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INTRODUCTION

This is a copy of the Record in the suit of Virginia v. West Virginia, now pending in the Supreme Court of the United States, as made up from the hearing before the Honorable Charles E. Littlefield, Special Master. The final hearing before the Master is set for September 21, 1909. We have named it Vol. III. of the suit, as Vol. I. and Vol. II. were issued heretofore by West Virginia for the information of the people of the State. Part One of this volume contains matter previously printed in Vols. I. and II., (excepting that the Appendixes thereto and the oral and written arguments are not printed herein), and Part Two is made up from the proceedings at hearings held by Master Littlefield at Richmond, Virginia, on November 16, 1908, February 15, May 4, 5, 6 and 7, and July 1 and 2, 1909, together with depositions taken by both plaintiff and defendant and certain exhibits and papers filed in the suit since said hearings. The proceedings before the Master at said hearings, were taken down in shorthand and transcribed in seven volumes of typewritten manuscript, and such references as "(Vol. 4, May 5, 1909)", found on page 291, mean that the printed matter following is from Vol. 4 of the typewritten manuscript of that date; and the figures "254" or "255", on the right-hand margin of said page, refer to the pages of said manuscript.

In referring the cause to the Master, the Court named seven specific items upon which the Master was directed to make report to the Court (pp. 173-4). These items are numbered 1 to 7 inclusive, and are called Paragraphs of the Decree. By directions of the Master, in printing Part Two of the Record, it has been attempted to marshal under each paragraph all matter pertaining thereto. Beginning on page 900, there is printed matter pertaining to the whole case generally.

There is also printed simultaneously with this volume an appendix containing the Acts, extracts from Acts, Constitutions, etc., of Virginia and West Virginia applicable to the suit, and is styled Vol. IV.

WM. G. CONLEY,
Attorney General.

CHARLESTON, W. VA., *Oct. 14, 1909.*

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

RECORD
PART ONE

BEING THE PLEADINGS AND PROCEEDINGS IN
THE SUPREME COURT OF THE UNITED STATES
PRIOR TO REFERRING
OF THE CAUSE
TO A SPECIAL MASTER.

IN THE

Supreme Court of the United States.

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

To the Chief Justice and the Associate Justices of the Supreme Court of the United States: 1

The Commonwealth of Virginia, by William A. Anderson, her attorney-general, brings this, her bill, against the State of West Virginia, and shows to the court that:

I.

On the first day of January, 1861, your Oratrix was indebted in about the sum of $33,000,000.00 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose, but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

II. 2

That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio river, that the Commonwealth of Virginia, in the first quarter of the Nineteenth century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State, and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia: and the completion of some of the main lines of improvement beyond the said range and through to the Ohio river, since the first day of January, 1861, has increased to very great and material extent the values of real estate, including coal and timber, in 3
the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvements. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1st, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to tax-

ation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

III.

The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvement, in a very large measure for the purpose of developing the aforesaid resources of the Western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been undertaken. In corroboration of this view it will appear
from an inspection of the legislative records of the State, 4
where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been the fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

IV.

The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the

territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

V.

On the 17th of April, 1861, the people of Virginia, in general convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the "Restored State of Virginia," and will be hereafter referred to in this bill as the "Restored State."

VI.

On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to "provide for the formation of a new State out of the portion of the territory of this State;" Section 9 of which ordinance was as follows, to-wit:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and

shall be determined by the laws now existing in the State of Virginia."

VII.

On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein, and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the fact that such change had been 7
made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

VIII.

Pending the admission of the State of West Virginia to the Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

"That all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public 8
works, in any parent bank or branch doing business within

said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government."

Your oratrix is informed, believes, and so charges, that the property which was by the operation of this act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property so received by West Virginia had been 9
obtained by Virginia since April, 1861.

IX.

And by a further Act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

"1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located out-

side of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property 10 of this State."

And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

X.

The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union contained the following provisions:

By Section 5 of Article VIII. of said Constitution it was provided:

"5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of War."

And by Section 7 of Article VIII. it was provided:

"7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by Section 8 of Article VIII. it was provided:

"8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accru- 11 ing interest and redeem the principal within thirty-four years."

At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed, any "public debt" or "previous liability," except for her just, contributive proportion of the public debt of the original State of Virginia, and for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of Janu-

ary, 1861. By section 5 of the same Article VIII., above set forth her Constitution forbade the creation of any debt "except to meet casual deficits in the revenue, to redeem a previous liability of the State," &c., and there was not and could not have been any such "previous liability," except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized a sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her proportion of that of the original State of Virginia, 12
and her liability for the money and property of the original State which had been transferred to her.

XI.

After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settling of any kind was ever had between the two States in regard to this debt.

XII.

The efforts looking to a settlement by the concurrent action of the two States having proved abortive, and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

The first of these was made by the General Assembly which was chosen at the close of the period of "destruction and reconstruction," which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

The purpose of the representatives of the Commonwealth, then

just emerging from conditions which had impoverished her people and paralyzed their productive energies, to assume and pay to the uttermost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871. 13

By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

XIII.

As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy One Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and hereinafter referred to Exhibit Number 7. 14

It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

It would seem from the above statement that Virginia has al-

ready done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

XIV. 15

By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

XV.

All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and con-

tracted on January 1, 1861, as stated in paragraph I of this bill, except a comparatively insignificant sum, not amounting to one per cent. of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master, who shall take the accounts hereinafter prayed for.

XVI.

Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right, a just claim against West Virginia for contribution 17
to the extent of West Virginia's equitable liability therefor.

XVII.

In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however, and the questions involved in connection therewith can be stated and settled in the account hereinafter prayed for to be taken between the two states; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period

of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

XVIII.

Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of Virginia, as of the time when the State of West Virginia 18
was created, rests upon the following among many grounds which might be indicated here:

First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia, forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is embedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

Third. The State of West Virginia has further, by the repeated enactments and joint resolution of her legislature, recognized her liability for a just proportion of this debt.

Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should duly account for the same in a settlement thereafter 19
to be had between her and the Commonwealth of Virginia.

Fifth. While the transfer of this property, real and personal, and also of certain moneys of the Commonwealth of Virginia, purport to have been made to the State of West Virginia by the Act of "The Restored Government of Virginia," there were in fact repre

sented in said "Restored Government" and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.

XIX.

The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: *"A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,"* approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled *"An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,"* the purpose of which Act is sufficiently set forth in its title, and a copy of the Act will also be hereinafter shown as one of the exhibits herewith filed.

XX.

The Commission acting under said last-mentioned Act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906,

made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, and referred to therein, will be exhibited as a part of this Bill.

XXI.

In order that the matters hereinbefore referred to may be more fully shown to the Court, your Oratrix files herewith certain exhibits (eight in number) which she prays may be read as a part of her bill, to-wit:

Exhibit Number 1. A copy of the said Act of the General 21
Assembly of Virginia, of March 30, 1871, entitled an Act to provide for the funding and payment of the public debt.

Exhibit Number 2. A Copy of the Act of the same General Assembly of March 28, 1879, entitled an Act to provide a plan of settlement of the public debt.

Exhibit Number 3. A copy of the Act of February 14, 1882, of the same General Assembly, entitled an Act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular payment of the interest thereon.

Exhibit Number 4. A copy of the said Act of the same General Assembly, approved February 20, 1892, entitled an Act to provide for the settlement of the public debt of Virginia not funded under the provisions of an Act entitled, etc.

Exhibit Number 5. A copy of the said Joint Resolution of the said General Assembly of March 6, 1894, providing for the appointment of a Commission.

Exhibit Number 6. A copy of the said Act of March 6, 1900, under which the powers of the said Commission were enlarged and the institution of this suit authorized.

Exhibit Number 7. Showing amounts paid off since January 1, 1861, or assumed and now carried by Virginia on account of the old debt of the undivided State.

Exhibit Number 8. A copy of the report of the said Virginia Commission made to the General Assembly of that State, dated January 6, 1906, together with the accompanying papers.

XXII. 22

Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to de-

termine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet.

And your Oratrix will ever pray, &c.

WILLIAM A. ANDERSON,
Attorney General of Virginia.
HOLMES CONRAD.

EXHIBITS WITH BILL. 23

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

EXHIBIT NUMBER 1. 24

CHAP. 282.—An Act to Provide for the Funding and Payment of the Public Debt.

Approved March 30, 1871.

(Acts G. A. of Va. 1870-1, p. 378.)

Whereas in the formation of the State of West Virginia, there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas, in the ordinance authorizing the organization of said state, it was provided that the said state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state, and will continue to be made as long as may be necessary; and whereas, the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof and not to this State, as the constitution of this state provides; now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness, shall be issued for any portion of the debt of this state; nor shall any interest be paid upon any part or portion of said debt, except as hereinafter provided.

2. The owners of any of the bonds, stocks or interest certificates heretofore issued by this state, which are recognized by its constitution and laws as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the old James river company, and the bonds of the James river and Kanawha company guaranteed by this state, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred seventy-one, in six per centum coupon or registered bonds of this state of the denominations of one hundred, and multiples thereof, dated that day and to become due and payable in thirty-four years after date, but redeemable at the pleasure of the state, after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order or bearer, and the coupons to bearer, at the treasury of the state and bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts, dues, and demands due the state, which shall be so expressed on their

face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by the law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars or any multiple thereof, shall be exchangeable for bonds of the character herein authorized to be issued; and new 26
certificates of like character may be issued for any fractional sums less than one hundred dollars which may remain in making such exchange.

3. Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the states of Virginia and West Virginia in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and that the state of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved or lithographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared shall commence the issuance of the same as herein provided. 27
The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a fac simile of his signature shall be stamped or

engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and the bonds of each series shall be numbered from one upwards, as they are issued; and the coupons in addition to the number of the bond to which they are attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate, to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amounts for which certificates shall be issued, under the second and third sections of this act; which calculations shall be endorsed, dated and signed by him on the back of such bond, certificate of stock, or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock, or interest certificate, to be made and kept in his office. After such endorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate, to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for the several amounts respectively, according to said endorsement. The second auditor, after making a proper registry of said bond or bonds, and certificates to be kept in his office, shall deliver the same to the person entitled to them. The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest certificate so surrendered and delivered to him, cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserved in his office a proper registry of every bond and certificate delivered by him to the second auditor, and whenever a coupon bond shall be issued payable to the order of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable. 28

5. Whatever sum may be realized from the claims of this state against Seldon, Withers and Company, and the Chesapeake and Ohio Canal company, and from the sale and disposition of the stocks and bonds, and debts owned by the state in and against any and all railway or other improvement companies, and all sums which may be realized from the claims of this state against the United States, and from any sales of any real estate now belonging to the commonwealth, shall be paid into the treasury of the state to the credit of the sinking fund hereby authorized and created. In the year eighteen hundred and eighty, and annually thereafter, until all the

bonds issued under and by authority of this act shall have been paid, there shall be levied and collected, the same as other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and the second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund, to the purchase and redemption of bonds issued by authority of this act.

6. All necessary expense incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same, signed by the treasurer and second auditor, and approved by the governor.

7. This act shall be in force from and after its passage.

EXHIBIT NUMBER 2.

CHAP. 24.—An Act to Provide a Plan of Settlement of the Public Debt.

Approved March 28, 1879.

(Acts G. A. of Va. 1878-9, p. 264.)

Whereas it is believed by the general assembly that the rate of interest heretofore agreed to be paid by the state on the public debt is greater than can be borne without destroying the industrial interests of the state and whereas the council of foreign bondholders of London, England, and the funding association of the United States of America, limited, have, in view of this belief expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest; and whereas it is highly expedient, in the best interest of the state, to secure an amicable settlement with the creditors by which the credit of the state may be restored and enhanced, and the aggregate amount of interest payable by the state reduced within limits which will not be too onerous to the population; therefore,

1. Be it enacted by the general assembly of Virginia, That to provide for funding the debt of the state, the governor is hereby authorized to create bonds of the state, registered and coupon, dated the first day of January, eighteen hundred and seventy-nine, the principal payable forty years thereafter, bearing interest at the rate of three per centum per annum for ten years, and at the rate of four per centum per annum for twenty years, and at the rate of five per

centum per annum for ten years, payable in the cities of Richmond, New York or London, as hereinafter provided, on the first days of July and January of each year, until the principal is redeemed. The state shall have the option of redeeming any or all of said bonds by the payment of principal and accrued interest at any time after the expiration of ten years from the first day of January, eighteen hundred and seventy-nine, on public notice to the holders of its purpose to make such redemption. The coupons on said bonds shall be receivable at and after maturity for all taxes, debts, 31
dues and demands due the state, and this shall be expressed on their face. The holder of any registered bond shall be entitled to receive from the treasurer of the state a certificate for any interest thereon, due and unpaid, and such certificate shall be receivable for all taxes, dues and demands due the state, and this shall be expressed on the face of the registered bonds and on the face of such certificate. All obligations created under this act shall be forever exempt from all taxation direct or indirect, by the state, or by any county or corporation therein, and this shall be expressed on the face of the bonds. The said bonds shall be of the denominations of one hundred dollars, five hundred dollars, and one thousand dollars, at the option of the creditors respectively, and the bonds as well as their coupons shall be payable at Richmond and New York, or if desired may be made payable in sterling at London, at the fixed rate of exchange of one pound sterling for five dollars. The bonds hereby authorized shall be issued only in exchange for the outstanding debt of the state, as hereinafter provided.

2. For purposes of designation, the outstanding indebtedness of the state is divided into two classes, as follows, to-wit:

Class I. which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.

Class II. which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds.

3. The outstanding indebtedness of the state shall be funded in the new bonds, to be issued under this act, as fol- 32
lows: Bonds shall be presented for exchange with all coupons attached maturing after the date of presentation, and shall be exchanged at the face value of said bonds, dollar for dollar, for the new bonds, with all coupons attached maturing after the date of such presentation: Provided that the proportion of Class II, refunded, shall never exceed in amount one-third (1-3) of the total

amount refunded, until eighteen million dollars of Class I. have been retired. The new bonds to be issued may be coupon or registered, at the option of the holders, and at the like option coupon bonds may at any time be converted into registered bonds.

4. All due and unpaid interest may be funded under the provisions of this act at the rate of fifty cents on the dollar, and shall be fundable at that rate under the third section of this act, and taken under the provisions of said section, in lieu of bonds of Class II.

5. If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the governor their assent to and acceptance of the terms of this act the same shall be taken to be a contract between the state and the said corporations, and the governor shall forthwith provide for the preparation of the bonds provided for by this act. The said corporations may present for funding, and in the proportions hereinbefore provided at least eight millions of dollars of the outstanding obligations of the state prior to the first day of January, eighteen hundred and eighty; and during each period of six months, from and after the thirty-first — December, eighteen hundred and seventy-nine they may present an additional amount of at least five millions of dollars, until the whole debt is funded; but any excess over said amounts, which may be presented during any of said periods may be estimated in requirement for the succeeding six months. So long as the said corporations shall present for funding the obligations aforesaid, in the amounts and in the periods aforesaid, 33 they shall have the exclusive privilege of funding the outstanding debt under the provisions of this act: Provided that the said corporations shall arrange to receive the outstanding bonds at the city of Richmond, when the holders thereof shall so desire. But if the said corporations shall fail to file with the governor their assent and agreement as aforesaid by the first day of May, eighteen hundred and seventy-nine, or shall fail to present for funding the outstanding bonds in the proportions and amounts and during the periods hereinbefore specified, then the governor may, in his discretion, make a like contract with responsible parties for the funding of the debt of the state under this act.

6. The rules prescribed under the act approved March thirtieth, eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act, except so far as the same be modified by the provisions of this act: Provided that all bonds and certificates which may be necessary to be printed, shall be printed from a plate which shall be the property of the commonwealth, and shall remain in the keeping or under the con-

trol of the second auditor. Whenever an obligation of the state shall be presented to the second auditor to be funded under this act, he shall note the fact and date on the proper register in his office, shall punch a hole through the name of the second auditor, signed or countersigned thereto, and shall issue his warrant upon the treasurer for the new obligations required. There shall be endorsed upon the said warrant a description of the old obligations, and the calculation of principal and interest for which the new obligations are to be issued. The said old obligations and warrant shall be carried by the second auditor to the treasurer, who shall note the fact and date of funding on the proper register in his office, and if he shall find the warrant correctly drawn, shall sign the proper obligations to be issued, register the same in his office, clip 34
therefrom the past-due coupons and punch the same, and deliver the said obligations to the second auditor, taking his receipt therefor upon his warrant. The second auditor shall countersign the obligation so delivered to him, register the same in his office, and deliver the same to the proper person, taking his receipt therefor. The treasurer shall jacket and file in his office the warrant upon which the new obligations were issued, with the surrendered obligations attached to said warrant, and shall number and date the jacket so as to make it easy for reference. But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so cancelled shall be filed for reference.

7. The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the state of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the state of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia. The acceptance of the said certificates for West Virginia's one third, issued under this act, shall be taken and held as a full and absolute release of the state of Virginia from all liability on account of said certificates.

8. The general assembly will, by necessary and appropriate legislation, provide for the prompt payment of the interest on the bonds issued under this act.

9. In the year eighteen hundred and eighty-five, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be levied and collected the 35
same as, and together with other taxes, a tax of two cents on

the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued under this act. All the certificates of debt which shall be funded, redeemed or purchased under this act shall be cancelled by the second auditor, and delivered by him to the treasurer of the commonwealth at the time of payment therefor, who shall carefully preserve the same in his office. All certificates of debt acquired under the operation of the sinking fund, created by the act of March thirty, eighteen hundred and seventy-one, shall also be cancelled and delivered.

10. Executors, administrators, and others acting as fiduciaries, may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

11. The treasurer shall, upon the first days of July, eighteen hundred and seventy-nine, and January, eighteen hundred and eighty, and upon the same days in each year, pay or cause to be paid to the holders thereof the half-yearly interest then due upon each of the bonds of the commonwealth issued under this act.

12. Whenever there shall not be a sufficient amount of money in the treasury of the state to meet the accruing interest on the said bonds promptly, the auditor is hereby authorized and directed, by and with the advice of the governor of Virginia, to raise by temporary loan, to be returned out of the accruing revenues of the state, a sum sufficient to enable him to meet promptly the said interest as it accrues. And in case the auditor shall not be able to 36
raise a sufficient sum for the said purpose by loans, he is hereby authorized and directed to issue non-interest-bearing certificates of indebtedness of this state, to be signed by himself and countersigned by the treasurer, and properly registered in the offices of the auditor and treasurer, for the sum of one dollar and multiples thereof, the same to be printed from plates, which shall be the property of the state, and to sell the same at not less than a minimum price to be fixed by the commissioners of the sinking fund, which shall not be less than seventy-five cents upon the dollar. The said certificates shall be receivable for all taxes, debts, dues and demands due the state, and this shall be expressed on their face. The amount of such certificates which may be issued at any one time shall be fixed by the commissioners of the sinking fund, and the proceeds of the sale thereof shall be devoted exclusively to the payment of interest as aforesaid. The auditor shall report regularly to the general assembly the amount and character of certificates issued under this act, and the net proceeds thereof. In case the auditor shall not be able to

borrow the sums needed as aforesaid without security, he shall be and is hereby authorized to hypothecate such amounts of the said certificates as may be fixed on by the commissioners of the sinking fund, at a value to be fixed as aforesaid, but in no case to be at a less value than seventy-five cents upon the dollar; and in case of a sale of said certificates, whether they may have been so hypothecated or not, they shall be offered for sale in suitable and proportionate amounts in the different counties, towns and cities of this state, so far as practicable, under regulations to be fixed by the commissioners of the sinking fund. The said certificates shall be received by the treasurer of the state, and be cancelled on receipt thereof, under the same regulations and prohibitions now existing in relation to coupons for interest on the public debt, except that no tax shall be deducted therefrom, and the fact of their cancellation shall be noted on the said registers.

13. The act approved March fourteenth, eighteen hun- 37
dred and seventy-eight, and all acts inconsistent with the provisions of this act, are hereby repealed.

14. This act shall be in force from its passage.

EXHIBIT NUMBER 3. 38

CHAP. 84.—An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon.

Approved February 14, 1882.

Preamble.—Whereas to the end which this act comprehends, a full statement of the debt is essential; and whereas the following has been carefully made up from the records of the second auditor's office of the State, it is confidently submitted as presenting a true state of the account between the State and her creditors—the account is as follows:

		Interest.	Principal.
	Principal outstanding at this date:		
1861, January 1st,	Sterling debt bearing 5 per cent. interest..... $ 1,973,000 00		
	Dollar debt bearing 6 per cent. interest..... 29,533,582 90		
	Debt guaranteed bearing 6 per cent. interest..... 294,130 00		
	Total principal		$31,800,712 90
	Interest:		
	Past due and uncalled for at this date..... 101,023 63		
	Maturing at this date, January 1st, 1861..... 944,156 38		
	Total interest	$1,045,183 01	
1863, July 1st.	The State of West Virginia was formally admitted into the Union June 20th, 1863. The property and resources of Virginia, upon which the above debt has been founded, were by this partition of the old State, reduced, one-third of her territory and one-fifth of her population going to form West Virginia. This and the consequences of war to her and her people made a loss of full $500,000,000 of property, and her taxable values were reduced from $723,000,000 to $336,000,000, and her annual revenues from over $4,000,000 to $2,500,000.		
39	*Principal July* 1st, 1863:		
	Sterling debt bearing 5 per cent. interest..... $ 1,973,000 00		
	Dollar debt bearing 6 per cent. interest..... 29,827,712 90		

	Bonds issued since January 1st, 1861, in discharge of debts contracted, and appropriations made prior to that date	1,340,500 02		
	Total principal July 1st, 1863			33,141,212 92
	Interest July 1st, 1863:			
	Past due January 1st, 1861, and uncalled for	1,045,183 01		
	Accrued between January 1st, 1861, and July 1st, 1863, inclusive	4,909,533 07		
	Total interest to July 1st, 1863, inclusive		5,954,716 08	
1863, July 1st.	Two-thirds of the above debt, principal and interest, to this date is assumed as Virginia's equitable portion, in consideration of the partition of her territory, population, and resources, upon the well established principle that debt in such cases follows territory. Upon that basis, Virginia's portion of the debt of the entire State is—			
	Principal:			
	Two-thirds of $1,973,000 sterling debt	1,315,333 34		
	Two-thirds of $31,168,212.92 dollar debt	20,778,808 62		
	Total principal, two-thirds, to July, 1863, inclusive			22,094,141 96
	Interest:			
	Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive	3,969,810 72		

	Less amount of interest paid by Virginia since January 1st, 1861, exclusively, out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto..	3,662,434 55		
	Balance of interest due and unpaid July 1st, 1863, inclusive		307,376 17	
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above..	1,315,333 34		
	Principal July 1st, 1863, in dollar bonds as above $20,778,808 62			
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date 3,710,449 67			
	Total dollar bonds.....	17,068,358 95		
	Total principal			18,383,692 29
	Interest from July 1st, 1863, *to July* 1st, 1871, *inclusive:*			
	On $1,315,333.34 sterling bonds at 5 per cent.....	526,133 28		
	On $20,788,808.62 dollar bonds at 6 per cent.....	9,973,828 14		
		10,499,961 42		
	Less amount covering average time of the redemption of the $3,710,449.67 dollar bonds redeemed 445,257 58			

	Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive.....	3,594,289 11		
			4,039,546 69	
40	*Interest*:			6,460,414 73
	Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive		3,969,810 72	
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto		3,662,434 55	
	Balance of interest due and unpaid July 1st, 1863, inclusive..			307,376 17
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above..		1,315,333 34	
	Principal July 1st, 1863, in dollar bonds as above....	$20,778,808 62		
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date	3,710,449 67		
	Total dollar bonds		17,068,358 95	
	Total principal			18,383,692 29
	Interest from July 1st, 1863, *to July* 1st, 1871, *inclusive:*			
	On £ 1,315,333.34 sterling bonds at 5 per cent.....		526,133 28	

On $20,778,808.62 dollar bonds at 6 per cent.....		9,973,828 14	
		10,499,961 42	
Less amount covering average time of the redemption of the $3,710,449.67 dollar bonds redeemed	445,257 58		
Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive.....	3,594,289 11	4,039,546 69	
			6,460,414 73
Add interest accrued to July 1st, 1871, as above		6,767,790 90	
Total		18,041,288 93	
Less amount paid between July 1st, 1871, and October 1st, 1881,—in money	$2,415,973 56		
In coupons	8,707,615 50		
Less amount covering average time of the redemption of the $1,540,658.12 bonds redeemed	331,800 00		
Less tax-receivable coupons outstanding October 1st, 1881, and to be paid as part of the floating debt	895,722 00		

Less tax-receivable coupons maturing in January and July, 1882....	1,117,724 87			
Amount of interest (special): Redeemed and cancelled.....	380,110 02			
Total deductions.....		13,848,945 95		
Balance of interest to July 1st, 1882.....			4,192,342 98	
Total debt to July 1st, 1882:				
Principal as above				16,843,034 17
Interest, as above				4,192,342 98
Total				$21,035,377 15

Including bonds held by the literary fund to the amount of $1,428,245.25, and interest on the same—in arrears July 1st, 1881, 516,322.19—and interest added from that date to July 1st, 1882, $85,694.71, making $602,016.90 included in the above sum of $4,192,342.98.

Total debt	21,035,377 15

And whereas by this account it appears that Virginia owes 41
her creditors, as of the first — July, eighteen hundred and eighty-two, including the bonds held by the Literary fund and arrears of interest thereon cast to such date, twenty-one million, thirty-five thousand, three hundred and seventy-seven dollars and fifteen cents; and that she may cause to be issued her own bonds for the same, and provide for the certain payment of interest thereon; that is for her equitable share of the bonds known as consols, and here designated as class A, and whereof there are outstanding fourteen million three hundred and sixty-nine thousand nine hundred and seventy-four dollars and eighty-one cents; and for her equitable share of the bonds known as ten-forties, and here designated as class B, and whereof there are outstanding eight million five hundred and seventeen thousand six hundred dollars; and for her equitable share of the bonds known as peeler, and here designated as class C, and whereof there are outstanding two million three hundred and ninety-four thousand three hundred and five dollars and twelve cents; and for her equitable share of the interest thereon, designated as class D, and whereof there is now in arrears nine hundred and twenty-eight thousand eight hundred and eighty-seven dollars and forty-five cents, and counted to the first of July, eighteen hundred and eighty-two, makes the amount of such interest then to be in arrears, one million seventy-two thousand five hundred and forty-five dollars and seventy-five cents; and for her equitable share of the bonds known as unfunded bonds—dollar and sterling—here designated as class E, and whereof there are now outstanding, computed at two-thirds, three million seven hundred and seventy-three thousand four hundred and ninety-three dollars and sixty-eight cents; and for her equitable share of the interest thereon now in arrears, two million six hundred and thirty-six thousand four hundred and forty-four dollars and thirty-four cents, and counted to the first of July, eighteen hundred and eighty-two, making as of that date (two hundred and twenty-six thousand four hundred and nine dollars and sixty-two cents more) the sum of two million eight hundred and sixty-two thousand eight hundred and fifty-three dollars and ninety-six cents, and here designated as class F; and for her equitable share of the bonds held by the commissioners of the Literary fund, whereof there are one million four hundred and twenty-eight thousand two hundred and forty-five dollars and twenty-five cents; and whereas the rate of interest which any people can safely undertake to pay must be determined by the measure of their productive resources; and whereas these have long been burdened by a rate of taxation which is conceded to be as high as can be endured; and whereas the means of prompt and certain payment should be apparent to the creditor, while the people have assurance for the support of the government and the maintenance of their schools, as required by the

constitution; and whereas the net revenues of the state remaining and so derived, after providing for the proper and gradual liquidation of the balance of the moneys heretofore diverted from the public free school fund, after liquidating gradually the ar- 42
rearages to the Literary fund, and leaving some small margin for the immediate and subsequent exigencies, which are, and are likely to be demanded by the public welfare—notably in respect of the humane institutions now inadequate to the proper accommodation of that unfortunate class of every population—do not warrant the assumption of a larger rate of interest than three per centum upon the full amount of Virginia's equitable share of the debt of the old and entire state, as the same is ascertained and now formally declared by the foregoing account; therefore,

1. Be it enacted by the general assembly of Virginia, That the board of commissioners of the sinking fund of the state, be, and they are hereby empowered and directed to create bonds, registered and coupon, to such extent as may necessary to comply with the provisions of this act.

2. The said bonds shall be dated July first, eighteen hundred and eighty-two, and be payable at the office of the treasurer of the state on the first day of July, nineteen hundred and thirty-two; provided that the state may, at any time and from time to time, after July first, nineteen hundred, redeem any part of the same, principal and interest, at par. In case of such redemption before maturity, the bonds to be paid, shall be determined by lot by said board of commissioners, and notice of the bonds so selected to be paid, shall be given in a newspaper published in Richmond, New York, and London, England, when interest from and after ninety days from the date of such publication in London, shall cease upon the bonds so designated to be paid.

3. The form of the bond shall be as follows, to-wit:

The commonwealth of Virginia acknowledges herself indebted to —— —— (in the case of a coupon bond to the bearer, and in the case of a registered bond, inserting the name of the person or corporation) in the sum of —— dollars, which she promises to pay in lawful money of the United States at the office of the treasurer of the state, Richmond, Virginia, on the first day of July, nineteen hundred and thirty-two, with the option of payment at par, principal, and interest, before maturity, at any time after July first, nineteen hundred; and interest at the office of the treasurer of the state, in such lawful money, on the first days of January and July, at the rate of three per centum per annum until paid (according to the tenor of the annexed coupons, in the case of coupon bonds).

In testimony whereof, witness the signature of the treasurer and

the counter-signature of the second auditor, hereto affixed according to law.

—— ——, *Treasurer,*
—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be as follows, to-wit:

No. —— (of bond). 43

The commonwealth of Virginia will pay to bearer —— dollars, in lawful money of the United States, at the office of the treasurer, Richmond, Virginia, on the first day of January and July, alternately—the first coupon to be payable January first, eighteen hundred and eighty-three.

—— ——, *Treasurer:*

$——.

Each coupon to be impressed on the back with its number, in the order of maturity, from one forward.

5. The said board of commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of a different tint: Provided that registered bonds may be issued of any denomination, multiple of one hundred; all registered bonds to be of the same tint; and they are authorized and directed to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore numerated, including the bonds held by the literary fund, as follows, that is to say:

(*a*) For her equitable share of class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act (principal and accrued interest, at par, from the preceding period of maturity to the date of exchange,) are to be given for every one hundred dollars, face, principal and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest which may be past due and unpaid upon the same, funded bonds issued under this act may be given dollar for dollar.

(*b*) For her equitable share of class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of class A.

(*c*) For her equitable share of class C, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A and B, and accounting for the same as provided in class D.

(*d*) For her equitable share of class D, at the rate of eighty per centum.

(*e*) For her equitable share of class E, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A, B, and C, and accounting for the same as provided in class F.

(*f*) For her equitable share of class F, at the rate of sixty-three per centum.

(*g*) For her equitable share of the bonds of the Literary fund, as in the case of class C; her equitable share of the arrearages of interest—three hundred and seventy-nine thousand two hundred seventy dollars—to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate as follows:

No. ——. 44

The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for —— dollars, held by ——, dated the —— day of ——, and numbered ——, leaving a balance of —— dollars, with interest from ——, to be accounted for by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this —— day of——, eighteen ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

7. The said board of commissioners are empowered to issue for any fractional part of one hundred dollars of the indebtedness funded under this act, the following certificate:

Fractional Certificate.

Register No. —. Transaction No. —.

This certificate entitles the holder hereof to the sum of —— dollars, fundable at its face in the bonds of the commonwealth of Virginia, authorized by an act approved —— day of ——, eighteen hundred and eighty-two, when presented with certificate of like tenor or in conjunction with other evidences of debt fundable under said act in amounts of one hundred dollars and multiples thereof.

Done at the capitol of Virginia, this——day of ——, eighteen hundred and eighty ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued shall be registered by the second auditor in a register kept for that specific purpose, giving the date and number of the transaction to which it relates, the amount of the same, and the name of the person or corporation to whom it was issued; and as such certificates are refunded, the same shall be canceled and preserved as herein provided in respect to the evidences of debt refunded.

8. All the bonds and certificates of debt and evidences of past due and unpaid interest taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are required, and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled from time to time, shall be certified by said board and filed with the treasurer for preservation.

9. All the coupons and registered bonds and fractional certificates issued under this act, shall be separately registered by the second auditor in books kept for the specific purpose; and in each case giving the date, number and amount of the obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the bond, bonds or indebtedness surrendered. 45

10. The plates from which the bonds and fractional certificates authorized by this act, are printed, shall be the property of the commonwealth, and shall remain in the keeping of the said board of commissioners of the sinking fund.

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the state each year, two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the sinking fund; and the commissioners of the said sinking fund shall, annually or oftener, apply the same to the redemption or purchase (at a rate not above par) of the bonds issued under this act, and the bonds so redeemed shall be canceled by the said board, and the same registered by the second auditor in a book to be kept for the purpose, giving the number, the date of the issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and canceled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot as provided in section two of this act.

12. Executors, administrators and others acting as fiduciaries, may exchange any state bonds held by them as provided, for bonds issued under this act, when so authorized by the court having juris-

diction in the premises, and the same, when so made, shall be considered a lawful investment.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act, as the same shall become due and payable, out of any money in the treasury not otherwise appropriated.

14. All necessary expenses incurred in the execution of this act, shall be paid out of any money in the treasury not otherwise appropriated, on the warrants of the auditor of public accounts drawn upon the treasurer, on the order of the board of sinking fund commissioners.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this state, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

16. This act shall be in force from its passage.

EXHIBIT NUMBER 4. 46

CHAP. 325. An act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882.

Approved February 20, 1892.
(Acts G. A. of Va. 1891-92, p. 533.)

Whereas by a joint resolution of the general assembly of the state of Virginia, adopted on the third day of March, eighteen hundred and ninety, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the state not funded under the act known as the "Riddleberger bill," approved February fourteenth, eighteen hundred and eighty-two, from a properly constituted representative of her creditors; and

Whereas said Virginia debt commission has submitted a report to the general assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central Trust Company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, Junior, Hugh R. Garden, and John Gill, constituting a committee for certain of the creditors of Virginia, called the "Bondholders' committee," have proposed to said commission to surrender to the state in bulk not less than twenty-three million of dollars of the public debt, unfunded

under said act approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves appointed; and that, in pursuance of said proposal an 47
agreement has been entered into unanimously between the said commission and the said bondholders' committee, subject to approval by the general assembly, whereby in exchange for the said unsettled obligations of the state held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the commonwealth pursuant to law and by the United States) together with the interest thereon to July first, eighteen hundred and ninety-one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety-one, and maturing one hundred years from said date, with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually, of which aggregate debt of about twenty-eight million of dollars the said bondholders' committee represent that they now hold and agree to surrender not less than twenty-three million of dollars, and

Whereas said report and agreement contemplate the surrender of the obligations held by the bondholders' committee as an entirety, and do not contemplate an apportionment by the general assembly between the various classes of creditors so represented by said bondholders' committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the state (except those issued under the act of February fourteenth, eighteen hundred and eighty-two, the evidences of debt held by the public institutions of the state in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act; therefore

1. Be it enacted by the general assembly of Virginia, That the commissioners of the sinking fund, a majority of whom 48
may act, be, and they are hereby, empowered and directed to create "listable" engraved bonds, registered and coupon, to such an extent as may be necessary to issue nineteen million of dollars of bonds in lieu of the twenty-eight million dollars of outstanding obligations, not funded under the act approved February fourteenth, eighteen hundred and eighty-two, hereinbefore recited.

2. The said bonds shall be dated July first, eighteen hundred and

ninety-one, and be payable at the office of the treasury of the state, or at such agency in the city of New York, as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, and shall bear interest from date, payable semi-annually on the first days of January and July in each year, at the rate of two per centum per annum for the first ten years and three per centum per annum for the remaining ninety years; the said interest may be payable in Richmond, New York and London, or at either place, as may be designated by the state; provided that the state may at any time, and from time to time, after July first, nineteen hundred and six, redeem at par any part of the principal with accrued interest. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said commissioners of the sinking fund, and notice of the bonds so selected to be paid shall be given by publication beginning at least ninety days prior to an interest-due date, in a newspaper published in Richmond, Virginia, one in New York city, and one in London, England; and the interest from and after the next succeeding interest-due date shall cease upon the bonds so designated to be paid: provided that no registered bonds shall be so redeemed while there are any coupon bonds outstanding.

3. The form of the bonds shall be substantially as follows, to-wit:

Issued under act of assembly, approved —— day of ——, eighteen hundred and ninety-two.

The commonwealth of Virginia acknowledges herself to be indebted to —— —— (in case of a coupon bond to the bearer, 49 and in case of a registered bond inserting the name of a person or corporation, or assigns), in the sum of —— dollars, which she promises to pay in lawful money of the United States, at the office of the treasurer of the state, or at such agency in the city of New York as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, with the option of payment at par with accrued interest, before maturity at any time after July first, nineteen hundred and six, and interest, at the office of the treasurer of the state, or at the agencies of the state in New York city and London, England, or at either place, as may from time to time be designated by the state, in such lawful money aforesaid, at the rate of two per centum per annum for ten years from the first day of July, eighteen hundred and ninety-one, and at the rate of three per centum per annum thereafter until paid, payable semi-annually on January first and July first in each year (according to the tenor of the annexed coupon bearing the engraved signature of the treasurer of the commonwealth in case of coupon bonds). And this obligation is hereby made exempt from any taxation by the said commonwealth of Virginia, or any county or municipal corporation thereof.

In testimony whereof, witness the signature of the treasurer and the countersignature of the second auditor of the commonwealth of Virginia, hereto affixed according to law.

[SEAL.] —— ——, *Treasurer.*

—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be substantially as follows, to-wit:

Coupon No. —.

On the first day of —— the commonwealth of Virginia will pay to bearer —— dollars in lawful money of the United States, at the office of the treasurer of the state, or at the agencies of the state in New York city or London, England, or at either place, as may be designated by the state; the same being six months' interest on bond number ——, —— dollars.

—— ——, *Treasurer.*

Each coupon to be impressed on the back with its number, in order of maturity, from number one consecutively.

5. Said commissioners of the sinking fund are authorized to issue coupon bonds in denominations of five hundred and one thousand dollars each, as may be necessary to carry out the provisions of this act: provided that registered bonds may be issued of the denominations of one hundred dollars, five hundred dollars, one thousand dollars, five thousand dollars, ten thousand dollars; and they are authorized and directed to issue said bonds, registered or coupon, in exchange for the said outstanding obligations up to and including July first, eighteen hundred and ninety-one (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States) as follows:

A. Said bondholders' committee may at any time on or before the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification bonds and other evidences of debt, and coupons or other evidences of interest thereon, obligations of the state of Virginia, held by said committee, for exchange as aforesaid; and said commissioners shall determine whether the obligations so presented are genuine obligations of the state and whether the coupons or other evidences of interest represent interest accrued on such obligations (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States).

B. Such of the obligations so presented for verification as may be determined by said commissioners to conform to the requirements of paragraph A hereof, shall be sealed in convenient packages as the

examination proceeds. Each of the packages shall be numbered, and upon each package shall be endorsed the amount and 51
character of the obligations therein contained. Such endorsement on each package shall be signed by said commissioners or a majority thereof, and the package shall then be delivered to said committee or its agent. Said commissioners shall keep in a book to be provided for the purpose a record of the numbers of all such packages and of the amount and character of the obligations contained in each. Such obligations presented by said bondholders' committee as do not conform to the requirements of paragraph A hereof shall be returned to said committee; but said commissioners shall keep a record thereof in the book aforesaid.

C. After said bondholders' committee shall have presented to said commissioners for verification bonds and other evidences of debt and coupons, or other evidence of interest thereon accrued on or before July first, eighteen hundred and ninety-one, obligations of the state of Virginia, all conforming to the requirements of paragraph A hereof, as determined by said commissioners, and amounting in the aggregate to not less than twenty-three million of dollars, after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided. All coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, shall be surrendered with such bonds, the said cash to be returned if proper coupons are subsequently tendered. And when the said bondholders' committee shall have presented for exchange the obligations aforesaid to an amount of
twenty-three million of dollars or more, if the engraved bonds 52
hereinbefore authorized are not ready for exchange, the said commissioners shall, upon application of said bondholders' committee, issue to said bondholders' committee a manuscript registered bond of the state of Virginia, substantially of the form of the bond hereinbefore specified, for the aggregate amount to which the said committee may be entitled for the obligations so presented under this act, the said bond to be exchangeable for the engraved bonds aforesaid of character and amount required by said committee, as prescribed in this act, and interest in the meantime on said manuscript bond shall be paid as herein provided for on the engraved bonds.

D. The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph C of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered: provided that no certificates issued on account of the proportion of West Virginia of the obligations of the state shall be funded under this act. When said bondholders' committee shall have surrendered and exchanged such obligations as aforesaid to the amount of at least twenty-three million dollars, said committee may at any time thereafter up to and including the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification, surrender, and exchange additional obligations, principal and interest, as aforesaid; all coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount,
or the face value thereof in cash, to be presented with such 53
bonds, the cash, if paid, to be returned if proper coupons are
subsequently tendered. After said commissioners shall have determined that said obligations conform to the requirements of paragraph A hereof, said commissioners shall accept the obligations so presented for surrender and exchange by said committee, and shall deliver to said committee in exchange therefor new bonds issued under the provisions of this act in the same proportion as is set out in this paragraph of this section, after making the deductions provided for in paragraph C of this section.

E. If on making the exchange provided for in this act said committee shall be found entitled to a fractional amount or amounts less than one hundred dollars in addition to the new bonds delivered to it, said commissioners of the sinking fund shall issue to the committee a certificate or certificates for such amount or amounts. Such fractional certificates shall be exchangeable for the bonds authorized by this act to be issued in sums of one hundred dollars, or any multiple thereof, and certificates of like character shall be issued for any fractional amount which may remain in making the exchange.

6. For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:

No. —. The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond for —— dollars, dated —— day of ——, and No. —, leaving a balance of —— dollars, with interest from ——, to be accounted for to the holder of this certificate by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this —— day 54
of ——, eighteen hundred and ninety-two.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued under sections five and six of this act shall be recorded by the second auditor in a book kept for that purpose, giving the date and number of the transaction to which it refers, the amount of certificates, and the name of the person or corporation to whom issued and delivered; and as such certificates, authorized by paragraph E, section five of this act, are exchanged, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the state as may be presented to said commissioners; provided, that said commissioners shall not receive on deposit for the purposes aforesaid any outstanding obligations of the state which have been once deposited with the bond-holders' committee, or may be hereafter deposited with them; the said verification and exchange for the new bonds of the obligations so deposited to be conducted in the same manner as hereinbefore provided with respect to the obligations deposited with the said bond-holders' committee, and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act, in exchange for the obligations so deposited, bonds authorized by this act as follows, namely: to each of the several classes of said depositing creditors the same proportions, as nearly as may be found in their judgment practicable by the commissioners of the sinking fund, as the same class shall receive under the distribution which shall be made by the commission for the creditors represented by the bondholders' committee: provided that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-two, nor shall any coupon bonds be 55
received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one; but for any such coupons as may be missing, coupons of like class and amount, or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subseqently

tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by him, or a commission equal in amount to that which may at any time hereafter be fixed by the said committee of bondholders upon any bonds deposited with them, not, however, in any case to exceed three and one-half per centum; and said sinking fund commissioners shall cover the fund thus received into the treasury of the commonwealth.

8. All the coupon and registered bonds issued under this act shall be separately recorded by the second auditor in books provided for the specific purpose, in each case giving the date, number, amount of obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the obligations surrendered.

9. All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the general assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasurer for preservation.

10. In the year nineteen hundred and ten, and annually thereafter, there shall be set apart of the revenue collected from the property of the state each year up to and including the year nineteen hundred and twenty-nine, one half of one per cent. upon 56
the bonds issued under this act, as well as upon the outstanding bonds issued under act approved February fourteenth, eighteen hundred and eighty-two; and in the year nineteen hundred and thirty, and annually thereafter until all the bonds issued under this act and the said act approved February fourteenth, eighteen hundred and eighty-two, are paid, there shall be set apart of the revenue collected from the property of the state each year one per cent. upon the outstanding bonds issued under the aforesaid acts, which shall be paid into the treasury to the credit of the sinking fund, and the commissioners of the sinking fund shall annually, or oftener, apply the same to the redemption or purchase (at a rate not above par and accrued interest), of the bonds issued under the aforesaid acts, and the bonds so redeemed shall be cancelled by the said commissioners and the same registered by the second auditor in a book to be kept for that purpose, giving the number and date of issue, the character, the amount, and the owner at the time of purchase, of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act. All bonds of the state issued under the provisions of the act

aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund shall, as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be cancelled by said commissioners and preserved in the office of the treasurer of the commonwealth.

11. Executors, administrators and others acting as fiduciaries may participate in the settlement of the debt herein specified in the manner hereinbefore provided, and such action shall be deemed a lawful investment of their trust fund. Executors, administrators and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

12. All coupons heretofore tendered for taxes and held by 57
said tax-payers in pursuance of such tender, shall be received in payment of the taxes for which they were tendered, and upon their delivery to the proper collector or the amount thereof in money, the judgments obtained against the said tax-payers for such taxes shall be marked satisfied: Provided the said tax payers shall have paid in money and not in coupons the costs of said judgments. All coupons heretofore tendered for taxes and held by the officers of the commonwealth for verification, in pursuance of the statute in such case made and provided, shall be received in payment of the taxes for which they were tendered, and the money collected for such taxes returned to the parties from whom it was received: Provided the said tax-payers shall have paid in money, and not in coupons, all costs incurred in legal proceedings to verify said coupons.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act as the same shall become due and payable out of any money in the treasury not otherwise appropriated.

14. The plates from which the bonds and fractional certificates authorized by this act are printed shall be the property of the commonwealth.

15. All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated on the warrants of the auditor of public accounts, drawn upon the treasury on the order of the commissioners of the sinking fund.

16. The act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, and the amendments thereto to-wit: an act entitled "an act to declare the true in- 58
tent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts eighteen hundred and eighty-one and

eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved August twenty-seventh, eighteen hundred and eighty-four; and the act entitled "an act to amend and re-enact an act approved August twenty-seventh eighteen hundred and eighty-four, entitled an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts of eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved November twenty-ninth, eighteen hundred and eighty-four, are hereby repealed.

17. The commissioners of the sinking fund are authorized, if it shall seem to them for the best interest of the commonwealth, to make one extension of the time for the funding of the said twenty-eight million of dollars of outstanding evidences of debt for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-two.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds issued under this act into registered bonds in the denominations hereinbefore provided, and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by, and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund; and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

19. This act shall be in force from its passage.

EXHIBIT NUMBER 5. 59

CHAP. 747. A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same.

(Approved March 6, 1894.)

(Acts G. A. of Va., 1893-4, p. 867.)

Whereas the general assembly of Virginia is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia; and

Whereas the general assembly has heretofore passed four several acts in relation to the funding and settlement of her public debt, as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eight, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit: one-third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the present state of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state; now, therefore,

Be it resolved by the senate of Virginia (the house of delegates concurring), That a commission of seven members is hereby created and provided for, of whom the present chairman of the committee on finance and banks of the senate shall be one, and the present chairman of the committee on finance of the house of delegates shall be another; of the other five, two shall be chosen by the senate from among the persons now members of that body; two by the house of delegates from among the persons now members of that body, and one, to be a resident of this state, shall be appointed by the governor. No member of said commission shall cease to be a member thereof by reason of ceasing to be a member of the general assembly.

Said commission shall choose its own chairman and secretary; vacancies therein occurring or existing during recess of the legislature shall be filled by the governor on notification thereof by the chairman; and a majority of said commission shall be competent to act.

Said commission is hereby authorized and directed to negotiate with the state of West Virginia a settlement and adjustment of the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia. 61

But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the state through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation and will accept the amount so ascertained to be paid by the state of West Virginia in full settlement of the one-third of the debt of the original state of Virginia which has not been assumed by the present state of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof.

All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account.

And their action shall be subject to the approval or disapproval of the general assembly, and shall not be binding on the state until approved by the general assembly. The governor is requested to communicate this joint resolution to the governor and legislature of West Virginia.

This joint resolution shall be in force from its passage.

EXHIBIT NUMBER 6. 62

CHAP. 825. An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

Approved March 6, 1900.

(Acts G. A. of Va., 1899-1900, p. 902.)

Whereas the general assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept the new bonds provided for by said several acts, certificates 63
for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit: one-third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the general assembly is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the debt of the original state of Virginia proper to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt: now, therefore,

1. Be it enacted by the general assembly of Virginia, That the commission created and appointed under a joint resolution of this general assembly entitled a joint resolution to provide for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said com-

mission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificate as a full settlement of all their claims there- 64
under.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney general be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subject to any expense on that account.

3. This act shall be in force from its passage.

EXHIBIT NUMBER 7. 65

Showing Amounts Paid Off Since January 1, 1861, or Assumed and Now Carried by Virginia on Account of the Old Debt of the Undivided State.

* * * * * * * * * *

Amount of interest paid, as shown by the records of the Second Auditor's Office, from January 1st, 1861, to February 1st, 1906	$35,551,642.82
Bonds heretofore paid off, taken up, and retired by Virginia to Sept. 30, 1905. See 2nd Auditor's Report for 1905, p. 21, and now held by Virginia	10,771,791.49(*)
New Bonds of Virginia issued for the portion of the unpaid debt funded and assumed by her—See Second Auditor's Report for 1905, p. 9 ...	25,537,820.00
	$71,861,253.31

(*) NOTE.—This sum of $10,771,791.49 probably does not include some considerable amounts of ante bellum bonds of Virginia paid her by some of the Railroad Companies of the State, and by the Dismal Swamp Canal Company in payment for the share and interest of the State in such Companies or for property sold them by the State; nor does it include considerable amounts of said bonds received by the State from the sureties of certain Sheriffs—nor does the Statement include amounts paid by Virginia since 1861 in settlement of open accounts or unfounded ante bellum debts of the undivided State. These amounts can be ascertained from the records of the Board of Public Works, the First and Second Auditor's offices and the Acts of Assembly.

EXHIBIT No. 8.

Report of the Commission appointed and acting under the 66
joint resolution of the General Assembly of Virginia, approved March 6th, 1894, and the act of the said General Assembly approved March 6th, 1900, with respect to certain certificates issued by the State in connection with the debt of the original State of Virginia and known as Virginia Deferred Certificates.

RICHMOND, VA., January 9th, 1906.

To the General Assembly of Virginia:

Your Commission appointed and acting under the joint resolution of the General Assembly entitled "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found entitled to the same," approved March 6th, 1894, and an Act of the General Assembly entitled "An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises," approved March 6th, 1900, beg leave to make a further report of their proceedings, as follows:

It will be noted that it appears from the first report of your Commission, dated January 28th, 1896, and printed as Senate Document No. 10 in the Senate Journal and Documents of 1896, and as House Document No. 4 in the House Journal and Documents of that session, that the conditions required by said joint resolution having been complied with, your Commission was ready and desirous to open negotiations with West Virginia for a settlement as provided for in said joint resolution, and this fact was communicated to the Governor of West Virginia by the Governor of this State with the request that such negotiations might accordingly be 67
opened, which communication was laid before the Legislature

of West Virginia, but that body, by a joint resolution, declined to enter into negotiations on the subject.

By a subsequent report of your Commission to this General Assembly, dated February 7th, 1900, and to be found printed as Senate Document No. 6 in Senate Journal and Documents for the session of 1899-90, it was further shown that the control and disposal of a majority of said certificates had been again tendered your Commission by a Committee, of which John Crosby Brown of New York was chairman, acting under a depositing agreement of July 28th, 1898, and the said Committee offering to accept whatever might be realized from West Virginia on the certificates in full settlement of their claims. A copy of said depositing agreement of July 28th, 1898, under which said Committee was constituted, was filed with said last report, and the same is also now herewith filed, showing who constituted said Depositing Committee and what their powers and functions were, and also that Brown Brothers & Company, Bankers of New York, N. Y., were the depository of the said Committee in whose hands the said certificates had been placed.

Upon the coming in of this last report, the Act of March 6th, 1900, was passed by the General Assembly, by which the powers and duties of your Commission were very materially enlarged, and it was provided that if at least two-thirds of the certificates of 1871 outstanding in the hands of the public, and a majority of all the other certificates so outstanding, were deposited and placed subject to the control of your Commission upon the agreement that the creditors would accept whatever might be realized thereon from West Virginia in full settlement of their claims, then your commission was authorized, by and with the advice and approval of the Attorney General of the State, to take such action and institute such proceedings on behalf of the State as might, in the 68
judgment of your Commission and the Attorney General, be needful and proper to protect the interests of the State and bring about and carry into effect a settlement in the premises, but all the expenses in connection with any of the matters involved were to be borne by the certificate holders. A copy of this Act is for convenience of reference herewith filed.

At the time of the passage of this Act the Depositing Committee did not hold the two-thirds in amount of the certificates of 1871 required by the Act as a basis for negotiations or action by your Commission, but having acquired them later, the Committee, on the 18th of September, 1902, submitted to your Commission a proposition in writing, bearing date on that day, by which they tendered and placed subject to the control of your Commission, in accordance with the terms of said Act, $8,565,095.70 of the certificates of 1871, being more than the requisite two-thirds of these certificates outstanding, and $1,782,475.13 of the other certificates outstanding, being a majority thereof, upon the agreement and arrangement on

the part of your Commission acting for the State of Virginia that they would enter into negotiations with the State of West Virginia or the constituted authorities thereof, for the purpose of effecting a settlement with that State with respect to said certificates, and that your commission would, by and with the advice and approval of the Attorney General, take such action as they might deem needful in the premises, any amount realized on such settlement to be accepted in full of all claims on said certificates as in said Act provided.

This proposition was accompanied by the statement of Brown Bros. & Co., the depository, showing that the certificates referred to were held by them, and it was stated in the proposition that upon its acceptance by your Commission it should constitute a contract between the parties to continue in force for three years, but subject to renewal or extension by the parties, and to such 69
amendment or modification as might be agreed on. It was on the day of its date accepted in writing by the unanimous action of your Commission, and the acceptance thereof duly endorsed thereon, and the same was approved by the Attorney General on September 29th, 1902; and a copy of the same showing its acceptance and the endorsements thereon is herewith filed and is referred to as showing in detail the action taken by your Commission. This agreement constitutes an arrangement with Virginia under said Act of March 6th, 1900, for obtaining a settlement with West Virginia and thus precluded the right which any certificate holder might under the terms of the depositing agreement, otherwise have had to withdraw his certificate after October 1st, 1902.

On December 3rd, 1902, a plan of settlement as provided in the said depositing agreement of July 28th, 1898, was formulated, approved and recommended by the Depositing Committee and Advisory Board created under said agreement, by which the provisions of the foregoing contract of September 18th, 1902, were adopted as included in their plan of settlement, with the right to the Depositing Committee to make such further contracts with the Virginia Commission as might be deemed needful to bring about a settlement with West Virginia under said joint resolution and Act of the Virginia Assembly.

This plan of settlement provided for a full compliance on the part of the Depositing Committee with the terms of said joint resolution and Act, and clothed the Committee with ample powers to act in the premises, and notice of it was duly published in New York and London, as required in the agreement of July 28th, 1898, so as to afford opportunity to any dissenting depositor of certificates to give notice of his unwillingness to accept the proposed settlement, which notice the agreement provided was 70
to be given within thirty days from the completion of the publication, but no such notice appears to have been given at any time by any depositor. The depositing agreement also provided that

in the absence of such notification from a majority of the depositors the proposed plan should become effective and final, and that the declaration in writing of this fact by the Committee to the depository should be conclusive on this point; and such declaration in writing by the Depositing Committee to Messrs. Brown Bros. & Co. the depository, was accordingly so made in writing on December 13th, 1904. A copy of this plan of settlement and the certificates of the publication thereof, together with the said declaration in writing of the Committee, are all herewith filed and are referred to as parts hereof.

On December 14th, 1904, the amount of said certificates deposited with Brown Brothers and Company, as aforesaid, had increased to $11,607,298.64, of which $9,360,062.96 were those of 1871, and your Commission proposing to again attempt to open negotiations for a settlement with the legislature of West Virginia (which was then about to convene) it was thought advisable to enter into a contract by way of amendment to that of September 18th, 1902, by which the complete control of all these certificates should be placed in the hands of your Commission, and such additional agreement, bearing date December 14th, 1904, was accordingly entered into between the said Depositing Committee and your Commission, and approved by the Attorney General; and cotemporaneously therewith by a receipt or certificate bearing date on the same day, the said Brown Brothers and Company acknowledged and certified that they held all the certificates last aforesaid to the amount of $11,607,298.64 on deposit for and subject to the control and disposition of your Commission without reservation or condition of any kind. A copy of this agreement and receipt of December 14th, 1904, together with the Attorney General's approval, will be found filed herewith. By a subsequent communication of January 23rd, 1905, from Brown Bros. & Company to your Commission, it was shown that said deposits, so placed under the control of your Commission, had increased to $12,910,555.89, of which $10,639,776.42 were those of 1871, and a copy of this communication will also be found herewith filed.

Desiring, as above stated, to open communication with West Virginia, your Commission, on December 14th, 1904, appointed a sub-committee consisting of Messrs. Randolph Harrison, Chairman, H D. Flood, H. H. Downing and John B. Moon, who, together with the Attorney General, should be authorized to open negotiations with the proper authorities of West Virginia looking to a settlement of the matters at issue. This sub-committee endeavored to do this by the presentation of a memorial to His Excellency, A. B. White, Governor of the State of West Virginia, signed by the sub-committee and approved by the Attorney General, bearing date January 25th, 1905, a copy of which is herewith filed. This memorial was presented to the Governor of West Virginia at Charleston, W. Va.

by the Attorney General and the chairman of the sub-committee and was by him, on the 27th day of January, 1905, transmitted to the Senate of West Virginia by a special message to that body, but without any recommendation on his part, a copy of which message is also herewith filed.

It was arranged, however, by the Senate and House Committees on Finance of the West Virginia Legislature to give to the sub-committee a hearing upon the subject at Charleston on February 1st, 1905, at which hearing the Attorney General of Virginia, the chairman of the sub-committee and the chairman of your Commission attended, and the memorial of your Commission above referred to was read, and a full presentation was made by Mr. Harrison, chairman of the sub-committee, of the reasons why West Virginia should, at least, enter into negotiations in regard to a settlement in an address made by him to the Senate and House Finance Committees aforesaid. It was considered by your Commission that Mr. Harrison's address dealt with the questions involved in so clear and able a manner and showed so conclusively that it was both the right and duty of Virginia to ask for a settlement, that they caused it to be printed, and a copy of it is herewith filed. 72

The Legislature of West Virginia, however, failed and declined to enter into any negotiations or to empower any committee or other official to do so, but on the contrary passed the following resolutions: "Resolved, by the Legislature of West Virginia: That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so called debt of Virginia, and that this Legislature is opposed to any negotiations whatsoever on that subject." Indeed your Commission are advised that resolutions of a similar import have been passed by all, or nearly all, of the Legislatures of West Virginia which have met since your Commission first communicated with them on the subject in 1896, thus showing a persistent and determined refusal on the part of West Virginia to pay any portion of what they are bound for on account of the debt of the original State, or to enter into any accounting or negotiations whatsoever on the subject.

The deferred certificates of 1871 issued by the State of Virginia are in the following form:

"Copy of Certificate under Act of March 30, 1871.

"COMMONWEALTH OF VIRGINIA.

"No. —.

"TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs, executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an Act approved March 30th,

1871, entitled, 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest, amounting to $—. Payment of said one-third with interest thereon 73
at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"_____ _____.

"Treasurer of the Commonwealth of Virginia

"_____.

"Second Auditor of Virginia."

So it would appear that if the contention of West Virginia is correct, the responsibility that attaches to the issuing of these certificates must rest with Virginia alone and West Virginia be responsible for nothing in connection with the debt of the original State.

By a recent enactment of the State of South Dakota suit was authorized against any state whose over-due bonds might be donated or deposited in her treasury, and under this law a suit was brought by the South Dakota and judgment given against North Carolina in the Supreme Court of the United States upon some past due bonds of the latter state as see the case of South Dakota *vs.* North Carolina, 192 U. S. Reports, 286,—and a like statute has lately been enacted by the State of New York authorizing similar suits. Your Commission are informed that such suits have lately been proposed against the State of Virginia under these statutes upon the certificates of 1871 and have only been restrained and prevented
by the prospect of some definite action on the part of Vir- 74
ginia.

So your Commission were confronted with the alternative of either a suit by Virginia as plaintiff on these certificates with indemnity to her against liability as proposed by the Depositing Committee, or a suit against her without any such indemnity, and your Commission had no doubt as to the safe and proper course to pursue, especially as Virginia herself holds through the agency of her Sinking and Literary funds $2,578,518.68 of the certificates of 1871 and $166,943.33 of the certificates of other classes which would be entitled to their distributive share in whatever may be realized from West Virginia.

The contract of December 14th, 1904, would have expired by limitation on September 18th, 1905, but in order to allow time for the drawing of a final contract, the same was by an agreement en-

dorsed thereon on September 9th, 1905, extended to December 1st, 1905; and on the 24th day of November, 1905, a final contract was drawn up and entered into between your Commission and the Depositing Committee. This last contract was annexed to that of December 14th, 1905, as an extension and enlargement thereof, it having been provided in all of said contracts that they might be extended, modified and changed by the act of the parties.

A copy of said last contract of November 24th, 1905, annexed to that of December 14th, 1904, together with the extensions aforesaid and the approval of the Attorney General thereon endorsed, are herewith filed. It will be seen from said last contract that the reasons are therein set forth which led the Commission to the conclusion that no alternative remained in the premises except a suit against West Virginia; and they accordingly by and with the advice and approval of the Attorney General undertook to bring such suit and the Depositing Committee agreed as provided in said Act of March 6th, 1900, to accept the amount recovered in such 75
suit or the adjudication therein or any amount realized by your Commission on a compromise with West Virginia in full of all claims on the certificates deposited.

This contract also further provides that all certificates thereafter deposited with Brown Brothers and Company should be included thereunder, and that your Commission should have complete control of all certificates so deposited; and a further and additional receipt or statement was accordingly given your Commission by Brown Brothers and Company bearing date January 4th, 1906, showing that since their statement and receipt of December 4th, 1904, additional certificates to the amount of $1,566,136.77, of which $1,491,231.13 were those of 1871, had been deposited with them and were subject to the control and disposal of your Commission making total deposits to that date $13,173,435.31, of which $10,851,294.09 were those of 1871. This last statement was verified by the oath of William Gerard Vermilye, cashier of Brown Brothers and Company, attached thereto; and on January 5th, 1906, your Commission caused all of these certificates to be removed from the custody of Brown Brothers and Company and placed on deposit for your Commission and subject to their order with the Central Trust Company of New York, N. Y., whose acknowledgment of the receipt thereof stated that the certificates were held on deposit for and subject to the order, control and disposal of your Commission, and the keys to the boxes containing said certificates were delivered to the Secretary of your Commission—Copies of this last named statement of Brown Brothers and Company, with the affidavit of the said Vermilye attached, and of the receipt and acknowledgment of the Central Trust Company are herewith returned.

Your Commission caused these certificates to be removed from Brown Brothers and Company, not from any want of confidence in

them, because your Commission have every reason to believe them to be entirely responsible, but because it was deemed 76
best to place the certificates in the hands of some custodian who never had any connection with the Depositing Committee, and who would be responsible to your Commission alone in connection therewith.

To recapitulate, your Commission will say that the whole amount of the deferred certificates outstanding is $18,227,153.60, as shown in the statement of the Second Auditor, John G. Dew, dated September 17, 1902, and herewith returned, which statement shows also the different classes of certificates.

Of the certificates of 1871, there are in all $15,281,970.47, of which $2,578,518.68 are held by the State through the Sinking and Literary funds, leaving outstanding in the hands of the public $12,703,451.79; and of this last amount there have been deposited with your Commission $10,851,294.09, as above stated.

Of the other certificates there are in all $2,845,183.13, of which the Literary Fund holds $166,943.33, leaving in the hands of the public $2,778,239.80, and of this last amount there have been deposited with your Commission $2,322,141.32 as above stated.

It thus appears that your Commission hold more than five-sixths of all the certificates of 1871 outstanding, and about six-sevenths of all the others outstanding.

It will be noted that since the first agreement of Sept. 18, 1902 was entered into the certificates deposited with Brown Brothers and Company have increased from $10,347,570.83 to $13,173,435.41, which are now in the hands of your Commission; and there is reason to believe that this amount will be still further increased upon the institution of the proposed suits.

Respectfully submitted,

JOHN B. MOON.
J. THOMPSON BROWN.
H. T. WICKHAM.
H. D. FLOOD. 77
H. H. DOWNING.
RANDOLPH HARRISON.
W. F. RHEA.

Attest: JOS. BUTTON, *Secretary.*

AGREEMENT.

This agreement between John Crosby Brown, George Coppell, J. Kennedy Tod and Clarence Cary, herein styled "The 78
Committee," parties of the first part, and such holders of the certificates herein mentioned as deposit hereunder, parties of the second part.

Whereas, the present State of Virginia enacted laws providing for issuing certificates for one-third of the debt of the original State, and more than $12,000,000 of such certificates recite:

"That payment will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of Virginia existing at the time of its dismemberment."

And Whereas, it is believed that West Virginia's proportion of said debt, if ascertained as provided by the Ordinance under which Virginia was divided, is less than the amount of the certificates which have been issued by Virginia; and it is considered that, under such circumstances, neither State should, or will, incur any obligations respecting said debt unless its legislature has an undoubted guarantee that substantially all of the certificates will be promptly surrendered in exchange for whatever amount West Virginia agrees to pay and the creditors of West Virginia may agree to accept.

"Witnesseth:

1st. The following gentlemen shall constitute an Advisory Board in this behalf, to-wit: Thomas F. Bayard, W. Pinkney Whyte, Edward J. Phelps and George G. Williams.

The function of said Board is to examine such plan of settlement as may be proposed by the Committee, representing the holders of the certificates, and submitted to them in accordance with this agreement, and to state their recommendation thereof of the contrary.

Said board may add to their number, and any vacancy may be filled by the remaining members. 79

2d. The function of the Committee is:

(*a.*) To bring about the deposit, under this agreement, as far as may be practicable, of said certificates, or of the trust receipts heretofore issued to represent them.

(*b.*) To formulate a plan of settlement, and after it has been recommended by the Advisory Board, cause the same to be published and submitted to depositing creditors for their acceptance as herein provided.

(*c.*) To act as agent of the depositing creditors in carrying out the purposes of this agreement.

(*d.*) The Committee shall appoint one or more depositories to receive said certificates or trust receipts, and issue therefor its proper receipt.

Subject to the restrictions herein, the Committee shall have power to perform any act to accomplish a settlement, and this includes power to make arrangements with either Virginia or West Virginia to insure the prompt surrender of all or any of the certificates in exchange for such amount as West Virginia may pay and her creditors

agree to accept, and also includes power to execute, in behalf of the depositing creditors, any release or acquittance which will exclude any demand on Virginia beyond the amount she may receive from West Virginia; provided that no settlement shall be concluded until it has been recommended by the Advisory Board, and has also been submitted to creditors and accepted as follows, to-wit:

(1.) As soon as a plan of settlement has been recommended by the Advisory Board, the Committee shall, before proposing it to the State, advertise for at least twice a week for three weeks in two of the newspapers published in New York City and 80
London, that a plan of settlement has been formulated, and notifying parties in interest where said plan may be obtained in said cities without cost.

(2.) If, within thirty days after the first publication of said advertisement holders of a majority of the face value of the deposited certificates notify the Committee, in writing, either directly or through any depository, of their unwillingness to accept the proposed settlement, then said settlement shall not be consummated. If the Committee is not so notified within said thirty days, then it shall be assumed that the proposed plan, being satisfactory to a majority, is accepted by all the depositing creditors, and it shall be offered to said States or either of them to be carried into effect by appropriate legislation.

(3.) After a plan of settlement has become effective (of which fact the declaration in writing of the Committee to the several depositories shall be conclusive), each depository shall, in the manner directed by the Committee, surrender to either State, as may be necessary, any or all of the certificates deposited with it, and receive in exchange therefor the amount or kinds of securities called for by the plan of settlement.

The amount so received in settlement shall be immediately delivered to depositing creditors, in accordance with the terms of settlement.

The Committee may arrange for the purchase and sale of such fractional interests as may be necessary to equalize distribution.

(4.) Each depositor shall, when he receives his new bonds, in settlement, pay to the depository, for account of the Committee, such a commission as the Committee may assess for the charges and expenses of settlement, including the compensation of 81
the Committee, Counsel and Advisory Board, but such assessment shall in no event exceed five per cent. in cash on the par of any certificate deposited under this agreement.

If the Committee decide at any time that a settlement satisfactory to holders cannot be promptly effected, they may publish a notice requiring holders to pay so much of twenty cents per $100 of cer-

tificates as may be necessary to reimburse the expenses actually incurred by the Committee. Any certificate, assessment on which is not paid within six months after such notice has been published twice a week for three consecutive weeks in two of the newspapers in New York and London, may be sold by the Depository and the proceeds, after paying its assessment, held for the holder of its corresponding receipt.

Any certificate may be withdrawn from deposit at any time after October 1, 1902, upon payment of its pro rata of expenses, not to exceed twenty cents per $100 of certificates, unless a settlement has been previously arranged, or unless an arrangement has been made with Virginia for obtaining a settlement with West Virginia.

(5.) The Committee may add to their number, and any vacancy may be filled by the remaining members. By unanimous consent of the members of the Committee any member may act by proxy.

In testimony whereof, the Committee have hereto set their hands this 28th day of July, 1898.

An act to provide for the settlement with West Virginia of the portion of the public debt of the original State of Virginia properly to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises. 82

Approved March 6th, 1900.

Whereas the General Assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt

payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates 83
for such proportion of the obligation—surrended by them as was deemed proper to be borne by the State of West Virginia—to-wit: one-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the General Assembly is required by the constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia properly to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the General Assembly of Virginia, That the commission created and appointed under a joint resolution of this General Assembly entitled a joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia properly to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with 84
West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in

amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interests of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

Proposal. 85

To the Virginia Commission as constituted under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and the act of the said General Assembly approved March 6, 1900:

Whereas your Commission was constituted as set forth in said joint resolution and act of Assembly for the purpose of negotiating and bringing about a settlement with the State of West Virginia with respect to the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia and in connection with which the present State of Virginia has issued certain certificates under four acts of its General Assembly, approved, respectively March 30th, 1871, March 28th, 1879, February 14th, 1882, and February 20th, 1892.

And whereas your commission was, under the said act of March 6, 1900, further authorized to receive and take upon deposit the certificates aforesaid, or to have the same otherwise placed or held on deposit subject to your control, upon the agreement and contract on the part of the holders of said certificates that if your commission would secure a settlement with West Virginia with respect to said certificates, the said holders of said certificates, so deposited, would accept the amount realized on such settlement from West Virginia as a full settlement of all their claims thereunder; and said act further provided that if at least two-thirds of the amount of the said certificates issued under said act of 1871, (exclusive of those held by the State through the agency of the Board of Education and the sinking fund commissioners) and at least a majority in amount of all the other certificates should be so deposited or placed subject to the control of your commission upon the agreement and contract aforesaid, then your commission should 86
be authorized, by and with the approval of the Attorney-

General of Virginia, to take action in the premises as might be needful to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

And whereas by a certain agreement of July 28th, 1898, a committee on behalf of the holders of the said certificates was constituted to bring about the deposit, as far as practicable, of said certificates in such depository as the committee should appoint with powers in the committee to act as agent of the certificate holders so depositing in bringing about a settlement of their claims upon such plan, as might be recommended by the Advisory Board named in said agreement and as should become effective thereunder; it being further stated in said agreements that all the said certificates so deposited would be promptly surrendered in exchange for whatever amount West Virginia might agree to pay and the creditors of West Virginia might agree to accept as aforesaid.

And whereas more than two-thirds in amount of all the said certificates of 1871, outstanding as aforesaid, to-wit, $8,565.095.70 and a majority of all the other certificates aforesaid, to-wit, $1,782,-475.13, have been duly deposited with said committee and are in custody of Brown Brothers & Company, Bankers of New York City, N. Y., the depository named by said Committee, and are held subject to the control of the said committee under the said agreement, so that the same can be duly placed and held subject to the control of your commission in accordance with the said agreement and in pursuance of such plan of settlement as is now proposed or as may hereafter become effective.

In view of the premises the undersigned, the committee aforesaid do now hereby tender and place subject to the control of your commission all the aforesaid certificates, so held on deposit, upon the agreement and arrangement on the part of your commission,
acting for the State of Virginia under the said joint resolu- 87
tion and act of Assemby aforesaid, that your commission
will enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting a settlement with West Virginia with respect—the said certificates in accordance with the said agreement of July 28th, 1898, and in accordance with such plan of settlement as is now proposed or as may hereafter become effective; and that your commission will by and with the advice and approval of the said Attorney General take such action as they may deem needful in the premises; and in event such a settlement is so made, then it is hereby agreed that the amount realized thereon shall be accepted in full satisfaction of all the claims of the certificate holders thereunder and the undersigned Committee will surrender to your commission, in exchange for such amount the certificates aforesaid so deposited.

If this proposal be accepted by your commission, the same shall constitute an arrangement and contract with the State of Virginia

for obtaining a settlement with West Virginia and the same shall continue binding upon the undersigned committee and upon the holders of said certificates so deposited for the period of three years next ensuing from the date hereof for the purpose of allowing time for a settlement aforesaid; and the same shall be subject to renewal and extension for such further time as may be agreed upon and to such modification and amendment as may be agreed upon, and shall apply to and include any and all such certificates as aforesaid as may hereafter be deposited with and held by the said Committee under said agreement of July 28th, 1898.

Respectfully submitted,

JOHN CROSBY BROWN, *Chairman.*

ROBERT L. HARRISON, *Secretary.*

Richmond, Va. September 18th, 1902.

The undersigned, Brown Brothers & Company, Bankers of New York City, N. Y., the depository referred to in the foregoing proposal, do hereby certify that they now hold as such depository and subject to the control of the Committee therein referred to, the certificates which are referred to in the foregoing proposal as being deposited with them, to-wit: 88

$8,565,095.70	certificates of	1871
1,782,475.13	" "	1879
		1882
		1892

September 18th, 1902.

BROWN BROTHERS & CO.

In pursuance of a resolution of the Virginia Commission this day unanimously adopted, the foregoing proposition of the Certificate holders Committee is hereby accepted by the said Commission and becomes an agreement between the said Committee and the said Commission.

JOHN B. MOON,

Chairman of the Virginia Commission.

Attest: JOS. BUTTON, *Secretary.*

Richmond, Va., September 18th, 1902.

The above action of the Virginia Debt Commission is approved Sept. 29th, 1902.

WILLIAM A. ANDERSON,

Attorney General of Virginia

Plan for the Settlement of the West Virginia Debt.

Under an agreement of July, 1898, a Committee was constituted for the purpose of assembling the Virginia deferred certificates, with certain powers and functions as in the agreement specified, and by the same agreement an Advisory Board was constituted whose functions were also specified in the agreement.

In pursuance of this agreement, a certain plan of settlement was, on the 21st day of June, 1899, formulated and recommended by the Committee and Advisory Board, which among other things, contained the following provision:

"The Committee may surrender to either State (Virginia or West Virginia) any of the deposited certificates and receive in full satisfaction therefor their pro rata of such an amount in State Bonds, or cash as may be agreed upon between the Committee and the representatives of Virginia or West Virginia, as the maximum amount which West Virginia will assume on account of her proportion of the debt of the original State."

Since the date last named the General Assembly of Virginia, on the 6th day of March, 1900, passed an Act authorizing a commission which had been appointed and constituted on her behalf in the premises, by and with the advice and approval of her Attorney General, to take such action and institute such proceedings as might, in the judgment of the Commission and Attorney General be needful and proper to bring about and carry into effect a settlement of said certificates; but it was further provided in this Act that such action should be taken only in the event that at least two-thirds of all the certificates of 1871 (exclusive of those held by the State) and a majority of all the other certificates, should be deposited with or placed subject to the control of the Commission upon an agreement on the part of the holders of such certificates that if the Commission would secure a settlement with West Virginia with respect to said certificates, they would accept the amount realized from West Virginia on such settlement in full of all their claims thereunder. On the 18th of September, 1902, the Committee held 90 on deposit $8,565,095.70 of the certificates of 1871, being more than two-thirds thereof, (*) as above stated, and $1,782, 457.13 of all the other certificates, being a majority thereof; and the Committee accordingly on that day entered into a contract with the Virginia Commission, by which it was stipulated that the said certificates should, for the period of three years, be held subject to the control of the Commission upon the agreement and arrangement on the part of the Commission that they would enter into negotiations with the state of West Virginia for the purpose of effecting a

(*) On March 2nd the figures were $9,231,602.13 of the certificates of 1871 and $2,239,451.62 of all the other certificates.

settlement with respect to said certificates, and would by and with the advice and approval of said Attorney General, take such action as they might deem needful in the premises; the amount realized on such settlement to be accepted in full of said certificates as above stated, which contract was duly approved by the Attorney General of Virginia on September 29th, 1902.

In view of this Act of the Virginia Assembly, and of the recent action taken thereunder, it is deemed desirable to make the plan of settlement heretofore recommended, more definite with respect to the matters now involved; and to this end the following is hereby formulated, approved and recommended by the Committee and the Advisory Board by way of supplement and addition to the original plan:

I. The above named committee shall pledge or deposit the certificates now or hereafter received under the agreement of July 28, 1898, with the Virginia Commission, in conformity with the Act of March 6, 1900, for the purpose of taking such action and instituting such proceedings, by and with the advice and approval of the Attorney-General of Virginia as may be deemed needful to bring about and carry into effect a settlement as in said Act provided; such pledge or deposit to be for such length of time as may be agreed on; and the said agreement of September 18, 1902, shall continue in force for the period therein specified; and the Committee may enter into such further agreements with the said Commission as may be deemed needful to bring about a settlement in the premises.

II. In the event that no settlement shall be effected by the Virginia Commission either under the agreement of Sep- 91
tember 18, 1902, within the period therein specified, or under any other agreement which may be entered into between the Committee and the said Commission within such time as may be limited therein, the Committee may, after any and all such agreements with the said Commission shall have expired, take such other and further proceedings and make such other and further agreements and settlement in the premises as the Committee may deem judicious.

III. The Committee shall be authorized to make such disposition by pledge, sale or otherwise, of the certificates, now or hereafter deposited, under the agreement of July 28, 1898, as may be necessary to carry into effect any proceedings taken and any agreements or settlements made by them as above stated, with or through the said Commission or otherwise, or for the payment of expenses now or hereafter to be incurred, whether a settlement is effected or not, not to exceed, however, the limit fixed by said agreement, and may give such release and acquittance as may be necessary to that end.

IV. The amount realized on or the proceeds of any such settlement, after deducting proper charges under the agreement of July 28, 1898, shall be apportioned and distributed among the different

certificate holders in such manner and according to such percentages as may be ascertained and established for the different classes of certificates by a tribunal to be constituted as follows *as follows;* one member thereof to be appointed by the Committee, one member by the Advisory Board, and the third by the two so appointed; and if it be impracticable in the judgment of such tribunal to distribute in kind any bonds or securities which may be received in any such settlement, then the same may be sold and converted into money for the purposes of such distribution. If a vacancy occur in such tribunal the same shall be filled by the remaining members.

New York, December 3d, 1902.

G. G. WILLIAMS,
WM. PINKNEY WHYTE,
WAYNE MacVEAGH,
LYMAN J. GAGE,
Advisory Board.

JOHN CROSBY BROWN,
Chairman Committee.

The following are the affidavits showing publication in two newspapers in London and New York on the notice given 92 under Article 2 of the Agreement of July 28, 1898:

STATE OF NEW YORK, *City and County of New York, ss:*

Thomas Mulhearn being duly sworn, says he is Principal Clerk of the Publisher of the Mail and Express, a daily newspaper published in the city of New York; and that the notice, of which the annexed is a printed copy has been regularly published in the said Mail and Express six times to-wit: January 13th, 16th, 20th, 23d, 27th and 30th, 1903.

THOMAS MULHEARN.

Sworn before me this 25th day of February, 1903.
R. E. A. DON, JR.,
Notary Public, City and County of New York.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph *d*, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board appointed under said agreement and all parties in interest are notified that the plan may be obtained, without cost in the city of New York, at the office of Messrs. Brown Brothers & Company, 59 Wall Street, and in the city of

London, England, at the office of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C. and 123 Pall Mall, W.

Dated New York, January 13th, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,

Committee.

ROBERT L. HARRISON, *Secretary.*

STATE OF NEW YORK, *City and County of New York, ss:* 93

Theodore L. Peverelly, being duly sworn saith that he is the Principal Clerk of the Publisher of the New York Times, a daily newspaper printed and published in the city and County of New York; that the advertisement hereto annexed has been regularly published in the said New York Times six times to-wit: on January 14, 17, 21, 24, 28, 31st, 1903.

THEODORE L. PEVERELLY.

Sworn to before me this Feb. 25th, 1903.

[SEAL.] EUGENE C. MAUBORGNE,
Notary Public, New York County.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph d, Section 1 of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board, appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost in the City of New York at the offices of Messrs. Brown Brothers and Company, 59 Wall Street, and in the City of London, England, at the office of Messrs. Brown, Shipley and Company, Founders Court, Lothbury E. C. and 123 Pall Mall, W.

Dated New York, January 13, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,

Committee.

ROBERT L. HARRISON, *Secretary.*

(Copy.) 94

KINGDOM OF GREAT BRITAIN AND IRELAND,
City of London, England, ss:

I, Rowland Lee, Assistant Manager of the Advertisement Department of the Daily Telegraph newspaper, published in the City of London, England, make oath and say that the advertisement "To Depositors of West Virginia Deferred Stock Certificates" attached hereto, was ordered for, and duly appeared in the Daily Telegraph on the following dates: January 15, 19, 22, 26, 29, February 2, 5, 9. 12, 16, 19, 23—all of 1903.

(Signed) ROWLAND LEE.

Sworn before me.

FRANCIS W. FRGOUT,
Deputy Consul-General of the United States of America at London, England, at 12 St. Helens Place, London, England.

March 18, 1903.

Copy of Advertisement Referred to Above.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved by the Advisory Board appointed under the said agreement, and all partied in interest are notified that the plan may be obtained without cost in the City of New York, at the offices of Mess. Brown Brothers & Company, 59 Wall Street, and in the City *City* of London, England, at the offices of Messrs. Brown, Shipley & Company, Founders-court, Lothbury, E. C., and 123 Pall Mall, W.

Dated New York, January 13, 1903. 95

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

(Copy.) 96

I, Gilbert Plumbridge, Chief Clerk, in the employment of the proprietors of the Times newspaper, published in the City of London, England, make oath and say that the attached advertisement, "To Depositors of West Virginia Deferred Certificates," was orcered for, and duly appeared in the said newspaper on the following dates: Jan. 14, 17, 21, 24, 28, 31; February 4, 7, 11, 18, 21, all of 1903.

(Signed) GILBERT PLUMBRIDGE.

Sworn before me, Richard Westcott, Vice and Deputy United States Consul-General, at 12 St. Helens Place, London, England, on the 4th, March, 1903.

(Signed) RICHARD WESTCOTT,

Vice and Deputy Consul-General of the United States of America at London, England.

This is the advertisement referred to in the above declaration.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th of July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved by the Advisory Board appointed under said agreement, and all parties in interest are notified that the plan may be obtained without cost, in the City of New York, at the offices of Messrs. Brown Brothers & Company, 59 Wall Street, and in the City of London, England, at the offices of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C., and 123 Pall Mall, W.

Dated New York, January 13, 1903. 97

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

Committee.		Advisory Board.
John Crosby Brown, Chairman.	George F. Baker,	W. Pinkney Whyte.
J. Kennedy Tod,	Bartlett S. Johnston,	Wayne MacVeigh.
Clarence Cary,	Wm. C. Legendre,	Lyman J. Gage.

R. P. Chew, of West Virginia.
Robert L. Harrison, Secretary.

Depository

Brown Brothers & Company.

Copy

NEW YORK, *Dec. 13th*, 1904.

Messrs. Brown Brothers & Company, Depository:

We, the undersigned Committee, heretofore appointed and constituted under the certain agreement of July 28, 1898, between ourselves and the holders of deposited certificates of indebtedness or securities known as the Virginia Deferred Certificates, hereby declare that the certain plan of settlement made and approved by the undersigned Committee and the Advisory Board, under date of December 3, 1902, became effective by such approval and by the due publication of such plan under the terms of the said agreement and further by reason of the absence of any notification in writing, or otherwise, from or on the part of the holders of any of the deposited certificates, for more than thirty days after the said publication, of any unwillingness to accept such proposed settlement.

(Signed) JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*

The above was received in due form this 13th day of December, 1904.

(Signed) BROWN BROTHERS & CO.

EXECUTIVE DEPARTMENT,
CHARLESTON, WEST VIRGINIA, *January* 27, 1905. 99

To the Honorable President and Members of the State Senate:

GENTLEMEN: The accompanying papers after oral statements had been made to me by a Committee representing the State of Virginia, consisting of Hon. Randolph Harrison, Chairman, Col. Joseph Button, Secretary, and Hon. William A. Anderson, Attorney-General of that State, were duly presented to me for transmission to the Legislature of West Virginia.

The papers consist of an address or statement of the Committee, representing the Commission appointed by the State of Virginia "to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia" and of a copy of the Act of March 6th, 1900, of the State of Virginia, enlarging the powers and duties of said Commission.

I deem it my duty to transmit these papers for your information.

Respectfully yours, ALBERT B. WHITE, *Governor.*

The papers accompanying the communication of the Governor are as follows:

To His Excellency A. B. White, Governor of the State of West Virginia:

SIR: Under and by virtue of a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, a commission consisting of Hons. Taylor Berry, H. T. Wickham, H D. Flood, John B. Moon, Randolph Harrison, H. H. Downing and William F. Rhea was continued for the purpose of opening negotiations with the State of West Virginia looking to the adjustment of the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, and by a communication bearing date on the 7th day of January, 1895, from the Hon. Chas. T. O'Ferral, then Governor of Virginia, the Honorable William A. MacCorkle, then Governor of West Virginia, was informed of this fact.

Since the date last named the Honorable Taylor Berry has departed this life, and Honorable J. Thompson Brown has been made a member of the Commission in his stead. And by an act of the General Assembly of Virginia, approved March 6th, 1900, the powers and functions of the Commission have been materially changed and enlarged, as will be seen by an inspection of said act, a copy of which is herewith submitted.

It will be observed that under the provisions of this act the Commission acting by and with the advice and approval of the Attorney General of Virginia, is authorized to make a final settlement and adjustment with West Virginia with respect to the debt of the original State, provided at least two-thirds in amount of the securities known as Virginia Deferred Certificates issued under the Virginia Act of 1871, and a majority of all the other certificates issued by Virginia with reference to said settlement, exclusive of those held by the Literary Fund and Sinking Fund of Virginia, were deposited with or placed subject to the control of the Commission.

On the 14th day of December, 1904, there were so placed on deposit in the name of the Commission, and subject to the control and

disposal, $12,910,555.89 of such certificates, embracing much more than two-thirds of those of 1871, as aforesaid, and a very large majority of all the others, so that the Commission is now authorized and empowered by and with the advice and approval of the Attorney General, to make a settlement and adjustment with 101
West Virginia as provided in said act of March 6th, 1900. The evidence of the deposit of the said certificates with the Commission as above stated is of course subject to inspection by Your Excellency and the proper authorities of West Virginia on request.

Looking to opening negotiations with West Virginia, the Commission at a meeting thereof, held in Richmond, Virginia, December 14th, 1904, authorized the appointment of a sub-committee, consisting of the undersigned Randolph Harrison, Chairman, H. D. Flood, H. H. Downing and John B. Moon, who together with the Attorney General of Virginia should invite the attention of Your Excellency to the unsettled matters between the two States and endeavor to negotiate a settlement of the same on some equitable basis to be agreed upon by the authorities of the two States.

The undersigned, the sub-committee so constituted, acting by and with the advice of the undersigned Attorney General of Virginia, therefore beg leave to call to the attention of Your Excellency the unsettled matters between the two States above referred to, growing out of the debt of the original State, and so respectfully request that they may be laid before the legislature of your State, now in session for their consideration; and that some action may be taken by the Legislature of your State for the purpose of entering into negotiations with the undersigned for a settlement between the two States of the matters aforesaid on some equitable basis either by the appointment of a committee to conduct such negotiations on behalf of your State, or by such other action as the legislature of your State may deem appropriate.

And the undersigned further beg in this connection to call attention to the following facts:

1. That when the State of West Virginia was formed, the original State of Virginia was deprived of more than one-third of its white population and about one-third of its territory, em- 102
bracing that portion of its territory which by reason of its mineral wealth has since proven to be the most valuable and productive part of the original State.

2. The ordinance of the convention which met at Wheeling in 1861, in providing for the formation of the State of West Virginia, further provided that: "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the

moneys paid into the Treasury of the Commonwealth from the counties within said new State during the same period." The obligation to assume an equitable proportion of the said debt was again recognized in the first constitution of West Virginia, which was ratified by a vote of her people in 1863, and in which article eight, section eight provided as follows: "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1961, shall be assumed by this State; and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a Sinking Fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." The Constitution of West Virginia of 1872, contains these provisions, article ten, section four: No debt shall be contracted by this State except to meet casual deficits in the revenue to redeem a previous liability of the State," etc., etc., and section five specifies that "The power of taxation of the Legislature shall extend to provisions for the payment of the State debt and interest thereon," etc.

3. The public debt of the original State of Virginia, at the time of the dismemberment, amounted to something more than $30,000,000 no part of which has ever been borne by West Virginia, nor has any settlement or adjustment been made by West Virginia, either with the present State of West Virginia, or with the creditors of the Original State, to ascertain what her liability might be with respect to said debt, but the whole of it has been left for adjustment to the people of the present State of Virginia. 102

4. It has been understood that West Virginia was not willing to negotiate directly with the creditors of the original State, and for that reason, and also in order to comply with the requirements of said act of March 6th, 1900, the deposit of said certificates of December 14th, 1904, was made with the Virginia Commission; so that the Commission with the Attorney General of Virginia are now authorized both on behalf of the State of Virginia, and also on behalf of a large majority of all certificate holders interested, to make a final settlement and adjustment of the matters above referred to, and thus finally conclude and dispose of questions which have been long left unsettled to the detriment, it is believed, of both States.

The undersigned only seek to present these matters to Your Excellency and through you to the Legislature of your State, because they believe it to be their duty to their own State to do so; and while no accounting or adjustment in the premises has ever been had by West Virginia, either with Virginia or the creditors of the original State, yet inasmuch as the matters involved are now presented by the undersigned, with new and enlarged powers on their part to make and carry into effect a complete and final settlement between the States, it is hoped that the suggestions herein contained will re-

ceive favorable consideration and action on the part of your Excellency and the Legislature of your State.

Respectfully submitted.

(Signed) RANDOLPH HARRISON
H. H. DOWNING
H. D. FLOOD
JOHN B. MOON
Committee.

Approved:
WILLIAM A. ANDERSON,
Attorney General of Va.

January 25, 1905.

Here follows copy of act of March 6, 1900.

ADDRESS 104

On Behalf of the Virginia Debt Commission

BEFORE

THE JOINT COMMITTEES ON FINANCE OF THE WEST VIRGINIA LEGISLATURE.

In Relation to West Virginia's Contributive Share of the Debt of Virginia.

BY RANDOLPH HARRISON.
Charleston, West Virginia, February 1, 1905.

Mr. Chairman, and Gentlemen of the Finance Committees of the two Houses of the Legislature of West Virginia:

We had the honor a few days ago to present to His Excellency, the governor of West Virginia, a communication in behalf of the State of Virginia in relation to the unsettled matters between the two states, growing out of the debt created before the dismemberment of Virginia. We were officially advised that that communication had been transmitted to the legislature, and by it referred to the appropriate committees for further consideration.

We appear before you tonight in response to an invitation from the two finance committees of this body for the purpose of more fully stating the reasons which impel Virginia to invite your attention to this subject.

It gives us pleasure to avail ourselves of this opportunity to make known to you the object of our mission here.

In considering the question as to West Virginia's obligation to bear a just proportion of the public debt of Virginia, it will be necessary for us to review the origin of that debt, the manner in which and the purposes for which it was created, and West Virginia's relation to the subject.

Beginning with the year 1825 Virginia entered upon an extensive system of internal improvements. She had in mind the development of her western territory. Her statesmen had known for many years prior to that time that the territory now composing the state of West Virginia contained immense resources of 105
wealth but there had been no definite ascertainment of that fact. They realized that it was essential, in order to ameliorate the condition of her people, who resided in that territory, and in the interest of all the people of Virginia, to develop that section, and establish communication between it and the Virginia seaboard. It was for this purpose that Virginia assumed the burden of a public debt. The development of this system of public improvements was progressive. During the first twenty-five years the debt had grown to about ten millions of dollars; between 1850 and 1861 it was increased by twenty millions of dollars. It is a matter of interest in passing to refer to the fact that the members of the Virginia legislature representing the counties that now compose this State unanimously voted to increase the debt. It is a notable fact that on several occasions it would not have been increased but for the united support of the delegates representing this section of the state, for the eastern and tidewater counties generally opposed the system of internal improvements which Virginia had undertaken. I do not mention this in any critical spirit; it was natural that the residents of this part of the state should want to develop their territory, and I am sure that any one similarly situated at that time would have been governed by the same considerations. The great argument advanced for the increase of the public debt was that, by the development of this section of the state by the construction of turnpikes, canals, bridges, railroads, etc., the wealth of Virginia would be so materially increased that she could bear the burden of the debt without feeling it. And so it came to pass that on the 1st of January, 1861, the public debt of Virginia amounted to about thirty millions of dollars, every dollar of which had been expended in works of internal improvements, the primary object of which was the development of this section of Virginia's territory.

On the 17th of April, 1861, the state of Virginia passed the ordinance of secession, withdrawing from the Union. Shortly thereafter, in the month of May, a number of citizens residing in the town of Clarksburg, met together and called a convention 106
to meet in Wheeling on the 11th of June following. That convention assembled in Wheeling, and organized what was known as the "Restored Government of Virginia." They ignored the gov-

ernment at Richmond, denounced it as revolutionary, and declared that it did not represent the state of Virginia. On June the 20th this convention elected Francis H. Pierpont governor of Virginia and called a legislature together at Wheeling on July the 1st, 1861, which it declared to be the only true and lawful legislature of the state. This legislature, on July the 9th, elected two United States senators, and provision was made for the election of three congressmen. Both Houses of Congress admitted these members as from the State of Virginia.

A second convention assembled at Wheeling on the 20th of August, 1861. "The Restored Government of Virginia," having been previously organized, this convention, claiming to represent the state of Virginia, met for the purpose of "creating a new state," and on the 20th of August, 1861, it adopted an ordinance declaring it to be the sense of that convention that a new state should be formed "out of a portion of the territory of Virginia," and to embrace the counties specified in the ordinance.

This ordinance contained the following provision as the condition upon which the new state should be created.

"The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the expenses of the state government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties within said new state during the same period."

This was the first step towards the formation of the state of West Virginia, and in taking this step it was expressly stipulated that the old state would consent to her dismemberment only 107
on condition that the State should assume a just proportion of her public debt.

This convention authorized delegates to be elected to another convention to assemble in Wheeling on the 26th day of November, 1961, for the purpose of forming a constitution for the new state in accordance with the terms of the ordinance of August the 20th. Accordingly a third convention, claiming to represent Virginia, assembled in Wheeling on November 26th, 1861, and prepared a constitution for the State of West Virginia, the eighth section of the eighth article thereof providing as follows:

"An equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accrued interest and redeem the principal within thirty-four years."

This provision was adopted in pursuance of the binding ordinance of the organic convention of August the 20th, 1861; it not only pledged the new State to bear a just proportion of the public debt of Virginia, but required her Legislature to ascertain the same and provide for its payment. Does not that seem fair to you? It seems so to me. West Virginia had helped to create the debt, and reaped a share of its benefit. Do you not think in fairness and justice she ought to bear a just proportion of it, as she agreed to do?

On the 3rd day of May, 1862, this constitution was submitted to the people of the counties composing the new State of West Virginia for ratification, and it was duly reported as ratified by a majority of the voters at the polls.

On the 13th of May, 1862, the legislature of the "Restored 108
Government of Virginia" passed an act giving Virginia's consent to the formation of the new state, "under the provisions set forth in the constitution for the state of West Virginia." By that act Virginia expressly stipulated that her consent was given "under the terms stated in the constitution of the state of West Virginia," and this constitution, as we have seen, expressly provided that the new state would bear "its just proportion of the debt of the old state."

The "Restored Government of Virginia" instructed her representatives and senators in Congress to use their influence in furtherance of the passage of an act to create the state of West Virginia.

On the 31st day of December, 1862, the act was passed creating the state of West Virginia. The debates in Congress show that West Virginia would not have been admitted as a state but for her promise to bear a just proportion of the debt of the old state. A brief extract from the debates, when the bill providing for the admission of West Virginia was under consideration, will serve my purpose tonight:

Mr. OLIN: "I desire to ask what will become of the bonds and other obligations which Virginia has issued or incurred by the recognition of a new state?"

Mr. HUTCHINS: "I will answer my friend from New York. Here is the provision of the Constitution of West Virginia in reference to that matter: 'An equitable portion of the debt of Virginia prior to January the first, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable.'"

Mr. CRITTENDEN: "* * * There is another question; the state of Virginia owes a large debt. How is this debt to be divided?"

Mr. BLAIR: "The constitution framed by the convention of the people of the proposed new state binds the new state to pay its just proportion of the debt owed by Virginia prior to the ordinance of secession."

Mr. CRITTENDEN: "I only knew that in this bill there was
no provision made for a division of the said debt. The gen- 109
tleman tells us there is a provision made for it in the constitu-

tion, and I am satisfied with that. As it has been attended to, I have no more to say about it." (Extract from Congressional Globe, 37th Congress, quoted by Hon. J. M. Mason in pamphlet published by him on the subject of the Virginia debt.)

No one can doubt, therefore, that West Virginia owes her existence to her promise to bear a just proportion of the debt of the old state.

The act admitting West Virginia into the Union was signed, as I have stated, on the 31st day of December, 1862, and on June 20, 1863, in pursuance of the proclamation of the president, she took her place in the family of states.

I have given this sketch of the origin of the state of West Virginia in order to show that she is solemnly pledged to bear a just proportion of the debt of Virginia.

The constitution of West Virginia adopted in 1872 contains the following provisions relating to the public debt:

Article X, Sec. 4, provides that no debt shall be contracted except * * * to redeem a previous liability of the state; and sec. 5 provides that the power of taxation shall extend to provisions for the payment of the state debt and interest thereon. There was no public debt for West Virginia to provide for except her obligation to bear her just proportion of the debt of the state of Virginia.

The legislature of the "Restored Government of Virginia" on the 4th of February, 1863, passed an act transferring to the state of West Virginia all the property of the state of Virginia in the territory of the proposed new state, but on condition that West Virginia "should account for it in the settlement to be had with Virginia."

It is hardly necessary for me at this time to refer to the value of the property so transferred. Suffice it to say that by that act several millions of dollars worth of property was transferred to West Virginia; but the transfer was made on the condition that West Virginia should account for it in the settlement to be had 110 with Virginia.

The stock owned by Virginia in banks alone situated within the territory of West Virginia amounted to several hundred thousand dollars, and in respect to this stock West Virginia, in her Constitution of 1863, authorized the legislature to dispose of the same, but expressly provided that the proceeds of such sale should be applied to the liquidation of the public debt; thereby again recognizing in her fundamental law her obligation to share with Virginia the burden of her public debt.

So, gentlemen, I think you must agree with me that West Virginia's obligation to pay a just proportion of the debt of Virginia is the foundation of her political existence. It is an essential part of the very Constitution under which Congress admitted her into the Union. West Virginia has not always been unmindful of her obligation and duty in this respect. After the war an effort was made

by the two states to ascertain by negotiation the fair proportion of the old debt which each should bear. In February, 1870, Virginia sent delegates to Wheeling, West Virginia, then the capital of this state, for the purpose of inviting the governor and the legislature of West Virginia to unite with her in making a statement and settlement of this account. But the governor of West Virginia did not think the time opportune to deal with the subject because the suit between the two states involving the two counties of Jefferson and Berkeley had not then been decided. Soon thereafter the governor of West Virginia sent commissioners to Virginia with authority to state the account, but at that time Governor Walker of Virginia did not feel that he had authority to appoint commissioners, because the legislature of Virginia had in the meantime passed an act to submit the question to arbitration, and so nothing came of this effort to settle the controversy.

I am aware of the fact that at that time some feeling existed on the part of the commissioners of West Virginia as to the manner in which they had been received by the authorities in 111
Virginia; but it is, of course, difficult to determine at this distance the cause for any misunderstanding between those commissioners and Governor Walker. The records only show that the Governor of Virginia felt constrained to decline to appoint commissioners for the reason stated, and renewed his invitation to the State of West Virginia to submit the question to arbitration.

Again in recognition of West Virginia's obligation to Virginia in this matter, the Governor of West Virginia had this to say in a letter dated May 16, 1881:

"The people of this State are willing and anxious to adjust with the mother State the amount of their liability on account of the public debt. The liability can be readily ascertained when the mother state is willing to state the account with us. The convention of the State of Virginia held in Wheeling on the 20th of August 1861, in giving its consent to the formation of this state out of the territory of the mother state, provided by Section IX of the ordinance passed that day as follows:

"The new State shall take upon itself a just proportion of the debt of Virginia prior to January 1, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the ordinary expenses of the state government since any part of said debt was contracted and deducting therefrom the moneys paid into the treasury from the counties included within the new state during the same period."

"The validity of this ordinance and the convention which passed the same has received the sanction of every department of the national government.

The Supreme Court of the United States, in a suit in that court

instituted by the state of Virginia against West Virginia to recover jurisdiction over the counties of Jefferson and Berk- 112
ley, now a part of this state, adjudged said ordinance valid and binding. This state was admitted in pursuance of this ordinance. We admit it is binding authority, and hold ourselves ready at all times to settle with our mother state on that basis. Our obligation is to the mother state, and not to creditors of that state." (Extract from letter published by Hon. J. M. Mason in a pamphlet by him on the subject of the Virginia debt.)

So, gentlemen, you perceive that the public authorities of West Virginia in the past fully acknowledged the binding obligation resting on your state to bear a just proportion of the debt. That obligation is none the less binding now than it was then.

Nothing having resulted from the efforts of the two states to ascertain and adjust their respective liabilities, Virginia felt obliged to make some arrangement for the funding of her debt. The war had intervened and left her prostrate and impoverished, but still she recognized her duty to make a fair adjustment with her creditors who had purchased her bonds when her credit was higher than that of any other state, and to that end, on the 30th of March, 1871, her Legislature enacted what is known as the Funding Bill.

By the terms of this act Virginia assumed responsibility for two-thirds of the Debt. The act provided that a new bond should be issued for two-thirds of each old bond, and that a certificate should be given to represent the other one-third, to bear interest at six per cent., and await payment until Virginia and West Virginia had come to a settlement; and Virginia agreed to hold the old bond, so far as unfunded, in trust for the holder of said certificate.

The debt of Virginia at that time, with interest added, amounted to about forty-five millions of dollars, of which Virginia assumed as her just proportion, two-thirds, or about thirty millions of dollars. The form of the certificate issued, as provided by the Funding Bill was as follows:

Copy of Certificate under Act of March 30, 1871.

"COMMONWEALTH OF VIRGINIA. 113

No. ——. $ ——.

TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an act approved March 30th, 1871, entitled 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest amounting to $—. Payment of said one-third with interest thereon at the rate of six per

cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the state of Va. and W. Va in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and the State of Va. holds said bonds so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"____ ____,

"Treasurer of the Commonwealth of Virginia.

"____ ____,

"Second Auditor of Virginia."

Under the foregoing act about fifteeen million dollars of these certificates were issued, and the old bonds were delivered up and are now held by Va., so far as unfunded, in trust to secure the payment of said certificates. These certificates do not in terms release Va from liability for their payment; they clearly import that there would be a settlement between Va. and W. Va., and that they would be paid when such settlement was had. Va. undoubtedly intended that when a settlement was had the certificate holders must accept W. Va.'s share in full payment of the unsettled one-third of the debt; but under the form of the certificate it might be contended that Va. was liable for the difference between the face of the certificates and the amount ascertained to be due by W. Va. Hence you will observe that it is of the greatest importance to Virginia to bring about, if possible, a settlement of this controversy, not only because it is a duty she owes the creditor, but especially for 114 her own protection.

In 1879 the legislature of Virginia passed another act for the funding of her debt by which provision was made the issuance of new bonds to take the place of those outstanding. With the bonds so issued certificates were issued for the unsettled one-third of the debt similar in form to the certificates of 1871, with this important difference, namely, that it was expressly stipulated in the certificate that its acceptance should be a full and absolute release of Virginia from all liability on account of said certificates. While the certificates issued under the act of 1879 imposed no liability, therefore, on Virginia they nevertheless provided that Virginia would aid the creditors holding such certificates, or certificates issued under previous acts, in negotiating with West Virginia for a friendly settlement of the claims of such creditors against the State of West Virginia.

In 1882 a third act for the funding of Virginia's debt was passed and under that act the certificates issued to represent the unpaid one-third of the debt expressly provided that they should be accepted without recourse on Virginia for their payment. These certifi-

cates, therefore, like those issued under the act of 1879, impose no liability on Virginia.

By act approved on the 20th of February, 1892, Virginia made a full and final settlement with her creditors and the certificates issued under this act, like those issued under acts of 1879 and 1882, expressly provided that they should be accepted without recourse on Virginia and hence they impose no liability on Virginia.

In as much as the unsettled one-third of the debt of the original state of Virginia is represented by the foregoing four classes of certificates, it becomes important to know the amount of those certificates outstanding.

The office of the second auditor of Virginia shows as follows in respect to these certificates: 115

Under the act of March 30, 1871, there were issued of these certificates	$15,281,970.47
Of these certificates Virginia holds in her sinking fund and in her literary fund	2,578,518.68
Leaving outstanding in the hands of the public of the certificates of March 30, 1871	$12,703,451.79

The foregoing certificates do not in terms release Virginia from liability for their payment.

Under the act of March 28, 1879, there were issued and are outstanding in the hands of the public, certificates amounting to	$ 564,258.87
Under the act of February 14, 1882, there were issued of these certificates	1,775,603.48
Of these certificates Virginia holds in her sinking fund	166,943.33
Leaving outstanding in the hands of the public	$1,609,660.15
Under the act of February 20, 1892, there were issued certificates outstanding in the hands of the public	$605,320.78

The three last mentioned classes of certificates were issued and accepted without recourse on Virginia.

The total issue of certificates, therefore, representing the unpaid one-third of the debt of the original state of Virginia is	$18,227,153.60
Of that amount Virginia holds in her sinking fund and in her literary fund	2,745,465.01
Leaving outstanding in the hands of the public of all classes of certificates	$15,481,691.59

A debt or claim of that magnitude cannot be disposed of by ignoring it, or attempting to waive it aside. The only way to dispose finally of it is to settle it.

Realizing the importance to her own interests of bringing about a friendly settlement of the matter, and in fulfillment of her promise to the creditors to aid in bringing it about Virginia, by resolution of March 6, 1894, appointed commissioners for the 116
purpose of negotiating with West Va. for an adjustment of the proportion of the debt proper to be borne by her.

In January, 1895, Governor O'Ferrell of Virginia communicated a copy of that resolution to Governor McKorkle of W. Va. No response was ever made by W. Va., but we learned through the press that your legislature declined to negotiate with Va. on the basis stated in the resolution creating her commission. We think the purpose and intent of that resolution was misunderstood, but at all events, nothing was done.

Subsequently, by an act of the General Assembly of Va., approved March 6, 1900, the powers of this commission were materially enlarged and the commission was authorized under the terms stated in the act to conclude a settlement with W. Va. or to take such action to that end as might be approved by the attorney general of Va. Under the provisions of this act the commission acting by and with the advice and approval of the attorney general of Va., is fully empowered to make final settlement with W. Va., provided at least two-thirds of the certificates of 1871 and a majority of all the other certificates outstanding in the hands of the public were deposited with or placed subject to the control of the commission. The requirements of that act have been complied with in a manner which far exceeded our most sanguine expectations, for there have been deposited, subject to the control of the commission, more than five-sixths of the entire issue of the certificates. This unexpected and desirable result has been brought about through the instrumentality of Brown Brothers & Co., bankers of New York, the agents of the certificate holders' committee. The standing of this house is doubtless known to you, or certainly to many of you; it does not engage in "frenzied finance," but on the contrary it is known as one of the most reliable and responsible firms in the financial world.

Through the agency of Brown Bros. Co. more than five-sixths of all the certificates outstanding in the hands of the public have been assembled and are held on deposit subject to the control of
the Virginia commission under an agreement with the owners 117
of those certificates to accept whatever may be received from West Virginia in full discharge of the unsettled one-third of the debt of Virginia.

Of the certificates of 1871 outstanding in the hands of the public (amounting to $12,703,451.79) Brown Bros. & Company now hold $10,639,776.42.

Of the certificates of 1879 outstanding in the hands of the public (amounting to $564,258.87) Brown Bros. & Company now hold $440,642.61.

Of the certificates of February 14, 1882, outstanding in the hands of the public (amounting to $1,608,660.15) Brown Bros. & Company now hold $1,285,680.55.

Of the certificates of February 20, 1892, outstanding in the hands of the public (amounting to $605,320.78) Brown Bros. & Company now hold $544,456.31.

The aggregate amount of all certificates held by Brown Bros. & Company is, therefore, $12,910,555.89.

The Virginia commission has full power and authority to deliver up those certificates as an entirety to be cancelled upon payment by West Virginia of whatever may be ascertained to be her just proportion of the debt of Virginia—be it much or little. We stand ready, of course, to exhibit the evidence of the deposit of those certificates with us to the proper authorities of West Virginia.

The contract under which these certificates are deposited subject to the control of the Virginia Commission, will expire in September 1905, unless, in the meantime, negotiations for a settlement, or some action looking to that end, have been undertaken.

At a meeting of the Virginia commission held in Richmond on December 14, 1904, a sub-committee was appointed who, together with the attorney general of Virginia, were requested to communicate these facts to the governor and legislature of West Virginia, and invite their co-operation in a friendly adjustment 118
and settlement of the account between the two states. Our visit here is in discharge of the duty assigned us. Do not imagine that Virginia has the slightest intention of meddling with the affairs of West Virginia, or of volunteering advice. She has ventured to bring the subject to your attention in compliance with her undertaking to the creditors, and especially because her own interests are involved. Virginia felt that she would be derelict in her duty to herself and in her duty to your state if she failed to bring to your notice the exceptional opportunity now presented to dispose finally of this vexatious question.

Is there any reason why West Virginia should not join Virginia in stating this account? I am sure, gentlemen, you cannot dissent from the proposition that your state is liable for some part of the debt, whatever the amount may be. As far as it is possible for a state to be committed by the solemn provisions of its organic law and by the repeated declaration of its public authorities, West Virginia is bound—bound in equity and good conscience—to bear whatever may be ascertained to be her fair proportion of the debt of Virginia. No account has ever been stated between the two states. How then can West Virginia declare that she owes no part of this debt until the account is stated? She is solemnly pledged to state this ac-

count. Ought she not to redeem this pledge? No state can refuse to do what is fair and right in respect to her public obligations and not suffer for it. We do not ask that West Virginia shall commit herself as liable in any specific amount. We make no claim against her for any definite sum. We do not know what a statement of the account will show; if it shows that West Virginia is not liable for any amount that will end the matter. We only ask that your state will through the proper authorities, unite with Virginia in stating the account between the two states in order that the question of her liability, if any, may be authoritatively ascertained. The 119
work of your commission will, of course, be subject to such action as West Virginia might deem proper in the premises.

Would any one of you, if a man thought he had an honest claim against you, be afraid to meet him and consider it with him? Then why should you hesitate to commit your state to the same course in this respect which you as an individual would not hesitate to take?

West Virginia has always taken the position that her liability on account of this debt was to Virginia and not to the creditors, and that her liability must be ascertained on the basis of the Wheeling ordinance. This ordinance not only committed West Virginia to bear her just proportion of the debt of Virginia, but states how the account shall be stated in order to ascertain the amount of the debt for which West Virginia is liable. We are ready to unite with you in stating the account on the basis of the Wheeling ordinance, or West Virginia may choose any other just and equitable basis, if she prefers, on which the account shall be stated, and we will abide by her choice. We have no interest whatever in this matter except to discharge our duty to our state by bringing about, if possible, a fair and final settlement of this controversy. Unless the two states can dispose of it we may confidently expect it to be referred to the courts for settlement, and in that event the decision of the court has already been plainly foreshadowed. In the case of Hartman *v.* Greenhow (decided October term, 1880), 102 U. S., page 672, the Supreme Court reviewed the legislation of Virginia in relation to her public debt, and in referring to West Virginia's liability for a portion of it the court, through Justice Field had this to say:

"It appears from the statutes to which we are referred—and we know the fact as a matter of public history—that prior to the late civil war Virginia had become largely indebted for moneys borrowed to construct public works in the state. The moneys were obtained upon her bonds, which were issued to an amount exceeding $30,000,000. Being the obligation of a state of large wealth, 120
which never allowed its fidelity to its promises to be questioned anywhere, the bonds found a ready sale in the markets of the country. Until the civil war the interest on them was regularly and promptly paid. Afterwards the payments ceased, and until

1871, with the exception of a few small sums remitted in coin during the war to London for foreign bondholders, or paid in Virginia in Confederate money, and a small amount paid in 1866 and 1867, no part of the interest or principal was paid. During the war a portion of her territory was separated from her, and by its people a new state, named West Virginia, was formed, and by the Congress of the United States was admitted into the Union. Nearly one-third of her territory and people were thus taken from her jurisdiction. But, as the whole state had created the indebtedness for which the bonds were issued, and participated in the benefits obtained by the moneys raised, it was but just that a portion of the indebtedness should be assumed by that part which was taken from her and made a new state. Writers on public law speak of the principle as well established that where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On this subject Kent says: "If a state should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, their rights are to be enjoyed and their obligations fulfilled by all the parts in common." (I Com., 26.) And Halleck, in speaking of a state divided into two or more distinct and independent sovereignties, says: In that case the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of the courts, and the practice of nations." (Internat. L., ch. 3, sec. 27.)

"In conformity with the doctrine thus stated by Halleck, both states—Virginia and West Virginia—have recognized in their constitutions their respective liability for an equitable proportion of the old debt of the state, and have provided that measures should be taken for its settlement. * * *

"The Constitution of West Virginia, which went into effect in 1863, declared that "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," should "be assumed" by the state, and that the legislature should "ascertain the same as soon as practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." (Art. 8, sec. 8.)

Virginia lost by the formation of the state of West Virginia one-third of her territory and more than one-third of her white population. To that extent she was deprived of possessions which belonged to her when the debt was contracted. Suppose fifty of the remaining counties of Virginia should decide to organize themselves into a new

state to be called "Eastern Virginia;" would you say it was fair and right for them to do so and take the public property within their borders, and leave the remaining counties constituting the state of Virginia to bear the burden of a debt created for the benefit of the whole? The Supreme Court of the United States has, 121
as we have just seen, answered that question in the negative, and I am sure your sense of justice would impel you also to answer "No." In that event you could not justify West Virginia in declining to bear a just proportion of the debt of the mother state.

Another decision of the Supreme Court of the United States has an important bearing on the liability of the two states on account of this debt. I refer to the recent decision of South Dakota against North Carolina (decided February 1, 1904), 192 U. S., page 286.

North Carolina had issued certain bonds which were outstanding in the hands of purchasers. She declined to make provision for their payment, feeling that she was justified in that course. In order to test the liability of North Carolina a holder of a large amount of those bonds donated ten of them of the face value of $10,000.00 principal to the state of South Dakota, with the understanding that South Dakota, would institute suit against North Carolina to enforce payment. An individual cannot sue a state, but the right of one state to sue another is expressly preserved by the Constitution of the United States. South Dakota accepted the gift and instituted suit in the Supreme Court of the United States against North Carolina, and the court gave judgment against North Carolina for the amount of the bonds with accrued interest.

If when the contract under which we hold control of the certificates expires nothing has been done looking to a settlement, and those certificates should be released and restored to the owners, it may prove to be the opening of a veritable Pandora's box. Under the authority of the South Dakota-North Carolina case, the attempt might be made to enforce collection of this debt by donating some of the certificates of the issue of 1871 to a state on condition that a suit should be instituted against Virginia and West Virginia to compel the settlement of the account between them, and the payment of the liability apportioned to each one. We are reliably informed that the governor of one of the states has already 122
been approached with an offer to donate to his state $100,000.00 of those certificates on condition that he would cause such a suit to be instituted. He declined, but some other governor might not be influenced by as delicate sense of propriety.

We feel that these considerations should appeal strongly to you to unite with Virginia in the effort to make a friendly settlement of this matter. Surely the two states can make a far better settlement than the courts can make for them. If we do not take the matter in our own hands the only alternative is a settlement by compulsion.

Resolutions that we do not owe anything will not avail. The holders of a debt amounting to about fifty millions of dollars will not be satisfied with your statement or with ours that we do not owe it. Unless your state will join Virginia in the effort to dispose finally of this question, you may rest assured that, like Cæsar's ghost, it will meet you at Philippi. The unsettled one-third of this debt now amounts to about fifty millions of dollars. No one can say what the extent of West Virginia's liability will be if the controversy is settled in court, but I will venture the assertion that in a friendly adjustment, it is entirely probable that we can effect a settlement within one-tenth of that sum. In this connection I cannot forbear a reference to what Virginia has done towards bearing the burden of this debt. The records of the office of the second auditor of Virginia show the following amounts paid by Virginia on account of the public debt of the old state since January 1, 1861:

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Amount of interest paid from January 1, 1861, to January, 1905		$34,551,642 85
Bonds now held in sinking fund	$1,111,500 00	
Bonds paid off and cancelled	8,863,994 49	
		9,975,441 49
Total of interest and bonds paid off		$45,527,134 34*
New bonds of Virginia issued for portion of debt funded and assumed by her		26,850,820 00
Total sum of principal and interest paid off and assumed and now carried by Virginia on account of the old debt		$72,377,954 34*

From the foregoing you will observe that the public debt of Virginia is now $26,850,820.00, and on this sum she pays an annual interest charge of $877,862.27. (Report of the second auditor of Virginia for 1904 in relation to the public debt.)

Do you not think that Virginia has borne her share of this common burden, especially in view of the trials and adversity through which she has passed? During four long years she withstood the shock of battle, and came out of that trying ordeal crushed, impoverished and dismembered. Then followed the night of reconstruction, when for five years she endured the bitterness and humiliation of military rule. But so soon as she regained control of her own affairs she met her creditors and, in spite of her poverty, endeavored to do her duty by them.

In adjusting her liability with her creditors and providing for its payment she has done all that she could do, and no more could be

*[Errors in addition:
The first result should be $44,527,084.34.
The second result should be $71,377,904.34.]

expected of her. The trials and sacrifices through which she has passed have left no trace of bitterness—least of all does she cherish any resentment against her youngest daughter. On the contrary, she rejoices in the wealth and power with which a benignant Providence has blessed you. She only appeals to you not to let pass the present golden opportunity to finally dispose of the only remaining question in connection with her public debt. She earnestly hopes that her suggestion will commend itself to your good judgment, and that your legislature will authorize the appointment of commissioners, with power to co-operate with us in stating the account between the two states. If, however, your action shall be 124
unfavorable, Virginia will feel that she has done her duty, and that responsibility for the consequences will not lie at her door.

In taking leave of you, gentlemen, I cannot refrain, on behalf of myself and associates, including the attorney general, an eminent citizen of my state, from expressing to you our sincere appreciation of the cordial reception accorded us here not only by His Excellency, your governor, but by your committees to-night. I can assure you that whatever may be the result of our mission we will recall with pleasure the considerate attention you have shown us.

Memorandum of agreement, made this 14th day of December, 1904, between the Depositing Committee of the securities known as the Virginia Deferred Certificates as constituted under the contract of July 28, 1898, and of which John Crosby Brown is Chairman, and Robert L. Harrison, Secretary, acting under the plan of settlement approved on December 3rd, 1902, by the Advisory Board referred to in the said contract, hereinafter referred to as the Depositing Committee, party of the first part, and the Commission constituted on behalf of the State of Virginia for the purpose of bringing about a settlement with the State of West Virginia with respect to said certificates as constituted and acting under the joint resolution of the General Assembly of the State of Virginia, approved March 6, 1894, and the act of said General Assembly, approved March 6, 1900, and of which John B. Moon is Chairman, and Joseph Button is Secretary, hereinafter referred to as the Virginia Commission, party of the second part: 125

Whereas, by an agreement entered into between the above parties on the 18th day of September, 1902, certain of the certificates aforesaid amounting in the aggregate to $10,347,570.85 were tendered by the Depositing Committee Aforesaid to the said Virginia Commission, and were placed subject to the control of the said Commission upon the agreement and arrangement on the part of the said Commission acting for the State of Virginia under the said joint resolution and Act of Assembly aforesaid, that the said Commission

should enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting with West Virginia a settlement with respect to the said certificates, in accordance with the said contract of July 28th, 1898, and in accordance with such plan of settlement as was then proposed or might thereafter become effective, and that the said Commission would, by and with the advice and approval of the Attorney General of Virginia, take such action as they might deem needful in the premises; and that in the event such a settlement was so made, then it was agreed that the amount realized thereon should be ac- 126
cepted in full satisfaction of all the claims of the certificate-holders thereunder, and that the said Committee would surrender to the said Commission, in exchange for such amount, the certificates so placed subject to the control of said Commission. And it was further specified in the said agreement of September 18, 1902, that the same should apply to and include all such certificates as might thereafter be deposited with and held by the said Committee under the said contract of July 28, 1898, and that the said agreement should constitute an arrangement and contract between the said Committee acting for the said certificate-holders with the State of Virginia for obtaining a settlement with West Virginia, and that the same should continue binding upon the parties and upon the holders of the certificates so deposited for the three years next ensuing from the date of the said agreement; that is to say, until the 18th day of September, 1905. And the said agreement further provided that the same should be subject to renewal and extension for such further time as might be agreed upon between the parties and to such modification and amendment as might thereafter be agreed upon; and,

Whereas, the said agreement of September 18, 1902, was approved by the Hon. William A. Anderson, Attorney General of Virginia, by his endorsement at the foot thereof on the 29th day of September, 1902; and

Whereas, the provisions of the said agreement last named were fully approved and recommended on the 3rd day of December, 1902, by the Advisory Board referred to in the said contract of July 28, 1898, as appears by the plan of settlement made and approved by the said Committee and the Advisory Board and bearing date December 3rd, 1902, of which plan of settlement publication was duly made as provided in the said contract of July 28, 1898, and no notification whatsoever was given to the said Committee, either directly or through any depository, by any of the holders of the deposited certificates, of their unwillingness to accept the proposed settlement as set forth in the said plan so published and more 127
than thirty days having elapsed after the said publication

was completed, and the said plan of settlement having therefore become complete; and of this fact the declaration in writing of the Committee having been duly made to the only depository under the said contract, to wit Messrs. Brown Brothers & Company, of 59 Wall Street, New York, the said plan of settlement thereupon became effective and final; and

Whereas, it is now proposed under the terms of the said agreement of September 18, 1902, and by way of modification thereof as therein provided, to place more fully and completely under the control of the said Virginia Commission all the certificates aforesaid which had up to that date been deposited, and also all thereafter deposited so that the said Virginia Commission may be given full and complete control of all the said certificates in their proposed negotiations with the State of West Virginia, and also in any action and proceeding which may be taken or instituted by the said Virginia Commission by and with the advice and approval of the said Attorney General under the said Act of the General Assembly of Virginia March 6, 1900:

Now therefore this agreement witnesseth: that the aforesaid Depositing Committee does hereby authorize and direct their said Depository Messrs. Brown Brothers & Company to issue to the Virginia Debt Commission a certificate that all the aforesaid Virginia Deferred Certificates which have up to this time been deposited with the said Brown Brothers and Company under the said depositing agreement of July 28, 1898, and all which may hereafter and before the 18th day of September, 1905, be so deposited with the said depository are held by the said depository on deposit for and subject in all respects to the control and disposition of the said Virginia Commission in pursuance on the said joint resolution and Act of the General Assembly of Virginia; and to this end the said Messrs. Brown Brothers & Company are authorized and instructed to issue such certificate to the said Virginia Commission in such 128
form as to show that all of the certificates aforesaid have been received and are held by them on deposit for the said Virginia Commission and subject to the control and disposal of the said Commission:

But this agreement shall continue in force only until the said 18 day of September, 1905, when the said certificate issued by the said Brown Brothers and Company to the said Virginia Commission for the purpose of making a settlement with West Virginia as aforesaid shall be returned to the said Depositing Committee, unless a settlement shall have been before that time negotiated with West Virginia is pursuance of said contract of September 18th, 1902, or unless negotiations be then pending with the properly constituted authorities of West Virginia for such settlement upon some equitable

basis which has been agreed to by said Commission and the authorities of West Virginia aforesaid. Provided, however, that it is fully understood and agreed that the time for continuing in force this agreement may be extended by the consent and agreement of the parties hereto indorsed hereon at the foot hereof, for such length of time and upon such conditions as the parties may hereafter specify; and this agreement may be changed, modified and amended with respect to the action and proceedings to be taken or instituted by the said Commission in the premises, as may hereafter be agreed upon by the parties and the indorsed as aforesaid, or as may be specified in a further and supplemental agreement between the parties.

In testimony whereof the signatures of the Chairman of the said Depositing Committee and of the Virginia Commission, attested by the respective Secretaries thereof, are hereunto affixed on the day and year first above written.

JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*
JOHN B. MOON,
Chairman of Virginia Commission.
JOSEPH BUTTON, *Secretary.*

The foregoing agreement is hereby approved as having 129
been entered into by my advice and approval.
Dated December 14, 1904.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

The foregoing agreement of December 14th, 1904, together 130
with the contract of September 18th, 1902, therein referred to, are hereby extended in all their provisions until December 1st, 1905, and they shall remain in full force until that date just as if December 1st, 1905, instead of Sept. 18th, 1905, had been the date originally named therein for their limitation, with the right of extension, enlargement and modification on or before Dec. 1st, 1905, in all respects as therein specified.

Given under our hands this 9th day of Sept. 1905.

JOHN CROSBY BROWN,
Chairman Depositing Committee.
ROBT. L. HARRISON, *Secretary.*
JOHN B. MOON,
Chairman Virginia Commission.
JOS. BUTTON, *Secretary.*

The above extension of the contracts above referred to is hereby approved this 9th day of September, 1905.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

Upon the execution of the foregoing contract of December 14, 1904, hereto annexed, Messrs. Brown Bros. & Co., Bankers of New York, N. Y., the depository referred to in said contract, issued to the Virginia Commission therein named the certificate provided for in said contract, which was also in the form of a receipt and showed that Virginia deferred certificates of 1871 to the amount of $10,639,776.42 and certificates of other dates to the amount of $2,270,779.47 were held by said Brown Bros. & Co. on deposit for and subject to the control and disposal of said Commission; thus placing subject to the complete control and disposal of the Commission considerably more than two-thirds of the total of $12,703,451.79 of the certificates of 1871 outstanding and in the hands of the public, and a large majority of the total of $2,778,239.80 of the other certificates so outstanding. 131

Thereafter, in January and February, 1905, the Virginia Commission, through its properly constituted sub-committee acting with the Attorney General of Virginia, made to the Governor and Attorney General of West Virginia, and to the Finance Committees of the Legislature of that State, which was then in session, a full statement and presentation of the matters outstanding and unsettled between the two States in connection with the deferred certificates aforesaid, accompanied by an urgent plea on behalf of the State of Virginia that the Legislature of West Virginia would, at least, appoint a Committee or other public functionery with authority to take up the questions involved for the purposes of discussion and negotiation, but the Commission was again met, as it had been in a previous attempt to open negotiations on the subject, by an absolute refusal on the part of the authorities of West Virginia to treat on the subject at all thus leaving to the Virginia Commission and Attorney General of that State no possible means of bringing about the settlement, which they are charged with the responsibility of making, except by a resort to the Court having jurisdiction of controversies between States. 132

Now, therefore, it is hereby stipulated and agreed by and between the Depositing Committee, named as the party of the first part in the said foregoing contract of December 14th, 1904, and the Virginia Commission therein named as the party of the second part, the said Commission acting in this behalf by and with the advice and approval of the Attorney General of Virginia, that in accordance with the provisions contained in the said foregoing contract and addendum thereto of September 9th, 1905, the same is hereby amended, modified and extended as follows, to wit:

1st. Neither the said foregoing contract of December 14th, 1904, nor the contract therein referred to between the same parties, bearing date September 18th, 1902, shall expire on the first day of December, 1905, but the same shall continue in force in all respects just as if no time limit had been named in either of said contracts, and this agreement shall be taken as a continuation, modification and extension of said contracts.

2nd. The certificate or certificates heretofore given by Brown Bros. & Co., the depository of the said Committee, to the said Virginia Commission, covering the deferred certificates aforesaid, shall be retained by the said Commission and shall remain in full force and effect without regard to time limit and the said Brown Bros. & Co. shall issue and give to the said Commission such other and further certificates and receipts in the premises, by way of amendment or in lieu of those already given or otherwise, as may be deemed needful or desirable in order to place said deferred certificates more completely and finally under the control and at the disposal of the said Commission for the purpose of carrying out this 133 agreement; and especially shall they give such certificates or receipts to cover all such Virginia deferred certificates as have been or may be deposited with them and not covered by certificates or receipts previously given to the Commission; and the said Virginia Commission are hereby given and invested with the full and complete control and right to dispose of all deferred certificates now or hereafter covered by or embraced in the receipts and certificates of Brown Bros. & Co., as aforesaid.

3rd. The said Virginia Commission hereby stipulate and agree, by and with the advice and approval of the Attorney General of Virginia, that, in their judgment, it is needful and proper, in order to protect the interest of the State and bring about and carry into effect a settlement in the premises, that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States asking for an adjudication and settlement by that Court of the matters aforesaid unsettled and undetermined between the two States, arising or growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the Act of the General Assembly of Virginia, of March 6th, 1900, referred to in said contract of December 14th, 1904; and the said Virginia Commission acting by and with the advice and approval of the Attorney General of that State, do hereby undertake and agree that such a suit shall be brought against the State of West Virginia for the purpose of

obtaining a settlement as aforesaid, as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said 134
Court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said Act of the General Assembly of Virginia and the Joint Resolution of the said General Assembly of March 6th, 1894, also referred to in said contract of December 14th, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia as to the deferred certificates placed subject to the control of the Commission as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said Commission, notwithstanding the institution and pendency of such suit.

4th. And the Virginia Commission do further undertake and agree that, in accordance with the terms and conditions of the said Joint Resolution and Act of the General Assembly of Virginia, they will account for, pay over and deliver such amount, either in cash or securities, as may be realized from West Virginia through any settlement made by the said Commission with that State, either by means of an adjudication or recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, to the said Depositing Committee in full settlement and satisfaction of all claims under said certificates; and the said Depositing Committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said Commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on ac- 135
count of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

5th. It is further understood and agreed that if from any cause the said Commission shall fail or be unable to bring about such adjustment or settlement or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said Commission to restore to the control of the said Depositing Committee all such deferred certifi-

cates as may have been placed subject to the control and disposal of said Commission as aforesaid.

Richmond, Va., November 24th, 1905.

JOHN CROSBY BROWN, *Chairman.*
R. P. CHEW,
WM. C. LEGENDRE,
CLARENCE CARY,
J. KENNEDY TOD,
GEO. F. BAKER,
BARTLETT S. JOHNSON,
Depositing Committee.

JOHN B. MOON,
WM. F. RHEA,
H. D. FLOOD,
H. H. DOWNING,
H. T. WICKHAM,
RANDOLPH HARRISON,
J. THOMPSON BROWN,
Virginia Commission.

Attest:

JOS. BUTTON,
Sec'ty Va. Commission.
RO. L. HARRISON,
Secretary Committee.

The foregoing contract of this date was entered into by 136
and with the advice and approval of the undersigned, William A. Anderson, Attorney General of Virginia, as in said contract stated and set forth; and the same is concurred in by him as such Attorney General.

Richmond, Va., November 24th, 1905.

(Signed) WILLIAM A. ANDERSON,
Attorney General of Virginia.

This is to certify that we, the undersigned, Brown Broth- 137
ers & Company (Bankers), of 59 Wall Street, New York City, N. Y., have received of the Commission of the State of Virginia, constituted and authorized to act with respect to the securities known as the Virginia Deferred Certificates under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and an act of the said General Assembly approved March 6, 1900, and of which John B Moon, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is secretary, the following Virginia Deferred Certificates, which we hold on deposit for and subject to the control and disposition of said Commission, to-wit:

Certificates of 1871:			
Principal		$9,317,009.30	
Sterling scrip	$10,666.66		
Dollar scrip	32,387.00	43,053.66	
			$9,360,062.96
Certificates of 1879:			
Principal		$403,362.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Certificates of 1882:			
Principal		$716,416.07	
Scrip		545,787.36	
			1,262,203.43
Certificates of 1892:			
Principal		$259,825.71	
		$284,563.93	
			544,389.64
			$11,607,298.64

And we further agree to hold on deposit for and subject to the control of said Commission as aforesaid such further certificates as may be deposited with us through or for the said Commission, between this and the 18th day of September, 1905.

Given under our hands this 14th day of December, 1904.

BROWN BROTHERS & CO.

Brown Brothers & Co., 59 Wall Street. 138

West Virginia Debt Settlement. (C)

NEW YORK, *January 23rd, 1905.*

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR:—Since we gave you the receipt and certificate of Deposit of December 14th, 1904, there have been deposited with us, and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under act of	1871,	to amount of	.....	$1,279,713.46
do.	1882,	do.	.....	23.477.12
do.	1892,	do.	.....	66.67
Total additional certificates			.....	$1,303.257.25

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal		$10,596,402.76	
Sterling scrip	$10,666.66		
Dollar scrip	32,707.00	43,373.66	
			$10,639,776.42
Issue of 1879:			
Principal		$403,362.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Issue of 1882:			
Principal		$738,819.72	
Scrip		546,860.83	
			1,285,680.55
Issue of 1892:			
Principal		$259,825.71	
Scrip		284.630.60	
			544,456.31
Total deposit to January 23rd, 1905			$12,910,555.89

B. B. & CO.

Brown Brothers & Co., 59 Wall Street. 139

West Virginia Debt Settlement. (T.)

NEW YORK, *January 4th, 1906*

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR: Since we gave you the receipt and Certificate of Deposit of December 14th, 1904, there have been deposited with us and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under the act of	1871,	to amount of	.....	$1,491,231.13
do.	1879.	do.	.....	23,250.00
do.	1882,	do.	.....	51,588.97
do.	1892,	do.	.....	66.67
Total additional certificates			.....	$1,566,136.77

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and Certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:

Principal	.....	$10,806,785.43	
Sterling scrip	$10,666.66		
Dollar scrip	33,842.00	44,508.66	
			$10,851,294.09

Issue of 1879:

Principal	.....	$ 426,612.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			463,892.61

Issue of 1882:

Principal	.....	$ 757,653.05	
Scrip	.....	556,139.35	
			1,313,792.40

Issue of 1892:

Principal	.....	$ 259,825.71	
Scrip	.....	284,630.60	
			544,456.31
Total deposit to January 4th, 1906			$13,173,435.41

BROWN BROTHERS & CO.

STATE OF NEW YORK,

County of New York, To-wit: 140

I, Wm. Gerard Vermilye, being first duly sworn, do depose and say that I am one of the Cashiers of Brown Brothers & Co., bankers of New York, N. Y., and have charge of their vaults and of the securities therein deposited, including the securities known as Virginia deferred Certificates, and that I have had charge of the filing

of said certificates deposited with said Brown Brothers & Co. and of the keeping of a record thereof as filed; and that the statement or certificate of the said Brown Brothers & Co. hereunto annexed made to John B. Moon, Chairman of the Virginia Debt Commission, bearing date January 4th, 1906, correctly sets forth the said Virginia Deferred Certificates so deposited and placed in the vaults of said Brown Brothers & Co. which said certificates to the amount set forth in said statement of Brown Brothers & Co. have been by order of the said Virginia Commission this day placed in sealed boxes and transferred to the Central Trust Company of New York, N. Y.

WM. GERARD VERMILYE.

The foregoing affidavit was this day subscribed and sworn to by Wm. Gerard Vermilye before me, a Notary Public in and for the State and County of New York.

Given under my hand and Notarial Seal this 5th day of January, 1906.

LEGRAND VAN VALKENBURGH,

[NOTARIAL SEAL.] *Notary Public, Kings County.*

Certificate filed in New York County.

Central Trust Company of New York. 141

54 WALL STREET, *January 5th, 1906.*

The undersigned, the Central Trust Company of New York, N. Y., hereby certifies and acknowledges that it has this day received from Brown Brothers & Co. three boxes under seal said to contain the Virginia Deferred Certificates to the amount of $13,173,435.41 referred to in the communication of said Brown Brothers & Company to John B. Moon, Chairman of the Virginia Commission, bearing date January 4th, 1906, which said sealed boxes and their contents are held by the undersigned Trust Company on deposit for and subject to the order and control of the Virginia Commission, constituted and authorized to act with respect to said Deferred Certificates under a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, and an act of the said General Assembly approved March 6th, 1900, of which John B. Moon,, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is Secretary, the said certificates having been turned over to the undersigned Trust Company by said Brown Brothers & Company to be held by the undersigned on deposit for and subject to the control and disposal of said Virginia Commission as above stated.

CENTRAL TRUST CO., OF N. Y.,

(Signed) F. L. GRANT, *Sec'y.*

Virginia, Second Auditor's Office. 142

(Statement Made Sept. 17, 1902.)

West Virginia Certificates Issued by Virginia in Funding Her Debt.

			In hands of the public
Act March 30, 1871	$15,281,970 47		
" " " " held by Com.			
" " " " sinking fund	2,026,439 39		
" " " " literary fund	552,079 29		
		$2,578,518 68	
			$12,703,451 79
Act March 28, 1879			564.258 87
Act Feb. 14, 1882		$1,775,603 48	
Held by literary fund		166,943 33	
			1,608,660 15
Act Feb. 20. 1892			605,320 78
Total amount in the hands of the public			$15,481,691 59
Total amount held by the Com. S. Fund			2,026,439 39
Total amount held by the literary fund			719,022 62
Total amount of W. Va. script issued			$18,227.153 60
In hands of public	$15,481,691 59		
Held by State of Virginia	2,745,462 01		
Total issue of W. Va. script	$18.227,153 60		

I hereby certify that the above statement correctly sets forth the amount of West Virginia certificates, issued by Virginia in funding her old obligations, as shown by the books of this office.

(Signed) JNO. G. DEW,
Second Auditor of Virginia.

Supreme Court of the United States

OCTOBER TERM 1907

No. 7.

ORIGINAL

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

PETITION AND DEMURRER

In the Supreme Court of the United States

OCTOBER TERM, 1906

ORIGINAL, NO. 7.

Commonwealth of Virginia,
vs.)
State of West Virginia.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of West Virginia, one of the United States of America, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, humbly prays leave to file the sworn demurrer herewith presented, to the bill of complaint in the above entitled cause.

It is humbly submitted that, by an examination of the bill of complaint in this cause, it will be observed that there is nothing in said bill contained showing a controversy between said Commonwealth of Virginia and said State of West Virginia justifiable in this court.

Wherefore, your petitioner humbly prays leave to file her said demurrer, and that a day may be fixed by your Honors for the hearing of the same.

_____
Governor of West Virginia.

_____
Attorney General of West Virginia.

_____,

_____,

_____, *Counsel.*

In the Supreme Court of the United States

OCTOBER TERM, 1906

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA
vs.)
STATE OF WEST VIRGINIA.

The demurrer of the State of West Virginia, defendant above named, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General of said State of West Virginia, to the bill of complaint of the Commonwealth of Virginia, complainant, by William A. Anderson, Attorney General of said Commonwealth of Virginia.

The defendant, the State of West Virginia, above named, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are set forth and alleged, or in any way or manner, demurs thereto, and for the cause of demurrer shows:

First: The jurisdiction of this Court does not extend to the character of demands, alleged in the bill in this cause, being in substance simple demands for money, and this Court could not enforce a judgment for money against one of the sovereign states of the Union of the United States in any way or manner.

Second: The bill on its face shows that the said Commonwealth of Virginia has no suable interest in the demands for money set out therein which would entitle her to the relief prayed for therein and that the said demands if recovered would be only for the benefit of certain individuals, who are the holders of the alleged evidences of debt mentioned in said bill.

Third: The bill on its face shows that so far as said Commonwealth of Virginia may have any ownership of any of such alleged evidences of debt, the acts of the Legislature of said Commonwealth, claimed by the said Attorney General thereof as authority to institute this cause, do not in fact authorize any suit therefor to be instituted, but only authorizes, if any authority at all is given, action on the part of the Commission in said bill mentioned and

said Attorney General for the benefit and at the expense of the individuals in the bill and exhibits called "Certificate holders," which is in effect giving the use of the name of said Commonwealth to such "Certificate holders," for the purpose of attempting to collect their alleged private money demands against said State of West Virginia.

Fourth: The said bill does not sufficiently and definitely set out therein the alleged demands for money claimed therein, so that a complete and proper answer can be made thereto.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

Governor of West Virginia.

Attorney General of West Virginia.

State of West Virginia,
County of Kanawha, ss.

This day there personally appeared before me, the undersigned Clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clarke W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing demurrer, and being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as Clerk of said Court and the official seal thereof —— day of October, 1906.

Clerk of the Supreme Court of Appeals of the State of West Virginia.

I, Clarke W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Attorney General of West Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

NOTICE AND AMENDED DEMURRER.

In the Supreme Court of the United States

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

NOTICE.

TO THE COMMONWEALTH OF VIRGINIA AND WILLIAM A. ANDERSON, *Attorney General:*

You are hereby, notified that the defendant, The State of West Virginia, will, on Monday, February 25, 1907, or as soon thereafter as the motion can be made, ask leave of the court to file an amended demurrer in the above-entitled cause. A copy of said proposed amended demurrer is hereto attached.

FEBRUARY 16, 1907.

Supreme Court of the United States

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, The State of West Virginia, one of the United States of America, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, humbly prays leave to file the sworn amended demurrer herewith presented to the bill of complaint in the above-entitled cause, and asks that a day may be fixed by your Honors for the hearing of the same.

And, as in duty bound, your petitioner will ever pray.

——— ———,
Governor of West Virginia.

——— ———,
Attorney General of West Virginia.

——— ———,
——— ———,
——— ———,
Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1906

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

AMENDED DEMURRER.

The defendant, The State of West Virginia, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, of said State, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in manner and form as the same are set forth and alleged, or in any way or manner, presents this amended demurrer thereto, and for cause of demurrer shows:

First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill, that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and deter-

mined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and considered.

Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia, in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee to an account or to a discovery from this defendant.

Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant.

Wherefore, and for divers other good causes, of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

W. M. O. DAWSON,
Governor of West Virginia.
CLARKE W. MAY,
Attorney General of West Virginia.

State of West Virginia,
County of Kanawha, ss:

This day there personally appeared before me, the undersigned clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clarke W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing amended demurrer, and, being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that

the foregoing amended demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as clerk of said court and the official seal thereof this 23rd day of February, 1907.

WM. B. MATHEWS,
Clerk of the Supreme Court of Appeals
of the State of West Virginia

I, Clarke W. May, Attorney General of the State of West Virginia hereby certify that in my opinion the foregoing amended demurrer is well founded in point of law.

CLARKE W. MAY,
Attorney General of West Virginia.

Supreme Court of the United States

No. 7, ORIGINAL—OCTOBER TERM, 1906.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIGRINIA.

IN EQUITY.

OPINION OF THE COURT.

DELIVERED BY MR. CHIEF JUSTICE FULLER.

MAY 27TH, 1907.

In the Supreme Court of the United States

OCTOBER TERM, 1906.

ORIGINAL No. 7.

COMMONWEALTH OF VIRGINIA
vs.) *In Equity.*
STATE OF WEST VIRGINIA.

[May 27, 1907.]

This is a bill filed, on leave, February 26, 1906, by the Commonwealth of Virginia against the State of West Virginia.

The bill averred that—

"On the first day of January, 1861, complainant was indebted in about the sum of $33,000,000 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose; but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

"In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

"The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

"(2) That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentalities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio River, that the Commonwealth of Virginia, in the first quarter of the Nineteenth Century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia; and the completion of some of the main lines of improvement beyond the said range and through to the Ohio River, since the first day of January, 1861, has increased to a very great and material extent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvments. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to taxation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

"(3) The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvements, in a very large measure for the purpose of developing the aforesaid

resources of the western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been undertaken. In corroboration of this view it will appear from an inspection of the legislative records of the State, where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been a fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

"4. The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

"5. On the 17th of April, 1861, the people of Virginia, in gener-

al convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the 'Restored State of Virginia,' and will be hereafter referred to in this bill as the 'Restored State.'

"6. On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to 'provide for the formation of a new State out of the portion of the territory of this State;' Section 9 of which ordinance was as follows, to-wit:

'9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.'

"7. On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein; and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the fact that such change had been made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

"8. Pending the admission of the State of West Virginia to the

Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

'That all property, real, personal and mixed, owned by, or appertaining to the state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.'

'That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.' ''

Complainant charged "that the property which was by the operation of this Act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

"9. And by a further act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

'1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out

of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

'2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States: provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State.'

"And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

"10. The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union, contained the following provisions:

"By Section 5 of Article VIII. of said Constitution it was provided:

'5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability to the State, to suppress insurrection, repel invasion, or defend the State in time of War.'

"And by section 7 of Article VIII. it was provided:

'7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank.'

"And by section 8 of Article VIII. it was provided:

'8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years.'

"At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed,

any 'public debt' or 'previous liability,' except for her just, contributive proportion of the public debt of the original State of Virginia, and for money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of January, 1861. By Section 5 of the same Article VIII., above set forth, her Constitution forbade the creation of any debt 'except to meet casual deficits in the revenue, to redeem a previous liability of the State,' &c., and there was not and could not have been any such 'previous liability,' except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized the sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her proportion of that of the original State of Virginia, and her liability for the money and property of the original State which had been transferred to her.

"11. After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settlement of any kind was ever had between the two States in regard to this debt.

"12. The efforts looking to a settlement by the concurrent action of the two States having proved abortive and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

"The first of these was made by the General Assembly which was chosen at the close of the period of 'destruction and reconstruction,' which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

"The purpose of the representatives of the Commonwealth, then just emerging from conditions which had improverished her people and paralyzed their productive energies, to assume and pay to the utmost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871.

"By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,0000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

"It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

"13. As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy-one Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and hereinafter referred to as Exhibit Number 7.

"It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution toward the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

"It would seem from the above statement that Virginia has already done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of

the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

"A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

"14. By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the some with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

"Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

"Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

"15. All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph 1 of this bill, except a comparatively insignificant sum, not amounting to one per cent. of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of

indebtedness so paid off or retired and now held by your Oratrix will, when it shall be proper to do so, be exhibited to the Master who shall take the accounts hereinafter prayed for.

"16. Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

"For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right, a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

"17. In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however, and the questions involved in connection therewith can be stated and settled in the account hereafter prayed for to be taken between the two States; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

"18. Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of Virginia, as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:

'First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia

did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

'Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is imbedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

'Third. The State of West Virginia has further, by the repeated enactments and joint resolutions of her legislature, recognized her liability for a just proportion of this debt.

'Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property amounting in value to many millions of dollars, and held and enjoyed the same, but upon express condition that she should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia.

'Fifth. While the transfer of this property, real and personal, and also certain moneys of the Commonwealth of Virginia, purport to have been made to the State of West Virginia by the Act of 'The Restored Government of Virginia,' there were in fact represented in said 'Restored Government' and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.'

"19. The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: 'A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,' approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

"Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

"The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled 'An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,' the purpose of which Act is sufficiently set forth in its title, and a copy of the act will also be hereinafter shown as one of the exhibits herewith filed.

"20. The Commission acting under said last mentioned act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia, this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906, made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, and referred to therein, will be exhibited as a part of this Bill."

21. Enumerates exhibits attached to the bill and prayed to be regarded as part thereof.

22. The bill prayed: "Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as

may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet."

Attached to the bill were the numerous exhibits referred to.

The State of West Virginia demurrred and assigned special causes as follows:

"First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

"Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

"Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described.

"Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

"Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

"Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

"Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant.

'Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant."

Hearing on the demurrer was had March 11, 12, 1907.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The State of West Virginia was admitted into the Union June 20, 1863, under the proclamation of the President of the United States of April 20, 1863, in pursuance of the act of Congress approved December 31, 1862, upon the terms and conditions prescribed by the Commonwealth of Virginia in ordinances adopted in convention and in acts passed by the General Assembly of the Restored Government of the Commonwealth, giving her consent to the formation of a new State out of her territory, with a constitution adopted for the new State by the people thereof. The ninth section of the ordinance adopted by the people of the Restored State of Virginia in convention assembled in the city of Wheeling, Virginia, on August 20, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," provided as follows:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia. . ."

The consent of the Commonwealth of Virginia was given to the formation of a new State on this condition. February 3 and 4, 1863, the General Assembly of the Restored State of Virginia enacted two statutes in pursuance of the provisions of which money and property amounting to and of the value of several millions of

dollars were, after the admission of the new State, paid over and transferred to West Virginia. The Constitution of the State of West Virginia when admitted contained these provisions, being sections 5, 7 and 8 of Article VIII thereof, as follows:

"5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

"7. The legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt and hereafter the State shall not become a stockholder in any bank."

"8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

The "public debt" and the "previous liability" manifestly referred to a portion of the original debt of the original State of Virginia and liability for the money and property of the original State, which had been received by West Virginia under the acts of the General Assembly above cited, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia, though one may be involved in the other; while the provisions of sections 7 and 8 were obviously framed in compliance with the conditions on which the consent of Virginia was given to the creation of the State of West Virginia, and the money and property were transferred. From 1865 to 1905 various efforts were made by Virginia through its constituted authorities to effect an adjustment and settlement with West Virginia for an equitable proportion of the public debt of the undivided State, proper to be borne and paid by West Virginia, but all these efforts proved unavailing, and it is charged that West Virginia refused or failed to take any action or do anything for the purpose of bringing about a settlement or adjustment with Virginia.

The original jurisdiction of this court was, therefore, invoked by Virginia to procure a decree for an accounting as between the two States, and, in order to a full and correct adjustment of the accounts, the adjudication and determination of the amount due Virginia by West Virginia in the premises.

But it is objected that this court has no jurisdiction because the

matters set forth in the bill do not constitute such a controversy or such controversies as can be heard and determined in this court, and because the court has no power to enforce and therefore none to render any final judgment or decree therein. We think these objections are disposed of by many decisions of this court. *Cohens* v. *Virginia*, 6 Wheat. 264, 378, 406; *Kansas* v. *Colorado*, 185 U. S. 125; *Kansas* v. *Colorado*, May 13, 1907, 206 U. S. p. ; *Missouri* v. *Illinois*, 180 U. S. 208; *Same case*, 200 U. S. 496; *Georgia* v. *Copper Company*, May 13, 1907, 206 U. S. p ; *United States* v. *Texas*, 143 U. S. 621; *United States* v. *North Carolina*, 136 U. S. 211; *United States* v. *Michigan*, 190 U. S. 379.

In *Cohens* v. *Virginia*, the Chief Justice said: "In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more States, between a State and the citizens of another State,' 'and between a State and foreign States, citizens or subjects.' If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

And, referring to the Eleventh Amendment, it was further said:

"It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the Federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases and in these a State may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment were persons who might probably be its creditors. There was not much reason to fear that foreign or sister States would be creditors to any considerable amount, and there was no reason to retain the jurisdiction of the court in those cases, because it might be essential to the preservation of peace. The amendment, therefore, extended

to suits commenced or prosecuted by individuals, but not to those brought by States."

By the cases cited and there are many more, it is established that, in the exercise of original jurisdiction as between States, this court necessarily in such a case as this has jurisdiction.

United States v. *North Carolina* and *United States* v. *Michigan*, *supra*, were controversies arising upon pecuniary demands, and jurisdiction was exercised in those cases just as in those for the prevention of the flow of polluted water from one State along the borders of another State, or of the diminution in the natural flow of rivers by the State in which they have their sources through and across another State or States, or of the discharge of noxious gases from works in one State over the territory of another.

The object of the suit is a settlement with West Virginia, and to that end a determination and adjudication of the amount due by that State to Virginia, and when this court has ascertained and adjudged the proportion of the debt of the original State which it would be equitable for West Virginia to pay, it is not to be presumed on demurrer that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted we can then consider by what means the decree may be enforced. Consent to be sued was given when West Virginia was admitted into the Union, and it must be assumed that the Legislature of West Virginia would in the natural course make provision for the satisfaction of any decree that may be rendered.

It is, however, further insisted that this court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of Congress, by which the question of the liability of Virginia to West Virginia was submitted to the arbitrament and award of the Legislature of West Virginia as the sole tribunal which could pass upon it. As we have seen, the Constitution of West Virginia when admitted into the Union contained the provision: "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, one thousand eight hundred and sixty-one, shall be assumed by the State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation of the same by a sinking fund and redeem the principal within thirty-four years." And it is said that, on May 13, 1862, the Legislature of Virginia passed an act entitled "An act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State," by which consent was given to the creation of the proposed new State, "according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto an-

nexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861;" and that by the act of Congress the consent of that body was given to all those provisions which thus became a constitutional and legal compact between the two States. The act of May 13, 1862, was not made a part of the case stated in the bill, and its validity is denied by counsel for Virginia, but it is unnecessary to go into that, for when Virginia, on August 20, 1861, by ordinance provided "for the formation of a new State out of the territory of this State," and declared therein that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its Legislature should "ascertain the same as soon as practicable," it referred to the method of ascertainment prescribed by the Virginia convention. Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression that the "Legislature shall ascertain" was that the Legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained. And it may well be inquired why, in the forty-three years that have elapsed since the alleged compact was entered into, West Virginia has never indicated that she stood upon such a compact, and, if so, why no step has ever been taken by West Virginia to enter upon the performance of the duty which such "compact" imposed, and to notify Virginia that she was ready and willing to discharge such duty.

It is also urged that Virginia had no interest in the subject-matter of the controversy because she had been released from all liability on account of the public debt of the old Commonwealth, evidenced by her bonds outstanding on the first day of January, 1861. This relates to the acts of the General Assembly of Virginia of March 30, 1871, March 28, 1879, February 14, 1882, February 20, 1892, March 6, 1894, and March 6, 1900. According to the bill, Virginia by the act of March 30, 1871, and subsequent acts, in an attempt to provide for the funding and payment of the public debt, having estimated that the liability of West Virginia was for one-third of the amount of the old bonds, provided for the issue of new bonds to the amount of two-thirds of the total, and for the issue of certificates for the other third, which showed that Virginia held the old bonds so far as unfunded in trust for the holders or their assignees to be paid by the funds expected to be obtained from West Virginia as her "just and equitable proportion of the public debt." The legislation resulted in the surrender of most of the old bonds to Virginia, satisfied as to two-thirds, and held as security for the creditors as to one-third. We do not care to take up and

discuss this legislation. We are satisfied that as we have jurisdiction, these questions ought not to be passed upon on demurrer. *Kansas* v. *Colorado,* 185 U. S. 125, 144, 145. And this also furnishes sufficient ground for not considering at length the objection of multifariousness. The observations of Lord Cottenham, in *Campbell* v. *Mackey,* 1 Mylne & Craig, 603, that it is impracticable to lay down any rule as to what constitutes multifariousness, as an abstract proposition; that each case must depend upon its own circumstances; and much must be left where the authorities leave it, to the sound discretion of the court, have been often affirmed in this court. *Oliver* v. *Piatt,* 3 How. 333, 411; *Gaines* v. *Relf,* 2 How. 619, 642. But we do not mean to rule that the bill is multifarious. It is true that the prayer contains, among other things, the request "that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix in her own right and as trustee aforesaid," but it also prays that the court "will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises." And we understand the reference to holding in trust to be in the interest of mere convenience, and that the bill cannot properly be regarded as seeking in chief anything more than a decree for "an equitable proportion of the public debt of the Commonwealth of Virginia on the first day of January, 1861." The objections of misjoinder of parties and misjoinder of causes of action may be treated as resting on matter of surplusage merely, and at all events further consideration thereof may wisely be postponed to final hearing. *Florida* v. *Georgia,* 17 How, 491, 492; *California* v. *Southern Pacific Company,* 157 U. S. 249.

The order will be—

Demurrer overruled without prejudice to any question, and leave to answer by the first Monday of next term.

[ORDER OVERRULING DEMURRER.]

Supreme Court of the United States.

No. 7, ORIGINAL, OCTOBER TERM, 1906.

COMMONWEALTH OF VIRGINIA,

vs. Complainant,

STATE OF WEST VIRGINIA.

This cause came on to be heard on the bill of complaint and the demurrer of the defendant thereto, and was argued by counsel. On consideration whereof, It is now here ordered by the Court that said demurrer be, and the same is hereby, overruled without prejudice to any question, and leave is hereby granted the defendant to file answer on or before the first Monday of the next term.

May 27, 1907.

Supreme Court of the United States

OCTOBER TERM 1907

ORIGINAL No. 7.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

ANSWER OF WEST VIRGINIA.

In the Supreme Court of the United States

ORIGINAL NO. 7.

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

ANSWER OF WEST VIRGINIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The answer of the State of West Virginia, by William M. O. Dawson, Governor, and Clarke W May, Attorney General, by leave of this Honorable Court, to the bill of complaint exhibited against said State of West Virginia by William A. Anderson, Attorney General, for and on behalf of the State of Virginia.

This defendant, now and at all times hereafter saving to herself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or so much thereof as this defendant is advised is material or necessary for her to make answer to, answering, says:

I.

That she believes it is true as alleged that on the first day of January, 1861, plaintiff was indebted in "about" the sum of $33,000,000, upon obligations and contracts made in connection with the construction of works of internal improvement within her then

territory; and it may be true that the greater part of said indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for said purpose; and it may also be true that all her liabilities, though arising under contracts made before that date, had not then been covered by bonds issued for their payment; but as to this allegation respondent has no knowledge or information except what is derived from said bill. This respondent denies that there was in addition to the above mentioned liability to the general public any other indebtedness evidenced by bonds held by and due to the Commissioners of the Sinking Fund and Literary Fund of the said State of Virginia as created under her laws, amounting the former to $1,462.993, and the latter to $1,543,669.05, or to any other sums, as of the same date, as in the said bill is alleged, because this defendant avers that the commissioners of these two funds were and are mere State agencies, and public officials of the State, created by said State of Virginia to have the custody of and to preserve certain of her financial resources and obligations to be made available for specific purposes when necessary, and which now belong exclusively to Virginia and are held for her sole and exclusive use and benefit. Respondent denies that any of the bonds or certificates so alleged to be held by the Commissioners of the Sinking Fund and the Literary Fund were ever negotiated or sold by the State of Virginia, or that the same constituted a part of the public debt of that State on the first day of January, 1861, and denies that the certificates representing one-third of such bonds are now a part of the said public debt; and respondent avers that the State of Virginia has long since voluntarily canceled all of said bonds and the same are no longer of any force or validity.

II.

It is true as alleged that said portion of the territory which now constitutes the present State of Virginia was, prior to January 1, 1861, devoted mainly to agriculture, and, to some extent, to grazing and manufacture, which afforded its chief source of revenue at that time; but this defendant avers that the territory which now composes the State of Virginia was largely underlaid with rich and valuable minerals only awaiting the opportunity and means of development to make the said State exceedingly wealthy in varied mineral resources such as coal, iron, manganese and other valuable and marketable products, and the said State abounded at that time in large forests of valuable timber which have since developed into a great source of revenue to the said State and its citizens. It is true that the portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in un-

developed stores of mineral and timber, and respondent avers that the same was inaccessible and of very little value on the first day of January, 1861, and during all the years prior thereto, and that it has been only within recent years that the development of said resources has been begun in the said State of West Virginia, and this required the outlay of many millions of dollars, since January 1, 1861, in the construction of railroads and other public works and the appropriation by the Congress of the United States of many more millions of dollars for the improvement of her waterways in order to afford an outlet for her mineral and other products. This respondent denies that the prime object of the State of Virginia in entering upon a system of internal improvement was to hasten and facilitate the development of the resources of wealth and revenue in West Virginia by the construction of graded roads, bridges, canals and railways extending through the then State of Virginia from tidewater toward the Ohio river, and avers that the main object of said system of internal improvements was to afford the eastern part of the State an outlet for its own products to the Ohio river on the west and to the seaboard on the east, and to afford convenient communication with those points so as to create a market for such products at points on the eastern coast of Virginia at tidewater, and thus open up and develop the resources of the territory now constituting the State of Virginia, and not, as alleged in said bill, for the purposes of developing the resources of the western part of her territory, now constituting the State of West Virginia. This respondent further says that it is true as alleged in said bill that the larger portion of these public works was constructed east of the Appalachjan range of mountains and within the present territorial limits of Virginia, and respondent avers that nearly all of the money derived from the sale of the bonds was in fact expended in the development and improvement of what now constitutes Virginia, and only a comparatively small sum was expended in developing, and improving the portion now composing West Virginia; that these expenditures in Virginia were of very little practical benefit to the people living in the western part of the State up to and including the first day of January, 1861. This respondent further says that it is true that property values within the limits of West Virginia have been largely increased since 1861, but denies that such increase was caused by the improvements made within her present territory prior to 1861, but nearly all of the improvements and developments of resources in said State have been made within the last twenty-five years and are due to railroads and other public works constructed by her own people and by private capital brought within her territory and by appropriations made by Congress, and are almost entirely disconnected and independent of any expenditures made by Virginia prior to January 1, 1861, either by

the proceeds of bonds issued and sold by her or from any other means derived from the creation of any debt by her. Respondent admits that the money appropriated and the payment of the annually accruing interest on said debt prior to January 1, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof was derived from taxes imposed upon property subject to taxation throughout the entire state, but respondent avers that the large amount thus derived from taxation to which the present State of West Virginia, then a part of Virginia, contributed her full share, was not kept intact by the State of Virginia after her ordinance of secession from the union in the year 1861, but was used by her in the administration of the so-called State Government at Richmond and for many other purposes while she claimed to be a part of the Confederate States of America, and that the part of the Sinking Fund so expended should be accounted for to this State and constitute a credit to her in the settlement of her equitable proportion of said debt; this respondent calls upon the State of Virginia to show what the aggregate amount of said Sinking Fund was on the first day of January, 1861, and of what it consisted, together with the interest thereon since accruing, and that she shall be required to give credit to this respondent for the amount contributed thereto by her prior to January 1, 1861, in case this court shall determine that an accounting shall be had between the said States in this action.

III.

This respondent denies that the Commonwealth of Virginia was induced to enter upon the construction of her general system of improvement, in a very large measure, for the purpose of developing the aforesaid resources of the western portion of the State, now constituting the State of West Virginia, and thereby as alleged in said bill, ameliorating the condition of her citizens residing therein, and denies that it was with this view that she took upon herself the alleged burden of her public debt, for which her bonds were issued, without which debt, it is alleged, said improvements could not have been undertaken. The respondent avers that Virginia appropriated to her own use, within the territory now constituting the present state of Virginia, about nine-tenths of all the money derived from the proceeds of said bonds, and that this large part of said proceeds enured to the sole benefit of the people living in what now constitutes the State of Virginia, while the territory now constituting the State of West Virginia received but a small proportional part thereof, and that all the money appropriated was expended under and by direction of the officers of the State of Virginia who were elected and controlled by the voters then living within the present limits of that State.

It may be true that a majority of the representatives residing in that part of Virginia now composing the State of West Virginia voted for the appropriations for the said public improvements, but if so, it was with the expectation and belief that an equitable proportion thereof would be expended in their section of the State which, as hereinbefore averred, was not done; and at the times when said debt was created the Legislature was in the absolute control of the very large majority of members chosen by the people living within what now constitutes the State of Virginia and they could, and actually did, control the legislation of the State.

IV.

It may be true that the development of this system of public improvements was, from its character and extent, progressive, as is alleged, and that the same extended with the general growth and increasing needs of the State, and was incomplete in 1861; but this respondent denies that prior to that time a very considerable portion of such improvements had been constructed in the territory now constituting West Virginia in order to meet the needs of the people of that portion of the State for their local purposes. On the contrary, the principal object of the State in entering upon this system was for the construction of a canal from the James River to the Ohio River for the purpose of connecting the Virginia seaboard with the western waters, the building of certain railroads projected in the same direction and in certain other directions, all within the present territorial limits of the State of Virginia, and for the construction of highways and bridges and certain public buildings, nearly all of which were located and constructed within the present limits of the State of Virginia. It is true, as alleged, that the expenditures of this money were under the direction and control of the Board of Public Works, the members of which were elected by the voters of the State at large, but respondent avers that this Board of Public Works was at all times composed of a majority of members residing within the present limits of Virginia and that only such members were chosen as were acceptable to the people residing within the present limits of Virginia and to promote their views and interests as to the method and policy of the expenditures of said moneys.

V.

It is true that on the 17th day of April, 1861, the people of Virginia in general convention assembled adopted an ordinance by which it was intended to withdraw Virginia from the union of the States, and it is also true that a considerable portion of the people

of Virginia dissented from this action and that a great majority of the people residing in the territory now composing the State of West Virginia opposed the action thus taken by the people of Virginia then residing within the present territorial limits of that State, and representatives of the people organized a separate government within the territorial limits of Virginia, known and recognized by the people now living within the State of Virginia as the "Restored State of Virginia;" and this government was thereafter recognized by the executive and all the other departments of the United States Government and treated as the State of Virginia until long after the close of the Civil War.

VI.

It is also true that on the 20th day of August, 1861, the State of Virginia, in a convention assembled at the city of Wheeling, adopted an ordinance "to provide for the formation of a new State out of a portion of the territory of this State," and that section nine of said ordinance is in the following words:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private right and interests in lands within the proposed State derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of West Virginia."

Section ten of said ordinance provided as follows:

> "When the General Assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the Union of States."

The same ordinance also provided for a convention of the people to be held within the territorial limits of the then State of Virginia by representatives to be selected by a popular vote of the people within the limits of the proposed new State to adopt a constitution

for such proposed new State, and the said convention assembled at Wheeling in November, 1861, and framed a constitution which was thereafter duly ratified by a vote of the people, which constitution contained the following provision relating to the public debt of the State of Virginia:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

Subsequently, on the 13th day of May, 1862, an act was passed by the legislature of Virginia giving the consent of that State to the formation and erection of the proposed new State within the jurisdiction and territorial limits of said State of Virginia. Section one of this act provided as follows:

> "That the consent of the Legislature of Virginia be, and the same is hereby, given to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, (and many other counties) according to the boundaries and under the provisions set forth in the Constitution of the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

Section three of said act provided:

> "Be it further enacted. That this act shall be transmitted by the executive to the senators and representatives of this Commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the union."

The respondent avers that said act was transmitted to the senators and representatives of Virginia in Congress. A correct copy of the same is attached to this answer and made part thereof as "Exhibit No. 1."

VII.

This respondent further says that the allegations contained in Paragraph VII of said bill with reference to the act of Congress and the admission of the State of West Virginia into the Union are true.

VIII.

This respondent for further answer to said bill says it is true that pending the admission of the State of West Virginia into the Union the general assembly of the Commonwealth of Virginia passed the act of February 3, 1863, which is set forth in Paragraph VIII of said bill; but this respondent denies that the property which was by this act appropriated and transferred from the Commonwealth of Virginia to the State of West Virginia amounted in the aggregate to several millions of dollars on the 3d day of February, 1863, as in said bill is alleged, and denies that the State of West Virginia realized and received into her treasury from the sale of bank stock alone about $600,000 as is in said bill alleged.

Respondent denies that she is chargeable for or on account of the transfer of said property, except the stocks of companies or corporations and the credits, or for any part thereof, otherwise than in a settlement with the State of Virginia for this respondent's just proportion of the public debt of that State as provided in the said ordinance of August 20, 1861, and in the said act of February 3, 1863; and respondent avers that she is not chargeable in any settlement for or on account of such stocks or credits with any sum in excess of the actual market value of the same at the times when they were transferred to her; and she avers that at the times when such stocks and credits were transferred they were greatly depreciated and were of but little value.

IX.

Respondent admits the passage of the act of February 4, 1863, as alleged in Paragraph IX of said bill, but denies that she received or that it was intended by said act that she should receive any money except such as had then been collected, or might be thereafter collected, within the territory constituting the present State of West Virginia prior to the admission of the State into the Union, and she denies that she is legally or equitably liable to the plaintiffs for any part thereof, or that said act of the Legislature imposed, or purported to impose, any liability upon her or was so intended or understood. Respondent avers that after the Wheeling Convention and the passage of the ordinance providing for the formation of a new State, the Restored State of Virginia con-

tinued to impose and collect taxes in the territory now composing the State of West Virginia until the admission of that State into the Union, and a small part of the money realized by such taxation was returned to the new State under the said act of February 4, 1863, and no other money was appropriated or received under that act.

Respondent avers that nearly the entire amount of revenue collected by the "Restored State of Virginia," prior to the admission of West Virginia into the Union was collected from the counties now constituting the latter State, and that much the largest part of it was expended by the said state government outside of those counties, and that it was only just and equitable that such surplus as might remain at the time of admission into the Union should be restored to her in order that she might be able to install her government, establish courts and preserve order within her limits; and this just and equitable claim was recognized by Virginia when the said act was passed.

X.

This respondent, for further answer to said bill, says that it is true that the Constitution of the State of West Virginia contained the provision, among others, set forth and alleged in Paragraph X of said bill, but this respondent denies that the terms "public debt" or "previous liability" referred to either the property or money formerly belonging to the State of Virginia which had been transferred to and received by West Virginia under the acts of the general assembly of the Commonwealth of Virginia set forth in Paragraph VIII and Paragraph IX of said bill, for the reason that said constitution was adopted long before the said acts of the general assembly of Virginia were passed, and before the act passed in May, 1862, by the said general assembly of Virginia giving her consent to the formation of the proposed new State out of the territory within her limits. This respondent therefore denies that anything contained in sections 5, 7, or 8 of Article VIII of the Constitution of West Virginia, adopted in 1861, bears any such construction, or is susceptible of any such meaning, as is given thereto by the allegations contained in Paragraph X of plaintiff's said bill.

XI.

This respondent for further answer to said bill says that she denies that the Commonwealth of Virginia made attempts at different times to ascertain and settle the equitable proportion of her public debt to be borne by West Virginia, upon the terms and in the manner contemplated by section nine of the ordinance adopted

by the convention of the State of Virginia on the 20th day of August, 1861, in section eight of Article VIII of the Constitution of West Virginia, or in the manner prescribed by either of said instruments. The facts relating to the efforts of the Commonwealth of Virginia and the State of West Virginia to make an adjustment of the liability of the latter State, if any such liability exists, between the year 1865, when communications between the two States was re-established, and the year 1872, are as follows:

Prior to December, 1866, the Commonwealth of Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. The effect of the pendency of this suit for over four years was to prevent a satisfactory adjustment of West Virginia's liability for the payment of an equitable proportion of the public debt of Virginia as provided in said ordinance of the Wheeling Convention because of the fact that West Virginia's boundaries could not be known and therefore it could not be determined what amount of money had been expended within
her limits for public works or other purposes prior to the 11
1st day of January, 1861.

Respondent avers that the Governor of West Virginia in his message to the legislature in January, 1866, recommended that Commissioners be appointed to settle with the Commonwealth of Virginia respecting the said public debt; but no action was taken by the legislature of West Virginia of 1866 for the reason that the authorities of Virginia had made, at that time, no provision for a settlement, so far as was known to the authorities of West Virginia.

In his message to the legislature of West Virginia in 1867, the Governor again directed the attention of that body to the subject of the adjustment of the said public debt, stating that he was informed that Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the General Assembly of Virginia: First for the purpose of securing a reunion of the two States, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On the 28th day of February of the same year, the legislature of West Virginia by resolution declared that the people of that State were unalterably opposed to a reunion with the people of the commonwealth of Virginia, but expressed the willingness of the citizens of West Virginia to effect a prompt and equitable settlement between the States and directed the Governor as soon as the said suit in the Supreme Court of the United States, relating to the counties of Berkeley and Jefferson, had been disposed

of, to appoint three commissioners on the part of West Virginia to treat with the Commissioners of Virginia upon the matter of adjusting the public debt of that State as provided in the ordinance of 1861, and the Constitution of West Virginia, adopted by the convention which assembled in November, 1861, and also requiring a report of their action to the Governor in order that the same might be communicated to the legislature of West Virginia for its action.

In January, 1868, the Governor of West Virginia informed the legislature in his annual message that the commissioners had not been appointed under the resolution because the suit in relation to the counties of Berkeley and Jefferson had not been disposed of. But in February of that year the Committee on Claims and Grievances of the House of Delegates, upon the petition of one of Virginia's creditors asking that the State of West Virginia provide for the payment of certain bonds of the State of Virginia of which he claimed to be the bona fide holder, reported that the settlement of West Virginia should be with the State of Virginia and not with the creditors of Virginia. And again in his message of 1869 to the Legislature of West Virginia the governor referred to the subject of the settlement of the public debt of Virginia and stated that commissioners had not been appointed by him up to that time owing to the fact that the suit between the States was still pending. The State of Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of the State of West Virginia, the governor of West Virginia, by communication dated February 24, 1870, advised the Legislature of West Virginia of the passage of that act by Virginia, and thereupon the Legislature of West Virginia, on the 1st day of March, 1870, appointed a joint committee of the two Houses of the Legislature to confer with the Virginia Commissioners and report to the Legislature, provided, however, that such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit in equity brought against her by the commonwealth of Virginia as hereinbefore stated, which was still pending in this court.

Afterwards, on March 3, 1870, the governor of West Virginia was authorized by the Legislature to appoint three resident citizens of the State to treat with the authorities of the Commonwealth of Virginia upon the subject of the proper adjustment of the public debt of that State, but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson; but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners, and the resolution authorizing their ap-

pointment was passed on the last day of the session of the Legislature, the Governor of West Virginia again in his message of 1871 stated that no appointment had been made owing to the lack of funds to pay the expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, on February 20, 1871, through the Governor of that State, tendered to West Virginia a proposition for an arbitration of the question relating to the public debt of that State, the arbitrators not to be citizens of either State, each State to appoint two arbitrators and the two to select an umpire if deemed necessary. This proposal made by the Commonwealth of Virginia was submitted to the Legislature of West Virginia on the 17th day of February, 1871, but on the 15th day of February, 1871, two days prior to the communication of this action of the General Assembly of Virginia, the Legislature of West Virginia had passed a joint resolution authorizing the Governor to appoint three disinterested citizens of the State to treat with the authorities of the Commonwealth of Virginia upon the subject of the adjustment of the public debt of that State existing prior to the 1st day of January, 1861, to report on various matters relating to the creation of the debt; upon the investments held by the State of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk.

The proposal of Virginia relating to arbitration was referred by the Legislature of West Virginia to a joint special committee of the two Houses, which committee reported a preamble and joint resolution rejecting the tender of arbitration made by the Governor of Virginia because the adjustment of the debt should be subject to the ratification of the legislatures of the two States and because citizen commissioners from both States would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. The said joint resolution also invited the Commonwealth of Virginia to appoint three disinterested citizens of that State as commissioners, with authority to treat with the commissioners, therefore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the General Assembly of the Commonwealth of Virginia; and the Governor of West Virginia was also directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution. Accordingly, in pursuance of this resolution, the Governor of West Virginia appointed three commissioners to negotiate with the State of Virginia for a settlement of West Virginia's equitable part of the public debt. After their appointment the said commissioners

proceeded to Richmond, where all the accounts, vouchers and other evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible, but realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of the Commonwealth of Virginia soliciting specifically the necessary information. To this request on the part of the Commissioners of West Virginia, the said second auditor made a reply in which he declined to furnish the information desired, a copy of which reply is herewith filed as "Exhibit No. 2" and made a part of this answer.

The failure and refusal of Virginia to co-operate with the said commissioners placed them at a great disadvantage in the examination of the records at Richmond, and they therefore obtained only such facts and figures as to enable them to make an imperfect report to the Governor of the State of West Virginia with reference to said public debt, showing the part of said public debt for which, in their opinion, according to such information as they could procure, West Virginia was liable.

Respondent avers that by reason of the inability of said commissioners to procure from the State of Virginia the necessary information concerning the public debt and other matters connected therewith, their report was not only very incomplete and inaccurate, but it appeared therefrom, that in making their investigations they wholly disregarded the provisions of the ordinance of the Wheeling Convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed and respondent avers that for these and other reasons the conclusions of said commissioners were not agreed to or accepted by the Legislature of West Virginia; but subsequently the Senate of West Virginia proceeded to make an investigation of the subject through its Finance Committee, of which J. M. Bennett, who was for eight years auditor of the old State of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. Said committee made a report on the 22nd day of December, 1873, from which it appeared that the State of West Virginia upon a settlement with the Commonwealth of Virginia based upon the provisions of section nine of the ordinance passed by the commonwealth of Virginia at the Wheeling Convention did not owe to the said Commonwealth of Virginia anything whatever, but that, on the contrary, the said Commonwealth was indebted to West Virginia on account of said debt on the 1st day of January, 1861, in the sum of $512,000, not including interest. A copy of said report is filed herewith, and made a part hereof as Exhibit 3.

The State of West Virginia has never receded from the provisions

contained in section nine of the Wheeling Ordinance with reference to the settlement of this respondent's just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a State; and the resolutions adopted by her Legislature in recent years in which she declared that she did not owe the State of Virginia anything on account of said public debt were based upon the said report of the Senate Committee made in 1873 as aforesaid, and upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance as the just and true one upon which a settlement between the two States could legally and equitably be made.

After the proposition of the Commonwealth of Virginia to select arbitrators, which was declined by the State of West Virginia as hereinbefore stated the said Commonwealth of Virginia at no time signified her desire to settle with West Virginia the matters relating to West Virginia's proportion of said public debt until the adoption of a joint resolution approved March 6, 1894, after she had compromised and settled with her creditors and been released from all liability, which resolution provided for the appointment of a commission of seven members who were thereby authorized and directed to negotiate with the State of West Virginia for a settlement and adjustment of the latter State's part of the public debt proper to be borne by her, but which also expressly provided that such commission should not proceed with such negotiations until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under the acts hereinafter referred to, that they desired the said commission to enter into and undertake such negotiations and would accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State which had not been assumed by the State of Virginia; and it was also provided in said resolution that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original State and which, as recited in said resolution she had already provided for as her equitable proportion thereof. Under the aforesaid resolution no negotiations were proposed to West Virginia until the year 1895 and then only upon the conditions prescribed in the joint resolution of 1894, which has never yet been repealed or modified in this respect; and negotiations were again offered by Virginia in 1906 but upon the same condition, that West Virginia should enter upon such negotiations with the admission on her part that the said Commonwealth of Virginia should only be liable for two-thirds of said debt, which was again declined by the said State of West Virginia.

XII.

This respondent further answering the said bill, says that the efforts looking to a settlement, and the only efforts looking to a settlement, are those hereinbefore stated in paragraph XI in this answer; the said commonwealth of Virginia having declined in 1871 to appoint any commissioners empowered and authorized to adjust or confer with the commissioners appointed by the State of West Virginia to adjust and determine what was the proportion of the public debt of said commonwealth to be assumed by this respondent. But, on the contrary, the said State of Virginia in 1871, assumed the right herself to settle the said public debt, created prior to January 1, 1861, with her creditors and for that purpose, without advising or consulting with West Virginia, passed an act, approved March 30, 1871, whereby she repudiated the ordinance of the Wheeling convention and adopted a method of her own as a basis of settlement and set apart as her own just proportion of said public debt two-thirds thereof, providing for its adjustment and funding as in the said act is set forth; a copy of which is filed with said bill as exhibit No. 1.

XIII.

This respondent further answering said bill, says that any burden that the commonwealth of Virginia assumed with reference to the payment of said debts; was made upon the assumption that she owed only two-thirds thereof and which she thereby admitted was not more than her just proportion; and therefore whatever she has paid on account thereof is a matter that cannot affect any controversy involved in this suit and is a matter of which the commonwealth of Virginia cannot complain. It is true, as alleged in said bill, that the great mass of creditors of the commonwealth of Virginia have agreed to accept the certificates issued under the acts of 1871, 1879, 1882 and 1892, for the one-third of her public debt, created prior to January 1, 1861, and have likewise agreed to accept the adjudication of this court what ever it may be, in full discharge of all their claims against Virginia on account of the old bonds and their claims represented by said certificates, thus relieving said commonwealth from any further liability as to said one-third of the public debt, or any part thereof, and this was the effect which the commonwealth of Virginia and the creditors intended and understood that the act of March 30, 1871, should have as to all the certificates issued under that act.

XIV.

This respondent for further answer to said bill, and especially that part contained in paragraph XIV, says that the old bonds were all required by the acts of the Legislature to be surrendered by the holders thereof to the State of Virginia and canceled, and they were all surrendered and canceled and new bonds were issued in lieu thereof for two-thirds of the said debt, not including interest, and certificates were issued for the other one-third; and it was declared by Virginia in the acts authorizing the issues and in the certificates that they were to be paid by West Virginia; and respondent avers that the said commonwealth of Virginia now holds said certificates in trust only for the owners thereof.

This respondent denies that Virginia used any means for an amicable settlement of said debt with West Virginia, or made any overtures to that end which were repeatedly refused, as alleged in said bill, except as hereinbefore stated in paragraph XI of this answer.

XV.

This respondent, for further answer to said bill, avers that even if all the bonds and obligations and other evidences of indebtedness of the original State of Virginia outstanding or contracted before January 1, 1861, as stated in paragraph I of said bill, except a comparatively insignificant sum, not amounting to one percentum of this liability, have been taken up and are now actually held by the commonwealth of Virginia, this fact does not give to the plaintiff the right to call upon West Virginia for settlement with respect thereto, because this respondent avers that the said bonds and obligations and other evidences of public indebtedness of the commonwealth of Virginia, contracted prior to January, 1861, have been taken up by the issuance of other bonds in lieu of two-thirds thereof as before stated, and by the issuance of the certificates hereinbefore mentioned for the other one-third thereof, the said one-third to be paid by West Virginia, according to the plan of funding the said debt by said commonwealth of Virginia, and that all the said original bonds and obligations and other evidences of said indebtedness are without any force, effect or value and have been canceled and annulled as aforesaid. Respondent avers that whatever has been paid upon said old indebtedness, by Virginia, if anything, was paid only on account of her own separate and equitable proportion thereof as recognized and declared by herself; and this respondent denies that the commonwealth of Virginia has any claim either in law or equity for any accounting with reference to said bonds or certificates or other evidences of indebtedness mentioned in paragraph XV of said

bill or any part thereof. Respondent avers that the plaintiff does not allege or admit in said bill, nor does it appear thereby, that she is liable on account of the other one-third or for any part thereof, which is represented, as before alleged, by said certificates.

XVI.

For further answer to said bill respondent avers that if any sum has been paid by Virginia, even though amounting in the aggregate to $25,000,000, including principal and interest to date, calculated at the rate of 6 per centum per annum, it was paid by her on account of her admitted just and equitable proportion of said public debt created prior to January 1, 1861; and if she has any claim at all against West Virginia on account of said alleged payment, which is not admitted, but is denied, it can only be for such amount as may be ascertained upon the basis and according to the principles embodied in section 9 of the ordinance of the Virginia convention, as hereinbefore stated. So this respondent denies that she is liable for any part of the obligations mentioned in paragraph XV and paragraph XVI of the plaintiff's bill, alleged to have been taken up and paid on account of said public debt, and denies that the said commonwealth of Virginia has, in her own right, a "just claim" against West Virginia for contribution on account thereof.

Respondent, for further answer to said paragraph XVI of said bill, avers that all accounts, vouchers and other records relating to the said public debt of Virginia, showing the payments made thereon, if any, and all other facts connected therewith, are now and always have been in the exclusive possession and control of the plaintiff, and respondent has no knowledge or information concerning the alleged payment of $25,000,000, or any other sum, on account of said debt existing prior to January 1, 1861, and therefore denies that plaintiff has paid said sum of $25,000,000 or any part thereof, and demands strict proof.

XVII.

This respondent, for answer to paragraph XVII of said bill, avers that the matters therein contained do not relate to the public debt of Virginia within the meaning and contemplation of section 9 of the Virginia ordinance of August 20, 1861, and cannot be brought into this suit for adjudication and determination. This respondent denies any and all liability for or on account of the matters referred to in said paragraph and avers that the said allegations are so uncertain, general and indefinite that respondent cannot answer them specifically and that no claim against this respondent can be founded upon them in this action.

XVIII.

This respondent, for further answer to said bill, says that she denies that the alleged liability of the State of West Virginia for a just and equitable proportion of the public debt of the commonwealth of Virginia rests upon any of the grounds specified in paragraph XVIII of said bill except the second, upon which, as hereinbefore averred in this answer, the State of West Virginia has always been ready and willing, and is now ready and willing, to adjust her liability, and upon which she proposed adjustment from 1866 to 1873, at which time Virginia had clearly evinced by her legislative action with reference to her public debt, her intention not to observe or abide by section 9 of the ordinance adopted by the Wheeling convention, and actually repudiated the agreed method upon which a settlement between the States should be made.

XIX.

This respondent, for further answer to said bill, avers that the only acts of Virginia indicating a desire to treat with West Virginia with reference to said public debt was that in which she tendered a proposition to arbitrate the same, thereby proposing to ignore the mode of settlement provided in said ordinance, and the two subsequent ones whereby she declared the only conditions upon which she would negotiate with the said State of West Virginia was that West Virginia should admit that the said Commonwealth of Virginia was only liable for two-thirds of the said public debt; and this respondent avers that if it is intended by paragraph XIX of said bill to aver that plaintiff ever attempted an amicable negotiation with West Virginia, except the ones hereinbefore stated, then this respondent denies the allegations contained in said paragraph of the bill and calls for proof thereof.

XX.

This respondent, for further answer to said bill, avers that what has already been stated in paragraph XIX of this answer is also applicable to paragraph XX of said bill and is hereby adopted as part hereof; and respondent avers in addition thereto that the alleged attempts of said commission to negotiate with West Virginia with reference to the said public debt related solely to the certificates owned by third parties and held in trust by said commission and the state of Virginia, which certificates represented about all, or practically all, of the one-third of the public debt not including interest of that State created prior to January 1, 1861; and these efforts on the part of said commission to negotiate

were upon the expressed condition that this respondent should concede that the Commonwealth of Virginia was, and is, liable for two thirds of the said public debt, and no more, which proffered negotiations were declined by the State of West Virginia because the finance committee of one branch of her legislative body had ascertained and reported that there was no liability upon her part to the Commonwealth of Virginia on account of the said public debt under the ordinance of the Wheeling Convention, and this respondent now denies that she owes or will owe any sum whatever to the State of Virginia upon a settlement made in the mode provided in said ordinance.

For further answer respondent says that the ordinance adopted by the Wheeling Convention in August, 1861, provided for the formation of the new State out of a part of the territory of the Commonwealth of Virginia, defined in the manner in which the respondent's equitable proportion of the public debt of Virginia should be ascertained, as appears from section nine of the said ordinance, which is set out in paragraph VI of the plaintiff's bill, and is heretofore referred to and made part of this answer.

And the said Commonwealth of Virginia also provided by section 10 of said ordinance as follows:

> "When the General Assembly shall give its consent to the formation of such new state, it shall forward to the Congress of the United States such consent, together with an official copy of such Constitution, with the request that the said new state may be admitted into the Union of States."

And respondent avers that the General Assembly referred to in section ten was the General Assembly of the Commonwealth of Virginia and the constitution referred to in said section was the constitution to be thereafter adopted by the proposed new state.

The said ordinance as heretofore stated also provided for the holding of a convention by the citizens within the territory of the proposed new state for the purpose of framing a constitution. After the promulgation of the ordinance of the convention, the people of Virginia, as well as those residing in that part of the territory to be converted into a new state as those residing in the other part of the Commonwealth of Virginia, which constitutes the present territory of that State, were fully advised as to the provisions of the said ordinance defining the manner in which the equitable proportion of the said debt was to be ascertained, and when the Constitution of West Virginia was framed and adopted in the year 1861 the said section nine was in full force, and both the Com-

monwealth of Virginia and the citizens residing in that portion thereof out of which the proposed new state was to be formed were satisfied with the methods therein provided for ascertaining this respondent's equitable proportion of the said public debt, and the constitution was framed and adopted, and West Virginia's equitable proportion of said public debt was assumed on the basis of the said ordinance, and not otherwise. It was provided in section eight, Article VIII, of the Constitution of the State of West Virginia:

> "An equitable portion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

After the adoption of this Constitution the Commonwealth of Virginia, on May 13, 1862, as hereinbefore stated, by an act of her Legislature, gave her consent to the formation of the new state. "According to the boundaries and under the provisions set forth in the Constitution for the said state of West Virginia, and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th day of November, 1861."

Subsequently, by an act of Congress approved December 31, 1862, provision was made for the admission of West Virginia into the Union, the said act providing a change in the seventh section of the eleventh article of the constitution of the said new state, relating to slavery, and providing for a vote to be taken relative thereto, and the proclamation thereof by the President of the United States, under which West Virginia, on the 20th day of June, 1863, became one of the states of the Union.

And so this respondent is advised, and now avers, that when West Virginia framed her constitution and inserted in it the provision concerning the adjustment of the public debt of Virginia and the Commonwealth of Virginia, through her Legislature, by the act aforesaid, approved the constitution of West Virginia as the basis of her consent for the formation of that State and her admission into the Union, and upon the passage of the act Congress admitting the said state into the Union, a compact between the two states prescribing the manner in which this respondent's equitable proportion of the debt should be ascertained was concluded and it became, and is binding upon the Commonwealth of Virginia and the State of West Virginia.

The respondent avers that her equitable proportion of said debt cannot be otherwise ascertained or determined than by the action of the State of West Virginia through her Legislature, as provided by her constitution, nor can its liquidation be otherwise provided for than by a sinking fund of sufficient amount to pay the accrued interest and redeem the principal of whatever sum may be thus ascertained within the period of thirty-four years as likewise therein provided. Respondent therefore pleads and relies upon said compact in bar of the plaintiff's right to prosecute and maintain this suit in this Honorable Court and prays that the said bill may be dismissed.

XXII.

This respondent further answering and as a defense to said bill avers that the Commonwealth of Virginia, by her said bill and exhibits therewith filed and made part thereof, shows that she has adjusted before the institution of this suit to the entire satisfaction of her people and her creditors her alleged equitable proportion of her whole public debt existing on the first day of January, 1861, which she claims is only two-thirds thereof, and that therefore this respondent should be made liable for the other one-third thereof. In effecting this adjustment she refunded all the evidences of indebtedness created prior to January 1, 1861, except about one per centum thereof, and required the same to be surrendered to her and cancelled and annulled. Respondent avers that the said Commonwealth of Virginia did not refund two-thirds of her public debt, as alleged, in said bill although she proposed to do this by an act of her Assembly approved March 30, 1871; but finding that she could probably secure more favorable terms of settlement of what she decided to be her just portion, another act was passed by her General Assembly which was approved March 28, 1879, whereby the debt was divided into two classes as shown by said act, and thereby made a further reduction in the principal of her indebtedness, as well as securing a lower rate of interest to be paid thereon.

After various efforts to adjust the indebtedness on terms most favorable to herself, she secured a settlement whereby she funded and settled what she claimed to be her equitable proportion of her debt at a fraction less than forty-seven per cent upon the entire amount, including interest, a part of which she may have paid, but for the great volume of which she has issued her bonds, and which are now outstanding and unpaid. For one-third of her original indebtedness, created prior to January 1, 1861, she has issued certificates amounting in the aggregate to $18,227,153.60, of which

it is alleged her Commissioners of The Sinking Fund and the Literary Fund hold $2,745,462.60, leaving $15,281,970 in the hands of the public.

Said certificates were issued by the State of Virginia and accepted by her creditors under the following acts of the General Assembly of that State, to-wit:

Under the act of March 30, 1871, certificates were issued for the sum of $15,281,970, of which it is alleged the Commissioners of the Sinking Fund and the Literary Fund held $2,578,515, leaving $12,703,451 in the hands of the public. Of these certificates issued to the public $10,851,294 had been deposited with the Virginia Commission on the fourth day of January, 1906, and only $1,852,157 had not been deposited at that time.

Under the act of March 28, 1879, certificates were issued to the amount of $564,258, of which $463,892 had been deposited with said commission at the date aforesaid, leaving $100,366 which had not been deposited. Neither the Commissioners of the Sinking Fund nor the Literary Fund held any of these certificates. The act of the Legislature under which all these certificates were issued and accepted by the creditors expressly provided that they should be taken "as a full and absolute release of the State of Virginia from all liability on account of said certificates."

Under the act of February 14, 1882, certificates were issued to the amount of $1,775,603, of which $166,943 were issued to the Virginia Literary Fund and $1,608,660 were issued to the public. Of the amount issued to the public $1,313,792 had been deposited with the Virginia Commission on the date aforesaid, leaving outstanding at that time $294,868.

Under the act of February 20, 1892, certificates were issued to the amount of $605,320, of which $544,456 had been deposited on the date aforesaid, leaving $60,844 still in the hands of the old bond-holders or their successors in interest. Neither the Commissioners of the Sinking Fund nor the Literary Fund received any of the certificates issued under said act.

The certificates for $1,774,603 issued under the act of 1882 and the $605,320 issued under the act of 1892 were in the following form, and respondent avers that the State of Virginia has been wholly released from liability thereon.

No..... The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond ..... dollars, dated ..... day of ....., from ....., to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this commonwealth.

Done at the Capitol of the State of Virginia, this ..... day of ....., eighteen hundred and ninety-two.

..... Second Auditor.

..... Treasurer.

And respondent says that the amount of certificates of all classes deposited with the Virginia Commission on the date aforesaid was $13,173,435.41, but respondent does not know what amount, if any, has been deposited since that time, and respondent asks that the State of Virginia be required to show on the hearing of this cause, what amount of certificates have been so deposited since January 4, 1906, and under what acts of the Legislature the same were issued. Respondents avers that all said deposits were made under and in accordance with the agreement made between the Virginia Commission and the Depositing Committee for the certificate holders on the 24th day of November, 1895, which, among other things provides as follows:

> "And the said depositing committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia."

And so respondent avers that the Commonwealth of Virginia has been wholly released from all liability on account of the said certificates and every part of them and has no legal or equitable interest in any claim based thereon, and that this suit was instituted and is being prosecuted by the said Commonwealth of Virginia solely as trustee for and on behalf of the holders of said certificates and not in her own right; and that she has agreed through her said commission with the said creditors that she is to incur no expense on account of this action and that the whole expense thereof is to be borne by the holders of said certificates in whose behalf and for

whose exclusive benefit the same was instituted and is now being prosecuted.

XXIII.

This respondent for further answer to said bill says that all the matters and allegations therein contained and not admitted in this answer to be true or heretofore specifically denied, are now and hereby denied and strict proof thereof is required.

Wherefore, this defendant, having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of plaintiff, material to be answered, according to her best knowledge and belief and humbly prays this Honorable Court that the said plaintiff's bill be dismissed and that this defendant have and recover her reasonable costs.

And as in duty bound she will ever pray, etc.

CLARKE W. MAY,
Attorney General,
J. G. CARLISLE,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
For West Virginia.

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, SS:

This day there personally appeared before me, the undersigned authority in and for said County and State, William M. O. Dawson, Governor of the State of West Virginia, the defendant named in the foregoing cause, and being by me duly sworn, says that he is the Governor of the defendant, the said State of West Virginia, and that he has read the foregoing answer and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

WM. M. O. DAWSON,
Governor of West Virginia.

Sworn to and subscribed before me this 5th day of October, A. D., 1907.

W. B. MATHEWS,
Clerk Supreme Court of Appeals.

EXHIBITS WITH ANSWER.

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

EXHIBIT NUMBER 1.

An Act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State.

Passed May 13, 1862.

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Mason, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire and Morgan, according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

2. Be it further enacted, That the consent of the legislature of Virginia be, and the same is hereby given, that the counties of Berkeley, Jefferson and Frederick, shall be included in and form part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for the purpose, at such time and under such regulations as the commissioners named in the said schedule may prescribe.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the Union.

4. This act shall be in force from and after its passage.

EXHIBIT NUMBER 2.

SECOND AUDITOR'S OFFICE,
RICHMOND, Nov. 16, 1871.

A. W. Campbell Esq., Secretary, &c.:

DEAR SIR:—Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,
Most respectfully yours,
ASA ROGERS.

EXHIBIT NUMBER 3.

REPORT OF THE SENATE FINANCE COMMITTEE OF 1873.

STATE OF WEST VIRGINIA,
CHARLESTON, December 22, 1873.

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subject their most earnest and careful attention as a matter fraught with more than ordinary consequences to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be approved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations or fundamental conditions

by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of the territory of this State," [Virginia] passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia *prior to the first day of January,* 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly a constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it to secure the exact fulfillment of the treaty stipulations as aforesaid.

By article eight, section eight of the constitution, it was provided that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and that the Legislature shall ascertain the same as soon as may be practicable, and to provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This subject has received a careful consideration by commissioners appointed by authority of this State, and while this committee see much to approve in the Report of the Debt Commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may rise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State." But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claims for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department, and subsequently affirmed by the Supreme Court of the United States, and may at this day be accepted by the public as firmly engrafted into obligations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, lead us to the following conclusions which are the results of a mathematical demonstration, founded upon public official records, appropriate to determine how much of the bonded debt of Virginia existing prior to January, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to $3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued nevertheless the expenditures would seem to import an obligation

upon our people to return every dollar which has been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioners aforesaid.

From the amount of the foregoing expenditures must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution, but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to $63,000; and in that year the total of the expenses of the State government chargeable to us was $47,000, leaving an excess of $16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed, the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to $512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to $647,079.96. In the same year our proportion of the ordinary expenses of government amounted to $135,000, which left the surplus aforesaid of $512,079.96. It will be observed that the committee have referred only to the surplus in 1822 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to $3,892,000 which is in excess of expenditures within our limits by $525,000.

It will thus be seen that our state is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts by conditions precedent prescribed by Virginia under the restored government which government has been approved as aforesaid by Congress, by the Executive and by the Supreme Court of the United States.

Notwithstanding the satisfactory condition of our finances and our material resources, the attention of the committee has been

called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar, in money of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which a State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount of its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second, that we are either unable or unwilling to pay the debt which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say, and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our Constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued by West Virginia and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration, to cultivate our forests and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which has so absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dollar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM,
A. E. SUMMERS,
J. T. MCCLASKEY,
R. B. SHERRARD,
ELLIOTT VAWTER.

Supreme Court of the United States

OCTOBER TERM, 1907

[May 4, 1908.]

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

DECREE REFERING THE CAUSE TO A SPECIAL MASTER.

[DECREE ENTERED MAY 4TH, 1908, REFERRING CAUSE TO MASTER.]

Supreme Court of the United States.

No. 4, Original.—OCTOBER TERM, 1907.

Commonwealth of Virginia, Complainant,
vs.
State of West Virginia, Defendant.

[MAY 4, 1908.]

This cause having been heard upon the pleadings and accompanying exhibits, it is, on consideration, ordered that it be referred to a special master, to be hereinafter designated, to ascertain and report to the court:

1. The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness.

2. The extent and *value of the territory of Virginia and of West Virginia, June 20, 1863, and the population thereof, with and without slaves, separately.

3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.

4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.

5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia.

*See Amendment, page 207

6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union.

7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof.

The answers to these inquiries to be without prejudice to any question in the cause.

It is further ordered that the Commonwealth of Virginia and the State of West Virginia shall each, when required, produce before the master, upon oath, all such records, books, papers and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts, or any of them.

And the master is authorized to make, or cause to be made, such examination as he may deem desirable of the books of account, vouchers, documents and public records of either State relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered, subject to the approval of the Chief Justice, to employ such stenographers and other clerical assistants as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference.

and to agree with such stenographers and typewriters and clerical assistants upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of five thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required, on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virginia for the compensation of the stenographers, typewriters and other clerical assistants whom he may employ, and for any other costs and expenses, including stationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal shall receive such commission for his services in receiving and disbursing the funds so deposited with him as may be allowed by the court, and he will make a report of his transactions, receipts and disbursements in the premises.

Any notices to be given in connection with the execution of this decree may be given by and to the Attorneys General of the respective States.

The master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance, and to state such alternative accounts as may be desired by either of the parties, subject to the direction of the court.

And the court reserves the consideration of the allowance of interest; of the costs of this suit, and all further directions until after the master has made his report; either of the parties to be at liberty to apply to the court as they shall be advised.

SUPREME COURT OF THE UNITED STATES.

I, JAMES H. MCKENNEY, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing is a true copy of the order of said Supreme Court entered on the 4th day of May, A. D. 1908, in the case of *Commonwealth of Virginia, Complainant,* v. *State of West Virginia,* No. 4, Original, October Term, 1907, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this.....day of May, A. D. 1908.

.....

Clerk of the Supreme Court of the United States.

Supreme Court of the United States

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

against

WEST VIRGINIA, DEFENDANT.

MOTION TO MODIFY DECREE OF REFERENCE.

Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

IN EQUITY.—ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA, *Complainant.*
against
WEST VIRGINIA, *Defendant.*

MOTION TO MODIFY DECREE OF REFERENCE.

To the Honorable the Supreme Court of the United States:

Now comes the State of West Virginia, the defendant herein, and availing itself of the leave granted by the interlocutory decree heretofore entered in this cause, respectfully moves the court to modify the said decree to the end that the same may be more definite and certain in the particulars hereinafter set forth:

First. By amending paragraph two to read as follows:

> "The territorial area and assessed valuation of the States of Virginia and West Virginia June 20, 1863, and the population thereof, with and without slaves, separately stated, including in the latter State the counties of Berkeley and Jefferson."

Second. By adding at the end of paragraph three thereof the words:

> "Prior to January 1, 1861."

Third. By amending paragraph four so as to read as follows:

> "The ordinary expenses of the government of Virginia since any of said debt was contracted and prior to January 1, 1861, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

Fourth. By amending paragraph five by striking out the words "fair estimated" where they occur in the first line, and inserting in lieu thereof the word "assessed" and by adding at the end thereof the words "during the same period," so that the same will read:

> "5. And also on the basis of the assessed valuation of the property, real and personal, by counties, of the State of Virginia during the same period."

Fifth. By amending paragraph six by inserting before the word "period" in the second line thereof the word "said" and before the word "prior" in the third line thereof the word "and," and by striking out the words "the admission of the latter State into the Union" and inserting in lieu thereof the words "January 1, 1861," so that it will read:

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the said period and prior to January 1, 1861."

CLARKE W. MAY,
Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

[Endorsed:] Supreme Court of the United States. October term, 1907. In equity. Original No. 4. Commonwealth of Virginia, complainant, against West Virginia, defendant. Motion to modify interlocutory decree referring cause to master.

Supreme Court of the United States

OCTOBER TERM, 1907.

Original, No. 7.

VIRGINIA

vs.

WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN.
FILED AS AN EXHIBIT FOR THE COMPLAINANT.

In the Supreme Court of the United States

OCTOBER TERM. 1907.

ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA.
vs.
STATE OF WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN.

Filed as an Exhibit for the Complainant.

The fact that Virginia in 1811-12 called upon Chief Justice Marshall and others of her leading citizens to devote some weeks or months of their time to a reconnaissance of the region lying between the Blue Ridge Mountains and the Ohio, for the purpose of learning the most desirable line of communication between the waters of the Eastern Seaboard and the Western waters, and that the Great Chief Justice and the eminent men who served with him on that Commission responded to that call and devoted themselves to the arduous service which its acceptance involved, is evidence of the profound interest which in the early part of the last century the people of Virginia and her leading citizens took in that subject, and the importance which they attached to it.

The report of this historic Commission is therefore reprinted and filed as an exhibit for the complainant in this cause.

Col. Claudius Crozet, an eminent civil engineer, who, after having served as an engineer under Napoleon, and afterwards as Professor of Mathematics or Engineering in the U. S. Military Academy at West Point, was for a number of years State Engineer of Virginia, and some of the most important of her works of internal improvement were begun under his direction.

In one of his reports he refers to the service rendered by this Commission in the following language:

> "The first notice of the connection of the eastern and western waters is found in a report, made at the close of 1812, by the commissioners appointed by an act of the preceding

session, 'for the purpose of viewing certain rivers within this Commonwealth.' The commissioners, John Marshall, James Breckenridge, William Lewis, James M'Dowell, William Caruthers, Andrew Alexander, examined the James river, from Lynchburg up, crossed the mountains, and descended with much difficulty, and indeed personal danger, the hitherto unexplored New river. They went through this arduous task with a zeal and perseverance worthy of such men.

"A plain sluice improvement of the James and Jackson's river, up to Dunlap's creek; thence a turnpike road, across the Alleghany mountain, which has been made since, and finally a sluice navigation of the Greenbrier, New, and Kanawha rivers were, at that early day, all they thought proper to recommend.

"A remarkable, and in our day, curious passage, occurs in their report. 'Your commissioners submit with diffidence the following propositions: First, that boats impelled by steam may be employed successfully on New River * * *. But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified as to be applied in new and different situations, &c.' These remarks, at the very dawn of steam navigation, show, on their part, much sagacity and forethought."

See Report of Colonel Claudius Crozet, late State Engineer, to the General Assembly of Virginia, 1848.

WILLIAM A. ANDERSON,
Counsel for Virginia.

March, 1908.

Besides the Great Chief Justice, the gentlemen who served upon this Commission were James Breckenridge, distinguished as a soldier and statesman, and esteemed by contemporaries as the equal in ability, though not in oratory, of his brother, John Breckenridge, of Kentucky; William Lewis, a patriotic citizen of the highest character, a near relative of Col. Charles, and General Andrew Lewis, of Point Pleasant fame, and a worthy scion of such illustrious lineage; James M'Dowell, one of the gifted men of his generation, who afterwards rendered eminent service as a member of Congress, and as Governor of the Commonwealth; William Caruthers, a leading citizen of the Valley of Virginia, and a farmer and business man of very high character and standing; and Andrew Alexander, survèyor, engineer, representative citizen, a man of skill in his profession, and remarkable for his public spirit.

REPORT

OF THE

COMMISSIONERS

APPOINTED TO VIEW CERTAIN RIVERS

WITHIN THE

COMMONWEALTH OF VIRGINIA,

CONFORMABLE TO AN ACT OF SAID COMMONWEALTH, PASSED THE FOURTEENTH DAY OF FEBRUARY, 1814.

PRINTED ACCORDING TO A JOINT RESOLUTION OF BOTH HOUSES OF THE GENERAL ASSEMBLY.

AND

ACCOMPANIED BY A MAP,

EXECUTED UNDER THE DIRECTION OF THE EXECUTIVE

IN CONFORMITY WITH THAT RESOLUTION.

PRINTED...1816.

STATE OF VIRGINIA.

Inland Navigation and Improvements.

PREAMBLE AND RESOLUTION,

For Re-printing the Report of the Commissioners on the Navigation of the Great Kanawha, &c.

[*Agreed to by both Houses of Assembly, February 14, 1814.*]

Whereas, it would greatly promote the welfare of this Commonwealth, and the prosperity of our sister States, to form a more intimate connexion between the Eastern and Western Waters of the United States; and, with a view to that object, the General Assembly of Virginia at a former session, appointed Commissioners to survey the head waters of James-River and the Great Kanawha, with instructions to ascertain the practicability of extending their navigation to the base of the chain of mountains which divides them, and at the shortest and easiest portage across it; a trust which was accepted and fulfilled, by the Commissioners who acted therein, in a manner that entitles them to the thanks of their country: And, as the result of their labors has never been presented to the Legislature of the Union, nor to the governments of the several States, who cannot but feel an interest in the accomplishment of an enterprise so important to the arts, manufactures, and commerce of the United States—

Resolved, therefore, That the executive of this commonwealth be, and they are hereby empowered and requested, to cause the Report of the Commissioners to be re-printed, and the Map and References accompanying it to be reduced to a convenient scale, engraved, printed, and annexed to the Report; and, reserving two hundred and fifty copies thereof for the use of the General Assembly, to forward a copy to each of the Commissioners whose names are subscribed to the Report, to each Member of the Congress of the United States, and to the Executives of the several States and Territories.

PROCEEDINGS OF THE COMMISSIONERS.

Letter of Mr. Marshall, One of the Commissioners.

A communication from the Governor, enclosing a letter from the Honorable John Marshall, and a report from the Commissioners who

executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth," was laid before the house.

The said letter and Report were read as follows:

Richmond, December 26, 1812.

SIR:—I hasten to submit to your Excellency, for the purpose of being laid before the General Assembly, the Report of the Commissioners who executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth."

To their distance from each other, and the consequent difficulties attending the interchange of sentiment, and the attainment of their respective signatures, is to be ascribed the delay which has taken place in the performance of this part of their duty.

The more detailed report, to which the enclosed refers, is not yet received, but it is expected in a few days, and will then be transmitted to your Excellency. It was not thought advisable longer to withhold the general report, for the purpose of accompanying it with that more in detail, to which it refers.

I have the honor to be,
Sir, with great respect,
Your obedient servant,
J. MARSHALL.

His Excellency Governor BARBOUR.

INLAND NAVIGATION.

REPORT.

To the Honorable the Speaker and Members of the General Assembly, the undersigned Commissioners, named, with others, in the act entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth,"

RESPECTFULLY REPORT—

That, supposing the autumn to be the season which afforded the fairest prospects for giving effect to the views of the Legislature, as expressed in their act, your Commissioners agreed that a meeting should be called on the first of September, at Lynchburg. The number required by law, for the execution of the service they were directed to perform, having assembled, and the necessary prepara-

tions having been made, your Commissioners began at the Bridge at Lynchburg, to view James-river, and to take its level by sections to the mouth of Dunlops-creek. Mr. Andrew Alexander, the surveyor of Rockbridge county, had been engaged to execute this duty under their direction. To his report, which your Commissioners believe to be accurate, they beg leave to refer, as exhibiting, in minute detail, the information required by the law.

As an actual measurement of the whole river would have employed so much time as to defer the completion of the work, until high waters might defeat the object of the Legislature, and was rendered the less necessary by previous surveys; distances were in general conjectured. The eye, aided by a time-piece, and occasionally corrected by actual measurement, furnished information, which, though not perfectly exact, was believed not to vary much from the truth, and to be substantially sufficient. Those places which present serious obstacles were measured by the chain, and the elevation was taken throughout by a spirit level.

On that part of the river which is comprised within the charter already granted, your Commissioners presumed that little, if any, information is expected from them, other than will be found in the annexed report of Mr. Alexander.

From Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, no difficulty presents itself, which may not be with certainty surmounted. The falls are no where formidable; there are long stretches of smooth water, and the shallows may be so deepened as to afford water for boats bringing down from six to eight tons, and carrying up from four to six tons, if not throughout the year, through all but a very inconsiderable portion of it. Your Commissioners give the opinion, unanimously, and with great confidence, that the navigation from Crow's Ferry to the mouth of the Cow-Pasture, may, with improvements by no means expensive, be rendered as certain, as useful, and as permanent, as the navigation from the same place to Lynchburg; and that it may be used at all times when the navigation to Lynchburg can be used, with boats carrying an equal burthen—indeed, that it may be rendered more safe and less laborious, than that from the mouth of the North Fork to Lynchburg now is.

From the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, the difficulties become more considerable and their removal will require greater expenditures of money. The mass of water diminishes, and the elevation increases.—The shoals become longer and shallower, and the intervals of smooth water shorter. Yet, this rugged navigation, though totally unimproved, is now used during high water. Boats, laden with the produce of the country, pass every year from the mouth of Dunlop's-creek to Richmond. It is, therefore, proved to be, even at this time, practicable for some portion of the year. This portion varies with the seasons. Most com-

monly, it commences in November, and terminates late in May, or early in June.

That, by the removal of rocks, now lying promiscuously and irregularly through the bed of the river, which it will be necessary in only a few instances to blow, and by the judicious application of labor, to the collection of water in narrower spaces than it now covers, this navigation may be rendered much more secure and beneficial, and the time during which it can be used may be considerably extended, will not admit of doubt.—Whether this portion of the river may be rendered at all times boatable, depends on the depth of water to be collected in particular channels by such means as are applicable to the object.

Some of your Commissioners have been personally engaged in opening the navigation of the North Fork of James-river, through Rockbridge. They are decidedly of opinion, that the river denominated "Jackson's," contains as far as Dunlop's-creek, more water and less formidable obstructions than were found in the North Fork. Yet the North Fork, though its improvement is far from being complete, is now actually used to great advantage, and is not much inferior to the river below.—Some experienced and judicious boatmen who were employed on the expedition, who are well acquainted with the river and its navigation, unite in the declaration, that, if the means be taken which ought to be employed, that part of James-river which is between the Cow-Pasture and Dunlop's-creek, may be used by any boats which will be capable of continuing their voyage to Lynchburg.

Your Commissioners concur in this opinion; and they take occasion now to remark, that should it be deemed advisable still to adhere to the system of improvement heretofore used in the upper part of the river, the difficulties of this navigation would, they think, be much diminished by several facilities which might be given to it. They would particularly suggest chains, with buoys fastened in rocks or otherwise, or walls on which men may walk, of which boatmen might avail themselves to lessen the labor of ascending places of peculiar difficulty; and thus either to increase the load which may be carried up the river, or to diminish the number of persons necessary for carrying up a given load. They will also mention a fact deemed favorable to the object contemplated by the Legislature. It is this: although the cold may be more intense in the bosom of the mountains than below, this part of the river freezes over.

It will perhaps save the honorable the members of the Legislature some calculation, to observe, that the distance from Lynchburg to the commencement of the Blue Ridge is stated, in the report of Mr. Alexander, to be twenty-five miles one-fourth and thirty poles; the elevation to be one hundred and eleven feet eight inches; shewing an average elevation of four and an half

feet to the mile.—The distance through the mountain, that is from Racoon Island to the mouth of the North Fork, is eight miles one-fourth and forty-nine poles, and the elevation one hundred and one feet six inches, giving an average elevation of upwards of twelve feet to the mile. The distance from the mouth of the North Fork to Crows Ferry, or Beall's Bridge, the highest point to which navigation is to be carried by the James-River Company, is stated at twenty-six miles and thirty-eight poles, and the elevation is one hundred and thirty-one feet four inches; making the average elevation five feet to a mile.

The distance from Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, is stated at thirty-six miles fifty-nine poles, and the elevation is one hundred and ninety feet three inches, making the average elevation five and an half feet nearly to a mile. The distance from the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, is stated at twenty-three miles three-fourths and twenty poles, and the elevation is two hundred and twenty-eight feet three inches, making the average elevation nine and an half feet to the mile.

Having reached Dunlop's-creek, your Commissioners proceeded to view and mark out what appeared to them to be the best and most direct way for a turnpike road from the mouth of that creek to the most convenient navigable point on Greenbrier river.

With some inconsiderable deviations, which will appear in the report of Mr. Alexander, already referred to, and some others which will be suggested, the road now leading from the mouth of Dunlop's-creek, by Bowyer's Sulphur Spring, to Anderson's Ford, over Greenbrier, at the mouth of Howard's-creek, is believed to be the most eligible which can be made. To that part of the road which passes from the mouth of Dunlop's-creek to the old Iron Works, a distance of about five miles, there are considerable objections, which your Commissioners are inclined to believe may be diminished. The road crosses the creek eight times, and the ground, during the winter and spring would, if much used and not well covered with stone or gravel, be much cut and be very deep. The creek too is frequently so high as not to be fordable.

Should it be found practicable, which your Commissioners believe to be the fact, to render Dunlop's-creek navigable up to its falls, some distance below the old Iron Works, these inconveniences would be in a great measure removed.

Should it be deemed unadvisable to carry navigation up Dunlop's-creek, a direction, as is understood from some of the inhabitants of that neighborhod, may be given to the road, so as to avoid five crossings of the creek, and at the same time shorten the distance. No attempt to view this way was made, because

guides could not readily be procured, and your Commissioners feared that, by devoting too much time to a minor object, on which complete information is attainable with ease and certainty through various channels, they might hazard the failure of others which were believed to be of much importance.

The road from the Sulphur Spring to Greenbrier crosses Howard's-creek, which is often not fordable, six times, and is in a few places attended with some difficulty. A small improvement may be made in it, and the steepest part avoided, by returning it, near the river, to the ground over which it formerly passed, and from which it has been lately taken.

The road over the mountain has been attentively viewed, and the deviations recommended, from that now in use, carefully and plainly marked. Your Commissioners feel much satisfaction in stating, that the elevation of this part of the road may, in the most unfavorable places, be reduced to an angle of five degrees with the horizon. By occasionally removing the earth, for small distances, this angle may be still further diminished. It is believed to be susceptible of improvement on as easy terms as any other road, since the materials for a turnpike are every where convenient, and not more levelling will be necessary than must be expected in passing through a mountainous country.

Your commissioners proceeded down the Greenbrier river in the boat in which they ascended the James. The season had been remarkably dry, and the water was declared by the inhabitants to be as low as at any period within their recollection. It frequently spreads over a wide bed covered with large stone, and is, in its present unimproved state, and at the season when it was viewed, so very shallow for the greater part of its course, as not to swim an empty boat. The labor of removing stone, and of dragging the boat over those which could not be removed without implements provided for the purpose, was so great, that your Commissioners at one time were enabled to advance only three miles in two days, even with the assistance of a horse and of many additional laborers. In part of the river the shoals are frequent and long, and the falls, as the report of Mr. Alexander will shew, considerable. At the great falls, which is the most important of them, the descent is twelve feet in forty-eight poles. There is no perpendicular fall at this place, but one continued rapid, with large rocks, irregularly interspersed through the bed of the river. Near the mouth of the river there is a flat rock, which continues for about two hundred and forty poles, with many irregular apertures or fissures through which the water passes. Although, in the usual state of the river, this rock is covered with water of sufficient depth for navigation; yet, such was the drought of the

last autumn, it was necessary to drag the boat over its whole extent.

These difficulties present obstacles to navigation during a season when the waters are remarkably low, which can be surmounted only at considerable expense.

But, from the best information your Commissioners can obtain, and they believe it to be correct, the Greenbrier is seldom so low at any season as it was during the last autumn; and it seldom if ever fails, for eight or nine months in the year, to be at least two feet higher than when viewed by your Commissioners; a depth of water unquestionably sufficient for the purpose of navigation. The testimony given by the inhabitants to this fact, was corroborated by appearances on the river. The indications of a recent considerable diminution of water were not to be mistaken.

On an attentive consideration of the obstacles which were found by your Commissioners to be great, while the river remains in the state in which they viewed it, they are unanimously and decidedly of opinion, that its navigation may be rendered as safe, as certain, and as easy as that of the James, at all times, except when the water is unusually low. The rocks are in general loose; and may be removed without extraordinary difficulty, so as to afford a tolerably smooth passage to boats; and, by collecting the water into narrow channels, a sufficient depth may be obtained, with the exception of a short period in a very dry year, to swim any boat which can be brought at the same time down James-river. But so scanty is the supply of water in a time of uncommon drought, that doubts are entertained whether there may not be a short season of the year during which, unless a considerable expense be incurred, the navigation must be suspended. Though aided by men and horses, ten days of unremitting labor were consumed in passing from the mouth of Howards-creek to the mouth of Greenbrier river, a distance not much exceeding forty-eight miles. In the month of June, the same voyage, if not retarded by measuring the river, might have been performed in a single day. Some of your Commissioners, however, are of opinion, that the Greenbrier may, without great additional expense, be rendered at all times passable for boats carrying half a load.

In addition to the shallowness of the water, (an inconvenience which is common to all rivers as you approach their sources, and which disappears for eight or nine months in the year) and to the rocks which have been mentioned, the obstructions to the navigation of the Greenbrier consists in its falls, and in the general rapidity of its current.

The great falls alone are of sufficient magnitude to merit particular attention. These unquestionably admit of being rendered

navigable, either by opening a sluice judiciously through them, or by locks. The latter would be most expensive, but would leave the navigation less laborious.

The rapidity of the current may be estimated by observing that the descent in forty-eight miles and eighty-four poles, is three hundred and sixty-two feet ten inches, between seven and eight feet to the mile.

This current will present no difficulty to a boat descending the river. To one ascending it, the labor will be considerable, but not so considerable as in some parts of James-river.

The night of the 28th of September, was passed among the islands in the mouth of Greenbrier; and on the morning of the 29th, your Commissioners entered New-river.

The New-river, or that part of the Great Kanawha which is above the mouth of Gauley, having to search its intricate way, and force a passage through a long chain of lofty and rugged mountains, whose feet it washes, exhibits an almost continued succession of shoals and falls, from which the navigator is sometimes, though rarely, relieved by a fine sheet of deep placid water.

The difficulties encountered in descending this river were of a character essentially different from those which were experienced in the Greenbrier. Uncommon as had been the drought, the supply of water was abundant. The boat sometimes, though rarely, rubbed upon a shoal; but in every such case it was apparent that a sufficient passage might be opened without much labor or expense. The velocity of the current and the enormous rocks which often interrupt it, the number and magnitude of the rapids and falls, the steepness, cragginess and abruptness of the banks, constitute the great impediments which at present exist to navigation between the mouth of the Greenbrier and the Great Falls of Kanawha.

The distance from the mouth of Greenbrier to Bowyer's Ferry, is forty miles one quarter and forty-six poles, and the descent is four hundred and sixty-six feet seven inches; that is, eleven feet six inches in each mile. In general, there is much sameness in the appearance of this part of the river. Long rapids, frequently terminated by a fall of from five to ten feet, in a distance of ten, twenty, thirty, and sometimes a greater number of poles; an intervening space, sometimes more, sometimes less considerable, of swift or smooth water; rocks, sometimes above the surface, sometimes near it, so as to require great caution to save a boat from dashing on them; a copious stream, with a current commonly impetuous, constitute its leading characteristics.

Falls too great to come within this general description, will be particularly noticed.

Brook's Falls are about four miles and one-fourth below the mouth of Greenbrier. The water descends thirteen feet seven inches in fifty poles. In its most rapid part the descent is five feet ten inches in fourteen poles. The boat was navigated through this place.

A much more formidable obstruction is the falls at Richmond's Mill. These are designated in the neighborhood by the name of the "Great Falls of New-river," but are generally called at a distance, "Lick-Creek Falls."

At this place the water may with propriety be said to fall perpendicularly twenty-three feet. For this distance, the sheet which dashes over the summit is intercepted only by huge fragments of broken rock, which, having been successively disjointed from the brink of the precipice, have fallen into the foaming basin below, where, piled on each other, they form one or two benches that break the cataract. A small distance lower down is another fall of three or four feet.

Here, for the first time, the boat was taken out of the water and let down by skids.

The ground along which a canal may be carried around these falls, pursuing the course of Richmond's mill-race, was measured, and the elevation taken. The descent was found to be twenty-two feet nine inches, in one hundred and eighty-one poles.

This estimate excludes a part of the falls, between five and six feet of which are just above the head of Richmond's mill-race.

The bottom of the river for some distance above these falls, is a hard rock, often appearing above the surface, and much covered with movable stones, some of which are very large. The bottom of the mill-race appears to be of the same description.

From Bowyer's Ferry to the Falls of the Great Kanawha, was estimated at nineteen miles and fifty-eight poles, in which distance the river falls three hundred and thirty-one feet; that is, seventeen feet to a mile. The honorable the legislature will perceive, that below the ferry the descent, in the same distance, is greater than above. For a part of this space, the scene is awful and discouraging. The vast volume of water which rolls down New-river, and which, far above the ferry, often spreads, without becoming shallow, over a bed three or four hundred yards wide; is seldom more than one hundred or one hundred and fifty yards wide. In some places, for a mile or more in continuation, it is compressed by the mountains on each side, into a channel of from twenty to sixty yards wide; and even these narrow limits are still more narrowed by enormous rocks which lie promiscuously in the bed of the river, through which it is often difficult to find a passage wide enough for the admission of a boat. In some places the bank is formed

of rugged and perpendicular cliffs or entire rock, which appear to be twenty, thirty, and forty feet high; in others, enormous, but unconnected, rocks dip into the water.

There are unequivocal indications of the river's having risen, in these narrows, from thirty to forty feet perpendicularly.

Immediately above the mouth of Gauley, the river opens and presents a beautiful sheet of deep smooth water, which is succeeded by the rocks over which it dashes, and forms the Great Falls of Kanawha. The height of these falls is twenty feet four inches. With its name, the river loses its wild and savage aspect. It is no longer confined by rugged cliff, by mountains barely separated from each other, nor interrupted by enormous masses of rocks which are scarcely to be avoided.

Within a short distance above the falls, the current is not unmanageably swift, nor the rocks over which it passes uneven. Below, quite to the rocks which have fallen from the brink over which the cataract rushes, is a deep smooth and beautiful basin. The river is so wide as to rise, in the greatest freshes, only six or seven feet. The falls themselves constitute the impediment, and the only impediment at this place.

Your Commissioners have deemed it proper to state in their full strength, the difficulties which are to be surmounted in opening the intercourse between this part of the state of Virginia and the western country; and to put the legislature, as far as is possible, in possession of the testimony on which their opinion is formed, as well as of their opinion. If, misguided by their conviction of the importance of the object, they are too sanguine in their hopes of its accomplishment, the facts now communicated will enable the General Assembly to correct the mistaken conclusions which have been drawn, and to determine on the course which will best promote the interests of the public.

The practicability of rendering the Greenbrier navigable has already been stated. The system which may be found best adapted for the improvement of James-river, will be equally applicable to the Greenbrier, and will be equally successful.—The one river and the other will be rendered more or less valuable as more or less labor and skill may be employed on them; but there can be no mistake in saying that, without incurring an expense which any would pronounce extravagant they are both capable of being brought into extensive use. Not only in descending, but in ascending also, these rivers may be navigated to great advantage.

With respect to New-river, a judgment cannot be formed quite so decisively, nor pronounced quite so confidently. The difficulties are great, and deserve to be seriously considered.

The boat which conveyed your Commissioners, passed from the mouth of Greenbrier, to the place where their expedition terminated, without being taken out of the water, except at the Great Falls of New-river, and at the Great Falls of the Kanawha. It was navigated in the usual way through all the other difficult places which abound in New-river, except two—both below Bowyers Ferry. Through these it was conducted by ropes.

The boat was not laden, nor was it empty. In addition to the number of hands usually employed in navigation, it carried between two and three thousand weight. The greater part of this burthen was taken out in the most difficult places; but in many of considerable magnitude, it remained in the boat. Where the vessel was guided by ropes, the necessity of resorting to this expedient was occasioned solely by the intervention of rocks, which can be removed.

It is also worthy of notice, that this voyage was performed by boatmen, who, having never before seen the river, were reduced to the necessity of selecting their way at the moment, without the aid of previous information.

The only impediments to the descent of the boat, except at the two great falls already mentioned, were rocks lying so near the surface of the water as to strike the bottom while shooting over them. At the usual height of the river, these rocks would be entirely covered, and all danger from them be removed; but others would be placed in a situation to expose a boat to equal hazard. It is therefore necessary, even for the descending navigation, to open a plain and broad sluice through all the rapids and falls, so as to relieve boats navigating the river from all danger of being dashed against the rocks. This may be effected by removing some and blowing others.—This sluice may be so conducted as to graduate the falls where they are most sudden, and thereby, in some degree, to diminish the impetuosity of the current.

Brook's Falls, the Great Falls of New-river, and the Great Falls of Kanawha, will probably require and admit of a different course.

The first of these which is the least formidable of the three, will present three alternatives to the election of those who may be engaged in improving the navigation.

First—One or more locks, which may unquestionably be constructed at this place.

Second—A canal, which is already almost formed, on the north side of the river. Its completion would require that it be opened for a short distance both where it would receive the water at the head of the falls and where it would empty itself below them.

To the eligibility of this canal, there can be but one objection. There may be impracticable rock, now hidden by the earth, so near the surface as to render this plan unadvisable.

Third—To open a sluice in the river, along its northern bank, and graduate the fall as far as may be compatible with that system of operation.

The Great Falls of New-river must be turned, by using a canal to be cut on the southern side, pursuing nearly the tract of Richmond's mill-race. Should locks be employed, it will most probably be found advisable to place them in this canal. Should locks be dispensed with, there will be no difficulty in descending through this channel, but the toil of ascending must, at this place, be considerable.

At the Great Falls of Kanawha, there is, near Morris's mill, a very eligible place for locks. If a canal be preferred, there is every reason to believe that the ground will admit of one, which may be so extended, and the fall thereby so graduated, as to afford a safe passage to loaded boats.

These observations are formed on the state of the river when viewed by your Commissioners.—It will readily occur, that they cannot judge with certainty of the changes which may be brought about by a great rise of water.

It would seem most probable, that by such rise the falls would be diminished, because the water at their feet would pass off less rapidly than at their head. But the apprehension cannot be entirely discarded, that in the narrows, which have been mentioned, the torrent would, in a flood, be too impetuous to be trusted. It is probable, that moderate elevation of the water would rather facilitate the passage of the boats; at least of those descending the river; but that great floods would suspend the navigation.

Having stated their view of this subject, your Commissioners will only add their opinion, that the New-river may be relied on with certainty, for the transportation of articles from east to west.

On the practicability of using this channel of conveyance for the transportation of articles from the western country, towards the rivers which empty into the Atlantic, at least so much of it as lies between Bowyer's Ferry and the Great Falls of Kanawha they must speak with less confidence. The great difficulty consists in the velocity of the current. For several miles, between Bowyer's Ferry and the Falls, it is believed that a canal would be impracticable. The river is susceptible of no other improvement than may be made in its channel, or on its banks. The current is often too rapid to be stemmed by a boat impelled by oars; and the water too deep to admit the use of poles. If a

channel, sufficient for the safe passage of vessels, be opened, still some other means than oars or poles must be devised for impelling them up the stream.

Your Commissioners submit with diffidence the following proposition:

First—That boats impelled by steam may be employed successfully on New-river.

With the capacities of this powerful agent they are too little acquainted to speak with confidence of the use which may be made of it in the waters of Virginia. Elsewhere, it has certainly been applied with great advantage to the purposes of navigation. Neither have they that intimate knowledge of the velocity of the currents, against which vessels have been propelled by it, to compare them with that of New-river, and to hazard any decided opinion on the comparison.—But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified in its modifications, as to be applied in new and different situations, as their exigencies may require. It is believed, that a sufficient depth of water is certainly obtainable, but whether sufficient employment may be found, to justify the use of a vessel which must, in any state of things, be constructed at considerable expense, is a question your Commissioners cannot attempt to solve.

Second—Should it be found impracticable to apply steam with advantage to the navigation of New-river, it is respectfully suggested, that between the Great Falls of Kanawha and Bowyer's Ferry, resort may be had to horse labor.

To give this facility to the navigation, it will be necessary to construct a horse-way along the bank of the river at different heights, or at the most common height of the water. The objection that such way cannot be used at all times, will lose much of force, when it shall be recollected that the navigation up the river will admit of being suspended for considerable intervals, with less injury to those who use it, than that which conveys to the western country articles imported for general consumption. The construction of this way, however, will require the blowing of a great quantity of rock, and will, consequently, be expensive.

Third—Should neither of these expedients be deemed eligible, it is respectfully suggested, that boats may be forced up the current, where it is too rapid for oars and too deep for poles, by the aid of chains fastened in the rocks on the bank.

Whatever doubts may be entertained respecting the navigation for boats ascending the river between the Great Falls of Kanawha and Bowyer's Ferry; your Commissioners are entirely persuaded

of the practicability of using it advantageously between the ferry and the mouth of Greenbrier.

In obedience to the law under which they have acted, your Commissioners will now proceed to state their ideas of the sums of money which will probably be necessary to open the river and make the road they have viewed.

No part of their duty has been performed with less confidence than this.

It will readily occur to the legislature, that no estimate of expense of executing so great a work as that which is to afford to the western parts of Virginia the means of conveying the produce of their lands to market, and probably to connect Virginia commercially with her sister states in the west, can have just pretensions to exactness.—Were the system of improvement, and the extent to which that system is to be carried, accurately defined; any calculations which could now be made, even by professional men, of the sum necessary for its execution, might be found to vary widely from that which would be actually expended. Still less precision can be looked for in the calculations of your Commissioners.

But it must be apparent that the expense of improvement will essentially depend on the object for which the improvement shall be made.

If the views of the legislature shall be limited to the conveyance of articles, the growth of the upper country, down James-river, the cheapness of that conveyance will certainly depend much on the degree of perfection to which the improvement may be carried; but the river, being the only channel of conveyance, will, if merely practicable, be used to some extent.

If the views of the legislature shall extend to a free commercial intercourse with the western states, or any of them, the channel selected for that intercourse will come into competition with others which now exist or may be opened, and must recommend itself to a preference by the advantages it offers. With a view to the latter object, no improvement ought to be undertaken but with a determination to make it complete and effectual.

The estimates of expense were more particularly made by Mr. Caruthers, who has been personally engaged in opening the North Fork though Rockbridge. This gentleman made his calculations on the plan which has been adopted by the James-River Company, with such improvements as would better adapt that plan to steam navigation. According to his estimate, one hundred and ninety thousand dollars will be sufficient to accomplish the work from Beall's Bridge, or Crow's Ferry, to the Falls of the Great Kanawha, including the road.—This estimate is formed on a comparison of the impediments to be removed, with those he had himself encountered in opening the North Fork of James-river. Some

others of your Commissioners, who have too little knowledge of the labor necessary for the accomplishment of objects of this description, to confide themselves, in their own judgment, much less to recommend it to the confidence of others, are so impressed with the magnitude of the difficulties they have seen, as to be unable to persuade themselves that the work can be completed for the sum at which it has been estimated. That estimate does not appear to them to be extravagant, if the descending navigation alone be contemplated. To make the ascending navigation such as will entitle it to extensive use, and give this a preference over other routes, they submit, though with much diffidence, the opinion that at least a half a million, perhaps six hundred thousand dollars, will be requisite.

From the mouth of Dunlop's-creek to the mouth of Howard's creek, is twenty-six miles and forty-four poles. From the first mentioned place to the summit of Alleghany mountain, is sixteen miles and thirty-six poles, and the elevation is nine hundred and forty-eight feet, which makes an angle with the horizon of less than three-quarters of a degree. From the summit of the mountain to the mouth of Howard's-creek, the distance is twelve miles and eight poles, and the descent is eight hundred and thirty-eight feet seven inches, making with the horizon an angle of about three-quarters of a degree. There are no peculiarities attending this route, which will render any plan the legislature may prefer for turnpiking it, more costly in its application to this road, than to others which have been constructed in various parts of the United States. It is now at least equal to, perhaps better, than any other of equal distance in the same part of the country.

In presenting to the honorable the legislature the advantages which, in the opinion of your Commissioners, will probably accrue to this state from executing the work to which their report relates, it will be necessary to divide this subject, and to consider, separately—first, those which may reasonably be expected to result from executing it in part; next, those which are to be looked for from executing it in the whole.

Should the navigation of James-river be carried up to the mouth of Dunlop's-creek, and a turnpike road be made over the Alleghany mountain, although nothing further should be done, a considerable impulse will be given to the agriculture, and a valuable effect produced on the wealth and population of a considerable tract of country. It cannot reasonably be doubted, that Bath, a part of Botetourt, and a great part of Greenbrier, Monroe, and perhaps even Giles, would find a real interest in searching for a market on James-river, for the produce of their soil, if such safe and cheap conveyance were afforded them as might be given by the improvements which have been stated.—Agriculture would

mingle more than heretofore with grazing; and industry would flourish when the reward of industry should be attainable. Those more western counties, whose distance might forbid the attempt to transport grain manufactured into flour, or distilled into spirits, to the markets on James-river, might still be encouraged to bring to those markets, salt, salted provisions, and various manufactures of hemp. An increase of population would result, not only from the check which this state of things would give to emigration, but also from its operation on the inhabitants, in other respects.

Other parts of the state would derive corresponding advantages from their intercourse with a section of the country which would have more to sell and more to purchase than at present. By the augmentation of the wealth and population of a part, not only would those belonging to that part be improved in their circumstances, but the whole would be more powerful, and the public burdens being more divided, might press less heavily on each individual.

These advantages would probably be extended by improving the navigation of the Greenbrier also.

Should New-river be rendered a safe and easy channel of communication, between the Ohio and the commercial towns on James-river, the subject will assume a more important aspect, and the advantages may be estimated on a larger scale. Not only will that part of our own state which lies on the Kanawha and on the Ohio, receive their supplies and send much of their produce to market through James-river, but an immense tract of fertile country, a great part of the states of Kentucky and Ohio, will most probably give their commerce the same direction. All that part of the state of Kentucky which lies above Louisville, and all that part of the state of Ohio whose trade would pass through the river of that name, might reasonably be expected to maintain a large portion of their commercial intercourse with the Atlantic states, through the James or Potowmac. Certainly in a contest for this interesting prize, the states through which those rivers run have geographical advantages, the benefit of which they can lose only by supineness in themselves, or by extraordinary exertions in others. It is far from being impossible, that even the south-western parts of Pennsylvania may look down one of these rivers for their supplies of goods manufactured in Europe.

Let the importance attached by men best acquainted with the subject to the commerce of the west attest its value. The exertions which other states appear to be making to secure it, will probably awaken the attention of Virginia to that part of it which should naturally belong to her.

There is still another aspect in which this subject deserves to be viewed.

That intimate connection which generally attends free commer-

cial intercourse, the strong ties which are formed by mutual interest, and the interchange of good offices, bind together individuals of different countries, and are well calculated to cherish those friendly sentiments, those amicable dispositions, which at present unite Virginia to a considerable portion of the western people. At all times the cultivation of these dispositions must be desirable but in the vicissitudes of human affairs, in that mysterious future, which is in reserve, and is yet hidden from us, events may occur to render their preservation too valuable to be estimated in dollars and cents.

The advantages which may result to Virginia, from opening this communication with the western country, will be shared in common with her by the states of Kentucky and Ohio.

Considering it as a medium for the introduction of foreign articles into those states, it has claims to their serious attention.

The proposition that a nation finds its true interest in multiplying its channels of importation, admitting them to be equally convenient, is believed to be incontrovertible. In addition to those arguments in support of this proposition which belongs to every case, the situation of the western states suggests some which are peculiar to themselves, and which well deserve their consideration.

The whole of that extensive and fertile country, a country increasing in wealth and population with a rapidity which baffles calculation, must make its importations up the Mississippi alone, or through the Atlantic states. When we take into view the certain growth of the country, we can scarcely suppose it possible that any commercial city on the banks of that river can keep pace with that growth, and furnish a supply equal to the demand. The unfriendliness of the climate to human life, will render this disparity between the commercial and agricultural capital still more sensible. It will tend still more to retard a population of that sound mercantile character, which would render some great city on that majestic river, a safe emporium for the western world.

In times of profound peace, then, the states on the Ohio would make sacrifices of no inconsiderable magnitude, by restricting their importations to a single river. But, in time of war, their whole trade might be annihilated. When it is recollected that the Mississippi empties itself into the Gulph of Florida, which is surrounded by foreign territory; that the island of Cuba and the coast of East Florida completely guard the passage from its mouth to the ocean; that the immense commerce flowing down its stream, holds forth irresistible allurements to cruizers, the opinion seems well founded, that scarcely a vessel making for that place could reach its port of destination.

But the length of the voyage up the Mississippi and Ohio, must be attended with delay so inconvenient to persons engaged in commerce, as to render a shorter route, though not less expensive, more eligible. For importation of many articles, there is much

reason to believe that a decided preference would always be given to the transportation through the United States, were that transportation rendered as easy as it is capable of being made.

The export trade during peace, so far as the articles exported were designed for a foreign market, would, more probably, pass exclusively down the Mississippi. But those articles which are consumed in the United States, as manufactures of hemp, would find their way to market through interior and shorter channels.

If the direct route through the Atlantic states would, for many purposes, be more eligible than that through the Gulph of Florida, which must be often connected with a coasting voyage to or from an Atlantic port, then the multiplication of those routes, if in themselves equal, by presenting a greater choice, and by accommodating more territory, must be desirable.

But your Commissioners are sanguine in the opinion, that the communication through the rivers they have viewed, if properly made, will possess advantages over every other, which cannot fail to recommend it to a large portion of the states of Kentucky and Ohio. All that part of the western country which draws its supplies and transports its produce through the river Ohio, and which lies east of Louisville and west of the Pennsylvania line, perhaps a part of the state of Pennsylvania itself, could probably use this route more advantageously than any other; unless, indeed, that through the Potowmac, connected with Monongehela, Cheat, or Yohaghena, should come into competition with it, for the eastern part of the country just mentioned.

That it would, for the importation of articles from Europe, and from the east, (with a few exceptions) and for the exportation of those which are consumed in the United States, be preferred to the voyage through the Mississippi, unless the introduction of steam boats should essentially vary the present state of things, may safely be assumed from the fact, that a land carriage between Pittsburg and Philadelphia or Baltimore, and a carriage up or down the Ohio, are now used for the purposes described, in preference to the route by New Orleans.

The present price for the transportation of goods from Philadelphia or Baltimore to Pittsburg, is understood to be from seven to ten dollars per hundred weight.

The price of transportation from Richmond, up James-river to the mouth of Dunlop's-creek, thence across the Alleghany to Greenbrier, and down to the mouth of the Great Kanawha, will certainly depend on the goodness of the road and the degree of perfection to which the navigation may be carried. Your Commissioners believe that a sound national economy would dictate such improvements as would reduce the price of freight, although the labor employed in making them might be procured by an augmentation of toll, and some expenditure of public money.

Should the navigation of James-river be rendered as safe and as easy as may be reasonably expected, and the Greenbrier and New-river be improved, in such manner as the object will justify, your Commissioners believe they hazard nothing in saying, that the expense of transporting one hundred weight from Richmond to the mouth of the Great Kanawha, will not exceed half the price of transporting the same weight from Baltimore or Philadelphia, to the same place.

The immense works meditated in New York, will certainly, if executed, give to that state great advantages in a competition for the trade of the lakes. But if other convenient and more direct channels be opened, it is not probable that the commerce of the Ohio will take the circuitous route by the lakes.

The expense of transportation from New York through the canal contemplated, can only be conjectured. The character of the rivers which would be used, is not well understood, but they must possess many advantages to give them a preference over the direct way through Virginia to the Ohio.

Your Commissioners, however, take the liberty to repeat, that the success of any attempt to obtain that share of the commerce of the west, to which this state, from her geographical situation and her rivers, would seem to be entitled, must depend entirely on the safety and cheapness of her navigation. A mode of transportation by water in itself insecure, or so laborious as to be little less expensive than carriage by land, will never change the channels in which the trade already flows.

The advantages to accrue to the United States, from opening this new channel of intercourse between the eastern and the western states, are those which necessarily result to the whole body from whatever benefits its members, and those which must result to the United States, particularly from every measure which tends to cement more closely the union of the eastern with the western states.

In those operations, too, which the exigencies of government may often require, this central channel of communication by water may be of great value. For the want of it, in the course of the last autumn, government was reduced to the necessity of transporting arms in waggons from Richmond to the falls of the great Kanawha. A similar necessity may often occur.

All which is respectfully submitted to the General Assembly, by

JOHN MARSHALL,
JAMES BRECKENRIDGE,
WILLIAM LEWIS,
JAMES M'DOWELL,
WILLIAM CARUTHERS,
ANDREW ALEXANDER.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

NO. 4, ORIGINAL.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA.

[ORDER AMENDING DECREE OF REFERENCE.]

On consideration of the motion to modify the decree of reference herein.

IT IS NOW HERE ORDERED BY THE COURT that said motion be and the same is hereby, sustained so far as to make the first line of paragraph 2 read "The extent and assessed valuation," and in all other respects that said motion be, and the same is hereby, denied.

June 1, 1908.

A true copy.

Test: JAMES H. McKENNEY,

(SEAL) Clerk of the Supreme Court of the United States.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

NO. 4, ORIGINAL.

COMMONWEALTH OF VIRGINIA, *Complainant*,

vs.

STATE OF WEST VIRGINIA.

[ORDER APPOINTING SPECIAL MASTER.]

It is ordered by the Court that MR. CHARLES E. LITTLEFIELD, a member of this Bar, be, and he is hereby, designated and appointed as Special Master under the decree entered herein on May 4, 1908.

June 1, 1908.

A true copy.

Test:

(SEAL)

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

RECORD
PART TWO

BEING THE EVIDENCE TAKEN AND PROCEEDINGS HAD
BEFORE THE SPECIAL MASTER
HON. CHARLES E. LITTLEFIELD
AT RICHMOND VIRGINIA
NOVEMBER 16th, 1908 TO JULY 2nd, 1909.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT A-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT A-1.

The Amount of the Public Debt of the Commonwealth of Virginia on the first day of January, 1861, including the Holdings by the Literary Fund, the Sinking Fund and the Board of Public Works.

Defendant denies that said Holdings by said Funds and by the Board of Public Works constitute any Part of said Public Debt.

PARAGRAPH I OF DECREE.

	5%	6%	Total.
Aggregate amount of the Public Debt of Virginia, January 1st, 1861, as per Plaintiff	$ 2,272,404.50	$33,208,583.96	$35,480,988.46
Accrued interest from July 1st, 1860, to December 31st, 1860	56,810.11	996,257.52	1,053,067.63
	$ 2,329,214.61	$34,204,841.48	$36,534,056.09
Aggregate amount of the Public Debt of Virginia, January 1st, 1861, as per Defendant	$ 2,077,204.50	$30,842,659.43	$32,919,863.93
Difference	$ 252,010.11	$ 3,362,182.05	$ 3,614,192.16

The difference is composed of the following items:	5%	6%	Total.
Accrued interest from July 1st, 1860, to December 31st, 1860, on Public Debt as claimed by Defendant.	$ 51,930.11	$ 925,279.78	$ 977,209.89
Holdings by the Sinking Fund	$ 40,000.00	$1,289,557.20	$1,329,557.20
Accrued interest from July 1st, 1860, to December 31st, 1860	1,000.00	38,686.72	39,686.72
	$ 41,000.00	$1,328,243.92	$1,369,243.92
Holdings by the Board of Public Works	.....	$ 146,500.00	$ 146,500.00
Accrued interest from July 1st, 1860, to December 31st, 1860	.....	4,395.00	4,395.00
	.....	$ 150,895.00	$ 150,895.00
Holdings by the Literary Fund	$ 155,200.00	$ 929,867.33	$1,085,067.33
Accrued interest from July 1st, 1860, to December 31st, 1860	3,880.00	27,896.02	31,776.02
	$159,080.00	$ 957,763.35	$1,116,843.35
Total	$252,010.11	$3,362,182.05	$3,614,192.16

The above is a summary of pages numbered 2 to 4 following, which constitutes a correct statement of the outstanding funded obligations of the Commonwealth of Virginia, as shown by her Bond Registers and other Records as at January 1st, 1861, showing how the same was distributed between Sinking Fund, Board of Public Works, Literary Fund, and Individual, Firms, Corporations and others, including the Bonds held by the United States, and any Bonds paid off by Virginia since that date, with the interest accrued and payable thereon for the six months prior to January 1st, 1861.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The above is a summary of pages numbered 2 to 4 following, and is a correct statement of the outstanding funded obligations of the Commonwealth of Virginia, as of January 1st, 1861, as shown by her Bond Registers and other Records, and in addition thereto the holdings by the Sinking Fund, the Literary Fund, and the Board of Public Works as of the same date which holdings the Defendant denies constitute any part of said Public Debt.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

For What Purpose Created.	By Authority of Acts of	Number of Loan.	Maturity.	Total.		Held by the Sinking Fund. Not admitted by Defendant as forming any part of Public Debt.		Held by the Board of Public Works. Not admitted by Defendant as forming any part of Public Debt.	Held by the Literary Fund. Not admitted by Defendant as forming any part of Public Debt.		Held by Individuals, Firms, Corporations, and others	
				5%	6%	5%	6%	6%	5%	6%	5%	6%
Brought forward				$ 449,200.00	$ 9,040,301.75	$40,000.00	$ 105,688.00	$146,500.00	$155,200.00	$664,017.33	$ 254,000.00	$ 8,124,096.42
Rivanna Navigation Co.	March 27, 1837 April 4, 1838	19	Regular.		6,300.00		300.00					6,000.00
Richmond & Danville Railroad Co.	March 9, 1847	46	"		380,090.00					2,000.00		378,090.00
Richlands to Kentucky Line Road	March 8, 1847	44	"		3,520.00							3,520.00
Rocky Mount Turnpike Co.	April 8, 1839 March 18, 1847 February 19, 1848	60	"		10,000.00					200.00		9,800.00
Rich Patch Turnpike Co.	March 14, 1849	87	"		1,100.00							1,100.00
Staunton & Parkersburg Road	March 16, 1838 April 8, 1839 February 19, 1845	16	Irredeemable for 20 years, and then to be redeemed.		125,393.27		880.02			17,800.00		106,713.25
do.	February 2, 1848 March 29, 1848	54	Regular.		4,500.00		200.00			2,400.00		1,900.00
do.	April 8, 1839 March 12, 1849	71	"		16,510.00							16,510.00
Salem & Peppers Ferry Turnpike Co.	March 25, 1839 April 8, 1839	30	"		5,400.00		500.00					4,900.00
Salem & Newcastle Turnpike Co.	February 11, 1839 April 8, 1839	38	"		3,875.00							3,875.00
South Western Turnpike Road	January 24, 1848 March 29, 1848	49	"		81,970.00					10,000.00		71,970.00
do.	January 17, 1848	55	"		153,162.00					30,000.00		123,162.00
Smiths River Navigation Co.	March 16, 1849	84	"		2,600.00							2,600.00
Tazewell Court House & Fancy Gap Road	March 17, 1849	78	"		3,420.00							3,420.00
Upper Appomattox Co.	February 28, 1837 January 25, 1839 April 8, 1839	9	"		43,900.00					6,000.00		37,900.00
Valley Turnpike Co.	March 24, 1838 February 14, 1839 April 8, 1839 February 12, 1841	22	"		233,813.00					1,400.00		232,413.00
do.	February 12, 1841	35	"		24,664.00		2,000.00					22,664.00
Virginia & Maryland Bridge Co.	March 17, 1849	63	"		10,000.00					1,800.00		8,200.00
Virginia & Tennessee Railroad Co.	March 6, 1849	81	"		66,800.00							66,800.00
Winchester & Potomac Railroad Co.	February 6, 1834 March 10, 1834 December 13, 1834	2	"		10,000.00					10,000.00		
do.	February 13, 1838	15	"	8,000.00	133,935.00						8,000.00	133,935.00
Wheeling, West Liberty & Bethany Turnpike Co.	March 29, 1848	52	"		10,867.61					2,400.00		8,467.61
Weston & Fairmont Turnpike Co.	March 9, 1848	66	"		4,000.00							4,000.00
Weston & Gauley Bridge Turnpike Co.	March 25, 1848 March 29, 1848	74	"		5,000.00							5,000.00
Wellsburg & Bethany Turnpike Co.	March 15, 1849	68	"		1,700.00							1,700.00
Williamsport Turnpike Co.	March 15, 1849	77	"		1,250.00					450.00		800.00
Registered Bonds	March 22, 1850	88	Irredeemable for 25 years, and then at the pleasure of the General Assembly.		2,340,648.00		19,800.00			48,500.00		2,272,348.00
Sterling Coupon Bonds	March 29, 1851	90	Redeemable in 35 years.	1,815,204.50							1,815,204.50	
Coupon Bonds	March 29, 1851	90	do.		13,082,500.00							13,082,500.00
Registered Bonds (coupon attached)	March 29, 1851 May 25, 1852	90	Redeemable in 34 years.		3,050,464.33		445,289.18			107,000.00		2,498,175.15
Registered Bonds issued for the redemption of outstanding Warrants	March 17, 1856	91	Irredeemable for 34 years, and then to be redeemed.		2,761,100.00		43,700.00			18,700.00		2,698,700.00
Registered Bonds issued in exchange for Coupon Bonds	March 18, 1856	92	Redeemable in 35 years.		1,059,500.00		546,000.00			1,000.00		512,500.00
Registered Bonds	March 18, 1858	93	Irredeemable for 34 years, and then to be redeemed.		530,300.00		125,200.00			6,200.00		398,900.00
Total				$2,272,404.50	$33,208,583.96	$40,000.00	$1,289,557.20	$146,500.00	$155,200.00	$929,867.33	$2,077,204.50	$30,342,659.43

PLAINTIFF'S EXHIBIT A-2

[The forms of Bonds which follow, 101 in number, Constitute the one Exhibit.]

Following are copies of the forms of the various bonds covered by this Exhibit arranged numerically with the following exceptions:

Loan Nos. 18, 20, 31, 32, 39, 53, 57, 58, 68, 70, 73, 78, 80, 82, 87, 90, 91, and J. R. 5, 6, 7, 8, 9, 10, 11

No cancelled bonds for these issues were found filed with the Treasurer of Virginia.

LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes; another Act passed on the 10th day of March, 1834, entitled, An Act to amend the charter of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX

per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of March 1839, entitled, "An Act to authorize a further increase of the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of January 1834, entitled "An Act to increase the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

and to authorize a subscription thereunto on behalf of the State, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1837, entitled "An Act to authorize the Board of Public Works to subscribe to two-fifths of the increased Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day above written.

$

LOAN No. 4.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd day of January, 1835, entitled, An Act authorizing the Board of Public Works to subscribe on behalf of the Commonwealth to the stock of the

RICHMOND FREDERICKSBURG AND POTOMAC RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 5.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1837, entitled, An Act to authorize a subscription on behalf of the State to the Stock of the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, of the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 25th day of February 1837, entitled, "An Act to authorize a subscription on behalf of the State of the stock of the

LOUISA RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th March 1838, entitled, An Act to authorize the

LOUISA RAILROAD COMPANY

to construct a railroad from some point on the line of their railroad to Charlottesville, and for other purposes, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 7.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of February 1837, entitled "An Act to authorize the

DISMAL SWAMP CANAL CO.

to increase their Capital Stock and to authorize the loans of the State to said Company to be converted into Stock", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

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LOAN NO. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 21st day of March 1837, entitled "An Act to amend the Act entitled an Act to provide for the construction of a road from

PRICES TURNPIKE TO CUMBERLAND GAP

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly, passed on the 2nd day of April 1839, entitled An Act to provide for the completion of that part of the road from

PRICES TURNPIKE TO CUMBERLAND GAP

which passes through the County of Lee" and a supplementary Act of 28th February 1842—the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

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LOAN NO. 8.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of any Act of the General Assembly of the Commonwealth of Virginia passed on the 8th day of March 1842, entitled "An Act to amend the Act passed January 22nd 1838, entitled, an Act to authorize the county courts of the counties of

BOTETOURT, TAZEWELL, GILES, RUSSELL, MERCER, SCOTT & LEE

to borrow money for certain purposes." The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 9.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

UPPER APPOMATTOX COMPANY.

The principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 11.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the twenty-first day of March eighteen hundred and thirty-seven, entitled "An Act providing for the payment of the Subscription of the State to

THE JAMES RIVER and KANAWHA COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th day of March 1836, entitled "An Act concerning

THE RAPPAHANNOCK COMPANY"

and of an Act concerning the States subscription to

THE RAPPAHANNOCK COMPANY"

passed the first day of March 1838 the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person, or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th March 1836 entitled, An Act concerning the

RAPPAHANNOCK COMPANY" and Act passed March 1st 1838

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 13.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1838, entitled An Act to repeal in part the fourth section, the Act entitled An Act to amend the several Acts concerning the

PETERSBURG RAIL ROAD COMPANY"

and for other purposes", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 14.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 31st day of March 1838, entitled, "An Act authorizing a loan on behalf of the state, to the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 15.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 13th February 1838

"WINCHESTER AND POTOMAC RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th March, 1838, entitled "An Act to provide for the Construction of a

TURNPIKE ROAD FROM STAUNTON TO PARKERSBURG"

and the third section of "An Act to provide for raising loans heretofore made to certain

RAILROAD COMPANIES

and for other purposes," passed 21st March 1839, the said loan to be redeemable at the expiration of twenty years from the day of , and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th February 1845, entitled, An Act for completing the

STAUNTON AND PARKERSBURG ROAD,"

and of An Act passed on the 8th April 1839 authorizing Loans for the payment of certain subscriptions and appropriations"; the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 17.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th day of March 1838, entitled "An Act to provide for the payment of the States subscription to the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY"

and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 19.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th day of March 1837, entitled, "An Act to au-

thorize a further subscription on behalf of the State to the Stock of the

RIVANNA NAVIGATION COMPANY"

as amended by an Act passed the 4th day of April 1838. The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 21.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1838, entitled, An Act concerning the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations",

VALLEY TURNPIKE COMPANY

Act 14th February 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth of Virginia aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of

Virginia passed on the 24th March 1838, entitled, An Act to provide for the construction of a road from

WINCHESTER TO STAUNTON

and for other purposes and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th February 1839, entitled, "An Act Concerning the

VALLEY TURNPIKE COMPANY"

and "An Act authorizing Loans for the payment of certain subscriptions and appropriations" passed 8th day of April 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 28th day of March, 1838, entitled, "An Act incorporating the

INDIAN DRAFT TURNPIKE COMPANY

(for the Red and Blue Sulphur Springs Turnpike Company) the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing loans for the payment of Certain Subscriptions, and Appropriations"

and An Act passed 23rd day of March 1839, entitled, An Act authorizing subscriptions on behalf of the Commonwealth to the original and additional Capital Stock of the

RED AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 24.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of April, 1839, entitled, an ACT authorizing a loan on behalf of the STATE to the

CITY POINT RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 25.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the second day of April 1839, entitled "An Act providing for the State's subscription to the Stock of the

PITTSYLVANIA, FRANKLIN & BOTETOURT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of 18 and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 26.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an ACT of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled "AN ACT authoriz-

ing loans for the payment of certain subscriptions and appropriations."

"NATURAL BRIDGE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 27.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the First of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839.

"DRAGON SWAMP NAVIGATION CO."

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 28.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "AN ACT" authorizing Loans for the payment of Certain Subscriptions and Appropriations.

HOLLIDAYS COVE TURNPIKE COMPANY

The principal whereof is irredeemable Twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 29.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia.

passed on the 8th day of April 1839, entitled AN ACT authorizing Loans for the payment of certain subscriptions and appropriations

CACAPON AND NORTH BRANCH TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 30.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled An Act authorizing Loans for the payment of certain subscriptions and appropriations"

SALEM AND PEPPERS FERRY TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 33.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839.

"LEWISBURG AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 34.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, executors, administrators or assigns, the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839 entitled "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

LAFAYETTE AND ENGLISH FERRY TURNPIKE COMPANY

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 35.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 12th day of February 1841, entitled, An Act authorizing the increase of the Capital Stock of the

VALLEY TURNPIKE COMPANY

and for other purposes; the principal whereof is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 36.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, semi-annually, on the first day of January and July, in specie or its equivalent; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of March, 1842, entitled, "An Act authorizing a loan to the

JAMES RIVER AND KANAWHA COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 37.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the eighth day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appro-

priations, "and An Act entitled, "An Act to increase the CAPITAL STOCK of the

LYNCHBURG AND BUFFALOE SPRINGS TURNPIKE COMPANY

etc., for other purposes, passed the 14th day of March 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate, is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 38.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, administrators, executors or assigns, the sum of Dollars, *being* interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations."

THE SALEM AND NEWCASTLE TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 41.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March, 1847, entitled An Act to authorize the Board of Public Works to purchase two-fifths of the Stock of

THE ALEXANDRIA CANAL COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 42.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing

LOANS for the payment of certain Subscriptions and Appropriations,

GILES, FAYETTE AND KANAWHA TURNPIKE COMPANY.

Act 1st February 1847, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 43.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March 1847, entitled "An Act to provide for the Completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes, the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the Pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 44.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions and Appropriations and An Act passed 8th March 1847, entitled, "An Act to provide for the Construction of a Turnpike Road from the Richlands in Tazewell to the Kentucky Line, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 45.

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TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of March 1847, entitled, "An Act providing for the extension of

LOUISA RAILROAD TO THE EASTERN BASE OF BLUE RIDGE"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 46.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th day of March 1847, entitled, "An Act incorporating the

RICHMOND AND DANVILLE RAILROAD COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of January, 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMOUNT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions, and Appropria-

tions," and an Act passed 14th January 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMONT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN NO. 48.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the third day of February 1848, entitled, "An Act authorizing a loan by the Commonwealth to the

RAPPAHANNOCK COMPANY"

the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN NO. 49.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th day of January 1848, entitled, "an Act to provide for the extension of the

SOUTH-WESTERN ROAD FROM ITS EASTERN TERMINUS TO THE TOWN OF BUCHANAN"

and also of an Act passed 29th March 1848, "entitled an Act prescribing the mode of raising funds for appropriations from the

PUBLIC TREASURY FOR INTERNAL IMPROVEMENTS",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations" also an Act passed 8th March 1847, entitled an Act to amend the Act passed 5th March 1846 incorporating the

HARDY AND WINCHESTER TURNPIKE COMPANY.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22nd day of February 1848, entitled, "An Act to provide for the completion of the

HARDY AND WINCHESTER TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled An Act to increase the State subscription to the Capital Stock of the

HARDY AND WINCHESTER TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th March 1849.

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th February 1848. Entitled, An Act to provide for Macadamizing the

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 52.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act to amend the Act incorporating the

WHEELING WEST LIBRARY AND BETHANY TURNPIKE COMPANY

passed the 20th day of March 1847," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 54.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 2nd February 1848, entitled, An Act making an appropriation for bridges on the

STAUNTON AND PARKERSBURG ROAD"

and also of an "Act passed 29th March 1848," entitled An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvements," the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 55.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1848, entitled "An Act to provide for the completion of the

SOUTHWESTERN TURNPIKE ROAD,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 56.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

LITTLE STONE GAP ROAD

Act 7th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 59.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

HOWARDSVILLE AND ROCKFISH TURNPIKE ROAD

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

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LOAN NO. 60.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations"

ROCKY MOUNT TURNPIKE COMPANY

Act 19th February 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 61.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements"

CLARKSBURG AND BUCHANAN TURNPIKE COMPANY

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 62.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Vir-

ginia, passed on the 15th March 1849, entitled, directing an additional subscription on behalf of the Commonwealth to the Capital Stock of the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

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LOAN No. 63.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of March 1849, entitled, "An Act to authorize a subscription to the Capital Stock of the

VIRGINIA AND MARYLAND BRIDGE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 64.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849, entitled, "AN ACT to amend the Act

'INCORPORATING THE ORANGE AND ALEXANDRIA RAILROAD COMPANY,'

passed March 27th 1848," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 65.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations"

MARSHALL AND OHIO TURNPIKE COMPANY. ACT 11TH FEB'Y 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 66.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum, per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th March 1848, entitled, An Act to provide for the construction of the

WESTON AND FAIRMONT TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 67.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations.

MOOREFIELD AND NORTH BRANCH TURNPIKE COMPANY, ACT 10TH MARCH 1848,

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

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LOAN No. 71.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 12th day of March, 1849, entitled, "An Act to provide for macadamizing certain parts of the

STAUNTON AND PARKERSBURG ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 72.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain Subscriptions and Appropriations

COAL RIVER NAVIGATION COMPANY ACT 17th MARCH 1849

the principle whereof is irredeemable for twenty years from day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 74.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements

WESTON AND GAULEY BRIDGE TURNPIKE COMPANY. ACT 25th MARCH 1848.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND. 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the the Treasury of the Commonwealth aforesaid, on the first day of Jan-

uary and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March, 1849, entitled "An Act to amend the Act passed April 3rd, 1848 ch. 75, concerning the

"NEWMARKET AND SPERRYVILLE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March 1849,

"NEWMARKET AND SPERRYVILLE TURNPIKE CO."

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 76.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled An Act authorizing loans for the payment of certain Subscriptions and Appropriations.

BERRYVILLE AND CHARLESTON TURNPIKE CO., ACT 12TH MARCH 1849.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 77.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th March 1849

"WILLIAMSPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 79.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 5th day of March, 1849, entitled, "An Act to incorporate the

BLUE RIDGE RAILROAD COMPANY

and for other purposes", the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 81.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the Ist day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849 entitled, "An Act authorizing a subscription for the Commonwealth to the Stock of the

VIRGINIA AND TENNESSEE RAILROAD COMPANY",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 83.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th March 1849, entitled, An Act to incorporate the

MOOREFIELD AND ALLEGHANY TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 84.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of March 1849, entitled "An Act amending An Act to incorporate the

SMITH RIVER NAVIGATION COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 85.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled "An Act to incorporate the

MORGANTOWN AND BRIDGEPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN NO. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvement"

OHIO RIVER AND MARYLAND ROAD, ACT 13TH JANUARY 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 86.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the public Treasury for internal improvement,

FISHING CREEK AND MORGANTOWN ROAD, ACT 13TH JANUARY 1848.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 88.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22d day of March, 1850, entitled "An Act providing for the

NEGOTIATION OF LOANS FOR THE PURPOSE OF INTERNAL IMPROVEMENT,

the principal whereof is irredeemable for twenty-five years from the , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 89.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of January 1850, entitled "An Act to provide for the completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes", the principal whereof is irredeemable for twenty-five years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 92.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on first January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 18th March 1856 entitled "An Act providing for and regulating the issue of Certificates of

REGISTERED STOCK

in lieu of Coupon Bonds, the principal whereof is redeemable after the day of (in lieu of Coupon Bond Number issued day of ,returned and cancelled.)

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 93.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators o assigns, the sum of Dollars, bearing interest at SI per centum per annum, from the day of payable a the Treasury of the Commonwealth aforesaid, on the first day of Jan uary and July in each year; being STOCK issued in pursuance o an Act of the General Assembly of the Commonwealth of Virginia passed on the 18th day of March 1858, entitled, An Act for the relie of certain Internal Improvement Companies and Holders of Debt on account of the

CONSTRUCTION OF STATE WORKS

by an issue of Certificates of State Stock, the principal whereof i irredeemable for thirty-four years from the day of and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. LOAN NO. 1—REISSUE.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1840, entitled "An Act providing

for the re-issue of certificates of State Stock due the Bank of Virginia"

J. R. Co.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. Loan No. 2.

TREASURY OFFICE OF VIRGINIA.

No. Richmond,

In pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th February 1823 entitled "An Act making more effectual provision to carry into effect the Act, entitled, an Act to amend the Act, entitled, an Act for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western waters, by the James and Kanawha Rivers, and for other purposes;" I, Treasurer of the Commonwealth of Virginia, do hereby certify, that the said Commonwealth is indebted to executors, administrators or assigns, in the sum of Dollars, with interest thereon from the date hereof at the rate of per centum per annum, payable semi-annually at the Treasury of Commonwealth aforesaid; the principal whereof is irredeemable for 20 years and afterwards to be redeemed at pleasure of General Assembly.

This Certificate is transferable on the books of the Second Auditor, by proprietor or proprietors, his, her, or their Attorney.

Witness my hand this day of 182

Countersigned.

$

J. L. LOAN No. 4.

TREASURY OFFICE OF VIRGINIA

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an "Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of February 1825, entitled ,"An Act making further provision to carry into effect the Act, entitled, "An Act, for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western Waters, by the James River and Kanawha Rivers, and for other purposes;" the principal whereof is irredeemable for twenty years, and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 1—N. W.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 19th day of March 1831, entitled, "An Act to provide for the construction of a turnpike road, from

WINCHESTER TO SOME POINT ON THE OHIO RIVER"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly within a period not exceeding fifteen years.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

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N. W. Loan No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February 1834, entitled "An Act further to provide for the construction of the

NORTH WESTERN ROAD"

as amended by an Act passed on the 7th February 1838"; the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. Loan No. 3.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1837, entitled, An Act further to provide for the construction of the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. Loan No. 5.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 26th day of January 1839, entitled, An Act to amend the Act, entitled, an Act to provide for the construction of the

"NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of January 1840, entitled an Act concerning loans heretofore authorized for the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 7.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1840, entitled, An Act to amend the several Acts concerning the

NORTH WESTERN TURNPIKE ROAD"

and an Act farther to amend the same passed 19th March 1840, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

BANK LOAN.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 19th day of March 1839, entitled, "An Act to provide for further subscriptions on the part of the State to

THE EXCHANGE BANK
and
NORTHWESTERN BANK OF VIRGINIA

the principal whereof is irredeemable for twenty years from the day of *in whole or in part, at the pleasure of the Commonwealth.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

*This language is vague. Possibly words "And then to be redeemed" just before "in whole or in part at pleasure of General Assembly" were intended to be inserted.

J. R. & K. LOAN (SEPARATE REGISTER).

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND,

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of 18 , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July of each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd March 1860, entitled, "An Act to amend the Charter of the

JAMES RIVER AND KANAWHA COMPANY"

the principal whereof is irredeemable for thirty-four years from the first day of January 1860, and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S SUPPLEMENTARY EXHIBIT A-1.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

The Amount of the Public Debt of Virginia.

PARAGRAPH I OF DECREE.

Supplementary Statement of Bonds Guaranteed by Virginia Outstanding January 1, 1861.

Undetermined contingent liability of the Commonwealth of Virginia with respect to the Bonds of the Chesapeake & Ohio Canal Co., as follows:

187 6% Bonds of $1,000 } in broken series of numbers
226 6% Bonds of $ 500 } from No. 1 to No. 1,495 ... $300,000.00

bearing dates from Nov. 13, 1847 to Nov. 9, 1849.

Of this issue of Bonds the following were redeemed by the Commonwealth of Virginia, April 11, 1903, (Transfer No. 2888) in her settlement with the United States for Virginia Bonds held by the Secretary of the Interior for the benefit of certain Indian Tribes:

No.	10	$1,000.00
	482	1,000.00
	487	1,000.00
	488	1,000.00
	857	1,000.00
	872	500.00
	873	500.00
	1048	1,000.00
	1140	1,000.00
	1419	1,000.00
	1420	1,000.00
	1490	1,000.00
	1492	1,000.00
	1493	1,000.00
		$13,000.00

These Bonds are guaranteed by the Commonwealth of Virginia under Act of March 8, 1847, Chapter 107.

Paragraph 1 (after preamble) recites the terms of the Guarantee as follows:

"I, A. B., Treasurer of the Commonwealth of Virginia, in conformity to an Act of the General Assembly, passed on the day of in the year eighteen hundred and forty-seven, do hereby pledge the faith of the state for the punctual payment of the interest, and the ultimate re-

demption of the principal sum of money appearing due by the within (or above) bond, according to the terms therein specified.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Richmond, Virginia, this of , Eighteen

A. B., Treasurer."

Payable 35 years after date of issue or in 1882, 1883 and 1884.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant agrees that the amounts shown above are correct, but denies that these bonds formed any part of the outstanding debt of the Commonwealth of Virginia on January 1st, 1861, or that they have since become such a debt; and claims that even if these bonds should be paid in full by the Commonwealth of Virginia, her remedy would lie against the Chesapeake & Ohio Canal Co., and not in any case against the State of West Virginia.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Other Evidence and Proceedings Relating to Paragraph I of the Decree.

[*Vol. 4, May 5, 1909.*]

[*Cross-Examination of Arthur G. Potter on Plaintiff's Exhibit A-1.*]

Mr. Carlisle: That is all. Take Exhibit A-1. This is a 254
schedule of bonds—

The Special Master: What exhibit do you refer to and what page?

Mr. Carlisle: A-1; the beginning.

The Special Master: The very beginning?

Mr. Carlisle: Yes. The first entry there is $161,600, on which there was outstanding on December 31st, 1860, $104,000. I will get you to state whether that $161,000 represents certificates of the same kind as the one you have just been speaking about—the James River Company.

The Witness: Yes, sir.

By Mr. Carlisle:

Q. So the others, the first one, No. 1—you do not know what that amount was?

A. I don't know what? 255

Q. You don't know what the amount of the first was?

A. Yes; $50,000.

Q. Then there were others there which brought the whole amount up to $161,000?

A. Yes, sir.

Q. Do you know whether or not those certificates are now held in the Literary Fund of the State of Virginia?

A. Those individual certificates are not held by the Literary Fund.

Q. You are sure of that, are you? I mean in the Treasurer's office. Perhaps I was mistaken about Literary fund.

A. I don't know whether they are in the Treasurer's office or not.

Q. You never saw them at all I understood you to say?

A. No, sir.

Q. That is all on that, then. On the last page of this summary schedule of bonds of internal improvement companies guaranteed by the Commonwealth of Virginia which were outstanding December 31, 1860—

The Special Master: That is the last page of Exhibit A-1?

A. Mr. Carlisle: Yes; and which were later paid by the State or converted to State bonds, there are quite a number of items there—

Mr. Harrison: What page?

Mr. McClintic: The last page, I think, or at least towards the last page.

Mr. Carlisle: General Anderson has his hand on it, I think. Here is the James River and Kanawha Company, 1823, total $475,475—

Mr. Anderson: The 23rd of March, 1839, is it? 256

Mr. Carlisle: That is the date of the authorizing act.

Mr. McClintic: We did not mean to put that in.

Mr. Carlisle: What do you know about that?

The Special Master: This item is on the last page of Plaintiff's Exhibit A-1

Mr. McClintic: The last page we have on this exhibit.

The Special Master: I don't find that.

Mr. McClintic: Headed Summary Schedule of Bonds of Internal Improvement Companies Guaranteed.

The Special Master: Let us be sure we are talking about the same thing. That is page 4 of mine.

Mr. McClintic: The pages may have been changed.

The Special Master: We must have them arranged so there will be no confusion. I shall have to ask you, Mr. Potter, to take the exhibits of West Virginia which are in your hands and those in mine and see that they are harmonious. I cannot stop every little while to correct the pages. Will you please attend to that during recess?

The Witness: Yes, sir.

By Mr. Carlisle:

Q. Did you make any investigation of this item that I have just read?

A. We examined the guaranteed bond registers and made a list of the bonds which were funded, cancelled or otherwise disposed of, after January 1, 1861.

Q. After 1861?

A. Yes, sir; those that were disposed of after that date we assumed to be open on that date.

Mr. McClintic: I would like to ask a question if I may be permitted.

The Special Master: Certainly. 257

By Mr. McClintic:

Q. Was not that actually assumed, that $475,000, by the State of Virginia, by the act of March 23rd, 1860?

A. I cannot answer that question.

Q. You made no examination of the acts to see whether it was guaranteed or owed by the State at that time, did you?

The Special Master: Is it your question whether or not they were for the first time assumed?

Mr. McClintic: As an actual obligation of the State, on the 23rd of March, 1860.

The Special Master: For the first time?

Mr. McClintic: Yes. Previous to that they were a guaranteed debt, I understand.

Mr. Carlisle: We say a contingent debt.

The Special Master: The question is whether or not on that date they were assumed for the first time as an absolute liability. That you do not know?

The Witness: I cannot answer that question without referring to my other papers.

By Mr. Carlisle:

Q. Did you look into any of these items shown on the page to which I have referred for the purpose of ascertaining the exact nature of the guarantee of the State to see exactly what the State did?

A. Yes; I searched among the records of the Treasurer's office, and found copies of all these guaranteed bonds except two. That was the 8th and 9th items on this page here covered by my foot note at the bottom of the page.

Q. Were those guarantees of the principal sums or were 258
they guarantees of the interest only, or guarantees of dividends; in what form did you find those guarantees?

A. I cannot say at this time, because I have not the bonds before me. I have no records to show; I don't remember.

Mr. Anderson: You have the records?

The Witness: I have not the records here. We have them, but not here. I don't remember the exact terms of those guarantees.

By Mr. Carlisle:

Q. Did you read the acts of the Legislature under which these guarantees were made?

A. I believe I read them all.

By Mr. McClintic:

Q. Did you read the act of March 23, 1860, in reference to the James River and Kanawha Company?

A. I don't know.

Q. You don't know whether they were actually assumed by the State, or not, before 1861, then?

A. No.

Mr. Carlisle: The treasurer is willing to come over and bring this certificate about which the witness has testified—certificate No. 1.

The Special Master: You say it can be produced?

Mr. Carlisle: Yes; I understand he is willing to produce it.

The Special Master: I understand that all the original sources of information—

Mr. Anderson: Do I understand that you request that now? 259

Mr. Carlisle: Yes; because I want to examine this witness about it.

Mr. Anderson: Now?

Mr. Carlisle: Not this minute.

The Special Master: If you can get it without inconvenience suppose you send out for it.

Mr. Anderson: Do you wish to interrupt the examination to produce it.

Mr. Carlisle: I want him to produce it so as to let the Master see whether it is an obligation of the State of Virginia or a debt due to Virginia.

The Special Master: Let some messenger go out then, and have the treasurer bring it in.

Mr. Carlisle: We have a copy.

The Special Master: If they concede it is a copy you can probably go on then.

Mr. McClintic: On this page we are now considering, in regard to the guaranteed bonds, I find an item of Valley Turnpike Company, I believe it is, fifty-five. Was not that assumed by the State as a direct obligation prior to the 1st of January, 1861?

The Witness: In regard to such, I cannot state.

By Mr. McClintic:

Q. You made no examination to find out?

A. Not that I remember; no, sir.

Q. You have on there, then, one item of $300,000 and one of $200,000 of the Chesapeake & Ohio Canal Company. I refer you to the $200,000 item. Did you make any examination to see whether or not that has been paid by the C. & O. Canal Company?

A. No, sir. 260

Q. Either before or after the 1st of January, 1861?

A. No, sir; the records were incomplete in regard to that issue.

Q. Did you make any investigation afterwards to see whether these are still outstanding debts or not?

A. I did not.

Q. You simply found they were guaranteed and apparently outstanding on the 1st of January, 1861, and stopped there?

A. Yes, sir.

Q. There is another charge there of $100,000 for the Virginia Central Railroad, which was afterwards changed to the C. & O. Did you make any investigation to see whether or not that was paid by the original maker of the paper?

The Special Master: When? Prior to January 1st, 1861, or subsequently?

Mr. McClintic: Whether it was paid at any time by the maker.

The Special Master: Your question is general?

Mr. McClintic: Yes.

By Mr. McClintic:

Q. Did you make any examination to see whether or not that was paid?

A. No; we took the evidence on the bond registers.

Q. You did not attempt to find out whether it had been paid or not?

A. No, sir.

Q. There is another item of $13,900 of the James River & 261
Kanawha Company that stands in the same relation as the other James River and Kanawha Company, does it? In other words, you made no examination to see whether it had been assumed directly by the State, did you?

A. No, sir.

Q. There is an item of $15,000, Alexandria Canal Company. Did you make any examination to see whether it had been paid or not?

A. We made no examination in any of these cases because we did not have access to the books of these companies; we could not tell without access to their books whether the Company had taken up the obligation or not.

Q. Did you try to find out in any case whether they had been taken up or not?

A. Yes; we used every effort to determine from the State archives whether or not there were.

Q. Did you ask the Alexandria Canal Company people whether they had taken it up; did you make any attempt to find out from the company?

The Special Master: Did you make any application to any of the officers of the company?

A. I believe we did, yes sir. We wrote to the General Manager of the Chesapeake & Ohio Canal Company and asked him if the books were in existence, and he said he did not know anything about it.

The Special Master: Will you repeat that?

The Witness: We told him we would like to know if the account books of the canal with reference to the cost, etc., were conveniently at hand. He did not answer that question. He said, "I have none of the old maps and am not prepared to report on the matter."

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By Mr. McClintic:

Q. Who is the General Manager of the Chesapeake & Ohio Canal Company?

A. G. L. Nicholson.

Q. Where does he reside?

A. At that time 5039 Q Street, Georgetown.

Q. Did you make any attempt to find out whether the $100,000 of the Virginia Central and C. & O. Railroad Company bonds had been disposed of, paid by anybody on the outside?

A. No.

Q. Is not the C. & O. Railroad Company's principal office in the City of Richmond?

A. Oh; the C. & O. Railroad. Yes, I believe it is.

Q. And you made no attempt to find out whether that $100,000 debt had been paid or not?

A. No, sir.

Q. Did you make any attempt to find out from the Alexandria Canal Company whether that $15,000 had been paid or not?

A. No; we did not ask that question.

Q. Why did you include those items guaranteed without attempting to find out whether or not they are still outstanding obligation?

A. Because in the case of the Alexandria Canal Company, it was a bankrupt company, and as long as the State guaranteed the old company they took care of the bonds.

Q. Who told you that?

A. I cannot tell.

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Q. Was that information satisfactory to you?

A. It was satisfactory at the time, yes, sir.

Q. What were you told by anybody in reference to the Chesapeake & Ohio or Virginia Central $1,000,000?

A. I don't remember.

Mr. Carlisle: The treasurer is here now and if you will allow us to put him on the stand for a question or two—

The Special Master: He had better take the witness stand.

Whereupon

A. W. HARMON

(not sworn, testified as follows):

(Note.—It was agreed by counsel that the witness need not be sworn and that his testimony should be regarded as taken under oath.)

The Special Master: You are the Treasurer of the Commonwealth of Virginia?

The witness: Yes, sir.

By Mr. Carlisle:

Q. I ask you whether you as Treasurer of the State of Virginia have in your possession one or more certificates issued by the James River Company under the act of February 17th, 1820?

A. I have, sir.

Q. The originals?

A. Yes, sir. I have four.

Q. Will you produce them here, and let us use them for the present? We will have copies made for the record.

A. Yes, sir.

Mr. Carlisle: I will read a copy into the record.

The Special Master: Do you wish this to appear as an exhibit? You wish to retain the copies? 264

The Witness: Yes, sir.

Mr. Carlisle: That is my suggestion.

The Special Master: I think we can save time if the witness will hold the original while you read the copy, to see that it is correct.

Mr. Anderson: Do you know these to be correct copies, Mr. Dixey?

Mr. Dixey: Yes; they are correct, even as to the punctuation.

Mr. Carlisle: These are copies of the certificates themselves, and also the endorsements on the back. Will you please look at this.

Mr. Dixey: That endorsement is a foot note.

Mr. Carlisle: Will you please follow the original while I read this.

Mr. Carlisle read as follows:

CERTIFICATE No. 1. SIX PER CENT STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th day of February, 1820, entitled

'An Act to amend an act entitled "An Act for clearing and improving the Navigation of James River," and for uniting the eastern and western waters by the James and Kanawha Rivers,' and by the 13th section of which act the James River Company are authorized and required to borrow money, on the terms, and in the manner therein specified, the James River Company do hereby certify, that there is due from the James River Company unto the President and Directors of the Literary fund the sum of fifty thousand dollars bearing interest at the rate of six per centum per annum from the fifteenth day of July one thousand eight hundred and twenty, being so much money borrowed of the said President & Directors of the Literary fund by the James River Company, the interest on which, at the rate of six per centum per annum, shall be paid, by the James River Company, semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be irredeemable for twenty years, from and after the fifteenth day of March one thousand eight hundred and twenty, and from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly—which said debt is duly registered in the books of the James River Company, and this certificate thereof transferable only on said books—Certified under the common seal of the James River Company, and signed by John Coalter, the President of the said Company for the time, being and counter signed by Robert Pollard, their clerk. 265

(Signed) JNO. COALTER, President.

Teste:

(SEAL.) (Signed) ROBERT POLLARD, Clerk.

Registered 1 June, 1823.

J. BROWN, JR., 2d Auditor.

Note.—Those portions of this copy, which are underlined, thus, appear on the original in manuscript. 266

Written in red ink across the face of the original:
Funded, Nov. 12/73, W. N. Newman.
Stamped in blue ink across the face of the original:
Commonwealth of Virginia, Funded, Nov. 12, 1873, Second Auds. Office.

Endorsed on the original in manuscript:

1821. June 15th. Paid half years interest due 1 January last, paid this day Robert Pollard.

August 24. Paid half years interest due 1 July last—paid this day (Signature dittoed.)

1822. February 16th. Paid half years interest due 1 January last, paid this day (signature dittoed.)

The Special Master: I understand that the defendants offer these exhibits under the 1st paragraph in the decree, and that they will be Defendant's Exhibits A-2, A-3, A-4 and A-5?

Mr. Carlisle: Yes, sir.

The papers referred to were accordingly marked as follows:

Certificate No. 86, Defendant's Exhibit A-3. 267
Certificate No. 87, Defendant's Exhibit A-4.
Certificate No. 88, Defendant's Exhibit A-5.

The exhibits referred to are as follows:

(Defendant's Exhibit A-3.)

CERTIFICATE No. 86.

In lieu of Original Certificate No. 67.

STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th February, 1820, entitled "An act to amend the act, entitled An act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western Waters by the James and Kanawha Rivers," by which acts the James River Company are authorized and required to borrow money on the terms and in the manner therein specified, the James River Company do hereby certify that there is due from the James River Company unto the President & Directors of the Literary Fund the sum of Six thousand dollars bearing an interest at the rate of Six per centum per annum, from the first day of July one thousand eight hundred and twenty-seven, being so much money borrowed by the James River Company, the interest on which, at the rate of Six per centum per annum, shall be paid by the James River Company semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be

irredeemable for twenty years, from and after the fifteenth day of March, one thousand eight hundred and twenty, and from 268
and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly; which said debt is duly registered in the books of the James River Company, and shall be transferable only on said books by the said President & Directors of the Literary Fund personally, or by their Attorney.

Certified under the common seal of the James River Company, and signed by William B. Giles Esq., the President of the said Company for the time being, and countersigned by James Brown Junior their Clerk, the 5th July, 1827.

(Signed) WM. B. GILES, President

Teste:

(SEAL.) (Signed) JAMES BROWN, JR., Clerk.

Note: Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original: p Funded. November 12, 1873. W. N. Newman.

Stamped in blue ink across the face of the original: Commonwealth of Virginia. Funded, November 12, 1873. Second Auds Office.

(Defendant's Exhibit A-4.) 269

CERTIFICATE No. 87.

IN LIEU OF ORIGINAL CERTIFICATES No. 61, 62, 63, 64, 65 & 66, OF 1,000 DOLLARS EACH.

STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th February, 1820, entitled "An act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western Waters by the James and Kanawha Rivers," and by one other act passed the 28th February, 1821, entitled "An act to amend the act, entitled "An act to amend the act, entitled an act to amend the act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western Waters by the James and Kanawha Rivers," by which acts the James River Company are authorized and required to borrow

money in the terms and in the manner therein specified, the James River Company do hereby certify that there is due from the James River Company unto the President & Directors of the Literary Fund the sum of Six thousand dollars bearing an interest at the rate of Six per centum per annum, from the First day of July one thousand eight hundred and twenty-seven, being so much money borrowed by the James River Company, the interest on which, at the rate of Six per centum per annum, shall be paid by the James River Company semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the prinicipal whereof shall be irredeemable for twenty years, from and after the fifteenth day of March, one thousand eight hundred and twen- 270
ty, and from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly; which said debt is duly registered in the books of the James River Company, and shall be transferable only on said books by the said President & Directors of the Literary Fund personally, or by their Attorney.

Certified under the common seal of the James River Company, and signed by William B. Giles Esquire, the President of the said Company for the time being, and countersigned by James Brown Junior their clerk. 20th August, 1827.

(Signed) WM. B. GILES, President

Teste:

(SEAL.) (Signed) JAMES BROWN, JR., Clerk.

Note: Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original: Funded November 12, 1873, W. N. Newman.

Stamped in blue ink across the face of the original: Commonwealth of Virginia. Funded, November 12, 1873. Second Auds Office.

(Defendant's Exhibit No. A-5.) 271

CERTIFICATE No. 88.

In lieu of Original Certificate No. 76.

STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th February, 1820, entitled "An

Act to amend the act, entitled An act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western waters by the James and Kanawha Rivers," and by one other act passed the 28th February, 1821, entitled "An act to amend the act, entitled An act to amend the act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western waters by the James and Kanawha Rivers," by which acts the James River Company are authorized and required to borrow money on the terms and in the manner therein specified, the James River Company do hereby certify that there is due from the James River Company unto the President & Directors of the Literary Fund the sum of Three thousand dollars bearing an interest at the rate of Six per centum per annum, for the First day of July, one thousand eight hundred and twenty-seven, being so much money borrowed by the James River Company, the interest on which, at the rate of Six per centum per annum, shall be paid by the James River Company semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be irredeemable for twenty years, from and after the fifteenth day of March, one thousand eight hundred and twenty, and from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly; which 272
said debt is duly registered in the books of the James River Company, and shall be transferable only on said books by the said President & Directors of the Literary Fund personally or by their Attorney.

Certified under the common seal of the James River Company, and signed by William B. Giles Esquire, the President of the said Company for the time being, and countersigned by James Brown Junior their clerk, 20th August, 1827.

(Signed) WM. B. GILES, President.

Teste:

(SEAL.) (Signed) JAMES BROWN, JR., Clerk.

Note: Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original: Funded November 12, 1873, W. N. Newman.

Stamped in blue ink across the face of the original: Commonwealth of Virginia. Funded, November 12, 1873. Second Auds Office.

Mr. McClintic read aloud Exhibits A-3, A-4 and A-5, as hereinbefore set forth, the witness, Treasurer Harman, holding 273
the originals, and comparing them with the copies which were read.

By Mr. Carlisle:

Q. Can you state whether or not the books in your office show that prior to the 15th day of July, 1820, the Literary Fund lent to the James River Company $50,000?

A. The books of my company showed that they lent the Company?

Q. Yes. Would it pass through your office?

A. I have not looked to see. I don't think it would.

Q. Would it probably be shown on your books, or shown on the books of the Literary Fund?

A. It would be shown on the books of the Literary Fund, I think, sir.

Q. Do you know whether it is a fact or not that this certificate dated July, 1820, was issued as evidence of an indebtedness of the company to the State on account of the loan made?

A. Yes; I think these certificates show that.

Q. I will not ask anything about the other certificates because they are dated within a period when we admit that the debt was being created in other ways; so it would cut no figure on this question as to the beginning of the debt?

The Special Master: What do you understand this to mean: "Registered June 1st, 1823. J. Brown, Jr., Second Auditor"?

The Witness: I think the reason of it is that the Second Auditor's office was established in 1823, and after it was es- 274
tablished these matters were all of record in the Second Auditor's office.

Mr. Spooner: I think that will be clear to your Honor when we read the Act of 1823.

Mr. Carlisle: Which recites the loan.

Mr. Spooner: Which explains it.

The Special Master: These may be returned to the treasurer, I understand, the copies remaining on file as exhibits?

Mr. Carlisle: Yes.

The Special Master: Do you desire to cross examine, Mr. Conrad?

Mr. Conrad: No sir.

The Special Master: Do you desire to cross examine, Mr. Attorney General?

Mr. Anderson: No sir.

Whereupon

ARTHUR G. POTTER,

resumed the stand for further
Cross Examination.

By Mr. McClintic:

Q. I want to ask one other question on the line I was on when the treasurer came in.

In your total of the public debt of the Commonwealth of Virginia on the 1st of January, 1861—and please state the amount so we will be sure we understand each other correctly. 275

Mr. Anderson: Page 5?

Mr. McClintic: I ask him to state the amount.

Mr. Anderson: I don't know which page you are speaking about.

Mr. McClintic: I don't know either.

The Witness: $34,707,908.96.

By Mr. McClintic:

Q. Does that include this guaranteed debt?

A. No sir.

Q. The guaranteed debt is in excess of that different amount?

A. In excess of that different amount.

Q. Does that include the amount held by the literary fund of the State of Virginia.

A. It does.

Q. How much do you include of the bonds in the literary fund on the 1st of January, 1861?

A. $1,037,567.33.

Q. How much do you include of the bonds of Virginia in the sinking fund the 1st of January 1861?

A. $1,329,557.20.

Q. And in this literary fund do you include the four certificates which have just been put in evidence?

A. No. 1; 86, 87, and 88, amounting to $665,000.

By Mr. Carlisle:

Q. Did you find any evidence in the public records, the original books or official reports of the officers of the state, anything to show that these bonds which were held in the literary fund and the board of public works on the 1st of January 1861, 275½ had ever been issued to the public and sold?

A. I did not examine them with the idea of finding out whether they had ever been in the hands of the public, no.

Q. You found nothing to indicate whether they had ever been issued by the state and put on the market and sold?

A. I made no examination.

Q. You made no examination to ascertain that?

A. No sir.

Q. That is all on that point.

TESTIMONY OF THOMAS B. DIXCY (Resumed).

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[*Vol. 5. May 6, 1909. Defendant's Exhibit A-1*]

By Mr. McClintic:

1. I hand you exhibit marked Defendant's Exhibit A-1.

If the court please, we desire to offer in evidence a statement of the debt under the 1st paragraph of the decree which we call defendant's exhibit A-1.

You have a copy of that?

A. I have a copy marked "original."

Q. Will you please look at that and identify that?

A. This is the one made by me.

(The document referred to was accordingly marked by the stenographer Defendant's Exhibit A-1.)

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By Mr. McClintic:

Q. Was this signed by you on the 1st day of December?

A. It was signed by me on the 1st day of December.

Q. State to the Commissioner what that exhibit contains in a general way.

A. This is an exhibit showing the amount of State bonds or certificates of indebtedness issued on account of various public improvements, itemized, and the total thereof, from March 19, 1823, to January 1st, 1861, showing the number of the loan, the act of the legislature under which the certificate was issued, the rate per cent, the total amount issued, and the disposition of parts of the entire authorized issue from time to time; and the amount of the public debt outstanding on the 1st day of January, 1861, of each individual issue of these bonds or certificates of State debt.

Q. What amount do you report as being outstanding on the 1st day of January, 1861?

A. On page 7, $32,919,863.93.

Q. Does that total contain therein anything on account of the bonds held by the Literary Fund?

A. It does not.

Q. Does it contain anything on account of the bonds held by the Sinking Fund?

A. It does not.

Q. Does it contain anything on account of guaranteed bonds which were made by other parties and guaranteed by the State at the time?

A. It does not.

Q. Have you personally examined each of the items that 501
make up this schedule?

A. I have personally examined each of the items and I made the schedule.

Q. Is this schedule from such an examination?

A. It is correct from the books of original entry of the Commonwealth of Virginia.

Q. Does that total just given by you as of January 1, 1861, contain anything for interest that might have accrued in the year 1860?

A. No, sir; it does not.

Q. Mr. Dixey; did you examine the plaintiff's exhibit A-1, filed here some time since?

A. I have examined it.

Q. I find on the last page thereof certain items of what was called the guaranteed debt or bonds of the Commonwealth of Virginia which were outstanding January 1, 1861, inthe name of the James River & Kanawha Company, three items; one of $475,475; one of $55,000; and one of $13,900. State, if you know, whether they were outstanding on the 1st day of January, 1861.

A. They were not guaranteed bonds. They had been assumed prior to that date by the Commonwealth of Virginia and were actual obligations of the Commonwealth of Virginia.

Q. Are they included in the total given by you of the Virginia debt?

A. Yes; they are.

Q. I find on the same page of plaintiff's exhibit A-1, two items: Chesapeake & Ohio canal, $300,000; the Chesapeake & Ohio Canal Company, $200,000. State, if you know, whether those were outstanding, on January 1st, 1861? 502

A. The item of $200,000 was not outstanding. It had been retired prior to January 1st, 1861. The item of $300,000 appears to be still outstanding.

Q. You mean outstanding at this time?

A. Still outstanding; yes, sir. We are informed that the books containing the record of that were destroyed in the Baltimore fire.

By the Special Master:

Q. Do you mean of the $300,000 item?

A. Yes.

Q. You do not include the $200,000 now?

A. That was retired, had been retired prior to January 1st, 1861.

By Mr. McClintic:

Q. How retired?

A. They had been paid off, taken up by the company.

Q. The $200,000 item had been paid and it was no longer an obligation of anybody?

A. It was not an obligation; no, sir.

Q. On the same exhibit I find "Virginia Central Railroad"——

The Special Master: Does the $300,000 enter into your aggregate?

The Witness: No, sir; it does not. As a State obligation. Their status is still undetermined. There is no principal obligation on the part of the Commonwealth of the State of Virginia for those bonds as yet.

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By Mr. Anderson:

Q. You mean the Chesapeake & Ohio canal?

A. Yes.

Q. No obligation as guarantor?

A. No; not as yet.

The Special Master: Guarantor of the principal sum?

The Witness: They guaranteed interest and the ultimate payment of the principal, and they have not yet paid the principal.

By Mr. McClintic:

Q. On the same page I find "Virginia Central Railroad", the name of which was afterwards changed to the C. & O. Railroad, $100,000. What has become of that, if you know?

A. In the refunding mortgage of the Chesapeake & Ohio Railroad I believe that obligation was assumed. I was so informed by Mr. Henry T. Wickham, General Solicitor of the Company. It was paid off by the Company.

The Special Master: So that does not exist as a liability against any one?

The Witness: No, sir.

By Mr. McClintic:

Q. On the same page I find "Alexandria Canal Company, $15,000." Tell the Commission what you know about that, as to its existence or non-existence, and if paid, by whom?

A. I am not testifying from exact knowledge now, sir. There is a report in the files of the Circuit Court here in Richmond to the effect that those bonds have been paid. I sent a man to Alexandria and made inquiry there and they said that in the course 504
of the suit (the Mayor and the Auditor of Alexandria told me this) the matter had been transferred to Richmond, and they thought

it was on record there. Inquiry into the records developed that fact in the report of the Commission. They referred to that in the report of the Commission. They referred to that loan as having been paid.

The Special Master: Did it give the date of payment?

The Witness: I have it here in the papers. I haven't it immediately in front of me.

Mr. Conrad: Did you say paid by whom?

The Witness: It was paid not by the State.

By Mr. McClintic:

Q. The first item of the exhibit Plaintiff A-1 was outstanding December 31, 1860, say $104,000, which was apparently a part of an issue of $161,600. Was the sum of $104,000 outstanding December 31, 1860, as a fact?

A. That was not a State obligation.

Q. I understand, but I am asking was that sum, $104,000 was outstanding.

A. Conceding those conditions, there was not $104,000 outstanding. $65,000 of that issue of bonds, or of certificates of indebtedness, were held by the Literary Fund.

Mr. Harrison: What do you mean by "those conditions"; what do you refer to?

The Witness: The conditions in the report.

By the Special Master:

Q. What about the balance of $104,000; do you account for that $39,000?

A. The balance of that was another loan altogether. That 505
remaining balance of $39,000 was not James River bonds at all, but bonds issued to the Presidents and Directors of the Bank of Virginia.

Q. Is it an obligation of the State of Virginia?

A. That $39,000 issued to the Bank of Virginia became an obligation on the State of Virginia in 1840.

Q. But the $65,000 you say never has become an obligation?

A. It has not, as shown by the original certificates presented here the other day, amounting to $65,000?

Q. Now in the hands of the Literary Fund?

A. They are not now. They were until 1871.

Q. They were in 1861?

A. They were in 1861, and until 1871.

By Mr. Spooner:

Q. Are those the certificates that were read here the other day?

A. Yes; those are the ones.

By Mr. McClintic:

Q. There were certain coupon bonds, I believe, without referring to the plaintiff's exhibit at the exact point, representing in pounds a certain amount. Did you find that amount as set out on plaintiff's exhibit A-1 correct?

A. I did not find it correct.

The Special Master: What is the particular item?

Mr. McClintic: I do not know where to look for it.

The Special Master: You ought to direct your inquiry specifically to it, because otherwise I cannot trace it.

The Witness: On page 6.

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The Special Master: You must have the items specified and the pages, because I cannot follow this out without that. You say you think it is on page 6. What is the item?

The Witness: I think it is the third item from the bottom.

Mr. McClintic: It is on the second page of plaintiff's Exhibit A-1, included, I think, in some large items at the bottom of the page.

The Special Master: Well, that items—because it is necessary for me to trace this and it is difficult to do so unless you locate them.

Mr. McClintic: They were issued under the Act of the 29th of March, 1851, the bottom act on page 2 of plaintiff's exhibit No. 1.

The Special Master: That is at the bottom of page 3, the coupon bond?

Mr. McClintic: Page 2, as I have it.

The Special Master: Let us get all your exhibits harmonious with mine.

Mr. McClintic: I made a mistake.

The Special Master: Then it is page 3, the item marked No. 90, coupon bonds $14,947,500. Is that the item you inquire about?

Mr. McClintic: Yes. I will ask the stenographer to strike the other question out.

By Mr. McClintic:

Q. Did you examine the items composing the large item of coupon bonds?

A. I examined them all.

Q. Did you find an item of 375,000 pounds sterling?

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A. Yes, sir.

Q. Please state to the court what you make that on your exhibit in American dollars.

A. It is shown on page 6 of defendant's Exhibit A-1, the third item from the bottom.

Q. You make it $1,815,204?

A. Yes, sir. I may say in connection with that, that it is shown on the Auditor's books that $5 is the par exchange, and I make it that it should be $4.8665.

Q. On that date?
A. On that date.
Q. And at what value in the plaintiff's exhibit?
A. $5 in the plaintiff's exhibit.
Q. Do you know what difference that would be?
A. $49,000 and odd dollars. I have not the amount immediately before me. It is a little short of $50,000.

By the Special Master:
Q. Have you got your notes so you can refer to them?
A. Yes, sir.
Q. Then put that into your testimony. You must give me the specific amounts on all items like that.
A. The exact amount of the difference?
A. Yes.
A. Between the $1,865,000, which would be the total at $5, and at the proper par of exchange, or $4,8665, is $49,759.50?

Mr. Harrison: Does the difference between yours and Mr. Potter's statement arise out of the difference you took in the matter of exchange? 508
The Witness: It is entirely a matter of exchange. That is to say, it was figured out $5 in the Auditor's books and on your statement.

By the Special Master:
Q. Is your only criticism of the item mentioned as $14,947,500. at the bottom of page 3, this one relating to the question of exchange?
A. I have not the plaintiff's exhibit before me and I cannot testify to that item from memory. Can I have that copy?
(After examination of paper) Will you state the question.

The last question was repeated by the stenographer as above recorded.

Q. (Continuing) That is, is there any other discrepancy between your computation and the computation of Mr. Potter, as appearing in that item?
A. No, sir; there is none.
Q. So there is that difference between the two only?
A. Yes, sir.

By Mr. McClintic:
Q. On what date was that power of exchange made?
A. January 1st, 1861?
Q. The date on which this outstanding account is fixed?
A. Yes, sir; the date of the account.

By Mr. Harrison:

Q. Did you see one of the bonds?

A. No, sir.

Q. You do not know what the bond said on its face as to the rate of exchange?

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A. No; but it was entered in the Auditor's books at $5, and on your statement at $5. The obligation was not $5 at that date.

The Special Master: At what date was the entry made on the books, if you remember; that is, bearing on the question of exchange?

The Witness: I will have to go to the original books for that.

By Mr. McClintic:

Q. Tell the court, if you know, about an annuity of the James River Company on which the interest had been guaranteed by the State and which was funded before January 1st, 1861.

A. That is shown on this exhibit, on page 3.

Mr. Harrison: On your exhibit?

The Witness: On this exhibit, yes; on page 3. It is the last item under the head of the James River Company, shown in the total column as $350,000 and referred to in note 3 at the end of the statement. The note is as follows:

"The amount of $350,000 here shown was not evidenced by any form of certificate of debt prior to January 1st, 1861, but is the principal amount required to produce annually at 6 per cent interest the sum of $21,000, guaranteed forever to the stockholders of this Company (The James River Company) by the act of March 23rd 1860. It was later actually funded on this basis under the acts of 1871 and 1872, known as the Consol and Peeler acts."

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The Special Master: When you say no certificate of debt, you mean no certificate of debt for the State of Virginia?

The Witness: Yes. These certificates were drawing 15 per cent and the State at this time assumed this obligation and converted them, under this act of March 23rd, 1860, and issued bonds for $350,000, which funded them.

Mr. McClintic: Please take the defendant's Exhibit B-1.

Mr. Harrison: Are you passing now from your Exhibit A-1?

Mr. McClintic: Yes, sir.

Mr. Harrison: That schedule has been admitted in evidence?

The Special Master: Yes; A-1 has been introduced and admitted in evidence.

[*Vol. 6, May 7, 1909. Cross-examination of T. B. Dixcy.*]

By Mr. Harrison:

Q. I understood you to say, Mr. Dixcy, that the origin of the debt which you have been engaged in investigating com- 589
menced with——

A. March 19, 1823.

Q. Yes; and on your statement you take as the first debt created by the State of Virginia an issue of bonds which you describe as the James River Company No. 2.

The Special Master: On what page is that?

Mr. Harrison: I am on page 3, about the middle of the page of defendant's schedule.

By Mr. Harrison:

Q. That is correct, is it?

A. Will you repeat that.

Q. I say you begin with a debt which you describe on your schedule as James River Company No. 2, do you not?

A. Loan No. 2 of the James River Company; that is the first debt.

Q. Mr. Potter, in his schedule of the debt, begins with a debt described as James River Company No. 1, does he not?

A. Yes.

Q. The James River debt No. 1, with which Mr. Potter's schedule begins, was created February 17, 1820?

A. Yes, sir.

Q. And the James River debt No. 2, with which you begin, was created under the Act of March 19, 1823? 590

A. February 24th——

Q. February 24, I mean, 1823; that being a difference in time of some three years or more?

The Special Master: Three years and four months.

Mr. McClintic: Mr. Potter took in arrearages back to October 19.

The Special Master: Yes; from that up to March 19, would be about three years and four months.

By Mr. Harrison:

Q. Why did you not begin with the debt described as James River Company No. 1?

A. Because no part of that debt was a debt of the Commonwealth.

Q. What is your authority for that statement?

A. The act of February 17, 1820.

Q. You then base your statement on your construction of the Act of February 17, 1820?

A. My construction, which was submitted to counsel.

Q. It was your own construction confirmed by counsel, or was it counsel's construction to you?

A. They instructed me to exclude any bonds issued under that act.

Q. Now, was there any difference in the way the James River Company's debt No. 1 was treated on the books of the Commonwealth of Virginia as compared with the way the James River Company's debt No. 2 was treated upon her books?

The Special Master: What was the difference in the orig- 591
inal entries, if any?

The Witness: There was not any difference. There were no entries on the books of the Commonwealth until long after the actual creation of this debt, and then they were lumped together in one entry.

By Mr. Harrison:

Q. My question was—

A. No sir; there was not any difference.

Q. Then, so far as the books of the Commonwealth of Virginia show, the James River debt No. 1 was as much a debt of the Commonwealth as James River debt No. 2?

A. You are confining that question to the books? So far as the books show, that was the case, yes, sir.

By The Special Master:

Q. What was the date of the first entry you found on the books referring to these two items?

A. I would like to refer to my notes.

Q. You had better have your notes handy.

A. I can get that first entry or submit the original record.

Q. The question is what is the date of the first entry on the books that relates to either one or both of these items. I understood they were both included in one entry.

A. They were.

By Mr. Harrison:

Q. Were not the entries on the books of Virginia in regard to James River Company debt No. 2 on the same book with the entries in regard to James River Company debt No. 1? 592

A. The original entry included both.

Q. Was not that book a record of the obligations of the Commonwealth?

A. I would like to qualify that. I do not know that that is a book of the Commonwealth of Virginia at all. It is marked on the back "James River Company."

Q. Is this the book? I hand you now the book of original entry that we are talking about and I will ask you to identify it.

A. (After an examination of book). We were talking about different books. This is the register.

Q. That is a register of the bonds of the Commonwealth, is it not?

A. It is a register of sundry acts from the 24th of February, 1823, to the 11th of March, 1844, according to the back of the book.

The Special Master: Have you the book of original entry?

Mr. Harrison: What we are concerned with is what it contains.

The Witness: That is the endorsement on the back of the book.

Mr. Harrison: Now, tell us what it contains.

The Witness: This book contains here a record, not necessarily on the original entry, of certificate No. 1. It may be simply a register of that certificate.

The Special Master: Well, read the entry and put it in the record, so it will show for itself.

The Witness: It says No. I. 593

The Special Master: In the first place, give the heading.

The Witness: There is no heading.

The Special Master: Oh, yes. There is "No.," "Date," "Amount."

By Mr. Harrison:

Q. Let me ask you this question. Did you ever see that book before?

A. Oh, yes; we have gone over it carefully.

Q. Did you use it in your compilation?

A. Yes, sir.

The Special Master: Do you wish this entry in the record?

Mr. Harrison: Yes, sir.

The Special Master: Then let us have it. First give the headings, and then say No.— No. 1; and then date.

The Witness: "Date 1820; 15th July.

"Amount; 50,000.

"To whom issued; President and Directors of the Literary Fund.

"Place of residence, Richmond.

"When transferred. ————

"To whom transferred. ————"

Do you wish me to go further?

The Special Master: No, I think not. Whenever we put any of these entries in we will have as near as we can exact fac similes of the entries.

By Mr. Harrison:

Q. I will ask you to look at page 1 there and read a memorandum note entered there opposite the bonds No. 21 to 30 inclusive of the issue of February 17, 1820. Please read that note. I want to get it in the record.

A. The issue of February 17, 1820. 594

Mr. McClintic: What was that question?

(The question as above recorded was repeated by the stenographer).

By Mr. Harrison:

Q. Do you say that note does not relate to bonds issued under the act of February 17, 1820?

A. Just a second—

The Special Master: Do you want what the books show or the knowledge of the witness independent of the book?

Mr. Harrison: I want what the books show first.

The Witness: I may say that the only certificate issued under the Act of February 17, 1820, was certificate No. I, for $50,000. These bonds which you are alluding to come under the following act.

By Mr. Harrison:

Q. Please read that memorandum for me.

A. (Reading):

"1st May, 1840, certificates 21 to 30, both inclusive, cancelled under the Act provising for a reissue of certificates of State stock due the bank of Virginia, passed 18th March, 1840, and new stock issued therefor. See folio 22. (Part of $40,000.)"

Q. Am I to understand you to say that that was not a reissue under the Act of February 17, 1820? 595

A. It was not a reissue.

Q. On what authority do you make that statement?

A. As a matter of fact it was not a reissue. It was an issue by the State, a funding in 1840 of certain certificates of indebtedness which had been issued by the James River Company in 1822.

Q. Part of the note that I asked you to read refers you to folio 22, does it not?

A. Yes, sir.

Q. When you turn to folio 22 you find the explanation of that do you not?

A. There is a note on folio 22.

Q. Suppose you read that note and let us get it into the record.

A. The note on folio 22 that is referred to on folio 1 is as follows:

"Note. The certificates registered on the opposite page and numbered 1, 2, 3 and 4, amounting to $40,000, are issued in lieu of the following certificates issued by the old James River Company under acts passed 17th February, 1820, and 28th February, 1831, viz.: No. 21 to 55 both inclusive, $1,000 each (see folios 1 and 2); and No. 73 for $5,000 (see folio 3)."

Q. You filed on yesterday a copy of a certificate of stock, of indebtedness of the James River Company, marked certificate No. 86, in lieu of original certificate No. 67, which appears to be an obligation for $61,000, bearing interest at the rate of six per centum per annum from the 1st of July 1827. Did you treat that in your statement as part of the debt?

A. No sir; it is an obligation of the James River Company 596
to the State of Virginia; it is not an obligation of the State of Virginia.

Q. Why do you say that?

A. It says it on its face.

Q. Is that your only reason for saying so?

A. That and the acts that back it up, and the opinion of counsel in the matter.

Q. Yes. The books, however, showing the way in which the Commonwealth of Virginia treats it, do not back you up?

A. No, sir; it says in the books that it was a certificate of the old James River Company.

Q. I know it does; but it is also treated as an obligation of the State of Virginia, is it not?

A. After 1840 these particular certificates referred to here became an obligation of the State of Virginia. In 1840 the state bonds that were issued in place of, in lieu of the old certificates of indebtedness of the James River Company—

Q. Why should they become an obligation of the State of Virginia in 1840 if they were not an obligation of the State when they were issued?

A. I have no idea.

Mr. McClintic: They were reissued under an act of the 597
legislature, were they not?

The Witness: Yes, sir; they were reissued under an act of the Legislature. I do not know why the legislature assumed them at that time. That is what I mean to say.

By Mr. Harrison:

Q. Was not the reissue under the Act of 1840 a reissue of the loan created under the Act of February, 1820?

A. I do not understand it as a reissue at all. I understand it as an original assumption by the State of part of the debt which up to that time had been the debt of the James River Company.

Q. Is the word reissue used?

A. It is; it is used in the title of the Act.

Q. And is it not used on that book of original entry there?

A. It is; yes sir.

Q. Notwithstanding that, however, you do not so understand it?

A. Notwithstanding that, I do not so understand it.

Q. Does any part of the debt described on Mr. Potter's schedule as James River Company No. 1, which is $104,000, appear in your statement of the debt?

A. Yes sir; I think Mr. Potter includes in that statement two issues of bonds, one by the State and one by the James River Company. There were included in that issue 65,000 of the bonds of the James River Company and 39,000 of the bonds of the State issued by the president and Directors of the Bank of Virginia.

By the Special Master:

Q. Is this book here the book of the James River Company? 598

A. It is the register of the second auditor's office.

Q. It is a Commonwealth book, rather than the James River Company book.

A. The record was kept, this record was kept, in the Second Auditor's office. We have not the original book of the James River Company.

Q. This is the record of the State and not the record of the James River Company?

A. This is the record of the State, yes, sir.

By Mr. Harrison:

Q. And it covers the register of all the bonds of the State embraced in the period covered by the book?

The Special Master: And is not confined to the James River Company?

Mr. Harrison: No, not at all.

The Special Master: But other internal improvements?

The Witness: Yes.

Mr. Harrison: When this book was made it was made to include bonds issued under sundry acts from the 24th of February, 1823, to

the 11th of March, 1844, inclusive, and later these James River bonds were inserted.

By the Special Master:

Q. Before you leave this subject, get out the other books, if there are any that show the expenses and disbursements and receipts in connection with this enterprise, so we will have the contemporaneous original history. That is, I suppose there are other books that show disbursements.

A. This is the bond register pure and simple. It is apart from the journals.

Q. But there are books showing disbursements? 599

A. Yes, sir; receipts and disbursements.

By Mr. Harrison:

Q. I understand you to say that of the $104,000 shown by Mr. Potter's schedule of the James River debt No. 1 to be outstanding December 31, 1860, you do take account of $39,000 of it in your statement of the debt. Is that right?

A. Yes; we take account of $39,000 of that $104,000.

Q. Where does that appear in your statement?

A. It appears on defendant's Exhibit A, sheet 2, third item from the top, headed Bank of Virginia March 18, 1840; total issue $100-000. That $40,000 or $39,000 was included in that amount, and one other bond which was cancelled later.

The Special Master: Do you also include the $65,000?

The Witness: No sir.

Mr. Harrison: Why do you not include the $65,000?

The Witness: Because the $65,000 was not a debt of the Commonwealth of Virginia represented by these James River certificates that we presented the other day.

By the Special Master:

Q. Did it at any time go into the indebtedness of the State of Virginia?

A. Those $65,000 never became a part of the debt of the State of Virginia until 1871.

Q. And what happened then?

A. And they were taken up under this general Consul & 600 Peeler Act, the funding act.

Q. By virtue of the Act of the legislature?

A. Yes, sir; the act of 1871.

Q. Were other evidences of indebtedness issued for the purpose of taking them up?

A. At that time, yes, sir.

Q. In 1871?

A. The certificates bore on their face the statement that the funding was done in 1873, but it was under the Act of 1871.

Q. And that, having taken place after 1861, is not included in this statement?

A. No, sir.

Q. Is that the reason?

A. Yes, sir.

By Mr. Harrison.

Q. Then your explanation is that according to your facts, that $65,000 that you exclude as a part of the debt of the State of Virginia prior to 1861, did become a part of the debt of the State of Virginia in 1871?

A. It was assumed by the Commonwealth in 1871.

By the Special Master:

Q. And your theory is that up to that time it was not a part of the indebtedness?

A. Yes, sir.

Q. And for that reason you did not include it?

A. Yes, sir.

Q. Do I state it correctly? 601

A. Yes, sir.

By Mr. Harrison.

Q. The fact is, then, according to your testimony, that the State of Virginia assumed a debt of 1871 for which she had been under no previous liability of obligation?

A. Quite true, sir.

Q. You have treated $39,000 of that indebtedness, called the James River Company No. 1, as part of the debt of Virginia, have you not?

A. More than that: $40,000.

Q. $40,000?

A. Yes, sir.

Q. Well, say $40,000, then—

A. There is a difference of $1,000 there because Mr. Potter takes up one bond of the bank of Virginia and includes that in that issue.

Q. You have treated $40,000 of the $161,000 that constitutes the first debt, known as the James River Company No. 1 as part of the debt of Virginia?

A. Under the act of March 18, 1840. I think it is March 18.

Q. And you treated it as a debt created for the first time on that date?

A. I would like to modify that answer a bit.

Mr. Conrad: Oh, yes; you may modify it as much as you please.

A. (Continuing) The State issued obligations then—and I have said this before, and so I am just repeating—under the 602
Act of March 18, 1840. There were certain obligations of the State issued which replaced the obligations of the James River Company to the extent specified in the Act. It was not a reissue.

By Mr. Harrison.

Q. That statement of yours that it was not a reissue you have already explained?

A. Yes, sir.

Q. You say that notwithstanding the Act of the General Assembly and the Books of Virginia, you treat it as not a reissue.

A. That is true.

Q. And you were acting under the instruction of counsel?

A. Under the opinion of counsel; not under instructions. It was my own opinion as well.

Q. Mr. Dixey, in your investigation of the records in relation to the debt and in the statement you have compiled with respect to it, did you take any account of a hundred shares of the stock of the old James River Company which were donated by Virginia to General Washington under an Act enacted long prior thereto?

A. Of 100 shares of what?

Q. Of the James River Company, that the State of Virginia donated to him?

A. No, sir.

Mr. Anderson: Upon which the state assumed an obligation to pay $3,000 a year forever.

The Witness: Well, the State afterwards assumed an 603
obligation on the dividends of the old James River Stock; but it was not at this period, it was not prior to March 18, 1823.

By Mr. Harrison.

Q. Not prior to it, you mean?

A. Yes, sir.

Q. You mean her assumption of that liability was not prior to 1823?

A. No sir. It was March 23, 1860, that she assumed that guarantee forever.

By the Special Master:

Q. $3,000 per annum?

A. No; I am speaking of the annuity, the assumption of the annuity.

Q. Well, the annuity relating to this stock given to George Washington?

A. I do not recall particularly as to that.

Mr. Anderson: And he gave it to Washington & Lee College, which holds it now?

The Special Master: That was by virtue of an act of 1860?

The Witness: I do not recall as to that individual stock.

The Special Master: Well that is ascertainable.

Mr. Harrison: I want to know whether he had taken any account of that at all.

Mr. McClintic: May I ask if you took any account of it?

Mr. Anderson: Yes sir, we took account of it; and he has got it in there too, but he does not know it. 604

The Witness: It may be in the $350,000 annuity.

Mr. Anderson: Yes, that is where it comes. It is capitalized by the Act of March 23, 1860.

The Special Master: It is in there, but he had not discovered George Washington in connection with?

By Mr. Harrison.

Q. You give us first the aggregate public debt of Virginia, January 1st, 1861, $32,919,863.93. You do not include in that aggregate the debt held by the Literary Fund or the debt held by the Sinking Fund, do you?

A. No, sir.

Q. Mr. Potter's statement of the total amount of the debt does include those two items?

A. Yes, sir.

Q. And it appears to be, with those items included, $34,707, 908. 96.

The Special Master: Is not the six months interest included in that?

Mr. Harrison: No; he does not include any.

The Special Master: I find I have a pencil note, thirty million dollars and something.

Mr. Harrison: No—

The Special Master: Then the item of $34,707,908.96 is simply the principal sum exclusive of interest?

Mr. Harrison: Exclusive of interest, but including the two debts of the Literary Fund and the Sinking Fund.

The Special Master: And also including the $64,000 in the James River fund?

By Mr. Harrison:

Q. If you deduct the two items of the indebtedness held by the Sinking fund and the Literary Fund from the total shown by Mr. Potter, the aggregate amount of the debt then, ac- 605
cording to this statement, would be $32,340,784.43, or $579,-079,50 less than your statement appears to be.

A. That may be true, and probably it is true.

Q. I state that so as to save time.

A. Yes; I accept that.

Q. In other words, if you eliminate from Mr. Potter's statement of the debt the two sums held by the Literary fund and the sinking fund your statement of the debt exceeds by more than half a million Mr. Potter's statement of the debt?

A. That is true.

Q. Now, can you give me, if you please, the items that enter into and constitute that excess in your statement of the debt over Mr. Potter's?

A. I think I can very closely from memory. The certificates of indebtedness of the James River and Kanawha Company which were assumed by the State, which are shown in Mr. Potter's statement of guaranteed debt, although they had not been converted into State certificates, were outstanding in their old form but has been assumed by the State.

By the Special Master:

Q. You treated them as a direct liability, and he treats them as a guaranteed liability?

A. Yes.

Q. What does that amount to? 606

A. $375,000 odd as I recollect it.

Mr. Hogg: That was by the Act of 1860?

The Witness: Yes. (Referring to memorandum) $533,375. that we add.

By the Special Master:

Q. That leaves in the neighborhood of $400,000?

A. Yes.

Q. What does that consist of?

A. Well, I would reconcile it if your Honor wishes me to do so. We add $95.500 to the amount shown by the accountants for Virginia in addition to the amount I have already stated, being the

principal of the amount required to produce annually at 6 per cent. interest the sum of $21,000 guaranteed forever to the stockholders of the James River Company by the Act of March 23, 1860, and later—in 1871—funded at $350,000. That was the amount necessary to produce $21,000 which had been guaranteed forever on the old Stock, the actual stock of the James River Company. The net amount of that outstanding that had not been acquired by the State was $95,500, which we add to the statement of Virginia, the public debt. We deduct the $65,000 which was under discussion. We deduct the difference between the par of exchange on January 1st, 1861, and 4.8665.

Q. About $49,000?

A. Yes, sir; $49,795.50; the difference between the par of exchange and $5, on 373,000 pounds sterling, coupon bonds issued in that form by the Commonwealth of Virginia for sale abroad.

We also deduct the amounts that Mr. Harrison has already spoken of, held by the sinking fund, the amounts shown by Virginia as held by the sinking fund, $1,329,557.20. And 607
we deduct the amounts shown by the accountants for Virginia as held by the literary fund. That is, $1,037,567.33. That is the amount that they show. Less the $65,000 which we have already deducted and which is included in their amount, making a net of $972,567.33. Our total additions to the figures ($34,703,908.96) are $628,875. Our total deductions are $2,416,920.03; which reconcile the two accounts.

Q. What page of what exhibit do you find that?

A. We have not presented that as an exhibit yet.

Mr. Harrison: I will ask you to furnish on that point—

By the Special Master:

Q. Right on this point, the only discrepancy between the accounts presented by them and the accounts presented by you that can be related to the beginning of the account is the $65,000 item?

A. That is all.

Q. Is that right, Mr. Dixey?

A. As I understand your question, yes.

Q. That is the only item referrable to the beginning of the account?

A. Yes, sir.

Q. In order to harmonize this particular exhibit in which you state the amount of the debt with the account made by Virginia what else would you have to do except to add the $65,000?

A. I do not quite get that.

Q. In order to harmonize your statement of the debt pre- 608

dicated on beginning March 29, 1823, and their statement of the debt beginning with the fiscal year 1820, what have you to do to your account except to add to it $65,000?

A. We have to also add the holdings of the sinking fund and the Literary fund—well, practically all these items that I have read.

Q. No; but in order to harmonize so far as the beginning of the accounts is concerned, all that you have to do would be to add $65,000?

A. That is all, I think, sir.

Q. And as to this exhibit, then, that would be completely harmonized?

A. I think so. That is rather offhand, but that is my impression.

By Mr. Harrison:

Q. Now, as to the difference in the two statements, I will ask you to furnish us, if you please, with the items that enter into and constitute the difference between your statement of the debt and Mr. Potter's. I mean the excess, if you eliminate the two indebtednesses held by the Literary Fund and the Sinking Fund with the special schedule supporting those differences. Can you give us that detail?

A. In other words, the items that I have just read into the record?

Q. Yes.

The Special Master: That would simply require a statement of the items that you have already given. 609

By Mr. Harrison:

Q. We want not only the statements, but the details of the statements, how you arrived at them, and how you finally reached your summary in respect to them?

A. I will furnish you that immediately.

(The witness produced some papers.)

Q. Can you give me a copy of that?

A. Yes sir. Here is one. We have not introduced this yet and they are not marked.

Mr. McClintic: Does that answer your question? Does that give you what you want, or do you want to go into a lot of sub-schedules, do you want to go all through it?

The Witness: We have used their figures.

Mr. Harrison: (After examination of the paper given him by the witness.) This does not seem to be what I asked for. We want sub-schedules, precisely such as we submitted to you six months ago.

The Witness: Of what?

Mr. Harrison: Of the bonds, of all the debts in which this difference occurs, this difference of $549,000.

The Witness: I haven't got them. You have about all we have. You have all we have, practically. We did not prepare such schedules as those. I do not think they were referred to except in one or two instances.

By Mr. Harrison:

Q. Did you not say just now, that you used ours in making up yours?

A. We have taken your statement of bonds as held by the 610
sinking fund and the literary fund and used that in reconciling the difference between the debt as you show it and as we show it. That is what I intended to say.

Q. You say you have not got—

A. We have no such schedules as you made.

Q. Have you got such as you made?

A. We have working papers, yes.

Q. I want to see your working papers; I want to know how you worked up to that difference, I want a detailed statement. We want it for the purpose of testing, of comparing it with our work, the work with which we reached our result.

Mr. Conrad: The Master said the other day that all those working papers should be brought here for the purpose of examination.

The Special Master: As I understand it, there are only three or four items, as the case may be, where the accountants differ on this question of reaching the amount of the indebtedness.

Mr. Harrison: There seem to be about six, I believe.

The Special Master: Well, whatever the number may be; five or six; they are the only items which I apprehend you are interested to inquire about.

Mr. Harrison: That is all.

The Special Master: Now the witness submits here what he calls a reconcilement between the two statements of indebtedness.

Mr. Harrison: That is in total only. 611

The Special Master: I would suggest this, if it is agreeable. We have this statement of reconcilement and I suggest that it be marked Defendant's General Exhibit 1. Then you look at the items and if you are not satisfied with the items he presents, confine your examination to those particular items so as to see whether or not there are any items as to which you will require more details. Mr. Dixey will be able to give, or ought to be able to give, just exactly what he bases his reconcilement figures on. Is that clear?

(The paper referred to was filed and marked Defendant's General Exhibit No. 1.)

The Witness: I do not understand what is not on the statement.

The Special Master: You are not required to understand it at this stage.

The Witness: But I do not know what to admit. We would have to submit all of our papers, and it would be unintelligible to anybody except ourselves.

The Special Master: I do not think you will have a particle of trouble when you get down to the details.

Mr. Harrison: If he satisfies Mr. Potter I will be satisfied.

The Special Master: We will have Defendant's General Exhibit No. 1, which is the statement of reconcilement as to the debt. Now, Brother Harrison, you will take that up and see what you want to know about that. Take the items you want to inquire about.

By Mr. Harrison: 612

Q. I suggested to the witness that I would defer temporarily examining him about those items until I can be informed by Mr. Potter just what specific data he wants.

The Special Master: That is right. For the time being, then, the cross examination as to that point is suspended.

These are not paged, Mr. Dixey, so I will have them all paged.

[*Vol. 6, May 7, 1909, Cross Examination of T. B. Dixey.*]

By Mr. Anderson: 681

Q. I just wish to ask you, Mr. Dixey, whether you included in your statement of the outstanding debt of Virginia on the 31st of December, 1860, bonds issued to George McIntosh or any of them. I think it is $22,000—the McIntosh bonds?

A. Bonds issued by the State of Virginia to George McIntosh?

Q. They were issued to somebody.

A. They have been retired, Major. My recollection is they have been retired.

Q. They have all been retired?

A. That is my recollection of it, but it is right here in the exhibit. There were $25,300 issued, and they were all retired—purchased and cancelled by the Sinking Fund established under the Act of March 26th, 1853.

By the Special Master: 682

Q. Do they enter into your statement ultimately?

A. Not on January 1st. They had been retired previous to that. Their issue is shown here, and their retirement is shown here.

Q. Shown on your schedule?

A. Yes, sir.

Q. It does not make up a part of the debt?

A. It it not a part of the total.

Q. Because up to that time they had been paid?
A. They had been paid and cancelled.

By Mr. Conrad:

Q. They were not paid, in your judgment, by the substitution of other evidences of debts issued by the States?
A. Not those bonds of the State issued to George McIntosh.
Q. They were satisfied, extinguished, wiped out, you think, by payment made?
A. Yes, sir; the books so show.
Mr. Anderson: That is all. I have not traced them down.

By the Special Master:

Q. What is the first entry you find in these books relating to this item of $104,000 of bonds of the Loan No. 1 to the James River, independent of this bond account or bond register?
A. $161,600?
Q. Yes; where do you find the first entry in the books of Virginia that relate to that item?
A. Outside of this bond register?
Q. Yes. 683
A. Outside of the register?
Q. Yes; in the accounts?
A. Well, there are books kept by the second auditor that were opened on May 2nd, 1823. All these entries that had up to that time taken place and were recorded in the original books of the James River Company were transferred in one journal entry on May 2, 1823, to these books that were opened under the act of 1823 by the second auditor, whose office was established by the act of 1823.
Q. Was that simply a duplicate of the preceding entries?
A. Yes; it is not an original entry, in the sense that it is the first relating to this.
Q. Are there any original entries relating to that item showing the disbursement of money by the State of Virginia on account of that $161,000 item?
A. That is the first entry.
Q. Are there any entries on any books showing any disbursement of money, either for interest or principal, on account of that $161,000 item?
A. At any time?
Q. Yes, at any time? If so, what is the first one?
A. I have just got to get the scope of that clearly in my mind before I answer. Will you read that question.

The question was read as follows:
"Q. Are there any entries on any books showing any disburse-

ment of money, either for interest or principal, on account of that $161,000 item?"

A. Why, yes, in part. 684

Q. What is the first entry in relation to it?

A. I will have to look it up. I cannot say, from memory, but I can look it up and show it to you.

Q. What you have just given me is simply a duplication of the original bond entries, practically. This original book you have produced here is a register of the bonds issued. Then when the public works came in, in 1823, the first entry they made on their books was simply to duplicate those entries, so as to have a continuous record of the bonds that may have been issued?

A. That is apparently true; yes, sir.

Q. This No. 1 loan, although named in the bond record—was it or was it not a bond, or was it a certificate of stock issued by the James River Company?

A. It was not a stock certificate as stock is generally understood today. It was a certificate of indebtedness.

Q. Of whom?

A. Why, of the James River Company to the State.

Q. Then the loan indicated as No. 1, $161,000, was evidenced by certificates issued by the James River Company?

A. The President and Directors of the Literary Fund.

Q. And that is all the bond register shows?

A. Yes, sir; and the face of the certificate itself shows that it was registered in 1823, although it had been issued some years previous.

Q. Do any of those certificates connected with the $161,000, import any obligation either on the part of the principal or the 685 interest on the part of the State of Virginia, so far as you have been able to ascertain?

A. Not on the original certificates amounting to $161,000, due. The first time any of that debt was assumed by the State was under the Act of March, 18th, 1840, when the State assumed an obligation of $40,000 of those bonds, but that is aside from the $65,000. The $65,000 had never been assumed by the State. It was still an obligation of the James River Company to the State on January 1, 1861, and it was so held in the Literary Fund until 1871.

Q. Do you find any entries on the books of Virginia showing any payments on account of that $161,000, either the $39,000 or the $65,000, either by way of principal or interest at any time, and if so when is the first entry, and what does it show?

A. They were funded from time to time. I will have to look that up, your Honor. I cannot say indirectly from memory.

Q. Was there any payment of interest?

In the Act of 1820, if I remember it right there is a stipulation

that the State of Virginia shall guarantee the interest, not exceeding $12,000 a year, that is, any deficit of interest. That is it in substance, if I understand it.

A. In the Act, it makes the amount $12,000.

Q. That is a maximum?

A. Yes; but for that $12,000 the State was to receive from the James River Company more of these certificates of 686
indebtedness, so that it was a loan. It was a loan to the company, for which the State received a certificate.

Q. Did the State actually loan anything under those circumstances?

A. Yes; it did, certainly.

Q. When did it make the first loan?

A. That is the point I shall have to look up.

Q. That is what I want to find out? I want the entry.

Mr. Conrad: We can give it to you, sir, as Mr. Lightfoot is familiar with a series of acts beginning with the Act of February, 1817.

The Special Master: But I would like, when Mr. Dixey is able to get it, to have the information, either now or later. Then I want to see the original book myself and see just exactly what it shows. I want to see when that loan first became connected with the accounts of the State of Virginia with reference to disbursement, either for interest or principal.

Mr. Conrad: The Act of February, 1820, made the State liable for those certificates.

The Special Master: Of course we have the acts, but in addition to the acts I want the accounts of the State with that particular loan, so that I can see just exactly what the entries are.

Mr. Anderson: There is other evidence in that connection that we wish to offer.

The Special Master: Yes; this does not preclude you from anything. I simply want to get this information myself. 687
Have you anything by way of re-direct examination, Mr. McClintic?

Mr. McClintic: Yes, sir; I want to ask a question or two.

Mr. Anderson: By the Act of 1820 the James River Company was made the agent of the State.

The Special Master: Of course the acts of the legislature are open to us all, but I want to get, so far as I can, contemporaneous acts of the State in relation to the loan. I want to see just exactly what was done. Are you waiting for Mr. Dixey, Mr. McClintic?

Mr. McClintic: Yes, sir.

The Special Master: Is he looking up something for you?

Mr. McClintic: He is looking up that item for your Honor.

The Special Master: You need not bother with that now.

The Witness: I can show it to you in a minute or two.

The Special Master: Let your assistant be looking for it. You may re-examine Mr. Dixcy, Mr. McClintic.

Redirect Examination.

By Mr McClintic: 688

Q. Have you seen a letter dated December 19, 1821, written by John Coalter of the Board of Public Works of Virginia, published in the Journal of the House of Delegates, 1821-1822?

A. I have seen that published copy.

Mr. McClintic: We desire to offer in evidence a letter of John Coalter, then President of the James River Company, dated December 19, 1821, and published in the journal of the House of Delegates for the Session of 1821-22, at page 31. I have not the letter here in full, but I have an extract from it. The journal, however, can be reached.

The Special Master: It will be admitted.

By Mr. McClintic:

Q. In that letter it is said:

"It is understood to be admitted by money holders in other states that the funds pledged for the payment of the interest on this loan may be very ample, and their continuance, as well guaranteed by the faith of the State, as though the loan was on behalf of the State, and that the final redemption of the debt may be safely calculated upon; but while these things are not expressly guaranteed by the State, but merely susceptible of demonstration from the Acts of Assembly and other public documents, the loan, though a valuable one to those wishing to make permanent investments, is not so readily convertible in market, as to answer their view. It has, however, been pretty satisfactorily ascertained that a State stock, even at five per cent, would sell for more than 689 par which merely shows to those wishing to make permanent investments, that the stock now offered to the public at five and a half per cent. must be a most valuable stock."

Had you read that letter when you gave the opinion to Mr. Harrison a while ago that you regarded this—

A. I had read a copy.

The Special Master: Do you put in the full letter?

Mr. McClintic: Yes, sir. I have not the full letter here, however.

Mr. Anderson: What date is that?

Mr. McClintic: It is dated December 19, 1821.

The Special Master: Here is the entry found on page 29 of the

book, to be put in as a part of the answer of Mr. Dixey. This applies in *realtion* to the first entry of the books of Virginia, No. 1 loan, $161,000.

The Witness: I produce a book, a book of original entry as I understand it, so far as these entries are concerned, at page 29. September 30, 1823, are found the following entries.

The following is a correct transcript from the page referred to:

"30th September, 1823.

30	Interest on Loans to James River Co. for interest paid to 1 July, 1823, viz.:				690
	July 15 on certife No. 67 from 1 Nov. for to Farmers Bank of Va.	6,000	239.18		
	July 15 on certife. No. 1, 6 Mar. to P. and Directors L. fund for..	5,000	1,500.00		
	" 16 on certife No. 70 (from 1 Dec. 1822) to Catherine Hayes for..	4,000	122.63		
	" on certifie No. 71 from 1 Dec., 1822 to Llowey Hays for....	4,000	122.63		
	" 17 on cert. No. 21 to 55 incluse $100 each and on No. 73 for $5,000 to Bank of Va.	35,000	1,067.53		
	" on cert. No. 11 to 20 incluse, for $1,000 each on No. 72 $5,000 No. 73 $2,200 and 75 $3,300 to Bd. P. Works	40,300	1,145.75		
	" 23 on cert. No. 61 to 66 inclus. for $1,000 each & No. 76 $3,000 to Catherine Gamble	9,000	451.97		
	" 25 on certf. No. 69 (from 27 Dec.) to Mutual assce society &c..	5,000	153.29	Previous entries in this column 634	
	Total on loans prior to 25 Feb., 1823...			7,800	
				4.902.98	691

(July)				
30 do. 15 On certf. No. 11 to 60 incluse. to Farmers Bk. Virginia	50,000	821.90		
17 On certf. No. 1 to 10 & 61 to 110 for $1,000 each to Bank of Va.	60,000	919.52		
15 On No. 111 to 170 inclusive to Literary Fund	60,000	729.84		
Total on Loans No. 2 after 24 Feb. 1823....			2,471.26	
Whole amount of dividends & Interest				15,798.24
Whole amount of disbursements				88,293.38

By the Special Master:

Q. This is the first entry you find of any kind of the books of the Commonwealth in relation to the disbursement of the $161,000?

A. Yes, sir; the first original entry.

Q. Well, is there any other duplicate entry indicating an original entry in any other place of any disbursement of funds on account of the $161,000 item?

A. The transcripts in the front of the book seem to be copies of the original books of entry of the James River Company.

Q. Do the original books of entry of the James River Com- 692
pany prior to September 30, 1823, contain any record of any disbursements on the part of the State on account of this $161,000 item, so far as you know?

A. I may answer in this way. The Act of 1823 provided for the transcript of all these entries by the Second Auditor's office. It provides that all the receipts and all the disbursements of the James River Company shall be taken up on the books in the Second Auditor's office; they are matters of record merely, copies of transactions that have gone before, and I think the caption refers to the provisions of the Act.

Q. The caption reads as follows:

"Richmond, May 2nd, 1823.

"On this day the books and papers of the James River Company were deposited with me by Robert Pollard, Esq., late clerk and treasurer to the said company, in conformity with the directions of an Act of the General Assembly passed the 24th day of February, 1823, entitled 'An act making more effectual provisions to carry into

effect the Act entitled "an act to amend an act entitled an act for clearing and improving the navigation of the James River, and for uniting the eastern and western waters and for other purposes.'"

"JAMES BROWN, JR., *Second Auditor.*"

My question is whether you find any entry on the books of the James River Company or the books of the Commonwealth of Virginia earlier than this one found on page 29, showing any disbursements either for principal or interest on account of this item, $161,000? 693

A. We have never found the books of the James River Company, and this is the first entry on the books of the Commonwealth.

By Mr. Harrison:

Q. Did you look in the Treasurer's office to see if you could find payments on account of the indebtedness prior to December 30, 1823?

A. I do not understand you?

Q. I ask you if you examined the records of the Treasurer to ascertain if you could whether payments had been made through that office on account of the James River Company Debt No. 1, prior to September 30, 1823?

A. Yes; we found no such payments.

Q. You did examine and you found no such payments?

A. We found no such payments.

Q. Does not the Act of 1823 expressly provide that payments of interest on that original loan should be made?

A. Oh, that is a different matter, payments of interest. I did not so understand you. Yes; the State had said that they would pay $12,000, and later $18,000. I think the $18,000 was in the Act of 1823. There have been payments by the Treasurer on account of that interest.

The Special Master: Do the books of the Commonwealth show payments of interest prior to September 30, 1823?

A. On account of that $12,000 pledged, yes.

The Special Master: Then you can produce those entries.

By Mr. McClintic: 694

Q. When did the books of the James River Company start, what was the beginning of them, kept for the Commonwealth?

A. May 2nd, 1823.

[*Vol. 7, July 1, 1909.*] 819

The Special Master: What will be the first thing we will take up this morning; shall it be the question as to the results reached by the accountants?

Mr. Anderson: We had best take up these schedules seriatim and submit them.

The Special Master: Very well. What have you to submit with reference to Plaintiff's Exhibit A-1, which relates to the first paragraph in the decree, in the line of a revised schedule, as 820
the result of the work of both accountants, if anything?

Mr. Anderson: Suppose Mr. Potter takes the stand.

The Special Master: Have you any schedule that has been agreed upon by the accountants on both sides? In the first place, has there been any change in attitude in reference to the date?

Mr. Harrison: Virginia starts from the same date that West Virgina starts from.

The Special Master: Enter upon the record that Virginia agrees with West Virginia upon the date when the accountants should begin, which date is—

Mr. Anderson: March 17, 1823.

The Special Master: March 17, 1823. Is that agreed to?

Mr. Dixey: March 19th, it should be.

The Special Master: I want to get into the record what we agree upon.

Mr. Carlisle: I still understand that the accountant on the other side includes in his statement that item of $65,000 which we say is shown to have been a debt before that date.

The Special Master: Let me make this statement. If these accounts begin on March 19, 1823, and that date is agreed upon by counsel on each side, the Master will not consider any item prior to that date. Now, then, with that statement from the Master,
am I to understand that the counsel for Virginia and West 821
Virginia agree that that is the date when the accounts begin?

Mr. Carlisle: That is correct.

Mr. Harrison: Yes, sir.

The Special Master: That settles that. Now, let us have the next point. You are submitting, Brother Harrison, a schedule in lieu of Plaintiff's Exhibit A-1, which is under the first paragraph of the decree?

Mr. Harrison: Yes, sir.

The Special Master: Am I to understand that this schedule, marked Plaintiff's Substitute Exhibit A-1, is to take the place of Plaintiff's Original Exhibit A-1?

Mr. Harrison: Plaintiff's Revised Exhibit, I would say.

The Special Master: I want to get this on the record. I have now before me Plaintiff's Substitute Exhibit A-1.

Mr. Anderson: It is a supplemental statement to the other, really, because it does not go into the details. Therefore, it is supplemental.

Mr. Harrison: It is a revised statement.

The Special Master: Let us see about that for a moment; I want to get this record as short as we can get it. After we get through with what we agree to, I am going to ask what I asked before, but which I suppose they could not do. What I want to get on the record is exactly what we agree to now. Excuse me, but these suggestions go for nothing if they interfere with the views of counsel on either side. There is no occasion for lumbering up this record with any details that are not necessarily involved in an intelligent conclusion on the part of the Master or on the part of the Court. It is conceivable that a large number of details must 822 have been prepared and have been prepared for counsel on both sides, but if you have a lot of records about which there is no controversy, my own view is that there can be an agreement upon figures and we can shorten the record very much. We can get our schedules down to something as concise as possible, and it will be the better for all concerned. So that if you now have a schedule that presents, so far as either of you is concerned, under Paragraph 1 all of the figures you desire to have presented, eliminating details and containing summaries which adequately present the rights of either party, it seems to me the concise schedule you both agree upon is the thing that we ought to have.

Mr. Harrison: Let me state this, subject to correction by Mr. Dixcy or Mr. Potter. The supplemental schedule referred to shows that the total amount of the debt outstanding in the hands of individuals, or, in other words, in the hands of the public, on 1st of January, 1861, was $32,919,863.93; and as to that figure I understand the two accountants are in accord.

The Special Master: You are in accord on that, Mr. Dixcy?

Mr. Dixcy: Yes, sir.

Mr. Carlisle: Of course we do not agree, as I understand it, that there are not items in there which do not belong to the public debt. For instance, the bonds held in the Literary Fund. The figures, however, are correct.

Mr. Harrison: They are not in there.

The Special Master: You will have to be governed very 823 largely by the suggestion of Mr. Dixcy, who is unquestionably familiar with the details. Of course I will not hold you to anything that may be agreed to if you inadvertently make a concession which would turn out to be adverse to your interests. In such a case, I would expect to relieve you from an admission so made; but what we want now is to get down on the record the items upon which we agree, so as to eliminate all possible controversy.

Mr. Harrison: In this Exhibit, Plaintiff's Substitute Exhibit A-1, I think the figures given for the total public debt of the Common-

wealth of Virginia, December 31, 1860, are agreed upon, as follows: $32,919,863.93.

The Special Master: The item thus stated by Mr. Harrison on the part of Virginia we understand to be agreed to by counsel for West Virginia and by the expert on the part of West Virginia?

Mr. Dixey: That is correct.

The Special Master: That item, then, will be reported by the Master as agreed to by the parties.

Mr. Harrison: Now, the point of this agreement relates to three subjects. Virginia shows in her schedule, in addition to the figures agreed to, $1,150,067.33, as held by the Literary Fund; also $1,329,-557.20 held by the Sinking Fund; and $146,500.00 held by Board of Public Works; which three items added to the agreed amount of the debt outstanding in the hands of the public, make a total of $35,545,988.46, which Virginia rests upon as constituting the entire public debt on the date mentioned, December 31, 1860.

The Special Master: I want to make this inquiry. Refer- 824
ing to these figures, held by the Literary Fund, $1,150,067.33; held by the Sinking Fund, $1,329,557.20, and held by Board of Public Works, $146,500.00; do Mr. Dixey and counsel for West Virginia concede the figures are correct?

Mr. McClintic: The first item in the Literary Fund, as I understand it, contains the $65,000 which has been referred to.

Mr. Harrison: Yes.

Mr. McClintic: We do not concede that.

The Special Master: Then I will put it this way: Virginia claims that in addition to the $32,919,863.93 there should be added to the public debt the following items: Held by the Literary Fund, $1,150,-067.33. As to this item, West Virginia disagrees, first upon the ground that it is not a proper part of the public debt; and, second, upon the ground that the aggregate is too large in any event. So that as to that item there is no agreement, the only disagreement being an item of $65,000 involved in the Literary Fund and claimed by West Virginia to have been contracted prior to the date of the beginning of the debt, and that it has never been a part of the State debt at any time. As to the item of "Held by the Sinking Fund, $1,329,557.20," West Virginia agrees to the accuracy of the amount stated and disagrees upon the question as to whether it is properly included in the public debt. Am I correct in that?

Mr. Carlisle: Yes, sir.

The Special Master: So that as to the amount both parties agree; as to classification, they disagree. The next item, "Held by
Board of Public Works, $146,500.00." 825

Mr. McClintic: That is all right.

The Special Master: As to the amount of $146,500, Virginia and

West Virginia both agree; West Virginia contends that it ought not to be included in the public debt. Now, I would like to inquire whether there are any of the computations submitted in the schedules on the part of Virginia and West Virginia under paragraph 1 of the decree that are essential or illuminating upon the question of settling the first controversy as to the $65,000 in the Literary Fund.

Mr. Carlisle: Yes; we have the history of that $65,000 which was offered here before, certificates—

The Special Master: Those figures can be very easily segregated from both of the schedules, I suppose. So we can eliminate them from the other figures. Is there any difficulty about that, Mr. Dixey?

Mr. Dixey: No, sir.

The Special Master: Is there any difficulty about that, Mr. Potter?

Mr. Potter: No, sir.

The Special Master: Are there any items in Paragraph 1 that are essential and material in determining the question as to whether the amount claimed by Virginia, $1,329,557.20, should or should not be included in the public debt? That is, are there any items or details in that account, or is that simply a question of the construction of some legal provision?

Mr. Anderson: That is on the construction of a statute.

The Special Master: It does not involve any details, so 826
long as you agree on the amount. Are there any details contained in the figures given in either schedule that tend to establish or controvert that proposition?

Mr. Harrison: Not at all.

The Special Master: If so, we do not need the schedules for that purpose.

Mr. Anderson: The only question is upon that $65,000, and that is a question of the construction of the statute.

The Special Master: Are there any details in any of the schedules submitted by either party which are material as bearing upon the question as to whether or not the $145,500.00 held by the Board of Public Works is or is not a part of the public debt, so long as you agree upon the amount—

Mr. Anderson: That turns entirely upon the statute, I think.

Mr. Harrison: A question of construction.

Mr. Carlisle: As to all the bonds in the Sinking Fund—

Mr. Anderson: As to all the bonds in the Sinking Fund except $65,000.

The Special Master: That is a question of law.

Mr. Carlisle: It is a question of law as to whether Virginia can owe herself this money.

The Special Master: I do not want anything superfluous in this

record. I want you to have everything in that either of you think has any tendency to establish the contention of either, but, outside of that, it seems to me we have no occasion to lumber the record with anything that is unnecessary. 827

Mr. Carlisle: There is nothing, I think—

The Special Master: Why, then, are there any items in the accounts of either of the schedules presented on the part of Virginia and West Virginia that need to be considered in connection with the public debt except the subject which I am going to call attention to in a moment—the manner in which it was constructed? There are none, are there?

Mr. Harrison: I do not think so.

Mr. Anderson: There is one matter there, contingent liability, we thought should be mentioned.

The Special Master: I do not see it.

Mr. Anderson: It is a supplemental exhibit to Exhibit A-1.

The Special Master: Is that an additional item that you claim is a part of the public debt?

Mr. Anderson: Yes, sir; an additional item.

The Special Master: I am discussing this particular schedule.

Mr. Anderson: I understand.

The Special Master: As to this schedule I now have before me (Plaintiff's Substitute Exhibit A-1), as to this exhibit, there is nothing in the accounts that needs to be considered.

Mr. Anderson: No.

The Special Master: Now, the next question I want to inquire about is whether you agree in the statement of how and in what form the debt was evidenced and by what authority of law, and for what purposes the same was created, and the dates and nature 828 of the bonds or other evidence of said indebtedness. Now, do the accountants agree, having agreed upon the amount?

Mr. Dixey: I know of no differences between us there.

Mr. Carlisle: So far as this is an indebtedness. That question is behind it all.

The Special Master: I understand that. There is nothing conceded as to clasification. It is simply getting results.

Mr. Carlisle: That is all.

Mr. Dixey: We quote the names of the acts, the companies for which the bonds were issued, and Mr. Potter has done the same thing.

The Special Master: Do you agree on that?

Mr. Potter: Yes.

The Special Master: Then I will ask you to have one schedule on that matter. Give us a joint schedule. Is that agreeable?

Mr. Carlisle: We do not want these stricken from the record, but they will not have to be printed.

The Special Master: When we get the case all in, I want to have printed for the convenience of counsel and myself in the argument just exactly what we all think ought to be submitted finally to the Supreme Court of the United States. I want to make that record just as short and just as concise as I can. The shorter we get it, and the more concise it is, the more it will relieve counsel of argument, the more it will relieve me in coming to my conclusions, and the more it will relieve the Supreme Court of the United States. Such a record will be infinitely more satisfactory to 829
the Supreme Court. I am going to make the record, if I can, upon which you argue before the same record that I submit to the Supreme Court. For that reason, where you both agree on a statement of facts, it seems to me it is best to have one schedule rather than two schedules. Still, you need not withdraw anything already submitted. But when we come to print, it seems to me there is no necessity for submitting two schedules which involve the same figures and details. As I said before, when we get around to fixing this record up for printing, I shall request Virginia and West Virginia to select some gentlemen, in whom each have confidence, to take this record and go over it and cut out everything that has not any bearing nor any material weight in connection with the issues. Then the transcript record we have here will be as short as possible. After you have agreed on a great many of these items, there is a great deal of discussion it seems to me that can go out. Of course anything that you want in will go in. Do you get my point, Brother Carlisle?

Mr. Carlisle: Yes, sir.

The Special Master: For that reason, I see no reason why there should not be one joint schedule covering the question as to how and in what form the debt was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness; and if the accountants are not able to submit to me now, so I can have the record show that both parties agree upon the schedules selected, I will leave that. Are you ready now with that, Mr. Dixey?

Mr. Dixey: We have not got a schedule that we can both 830
sign now.

The Special Master: You know what I want?

Mr. Dixey: We have not got it in full. We have all the facts here.

The Special Master: That is only a question of type-writing, then, practically?

Mr. Harrison: It will be necessary to do more than agree on the fact that they are in accord—

The Special Master: Of course it is a matter of quite a good deal of importance to both parties, and as far as I am concerned I do not want anything here that may turn out to be an inadvertence or a misunderstanding; but what I want to do is that when I report an agreement by the parties here, of course I shall report it as a fact; but I do not want to report any agreement between you people, on these important questions, unless I have upon my record the facts showing just what the agreement was. For that reason, it would be much more satisfactory to me to have one schedule. I do not want to print both these schedules; there is no occasion for that. I do not want to print Virginia's schedule and leave out West Virginia's schedule, and I do not want to print West Virginia's schedule and leave out Virginia's schedule. Now, if you both agree on a schedule like that, I want to put that in the record to show that you both agree on it. Do you follow me, Brother Conrad?

Mr. Conrad: If your Honor please, I do not see how it is practicable to produce a composite schedule from these two discordant ones that are before you now. If they differed only in 831 items, it possibly might be practicable; but they do not differ in items. They differ not so much in items as in the plan of classification. The plan of classification adopted by Mr. Potter, for illustration, is that that has been pursued by the State government of Virginia from the beginning. The plan adopted by Mr. Dixey disapproves of the methods adopted by the State government, is a departure from it.

The Special Master: May I inquire this, Brother Conrad: Do these suggestions that you are now making relate to the question of how and in what form the debt was evidenced?

Mr. Conrad: No, no—

The Special Master: I understand that your experts both agree upon this question (reading from the decree):

"How and in what form the same was evidenced, by what authority of law, and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness."

Mr. Conrad: I do not think there is any disagreement about that.

The Special Master: That is the only one I am making any suggestion about. We will make more progress if we go step by step. My suggestion is this: We will not encumber this record with Mr. Dixey's statement and Mr. Potter's statement, both of which are the same thing; we will put into the record one schedule as to that

part of the answer to Paragraph 1, and that schedule will be signed by Mr. Dixey and by Mr. Potter, and if the parties agree, we will show on the record that the parties do agree on those 832
facts. That eliminates them from controversy. Now, then, Brother Conrad, as to other features of the controversy, I do not expect Virginia or West Virginia to agree to anything that in any way tends to embarrass the rights of either. I thought I would take this up paragraph by paragraph, and when you reach a place where there is any suggestion of agreement that tends to embarrass the rights of your client, or the other side the same thing, of course as to that there is a disagreement, and as to that I will hear you. Do I make myself clear?

Mr. Conrad: Yes, sir.

The Special Master: So I will put into the record that the schedule submitted with reference to this part of Paragraph 1 that I have been calling attention to, and signed by both accountants, is agreed to by Virginia and West Virginia. Now, except as we have to recur to this Literary Fund, that disposes of Paragraph 1.

Mr. Potter: May I ask a question?

The Special Master: Certainly.

Mr. Potter: Need this joint schedule be in detail or simply as to this total?

The Special Master: Certainly it must be in detail, because here is what the paragraph requires (reading from decree):

"The amount of the public debt of the Commonwealth of Virginia on the 1st day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness." 833

It is impossible to answer that question without the details. As to that, we want the details signed by both of you, and when it comes to me thus signed I shall report that the parties agree upon that part of the Paragraph 1. Is there any objection to that?

Mr. Anderson: No, sir.

Mr. Carlisle: No, sir.

Mr. Anderson: This is supplemental, this is a supplemental statement of Paragraph 1. We think it should be noted in the record.

The Special Master: Let me make this suggestion. Suppose we do this. See how this appeals to you, Brother Anderson. What I am inclined to think I would like to do now is to go through the accounts where you all agree and eliminate those as subjects of controversy. Then we will go back and take up Paragraph 1, so far as you have additional matters to suggest, and so on all the way

through. Of course, when we come to print this case, we can take the testimony that relates to each paragraph and see that it is gathered together, so we will not have to be hunting all over the record to get what we want. It will be some work, of course, to do that, but when we get it done we will have a record that will be worth something.

Mr. Anderson: Your Honor proposes to go over all the schedules?

The Special Master: Yes. Let me get your suggestion.

Mr. Anderson: This can be disposed of in a moment, sir. By the Act of March 8, 1847, the State of Virginia guaranteed the payment of the interest and principal upon $300,000 of bonds 834
of the Chesapeake & Ohio Canal Company. The State guaranteed the payment of the interest without any qualifications. The guarantee of the interest was that the interest should be punctually paid, and the guarantee as to the principal was that it should be ultimately paid. The Chesapeake & Ohio Canal Company is still an existing corporation. It has not been found to be ultimately insolvent, so far as we can ascertain. So it cannot be determined now whether this liability will ever have to be met by the Commonwealth of Virginia.

The Special Master: In other words, this is a contingent liability?

Mr. Anderson: Yes, sir.

The Special Master: Your claim is that it should be included in the public debt?

Mr. Anderson: As an indeterminate and contingent liability?

The Special Master: Now this will be marked Plaintiff's Supplemental Exhibit A-1.

(The paper referred to was filed with the stenographer and marked "Plaintiff's Supplemental Exhibit A-1, the previous paper submitted being marked "Plaintiff's Substitute Exhibit A-1.)

The Special Master: Has this been submitted to the other side for criticism as to amounts?

Mr. Anderson: Yes, sir.

The Special Master: Then I would like to inquire whether the amounts stated in the computation—and this without reference to the propriety or impropriety of their charge—are cor- 835
rectly stated as to amounts.

Mr. Dixey: I think so, yes.

The Special Master: So that, so far as the computations are concerned, in Plaintiff's Supplemental Exhibit A-1, both parties agree that they are correctly stated? They disagree as to whether or not they should be included in the public debt, but they agree that they are correctly stated?

Mr. Anderson: Yes, sir.

Mr. Dixey: I think so.

[*Vol. 7, July 1, 1909.*]

The Special Master: To see whether we can make any more 868
progress now, without wating for the reports from the experts, I will inquire whether either party has any evidence it wants to submit on this item of $65,000?

Mr. Carlisle: I think so far as I know, there is no oral evidence that has been offered about it

Special Master: Is that your understanding, Brother Anderson?

Mr. Anderson: No, sir, no new evidence. We rely on the statute entirely.

The Special Master: As to the item at $65,000 in the Lite- 869
rary Fund, that is it, is it?

Mr. Anderson: Yes, sir—

The Special Master (continuing): Neither party has any additional evidence to submit, both conceding that the rights of the parties are to be determined by the proper legal construction of the statutes involved. Is that right?

Mr. Carlisle: There are several statutes. Yes, sir.

Mr. Harrison: Now, will you get back before you leave the schedules, to Supplemental Schedule A-1?

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The Special Master: In order to get along as far as possible, suppose we take up the paragraphs in their order. Now, as to Paragraph 1, does either side desire to submit anything in addition to the evidence already in, relating to the three items mentioned in the schedule, relating to "Held by the Literary Fund, $1,150,067.33;" "held by the Sinking Fund, $1,329,557.20;" and "held by Board of Public Works, $146,500?" Does either side desire to submit any evidence bearing upon those three propositions under that paragraph, or have you everything in that you want to put in on that?

Mr. Anderson: Virginia does not desire to submit anything.

The Special Master: How about West Virginia?

Mr. Conley: West Virginia does not desire to submit anything.

Mr. Anderson: Except, of course, it is understood that counsel will file a schedule reciting the different acts.

Mr. Carlisle: The acts under which the Literary Fund and the other fund held these bonds?

Mr. Anderson: Yes, sir. 874

The Special Master: Then it is understood that so far as the plaintiff Substitute Schedule A-1 is concerned, the case is closed. Is that agreed to?

Mr. Anderson: Yes, sir.

The Special Master: Now, we have here Plaintiff's Supplemental Exhibit A-1, headed "Public debt of Virginia; undetermined contingent liability." Does either side desire to submit any evidence in relation to that schedule?

Mr. Harrison: We do not.

Mr. Anderson: Except Mr. Potter is prepared to testify as to the accuracy of the figures.

The Special Master: That is agreed to. The accuracy of the figures is agreed to. Has West Virginia anything to submit as to schedule?

Mr. Carlisle: No, sir.

The Special Master: Then, as to Plaintiff's Supplemental Exhibit A-1, the case is closed.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

B-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT "B-1."

The Extent and Assessed Valuation of the Territory of Virginia and of West Virginia June 20th, 1863, and the Population Thereof, with and without Slaves, Separately.

PARAGRAPH II OF DECREE.

1. EXTENT:

Land Area:

Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
	64,284	do. =	100%

Total Area:

Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
	66,797	do. =	100%

2. ASSESSED VALUATION:

Real Estate:

Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
	$378,534,712.35 =	100%

3. POPULATION:

Estimated—With Slaves:

Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
	1,617,952 =	100%

Estimated—Without Slaves:

Virginia	748,171 =	66.4769%
West Virginia	377,289 =	33.5231%
	1,125,460 =	100%

Certified correct:

ARTHUR G. POTTER,

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Other Evidence and Proceedings Relating to Paragraph II of the Decree.

[See reference to Area contained in testimony of A. G. Potter under Paragraph 7, page —— of this volume, indented pages 80 and 81.]

[*Vol. 2, February 15, 1909. in Relation to Area.*]

The Special Master: Does any one else desire to be heard on the part of Virginia?

Mr. Anderson: If your Honor please, I can not, perhaps, add anything to the contention that has been made on the part of Virginia in opposition to the application for a continuance. That has already been exhaustively made by my associates. I wish, however, to refer to two matters, which will only occupy a few minutes. One is the statement of Senator Spooner, upon which he based one of his arguments for a continuance, as to any possible objection in this case about the territorial area of the Commonwealth of Virginia and of the State of West Virginia. A report was filed here with reference to the area, which I had not had an opportunity to examine, and which it was finally admitted at the former hearing was a fictitious area. I stated then that we did not rely upon it, and that there would be no controversy upon that question.

I wish now, in furtherance of the suggestion then made, to say to my friend, that Virginia is willing to accept the area furnished by the Department of the United States Government, either the Geological Survey or the Census Bureau.

The Special Master: The Geological Survey would be the 170
natural survey.

Mr. Anderson: The Geological Survey gives, as the area of Virginia, 40,262 square miles, and West Virginia, 24,022 square miles of land, and it is the land only that is assessed.

Mr. Carlisle: That gives both the water and the land?

Mr. Anderson: The water and land, both.

Mr. Carlisle: We think the water and land surface both ought to be included because the water surface is very valuable. Hampton Roads, the big James River and the other navigable streams are very valuable to the State.

The Special Master: You say these figures do include both water and land?

Mr. Carlisle: Yes; so much land and so much water. We want them both.

Mr. Conrad: It says, "the assessed value."

Mr. Anderson: The direction of the decree was that the assessed value should be ascertained, and the area of the territory. I take it it is immaterial whether the area is 40,000 square miles or 42,000 square miles, because I take it there will never be any ascertainment of this debt on the basis of area. It will be on the basis of values.

The Special Master: It is not immaterial to me, because that is one of the things I have got to find—the extent. Let us see right here if we are ready to agree. If you have the figures of both water and land—

Mr. Anderson: We have them both here. 171

The Special Master: If you have them both here and you agree on this public document as being the accurate result, why can we not put right into the record that it is now agreed between both parties that the area is as follows; then give the land area and the water area of Virginia and the same of West Virginia? Those facts then would be eliminated from controversy. That is the extent, and what may be predicated upon land and water, or upon land or water, is a matter to be determined hereafter; but we can get that fact out of the way if you both agree to it.

Mr. Carlisle: Their accountant has stated what he said was the area for a purpose, of course.

The Special Master: If the extent, which of course means area, can go into the record as agreed upon, that eliminates that fact from controversy.

Mr. Anderson: We are willing to agree that the area given at page 8 of Bulletin No. 302, Series F Geography, 53, United States Geological Survey of 1906, is an accurate statement of the area of the two States.

The Special Master: Will you pass that to me?

Mr. Anderson: Yes, sir. Now, we do not concede the water area has anything to do with this question.

Mr. Carlisle: There is no concession about it. You simply state the facts. There is no concession as to what the effect will be.

The Special Master: As long as we are here upon this, I will get this out of the way, Mr. Attorney General. Let me see if I state this so that both parties understand it.

It is agreed, under item 2 of the order, that the extent of Virginia is, land surface, 40,262 square miles; water surface, 2,365 square miles; total area, 42,627 square miles.

Of West Virginia, land surface, 24,022 square miles; water surface, 148 square miles; total area 24,170 square miles. Those are the figures shown by this official report. Are those figures agreed to as being the extent?

Mr. Carlisle: Yes, sir. 172

Mr. Anderson: Yes, sir.

The Special Master: That eliminates the matter of extent from controversy.

Mr. Anderson: We do not agree, on behalf of Virginia, that the water area should be taken into account.

The Special Master: The facts are stated. You will get the benefit of your legal proposition, whatever it may be. Of course that enables me to state very concretely what the facts are. Then what construction may be placed upon those facts is a matter for argument later.

[*Vol. 4. May 5th, 1909.*] 275½

[*Cross Examination of Arthur G. Potter on Plaintiff's Exhibit B-1.*]

[By Mr. Carlisle]:

The next clause of the decree is to ascertain the extent and assessed valuation of the territory of Virginia and West Virginia June 30, 1863, and the population thereof, with and without slaves, separately.

Mr. McClintic: In Exhibit B-1, responsive to item 2 of the decreee, you set out the area of Virginia as 48,951 square miles and the area of West Virginia as 45,537 square miles. Do you wish to let that stand as such or do you wish to correct it?

Mr. Harrison: It has already been corrected.

The Witness: I understood that the matter had been adjusted at the previous hearing.

The Special Master: All that relating to that subject matter would practically amount to nothing now because there is an agreement;

although of course it is a proper subject for cross examination. There was a stipulation at the last hearing. Of course it is still open, if you desire to pursue it on cross examination.

Mr. McClintic: I just wanted to ask one question to straighten it out.

The Special Master: Unless there is some real occasion for 276
it, I would not spend any time on it.

Value and population are other elements involved in paragraph 2, population with and without slaves.

By Mr. Carlisle:

Q. You have given the population of these two States, that is the population of what now constitutes Virginia and the population of what now constitutes West Virginia in 1860. Did you get it from the Census.

A. From the volume of the 9th Census of the United States, pages 68 to 72.

Q. And then you add 2.47 for an increase from 1860 to 1863?

A. Not 2.47 per cent, 2.47. In other words, 171 days.

The Special Master: Based on the preceding decade?

The Witness: Yes, sir.

By Mr. Carlisle:

Q. The Census day, under the law was June 1st of each ten years. Did you take that as the date from which you made your calculation of the increase?

A. I stated January 1st, 1861, to June 20th, 1863.

Q. You got the enumeration of the slaves and the enumeration of free persons of color in the same way, did you from the Census?

A. Yes, sir.

Q. You took the Census of 1860 and then you made an ad- 277
dition to it to ascertain the population in June, 1863?

A. Yes, sir.

Q. What method did you adopt to ascertain that fact?

The Special Master: That is, how did you get at your proportion?

A. I took the increase between 1860 and 1870 and applied the ratio to the population of the two States.

By Mr. Carlisle:

. You went back to the previous decennial period and got the average increase?

A. I got the average yearly increase.

Q. The average annual increase?

A. Yes, sir.

Q. And then you took the item that you did take here and applied that to it?

A. Yes.

The Special Master: What did you find the percentage of increase to be for the preceding decade?

The Witness: I had not figured on percentage. I have 20,000 whites, for instance, the increase in Virginia; and one-tenth of that would be 2,000. That is the way in which I arrived at the annual increase.

The Special Master: You did not take the percentage of increase for the decade, you took the concrete figures?

The Witness: I took the concrete figures.

By Mr. Carlisle:

Q. The decree says you shall ascertain this population with and without slaves. When you undertook to exclude slaves 278
have you not omitted all free persons of color in the State of Virginia?

(Consultation between Mr. Carlisle and his associates followed)

By. Mr. Carlisle:

Q. I will ask you this question. You find that there were in 1870, which was after this period, 512,841 free persons of color in Virginia—

Mr. Conrad: Free persons of color?

Mr. Carlisle: Colored persons. Of course they were free in 1870. They were put down separately in 1860 as free persons of color.

Q. (Continuing) Did you not assume then, when you wanted to ascertain your final result, that there would have been, if slavery had not been abolished, 512,841 slaves in the State; is not that what you assumed?

A. I have not got your question straight.

Mr. Harrison: That is on page 11?

Mr. Carlisle: It is marked page 10 here.

Mr. Anderson: Page 11 of Exhibit B-1.

Mr. Robinson: The first two pages will explain how we got at that. You mean at the bottom of page one?

Mr. Carlisle: I will ask the stenographer to read the question.

The stenographer read as follows:

"Q. You find that there were in 1870, which was after this period, 512,841 free persons of color in Virginia. They were of course free in 1870. They were put down separately in 1860, as free persons of color. Did you not assume then, when you wanted to 279
ascertain your final result, that there would have been, if

slavery had not been abolished, 512,841 slaves in the State. Is not that what you assumed?"

A. I understand that they were put down as free persons of color in 1870.

By. Mr. Carlisle:

Q. Did you find that in the Census?

A. Virginia's total negro population in 1870 was 512,840.

Q. I did not ask you whether they were put down as slaves in 1860. That was simply my statement. What I want to get at is, how did you get at these figures as representing the free colored people in Virginia in 1870—512,841?

The Special Master: That is, how did he reach that result; where did he get that item?

Mr. Carlisle: Yes.

A. I took it from the Census, the 9th Census of the United States.

By Mr. Carlisle:

Q. That is, the Census of 1870?

A. Yes, sir.

Q. Well, then, did you not assume that a certain number of them were slaves in 1860 or 1863? You were to give that with slaves and without slaves. I want to know how you got it?

The Special Master: How did you fix the number of slaves in 1863; just give the method of computation. 280

Mr. Carlisle: That is what I want.

The Special Master: He wants to know how you arrive at your result as to the slaves in 1863, on June 20th. Begin at the foundation and give us your computation. Give us the figures.

The Witness: The number of slaves in 1863?

The Special Master: How did you ascertain the number of slaves June 21, 1863. Give us the method you employed by which you reached the result in your statement?

The Witness: I first established the percentage of slaves and free negroes in 1860 in Virginia and West Virginia. Then I determined the free negro population in 1870.

The Special Master: What figures did you have to start with? You first ascertained the number of slaves in Virginia and West Virginia in 1860. What are those figures? That is what you want, is it not, Brother Carlisle?

Mr. Carlisle: Yes; the detailed steps.

The Special Master: Give us your figures, the detailed computation and the results.

The Witness: Virginia, 1860—472,494 slaves; 55,269 free negroes. West Virginia, 1860: 18,371 slaves; 2,773 free negroes. With that as a basis, I worked out the percentage shown on the schedule, which

was 89.53 per cent. of slaves for Virginia and 10.47 per cent. free negroes.

West Virginia, 86.89 per cent. slaves; 13.11 per cent. free negroes.

By the Special Master: 281

Q. That gave you the proportion of free and slaves, the proportion they bore to each other at that time?

A. Yes, sir.

Q. What was your next step?

A. I took the free negroe population of the two States in 1870, which was 512,841 in Virginia and 17,980 in West Virginia.

Q. Please state that again?

A. Virginia's negro population in 1870 was 512,841, of which 10.47 per cent., or 52,694, would be free negroes if slavery had existed at that time. On the same basis there would have been 2,357 free negroes in West Virginia in 1870, if slavery had existed. I took the total white population, which in 1870 was 712,322, and added to that the percentage of free negroes, determined by the method just mentioned, namely, 53,694, making a total of 766,016 total free population of Virginia. The total white population of West Virginia in 1870 was 424,034, to which I added the number of free negroes, determined by the method just described, 2,357, making a total of 426,391, as the probable total population in 1870. Comparing these two figures, I get the ten years increase at 18,880 in Virginia; and the increase in West Virginia, 68,074; to which I add 2.47.

Q. To what—to the population in 1860?

A. The population of 1860, to determine the population in 1863; making a total of 751,799 in Virginia, and 375,131 in West Virginia.

By Mr. Carlisle: 282

Q. Is that all?

A. That is assuming that the United States Census was made as of December 31, 1860, at the end of the year, taking in the year.

Q. If the United States Census was taken on the 1st of June, as of the 1st of June, 1860, you omitted, when you made the calculation, seven months and ten days, did you not?

A. If it was so taken.

Q. Would not that make a very great difference in the percentage?

A. It would make a very slight difference.

Q. A very slight difference? Would not one per cent. of 400,000 be much more than on 24,000?

A. Yes, sir.

Q. And when it came to make the percentage, would it not make quite a difference, the difference in percentage on a large amount and the percentage on a small amount?

A. Undoubtedly.

Q. Then, if you had taken the Census as of June 1st, 1861, the

population in the State of Virginia would have been much larger than you have shown it, would it not—because you would have to add an increase for a longer time?

A. I don't understand your question.

Q. In other words, have you not omitted from the time during which you have calculated the increase, seven months and some days?

A. If the Census was taken June 1st, I have omitted seven months, yes. 283

Q. If you had added the increase of Virginia's slave population for the seven months, that would have made it considerably larger, would it not?

A. Not necessarily. I cannot tell without figuring out. But West Virginia's proportion might have increased in the same ratio and would not have changed the result.

Mr. Conrad: Did not West Virginia's population increase in a far greater ratio?

Mr. Carlisle: I am examining the witness about it.

By Mr. Carlisle:

Q. If nine years had expired after the Census of 1860, would not the result have been very different if only one year had expired?

A. It would.

Q. The same thing applies, in less degree, does it not to seven months?

The Special Master: On how long a period of time is your percentage of 2.7 predicated?

Mr. Carlisle: The first of January, 1861, to the 20th of June, 1863.

The Witness: Yes.

The Special Master: That is two years—

The Witness: And 171 days.

The Special Master: And if there ought to have been seven months more added, you would have had that much longer time, and the results in which case would have been increased by the amount of the increased percentage.

The Witness: It would have been three years instead what of it was. 284

Mr. Carlisle: It would have been three years and twenty-three days.

Mr. Conrad: But the ratio the same.

Mr. Carlisle: But the interest on one dollar is not as much as the interest on $100 for the same length of time.

The Special Master: That is obvious.

Now, it is understood that the Census was actually taken in June, 1860?

Mr. Carlisle: That is the law.

Mr. Anderson: That is the theory.

The Special Master: Well, as far as we know, then, the United States Census is predicated, as to the population in existence, on the first of June?

Mr. Anderson: Although as a matter of fact the count is made after that.

The Special Master: But the work is supposed to have been done as of that date. Is that the understanding?

Mr. Robinson: Of course our schedule shows, too, that West Virginia was increasing very much more rapidly than Virginia.

The Special Master: That does not affect this proposition at all. What we want to know now is whether we have a common starting point. Is it agreed that the census was taken as of the first of June, 1860?

Mr. Carlisle: All the statistics of the Census.

The Special Master: But what I want to know is whether both sides agree to that.

Mr. Carlisle: That is what the Act says.

Mr. Conrad: But the Act says a great many things not in 285
accordance with the fact.

The Special Master: Then, if you do not agree we understand where we are. If you did agree all the accountant would have to do would be to rearrange his figures; but in the absence of agreeing, the defendants may proceed upon their theory and later I will hear the plaintiffs on their theory.

Mr. Carlisle: If you want a reference to the Act, I will give it to you.

Mr. Conrad: No. The reports furnished us agree substantially with ours.

The Special Master: As we go along, where the difference is so small that Virginia does not think it worth while to contest, I will have the record show that, and we will thereby make progress. When we reach that stage I will see to it that the record shows an agreement upon such items as may be involved in that suggestion.

Mr. Anderson: You would probably not care to press this further if you knew the result?

Mr. Carlisle: I do not know the exact result, but it would make some difference.

Mr. Anderson: Have you made an estimate as to what the result would be, what difference between our percentage and yours if this change was made?

The Witness: Yes, sir.

Mr. Carlisle: The only significance of this inquiry is that one of the alternative methods of ascertaining West Virginia's just
proportion of the ordinary expenses of government is based 286
on the population, and the other is based on the assessed val-

ue of property. Now, West Virginia is charged with a certain percentage, and a difference between the population, in the other method, and it might be important—

Mr. Anderson: Mr. Potter has looked into that and he has made a calculation as to what the difference would be in the two methods, and I think it would save time to ask him about it. We really do not care which you adopt.

The Special Master: If you do not care which is adopted, can we not have that stated in the record, and that will eliminate this controversy?

Mr. Carlisle: No; we could not; because we do not know just now the exact method he adopted.

The Special Master: We will not be able to make any progress in that direction just now, then. If they have no objection, the Attorney General wants to ask a witness what the result would be upon the theory that you suggest?

Mr. Carlisle: We have no objection.

The Special Master: Otherwise of course you could complete your cross examination and he could take up the matter upon redirect. You may ask that question, Mr. Attorney General.

Mr. Spooner: I would like to have the theory stated first.

Mr. Anderson: The theory has been stated by Mr. Carlisle.

The Special Master: Assuming that the computation of 287
population was to go back to June 1st, 1860, instead of December 1st, 1860, it is upon that hypothesis that Mr. Anderson wants the witness to state how it would affect the result.

Mr. Carlisle: That is purely a method of calculation.

The Special Master: That may be true; but he desires to ask him that question, and unless there is objection he may ask him.

Mr. Carlisle: I don't care; let him guess at it. That is all he can do.

Mr. Anderson: I want it to show that my friend is wasting some very heavy artillery on some very small sparrows.

The Witness: I have made a calculation on the basis of West Virginia figures. We assume she started that day. The difference in the population, taking slaves, is .1745 of one per cent., or, practically 17-100ths of one per cent. And the case of Virginia is the same.

Mr. Carlisle: That could not be so, applying the same method to a smaller number, when you compare the two things. When you compare the difference in the percentage, you have put down the percentage shown on your theory now.

The Witness: The difference between your per cent. and our per cent, shown by the schedules is as I have stated, a little over 17-100ths of one per cent.; and figuring it without slaves there is a difference of a little over .23 of one per cent.

Mr. Carlisle: We are not excluding slaves at all in the question put to you: we are including them.

[*Vol. 5, May 6, 1909.*]

[*Direct Examination of Thomas B. Dixcy on Defendant's Exhibit B-1.*]

[The Special Master:] 510

As I understand, defendant's exhibit B-1 is now produced.

Mr. McClintic: Please look at this and see if you identify it.

The Witness: I do identify it as having been made and signed by me.

(The paper referred to was marked by the stenographer Defendant's Exhibit B-1.)

Mr. McClintic: West Virginia offers Defendant's Exhibit B-1 as evidence.

By Mr. McClintic:

Q. Please state, Mr. Dixcy, if you made this, or if it was made under your direction (referring to Defendant's Exhibit B-1.)

A. It was made in part by me, yes, and under my direction. That is the original figures. The report itself was made by 511 me.

Q. Please state to the court what it contains, in a general way.

A. It contains four schedules, four statements, the first showing the area of Virginia and West Virginia separately, second, showing the assessed valuation of the real property in Virginia; third, showing the assessed valuation of the real property in West Virginia; fourth, the population of Virginia and West Virginia, with and without slaves separately, computed as of June 1st, 1863; and the average of such population by decades from 1820 to 1860, both dates inclusive.

Q. Are those amounts stated in there under those four schedules correct?

A. They are correct, sir, from the sources of information as noted.

Q. I find on page 6, included certain items as to the censuses of 1820, 1830, 1840, 1850, and 1860. Are those correct, from the sources from which you obtained them?

A. They are.

Q. What sources?

A. They were furnished by S. N. D. North, the Director of the United States Census Bureau, in a letter over his signature.

Q. Does that letter accompany this exhibit?

A. The letter including that schedule, no.

Q. Please explain how you arrived at the other census figures on that page?

A. The table to the top of the page, headed "With Slaves and Without Slaves" were furnished by the United States Census Bureau, so far as relates to the first and third columns. The 512
fourth column and the percentages were computed by me using the basis of computation used by the Census Bureau of the United States in their computation of June 1st, 1863.

Q. You took the date June 1st, 1860, and computed the additional amount from that date?

A. From that date.

Q. Why did you take the date, June 1st, 1860?

A. Because it is the date given in the laws of the United States for the taking of the United States Census.

Q. The valuation of the real estate of Virginia was taken from what sources?

A. As to Alexandria, from the Auditor's report for 1860, and thereafter from the sources noted at the head of each group of county names; the following group from the report of 1861, and then from the land books of 1861, 1862, and 1863, the Virginia counties being taken, almost altogether or very largely, from the land books of 1863.

Q. In those counties which were not taken from the land books of 1863, did you take them from the best and nearest sources available?

A. The nearest source available to that date.

By the Special Master:

Q. What are these land books?

A. They are assessment rolls.

Q. Where did you find them?

A. Down here in the basement of the State Library Building.

Q. For all the counties of Virginia?

A. No; some of them were missing, but most of them were 513
here.

Q. Is that the rule, that all the assessments made throughout the State are made here?

Mr. Anderson: Yes, sir.

Mr. Conrad: Three copies are made. One is sent here.

The Special Master: And this was the duplicate sent here that you had access to?

The Witness: Yes, sir. The series is not unbroken, but approximately so.

The Special Master: And when you did not get the exact date, you got the nearest approximation you could?

The Witness: Yes, sir.

By Mr. McClintic:

Q. Please state what facts bear on the assessment of West Virginia as to the best source of information?

A. They were the same as those in regard to the other counties of Virginia.

[*Vol. 6. May 7, 1909.*]

[*Cross-Examination of Thomas B. Dixey on Defendant's Exhibit B-1.*]

612

By Mr. Harrison:

Q. Now, I will pass to another subject. In the second item of the second paragraph of the decree, the inquiry was directed to the extent and assessed valuation of the territory of Virginia and West Virginia on June 20, 1863. That is part of the inquiry embraced in the second paragraph, the extent of assessed valuation of the territory. Is there any difference between your statement and Mr. Potter's statment as to the extent of the territory of the two Virginias?

Mr. McClintic: That was agreed on once.

Mr. Harrison: I understand that, but I want to get it in the record.

A. A very material difference.

By Mr. Harrison:

Q. There is, you say, a very material difference?

A. As to the extent of the territory, as we show it and as you show it; yes, there is a very material difference.

The Special Master: You mean a difference in the area?

The Witness: I am quite sure. 613

The Special Master: Be sure that you understand the question.

Mr. Conrad: He testified that there was a very material difference.

Mr. Harrison: Yes, between his statement and Mr. Potter's statement as to the area.

Do you understand the question? 613

The Witness: I am not sure that I do.

By Mr. Harrison:

Q. You understand that Mr. Potter's statement, as originally presented here, more than six months ago, was to be modified, that it was understood it was to be modified and treated as modified in respect to the extent of territory, do you not?

A. I understood that counsel had agreed that the United States

Geological Survey reports or surveys should be accepted.

Q. Then, when I refer to Mr. Potter's statement, I of course refer to it as modified according to the agreement.

A. I had not understood that Mr. Potter's original statement was withdrawn.

Mr. McClintic: He never filed any subsequent statement.

The Witness: Of course if his figures are the same as mine, taken from the same source, although I have never seen any statement prepared by Mr. Potter, I assume the areas would be the same.

The Special Master: Strictly speaking, of course Mr. Potter has not changed his statement, but as a matter of fact, that has been agreed upon, the areas have been agreed upon. 614 614

Mr. Harrison: You so understood it?

The Special Master: Yes. I thought the correction had been made.

Mr. McClintic: I never saw the change, if it was made.

Mr. Harrison: I was treating it as if it had been done. It was agreed that it should be done.

The Special Master: That is evidently the way the misapprehension arose.

Mr. Anderson: There is no doubt about it, that that was agreed upon, and there is no difference between us on that point.

By Mr. Harrison:

Q. As to the assessed valuation of the territory, is there any difference between your statement and Mr. Potter's statement?

A. As to the assessed valuation of the territory?

Q. Yes.

A. Yes; there is a small difference in each State.

The Special Master: How much?

The Witness: No. 2 is what I want (referring to exhibit).

The Special Master: Do you want your schedule, your second schedule?

The Witness: No; I want the plaintiff's exhibit. 615

The Special Master: Then it is Plaintiff's Exhibit B-1 that you want?

The Witness: (Referring to Exhibit) There is a difference to this extent. Virginia's Exhibit as to the assessed valuation of Virginia is less than ours by the sum of $129,424.36.

By the Special Master:

Q. What is the cause of that discrepancy?

A. It is difficult to reconcile the sums, because these were copied right out of the books in most cases, and sometimes, where Mr. Potter's figures did not agree with ours, we went back and reckoned, and they made clerical differences.

Q. Can you confine the difference to some particular item?

A. No; it varies from two and three cents to different amounts.

Q. Which is the largest?
A. Well, none of the differences are very much.

By Mr. Harrison:
Q. You have given the difference on the Virginia assessment?
A. Yes, sir.
Q. What is the difference on the West Virginia assessment?
A. It is quite small. The Virginia schedule showed the West Virginia assessment to be $6,352.90 less than the West Virginia schedule showed it to be. 616
Q. Then, if you deduct this $6,352.90 from $129.424.36 you will get $123,071.46 as the real difference?
A. No, sir; I should add the two items together.
Q. Why would you do that?
A. Because they are both against West Virginia. In one case Virginia is understated by Virginia's schedule—
Q. By how much?
A. $129,000.
Q. In round numbers, or that much accurately?
A. The figures are $129,424.30.
Mr. Anderson: If I was in error about that I want you to correct me.
The Special Master: Virginia is understated and West Virginia is overstated?
The Witness: By Virginia, yes sir.
Mr. Harrison: And it would be how much?
The Special Master: $6,352. Give me the exact amount, please.
The Witness: $6,352.90.
The Special Master: What do you gentlemen want to do about that discrepancy? I cannot take the time to examine all these details for you, and I should think the experts ought to get together on that. They ought to go over it and find that discrepancy, I should think.
Mr. Harrison: That is why we are developing these discrepancies.
The Special Master: Certainly. That is perfectly proper. I cannot take time for cross-examination on those details. 617 They must reconcile the two sides, or you must agree, one of two things; either you will agree among yourselves or the experts will get together and agree; then if they cannot agree on some particular instance, if they will submit it to me, I will have to determine it.

By Mr. Harrison:
Q. The second inquiry under the second paragraph of the decree relating to the population of the two Virginias, with and without slaves, separately. Will you please state to what extent your statement of that inquiry differs from Mr. Potter's statement of that?
A. In amount?

Q. Yes. That is what we are getting at.

A. Do you want it with or without slaves?

Q. I want it both ways.

The Special Master: What is this question?

Mr. Harrison: I ask him to state to what extent his statement of the population of the two Virginias differs from Mr. Potter's statement, showing it respectively with and without slaves.

The Special Master: Whether there was any discrepancy there, and if so, how much.

The Witness: Suppose I prepare that during the recess. It will only take a few minutes.

The Special Master: And it will be understood also in reference to that that if there is any discrepancy the accountants can get together, and see if they can reconcile it, and if they do not reconcile it, all they will do then will be to report to me and I will have to decide upon it. 618

[*May 7, 1909.*]

After Recess.

619

THOMAS BIRD DIXCY

resumed the stand for further cross examination.

By Mr. Harrison:

Q. Can you state now specifically the difference, if any there be, between your statement and Mr. Potter's, under paragraph 2 of the decree, of the population with and without slaves in the two Virginias?

A. For Virginia, as computed in the Virginia exhibit, with slaves, 1,220,997; in accordance with West Virginia's Exhibit, 1,221,319, an excess on the Virginia Exhibit of 322.

Q. In other words, Virginia is 322 in excess of the total population over West Virginia's schedule.

A. With slaves.

Q. Now take it without slaves.

A. Without slaves, as computed for Virginia, on Virginia's Exhibit, 751,799. As computed for Virginia on the West Virginia Exhibit, 748,171, an excess on the Virginia exhibit of 3,628.

Q. So that in each case, with slaves and without slaves, the difference is very slight between your statement and Mr. Potter's?

A. It would be a very small percentage of the entire amount; yes sir.

The Special Master: Now, can we agree on that?

Mr. Harrison: I should think so.

The Special Master: It is a small matter.

Mr. Spooner: I do not think the Supreme Court would hear 620
four or five days of argument on that.

The Special Master: But I think it is going to be very gratifying to the court if I can eliminate all controversy that is not substantial.

Mr. Conrad: We might add the difference together, and divide it by two, and equalize them in that way. The difference *in* infinitesimal.

The Special Master: It is not a matter we will spend very much time about here.

Mr. Spooner: Or there.

Mr. Harrison: We will take their statement, if your Honor please.

The Special Master: Then the statement as to the population with and without slaves—

Mr. Harrison: Under paragraph 2 of the decree.

The Special Master: Under paragraph 2, found on defendant's Exhibit B-1, page 6, is accepted by both parties as accurate.

The Witness: I have only testified in regard to Virginia, not with regard to West Virginia yet.

Mr. Harrison: I do not know how that would be. I thought that covered both.

The Witness: No; that was as to Virginia, on the two exhibits.

The Special Master: Is the difference any greater for West Virginia?

The Witness: It would be a slightly greater percentage, yes. It is not large difference. 621

By the Special Master:

Q. What is the difference?

A. On Virginia's Exhibit, the total population of West Virginia, with slaves, is 392,823.

Q. As against 396,333?

A. Yes, on West Virginia's Exhibit; an excess on the West Virginia exhibit of 3,810.

Q. That is rather in your favor than against you, is it not? That is, as far as Virginia is concerned, it increases their proportion rather than decreases it?

A. Without slaves, the population of West Virginia, as shown on the Virginia Exhibit is 375,131, and as shown on the West Virginia Exhibit, 377,289; an excess on the West Virginia exhibit of 2,158.

Q. In each case it is an excess on the part of West Virginia?

Mr. Anderson: We accept the West Virginia exhibit on both, sir.

The Special Master: Then it is agreed on the record that page 6 of the defendant's Exhibit B-1 is accepted as an accurate statement

of the population, both with and without slaves. That is agreed to on both sides.

The Witness: There is still another calculation at the bottom of page ——, an average of the population by decades from 1820 to 1860. They have not accepted that.

The Special Master: What is the significance of that? As long as we agree on the amount which I am to find, I do not know that we are concerned about the method by which the result is 622 reached.

Mr. Spooner: It bears on the expenses, possibly.

Mr. Harrison: I do not know that it has any bearing on any subsequent inquiry.

Mr. Spooner: This is in paragraph 2, as to the extent and value of the territory of Virginia and West Virginia on June 20, 1863, and the population thereof, with and without slaves, separately.

The Special Master: I shall not report any more than that.

Mr. McClintic: We shall ask to file a further statement under the *average* population of that period.

The Special Master: That is a matter I shall hear you about later. Anything either side may desire to have reported by me under my discretionary power, I will hear you both on; but for the time being it will result in less confusion if I simply confine the admissions to the paragraphs themselves. Then what I take up later will be a matter of discretion on my part.

Mr. Conrad: A question will arise under that provision of the construction of the order of the court.

The Special Master: Yes. Of course I have liberty to state any special circumstances that I consider of importance. I certainly am not going to state trivial things.

Mr. Harrison: Right here, for the purposes of paragraph 2, we will agree rather than spend any time in controversy.

The Special Master: Precisely. That covers the whole of 623 paragraph 2. If either party desires any suggestion or report or alternative in connection with paragraph 2, I will hear you on that at the close. Is that agreeable, Mr. McClintic?

Mr. McClintic: Yes, sir.

[*Vol. 7. July 1, 1909. Plaintiff's Substitute Exhibit B-1*]

Mr. Anderson: I now have in my hand schedule B-1. That has been agreed on That was accepted at the last meet- 835 ing.

Mr. Harrison: Will you read that second paragraph of the decree?

The Special Master: The second paragraph in the decree calls for the extent and assessed valuation of the territory of Virginia and West Virginia, June 20, 1863, and the population thereof, with

and without slaves, separately. The plaintiffs submit plaintiff's Substitute Exhibit B-1. Has this been submittd to the other side?

Mr. Dixcy: Yes, sir.

The Special Master: And are the computations found in Plaintiff's Substitute Exhibit B-1 agreed to?

Mr. McClintic: I understand that they agree to our statement.

The Special Master: I am merely trying to get the information. Is it a fact that you agree with the accountant on the other side as to the computations appearing in Plaintiff's Substitute Exhibit B-1.

Mr. Dixcy: They agree with us, yes, sir. 836

The Special Master: It does not make any difference which way you put it.

Mr. Carlisle: I would say that the agreement is with our figures.

The Special Master: Well, have you made an agreement? Does that state it? It is absolutely immaterial, so far as the Master is concerned, how these results are reached. The question is, do we agree on that?

Mr. Carlisle: Yes sir.

The Special Master: So that the Master will report that Plaintiff's Substitute Exhibit B-1 is agreed to by both sides. That disposes of that.

[*Vol. 7. July 1, 1909.*]

[The Special Master]: We now take up revised Exhibit B-1. 871 relating to matters involved under the second paragraph in the decree.

Mr. Anderson: That is an agreed statement.

The Special Master: The case is closed as to that paragraph. Is that agreed to?

Mr. Anderson: Yes, sir.

Mr. Conley: Yes sir.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT C-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

C-1
Page 1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

SUMMARY OF PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

PARAGRAPH III OF DECREE.

Details of which are shown on pages numbered 2 to 6, inclusive, following

Total Claimed by Plaintiff:

Group 1 Pages 2 & 3	Bridges	$ 3,000.00	
	Railroads	1,316,992.42	
	Turnpikes	1,579,341.81	
	Miscellaneous	1,253,200.10	
			$4,152,534.33
Group II Pages 4, 5 & 6	Bridge Co's	$ 78,412.50	
	Navigation Co's	210,500.00	
	Turnpike Co's	803,555.83	
	Banks	391,800.00	
	Town of Bath	2,500.00	
			1,486,768.33
			$5,639,302.66

Total Conceded by Defendant:

Group I	Bridges	$ 3,000.00	
	Turnpikes	1,149,088.92	
	Miscellaneous	99,200.00	
			1,251,288.92
	Difference		$4,388,013.74

This Difference is Composed of the Following:

Group I	Railroads	$1,316,992.42	
	Turnpikes	430,252.89	
	Miscellaneous	1,154,000.10	
			$2,901,245.41
	and all of Group II		1,486,768.33
			$4,388,013.74

Certified Correct as to Summary and Details.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

All Expenditures Made by the Commonwealth of Virginia Within the Territory now Constituting West Virginia, other than Subscriptions to Capital Stock (Shown in Group II), from March 19th, 1823, to December 31st, 1860, Inclusive.

All Figures and Calculations in this Exhibit Agreed to as Correct in Amount by Plaintiff and Defendant.

PARAGRAPH III OF DECREE.

Group I.

	Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree. (See Note below.)	
			Basis.	Amount.	Basis.	Amount.	Basis	Amount.
	Bridges:							
1	Coal River Bridge	$ 3,000.00		$ 3,000.00		$ 3,000.00		
	Railroads:							
2	Covington & Ohio Railroad	$2,787,128.33	Direct Construction	$1,146,460.42			Direct Construction	$1,146,460.42
3	Winchester & Potomac Railroad Company	270,000.00	Mileage 63.16%	170,532.00			Mileage 63.16%	170,532.00
	Total	3,057,128.33		$1,316,992.42				$1,316,992.42
	Turnpikes and Roads:							
4	Abbs Valley and Tug Road	$ 4,450.00	Mileage 90.1%	$ 4,009.45	Mileage 90.1%	$ 4,009.45		
5	Alleghany Mountain Turnpike	1,074.00	" 55.55%	596.66	" 55.55%	596.66		
6	Berryville and Charlestown Turnpike Company	20,455.74	" 58-1/3%	11,932.52			Mileage 58-1/3%	$ 11,932.52
7	do. Purchase of the Road in 1858	7,236.97	" 58-1/3%	4,221.57	Mileage 58-1/3%	4,221.57		
8	Franklin and Monterey Turnpike	13,694.09	" 55.1%	7,545.44	" 55.1%	7,545.44		
9	Harrisonburg to Hardy and Pendleton Co. Road	1,000.00	" 50%	500.00	" 50%	500.00		
10	Kanawha Turnpike	177,054.34	Direct Construction and 82% Mileage	152,130.54			Direct Construction and 82% Mileage	152,130.54
11	do. Extraordinary Repairs (Eastern Section)	6,050.66	Mileage 42.87%	2,593.92			Mileage 42.87%	2,593.92
12	do. do. (Western Section)	7,189.65	Direct Construction	7,189.65			Direct Construction	7,189.65
13	do. Extension	80,955.28	do.	80,955.28			do.	80,955.28
14	Kanawha River Improvements	59,572.36	do.	59,572.36			do.	59,572.36
15	Kanawha Board—Bonds	60,000.00		60,000.00				60,000.00
16	North Western Turnpike	620,271.38	Direct Construction	(1) 469,148.53	Direct Construction	469,148.53		
17	do. (Maryland Section)	7,882.92	do.	7,882.92			Direct Construction	7,882.92
18	Prices Turnpike and Cumberland Gap Road	72,780.67	do.	9,212.20	Direct Construction	9,212.20		
19	Raleigh and Grayson Turnpike	38,400.00	Mileage and Percentage	11,394.22	Mileage and Percentage	11,394.22		
20	Staunton and Parkersburg Turnpike	388,936.97	do.	(2) 264,043.07	do.	264,043.07		
21	South Branch of Potomac to Brocks Gap Road	1,400.00	Mileage 29.41%	411.80	Mileage 29.41%	411.80		
22	Skidmore Fork to South Fork of South Branch of Potomac Road	1,000.00	" 58.33%	583.33	" 58.33%	583.33		
23	Beverly and Fairmont Road	75,384.65		75,384.65		75,384.65		
24	Beverly and Clarksburg Road	2,724.00						
	and Road from Monongalia Co. to Beverly and Clarksburg Road	9,276.00		12,000.00		12,000.00		
	Carried forward	1,656,789.68		$1,241,308.11		$859,050.92		$ 382,257.19

NOTE. Items 10 to 14 inclusive, are included by the Defendant under Paragraph VII of the Decree.

(1) Not including repairs, etc. $109,587.74
(2) Not including repairs, etc. 21,700.74

	Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree.	
			Basis.	Amount.	Basis.	Amount.	Basis.	Amount.
	Brought forward	1,656,789.68		$1,241,308.11		$ 859,050.92		$ 382,257.19
	Turnpikes and Roads (Continued):							
25	Brandonville, Kingwood and Evansville Road	$ 10,595.73		10,595.73				10,595.73
26	Charleston and Weston State Road	4,456.71		4,456.71		4,456.71		
27	Clarksburg and Point Pleasant State Road	249.00		249.00		249.00		
28	Clarksburg and Buckhannon Turnpike (Macadamizing)	19,259.36		19,259.36				19,259.36
29	Cheat Mountain Turnpike	7,697.88		7,697.88		7,697.88		
30	Fairmont and Wheeling Road	31,848.85		31,848.85		31,848.85		
31	Huntersville and Lewisburg Turnpike (from Martin's Bottom to Huntersville)	19,976.47		19,976.47		19,976.47		
32	Huntersville and Parkersburg Road	4,000.00		4,000.00		4,000.00		
33	Huttonsville and Huntersville Turnpike (to Martin's Bottom)	23,168.72		23,168.72		23,168.72		
34	Ice's Ferry Road	1,358.00		1,358.00		1,358.00		
35	Kingwood and West Union Turnpike	18,140.61		18,140.61				18,140.61
36	Kanawha and Logan Road $5,000.00 Logan Court House and Kanawha State Road 2,407.50 Guyandotte to Kanawha State Road 601.50	8,009.00		8,009.00		8,009.00		
37	Marlins Bottom and Lewisburg Road	12,615.09		12,615.09		12,615.09		
38	Middle Fork Road	13,867.34		13,867.34		13,867.34		
39	Middlebourn to Pennsylvania Road $5,653.00 and Tyler to Green County Road 1,000.00	6,653.00		6,653.00		6,653.00		
40	Monroe County to Kentucky Line Road	5,000.00		5,000.00		5,000.00		
41	Moorefield and Alleghany Turnpike Co. (Building stem to Petersburg)	4,500.00		4,500.00		4,500.00		
42	Morgantown and Beverly Road	2,999.97		2,999.97		2,999.97		
43	Nicholas Court House and Gauley Bridge Turnpike	1,500.00		1,500.06		1,500.00		
44	Ohio River and Maryland Road	95,934.37		95,934.37		95,934.37		
45	South Fork of South Branch of Potomac River to Petersburg Road	900.00		900.00		900.00		
46	Princeton and Red Sulphur Springs Turnpike	4,200.00		4,200.00		4,200.00		
47	Sandy River (Wayne Co.) to Kanawha Turnpike (see Wilsons Creek to Kanawha Turnpike)	3,500.00		3,500.00		3,500.00		
48	Slavin's Cabin and Summerville Road	16,322.30		16,322.30		16,322.30		
49	Sistersville and Salem Turnpike	11,326.64		11,326.64		11,326.64		
50	Wilsons Creek to Kanawha Turnpike (see Sandy River to Kanawha Turnpike)	4,000.00		4,000.00		4,000.00		
51	Wyoming Court House to Bluffs Road	5,954.66		5,954.66		5,954.66		
	Total	1,994,823.38		$1,579,341.81		$1,149,088.92		$ 430,252.89
	Miscellaneous:							
52	Twelve Pole River Improvement	$ 1,200.00		$ 1,200.00		$ 1,200.00		
53	Harpers Ferry Raid $255,745.77 Deduct—Transportation of Troops, and Ordnance and Ordnance Stores, and Sundry Credits 66,027.18	189,718.59		189,718.59				$ 189,718.59
54	School Commissioners	830,865.37	Direct Expenditure	830,865.37				830,865.37
55	Surveys	250,206.56		106,416.14			Direct Expenditure, Mileage and Percentage	106,416.14
56	Trans-Alleghany Lunatic Asylum	125,000.00		125,000.00		98,000.00		27,000.00
	Total	1,396,990.52		$1,253,200.10		$ 99,200.00		$1,154,000.10

(Group II.) Disbursements made by the Commonwealth of Virginia in payment of subscriptions to the capital stock of joint stock companies and corporations, including banks, created by her, the property or works whereof were situated in whole or in part in the territory now constituting the State of West Virginia, and a loan to the Town of Bath in said territory; all claimed by Virginia under Paragraph III of the decree. The plaintiff and defendant agree to the correctness of the amounts of said disbursements and to the portion of the property situated in West Virginia, as set forth in this table; but the defendant denies that they are a proper charge against her under this paragraph, and denies that some of the items are a proper charge against her in any event, and claims that, so far as she is liable at all, she is liable under Paragraph VII of the decree.

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Bridge Companies:			
57	Buckhannon Bridge Company	$ 1,800.00	.....	$ 1,800.00
58	Cheat River Toll Bridge Company	4,612.50	.....	4,612.50
59	Elk River Bridge Company	6.000.00	.....	6,000.00
60	Fairmont and Palatine Bridge Company	12,000 00	.....	12,000.00
61	Guyandotte Bridge Company	12,000.00	.....	12,000.00
62	Morgantown Bridge Company	24,800.00	.....	24,800.00
63	North Branch Bridge Company	3,000.00	.....	3,000.00
64	South Branch Bridge Company	4,200.00	.....	4,200.00
65	Virginia and Maryland Bridge Company	10,000.00	.....	10,000.00
	Total	$ 78,412.50	.....	$ 78,412.50
	Navigation Companies:			
66	Coal River Navigation Company	$ 96,000.00	.....	$ 96,000.00
67	Guyandotte Navigation Company	106,800.00	.....	106,800.00
68	Monongalia Navigation Company	2,660.00	.....	2,660.00
69	Tug Fork Navigation Company	5,040.00	.....	5,040.00
	Total	$210,500.00	.....	$210,500.00
	Turnpike Companies:			
			Mileage.	
70	Berkeley and Hampshire Turnpike Company	$ 16,572.00	92.46%	$15,322.47
71	Cross Roads and Summit Point Turnpike Company	6,000.00	46.38%	2,782.80
72	Giles, Fayette and Kanawha Turnpike Company	44,991.60	97.62%	43,920.80
73	Hardy and Winchester Turnpike Company	23,400.00	67.21%	15,727.14
74	Huntersville and Warm Springs Turnpike Company	6,159.24	21.36%	1,315.61
75	Hillsboro and Harpers Ferry Turnpike Company	6,000.00	2.38%	142.80
76	Martinsburg and Winchester Turnpike Company	27,000.00	59.09%	15,954.30
77	Morgan and Frederick Turnpike Company	8,005.00	73 1-3%	5,870.33
78	Mountain Lake and Salt Sulphur Springs Turnpike Co.	4,800.00	16.2-3%	800.00
79	North Frederick Turnpike Company	11,325.00	11.68%	1,322.76
80	Raleigh and Wythe Line Turnpike Company	400.00	73 1-3%	293.33
81	Brandonville, Kingwood and Evansville Road Company	3,193.46	.....	3,193.46
82	Buckhannon and Little Kanawha Turnpike Company	7,773.00	.....	7,773.00
83	Charleston and Point Pleasant Turnpike Company	31,260.00	.....	31,260.00
84	Charleston, Ripley and Ravenswood Turnpike Company	27,519.41	.....	27,519.41
85	Clarksburg and Philippi Turnpike Company	5,446.25	.....	5,446.25
86	Clarksburg and Wheeling Turnpike Company	4,195.35	.....	4,195.35
87	Clarksburg and Buckhannon Turnpike Co.	9,255.13	.....	9,255.13
88	Cacapon and North Branch Turnpike Company	12,000.00	.....	12,000.00
89	Clear Fork Road Company	600.00	.....	600.00
	Carried forward,	$255,895.44	.....	$204,694.94

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward,	$255,895.44		$204,694.94
	Turnpike Companies (Continued):			
90	Cranberry Summit and Brandonville Turnpike Company.	4,120.11	.....	4,120.11
91	Dunkard Creek Turnpike Company.....	6,000.00	.....	6,000.00
92	East River and Princeton Turnpike Company.....	4,800.00	.....	4,800.00
93	Fish Creek Turnpike Company.....	6,000.00	.....	6,000.00
94	Franklin and Circleville Turnpike Company.....	2,175.00	.....	2,175.00
95	Gilmer and Braxton Turnpike Company.....	6,699.80	.....	6,699.80
96	Gilmer, Ripley and Ohio Turnpike Company.....	29,974.80	.....	29,974.80
97	Gnatty Creek and West Union Turnpike Company.....	5,700.55	.....	5,700.55
98	Grave Creek and Pennsylvania Line Turnpike Company.	1,800.00	.....	1,800.00
99	Hampshire and Morgan Turnpike Company.....	6,510.00	.....	6,510.00
100	Hardy and Randolph Turnpike Company.....	7,134.78	.....	7,134.78
101	Harrisville Turnpike Company.....	6,000.00	.....	6,000.00
102	Hedgesville and Potomac Turnpike Company.....	5,400.00	.....	5,400.00
102	Holliday Cove Turnpike Company.....	4,733.33	.....	4,733.33
103A	Holliday Cove and Wellsburg Turnpike Company.....	5,916.67	.....	5,916.67
104	Holliday Cove and New Cumberland Turnpike Company.	2,400.00	.....	2,400.00
105	Kingwood and West Union Turnpike Company.....	8,769.48	.....	8,769.48
106	Leading Creek and Buffalo Creek Turnpike Company....	5,847.84	.....	5,847.84
107	Letart Falls and West Columbia Turnpike Company....	2,350.00	.....	2,350.00
108	Lewisburg and Blue Sulphur Springs Turnpike Company.	4,950.00	.....	4,950.00
109	Logan, Raleigh and Monroe Turnpike Company.....	7,321.24	.....	7,321.24
110	Marshall and Ohio Turnpike Company.....	11,943.75	.....	11,943.75
111	Martinsburg and Potomac Turnpike Company.....	15,290.00	.....	15,290.00
112	Middleway and Gerardstown Turnpike Company.....	11,943.75	.....	11,943.75
113	Moorefield and North Branch Turnpike Company.....	28,137.75	.....	28,137.75
114	Moorefield and Alleghany Turnpike Company.....	8,779.78	.....	8,779.78
115	Morgantown and Bridgeport Turnpike Company.....	10,687.40	.....	10,687.40
116	New Creek and Hardy Turnpike Company.....	5,431.24	.....	5,431.24
117	New Manchester Turnpike Company.....	2,000.00	.....	2,000.00
118	Newark Turnpike Company.....	3,000.00	.....	3,000.00
119	North River Turnpike Company.....	5,400.00	.....	5,400.00
120	Pattersons Creek Valley Turnpike Company	9,900.00	.....	9,900.00
121	Parkersburg and Elizabethtown Turnpike Company.....	4,800.00	.....	4,800.00
122	Pleasant Valley and Tunnelton Turnpike Company.....	4,078.45	.....	4,078.45
123	Potomac Turnpike Company.....	2,489.70	.....	2,489.70
124	Raleigh and Boone Graded Road Company.....	1,800.00	.....	1,800.00
125	Ravenswood and Reedy Creek Turnpike Company.....	8,999.99	.....	8,999.99
126	Red and Blue Sulphur Springs Turnpike Company.....	8,856.66	.....	8,856.66
	Carried forward,	$534,037.51	.....	$482,837.01

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward,	$534,037.51	.....	$482,837.01
	Turnpike Companies (Continued):			
127	Reedy and Harrisville Turnpike Company	1,751.87	.....	1,751.87
128	Ritchie and Gilmer Turnpike Company	8,891.18	.....	8,891.18
129	Sandy River Turnpike Company	3,000.00	.....	3,000.00
130	Salem and Harrisville Turnpike Company	3,817.92	.....	3,817.92
131	Sheperdstown and Smithfield Turnpike Company	18,575.00	.....	18,575.00
132	Shinston Turnpike Company	13,302.26	.....	13,302.26
133	Smithfield, Charlestown and Harpers Ferry Turnpike Co.	14,000.00	.....	14,000.00
134	Sistersville and Salem Turnpike Company	9,000.00	.....	9,000.00
135	St. Mary's Turnpike Company	6,000.00	.....	6,000.00
136	Sweet and Salt Sulphur Springs Turnpike Company	10,104.00	.....	10,104.00
137	Walnut Gap Road Company	1,305.37	.....	1,305.37
138	Wellsburg and Washington Turnpike Company	7,071.01	.....	7,071.01
139	Wellsburg and Bethany Turnpike Company	12,590.22	.....	12,590.22
140	Weston and Gauley Bridge Turnpike Company	64,098.31	.....	64,098.31
141	Weston and Fairmont Turnpike Company	97,962.50	.....	97,962.50
142	Weston and West Union Turnpike Company	5,538.21	.....	5,538.21
143	West Union Turnpike Company	3,054.00	.....	3,054.00
144	West Milford and New Salem Turnpike Company	10,526.32	.....	10,526.32
145	White and Salt Sulphur Springs Turnpike Company	4,000.00	.....	4,000.00
146	Wheeling, West Liberty and Bethany Turnpike Company	21,000.00	.....	21,000.00
147	Williamsport Turnpike Company	5,130.65	.....	5,130.65
	Total	$854,756.33	.....	$803,555.83
	Banks:			
148	Fairmont Bank	$ 50,000.00	.....	$ 50,000.00
149	Northwestern Bank of Virginia at Wheeling	341,800.00	.....	341,800.00
	Total	$391,800.00	.....	$391,800.00
	Town of Bath:			
150	Loan to Town of Bath for road to St. John's River	$ 2,500.00	.....	$ 2,500.00

Other Evidence and Proceedings Relating to Paragraph III of the Decree.

[*Vol 1. November 16, 1908.*]

TESTIMONY ON BEHALF OF COMPLAINANT. 57

under

Paragraph 3 of the Decree.

ARTHUR G. POTTER,
testified as follows:

By Mr. Anderson:

Q. Mr. Potter, state whether this paper, marked, "Expenditures in West Virginia. Article III. (Part 1, Interstate Improvements)," has been prepared responsive to the third paragraph of the decree?

A. Yes, sir.

Q. What is that a statement of?

A. The first part of it is a statement of expenditures for what we call interstate roads, or interstate internal improvement enterprises, covering internal improvements starting in the present State of Virginia and ending in the State of West Virginia—the expenditures in West Virginia.

Q. The first part is a statement of expenditures in West Virginia, on account of what?

A. Interstate improvements.

Q. And the second part?

A. Expenditures in the State of West Virginia entirely for improvements within her counties.

Q. Please state how those expenditures were made up, and from what sources?

A. From the printed records of the Board of Public Works, verified by the register kept by the Second Auditor.

Q. Are you prepared to state whether those statements are correct, so far as shown by those records?

A. To the best of my knowledge and belief, they are all cor- 58
rect.

Q. As to all the items which they contain?

A. Yes, sir.

Q. Those statements, as I understand you, are made up from authentic public records of the State of Virginia?

A. They are.

Q. Have you verified those statements?

A. Yes, sir, personally.

Q. Are you prepared to say those statements are correct?

A. They are, to the best of my knowledge and belief.

Mr. Anderson: I offer those papers in evidence.

(The papers referred to, entitled respectively "Expenditures in West Virginia, Article III. (Part 1, Interstate Improvements)" and "Expenditures in West Virginia. Article III. (Part 2, direct.)" are filed herewith, marked, respectively, "Plaintiff's Exhibit C-1—Part 1," and "Plaintiff's Exhibit C-1—Part 2.")

The Special Master: Now, what is your next?

Mr. Anderson: I understood Mr. Spooner desired to ask a question of Mr. Potter.

The Special Master: Very well.

Mr. Spooner: I want to ask Mr. Potter where schedule 15 A, which is cited here as being attached, is?

The Special Master: 15-A is Plaintiff's Exhibit C-1, you are enquiring about now, Senator. 59

Mr. Spooner: Yes; "Expenses of Harper's Ferry Raid, summary of detail analysis." I would like to see that statement.

A. Do you want to know where the details are found? What was the question please?

Mr. Spooner: I want schedule 15-A, which is said to be attached, but which is not, so far as I can see.

A. You will find it here, Senator (indicating).

By Mr. Spooner:

Q. Did you charge the expenses of the trial and the hanging of John Brown, in this?

A. I can't say. I don't think so.

Q. Why should you not? Was not that money expended in West Virginia?

[*Vol. 4, May 5, 1909. Cross Examination of Arthur G. Potter.*]

I will turn this schedule over to Mr. McClintic, because he 288 is more familiar with the facts than I am.

By Mr. McClintic:

Q. Under schedule C-1, third section of the decree, these percentages marked thereon are made by whom?

A. I have not got the schedule to which you refer.

The Special Master: The entries made in red ink, plaintiff's exhibit C-1. It relates to the third item of the decree.

A. (Continuing) The percentages in red were made by—

Mr. Anderson: Wait until we get it.

The Special Master: The question is who made the computations that resulted in the percentages. Is not that it?

Mr. McClintic: Yes, sir.

The Special Master: Did you make them?

The Witness: I made them, and my assistant, Mr. John B. Lightfoot, Jr., assisted by the regular members of my staff.

Mr. McClintic: On what basis did you make them?

Mr. Anderson: What page is this?

Mr. McClintic: The first page. Take them in their order and go right along. I suppose you made them on some basis, the same basis or on a separate basis.

The Witness: Each one on a separate basis.

By Mr. McClintic:

Q. Did you make them all on mileage or some on a mileage basis and others on some other basis?

A. Some on mileage and some on direct expenses which were located—

Q. State generally how you made them; on what basis?

A. On the basis of mileage. 289

Q. State the general principles?

A. On the basis of mileage in some cases where no other method was available; but on a basis of the direct expenditures of the counties where such information was available.

Q. How did you ascertain the mileage when you did base it on mileage?

A. From the board of public works report from maps which we scaled and in some cases from post route maps, which maps we used in some cases; and also railroad maps and railroad guides.

Q. As to those maps, where did you get the maps from which you scaled them?

A. From the office of the Corporation Commission.

Q. What did you know as to the correctness of those maps?

A. Nothing except what the map bore on its face, that it purported to be the map of a certain road or railroad or what not?

Q. When you use the word map, explain the character of the map in a general way.

A. We had a number of maps made by the engineers of the State, showing the routes of the different turnpikes, which we found with the Corporation Commission, and they were hand made maps.

Q. And that is the character of the maps you always used?

A. Not always; we referred to a United States post route map in one case. 290

Q. Only in one case?

A. I mean we had one map there which we referred to occasionally, sometimes to assist in locating these roads, and sometimes used independently. I have the explanation of the various ones that we have used on that basis.

Mr. Conrad: I suppose your Honor knows what the witness means by the Corporation Commission.

The Special Master: It is the Commission that has control of enterprises of that character?

Mr. Conrad: Yes, sir.

Mr. Moon: It is the successor to the board of public works?

The Special Master: I understand. It is the bureau where all those records will be.

Mr. Anderson: Yes. All the records of the Board of Public Works were turned over to the State Corporation Commission.

By Mr. McClintic:

Q. When you did not take maps, but took direct reports, what reports do you refer to?

A. Proceedings of the board of public works.

Q. What do you mean by proceedings of the board of public works, in that sense?

A. They are published volumes of the proceedings.

Q. On what were those based?

A. The reports of the engineers who built the roads. 291

Q. The engineer in charge of the particular road?

A. Or the State engineer in charge of all roads in the State.

Q. What did those reports show as to the location of the roads?

A. I cannot say offhand. In some cases they gave the town from which they started, the length of road built between certain points, and land marks; for instance, ridges of mountains, bodies of water, rivers, creeks, etc.

Q. And gave distances?

A. Gave distances in some instances, yes.

Q. Mr. Potter, where you took the basis of mileage, for instance, did you assume that each mile of road then cost exactly the same amount?

A. Not in all cases.

Q. When did you not assume it?

A. When we could determine that some part of the road had been macadamized, the cost of macadamizing was usually stated separately.

The Special Master: In the case of a turnpike?

The Witness: Yes.

By Mr. McClintic:

Q. If you did not know where that macadam was, would you divide that on a mileage basis, then?

A. Yes, sir.

Q. Did you make any difference in this mileage basis as to whether a road crossed a mountain, or whether it required excavation or anything of that character? 292

A. No, sir.

The Special Master: That is, you took the mileage without reference to the character of the country through which it went?

The Witness: Exactly.

By Mr. McClintic:

Q. Were bridges and culverts and things of that kind always charged extra or shown where they existed?

A. If they were identified in any way on the records we so treated them. I imagine there were many small bridges which did not show up separately as bridge constuction which we included possibly upon the mileage basis.

Q. The fact that a road crossed the Allegheny Mountains did not enter into the computation one way or the other on a mileage basis, did it?

A. It would depend on where the State line was.

Q. Supposing that was the State line—

The Special Master: The point is, was the character of the country where they crossed the Mountains taken into account?

Mr. Harrison: He said no.

The Special Master: That is your point, is it not?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. You charge this under what you might term two heads, one called interstate improvements, and the other direct.

The Special Master: Where do you find that?

Mr. McClintic: On the first page. That is the general statement, in Exhibit C-1. 293

The Witness: The "direct" begins at page 4.

Mr. McClintic: I am at page 1 now. I was speaking of the front page. Under the first head, in general what classes do you include?

The Witness: Only roads which were built partly in both states—roads and other improvements.

Mr. Harrison: What do you mean by the first head?

Mr. McClintic: I just named that; first, interstate improvements, and, second, "direct."

Mr. Harrison: Direct begins on the fourth page.

The Special Master: It is the title of the Exhibit that you refer to?

Mr. McClintic: Yes.

The Special Master: "Part 1; interstate improvements. Part 2, direct." Now, what you want to know is what he included under interstate improvements?

Mr. McClintic: Yes. What did you include under the second one?

The Witness: Expenditures made exclusively in the counties which now form West Virginia.

The Special Master: Are they separated in your report, these two classes of improvements, direct and interstate?

The Witness: Yes, sir; there is a separate total for the two.

The Special Master: Oh, a separate total.

By Mr. McClintic:

Q. Did you make any distinction between roads built directly by the state (using the word direct in the sense of direct appropriation), and those in which they bought stock in a 294
company?

A. I did not.

Q. So this includes as a direct charge all those in which the State of Virginia simply owned stock in the company or built the road, does it not?

A. Yes, sir.

The Special Master: You mean stock in whole or in part?

Mr. McClintic: In either case.

The Special Master: Both?

Mr. McClintic: Either owned the whole or part of the stock. I ask him whether he included that as a direct charge.

Mr. Conrad: In some cases they owned three fifths of the stock. In other cases the road was built by the Commonwealth. In the case of the northwestern turnpike it was built exclusively by the Commonwealth. In other cases the Commonwealth by purchase or subscription to the stock, owned three fifths.

The Special Master: Yes; but do these items include just what the State paid out on account of its three-fifths subscription?

Mr. Anderson: Both.

Mr. McClintic: Let me ask a question and we will find out.

Mr. Conrad: There is some misapprehension as to your Honor's inquiry. I understand your Honor's inquiry to be addressed to the fact as to whether this report showed in two parts the 295
money appropriated by the State, where it exclusively built a road.

The Special Master: Yes.

Mr. Conrad: And also where it subscribed to three fifths of the stock?

The Special Master: Yes.

Mr. Conrad: It had nothing to do with private subscriptions to the other two fifths. That has nothing to do with this case.

The Special Master: Where the State was the owner of three-fifths and private individuals the owners of two-fifths, this covers, as I understand it, the amount the State expended for its three-fifths.

Mr. McClintic: It did not necessarily own three fifths. Sometimes it would be two fifths, or other sums.

The Special Master: I understand; but whatever it might own, I mean. This schedule shows what the state did expend for, what it did own?—

Mr. Carlisle: And charges what the state paid for its stock as a direct expenditure by the State, for their stock in West Virginia.

Mr. Anderson: It includes all expenditures made by Virginia in works of internal improvements in West Virginia, whether those works of internal improvements were owned wholly by the State or partly by the State.

Mr. McClintic: That is a contention by Mr. Anderson which we do not agree to.

The Special Master: Of course it is only important for me now to get the position taken by each party to the contro- 296
versy. The total cost may be seen here, all that is here is the cost to the State of Virginia. So we know what the item means.

Mr. Carlisle: Of the stock?

The Special Master: Yes; of the stock. Whether that is a proper item to be charged is another matter.

Mr. McClintic: Take the Berkeley and Hampshire turnpike. Is that a joint stock company or a private corporation?

The Witness: I don't know.

Mr. Conrad: Your summary statement does not show that?

The Witness: No, sir.

By Mr. McClintic:

Q. Did you know as to any of these companies, whether joint stock companies, or private corporations?

A. We made no inquiry into that, as to the form of the Company itself.

Q. Were not the books so kept that they showed an account with each company?

A. Yes, sir.

Q. Did you examine those books?

A. We did.

Q. Why did you not state the facts on your exhibit, then?

A. We did.

Q. You did not state whether it is a company or a direct appropriation. Is not that the fact—that appeared on the books?

A. I think it appeared on the books under the head of Berkeley & Hampshire Company, and we have simply the 297
Berkeley and Hampshire turnpike.

Q. Did it say whether the State made a direct appropriation or took stock?

A. Yes, sir.

Q. You do not show that on your schedule, do you?

A. We simply state the amount of money expended by the State in the interest of that road, by stock or by direct appropriation.

The Special Master: You did not differentiate between the two?

The Witness: No, sir.

By Mr. McClintic:

Q. You make no distinction between stock and direct appropriation?

A. No, sir.

Q. Take the second one on the list, the Berryville & Charleston turnpike. You have charged there the total cost of the road, $27,692.71, and charged 68 per cent in West Virginia?

A. Yes, sir.

Q. There is an item there, $7,236.97. Do you know what that was paid for?

A. I only know it appeared on the Commonwealth ledger and in the auditor of public account's report of 1858.

Q. You never looked back to see what it was paid for?

A. I cannot say that we did not; I think probably we did; but I do not remember that particular item.

Q. Did you make any examination of that particular road 298
as to whether there were certain stock charges and certain direct charges in relation to it?

A. No, sir.

Q. Just left it as it was?

A. Just as the previous one.

Q. The third item on the first page is the Covington & Ohio Railroad, now the Chesapeake & Ohio Railroad line. In settling the amount for the Allegheny tunnel ($284,873.18) please state the basis.

A. I have not the information with me to answer that question. I can give it roughly by saying we took the total length of the tunnel from a copy of the profile and established the State line and measured the distance from the entrance of the tunnel to the State line, on both sides, and used that to obtain the percentage which we used in dividing the total cost of the tunnel, which was stated separately in the books of the Covington & Ohio Railroad

under sections 19 and 20—that is, the total cost, sections 19 and 20, including the cost of the tunnel, were under one account. We applied it to that amount and divided it on that basis.

Q. Sections 19 and 20 included a lot more distance than the tunnel, did they not—a lot more distance?

A. They did.

Q. Did you take into account on that tunnel only sections 19 and 20 as a whole, and divide that?

A. Yes; 19 and 20 as a whole.

Q. How much of Section 19 was in the present limits of Virginia; or do you know that?

A. I cannot say from the information before me. I have the information with my other papers.

Q. Did you take into consideration in any way the long 299
cut that was made on the Virginia side before the West Virginia side was reached?

A. No, sir.

Q. You say that these measurements were made. Who made the measurements?

A. They were made from the profiles.

Mr. Carlisle: Who made them?

The Witness: I think I made it personally.

By Mr. McClintic:

Q. Where did you get the profiles?

A. I think Mr. John B. Lightfoot, Jr., got it from the Chesapeake & Ohio Railroad, and had a copy of that made. We got the copy from them, and had a copy made.

Q. Did you take into consideration in any way the approaches; that is, the cuts on the West Virginia side, in making any charge?

A. Not if I remember correctly.

Q. How long a space did Sections 19 and 20 cover in distance?

A. I have not that information before me.

Q. In making up these charges, what did you use, what book, on the Covington & Ohio?

A. The journal, ledger and cash book, I think.

Q. The journal and cash book of what?

A. Of the Covington & Ohio Railroad; and also the board 300
of public works ledgers, A and B, with the journals.

Q. Were separate books kept of the Covington and Ohio? I am speaking of the whole railroad?

A. Yes; I have not the reference to those particular books, but I believe I am correct in saying that there was a separate set of books kept.

Q. Did you make up all the figures that make that $1,212,354.85?

A. I cannot say I made them up individually. They were made up by my force.

Q. Are you prepared to say that that is a correct charge from those books?

A. I believe it is.

Q. You know it is?

A. I believe it is.

Q. That is your best judgment?

A. Yes, sir.

Q. Did you analyze each and every account that appeared in those books?

A. They were analyzed by my force. I did not do the work individually.

Mr. Moon: It was done under your supervision?

The Witness: Yes, sir.

By Mr. McClintic:

Q. You say it was done under your supervision. What do you mean?

A. I mean one of the men who assisted me did the work, 301 did the mathematical part of the work. I laid out the plan and he followed it, and I looked over his work after he had finished it. The mathematical accuracy of it was tested by another man.

Q. At what point did you get into it?

A. I laid out the plan and instructed them what to do, what to include and what to exclude and how to make the divisions, and how to put the figures together.

Mr. Anderson: You were here all the while?

The Witness: I was here all the while.

By Mr. McClintic:

Q. How much of this $1,212,000 is a direct charge and how much did you estimate or apply by estimation?

A. All of sertions 21 to 39, eastern division; and all of the western division, $906,817.20.

Q. Is that a direct charge?

A. That is a direct charge, all west of the Allegheny tunnel; 92.4 per cent of the total surveying and location expense on a mileage basis, making $20,664.47, and 12-23rds of the total cost of Sections 19 and 20, including the total.

The Special Master: The first two items are the result of computation and the others of direct charge?

The Witness: No; in the order in which I gave them, the first one is direct.

The Special Master: The second is a direct charge?

The Witness: Yes, sir:

By Mr. McClintic:

Q. In these roads which you charge along there in red ink a certain percentage, can you tell where you charge that percentage by mileage and which by other means? 302

A. Yes, sir. The Berkeley and Hampshire turnpike was on a mileage basis; the Berryville and Charleston was on a mileage basis; the Covington & Ohio I have just explained; The Cross Roads and Summit Point turnpike was on a mileage basis. The Franklin and Monterey was on a mileage basis. There is a charge there of $861,305.91—

Q. Referring to the $861,305.91, please tell the Commissioner when you entered these charges, what was your stopping point?

A. A draft in that particular case for payment—

Q. That was not the question. When did you stop making charges?

The Special Master: Up to what date did you make this computation?

A. All obligations, payments up to December 31, 1861, and as many obligations as we could determine had been entered into but not actually paid for work actually done prior to December 31, 1860, which were paid in the following year—1861.

By Mr. McClintic:

Q. Are we to understanud you to say that you stopped all charges as of December 31, 1860, or 1861? You said 1861.

A. I mean 1860, with the exception of such other items as I explained.

(Informal discussion followed in regard to the taking of recess.)

The Special Master: You will remember that the treasurer, when he took the stand was not sworn. I suppose there is no objection to his statement being taken as if it were taken under oath. 303

Mr. Conrad: There is no objection to that.

Mr. Carlisle: That is the understanding.

By Mr. McClintic:

Q. On page 2 there is a road called the Mountain Lake and Sulphur Springs turnpike. On what basis did you divide it?

A. On the basis of mileage.

Q. How did you arrive at the mileage in that particular case?

A. The distance was estimated from the map of post roads in the State of Virginia and in West Virginia, authorized by the Postmaster General in 1904, according to scale. In other words, we scaled the map.

Q. What was the beginning of the road?

A. I cannot tell. It ran through Giles and Monroe Counties. I don't know just where it started or ended.

Q. Please find out for me the beginning and end of that road and give me that information after dinner or some other time?

A. Very well, sir.

The Special Master: You had better be prepared to produce all the original memoranda you used in reaching your results.

By Mr. McClintic:

Q. Take the Giles, Fayette and Kanawha. Was that divided on a mileage basis? I want to run over these rapidly to see whether we are on the same basis or not. That is on page 1. 304

A. On a mileage basis.

Q. How about the Hardy & Winchester?

A. On a mileage basis.

Q. How many miles did you make that road?

A. By Crozet's, 70 miles.

Q. Did you make any further examination to see whether that was correct as to mileage or not?

A. I have not that information before me.

Q. You don't know?

A. At the present time I cannot say.

Q. The Huntersville and Warm Springs road?

A. On a mileage basis.

Q. That first charge of $1,000 in 1833—was that spent on that road?

A. The notation on my schedule shows it was money advanced Peter Scales, an engineer, for his account and expenses in laying out the road.

Q. The Martinsburg and Winchester. Is that divided on a mileage basis also?

A. On a mileage basis, yes, sir.

Q. The Morgan and Frederick?

A. On a mileage basis.

Q. The Northwestern turnpike; how is that divided?

A. On a mileage basis as to the cost of laying out the road, the cost of surveys and locations; but all of the cost of macadamizing was charged direct to West Virginia, with the exception of five miles, as shown by comparison. 305

Q. You say 92.8 per cent of total loan, $308,000. What do you mean by that debt?

A. The State raised loans, amounting, if I remember rightly to $320,000, of which we charged 92.8 per cent. on a mileage basis to West Virginia.

Q. What books did you get that from?

A. The amount of the loan?

Q. No; how it was divided.

A. The total length, see Crozet's report. Other distances, see proceedings of the Board of public works, Volume 7, page 77.

Q. Were there any original books kept on that, separate from the general books?

A. Yes.

Q. Did you analyze these accounts and get this amount from those books?

A. We analyzed the accounts from those books; but it was not possible to locate them entirely to our satisfaction. So I adopted this method.

Q. You took the percentage method rather than take the direct books in that case?

A. Yes.

Q. And part of that road went through the State of Maryland, did it not?

A. It did.

Q. Was any charge made by you for anything on that ac- 306
count?

A. We made no distinction. We included the item of the cost of the road through that section of Maryland.

The Special Master: I did not hear that answer.

The Witness: We included the cost of the road through that small section of Maryland.

The Special Master: That made a part of your total?

The Witness: Yes, sir.

By Mr. McClintic:

Q. Who built that part through Maryland?

A. The Northwestern turnpike company, incorporated under the laws of Maryland.

Q. Under the laws of Maryland?

A. I believe so.

Q. What interest, if any, did Virginia have in that company?

A. I don't know that, except if my memory serves me, the manager or the engineer of the road was the president of the Northwestern turnpike in Maryland.

Q. Did Virginia own any stock in it?

A. I don't know.

Q. You don't know?

A. I don't remember.

Mr. Spooner: Your memorandum will show, will it not?

The Witness: I think it will.

The Special Master: What is the length of the road in Maryland?

The Witness: I think it is about eight miles.

Mr. McClintic: Eight or ten or twelve miles. 307

Mr. Spooner: I would like to make a suggestion. This witness is an expert. He knew he was to be cross examined, and yet I think he has answered a great many questions by saying that he has not the information before him, and a great many questions by saying that the memoranda are not here. I think he ought to bring whatever memoranda he had, from which he compiled these reports, in order that he may, if it is important and desirable, make swift reference to them and be able to answer the questions.

The Special Master: There is no question about that. I have suggested to Mr. Potter, and also I will suggest to Mr. Dixey, that they must both be prepared with all of the original sources of information upon which they have relied for the purpose of getting up these accounts; because counsel on either side are entitled on cross examination to know just the method used in reaching the result, and they have a right to see the original books and memoranda.

Mr. Spooner: Mr. Dixey informs us that that is the rule with accountants and that he will be prepared in that way.

Mr. Harrison: In justice to Mr. Potter I would state that it has been six months since he finished his accounts.

The Witness: We cannot possibly bring all the books from which we took this information.

The Special Master: Of course my suggestion is subject to that qualification—whatever you have that is movable and you can bring here. 308

Mr. Spooner: Your own notes.

The Special Master: Your own memoranda and notes, yes. If there are any books or records of such a character that they cannot be brought in here, if we need them, we will adjourn and go to see them; but in the meantime you will please have your notes here, so that the gentlemen on the other side can in cross examination criticize them as they like. And please bring all the sources of original information that are available. If you have time during the intermission—I do not ask you to do it now, but if you do have time—I would like you to take these exhibits and page them so we will have everything harmonious, and so when we refer to a page of an exhibit we will know just which one it is.

(Thereupon, at 1 o'clock a recess was taken until 2 o'clock P. M.)

AFTER RECESS.

The Special Master: You may proceed. 309

ARTHUR G. POTTER,

resumed the stand for further Cross Examination.

By Mr. McClintic:

Q. Mr. Potter, did you take into account on the Northwestern road the tolls paid in prior to the War?—I mean prior to the 1st of January, 1861?

A. As credits?

Q. As credits or otherwise.

A. We did not take them into account.

Q. Did you take in none of them, in any way or shape?

A. We took a note of them. We have them summarized in our papers, but we did not allow them as a credit on this account.

The Special Master: That is, you are inquiring into the proportion of the tolls paid into the Treasury of Virginia.

Mr. McClintic: Yes, sir; on a road wholly owned by the State.

By Mr. McClintic:

Q. How much was the amount you have, Mr. Potter?

A. My account on page 38 of the Northwestern ledger shows, for toll gates, $152,679.26 received as tolls. I don't know that all that was turned over to the State, but that is the account in the ledger.

Q. You neither gave credit for that here nor anywhere else?

A. No sir. 310

Q. Or any proportion thereof?

A. No, sir.

Q. Now, Prices Turnpike and Cumberland Gap Road, page 3. Was that divided on a mileage basis?

A. Yes, sir.

Q. You have no percentage put down there. Do you mean that is the part that was given to West Virginia on a mileage basis?

A. Yes; I have the percentage in another schedule. I don't recall why it was not put in that schedule, but it was on a basis of 91.3 per cent. Virginia, and 8.7 per cent. West Virginia.

Mr. Harrison: What item is that?

A. Price's Turnpike and Cumberland Gap Road.

Q. This amount you have here is what?

A. That is 8.7 per cent, I think, of the total. The total is not

shown there. It is just divided. The extensions are made to the two divisions.

Q. Is the next, the Raleigh and Grayson, divided by mileage?

A. No; from the report of the president of the board of public works of the 12th of October, 1852, Document 18, Volume 17, the date of the report, the Section of the road in Raleigh county was reported at 10 miles—excuse me; I am mistaken about that. I would like to have that stricken from the record. I read my note wrong. That is on a mileage basis.

Q. Did not those same reports show where each dollar of 311
that road was, or practically all of it?

A. I don't think so. We have relied upon the board of public works account, on page 14 of Ledger B, for the total expenses of the road, and divided it on that basis, the mileage basis.

Q. In the case of the Raleigh and Wythe line, you have charged $400 in 1862, $2,200 in 1861, and $200 in 1862. Please explain those.

A. The items in 1861 and 1862 are for contracts made and for work done prior to December 31, 1860.

Q. Who paid them?

A. The board of public works. The record is in the board of public works Ledger B, page 269, from the board of public works' funds, by the treasurer.

Q. By what government was the 1862 payment made, for instance?

A. The Virginia government.

Q. What government in Virginia was it, the one that recognized the United States of America, or the one that did not recognize the United Stated of America?

Mr. Harrison: I suppose you refer to the Richmond goverment?

A. Yes, sir.

Mr. Conrad: All governments of Virginia recognized the United States of America.

Mr. McClintic: Did it give allegiance to the United States of America?

The Special Master: Probably as far as was compatible with the circumstances?

By Mr. McClintic:

Q. Now, the Staunton and Parkersburg turnpike, page 3. 312
Were there any tolls on that road?

A. I believe there were tolls received from that road.

Q. Was any credit given for those anywhere?

A. No sir; no credit.

Q. Where did you get the items in reference to the Staunton and Parkersburg?

A. The Board of public works ledgers A. and B.

Q. Did you divide that on a mileage basis also?

A. No; we divided the construction items, macadamizing and engineering expenses, on the basis of 74.83 per cent. to West Virginia, and debited West Virginia with the bridges and direct construction items in West Virginia.

Q. Did not those books show where most of this construction was? Most of the expenditures were by counties.

A. I don't remember that it did; no.

Mr. Spooner: Does not your memorandum show? Have you not a memorandum to show that?

The Special Master: See what your notes show in that regard.

Mr. Spooner: That is what I am asking, whether he has any notes that show.

Mr. Harrison: What was the question?

The Special Master: Whether the books do not show where the money was expended, that is, what locality.

Mr. Harrison: What part of the road?

The Special Master: Yes, I suppose that is it.

A. My notes do not indicate that the books show with sufficient accuracy to be depended upon. 313

By Mr. McClintic:

Q. They indicate that it showed the expenditures?

A. Yes, by sections.

Q. You knew in which counties the sections were, did you not?

A. Not with absolutely certainty.

Q. Do you know that the books do not show with accuracy?

A. I do not. I can't say positively at this time. The books are on file in the second auditor's office.

Q. Did you examine those books yourself or through an assistant?

A. I directed the work in examining. Some of the work I examined myself.

Q. You simply do not know, then, beyond what was told you?

A. Yes; I satisfied myself that it was not safe to take the divisions to be found in those books.

Mr. Spooner: But you want to satisfy us and the court.

A. That is all I can say.

Mr. Spooner: You cannot do it?

A. That is all I can say in order to satisfy you.

Mr. Conrad: You are too hard to satisfy.

Mr. Spooner: You ought to have the data.

By Mr. McClintic:

Q. If the books showed the sections and the county why was not that sufficient? 314

A. I testified that we could not locate the sections with absolute certainty within those counties.

Q. It was quite as satisfactory to locate it in that way, was it not, as guessing on the mileage or guessing where the work was done in that 234 miles that the road covered or thereabouts?

A. I think it was a safe basis to divide the construction and the mileage as we have done it *no* other roads and then divide such direct expenses as we could definitely locate.

Q. Was it not a much better method to take direct construction where you were able to?

A. I don't know that there was any direct construction in this case.

Q. Were there not direct books kept on that subject matter all alone to themselves?

A. Yes, sir.

Q. Did not those books show by reports continuous and often, the process of construction and the amount of cost?

A. I don't recall that we found any reports showing the cost at different periods, or the process of construction at different periods.

Q. So you did not make a sufficient examination of those books to remember those facts, did you?

A. I would not go so far as to say that. I made a pretty thorough examination, or had it made under my direction, and as I said before I satisfied myself that the basis we used was the 315 most accurate.

Q. This was a road 234 miles long, was it not?

A. Yes, sir.

Q. From Staunton, Virginia, to Parkersburg, West Virginia on the Ohio River?

A. Yes, sir.

Q. Of which you say 74.83 per cent was in West Virginia.

A. Yes, sir.

Q. Was not that as capable of being differentiated on the books kept as in the case of the Covington and Ohio Railroad?

A. No; it was not. The Covington and Ohio Railroad Books were kept in a much more thorough manner, if I recall them properly. This road was divided into three divisions, the western division, and middle and the eastern.

Q. How much was in each division?

A. We have fifty eight miles and 72 chains in Virginia, and 17 miles and 8 chains in West Virginia, but I have not the figures right here as to the length in the different divisions, except that of the eastern division, which was 75 miles long, 58 miles lay in Virginia and 17 miles in West Virginia.

Q. Then all the balance except the eastern division were wholly in West Virginia, were they not?

A. The western divison and the middle division were both in West Virginia.

Q. The books were so kept as to show accurately the amounts that went to each of those, were they not?

A. I don't recall just—

By Mr. Spooner.

Q. Is it not your business to know?

A. It was at the time, but it has been some six or seven 316 months since I saw those books.

Q. But you must have memoranda from which you can testify?

A. We didn't copy the books.

Q. If you directed it, you ought to know upon what basis you directed it?

A. I simply had to rely upon my judgment at that time, which was that this was the most equitable division of the expenses.

Q. That is for court, not for you.

Mr. Harrison: You are asking him for the foundation of his statement.

Mr. Spooner: We are asking him for the facts.

By Mr. McClintic:

Q. You say these books were not so well kept as the Covington & Ohio books. What was the difference in the bookkeeping between the two?

A. I mean to say the items were not capable of the same analysis as were the items of the Covington and Ohio, by divisions, because we had a profile of the Covington and Ohio Road which guided us. We had no maps of the Staunton & Parkersburg, if I remember right.

Q. How did you arrive at the mileage, then?

A. From reports.

Q. What reports?

A. The survey of the principal engineer, Crozet's field book, 317 1838 and 1839.

Q. Did that State the amount of mileage in Virginia and the amount in West Virginia?

A. That located the distance from Staunton to the top of the Alleghany Mountains, as 58 miles and 72 chains.

Q. Were there not maps filed with those books, or of that road, showing the whole distance?

A. There may have been. I don't recall that we found a complete map or complete maps showing the entire route.

Q. Did you give credit for the tolls on that road anywhere?

A. No, sir.

Q. How much did they amount to?

A. I can't say offhand. I can look it up. It is somewhere in my papers, but I do not know that I can find it. I may not have it in summarized form. It may have been included in the receipts from the various internal improvement companies, which we did not summarize, but which we threw into a total with all other details.

By Special Master:

Q. You are not able to find that now?

A. No sir; I am not able to find it at present. I could find it if I were allowed the time.

By Mr. McClintic:

Q. The next road is the road from Skedmore Fork to South Branch of Potomac. Was that divided on a mileage basis?

A. Yes.

Q. The next road, Strasburg to Capon Turnpike. Do you 318
assert that any part of that road is in Virginia?

A. We figured that 16 per cent of the distance lies in West Virginia.

Q. Where did you find the report of the Strasburg and Capon Turnpike, Mr. Potter?

A. We traced the road through Shenandoah, at Frederick and Hampshire counties, from the Board of Public Works document 17, year 1857, page 215, which shows the road through Shenandoah, Frederick and Hampshire counties, 12½ miles. The distance has been scaled from the United States post route map of 1904 as 2 miles in West Virginia and 10½ miles in Virginia.

Q. Did the report state that part of it was in Hampshire county?

A. I don't recall.

The Special Master: Is there a map of the State, giving these various towns and these public enterprises, that I could have here to look at?

Mr. McClintic: The gentleman here can furnish it, no doubt.

The Special Master: Hampshire county is Greek to me. It might just as well be located in Florida.

Mr. Anderson: We have a very good map, your Honor.

The Special Master: If you have a map of that kind, I would like to have it to follow this along as you proceed. The testimony would be more intelligible to me.

By Mr. McClintic:

Q. Did you find it actually was constructed to Capon from 319
any evidence that you could see in the case?

The Special Master: Constructed to Capon?

Mr. McClintic: Yes.

A. Well, evidently we did find some evidence that it was constructed. I don't recall that particular road.

Q. Are you only testifying from the results of what you once had in your mind?

A. I cannot possibly carry all the details of this tremendous case in my mind, especially after the lapse of six months since I saw the papers.

By the Special Master:

Q. Have you anything on your notes to indicate the sources of your original information on this item?

A. I have just read the reference to the Board of Public Works.

Q. You have nothing else that refreshes your recollection on that point in your notes?

A. No, sir.

By Mr. McClintic:

Q. The next item is the Winchester & Potomac Railroad Company, of which you charge West Virginia with $168,750. What are those charges made for, say the one in 1834, $50,000?

A. I can't say. All I know is that the amount was charged to that account on the Board of Public Works ledger as a payment to the Winchester & Potomac Railroad.

By the Special Master:

Q. In a lump sum?

A. In a lump sum. I don't know whether it was by sub- 320
scription to stock or payment for construction.

By Mr. Spooner:

Q. Does not your memorandum show?

A. It does not.

By Mr. McClintic:

Q. Did you make no further investigation of an item for a railroad like that than just the Board of public Works ledger, that so much was charged to it?

A. No; we considered that good evidence that payment had been made.

Q. If the Board of Public Works had loaned Governor Johnson of Clarksburg $100,000, and you found it on there charged to Governor Johnson, would you simply put it on this account without looking further?

A. No; we would have looked further to see whether there was any recovery on that loan.

Q. Did you look in this case, to see what these charges were for, whether they were gifts, stocks, loans or what?

A. We determined that they were payments in some form, either for stock or for subscription to the road for construction purposes. There were certain loans which were made and later recovered, which we have eliminated from the account.

Q. In this case?

A. In respect to this road.

Q. Which part of this $270,000 is for stock and which part is for loans, if you know?

A. I don't know.

Q. Have you any means of finding out, from your notes 321
or otherwise?

A. Not from the notes. I can find out from the books of the 2nd Auditor's Office.

Q. What amounts were loaned and afterwards repaid, which you just spoke of?

A. In 1835, the first $10,000, the loan was made in 1835 and paid in 1836. The next loan was $30,000, made in 1835, and paid back the same year to the Board of Public Works by the Winchester & Potomac Railroad. The next loan was in 1836, and repaid the same year.

Q. Then you cannot tell whether any part of this $270,000 was a loan, a stock subscription or a direct appropriation?

A. I can say definitely that it was not a loan.

Q. No part of it was a loan?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Did you make an examination of the books of Virginia in reference to income paid from that Winchester & Potomac Road to the State, if any?

A. I have it among my other papers. We analyzed all of the receipts.

Q. What receipts did you get from the Winchester & Potomac Road?

A. I can't tell you. They are not brought into these state-
ments. We have them in another form among our original 322
papers, but not having taken them into our statements, we did not summarize them.

Q. When was the Winchester & Potomac Road incorporated, if you remember?

A. I have no notes on that point.

Q. Did you look at the books of Virginia, following the period of 1861, as to what Virginia did with that part of that road?

A. I did not.

Q. You have no knowledge of anything occurring subsequent to 1861, then?

A. No, sir.

Q. Did you examine the books of Virginia as to an Act of the legislature providing for a surrender of anything from this road by the payment of an annuity?

A. I don't recall such an act.

Mr. Conrad: You refer to the act of 1866 or 1867?

Mr. McClintic: I am not referring to the Act of 1866 or 1867 in that matter. He said he knew nothing about those, so I did not go into that.

By Mr. McClintic:

Did you find any Act in 1846, or did you look for any Act, or see any payment made by this Road to the State of Virginia?

A. The Commonwealth or the Board of Public Works?

Q. I cannot tell you myself, except the payment of the money.

Mr. Harrison: Did you ask whether that was a payment under the Act of 1846?

Mr. McClintic: A payment of $50,000 by an annuity. 323

The Special Master: Paid by the Railroad to the State.

Mr. McClintic: Yes, sir.

A. I don't find such a receipt in the year 1846, either in the Board of Public Works or on the Commonwealth books.

By Mr. McClintic:

Q. You do not find any sum paid by the Winchester & Potomac road to the State in those years, 1846 to 1861, inclusive, or any one of them?

A. I have only examined one year.

Q. You do not find any in 1846.

A. No, sir; not in 1846.

Q. We will not take time to go into each year after that if you do not remember anything about it. The Hillsboro and Harpers Ferry road, page 4. Was that divided on the mileage basis?

A. On a mileage basis; yes.

Q. And the same as to the Harrisonburg and Hardy road?

A. Yes; on a mileage basis, as near as we could get at it.

Q. You have charged the sum of $428,063.86 on account of James River and Kanawha interest, as you term it?

A. Yes.

Q. You have charged there bonds to Kanawha Board, in 1860, $100,000. What was that; I mean as to a loan, or buying stock, or direct appropriation, or what?

A. It was an issue of bonds under the Act of March 23, 1860. I believe the Act shows the manner in which the $100,000 was to be paid to the Kanawha Board.

Q. Do you call that a loan or a direct appropriation or 324
what do you put it under? Under what head in that line?

A. I don't recall.

Q. What was the James River & Kanawha Company? I mean, was it a corporation or what was it?

A. I don't know the exact status of it.

Q. Do you know whether it was or was not a corporation?

A. I think it was a corporation; yes. It issued stocks.

Q. Then you know it was, do you not?

A. Yes; it was a corporation in some form.

Q. Was not that $100,000 loaned to the James River and Kanawha Company?

A. I don't remember.

Q. Was it delivered to the James River & Kanawha Company?

A. I didn't see the receipt, but I saw the evidence of the issue of the bonds in the bond registers to the James River & Kanawha Company. We did not go to the transfer books to see if the bonds were actually turned over to them.

Q. Did you see any other evidences than the bond register?

A. I don't recall that we did, except the Acts.

Q. You saw the Acts authorizing the issue?

A. Yes, sir.

Q. Do you know the James River & Kanawha Company got $100,000 worth of bonds?

A. I can't state positively. 325

Q. You found the bonds were issued?

A. Yes; the bonds were issued. I can't state positively that they got the bonds.

Q. You simply charge them because the bond register showed that they were issued?

A. They were charged to the Kanawha Board of the James River & Kanawha.

Q. Did you look further to see whether there were any evidences that the Kanawha Board got them? What was the Kanawha Board?

A. I can't recall the history of that. We have it in another form, I believe, in Mr. Lightfoot's report, the full details which we compiled, but it is rather a complicated organization, this old James River proposition, and I would not undertake to give the history of it offhand.

Mr. Conrad: There were two or three distinct companies in succession. The James River Company was the first one.

Mr. McClintic: The James River entered into it too. It is not worth while to mix this.

Mr. Conrad: It is not mixing it. I say there were three or four companies consecutively growing out of the original company.

The Special Master: Each the successor of the other?

Mr. Conrad: Yes.

Mr. Carlisle: There were several successors, were there not?

Mr. Conrad: Yes; three or four, I think, one right after the other.

By Mr. McClintic:

Q. You know nothing about this except that there were 326
certain bonds shown by the bond register issued to the James River & Kanawha Company for the Kanawha Board?

A. In a general way I satisfied myself at that time that it was a proper charge. Further than that I cannot testify at this time.

Q. Have you anything to refresh your memory so that you could testify on that $100,000 item directly?

A. I think so.

Q. I think you said you did not know whether these bonds were delivered to the James River & Kanawha Company?

A. No; I don't know.

Q. Or to the Kanawha Board?

The Special Master: He said he did not find any receipt from the company on the files.

By Mr. McClintic:

Q. When were they issued, Mr. Potter, if you will allow me to ask you a question while you are looking?

A. I don't know the exact date of the bonds. They were issued under that Act of March 23, 1860.

Q. Were they issued before December 31, 1860?

A. They must have been, I think, to come into my account. I would say offhand, yes, they were. Of course I have no proof of that just yet.

Q. You can look that up at your leisure, Mr. Potter. We will not take further time with that. You have charged on account of this James River & Kanawha interest, as you term it, in addition to the $100,000, some $431,000, I believe it is, in round figures, other charges. What did Virginia do with reference to that money in connection with the James River & Kanawha Company? 327

A. What did she do with it?

Q. What settlement was made with the James River and Kanawha Company by Virginia with reference to it.

Mr. Harrison: Are you referring to the $428,000 of interest?

Mr. McClintic: About $438,000.

Mr. Harrison: Those several items, you mean?

Mr. McClintic: Yes.

A. I don't know any settlement that was made by Virginia with West Virginia for that.

Q. I did not say West Virginia. I said between the James River & Kanawha Company and Virginia.

A. No; I don't know any settlement that was made between them.

Q. Did not Virginia take stock for that whole sum?

Mr. Harrison: Do you mean $91,666?

Mr. McClintic: The $91,000, the $107,000 and the $84,000; all those items.

The Special Master: Aggregating $424,063?

Mr. McClintic: Well, less the $100,000.

The Special Master: All the items included in that except the $100,000?

Mr. McClintic: Yes, it amounted to about $438,000. Somewhere along there.

A. I can't say at this time whether she took stock in payment for that or not.

By Mr. McClintic:

Q. Did you not refer to the Act of March 23, 1860, awhile ago?

A. I believe we did; yes.

Q. Did not that Act provide that she should take stock for 328 all that indebtedness?

A. I don't recall.

Q. Were separate books kept by the James River Company?

A. I believe they were, up to about 1836. In 1836, I believe, the James River books were closed.

Q. Did you look at the books along in 1832, 1833, 1834 and 1835, to see whether or not stock was taken for these early payments?

A. Well, we made an analysis of the books, both receipts and disbursements.

Q. What stock did Virginia have in the James River & Kanawha Company?

A. I have no record.

Q. You made no examination of that?

A. I have no record in summarized form of the stock she held at that time, at the end of this period, or at any time. We only have a record of the various amounts paid to the James River interest, and the amount she received from them, out of which we picked these items that were chargeable to West Virginia.

Q. Did not Virginia have stock for all the amounts owed her by the James River Company by 1860?

A. I think she did. I am not sure of that.

Q. Except this $100,000 to the Kanawha Board. I do not think she had any stock for that. Did not the James River & Kanawha Company pay Virginia in stock for all the money loaned?

A. I can't state positively that she did, because I have 329 not made a computation to ascertain that particular point. The object of our investigation was to find out how much Virginia paid to the James River interest.

Q. If the money was paid by the James River Company, even if it was paid in the form of stock, would you have looked to see any gross credits of that kind?

A. If it was paid back in stock, there would not necessarily be any gross credit.

Q. Would not the accounts be closed on the books?

The Special Master: Well, were they?

A. I can't say that they were.

By Mr. McClintic:

Q. Did you look to see?

A. Naturally we examined all of the entries pertaining to the James River items throughout the period, and that would come under the scope of that examination.

Q. You left that part out of your report if you found it, then, did you?

A. Our accounts here do not comprehend that point at all; do not comprehend the items received from the James River.

Q. I realize that, but I ask you if you found the other and left it out?

A. Yes; I think I can safely say that we did. We found everything in regard to the James River.

Q. When the debt was paid by the delivery of the stock of the Company to the State, why did you leave that out?

A. It is my impression that these items we have here were 330 not covered by payments of stock to the State.

Q. Do you know they were not?

A. I cannot state positively that such was not the case at this time, but naturally, having put them in, I think I am safe in saying that they were not. That was my opinion of it, at least, when I made these accounts.

Q. I am not asking your opinion. Is that your knowledge?

A. It is my best judgment that it was the case.

Q. I differentiate between your judgment and your knowledge. Do you know it or do you not know it?

A. I can't say that I positively know it, but I believe it is true.

Q. That these items were not paid by stock?

A. Were not covered by payments of stock.

Q. None of these items?

A. No.

Q. Now take the next page, page 5, I reckon you call it. It is not paged in this memorandum I have.

A. It is page 1 of the second division of this schedule.

The Special Master: I shall have these accounts all paged in their regular consecutive order, for reference in the examination.

By Mr. McClintic:

Q. There is charged there the Alleghany Mountain turnpike, for which you charge $1,074. Do you know that that 331
road is wholly within the State of West Virginia?

A. I believe that it is.

Q. On what do you base your belief?

A. Well, I was assisted in locating these roads by a native Virginian, who traveled more or less, Mr. Lightfoot, and I relied considerably upon his advice in the matter.

Q. Where did the road begin and where did it end?

A. I have not that record in convenient form.

The Special Master: What county was it in?

Mr. McClintic: It was in Highland, Page and Pocahontas Counties, West Virginia, as a matter of fact, your Honor.

The Witness: We also relied on Crozet's report.

By Mr. McClintic:

Q. What did the Acts say about this road, if you remember?

A. I don't remember.

Q. The next item you have charged is the Trans-Alleghany Lunatic Asylum at Weston, $125,000. Where did you get that sum of $125,000 from?

A. From the reports of the Auditor of Public Accounts, 1858, 1859 and 1860.

Q. What do they show?

A. Those payments of $125,000.

Q. To whom?

A. To the Trans-Alleghany Lunatic Asylum.

Q. To differentiate again, what do you mean by the Trans-Alleghany Lunatic Asylum in that connection?

A. What do I mean?

Q. Who got the money? 332

A. I couldn't say.

Q. You looked no further than the published reports on that item?

A. No further than that, except with regard to the last item of $50,000 we had to refer to the ledger.

Q. What did the ledger show with reference to that?

A. The ledger showed $50,000 charged to the Trans-Alleghany lunatic asylum at Weston.

Q. Why did you have to refer to the ledger for one item and not the other?

A. Because we did not know from the published report of 1861 whether it came in the period between October 1st and December 31st. or after the 1st of January.

Q. You were in West Virginia, were you not?

A. I was.

Q. You looked at certain auditor's reports there, did you not?

A. Yes, sir.

Q. Did you not see on the auditor's report of the restored government an item by which they recovered into the Treasury $27,000 of that sum?

A. I don't recall such an item; no.

The Special Master: You mean into the Treasury of Virginia?

Mr. McClintic: Yes, sir; the restored government, the real State of Virginia.

The Special Master: The Pierpont government?

Mr. McClintic: Yes.

Mr. Conrad: The Government at Wheeling.

The Special Master: Are they identical?

Mr. McClintic: Yes; when you speak of one you mean the same thing, the restored Government or the Pierpont Government. It had a little trouble getting to Richmond, but it got there sooner or later. 333

The Special Master: It was ambulatory.

Mr. Anderson: There was a race for that money, was there not?

Mr. McClintic: No; Virginia got it.

By Mr. McClintic:

Q. The next item is the Abbs Valley & Tug Road. Do you know that that road is wholly in West Virginia?

A. I have not the information regarding these roads in this division in convenient form for reference. As we found the appropriations, we made a note as to where the roads ran, and that was not tabulated in such form as to make convenient reference at this time. If it is necessary to have it, I can have it later.

Mr. Spooner. You could not have had time enough to make an exhaustive accounting here, could you?

A. We thought we had devoted sufficient time. We did not anticipate these questions.

By Mr. McClintic:

Q. I find charged there, below, the Brandonville, Kingwood and Evansville state road. Have you anything on your accounts to show whether that was a stock company or a direct state appropriation?

A. No, sir; I think, however, it was a direct state appropriation, because the money was paid through the auditor of public accounts, or the evidence of the payment is in his reports.

Q. Do you know? 334

A. I do not, positively.

Q. Further down there somewhere—I have a memorandum on the outside that it is page 3 of the second section—is the Clarksburg and Buchanan road. Do you know whether that was a stock company or a direct appropriation?

A. I do not.

Q. You charge on the same page the Coal River Bridge Company. Was that a company or a direct appropriation?

A. I can't say.

Q. That charge is $3,000. You charge on the same page the Coal River Navigation Company. For what were those appropriations, $96,000 total, made, stock or direct appropriation or loans or gifts?

A. I can't say.

Q. You made no differentiation?

A. If they were charged to the account of the internal improvement, on the Board of Public Works, we accepted them as payments.

Q. The State of Virginia has filed here a great number of acts—that is, a memorandum of acts. That act says that was for stock. Did you look at that compendium of acts, at all?

A. I did not compile that.

Q. You had nothing to do with the filing of those acts and know nothing about them?

A. No, sir.

Q. You do not know whether this is a company or a direct charge?

A. No, sir.

Q. All you know is that some book showed so much money 335 charged?

A. So much money charged.

Q. Was that an official report or a book?

A. It is the ledgers A and B of the Board of Public Works.

The Special Master: A manuscript book?

A. Yes, sir.

By Mr. McClintic:

Q. There are a number of these bridge companies, the Buckhannon Bridge Company and others, marked on here as companies. Does the same information apply to those?

A. Yes, sir; we followed the names used in the books that we had for reference, that we have referred to.

Q. You charge here Gauley bridge, $1,419.45.

Mr. Anderson: What page is that on?

Mr. McClintic: It is page 4 of the second section.

By Mr. McClintic:

Q. You also charge Gauley bridge under the James River and Kanawha Company. Are both charges correct, or why are the two charges made?

A. I believe the bridge was destroyed and rebuilt, and they were charged in different places. One is on the James River account, and later on, among the Board of Public Works accounts.

Q. Did not the bridge belong to the James River and Kanawha Company?

The Special Master: Which was that; Gauley bridge?

Mr. McClintic: Gauley Bridge. 336

A. I don't know.

Q. When you charged it under the James River and Kanawha Company, did it not belong to it?

A. I think very probably it did.

Q. Was not that the first charge?

A. I think it was, but I have not the date of that charge, so I can't state positively.

Q. You charge on the same page, 4, Bank of Fairmount, $50,000. What is that?

A. I believe it was a purchase of the bank stock by the literary fund.

Q. How did you happen to know this was stock and the other things which accompanied it were only direct appropriations? How did you happen to differentiate between the two?

A. The State was not exactly building banks and it was building roads.

Q. Well, were they building roads in some cases where there were companies, or were they building navigation companies?

A. Making appropriations and buying stock of these various companies, the same as they bought this stock.

By Mr. Carlisle:

Q. You say they bought stock in that bank?

A. I believe they did; yes.

Q. And you have charged it in your account as a direct expenditure of money in West Virginia?

A. Yes, sir; because we could not determine what became of the stock. 337

By the Special Master:

Q. Where was the bank located?

A. In Fairmont, West Virginia.

Q. You say you could not determine what became of the stock?

A. Yes; the record is not clear as to what became of the stock.

Q. Is that the criterion?

Mr. Spooner: Does that make any difference in the nature of the original transaction?

By Mr. McClintic:

Q. Did the record show what became of the stock of the various other companies?

The Special Master: What is Fairmont; a town in West Virginia?

Mr. McClintic: It is a town in Marion County, up in northwestern West Virginia.

Q. You charged below there $106,800 to the Guayandotte Navigation Company. What was that; a stock transaction, or a direct appropriation or a loan?

A. I don't think it was a loan. I think it was a direct appropriation. It may have been a purchase of stock.

Q. Did not the books show whether the appropriation was for purchase of stock, or for loans?

A. Yes; but we did not make any distinctions between the various classes of payments to improvement companies, etc.

The Special Master: That is, you made no distinction in your account whether the investment was direct or indirect? 338

A. No, sir.

Mr. Spooner: Whether the money was expended in the construction of a railroad or the purchase of stock in a corporation.

The Special Master: Yes; that is what I mean by direct and indirect. What you are getting at now is the basis on which this account is made up?

Mr. Carlisle: Yes, sir.

The Special Master: Whether it is satisfactory or otherwise is to be determined later.

By Mr. McClintic:

Q. On page 6 there is the Kingwood and West Union turnpike. Do you know whether that was a corporation or a direct appropriation?

A. I do not.

Q. On the bottom of that page 6 is Lewisburg Law Library. You charge $4,150. Why did you charge that?

A. I believe it was an appropriation made by the State for the purchase of books for that library in 1836, if my recollection serves me.

Q. Do you regard that as a direct expenditure in the State of West Virginia?

The Special Master: Where is that located in West Virginia?

Mr. McClintic: The library was for the Supreme Court of Virginia. It was a Supreme Court on wheels.

Mr. Conrad: Oh, no.

The Special Master: I mean where is it located geographically? 339

Mr. Conrad: In Greenbrier county, West Virginia. It was an improvement for the legal mind of West Virginia.

Mr. McClintic: I suppose you will charge up direct to us the time the court stayed over there and said they were giving us instruction?

Mr. Harrison: If that is of any account, we expect to do it.

By Mr. McClintic:

Q. On page 7 you have charged $7,000, the Louisa Fork of the Sandy River road. Please tell us what that is?

A. The road?

The Special Master: Do you mean where the road is located?

Mr. McClintic: Yes.

A. I would think from that description that it was on the Louisa Fork of the Sandy River.

Q. Where is the Louisa Fork of the Sandy River?

A. I can't tell you.

Q. Is it not wholly within the States of Kentucky and Virginia?

A. I don't know at this time. I have satisfied myself that at that time that it lay within West Virginia.

Q. Were you as well satisfied of all the other items as you were of that?

A. I think I can say I was.

Q. Were you as well satisfied of that as you were of all the other items?

A. I think so.

Q. You charge there a road called the Morgan County road 340 from Bath to St. John's River, $2,500. Where did you get that information?

A. I don't recall at this time.

Q. Did that appear in that form or shape in any way on any book?

A. It appeared in the Board of Public Works ledgers A and B, page 108 and page 239.

Q. Does the record show that money went to that purpose by that record?

A. The record shows that; yes.

The Special Master: Do I understand there is an entry that indicates an expenditure for that purpose?

A. Yes, sir.

By Mr. McClintic:

Q. Does not an Act of the legislature show a loan of $2,500 to the town of Bath?

A. I don't know. There is such an item in your accounts, and I thought that probably that offset this, but I don't recall having seen the loan to the town of Bath. It may be there.

Q. Does not the act of the legislature authorize the loan to the town of Bath; or did you ever look at the Act?

A. I did not look at the Act with regard to that.

Q. Did not the ledger and journal of the Internal Improvement Fund show that the town of Bath got the $2,500?

A. I don't recall.

Q. You simply don't know?

A. I don't recall at this time that it did; no.

Q. You charge there next, Mr. Potter, the Monongalia Navigation Company, $8,180. When do you charge the first item? 341

A. In 1822.

Q. How much?

A. $5,520.

Q. Is that an appropriation made for the purpose of buying stock or a direct appropriation; or do you know?

A. I don't know.

The Special Master: I understand that to be true of all the items, that he cannot differentiate;—that is, with the information he has before him now. That is correct, is it?

A. Yes, sir.

By Mr. McClintic:

Q. On the top of the next page I find an item of Moorefield and Alleghany turnpike, $8,779.78. I also find an act filed by counsel for Virginia here, that that stock in that road was totally given to the county of Hardy in 1858. Were you aware of that fact when you put that item in?

A. I was not.

The Special Master: The county of Hardy?

Mr. McClintic: Yes, sir.

The Special Master: Which State is that in?

Mr. McClintic: West Virginia. The Act which they filed here shows that it was given to the county.

By Mr. McClintic: 342

Q. On the next page there is an item, Northwestern Bank of Wheeling, $450,000. Please state what that is?

A. I cannot state. The record is not complete, as to whether it was for stock, but I believe it was for stock.

Q. You mean bank stock bought by the State of Virginia?

A. Yes, sir.

The Special Examiner: In what respect is the record incomplete in that regard?

The Witness: I made no description of these items. I merely took them from the books under the drawings. The account said Northwestern bank. I entered that under that heading, the total item, knowing that that bank was in West Virginia.

By the Special Master:

Q. There was nothing on the book you saw that indicated exactly what the money was for?

A. If we had checked back to the journal we could have told about that.

Q. But did you check back to the journal?

A. Not in all cases.

Q. But I mean in this specific instance?

A. I don't remember.

By Mr. Carlisle:

Q. Did you or not find upon the books that prior to the 1st of January, 1861, the Commonwealth of Virginia had sold a large amount of that stock and received the money for it?

A. I do not recall that circumstance. 343

Q. You cannot answer as to that?

A. No, sir.

By Mr. McClintic:

Q. You have an item on there, the last item, $24,908.67 in that account.

Mr. Spooner: If he had it, would it have made any difference in his account?

The Witness: Probably I would have put it in.

Mr. Spooner: Probably is rather indefinite. You have not put in a great many similar things. Why would you have put it in?

The Witness: If the State had sold its holdings in the Northwestern Bank, I would have allowed that credit. That is the theory on which these accounts are constructed, that any disposition for which money was received would work a reduction.

Mr. Spooner: If the books showed that they did sell that stock for so much money, was it a proper examination of the books that you made, if you say you do not know it?

The Witness: I think I would have given it if it was there.

The Special Master: What you intended to give was the balance that stood against the investment in 1861, was it?

The Witness: January 1st, 1861; yes, sir.

The Special Master: That is, your intention was to give the investment as it stood at that time, and you so gave it?

Mr. Spooner: That was not what the order called for; it was moneys expended in West Virginia.

Mr. Conrad: Suppose your accounts that have been offered in evidence here show the fact that you do give credit for 344
that very sale of stock, would that affect the final result you have reached? I say, if the accounts you have rendered here, that have been put in evidence, do show the fact of the sale of this stock, and that you have given credit for the proceeds of that sale?

Mr. Spooner: Our accounts?

Mr. Conrad: Yes.

Mr. Spooner: We have not put them in evidence.

Mr. Conrad: You gave them to us and we assume from that that you are intending to put them in evidence. I am not talking about his accounts, but your accounts.

The Special Master: If his accounts show that the stock was sold and credit given, the question is whether you do not get the same result.

Mr. Conrad: Yes. He has simply forgotten it.

The Witness: I cannot say positively about that item.

By the Special Master:

Q. If your accounts show it, and Virginia is given credit for it, of course it is the same thing as if it was in this item. Of course it is not very material whether it appears right here or some other place.

Mr. McClintic: Does your account anywhere show any credit of that kind?

The Witness: Not that I recollect.

345

By Mr. McClintic:

Q. You do not think that your account shows anywhere any credit of that kind?

A. I don't think it does.

Q. Did you not take the original investment that you found from the books and charge West Virginia with that amount?

A. I cannot state positively, but that was the basis on which that was entered there.

Q. I started to ask you when I was interrupted whether as to the item of $24,908.67, which you marked "Not on annual report 1839". Virginia paid a cent of that?

A. If you will allow me to refer to the receipts I think I can answer that.

Q. Certainly.

The Special Master: That is, does that represent an actual investment?

A. (Referring to memorandum) I do not find the record among my papers. I have it somewhere, but I cannot answer that question now.

Mr. McClintic: You do not know what that "Not on annual report" means?

A. I think it had something to do—no, I do not know.

By the Special Master:

Q. Have you got all your notes here?

A. I had them here.

Q. But you are not able to put your fingers on that point?

A. They are very voluminous and I cannot turn to that. 346

Mr. McClintic: I wish you would look that up and tell me.

The Special Master: I was going to say, if there are any of these items you want to have him look up in his notes, we had better not take time to do it now; but he can make a note of everything of that kind and look it up between now and tomorrow morning. We will not wait for those things unless it disturbs the continuity of the cross examination to go ahead with something else.

Mr. McClintic: No, sir; it will not disturb me.

By Mr. McClintic:

Q. On page 11 you charge a road called the South Branch and Kitterman's to Hardy County. Is that road wholly in West Virginia?

A. I believe it is.

Q. Do you know that it is?

A. I would not have put it in there if I had not been pretty sure of it.

Q. Your judgment was that it should be put in there, was it?

A. It certainly was.

The Special Master: What county do you contend it is in?

Mr. McClintic: It is in Harrison county, Virginia.

Mr. Conrad: There is no such county in Virginia.

Mr. McClintic: I mean Rockingham County; I was thinking of Harrisonburg. It is in Hardy County, West Virginia, and Rockingham, Virginia. It is better known as Brock's Gap. 347

Mr. Anderson: That is another road. That is not Brock's Gap.

The Special Master: Do you remember how you ascertain that

fact when you made your statement about that road and its location; that is, from whom or from what you got your information?

The Witness: We had several maps there, and one map that we received from the library in Washington. We located these various roads and charged them up accordingly. I did not make an index showing the locations of the direct West Virginia charges, but made an index of those crossing the line. But I do not think there would be any question about these roads located in West Virginia, I did not think so, and so we did not prepare that index.

The Special Master: And it is impossible for you now to put your finger on the original memorandum from which you reached that result?

The Witness: Yes.

Mr. McClintic: Dd not that road have the proper title of the South Branch of the Potomac to Brock's Gap and Rockingham county?

Mr. Anderson: There is such a road as that.

The Witness: I think that is the road; but somewhere in the report we found a record of Kitterman's and located it in West Virginia.

Mr. McClintic: On page 13 I find the Williamsport Turnpike, $5,130.65. Are you aware of the acts of Virginia filed here which give the stock in that road to Wood County?

The Witness: No, sir. 348

Mr. Anderson: What is the date there?

Mr. McClintic: 1858, I think, but I would not be positive.

Mr. Harrison: To whom does the act give it?

Mr. McClintic: To Wood County.

By Mr. McClintic:

Q. To go back to one question on the first page of the whole account, do you know, in the case of the Berryville and Charleston turnpike, whether or not that road was sold under a deed of trust given by the company?

A. I do not.

Mr. Anderson: It was.

Mr. McClintic: I will ask Mr. Potter.

The Witness: I don't know.

By Mr. McClintic:

Q. You do not know anything about what the books showed as to charges?

A. I do not.

Q. Did the books make any difference between the last charge of $7,236.97 and the other charges?

A. I cannot say at this time.

Mr. Spooner: A trust given by the corporation?
Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Were the items taken from the same book thereunder?

A. No; the item in 1858 was taken from the Commonwealth ledger.

Q. Did you look at the journal of the Commonwealth to 349
see what that charge was for?

A. I think probably we did not. I don't remember.

Q. On page 15 you have a charge there called sundry expenses, $339.91. On what theory did you charge those to West Virginia?

A. Journal B, page 532. In the first place, we find them entered in the annual reports of the board of public works, and we located the expense as in some particular county. There were many others which we located in Virginia counties which we left out. Such as we could locate in West Virginia counties were charged.

The Special Master: What was the nature of the expenses?

The Witness: In connection with the inspection of road by the board and things of that kind.

By Mr. McClintic:

Q. Did you not charge under the head of 4-D a whole lot of items for inspections as ordinary expenses of the State Government?

A. Such inspections as we could not locate within particular counties, we charged up as ordinary expenses; but all items that we could locate we charged direct. These items may not have been ordinary expenses in one sense; if they were applied to the inspection of a particular road which we could locate, I think it was quite reasonable to charge it.

Mr. Spooner: How many different kinds of ordinary expenses have you been governed by in distributing these items?

The Witness: I think my previous answer explains that. 350

Mr. McClintic: And these items which you put into ordinary expenses and charged as such, did you exclude all the items for Virginia counties?

The Witness: All direct charges. Items we could locate the same as these, we did so charge, and excluded them from the ordinary expenses of the board of public works.

The Special Master: That is, where the expenses appeared to be localized by the books, you left them out, and where they were general in their character, you made the charge of ordinary expense?

The Witness: Yes, sir.

The Special Master: The only distinction between the two being on the books. You saw where some of them went, but you could not see where the others went, and therefore made a general charge?

The Witness: Yes, sir.

Mr. Conrad: Governor Wise's salary was an ordinary expense, but when he went to Charlestown to command the troops at the John Brown raid, that, too, was just such an expense.

Mr. McClintic: We thought the hanging of John Brown on West Virginia soil was a permanent improvement to West Virginia.

Mr. Conrad: It was. Jefferson County to-day is the finest 351
county in West Virginia.

The Special Master: I suppose that might raise the question as to whether I have a right to localize it or spread it generally over the whole country.

By Mr. McClintic:

Q. We find on the same page a charge of interest on the bonds of the city of Wheeling of $30,627.45, and you give credit for $15,115.64. On what theory of State expenditure did you charge that to West Virginia?

A. On the direct instructions of that paragraph of the decree which says "All moneys expended within the counties of West Virginia."

Q. Was money paid on bonds given by a municipality of West Virginia, which the State had guaranteed, money spent within West Virginia?

A. It was spent for that purpose, yes. Wheeling was in West Virginia.

Q. Yes; Wheeling is in West Virginia, and Wheeling is a solvent municpality, is it not, or was it not?

A. It was.

Q. Was and is, as a matter of fact?

Mr. Anderson: I don't know whether it was or not.

Q. (Continuing) Yes; it was and is. Did you look to see whether that same money had ever been repaid to Virginia?

A. I did not look beyond 1860.

Q. You did not follow the books to see whether items of 352
that kind owned by an independent municipality had ever been repaid to the State or not?

A. Not after 1860.

Q. You were satisfied to make a charge and then not look to see whether it was paid afterwards or not?

A. I don't think it was paid, because it would have appeared on the auditor of public accounts' ledger, if it had been, and I did not notice it there.

Q. If you had looked don't you think you would have found it was paid?

A. I don't know.

Q. It was no part of a State expenditure, but as a matter of fact,

the sum with interest was paid to the State of Virginia in 1867, and the State of Virginia took it and accepted it.

Mr. Conrad: What part of the State of Virginia?

The Special Master: He has not taken into account any of those since 1860.

Mr. McClintic: We took the position, that it was his duty to see if that account had ever been paid.

The Special Master: That is open to you to show.

Mr. Harrison: If that is your theory you can put it in your evidence to show it.

Mr. McClintic: The evidence can be had from your own books.

Mr. Harrison: Well, let it go in.

Mr. McClintic: Why did you charge to us the Harpers' Ferry Raid, $174,684.79; upon what theory did you charge that?

The Witness: Primarily— 353

Mr. Harrison: State what it is for first.

The Witness: Claims for subsistence, quartermaster's stores, pay of soldiers, damages, medical department, and miscellaneous items incident to the maintenance of certain troops in Harpers Ferry, which is in West Virginia.

By Mr. McClintic:

Q. Why did you charge it, that is the question I asked?

A. Because it was an expenditure in West Virginia and I had an opinion of the counsel of Virginia.

Q. That is what I expected; I suppose that was the reason you did it.

The Special Master: That is, he was so instructed.

Mr. McClintic: Yes; I have no doubt that is the fact.

Mr. Conrad: I suppose that was proper.

The Special Master: I do not understand that they criticised the propriety of instructing him, although it may be that they do contest the propriety of the item.

Mr. Spooner: I do not criticise the propriety of his obeying the instruction.

Mr. Carlisle: But we claim that the instruction was erroneous.

Mr. Spooner: We want to be heard briefly on the propriety of the instruction.

The Special Master: That will come up later.

By Mr. McClintic:

Q. There is another item, "payment to West Virginia counties for school purposes, $863,278.26," at the bottom of page 15. Why did you charge that to this account? 354

A. Because they were payments to West Virginia counties, as shown by the following schedules.

Q. Did you charge that of your own volition, or was it by instruction?

A. I don't remember of referring that matter to counsel; I think it was of my own volition.

Mr. Harrison: Say whether or not these charges, whether made by instruction or not, met with your approval?

The Witness: This Harpers' Ferry raid did meet my approval. This certainly did, because I think the original charge originated with me. It was the intention to make the charge.

Mr. McClintic: Do you think it makes much difference whether it met with his approval?

Mr. Harrison: It might; we will see later on.

The Special Master: You want it for what it is worth, anyway?

Mr. McClintic: Counsel approved these directions.

The Special Master: I understand that both counsel and auditor concurred in their propriety.

By Mr. McClintic:

Q. Mr. Potter, did you take any account in your statements anywhere of the dividends paid by any of the banks in West Virginia to the government of Virginia—banks such as the Northwestern?

A. They are not included in these charges.

Q. Anywhere; in any account?

A. In none of our schedules are they included.

Q. Are what you might term the bonus stocks, what the statute terms bonus stocks, some sort of a license, included in any of your accounts? 355

The Special Master: What is that? I don't understand that.

Mr. McClintic: What the statute of Virginia termed a bonus stock, which is really a license to do business, as I understand. Were they included in any of your accounts?

The Witness: Not that I know of.

The Special Master: What were those licenses issued by the State of Virginia?

Mr. McClintic: The State of Virginia exacted some sort of a toll from the banks for doing business in some shape, in the shape of a bonus of stock or license in some form. I cannot exactly state what it was now.

The Special Master: In other words, they required some special consideration from them for the exercise of their franchises?

Mr. McClintic: Yes, sir.

The Witness: Do you want the information about the Mountain Lake turnpike that you asked me before lunch to give you?

Mr. McClintic: Yes, sir.

The Witness: The first information we got about that was from an ordinary map, which showed a small lake near Walker's Moun-

tain, and we pursued the research further, and found that there was a town called Mountain Lake, or there is a town called Mountain Lake, in Giles County, and going further, to the old 356
nine section map, a copy of which is in the land office at Richmond, it shows a turnpike from this little lake, which we have decided is the Mountain Lake referred to, across the mountain to Salt Sulphur Springs, in Monroe County.

By Mr. McClintic:

Q. What distances, respectively?

A. The distance is 20 miles; and the post route map was scaled. and as near as we can get it on a map of that kind we estimate that it is ten miles in each State.

Q. Does the act show where that road was to begin and end?

A. I have no recollection in regard to the act authorizing it.

Q. How do you know where it began and where it ended?

A. I have just explained to you the theory on which we decided where it began and where it ended.

Q. Your theory was that you found two things by that name and jumped to that conclusion?

A. I don't think we jumped to that conclusion. It was a place called Mountain Lake.

Q. A place called Mountain Lake, in Giles County?

A. Yes.

Q. And a place called Salt Sulphur Springs in Monroe County?

A. Yes ,sir.

Q. And you decided the road went between those two points?

A. There is a road between those two points, and we decided that was the road referred to. 357

Q. Do you know that that money was expended on that road, or that any money was expended on that road?

A. I cannot state positively it was.

Q. You found no report showing that it was, did you?

A. Not that I recall.

Q. You wished also to ask me something about Covington and Ohio, sections 19 and 20?

A. Yes, sir; sections 19 and 20. I asked you the distance, I believe.

A. The distance was 3,650 feet from the beginning of section 19 to the entrance of the tunnel; and it was 2,234 feet from the entrance of the tunnel on the Virginia side to the State line. It was 2,241 feet from the State line to the end of the tunnel, and it was 2,375 feet from there to section 21, section 20 lying somewhere between those two poles. We are told by H. C. Whitcomb, formerly assistant chief engineer—

Mr. Anderson: Chief engineer.

A. (Continuing) Chief engineer of the Chesapeake & Ohio Railroad, that the West Virginia end of this tunnel was bricked, on account of the character of the soil through which the tunnel was driven. That end of the tunnel is longer, by about 200 feet, than the Virginia end of the tunnel. The West Virginia approach is about 1,300 feet shorter than the Virginia approach; but the character of the land is more precipitous at the West Virginia end than at the Virginia end, and consequently there are greater cuts at the Virginia end, and we allow the additional expense of 358
bricking that West Virginia end, to offset the greater length of the approach on the West Virginia side, which is as near an estimate as we could make.

By Mr. McClintic:

Q. That was the statement of Major Whitcomb that you are basing that on?

A. Only with respect to the bricking. The other information we obtained from this profile.

The Special Master: What is that—the profile (indicating)?

Mr. Anderson: Yes, sir.

Mr. Harrison: This is a copy of the original profile?

Mr. Conrad: Show it to the judge.

(The profile referred to is examined by the Special Master and explained by the witness to the Special Master.)

Mr. McClintic: I want to ask you one other question on that $863,000. Where did that fund come from?

Mr. Harrison: Do you mean the school fund?

Mr. McClintic: Yes.

The Witness: We obtained our information from journals A, B and C of the Literary Fund.

By Mr. McClintic:

Q. Where did the money come from; where did the literary fund get it?

A. I don't know; I think it was received from the general funds. 359

Q. From taxation, or in what way?

A. I believe the literary fund received the capitation tax, and certain interest on investments.

Q. Do you know how much money it received during that period in which that $863,000 was being charged, from capitations?

A. No, sir.

Q. Do you know how much it received from investments?

A. No, sir.

Q. Did you make any effort to find out those things?

A. I did not consider it necessary for the purpose of this —

Q. Just answer yes or no.

A. No, sir.

Q. You do know, though, that part of it came from capitations and part of it from investments?

A. That is my recollection, and I believe I am right.

Q. Did any come from any other source?

A. The State may have appropriated certain sums to the literary fund during that period. I do not recall.

By Mr. Carlisle:

Q. I see from this statement that you charged $863,000 and some dollars directly to West Virginia on account of money expended there for educational purposes. That is correct, is it?

A. That is correct.

Q. When you come over to the ordinary expenses of the 360
State government of Virginia, the whole State under another clause of that decree, you charge the money expended by the State of Virginia for education purposes within the limits of what is now the State as ordinary expenses, do you not?

A. No; all the expenses through the literary fund were eliminated.

Q. Well, the University of Virginia and the Military School and some other things is all you have taken there.

A. Well, general educational institutions, colleges and things like that, yes; but not for the education boards, the boards in the various counties.

Q. What distinction do you make between those two?

A. These same payments were made to the counties of Virginia and we excluded those. Payments similar to those were made to Virginia counties.

Q. What I am trying to get at is this. The expenditures for educational purposes in Virginia belonged to the ordinary expenses of the State; why did not expenditures for education purposes for West Virginia belong to the ordinary expenses of the State?

A. We did not take all money for educational purposes in Virginia into the ordinary expenses of the government.

Q. You took some of it?

A. But all moneys paid direct to the counties were excluded from this account?

Q. In Virginia? 361

A. In Virginia.

Mr. Conrad: All universities you refer to belonged to the State of Virginia.

Mr. Carlisle: I understand that; but the point I wanted information on was this. If that money expended here for a similar purpose, that is for educational purposes, belonged to the ordinary expenses, why did not money expended in West Virginia for educational purposes also belong to ordinary expenses, so we would be charged not directly with the whole amount of $863,000, but our just share of it, as a part of the ordinary expenses of the State of Virginia?

The Special Master: Let us see if we understand what the witness has tried to do. I understand the witness has stated that items of this character, applicable to Virginia, do not enter into the accounts as a part of the ordinary expenses that are charged?

The Witness: That is correct.

The Special Master: So that while they are put in here as items disbursed in West Virginia, items of similar character do not appear in the ordinary expenses account, and none of these items occur in the charge that makes up the ordinary expense.

Mr. Harrison: That answers his question.

Mr. Carlisle: In other words, any money expended by the State of Virginia for common schools, we will say, inside of the territory now constituting the State of Virginia was not charged in this account either as ordinary expenses or otherwise. Is that what you mean to say?

The Witness: Yes, sir.

The Special Master: That is what I understood him to say. 362

[*Vol. 5, May 6, 1909. Cross Examination of A. G. Potter.*]

Mr. McClintic: There are sundry matters that I asked you to look up and be able to testify about this morning. Are you in a position now to answer in regard to any of those?

The Witness: I am in a position to reply regarding the road from South Branch.

The Special Master: What exhibit does that relate to?

Mr. McClintic: 3, I think.

The Witness: C-1.

The Special Master: And what page?

The Witness: Page 15 of the new paging. South Branch and Kitterman's, $1,400.

The Special Master: South Branch and Kitterman's?

The Witness: South Branch and Kitterman's to Hardy County.

The Special Master: The question was whether that was all in West Virginia?

The Witness: Yes, sir. 391

The Special Master: What have you found?

The Witness (apparently reading): Journal B, page 753, shows $1,400 to William Seymour for road from South Branch to Brocks Gap, under the Act of the 7th of February, 1850, Chapter 95, section 6. This is posted to his account in Ledger A, page 140, and transferred to Ledger B, page 265, in 1862. The $1,400 is then transferred by Journal D, page 181, 1865, to the account headed "Road from the South Fork of the South Branch of the Potomac near Breaks, by way of Kitterman's, to the Moorefield North Branch Turnpike in Hardy County at Petersburg." Petersburg is in Hardy County, west of the South Branch of the South Fork of the Potomac. I should say it is in Grant County, West Virginia, split off from Hardy.

Mr. Anderson: That shows both termini to be in West Virginia?

The Witness: Yes, sir.

Mr. McClintic: That is dated when?

The Witness: The last entry is made in 1865, transferring it to the account under this head.

The Special Master: Have you any other items which you were asked to look up, which you can now testify to?

The Witness: No, sir.

By Mr. McClintic:

Q. What was the reason for transferring those in 1865, so far as the books would show you anything?

A. I cannot say what the reason was.

Q. As a matter of fact, is not the road of the South Fork of the South Branch of the Potomac River to Petersburg and Hardy County entitled to a charge of $900 loan, and is not that a 392
wholly different road from the one you are speaking of?

A. I do not think it is, because the entry starts with an act of 1850, under the name of South Branch to Brock's Gap, and was later transferred to this other name.

Q. When we know that Brock's Gap is in Rockingham County and the South Branch is in Hardy and Pendleton Counties, would you not suppose the entry made when the road was built would be better than the one made fifteen years afterwards?

A. I don't know; I am sure I don't know whether it would or not. We would have to know more about the facts, and the facts beyond what I have stated here are not ascertainable from the books.

Q. Well, it is ascertainable from the books that when the road was started and when they knew what was doing they had it in one place, and then fifteen years afterwards it was changed to another place?

The Special Master: That is, there is an inconsistency?

The Witness: Yes; the entry indicates that.

Mr. Conrad: The road may have been built to extend much further than it actually did extend, and as it was constructed, it was between two points, the eastern point of which may have been further than provided for in the charter.

Mr. McClintic: What evidence have you of that? Are you testifying?

Mr. Conrad: No; I am not testifying; I am explaining an 393
obvious solution of the matter. Here is a record of West Virginia which shows the terminus of that road to be within that State.

Mr. McClintic: Where is the record and when was it made. This road connects at Brock's Gap.

The Witness: This is from the Board of Public Works. I merely said that this information was taken from the Board of Public Works ledger.

Mr. McClintic: Of what State?

The Witness: The State of Virginia.

The Special Master: Have you any information except what you get from the books?

The Witness: No, sir.

Mr. Conrad: Will you please give me the last date you read.

The Special Master: If that is to be supplemented by oral testimony that will come from another source, evidently. Is there anything further on that?

Mr. McClintic: No, sir.

[*Vol. 5. May 6, 1909.*]

JOHN B. LIGHTFOOT, JR.

was called as witness for the plaintiff, and being first duly 408
sworn, testified as follows:

By Mr. Anderson:

Q. What is your profession or occupation, Mr. Lightfoot?

A. I am a lawyer.

Q. How long have you practiced law?

A. Nearly five years.

Q. Please state to his Honor your connection, if any, during the last year or eighteen months, with any investigation or accounts which have been had in connection with this case?

A. When the expert accountant for the State of Virginia came to Richmond I was employed through the Attorney General to assist him by such means and methods as circumstances at various times might require, largely in connection with collecting and securing for their use the various documents of the State, as we might

find them at different places. When Mr. Potter, the accountant, came and brought with him his force of assistants, from the time that they arrived until they left I was with them constantly, connected with their work of accounting. I am not personally an accountant, so that my connection with the accounting work has been only that of an assistant under the direction of Mr. Potter. Incidentally to the existing work with him at the request of the Attorney General, I made an independent investigation into the expenditures within the boundaries of West Virginia, under the clause of the decree referring to that matter. It was not
my intention at the time to make anything more than a 409
memorandum for the use of counsel so far as it might be needed.
However, the report was made the nature of an account, because that was the only way in which I could make it out so that it would serve its best purpose; but the report does not purport to be and is not the report of an expert accountant. It is my observation and my conclusion from the figures which I found in the published reports of the Board of Public Works, the published reports of the auditor and second auditor in the documents of the House of Delegates and in such original books of entry as the Board of Public Works, of the Auditor's office and of the second Auditor's office, and of the various internal improvement companies as I found occasion to examine. That report I have here.

Q. From your examination did you make up a statement or a report as to the expenditures within the counties now constituing West Virginia, and if so, what period was covered by that report?

A. I covered the period between 1820 and December 31, 1860.

Q. Have you a copy of that report?

A. I have one before me.

Mr. Anderson: A copy of this, if your Honor please, was left by me at the office of the Attorney General of West Virginia on the 7th of October last, and he acknowledged it afterwards to me.

Mr. McClintic: Yes, sir; we have a copy.

By Mr. Anderson:

Q. From what source did you get the figures or statement 410
of fact made in that report, Mr. Lightfoot?

A. The statement of facts and figures shown there were obtained from the published reports of the Board of Public Works, as contained in the separate volumes of the reports of the Board of Public Works, and also as contained in the documents of the House of Delegates; also the reports of the Second Auditor; also the original manuscript journal of the Board of Public Works; also from original maps of internal improvement companies; also from the reports

of C. Crozet, Chief Engineer, under the Board of Public Works, and from the original books of entry in the Second Auditor's office and in charge of the corporation commission which deal with internal improvement matters.

By Mr. Spooner:

Q. Does this differ from Mr. Potter's report?

A. To a slight extent; yes, sir.

Q. Will you point out the difference?

Mr. Anderson: The differences will be pointed out as we go along.

The Special Master: Do you want to use the whole report or only such parts of it as relate to discrepancies between it and the report of Mr. Potter?

Mr. Anderson: We will file the whole report.

Mr. Conrad: We put it in, in large part, because it does differ from Mr. Potter's statement, to show two independent lines of inquiry.

The Special Master: Have you a duplicate of it, so that I can follow along with it?

Mr. Harrison: You will be furnished with a duplicate, 411
your Honor.

The Special Master: In order to follow it intelligently, I must have a copy as we go along.

Mr. McClintic: What page do you begin with?

Mr. Anderson: The report is not paged, but we begin on page 4.

By Mr. Anderson:

Q. Mr. Lightfoot, was your report prepared before Mr. Potter's was completed, or afterwards?

A. My report was prepared before Mr. Potter's was completed, according to my memory. This is dated June 4th. I corrected this report.

Q. Was it revised?

A. This report was revised subsequent to the time it was originally presented; yes, sir.

Mr. Spooner: You say you corrected that report. Just finish that answer.

A. I don't understand.

Mr. Harrison: What did you say about subsequently correcting the report?

A. The report as first put in was subsequently revised as to a number of points which developed later, that needed revising.

Mr. Conrad: Revised by you?

A. By me, personally.

Mr. Harrison: And handed to me?

A. Yes, sir.

The Special Master: What have we here; the complete 412
revision?

A. Yes, sir.

Mr. Anderson: Yes, sir; that is his revised report. As will be seen by counsel and by Master, Mr. Lightfoot has adopted a somewhat different arrangement from that adopted by Mr. Potter.

By Mr. Anderson:

Q. From page 4 to 6 you have a statement of expenditures by the Commonwealth of Virginia within the boundaries of West Virginia for internal improvements, lunatic asylums, banks, law library, and miscellaneous items, since any part of the debt existing January 1st, 1861, was contracted, and the first statement you have here is a statement the caption of which is "Expended through the Board of Public Works. Joint stock and State turnpikes lying wholly within West Virginia." The first item is the Abbs Valley and Tug Road. Do you remember whether that was a joint stock company?

A. I do not. I took no note of the different internal improvement companies to which subscriptions were made for the joint stock or to which payments were direct by resolution or authority of the special act. I only took note of the fact that the money was spent.

Q. Is that road wholly within West Virginia?

A. This road is wholly within West Virginia, according to my report.

Q. You have the item $4,450, as expended by the Commonwealth on that road?

A. Yes, sir.

Q. Is that a correct interest? 413

A. It is.

Q. Then the Beverly and Fairmount road, $75,384.65. Does that road lie wholly in West Virginia?

A. It does.

Mr. McClintic: That is admitted.

By Mr. Anderson:

Q. And the original records show that the State expended that amount?

A. Yes, sir.

Q. Is that true as to all the items in this account on pages four and five of your report? I ask this in order to save time.

A. It is, to the best of my knowledge.

By the Special Master:

Q. In what respect do those items differ from the report made by Mr. Potter?

A. I have not made a minute examination, Mr. Littlefield.

Mr. Anderson: He has not classified them in exactly the same way.

The Witness: To get the exact difference in each item.

The Special Master: Then you would have to make a very careful analysis to get at the differences in details?

A. Yes, sir.

The Special Master: You need not bother to do it now, that is, as far as I am concerned. I did not know but you had it right at hand.

A. I think the items on pages four and five are the same in this and in his.

Mr. Carlisle: As to amounts? 414

A. As to amounts.

The Special Master: You mean the subject matter and the amounts expended?

A. Yes, sir.

Mr. Anderson: Yes, sir; we have Mr. Potter's statement here, and they agree as to that.

By Mr. Anderson:

Q. On page 6 you have a statement of the expenditures upon turnpikes and State roads lying partly in Virginia and partly in West Virginia. The first is the Berkeley and Hampshire Road, upon which, according to your statement, the total expenditure by the Commonwealth was $16,572, of which you ascertained that $13,655.33 was expended in West Virginia, or 82.4 per cent of the total expenditure. How did you ascertain those figures? These are what we may call now interstate roads.

The Special Master: That is identical with the item in Mr. Potter's report.

Mr. Harrison: That is right, sir. There is no difference there.

A. With respect to the road to which you refer, the Berkeley and Hampshire, I secured the 82.4 per cent chargeable to West Virginia, as follows. By the Act of March 1, 1851, page 103, the road is shown to run from Martinsburg in Berkeley County, by way of Boyd's Gap and Bloomery Gap in Hampshire County to some point on the Northwestern Turnipke at or near French's Tavern. The Board of Public Works printed report, Volume 17, part 2, page 289, 415 stated the length of that road to be 45½ miles. The Board of Public Works printed report for 1858, at page 23, states that all of it has been finished. By scaling the maps, the length of this road in Virginia is found to be eight miles, and the length in West Virginia 35 and one-half miles. In Crozet's report of 1848—

Mr. Anderson: Crozet was the State Engineer.

A. The distance from Martinsburg to Bloomery Gap is stated to be 29 and one quarter miles. Bloomery Gap is taken to be one and a quarter miles west of Frederick and Hampshire line. By figuring the percentages from those calculations, I arrived at 82.4 per cent total distance in West Virginia. Therefore, 82.4 per cent of the total expenditures was charged to West Virginia.

Q. Does your report contain memoranda showing how you arrived at that result?

A. The report does.

Q. The report itself?

A. Yes, in this instance. In some instances, of course, it does not.

Mr. Spooner: Does that differ from Mr. Potter's statement?

Mr. Anderson: No, sir.

The Special Master: Do you care, gentlemen, to go over these items where there is no discrepancy?

Mr. Anderson: No, sir.

The Special Master: Unless some question is raised about 416 them on the other side?

Mr. Anderson: No, sir; I do not.

The Special Master: Unless there is some question made about these items, where he agrees with Mr. Potter, there is no occasion to spend time on them.

By Mr. Anderson:

Q. Did you ascertain the facts as stated on this page 6 as to these expenditures, aggregating $829,072.09, upon turnpikes and state roads lying partly in Virginia and partly in West Virginia, from the original records and reports of the Commonwealth to which you have referred?

A. Yes, sir.

Q. And maps?

A. Yes, sir.

Q. Now as to bridge companies—bridge companies solely in West Virginia. You find the total expense bill was $81,412.50 upon those bridges, and they are enumerated and described on page 7 of your report?

A. Yes, sir.

Q. Are the facts and figures stated in that account ascertained by you in the same way as you mentioned with respect to turnpikes and roads?

A. Yes, sir.

Q. Now, expenditures upon navigation companies—Coal River Navigation Company, Guyandotte Navigation Company, Monongalia Navigation Company and Tug Fork Navigation Company are found

on the same page, page 7, and the aggregate, according to that account, is $216,020. Were those expenditures traced and ascertained by you and determined in the same way as the 417
others?

A. Yes, sir.

Mr. Spooner: General, do they differ from Mr. Potter's?

Mr. Anderson: No, sir; they agree exactly.

By Mr. Anderson:

Q. Then you have a statement of money expended directly from the State Treasury on turnpikes and State roads lying wholly in West Virginia between those periods, amounting to $77,586.13.

The Special Master: The copy I have here shows $77,886.13.

The Witness: I think, General Anderson, the copy you have is not one of the revised copies.

Mr. Anderson: It is not. This is one of the first copies furnished.

The Witness: I think that was a copy which was made from one of the originals and not corrected. I have the corrected sheets here, however. You can follow them.

Mr. Anderson: My copy, which was a revised copy, I gave to his Honor.

Mr. Spooner: Have you another copy which you can spare?

The Witness: I have not, Mr. Spooner. I only had three revised copies.

The Special Master: Is there any discrepancy between that list and Mr. Potter's figures, Mr. Anderson?

Mr. Anderson: No, sir.

By Mr. Anderson:

Q. Then the next account, on page 9, is with reference to turnpikes and State roads lying partly in Virginia and partly 418
in West Virginia. What figures have you for that, Mr. Lightfoot?

A. Exclusive of the Kanawha Turnpike road and extension of same, and the Kanawha River and Board, the total is $6,080.50.

Q. Lying partly in Virginia and partly in West Virginia?

A. Expended directly from the State treasury.

Q. Including that, how much is it?

A. Including the Kanawha Turnpike road and extension of same, and the Kanawha River and Board—they are not shown as added there.

The Special Master: The addition would be $424,612.00, as I have it here. Is that right?

A. That is right.

The Special Master: Is there any discrepancy in those items, Mr. Harrison?

Mr. Harrison: There is a slight discrepancy.

The Special Master: In what item?

Mr. Harrison: In the Skidmore Fork item.

The Special Master: How much?

Mr. Harrison: Mr. Potter gives his opinion there as 50 per cent., and Mr. Lightfoot at 58 per cent. There is a difference of $80.

The Special Master: Upon which do you rely?

By Mr. Anderson:

Q. How did you get yours, Mr. Lightfoot? You find 58 per cent. and Mr. Potter 50 per cent. of the road is in West Virginia.

The Special Master: Which computation do you rest upon? 419

Mr. Harrison: We rest upon Mr. Potter's.

The Special Master: Then you do not need to spend any time in going into this detail.

By Mr. Anderson:

Q. On page 10 you have a statement of the expenditures by the Commonwealth of Virginia in West Virginia on railroads, and the first item embraces the Winchester & Potomac, 62.5 per cent. in West Virginia, $168,750. How did you get at that, Mr. Lightfoot?

A. Let me find the reference to that, Major.

The Special Master: Is there any discrepancy in that item?

Mr. Harrison: No, sir.

Mr. McClintic: It is a wonderful coincidence, your Honor, that both of them get at the same percentage on both of those things.

The Special Master: I suppose it is assumed they have proceeded upon an accurate hypothesis, and therefore they must come out together. Is there any discrepancy in any of the items on page 10, Mr. Anderson?

Mr. Anderson: There is, in the Covington & Ohio.

The Special Master.: There is no discrepancy between the items with relation to the two railroads?

Mr. Anderson: There is not as to the Winchester and Potomac. The measurement is just the same.

By Mr. Anderson: 420

Q. Now, you find there were $1,158,214.49 expended by Virginia in the Covington & Ohio Railroad.

The Special Master: That is not the way I have it here. I have it $1,187,149.09.

A. The correction in that sheet would show what Mr. Littlefield has.

Mr. Anderson: What is the amount?

A. $1,187,149.09 to be accurate.

The Special Master: Does that agree with Mr. Potter?

Mr. Harrison: No, sir; there is a difference.

The Special Master: Larger or smaller?

Mr. Harrison: Mr. Potter's is smaller.

The Special Master: Upon which do you rely?

Mr. Harrison: Mr. Potter's. There is $25,000 difference.

The Special Master: Then you need not spend any time on this item, need you?

Mr. Harrison: No, sir.

The Witness: I would like to state that the difference comes in because Mr. Potter has worked his out upon a scientific theory of accounting. I was not able to follow the—

Mr. Carlisle: How did you know?

A. I was associated with Mr. Potter for seven and a half months. We consulted over this matter very largely. I assisted him to a large extent, and he assisted me to a larger. Consequently what Mr. Potter has there I am very familiar with, and what I have Mr. Potter is very familiar with. As I wanted to make an independent investigation and could not follow Mr. Potter's theoreti- 421
cal working out of accounts, I had to take my own practical ideas, and I consequently lost $25,000 by it. It is worth that much to get an accountant.

By the Special Master:

Q. In other words, Mr. Potter's figures are the figures of an expert and yours are the figures of a lawyer?

A. That is correct, sir.

Q. And they rely on the figures of the experts?

A. Yes, sir.

The Special Master: That disposes of that item, then, so far as this branch of examination goes. Of course I do not mean to shut you off, Mr. Anderson, on any of these except I want to get the issues, and make it as short as we can.

Mr. Anderson: Yes, sir.

By Mr. Anderson:

Q. The miscellaneous expenditures, I believe, agree. I wish to direct your attention to the amount expended by Virginia in banks in West Virginia, $500,000.

The Special Master: What page do you find that on?

Mr. Anderson: That is on page 10.

Q. How do you get at that, Mr. Lightfoot? Some question has been raised about that.

By the Special Master:

Q. Does that differ from Mr. Potter's statement?

A. There is a difference there; yes, sir.

Q. What is it; how much? 422

A. I think there is a difference of $50,000.

Q. Is yours larger or smaller?

A. Mine is larger, if I recollect correctly.

The Special Master: On which computation do you rely, on that item?

Mr. Harrison: Upon Mr. Potter's figures. He is the expert.

Mr. McClintic: They are both the same, $500,000.

The Witness: I thought Mr. Potter's was different. I did not remember.

The Special Master: Mr. Potter gets the same result in another way.

Mr. Harrison: Substantially; that is it.

By Mr. Anderson:

Q. How did you get at the figures you have, $500,000? I have not been able to compare it, and I do not remember what Mr. Potter has.

A. I made up that statement from an examination, first of the documents of the House of Delegates, 1839-40, document 52, on banks situated in West Virginia. The statement there shows $450,000, held as follows: Northwestern Bank, in the name of the Commonwealth, $400,000; in the name of the Literary Fund, $50,000. In addition to the above, the Auditor's statement for the year ending September 30, 1861, Documents 61-2, document 7, page 12, shows 1,000 shares in the name of the Literary Fund in the bank of Fairmont, $50,000; making a total of $500,000. The expenditure of that $400,000 is shown in detail in the ledger in the auditor's office marked "1856-61," at page 55. The figures there shown make 423 up the $400,000. The item of $50,000, mentioned second, is shown in the documents 1861-2, document 7, page 17. The third item, in the same document, 7, page 12.

Q. Those items make the $500,000?

A. Yes, sir.

Q. And that agrees with Mr. Potter?

A. Yes, sir.

Q. I have not found Mr. Potter's estimate. Now, the amount expended on account of the Harper's Ferry raid, as it is called?

A. There is a slight difference there, I think.

The Special Master: He is a little more than $2,000 less than Mr. Potter.

Mr. Harrison: About $2,000 less.

The Special Master: Which do you rely upon?

Mr. Harrison: We rely upon Mr. Potter:

The Special Master: Is it a fact that wherever discrepancies occur between the reports of Mr. Potter and Mr. Lightfoot, the plaintiff relies upon Mr. Potter?

Mr. Anderson: Yes; we rely upon Mr. Potter.

The Special Master: Then what occasion have you for taking the time with Mr. Lightfoot, under the circumstances, unless he is possessed of some information as to the original sources that is not possessed by Mr. Potter?

Mr. Harrison: It shows the result of an independent investigation, and we are introducing it for the purpose of corroborating the statements filed by Mr. Potter.

The Special Master: If they do not happen to agree, they 424
do not corroborate.

Mr. Harrison: As far as they do not agree, they do not corroborate; but so far as they do agree, and so far as the report shows the sources from which the information was derived, they are corroborative.

The Special Master: Very well.

By Mr. Anderson:

Q. Do you remember what you excluded that Mr. Potter included in his statement of the Harper's Ferry expenses?

A. I couldn't say, from memory, where we differed as to items.

The Special Master: That, of course, would be disclosed by a comparison, but there is no occasion to take up time for that if I may rely upon Mr. Potter's report as the authentic report. That is, I will not have any occasion to examine it for that purpose.

By Mr. Anderson:

Q. You make the total expenditures in West Virginia, Mr. Lightfoot, as shown by the last two pages of your report, $5,770,677.48.

The Special Master: That is on page 10?

A. No, sir; page 11, the summarized report. They show the same figures, however. Page 11 is merely a summary of the foregoing.

The Special Master: Yes; I have it.

By Mr. Anderson:

Q. The items aggregating that amount were determined by you in the same manner in which you have taken the details as to a
number of items about which you have testified? 425

A. Yes, sir.

Q. And it is supported by the record and accounts in the public offices of the Commonwealth?

A. They were.

Mr. Anderson: We now offer that report.

The Special Master: Do you wish this all to go in, Mr. Anderson?

Mr. Anderson: Yes, sir; we want the statement to go in.

The Special Master: Just what you have called attention to in the examination?

Mr. Anderson: No, sir; the whole of it.

The Special Master: On page 12 there is a statement of the variance between these figures and those by J. M. Bennett in the report of the Virginia Debt Commission to Governor Jacob, August 9, 1871. Do we have any occasion for that?

Mr. Conrad: It is very important. Then it was the Auditor of Virginia who made the reports on which we rely. He afterwards returned to his home in West Virginia, at the close of the war, and was employed there to make a report by the Governor of West Virginia.

The Special Master: Well, this will become material, I suppose, so far as it tends to show what the actual conditions were; but the mere fact that a discrepancy existed between one accountant and another, of itself, standing alone, would not be very illuminating.

Mr. Conrad: The curious result was disclosed that the re- 426
port made by him under the auspices of West Virginia differed materially and essentially from the report made by him five years before, as Auditor of Virginia.

The Special Master: This has some tendency to affect the integrity or reliability of his reports.

Mr. Carlisle: Yes, both as an officer of old Virginia and as auditor of West Virginia.

Mr. Conrad: He was not the auditor of West Virginia.

Mr. Carlisle: He had been the auditor of Virginia.

Mr. Conrad: He had been the auditor of Virginia, but he never was the auditor of West Virginia.

Mr. Carlisle: Do you think the report in West Virginia was not correct?

Mr. Conrad: I know it was not correct.

Mr. Carlisle: Then what makes you think that the report by the same man in old Virginia was correct?

Mr. Anderson: It was just a compilation of figures.

The Special Master: That will come later.

Mr. Conrad: I will answer that later, or try to do it.

The Special Master: Then, as I understand, you offer the whole of this, Mr. Anderson?

Mr. Anderson: Yes, sir.

The Special Master: What shall we mark this? It relates to all of the various subjects, does it not?

Mr. Anderson: No, sir; it only relates to Article C-2.

The Special Master: Then it will be marked "Plaintiff's Exhibit C-2."

(The paper referred to is filed herewith, marked "Plaintiff's Exhibit C-2.") 427

Cross Examination.

By Mr. Carlisle:

Q. I understand you to say you are not an expert accountant, Mr. Lightfoot?

A. You are correct, sir.

Q. But an attorney at law.

A. Yes, sir.

Q. You were employed as an attorney in the case, were you?

A. No, sir.

Q. You were employed as an ottorney in the case, were you?

A. I was not employed as an attorney in the case.

Q. In what capacity were you employed?

A. I was employed in the broadest capacity that could be devised. It was to do anything which might assist the accountants in this matter, either in a legal way or in the matter of accounting, so far as my abilities went.

Q. In a subordinate capacity?

A. Yes, sir.

Q. Well, as a subordinate, did you make, as you said a while ago, an independent examination of these things?

A. That is correct, sir.

Q. Not subject to the supervision or control in any way of Mr. Potter?

A. Not at all, sir.

Q. Did you consult with him from time to time while you were making the account? 428

A. Very frequently.

Q. What was the character of those consultations? What were they about, in a general way?

A. Let me illustrate. We will take the Covington & Ohio Railroad. When the accountants came to making up their report on the Covington & Ohio Railroad, we found that it involved largely a history of events and of the work of the Board of Public works—not of the Board of Public Works, but of the Commissioners who built that railroad. That tooks us through a large number of volumes of the report of the Board of Public Works and of the documents of the House of Delegates. We had to find the scheme under which the engineers built that road. We had to find the history of the various proposed routes, and the authority for the one which they

finally adopted, and the cost of surveys on various routes, the division which the engineers made between Covington and the western end of the road, so as to divide the expenditures properly between Virginia and West Virginia. The conferences with Mr. Potter on that subject were of great assistance to me, and I do not hesitate to say the conferences with me were of great assistance to Mr. Potter. That is merely an illustration of the way we worked together.

Q. That is one instance?

A. Yes, sir.

Q. I asked you for your general course while you were there acting as a subordinate to Mr. Potter, as I understood you to say you were.

A. Yes, sir. 429

Q. Did you not co-operate with Mr. Potter all the way through this investigation?

A. All the way through; yes, sir.

Q. So that it was not, as you said, an independent investigation on your part?

A. It was independent in this sense, that the report which I have here I made up from notes which I myself took during the work with Mr. Potter.

Q. I understand that. Then you submitted them to Mr. Potter, did you not?

A. No, sir.

Q. You did not?

A. I did not.

Q. When you came to revise them, where did you get your information for your revision?

A. I got my information from the same sources.

Q. Did you go back to the original sources again?

A. Absolutely; yes, sir.

Q. Sources that were original with you?

A. Yes, sir.

Q. Did Mr. Potter ever have that report?

A. Yes, sir; he made a copy of it.

Q. Did he have it before he made his report?

A. As to that I can't state positively. I think he did.

Q. Then, as I understand you, there are some differences between the amounts found by you and the amounts found by Mr. Potter? 430

A In some instances; yes, sir.

Q. A few instances? About how many?

A. Probably not over three or four.

Q. Then, as I understand you, an independent investigation made by a gentleman who is not an expert accountant at all, of all these

numerous accounts, agrees, except in three or four instances, with the investigation made by an expert accountant?

A. That is correct, as to the expenditures within the counties comprising the State of West Virginia. You understand, Senator, this report does not go beyond that item.

Q. Then if Mr. Potter is an expert accountant, you are one also, are you not?

A. If I am as close to Mr. Potter's results as this, I think I might say I am.

Q. You are almost as good an expert accountant as he is?

A. I should think so.

Q. Mr. Lightfoot, did you consult Mr. Potter at any time during this investigation as to what should and what should not be included in his accounts?

A. In his accounts?

Q. Yes.

A. I think I had better answer that question generally by saying that possibly there is no question which arose in connection with these accounts in toto that was not discussed between Mr. Potter and myself.

Q. If, for instance, Mr. Potter had charged certain items 431 under the head of ordinary expenses, if he had to charge certain others as moneys expended in West Virginia, then he had to credit West Virginia with certain moneys which had been paid into the public treasury by the counties now composing that State. Did you advise Mr. Potter as to what he should include in any one of these accounts, and what he should exclude from any one of these accounts, as a lawyer, as an attorney? You were there in that capacity as I understand you?

A. No, sir; I was not there in the capacity of an attorney to advise Mr. Potter.

Q. Well, you were not an accountant, you say?

A. No, sir.

Q. In what capacity were you acting?

A. I was there in the capacity of a subordinate, to assist in any way I might.

Q. A subordinate accountant, or a subordinate—

A. If you will pardon me, let me be understood.

Q. I do not want to confuse you. I want to get the facts. That is all.

A. It is a fact that I want clearly stated. I would not like my position to be misunderstood. It was clearly understood, when I was assigned to this work, that while my legal opinion might be valuable, it was not to be final. In fact, it was not to be taken in

important matters at all, without reference to a regularly employed counsel.

Q. I did not ask you whether your opinion was final or not. 432
I simply asked you if you did or did not consult with him and advise him?

A. As I have stated, I undoubtedly did, and I gave my opinion in numerous instances.

Q. Did he follow your opinion?

A. That I couldn't tell you.

Q. You can look at his account and see. Does your account differ from his as to the classification of any of those matters about which you gave him advice?

A. I would not attempt to answer, it covers such a multitude of detail.

Q. You consulted him a great many times, did you not?

A. Numerous times. In fact, we were working together. He would sit at this end of this desk, and I would sit at the other end, frequently.

Q. There are only three or four differences, as you have already stated, between your account and the account of the expert?

A. I think that is all, sir.

Q. Are they on figures or on classification of the accounts?

A. As to the main differences—well, what do you mean by classification?

Q. I mean whether a particular item should be charged as an ordinary expense or should be charged as a direct payment to West Virginia, or should be credited to West Virginia as a payment by her counties into the public treasury. You know the division of each county, under the decree of the Court.

A. Yes. The discrepancy of the Covington & Ohio Rail- 433
road—

Q. I am not asking for any particular thing.

A. I can best illustrate it in that way.

Mr. McClintic: We do not want an illustration. We want facts.

By Mr. Carlisle:

Q. Well, go on.

A. The discrepancy in the case of the Covington & Ohio Railroad, which, according to my memory, covers about $25,000 loss in the difference between Mr. Potter's method of dividing the administrative expenses and my method of dividing the same, is one instance. There is a discrepancy in the Northwestern turnpike accounts, which, according to the best of my memory, is for the same reason—probably that and the Staunton and Parkersburg.

Q. You see, Mr. Lightfoot, I am not asking you anything on that

subject. I am asking you whether you and Mr. Potter differed at any time with respect to the classification of the accounts; that is, to which account a particular item should go.

Mr. Anderson: About any matter in this account or the other account?

Mr. Carlisle: All the accounts. I want to know in other words, if his account and Mr. Potter's account agree as to the classification of the items, and if so, how that came about?

A. They do. 434

Q. How did that come about? You are not an expert accountant, and he is. How did this agreement between you and him come about?

A. Because, so far as I see, there is only one possible classification—that is, into turnpikes wholly within the State of West Virginia, turnpikes partly—

M. Lightfoot, I am very unfortunate in not being able to make myself understood.

The Special Master: The question simply is, Mr. Lightfoot, inasmuch as you and Mr. Potter did agree on the classification, how does it happen you did agree?

Mr. Harrison: But there is no item in this statement except money spent wholly or partly in West Virginia.

The Special Master: Then it may be one great classification. There are various items.

Mr. Carlisle: There are three different material accounts.

The Special Master: The simple question now is how they came to agree on the classification between themselves. That is the only question asked now.

Mr. Carlisle: That is my question.

By Mr. Carlisle:

Q. There are three accounts there which I have already enumerated, and your report and Mr. Potter's report, if I understand it, agree substantially on the items contained in those classifications. I do not mean as to amounts now. You agree that this item should go into this account, and another one into another account, under the decree of the Court. How did you happen to agree on this classification—not on amounts. I am not talking about 435 amounts at all.

A. I understand you. May I ask you again, Senator, to explain the meaning of classification?

Q. I will state it again. I can state it from the decree.

Q. Would you take my report and illustrate?

A. That is not necessary at all. I don't know what your report is on that subject. The decree directs the Master to ascertain three

things which affect the accounts between these two states. The first is that West Virginia shall be credited with all the money which the counties now composing that state, paid into the Treasury of the State of Virginia during the time this debt was being created?

A. May I interrupt you? My report takes no account whatever of that.

Q. What does your report relate to?

A. Only expenditures within the Commonwealth.

Q. Leave that out, then. There are two other accounts. The decree, then, directs the Master to ascertain and report West Virginia's just proportion of the ordinary expenses for the State of Virginia, which of course requires him to ascertain what the ordinary expenses of Virginia amounted to during that period.

A. May I interrupt there?

Q. Yes.

A. My report takes no account whatsoever of that.

The Special Master: His report, Mr. Carlisle, is only made under paragraph 3, plaintiff's exhibit C, which relates simply to expenditures made by the Commonwealth of Virginia, as I understand it. I may be wrong about this, but as I understand it Mr. 436
Lightfoot's report is confined entirely to that particular item.

Mr. Harrison: Absolutely.

The Special Master: And up to date he has not testified about any other item? The report submitted covers only that particular item, and does not go any further.

Mr. Carlisle: Then on that item, we will confine ourselves to the report. I thought his report covered the whole thing.

The Special Master: I had that impression in the beginning, but I find it is confined to that paragraph.

By Mr. Carlisle:

Q. I understand, then, Mr. Lightfoot, that this report refers to expenditures made by the Commonwealth of Virginia in the territory now constituting the State of West Virginia since any part of the debt was contracted. That is the only one, as I understand now, that you investigated.

A. That is correct.

Q. Does your report agree with Mr. Potter's report under that item of the decree?

A. It does not.

Q. In what respects does it differ?

A. There is a discrepancy probably amounting to nearly $50,000. 437

Q. I did not ask for dollars and cents. I have expressly excluded that. Do you agree as to the items you have charged

under that against West Virginia? Did you agree upon the subject matters that should go in there?

A. Practically, I think we did. I know of no instance in which we did not.

Q. You consulted about that, did you not?

A. Undoubtedly, yes.

Q. Did or did you not advise him on that subject, as to what he should put in?

A. In specific instances, I have no doubt that I did.

Q. Did he take your advice?

A. I couldn't tell you, Senator.

Q. His report will show you that?

A. I have no doubt he did.

Q. He put them in?

A. I have no doubt of it.

Q. Now, there is an item in there of eight hundred and some odd thousand dollars for school expenditures in the counties of West Virginia, Did you consult with him about that?

A. Yes, sir; as to that item. Let me find that item. It is added in ink at the end of my report.

Q. After you had made your report?

A. After I had made my report. It is to indicate, and is a fact, that as to that item, I made no personal investigation. I took Mr. Potter's figure entirely, in order to complete the nature of my report.

Q. So you had no consultation about that item, you mean to say, before Mr. Potter included it in his report? 438

A. Before what date?

Q. Before he included it in his report. You took that item from Mr. Potter's figures?

A. Entirely so; yes, sir.

Q. Previous to the time when you took it from his figures, you had no consultation about it, as I understand it?

A. Yes; we had. We had worked together on compiling those figures of his report. I had not included it in mine. I had no notes on the subject.

Q. I misunderstood you. I thought you said you did not investigate that subject at all.

A. Not for the purpose of my report. I made no notes for my own purposes on that item.

Q. Do you know why you had not included that in your report, when you took up the specification of the decree, to ascertain what money had been expended by the State of Virginia in the counties composing the State of West Virginia?

A. Yes, sir; I can explain that, I think. The original idea of this report was to furnish to the attorney general or the counsel

some idea as to the expenditures for the physical internal improvements. It was intended primarily to cover the turnpike companies, the bridge and navigation companies and the railroads.

Q. That is what is covered by the decree.

A. I was not instructed to do that by the attorney general, but I got it up on my own idea, and later when the report was completed and handed in, I found that Mr. Potter had in- 439
cluded the school commissions in his report.

Q. You put it on the bottom of yours?

A. I put it on the bottom of mine, to make a full figure.

Q. Mr. Lightfoot, in apportioning the amounts which were expended on turnpikes, roads, bridges and navigation companies, which you had to do, you say, by ascertaining the percentage of the work in the one State or in the other?

A. Yes, sir.

Q. Did you and Mr. Potter collaborate on that together?

A. A great deal; yes, sir.

Q. Who made the measurements on the maps?

A. Why, we both made them.

Q. Did Mr. Potter or any one of his assistants go over all those measurements, so far as you know?

A. So far as I know, Mr. Potter or one of his assistants personally went over all of them.

Q. Did Mr. Potter or any of his assistants, so far as you know, go through the books to see whether your amounts were right or not?

A. No, sir; they did not check my amounts. They checked their own.

Q. So that the amounts which are reported there by Mr. Potter are the amounts found by you?

A. Undoubtedly.

Q. Not by him?

A. No, sir.

Q. Not by any of his assistants? 440

A. That is correct sir.

Q. Do they disagree from Mr. Potter's in any way?

A. They do not, except in the one or two instances mentioned.

Q. Do you know how that disagreement came about?

A. May I state that now?

Q. Yes, sir.

A. Referring back to this Covington & Ohio matter—

The Special Master. You do not need to go over that again, Mr. Carlisle:

The Witness: Then I can't explain how it came about.

The Special Master: You need not explain that one instance again, because you have already explained it twice. If there are

any other instances, you may explain them. You do not care to have him go over that again, Mr. Carlisle?

Mr. Carlisle: Oh, no, sir.

The witness: I understood you to ask me the question, and it would require repetition.

By Mr. Carlisle:

Q. What other instance have you beside the Covington & Ohio?

A. The Staunton and Parkersburg and the Northwestern Turnpike are the only two I recall right now.

Q. How did that disagreement come about?

A. From the different methods we used in getting at it.

Q. In getting at the amount? 441

A. Yes, sir.

Q. I understood you just now to say that neither Mr. Potter nor his assistants investigated the amounts at all; that they took your figures on the amounts?

The Special Master: You did not get the whole of his answer, Mr. Carlisle; I noticed particularly in answer to that question that he said they did not examine as to his items, but did examine as to their own.

Mr. Carlisle: That is one of your items?

A. Let me make that answer a little more clear. I said that neither Mr. Potter or his assistants checked my amounts in order to ascertain if they were correct. They themselves made up independently their amounts and checked those.

Mr. Carlisle: I misunderstood you entirely?

A. Yes, sir.

The Special Master: I thought you did. That is substantially what he said before.

Mr. Carlisle: My question to the witness was whether they had investigated the amounts, and he said no, as I understood him.

A. We compared them, of course, to see if we had arrived at the same conclusions.

By Mr. Carlisle:

Q. Yes; I understand that. Now, you were asked about this celebrated John Brown raid. Did you investigate that account?

A. Yes, sir.

Q. How did you come to investigate that account, when 442
you say you started in to ascertain only the amounts expended for improvements in West Virginia? Did you think that was an improvement?

A. I investigated that at the special request of the attorney general.

Q. That was beyond the scope of your investigation, as I under-

stood it, at the start? That was beyond the scope of your report?

A. No, sir. It was beyond the scope of my report as I had personally intended to make one.

Q. If you started out as you said a while ago to investigate the accounts of money expended in West Virginia for internal improvements, et cetera, would not the John Brown raid expenditure be outside the scope of that investigation?

A. As to internal improvements?

Q. Yes, sir.

A. It would be outside of the scope of my report. Physical improvements, was the idea of my report.

Q. Why did you suppose that was an expenditure to be charged to the counties composing the State of West Virginia?

A. Because so far as—

Q. As a lawyer, now, why did you suppose that expenditure was an expenditure chargeable alone to the counties composing the State of West Virginia?

A. So far as my judgment went in the items included they were expenditures within the counties of West Virginia.

Q. I suppose you included the idea that they were expended 443
for the benefit of the counties of West Virginia?

A. You suppose I included that idea?

Mr. Anderson: The decree does not take account of beneficial expenditures in West Virginia.

Mr. Carlisle: Money expended for the benefit of West Virginia exclusively.

Mr. Conrad: Not at all.

Mr. Carlisle: We differ about that. A great deal of money was expended in West Virginia during this period for various purposes, but it was for the common benefit.

Mr. Conrad: I think the tunnel through the Blue Ridge Mountains, which is entirely in the State of Virginia, was as much for the benefit of the counties of West Virginia as of Virginia.

Mr. Spooner: You do not see any connection between that and the John Brown raid, do you?

Mr. Conrad: The parallel, Senator, is that the body politic is like the human being. The food put in the mouth goes for the nutrition of the whole body, and not for the mouth alone.

Mr. Carlisle: Suppose the body politic had three heads, the restored government, the government at Richmond and the West Virginia government.

The Special Master: That is a sort of an aggravated Siamese twins illustration. You may proceed with the examination.

Mr. Carlisle: I want to see what the account is for, what 444
the items of the expenditure were made for.

Mr. Harrison: Which account?

Mr. Carlisle: I want to see whether it includes anything for the trial of John Brown, the sheriff's fees for hanging, or whatever was in there.

A. My notes, so far as this report has it on that subject is:

"The above is obtained from the reports of the Auditing Board of March 15, 1860, and January 1, 1861, as published in Senate Documents 1859-60, document 62 and Senate Documents extra session 1861, document 2."

By Mr. Carlisle:

Q. Do they give the items?

A. They give all the items.

Q. You haven't them?

A. I haven't them here; no sir. I picked out such items as I thought in my own judgment were proper.

Q. That is what I want to get at. Will you state to the Master what character of items you included?

A. I find a further note:

"The basis of charges to West Virginia are for expenditures at Harper's Ferry and Charlestown, but expenditures for arms, ordinance, blankets, overcoats, and transportation are not included in the above."

Q. The trial of John Brown, though, and the expense of it, are included there?

A. No; I am very sure the trial was not included in the report.

Q. You spoke of Harper's Ferry and Charlestown. That is where he was tried and executed. What expenses at 445 Charlestown are included?

A. I can't tell you without having that report here. There are in that report the data and vouchers for everything that they paid.

Q. Could you get those details some time to-day?

Mr. Conrad: We can get them in fifteen minutes. They are in Senate Documents 1859-60.

A. It is very possible I have them here in my notes.

Mr. Carlisle: I do not care so much about the details, because the whole trial, as a matter of history, is in the record.

The Special Master: He thinks he has the details here.

Mr. Carlisle: What was it at Charlestown?

Mr. Anderson: The charge was for the support of 1,500 troops for a month or two. I don't remember the time.

Mr. Carlisle: At Charlestown?

Mr. Anderson: Chiefly at Charlestown. The money was expended in West Virginia.

The Special Master: Do you find the items, Mr. Lightfoot?

A. No, sir; I do not find them.

Mr. Carlisle: I am through with the witness.

Mr. McClintic: I would like to ask one or two questions on the road matter.

By Mr. McClintic:

Q. You charge the Back Creek Valley road, and Mr. Potter does not charge it. Which is correct in that instance?

A. If you expect me to answer that question, I will say 446
I am.

Q. Where is the Back Creek Valley Road; in West Virginia?

A. Just a moment, sir. I will give you some information on that.

The Special Master: On what page do you find that?

Mr. McClintic: It is on page 6.

Mr. Conrad: It is partly in Hampshire and Frederick counties, but the bulk of it is in Hampshire county.

A. With reference to the Back Creek Valley road, I find this note:

"Virginia 58 per cent, $661.20; West Virginia, 42 per cent, $478.80; total expenditures, $1,140.00. Act of March 8th, 1856, page 134. Road to run from the Northwest Turnpike near Lockhart's Tavern, in Frederick county, up Back Creek Valley to Capon Springs in Hampshire County. See Act of March 29, 1860, page 302, for States subscription. The 'nine section' map shows this road beginning about ½ mile west of Lockhart's Gap and running to Capon Springs. By scaling that I find the total distance to be 16¾ miles; in Frederick county, 9¾ miles; in Hardy county, 7 miles."

By Mr. McClintic:

Q. Is that Hardy or Hampshire?

A. It should be Hampshire. That is evidently a mistake.

Q. You charge there the Abbs Valley and Tug road wholly in West Virginia, on page 4. Do you know Abbs is in Tazewell County, Virginia? 447

A. Yes. Abbs Valley is in Tazewell County.

Q. Where they had the celebrated Indian massacre and various and sundry other historical episodes?

A. I don't personally recollect it, but I have no doubt that is true.

Q. Do you say that is all in West Virginia or partly in West Virginia, that Abbs Valley and Tug road?

A. I have it wholly in West Virginia.

Q. Is that your best judgment?

A. That is my best judgment.

Q. On page 8 you have the Allegheny mountain turnpike wholly in West Virginia. What have you in relation to that?

A. What is your next one, sir?

Q. The Allegheny mountain turnpike?

A. As to the Abbs Valley, I have no notes here which would assist. I have references. I think as to the Allegheny Mountain turnpike I have a specific note, however. (After examination.) No; I have no specific note here as to that. I have only the references.

Q. As a matter of fact, do you not remember that the Acts calls for Pendleton and Pocahontas Counties?

A. I can't say that I recall the Act.

Q. And look further for it when you look for it, and see if that part of Pendleton County was not afterwards made into Highland County?

A. That may probably be true, sir.

Q. Those are the facts in the case. 448

Mr. Anderson: What was the date of it?

Mr. McClintic: I do not recall the date.

A. My report will show the date of the expenditure, not of the Act. Mr. Taylor's report would show the date of the Act.

By Mr. McClintic:

Q. You have the Louisa Fork of Sandy River road?

A. Yes, sir.

Q. Where is that?

A. What page are you referring to now?

The Special Master: It is page 8, $1,000.

A. I have no note on the location of that road. I have only references to the expenditures, but those references are doubtless the ones from which I obtained this information. I will refer back to it.

Mr. McClintic: That is all.

The Special Master: Have you anything to ask on re-direct?

Mr. Conrad: There is just one question I want to ask, referring to Mr. Carlisle's examination.

Re-Direct Examination.

By Mr. Conrad:

Q. You refer to your report there as an independent inquiry of your own. I would ask you if there is any fact or figure stated in your report which was acquired by you by adoption from Mr. Potter or from any other source, or whether you derived it from original investigation of your own?

A. I derived it from original investigation of my own, with the single exception of this payment for schools in West Virginia, which I have already stated. 449

Q. Yes. Having derived all the facts and figures by original investigation of your own, I would ask whether your application of those facts and figures in any respect was derived by you from Mr. Potter's scheme, or whether it was an original device of your own.

A. So far as I have any recollection at all, it is entirely an original device of my own.

The Special Master: That is, you acted on your own initiative?

A. Yes, sir; entirely so.

By Mr. Conrad:

Q. You adopted nothing in either the ascertainment of facts and figures of the application of them. Is that your answer?

A. Yes, sir.

[*Vol. 5. May 6, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: I will now present exhibit marked Defendant's Exhibit C-1. If the Court pleases, in Defendant's Exhibit C-1. we do not wish to present it in the exact form in which it 513
is here. I desire to make some changes in it and have the stenographer take the changes down.

On page 2, item for Brandonville, Kingwood & Evansville Road, $10,595.73; the item for the Clarksburg and Buchanan Road, $19,259.36; and the item for the Kingwood and West Union Turnpike company, $18,140.61, we desire to eliminate from 514
this report. With the permission of the other side, I will state the reasons.

Those three roads or turnpike companies were incorporated under the laws of Virginia, and after they had been incorporated and virtually built by these stock companies, the State appropriated those three sums, which I believe are correct in amount, for certain work, I believe, for macadamizing those three roads, which I believe, belonged to these private corporations; and we wish to reserve the question for argument as to whether there is any liability on us for those items.

Mr. Harrison: What do you mean by saying the State appropriated those three sums, and what do you refer to as the evidence of that appropriation?

Mr. McClintic: The evidence appears from the acts which appropriated that amount of money, which was expended on the roads belonging to a private company in the State of Virginia, as in the nature of a gift to those three companies. I do not think there is any doubt about the facts. It is a question of argument.

The Special Master: The only question is whether under the law

and the decree it is an item to be properly taken into consideration in this connection.

Mr. McClintic: Yes; that is right.

Again on page 4, of that exhibit, there is charged to the Trans-Allegheny Lunatic Asylum at Weston, $125,000. We desire to ask that that be changed from $125,000 to $98,000 on the exhibit, and later, perhaps, to show by evidence that while that sum of money, $125,000, was drawn from the Treasury of the State of Virginia prior to the 1st day of January, 1861, that $27,000 of 515
that sum was in the hands of the Treasurer of the Board of Directors of the Trans-Allegheny Lunatic Asylum, and had been expended; but was still the property of the State of Virginia; and in the summer of 1861 the restored government, which, as we claim, for all necessary purposes was the State of Virginia, took that money from the hands of the treasurer and used it for its own purposes, and the same was not expended on the building for which it was originally appropriated by Virginia. In other words, $98,000 instead of $125,000 was spent.

Mr. Anderson: It was expended in West Virginia, but it was expended in a different way.

Mr. McClintic: Yes; it was spent to have that ordinance passed and for other necessary things that were needed at that time.

With those changes, we desire to offer this exhibit Defendant's Exhibit C-1 in evidence.

(The exhibit was marked accordingly.)

Mr. McClintic: Please state if you made this exhibit?

The Witness: I prepared and made this exhibit.

The Special Master: Can you state in this connection the acts of the legislature upon which you rely in connection with the three things you have struck out, so that it will be in the record in that connection.

Mr. McClintic: With the kind permission of the other side, I will use the index of the other side and find out for your Honor in a moment.

Mr. McClintic: The Clarksburg and Buchanan Road—

Mr. Harrison: What page have you? 516

Mr. McClintic: I am on page 6 of Taylor's report. The Clarksburg and Buckhannon Road was incorporated March 9, 1848, Acts, page 219. In 1853, Acts of 1853, page 70, the moneys expended on the road were appropriated, or the Board of Public Works was authorized to borrow and spend that sum.

The Kingwood & West Union Turnpike Company was incorporates in 1848, Acts, page 216, and this other expenditure was authorized in 1853, Acts, page 11. I do not find in this exhibit the

Brandonville and the other one. It might be under some other name, but I do not see it.

The Special Master: You can supply that later, then?

Mr. McClintic: Yes, I can supply it later.

The Special Master: And when you get it, I will have the stenographer put it in the notes in its place. It will be a great convenience to me in looking this thing over later, to have everything grouped together.

(The information referred to is as follows):

By Mr. McClintic:

Q. State, Mr. Dixcy, whether this exhibit includes all the 517
expenditures by direct appropriation made for roads in the West Virginia counties, the counties now forming West Virginia, and if any are omitted, if you know, why were they omitted?

A. It includes all the direct expenditures under appropriations for roads made by the Commonwealth of Virginia in the territory now constituting the State of West Virginia between March 19, 1823, and January 21, 1861.

Q. State about the expenditure on page 2, of the Moorefield & Allegheny Turnpike Company for building the stem to Petersburg. $4,500. Was there any other expenditure by that company, or on that road, either?

A. In addition?

Q. In addition to the sum of $4,500 for the stem up to Petersburg.

A. That is shown as the expense of building the stem to Peterburg.

Q. That was a direct appropriation, was it not?

A. Yes, sir; a direct appropriation.

Q. For a particular purpose.

A For that particular purpose, it is shown.

Q. Was that an incorporated company or a direct appropriation, the Moorefield & Alleghent Company proper?

A. That was a direct appropriation.

Q. I mean the Moorefield & Allegheny Turnpike Company proper. Was that an incorporated company?

A. The Moorefield & Allegheny Turnpike Company was an incorporated company.

Q. Is the value of that included in any exhibit made by you? 518

A. Yes; in under 7.

Q. I will examine you then under 7 in reference to it.

Mr. Harrison: What was the last question that related to 7?

Mr. McClintic: This Moorefield & Alleghent turnpike company. It is an incorporated company, except a certain sum, $4,500, ap-

propriated to build what the State termed a stem to Petersburg; that is, a branch from the main stem.

Mr. Harrison: And he does not show on this schedule the expense of the stem to Petersburg?

Mr. McClintic: He only shows the expense of the stem to Petersburg.

Mr. Harrison: The $4,500.

Mr. McClintic: Yes.

Mr. Harrison: It does not show, then—

Mr. McClintic: It does not show what you might term the main construction of the line?

Mr. Harrison: That is shown somewhere else?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. On page 3 of this exhibit there is shown the Abbs Valley and Tug road.

A. Yes, sir.

Q. State as to what percentage charged to West Virginia 519 what the percentage is on the exhibit you have?

A. As lithographed, it was 9.91. It has been changed on the original here and on the Master's copy, and I think on most of the copies, to 90.10. It was an error in typewriting which was corrected in reading back the proof.

Q. That road has been testified to as being wholly in West Virginia. What did your examination show as to that road?

A. It showed that something over 90 per cent., 90.10 per cent., was in West Virginia; the balance in Virginia.

Q. What county, if you remember? Tazewell County, if you will allow me.

A. I don't remember; no.

Q. As a matter of fact it is Tazewell County.

Mr. Anderson: The ten per cent. is in Tazewell County?

By Mr. McClintic:

Q. The next item following that is the Allegheny Mountain Turnpike. State if you know whether that is in both States or not?

A. 55.55 per cent in mileage, as we measured it, is in West Virginia.

Q. Do you know the counties that is in?

A. I don't recall them; no, sir.

Q. In the next item, the Berryville and Charlestown Turnpike, for which is charged the sum of $4,221.56 against West Virginia, out of $7,236.97, please explain to the Court the history of that road, if you remember it, as to how that charge came about?

A. That road was originally incorporated and the State subscribed to the stock of it. Later it had to buy in the road for the amount that is charged there, $7,236.97, to protect its interests in the property. 520

Q. How was it sold, if you know, by any report or exhibit?

A. How do you mean?

Q. I mean who sold the road when the State had to buy it in? Was it a mortgage sale, a deed of trust sale, or what?

A. It was sold under a deed of trust.

Mr. Anderson: Which road is that?

Mr. McClintic: The Berryville and Charlestown.

By Mr. McClintic:

Q. By whom was the deed of trust executed, if you know?

A. I don't remember.

The Special Master: It was sold for that sum?

A. $7,236.97.

Mr. Conrad: What year was that?

A. It was sold in 1858—the purchase was made in 1858.

Mr. Anderson: The State bought it in?

A. Yes; bought it in.

By Mr. McClintic:

Q. On the same page, 3, is the Northwestern Turnpike road, in which the total expenditure was $620,271.38, with which you charge the West Virginia $573,994.39. Please explain to the Master how that account was made up, what books were kept in relation to it, etc.?

A. Well, the account included the items stated in the note on the road. It says: 521

"Includes tolls, &c., expended on the road, amounting to $173,670.39. The charge to Wythe, Virginia, excludes items which the construction books show as expended in the present State of Virginia, and include those which were expended in West Virginia, and a proportion on a mileage basis of items which were not designated in the construction books of the internal improvement fund as directly chargeable to either present State. These latter amounts are divided on the basis of the length of the whole road, 92.94 per cent. in West Virginia, the length of the Eastern Section, 61.05 per cent. in West Virginia, and the charge on 86 miles of the road west of Winchester, 80.03 per cent. being in West Virginia."

And the entire charge to West Virginia of those items on the basis above stated was $573,994.39.

Q. For the purpose of clearness, was credit given to West Virginia anywhere in this account for her proportion of those tolls—not on this exhibit, but on any other exhibit in this account, was credit given to her for her proportion of those tolls?

A. Are these tolls included in the cost?

A. Yes.

Q. I will have to look it up, Mr. McClintic, in the exhibit on which it appears.

By the Special Master:

Q. Your charge to West Virginia is almost $150,000 more than theirs?

A. That is accounted for very largely by these tolls that 522
were included in the road.

Q. Your idea is that they are not included as a credit in your item?

A. They were not included as a credit here. They are a charge here, but I do not want to state the amount of the credit on another schedule when it will be of record and I can state it exactly.

Q. They give the tolls as $162,679.26. Your statement is $173,670.39. Is that intended to be the same item, do you think?

A. We are not able to identify it exactly. There are a number of these accounts that we do not identify exactly.

Q. That is, that you are not quite certain whether when they state the tolls as $162,679.26, they are endeavoring to state the item you give as $173,670.39?

A. Yes. I don't know where the difference is exactly.

Mr. Conrad: Our statements take no account of tolls at all, either way.

The Special Master: Let me make this inquiry right here. Do I understand counsel for West Virginia to concede that this charge os $573,994.39 is correct?

Mr. McClintic: It is correct if the credit which we ask for in another place is correct.

The Special Master: I am asking about this entry here. Is this entry as it stands here correct?

Mr. McClintic: Yes; it is a correct item. 523

The Special Master: The other item will have to stand by itself, as to whether it is allowed or disallowed. So far as this item is concerned, I may take it as a concession on your part that it is correct?

Mr. McClintic: That is what the books show, as being the amount that went into the construction of the road. We took every dollar and every cent that went in. Your Honor will find several of these items are larger than was attempted to be charged by Virginia, because we had to take our own findings in the books.

The Special Master: Of course when I reach a question like that I am quite anxious to know just how counsel feel about it.

Mr. McClintic: We were very sorry to alarm you, but it could not change the facts. That was the position we had to take in that matter.

The Special Master: So far as your contentions are concerned, that would not disturb me any.

Mr. Hogg: There is a corresponding reduction by tolls.

The Special Master: That is another item, but *quoad* this point here, that is conceded to be correct.

By Mr. McClintic:

Q. On page 4, Mr. Dixey, there is a road marked "South Branch of Potomac River to Brock's Gap, in Rockingham County, charging West Virginia with $411.80. State what you know of that division?

A. 29.41 per cent. was charged to West Virginia on a mile- 524
age basis. That is to say, 29.41 per cent. of the road lay in West Virginia.

Q. Did you make a personal examination in that case, or was that information furnished you by your assistants?

A. I didn't scale any of these roads.

Q. Who did scale them?

A. Mr. Clifford E. Scoville, my Chief of Staff.

Q. I wanted to ask you the general question a while ago, and I was interrupted. How were all these percentatges arrived at in reference to this class of roads?

A. By scaling the maps, by actual measurements, and from the engineer's reports.

Q. All the sources of information of that character that you could get?

A. All the sources of information that were available.

Q. The next item is the Staunton and Parkersburg Road. Please explain to the Master the sources of the charges made therein, of $288,807.56.

A. The whole charge of $388,936.97, includes tolls and the interest earned, amounting to $26,272.55 expended on the road; charge to West Virginia excludes items which the construction books of the road and the books of the internal improvement fund designate as chargeable to the present State of Virginia. It includes items which are designated as having been expended in West Virginia, and a proportion on a mileage basis of expenditures not designated 525
as chargeable directly to either present state. Such expenditures are divided on a basis of the total mileage of the eastern division, 40.48 per cent. being in West Virginia, and on the basis of the total length of the road, 73.40 per cent. being in West Virginia; and on the above basis there was charged to West Virginia, $288,807.56.

Q. To go back just a moment, on page 2 of this exhibit I find charge to the road for the Middle-Bourne & Pennsylvania road, $6,252. What total, if any, has the plaintiff filed that road under, if you know?

The Special Master: And on what page of their exhibit is it found?

A. I would have to see the exhibit.

Mr. McClintic: On their exhibit, if I have got the same road—I am not sure that I am correct. I want to see if they meant, on page 16 of Exhibit C-1 for the plaintiff, that that was the same road called Tyler County to Green County State road?

Mr. Harrison: Has he answered your last question? That is to say, what corresponding road our exhibit showed?

Mr. McClintic: That is what I am trying to see, whether he knew it or not.

Mr. Harrison: He has not answered yet.

A. I have no exhibit before me, and I could not identify it in that way. I would not be able to identify it as that road.

Q. You have on page 2 a road called the Morgantown to Beverly road, $12.000. Do you know whether there is any 526
road of that title in plaintiff's Exhibit No. C-1?

A. There is in the plaintiff's exhibit a road, and there seems to be some confusion between that road and what we term the Morgan and Beverly road, right above in our exhibit.

Q. Is there anything that corresponds, either in amount or name, with the one called the Morgantown to Beverly road on their exhibit, if you know?

A. I don't recall now find such a road. I looked for it and could not find it.

By the Special Master:

Q. Did you find the data from which you made this statement in the books of original entry?

A. Yes; the names given here are those of the Acts and are also reported in the books of original entry. Of course *were* their terms were different, we frequently could not identify just what property they were referring to; and that would be true of them in our case.

Q. Did you intend your designations here to be duplicates of the titles of the accounts that you found in the books of original entry?

A. Not always duplicates. We intended them to designate very specifically the road that was referred to.

Q. Why should they not be duplicates of the entries? If the name of the road is entered on the book, why should it not be carried forwards in the account?

A. They are practically so, to all intents and purposes. 527
They are very little changed?

By Mr. McClintic:

Q. Mr. Dixey, if you have the dates when the amounts we ap-

propriated and paid to the Trans-Alleghany Lunatic Asylum at Weston, I wish you would give them.

A. I did not get your question, Mr. McClintic.

Q. I want the dates when the amounts were paid for the Trans-Alleghany Lunatic Asylum at Weston—the month and the year, if you have it.

A. Then we will have to get the original papers.

Q. Is it in these papers here?

A. I haven't it her, Mr. McClintic.

Q. I mean is it in this box here?

A. Yes, sir.

Q. Let your assistant get it for you. Have you found the amount?

A. Yes; the dates of the payments to the Trans-Alleghany Lunatic Asylum were in 1858.

Q. Will you give the month, in the latter case, at least?

A. In 1858, $8,000; in 1859, $17,000; in the fiscal year 1860, $50,000; and in December, 1860, $50,000 more.

Q. That is all I wanted, the last date.

A. Making a total of $125,000.

Q. The last payment was made in December?

A. In December, 1860.

Q. Will you look at plaintiff's Exhibit C-1, Mr. Dixey, I want to ask some questions in relation to it. 528

A. Yes, sir.

Q. I find on page 3, I believe it is, of plaintiff's Exhibit C-1 Winchester and Potomac Railroad, which apparently charges to West Virginia $168,750. Please state to the court what those four charges there are for, if you know, amounting to $270,000?

A. $150,000 of that amount was a loan, and the balance, $120,000, was stock.

Q. Was the last item in 1838 a loan?

A. The last item in 1838 was a loan.

The Special Master: That is $150,000?

A. $1500,00.

By Mr. McClintic:

Q. What do you mean when you say $120,000 was stock?

A. It was stock owned by the State in the Winchester and Potomac Railroad?

Q. Was the Winchester & Potomac Railroad Company a corporation under the laws of Virginia?

A. Yes, it was a corporation.

Q. A corporation under the laws of Virginia?

A. Yes.

Q. And the State purchased—
A. $120,000 worth of stock.

By the Special Master:
Q. And the balance of the $270,000, is accounted for by the loan of $150,000?
A. $150,000; yes, sir.
Q. Which of these items were payments on account of the stock?
A. The first three.
Q. Those were installments paid on account of stock? 529
A. Yes, sir.
Q. And the other was a loan?
A. Yes, sir.
Q. What became of the loan? Is it still outstanding?
A. No; the loan was converted into an annuity.

By Mr. McClintic:
Q. Go ahead, Mr. Dixey, and state the facts which appear from the record of Virginia in reference to that railroad, if you have them.
A. Well, the State—
Q. Do you desire this memorandum you made?
A. I would like it; yes sir.
Mr. McClintic: Here is a memorandum which he gave to me, if your Honor please.
Mr. Harrison: He can refresh his memory by looking at it, but we do not expect him to read the manuscript.
Mr. McClintic: No; I do not expect him to read it, but I expect him to refresh his memory as to dates and amounts, and things like that. This has all been done by manuscript.
The Special Master: The distinction in getting the result is not very profound.
Mr. McClintic: Not in a case of this kind, especially.
The Special Master: Mr. Harrison is perfectly correct 530 from a technical standpoint.
Mr. Spooner: He should not be allowed, perhaps to adopt as his testimony a memorandum, but he can read it.
The Special Master: I guess this witness is on to the method by which he can reach the result all right.
A. The Winchester & Potomac railroad was incorporated by the Act of April 8th, 1831, at a capital of $300,000 par value of $25 per share, a railroad from Winchester to some convenient point on the Potomac River at or near Harpers Ferry. Appropriations by the State: Under act of March 14, 1832, $75,000, the Act of January 31, 1833, $45,000, making a total of $120,000. That was paid as a stock subscription.

By the Special Master:

Q. Were these three sums that are stated in plaintiff's Exhibit C-1, installments paid from those two appropriations?

A. Yes, sir.

Q. They are the sums covered by the appropriation?

A. Yes; $120,000. By the Act of February 13, 1838, a loan to the Company was made, of $150,000, making up that sum of $270,000. Then by the act of March 25, 1843, the capital stock was increased to $481,220, the whole amount to be taken by the State, the increase not to exceed the amount due the State for the loan, with interest on July 1, 1843, said increase to be reconverted into a debt whenever the company failed to pay a dividend of 3 per cent on the whole of the State stock, provided that such dividend did not exceed 6 per cent on the debt so converted, under the 531
Act. No dividend was received by the State, nor were there received any dividends, either before or after this Act. The companies paid only the interest on the loan of $150,000 in the years 1839 and 1840. By the Act of February 24, 1846, the State accepted an annuity of $5,000 in lieu of the interest in the debt and dividends on the stock, the collection of the debt to be postponed so long as the payment of the annuity was continued.

By Mr. McClintic:

Q. How long was that annuity paid?

A. The annuity was paid in each year from 1848 to 1860, inclusive, a total of $65,000, and the last annuity was received on July 27th 1861, and was for the one due November 1, 1861.

Q. Subsequent to the 1st of January 1861, what was done with this matter by the State of Virginia, as shown by her books or her acts of the Legislature?

A. With the stock?

Q. Yes.

The Special Master: The annuity.

A. The stock was surrendered .

The Special Master: Surrendered by whom?

A. Just a minute,

By Mr. McClintic:

Q. Had not the stock been commuted into an annuity?

A. Yes. I might just as well go ahead with this memorandum I have made on it. On February 22, 1868, the State of Virginia passed an act providing that the sum of $83,333.33, which was 532
the principal sum owing, which seems to have been arrived at as the principal of the $5,000 annuity for one year at 6 per cent, together with all interest thereon, should be paid into the State

treasury on or before January 1, 1868, such payment to be made in any bonds of the State at their par value, and upon such payment being made, the claim of the State against the Company shall be lifted and discharged, under this Act, there was paid into the treasury the following stocks. As to that the record is not entirely clear.

By Mr. McClintic:

Q. Mr. Dixey, let me interrupt you. Is not that date, February 22, which you called 1868, a mistake?

A. Well, it is 1868 here. I cannot give the date from memory.

Q. We will call it up again in another way.

Mr. Spooner: What was the date?

Mr. McClintic: 1866.

A. Under this Act there were paid into the Treasury the following, apparently: Old registered bonds, $45,000, and new registered bonds, representing the funded interest of $66,130.90, making $111,130.90, upon whichthere was due in accrued interest $7,387.22, making a total of $118,518.12. The principal of the annuity was $83,333.33, and the interest on the same would have been $35,184.79. There were 4,800 shares of stock, at a value of $120,000.

Q. State if you found anything else on the books of Virginia in relation to this?

A. This memorandum was made before we made further discoveries. The stock was actually surrendered, and it shows on the books it was surendered in connection with this annuity in consideration for the anuity, and it was wiped off. 533

By the Special Master:

Q. Was all the stock converted into an annuity?

A. Yes, sir; that $120,000 owned by the State.

Q. The amount of the State's original purchase was subsequently converted into an annuity?

A. Yes, sir.

Q. That is the annuity you have been speaking of?

A. That is the annuity that is spoken of.

By Mr. McClintic:

Q. Does the Act show that the annuity was in the place of the loan as well as the stock?

A. Of the loan and the stock; yes, sir.

The Special Master: Then the loan and the stock were both merged in the annuity?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. There was interest paid on that $150,000 for two years, I believe. Was that 6 per cent interest?

A. Yes, sir.

Q. Then, Mr. Dixey, so far as this charge is concerned of $168,750, being 62½ per cent. of the $270,000, that is a charge for something which Virginia has entirely disposed of herself?

A. Prior to this date; yes, sir. She had disposed of her 534 interest in it altogether.

Q. And all the proceeds from that disposal of that interest went to the State of Virginia?

A. Yes; West Virginia got no benefit from it, so far as we find in the record.

By the Special Master:

Q. That is, West Virginia did not get anything from the proceeds of the transaction?

A. No, sir.

Q. Mr. Dixey, to what extent does the aggregate of these items you have in defendant's Exhibit C-1 differ from the similar aggregate in plaintiff's Exhibit C-1?

A. I cannot say. We have not been able to reconcile them. They cover different periods of time. Do you mean as a total?

Q. Yes.

A. They include in their items a great list of charges against West Virginia that we do not include at all. That is, they include stock companies in their exhibit that we do not include in our C-1 at all, so that a reconciliation of the account would really be the substitution of one account for the other.

By Mr. Harrison:

Q. Do you include in those items anywhere any of the items you are speaking of?

A. I believe they will be presented for consideration sometimes.

Q. I am asking you the question, do you include them?

A. Not in this exhibit. 535

Q. I understand that, but I ask you if you include them anywhere.

A. The stock of the Company?

Q. Yes.

A. I have told you we do include them, but not in this exhibit.

Q. When you say Exhibit C includes a great many items that you do not include at all, you do not mean to say you do not include them somewhere else?

A. I was talking of this exhibit.

The Special Master: What I wanted to get, as near as I could, was a concrete statement of the points of difference. Of course where there are no differences I have no worry. Where there are, then I have.

Mr. McClintic: All the stocks which they include in their No. 3, we eliminate from our No. 3.

By the Special Master:

Q. That takes care of all that class of items. Then as to the *quoad* other items do you disagree?

A. Yes, sir; frequently.

Q. If without any difficulty you can have a memorandum of the places where you disagree, I could have before me just where the elements of disagreement are.

A. Have you their schedule?

Q. Yes. 536

A. I can mark it.

Q. I wish you would do that—either that or make a separate statement.

A. Well, it would be very complicated and very long.

Q. Very well; you take their schedule.

A. And it is hard to reconcile it in any way that is intelligible, because there are so very many, many items of difference.

Q. But I have got to have this in the end, you know, so that I can have it in some concrete way, and see the points of difference. Then I will get the contentions of both parties upon those points.

A. Do you want the amounts or the difference?

Q. Give me the items and the amounts, yes, if you can do so without too much trouble. This is simply for my convenience later. When I come to state the accounts, I want to see what there is that is not disputed. Then I will take the disputes, and take care of them.

The hearing is now adjourned until to-morrow morning at 10 o'clock.

(The hearing, at 5 o'clock P. M., was adjourned until Friday, May 7, 1909, at 10 o'clock A. M.

[*Vol. 6.*]

[May 7, 1909.]

THOMAS BIRD DIXCY,
resumed the stand for further direct examination.

By Mr. McClintic:

Q. When we closed yesterday, Mr. Dixcy, we were discussing Defendant's Exhibit C-1. Please state to the Commissioner whether you made up the details of that report, or only the totals thereof; and if you did not make the details, who did make them for you. 537

A. The report as to totals was examined and verified by me, The details going to make up those totals were not made by me. The details statements were made by Mr. Clifford E. Scoville.

Q. Mr. Scoville, I believe you said, was your chief of staff, or employe?

A. Yes, sir.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

[Mr. McClintic]: 577

There is another matter which we desire to bring up, regarding *the Covington & Ohio Railroad*, what is now the Chesapeake and Ohio Railroad. We desire to offer (and also of which we will have typewritten copies made and filed for the benefit of your Honor and counsel) the Act of March 1st, 1866, of the State of West Virginia (page 127), incorporating the Covington & Ohio Railroad Company; the Act of February 26, 1866, (page 317) of the State of Virginia incorporating the Covington & Ohio Railroad Company; the Act of February 26, 1867, (page 102) of the State of West Virginia in relation to the same; also the act of Virginia of March 1st, 1867, relating to the same matter.

I thought I had an additional memorandum, but I cannot put my finger on it at this moment. Anyhow, also an Act of the two States afterwards ratifying a contract made and containing a copy of a contract made between the Virginia Central Railroad Company and Commissioners appointed by the State of Virginia and the State of West Virginia in relation to the Covington & Ohio Railroad Company and the Virginia Central Railroad Company. 578

Mr. Conrad: Have you a copy of that in your hand?

Mr. McClintic: I had a memorandum of it a moment ago. Yes, here it is. The contract is dated on the 31st day of August, 1868.

The Special Master: Does not that refer to the Act?

Mr. McClintic: It recites the previous Acts: but there was a sub-

sequent Act of the State. The Act of the Legislature of West Virginia was passed January 26, 1870, ratifying that, and the State of Virginia passed an Act ratifying it.

Mr. Anderson: What was the date of the Act in regard to the Chesapeake & Ohio Railroad?

Mr. McClintic: I think that was the Act of 1867.

Mr. Anderson: They were concurrent Acts of the two States?

Mr. McClintic: Yes, sir; I have called attention to the fact that the Acts are practically the same—and the same ratifying the contract.

The Special Master: You mean they were practically contemporaneous?

Mr. McClintic: Yes, sir.

The Special Master: That will be admitted, then, so it will show on the record 579

Mr. Anderson: We object to it as irrelevant, to any account or—

The Special Master: In the absence of looking at the Acts, it may appear that all legislation subsequent to 1863 is objected to on the ground that it is irrelevant. I will admit it *de bene* because it is impossible for me to pass on it now.

By Mr. McClintic:

Q. Are you familiar with the details of the account of the Covington & Ohio Railroad; or was that made up by Mr. Scoville?

A. The details of that were prepared by Mr. Scoville.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixcy.*]

The Special Master: Now take up your next schedule 623

By Mr. Harrison:

Q. The third paragraph of the decree directs an inquiry as to all expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted. Your statement filed as Defendant's Exhibit C-1 is responsive to that inquiry, is it not? I think it was C-1.

Q. It was prepared for the information of counsel.

The Special Master: Yes; it is Defendant's Exhibit C-1.

By Mr. Harrison:

Q. It was prepared for the information of counsel under that inquiry?

A. I may say that Major Conrad and yourself objected to my offering anything responsive to the decree. I am simply avoiding that.

Mr. Conrad: Not at all. You are an accountant employed for that purpose.

By Mr. Harrison:

Q. You did not offer it. It has been offered by counsel for you.

A. It was prepared in accordance with the decree.

Q. The date from which you started the computation, as 624
you have explained heretofore, was March 19, 1823?

A. Yes, sir.

Q. Will you please state the difference in the result ascertained by your statement under that paragraph 3, and the result ascertained by Mr. Potter under the same paragraph?

A. You mean state it in dollars and cents?

Q. In dollars and cents. The result, I say.

The Special Master: You mean by that the difference in the total?

Mr. Harrison: The total; the difference in the result.

The Special Master: The difference between the aggregates found on your schedule and the aggregate found on the schedule presented by the plaintiff?

Mr. Harrison: That is right.

The Special Master: Let me see if I have it right. The aggregate in the Plaintiff's schedule, found on page 19, is $3,147,547.

Mr. McClintic: No, sir; that is the second part. The schedule is made in two parts.

Mr. Harrison: There are two parts. You will have to add the two.

Mr. McClintic: On page 3 of the Exhibit you will find $2,674,401.-04. You add those two together to make the total of theirs. If my addition is correct, it makes $5,821,949.01.

The Special Master: Without running back, I assumed that one schedule included them both.

A. In accordance with Virginia's exhibit the total is $5,821,949.01. The total in accordance with West Virginia's exhibit is $1,
455,196.12. The difference is an excess on the Virginia ex- 625
hibit of $4,366,752.89.

Mr. McClintic: I call your attention to the fact, Mr. Dixcy, that $25,000 was withdrawn from the West Virginia Exhibit, which would make that much further reduction and greater difference.

A. It should be added to that.

The Special Master: That would increase the difference.

Mr. McClintic: Yes; it would increase the difference $25,000.

The Special Master: He has stated it near enough for all practical purposes.

Mr. Harrison: There are possibly other items.

Mr. McClintic: Yes; there were three other items I had forgotten.

Mr. Conrad: Some roads.

Mr. McClintic: Yes; three roads.

Mr. Harrison: I prefer to take the statements as they are.

A. Well, on the statements as they are, it is as I have stated.

Mr. Harrison: In other words, according to the schedules prepared by yourself and Mr. Potter, respectively—

The Special Master: Before any change was made.

Mr. Harrison: Before any suggested changes were made in the West Virginia schedule, the Virginia exhibit shows that $4,366,752.89 was expended by Virginia in the territory now constituting the State of West Virginia in excess of the amount shown 626
by your schedule.

A. Not before any suggested changes were made, Mr. Harrison: It was suggested when the schedules were originally submitted to Attorney General Anderson that counsel reserved the right to amend them either by elimination or division.

Mr. Anderson: That was stated to me in writing.

A. In writing; yes, sir.

Mr. Harrison: When I said suggested changes, I meant suggested here.

The Special Master: Mr. Harrison meant the schedules presented here.

Mr. Harrison: I am talking about schedules presented here.

A. Before any changes were actually made in them, that was the difference.

The Special Master: The changes will show for themselves. A further inquiry will develop the other facts.

By Mr. Harrison:

Q. In your statement of money expended in the territory of West Virginia, do you include amounts invested by Virginia in the stock of joint stock companies?

A. I do not.

Q. Which constructed works of internal improvement in the State?

A. I do not.

Q. Why not?

A. Under instructions from counsel. 627

Q. If the State spent, through the medium of a purchase of $500,000 worth of stock, to illustrate, $500,000 in the construction of a road, would not that be money expended in West Virginia?

A. Not by the State.

The Special Master: What was your question, Mr. Harrison? If

the State spent, that amount of money in the stock of the corporation that built the road?

Mr. Harrison: That built the road—if that would not be an expenditure by the State of $500,000 in the construction of that road, as much so as if it had been spent—

The Special Master: Directly?

Mr. Harrison: Directly.

By Mr. Harrison:

Q. You say you think not.

A. Not by the State. That is my interpretation.

The Special Master: He stated the account on the other hypothesis.

Mr. Harrison: Yes.

By Mr. Harrison:

Q. Then your account of moneys expended by the State in the construction of works of internal improvement in the State of West Virginia through the medium of her purchase of stock in joint stock companies, is excluded from your computation?

A. All subscriptions to the capital stock of stock companies are excluded from this account.

Q. You show on page 4 of your schedule C-1 total expenditures on account of appropriations for turnpikes and roads 628
lying wholly within the territory now constituting the State of West Virginia, of $425,418.35. That I understand takes no account of any other expenditure by the State of Virginia through stock subscriptions to joint stock companies that built the road?

A. It is direct expenditures under appropriations.

Q. Now, have you carried into any schedule the amounts invested by the State in stock subscriptions to works of internal improvement?

A. Yes, sir.

Q. Under what schedule?

A. It is shown on our schedule No. 7, defendant's Exhibit G-1.

Q. So then on the threshold your statement of the account under paragraph 3 of the decree differs from Mr. Potter's in that you have not included moneys expended through the medium of subscriptions to the stock of joint stock companies?

A. That is essentially different.

By the Special Master:

Q. Does that account for the whole discrepancy?

A. No, sir; there are other variations, but that is the major part of it, by far.

Q. This I imagine could be reconciled by conference between the accountants?

A. Well, it takes in this matter of the beginning of the debt. It could not be done by a conference.

Q. Of course we understand that. 629

Mr. Anderson: There is very little of it?

A. There is very little of it, but I mean it could not be reconciled absolutely.

The Special Master: It would be reconciled in the sense of being agreed upon as to the items that were expended, and then disclosing those about which no agreement can be had?

A. Yes, sir.

By Mr. Harrison:

Q. I understand the difference, as you have just stated to the Master, growing out of the method of stating this account, in that you have excluded and Mr. Potter has included subscriptions to joint stock companies, constitutes the major difference between you in your statement under that paragraph of the decree?

A. That is true; yes, sir.

Q. Of course that difference applies in your recapitulation on page 4 of your statement to the second item, namely, total expenditures on account of appropriations to interstate roads. That same difference enters into that statement?

A. Interstate roads?

Q. I call them interstate.

A. Yes; I understand what you mean, sir. I am just locating the items.

Q. Look at your recapitulation.

A. Yes; I am looking at it. I want to identify it absolutely. Well, all that difference is not located there, not located in that item. 630

Q. I did not say all the difference was.

A. There is a difference there.

Q. But I say that difference enters into that.

A. Oh, yes.

Q. Now, you show $900,577.77 as the total expenditures on account of appropriations for turnpikes and roads lying in the two States?

A. Yes, sir.

Q. And the same difference enters into that computation as entered into the first item?

A. Yes, sir.

Q. Of course there may be other differences?

A. Yes, sir; that is true.

Q. But your answer holds good as to that, that it is the major difference.

A. Yes, sir.

Q. The third item in your recapitulation, page 4, shows $129,200

as the total expenditures on account of additional appropriations for purposes within the territory now constituting the State of West Virginia. Of what items is that $129,200 made up? I simply want to get it on the record?

A. There are three items shown on that same page. Shall I state them?

Q. Yes.

A. Coal River Bridge, $3,000, Coal River improvements, $1,200, Trans-Alleghany Lunatic Asylum, at Weston, for building, $125,000, as shown on the page. 631

Q. Making a total of $129,200?

A. Yes, sir.

Q. And the aggregate of those three items gives $1,455,196.12, which you report as the total amount of money expended by the Commonwealth of Virginia in the territory now constituting the State of West Virginia?

A. That is right; yes, sir.

Q. Now, as illustrating the method in which the two accounts were stated, I will call your attention to an item on your statement, page 2, of the Moorefield and Allegheny Turnpike Company, wherein you include an item of $4,500 for building that turnpike, or building what is called the stemp to Petersburg, in West Virginia. That is correct, is it not?

A. Yes, sir.

Q. If you will look at Mr. Potter's Exhibit C-1, on page 12, under that same item, Moorefield and Allegheny Turnpike, you will find that gives the total amount expended on that turnpike in the State of West Virginia at $13,279.78, made up of two items, one of $4,500, which you have on your statement, and the other of $8,779.78.

A. That is correct.

Q. Now, please state how that $8,779.78 is shown to have been expended by Mr. Potter's statement?

A. As shown to have been expended in 1850, $3,090; in 1851, $4,748.79; in 1852, $565.99; in 1853, $375.

Q. Those, then, are the several appropriations for stock in that turnpike?

A. It does not say that they are, in Mr. Potter's statement. 632

Q. Is it a fact?

The Special Master: Do you know whether they are or not?

A. I think they are; yes, sir.

By Mr. Harrison:

Q. Where do you show those aggregate sums?

The Special Master: In Schedule 7.

A. I will refer to Schedule 7.

Mr. McClintic: He does not show that anywhere in the construction account.

Mr. Harrison: Let us see if he does not.

Mr. McClintic: At least, if he did, it was against my direction.

A. We show on page 4 of Exhibit 7—

The Special Master: No; Defendant's Exhibit G-1.

A. G-1; yes, sir. I beg your pardon.

By Mr. Harrison:

Q. On what page?

A. On page 4.

Q. You have there Moorefield & Allegheny Turnpike Company, $8,779.78?

A. Yes; as the amount paid by the Commonwealth.

Q. That is precisely the same amount shown on Mr. Potter's statement under that item, is it not?

A. That is correct; yes, sir.

Q. So that you carry that into your item 7 as a stock subscription?

A. A stock subscription. 633

Q. To the stock of that company?

A. To the stock of that company.

Q. Paid for by the Commonwealth?

A. Paid for by the Commonwealth.

Q. So that when you say Mr. Potter's statement does not show that, you do not mean to say that is not true, whether it shows it or not?

A. No; I mean to say it does not show it as a stock subscription.

The Special Master: What he meant was that the statement does not show on its face that it was for stock?

A. Yes, sir; I did not mean to controvert the item at all. I mean to say it did not show, to me, that it was a stock subscription.

The Special Master: Mr. Harrison simply uses it as an illustration of the difference between the two statements?

Mr. Harrison: That is my object, to show the difference.

By Mr. Harrison:

Q. On what theory of stating the accounts can you illustrate other differences between the two statements? You have accounted for the larger difference in this method of proving stock subscriptions?

A. The account in some items includes items prior to the period we have stated.

Q. That might be, but—

By the Special Master: 634

Q. Right on that point, does the account submitted by the plaintiff include some items prior to March 19, 1823?

A. Yes, sir.

Q. If you were to harmonize your account with that submitted by the plaintiff, what else would you have to do except to add such items as appear in that account of yours, so far as this exhibit is concerned?

A. There are some deductions from the plaintiff's exhibit for items added after January 1, 1861, and—

Q. I am referring now to *quoad* the beginning of the account. If you wanted to harmonize your account with the account submitted by the plaintiff, what else would you have to do with the exhibit now under discussion than to add the sums that appear by the report of the plaintiff's accountant to have been expended prior to March 19, 1823? That is, what other computations would it involve, if any, except the mere addition?

A. There are numbers, your Honor. We differ in a great many instances as to the amount that has been charged to West Virginia under 3. There are differences in scaling the mileage.

Q. That is not the question I am asking. The question I am asking you is this, Mr. Dixey. The plaintiff's account begins on October 1, 1819. Your account begins March 19, 1823. Now, as to the items that may appear in the plaintiff's account during that period, if you had occasion to accommodate your account to theirs, or to harmonize with them, what else would you have to do as 635 a matter of mathematical computation other than to add the accounts thus omitted to yours—anything in connection with this exhibit?

A. Well, there is nothing that occurs to me, but I don't want to commit myself absolutely on that. I don't know; but there is nothing that occurs to me.

Q. So far as you are at present advised, you would not have to do anything except to make that addition?

A. I think that would be all.

By Mr. Harrison:

Q. In order to see what further differences there are between you, you say Virginia's account contains items up to 1861 that yours does not contain?

A. Yes, sir.

Q. Do you show on your statement anything expended by Virginia for the Letart Falls & West Columbia Turnpike?

A. Under what schedule?

The Special Master: This particular schedule.

Mr. Harrison: Under 3.

The Special Master: Either in Defendant's Exhibit C-1 or Defendant's Exhibit G-1, which are the two exhibits including expenditures of this character.

A. What page is that on, Mr. Harrison?

Q. On your exhibit?

A. No; on the plaintiff's exhibit.

Q. On ours it is page 11.

The Special Master: Mr. Harrison is referring to page 11 of the Plaintiff's Exhibit.

636

By Mr. Harrison:

Q. Yes; our exhibit. If you will look at page 11 of plaintiff's Exhibit C-1 you will find that $2,950 is charged there for money expended by the Commonwealth of Virginia in West Virginia for the construction of the Letart Falls and West Columbia Turnpike. Does your statement include any or all of that item?

The Special Master: What statement do you refer to, Mr. Harrison; Defendant's Exhibit C?

Mr. Harrison: I mean the corresponding statement.

The Special Master: Or do you refer to defendant's Exhibit G, or both?

Mr. Harrison: Exhibit C.

The Special Master: Whether that includes it?

Mr. Harrison: Yes; that is the one that deals with paragraph 3 of the decree.

A. That is a stock company, and no stock companies are included in this statement.

By Mr. Harrison:

Q. None are included there?

A. No, sir.

Q. Look at your Exhibit 7 and see if you have an account of any others there? Exhibit G-1 I believe it is.

The Special Master: It refers to paragraph 7.

A. We show the—

Q. How much do you show?

A. Letart Falls and West Columbia Turnpike Company, 637
amount paid by the Commonwealth, $2,350.

Q. Then you have excluded from your statement there $600, have you not?

A. Yes, sir.

Q. Shown by Mr. Potter?

A. Yes, sir; there is that difference of $600.

Q. Why did you do that?

A. That is shown in 1861 on Mr. Potter's statement. We did not include items of expenditure in 1861.

Q. Why did you not do it? It was an obligation contracted before 1861, was it not?

A. I will simply say, in regard to that, we did not include them by the instruction of counsel.

The Special Master: As I understand it, their statement stops right short on January 1, 1861?

Mr. Hogg: On the subject of expenditures.

The Special Master: Nothing appears up to that date to have been expended in connection with the particular item where it would not be disclosed by your item, whether it was expended afterwards or whether there was any prior obligation by virtue of which the expenditure was made?

A. That is true.

The Special Master: You are not reporting the liabilities. You are reporting the actual expenditures up to that time. Am I correct in that statement?

A. Yes, sir.

The Special Master: That is what you wanted, Mr. Harrison?

A. Yes, sir; that is right. Counsel for West Virginia say they stop short with 1861, so far as expenditures were con- 638
cerned.

By Mr. Harrison:

Q. Do they go beyond 1861 in the matter of other transactions; do you know?

A. Our accounting stops at January 1, 1861.

Q. Both as to expenditures and everything else?

A. On all acounts, so far as the accounts are concerned.

A. Well, as far as any charges and disbursements direct and receipts are concerned, it stops in 1861.

Mr. Anderson: Except as to the statement you have sent for?

By the Special Master:

Q. As far as the charges and credits go which are predicated upon actual cash transactions, they stop on January 1, 1861?

A. No, sir.

Q. On both sides of the account?

A. Yes, sir.

Mr. Harrison: Did you include all payments made up to that date?

The Special Master: Do you mean by receipts?

Mr. Harrison: Yes, sir.

A. We included all in one account or the other—no; let me modify that. We excluded a large number of claims. They are all included in our general balance that we have offered here.

Mr. Anderson: Have you gotten that yet? 639

A. It had not arrived when I last heard, Major It will not take long to prepare it when it does come.

By Mr. Harrison:

Q. I want to know if this was a part of your theory upon which your accounting has been constructed. If I correctly understand your testimony that has gone before, it sometimes occurred, where all payments had been made prior to 1861, that you excluded them because it appeared that in subsequent years, in the 60's or 70's, there has been some change or sale of the road, or stock, or what not. You therefore excluded the investments that had been made and paid before 1861 because of some subsequent change. Is that true?

A. I don't get just exactly the force of that, Mr. Harrison.

Q. Take some road. I cannot think of the name of it, but it has frequently occurred here that you have referred to the fact that a road had been sold after the War, or given to a county, a present made of it to the county. Therefore you took no account of what the State expended.

Mr. McClintic: Those were before the War, Mr. Harrison.

Mr. Harrison: Well, whether it was before the War or since the War.

The Special Master: Have you not in mind the Covington railroad?

Mr. Harrison: That is one.

The Special Master: That is the only one I had in mind as 640
to which they raised that question.

Mr. Harrison: There was a million or more dollars involved in the Covington & Ohio transaction?

The Special Master: Yes; that is true. That is the only item I have in mind as to which they raised a question of that character?

A. So far as actual records, actual cash receipts and disbursements, our accounting closed on January 1, 1861, or rather, at the close of business December 31, 1860. Where there were questions that affected the value of the property or West Virginia's interest in it at that time, affected by later evidence, we included these and showed them on the schedule.

Q. Now, look on your schedule C-1, page 3, at the Franklin and Monterey Turnpike. Do you see that?

The Special Master: The Franklin & Monterey Road. Is that what you mean?

Mr. Harrison: Yes, sir; that is what it is called.

The Special Master: There are so many light variations of these names, that we want to get them exact.

By Mr. Harrison:

Q. Bearing that item in mind, will you say whether or not you take account there of a draft for $305.91 given by the State of Virginia in payment of a subscription to stock of that company on the 1st of October, 1855? It may have been a direct payment. I do

not know whether it was a stock subscription or not. I want to know if you took account of that draft?

A. Personally, I have no knowledge of that. 641

Q. You have no knowledge of that at all?

A. Personally, no sir.

The Special Master: Where is that item on your exhibit?

Mr. Harrison: Exhibit C-1, page 1, and our exhibit includes that draft, which was given October 1, 1855, and paid in 1861. I just simply want to present that.

A. What was the amount?

Q. $305.91. About that you know nothing?

A. No; not of my personal knowledge. I have a note here that I did not make personal.

Q. I only want what you know personally about it. Mr. Dixey, would you have any difficulty in ascertaining, in conjunction with Mr. Potter, the difference between your two statements, growing out of obligations contracted before 1861, but paid after 1861?

A. I think not.

Q. You would not have any difficulty in that?

A. No.

Q. It would not be a very material item?

A. There are only a comparatively few items.

Q. They would possibly be comparatively few, but would it constitute some of the difference?

A. Yes, sir.

Q. I understand you to say that some differences may exist in your two statements growing out of the mileage allowed for the improvements in the respective States?

A. Yes, sir.

The Special Master: That is, the manner in which the division of the item was made, predicated upon the mileage.

Mr. Harrison: Well, I think the division was made in the 642 same way, on a percentage division, was it not?

A. Frequently. Not altogether.

The Special Master: But the percentage upon which the result was reached. They may have adopted different lengths in their computations. That is what you have in your mind, is it not?

Mr. Harrison: Yes, sir. You would not have any difficulty in harmonizing that, between you and Mr. Potter, would you?

A. In a great many cases both were scaled to maps, and it was largely a matter of individuality. They were both doubtless done carefully, and it is the difference between one man's judgment and another man's judgment. I think those could be reconciled.

By the Special Master:

Q. You had the same original sources of information?

A. Yes, sir; we did have.

Q. And two experts together ought to be able to reach a result.

A. I think there will be no difficulty about reconciling those percentages.

By Mr. Harrison:

Q. The difference might have depended, as you say, upon the judgment exercised by the man who did the scaling, and by the care with which he performed that work, but you think they could be readily ascertained and reconciled?

A. I think there would be no difficulty. There might be a 643
little give and take on each side.

Q. The differences, then, between your statements, which are so widely different in their results, grow out of the methods in which you stated the accounts respectively, as you have detailed?

A. Yes, sir.

Q. Are there any more discrepancies in actual figures?

A. Yes, sir.

The Special Master: That is, the details are negligible, but in the differences there is a great bulk of it that comes from the accounts stated?

A. That is right.

By Mr. Harrison:

Q. Mr. Dixcy, Mr. Potter includes in his statement C-1, showing moneys expended in West Virginia, the moneys expended for the construction of the Covington & Ohio Railroad?

A. Yes, sir.

Q. That is a very large item?

A. Yes, it is.

Q. It runs over a million dollars?

A. Yes. We do not include that.

Q. You have not included that anywhere?

A. No, sir.

Q. You said you did not include that, on the instructions of counsel?

A. That is right.

Q. There is another considerable item that will help 644
make up the difference, the Winchester and Potomac Railroad, which Mr. Potter includes, amounting to $168,758.

A. That was excluded. We excluded that.

Q. You have excluded that entirely from your accounts?

A. Yes, sir.

The Special Master: In all the schedules?

Mr. Harrison: In all of them.

Mr. McClintic: Mr. Dixcy testified to that yesterday. That was one that Virginia dealt with herself before the War, or just after the War, and got paid for it.

By Mr. Harrison:

Q. You excluded that upon the instructions of counsel?

A. Yes, sir.

Mr. Anderson: That is their theory.

Mr. Spooner: It is not very much of a theory.

Mr. Harrison: Yes; it is altogether a theory.

Mr. McClintic: We think it is a demonstrated fact.

Mr. Conrad: I was counsel for that road a long time, and I have derived a great deal of information about it.

The Special Master: Do I understand it is the contention of the defense that the counsel was sold with the road?

Mr. Conrad: He has been badly sold on these statements that he has learned here.

Mr. McClintic: They are in your Virginia books. We have to take them, right or wrong.

Mr. Harrison: I just want to know the facts from this witness, that he knows no facts in connection with that, but included it under the instructions of counsel. 645

The Special Master: I understand him to so testify.

The Witness: I said it was excluded under the instructions of counsel. That is true; but we are in possession of facts in connection with it.

By Mr. Harrison:

Q. When you say "we," whom do you mean?

A. I mean we have it in our papers. I am not personally familiar with it at all.

Q. Has anything of that sort come in? I don't remember it. I am in the dark.

Mr. McClintic: Which road is that?

Mr. Harrison: The Winchester and Potomac, he is talking about. He says they are in possession of papers.

Mr. McClintic: Mr. Dixey testified to certain facts in connection with it, from a memorandum which his staff had made in relation to it, on yesterday.

Mr. Harrison: You call those facts?

The Special Master: The circumstances under which the road was disposed of, according to the contention of the defendants. That is what you mean, Mr. McClintic?

Mr. McClintic: Yes, sir. The Winchester and Potomac is still in existence, leased to the Baltimore & Ohio Railroad, but the Baltimore & Ohio Railroad got it in 1866 or or 1867.

Mr. Anderson: The Baltimore & Ohio was the lessee of it for a great many years.

Mr. McClintic: I think it is the lessee yet.

Mr. Anderson: Yes; but it owns a majority of the stock. 646

Mr. Conrad: It was the lessee for sixteen years without any authority from the Legislature of Virginia to lease or to hold it.

Mr. Harrison: Do I understand, Mr. McClintic, that your contention is that Virginia disposed of the road or gave it away, or did something, in 1867?

Mr. McClintic: Prior to that time, in 1846 or 1847—I cannot state the exact date—she passed an act commuting this stock and loan into an annuity, which was paid for a series of years, and then she sold the annuity. In the first place, we deny that we are responsible for loans made by Virginia to any municipality, incorporation or individual. We do not call that money spent in West Virginia, if that individual happened to live in West Virginia.

The Special Master: In the next place, you contend the loan has been subsequently paid?

Mr. McClintic: Yes, sir.

[*Vol. 6. May 7, 1909. Direct Examination of C. E. Scoville.*]

By Mr. McClintic:

Q. We have filed here Defendant's Exhibit C-1. Please state, if you know, the charges made therein, of your own knowledge, or items entered, would be better, perhaps? 697

A. (Mr. Scoville) I do know as regards each and every item appearing on the schedule. That schedule I find charged— 698

The Special Master: On what page?

Q. (Continuing) On page 2.

"Brandonville, Kingwood and Evansville Road, $10,595.73." Please state the character of that charge and what it was for, and if there is any other thing in relation to that road, please state it.

A. The road was originally incorporated as a stock company in 1837, and in the following year the State made an appropriation for subscriptions to the stock. In 1847 and in 1857 additional appropriations were made.

Q. Were those additional appropriations for stock purposes?

A. They were for stock purposes, amounting in all to $18,000.

Q. What sum of money was paid out on that road for stock, if you have it there, and what for direct appropriation for work done?

A. The amount paid by direct appropriation—

By the Special Master:

Q. What do you mean by that, direct construction?

A. Direct construction on the road, as shown by the books, was $10,595.73.

Q. Was the State at that time a stockholder in the road?

A. The State was at that time a stockholder to the amount shown on the books; as to the amount paid on the stock subscriptions, it was $2,193.46.

Mr. Spooner: You mean by the State? 699

The Witness: Paid by the State on their subscriptions.

The Special Master: Is that the total amount that appears to have been paid by the State on its subscription?

The Witness: Yes, sir.

By Mr. McClintic:

Q. Right at that point, what do the books show as to these stock subscriptions, as to there being other stockholders?

A. It does show that there were other stockholders.

Q. Do the books show whether these subscriptions for stock were paid by calls from directors of the Company, or in what way?

A. I think it can be said that in every case where the appropriation was made for the purchase of stock of any improvement company the payments by the State on account of that subscriptions were to be paid *pari passu* with the payments of individual stockholders.

Q. Now, take the next item below that, the Clarksville and Buchannan Road. Was that a road incorporated?

A. It was an incorporated company.

Q. And did the State spend some money thereon in addition to the stock it purchased?

A. It did.

Q. An amount stated on this exhibit?

A. The amount expended for other purposes than stock was $19,259.36, which was on account of an appropriation of $20,000 for macadamizing the road.

Q. I will next go to the item, "Kingwood and West Union Turnpike Company. What was the condition as to that, as 700 to its being an incorporated company, and the State also making a direct construction appropriation?

A. The Kingwood and West Union Turnpike Company was an incorporated company, and the State subscribed to its stock and also appropriated as a direct expenditure on the road $18,140.61.

The Special Master: Expended also, as well as appropriated?

The Witness: Expended that amount. It appropriated more than that sum, but that was actually expended.

Mr. Harrison: How much by direct appropriation and how much by stock?

The Special Master: $18,140.61 was the total direct expenditure, as I understood it.

The Witness: That is correct.

The Special Master: He had not stated the amount of stock.

Mr. Harrison: I thought he stated them separately.

The Special Master: No; he did not.

The Witness: The total amount paid on the stock subscription was $8,769.48.

By Mr. McClintic:

Q. How much was subscribed by the State?

A. $12,000

Q. On page 2, you have a road called the "Morgantown to Beverly Road, $12,000. Can you reconcile that charge with any charges made on Plaintiff's exhibit C-1?

A. Yes, sir.

Q. Please do so.

The total expenditure of $12,000 which we include under the title of Morgantown to Beverly road on West Virginia's exhibit is shown in two amounts on Plaintiff's Exhibit C-1,$2,724.

The Special Master: At what page? 701

The Witness: On page 5. Under Beverly and Clarksburg road; it is the fourth item from the bottom of the page.

The Special Master: What other item is that connected with?

The Witness: And an item on page 7, amounting to $9,276, under Monongalia County to Beverly and Clarksburg Road. That is the fifth amount extended into the total column, counting from the bottom of the page.

The Special Master: That seems to be page 11?

The Witness: I should have given the number as 11.

The Special Master: And those two make $12,000?

The Witness: Yes, sir.

By Mr. McClintic:

Q. You also have an item, page 2, Middlebourne & Pennsylvania Road, $6,252. Can you reconcile that with any charges made by Mr. Potter?

A. I cannot, no, sir.

The Special Master: Are not these items items that the two accountants could take up and reconcile?

Mr. McClintic: There is some confusion of the names of the companies.

The Special Master: They can do better sitting down and discussing it between themselves, probably.

By Mr. McClintic:

Q. On page 3 there is an item, South Fork of South Branch 702
of Potomac River to Petersburg and Hardy County Road; and on page 4 is the South Branch of Potomac River to Brock's

Gap and Rockingham County road. Could you give an explanation of those two roads?

A. Yes, sir. The first road that you have referred to, on page 3 of our exhibit, South Branch of South Fork of Potomac River to Petersburg in Hardy County, on which there was expended $900, is wholly within the territory now constituting the State of West Virginia. The other item, South Branch of Potomac River, page 4, to Brock's Gap in Rockingham County, on which the total expenditure was $1,400, is in West Virginia, on a mileage basis, 29.41 per cent. I might say that is the full amount of the appropriation, and it is charged to the roads for which it was appropriated. Originally it was given to commissioners to be expended on these roads, and charged to the accounts of these commissioners, and carried that way on the books of the internal improvement fund for a number of years. Then, some time prior to 1861—between 1850 and 1860—they closed the accounts of those commissioners and opened new accounts under the titles of these roads, and in doing that they charged the $1,400 appropriation and expenditure to the road under that title "South Fork of South Branch of Potomac River to Petersburg in Hardy County" and the $900 to the other road. So that at the present time, on the books of the internal improvement fund, the $1,400 shows as expended on the south fork of South Branch of Potomac River to Petersburg in Hardy County Road: whereas it should show, as charged to the road through Brock's Gap, as shown on page 4 of our exhibit.

The Special Master: In transferring the items they got 703 them transposed?

The Witness: Yes, sir.

Mr. Anderson: The road was through Brock's Gap to what point?

The Witness: South Branch of Potomac River to Brock's Gap in Rockingham County.

Mr. Anderson: Part of it would be in West Virginia?

The Witness: Yes, sir.

The Special Master: And this report you have made is in accordance with the original entries and does not follow it after the transposition here made.

The Witness: That is it exactly.

By Mr. McClintic:

Q. On page 3, the Abbs Valley and Tug Road, $4,450; is that partly in Virginia and partly in West Virginia?

A. Yes, sir. Abbs Valley is in Tazewell County, in the present State of Virginia.

Q. This charge made by you here is the correct charge in your opinion?

A. It is.

Q. You made this division yourself, did you?

A. I made this division personally, yes, based on a mileage basis.

Q. The next item is Allegheny Mountain Turnpike, which has been wholly charged by Mr. Potter's account to West Virginia. Please state what you know about that?

A. I will have to refer to papers to get the location of the 704 beginning of that road.

(Continuing after reference to papers.) In the year 1834, there was an appropriation made to construct a road from Pendleton County to Pocahontas County. Both counties at that time were in the present State of West Virginia. The route laid out for that road is as follows. On the route of the road located from Stanton to Parkersburg, from Heevner's Store in the County of Pendleton, to Greenbrier river in the County of Pocahontas. From an inquiry which was made as to where Heevner's Store was located, we found that it was in that part of Pendleton County which in 1847 became Highland County, Virginia; so that the road is partly in both of the present States.

Mr. Anderson: If it is the same Heevner's Store that I know about it is now called Hightown.

Mr. McClintic: Yes, that is it.

Mr. Harrison: How long is that road?

The Witness: The reports of Volume 7 of the Board of Public Works gives the length of that road as 17 miles, 68 chains; and we were informed by individuals that reside along the road that it was eight miles in the present Highland County, Virginia.

By Mr. McClintic:

Q. On page 4, there is a charge, Trans-Allegheny Lunatic Asylum at Weston, $125,000. Did you examine some books I brought here a few days ago, from West Virginia, called the books of the restored government?

A. Those books were examined under my direction.

Q. Did you find anything as to the sum of $27,000 being 705 repaid into the treasury of the State?

A. The journal of the restored state of Virginia shows that $27,000 was paid into the Treasury of that State.

(Continuing after referring to book.) The $27,000 which has been referred to, and was deposited, according to the journal of the restored State, on July 22nd, 1861, one half in the Northwestern Bank at Wheeling, and one half in the Merchants' and Mechanics' Bank at Wheeling.

Mr. McClintic: On that same point, at this moment, I want to introduce as evidence the Auditor's report.

The Special Master: You had better have him read the entries that appear.

Mr. McClintic: Yes, we will have him do that.

The Special Master: The entries read as follows, appearing on page 4, under date of July 22, 1861. This is Wheeling, Virginia?

Mr. McClintic: Yes, Wheeling, Virginia, then.

The Special Master; Under the head of Wheeling, Virginia, July 22, 1861, appear the following entries.

The Witness: (Reading)

"Northwestern Bank at Wheeling.

"To certificate, John List, No. 7, Weston Asylum, $13,500."

The next entry reads as follows:

"Merchants and Mechanics Bank, Wheeling.

"To certificate, John List, Weston Lunatic Asylum, $13,500."

Both of those amounts are shown as deposited in the account kept in the ledger with those two banks. 706

By the Special Master:

Q. They are charged in the account for the two banks, and each bank is debited on that same date with the sum of $13,000?

A. That is correct.

Q. In the ledger account?

A. In the ledger account.

Mr. McClintic: I desire to introduce the auditor's report, Wheeling, October 1st, 1861, signed by the then Auditor of Virginia, Samuel Crane, in which appeared the following items: (Reading)

"From the Lunatic Asylum, West of the Allegheny Mountains, $27,000."

That is under the head of receipts. The whole report I desire to offer, but that is the only item I have.

The Special Master: That is the only item in the book to which you propose to refer?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Referring to plaintiff's Exhibit C-1, I find charged on page 1 thereof, Covington & Ohio Railroad, total, $1,212,354.85. Have you made any investigation of the amount expended on the Covington & Ohio Railroad by the State of Virginia?

A. Yes, sir.

Q. Please take the statement handed you. Was that made by you?

A. (After examination.) Yes, sir; this was made by me personally.

Q. Please state the total amount that you believe should be charged to the amounts expended, if the court should decide that any amount was proper. 707

The Special Master: You mean by that, I suppose, what he finds by his investigation that the books show?

Mr. McClintic: Yes, sir. What he believes to be correct from his examination.

A. After analyzing each account appearing in the construction books of the Covington & Ohio Railroad as closely as the records and entries would allow, and applying all expenditures which these construction books show were for money expended in what is now the present State of West Virginia, and dividing on a mileage basis only such items as could not be applied direct, I have arrived at a charge against West Virginia of $1,146,462.52.

Q. And do you in that statement charge the whole Western Division to West Virginia?

A. Yes, sir.

Q. Beginning at what section and going west, do you charge all to West Virginia?

The Special Master: Is that an item that the two experts can reconcile in all probability? I am referring to the details.

Mr. Anderson: I think they ought to be able to do it.

Mr. Harrison: I think they can; I don't think there is any doubt about it.

Mr. McClintic: It is about between $65,000 and $75,000, there is a difference of that much between them. 708

The Special Master: If they are unable to agree on any detail, cannot they give me the concrete facts in connection with the detail, so I can pass upon it?

Mr. McClintic: I think so.

The Special Master: If they can, that would save us a lot of time.

Mr. Harrison: Before you go on, I think it would be well for the witness to answer the last question, that is, as to what section he began with.

The Special Master: Well, you will have access to his memoranda.

The last question was repeated by the stenographer, as follows:

"Q. Beginning at what section and going west do you charge all to West Virginia?"

The Witness: I do not see it now, but we have it without doubt.

Mr. Harrison: You are not able to give it now?

The Witness: No, sir.

By Mr. McClintic:

Q. Did you make any examination of what appears, after the State of West Virginia was formed, on the books of West Virginia as to any sales made by the State of Virginia of its stock in the Blue Ridge Road, or any of those items?

A. Yes, sir; I did.

Q. What, if you know, was paid the State of Virginia by the Virginia Central or the Chesapeake & Ohio Railroad for the Blue Ridge Road?

Mr. Anderson: That is wholly in Virginia. I do not see 709 what it has to do with this inquiry.

Mr. McClintic: It has a good deal to do with the inquiry on our theory of the Covington & Ohio Railroad.

The Special Master: I will hear it *de bene*. Of course I cannot pass upon the force of it until I have all the facts before me. I will let it go in *de bene*.

Mr. Anderson: We merely enter an objection to it as irrelevant.

Mr. McClintic: I take it that all testimony is allowed on that theory. We have not objected many times for that reason.

The Special Master: Yes.

The Witness: The present State of Virginia received in 1870 from the Blue Ridge Railroad, $625,348.08 in State bonds and accrued interest on the State bonds.

By Mr. McClintic:

Q. From whom?

A. From the Chesapeake & Ohio Railroad Company.

Q. State, if you know, whether the State of Virginia was relieved of any guarantees on bonds of the Virginia Central Railroad by the Chesapeake & Ohio Railroad or the Virginia Central Railroad; and, if so, please state the amount?

A. The State of Virginia was relieved of the guarantee of bonds of the Virginia Central Railroad, amounting to $100,000; and it was relieved by the Chesapeake & Ohio Railroad Company, taking up those bonds.

Q. State, if you know, the par value at least of the stock of 710 the Virginia Central Railroad Company owned by the State of Virginia on the 1st of January 1861.

Mr. Anderson: We object to that. He does not know the value.

Mr. McClintic: I am simply asking for the par value.

Mr. Anderson: All right, if it is the par value.

A. I can't state what the par value was. I can only state that the State of Virginia had paid up to the 1st of January, 1861, $1,927,382.57 for stock in the Virginia Central Railroad. She had

paid that much on her subscriptions to the stock of the Virginia Central Railroad Company.

Q. What, if anything, did the Virginia Central Railroad owe the State at that time, if you know?

A. The railroad company owed the state $90,000 that had been loaned.

Q. Returning to Exhibit Plaintiff C-1, and referring to page 3, there is a road charged as the Strasburg and Capon Turnpike. Please explain, if you know, whether that road, or any part of it, is in the State of West Virginia?

A. The Strasburg and Capon Turnpike Company was incorporated in the year 1856. The route of the road was from Strasburg in the Shenendoah County and the present State of Virginia, to some point on the Winchester and Moorefield Road, at or near Hoff's gate. There was no report filed by that company which gave the exact location of the road. To get into the present State of West Virginia the road would have had to have gone over the Great 711
North Mountain, and on the maps which we had access to there is no such road shown. The road was to go from Strasburg in Shenendoah County, to some point at or near Hoff's Gate on the Winchester Road, and there is a road on the maps which I consulted, running from Strasburg to this Winchester and Moorefield Road, which would make this road entirely in the present State of Virginia.

The Special Master: You took it to be that road?

The Witness: Yes. I do not think the road went to Capon, which is in Hampshire County, and the present State of West Virginia, because the road to Capon from the Moorefield and Winchester Road was built by the latter road.

By Mr. Harrison:

Q. In that connection, did you examine the Board of Public Works Report, 1857, page 215?

A. I made no particular note of that. I made no note of information gotten from that report.

Q. You have no recollection on that subject?

A. No, sir.

Q. You have no memoranda showing it?

A. No, sir.

By Mr. McClintic:

Q. On the same page, Mr. Scoville, appears the Winchester and Potomac Railroad, charging West Virginia $168,750 (referring to

plaintiff's Exhibit C-1), and dividing it into four items. Please explain those items as to stock or loan or their character or 712
nature.

The Special Master: Is that page 3 at the bottom of the page?

Mr. McClintic: Yes, sir.

A. The first three items, aggregating $120,000 were paid by the State on account of its subscription to the stock of the Winchester and Potomac Railroad Company.

The item of $150,000 was loaned to the company.

In 1846 the Commonwealth of Virginia passed an act accepting in lieu of dividends on stock and interest on the loan, an annuity of $5,000. That annuity was paid in every year up to and including the year 1860. The ledger account, which carries the subscription of $120,000, to the stock, was closed on the books of the internal improvement fund with the explanation that the stock had been surrendered for the annuity.

After 1861, I think in 1866, the State of Virginia passed an act agreeing to accept stock or bonds of the State of Virginia in settlement of the principal of that annuity, and the State of Virginia did establish the principal of $83,333.33, which was the principal sum producing $5,000 annually at six per cent; the State accepted State bonds of Virginia for the $83,000 odd as principal, and the unpaid annuity up to the time of the settlement, amounting in all to $118,000.

Mr. Anderson: To satisfy the State bonds?

The Witness: Yes.

Mr. Anderson: That is bonds of the old State?

The Witness: Bonds of the old State. 713

By Mr. McClintic:

Q. Were there any notes, so far as you know, given to the State of Virginia for that loan, or how was it evidenced as a loan, if you remember?

A. The only evidence that I have seen is an entry of it on the original books kept by the second auditor, which shows the money as being received. Just what was given for it I do not know.

Q. So, the State's interest in that consisted of $120,000 worth of stock and $150,000 worth of loans?

A. Yes, sir.

Q. And it was settled, as you say?

A. Yes, sir.

Q. On page 4, I find the item, James River and Kanawha interest. Please tell the court what you know about an item there of $100,000 charge, called bonds to Kanawha Board, in 1860?

A. Under an Act passed by Virginia on March 23, 1860, the State

agreed to loan to the James River and Kanawha Company for the use of the Kanawha Board, which had been established to carry on the improvements of the Kanawha River, $200,000 in State bonds. I did not find that the $200,000 or $100,000, as shown on plaintiff's exhibit, had been turned over to the James River and Kanawha Company prior to January 1st, 1861.

Q. How much did you find had been turned over, if any sum, to the Kanawha Board?

A. $60,000.

Q. That was bonds of the State of Virginia under the Act 714
of March 23, 1860?

A. Yes, sir, as a loan to the James River and Kanawha—

By the Special Master:

Q. What date was the $60,000 of bonds turned over?

A. I haven't the exact date, but it was prior to January 1st, 1861.

Q. It was during the year 1860?

A. During the year 1860.

By Mr. McClintic:

Q. That was only a loan to the James River and Kanawha Company, was it not?

A. Only a loan.

Q. The plaintiff has charged under that head something over $300,000; for Kanawha River, $91,666.72; extension of Kanawha Turnpike, $87,285.36; 82 per cent Kanawha turnpike, $144,772.86; Gauley Bridge, $1,167.68. Those were, if payments at all, only payments by the Company, were they not, for the purpose of construction or something?

A. Those payments, without attempting to say whether the amounts there are correct or not, were on account of the improvements of the James River Canal proposition made by the State, improvements carried on by the State, and expenditures made by the State. But under an act passed in 1832 the State surrendered its interest in the improvements, on the James River Canal to the newly incorporated James River and Kanawha Company for stock in that company. So that these payments are not charges against West Virginia as direct expenditures, but became during the
period under examination investments in the stock of the 715
James River and Kanawha Company.

Q. By the State of Virginia?

A. By the State of Virginia.

The Special Master: First they were investments, and afterwards converted into stock?

The Witness: Yes.

By Mr. McClintic:

Q. Were these particular investments made before 1832; were they not made long after 1832?

A. I can't say as to that; but I think they were made before 1832. They expended large sums before 1832.

Q. But were those large sums expended out yonder in West Virginia before 1832?

A. A very small proportion of the large sums were expended in West Virginia.

Q. Before 1832, was anything expended in West Virginia?

A. Yes, sir; they commenced.

Q. In West Virginia?

A. Yes, they commenced on the Kanawha Road before 1832.

Q. Have you investigated these particular charges here made and just read, as to the date when they were expended, and time, and so forth?

A. Yes, sir; I have.

Q. Have you the working papers that show them?

A. Yes, sir; I have.

Q. Could you get them immediately or later? 716

A. (After searching among papers.) 2I have them here.

Q. Please state, if you know, when those sums were expended, or such of them as were expended, as far as your papers show?

A. I cannot testify as to when it was expended without further papers. I find I have not the papers here which give the dates.

Q. Sometime later I wish you would make me a statement to that effect, and if we have opportunity we will show it.

Mr. Harrison: Do you know when the Act incorporating the James River and Kanawha Company became operative? It was passed in 1832, was it not?

The Witness: It became operative in June, 1835.

Mr. Anderson: That is, the Company was organized then?

The Witness: Yes, the Company was organized then.

By Mr. McClintic:

Q. On page 11, I believe it is, of Plaintiff's Exhibit C-1 (Defendant's Exhibit G-1), I find the item of $2,500 in 1847, charged on the Plaintiff's Exhibit, Morgan County road, from Bath to St. John's River, $2,500. Do you know anything about that?

A. That money was loaned to the trustees.

The Special Master: What is that item?

Mr. McClintic: Page 11, Exhibit Plaintiff's C-1; Morgan County road from Bath to St. John's River. It is a similar loan to the town of Bath to the one shown in our Exhibit G-1. I wanted to prove the fact by Mr. Scoville.

The Witness: The money was loaned to the trustees of the town of Bath, and had not been paid back into the Treasury 717
of the State prior to January 1st, 1861, and on that date stood as a loan against the trustees of the town of Bath.

Mr. Harrison: It was for the purpose of building that road, was it not?

The Witness: I don't know what the purpose was. I know it was a loan to the trustees of the town of Bath.

Mr. Harrison: Did not the record disclose any purpose at all?

The Special Master: What page is that found on in your exhibit G-1?

Mr. McClintic: It is noted on page 2, and then it is noted somewhere else later on.

The Special Master: Yes, I find it.

Mr. McClintic: Also on page 9. It is noted again on page 9.

By Mr. McClintic:

Q. On page 11 of Exhibit C-1, Louisa Fork of the Sandy River Road, $1,000. Did you find any such road in your examination?

A. I did not find any such road in the whole State of Virginia. I did find that that road was in the present State of Kentucky.

Mr. Harrison: How did you find that; what source of information did you have?

The Witness: I don't think I mean the present State of Kentucky; I would like to withdraw that answer and consult the papers here.

Mr. Anderson: There is a Louisa Fork and a Levisa 718
Fork. The Levisa Fork is in Buchanan County, Virginia.

Mr. McClintic: The same fork depends a good deal on map. Sometimes it is "Louisa," and sometimes it is "Levisa."

Mr. Mollohan: When was that made?

The Witness: The appropriation was made in 1823. That road runs through Buchanan, Russell and Tazewell Counties, all in the present State of Virginia, being in the southwestern part of the State.

Mr. Harrison: What is the terminal point?

The Witness: This road was made in connection with a road built by the State of Kentucky, and the entire road, including what was built by Kentucky in Virginia, was intended to run from Mt. Sterling, in Kentucky, by way of Prestonburg, in the direction of Tazewell Court House, to intersect the main western road leading from Richmond to Abingdon. The Commissioners who had charge of the building of that road were directed to construct the road from the latter point, that is the road leading from Richmond to Abing-

don, thence up the Louisa Fork of the Big Sandy River, through the most practical route, through the rich lands of the Clinch River.

By Mr. Harrison:

Q. What act was that?

A. January 15, 1826.

Q. Have you got the page of the act?

A. Yes, sir; page 81.

By Mr. McClintic:

Q. On page 19, Mr. Scoville, I find charged the balance of 719
interest on bonds of the City of Wheeling, $15,115.64. State, if you know, whether that item was paid to the State of Virginia, and if so when?

A. That item was paid to the State of Virginia in the year 1867, with interest, which amounted to about $6,000, as shown by the books in the Auditor's office, the auditor of public accounts.

(Informal discussion followed, about the question of holding a night session, at the conclusion of which, at 5:40 o'clock P. M., a recess was taken until 8 o'clock P. M.)

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[*Vol. 6. May 7, 1909. Direct Examination of C. E. Scoville.*]

The Special Master: Of course I have no objection to proceeding in this way, but as long as that understanding is practically entered into I think you will make more satisfactory progress by letting them in the first instance undertake to weed it out. With that exception are you through, Brother McClintic, with this witness?

Mr. McClintic: Just one moment. (Continuing after consultation among counsel.) I want to prove in some form, so as to get it into the record, the amount of tolls or dividends, dividends, I should say, paid in by these stock companies to Virginia prior to January 1, 1861. I mean all the road companies, the navigation companies, the bridge companies and things that paid dividends.

The Special Master: Have you a schedule?

Mr. McClintic: I haven't it prepared in such a way as to put it in as such.

The Special Master: Then why do you not have your experts prepare it in the interim?

Mr. McClintic: That can be put in, then, without going over in detail the items with this witness?

The Special Master: How is that?

Mr. McClintic: I say I can have the experts, Mr. Dixey and 784
Mr. Scoville, make a statement of that by roads and compa-

nies, showing the companies that did pay dividends, and a statement that all others did not pay dividends. There are only a few that did pay dividends.

The Special Master: Of course, when we suspend, we shall have to suspend for the purpose of having another hearing, because there are reports that have to be made by these experts. Brother McClintic, you may have prepared your statement, and as soon as you get it prepared submit it to the other side, so they will be prepared to criticise it if they have occasion to do so.

Mr. McClintic: I do not now think of anything that I want to ask at this time. There are some things we will have to go into when we get this in.

Mr. Spooner: I would like to put one or two questions upon a matter concerning which you testified. I would like a little fuller information referring to these corporations, to the construction of turnpikes, and bridges, and the like, navigation companies, and all that. I understood you to say that in no case—I mean those that are set forth in these schedules—did Virginia subscribe for more than three-fifths of the capital stock, and in some cases two-fifths, and in other cases two-fifths.

The Special Master: And in some cases one-fifth.

Mr. Spooner: Some cases one-fifth.

The Witness: I do not think I made that statement.

The Special Master: Mr. Dixey made that statement.

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By Mr. Spooner:

Q. Well, two-fifths or three-fifths. Did you testify, or did I incorrectly understand you, that in no instance did the State of Virginia own all of the outstanding stock in any of those corporations?

A. I do not recall any instance where the State of Virginia did own the entire outstanding capital stock.

Q. Where the State owned two-fifths, were there majority stockholders owning the other three-fifths?

A. There were.

Q. And where the State owned three-fifths, there were minority stockholders owning the other two-fifths?

A. There were.

Q. Did you testify, or did you mean to be understood as testifying, that Virginia, in either case, made no payments upon the stock subscriptions until the other stockholders had made payments on their stock subscriptions?

A. I intended to convey just that impression.

Q. Was that by statutory provision?

A. It was. It was provided in the Acts making the appropriations. It was the general rule and custom.

By the Special Master:

Q. That is, the payments were made upon call upon all the stockholders?

A. Yes, sir.

Q. The State paying in the same proportion that the private stockholders paid?

A. Yes, sir.

Q. And Virginia did not pay until the private stockholders had paid; is that what you stated?

Mr. Conrad: No, he did not state that. He is not a lawyer, 786
and he misunderstands it. As the Master suggests, it was simply a call.

Mr. Spooner: I understand—

Mr. Conrad: I know you understand, but he will do himself an injustice.

The Special Master: The question now is, whether the payment of the private subscribers was antecedent to the payment by the State.

The Witness: If the payments were made according to law, they were not antecedent. They were *pari passu* with the private subscriptions.

Cross Examination.

By Mr. Conrad:

Q. You have been examined upon this Auditor's report of Auditor Crane. We will offer it in evidence at the proper time. Now, as you have been examined on it, I want to ask you what you found in the course of your examination, what you found out about this report of Auditor Crane, made November 25, 1862.

Mr. Harrison. What auditor?

Mr. Conrad: Auditor of Public Accounts of the restored Government of Virginia.

Mr. Mollohan: The State of Virginia. There is no restored in it.

Mr. Conrad: I will read this. (Reading):

"It has about $400,000 worth of stock in the Northwestern bank at Wheeling standing in the name of the Commonwealth, part in the name of the Board of Public Works, and part in the 787
name of the Literary Fund. The State has $50,000 of stock or loans in the name of the Literary Fund in the bank at Fairmont, and from $50,000 to $70,000 in the Exchange bank at Weston, making about $500,000 in all. She is also a stockholder in the improvements of the Kanawha River, how much the Auditor does not know. The State is the owner of several important turnpike roads in the northwestern part of the State, and is a stockholder in many other turnpike and bridge companies. The power to control and use the

stock before and pending the settlement with the old State: Some legislation, therefore, upon the subject will be necessary."

Did you have occasion to look into this item of $500,000 made up of these stocks referred to in this report?

A. Yes, sir; that has been covered.

Q. You have covered it with the amount of $500,000?

The Special Master: Covered in what?

The Witness: In the testimony that I have given this evening.

By Mr. Conrad:

Q. To this amount of $500,000?

A. As to the Northwestern Bank, $450,000 par value, all of which is not paid in cash. As to the Fairmont Bank, $50,000 paid in cash.

Q. I am referring to what the auditor says—

Mr. McClintic: That is the auditor of Virginia reporting to Virginia, is it not? 788

Mr. Conrad: To gratify you, I will assent to that statement.

By Mr. Conrad:

Q. I ask you if you have any further explanation to make of that.

The Special Master: Does the testimony you have given in connection with that cover all you have to say about that?

A. Yes, sir.

Mr. Conrad: We will at the proper time ask to offer this report in evidence. That is all I have to ask you, sir.

(The witness under examination, Mr. Scoville, was accordingly excused from the witness stand.)

Mr. Conrad: There is another statement contained in another auditor's report, which, if the Court will permit me, as it is very brief, I would like to read. This is a very noble aspiration.

(Reading):

"If, however, we succeed in making a new State, new expenses will be necessary."

All this will be necessary! 789

"When all this has been completed and the red line put down, the citizens of the new state will be one of the happiest people upon the Globe. No large State debt to pay; no oppressor's hand upon them; the tree of liberty to shade them; the flag of the Union to

cheer them, and the providence of God to bless. Who would not rejoice to dwell in such a state?"

[*Vol. 7. May 6, 1909.*] 734

MR. CLIFFORD E. SCOVILLE
resumed the stand for further direct examination.

By Mr. McClintic:

Q. Mr. Scoville, please tell the court about the two items for Gauley Bridge, charged one under the James River and the other a direct charge to Gauley Bridge in Defendant's Exhibit C-1, as to whether or no those were both James River expenditures or not, and whether or not the State got stock for it.

A. The first item is on page 4 of Plaintiff's Exhibit C-1. 735 under James River & Kanawha interests. The item reads "Gauley Bridge, $1,167.68." I have not been able to find where Mr. Potter obtained that figure, but I presume it came from the analysis of some account in the James River expenditures.

Mr. Mollohan: Did you find the date?

A. Mr. Potter gives a reference here—"J. R. Journal," meaning James River Journal, "B page 464," but that item does not show on page 464 as an item in itself.

Mr. Harrison: I will say to the witness, in explanation, that that reference was not intended to include Gauley Bridge. It applies to the items above Gauley Bridge, and you were misled by it. It is a typographical error.

The Witness: It is bracketed all the way down.

Mr. Harrison: Yes; it is bracketed all the way down, but the bracket ought to have stopped before it included the Gauley Bridge item.

The Witness: The second charge on account of the Gauley Bridge is on page 8 of the Plaintiff's Exhibit C-1, and amounts to $1,419.45. The third item extended into the total column from the bottom. That amount was extended under an act passed in 1837, and was paid to Joseph Blair and William Shields. The date of the act is March 6, 1837, page 291, and is for the balance due for construction of bridge over Gauley River. That is not a direct charge against West Virginia, but is an additional amount paid on account of James River improvements, for which the State received stock under an act passed in 1832.

Mr. Harrison: You mean it was a stock subscription and 736 not a direct expenditure?

The Witness: Yes, sir; practically that.

By the Special Master:

Q. The money was paid to these two men of whom you speak, who did the work on the bridge?

A. Yes, sir.

Q. But for the disbursement the State received stock?

A. Yes, sir.

Mr. Spooner: But was it a stock subscription?

A. Not primarily. It was a part of the James River improvements built by the State, but all of those improvements were turned over to the James River & Kanawha Company for stock in that company. So in that way it becomes a part of the cost of the stock which was received by the State.

By Mr. McClintic:

Q. Mr. Scoville, there was charged on page 13 the Northwestern Bank of Wheeling, $450,000. Please explain to the court—

The Special Master: Is that the same bank to which this certificate relates which you have just put in?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Please explain to the court how much of that sum of $450,000 was paid in money by the State.

A. Of the total stock, amounting in par value to $450,000, there was paid in cash by the State $425,091.33. The balance due on the State total subscription, amounting to $450,000, was paid by dividends on the stock which had been subscribed for by the State, which accrued before the subscription was fully paid for, and from those dividends, which amounted to exactly $33,000, there 737
was a deduction of an interest charge against the State, which left the net amount left them on dividends $24,908.67.

The Special Master: Which made up the balance of the $450,000?

The Witness: Yes, sir.

By Mr. McClintic:

Q. State to the court how many branches that bank had, if you know, and where they were situated?

A. The Northwestern Bank of Virginia was authorized to establish a great many branches that it never did establish. From reports which can be found in the documents of the House of Delegates of Virginia, we found that the following branches were actually established: One at Wellsburg, one at Parkersburg, and one at Jeffersonville, in Tazewell county, in the present State of Virginia.

Q. State next the sale of a part of the stock of the Northwestern Bank prior to January 1, 1861.

A. In the year 1857 the Commonwealth sold 1,082 shares of Northwestern Bank stock for $113,671.42, and turned the proceeds of that sale over to the Sinking Fund. That transaction is shown in the books of the Commonwealth—the original books.

Q. State what other stock, if any, the State of Virginia acquired in that Bank, and how?

A. We referred, first, to stock in that Northwestern Bank, amounting to a par value of $454,000. That is the total amount of stock which the State of Virginia purchased in that bank. $400,000 of that was purchased through what was known as the Commonwealth or General Fund, and $50,000 was purchased through the Literary Fund. 738

Q. Was there any bonus stock given to the State in that bank?

A. Yes, sir.

Mr. Conrad: I wish you would explain what you mean by bonus stock.

Mr. McClintic: It is a franchise stock. Both Mr. Potter and Mr. Dixey explained it.

Mr. Spooner: Do you mean payment for the franchise?

Mr. McClintic: Yes; the franchise tax you might say, as I understand it.

Mr. Conrad: Do you mean it was stock in addition to the entire stock of the corporation?

Mr. McClintic: The State exacted from the corporation so many shares of stock for nothing.

Mr. Conrad: Of its authorized capital stock, the State required that so much should be turned back to it for the stock.

The Special Master: That is, in addition to the stock subscribed and paid for?

Mr. McClintic: Yes, sir.

The Special Master: So that in a sense the State would have stock on its hands without having rendered any compensation therefor except as it was credited to the franchise and the price of the franchise of the bank.

By Mr. McClintic:

Q. How many shares of stock were there in this case?

A. There were 326 shares, of the par value of $100 each, amounting to $32,600. 739

By Mr. Conrad:

Q. Do you find it called bonus stock in any Act of Assembly?

A. Yes, sir; I am quite sure it was invariably referred to as bonus stock.

Q. In the Acts of Assembly?

A. Yes, sir; I am positive of that fact.

By Mr. McClintic:

Q. On page 2 of plaintiff's exhibit C-1, and on page 3 of defendant's exhibit C-1, is the Northwestern Turnpike Road. You made a thorough examination of those books yourself, I believe?

A. I did; yes, sir.

Q. Please explain the facts in relation to that charge, stating how much money was paid, how you arrived at it, and the tolls and other questions connected with it.

A. The Northwestern Turnpike Road was built entirely by the State, and separate construction books were kept of the expenditures. From those books we analyzed the various accounts of the expenditures, and applied as far as possible all expenditures which could be applied directly to either the present State of Virginia or West Virginia, and items which the books did not clearly record the localities on, we divided on a mileage basis, and on that plan we arrived at a charge against West Virginia of $573,994.39, and that amount includes tolls and I think small amounts of other income.

Q. What page of defendant's exhibit C-1 do you find that? 740

A. Page 3. It includes tolls and other income amounting to $173,670.39, the total amount of which went back into the road, was expended on the road.

Q. Have you given credit to West Virginia for her mileage proportion of those tolls?

A. Yes, sir.

Q. On exhibit F-1?

A. Yes, sir.

Q. Please look at page 4 of the same exhibit, C-1, of the defendant.

By Mr. Harrison:

Q. Before you do that, if it does not interrupt you, I would like to ask him a question, to explain it a little more fully. You have included in that charge tolls and other charges, you say?

A. Tolls and other income.

Q. I should have said other receipts, amounting to $173,000?

A. Yes, sir.

Q. Now, can you state without any special delay whether the corresponding exhibit filed by the plaintiff and prepared by Mr. Potter includes tolls and those other items of credit you speak of?

A. I cannot state, Mr. Harrison, but if I am not mistaken, it has

been testified by Mr. Potter that the tolls were not taken into account either way.

Q. He shows a charge against West Virginia under that item of $426,053, as against $573,994.39, and I simply wanted 741
to develop the fact that the difference is accounted for by the fact that Mr. Potter took no account of tolls and the other credits that have been included there.

A. That does account very largely for the difference. The difference between Mr. Potter's statement and our statement on that road is $153,920.22; but on our defendant's exhibit F-1, we take credit for $171,194.10 for a proportionate toll on a mileage basis, so that the difference after allowing for those tolls is $2,726.12.

Q. Eliminating the tolls, then, the only difference between yourself and Mr. Potter is some two thousand and odd dollars?

A. Yes, sir.

Q. Which you spoke of, which is classified under the head of other credits, or at least described by you among other credits.

By Mr. McClintic:

Q. In the $151,000 you included both the tolls and the other credits?

A. Oh, yes.

The Special Master: So that there is really a discrepancy of a little over $2,000?

Mr. McClintic: Yes.

The Special Master: That is one of the matters they will have to reconcile.

By Mr. Harrison:

Q. You say the tolls coming in from the operation of the road were extended along with any other operating fund for 742
the maintenance of the road?

A. And other purposes; expended on the road; yes, sir.

Mr. Harrison: That is all I want to ask.

The Special Master: I suppose they were expended for maintenance and operating expenses, were they not?

Mr. Harrison: I take it they were.

By the Special Master:

Q. Did I understand they were for new construction or simply operating and maintenance expenses? What is the fact about that, Mr. Scoville?

A. They were for both. In other words, I don't think it would be possible to say just how those tolls were applied, what was the exact application of that money; but it went back into the road,

and at the time it did go back, they were under construction expenses as well as operating expenses.

Q. At the time it went back, they were constructing the road then?

A. Yes, sir.

Q. They were constructing additional road?

A. Oh, yes; and they were also operating a part of it.

Mr. McClintic: The road was several hundred miles long, your Honor.

The Special Master: Yes; I did not know what the fact might be. I do not know that it is of any significance, anyway.

743

By Mr. Harrison:

Q. You say it would be impossible for you to tell for just what purposes the money derived as tolls was applied?

A. I don't think it would be possible.

By Mr. McClintic:

Q. On page 4, the Staunton & Parkersburg Road. Please explain in a general way about that. That is defendant's exhibit C-1, page 4.

A. The Staunton & Parkersburg Road was also built wholly by the State, and construction books were kept, in which the expenses on account of that road were recorded and the accounts appearing in those books were closely and carefully analyzed and treated exactly the same as the Northwestern Turnpike accounts were treated.

The Special Master: The Northwestern Turnpike Road was also built wholly by the State?

A. Yes, sir.

By Mr. McClintic:

Q. Have you there, Mr. Scoville, plaintiff's exhibit D-1?

A. Yes, sir.

Mr. Harrison: I would like to ask Mr. Scoville a question. Right there, if Mr. McClintic will allow me?

Mr. McClintic: Certainly.

By Mr. Harrison:

Q. You show as a charge against West Virginia under the Staunton & Parkersburg Road item, $288,807.56, do you not?

A. Yes, sir. 743½

Q. Turning to the plaintiff's corresponding exhibit dealing with that item, on page 3, plaintiff's exhibit C-1, the amount charged against West Virginia is shown to be $284,232.64?

A. Yes, sir.

Q. Or within about $4,000 of the amount shown by you?

A. Yes, sir; but in connection with that Staunton & Parkersburg charge on our exhibit, we also take credit on our exhibit F-1, which covers receipts for $18,952.90 for West Virginia's proportion of tolls on a mileage basis; so that after applying that, it makes the difference considerably larger.

By the Special Master:

Q. It makes your sum smaller instead of larger?

A. Yes, sir.

Q. That is, if you struck a balance?

A. Yes, sir.

By Mr. Harrison:

Q. Taking a credit for tolls?

A. Yes, sir.

Q. Were the tolls handled in that case as they were in the Northwestern Turnpike Company case?

A. Just exactly the same.

The Special Master: The money went on to the road for its maintenance and operation and construction?

A. Yes, sir.

Mr. Spooner: It was self-supporting to that extent.

836

[*Vol. 7. July 1, 1909. Plaintiff's Revised Exhibit C-1.*]

[The Special Master]:

The next is Paragraph 3 (reading from the decree):

"All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

Mr. Anderson: I now submit this exhibit, marked C-1.

(The exhibit referred to was filed with the stenographer, and marked "Plaintiff's Revised Exhibit C-1.)

Mr. Harrison: We submit what we call Plaintiff's Revised Exhibit C-1.

The Special Master: I am not at all particular about the language, but I think we had better have consistent language throughout. I am willing to call them all revised schedules or substitute

schedules. My own notion was that we might substitute these for the others, but if you prefer the other method, Brother 837
Harrison, very well.

Mr. Harrison: No, not at all—

The Special Master: The Plaintiffs submit Plaintiff's Substitute Schedule C-1. I will say that of course when we come to make up this record there will not be any occasion for showing that several schedules in reference to the same subject have been submitted. There is no occasion for the record disclosing how we reach the agreement, where we do agree. This is the Plaintiff's Substitute Schedule C-1. Now, am I to understand that the computations appearing on that schedule as to amount are agreed to by Virginia and West Virginia?

Mr. McClintic: I understand not.

Mr. Carlisle: There is a statement there which shows, I think—

Mr. Harrison: Substitute Schedule C-1 that you hold in your hand shows in complete detail the points of disagreement, both as to amounts and as to classification.

Mr. Carlisle: And as to everything else except what is enumerated as disagreement, there is an agreement.

Mr. Harrison: I would not make it as broad as that.

The Special Master: Let us make it just as it is. We will not have anything the result of inadvertence or misunderstanding if we can help it.

Mr. Dixey: There are some adjustments yet that have not been entirely agreed to. There are some differences in figures that appear when we go to check up the statements. I think the differences can be reconciled, but as I understand it, they are not yet all reconciled. 838

The Special Master: Then, why do we not have these reconciled before we agree on it? If it is probable that the experts on both sides will later, at some time, be able to submit to us a complete schedule of agreement under this paragraph, would it not seem to you, Mr. Carlisle, that we had better suspend this until then?

Mr. Carlisle: Yes, sir.

The Special Master: How does that strike you, Brother Anderson?

Mr. Anderson: Our information was that there was an agreement as to amounts. Of course there is not an agreement as to the classification—

Mr. Dixey: I think it could be adjusted in a few hours.

The Special Master: Very well. Then, suppose we suspend on this for the present in the hope that the experts may be able to agree on the items?

Mr. Harrison: We were not aware of any disagreement ourselves.

The Special Master: Well, I will ask Mr. Dixey and Mr. Potter to

get together at the intermission and see if they can reconcile that, and if they cannot during that time, we will see if further time will be needed.

The Special Master: We now come to Plaintiff's Revised 874
Exhibit C-1.

Mr. Harrison: That is suspended. That is still open.

The Special Master: You have not any evidence, so far as 875
you know, if the experts agree on the figures, that you wish to put in; you have not any additional evidence?

Mr. Harrison: No, sir.

965

[*Vol. 7. July 2, 1909. Plaintiff's Substitute Exhibit C-1.*]

Mr. Anderson: C-1 we had better put in first, I reckon. That has been modified somewhat. We wish to substitute this for the one filed. We will withdraw the other and put this in (indicating).

Mr. McClintic: We do not want any withdrawals.

The Special Master: No; they are all in. Plaintiff's Substitute C-2. Am I correct in my understanding that all the computations that appear on this schedule are agreed to as being correct in amount (referring to Substitute Exhibit C-1).

Mr. Dixey: Not all the computations, because that includes 966
certain amounts which the plaintiffs charged to West Virginia.

The Special Master: What I want to know is this: whether the items are correctly stated as to amounts.

Mr. Dixey: As to the totals, yes; not that proportion chargeable to West Virginia.

Mr. Carlisle: You agree upon the aggregates, but you do not agree upon the proportions.

Mr. Dixey: That is it.

The Special Master: What are the items as to which you disagree about the proportions?

Mr. Dixey: There are a great number. They are all in this schedule and marked here (indicating).

Mr. Anderson: What schedules?

Mr. Dixey: This is C. All the items that are marked in this last column, defendant's Exhibit G-1, and there are a great number of them; there are 138 items on the schedule. I believe we agree as to this amount in the total column. There is no agreement as to the amounts in the right hand column marked "amounts chargeable to West Virginia."

Mr. Harrison: You do agree upon the percentage?

Mr. Dixey: On the percentage of the property in West Virginia; not the percentage as a charge.

Mr. Anderson: You object to the classification.

Mr. Dixey: We do not agree about that at all, as to amounts, because we have not verified it.

The Special Master: This is under Paragraph 3, page 4. 967
Let me take one item. Here is the total, under the No. 1, Abbs Valley and Tug Road. This schedule shows the part of the improvement in West Virginia to be 90.1 per cent. Now, what I want to know is whether that percentage is agreed upon.

Mr. Dixey: We agree to that item in its entirety, because that is on our Exhibit C-1. It is only those that are on our Exhibit G that we do not agree to.

The Special Master: The third item, Berkeley & Hampshire turnpike, part of improvement in West Virginia, 42.96 per cent. Is that percentage agreed upon?

Mr. Dixey: Yes, sir.

The Special Master: The total there is $16,572. Is that agreed upon?

Mr. Dixey: Yes, sir.

The Special Master: Then comes the amount chargeable to West Virginia, $15,322.47. Is that agreed upon?

Mr Dixey: No, sir. We do not agree on that.

Mr. Harrison: In what respect do you not agree?

Mr. Dixey: We do not agree that there is a charge there of any amount. That still has to be determined.

Mr. Harrison: That is not for the accountants to determine.

The Special Master: Let me find out right here where we are. Your contention is that it is not chargeable at all, but if chargeable, would it not be 92.46 per cent. of that amount?

Mr. Dixey: I don't know; it depends on what basis the charge is made upon. Is is true that 92.46 per cent. of that 968
property in mileage lies in West Virginia; but whether that would be a proper charge or not I would not say.

The Special Master: That is for me to say.

Mr. McClintic: And if you charge to us that sum, what is the stock worth; that is the question for you to decide.

The Special Master: You must all bear in mind that when I come to pass upon this I shall pass upon it as it appears in the record. When I take this item here to illustrate, the total, $16,572, you agree upon that, and then it is said that that percentage of that item is in West Virginia. Well, if I charge it on the basis of percentage, I will charge West Virginia with $15,322. I do not say now, of course, what I would do. But I understand that you agree on those figures. But you do not agree that it is chargeable on that basis.

Mr. Dixey: We agree that that percentage of the physical mileage is in West Virginia.

The Special Master: Then the question comes up whether that is a proper way to estimate that charge.

Mr. Carlisle: In the bill of Virginia against West Virginia and in this case there is a charge that West Virginia received from the State of Virginia under the Acts of 1863 certain stocks, and a claim is made for stocks that are worth millions of dollars. They also claim in that bill that West Virginia is chargeable for all the money that was expended in paying for those stocks.

The Special Master: I understand your position is that that is a duplicate charge?

Mr. McClintic: And your Honor has to decide under which 969
one of these charges these things have to be met. The accountants cannot settle that question.

Mr. Harrison: That is what I said.

Mr. Anderson: We do not propose to anticipate the argument, but my friend entirely misstates the fact about it.

The Special Master: But you are not embarrassed by that; that will not affect you at all.

Mr. Carlisle: I did not make any argument; I just stated the situation.

The Special Master: I am glad to have counsel make any suggestions; but there is not a single thing that counsel states, a single suggestion, that will have the slighest weight with me in reaching my conclusions. I am going to wait for the argument before I begin to make up my mind at all. Of course, I do not mean to say that I do not like to have suggestions from counsel; but anything that is said now will not influence me one way or the other in making up my mind.

Mr. Anderson: I want to say that they either have to stand on the Wheeling ordinance, or not stand on it.

Mr. Carlisle: So do you.

The Special Master: You are both either on or off.

Mr. Anderson: Under the Wheeling ordinance West Virginia is to be charged with all the expenses made in the territory constituting the new State.

The Special Master: The only thing I am interested in now is this. In the first place, to get this schedule so I will know what it
means. There are some of these items as to which Mr. Potter 970
claimed a certain sum was expended in West Virginia on the basis of a certain mileage, and Mr. Dixey claimed another sum on the basis of another mileage. If they have reconciled the thing so that they agree on their mileage and total amounts, and agree on the percentage that would follow, that is all I want to know.

Mr. Harrison: That is true.

The Special Master: Now, what weight I will give to that is another question.

Mr. McClintic: It is a small matter, but referring to item 16 on the next page—

The Special Master: Just a moment. Do you get the significance of my suggestion?

Mr. Carlisle: Certainly.

Mr. McClintic: We do not agree to that seventeen per cent. there, in item 16, Mountain Lake and Sulphur Springs turnpike.

The Special Master: Let me make inquiry right now. Here are under the first heading 22 items. Am I correct in my understanding that the amounts stated in the column under the heading, "Part of improvements in West Virginia," are agreed upon by both sides as being accurately stated?

Mr. McClintic: Except item 16.

The Special Master: Except item 16. Am I correct in understanding that in Plaintiff's Revised Exhibit C-1, or substitute Exhibit C-1, on pages 4, 5 and 6, including 22 items, that the parties are in agreement on all of the sums appearing in the column, "part of improvement in West Virginia," except item No. 16. Do I state that correctly? Mark that down in the record. 971

Mr. Potter: Do you want to summarize the first division of this? If you do, on page 8 is the total.

The Special Master: I guess I am right where I want to be. I will get your suggestions as I go along. I am going to clean this schedule up in its logical order, and when we agree to anything we will settle that. Am I stating that right?

Mr. McClintic: As I understand it you agree on column 1—

Mr. Anderson: I haven't got it before me.

The Special Master: Just answer my questions. Do the parties agree on all the claims mentioned in the column headed, "Part of improvement in West Virginia," except as to item 16?

Mr. McClintic: I think so.

Mr. Harrison: Let us see what the disagreement is about that.

The Special Master: I will attend to that. You cannot make any progress unless you proceed logically.

Mr. McClintic: Now, take the next claim.

Mr. Harrison: 16, you say, is not agreed on?

The Special Master: One moment. Do the parties agree on the sum stated in the column marked "Part of the improvement in West Virginia," with the exception of item 16?

Mr. McClintic: I understand so, yes.

The Special Master: Very well. Mark that down, that the parties do so agree. 972

Mr. Conley: We are not agreeing that we owe it.

The Special Master: No, that is not implied at all.

Mr. Conley: But the record does not show that.

The Special Master: Have the record show that the Master inquires whether they agree on the amounts stated.

Mr. Conley: How easy it would be for the Court, not understanding what is going on here, to understand from the record that we agree that that is a proper charge.

The Special Master: Well, let me state it in the record again, that there is no agreement that has yet been made, or intended to be made, that will be intended to bind or will bind—and this is the fourth or fifth time I have stated this—either party as to their classification or as to whether they are or are not a proper subject of credit. The agreement only goes so far as to fix the amount. A record might be so construed that there would be some misunderstanding, and you are perfectly right, Mr. Attorney General, to have it distinctly understood that no agreement that has been made or that will be made in connection with any of these items in any of these schedules binds either party as to their classification, or as to whether they are or are not a proper subject of credit. That will be distinctly understood, and I think is now clear upon the record.

Mr. Conley: You stated that broadly on yesterday; that was my understanding also, but I wanted it to appear so clearly on the record that there would not possibly be any doubt about it.

Mr. Anderson: That was stated a half a dozen times.

The Special Master: Well, it does not hurt to have it stated 973
again. Now, as to item 16.

Mr. McClintic: I took the deposition of a witness on that question, and we claim it should be 16-2/3 per cent. instead of 17.39 per cent.

Mr. Harrison: Do you not agree, Mr. Dixey, with Mr. Potter on that?

Mr. Dixey: No, sir.

The Special Master: It is either 17.39 or—what is the other figure?

Mr. McClintic: It is either 17.39 or 16-2/3 per cent.

The Special Master: There is a difference, then, of about one per cent. Do you want to waste any time on that?

Mr. Anderson: No.

Mr. McClintic: It is merely a matter of proof by my witness. I can prove that by my witness.

The Special Master: Well, shall I put in 16-2/3 instead of 17.39?

Mr. Harrison: We have been acceding and conceding—

The Special Master: You do not have to accede to anything. The question is, will Virginia agree to that being 16-2/3?

Mr. Anderson: Yes, sir; we will.

The Special Master: Let that go into the record that way, then.

Mr. Anderson: That would be less than $48.

The Special Master: On page 6 I notice, "Revised figures, 974
June 30, 1909, construction charged to West Virginia, page 5. $465,732.11," and other pages there, there being six totals in all.

Mr. Dixey: That all relates back, if you will look at the preceding page, to the Northwestern turnpike.

The Special Master: The computations are agreed to, are they?

Mr. Dixey: As I understand it, they are, yes, sir.

The Special Master: Now, take up page 7. Do those summaries also result from the previous computations?

Mr. Dixey: Yes, sir.

The Special Master: Then they are agreed to. Now, let us take up page 8.

Mr. Harrison: That is part of what you have already been considering.

The Special Master: Page 8 is?

Mr. Harrison: Yes.

The Special Master: Some of the items already considered?

Mr. Harrison: No, that is a continuation.

The Special Master: Very well. Let me take those. Beginning on page 8, and running to 15—

Mr. McClintic: Page 8 ends the first division.

The Special Master: Oh, yes. Now, page 8, those are the figures, the computations, appearing in the three columns, "Part of improvement in West Virginia," the total, and "Amount chargeable to West Virginia;" and the amounts agreed upon as correctly stated.

Mr. Anderson: There is a change in the total, but that is made in another place. 975

The Special Master: Where there is an error in computation, that can be fixed. Are those amounts agreed upon?

Mr. Dixey: Yes, sir.

The Special Master: They are agreed upon, and let it be so marked in the record. Now, beginning at page 9 and running to page 15, the amounts of various items that appear on those pages; are the amounts of the various items as appearing on those pages agreed to?

Mr. Dixey: 8 to 15, inclusive, all with the exception of the last item, marked 112 Trans-Alleghany Lunatic Asylum, are agreed to.

The Special Master: Where is the item?

Mr. Dixey: 112, the last item, Trans-Alleghany Lunatic Asylum.

The Special Master: We can take care of that. All of the items on page 9 to page 15, under the column of "Amount chargeable to West Virginia," it is agreed that the amounts are correctly stated;

the parties still agree. Now, as to 112, Trans-Alleghany Lunatic Asylum, $125,000, is it or not agreed that that is the correct amount, without respect to whether it is chargeable or not?

Mr. Carlisle: There is $27,000 difference there.

The Special Master: There is $27,000 difference there. What gives rise to that difference?

Mr. Dixey: The $27,000 that was returned from the Lunatic Asylum to the State.

The Special Master: Am I to understand that you agree 976
that in the first instance there was $125,000 appropriated for
that purpose?

Mr. Dixey: Yes, sir.

The Special Master: And was it turned over to the Lunatic Asylum Fund?

Mr. Dixey: Yes, sir.

The Special Master: Then afterwards, your contention is that that was returned to the State?

Mr. Dixey: Yes, sir.

The Special Master: And therefore the $125.000 should be stated as minus $27,000?

Mr. Dixey: Yes, sir.

The Special Master: What do you say to that, Mr. Attorney General?

Mr. Anderson: Our friends are mistaken as to the facts. The facts are these. The $27,000 was paid to the Northwestern Lunatic Asylum and turned over to the Board of Directors. A military raid was made from Wheeling and that was taken from the Northwestern Lunatic Asylum. They were afraid the Confederates would get hold of it, and so that money was taken to Wheeling, and every dollar of it was expended on the Northwestern Lunatic Asylum in West Virginia.

The Special Master: What do you say to that, Brother McClintic?

Mr. McClintic: That is absolutely wrong. The money was paid into the treasury in the summer of 1861 and spent by the restored Government of Virginia for the purposes of government, spent by Virginia, by the State of Virginia.

The Special Master: Is not this the item as to which you produced some books here at the last hearing showing the $27,000
accounted for in some way? 977

Mr. McClintic: Yes.

The Special Master: Well, is there anybody that can supplement that in any way?

Mr. Harrison: Yes, sir. The books show that that money was put back into the treasury of the Lunatic Asylum.

The Special Master: If that is so, the books will show it. Have you any evidence in addition to the books, Brother McClintic?

Mr. McClintic: No, sir.

The Special Master: Have you any evidence, any testimony, Brother Harrison, that you can submit to me, in addition to the books already in?

Mr. Harrison: That book is in.

The Special Master: Well, have either of you anything supplemental to that?

Mr. Harrison: No, sir.

Mr. McClintic: No, sir.

The Special Master: Then there is no reason why these two experts cannot say to me what the books show. You stated $125,000 on the assumption that all went in, and they undertake to account for it in this way. Now, what I want these experts to do is to get together and show me what the books show as to this item. If they cannot get together, I will get an expert of my own to dig it out. It is not worth while to discuss that any longer. Now, what about this last, this page 16, Literary Fund Disbursements?

Mr. McClintic: That is a schedule of a total that is already 978 in.

The Special Master: Are those amounts correctly stated? I understand that that is agreed upon.

Mr. McClintic: Yes, sir.

[*Vol. 7. July 2, 1909. Relating to Winchester and Potomac R. R.*]

The Special Master: Defendant's Revised Exhibit C-1.

Mr. Carlisle: This is page 8, left-hand column. I will simply state we do not agree to that, of course. It is not part of the account. The item of the Winchester & Potomac Railroad, I have item No. 25. Mr. Potter has inserted this on his account:

"Excluded by defendants because it is stated that the loan of $150,000"—

The Special Master: Excuse me; the statement that Mr. Potter makes as to the reasons as given by the defendant is all well enough from his point of view, but it does not foreclose the defendant.

Mr. Carlisle: Here is another statement (reading):

"The Second Auditor pursued a course in dealing with these two items on his book not contemplated in the act authorizing the annuity, the result of which made it appear that the State had surrendered $270,000 for $83,333.33. The State intended to post-

pone the collection of the loan of $150,000 while and only so 998
long as the annuity was promptly paid by the company, and no reference is made in the act as to the disposition of the stock amounting to $120,000."

The Special Master: As to those items, I shall reach a conclusion that is predicated on the evidence in the case. Mr. Potter's conclusion will not have the slightest effect on the Master at all. There is no particular harm in his stating what his contention is, and whether Mr. Potter's conclusions are correct or not depends on what the acts of the Legislature and the record evidence in this case shows; and while the Master has not any objection to the suggestion of Mr. Potter, it will weigh nothing with the Master in reaching his conclusions. I will hear you all on that before I make my finding.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT D-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

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COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT D-1.

Such Proportion of the Ordinary Expenses of the Government of Virginia since any of said Debt was Contracted as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Average Total Population of Virginia With and Without Slaves, as shown by the Census of the United States.

PARAGRAPH IV OF DECREE.

Ordinary Expenses of the Government from March 19th, 1823, to December 31st, 1860, Inclusive.

Plaintiff	$37,794,211.18
Defendant	18,207,684.29
Difference	$19,586,526.89

This difference is composed of the following items, all of which are agreed to by the parties to be correct as to amount, but nothing contained herein shall be construed as an admission as to the propriety of including or excluding any disputed items:

No. 1	Tobacco Receipts (1)			$ 353,123.96
2	Constitutional Conventions			258,906.28
3	Slaves transported and executed			311,168.35
4	Boundary Lines			16,704.78
5	Maps (Commonwealth)	$16,628.04		
	Maps (Board of Public Works)	11,446.48		
				28,074.52
6	Deaf, Dumb and Blind Institution 1845-1860, New Buildings, etc. (See pages 5-7 for details)			80,661.94
7	International Exchanges			2,836.19
8	Overpayment of Treasury Notes			50.00
9	Printing Treasury Notes			375.74
10	Loss account of Counterfeit Money			190.00
11	Virginia Military Institute, New Buildings, etc. (See pages 8-9 for details)			151,000.00
12	University of Virginia, Repairs and Improvements to Buildings and Water Supply (See page 10 for details)			25,000.00
13	Improvements, Public Square (See page 11 for details)			1,456.91
	Improvements, Capitol Square (See page 12 for details)			12,278.47
14	Fugitive Slave Expense	$ 701.00		
	Reward, Additional	1,500.00		
				2,201.00
	Carried forward			$ 1,244,028.14

(1) Deducted from ordinary expenses by defendant.

	Brought forward			$ 1,244,028.14
No. 15	Penitentiary Lot, New Hospital Building, etc. (See page 13 for details)			13,947.48
16	Calling out Militia at Wheeling in 1836			1,099.00
17	Medical College of Virginia, Additions and Improvements to Buildings, etc. (See page 14 for details)			25,000.00
18	Attorney General's Fees, prosecuting Selden, Withers & Company			500.00
19	Eastern and Western Asylums (See pages 15-22 for details):			
	New Buildings, etc.	$336,845.56		
	Support	7,450.01		
				344,295.57
20	Gun House at Alexandria			900.00
21	Cannon House, Surry County			110.00
22	Gun House for Richmond Artillery			1,079.09
23	Sundry B. P. W. Expenses			36,728.50
24	Interest:			
	Interest on Public Debt	$18,324,044.50		
	Interest on Treasury Notes	133,527.34		
	Interest on Temporary Loans	107,844.57		
	Interest on Old Military Debt of 1814 and prior	9,331.43		
				18,574,747.84
				$20,242,435.62
	Less—Amount of payments to School Commissioners admitted by Defendant in Exhibit D-1, under Paragraph IV for			655,908.73
	But charged by Plaintiff as $830,865.37 (being payments into West Virginia Counties) in Exhibit C-1, under Paragraph III.			
	Net Difference			$19,586,526.89

Certified Correct:
ARTHUR G. POTTER.
PRICE, WATERHOUSE & COMPANY,
For the Plaintiff.

CLIFFORD E. SCOVILLE,
THOMAS BIRD DIXCY,
For the Defendant.

THE DIVISION OF THE ORDINARY EXPENSES OF GOVERNMENT IS MADE BY THE PARTIES TO THIS CAUSE AS FOLLOWS:

PLAINTIFF:

"The Average Total Population" *including slaves* is construed to mean the average for each decade determined by averaging the census at the beginning and at the end of that decade. The average total population so found determines the proportion in which the Total Ordinary Expense for that decade is to be charged to the two States. (See page 3 for details.)

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830	Virginia (estimated)	996,340	85.9789%	West Virginia	162,479	14.0211%
1830 and 1840	"	1,024,871	83.6218%	" "	200,731	16.3782%
1840 and 1850	"	1,067,304	80.2045%	" "	263,425	19.7955%
1850 and 1860	"	1,169,489	77.5014%	" "	339,501	22.4986%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830,	Total	$ 3,367,513.89	Virginia,	$ 2,895,351.40	85.9789%	West Virginia,	$ 472,162.49	14.0211%
October 1st, 1830-September 30th, 1840,	Total	5,344,600.21	Virginia,	4,469,250.90	83.6218%	West Virginia,	875,349.31	16.3782%
October 1st, 1840-September 30th, 1850,	Total	8,700,443.93	Virginia,	6,978,147.55	80.2045%	West Virginia,	1,722,296.38	19.7955%
October 1st, 1850-December 31st, 1860,	Total	20,381,653.15	Virginia,	15,796,066.53	77.5014%	West Virginia,	4,585,586.62	22.4986%
Total		$37,794,211.18		$30,138,816.38			$ 7,655,394.80	

"The Average Total Population" *excluding slaves* is treated in the same manner as above producing the following:

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830	Virginia (estimated)	559,399	79.3334%	West Virginia.	145,725	20.6666%
1830 and 1840	"	583,579	76.1625%	" "	182,650	23.8375%
1840 and 1850	"	626,041	71.9611%	" "	243,931	28.0389%
1850 and 1860	"	707,228	68.8438%	" "	320,065	31.1562%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830,	Total	$ 3,367,513.89	Virginia,	$ 2,671,563.26	79.3334%	West Virginia,	$ 695,950.63	20.6666%
October 1st, 1830-September 30th, 1840,	Total	5,344,600.21	Virginia,	4,070,581.13	76.1625%	West Virginia,	1,274,019.08	23.8375%
October 1st, 1840-September 30th, 1850,	Total	8,700,443.93	Virginia,	6,260,935.16	71.9611%	West Virginia,	2,439,508.77	28 0389%
October 1st, 1850-December 31st, 1860,	Total	20,381,653.15	Virginia,	14,031,504.53	68.8438%	West Virginia,	6,350,148.62	31.1562%
Total		$37,794,211.18		$27,034,584.08			$10,759,627.10	

Total charge to West Virginia on basis of Average Total Population *including slaves* ..... $ 7,655,394.80

Total charge to West Virginia on basis of Average Total Population *excluding slaves* $10,759,627.10

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the above calculations are correctly made but objects both to the method adopted and to the division so arrived at as well as the amount to be divided.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

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PLAINTIFF'S METHOD OF ARRIVING AT PERCENTAGES TO DIVIDE ORDINARY EXPENSES OF GOVERNMENT.

TOTAL POPULATION INCLUDING SLAVES.

	Virginia.		*West Virginia.*	
1820	928,558		136,808	
1830	1,034,481		176,924	
10 years' Increase	105,923		40,116	
1022/3652 of Increase	29,642		11,226	
Add—1820	928,558		136,808	
1823	958,200		148.034	
1830	1,034,481		176,924	
	2)1,992.681		2)324,958	
	996,340	85.9789%	162.479	14.0211%
1830	1,034,481		176,924	
1840	1,015,260		224,537	
	2)2,049,741		2)401,461	
	1,024.871	83.6218%	200,731	16.3782%
1840	1,015,260		224,537	
1850	1,119,348		302,313	
	2)2,134,608		2)526,850	
	1,067,304	80.2045%	263,425	19.7955%
1850	1,119,348		302,313	
1860	1,219,630		376,688	
	2)2,338,978		2)679,001	
	1,169,489	77.5014%	339,501	22.4986%

TOTAL POPULATION EXCLUDING SLAVES.

	Virginia.		*West Virginia.*	
1820	518,529		121,689	
1830	582,397		159,251	
10 years' Increase	63,868		37,562	
1022/3652 of Increase	17,873		10,511	
Add—1820	518,529		121,689	
1823	536,402		132,200	
1830	582,397		159,251	
	2)1,118,799		2)291,451	
	559,399	79.3334%	145,725	20.6666%
1830	582,397		159,251	
1840	584,761		206,049	
	2)1,167,158		2)365,300	
	583.579	76.1625%	182,650	23.8375%
1840	584,761		206,049	
1850	667,320		281,813	
	2)1,252,081		2)487,862	
	626,041	71.9611%	243,931	28.0389%
1850	667,320		281,813	
1860	747,136		358,317	
	2)1,414,456		2)640,130	
	707.228	68.8438%	320,065	31.1562%

DEFENDANT:

"The Average Total Population of Virginia, with and without Slaves, as shown by the census of the United States" is construed to mean the average of the five censuses from 1820 to 1860 both inclusive; and the proportion of the total ordinary expenses of Virginia for the period from March 19th, 1823, to December 31st, 1860, chargeable to West Virginia on the above basis, is determined by dividing the said total Ordinary Expenses on the ratio which the average total population of Virginia with and without slaves bears to the average total population with and without slaves of those counties which were created into the State of West Virginia:

Virginia:						
Census of 1820	Population with Slaves	928,558		Population without Slaves	518,529	
" " 1830		1,034,481			582,397	
" " 1840		1,015,260			584,761	
" " 1850		1,119,348			667,320	
" " 1860		1,219,630			747,136	
Total 5 censuses		5,317,277			3,100,143	
Average 5 censuses		1,063,455	81.3718%		620,029	73 3369%
West Virginia:						
Census of 1820	Population with Slaves	136,808		Population without Slaves	121,689	
" " 1830		176,924			159,251	
" " 1840		224,537			206,049	
" " 1850		302,313			281,813	
" " 1860		376,688			358,317	
Total 5 censuses		1,217,270			1,127,119	
Average 5 censuses		243,454	18.6282%		225,424	26.6631%

The proportion of the Ordinary Expenses of the government of Virginia assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia as shown by the census of the United States:

With Slaves.....18.6282% of $18,207,684.29 = $3,391,763.84

Without Slaves.....26.6631% of $18,207,684.29 = $4,854,733.07

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above calculations are correctly made, but objects both to the method adopted, and the division so arrived at, as well as the amount to be divided.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

No. 6.

DEAF, DUMB AND BLIND INSTITUTE.

This Institute was established under an Act of March 31st, 1839, page 32, Chapter 19, authorizing an appropriation out of the revenue of the Literary Fund, for an amount not exceeding $20,000, for purpose of procuring a site or sites and erecting necessary buildings, etc.

Payments were made as follows:

Year	1839	$10,000.00	
"	1841	5,000.00	
"	1842	2,500.00	
"	1843	2,500.00	
			$20,000.00

An Act of March 20th, 1841, page 37, Chapter 14, authorized the payment of $6,250 for purchase of furniture, musical instruments, books, etc., apparatus, and other articles, required for the outfit of the Institution. Payment was made in 1841 in two amounts—viz: $1,562.50 and $4,687.50. Total..... 6,250.00

An Act of January 23rd, 1845, page 13, Chapter 9, authorized an appropriation of $25,000 for completion of the buildings of the Institution, provided that the aforesaid appropriation should be so expended as to fully complete the said buildings in such mode and style as such appropriations would warrant.

Payments were made as follows:

Year	1845	$ 4,166.66	
"	1846	4,166.66	
"	1846	4,166.66	
"	1847	4,166.66	
"	1847	4,166.66	
"	1848	488.66	
			21,321.96

An Act of March 20th, 1847, page 230, Chapter 272, authorized a payment of $5,998.98 to William C. Adams, or his legal representative, being an allowance on account of work done, materials furnished, etc., in erection of buildings.

Payment was made in 1847..... 5,998.98

An Act of February 24th, 1846, page 20, Chapter 18, authorized a payment of $5,000 for necessary furniture and fixtures.

Payments were made as follows:

Year	1846	$ 2,500.00	
"	1847	2,500.00	
			5,000.00

Carried forward $58,570.94

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Page 6

Brought forward		$58,570.94
An Act of March 16th, 1847, page 16, Chapter 15, provided among other things for the following—viz: $2,000 for the purchase of 20 acres of land adjoining and lying south of the present Institution lot; $1,000 for the purchase of raised and common types, moulds, and other printing apparatus as may be required; $2,300 for the purchase of materials, machines and tools for the various workshops of said Institution, and for the completion of said workshops. Payments were made in 1848		5,300.00
An Act of January 25th, 1849, page 14, Chapter 12, authorized payment of an amount not to exceed $4,000 for the erection of a plain, substantial brick building of sufficient size to contain a laundry and bakehouse, and accommodations for servants. Payment was made in 1849		4,000.00
An Act of March 7th, 1851, page 5, Chapter 2, authorized payment of $2,500 for completing the buildings of the Institution. Payment was made in 1851		2,500.00
An Act of March 14th, 1850, page 4, Chapter 1, authorized payment of $6,000 for furniture for increased number of pupils in the Institution under Act of March 16th, 1847, and for arrears in support of Institution. Payment was made in 1850.....		6,000.00
An Act of June 5th, 1852, page 29, Chapter 35, authorized the payment of $2,000 for purchase of a library, philosophical apparatus and an organ.		
Payments were made as follows:		
Year 1852	$ 1,000.00	
" 1853	1,000.00	
		2,000.00
An Act of February 24, 1853, page 126, Chapter 145, authorized the following payments: $7,000 for construction of fixtures for warming buildings; $5,000 for construction of apparatus for lighting buildings with gas; $8,000 for the erection of an additional building.		
Payments were made as follows:		
Year 1853	$ 5,000.00	
" 1853	2,500.00	
" 1854	10,000.00	
" 1855	2,500.00	
		20,000.00
An Act of March 4th, 1854, page 30, Chapter 41, authorized payment of $10,000 for permanent water supply. Payment was made in 1854.....		10,000.00
Carried forward		$108,370.94

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Brought forward		$108,370.94
An Act of March 13th, 1856, page 80, Chapter 93, authorized the following payments: $3,000 for additional boiler, and erection of suitable boiler house to complete the heating of the buildings by steam; $1,000.00 for purchase of fire engine and erection of engine house; $1,500 for purchase of an organ, in addition to amount appropriated by former Act; $1,000 for fencing grounds, and $2,841 for deficiency of Chapel Steam and Gas Fund.		
Payments were made as follows:		
Year 1856	$ 8,341.00	
" 1857	1,000.00	
		9,341.00
An Act of January 10th, 1860, page 106, Chapter 12, authorized an appropriation of $7,000 for the erection of a shop building and to warm and light same with steam and gas. Payment was made in 1860.....		7,000.00
		$124,711.94
Less		
Amounts included by defendant in ordinary expenses of government:		
Under Act of March 20th, 1841.....	$ 6,250.00	
do Feb. 24th, 1846	5,000.00	
do March 16th, 1847	3,300.00	
do March 14th, 1850	6,000.00	
do June 5th, 1852	2,000.00	
do March 13th, 1856 (purchase of organ), ...	1,500.00	
	$24,050.00	
Original buildings under Act of March 31st, 1838....	20,000.00	
		44,050.00
Net amount plaintiff claims as an addition to defendant's ordinary expenses on this account		$ 80,661.94

No. 11.

VIRGINIA MILITARY INSTITUTE.

This Institute was established under an Act of March 29th, 1839, entitled:

"An Act amending and reducing into one the several Acts concerning the reorganization of the Lexington Arsenal and the establishment therewith of a Military School at Washington College."

An Act of March 6th, 1840, page 26, Chapter 15, authorized an appropriation of $4,500 for the erection of a steward's house and for furnishing a supply of water for the Institute, to be paid as follows: $1,500 in the year 1840, $1,500 in 1841 and $1,500 in 1842. Payments were made accordingly ..... $ 4,500.00

An Act of February 14th, 1844, page 22, Chapter 27, authorized appropriation of an amount not exceeding $1,000 for the erection of a magazine and shelter for artillery at the Institute. Payment was made in 1845 ..... 1,000.00

An Act of March 7th, 1848, page 18, Chapter 17, authorized an appropriation of $4,500 for erecting a house for an additional Professor; also a hospital, at the Institute. Payment was made in 1848..... 4,500.00

An Act of March 8th, 1850, page 16, Chapter 19, authorized an appropriation of $46,000—viz: $11,500 a year for four years, for construction of suitable buildings for cadets' quarters, and for other purposes, as specified in the report of the Board of Visitors of September 15th, 1849.

Payments were made as follows:

Year	1850	$11,500.00	
"	1851	29,500.00	
			41,000.00

An Act of June 5th, 1852, page 21, Chapter 20, appropriating the public revenue for fiscal year 1851-1852 authorizes payment of the balance of $5,000 for erection of new barracks, etc., under Act of March 8th, 1850 (above). Payment was made in 1852..... 5,000.00

An Act of May 29th, 1852, page 29, Chapter 34, makes provision for additional accommodation for the cadets of the Institute, the new barracks erected under Act of March 8th, 1850, being insufficient to accommodate the additional cadets. This Act also mentions that an addition of funds is needed for the purpose of improved heating and lighting arrangements. An amount of $30,000 was appropriated for these purposes. Payment was made in 1852..... 30,000.00

Carried forward ..... $ 86,000.00

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Brought forward		$ 86,000.00
An Act of March 1st, 1854, page 31, Chapter 42, provided for the completion of the barracks, and the erection of a mess hall at the Institute. An amount of $20,000 was appropriated for these purposes to be paid in four installments of $5,000 each.		
Payments were made as follows:		
Year 1854	$15,000.00	
" 1855	5,000.00	
		20,000.00
An Act of March 31st, 1858, page 115, Chapter 162, provides for the completion of Institute buildings, enclosing its grounds, and procuring a supply of water for said Institute. An appropriation of $25,000 was made as follows: $16,000 to meet the deficiency in Building Fund and complete the barracks and mess hall; $6,000 for procuring a supply of water, and $3,000 for enclosing the grounds.		
Payments were made as follows:		
Year 1858	$10,000.00	
" 1859	9,000.00	
" 1860	6,000.00	
		25,000.00
An Act of March 28th, 1860, page 105, Chapter 7, makes an appropriation of $20,000 for additional buildings. Payment was made in 1860		20,000.00
Total		$151,000.00

No. 12.

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UNIVERSITY OF VIRGINIA, $25,000.00.

This payment was authorized by the Act of February 28th, 1854, Chapter 36, page 26, as follows:

"Appropriated to the University of Virginia the sum of $25,000.00 for the purpose of repairing and improving the buildings thereof and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the said institution."

No. 13.

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IMPROVEMENTS PUBLIC SQUARE, $1,456.91.

his amount covers sundry expenditures for the improvement of the e, for work done at the Capitol, for laying water pipes, and for items , being quarterly allowance to the superintendent of the Capitol Square 6 and 1827. While the books do not show the exact nature of the im- ments, they were charged to "Public Improvements" account on the of the Commonwealth.

No. 13.

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IMPROVEMENTS CAPITOL SQUARE, $12,278.47.

The items making up this total are as follows:

From General Appropriation:	
1825—For guard house	$ 2,700.00
1834—For "graduation" of the grounds about the Capitol, etc.	4,127.69
1838—For water system in Capitol and Governor's house	2,285.70
1851—New gas system	1,024.14
1851— do	880.94
1855—Purchase of lot adjoining Square—Act of April 3rd, 1848	1,260.00
Total	$12,278.47

No. 15.

PENITENTIARY.

Act of March 9th, 1833, page 18, Chapter 19, authorized an appropriation, not to exceed $7,000.00, for the erection of a hospital, buildings and sheds for the preservation of timber and manufactured articles, and if necessary to enlarge a part of the outer walls to take them within the enclosure.

Act of March 11th, 1834, page 6, Chapter 2, authorized an appropriation of $2,500.00 for completing the improvements at the Penitentiary.

Payments were made as follows:

Year	1833	$ 797.44	
"	1834	8,169.43	
"	"	150.00	
"	1835	37.80	
"	"	150.73	
"	"	41.58	
			$ 9,346.98

Act of March 12th, 1835, page 5, Chapter 2, authorized payment of $3,000.00 to Charles L. Winfield for lots condemned to obtain supply of water for use of the Penitentiary. Payment was made in 1837 ..... 3,000.00

General appropriation Act of March 5th, 1835, authorized payment of $1,600.50 for iron pipes for conducting water to the Penitentiary. Payment was made in 1840 ..... 1,600.50

Total $13,947.48

No. 17.

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MEDICAL COLLEGE OF VIRGINIA, $25,000.00

This amount was paid under an Act of March 1st, 1860, page 104, Chapter 8, as follows:

"Act appropriating $30,000.00 to the Medical College of Virginia for enlarging the hospital or infirmary, for extending the College buildings, and for improvement and extension of the College museum."

The Medical College of Virginia succeeded the old Richmond Medical College, and was incorporated in 1860 under the above style.

No. 19.

LUNATIC HOSPITALS.

EASTERN ASYLUM, WILLIAMSBURG.....	$133,280.19
WESTERN ASYLUM, STAUNTON.....	211,015.38
	$344,295.57

EASTERN ASYLUM AT WILLIAMSBURG, ESTABLISHED UNDER ACT OF JANUARY 1st, 1787:

An Act of March 5th, 1824, page 93, Chapter 90, authorized the Directors of the Hospital to contract for the erection of an additional brick building, containing convalescent apartment for females, not to exceed $5,000.		
Payments were made as follows:		
Year 1824	$ 2,500.00	
" 1825	2,500.00	
		$5,000.00
An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $6,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1833		6,000.00
An Act of March 12th, 1834, page 27 Chapter 19, authorized the Directors of the Hospital to draw upon the Treasury for money to finish their buildings authorized by the Act of March 1st, 1833, the amount not to exceed $9,000. Payment was made in 1834.....		9,000.00
An Act of March 12th, 1835, page 17, Chapter 17, appropriated $2,660.00 necessary for completion of buildings. Payment was made in 1835		2,660.00
An Act of March 31st, 1837, page 18, Chapter 19, appropriated $1,000 for purchase of land near hospital, a neat 2-horse carriage and a pair of horses, and such other articles as recommended. Payment was made in 1837		1,000.00
An Act covering general appropriations for the year 1837 authorized payment of an amount of $658.88 for buildings. Payment was made in 1837.....		658.88
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1839...		12,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of amount not to exceed $5,000 for enclosures and buildings. Payment was made in 1839		5,000.00
Carried forward		$41,318.88

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Brought forward		$41,318.33
An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not to exceed $12,000 for an addition to the asylum, to be paid in the following manner—viz: $6,000 when the contract is ratified and the bond duly executed, remaining $6,000 on completion of building, provided same shall not be less than twelve months after first payment is drawn.		
Payments were made as follows:		
Year 1842	$ 6,000.00	
" 1844	4,000.00	
		10,000.00
An Act of February 12th, 1844, page 17, Chapter 12, authorized payment of $2,000 for the erection of an additional building. Payment was made in 1844....		2,000.00
An Act of February 14th, 1844, page 16, Chapter 11, authorized payment of $5,000.00 for remodeling and repairing the body of the old building. Payment was made in 1844		5,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount not exceeding $25,000 for additional buildings, to be paid in the following manner—viz: $5,000 on ratification of contract; $5,000 on July 1st, 1848; $5,000 on January 1st, 1849; $5,000 on July 1st, 1849, and $5,000 on January 1st, 1850. Payments were made accordingly		25,000.00
An Act of January 13th, 1849, page 15, Chapter 13, authorized payment of $6,266 for furniture for the additional building, and for such clothing as might be necessary for the additional number of patients to be admitted, and to pay the excess of the price of the buildings contracted for over the appropriation. Payment was made in 1849.....		6,266.00
An Act of January 22nd, 1850, page 16, Chapter 17, authorized payment of an amount of $11,500 for arrears on buildings, and furnishing water and additional accommodation for free colored persons at the Asylum, also to purchase furniture for the new building. Payment was made in 1850.....		11,500.00
An Act of January 21st, 1853, page 126, Chapter 144, authorized payment of an amount of $7,000 for repairing and rebuilding buildings, etc., as follows: $661 for purchase of the "Six Chimney" lot; $1,839 on ratification of contract and execution of bond required; $2,500 after the work shall have been half completed, and $2,000 on completion of the contract hereby authorized.		
Payments were made as follows:		
Year 1853	$ 2,500.00	
" 1854	4,500.00	
		7,000.00
Carried forward		$108,084.33

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Brought forward		$108,084.88
n Act of March 1st, 1854, page 29, Chapter 39, authorized payment of an amount of $17,750 for erecting and repairing buildings and enclosures, for purchasing a lot of land, for the use of the Asylum, for improving its grounds, for providing furniture and other conveniences for the same, $11,750.00, and for lighting the institution with gas, $6,000.00.		
ayments were made as follows:		
Year 1854	$ 3,750.00	
" 1855	6,000.00	
" 1856	8,000.00	
		17,750.00
n Act of March 18th, 1856, page 24, Chapter 17, authorized payment of $7,500 for purchase of certain sections of streets penetrating the lands adjacent thereto for the use of the Asylum. Payment was made in 1856		7,500.00
		$133,334.88
Less—Credit—Building Account.....		54.69
et amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account.....		$133,280.19

WESTERN ASYLUM AT STAUNTON, ESTABLISHED UNDER ACT OF JANUARY 22nd, 1825.

This Asylum was established under an Act of January 22nd, 1825, page 30, Chapter 35, authorizing directors to purchase a piece or parcel of land, not exceeding four acres, and contract for the erection thereon of a commodious house or houses, for the accommodation of persons of unsound mind. Provided that the whole expense shall not exceed $10,000.00.		
Payments were made as follows:		
Year 1825	$ 5,000.00	
" 1826	5,000.00	
		$10,000.00
An Act of February 24th, 1827, page 9, Chapter 4, authorized payment of $12,000.00 toward the completion of the Asylum, to be paid by installments as the work progressed.		
Payments were made as follows:		
Year 1827	$6,000.00	
" 1827	6,000.00	
		12,000.00
An Act of February 17th, 1830, page 9, Chapter 6, authorized payment of $5,000.00 for enclosing buildings of the Asylum and the lot with a suitable wall of stone or brick. Payment was made in 1830.....		5,000.00
Cost of buildings not claimed by Plaintiff as Ordinary Expenses. (See page 22).....		$ 27,000.00
An Act of March 1st, 1833, page 22, Chapter 29, authorizing payment of an amount not to exceed $6,000.00 for the extension of the buildings of the institution so as to make same fit for the reception and accommodation of an additional number of lunatics. That the plan and dimensions of said building shall be agreed upon and prescribed by the directors and shall contain no more than forty cells, or apartments. Payment was made in 1833.....		6,000.00
Carried forward		$33,000.00

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Brought forward	$ 33,000.00
An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $1,000.00 to contract for conducting an ample supply of good spring water to the Asylum in iron pipes without the use of forcing pump or other machinery. Payment was made in 1833	1,000.00
An Act of March 12th, 1834, page 27, Chapter 19, authorized appropriations as might be necessary to defray expenses of the additional buildings authorized by an Act of March 1st, 1833. Provided the whole expense shall not exceed $9,000.00 for each hospital over and above the amount already appropriated to these objects by said Act of March 1st, 1833. Payment was made in 1834.....	9,000.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a sum of money in addition to the sum appropriated by Act of March 1st, 1833, for conducting an ample supply of good spring water to the said Asylum in iron pipes, the additional sum not to exceed $1,200.00. Payment was made in 1835.....	1,200.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a further sum not to exceed $1,500.00 in addition to amounts heretofore appropriated by Acts of March 1st, 1833, and March 12th, 1834, necessary for the completion of the additional buildings. Payment was made in 1835.....	1,500.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of an amount of $1,500.00 for completing the graduation and building partition walls for the male and female wards. Payment was made in 1835	1,500.00
An Act of March 22nd, 1836, page 9, Chapter 8, authorized payment of an amount not to exceed $6,000.00, in addition to amounts heretofore appropriated, for the completion of the additional buildings heretofore authorized to be erected, and also for the completion of the partition walls authorized to be erected by the Act of March 12th, 1835. Payment was made in 1836	6,000.00
Carried forward	$ 53,200.00

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	Brought forward	$ 53,200.00
An Act of March 31st, 1837, page 18, Chapter 19, authorized payment of an amount not to exceed $1,000.00 for the purchase of land near hospital, a neat two-horse carriage and a pair of horses, and such other articles as are recommended in the report of the physician of the Western Asylum, and calculated to aid in the restoration of patients confined in a lunatic hospital. Payment was made in 1837		1,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $5,000.00 for the purchase of land near said hospital, the erection of workshops, the purchase of tools and materials for manufacture, and such other articles as were recommended by the report of the physician or directors. Payment was made in 1838		5,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000.00 for the extension of buildings so as to make them fit for the accommodation of an additional number of lunatics. Payment was made in 1838.....		12,000.00
An Act of April 10th, 1839, page 14, Chapter 17, authorized payment of an amount not to exceed $5,000.00, in addition to sums heretofore appropriated, for an ample supply of water. Payment was made in 1839		5,000.00
An Act of March 8th, 1842, page 16, Chapter 18, authorized that an amount of $9,060.44 be appropriated to discharge in full, including any claim for interest, the debt due from the Commonwealth to the workmen for completing the additional building to the Asylum. Payment was made in 1842.....		9,060.44
An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not exceeding $24,000.00 out of the Treasury of the Commonwealth for entire completion of the additional buildings thereby authorized, as follows: $8,000 on the ratification of the contract and execution of the bond required; $8,000 in twelve months thereafter, and remaining $8,000 on the completion of the buildings, provided the same shall not be in less than twelve months from the last payment.		
Payments were made as follows:		
Year 1842	$ 8,000.00	
" 1843	8,000.00	
" 1844	8,000.00	
		24,000.00
Carried forward		109,260.44

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Brought forward		$109,260.44
An Act of February 12th, 1844, page 16, Chapter 10, authorized payment of $8,000.00 for furnishing the new addition to the Asylum, and to the support and maintenance of said Asylum. Payment of $3,000.00 was made in 1844		3,000.00
An Act of March 4th, 1846, page 19, Chapter 17, authorized payment of $4,000.00 for additional purchase of land. Payment was made in 1846.....		4,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount of $36,000.00 for the completion of additional buildings, as follows: $7,000.00 on the ratification of contract and execution of bond required; $7,000.00 on July 1st, 1848; $7,000.00 on January 1st, 1849; $7,000.00 on July 1st, 1849, and $8,000.00 on January 1st, 1850; provided said buildings shall be completed on the day last aforesaid; if not then, upon the completion thereof.		
Payments were made as follows:		
Year 1848	$ 7,000.00	
" 1849	21,000.00	
" 1850	8,000.00	
		36,000.00
An Act of January 15th, 1849, page 14, Chapter 13, authorized payment of an amount not exceeding $8,500.00 for the purchase of furniture for the two additional buildings heretofore directed to be built by the directors of the Asylum, and for such clothing as may be necessary for the additonal number of patients to be admitted into said Asylum.		
Payments were made as follows:		
Year 1849	$ 5,000.00	
" 1850	3,500.00	
		8,500.00
An Act of January 19th, 1850, page 15, Chapter 16, authorized payment of $14,500.00 for the purpose of erecting a plain and substantial building, to contain a kitchen, bakery, pantry, store rooms, dining room, chapel, clothes rooms, medicine and library rooms, and other rooms rendered necessary by the great enlargement of said Asylum by previous Acts of the General Assembly.		
Payments to be made as follows: $7,250.00 July 1st, 1850, and $7,250.00 January 1st, 1851, same being sufficient to complete entirely, in the opinion of the directors, the necessary out-buildings in conformity with the present enlarged plan of said Asylum.		
Payments were made as follows:		
Year 1850	$ 7,250.00	
" 1851	7,250.00	
		14,500.00
An Act of February 25th, 1852, page 30, Chapter 36, authorized payment of $5,000.00 for constructing fixtures and apparatus for lighting with gas. Payment was made in 1852		5,000.00
Carried forward		$180,260.44

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Brought forward		$180,260.44
An Act of March 1st, 1854, page 29, Chapter 40, authorized payment of an amount of $34,188.00 to heat the buildings by steam, to erect covered connections and verandas, and to enclose the grounds of the said Asylum, as follows: $15,000.00 for heating by steam, $9,150.00 for erection of covered connections and verandas, $10,038.00 for enclosing the grounds; one-half to be paid during the present fiscal year and the remaining half the next succeeding fiscal year.		
Payments were made as follows:		
Year 1854	$ 7,500.00	
" 1855	7,500.00	
" "	5,000.00	
" 1856	1,800.00	
" "	2,000.00	
" "	5,038.00	
" 1857	5,350.00	
		34,188.00
An Act of March 18th, 1856, page 23, Chapter 17, authorized appropriation of $4,185.82 to pay deficit on steam account of said Asylum. Payment of $1,000.00 was made in 1857		1,000.00
An Act of April 7th, 1858, page 12, Chapter 14, authorized appropriation of $3,685.82 to pay balance of deficit on steam account. Payment of $3,685.00 was made in 1858		3,685.00
An Act of March 19th, 1858, page 116, Chapter 166, authorized appropriation of $10,000.00 to procure a supply of water for the Asylum.		
Payments were made as follows:		
Year 1858	$ 2,500.00	
" 1859	7,500.00	
		10,000.00
An Act of March 17th, 1860, page 81, Chapter 5, authorized appropriation of $13,000.00 for erection of laundry. Payment was made in 1860.....		12,931.93
Amount for support in 1835		7,450.01
		$249,515.38
Less:		
Buildings. (See page 18.)	$27,000.00	
Amounts for furniture already included by defendant:		
Under Act of February 12th, 1844. $ 3,000.00		
Under Act of January 13th, 1849. 8,500.00	11,500.00	
		38,500.00
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account.....		$211,015.38

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

LITERARY FUND

DEFENDANT'S EXHIBIT D-2

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

Def. Ex. D-2
Page 1

DEFENDANT'S EXHIBIT D-2

COMMONWEALTH OF VIRGINIA—LITERARY FUND.

TOTAL AMOUNT OF THE FUND SHOWING CASH ON HAND AND INVESTMENTS, AT COST.

	Mch. 19, 1823	Jan. 1, 1861.
Cash,	$ 94,021.42	$ 23,985.18
Bank of Virginia stock,	192,013.45	146,832.57
Farmers' Bank of Virginia stock,	109,492.75	102,305.75
Northwestern Bank of Virginia stock,	.....	50,000.00
Bank of the Valley stock,	.....	10,134.00
Fairmont Bank stock,	.....	50,000.00
United States Bank stock,	96,400.00	.....
Richmond Academy stock,	.....	400.00
James River Company stock, the annuity on which was assumed by the Commonwealth in accordance with act passed March 23, 1860,	52,095.00	96,950.00
(1) University of Virginia, loan No. 1,	40,000.00	40,000.00
(1) " " " 2,	20,000.00	20,000.00
(1) " " " 3,	29,100.00	29,100.00
(1) " " " 4,	30,900.00	30,900.00
(1) " " " 5,	.....	40,000.00
(1) " " " 6,	.....	5,000.00
(1) " " " 7,	.....	15,000.00
(1) Emory and Henry College loan,	.....	18,000.00
Washington College loan,	4,000.00	2,000.00
Loans to individuals,	80,000.00	.....
(1) The Faculty of the Medical Department of the Hampden-Sidney College at Richmond. Amount invested in land and buildings,	.....	25,000.00
(2) Medical College in the Valley of Virginia: Amount invested in property (at Winchester),	.....	6,400.00
(2) Davis's book on criminal law, copyright purchased,	.....	12,000.00
(3) John Preston, State Treasurer, balance due,	58,441.07	58,392.40
(3) Preston Smith,	649.45	649.45
United States 6% stock,	13,000.00	.....
James River Company bonds,	50,000.00	65,960.00
Virginia 6% military bonds,	20,964.40	24,039.17
" 7% " "	349,000.00	319,000.00
Virginia 5% internal improvement bonds,	.....	155,750.00
Virginia 6% internal improvement bonds,	.....	803,395.33
Bond of the Auditor of Public Accounts for amount paid into Commonwealth fund in accordance with act passed March 18, 1856,	.....	50,562.55
Total,	$1,240,077.54	$2,201,756.40

(1) Suspended debts.
(2) Unproductive.
(3) Considered lost.

STATEMENT "A"

COMMONWEALTH OF VIRGINIA.

TRANSACTIONS OF THE LITERARY FUND, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

TOTAL FUND, MARCH 19, 1823, PER STATEMENT "A,".....		$1,240,077.54
ADDITIONS TO THE FUND:—		
CASH:—		
FROM THE COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA—Schedule No. 1, ...	$ 114,395.46	
FROM THE COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA—Schedule No. 2, ...	401,972.14	
DIVIDENDS AND INTEREST ON INVESTMENTS OF THE FUND—Schedule No. 3, ...	1,059,695.03	
FROM OTHER FUNDS OF THE COMMONWEALTH OF VIRGINIA—Schedule No. 4, ..	3,109,839.88	
UNITED STATES WAR CLAIMS, LESS COMMISSIONS PAID, ...	182,441.48	
PROFIT ON UNITED STATES STOCK.....	818.18	
TOTAL ADDITIONS, ...		$4,869,162.17
		$6,109,239.71
DEDUCTIONS FROM THE FUND:—		
CASH:—		
FOR ACCOUNT OF THE PRIMARY SCHOOLS:—		
Paid from income from investments, ...	$2,400,331.11	
Paid from Capitation Tax, ...	655,908.73	$3,056,239.84
UNIVERSITY OF VIRGINIA, (at Charlottesville), ...	613,000.00	
INSTITUTE FOR THE DEAF, DUMB AND BLIND, (at Staunton), ...	40,821.62	
VIRGINIA MILITARY INSTITUTE—support,	28,500.00	
MARGARET ACADEMY, (Accomac County), ..	1,500.00	
SALARIES AND EXPENSES OF THE BOARD Schedule No. 5, ...	85,322.45	
PREMIUM PAID ON CITY OF RICHMOND STOCK	420.00	
TOTAL CASH DISBURSEMENTS, ...		$3,825,803.31
LOSSES:—		
AMOUNT WRITTEN OFF FOR THE REDUCTION IN PAR VALUE OF THE BANK OF VIRGINIA STOCK FROM $100. to $70. PER SHARE. 2121 SHARES, ...	$63,630.00	
LOSS ON UNITED STATES BANK STOCK:—COST—$96,-400. SOLD FOR $78,350, ...	18,050.00	
TOTAL LOSSES, ...	$81,680.00	
TOTAL DEDUCTIONS, ...		$3,907,483.31
TOTAL FUND, JANUARY 1, 1861, PER STATEMENT "A,".....		$2,201,756.40

STATEMENT "B."

Def. Ex. D-2
Page 3

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc	$ 58,059.46
Escheats, less refunds and expenses, ...	4,603.57
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	49,726.61
Sales of runaway slaves and free negroes, less refunds, ...	2,005.82
Total, ...	$114,395.46

STATEMENT "B".

Schedule No. 1.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc., ...	$306,856.98
Escheats, less refunds and expenses, ...	51,400.55
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	3,996.98
Sales of runaway slaves and free negroes, less refunds, ...	14,514.40
(1) Bristoe Estate:—	
Sale of lots in Prince William County, ...	17,289.18
Net income, ...	7,914.05
Total, ...	$401,972.14

(1) The books of original entry and published reports do not record the origin of the Bristoe estate. It is presumed to have been the property of Robert Bristoe, a British subject, which escheated to the Commonwealth.

STATEMENT "B".

Schedule No. 2.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

ICOME FROM INVESTMENTS AND LOANS, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

ividends on bank stock:—		
Bank of Virginia,		$ 424,209.83
Bank of the Valley,		12,373.00
Farmers' Bank of Virginia,		272,681.75
Northwestern Bank of Virginia,		89,500.00
Fairmont Bank,		2,000.00
Total,		$ 800,764.58
vidends on James River Company stock, subsequent to dividend of January 1, 1835, received from the James River and Kanawha Company,		155,291.08
vidends on Richmond Academy stock,		440.88
vidends on United States Bank stock,		11,350.00
terest on loans to and dividends on stock of City of Richmond,		16,531.71
terest on United States 6% stock,		3,200.40
terest on bonds of the Valley Turnpike Company, guaranteed by the State,		2,090.00
terest on loans:—		
Emory and Henry College,	$ 3,240.00	
Loans to individuals,	34,241.48	
Library fund,	8,477.76	
Medical College at Winchester,	1,974.93	
Richmond Medical College,	6,552.21	
University of Virginia,	7,200.00	
Washington College,	8,340.00	
Total,		$ 70,026.38
tal,		$1,059,695.03

STATEMENT "B".

Schedule No. 3.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

RECEIPTS FROM OTHER FUNDS OF THE COMMONWEALTH, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

COMMONWEALTH FUND:—		
Capitation Tax,	$ 751,481.63	
United States war claims,	77,216.28	
Interest,	926,919.28	
Total,		$1,755,617.19
INTERNAL IMPROVEMENT FUND:—		
Interest,	$1,303,535.77	
Dividends on James River Company stock, to and including dividend of January 1, 1835, and the July 1, 1860 dividend,	50,686.92	
Total,		$1,354,222.69
Total receipts from other funds,		$3,109,839.88

STATEMENT "B".

Schedule No. 4

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

SALARIES AND EXPENSES OF THE BOARD, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

SALARIES:—		
Second Auditor,	$33,342.84	
Clerks,	35,504.51	
Special Accountant,	100.00	
President,	2,326.81	
Directors,	4,556.50	
Messenger,	1,748.27	
Tax on above salaries	251.31	
Total,		$77,830.24
EXPENSES:—		
Advertising,	$ 123.13	
Legal expenses,	189.55	
Printing,	4,348.89	
General,	2,830.64	
Total,		$ 7,492.21
Total salaries and Expenses,		$85,322.45

STATEMENT "B".

Schedule No. 5.

Def. Ex. D-2.
Page 6

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Cash in Fund, March 19, 1823, per Statement "A",			$ 94,021.42
RECEIPTS:—			
From the counties now constituting the State of West Virginia—Statement "B", Schedule No. 1..		$ 114,395.46	
From counties now constituting the Commonwealth of Virginia—Statement "B", Schedule No. 2,		401,972.14	
Dividends and interest on investments of the fund—Statement "B", Schedule No. 3,		1,059,695.03	
From other funds of the Commonwealth of Virginia:—			
Statement "A", Schedule No. 4,	$3,109,839.88		
Commonwealth Fund—Redemption of 7% Military Debt,	30,000.00		
Internal Improvement Fund. On account of balance due from J. Preston, State treasurer, ..	48.67	3,139,888.55	
United States war claims, less commissions paid		182,441.48	
Profit on United States stock		818.18	
Investments converted into cash:—			
United States 6% stock redeemed,	$ 13,000.00		
Farmers' Bank of Virginia stock sold,	9,762.00		
United States Bank stock,	78,350.00		
Loans to individuals, repaid to Literary Fund	80,000.00		
Loans to Washington College, repaid to Literary Fund	2,000.00	183,112.00	
Total Cash Receipts,			5,082,322.84
			$5,176,344.26

STATEMENT "C".

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

DISBURSEMENTS:—

For account of the primary schools:—		
Paid from income from investments,	$2,400,331.11	
Paid from Capitation Tax,	655,908.73	$3,056,239.84
University of Virginia, (at Charlottesville),		613,000.00
Institute for the Deaf, Dumb and Blind, (at Staunton),		40,821.02
Virginia Military Institute—support,		28,500.00
Margaret Academy, (Accomac County),		1,500.00
Salaries and Expenses of the Board—Statement "B," Schedule No. 5,		85,322.45
Premium paid on City of Richmond stock,		420.00
Investments in stocks, bonds, etc., at cost:—		
Farmers' Bank of Virginia stock,	$ 2,575.00	
Virginia revolutionary 6% bonds,	3,074.77	
James River Company stock,	44,855.00	
Bank of Virginia stock,	18,449.12	
University of Virginia, loan No. 5,	40,000.00	
" " " loans No. 6 and No. 7,	20,000.00	
Virginia Internal Improvement 5% bonds,	155,750.00	
" " " 6% bonds,	803,395.33	
James River Company bonds, issued under act passed February 17, 1820,	15,960.00	
Richmond Academy stock,	400.00	
Northwestern Bank of Virginia stock,	50,000.00	
Bank of Valley stock,	10,134.00	
Loan to Emory and Henry College,	18,000.00	
The Faculty of the medical department of the Hampden-Sidney College, at Richmond; amount invested in land and buildings,	25,000.00	
Paid into the Commonwealth Fund in accordance with act passed March 18, 1856,	50,562.55	
Davis's Book on Criminal Law, copyright purchased,	12,000.00	
Fairmont Bank stock,	50,000.00	
Medical College in the Valley of Virginia; investment in property at Winchester,	6,400.00	1,326,555.77
Total Cash Disbursements,		$5,152,359.08
Cash in Fund, January 1, 1861, per Statement "A",		23,985.18
		$5,176,344.26

The foregoing Statements and Schedules on pages 1 to 7, inclusive, certified correct:

CLIFFORD E. SCOVILLE. THOMAS BIRD DIXCY,
For the Defendant.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 7 inclusive, and find them correct, but that all items contained herein affecting this accounting are included in other Exhibits.

Certified Correct:

ARTHUR G. POTTER. PRICE, WATERHOUSE & CO.,
For the Plaintiff.

STATEMENT "C".

(Concluded.)

Other Evidence and Proceedings Relating to Paragraph IV of the Decree.

[*Vol. 1. Nov. 16, 1908.*] 61

After Recess.

TESTIMONY ON BEHALF OF COMPLAINANT UNDER PARAGRAPH IV OF THE DECREE.

ARTHUR G. POTTER,
testified as follows:

By Mr. Anderson:

Q. Mr. Potter, please take that statement marked "Plaintiff's Exhibit D-1—

The Special Master: Does this relate to paragraph 4?

Mr. Anderson: Paragraph 4; yes, sir.

By Mr. Anderson:

Q. Please examine that statement and state what it is a statement of, what it embraces, and state your knowledge in regard to the items which make up that statement, as well as to the correctness of the figures and the facts mentioned in it.

A. The schedule is the statement of the ordinary expenses of Government—

The Special Master: Of Virginia? 62

A. Of the State of Virginia between 1820 and 1860, both inclusive. It contains information which I took from the public reports of the Auditor of Public Accounts for the State of Virginia. The totals were taken off by myself personally and verified by my assistants, and I believe it to be correct.

By Mr. Anderson:

Q. You say the totals were taken off by yourself personally?

A. By myself personally and were verified by figures taken by my assistants.

The Special Master: Have you computed the proportions as required by Paragraph IV?

Mr. Anderson: Yes. sir; that is responsive to paragraph IV. It shows the proportions with and without slaves.

By Mr. Spooner.

Q. Does that embrace the items?

A. It embraces a summary statement of the items, not the individual details. That gives the total of the various classifications, without the items that make them up.

Mr. Anderson: I wish to say to the Master and to counsel that that statement embraces items embodied in a large number of subsidiary statements, one or two hundred pages, with which I do not think it is necessaary to encumber the record at present.

The Special Master: Do I understand that you offer the details from which this summary was compiled?

Mr. Anderson: Yes, sir.

The Special Master: And it is admitted *de bene*, and to be 63
turned over to the other side, receipted for by them, and to be used by them as the other details are to be used in connection with item I?

Mr. Anderson: Yes, sir.

The Special Master: We will mark that right now, Plaintiff's Exhibit D 2, if that contains all the details, so that we will have it identified, offered and admitted.

Mr. Spooner: Is that the one you are offering in evidence?

Mr. Anderson: Yes, sir. I do not wish it to go into the record unless you desire it.

Mr. Spooner: All we want is to have it where we can get at it. The question as to what is an ordinary and what is an extraordinary expense is a question of law, and we want to see what the statement contains.

The Special Master: I want this to go into the record and be identified. Then I will turn it over to counsel for West Virginia, and take their receipt for it. This is marked, "Plaintiff's Exhibit D 2." When you give me your receipt for the other papers, you can include this in it. All questions as to the ordinary or extraordinary character of the expenditures can be raised later.

Mr. Spooner: That is the reason it will be necessary for us to examine them.

By Mr. Anderson:

Q. Please state your knowledge as to the correctness of the statements embodied in this exhibit, Plaintiff's Exhibit D No. 1, in general and in detail, and to what extent you have verified 64
that record from the public records of the Commonwealth.

A. We have relied almost exclusively on the published reports of the Auditor of Public Accounts, in so far as that portion is concerned that applies to the expenses of government for the Commonwealth disbursed by the Treasury. Included there are two statements, one of the Board of Public Works and one of the literary fund, for miscellaneous expenses. Those were taken, in the case of the Board of Public Works, from the published reports, verified by the Second Auditor's ledger. In the case of the Literary Fund, they were taken directly from the Literary Fund ledgers and journals, verified by myself and my assistants conjointly, and I believe them to be correct.

By Mr. Spooner.

Q. If I understand you, that statement is based upon public records. You stated you had based it almost exclusively upon published reports?

A. Public printed records in the proceedings of the Board of Public Works.

Q. That leaves a margin—"almost exclusively." What is the rest of it?

A. That portion of it relating to the Literary Fund, which we took from the ledgers and journals of the Literary Funds, and not from published reports.

By the Special Master:

Q. But with that exception they are based upon the published reports?

A. Yes, sir.

65

By Mr. Anderson:

Q. You believe them to be correctly deduced from those records?

A. Yes, sir.

Mr. Anderson: I will ask to have these papers filed.

(The papers referred to, entitled "Commonwealth of Virginia vs. State of West Virginia. Ordinary Expenses of Government. Article IV," are filed herewith, marked, respectively, "Plaintiff's Exhibit D 1" and "Plaintiff's Exhibit D 2.")

Mr. Anderson: That is all we desire to introduce in response to the fourth paragraph of the decree. Do our brethren on the other side desire to ask any questions?

Mr. Spooner: Not at this time.

Mr. Anderson: I understand you do not intend to estop yourself from future cross examination. We will pass to the next one.

This relates to the general subject, and is an alternative statement, really under the same general direction.

[*Vol. 4. May 5, 1909. Cross Examination of A. G. Potter.*]

[By Mr. Carlisle]:

Q. We will take Exhibit 4, Schedule 1.

The Special Master: The way the exhibits are numbered, as I have them on my desk here, is "Plaintiff's Exhibit A-1, B-1, C-1, and so on.

Mr. McClintic: This is Article 4 of the ordinary expenses.

The Special Master: What is the exhibit? 223

Mr. McClintic: D-1, as we know it.

The Special Master: As a matter of convenience in tracing out the record, we had better have these exhibits referred to by the name they bear in the record. Then we can trace the record without any difficulty. Plaintiff's Exhibit D-1 is the one you have in mind now?

Mr. McClintic: Yes, sir.

The Special Master: What page do you refer to, Mr. McClintic?

Mr. McClintic: The fourth page of Schedule 1, in the upper right hand corner.

Mr. Carlisle: The first entry in this is "General Assembly," $4,130,064.55.

Mr. Anderson: What page is that, Mr. Carlisle?

Mr. Carlisle: On the very first page.

The Special Master: It is really the third page of Schedule 1. It is the third page in the chronological order.

By Mr. Carlisle:

Q. How did you ascertain that amount, $4,130,064.55?

A. By taking the forty items under that heading, in the forty annual statements in the auditor of public accounts.

Q. When you say the forty items, you mean the forty totals?

A. The forty totals.

By the Special Master:

Q. Beginning with what year?

A. The fiscal year 1820. 224

Q. And running up to 1861?

A. To January 1, 1861.

Q. This aggregate here is the result of forty aggregates?

A. Yes; taking the annual statements for those forty years.

Q. The aggregates given in the annual statements make this amount?

A. Yes.

By Mr. Carlisle:

Q. Then you did not go back to the books of original entry in any year, did you?

A. No, sir.

Q. To see whether the published statement as to the account of expenses on that account was correct or was not correct?

A. I did not compare them.

The Special Master: That is, you mean whether the aggregate for any particular year would agree with the totals added up?

Mr. Carlisle: Yes, I ask him whether he went back in any single year and examined the original books to see what was included under this head of expenditures on account of the general assembly?

A. No, sir; I did not.

By Mr. Carlisle:

Q. So all you did on that subject was that you found certain figures in the annual report?

A. Yes, sir. 225

Q. Whether those totals included things which were not properly expenditures on account of the General Assembly, you do not know?

A. I have not verified it; no, sir.

Q. Now, one or two others. I will not take up time by going into each item. Take "Officers of the Government, "$3,595,102.14. What have you to say about that?

A. The same statements are true regarding that.

Q. The same statements as to that?

A. Yes, sir.

Q. You do not know what items compose these totals which you took from the books?

A. No, sir.

Q. No, "Criminal charges?" $1,750,732.11.

A. The same is true as to that?

Q. You do not know what items compose it, do you?

A. I have not gone back to the original records to verify the statements.

Q. You do not know whether anything was or was not included in that which did not belong there properly? In other words, you have no information except what you saw on the official printed reports?

A. No, sir.

Q. Do you think that is a proper way to ascertain the expenditures of the State for the purpose of litigation? I ask you now as a public accountant.

A. As we had a balanced cash statement—

Q. Can't you answer the question? I will put it this way. If you were employed by the State of New York to ascertain 226
the total expenditures of that State for a period of years for different purposes, would you or would you not go to the original books to ascertain it, or would you take what you would find in the printed reports of the officials?

The Special Master: With reference to direct answers, I will make this suggestion. I think it is quite proper for the witness, perhaps, to make his answer as direct as he can; but at the same time, if the witness desires to do so, he has a perfect right to add, by way of explanation, anything he likes. The regular and ordinary way is to get the direct answer, and then if he has occasion to make any explanation, he can make it at the same time, if he likes.

Mr. Spooner: The best way is the usual way. If the question is susceptible of a direct answer, it should be given.

Mr. Harrison: He has a right to answer the question in his own way, though.

The Special Master: Certainly.

Mr. Carlisle: Provided he answers it.

The Special Master: I simply make that suggestion to the witness. Witnesses all have that trouble. They are quite likely to make the explanation before they answer the question. The better way is to answer the question and then make such explanation as they think they ought to make.

Mr. Carlisle: The witness can make his statement in his own way after he has answered the question, but he must answer the question.

The Special Master: I have just had a week's experience in regard to that matter. 227

(The question was read, as follows):

"Q. If you were employed by the State of New York to ascertain the total expenditures of that State for a period of years for different purposes, would you or would you not go to the original books to ascertain it, or would you take what you find in the printed reports of the officials?"

A. I don't think I can answer that question directly, because it would depend on what the particular purposes were.

By Mr. Carlisle:

Q. You know what the purposes were here?

A. Various purposes, you say.

Q. You had the decree of the Supreme Court before you, did you not?

A. Yes, sir.

Q. That showed you for what purpose the examination was made, did it not?

A. Yes, sir.

Q. You were to ascertain certain things?

A. Yes, sir.

Q. As specified distinctly in that decree?

A. Yes, sir.

Q. Of course you knew you were to be a witness, and were to come on the stand and testify. Do you think it was a proper thing just simply to take the printed reports, without verifying the items contained in the totals as shown in those reports?

A. I do.

Q. Why? 228

A. Because they were the published reports of the State. They were made for submission to the General Assembly and other officials. They were made by a competent auditing authority in the State, and I believe they furnished a very good record.

Q. You thought you could tell from the totals stated in the official reports whether they did or did not include the things which are separated distinctly in this decree? For instance, you might find in some total—we will take the general assembly—something which, if you had gone back to the books of original entry, did not properly belong in that account, but belonged in some other account—public improvements, educational purposes, or something of that sort. You relied, then, upon the judgment of the officials alone, and not upon your own investigation?

A. Yes, sir.

Q. So you did not distribute any of these accounts in any way, as required by this decree, unless the officers of the State had distributed them in that way in their reports?

A. No, sir.

Q. Is that the fact?

A. Yes, sir; that is the fact.

The Special Master: That is, he assumed, without further investigation, that the aggregates made by the officers were accurate?

Mr. Carlisle: Yes.

The Special Master: That is what it comes down to. He proceeded upon that assumption.

Mr. Carlisle: That is substantially what he says; yes, sir. 229

By the Special Master:

Q. Is that true of all the items you have in schedule 1?

A. Yes, sir.

The Special Master: I asked that simply to save time.

Mr. Carlisle: That saves time; yes, sir.

The Special Master: So that all these are of the same character and proceed on the same assumption.

Mr. Harrison: It is schedule 1, item 4, in Exhibit D-1.

The Special Master: Schedule 1 in Plaintiff's Exhibit D-1?

Mr. Harrison: Yes, sir.

The Special Master: Schedule 1 ends, as I understand it, on what is called the second page, and the aggregate is $21,209,952.03. Am I right about that?

A. Yes, sir.

The Special Master: So that you proceeded on the same assumption with reference to all the items making up that aggregate that you did in connection with the General Assembly, in the items about which you have testified?

A. Yes, sir.

The Special Master: That cleans up that schedule.

By Mr. Carlisle:

Q. On Schedule 9 of D-1—

The Special Master: I think, for convenience of reference, I will have all these schedules paged, so that we can refer to the pages in the schedule. Then we can trace it out without any 230
difficulty. Schedule 9 is on the last page of Plaintiff's Exhibit D-1, as I have it. Am I right about that? That is the schedule you are inquiring about, Mr. Carlisle?

Mr. Carlisle: D-1.

The Special Master: It is on the last page of Plaintiff's Exhibit D-1?

Mr. Carlisle: Yes, sir; the last page.

The Special Master: I will ask Mr. Potter to page his schedules, in all these schedules we have here, so that we can make reference by pages as well as by schedule, and we will not have any difficulty in tracing them out later on, when we have occasion to examine the facts.

By Mr. Carlisle:

Q. On that page you include in your account, as a part of the ordinary expense of the State of Virginia during the period which you were directed to investigate, the sum of $20,606,229.24, for interest paid on the public debt. From that you deduct certain credits, which reduces the amount of that item to $18,024,358.62. What did

you find about that in the books, in what books, and where did you get it?

The Special Master: That is, on what books of original entry did he find these entries?

Mr. Carlisle: Yes; what official books. I ask the general question.

The Special Master: Either books or reports?

Mr. Carlisle: Yes.

A. All items of interest on the public debt paid by the board 231
of public works, I took from the board of public works original books.

By the Special Master:

Q. You mean you found it entered there as a charge of interest?

A. As a charge of interest, yes, sir.

By Mr. Carlisle:

Q. That is, the $5,834,000?

A. Yes; those first two items.

Q. Now, the next one?

A. Third item I got from the reports of the auditor of public accounts, and did not refer to the original books.

Q. What was that bank debt? Did you investigate it to see what it was?

A. It was an issue of bonds for the purpose of a subscription to the Northwestern Bank of Wheeling and the Exchange Bank of Norfolk, if I remember rightly. I can tell you the amount of it.

Q. Did you find that on the books of the Board of Public Works?

A. No; not that account. That was paid by the treasurer of the Commonwealth, entered through the books of the auditor of public accounts.

Q. Out of what we call the Commonwealth fund?

A. Yes, sir.

Q. The next one is interest on the public debt, C. & O. Canal, paid by the treasurer of the Commonwealth, $270,479.25. Where did you get that?

A. From the published reports of the Auditor of Public Ac- 232
counts, Commonwealth books.

Q. I will get you to state to the Master whether that was a direct indebtedness upon the part of the State of Virginia, if you examined that question, or whether it was only in the form of a contingent liability, guaranteed?

A. Just a moment. I will have to examine that.

The Special Master: Do you mean whether the State paid it as guarantor, or as principal?

Mr. Carlisle: Yes; we say the State paid it as guarantor, and the Company owed the State the money.

The Special Master: Your inquiry is intended to disclose what the fact is?

Mr. Carlisle: Yes.

The Special Master: Whether the Commonwealth paid it as a guarantor, or whether it paid it as a part of its principal debt;—its own indebtedness?

Mr. Carlisle: Yes; that is what I want to get at.

A. I believe the State issued the bonds, $250,000.

By Mr. Carlisle:

Q. You say you believe. Did you examine the question?

A. Yes, sir.

Q. Did you find it to be a fact that the State issued the bonds?

A. I did.

Q. Have you a memorandum to show when the State issued the bonds? 233

A. They were authorized by Act of February 20, 1833.

Q. Authorized?

A. And issued under that Act.

Q. Now, I want to ask a question on that very point. When you found an act of the legislature authorizing the expenditure of money for a certain purpose, did you trace it up to see whether they actually did expend it or not? In other words, I will put it in this way, to make it shorter. Did you not, when you saw an act authorizing the expenditure of a sum of money, just assume that it had been expended, and charge it?

A. No, sir.

Q. You did not go to the books?

A. We started at the other end. We took the expenditure and worked back to the Act authorizing it. We did not go to the Act first, and find out what was authorized, and then find out what was spent under it.

By the Special Master:

Q. You mean you found the charge on the books and then traced it back to see what legal authority there was for the expenditure, and therefore landed on the Act in that way?

A. Yes, sir.

By Mr. Carlisle:

Q. Did you examine all those acts?

A. I can't say we examined all of them.

Q. You did not personally examine the acts?

A. No.

Q. Or your assistants under your direction? 234

A. But we did not take the acts of the assembly and go through them. We referred to the acts when it was necessary to get authority for a payment.

Q. "Interest on public debt paid by the sinking fund," December 21, 1860, of $11,762,509.04. Where did you get that item?

A. From the sinking fund original books.

Q. Can you state what date that was paid or a part of it was paid? Just state generally what that debt was, what it was created for, if you know?

A. Well, that was the interest paid—I can't answer that question without reference to my original papers.

The Special Master: You mean, Mr. Carlisle, the purposes for which this public debt was created? Is that what you want him to state?

Mr. Carlisle: Yes; I want to know whether he can state what it was for.

By Mr. Carlisle:

Q. "Interest on the James River and Kanawha guaranteed bonds, paid by the treasurer of the Commonwealth," $617,542.62. Did you examine the books of original entry for that?

A. No sir; we took that from the published reports. I would like to qualify my statements to this extent, that between October 1st and December 31, 1860, it was necessary to refer to the books of original entry in the commonwealth accounts. Otherwise we depended on the published reports, for that was the division of the year.

Q. The first of the year was September?

A. Yes, sir; the year ended on September 30, 1861 We 235 had to examine the books from the first of October, 1860, to December 31, 1860, to get the amount applicable to that year.

Q. That is, just one year you went to the original books?

A. Yes, sir.

Q. That is, a part of one year?

A. Yes, sir.

By the Special Master:

Q. That brought you up to the 1st day of January 1861?

A. Yes, sir.

By Mr. Carlisle:

Q. I understand from that that in cases where you took the

official printed report as the basis of your entries in the report, you took them by the fiscal years?

A. Yes, sir.

Q. Which began on the 1st day of October in each year?

A. Yes, sir.

Q. So any figures which you got from the official reports for the year 1820, we will say, went back to the 1st of October, 1819, did they not?

A. I think there was a change in date of the fiscal year along in 1820 or 1821. It was approximately, though, the first of October. I won't state positively that it was that date.

Q. Whatever you took from the official books for the fiscal 236
year 1820, took you back to the year 1819, did it not?

A. Yes; the latter part of 1819.

Q. And you could not discriminate so as exclude anything that occurred in 1819, any expenditure made then or any receipts then, from the receipts or expenditures which actually were made in the calendar year 1820?

A. We did not.

Q. Therefore your account begins back in 1819?

A. Yes; it begins with the fiscal year ending September 30, 1820?

By the Special Master:

Q. Your account is predicated upon the fiscal rather than the calendar years?

A. Yes, sir.

By Mr. Carlisle:

Q. Was any part of this public debt created in 1819, so far as you found?

A. There was no part of the public debt; no, sir.

Q. You read the decree, did you not?

A. Yes, sir.

Q. Which said you must take the account for the period during which this debt was created?

A. There was no part of the public debt, as stated in the schedule. There were obligations by the State which antedated 1819.

Q. I do not mean antedated it. Were there any in 1819. Antedated would be 1818 or 1817, or sometime along there.

A. There was an obligation on the part of the State to pay
interest or an annuity to Washington and Lee College, with 237
respect to $50,000 worth of old James River Stock, which was presented by General George Washington to the College and that obligation was later exchanged for a manuscript bond. That obligation was in existence in 1819.

Q. Whose obligation was it?

A. The obligation of the James River Company, guaranteed by the State of Virginia.

Q. Guaranteed by the State of Virginia?

A. Yes.

Q. When was that issued?

A. We have not been able to find the date of the issue of that stock.

Q. Then why did you go back to 1819 to begin your accounts?

A. The primary reason was that the first issue of State bonds under the name of James River Loan No. 1, for $161,600 was dated in the fiscal year ending September 30, 1820.

Q. It had a specific date on it, did it not?—some day of the month?

The Special Master: What date was it?

A. The loan was authorized by an act of February 17, 1820.

By Mr. Carlisle:

Q. The calendar year 1820?

A. Yes, sir; the first certificate was issued—

Mr. Spooner: Is that one of the certificates you have there?

Mr. Conrad. No. Let him answer.

Q. State your answer in your own way. I will ask you 238 this question—

The Special Master: Do you want that question answered, when the first certificate was issued?

Mr. Carlisle: Yes.

The Special Master: Well, give that.

A. July 15, 1820.

By Mr. Carlisle:

Q. Now, Mr. Potter, if you did as you say you did, if you took the official report for the fiscal year 1820, which took you back to September 30, 1819, and made that the basis of your accounting, when the decree says that you shall simply take these accounts during the period when the debt was being created, is not your whole account vitiated by that basis which you have assigned—if you are wrong? If you have done what you say you did, and if the decree excluded everything prior to September 1820—is not your entire account permeated by that error, and are not all your totals affected by it?

Mr. Conrad: What error is that?

Mr. Carlisle: By beginning in 1819?

Mr. Conrad: But that is assuming what does not exist.

Mr. Carlisle: Well, I am assuming. I say if that is wrong.

Mr. Harrison: That is a hypothetical question.

Mr. Carlisle: But I am taking what he says.

Mr. Conrad: If you will pardon me, that is not exactly what he says. He says he started here with an appropriation made under an Act of February, 1820. That was the foundation. You assume that he started with an appropriation made in the year 1819, and speak of it as an error that pervades all of this settlement. If you will pardon me, I do not think that is quite fair to the 239
witness.

Mr. Carlisle: The witness, I suppose, thinks he took the proper date to begin with. I ask him, if you did not get the proper date and went back and included in your accounts charges against West Virginia and credits to West Virginia, and amounts of ordinary expenses and other things which are covered by this decree, during a period which the decree did not authorize you to take, is not your whole account affected by that error, if it was an error?

A. If there were errors, of course—

The Special Master: The question is if you began your account at a too early date, and it turns out later to be erroneous for that reason, whether that error would pervade your whole account. That is the substance of the proposition. It is not for you to say, whether you did begin too early or did not, but assuming that you did begin earlier than you ought to have begun, the question is does that error, if it is an error, pervade the whole account, and would it disarrange your final result?

Mr. Carlisle: All his totals.

The Special Master: Yes; all your totals?

A. It would disarrange them to the extent of the expenditures and receipts between the date at which I started and the date at which I should have started if I did make an error in starting.

By Mr. Carlisle:

Q. That would affect your entire account?

A. It would affect the totals, yes, sir. 240

Q. It would affect all the totals?

A. Yes, sir.

Q. I understand you to say, as a matter of fact—

By the Special Master:

Q. I want to ask you this right here. Would it be necessary, in order to get a correct result, assuming that you began too early, and for that reason the account is erroneous in the record, to recast the whole account?

A. No, sir.

Q. You do not think you would have to do that?

A. I know I would not.

Q. You think you could eliminate the erroneous items, and reach a result without recasting the whole account?

A. Yes, sir.

By Mr. Carlisle:

Q. Will you state to the Master just how you would do that. These erroneous sums, if they are erroneous, would be carried into every total you made up. Would you not have to revise all your totals?

The Special Master: Mr. Carlisle has in his mind now items of expenditure from the various counties also predicated upon this early date, and that would enter into the final total.

Mr. Carlisle: All the charges against West Virginia, credits to West Virginia, ordinary expenses,—everything covered by the decree which involves an accounting would be affected.

The Special Master: The simple question right here now 241
is, assuming there was an error in the record, whether he could rearrange his accounts without recasting them, and eliminate those errors.

A. I could; yes, sir.

By Mr. Carlisle:

Q. Would you not have to revise everyone of your totals? If you have included there something which ought not to be included would you not have to take it out of every one of your totals, every item?

A. Every total in which any of those figures enter.

Q. By totals, now, I mean for the purposes of this hearing, these items which you have stated here, which I have just read from. Take the $5,000,000 first, then the $1,000,000, and the $360,000 on this paper. Would you not have to revise each one of those?

The Special Master: You refer to the interest items in schedule 9?

Mr. Carlisle: Schedule 9, Exhibit D-1.

The Special Master: The question is whether you would not have to revise all those items of interest in case you began at a too early date—that is, whether or not those items do not in some way enter into those aggregates of interest?

A. Yes; but it would be no difficult matter to eliminate the items between the date at which I did start and the date at which I should have started.

By Mr. Carlisle:

Q. Let us see if there is no difficulty about it. I would 242
find it very difficult. Would you not in order to eliminate

those items have to go to the books of original entry in each instance, because you took the aggregates from the published reports?

A. If we started in the middle of the fiscal year, I would have to go to the books of original entry.

Q. If it started in the middle of the year?

A. Yes.

Q. I am talking about the first year, the basis if your accounts. Would you not have to go back to the original books of entry, ascertain the exact date, and the amount of each item during the period you have mentioned?

A. I don't understand your question.

Q. To show you what I mean I will take this item—"Officers of the general Government," $3,595,102.14. If it should turn out that you had included in that item, which you took from the official reports for that fiscal year, something which ought not to have been included, under the decree, would you not have to go back to the books of original entry to find what that was?

A. It would depend entirely on what it was.

Q. You could not find out what it was, could you, until you went back to the original books?

A. I don't know. It would depend on what you said it was. For instance, if you asked me to take out all of the expenses of the first fiscal year, which I included in that total, I could do that. If you asked me to take out one half of the expenses of the fiscal year, I would have to analyze the books, to find out what that one-half consisted of. 243

Q. Suppose I ask you to take out of that account all the items now included in it which belonged to the calendar year 1819—leaving out the fiscal year now, but during that calendar year. Would you not have to go to the original books to find what to take out?

A. I would.

Q. That is what I mean exactly. Then you would have to make a corresponding change all through your accounts, would you not, because your basis then would be wrong? I mean the basis you have adopted here?

A. We would have to make changes in every account affected by the figures in that year, but it does not necessarily follow that all the accounts were affected.

By the Special Master:

Q. Would that be feasible without a recomputation; or could you make a recomputation and make a deduction and get an accurate result?

A. Yes, sir; I could.

Q. You think you could take an item back prior to 1819 and reach your conclusions that would be involved in connection with these other items, and simply make a deduction at the end instead of recasting and recomputing?

A. Yes, sir; prior to 1820.

Q. I mean prior to 1820.

A. Yes, sir.

The Special Master: That is what you wanted, was it not, Mr. Carlisle?

Mr. Carlisle: Yes. 244

By Mr. Carlisle:

Q. Mr. Potter, will you state to the Master why you included the interest on the public debt as a part of the ordinary expenses of the State of Virginia?

A. Out of deference to the opinion of the attorneys for the Virginia side.

Q. That is what I supposed. You were advised to do that.

The Special Master: You were so instructed. That is about it.

Mr. Conrad: He was so instructed, and we have authority for it, sir.

Mr. Carlisle: It is not necessary to raise that question now. The question as to what are ordinary expenses, we think, is a question of law for the court.

The Special Master: Up to the present time the Master is advised that the State of Virginia has one contention in reference to that matter, and West Virginia another.

Mr. Carlisle: Certainly. The business of the Master is, under the decree, to ascertain facts, and then we will discuss the law, if we are able to do it, before the Supreme Court.

The Special Master: I do not apprehend there is much difficulty about that.

By Mr. Carlisle:

Q. Suppose you carried your accounts beyond the proper period under the decree—assuming that, now—if you carried your accounts to a date which was not required or authorized by 245 the decree, how would you correct that?

A. By deducting the amounts in the same manner as I would in the matter explained.

Q. By deducting the amounts which were corrected after the—

A. Yes, sir.

Q. That would involve as much labor as the other?

A. No, sir; not quite.

Q. I wish you would describe that certificate or whatever it was which you say was issued in July, 1820?

A. The only description I can give you at this time is that it is certificate No. 1 of James River loan No. 1, issued under authority of Act of Legislature February 17, 1820.

The Special Master: Certificate No. 1, issued when?

A. Certificate No. 1 was issued on the 15th of July, 1820.

Mr. Harrison: Under authority of the act of February 17, 1820?

A. Yes, sir.

By the Special Master:

Q. Have you any of those original certificates?

A. No, sir; this one is a blank certificate under that law.

Q. This certificate you have just shown me relates to an act of the legislature of 1821. It could not very well have been issued in 1820?

A. I think you will find two dates on it, both February 17, 1820, and February 20, 1821.

Q. But how are you going to get that into a printed docu- 246
ment in 1820?

A. That must have been a later print of the certificate that was issued.

Q. Is the certificate which you refer to as having been issued in July, 1820, a certificate by the Commonwealth or a certificate by the railroad company?

Mr. Conrad: By the James River Canal Company.

The Special Master: By the railroad Company?

Mr. Conrad: The James River Canal Company.

Mr. Anderson: The navigation company?

A. It was issued by the James River Company.

By Mr. Carlisle:

Q. You said you had a certificate issued under the act of 1819, certificate No. 1.

The Special Master: 1820.

Mr. Carlisle: Yes, but issued under that act of February 17, 1820, entitled "An Act to Amend an Act entitled 'an Act to improve the navigation of the James River.'" Did you examine that certificate?

A. I never have seen certificate No. 1: no sir.

Q. Then how do you know it imported an obligation on the part of the State of Virginia?

A. I have consulted the register. That is the first bond entered in that register. I presume you mean if this is—

Q. How do you know that certificate to which you refer, which

was issued in 1820, was an obligation upon the part of the State of Virginia, either in substance or in form?

The Special Master: Directly or indirectly.

Mr. Carlisle: Yes; directly or indirectly. 247

The Special Master: While he is looking for that, has any one here the Act of 1820, or a copy of it, so that I may have it before me as he is being examined?

Mr. Anderson: Yes; I have a copy of it.

Mr. Conrad: It is not that certificate you have there, Mr. Potter?

Mr. Potter: No. I understand.

Mr. Anderson: I call your Honor's attention to the fact that there are several obligations there. In the first place, there are appropriations authorized to be made for this company. Then there is a guarantee of the stock of the company, up to $12,000 a year.

The Special Master: I want to get the section under which this certificate was issued, so that I can have it before me when you are examining him.

Mr. McClintic: It could not very well be a guarantee of the stock.

Mr. Anderson: Of the dividend—12 per cent. for 12 years, and 15 per cent. forever thereafter.

The Special Master: The Act itself will disclose what the obligations were, of course.

(The pending question was read, as follows):

"Q. How do you know that certificate to which you refer, which was issued in 1820, was an obligation upon the part of the State of Virginia, either in substance or in form, directly or indirectly?"

A. Because it was funded by the State on the 12th day of November, 1873. 248

By Mr. Carlisle:

Q. Did you see that certificate at all?

A. No, sir.

Q. Do you know that that Act of 1873 refers to that certificate?

A. I don't know that there is an act of November 12, 1873. There is a funding transaction on the books of the second auditor which recites that that particular bond was refunded under that act.

Q. You see, you do not understand me. I am trying to get at the origin. I am trying to find out whether the certificates which you assumed was a debt of Virginia was at that time a debt of the State of Virginia—that is, when it was issued on the 17th of February, 1820, or whatever the date was.

The Special Master: No; July, 1820.

A. July 15, 1820.

By Mr. Carlisle:

Q. Did you look into it to see whether it was at that time a debt or a part of the debt of the State of Virginia?

A. This issue of bonds was referred to repeatedly in various reports, and it was mentioned on the books. It appears in the books of the Second Auditor's office as a part of the debt of the State of Virginia.

Q. Then you supposed that certificate was a bond, did you?

A. I made no assumption in regard to whether it was a bond or stock? 249

Q. You must have made some conclusion in regard to it?

A. I considered it as an obligation.

The Special Master: It is important to us to get exactly what the witness knows. The question is when you made your account and started with this item, whether you made any investigation of the original sources of information, so as to satisfy yourself as to what kind, if any, obligation, the State of Virginia was under in connection with the certificate. That was the point.

Mr. Carlisle: That is what I mean.

The Special Master: Did you make any investigation that enables you to state the kind of obligation the State of Virginia assumes in connection with this certificate, issued under these circumstances, and if you did, state what it was. If you did not, that settles it.

A. I did make such an investigation and satisfied myself that it was an obligation of the State of Virginia, but I can't state at this time from memory just the extent of my investigation.

The Special Master: Refresh your recollection, and be able to state that after recess. Give us the original sources of information from which you reached that conclusion as distinguished from the subsequent reports.

Mr. Carlisle: As I understand, he did not see this certificate.

The Special Master: What you want is what the witness did find, if he found anything, that did indicate any obligation on the part of Virginia as to this certificate. I rather infer that there may be more or less reference to the acts of the legislature in connection with this account from time to time, and I 250 would suggest—I do not know whether this suggestion is a wise one or otherwise—that it would be a good thing if we could all have duplicates of the particular acts and sections of the Acts to which these accounts relate, so that I may have them right here without looking all over a long act. I will then have the sections

upon which Virginia relies, for instance, and the sections, if any, upon which West Virginia relies, for ready reference. If I could have the acts of the legislature where I can look at them, while this examination is going on, it will help us. I hope counsel on either side will arrange about that. These things are undoubtedly familiar to you all, but they are not quite so familiar to me.

By Mr. Carlisle:

Q. Not having seen that certificate at all, as you testified, 251 did you suppose it was a bond, or did you suppose it was a certificate of stock in the James River Company the interests and dividends on which you say were guaranteed?

A. I never considered that point very much. We called them certificates, but they are in the schedule of Bonds. I never considered whether they were stock or bonds. I considered them as an obligation because the term stock and bond was used rather interchangeably in those early days. They called all bonds State stock.

Q. Yes, I understand; but I am trying to ascertain whether you found any bonds there or any certificates of stock issued by the James River Company the dividends on which were guaranteed by the State. Did you examine the papers held by the Literary Fund.

A. I don't know.

Q. Did you look there for a certificate or bond or certificate of stock?

A. I don't know that this bond is in existence. It was refunded and placed on file with the Treasury, and a new stock issued.

The Special Master: Well, you did not find it?

The Witness: No, sir.

Mr. Carlisle: When we get the papers we will see what it was.

The Special Master: He says he did not find anything of the kind.

By Mr. Carlisle:

Q. You treated it as an obligation of the State debt?

A. Yes, sir; as a part of the State debt.

Q. And then you made your accounting because you 252 thought that was the beginning of the debt of Virginia?

A. Because I thought what?

Q. Because you thought the issuing of that certificate, whatever it was, was the beginning of the creation of the public debt of the State of Virginia?

A. Yes, sir.

Q. That is what you thought?

A. Yes, sir.

Q. Now, if that was not any part of the public debt, then your accounting was erroneous?

A. If that was not the beginning, yes.

The Special Master: Are we to understand that the guarantee only related to the dividends—

Mr. Anderson: No, sir; as to both.

The Special Master: Both the principal sum and the interest on the principal sum?

Mr. Anderson: The State appropriated money indirectly to the extension of that improvement and also guaranteed 12 and 15 per cent dividend on the stock of the Company, and the State has paid enormous sums under that obligation from that time 253 down?

The Special Master: From a hurried reading I doubt whether section 14 goes as far as you think, Mr. Anderson. You may be correct, however; I only read it hurriedly. There is a proviso at the end of the section that limits the liability to $12,000 per annum.

Mr. Anderson: That is it, sir.

The Special Master: Do you mean by that they were to pay $12,000 per annum of the income?

Mr. Anderson: No, the State to pay $12,000 per annum whether anything was earned by the Company or not.

The Special Master: And no more.

Mr. Anderson: But still that was an obligation equal to $200,000 capitalized.

Mr. Spooner: No. We will contend, and I think we will be able to demonstrate, that it was no obligation at all in the sense of being a State debt, and I rise merely to suggest that there are four acts. They are splendidly drawn, as all the acts in the early days of Virginia were splendidly drawn. They are somewhat complicated, and you cannot take a certain section or an extract from a single section, and solve the question by the light from that section or extract; and as long as it will be a concrete thing which we must discuss, I think it will tend to the better elucidation of it if we take the testimony as to what this witness did, and why he did it, and discuss later this question of law—for that is what it is.

The Special Master: That is quite agreeable to me.

Mr. Anderson: And satisfactory to us. 254

The Special Master: But in the meantime you will appreciate the importance of my having these various sections where I can see them and become familiar with them.

Mr. Spooner: And after recess we will have before you the various acts.

The Special Master: Typewritten copies?

Mr. Spooner: No, printed copies, and your attention will be drawn to various sections which touch the subject.

The Special Master: You may proceed with your cross-examination, Mr. Carlisle. Mr. Carlisle's purpose now, as I understand it, is to detail the facts, and get those on the record, and later we will have oportunity to discuss the legal questions.

[*Vol. 4. May 5, 1909. Cross examination of A. G. Potter.*]

By Mr. McClintic:

Q. I will now refer to Exhibit D-1, first page of Schedule 1— 362

Mr. Harrison: Beginning with item 4 of the decree?

Mr. McClintic: Yes.

Q. (Continuing). In these ordinary expenses, did you charge any buildings?

The Special Master: Money expended for the construction of buildings?

Mr. McClintic: That is what I mean, yes.

The Special Master: If so, what. I suppose that is what you mean?

Mr. McClintic: Yes; I was going to follow that up if he said there were any. I don't know whether there were any or not. I wanted to find out.

A. Excuse me a moment and I will see if I can answer positively. I find one item, penitentiary, enlarging, and repairs. Part of that was for building—enlarging the penitentiary. I do not recognize any other items in this account at the present time as covering buildings.

By Mr. McClintic:

Q. Do you know whether or not you did charge buildings?

A. I don't remember positively whether any buildings went into this account or not.

Q. Did you intend to charge buildings: do you remember whether you did or did not? If you absolutely did not, there is no use of going into it; but if you did, I would like to know what they are.

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A. If you will allow me to look I can tell you in a moment. "Deaf, dumb and blind institution." That may have been for building.

Q. I will ask you another question. Where did you get these accounts?

The Special Master: Do you want him to finish his answer to

the other question? He was undertaking to ascertain whether the deaf, dumb and blind institution was for building.

A. (Continuing.) The item is under "Deaf, Dumb and Blind Institution, and I don't know whether it covers building or not.

The Special Master: You are not able to state.

The Witness: No, sir.

By Mr. McClintic:

Q. Where did you get these items from, mentioned in Schedule 1, Plaintiff's Exhibit D-1?

A. From the published reports of the auditor of public accounts.

Q. Did you analyze any of them to see what they were for?

The Special Master: We went over that this morning and he said he did not, and unless there is some change to be made—

The Witness: No; there is none.

By Mr. McClintic:

Q. The third item is "General Government, $8,495.63" (Plaintiff's Exhibit D-1, first page of Schedule 1). Can 364
you tell us what that means, what is it for?

A. I think it is in the nature of petty cash items not chargeable to other accounts, merely general expense items not otherwise classified.

Q. Expenses for what?

A. I don't know. Charged up under that heading in the annual reports, and we put them in under that heading.

Q. You have another item, "Pensions." Pensions for what?

A. I don't know. They may have been State employees, but I have no absolute knowledge as to what class of individuals they apply to.

Q. You have an item there called "Expenses of representation." Do you know what that means?

A. No, sir.

Q. "Public arsenals?" Do you know what that means?

A. Only in a general way. I know there was a guard maintained in Virginia at that time.

Q. I am not asking about the public guard; I am asking about the arsenal.

A. They had to have an arsenal, I presume, for taking care of the arms.

Q. You mean by an arsenal a building?

A. No; I don't know that it means that. I think it is the expense of maintaining an arsenal.

Q. Do you know that, or are you conjecturing? 365

A. I don't know it, no.

The Special Master: That is, do you know anything about it outside the entry you have made from the books?

The Witness: No; we have not gone back of the entry.

The Special Master: He said he did not go back on any one of them.

Mr. McClintic: Now, schedule 2—

The Special Master: In the same exhibit?

Mr. McClintic: The same exhibit.

Does the same answer apply to all those, that you took those from a book and did not look back as to the divisions of that?

The Special Master: In detail?

Mr. McClintic: In detail?

The Witness: Well, with respect to the expenses, mileage of the board, and expenses of inspection, we did analyze them, as I have explained in the preceding exhibit.

By Mr. McClintic:

Q. As to all the others, then?

A. Otherwise we did not make any further analysis than the books showed.

Q. On the next page, Schedule 3, you charge maps, $42,529,98. Did you analyze that account and get details?

A. No; those were charges appearing in the annual reports, as shown by the next number, under references, which means the references in the annual report.

The Special Master: How much of that did you charge for 20, 21 and 22 added together?

The Witness: $30,000.

By Mr. McClintic: 366

Q. Of the $42,000?

A. Of the $42,000.

Q. And the next item, "Surveys, Salaries and Expenses, $110,369.47," how did you arrive at that?

A. In the same manner, taking the items appearing in the board of public works annual reports.

Q. How much of that is charged in items 19, 20 and 21?

A. $7,373.81.

Q. I understood you to say that you excluded from these all the items you charged under 3 of the direct charges?

A. Yes, sir.

Mr. McClintic: If your Honor please, I cannot speak of the decree as No. 3. C-1 I believe it is.

Mr. Harrison: You mean item 3 of the decree?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. On schedule 4 there are certain items amounting to $891,435,66, called the literary fund disbursements. Where did you get those, as to detail or not?

A. From an analysis of the Literary Fund books—journals and ledgers.

Q. You analyzed those books?

A. Yes, sir. We had no published reports of that and were compelled to go back to the books.

The Special Master: So you went back to the original items? 367

The Witness: Yes, sir.

Q. Hampden-Sidney College, at the bottom of the page, $25,000. What was the nature of that expense?

A. I don't know. It was merely a payment to the college as shown by the books, but for what purpose I don't know.

Q. Do not the books further show an investment in land and buildings up there?

A. I cannot say at this time.

Q. There is an item there, medical college, $5,000. What is that for?

A. I don't know.

Q. I thought you said you analyzed these expenses.

A. We analyzed them and found the charge and the payments to the medical college.

Q. What medical college?

A. I cannot say offhand. I don't know whether it is connected with the University of Virginia or not.

Mr. Anderson: It was connected with Hampden-Sidney, and I suppose it was $25,000 for building it, although I don't know. The State owns it.

Mr. Carlisle: Does the State own it?

Mr. Anderson: Yes; and still makes an appropriation for it.

By Mr. McClintic:

Q. Was that the only appropriation ever made for it, the $25,000?

A. I think it was during that period, yes.

Q. Up to 1861? 368

A. Yes.

Q. You charged next there an item "Davis' book on criminal law, $12,000." Was that item put in there at your volition or upon direction of counsel?

A. I did not ask counsel about it.

The Special Master: What is the basis of it?

The Witness: The cost of publishing that or purchasing a supply of them.

The Special Master: Was the State buying the book or publishing it?

The Witness: I could not tell you.

The Special Master: That is, did the State own the copyright, or was it simply buying a number of copies?

Mr. McClintic: He says he does not know.

The Special Master: Then that exhausts that.

By Mr. McClintic:

Q. Is the buying of a book on criminal law in your opinion an ordinary expense of goverment?

A. The buying of it is not. If it was bought for distribution among the State officials, then it would be such an expense.

Q. Was it done or not. The witness is going on to suppose a certain state of facts?

Mr. Harrison: No; you asked him for his opinion and he is giving it and now you say you don't want it.

Mr. McClintic: I want him to answer the question, but I do not want it on a supposed state of facts.

The Special Master: Mr. McClintic's question is whether on the facts that came to his knowledge this is an item that is properly charged to ordinary expenses.

(The stenographer repeated the last question of Mr. 369 McClintic and the answer thereto as above recorded, on request.)

The Witness: It would depend entirely on the purpose for which it was bought.

By Mr. McClintic:

Q. What has the literary fund got to do with the sale of slaves and expenses of free negroes, an item of $827.73?

A. All I know about it is I found the item on the book. "Expenses in connection with the sale of slaves and free negroes."

Q. You find charged here as an ordinary expenses. "State claims against the United States," $2,722.82. What is that for?

A. Expenses in connection with the collection of State claims. My recollection is that the Literary Fund had the handling of some of those claims and it cost that much to collect them.

Q. Did you find that from the books?

A. Yes, sir.

Q. Was the same taken out of the amount collected?

A. I don't know.

Q. What does the book show on that?

A. I cannot tell you offhand. I have it among my papers. It was an original entry of expense and we so considered it. 370

Q. Did you consider every item of expense that the State went to for any purpose, shape or form, an ordinary expense—every expenditure of money?

A. Any expense that did not appear to be an extraordinary expense I would call an ordinary expense of government.

Q. Will you kindly define the distinction between ordinary and extraordinary?

A. I merely use that word in the sense that it would be used in connection with any business. It we had a fire and burned the house down, it would be an extraordinary expense. I did not run across any item of that kind. Others I would consider ordinary expenses.

Q. Would the building of this building be an ordinary or extraordinary expense?

The Special Master: Do you mean this building where we are now sitting?

Mr. McClintic: Yes, sir.

A. I would rather not pass an opinion on that.

By Mr. McClintic:

Q. Well, is the building of an asylum at Williamsburg an ordinary expense or an extraordinary expense?

A. I think an ordinary expense if the lunatics of the State need it.

Q. Then when it is built in West Virginia it is an extraordinary expense and when it is built in Virginia it is an ordinary expense?

A. I don't think there is anything of that nature in here.

Q. Haven't you an item of that kind charged? 371

A. No, I think not.

Q. They have built buildings out of this fund, which you have charged as ordinary expenses, have they not?

A. We would probably have to have the reports from the asylums to determine what they have spent it for.

Q. You made no attempt to analyze that?

A. No, sir.

Q. You have an item here "Taxes on salaries, $217.23." What is that?

A. The literary fund paid the salaries of the employees, clerk and bookkeeper, and charged those salaries to expenses.

Q. You mean the State of Virginia?

A. The State of Virginia.

Q. Taxes on the salaries of their employees?

A. Yes, sir.

The Special Master: An income tax?

The Witness: I don't know. And the board of public works did the same thing.

The Special Master: It was practically an addition to the salaries of the employees?

The Witness: Yes; sort of a special compensation.

By the Special Master:

Q. I do not quite understand this item about State claims against the United States. Do you know anything about that except what you find on the books, as to how it comes about and what the basis of it is?

A. What is that item? 372

Q. State claims against the United States, $2,722.82. How does that happen to be an item of charge?

A. I stated that the Literary fund held some of those claims that possibly had been assigned to them; or at least they held them, and it cost $2,700 to collect the claims.

Q. That was for the collection of these claims against the United States?

A. Yes; I think that is the explanation.

Q. What was the nature of these claims?

A. I think they were Revolutionary, half-pay claims. The Government paid for soldiers' half pay.

Q. And the literary fund took the claims and prosecuted the claims against the United States?

A. Yes, sir.

Q. And this item got in in that way?

A. Yes.

By Mr. McClintic:

Q. You have an item here "Expenses account of purchase of stock by J. Bauer," $902.23.

A. I think Mr. Bauer was commissioned to go to New York or Philadelphia and buy some bonds for the Literary Fund and his expenses on that trip or trips amounted to that much.

Q. You have here commission on United States debt, $4,199.92.

A. I cannot tell you offhand what that is. It appears in the Literary fund books as an expense. 373

The Special Master: And under that head, I suppose?

The Witness: I believe so, yes.

By Mr. McClintic:

Q. You have here "Judgments and commissions on escheats, delinquent and redeemed lands, $26,029.48." What does that mean?

A. I think it is an expense of the Literary Fund for that department in getting judgments in connection with delinquent and redeemed lands.

Q. Did they not get the money that came from those 374
things?

A. I think probably they did; yes. I am not entirely clear as to the make up of that item. I could explain it later.

Q. Was not that proper against the money collected, like the other items were?

A. I don't know that it was.

Q. What was that University of Virginia, $649,874?

A. I think it was an annual appropriation to the University, with such other sums as were appropriated by special act during that period.

The Special Master: The Act gave all the appropriations for the forty years?

A. Yes, sir.

By Mr. McClintic:

Q. You have just below that, put Deaf, Dumb and Blind Institute, $40,821.02. Are there any buildings in that?

A. I don't know.

Q. Did you analyze it any further than the total?

A. We took the figures from the data on the books, and I don't know whether it covers buildings or not. I will have to look at the books to tell. I have the information among my papers.

Q. Please look and see by to-morrow. What is the item Virginia Military Institute, $28,500?

A. I believe it is the same as the appropriations to the University of Virginia.

Q. Do you mean an annual appropriation of so much?

A. Various items appropriated for the suppoprt or equipment.
or other purposes of the Virginia Military Institute? 375

Q. Do you mean that they were appropriated occasionally, a certain amount, or was it all appropriated in one sum, divided in the forty year period?

A. I can't tell you that offhand.

Q. On schedule 9, the last page of this exhibit, is an item "Interest on James River and Kanawha Guaranteed Bonds paid by Treasurer of the Commonwealth, $617,502.46."

Mr. Carlisle: Is there any date to that?

Mr. McClintic: That is the whole for the period. No date is given.

By Mr. McClintic:

What period does that cover?

A. I don't know. I can't tell you from these figures.

By Mr. Spooner:

Q. Have you any memoranda by which you can tell when that began?

A. Yes, sir.

Q. And what period it covers?

A. Yes; I can get that if you wish.

Mr. Spooner: Yes, do that.

By the Special Master:

Q. The time when it ended and when it began.

A. Beginning with the year 1843 and ending in December, 1860.

Q. It began when?

A. In 1843.

Q. And ended when?

A. In December, 1860. The last payment was in December, 376
1860.

By Mr. McClintic:

Q. Was not all that interest converted into stock of the James River and Kanawha Company by the Act of Assembly of the State of Virginia, and the acquiescence of the Company, and received by Virginia?

A. I don't know.

Q. Did not the Act of March 23, 1860, provide for that?

A. I am not familiar with that Act of March 23, 1860.

Mr. McClintic: I believe that is all, your Honor, on section 4.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: If your Honor please, we now desire to offer Defendant's Exhibit D-1.

The Special Master: Very well. 537

(The paper referred to is filed herewith, marked "Defendant's Exhibit D-1.") 538

Mr. McClintic: On the bottom of page 5 of that exhibit there is an item marked "Primary Schools, out of income $2,400,331.11. We desire to withdraw that item from this exhibit as a part of the ordinary expenses of Virginia, for the reason to give notice to the other side— that this literary fund out of which this income was

derived was a fund already accumulated before the beginning of either period, either their period or our period in this case, and this expenditure was made alone, as I understand it, out of the income or interest which arose from the investment of that fund, which belonged to the State of Virginia before 1819, and was not paid out of money raised either by bonds or by taxes, or in any other way, during the period, but was wholly raised out of this income or from the investment of this literary fund.

The Special Master: Well, it came from assets accumulated anterior to the period in controversy, and has no relation to either indebtedness or taxation during the period, or since?

Mr. McClintic: And the fund was kept by the State of Virginia at the end of the period.

The Special Master: Do they have any parallel item in their schedule?

Mr. McClintic: They charge that item under the head of $863,000 of direct expenditures which arose from that fund.

The Special Master: That $863,000 is a part of the $2,400,000?

Mr. McClintic: Yes, sir. We put it under one head, and they put it under another. We now desire to withdraw it 539
from this heading, and claim no part of it. It is a question of law rather than fact, as I understand it.

Mr. Spooner: We object to this being included in the other.

The Special Master: Yes; but I know from him, of course, the relation of one item to the other.

Mr. Anderson: If your honor please, we of course make no objection to counsel on the other side withdrawing this item from the statement, but—

The Special Master: I understand you have no objection to their withdrawing the item, but you do not waive any rights you have in relation thereto.

Mr. Anderson: But we do not concede the statement of fact made by the other side. The literary fund is a continually growing fund in Virginia, all fines and escheats going to it.

The Special Master: If there is any question of fact involved about the literary fund, that of course will raise an issue between you.

The Special Master: So I understand the item of $2,400,331.11 is withdrawn?

Mr. McClintic: Yes, sir.

The Special Master: It is not objected to by the counsel for the State of Virginia, although the State of Virginia does not waive any rights it may have in that regard.

Mr. Anderson: We do not concede the statement of fact or the proposition of law either. 540

Mr. McClintic: We will present that here to your Honor, before the case is closed, through a supplementary statement.

The Special Master: Certainly. This seems to leave West Virginia in the position she would have been in if she had not included the item, and it does not preclude the rights of either party in connection with this exhibit.

Mr. McClintic: No, sir.

The Special Master: You may proceed with the examination.

By Mr. McClintic:

Q. Take Exhibit D-1, Mr. Dixey, and state to the Court if that was made up under your supervision?

A. That was made up my supervision and direction, and signed by me.

Mr. McClintic: I would state, for the further information of the Commissioner, that the withdrawal of that item will necessitate our later making a new proportion to go in the front of this paper.

The Special Master: Precisely. In other words, you desire to file a supplementary statement to defendant's exhibit D-1, a restatement of the statement?

Mr. McClintic: A restatement of the proportion.

The Special Master: In order to harmonize with the items you withdraw?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Is this statement, Mr. Dixey, a correct one, including 541
the item as it stands before we withdrew this $2,400,000 item?

A. It is a correct statement of the amounts of such expenses as are included in it—such disbursements and expenditures as are included in it.

Q. The proportion on page 2—

The Special Master: It is made up from information derived from books of original entry?

A. Books of original entry; yes, sir.

By Mr. McClintic:

Q. As I understood you, all the information and all the exhibits so far filed have been derived from books of original entry in each and every instance?

A. Yes, sir.

The Special Master: Yes.

By Mr. McClintic:

Q. The proportion on page 2 was made by you, was it?

A. Yes, sir.

Q. And is correct on the face of it, as it then stood?

A. Yes, sir; it has been verified.

Q. And likewise the proportion on page 3?

A. The percentages on page 3 were made by me. With the exception of the $620,029, that is, the average of the population without slaves for Virginia, and the averages with and without slaves for West Virginia, everything else on that sheet was furnished by the United States Census Bureau.

542

By the Special Master:

Q. Did you make any revision of their computation?

A. I checked their computations. Those are simply averages.

Q. My question is whether you recomputed, so as to see whether the computations made in the Census Bureau were accurate or not?

A. Yes, sir.

Q. That is what you mean by checking?

A. I have their original letter here.

Q. When you say you checked their computation, you mean you compared your computations with theirs?

A. Yes, sir; I verified them.

Q. And found theirs correct?

A. Yes, sir; I found their computations correct. Of course the figures as they gave them I accepted as being correct. That is, the Census of 1820, for instance, as they give it, I accepted as being correct. Their totals and their divisions I verified.

Q. In other words, you did not go back to the Census yourself just for the purpose of ascertaining whether the total was correct?

A. I did not. Their letter states that it is an extract from the United States Census, and the letter is signed by Mr. North.

By Mr. McClintic:

Q. On pages 4, 5 and 6 of this Exhibit, Mr. Dixey, we find various items and various figures. Were those all examined by you?

A. As to totals; yes, sir. 543

Q. Under whose direction or by what direction did you put these various items in this exhibit?

A. By direction of counsel for West Virginia.

Q. As to the details making up each of these totals, I understood you to say you personally did not originally make them?

A. I did not examine every item; no, sir. If there was any question of policy or application, such matters were examined and passed on by me, but I made no attempt whatever to examine every item in the routine work of analysis.

By the Special Master:

Q. That is, you passed upon items as to which the application was not obvious?

A. Yes, sir; when there was any question in the mind of the gentleman who was in direct charge of the work.

By Mr. McClintic:

Q. Were any buildings which were erected in what is now the State of Virginia included in this exhibit?

A. In this exhibit?

Q. Yes; defendant's exhibit D-1?

A. There are no buildings; no, sir.

Q. No buildings were included?

A. No, sir.

Q. Were any purchases of land in what is now the State of Virginia included in this?

A. No, sir; there are no purchases of land. I may qualify that by saying that there are repairs to buildings included within it.

Mr. Spooner: That is different.

A. But no original investments. 544

The Special Master: No original construction?

A. No original construction.

By Mr. McClintic:

Q. Mr. Dixey, on plaintiff's Exhibit D-1—have you a copy of that there?

A. I haven't it here, Mr. McClintic.

Mr. Anderson: I will lend him mine, gentlemen.

The Special Master: What page?

Mr. McClintic: Page 4.

By Mr. McClintic:

Q. Are you familiar with the items on this schedule 1, page 4, of plaintiff's Exhibit D-4, which were not allowed by your exhibit? For instance, the third and fourth items, general government and pensions. Did you personally examine as to what those were for?

A. I don't find it here, Mr. McClintic.

Q. It is on page 4 of the whole exhibit, as marked here, schedule 1, entitled "Commonwealth of Virginia vs. State of West Virginia, analysis general expenses of Government, summary." Look on the preceding page.

A. I have it.

Mr. Anderson: It is headed "Schedule 1."

The Special Master: Page 4 is a continuation of page 3. What is the question, Mr. McClintic?

Mr. McClintic: I ask him whether he knows personally the details of the third and fourth items sufficiently to explain to the Court what they were for? 545

The Special Master: The third and fourth items on page 4?

Mr. McClintic: Yes.

The Special Master: That is transportation of free persons of color.

Mr. McClintic: No; General Government and Pensions is the one.

The Witness: It is on page 3 in my statement here.

Mr. McClintic: This was paged for us by the gentlemen on the other side.

The Special Master: What page are you looking at?

Mr. McClintic: Page 4 of Exhibit D-1.

The Special Master: What item have you in mind?

Mr. McClintic: The items General Government and Pensions.

The Special Master: That is on page 3 of my copy.

Mr. McClintic: It is page 4 here.

The Special Master: Let me have that repaged right now. You follow my paging. I have got to have some opportunity to work this out myself. The first page of Exhibit D-1 is page 1. Have you that, Mr. McClintic?

Mr. McClintic: Yes, sir.

The Special Master: Page 2 is headed "Commonwealth of Virginia vs. State of West Virginia, ordinary expenses of government. Article 4." Make that page 2. Now, page three is headed, "Summary, analysis of general expenses, Schedule 1." Page 4 is a continuation of it. Page 5 is headed "Schedule S." Page 6 is headed "Schedule 2." Page 7 is headed Schedule 3. Page 8 is headed Schedule 4. Page 9 is headed Schedule 9. Are you 546 correct now?

Mr. McClintic: Yes, sir. Mr. Potter's assistant paged this, and I did not know anything about it except what I found here.

Mr. Anderson: It is just accidental. There was a leaf put there. That is the reason for that.

The Special Master: There must not be any additional leaves put anywhere unless they are put into all the copies. I cannot allow confusion in this. Now, take your item, Mr. McClintic—General Government, $8,495.63. What is the inquiry?

By Mr. McClintic:

Q. Do you know what that means, what it is for?

A. Do I know what it means and what it is for?

Q. Yes.

A. As to the details?

Q. Yes.

A. I am not familiar with all the details.

Mr. McClintic: We will examine Mr. Scoville on that question later on.

The Special Master: All right.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixey.*]

By Mr. Harrison:

Q. Now, Mr. Dixey, we will go to item 4 of the decree.

The Special Master: That is Defendant's Exhibit D-1?

Mr. Harrison: Yes, sir. The paragraph of the decree requires an ascertainment of such proportion of the ordinary expenses of the Government of Virginia, since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia, on the basis of the *average* total population with and without slaves, as shown by the Census of the United States. Will you please look at your exhibit D-1 and the plaintiff's exhibit D-1, and state the difference in the totals 647 arrived at respectively by the two accounts.

The Special Master: You want to get the totals in each exhibit?

Mr. Harrison: Yes; the totals in each exhibit.

The Special Master: Are they not found on page 6 of Defendant's Exhibit D-1, and on page 2 of the Plaintiff's Exhibit D-1?

Mr. Harrison: I believe they are. Yes, sir; that is right.

A. The total on plaintiff's Exhibit D-1, page 2, is $40,023,287.79, and on Defendant's Exhibit D-1, page 6, $20,638,825.13, an excess on the plaintiff's Exhibit of $19,384,462.66.

By Mr. Harrison:

Q. How is that difference accounted for?

A. It is accounted for by items included in the plaintiff's exhibit, which are not included in the defendant's exhibit.

The Special Master: The principal of which is interest on public debt, $18,024,358.52. Is that right?

A. That is the largest individual item, and practically a very large percentage of the difference.

By Mr. Harrison:

Q. The largest item is that the plaintiff's exhibit includes interest on the public debt, amounting over $18,000,000?

A. Yes.

Q. The rest of it is accounted for how, in the period from 648
which you started to reckon the accounting?

A. Partly that; yes, and by the exclusion of some other items from our account.

Q. Well, they would be more or less negligible, would they not? The other items you speak of, the two larger items, I imagine, would be the interest on the public debt and the difference in the period of time from which the record commenced.

Mr. McClintic: And there are items which you have included in yours which we do not admit to be an ordinary expense, and we include some in ours which you have not in yours.

Mr. Harrison: They could not be very material, because the major portion of this difference is covered by the interest on the public debt.

A. The difference is both ways.

Mr. McClintic: There are a great many in yours that are cut out of ours.

The Witness: The actual difference is larger than the balance.

The Special Master: I will ask counsel for the plaintiff this. Do these items of interest rendered here on page 2 of Plaintiff's Exhibit D-1 represent amounts of interest actually paid during the period, or are they computations?

Mr. Anderson: They were actually paid.

The Special Master: The $18,024,358 is shown by the books to have been actually paid by the State during the period?

Mr. Anderson: Yes, sir; actually paid. 649

The Special Master: And so as to all the other items?

Mr. Anderson: Yes, sir,

By Mr. Harrison:

Q. Was not something said yesterday or this morning about your striking out from your exhibit, D-1, an item of over $2,000,000 on account of primary schools?

A. Yes; that was struck out, but that is not a difference as appears in the figures that I have given you. I assumed that you wished me to handle this in the same way I handled the other.

Q. What do you propose to do with that item if you strike it out? Are you going to include it anywhere else?

A. Counsel will tell you that.

Q. You will have to refer me to counsel about that?

A. I will have to refer you to counsel; yes, sir.

The Special Master: You give the result and it is up to the attorneys to discuss it. Is that your position, Mr. Dixey?

A. Yes, sir.

By Mr. Harrison:

Q. When you undertake to ascertain the just proportions of those items of ordinary expenses on the basis of the *average* total population of Virginia, please explain the method which you pursued.

A. I took the census of the United States, as shown by its records, from 1820 to 1860 by decades. 650

Q. By decades?

A. By decades, and added them together and divided them by five, there being five censuses in the period, to determine the average census.

By the Special Master:

Q. That is, by decades covering the period covered by the account?

A. Yes, sir; and then determined the proportion of Virginia's average census to the total of both States, or to the whole entire State, and the proportion of the West Virginia Census to the population of the entire State.

Q. That method is set out in detail on page 3 in Defendant's Exhibit D-1?

A. Yes, sir; and I applied those percentages to the entire amount of the ordinary expenses, as shown by the schedule.

Q. Defendant's Exhibit D-1, page 3, shows the details of that computation?

A. Yes, sir; that information was furnished us by the United States Census Bureau. I have the letter of the director, giving those statements.

By Mr. Harrison:

Q. Does your statement show the percentage of the whole on the basis of both total population and white population exclusive of slaves?

A. Yes, sir; you will find the percentage on page 3, Mr. Harrison.

By Mr. Anderson: 651

Q. You estimate it on the basis of the total average population for the five decades?

A. As called for by that section of the decree.

Q. As you understood it?

A. Yes, sir; it shows the average total population as shown by the Census of the United States, with and without slaves.

Q. The question was whether that meant the average for the period of forty years, or the average so as to strike the period of June 20, 1863.

The Special Master: The question is whether the term "average" relates to the period over which the accounts were running?

Mr. Anderson: Yes, sir.

The Special Master: That is, whether you would have the parallel of average with the parallel of accounts. In point of time, are they both coterminus; have they the beginning and ending at the same time?

Mr. Anderson: That is very likely what is meant—to average each decade.

Mr. McClintic: We will have to make a supplemental statement, then, by reason of taking out the $2,400,000, as I said this morning.

The Special Master: I understand that. That simply throws the amount out of joint. Is that all you want to ask him about this?

Mr. Harrison: I think so.

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[*Vol. 6. May 7, 1909. Direct Examination C. E. Scoville.*]

By Mr. McClintic:

Q. Mr. Scoville, on page 3 of plaintiff's exhibit D-1, there is charged what is termed an analysis of general expenses of government, and there is the word "summary" under that.

Mr. McClintic: If your Honor please, I would like to make a statement to make myself clear as to what I want in there. I want to call it to the special attention of the Master, in view of what you said. There is a very large number of items which they have marked apparently on here as ordinary expenses of government, and it is necessary in some way to get the matter into the record, so as to show to you what each of those items is, in order that you may see whether or no it is pertinent to the words "ordinary expenses." I am not wholly advised as to the best method by which that can be done. The only method I know of is to examine Mr. Scoville, who has examined them, and let him state what they are, unless your Honor can suggest some better way.

The Special Master: Do you object to them all?

Mr. McClintic: No; not to all on that page, but a great many I object to, and the difficulty lies in the fact that the 749
mere word there does not explain anything.

The Special Master: Do you object to the classification? For instance, do you object to the general assembly item as being an ordinary expense?

Mr. McClintic: No, sir; not inherently.

The Special Master: But you have objection to some of the items that make up that aggregate?

Mr. McClintic: No, not as far as I know of; not anything on general assembly.

The Special Master: I was using that for an illustration. That is all. I do not know that you can make any better progress than to take each item, unless he could prepare a statement in detail in relation to all these items, and then later on have that submitted. How long would it take him to go through with this?

Mr. McClintic: It would take some little time. I don't know how long.

Mr. Spooner: It is an important matter.

The Special Master: Yes; certainly. We are only discussing the question as to the most feasible way of getting it in. Has he his details all prepared?

Mr. McClintic: No; it is a question not of figures, but of information as to what the figures mean. In other words, take the words "general government," the third item there, $8,495.63. That does not mean anything to your mind unless you know what it is.

Mr. Spooner: It has to be proven by testimony. It cannot be proven by exhibit.

The Special Master: I guess you had better take it and go along with it, item by item.

By Mr. McClintic:

Q. State, Mr. Scoville, if you know, to what the third item under "general government," $8,495.63 refers, and what it is. 750

The Special Master: What expense it is. What character of expense.

A. In that account there was charged the expenses of the War of 1814 as recorded on the books, and not what might be termed current expenses during our period.

The Special Master: Do I understand that the whole item $8,495.63 is predicated upon the expenses of the War of 1814?

A. Yes, sir.

The Special Master : Now go right along with the next item.

By Mr. McClintic:

Q. The next item is pensions, $88,548.74.

Mr. Harrison: What is his authority for the statement he made just now?

Mr. McClintic: The original entries on the books.

Mr. Harrison: Did you find $8,495.63?

The Witness: I am not attempting to testify as to the exact amount, but the character of items that are included under that caption.

By the Special Master:

Q. Did you find an account on the books denominated "general government?"

A. Yes, sir.

Q. Then you ran that account down to the items of which it was composed?

A. Exactly. 751

Q. And found this result to which you testified?

A. Those items are for war expenses for the War of 1814.

Mr. Conrad: 1812.

Mr. Hogg: It is sometimes called 1814 and sometimes 1812.

Mr. McClintic: We all know what he means.

By Mr. McClintic:

Q. The next item, Mr. Scoville, is pensions, $88,548.74. Tell the court if you know what that is for; if you have been able to find out?

A. The books of original entry and all of the records which we had access to, and searched, did not disclose just what pensions those were, but the original entries for each individual disbursement do record them as payments for pensions; but whether they are Revolutionary War pensions or Government Employe pensions is not shown as far as I can find.

The Special Master: Or 1812 pensions?

The Witness: No sir.

Mr. Spooner. Is there no legislation that shows?

The Witness: I could not find any information.

Mr. Anderson: About what years was that; do you recall?

The Witness: That runs through the entire period, payments every year.

The Special Master: There must have been some statute under which those pensions were conferred. However, he did not find anything.

By Mr. McClintic:

Q. On the same page, farther down, we find the words 752
"expenses of representation," $24,120.17. Will you please explain if you know what that is?

A. Those are election expenses for representatives in Congress.

Q. What is that; election expenses for representatives in Congress?

A. Yes, sir; comparing polls, etc.

Mr. Anderson: Expenses of Federal elections?

The Special Master: The regular biennial expenses involved in Congressional elections?

The Witness: They are regular expenses; yes, sir.

The Special Master: Regular biennial Congressional expenses; that is, expenses in Congressional elections?

The Witness: I won't say biennial. They occur regularly.

Mr. Harrison: They run all the way during the period?

The Witness: Yes, sir.

The Special Master: You say they do run all the way during the period?

The Witness: Yes, sir.

The Special Master: What do they consist of?

Mr. Anderson: They are in both accounts, are they not?

Mr. McClintic: Yes, sir. I thought they were not. That is the reason I asked the question.

The Special Master: Then there is no controversy over 753 that.

Q. The next charge is "public arsenals," $96,709.63.

A. The charges to that account are included in Defendant's Exhibit D-1.

Q. Under the head of "military establishment?"

A. Yes, sir.

The Special Master: Do they aggregate the same?

The Witness: No, sir; they do not, for one reason, on account of the difference in the period.

Mr. Harrison: They run from 1820.

The Special Master: Yes; I understand. You cover three years and four months more than they do.

By Mr. McClintic:

Q. Do you find the item of "warrants on account" and "general appropriations?"

By Mr. Spooner:

Q. Are those expenses recurring expenses from year to year?

A. The arsenal expenses?

Q. Yes.

A. Yes, sir; we include those in our statement of ordinary expenses.

By Mr. McClintic:

Q. Take that next item, "warrants on account" and "general appropriations," $746.087.72. What is that?

A. That account includes a varied class of expenditures, and does not appear in any of our exhibits, because we analyzed all expenditures which were grouped under that head, and applied them to the proper individual accounts to which they were chargeable.

By Mr. Harrison:

Q. Do they not appear in the books of the Commonwealth under that head? 754

A. There is such an account; yes.

Q. You disregarded it, though.

A. We did not disregard it. We analyzed it and found what was in the account, and applied it to the proper accounts.

By the Special Master:

Q. In so doing, did you take all the items included in the original account and apportion them to some account, or did you leave some unaccounted for, undistributed? That is, when you got through with your analysis of that account, had you attributed to some account that you made up all the items contained in that account?

A. We did, with the exception of a small amount of about $11,000, which we called miscellaneous expenditures, and a part of that came from those warrants on account.

Q. Did you have an item of miscellaneous expenditures?

A. We have on our exhibit, under ordinary expenses, an item of miscellaneous expenditures, which we explained by saying that there are other unclassified expenses.

Q. And in that item you included the $12,000?

A. Yes, sir; part of which came from these warrants on account.

Q. So that everything included in that account is distributed in some other accounts you have made?

A. Unless it has been excluded under instructions from 755 counsel.

Mr. Harrison: Has that been done?

The Special Master: Has anything been excluded? That is what we want to get at.

Mr. Harrison: Whether anything has been excluded is what we want to find out.

The Special Master: If the whole item is accounted for in some of the various accounts you have made, as the result of your analysis, that takes care of it. On the other hand, if there is anything unaccounted for, what is unaccounted for and what is it?

A. I cannot tell that without referring to some of our detailed papers. I think it is safe to say some were excluded.

Mr. Harrison: How much was it?

The Witness: I cannot tell right here how much it was, but our papers will disclose that.

The Special Master: Make a statement of that, so the other side will have an opportunity to criticise it.

Mr. McClintic: The other side did not give us any details so that we could criticise. We had to take everything there was. They

are the plaintiffs, and they are making up this statement that we could not do anything with except by taking it as it was.

Mr. Harrison: You ought to have analyzed the accounts yourselves.

The Special Master: Of course they rest on their general 756
statement, and if you are able to successfully attack any part of it, or appear to, it is open to them to reply as best they can. There is no question about that. What is your next item.

By Mr. McClintic:

Q. "Slaves transported and executed," $611,351.23. Please explain that, Mr. Scoville.

A. The account "slaves transported and executed" covers the amount paid by the State for slaves executed and transported. Under the laws of Virginia if a slave was executed or transported, the owner of that slave was paid an appraised value, and in this account to which we are referring were included expenditures on that account.

The Special Master: What is meant by "transported?"

The Witness: Transported beyond the limits of the United States.

The Special Master: He was exported at the time he was transported?

The Witness: There is a credit against that account for slaves sold.

Mr. Harrison: Has the witness answered whether that item appears on the corresponding schedule of West Virginia—$611,351.23?

Mr. McClintic: I did not ask him that, but I think it does.

The Special Master: No; he did not ask him that. What is the fact about that?

The Witness: It does not appear in our exhibit.

Mr. Harrison: Why not?

Mr. McClintic: I expect it is because counsel told him 757
otherwise.

The Witness: I just thinking how to frame that. That is the fact. Under instructions from counsel, that item was omitted.

By Mr. McClintic:

Q. The next item is "gun carriages," $14,317.05. Is that included in your exhibit?

A. We include that in Defendant's Exhibit D-1, under "transportation of arms." Gun carriages in that account means the carriage of guns. Transportation of arms is the proper title, we think, for it.

Q. Yes; I should think that would be better than "gun carriages."

A. It does not mean the carriages the guns were carried on.

Mr. Anderson: It means transportation of guns, does it not?

The Special Master: He has explained that item. He says it means the carriage of guns.

Mr. Conrad: The State had an armory here and one at Lexington, and it may be that arms were transported.

By Mr. McClintic:

Q. There is an item below there "revision of laws," $4,500. Do you know what that is?

By Mr. Harrison:

Q. What item in your accounts did you say that gun carriage item appeared?

A. Defendant's Exhibit D-1, page 5; under "military establishment, transportation of arms."

By the Special Master:

Q. It makes up another larger item?

A. Yes, sir.

Q. It is not by itself? 758

A. No, sir.

Mr. McClintic: It is detailed to itself. It shows what it is. It is detailed under the account "military establishment."

The Special Master: But this is $14,307.05. You have it $12,160.08.

Mr. McClintic: There is hardly a single item that agrees, even when you have to take the same item on account of this period. They all disagree. Under this head everything disagrees.

The Witness: I cannot say just where the charge there for "revisions of laws" appeared in our own accounts, if it appears at all. It does not appear under that caption.

By Mr. McClintic:

Q. Do you know what it refers to?

A. I do not.

Q. Do you find anything in the books of original entry to show under which it comes?

A. No, sir; there is no account of that caption.

Q. The next is a small item of $71.10, for seines. Do you know what that is?

A. I am under the impression that that is prior to March 19, 1823, and that it is a refund.

Q. The next item is "public warehouses," $35,722.00.

A. To that account there was charged the expenses of the

Warehouse Commissioners, and it is a proper reduction 759
from receipts from warehouses.

Q. But there is no corresponding item in your account?

A. On Defendant's Exhibit D-1, page 6, we show a credit to West Virginia of $389,694.91 for an item called "inspectors of tobacco," and from that amount the expense of Commissioners is deducted.

The Special Master: On page 6 you have that, have you?

A. Yes; under "less the following receipts."

By Mr. McClintic:

Q. The next item is "tobacco sales," $454.91.

Mr. Harrison: What is the difference between that item on your account and the plaintiff's corresponding account?

A. I suppose it is on account of the difference in the period. The difference is not very large.

The Special Master: The aggregate in the Plaintiff's Exhibit is $35,722.00, and the total credit you give is $36,570.00, which is more, but that includes the other item.

A. That includes two other items.

The Special Master: The $23,626.96 is a corresponding item?

Mr. McClintic: Yes.

The Special Master: What is your next item, Mr. McClintic?

By Mr. McClintic:

Q. Take the item "Tobacco sales $454.91." Do you know 760
what that is, Mr. Scoville?

A. I am not familiar with that expenditure.

Mr. McClintic: Is that in your account, General Anderson?

Mr. Anderson: Yes, sir.

Mr. Harrison: It is, yes.

Mr. McClintic: What do you mean by that?

Mr. Harrison: I could not explain that.

Mr. Anderson: I suppose it means sales at warehouses.

Mr. Harrison: The State had something to do with the sale of tobacco, in the way of inspection and commission and all that.

The Witness: I think that item is for the payment of burnt tobacco at the warehouses. That accounts for its being an expenditure. The title here, "Tobacco sales," under expenditures is not quite clear.

The Special Master: You allow $2,639.30 for burnt tobacco?

The Witness: Yes, sir.

The Special Master: Is that a corresponding item?

The Witness: That comes in another item further on, the first report here in the Plaintiff's Exhibit.

By Mr. McClintic:

Q. You have, next, "Armory, manufactory and repairs of arms, $243,015.60. Have you any corresponding item to that?

A. That is in Defendant's Exhibit D-1, page 5, under mili- 761
tary establishment; repairs of arms is the last item, and the manufacture of arms is the fourth item under military establishment.

Mr. Anderson: Transportation of arms?

The Witness: No.

Mr. McClintic: Armory and manufacture and repairs of arms. Is there anything included by the plaintiff in there for anything of that character, or do you remember about that?

The Witness: I think not in connection with that.

Mr. McClintic: The next item is "Sale of slaves, $99.26."

Mr. Anderson: The armory was built long before 1820.

By Mr. McClintic:

Q. The next item is "Sale of Slaves, $99.26. Do you know what that is?

A. No; I do not.

Q. The next item I refer to is Revolutionary claims agent, $3,861.67. Have you any knowledge of that?

A. That expenditure is for commissions of the agents.

Q. Collecting revenues.

A. Yes, sir; from the United States Government.

Q. The next item is "administrators of J. Merryweather and R. Graves, $11,067.33." Do you know anything about that.

A. We do not include any such item and I don't know what that is.

By Mr. Harrison:

Q. You have no memorandum about that?

A. Not under that heading. 762

Q. Well, under any other heading?

A. I cannot identify it, no, sir. That is, in our account it is in under its proper title, if it is there at all.

By Mr. McClintic:

Q. The next item is "Clerk hire and so forth, on account of delinquent lands, $18,374.27." Did you include that?

A. That is included in Defendant's Exhibit D-1.

Q. Under this heading, or under the head of officers? I looked for it and did not see it.

A. That is included in our account under officers of the Government, inasmuch as that account includes the salaries of officers and clerks.

By the Special Master:

Q. You say you include it under the title of officers of the Government?

A. Yes, sir; on page 5.

Q. And the aggregate there is $3,190.633.

A. Yes, sir.

Q. Do you include the latter item in that aggregate, so far as you know?

A. So far as I know, yes.

By Mr. McClintic:

Q. The next item is Buckingham furnace lands, $771.72. What have you to say about that?

A. I might say first these furnace lands were in Buckingham County, Virginia, and they were sold, and there were claimants to part of the proceedings, and that amount of about $900 is the amount which was paid to these claimants, plus com- 763
missions out of the amount which was received from the sale of the Buckingham lands. We do not take credit for the sale of the lands, and that is a proper charge against the sale.

Q. You do not charge that anywhere in your accounts?

A. No, sir.

Q. On the next page, the first item is "Transportation of free persons of color to Liberia, $26,103.50." Do you allow that in your account?

A. It is not included in our account.

Mr. Conrad: Why not?

The Witness: Under instructions from counsel.

Mr. Hogg: It is neither an ordinary expenditure nor an extraordinary expenditure.

By Mr. McClintic:

Q. Further down the page (page 4 of Plaintiff's Exhibit D-1), we find "Unexpended postage returned to treasury, $53.13." How could that be a charge?

A. We have not any such account in our exhibit. I think that might be better explained under some other title. I do not know why it is there.

The Special Master: You do not know anything about that?

The Witness: No sir.

By Mr. McClintic:

Q. The next item on this page to which I will call your attention is "Penitentiary: Hatcher vs. Commonwealth, $12,897.96. Do you know anything about that?

A. I do not. 764

Q. Do you find any item like that on the books of Virginia anywhere?

A. I do not recall the item at all.

Q. The next item to which I will call your attention is "Ferriage of troops during late war—"

The Special Master: Referring to that other item, have you looked for it?

The Witness: No, sir.

The Special Master: When did you begin your examination of this plaintiff's Exhibit D-1.

Mr. McClintic: I don't know that he ever begun it.

The Witness: No, I have not.

Mr. McClintic: He went over the books and took out all items, and it is from that knowledge that he is testifying.

The Special Master: But you have had this exhibit since last November, have you not?

The Witness: But we were very busy with our own exhibits.

The Special Master: Are we to understand that you have not put in any time at all examining these exhibits of the plaintiff for the purpose of testifying in regard to these figures of theirs?

The Witness: We have just finished with our own exhibits.

Mr. McClintic: What is the fact about that, Mr. Scoville?

The Witness: We have no special examination of the 765
Plaintiff's Exhibits, with the exception of No. 3. We made an examination, not a thorough examination, but a superficial examination, as to the difference between their charges for these roads and our own.

By Mr. Harrison:

Q. Am I to understand you to say that you knew nothing about that item at all, the item of the penitentiary; Hatcher against the Commonwealth?

A. I do not recall it. I do not mean by that that it is not in our account, but I do not recall it under that title.

Q. You do not recall that the books of original entry show the payment of a judgment for that amount?

A. No, sir; I do not recall the item at all.

By Mr. McClintic:

Q. I understood you to say that you had taken up the accounts of Virginia, beginning with the 19th of March, 1823, and taken every item of receipt and item of expenditure up to January 1st, 1861?

A. That is correct, yes, sir.

Q. And every item is either on these papers or on the general balance sheet which is to be filed as soon as it reaches here?

A. Absolutely every dollar received and disbursed.

Q. And then you do not remember having seen an item of Hatcher vs. Commonwealth for $12,000 and something?

A. I do not.

766

By Mr. Harrison:

Q. Did you examine the annual reports?

A. Yes, sir.

Q. You saw no such item there?

A. I do not recall the item. I may have seen it at some time, but I do not recall it.

By the Special Master:

Q. There are 750,000 items.

A. You could not remember all.

Q. The fact is you never made any search for this item?

A. No, sir.

Q. You never criticised this schedule?

A. No, sir.

Q. Or spent any time on it?

A. No, sir.

Q. And the only information you can give is your recollection from the accounts as you go along; that is correct is it not?

Mr. McClintic: From what he knows about the accounts of Virginia—

The Special Master: It is not predicated upon any particular examination of this schedule?

The Witness: No, sir. It would be difficult—

Mr. McClintic: He has not had time.

The Special Master: You have not done it, anyway.

A. No, sir.

The Witness: It would probably be found either under one of our schedules under some other title, or having been excluded, but I do not recall the item.

By Mr. McClintic:

767

Q. In making up your schedule, D-1, did you follow the nomenclature on the books of original entry?

A. Yes, sir. An item of that nature must be chargeable to some account, and we would include that, not under this individual expenditure, but under its proper account.

Mr. Harrison: Are we to understand that you did follow the nomenclature of the accounts as you found them?

The Witness: Yes, sir.

Mr. Harrison: Did you not just say in connection with the item, "Warrants on account general appropriation"—I think that was it?

The Witness: Yes.

Mr. Harrison: Why did you not follow that nomenclature in the statement of your own account?

The Witness: For the reason that warrants on account are not represented in expenses—

Mr. Harrison: I am asking you for the fact. It is a fact that in that instance you did not follow the nomenclature?

Mr. McClintic: Did the books of original entry have any such item as "warrants on account"?

The Witness: They did.

The Special Master: In that instance you did not follow that heading; you analyzed that account and distributed the items under what you considered their proper heads?

The Witness: Yes, sir.

Mr. Harrison: In asking you this question I merely want to develop the fact that in other instances you did not follow the nomenclature that you found in the books of the Commonwealth. 768
I cannot recall the different instances, but you have a military establishment. You did not find any such nomenclature as that in the books?

The Witness: No, sir.

Mr. Harrison: So he did not follow the nomenclature in the statement of his account?

The Witness: I do not know how to express that or explain it any better.

Mr. Harrison: You may have had a reason, perfectly sufficient perhaps, for not doing it; but the question is the question of fact—did you do it?

The Witness: It seems that in this case you have called attention to we have changed the nomenclature in order to state the account.

The Special Master: More intelligently?

The Witness: More intelligently and clearly.

By Mr. McClintic:

Q. The next item to which I will call attention is ferriage of troops during the late war, $54.71. Have you any knowledge of that?

A. I do not recall that.

Q. The next item is "Criminal and Civil Code," $52,073.88. Is that in your account?

A. That item is included in our account. Let me see if I can find just where it is.

Mr. Harrison: It is not included under that nomenclature, is it?

The Witness: No, sir; it is not. It is on page 5 of Defendant's Exhibit D-1, under "printing, compiling, and so forth, of Code, Statutes and Report."

769

By Mr. McClintic

Q. The next item is rent $52.25. Do you know what that is?

A. I do not know what that particular item is.

Q. The next item is Virginia Volunteers, $29,479.05. Do you know what that is?

A. That is the expense of getting a regiment of Virginia soldiers ready for the Mexican war, I think, in 1847. It was almost entirely repaid to Virginia by the United States Government.

By Mr. Harrison:

Q. You have no corresponding amount under that heading in your report?

A. No, sir. Neither the expenditure nor the receipts are included in any of our exhibits.

Q. Why not?

A. Because it was not considered by counsel an ordinary expense.

Q. That is the reason it does not appear?

A. Yes, sir.

The Special Master: Do you remember what balance was unpaid? While we are on the items, we might have it on the record.

Mr. Harrison: What was the question?

The Special Master: He said nearly all had been repaid. I asked him what balance remained unpaid.

The Witness: We found charges against that particular Mexican War, $32,101.16. We found that they collected 770 from the United States Government on account of those expenditures, $27,943.66; leaving a balance of expenditures over receipts of $4,157.50.

By Mr. Conrad:

Q. Did you find that the amount received from the United States Government was on the identical item there of charge?

A. Yes; so recorded in the books.

Q. In what books did you find that?

A. In the books of the Auditor of Public Accounts.

Mr. Harrison: When was it received?

Mr. McClintic: Can you give the date of the receipt?

The Witness: I can get it without much delay (referring to memorandum). The money was received from the United States Government in 1848, in 1850, in 1851, in 1852, and in 1853. I find on looking at the detailed analysis that in that item of receipts, amounting to $27,943.66, there are some small items which were refunded, which were not collected from the United States Govern-

ment, but which were refunded on account of overpayments and advances which were returned on this same account. Less than $1,400 was refunded. The balance was collected from the United States Government.

By Mr. McClintic:

Q. The next item is tobacco sales and burnt tobacco, $1,931.30. You allow for that, I believe?

A. Yes; that is in our exhibit. 771

Mr. Anderson: The amount is agreed, is it?

The Special Master: No; they have the amount as $2,666.13, and the amount here is $1,931.30.

Mr. Anderson: There is another item, though, I think, of $454.51.

The Special Master: Well, those two together do not quite make up the amount that they credit—that is, if they do go together.

By Mr. McClintic

Q. The next item is land taxes, $296.59. Do you know what that means?

A. I do not; but I presume it is a refund of taxes, and a corresponding expenditure on our statements is deducted from the receipts from taxes.

By Mr. Harrison:

Q. You mean your statement takes account of that in some form?

A. That is, for taxes refunded. It has been deducted from what we take credit for.

Q. That is a qualification. You say if so and so. You cannot say?

A. I cannot identify it.

By the Special Master:

Q. You can, by taking the time?

A. Yes, sir.

Q. Of course those things you can work out later?

A. Yes; without difficulty.

772

By Mr. McClintic:

Q. The next item I call to your attention is "Assessment of free negroes, $897.21." Have you any knowledge of that item, Mr. Scoville?

A. We have included the charges on that account under the account called "General Account of revenue,' on Defendants Exhibit D-1, page 4.

Mr. Harrison: You do take account of it, then, under another head?

The Witness: That is the general account.

By Mr. Conrad:

Q. Do you have the same item?

A. General account of revenue is the account.

Q. But you embrace in it the same item that Mr. McClintic has inquired about?

A. Yes, sir. That is the amount paid to the assessors for listing free negroes.

By Mr. McClintic:

Q. There is an item called "Fugitive Slave Fund," $5,201. Do you know what that was?

A. The charges to that account are in the nature of rewards for the capture of fugitive slaves.

Q. You have no charge on your exhibit of that account, have you?

Mr. Conrad: Nothing was more ordinary and usual than that.

The Special Master: You have no topic of that character, have you?

The Witness: No; I do not remember any.

The Special Master: Are you looking now to see whether 773
it is included in any other item.

The Witness: Yes. We include it in Exhibit D-1, page 6, an expenditure under the title, "Rewards," $13,992.64, which is for the apprehension of fugitives and criminals.

The Special Master: And does that probably include this item of $5,201?

The Witness: It probably does, yes, sir.

By Mr. McClintic:

Q. Going to the next item, land sold in 1855, $8.48. Do you recall anything about that?

A. I do not recall that item.

Q. Under the title "Public printing," there is $23,092.31. Do you include that under that head or some other head?

A. We have the same head, page 5 of Defendant's Exhibit D-1.

Q. The next item is "Claims under 27th and 45th Chapter Code of Virginia, $1,344.05." Do you know what that is?

A. I do not.

The Special Master: That is not rewards, is it?

The Witness: I could not tell.

Mr. Conrad: You could not tell without reference to the Code.

By Mr. McClintic:

Q. The next item to which I call your attention is Treasury Note expenses, $375.45. Do you allow that in your exhibit?

A. We do not allow it.

Q. Do you know what it is? 774

A. It is for printing treasury notes.

The Special Master: Printing what?

The Witness: Printing Treasury notes, the notes themselves, the expense connected with printing the notes.

By Mr. McClintic:

Q. That is, Virginia State money?

A. That is Virginia State money.

Q. The next item is "Tax on dividends, $128.50." Do you remember what that is?

A. I cannot say that I remember that particular item, but I am under the impression that it is a refund.

Q. If it was a refund it had no business as a charge here, had it?

A. No, sir.

Q. (Reading): "Arms and munitions of War, $4,111.13." Do you know what that is?

A. That is an expense on account of the early wars, 1812 and 1814, and is not included in our account.

Q. The next is "Survey of Washington's birth place, $139.21." What have you to say about that?

A. That title is self explanatory and we have not included that in the account.

Q. That was not an ordinary expense?

A. No, sir.

Mr. Harrison: Why did you not include it?

The Witness: We did not include it—

Mr. McClintic: If you will allow me to answer, I will say that he did not include it because we instructed him not to 775 include it.

Mr. Conrad: The thing had to be a recurring expense to be an ordinary expense.

The Special Master: That is the position they took, I suppose.

By Mr. McClintic:

Q. The next item is "temporary clerks in auditor's office, $3,826.64." Is that taken care of in your account somewhere?

A. I think it is.

Mr. Conrad: If these two experts had gotten together they could have avoided a lot of this examination.

The Witness: (After looking over papers.) I have that impressed very strongly on my mind, but I cannot locate it.

By Mr. McClintic:

Q. The next item is "marking Virginia and Maryland Boundary, $6,094.44." Do you include that anywhere?

A. No, sir.

Mr. Harrison: Why not?

A. Under instruction of counsel.

By Mr. McClintic:

Q. The next item is maps, $11,400.90. Is that charged in your account?

A. It is not.

Mr. Conrad: What is that,—Maps?

The Witness: Yes, sir.

Mr. Conrad: Published by the State for public use throughout the limits of the entire Commonwealth.

Mr. Harrison: When were those maps published, if you know?

The Witness: I am not able to tell when they were published. I can tell when the money was expended. 776

Mr. Harrison: They were published in 1825, 1826, 1827 and 1828, were they not?

Mr. Conrad: They were, and they were published for the use of the entire Commonwealth.

The Witness: The dates you give are correct—1825, 1826, 1827 and 1828; that is the date of the expenditure of the money.

By Mr. Harrison:

Q. Have you got that same figure in that account?

The Witness: $11,397.24. It is not in our account.

Q. The expenditure is correct?

A. Yes.

Q. And not included in your account on direction of counsel?

The Witness: Yes.

The Special Master: What is the item; "maps?"

Mr. Conrad: For maps which were published and circulated all over the Commonwealth.

By Mr. McClintic:

Q. The next item is public arms, $11,499.97. Is that included in this?

A. We have included the charges for public arms in Defendant's Exhibit D-1, page 5; the amount that we charge there on the military establishment, public arms, pay roll at armory, and so forth, $21,609.30. I think we have combined another account with 777 this account.

Q. The next item is State Convention, $258,677.40. Have you included that?

A. It is not included in any of our exhibits.

Mr. Harrison: That expenditure was made, was it not?

Mr. McClintic: What was it?

Mr. Harrison: It was for the State Convention of 1829-1830 and 1850-1851.

Mr. Spooner: Constitutional conventions?

Mr. Harrison: State constitutional conventions, yes.

The Special Master: Two different Constitutional Conventions?

Mr. Harrison: Yes, sir.

Mr. McClintic: You had one in 1864, too, did you not? You had one at Alexandria?

Mr. Harrison: Yes, there was Pierpont and two or three others there.

Mr. McClintic: There were seventeen people there.

Mr. Harrison: That money was expended, was it not, for the Conventions of 1829-30 and 1850-51?

The Special Master: These conventions are apparently as regular as the eruption of a volcano.

Mr. Harrison: There were two ex-Presidents of the United States in that first convention, and Chief Justice Marshall.

Mr. Spooner: Is that why it was so expensive?

Mr. Harrison: No, but it was a famous assemblage of men.

Mr. Spooner: Oh, yes, it was an extraordinary convention.

Mr. Anderson: It cost about one fourth as much as the convention of 1850-51. 778

The Witness: There was expended $258,906.28 in the years 1830 and 1851-52.

Mr. Harrison: And you did not include that?

The Witness: No, under instructions of counsel.

Mr. McClintic: The next item is "Medical College, $25,000." Did you include that item?

A. No, sir. It was on account of construction at Richmond.

Mr. Harrison: Construction of buildings?

The Witness: I don't know what was constructed.

The Special Master: Which is the item?

Mr. McClintic: Medical College, $25,000.

Mr. Harrison: You do not include that item in your statement?

The Witness: It was not included.

Mr. Harrison: I suppose for the same reason.

The Witness: For the same reason; the instructions of counsel.

Mr. McClintic: And that was for construction, you said, in Richmond.

Mr. Harrison: He said he didn't know what it was for.

The Witness: I said it was for construction in Richmond.

Mr. Conrad: For construction?

The Witness: Yes, sir.

Mr. Conrad: I thought you were asked the question 779
whether it was for a building and you said you didn't know whether it was a building or not.

Mr. McClintic: The next item is "Experimental Railroad, $10,000." Please tell us where that was constructed.

The Witness: There was expended on account of the experimental railroad, $6,000 in accordance with an act passed March 31, 1850, page 15, for an experimental railroad not exceeding two miles in length between the depot of Richmond and Petersburg railroad, and the depot of Richmond and Fredericksburg Railroad, and between such other points as the Board of Public Works may select, furnishing engines and other necessities.

Mr. Conrad: That is not embraced in your account?

The Witness: It is not.

By Mr. McClintic:

Q. The next item is Blair and Bolling, special service, $200. Do you know what that is?

A. The item is very familiar, but I shall have to look further before I can answer.

Q. You do not include it in your account, do you?

A. I cannot tell whether I do or not without further examination of these detail figures.

Mr. McClintic: If the court please, it is now twenty minutes after ten o'clock, and I will not be able to finish this witness to-night.

The Special Master: I hoped you would be able to get through.

Mr. McClintic: There are two schedules besides this one to examine him about.

Mr. Harrison: Are you going to go through those in the 780
same way that you are going through this one?

Mr. McClintic: This is the only way I know to get the information I want to in regard to these items.

The Special Master: Of course I do not want to direct counsel as to how they should conduct this examination, but I think probably seven or eight of these items would be reconciled by the accountants if they could get together and go over them. If the others are of the same character, I see no reason why they should not have a try at it, and then if there are any others that they cannot agree on we can take those up.

Mr. McClintic: What I want to do is to get something in the record, so we can make our arguments on it.

The Special Master: Probably one-half or two-thirds of these

items have not got to be examined by the experts; this witness will probably have to examine that proportion of them to find out whether he included them in other charges. Perhaps I am putting the proportion too high when I say two-thirds, but I will say a great many of them. All of this could be done by the experts themselves, and they could agree on a great many of the items. Of course, here is your State Convention; that is an item about which you would have a controversy. But there are a great many other items which the experts could probably agree on.

Mr. McClintic: I would like to have a statement of the witness as to what they represent, more than the way it is stated here.

The Special Master: Take this Blair Bolling special ser- 781
vice, $200. If it turns out that is included, you do not care anything about it.

Mr. McClintic: I want to say, your Honor, that this proposition inviting us to work with the experts of the other State is an entirely new proposition to me.

The Special Master: If the other schedules are practically like these, there is no reason why the experts should not dispose of nearly all the items. That will not bind either one of you as to whether the items shall be in or out, but they can tell whether the items here appear in your account under another name.

Mr. McClintic: In connection with that, I want some explanation as to what the items are.

The Special Master: This witness it seems has not had an opportunity to examine the schedule. All he has testified to is from his general recollection.

Mr. Spooner. In some respects that has been pretty definite.

The Special Master: It has been definite in some cases, but on the whole not very satisfactory.

Mr. Harrison: All we want is to have your expert confer with ours and let them see what progress they can make in disposing of many of these items.

Mr. McClintic: We do not want the experts to decide this case, however; we will want to argue it.

The Special Master: The experts will not decide the ques- 782
tion; but the question arises, is this item included, or is that item included, and as to a great many of them the experts are able to tell. As to others, the witness cannot remember. That is very natural, of course he cannot remember. It is a physical impossibility for him to remember, it is asking too much of him. As I say, he can recall with regard to some of these items as to whether they are included or not, but as to others, he has to make an examination in connection with a lot of these items before he can make a statement which is satisfactory. Of course, when he says he thinks it is in or thinks it

is not in, that goes for nothing with me; it is either in or out, and it can be ascertained, and he will have to take the time as to a lot of these items, to say certainly whether they are included or not. So, so long as it is understood that the experts are going to get together and go over these items and see if they can agree as to a lot of them, it seems to me we are not gaining very much now by going over this. If there is an item here that Mr. Dixey has been instructed to leave out, it will be left out, of course; he will not consent to its going in. Then if the plaintiffs claim that it ought to go in, I will hear their argument on that.

Mr. McClintic: I want the information more definite as to what the items are.

The Special Master: When we get them weeded down as to the items of controversy, of course I want on the record the facts in relation to those items, so I can take the facts and your argument, and weigh your argument according to the facts; and the experts among themselves can work out these details. So far as 783
they disagree, that will be entirely open to explanation, and to the production of any facts necessary; but you will be in a much better position to put your facts in when you know what they are than you are now.

Mr. McClintic: I realize that.

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[*Vol. 7. July 1, 1909. Plaintiff's Revised Exhibit D-1.*]

[The Special Master]: Now, we will proceed under Paragraph 4.

Mr. Anderson: I have here schedule D-1.

The Special Master: The plaintiffs submit substitute schedule D-1. Is that agreed upon as to the computations?

(The exhibit referred to was filed with the stenographer and marked "Plaintiff's Revised Exhibit D-1.")

Mr. Anderson (replying to the Special Master): Not in all 839
details.

Mr. McClintic: That, as I understand it, Mr. Dixey has not had time to go over and check up. It was handed to him on yesterday, and he did not have time to finish it.

The Special Master: Then we will make more progress by laying that aside.

Mr. Dixey: There is an admitted discrepancy there of almost $50,000.

The Special Master: Is that in any one item or several items?

Mr. Dixey: We do not know.

The Special Master: Then shall we lay that aside for the present?

Mr. Dixey: I would rather have you take Mr. Potter's say on that.

The Special Master: The only question I am interested in is whether all the items in this schedule are agreed upon. I understand that they are not.

Mr. Dixey: That is correct.

The Special Master: Now, the next question is whether the experts will get together and make an effort to reach an agreement.

Mr. Harrison: Might it not facilitate matters for your Honor to go ahead and ascertain what are agreed upon? Take this fourth schedule, which relates to the ordinary expenses of the State government, and leaving out the classification and referring only to the question of the amounts of the ordinary expenses, extending over the thirty-seven years involved, there is only a difference, as I understand it, of $50,000. 840

The Special Master: Well, if the experts themselves can get together and settle that, it saves the time of something like ten or fifteen men.

Mr. Carlisle: Is the difference of $50,000 in the total amount, and not a difference of $50,000 in West Virginia's part of it?

Mr. Harrison: It is a case of the amount, no matter what you do with it.

The Special Master: It is immaterial to me. Now, here is $50,000. If you want to reconcile the $50,000 between yourselves, in connection with this schedule, and the experts have gone over it for the purpose of reaching that result—

Mr. Harrison: The difficulty about referring that to the experts to reconcile is that it means a very considerable expenditure of time and labor in running down the items that compose that $50,000, to see what they are.

The Special Master: Let me ask you this. Suppose you put it up to me to settle? Have I not got to run it down the same way? And then six or seven men on each side have to listen to it. Is it not better to let two men take it and try to settle it if they can?

Mr. Anderson: I wished to find out where it was. It may be we will be able to adjust it.

The Special Master: That is my suggestion, that the experts take it up. I am willing to stay here—of course if you do not agree, I am willing to stay here and hear the controversy between all the parties; but my own notion about it is that if there are items of disagreement in this $50,000 and you do not agree to eliminate it among yourselves, that the experts had better make an 841

effort to agree before we take the time of the experts and the time of all counsel to go into the matter fully.

Mr. Anderson: I hope that counsel will be able to eliminate it.

The Special Master: Very well. It it immaterial to me whether the agreement is reached between the counsel or between the experts. Here is the point—

Mr. Anderson: They have been working on that for six weeks, and they have not been able to find out what those accounts are.

The Special Master: That is going to be the question, whether I will have to sit here and listen to the experts on both sides—

Mr. Anderson: That is the reason I suggest we postpone it.

The Special Master: Very well; and not take the time of the Master and all the counsel on either side, unless it appears that the counsel are not able to agree after the experts put in their work and ascertain what the disagreement is. Is that satisfactory?

Mr. Harrison: Yes, sir.

The Special Master: Then we will spend no further time on Plaintiff's Substitute Exhibit D-1.

[*Vol. 7. July 1, 1909. As to Introduction of Further Evidence.*]

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The Special Master: Then we come to D-1, Plaintiff Revised Exhibit D-1. There the experts, I think, have some computations to make. Have you any evidence to submit in relation to D-1, other than what is in the record?

Mr. Harrison: No other than what is embodied in our schedule.

The Special Master: Unless it should appear that the experts are not able to agree, in which case you would have to submit to me, I suppose, the items of disagreement for me to decide. Have you anything to submit, either of you, under the fourth paragraph, Plaintiff's Exhibit D-1?

Mr. Carlisle: That relates to what?

The Special Master (reading from decree):

"Such proportion of the ordinary expenses of the Government of Virginia since any of said debt was contracted as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of the State of Virginia, with and without slaves, as shown by the Census of the United States."

As to Plaintiff's Substitute Exhibit D-1, paragraph 4 of the Decree, unless the experts are unable to agree on some item now in

controversy, there is no additional testimony to be submitted by either side. Am I correct? 876

Mr. McClintic: Unless there is something overlooked.

The Special Master: I want this distinctly understood. I think I have already stated it a number of times. This hearing is not going to be conducted on the basis of snap judgment against either of you. At the last moment, as far as that is concerned, if either party finds it has left out anything which it thinks seriously or materially affects its rights, I will open the report and see that it goes in. I want to make a report only after having given both parties full opportunity to have all their contentions heard, and if I am satisfied you have left out anything at any time, as I say, I will open the case.

Mr. Harrison: We have nothing in addition to that except what may be explanatory.

The Special Master: In case the experts agree, you have not any additional testimony?

Mr. Anderson: Not as to the amounts, but as to the facts.

Mr. Harrison: That is, in the character of classification.

The Special Master: But until you get the result from the experts, you would not be in a position to go on?

Mr. Harrison: No, sir.

The Special Master: Then, for the purpose of the hearing right now, we will pass paragraph 4.

[*Vol. 7. July 1. 1909. Relating to Differences in Schedules.*]

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[Mr. Dixey]: I think it will be very much longer than Saturday morning before an analysis could be made of the ordinary expenses and an agreement reached on that.

Mr. Anderson: What is the discrepancy; what is the amount of it?

Mr. Dixey: The balance is about $42,000, but there may be hundreds of thousands of dollars involved in that, and we cannot tell until we make the analysis.

The Special Master: How could there be hundreds of thousands of dollars involved, if there is only a difference of $42,000?

Mr. Dixey: Because you have charges and credits each way, 893 and the difference is only $42,000.

Mr. Anderson: Do you stand by your original schedule? Defendant's Exhibit D-1.

Mr. Dixey: We are here now, I understand, for the purpose of reconciling these things. If any errors develop in the course of the analysis, we shall of course want to correct them.

Mr. Potter: It will take two months to make an analysis of that account item by item.

The Special Master: There is $42,000 in controversy. The plaintiffs charge you with $42,000 more than you think they ought to.

Mr. Dixey: Yes, sir.

Mr. Anderson: We will accept West Virginia's total rather than have any trouble about that.

The Special Master: Rather than have any trouble about that, Virginia waives that $42,000.

Mr. Anderson: I mean as to that $42,000. We have other figures about which there can be no controversy as to the amount.

Mr. Dixey: That is just the point.

The Special Master: Mr. Dixey's contention is this: That he finds it difficult, I suppose, to apply to any particular item the descrepancy that there may be; is that it?

Mr. Dixey: That is it; that that $42,000 is unlocated.

The Special Master: That is, if it is applied to one item the result may be one thing, and if it is applied to another item the result may be another, and if applied to another still another thing.

Mr. Anderson: I call attention to the fact that I think he is 894
mistaken, because these items have been agreed upon between Mr. Dixey and Mr. Potter; everything has been agreed upon except a discrepancy in the totals of $42,000, and we are willing to accept West Virginia's totals.

Mr. Dixey: I do not know that at this time.

Mr. Anderson: I will read them to you.

Mr. Dixey: Even then I cannot identify them from memory.

Mr. Anderson: I think you can.

Mr. Dixey: No, I cannot. I have had it and gone over it.

Mr. Anderson: Certainly Mr. Scoville can.

Mr. Dixey: Unfortunately Mr. Scoville is ill and is not here.

Mr. Anderson: There is no question that it has been agreed upon between the accountants as to these items between Virginia and West Virginia.

Mr. Dixey: I have not agreed upon that.

The Special Master: Of course the agreement that I ultimately recognize is the agreement between counsel for Virginia and counsel for West Virginia.

Mr. Anderson: I said that they had been agreed upon between the accountants.

The Special Master: In the face of Mr. Dixey's statement that it has not been made, I cannot hold that an agreement has been reached. I cannot report they agree when they do not agree.

Here is the condition that confronts. Here is Mr. Dixey, who 895
is a responsible accountant for West Virginia, and if he tells

me that he does not agree, even if he has heretofore agreed and withdraws that agreement—although of course I do not suggest that that is the fact—I would not be able to hold that an agreement was reached.

Mr. Anderson: Well, we are prepared to prove these items, and by incontrovertible evidence.

The Special Master: I know you are. We have all thought that rather than take the time of all of us by taking your proof and their proof and having me pass upon it, that the wisest thing was to have two men spend their time on it, Mr. Potter and Mr. Dixey, instead of twelve of us or fourteen of us spending our time on the same thing. Now, I have no power to insist on your agreeing. Of course I would be very glad to have you agree if you can. It is entirely a matter for you as to whether you will agree or not. I cannot hold, Brother Conrad, that the experts do agree when they are here and disagree.

Mr. Conrad: I agree entirely in that, but the accountant on behalf of West Virginia stated, as I understood him, in open Court not ten minutes ago that the differences between himself and Mr. Potter amounted to $42,000.

Mr. Conley: $49,000.

Mr. Conrad: Very well; $49,000, or $59,000, if you say so, in favor of the State of Virginia.

Mr. Dixey: May I modify that and say as shown by the schedule presented here to-day?

The Special Master: The amount is immaterial. 896

Mr. Conrad: And the attorney General has stated that and we accept his statement.

The Special Master: You mean that you accept their schedules?

Mr Conrad: Yes, sir.

The Special Master: In full?

Mr. Conrad: Oh, no, the difference. We waive the balance of $49,000, or whatever it is.

The Special Master: What do you say to this suggestion? I suppose the $49,000 may not be attributable to any one item, and of course this is purely a hypothesis on my part; they may contend that it is distributed over various items, and that they cannot make an admission covering it in that way. Is that it?

Mr. Dixey: Yes. There may be hundreds of thousands of dollars involved in it.

Mr. Conrad: We have had that voluntary statement from the accountant for West Virginia, that there may be hundreds of thousands of dollars. We have not heard of it before. We heard it only when the Attorney General of Virginia agreed that he would accept the balance as found by the accountant for West Virginia. Now,

my object in rising to occupy your time is this: We have agreed to all these things, we have agreed to fix the time as 1823 instead of 1820 or 1821; we have agreed to the other items, in the interest of time only—not because we believed they were right and we were wrong. Now, it is proposed again, and I understood that it would be proposed, last night, that there shall be another adjournment of this case. If your Honor has any interest professionally or otherwise that requires your attention away from here, 897
we yield to that, of course; but if there is to be another adjournment, I want earnestly to suggest that that adjournment be to a time when the final argument and submission of this case to you be made. Let the time to which this adjournment is made be occupied, as much of it is necessary, in getting this record into condition; but let the remainder of that time be occupied in the final argument and submission of this case to you.

The Special Master: You mean let the time in the interim be so occupied?

Mr. Conrad: Yes, let the next meeting be the final meeting, wherever it is, New York or anywhere else. If there are any matters of reconciliation of discrepancies to be made there, let that be done before the argument is entered upon; but let it be done on that occasion in New York, or wherever you choose to meet, and when that is done, then let us enter upon the final argument in this case and put it in your hands, so that there may be no other adjournment for the purpose of perfecting this record. This in the interest of time. * * * * *

So that the only schedule that appears to involve the possibility of serious delay is Schedule D, relating to the ordinary expenses of the State Government. There is a difference between the two accountants in the totals, of $49,000, that being Virginia's excess over West Virginia's statement. Now, we say we will accept West Virginiaa's statement. 898 899

The Special Master: In toto.

Mr. Harrison: Yes, sir.

The Special Master: On that proposition?

Mr. Harrison: On that proposition. It has been suggested by Mr. Dixey, the accountant for West Virginia, that he is not prepared to say—

The Special Master: That presents a little different question. The impression I got was you were not willing to diminish your claim by $49,000, but the proposition now is that you will take the schedule presented by West Virginia as true.

Mr. Harrison: Not as to classification.

The Special Master: No, not as to classification.

Mr. Harrison: I think we agree, and probably in an hour we can determine among ourselves.

The Special Master: It does not involve classification. Will you take the schedule of West Virginia as submitted, as to the amount, without binding yourselves as to classification?

Mr. Harrison: We can answer that in a little while, after these accountants see if that is not the fact.

The Special Master: In the first place, I cannot require either of you to agree on either of these things. You are only doing it as a matter of courtesy and to get through with this work; but if West Virginia has submitted a schedule, and as to that Virginia agrees that the amount stated therein is accurat, I 900 will take those amounts as accurate, and as the agreement of both parties. As to the classification, I will hear you about that later. If you are willing to take the classification of West Virginia on those amounts as accurate in amounts, that eliminates that from controversy.

Mr. Harrison: I think that can be done.

Mr. Anderson: We will take West Virginia's account, as far as it goes.

Mr. Harrison: I was going to say as far as it goes.

Mr. Anderson: We have eighteen million dollars in addition.

The Special Master: Those are separate entirely. They include interest.

Mr. Anderson: Yes.

The Special Master: Of course that item we do not require them to agree to.

Mr. Harrison: They do agree on amounts.

The Special Master: Yes. Then it is for me to say, with the evidence in this case, whether that interest will be allowed or not. But you agree on the amounts. All you want to be heard on is the question as to whether it will be allowed.

Mr. Harrison: I was going to make this suggestion. West Virginia's schedule shows $17,582,585.25 of ordinary expenses of the State Government during the period covered by the contracting of this debt, down to 1861. Is not that correct?

Mr. Dixey: No, sir, it is not. We cannot even start out— 901 our schedule shows over $18,000,000 as it stands.

Mr. Anderson: Then you have changed it?

Mr. Dixey: No, sir. Mr. Potter has changed it. Mr. Potter has deducted two items from our schedule and put them in another schedule in another account. Those two items are agreed to, and added to that amount he has there, brings ours. But the whole principle is so different that agreeing to the $42,000 would not reconcile the difference between us; because Mr. Potter takes the original figures and deducts hundreds of thousands of dollars, and then takes our original figures and adds hundreds of thousands of dollars; and

they say the difference is $42,000. It is true, but it does not mean anything.

The Special Master: But if they do this; if they take your schedule in toto, with the amount stated, as a true statement, the only thing left on the schedule is the question of proper classification. It is quite open to Virginia, if they want to do it; if you have submitted a schedule containing items, it is open to you to agree that those items are a truthful statement of those items, and reserve the right as to the question of whether they are properly classified. Now, if there are any details that can be submitted by the experts on either side that will illuminate the question as to whether or not they are properly classified, that is something you know more about than I do; but if there are any other things to be determined by Acts of the Legislature and not by experts, those are things that I will have to pass upon myself, probably. Do I make myself clear?

Mr. Dixey: Yes, sir. 902

The Special Master: And if Virginia is willing to take that position under this paragraph, to agree that these amounts are accurately stated, I will enter it upon the record; and later I will hear you upon the proposition of classification. If you need any additional evidence to establish your contention, pro or con., that evidence I will hear now. It seems to me that simplifies the whole situation, if Virginia is willing to take that course.

Mr. Harrison: Do you deny that your statement of the ordinary expenses, after deducting school expenses, leaves $17,000,000?

Mr. Dixey: That was not your first statement. I do not deny that.

Mr. Harrison: Well, I say we accept that statement, so far as it goes, as being accurate; and that is what he shows. The difference, if your Honor pleases, includes items that they have excluded and we have included.

The Special Master: What are those items?

Mr. Harrison: As to those items, they are in agreement about, as I understand.

The Special Master: As to amounts?

Mr. Harrison: As to amount. It is purely a question of whether they shall or shall not be included. Let me go a little further.

The Special Master: Very well.

Mr. Harrison: We show our expenses, our share of the expenses of the State Government, for the period included was $37,875,000 and something.

The Special Master: Some $18,000,000 of which is interest? 903

Mr. Harrison: Some $18,000,000 of which they agree upon as the amount, and some million or more of several items are agreed upon as to the amount.

The Special Master: That eliminates that.

Mr. Harrison: It is merely a question of whether they shall be or shall not be included in a statement of ordinary expenses.

The Special Master: Upon the question of whether they ought to be or ought not to be included, is there any information that the experts have gathered that will illuminate that question?

Mr. Conrad: I think it is purely a question of law.

The Special Master: You understand the question. Of course, if there are any computations that have a legitimate bearing upon that proposition, one way or the other, we want them. If there are not, we will not spend any more time on those items. For instance, $18,000,000 interest. If they both agree that that is the sum to be charged, if any sum is charged, that ends that so far as any testimony in this case is concerned—unless you have something in the way of legislation or anything else, whatever it is, that tends to show that it ought not to be included, or the other side has anything tending to show that it ought to be included; if you are willing to agre to the schedules submitted by West Virginia, with the exception of a number of items, the amount of which you agree to, I do not see any difficulty in reaching an agreement on this proposi- 904
tion. Then we bring the controversy down to these items as to which you agree upon the amounts, but do not agree as to whether they shall be included.

Mr. Harrison: That is a matter of argument.

Mr. Conrad: That would be for the argument.

The Special Master: It is a matter of argument in the end, but, *quo ad*, is there any evidence on that that you desire to introduce?

Mr. McClintic: Before we go on, I have had no opportunity to look at that. I understand it was only given to Mr. Dixey yesterday.

The Special Master: Very well. Let me see if I understand it. You have presented a schedule here by Mr. Dixey, to which he has sworn, as being true, and I have no doubt he believes is true, and it states the facts from your point of view. They present a schedule on the same subject matter. In their schedule they include items which you do not include, and which you say ought not to be included; but as to these items Mr. Dixey agrees that they are properly stated.

Mr. Dixey: I do not know that I do. I have not had time to examine the schedule.

The Special Master: I perhaps was assuming too much. While it may be embarrassing, we have to take these things as we find them here. I cannot compel you people to agree. I can do this. West Virginia submits a schedule under this paragraph. If Virginia sees fit to agree to the accuracy of all the items in that schedule, I

will enter upon the record that the parties agree as to those 905
items, in the amounts. Now, in addition to that West Virginia or Virginia does not agree to the classification contained in that schedule and wants to produce any evidence sustaining her contentions, and if she does want to produce such evidence I will hear it. If they do not agree and they think the evidence is already in, that settles that. If, on the other hand, the other side want to submit additional evidence to sustain their schedule, to sustain their contention that their schedule is correct, I will hear that. If they have not anything to submit as to the items in your schedule to which Virginia agrees, there is no necessity for any further controversy because there is no disagreement. Now, as to these items. Take, for instance, the interest and the half dozen other items that you say ought to be included and which they say ought not to be included. If you agree on that amount, I will enter that as an agreement. If you do not, I will give Mr. Dixey time to verify and see if he does agree. Of course, in the absence of their agreeing, we would have to sit here and take the testimony, or I would have to appoint an expert to go over it. I do not suppose anybody expects me to perform the office of expert. Of course, if these experts do not agree, and you do not want to sit here and listen and examine, I would have to submit the matters to an expert who would go into the question and then report to me, and would be subject, of course, to cross examination. It seems to me that is the situation. If Virginia is merely to say that they agree to your schedule under this paragraph and the amounts stated therein, not binding 906
themselves as to classification, I do not see that there is any further controversy about the amounts.

Mr. Dixey: There is no schedule in evidence which Virginia could agree to at the present moment. Our original schedule showed a total of over $20,000,000, from which Mr. McClintic withdrew some $2,000,000, leaving about $18,000,000, in addition to that there have been various items agreed upon that have altered some of the items as they appeared in the original schedules. The changes have not been material, but I believe the statement is about $351.00. There are twenty or thirty changes in the schedule as originally presented, I believe, and the new schedule has not been presented in evidence. It was our understanding that it would not be until Virginia and West Virginia agreed on it.

The Special Master: What is the reason the schedule you submitted at the last hearing is not in evidence?

Mr. Dixey: It has been altered.

The Special Master: Well, I would like to know why the schedule you offered last time is not in evidence?

Mr. Dixey: It is.

The Special Master: Well, if they see fit to agree to that, how am I going to help that and how are you going to help it?

Mr. Dixey: There was $2,000,000 withdrawn from that at the last hearing.

The Special Master: I don't care whether there was $10,- 907
000,000 withdrawn. *Quo ad,* suppose they withdrew all the others. I knew nothing about the details of this, but if with the exception of the $2,000,000 which they withdrew, they are willing to agree to that schedule, what harm is there in it?

Mr. Conrad: I should like to know on whose behalf and what interest is represented by the counsel accountant?

The Special Master: It seems to me this comes to a simple proposition—

Mr. Carlisle: I would say in behalf of Mr. Dixey that I do not understand that he is undertaking to act as counsel.

The Special Master: I do not understand that he is either, not at all. I don't think that Brother Conrad intended to intimate that Mr. Dixey was transgressing—

Mr. Carlisle: We cannot explain it as well as Mr. Dixey can, very often.

The Special Master: Perhaps they appreciate that Mr. Dixey was handling the matter with considerable intelligence.

Mr. Carlisle: I suppose it is understood that we meet to-morrow morning for the purpose of hearing these two witnesses, unless their depositions are agreed to.

The Special Master: No; I understood that was rather superseded by the agreement that they take those depositions anyway.

Mr. Carlisle: Then, perhaps my suggestion was not appropriate.

The Special Master: If have submitted a schedule here at the last session, which with the exception of an item of $2,000,000 the other side are now ready to agree to—it may be that I do not 908
quite comprehend the full situation, but for the life of me, I cannot see why there should be any further controversy about that.

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The Special Master: I would like to make this inquiry. As 912
to Paragraph 4, which involves the schedule we have been talking about, where you eliminate the $2,000,000 item, are the counsel for Virginia prepared now to say that they will take the schedule submitted by West Virginia and agree to the accuracy of all the items stated therein?

Mr. Anderson: We agree to it as far as it goes. The errors in West Virginia's statements are errors of omission.

The Special Master: Will you note the question that I put. Will the counsel for Virginia enter now upon the record the statement that they agree to the accuracy of all the items submitted by the schedule for West Virginia under paragraph 4, the same paragraph as to which Virginia submitted its schedule, Plaintiff's Exhibit D-1? Do you agree to the accuracy of those items? If you do—

Mr. Anderson: We agree to those items as far as they go.

The Special Master: My question does not include any other items. I would like to know without qualification if there is any objection. The question is especially confined to the schedule. West Virginia submits a schedule. It has withdrawn an item of $2,000,000. With the exception of that item, West Virginia stands by the items therein stated as being accurate in amount. Does Virginia now agree to the accuracy of that schedule, in amount, so far as that schedule goes?

Mr. Anderson: So far as the amount goes.

The Special Master: That may be entered upon the record, that Virginia and West Virginia agree upon the schedule submitted by West Virginia, marked "Defendant's Schedule D-1," 913 that the amounts stated therein, in that schedule, are correctly stated; and the Master will report that the parties agree thereto. Now, that eliminates that schedule, so far as that goes.

Mr. Conley: But as modified at the time of its introduction.

The Special Master: Oh, certainly. It does not bind either party to the schedules, but it does eliminate every item in that schedule from now, except that $2,000,000 item. Now, there are items that Virginia claims ought to be included in that schedule. I will read them. Is this it (indicating)?

Mr. Harrison: Yes, sir.

The Special Master: Now, what are the items that you claim, Brother Harrison, ought to go in here?

Mr. Harrison: I think it would be better to let Mr. Potter take the stand and explain this now.

The Special Master: Does page 2 include all the items that are not included in the schedule?

Mr. Harrison: Pages 3 and 2.

The Special Master: Just give me the items that you claim should go in, which they have not included. Tell me where they are. First, in the item of interest.

Mr. Harrison: No. Look at the top of page 2. We are taking up the items of page 2 and 3 that do not embrace the interest. That is on a different page, which we call your attention to presently.

The Special Master: Yes.

Mr. Harrison: Now, you will observe that the first item on page 2 of our schedule, substitute, is dependent on original totals, deducting school commissions. They have deducted from their ordinary expenses school commissions. 914

The Special Master: There is an item of $2,000,000—

Mr. Carlisle: No, that is $860,000. That is part of that.

Mr. Harrison: They did deduct, in all, $2,000,000. I think I had better let Mr. Potter explain that.

The Special Master: All right.

Mr. Harrison: At all events the figures following there will show. That item, if your Honor please, is the ordinary expenses of the Government, total amount shown, according to defendant's exhibit, revised exhibit. Now, we say that is incorrect in so far as it does not include other items that ought to be included as ordinary expenses.

Mr. Carlisle: You have agreed to our items?

The Special Master: We have agreed to the items, yes. What I want to find out is the item he says should be included.

Mr. Harrison: The first is tobacco receipts deducted by the defendants from ordinary expenses, amounting to $353,123.96.

The Special Master: Please step around here, Mr. Dixey.

Mr. Harrison: No, let Mr. Dixey say whether that is not correct.

The Special Master: You have not included that. They think it ought to be included. 915

Mr. Harrison: You have taken credit for it where they ought not to have taken credit for it, and we are putting it back. You are trying to take credit for it.

Mr. McClintic: No, we are not taking credit for it.

Mr. Harrison: I ask Mr. McClintic if I am to understand him to say that that item was not taken account of by West Virginia at all.

Mr. McClintic: Let the expert testify.

Mr. Harrison: You are withdrawing your remark?

Mr. McClintic: No, I am not withdrawing anything: I simply don't want to get into a controversy.

The Special Master: Mr. Dixey, please state whether or not the amount of $353,123.96, which appears in the plaintiff's substitute Exhibit D-1, is a correct statement of tobacco receipts during the period.

Mr. Dixey: May I ask a question preliminary to answering that? The original figures in this schedule have been restored.

The Special Master: That does not quite answer the question.

Mr. Dixey: If it does, yes; if not, no.

The Special Master: Here is a question—and if I do not make it plain, say so. I will try to make it plain. The question is whether the item of tobacco receipts, $353,123.96, which 916

appears on page 2 of Plaintiff's Substitute Exhibit D-1, is accurately stated in amount.

Mr. Dixey: It agrees with the amount in Defendant's Exhibit D-1 as originally introduced.

The Special Master: You may eliminate that suggestion and answer the question just as I asked it. I do not want it confused that way. Is the amount of $353,123.96 the correct aggregate?

Mr. Dixey: I don't know, Mr. Littlefield.

The Special Master: Have you not got it in one of your schedules?

Mr. Dixey: There are two figures here, one the original figure and one the adjusted figure.

The Special Master: What is your original figure?

Mr. Dixey: The original figure was that amount.

The Special Master: The original figure made by you?

Mr. Dixey: Yes.

The Special Master: Intended to be true?

Mr. Dixey: Yes, sir.

The Special Master: Was it true?

Mr. Dixey: We believed it to be so.

The Special Master: Do you believe it to be true now?

Mr. Dixey: There have been adjustments made—

The Special Master: Do you believe it to be true now? You said it was true; do you believe it to be true now? If you do, that settles that. If you do not, please say so.

Mr Dixey: I do not think that is the correct figure now.

The Special Master: You do not think it is? 917

Mr. Dixey: No, sir.

The Special Master: On revising your notes and figures, you have discovered an error?

Mr. Dixey: Yes, sir.

The Special Master: What is the amount of the error?

Mr. Dixey: The revised figures are $346,560.65.

The Special Master: Then, as to that item, you do not agree, and you want to change your original testimony, do you not? You first testified that that item was correct, that the figures $353,123.96 was correct. Did you or did you not?

Mr. Dixey: Yes, sir; that was the original testimony.

The Special Master: Now, then, since then you have discovered that you made a mistake. Is that right?

Mr. Dixey: Yes, sir.

The Special Master: Very well. We will leave that out. Now, what is the error?

Mr. Dixey: $346,560.65, as I have it.

The Special Master: Are you satisfied that that amount is correct?

Mr. Dixey: No, sir; I am not. That was to be compared with Mr. Potter, and I am not entirely sure that it has been so compared.

The Special Master: Well, I will ask Virginia if Virginia is willing to agree that $346,560.65, now changed by Mr. Dixey, is the accurate statement of the amount. Are you willing to agree to that?

Mr. Harrison: No, sir; we do not agree to that because we have already compared it with his chief of staff and 918 have ascertained that the $353,000—

The Special Master: We cannot discuss that, then. I cannot compel you to agree. It is open to you on cross examination to ascertain why the change was made. Take the next item, "Constitutional Convention."

Mr. Harrison: Before that, I would like to ask Mr. Dixey what he did with that in his account.

Mr. Dixey: I understood that there was a tobacco warehouse included originally, about $4,000, which was deducted, and I think that that was agreed upon between Mr. Potter and Mr. Scoville.

Mr. Harrison: But that does not answer the question. Do you not take credit for $353,123.96 in your account by deducting those tobacco receipts that go to ordinary expenses?

Mr. Dixey: On the original schedule, yes, sir.

The Special Master: That will show.

Mr. Harrison: You do do that?

Mr. Dixey: Yes, sir.

Mr. Harrison: Where did the receipts come from; where were they derived?

Mr. Dixey: From the inspectors of tobacco, received from the inspectors of tobacco, less certain amounts that were paid out and expenses of the Commissioners, refunds, and amounts paid for burnt tobacco; and the balance was that amount.

Mr. Harrison: Where were those warehouses located?

Mr. Dixey: They were located all over the State.

Mr. Harrison: Were any of them located in the territory now constituting the State of West Virginia?

Mr. Dixey: Not that I recall, no, sir.

Mr. Harrison: Why, then, do you deduct receipts of to- 919 bacco as a proper credit on the total of ordinary expenses of the State government?

Mr. Dixey: These items were all gone over in conference with counsel and that was by instruction of counsel.

Mr. Harrison: What have the receipts that the State may have derived from her connection with the tobacco warehouses located in the present State of Virginia got to do with West Virginia's fair proportion of the ordinary expenses of the State government?

Mr. Dixey: Well, they were the general receipts that seemed to

belong to the State as a whole, and we thought it was the best way to apportion them—simply to deduct them from the ordinary expenses.

Mr. Harrison: West Virginia takes credit for something that Virginia received into her treasury—

Mr. Dixey: This is not a credit to West Virginia.

Mr. Harrison: Does not West Virginia take credit for it?

Mr. Dixey: Not for that.

Mr. Harrison: Have you not deducted that from your total ordinary expenses?

Mr. Dixey: Yes, sir.

Mr. Harrison: Is not that taking credit for it?

Mr. Dixey: No. sir; certainly not. West Virginia gets credit for only her proportion of it, that comes from the total of all the ordinary expenses.

Mr. Harrison: I understand. I say that diminishes the total of the ordinary expenses, does it not?

Mr. Dixey: Yes, sir; but West Virginia did not get credit 920
for it, but only a part of it.

The Special Master: Except her pro-rata share, and your theory is that that should be deducted in order to get the net?

Mr. Dixey: Yes, sir.

Mr. Harrison: And you say you got that from conference with counsel?

Mr. Dixey: From a conference with counsel, yes, sir.

Mr. Harrison: I want to remind you of the state nent that Mr. McClintic made at the bar a few moments ago, that there were no warehouses located in West Virginia and of course West Virginia had nothing to do with receipts from tobacco warehouses.

Mr. McClintic: I am not testifying.

The Special Master: I do not understand that Mr. Harrison claims that this was chargeable to West Virginia *per se*, but in getting at his total of ordinary expenses covered over the whole State, that it is proper to deduct this. That is his theory. He deducts this to get his net expenditures. Whether there is legal foundation for it, of course is another proposition.

Mr. Harrison: As to that, Virginia takes no account of that as having any proper place in the statement of the ordinary expenses, and in order to restore the status of the ordinary expenses to the figures that she thinks are correct, she puts that item back, West Virginia having taken it off she puts it back in that 921
column.

The Special Master: That is, West Virginia practically undertakes to make a wash entry of it. that is, if she is allowed the credit you want to make the charge, one counterbalancing the other?

Mr. Harrison: Yes.

The Special Master: I understand that; but the thing we are interested in particularly now is the amount. Of course, Mr. Dixey has changed the amount to $346,000. Now, what I would like to know is whether Virginia agrees to that.

Mr. Anderson: No, because the other amount has been deducted by West Virginia. We do not, for that simple reason.

The Special Master: I understand, but that amount of $353,123.96 would go out altogether, and in its place would be the $346,560.65.

Mr. Anderson: That would require a re-statement of their whole account, because they have deducted it.

The Special Master: But that could be arranged without any trouble.

Mr. Anderson: Of course; but the way to correct that is to charge back the same amount.

The Special Master: That is true. I understand Mr. Dixey to now say that instead of the item being $353,000 it should be $346,000, and he wants to credit the general sum of ordinary expenses with that and reduce it and make it net. Now, are you willing to agree that $346,560.65 is the amount of the tobacco receipts, either to be credited or charged, as the case may be. If they credit it, you say they ought to charge it, so as to offset it. 922 Are you willing to agree that the amount shall be $346,560.65?

Mr. Harrison: It involves this. There would be a difference of some $6,000 or $8,000, and that $6,000 or $8,000 consists of items that they have located elsewhere, and have taken credit for elsewhere. It is the sale of a warehouse in Virginia—

The Special Master: How much did you receive for it?

Mr. Potter: $5,880.81.

The Special Master: Are you able to state whether that $5,880.81 is correct, the sum allowed on account of the sale of the warehouse?

Mr. Dixey: I have not the figures here.

The Special Master: Where are your working papers?

Mr. Dixey: Downstairs.

The Special Master: Bring them up, please.

Mr. Carlisle: I may be mistaken, but I have understood that the figures in the original account presented by Mr. Dixey, with the exception of about $2,000,000, have been agreed to. Now, I understand this examination to show that they are not correct.

The Special Master: No; what we are doing now, if I understand it, is this. Virginia claims that there should be other items allowed for which they are entitled to charge under so-called ordinary expenses.

Mr. Carlisle: They want an additional item put in. Now they have agreed that the items are correct.

The Special Master: Is it your point that that $353,123.96 923 was included in that schedule as a credit?

Mr. Carlisle: I don't know.

Mr. McClintic: Yes, sir.

The Special Master: And therefore that they agree to it?

Mr. Carlisle: It is credited there.

The Special Master: And having been credited there, you say it ought to be settled?

Mr. Carlisle: They having agreed to it.

The Special Master: Very well. Let me call your attention to the fact that your expert is the man who now disagrees to it.

Mr. Carlisle: He cannot disagree to it.

The Special Master: Very well, then. Mr. Dixey declines to say he would agree to it. He said he testified the other day and wanted to change it. It stood as $353,123.96 and it was your expert that undertook to change it to $346,560.65. Of course if you want to ride over your expert, you have a right to do so.

Mr. Carlisle. Mr. Dixey made his answer in response to a question put by the other side.

The Special Master: No, it was in response to a question by me.

Mr. Carlisle: By somebody.

The Special Master: If you say, Brother Carlisle, that counsel for West Virginia thinks that the item of $353,123.96 is correct and should go into the accounts, that settles it.

Mr. Carlisle: I have not said it was correct, for I don't 924 know anything about it. I have simply said that the parties on the other side agreed it was correct, and I thought the record showed that the amounts and the items were correct.

The Special Master: It did show it until your own expert declined to accede to it.

Mr. McClintic: It is incorrect, because they have deducted a building and certain accounts—

The Special Master: We will get there in a moment. Send down for your notes, Mr. Dixey, please. Of course, if the point is made that that is included as a credit and that is binding on the parties, of course that eliminates it.

Mr. Carlisle: Suppose we want to prove something different from that account; would you be willing to do that—

The Special Master: No sir.

Mr. Carlisle: That is what they are trying to do.

The Special Master: Then that settles that, and we will not discuss it any longer. The fact about it is, as it stands now, the

objection to the accuracy of this item comes from Mr. Dixey and nobody else.

Mr. Carlisle: In response to a question.

The Special Master: Certainly, in response to a question.

Mr. Carlisle: I thought when Mr. Harrison began the examination and when your Honor put that question to Mr. Dixey that he was trying to show that some item had been omitted.

The Special Master: I thought so too.

Mr. Carlisle: And I understand the agreement to be that the items there are correct items and that the amounts are correct, but if there are any items that ought to be put in—

The Special Master: I understood it that way, but it turns 925
out we were in error and this item appeared in the schedule prepared by your accountant as a credit. I have misunderstood that just as you did. If you take the point that having appeared in that schedule as a credit, $353,000, that that is an agreement on that item, I suppose that is agreeable to the other side.

Mr. Carlisle: Yes; but I would have objected immediately if I had not understood he was trying to introduce some new item.

Mr. Anderson: We agree as to the amount, but not as to the application.

The Special Master: We can settle that now. Mr. Carlisle makes the point that this schedule to which you agreed contains this item of $353,000. Do you object to that?

Mr. Harrison: We do not agree that it is a proper item of credit.

The Special Master: That is not the question. The question is as to the amount.

Mr. Harrison: Yes, sir.

The Special Master: Very well. There is no more controversy about the $353,000. You may record the amount as agreed to by both parties and was included in the previous schedule in accordance with the suggestion of Mr. Carlisle.

Mr. Anderson: We never agreed it was a proper credit.

Mr. Carlisle: Whether proper or improper, you have agreed to it.

Mr. Harrison: Oh, no.

Mr Anderson: I cannot allow the remark made by Mr. 926
Carlisle to go unchallenged. We did not suppose we were to be led into a trap. We agreed as to the amount and did not agree that there were not any set-offs against it, and errors in the method by which that result was reached—

Mr. Carlisle: If there was error in the account, then they were not correct and your agreement was wrong. You said they were correct.

The Special Master: The agreement went so far as to agree to the accuracy of the items and the amount stated therein, and it did

not go so far as to bind either party on the question of classification.

Mr. Carlisle: No, sir; not at all.

The Special Master: And as to whether the items were or were not properly charged, I think I have stated that as much as fifteen times, and so many times I can re-state it as often as may be necessary for my own illumination, I do not intimate that anybody else needs to be illuminated about it.

Coming to the next item, Constitutional Convention, $258,906.28. I would like to ask Mr. Dixey if that is correct.

Mr. Dixey: $258,000, yes, sir.

The Special Master: That is agreed to by both parties as correct in amount. Do you have any objection to that?

Mr. Anderson: No, sir.

Mr. McClintic: No sir.

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The Special Master: The next item is, "Slaves. Cost of Slaves transported and executed, $311,168.35." Is that item correctly stated in amount?

Mr. Dixey: (After referring to memorandum) $311,168.35.

The Special Master: That item is also agreed to in amount?

Mr. Anderson: Yes, sir.

The Special Master: The next is "Boundary Line, $16,704.78." Is that agreed to in amount?

Mr. Harrison: That is the aggregate of several boundary lines.

Mr. Dixey: No; it is given in one here, $16,704.78.

The Special Master: Is that agreed to?

Mr. Dixey: That is correct.

Mr. Anderson: Yes, sir.

The Special Master: That item, then, is agreed to by both parties?

The next item is "Maps, Commonwealth and Board of Public Works, $16,628.04 and $11,446.48;" making a total of $28,074.52.

Mr. Dixey: That is correct.

The Special Master: Is the amount of that item agreed to by both parties?

Mr. Anderson: Yes, sir.

Mr. Dixey: Yes, sir.

The Special Master: The next is "Deaf, Dumb and Blind Institution, 1845 to 1860."

Mr. Dixey: I will have to ask you to wait a moment. (Continuing after referring to memorandum.) We do not agree on that.

The Special Master: What is the difference, please?

Mr. Dixey: Well, they have got a total of $80,661.94. There is a difference of $20,000.

Mr. Potter: That is through the Literary Fund.

928

Mr. Dixey: I did not recognize it immediately. It can be reconciled, but we do not agree.

The Special Master: How about that? Is West Virginia willing to agree to—what is the sum that you make it?

Mr. Dixey: What became of that other $20,000?

The Special Master: No matter about that. What do you say you are willing to agree to?

Mr. Dixey: We have $100,661.94.

The Special Master: You have $100,000 and they have $80,000?

Mr. Dixey: I say we have it. It is merely a memorandum on our part. It has never been introduced in evidence as part of the account.

The Special Master: What objection, then, is there to agreeing that the amount of $80,000 is the correct amount of the item? You make it more; they simply claim that. If they are willing to agree to your item of $80,000, that ought to settle that.

Mr. McClintic: We will agree to that being the amount.

Mr. Anderson: The other $20,000 we thought ought to be struck out.

The Special Master: Then the amount of $80,661.94 is agreed to?

Mr. Anderson: Yes.

The Special Master: The next item is "International Ex- 929
changes, $2,836.19." Is that agreed to as to amount?

Mr. Dixey: That is right.

The Special Master: That item is agreed to as to amount. The next item is, "Over-payment of Treasury Note, $50." I suppose that item is agreed to in amount?

Mr. Dixey: $50 is right.

The Special Master: Let it be recorded that that is agreed to.

The next item is "Printing Treasury Notes, $375.74." Is that agreed to as to amount?

Mr. Anderson: Yes.

Mr. McClintic: Yes.

The Special Master: That is agreed to.

The next item is "Loss account of Counterfeit Money $190." Is that agreed to as to amount?

Mr. Dixey: Yes.

Mr. Anderson: Yes.

The Special Master: That is agreed to.

The next is "Virginia Military Institute, Additions and Improvements to Buildings, etc., $151,000." Is that amount right?

Mr. Dixey: $151,000 even is right.

The Special Master: That amount is agreed to by both sides, as to the amount?

Mr. Anderson: Yes.

Mr. Dixey: Yes.

The Special Master: "University of Virginia, Water Supply, $25,000." Is that amount agreed to? 930

Mr. Dixey: $25,000.

The Special Master: Let the record show that that amount is agreed to.

The next item is "Improvements, Public Square, and Improvements, Capitol Square, $1,456.91 and $12,278.47." Is that agreed to as to amount?

Mr Dixey: That is right.

Mr. Anderson: Yes.

The Special Master: The next item is "Fugitive Slave Expenses, $701." Is that amount agreed to?

Mr. Dixey: Take those items, that $701 and that $1,500; I have it in one.

The Special Master: You have $2,201?

Mr. Dixey: Yes.

The Special Master: Is that agreed to as to amounts?

Mr. Dixey: Yes; that is right.

The Special Master: The next is "Penitentiary Lot and New Hospital Building, $17,947.48." Is that agreed to as to amount?

Mr. Dixey: Yes.

Mr. Anderson: Yes .

The Special Master: The next item is "items of Indian defense in 1834, 1835, $754." And the next item is calling out the militia at Wheeling in 1838, $1,099. Those two items together make $1,853. Is that agreed to as to amount?

Mr. Dixey: We have not got that, $1,853.00; we will have to make further investigation.

The Special Master: How near to it have you got it?

Mr. Dixey: Total $1,099. 931

The Special Master: You have not got the $754?

Mr. Dixey: We do not locate it.

The Special Master: Well, the amount of the item $1,099, for calling out the militia at Wheeling in 1838 is agreed to?

Mr. Dixey: Yes.

The Special Master: That leaves $754?

Mr. Harrison: You have not that item at all?

Mr. Dixey: We do not locate it.

The Special Master: We will not wait for that.

Mr. Potter: It is probably included in the expenses of old wars.

Mr. Dixey: We can probably locate it.

The Special Master: The next is "Medical College of Virginia, Additions and Improvements to Buildings, etc., $25,000." Is that agreed to in amount?

Mr. Dixey: That is right.

The Special Master: That is agreed to.

The next is "Attorney General's Fees for prosecuting Selden Withers & Co., $500."

Mr. Dixey: Yes; $500.

The Special Master: That is agreed to as to amount?

Mr. Dixey: Yes, that is correct.

The Special Master: The next is "Eastern and Western Asylums: Additions and Improvements to Buildings, $363,845.56; and Support, $7,450.01; making a total of $371,295.57. Less buildings, original, $27,000, leaving $344,295.57." The first item is additions and improvements, $363,000. You have it right there, have you not?

Mr. Dixey: Yes. I have got to locate it. I have it, $371,295.57. They deduct buildings, $27,000, which I do not 932
locate immediately in my figures here.

Mr. Potter: That is included in the $371,000 but has been deducted.

The Special Master: Then, is it proper to say that the item of $344,000 is agreed to as to amount, after making a deduction of $27,000?

Mr. Dixey: Without knowing that there are not more buildings in there, I could not say.

Mr. Anderson: That is the original asylum.

The Special Master: Shall we mark that item as agreed to in amount?

Mr. Anderson: You can mark the $371,000 agreed to, if you want to. Mr. Scoville knew about that.

Mr. McClintic: Mr. Scoville became ill and had to leave.

The Special Master: Of course we are very sorry, but we cannot help that. Do you feel authorized to say that $344,000 is correct?

Mr. McClintic: I could not say.

The Special Master: Mr. Dixey agrees to the $371,000, and there is deducted $27,000 for the original buildings—

Mr. McClintic: I presume that is correct. Mr. Dixey thinks that possibly there are some more buildings—

The Special Master: Suppose we have this entry made as to that. That item is agreed to subject to the right of West Virginia to show that there are additional credits that should be deducted from the item. Is that agreeable? 933

Mr. McClintic: Yes, sir.

The Special Master: The next item, "Gun House at Alexandria, $900." Is that agreed to as to amount?

Mr. Dixey: $900 is correct.

Mr. Anderson: Yes.

The Special Master: The amount of $900 is agreed to.

The next item is "Cannon House, Surry County, $110." Is that agreed to as to amount?

Mr. Dixey: That is correct as to amount.

The Special Master: The next is "Gun House for Richmond Artillery, Act of March 11, 1835, $1,079.09." Is that correct as to amount, and is it agreed to as to amount?

Mr. Dixey: That is correct as to amount.

The Special Master: The next item is "Sundries, B. P. W. Expenses, as follows: Legal expenses, $2,024.97."

Mr. Dixey: We do not agree as to that, by a small amount.

The Special Master: How much—less than $2,000?

Mr. Harrison: Why don't you agree?

Mr. Dixey: I cannot say immediately. We have $38,461.62.

The Special Master: You mean as the aggregate of those various items?

Mr. Dixey: I can explain—

Mr. Potter: $1,668.12 for the expenses of the agent to London. (Mr. Potter read some other figures from a memorandum.)

The Special Master: Then that leaves that amount?

Mr. Potter: Yes.

The Special Master: Then that is agreed to as to amount? 934
How about this interest on the public debt, amounting to $18,574,747.84. Is that agreed to as to amount?

Mr. Dixey: That is correct.

The Special Master: Now, are there any other items which Virginia claims which are not included in the schedule?

Mr. Anderson: No.

The Special Master: Are there any items which West Virginia claims which are not included in the schedule submitted at the previous hearing, that should be added to the schedule?

The question was, Brother Carlisle and Mr. Attorney General, whether under this paragraph there were any items that West Virginia claims should be taken into account in addition to those that they have in their schedules that we have just been over, items that Virginia claims should go in, and Mr. Dixey is inquiring—

Mr. Anderson: There are none to be included, none others to be included.

The Special Master: Then, so far as accounts are concerned, and items on those accounts and their amounts, the case is closed under Paragraph 4, and I am now ready to hear anything that may be offered by either party for the purpose of establishing their contention that these items should be included or should not be included, and Virginia may proceed.

[*Vol. 7. July 2, 1909. Relating to Trans-Alleghany Lunatic Asylum.*]

Mr. Anderson: The accountants have reconciled several of these items.

(At this point the witness, Judge McWhorter, was excused.)

The Special Master: Do you recollect the paragraph under which there were two items? 965

Mr. Dixey: I think one was $27,000.

The Special Master: And the other was $700—

Mr. Dixey: The $27,000 is correct, so far as it goes, but there were other buildings in there.

Mr. Harrison: This is schedule four, ordinary expenses.

Mr. Dixey: But it does not include all the buildings.

The Special Master: Now, as to that item, what is the reason—what schedule is that?

Mr. Harrison: That is schedule D-1.

[*Vol. 7. July 2, 1909. General discussion. Direct Examination of A. G. Potter.*]

The Special Master: The next paragraph, Schedule D, relates to the ordinary expenses. That was the paragraph as to which there were two items. Let me have that schedule. 978

(After examination of schedule). How about D now, Plaintiff's Substitute Exhibit D? Are you agreed on that, Mr. Dixey?

Mr. Dixey: Not including that item of the Eastern and Western Asylums, including that credit of $27,000. The credit is right, so far as it goes.

The Special Master: Just say that on Plaintiff's Substitute Exhibit D-1 the item of Indian defense in 1834, 1835, $754, is agreed to. Also let the record show that West Virginia contends that in the items relating to the Eastern and Western Asylums the total of $371,295.57 should be diminished by more than $27,000, because they contend that there was more than that expended in the construction of the original buildings that went into the first total.

Now, you have not been able, Mr. Dixey, to get your details, to state how much that would be?

Mr. Dixey: No, sir.

The Special Master: What do you say about there being additional buildings, Mr. Potter; have you investigated that?

Mr. Potter: Yes, sir.

The Special Master: Were you able to find anything additional in the line of original construction?

Mr. Potter: Not in the line of original construction, but 979 there were buildings added from time to time.

The Special Master: I suppose Mr. Dixey would contend that if they added a wing that would be in the nature of original construction?

Mr. Dixey: Yes, sir.

The Special Master: Now, take the $27,000, Mr. Dixey, that from time to time additions were made, which should be considered as the original construction. You say there were—

Mr. Potter: Yes, sir.

The Special Master: How much do you think they aggregate?

Mr. Potter: I cannot tell.

The Special Master: How much do you think, Mr. Dixey?

Mr. Dixey: A large sum; I could not say how much.

The Special Master: Well, what do you mean by a large sum?

Mr. Dixey: I could not tell you. We did not go into that.

The Special Master: We will not take time this morning to go over that.

Mr. Dixey: We can reconcile those later, Mr. Potter, and I can reconcile that.

The Special Master: That item is left with the understanding that Mr. Potter and Mr. Dixey report to the Master just exactly what those additional expenditures were, and the circumstances under which they were made, and that the Master will take the report made by them as to that item as the agreement of the parties, he to determine whether they are in the nature of an original expenditure and to be deducted. Of course you are to be heard 980 on that proposition. There is no sense in spending time discussing that. That is simply a question of judgment as to whether it is or is not. That is entirely for me to say, when we get to it. That takes care of that item.

The parties are bound by what these experts report to me, and I say whether the $27,000 shall be increased or not. That is just exactly as if we spent a week here talking about it, and just as good as to spend more time about it.

Now, then, take the next schedule.

Mr. Anderson: No; there is a very important matter there, the apportionment of the ordinary expenses of the government.

The Special Master: That is in the revised—

Mr. Anderson: No, sir—

The Special Master: Are these the results of the revised computation predicated upon the agreement entered into yesterday?

Mr. Anderson: No, a more important matter is this—

The Special Master: What is it?

Mr. Anderson: There was a misapprehension on the part of the accountants as to the principle upon which the apportionment shall be made, and the decree directs the apportionment to be made as to aggregate population and as to with and without slaves. 981

The Special Master: I do not make any apportionment; I simply report facts.

Mr. Anderson: The decree directs that apportionment be made as to population.

The Special Master: No, sir; I simply report the facts and what the decree does later on, none of us knows.

Mr. Anderson: I do not mean the court decided it.

Mr. Carlisle: You said they directed it to be done.

The Special Master: I report the amount of the ordinary expenses on the basis of the Virginia population with and without slaves. That is a matter of computation, as shown by the census.

Mr. Anderson: You have to make that?

The Special Master: Yes.

Mr. Anderson: The decree says it shall be done on the basis of the average total population of Virginia, with or without slaves.

Mr. Carlisle: Where?

Mr. Anderson: In the 4th Section.

Mr. Carlisle: It does not. We do not say on what basis it shall be made. The court may hereafter determine that.

Mr. Anderson: I do not say the court has decided which shall be done.

Mr. Carlisle: You did say that.

Mr. Anderson: I beg your pardon. The court has not decided anything upon that.

The Special Master: Please bring my attention to specific items.

Mr Anderson. The decree directs this apportionment to be made on the basis of average total population with and without slaves. Now, in making the computation and apportionment, 982 the accountant made the mistake of taking the census at the end of each decade; that is, for the years 1823 to 1830 he took the census for 1830; from 1830 to 1850 he took the census for 1840. The purpose of the court evidently was to come as nearly as possible to the actual population for each year for which these expenditures were made. Now, what the accountant has done, you will observe, is to ascertain the average population for each decade.

The Special Master: Here is a sheet of paper that you gave me, marked "Ordinary Expenses, March 23 to December 31, 1860," which is the schedule you are now discussing?

Mr. Anderson: Yes, sir.

The Special Master: Has this been submitted to the other side?

Mr. Anderson: No, sir. This was made up only last night.

The Special Master: So it has not been submitted long enough for them to tell whether it is correct or not. We do not have to discuss that, because the whole thing is a matter of computation and incompetent. What I have to say is that if Mr. Dixey can take that and make his computation and report to me whether he agrees—

Mr. McClintic: When he has time to go over it.

The Special Master: Surely. If he does not agree with Mr. Potter, I will get an expert and have him make a computation.

Now, is there anything else? I will ask the stenographer 983 to mark this paper.

(Papers handed to the stenographer were filed with the case and marked "West Virginia 1, West Virginia 2 and West Virginia 3.")

Mr. Harrison: We want Mr. Potter to take the stand to explain some of these things.

Whereupon:

ARTHUR G. POTTER,

a witness heretofore sworn in behalf of the plaintiff, was recalled for further examination:

By Mr. Harrison:

Q. You will observe that the Virginia schedule D-1 includes a number of items of expenditures in the State of West Virginia, which according—

Mr. Anderson: Do you mean ordinary expenses?

Q. (Continuing) I mean to say ordinary expenses of Government, which according to our view should be included.

The Special Master: I understand that was suspended yesterday so as to give you a chance.

Mr. Harrison: I would like Mr. Potter to explain the character and circumstances—

The Special Master: Sure. You may now state the reason why you include those items as a proper subject of charge under this, as a part of ordinary expenses of government. You can begin with the first item and go down through, or make a statement covering them all, if you can. Put it in your own way and give all the detail you think necessary, in order that I may have the information necessary to pass upon that question. Begin with 984 $353,123.96, tobacco receipts.

A. We ascertained that the tobacco warehouses controlled by the State were in the following places: Richmond and Petersburg:

Dinwiddie, Campbell, Prince Edward, Mecklenburg, Buckingham, Cumberland, Albemarle, Nelson and Pittsylvania counties, all counties within the present State of Virginia; and that the business being done in Virginia was a proper receipt for the State of Virginia and was not a credit to the ordinary expenses of government. West Virginia took credit for that by deducting from the ordinary expenses.

By the Special Master:

Q. Your contention is that ought not to appear on either side?

A. Yes, sir.

Q. Is that all that is to be said about that?

A. We have agreed as to the total—

Q. I understand that, but is that all that needs to be said in order to show what the record is?

Mr. Harrison: You may state briefly how those receipts are derived. No matter about that; you may cross that question out.

Mr. Carlisle: I would like to have that, then. We would like to know about that.

The Witness: They were receipts for inspection and storage of unmanufactured crop tobacco, whether stemmed or unstemmed; also for the sale of waste and sample tobacco or the tobacco remaining in the warehouse three years. 985

Mr. Carlisle: That is all on that.

The Special Master: They were paid out and afterwards reimbursed by the industry.

The Witness: There were no payments by the State except for the salaries of the inspectors.

Mr. McClintic: Were not the salaries of these inspectors paid and charged in the ordinary expenses?

A. I cannot say that. They were paid by the expenses. They were deducted from the figure that produces this net figure that you have deducted from your ordinary expenses.

By the Special Master:

Q. As I understand it, Virginia contends that this item of tobacco receipts, either disbursements or receipts, does not appear on either side of the account as you have stated it; you have elimimated it altogether?

A. Yes, sir.

Q. And therefore you think West Virginia ought not to be entitled to the credit?

A. Yes, sir.

The Special Master: On that item, have you any further cross examination, Mr. McClintic?

Mr. McClintic: The inspectors were paid by the State, were they not, and paid out of the salary fund?

The Witness: They were paid by any money that happened to be in the treasury. There was no salary fund, as I understand it.

Mr. McClintic: And that money that was paid to them is charged up in the ordinary expenses, is it not?

The Witness: Charged up in the salary account. 986

The Special Master: Although it may be that the State paid the salary of the inspectors of tobacco, and that was included in the first instance in the salary fund, in making that statement you have deducted from the salary fund as a charge the amounts thus paid to the inspectors of tobacco; is that right?

The Witness: Yes, sir.

The Special Master: So it does not appear in their account at all. What about the next item? Please take those items, Mr. Potter, and go through them.

The Witness: Expenses of Constitutional Convention.

The Special Master: Is there anything that needs to be said about that except that it was a constitutional convention to revise the constitution of the State? I suppose I may take judicial notice of that fact?

Mr. Harrison: Two conventions; one of 39-40 and one of 49-50.

The Special Master: Is there anything to say about that, except that there were two conventions?

Mr. Harrison: No.

The Special Master The next item is "Cost of Slaves Transported and Executed." Does not that item speak for itself and show what it was for?

The Witness: Yes, sir.

The Special Master: Of course I will assume that the State was transporting and attending to these slaves. 987

Mr. Carlisle: And the question is whether it was on ordinary expense.

The Special Master: Yes. Unless there is some special fact that should be in the record, we will not have to spend any time on that.

Mr. Anderson: There is nothing except what appears in the Statutes.

The Special Master: Very well.

The next is "Boundary Line." I suppose that was money expended for the boundary line?

The Witness: Several boundary line disputes.

The Special Master: It does not make any difference how many there were; I suppose that speaks for itself. That is all there is of that. I do not think there is anything to be added to that.

The next is "Maps." Commonwealth and Board of Public Works.

I suppose they used a lot of maps and the State paid for them. Is there anything more than that to be said about that?

The Witness: Those were maps--

Mr. McClintic: Big State maps, were they not?

The Witness: Yes, sir.

Mr. Carlisle: They were maps made in connection with the development of the State.

The Special Master: Maps that were thought to be necessary to properly develop the work under the control of the Board of Public Works.

Mr. McClintic: What I wanted to add was that these were State maps, maps of the whole State.

Mr. Harrison: Yes. 988

The Special Master: Well, the maps were State wide and covered the whole State.

The Witness: I don't know that I can state that positively. There may have been some county maps.

The Special Master: Well, it is more to your interest that they cover the whole State. The next item is "Deaf, Dumb and Blind Institution, 1845 to 1860." What is there to say about that?

Mr. Harrison: That has nothing to do with the original cost.

The Special Master: I understand this is a matter of improvements and additions to buildings?

Mr. Anderson: And enlargements.

The Special Master: Of course, that will raise the question as to whether it is an investment in the plant or a matter to be taken into account in the maintenance of the plant. The next is "International Exchanges."

The Witness: That was an amount appropriated for expenses in connection with the exchange of books, works of art, and agricultural implements with foreign governments, 1849 to 1860.

The Special Master: That is justified, I suppose, by the accumulation of public intelligence, which Virginia received as a matter of courtesy from these countries. Can you add anything to that?

Mr. Carlisle: I suppose not.

The Special Master: Does that state the facts?

Mr. Carlisle: So far as we know.

The Special Master: That cleans that up. The next is "Over- 989
payment of Treasury Note, $50." What is that; did they pay a note twice?

Mr. Potter: I don't know that it was one note, but there was a difference of $50 after all the notes had been paid.

The Special Master: They paid it and did not recover it back; is that it?

Mr. Potter: Yes, sir.

The Special Master: Printing treasury notes. Does not that explain itself?

Mr. Potter: That is the cost of printing the treasury notes, yes.

The Special Master: Loss on account of counterfeit money. Can anything be added to that; does that not explain itself?

Mr. Potter: Except the money was received from the Northwestern and Merchants and Mechanics Banks at Wheeling, being moneys received by the treasurer.

The Special Master: When?

Mr. Potter: 1859.

The Special Master: And it turned out that that was counterfeit?

Mr. Potter: And has been charged as a loss in the ordinary expenses.

The Special Master: The State did not collect it. Of course that left the bank liable for it. As a matter of fact, the State lost it and did not collect it. Is that all of that?

Mr. Potter: Yes, sir.

The Special Master: Virginia Military Institute, Additions and Improvements to Buildings, $151,000. Is that criticised because the aggregate, $151,000, may include what would be additions as well as improvements; or is that sufficiently intelligible? 990

Mr. McClintic: It is all buildings, is it not, Mr. Potter?

Mr. Potter: It is buildings, yes. They were all additional buildings.

The Special Master: Then when you say improvements there, all you mean to say is that the addition thus made was an improvement on the original plant?

Mr. Potter: Yes, sir.

The Special Master: It is admitted it was an addition to the buildings?

Mr. Potter: Some of them were very small.

The Special Master: It is a matter of no consequence about their size—

Mr. Conrad: This was a mess hall added to the Institute.

The Special Master: It is quite immaterial what it was.

Mr. Anderson: That was only part of it.

The Special Master: A designation adds nothing to it. Your contention is it ought not to be allowed, and their contention is it should be allowed. Your proposition, Brother Carlisle, is that it was an addition to property which was an investment. I suppose that is your contention. That takes care of that item. The next is University of Virginia: Water Supply. 991

Mr. Potter: An appropriation for the University of $25,000 for the purpose of repairing and improving the buildings thereof and for furnishing a supply of water.

The Special Master: Was there a system of water works constructed for the use of the University of Virginia?

Mr. Potter: Yes.

The Special Master: That covers that, then. The only question is whether that is a maintenance charge or an additional charge. Have you any suggestions to make, Brother McClintic?

Mr. McClintic: No, sir.

The Special Master: Brother Anderson?

Mr. Anderson: No, sir.

The Special Master: Improvements Public Square and Improvements Capitol Square. I suppose that is just what the heading shows?

Mr. Potter: Yes. That should read Capitol Square, Governor's Mansion, and so forth.

The Special Master: When you say improvements in Public Square and improvements in Capitol Square, do you mean to say that is simply a question of repairing, keeping in order, or an addition?

Mr. Potter: Here are the items under the second division (referring to memorandum) 1825, for a guard house; 1834 for grading the grounds around the Capitol Square; 1838, water system; 1851, gas system; 1855, approaches—

The Special Master: What are you giving—the years or the amounts? Taking the amounts that make the aggregate $1,456,091, I wish you would tell what they are for, and give the 992
amounts that make up the $12,247.

Mr. Potter: I was giving the amounts of the $12,247. I have not the details of that other amount.

The Special Master: If you have not, you will submit that later, and submit it for their inspection?

Mr. Potter: These amounts have been agreed on with them.

The Special Master: I understand, but what I want is this. I suppose both of you may want to discuss the question of whether they may be called a maintenance charge or not. In order to give that, we may want the details showing just what was done. For instance, if any of the money was expended by the acquisition of additional land, that might be one thing. If it was expended for the purpose of keeping in repair during that year, that might be quite another thing. Mr. Dixey, you notice what I say about that. You will have no trouble about that?

Mr. Dixey: None at all.

The Special Master: The next is "Fugitive Slave Expenses."

Mr. Dixey: For the arrest of fugitive slaves.

Mr. Harrison: That explains itself.

The Special Master: Have you any suggestion about that, Mr. Potter?

Mr. Potter: Some part of that may be for the apprehension of fugitive slaves in other States.

The Special Master: That distinction is not worth discussing. That is the sum that was spent for apprehending fugitive slaves in Virginia and some outside Virginia. To my mind that is of no consequence, the question as to where they were arrested. I 993 do not think the geographical location of the expenditure would cut any figure whatever in that. Is there anything to be added there? If not, that is enough about that. The next is "Reward, Additional." That is in connection with the same thing, I suppose?

Mr. Potter: Reward for information leading to the conviction of persons carrying off slaves.

The Special Master: That is, rewards paid to people in connection with the enforcement of the fugitive slave law?

Mr. Potter: Yes.

The Special Master: Can there be anything added to that? If not, that is all we want about that. That settles that matter. Now, going to the next one. "Penitentiary Lot and New Hospital Building." Is that all that can be said about it?

Mr. Potter: Yes.

The Special Master: Is there anything further on that, Mr. Potter? If not, we will pass to the next item. "Items of Indian Defense in 1834-1835;" and the next "Calling out Militia at Wheeling in 1838." Can anything be added to that?

Mr. Potter: I think not.

The Special Master: Can you suggest anything that minimizes it? That is 1834, 1835 and 1838.

Mr. Potter: Do not confuse those two. Calling out the militia at Wheeling in 1838 is $1,099.

The Special Master: I am not confusing them. I am simply 994 saying there was $754 expended in 1834 and 1835 in defending against the Indians.

Mr. Carlisle: It was not paid until then, I suppose, although the occasion of the expenditure may have occurred long before then.

Mr. Potter: All I know is the payment was made then.

The Special Master: And the service rendered was sometimes anterior to that. Is there anything to be added to that? If not, we will pass to the next. "Calling out Militia at Wheeling in 1838."

Mr. Potter (reading from memorandum): "For which they should receive the usual pay of the militia when they were in actual service, etc."

The Special Master: Is there anything to be added to that? If

not, we will go to the next item. "Medical College of Virginia, Additions and Improvements to Buildings, etc."

Mr. Potter (again referring to memorandum): "The Act creates, etc. (reading) "the hospital and infirmary for extending the college buildings."

The Special Master: That is undoubtedly additional.

Mr. Potter: The Act is March 1, 1860.

The Special Master: Improvements is used there for suggesting that the addition was an improvement, because, technically speaking, it was an addition. That is $25,000. The next is "Attorney General's Fees prosecuting Selden, Withers & Company." Who were Selden, Withers & Company?

Mr. Carlisle: They were defaulters, New York bankers.

Mr. Anderson: That means prosecuting a claim against 995 them, not criminally.

The Special Master: I understand.

Mr. Potter: It was paid under the Act of December 25, 1859, I think.

Mr. Anderson: And this was paid for conducting the lawsuit.

Mr. Potter: That is right.

The Special Master: The next is "Eastern and Western Asylums; Additions and Improvements to Buildings, etc., $363,845.56;" and "Support, $7,450.01;" making a total of $371,295.57. What is that "Support?"

Mr. McClintic: That is a question that is under dispute. We were speaking about that awhile ago.

The Special Master: The support proposition?

Mr. McClintic: No—

The Special Master: "Additions and Improvements to Buildings, etc., $363,845.56." Are those the same kind of additions involved in these other items?

Mr. Potter: Yes, sir; but the item of support—

The Special Master: I will come to that in a moment. That is all there is to be said about that; so far as they are called improvements it is in the sense that an addition is an improvement. Now, "Support," what is that for?

Mr. Potter: For annual support the State appropriated so much each year.

The Special Master: The annual appropriations in the maintenance of this institution. Do you agree to that?

Mr. McClintic: That is correct.

Mr. Potter: I think it is merely an omission on the part of 996 our friends.

The Special Master: There is an opportunity for repentance, between now and the argument, and they can make that confession if

they have a mind to; and if they do not make it and I decide against them, it can go in. The next is "Gun House at Alexandria" and "Cannon House, Surry county." I suppose that is the same sort of an investment, $110.

Mr. Potter: The same thing.

The Special Master: The next is "Gun House for Richmond Artillery, $1,079.09."

Mr. Potter: The same.

The Special Master: The next is "Sundry Board of Public Work Expenses, as follows." Is there anything to be added to any of these items except matters disclosed in the items themselves?

Mr. Potter: Not entirely. The printing of bonds is not the entire cost of printing bonds. As I understand it, the defendants have included the printing of registered bonds, and this is the printing of coupon bonds and the engraving of the coupon bonds.

The Special Master: That is, they have included the printing of the registered bonds, and you have included the printing of registered bonds and coupon bonds.

Mr. Potter: Yes.

The Special Master: Do you agree on that?

Mr. McClintic: We are handicapped by illness of Mr. Scoville on that.

The Special Master: I say this. Mr. Dixey may look that 997 up and if there is anything you want to call my attention to in reference to that, that may be done later. Is there anything else to be said about those items?

Mr. Potter: No, sir, I think not.

Mr. McClintic: No, sir.

The Special Master: As to those items, the case is closed. Now, let us take up the next paragraph, which is Paragraph No. 5, I think. As to that, I understand the experts have not been able to reach any result.

Mr. Carlisle: Before that, stated by the defendant's counsel on Exhibit C-1, on page 8—

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT E-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

E-1
Page 1

COMMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT E-1.

SUMMARY.

	Virginia.	West Virginia.
Assessed Valuation of Real Property as per latest obtainable Assessment Rolls, prior to June 20th, 1863	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863, (estimated in part)	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863	152,844,637.59	24,739,894.21
Total Amount of Income on which tax was levied as per latest obtainable Assessment Rolls, prior to June 20th, 1863	11,108,300.13	299.257.45
	$710,889,989.03	$113,142,996.70

The assessed valuation of Slaves for 1860 and 1861, not appearing on the original Assessment Rolls, it is agreed by the parties to this cause that in those counties for which no returns are found for 1862 and 1863, the number of slaves reported for 1860 and 1861 shall be taken and their value estimated on the basis of the average value of all Slaves in counties for which both number and value is reported in 1862 and 1863, making a separate calculation for each State.

Where number of slaves but no assessed valuation is reported in 1862 and 1863 the same average value as above is used.

We hereby certify that the within tables, consisting of pages 5 to 8 following, of which the above is a Summary, are taken from the original Assessment Rolls of the Commonwealth of Virginia, so far as available and from Auditors reports in other cases; that the said Summary is composed of items taken from the latest obtainable authentic sources of information prior to June 20th, 1863, and that the method adopted as above, of valuing the Slaves in those counties for which no value is shown in 1860 and 1861 is fair to both parties.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & COMPANY,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,460.31	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed Summary.....	152,844,637.59	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

Summary.

Plaintiff's Fair Estimated Valuation of Property, Real and Personal—		
In Virginia Counties, as above.....	$186,253,889.55	68.8636%
In West Virginia Counties, per contra.....	84,213,900.15	31.1364%
Total	$270,467,789.70	100 %
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$37,794,211.18
Of which Plaintiff claims there is chargeable to West Virginia 31.1364% as above		$11,767,756.77

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY.
For the Defendant.

Fair Estimated Valuation—West Virginia.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above named counties.	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these counties is 25% of this assessed valuation..		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		13,803,732.21	
(As per agreed summary....	$24,739,894.21)		16,537,772.71
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, in West Virginia Counties.....			$84,213,900.15

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Plaintiff's Alternative Method of Determining Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Fair Estimated Valuation of the Property, Real and Personal, by Counties of the State of Virginia

At June 20th, 1863.

Alternative Estimate of the Valuation of Real and Personal Property, Applying to the Assessed Valuation of Personal Property in Counties Dominated by the Wheeling Government, which it is Alleged is on a Greenback Basis, the Gold Value as at Date of Assessment, viz., February 1st, 1863, as Reported in Report of United States Treasury, Office of Government Actuary, Form II—Ed. 5-17-'95.

FAIR ESTIMATED VALUATION—VIRGINIA.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary	$296,085,460.31	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed summary	152,844,637.59	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

SUMMARY

Plaintiff's Fair Estimated Valuation of Property, Real and Personal:		
In Virginia Counties, as above	$186,253,889.55	70.2146%
In West Virginia Counties, per contra	79,009,893.11	29.7854%
Total	$265,263,782.66	100 %

Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1	$ 37,794,211.18
Of which Plaintiff claims there is chargeable to West Virginia 29.7854% as above	$ 11,257,156.98

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations :
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

FAIR ESTIMATED VALUATION—WEST VIRGINIA.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces ..... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimate valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these Counties is a fair estimated valuation....		52,903,002.84	
(As per agreed summary..	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above-named counties	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these Counties is 25% of this assessed valuation		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties....	13,803,732.21		
Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17	
(As per agreed summary..	$24,739,894.21)		11,333,765.67
Plaintiff's Fair Estimated Valuation of Property, Real and Personal in West Virginia Counties applying greenback value to Personal Property assessments			$79,009,893.11

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S ALTERNATIVE METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are included as Personal Property, notwithstanding the fact that they had been emancipated by President Lincoln's Proclamation.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.			
Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,460.31		
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.....		$148,042,730.15	
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary.	403,696,228.59		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15	
		$248,966,787.30	
Summary.			
Plaintiff's Fair Estimated Valuation of Property Real and Personal, with exceptions noted above:			
In Virginia, as above	$248,966,787.30	74.4085%	
In West Virginia, per contra.....	85,627,548.40	25.5915%	
	$334,594,335.70	100 %	
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$37,794,211.18	
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 25.5915% as above..... ..		$ 9,672,105.55	

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.			
Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that the assessed valuation is a fair estimated valuation		13,803,732.21	
Total Valuation of Slaves at latest obtainable assessment in all other West Virginia counties..	1,805,796.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		451,449.00	
(As per agreed summary..	$30,394,487.21)		17,951,420.96
Plaintiff's fair estimated valuation of property, real and personal, in West Virginia counties with exception noted above.			$85,627,548.40

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COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

DEFENDANT'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia, on the basis of the Fair Estimated valuations of the Property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

	Virginia.	West Virginia.
Assessed Valuation of Real Property at latest obtainable assessment, as per agreed Summary	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves at latest obtainable assessment, as per agreed Summary	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves, at latest obtainable assessment, as per agreed Summary	152,844,637.59	24,739,894.21
Total amount of Income on which tax was levied, at latest obtainable assessment, as per agreed Summary	11,108,300.13	299,257.45
Total	$710,889,989.03	$113,142,996.70

Defendant claims that the assessed valuation here shown is a Fair Estimated Valuation to be used as the basis for the division of the Ordinary Expenses of Government, viz.:

Virginia	$710,889,989.03	86.2696%
West Virginia	113,142,996.70	13.7304%
	$824,032,985.73	100 %

Defendant further claims that the Ordinary Expenses of Government from March 19th, 1823, to December 31st, 1860, amount to $18,207,684.29

as shown in Joint Exhibit D-1, and that the amount to be charged to West Virginia is 13.7304% as above..... $ 2,499,987.88

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of Real and Personal Property being used as a FAIR ESTIMATE of the valuation; objects to the inclusion of income, on which tax is levied, as Personal Property; objects to Slaves being considered Personal Property; objects to the use of the percentages so obtained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.

Certified correct as to figures and calculations.
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

County.	1860				1861					
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.	
	Number.	Value.			Number.	Value.			Number.	Value.
VIRGINIA:										
Accomac	2,645	.....	$ 1,353,505.00	$ 7,693.00	2,739	.....	$ 1,354,953.00	$ 3,822.00	2,643	.....
Albemarle	.....	.....	.....	.....	7,449	.....	2,626,742.00	116,956.00	12,681	$ 3,906
Alexandria	709	.....	816,186.00	161,521.45	709	.....	816,186.00	160,900.45	149	.....
Alleghany	589	.....	355,465.00	27,510.00	522	.....	380,427.00	16,986.00	659	259
Amelia	4,269	.....	979,016.00	35,738.00	4,195	.....	1,017,215.00	14,840.00	7,172	2,453
Amherst	3,211	.....	761,320.00	9,539.00	3,405	.....	882,485.00	7,080.00	5,860	2,004
Appomattox	2,444	.....	661,245.00	14,315.00	2,526	.....	711,061.00	6,340.00	4,276	1,707
Augusta	2,545	.....	3,052,439.00	12,310.00	2,587	.....	3,133,015.00	10,015.00	4,430	1,760
Staunton	.....	.....	.....	.....	441	.....	435,404.08	43,366.00	734	332
Bath	475	.....	425,836.00	2,875.00	517	.....	384,645.00	.....	781	298
Bedford	5,303	.....	2,115,884.00	9,592.00	5,660	.....	2,011,160.00	8,422.00	9,135	2,830
Bland	.....	.....	.....	.....	113	.....	154,400.00	.....	273	92
Botetourt	1,728	.....	1,044,030.00	20,093.43	1,671	.....	1,001,191.00	13,313.12	1,852	902
Brunswick	5,209	.....	1,412,920.00	15,283.00	5,381	.....	1,442,560.00	7,754.00	9,212	3,564
Buchanan	14	.....	81,548.00	.....	13	.....	84,904.00	.....	29	10
Buckinghan	4,827	.....	933,423.00	21,310.00	4,866	.....	838,847.00	12,114.00	8,104	2,457
Campbell	4,932	.....	1,452,167.00	150,927.00	4,981	.....	1,571,830.00	115,157.00	8,175	2,961
Lynchburg	1,822	.....	984,599.00	242,409.00	1,611	.....	1,078,978.00	148 48.00	1,502	54
Caroline	6,029	.....	1,460,978.00	19,540.00	6,074	.....	1,490,234.00	1,744.00	10,389	3,516
Carroll	65	.....	156,233.87	.....	104	.....	290,028.93	300.00	258	91
Charles City	1,783	.....	405,592.00	13,858.00	1,877	.....	434,720.00	7,301.00	3,643	1,104
Charlotte	5,489	.....	1,562,782.00	39,456.00	5,560	.....	1,509,757.00	17,080.00	9,245	3,103
Chesterfield	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Clarke	1,834	.....	748,762.00	4,018.00	1,798	.....	720,928.00	2,190.00	2,623	91
Craig	215	.....	262,376.00	.....	225	.....	253,431.00	.....	390	13
Culpeper	3,245	.....	928,245.00	18,561.00	3,259	.....	1,046,014.00	7,923.00	4,587	2,04
Cumberland	3,899	.....	937,357.00	37,125.00	3,834	.....	808,050.00	6,254.00	6,331	1,91
Dinwiddie	3,918	.....	814,161.00	13,665.00	4,010	.....	810,776.00	6,100.00	6,486	2,36
Petersburg	3,538	.....	2,520,019.00	626,747.00	3,453	.....	2,754,673.00	199,288.00	4,024	1,89
Elizabeth City	.....	.....	.....	.....	1,196	.....	334,069.00	2,680.00	.....	.....
Essex	3,921	.....	1,062,457.62	44,483.85	3,873	.....	1,005,861.30	14,278.00	6,472	1,95
Fairfax	1,607	.....	804,195.00	30,343.00	1,611	.....	899,020.00	13,656.00	.....	.....
Fauquier	5,025	.....	2,578,876.00	7,621.00	5,016	.....	2,544,018.00	6,335.00	.....	.....
Floyd	224	.....	305,154.00	3,721.00	244	.....	271,282.00	.....	374	15
Fluvanna	2,877	.....	801,182.00	12,121.00	2,883	.....	753,155.00	5,200.00	4,781	1,73
Franklin	3,330	.....	1,237,755.00	2,327.00	3,394	.....	1,137,392.00	44.00	5,987	1,93
Frederick	844	.....	1,096,876.00	8,092.00	824	.....	1,066,656.00	1,036.00	715	28
Winchester	330	.....	669,739.00	40,754.80	342	.....	1,060,637.00	23,972.80	428	18
Giles	444	.....	390,735.00	1,925.00	438	.....	373,820.00	2,000.00	708	24
Gloucester	3,038	.....	723,846.00	5,675.00	3,053	.....	653,340.00	3,819.00	.....	.....
Carried forward	92,377	.....	$35,896,904.49	$1,661,149.53	102,454	.....	$40,143,865.31	$1,006,414.37	145,108	$49,6

1862			1863				Total of Latest Assessment.					County.
ves. Value.	Other Personal Property.	Income.	Slaves. Number.	Slaves. Value.	Other Personal Property.	Income.	Slaves. Number.	Slaves. Value.	Other Personal Property.	Income.	Real Estate.	
.....	$ 1,008,285.00	$ 850.00	2,263	.....	$ 971,261.00	$ 1,020.00	2,263	$ *1,135,121.00	$ 971,261.00	1,020.00	$ 3,006,019.01	Accomac
$ 3,906,845.00	3,073,022.00	109,016.00	12,916	$ 7,647,305.00	4,212,185.00	201,569.00	12,916	7,647,305.00	4,212,185.00	201,569.00	7,521,011.47	Albemarle
.....	429,121.45	23,201.24	.....	.....	371,202.45	5,250.00	.....	.....	371,202.45	5,250.00	4,246,781.48	Alexandria
259,580.00	371,595.00	4,682.00	677	484,935.00	617,220.00	3,190.00	677	484,935.00	617,220.00	3,190.00	886,218.89	Alleghany
2,453,900.00	1,000,325.00	12,980.00	7,538	5,840,450.00	1,524,152.00	17,997.00	7,538	5,840,450.00	1,524,152.00	17,997.00	2,227,607.77	Amelia
2,004,545.00	980,975.00	9,546.00	6,368	4,839,000.00	1,798,230.00	6,091.19	6,368	4,839,000.00	1,798,230.00	6,091.19	2,285,852.00	Amherst
1,707,240.00	785,959.00	4,588.00	4,446	3,350,375.00	1,216,929.00	13,334.00	4,446	3,350,375.00	1,216,929.00	13,334.00	1,517,274.47	Appomattox
1,760,685.00	3,433,132.00	7,201.00	4,515	3,930,430.00	6,078,024.00	73,864.50	4,515	3,930,430.00	6,078,024.00	73,864.50	{ 10,447,385.19	Augusta
339,400.00	486,229.00	34,552.00	749	630,890.00	831,077.00	130,348.00	749	630,890.00	831,077.00	130,348.00	{	Staunton
298,375.00	405,285.00	.....	740	521,407.00	641,091.00	200.00	740	521,407.00	641,091.00	200.00	1,022,626.72	Bath
2,836,934.00	1,952,789.00	4,557.92	9,623	4,825,805.00	2,886,851.00	54,269.00	9,623	4,825,805.00	2,886,851.00	54,269.00	4,915,374.34	Bedford
92,370.00	254,156.00	.....	252	163,850.00	435,115.00	.....	252	163,850.00	435,115.00	.....	677,408.17	Bland
909,756.00	1,104,465.00	8,650.00	2,671	1,966,055.00	1,681,013.00	8,327.00	2,671	1,966,055.00	1,681,013.00	8,327.00	3,093,896.88	Botetourt
3,564,725.00	1,477,460.00	7,311.00	9,479	6,819,700.00	1,847,050.00	11,849.00	9,479	6,819,700.00	1,847,050.00	11,849.00	1,571,475.99	Brunswick
10,300.00	94,645.00	.....	33	17,500.00	142,252.00	.....	33	17,500.00	142,252.00	.....	145,260.55	Buchanan
2,457,025.00	882,716.00	10,649.00	7,096	5,062,000.00	1,346,710.00	13,585.00	7,096	5,062,000.00	1,346,710.00	13,585.00	2,419,172.74	Buckingham
2,961,200.00	1,594,054.00	100,684.00	8,524	6,336,915.00	3,022,783.00	89,508.00	8,524	6,336,915.00	3,022,783.00	89,508.00	{ 6,072,524.78	Campbell
546,100.00	1,334,867.50	92,911.60	1,722	1,482,500.00	5,156,421.00	819,025.00	1,722	1,482,500.00	5,156,421.00	819,025.00	{	Lynchburg
3,510,767.00	1,579,549.00	6,712.00	8,554	5,974,572.00	2,490,952.00	9,238.36	8,554	5,974,572.00	2,490,952.00	9,238.36	3,451,136.32	Caroline
91, 420.00	336,919.00	.....	280	143,990.00	426,303.00	.....	280	143,990.00	426,303.00	.....	827,284.23	Carroll
1,104,370.00	477,720.00	7,641.90	1,784	596,895.00	486,689.00	7,564.80	1,784	596,895.00	486,689.00	7,564.80	1,033,531.77	Charles City
3,102,447.00	1,474,850.00	16,385.00	9,589	6,596,820.00	2,020,267.00	21,019.00	9,589	6,596,820.00	2,020,267.00	21,019.00	3,393,480.56	Charlotte
.....	.....	.....	7,671	5,722,220.00	1,760,777.00	27,337.00	7,671	5,722,220.00	1,760,777.00	27,337.00	3,944,786.00	Chesterfield
916,545.00	744,163.00	700.00	.....	.....	.....	.....	2,623	916,545.00	744,163.00	700.00	3,865,795.11	Clarke
139,705.00	277,120.00	.....	447	275,775.00	429,280.00	2,000.00	447	275,775.00	429,280.00	2,000.00	870,973.94	Craig
2,044,436.00	1,079,756.00	4,724.00	3,253	1,902,550.00	1,476,177.50	34,919.00	3,253	1,902,550.00	1,476,177.50	34,919.00	3,271,412.76	Culpeper
1,917,150.00	869,315.00	.....	6,537	4,605,600.00	1,184,638.00	.....	6,537	4,605,600.00	1,184,638.00	.....	2,127,944.91	Cumberland
2,362,630.00	868,333.00	2,000.00	6,515	4,400,087.00	1,011,982.00	4,800.00	6,515	4,400,087.00	1,011,982.00	4,800.00	2,427,991.10	Dinwiddie
1,893,595.00	2,956,881.00	175,707.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	6,604,014.00	Petersburg
.....	.....	.....	....	.....	.....	.....	1,196	* 599,914.00	334,069.00	2,680.00	1,032,933.00	Elizabeth City
1,958,465.00	945,763.98	14,172.00	6,265	1,904,900.00	1,291,389.03	14,526.00	6,265	1,904,900.00	1,291,389.03	14,526.00	2,095,105.24	Essex
.....	.....	.....	.....	.....	.....	.....	1,611	* 808,078.00	899,020.00	13,656.00	5,028,362.73	Fairfax
.....	.....	.....	.....	.....	.....	.....	5,016	*2,516,026.00	2,544,018.00	6,335.00	9,250,346.87	Fauquier
152,050.00	363,880.00	.....	493	372,300.00	744,784.00	6,478.00	493	372,300.00	744,784.00	6,478.00	871,642.70	Floyd
1,737,141.00	831,593.00	2,800.00	5,107	3,910,900.00	1,393,673.00	15,168.00	5,107	3,910,900.00	1,393,673.00	15,168.00	2,160,783.87	Fluvanna
1,934,000.00	1,161,237.00	.....	6,262	4,230,100.00	1,754,029.00	500.00	6,262	4,230,100.00	1,754,029.00	500.00	2,506,642.31	Franklin
281,300.00	525,825.00	2,300.00	.....	.....	.....	.....	715	281,300.00	525,825.00	2,300.00	{ 5,681,169.61	Frederick
180,900.00	1,045,582.00	16,848.00	.....	.....	.....	.....	428	180,900.00	1,045,582.00	16,848.00	{	Winchester
246,200.00	356,005.00	950.00	651	290,025.00	511,210.00	700.00	651	290,025.00	511,210.00	700.00	1,030,201.85	Giles
.....	.....	.....		.....	.....	.....	3,053	*1,531,385.00	653,340.00	3,819.00	1,936,241.88	Gloucester
$49,682,101.00	$36,563,172.93	$682,319.66	147,223	$99,065,801.00	$57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$64,685,463.98	$3,816,295.85	$115,467,671.21	

* This value is based on the average value of the total number of slaves in counties for which both number and value is shown in 1862 and 1863.

County.	1860				1861				1862			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	In
	Number.	Value.			Number.	Value.			Number.	Value.		
Brought forward.....	92,377	.....	$35,896,904.49	$1,661,149.53	102,454	.....	$40,143,865.31	$1,006,414.37	145,108	$ 49,682,101.00	$36,563,472.93	$
Goochland	3,507	.....	882,985.00	25,975.00	.....	.....	.....	.....	5,768	2,165,145.00	815,925.00	
Grayson	280	.....	279,337.00	1,200.00	294	.....	320,568.00	200.00	551	187,550.00	396,525.00	
Greene	981	.....	371,965.00	1,535.00	997	.....	359,706.00	768.00	1,838	545,525.00	374,200.00	
Greensville	2,213	.....	438,850.00	450.00	2,280	.....	466,020.00	750.00	3,963	1,274,234.00	440,404.00	
Halifax	8,696	.....	2,636,968.00	77,631.00	8,818	.....	2,602,942.00	33,507.00	14,770	5,338,625.00	2,638,665.00	
Hanover	4,984	.....	1,408,020.00	30,737.00	5,115	.....	1,328,990.00	17,762.00	8,621	3,017,450.00	1,355,520.00	
Henrico	3,860	.....	1,425,038.00	144,932.00	4,494	.....	1,386,853.00	68,944.68	6,557	2,534,345.00	1,841,535.00	
Richmond	7,639	.....	4,073,365.00	605,795.43	6,474	.....	4,274,884.00	459,347.00	7,917	3,350,340.00	6,864,734.00	
Henry	2,678	.....	845,159.00	6,827.00	2,779	.....	813,485.00	2,860.00	4,978	1,633,430.00	862,235.00	
Highland	208	.....	314,790.00	1,200.00	219	.....	312,288.00	150.00	341	102,680.00	365,655.00	
Isle of Wight.....	1,040	.....	447,528.00	8,620.00	2,148	.....	867,977.00	11,968.06	1,643	601,750.00	466,225.00	
James City	1,141	.....	267,597.00	8,619.00	1,162	.....	287,899.00	2,712.00	.....	.....	.....	
Williamsburg	405	.....	276,220.00	25,743.00	410	.....	269,541.00	9,997.00	.....	.....	.....	
King and Queen.....	3,288	.....	912,999.00	4,532.00	3,406	.....	937,602.00	7,216.00	5,882	1,592,590.00	941,985.00	
King George	2,066	.....	478,874.00	9,022.00	1,984	.....	513,311.00	7,280.00	2,999	1,123,260.00	560,735.00	
King William	2,916	.....	423,670.00	6,970.00	3,248	.....	441,115.00	1,220.00	5,029	1,526,300.00	487,950.00	
Lancaster	1,605	.....	313,610.00	4,350.00	1,583	.....	306,475.00	3,055.00	2,340	710,670.00	297,175.00	
Lee	486	.....	699,153.00	2,320.00	481	.....	742,706.00	342.00	958	468,976.00	895,991.00	
Loudoun	3,063	.....	2,590,444.00	34,478.40	3,000	.....	3,207,617.00	21,171.40	.....	.....	.....	
Louisa	5,429	.....	1,618,875.00	34,093.00	5,366	.....	1,663,795.00	17,013.00	9,169	3,217,660.00	1,790,134.00	
Lunenburg	4,163	.....	926,401.00	3,147.00	4,212	.....	861,074.00	3,904.00	7,219	2,636,663.00	959,409.00	
Madison	2,408	.....	1,156,079.00	9,462.56	2,373	.....	1,121,577.00	1,608.00	4,235	1,322,375.00	1,199,813.00	
Matthews	1,507	.....	327,884.00	2,650.00	1,479	.....	343,250.00	800.00	2,110	599,090.00	318,030.00	
Mecklenburg	7,392	.....	1,553,038.00	31,894.00	7,506	.....	1,642,462.00	28,225.00	12,481	3,818,238.00	1,552,399.00	
Middlesex	1,526	.....	324,513.00	7,812.00	1,550	.....	347,625.00	3,657.00	2,546	652,119.00	338,778.00	
Montgomery	1,141	.....	753,910.00	9,460.00	1,173	.....	780,915.00	3,890.00	2,132	879,400.00	888,875.00	
Nansemond	2,571	.....	1,005,005.00	17,804.00	2,677	.....	1,036,998.00	12,228.00	.....	.....	.....	
Nelson	3,215	.....	569,377.00	3,160.00	3,158	.....	531,572.00	1,377.00	5,356	1,306,830.00	520,321.00	
New Kent	1,780	.....	320,945.00	5,706.20	1,808	.....	316,990.00	5,771.00	2,958	892,670.00	405,200.00	
Norfolk	2,887	.....	654,166.00	14,305.00	2,751	.....	619,528.00	8,441.28	1,390	501,225.00	230,875.00	
Norfolk City	1,997	.....	1,298,477.50	271,297.00	1,951	.....	1,258,780.00	164,856.00	2,327	860,820.00	1,086,205.00	
Portsmouth	736	.....	232,765.00	51,508.00	689	.....	248,455.00	57,939.00	941	276,960.00	215,605.00	
Northampton	.....	.....	.....	.....	2,250	.....	642,880.00	2,494.00	2,123	.....	582,199.00	
Northumberland	1,733	.....	426,450.00	650.00	1,823	.....	417,340.00	.....	2,884	818,975.00	375,054.00	
Nottoway	3,856	.....	854,726.00	19,564.00	3,953	.....	859,740.00	14,602.00	6,342	2,373,533.00	860,331.00	
Orange	3,309	.....	779,770.00	10,469.00	3,486	.....	819,151.00	7,440.00	5,873	1,767,080.00	932,497.00	
Page	495	.....	867,587.00	6,224.00	483	.....	860,453.00	1,569.00	944	355,960.00	932,654.00	
Patrick	1,026	.....	527,418.00	4,659.00	1,024	.....	530,975.00	1,050.00	1,872	663,395.00	578,840.00	
Pittsylvania	7,417	.....	2,104,281.00	21,541.00	7,171	.....	1,990,008.00	7,840.00	12,362	4,377,479.00	2,103,801.00	
Danville	763	.....	268,746.00	31,451.00	573	.....	238,404.00	14,578.00	1,023	418,550.00	278,954.00	
Carried forward.....	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73	305,550	$103,593,993.00	$72,318,905.93	$1,5

Income.	1862				1863				Total of Latest Assessment.				
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Re
	Number.	Value.			Number.	Value.			Number.	Value.			
$1,006,414.37	145,108	$ 49,682,101.00	$36,563,472.93	$ 682,319.66	147,223	$ 99,065,801.00	$ 57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$ 64,685,463.98	$3,816,295.85	$115
.....	5,768	2,165,145.00	815,925.00	15,192.00	5,664	3,513,700.00	1,255,630.00	10,656.00	5,664	3,513,700.00	1,255,630.00	10,656.00	2
200.00	551	187,550.00	396,525.00	1,200.00	579	417,525.00	789,990.00	300.00	579	417,525.00	789,990.00	300.00	
768.00	1,838	545,525.00	374,200.00	.....	1,785	845,785.00	539,725.00	2,000.00	1,785	845,785.00	539,725.00	2,000.00	
750.00	3,963	1,274,234.00	440,404.00	300.00	4,029	2,936,075.00	753,273.00	.....	4,029	2,936,075.00	753,273.00	.....	
33,507.00	14,770	5,338,625.00	2,638,665.00	22,397.00	15,198	11,735,360.00	3,304,526.00	137,833.00	15,198	11,735,360.00	3,304,526.00	137,833.00	5
17,762.00	8,621	3,017,450.00	1,355,520.00	13,876.00	7,893	5,185,600.00	1,977,545.00	16,994.00	7,893	5,185,600.00	1,977,545.00	16,994.00	3
68,944.68	6,557	2,534,345.00	1,841,535.00	58,235.77	7,167	5,542,380.00	2,651,135.00	409,964.00	7,167	5,542,380.00	2,651,135.00	409,964.00	8
459,347.00	7,917	3,350,340.00	6,864,734.00	452,495.00	6,648	7,154,365.00	7,336,275.00	3,803,636.64	6,648	7,154,365.00	7,336,275.00	3,803,636.64	19
2,860.00	4,978	1,633,430.00	862,235.00	2,300.00	5,385	3,527,843.00	1,411,336.00	63,321.83	5,385	3,527,843.00	1,411,336.00	63,321.83	1
150.00	341	102,680.00	365,655.00	.....	279	77,450.00	405,433.00	40.00	279	77,450.00	405,433.00	40.00	1
11,968.00	1,643	601,750.00	466,225.00	7,626.00	.....	.....	.....	.....	1,643	601,750.00	466,225.00	7,626.00	1
2,712.00	.....	.....	.....	.....	.....	.....	.....	.....	1,162	* 582,859.00	287,899.00	2,712.00	1
9,997.00	.....	.....	.....	.....	.....	.....	.....	.....	410	* 205,656.00	269,541.00	9,997.00	
7,216.00	5,882	1,592,590.00	941,985.00	8,765.00	5,746	2,616,895.00	1,242,571.00	11,936.00	5,746	2,616,895.00	1,242,571.00	11,936.00	1
7,280.00	2,999	1,123,260.00	560,735.00	5,849.00	.....	.....	.....	.....	2,999	1,123,260.00	560,735.00	5,849.00	1
1,220.00	5,029	1,526,300.00	487,950.00	1,050.00	4,569	2,283,550.00	731,665.00	3,700.00	4,569	2,283,550.00	731,665.00	3,700.00	1
3,055.00	2,340	710,670.00	297,175.00	.....	2,306	772,475.00	405,854.00	457.00	2,306	772,475.00	405,854.00	457.00	
342.00	958	468,976.00	895,991.00	400.00	1,121	784,712.00	1,140,423.00	.....	1,121	784,712.00	1,140,423.00	.....	1
21,171.40	.....	.....	.....	.....	.....	.....	.....	.....	3,000	*1,504,800.00	3,207,617.00	21,171.40	11
17,013.00	9,169	3,217,660.00	1,790,134.00	22,388.00	8,963	5,838,915.00	2,397,065.00	24,707.00	8,963	5,838,915.00	2,397,065.00	24,707.00	3
3,904.00	7,219	2,636,663.00	959,409.00	1,945.00	7,366	5,234,275.00	1,210,225.00	2,782.00	7,366	5,234,275.00	1,210,225.00	2,782.00	1
1,608.00	4,235	1,322,375.00	1,199,813.00	1,608.00	3,620	1,970,505.00	1,601,701.00	10,107.33	3,620	1,970,505.00	1,601,701.00	10,107.33	2
800.00	2,110	599,090.00	318,030.00	800.00	.....	.....	.....	.....	2,110	599,090.00	318,030.00	800.00	
28,225.00	12,481	3,818,238.00	1,552,399.00	12,672.00	13,399	7,824,030.00	2,748,784.00	100,206.50	13,399	7,824,030.00	2,748,784.00	100,206.50	3
3,657.00	2,546	652,119.00	338,778.00	618.00	2,450	644,320.00	425,137.00	288.00	2,450	644,320.00	425,137.00	288.00	
3,890.00	2,132	879,400.00	888,875.00	4,400.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2
12,228.00	.....	.....	.....	.....	.....	.....	.....	.....	2,677	*1,342,783.00	1,036,998.00	12,228.00	1
1,377.00	5,356	1,306,830.00	520,321.00	1,662.00	5,549	3,460,892.00	978,717.00	19,426.00	5,549	3,460,892.00	978,717.00	19,426.00	2
5,771.00	2,958	892,670.00	405,200.00	.....	1,852	1,115,725.00	519,072.00	.....	1,852	1,115,725.00	519,072.00	.....	
8,441.28	1,390	501,225.00	230,875.00	3,028.00	.....	.....	.....	.....	1,390	501,225.00	230,875.00	3,028.00	2
164,856.00	2,327	860,820.00	1,086,205.00	115,972.00	.....	.....	.....	.....	2,327	860,820.00	1,086,205.00	115,972.00	5
57,939.00	941	276,960.00	215,605.00	62,909.00	.....	.....	.....	.....	941	276,960.00	215,605.00	62,909.00	2
2,494.00	2,123	.....	582,199.00	1,920.00	1,870	.....	519,841.00	1,500.00	1,870	* 937,992.00	519,841.00	1,500.00	1
.....	2,884	818,975.00	375,054.00	.....	2,731	780,393.00	438,316.00	2,160.00	2,731	780,393.00	438,316.00	2,160.00	1
14,602.00	6,342	2,373,533.00	860,331.00	12,210.00	6,337	3,592,725.00	1,136,136.00	11,880.00	6,337	3,592,725.00	1,136,136.00	11,880.00	1
7,440.00	5,873	1,767,080.00	932,497.00	9,236.00	5,483	3,043,025.00	1,557,107.00	41,813.00	5,483	3,043,025.00	1,557,107.00	41,813.00	2
1,569.00	944	355,960.00	932,654.00	695.00	725	280,435.00	1,275,110.00	8,240.00	725	280,435.00	1,275,110.00	8,240.00	2
1,050.00	1,872	663,395.00	578,840.00	.....	2,007	1,707,065.00	1,034,030.00	1,800.00	2,007	1,707,065.00	1,034,030.00	1,800.00	1
7,840.00	12,362	4,377,479.00	2,103,801.00	14,210.00	13,818	8,757,754.00	3,097,599.00	171,200.00	13,818	8,757,754.00	3,097,599.00	171,200.00	4
14,578.00	1,023	418,550.00	278,954.00	15,241.00	1,162	977,000.00	867,949.50	1,007,359.28	1,162	977,000.00	867,949.50	1,007,359.28	
$2,014,946.73	305,550	$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$9,657,545.43	328,375	$209,884,569.00	$117,643,741.48	$9,946,175.83	$229

1862			1863				Total of Latest Assessment.					County
s. Value.	Other Personal Property.	Income.	Slaves. Number.	Slaves. Value.	Other Personal Property.	Income.	Slaves. Number.	Slaves. Value.	Other Personal Property.	Income.	Real Estate.	
49,682,101.00	$36,563,472.93	$ 682,319.66	147,223	$ 99,065,801.00	$ 57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$ 64,685,463.98	$3,816,295.85	$115,467,671.21	
2,165,145.00	815,925.00	15,192.00	5,664	3,513,700.00	1,255,630.00	10,656.00	5,664	3,513,700.00	1,255,630.00	10,656.00	2,698,185.52	Goochland
187,550.00	396,525.00	1,200.00	579	417,525.00	789,990.00	300.00	579	417,525.00	789,990.00	300.00	939,744.26	Grayson
545,525.00	374,200.00	.....	1,785	845,785.00	539,725.00	2,000.00	1,785	845,785.00	539,725.00	2,000.00	961,860.60	Greene
1,274,234.00	440,404.00	300.00	4,029	2,936,075.00	753,273.00	.....	4,029	2,936,075.00	753,273.00	.....	768,704.12	Greensville
5,338,625.00	2,638,665.00	22,397.00	15,198	11,735,360.00	3,304,526.00	137,833.00	15,198	11,735,360.00	3,304,526.00	137,833.00	5,245,749.29	Halifax
3,017,450.00	1,355,520.00	13,876.00	7,893	5,185,600.00	1,977,545.00	16,994.00	7,893	5,185,600.00	1,977,545.00	16,994.00	3,243,892.30	Hanover
2,534,345.00	1,841,535.00	58,235.77	7,167	5,542,380.00	2,651,135.00	409,964.00	7,167	5,542,380.00	2,651,135.00	409,964.00	8,271,529.00	Henrico
3,350,340.00	6,864,734.00	452,495.00	6,648	7,154,365.00	7,336,275.00	3,803,636.64	6,648	7,154,365.00	7,336,275.00	3,803,636.64	19,662,313.00	Richmond
1,633,430.00	862,235.00	2,300.00	5,385	3,527,843.00	1,411,336.00	63,321.83	5,385	3,527,843.00	1,411,336.00	63,321.83	1,811,520.71	Henry
102,680.00	365,655.00	.....	279	77,450.00	405,433.00	40.00	279	77,450.00	405,433.00	40.00	1,296,097.42	Highland
601,750.00	466,225.00	7,626.00	.....	.....	.....	.....	1,643	601,750.00	466,225.00	7,626.00	1,407,738.36	Isle of Wight
.....	.....	.....	.....	.....	.....	.....	1,162	* 582,859.00	287,899.00	2,712.00	1,102,552.98	James City
.....	.....	.....	.....	.....	.....	.....	410	* 205,656.00	269,541.00	9,997.00	.....	Williamsburg
1,592,590.00	941,985.00	8,765.00	5,746	2,616,895.00	1,242,571.00	11,936.00	5,746	2,616,895.00	1,242,571.00	11,936.00	1,764,398.74	King and Queen
1,123,260.00	560,735.00	5,849.00	.....	.....	.....	.....	2,999	1,123,260.00	560,735.00	5,849.00	1,544,464.85	King George
1,526,300.00	487,950.00	1,050.00	4,569	2,283,550.00	731,665.00	3,700.00	4,569	2,283,550.00	731,665.00	3,700.00	1,729,586.10	King William
710,670.00	297,175.00	.....	2,306	772,475.00	405,854.00	457.00	2,306	772,475.00	405,854.00	457.00	981,261.00	Lancaster
468,976.00	895,991.00	400.00	1,121	784,712.00	1,140,423.00	.....	1,121	784,712.00	1,140,423.00	.....	1,633,215.73	Lee
.....	.....	.....	.....	.....	.....	.....	3,000	*1,504,800.00	3,207,617.00	21,171.40	11,684,915.00	Loudoun
3,217,660.00	1,790,134.00	22,388.00	8,963	5,838,915.00	2,397,065.00	24,707.00	8,963	5,838,915.00	2,397,065.00	24,707.00	3,544,387.57	Louisa
2,636,663.00	959,409.00	1,945.00	7,366	5,234,275.00	1,210,225.00	2,782.00	7,366	5,234,275.00	1,210,225.00	2,782.00	1,598,421.72	Lunenburg
1,322,375.00	1,199,813.00	1,608.00	3,620	1,970,505.00	1,601,701.00	10,107.33	3,620	1,970,505.00	1,601,701.00	10,107.33	2,150,811.93	Madison
599,090.00	318,030.00	800.00	.....	.....	.....	.....	2,110	599,090.00	318,030.00	800.00	777,059.78	Matthews
3,818,238.00	1,552,399.00	12,672.00	13,399	7,824,030.00	2,748,784.00	100,206.50	13,399	7,824,030.00	2,748,784.00	100,206.50	3,530,539.87	Mecklenburg
652,119.00	338,778.00	618.00	2,450	644,320.00	425,137.00	288.00	2,450	644,320.00	425,137.00	288.00	870,729.64	Middlesex
879,400.00	888,875.00	4,400.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,729,449.75	Montgomery
.....	.....	.....	.....	.....	.....	.....	2,677	*1,342,783.00	1,036,998.00	12,228.00	1,770,113.08	Nansemond
1,306,830.00	520,321.00	1,662.00	5,549	3,460,892.00	978,717.00	19,426.00	5,549	3,460,892.00	978,717.00	19,426.00	2,694,440.00	Nelson
892,670.00	405,200.00	.....	1,852	1,115,725.00	519,072.00	.....	1,852	1,115,725.00	519,072.00	.....	926,208.29	New Kent
501,225.00	230,875.00	3,028.00	.....	.....	.....	.....	1,390	501,225.00	230,875.00	3,028.00	2,918,682.83	Norfolk
860,820.00	1,086,205.00	115,972.00	.....	.....	.....	.....	2,327	860,820.00	1,086,205.00	115,972.00	5,749,810.86	Norfolk City
276,960.00	215,605.00	62,909.00	.....	.....	.....	.....	941	276,960.00	215,605.00	62,909.00	2,090,080.00	Portsmouth
.....	582,199.00	1,920.00	1,870	.....	519,841.00	1,500.00	1,870	* 937,992.00	519,841.00	1,500.00	1,397,328.00	Northampton
818,975.00	375,054.00	.....	2,731	780,393.00	438,316.00	2,160.00	2,731	780,393.00	438,316.00	2,160.00	1,219,354.00	Northumberland
2,373,533.00	860,331.00	12,210.00	6,337	3,592,725.00	1,136,136.00	11,880.00	6,337	3,592,725.00	1,136,136.00	11,880.00	1,964,321.92	Nottoway.
1,767,080.00	932,497.00	9,236.00	5,483	3,043,025.00	1,557,107.00	41,813.00	5,483	3,043,025.00	1,557,107.00	41,813.00	2,805,006.00	Orange
355,960.00	932,654.00	695.00	725	280,435.00	1,275,110.00	8,240.00	725	280,435.00	1,275,110.00	8,240.00	2,140,857.54	Page
663,395.00	578,840.00	.....	2,007	1,707,065.00	1,034,030.00	1,800.00	2,007	1,707,065.00	1,034,030.00	1,800.00	1,201,441.00	Patrick
4,377,479.00	2,103,801.00	14,210.00	13,818	8,757,754.00	3,097,599.00	171,200.00	13,818	8,757,754.00	3,097,599.00	171,200.00	4,789,153.21	Pittsylvania
418,550.00	278,954.00	15,241.00	1,162	977,000.00	867,949.50	1,007,359.28	1,162	977,000.00	867,949.50	1,007,359.28	770,158.00	Danville
103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$9,657,545.43	328,375	$209,884,569.00	$117,643,741.48	$9,946,175.83	$229,853,755.18	

County.	1860				1861				1862			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	I
	Number.	Value.			Number.	Value.			Number.	Value.		
Brought forward.....	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73	305,550	$103,593,993.00	$72,318,905.93	$1,
Powhatan	3,177	.....	789,892.00	11,487.00	3,156	.....	781,924.00	4,593.00	5,266	1,965,820.00	728,410.00	
Prince Edward	4,352	.....	1,035,329.00	41,213.00	4,279	.....	963,827.00	18,096.00	6,998	2,673,880.00	1,027,941.00	
Prince George	2,894	.....	787,372.00	18,209.00	2,926	.....	895,394.00	10,121.00	4,536	1,810,132.00	892,677.00	
Prince William	1,269	.....	615,710.00	14,734.80	1,243	.....	578,707.00	8,514.80	.....	.....	.....	..
Princess Anne	1,818	.....	562,412.00	12,825.00	224	.....	563,823.00	.....	....	.....	.....	..
Pulaski	918	.....	765,562.00	5,250.00	928	.....	754,557.00	950.00	1,636	611,015.00	834,437.00	
Rappahannock	1,721	.....	566,869.00	802.00	1,748	.....	643,857.00	1,150.00	3,316	1,122,450.00	801,219.00	
Richmond	1,373	.....	361,865.61	3,175.00	1,384	.....	336,457.92	1,759.00	1,954	672,335.00	472,179.22	..
Roanoke	1,603	.....	879,608.00	18,778.00	1,580	.....	977,989.00	16,606.00	2,763	896,650.00	997,282.00	
Rockbridge	2,328	.....	1,991,203.00	54,634.71	2,273	.....	1,924,718.81	28,630.21	4,024	1,457,367.00	2,253,946.00	
Rockingham	1,268	.....	2,855,817.00	32,082.00	1,241	.....	2,793,172.50	14,407.00	2,164	768,405.00	3,019,088.00	
Russell	516	.....	628,823.00	700.00	573	.....	660,922.00	.....	1,061	357,490.00	690,654.00	..
Scott	324	.....	668,486.00	2,591.00	331	.....	661,765.00	2,017.00	465	186,175.00	726,728.00	
Shenandoah	484	.....	1,408,887.00	4,755.00	457	.....	1,487,641.00	780.00	549	220,600.00	1,531,642.00	
Smyth	508	.....	502,340.00	6,835.00	500	.....	500,160.00	5,570.00	1,044	424,570.00	621,355.00	..
Southampton	3,174	.....	1,287,193.00	11,157.00	3,141	.....	1,326,697.00	7,108.00	5,081	1,812,250.00	1,419,703.00	
Spottsylvania	2,382	.....	1,066,307.00	17,451.90	3,409	.....	976,683.00	18,590.00	3,220	1,292,815.00	637,604.00	
Fredericksburg	724	.....	698,492.00	75,965.00	685	.....	612,077.00	61,804.00	1,117	441,675.00	654,447.00	
Stafford	1,575	.....	478,025.50	22,461.00	1,545	.....	441,672.50	22,209.00	.....	.....	.....	..
Surry	1,552	.....	348,872.99	8,265.06	1,544	.....	349,580.40	4,725.00	2,280	688,603.00	361,492.72	
Sussex	3,604	.....	801,725.00	4,398.82	3,598	.....	810,060.00	400.00	6,043	2,372,325.00	941,440.00	
Tazewell	676	.....	566,828.00	6,911.00	670	.....	566,078.00	4,470.00	1,124	378,318.00	595,882.00	
Warren	804	.....	548,143.00	5,640.00	822	.....	520,794.00	1,250.00	1,348	429,775.00	536,819.00	
Warwick	602	.....	80,085.00	1,120.00	616	.....	90,080.00	1,120.00	.....	.....	.....	..
Washington	1,319	.....	1,290,488.00	26,152.00	1,375	.....	1,455,589.00	16,135.00	2,507	864,335.00	1,466,021.00	
Westmoreland	2,088	.....	347,612.00	9,470.00	2,153	.....	350,571.00	9,668.00	3,328	1,086,393.00	404,323.00	
Wise	34	.....	148,505.00	1,475.00	38	.....	165,646.00	1,725.00	51	24,000.00	175,155.00	..
Wythe	1,116	.....	1,143,261.00	25,095.00	1,120	.....	1,100,401.00	19,620.00	1,941	638,540.00	1,223,559.00	
York	999	.....	215,671.00	2,500.00	990	.....	195,190.00	.....	.....	.....	.....	..
Total	243,986	.....	$94,995,274.09	$3,665,076.41	253,351	.....	$100,201,850.44	$2,296,964.74	369,466	$126,789,911.00	$95,332,909.87	$1,
WEST VIRGINIA:												
Barbour	68	.....	$ 516,950.00	$ 4,508.00	.....	.....	.....	.....	.....	.....	.....	..
Berkeley	911	.....	797,998.00	3,080.00	926	.....	$ 862,022.00	$4,826.00	.....	.....	.....	..
Boone	86	.....	187,680.00	2,815.00	.....	.....	.....	.....	.....	.....	.....	..
Braxton	54	.....	289,435.00	825.00	57	.....	311,153.00	.....	.....	.....	.....	..
Brooke	5	.....	407,487.00	7,650.00	.....	.....	.....	.....	.....	.....	.....	..
Cabell	216	.....	605,462.00	4,800.00	.....	.....	.....	.....	.....	.....	.....	..
Calhoun	6	.....	55,955.00	400.00	.....	.....	.....	.....	.....	.....	.....	..
Clay	25	.....	105,320.00	510.00	9	.....	57,527.00	847.00	.....	.....	.....	..
Doddridge	17	.....	165,220.00	2,362.00	.....	.....	.....	.....	.....	.....	.....	..
Fayette	127	.....	219,158.00	1,020.00	124	.....	242,411.00	.....	.....	.....	.....	..
Carried forward	1,515	.....	$3,350,665.00	$27,970.00	1,116	.....	$1,473,113.00	$5,673.00	.....	.....	.....	..

1862			1863				Total of Latest Assessment.					County.
			Slaves.				Slaves.					
Value.	Other Personal Property.	Income.	Number.	Value.	Other Personal Property.	Income.	Number.	Value.	Other Personal Property.	Income.	Real Estate.	
$,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$ 9,657,545.43	328,375	$209,884,569.00	$117,643,741.48	$ 9,946,175.83	$229,853,755.18	
,965,820.00	728,410.00	10,144.00	5,344	4,332,910.00	1,124,730.00	5,590.00	5,344	4,332,910.00	1,124,730.00	5,590.00	1,342,646.93	Powhatan.
,673,880.00	1,027,941.00	17,638.00	7,081	5,141,651.00	1,690,959.00	68,592.00	7,081	5,141,651.00	1,690,959.00	68,592.00	2,299,360.30	Prince Edward.
,810,132.00	892,677.00	11,576.00	.....	.....	.....	.....	4,536	1,810,132.00	892,677.00	11,576.00	1,887,005.40	Prince George.
.....	.....	.....	.....	.....	.....	.....	1,243	*623,489.00	578,707.00	8,514.80	2,629,411.00	Prince William.
.....	.....	.....	.....	.....	.....	.....	224	*112,358.00	563,823.00	.....	1,531,299.27	Princess Anne.
611,015.00	834,437.00	535.00	1,766	1,181,545.00	1,470,895.00	2,750.00	1,766	1,181,545.00	1,470,895.00	2,750.00	1,781,920.36	Pulaski.
,122,450.00	801,219.00	600.00	2,281	1,663,150.00	1,046,446.00	.....	2,281	1,663,150.00	1,046,446.00	.....	2,698,529.86	Rappahannock.
672,335.00	472,179.22	.....	2,112	725,870.00	561,667.81	.....	2,112	725,870.00	561,667.81	.....	1,069,219.04	Richmond.
896,650.00	997,282.00	4,100.00	2,766	2,157,455.00	1,558,317.00	128,727.00	2,766	2,157,455.00	1,558,317.00	128,727.00	3,014,050.66	Roanoke.
,457,367.00	2,253,946.00	22,325.00	4,145	3,097,825.00	3,533,582.00	57,370.00	4,145	3,097,825.00	3,533,582.00	57,370.00	5,333,247.55	Rockbridge.
768,405.00	3,019,088.00	4,933.00	2,039	1,564,820.00	4,726,373.00	57,522.50	2,039	1,564,820.00	4,726,373.00	57,522.50	8,424,219.96	Rockingham.
357,490.00	690,654.00	.....	1,081	909,880.00	1,187,672.00	.....	1,081	909,880.00	1,187,672.00	.....	1,576,304.75	Russell.
186,175.00	726,728.00	300.00	517	327,500.00	998,689.00	300.00	517	327,500.00	998,689.00	300.00	1,248,493.57	Scott.
220,600.00	1,531,642.00	800.00	255	163,750.00	1,159,671.00	476.00	255	163,750.00	1,159,671.00	476.00	4,499,679.62	Shenandoah.
424,570.00	621,355.00	.....	1,624	1,701,190.00	1,621,730.00	414,460.00	1,624	1,701,190.00	1,621,730.00	414,460.00	2,518,350.84	Smyth.
,812,250.00	1,419,703.00	5,290.00	4,783	2,464,255.00	1,841,724.80	1,955.00	4,782	2,464,255.00	1,841,724.80	1,955.00	1,549,447.12	Southampton.
,292,815.00	637,604.00	9,577.00	.....	.....	.....	.....	3,220	1,292,815.00	637,604.00	9,577.00	2,413,479.86	Spottsylvania.
441,675.00	654,447.00	57,016.00	.....	.....	.....	.....	1,117	441,675.00	654,447.00	57,016.00	1,388,430.00	Fredericksburg.
.....	.....	.....	.....	.....	.....	.....	1,545	*774,972.00	441,672.50	22,209.00	1,711,582.00	Stafford.
688,603.00	361,492.72	2,654.00	1,835	921,995.00	466,413.00	37,562.00	1,835	921,995.00	466,413.00	37,562.00	881,874.16	Surry.
,372,325.00	941,440.00	1,382.00	5,921	3,209,560.00	1,273,032.00	1,852.00	5,921	3,209,560.00	1,273,032.00	1,852.00	1,065,446.22	Sussex.
378,318.00	595,882.00	2,250.00	1,186	820,420.00	1,059,241.00	2,000.00	1,186	820,420.00	1,059,241.00	2,000.00	1,860,424.00	Tazewell.
429,775.00	536,819.00	340.00	.....	.....	.....	.....	1,348	429,775.00	536,819.00	340.00	2,080,567.84	Warren.
.....	.....	.....	.....	.....	.....	.....	616	*308,986.00	90,080.00	1,120.00	453,501.21	Warwick.
864,335.00	1,466,021.00	4,250.00	2,771	1,754,750.00	2,216,805.00	86,554,00	2,771	1,754,750.00	2,216,805.00	86,554.00	4,490,523.00	Washington.
,086,393.00	404,323.00	1,333.00	2,127	850,150.00	598,204.00	670.00	2,127	850,150.00	598,204.00	670.00	1,674,143.00	Westmoreland.
24,000.00	175,155.00	.....	67	55,920.00	274,984.00	.....	67	55,920.00	274,984.00	.....	277,640.83	Wise.
638,540.00	1,223,559.00	8,750.00	2,190	1,631,640.00	2,198,741.00	185,391.00	2,190	1,631,640.00	2,198,741.00	185,391.00	3,033,517.92	Wythe.
.....	.....	.....	.....	.....	.....	.....	990	*496,584.00	195,190.00	.....	897,388.86	York.
,789,911.00	$95,332,909.87	$1,719,312.43	346,965	$228,054,341.00	$133,827,871.09	$10,709,316.93	395,105	$250,851,591.00	$152,844,637.59	$11,108,300.13	$296,085,460.31	
.....	.....	.....	.....	.....	.....	.....	68	*$ 33,201.00	$ 516,950.00	$ 4,508.00	$ 1,435,327.12	Barbour.
.....	.....	.....	.....	.....	.....	.....	926	*452,119.00	862,022.00	4,826.00	5,298,640.00	Berkeley.
.....	.....	.....	.....	.....	.....	.....	86	*41,989.00	187,680.00	2,815.00	501,364.79	Boone.
.....	.....	.....	.....	.....	.....	.....	57	*27,830.00	311,153.00	.....	779,557.90	Braxton.
.....	.....	.....	.....	.....	.....	.....	5	*2,441.00	407,487.00	7,650.00	1,166,793.00	Brooke.
.....	.....	.....	.....	.....	.....	.....	216	*105,462.00	605,462.00	4,800.00	2,032,209.92	Cabell.
.....	.....	.....	.....	.....	.....	.....	6	*2,929.00	55,955.00	400.00	323,404.70	Calhoun.
.....	.....	.....	.....	.....	.....	.....	9	*4,394.00	57,527.00	847.00	227,043.32	Clay.
.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	165,220.00	2,362.00	791,411.00	Doddridge.
.....	.....	.....	.....	.....	.....	.....	124	*60,543.00	242,411.00	.....	910,550.25	Fayette.
.....	.....	.....	.....	.....	.....	.....	1,514	$739,208.00	$3,411,867.00	$28,208.00	$13,466,302.00	

PARAGRAPH V OF DECREE.

County.	1860				1861				1862			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	In
	Number.	Value.			Number.	Value.			Number.	Value.		
Brought forward	1,515	.....	$ 3,350,665.00	$ 27,970.00	1,116		$ 1,473,113.00	$ 5,673.00				
Gilmer	21	.....	161,522.00	1,601.00	28	.....	175,772.00	935.00	.....	.....	.....	...
Greenbrier	996	.....	1,808,705.00	33,240.32	984	.....	1,902,530.00	18,250,26	1,419	$ 599,761.00	$1,883,100.00	$
Hampshire	729	.....	1,082,218.00	14,207.50	.....	.....	.....	.....	.....	.....	.....	...
Hancock	1	.....	262,146.00	450.00	.....	.....	.....	.....	.....	.....	.....	...
Hardy	645	.....	942,419.00	5,679.00	641	.....	1,014,392.00	7,710.00	.....	.....	.....	...
Harrison	292	.....	1,083,482.00	5,751.00	.....	.....	.....	.....	.....	.....	.....	...
Jackson	42	.....	294,986.00	4,217.00	41	.....	303,932.00	600.00	.....	.....	.....	...
Jefferson	2,256	.....	1,910,687.00	24,365.00	2,256	.....	1,888,233.00	13,190.20	.....	.....	.....	...
Kanawha	1,238	.....	720,969.00	30,271.00	1,237	.....	749,570.00	28,542.00	.....	.....	.....	...
Lewis	103	.....	432,826.00	5,246.00	.....	.....	.....	.....	.....	.....	.....	...
Logan	30	.....	120,156.00	.....	.....	.....	.....	.....	.....	.....	.....	...
McDowell	.....	.....	31,138.00	.....	.....	.....	.....	.....	.....	.....	.....	...
Marion	46	.....	717,028.00	10,600.00	.....	.....	35,595.00	.....	.....	.....	.....	...
Marshall	20	.....	340,471.00	3,758.00	.....	.....	.....	.....	.....	.....	.....	...
Mason	200	.....	548,385.00	2,500.00	.....	.....	.....	.....	.....	.....	33,995.00	...
Mercer	192	.....	279,050.00	1,500.00	.....	.....	.....	.....	.....	.....	.....	...
Monongalia	69	.....	1,071,376.00	4,700.00	191	.....	300,545.00	.....	.....	.....	.....	...
Monroe	611	.....	1,408,522.00	12,588.00	.....	.....	.....	.....	301	95,370.00	308,960.00	...
Morgan	60	.....	186,232.00	150.00	627	.....	1,416,431.00	5,663.00	.....	.....	.....	...
Nicholas	85	.....	264,084.00	1,636.00	59	.....	202,144.00	400.00	1,136	401,830.00	1,541,052.00	...
Ohio	21	.....	347,555.00	1,600.00	76	.....	237,162.00	50.00	.....	.....	.....	...
Wheeling	2	.....	470,005.00	95,748.00	.....	.....	.....	.....	.....	.....	.....	...
Pendleton	138	.....	523,324.00	1,805.00	.....	.....	.....	.....	.....	.....	.....	...
Pleasants	7	.....	129,035.00	800.00	139	.....	520,629.00	15.00	201	61,450.00	555,093.00	...
Pocahontas	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	...
Preston	41	.....	679,170.00	2,500.00	139	.....	470,156.00	.....	.....	.....	.....	...
Putnam	353	.....	299,725.00	930.00	.....	.....	.....	.....	.....	.....	.....	...
Raleigh	28	.....	125,355.00	1,000.00	345	.....	332,887.00	540.00	.....	.....	.....	...
Randolph	107	.....	306,617.00	1,561.00	35	.....	134,835.00	.....	.....	.....	.....	...
Ritchie	12	.....	261,832.00	2,726.00	20	.....	126,805.00	.....	.....	.....	.....	...
Roane	35	.....	158,731.00	2,130.00	.....	.....	.....	.....	.....	.....	.....	...
Taylor	68	.....	361,874.00	800.00	37	.....	185,404.00	1,440.00	.....	.....	.....	...
Tucker	17	.....	77,679.00	698.00	.....	.....	.....	.....	.....	.....	.....	...
Tyler	7	.....	308,536.00	948.00	.....	.....	.....	.....	.....	.....	.....	...
Upshur	97	.....	401,914.00	2,202.00	.....	.....	.....	.....	.....	.....	.....	...
Wayne	74	.....	363,127.00	1,045.00	.....	.....	.....	.....	.....	.....	.....	...
Webster	.....	.....	21,554.00	.....	77	.....	380,000.00	265.00	.....	.....	.....	...
Wetzel	8	.....	19,060.00	430.00	.....	.....	59,546.21	.....	.....	.....	.....	...
Wirt	17	.....	110,893.00	1,470.00	.....	.....	.....	.....	.....	.....	.....	...
Wood	82	.....	683,030.00	29,758.50	.....	.....	.....	.....	.....	.....	.....	...
Wyoming	36	.....	121,083.00	506.00	35	.....	112,066.00	.....	.....	.....	.....	...
Total	10,301	.....	$22,787,166.00	$339,087.32	8,963	.....	$12,021,747.21	$83,273.46	3,057	$1,158,411.00	$4,322,200.00	$

1862			1863				Total of Latest Assessment.					
s. Value.	Other Personal Property.	Income.	Slaves Number.	Slaves Value.	Other Personal Property.	Income.	Slaves Number.	Slaves Value.	Other Personal Property.	Income.	Real Estate.	County.
							1,514	$ 739,208.00	$ 3,411,867.00	$ 28,208.00	$13,466,302.00	
$ 599,761.00	$1,883,100.00	$10,295.00	928	$ 745,220.00	$2,252,197.00	$17,630.75	28	*13,671.00	175,772.00	935.00	769,507.31	Gilmer.
							928	745,220.00	2,252,197.00	17,630.75	3,466,378.52	Greenbrier.
							729	*355,934.00	1,082,218.00	14,207.50	3,958,442.80	Hampshire.
							1	*488.00	262,146.00	450.00	909,007.51	Hancock.
							641	*312,968.00	1,014,392.00	7,710.00	2,911,771.10	Hardy.
							292	*142,569.00	1,083,482.00	5,751.00	3,797,604.16	Harrison.
							41	20,018.00	303,932.00	600.00	1,648,682.47	Jackson.
							2,256	*1,101,492.00	1,888,233.00	13,190.20	6,802,928.00	Jefferson.
							1,237	*603,965.00	749,570.00	28,542.00	3,287,882.51	Kanawha.
							103	*50,290.00	432,826.00	5,246.00	1,278,235.39	Lewis.
	33,995.00		177	19,295.00	29,455.00		30	*14,647.00	120,156.00		388,650.94	Logan.
							177	19,295.00	29,455.00		173,698.05	McDowell.
							46	*22,459.00	717,028.00	10,600.00	2,721,068.13	Marion.
							20	*9,765.00	340,471.00	3,758.00	2,371,997.95	Marshall.
95,370.00	308,960.00	30.00	176	123,615.00	368,388.00		200	*97,650.00	548,385.00	2,500.00	2,814,941.08	Mason.
							176	123,615.00	368,388.00		679,564.35	Mercer.
401,830.00	1,541,052.00	1,687.00	1,052	569,325.00	2,010,111.00	12,853.50	69	*33,689.00	1,071,376.00	4,700.00	2,954,126.46	Monongalia.
							1,052	569,325.00	2,010,111.00	12,853.50	3,399,322.99	Monroe.
							59	*28,807.00	202,144.00	400.00	740,758.44	Morgan.
							76	*37,107.00	237,162.00	50.00	778,012.33	Nicholas.
							21	*10,253.00	347,555.00	1,600.00	5,074,553.00	Ohio.
							2	*976.00	470,005.00	95,748.00		Wheeling.
61,450.00	555,093.00	80.00	155	91,450.00	786,301.00		155	91,450.00	786,301.00		1,098,709.70	Pendleton.
							7	*3,418.00	129,035.00	800.00	577,606.79	Pleasants.
							139	*67,867.00	470,156.00		1,189,733.24	Pocahontas.
							41	*20,018.00	679,170.00	2,500.00	1,679,082.61	Preston.
							345	*168,446.00	332,887.00	540.00	982,826.02	Putnam.
							35	*17,089.00	134,835.00		498,330.90	Raleigh.
							20	*9,765.00	126,805.00		1,136,745.77	Randolph.
							12	*5,859.00	261,832.00	2,726.00	1,166,737.79	Ritchie.
							37	*18,065.00	185,404.00	1,440.00	468,005.20	Roane.
							68	*33,201.00	361,871.00	800.00	1,241,003.36	Taylor.
							17	*8,300.00	77,679.00	698.00	288,520.66	Tucker.
							7	*3,418.00	308,536.00	948.00	878,326.00	Tyler.
							97	*47,360.00	401,914.00	2,202.00	1,329,680.83	Upshur.
							77	*37,595.00	380,000.00	265.00	1,135,038.58	Wayne.
							.....	....	59,546.21		216,085.00	Webster.
							8	*3,906.00	19,060.00	430.00	789,068.00	Wetzel.
							17	*8,300.00	110,893.00	1,470.00	508,578.48	Wirt.
							82	*40,036.00	683,030.00	29,758.50	2,600,610.50	Wood.
							35	*17,089.00	112,066.00		271,127.06	Wyoming.
$1,158,411.00	$4,322,200.00	$12,092.00	2,488	$1,548,905.00	$5,446,452.00	$30,484.25	10,397	$5,654,593.00	$24,739,394.21	$299,257.45	$82,449,252.04	

PLAINTIFF'S EXHIBIT E 2.

IN THE SUPREME COURT OF APPEALS OF VIRGINIA.

"That in December, 1861, and in 1862, and down to the close of the war, in April, 1865, the treasury notes of the Confederate States were in general circulation as currency in this city; that these treasury notes were constantly diminishing in value from the 1st of January, 1862, to the end of the war; that the following table shows the value of said currency in gold at various times in the City of Lynchburg, to-wit:

Months	1861	1862	1863	1864	1865
January	....	1.25	3.00	20 to 20½	45 to 60
February	....	1.25	4.00	21½ to 25	45 to 65
March	....	1.30	5.00	23 to 24½	70 to 60
April	....	1.40	5.50	22 to 23	60
May	1.10	1.50	5½ to 6	18 to 21	
June	1.10	1.50	7 to 8	17 to 19	
July	1.10	1.50	9	20 to 23	
August	1.10	1.50	12 to 13	22½ to 25	
September	1.10	2.50	12 to 13	22½ to 27½	
October	1.15	2.50	14	26 to 27	
November	1.15	3.00	15 to 17	27½ to 33½	
December	1.20	3.00	18 to 20	34 to 49	

I, H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia, certify that the foregoing is a true extract from the record of Dearing's Administratrix vs. Rucker, decided by the Supreme Court of Appeals of Virginia at its April Term, 1868, and that the table therein copied showing the value of Confederate States treasury notes at various times during the war, is the only table filed, or to be found in the record of said cause.

Given under my hand this the 1st day of July, 1909.

H. STEWART JONES,
Clerk of the Supreme Court of Appeals of Virginia.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA *vs.* STATE OF WEST VIRGINIA.

COMPARISON OF ASSESSED VALUATION OF ALL PROPERTY FROM 1867 TO 1908 INCLUSIVE.

(Virginia and)
(West Virginia)

PLAINTIFF'S EXHIBIT E-3.

VIRGINIA FIGURES TAKEN FROM VIRGINIA AUDITORS REPORT FOR RESPECTIVE YEARS.

WEST VIRGINIA FIGURES TAKEN FROM "BIENNIAL REPORT OF THE AUDITOR" OF WEST VIRGINIA FOR 1907-8. PAGE 126 STATEMENT LXVIII.

Prepared by
PRICE, WATERHOUSE & CO.
Chartered Accountants.
54 William Street.
New York.
FOR THE PLAINTIFF.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT E-6.

Prepared by

PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff.

PLAINTIFF'S EXHIBIT E-3.

TOTAL ASSESSED VALUATION OF REAL ESTATE, PERSONAL AND RAILROAD PROPERTY IN VIRGINIA AND WEST VIRGINIA WITH PERCENTAGES OF EACH TO THE TOTAL.

NOTE.—The Assessed Valuation of Railroads from 1867 to 1879 inclusive in Virginia is not shown in Auditor's reports, so we estimate their value at $9,000,000.00 and add that amount in each year.

1867	Virginia	$354,848,482.69	73.79%
	West Virginia	126,060,743.00	26.21%
1868	Virginia	357,699,144.00	72.17%
	West Virginia	137,952,255.00	27.83%
1869	Virginia	363,480,163.33	72.41%
	West Virginia	138,510,065.00	27.59%
1870	Virginia	388,537,534.00	73.40%
	West Virginia	140,783,286.00	26.60%
1871	Virginia	370,202,374.38	72.07%
	West Virginia	143,436,703.00	27.93%
1872	Virginia	351,552,630.38	71.05%
	West Virginia	143,270,414.00	28.95%
1873	Virginia	345,686,411.23	70.19%
	West Virginia	146,845,522.00	29.81%
1874	Virginia	341,428,256.00	69.72%
	West Virginia	148,305,419.00	30.28%
1875	Virginia	335,309,651.49	68.09%
	West Virginia	157,118,644.00	31.91%
1876	Virginia	330,317,488.75	68.49%
	West Virginia	151,977,231.00	31.51%
1877	Virginia	332,989,771.56	68.70%
	West Virginia	151,681,708.00	31.30%
1878	Virginia	325,686,872.31	68.90%
	West Virginia	147,021,912.00	31.10%
1879	Virginia	328,393,559.22	69.04%
	West Virginia	147,266,120.00	30.96%
1880	Virginia	317,191,383.17	68.33%
	West Virginia	146,991,740.00	31.67%
1881	Virginia	333,469,913.75	68.76%
	West Virginia	151,479,428.00	31.24%
1882	Virginia	343,813,689.50	68.92%
	West Virginia	155,050,076.00	31.08%
1883	Virginia	353,975,149.88	67.00%
	West Virginia	174,309,734.00	33.00%
1884	Virginia	364,638,390.03	67.34%
	West Virginia	176,796,754.00	32.66%
1885	Virginia	383,723,692.70	68.07%
	West Virginia	179,958,334.00	31.93%
1886	Virginia	375,375,333.50	68.33%
	West Virginia	173,993,762.00	31.67%
1887	Virginia	375,043,238.31	67.28%
	West Virginia	182,346,389.06	32.72%
1888	Virginia	$380,429,882.52	67.95%
	West Virginia	179,385,329.00	32.05%
1889	Virginia	384,014,695.75	67.68%
	West Virginia	183,381,499.75	32.32%
1890	Virginia	404,923,584.55	68.38%
	West Virginia	187,165,353.61	31.62%
1891	Virginia	439,832,800.41	69.44%
	West Virginia	193,533,458.00	30.56%
1892	Virginia	448,039,022.67	67.28%
	West Virginia	217,858,413.64	32.72%
1893	Virginia	453,151,823.73	67.09%
	West Virginia	222,218,154.37	32.91%
1894	Virginia	450,277,768.08	67.17%
	West Virginia	220,007,517.00	32.83%
1895	Virginia	438,258,777.14	66.17%
	West Virginia	224,025,744.40	33.83%
1896	Virginia	451,931,676.89	67.69%
	West Virginia	215,669,932.30	32.31%
1897	Virginia	459,023,847.08	67.75%
	West Virginia	218,517,105.72	32.25%
1898	Virginia	462,892,204.46	67.57%
	West Virginia	222,195,486.10	32.43%
1899	Virginia	469,732,937.09	67.28%
	West Virginia	228,409,289.26	32.72%
1900	Virginia	488,773,981.77	66.95%
	West Virginia	241,313,244.18	33.05%
1901	Virginia	497,956,643.30	66.69%
	West Virginia	248,749,692.90	33.31%
1902	Virginia	501,284,776.89	67.67%
	West Virginia	239,476,148.94	32.33%
1903	Virginia	519,352,393.00	65.82%
	West Virginia	269,644,299.60	34.18%
1904	Virginia	533,757,406.00	65.76%
	West Virginia	277,859,198.92	34.24%
1905	Virginia	571,997,927.00	63.05%
	West Virginia	335,203,005.85	36.95%
1906	Virginia	597,835,020.00	40.42%
	West Virginia	881,285,710.95	59.58%
1907	Virginia	632,285,784.00	40.48%
	West Virginia	929,663,694.63	59.52%
1908	Virginia	661,796,631.00	41.38%
	West Virginia	937,232,718.54	58.62%

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

PLAINTIFF'S EXHIBIT E-4.

Prepared for the Plaintiff, and certified to as correct by
JOHN B. LIGHTFOOT, JR.
Richmond, Va.

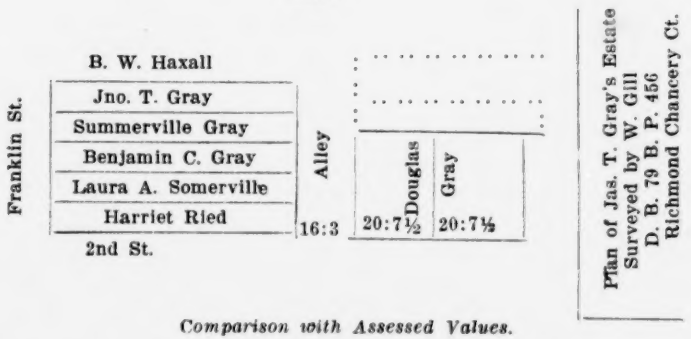
Comparison of Actual Value of Real Property in Virginia, June, 1863, with Assessed Value. 1863, showing percentage of Decrease in Actual Value, as evidenced by sales recorded from April to August, 1863, in Richmond City, and Counties of Henrico, Hanover, and Chesterfield.

RICHMOND CITY

ESTATE OF JAMES GRAY.

Deed Book 79 B. 462.

At the request of the heirs of James Gray, his realty in the City of Richmond was appraised by Messrs. Wellington Goddin, James M. Taylor and A. D. Williams for partition.
The report of these appraisers is made part of the partition deed and recorded with it.
The report is dated *June 22, 1863.*



	Character	Location	Front Feet	Appraised Value
1	Brick Tenement	S. E. Cor. Second and Franklin	26′ 10″	$30,000.00
2	" "	Adjoining, 2nd from above on East	26′ 2″	28,000.00
3	" "	Adjoining, 3rd from above on East	26′ 1″	28,000.00
4	" "	Adjoining, 4th from above on East	26′ 2″	28,000.00
5	" "	Adjoining, 5th from above on East	26′ 9″	29,000.00
6	Brick Tenement	E. side Second bet. Main and Franklin	20′ 7½″	11,000.00
7	" "	Adjoining this	20′ 7½″	11,000.00
8	Brick Tenement	N. E. Cor. Broad and 4th Sts.	52′	20,000.00
9	" "	Adjoining this	52′	18,000.00
10	Warehouse and Offices	S. E. Corner 13th and Cary	61′	55,000.00
				$258,000.00

Comparison with Assessed Values.

	1863 Appraised Value	†Reduced To Gold @ 7 3-4	‡1863 Assessed Value	Decrease	%
*130′	$143,000.00	$18,451.61	$37,150.00	$18,698.39	50.33
*44′	22,000.00	2,838.71	7,540.00	4,701.29	62.35
52′	20,000.00	2,580.65	11,900.00	9,319.35	78.31
52′	18,000.00	2,322.58	12,900.00	10,577.42	82
61′	55,000.00	7,096.77	21,320.00	14,223.23	66.71
	$258,000.00	$33,290.32	$90,810.00	$57.519.68	63.34

* Grouped on Land Books.
†See Plaintiff's Exhibit E-2.
‡Same as assessment of 1856, see Appendix.

Plaintiff's Exhibit E-4
Sheet 2

Deed Book #79A.

RICHMOND CITY.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold.	Assessment 1863	Decrease	Per cent.	
274	Dennis Delaney and wife to Thos. L. Hardy	Conveys 19' No. Side Jackson St., back 120'—Part of lot #4 in plot with deed from W. Goddin &c., to Burch, July 5, 1845.	Apl. 6/63	$ 3,000.00	5 1/2	$ 545.45	$ 733.00	$ 187.55	25.59	Bldg. $133.00
314	Alex. H. Rutherfoord to Charles Behle	Conveys 25' No. Side Broad near First St. back about 130'.	Apl. 22/63	12,650.00	5 1/2	2,300.00	4,000.00	1,700.00	42.50	
427	Wm. W. Dunnavant and wife to Joseph F. Powell	Conveys 60' No. Side Cary near 3rd Back 160'.	June 1/63	8,400.00	7 1/2	1,120.00	2,100.00	980.00	46.67	No Bldg.
	Deed Book No. 79 B.									
475	Philip K. White and wife to Jno. B. Davis	Conveys 35' E. Side Mayo, bet. Franklin & Broad—Part of #17 in Mayo's plan, on Council Chamber Hill—White from Peyton Johnson.	June 6/63	10,000.00	7 1/2	1,333.34	5,500.00	4,166.66	75.76	Bldg. $4,000.00
405	Wm. A. Thomas to Joseph Hodgson	Conveys 22', 12th St. between Broad & Marshall Back 106 ft.	June 9/63	11,950.00	7 1/2	1,593.34	5,290.00	3,696.66	69.89	Bldg. $3,750.00
464	James B. White and wife to Ezekiel J. Levy	Conveys 21 feet So. Side Grace—Corner First Back 156'.	June 16/63	23,500.00	7 3/	3,032.26	7,000.00	3,967.74	56.69	Bldg. $6,000.00
	Joseph August and wife to Frank J. Brand Deed Rec'd Henrico D. B. 79, p. 350, assessed Richmond.	Conveys 33' So. Side Broad between Monroe & Madison 2nd door from Cor. Monroe.	June 23/63	2,000.00	7 3/4	258.07	1,646.00	1,387.93	84.32	Bldg. $1,250.00
475	Daniel Trueheart, Jr., to Wolff Jacobs	Conveys 33 No. Side Main Between 17th & 18th "Designated on Assors Books by letter C."	July 8/63	17,500.00	9	1,944.45	7,300.00	5,355.55	73.36	Bldg. $4,000.00

HENRICO COUNTY.

Deed Book #79.

Plaintiff's Exhibit E-4
Sheet ?

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
451	Ellis Juan to J. M. Marshall	Conveys 44 3/4 feet, being lot #29 "Green Plan." Near Penitentiary on Belvidere Hill.	May 10/63	$ 800.00	5 1/2	$145.45	$600.00	$454.55	75.75	No Bldgs.
314	Wm. O. Taylor and wife to Marcus Kaughman	Conveys 80 Acres on new road to Williamsb'g. About 5 miles below Rd. Adj. lands of Courtney, Plat with Deed.	June 1/63	1,460.00	7 1/2	194.67	800.00	605.33	75.67	No Bldgs.
629	Margaret Heron to L. B. Lipscamb	Conveys part of lot #2, Sq. 118, Adam's plan—front'g 55 feet E. Side 24th between N. & O. Sts.	June 4/63	962.50	7 1/2	128.33	200.00	71.67	35.84	No Bldgs.
367	H. P. Poindexter to Thos. Bruton	Conveys 4.754 Acres about 1½ miles from Rd. (W.) on Road from Meadow Bridge to Brook Tpk,	June 13/63	700.00	7 1/2	93.33	285.00	191.67	67.25	No Bldgs.
444	Sam. G. Greenhow and B. Winston to J. Schutte	Conveys 166 Acres adjoining lands of Jas. Currie on Four Mile Run.	June 20/63	3,320.00	7 3/4	428.40	1,328.00	899.60	67.74	
353	Sam'l Huffman and wife to Jno. Ad. Neidemayer	Conveys 34 Acres, more or less Upper End Henrico, adjoining Reeves Tinsley.	June 22/63	900.00	7 3/4	116.13	340.00	223.87	65.84	No Bldgs.
493	A. E. Dickenson and wife to J. H. Oliver	Conveys 30 feet, So. Side Grace extended, (Sydney) back 150'.	June 29/63	2,040.00	7 3/4	263.22	300.00	36.78	12.26	No Bldgs.
368	Jno. Nettles and wife to Jno. Hughes	Conveys 47 acres (estimated) about 8 miles below Rd. adjoining Jas. A. Carter et als.	July 1/63	1,500.00	9	166.67	376.00	209.33	55.67	

HENRICO COUNTY.

Plaintiff's Exhibit E-4
Sheet 4

Deed Book #79.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
454	Pleasants Roach and wife to Jno. Hart	Conveys lots 6 & 7 in Plan of Sydney, fronting 90' So. Side Westham Road.	July 9/63	$ 300.00	9	$ 33.34	$ 200.00	$ 166.66	83.33	No Bldgs.
429	J. H. Poindexter and wife to J. D. Hammersly	Conveys "Rocketts Mills" property —Land Bks. show near Gas House containing 12 Acres.	July 30/63	26,500.00	9 10	2,944.44 2,650.00	7,200.00	4,255.56 4,550.00	59.10 63.19	Includes Bldg. $2,000.00—
433	Wm. Taylor, Tr. for Maria Brimmer to Henry Linkhauer	Conveys 157' × 173' on No. side Venable near 25th St.	July 31/63	16,000.00	9 10 11	1,777.77 1,600.00 1,454.55	2,000.00	222.23 400.00 545.45	11.11 20. 22.22	Assessed to Henry Brimmer. Includes Bldg. $1,500.00
484	Geo. W. Munford and wife to Glazebrook and Thomas	Conveys "Old Home" Tract containing 430.967 acres, about 10 miles above Richmond.	Aug. 11/63	15,083.86	12 1/2	1,206.71	4,310.00	3,103.29	72.	Includes Bldg. $600.00

Plaintiff's Exhibit E-4
Sheet 5

Deed Book #1.

HANOVER COUNTY.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
201	Mann S. Valentine, Jr. & wife to Alfred Moses	Conveys 413 1/2 Acres known as "Crany Island"—Adjoining lands of Timberlake & others.	Apl. 30/63	$20,675.00	5 1/2	$3,759.09	$10,337.50	$ 6,578.41	63.64	Bldg. $600.00
457	Hugh Campbell to Thaddeus C. Brown	Conveys 442 Acres more or less, known as "The Grove," on Road from Cedar Creek Meeting House to road from Richmond to Louisa C. H.	June 20/33	9,000.00	7 3/4	1.161.29	4.422.50	3,261.21	73.74	Bldg. $300.00
	Deed Book #2.									
437	W. F. G. Garnett and wife to Wm. Stagg	Conveys 259 Acres more or less on Va. Cent. R. R. adjoining lands of Timberlake—Same sold to G. by Mahlon Terrell Dec. 3, 1859.	June 18/63	10,000.00	7 3/4	1,290.32	3,885.00	2,594.68	66.79	Bldg. $200.00
	Deed Book #1.									
194	Ezekiel Talley (Spc. Comr.) to Jno. P. Ballard	Conveys "Gould Hill" containing 810 1/4 Acres, adjoining "Sommerville (Chas. L. C. Page—later W. B. Newton); Pamunkey River—Sold at Auction in suit of Nelson, &c. v. Burwell, &c.	Nov. 2/63	59,950.58	15	3,996.70	16,200.00	12,203.30	75.32	Bldg. $1,200.00 Assessed to Wm. R. Nelson.

CHESTERFIELD COUNTY.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
357	Geo. W. Friend and wife to D. S. Woodbridge	Conveys 150 acres near the C. H.—Adjoins Silas Cheatham, Gregory & Jordan.	June 5/63	$ 5,000.00	7 1/2	$ 666.67	$2,250.00	$1,583.33	70.37	Bldgs. $1,000.00
439	Edwin W. Poindexter & wife to Isaac M. Wolff	Conveys 837 acres more or less adjoining Chas. Friend, Cheatham, Perdue et als.	June 22/63	25,000.00	7.75	3,225.81	10,242.00	7,016.19	68.50	Bldgs. $200.00
558	Jno. H. A. Clay et als. Ex'ors of P. Clay to Francis B. Cheatham	Conveys 195 acres 38 poles called "Peoria," adjoining the lands of Worsham, Cheatham, &c.	June 26/63	1,082.21	7.75	139.64	1,370.00	1,230.36	89.81	No Bldgs. Assessed to Phineas Clay & Marked "Peoria" 1861-2
377	Mary Jewett to Richard G. Elam	Conveys 220 acres lying No. side Jenito Road, adjoining Furcron, &c.	July 9/63	2,000.00	9	222.23	1,320.00	1,097.77	83.16	Bldg. $400.00
393	Thos. W. Nelson and wife to S. Simon	Conveys 100 acres more or less about 4 miles from Manchester, adj. Anderson, &c.	July 28/63	4,000.00	9 10	444.45 400.00	1,000.00	555.55 600.00	55.55 60.	No Bldgs.
513	Chas. T. Scott and wife to James Galloway	Conveys 142 1/2 acres about 5 miles from Petersburg adjoining Wms. Campbell, &c.	Aug. 20/63	5,000.00	12 3/4	384.31	1,425.00	1,040.69	73.03	Bldg. $500.00

PLAINTIFF'S EXHIBIT E-5

P-1

Extracts from the Tables of Town Lots in the Land Books of the Commonwealth of Virginia for the years 1862 and 1863.

In the 3rd District, Richmond City, the District of F. Butler, Commissioner of the Revenue, with Taxes thereon at one dollar on every hundred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold of the land charged in possession.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether in fee simple, for life, &c.	Number of each lot in the town, or a description of the part of lot owned.		Name of the town in which the lot is situated.	Value of buildings on the lot.	Value of lots, including buildings.	The amount of tax on lots at 40 cents on every $100 value thereof.	Explanation of alterations during the preceding year, especially from whom transferred, and when and how the owner acquired the lot, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purposes, per centum on the State taxes.
Gray, Jas., Est.	Richmond	Fee	Pt. 681	130 feet	F & 2d	30,000.	37,150.	371.50		
" " " and R. B. Summerville.	"	"	" 680	44 "	2d	6,000.	7,540.	75.40		
Gray, Jas., Est.	"	"	" 610	52 "	H & 4th	8,000.	11,900.	119.00		
Gray, J. H. & others, Trustees.	"	Trust	" 610	52 "	H	9,000.	12,900.	129.00		
Gray, Jas., Est. and Ro. B. Summerville.			" 348	61	D & 13th	14,000.	21,320.	213.20	[Appears 2d District.]	
Delany, Dennis	Richmond	Fee	Pt. 5	19 feet	Jackson	600.	733.	7.33		
Rutherfoord, Alex'r H.	"	"	" 743	25 "	H	3,000.	4,000.	40.00		
Dunnavant, W. W.	"	"	" 659	60 "	D		2,100.	21.00		
White, Jas. B.	"	"	" 740	21 8-12 "	G & 1st	6,000.	7,000.	70.00		
August, Joseph			" 15	33 "	H	1,250.	1,646.	16.46	From R. M. Bridges.	
Trueheart, Jr., Dan'l				33 "	E	4,000.	7,300.	73.00		
Trueheart, Jr., Dan'l (1862)				" "	"	4,000.	7,300.	43.80	From D. Trueheart by will.	
IN THE 1ST DISTRICT, RICHMOND CITY.										
White, P. K.			Pt. 17	30	Mayo	4,000.	5,500.	55.00	From Peyton Johnson & wife.	
IN THE 2ND DISTRICT, RICHMOND CITY.										
Thomas, Wm. A.			Pt. 752	22 "	12, bet H & I.	3,750.	5,290.	52.90		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Richmond City, In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Plaintiffs Exhibit
E-5, P. 2.

Extracts from the Tables of Tracts of Lands in the Land Books of the Commonwealth of Virginia for the year of 1863

In Henrico County, within the District of John Eacho, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house. Bearing from C. H.	Miles.	Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	The amount of tax on the whole tract at forty cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purposes, per centum on the State taxes.
Taylor, W. O.	Richmond	Fee	80	Near 7 Pines.	E.	6	10.	.....	800.	8.00		
Greenhow, Samuel C., and Bickerton, L. Winston	Richmond	Fee	166	Adj. John Currie.	S. E.	8	8.	.....	1,328.	13.28		
Nettles, John	Henrico	Fee	47	Adj. James Carter.	S. E.	8	8.	.....	376.	3.76		
Poindexter, James H., John E. Wamble & Martin Benton.	Henrico	Fee	12	Rocketts Mills near Gas House.	E.	½	600.	2,000.	7,200.	72.00		
IN HENRICO COUNTY WITHIN THE DISTRICT OF J. B. KEESEE.												
Poindexter, Henry P.	Henrico	Fee	4¾	Adj. D. C. Clopton's Est.	N. W.	3	60.	.....	285.00	2.85		
Huffman, Samuel	Henrico	Fee	34	Adj. Reeves Tinsley.	W.	10	10.	.....	340.00	3.40	From Crawford Alley, &c.	
Munford, Geo. Wythe	Richmond	Fee	431	Old Home adj. M. Sheppard's Est.	N. W.	12	10.	600.	4,310.00	43.10		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Henrico County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Plaintiff's Exhibit.
E.-5, P. 3.

Extracts from the Tables of Town Lots in the Land Books of the Commonwealth of Virginia for the years 1862 and 1863.

In Henrico County, within the Distrct of J. B. Keesee Commissioner of the Revenue, with taxes thereon at forty cents on every hnudred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold of the land charged in possession.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether in fee simple, for life, &c.	Number of each lot in the town, or a description of the part of lot owned.	Name of the town in which the lot is situated.	Value of buildings on the lot.	Value of lots, including buildings.	The amount of tax on lots at 40 cents on every $100 value thereof.	Explanation of alterations during the preceding year, especially from whom transferred, and when and how the owner acquired the lot, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purpurposes, per centum on the State taxes.
1862. Juan, Ellis	Henrico	Fee	1 W. 2 No. 29, B. W. Green's Plan.	Sydney	450.	600.	3.60		
1863. Heron, Margarett	Richmond	"	1 N. 1 Part No. 2, Sq. No. 118.	Adams' Plan	.....	200.	2.00		
1863. Dickinson, Alfred E.	Henrico	"	1 W. 2 Grace Street 30x	Sydney	.....	300.	3.00		
1863. Roach, Pleasant	"	"	1 W. 2. Dover Street, 6 & 7, 90x	Sydney	.....	200.	2.00		
1863. Brimmer, Henry	"	"	1 W. 1 Venable Street, 157x173.	Union Hill	1,500.	2,000.	20.00		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Henrico County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Plaintiffs Exhibit
E-5 Sheet 4.

Extracts from the Tables of Tracts of Lands in the Land Books of the Commonwealth of Virginia for the years 1861, 1862 and 1863.

In Henrico County, within the District of John Eacho, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house. Bearing from C. H.	Miles.	Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	The amount of tax on the whole tract at forty cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purposes, per centum on the State taxes.
1863. Valentine, Mann S., Jr.	Richmond	Fee	413½	Crany Island. Adj., A. B. Clarke.	S. E.	8	25.	600.	10,337.50	103.38		
1863. Garnett, W. F. G.	Henrico	Fee	259	Adj. A. D. Timberlake.	S. W.	7	15.	200.	3,885.	38.85		
1863. Nelson, William R.'s Est.	Hanover	Fee	810	Adj. W. B. Newton	S. E.	6	20.	1,200.	16,200.	162.00		
1862. Nelson, William R.	"	"	810	" " " "	"	6	20.00	1,200.	16,200.	97.20		
1861. Wm. R. Nelson.	"	"	810	" L. A. Page and Wm. B. Newton.	"	6	20.	1,200.	16,200.	64.80		
IN HANOVER COUNTY WITHIN THE DISTRICT OF E. C. TAYLOR.												
1863. Campbell, Hugh	Hanover	"	442¾	Adj. C. Vaughan.	W.	20	10.	300.	4,422.50	44.23		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Hanover County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Plaintiffs Exhibit
E.-5, P. 5.

Extracts from the Tables of Tracts of Lands in the Land Books of the Commonwealth of Virginia for the years 1862 and 1863.

In Chesterfield County, within the District of R. D. Flournoy, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house.		Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	The amount of tax on the whole tract at forty cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purposes, per centum on the State taxes.
					Bearing from C. H.	Miles.						
1863. Friend ,Geo. W.	Chesterfield	In fee	150	Silas Cheatham.	E.	½	15.	1,000.	2,250.	22.50		
1863. Poindexter, Ed. W.	"	"	772	1 R. Charles W. Friend.	E.	5	12.	200.	9,267	92.67		
1863. Same.	"	"	65	Saml Poindexter.	"	6	15.	.....	975.	9.75		
1863. Scott, Charles F.	"	"	142	2 R. H. & P. Turnpike.	S. E.	10	10.	500.	1,425.	14.25		
DISTRICT W. G. FLOURNOY.												
1863. Clay, Phenihas, Est.	Chesterfield	In fee	195	Wm. Worsham.	W.	14	7.	.....	1,370.	13.70		
1862. Clay, Phenehas, Est.	"	In fee	195	Peoria by Wm. Worsham.	W.	14	7.	.....	1,370.	8.22		
1863. Jewitt, Mary	"	"	220	Thos. Fureron.	W.	16	6.	400.	1,320.	13.20	Transfd from Wm P. Jewitt by will	
1863. Nelson, Catharine A.	"	In fee	100	Mary Cocke.	N.	10	10.		1,000.	10.00		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Chesterfield County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT E-6.

SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA ON THE BASIS OF THE FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES OF THE STATE OF VIRGINIA.

PARAGRAPH V OF DECREE.

Ordinary expenses of government from March 19th, 1823, to December 31st, 1860, inclusive		$37,794,211.18
Divided on basis of fair estimated valuation shown in plaintiff's Exhibit E-7 (Slaves excluded from Personal Property):		
Virginia	69.2034% = $26,154,879.14	
West Virginia	30.7966%	$11,639,332.04
Alternative division on basis of fair estimated valuation if slaves are included as personal property, as shown in plaintiff's Exhibit E-7:		
Virginia	72.5780% = $27,430,282.59	
West Virginia	27.4220%	$10,363,928.59

We certify that the above calculations are correctly made from percentage not prepared by us.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & COMPANY,
For the Plaintiff.

PLAINTIFF'S EXHIBIT E-7.

FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES, OF VIRGINIA AND WEST VIRGINIA JUNE 20, 1863, WITH AND WITHOUT SLAVES.

[Prepared for the Plaintiff, and the calculations certified to as correct, by John B. Lightfoot, Jr., Richmond, Virginia. Totals of assessments taken from A. G. Potter's compilation of Auditor's Report of 1861.]

SCHEDULE 1.

SLAVES EXCLUDED.

VIRGINIA.

	Total assessed value for all counties 1861.	Fair Est. Valuation (basis of ½ of assessed value) June 20, 1863.
Real Property—		
Tracts of land and buildings	$237,802,014.94	
Town lots and buildings	55,216,016.36	
	$293,018,031.30	$146,509,015.65
Personal Property—		
Property other than slaves and realty, taxed at 40c. per $100	$101,741,727.40	$ 50,870,863.70
Total	$394,759,758.70	$197,379,879.35

NOTE.—In the foregoing the 1860 figures are shown for Virginia Counties as follows:

1 Alexandria County
2 Elizabeth City County
3 Buchanan County
4 Norfolk City.

All other Virginia Counties and Cities made returns for 1861 and are so shown.

WEST VIRGINIA.

	Total assessed values for those West Virginia Counties which were, for the most part, dominated by Confederate forces 1861.	Fair Est. Valuation (basis of ½ of assessed value) June 20, 1863.
Real Property:		
Tracts land and bldgs	$27,131,384.35	
Town lots and bldgs	2,433,774.50	
	$29,565,158.85	$14,782,579.43

Pl. Ex. E-7, p. 2.

Personalty:			
Property other than slaves and real property taxed at 40c. per $100.00.....	$9,659,305.00	$4,829,652.50	$19,612,231.93
Real Property:			
	As above, for Residue of West Virginia Counties.	(Basis of full assessed value.)	
Tracts land and bldgs.....	$47,295,978.96		
Town lots and bldgs.....	6,739,592.74		
	$54,035,571.70	$54,035,571.70	
Personalty:			
Property other than slaves and realty taxed at 40c. per $100.00.....	$14,189,011.00	$14,189,011.00	68,224,582.70
Total excluding slaves..	$107,449,046.55		$87,836,814.63

PERCENTAGES: EXCLUDING SLAVES.

1863—			
Total fair estimated value, Virginia.....	$197,379,879.35	=	69.2034%
Total fair estimated value, West Virginia.....	87,836,814.63	=	30.7966%
	$285,216,693.98	100	%

Note: In the foregoing, the following are taken as the Counties dominated for the most part by Confederate forces:

1	Jefferson	6	Pendleton
2	Berkeley	7	Pocahontas
3	Morgan	8	Greenbrier
4	Hampshire	9	Monroe
5	Hardy	10	Mercer

The figures for Hampshire are those of 1860.

Of the "residue of West Virginia counties," 1860 figures are taken for the following:

1	Barbour County	16	Putnam County
2	Brooke "	17	Ritchie "
3	Cabell "	18	Taylor "
4	Calhoun "	19	Tyler "
5	Doddridge "	20	Tucker "
6	Hancock "	21	Upshur "
7	Harrison "	22	Wayne
8	Lewis "	23	Wetzel "
9	Marion "	24	Wirt "
10	Marshall "	25	Wood "
11	Mason "	26	Kanawha "
12	Monongalia "	27	Randolph "
13	Ohio "	28	Boone "
14	Pleasants "	29	Logan "
15	Preston "		

The remaining W. Va. Counties showed returns for 1861, and these are taken.

Pl. Ex. E-7, p. 3.

SCHEDULE 2.

SLAVES INCLUDED.

VIRGINIA.

	1860. Value	1863. Fair Est. Value
Total number slaves in Va. over 12 years of age, by Counties, 1860 ..... 261,717*		
Value of these at $300 each.....	$78,515,100	.....
Fair estimated value of same June 20, 1863, on basis of ½.....	.....	$39,257,550
Fair estimated value at same date of other property as per Schedule 1.	.....	197,379,879.35
Total fair estimated value of all property, including slaves	.....	$236,637,429.35

* For Virginia, the figures concerning slaves are taken from the 1860 tables, Aud. Rep. 1861, by what are there termed "Districts." Where a "District" contains Counties in both States, the figures for the Counties in West Virginia are deducted.

DISTRICT:

				Number.
Tidewater	All	in	Virginia.	103,977
Piedmont	"	"	"	134,424
Valley			20,911	
Deduct for:				
Berkeley	911			
Hampshire	729			
Hardy	645			
Jefferson	2,256			
Morgan	60			
Pendleton	138		4,739	15,172
So. West.....			10,290	
Deduct for:				
Boone	86			
Fayette	127			
Greenbrier	996			
Logan	70			
Mercer	192			
Monroe	611			
McDowell	...			
Raleigh	28			
Wyoming	36		2,146	8,144
Total number slaves in Virginia.....				261,717
These at $300 each				$78,515,100.00

Pl. Ex. E-7, p. 4.

WEST VIRGINIA.

	Value 1860.	Fair Est. Value 1863.
Total number slaves in West Virginia over 12 years age, by Counties, 1860..... 10,476*		
Value of these at $300 each.....	$3,142,800.00	
Fair estimated value of same June 20, '63 on basis of ½.....	.....	$1,571,400.00
Fair estimated value, at same date, of other property, as per Schedule 1...	.....	87,836,814.63
Total fair estimated value, including slaves.....	.....	$89,408,214.63

PERCENTAGES, INCLUDING SLAVES.

1863:

Fair estimated total value, Virginia.....	$236,637,429.35 =	72.578%
Fair estimated total value, West Virginia.....	89,408,214.63 =	27.422%
Fair estimated total value both States.....	$326,045,643.98 =	100 %

* For West Virginia, the figures and districts are taken as in case of Virginia.

DISTRICT:

		Number.
Tidewater	....	....
Piedmont	....	....
Valley:		
Berkeley	911	
Hampshire	729	
Hardy	645	
Jefferson	2,256	
Morgan	60	
Pendleton	138	4,739
So. West:		
Boone	86	
Fayette	127	
Greenbrier	996	
Logan	70	
Mercer	192	
Monroe	611	
McDowell	....	
Raleigh	28	
Wyoming	36	2,146
North West	All in W. Va.	3,591
Total number slaves in W. Va.		10,476
These at $300.00 each		$3,142,800.00

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

THE VALUATION OF SLAVES IN 1860 AND 1861,

COMPUTED FROM THE AVERAGE ASSESSED VALUATION OF SLAVES IN 1862 AND 1863.

DEFENDANT'S EXHIBIT E-2.

(Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

Prepared by
THOMAS BIRD DIXCY,
Certified Public Accountant,
30 Church Street,
New York.

Def. Ex. E-2
Page-1

COMMONWEALTH OF VIRGINIA VERSUS STATE OF WEST VIRGINIA.

Defendant's Exhibit E-2.

(Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

THE NUMBER OF SLAVES IN 1860 AND 1861, BASED ON THE ASSESSMENT ROLLS OF COUNTIES FOR WHICH RETURNS WERE FOUND, AND THE VALUE THEREOF, COMPUTED FROM THE AVERAGE ASSESSED VALUATION OF SLAVES FOR WHICH RETURNS WERE FOUND IN 1862 AND 1863:

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
VIRGINIA:				
Accomac,	2,645	$ 1,326,732	2,739	$ 1,373,882
Albemarle	.....	.....	7,449	3,736,418
Alexandria,	709	355,634	709	355,634
Alleghany,	589	295,442	522	261,835
Amelia,	4,269	2,141,330	4,195	2,104,212
Amherst,	3,211	1,610,638	3,405	1,707,948
Appomattox,	2,444	1,225,910	2,526	1,267,042
Augusta,	2,545	1,276,572	2,587	1,297,639
Staunton,	....	.....	441	221,206
Bath,	475	238,260	517	259,327
Bedford,	5,303	2,659,985	5,660	2,839,056
Bland,	....	.....	113	56,681
Botetourt,	1,728	866,765	1,671	838,174
Brunswick,	5,209	2,612,834	5,381	2,699,110
Buchanan,	14	7,022	13	6,521
Buckingham,	4,827	2,421,223	4,866	2,440,786
Campbell,	4,932	2,473,891	4,981	2,498,470
Lynchburg,	1,822	913,915	1,611	808,078
Caroline,	6,029	3,024,146	6,074	3,046,718
Carroll,	65	32,604	104	52,166
Charles City,	1,783	894,353	1,877	941,503
Charlotte,	5,489	2,753,283	5,560	2,788,896
Chesterfield,	....	.....	....	.....
Clarke,	1,834	919,934	1,798	901,877
Craig,	215	107,844	225	112,860
Culpeper,	3,245	1,627,692	3,259	1,634,714
Cumberland,	3,899	1,955,738	3,834	1,923,134
Dinwiddie,	3,918	1,965,269	4,010	2,011,416
Petersburg,	3,538	1,774,661	3,453	1,732,025
Elizabeth City,	....	.....	1,196	599,914
Essex,	3,921	1,966,774	3,873	1,942,697
Fairfax,	1,607	806,071	1,611	808,078
Fauquier,	5,025	2,520,540	5,016	2,516,026
Floyd,	224	112,358	244	122,390
Fluvanna,	2,877	1,443,103	2,883	1,446,113
Franklin,	3,330	1,670,328	3,394	1,702,430
Frederick,	844	423,350	824	413,318
Winchester,	330	165,528	342	171,547
Giles,	444	222,710	438	219,701
Gloucester,	3,038	1,523,861	3,053	1,531,385
Goochland,	3,507	1,759,111	....	.....
Grayson,	280	140,448	294	147,470
Greene,	981	492,070	997	500,095
Greensville,	2,213	1,110,041	2,280	1,143,648
Halifax,	8,696	4,361,914	8,818	4,423,109
Hanover,	4,984	2,499,974	5,115	2,565,684
Henrico,	3,860	1,936,176	4,494	2,254,190
Richmond City,	7,639	3,831,722	6,474	3,247,358
Henry,	2,678	1,343,285	2,779	1,393,946
Forward,	127,215	$63,811,040	133,705	$67,066,427

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
Forward,	127,215	$63,811,040	133,705	$67,066,427
Highland,	208	104,333	219	109,850
Isle of Wight,	1,040	521,664	2,148	1,077,437
James City,	1,141	572,326	1,162	582,859
Williamsburg,	405	203,148	410	205,656
King and Queen,	3,288	1,649,261	3,406	1,708,450
King George,	2,066	1,036,306	1,984	995,174
King William,	2,916	1,462,666	3,248	1,629,197
Lancaster,	1,605	805,068	1,583	794,033
Lee,	486	243,778	481	241,270
Loudoun,	3,063	1,536,401	3,000	1,504,800
Louisa,	5,429	2,723,186	5,366	2,691,586
Lunenburg,	4,163	2,088,161	4,212	2,112,739
Madison,	2,408	1,207,853	2,373	1,190,297
Mathews,	1,507	755,911	1,479	741,866
Mecklenburg,	7,392	3,707,827	7,506	3,765,010
Middlesex,	1,526	765,442	1,550	777,480
Montgomery,	1,141	572,326	1,173	588,377
Nansemond,	2,571	1,289,614	2,677	1,342,783
Nelson,	3,215	1,612,644	3,158	1,584,053
New Kent,	1,780	892,848	1,808	906,893
Norfolk,	2,887	1,448,119	2,751	1,379,902
Norfolk City,	1,997	1,001,695	1,951	978,622
Portsmouth,	736	369,178	689	345,602
Northampton,	....	.....	2,250	1,128,600
Northumberland,	1,733	869,273	1,823	914,417
Nottoway,	3,856	1,934,170	3,953	1,982,825
Orange,	3,309	1,659,794	3,486	1,748,578
Page,	495	248,292	483	242,273
Patrick,	1,026	514,642	1,024	513,638
Pittsylvania,	7,417	3,720,367	7,171	3,596,974
Danville,	763	382,721	573	287,417
Powhatan,	3,177	1,593,583	3,156	1,583,050
Prince Edward,	4,352	2,182,963	4,279	2,146,346
Prince George,	2,894	1,451,630	2,926	1,467,682
Prince William,	1,269	636,530	1,243	623,489
Princess Anne,	1,818	911,909	224	112,358
Pulaski,	918	460,469	928	465,485
Rappahannock,	1,721	863,254	1,748	876,797
Richmond,	1,373	688,697	1,384	694,214
Roanoke,	1,603	804,065	1,580	792,528
Rockbridge,	2,328	1,167,725	2,273	1,140,137
Rockingham,	1,268	636,029	1,241	622,486
Russell,	516	258,826	573	287,417
Scott,	324	162,518	331	166,030
Shenandoah,	484	242,774	457	229,231
Smyth,	508	254,813	500	250,800
Southampton,	3,174	1,592,078	3,141	1,575,526
Spottsylvania,	2,382	1,194,811	3,409	1,709,954
Fredericksb'g,	724	363,158	685	343,596
Stafford,	1,575	790,020	1,545	774,972
Surry,	1,552	778,483	1,544	774,479
Sussex,	3,604	1,807,766	3,598	1,804,757
Tazewell,	676	339,082	670	336,072
Warren,	804	403,286	822	412,315
Warwick,	602	301,963	616	308,986
Washington,	1,319	661,610	1,375	689,700
Westmoreland,	2,088	1,047,341	2,153	1,079,945
Wise,	34	17,054	38	19,061
Wythe,	1,116	559,786	1,120	561,792
York,	999	501,098	990	496,584
Total,	243,986	$122,383,375	253,351	$127,080,865

County.	1860. No. of slaves.	1860. Value.	1861. No. of slaves.	1861. Value.
WEST VIRGINIA:				
Barbour	68	$ 33,201	....	.....
Berkeley,	911	444,796	926	$ 452,120
Boone,	86	41,990	....	.....
Braxton,	54	26,366	57	27,830
Brooke,	5	2,441	....	.....
Cabell,	216	105,462	....	.....
Calhoun,	6	2,930	....	.....
Clay,	25	12,206	9	4,394
Doddridge,	17	8,300	....	.....
Fayette,	127	62,008	124	60,543
Gilmer,	21	10,253	28	13,671
Greenbrier,	996	486,297	984	480,438
Hampshire,	729	355,934	....	.....
Hancock,	1	488	....	.....
Hardy,	645	314,921	641	312,968
Harrison,	292	142,569	....	.....
Jackson,	42	20,507	41	20,018
Jefferson,	2,256	1,101,492	2,256	1,101,492
Kanawha,	1,238	604,454	1,237	603,965
Lewis,	103	50,290	....	.....
Logan,	30	14,648	....	.....
McDowell,	....	.....	....	.....
Marion,	46	22,460	....	.....
Marshall,	20	9,765	....	.....
Mason,	200	97,650	....	.....
Mercer,	192	93,744	191	93,256
Monongalia,	69	33,689	....	.....
Monroe,	611	298,321	627	306,133
Morgan,	60	29,295	59	28,807
Nicholas,	85	41,501	76	37,107
Ohio,	21	10,253	....	.....
Wheeling,	2	977	....	.....
Pendleton,	138	67,379	139	67,867
Pleasants,	7	3,418	....	.....
Pocahontas,	....	.....	139	67,867
Preston,	41	20,018	....	.....
Putnam,	353	172,352	345	168,446
Raleigh,	28	13,671	35	17,089
Randolph,	107	52,243	20	9,765
Ritchie,	12	5,859	....	.....
Roane,	35	17,089	37	18,065
Taylor,	68	33,201	....	.....
Tucker,	17	8,300	....	.....
Tyler,	7	3,418	....	.....
Upshur,	97	47,360	....	.....
Wayne,	74	36,131	77	37,595
Webster,	....	.....	....	.....
Wetzel,	8	3,906	....	.....
Wirt,	17	8,300	....	.....
Wood,	82	40,037	....	.....
Wyoming,	36	17,577	35	17,089
Total,	10,301	$5,029,467	8,083	$3,946,525

NOTE: The valuation of slaves for 1860 and 1861 is based on the average assessed valuation of slaves in 1862 and 1863, as shown by the original assessment rolls of counties reporting both the number and value.

Such values are:

For Virginia,	$501.60
For West Virginia,	488.25

Certified Correct:

CLIFFORD E. SCOVILLE, THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff objects to the use of the average assessed valuation of Slaves in 1862 and 1863 as a basis of their assessed valuation in 1860 and 1861, as the Records of the Commonwealth of Virginia clearly show that slaves were assessed in the last mentioned years at 40c per $100 of value and as the tax levied on all slaves over 12 years was $1.20, their assessed valuation was $300; and for the further reason that in 1862 and 1863 the assessed value of the slaves in Virginia was estimated with reference to Confederate money as a standard of value.

We have checked all figures in this exhibit consisting of pages 1, 2, and 3, and find them to be correct.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO.,
For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

DEFENDANT'S EXHIBIT E-3

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

Defendant's Exhibit E-3

DEFENDANT'S ALTERNATIVE METHOD OF DETERMINING

SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA AT JUNE 20TH, 1863.

Treasury Department
Office of the Government Actuary.
Form No. 11-Ed. 5-17-95-1,000.

COPY OF A STATEMENT FURNISHED BY THE TREASURY DEPARTMENT OF THE UNITED STATES

OF THE

Average Relative Values of Gold and U. S. Paper Currency in the New York Market from the Suspension to the Resumption of Specie Payments, during the Period of Seventeen Years from 1862 to 1878, both inclusive—Prepared by the U. S. Treasury Department.

CURRENCY VALUE OF GOLD.

Table showing the Average Value in Currency of One Hundred Dollars in Gold in the New York Market, by Months, Quarter years, Half-years, Calendar Years, and Fiscal Years, from January 1, 1862, to December 31, 1878, both inclusive.

PERIODS.	1862.	1863.	1864.	1865.	1866.	1867.	1868	1869.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.
January	102.5	145.1	155.5	216.2	140.1	134.6	138.5	135.6	121.3	110.7	109.1	112.7	111.4	112.5	112.8	106.3	102.1
February	103 5	160.5	158.6	205.5	138.4	137.4	141.4	134.4	119.5	111.5	110.5	114.1	112.3	114.5	113.4	105.4	102.
March	101.8	154.5	162.9	173.8	130.5	135.	139.5	131.3	112.6	111.	110.1	115.5	112.1	115.5	114.3	104.8	101.2
April	101.5	151.5	172.7	148.5	127.3	135.6	138.7	132.9	113.1	110.6	111.1	117.8	113.4	114.8	113.	106.2	100.6
May	103.3	148.9	176.3	135.6	131.8	137.	139.6	139.2	114.7	111.5	113.7	117.7	112.4	115.8	112.6	106.9	100.7
June	106 5	144.5	210.7	140.1	148.7	137.5	140.1	138.1	112.9	112.4	113.9	116.5	111.5	117.	112.5	105.4	100.8
July	115.5	150.6	258.1	142.1	151.6	139.4	142.7	136.1	116.8	112.4	114.3	115.7	110.	114.8	111.9	105.4	100.5
August	114.5	125.8	254.1	143.5	148.7	140.8	145.5	134.2	117.9	112.4	114.4	115.4	109.7	113.5	111.2	105.	100.6
September	118.5	134.2	222.5	143.9	145.5	143.4	143.6	136.8	114.8	114.5	113.5	112.7	109.7	115.8	110.	103.3	100.4
October	128.5	147.7	207.2	145.5	148.3	145.5	137.1	130.2	112.8	113.2	113.2	108.9	110.	116.4	109.7	102.8	100.6
November	131.1	148.	233.5	147.	143.8	139.6	134.4	126.2	111.4	111.2	112.9	108.6	110.9	114.7	109.1	102.8	100.2
December	132.5	151.1	227.5	146.2	136.7	134.8	135.2	121.5	110.7	109.5	112.2	110.	111.7	113.9	107.9	102.8	100.1
First quarter-year	102.6	153.4	159.	198.5	136.3	135.7	139.8	133.8	117.8	111.1	109.8	114.1	111.9	114.2	113.5	105.5	101.7
Second quarter-year	103.8	148.3	186.6	141.4	135.9	136.7	139.5	136.7	113.6	111.5	112.9	117.3	112.4	115.9	112.7	106.2	100.7
Third quarter year	116.2	130.2	244.9	143.2	148.6	141.2	143.9	135.7	116.5	113.1	114.1	114.6	109.8	114.7	111.	104.6	100.5
Fourth quarter-year	130.6	148.9	222.7	146.2	142.9	139.3	135.6	126.	111.6	111.2	112.8	109.2	110.9	115.	108.9	102.8	100.3
First half-year	103.2	150.8	172.8	169.9	136.1	136.2	139.6	135.3	115.7	111.3	111.4	115.7	112.2	115.1	113.1	105.9	101.2
Second half-year	123.4	139.6	233.8	144.7	145.8	140.3	139.8	130.8	114.	121.1	113.4	111.9	110.3	114.8	109.9	105.7	100.4
Calendar year	113.3	145.2	203.3	157.3	140.9	138.2	139.7	133.	114.9	111.7	112.4	113.8	111.2	114.9	111.5	104.8	100.8
Fiscal year ended June 30th	.....	137.1	156.2	201.9	140.4	141.	139.9	137.5	123.3	112.7	111.8	114.6	112.	112.7	113.9	107.9	102.5

GOLD VALUE OF CURRENCY.

Table showing the Average Value in Gold of One Hundred Dollars in Currency in the New York Market, by Months, Quarter-years, Half-years, Calendar Years, and Fiscal Years, from January 1, 1862, to December 31, 1878, both inclusive.

PERIODS.	1862.	1863.	1864.	1865.	1866.	1867.	1868.	1869.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.
January	97.6	68.9	64.3	46.3	71.4	74.3	72.2	73.7	82.4	90.5	91.7	88.7	89.7	88.9	88.6	94.	97.9
February	96.6	62.3	63.1	48.7	72.3	72.8	70.7	74.4	83.7	89.7	90.7	87.6	89.1	87.3	88.2	94.8	98.
March	98.2	64.7	61.4	57.5	76.6	74.1	71.7	76.2	88.8	90.1	90.8	86.6	89.2	86.6	87.5	91.4	98.8
April	98.5	66.	57.9	67.3	78.6	73.7	72.1	75.2	88.4	90.4	90.	84.9	88.2	87.1	88.5	94.2	99.4
May	96.8	67.2	56.7	73.7	75.9	75.	71.6	71.8	87.2	89.7	88.	85.	89.9	86.3	88.8	83.5	99.5
June	93.9	69.2	47.5	71.4	67.2	72.7	71.4	72.4	88.6	89.	87.8	85.8	90.	85.4	88.9	94.9	99.2
July	86.6	76.6	38.7	70.4	66.	71.7	70.1	73.5	85.6	89.	87.5	86.4	91.	87.2	89.4	94.8	99.5
August	87.3	79.5	39.4	69.7	67.2	71.	68.7	74.5	84.8	89.	87.4	86.7	91.2	88.1	89.9	95.2	99.5
September	84.4	74.5	44.9	69.5	68.7	69.7	69.6	73.1	87.1	87.3	88.1	88.7	91.2	86.4	90.9	96.8	99.6
October	77.8	67.7	48.3	68.7	67.4	69.7	72.9	76.8	88.7	88.3	88.3	91.8	91.	85.9	91.2	97.3	99.5
November	76.3	67.6	42.8	68.	69.5	71.6	74.4	79.2	89.8	89.9	88.6	92.1	90.2	87.2	91.7	97.3	99.8
December	75.6	66.2	44.	68.4	73.2	74.2	74.	82.5	90.3	91.5	89.1	90.9	89.6	87.8	92.6	97.5	99.9
First quarter-year	97.5	65.2	62.9	50.4	73.3	73.7	71.5	74.7	84.9	90.	91.	87.6	89.3	87.6	88.1	94.8	98.3
Second quarter-year	96.3	67.4	53.6	70.7	73.6	73.2	71.7	75.2	88.	89.7	88.6	85.3	89.	86.3	88.7	94.2	99.3
Third quarter-year	86.1	76.8	40.8	69.8	67.2	70.8	69.5	73.7	85.8	88.4	87.6	87.3	91.1	87.2	90.1	95.6	99.5
Fourth quarter-year	76.6	67.2	44.9	68.4	70.	71.8	73.7	79.4	89.6	90.	88.7	91.6	90.2	86.9	91.8	97.3	99.7
First half-year	96.9	66.3	57.9	58.9	73.5	75.4	71.6	73.9	86.4	89.8	89.8	86.4	89.2	86.9	88.4	94.4	98.8
Second half year	81.	71.6	42.8	69.1	68.6.	71.3	71.5	76.5	87.7	89.2	88.2	89.4	90.7	87.1	90.9	96.4	99.6
Calendar year	88.3	68.9	49.2	63.6	71.	72.4	71.6	75.2	87.	89.5	89.	87.9	89.9	87.	89.8	95.4	99.2
Fiscal year ended June 30th	....	72.9	64.	49.5	71.2	70.9	71.5	72.7	81.1	88.7	89.4	87.5	89.3	88.8	87.8	92.7	97.6

Defendant's Alternative Method of Determining

Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia.

At June 20th, 1863.

VIRGINIA.			WEST VIRGINIA.		
Total Valuation of Real Property at latest obtainable assessment, as per agreed summary	$296,085,460.31		Total valuation of Real Property, at latest obtainable assessment, in the following counties which were, for the most part, dominated by confederate forces: Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas	$29,546,249.20	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$148,042,730.15			
Total valuation of Personal Property, including slaves but excluding Income at latest obtainable assessment, as per agreed summary	403,696,228.59				
Plaintiff claims that a fair estimated valuation is 25% of this assessed valuation		100,924,057.15			
Total		$248,966,787.30	Plaintiff admits that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60
SUMMARY.			Total valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
Plaintiff claims the fair estimated valuation of Property, Real and Personal, in Virginia, as noted above, to be	248,966,787.30	79.2765%			
Defendant claims the valuation of Property, Real and Personal, in West Virginia, estimated on the basis, and according to the principle, adopted by the Plaintiff, to be as per contra	65,081,874.01	20.7235%	Defendant claims that 69.2% of the assessed valuation in these Counties is a fair estimated valuation		36,608,877.97
Total	$314,048,661.31	100 %	Total as per agreed summary	$82,449,252.04	
Defendant further claims that the Ordinary Expenses of Government from March 19th 1823, to December 31st, 1860, amount to	$ 12,207,684.29		Total fair estimated valuation of Real Property, as noted above		$51,382,002.57
As shown in Joint Exhibit D-1 and that the amount to be charged to West Virginia, computed on the principle adopted by the Plaintiff, is 20.7235%, as above		$ 3,773,269.45	Total valuation of Personal Property, including slaves but excluding income, at latest obtainable assessment in above Counties	$14,784,959.00	
Certified Correct as to amounts and calculations. CLIFFORD E. SCOVILLE.			Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75
THOMAS BIRD DIXCY. For the Defendant.			Total valuation of Personal Property, excluding Slaves and income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
Plaintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of Real and Personal Property being reduced to 69.2% and to the use of this amount as a FAIR ESTIMATE of the valuation; objects to Slaves being considered Personal Property; objects to the use of percentages so obtained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.			Defendant claims that 69.2% of the assessed valuation is a fair estimated valuation		9,552,182.69
			Total valuation of Slaves at latest obtainable assessment in all other West Virginia Counties	1,805,796.00	
			Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		451,449.00
			Total as per agreed summary	$30,394,487.21	
Certified Correct as to figures and Calculations. ARTHUR G. POTTER.			Total fair estimated valuation of Personal Property, including Slaves, but excluding income as noted above		13,699,871.44
PRICE, WATERHOUSE & CO., For the Plaintiff.			Defendant claims the valuation of Property, Real and Personal, in West Virginia, estimated on the basis and according to the principle adopted by the Plaintiff, to be		$65,081,874.01

Other Evidence and Proceedings Relating to Paragraph V of the Decree.

[*Vol. 5. Nov. 16, 1909.*]

TESTIMONY ON BEHALF OF COMPLAINANT UNDER PARAGRAPH V OF THE DECREE.

ARTHUR G. POTTER,
testified as follows: 66

By Mr. Anderson:

Q. Please examine this schedule, marked "Plaintiff's Exhibit E 1," and state what that statement embraces, the sources from which it was derived, and your knowledge as to the correctness of the statement in general and in particular.

A. The statement is a division of the sum total of the ordinary expenses of Government in the preceding exhibit, namely, forty million dollars, on the basis of a fair estimated valuation of the real and personal property. The estimated valuations of the real and personal property are shown in what we call Article II—I believe it is Exhibit B—and is based on the same figures that were used in that schedule.

Q. That is, you predicate this result from the statements contained in Plaintiff's Exhibit B 1?

A. Yes, sir.

Mr. Robinson: Partially.

Mr Anderson: And upon the population.

The Special Master: Yes; so far as it is necessary.

By Mr. Anderson:

Q. This includes personal property as well as real property?

A. Personal property.

Q. How did you estimate the value of the personal property, and of what date, and how did you ascertain it? 67

A. Certain of the counties made returns of personal property in 1863, and certain of them did not. We took those that did make returns, and from the—do you want me to explain the exact method by which I arrived at it?

Q. I did not ask that now. The question is whether that statement is correct, and from what sources it was derived.

The Special Master: Your question would involve all the answer he has given. You might as well state it fully and give your reasons as you go along. Put it in, concretely and concisely.

A. We had the personal property returns in 77 counties for 1863. I understand these returns were in Confederate money. We reduced that to gold—

By The Special Master:

Q. As of what date?

A. As of February, 1863, which was the date of the assessment. On that date we ascertained that one dollar in gold was worth four dollars Confederate. We reduced the Confederate valuation to gold. Then we took the valuation of 1861 and determined the percentage of shrinkage.

Q. Do you apply the same percentage to the remaining counties that appeared to apply to the 77?

A. No; there was an intermediate step. We determined the percentage of shrinkage. Then we took the 33 counties of 1861, and applied that percentage of shrinkage and got at the value of those for 1863. Adding the two together gave us the valuation of personal property in 1863, as of February, which was the date 68
of the assessment.

By Mr. Conrad:

Q. Are not those explanations you are now making all set out and printed in that slip itself?

A. Yes, sir; on page 3.

By Mr. Anderson:

Q. What do you know as to the correctness of the statements in that schedule, Mr. Potter? Did you verify them?

A. I made these personally—all of them.

Q. Did you compare them with the original records?

A. Yes, sir.

Q. State whether that is a correct statement of the principles upon which it is stated, as set for forth upon the paper itself.

A. I believe it is.

Mr. Anderson: That paper may be filed. That is all we think it will be necessary to introduce in support of this paragraph. It is based upon what is known as the Commissioner of Revenue—the land books returned by the Commissioner of Revenue for each year.

The Special Master: They are public records, open to the inspection of the other side?

Mr. Anderson: Yes, sir; open to the inspection of the other side.

The Special Master: Do you wish to ask any questions, gentlemen?

By Mr. Spooner:

Q. I did not understand exactly how you got at that $23,-042,230, estimated personal property in Virginia and $24,406,- 69
681, in West Virginia.

A. The assessed valuation of personal property in West Virginia I took from the reports of the Auditor. I will have to look at my papers, if you will permit me.

Q. Certainly.

A. The 33 counties in West Virginia I took from the West Virginia's Auditor's report, in the West Virginia Journal of 1863, page 324, assessments of 1862.

Q. What is the date of that Auditor's report?

A. Auditor's report, Journal of 1863.

Q. You do not know the date?

The Special Master: You mean the house journal. You say the journal of 1863.

A. No; it is a volume of Auditor's reports that I found in the library at Charleston.

Mr. Conley: It is published in the Journal of the House of Delegates or Senate.

A. The Journal of 1863.

By Mr. Anderson:

Q. You mean the ledger of 1863, do you not?

A. All my memoranda show are the Auditor's report in the Journal of 1863—that is right; the Journal of the House of Delegates.

By Mr. Spooner:

Q. How much did you find to be the value of personal property in Virginia without the reduction to the basis of the value in Confederate money?

A. In 73 counties it was $70,566,000.

Q. Can you state separately how much of that was money 70
and how much was other personal property?

A. No, sir; the reports merely give it in totals.

Mr. Anderson: The report only gives the totals.

A. Only the totals. I do not give any details in that.

By Mr. Conrad:

Q. Your report shows the sources of your information, where the sources can be found, does it not?

A. Yes, sir.

By Mr. Spooner:

Q. What percentage did you reduce the valuation of personal property in Virginia to as contradistinguished from West Virginia?

A. What percentage?

Q. Yes; you said it was $77,000,000. You brought it down to $23,000,000 and something. What was the principle on which you made that reduction? I only want to get at your methods?

A. The $70,000,000, was reduced to gold on a basis of four to one.

Q. You assumed that all of that $70,000,000 was money?

A. Oh, no; personal property—the value of personal property in 73 Virginia counties as stated in the report.

By the Special Master:

Q. Your assumption is it was computed in Confederate money?

A. Not my assumption; no, sir. I did not assume anything. I was informed by the counsel for Virginia. 71

Q. It is immaterial as to how you get it. You proceeded on the hypothesis that the personal property was estimated in Confederate money?

A. That the assessments were made in Confederate money.

By Mr. Spooner:

Q. You did not get that very important information, then, either from the published reports or from any records of the State?

A. No, I did not.

By the Special Master:

Q. That is, was there any public document that made that statement?

A. No, sir; none that I have seen.

Mr. Conrad: The Master would almost take judicial notice of that, as a matter of history, pretty much on the basis that Chief Justice Chase proceeded in Harrington against Smith, in North Carolina. The published history of the country shows that the only currency in this region at that period was the Confederate currency. Gold was a commodity. Greenbacks were a commodity. Confederate money alone was current here, and all the assessments of property were made in Confederate money. I say the Master might safely take judicial notice of that as a matter of public history.

Mr. Spooner: I was only trying to get at the facts as to how these estimates were made.

Mr. Anderson: We call the attention of your Honor and of counsel to the fact that our statement with regard to all of this personalty as to which this scale, as it is called, applied, reducing the value estimated in Confederate money to the value estimated 72
in lawful money, in specie—not gold, but specie, gold and silver being then on a par with each other—is supported by the legislation at that time. The legislation of the Richmond Government, which controlled this whole region during all this period, provided that the land assessments should remain the same, the assessment of 1856, subject to such changes as might be necessitated by reason of new improvements or the destruction of improvements, while personal property was assessed annually at its then current value; and taxes, by the express mandate of the statute, were payable in Confederate money, defining what Confederate money was. Taxes were payable in Confederate money and the assessments, as will appear from comparison, were made in Confederate money. The assessments, I will say to my friends, were very much larger in nominal amount in 1863 than they were prior to the beginning of the war, but very much smaller in the quantity of property, as will be seen on an examination of the Commissioner's books, because of the fact that by the disastrous operation of the war then prevailing throughout this territory, there was an enormous destruction of personal property, and it will be found also that there was a great diminution in the quantity of personal property that was assessed, while there was a nominal appreciation in values, a horse being estimated to be worth, in 1861, in the then lawful money, from $20 to $50, and in 1863, $150 or $200, perhaps—certainly $150, an increase of five hundred per cent. sometimes, in the subject of taxation in the nominal assessment, while the real value had been de- 73
preciated very greatly. The witness has taken the very highest value at which Confederate money was sold during that period, four for one, while the fact is, I want to say to my friends, that in June, when the assessment was in fact made, the value was eight or nine to one. The fortunes of the Confederacy were waning. Stonewall Jackson fell in the month of May, and from that time the value of Confederate money, which depended entirely upon the ultimate success of the Confederate Government, depreciated rapidly; but we take the assessment at the very highest rate in Virginia at that time, four for one.

The Special Master: The important point at this stage of the hearing is that the other side should be advised of the hypothesis and the theory upon which the statement is predicated. Later, if they think they have occasion to criticize either the hypothesis or the

report, I will hear them. Of course they now have notice of exactly what your contention is.

Mr. Spooner: I would like to ask another question.

Mr. Anderson: The first act as to Confederate currency was in 1862, and the last was in 1863, before this assessment became effective.

By Mr. Spooner:

Q. Did you make any deductions in the estimates of the value of personal property in West Virginia on account of the appreciation of gold?

A. We made no deduction of any kind for West Virginia 74
counties. The report states that the figures were taken from the Auditor's report of 1862.

By Mr. Conrad:

Q. Is that West Virginia now?

A. Yes; and a few of the counties which were not returned in that report from the old Virginia statements of 1861.

Mr. Mollohan: Not West Virginia?

Mr. Anderson: Yes; West Virginia.

Mr. Mollohan: No; there was no West Virginia then.

Mr. Conrad: That raises a large question, that we are not going into at this time.

Mr. Anderson: It refers to the counties now constituting West Virginia.

Mr. Mollohan: Counties that you owned yourself.

Mr. Conrad: Who appropriated the money derived from taxation by those assessments?

Mr. McClintic: The State of Virginia.

Mr. Anderson: Are there any other questions, gentlemen?

Mr. Spooner: I did not mean to interrupt you.

By Mr. Anderson:

Q. I understand, Mr. Potter, you said this statement is correct.

A. Yes, sir.

Mr. Anderson: I will ask that it be filed.

(The paper referred to, entitled "Commonwealth of Virginia vs. State of West Virginia. Fair Estimated valuation of the property, real and personal. Article V." is filed herewith, marked "Plaintiff's Exhibit E-1.") 75

Mr. Anderson: We are through on that statement, if the Master please, except that I wish to give your Honor—and I will furnish a

copy of it to my friends on the other side—a citation of the acts of the Richmond Government of Virginia, providing that all taxes should be paid in Confederate money, and also the act providing that all the lands should continue at the former antebellum assessments, while personal property should be reassessed annually at its annual value.

(The paper referred to was subsequently forwarded by Mr. Anderson, and is filed herewith, marked "Plaintiff's Exhibit E-2.")

[*Vol. 4. May 5, 1909. Cross Examination A. G. Potter.*] 377

Mr. Carlisle: There are some questions I want to ask the witness at this time.

By Mr. Carlisle:

Q. Mr. Potter, I will not go through the entire process adopted by you in ascertaining the assessed value either of the land or the personal property in these two States.

Mr. Anderson: Which schedule are you looking at?

Mr. Carlisle: Schedule 5.

By Mr. Carlisle:

Q. Do you find that the assessed value of personal property in what now constitutes the State of Virginia in 1863 was $23,042,230, and you find that the assessed value of personal property in West Virginia at the same time was $24,406,681, or considerably over $1,000,000 more than the assessed value of the personal property in the State of Virginia, with its hundred counties. 378 In order to ascertain that result, you took the assessed value of the personal property as shown by such records as were accessible to you, and you divided that by four. Why did you do that?

A. Because I was informed by counsel that this assessment was in Confederate money in Virginia.

Q. Is that all the information you had upon the subject? Have you seen any law of the State of Virginia authorizing assessments to be made in Confederate money?

A. No, sir.

Q. There was a law in the State, which we all know, authorizing the owner to pay his taxes in Confederate money, but there was no law authorizing the assessment in Confederate money.

Mr. Conrad: But we all know, as a matter of fact, that it was assessed in Confederate money.

Mr. Carlisle: You say you know it as a matter of fact. I do not know it.

Mr. Conrad: We can prove it.

Mr. Carlisle: I see by comparing that assessment with the assessment in West Virginia that personal property is assessed about the same.

Mr. Anderson: Both those were Confederate assessments.

The Special Master: Where does the statement appear in this report about his having divided by four?

Mr. Carlisle: In the whole statement here.

The Witness: It is on the last page.

By Mr. Carlisle:

Q. There was a law authorizing the taxpayer to discharge 379
his obligations to the State for taxes on personal property by paying in Confederate money, but no law in regard to the assessment in Confederate money. Now, as a matter of fact, do you know whether the taxes on the land were also paid in Confederate money?

A. I do not.

The Special Master: The question now is whether the witness has any knowledge of how the taxes were paid.

By Mr. Carlisle:

Q. Why did you divide the valuation on personal property by four and not divide the assessment on the land by four, although they were on the same footing?

Mr. Conrad: There was no assessment of land after 1866. Personal property was assessed every year.

Mr. Carlisle: But there was no law to assess it in Confederate money.

Mr. Conrad: Land was not assessed in Confederate money.

Mr. Carlisle: Neither was personal property, according to the law.

Mr. Conrad: Yes; it was. We can explain it.

Mr. Carlisle: It certainly requires explanation.

Mr. Anderson: Land was assessed in 1856, the last time, in gold.

Mr. Conrad: The first case ever decided by the Chief Justice of the United States in North Carolina on circuit, was to the effect that although a bond was payable absolutely in money, still despite the seal, it was a Confederate transaction. There was no statute at all providing for it. There was no law that authorized them to do it. All business transactions in Virginia were
on the basis of Confederate money, and it would have been 380
impossible after 1861 to assess personal property on green-

backs, gold, silver or anything but what was the sole money we had here. You could not have assessed it on a gold basis or a greenback basis. We did not have them. Their value here was a purely commercial value.

Mr. Carlisle: I do not see, Major, that that answers my question at all. Of course it is a well known rule of law that if transactions take place between individuals where the *de facto* government is existing, its law and customs control that transaction.

Mr. Conrad: Of course. Transactions that take place between the State government and its own citizens would not be put upon a different footing from transactions between citizens.

Mr. Carlisle: No; but there is no evidence here—

The Special Master: What Mr. Carlisle wants in the first instance is to develop the facts upon which the report is predicated. Then later as between yourselves if you do not agree, you will discuss your various contentions.

Mr. Carlisle: Yes, the argument will come hereafter.

By Mr. Carlisle:

Q. It is a fact, then, that you divided the assessed valuation of the personal property by four?

A. Yes, sir.

Q. And therefore reduced it from about $73,000,000 down to $23,000,000. That is a fact?

A. Yes, sir.

Q. And it is a fact that you did not divide the assessed valuation of the real estate by four?

A. Yes, sir.

Q. But you took them just as they stood?

A. Yes, sir. 381

Q. Just as you found them on the books?

A. Yes; just as they were reported on the land books and other sources of information from which we got these figures.

Mr. Carlisle: That is all I want—the facts.

The Special Master: Then, as I understand, except that the defense may wish to put a question or two that they have overlooked, this concludes the cross examination of Mr. Potter?

Mr. McClintic: No, we have schedules 6 and 7 yet, but we will not be long on those in the morning.

The Special Master: Very well, then, we will suspend here until 10 o'clock in the morning. I would like to have counsel for the defense and for the plaintiff go over these various schedules that have been presented so that between now and to-morrow morning the exhibits may be paged, so that they will be harmonious through-

out, and we may refer to them later by exhibit and page. Mr. Dixey has already paged the memoranda presented by the defendant.

The hearing, at 4:55 o'clock P. M., was adjourned until Thursday, May 6, 1909, at 10 o'clock A. M.

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The Special Master: If there are any other documents of the same miscellaneous character we will mark them in the same way. Have you anything more, Brother Conrad? 465

Mr. Conrad: We are conferring as to whether a certain matter is properly in rebuttal or not. We know as a matter of fact that the assessments of personal property made from 1862 to the close of the war, were made based on Confederate money. It has been objected that there was no act authorizing that, but it is so, and it would have been impossible to have had an assessment on the gold basis or the greenback basis, because we had none of that money in the State at that time.

Mr. Carlisle: From our inspection of the assessment of personal property at that time, we do not think that the value put upon it indicated that it was on a Confederate money basis.

Mr. Conrad: Well, we will reserve that evidence.

Mr. Anderson: That will be in rebuttal.

The Special Master: Then it is understood that as to that phase you rest until you hear from the other side?

Mr. Anderson: Yes, sir.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*] 546

Mr. McClintic: We now offer Defendant's Exhibit E-1.

(The paper referred to was received in evidence, marked "Defendant's Exhibit E-1.") 547

By Mr. McClintic:

Q. State, Mr. Dixey, if you made up Defendant's Exhibit E-1.

A. Yes, sir; the schedules as presented were prepared by me, and the work was done under my direction and supervision, and bears my signature.

Q. The totals and percentages and other things therein were all made by you, were they?

A. Yes, sir; on page 2—entirely by me, and verified.

Q. The items appearing on page 3 and the following pages, as to the amount of the valuation of property—were they verified by you?

A. As to totals, yes, sir.

Q. Please state to the Commissioner what they were compiled from, beginning on page 3, as to real estate in Virginia?

A. The first item, for Alexandria, was taken from the auditor's report of 1860. The next 15 items, being the names of various counties, were taken from the auditor's report for 1861.

Q. That is shown on the face of the report itself.

A. That is shown on the schedule. The next three items are from the land books of 1861. I may say that we attempted to—

By the Special Master:

Q. It is all taken from the sources indicated in the statement?

A. Yes, sir. The endeavor was to obtain all the items that we could from the land books. We took them from other sources only where the land books were not available.

Q. The land books I understand are the duplicates of the original assessments?

Q. Made for the years indicated? 548

A. Yes, sir.

Q. And where you have not made statements here predicated upon the land books of 1863, is that because you could not find the land books for that year?

A. We were unable to find them; yes, sir.

Q. In that event, you found the land books for the nearest year?

A. The land books for the nearest year, or the auditor's report for the nearest year. We tried to obtain the assessed valuation as near to the date called for by the decree, as possible.

By Mr. McClintic:

Q. On page 6, Mr. Dixey, comes the assessed valuation of the personal property in Virginia. Please state to the court how that was made, and from what sources?

A. That was made, as indicated on the face of the schedule, from the property books, in almost every case, as regards what is now the State of Virginia. The item at the end, for Chesterfield, was taken from the Auditor's report of 1863.

The Special Master: At the end, where?

A. At the end of the schedule on page 7.

Q. Please look at page 8, Mr. Dixey; —

By the Special Master:

Q. What is the distinction, right here, between property book and land book?

A. The property books contain personal property.

Q. Are there two sets of books, one containing real estate and the other personal property? 549

A. Yes, sir.

Q. One denominated land book and the other property book?

A. Yes, sir.

Q. As distinguishing personal property from real estate?

A. Yes, sir.

Mr. Anderson: And there was an annual assessment of personal property?

The Special Master: An annual valuation of personal property, but only a valuation by decades of real estate.

Mr. Anderson: The assessments of real estate was not at regular intervals. The last assessment of real estate was in 1856, and that assessment continued until 1870.

Mr. McClintic: To state the facts further, there was an annual land book made for each year, in which the assessors of each county added to for buildings erected and took off for buildings destroyed, or changes made by a county court, or anything like that? So that there was a land book each year.

Mr. Anderson: There was a slight change in the assessment.

The Special Master: Do I understand that except as there may have been changes in the character of the real estate, the land books continued from one assessment to another?

A. Yes, sir.

The Special Master: If there was a physical change as to 550 the construction of a building, that was allowed for in making the assessment, but otherwise the assessors took the assessed value for the preceding year, and continued until another general valuation was made. Is that right?

Mr. Anderson: Yes, sir.

Mr. McClintic: Yes, sir; that is right.

The Special Master. But the personal property was assessed and valued every year?

Mr. Anderson: Every year.

Mr. Conrad: I have sent for a land book and a personal property book.

The Special Master: Yes; the practice is a little bit new to me, and I simply wanted to intelligently understand what the conditions were.

By Mr. McClintic:

Q. Please state from what this assessment on page 8 in West Virginia was obtained?

A. This is an assessment of personal property in West Virginia and was obtained from the sources indicated on the schedule at the heading of each class of items. I was about to say that the original entries in the property books were not available in so many cases as they were in what afterwards became the Virginia counties.

By the Special Master:

Q. In West Virginia, for instance, you have only six counties for property books of 1863?

A. Yes; those were on file here.

Q. Other than those, there were none on file?

A. No, sir.

Q. Was any effort made to get at the property books in the towns themselves? 551

A. I will say in regard to that, sir, that I think those things are all filed here. We found between 1830 and 1840, roughly, there were large cases in the basement, which we had open. They were all filled with these property books, and we went through those books individually endeavoring to get the nearest assessment made to 1863.

Q. As I understand, there were three duplicates, or there should have been, of both land and property books, one of which according to the law was filed here in the Capitol, one of which I suppose was kept by the assessors, or was supposed to be—

Mr. Conrad: Yes, sir.

The Special Master: Supposed to be kept by the assessors as a permanent public record.

Mr. Conrad: Not by the assessors. It was filed in the county courts' clerks office and in the hustings court, the corporation courts of the town. There were three copies always made.

The Special Master: One copy went where?

Mr. Conrad: One copy came to Richmond, one copy was kept in the clerk's office, and the other copy—

Mr. McClintic: Went to the sheriff for the purpose of making up the tax figures.

Mr. Anderson: It went to the treasurer, who was at that time the sheriff.

The Special Master: The treasurer of what; the town or county?

Mr. McClintic: At that time, the sheriff of the county—

Since the War they have made a new title in this State, but at that time the sheriff was a police officer and a fiscal officer. 552

The Special Master: My inquiry is whether in regard to the land books and property books any effort has been made to get at those books in those other two places of deposit, outside of the capitol here?

A. None on our part.

Mr. Conrad: They were very much deranged during the War in those regions that were open to the Armies.

The Special Master: That is very true, but has any effort been made on the part of either party to get at the other two of the triplicate set?

Mr. McClintic: If your Honor please, I looked at two or three counties in our State, and could not find them. Beyond that we did not make any further effort, so far as I know.

The Witness: I didn't know three copies were filed.

Mr. Anderson: They must have been sent to Wheeling during that time. There were thirty or forty counties.

The Special Master: The only question I had in mind was, first, whether any effort had been made to get at the other two of this triplicate set.

Mr. McClintic: I found, on examination, that the personal property books were not kept and they are not to-day kept more than three or four years back. Generally at the end of that period they have been destroyed. All the personal property books
that went to the State of Virginia for that year were destroy- 553
ed years and years ago. Your Honor possibly knows that we have had a removal of our capital three times, and they did not keep those things. They simply dumped them away, as they did a whole lot of other books. So far as the counties are concerned, it is not customary for the counties to keep personal property books for very many years. I found that up to the seventies the personal property books had been destroyed. They got to be very voluminous, and as room was scarce, they threw them away. The land books as a rule are kept.

The Special Master: Has any effort been made to get at the original land books in these other places?

Mr. McClintic: The land books were based on the assessment of 1856, and it was not worth while to look for them, because we had the original appraisements, and the changes were infinitesimal from that time to 1863.

The Special Master: If it is agreed by both sides that the assessment that appears here for 1860 to 1861 as to the land can be adopted as the assessed value of land for 1853, that eliminates that element.

Mr. McClintic: There are some differences between Virginia's

account and ours. I think they can be easily reconciled. I believe they are purely clerical.

The Special Master: I may say here that when it comes to questions of detail in connection with these two accounts, which ought to be reconcilable by reference back to the original sources of information, I may ask the accountants on both sides to get together for the purpose of ascertaining what the facts are in those cases. I cannot undertake to investigate those questions. The ac- 554
countants must do that for me; and that will apply to all the items involved in this account. Wherever there is any probability of ascertaining identity of items and identity of amount, where there is a disagreement in these accounts, unless there is some other arrangement made, I shall have to request the accountants to get together and see what they can find. If when they get together and they get the results, there are things they cannot agree on, of course I will determine those; but so far as they can reach common results from the original sources of information, I should like them to do it. That will winnow out a lot of those details.

Mr. Conrad: I will hand your Honor at this time an official publication which gives the form in each county and town of the State.

The Special Master: Let me ask this question right here, because while we are discussing this, if we can make progress, we had better do it. Is it agreed by counsel on both sides that the assessed value of the real estate, as it may appear, either by the land records of 1861 or 1860 or 1863, can be treated as the assessed value on June 20, 1863. That is, are you near enough together?

Mr. Anderson: We are willing that the nearest authentic assessment that can be found shall be taken. We have endeavored to do that.

The Special Master: Is it agreed on both sides?

Mr. Conrad: I think we are shut up to it on both sides. 555
The last assessment of land made before the War both for Virginia and West Virginia was in 1856. That ran until 1866, unless West Virginia had a reassessment of land and I do not think she did.

The Special Master: She could not have had any reassessment before 1863.

Mr. Conrad: We are bound by that.

The Special Master: I know, but I do not want to bother the court with all these names, provided I can have it appear in the record that the parties on either side agree. Of course all these reasons would undoubtedly satisfy the court it is all right. What I want now, if I can safely do it, is to put into the record the statement agreed to by counsel on both sides, that the valuations that

appear here for any other year than 1863 will be accepted by both sides as the valuation under this paragraph for June 20, 1863, except with this suggestion. If there are any items as to which there is a disagreement in the reports of the two accountants, the understanding is that the accountants are to get together. Is that agreed upon?

Mr. Harrison: They are to reconcile them if they can.

The Special Master: Yes; they are to reconcile them if they can. If not, I will get the result, and I will determine then in those particular instances what the fact is.

Mr. McClintic: If your Honor please, there is only one difficulty in that and I do not know whether we can arrange it or not. The West Virginia counties, as shown by the exhibit originally filed here by the accountant for Virginia, had 45,000 square miles. That same exhibit, taken from the Auditor's report of 1861, showed that there were counties in West Virginia, as we can prove by the United States Geological Bureau, which only have 480 miles in 556
them, and in that exhibit they had them as 1,500 square miles. The reason for that was that the Auditor's report says that in many instances they were taken by adding the acreage of the lands assessed in each county together, and that made so many acres, and that made so many square miles. The facts are that West Virginia and Virginia at that time assessed titles instead of land, and there are in a great many cases simply duplications. In other words, there would be a half a dozen people claiming a hundred thousand acres of land. Each one of that half dozen had on the books his hundred thousand acres of land, in order to keep his title. That makes a very grave duplication in West Virginia; but on the face of the books the assessed valuation appears as so much.

The Special Master: Well, how can I do anything else except report the assessed valuation? Of course I appreciate the force of those considerations, but I presume they went all over the State, did they not?

Mr. McClintic: That applies to the wild lands, so-called, and the doubtful titles. Virginia has two systems of land titles, one west of the Alleghenies and the other east of the Alleghenies. We belonged west of the Alleghenies. They had what was known as an inclusive survey west of the Alleghenies. In other words, a man could go out onto Barren Creek and survey a hundred thousand acres and say "I exclude all previous entries, surveys and grants." 557

Mr. Anderson: We had that on the east side, too.

Mr. McClintic: Those things were duplicated and duplicated.

The Special Master: Let us see where we would land on that. There is to be presented to me what will be and is by these reports

the assessed valuation. Now, is the assessed valuation, so far as it relates to the territory of West Virginia, to be attacked upon the ground that this practice was adopted, and that it resulted in the assessment? If you are going to be bound by the assessment, that is all there is of it, if I am to report the assessment as it stands. If you desire to open up that question, then I will hear you upon that.

Mr. Anderson: If your Honor please, the difference between those two assessments is very slight.

The Special Master: I do not want counsel on either side to agree to any fact that is going to embarrass them in any way, or to deprive them of any right.

Mr. Anderson: The amount is very small. The difference in the result as ascertained by the accountants for Virginia and West Virginia is only .088 of one per cent. Therefore it is *de minimis*.

The Special Master: It is important for me, and for you gentlemen later on.

Mr. Anderson: We are perfectly willing to take that statement.

The Special Master: You do not want negligible elements of controversy when you get this up in the Supreme Court, 558
and I do not want to bother the Supreme Court with unnecessarily small details.

Mr. Anderson: As to what my friend Mr. McClintic said just now with reference to the manner in which this excessive or fictitious area was arrived at, I have no doubt he is correct. The same thing occurred in Virginia. Both in West Virginia, west of the Alleghenies and in Virginia, failure to put their claims on the land books resulted in forfeiture of title to the land, according to the law of the State; and in order to save their title to land, they had titles that were worth little or nothing put upon the land books. Sometimes there would be five or six claims to the same land, and they were assessed at nominal amounts, frequently insignificant amounts, sometimes a cent an acre or less.

The Special Master: I have got to do one of two things. I must take the public record of this assessment, or I must allow the public record to be impeached. I do not know what you may have, but it is almost incredible to my mind that you could have living evidence by which you could establish the instances in which the assessors had assessed land under these circumstances in particular cases. Of course you may have it.

Mr. McClintic: We could prove that without difficulty in numbers of instances. Whether it is a provable matter or not is another thing.

The Special Master: That would be another question. The assessed value, of course, is what I must report under this pargaraph.

The whole point is, are you all willing to agree that the assessed value as it appears here in these reports for years other than 1863 may be accepted by me and reported as the assessed 559
value of land on June 20, 1863.

Mr. Anderson: We are willing that that should be done, sir.

Mr. McClintic: We will confer and let your Honor know this afternoon.

The Special Master: I merely make the suggestion. None of you need feel bound to make any of these agreements which I suggest. It is only for the purpose of saving myself work, and saving the court work later.

By Mr. McClintic:

Q. Are the totals of the personal property assessments as set out on the bottom of page 7 correct?

A. You mean in this summary? 560

Q. Yes.

A. The total assessment?

Q. Yes.

A. They are correct according to the sources of information from which we took them, as shown by the schedule.

The Special Master: I would like to have that same suggestion with reference to agreement apply to the personal property as well as to the land. Of course you are not obliged to agree to it, but I merely suggest it. Of course I appreciate the fact that the personal property raises quite different considerations. But we have got to do one of two things. Of course in the absence of getting the assessment for the year 1863, we would have to approximate it in some way, by some competent testimony, and if the only competent testimony you have was the assessment for 1860, and you have to leave the case there, so that I have got to infer, you might as well agree on it and eliminate that as an element of controversy.

Of course I do not direct the course of the hearing, but when it comes to me, if there is nothing before me except the assessment of 1860 to show the value of the personal property in 1863, I should have to come pretty near finding that that is the value in 1863. Of course you have the property book, if you want to supplement it by any additional testimony. We are not discussing actual value; this is assessed value, and I cannot report actual values. 561

Mr. Conrad: The only thing we can do is to lay before you the official reports.

The Special Master: I don't know—on the basis of a fair estimate of valuation of property.

Mr. Conrad: That is another thing. All we can do upon this assessed valuation is to furnish you with the official publications—

and please note that they are as well the official publications of the people of West Virginia as they are of the people of Virginia at the time they were made in 1863. Now, if an assessment of land appears we know it existed in 1856 and continued.

The Special Master: I do not know that I am confined to the assessed valuation of the personal property.

(Reading):

"5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties of the State of Virginia."

Of course if all you give me is the assessed valuation of 1860, and stop there, and that is all the evidence I have, I may have to take it.

Mr. Spooner: We move to amend that—

The Special Master: I only suggest that. You can go on with the examination. As to whether you both think it prudent, in the interest of progress, and certainty in the result, to agree upon this question of the valuation as to land and personal property, that is something you will have to decide for yourselves. I simply make the suggestion. You may proceed.

Mr. Spooner: We moved to amend that by making it read "assessed valuation." In the Supreme Court's report in connection with these proceedings that word "assessed" is put in.

Mr. Anderson: If your Honor please, that is only the sec- 562
ond paragraph that the word "assessed" occurs.

The Special Master: In the second paragraph the word "assessed" does not appear in the decree as I have it. What I have here is a certified copy of the order on which I am acting, signed by the clerk of the court.

Mr. Spooner: That was amended.

The Special Master: Let us find out where we are. His certificate is dated June 5, 1908, under the seal of the court.

Mr. Spooner: I am not making any mistake about this.

The Special Master: Probably not, but there is one thing certain; if this authority is not correct the proper authority will have to make it correct.

Mr. Spooner: It has been made correct.

The Special Master: But they must make it correct to me. I had in mind all the while that it read "assessed" but when I come to look at this certified copy of the decree I see that the word "assessed" is not there. I will have to communicate with the clerk of the court. I will have it sent back and amended . Of course, this is my authority, this copy I have.

Mr. Anderson: Under the fifth paragraph of the decree, 563
your Honor shall estimate the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia—the fair estimated valuation. There is no suggestion that the assessed value shall be taken as a criterion in that paragraph.

But if your Honor please, when we come to endeavor to ascertain fairly on each side, what was the fair valuation of property on the 20th of June, 1863, it was found to be an absolutely unsolvable problem, and the nearest approach we could get to a value was to take the assessed valuation. Your Honor will understand very well that very few men are old enough to have been in active business then. So it would take the testimony of thousands of men to prove what the assessed value of property in those two States was at that time.

The Special Master: I appreciate that fully.

Mr. Anderson: So it was very difficult. But in taking the assessed valuation we found that here was this difference between the assessed valuation in loyal West Virginia and in the Confederate Virginia—or in Federal West Virginia and Confederate Virginia, I would rather say; because both were right according to the principles which they followed and which it seemed to them to be constitutional.

The Special Master: I accept the change, although I noticed the inadvertence when you made it.

Mr. Anderson: I will put quotation marks around the word "loyal" in the first instance. The assessment there was in reference to lawful money of the United States. It was the money in which the taxes paid to the Wheeling Government were paid in 1863 and 1864; while in Virginia it was transparently 564
evident that the assessments placed by the sworn officers of the Government here had reference to some other standard of value than gold or silver.

Mr. McClintic: Gold was not a standard of value in West Virginia. It was not known then.

Mr. Hogg: It was a curiosity.

Mr. Anderson: So were greenbacks here a curiosity, and illegal as a circulating medium. Comparing the two assessments, you will see that horses were assessed for three or four times as much in 1863 as they were in 1860, although horses in 1860 were worth less in lawful money. So it was evident that the assessments here were made with reference to Confederate money as a standard. In order to ascertain the fair valuation it was necessary to apply the scale adopted by the courts, and that is what we did in reaching our conclusions.

The Special Master: That is another question. The only practical question here is whether between yourselves you will agree, first, upon taking the assessed valuation of the land for the valuation and for what will be the fair estimated valuation under paragraph 5, and then, whether at the same time you will agree that the assessments of personal property you put in shall be treated by me as of 1863; and so far as they go, unless you see fit to supplement them by other evidence to be taken by me as to the valuation of the personal property. You can make that agreement if you like, and reserve the right of Virginia to assert the proposition for which they contend, that for obvious reasons the valuation was excessive and ought to be reduced. That is independent of the ques- 565
tion what the figures themselves show. Of course when I come to report to the court, if I report a valuation for 1861, I have to give some reason why I reach a conclusion in 1863; and if you both stop on 1861 and do not undertake to go further, I might as well have it as a matter of agreement in the record. I only make these suggestions and I want counsel, if they think they can do so with safety and propriety to join me in having an agreement that will eliminate this element of controversy.

Mr. Spooner: We understand your Honor's suggestion and we will consider it with an earnest desire to come to an adjustment about it, and we will not take a great deal of time in considering it either. One of these statements of personal property, as I recollect, embraces 30 odd counties, the assessment of 1860 or 1861.

Mr. McClintic: 1861 and 1862.

Mr. Spooner: 1861 and 1862. Then the other counties of Virginia are reported from the assessment roll of 1863. That is upon the theory that they have been unable to find a complete record for 1863. We shall ask to put in a statement of assessment of 1861 and also a statement of the assessed value in 1863.

The Special Master: Well, that question of fixing a valuation of 1861 would be a question addressed to the discretion of the Master.

Mr. Spooner: Yes; that is true.

The Special Master: That is something I will hear you upon when you reach it. That will not present any difficulty so far as the land is concerned, because the statement made by both 566
sides, as I understand it, is that the valuation of the land in 1861 was practically the same as in 1863—substantially the same, with some few changes.

Mr. McClintic: What did this assessment of personal property, in a general way, include?

Mr. Anderson: What page are you on?

Mr. McClintic: Page 6.

The Special Master: You mean assessments in both places, Virginia and West Virginia?

Mr. McClintic: Yes; the general subject matters assessed in each State.

The Witness: Well, as far as I itemized they were slaves, horses, mules, asses, jennies, pleasure carriages, cattle, sheep, hogs, watches, clocks, pianos and harps.

By Mr. McClintic:

Q. Is that what the assessment rolls show as being the subject matter of assessment?

A. The assessment rolls show those in detail.

Q. And other details?

A. And other details in addition, but not separate.

Q. Those classes were shown on each assessment roll, and they are assessed separately under those heads?

A. Yes, sir.

Q. That is true of each State?

A. Yes, sir.

The Special Master: I see that they do not assess household furniture in those States. You may proceed.

Mr. Conrad: I just asked him if that is not personal property you are examining about.

The Special Master: Is that one of the original valuation books (indicating book)?

(The Special Master and counsel examined some books).

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[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixcy.*]

By Mr. Harrison:

Q. How did you ascertain the fair proportion of the ordi- 654
nary expenses to be borne by West Virginia, on the basis of the fair estimated value of property, real and personal, by counties? Is that shown by your Exhibit E-1?

A. We substituted the assessed valuation, for we certainly were incompetent to make a fair estimated valuation, and we used the same basis that Virginia used?

Q. You did?

A. Well, practically so.

Q. Did you make a comparison between the assessed values of personal property in Virginia in 1861 and 1862 and 1863?

A. In 1861, 1862 and 1863?

Q. Yes.

A. It was made. I did not make it personally, but I instructed it to be made, I think I have seen the result. I am not quite sure whether they were made or not. My impression is they were.

Q. You are not able to testify about them yourself?

A. I am not sure whether I saw them or not. There were some papers handed to me since this hearing commenced, and I am not sure what they were. I instructed them to be made, and I assume they have been made, but I did not give them any atten- 655
tion.

The Special Master: You are on Defendant's Exhibit E-1 now, are you, Mr. Harrison?

Mr. Harrison: E-1; yes, sir.

The Special Master: Paragraph 5.

Mr. Harrison: On the basis of the fair estimated value of the property.

By Mr. Harrison:

Q. You included in the assessed valuation of personal property slaves?

A. Yes, sir.

Q. And you made no deduction on account of the depreciation in currency?

A. No, sir.

Q. Those two considerations would probably cover substantially the difference between your result and the result shown on Mr. Potter's statement, would they not?

A. I assume that they would. On personal property we did not get all of our figures from the same sources. We discovered a lot of personal property books and took them over there. I think Mr. Potter had not seen them. The books were not open. We found them down in the basement of the Capitol and had them opened and went through those.

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[*Vol. 7. July 1, 1909. General Discussion.*]

[The Special Master]: We come now to Paragraph 5. Have you a substitute exhibit there for plaintiff's original Exhibit E-1?

Mr. Harrison: That relates to the fair estimated value of the property, real and personal, does it not?

The Special Master (reading from decree): "And also on 842

the basis of the fair estimated valuation of the property, real and personal, by counties of the State of Virginia."

Have you reached any agreement on that?

Mr. Dixey: We cannot determine that until the preceding one is determined, because it involves the ordinary expenses the same as the preceding one.

Mr. Harrison: It does not involve the method by which you reached the fair estimated value.

The Special Master: Have you or have you not reached an agreement on that paragraph?

Mr. Anderson: No, sir. There are a great many points of disagreement there.

The Special Master: Are those matters that the experts have gone over, or are they matters which they can go over with any hope or expectation of reaching a reconcilement?

Mr. Anderson: I think they are almost entirely as to classification and as to the construction of these decrees.

Mr. Harrison: The fair estimated value is, of course, a question of facts.

The Special Master: That involves a question of fact as to whether you agree on it.

Mr. McClintic: We will not agree on that—the fair estimated value.

The Special Master: Do I understand, then, that there is not any prospect of reaching an agreement on what is the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia? 843

Mr. Carlisle: I believe we agree on the value of the real property.

Mr. McClintic: The assessed value of the real property.

Mr. Carlisle: Yes.

The Special Master: I am going to report the fair estimated valuation. Now, then, if counsel for Virginia and West Virginia agree that the assessed valuation is the nearest that you can both approximate to the fair estimated valuation, I will report that as the fact. If you do not agree on that, I will hear either of you on any phase of that.

Mr. Harrison: It is upon that point that we want to introduce some testimony.

The Special Master: The first question is, do you agree on the assessed valuation?

Mr. Anderson: We do not think that is a fair criterion.

The Special Master: I do not ask you to bind yourselves as to what is a fair criterion, but the first question is this. I suppose you both rely in some stage of the contention that either of you

may have on this proposition, upon the element of assessed value?

Mr. Anderson: Yes, sir.

The Special Master: Now, what weight or force may be given is a matter to be determined later on by me, after hearing both parties. Now what I want to know is whether, as to the figures the assessed valuation show, whether you agree on them.

Mr. Carlisle: We do not agree as to the assessed valuation of the personal property.

The Special Master: Let us confine it to the real estate.

Mr. McClintic: We have agreed on the real estate. 844

The Special Master: Do I understand, Brother Attorney General, that you agree on the assessed valuation of the real estate?

Mr. Anderson: Yes, sir.

The Special Master: I do not understand that by making that valuation that that is the valuation I am to take. If that is the case, that eliminates that from that sum—what is the amount?

Mr. McClintic: It is set out in Section 2.

Mr. Anderson: $82,000,000 for West Virginia, and I think $290,000,000 for Virginia, and something.

The Special Master: Under Paragraph 5 of the decree we are to determine "and also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia." Now, give me, if you can put your hand on it in a minute, what the assessed valuation is.

Mr. McClintic: It is stated in B-1.

Mr. Harrison: In Virginia the assessed valuation was $296,085,460.31.

Mr. Carlisle: That is real estate only.

Mr. Harrison: Yes.

The Special Master: And what are the figures as to West Virginia?

Mr. Harrison: West Virginia, $82,449,252.04.

The Special Master: Yes; I had not read that. We need not spend any more time on that. That is already agreed to.

Mr. Harrison: We agree as to the amounts of the assessed valuation of the real estate.

The Special Master: The agreement does not bind you any 845
further than that. If I find in the end that the assessed valuation is the fair valuation, I shall find so; if I find that the assessed valuation is not the fair valuation, then I shall so find. If I think it is a factor that should be taken into account, I will take it into account, and not otherwise. Now, as to the personal valuation.

Mr. Harrison: There is a wide disagreement.

The Special Master: There is a wide disagreement as to the valuation of personal property.

Mr. Carlisle: There is a wide disagreement; yes, sir.

The Special Master: There may be a wide disagreement as to the fair valuation of personal property, but is there a wide disagreement as to the assessed valuation?

Mr. Carlisle: Yes, sir.

The Special Master: Do you say so also, Brother Anderson? Brother Carlisle says that the assessed valuation of the personal property shows a wide disagreement as to the figures between Virginia and West Virginia. Do you understand it?

Mr. Anderson: It is almost impossible to find out what the assesed valuation in 1863 was; for a large portion of Virginia there were no returns made because there were no assessments made.

The Special Master: My recollection is that the exhibits do show the assessed valuations for certain portions of the State. What I want to inquire about is whether the exhibits already in the case, so far as they do show assessed valuations, are agreed upon as showing what the assessed valuation was. I will simply stop right there. Do you agree on that? 846

Mr. Carlisle: We do not concede—

The Special Master: Let me give you my point. I do not know that I made myself quite plain. Suppose, for instance, for one county the returns in here show an assessed valuation of $100,000 on personal property. Now, what I want to know is do you both agree that the assessed valuation in that county is $100,000? That does not bind you, it does not affect you in any way as to what bearing it may have upon the ultimate result. Do you agree upon the figures?

Mr. McClintic: No; there is a wide disagreement all through that. There is no possibility, I think, of getting together, unless we change ideas.

The Special Master: Let me make this suggestion. Of course you are more competent to express an opinion than I am in reference to this, you being more familiar with all the facts; but it would seem to me that there ought to be a public record somewhere for the year 1863 that would give an assessed valuation and at the same time also, unless there is some confusion in connection with the inherent conditions existing at that time, there ought to be only one record on that proposition, and if so, that record ought to show one thing. Of course I don't know how this may be; I am simply giving you my impression of what I would suppose you might find. If there is a published report showing the valuation of personal property in a part of these counties for 1863, and there is only one published report, of course it will only show one thing. Do you get my point?

Mr. McClintic: Yes, sir.

The Special Master: You do not concede that that is the valuation by any means. It is open to any criticism that you 847
have to make.

Mr. Carlisle: The question is whether they have any correct records of that kind at all.

Mr. McClintic: We do not concede that they took them off the right books, either. In other words, we disagree as to books.

The Special Master: In other words, they claim they have made an effort to get at the original sources and you claim you have made an effort to get at the original sources, and you do not get the same results?

Mr. Carlisle: Yes. We say ours are more correct than theirs.

The Special Master: Surely; you think your results are more correct than theirs. Now, is there any probability of the experts being able to get together and agree upon what that assessed valuation is? I suppose we would all concede, at least you would concede it was admissible upon that question—what force and effect it might have would be a matter for discussion.

Mr. Anderson: As to the land, that is possible, but as to personal property it is impossible, because in a great number of counties there was no assessment at all.

The Special Master: But you do not quite get the significance of my suggestion. As to a county where there is no assessed valuation, I do not suppose either side has given any figures as to assessed valuation.

Mr. Carlisle: We have gone back to the nearest year.

The Special Master: That is another proposition. I am in- 848
quiring about 1863. My inquiries have all been directed to the year 1863. Now, what I want to know is whether the experts agree upon what the official records show in any or all of these counties, or all or none of these counties, for a valuation of personal property in 1863. That is the first question. Do they agree on the amount? And if they have not yet agreed, can they get together and agree on the amount? Or are there two sets of public records for some of these counties? If there are not two sets of public records, there is no reason why the two experts should not agree, where they go to the same record. Now, where there are no assessed valuations, of course neither side will be able to give any assessed valuation. What do you say about that proposition that the experts may be able to agree as to the assessed valuations where there are public records of the assessed valuations? What do you think about that, Brother Anderson?

Mr. Anderson: I may anticipate, probably, the putting in of our case. The suggestion of your Honor has been carefully considered

by counsel on both sides and by the experts; but we found it was absolutely impossible to ascertain what the assessed valuation of the personal property was in a number of counties of Virginia.

The Special Master: Why?

Mr. Anderson: Because there was no assessment.

The Special Master: This question that I have just put does not include that proposition at all. I am afraid I did not make myself clear—

Mr. Anderson: And this fact was developed, too: That the assessments were made in different counties with reference to different standards and measures of value; that in western Vir- 849
ginia they had reference to United States currency, while in what now constitutes Virginia the valuations were made with reference to Confederate money.

The Special Master: That would be a question directed to 850
the fair valuation rather than the assessed valuation.

Mr. Anderson: What is the fair estimated value? If your Honor please, to fairly meet that, to fairly respond to that inquiry directed by the Supreme Court, Virginia has taken the evidence of a number of living witnesses and has also collated and is prepared to file the evidence of concrete facts shown by the public records of the State, which demonstrate, in our judgment, what was the depreciation of property in June, 1863, approximately, as contrasted with its value in 1861. We have introduced the evidence of a number of existing, intelligent witnesses, business men, men of wide experience, who testify as to those facts as to the State at large, and as to particular instances; and we have introduced the testimony of the records as to sale after sale of property made at that time, and as to the partition of property and the value put upon it by experienced business men, showing the enormous depreciation of real estate at that time and the enormous depreciation of personal property, and showing that as a minimum the loss was not less than fifty per cent., while in a large part of the State the personal property loss was ninety per cent., it was found that nine-tenths had been destroyed; in other sections three-fourths, and so on. But we have taken one-half, if your Honor please, and we have divided 1861, the value for those years by two, and we think that is a very liberal estimate as to West Virginia. That is as near as we can get to a fair estimate of the value of the property.

The Special Master: Now, let us get down to the question 851
pending before me. If I understand you, you yourself in the last analysis predicate some of your figures on the assessed valuation of personal property.

Mr. Anderson: The assessed valuation before the war.

The Special Master: It does not make any difference when it was.

You cannot do that unless it is a legal element in reaching the conclusion. Otherwise you would have to exclude it. Now, if it is a legal element in 1861, it is a legal element in 1863?

Mr. Conrad: Oh, no—

The Special Master: One moment. I do not appreciate the distinction between one year and another year. I do not say it concludes. I cannot quite see why an assessment in one year is a valid element in reaching a conclusion and an assessment in another year is not a valid element in reaching a conclusion. The force or weight it may have is another thing. If counsel will notice the distinction I make there they will see the point. The one thing I am interested in here is to have such evidence put in as has a legitimate bearing on establishing this issue, and I could not let Virginia set up one contention predicated upon the assessed valuation of personal property at one time and consider that and then exclude all consideration of the assessed valuation of property at another period. The only point is this: Is assessed valuation at any time an element entitled to be considered? The weight to be given to it, of course, is a matter to be determined later. Do I make myself clear?

Mr. Anderson: Yes, sir. 852

The Special Master: Now, what I want to know is whether the assessed valuations—I will go back to those other years after I get through with 1863. I am talking about 1863, and I am more than glad to have counsel make their suggestions as I go along. Now, the question we are on right now is whether or not the experts and the parties agreed upon what the assessed valuation of the personal property was, so far as you have been able to get it, in 1863. That does not bind either of you as to the effect to be given to that valuation. I simply want to know whether you agree upon the figures, and I will hear you later as to whether or not it is entitled to some weight or great weight.

Mr. Conrad: Speaking for the creditors, as far as any official assessment or appraisement of personal property is concerned, that can be produced by West Virginia, I would be prepared to accept it.

Mr. Carlisle: You have an assessed value on personal property in 1863, assessed by old Virginia and divided by four.

Mr. Conrad: That is very easily made. Will your Honor pardon me a moment?

The Special Master: Certainly.

Mr. Conrad: When you employed a while ago as the rule of reasoning the instance, in reference to Virginia, that a certain assessment of 1861 or 1860 or 1859 might be assumed as a reasonable basis to reason from, that therefore the sum given would be true in 1863, I venture, with great deference, to suggest to your Honor that there is a serious fallacy in that reasoning. 853

The Special Master: If I conveyed that reasoning to you, Brother Conrad, it was not intentional. My suggestion on that only went this distance. Perhaps I did not make myself clear. It was bearing upon the question as to whether the assessment of the personal property was an element to be considered, any assessment made at any time being open to any explanation that may be made.

Mr. Conrad: I think that will be conceded.

The Special Master: The only question is whether the assessment, whenever it was made, so far as it is entitled to weight, is a factor to be considered.

Mr. Conrad: I do not think there is any question about that.

Mr. Littlefield: That is all I meant to convey. I did not intend by any means to intimate that an assessment made in 1863 was entitled to the same weight and had the same probative force as the assessment made in 1861. I will hear you upon that question, when we come to it. Do I make myself clear?

Mr. Conrad: Yes, sir.

Mr. Carlisle: We all agree to that.

The Special Master: Now, we will start where I began. Do you both agree upon the assessment of personal property so far as it is taken from the official records for the year 1863, as to the amount?

Mr. Carlisle: We would agree, I have no doubt—

Mr. McClintic: I beg your pardon—

Mr. Carlisle: One moment. We could agree as to the act- 854
ual assessment of personal property in 1863. But they do not put it into their report, they do not put it in their report or account, except where they divided it by four, and we cannot take that division.

The Special Master: I do not ask you to. You agree, in the first place, in the figures?

Mr. Anderson: We have filed an exhibit giving the assessment of 1863.

The Special Master: Do you both agree—

Mr. McClintic: If they have filed an assessment of counties I have never seen it. They have filed a number five, which gives the total, but if they have filed it by counties I have never seen it. Now, we did file a statement by counties, of Virginia, I suppose about 75 per cent. of the counties, from the property books of 1863, which is our Exhibit E-1.

Mr. Conrad: When you refer to Virginia, what do you mean?

Mr. McClintic: I mean the present State of Virginia.

Mr. Conrad: How may counties?

Mr. McClintic: I would suppose seventy-five per cent. of the counties. I did not calculate them exactly. They show on this Exhibit 5, or E-1, filed by us.

Mr. Conrad: From official assessments?

Mr. McClintic: Yes, sir.

The Special Master: Right there, I would like to know what difficulty there is in Mr. Potter, representing Virginia, looking those figures over and either agreeing or disagreeing to them.

Mr. McClintic: I see no objection to that. 855

The Special Master: Then why do you spend time discussing that?

Mr. McClintic: That was a question of fact I wanted to put before your Honor.

The Special Master: Precisely. Without remembering in which schedule it was, I had a recollection that there was segregated a schedule by counties. Now, I would like to inquire from you, General Anderson, whether or not Mr. Potter cannot look over these official records for 1863 and advise the Master and all concerned whether he agrees with the statement of figures given by the expert for West Virginia as the personal valuations for 1863.

Mr. Carlisle: As to those counties?

The Special Master: Certainly.

Mr. Anderson: I think that can be done, but I do not see how that can be informing to the Master in ascertaining the fair estimated value, for the reason that in Virginia the standard was Confederate money and in West Virginia the standard was greenbacks.

The Special Master: There is no use in discussing that question now, because I am not hearing that question now. I will hear you both on that *ad libitum* before we get through with the hearing and all the evidence you have on that, but what I am trying to get at now is whether one piece of evidence which you both undertake to submit, and one relies on for one purpose and the other for another purpose, whether you both agree on that.

Mr. Anderson: That is just a question of time, and it will 856 not take very much time I think.

The Special Master: Then, we will have probably from both experts a joint schedule stating what the official valuation for such of the counties as you have been able to get the valuation of personal property for for 1863. Now, do you both agree—you understand what I am trying to get? You submit, Brother Anderson, some official valuations of 1861, do you not?

Mr. Anderson: Yes, sir.

The Special Master: Now, do you both agree as to the figures submitted by Virginia as the official valuations for those various counties, as to personal property, for the year 1861? Do you both agree about that?

Mr. Conley: No, sir, we do not agree to that because they do not include the whole property, as we contend.

The Special Master: I will say this. Unless it is put down by counties the Master will not consider it. Let us see what this paragraph calls for (reading from the decree): "And also on the basis of the fair estimated valuation of property, real and personal, by counties, of the State of Virginia." Now, I have to say to you that as I shall require both Virginia and West Virginia to submit to me their valuations by counties, I shall not consider a lump valuation; I cannot report it that way; I have got to report it by counties, and you must submit it to me by counties.

Mr. Anderson: We will furnish that in detail. We have it in the aggregate.

The Special Master: Then separate it into counties. I 857
mean report by counties, for I cannot report total valuations.

Mr. Anderson: We take our figures from the Auditor's report.

The Special Master: It is immaterial where you take them from, but you must get your facts in here so as to answer the questions propounded. Now, Virginia must submit—I say must submit; I mean that of course in a tentative way—in order to have considered their contention by the Master they must submit a valuation by counties. I suppose you can do that without trouble, can you not, Mr. Potter?

Mr. Potter: Yes, sir.

The Special Master: And is there any good reason why the official records for 1861 do not show one thing? Do I understand there is any difficulty about the official records of 1861, so far as you find them?

Mr. McClintic: I don't know, your Honor. We simply went into the books where we could find them.

The Special Master: Let me ask Mr. Dixey this question. Is there any difficulty in agreeing that the books show one thing as to the assessed valuation of personal property for 1861?

Mr. Dixey: For all the counties? Yes, sir.

The Special Master: So far as they exist?

Mr. Dixey: Not so far as they exist.

The Special Master: There is no difficulty about that?

Mr. Dixey: No, sir. 858

Mr. Anderson: A few counties would have to be taken for 1860. There is very little difference.

The Special Master: These suggestions apply to 1860 or 1861. Whether 1860 or 1861 is too remote in the consideration that will be open to both of you to discuss. You do not bind yourself to anything; but I am trying to eliminate everything I can that you can agree on. I do not want to have to take all these figures, and

then try to find out what the valuation is by counties. I don't want to have to go through all that myself in order to get at the result. If you can agree upon that, it will save us all a great deal of time.

Mr. Dixey: Do you want all the counties obtainable for 1863, and also all the counties obtainable for 1861, even though they be duplicates?

The Special Master: Duplicates?

Mr. Dixey: I mean even though the counties appear in 1861 and 1863 both; do you want them for both years?

The Special Master: That is a matter upon which you may be guided by the advice of your counsel. What I want is this. If Virginia submits these figures for 1860 and 1861 and 1863, I would like to have the expert for West Virginia examine those figures and compare them and tell me whether he agrees that they are correct statements from the official records. Do I make myself plain?

Mr. Dixey: Yes, sir.

Mr. McClintic: I understand, but I want to say this for the benefit of the other gentlemen. We are supposed to submit here at this hearing the personal assessment of 1860 as taken from the Auditor's reports, and if the gentlemen want to take it 859 and go over it with the books, I would be glad to do that; but at the same time we are going to submit that as testimony for whatever it is worth.

Mr. Conrad: From the report of Auditor Bennett?

Mr. McClintic: Yes, sir.

Mr. Conrad: His published report is here.

Mr. McClintic: I am taking it off. In addition to that, I want to submit a table showing the value of real and personal property by counties in 1860 and published in a book called Miscellaneous statistics, Census Reports, 1860.

The Special Master: That is, a United States Census report?

Mr. McClintic: Yes, sir. I have taken a transcript from it for convenience; and if the gentlemen want to take that and compare it with the books, I would be glad to have them do so:

Mr. Anderson: Will you let us have a copy of that?

The Special Master: Yes; let them have a copy of it. Counsel need not have any apprehension. There is no agreement that you make here that will in the slightest degree at all prejudice your rights as to whether this thing or that thing shall be given this effect or that effect. I am simply trying to get an agreement upon the elements, and what weight I will give these things is something I will hear you on later. But get your facts all in now. That is, I would suggest that that is the best thing to do. And then later, when we come to have the final argument, I will hear you both

upon what is proper and what weight should be given to this consideration or that consideration. But now we will get all the facts we can agree upon, and that will simply eliminate some elements of controversy. 860

Mr. McClintic: I will also at the proper time present a table showing the number of slaves, as taken from the United States Census report; likewise the number under twelve years old and the number over twelve years old; and the total by counties; also the slaves assessed in 1860 in each of the counties, over twelve years old, as shown by the auditor's report.

The Special Master: That is, bearing upon the question of valuation of personal property?

Mr. McClintic: Yes, sir. I will give notice to the other side.

The Special Master: You submit that as notice of something you intend to offer, and it is subject to inspection and criticism by the other side?

Mr. McClintic: Yes, sir.

The Special Master: Now, when can Mr. Potter and Mr. Dixey give us this record by counties of the assessed valuation of the personal property for 1863, 1861 and 1860?

Mr. Anderson: That data has been compiled by both sides.

The Special Master: I mean when can they give us that result, so I can put it in the record that that is what the figures show?

Mr. Carlisle: For the counties which they can have access to.

The Special Master: The agreement covers the counties for which figures can be had. 861

Mr. Anderson: Take the first year, 1860.

The Special Master: The records will all show that.

Mr. McClintic: Did I correctly understand your Honor to say that if you cannot get 1863, you would like to have the nearest year?

The Special Master: No; I am not intimating that I am going to take anything—

Mr. McClintic: I mean are you asking for that?

The Special Master: No. I understand this: That you have in here already, either on the part of Virginia or on the part of West Virginia, the valuation of the personal property for 1863 so far as it goes, and you also have in here the valuation for 1861—

Mr. McClintic: 1862—

The Special Master: Well, that is very good. You may put in—and so far as you put in I should like to have you agree upon what that valuation shows. Now, the weight to be given that is to be determined later, after having heard the argument of both parties. If you want to put in your valuation for 1863, so far as you have got it and agree on it, and if you want to put the figures in for 1862 and 1861 and 1860 the same, that simply covers this. You agree

on the amounts, but you do not agree on the effect of it, and I do not intimate what weight I will give to any of the valuations. Do I make that clear, Brother Anderson?

Mr. Anderson: Yes, sir. 862

The Special Master: Is that satisfactory, Brother Conrad?

Mr. Conrad: Entirely so.

The Special Master: The only purpose now being to get away brushwood, is to get to the agreement on the facts. The effect to be given to it is a matter for later consideration. Can the experts give us that, and, if so, when will they be able to give it to us?

Mr. McClintic: Well, we have it for 1863, already, taken from the books.

The Special Master: Have you got it for all three years, or all four years?

Mr. McClintic: No. We have 1860 only from the Auditor's report; and 1861 and 1862—and only where we could get it for 1863.

The Special Master: This only requires you to agree so far as you can agree. If, in addition to the agreement, you think there is anything in relation to either of those years you want to introduce—

Mr. McClintic: The trouble about it is it involves a great deal of labor, going down to the basement of this building and getting out a lot of boxes filled with books and going all over them.

Mr. Conrad: At the first meeting there was offered on the part of Virginia a report made by Mr. Bennett, the Auditor of Virginia, giving an itemized, detailed statement of each county of the State, of the appraisement of every article of personal property in the commonwealth. That has been in evidence all the time, made county by county, alphabetically arranged, giving the 863 assessment of the personal property up to 1862. Now, when gentlemen say that they have, from the official records of Virginia an assessment of personal property in 1863, I confess that is a matter of astonishment to me.

Mr. Carlisle: We say part of it.

Mr. McClintic. It has been introduced in evidence here, and a copy of it furnished you.

Mr. Conrad: There was hardly, outside of the cities and towns of this commonwealth, a tea cup equipped with a handle in 1863.

Mr. McClintic: Oh, you had a heap more property than you thought you had.

Mr. Conrad: No, sir, we had not, and I know pretty well what I am talking about. We hadn't any farming implements to speak of—

The Special Master: I have just read Mrs. Pryor's book on that period. While I do not want to be understood that I have taken judicial notice, sitting here as Master, of what is stated in that book,

still it is very illuminating. I do not say it is controlling by any means.

Mr. Conrad: It is so conspicuous that the Courts of Virginia would take judicial notice of the fact—I am referring to how little personal property there was here—and the personal property of the State consisted in great part of slaves and bank stock.

Mr. Carlisle: But still, if they did make an assessment—

The Special Master: I can say this. Of course I notice the 864
Major's suggestion about this book. I suppose if the other side offers evidence that they think impeaches it, I shall be obliged to admit, if in my judgment it is competent. When we come to what is evidence, I suppose both sides expect me to rule, or endeavor to rule, in accordance with legal principles bearing upon the question of that ancient debt. I suppose if West Virginia claims that there is an official record upon which this report must have been based, and they say it does not agree with it, I do not see why I would not have to be required to consider it in determining whether or not I thought that, as distinguished from the book, was the authentic valuation. Now, those are all questions that are going to come up later. My question now is, will the experts go back to the original official records for the year 1863, 1861, 1862 and 1860, and so far as they show, in whole or in part, the valuation of the personal property, will they agree on it if they can? Then, when we come to the valuation of 1861, if either side has any contention they want to submit in reference thereto, tending to show that it is not entitled to the weight it would show on its face, I will hear it. And the same with 1860, 1862 and 1863. I do not say, and I do not understand, that the assessed valuation of personal property is the only criterion of its fair value. Of course I could not rule that; not in the presence of lawyers; but I suppose we are all quite familiar with the kind of evidence that it would be necessary to have in order to establish the valuation of property at any period of time. By those rules I should expect counsel to be governed, and of
course I will have to do the best I can in ruling, to follow 865
along on those rules. Now, all we are trying to do is to get at one element, without any reference whatever to the weight it has, subject to all kinds of explanations that either of you can make, to get that one element agreed upon for the year 1860, 1861, 1862 and 1863, so far as you can get the original sources. There ought not to be any trouble about that.

Mr. Anderson: I do not think there ought to be any trouble about that. It will only take a little time.

The Special Master: Does that embarrass you, Brother Anderson?

Mr. Anderson: No, sir.

The Special Master: With the suggestion I have made, does that embarrass you, Brother Conrad?

Mr. Conrad: No, sir.

The Special Master: That is, as far as that goes. Now, are there any other items in relation to paragraph 5, as to which you have any disagreement, or as to which there have been disagreements, as to which you can now agree? If not, we will go to paragraph 6.

Mr. Anderson: I do not think there are, sir. What will be a fair estimated value on each side will rely on different evidence.

The Special Master: Now, of course, whether you will want to put your evidence in until you get the assessed valuation to work from—

Mr. Anderson: I think it will be better to put it all to- 866
gether.

The Special Master: I do not know but what you both might want to use the assessed valuation to start from, and of course if you do, we will have to wait until you get that.

[*Vol. 7. July 1, 1909.*]

[The Special Master]: 876

We next come to Plaintiff's Exhibit, Substitute Exhibit E-1.

Mr. Anderson: That will await the filing of the assessed valuations.

The Special Master: We cannot go on intelligently until 877
you agree as to those results, so far as that is concerned.

[*Vol. 7. July 1, 1909. As to assessed values.*]

Mr. Carlisle: * * * We still have the matter of the assessment—

Mr. Conrad: The assessments of 1863?

Mr. Carlisle: No, sir; the assessment of 1863 so far as there is any assessment in 1863 is already in. Now, what the Master wants is an assessment by counties. 908

Mr. Conrad: We put it in.

Mr. McClintic: I haven't seen it.

Mr. Conrad: We submitted that.

Mr. McClintic: You mean the book you filed?

Mr. Conrad: Yes.

Mr. McClintic: Not for 1860. There were only partial figures for 1861 in that book.

Mr. Conrad: Pardon me. I am perfectly familiar with that book. That is a report made by Mr. Bennett, a reliable West Virginian, who was the Auditor of this State. He made it when

he represented the territory of both the present States, and we put that in evidence formally and distinctively a year ago. There is an assessment by counties of all personal property. The gentlemen say they have not seen it.

Mr. Carlisle: I never saw it, I am sure.

Mr. Conrad: It has been in evidence all the time.

Mr. McClintic: Did you put in that as your claim of the assessment under this exhibit you filed as No. 5? 909

The Special Master: Just one moment. I doubt whether this is making much progress. Let me make this suggestion without discussing the character of this book or what it is evidentiary of, we have two sets of accountants here, and I am rather inclined to think it is the proper thing for each accountant to submit a schedule of his own. I think it is quite fair, Brother Conrad, for them to ask your accountant to submit his schedule. Then he can show the source from which he got it, and then they can get together and agree, perhaps. There may be evidence in this case, and it may be legal evidence; and I do not say you will be required to put in anything additional, but it seems to me it is quite proper for them to ask your expert to take up the evidence submitted by their experts, by counties, and see if they can agree. We cannot print all this book.

Mr. Conrad: It would not be necessary. It is a public official document.

The Special Master: Somebody must pick it out from the book, and it strikes me that your expert is the best man to do it. I do not think they are unreasonable in requesting that they try to get together with their expert, on these counties in these years. I may agree with you that you may have the evidence already in.

Mr. Conrad: All that would be necessary would be one to hold the book and the other hold his statement and go over it.

The Special Master: That is simply giving the result. That does not militate against the fact that the result ought to be reached. You may be right about that. I do not under- 910 take to say about that. Then, Mr. Carlisle's suggestion is that the introduction of evidence on the part of Virginia in connection with what the assessed value of real property was at that time is contingent upon the submitting of these schedules by the accountants, and that then that evidence will come in. I understood that to be Mr. Anderson's position. Am I right.

Mr. Anderson: I would like to say a word on the entire question.

The Special Master. Certainly.

Mr. Anderson: I cherish a most earnest desire to expedite this case, and I see no occasion whatever for any such delay as is now proposed.

Mr. McClintic: We are not proposing any delay.

Mr. Anderson: Excuse me. I have been waiting for an oppor-

tunity to say this, and I will not take very much time to say what I want to say.

The Special Master: You will have unlimited time. I mean, I want you to take all the time you desire.

Mr. Anderson: I see no occasion for this delay at all. This matter of the assessed value in 1863 of the real and personal property can be put before you to-morrow, or certainly by Saturday, official records, as to the items of which there can be no controversy whatever. The statements which Virginia desires to file under section 5 of the decree, which I believe is E-1 of the Exhibits, can all be laid before your Honor either now or on Saturday morning, or to-morrow. So there is no occasion for delay so far as Exhibit E is concerned.

934

[*Vol. 7. July 1, 1909. Relating to Joint Statement of Assessed Values.*]

The Special Master: I think we have gotten pretty nearly through everything we can do except Paragraph 5, and the evidence you may want to submit.

Mr. Conrad: The experts will get together, I understand, under your direction, on the matter of reconcilement of the matters of appraisement.

The Special Master: I do not want you to feel concerned by any suggestion I make, but my suggestion is, would it be practical for you to go right along under this paragraph and then put in your proof under Paragraph 5, and then let the schedules come in later? If you do not feel if would be best to go on now, we can take it up in the morning. Of course if we could do it now in the course of an hour or so—

Mr. Anderson: We would not be ready on No. 5. 935

The Special Master: Is not everything you have got on that in depositions?

Mr. Anderson: No. We want to file something as to the assessed values.

The Special Master: You could not go with that now?

Mr. Anderson: No, sir. It will take a very little time for an accountant—

The Special Master: We could not get through with that this evening?

Mr. Anderson: No. I think probably Schedule E-1 will take an hour.

The Special Master: The question is, will we not save time if we

postpone that until to-morrow? We cannot close it up this afternoon, as far as I can see.

Mr. Moon: Your Honor asked for a joint schedule under Paragraph 1?

The Special Master: That we have already agreed to.

Mr. Moon: They are getting that up. 936

The Special Master: They are to take that and make one schedule and both sign it, so we will not have two duplicates on file. That takes care of that. What do you think, gentlemen, that we would make as much progress as practicable if we were to adjourn now until to-morrow morning?

(Informal discussion followed as to the question of adjustment.)

Mr. Conrad: I understand also that when we adjourn here we adjourn for the final argument of the case.

Mr. Carlisle: If the experts do not get through to-morrow, whenever they do get through, let them send us the result of their work.

The Special Master: You will be ready to-morrow morning at nine o'clock, will you not, gentlemen?

Mr. Dixey. I think so. We may not have that Exhibit A.

The Special Master: All the experts have got to reconcile under Paragraph 5 is the assessed valuation by counties for the years 1863, 1862, 1861, and 1860, so far as they can get them. There is no reason why you will not be ready, is there?

Mr. Dixey: Only the physical reason that these books are incased in packing boxes, and they have to be dug out, and there is a good deal of labor involved, and it will take a good deal of time.

The Special Master: You appreciate this. Here are eight or ten lawyers. Their time is all worth something, and they are anxious to get through with his. We do not want to unduly press you people, but if you can be here to-morrow morning at nine 937 o'clock with a reconcilement of these matters that have been submitted to you, it will clean this case up, and it will be really an extremely great convenience to all concerned. Now, we feel like asking under these circumstances that you shall put in all the time possible between now and then to get the results. You appreciate the situation?

Mr. Anderson: If Mr. Dixey and Mr. Potter cannot agree, I would be very glad if your Honor would indicate to them that they state in writing wherein they do not agree.

The Special Master: Yes; I will do that.

Mr. Carlisle: And if they do not agree, they may agree later.

The Special Master: It is almost sure that they can agree on what the official record shows.

Mr. Carlisle: Suppose they do not agree by to-morrow morning.

The Special Master: They can have one set of men at work on that branch of the case and another set under the other paragraph all at the same time, and it really does seem to me, even though they may have to work pretty late, that they really ought to put in some extra exertion in order to be here and facilitate this whole matter on the part of all concerned, because it will be a great accommodation to all of us.

943

[*Vol. 7. July 2, 1909. Testimony of J. M. McWhorter.*]

Mr. McClintic: I have a witness I would like to put on the stand.

The Special Master: Very well; while we are waiting for Mr. Potter, Mr. McClintic suggests that we hear from his witness.

Whereupon

J. M. McWHORTER

a witness produced by and on behalf of the State of West Virginia, having been first duly sworn, was examined.

By Mr. McClintic:

Q. What is your age?

A. Well, I have lived 81 years; I don't know whether I am that old or not.

Q. What is your occupation?

A. Attorney at law.

Q. What official positions did you hold under the Government of Virginia before the 20th of June, 1863, if any?

A. I was clerk of the County Court and deputy clerk of the 944
Circuit Court of Roane County.

Q. What official positions have you held under the Government of West Virginia?

A. I was first Warden of the Penitentiary for one year—not for a year, either. I was appointed to see whether we could work the convicts to any advantage, and they were scattered through the different jails, and I informed the Governor, after investigating, that we could not work them to any advantage.

Q. What other position did you hold?

A. Then I was Auditor for two terms.

Q. When did you first become Auditor of West Virginia?

A. In 1865.

Q. Were you elected in 1864?

A. Yes, sir.

Q. Were you ever a member of the West Virginia Legislature?

A. I was.

Q. When?

A. In 1863, the first Legislature of the State.

Q. What other positions have you held, besides being Auditor of the State?

A. Judge of the Circuit Court of the Circuit of Greenbrier County, and associate counties with Greenbrier.

Q. How often were you judge of that Circuit Court?

A. Twice.

Q. When did your last term end?

A. December 31, 1904.

Q. When were you first judge of that Circuit?

A. I was appointed Judge there in March, 1870. 945

Q. How long did you serve then?

A. Nearly three years.

Q. You served until you were constituted out of office by a new Constitution?

A. Yes, sir.

Q. Were you over in West Virginia much during the periods of 1861, 1862 and 1863?

A. The War broke out in 1861. I was clerk of the county court of Roane county, and lived there until February, 1864. I then moved to Jackson County. I was over in Jackson, and Kanawha during that time; and some other counties, also, for instance, Mason—

Q. What was the condition of that country as to the contending armies? Was there much raiding and backward and forward movements of each army through that section of West Virginia?

A. Yes, sir. In 1861, when the War broke out, the people divided, those belonging to the Union Forces, those adhering to the Union, forming what they called home guards. On the other side, they had guerilla companies; and between the two it was a terrible state of affairs. I do not want to see it again, and I don't think I ever will.

Q. What was the result of that guerilla warfare upon the people and the property and personal property, especially?

A. No one could feel any safety as to his property. I lost a horse or two myself. Most everybody had to keep a constant watch on his property for fear it would be carried away by one side or the other. 946

Q. What was the condition of property in West Virginia as to depreciation in value on account of these war conditions?

A. As I remember it now, property was very much depreciated in value, because of the apprehension all the time that they would lose it. They found a ready market for the cattle, beef cattle and sheep, mutton; that found a ready market as long as the soldiers were in there. But there was a constant fear and apprehension all the time of the loss of property, and people were ready to dispose of it at a depreciated price.

The Special Master: Am I correct in understanding you to say that

it resulted in an absolute depreciation, or simply that there was this apprehension?

The Witness: On account of the apprehension, there was a depreciation. People were ready to dispose of their property and turn it into money.

By Mr. McClintic:

Q. Was or was there not a large emigration from West Virginia from the period of 1861 to 1863?

A. There was in 1861. As I have stated, the companies were formed on one side and the other. Nearly all that went into the home guard, men of proper age, went into the Federal forces, in the Federal Army; and they moved their families out, so as to have them secure.

Q. Was there not a large emigration from West of the Confederate sympathizers, down into Virginia or other Southern States?

A. Oh, yes; I know a great many who left and came south—
a great many. 947

Q. Was there not also a large emigration of Union sympathizers to Ohio and other nearby Northern States?

A. Yes, sir; a large emigration.

Q. Were there many army movements, either of the Confederates or of the Federals, backwards and forwards in West Virginia during this period, and continuous raids by one side or the other?

A. The Confederates first organized companies there—

The Special Master: I think he has already stated that. I understood him to testify in regard to that.

Mr. McClintic: I am not speaking of the Guerilla companies, but the Confederate Army proper now.

The Special Master: Very well; proceed.

A. The Confederates first organized their forces there; but they did not hold their position very long. They soon had to leave. They left there and there never were any other forces than the guerilla forces on either side, except in—I have forgotten now whether it was 1861 or 1862, but whenever it was, there was one other raid through there, by General Jones. He passed through, and the forces of the regular army, a small army, got out of the way then.

Q. What was in the minds of the people as to confiscation of property at that time; what was discussed?

Mr. Harrison: You are not asking for facts now, but what was in the minds of the people?

Mr. McClintic: Yes; what was in the minds of the people.

A. Well, it was understood there at one time that there was 948
a bill pending before the Confederate Congress to confiscate the property of the Union men of the State, and it alarmed them a good deal.

Q. Was there not also talk and claims made by the Union people that they would confiscate the property of the Confederates?

A. There was a great deal of that done; a great deal of talk that it was a part of warfare to confiscate the opponent's property.

Q. Was there not in effect a good deal of that done? I mean, was there not a good deal of real confiscation?

A. That is what I say; there was a good deal of that done, a good deal of property confiscated.

Mr. Conrad: Confiscated?

Mr. McClintic: Yes; taken in all sorts of ways.

Mr. Conrad: That is not confiscation.

Mr. McClintic: It amounted to the same thing.

Mr. Conrad: Oh, no!

The Special Master: What you are trying to show is that one or the other of the contending forces took personal property and applied it to their own purposes?

Mr. McClintic: Not only personal property, but real property, through alleged forms of law.

The Special Master: If that is true, I suppose it could be shown by legal proceedings.

The Witness: I do not know that any real property was taken.

The Special Master: You would not undertake to establish that, by oral testimony? 949

The Witness: I do not think any real property was taken.

The Special Master: Of course, whatever was done under the forms of law, the records will show. Personal property, of course, could be taken physically without having any written proceedings connected therewith.

By Mr. Carlisle:

Q. When you speak of the conditions there, are you speaking of the single county of Greenbrier, or of that section of the State?

A. I was speaking of the section in which I lived. I am not speaking of Greenbrier.

Q. You are not confining yourself to Greenbrier?

A. I was not in Greenbrier. I was in Roane County and Kanawha and Mason County.

Mr. McClintic: And adjoining territory?

The Witness: Yes.

The Special Master: The whole territory with which you were conversant at that time. That is what he is testifying about?

Mr. McClintic: Yes, sir. That is all.

Cross Examination.

By Mr. Conrad:

Q. Referring to the numerous offices that you have held, were any of them held under the old State of Virginia?

A. Yes, sir; up to the time of the convention at Wheeling, when they declared themselves independent of Virginia.

Q. What office had you held up to that time? 950

A. I had held the office of clerk of the county court.

Q. But your judgeship and your position as Warden of the penitentiary, and so forth, was under the restored government of Virginia?

A. No, sir; it was under the Government of West Virginia.

Q. You lived in Roane County, and then moved to Jackson, an adjoining county?

A. Yes, sir. That was in 1864 that I moved to Jackson County.

Q. When you speak, or have spoken of the condition of affairs in West Virginia, do you undertake to state under oath here anything about the condition of affairs outside of Roane and Jackson and the adjoining counties?

A. No, sir; I do not. I did go, though, sometimes, into Lewis County, and sometimes into Harrison County.

Q. You have been asked about the destruction of property there. Can you say that to your knowledge any property ever was destroyed by any organized force of the Confederate Army?

A. Yes, sir.

Q. What property?

A. Yes.

Q. When and what property?

A. I was just saying that I am not quite sure when it was that Colonel Jones passed through there. I think it may have been in 1861— 951

Q. 1862.

Mr. Carlisle: 1863, was it not?

The Witness: 1863, I believe it was.

By Mr. Conrad:

Q. I was adjutant of one of his regiments.

The Special Master: This was not Judge Jones, of Alabama?

Mr. Conrad: No, this was another Jones; William E. Jones.

The Special Master: There are several Joneses.

By Mr. Conrad:

Q. Just a moment. This is a matter I wish to have stated particularly. I wish you would indicate one piece of property that you know, to your knowledge, was destroyed by any Confederate force?

A. I don't know that I can, any personal property.

Q. What real property was destroyed?

A. None that I know of.

Q. Oh, yes, there was. We burned up hundreds of thousands of barrels of oil.

A. I was not in the oil section. I remember of hearing of that.

Q. I want you to state to the Master whether you know of that command taking any horses or cattle or property of that kind that was not paid for, and paid for in greenbacks, at that?

A. Yes, I did.

Q. What was it?

A. That was old Man Hickle, in Roane County. He came 952
in there, and old man Jenkins offered him greenbacks for what they took from him and he would not take the greenbacks, but wanted Confederate money.

Mr. Conrad: I hope your Honor got that point.

By Mr. Conrad:

Q. I wish you would state again if you know of any property whatever that was taken by General Jones' command?

A. I do not.

Q. Do you know of any other organized Confederate force that ever was in that part of Virginia during the War?

A. I know some forces that claimed to be organized and claimed to be a part of the Confederate Army.

Q. What counties were they in?

A. They were in Calhoun, Roane, Jackson—they were scouting parties, rangers, they called themselves.

Q. Guerillas?

A. Well, they called themselves rangers.

Q. Yes. Let us see a moment. Were not those men composing those commands, citizens of that part of the country?

A. Some of them were and some were not.

Q. Do you know any of them that were not?

A. Most of them were composed of the citizens.

Q. Again, I ask you, to your knowledge was there any organized part of the military force of the Confederate Army in that part of Virginia?

A. Not unless these companies that I have referred to could be considered a part of the military force of the Confederate 953
Army.

Q. Those guerillas, you mean. They were not. Now, when you talk about property being destroyed and taken, you mean taken by those guerillas?

A. I do, mostly.

Q. They were your own people—

Mr. Carlisle: It wouldn't make any difference who took it. The question is whether it was taken.

Mr. Conrad: I understand that.

The Special Master: I suppose I should have to say that if the statements made by Major Conrad are evidence, he would subject himself to cross examination.

Mr. Conrad: I am perfectly willing to do so.

Mr. Carlisle: It makes no difference whatever, if the property was destroyed, who destroyed it.

The Special Master: The cross examination is proceeding, evidently, from a more or less intimate knowledge of conditions inquired about.

Mr. Conrad: Yes; I ought to know something about them.

The Special Master: Not that the Master indicates that he thinks counsel confiscated any of the property—

Mr. McClintic: I believe the distinguished counsel admits that he burned bridges.

Mr. Conrad: When General Lee entered Pennsylvania he issued an order absolutely prohibiting his men from even taking an apple from the orchards, and there is no evidence that the rule was ever violated. And so, when we went into West Virginia, property 954 was not taken by the soldiers, and if you know of any instance in which Jones' command took property without paying for it, I wish you would state it.

The Special Master: He has stated that already.

The Witness: I said I do not know of his taking any, and I did not hear of his taking any.

Mr. Conrad: Then he says his knowledge of West Virginia is confined to these counties.

The Special Master: Yes; I so understand it.

Mr. Conley's suggestion in regard to the apples was that General Lee probably knew what the effect would be on the men if they eat green apples.

Mr. Conrad: It was a bellicose thing, then, you know.

The Special Master: He was a little afraid it might be disastrous.

By Mr. Anderson:

Q. When were you auditor of West Virginia?

A. My term of office commenced March 4, 1865.

Q. I have here the auditor's report from 1861 to 1870, of West Virginia, a book which has already been offered in evidence.

Mr. McClintic: Understand me; I never introduced the book in evidence. I only introduced one page. You can introduce as much as you want to, however.

Mr. Anderson: It is understood that either party can refer to this.

The Special Master: Certainly; that is right.

By Mr. Anderson:

Q. I notice in the auditor's report for 1865, or coming down 955
to 1865, that the assessed valuation of personal property in Ohio County, which is the county, I believe, in which the City of Wheeling is located, aggregated $817,560 in 1860, and had increased to $2,663,637 in 1865, immediately after the war, which was an increase of over $2,100,000, an increase of over 300 per cent. If there was much destruction of personal property in West Virginia, how do you account for that condition of affairs, that the property increased threefold during that time?

A. Well, in Ohio County it was entirely safe. They had never been raided. They had not been threatened with danger there, and the City of Wheeling did prosper beyond any question.

The Special Master: That is, your statement was that that county was not subject to these uncertain conditions?

The Witness: That is it, sir.

Mr. Anderson: Well, take the county of Roane. You were auditor in 1865?

The Witness: Yes, sir.

Mr. Carlisle: But this was before 1865.

Mr. Anderson: No; this is the report of 1865.

Mr. Carlisle: He was elected Auditor in 1865, was he not?

The Special Master: He was elected in 1864 and became Auditor in 1865. That was the statement of the witness.

Mr. Anderson: Yes. This shows that the assessed value of personal property in 1860 in Roane County was $158,731, and in 1861 it is estimated at $130,700, which shows a depreciation of 956
$28,000. So there appears to have been some depreciation. Let us take Ritchie County. The assessments in 1860 were $261,832; and in 1865 the figures are $445,138, or nearly double.

The Witness: In Ritchie County?

Mr. Anderson: Yes, sir.

The Witness: Yes, sir.

By Mr. Anderson:

Q. Take Jackson County, which is one of the counties you mentioned that suffered from the guerillas. That is immediately on the Ohio River, is it not?

A. Yes, sir; Jackson County is on the Ohio River.

Q. Your report shows that the personal property in Jackson County for 1860 was assessed at $294,986, and for 1865 you estimated it to be worth $403,314, or an increase of perhaps 60 per cent.

A. Yes, sir. It is along the Ohio River there—

Q. That is one of the counties that you say suffered. Now, take Kanawha County. Kanawha County is one of the counties mentioned. The assessed valuation of personal property in Kanawha County

in 1860 was $720,969, and in 1865 that increased to $803,137, or an increase of about twenty per cent.

A. There seems to have been no loss there, no, sir.

Q. Now, Judge McWhorter, is it not a fact that no Confederate armies occupied any part of West Virginia west of Greenbrier County after 1862?

A. That is a fact, yes.

Q. Is it not true that the only Confederate armies that ever 957
were in West Virginia retired from West Virginia in the fall of 1861? That portion of West Virginia, I mean, not dominated by the Confederacy—in the fall of 1861 or early in 1862?

A. Yes, sir; excepting for these raids that I have referred to.

Q. Jones' raid?

A. Yes, sir.

Q. And Jenkins' raid?

A. Yes, sir.

Q. They were commands that went rapidly into the country and rapidly out of it again?

A. That is so.

Q. They did not occupy the country but a few days, any portion of it, did they?

A. Only a short time; they just went through and out again.

Q. Was not General Lee's Army stationed on Sewell Mountain, a country that was almost a wilderness, not densely populated at all?

A. That was a mountainous region, yes, sir.

Q. And the Federal Army, under General Rosecrans, was near it in that same region, in that mountainous region, was it not?

A. Yes, sir.

Q. And they had to retire from that country because of the bad conditions of the roads, and because it was impossible to supply their armies; is not that so?

A. That was the situation, yes, sir. 958

Q. When was oil first discovered in West Virginia? When was petroleum, I mean, first discovered?

A. I think it was in 1860.

Q. Was not that industry and that resource of West Virginia largely developed during the War, in the early part of the Civil War?

A. Well, in 1861, it was the most active development that we had, I believe.

Q. When was natural gas discovered in West Virginia?

A. There has been the greatest discovery of natural gas in recent years.

Q. Was it not discovered during the Civil War?

A. It has not grown into use then, I am sure.

Q. It had not been developed for economic purposes?

A. No, sir.

Q. But it was discovered?
A. Yes, sir.
Q. And the petroleum interest was largely developed, was it not?
A. Yes, sir.
Q. In considerable sections of the State?
A. Yes, sir.

The Special Master: In 1861 it was the highest state of development, I understand.

Mr. Anderson: In 1861, 1862 and 1863. The development was along the Little Kanawha River and other regions of the State.

Mr. McClintic: There were not any developments of oil except along the Kanawha River.

Mr. Anderson: Are you testifying? 959

Mr. McClintic: You are testifying. You are asserting that the development was along the Little Kanawha River and other regions of the State.

Mr. Anderson: I was asking questions.

Mr. McClintic: If you were asking a question, then it is all right.

The Special Master: If that is material, put the specific question. Is that all, Mr. Anderson?

Mr. Anderson: No, sir.

The Witness: During the war, after 1861, I do not think there was much development of the oil, or much working of the oil there.

By Mr. Anderson:

Q. Was there not a market in West Virginia in 1862 and 1863 for all the products of agriculture, and other products of the people?
A. Yes, sir.
Q. They got good prices?
A. Yes, sir; pretty good prices.
Q. In lawful money of the United States?
A. Yes, sir.
Q. Did not the United States Government, in connection with its military operations, expend very large sums of money in West Virginia?

The Special Master: In the purchase of supplies, you mean?

Mr. Anderson: In the purchase of supplies, yes.

A. They got good prices for all their products.

By Mr. Anderson: 960

Q. Did not Cincinnati furnish a good market for all your products during that time, at high prices?
A. We did not have to go as far as Cincinnati.
Q. You had a home market?

A. While Uncle Sam's Army was there, we furnished to the Army all our products.

Q. And the United States Army did not depredate upon your country, did it?

A. No, sir.

Q. When they were stationed in West Virginia?

A. No, sir; I cannot say that they did. When disturbances arose, they would confiscate the property and take the property out in the region—

Q. But they paid for it, did they not?

A. They would very often do that, but if it was a Confederate they did not always pay for it.

Q. You mean if they got it from Confederate sympathizers they would not pay for it?

A. Yes, sir.

Q. Is it not a fact that the portion of West Virginia you are familiar with, and north of that, the "Pan Handle," Monongahela and Marion and Taylor and Harrison and Ritchie Counties, and all that region there, was really prosperous during the war; did not lands appreciate in value, as well as the products of the State?

The Special Master: How can he tell when he was not up there at all. That must be hearsay. He cannot give testimony as to parts of the State he was not in, or at least we cannot give any weight to that testimony.

Mr. Anderson: He said he was in Harrison County. 960½

The Witness: Well, I was through all of these counties during the war, more or less.

The Special Master: Of course if you were through them, it is all right, you can testify about them.

Mr. Anderson: He was auditor of the State Government which was stationed at Wheeling.

The Special Master: Of course, if the record shows he was through there, where he would have an opportunity of having personal knowledge, he can testify.

The Witness: I passed through these counties—

The Special Master: But, except as to places where he has personal knowledge, there is no use to fill up the record. I cannot give any weight to a statement that is purely hearsay, you know.

Mr. Anderson: I don't want any hearsay testimony.

The Witness: The counties north of Harrison County were generally pretty prosperous.

Re-Direct Examination.

By Mr. McClintic:

Q. Was it not after 1863 that the counties on the Ohio River, and in the north part of the State, were safe from Confederate raids.

A. Yes, sir; from all depredations, I think. They were safe at that time.

Q. Were not all the Confederate sympathizers, and practically all of the Confederate guerillas run out of that section by that time?

A. Well, mostly. There were only occasional raids made in there. 961

Q. What proportion of the able-bodied men of your section of West Virginia went into the armies, on either side?

A. Well, Roane, Jackson and in there, I should say there were mighty near seventy-five per cent. of them in both armies.

Q. On one side or the other?

A. Yes, sir. Men between the ages of 18 and 45; I should say there was as much as seventy-five per cent. in one army or the other.

Q. Did not these counties in the northern panhandle and through that section get their so-called prosperity, which Mr. Anderson spoke of, in the last years of the war, when they were absolutely safe from intrusion, after the formation of the State of West Virginia?

A. Yes, sir; after all fears of the Confederate forces coming in there, they went right on in prosperity, I believe.

Q. Look at the table handed to you and state who made that and where you got it from?

Mr. Anderson: What table is it?

Mr. McClintic: A table made by him from certain reports.

Mr. Anderson: I have not seen a copy, have I?

Mr. McClintic: I will show it to you in a moment.

The Witness: I made this table myself.

Mr. McClintic: The following table shows the capitation returns by the Commissioners for taxation, as shown by Auditor Bennett's report in the several counties of Virginia for the year 1860, that afterward formed the State of West Virginia, and also the capitations returned by the assessors in the same counties for the year 1865, shown by auditor's report for the State of West Virginia. 962

The Special Master: This is a computation from figures already in evidence?

Mr. Anderson: Yes, sir.

The Special Master: You do not care to cross examine on that?

Mr. Anderson: No; I do not suppose so.

The Special Master: Well, if this does not follow the material in evidence, it is of no value, and if it is based on that report, and the reports do not sustain it, that impeaches it.

The Witness: In but two counties, as I remember, the capitations of 1865 are estimated, and that in Greenbrier County, and I believe in McDowell County.

The Special Master: Then with the exception of two counties, Greenbrier and McDowell, that is simply a computation made from a record that is already in the case, and as to Greenbrier and McDowell, you simply made an estimate; is that right?

The Witness: Yes, sir. I think it is McDowell County.

The Special Master: Greenbrier was controlled by the Confederates for a greater part of the time, was it not?

Mr. McClintic: Yes, sir. I will hand this to the stenographer.

The paper referred to is as follows:

"The following Table shows the Capitations returned by the 963
Commissioners for taxation shown by Auditor Bennett's report
in the several counties of Virginia for the year 1860, that afterward formed the State of West Virginia, and also the capitations returned by the Assessors in the same counties for the year 1865, shown by Auditor's report for State of West Virginia:

County	1860	1865	Decrease	Increase
Barbour	1,812	1,635	177	
Berkley	1,932	1,742	190	
Boone	846	705	141	
Braxton	1,008	917	91	
Brooke	1,031	883	148	
Cabell	1,495	1,275	220	
Calhoun	420	366	54	
Clay	314	321	....	
Doddridge	936	829	107	
Fayette	1,115	834	281	
Gilmer	646	522	124	
Greenbrier	2,278	1,900	378	
Hampshire	2,663	2,171	492	
Hancock	884	880	4	
Harrison	2,669	2,425	244	
Hardy	1,709	812	897	
Jackson	1,545	1,333	212	
Jefferson	2,045	1,674	371	
Kanawha	2,596	2,966		370
Lewis	1,456	1,187	269	
Logan	824	694	130	
Marion	2,422	2,134	288	
Marshall	2,192	1,958	234	

McDowell	270	185	85	
Mason	1,504	2,103	....	499
Mercer	1,185	1,014	171	
Monongalia	2,420	2,006	414	
Monroe	1,963	1,782	181	
Morgan	777	742	35	
Nicholas	964	787	177	
Ohio	4,132	4,410	....	78
Pendleton	1,180	995	185	
Pleasants	554	515	39	
Pocahontas	829	596	233	
Preston	2,586	2,381	205	
Putnam	1,181	985	198	
Raleigh	642	548	94	
Randolph	941	775	166	
Ritchie	1,176	1,166	10	
Roane	1,010	793	217	
Taylor	1,406	1,414	....	8
Tucker	259	260	....	1
Tyler	1,213	1,094	129	
Upshur	1,273	1,325	....	42
Wayne	1,272	1,082	190	
Webster	138	130	8	
Wetzel	1,236	1,256		20
Wirt	729	623	106	
Wood	2,654	3,076	....	322
Wyoming	455	437	18	
	68,988		7,436	970

[*Vol. 7. July 2, 1909. Certain Exhibits filed.*]

Now, then, we come to 5. As to that, as I understand it, it is a physical impossibility for these accountants, by the exercise of any human diligence, to get together and get results predicated upon the original papers that they feel they ought to 998
refer to. I think it is quite proper for them to be able to go back, and to go back to the original source of information. Neither party is bound by the report of any auditor or referee. They are all entitled to the original sources of information, if they want it. Now, upon that item there is to be predicated, as I understand it, some evidence that is ready to be presented on

the part of the plaintiffs, the result of which will depend upon the results reached by the auditors.

Mr. Anderson: Not entirely, sir.

The Special Master: If the auditors reach one sum, the pro- 999
portion upon which the plaintiffs rely would be one sum. If the auditors reach another sum, that same proportion of course would result in another sum. That is the only change, as I understand it, and the only effect that the advice to be submitted by the auditors could have upon the evidence to be submitted by Virginia. Suppose you claim that a certain one-half of a certain sum to be the sum allowed by me, and if the principal sum, to illustrate, was $100,000 one-half would be $50,000. If the principal sum was $50,000, one-half would be $25,000. Of course you could not have an expert state, without having first the sum upon which you would begin settled so as to go in the record; but the experts could give us the result later, and you could give us your testimony establishing the proportion, and when we print the case we can put in what the experts find in the matter, and the court will see that, and as far as I am concerned it does not make any difference, and it will not make any difference; and the court will never know but what there was introduced here the testimony of the experts giving the sum upon which you make the proportion. The only thing left, as I understand it, is the report of the auditors upon which your percentages are predicated. Am I right?

Mr. McClintic: If your Honor please, there are other things here I intended to prove by Mr. Scoville, which Mr. Dixey is not familiar with, and knowing his illness and absence, 1000
I am at a loss to know how to proceed.

The Special Master: Let us settle this point first. How does that strike you, Mr. Attorney General?

Mr. Anderson: Part of your Honor's statement presents the position of the plaintiff, but we have other evidence on which we rely, tending to show what was the fair value of all the property in the two States.

The Special Master: What is it; have you got it in depositions?

Mr. Anderson: The depositions of a number of witnesses.

The Special Master: What harm is there is submitting it right now?

Mr. Anderson: That is what we propose to do; and besides that we propose to show a number of sales, taken from the records within the boundaries of the present State of Virginia, which have been tabulated.

The Special Master: There is no objection, then, to your submitting your evidence under this paragraph without waiting for the accounts of the accountants.

Mr. Anderson: I introduced the deposition of Robert W. Hunter and others.

The Special Master: Plaintiff introduces the depositions of Robert W. Hunter, W. W. Scott, John P. Branch, Phillip A. Wellford, William G. Taylor, S. H. Hawes, Charles U. Williams and W. Gordon McCabe, taken in the City of Richmond, State of Virginia, on the 4th of June, 1909.

Were the other side given notice?

Mr. Anderson: Yes, sir.

The Special Master: Very well, they can go in.

(The depositions referred to were filed and marked Virginia No. 1.) and will be found at the end of the session.

The Special Master: Have you any more depositions, Mr. 1001 Attorney General?

Mr. Anderson: Yes. I will have some oral testimony in a moment. I wish now to put in a statement showing the depreciation of Confederate money as compared with gold for every month during the War, and particularly to show the depreciation of Confederate money in June, 1863.

Mr. Carlisle: Of course that is a matter upon which the Master can inform himself.

Mr. Anderson: This is a statement approved by the Supreme Court of Appeals of Virginia and has been adopted in thousands of transactions. It is taken from a case decided by the Supreme Court of the State.

Mr. Carlisle: Was West Virginia a party?

Mr. Anderson: No; but this settles the question.

Mr. Carlisle: Let it go for what it is worth. We don't think it is worth very much.

The Special Master: I suppose as to this, the financial records of that time would probably bear out that statement.

Mr. Carlisle: The records of the Treasury department at Washington would show that, would show it for every day.

The Special Master: I understand that this is objected to and is admitted *de bene*, and I would like to have counsel for West Virginia take it and verify it, so as to be able to tell me 1002 whether the facts are correctly stated.

Mr. Carlisle: I called upon the Treasury Department for information along this same line, and expect to get it from them.

The Special Master: Is it understood by counsel for Virginia?

Mr. Carlisle: I want to say this; that I desire also to give a statement likewise, for your consideration, as to the value of the United States greenbacks in comparison with gold, at the same time.

The Special Master: Well, I suppose if I open the question as to respective values, I should probably go into a maze as to respective values of gold and greenbacks and Confederate money and gold.

Mr. Carlisle: Of course, you would, because West Virginia's money was the greenback.

The Special Master: That is a matter for me to consider. But what I want is this: Will Virginia consent that Mr. Carlisle may submit as a part of the record in the case a statement from the Treasury Department showing, during the period covered by your statement, the value of gold and greenbacks?

Mr. Anderson: Yes, sir.

Mr. Conrad: In Virginia.

Mr. Carlisle: And in West Virginia.

The Special Master: Now, this statement here, this only goes so far as to allow the defendants to submit as a part of the record a statement from the Treasury Department as to financial facts that will make no conclusions whatever.

Mr. Carlisle: No conclusions; only figures.

The Special Master: And whatever that statement is, it 1003 will be submitted to the other side, and whether that proves anything or not, of course is another question.

Mr. Anderson: I suppose that ought to be marked plaintiff's Exhibit E-2.

(The paper referred to was filed with the stenographer and marked "Plaintiff's Exhibit E-2.)

Mr. Anderson: I wish to introduce Plaintiff's Exhibit E-3.

Mr. McClintic: That is introduced over our objection, very strongly.

Mr. Anderson: Read the caption, please.

The Special Master: Without stopping to discuss this, how does a valuation, for instance, in 1867, have any legitimate bearing on what the valuation was in 1863; what kind of a door does that open?

Mr. Anderson: I think we will show the bearing.

The Special Master: I will admit this *de bene*, but with the suggestion that unless some connection is shown which I do not see, it may not be of much value. It cannot do any harm. I shall not give any weight to it to which it is not entitled. It comes right down to 1908. I will hear you on that, I say.

Mr. Harrison: We can show you the bearing, I think, when the time comes.

Mr. Anderson: Are these figures taken from the Auditor's report of West Virginia and Virginia?

Mr. Potter: Yes, sir.

Mr. McClintic: We will not admit anything on that.

Mr. Carlisle: Mr. Potter will testify, I suppose, that these 1004 figures are correct?

Mr. Potter: Yes, sir.

Mr. Anderson: We expect to be able to suggest reasons to your Honor which will be persuasive as to the value of those figures.

Mr. Potter: I said that was taken from the records. It is, with the exception of $9,000,000 introduced as the value of railroads in Virginia between 1867 and 1879, for which we had no report, as covered by the note at the top of the second page.

Mr. Anderson: They were not assessed in Virginia at that time, but we took them—

Mr. Potter: Value in 1880—

Mr. Anderson: Which was probably fifty per cent more—

The Special Master: Do you want to spend any time in inquiring about that?

Mr. Anderson: We wish to introduce this Exhibit as Plaintiff's Exhibit E-4. It is a statement of the value of real and personal property, assessed values, in 1861, taken from the Auditor's report.

(The paper referred to was filed and marked Plaintiff's Exhibit E-4.)

The Special Master: That is all going to be covered by the statements that they are going to get up between them, that we have already agreed on.

Mr. Anderson: If that is introduced, it will be substituted 1005 for this, but we have to have this in order to support the next statement.

The Special Master: Does not this show that you have agreed on the assessed value of real estate for 1863?

Mr. Anderson: Yes.

The Special Master: That is what this shows (Indicating)?

Mr. Anderson: No; personal property.

The Special Master: Then, when you get in the statement that the experts are to agree on—

Mr. Anderson: This is by counties. We do not think we will need the other statement.

The Special Master: If it does not agree with the other statement it will not go for anything, because Mr. Dixcy and Mr. Potter will present a statement signed by both of them, and if this schedule does not agree with that, this schedule will not go for anything. I shall not submit any schedule submitted by Mr. Potter which does not agree with the joint schedule. There is no occasion for duplicating it. Have we not already agreed that Mr. Potter and Mr.

Dixey should give us, first, the assessed valuation of personal property as appears from the official records, in 1860; next in 1861, and next in 1862 and next in 1863; have we not agreed to that?

Mr. Anderson: Yes, sir.

The Special Master: That settles the official valuation by counties for those four years.

Mr. Anderson: Except that we insist that in 1863 it was made with reference to Confederate money. 1006

The Special Master: We will hear your argument on that later, but there is no occasion for duplicating a schedule on that.

Mr. Anderson: Well, we will withdraw that.

The Special Master: Now, then, is there anything else you have to offer?

Mr. Anderson: We wish to introduce testimony to show a number of sales of real estate at that period.

Mr. Carlisle: We object to that.

Mr. Anderson: Sales of property?

Mr. Carlisle: Yes, sir.

Mr. Anderson: I would like to recall Mr. Lightfoot.

JOHN B. LIGHTFOOT, JR.,

a witness previously produced and sworn on behalf of the plaintiff, is recalled for further examination; and took the stand as a witness:

Mr. Carlisle: You have gone to the records and segregated certain sales and found the considerations stated in the deeds, which may be true and may be false. Many deeds are made for a consideration of one dollar, and the consideration named in the deed does not prove the value of the property.

Mr. Harrison: If the evidence is of no value, then it will not do you any harm.

Mr. Carlisle: If there is a deed on record which shows that a certain lot which sold for a certain price on a certain day, that does not prove the value of that lot?

Mr. Harrison: It proves something in reference to that 1007 property, yes.

The Special Master: The defendants object to all the evidence that is submitted to Virginia on this line. The plaintiffs now propose to show what the record shows, as I understand it, with reference to a particular lot in 1863.

Mr. Carlisle: Several lots.

Mr. Anderson: A great number of lots.

The Special Master: Well, a number of lots, then.

Mr. Carlisle: 58 or 60, perhaps.

The Special Master: I propose to submit this evidence *de bene;* but it is subject to all the legal objections made by West Virginia. Now, why do you not put this schedule right in. Mr. Lightfoot, as I understand it, testifies that the computations shown upon that schedule are computations made by him from the original records, and so far as they are made from deeds which purport to show the consideration, they are accurately made.

Mr. Carlisle: From the deeds on record, yes.

The Special Master: Yes, sir. Of course, whether that proves the consideration of that particular sale is another thing, perhaps. Does that cover everything you want?

Mr. Anderson: No, sir. I want to prove by him whether this included all he could trace. We are not only prepared to prove what these properties sold for, but what the assessed value of these properties was.

The Special Master: I understand this schedule states that, and without going over it in detail, I understand it may be stated on the record that Mr. Lightfoot testifies that the figures appearing here are the accurate result of the examination of the 1008 original records, both of conveyances and assessments.

Mr. Anderson: It will not be necessary to encumber the record with the original deeds?

The Special Master: Not unless the other side wishes to do that.

Mr. Carlisle: Oh, no.

The Special Master: That schedule is admitted, and Mr. Lightfoot so testifies.

Mr. Anderson: (Addressing the witness, Mr. Lightfoot.) Please state what proportion of the property that was sold at that time as shown by the records of the State and which took place in Richmond City and Henrico County, Hanover County and Chesterfield County, you show in this schedule?

The Special Master: What proportion of the actual sales that appear upon the record during that period that he has made a note of in this schedule. That calls first for the question whether he examined the record in these various counties for the purpose of determining how many sales were made of real estate.

Mr. Lightfoot: I did, sir, in this way—

The Special Master: Very well. What proportion of the actual sales which you found recorded on the records are represented in this schedule?

Mr. Lightfoot: As to Henrico County, Hanover County and Chesterfield County, they cover all sales which I could find by an examination of the deed books for the year 1863, as to which I could trace the assessments of that particular prop- 1009 erty.

The Special Master: Well, now, that does not give any information. How many deeds were on record which you could not trace in the assessments books?

Mr. Lightfoot: I could not give you the number.

Mr. Anderson: What proportion?

Mr. Lightfoot: That would be an estimate.

Mr. Anderson: Have you any idea?

Mr. Lightfoot: That would simply be an estimate.

The Special Master: Well, what is your estimate?

Mr. Lightfoot: I should say over one-half.

Mr. Anderson: Because they were parts of tracts of land—

The Special Master: That is immaterial.

Now, then, anything further?

Mr. Anderson: You did not say about Richmond City.

Mr. Lightfoot: For Richmond City the same applies, except that I have not gone through all of the deed books as carefully as I did in the counties. I may have omitted ten or twelve or fifteen deeds, as to which assessments could have been traced; but as to Richmond City I have not made as careful examination of all the deed books as I made in the other cases.

The Special Master: As to Richmond City, your examination is not exhaustive, as I understand it?

Mr. Lightfoot: That is correct.

The Special Master: Does this schedule show where these various properties are located, in what counties?

Mr. Lightfoot: It does, yes, sir. 1019

The Special Master: Yes, I see it.

Mr. Lightfoot: They show the location within the county or city.

Cross Examination.

By Mr. Carlisle:

Q. What period was covered by your examination?

A. It shows on the outside of the schedule, April, May, June, July, and August of 1863.

Mr. Anderson: I desire to file the certificate as to the assessment of those identical properties in 1863. This is a complementary schedule and follows the other, and is subject to the same objection.

(Paper handed to the stenographer and marked Plaintiff's Exhibit E-5.)

Mr. Anderson: Please explain the connection between Exhibits E-4 and E-5.

Mr. Lightfoot: When you examine the certified assessments made by the auditor, you will find one piece of property stated as for three years, in some instances. That was done for the reason that the description in a deed which is shown on this exhibit will be described by the name of the place, for instance. I will take one instance. In the deed it is described as Peoria. On the land book for the same year, you would not find the description "Peoria," but on the land book for 1862 you would find that property described as "Peoria." In those cases I have taken it for 1863 and then for 1862, and if necessary have gone to 1861, until I have located the same description on the land book as contained in the deed.

The Special Master: Does the land book contain descriptions of the property?

Mr. Lightfoot: Yes; so you can identify it. 1011

The Special Master: When a certain piece of land assessed to A has been conveyed by A, is the description on your tax book so complete that you can identify it with the deed to Mr. A?

Mr. Lightfoot: Yes, sir. In those cases where I could not identify it I have left it out.

The Special Master: When it comes to the books, do you mean assessment books contain such a description by feet and distances that you could identify that with the land conveyed in the deed?

Mr. Lightfoot: Yes.

Mr. Anderson: They give the number of the lot and the number of feet front, and so forth.

The Special Master: Well, does this list you give here give the full description that appears in the assessment books?

Mr. Lightfoot: Yes, sir; it gives the exact description.

The Special Master: The list you have submitted as being complementary contains all the description that appears on the assessment books?

Mr. Lightfoot: Yes, sir.

The Special Master: Then, whether it is identical or not is a matter for argument?

Mr. Conley: Whether or not we are getting more, does 1012 it contain anything that the books do not show; does the exhibit just filed contain anything more?

The Special Master: I understand him to say they are exact copies.

Mr. Carlisle: The question is whether his report contains anything more than appears on the assessment book?

The Special Master: I understood him to say that his report, so far as descriptions were concerned, was an exact copy.

Mr. Lightfoot: Yes, sir.

* * * * * * * * *

The Special Master: Finish on paragraph 5, then— 1013
Mr. Anderson: I have now the exhibit which shows the purpose of that testimony, the exhibits filed under paragraph No 5.
The Special Master: This is simply a computation?
Mr. Anderson: Yes, sir.
The Special Master: That can be made any time. It can 1014 be made after the case is printed as well as any other time.
Mr. Anderson: This will be plaintiff's Exhibit E-6.

(The paper referred to was filed by the Stenographer and marked "Plaintiff's Exhibit E-6.)

Mr. McClintic: We reserve the right to make our computations later on that.
The Special Master: You can make them all in the closing argument.
Mr. McClintic: There is a difference between argument and evidence.
The Special Master: There will not be any distinction as far as I am concerned. The computation made by Mr. Potter is subject to the cross examination of your experts, the same as if it was given as oral testimony. It has no more weight and no less weight.
Mr. McClintic: If evidence does not have any more weight than argument, then I will consent to it.
The Special Master: This is simply a computation made by the expert, and if it is questioned, I will make the computation myself.
Mr. McClintic: I understand, but I also understand that they are offering it as proof.
The Special Master: Well, you may have Mr. Dixey make the same computation, and if he does not reach the same result, submit it to me. A fact that the expert swears to has no more 1015 weight with me than if you stated it in argument.
Mr. McClintic: If that is understood, very well, then.
Mr. Anderson: These figures may be modified.
The Special Master: Either side can put into the case at any time any computations they see fit to make, and they can have experts make them. The computations will not bind me.
Now, is that all?
Mr. Anderson: We reserve the right to file an amended statement—

* * * * * * * * *

Mr. Anderson: We have not finished with number 5. I ask 1017 that this be filed as an exhibit.

(Paper handed to the stenographer and filed in the case, marked Plaintiff's Exhibit E-7.)

Mr. Harrison: This is a statement that supports the summary handed in just now.

The Special Master: This is their computation predicated upon what they have already put in?

Mr. Anderson: Yes, sir.

Mr. Carlisle: It goes in under our objection?

The Special Master: Yes.

Mr. Anderson: You prepared that?

Mr. Lightfoot: Yes.

Mr. Anderson: And it is correct according to the records?

Mr. Lightfoot: Yes.

Mr. Harrison: We have never gotten to F, yet.

Mr. McClintic: I want to put in something on No. 5, if you are through.

[*Vol. 7. July 2, 1909. West Virginia Exhibits 1, 2 and 3.*]

Mr. McClintic: Yesterday I gave each one a copy of a 1018 paper taken from the United States Census reports. We have the Census report here.

Mr. Anderson: We object to that.

The Special Master: Yes; it is objected to, but I will admit it *de bene.*

Mr. McClintic: I also want to file a table showing the slave population by counties in West Virginia in 1860 and over and under the age of twelve years, as shown by the Census of 1860, 1019 and the number of slaves assessed in West Virginia. Also a table showing slave population by counties in Virginia in 1860 over and under the age of 12 years, as shown by Census of 1860, and number of slaves assessed in Virginia in 1860. This was taken from the Census reports and the auditor's reports already in.

Mr. Anderson: We know nothing about that.

The Special Master: I understand that. That is admitted, subject to objection by Virginia. We understand that they are to have their experts compare them with the original sources of information, and they can file a contrary report, if they desire to do so, if they do not agree that this is correct.

[*Vol. 7. Depositions on behalf of Virginia taken June 4 and 5, 1909.*]

DEPOSITIONS TAKEN ON BEHALF OF THE COMMONWEALTH OF VIRGINIA.

In the Supreme Court of the United States

1023

THE COMMONWEALTH OF VIRGINIA
Complainant

v.

THE STATE OF WEST VIRGINIA
Defendant.

Depositions of Robert W. Hunter, W. W. Scott, John P. Branch, Philip A. Wellford, William G. Taylor, S. H. Hawes, Charles U. Williams and W. Gordon McCabe taken in the City of Richmond, State of Virginia, on the 4th and 5th day of June, nineteen hundred and nine, to be read as evidence on behalf of Virginia in the above entitled cause.

In the Supreme Court of the United States

THE COMMONWEALTH OF VIRGINIA
Complainant

v.

THE STATE OF WEST VIRGINIA
Defendant.

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In the Supreme Court of the United States

1024

THE COMMONWEALTH OF VIRGINIA
Complainant

v.

THE STATE OF WEST VIRGINIA
Defendant.

Depositions of William G. Taylor and others taken at the offices of the Attorney General of Virginia, Richmond, Virginia, on the 4th and 5th days of June, nineteen hundred and nine (beginning at 10 o'clock A. M., on the 4th), pursuant to the annexed notice, to be read as evidence by the Special Master and the Court in Chancery cause now pending in the Supreme Court of the United States in which the Commonwealth of Virginia is complainant and the State of West Virginia is defendant.

Present on behalf of the Commonwealth of Virginia William A. Anderson, Attorney General of Virginia, and John B. Moon.

Present on behalf of the State of West Virginia, William G. Conley, Attorney General of West Virginia.

Note: The taking of these depositions was adjourned from 1025
the office of the Attorney General to the Court Room of the Supreme Court of Appeals of Virginia.

Major Robert W. Hunter being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. Please state where you reside, and what official position, if any, you now hold?

A. My legal residence is Winchester, Valley of Virginia, and I am now Secretary of Virginia Military Record, with my office in the Capitol at Richmond, Virginia.

Q. 2. Where were you during the War between the States and if you were connected with the Confederate Army, please state with what commands, and what positions or offices you held ?

A. I was Adjutant of the Second Virginia Regiment of the Stonewall Brigade. For a considerable period, especially when James A. Walker was in command, I was acting Adjutant General of the Stonewall Brigade. At the time of the battle of Gettysburg I was promoted Major of Jackson's old Division, then commanded by General Edward Johnson. Was Adjutant General of Edward Johnson's Division until the 12th of May, 1864, when I became the Adjutant General of Major General John B Gordon, commanding the Division in Early's corps, and remained with him until Appomattox.

Q. 3. State what civil office, if any, you held during that period?

A. I was a member of the Virginia Legislature from the County of Berkeley, Virginia (now West Virginia) during 1026
the years 1863 and 1864. It may have been earlier than that. I didn't take my seat except occasionally.

Q. 5. Through what portions of the present territory of Virginia did you travel or march during that period?

A. Our first service was at Harper's Ferry; from there we retired to Winchester, from Winchester transferred to the Battle of Manassas, remained about Centerville until the Command was ordered back to Winchester, in the Valley of Virginia, after Jackson was appointed Major General in command of the Valley.

Q. 6. After that?

A. Then we were chiefly in the Valley of Virginia.

Q. 7. Where did you serve in the year 1862 and 1863?

A. Then came the battle of Kernstown, and afterwards what is known as Jackson's campaign, which covered the entire Valley and extended over towards West Virginia. Then as we returned we crossed over into the Luray Valley—had a fight at Front Royal. I was in the Valley chiefly with Jackson's Army, largely about Winchester and the upper parts of the Valley.

Q. 8. Did you go with Jackson's command to Richmond in July, 1862?

A. Yes, sir.

Q. 9. Did you go with Jackson's command in the march toward Rappahannock?

A. In the battle of Slaughter Mountain I did. I was in that engagement.

Q. 10. Were you with Jackson's command in the campaign 1027
culminating in the Second Battle of Manassas?

A. I was, sir. I was in the railroad cut.

Q. 11. Were you with the Army of General Lee in the march into Maryland—the battle of Sharpsburg?

A. I was, sir.

Q. 12. You remember the date of the battle of Sharpsburg?

A. The 17th day of September, 1862.

Q. 13. You were in the retreat through Northern Virginia back to Richmond?

A. Yes, sir.

Q. 14. Were you in the Fredericksburg campaign of 1862-63?

A. Yes, sir. We were in camp in Caroline County in that winter.

Q. 15. Were you in the army during the campaign of General Lee in 1863?

A. At Gettysburg?

Q. 16. Yes, sir.

A. Yes, sir.

Q. 17. Now, Major Hunter, please kindly state what was the condition of the farms, and generally of the buildings upon the farms, the fences, and real estate generally in the portions of Virginia with which you were familiar during that period, as compared with their condition prior to that period?

A. In the early part of the War property rights were respected to a very considerable extent by both armies. Of course, necessarily the occupation of any territory by an army entails very large damage to that country. A great many fences were destroyed, and a great deal of damage was necessarily done. Now, later on in the War when orders were given to devastate the 1028 country, the country became thoroughly ravaged, fences gone, mills and barns destroyed—a general destruction.

Q. 18. Was there any observable damage done prior to June, 1863, to the fencing, forests and buildings in the portions of Virginia to which you have referred, by reason of the occupation of the country by the two armies?

A. Very considerable damage was done by the occupation of the territory by both armies, necessarily.

Q. 19. What was the effect of the occupation of the country by the two armies upon the forests and timber lands in those regions?

A. A great many of them around Winchester were destroyed almost, and in other parts of the country where our army encamped for a considerable length of time they were almost destroyed. Down in Caroline we made houses of wood. We cut down an enormous amount of timber. We used a large amount of fire wood.

Q. 20. How long were the two armies encamped in the region about Fredericksburg—in 1862-63—prior to the battle of Chancellorsville, which was in May, 1863?

A. McDowell's Army was in the neighborhood of Fredericksburg

during the seven days' fight at Richmond. That country was occupied by the Federal Army very largely. McDowell I think had 30,000 men at least. While The Jackson campaign chiefly was in progress, he occupied that territory.

Q. 21. Where was General Hooker's Army in camp later 1029
in that year?

A. First was Burnside. They were encamped from the Rappahannock to the Potomac—ranged over that whole country. They had a base on the rivers near by, and at Alexandria.

Q. 22. Where was Hooker's Army encamped?

A. Hooker's Army was encamped from Stafford up along about the same region of country that had been occupied by Burnside's Army.

Q. 23. How would you describe, Major Hunter, the effect of the occupation of this region by the Federal and the Confederate Armies respectively?

A. To a very large extent it paralyzed all the agricultural operations. Destroyed fences, and made the pursuit of agriculture almost impossible, except in a very unsatisfactory way.

Q. 24. And now will you kindly state what was the condition of the agricultural interests in Virginia, and industrial interests in Virginia generally, outside of the sphere of occupation by the Federal Army,—inside of the Confederate lines—as to whether the farms were kept up, and as to what was the character of the tillage during that period.

A. The farming operations in other portions of the State not occupied by the Army were indirectly affected, and affected very seriously, but the fact that the labor necessary for carrying on agricultural operations was largely in the Army, or engaged in the support of the Army one way or another. Then there was the negro population—well to their credit it may be said of them that they did remarkably well under all the circumstances—yet a great deal of apprehension in regard to them was felt, and they were being induced away very frequently. 1030

Q. 25. What, within your knowledge and observation, was the result of the operation of the causes that you have mentioned, upon the actual value of real estate in the territory now constituting the State of Virginia—in June, 1863?

A. Well, sir, that is almost entirely a matter of conjecture, but I should suppose that it would be fair—of course I just hazard this—to state that the values were destroyed one-half at least, taking the whole State a large. It is like the value of a buggy when a horse is running away with it. There was a condition of affairs existing which made it impossible to base any satisfactory judgment as to values.

Q. 26. Are you prepared to say whether there was or was not a deterioration in value, and whether or not that deterioration was great or small?

A. There was a great deterioration in values. In the first place our currency began to be very valueless at that time. Began to depreciate very decidedly.

Q. 27. Do you happen to know of any actual sales of real estate during that period, in that territory, and if so, how did the prices compare with the prices before the War, taking gold and silver as a standard of value?

A. Well, a small amount of gold would buy—I couldn't say how much—but relatively three or four times as much as it would at any other time. Sometimes a very much larger amount. It had an exceptional value brought about by the condition of affairs.

Q. 28. Please state, if you can, what the value of the Moss 1031
Neck plantation on the Rappahannock River was in sound money before the War?

A. I should say, without knowing certainly as to values in that region of the country, that it would have been worth $50,000.00. I suppose the house on it cost $30,000.00.

Q. 29. Will you now state what, within your knowledge and observation, was the condition of personal property, farming implements, vehicles, household effects, and other tangible personal property, in June, 1863, as compared with its condition prior to the beginning of the War, throughout the present State of Virginia—as far as your observation extends?

A. By that time—1863—pretty much everything was out of repair. Most of the skilled labor was in the Army, and the workshops, wagon shops, except such as were under government control, has, to a very large extent, broken up.

Q. 30. Had there been any destruction of personal property, destruction and carrying off of live-stock and consumption of live-stock throughout the State of Virginia during that time—had it been diminished in quantity?

A. Yes, very largely, very largely.

Q. 31. Was it in as good condition as it was at the beginning of the War, and before the War?

A. Nothing like, sir. Everything was out of repair, vehicles, farming utensils, and things of that sort.

Q. 32. Would you be prepared to make an estimate of the depreciation of that property in value—as to the specific property and as to the value of the total or aggregate property?

A. I don't think my estimate would be of any value. The 1032
fact is my mind was not intent upon those matters at all at that time, and it is only an estimate that I would have to hazard

now at this period. There are other gentlemen here who have given their attention to values. If I could get enough to buy a uniform and horse, that was all I wanted.

Q. 33. What was the currency of the people of what now constitutes the State of Virginia during that time?

A. At first we had a great many bank notes, and then we had Virginia Treasury notes, but Confederate currency was the currency.

Q. 34. What was the currency in 1863?

A. Confederate.

Q. 35. What was the standard of value within Confederate Virginia with reference to which all transactions between man and man and between the government and citizens were conducted, and all values measured—in 1863?

A. I think the impressment began about that time by the government, and I think a scale of prices to be paid for wheat, corn, bacon, and other supplies was fixed. I think that was fixed by the War Department—the Commissary-General under the authority of Congress of the Confederate government.

Q. 36. What was the measure of values then among the people—what currency—in 1863?

A. Well, it was impossible to get gold except in very small amounts. Very frequently Confederate money was 4 for 1, 5 for 1, 6 for 1, 7 for 1, 8 for 1. The Legislature began at $4.00, then went 1033 to $6.00, $12.00, and I think got up to $40.00 per diem.

Q. 37. In what currency were all those transactions to which you refer?

A. Confederate money.

Q 38. In what currency were taxes paid?

A. Confederate money. There were, of course, Virginia treasury notes. I think pretty much all sorts of paper would go to some extent.

Q. 39. As I understand you, you were an officer in the Confederate Army during all that period, but served at intervals in the Legislature of the State?

A. Yes, sir.

Q. 40. While you were in the Legislature was your attention drawn to the economic and financial condition of the State?

A. Yes, sir, in a very general way, but my attendance upon the Legislature was coming and going. I used it in order to get brief furloughs, but that was about all. I was more subject to the Army than I was to the Legislature. It was only when our Army was not on the march that I was here.

Q. 41. Please state, Major Hunter, what was the condition of the highways and bridges, within your knowledge and observation, in

the present State of Virginia during the period to which your testimony has already referred, and particularly during the year 1863?

A. The highways were in a very wretched condition. I don't know that there was any provision for the repair of the roads at all during the War. There were no toll-gates. They were 1034 not kept up. In our marches we did not respect roads. We marched over the country generally—the best ground we could find.

Q. 42. To what extent were the highway bridges kept up?

A. A great many of them were burnt under orders from one Army or the other, and very frequently never repaired until after the War. Never rebuilt. Of course, where bridges were absolutely necessary for Army operations they had to be repaired.

Q. 43. What was the condition of the railroads in the present territory of Virginia during that time, and other lines of communication, both over land and by water?

A. The railroads were in a very wretched condition. The supplies of rails had largely given out. The engines became almost valueless. That is stated very clearly in a paper that will appear in the Times-Dispatch on Sunday, by Professor Mallet. The Ordnance Department of the Confederate government and the railroads helped each other out in every way possible. That is all stated in this article of Professor Mallet's—a very interesting one.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said objection, proceeds to cross examine Major Hunter.

1035

Cross Examination.

By the Attorney-General of West Virginia:

XQ. 1. Major Hunter, you have stated in your direct examination that an order was given to devastate the country during the War between the States—wasn't that order given in 1863?

A. I can't recall the date of the order. I have it in my office. There was an order from General Grant through General Halleck to General Hunter, and that order spoke of devastating the Valley so that a "crow would have to carry its provender."

XQ. 2. That order was issued after General Grant succeeded General McClellan?

A. Yes, sir.

XQ. 3. How long after General Grant succeeded General McClellan or General Meade was this order issued?

A. I can't answer that, Mr. Conley, without reference to the records; but a great deal of damage was done by General Milroy, and other officers in command. General Pope's Army did a great deal of damage. His orders were for the devastation.

XQ. 4. But this was all after June, 1863, was it not?

A. Milroy was in Winchester just prior to the battle of Gettysburg, and Gettysburg was in 1863, and Milroy had issued orders for the indiscriminate use of all property belonging to what he termed rebels. The country was entirely occupied by men of that class. I have a copy of Pope's order which was for the use of prop- 1036 erty of the citizens for Army purposes. This was before the battle of Second Manassas—at the time of the Slaughter Mountain fight.

XQ. 5. In your Army campaigns you have pretended to describe in your direct examination, your mind was particularly directed to the maneuvers of the Army, and not to the condition of the country or property through which you passed, was it not?

A. Yes, sir, almost entirely. It was only incidentally that I observed the property destruction. Of course, it impressed itself on the mind of everyone. You could see it around you wherever you went.

XQ. 6. What territory in the present boundaries of West Virginia did you cover during the period of the Civil War, prior to June 20, 1863?

A. Well, at times we had Berkely and Jefferson Counties—the lower Valley—and we had Hampshire, Hardy Counties, and that country to some extent, then Greenbrier, Monroe and Kanawha, and the counties around Kanawha.

XQ. 7. Were there any bridges destroyed in this territory during your trips through there?

A. The bridges across the Shenandoah were frequently destroyed —sometimes rebuilt and sometimes not. In the retreat of either Army after crossing a river they burned the bridge if was possible—if the pursuit was not too rapid.

XQ. 8. Whose command were you with in the trip through Greenbrier, Monroe and Kanawha counties?

A. Well, I never was there. I just spoke of that from my 1037 knowledge. I was never with any command in that part of the country.

Re-Direct Examination.

By the Attorney-General of Virginia:

Q. 1. What was the number of battles or engagements between the Federal and Confederate forces within the territory embraced by the present State of Virginia, and what were the number in the territory

embraced within the present State of West Virginia, during the War?

A. In the numbers that I give you, you will understand that I range from battles down to outpost engagements and skirmishes—all of them of sufficient dignity to be mentioned in the reports of the Union and Confederate Armies. There were 1,004 in Virginia and 364 in West Virginia. In West Virginia, as a rule, they were of a minor character—not on as large a scale as in Virginia.

Q. 2. In which territory were the engagements of any considerable magnitude and importance, and in which territory were the principal Armies of the two cambatants engaged?

A. In the State of Virginia. There was no great battle within the limits of West Virginia.

The signature of the witness is waived by consent.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers on redirect examination, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in 1038 said questions and answers.

MR. W. W. SCOTT,
being duly sworn, deposes and says as follows:

By Mr. John B. Moon:

Q. 1. Mr. Scott, what official position do you hold in connection with any Virginia office?

A. I am known officially, sir, as the State Law Librarian of Virginia.

Q. 2. Where were you during the War from 1861 to 1865?

A. I was in the Confederate Army, except during the period from about July 17th, 1862, until about the 1st of November, 1863. During that time I was at the Military Institute, and for a short while at my home in Orange County.

Q. 3. Your home was in Orange County, Virginia?

A. Yes. sir.

Q. 4. What portions of the State were you in during the War—prior to 1863?

A. Well, I was at Harper's Ferry in April, 1861, and in all the subsequent operations of Jackson's Army until we came to Manassas. Spent the winter at Manassas, and fell back with the Army to the line of Rappahannock, and when Ewell's Division was detached and joined General Jackson's Command at Swift Run Gap near Elkton. I was in the Valley campaign with Jackson—not partici- 1039 pating in the battle at McDowell—but I was in what was known as the Valley campaign from beginning to end. In the com-

bats with Banks, beginning at Front Royal, through Winchester to Halltown within a few miles of Harper's Ferry, thence back to the Cross Keys and Port Republic, in Rockingham County, thence to the seven days' battles around Richmond, and thence to Gordonsville, in Orange County, where I was discharged from the Army, being under age, on the 16th of July, 1862.

Q. 5. Have you had occasion in connection with any history or publication that you have gotten up, to pay attention and note the financial condition of matters in the present State of Virginia, during the War?

A. I have, sir, in a history of my own county. I have had occasion to make a comparison of the values as stated officially in the Auditor's reports in 1860 & 1861, and 1866.

Q. 6. From your judgment and observation during that period of the War, was there any increase or diminution in the actual intrinsic value of real estate—from January 1, 1861, to June, 1863—if so, what was the difference?

A. Well, if the intrinsic value is to be estimated at all by the market value, or salable value, there was a very considerable decrease.

Q. 7. What was that diminution—what proportion or percentage?

A. Well, I should say, sir, that lands that would have brought $40.00 an acre in say 1860-61 before the War came on, brought very little in comparison more than that in the currency of the 1040 country along in 1862-63.

Q. 8. What was that currency worth in 1863?

A. Well, that currency was very much depreciated. My recollection is that it got as low as at least 6 for 1. I wouldn't testify from memory what the precise depreciation was.

Q. 9. Then, according to the scale, real estate was worth in 1863 less than one-half of what it was in 1861?

A. Undoubtedly, in gold values. Hard money values. Gold and silver were about the same at that time. Silver was a little higher, I believe.

Q. 10. Well, what was the comparison in values of personal property between those two years, taking into consideration the diminution in amount as well as in value?

A. Well, sir, my recollection is pretty distinct that when I joined the Army in 1863 (you know they appraised the horses of the soldiers in the Cavalry) the horse that I was riding was appraised at $1,200.00 in Confederate money, and $100.00 would have been a good price for him in gold—a big price, but for the scarcity of horses then.

Q. 11. Then what, on the whole, would have been the percentage of diminution in values of personalty, considering the diminution in quantity, and in value also?

A. Well, the way I would look at it, personal property of all sorts had become so scarce that by reason of its scarcity it had a fictitious value almost in Confederate money. There were not any horses to spare left, very few cows, very little furniture, very few farming utensils, and very little live stock.

Q. 12. What percentage of diminution in actual value of the 1041
personalty occurred between those periods?

A. Well, I would say that there was ten times as much personal property in 1861 as there was in 1863. When you come to the values, I cannot speak.

Q. 13. Do you mean ten times as much in intrinsic value?

A. Yes, sir. The property was there in 1861 and in 1863 it wasn't there.

Q. 14. What was the currency of the country in 1863?

A. I was paid off once—the first time I think—in State Bank notes; after that I never saw anything but Confederate money, and these little shinplasters. Taxes were paid in Confederate currency—it was all known practically as Confederate currency, except the provision of the Confederate law that one-tenth, I think, of the products of the farm had to be paid in kind—wheat, corn, tobacco, potatoes—on everything that a soldier could eat, you had to pay a tax in kind.

Q. 15. You speak of being paid off in Virginia Treasury notes, was that early in the War?

A. I said I was paid in Virginia Bank notes. The first thing paid to me as a soldier, as I remember, was Virginia Bank notes.

Q. 16. That was in 1861?

A. In 1861. My recollection is that it was paid in Virginia Bank notes.

Q. 17. After that time were all payments in Confederate money?

A. So far as I remember, yes, sir. I saw nothing else during
the War but Confederate money, and these shinplasters that I 1042
spoke of, and occasionally Virginia Treasury notes.

Q. 18. Did any of them pass at any higher rate than Confederate money?

A. All on one common level.

Q. 19. All taken as Confederate money?

A. Yes, sir.

Q. 20. Then I understand that Confederate money was the standard measure of value in 1863?

A. There was none other that I know of.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said objection, proceeds to cross examine the witness.

Cross Examination.

By the Attorney-General of West Virginia:

XQ. 1. Mr. Scott, when you speak of the values, you are only speaking as to your opinion, are you not—as to the measure of values?

A. Well, I should say of my own knowledge, sir, as based on facts. Some things would be my opinion, but I was careful to state only facts which came under my personal observation.

XQ. 2. When you stated in your direct examination that 1043
there was ten times as much personal property, and that the property was of ten times the value in 1861 as compared with 1863, is not that simply your opinion?

A. Well, it is my opinion as to matters at large, sir. It is my knowledge as to matters within a restricted area. I know, for instance, the conditions of my own immediate neighborhood, for I was there in 1863. You remember (no, you were too young to remember) that, in the first place, there was a call for contributions of horses and wagons to the army, which were freely rendered, and after the spirit of contribution became exhausted there were impressments. The negro slaves were drafted by a court order. Two hundred at one time were taken from the County of Orange in 1863, which is a small county, and sent down to work on the defenses around Richmond.

XQ. 3. What time in 1863?

A. If you will let me look at this book I will tell you. I have copied the order. I can't give you the exact time without referring to that. I copied it from the court order. At a special term, January, 1863, two hundred able bodied slaves—negro men—

XQ. 4. Mr. Scott, when you spoke of the increased value of horses along about 1863, isn't it true that the value of horses, as a matter of fact, was much more at that time, because they were more in demand?

A. Yes, sir, and fewer of them, that is in my judgment, sir.

XQ. 5. When you spoke of the value of Confederate money, you meant that Confederate money was used as the medium of exchange?

A. Yes, sir, as the medium of exchange.

XQ. 6. And not as a unit of value? 1044

A. It was our only unit of value. The Confederate dollar was the only unit of value that we had. It wasn't considered loyal to traffic in gold and silver in this old Commonwealth during the war.

XQ. 7. On what was the value based?

A. You mean the value of the Confederate money—it was based on an abiding faith, sir, that we were going to be a nation and pay our debts.

XQ. 8. What did you measure the value of the Confederate money by?

A. Well, I don't know that I catch the meaning, Mr. Attorney General. I would be glad to answer frankly, sir.

XQ. 9. You must have had some comparison of value?

A. Well, we expected with absolute faith that the Confederate States would pay these notes dollar for dollar. We thought they meant a dollar measured in gold and silver— the standard value.

XQ. 10. Then is it not a fact your Confederate money after all was measured in value with gold and silver?

A. An abiding faith, yes, sir.

Redirect Examination.

Q. 1. Will you please state what month it was in which your horse was valued at $1,200.00?

A. It must have been sir, the very last of October, or the 1045 very first of November, 1863.

Note: The State of West Virginia, by her Attorney General objects to the foregoing question and answer, because it is not relevant and germane to the issues in this cause, and for other reasons apparent in said question and answer; and without waiving said objection, proceeds to re-cross examine the witness.

Recross Examination.

By the Attorney General of West Virginia:

XQ. 1. By what method was that horse valued?

A. The rule was that when your horse was killed (we furnished our own horses)—when the horse was killed the Quartermaster paid you for it, and in order to have a basis for payment when you joined the regiment your horse was appraised and reported to the Quartermaster as of such a value, and when he was killed, they paid you that much, and you could probably get one-twelfth as good a horse by that time for that amount.

XQ. 2. What was the assessed value of that horse as shown by your assessment books?

A. Well, sir, I was hardly more than a lad in short breeches. It was my father's horse, not mine. I said in my preliminary examination, sir, that $100.00 would have been an excellent price for him.

XQ. 3. And that was about the value it was assessed at in your assessment books?

A. Well, I couldn't tell you about that. I was about 17 1046
years old, I think, in 1863.

XQ. 4. Haven't you obtained the value of the assessment at that time, since then?

A. Hardly of that particular horse.

XQ. 5. Of horses generally?

A. Well, I will say, as I said in the beginning, that horses of that character would sell around about $100.00.

XQ. 6. Were they assessed at more or less than their selling price?

A. That is a matter of the taxpayer's conscience—he takes an oath—

XQ. 7. I am not speaking of any particular horse. I am speaking as to a matter of fact—what the assessment shows during that period.

A. I am wholly unable to answer that question, sir. I never saw a tax ticket until after the war. I don't want to evade the question.

XQ. 8. How long after the war?

A. Well, I was twenty years old the day after Appomattox, and I paid no taxes myself until 1867.

XQ. 9. I believe you stated you were State Librarian of Virginia?

A. I was the State Librarian. Am now the State Law Librarian.

XQ. 10. Will you examine the assessment book of personal property in your county in 1863, and state from it what the assessed value of horses were at that time?

A. If I can have access to that book, sir. I have published a a tabulated statement—

XQ. 11. On page 173 of the book published by yourself, en- 1047
titled "History of Orange County, Virginia," you have for the year 1860, given the number of horses as 2,991, and the total assessed value thereof, $150,328.00, what would be the average assessed value of those horses in that county for that year—would it not be in round numbers about $50.00 each?

A. It would be that sum ($150,328.00) divided by the number of horses. What the apportionment is would be the assessed value —I can't do it in my head.

XQ. 12. Well now, that being true, you would not pretend to say, would you, that horses, cattle, and other personal property were assessed in Confederate money?

A. In 1861 there was no Confederate money. It hadn't come out. The assessment was made as of the first of February, you know.

XQ. 13. Well, in 1866 how were the assessments made?

A. In 1866 they were made on the basis of the United States currency?

XQ. 14. Will you examine the personal property book of your

county for the year 1863, and give me the assessed value of horses and cows for that year?

A. I haven't the access to that book. I will do it if you will give me the book.

The signature of the witness is waived by consent.

Note: Since the taking of these depositions, Mr. Scott 1048 has examined the Commissioners returns to the Auditor of Public Accounts from Orange County, as requested in XQ. 14, just above, and made the following statement:

"I have examined the Commissioner's Returns to the Auditor of Public Accounts for 1863, from Orange County.

The average assessment, for taxation, was about $160.00 for horses, about $40.00 for cattle, for all ages and conditions. This, I think, was about four times as much as the same stock, or stock of like kind, would have been assessed at in 1860, for taxation."

COLONEL JOHN P. BRANCH,
being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. What is your place of residence?

A. Richmond, Virginia.

Q. 2. What is your occupation, and what position, if any, do you hold?

A. I am President of the Merchants National Bank of Richmond, Virginia.

Q. 3. About how long have you been president of that bank?

A. About 28 years, I would say.

Q. 4. Where did you reside during the War between the States?

A. Petersburg, Virginia.

Q. 5. Did you have any connection with any business or 1049 banking house at that time—during the War between the States?

A. Yes, sir. I was partner with my father in business during the war.

Q. 6. What was the style of the banking house?

A. In the early part of the war we were commission merchants representing the farming interests of the State. Afterwards we went in the banking business during the War.

Q. 7. Did you have any connection with the Confederate Army during the War.

A. Was a soldier, and surrendered with General Lee at Appomattox C. H.

Q. 8. Over what portions of Virginia did you travel or march during the War, Colonel?

A. I was stationed mostly around Petersburg—in the Provost Marshal Department most of the time.

Q. 9. State, if you please, what, within your observation and knowledge, was the condition of the fencing and buildings and lands of the present State of Virginia during the War, and particularly during the year 1863, two years after the War had commenced—as to whether they had deteriorated or improved in value during that period?

A. Deteriorated very much.

Q. 10. What was the condition of the fences upon those farms?

A. Worse than they were in 1861 by far.

Q. 11. What was the condition of the buildings?

A. Worse too.

Q. 12. What was the condition of the buildings in the towns 1050
—for instance the City of Petersburg, or other towns with which you are familiar—whether they had been kept in repair or deteriorated?

A. Deteriorated in value very much when General Grant got to Petersburg and shelled the town.

Q. 13. What was the condition of the personal property in the State—live-stock, farming utensils, vehicles of every kind, household effects, furniture, and so on— as to whether it had depreciated in value during that period?

A. Depreciated in value very much.

Q. 14. What was the currency in use in Virginia during that time—in 1863?

A. Just after the War commenced the banks made very large loans to the Government in bank notes, and for a few months that money was distributed, but, of course, that gave out quickly and Confederate money was the currency from that time on, except what was issued by the cities. All of the cities in Virginia issued, most of them, what was known as shinplasters, and all of them were repudiated except Petersburg, where I was born, and she paid every one dollar for dollar.

Q. 15. What was the standard of value with reference to which all transactions were made in 1863?

A. Confederate money.

Q. 16. If gold was used at all, how was it treated—as a commodity?

A. Bought and sold as a commodity. Didn't circulate at all.

Q. 17. Have the books of the firms of which you were a member been preserved?

A. Yes, sir; they are all preserved, but I haven't been able 1051
to find all of them. I have found some of them.

Q. 18. Did you keep yourself informed as to the transactions of your house, upon your visits to your home, and at intervals during the War?

A. I would say that I knew from time to time what was going on, but not all the time.

Q. 19. Not in detail.

A. No, sir.

Q. 20. You were familiar with transactions that were going on in the communities in which you were at that time—Petersburg and Richmond?

A. Yes, sir; a general view of them, yes, sir.

Q. 21. You have said that there was a deterioration in the value of both real and personal property in 1863 as compared with its value before the War began?

A. Yes, sir.

Q. 22. Are you prepared to say what the deterioration in the actual values of personal property in Virginia, and of real property were, between January, 1861, and June, 1863?

A. Personal property was very much depreciated for over two years.

Q. 23. Are you prepared to say as a minimum what that depreciation was—any particular property?

A. Flour sold in May, 1863, for less than $3.00 a barrel in gold.

Q. 24. What was it worth in 1861 about?

A. I would say never less than $5.00 a barrel, and some- 1052
times as high as $10.00. In 1847 it brought over $10.00 a barrel. I remember that, because that was the year of the Irish famine.

Q. 25. Do you remember what flour and wheat sold at in Virginia in 1856, or along there after the Crimean War?

A. I think wheat went up $2.00 a bushel in that year. I would say that the price of wheat in Virginia previous to the War was 90 cents to $1.20, according to the crop. It may be interesting to you for me to state some facts in regard to the South, and Virginia in particular. We were an exporting people. For instance, take the South, the whole cotton crop went up. Now when you come to Virginia, Virginia exported tobacco, wheat, and corn, and when the War commenced all that export business suffered you know. We couldn't get it out. Of course everything was very much depreciated. Farm supplies were very much depreciated in prices because there was no demand, except what we could sell to the Army.

There were one or two exceptions—we might state horses which were very much needed for the cavalry and artillery. Everything got so scarce that General Lee on his retreat from Richmond and Petersburg to Appomattox C. H.—his troops were fed on corn. And when we got up to Appomattox C. H. we didn't have that. We surrendered on Sunday morning. After that General Grant sent in a big supply of corn and everything. Cotton sold as low as 2 and 3 cents a pound on the gold and silver value.

Q. 26. How was it with tobacco?

A. That didn't sell much better. One reason why tobacco sold so low was that there was nowhere to keep it. The barns were all burnt. The negroes were much depressed in prices. I 1053 bought a servant in July, 1863, on the basis of about $225.00 in gold. That servant would have brought certainly $1,200.00 in 1860 previous to the election.

Q. 27. What was the effect of the War upon the value of negro slaves?

A. It depreciated them very much.

Q. 28. It depreciated their actual value with reference to hard money as a standard of value?

A. Yes, sir, very much. As I think I told you, in July, 1863, I bought a servant for about $225.00 in gold.

Q. 29. And he would have been worth at least $1,200.00 before the War?

A. Yes, sir.

Q. 30. What was gold selling for in May and June, 1863, as shown by the books of your house?

A. In April, 1863, it sold for 6 to 1, in July it sold for from 9 to 1 to 10 to 1.

Q. 31. You know what it sold for in May?

A. Gold was appreciating all the time and Confederate money was depreciating, so I would say it certainly sold higher than that in May and June.

Q. 32. In June was it higher?

A. Necessarily, it couldn't have been any less. As you see here in April it sold for 6 to 1, and in July it sold for from 9 to 1 to 10 to 1. So you see in 3 months it had gone up. In August it sold for 15 for 1.

Q. 33. What would you say would be a fair estimate of the depreciation of real and personal property in Virginia in 1054 June, 1863, as compared with its value, say, in January, 1861—I mean its actual value?

A. I don't consider that I know enough to express an opinion in regard to real estate. It was very much depreciated, and there was some other remarkable cheap sales that were made in Confederate money, but I am satisfied (though I am not speaking of any sale I

now remember) that it depreciated fully one-half. The negro property had depreciated two-thirds. And then provisions were cheap.

Q. 34. Tobacco and cotton and things of that sort?

A. I would say the whole shebang averaged 50 per cent, with some exceptions.

Q. 35. In actual value?

A. In gold, yes, sir.

Q. 36. What was the condition of the highways, roadways and turnpikes in the State in 1863—2 years after the beginning of the War?

A. I don't know very much about the turnpikes. I wouldn't say the country roads were very bad because there was so little travel on them. But the railroads, well they just got worse and worse. To give you some idea. From Richmond to Petersburg after the War—21 miles—the schedule time after the War was 2 hours. It took 2 hours as a general thing to go 21 miles.

Q. 37. What was the condition of the railroads in the Spring of 1863—as to the equipment, track and roadbed?

A. Bad.

Q. 38. How were other lines of communication, for instance, 1055
the water lines, canals and rivers—was satisfactory service furnished by steamship lines?

A. There wasn't any. They stopped running steamboats on the James River in 1861. In 1861 they didn't run them down any further than Jamestown.

Q. 39. How about the Rappahannock?

A. I don't know anything about that. In January, 1863, I wouldn't say that any steamboats were run at all so far as James River is concerned.

Q. 40. Is your estimate of the depreciation in values of real and personal property in the present State of Virginia being as great as at least 50 per cent. in June, 1863, confined to the portion of the territory of Virginia then within the Confederate lines, or do you include the whole State?

A. I have no knowledge on which I could form an estimate of the property in that part of the State in the Yankee lines. I have no knowledge of that at all.

Q. 41. Is your estimate then confined to the territory inside of the Confederate lines in 1863?

A. Yes, sir.

Q. 42. Do you take in account then the destruction of fences, property, and the carrying off of property inside of the Federal lines?

A. I don't think the fences were hurt much except where the army went by (you are trying to find about 1863 now)—I don't say that

the fences had depreciated very much except where the armies went by. You know they took everything as they went along. They camped near the west end of the town here and burnt all the woods.

Q. 43. In what currency were taxes paid in 1863? 1056

A. Confederate money.

Q. 44. In Confederate money?

A. Yes, sir.

Q. 45. With reference to what currency was personal property valued for taxation in 1863?

A. I don't know.

Q. 46. Do you remember anything as to the assessments of personal property?

A. No, sir.

Q. 47. You only know that the taxes were paid in Confederate money?

A. Yes, sir.

Q. 48. And that Confederate money was the currency of Virginia at that time?

A. Yes, sir. Of course there were a few exceptions where a man sold his property for other things. They swapped farms and things for something else.

Q. 49. They bartered?

A. Bartered, yes, sir.

Q. 50. What was the condition of wagons and farming implements at that time?

A. They must have been very bad.

Q. 51. What is your age, Colonel?

A. 78 years of age.

Note: The State of West Virginia, by her Attorney 1057
General, objects to each and all of the foregoing questions and answers, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said objection, proceeds to cross examine the witness.

Cross Examination.

By the Attorney General of West Virginia.

XQ. 1. Colonel, do you remember the assessed valuation of horses in 1863?

A. No, sir.

XQ. 2. What is your best recollection?

A. Well, I would say that they probably sold better than anything else, because they were more in demand. If I had been the

assessor I would have assessed them higher because there was more demand for them.

XQ. 3. In 1863 what would an ordinary horse sell for in Confederate money?

A. I couldn't form any idea of that at all.

XQ. 4. What would a slave sell for in Confederate money at that time?

A. I bought this slave for $2,000.00 in Confederate money. Money was selling at from 9 to 10 for 1, which I estimated to be about $225.00 in gold.

XQ. 5. The value of other personal property was about the same ratio, was it not?

A. No, I think negroes were as much or more depreciated than anything else.

XQ. 6. Well, then, if you had a horse valued at $200.00 1058
in gold, it would sell for more $1,200.00 in Confederate money?

A. In June, just about $1,200.00. I don't know anything, not even a horse, that sold as high in 1863 as it did before the War. In other words, everything was being depressed. No business was being done. The cities issued these shinplasters to support the poor people, and then they repudiated them all afterwards—all except the City of Petersburg, where I was born.

XQ. 7. Wasn't there more demand for horses in 1863 than there was before the War?

A. Of course there was. Everything was low. The idea of flour selling at $3.00 a barrel, but afterwards it went up higher and higher, and finally you couldn't get it at any price. We were starving here in 1863, you know. A great deal of the country was occupied by the Yankee Army, and we couldn't get our supplies. The first thing that General Grant did was to cut off the Southern route, and we only had one road left, and that was this road from here to Danville.

Signature of witness waived by consent.

MAJOR PHILIP A. WELLFORD,
being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. What is your place of residence, Major?

A. Richmond, Virginia.

Q. 2. Where were you born and raised? 1059

A. Fredericksburg, Virginia, and moved to Richmond about 1857.

Q. 3. What is your age, Major Wellford?

A. 75.

Q. 4. Please state where you were during the War of 1861-65, and what position, if any, you held in connection with the Confederate army?

A. I left Richmond as a Lieutenant in the first company that left the City of Richmond, and was sent to Acquia Creek, on the Potomac, first, where we were about two months. We then came down to Richmond, and after being here for a short we went out to West Virginia to meet Garnett and Pegram. From there we went out to Valley Mountain, where General Lee came to take control, and we were there during that summer. In the fall we came back, and in January, 1862, we marched up to Winchester to join General Jackson, and I was then with him until after he was killed, and the Army was brought back to Mine Run. I was in both campaigns across the Potomac. In 1863 I was brought from the Army and put in charge of the mills here, running them exclusively for the Confederate government, where I remained until the evacuation. At the reorganization of the Army in 1862 I went on General Taliaferro's Staff, and as there was some question about having volunteer aides, I was made Commissary in the 23rd Virginia Regiment, then afterwards was Assistant Commissary in Taliaferro's Brigade.

Q. 5. Did you go through the portions of Virginia through which the command of General Stonewall Jackson marched in 1060 1862 and 1863?

A. Yes, sir, up in the Valley, out to Romney, over into Maryland, back to Fredericksburg, all along there.

Q. 6. You were encamped during the winter of 1862-63 in Fredericksburg?

A. Yes, a few miles below there.

Q. 7. The Confederate Army camped on one side of the Rappahannock and the Federal Army on the other side during the winter of 1862-63, did it not?

A. Yes, sir.

Q. 8. Were you with General Jackson's corps when it came to Richmond just before the seven days' fight?

A. Yes, sir.

Q. 9. Were you with his command when it went from Richmond to Orange County in the summer of 1862, and at the battle of Slaughter's Mountain?

A. Yes, sir.

Q. 10. Were you with it in the campaign ending in the second battle of Manassas?

A. Yes, sir.

Q. 11. And you were with it on its return from Maryland after the battle of Sharpsburg?

A. Yes, sir.

Q. 12. Then in the winter of 1862-63 you were with that Army near Fredericksburg?

Q. 13. Did you accompany that Army in the summer of 1863 1061
after the battle of Chancellorsville, when it marched to Gettysburg?

A. Yes, sir, and on its return to Mine Run.

Q. 14. Please state, Major Wellford, what was the condition of the farms and houses, buildings, fences and orchards in the portion of Virginia which came under your observation, and within your knowledge at that time, during the period to which your testimony refers.

A. Well, they were almost desolated. When I returned from West Virginia the first time and went down the Valley it was a perfect garden spot—all the farms were occupied with everything you could think of. A few years afterwards those farms were in a bad condition, nothing had been done towards the fences, or on the buildings. They had no cattle, no horses, nor anything else.

Q. 15. What was the case in Northern Virginia—the region north of Richmond and the Rappahannock through which you marched in 1863?

A. I didn't go on the north side of the Rappahannock because it was occupied by the Federal Army, but knew that whole country well, having been born and raised in Fredericksburg, and it was completely desolated. Nearly all the woods between the Rappahannock and the Potomac were cut down, all the fences destroyed, all the roads ruined, and all of the country south of the Rappahannock that was occupied by General Lee's Army was very much in the same way. I know when we were camped below Fredericksburg at Stringer's Neck, we didn't follow the roads at all. We had new roads cut right across the fields.

Q. 16. Why were those roads abandoned? 1062

A. Well, the roads were in a terrible condition. Nothing had been done to them, and the wagons were turned out of the road into the fields, and I have seen places there where the roads were one-quarter of a mile wide, made so by the wagons turning out farther and farther trying to get on good ground. And from Gordonsville up to Manassas things were not much better.

Q. 17. How was it in Prince William County and Fairfax that you had to march through in going to Sharpsburg?

A. I didn't go through them, except part of Fairfax.

Q. 18. What was the condition of the railroads in Virginia in 1863?

A. As bad as they could be.

Q. 19. As to their equipment, track and roadbeds?

A. Well, their equipment, you may say the passenger cars were almost entirely done away with. Almost all of the hauling of soldiers and everything was done in box cars. Trains moved very slowly, very irregularly—rates not over ten to fifteen miles an hour.

. 20. What taxes were levied by the government at that time upon the farms?

A. I really can't say about that. I knew nothing about the taxes until I was brought here and put in charge of the mills. The only tax then that I had anything to do with was the tax in kind.

Q. 21. What was that tax in kind?

A. All the farmers had to send in 10% of their crop of wheat and corn.

Q. 22. One-tenth of the gross products of the farm? 1063

A. Yes, sir.

Q. 23. That was exacted by the government?

A. Yes, sir.

Q. 24. Was that in addition to the money tax levied by the State?

A. I think so; yes, sir.

Q. 25. As a result of the causes which you have mentioned, what was the value of the lands in Virginia in June, 1863—the actual value with reference to sound hard money?

A. That is a very hard question to answer. The value of lands had depreciated so much that nobody sold any land unless they were absolutely obliged to. When they were forced to sell, they took the best price they could get. I was not in the real estate business, but I know of the sale of some farms. The Moss Neck farm belonging to a relative of mine, Mr. Corbin, was offered to me in the fall of 1863 for $100,000.00 in Confederate money.

Q. 26. What was that farm worth before the War, Major Wellford?

A. Well, I should say from $40,000.00 to $60,000.00. There had been a house built on it within 3 or 4 years that I know cost $30,000.00. There was another farm belonging to another relative of mine, Dr. William Wellford, that was sold for $100,000.00 in Confederate bonds.

Q. 27. How much was that farm worth before the War?

A. I suppose before the War it was worth $50,000.00 to $60,000.00.

Q. 28. What were the Confederate bonds worth with reference to gold and silver? 1064

A. I don't remember. Then I had a mill near Fredericksburg which I sold in 62 for little over one-half as much as I thought it was worth before the War. I didn't own the mill entirely—I owned one-fourth of it.

Q. 29. You say there had been a great depreciation in the value of real estate. What, as a minimum, would you say was that depreciation in June, 1863, as compared with January, 1861?

A. Well, if you would reduce that Confederate money to gold and compare it with the value before the War, I would say that it wasn't over one-half.

Q. 30. Now this Moss Neck farm that you say was offered to you in the fall of 1863 for $100,000.00 in Confederate money—do you know what the value of Confederate money was at that time?

A. It must have been somewhere from 15 to 20 for 1.

Q. 31. So that it must have been worth then not over $7,000.00 in good money?

A. Yes, sir.

Q. 32. How was it with personal property—had there been any increase or diminution of the quantity of personal property?

A. Yes, sir, an immense diminution in the quantity.

Q. 33. Had there been an increase or diminution in the value of specific personal property as a rule with reference to good money, I mean?

A. It depends upon what kind of personal property you mean. Hogs, if you made them into bacon, would have brought more. Horses, where in the neighborhod of the army, should 1065 you meet one of those dismounted cavalrymen, would bring most any price. You could get all the money he had for a horse. This had very little reference to the price before the war.

Q. 34. As a rule a dismounted cavalryman was not very well supplied with money, was he?

A. No, sir.

Q. 35. How was it with tobacco and cotton, and with negro slaves, as to their value taking good money as a standard of value?

A. I do not know of any direct transactions, but I know the impression that I had after I was brought back to Richmond and living here, was that slaves didn't bring one-half or very little more one-fourth, of what they would have brought before the war.

Q. 36. Lincoln's Proclamation emancipating the slaves was issued in September, 1862, to take effect according to its terms within such portions of the Confederate States as had not then laid down their arms and returned their allegiance to the National Government, on the first day of January, 1863, what effect did that have?

A. Very little until the surrender of Vicksburg and Gettysburg. It was laughed at and ridiculed by most of the people. But after Vicksburg and Gettysburg, we began to be a little doubtful.

Q. 37. Taking all the movable personal property, live-stock, farming utensils, vehicles of every kind, household and kitchen furniture, the stores of tobacco and corn, what would you say, as a

minimum, was the depreciated of all personal property in 1066
Virginia in June, 1863, as compared with January, 1861?

A. Leaving out cotton and tobacco, I would say that it was nearly 75%. Carriages and wagons were almost all worn out; broken down. All farming utensils were pretty well worn out. There was very little demand for them. Men did not cultivate more than one-half or two-thirds of the acreage that he had done before. They had no new implements, and all the carriages and farming utensils were almost worn out.

Q. 38. How did the conditions then existing affect the agricultural business of the State as to its profitableness?

A. I was more familiar with the crops along the James River and this section around Richmond, and that down in North Carolina, and I don't suppose that the crops made in 1863 were on the whole more than one-half of what they had been years before. I know that was certainly the case with wheat. I was brought down in September, 1863, and put in charge of these mills. The grain wheat was brought to the mill and it was ground, and we paid the owners of the mill a percentage for grinding it. The balance went to the Confederate government. Very soon after I came I was called on for an estimate of what I thought the wheat crop in Virginia was, and how long it would last, and I remember I made up an estimate that at the then amount of requisitions, the wheat crop would
not last until the 15th of December of that year, and that 1067
other means of providing for the men would have to be resorted to. We then went to work and from that time on to the close of the War, the Confederate Army was fed on corn meal ground from corn brought from Southwest Georgia. Sometimes the trains wouldn't come in here until during the night, and I would grind it up during the night and it was issued to the Army for breakfast in the morning. Sometimes it didn't come in and I would have to go around to the Quartermaster's for corn and get him to let me have it. As a matter of fact, from September, 1863, to the end of the War, I never had three days supply of breadstuff on hand at any time for the Army.

Q. 39. Were you in charge of that branch of the Commissary Department at that time?

A. Of the breadstuffs that were used by the Army and hospitals.

Q. 40. What would you say, as a minimum, was the depreciation of all the personal property in Virginia, in June, 1863, upon the basis of any sort of sound money? What was the per cent. of the depreciation in June, 1863, as compared with January, 1861?

A. Not less than 50%. There had been no repairs made to furniture. All the mechanics were in the Army. If a bed broke down,

a man had to fix it the best way he could. The same way with all the farming utensils and everything else.

Q. 41. In that estimate do you take any account of the waste, destruction, and consumption of livestock and other personal property in the portions of Virginia ravaged by the two armies?

A. I suppose by 1863 nearly one-half of the horses that were 1068
in Virginia had been killed—were used up or died in the Army. The same is true as to beef cattle, and as I say, all the other farming utensils, furniture, household effects, and everything of that sort, had deteriorated without any repairs being done.

Q. 42. Can you speak as to the value of securities, the stocks of insurance companies, manufacturing companies, and of banks and other stocks?

A. They had depreciated. I bought, I remember, $5,000.00 $50 shares of the Farmer's Bank stock, and I don't think I paid over $200.00 for it in Confederate money.

Q. 43. What was that the equivalent of in good money at that time?

A. Not more than $30.00 a share.

Q. 44. What would that stock have been worth before the War?

A. Mr. Taylor can tell better.

Q. 45. Do you remember the dividends that were regularly paid upon it before War?

A. Never less than 6%.

Q. 46. In what currency were taxes paid in June, 1862?

A. In Confederate money.

Q. 47. What was the sole measure of values at that time in transactions between the government and the people, and between man and man?

A. In Confederate money, except when there was a barter. 1069

Q. 48. How was gold and silver disposed of at that time?

A. Some of the brokers here had some gold that they would sell.

Q. 49. Was gold sold as a commodity just as any other commodity?

A. Yes, sir. No one called for gold unless they wanted to get across the lines.

Q. 50. From your observation and knowledge at that time, what was the condition of the people of Virginia in the territory now constituting the Commonwealth of Virginia—their financial condition?

A. A large proportion was abject poverty.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant or germane to the issues in this cause, and for other reasons apparent in said questions and answers; and

without waiving said exception, proceeds to cross examine Major Philip A. Wellford.

Cross Examination.

By the Attorney-General of West Virginia:

XQ. 1. In June, 1860, or during the assessment month of 1863, what was the value of horses, cows, hogs, etc., in Confederate money? 1070

A. I can't give any reliable answer to that. I was in the Army at the time that assessment was made.

XQ. 2. Don't you know what horses sold for in Confederate money at that time?

A. Well, as I said a little while ago, it depended upon the necessity. I bought in April or May a very fine horse, a little old—I gave $300.00 in Confederate money for it. I bought it from a person who was anxious to sell.

XQ. 3. From your information as to what other people said as to the value of horses and cattle, what would you say was the value in Confederate money?

A. In the Army we didn't bother ourselves much about the price of anything outside of just what we wanted right then and there.

XQ. 4. Did you have any experience as to the value of them when you were here in charge of the mills?

A. Very little.

XQ. 5. When did you first come here to take charge of the mills?

A. It was in September, 1863. It was just two or three days before the battle of Mine Run. I will say that all the teams for the mill were bought by the owners of the mill.

XQ. 5. When did you first start to use Confederate money?

A. Very soon after the War commenced. The first payment that I received in Confederate money as a soldier was at Valley Mountain in August, 1861. 1071

Redirect Examination.

By the Attorney-General of Virginia:

Q. 1. State any experience that you had in your official capacity in regard to any transactions during the War which would have any bearing upon this investigation.

A. As evidence of how complete the country was stripped of everything, I will say that in the Army I very frequently was sent off to try to beg, borrow, buy, and impress provisions for the Brigade, and I very rarely succeeded in getting any. Then on two occasions while I was here in Richmond the railroads were cut and the provisions come from the South were interrupted, and I was sent on

horseback up along the James River & Kanawha Canal to see all the farmers to tell them the situation we were in in Richmond, and to beg, borrow, buy, or impress any meat or corn, and I got very little. The whole country was completely stripped.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant or germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said exception, proceeds to re-cross examine Major Philip A. Wellford.

Re-Cross Examination. 1072

By the Attorney-General of West Virginia:

Q. 1. In purchasing this corn and meat, in what currency was it paid for?

A. Confederate money.

Q. 2. What was the value of the corn and meat?

A. The government had a scale of prices that it fixed, and I wasn't authorized to go beyond that. If they didn't take that price I impressed it.

Q. 3. What was that scale?

A. I forget now. Flour I know was $37.50 a barrel. It was readily sold on the streets here in Richmond for from $75.00 to $100.00 a barrel.

Q. 4. How about your meat?

A. I really forget what the meat was.

Q. 5. Did you purchase any live-stock?

A. No, sir.

By Mr. Moon:

Q. You didn't have charge of the meat department?

A. No, sir. I was just sent out to ask the farmers to help us, and I took it forcibly if they didn't sell at the price fixed.

The signature of the witness is waived by consent.

MR. WILLIAM G. TAYLOR, 1073

being duly sworn, deposes and says as follows:

By Mr. John B. Moon:

Q. 1. What is your age, Mr. Taylor?

A. 73 in March.

Q. 2. Where were you during the War from 1861 to 1865?

A. Most of the time in and around Richmond.

Q. 3. What business and occupation were you in—what was your occupation at that time?

A. In the early part of the War I was connected with a bank—had charge of the Traders Bank at Richmond, and up to the latter part of the year 1862 I had charge of the effects of the bank, that is carried on the business here and then carried the effects away when the raids were made around Richmond where there was supposed to be any danger. In the latter part of 1862 I associated myself with Mr. Isaacs in the broker's business, under the firm of Williams, Isaacs & Company, and afterwards Isaacs, Taylor & Williams.

Q. 4. Did you have any other occupation?

A. Yes, sir. Then I became subject to the orders of the Secretary of War and General Lee as a scout to follow up these raids around Richmond.

Q. 5. You were connected with the Confederate Army?

A. I was connected with it in that way, but not in any official capacity. They would call on me and I would go for a week at a time, and then I was called upon at times to aid them in the Treasury department. They were converting gold into Confederate money—the gold that they would borrow from banks—a 1074
good deal of the time I was taken there. So in all I was rather in an anonymous position—first in the Army, then at my office, and then there. And when there was a raid around Richmond—a fight around Richmond—I would go to the front, and my time was pretty much occupied in that way.

Q. 6. What was the currency used in what is now the State of Virginia—in the Confederate lines—in 1863 what kind of money was used?

A. Confederate money.

Q. 7. Any other kind of money?

A. None at all except these little shinplasters used as change.

Q. 8. They went as Confederate money?

A. Yes, sir. These market men would use them sometimes. They didn't go outside of the State.

Q. 9. They were payable in Confederate money?

A. Yes, sir.

Q. 10. Was that the only kind of money used in dealings between man and man?

A. Yes, sir, except the City of Richmond issued notes payable in Confederate money and receivable in taxes.

Q. 11. In what kind of money were taxes assessed and paid at that time—in 1863?

A. Confederate money. These things that I speak of would not be received in payment of taxes—I mean these little shinplasters. The treasury department would not receive anything except Confederate money, nor would the banks. They were just sim- 1075
ply used for the purpose of convenience. Sometimes these large foundries issued tickets for the time being instead of paying currency. A little due bill or something of that sort for the purpose of making change, there being no gold or silver in circulation.

Q. 12. Will you state whether there was an increase or diminution in the actual value of the personal property in what is now the State of Virginia, between January 1, 1861, and June, 1863, and if so, what it was?

A. Well, I suppose the depreciation was 50% to 75 per cent. on personal property generally, except such things as were absolutely in demand, like horses and provisions, and things that you would have to have. In other words, you could take $1.00 in gold and buy two or three times as much by converting it into Confederate money as you could prior to the War.

Q. 13. What was the value of land in June, 1863, as compared with what it was worth in January, 1861?

A. Well, my impression was this in regard to that—I thought that land was the cheapest thing on the market, and had often thought about investing, but the question in my mind was in buying it whether I would have anything after the War, whether that would not be confiscated—that had some weight with me. If I purchased it, whether it would not be taken from me afterwards. Lands were very cheap—real estate as compared to what it was before the War.

Q. 14. What would you say was the percentage of diminution in value?

A. I can't say, except that I recollect one or two pieces of 1076
property that were sold. As to the date I can't tell you. Now, I remember one little piece of property fronting my place where I reside now. This Irishman came in. I was in the broker's business, buying and selling gold and silver. My recollection is that he had $60.00 in silver—certainly not over $70.00. He asked me to know whether I would advise him to sell it or not. Seemed to come to me as a friend. I asked him if he owned a residence. He said no, but there was a place he would like to own. He told me what he could get it for. I found out that this amount of money that he had, converted into Confederate money, would buy it, and I advised him to buy the property; that I would give him enough money for that to buy this property. They own that property to-day. I suppose that property ought to have been worth $500.00 in good times before the War—the land and the house. I think the property would have been cheap at that. It was just out of town here, and I think it

contained about two acres. It looks about the size of a square in town; but that, of course, may have been just an individual case. I do not say that everything had depreciated in that territory. Then I remember Mr. Haxsall selling a piece of property up here on Franklin Street. My recollection is that he got $40,000.00 for it in Confederate money.

Q. 15. What house was it?

A. That brown stone house on Franklin Street. I suppose it is worth that much now in good money. I suppose it cost him that much. 1077

Q. 16. What Haxsall was that?

A. I think William Henry Haxsall. A year or two afterwards he bought it back again, and had to advance $10,000.00, I think, to get off from buying it. I don't say positively that those were the figures. Just what I heard. I thought then he was making a mistake.

Q. 17. What, on the whole, would you say was the percentage of depreciation in value between January, 1861, and June, 1863—in real estate?

A. It looks to me like it was certainly 50% or 60 per cent. Of course, this is my impression. I can't remember those things accurately. I am only stating from recollection now, just what I heard. I have never talked with Mr. Haxsall about it.

There was no cross examination.

Note.—The State of West Virginia, by her Attorney-General, objects to the foregoing questions and answers, because they are not in harmony with the order of reference in this case, and not relevant and germane to the issues therein.

At 1:30 o'clock P. M. the taking of these depositions was adjourned over until to-morrow morning, June 5, 1909, at 9:30 o'clock A. M., at the same place.

The taking of these depositions is resumed this 5th day of 1078 June, 1909, at the hour 9:30 o'clock A. M., at the same place.

Present on behalf of the Commonwealth of Virginia: William A. Anderson, Attorney-General of Virginia, and John B. Moon.

Present on behalf of the State of West Virginia: William G. Conley, Attorney-General of West Virginia.

MR. S. H. HAWES, 1079
being duly sworn, deposes and says as follows:

By the Attorney-General of Virginia:

Q. 1. Please state your age, residence and occupation.

A. I am 71 years old, merchant and reside in Richmond, Virginia.

Q. 2. Where were you and how were you occupied during the War from 1861 to 1865?

A. I enlisted in the Confederate Army on the 19th day of April, 1861, and served in that Army during the whole War.

Q. 3. In what parts of Virginia did you serve?

A. The first of the War I was on the Lower Peninsula—between the James and the York—under Magruder, and the second year in the battles around Richmond, and then in the Valley.

Q. 4. Where did you serve in the summer and fall of 1862, and the spring, summer and fall of 1863?

A. In the summer and fall of 1862 in the Valley of Virginia, in 1863 we scouted and fought from here to Gettysburg, all through Culpepper, near the Town of Winchester.

Q. 5. In what counties?

A. In Culpepper, Orange, Rockbridge, all through those counties. I don't remember the names.

Q. 6. Were you in the counties of Fauquier, Prince William, Fairfax, Alexander, Loudoun, or any of them, during the fall of 1862—that is during the campaign of General Lee and General Jackson against Pope?

A. Yes, sir, I was all through those counties. 1080

Q. 7. In the campaign in the spring of May and June, 1863, did you march with General Lee's Army from the neighborhood of Fredericksburg after the battle of Chancellorsville, through Northern Virginia to Gettysburg?

A. Yes, sir. I have a diary giving the whole march. I took some notes from it last night, showing some places we went by up to the fight of Gettysburg.

Q. 8. In going to and returning from Gettysburg, did you pass through the counties of Spotsylvania, Orange, Culpeper, Fauquier, Warren, Clarke, and Frederick, or any of them?

A. I did, all of those you speak of.

Q. 9. Do you remember whether you were in Prince William and Fairfax counties upon that campaign?

A. I can't remember exactly. I wouldn't like to say. As we moved about so rapidly, I hardly knew where we were.

Q. 10. How long were you camped about Richmond prior to June, 1863?

A. I can't tell you exactly, but we were here some time. After

the retreat from Williamsburg we camped around Richmond a while.

Q. 11. Please state what, within your observation and knowledge, was the condition in which the farms, forests, buildings, &c., in the regions occupied by the Federal and Confederate Armies, were left by those Armies?

A. Well, the conditions were most deplorable. I have seen hundreds of acres of splendid wood land cut down while the Armies were there, and left bare of timber. All the fences in 1081
the neighborhood were burned and the whole country ravaged. It was distressing to see it. What one Army didn't take another did.

Q. 12. What was the effect of the occupation of any portion of the country by either Army in respect to live-stock, poultry, as well as growing crops?

A. Everything was swept off. The farmers tried to hide their horses when the Army would come there, but somebody would report them and they nearly always lost their horses. The fields were pretty well swept of all forage. I know there was no respect for the farmer. I judge by what we did with our artillery horses. Whenever we found forage, we would turn our horses in, and the other Army did the same thing. Had to do it.

Q. 13. Turned their horses in on the growing crops?

A. Yes, sir—well, I will take that back—turned them in on the timothy fields and clover fields. I don't know that I ever saw any one turn them in on the growing crops, but there were not many growing crops to turn them on. In those counties that you speak of growing crops were a rarity.

Q. 14. What was the condition of the highways and highway bridges in the fall of 1862 and during the first half of 1863?

A. The highways in Virginia at best were bad, but they were terrible at that time, because two Armies were passing over them. You may say they were impassable in the Winter. I have been in the mud myself up to my knees, trying to force the artillery through. 1082

Q. 15. What command did you serve in?

A. I served in the First Regiment of Virginia Artillery.

Q. 16. What position did you hold?

A. Lieutenant.

Q. 17. Lieutenant in an Artillery company?

A. Yes, sir.

Q. 18. What was the condition of the railroads—as to their equipment, track, and roadbed—their capacity for efficiently moving crops or products of any kind?

A. Very poor. We rarely went over 12 miles an hour at full speed.

Q. 19. Is that as to passenger trains?

A. As to the trains I was on. The men would jokingly say that

they could jump off and pick blackberries and catch up with the train.

Q. 20. What was the condition of the buildings through the country?

A. Very dilapidated. No one could keep them in order.

Q. 21. What as to vehicles and farming utensils?

A. All of our people were in the War. It was home-made work and very poor. They were in bad condition. Sorry to report that, but they were.

Q. 22. To what extent were the people able to keep their buildings and utensils and vehicles in repair?

A. You know the fighting men were all in the war, and nearly all of those left at home were men of advanced years, and they were not able to look after things as they should. 1083

Q. 23. How was it as to household furniture, household effects?

A. Of course those things go to wreck when they are not repaired and they did go to wreck.

Q. 24. What in 1863 was the currency in use in the territory of the present State of Virginia—what was the measure of all values, the currency in which taxes were paid, and with reference to which all transactions were had?

A. Confederate money.

Q. 25. From your knowledge and observation, would you be prepared to state what, as a minimum, was the depreciation of the real and personal property in Virginia, occasioned by the causes to which you have referred as to June, 1863?

A. I should say about 50 per cent.

Q. 26. You would state that as a minimum?

A. Yes, sir, I think so, from my observation and knowledge of properties that were sold belonging to my own connections.

Q. 27. When I speak of the depreciation in value, I mean in actual value, taking any sound money as a standard, estimating the property of Virginia in June, 1863, and contrasting it with its value at any time prior to April, 1861—in either 1860 or 1861—what would be your estimate as to the depreciation, as a minimum—the lowest estimate that could be fairly made, of this depreciation?

A. Of course, I can't say positively, but I think what I said just now—about 50 per cent.—would cover it.

Q. 28. Is that your estimate of the depreciation of specific 1084 property then in Virginia?

A. I can't exactly understand what you mean. From my observation though, and from what I know that property sold for prior to the War, and what it sold for during the War, I think it was about 50 per cent, as well as I can remember. I heard my father speak of it. I didn't sell any myself.

Q. 29. Can you state approximately what proportion of the movable personal property in the State had been destroyed, carried off by the Armies, or consumed, in June, 1863, as compared with, say, April, 1861—as a minimum?

A. I would not like to make that estimate. I couldn't tell. I want to be as accurate as I can. Everything was in a very deplorable state, and the damage to property had been terrible. In fact, some farms had been destroyed—nothing left. Some had little. So I can't tell exactly. I wouldn't like to make any estimate.

Q. 30. Was the portion of the live-stock and personal property upon the farms in the State which were carried off, destroyed, or consumed, large or small?

A. Large. No question about that.

Note.—The state of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and the answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers; and without waiving said objections, proceeds to cross examine the witness.

Cross Examination. 1085

By the Attorney-General of West Virginia:

XQ. 1. Mr. Hawes, did you know the value of horses during the years 1862 and 1863 in Confederate money?

A. It varied very much, Mr. Conley, according to the horse; some of them $400.00, some of them $1,000.00, and some of them $1,500.00.

XQ. 2. Do you know the value of cattle during the same period?

A. No, sir.

XQ. 3. Hogs?

A. No, sir, only horses, because I had to deal with them.

XQ. 4. Do you know how much horses were assessed at during these years—on an average?

A. When an officer's horse was killed in battle, there was a board of appraisement, and according to the value of the horse he was allowed for him.

XQ. 5. I have reference, however, to the assessment made by the assessors of personal property in the various counties throughout the State of Virginia?

A. Oh, no. I don't know anything about taxes during that year. I was in the army all during the War. I don't know anything about taxes.

XQ. 6. What would you say would be the value of those horses in gold during the years 1862 and 1863?

A. I knew nothing about gold at that time. All I knew about was Confederate money.

1086

XQ. 7. Was Dinwiddie County an average county of this State during that period, as to property, according to your best judgment?

A. Dinwiddie county wasn't damaged as much as the other counties, from my point of view, during the War, because the Armies didn't fight over there as they did in the others.

XQ. 8. I note from the original assessment list of Dinwiddie County for the year 1863, that the total number of horses, mules, asses, and genets were 2,202, and that the total assessed value thereof was $211,290.00. I would like for you to state what the average assessment was for that county for the year 1863?

A. I don't know anything about the assessment of property there. I only speak of my knowledge of what happened to me during the War. It is a matter of fact, however, that I don't understand the assessments in the counties. Assessments in the counties are very remarkable things. How in the world they can have the conscience to put things down so low, has always been a mystery to me. I might say the same of personal property in the cities; but I know very well that they never assess things in the counties at the proper value. I know that.

XQ. 9. I hand you the original assessment list for that county for the year 1863 to verify the figures I have given you.

A. I haven't any doubt about that. I don't think they know what they are doing when they assessed them. Somebody must know, but I don't understand it.

1087

XQ. 10. Now, Mr. Hawes, isn't it a fact that the average assessment for that year in that county was, in round numbers, $95 a head?

A. You mean according to these figures. It looks that way.

XQ. 11. To be exact $95.95.

A. It looks like about $100.00 in round numbers. I know nothing in world about that. The mode of assessment in counties is past finding out for an ordinary layman.

XQ. 12. In the same county, and for the same year, there was assessed 6,662 cattle at a total assessed valuation of $92,441.00?

A. Well, as I told you a while ago, when you asked me about cattle, I know nothing about cattle—whether that assessment is right or wrong.

XQ. 13. It would average about $13.87 a head, would it not, according to the figures I have given you as shown by the original book of asessment?

A. I don't know anything about the value of cattle, if you ask me

to say whether I think that is a proper valuation or not. I know nothing in the world about it.

Redirect Examination.

By the Attorney-General of Virginia:

Q. 1. That assessment referred to in the question just propounded to you embraces all the cattle and all the horses in Dinwiddie County—good, bad and indifferent—colts, and old broken down horses, as well as any good horses that might have been left in the county, and so far as to the cattle, it embraces evidently all of the cattle in the county, including calves, old cows—as a 1087½ rule can you say whether much of the best stock was left on the farms—whether the best horses and the best cattle, and all of the beef cattle generally, were not carried off or consumed?

A. They were taken off, no doubt about that.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers; and without waiving said objections, proceeds to recross-examine the witness.

Recross Examination.

By the Attorney-General of West Virginia:

XQ. 1. I will ask you to take the original assessment list for Dinwiddie County and look in Column "42 under the head of the number of horses, &c., together with the assessed value, immediately following, and say whether the average in the columns you examine is below $100.00, and what the highest assessment of any one animal is, together with the lowest assessment of any one animal?

A. Mr. Conley, I told you just now that the assessed values in counties was past my understanding, and I know they are usually wrong; and yet why they allow them to assess that 1088 way I do not understand. This is, it seems to me, a mighty low assessment for horses. They nearly always do assess them low. Now, here are two horses at $50, and yet they may have been very poor in 1863. I expect it was miserable stock that those farmers had, because the best horses were taken by the cavalry and artillery for the War, and the rest that were left were very shaky, I expect; but giving them the benefit of the doubt, I would say that the assessment is fair, but I know nothing about that. Here are four for $150 each. There are three items of horses at $150 each. They may

have been young horses. It is all guess work. I don't know anything about that.

XQ. 2. The assessments made at all times take in the good, bad, and indifferent, do they not?

A. Are supposed to, yes, sir.

Signature of the witness is waived by consent.

MR. CHARLES U. WILLIAMS, 1089
being duly sworn, deposes and says, as follows:

By Mr. John B. Moon:

Q. 1. Mr. Williams, what is your age, residence and occupation?

A. I am nearly 59 years old, and my occupation now is a farmer. I have been a lawyer for 41 years, and I have resided in Richmond all my life—within a mile of it. Now I am about 5 miles out, but I hardly consider that my permanent residence. I still have a town house that I rent out while living in the country.

Q. 2. Where were you and what were you engaged in during the War from 1861 to 1865?

A. I went to Harpers Ferry on the 17th of April. I belonged to a battalion of students at the University of Virginia. We went to Harpers Ferry. Took a train to Manassas and then down to Strasburg, and marched from Strasburg to Winchester, thence by rail. After about ten days Governor Letcher ordered us back to the University and refused to permit us to be mustered in as a battalion, and we disbanded at Harpers Ferry, and I went to Winchester and staid for a day or two with a cousin of mine, Phil Williams, and then he drove me in his buggy to Staunton, and then I came back to Richmond. I then went into Richmond Howitzers, and went to Yorktown. I was engaged in drilling artillery during my whole stay at Yorktown. I staid there until the 10th day of February following—1862. I was then ordered to Richmond and assigned as drill master of artillery at the camp out here, and remained there until
July. I then was appointed on the Staff of Major-General 1090
Leigh R. Jones in 1862, and went with him through the first Maryland campaign. I marched from Richmond all the way to Gordonsville, acting as Adjutant for the artillery battalion—was temporarily assigned to that—and after that marched with the Army to overtake Jackson, and went through Northern Virginia into Maryland. I came back from Maryland and staid a couple of days with Mr. Phil Williams in Winchester, and I rode in a stage from there to Staunton, and then came to Richmond; I came as special

messenger to Mrs. Jones to inform her that her husband had been retired from the Army on account of a probably fatal trouble with his heart. This was in December, 1862, and he died in January, 1863. I went back to the Army after I had found that his death was inevitable. I had done the work that he wanted me to do. He was in bed and I went there every morning and spent several hours writing for him. I returned to the Army about the last week in December, 1862, and went on the Staff of General Corps of Pickett's Division, and remained with him until the close of the War, the last year of which I was his Assistant Adjutant and Inspector General.

Q. 3. This was all in the present State of Virginia except when you went into Maryland?

A. Yes, sir. We crossed at Shepherdstown in returning from Maryland, marched through Martinsburg, and then we came down by way of Bunker Hill.

Q. 4. What was the state of the country and what was the effect upon the country of the occupation by the army and of the existence of the war, in regard to improvements on lands, 1091
and the cultivation of lands, and the condition of personal property on the lands—stock or other personalty?

A. There was a constant state of depreciation. When I was in the valley in April, 1861, it was the garden spot of the earth. Every thing was beautiful, well tilled, and as well cultivated as could be. It was full of fine crops and fine stock. My next trip through the valley was in September, 1862, and the depreciation was very marked in every respect.

Q. 5. Taking the whole of the present State of Virginia what portion of deterioration, in your judgment, was there in actual value of the lands, from January 1, 1861, to June, 1863? What percentage of actual depreciation in the value of lands?

A. Well, the Confederate money at the beginning of the war was practically as good as greenbacks. By 1863 they had become very much depreciated, and the Confederate Government cut off 33⅓ per cent of its treasury notes, thinking, thereby, to enhance the value of the rest, but which had a much more natural effect of rendering the rest almost valueless. The 66⅔, instead of being worth as much as the old currency had been at par, was less than the 66⅔ before it was cut off, and the depreciation was much more rapid from that time on. But the value of land depends upon the employment of personal property upon it, and the personal property was scattered. The horses had been taken, the cattle had been eaten up, and the negroes were, many of them, working on public works. They were carried from Orange and Culpeper counties down to 1092
the Peninsula to throw up the fortifications there. They threw up all these fortifications around Richmond here, so that the farm-

ing operations were very much upset. And then the crops were so often trampled upon and destroyed by the army that the farmers were discouraged, and then a large number of the negroes were sent away. I know of a good many sent to Florida and North Carolina. In my own family there were several hundred sent to Florida, and I know of over 100 being sent by old Mr. George Pendle to North Carolina. I think old Sam Harriston sent over 500 south during the War. All these things tended to destroy the value of land because they could make no profitable use of it, and the farm products in the State were decreasing every day, and this had advanced very far, by June, 1863. There became such scarcity of forage and everything of that sort, that the Confederate Government exempted from service a number of men and appointed them to stay on the farms and work. I recollect that Mr. R. S. Allen, of Tuckahoe, was appointed to stay on the farm and keep his farm going for the benefit of the Confederate Army.

Q. 6. Well, what proportion of diminution was there in the value of the lands from this cause?

A. Well, I can give you a personal example—my father had a place near Richmond that would have brought $50,000 in 1860, that sold after the war for $11,500.

Q. 7. I mean between the dates of 1861 and 1863, as mentioned above?

A. Well, you take the sales that were made at that time, of course they were made in depreciated currency and they look better than they really were. If you take the sales that were made in Confederate money in 1863, there would probably have been 1093 three times as much Confederate money paid for property as would have been paid for the same property in 1861. That is in the cities. In the country the depreciation was more, because it was very hard to sell any land except to men who were making money and who wanted to get rid of the Confederate money and bought largely of lands. But they were selected lands, like that farm of Dr. Welford's on the Rappahanock River, and like Mr. Jerry Morton's place in Orange County. That was sold in Confederate money for a pretty large sum. But the farm was worth in 1860 about $50,000. I think it sold for $300,000. But that was an exceptional transaction. It was a valuable farm, as the Welford farm, but you take the average lands in Virginia, they were not worth 25 per cent of their value in 1860 in good money.

Q. 8. Between those same dates of January 1, 1861, and June, 1863, what was the depreciation, if any, in the amount and value of the personal property in the State, according to your best judgment?

A. I should say that the estimate which Major Hunter gave of 50 per cent, was too high. I think it was less than fifty per cent.

He told you that he would put it at 50 per cent as a minimum. I think even that is too much.

Q. 9. The personal property in the State had diminished more than 50 per cent?

A. Oh, yes, sir. It had disappeared everywhere pretty large- 1094
ly. We had lost enormously in negro property, by the Northern Army taking them and sending them to the rear.

Note: The State of West Virginia, by her Attorney General, objects to each and all the foregoing questions, and the answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers; and without waiving said objection, proceeds to cross examine the witness.

Cross Examination.

By the Attorney General of West Virginia.

XQ. 1. Mr. Williams, the depreciation in property you have just described was brought about mainly by a greatly depreciated currency, was it not?

A. No, I meant that it was destroyed. You know the State of Virginia had already furnished most of the horses and most of the cattle for the Confederate Army. The Southern States were too far off, and we needed our transportation for freight and men. So that very little live stock was brought here from any other State until the close of the war, when it had given out here practically, and we had to bring it from other States. We were foraging cattle in North Carolina in January and February, 1865.

XQ. 2. You have stated that at the beginning of the is- 1095
suing of Confederate money, which I believe was in 1861, it was at par?

A. It was about the same value as the United States greenbacks, but it depreciated steadily.

XQ. 3. What was its value in 1863?

A. The depreciation had advanced pretty far before the 1st of April, 1863, and then when we repudiated one-third of the currency it went much more rapidly. The fact is the credit of the Government was gone at that time. That book (referring to Matthews' Forms, p. 308) will give you the depreciation in January, 1863, three for one, February, four for one; March, five for one; April, five and one-half for one; May, five and one-half to five and three fourths for one; June, seven and one-half to eight for one; July, nine for one; August, twelve and one-half to thirteen for one; September, thirteen

for one; October, fourteen for one; November, fifteen to seventeen for one; December eighteen to twenty for one.

XQ. 4. How was it in 1861?

A. In 1861—May 1, 10 for 1, up to October, then it was 1.12 to 1.15 for 1; November, 1.15 for 1; December 1.20 for 1.

XQ. 5. In other words you paid $1.20 for a dollar in good money in December?

A. At that time the bank notes that were in circulation were considered pretty good money up until about 1863 or 1862.

Redirect Examination.

By Mr. Moon:

Q. 1. In 1863 what was the currency of the country here, the currency in which taxes were assessed and paid, and transactions of all kind had? 1096

A. The only currency in use was Confederate Treasury notes and State bank notes, but public confidence was a little stronger in State bank notes, and the people who got them in their possession kept them and paid out Confederate Treasury notes. One enormous loss to the State in the value of personal property was that the entire capital and assets of the banks in the State when the war broke out was in gold and silver and bank notes, which all drifted into Confederate money later, most of the gold and silver having drifted into the Confederate treasury.

Q. 2. What currency was the measure of value in 1863?

A. Confederate currency. The bank notes were for a long time at a premium but they became finally as worthless as Confederate money. There was practically no circulation except the Confederate notes. People held the bank notes because they did not want to part with them. They finally became worthless. But the Confederate currency was the only currency in use. If a man wanted to go abroad he found it very difficult to get gold and silver. He had to buy it at a premium. There was very little of it for sale.

Q. 3. Confederate money, then, as I understand it, was the basis upon which taxes were assessed and paid?

A. Yes, sir.

Q. 4. In which all transactions were conducted? 1097

A. Yes, sir. If you offered a man $500 for a horse it was understood that that was Confederate money. However it was a mighty poor horse you could get for $500 in 1863—

Q. 5. In other words, $1 meant $1 in Confederate money.

A. That was all, sir.

Q. 6. Can you state what effect the causes you have mentioned had upon the value of stocks and other securities in the Common-

wealth—bank stocks, stocks of insurance companies, manufacturing companies, and bonds of corporations, and other like properties?

A. Bank stocks, and the stock of other corporations, including railways, were constantly depreciating, and were finally entirely wiped out—banks, railroads, insurance companies, and everything else. There wasn't a share of any manufacturing or industrial corporation, or any other corporation in Virginia worth a dollar.

Note: The State of West Virginia, by her Attorney General, objects to each and all of the foregoing questions on redirect examination, and the answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers.

Signature of the witness is waived by consent.

CAPTAIN W. GORDON McCABE,
being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. Captain McCabe, will you please state your age, and where you reside?

A. I am 67 years of age and live in Richmond.

Q. Please state where you were during the war between 1098 the States, and what opportunity you had for obtaining knowledge and information as to the condition of the farms, forests, fences, buildings, and lands generally in Virginia, and particularly in those portions of Virginia which were occupied either by the Federal or the Confederate Armies?

A. I believe I have slept in every man's cornfield in Virginia. I first went out with a company from the University when I was a lad at College, marched up the valley to seize Harpers' Ferry. We got all we wanted, and we wanted a good deal. I then came back to college, packed up my things and paid my debts. Then I enlisted in the Richmond Howitzers and served in the Army of the Peninsula. That was in 1861. And there is where I first commenced to see the devastation. I had been prepared for college at the Hampton Academy, and my sister lived there. That was one of the most flourishing places in Virginia. In the first place Magruder issued an order that the people must get out. The Yankees had advanced from Fortress Monroe, and had several times occupied the town of Hampton. He took up the idea that Hampton would be

a most valuable place for them to put their troops in winter quarters, and determined to burn it. We burned everything 1099
in that town except the old church and the Whiting house and the old Hudgins house, and all those people were fugitives. That was a very rich country for trucking. They used to do a great deal of trucking. All that country was just wiped off. All those people had come up here to Richmond. Poor! Why, my sister who kept her horses and carriage, and had everything that a lady could have in those days—she had two children, she had a negro girl,—why she had to do her own cooking. Nobody had any idea how those poor children were.

Q. 3. What was the condition and effect of the occupation of the country by the two armies, upon the fences, forests and fields?

A. Well, in the Peninsula it was devastation. In 1862, after the battles around Richmond, I went into Charles City, New Kent, King William's County, and the next year in the Chancellorsville Campaign I was all up through Orange, Green, Madison—all through Northern Virginia. There were practically no roads at all. We used to drive our guns where we pleased. If we would go in the road they would go up to the hub, you know.

Q. 4. How were the fences in Northern Virginia?

A. They were down.

Q. 5. Did you go with the army through Northern Virginia on the Campaign of 1862?

A. No, sir. Now, in 1863, after the Chancellorsville Campaign, I was ordered to report to the Secretary of War in Richmond, who told me that he understood I had been a student of ordnance and gunnery. A man named Foote from Tennessee had of- 1100
fered them a breech loading gun that was going to do wonders. He ordered me to take a section of those guns to Charleston, South Carolina, where I used them against the enemies' gunboats from James Island. The guns didn't come for some time. I served in Fort Sumpter until that was knocked to pieces. Then I served in Battery Wagner, until it was evacuated.

Q. 6. When did you return to Virginia?

A. I came back that autumn and joined my battalion, and from the Wilderness down, I served through all the campaigns. I was at Appomattox Court House.

Q. 7. Can you mention any transaction or sales which came within your observation or knowledge, of real estate in 1863, which would illustrate the depreciation in the value of such property; if so, please state it.

A. Well, I lived at Westover, which was one of the show places on James River. It was one of the model plantations on the river, with 1,200 acres of land. It had splendid barns on it. Mr. John

Selden, who owned it, was known as one of the best farmers in Virginia. He had a very large family. Westover was built by William Byrd II, who was the most cultured man in the western world of his day, the greatest wit. Had been educated in England. Studied in the Inner Temple. Also educated in France. He was a fellow of royal society. He spared no expense in building Westover. He went to Italy and had the chimney pieces for Westover carved by Italian sculptors and sent to this country. He was a man of enormous wealth. Westover was perfectly kept up before the war. 1101
I lived there in 1858 and 1859—two years. In 1859 John Selden was offered by Mr. Beirn $75,000 in good money for Westover.

Q. Did he accept it?

A. No, sir, he refused it. What did he want to sell Westover for. In 1862 when McClellans army fell back on Harrison's landing after the battle of Malvern Hill, Fitz-John Porter's Horse occupied Westover. While Fitz-John Porter did what he could, they absolutely destroyed everything on that place. They stole the mantle pieces out of the house and sent them to New York. I have been called upon since the war to make a drawing of the mantle piece in the drawing room, and the present owner has had a replica made of it and it is there now. They destroyed everything. Poor old Selden was broken in spirit by living in refuge and poverty and he sold Westover to Major Drury in 1863 for $60,000 in Confederate money, which he put in Confederate cotton bonds and they became worthless.

Q. 9. Do you know what month it was in 1863?

A. No, I do not. I only know that it was in 1863. I can't, of course, tell about that. It is just a matter of memory anyway.

I recall another sale—this is to the best of my knowledge and belief. My father-in-law was a rich man—Mr. Edmund Osborne of Petersburg. His brother was a rich man too. Mr. Osborne had a great deal of money and Judge Gholson was a great friend of his. Dr. Osborne urged his brother, Mr. Edmund, to buy Judge Gholson's place. Judge Gholson had most of his money in England, and Judge Gholson told him he would sell it to him for $100,000 in Confederate money. And the old man believed that the 1102
cause was going to win and he told him that he wouldn't give it to him, the place wasn't worth it. He sold that place for $25,000 in 1865 and was glad to get it.

Q. 10. What was the condition of the farming interests of Tidewater, Virginia, particularly on the Peninsula, in 1863?

A. Well, it was a scene of desolation. The fences were down. The enemy would send raiding parties up from Newport News, where they had a strong base, as well as from Fortress Monroe, and

what they couldn't steal they would destroy, and there were no improvements or repairs.

Q. 11. What was the condition of the country in the region around Norfolk in 1863?

A. I can't tell you anything about it, I wasn't there.

Q. 12. Norfolk was occupied by the Federal troops.

A. Of course, it was. But I do not know what the condition was all through Culpepper, Orange, and the country all down through there. The roads were quagmires. They would take the fences and make fires out of them. The roads made a great impression on me—much more than they would on an infantry officer—because I was an artillery officer.

Q. 13. What was the condition of the highway bridges of Northern Virginia, in the Peninsula and in the valley—the country with which you were familiar—in 1863?

A. You know as well as I do about that. You know what they did. I can only repeat what everybody knows. They were in a very bad condition. Of course they were very bad. But 1103
you must remember that we had an engineer corps, and we would bring up the engineers when we couldn't pull the guns over, and they would fix them the best they could. Everything was going to the devil—that is the plain English of it.

Q. 14. What was the effect of the operations of the two armies upon the supply of live stock in the regions through which the armies marched?

A. There wasn't any. The live stock was swept away.

Q. 15. What was the financial condition of the people of Virginia generally in 1863?

A. Well, I can't speak of the people of Virginia generally. All I know were dead poor. But nobody thought about money. Nobody had any money. It wasn't considered very genteel to have money. It wasn't very respectable to have money.

Q. 16. What was the condition of the railroads in Confederate Virginia in 1863?

A. Everything was run down. You know the rails were built, some of them, with scrap iron. I can't remember ever having been in a passenger car when I used to come down and go away. I used to ride in box cars pretty much all the time. When the troops were moved we always travelled in box cars or on flats. The trains were never on time and were always running off the track.

Note: The State of West Virginia, by her Attorney General, objects to the foregoing questions and answers, for the reason that they are not responsive to the or- 1104

der of reference, and for other reasons apparent on the face of said questions and answers.

Signature of witness is waived by consent.

STATE OF VIRGINIA,
City of Richmond, to-wit:

I, T. Gray Haddon, a notary public in and for the City of Richmond, and State of Virginia, do hereby certify that the foregoing depositions of Robert W. Hunter, W. W. Scott, John P. Branch, Phillip A. Wellford, William G. Taylor, S. H. Hawes, Charles G. Williams, and W. Gordon McCabe, were taken before me at the times and place therein set out; and I further certify that each of said witnesses was duly sworn.

Given under my hand and official seal this, the 15th day of June, 1909.

(Seal) T. GRAY HADDON,
Notary Public in and for the City of Richmond and State of Virginia.

DEPOSITIONS OF GEORGE W. ATKINSON ON BEHALF OF THE DEFENDANT.

Deposition of George W. Atkinson, taken by the State of West Virginia, to be filed and read as evidence in her behalf in the cause of the Commonwealth of Virginia against the State of West Virginia, pending in the Supreme Court of the United States, which deposition is taken by the consent of the parties on the 14th day of July, 1909, at the law office of Mollohan, McClintic and Matthews in the City of Charleston, County of Kanawha and State of West Virginia. 1

Present on behalf of the defendant, the State of West Virginia: George W. McClintic, of counsel.

Present on behalf of the plaintiff, the Commonwealth of Virginia: John B. Lightfoot, Jr., by appointment of William A. Anderson, Attorney-General of Virginia.

JUDGE GEORGE W. ATKINSON,

a witness of lawful age, being first duly sworn, deposes as follows, to-wit:

(Direct examination, conducted by George W. McClintic, Esq.)

Q. State your age, residence and present occupation.

A. I was sixty-four years old a few days ago; my legal residence is Charleston, Kanawha County, West Virginia; my present official residence is Washington, D. C.; Associate Judge of the United States Court of Claims.

Q. What other official positions under the Government of the United States have you held, if any?

A. I was four years United States Marshal and nearly four years United States District Attorney; and a member of Congress at one time.

Q. What official position did you hold, if any, under the 2
Government of the State of West Virginia?

A. I was four years Governor of this State, from March 4, 1897, to March 3, 1901, inclusive.

Q. In what county in West Virginia were you born and raised?

A. Kanawha County.

Q. In what county in West Virginia were you living from the year 1861 to 1865?

A. In Kanawha County.

Q. What official position, if any, did your father, James Atkinson, hold during the period from 1861 to 1863, previous to the formation of the State of West Virginia in 1863?

A. Sheriff of Kanawha County.

Q. In what parts of what is now the State of West Virginia were you familiar—with what parts were you familiar from the year 1861 to June 20, 1863?

A. Kanawha County, Fayette, Nicholas, one or two trips to Greenbrier County, also Jackson and Roane Counties. I was also in Putnam and Mason a time or two.

Q. Was the section of West Virginia with which you were familiar overrun by the armies either of the Confederate or Union side?

A. By both, at times. The section of the state I have mentioned with which I was familiar during that period was most overrun, I think, by home guards of both armies. The Confederate army occupied Charleston at the beginning of the War and soon thereafter was driven from this valley by Federal forces under the command of General J. D. Cox, of Ohio troops. This section, if I remember correctly, remained under the control of the Federal 3
army until September, 1862, when the Confederates entered

the valley from the east and drove the Federal forces under the command of General Lightburn across the Ohio River into the State of Ohio.

Q. You spoke of home guards; please explain what you mean by home guards, and what was their usual occupation, on each side?

A. The home guards were composed of militiamen principally under the command of captains, and participated as parts of both armies. Their principal occupation, we used to think during the War, was that of stealing and marauding. The Union home guards pursued the Confederate citizens or those who sympathized with the Confederacy, and vice versa; so that the marauding was pretty general all through these counties during that period; and I remember distinctly that our citizens feared them much worse than they did the army on either side so far as maintaining and protecting their property was concerned.

Q. Was it not a fact that these home guards often took the lives of opponents without any pretense of trial or otherwise?

A. Unquestionably so, on both sides. It was a common occurrence to hear of men being killed all around these adjacent counties, first by Union home guards and also by Confederate home guards.

Q. What was the condition of this section spoken of by you as to security of property during the period from the beginning of the War to the 20th day of June, 1863, and thereabouts? 4

A. There was practically no security of property at all, either of Union people or of Confederate people.

Q. What effect did this state of affairs have upon the value of property, both real and personal, during that period?

A. It necessarily materially reduced the values of all kinds of property all through this region of country.

Q. What proportion of able-bodied men of soldier age were in the two armies from this section of the country, in your opinion?

A. I am quite sure a decided majority of the men of both sides went into one army or the other. I could hardly say with any degree of exactness as to the proportion, but I should say anywhere from sixty-five to seventy-five per cent. of able-bodied men, middle-aged and young men, volunteered on both sides during that period.

Q. State any specific instance of which you may know that the Confederate army took the property of Union sympathizers and confiscated the same during this period?

A. When General Loring came into this section, the leading or prominent men of the Union side left this section in advance of General Lightburn's retreating force, and remained in Ohio until the Federal troops returned to Charleston. The rule, as I understood it then, was for the Confederates to prey off the property of

the Yankee sympathizers; and I can recollect one particular instance of their taking property away, and that was from the dry goods and grocery store owned by my father and Greenberry Slack. They had a right good sized store of goods here in Charleston, and General Loring's forces took it all. They, however, offered to pay for it in Confederate money, but very little or a comparatively small part of it was taken in comparison with the value of the goods, because it was worthless money; so it was on the whole a practical taking. I am quite sure other people here lost property the same way, but I do not recollect any particular instance now.

Q. Do you remember the condition of the roads and bridges in this section of the State of West Virginia at that time, up to the 20th of June, 1863, or thereabouts?

A. My recollection is that practically all of the bridges, if not all of them, were destroyed by one side or the other. I know that General Lightburn destroyed the wire suspension bridge across Elk River after crossing it to prevent the Confederates from pursuing him. I also remember distinctly that the bridge across Coal River was destroyed, but I cannot recollect which army did that job, or whether it was before or after General Loring's entrance into this valley in the fall of the year 1862.

Q. Was there much emigration from this section of the valley with which you were acquainted during the period from 1861 to 1863 by people going to Ohio as Union men or to Dixey or the South as Confederate sympathizers?

A. A very large proportion of our population went West and South, Union people going towards Ohio and into Ohio and the Confederates southward, principally to Virginia. There were times from 1861 to 1863 when there were very few able-bodied men in all this section, round about Charleston.

Q. Do you remember whether or not there was talk or scare of confiscation of property by either Union people or by Confederate people according as to the one who should win, during the period of which we have been speaking?

A. That feeling existed to a very great extent from the beginning to the close of the Civil War, as no one seemed to know then, or at least during the first half of the War which side was going to win. I have always regarded the battle of Gettysburg the decisive battle of the War; and after that event the Union people were quite confident of success. Prior to that time no one knew what the result would be, and there was a great fear of confiscation of property on both sides.

Cross Examination.

By Mr. Lightfoot:

Q. Judge, when the War broke out in the year 1861, you were, I believe, according to your statement of your present age, about fifteen or sixteen years old.

A. Yes, sir.

Q. Were you actively enlisted in the army?

A. I was not.

Q. Your observations or events in the counties and districts 7
you have mentioned were obtained principally by the casual visits which you might have made from one county to another and not as a soldier with the armies?

A. That is correct.

Q. In answer to Mr. McClintic's question whether or not the sections you have mentioned were overrun by the armies of both sides you have stated that at times they were subject to the depredations of the home guards. I take it that this answer means that the actual organized force neither of the Confederate nor of the Union army occupied this section for any lengthy period of time between 1861 and 1863; is that correct?

A. The Federal troops occupied this valley practically all the time from early in 1861, indeed, all the time from 1861 until General Loring came in in 1862 and drove them out. Then the Federal forces were reinforced, and, in a very short time after General Loring came in, returned and drove him out, and from that time until the close of the War the Federal forces occupied this entire valley.

Q. When you speak of the valley, please designate the valley to which you refer.

A. The Great Kanawha Valley.

Q. Are these facts which you state as to the occupancy of the valley by the Federal and Confederate organized forces made as a matter of historical information or from your own knowledge and information, seeing the armies there?

A. I speak principally of my own recollection. I do not recollect any return of Confederate troops in this valley after General Loring retreated from it.

Q. That was when? 8

A. 1862. I do recollect a raid made through the Ohio Valley, crossing the Kanawha in the neighborhood of its mouth that created quit a stir down in that section, but that was more confined to the Ohio Valley than the Kanawha.

Q. Who made that raid?

A. General Albert G. Jenkins.

Q. Is it not a fact, after the year 1862, with the exception of the Jenkins raid that you have mentioned and the further exception of

a raid by General William E. Jones, there was no Confederate occupation of this valley west of Greenbrier and the border counties?

A. I do not think Jones came as far west as Greenbrier county. My recollection is that his raid was up in the neighborhood of Philippi, Elkins, Grafton and that region. I do not recollect any raids of regular Confederate soldiers other than those I have mentioned; but all the while the home guards were marauding and had our people scared, terrified, practically throughout the whole of the War.

Q. Judge, the term "home guards" must have been a misnomer if the men who constituted them didn't guard the home, but on the contrary were marauders?

A. The Union home guards were intended to protect the loyal citizens and the Confederate home guards were to protect those who sympathized with the Confederacy. However, the name that followed them all through the War was that they were not much short of pirates on both sides. I do not think that the Union home guards ever stole property from the Union people—they did their capturing from the Confederates, and vice versa.

Q. What percentage of the personal property of the section which you have mentioned would you say was absolutely destroyed by the depredations of those home guards?

A. I could not give any correct estimate of the amount of property destroyed. That would be impossible; and personally I know very little about their destruction of property. They confined their action chiefly to capturing property and carrying it off all around Charleston in Kanawha County.

Q. What character of property?

A. Anything they could get their hands on and remove.

Q. Do you think that the extent of these depredations was sufficient to make an appreciable decrease in the total valuation of personal property in this section?

A. Unquestionably so; because no one had encouragement for the production of personal property. They managed to raise enough to live on. There was no such thing as people's producing with a view of increasing their property or their wealth. It was a matter simply of living through the pendency of the War.

Q. Judge, is it not true that the farmers had an open and ready market and sale with the Union forces, and with the markets west of them, and with their home markets, for all the products of their farms, both agricultural and live stock?

A. Yes, to a certain extent in this immediate section and along the Kanawha River while the Federal troops were in control, but the people who lived along this valley did not know what day the Federal troops would be driven out; hence, they had no encouragement to produce property for sale. And my recollection

is quite distinct that very few products of any kind were raised in this section during the entire period of the War. I know this, and I know it well, that not only did the Federal Army supply itself with the necessary supplies for the support of its soldiery, but also that most of the people who lived in this town, if not all of them, got their supplies from Gallipolis, Ohio, by means of steamboats which plied this Kanawha River during that part of the War when the Federal troops were in charge.

Q. When the Federal troops supplied themselves from the farms of the people, did they not pay for the supplies which they obtained?

A. I do not recollect any instance of the Federal army buying any supplies from the farmers in this section. They might, however, have done so. But I recollect vividly the fact that hay for their horses and the bacon, beans and other supplies for the men, were shipped here on steamboats from Gallipolis, Ohio. My recollection further is that none of the farmers, certainly with my recollection, raised anything to sell to the army or to anybody else during the period of the War. My father owned a large farm five miles from Charleston on Elk River, and I am very sure he never sold a dollar's worth to anybody during the entire period of the Civil War, or I would recollect it. 11

Q. Taking the County of Kanawha, would you say that the personal property in that county during the period of the War was, in the aggregate, decreased by reason of these depredations?

A. Unquestionably and materially so.

Q. Going further west, would you say that the same is true of Jackson County?

A. In a general way, I should say yes, although I did not know so much about Jackson County as I did about Kanawha, as I lived here. Yet I often saw people from Jackson County who came to this county.

Q. Mason County?

A. It would be less in Mason County, I think.

Q. How about the Pan Handle—in the northern part of the State?

A. I do not think it was disturbed during the War in any way materially, except the time General Morgan went across the Ohio River and went over or through Ohio and was captured near Steubenville; and I have heard a great many people in Wheeling say that they were badly scared for fear General Morgan might cross into the City of Wheeling and burn the city. I speak somewhat knowingly on this point, because some eight or ten years after the War closed I moved to Wheeling and lived there for twenty years.

Q. When was that raid, Judge—approximately?

A. 'Long about 1864, I think. 12

Q. How long did it last?

A. Morgan was in Ohio—he was engaged in marching through Ohio two or three weeks.

Q. Then, as a matter of fact, the depreciation of property in the Pan Handle resulting from the terrified condition of the people did not last over two or three weeks?

A. Yes; I do not think property very much depreciated up there on account of that raid. The fear was that he might cross into West Virginia and destroy the towns and cities in that section.

Q. Now, Judge, from your information generally as to the situation in West Virginia during the War, did personal property in the whole state depreciate in its valuation during the War?

A. Unquestionably so, taking it as a whole.

Q. Do you know Judge J. M. McWhorter?

A. Very well.

Q. Do you know what position he held immediately after the War?

A. Yes, sir; he was State Auditor of West Virginia. He was the second Auditor elected in West Virginia after the State was formed.

Q. What do you think of Judge McWhorter's opportunities for observations of the conditions which you have mentioned?

A. They were as good as anybody's in the section of the state where he lived and moved among the people.

Q. Was Judge McWhorter reckoned a careful and accurate 13
Auditor?

A. A very competent and able man.

Q. If it were stated to you that Judge McWhorter's report as Auditor to the legislature of West Virginia showed an increase in the valuation of personal property in the County of Kanawha for the period between 1860 and 1865, would it not tend to change your opinion somewhat that you have expressed that personal property in Kanawha County depreciated in that period?

Question objected to by counsel for the defendant, because Judge McWhorter never reported anywhere for the period between 1860 and 1865, but published an Auditor's report for the year 1865.

A. While I have confidence in Judge McWhorter's ability, integrity and correctness, yet I do not believe that such statement was borne out by the facts. If property, as you stated in your question, in this county increased from 1860 or 1861 to 1865, I would account—

Counsel for the Commonwealth of Virginia objects to Judge Atkinson's answer continuing, so far as he attempts to account for Judge McWhorter's report.

(Answer concluded). I would account for it in two ways: First, by the assessors who fixed the value upon personal property and real estate in the county. As every one knows, no two 14
assessors will value property upon the same basis or by the same rule. And, secondly, that this large increase to which Judge McWhorter refers was doubtless created during the last year of the War, after it was practically settled that the Union, in the great conflict, would prevail in the end. Then values began to look upward.

Q. Without waiving the objection made to the answer, I will ask you this: Taking the first of your explanations, that is, that the assessors valued property in Kanawha County different from what other assessors would have done, is it not true that those assessors had greater and more accurate opportunity to ascertain the value of that property than you yourself did?

A. I will admit that an assessor ought to know more exactly the value of personal and real property in the county than I; but I certainly know that no two assessors ever valued the same property at the same rate.

Q. Now, taking the second of your explanations, that is, that the increase shown did, in your opinion, occur in the year 1864, and assuming that this is true for the purpose of the question, does not that indicate that any depreciation was fictitious rather than actual; that is, that the property itself had not diminished, but that its supposed value was lessened by reason of the apprehension of the people? 15

A. To a certain extent, that might be true.

Q. Now, I will ask you further, if it were stated to you that the same report of Judge McWhorter, just referred to, stated that the aggregate increase in values of property, real and personal, in the State of West Virginia, for the period between 1860 and 1865, was $6,170,946.00, would that not tend to change your opinion that property within the whole state of West Virginia depreciated during the War?

Counsel for the defendant objects to the question, because Judge McWhorter never did state in printed report, or otherwise, that the property increased the said sum during the period from 1860 to 1865, but Judge McWhorter did compare the assessment of 1860, as made by the Commonwealth of Virginia, with the assessment of 1865, which assessment was made after the close of the War, as made by the State of West Virginia, and the difference between the two assessments was the sum stated.

A. No, it would not. I have no doubt but that property values did increase in the upper part of the state to some extent during the

period of the War, which part was not burdened by soldiers of either side; but for the southern portion of the state, I cannot believe, taking the whole period of the War, that the valuation of personal property and real estate increased at all. On the con- 16
trary, I am quite confident that it did not do so. Furthermore, the so-called increase to which Judge McWhorter referred, is fully explained in the objection just above made by the counsel for the State of West Virginia.

Q. I now read you from Judge McWhorter's report for the year 1865, part of page 51, second paragraph, of said report, as follows:

> "By the returns of commissioners of the revenue of the several counties of this State in 1860, as ascertained from the report of Mr. Bennett, Auditor of Public Accounts of Virginia, made in the year 1861, the value of real estate assessed for taxation, according to the valuation made in 1856, amounted to the sum of $81,583,891.41. According to the United States census returns of 1860, the aggregate value of the real estate of the resident citizens of the respective counties amounted to the sum of $110,623,845.08, showing an excess of $29,039,933.67 in valuation not assessed for taxation. When we take into consideration that this excess arises from the valuation of the real estate of the resident owners only, several millions would be added to the excess by the valuation of large tracts held by non-residents which are not included in the census reports. This is the result of a comparison of the census returns with the valuation made four years previous, and when we consider that the value of real estate has enhanced each year since in an increased ratio, we might reasonably expect that a valuation 17
> made at this time would more than double the aggregate valuation as it now stands."

This is the expressed opinion of Judge McWhorter as Auditor. So far as real estate is concerned, would it not tend to change your opinion, if you have expressed such, that the value of real estate depreciated during the War in the State of West Virginia?

A. I have never said that the value of the real estate in West Virginia, in all of the counties in West Virginia, depreciated during the War. As I have stated, the upper portion of the State did not suffer very materially from the results of the War. But I adhere to my former statement, that in the whole southern tier of counties, with many of which I was familiar during the War as a young man living here in Kanawha County, it did materially depreciate. I do not now recollect, within my own personal knowledge, of the

sale or offering for sale of real estate in this section during that period. A general deadness prevailed because of the uncertainty of the result of the War and because of the scarcity of money with which to purchase property. It was a struggle on the part of most of our people to support themselves and families during that terrible period of the War.

Q. Referring to personal property, I now read you from Judge McWhorter's same report, page 48, as follows:

> "There have been no assessments made in several of 18
> the counties for the year 1865, consequently the figures
> given are but estimates for such counties. The assessments
> for 1860 are taken from the report of Mr. Bennett, Auditor
> of Public Accounts of Virginia, made in 1861. A large al-
> lowance has been made for the loss of property in those
> counties which suffered most during the rebellion. By this
> estimate the value of Personal Property in the year 1865,
> exceeds that of 1860 in the sum of $6,170,946. When we take
> into consideration what has been the prosperity of those
> counties not immediately exposed to the ravages and desola-
> tion of war, to thus overcome the loss sustained by the others,
> and still give this excess, it is highly gratifying."

Calling your attention to the fact that Judge McWhorter, in his estimate of the increase in value of personal property during the period covered by the War, has made "large allowance * * * * for the loss of property in those counties which suffered most during the rebellion," would you not now say that your opinion, as expressed, and which I understand is based on your observations as a young man from fifteen to nineteen years, would be changed by this expressed opinion of Judge McWhorter?

A. Not materially: First, because, as I have heretofore stated, of the inequality of values placed upon property by assessors; and, secondly, that at the beginning of the year 1865 the War was practically settled, and because business of all kinds as well as values
of all kinds increased in dimensions. I can not believe that 19
from 1861 to 1864 there was any increase of personal property,
not, certainly, in any of the southern tier of counties. On the contrary, I shall always believe, from what I saw myself and heard during that period, that such values decreased.

Q. Excepting the southern tier of counties referred to, you would not be willing to say that said increase did not take place in the remaining counties, would you?

A. No, sir; I would not, especially in the northern tier of counties.

Q. Would you be willing to say that there was not such an increase

in the counties, exclusive of what you term the southern tier of counties, sufficient on the average, considering any depreciation in that southern tier, to cause the increase noted by Judge McWhorter?

A. No; not altogether; because my candid judgment is that the increase to which Judge McWhorter refers was for the entire year of 1865, when the War has closed and when business of all kinds had started up, thus making a demand for the development of all kinds of property.

Q. Did you know Mr. J. R. Dodge, who was an official of the United States Department of Agriculture in 1865?

A. I never knew him personally. I have heard of him. His name is very familiar to me.

Q. Was he a man of accredited reputation in the State?

A. I would take him so to be. 20

Q. In a book written by Mr. J. R. Dodge in August of 1865, in the preface of which he acknowledges valuable information and suggestions from twenty or thirty seemingly prominent men, amongst them Honorable W. T. Willey, Governor A. I. Boreman, Honorable John M. Phelps, J. H. Dis DeBar and Mr. McWhorter, in Chapter 3, discussing the value of lands, I find on page 42 the following paragraph:

> "Indeed, it would be difficult to compute with accuracy, in Federal Currency, the actual appreciation already attained at the present writing, since the census of 1860. It would amount to tens of millions of dollars in advanced rates at which property is held, much of which is founded upon actual cash purchases within the past year. While this advance is mainly speculative, there is energy and enterprise and skill enough, as well as capital, interested and actually engaged in the development of these valuable resources, to insure a steady and permanent progress of industrial improvement."

Do you not think that the opinion of Mr. Dodge thus expressed, and which is substantiated by that of Judge McWhorter, should have the effect to change your own opinion as to the depreciation of realty?

A. Not altogether. That book was written after the close of the Civil War and when industries of all kinds began to start up, when people had turned their eyes in the direction of West Virginia and came into our midst for the purpose of becoming citizens of our new Commonwealth and to take a hand in its development. Property values, of course, increased at a very rapid rate. More- 21
over, the opinion expressed in the book is extremely roseate, and was intended to encourage our own people, to encourage more

than had theretofore been done the development of the natural resources of the counties which composed the new State which were then known to be very great. Our leading newspapers at that time published glowing articles intended to encourage immigration and to encourage our own people, which were laudable, indeed, and which proved to be very helpful. Not only the book of Mr. Dodge, but other pamphlets and publications were made with this object in view. I do not mean to say that the development which they portrayed was incorrect, but at that time, to say the least, such articles and publications were exceedingly roseate.

Q. In view of your reply, I call your attention to the fact that Mr. Dodge had founded his opinion, certainly to some extent, upon his report of actual instances. To substantiate this, I read you from page 44 of the same book, a paragraph which occurs in connection with Mr. Dodge's discussion of the lands purchased by George Washington and other great people.

> "As an evidence of the quality of these lands, it may be stated that George Edwards, upon similar lands in the vicinity, near Moundsville, sold sufficient hay in 1863 and 1864, in addition to pasturage for his cattle, to make an average of one hundred dollars per acre for his farm, a profit equivalent to its cost."

Would not that indicate that Mr. Dodge was not drawing 23
wholly on his imagination?

A. In the first place, our first great president never purchased any lands in West Virginia. He located them and secured them by tomahawk titles. In the next place, I have no doubt that George Edwards in Marshall County, one of the best farming counties in the State of its size, raised and sold the hay Mr. Dodge referred to, and that, as you know, is in the extreme northern part of the State where farmers and other producers were not disturbed during the War. That kind of hay growing did not exist down in this region of the State, I am sure.

Q. Now, Judge Atkinson, as a last reference to this matter, I will read you a paragraph from page 147 of the same book, occurring in Mr. Dodge's discussion of the personal property of West Virginia, as follows:

> "In some counties great losses have been incurred in live stock from marauding, particularly in horses. Yet the State returns for 1862 give an increase in horses, over 1860, in the counties of Barbour, Brooke, Cabell, Doddridge, Harrison, Hancock, Jackson, Kanawha, Lewis, Monongalia, Marshall, Ohio, Preston, and several others. In some cases this increase

is extraordinary, as in Kanawha, from 1402 to 5222, doubtless due to a great influx from Fayette and Greenbrier, on the great highway of Rebeldom and from which there is no report. The same disturbing causes have affected other stock to the same extent. Sheep had already increased 23
in 1862, in Brooke, from 40,620 to 46,200; in Hancock, from 21,402 to 29,932; in Harrison, from 13,202 to 17,991; in Monongalia, from 10,945 to 17,594; in Marshall, from 16,022 to 22,197; in Preston, from 19,084 to 25,980. Since that date there has been a still heavier increase."

I now ask you if this assertion of Mr. Dodge, taking his information from the returns for the year 1862, does not indicate to you a large increase in the values of personal property, at least so far as live stock was concerned?

A. The comparison made by Mr. Dodge is between 1860, when the War was coming on and shaping itself for its horrible disasters, and 1862, before it had well begun. If he had made his comparison between 1860 and 1863, it would have been, in my judgment, materially different.

Q. You spoke of General Loring's offering to pay for the dry goods and grocery store of your father in Confederate money. Did your father accept this offer?

A. I did not mean to say that General Loring himself offered to pay anything. It was his men that supplied themselves with the goods I referred to, and they had, as I was informed, a bountiful supply of Confederate money. My father and his partner, Mr. Slack, were not in Charleston at the time, they having refugeed to Ohio from fear of personal injury of Confederate soldiers. The store was in charge of a clerk. I knew nothing of it myself personally, only I know that when the Confederates left here there were no goods left in the store; and I often heard my father say that he made no inquiry about the Confederate money to pay for the goods, 24
if they were paid for, because such money was of no value here.

Q. At what date was this taking of your fathers property?

A. In September, 1862.

Q. Do you know what the ratio of Confederate money to gold was in September, 1862?

A. I do not, in this section, or in any section for that matter. I know that here it could not be passed as currency at all, at least that is my recollection of it.

Q. Do you know that Confederate money, in September, 1862, passed current in the State of Virginia and all over the South and had purchasing power?

A. I do.

Q. If your father had accepted the Confederate money which was offered him and had demanded enough to have been equal to the gold value of his goods, was it not possible for him to realize value received in September, 1862, for that Confederate currency?

A. I hardly think it was; because he could not go to Richmond or to any place in the South to exchange it for good money. First, he would be afraid to go; and second, he could not get greenback money in the South that would be current here. Moreover, he was not here, as I have stated; and so far as I know, he never received any value whatever from any source for the goods taken.

Q. If he did not receive this value, however, it was not the 25
fault of the parties taking it, as I understand your deposition, so far as that value was estimated in Confederate money?

A. As I was not personally present at the time the goods were taken, I know nothing about the amount tendered or the amount paid to any one in the store. My information was then that General Loring's order was that his troops should not improvidently destroy property of any kind. A number of buildings were destroyed upon his entrance to this town, but they were all burned by the retreating Federal troops. I do not recollect a single building that was destroyed in this section by General Loring's order.

Q. I understood you to say that you do not recollect a single instance of the taking of any personal property by any of the regularly organized forces of either side without payment being made or tendered therefor: is that correct?

A. Of my own personal knowledge, I do not know of the destruction of any personal property by General Loring's troops.

Re-Direct Examination.

By Mr. McClintic:

Q. Was not the year 1865, under the stable government then established in the State of West Virginia and under the protection thus given to all property in this State, a year of great speculation in all sorts of enterprises in the State of West Virginia?

A. My recollection is that it was.

Q. Was not most of the lands up Elk River, for instance, leased or purchased for oil purposes in the year 1865?

A. I knew of a large number of oil leases being made on Elk 26
River, and I knew of one sale of a small tract of land at the mouth of Two Mile on Elk, which tract sold at what we considered a fabulous price, being in the neighborhood of forty thousand dollars. My father owned something like one thousand acres five miles from Charleston on Elk River, and he was offered forty-five thousand

dollars cash for it, but he asked fifty thousand, and allowed the five thousand dollars between them to defeat the sale; and subsequently, after his death, I, as administrator of his estate, sold it for about ten thousand dollars.

Q. Wasn't the period of the spring of 1863 the period of the greatest depression in the values of both real and personal property in this section of West Virginia?

A. I think it was.

Q. If there really were 5,222 horses in the County of Kanawha in 1862, being four times more than there were in 1860, did not that include all the cavalry horses of the Union and Confederacy in the county?

Counsel for the Commonwealth of Virginia objects to this question, on account of the fact that it calls for an expression of opinion by the witness, unless said question is answered from the personal knowledge of the witness.

A. I do not know about that; it may have done so, and yet it may not. 27

Q. Was there not a considerable influx of people, especially of Union people seeking protection, into the County of Kanawha during the War?

Same objection to this question as was made to the preceding question.

A. There was.

And further dependent saith not.

Signature of witness waived.

Counsel for the Commonwealth of Virginia objects to the answers of the witness to all of the foregoing questions so far as the said answers show that they are not made from his own personal knowledge.

Counsel for the State of West Virginia excepts to all of the questions asked by the counsel for the Commonwealth of Virginia in so far as they assume facts as true from publications or other works not in evidence in this case.

Counsel for the Commonwealth of Virginia here states that in so far as the publications from which he read or quoted were read and quoted, they were considered by him as in evidence in this cause.

STATE OF WEST VIRGINIA. 28

County of Kanawha, to-wit:

I, J. F. Cork, a notary public in and for the County of Kanawha and State of West Virginia, do hereby certify that the foregoing deposition of Judge George W. Atkinson was taken at the time and place as therein set out; and I further certify that said witness was duly sworn.

Given under my hand and official seal this 14th day of July, 1909.

(Seal) J. F. CORK,

Notary Public in and for the County of Kanawha and State of West Virginia.

My Commission expires Dec. 31, 1909.

Notary's Fee $7.75.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT F-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT F-1.

All Money. Paid into the Treasury of the Commonwealth from the Counties Included Within the State of West Virginia from March 19th, 1823, to December 31st, 1860, Inclusive.

PARAGRAPH VI OF DECREE.

		Amounts agreed upon by Plaintiff and Defendant as credits to West Virginia.	Items claimed by Defendant, agreed to as to amounts, but not admitted by Plaintiff to be credits to West Virginia.
1	Bonus received from Banks in West Virginia Counties		$ 96,253.62
2	Clerks of County and Corporation Courts	$ 161,223.06	
3	Clerks of Superior Courts	96,880.51	
4	Clerks of District Courts	769.28	
5	Clerks of Superior Courts of Chancery	2,797.59	
6	Costs—Civil and Criminal Prosecutions	1,926.36	
7	Dividends from Banks in West Virginia Counties		786,666.98
8	Dividends and Interest from Turnpike Companies in West Virginia Counties		13,595.48
9	Dividends from Bridge Companies in West Virginia Counties		6,028.51
10	Dividends from Interstate Turnpike Companies (Proportion)		1,355.92
11	Dividends from James River & Kanawha Company (Proportion)		352.21
12	Escheats	4,603.57	
13	Fines, Forfeitures and Penalties	57,911.76	
14	Interest from City of Wheeling		571.81
15	Land—Sale of Unappropriated	109,103.64	
16	Land—Redemption of	58,944.10	
17	Land—Sale of Delinquent and Forfeited	17,694.73	
18	Land—Redemption of and Sale of Delinquent and Forfeited	48,699.36	
19	Militia Fines	73,926.39	
20	Merchants and Mechanics Bank Stock sold (Bonus Stock)		43,103.35
21	Northwestern Bank—Profit on 1,082 shares sold		5,471.42
22	Northwestern Turnpike Road—Tolls		126,339.89
23	Staunton & Parkersburg Road—Tolls		17,080.71
24	Taxes—General Revenue	5,037,421.46	
25	Taxes—Capitation	123,111.10	
26	Tax on Free Negroes	4,079.52	
27	Tax on Dividends	53,202.60	
28	Tax on Railroad Travel	49,202.01	
29	Tax on Notarial Seals	48,247.02	
30	Voluntary Enslavement	47.50	
31	Miscellaneous — Unclassified Receipts	4,604.16	
	Total	$5,954,395.66	$1,096,819.90

F-1
P-2

SUMMARY.

Total claimed by Defendant	$7,051,215.56
Total admitted by Plaintiff	5,954,395.66
Total not admitted by Plaintiff	$1,096,819.90

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Other Evidence and Proceedings Relating to Paragraph VI of the Decree.

[*Vol. 1. November 16, 1908. Direct Examination of A. G Potter.*]

TESTIMONY ON BEHALF OF COMPLAINANT UNDER PARAGRAPH VI OF THE DECREE.

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ARTHUR G. POTTER,
testified as follows:

Mr. Anderson: The next is Plaintiff's Exhibit F-1. This is responsive to the sixth paragraph of the decree. It purports to be a statement of all money paid into the Treasury of the Commonwealth from the counties included in the State of West Virginia during the period prior to the admission of the latter State into the Union.

By Mr. Anderson:

Q. State what you know as to the correctness of that statement, how it was made up, by whom it was made up, and from what sources of information.

A. The figures in the first division, redemption of land and escheats, were taken from the Auditor's ledgers, from 1816 to 1822, and the Literary Fund Journals A, B and C. The redemption of lands and escheats were payments to the Literary Fund.

The second division, public lands and the Land Registrar's Office, were taken from the yearly printed report of the Auditor of Public Accounts.

Q. Fines, forfeitures and penalties is another item?

A. They were taken from the Literary Fund Journals, A, B and C.

Q. And the largest item of that account, contributions to the general treasury of Virginia in the shape of taxes by the counties now constituting the State of West Virginia—from what source did you derive that statement?

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A. First, from the ledgers of the Auditor of Public Accounts, and afterwards verified by reference to the various journals and day books.

Q. Please state your knowledge, Mr. Potter, as to the correctness of the items and statements embodied in this schedule, in particular and in general?

A. The figures were taken off by my assistants, and—

Q. From what?

A. From the various books I have just mentioned, and then handed to other men who called them back. It was not possible to check them up to any total, so we merely applied the rule of the double check. That is true of all the items contained in the schedule, which I believe are correct.

Mr. Anderson: Please file that.

(The paper referred to, entitled, "Commonwealth of Virginia vs. the State of West Virginia. Receipts from West Virginia counties. Redemption lands and escheats. Public lands and Land Registrar's Office. Fines, forfeitures and penalties. Tax receipts (Less tax refunds). Article VI." is filed herewith, marked "Plaintiff's Exhibit F 1.")

Mr. Anderson: Plaintiff's Exhibit F 2 is the same statement, giving the details a little more fully.

The Special Master: Is it supplementary to Plaintiff's Exhibit F 1?

Mr. Robinson: Yes. 78

By Mr. Spooner: Will you give me the pages of the records from which you compiled these?

A. I don't know whether that is shown in this schedule or not. In a great many instances the journals were not paged. In those cases we show the years—

Q. From what page to what page, of what books?

A. Those do not show any pages at all.

Mr. Anderson: I offer this second statement in evidence.

(The paper referred to is filed herewith, marked, "Plaintiff's Exhibit F 2.")

[*Vol. 5. May 6, 1909. Cross Examination of A. G. Potter.*]

ARTHUR G. POTTER, 382
resumed the stand for further
Cross Examination.

By Mr. McClintic:

Q. In relation to F-1 No. 6—

The Special Master: Do you mean page 6?

Mr. McClintic: Plaintiff's Exhibit F-1.

The Special Master: Relating to the 6th paragraph?

Mr. McClintic: Relating to the 6th paragraph of the decree.

The Special Master: What page are you examining?

Mr. McClintic: I was looking at the first page. I want to 383
ask a general question. This exhibit is in relation to the receipts from Virginia counties.

By Mr. McClintic:

Q. When did you begin?

A. The fiscal year ending September 30, 1820.

Q. The first of the year?

A. The fiscal year.

Q. In other words, the 1st of October?

A. Yes, sir.

Q. And when did you end?

A. December 31, 1860.

Q. That is all I desire to ask on that schedule.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixey.*]

Mr. McClintic: Please take defendant's exhibit F-1. 567

(The paper referred to was received in evidence and marked Defendant's Exhibit F-1.)

By Mr. McClintic:

Q. Please state if that was made under your direction and signed by you?

A. It was, sir.

Q. Please state if the facts and figures therein stated are correct?

A. They are so far as the items included therein from the books of original entry of the Commonwealth of Virginia.

Q. On the bottom of page 2 of that exhibit I find "Merchant's & Mechanics Bank of Wheeling; sale of 400 shares bonus stock, held by the Board of Public Works, $43,103.35." Please explain to the Master that item.

A. That was bonus stock issued to the Commonwealth of Virginia by this bank located in Wheeling. It was in the nature of a franchise tax. It could be paid for in stock, and in this case the tax was paid by the stock. It was par value $40,000, and it was held by the State until 1853 and then sold for $43,103.35.

The Special Master: That is where you got that item?

The Witness: That is the item, yes. It was entered in the books in 1857, but the sale, I believe, took place in 1853.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixey.*]

[Mr. Harrison:]

Q. Next is defendant's Exhibit F-1. This relates to paragraph 6 of the decree—all moneys paid into the Treasury of the Commonwealth by the counties included within the territory of West Virginia. Please state the difference between the result ascertained by you and that shown by the corresponding exhibit for the plaintiff? 655

A. Under paragraph 6, according to the Virginia Exhibit, the receipts from West Virginia counties are $6,111,572.23, and according to West Virginia's Exhibit, $7,081,538.48, an excess on West Virginia's Exhibit of $969,966.25. 656

Q. Did your list of payments include any dividends received on stock of private companies?

A. Stock of private companies?

Q. Yes.

The Special Master: In which the State was a stockholder?

Mr. Harrison: Yes.

A. Yes; it included dividends on stock in banks located within the territory now constituting the State of West Virginia, dividends on stock in turnpike companies, lying wholly within the present State of West Virginia, dividends on stock in bridge companies lying wholly within the present State of West Virginia, and dividends on stock in turnpike companies extending into and between the present States, divided on a mileage basis.

By Mr. Harrison:

Q. Does the schedule show the several amounts under those heads?

A. Yes, sir.

Q. And you can show it in the aggregate. Could you do it readily for us now?

A. I think so.

Q. I want to know how much you have included as payments into the treasury embraced under the heads you have just given us?

A. There are same other items included with those dividends. For instance, there is some interest on loans. 657

The Special Master: Why do you not have them worked out when they work out the other details in connection with the other schedules, unless you want to get the information right now?

Mr. Harrison: His statement, for example, says "Dividends on stocks in banks located in the territory now constituting the State of West Virginia."

The Special Master: That is a large item, $766,666.

Mr. Harrison: That accounts for the biggest part of the difference.

The Special Master: What do you want: The detail of that?

A. You mean from what banks that came?

Mr. Harrison: I want it first to give the items so as to show the aggregate amount received and charged on account of stock dividends, and so forth. Then I wanted the details supporting it.

A. Very well, we can give you that, but it will take some little while, maybe a few hours, to prepare it and have it typewritten.

Mr. Harrison: Evidently the difference between Mr. Potter and himself arises out of the fact that he has charged dividends as money contributed by West Virginia counties to the Treasurer of the State.

The Special Master: Are those the same items involved 658
in the other schedules as to which the investments of the State in the stock are taken into consideration?

Mr. Spooner: Yes, sir.

The Special Master: The same banks?

Mr. Anderson: These were dividends received by the State during that period from those investments.

The Special Master: Upon one side the territory is being charged with the investment, and upon the other side they are taking a credit for the dividends, are they, in the same banks in which the investments were made?

Mr. McClintic: The same banks; yes, sir.

The Special Master: That is, in one part of the schedule West Virginia is charged with investments in the stock.

Mr. McClintic: Virginia charged us with investments in the stocks, and gave us no credit for the dividends.

The Special Master: And you take credit for the dividends on that same stock?

Mr. McClintic: Yes, sir; and we say we are to be charged for the stocks only what we got them for in 1863.

The Special Master: That is a question of amount, but it is a question whether these dividends were predicated upon the stock as to which investments were made, charged against West Virginia in the schedule. That is right, is it?

Mr. McClintic: Yes.

By Mr. Harrison:

Q. I noticed that as a part of your statement of receipts by 659
Virginia from the counties of West Virginia, you have included $153,475 of toll on a mileage basis from the Northwestern turnpike?

A. Yes.

The Special Master: Are those the same roads as to which charges are made in some parts of the schedule?

Mr. McClintic: If your Honor please, you asked us yesterday why the northwestern turnpike road had so much more charged to it by West Virginia than Virginia charged. That is practically the difference. Those tolls were paid back on the road, and we charged it.

The Special Master: You took the tolls into account?

Mr. McClintic: Yes, sir.

The Special Master: And they did not take them into account either way?

Mr. McClintic: No, sir.

The Special Master: You gave credit for a larger charge, and here you seek to get allowance for the tolls?

Mr. McClintic: These tolls were spent on the road just as they were collected. They were immediately put back on the road, and as we understood it were chargeable as a part of the money that went into the road, but we claim credit for it, because we paid it.

By Mr. Harrison:

Q. Explain one of the items you have in that schedule under the head of "bonus received from banks within the territory now constituting the State of West Virginia, paid into the treasury out of dividends, being a tax on charter privileges, $96,000."

The Special Master: Is that the franchise tax we have heard about?

Mr. Harrison: That may be. 660

The Special Master: Is it, I say?

A. Yes, sir.

The Special Master: Or the charge for the privilege of exercising the franchise?

A. Yes, sir; that is what it was.

Mr. Anderson: The State charged that to grant a charter to the bank?

A. And a certain amount for refunding. It was a tax on the charter privilege.

By Mr. Harrison:

Q. Was that contributed by any of the counties of West Virginia?

A. So it says—within the territory now constituting the State of West Virginia.

Q. But the decree requires you to render a statement of all moneys paid into the Treasury from the counties?

A. Yes, sir; from the counties.

Q. Did that come from any counties in West Virginia?

A. Certainly.

Q. What counties did it come from?

A. Wherever the bank was located.

Q. You construe that as coming from the county because the situs of the bank was in a particular county?

A. That is it.

Q. You testified when we were on paragraph 3 of the decree, in relation to the expenditures of money by Virginia in West Virginia, that you did not consider it money expended by Virginia in West Virginia where she subscribed to the stock of a joint 661
stock company located in that State?

A. Yes, sir.

Q. I understand you to say now that when that same company paid a dividend to Virginia on the stock so subscribed for, you do consider that a payment by a West Virginia county to the Treasury of Virginia?

A. It is included in that schedule.

Q. How do you reconcile that logic?

A. I think it is not difficult of reconciliation. Where money is subscribed to a stock company, paid out of the Treasury here for a subscription to stock, and stock taken for it and held in the treasury, it can hardly be construed as an expenditure within the counties that now form West Virginia, as I understand it, while the money paid from dividends came indirectly from those counties that form West Virginia.

Q. The money paid on the stock which you do not consider an expenditure in West Virginia, is, however a contribution from the county where the company is located to the Treasury of Virginia?

A. As a matter of fact; yes.

[*Vol. 6. May 7, 1909. Re-Direct Examination of T. B. Dixey.*]

[Mr. McClintic:]

Q. Jumping from the first exhibit to No. F-1, No. 6, in reference to payment of counties, were there any moneys paid into Virginia by a county as a county? 694

The Special Master: You mean as a municipal organization?

Mr. McClintic: As a county or organization of any character. Were not all the funds paid in paid by individuals?

A. A State depository; is that what you mean?

Q. No; Mr. Harrison asked you about the counties paying in money. Did any county ever pay anything as a county, in any instance?

A. I will not say in any instance. I do not think I understand the scope of your question.

Q. The question is—

The Special Master: Did the money that appears to have been paid to the State of Virginia by West Virginia come from the county treasuries, in any case, or did it come from institutions or organizations within the territory. Is not that the question?

Mr. McClintic: No; what I want to get at is this. Mr. Harrison seems to think that that decree meant that in order to get credit from the county it must be paid by the county as a county, and I ask him if these taxes were not levied by State authority and directly paid by the individuals to the agent of the State, for 695
the State?

The Special Master: Without going through the county treasury?

Mr. McClintic: Without going through any county.

The Special Master: Or having any official mark.

Mr. McClintic: Any official mark of the county.

The Witness: No, sir; not in that sense.

The Special Master: What is your answer?

The Witness: Originally the books showed the county from which the money was paid, such and such a county; the clerk of such and such a county.

The Special Master: Let us see what the entries did show.

The Witness: The books show the county in which these payments originated, the original books of entry. I do not recall, without reference to the books, whether they show them as direct payments into the Treasury from the County official as an official act of that official or not. I do not remember about that. That is made clear on the books, perhaps, but I do not remember about that. But the books do show the county in which the receipt originated, or the disbursement was made.

Mr. Mollohan: It was fixed by statute. The sheriff took the tax ticket. There was the same levy over the State. This land book would go into the hands of the sheriff. He made the tickets out and collected in each county and then transmitted it to the Treasurer here.

The Special Master: If the statute shows it, it is easy 696
to develop it.

The Witness: It shows receipts by clerks of county courts, and that sort of thing.

The Special Master: The county paid nothing except her own revenue, and she spent her own revenue?

Mr. Mollohan: Yes, sir.

The Special Master: Is there anything in the way of re-cross examination? There does not seem to be anything else. Call your next witness.

[*Vol. 7. July 1, 1909. Plaintiff's Substitute Exhibit F-1.*]

[The Special Master]:

Now, we come to the sixth paragraph, plaintiff's exhibit F-1. 866
(Reading from decree):

"All moneys paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

You submit Plaintiff's Substitute Exhibit F-1?

Mr. Anderson: Yes, sir.

The Special Master: Do the parties agree upon the items stated in Plaintiff's Substitute Exhibit F-1?

Mr. Harrison: I think we are in accord on the items. It is only a question of inclusion or exclusion.

Mr. Dixey: No, sir; not entirely. I would like to have that put in the class with C-1, and Mr. Potter and I will take it up. It is only a matter of a few hours, I think.

[*Vol. 7. July 2, 1909.*]

The Special Master: Let me make this one inquiry. There 1017
are some reconcilings to be done by the experts, and that is disposed of, because we all agree that we will take what they agree upon. Has Virginia submitted everything they are now prepared to submit on all the paragraphs?

Mr. Harrison: We left No. 6 open—

The Special Master: Between the experts— 1018

Mr. Harrison: Yes, I think so.

The Special Master: If they are not able to report, we will take their report later.

Mr. Dixey: There is no difference whatever.

Mr. Anderson: They accept Virginia's Schedule as to the amounts.

The Special Master: As I understand it now, so far as Virginia is concerned, they have nothing further to submit on any of these paragraphs.

Mr. Harrison: One moment. Mr. Potter made a slight correction in that schedule of the receipts for West Virginia, and here is where it appears. This is reconciling it.

The Special Master: Did you go over that with Mr. Dixey?

Mr. Potter: Yes, sir; every item.

Mr. Harrison: There are only one or two immaterial items.

The Special Master: Let Mr. Dixey and Mr. Potter sign it and hand it to the stenographer.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT G-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

G-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT G-1.

All Money, Property, Stocks and Credits which West Virginia Received from the Commonwealth of Virginia.

PARAGRAPH VII OF DECREE.

A. Money.

From
"LEDGER 1863
TREASURER
WEST VA."

Folio 4,	July 2nd, 1863	Received from "Treasury of Virginia by Campbell Tarr" and deposited in the Merchants & Mechanics Bank at Wheeling	$ 92,866.17
Folio 36,	July 2nd, 1863	Received from "The Treasurer of Virginia" and deposited in the North-Western Bank at Wheeling	47,734.03
Folio 56,	July 9th 1863	Received from "Treasurer of the Commonwealth of Virginia" and deposited in the North-Western Bank at Wellsburg	9,399.80
			$150,000.00
Folio 100,	Feb. 1st, 1864	Received from the "Treasurer of the Commonwealth of Virginia" and deposited in the North-Western Bank at Wheeling	20,771.46
			$170,771.46

B. Property .....
C. Stocks .....
D. Credits .....

The Books of West Virginia, except the Treasurer's Ledger above referred to, not being obtainable, we are unable to ascertain what other property, if any, was taken over by West Virginia.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant certifies to the correctness of the figures shown by the plaintiff in this exhibit, but denies that the total amount, or any part thereof, is a proper charge against West Virginia.

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

MONEY, PROPERTY, STOCKS AND CREDITS RECEIVED BY WEST VIRGINIA.

DEFENDANT'S EXHIBIT G-1

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

DEFENDANT'S EXHIBIT G-1.

SUMMARY OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED IN ANY PRECEDING EXHIBIT, BUT NOT INCLUDING ANY PROPERTY, STOCKS, OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGANIZATION OF THE RESTORED GOVERNMENT OF VIRGINIA;

TOGETHER WITH THE NATURE AND DESCRIPTION THEREOF, SHOWING WHETHER SUCH PROPERTY WAS LOCATED WHOLLY IN WEST VIRGINIA OR PARTLY IN WEST VIRGINIA; AND THE AMOUNT PAID BY THE COMMONWEALTH IN SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE COMPANIES OWNING SUCH PROPERTY. ALSO SHOWING WHICH OF SAID COMPANIES AND BANKS PAID DIVIDENDS AND THE DATES AND AMOUNTS OF SUCH PAYMENTS.

PARAGRAPH VII OF DECREE.

NOTE:—In the following statements and schedules, no value is shown as chargeable to West Virginia except in the cases of the Fairmont Bank in Marion County and the Northwestern Bank of Virginia at Wheeling, for the reason that no evidence has been produced to determine the value of the stock of any of the said companies other than the two above mentioned.

	Total amount paid by Virginia.	Dividends.	Value chargeable to West Virginia.
Total, turnpikes and roads lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock	$ 700,103.49	$ 12,600.54	
Total, navigation companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	210,500.00		
Total, bridge companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	78,412.50	6,028.51	
Total, turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia, in which the Commonwealth held stock,	154,652.84	1,901.27	
Northwestern Bank of Virginia (at Wheeling)	341,800.00	534,815.16	$126,120.00
Fairmont Bank, (Marion County),	50,000.00	2,000.00	50,000.00
James River and Kanawha Company,	9,547,582.21	10,092.00	
Total,	$11,083,051.04		

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Brandonville, Kingwood and Evansville Road,	March 13, 1837	$ 45,000.00	$ 25.00	$ 8,000.00	$ 3,193.46			
Buckhannon and Little Kanawha Turnpike Company,	March 15, 1849	13,800.00	25.00	8,280.00	7,773.00			
Charleston and Point Pleasant Turnpike Company,	January 23, 1835	67,460.00	50.00	31,260.00	31,260.00			
Charleston, Ripley and Ravenswood Turnpike Company,	March 25, 1853	50,000.00	50.00	30,000.00	27,519.41			
Cacapon and North Branch Turnpike Company,	April 3, 1838	32,500.00	15.00	13,000.00	12,000.00			
Clarksburg and Buchanan Turnpike Company,	March 9, 1848	20,000.00	25.00	12,000.00	9,255.13			
Cranberry Summit and Brandonville Turnpike Company,	February 10, 1853	8,025.00	25.00	4,815.00	4,120.11			
Clarksburg and Philippi Turnpike Company,	March 13, 1849	10,000.00	25.00	6,000.00	5,446.25			
Clarksburg and Wheeling Turnpike Company,	February 2, 1850	17,000.00	25.00	10,200.00	4,195.35			
Clear Fork Road Company,	March 27, 1858	5,000.00	25.00	3,000.00	600.00			
Dunkard Creek Turnpike Company,	February 1, 1839	10,000.00	20.00	6,000.00	6,000.00			
East River and Princeton Turnpike Company,	March 31, 1858	7,000.00	25.00	4,800.00	4,800.00			
Fish Creek Road Company,	" 30, 1853	10,000.00	20.00	6,000.00	6,000.00			
Franklin and Circleville Turnpike Company,	" 10, 1853	4,000.00	25.00	2,400.00	2,175.00			
Gilmer, Ripley and Ohio Turnpike Company,	" 19, 1850	62,000.00	25.00	37,200.00	29,974.80			
Gnatty Creek and West Union Turnpike Company,	February 16, 1853	18,000.00	25.00	10,800.00	5,700.55			
Gilmer and Braxton Turnpike Company,	March 29, 1853	12,000.00	25.00	7,200.00	6,699.80			
Grave Creek and Pennsylvania Line Turnpike Company,	" 21, 1850	8,000.00	25.00	4,800.00	1,800.00	1860	$ 412.50	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Witlin the Territory Now Constituting the State of West Virginia, in which the Commonwealth of Virginia Held Stock

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value Chargeable to West Virginia.
						1848	$ 69.60	
						1849	35.50	
						1850	47.20	
						1851	83.00	
						1852	94.66	
						1853	59.26	
Holliday's Cove Turnpike Company,	March 2, 1838	$ 25,000.00	$ 50.00	$ 15,000.00	$ 4,733.33	1854	71.00	
						1856	23.66	
						1857	88.75	
						1858	66.27	
						1859	20.69	
						1860	55.91	
						Total,	$ 715.50	
Holliday's Cove and Wellsburg Turnpike Company,	April 5, 1858	Included in above.	25.00	Included in above.	5,916.67			
Hampshire and Morgan Turnpike Company,	March 15, 1849	11,000.00	25.00	6,600.00	6,000.00			
Harrisville Turnpike Company,	" 28, 1848	13,500.00	50.00	8,100.00	6,510.00			
Hedgesville and Potomac Turnpike Company,	February 18, 1850	16,000.00	25.00	6,000.00	5,400.00			
Hardy and Randolph Turnpike Company,	March 24, 1851	30,000.00	25.00	18,000.00	7,134.78			
Holliday's Cove and New Cumberland Turnpike Company,	" 29, 1851	4,000.00	25.00	2,400.00	2,400.00			
Kingwood and West Union Turnpike Company,	" 25, 1848	20,000.00	25.00	12,000.00	8,769.48			
Lewisburg and Blue Sulphur Springs Turnpike Company,	" 12, 1834	12,500.00	50.00	5,000.00	4,950.00			
Leading Creek and Buffalo Creek Turnpike Company,	" 31, 1851	16,000.00	25.00	9,600.00	5,847.84			
Letart Falls and West Columbia Turnpike Company,	February 15, 1854	3,500.00	20.00	2,100.00	2,350.00			
Logan, Raleigh and Monroe Turnpike Company,	March 17, 1849	46,000.00	25.00	27,600.00	7,321.24			
Marshall and Ohio Turnpike Company,	February 11, 1848	20,000.00	25.00	12,000.00	11,943.75			
						1853	$ 146.00	
						1854	306.00	
Martinsburg and Potomac Turnpike Company,	March 17, 1849	30,000.00	100.00	18,000.00	15,290.00	1859	459.00	
						1860	765.00	
						Total,	$1,676.00	
Middleway and Gerardstown Turnpike Company,	February 18, 1854	20,000.00	25.00	12,000.00	11,943.75			
Morgantown and Bridgeport Turnpike Company,	March 15, 1849	34,000.00	25.00	20,400.00	10,687.40			
Moorfield and Alleghany Turnpike Company,	" 7, 1849	17,000.00	50.00	10,200.00	8,779.78			
Moorfield and North Branch Turnpike Company,	" 22, 1847	65,500.00	50.00	39,300.00	28,137.75			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Newark Turnpike Company,	March 28, 1851	$ 6,000.00	$ 25.00	$ 3,600.00	$ 3,000.00			
North River Turnpike Company,	February 17, 1851	9,000.00	20.00	5,400.00	5,400.00			
New Manchester Turnpike Company,	April 4, 1848	5,000.00	25.00	2,000.00	2,000.00			
New Creek and Hardy Turnpike Company,	February 25, 1850	10,000.00	25.00	6,000.00	5,431.24	1857	$ 271.25	
Patterson's Creek Valley Turnpike Company,	March 17, 1849	20,500.00	25.00	12,300.00	9,900.00			
Parkersburg and Elizabethtown Turnpike Company,	" 11, 1850	8,000.00	25.00	4,800.00	4,800.00			
Pleasant Valley and Tunnelton Turnpike Company,	" 30, 1853	10,000.00	20.00	6,000.00	4,078.45			
Potomac Turnpike Company,	" 4, 1851	4,500.00	20.00	2,700.00	2,489.70			
Red and Blue Sulphur Springs Turnpike Company,	January 18, 1836	22,000.00	50.00	10,200.00	8,856.66			
Ravenswood and Reedy Creek Turnpike Company,	February 18, 1850	15,000.00	25.00	9,000.00	8,999.99			
Ritchie and Gilmer Turnpike Company,	March 12, 1851	15,000.00	25.00	9,000.00	8,891.18			
Reedy and Harrisville Turnpike Company,	" 24, 1851	12,000.00	25.00	7,200.00	1,751.87			
Raleigh and Boone Graded Road Company,	January 28, 1854	5,000.00	25.00	3,000.00	1,800.00			
Smithfield, Charleston and Harper's Ferry Turnpike Company,	February 18, 1830	45,000.00	50.00	18,000.00	14,000.00			
Salem and Harrisville Turnpike Company,	March 10, 1851	12,000.00	25.00	7,200.00	3,817.92			
						1832	$ 399.38	
						1833	309.64	
						1834	354.82	
Sheperdstown and Smithfield Turnpike Company,	January 31, 1816	(?)	50.00	18,575.00	18,575.00	1835	269.37	
						1836	126.00	
						1837	98.00	
						1838	58.20	
						1839	40.00	
						Total,	$1,655.41	
Sistersville and Salem Turnpike Company,	March 27, 1851	15,000.00	25.00	9,000.00	9,000.00			
Shinston Turnpike Company,	February 7, 1850	28,000.00	25.00	13,200.00	13,302.26			
Sandy River Turnpike Company,	March 31, 1851	5,000.00	25.00	3,000.00	3,000.00			
						1855	$ 400.12	
						1856	654.75	
Sweet and Salt Sulphur Springs Turnpike Company,	" 15, 1849	17,000.00	25.00	10,200.00	10,104.00	1857	582.00	
						1858	363.75	
						1859	459.00	
						Total,	$2,459.62	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
St. Mary's Turnpike Company,	February, 24, 1851	$ 10,000.00	$ 25.00	$ 6,000.00	$ 6,000.00			
Weston and Gauley Bridge Turnpike Company,	March 25, 1848	90,000.00	25.00	66,000.00	64,098.31			
Weston and West Union Turnpike Company,	February 17, 1851	14,000.00	25.00	8,400.00	5,538.21			
Weston and Fairmont Turnpike Company,	March 9, 1848	106,000.00	25.00	98,000.00	97,962.50			
Wheeling, West Liberty and Bethany Turnpike Company,	" 20, 1847	35,000.00	50.00	21,000.00	21,000.00			
						1838	$ 140.00	
						1839	280.00	
						1840	340.00	
						1841	320.00	
						1842	160.00	
						1844	220.00	
						1845	140.00	
						1846	200.00	
						1847	200.00	
						1848	240.00	
White and Salt Sulphur Springs Turnpike Company,	January 8, 1834	10,000.00	50.00	4,000.00	4,000.00	1849	220.00	
						1850	220.00	
						1851	300.00	
						1852	300.00	
						1853	240.00	
						1854	260.00	
						1856	160.00	
						1857	240.00	
						1858	260.00	
						1859	180.00	
						1860	400.00	
						Total,	$5,020.00	
Wellsburg and Bethany Turnpike Company,	March 15, 1849	27,000.00	50.00	16,200.00	12,590.22			
Wellsburg and Washington Turnpike Company,	January 18, 1808	17,833.33	50.00	7,133.33	7,071.01	1837	$ 178.13	
						1838	212.13	
						Total,	$. 390.26	
Williamsport Turnpike Company,	March 15, 1849	10,000.00	25.00	6,000.00	5,130.65			
West Milford and New Salem Turnpike Company,	" 7, 1850	23,000.00	25.00	13,800.00	10,526.32			
West Union Turnpike Company,	February 24, 1851	12,000.00	25.00	7,200.00	3,054.00			
Walnut Gap Road Company,	" 15, 1854	5,000.00	20.00	3,000.00	1,305.37			
Total, Turnpikes and Roads,		$1,407,618.33		$847,163.33	$700,103.49		$12,600.54	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Navigation companies, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Coal River Navigation Company,	March 17, 1849	$210,000.00	$ 25.00	$ 96,000.00	$ 96,000.00			
Guyandotte Navigation Company,	" 16, 1849	200,000.00	50.00	120,000.00	106,800.00			
Monongalia Navigation Company,	January 29, 1817	35,000.00	(?)	14,000.00	2,660.00			
Tug Fork Navigation Company,	March 15, 1853	15,000.00	50.00	9,000.00	5,040.00			
Total, Navigation Companies,		$460,000.00		$239,000.00	$210,500.00			
Bridge companies, From March 19, 1823, to January 1, 1861.								
Buckhannon Bridge Company,	December 15, 1853	$ 3,000.00	$ 25.00	$ 1,800.00	$ 1,800.00			
Cheat River Toll Bridge Company,	January 15, 1848	10,000.00	25.00	6,000.00	4,612.50	1853	$ 374.00	
						1854	166.51	
						Total,	$ 540.51	
Elk River Bridge Company,	March 27, 1848	20,000.00	50.00	6,000.00	6,000.00	1857	$ 420.00	
						1858	210.00	
						1859	210.00	
						1860	320.00	
						Total,	$1,160.00	
Fairmont and Palatine Bridge Company,	" 12, 1850	20,000.00	25.00	12,000.00	12,000.00			
Guyandotte Bridge Company,	" 27, 1848	20,000.00	20.00	12,000.00	12,000.00			
Morgantown Bridge Company,	" 11, 1850	36,000.00	25.00	24,800.00	24,800.00			
North Branch Bridge Company,	January 14, 1848	5,000.00	20.00	3,000.00	3,000.00			
South Branch Bridge Company,	February 15, 1851	7,000.00	25.00	4,200.00	4,200.00	1860	$ 378.00	
Virginia and Maryland Bridge Company,	January 17, 1848	60,000.00	50.00	10,000.00	10,000.00	1852	$ 600.00	
						1853	600.00	
						1854	250.00	
						1855	300.00	
						1856	600.00	
						1857	200.00	
						1858	550.00	
						1859	450.00	
						1860	400.00	
						Total,	$3,950.00	
Total, Bridge Companies,		$181,000.00		$79,800.00	$ 78,412.50		$6,028.51	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Berkeley and Hampshire Turnpike Company, ... From Martinsburg, Berkeley County, by way of Boyd's Gap and Bloomery Gap in Hampshire County, to some point on Northwestern road at or near French's Tavern in same County. Road estimated to be 49¾ miles in length, 3¾ miles of which run through Frederick County, Va., making 92.46% in West Virginia and 7.54% in Virginia.	March 1, 1851	$ 36,000.00	$ 25.00	$ 21,600.00	$ 16,572.00			
Cross Roads and Summit Point Turnpike Company, ... From a point of intersection on the Charleston and Berryville Turnpike at the cross road leading to Summit Point, to Summit Point depot, on the Winchester and Potomac railroad, in Jefferson County. The length of this road was reported as 5 miles, 690 yds. or 5.39 miles, of which 2½ miles, or 46.38% are estimated to be in Jefferson County, West Virginia.	March 29, 1851	10,000.00	25.00	6,000.00	6,000.00			
Giles, Fayette and Kanawha Turnpike Company, ... From Fauer's Furnace, (above Kanawha Salt Works) by Falls of Kanawha and Vandal's in the Loop, to Giles Court House. The total length of this road was reported in 1841 as 134 miles, 17.5 chains, from which is deducted 7 miles, 54.8 chains which run over the Fincastle and Cumberland Gap Road, leaving 126 miles, 42.7 chains constructed by the Giles, Fayette and Kanawha Company, practically 126½ miles. Of this number of miles, 3 miles are estimated to be in Giles County, Va., (allowing for change in boundary) making West Virginia's proportion 97.62%. The reports of this company show total capital stock of $76,850.00 paid and unpaid, which is apparently $6,850.00 more than authorized.	March 1, 1837	70,000.00	25.00	45,000.00	44,991.60			
Huntersville and Warm Springs Turnpike Company,..... From the Warm Springs in Bath County, to Huntersville in Pocahontas County. The length of this road was reported in 1834 as 26¼ miles. The first half mile ran over a turnpike already built which left 25¾ miles to be built. This is notwithstanding the fact that the distance by direct line was only 16½ miles. 5½ miles, or 21.36% is estimated as West Virginia's proportion. The road was destroyed in 1842 and 1843. In 1860 a new company was formed to which the State subscribed, but nothing was paid.	March 20, 1832	16,000.00	50.00	6,400.00	6,159.24			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Hardy and Winchester Turnpike Company, ... From Moorfield by way of Wardensville to within four miles of Winchester, with branch to Capon Springs. From reports this road, including the branch, is ascertained to be 61 miles in length, 41 miles of which, or 67.21% are estimated to lie in West Virginia.	March 5, 1846	$ 39,000.00	$ 50.00	$ 23,400.00	$ 23,400.00			
Hillsborough and Harper's Ferry Turnpike Company, ... From Hillsborough, Loudoun County, to some point near the bridge across the Shenandoah river at Harper's Ferry, Jefferson County. The length of this road is reported as 10½ miles, of which ¼ mile, or 2.38% is ascertained to be in West Virginia.	March 9, 1849	10,000.00	25.00	6,000.00	6,000.00	1856	$ 240.00	
Martinsburg and Winchester Turnpike Company, ... From Martinsburg, Berkeley County, to Winchester, Frederick County. This road is ascertained to be 22 miles in length, of which 13 miles, or 59.09% are found to be in West Virginia. Letters on file show that as late as in 1874 there was $1,300.00 on deposit at Winchester to the credit of this company. This was after West Virginia had released her part of the road to the County of Berkeley.	March 24, 1838	46,550.00	25.00	27,000.00	27,000.00	1859 1860 Total,	803.27 405.00 $1,208.27	
Morgan and Frederick Turnpike Company, ... From Potomac River, opposite Hancock, to the North Frederick Grade in Frederick County. From reports the road is ascertained to be about 30 miles in length, of which 22 miles, or 73⅓% are estimated to be in Morgan County, West Virginia.	February 25, 1851	15,000.00	20.00	9,000.00	8,005.00			
Mountain Lake and Salt Sulphur Springs Turnpike Company, ... From Salt Sulphur Springs, Monroe County, by way of Mountain Lake, Giles County, to Christiansburg, Montgomery County. Length of road 48 miles, 8 miles, or 16⅔% of which is in Monroe County, West Virginia.	March 3, 1856	20,000.00	25.00	4,800.00	4,800.00			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
North Frederick Turnpike Company, ... From a point at or near the house of Frederick B. Jenkins in Hampshire County, through Gainesborough to Winchester. The road was reported as 19¼ miles in length of which we estimate, exact location not being clear, 2¼ miles, or 11.68%, to be in West Virginia.	February 24, 1851	$ 19,000.00	$ 25.00	$ 11,400.00	$ 11,325.00	1857	$ 453.00	
Raleigh and Wythe Line Turnpike Company, ... That portion of the Raleigh and North Carolina turnpike lying between the Giles, Fayette and Kanawha turnpike in Raleigh County and the county line of Wythe and Tazewell counties. This road is estimated to be 60 miles in length, 44 miles of which, or 73⅓%, are estimated to be in West Virginia.	March 3, 1860	8,000.00	20.00	4,800.00	400.00			
Total, turnpikes and roads, ...		$289,550.00		$165,400.00	$154,652.84		$1,901.27	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Banks Located Within the Territory Now Constituting the State of West Virginia in Which the Commonwealth of Virginia Held Stock.

(From March 19, 1823 to January 1, 1861.)	Number of shares	Par value of shares.	Dividends received by Commonwealth. Date.	Amount.	Value chargeable to West Virginia.
Northwestern Bank of Virginia, at Wheeling.					
eld by Commonwealth Fund,	2,918	$291,800.00	Regularly 1838-1860 on 2,918 shares,	$445,315.16	
The Commonwealth Fund originally held 4,000 shares which were paid for as follows:					
Cash,	$375,091.33				
Net dividends and interest	24,908.67				
4,000 shares at $100.00 per share,	$400,000.00				
In 1857 the Commonwealth sold 1,082 shares for $113,671.42 and turned this amount over to the Sinking Fund.					
eld by Literary Fund, Purchased in 1832.	500	$ 50,000.00	Regularly 1835-1860 both inclusive except 1843,	$ 89,500.00	
otal, Northwestern Bank stock, January 1, 1861,	3,418	$341,800.00	Total,	$534,815.16	
airmont Bank, (Marion County)					
Held by Literary Fund, Purchased in 1860.	1,000	$ 50,000.00	1860	$ 2,000.00	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

	Number of shares.	Par value of shares.	COST: Expended through the Commonwealth Fund.	COST: Expended through the Internal Improvement Fund.	COST: Expended through the Sinking Fund.	Total cost.	Dividend received by Commonwealth. Date	Dividend received by Commonwealth. Amount.
Expenditures by the Commonwealth, ... For construction work and improvements on the James River Canal, Blue Ridge Canal and Kanawha road and river which were turned over to the James River and Kanawha Company for 10,000 shares of capital stock of that company in accordance with act passed March 16, 1832. (P. 73.)	10,000	$1,000,000.00		$1,216,666.30		$1,216,666.30	1836	$10,092.00
Capital Stock of James River and Kanawha Company, ... Received in part payment of cost of Blue Ridge Canal Turnpike in accordance with act passed February 25, 1833, (P. 57). The balance of the cost of this turnpike, viz: $58.80, was paid to the State in cash by the James River and Kanawha Company,	92	9,200.00		9,200.00		9,200.00		
Expenditures by the Commonwealth, ... On account of subscriptions to capital stock.	19,908	1,990,800.00		1,990,800.00		1,990,800.00		
State bonds issued in accordance with the act passed March 23, 1860, .. (P. 113). In exchange for a similar amount of capital stock.	2,000	200,000.00		200,000.00		200,000.00		
	32,000	$3,200,000.00		$3,416,666.30		$3,416,666.30		$10,092.00
Capital stock issued to the Commonwealth on account of the items below, Expenditures on account of interest on guaranteed bonds and annuity to stockholders of the James River Company; deducting from the latter, the amount of the annuity repaid to the Commonwealth by the James River and Kanawha Company, ...	72,000	$7,200,000.00	$695,542.66	$145,670.45	$181,202.80	$1,022,415.91		
Cash loans, ...				890,000.00		890,000.00		
Principal amount required to produce annually, at six per cent, the sum of $21,000.00, guaranteed forever to the stockholders of the James River Company, by the act of March 23, 1860, ...				350,000.00		350,000.00		
Cash loans to the Richmond Dock Company by the Board of Public Works, transferred to the Commonwealth Fund; being a part of the debt amounting to $94,128.96, so transferred, ...			12,500.00			12,500.00		

The said debt became a liability of the James River and Kanawha Company through its purchase of the Richmond Dock Company, and is as below:—

Loan of Bank of Virginia stock, ...	$ 37,500.00
Cash, ...	12,500.00
Total, ...	$ 50,000.00
Premium on the above stock, ...	4,078.12
Total, ...	$ 54,078.12
Interest on $54,078.12, ...	33,714.69
Total amount of decree obtained by the Board of Public Works in February 1845, ...	$ 87,792.81
Interest on $87,792.81 to February 1845, ...	6,336.15
Total transferred to the Commonwealth Fund in exchange for a certificate of state stock for $100,000.00; the difference being paid in cash, ...	94,128.96

The total amount of $94,128.96 was received by the Commonwealth, in stock of the James River and Kanawha Company; but this account is charged only with that part thereof, which was expended in cash from March 19, 1823, to January 1, 1861, viz:—$12,500.00.

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 18 23, to January 1, 1861.

	Number of shares.	Par value of shares.	COST: Expended through the Commonwealth Fund.	COST: Expended through the Internal Improvement Fund	COST: Expended through the Sinking Fund.	COST: Total cost.	Dividends received by Commonwealth: Date	Dividends received by Commonwealth: Amount.
Capital Stock issued to the Commonwealth, (Continued.)								
Bonds of the State loaned to the James River and Kanawha Company:								
As per act passed March 25, 1842, ... $ 250,000.00								
" " " " " 1, 1847, ... 1,236,000.00						$1,596,000.00		
" " " " January 25, 1850, ... 110,000.00				$1,596,000.00				
Bonds of the James River and Kanawha Company: Guaranteed by the State and assumed in accordance with the act of March 23, 1860:								
As per act passed March 23, 1839, ... $1,400,000.00								
" " " " " 9, 1849 ..... 350,000.00								
" " " " " 12, 1849, ... 150,000.00								
" " " " " 15, 1850, ... 360,000.00				$2,260,000.00		$2,260,000.00		
Total amount due the Commonwealth and capital stock issued therefor, in accordance with the act passed March 23, 1860, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181,202.80	$6,130,915.91		$10,092.00

RECAPITULATION OF THE ACCOUNT OF THE JAMES RIVER AND KANAWHA COMPANY.

Account of construction and subscription to capital stock, ...	32,000	$ 3,200,000.00		$3,416,666.30		$3,416,666.30		
Account of debt due the Commonwealth, guaranteed bonds and annuity assumed, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181.202.80	$6,130,915.91		
Total, ...	104,000	$10,400,000.00	$708,042.66	$8,658,336.75	$181,202.80	$9,547,582.21		

Par value of the stock of the James River and Kanawha Company owned by the Commonwealth on January 1, 1861, and the cost thereof in cash from March 19, 1823, to January 1, 1861, excluding the Bank of Virginia stock, referred to above, and all interest due the Commonwealth at March 23, 1860.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 12 inclusive, and find them to be correct as to the amount and that they represent expenditures by the Commonwealth of Virginia for the purposes indicated.

Certified Correct:
ARTHUR G. POTTER,

PRICE WATERHOUSE & CO.,
For the Plaintiff.

Of the total capital investment of the James River and Kanawha Company as reported by that Company at September 30, 1860, 3.49% was located in West Virginia.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

EXHIBIT "WEST VA. 1."

Table showing value of Real and Personal Property in Virginia and West Virginia by Counties as returned by Individuals on the first day of June, 1860, and published in "Miscellaneous Statistics, Census Reports 1860" and value of Real and Personal Property as assessed in 1860.

VIRGINIA.

	Counties.	Census Valuation. Real.	Personal.	Total.	Assessed Valuation. Real.	Personal.	Total.
1	Accomack	$ 4,995,240	$ 5,045,355	$ 10,040,595	$ 3,007,903	$ 1,353,505	$ 4,361,408
2	Albemarle	11,112,279	16,124,021	27,236,300	7,465,975	2,716,944	10,182,919
3	Alexandria	4,762,885	2,649,798	7,412,683	4,246,781	816,186	5,262,967
4	Alleghany	1,502,967	1,653,271	3,156,238	876,648	355,465	1,232,113
5	Amelia	2,773,986	7,188,874	9,962,860	518,775	979,016	1,497,791
6	Amherst	3,212,791	5,686,935	8,899,726	363,643	761,320	1,124,963
7	Appomattox	2,135,636	4,929,131	7,064,767	1,510,990	661,245	2,172,235
8	Augusta	13,850,776	10,113,154	23,963,930	10,374,078	3,390,421	13,764,499
9	Bath	1,891,129	1,128,427	3,019,556	1,035,854	425,836	1,461,690
10	Bedford	7,661,370	12,012,616	19,673,986	4,915,177	2,115,884	7,031,061
11	Botetourt	4,223,734	4,549,414	8,773,148	3,065,042	1,044,030	4,109,072
12	Brunswick	2,639,337	9,395,528	12,024,865	1,576,811	1,412,920	2,989,731
13	Buchanan	128,946	100,081	229,027	222,498	81,548	304,046
14	Buckingham	4,187,520	8,421,168	12,608,688	2,416,045	943,428	3,359,473
15	Campbell	8,318,593	16,182,897	24,501,490	5,918,121	2,436,766	8,354,887
16	Caroline	4,821,539	9,894,510	14,716,049	3,442,667	1,460,978	4,903,645
17	Carroll	1,037,626	793,039	1,830,665	1,708,695	291,606	2,000,301
18	Charles City	1,457,472	2,439,864	3,897,336	1,025,610	405,600	1,431,210
19	Charlotte	4,558,899	9,150,516	13,709,415	3,377,079	1,562,782	4,939,861
20	Chesterfield	4,148,519	8,379,685	12,528,204	4,458,984	1,098,072	5,557,056
21	Clarke	3,987,176	3,314,612	7,301,788	3,847,756	748,762	4,596,518
22	Craig	1,060,150	705,693	1,765,843	880,927	262,376	1,143,303
23	Culpeper	5,541,402	6,425,009	11,966,411	3,268,892	928,245	4,197,137
24	Cumberland	2,804,763	7,128,849	9,933,612	2,132,623	937,357	3,069,980
25	Dinwiddie	8,592,624	18,426,290	27,018,914	2,572,589	804,161	3,376,750
26	Elizabeth City	2,390,730	3,244,275	5,635,005	1,041,912	351,365	1,393,277
27	Essex	3,546,912	6,217,528	9,764,440	2,078,259	1,062,457	3,140,716
28	Fairfax	4,071,772	3,285,394	7,357,166	4,414,990	804,195	5,219,185
29	Fauquier	13,308,772	14,052,831	27,361,603	9,262,040	2,578,876	11,840,916
30	Floyd	1,394,658	1,014,772	2,409,430	890,798	305,154	1,195,952
31	Fluvanna	2,793,206	4,987,111	7,780,317	2,151,850	801,182	2,953,032
32	Franklin	3,937,007	6,649,915	10,586,922	2,459,612	1,237,755	3,697,367
33	Frederick	6,711,276	5,168,807	11,880,083	5,728,035	1,754,088	7,482,123
34	Giles	1,973,839	1,501,936	3,475,775	1,204,623	390,735	1,595,358
35	Gloucester	2,515,586	5,089,983	7,605,569	1,924,336	723,846	2,648,182
36	Goochland	2,773,956	5,231,626	8,005,582	2,626,997	882,985	3,509,982
37	Grayson	1,450,756	1,090,911	2,541,667	1,036,652	279,337	1,315,989
38	Greene	1,175,083	1,964,685	3,139,768	955,333	371,965	1,327,298
39	Greenville	1,322,139	3,946,766	5,268,905	820,967	438,350	1,259,317
40	Halifax	7,444,875	14,759,675	22,204,550	5,202,597	2,636,968	7,839,565
41	Hanover	5,191,947	8,463,651	13,655,598	3,204,975	1,408,020	4,612,995
42	Henrico	27,494,537	29,527,908	57,022,445	10,108,513	1,425,038	11,533,551
43	Henry	2,260,965	3,335,553	5,596,518	1,796,238	845,159	2,641,397
44	Highland	1,590,967	1,010,183	2,601,150	1,308,003	314,790	1,622,793
45	Isle of Wight	1,788,975	3,437,216	5,226,191	1,380,501	821,558	2,202,059
46	James City	1,850,822	2,042,825	3,893,647	1,097,809	543,817	1,641,626
47	King George	1,870,093	3,709,367	5,579,460	1,545,465	478,874	2,024,339
48	King and Queen	2,439,834	5,113,472	7,553,307	1,752,784	912,999	2,665,783
49	King William	2,642,081	3,581,000	6,223,081	1,613,712	423,670	2,037,382
50	Lancaster	1,117,950	2,422,280	3,540,230	977,843	313,610	1,291,453
51	Lee	3,322,134	1,152,575	4,474,709	1,690,706	699,153	2,389,859
52	Loudoun	12,545,236	8,626,701	21,171,937	11,647,933	3,590,444	15,238,377
53	Louisa	4,873,166	9,873,828	14,746,994	3,522,707	1,618,875	5,141,582
54	Lunenburg	2,424,820	7,890,000	10,314,820	1,595,692	926,401	2,522,093
55	Madison	2,998,827	4,532,680	7,531,507	346,035	1,156,079	1,502,114

EXHIBIT "WEST VA. 1."—Continued.

	Counties.	Census Valuation Real.	Census Valuation Personal.	Census Valuation Total.	Assessed Valuation. Real.	Assessed Valuation. Personal.	Assessed Valuation. Total.
56	Mathews	1,757,390	3,056,300	4,813,690	762,967	327,884	1,090,851
57	Mecklenburg	4,586,376	12,090,434	16,676,810	3,557,893	1,553,038	5,110,931
58	Middlesex	1,139,736	1,785,685	2,925,421	867,120	324,513	1,191,633
59	Montgomery	4,194,920	3,401,695	7,596,615	2,719,418	753,910	3,473,328
60	Nansemond	2,599,260	4,755,286	7,354,546	1,736,079	1,005,005	2,741,084
61	Nelson	4,891,200	7,302,350	12,193,550	2,703,798	569,377	3,273,175
62	New Kent	1,272,193	2,208,500	3,480,693	926,259	320,945	1,247,204
63	Norfolk	12,101,493	16,826,963	28,928,456	2,385,437	654,166	3,039,603
64	Northampton	2,684,215	3,627,370	6,311,585	1,399,412	680,755	2,080,167
65	Northumberland	2,113,596	3,015,921	5,129,517	1,217,535	426,450	1,643,985
66	Nottoway	2,196,624	6,290,373	8,486,997	2,130,397	854,721	2,985,118
67	Orange	4,512,173	6,624,073	11,136,246	2,766,285	779,770	3,546,055
68	Page	2,678,627	1,799,098	4,477,725	2,133,476	867,587	3,001,063
69	Patrick	1,340,378	2,434,757	3,775,135	1,205,807	527,418	1,733,225
70	Pittsylvania	8,012,555	14,393,348	22,405,903	4,732,416	2,104,281	6,836,697
71	Powhatan	3,175,391	5,631,415	8,806,806	1,953,165	789,892	2,743,057
72	Prince Edward	3,271,213	7,070,474	10,341,687	2,285,055	1,035,329	3,320,384
73	Prince George	2,587,427	4,669,906	7,257,333	1,893,012	787,372	2,680,384
74	Prince William	2,483,400	2,822,626	5,306,026	2,623,791	615,710	3,239,501
75	Princess Ann	1,896,283	2,644,733	4,541,016	1,517,555	562,412	2,079,967
76	Pulaski	2,394,823	2,061,003	4,455,826	1,788,247	765,562	2,553,809
77	Rappahannock	3,074,234	3,720,086	6,794,320	2,702,427	566,869	3,269,296
78	Richmond	1,291,762	1,904,200	3,195,962	1,051,725	361,865	1,413.590
79	Roanoke	3,667,544	3,107,012	6,774,556	2,993,909	879,608	3,873,517
80	Rockbridge	8,290,943	6,170,188	14,461,131	5,269,845	1,991,103	7,260,948
81	Rockingham	10,359,061	6,726,645	17,085,706	8,376,379	2,855,817	11,232,196
82	Russell	3,074,424	1,964,275	5,038,699	1,534,917	628,823	2,163,740
83	Scott	2,112,226	1,284,937	3,397,163	1,261,070	668,486	1,929,556
84	Shenandoah	5,174,207	2,983,918	8,158,125	4,505,626	1,408,912	5,914,538
85	Smyth	2,604,565	1,736,291	4,340,856	2,350,760	502,340	2,853,100
86	Southampton	1,993,011	4,300,346	6,293,357	1,536,733	1,347,193	2,883,926
87	Spotsylvania	4,511,301	9,221,483	13,732,784	3,686,404	1,764,799	5,451,208
88	Stafford	1,950,860	4,024,249	5,975,109	1,702,946	478,025	2,180,971
89	Surry	1,211,927	3,125,621	4,337,548	872,609	348,872	1,221,481
90	Sussex	1,724,989	6,617,752	8,342,741	1,042,099	801,725	1,843,824
91	Tazewell	3,105,251	2,101,677	5,206,928	2,040,822	566,828	2,607,650
92	Warwick	359,451	619,482	978,933	453,539	80,085	533,624
93	Warren	2,347,585	2,316,126	4,663,711	2,084,297	548,143	2,632,440
94	Washington	5,227,245	4,409,650	9,736,895	4,395,420	1,290,488	5,685.908
95	Westmoreland	1,837,762	2,583,458	4,421,220	1,363,055	347,612	1,710,667
96	Wise	522,425	346,735	869,160	393,636	148,505	542,141
97	Wythe	4,677,230	2,877,144	7,554,374	3,354,501	1,143,261	4,497,762
98	York	756,320	1,216,200	1,972,520	897,569	215,671	1,113,240
		$384,453,876	$532,633,947	$917,087,823	$294,168,822	$101,736,704	$395,905,526

EXHIBIT "WEST VA. 1."—Continued.

WEST VIRGINIA.

	Counties.	Census Valuation. Real.	Census Valuation. Personal.	Census Valuation. Total.	Assessed Valuation. Real.	Assessed Valuation. Personal.	Assessed Valuation. Total.
1	Barbour	$ 2,372,090	$ 775,896	$ 3,147,986	$ 1,428,352	$ 516,950	$ 1,945,302
2	Berkley	5,107,801	2,343,268	7,451,069	5,221,496	797,998	6,029,494
3	Boone	507,032	376,589	883,621	501,364	187,680	689,044
4	Braxton	990,383	418,230	1,408,613	931,716	289,434	1,221,150
5	Brooke	3,040,949	1,480,677	4,521,626	1,015,751	407,487	1,423,238
6	Cabell	2,225,160	1,137,091	3,362,251	1,981,994	605,462	2,587,456
7	Calhoun	392,097	116,665	508,762	319,861	55,955	375,816
8	Clay	183,854	88,338	272,192	258,802	52,440	311,242
9	Doddridge	1,039,599	328,092	1,367,691	758,970	165,220	924,190
10	Fayette	1,364,206	585,205	1,947,411	909,019	219,158	1,128,177
11	Gilmer	783,082	338,013	1,121,095	777,532	161,522	939,054
12	Greenbrier	6,724,245	3,609,556	10,333,801	3,511,292	1,809,005	5,320,297
13	Hampshire	4,317,428	2,586,420	6,903,848	3,958,442	1,082,218	5,040,660
14	Hancock	2,310,024	1,012,557	3,322,581	962,469	262,221	1,224,690
15	Hardy	3,563,232	2,289,434	5,852,666	2,946,309	942,419	3,888,728
16	Harrison	5,035,595	2,473,447	7,509,042	3,841,669	1,083,482	4,925,151
17	Jackson	1,597,727	446,024	2,043,751	1,605,007	294,986	1,899,993
18	Jefferson	7,519,196	4,717,786	12,236,982	6,786,097	1,910,687	8,696,784
19	Kanawha	3,264,375	2,750,530	6,014,905	3,803,359	720,969	4,524,328
20	Lewis	2,384,629	862,546	3,247,175	1,424,843	432,826	1,857,669
21	Logan	655,697	434,685	1,090,382	388,650	239,785	628,435
22	McDowell	102,876	41,565	144,441	159,686	31,138	190,824
23	Marion	3,350,079	1,360,093	4,710,172	2,721,173	717,028	3,438,201
24	Marshall	3,700,576	1,170,092	4,870,668	2,422,094	340,471	2,762,565
25	Mason	2,717,393	1,156,457	3,873,850	2,757,149	548,385	3,305,534
26	Mercer	1,487,427	831,916	2,319,343	679,256	279,050	958,306
27	Monongahelia	3,535,232	1,360,800	4,896,032	3,038,051	1,067,084	4,105,135
28	Monroe	4,665,886	3,123,403	7,789,289	3,384,469	1,408,522	4,792,991
29	Morgan	730,967	371,688	1,102,655	741,555	186,232	927,787
30	Nicholas	1,552,470	1,011,240	2,533,710	850,699	264,084	1,114,783
31	Ohio	8,509,524	4,400,512	12,910,036	5,021,349	817,560	5,838,909
32	Pendleton	1,662,607	920,447	2,583,054	1,100,237	523,324	1,623,561
33	Pleasants	680,381	151,152	831,533	584,444	129,035	713,479
34	Pocahontas	1,880,904	1,027,004	2,907,908	1,184,314	436,121	1,620,435
35	Preston	2,612,010	1,460,721	4,072,731	1,671,766	679,170	2,350,936
36	Putnam	1,582,360	1,104,255	2,686,615	1,076,081	299,725	1,175,806
37	Raleigh	552,940	264,256	817,196	521,252	125,355	646,607
38	Randolph	1,747,089	642,608	2,389,697	1,364,590	306,617	1,671,207
39	Ritchie	1,465,987	632,404	2,098,391	1,322,142	261,832	1,583,974
40	Roane	697,115	149,316	846,431	606,217	158,731	724,948
41	Taylor	1,837,933	858,845	2,696,778	1,256,488	361,874	1,618,362
42	Tucker	287,555	94,374	381,929	371,080	77,679	448,759
43	Tyler	1,770,848	762,994	2,533,842	914,502	308,533	1,223,038
44	Upsher	1,834,475	768,691	2,603,136	1,333,164	401,914	1,735,078
45	Wayne	1,014,831	511,471	1,526,302	1,027,443	363,127	1,390,570
46	Webster	204,316	54,690	259,006	83,401	21,554	104,955
47	Wetzel	1,111,952	463,534	1,575,486	866,500	190,611	1,057,111
48	Wirt	550,673	228,449	779,122	515,227	110,893	626,120
49	Wood	2,881,249	1,287,397	4,168,646	2,578,846	683,030	3,261,876
50	Wyoming	338,395	272,981	611,376	292,121	121,083	413,204
		$110,444,451	$55,652,404	$166,096,855	$ 83,778,290	$ 23,457,666	$107,235,956

EXHIBIT "WEST VIRGINIA 2."

Table showing slave population, by counties, in Virginia in 1860, over and under the age of 12 years, as shown by Census of 1860, and number of slaves assessed in Virginia in 1860.

	County.	Under 12.	Over 12.	Total.	Slaves assessed as over 12.
1.	Accomack	1,601	2,906	4,507	2,645
2.	Albemarle	5,234	8,682	13,916	7,469
3.	Alexandria	383	1,003	1,386	709
4.	Allegheny	271	729	990	589
5.	Amelia	2,903	4,752	7,655	4,269
6.	Amherst	2,316	3,962	6,278	3,211
7.	Appomattox	2,505	2,095	4,600	2,444
8.	Augusta	2,086	3,530	5,616	2,967
9.	Bath	373	573	946	475
10.	Bedford	3,728	6,448	10,176	5,303
11.	Botetourt	1,031	1,738	2,769	1,728
12	Brunswick	3,442	5,704	9,146	5,209
13.	Buchanan	15	15	30	144
14.	Buckingham	3,270	5,541	8,811	4,827
15.	Campbell	3,953	7,627	11,580	6,754
16.	Caroline	3,975	6,697	10,672	6,029
17.	Carroll	98	164	262	127
18.	Charles City	976	1,971	2,947	1,783
19.	Charlotte	3,402	5,836	9,238	5,489
20.	Chesterfield	3,852	5,502	8,354	4,733
21.	Clarke	1,255	2,120	3,375	1,834
22.	Craig	199	221	420	215
23.	Culpeper	2,559	4,116	6,675	3,245
24.	Cumberland	2,358	4,347	6,705	3,899
25.	Dinwiddie	3,904	8,870	12,774	3,918
26.	Elizabeth City	877	1,540	2,417	1,273
27.	Essex	2,441	4,255	6,696	3,921
28.	Fairfax	1,154	1,962	3,116	1,607
29.	Franklin	4,022	6,433	10,455	5,025
30.	Floyd	199	276	475	224
31.	Fluvanna	1,885	3,109	4,994	981
32.	Franklin	2,607	3,744	6,351	2,877
33.	Frederick	831	1,428	2,259	1,174
34.	Giles	271	507	778	444
35.	Gloucester	2,166	3,570	5,736	3,038
36.	Goochland	2,251	3,888	6,139	8,696
37.	Grayson	215	332	547	280
38.	Greene	791	1,193	1,984	3,507
39.	Greenville	1,598	2,569	4,167	2,213
40.	Halifax	5,711	9,186	14,897	2,678
41.	Hanover	3,650	5,833	9,483	4,984
42.	Henrico	6,794	13,247	20,041	4,462
43.	Henry	2,119	2,899	5,018	3,065
44.	Highland	153	299	402	208
45.	Isle of Wight	1,227	2,343	2,570	2,077
46.	James City	819	1,767	2,586	1,546
47.	King George	1,320	2,350	3,673	2,066
48.	King and Queen	2,362	3,777	6,139	2,916
49.	King William	1,874	3,651	5,525	3,288
50.	Lancester	1,100	1,769	2,869	1,605
51.	Lee	348	476	824	486
52.	Loudoun	2,029	3,472	5,501	5,429

Ex. "W. Va. 2."
P.-2

53.	Louisa	3,921	6,273	10,194	4,163
54.	Lunenburg	2,785	4,520	7,305	2,408
55.	Madison	1,654	2,743	4,397	7,392
56.	Matthews	1,117	2,991	3.008	1.507
57.	Mecklenburg	4,507	7,913	12,420	3,215
58.	Middlesex	915	1,460	2,375	1.526
59.	Montgomery	862	1,357	2,219	1,141
60.	Nansemond	1,817	3,664	5,481	2,571
61.	Nelson	2,200	4,038	6,238	3,856
62.	New Kent	1,534	1,840	3,374	1,780
63.	Norfolk	2,608	6,396	9,004	1,997
64.	Northampton	1,341	2,531	3,872	2,213
65.	Northumberland	1,334	2,105	3,439	1,733
66.	Nottoway	2,304	4,164	6,46[illegible]	3,309
67.	Orange	2,390	3,721	6,111	1,026
68.	Page	346	504	850	495
69.	Patrick	1,000	1,070	2,070	8,180
70.	Pittsylvania	5,455	8,885	14,340	8,180
71.	Powhatan	1,995	3,408	5,403	3,177
72.	Prince Edward	2,546	4,795	7,341	4,352
73.	Prince George	1,729	3,268	4,997	2,894
74.	Prince William	926	1,430	2,356	1,269
75.	Princess Anne	1,139	2,047	3,186	1,818
76.	Pulaski	623	966	1,589	918
77.	Rappahannock	1,382	2,138	3,520	1,721
78.	Richmond	904	1,562	2,466	1,373
79.	Roanoke	955	1,688	2,643	1,603
80.	Rockbridge	1,543	2,442	3,985	2,328
81.	Rockingham	912	1,475	2,387	1,268
82.	Russell	466	633	1,099	516
83.	Scott	150	340	490	324
84.	Shenandoah	237	517	753	484
85.	Smyth	326	711	1,037	508
86.	Southampton	1,815	3,593	5,408	3,174
87.	Spottsylvania	2,920	4,866	7,786	4,106
88.	Stafford	1,267	2,047	3,314	1,575
89.	Surry	837	1,678	2,515	1,552
90.	Sussex	3,327	4,057	6,384	3,604
91.	Tazewell	523	679	1,202	676
92.	Warwick	331	688	1.019	602
93.	Warren	588	987	1,575	804
94.	Washington	950	1,597	2,547	1,319
95.	Westmoreland	1,394	2,307	3,704	2,088
96.	Wise	29	37	66	34
97.	Wythe	824	1,338	2,162	1,116
98.	York	697	1,228	1,925	999
	Total	173,851	298,643	472,494	262,617

EXHIBIT "WEST VIRGINIA 3."

Table showing slave population, by counties, in West Virginia in 1860, over and under the age of 12 years, as shown by Census of 1860, and number of slaves assessed in West Virginia in 1860.

	County.	Under 12.	Over 12.	Total.	Slaves assessed as over 12.
1.	Barbour	22	73	95	68
2.	Berkeley	586	1,064	1,650	911
3.	Boone	57	101	158	86
4.	Braxton	46	58	104	54
5.	Brooke	5	13	18	5
6.	Cabell	110	195	305	216
7.	Calhoun	2	7	9	6
8.	Clay	10	11	21	12
9.	Doddridge	13	21	34	17
10.	Fayette	105	166	271	127
11.	Gilmer	15	37	52	21
12.	Greenbrier	532	993	1,525	996
13.	Hampshire (See * below)	434	779	1,213	729
14.	Jackson	12	43	55	42
15.	Jefferson	1,460	2,500	3,960	2,256
16.	Kanawha	769	1,415	2,184	1,238
17.	Lewis	86	144	230	103
18.	Logan	61	87	148	192
19.	Marion	14	49	63	46
20.	Marshall	3	26	29	20
21.	Mason	143	233	376	200
22.	Mercer	151	211	362	70
23.	Monongalia	26	75	101	69
24.	Monroe	423	691	1,114	611
25.	Morgan	38	56	94	60
26.	Nicholas	56	98	154	85
27.	Ohio	25	75	100	23
28.	Pendleton	95	149	244	138
29.	Pleasants	4	11	15	7
30.	Pocahontas	94	158	252	148
31.	Preston	23	44	67	41
32.	Putnam	232	348	580	353
33.	Raleigh	19	38	57	28
34.	Randolph	52	131	183	107
35.	Ritchie	14	24	38	12
36.	Roane	31	41	72	35
37.	Taylor	33	79	112	68
38.	Tucker	4	16	20	17
39.	Tyler	5	13	18	7
40.	Upshur	68	144	212	97
41.	Wayne	45	98	143	74
42.	Wetzel	1	9	10	8
43.	Wirt	5	18	23	17
44.	Wood	68	108	176	82
45.	Wyoming	22	42	64	36
46.	Webster *	0	3	3	0
47.	Hancock	0	2	2	1
48.	Hardy	381	692	1,073	645
49.	Harrison	220	362	582	292
50.	(McDowell not given.)				
	Total	6,620	11,751	18,371	10,476

Other Evidence and Proceedings Relating to Paragraph VII of the Decree.

[*Vol. 1. Nov. 16, 1909. Direct Examination of A. G Potter.*]

TESTIMONY ON BEHALF OF THE COMPLAINANT.
under Paragraph 7 of the Decree.

79

ARTHUR G. POTTER,
testified as follows:

Mr. Anderson: The statements we have filed in response to the seventh paragraph of the decree are necessarily incomplete, and to some extent tentative. There are certain facts we had hoped to be able to ascertain upon examination of records in West Virginia, where I went personally, accompanied by Mr. Potter and Mr. Robinson and Mr. Lightfoot, and they made careful investigations there. The officials of West Virginia turned over to us all the records which were accessible or which could be found in the State library and in the public offices of the government of West Virginia at Charleston; but the first General Assembly of the Government of West Virginia at Wheeling authorized Governor Pierpont to turn these records over to the new Governor of West Virginia, upon the understanding that whenever called for by Virginia, they were to be returned to Virginia. They have not been returned, and until they are returned we cannot make complete answers to this direction of the decree. I want to say, however, that it is not so important to have these records as it was at one time believed to be. We can file this statement with the understanding that it is tentative and incomplete.

The Special Master: Then as I understand, you offer Plaintiff's Exhibit G-1 with the understanding that you may later desire to supplement it with more complete proof of the Plaintiff's case under that item?

Mr. Spooner: If it cannot be supplemented, it is not good, 80
is it?

Mr. Anderson: We want to make additions to it, that is all. We will lose if we are not able to do it.

The Special Master: That is, in presenting this, you do not wish to be understood as conceding that this is all that you are entitled to

recover on that branch of the case, but you reserve the right to put in additional evidence if you are able to obtain it?

Mr. Anderson: If we are able to obtain it.

The Special Master: I see no objection to that.

[See in testimony under Paragraph 2, at page —— of this volume, reference to matter following through indented page 81.]

By Mr. Spooner:

Q. Did you ascertain, during the progress of your investigation, the number of square miles in the Commonwealth of Virginia in 1861?

A. We took that from the report of the Auditor of Public Accounts.

Q. What did you ascertain to be the area in square miles of Virginia in 1861?

A. It is shown in that Schedule No. 2—number of square miles in Virginia, 48,951.

Q. Oh, no; not in 1861. I mean the area of Virginia before she was divided.

A. Before she was divided? Total, 94,488 square miles.

Mr. Anderson: I think that is excessive, but that was the estimate. I suppose it was reached, Senator, by reason of the fact that —

By Mr. Spooner:

Q. Where did you get that? 81

A. From the auditor's report of 1861.

By the Special Master:

Q. What is that; the report giving the list of counties in detail and the area of each county?

A. Yes, sir.

Q. You took the county items and made the aggregate?

A. As per the certificate of the County Surveyors.

By Mr. Harrison:

Q. That was in the Auditor's report of the State of Virginia for 1861?

A. I believe the book is marked, "Reports of 1861."

Q. And that information in detail is given by the Auditor in that report?

A. Yes, sir.

Q. By counties?

A. Yes, sir.

By Mr. Spooner:

Q. Vacant lands that were assessed?

A. I paid no attention to vacant lands that were assessed.

Mr. Anderson: If he had, Senator, it would have been a great deal larger, in all probability, because the same tract of land was sometimes assessed three or four times.

The Special Master: Anything further, Mr. Anderson?

By Mr. Anderson:

Q. State what you know about this statement, "Plaintiff's Exhibit G-1." From what sources was that information compiled.

The Special Master: That is, what were the original sources of your information? 82

Mr. Anderson: Yes, sir.

A. With respect to schedules 1, 2 and 3 under this article, the information was taken from the Auditor's reports of West Virginia, consulted in the library at Charleston. The schedules here show the source of the information.

Q. What are the facts as to the correctness of that statement, as far as it goes, and so far as it comes within your knowledge?

A. The various figures that I have taken off are merely copies from those books. I do not know anything about the accuracy of them, because there was no opportunity for verifying them. I merely know the copies are right, to the best of my knowledge and belief.

Q. They are copies of the public reports of the Auditor of West Virginia?

A. Yes, sir.

The Special Master: File that, please, and let it be marked by the stenographer.

(The paper referred to, entitled "Commonwealth of Virginia vs. State of West Virginia. Summary of Property, Stocks and Credits received by West Virginia under Article VII." is filed herewith, marked "Plaintiff's Exhibit G-1.")

Mr. Harrison: Do you gentlemen want to examine Mr. Potter about this exhibit?

By the Special Master:

Q. Can you state where you got the information in Schedule 5—stock in the Merchants & Mechanics Bank of Wheeling? 83

A. The last page shows that under Section 20 of the Act of March 7, 1834, the Commonwealth of Virginia received from the Merchants

& Mechanics Bank of Wheeling a stock bonus amounting to $40,000.

Q. Then you got that from an act of the Legislature?

A. Yes, sir.

Mr. Spooner: Have you detailed statements to support this exhibit G 1?

Mr. Robinson: We have no details to support that?

Mr. Spooner: Why not?

A. This contains all the detail we could find.

Mr. Robinson: That is all the detail we have.

The Special Master: As I understand Mr. Potter, he found the items upon which he predicates items 1, 2 and 3 in the public reports of West Virginia, and he took those items and assumed them to be correct.

By Mr. Spooner:

Q. Will you indicate the reports where you got that information?

A. The introductory paragraph of this first schedule, Schedule 1, says:

"In a letter in 'Auditor's reports, House Journal 1862-3,' dated Wheeling, July 14th, 1863, from S. P. Hildreth, Treasurer, to Governor Pierpont, he reports having made an examination of what we take to be the books of the Restored State.

The second one also refers to that. The third one refers to a number of annual reports, giving the table and page number 84 in the annual reports of the Auditor of West Virginia as far up as 1872. It has to do with arrears of taxes.

[*Vol. 5. May 6, 1909. Cross Examination of A. G. Potter.*]

[By Mr. McClintic]: The next schedule is 7—

The Special Master: Plaintiff's Exhibit G-1.

Q. (Continuing): G-1; No. 7 of the decree. The charge in that schedule, Mr. Potter, $225,279.83 received by West Virginia. What evidence did you have that West Virginia received any such sum?

The Special Master: That is on page one.

Mr. McClintic: Yes.

A .The auditor's report of the house journal 1862-3, dated Wheeling, July 14, 1863.

By Mr. McClintic:

Q. What auditor?

A. I have not the name of the auditor here. I think the report was by Treasurer Hildreth.

Q. Of what state was Mr. Hildreth the treasurer? 384

A. I don't know whether it was the restored state or West Virginia.

The Special Master: What did he say—that he was the treasurer of the Pierpont Government?

Mr. McClintic: I think so.

The Special Master: This schedule does not contain the date. What was that item?

The Witness: On page 2 that is given.

The Special Master: You have your schedules all paged correctly now, have you not?

Mr. McClintic: Yes, sir.

The Special Master: So we can refer now to the new pages?

By Mr. McClintic:

Q. Was not that sum taken by you from a letter written by S. P. Hildreth to Governor F. H. Pierpont, July 14, 1863?

A. Yes, a copy of the letter as the schedule states. In the letter above referred to is the following paragraph, and then it goes on to state the amount of money received and disbursed.

By Mr. Harrison:

Q. Read the paragraph.

A. "In a letter in auditor's report House Journal 1862, line 3, dated Wheeling, July 14, 1863, from S. P. Hildreth, Treasurer, to Governor Pierpont, he reports having made an examination of what we took to be the books of the restored State."

In that letter above referred to is the following paragraph: 385

"In this same journal we find the amount in the Treasury on the 1st of October, 1862, to have been $120,159.01; received to June 19, 1863, $252,529.71; making a total of cash to be accounted for $372,688.72. Out of which there was paid $147,408.89. Leaving a balance in the Treasury June 20, 1863, of $225,279.83."

By Mr. McClintic:

Q. In what part of that letter did you find those words, "Making the total of cash to be accounted for?"

A. I introduced that.

Q. Were you not starting out to read what the letter purported to say?

A. The figures show that there is that charge to be accounted for.

Q. Did you not start out, in answer to a question a moment ago, to read the paragraph?

A. Yes, sir.

Q. And did you not interpolate some language of your own in reading it?

A. Yes, sir; but you had a copy of the report before you.

Q. You were doing that in answer to a question of Mr. Harrison, were you not?

A. Yes, sir, I believe so.

Q. What evidence have you that West Virginia got that $225,279.83?

A. None whatever.

The Special Master: What does this indicate; that it was in the Treasury of the Pierpont Government or in the Treasury of some other government?

The Witness: That the Government of West Virginia took 386
it over from the restored government.

Mr. McClintic: How did it indicate that?

Mr. Anderson: That is rather a matter of argument.

Mr. McClintic: No, it is not; it is a matter of fact.

The Special Master: How would it do to inquire whether there is anything in the letter that is indicative of the place where the money went except the extract he quotes. What is the fact about that? Excuse me for making the suggestion?

The Witness: There is nothing—

By the Special Master:

Q. Have you given all of the letter that tends to indicate where the money was and where the money went?

A. Yes; that was my intention.

Q. And so, wherever it was, it was simply a matter of construction from this?

Mr. Anderson: Will you read your note at the bottom of the page, page 2?

The Witness (apparently reading): Governor Boreman's message of July 23, 1863, says the report of Hildreth shows a balance in the Treasury of June 19, 1863, which is to be transferred to this State under the provisions of an act of the General Assembly, passed February 4, 1863. See page 6, Volume 1; Virginia vs. West Virginia reports.

The Special Master: Of what State was Boreman Governor?

Mr. Harrison: He was the first Governor of West Virginia.

The Special Master: So far as the letter is concerned, the 387
extract shows everything that the letter discloses?

Mr. Harrison: Yes.

The Special Master: And then you supplement it by this extract from the Governor's message?

By Mr. McClintic:

Q. Then you have no other evidence than the message by Boreman and this letter—which message of Boreman says there was so much in the Treasury on the 19th of June, 1863, meaning the Treasury of Virginia, which was to be transferred?

A. That is all.

Q. You have no evidence that it was transferred in any way?

A. None whatever.

Q. In schedule 2, mentioned on page 1, and also page 3, you charge West Virginia with $9,937.86. On what basis do you make that charge?

A. From information read out of the same letter just referred to, in a published report found in Charleston.

Q. Have you any evidence that that money was ever transferred to West Virginia?

A. None whatever.

Q. Have you any evidence that that money was ever in the Treasury at any time?

A. No, sir.

Q. You make a charge on schedule 3 of $1,343.80. The schedule is on page 4. Where did you get that information?

A. The auditor's reports of 1861-70; 1871-76. 388

Q. The auditor's reports of what state?

A. The state of West Virginia.

Q. You do not mean the auditor's report of the State of West Virginia of 1861?

A. Yes; the book was marked "Auditor's report 1861-70" on the back of the book.

Q. You simply mean they were bound together?

A. That is all. The first year was 1862, the year ending 1862, as shown in the schedule, table C, page No. 7.

Q. Why do you charge West Virginia with anything received in 1862?

A. We have not done so under this schedule.

Q. I understand you to say so.

A. I said the first report mentioned in that book was marked 1861-70, the report of September 30, 1862.

Q. Whose report?

A. The Auditor's.

Q. Of what state?

The Special Master: What auditor?

Mr. Anderson: The Pierpont Government, I suppose.

A. I have not that name.

Mr. Carlisle: What state was he auditor of?

The Special Master: Tell us whether he represented Virginia or West Virginia?

The Witness: The restored government. I am not so familiar with the personnel of that Governmental force up there as some of you gentlemen are.

Mr. Harrison: Where did you find the book you referred to? 389

A. In the State Library in Charleston, West Virginia.

By Mr. McClintic:

Q. On the schedule marked page 1, stock in Merchants and Mechanics Bank, Wheeling, $40,000. Please explain what that charge was for.

A. I would like to explain that that item was entered under a misapprehension. I had a memorandum when I came down here at the first hearing to investigaate that, and it was not my understanding that that entire schedule was to be introduced as evidence; but it was introduced, and I overlooked the matter of looking up that particular item. I have since found that those shares were sold by the Sinking Fund in 1857, and we would therefore like to withdraw that item from the schedule.

Q. Did the State pay any money for that stock?

A. I believe it was a stock bonus.

Q. You mean it was given to the State under an act of the legislature?

A. Providing for something in the way of a franchise tax, I presume.

The Special Master: Is it conceded on the part of counsel for the plaintiff that that item shall go out?

Mr. Anderson: Yes, sir; that item goes out.

Mr. Harrison: I understand, Mr. Potter, that this schedule 7 was put in—

The Special Master: Plaintiff's Exhibit G-1—

Mr. Harrison: Was put in before you had fully completed your investigation of the bank stock item referred to?

The Witness: Yes, sir. 390

By Mr. McClintic:

Q. Did you look at the item of the Northwestern bank in reference to the item which you marked "not on annual report?"

A. I have not had time to investigate that?

The Special Master: Do you wish him to investigate that?

Mr. McClintic: Yes; I asked him to do so.

The Special Master: We might suspend, then, with this witness, and go on with some other witness.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: We now offer Defendant's Exhibit G-1. 568

The Special Master: That is offered and received.

(The exhibit referred to is marked Defendant's Exhibit G-1.)

By Mr. McClintic:

Q. Please state if that exhibit was made under your direction and signed by you?

A. That exhibit was made under my direction and is correct, in regard to such items as are included thereunder, as qualified by the caption; and it is signed by me.

Q. On page 2, the first item, total turnpikes, roads, etc., $700,-103.49. Please explain what you mean by that?

A. Those were the total amounts in regard to that particular item which the State had invested in the stock of turnpikes and roads lying wholly in the territory now constituting the State of West Virginia. It was the original and full amount of the investment of the State.

Q. That is the purchase of stock in various companies by the State of Virginia?

A. Yes; incorporated companies.

By the Special Master:

Q. When you say total cost, do you mean that is the total capital of the stock?

A. No, sir; not exactly.

Q. You mean that is the aggregate expenditure of the State in the stock of that company?

A. Yes, sir. 569

Mr. McClintic: That class of company, there were a hundred or more of them.

The Special Master: Oh, yes.

The Witness: The State subscription was first two-fifths and then

three-fifths. That was the usual subscription to the capital stock of these various companies.

By Mr. McClintic:

Q. Take the next item, navigation companies, $210,500. Please explain that.

A. The same applies to that. That was the amount that the State paid. I may say that there were sometimes differences between the amount paid and the amount subscribed. This is the amount actually paid in by the State for the capital stock which it purchased, in these incorporated navigation companies, the navigation companies being devoted to the improvement of rivers.

The Special Master: Do you say that as a rule the investment of the State was two-fifths?

The Witness. Yes, sir. In the early part of the period in some instances it was one-fifth, usually two-fifths and later three-fifths.

By Mr. McClintic:

Q. On Plaintiff's Exhibit C-1 there is charged an item, *Monongalia*, $8,180.

Mr. Anderson: What page is that?

Mr. McClintic: Page 11. Please state if you admitted to your account an item, 1822, $5,520.

The Special Master: That is prior to the beginning of his 570
account, is it not?

Mr. McClintic: Yes.

By the Special Master:

Q. Then I may assume that every item that appears on the schedules presented by the plaintiff that antedates March 19, 1823, is not included in the statements made by Mr. Dixey?

A. Yes, sir.

Q. That statement covers the whole series of exhibits and schedules?

A. Yes, sir.

By Mr. McClintic:

Q. Look on page 2 of Defendant's Exhibit G-1 and explain the item Bridge Companies, $78,412.50.

A. On page 2?

Q. Yes.

A. Those were incorporated bridge companies, and that amount is the amount that the State paid for its stock purchased by it in those incorporated bridge companies.

Mr. Spooner: When you say purchased, do you mean subscribed for?

The Witness: Paid; that is, the actual payment by the State. It does not agree in all cases with the subscription.

By the Special Master:

Q. Does the amount paid in any instance exceed the subscription?

A. I recall no such instance.

Q. But in some cases the amount subscribed exceeded the amount paid in?

A. Yes, sir. The payments were made proportionately. 571
When the public paid in so much, the State paid in so much; and sometimes the whole amount was not paid in.

Q. The inference is that when the State did not pay the full amount of the subscription, the public did not pay the full amount?

A. That is the inference.

Q. That is, it was a pro rata payment all around?

A. Usually, yes.

By Mr. McClintic:

Q. The next item is in regard to interstate roads between and in the the territory now constituting the Commonwealth of Virginia and the State of West Virginia; $114,652.84. Please explain that?

A. That amount is the amount paid by the State for its subscription to the capital stock of the Interstate turnpike and roads.

By the Special Master:

Q. That is, the turnpikes leading from one state to another?

A. Yes, built by an incorporated company.

Q. Have you any computation that would apportion that payment to the respective distances that the roads would extend in either State?

A. We have the mileage in the two states figured out in every case. That would not always be necessarily a fair method of apportionment, however. Portions of the road might be more difficult to build than other portions.

Q. That, of course, would be arbitrary.

A. I may say, sir, that those mileages are shown on the details of this exhibit in this report.

Q. Are those facts worked out? 572

A. They have not been applied to the amount spent.

Mr. McClintic: We expect to prove that fact later. The next is $25,000—

The Special Master: I was going to say that all these facts would be admissible. I cannot tell in advance what theory I am going to

adopt. I have to have all the facts before me and then reach a conclusion.

By Mr. McClintic:

Q. That item on page 2; please state, if you know, the facts in relation to that.

A. That is an amount paid to the town of Bath.

The Special Master: Do you understand that it represents an indebtedness to the town of Bath by the State?

The Witness: The inception was it was a loan to the town of Bath.

The Special Master: And so far as you have discovered, it indicates the indebtedness of the town of Bath to the Commonwealth?

The Witness: Yes, sir.

The Special Master: And what has been done with it the books do not disclose.

The Witness: They do not, no, sir.

By Mr. McClintic:

Q. The next item, Northwestern Bank of Virginia, at Wheeling, $341,800. Please turn to that exhibit. Page 9, on the same exhibit; explain that amount and what you mean by that amount, $341,800.

A. The amount is the par value of the stock held by the Commonwealth and Literary Fund of the State of Virginia in 573
the Northwestern Bank of Virginia, which was located at Wheeling. The Commonwealth Fund originally held 4,000 shares, on which they paid $375,091.33 in cash, and the balance of $400,000, amounting to $24,908.67 in dividends and interest accumulated. The amount held by the Literary Fund, 500 shares, was purchased in 1832, so that the total amount was Northwestern Bank stock held January 1st, 1861, was 34,018 shares, with a par value of $341,800, excluding 326 shares held by the Board of Public Works, and which were received as bonus stock without cost to the State.

Q. That bonus stock, you mean, is in the nature of a franchise tax?

A. Yes.

Q. And those 326 shares were based on that?

A. Yes.

Q. I notice you say that in 1857 the Commonwealth sold 4082 shares. That is shown by the books of Virginia?

A. Yes, sir.

Q. So it was shown by the books that the number of shares held by the State of Virginia in the Northwestern Bank was 3418, as of January 1st, 1861, I believe?

A. Held by the Commonwealth and Literary Fund, yes, sir.

Q. Well, that is the same as the state.

A. Yes, sir.

Q. How many branches, if you know, from the Acts, did the Northwestern bank have, and where were they situated?

A. I prefer not to testify on that from memory. The record 574 shows.

Q. Please explain the item Fairmont Bank, Marion County, $50,000, which is also on page 9 of the exhibit?

A. That was the amount of subscription of the State for 1,000 shares purchased in 1860; 1,000 shares of the capital stock of the Fairmont bank in Marion County.

Q. And the par value of those shares was $50?

A. Yes, sir.

Q. And the par value of the shares of the Northwestern Bank was $100, was it?

A. Yes; $100.

Q. On page 2 we find James River and Kanawha Company, $9,542,004.30. Please explain why that was included in that form and what it is.

A. That is shown in detail on pages 10 and 11 of the Exhibit.

Q. On pages 10 and 11 of the complete details?

A. Yes. Do you wish me to go over it in full?

Q. No, unless somebody else wants it; I don't care for it. That sum, $9,542,004.30, represents what?

A. That sum represents the total cash outlay for the Commonwealth of the stock of the James River and Kanawha Company, which it owned.

Q. On the 1st day of January, 1861, what was the relation of the State of Virginia to this company, as to the amount of stock held?

A. It held 104,000 shares, of the par value of $10,400,000.

The Special Master: You get that from the aggregate of 575 72,000 and 32,000 on page 11?

The Witness: Yes, sir; shown in the recapitulation on page 11.

By Mr. McClintic:

Q. Was the James River and Kanawha Company indebted to the State of Virginia the 1st of January, 1861, in any sum that you remember or did you examine into the details of that?

A. I don't remember that sufficiently to testify from memory. I may ask you whether you mean in addition to the amount represented by capital stock?

Q. Yes.

A. I don't remember the amount sufficiently to tell that.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixey.*]

Q. Now, dealing with your Exhibit G-1, which is responsive to paragraph 7 of the decree, will you please look at that for a moment, Mr. Dixey? 661

A. Yes, sir.

Q. On page 1 of that exhibit you say "Appended hereto is a statement of such property as was received by West Virginia and which has not been included in any schedule heretofore prepared and rendered." Now, turning to the next page we find an itemized list of property, footing up $11,079,973.19. Is that the list referred to in the certificate on page 1? 662

A. That is not the list. That is the property. The footings are not referred to on page 1. It simply refers to the property received. That is the total cost, the money expended for those. Those are still to be valued.

By the Special Master:

Q. That is the summary of the cost of the property, is it?

A. Yes, sir; I have not assumed to put any value on those.

Q. That is, what you have on page 2 is a summary of the cost of the property referred to in the certificate on page 1. Is that right?

A. Yes, sir.

By Mr. Harrison:

Q. My question is, do you state that the property listed there was received by West Virginia?

A. I understand that it was constructively received; yes, sir. These are practically all stocks. Now, I don't understand that the stock certificates were delivered to West Virginia.

Q. Where did you get your understanding from?

A. From that section of the decree. 663

Q. I do not see how you could get it from that.

A. If you will make your meaning a little plainer—

The Special Master: The understanding he is asking you for, as I understand it, is where you get your understanding that all the stock was not delivered to West Virginia. He wants to know where you got that information.

By Mr. Harrison:

Q. Where did you get your understanding that that was constructively held by West Virginia?

A. Well, I have been so advised.

Q. By whom?

A. I know that an amount of the stock of these old Companies was never actually delivered to West Virginia.

Q. Did you get your information from the public records of Virginia?

A. The stock is in the Treasurer's office at this minute of a great many of these companies.

Q. That is not an answer to my question. You have said just now that you had an understanding that this list of stock was constructively delivered to West Virginia?

A. Yes, sir.

Q. I ask you where you got that understanding. If you will answer the question, I will be obliged to you?

A. I think I cannot say I have been actually so instructed by counsel, but I have received that impression from counsel in conversation, in talking this matter over. I certainly did not evolve it myself.

Q. Then when you speak of your understanding on that subject, you refer to the impressions you have received from 664
counsel?

A. I think from counsel; yes, sir. It is a very definite impression on my mind. I cannot locate it absolutely.

By the Special Master:

Q. To what extent did you find the original stock on file?

A. I have not made any attempt to go through it. There were hundreds and hundreds of certificates down there, and they don't know what they have got themselves.

Q. In whose name?

A. I don't even know that. I have only seen a very few certificates.

By Mr. Harrison:

Q. It is impossible for you to tell whether it is West Virginia's stock or Virginia's stock or any other stock?

A. Well, this list, of course, was prepared under instruction of counsel.

Q. The thing I was inquiring about now was the particular matter the stock certificates.

A. I don't actually know. No actual investigation has been made to see just what stock certificates are down there.

Q. You say investigation has been made?

A. Has not been made, on our part.

Q. You have an item of $9,542,004.30 of stocks of the James River and Kanawha Company?

A. Yes, sir.

Q. Which, according to your statement, is constructively held by West Virginia? 365

Mr. McClintic: No, sir; he never made any such statement.

A. No, sir.

Mr. Harrison: That is the explanation he had given?

A. It does not say so. There is the schedule.

By Mr. Harrison:

Q. Just wait one moment. Let us see what it says. You have just stated that was a list of property certified as having been received by West Virginia, and when I asked you how you knew it was received by West Virginia you said your understanding was it had been constructively received by her, and then what you meant by that was that you had derived that impression from counsel. Now, I ask you if I am to understand that that $9,000,000 of stock of the James River and Kanawha Company was constructively received?

A. I think I can make a more definite answer than I have made.

Q. Just answer my question. Then you can make just as definite a one as you choose. I say does that mean, according to your testimony, that $9,000,000 of the stock of the James River and Kanawha Company was constructively received by West Virginia?

A. Certainly not.

Q. Now, what do you mean by your caption. Let me read your caption to you and then you may answer my question. What do you mean by this caption: "Summary of the property received by the State of West Virginia; not embraced in any preceding schedule?" What do you mean by that. Is that true, or does it mean something else than it states?

A. No; that is copied from paragraph 7 of the decree.

By the Special Master:

Q. How did you come to include these items under that heading?

A. May I explain?

Q. Yes, certainly.

A. I understood paragraph 7, and I have been so advised, to cover the property that passed under the act of February 3, 1863, and I have understood that all the stock of the companies incorporated in this State, in which West Virginia had any interest, passed under that act; and this schedule is supposed to represent the property that was passed.

Q. Were you not instructed by counsel to include these items under that heading?

A. That is true.

Q. You were instructed by your counsel to include the items under that heading?

A. To include the items under this heading; yes, sir, but that is not the question Mr. Harrison asked. That is included.

The Special Master: Is there any question raised about that, about the accuracy of the statement?

Mr. McClintic: The heading is a trifle misleading, as it was put there, your Honor. I never paid any attention to it whatever. The instructions of counsel were that all items of stocks should go under what we call G-1, clause 7, and in the reference to the 667
James River and Kanawha Company, Mr. Dixey, instead of making a division, simply put the whole stock down here and put the facts down and left it to us to decide the question. We did not see this exhibit until last Monday, and we did not think it worth while to change it afterwards, as it was susceptible of explanation.

The Special Master: As it stands, it is obvious what inference might be drawn from it.

Mr. McClintic: West Virginia, of course, never received that stock of the James River and Kanawha Company, because there is only a small item of that in West Virginia. The balance is in Virginia, and that is misleading. As to the turnpikes and roads that extended across the line, West Virginia received stock for such portions of the roads as were in West Virginia, and did not receive stock for such portions as were in Virginia.

The Special Master: Both parties must appreciate that these schedules are here before me, and I am quite likely to take them for what they state. They must take such action in relation to the schedules, so far as they do not state what they appear to state, as they are advised the rights and interests of their respective clients require. Do I make myself clear about that?

Mr. Spooner: I did not hear your honor.

The Special Master: These schedules all come here before me, and I take the statements that appear on them as true. If the statements are not in accordance with the ideas of counsel in relation to them, they must take such action in relation to the schedules 668
on either side as they are advised the interests of their clients require.

Mr. Spooner: That shall be done, but the subject had not been brought to my attention.

The Special Master: You appreciate their significance, so far as I am concerned. I take these statements as made by the accountants on either side as practically the admissions and declarations of the parties. If they do not accurately state the ideas of the parties, of course the counsel on either side must be careful to see that they must protect the rights of their clients in connection with the statements with which they do not agree, as they may be advised the interests of their clients require.

Mr. Spooner: It is a question as to the construction of the receipt. That is a question of law. I supposed this was an exhibit containing a list of the stocks.

The Special Master: All you are doing at present is to get the facts presented before me, and as the facts appear, of course you predicate your legal propositions thereon; but a clean statement of what the thing is, unless it is explained in some way, of course will go with me. I cannot take any other course in relation to it.

Mr. Spooner: I suppose the real facts are the important thing, and not a mere headline.

The Special Master: Certainly; but in the absence of a fact that counter indicates a headline, the headline goes with me.

Mr. Spooner: Certainly. 669

The Special Master: I shall not take this and go digging. down to evade headlines. If the attorneys have something that counter indicates a headline, I will read it.

Mr. Spooner: We will try and relieve you of any such labor.

The Special Master: In the absence of explanation or suggestion, the headline will stand.

By Mr. Harrison:

Q. Did you visit West Virginia in the progress of this investigation?

A. I have been to West Virginia; yes, sir.

Q. I did not ask you whether you have been to West Virginia.

A. I have been to West Virginia in the progress of this investigation; yes, sir.

Q. Did you go there for the purpose of conducting an examination of her records?

A. I did not myself go there for that purpose. I sent two representatives over there to make the investigation.

Q. Who were they?

A. Do you want the names?

Q. Yes.

A. Mr. D. E. Balsley and Mr. L. A. Petty.

Q. Then you, yourself, took no part in the investigation of the records in West Virginia?

A. Not of the investigation of the records in West Virginia; no, sir.

Q. Were the two gentlemen you have mentioned just now as having investigated your employes?

A. Yes, sir; Mr. Balsley is my employee. 670

Q. How about the other man?

A. Mr. Petty is employed by the State of West Virginia, under my direction.

By the Special Master:

Q. They are all employed in the common work, I suppose?

A. Yes, sir; he went to assist Mr. Balsley, and do whatever Mr. Balsley told him to do.

Q. He simply was not part of your force?

A. He was not, so far as my pay roll goes.

Q. But he was co-operating with your people?

A. Yes, sir.

By Mr. Harrison:

Q. Do you know what records they examined?

A. Do I know what records they examined?

Q. Yes.

A. Yes, sir; they examined those records that were examined by the representatives of Virginia.

Q. Did they examine the journals sheriff's accounts, license books, and the books of the railroad, banks and express and insurance companies of the restored State of Virginia which are referred to in the letter of treasurer Hildreth, of July 14, 1863?

A. They examined the document in which that letter is.

Q. Now I ask you if they examined the documents referred to in that letter?

A. Will you kindly read the letter. 671

The Special Master: Call attention to the documents.

Mr. Harrison: I do not want to read the whole letter. The letter refers to the documents I have mentioned. It refers to the following books: The Journal, Sheriff's accounts, license books, and the books of the railroads, banks, express and insurance companies.

A. The books of the railroads?

Q. Yes.

A. Certainly no such investigation was made.

Q. Or the registry, I believe it was, of banks and insurance companies?

A. No, sir.

Q. Did they examine any of those documents or books referred to in that letter?

A. No, sir.

Q. How do you know?

A. I know because I know what they examined.

Q. Were you there when they examined?

A. No, sir.

Q. You did not see them examined?

A. No, sir.

Q. How do you know what they examined?

A. Because they examined and made a report and brought it

back with them. The book that contains the report that is quoted from in Virginia's Exhibit—they examined that book and brought it back here to Virginia with them, and copies were made of that and we have them in our papers here.

Q. Is that your only reason for saying that you know they 672 did not examine the documents referred to in that book?

A. It was not reported to me that they did, and if they had it would have been so reported; and for the further reason that they do not exist.

Q. How do you know they do not exist?

A. I think Virginia has so stated.

Q. Is that your only reason for saying so?

A. I accepted that statement.

The Special Master: Who said so?

Mr. Harrison: Virginia, he says.

By Mr. Harrison:

Q. You do not know, then?

A. Not of my own knowledge, no, sir; not by any search I have made, I don't know.

The Special Master: You say Virginia so stated. Who do you mean?

A. I say that is my impression.

Mr. McClintic: If the Court please, I forgot to call the attention of these gentlemen to the fact that some time in the month of April I did find in the vault of the Treasury of West Virginia a book which had in it certain memoranda of the restored government, and you might term it, I presume, accounts. I do not know whether to call it a journal or what. I also found another book which contained other memoranda, both of which are here, and both of which we are ready to give to them any time they want them. I had forgotten it up to this time.

Mr. Harrison: We would like to have them.

The Special Master: Do those books contain anything 673 material?

Mr. McClintic: They contain certain receipts and disbursements of the restored Government of Virginia, beginning, I think, sometime in 1861 or 1862. I don't remember the exact date. I brought them over here a short time ago.

Mr. Conrad: There are three books referred to in several of the State papers connected with that Government, and the Statement is made in one those papers that one of the books will be deposited here in the archives of this State. We have made search for nearly two years for those three books.

Mr. McClintic: I will state further that when General Anderson

and Mr. Potter and others were there last October I had never seen or heard of those books. I went with them to the State officers and also with Mr. Lewis, who had been there longer than any of the others, and they said there were no such books. About three weeks ago—I do not remember just when, sometime in the month of April—I was in the Treasurer's office one day, and I saw an old clerk of the treasurer's office in there. I said, "Did you ever find any books, so and so?" He made a search in the vault and said, "Here are a couple of old books, which you might be looking for." At that time I did not look at them, but a few days afterwards I did go back and look at those books, when I got time to do so, and I brought them over here. The gentlemen can have them any time they went them.

Mr. Harrison: Mr. McClintic, when did you say you dis- 674
covered those books?

Mr. McClintic: Sometime in the month of April.

Mr. Harrison: Of this year?

Mr. McClintic: Yes, sir.

Mr. Harrison: And they are here, and we can have access to them?

Mr. McClintic: Yes; you can have them at any time you want them.

The Witness: Mr. McClintic, may I interrupt you a moment. In thinking this matter over at this minute, I think Mr. Balsley was not the man who made the examination. I think it was Mr. J. C. Pybas. Mr. Balsley was engaged on some other examinations, I think. I was confused.

Q. Did you learn anything in the course of your examination and investigation into this matter of an item appearing in statement F, filed with the report of Jackson, Bennett and Campbell, and exhibited by counsel for West Virginia in this record, showing $539,000 of stock of Virginia in West Virginia banks, received by West Virginia?

A. It is in your Exhibit F?

Q. No; I say filed by counsel for West Virginia.

Mr. McClintic: You mean the Bennett report?

Mr. Harrison: Yes, the Bennett, Jackson and Campbell report.

Mr. McClintic: I do not think Mr. Dixey has ever investigated the Bennett report.

Mr. Harrison: Let him answer the question.

A. I am not entirely sure what you are talking about. 675

Mr. Conrad: Let him see that report. Here is a report filed by the counsel for West Virginia.

Mr. McClintic: No; it is not filed anywhere.

A. I know nothing of that. I have seen that book. I have that book.

The Special Master: You mean filed here before me?

Mr. Harrison: No; it is filed in the case.

Mr. McClintic: No, sir; it is not filed in the case anywhere. When we printed that book, we printed it for the information of people in West Virginia, not for anybody in this case or outside of it. In 1871, under a resolution passed by the legislature, three gentlemen, Mr. Bennett, Mr. Jackson and Mr. Campbell made what they called a report, which report was made to the Governor of West Virginia. It never received any attention, you might say, in West Virginia in any way, shape or form. It was for the benefit and information of the people of West Virginia, and when we printed these books, we printed that with it, because that was a document which we wanted people to see, along with the other documents. It is not filed here, in the Supreme Court, or anywhere else.

The Special Master: This is simply cross examination, and cross examination in relation to it does not make it evidence. I was simply inquiring, because I did not know, whether it was something that had been filed before me. Of course I know nothing personally about the Bennett report. I suppose it is competent for them to cross examine in relation to that as well as any other document.

Mr. Harrison: The question is entirely germane to our 676 investigation.

The Special Master: I say he may answer.

A. I have seen this book, Mr. Harrison, and I have run through all the tables there. I have never given any of them very much attention.

By Mr. Conrad:

Q. In the course of your investigations, either direct or through agents in West Virginia, did you learn anything of a sum of between $500,000 and $600,000 in amount which had been derived by the State of West Virginia from the sale of bank stocks, and which appears or did appear a few years ago in their school fund, invested there by the State of West Virginia?

A. At what time?

Q. It was received at the time the bank stocks were sold by the State of West Virginia, whenever that was.

The Special Master: The question is whether you learned in your investigation anything about that item.

By Mr. Conrad:

Q. Did you ever hear of it at all?

A. I would want time to consult our papers on that before I answer it.

Q. Have you any memory about it?

A. What I mean is this paper that is now being printed and which we introduced in carbon form this morning.

By Mr. Harrison:

Q. You mean you have no independent recollection?

A. I have no independent recollection. 677

By Mr. Conrad:

Q. You have no impression on your mind?

A. No, sir; not as to that. I cannot identify it.

Q. You never heard that they had actual sequestered, segregated, a sum approaching $600,000 many years ago, the proceeds of the sale of bank stock, and put it in their school fund for the purpose of preserving it?

A. No, sir; I can say absolutely that I never heard that.

Q. Nor anything like it?

A. No, sir; nothing that made any such impression on me.

[*Vol. 6. May 7, 1909. List of Acts and deeds by Mr. McClintic. Affidavit of J. S. Darst.*]

Mr. McClintic: Just for the convenience of counsel, if they want to look at these acts in the meantime, I want to give the title of a few acts we expect to rely on: 729

Acts of Virginia, restored government, 1861-2, chapter 35, page 20.

Mr. Harrison: Please state as you go along, if it will not inconvenience you, the subject to which the act relates.

Mr. McClintic: That one, as I recollect, gives all the stock of a certain Turnpike Company to the counties through which it passed, called the Marshall & Ohio road.

Acts of Virginia, restored government, 1861-2, chapter 62, page 37. That is in reference to the Kanawha Board.

Mr. Harrison: These are the acts of the restored government?

Mr. McClintic: The acts of Virginia, the so-called restored government.

Acts, 1862, page 13, chapter 15, that is an additional Kanawha Board.

Acts 1862, chapter 18.

Mr. Anderson: We have that volume. That is the compilation made after the war by the West Virginia government—the acts and constitution of Virginia and West Virginia.

Mr. McClintic: Then acts 1862-3, chapter 68, page 58.

The same acts, chapter 72, page 62.
Acts of West Virginia, 1863, chapter 30, page 31.
Also chapter 120, page 178.
Acts 1865, chapter 71, page 61.
Acts 1866, chapter 117, age 115.
Acts 1866, joint resolution No. 8, page 133.

I also want to tender a deed of trust, dated July 30, 1858, between the Coal River Navigation Company of Virginia and James L. Carr and others, trustees.

The Special Master: What is the date of it? 730

Mr. McClintic: July 30, 1858. It grants all the properties and assets of the Coal River Navigation Company to these trustees to secure certain debts therein set out.

(The paper referred to is filed herewith, marked "Plaintiff's General Exhibit No. 2.")

Mr. McClintic: We also tender a deed dated October 25, 1865, between said trustees and certain other parties, purchasers at the trustees sale of said property.

(The paper referred to is filed herewith, marked "Plaintiff's General Exhibit No. 3").

Mr. McClintic: Also a report made by the trustees, recorded July 30, 1867, explaining the persons to whom the money went that arose from the trust sale.

The Special Master: What is that; a report to the court or a report to the corporation?

Mr. McClintic: It is the report to the court, or to the clerk, under the laws of West Virginia, which required a report by trustees.

The Special Master: Simply making it a matter of public record under the statute?

Mr. McClintic: Yes, sir.

I also desire to offer in evidence a certificate of J. S. Darst, present Auditor of the State of West Virginia, which is short, and I will read it:

STATE OF WEST VIRGINIA,
AUDITOR'S OFFICE,
CITY OF CHARLESTON, TO-WIT:

I, J. S. Darst, Auditor of the State of West Virginia, do hereby certify that I have carefully examined the records of the Board of the School Fund of West Virginia, and that the 731 State received for the benefit of its School Fund in the Na-

tional Bank of West Virginia in the City of Wheeling three hundred (300) shares of stock, in the Parkersburg National Bank of Parkersburg, West Virginia four hundred (400) shares of stock, and in the First National Bank of Wellsburg, at Wellsburg, West Virginia, three hundred and fifty-one (351) shares of stock. That the records of West Virginia show that these three Banks were the successors of the Northwestern Bank of Virginia at Wheeling known as the parent bank and of its branches at Wellsburg and Parkersburg, respectively. That each of these shares of stock was of the par value of One Hundred ($100.00) Dollars each,

And I do further certify that the State of West Virginia received from the First National Bank of Fairmont five hundred shares (500) of the par value of One Hundred ($100.00) Dollars each of stock in said last named Bank, which was the successor of the Bank of Fairmont, and that such stocks were received by said State for the benefit of her School Fund in exchange of stock formerly held by the State of Virginia in said Banks, which stocks were taken over by the State of West Virginia by virtue of the Act of the Legislature of Virginia, passed on the 3rd day of February 1863.

And I do further certify that out of the remaining assets of the said Northwestern Bank of Virginia as a dividend on the stock so held by said State of West Virginia therein, there was paid to the said State on the 9th day of July, 1867, $10,510.00, and 732 on the 12th day of August, 1868, by G. Lamb for and on behalf of the Commissioners of said Bank the sum of $10,510.00, and that I do not find that any other or further sum was ever paid to said State of West Virginia by the Commissioners of said Bank out of the assets remaining after the three said National Banks had been formed out of the same.

Given under my hand and official seal this 27th day of April, 1909.

J. S. DARST,
Auditor.

(Seal)

The Special Master: With reference to the three exhibits introduced, I suppose they are introduced for the purpose of showing some specific fact?

Mr. McClintic: Yes, sir.

The Special Master: I do not suppose there is any contingency by virtue of which this record need be encumbered with the documents *in extenso*. As to documents of that character, I would like counsel for West Virginia to prepare as succinct and concise an abstract as they can of the document, which will go into the record in the place of the document, and if Virginia puts in documents of a similar character, I would like to have them do the same thing. There is

no sense in cumbering the record with a great long deed that is only for the purpose of showing one fact. Of course the admitting of the abstract or the admitting of the deed does 733
not foreclose any proposition involved in the case.

Mr. McClintic: The deeds are introduced for just one purpose.

The Special Master: I prefer in cases like that to have counsel themselves make their own abstract rather than undertake to make it myself. I will not cumber this record with a lot of material of that kind. So that counsel on either side can do that and have it assented to by counsel on the other side as a proper abstract.

Mr. McClintic: Those three deeds were with reference to one navigation company, to show that prior to the 1st of January, 1861, the company in which the State of Virginia held stock, of the par value of $96,000, conveyed all its assets to trustees.

The Special Master: You can make a very short abstract to show all that.

Mr. McClintic: Yes, sir.

Mr. Anderson: It became insolvent and lost all its property. That is what you wish to prove?

Mr. McClintic: Yes, sir.

Mr. Harrison: That is a fact established by the deeds, is it not, that the company became insolvent?

Mr. McClintic: Yes.

The Special Master: That can be shown, you see, by a very concise abstract.

Mr. Spooner: They could not foreclose without a mort- 734
gage.

Mr. Anderson: I say a mortgage which was foreclosed and did not satisfy the obligations of the company secured by it.

[*Vol. 6, May 7, 1909, Direct Examination of C. E. Scoville.*]

By Mr. McClintic:

Q. Before I forget it, Mr. Scoville, have you examined the books called the journal and ledger, I presume, of the restored government, which I brought here a few days ago?

A. Yes, sir.

Q. Will you state to the court what amount of money those 744
books show were paid to the treasurer of West Virginia on the 20th of June, 1863, or thereabouts, by the restored State?

A. The books of the restored State to which you refer show that $150,000 was turned over to the new State of West Virginia, in three amounts.

The Special Master: On what date?

A. On July 2, 1863, $92,866.17; on the same date an amount of $47,734.03; on July 9, 1863, $9,399.80; total $150,000.

By Mr. McClintic:

Q. What other moneys if any were turned over to the new State by the restored State of Virginia?

A. The ledger of the new State of West Virginia, which we have here, shows that on February 1, 1864, there was deposited in the Northwestern Bank at Wheeling $20,771.46, as received, according to the entry in that ledger referred to, from the Treasurer of the Commonwealth of Virginia. That last amount, $20,771.46, is not shown as a disbursement in the books of the restored State.

Q. Do the books show for what purpose that sum of twenty thousand and odd dollars was paid?

A. It is not shown on the books of the restored State. It is shown only on the ledger of the new State of West Virginia as a receipt.

Q. The Act of February 4, 1863, of Virginia, made an appropriation to West Virginia of $150,000 in the first section, 745 and in the second provided "that there shall be and hereby is appropriated * * * all balances not otherwise appropriated that may remain in the treasury." Did you examine the books to see if there were any balances of moneys appropriated and not expended on the 20th of June, 1863?

A. Yes, sir.

The Special Master: In the State of Virginia?

Mr. McClintic: In the State of Virginia.

By Mr. McClintic:

Q. What balances if any were shown?

A. The balance shown on June 19, 1863, as being on hand in the restored State was $225,280.07.

Q. I mean the balances of appropriations made for specific purposes and not yet expended. That is what this act says.

A. I have no information as to that.

Mr. Spooner: That is ascertainable, is it not?

The Witness: I don't think so, from the books.

Mr. Harrison: What was the amount you stated just now?

The Witness: $225,280.07.

The Special Master: That is the balance on hand according to the books. That has no relation to these appropriations inquired of. The inquiry was what balances of appropriations that had been made were on hand and unexpended, upon which this act of the legislature might be predicated. He says he does not know, and I think he said he thought it would be difficult to ascertain.

Mr. McClintic: The letter from S. P. Hildreth to F. H. 746
Pierpont—

Mr. Anderson: What are you reading from?

Mr. McClintic: From the journal of the Senate of West Virginia, 1862.

The Special Master: That is the letter that has already appeared in the case?

Mr. McClintic: Yes, sir. It shows a number of balances. They are not added up, and there is a whole lot of accounts. I will ask Mr. Dixey to add them up. I will call the matter up again when I get that added up. While we are on that point, your Honor, I want to put in evidence or in the case all of page 24 of the journal of the House of Delegates of the Commonwealth of Virginia, extra session, which met on the 4th day of December, 1862, being a part of the report of Samuel Crane, Auditor of Public Accounts. I will see that it is typewritten in some form, to put into the report, so it applies to the question of argument which we will come to later, whether this $150,000 should be in any way charged to us.

Mr. Hogg: It is spoken of in the Act of February 4, 1863.

Mr. McClintic: The report is not spoken of, but it is applicable to that matter on the question of that charge. I suppose, your Honor, in every case where we want to refer to a journal, that will have to be put specially in evidence—the public journal of the legislature. Is that in the same position as a public act?

The Special Master: I think you had better put into the 747
record somewhere the extracts on which you rely.

Mr. McClintic: Yes; I suppose it might be well to do that.

The Special Master: I have not examined to see whether they would be taken judicial notice of.

Mr. Spooner: I do not think they would.

Mr. Hogg: They have to be proved.

Mr. Anderson: What is the date of the journal?

Mr. McClintic: It is the journal of the special session in 1862. This report is dated Wheeling, November 25, 1862.

Mr. Anderson: The decree makes the public acts and records of the two States since the admission of West Virginia evidence, if pertinent and duly authenticated.

Mr. Spooner: It makes them competent, but they have to be introduced and put into the record. The court does not take judicial notice of them.

By Mr. McClintic:

Q. I find, Mr. Scoville, by an addition of the balances as reported in this letter of Mr. Hildreth, the Treasurer of Virginia, that the amount of these balances, added up, is $19,570.71. How much does

that differ from the amount you found was paid to West Virginia by Virginia?

A. Will you give me that again, please?

Q. $19,570.71?

A. As I understand the question, you want to know the difference between that and that last amount of $20,000?

Q. Yes; whatever it was. I do not remember the amount.

A. The amount was $20,771.46. The difference is $1,200.75.

The Special Master: In which exhibit do they charge you 748
with $150,000?

Mr. McClintic: They charge us in their exhibit G-1, under the 7th paragraph of the decree, with $225,000, and also some other sum.

The Special Master: On what page do you find that?

Mr. Anderson: It is on the first page of exhibit G-1.

[*Vol. 6. May 7, 1909. Amendment to heading on Defendant's Exhibit G-1.*]

The Special Master: Have the defendants anything further 789
to submit?

Mr. McClintic: We think not; we have no other witnesses at present; but if your Honor please, we want to correct that heading on Exhibit No. 7, which seems to be a trifle misleading. I will have to admit that as one of the counsel I submitted it without reading the heading.

The Special Master: Leave is granted to amend that. Of course, as far as that is concerned, there is no statement made by counsel on either side that they will be estopped by, and if inadvertently any statement has been made which ought to be qualified or changed, it is quite open for counsel to make such change and amendment as they desire.

[*Vol. 7. July 1, 1909. Amounts agreed to.*]

The Special Master: Have you Plaintiff's Substitute G-1? 866
Now, am I to understand that as to the amounts you agree, but not as to classification?

Mr. McClintic: In G-1? 867

The Special Master: Substitute G-1, yes.

Mr. McClintic: The Plaintiff's Exhibit G-1 and the defendant's G-1 are two very different papers.

The Special Master: I understand there is a profound difference—

Mr. McClintic: We agree with the amount of the plaintiff's G-1, as I understand it, but deny that we owe it; and I don't know whether they agree as to the amount of our G-1 or not. What is that, Mr. Potter?

Mr. Anderson: We don't understand your G-1.

Mr. Harrison: The amounts may be correct.

Mr. Anderson: The amounts are probably correct, but we do not understand what relation they have.

The Special Master: Well, before we start on theirs let me get this settled, if we can settle it. Do the defendants agree that the amounts stated in the Plaintiff's Substitute Exhibit G-1 are accurately stated?

Mr. McClintic: Yes sir.

The Special Master: Then, put it in the record that both parties agree that the amounts stated in Plaintiff's Substitute Exhibit G-1 are accurately stated. They do not agree as to the question as to whether they are chargeable to West Virginia.

Mr. Conley: We deny that they are properly chargeable to West Virginia.

The Special Master: I understand that. West Virginia denies that they are so chargeable.

Mr. McClintic: Then I understand that they agree the amount states in our Exhibit G-1 are also accurately stated?

The Special Master: Let me have that and I will get that into the record. Now, this involves agreement on quite a 868 variety of items, on which there was disagreement before; but the items, I understand are now agreed upon, that is the amounts are agreed upon?

Mr. Anderson: Yes, we should say the amounts.

The Special Master: In defendant's Exhibit G-1, do I understand that the complainants agree that the amounts stated in G-1—

Mr. Anderson: It has not been revised or changed?

Mr. McClintic: No, sir.

The Special Master (Continuing) Are accurately stated as to amount?

Mr. Anderson: That is true.

The Special Master: So that the record may show that as to the amounts stated in Defendant's Exhibit G-1 the parties agree as to the amounts. Virginia does not agree as to the classification?

Mr. Anderson: No, sir; she does not.

Mr. Harrison: No; nor as to the pertinency or relevancy of the statement.

The Special Master. No. Of course that eliminates the amounts from controversy.

That covers every paragraph in the decree.

[*Vol. 7. July 1, 1909. Revised heading for Defendant's Exhibit G-1.*]

Mr. McClintic: If your Honor please, before I overlook it, permission was given for us to change the heading of our Exhibit G-1, and Mr. Dixey has not written on the heading as we pro- 869
posed to change it yet, but he will do so.

The Special Master: I understand that.

Mr. Dixey: Shall I read the revised heading now?

The Special Master: If you please.

Mr. Harrison: You are changing the certificate now. He has certified to certain facts before. Now do you want him to certify to a different set of facts?

Mr. McClintic: Facts are facts. The heading was the only thing that was wrong. The facts speak for themselves. Everybody knew that the James River and Kanawha Company was not wholly in West Virginia—

The Special Master: I will fix this in just a minute. Let me have the schedule so that I can follow it.

Mr. Dixey: The heading of the schedule— 870

The Special Master: Now, counsel for West Virginia desire to have Mr. Dixey, their accountant, change the heading of Defendant's Exhibit G-1. They wish to strike out the heading that now appears and insert in its place the following. Go ahead, Mr. Dixey, read it.

Mr. Dixey: (Reading):

"Summary of the stocks in banks, turnpike, bridge and navigation companies, whose properties were wholly in the limits of West Virginia, received from Virginia by West Virginia, and also a summary of the stocks in certain turnpike companies, and the James River and Kanawha Company, whose properties were partly in each State; and a certain loan to the town of Bath, not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, April 17, 1861."

The Special Master: This application is in the nature of a change indirectly in the testimony of Mr. Dixey. I shall allow it, and now subject him to cross examination by counsel on the other side. Of course, I would allow any witness to make a change in his testimony if desired to do so.

Mr. Anderson: The point I have in mind is the manner in which this correction should be made. That Exhibit G-1 has already been made a part of his testimony, and he finds now he was mistaken in the caption of that paper, which was a part of the paper as to

which he testified, and to the whole of which his certificate relates, except certain endorsements. Of course he ought to be allowed to correct that, and we cannot make any objection to 871
it now being put into the record that Mr. Dixey desires to correct that caption and the statement implied by the caption, and to make a statement that he is now satisfied agreed with the facts.

The Special Master: What you want is, first the schedule as it was originally put in?

Mr. Anderson: Yes sir.

The Special Master: And then you want the correction to appear?

Mr. Anderson: Yes sir.

The Special Master: I think that is proper. I treat all of these schedules as the testimony of each of these experts. If either expert, before this hearing is finished, has reached the conclusion that he has made a mistake, I shall feel bound to allow him to correct it. If it is a mistake of a character that impeaches the verity or the weight to be given to it, it is open to the other side to comment upon for cross examination, and I will give it all the consideration to which it may be entitled. Now, the present status of this matter is that Mr. Dixey has testified, as appears in defendant's Exhibit G-1, and as to the heading of that Exhibit he desires to make a change in his statement. He desires to make a change and I will allow it.

Mr. McClintic: And no other change. It is not changed in any other manner.

The Special Master: Of course that appears.

Mr. Anderson: What is the revised caption.

Mr. Dixey: The stenographer has it.

Mr. Anderson: I would like to hear that.

(The Stenographer read aloud the revised caption, as here- 872
inbefore recorded.)

Mr. Carlisle: As I understand the situation, that heading which Mr. Dixey now proposed just simply embraces the facts which the paper itself shows?

The Special Master: Well, if they contend otherwise, of course that is open to them. And then in answer to that contention it is open to you to set up the contention you now suggest.

When you say "stocks in banks," do I correctly understand that you mean the particular stock that the State held in the banks?

Mr. Dixey: Yes, sir.

The Special Master: The extent to which the State was a stockholder?

Mr. Dixey: Yes, sir. I may say that is the heading of the summary: The headings of the sub-schedules, of which there are several, of course will be changed accordingly.

The Special Master: Well, if they require it, I think you ought to submit to them such change as you think ought to be made; so they will have an opportunity to criticise it if they desire to do so.

Mr. Harrison: That affects his entire testimony.

The Special Master: If they insist on it, of course I think I would have to require him to make the changes he makes so that the other side may see just what they are. What do you say about that?

Mr. Anderson: I think we ought to know just what changes are made. 873

The Special Master: Very well. Mr. Dixey, then I will have to ask you to submit such changes as you propose to make so that the other side may have an opportunity to see them and cross examine upon them.

[*Vol. 7. July 1, 1909. Agreement relating to depositions on behalf of West Virginia.*]

The Special Master: * * * * * * * We will go to paragraph 7. 877 So far as I can see, and I would be glad to have the suggestion of counsel on either side—down to this stage we are in the condition where we cannot go on with any testimony to-day.

Now, coming to paragraph 7, what do you say as to that, paragraph 7 being—

> "The amount and value of all money, property, stocks and credits, which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored Government of Virginia together with the nature and description thereof."

Mr. Harrison: The amount is agreed to, as it appears of Vir- 878 ginia's Exhibit.

Mr. Carlisle: The amount that Virginia has paid is agreed, but not the value.

Mr. Harrison: But we agree as to the amount.

Mr. Carlisle: We disagree there on the sum of $170,000; and what items does that include?

Mr. McClintic: All the items paid by Virginia.

Mr. Anderson: $150,000 paid at one time, and $20,000 paid at another time. It is not denied that she received that money, but West Virginia denies that she should be charged with it.

The Special Master: Here is the schedule. As to this, I think they agreed on the amount, did they not?

Mr. Anderson: Yes, sir.

The Special Master: Are you prepared to-day to be heard on either side of the question of any additional evidence establishing the propriety or the impropriety of these items being allowed under paragraph 7? Of course, in the first instance, I would hear Virginia. If you have anything to submit on that, you can submit it.

Mr. Anderson: We have not any additional evidence. West Virginia admits that the money was paid.

The Special Master: Have you any additional evidence on the propriety of making the charge, or is everything in the case that you rely on?

Mr. Anderson: In the case or in the record. I mean the acts of Assembly of West Virginia?

The Special Master: You, of course, want to have this in mind, so as not to have any mistake. If you rely on Acts of West 879
Virginia as probative, I think they ought to be submitted now, if they are not already in. Whatever you have in the way of public records that you rely upon to sustain your contention that this ought to be made a part of paragraph 7, you ought to submit.

Mr. Anderson: They are already in the record. That is, they are in the bill.

The Special Master: The bill has not been put in the case yet, not before me.

Mr. Anderson: There are copies of those statutes already in this record.

The Special Master: All right. And if you have the acts on which you rely recited in your bill in equity, that is all right. If that is a fact, I do not think you need anything more; and especially after having called attention to it, so that the other side know what you rely on. Do you disagree about that, Brother McClintic?

Mr. McClintic: I beg your pardon.

The Special Master: They say that all the Acts of the Legislature in connection with this paragraph 7 upon which they rely, the acts of the State of West Virginia, are in record.

Mr. McClintic: They are acts of Virginia.

Mr. Anderson: The restored Government of Virginia.

Mr. Carlisle: The two acts of February, 1863, and (gives another date).

Mr. McClintic: If I have not put those in I want to put them in.

The Special Master: If they are in the bill in equity, if they are simply recitals of acts of public legislation in the pleadings 880
in the case, so that they can be referred to, that is sufficient so far as I am concerned.

Mr. Anderson: Those acts have been filed by both sides.

Mr. McClintic: Those printed books are mere memoranda, a good

deal of them, but the three acts referred to are already in evidence, I think. If not, I want to put them in evidence.

The Special Master: Did you make a memorandum of what acts you relied on?

Mr. Anderson: No, not yet. I called on the Attorney General of West Virginia for an act he wanted, so we would not have duplicates.

Mr. McClintic: That matter was referred to me, and for some personal reasons, which I can state if desired, I was unable to attend to it.

The Special Master: You need not go into the reasons. Then, so far as the plaintiff's Exhibit Substitute Exhibit G-1 either party has any additional evidence to submit, the understanding being that the Acts of the Legislature upon which each party relies are either now in or will be put in and attention called to them by counsel on either side?

Mr. McClintic: The record already shows a report of the Auditor of Virginia, which I called your Honor's attention to, and which I will put in and again call attention to. It is already in the record.

The Special Master: You simply have not pointed it out? 881

Mr. McClintic: Yes, sir.

The Special Master: The book is in?

Mr. McClintic: Yes, sir.

The Special Master: That is already in, then. The question now is whether it is desired on either side to offer any additional evidence on this. I understand that additional testimony is not desired on either side. Subject to the understanding that the Acts of the Legislature are either in or are to be put in, the case is closed so far as that is concerned.

Mr. McClintic: The report of the auditor.

Mr. Carlisle: There is the report of the auditor—

The Special Master: I understood him to say that was in. What do you say about that?

Mr. Harrison: I have not seen that yet.

Mr. Anderson: Mr. McClintic says he will furnish that, an extract from the report of the Auditor.

The Special Master: I understood him to say that the book was in.

Mr. Anderson: The book was produced, but I did not understand that the whole of it was offered in evidence.

The Special Master: Let us find out. Brother Anderson suggests that while the book was here at the last hearing he did not get the impression that it was offered in evidence.

Mr. Carlisle: What book?

The Special Master: The Auditor's book. 882

Mr. McClintic: No, I don't want to put that whole book in. I was just putting in a page or two of it. I have not put the book in. I said that was the book that Mr. Scoville and you wanted—

The Special Master: Is there any objection to this understanding? The whole book is offered and admitted in evidence, but only so much of the book will be printed as counsel on either side desires. Does that cover it?

Mr. Anderson: Yes, sir.

Mr. McClintic: That covers it.

The Special Master: Now, is it feasible to continue the hearing any longer to-day?

Mr. McClintic: I want to introduce some depositions which we took during recess.

The Special Master: And they relate to what paragraph?

Mr. McClintic: The value of stock. They relate principally to paragraph 7. They are depositions of a list of witnesses which the stenographer can take down.

Mr. Carlisle: I do not think it is necessary to print them in full.

The Special Master: You can print so much of them as you desire.

Mr. McClintic: Then we desire an agreed statement between the Attorney General of West Virginia and the Attorney General of Virginia.

Mr. McClintic: As to the condition of the roads there—

Mr. Carlisle: That is not very long, and perhaps we had better put it in the record.

The Special Master: We can do this. We will agree to put 883 in such part of it as you want.

(Counsel for West Virginia submitted the following paper, above referred to):

"Commonwealth of Virginia,

vs.

State of West Virginia.

PENDING IN THE SUPREME COURT OF THE UNITED STATES.

Agreement between Plaintiff and Defendant as to certain matters matters of proof.

It is agreed upon by William A. Anderson, Attorney General of Virginia, of counsel for and on behalf of the Commonwealth of Virginia, and by William G. Conley, Attorney General of West Virginia, for and on behalf of the State of West Virginia, that competent and credible witnesses who can be called on behalf of West Virginia will testify to the following facts:

FIRST—BRIDGE COMPANIES.

(1) That the bridge across the Buchannon River, in the County of Upshur and State of West Virginia, near the Mill of Carper and Post, and owned by the Buchannon Bridge Company, was destroyed in the month of April, 1863.

(2) That the bridge across Cheat River, in the County of Preston and State of West Virginia, at the point where said river was crossed by the Brandenville, Kingwood and Evansville turnpike, and owned by the Cheat River Toll Bridge Company, was destroyed in April, 1863.

(3) That the bridge across the North Branch of the Potomac 884
River at the point where said river was crossed by the Cacapon and North Branch turnpike, in what is now Mineral County, State of West Virginia, and owned by the North Branch Bridge Company, was destroyed in the year 1862.

(4) That the bridge across the South Branch of the Potomac River, in Hampshire County and State of West Virginia, and owned by the South Branch Bridge Company, was destroyed in 1862.

(5) That the bridge across the Potomac River at Shepherdstown, in the County of Jefferson and State of West Virginia, and owned by the Virginia and Maryland Bridge Company, was destroyed in 1861.

(6) That the bridge across the Guyandotte River, at or near its mouth, in the County of Cabell and State of West Virginia, and owned by the Guyandotte Bridge Company, was not destroyed, but that the same did not pay any dividend to the owners thereof after the State of West Virginia was formed.

(7) That the bridge across the Monongahela River at Morgantown, in the County of Monongahela, and owned by the Morgantown Bridge Company, paid no dividend after the State of West Virginia was formed, and that the stock was of no practical value.

(8) That the bridge across the Monongahela River at Fairmont, in the County of Marion and State of West Virginia, and owned by the Fairmont and Palatine Bridge Company, did pay to the State of West Virginia a dividend of six per cent per year for several years after the end of the war, on the par value of the stock of twelve thousand dollars assigned to the State of West Virginia 885
therein.

(9) That the bridge across Elk River at Charleston, in the County of Kanawha and State of West Virginia, and owned by the Elk Bridge Company, was destroyed in 1862.

SECOND—NAVIGATION COMPANIES.

(1) That the Monongahela Navigation Company spent no money on the Monongahela River after the year 1825, and that long before

the year 1863 all evidence of such work had disappeared and that the stock in said company was of no practical value on the 20th day of June, 1863.

(2) That the amount of money spent by the Tug Fork Navigation Company on the Tug Fork of Big Sandy River was of such a small amount that no evidence of such work remained on the 20th day of June, 1863, and that the stock in said Company was of no value as of that date.

THREE—TURNPIKE COMPANIES.

That the turnpikes owned by the turnpike companies in the Counties of Monongahela, Preston, and other counties of northern West Virginia, had no work of repair done at all on them during the war period and that many of them were cut to pieces by the army travel thereon, and by rains, snows, and high waters, and that many of them became in places and for considerable distances before and after the 20th day of June, 1863, practically impassable, during wet weather, and for a considerable period of time, and that no dividends were ever received from any of them after the State of West Virginia was formed. 886

But said counsel for Virginia respectfully excepts to the competency and pertinency of said evidence and facts to any issue in the cause.

May 21, 1909.

WILLIAM A. ANDERSON,
Attorney-General of the Commonwealth of Virginia.
WM. G. CONLEY,
Attorney-General of the State of West Virginia.

[*Vol. 7. July 2, 1909. Statement to Be Made of Roads Paying Dividends.*]

1012

The Special Master: It is understood that you wanted to take the deposition of this other witness?

Mr. McClintic: Yes, sir.

The Special Master: Who is he?

Mr. McClintic: Judge Atkinson.

The Special Master: Is it agreed that the defendants may take the deposition of Judge Atkinson and file it as part of the case?

Mr. McClintic: And possibly Mr. Scoville?

Mr. Harrison: I do not think there is any excuse for Mr. Dixcy not being able to answer questions put to him.

The Special Master: What do you want to show by him?

Mr. McClintic: That certain roads paid dividends, and at other times did not pay dividends.

The Special Master: What physical difficulty is there in having Mr. Dixey and Mr. Potter agree on those facts?

Mr. McClintic: I think there is none.

The Special Master: I think there cannot be any. They are 1013 all shown by the books.

Mr. Harrison: We object to the taking of testimony by deposition, from these experts.

The Special Master: This is, to an extent, an incidental matter. It is important, perhaps; but as to this matter I understand that the parties now agree that Mr. Potter and Mr. Dixey may submit a joint statement to become a part of the record, npon this question of—what items?

Mr. McClintic: As to the roads and bridges that paid dividends and those that did not.

The Special Master: There cannot be any difficulty about that. Is that agreed on? Let it be recorded that it is so agreed.

Mr. Harrison: I cannot see the relevancy of that.

Mr. Anderson: We object to it.

The Special Master: That is all right. It is agreed that the experts shall submit, to become a part of the record, a joint statement on the question of the roads and bridges that paid dividends, and the amounts paid; but Virginia objects to its relevancy or competency. That settles that item.

Mr. Anderson: That statement ought to show what became of the dividends.

Mr. McClintic: It is all in the record, as to what became of the dividends. * * *

Mr. Moon: As to the dividends, we ought to put in a re- 1015 port.

The Special Master: In the statement that is to be made by the experts in relation to the dividends received, the experts are to submit at the same time a statement showing what the difference between them is, what the records show as to what application was made. There is no difficulty about that. Is that all?

Mr. McClintic: Suppose it would develop that these experts cannot agree?

The Special Master: Then, if the experts do not agree, we will have another meeting, and I will hear the evidence on both sides. If they do not agree about that, I will pass on it later. I shall pass on it in New York.

[*Vol. 7. July 2, 1909. Further as to Change of Heading on Defendant's Exhibit G-1. Joint Statement Relating to Literary Fund.*]

1019

Mr. McClintic: Exhibit G-1, it seems, was not properly understood yesterday. We put in a change of the heading on page 2.

The Special Master: Yes, with the understanding that you would change the other sub-headings.

Mr. McClintic: And we struck out the heading on the top of page 3.

The Special Master: You need not spend a minute's time on that. If that is a proper subject of criticism I will hear it in the argument.

Mr. McClintic: Then we changed the word "property" to "stock"; and after the word "received", we put the words "wholly or partly".

1020

The Special Master: Any other changes?

Mr. McClintic: That is all.

The Special Master: Is there anything else for me to decide?

Mr. McClintic: On our Exhibit G-1, we withdrew $2,400,000.

The Special Master: I remember that.

Mr. McClintic: I want to have Mr. Dixcy and Mr. Potter make a statement and let it go in afterwards with their other statements, showing the amount of the Literary Fund on the 19th of March, 1823, the amount the first of March, 1861, and where that $24,000 came from.

The Special Master: I understand that a statement may be submitted jointly by Mr. Potter and Mr. Dixcy covering this. I think that settles that.

Mr. Harrison: We do not agree to anything that involves any delay.

The Special Master: You are safe on that, because your expert has got to sign it.

Mr. Harrison: The only other question is how long will they be allowed to take Judge Atkinson's deposition?

The Special Master: I think that has been agreed upon, that it must be taken within the next two weeks, subject to the same conditions fixed by the Master heretofore.

Mr. McClintic: And possibly there will be one or two other witnesses, if you do not object to it.

The Special Master: There will be no other witnesses unless admitted by Virginia. If you want to have other witnesses, and you agree to it—

1021

Mr. Anderson: And we ought to have an opportunity to cross examine.

Mr. Special Master: Certainly. A deposition will not be considered unless you have such opportunity. If they have developed anything in connection with the deposition of Judge Atkinson that if seems

necessary for you to take testimony upon that subject, that, in my judgment, raises a serious question in connection with this case. It would be incumbent that you agree that they might take any deposition in reply; or if it raised a serious question of that kind, I should probably open the case.

Mr. Conley: I suggest you limit them to the same time you limit us.

The Special Master: I do; I limit them to one week. West Virginia may have two weeks' time in which to take the depositions referred to, and any depositions in reply on the part of Virginia must be taken in one week from the time the deposition on the part of West Virginia is taken.

[*Vol. 7. Depositions on Behalf of West Virginia Copied into the Record.*]

In the Supreme Court of the United States

Commonwealth of Virginia,
vs. 1105
State of West Virginia.

Index to the following depositions. May 20, 1909:

Peter E. Love 1107
Frederick Lee Baumgardner 1110
B. F. Swann 1112
William Griffith 1116
Henry V. Sattes 1122
W. F. Gregory 1126
James H. Wright 1128
James M. Payne 1132
Dr. C. I. Lewis 1133
John Slack 1136
William H. Tompkins 1142
Charles W. Dering 1150
May 21, 1909:
J. K. Thompson 1153
Thomas Swinburn 1159

Depositions of witnesses taken by the State of West Virginia 1106
to be filed and read as evidence in her behalf in the cause of the

Commonwealth of Virginia against the State of West Virginia, pending in the Supreme Court of the United States, which depositions are taken by the consent of parties, beginning on the 20th day of May, 1909, at the law office of Mollohan, McClintic and Matthews, in the City of Charleston, County of Kanawha and State of West Virginia.

Present on behalf of the defendant, the State of West Virginia, Wesley Mollohan and George W. McClintic, of counsel.

Present on behalf of the Commonwealth of Virginia, William A. Anderson, Attorney General of Virginia.

PETER E. LOVE, 1107

a witness of lawful age, being first duly sworn, deposes and says:

(Examined by Wesley Mollohan, Esq.:)

Q. State your name, age, residence and occupation.

A. Peter E. Love, I will be 76 years old on the 13th of June; I am a farmer; and live at Martha, in Cabell County, State of West Virginia.

Q. How is your residence situated as to the Guyandotte River?

A. When I first moved there my farm was lying right on the bank of the River; now it is 400 yards back.

Q. How long have you lived at that place?

A. 56 years last February.

Q. How far is your residence from the mouth of the Guyandotte River?

A. Well, by water—Well, I guess it is 13 miles, that is, the way the railroad runs.

Q. Do you remember when the locks and dams were built in the Guyandotte River?

A. When I moved to Cabell County from Putnam County, in 1853, the locks were mostly completed. That is my recollection. I think they were completed then in 1853. I think they finished them that year.

Q. How many of them were there?

A. Six, I think.

Q. How were those locks and dams constructed—of what material?

A. Wood and stone; cribs built of round logs, timber, and filled with stone.

1108

The counsel for complainant excepts to this question and answer as not responsive to any inquiry directed by the decree of reference and as not pertinent to any issue in the cause.

Q. Are any of those locks and dams in the river now?

A. No, sir.

Q. What became of the locks and dams?

A. In September, 1861, the big rise we had in 1861 partially destroyed some of them, filled them up and washed around some of them. I don't know much about some of them above. But I know they weren't much used. I lived at lock No. 3—just about a half a mile above it.

Q. When did they cease to use them?

A. Never used them after the fall 1861.

Q. What finally became of the remains of the locks and dams?

A. In various ways they went out. The timber rotted; the timbers would naturally rot, you know; they rotted down and washed out.

Q. Of what value for navigation purposes was that system of locks and dams after the big rise of 1861?

A. They were worthless after 1861, because they were an obstruction in the way.

Q. Was there any attempt to repair them after the big rise of the year 1861?

A. Not to my knowledge.

Q. Were they cleaned out of the river, and if so, about when?

A. Well, I couldn't tell you. I know there was; but I don't know whether the State made an appropriation for the clean- 1109
ing out of those locks and dams; I know they did make an appropriation to clean out the river, and it occurs to me that they did take out some of those locks and dams. The dam at my place now, after the War closed, was lowered and used for mill purposes, for a mill at that point; but the lock was destroyed and was never used for navigation purposes.

Q. What was the character of the big rise of 1861?

A. You mean as to the amount of water?

Q. The bigness of it, and so forth?

A. Well, I do not remember what the height of that rise was, and I cannot tell you. Mr. Swann can tell you more about that than I can.

The counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference, or pertinent to any issue in the cause.

Further the witness sayeth not.

FREDERICK LEE BAUMGARDNER, 1110

a witness of lawful age, being first duly sworn, deposes and says:

(Examination conducted by Wesley Mollohan, Esq.:)

Q. Where do you reside, what is your age, and what is your occupation?

A. Well, I live a mile and a half west of Barboursville, in the neighborhood commonly called Pearidge, Cabell County, West Virginia; I am even 60 years old, and my occupation is that of farming.

Q. How far is your residence from Guyandotte River?

A. Only a mile and a half towards Barboursville.

Q. How long have you lived in that neighborhood?

A. Well, I went there when I was six years old; now, to make the calculation, I am 60 years old, so that would be 54 years the 7th day of last March.

Q. You were living in that neighborhood when the locks and dams were built in the Guyandotte River, were you?

A. Yes, sir. They were working there. I don't know how long they had been working on them.

Q. Of what were they constructed?

A. Out of timber, round logs, and broken up stone.

Q. What one of the locks was nearest to you?

A. The second lock—Barboursville.

Q. What became of the locks and dams?

A. Well, that one particularly was closest to my attention in this big rise in 1861. The water got around it on the west side, and the main river ran around it.

Q. Was it ever repaired or used after that time?

A. No, sir.

Q. Had you occasion soon after that rise to observe the con- 1111
dition of any of the other locks and dams?

A. Well, no, sir. Except the lower dam Guyan, or a mile, I believe they call it, above Guyan. I passed it, I suppose, two or three weeks after that, and I didn't see it was damaged any. It may have been, but I didn't pay close attention to it.

Q. Did you ever afterwards observe its condition?

A. At any time afterwards?

Q. Yes.

A. Oh, yes; it finally washed and rotted out.

Q. What use, if any, was made of the locks and dams after the beginning of the war?

A. There wasn't any.

Q. Of what value were the said locks and dams for the purposes of navigation after the rise of 1861?

A. Well, not any.

Q. What finally became of the remains of the said locks and dams?

A. The timbers rotted down, rotted out, and the stones dropped away. That made little islands in the river, and timber grew upon them.

Q. After the War commenced what care was taken or what repairs were made to the said locks and dams?

A. There wasn't any, to my knowledge.

Q. Did you say there wasn't any?
A. Yes, sir; I said there wasn't any.

And further the deponent sayeth not.

The counsel for complainants excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference, or pertinent to any issue in the cause. 1112

B. F. SWANN,
a witness of lawful age, being first duly sworn, deposes and says:

(Examination conducted by Wesley Mollohan, Esq.:)
Q. State your age, residence, and occupation.
A. I was 76 years old last October; I live in Barboursville, Cabell County, State of West Virginia; I generally follow blacksmithing, wagon-making, and so forth, farm a little, even.
Q. How is Barboursville situated as to the Guyandotte River?
A. Right on the bank of Guyandotte River.
Q. How long have you lived there? How long have you lived at Barboursville or in that neighborhood?
A. I have lived there since 1866. I moved there in 1866.
Q. Where did you live before that?
A. At what we know as the Dusenberry Dam, at Lock No. 3 of the Guyandotte River.
Q. How long did you live there?
A. I have lived there 11 years before I moved to Barboursville.
Q. Do you remember when they constructed the locks and dams in Guyandotte River before the War? 1113
A. Yes, sir. They commenced working, I reckon it was 1850. The first work that was begun was at Lock No. 3; then Salt Rock in the fall. Salt Rock was the second lock going down the river from the falls. Lock No. 3, they called it, then No. 4. They built a lock between that and Salt Rock.
Q. How were these locks and dams built?
A. What they call crib work—wood work, large round logs, partly hewn, some of them, and some of them were not. Where the planks had to be put on, they were hewn there. They were trimmed together. Then they filled them with broken up stone; then planked over with heavy plank. Piling was drove above to keep the water from cutting.
Q. What connection, if any, had you with these locks and dams?
A. I kept lock No. 3 for five or six years.
Q. What finally became of those locks and dams?

A. They went to naught.

Q. What, if anything, was done to those locks and dams, or repairs made to them after the beginning of the War?

A. None, virtually none; nothing much to do, no use to take care of them.

Q. What, if ever, were they abandoned for navigation purposes?

A. That is hard to tell. They were abandoned, of course, when there was nothing to do.

Q. Were they used for navigation purposes in the year 1861 1114
or thereafter?

A. They were used for navigation purposes a little in 1861, mighty little. They were in the spring. A good deal of timber came out of Guyandotte, in the spring of 1861. They had to go over the locks.

Q. What effect, if any, had the high waters of 1861 upon the locks and dams?

A. Had pretty bad effect; damaged them a great deal first and last. Some of them it didn't damage; others it did.

Q. Was any effort made to repair such damage?

A. No, sir.

Q. What finally became of the locks and dams?

A. Gradually wore out and went under.

Q. What was the condition of those locks and dams in the summer of 1863?

A. Well, they were just about equal to what they were in the beginning of 1862. I didn't see any difference so far as the condition was concerned. They were just about the same. There was no use for them, and they were not used from 1861 to 1863. There wasn't anything to go up or down the river.

Q. Of what value were they as a system of navigation after the year 1861?

A. Well, I couldn't tell you, so far as that is concerned. If they had been looked after and kept up as they had been before that—it took a whole lot of repair work to keep them up before that for the custom and trade of the locks and dams. It took a heap of re-
pair work to keep them up. The lock I kept on the river paid 1115
more than any other one lock on the river. That was Lock No. 3. During high water big pools of water—back water—very often rose over these dams, and they didn't have to go through the locks. They would go over the dam. Of course, steamboats hardly ever went over the dams when they could get to the locks.

Q. Were they used in the navigation of steamboats after 1861?

A. There wasn't any; there wasn't any steamboats used after 1861. There was during 1861 a little trade by steamboats.

Q. What time in 1861?

A. In the beginning of 1861, until about June, I reckon it was. One of the little steamboats sunk between Smith's Creek and Salt

Rock; I think it was in the spring of 1861. There was nothing more to do, anyhow.

Q. What became of the remains of said locks and dams?

A. It would take more people than me to answer that. I don't know what became of them. They disappeared and went to nothing —washed out, washed around, broke. Mr. Love said they rotted, but he is mistaken about that, they weren't rotten. They weren't old enough to rot. But the water cut out a place below to let these loose rock drop, and broke off the plank above. The timber was sound; could not be otherwise. They put in there all oak timber. They weren't old enough to rot.

The counsel for complainant excepts to all the testimony of witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause. 1116

And further the deponent sayeth not.

WILLIAM A. GRIFFITH,

a witness of lawful age, being first duly sworn, deposes and says:

(Examined in chief by Wesley Mollohan, Esq.:)

Q. State your age, residence, and occupation.

A. My age—I cannot swear to my age; but I think it is 82 years. I think I will be 82 years old the 5th day of next month. I reside in Kanawha County, West Virginia.

Q. On what stream?

A. Dry Fork, at Alcott.

Q. What is your occupation?

A. What is my occupation? I haven't got any now. I have always been a river man, but at this time I am only gardening a little at home. I have got no occupation at all. I am not a farmer. I don't think I have got any.

Q. How close is your present residence to Coal River?

A. Four miles.

Q. Did you ever live on Coal River; if so, at what place?

A. I lived a year or about 18 months at lock No. 3 on Coal River, right on the bank. And I might state here that I had charge of the river, or my family did. I had charge of a steamboat.

Q. When did you move to Coal River? 1117

A. I don't remember that.

Q. About what time?

A. Well, I think it was about 1871 or 72; I couldn't tell that very clearly. I could have given you a heap better statement if I had known what I was coming for.

Q. Do you remember the time the first locks and dams were built in Coal River?

A. I cannot give you a perfect date of that; but I think it was about 1856 or 57, somewhere along there.

Q. Where were you living then?

A. I was a young man then, here in Charleston and on the Kanawha River. I didn't have any certain home at all.

Q. Where were you living in the year 1861?

A. I was living in the year 1861 on Brier Creek.

Q. How far from Coal River?

A. Four miles.

Q. What business were you engaged in at that time?

A. I was flat boat piloting on the river, boating for salt companies.

Q. How were those locks and dams constructed?

A. They were built of wood and stone. They made a frame of wood and then filled it with stone.

Q. Do you remember the big rise of 1861?

A. Yes, sir.

Q. What effect, if any, did that rise have upon the locks and dams in Coal River?

A. That rise washed out quite a lot of the locks and dams. 1118
It didn't wash the dams out so much as it washed around the locks and cut in the banks around them.

Q. Where were you living in the year 1862, Captain?

A. I was trying to fight for Jeff Davis.

Q. What time did you go into the Army, Captain?

A. 1862, the first of the year, I think.

Q. What use was made of that old system of locks and dams for navigation purposes, after the beginning of the War?

A. There was none, sir. The locks—some of the locks were entirely dismantled, and there was no lockage through them; that is, so far as I know anything about it. I think I am right.

Q. Of what value was that old system of locks for navigation purposes after 1861?

A. Mr. Mollohan, you are asking me questions, and I will ask you one: From 1861 to when?

Q. Until 1862 or 1863—until you left.

A. From 1861 to 1865 they were of no use to anybody at all. They were dismantled. There was no locking through. You could not get through them. They were a retard actually to navigation.

Q. When were the locks and dams rebuilt in Coal River?

A. Well, I will not be certain, Mr. Mollohan, but I think it was in 1866.

Q. Who rebuilt them? Who rebuilt the locks and dams?

A. Major Cupp was the contractor.

Q. Was it by the same company that built the original locks and dams? 1119

A. That was my understanding, sir. I do not know.

Q. What was the name of the last company?

A. Coal River navigation Company.

Q. What was the name of the old company that built the first locks and dams?

A. The old company—I don't know. The old locks and dams were built, I think, by the Peytona Canal Coal Company. They furnished the money; but they might have had another name for it.

Q. Did you ever hear of the name of the navigation company of Coal River used in connection with the first locks and dams put in the river?

A. I don't know who were the officers of that company; but they had two companies—the Peytona Canal Coal Company, and the navigation company. The Peytona Canal Coal Company put up the money all the time; but there were two names to it.

Q. When did you first become a pilot on the Kanawha River?

A. In 1854.

Q. What was the character of the services you rendered as pilot on the Kanawha River?

A. My services were simply to run boats through the channel to get them to market.

Q. What kind of boats?

A. Flat bottom boats—salt boats. That is what we called them.

Q. What did you ship in those boats?

A. Shipped salt; and latterly before I came they commenced 1120 to ship coal.

Q. When did they commence to ship coal by flat boat?

A. That is another thing I can't tell you by date—perhaps somewhere along about 1856.

Q. How extensive was the shipment of coal?

A. Oh, there wasn't any shipping of coal except by one company—the Fields Creek Company.

Q. Had there been constructed any shoots or channels in the river before you commenced piloting on the Kanawha river?

A. Yes, sir.

Q. What was the character of those shoots?

A. Well, they were very oddly constructed, so far as my knowledge goes. They were crooked and very hard to navigate.

Q. How wide were they?

A. They were supposed to be 24 feet wide. They threw these walls up. Boats 18 feet wide would grind on shores of each wall. They were not wide enough to let boats go though free.

Q. Were they generally used for the purpose of sending boats out of the river, or was it the custom to wait until the river got up to run the boats out on the flood?

A. They were used for shipping salt out in low water; but the boats were held very often for a rise to go over these walls.

Q. What loss or destruction occurred in the navigation of these shoots?

A. Why, a great many times the boats would strike the 1121 walls—men couldn't get them off, and they would sink. They caused a good deal of destruction to the operators, to the salt mines.

Q. What is your opinion, as a pilot, of the way these shoots were constructed for navigation purposes?

A. My opinion is, Mr. Mollohan, those shoots were very badly constructed, and were not in accordance with good sense in making channels. You can take that as you please.

Q. What use was made of them in steamboat navigation?

A. Why the steamboats had in many places to run those channels.

Q. How was it when steamboats were going up the river?

A. Why, they could make the channels a great deal of the way, but there were places they couldn't go through. They had to come around. That is where the great trouble is about that navigation. They made them so crooked. They would rather have a straight channel. I am both a steamboat man and a flatboat man.

Q. What is your opinion as to the effect of the construction of those shoots on the navigation of the Kanawha River as it then existed?

A. Do you mean before the War?

Q. Yes, sir.

A. I believe they were an obstruction to the navigation.

Q. What improvements were made to the navigation of the Kanawha River after the War?

A. I don't know. 1122

Q. Were not many of the shoots changed and widened after the War and before the Government of the United States put in the locks and dams?

A. Mr. Mollohan, I think the shoots haven't been bothered since the contract with Barton was finished. If there was any improvement, I don't know of it. He had a contract to change these shoots. He closed it about the beginning of the War. He and his sons were working here, and his son went off in the Confederate Army, and it hurt the old man very much. The son died in the Confederate Army the same year.

The counsel for complainant excepts to all of the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further deponent sayeth not.

HENRY V. SATTES,

a witness of lawful age, being duly sworn, deposes and says:

(Examined by Wesley Mollohan, Esq.:)

Q. State your name, age, residence and occupation.

A. I am past 65; I live at the lower falls of Coal River; I am in the milling business at that point.

Q. Where did you live in the year 1861?

A. I lived at the lower falls. 1123

Q. What was your business then?

A. Milling.

Q. At that point?

A. Yes, sir.

Q. Were you acquainted with the locks and dams built in Coal River before the War?

A. I was acquainted with the bigger portion of them on up to No. 4; I had never been above that.

Q. How were they numbered going up the river?

A. They commenced at the first lock at the mouth of the river and numbered up.

Q. How?

A. 1, 2, 3, 4, 5, 6, 7, 8. The lock on Little Coal River was numbered "A".

Q. How were those locks constructed? I mean of what material?

A. Wooden pens filled with stone—cribs.

Q. How were the dams constructed?

A. Same way.

Q. Where were you at the time of the big rise in 1861?

A. I was at the lower falls of Coal.

Q. What effect had that rise on Lock No. 1?

A. I don't think that rise had any particular effect on Lock No. 1. There was a later rise in the winter of 1861-2, that wrecked the lock, and also wrecked No. 2 lock.

Q. How did it wreck them?

A. Well, it washed the top of the dam off of one, I think, to 1124 the best of my knowledge. It broke the cribs of No. 2 and dismantled the gate, and the whole river ran through the crib work above the locks.

Q. When lock No. 2 was rebuilt after the war, was it located at the same place?

A. The lock was located at the same place. They first built on the opposite of the river. They located the lock at the same place, but moved the dam lower down the river.

Q. What effect did it have on lock 3?

A. Well, I don't think that fall had any particular effect on lock 3. It might have lost some of the rigging off of it. But by the end of the war it was gone—knocked and washed to pieces.

Q. How was it as to the locks above that?

A. I don't know, only from hearsay. They were all wrecked above that. There wasn't any locks of any use. People who came to the mill told me that locks No. 4 were all right.

Q. When they reconstructed Lock No. 1 after the War, what did they do to it?

A. Built a new dam; built a new lock.

Q. When the War broke out, what care or attention was paid to those locks and dams?

A. Well, they were working on the locks and dams repairing them, right just at the time the War broke out; but just at the middle of the summer, high water came up, and there wasn't any more done until the end of the War.

Q. Did anybody take care of them?

A. Not that I heard of. 1125

Q. What use was made of them for navigation purposes after the beginning of the War until they repaired and reconstructed?

A. There wasn't any; only one lock on the river they could make any lockage through, and you couldn't get out or in it, because there wasn't any water above or below. That was No. 3.

Q. What use for navigation purposes were those locks and dams in the year 1863?

A. There wasn't any.

Q. What company rebuilt the locks and dams after the War?

A. I think the navigation company of Coal River.

Q. What came of the locks and dams put in the river after the war?

A. Well, they were used until the Peytona Company quit working. They abandoned them. Irons taken off. They were just let go.

Q. Any use made of them now?

A. No, sir; there are no locks in the river.

Q. How is it as to dams?

A. There isn't any but one, No. 1, built in 1867, and kept up by the Bowman Lumber Company.

Q. For what purpose did they use it?

A. To make a pool to handle logs with. By the way, that dam is a few feet higher than No. 7 in the Kanawha.

Q. In the wreckage of these locks and dams, what change did the floods make, if any, to the locks, that is, did it move any of the locks in the river? 1126

A. No, sir; it never moved any of the locks; that is, the foundations. It would just take the tops off and the cribs off.

The counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

W. F. GREGORY,

a witness of lawful age, being first duly sworn, deposes and says:

Questioned by Wesley Mollohan, Esq.:

Q. State your age, residence and occupation.

A. I am 75 past; my residence is Kanawha County, Lock No. 7, West Virginia; and I am a steamboat Captain and Pilot.

Q. How long have you lived on the Kanawha River?

A. Well, I was a year old when I came out from Richmond here. I was born out there, and my father moved over here.

Q. Have you lived on the Kanawha ever since you came to this section of the country?

A. No, sir.

Q. Where else did you live?

A. At Cincinnati, when I wouldn't be on steamboats. I was a young man, then single.

Q. On what river have you been captain and pilot?

A. On the Kanawha and Ohio Rivers; and on Western rivers 1127 as captain.

Q. Were you ever engaged in navigation of flat boats on the Kanawha River?

A. No, sir, only made a few trips with pilots, as a hand. I made the first trip with this man, Captain Griffith.

Q. Were you acquainted with the shoots constructed in the Kanawha River before the War?

A. Well, acquainted, sir, since 1849.

Q. What was their character—how were they constructed?

A. Badly constructed; very crooked and narrow channels.

Q. How extensively were they used in navigation of the Kanawha River?

A. Very little; few steamboats and salt boats.

Q. What parts of the river were used in the navigation of steamboats—the shoots or other parts of the river?

A. I ran the shoots where I had to do it. When there was plenty of water, I didn't have to run them. I ran straight, the way they ought to have been made.

Q. What is your opinion, as a pilot, as to the value of those improvements to the navigation of the Kanawha River?

A. Those old shoots?. Very little, sir. They made crooked, the natural course where the waters ran, and crooked they made the channel, the way God Almighty made it.

Q. What improvements were made in the shoots or channels after the War in the Kanawha River?

A. A good deal; made a good river. 1128

Q. How were the new shoots constructed as to the old ones?

A. They were run straight and wider.

Q. After the construction of the new shoots after the War, what use was made of those old shoots?

A. They were stopped up, filled up. They were no account. Steamboats they build now couldn't get into them. If there wasn't bar water, they would have to lay up. The size boats we have now couldn't get in those old shoots.

Counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further deponent sayeth not.

JAMES H. WRIGHT,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Wesley Mollohan, Esq.:

Q. What is your age, residence and occupation?

A. I was 74 the 1st day of last April; now going on 75; I live at Scary, Putnam County, West Virginia. I have always been a pilot all my life.

Q. On what river? 1129

A. Kanawha, and as far as Louisville on the Ohio River.

Q. When did you first commence the navigation of the Kanawha River?

A. I guess I was about 18 years old when I went on the Kanawha River. I have had license for 50 years, and I was a pilot before I got my license, before the license came out, you know, long before the War.

Q. Before the War there were constructed in the Kanawha River certain shoots. Were you acquainted with those shoots?

A. Yes, sir.

Q. What was their character, as constructed in the river?

A. Well, we had what we call wing dams on each side of the channel. We would cut a lot of brush and put on these dams and put stone on that to back the water up in shallow places.

Q. Were there some shoots constructed with walls?

A. Yes, sir.

Q. What was the channel width of those shoots constructed with walls?

A. I suppose they were something near forty feet.

Q. What use was made of these shoots in the navigation of the Kanawha River?

A. Well, there was very little use made of them. The river was so low you couldn't do much with the shoots—couldn't do anything at all until there was a rise or something of that kind; couldn't do much of anything when the water got under 1130
three feet.

Q. Were the shoots constructed straight or crooked?

A. Very crooked, sir.

Q. What effect did this crooked construction have upon the use of the shoots in navigation?

A. Well, we had to—when we salt boated we would have to land at the end of these shoots, and take both crews to run through these shoots, then walk back four or five miles to get the other boat. Four men couldn't handle one boat.

Q. Was there much loss or destruction of cargoes in the navigation of these shoots?

A. Well, I don't know of any. Sunk a heap of salt boats, but we did that when the river would rise. They would sink on the piles. They never sunk any of them right in the channel. That is the way they lost their salt.

Q. What do you mean by saying that they sunk them on the piles?

A. They put bouys on the piles. We had bouys set on those piles. That is the way we had to run. When the river would rise they wouldn't show up. The salt they lost was—well, they knowed where the piles were, too; but they couldn't keep off of them in the current.

Q. Who put in those piles?

A. James River and Kanawha Company.

Q. Were they a part of the system of navigation?

A. They had the river—both sides of the river; that is, the turnpike.

Q. What, in your opinion, as a pilot, was this system of 1131
navigation as constructed by the James River Company of benefit to the navigation of the Kanawha River?

A. Well, it wasn't very much. If you will allow me to tell you, I will tell you something. I used to run steamboats here when we would have to put everybody off at the foot of a shoal; and stocked up at New River to get water to drink.

Q. How extensively were those shoots used in the navigation of the Kanawha River?

A. It was very bad.

Q. What improvement was made for navigation purposes in the Kanawha River after the war and before the Government of the United States put in the locks and dams?

A. They straightened the shoots and made them much wider.

Q. Did they not also locate many of them elsewhere in the river?

A. Yes, sir.

Q. Did they not also widen the shoots?

A. Yes, sir.

Q. How extensively were those old shoots user ofter the shoots were so straightened and widened?

A. They weren't used at all, only when there came more water.

Counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference, or pertinent to any issue in the cause.

Without waiving the exception, counsel for complainant 1132 wishes to ask the following:

By Attorney General Anderson:

Q. Were the new sluices or shoots to which you have referred a benefit to navigation during low water?

A. Yes, sir; they were.

Q. And the river could not have been navigated at all in period of low water but for these sluices?

A. Yes, sir.

Q. It could not have been?

A. No, sir; it could not have been.

Further dependent sayeth not.

JAMES M. PAYNE,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Geo. W. McClintic, Esq.:

Q. State you name, age, residence and occupation.

A. James M. Payne; I am 60 years of age; my residence is Charleston, West Virginia; occupation, lawyer.

Q. Where were you born, Mr. Payne?

A. In Giles County, Virginia.

Q. There has been charged by the Commonwealth of Virginia against West Virginia the sum of $2,400 being 50 per cent. of the amount of money which the Commonwealth of Virginia spent for stock in what is known as the Mountain Lake, Salt Sulphur Springs Turnpike Company, which purported to be a turnpike 1133 from Salt Sulphur Spring, in Monroe County, now West Virginia, by the way of Mountain Lake, in Giles County, now Commonwealth of Virginia, to some point on the Virginia & Tennessee Railroad in the County of Montgomery or Pulaski. Please tell what

you know of that turnpike and how much of it is in the State of West Virginia, and how much in the Commonwealth of Virginia.

A. I know of that pike, turnpike, having been born and reared near it. Part of it ran through my father's home farm, near Newport, in said County of Giles. My father also owned a farm east of Newport along the line of this road. The distance from Salt Sulphur to Mountain Lake is about 24 miles. From Mountain Lake to Christiansburg Depot is about 24 miles. The portion of the turnpike lying in Monroe County between Salt Sulphur Depot and Peters Mountain is about 8 miles. The remaining 40 miles is in Giles County and Montgomery County, Virginia.

No questions; no exceptions.

Further deponent sayeth not.

DR. C. I. LEWIS,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Mr. Mollohan:

Q. State your age, residence and occupation.

A. I will be 73 years old July next. I live at Lewisburg, in Greenbrier County, West Virginia. I practiced medicine for about thirty years, sir. I am doing nothing now.

Q. Where were you raised? 1134

A. I was born at the mouth of Kelly's Creek, in this County. I was raised principally one mile below St. Albans.

Q. Had you spent much time before the war at the falls of the Great Kanawha River?

A. Yes, sir; my father lived there about five years.

Q. Had you any other relatives living there?

A. Yes, sir; my grandfather and grandmother were living there.

Q. Do you know where was located the bridge across Gauley River?

A. Yes, sir.

Q. Where was it?

A. At the mouth of Gauley. The mouth of Gauley is about one mile above Kanawha Falls.

Q. Upon what road or part of what road or turnpike was that bridge constructed?

A. My understanding was the James River and Kanawha.

Q. How long had you known that bridge before the war?

A. I can't remember back—let me see; commence that in 1840. I

went to school there when I was ten years old. Well, I had known it for many years.

Q. Was there any other bridge across Gauley except that one?

A. No, sir; that is the only one I know of.

Q. Was that bridge burned down or destroyed during the War; and, if so, by whom?

A. I belonged to Wise's command. When Wise retreated 1135
out of the valley here, out of this valley, my company stopped at what is now known as the town of Montgomery. We remained there some three or four days. When we went east, and when we arrived at the mouth of Gauley, the bridge was burned.

Q. In what year was that?

A. 1861.

Q. How did you cross Gauley?

A. We forded the river about a quarter of a mile above what is known as the mouth of Scrabble Creek.

Q. What Wise was that?

A. Ex-Governor Wise, General Henry A. Wise.

Q. What was your position in the army at that time?

A. I was Captain of Troop 1, 8th Virginia Cavalry.

The counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further dependent sayeth not.

JOHN SLACK,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Wesley Mollohan, Esq. 1136

Q. State your age, residence and occupation.

A. I will be 75 years old the 1st day of November; residence—I resided in Charleston, West Virginia; I have no particular occupation.

Q. Where did you reside in the year 1861?

A. Here in Charleston.

Q. Were you acquainted with a bridge that had been constructed across Elk River before the War?

A. Yes, sir.

Q. Where was it located?

A. It was located right where the bridge is now. I forget what the name of the street was then, and I really don't know. But it was on the same spot.

Q. On the line of any turnpike?

A. Yes, sir; on the James River and Kanawha Turnpike.

Q. State what occurred to that bridge, if anything, early in the War.

A. Well, when Governor Wise retreated from here in 1861, his soldiers cut the lower strand, that is my recollection, about half, probably not quite half, in two. The bridge didn't fall, and was repaired by the Federal forces when they came up.

Q. What happened to that bridge after that, and when?

A. The next thing that happened to the bridge—they don't say it was the high rise known as the rise of 1861 that damaged it. My recollection is that it did not do any damage. The drift and water raised it way up, and when the water fell the bridge went 1137 back to the normal position.

Q. What happened to it after that?

A. When Lightburn retreated he cut the strand on the lower side of Elk, on the lower side of the bridge, cut it in two, and let the bridge down. Part of it went down in the water.

Q. When was it rebuilt or reconstructed?

A. Well, I cannot fix the date exactly; but it was not reconstructed until there was some legislation which turned it over to Mr. Joseph Biddle. I don't remember now whether that was by the legislation called the restored Government, or whether it was after the State was made; but I think it was after the State was made. I think it was after the 20th of June, 1863.

Q. From the time Lightburn cut its cables, until it was rebuilt, what was its condition? Was it used for any purpose?

A. None at all. The wires at this end of the bridge held it up; that is, this end of the bridge, but the other end was down. The lower side was in the water.

Q. Do you know anything about the destruction of the bridge at Sissonville?

A. I don't know anything about that.

Q. Do you know what became of the bridge at Sissonville, Kanawha County, West Virginia, over the Pocatalico River?

A. My recollection is that it was down for some time, but when it went down or what made it go down I don't know. 1138

Q. Weren't you sheriff of the county?

A. Yes, sir.

Q. Were you sheriff under the restored government?

A. No, sir; I was elected under the old State Government just as the War was breaking out.

Q. Do you know that it was done before the 20th day of June, 1863?

A. I can't be positive about that.

Q. On what road was that bridge?

A. It was on the road that was called the Kanawha & Jackson Turnpike—The Charleston, Ripley and Ravenswood, built by Henry Chapel.

Q. Were you much through this section of the country before June 20th, 1863?

A. Yes, sir; I was around considerable through this end of the State.

Q. Were you anywhere outside of the County of Kanawha?

A. Yes, sir; I was in Cabell County, Roane County, Jackson County, Mason County.

Q. Were you in Putnam County?

A. Yes, sir; Putnam, and what is now Lincoln, Braxton County, Clay County. I can't remember all of them now.

Q. Were you acquainted with the Kanawha & James River Turnpike, located through Kanawha County and adjoining counties?

A. Yes, sir; I was. 1139

Q. What was the condition of this turnpike in the years 1861 and 62 and up to June 20, 1863?

A. Well, in the winter season they were almost impassable, particularly where the Army had travelled.

Q. How did the Army injure this pikes?

A. Well, the travel over them in the winter time destroyed them, cut them up and made them almost impassable.

Q. What effect did the wagons used by the army have upon these pikes?

A. Cut ditches and holes in the roads; had to fill some of the holes up with stone. The James River and Kanawha Turnpike was one of the streets right through the town here. In the winter time they were almost impassable at times. The army would repair it occasionally by putting rock in the mud holes.

Q. What repairs, if any, were made upon these pikes by any public authority in the years 1861 and 62 and up to June 20, 1863?

A. None, I don't think. There were no good roads through this country during the War.

Q. Did you, during that time, make any trip or trips over the James River and Kanawha Turnpike between Point Pleasant and Charleston?

A. Oh, yes.

Q. What was the condition of that part of the Pike?

A. Oh, I stated before, in the winter time it was very bad. Dry weather, of course, helped the roads.

Q. Were you over any part of the James River & Kanawha Turnpike between there and Kanawha Falls during that time? 1140

A. Yes, sir.

Q. What was the condition of that part of the turnpike?

A. Well, it was bad.

Q. When you say "bad," what do you mean?

A. I mean it was all cut to pieces, particularly in the winter time, and it was almost impassable to get along, even on horseback.

Q. Was there much hauling over that part of the turnpike in connection with the army?

A. Yes, sir; there was a great deal. That is principally what caused the condition of it.

Q. Were you over any part of the Charleston, Ripley and Ravenswood Turnpike during any part of that time?

A. Yes, sir.

Q. What was its condition?

A. The same as the others; in the winter time very bad.

Q. Do you remember what was known as the high rise in the Kanawha River in 1861?

A. Yes, sir; I remember that very well.

Q. Where were you at the time?

A. Here in Charleston.

Q. What effect did that rise have upon the turnpike or the bridges located thereon?

A. Well, it carried out a great many of the bridges. The bridges in the small streams between here and Lewisburg were nearly all destroyed in September, 1861. The bridges from here to 1141
Point Pleasant, my recollection is that they were nearly all taken out. I know some of them were. As I understand, some of them were rebuilt soon. That was in Mason County, and I don't know how that is.

Q. Do you know how far the Charleston, Ripley & Ravenswood Turnpike had been made before the war?

A. Well, it was a pretty good road from here to Sissonsville before the War.

Q. How far had it been made?

A. Well, it was all made before the War. I don't know anything about it about two miles beyond Sissonsville. I think Chapel quit there. It was finished to Fishers. About two miles above Sissonsville, about twenty miles from here.

Counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the case.

Further deponent sayeth not.

WILLIAM H. TOMPKINS,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Wesley Mollohan, Esq.: 1142

Q. State your age, residence and occupation.

A. I am 72 years of age; I reside in Charleston, Kanawha County, West Virginia; I have no occupation at present.

Q. Where did you reside in 1861?

A. I was born in Kanawha County and I reside in Kanawha County, and have always lived here. In 1861 I resided in Cedar Grove, Kelley's Creek, 20 miles above here.

Q. On what road?

A. On the old James River and Kanawha turnpike.

Q. How long did you reside there during the Civil War?

A. Until October, 1862.

Q. Where did you go then?

A. I went to Virginia and joined the army.

Q. When you left this country, which way did you go?

A. I went to Lewisburg first, and from there to Dublin depot.

Q. When you went South, what turnpike, if any, did you travel over?

A. Over the James River and Kanawha turnpike to Lewisburg.

Q. What was the condition of that turnpike when you travelled over it? I mean on that trip?

A. Well, it was no good, sir. I would call it bad.

Q. In what respect?

A. Well, the roads were a good deal cut up and the bridges were gone, especially the bridge across Gauley. We ferried 1143 there.

Q. What, in your opinion, had cut the road up, as you saw it?

A. So far as the army went, that was the cause of it, especially to Gauley Bridge. That was in bad condition. The supplies were hauled during the first year of the War from Ten mile house, ten miles above here.

Q. How far was it from Charleston to Gauley Bridge?

A. We always called it 39 miles.

Q. What temporary devices were resorted to by the army to make the roads passable?

A. They would throw rocks in the road, put timber in it. Sometimes it was kind of a corduroy road. They would put anything in it that they could get to fill up the ruts. There were hundreds of wagons passing over it.

Q. What did they corduroy it with?

A. Anything they could get, rails or anything else. I don't mean all the way; but in some places. They put rocks in the ruts that were cut where they could get them.

Q. Were there not very large armies in the early part of the War between Gauley Bridge and Lewisburg?

A. Well, I can't say that they were very large armies. There were troops at times between Lewisburg and Gauley and the top of Gauley Mountain. Of course, they made raids from there frequently.

Q. In the early part of the war wasn't a large Confederate army in that section under General Lee, and also a large Federal army under the command of General Rosecrans? 1144

A. Yes, sir; stations there on the Sewell. That was in 1861.

Q. From what point did the army of General Roscrans get its supplies?

A. Well, I suppose they got most of them passing Gauley from the head of navigation on the Kanawha.

Q. How would General Lee be compelled to get his supplies?

A. He would have to haul them over the road from the other end, from Lewisburg.

Q. Over what turnpike would these supplies have to be hauled?

A. James River & Kanawha turnpike.

Q. Had you occasion during that time to travel over any other turnpikes in this end of the State, and, if so, what?

A. No, sir; I didn't. I stayed right close at home.

Q. When you returned from the War, at the end of the War, over what road or roads did you come?

A. I came by the way of Lewisburg; and from Lewisburg I came over the James River and Kanawha Turnpike, in June, 1865.

Q. What was the condition of the pike at that time?

A. Well, it was bad?

Q. Had any repairs apparently been made to the road?

A. I don't think there had, sir.

Q. What do you remember about the fact that the small bridges on the road had been destroyed and remained unreplaced?

A. My recollection is that when I returned a number of them 1145
were not there. We had to come around where the bridges were. There had been temporary roads built around. There wasn't any bridges of any particular size that were formerly there but were gone. The roads were in very bad condition.

Q. What connection, if any, had you with the navigation of the Kanawha River?

A. When?

Q. Previous to the War; previous to the Civil War?

A. I didn't have any particular connection before the War; I was up and down the river frequently, but I had no position on the river.

Q. After the War what had you?

A. Well, after the War I steamboated a long time on the Kanawha River and down the Ohio to Cincinnati. I was a member of the Kanawha River Board for three years or more. As a salt manufacturer I used to ship salt down the river in flat boats.

Q. Do you remember, generally, the old shoots that had been constructed in the Kanawha River before the War?

A. Oh, yes; I remember a great many of them—most of them, I suppose.

Q. What were their character? That is, as a means of navigation?

A. Well, sir, they were—they served very little if any. They were narrow and swift, badly located; navigation was very dangerous, that is, by flat boats—and even for steamboats.

Q. Were they straight or crooked? 1146

A. Well, they weren't always straight; they were narrow. The boats of the present day couldn't run through at all. Such boats as I ran couldn't get in those shoots at all.

Q. In passing up and down the river before the war with steamboats, how extensively were those shoots used?

A. They weren't used at all times. Sometimes in ascending it was impossible to ascend them. You would have to wind a boat clear through. It would have been better, in fact, to stay in the current. Another thing, I didn't think it was possible for steamboats to ascend them by winding.

Q. Didn't steamboats in coming up through the Elk shoot usually pass around to the left of the shoot?

A. Yes, sir; left, in ascending it. They would come close to this

Q. Do you remember the shoot through Johnson's shoal?

shore until they came up to the mouth of the Elk.

A. That was pretty bad and crooked before it was repaired and rebuilt.

Q. What was the trouble with it?

A. Well, it was crooked and narrow; it didn't afford sufficient water for easy navigation.

Q. Do you remember the character of the shoot Knobs Shoals?

A. Yes, sir. It went down through that old shoot in the middle of the river. The old shoot was in the middle of the river, and it was narrow. 1147

Q. How was it located for the purpose of navigation?

A. Well, it was badly located, and very difficult to run. Afterwards a new shoot was made through there.

Q. Do you remember the improvement in Catfish Shoals above Charleston?

A. Catfish Shoals was a very bad place; but before the War very little steamboating, very little of anything, in fact, was done there. Very little coal and very little salt shipped before the War. But it was a very bad place.

Q. How was that improvement located for the purposes of navigation?

A. Well, they were bad, they were all bad.

Q. Was that so with the shoot from Tackett?

A. Yes, sir.

Q. There was an improvement lower down called Dovey's Dam. Do you remember that?

A. Yes, sir; that was way down.

Q. How was that constructed for the purposes of navigation?

A. Well, that was a badly constructed and very dangerous place; that is, dangerous for navigation. It was a common thing to sink salt boats at any of these shoots.

Q. How was the shoot constructed at 13?

A. Well, before the improvement that was a bad place.

Q. How was that for the purposes of navigation?

A. Bad.

Q. Was there any loss to navigation on account of that shoot?

A. Oh, yes; there has been.

Q. For the purposes of navigation, generally, of the Kana- 1148
wha River, what is your opinion of the shoots constructed in the river before War?

A. Well, I consider them of little or no value for navigation. We generally ran things out of here on a tide or rise. They could have done just as well without the improvement as with it. They would hold salt boats here until they accumulated, fifty or one hundred, maybe, and run them out on a rise.

Q. On such occasions, what use was made of those shoots?

A. None, during the rise. They went over the bars—what we call bar water.

Q. What was the character of steamboats, generally, that navigated the river before 1861?

A. They were small, generally, in comparison with the boats of the present day.

Q. What improvements were made in the navigation of the Kanawha River after the war and before the Government of the United States put in the lock and dam system?

A. Naturally, the river was almost entirely remodeled. A new shoot was made at Elk, one at Johnson, one at Knob, and at 13; besides other places. Tackett, for instance, there was an improvement and at Red House. That was a bad place.

Q. Before the War?

A. Yes, sir; that was very bad. That shoot was narrow and 1149
long. I almost overlooked the Red House shoot.

Q. In these improvements made after the War, were the locations of the old shoots largely abandoned?

A. Oh, yes. They were relocated in a great many instances, and in one or two instances they were simply widened, they simply widened the shoot or straightened it, as in the case of Elk here. Tackett, Johnson, Knob, Red House and Thirteen, you might say they were almost entirely relocated. Elk was widened and deepened and strengthened.

Counsel for the complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Without waiving that exception, counsel for complainant asks the following questions:

Q. What was the principal line of communication between the

Kanawha Valley and the eastern part of Virginia? I mean, for many years prior to the War?

A. Principally by the James River and Kanawha Turnpike.

Q. What was the principal line of communication between Charleston and the Kanawha and Ravenswood on the Ohio, during the same period prior to the War?

A. There were two ways of reaching Ravenswood: By the Charleston, Ripley and Ravenswood Turnpike, or you could go down the Kanawha River and up the Ohio. Ravenswood is right on the Ohio River.

Q. The principal line of communication, if any one went 1150
over-land, was by the Charleston, Ripley and Ravenswood Pike, wasn't it?

A. That was the principal way; yes, sir.

Re-Direct Examination.

By Wesley Mollohan, Esq.:

Q. Do you know how far the Charleston, Ripley and Ravenswood Turnpike had been made before the War?

A. No, sir; I don't. I never knew much about that country. Mr. Slack could tell you more about that than I could.

Further deponent sayeth not.

CHARLES W. DERING,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by George W. McClintic, Esq.:

Q. Give your age, residence and occupation?

A. Forty-four; residence, Charleston, West Virginia; occupation, Chief Clerk in the State Auditor's office.

Q. How long have you occupied the position of Chief Clerk in the State Auditor's office?

A. Since March 4th, last.

Q. State, Mr. Dering, if you have examined the books of the Auditor's office as to the First National Bank of Fairmont; and if so, state what shares of stock, if any, the State of West Virginia received from the first National Bank of Fairmont for the shares of stock held by the State in the Bank of Fairmont?

A. Yes, sir; I have examined the records of the Board of 1151
School Fund, and find that the State got 500 shares, of $100 a share, as I am informed.

Q. State if you have examined the books in the Auditor's office and what shares of stock were received by the State of West Virginia

from the Northwestern Bank of Virginia at Wheeling and its branches, and the par value thereof.

A. I have examined the records, the same book, and find that the State received from the National Bank of West Virginia from the Northwestern Bank of Virginia at Wheeling 300 shares, and from the First National Bank of Wellsburg 351 shares, and from the Parkersburg National Bank 400 shares, of $100 a share.

Q. State if the records show that the bank at Parkersburg and the Bank at Wellsburg were originally branches of the Northwestern Bank of Virginia at Wheeling, after the National Banks above spoken of had been formed.

A. The records do not show.

Q. Did the State receive any money or other thing of value besides the stock?

A. Yes, sir. I find in the same record two payments or dividends of 5 per cent., amounting to $10,510 each dividend; same record.

Q. State if you found whether or not the State received anything else, so far as the records show, from these two banks than the stocks and moneys above set out?

A. Nothing that I discovered. They do not show any other 1152 payments or any other stocks.

Counsel for the complainant excepts to all of the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Without waiving the exception, counsel for the complainant asked the following questions:

Q. Do you know what the State of West Virginia did not receive any other money or property or thing of value on account of shares of stock formerly owned by the Commonwealth of Virginia in the Northwestern Bank of Virginia at Wheeling and its branches and any other banks located within the limits of what is now West Virginia, in addition to the shares of stock and money you have mentioned?

A. No, sir; I do not know that West Virginia did not receive anything besides this stock; but I find nothing in the records, so far as I have been over them, except what I stated.

Q. That is all.

Further the witness saith not.

The taking of these depositions is resumed this 21st day of May, 1909, at the hour of 10:00 o'clock A. M., at the same place.

Present on behalf of the defendant, the State of West Virginia: Wesley Mollohan and George W. McClintic, of counsel. 1153

Present on behalf of the complainant, the Commonwealth of Virginia, William A. Anderson, Attorney General of Virginia.

J. K. THOMPSON,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by George W. McClintic, Esq.:

Q. Give your name, age, residence and occupation.

A. J. K. Thompson; 66 years old; occupation, farmer, I reckon—as much that as anything else; Winfield, West Virginia, Route No. 1, Putnam County.

Q. What were you doing when the War began in 1861?

A. I was a cadet of the Virginia Military Institute.

Q. If you joined the army, which one and where?

A. When the War broke out, we were ordered to Richmond. I served there as cadet and drill master for a couple of months drilling the Virginia troops that were mobilized there. Some time during the summer I was transferred to this Western Virginia Department. I came here to Charleston, and on Wise's retreat we fell back to White Sulphur Springs. There I organized the 22d regiment. They put 10 companies into that regiment. I served as adjutant until 10th of October, 1861. I resigned that and accepted the first lieutenancy in Company A, 22d Virginia regiment. I served in that company and regiment for the rest of the War.

Q. What parts or counties of what is now West Virginia were you mostly in during the period from 1861 to 1863, inclusive?

A. 1861 to 1863? Putnam, Kanawha, Fayette, Raleigh, 1154
Mercer, Monroe, Greenbrier, and Nicholas Counties, and I made one expedition into Randolph, Upshur, Lewis, Braxton and Pocahontas. I was in Pocahontas County frequently during the War. I had a fight or two in there.

Q. What was the condition of the various roads in those counties during the war, as you saw them, in a general way?

A. The roads, it is my recollection—well, I came across from Richmond over the Virginia Central to the Jackson River depot, and from there to Charleston over the James River and Kanawha Pike, and then I tramped that road several times from White Sulphur Springs back and forth. The roads were in pretty fair condition until the armies passed over them. They cut them up. Then they got into very bad condition and remained in that condition until the end of the war; and they were kept up, that is, what keeping was done to them, by the pioneer corps of the Army in what is now West Virginia. The roads from our base of supplies, Doublin Depot and Jackson

River depot, were kept up by the pioneer corps of the Army. They had to keep a force of men on the roads all the time, fixing them up, so that we could get over them with the wagons. Of course, one's recollection is not very vivid after this lapse of time. But we were always in trouble with our wagons and artillery trains moving over these roads.

Q. Tell what you know of the James River and Kanawha turnpikes as to bridges in the West Virginia counties, telling if you know, of any bridges that were burned. 1155

A. Commencing with the Poca bridge—that was burned in 1861, on the James River and Kanawha pike; then, I believe, the bridge over Gauley was burned. I do not remember whether it was burned in 1861 or 1862. I know it was burned, though. The bridge across Greenbrier—the bridge three miles on the other side of Lewisburg—that was burned about the time I got my eye shot out, I think. That was in 1862, I believe. That is my recollection. I swear to anything, hardly as to specific times.

Q. How were the creek bridges on this road, if you recollect, were they left or gone?

A. Well, some of them were left. A great many of them were washed out in the fall of 1861—that big rain that produced the highest the flood we have ever had in the Kanawha River.

Q. How was the year 1861 as to rain?

A. It was very wet, the autumn of 1861, all over the mountains up here. When we retreated from Cotton Hill, over the Kanawha, Fayette and Giles Pike, the roads became impassable for Army wagons. A great many were abandoned on account of the roads, just stick in the mud, cut the teams loose and go on. I saw abandoned wagons, I know, as we went along, abandoned by those who went head of us, of course.

Q. State what you remember of the condition of the roads.

A. Where?

Q. In Randolph, Upshur, Lewis, Braxton and Nicholas, as 1156 you saw them on the expedition of April, 1863.

A. Well, they were in very rough condition. They had been cut up by the two armies in the fall of 1861, up there, and I suppose they had never been repaired afterwards. They very much obstructed us on that light Imboden raid. But we didn't have much to haul then.

Q. When you spoke of joining the army a while ago, you joined what was called the Confederate Army?

A. Yes, sir. I believe we didn't join the Confederate army proper until May, 1862.

Q. What official positions have you held under the State of West Virginia or the United States since the War?

A. Well, I have served a term in the legislature, member of the County Court for twelve years. I believe I was a member of the famous Kanawha Board, that wound up the affairs of the old James

River and Kanawha corporation. I was a member of the West Virginia tax commission that drafted these tax laws.

Q. What position under the United States?

A. United States Marshal for eight years and a half, I believe.

Counsel for the complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Without waiving that exception, counsel for the complainant, the Commonwealth of Virginia, asked the following questions: 1157

Q. Was there any extraordinary rain fall in western Virginia in the year 1861?

A. In the fall of the year 1861 there was; yes, sir. It was an extraordinary rain fall. It came on about the time of the autumnal equinox.

Q. Did the wet weather continue for a long time during the fall of 1861 in the mountains of West Virginia?

A. Yes, sir; it continued.

Q. Wasn't it frequent?

A. Yes, sir; it was very wet. I think we went back to Cotton Hill late in November. I don't remember much about it after I got to Raleigh, because I was stricken down with camp fever.

Q. Were not all the turnpikes and roads in the counties of West Virginia referred to by you in your examination in chief dirt roads and turnpikes?

A. Yes, sir.

Q. Not macadamized?

A. No, sir.

Q. They would be liable, then, would they not, to become very muddy in long seasons of wet weather whether Army wagons went over them or not?

A. Well, they would become muddy if used by any kind of wagons. They would be cut up. Of course, if they were not used they wouldn't become cut up.

Q. They wouldn't be cut into holes unless they were used? That is, cut into holes and ruts?

A. You couldn't use them without their becoming muddy. 1158 Of course, in rainy weather they would become wet, but muddy only when they were used. The wet weather would only make them so that they would be cut up if they were used much.

Q. The Kanawha Road was used a great deal, was it not, before the War and in time of peace?

A. Well, that I cannot speak of it to my own knowledge. I was only over it once before the war when I was a child. I came out here

in 1850. I never travelled it again until war broke out. I travelled by rail when I went east; that is, from Charleston.

Q. That was the principal line of communication between the Kanawha Valley and eastern Virginia for many years before the war, was it not?

A. Well, I do not know that I can answer that question from my own knowledge. You see, when the war broke out I was only eighteen years old. I went to Lexington when I was sixteen. I have very little recollection of events prior to the war. I lived in the country.

Q. Wasn't the James River and Kanawha Road the main thoroughfare along the Kanawha Valley and from the Kanawha Valley to Covington after the close of the war until the construction of the C. & O. Railroad?

A. Yes, sir, it was.

Q. Can you state what its condition was after the war?

A. No, sir; I was never over it after the close of the war, except when I went from here to Gauley to go hunting up in the mountains. I believe I never since travelled over the James River and Kanawha Pike except from here to Gauley. That was in 1878, 1159
in the fall of 1878. I came over that road in 1865 from Lewisburg, and it was in bad condition then.

Q. Didn't stages and other vehicles go over it regularly—wasn't there a regular stage from here to Lewisburg after the close of the War?

A. Indeed, I do not know.

Further deponent saith not.

THOMAS SWINBURN,

a witness of lawful age, being first duly sworn, deposed and says.

Examined by George W. McClintic, Esq.:

Q. State, Mr. Swinburn, your age, residence and occupation.

A. I am 69 years of age; I reside in the City of Charleston; I scarcely have any occupation now.

Q. State if you were a member of any army in the year 1861 or during the war of 1861 to 1865; and, if so, what army and what regiment of what army?

A. I was a member of the 7th West Virginia Cavalry.

Q. When did you join the 7th West Virginia Cavalry, if you remember?

A. In fall of 1861. I may state that it was the 8th infantry when I joined it, and it was afterwards converted into the 7th Cavalry.

Q. What counties in what is now West Virginia did you campaign in or be in from 1861 to 1863, so far as you now remem- 1160
ber?

A. First in Kanawha County, a while in Putnam County; from there we went to New Creek, Hampshire County, on the B. & O.; from there we went to Franklin in Pendleton County; then back to Moorfield, Hardy County, and Wardensville in the same county. We passed through Romney on the way to Wardensville, and from there we went to Lost River Bridge in Hardy County.

Q. Were you in Harrison and Randolph counties?

A. Yes, sir.

Q. Upshur, Lewis?

A. Yes, sir.

Q. Braxton?

A. I think, perhaps, I was; yes, I was.

Q. State, Mr. Swinburn, the condition of the roads in these various counties as you saw them from the year 1861 to 1863?

A. They were all dirt roads. I never saw a macadamized road in West Virginia.

Q. What was their condition as to goodness of repair?

A. Well, in the summer time they were generally a string of dust and in the winter time a string of mud. Dirt roads necessarily will be.

Q. Had the army travel cut them up much?

A. Yes, sir; in soft weather it necessarily would. In bad weather they would become almost impassable. A great many mule teams were hauling supplies.

Q. Do you remember the year 1861 as to whether it was a wet 1161 year or not?

A. My recollection is that it wasn't a very wet year here. It was dry until the big flood came.

Q. The flood was the biggest one they had here for some time?

A. The highest flood here that ever was known.

Q. That would affect the small tributaries of the Kanawha River, or would it not?

A. It did to some extent. There wasn't a great deal in that day to be affected.

Counsel for complainant excepts to all of the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further the witness saith not.

AGREEMENT.

It is agreed by the parties hereto that the signatures of the witnesses to these depositions are hereby waived. And it is further agreed that counsel for the complainant could except to any of the testimony at

the close of the deposition of any witness, and that the exception would be of the same effect as if made to each and every question and answer separately at the propounding and making of the same.

STATE OF WEST VIRGINIA, 1162

County of Kanawha, to-wit:

I, J. E. Campbell, a notary in and for the county of Kanawha and State of West Virginia, do hereby certify that the foregoing depositions of Peter E. Love, Frederick Lee Baumgardner, B. F. Swann, William A. Griffith, W. F. Gregory, James H. Wright, Henry V. Sattes, Dr. C. I. Lewis, John Slack, William H. Thompson, Charles W. Dering, J. K. Thompson, and Thomas Swinburn, were taken at the times and places therein set out; and I further certify that each of said witnesses was duly sworn.

Given under my hand and official seal this the 21st day of May, 1909.

(Seal) J. E. CAMPBELL,

Notary Public in and for the County of Kanawha and State of West Virginia.

PLAINTIFF'S GENERAL EXHIBIT 1.

ABSTRACT OF ACTS

OF THE

GENERAL ASSEMBLY OF VIRGINIA

1820 TO 1860 INCLUSIVE.

RELATING TO THE

VIRGINIA STATE DEBT.

Within is an abstract of the Acts of the General Assembly of Virginia, from 1820 to 1860, inclusive,—being acts authorizing subscriptions and appropriations to works of internal improvement, banks, etc., and such other acts, of a general nature, as bear upon the creation, evolution, and administration of the public debt of the State, up to 1861.

It is believed that this list will afford explanations for numerous transactions connected with the matter of this public debt, and will constitute a convenient reference to many authorities needful in the preparation of a statement of the account between the States of Virginia and West Virginia.

The acts are collated into the following divisions:

1. Incorporated turnpike and road companies to the capital stock of which the State subscribed.
2. Roads constructed wholly or partly on State account.
3. Navigation companies, Canals, etc.
4. Railroads.
5. James River Co. and James River & Kanawha Co.
6. Bridges.
7. Banks.
8. Miscellaneous appropriations.
9. Miscellaneous: of a general nature.

EXPLANATORY.

The figures in the left-hand margin indicate the date of the passage of the act and the page of the Acts on which it is to be found. The figures in the right-hand margin show the amounts authorized to be subscribed or appropriated. "B. P. W." means Board of Public Works, under whose direction practically all the works of internal improvement to which the State contributed were conducted. "Incptd." following the name of a company means that the company was incorporated by that act.

Thus:

3/28/51-100 Jefferson & Frederick Tpke Co. Incptd. $10,000. and B. P. W. for 3/5 6,000

The above notation means that by act of March 28th, 1851, page 100 of the Acts of 1850-51, the Jefferson & Frederick Tpke Co. was incorporated, with a capital of $10,000, and that the Board of Public Works was directed to subscribe on behalf of the State for 3/5 of the capital stock, or $6,000.

The within list, being a tabulation of Acts of Assembly, concerns only authorities, and not actual expenditures or transactions; but with the aid of the excellent maps and charts to be found in the office of the Virginia State Corporation Commission, and the annual reports (published in bound volumes) of the Board of Public Works, also to be found in that office and in the State Library, the routes of the various improvements, and the amounts actually expended on them, may be accurately ascertained.

JOS. C. TAYLOR.

May 14/08.

TURNPIKES.

2/10/20- 62 Ashby's Gap Tpke Co. B. P. W. to subscribe for 140 shares of—(Act 1/30/1810-78 shows par val to be $100.) $14,000
(From Little River Tpke Road to Shenandoah River through Ashby's Gap of Blue Ridge.)

2/ 7/25- 63 B. P. W. to subscribe for additional 140 shares, 14,000

2/19/35-131 Augusta Springs Tpke Co., Incptd., $6,000, and B. P. W. for 2/5 2,400
(In Augusta County.)

3/29/60-302 Back Creek Valley Tpke Co. B. P. W. for 3/5 of $2,500 1,500
(From a point on N. W. Tpke in Frederick Co. up Back Creek Valley to Capon Springs in Hampshire Co.)

3/ 9/53-199 Bellville & Williamsport Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 9,000
(From Bellville in Wood Co. to Williamsp't in same Co.)

3/ 1/51-103 Berkeley & Hampshire Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Martinsburg in Berkeley Co. to point on N. W. Tpke in Hampshire Co.)

3/22/53-205 Amends above act and increases capital to $36,000, and B. P. W. for 3/5 9,600

3/16/49-123 Berkeley & Jefferson Tpke Co., Incptd., $20,000, and B. P. W. for 2/5..... 8,000
(From Martinsburg in Berkeley Co. to Shepherdstown and Smithfield Road in Jefferson Co.)

3/19/31-210 Berryville Tpke Co. B. P. W. for 126 shares of ($10,000 par val. $50.) 6,300
(From Berryville in Frederick Co. to Snicker's Ferry on Shenandoah River.)

3/30/39- 91 Capital increased by $15,000, and B. P. W. for 2/5 6,000

2/ 4/47-117 Capital increased by $5,000, and B. P. W. 2/5. 2,000

3/22/47-117 Berryville and Charlestown Tpke Co., Incptd., $23,000, and B. P. W. for 2/5.
(From Berryville then in Clarke Co. to Charlestown in Jefferson Co.)

3/12/49-120 Further time allowed to begin; changes B. P. W.'s subscription to 3/5 instead of the 2/5 above 13,800

3/18/50- 84 Capital increased by $12,000, and B. P. W. for 3/5 7,200

4/ 2/58- 95 State appropriation to pay for—account of purchase of—by B. P. W. at a sale thereof 7,150

3/13/47-124 Beverly & Phillipi Tpke Co., Incptd., $9,000, and B. P. W. for 2/5 3,600
(From Beverly in Randolph Co. to Phil. in Barbour Co.)

2/15/60-291 Blacksburg, Catawba Creek & Fincastle Tpke Co., Incptd., $16,000, B. P. W. for 3/5..... 9,600
(From Blacksburg in Montgomery Co. by Catawba Cr. in Roanoke Co. to Fincastle in Botetourt Co.)

3/26/53-209 Blacksville & Worthington Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 9,000
(From Blacksville in Monongalia Co. to Worthington in Marion Co.)

3/31/51-113 Black Water Tpke Co., Incptd., $1,800, B. P. W. 3/5 1,080
(Across Alleghany Mountains in Franklin and Floyd Counties.)
This act repeals Act of 3/11/50-91 appropriating $600 for a road across Alleghany Mts.

3/25/48-206 Blue Ridge Co., Incptd., $200,000, and B. P. W. for 2/5.
(From New Market in Shenandoah Co. to Gordonsville in Orange Co.)

3/17/49-118 Capital reduced to $120,000, and B. P. W. for 3/5 72,000

3/ 3/51- 96 Capital increased by $50,000 and B. P. W. for 3/5 30,000

2/11/53- 76 Transfers to—the $1,500 appropriated to a road from Eastern base of Blue Ridge in Madison Co. to Western base in Page Co. by Acts 3/15/49- 93. 1,500

3/19/50- 76 Boydton & Petersburg Plank Road Co., Incptd., $160,000, and B. P. W. for 3/5 96,000
(From Boydton in Mecklenburg Co. to Petersburg in Dinwiddie Co.)

3/16/53-178 Capital increased by $20,000, and B. P. W. 3/5. 12,000

3/ 1/53-194 Brown's Gap Tpke Co., Incptd., $18,000, B. P. W. for 3/5 10,800
(From point in Rockingham Co. to point in Albemarle Co.)

3/ 4/53-176 Brunswick & Roanoke Plank Co., Incptd., $70,000, and B. P. W. for 3/5 42,000
(Brunswick and Roanoke Counties)

3/15/56-123 Provides that $6,000 of above appropriation shall go to Dinwiddie Plank Road Co., provided stockholders of Brunswick & Roanoke Pl. R'd Co. consent. See Dinwiddie Plank Road Co.

3/15/49-110 Buchanan Tpke Co., Incptd., $9,000, B. P. W. for 3/5 5,400
(From Dibbrell's Springs to Buchanan in Botetourt Co.)

3/11/50-102 Capital increased by $6,000, and B. P. W. for 3/5 3,600

2/ 9/50- 90 Buchanan & Bedford Tpke Co., Incptd., $10,000 and B. P. W. for 3/5 6,000
(In Botetourt Co.)

3/15/49-131 Buckhannon & Little Kanawha Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(From Buckhannon in Lewis Co. to point in Braxton Co.)

3/18/53- 75 Revises act next above.

3/28/51- 83 Buford's Gap & Buchanan Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Buford's depot on Va. & Tenn. R. R. to Buchanan in Botetourt Co.)

4/ 3/38-134	Cacapon & North Branch Tpke Co., Incptd., $30,000, and B. P. W. for 2/5 ..... (Fro.n Cac. in Hampshire Co. to point on N. Branch of Potomac Riv. near Cumberland.)	12,000
3/20/47-119	Capital increased by $2,500, and B. P. W. for 2/5	1,000
3/29/53-213	Carroll & Pulaski Tpke Co., Incptd., $9,000, and B. P. W. for 3/5 ..... (From point in Pulaski Co. to point on Jacksonville and Hillsville Tpke.)	5,400
2/10/53-189	Cassville & Chapmansville Tpke Co., Incptd., $10,000, B. P. W. for 3/5..... (From Cassville in Wayne Co. to Ch. in Logan Co.)	6,000
3/30/53-216	Castleman's Ferry Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 ..... (From C.'s Ferry in Clarke Co. to Berryville & Charlestown Tpke.)	7,200
3/24/51-101	Cedar Creek & Opequon Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 ..... (From a point on Cedar Creek to a point on Valley Tpke in Frederick Co.)	6,000
1/31/54- 54	Capital increased by $3,000, and B. P. W. for 3/5	1,800
3/17/51-123	Centreville & St. Mary's Tpke Co., Incptd., $8,400, and B. P. W. for 3/5 ..... (From Tyler Co. to Wood Co.)	5,040
1/23/35-133	Charleston & Point Pleasant Tpke Co., Incptd., $40,000, and B. P. W. for 2/5 ..... (From Charleston in Kanawha Co. to Point Pleasant in Mason Co.)	16,000
1/25/39- 87	Capital increased by $12,000, and B. P. W. for 2/5	4,800
4/ 1/48-223	Capital increased by $5,000, and B. P. W. for 2/5	2,000

3/15/49-133 B. P. W. to subscribe for additional $8,000... 8,000

3/15/51-113 B. P. W. to subscribe for additional $2,460... 2,460

3/28/48-221 Charleston, Ripley & Parkersburg Tpke Co., Ineptd., $40,000, and B. P. W. for 3/5 24,000
(From Charleston in Kanawha Co. to Parkersburg in Wood Co.)

3/25/53-211 Amends above act and changes name of Co. to Charleston, Ripley & Ravenswood Tpke Co. See Charleston, Ripley & Ravenwood Tpke Co.

3/25/53-211 Charleston, Ripley & Ravenswood Tpke., Ineptd. Name of Charleston, Ripley & Parkersburg Tpke Co. changed to this. Capital $40,000, with privilege of increase by $10,000, for branch to Parkersburg, and B. P. W. for 3/5 of this $50,000 30,000
(From Charleston in Kanawha Co. through Ripley in Jackson Co. to Ravenswood in Jackson Co.)

3/ 9/60-292 Capital increased by $10,000, and B. P. W. for 3/5 6,000

2/21/53-173 Christiansville & Keysville Plank Road Co., Ineptd., $30,000, and B. P. W. for 3/5 18,000
(From Ch. in Mecklenburg Co. to Keysv. in Charlotte Co.)

4/ 1/53-222 Clarke & Warren Tpke Co., Ineptd., $30,000, and B. P. W. for 3/5 18,000
(From Clarke Co. to Warren Co.)

3/ 9/48-219 Clarksburg & Buchanan Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5 9,000
(From Clarksb'g in Harrison Co. to Buc. in Lewis Co.)

3/ 5/51-118 Capital increased by $5,000, and B. P. W. for 3/5 3,000
(The name is spelt "Buckhannon" in this act. This is the proper spelling of this town's name.)

3/18/53-70 B. P. W. to borrow and spend on this road the further sum of $20,000 20,000

3/13/49-129 Clarksburg & Phillipi Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5 6,000
(From Phillipi in Barbour Co. to Clksbg in Harrison Co.)

3/30/39- 92 Clarksburg & Wheeling Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5 6,000
(From Clksbg in Harrison Co. in the direction of Wheeling to connect with Middletown & Wheeling Tpke.)

2/ 2/50- 60 Clarksburg & Wheeling Tpke Co., Ineptd., $7,000, and B. P. W., for 3/5 4,200
(From Shinston in Harrison Co. towards Wheeling.)

3/27/60-286 Capital increased by $10,000, and B. P. W. for 3/5 6,000

3/27/58- 99 Clear Fork Road Co., Ineptd., $3,000, with privilege of increasing to $5,000, and B. P. W. for 3/5 3,000
(From Point in Raleigh Co. to point in same Co.)

2/ 9/39- 81 Cox Lane Tpke Co., Ineptd., $12,000, and B. P. W. for 2/5 4,800
(From point in Lunenburg Co. to point in Nottoway Co.)

2/10/53-190 Cranberry Summit & Brandonville Tpke Co., Ineptd., $8,025, and B. P. W. for 3/5 4,815
(From Cranberry Sum. in Preston Co. to Br. in same Co.)

3/31/53-220 Cross Roads & Summit Point Tpke Co., amends incorporating act. Capital $10,000, B. P. W. 3/5 6,000
(From point of intersection of Charlestown & Berryville Tpke at Cross Road leading to Summit Point to Sum. Pt. depot in Jefferson Co.)

2/28/33- 95 Danville & Evansham Tpke Co. Capital reduced to $50,000, but allowed to be increased to $100,000, and B. P. W. for 2/5 of $50,000 ... 20,000
(From Pittsylvania to Wythe Co.)

3/17/51- 85 Danville & Wytheville Tpke Co. Name of Mawbrey's Gap Tpke Co. changed to this. Capital $30,000 and B. Y. W. for 3/5 18,000
Authorized increase by $20,000, of which B. P. W. 3/5 12,000
(From Pittsylvania Co. towards Wythe Co.)
See Mawbrey's Gap Tpke Co.

2/10/53-189 Capital increased by $25,000 and B. P. W. for 3/5 15,000

3/26/60-300 Capital increased by $5,000, and B. P. W. for 3/5 3,000

3/15/56-123 Dinwiddie Plank Road Co., Ineptd., B. P. W. for 3/5 of $10,000 6,000
(Dinwiddie Co.)
The above subscription to be paid out of the unexpended balance of the appropriation to Brunswick & Roanoke Plk Rd. Co., provided stockholders of last mentioned road consent.
See Brunswick & Roanoke Plk Rd. Co.

2/ 1/39- 95 Dunkard Creek Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5 .....
(From point in Monongalia Co. to intersect Middletown & Wheeling Tpke.)

3/13/47-124 Capital reduced to $10,000, and B. P. W. for 2/5 of the reduced capital instead of 2/5 of $5,000

2/12/48-216 B P W.'s subscription increased to 3/5..... 6,000
3/24/48-196 Dunlap's Creek Tpke Co., Ineptd., $4,000, and B. P. W. for 3/5 2,400
(From mouth of Oglee's Creek in Alleghany Co. to White Sulphur & Sweet Springs Tpke in same Co.)

3/31/58- 99 East River & Princeton Tpke Co., Ineptd., B. P. W. to turn over to—the proportionate share of unapplied portion of State's subscription to Mechanicksb'g & Wythe Tpke Co. This to be an independent Co. for that part of the Mechan. & Wythe Tpke lying between East River and Princeton in Mercer Co. See Mec. & Wythe Tpke Co.

3/22/60-278 East River & Princeton Tpke Co., Incptd., $8,000, and B. P. W. for 3/5..... 4,800
(Mercer Co.)

2/18/54- 51 El Dorado Tpke Co., Incptd., $13,000, and B. P. W. for 3/5 7,800
(From Culpeper Co. to Rappahannock Co.)

2/ 9/60-290 Capital increased by $7,000 and B. P. W. for 3/5 4,200

2/27/60-289 Elk River Tpke Co., Incptd., $20,000 and B. P. W. for $12,040 12,040
(From Kanawha Co. to Braxton Co., with branch to Roane Co.)

3/ 9/48-203 Estillville Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(Scott Co.)

2/14/23- 78 Fairfax Tpke Co. B. P. W. for 160 shares (Act 2/ 1/1813- 51 shows par val. to be $50.) 8,000

1/ 7/20-67 Fallsbridge Tpke Co., B. P. W. for $24,000 of stock of 24,000

2/22/26- 65 Capital increased and B. P. W. for $8,000 more. 8,000

3/18/53-178 Farmville & Buckingham Plank Road Co. Amends incorporating act and B. P. W. for 900 shares at $50 45,000
(From Prince Edward Co. to Buckingham Co.)

1/13/23- 77 Fauquier & Alexandria Tpke Co. B. P. W. for $30,000 of increased capital 30,000

3/24/51-110 Fayette & Blue Sulphur Springs Tpke Co., Incptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Fayette Co. to Greenbrier Co.)

3/26/60-284 Fetterman & Cove Tpke Co., Incptd., $8,000, and B. P. W. for 3/5 4,800
(From Taylor Co. to Barbour Co.)

2/26/33- 98 Fincastle & Blue Ridge Tpke Co. Capital reduced to $8,000, and B. P. W. for 2/5 3,200
(Botetourt Co.)

3/24/51-108 Fincastle & Covington Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(Botetourt and Alleghany Counties.)

3/30/53-217 Fish Creek Road Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(Marshall Co.)

3/10/53-200 Franklin & Circlesville Tpke Co., Incptd., $4,000, and B. P. W. for 3/5 2,400
(Pendleton Co.)

2/ 2/50- 77 Fredericksburg & Valley Plank Road Co., Incptd., $100,000, and B. P. W. for 3/5 60,000
(From Spottsylvania to Green and Rockingham Counties.)

3/31-51- 82 Capital increased by $50,000, and B. P. W. for 3/5 30,000

3/22/53-179 Capital increased by $74,000 and B. P. W. for 3/5 44,400

3/27/48-210 Front Royal Tpke Co., Incptd., $15,000, and B. P. W. for 2/5.....
(From Front Royal in Warren Co. to point on the Valley Tpke.)

2/ 9/50- 83 Capital increased to $40,000, and B. P. W. for 3/5 of all 24,000

2/17/51- 98 Capital increased by $20,000, and B. P. W. for 3/5 12,000

4/ 1/48-209 Front Royal & Gaines Cross Road Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 9,000
(From Warren Co. to Rappahannock Co.)

2/ 1/47-125 Giles, Fayette & Kanawha Tpke Co. B. P. W. for $16,000 (2/5) to be expended in Fayette and Monroe Counties 16,000
(From Kanawha Co. at Salt Works by the falls of Kanawha Riv. and Vandall's in the Loop to Court House of Giles Co.)

3/15/49-133 B. P. W. for additional $8,000 8,000

3/ 7/50- 95 B. P. W. for additional $6,000 6,000

2/25/53-193 B. P. W. for additional $15,000 15,000

3/29/53-213 Gilmer & Braxton Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(From Gilmer Co. to Braxton Co.)

3/19/50- 95 Gilmer, Ripley & Ohio Tpke Co., Incptd., $50,000, and B. P. W. for 3/5 30,000
(From Gilmer Co. to Ohio Riv. and down same to West Columbia in Mason Co.)

3/20/60-296 Capital increased by $12,000, and B. P. W. $20,000 and B. P. W. for 3/5..... 7,200

3/15/49-132 Glenville & Charleston Tpke Co., Incptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Gilmer Co. to Kanawha Co.)

2/16/53-192 Gnatty Creek & West Union Tpke Co., Incptd., $18,000, and B. P. W. for 3/5 10,800
(From mouth of Gnatty Creek by Phillipi in Barbour Co., crossing Cheat River in Randolph Co. to W. Union in Preston Co,)

3/20/50- 82 Goony Gap Tpke Co., Incptd., $1,500, and B. P. W. for 3/5 900
(Rappahannock Co. to Warren Co.)

1/21/54- 50 Gooney Manor Tpke Co., Amends incorporating act. Capital $6,000, B. P. W. 3/5..... 3,600
(Rappahannock and Warren Counties.)

4/ 2/39- 94 Graves Creek Tpke Co., Incptd., $12,000, and B. P. W for 2/5.
(From Elizabethtown in Marshall Co. to Wheeling in Ohio Co.)

2/11/48-224 Capital increased to $20,000, and B. P. W. for 3/5 of whole instead of above subscription..... 12,000

3/21/50-101 Grave Creek & Pennsylvania Line Tpke Co., Incptd., $8,000, and B. P. W. for 3/5 4,800
(From Grave Creek in Marshall Co. to the Pennsylvania line.)

3/10/34-173 Greenville & Panther Gap Tpke Co., Incptd., $10,000, and B. P. W. for 2/5 4,000
(Augusta Co. to Rockbridge Co.)

3/30/53-218 Guyandotte Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 9,000
(From Cabell Co. to Logan Co.)

3/15/49-125 Hampshire & Morgan Tpke Co., Incptd., $11,000, and B. P. W. for 3/5 6,600
(From Hampshire Co. to Morgan Co.)

3/11/50- 87 Capital increased by $13,000 for branch from point in Hampshire Co. through Gainesborough to Winchester and B. P. W. for 3/5 7,800

2/24/51-102 The subscribers to the stock authorized in act next above incorporated as a new Co. by name of North Frederick Tpke Co. See N. Fred. Tpke Co.

3/24/51-105 Hardy & Randolph Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From Petersburg in Hardy Co. by Pendleton Co. to Beverly in Randolph Co.)

3/ 8/47-118 Hardy & Winchester Tpke Co. Changes par val. of shares from $100 to $50, and B. P. W. for 80 shares.
(From point on Great Cacapon River in Hardy Co. to Winchester in Frederick Co.)

2/22/48-215 Increases B. P. W.'s subscription to 3/5 instead of 2/5 of not less than $16,000, for extension of road from Wardensville to Moorfield (Hardy Co.) 9,600

3/28/48-215 B. P. W. for 2/5 of additional $6,000 for finishing road between N. W. Tpke and Wardensville and for branch to Capon Springs in Hampshire Co. 2,400

3/15/49-122 Capital increased to $33,000, and B. P. W. for such amount as to make its subscription 3/5 of whole $33,000 (which amounts to increase of $7,800) 7,800

3/18/50- 87 Capital increased by $2,000, for branch in Hampshire Co., and B. P. W. for 3/5 1,200

3/27/51-104 Capital increased by $4,000, and B. P. W. for 3/5 2,400

3/26/51- 97 Harrisonburg & Franklin Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Harrisonburg in Rockingham Co. to Franklin in Pendleton Co.)

3/28/48-222 Harrisville Tpke Co., Incptd., $10,000, and B. P. W. for 2/5 4,000
(Ritchie Co.)

3/17/49-134 B. P. W.'s subscription increased to 3/5 2,000

3/ 3/51-119 Capital increased by $3,500 and B. P. W. for 3/5 2,100

3/23/60-286 Harrisville & Ellenboro Tpke Co., Incptd., $6,000, and B. P. W. for 3/5 3,600
(Ritchie Co.)

3/28/51- 96 Hazel River Tpke Co., Incptd., $16,000, and B. P. W. for 3/5 9,600
(From Woodville in Rappahannock Co. to head of navigation of Hazel Riv.)

2/18/50- 86 Hedgesville & Potomac Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(Berkeley Co.)

3/ 9/49-121 Hillsborough & Harper's Ferry Tpke Co., Incptd.. $10,000, and B. P. W. for 3/5 6,000
(From Hillsborough in Loudon Co. to Harper's Ferry in Jefferson Co.)

3/ 2/38-135 Holliday's Cove Tpke Co., Incptd., $10,000, but increase allowed up to $25,000, and B. P. W. for 2/5.
(From Ohio River in Brooke Co. to Pennsylvania line.)

3/26/39- 95 Capital increased to $30,000, and B. P. W. for 2/5.

3/17/51- 93 Co. to construct a branch to Wellsburg in Brooke Co. B. P. W.'s subscription changed to 3/5 of am't authorized by Act of 3/2/38-135 (first above) 15,000

4/ 5/58-101 Incorporates Holliday's Cove & Wellsburg Tpke Co. as an independent Co. for the branch to Wellsburg mentioned in act just above; and turns over to this new Co. the unexpended appropriation to Holliday's Cove Tpke Co. See H's Cove & Wellsb'g, etc. Co.

3/29/51-124 Holliday's Cove & New Cumberland Tpke Co., Incptd., $4,000, and B. P. W. for 3/5 2,400
(From a point on Holliday's Cove Tpke to New Cumberland in Hancock Co.)

4/ 5/58-101 Holliday's Cove & Wellsburg Tpke Co., Incptd. This to be an independent So. for building the branch road to Wellsburg in Brooke Co., authorized to be built by the Holliday's Cove Tpke Co. by act 3/17/51-93, and the Co. hereby incorporated to receive the unexpended appropriation to said Holliday's Cove Tpke Co. See H's Cove Tpke Co.

3/31/51-109 Hot Springs & Clifton Forge Tpke Co., Incptd., $6,000, and B. P. W. for 3/5 3,600
(From Bath Co. to Clifton Forge in Alleghany Co.)

3/ 9/48-193 Howardsville Tpke Co. Capital increased to $35,000, and B. P. W. for 2/5 14,000
(From Howardsville in Albemarle Co. to forks of Rockfish River in Nelson Co.)

3/17/49-115 B. P. W.'s subscriptions increased to 3/5 7,000

3/31/51-105 Capital increased by $10,000, and B. P. W. for 3/5 6,000

4/ 1/53-221 Capital increased by $15,000, and B. P. W. for 3/5 9,000

3/29/53-215 Huntersville & Monterey Tpke Co., Incptd., $16,000, and B. P. W. for 3/5 9,600
(From Huntersville in Pocahontas Co. to Monterey in Highland Co.)

3/20/32-183 Huntersville & Warm Springs Tpke Co., Incptd., $16,000, and B. P. W. for 2/5 6,400
(From Huntersville in Pocahontas Co. to Warm Springs in Bath Co.)

2/15/60-297 Huntersville & Warm Springs Tpke Co., Incptd., $7,000, and B. P. W. for 3/5 4,200
(From Huntersville in Pocahontas Co. to Warm Springs in Bath Co. on or near the line of the old tpke from H. to W. Spgs.)

2/27/54- 49 Indian Creek Tpke Co., Incptd., $5,000, and B. P. W. for 3/5 3,000
(From Mouth of Indian Creek in Tazewell Co. by best route to point on Price's Tpke and Cumberland Gap Road at Liberty Hill.)

3/28/38-127 Indian Draft Tpke Co., Incptd., $7,000, and B. P. W. for 2/5 2,800
(From Salt Sulph. Springs in Monroe Co. to Blue & Red Sulph. Springs Tpke near mouth of the Indian Draft.)

4/ 2/31-205 Jackson's River Tpke Co., B. P. W. for 2/5 of cap. stock. (Act 2/21/29-112 shows cap. $20,000.) 8,000
From Warm Springs to Kanawha Tpke at Callaghans.)

4/ 1/48-172 B. P. W. to pay to—account bridges across Jackson River 3,000

3/31/48-199 Jacksonville & Bent Mountain Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From Jacksonville in Floyd Co. by way of point in Montgomery Co. to Roanoke Co.)

3/15/58- 96 State's interest in—released to Counties of Floyd and Roanoke; to become a free road.

3/24/51- 88 Jacksonville & Christiansburg Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(From Floyd Co. to Montgomery Co.)

3/12/53-203 Capital increased by $14,000, and B. P. W. for 3/5 8,400

3/29/51- 81 James River & Clover Hill Plank Road Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(Nelson Co. to Appomattox Co.)

2/24/60-281 Jane Lew & Upshur Tpke Co., Incptd. This Co. to take over that part of the West Milford & New Salem Tpke that lies in Lewis & Upshur Counties. See West Milford and New Salem Tpke Co.

3/28/51-100 Jefferson & Frederick Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From Smithfield in Jefferson Co. to Frederick Co.)

3/26/60-298 Jeffersonville, Marion & Rye Valley Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Jeff'ville in Tazewell Co. to Rich Valley, thence to Marion in Smyth Co. and thence to Blue Springs Road in Rye Valley.)

3/ 4/50- 92 Jonesville & Little Stone Gap Tpke Co., Incptd., $7,000, and B. P. W. for 3/5 4,200
(From Lee Co. at end of Little Stone Gap Road to Yankham Station, thence to Jonesville, and branch from Yankham Station across Lovelace Gap to Wild Cat Valley Road.)

3/17/51- 93 Capital increased by $5,000, and B. P. W. for 3/5 3,000

3/ 7/48-196 Jordan's Furnace & Rockbridge Tpke Co., Incptd., $6,000, and B. P. W. for 3/5 3,600
(From Alleghany Co. to Rockbridge Co.)

3/17/49-111 Junction Valley Tpke Co., Incptd., $60,000, and B. P. W. for 3/5 36,000
(From Botetourt Co. to Staunton in Augusta Co.)

3/31/53-221 Capital increased by $25,000, for completing and B. P. W. for 3/5 15,000

12/22/57- 95 Appropriation to pay for—account of purchase of by B. P. W. at sale thereof 25,000

3/25/48-216 Kingwood & West Union Tpke Co., Incptd., $10,000, and B. P. W. for 2/5 6,000
(From W. Union in Preston Co. to Kingwood in same Co. and thence to Monongalia Co.)

3/24/51-116 Capital increased by $10,000, and B. P. W. for 3/5 6,000

2/28/53- 71 State appropriation to for macadamizing parts of 28,000

3/22/60-295 Knob Tpke Co., Incptd., $12,500, and B. P. W. for 3/5 7,500
(From point in Washington Co. by Abingdon to Tennessee line.)

3/17/49-127 Knobley Valley Tpke Co., Incptd., $14,000, and B. P. W. for 3/5 8,400
And capital may be increased by $4,000, of which
B. P. W. for 3/5 2,400
(From Hardy Co. line by Ridgeville in Hampshire Co. through Knobley Valley to B. & O. R. R. near Cumberland, Maryland.)

3/11/50- 88 Name of this Co. changed to Patterson's Creek Valley Tpke Co. Extends road to point on Moorfield & Alleghany Tpke and B. P. W. for 3/5 of $2,500, additional capital. See Patterson's Creek Valley Tpke Co.

1/25/39- 83 Lafayette & English's Ferry Tpke Co. B. P. W. for 2/5 of capital of. (Act 3/21/38-121 shows capital $8,000.) 3,200
(From Lafayette in Montgomery Co. by Christiansburg to E.'s Ferry on New River.)

3/31/51-117 Leading Creek & Buffalo Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From point on Beverly & Fairmont Road near Leading Creek Bridge to point in Preston Co.)

3/ 9/53-200 Capital increased by $6,000, and B. P. W. for 3/5 3,600

3/31/48-208 Leeds Manor Tpke Co., Incptd., $5,000, and B. P. W. for 2/5 2,000
(Fauquier Co.)

3/15/58- 96 State's interest in—released to Fauquier Co.

3/19/50- 85 Leesburg Tpke Co., B. P. W. for $7,850, being 2/5 of cost of extension to Fairfax Co. 7,850

2/20/32-177 Leesburg & Snickers Gap Tpke Co., B. P. W. for $20,000 20,000
(Loudon Co.)

3/16/47-119 Capital increased by $5,000, and B. P. W. for 2/5 2,000

3/21/60-282 Lenn's Creek & Logan Court House Tpke Co., Incptd., $20,000, and B. P. W. for $12,450 12,450
(From Lenn's Creek in Kanawha Co. by way of Peytona in Boone Co. to Logan C. H.)

2/15/54- 47 Letart Falls & West Columbia Tpke Co., Incptd., $3,500, and B. P. W. for 3/5 2,100
(From Letart Falls on Glenville & Ohio Tpke through West Columbia to lower side of Ten Mile Creek.)

3/ 9/36-214 Lewisburg & Blue Sulphur Springs Tpke Co., B. P. W. for 80 shares of. (Act 3/12/34-166 shows capital $10,000, in shares of $50)..... 4,000
(From Lewisburg in Greenbrier Co. to Blue Sulph. Sprgs. in Monroe Co.)

3/30/37-145 Capital increased by $2,500, and B. P. W. for 2/5 1,000

3/21/53-179 Lewiston Plank Road Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(Lunenburg Co.)

2/19/29- 29 Lexington & Covington Tpke Co., Incptd., $20,000, and B. P. W. for 160 shares (2/5) 8,000
(Alleghany and Rockbridge Counties.)

2/20/32-181 Capital increased by $16,000, and B. P. W. for 2/5 6,400

4/ 8/31-209 Lexington & Mountain Canal Tpke Co., Incptd., $5,000, and B. P. W. for 80 shares (2/5)..... 2,000
(Rockbridge Co.)

2/12/33-101 Capital increased by $5,000, and B. P. W. for 2/5 2,000

3/31/37-153 Little Stone Gap Tpke Co., Incptd., $5,000, and B. P. W. for 2/5 2,000
(Lee Co. to Russell Co.)

3/17/49-133 Logan, Raleigh & Monroe Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From Logan Co. to Fayette Co.)

3/16/53-205 Capital increased by $16,000, and B. P. W. for 3/5 for extension from Raleigh C. H. to Blue Sulph. Springs in Greenbrier Co. 9,600

2/25/50- 85 Loudon & Berlin Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From point in Loudon Co. to point on Potomac Riv. opposite Berlin in Maryland.)

2/25/53-174 Lunenburg Plank Road Co. Amends incorporating act, and B. P. W. for 3/5 (3/5 of $50,000) 30,000
(From Nottoway Co. to Lunenburg Co.)

2/15/54- 55 Capital increased by $30,000, and B. P. W. for 3/5 18,000

3/31/51- 98 Luray & Front Royal Tpke Co., Incptd., $20,000 and B. P. W. for 3/5 12,000
(From Luray in Page Co. to Fr. Royal in Warren Co.)

2/14/53-191 Capital increased by $30,000, for extension into Rockingham Co. and by $10,000, for improvements and B. P. W. for 3/5 24,000

3/14/39- 85 Lynchburg & Buffalo Springs Tpke Co. Capital increased to $25,000, and B. P. W. for 2/5.. 10,000

2/18/32-179 Lynchburg & Concord Tpke Co., Incorporated agreeably to act 2/11/32-71 Capital $12,000, and B. P. W. for 2/5 4,800

1/17/23- 83 Lynchburg & Salem Tpke Co. B. P. W. for 300 shares of 30,000

2/16/56- 31 Releases State's interest in so much of—as lies in Bedford and Roanoke Counties, to said counties.

3/16/47-120 Manassa's Gap Tpke Co., Ineptd., $45,000, and B. P. W. for 2/5 18,000
(Fauquier Co.)

3/ 6/24- 74 Manchester & Petersburg Tpke Co., B. P. W. for $8,000 8,000
(Chesterfield and Dinwiddie Counties.)

3/12/53-203 Marshall County Road Co. Incorporated for widening and grading. (The act does not give any name to the Co.) Road extends from Marshall C. H. up Riggs Hill, etc., to point on Fish Creek in Ohio Co. Capital $5,000, and B. P. W. for 3/5 3,000

2/25/58- 97 Releases State's interest in—to Counties of Marshall and Ohio. The name of the Co. is given in this act as Wheeling & Marshall Co. Tpke.

3/17/49-123 Martinsburg & Potomac Tpke Co., Ineptd., $30,000, and B. P. W. for 3/5 18,000
(From Martinsburg in Berkeley Co. to point on Potomac Riv. opposite Williamsport, Md.)

3/34/38-129 (131) Martinsburg & Winchester Tpke Co., Ineptd., $60,000, and B. P. W., for $33,600.
(From Martinsburg in Berkeley Co. to Winchester in Frederick Co.)

3/24/48-211 Revives above act.

1/20/49-122 Divides the road into sections; capital reduced and B. P. W. for 3/5 in lieu of subscription above 27,000

3/17/51- 92 Martin's Creek Free Road Co., Incptd., $3,400, and B. P. W. for 3/5 2,040
(Lee County.)

3/ 8/53-176 Marysville Plank Road Co. B. P. W. for 3/5 (Act 5/13/52-133 shows cap to be $25,000.) 15,000
(Charlotte Co.)

2/28/54 Capital increased by $35,000, and B. P. W. for 3/5 21,000

3/24/60-285 Mason & Cabell Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Mason Co. to Cabell Co.)

3/ 7/48-198 Mawbrey's Gap Tpke Co., Incptd., $30,000, and B. P. W. for 3/5.
(From Pittsylvania Co., by Patrick Co. and Floyd Co. to point in Montgomery Co.)

3/17/51- 85 Amends above act, changes name to Danville & Wytheville Tpke Co. Capital $30,000, with authorized increase by $20,000, and B. P. W. for 3/5. See Danville & Wytheville Tpke Co..... 30,000

3/ 4/51-87 Mechanicsburg & Wythe Tpke Co., Incptd., $5,000, and B. P. W. for 3/5 3,000
(From Mec'bg. in Giles Co. to Wythe Co.)

3/12/53-204 B. P. W. for 3/5 of $15,000, for extension from Mechanicsburg to Cumberland Gap Tpke in Mercer Co., thence to Princeton, with another branch in Mercer Co. (See act 4/20/52-144 making this route.) 9,000

3/31/58- 99 B. P. W. to turn over to East River & Pinceton Tpke Co., an independent Co., incorporated by this act for the road between East River and Princeton, the unexpended proportion of State's subscription to Mechans'bg & Wythe Tpke Co.
See East River & Princeton Tpke Co.

4/ 2/60-289 With consent of Mecs'bg & Wythe Tpke Co., $500 of State's subscription to said Co. to be transferred to Raleigh & Grayson Tpke Co.

3/15/31-207 Middle Tpke Co. B. P. W. for 239 shares. (Act 2/14/1818-135 shows capital $50,000, but does not show par value.)
(From Fairfax Co. to point on Little River or on line of District of Columbia.)

3/17/51-107 Middlebrook & Brownsburg Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... 9,000

3/29/53-214 Capital increased by $5,000, and B. P. W. for
(From Staunton in Augusta Co. to Lexington in Rockbridge Co.)
3/5 3,000

3/25/39- 93 Middletown & Wheeling Tpke Co., B. P. W. for 600 shares (Act 4/6/38-135 shows cap. $30,000 divided into shares of $20 each..... 12,000
(From N. W. Tpke at Tygart's Valley bridge by way of Middletown to Wheeling in Ohio Co.)

2/18/54- 53 Middleway & Gerardstown Tpke Co., Incptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Middleway in Jefferson Co. by Gerardstown to point on Back Creek.)

4/ 2/53-222 Mill Point & Nicholas Tpke Co., Incptd., $30,000, and B. P. W. for 3/5..... 18,000
(From Mill Point in Pocahontas Co. to Cranberry River in Nicholas Co.)

3/24/48-213 Millwood & Berryville Tpke Co., Incptd., $20,000, and B. P. W. for 2/5.
(In Clarke Co.)

3/21/51- 99 Capital reduced to $15,000, and B. P. W. 3/5. 9,000

3/23/60-287 Monterey & Warm Springs Tpke Co., Incptd., $12,500, and B. P. W. for 3/5..... 7,500
(Highland Co. to Bath Co.)

3/31/38-132 Moorefield & Alleghany Tpke Co., Incptd., $15,000, and B. P. W. for 360 shares (at $25).. 9,000
(From Moorefield in Hardy Co. to N. W. Tpke in the Alleghany mountains.)

3/ 7/49-126	Incorporated again, $15,000, and B. P. W. for 3/5	9,000
	And in addition State appropriation of $4,500 for stem in Hardy Co.	4,500
3/11/53-202	Capital increased by $2,000, and B. P. W. for 3/5	1,200
1/20/58-147	Transfers this road, except the Petersburg stem, to County Court of Hardy Co.	
3/22/47-118	Moorefield & North Branch Tpke Co., Ineptd., $25,000, and B. P. W. for 2/5.	
3/10/48-216	Capital increased to $35,000, and B. P. W. for 3/5 of whole instead of above subscription.....	21,000
3/ 7/49-125	Capital increased by $18,000, for extension to Pendleton Co. and B. P. W. for 3/5.....	10,800
3/11/50- 88	Capital increased by $2,500, and B. P. W. for 3/5	1,500
3/11/50- 89	Capital increased by $10,000, for extension from Franklin in Pendleton Co. to Monterey in Highland Co., and B. P. W. for 3/5.....	6,000
2/25/51-100	Morgan & Frederick Tpke Co., Ineptd., $6,000, by individuals and $9,000, by B. P. W..... (From point near Gainesborough on Morgan & Hampshire Tpke to point on Potomac River in Morgan Co.)	9,000
3/15/49-128	Morgantown & Bridgeport Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... (From Morgantown in Monongalia Co. via. Palatine in Marion Co. to Br. in Harrison Co.)	6,000
2/ 7/50-100	Capital increased by $12,000, and B. P. W. for 3/5 for extension into Harrison Co.....	7,200
3/12/53-203	Capital increased by $12,000, and B. P. W. for 3/5	7,200

3/30/39- 92 Morgantown & Clarksburg Tpke Co., Ineptd., $30,000, and B. P. W. for 2/5..... 12,000
(From Clarksburg in Harrison Co. by way of Morgantown in Monongalia Co. and Ice's Ferry to Pennsylvania line.)

Morgantown, Kingwood & West Union Tpke Co.
(See Kingwood & West Union Tpke Co.

3/24/60-300 Mountain Lake & Salt Sulphur Springs Tpke Co. Capital increased by $8,000, for completion of road, and B. P. W. for 3/5 (Ineptd by Act 3/3/56-137) 4,800
(From Salt Sulph. Springs in Monroe Co., by way of Mt. Lake in Giles Co., to point on Va. & Tenn. R. R. in Montgomery or Pulaski Co.)

3/ 9/60-293 Mount Jackson & Howard's Lick Tpke Co., B. P. W. for $7,200 (2/5) (Ineptd by Act 2/6/56-133) 7,200
(From Mt. Jackson in Shenandoah Co. to Howard's Lick in Hardy Co.)

3/31/51-113 Mud River & Valley Tpke Co., Ineptd., $3,000, and B. P. W. for 3/5..... 1,800
(Down Mud River to Jas. Riv. & Kanawha Tpke Road in Cabell Co.)

2/28/37-144 Natural Bridge Tpke Co., B. P. W. for 64 shares (Act 2/29/36-213 shows $16,000 in shares of $100)..... 6,400
(Rockbridge Co.)

3/28/51-121 Newark Tpke Co., Ineptd., $6,000, and B. P. W. for 3/5 3,600
(From Court House of Wirt Co. through Newark to Parkersburg & Staunton Road at mouth of Hughes River.)

3/21/53-221 New Castle & Gap Mills Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5..... 7,200
(From New Castle in Craig Co. by best route to Gap Mills in Monroe Co.)

2/25/50- 88 New Creek & Hardy Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Hardy Co. to Hampshire Co.)

4/ 4/48-225 New Manchester Tpke Co., Incptd., $5,000, and B. P. W. for 2/5 2,000
(From Ohio River to Pennsylvania line.)

3/28/48/194 New Market & Buffalo Springs Tpke Co., Incptd., $10,000, and B. P. W. for 2/5..... 4,000
(From New Market in Nelson Co. at James River Canal to tpke road near Buffalo Springs in Amherst Co.)

3/ 6/48-205 New Market & Sperryville Tpke Co., Incptd., $100,000, and B. P. W. for 3/5..... 60,000
(From N. Market in Shenandoah Co. to Sperryville in Rappahannock Co.)

3/ 6/51- 95 Capital increased by $15,000, and B. P. W. for 3/5 9,000

2/10/53-189 New Martinsville & Knob Fork Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(From New M. in Wetzel Co. eastwardly to convenient point on B. & O. R. R.)

3/29/53-217 New Martinsville & Proctor Tpke Co., Incptd., $4,400, and B. P. W. for 3/5 2,640
(From New M. in Wetzel Co. to Marshall Co. line.)

2/24/51-102 North Frederick Tpke Co. Incorporation as—of subscribers to the additional stock of $13,000, of the Hampshire & Morgan Tpke Co., authorized by Act 3/11/50-87 for branch from Hampshire Co. through Gainesborough to Winchester. See Hampshire & Morgan Tpke Co... 7,800

3/15/51-100 Capital increased by $4,000, and B. P. W. for 3/5 2,400

2/25/53-193 Capital further increased by $2,000 for a road to the Hampshire & Morgan Tpke, and B. P. W. for 3/5 1,200

2/17/51-102 North River Tpke Co., Incptd., $9,000, and B. P. W. for 3/5 5,400
(From point on N. W. Tpke in Hampshire Co. to point on Moorfield & Wardensville Road.)

4/ 5/38-133 North River & Moorfield Tpke Co., Incptd., $28,000, and B. P. W. for 2/5 11,200
(From Moorfield in Hardy Co. to point in Hampshire Co. on N. W. Tpke.)

2/27/27- 85 Northwestern Road Co., Incptd., $75,000, and B. P. W. for 2/5 30,000
(From Winchester in Frederick Co. to the Ohio River.)

4/ 1/48-201 Old Court House & Abingdon Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... 15,000
(From Old Court House of Russell Co. to Abingdon in Washington Co., thence up Laurel Fork to Tennessee line.)

3/16/49-120 Orlean & Salem Tpke Co., Incptd., $5,000, and B. P. W. for 3/5 3,000
(From Orlean in Fauquier Co. to Salem & Paris Road.)

2/28/54/ 52 Paris & Piedmont Station Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(Fauquier Co.)

3/11/50- 96 Parkersburg & Elizabethtown Tpke Co., Incptd., $8,000, and B. P. W. for 3/5 4,800
(From Elizabethtown in Wirt Co. to Parkersburg in Wood Co.)

3/11/50- 88 Patterson's Creek Valley Tpke Co. Name of Knobley Valley Tpke Co. changed to above, and route of road to be from point on Hardy Co line down Pat.'s Cr. Valley to Patterson's Creek depot on B. & O. R. R., with extension to convenient point on Moorfield & Alleghany Tpke. Capital increased by $2,500, and B. P. W. for 3/5 1,500
See Knobley Valley Tpke Co.

2/ 4/48-200 Pepper's Ferry & Holston Tpke Co., Incptd., $26,000, and B. P. W. for 3/5..... 15,600
(From P's Ferry in Pulaski Co. to end of Shannon's Tpke in Giles Co., thence up Walker's Creek Valley to Salt Works in Smyth Co.)

3/ 8/53-175 Petersburg & Jerusalem Plank Road Co., Incptd., $75,000, and B. P. W. for 3/5..... 45,000
(From Petersburg in Dinwiddie Co. to Jerusalem in Southampton Co.)

3/ 7/49-130 Phillipi & Buckhannon Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Phillipi in Barbour Co. to Buckhannon in Lewis Co.)

2/20/38-117 Pittsylvania, Franklin & Botetourt Tpke Co., Incptd., $40,000, with privilege of increasing to $60,000, and B. P. W. for 2/5 24,000
(In Pittsylvania, Franklin and Botetourt Co.'s)

3/16/36-208 Pittsylvania & Lynchburg Tpke Co. Capital reduced to $17,500, and B. P. W. for 140 shares (2/5) 7,500
(In Pittsylvania and Campbell Counties.)

3/30/53-218 Pleasant Valley & Tunnelton Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Ice's Ferry on Cheat River, by Pleasant Valley meeting house in Preston Co. to Tunnelton on B. & O. R. R.)

2/ 5/48-221 Point Pleasant & Ripley Tpke Co., Incptd., $50,000, and B. P. W. for 3/5..... 30,000
(From Gilmer Co. through Ripley in Jackson Co. to Point Pleasant in Mason Co.)

3/ 4/51-103 Potomac Tpke Co., Incptd., $4,500, and B. P. W. for 3/5..... 2,700
(From point on Cacapon & N. Branch Tpke in Hampshire Co. to point not East of the Morgan Co. line.)

3/ 7/50-80 Princeton & Red Sulphur Tpke. Co., Incptd., $7,000, and B. P. W. for 3/5..... 4,200
(From Princeton in Mercer Co. to Red Sulphur Springs in Monroe Co.)

3/21/51-110 Amends above so as to make the subscription of $4,200 an appropriation instead of a subscription, and makes this a free road.

3/ 7/51-82 Providence Branch Plank Road Co., Incptd., $10,000, and B. P. W. for 2/5..... 4,000
(From Fairfax Court House to point on Alexandria and Gordonsville R. R.)

3/28/53-212 Pulaski & Giles Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Giles Co. to Pulaski Co.)

2/28/54-47 Raleigh & Boone Road Co., Incptd., $3,000, and B. P. W. for 3/5..... 1,800
and may increase by $2,000, of which 3/5 by B. P. W..... 1,200
(From Boone Co. to Raleigh Co.)

4/ 2/50-289 Raleigh & Grayson Tpke Co., $2,500 of State's subscription to Mechanicsburg & Wythe Tpke Co. to be transferred to Raleigh and Grayson Tpke Co., with consent of stockholders of former Co.

3/17/56-143 Raleigh & Tazewell Line Tpke Co. Incorporated as an independent Co. for making that part of the Raleigh & N. C. Road lying between the Giles, Fayette & Kan. Tpke in Raleigh County and the Co. line of Wythe & Tazewell Counties.
Capital $4,000. This Co. to receive a proportionate share of the unapplied portion of State's subscription to the Raleigh & N. C. Road.
See Raleigh & N. C. Road.

3/ 3/60-280 Amends above act by changing name of this Co. to Raleigh & Wythe Line Tpke Co., making its capital $8,000 instead of $4,000, and having B. P. W. subscribe for 3/5 instead of giving to this independent Co. a portion of the unapplied subscription of B. P. W. to Raleigh & N. C. Line Road 4,800

3/ 3/ 60-280 Raleigh & Wythe Line Tkpe Co.
See Raleigh & Tazewell Line Tpke Co.

3/25/53-210 Randolph & Moorfield Tpke Co., Incptd., $30,000, and B. P. W. for 3/5..... 18,000
(From Beverly in Randolph Co. to Petersburg in Hardy Co.

2/18/50-98 Ravenswood & Reedy Creek Tpke Co., Incptd., $10,000 and B. P. W. for 3/5..... 6,000
(From point in Reedy Creek in Wirt Co. to Ravenswood on Ohio River.)

3/24/51-121 Capital increased by $5,000, and B. P. W. for 3/5..... 3,000
and authorizes extension to town of California in Wirt Co.

3/20/37-144 Red & Blue Sulphur Springs Tpke Co., B. P. W. for 100 shares (2/5). (Act 1/18/36-214 shows capital $12,500, par val. $50)..... 5,000
(From Blue Sul. Springs in Greenbrier Co. to Red Sul. Springs in Monroe Co.)

3/23/39- 86 B. P. W. for 76 additional shares, being 2/5 of increase allowed by act of 3/27/38..... 3,800

3/15/51-110 B. P. W. to appropriate for bridge over Indian Creek 1,400

3/24/51-117 Reedy & Harrisville Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(From the Three Forks of Reedy through Palatine in Wirt Co. to Harrisville in Ritchie Co.)

3/14/49-113 Rich Patch Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(Alleghany and Botetourt Counties.)

3/12/51-121 Ritchie & Gilmer Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... 9,000
(From Schumla on N. W. Tpke through Harrisville in Ritchie Co. to Glenville in Gilmer Co.)

1/28/33-102 Rivanna & Fredericksburg Tpke Co., Incptd., $30,000, and B. P. W. for 2/5..... 12,000
(From Albemarle Co. to Spottsylvania Co.)

3/ 4/53-45 Rivesville & New Brownsville Tpke Co., Incptd., $8,000, and B. P. W. for 3/5..... 4,800
(From Paw Paw Creek in Marion Co. to Pennsylvania line at New Br. in Monongalia Co.)

4/ 2/39-96 Rockfish Navigation & Blue Ridge Tpke Co., Incptd., $60,000, and B. P. W. for 2/5..... 24,000
(Improvement of navigation of Rockfish Riv. and Tpke up same to point in Augusta Co.)
(See same title under head of Navigation Companies.)

3/18/50-81 Rockingham Tpke Co., Incptd., $100,000, and B. P. W. for 3/5..... 60,000
From Standardsville in Greene Co. by Swift Run Gap to point on Valley Tpke.)

2/28/53-193 Capital increased by $50,000, and B. P. W. for 3/5 30,000

3/18/47-111 Rocky Mount Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... 15,000
(From point on Lynchburg & Salem Tpke west of New London, by Franklin Court House or Rocky Mount to Jacksonville in Floyd Co.)

2/19/48-197 Capital increased by $30,000, and B. P. W. for 3/5..... 18,000
B. P. W. also for 3/5 of additional increase allowed of $10,000 for branch to Patrick Co... 6,000

3/ 9/53-72 B. P. W. authorized to purchase the mountain section of this road and widen same as recommended by engineer and Sup't of Floyd C. H. & Hillsville Road, provided this can be done at cost not exceeding 4,500
(See Floyd C. H. & Hillsville Road.)

3/ 9/53-198 Russell Old Court House & Abingdon Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... 15,000
(From old Court House of Russell Co. through Little Moccasin Gap to Abingdon in Washington Co., thence up Laurel Fork to Tenn. line.)

3/ 1/54-48 Capital increased by $15,000, and B. P. W. for 3/5..... 9,000

3/ 6/48-202 Russell & Washington Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(Russell and Washington Counties.)

2/ 7/50-93	Capital increased by $1,125, and B. P. W. for 3/5	675
3/15/51-90	Capital increased by $3,000, and B. P. W. for 3/5	1,800
3/15/51-90	Capital increased by $1,250, and B. P. W. for 3/5	750
3/24/51-123	St. Mary's Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... (From Parkersburg in Wood Co. to St. Mary's in same Co.)	6,000
3/10/51-120	Salem & Harrisville Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5..... (Ritchie Co.)	7,200
2/11/39-182	Salem & Newcastle Tpke Co. Changes par val. of shares to $25 (Act 4/6/38-120 shows cap. $10,000, par val. $50) and B. P. W. for 66 shares for every 100 by others (2/5 about)..... (Botetourt Co. to P's Ferry in Montgomery	4,000
3/25/39-82	Salem & Pepper's Ferry Tpke Co. B. P. W. for 2/5 (Act 3/21/38-120 shows cap. $15,000).. (Botetourt Co. to P's Ferry in Montgomery Co.)	6,000
3/25/58-95	B. P. W. to borrow and pay to as appropriation, for paying the debts of—not over $12,000..	12,000
2/27/54-52	Salem Station & Rappahannock Tpke Co., Ineptd., $30,000, and B. P. W. for 3/5..... (From Salem Station on Manassa Gap R. R. to point in Rappahannock Co.)	18,000
3/ 8/34-166	Salt & Red Sulphur Springs Tpke Co. B. P. W. for 80 shares (Act 1/8/34-165 shows cap. $10,000, par val. $50)..... (Monroe Co.)	4,000
3/31/60-303	Saltville & Laurel Tpke Co., Ineptd., $8,000, and B. P. W. for 3/5..... (From Saltville on Va. & Tenn. R. R. to intersect Tkpe from Abingdon to Tenn. line.)	4,800

2/12/53-191 Sand Creek Tpke Co., Ineptd., $2,400, and B. P. W. for 3/5 1,440
(From Jackson Co. to Gilmer, Ripley & Ohio Tpke.)

3/31/51-112 Sandy River Tpke Co., Ineptd., $5,000, and B. P. W. for 3/5 3,000
(From mouth of Big Sandy River up to Cassville in Monongalia Co.)

4/ 6/39-84 Scott & Washington Tpke Co., Ineptd., $20,000, and B. P. W. for 133 shares for every $200 by others (about 2/5) 8,000
(Washington and Scott Counties.)

2/23/21-98 Shepherdstown, Martinsburg & Potomac Tpke Co. B. P. W. for 2/5 (incorporating Act of 1/20/20-59 shows capital $60,000) 24,000
(From Shepherdstown in Jefferson Co. by way of Martinsburg in Berkeley Co. to Potomac River.)

2/20/26-66 Shepherdstown & Smithfield Tpke Co. B. P. W. for $18,575 18,575
(From Sh. in Jefferson Co. to Smithfield in same Co.)
The name of this Co. originally was Shepherdstown & Winchester, but this act changed name to above and made the termini Shep. and Smithfield.

2/11/48-214 B. P. W. for $14,000, being 2/5 of additional capital ($35,000) authorized by Act 3/22/47-116 for extension of road to Winchester in Frederick Co. 14,000

2/ 7/50-99 Shinston Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5 7,200
(From Shinston in Harrison Co. to Doddridge or Tyler Co.)

2/ 9/53-188 Capital increased by $10,000, and B. P. W. for 3/5 6,000

2/26/51-118 Simpson's Creek Tpke Co., Ineptd., $7,000, and B. P. W. for 3/5 4,200
(From Harrison Co. to Taylor Co.)

2/ 4/53-187	Sinking Creek & Craig's Creek Tpke Co., Incptd., $3,000, and B. P. W. for 3/5..... (Craig Co.)	1,800
3/31/60-301	Sir John's Run Tpke Co., Incptd., $7,000, and B. P. W. for 3/5..... (From point in Frederick Co. on Berkeley & Hampshire Tpke to point in Morgan Co. on Bath & Potomac Road.	4,200
3/27/51-120	Sistersville & Salem Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... (For widening and completing the Sistersville & Salem Road.) See Sistersville to Salem Road.	9,000
3/16/31-206	Smithfield, Charlestown & Harpers Ferry Tpke Co. B. P. W. for $14.000 (see Act 2/18/30-86) .... (Jefferson Co.)	14,000
2/25/33-99	Capital increased by $10,000, and B. P. W. for	4,000
3/29/53-215	Smithtown Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... (From Smithtown in Monongalia Co. to Morgantown & Beverly Road.)	6,000
2/27/22-45	Snickers Gap Tpke Co. B. P. W. for 400 shares of—allowed to be increased by this act. (Act 1/29/1810-67 shows par val. $50.)..... (From E. bank of Shenandoah River by way of Snicker's Gap to Winchester in Frederick Co.)	20,000
2/21/35-129	Southwestern Tpke Co., Incptd., $100,000, and B. P. W. for 2/5..... (From Botetourt Co. to State line in Washington Co.)	40,000
3/27/48-204	Sperryville & Rappahannock Tpke Co., Incptd., $50,000, and B. P. W. for 3/5..... (From Sperryville in Rappahannock Co. to head of navigation of Rappahannock Riv.	30,000

2/19/51-95	Capital increased by $30,000, and B. P. W. for 3/5	18,000
3/ 8/24-68	Staunton & James River Tpke Co., Ineptd. B. P. W. for 2/5 of $200,000. (From Staunton in Augusta Co. to Scott's Landing on James Riv.)	
2/12/25-64	Repeals above act; makes cap. $50,000, and B. P. W. to subscribe for 2/5.....	20,000
2/24/26-66	B. P. W. for additional $20,000.....	20,000
2/ 7/33-102	B. P. W. for 2/5 of additional $50,000.....	20,000
3/ 1/47-112	Capital increased $175,000, and B. P. W. for 3/5	105,000
2/20/33-96	Staunton & Jennings Gap Tpke Co., Ineptd., $8,000, and B. P. W. for 2/5. (Augusta County.)	
3/ 7/33-96	Amends above act, reduces capital to $6,000. of which B. P. W. to subscribe for 2/5.	
3/29/37-148	Amends above acts, makes capital $9,000. B. P. W. for 2/5.....	3,600
3/28/51-107	Staunton & North River Gap Tpke Co., Ineptd., $25,000, and B. P. W. for 3/5..... (Augusta County.)	15,000
3/24/51-93	Stone Mountain Free Road Co., Ineptd., $2,000, and B. P. W. for 3/5..... (From point 18 miles E. of Lee C. H., crossing Stone Mountain to Ky. line in Harlan Co., Ky.)	1,200
3/27/60-278	Strasburg & Capon Tpke Co. B. P. W. for $3,000 of stock of (See incorporating act of 3/3/56-133.) .... (From Strasburg in Shenandoah Co. to point on Winchester & Moorfield Road at Hoff's Gate.)	3,000

3/15/49-112 Sweet & Salt Sulphur Springs Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(From Sweet Springs in Monroe Co. by way of Salt Sulph. Springs to Red & Blue Sulph. Tpke near mouth of Indian Draft.)

3/25/53-211 Capital increased by $5,000, and B. P. W. for 3/5 3,000

3/10/51-91 Tazewell Court House & Saltville Tpke Co., Incptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Tazewell C. H. by Broad Ford in Smyth Co. to Saltville in Washington Co.)

3/25/39-86 Teay's Valley & Hannansville Tpke Co., Incptd., $20,000, and B. P. W. for 2/5..... 8,000
(From point on Kanawha Tpke near Hurricane Bridge to Hannansville in Cabell Co.)

1/19/48-207 Thornton's Gap Tpke Co., Incptd., $75,000, and B. P. W. for 3/5..... 45,000
(Rappahannock Co. to Culpepper Co.)

2/19/51-95 Capital increased by $10,000, and B. P. W. for 3/5 6,000

3/ 1/33-94 Thornton's Gap & Warrenton Tpke Co., Incptd., $30,000, and B. P. W. for 2/5..... 12,000
(Fauquier Co. to Culpeper Co.)

3/12/31-208 Thoroughfare Gap Tpke Co. Capital reduced to $45,000, and B. P. W. for 2/5.
(Salem in Fauquier Co. made the western terminus of the road.)

2/13/33-100 Capital reduced to $31,000, and B. P. W. for 2/5 of reduced capital instead of as above..... 12,400

3/ 1/60-279 Tom's Creek & White's Creek Tpke Co., Incptd $3,000, and B. P. W. for 3/5..... 1,800
(From Tom's Cr. in Wayne Co. to mouth of White's Creek on Big Sandy River.)

3/ 1/56- 65 Tye River & Blue Ridge Tpke Co. B. P. W. for 50 shares. (Incorporating act 3/11/1819-133 does not show par value.)
(From point near Greensville over Blue Ridge Mountains to Tye Riv. in Nelson Co.)

3/22/51-84	Union Hall Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5	9,000
	Increase allaowed by $3,000, of which B. P. W. for 3/5	1,800
	(Bedford Co. to Franklin Co.)	
3/30/53-207	Upperville & Manassa Gap Plank Road Co. B. P. W. for 3/5 of $12,000	7,200
	(Fauquier Co. to Manassa Gap R. R.)	
3/ 3/34-171	Valley Tpke Co., Ineptd., $250,000, and B. P. W. for 2/5.	
	From Winchester in Frederick Co. to Harrisonburg in Rockingham Co.)	
3/34/38-129	Same; incorporated and B. P. W. for 3/5	180,000
2/14/39-89	Capital increased by addition of not over $75,000, and B. P. W. for 3/5	45,000
2/12/41-111	Capital increased by $25,000, and B. P. W. for 3/5	15,000
	and B. P. W. to lend to—(6% scrip) secured by lien	25,000
2/15/45-68	State guarantees loan of—to extent of	21,000
1/31/48-212	Capital increased by 1,000 shares; converts State's loan (above) of $25,000 into stock	25,000
4/ 3/38-122	Walker's Creek Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5	6,000
	(Smyth Co. to Giles Co.)	
2/15/54-46	Walnut Gap Road Co., Ineptd., $3,000, and B. P. W. for 3/5, and also for 3/5 of increase of $2,000 allowed by this act	3,000
	(Wyoming Co. to Boone Co.)	
3/ 2/31-207	Warm Springs & Harrisonburg Tpke Co. Capital reduced to $30,000, and B. P. W. for 2/5.	12,000
	(From east side of Warm Springs Mountain to Harrisonburg in Rockingham Co.)	
3/26/53-209	Capital increased by $15,000, and B. P. W. for so much as will make State's subscription 3/5 of whole	15,000

3/26/53-209	Capital increased by $15,000, and B. P. W. for so much as will make State's subscription 3/5 of whole.....	15,000
3/16/49-118	Warrenton & Rappahannock Tpke Co., Incptd, $20,000, and B.P. W. for 3/5..... (From War. in Fauquier Co. to point on Rappahannock River.)	12,000
3/18/50-83	Repeals section of above act authorizing State's subscription, but this act authorizes for 3/5.	
4/10/39- 87	Waynesborough & Greensville Tpke Co., Incptd., $6,000, with privilege of increasing to $10,000, and B. P. W. for 2/5..... (Augusta Co.)	4,000
3/15/49-135	Wellsburg & Bethany Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... (From Wellsburg in Brooke Co. to point near Bethany in same Co.)	9,000
3/14/50-101	Capital increased by $12,000, and B. P. W. for 3/5.....	7,200
2/ 4/23-81	Wellsburg & Washington Tpke Co. B. P. W. for $5,000 of the stock of..... (From Wellsburg in Brooke Co. to Washington in Pennsylvania.)	5,000
3/23/31-205	B. P. W. for $2,133.33 more.....	2,133.33
3/ 7/50-98	West Milford & New Salem Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... (Harrison Co. to Lewis Co.)	7,200
2/17/51-119	Capital increased by $6,000 for branch to Clarksburg in Harrison Co., and B. P. W. for 3/5.....	3,600
3/26/60-293	Capital increased by $5,000, and B. P. W. for 3/5.....	3,000

2/24/60-281 Jane Lew & Upshur Tpke Co., incorporated to take over such part of this road as lies in Lewis & Upshur Counties.

3/ 9/48-218 Weston & Fairmont Tpke Co., Ineptd., $16,000, and B. P. W. for 3/5..... 9,600
(From Weston in Lewis Co. by Clarksburg in Harrison Co. to Fairmont in Marion Co.)

3/15/49-129 Capital increased to $20,000, and B. P. W. for 3/5..... 2,400

2/17/53-193 B. P. W. for macadamizing and planking—to subscribe not over..... 46,000

3/ 1/54- 46 B. P. W. for additional subscription for bridges and macadamizing..... 40,000

3/25/48-217 Weston & Gauley Bridge Tpke Co., Ineptd., $30,000, and B. P. W. for 3/5..... 18,000
(From Weston in Lewis Co. by Braxton Co. and Nicholas Co. to point on Great Kanawha in Fayette Co.)

3/11/50-97 Capital increased by $15,000, and B. P. W. for 3/5..... 9,000

2/25/53-194 Capital increased by $15,000, and B. P. W. for 3/5..... 9,000
and B. P. W., for improvement of road, to subscribe also for additional stock not exceeding $30,000..... 30,000

2/17/51-114 Weston & West Union Tpke Co., Ineptd., $14,000, and B. P. W. for 3/5..... 8,400
(From Weston in Lewis Co. to W. Union in Doddridge Co.)

2/24/51-114 West Union Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5..... 7,200
(From W. Union in Doddridge Co. by way of Centreville to point on Sistersville & Salem Road.)

2/25/54-45 West Union Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... 6,000
(Marshall Co.)

Marshall County Road to Fish Creek. Co. incorporated to grade and widen.
See Wheeling & Marshall Tpke Co.

3/20/47-121 Wheeling, West Liberty & Bethany Tpke Co., Ineptd., $20,000, and B. P. W. for 2/5.
(From point in Ohio Co. by way of W. Liberty in same Co. and Bethany in Brooke Co. to the Pennsylvania line.)

2/29/48-224 Capital increased to $35,000, and B. P. W. for 3/5 of whole instead of as in act next above... 21,000

3/ 8/34-166 White & Salt Sulphur Springs Tpke Co. B. P. W. for 80 shares of—(Acts 1/8/34-165 shows cap. $10,000, par val. $50)..... 4,000
(From White Sulph. Springs in Greenbrier Co. to Salt Sulph. Springs in Monroe Co.)

3/15/49-135 Williamsport Tpke Co., Ineptd., $5,000, and B. P. W. for 3/5..... 3,000
(From Williamsport in Wood Co. to point on Parkersburg Road east of Parkersburg.)

2/18/51-118 Capital increased by $5,000, and B. P. W. for 3/5..... 3,000

4/ 7/58-97 State's interest in—**released to Wood Co.**

3/ 8/53-196 Wilson Creek & South Fork Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5..... 9,000
(From Grayson Co. to Smyth Co.)

3/21/60-305 Capital increased by $10,000, and B. P. W. for 3/5 6,000

4/ 8/39- 90 Winchester & Berkeley Springs Tpke Co., Ineptd., $20,000, and B. P. W. for 2/5..... 8,000
(From Winchester in Frederick Co. to point on C & O. Canan near Bath in Morgan Co.)

4/ 6/39- 91 Winchester & Berry's Ferry Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5.
(From Winchester in Frederick Co. to Berry's Ferry on Shenandoah River.)

1/21/48-211	Revives above act and changes State's subscription from $6,000 to $10,000, and increases capital to $25,000.	
1/30/50- 87	Changes State's subscription to 3/5.....	15,000
1/23/54- 53	Capital increased by $6,000, and B. P. W. for 3/5	3,600
2/23/21- 98	Winchester & Frankfort Tpke Co., B. P. W. for 2/5 (Act 2/15/20-62 shows $200,000)..... (From Winchester in Frederick Co. by way of Frankfort in Hampshire Co. to N. Branch of Potomac River.)	80,000
2/23/21- 98	Winchester & Romney Tpke Co., B. P. W. for 2/5 (Act 2/15/20-62 shows capital of $150,000). (From Winchester in Frederick Co. to Romney in Hampshire Co.)	60,000
4/ 2/53-223	Winfield & Thompsonville Tpke Co., Ineptd., $7,500, and B. P. W. for 3/5. (From Winfield in Putnam Co. by Hurricane Bridge, etc., to Wilson's Creek and Kanawha Road.)	
3/12/56-141	Capital reduced to $6,000.....	3,600
3/29/53-216	Wolf Creek Tpke Co., B. P. W. for 3/5 of $15,000 ..... (From mouth of Wolf Creek in Giles Co. up valley of said Creek to point in Tazewell Co.)	9,000
3/12/53-202	Wytheville Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5 ..... (Wythe Co.)	6,000
3/21/53-206	Wytheville & Grayson Tpke Co., B. P. W. for 3/5 of $20,000 ..... (Wythe Co. to Grayson Co. and branch to Carroll Co.)	12,000
3/26/53-208	Yellow Sulphur Springs Tpke Co., Ineptd., $3,000, and B. P. W. for 3/5..... (Montgomery Co.)	1,800
2/27/54- 48	Capital increased by $600, and B. P. W. for 3/5	360

ROADS.

2/19/50- 68	Abb's Valley & Tug Road, from Abb's Valley in Tazewell Co. to Thos. Cook's in Wyoming Co., B. P. W. to construct and may borrow therefor.	5,000
3/ 1/50- 68	Road from Abingdon in Washington Co. to Pattonsville in Scott Co., B. P. W. for 3/5 of cost of (cost not to exceed $15,000)	9,000
3/11/50- 91	Road across Alleghany Mountains in Franklin and Floyd Counties, B. P. W. to pay towards—	
3/31/51-113	Repeals act next above and makes B. P. W. subscribe for stock of Blackwater Tpke Co., incorporated to build this road ..... See Blackwater Tpke Co.	
3/ 4/34-105	Road across Alleghany Mountains in Pendleton and Pocahontas Counties, State appropriation for	6,000
3/13/49- 92	Alleghany & Huntersville Tpke Road from point on Jackson's River Tpke in Alleghany Co. to Warm Springs & Huntersville Tpke in Bath Co., to be built by B. P. W., appropriation of..	5,000
2/ 1/50- 59	B. P. W. to borrow the further sum for—of..	600
3/31/51-109	B. P. W. to appropriate to—for extension to Covington, the further sum of	4,500
3/22/53- 71	B. P. W. to appropriate to—for completion of—to Covington	1,500
1/19/34-158	Road from Bath Co. to Chimney Run above Warm Springs, State appropriation for opening.	1,600
3/ 8/47- 92	Road from Bath in Morgan Co. to mouth of St. John's River on Potomac Riv., B. P. W. to contribut.	2,500
3/14/36- 73	Tpke Road from Beverly in Randolph Co. to Clarksburg in Harrison Co., B. P. W. to contribute	8,000

2/14/48-174 Beverly and Fairmont Road, from Beverly in Randolph Co. by Philippi and Pruntytown to Fairmont in Marion Co., B. P. W. to build—and may borrow 24,000

2/ 2/50- 60 Further sum appropriated to—..... 18,000

2/ 2/50- 60 Further sum to—for continuing road from Fairmont by Barracksville and Bassetteville and Paw Paw City to Warren in Monongalia Co., thence through Monongalia, Wetzel, Marshall and Ohio Counties to Wheeling..... 25,800

2/23/53- 70 Further appropriation to for completion of bridges 9,000

2/10/53- 71 Further sum to be spent on by B. P. W. for completion to Warren in Monongalia Co..... 30,000

2/15/54- 47 Further sum to 1,500

3/ 6/51- 89 Black Lick & Plaster Banks Tpke Road, from Wythe Co. to Plaster Bks in Smythe Co., B. P. W. for 3/5 of $16,000 for..... 9,000

3/15/49- 93 Road from Eastern base of Blue Ridge in Madison Co. to Western base in Page Co., State appropriation for 1,500

2/11/53- 76 Above appropriation transferred to Blue Ridge Tpke Co.
See Blue Ridge Tpke Co.

2/25/36- 69 Road across Blue Ridge at Milan's Gap, State appropriation for— 800

4/ 5/38- 96 Road across Blue Ridge from Port Republic to Harris Mills in Albemarle Co., State appropriation to— 1,000

2/ 2/50- 59 Road across Blue Ridge from Rappahannock Co. to Warren Co., B. P. W. to construct and may borrow for 1,500

4/ 7/38- 99 Road from Brandonville in Preston Co. by Kingwood to a point on N. W. Tpke near Evansville in Preston Co., State appropriation for.... 10,000

2/16/47- 91	Capital increased by $15,000, of which the State subscribes for 2/5	6,000
1/15/48-254	$4,000 of the appropriation next above to go to Cheat River Toll Bridge Co. (See Cheat River Toll Bridge Co.)	
3/ 8/49-127	$2,000 more of the above appropriation to go to Cheat River Toll Bridge Co. (See Cheat River Toll Bridge Co.)	
3/21/51-116	Capital increased by $10,000, and B. P. W. for 3/5	6,000
3/ 5/33- 97	Road across Cheat Mountains in Randolph Co. from Tygart's Valley River to Greenbrier Riv., State appropriation for	6,000
2/ 7/32- 88	Cumberland Road—State to take over—whenever U. S. Government shall surrender so much thereof as lies in Virginia.	
	Fishing Creek, Morgantown & Brandonville. Road. (See Ohio River & Maryland Road.)	
2/25/50- 62	Floyd Court House and Hillsville Tpke Road, from Court House of Floyd Co. to Hillsville in Carroll Co., B. P. W. to construct	9,000
3/ 8/51- 88	Further sums appropriated to—for extension into Floyd Co. and bridge in Carroll Co.....	4,500 6,000
3/ 1/53- 72	Further appropriation for extension into Grayson Co.	10,000
3/ 9/53- 72	Further appropriation to— ..... and B. P. W. authorized to purchase from Rocky Mount Tpke Co. the mountain section of its road and to widen same as recommended by the Engineer & Supt. of Floyd C. H. & Hillsville Road, at cost not over.....	1,500 4,500
3/13/58- 97	Transfers the parts of—in Floyd and Carroll Counties to said Counties.	

2/14/53- 77	Road from Franklin in Pendleton Co. to Monterey in Highland Co. B. P. W. to construct and may borrow for	14,000
4/ 8/39- 63	Road from Guest's Station to Tennessee line, State appropriation to	6,000
3/ 2/46- 77	Road from Guyandotte River in Logan Co. to point on Kanawha River near Charleston, State appropriation to—	3,000
2/ 2/50- 63	Extends road to Logan C. H. and further State appropriation to	5,000
3/12/49- 94	Road from Harrisonburg in Rockingham Co. to Franklin in Pendleton Co., State appropriation account of	667
3/12/49- 94	Road from Harrisonburg in Rockingham Co. to Moorfield in Hardy Co., State appropriation account of	333
3/10/36- 71	Road from Huntersville in Pocahontas Co. to Parkersburg in Wood Co., State appropriation for Eastern section of	3,000
2/19/40- 62	Further appropriation to	1,000
2/25/50- 59	Huntonsville & Huntersville Road, from Hut. in Randolph Co. by way of Concord in same Co. to Hun. in Pocahontas Co. B. P. W. to construct	15,000
2/28/53- 70	B. P. W. for further sum for extension and completion of—and bridge in Pocahontas Co.	8,000
2/ 8/53- 70	B. P. W. further sum for completion	7,500
3/22/53- 71	B. P. W. further sum for extension into Greenbrier Co. to Lewisburg	20,000
3/30/37- 86	Road from Ice's Ferry on Cheat River in Monongalia Co. to Pennsylvania line in direction of Monroe, B. P. W. to pay for—and may borrow up to	4,200

3/ 9/53-199 Road from Jacksonville & Cove Spring Tpke in Floyd Co. across Alleghany Mountains and down South Fork of Roanoke Riv. to Va. and Tenn. line in Montgomery Co., B. P. W. to open and construct, and to spend on..... 2,500

3/26/31-159 Road from lower end of James River Canal at the mountain section to point near North River at upper end, State appropriation for construction of 9,000

3/ 7/48-178 Little Stone Gap Road, from head of Powell's Valley in Lee Co. to nearest and best point on Pound Gap Road, State appropriation for..... 3,000

3/17/49- 95 State appropriation for completion of... 650

3/17/49- 88 Road from Logan Court House at Shannon's house by best route to the Bluffs between Logan and Mercer Counties, State appropriation for 2,000

2/ 7/50- 64 Extension of road from Bluffs to Cumberland Gap Tpke in Giles Co,, and State appropriation to 2,000

3/ 4/51-112 Road to start from Wyoming Court House instead of from Shannon's house,, and B. P. W. for additional appropriation for completion.... 3,000

3/23/31-161 Road from Middlebourn, on Middle Island Creek in Tyler Co. to point in Green Co. of Pennsylvania, State appropriation for..... 5,000

2/19/34-109 Additional State appropriation 1,000

2/28/54- 54 Middle Fork Tpke Co., from Randolph Co. to Point in Barbour Co., B. P. W. to construct—and may borrow for same 15,000

3/19/32-166 Road from Monroe Co. line to Kentucky line in Cabell Co., State appropriation for..... 5,000

Morgantown & Beverly Road.
(See Road from Penn. line by Morgantown etc.)

3/21/37- 88 Road from Nicholas Court House to Gauley Bridge on line of Kanawha Tpke, State appropriation for— 1,500

1/17/48-177 Road from N. C. line through Carroll Co. to Valley Road near Wytheville, State appropriation for completing— 2,000

3/19/31-153 Northwestern Tpke Road, from Winchester in Frederick Co. to point on Ohio River. The Governor, Treasurer, Atty. General, and Second Auditor of the State incorporated as—for purpose of building and maintaining this road; and empowered to borrow on credit of State at 6%. 125,000

2/ 6/34-104 Authorized to borrow on credit of State..... 86,000

3/ 1/34-105 To subscribe not over $8,000 to Northwestern Road of Maryland 8,000

3/30/37- 82 Authorized to borrow on credit of State..... 50,000

3/29/37- 82 Authorized to borrow on credit of State for macadamizing and widening parts of between Winchester and Lockharts 15,000

4/ 9/38- 99 Authorized to borrow on credit of State..... 28,000

1/26/39- 70 Authorized to make temporary loan for amount necessary to rebuild bridge over South Branch of Potomac River.

1/ 5/40- 61 Amends act next above; allows loan to be made through B. P. W. instead of being a temporary loan, amount not to exceed 11,484

3/14/40- 61 Authorized to borrow on credit of State..... 7,000

1/29/44- 66 B. P. W. to pay a claim against— 2,130.97

2/29/48-173 B. P. W. to macadamize certain parts of from Taylor Co. to Parkersburg and may borrow for same not $30,000 a year for two years..... 60,000

3/17/49- 91 B. P. W. to spend on for macadamizing the further sum of 60,000

3/15/36- 76	Road from Ohio River at mouth of Fishing Creek in Tyler Co. by Morgantown in Monongalia Co. and Brandonville in direction of Smithfield in Jefferson Co., State appropriation to—through B. P. W. which is to borrow and pay	12,000
2/14/38-101	B. P. W. to lend to—for completion of to be secured by mortgage	12,000
3/30/39- 69	State appropriation toward completion of—..	12,500
1/13/48-175	B. P. W. to foreclose mortgage on—securing State loan, and authorized to bid it in at sale for any amount not over the mortgage, and if B. P. W. bid it in then State appropriation to—for completion	15,000
2/ 4/50- 60	B. P. W. to borrow and spend on—for completing and repairing	30,000
2/10/53- 72	B. P. W. to borrow and spend on for bridges over Buffalo, Pile's Fork, and Little Fishing Creek	22,000
	and the further sum for planking and macadamizing	6,000
3/30/37- 85	Road from Pennsylvania line in Monongalia Co. by Morgantown in same Co. to point on N. W. Road West of Cheat River, State appropriation for.	
4/ 9/38-100	This appropriation increased to $12,000.....	12,000
3/39/48-176	Further appropriation to	3,000
3/ 1/53-195	Capital increased by $8,000 for finishing and repairing road, and B. P. W. for 3/5.....	4,800
3/25/37- 93	Road from Pound Gap of Cumberland Mountain on Kentucky line to intersect Fincastle & Cumberland Gap Road in Russell Co., State appropriation for	5,000

3/ 5/34-106	Price's Tpke and Cumberland Gap Road from Price's Turnpike in Botetourt Co. by way of valley of East River or up Wolf Creek to Cumberland Gap on dividing line between Va., Tenn. & Ky. To be built by County Courts and B. P. W. B. P. W. for 2/5 of $100,000. Raised to 3/5 or $60,000 by Act Mar. 21, 1837.....	40,000
4/ 2/39- 63	B. P. W. to appropriate to..... (See act 2/28/42-71 declaring this $3,600 to be in addition to State's subscription.)	3,600
3/ 8/42- 72	B. P. W. to borrow to pay towards construction of that part of—which passes through Mercer Co.	4,000
1/29/44- 67	B. P. W. to pay 3/5 of amount ($8,416.67) due on construction of that part of—passing through Counties of Lee, Scott, Russell, Tazewell & Giles	5,050
3/21/51-110	Princeton & Red Sulphur Road, in Mercer and Monroe Counties. Made a free road, and State's subscription to Princeton & Red Sulphur Tpke Co. ($4,200) an appropriation to this free road.. (See Princeton & Red Sulphur Tpke Co.)	4,200
2/19/50- 65	Pulaski & Giles Tpke. To be constructed; B. P. W. for 3/5 of estimated cost (cost not to exceed $10,000)	6,000
3/ 3/54- 48	Capital increased by $3,000, and B. P. W. for 3/5	1,800
3/28/53-212	(See Pulaski & Giles Tpke Co.)	
2/ 4/50- 65	Raleigh & North Carolina Road. From Raleigh Co. by way of Princeton in Mercer Co., Wytheville in Wythe Co., Grayson C. H. to N. C. line in direction of Jefferson in Ashe Co., N. C. B. P. W. for 3/5 of cost of (cost not to exceed $44,000)	26,400
2/25/53-194	B. P. W. for 3/5 of additional $20,000.....	12,000

3/17/56-143 Incorporates Raleigh & Tazewell Line Tpke Co. to construct part of this road. This Co. to receive proportional share of unapplied portion of State's subscription to this road.
(See Raleigh & Tazewell Line Tpke Co.)

3/ 3/60-280 Changes name of above Co. to Raleigh & Wythe Line Tpke Co.
(See Raleigh & Wythe Line Tpke Co.)

3/ 8/47- 89 Tpke Road from Richlands in Tazewell Co. down Louisa Fork of Sandy River to Ky. State line. B. P. W. to construct and may borrow therefor not over 10,000

1/17/48-178 State appropriation for completing 6,500

3/ 7/49- 96 State appropriation for 2,500

1/30/50- 63 State appropriation for road connecting this road with Tazewell C. H. & Fancy Gap road.... 8,000

3/ 2/53- 72 State appropriation for completing Richlands & Ky. line Tpke Road..... 3,000

2/16/53- 77 B. P. W. to appropriate, for completing the connecting road provided for by 1/30/50-63 (the second above) 2,000

3/12/49- 90 Road from Forks of Sandy River in Wayne Co. to Kanawha Tpke in Cabell Co., State appropriation for 3,500

3/19/50- 70 Graded Road in Scott Co. B. P. W. for 3/5 of $6,000 for 3,600

3/31/37- 83 Road from Sistersville in Tyler Co. by Middlebourn to the N. W. Tpke Road near Salem in Harrison Co. State appropriation to—of not over 6,000

2/ 1/47- 90 State appropriation for 6,000

3/30/48-220 Further State appropriation for completing.

3/ 9/49- 91 State appropriation for completing. This to be in lieu of the $2,500 by act next above..... 5,000
(See Sistersville & Salem Tpke Co.)

3/12/34-160 Road from Skidmore's Fork in Rockingham Co. to South Fork in Pendleton Co., State appropriation towards 1,000

3/12/53- 75 Road from Slavins Cabin on West side of Greenbrier River on Staunton & Parkersburg Road to Summerville in Nicholas Co., by way of Point Mountain and Fork Lick. B. P. W. to construct and may borrow therefor..... 25,000

3/23/60-294 Further appropriation to—by State for completing and for extension from Nicholas Co. to Hunstonsville & Huntersville Tpke 12,000

3/30/38- 95 Road from Smyth Court House to Plaster Banks in Rich Valley across Walker's Mountain, State appropriation for..... 3,000

2/ 9/50- 63 Further appropriation for completion..... 1,500

2/ 7/50- 64 Road from South Fork in Hardy Co. to Brock's Gap in Rockingham Co. B. P. W. to spend on 1,400

2/ 7/50- 64 Road from South Fork of S. Branch of Potomac near Brakes to Petersburg in Hardy Co. State appropriation for 900

1/28/46- 79 Southwestern Tpke Road (in Roanoke, Montgomery, Pulaski, Wythe, Smyth and Washington Counties) B. P. W. incorporated as—and may draw on State Treasury for..... 75,000
Also authorized on certain conditions to purchase the stocks of Salem & Pepper's Ferry Tpke Co., Lafayette & Ingles Tpke Co., and Alleghany Tpke Co.

1/12/47- 85 State appropriation towards construction.... 75,000

1/17/48-176 State appropriation for completion 300,000

1/24/48-177 State appropriation for extension from Eastern terminus to Buchanan in Botetourt Co..... 90,000

3/19/50- 62 B. P. W. to borrow for completion of between Salem and Buchanan 8,000

3/16/38- 97 Staunton & Parkersburg Tpke Road. From Staunton in Augusta Co. to Parkersburg in Wood Co. B. P. W. directed to construct and allowed to borrow therefor not exceeding..... 150,000

2/19/45- 68 B. P. W. to borrow for that part of between Weston in Lewis Co. and Beverly in Randolph Co. 30,000

3/ 5/46- 75 B. P. W. to erect bridge over Valley River in Randolph Co. and appropriation for this purpose of 5,000

3/13/47- 85 B. P. W. to build certain bridges in Randolph Co., Lewis Co., over N. & S. Fork of Hughes River, over Stone Creek and other creeks, and appropriation for this purpose 15,000

2/ 2/48-174 Additional $10,000 for bridges 10,000

3/12/49- 92 B. P. W. to macadamize parts of and may borrow therefor 60,000

2/ 7/50- 59 B. P. W. to build bridge over Polk Creek and may spend therefor 800

3/ 1/53- 70 B. P. W. to spend on for macadamizing, planking and bridging 100,000
Not over $25,000 of this in any one year.

4/ 7/58-138 B. P. W. to build open bridge over File's Creek in Randolph Co. on line of this road and pay for same out of the appropriations made by act of 3/1/53-70 (next above).

3/30/60-304 B. P. W. to use $12,000 of the unexpended money heretofore appropriated to—for repairs in several Counties that are necessary, and for changing location of road in Wood Co.

3/17/49- 96 Tazewell Court House & Fancy Gap Tpke Road. From Tazewell C. H. by Wytheville in Wythe Co. and Hillsville in Carroll Co. to N. C. line at Fancy Gap. B. P. W. for 3/5 of $32,000 for 19,200

1/30/50- 63	State appropriation for road connecting this road with Richlands and Ky. line Road. (See Richlands & Ky. Line Road.)	
3/ 8/51- 91	Amount to be spent on Tazewell C. H. & Fancy Gap Road increased by $15,000, of which B. P. W. 3/5	9,000
2/16/53- 77	Further appropriation for the connecting road mentioned in second act above. (See Richlands & Ky. Line Road.)	
2/11/53-190	B. P. W. for 3/5 of additional $25,000	15,000
1/15/23- 81	Road from Virginia and Kentucky dividing line on Louisa Fork of Sandy River, by way of Prestonburg to Clinch River. State appropriation for opening	3,000
1/19/36- 79	Road between Weston in Lewis Co. and Charleston in Kanawha Co. State appropriation for	6,000
3/25/42- 69	B. P. W. to see to construction of—by appointing a commissioner who is to draw warrants on State Auditor	1,500
1/30/50- 93	Road from mouth of Wilson's Creek in Wayne Co. to Cabell Co. and thence to Kanawha Tpke. State appropriation for	4,000
3/31/53-220	Additional subscription by B. P. W.	3,000
3/15/58-101	Confirms act next above.	

CANALS, NAVIGATION COMPANIES.

3/ 1/47- 93	Alexandria Canal Co. B. P. W. to buy 2/5 of stock of, and State bonds to issue therefor (2,720 shares at $100)	272,000
4/ 4/48-168	State guarantees bonds of—to am't not exceeding	43,520

2/20/33-59	Chesapeake & Ohio Canal Co. State Treasurer to subscribe for 2,500 shares of stock of—and to issue State certificates therefor..... (Act 1/27/24-41 shows capital $6,000,000 par value $100.)	250,000
3/ 8/47-92	State guarantees bonds of—to extent of $300,000, to be endorsed on bonds.....	300,000
3/15/49-81	State guarantees bonds of—not exceeding $200,000	200,000
3/22/53-65	B. P. W. to pay interest on bonds of—guaranteed by State and may borrow therefor.....	24,315
3/24/53-65	Amount in act next above increased by $276.78	276.78
2/22/53-34	B. P. W. to pay $15,450 interest on bonds of—guaranteed by State to 7/1/53 and $15,000 interest to 1/1/54.....	30,450
2/13/56-85	State pays interest due and to become due on bonds of—guaranteed by State (7 installments of $15,000 each, interest July 54 to July 57 inclus.....	105,000
12/23/57- 16	Second Auditor to pay interest bonds of guaranteed by State to 1/1/58, 7/1/58, 1/1/59 and 7/1/59 of $15,000 each.....	60,000
3/17/49-149	Coal River Navigation Co., Incptd. For improvement of navigation of Big Coal River from its mouth in Kanawha Co. to Boone & Fayette Counties, and Little Coal Riv. to Boone C. H. Capital $10,000, and B. P. W. for 3/5.....	6,000
3/ 9/53-168	Capital increased by $50,000, and B. P. W. for 3/5.....	30,000
3/17/56-86	Capital increased by $100,000, and B. P. W. for 3/5.....	60,000
2/27/54-55	Craig's Creek Navigation Co., Incptd. (Craig Co.) Capital $50,000, and B. P. W. for 3/5...	30,000

3/ 2/21-55	Dismal Swamp Canal Co. B. P. W. to lend to—$50,000	50,000
2/26/24-56	B. P. W. to lend to—to be secured by mortgage	37,500
2/17/37/131	Capital increased to 1,944 shares and B. P. W. for such amount of as will increase State's stock to shares of whole, and may borrow therefor.	
4/ 3/38-142	Dragon Swamp Navigation Co., Inceptd., $5,000, and B. P. W. for 2/5	2,000
4/ 5/38/151	Goose Creek & Little River Navigation Co. B. P. W. for 2/5. (Act 4/14/36-226 shows cap. $60,000).	
3/27/48-234	Makes B. P. W.'s subscription 3/5 of whole capital of $100,000	60,000
3/16/49-148	Guyandotte Navigation Co., Inceptd., $75,000, and B. P. W. for 3/5 For improvement of Guyandotte River from its mouth in Cabell Co. to Logan C. H.	45,000
3/ 4/51-76	Capital increased by $125,000, and B. P. W. for 3/5 (If Co. does not accept provisions of this act, then Upper Guyandotte Nav. Co., Inceptd., with cap. of $125,000, and B. P. W. 3/5. See Upper Guyandotte Navigation Co.)	75,000
1/31/50-112	Hazel River Navigation Co., Inceptd., $75,000, and B. P. W. for 3/5 For improving navigation of Hazel Riv. from Rappahannock River to point in Culpeper Co.	45,000
3/22/51-75	Capital increased by $16,000, and B. P. W. for 3/5	9,600
3/30/53-171	Capital increased by $15,000, and B. P. W. for 3/5	9,000

4/ 9/39/98 Holston Navigation Co., Ineptd., $30,000, and B. P. W. for 2/5..... 12,000
(Washington Co.)

3/23/60-113 Kanawha Board of Directors. For improvement of navigation of Kanawha River from the mouth of Loup Creek shoals. Issue to of $300,000 of State stock bearing 6 per cent. int..... 300,000

3/15/51-72 Kempsville Canan Co. Capital increased to $12,000, and B. P. W. for 3/5..... 7,200
(Princess Anne Co.)

3/26/60-120 Capital increased by $30,000, and B. P. W. for 3/5..... 18,000

3/11/48-232 Little Kanawha Navigation Co. B. P. W. for 3/5 ($30,000).
For improving navigation of Lit. Kan. Riv. from its mouth to point in Braxton Co.

3/ 1/53-164 Revives and amends incorporating act (3/9/47-127) and incorporates with capital of $50,000, of which B. P. W. for 3/5.

2/ 8/60-122 Revives and amends incorporating act. Capital $25,000, and B. P. W. for 3/5..... 15,000

2/24/27-72 Lower Appomattox Co. B. P. W. for 160 shares 16,000

3/28/51-72 Turns over to City of Petersburg State's interest in this Co. on payment by said city into State Treasury of $588.82.

3/22/47-136 Mattaponi Navigation Co., Ineptd., $5,000, and B. P. W. for 2/5..... 2,000
(King & Queen and King William Counties.)

3/ 8/48-226 Meherrin Navigation Co., Ineptd., $100,000, and B. P. W. for 2/5..... 40,000
(Mecklenburg and Lunenburg Counties.)

3/10/47-125	Monongahela Navigation Co., Incptd., $200,000, and B. P. W. for 600 shares for every 1,000 taken by others. Navigation of M. River from Penn. line to Elk Creek in Harrison Co.	
3/19/47-127	Supplementary to act next above. Additional capital of $100,000, for Cheat River in Monongalia Co., and B. P. W. for 2/5.....	40,000
3/ 7/49-147	Amends act of 3/10/47 (second above), changing par val. of shares and making B. P. W.'s subscription 3/5 of said capital.	
4/ 7/58-133	Revives and amends acts of 3/10/47 and 3/7/49. In this act nothing is said about State subscription.	
3/ 8/60-119	Revives and amends previous acts incorporating. Makes capital $80,000, and B. P. W. for 3/5.....	48,000
3/ 2/21-87	Monongalia Navigation Co. B. P. W. for 2/5 of $35,000.....	14,000
	For navigation of Monongalia and West Fork Rivers.	
3/27/37-135	New Shenandoah Co. B. P. W. for 2/5 of—($500,000)	200,000
1/24/48-233	B. P. W. for 2/5 of $500,000, new stock.....	200,000
2/ 2/50-111	North River Navigation Co., Incptd., $100,000, and B. P. W. for 3/5.....	60,000
	(Rockbridge Co.)	
2/17/51-75	B. P. W. for $45,000, being 3/5 of additional capital by this act.....	45,000
3/15/53-168	Capital increased by $60,000, and B. P. W. for 3/5.....	36,000
3/16/58-93	To be taken over by James Riv. & Kanawha Co.	
2/20/34-111	Nottoway Navigation Co., Incptd., $30,000, and B. P. W. for 2/5.....	12,000
	(Nottoway River.)	

3/27/37-94	Potomac River—for improvement of South Branch of—in Hardy Co. State appropriation.	2,000
1/21/28-78	Rappahannock Co. B. P. W. for 2/5 of $50,000 of stock of.....	20,000
1/15/29-60	B. P. W. for 2/5 of additional $20,000 of stock.	8,000
2/23/30-87	B. P. W. for 2/5 of $30,000 additional stock...	12,000
3/31/31-207	B. P. W. for 2/5 of additional $15,000 of stock	6,000
3/ 4/36-224	Authorizes B. P. W. to pay out as an advance on State stock in—not over $75 per share, or to sell State stock for $25 a share, or both, or if neither of these, then to turn said stock over to the Co.	
3/ 1/38-149	B. P. W. to borrow money to pay its subscriptions to—	
12/13/45-97	Surrenders State stock in—	
2/ 3/48-236	State Treasurer to issue State certificates to—for construction of its work, to amount not over $100,000, to be secured by mortgage.....	100,000
2/25/53-166	B. P. W. directed to foreclose mortgage of State, and purchase money converted into stock, to which State subscribes for amount due it.	
3/ 2/21-56	Richmond Dock Co. B. P. W. to pay further sum of $12,500 on its subscription to stock of...	12,500
3/13/23-67	B. P. W. to lend to—375 shares of stock in Bank of Virginia, and also $12,500, to be secured by lien.	
4/ 7/31-246	Rivanna Navigation Co. B. P. W. for 600 shares of— (Act 3/2/27/58 shows $100,000, par val. $50.)..... (Albemarle and Fluvanna Counties.)	30,000
3/27/37-134	B. P. W. for 200 shares, making with former amount 2/5 of whole.....	10,000

4/ 8/39-98	Capital increased by $40,000, making whole $160,000, and B. P. W. for 2/5 of increase, also for 2/5 of the increase of $20,000 by act 4/41/38-149.....	24,000
2/15/51-73	B. P. W.'s subscription to such amount as will make 3/5 in all of the aggregate formed by said subscription added to the amount already subscribed by individuals and State; also for $20,000 of the increase by act 3/8/49-151.	
5/26/53-164	B. P. W. for $100,000 of stock of.....	100,000
2/ 9/60-121	B. P. W. for 1,200 shares at $50.....	60,000
4/ 2/39-96	Rockfish Navigation & Blue Ridge Tpke Co. (See under Turnpikes.)	
1/24/24-57	Slate River Co. (Buckingham Co.) B. P. W. for 69 shares of. (Act 1/29/19-68 shows par val. $100.).....	6,900
3/ 3/51-74	Slate River Co., Incorporated. B. P. W. for $21,000.....	21,000
3/24/48-231	Smith River Navigation Co., Incptd., $12,000, and B. P. W. for 3/5..... (Patrick Co.)	7,200
3/27/37-94	South Branch of Potomac River. (See Potomac River.)	
3/15/53-170	Tug Fork Navigation Co., Incptd., $8,400, and may increase to $15,000, and B. P. W. for 3/5.. (Tug Fork of Sandy River up to Logan Co.)	9,000
3/ 9/49-86	Twelve Pole River in Wayne Co. State appropriation for improving navigation of.....	1,800
3/ 1/53-167	Twelve Pole River Navigation Co., Incptd., $6,000, and B. P. W. for 3/5..... (Wayne Co.)	3,600
2/21/20-56	Upper Appomattox Co. B. P. W. for 150 shares at $100.....	15,000

2/28/37-133	B. P. W. for 277 shares of new stock of.....	27,700
1/25/39-101	Capital increased to $120,000, and B. P. W. for enough to make its subscription 2/5 of whole..	5,300
3/ 4/51-76	Upper Guyandotte Navigation Co. This Co. to be incorporated with capital of $125,000, of which B. P. W. subscribes 3/5, in the event the Guyandotte Navigation Co. does not accept provisions of this act increasing its capital by $125,000.....	75,000
	(See Guyandotte Navigation Co.)	

RAILROAD COMPANIES.

3/15/53-148	Alexandria, Loudoun & Hampshire R. R. Co., Incptd. Amends acts relating to Alexandria & Harper's Ferry R. R. Co., which name is changed to this. B. P. W. for 3/5 of $1,200,000	$720,000
	(From point at or near Leesburg in Loudoun Co. through Clark's Gap and by most eligible route through Bloomery Gap in Hampshire Co. to Paddytown in Hampshire Co.)	
	Authorized to purchase or unite with Winchester & Potomac R. R. Co.	
2/15/54-40	Authorized to extend the road to point in Hampshire Co. west of Paddytown.	
2/26/56-110	Provides that not more than $120,000 shall be expended in construction and equipment of the road west of Shenandoah River.	
3/25/58-89	B. P. W. for 3/5 of $500,000.....	300,000
3/28/37-129	Baltimore & Ohio R. R. Co. B. P. W. for $302,100.	
4/ 2/38-113	B. P. W. subscription.	
3/ 6/47-86	Repeals State's subscriptions to—under above acts.	

3/20/48-179 State guarantees bonds of City of Wheeling to amount of $500,000 to pay said city's subscription to B. & O. R. R. Co., to be secured by mortgage from said city.

2/22/60-264 B. & O. R. R. Co. and N. W. Va. R. R. Co. authorized to be consolidated under name of B. & O. R. R. Co.

3/ 5/49-99 Blue Ridge R. R. Co. B. P. W. incorporated as— Not to contract for more than $100,000 in any one year and may borrow same on credit of State. Louisa R. R. Co. may take over this R. R. by paying for same out of its tolls.

Increases capital of Louisa R. R. Co. $150,000, and B. P. W. for same proportion as act 3/8/47 (3/5) for road from Staunton. If Louisa R. R. Co. does not accept provisions of this act, then Blue Ridge R. R. Co. stock to be issued ($150,000) for the road to Staunton and B. P. W. for 3/5..... 90,000

3/ 3/52-125 Amends above provision as to borrowing on credit of State so as to allow borrowing of not over $150,000 by July 1/52, $150,000 by 1/1/53, $100,000 by 7/1/53 and $100,000 by 1/1/54..... 500,000

3/27/37-122 City Point R. R. Co. B. P. W. for 600 shares of— (Act 1/26/36-141 shows cap. $150,000, par val. $100.)..... 60,000

4/ 6/39-72 B. P. W. to lend to—to be secured by mortgage 50,000

3/25/43-71 Increases capital to $210,000. Increase to be subscribed for by B. P. W., provided does not exceed debt due State by the Co. with interest. This is an exchange of equivalent amount of stock for the debt and interest.

2/15/53-66	Covington & Ohio R. R. Co. B. P. W. incorporated as—for constructing a R. R. from point at or near Covington or Clifton Forge by best practicable route to point on Ohio River between mouth of Big Sandy and town of Point Pleasant. 3rd section of this act provides that B. P. W. shall commence at western terminus and work eastwardly at the same time they are working from the eastern terminus westwardly. B. P. W. authorized to borrow for—on credit of St.....	1,000,000
3/13/56-83	B. P. W. to borrow and appropriate to—to be expended within present and succeeding year, for tunneling, grading, masonry, bridges, etc.....	500,000
4/ 3/58-87	B. P. W. to borrow and appropriate to—to be expended in years 1858 and 1859..... Repeals 3rd section of act of 2/15/53-66.	800,000
2/29/60-107	B. P. W. to borrow for—$2,500,000, but not over $1,000,000 to be expended in any one year.....	2,500,000
3/ 3/60-113	Rail Road from point on Covington & Ohio R. R. near White Sulphur Springs in Greenbrier Co. to Grafton in Taylor Co. B. P. W. to have surveys made, and appropriation for that purpose of not over.....	4,000
3/21/50-55	Experimental R. R. in Richmond, between depots of R. & P. R. R. and R. & F. R. R., not over two miles long. B. P. W. to build, for which appropriation of.....	10,000
3/30/37-129	Falmouth & Alexandria R. R. Co. B. P. W. for 2/5 of stock of— (Act 3/9/35-89 shows capital $600,000.)	
3/30/38-111	Amends above act and changes State's subscription from 2/5 to 3/5.....	360,000

4/ 1/48-189 Fredericksburg & Blue Ridge R. R. Co., Incptd. Provides that majority of stockholders of Swift Run Gap Tpke Co. may sell that road to—and if this is done State to be a stockholder in, to the extent of the value of its stock in Swift Run Tpke Co.

3/ 1/53/136 Fredericksburg & Gordonsville R. R. Co., Incptd., $460,000, and B. P. W. for 3/5..... 276,000

3/ 8/53-140 Loudon Branch R. R. Co. To be incorporated on certain conditions.
See Manassa Gap R. R. Co.

2/25/37-125 Louisa R. R. Co. B. P. W. for 1,200 shares (2/5). (Act 2/18/36-168 shows cap. $300,000.)..... 120,000

3/27/38-110 Capital increased and B. P. W. for 3/5 of not over $200,000..... 120,000

3/ 8/47-103 Capital increased by $250,000, and B. P. W. for 3/5 150,000

3/24/48-187 Capital increased by $250,000, and B. P. W. for 2/5..... 100,000

3/ 5/49/99 Authorizes—to take over Blue Ridge R. R. Co. and increases capital $150,000 for road to Staunton, should it decide to build such road, and B. P. W. 3/5..... 90,000
(See Blue Ridge R. R. Co.)

1/30/50-51 Capital increased by $700,000 for extension to Covington, and B. P. W. for..... 420,000
Or, if stockholders fail to accept this, then new Co., to be called Staunton & Covington R. R. Co., to build the road and B. P. W. to subscribe this $420,000 to it.

2/ 2/50-52 Name changed to Virginia Central R. R. Co. and State guarantees its bonds to extent of $100,000.
(See Virginia Central R. R. Co.)

3/30/37-119	Lynchburg & Tennessee R. R. Co. B. P. W. for 2,000 shares. (Act 3/11/36-89 shows capital $2,500,000, par val. $100.)	200,000
3/ 6/49-101	Amends last incorporating act (3/24/48-184) and changes name to Virginia & Tennessee R. R. Co. (For subscription under this act see Va. & Tenn. R. R. Co.)	
2/10/51-69	Manassa's Gap R. R. Co. B. P. W. for 2/5 of $800,000	320,000
12/ 6/52-69	B. P. W. for $160,000 to make its subscription 3/5	160,000
2/ 7/53-69	Capital increased by $800,000, and B. P. W. for 3/5	480,000
3/ 8/53-140	Authorizes—to take over R. R. to be built from Snickersville, Middleburg, Purcellville or Waterford to Manassas Gap R. R. Capital necessary $300,000, & B. P. W. 3/5. If Man. Gap R. R. Co. fail to accept this act, then independent Co. incorporated as Loudon Branch R. R. Co.	180,000
3/10/53-158	Capital increased by $500,000, and B. P. W. for 3/5	300,000
1/25/54-35	Capital increased by $400,000, and B. P. W. for 3/5	240,000
3/25/58-88	Capital increased by $250,000. B. P. W. for all of it; to constitute preferred stock	250,000
2/10/60-109	Capital increased by $350,000, and B. P. W. for all, to constitute a 6 per cent. preferred stock	350,000
3/12/53-139	New River R. R. Co. To be incorporated on certain conditions. (See Virginia & Tennessee R. R. Co.)	
2/ 9/53-137	Norfolk & Petersburg R. R. Co. B. P. W. for 4,800 shares (3/5)	480,000

2/13/54-34	Capital increased by $700,000, and B. P. W. for 3/5.....	420,000
3/25/58-88	B. P. W. for additional subscription of $300,000 in 6 per cent. State bonds.....	300,000
3/ 2/60-112	Capital increased by $300,000, and B. P. W. for all.....	300,000
3/27/48-191	Orange & Alexandria R. R. Co., Inceptd., $900,000, and B. P. W. for 2/5.	
3/ 6/49-107	State's subscription increased to 3/5.....	540,000
3/15/50-235	Resolution transferring claim of Va. against U. S. ($120,000) to this R. R., and when same recovered said R. R. to issue stock therefor to Literary Fund.	
3/ 7/51-66	Capital increased by $100,000, and B. P. W. for 3/5	60,000
2/ 9/53-69	Capital increased by $420,000, and B. P. W. for 3/5.....	252,000
3/25/58-87	B. P. W. to lend to—to be secured by mortgage	400,000
3/22/31-205	Petersburg R. R. Co. B. P. W. for 2/5 of $400,000 of stock of.....	160,000
2/27/32-163	Amends above, State's subscription to be payable in two installments.	
3/29/38-105	B. P. W. to lend to, borrowing for the purpose, and take mortgage to secure it.....	150,000
2/25/43- 71	Increases capital to $769,000. This increase to be subscribed for by B. P. W. provided said increase does not exceed the debt due State by said Co. with interest. This is an exchange of equivalent amount of stock for the debt and interest.	
4/ 2/53-142	Authorizes—to unite with Greensville & Roanoke R. R. Co. as Petersburg R. R. Co.	

1/30/34-149	Portsmouth & Roanoke R. R. Co. Increases capital to $475,000, and B. P. W. for 2/5....	190,000
3/14/37-115	B. P. W. for $50,000 of $150,000 increase..	50,000
3/31/38-103	B. P. W. to lend to—to be secured by mortgage	150,000
3/20/39- 71	Capital increased by $150,000 and B. P. W. for	16,650
3/25/43- 71	Increases capital to $817,850, to be subscribed for by B. P. W. This an exchange of equivalent amount of stock for the debt due State with interest.	
2/27/46- 90	Directs B. P. W. to sell—and incorporates the purchasers as Seaboard & Portsmouth R. R. Co.	
3/ 9/47-108	Richmond & Danville R. R. Co., Ineptd., $1,500,000, and B. P. W. for 3/5.....	900,000
3/15/50- 57	State guarantees bonds of—	200,000
3/20/51 -63	Capital increased by $500,000, and B. P. W. 3/5	300,000
2/ 9/53- 68	B. P. W. to lend to.....	600,000
2/10/60-107	B. P. W. for additional stock.....	350,000
1/23/35- 86	Richmond, Fredericksburg & Potomac R. R. Co. B. P. W. for 2/5 (Act 2/25/34-127 shows cap. $700,000)	
3/23/36-167	Amends above State's subscription changed to 48 shares less than 2/5, making it 2,752 shares	275,200
4/ 6/39- 76	Authorizes—to borrow on credit of State $250,000 on condition that it surrender its exemption from taxation	250,000

1/17/37-123	Richmond & Petersburg R. R. Co. B. P. W. for 2,000 shares (Act 3/14/36-146 shows capital $300,000 exclusive of B. P. W.'s subscription)	200,000
3/30/38-107	B. P. W. to lend to—to be secured by mortgage	150,000
3/25/43- 71	Capital increased to $685,600 to be subscribed by B. P. W. This an exchange of debt due State for an equivalent amount of stock.	
3/24/53-141	Authorizes—to convert its debts into stock at $50 per share. B. P. W. to have option of concerting all State's loans into this stock.	
1/31/53-135	Richmond & York River R. R. Co., Ineptd., $500,000 and B. P. W. for 3/5.....	300,000
3/25/58- 89	Capital increased by $200,000 and B. P. W. for all of it; to constitute preferred stock....	200,000
3/31/37-116	Roanoke & Danville Junction R. R. Co. B. P. W. for 2/5 (Act 3/10/36-113 shows $2,500,000)	800,000
3/ 4/51- 61	Roanoke Valley R. R. Co., Ineptd., $300,000 and B. P. W. for $100,000.	
3/10/53-137	B. P. W.'s subscription changed to 3/5 of $300,000	180,000
3/ 1/54- 35	Capital increased by $130,000 and B. P. W. for all	130,000
2/27/46- 90	Seaboard & Roanoke R. R. Co. B. P. W. directed to sell Portsmouth & Roanoke R. R. Co. and the purchasers thereof incorporated as Seab. & Roan. R. R. Co.	
2/20/51- 62	Southside R. R. Co. B. P. W. for 3/5 of $800,000	480,000
2/ 5/53- 65	B. P. W. to borrow money to lend to—....	800,000
4/ 6/39-77	Staunton & Charlottesville R. R. Co., Ineptd., $800,000, and B. P. W. for 2/5.....	320,000

1/30/50-51	Staunton & Covington R. R. Co. To be formed in certain event. (See Louisa R. R. Co., this act.)	
2/ 2/50-52	Virginia Central R. R. Co. Name of Louisa R. R. Co. changed to this. State guarantees bonds of..... (See Louisa R. R. Co.)	100,000
3/22/51-65	B. P. W.'s subscription made 3/5 of whole.	
12/15/52-66	Capital increased by $150,000, and B. P. W. for 3/5.....	90,000
3/22/53-67	Capital increased by $1,000,000; B. P. W. for 3/5.....	600,000
2/ 9/60-110	B. P. W. to lend to—.....	600,000
3/ 3/53-138	Virginia & Kentucky R. R. Co. To be formed in certain event. (See Va. & Tenn. R. R. Co.)	
3/ 6/49-101	Virginia & Tennessee R. R. Co. Name of Lynchburg & Tenn. R. R. changed to this. (See Lynchburg & Tenn. R. R. Co.)	
2/20/51-65	B. P. W. for so much as will make its holding 3/5.....	1,800,000
2/ 9/53-68	B. P. W. to lend to.....	1,000,000
3/ 3/53-138	Capital increased by $1,500,000, with power to further increase by $1,000,000, and B. P. W. for 3/5..... If Va. & Tenn. does not accept provisions of this act, then independent Co. established as Va. & Kentucky R. R. Co., with same powers, etc.	1,500,000
3/12/53-139	Capital increased by $1,500,000 for branch from Montgomery Co. to point on New River near mouth of Greenbrier Riv. or to other suitable point for intersection with Covington & Ohio R. R. B. P. W. for 3/5..... This additional stock to be kept separate and to constitute a separate fund from	900,000

capital of said Co., and shall be applied only to the road for which it is subscribed. If Va. & Tenn. R. R. Co. does not accept the provisions of this act, then independent Co. incorporated as New River R. R. Co., subject to same provisions as to subscriptions to stock, etc.

3/18/56-83 Capital increased by $500,000, and B. P. W. for all 500,000

3/20/47-79 Washington & New Orleans Telegraph Co. In case of failure of R. R.'s to subscribe, then B. P. W. for so much as they deem expedient.

3/14/32-161 Winchester & Potomac R. R. Co. (From Winchester in Frederick Co. to point on Potomac River at or near Harper's Ferry in Jefferson Co.) B. P. W. for stock of—not exceeding 75,000

1/31/33-72 B. P. W.'s subscription increased to 2/5 of whole. (Act 4/8/31-187 shows capital $300,000.)..... 45,000

2/ 6/34-153 B. P. W. to borrow to pay its subscription to—

12/13/34-118 B. P. W. to borrow the money to pay its subscription to—

2/13/38-112 B. P. W. to borrow the money to lend to—to be secured by mortgage from the R. R. Co..... 150,000

3/25/43-71 Capital increased to $481,220, the increase to subscribed for by B. P. W. This an exchange of the debt due the State for an equivalent amount of stock.

3/15/53-148 Alexandria, Loudon & Hampshire R. R. Co. authorized to purchase or unite with this R. R. Co.

BRIDGES.

2/15/52/182	Buckhannon Bridge Co., Incptd., $3,000.00 and B. P. W. for 3/5..... (Across Buckhannon River in Upshur Co.)	1,800
3/ 3/21-56	Cartersville Bridge Co. B. P. W. for stock of..... .... (Bridge over James River at Cartersville.)	5,000
3/20/37-156	B. P. W. to pay to for repairs.....	1,700
1/15/48-254	Cheat River Toll Bridge Co., Incptd., $10,000, and B. P. W. for 2/5. (Bridge over Cheat River in Preston Co.) This payment is to be made from remainder of subscription by act 2/16/47 to Brandonville, Kingwood & Evansville Road. (See Brandonville, Kingwood & Evansville Road.)	
3/ 8/49-127	Changes B. P. W.'s subscription to 3/5..... This increase on same terms and conditions as in act next above.	6,000
2/26/53-183	Elk River Bridge Co. B. P. W. for 2/5 of of $15,000 ..... (Bridge over Elk River in Kanawha Co.)	9,000
3/15/51-132	Fairmont & Palatine Bridge Co. Amends incorporating act, makes capital $20,000, and B. P. W. for 3/5..... (Bridge over Monongahela Riv. in Marion Co.)	12,000
3/17/51-133	Fish Creek Bridge Co., Incptd., $3,500, and B. P. W. for 3/5..... (Bridge over Fish Creek in Marshall Co.)	2,100
3/30/53-183	Guyandotte Bridge Co. Capital made $15,000, and B. P. W. for 3/5. (Bridge over Guyandotte River in Cabell Co.)	

1/23/54-59	Repeals above. Capital $25,000, and B. P. W. for 3/5	15,000
4/ 1/58-94	B. P. W. for 3/5 of additional $15,000....	3,000
1/23/33-58	Bridge over Jackson's River opposite Covington. B. P. W. to build.....	3,500
3/ 9/41-93	B. P. W. to pay on account of.....	344
4/ 9/39-104	Jude's Ferry Toll Bridge Co., Ineptd., $20,000, and B. P. W. for 2/5..... (Bridge over James River at Jude's Ferry.)	8,000
2/16/54-60	Loudon & Berlin Bridge Co., Ineptd., $50,000, and B. P. W. for 3/5..... (Over Potomac River opposite Berlin in Frederick Co., Maryland.)	30,000
3/11/50-107	Morgantown Bridge Co., Ineptd., $18,000, and B. P. W. for 3/5..... (Toll Bridge over Monongahela River at Morgantown in Monongalia Co.)	10,800
3/15/51-132	Capital increased by $10,000, and B. P. W. for 3/5.....	6,000
2/28/54-60	Capital increased by $8,000, and B. P. W. for all.....	8,000
3/19/50-71	Bridge across New River in Giles Co. B. P. W. for 3/5 of $12,000.....	7,200
1/14/48-252	North Branch Bridge Co., Ineptd., $5,000, and B. P. W. for 2/5. (Over North Branch of Potomac River in Hampshire Co.)	
3/14/50-103	Changes B. P. W.'s subscription to 3/5...	3,000
3/19/50-102	Potomac Bridge Co. B. P. W. for 2/5 of capital. (Act 3/22/47-144 shows $40,000.).. (Over Potomac River at Point of Rocks, Md.)	16,000

2/15/51-129 South Branch Bridge Co., Ineptd., $7,000, and B. P. W. for 3/5..... 4,200
(Over S. Branch River in Hampshire Co.)

4/ 6/38-139 South Shenandoah Toll Bridge Co., Ineptd., $5,000, and B. P. W. for 80 shares at $25.... 2,000
(Over Shenandoah River in Rockingham Co.)

3/26/39-111 Capital increased to $40,000, and B. P. W. for 2/5 of increase..... 14,000

3/17/49-154 Virginia & Maryland Bridge Co. B. P. W. for $10,000 of stock of..... 10,000
(Bridge at Shepperdstown in Jefferson Co.)

JAMES RIVER CO. AND JAMES RIVER & KANAWHA CO.

2/17/20-39 James River Co. to be agent for the State in carrying out the work, and State to finance it. Work to be carried out as follows, and in the following order:

1. Improvement of navigation of Great Kanawha River from the falls to Ohio River.
2. Improvement of navigation of James River.
3. $100,000 road from mouth of Dunlap's Creek to Great Falls of Kanawha River.
4. Navigable canals and locks from Pleasant's Island to mouth of Dunlap's Creek.
5. Communications from the river to accommodate trade.

When works completed to be public highways. Treasurer of State to be ex-officio Treasurer of Co.

Co. to borrow annually $200,000, or such greater or less sums as hereafter authorized by law, which borrowing shall continue until otherwise directed by law. Co. to issue certificates and register them; to be irredeemable for 20 years, and then at pleasure of General Assembly. Int. not over 6 per cent.

State guarantees interest up to $12,000 a year.

2/28/21-48	Jas. Riv. Co. authorized to borrow $300,000 in addition to the $50,000 borrowed from the Literary Fund. State guarantees interest up to $18,000 a year.	
3/ 2/22-38	210 shares of stock in Bank of U. S. ($23,-370.59) to go to credit of fund for payment of interest of James River Co. loan; certificates of Jas. Riv. Co. loan to be bought at par with proceeds of sale of this stock.	
2/24/23-50	Authorized to borrow so much of the $350,-000 heretofore authorized as has not yet been borrowed, and also $80,000 in addition; State to issue bonds for same, interest at 6 per cent.; $18,000 a year pledged by State to pay the dividends to stock holders, or 12 per cent. for 12 years from 1820 and 15 per cent. thereafter forever.	
3/28/24-12	Authorized to borrow on credit of State, and State bonds to issue therefor at 6 per cent....	400,000
2/16/25-38	Authorized to borrow on credit of State not over.....	200,000
3/ 1/26-26	Authorized to borrow on credit of State not over $200,000, and State to issue 6 per cent. certificates for.....	200,000
3/ 7/27-37	Directs Jas. R. Co. to dispose of $40,000 of its surplus and appropriation fund to be expended in rebuilding bridge over Gauley River, and $28,000 of it to enable Jas. Riv. Co. and Commissioner of Kanawha road & navigation to complete works already contracted for and furnished, and to pay what is due on existing contracts.	
1/30/29-45	Authorized to borrow on credit of State not over ..... for extending western termination of Kanawha Tpke Road to mouth of Big Sandy.	50,000
2/28/29-48	Authorized to borrow on credit of State....	10,000

12/18/29-45	Authorized to borrow on credit of State for extension of Kanawha Tpke Road to mouth of Big Sandy.....	8,000
3/31/31-158	Authorized to borrow on credit of State for extension of Kanawha Tpke Road to mouth of Big Sandy	15,000
3/16/32-73	James River & Kanawha Co., Ineptd. Recites inadequacy of measures heretofore adopted for connecting navigable waters of Ohio River and James River. Capital $5,000,000, par val. $100. State subscribes for $1,000,000 and pays same by transfer of State's whole interest in works and property of James River Co. When 3/5 of the stock has been subscribed for by others than State for residue.....	2,000,000
2/20/33-59	James River Co. authorized to borrow on credit of State for building bridge and embankment over ravine of Campbell's Creek on Kanawha Road.....	4,000
3/11/34-99	Jas. Riv. Co. authorized to borrow on credit of State for Kanawha Tpke Road.....	10,000
2/14/34-101	James Riv. & Kan. Co. State's subscription to—to be one-half (i. e., $2,500,000), which is $500,000 more than by act 3/16/32-73 (above)	500,000
1/24/35-70	Makes State's subscription 3/5 (additional amount of $500,000).....	500,000
3/21/37-95	B. P. W. to borrow on credit of State to meet requisitions on State stock in—	
3/23/39-59	Authorized to borrow and State to guarantee principal and interest.....	1,500,000
3/17/40-21	Old James River Co. Sum in State Treasury ($3,757.07) to credit of—and retained to meet probable unpaid dividends, transferred to credit of State.	

3/20/41-94	James Riv. & Kan. Co. State to issue new bonds in U. S. currency in lieu of sterling money (£123,801=$550,226.66).	
3/25/42-72	State loan for.....	250,000
3/ 1/47-81	State Treasurer to turn over to—State bonds to be secured by mortgage.....	1,236,000
2/16/48-169	Converting guaranteed bonds into new stock (registered bonds).	
3/ 9/49-83	State guarantees bonds of—not exceeding..	350,000
3/12/49-85	State guarantees bonds of—not exceeding..	150,000
1/25/50-46	Loan to—of State bonds.....	110,000
3/15/50-46	State guarantees bonds of.....	360,000
6/ 5/52-124	B. P. W. to borrow and lend to—for payment of interest and annuity.....	120,000
3/ 2/53-63	Loan to—by B. P. W. of $640,000 at $50,000 a month. To be raised by acts 3/27/51 and 5/25/52 (coupon bonds acts), and to be expended in extension of water line from Buchanan to point near Covington or Clifton Forge	640,000
3/29/53-64	B. P. W. to lend to—for completion of tidewater connection; money to be raised by coupon bond act of 1853.....	70,000
1/ 7/53-64	B. P. W. to borrow to pay interest on bonds of—guaranteed by State.	
3/ 3/54-33	B. P. W. to borrow and lend to for completion of tidewater connection.....	60,000
1/19/56-83	State pays interest (paid out of Sinking Fund) on bonds of—guaranteed by State. Int. due July 1/55 of $46,000, 1/1/56 of $67,675, and due 7/1/56 of $67,675 ($181,350).	

3/15/56-84 Auditor of Pub. Accts. directed to pay interest on bonds of—guaranteed by State, due 1/1/57.

12/22/57-15 Auditor directed to pay interest on bonds of—guaranteed by State; $67,800 due 7/1/57, and same amount due 1/1/58, 7/1/58 and 1/1/59 ($271,200).

3/16/58-93 To take over North River Navigation Co.

12/20/59-159 Auditor to pay interest on bonds of—guaranteed by State; $67,800 due 7/1/59 and same am't due 1/1/60.

3/23/60-113 Capital increased to $12,400,000, par val. $100, and B. P. W. to subscribe for 74,000 shares, which is to be a 6 per cent. preferred stock. Of this subscription 72,000 shares to be taken in satisfaction of the debt due from the Co. to State and for the assumption by State of the debt for which State is bound as surety for the Co. and the annuity of the old James River Co., and balance of 2,000 shares to be paid for in State bonds. This $200,000 to be expended to extinguish Co.'s floating debt..... 200,000

State to take up the guaranteed stock of the Co. and to issue in place thereof State bonds at 6 per cent., payable 34 years after this date.

Provides for issue to Kanawha Board of Directors of $300,000 of 6 per cent. State bonds, to be used for improvement of navigation of Kanawha River from mouth of Loup Creek shoals.

BANKS.

4/ 4/48-87 Branch Bank at Abingdon (Washington Co. Exchange Bk. authorized to establish—capital not less than $100,000 nor more than $500,000, and may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State subscribes for one-half..... 250,000

3/31/58-60	Branch Bank at Beverly (Randolph Co.) Bk. of Va., Farmers Bk. of Va., Bk. of Valley, Exchange Bk., North Western Bk., or Merchants & Mechanics Bk. of Wheeling authorized to establish—with capital not over $200,000, to be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State subscribes for one-half	100,000
4/ 1/58-61	Branch Bank at Buckhannon (Upshur Co.) Farmers Bk., Exchange Bk., Bk. of Va., Bk. of Valley or N. W. Bk., authorized to establish—with capital not over $200,000, which may be raised as in 5th and 11th sections of the Banking Act of 3/25/37-68, by which State takes one-half.....	100,000
3/15/56-57	Branch Bank at Clarksburg (Harrison Co.) Bk. of Va., Farmers Bk. or Bk. of Valley authorized to establish—with capital not over $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes one-half.....	100,000
3/25/37-68	Exchange Bank of Virginia, Ineptd. Capital $1,800,000, and State takes one-half.....	900,000
	To establish offices of discount and deposit at Richmond with capital of $500,000, Petersburg with capital of $500,000 and Clarksville $200,000.	
3/19/39-52	State Treasurer to subscribe for 4,500 shares of at not over $100 per share, and may borrow for of No. Western Bk. of Wheeling and Exchange Bank.....	450,000
3/25/37-68	Farmers Bank of Virginia. Capital increased by $1,010,000, and State takes 1/2...	505,000
	This new stock to be divided between said Bank and its branches as follows:	
	For Bank at Richmond.....$ 40,000	
	For Petersburg discount and deposit office 32,500	
	For Lynchburg discount and deposit office 212,500	

For Fredericksburg discount and deposit office	112,500
For Winchester discount and deposit office	62,500
For Danville discount and deposit office	50,000
For Farmville discount and deposit office	200,000
For Scottsville or Charlottesville, etc.	150,000
For Abingdon or Evansville, etc.	150,000

3/16/49-74 Authorized to furnish additional capital for office at Wytheville (Wythe Co.), so that whole capital of said branch will not exceed $500,000. Capital may be increased for this purpose, and State for 1/2.

3/15/49-72 Branch Bank at Fincastle (Botetourt Co.) Farmers Bk. or Exchange Bk. authorized to establish, with capital not over $300,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2 150,000

3/16/50-40 Amends above so as to allow Bk. of Va., Farmers Bk., Exchange Bk., or any other bank, to establish office of discount and deposit at Fincastle, Salem, Christiansburg or Blacksburg; capital same as above.

3/30/60-217 Branch Bank at Harrisville (Ritchie Co.) Authorizes Bk. of Va., Farmer's Bk. of Va., Bk. of Valley, N. W. Bk., or Mer. & Mec. Bk. of Wheeling, to establish—with capital of not over $150,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2 75,000

3/23/60-229 Branch Bank at Huntersville (Pocahontas Co.) Bk. of Va., Farmers Bk., Bk. of Valley, Exchange Bk., N. W. Bk., or Mer. & Mec. Bk. of Wheeling, authorized to establish—with capital of not over $200,000, which may be raised as in 5th and 11th sections of Act of 3/25/37-68, by which State takes 1/2 .. 100,000

3/15/49-73	Branch Bank at Jeffersonville (Tazewell Co.) Bk. of Va., Farmers Bk., Bk. of Valley or N. W. Bk. authorized to establish, with capital not over $300,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	150,000
3/ 9/60-230	Branch Bank at Liberty (Bedford Co.) Bk. of Va., Farmers Bk., Exchange Bk., Bk. of Valley or Bk. of Commonwealth authorized to establish—with capital not over $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	100,000
3/24/60-228	Branch Bank at Marion (Smyth Co.) Bk. of Va., Farmers Bk., Bk. of Valley, Bk. of Commonwealth, N. W. Bk. and Mer. & Mec. Bk. of Wheeling authorized to establish, with capital of not over $150,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	75,000
3/25/37-68	Merchants & Mechanics Bank at Wheeling (Ohio Co.) Capital increased by $300,000, of which State subscribes for 1/2.....	150,000
	This capital to be distributed as follows:	
	For Bank at Wheeling.....$220,000	
	For Morgantown office of disc. & deposit 80,000	
5/17/52-87	Branch Bank at Newbern (Pulaski Co.) Exchange Bk., Bk. of Va., Farmers Bk. or Bk. of Valley authorized to establish—with capital not over $300,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2....	150,000
3/25/37-68	North Western Bank of Virginia (at Wheeling, Ohio Co.) Capital increased by $500,000, and State takes 1/2.....	250,000
	This new stock to be divided as follows:	
	For N. W. Bk. at Wheeling....$315,000	

For Wellsburg discount and deposit office 85,000
For Parkersburg discount and deposit office 100,000

3/19/39-52 State Treasurer to borrow money to pay State's subscription to—

3/12/49-70 Branch Bank at Scottsville (Albemarle Co.) Exchange Bk. or Bk. of Va. authorized to establish, with capital not less than $75,000 nor more than $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.... 100,000

3/13/47-69 Branch Bank at Staunton (Augusta Co.) Bank of Valley authorized to establish—with capital not over $100,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2..... 50,000

3/25/37-68 Bank of Valley. Capital increased by $740,000, and State takes 1/2..... 370,000
The new stock to be divided between said Bk. and its branches as follows:
For Bk. at Winchester.....$150,000
For Leesburg office disc. & deposit 80,000
For Charlestown office disc. & deposit 80,000
For Romney office disc. & deposit. 95,000
For Staunton office disc. & deposit 200,000
For Warrenton office disc. & deposit 135,000

3/25/37-68 Bank of Virginia. Capital increased by $650,000, of which State takes 1/2..... 325,000
This new stock to be divided as follows:
For Lynchburg office disc. & deposit $150,000
For Charleston office disc. & deposit 200,000
For Fredericksburg office disc. & deposit 50,000
For Danville office disc. & deposit 50,000

3/18/40-55	Issue to—of new certificates in place of old.	
5/27/52-88	Branch Bank at West Columbia (Mason Co.) Bk. of Va., Farmers Bk., Exchange Bk. or Bk. of Valley authorized to establish, with capital not over $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2....	100,000
3/31/48-86	Branch Bank at Weston (Lewis Co.) Farmers Bk., Bk. of Va., Bk. of Valley of Exchange Bk. authorized to establish—with capital not over $100,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	50,000
3/ 1/56-22	Act separating State from banks by providing for sale of State's stocks therein, except the stocks held in name of the Literary Fund, and application of proceeds to redemption of State debt. Fourth section of above act amended by act 4/3/58-9, which provides that the proceeds shall go into Sinking Fund.	

MISCELLANEOUS APPROPRIATIONS.

3/16/32-7	State appropriation to Brooke Co. for repairs to roads and bridges damaged by freshet in Ohio River.....	1,600
3/16/32-7	Same as to Cabell Co.....	600
3/16/32-7	Same as to Jackson Co.....	250
3/16/32-7	Same as to Mason Co.....	1,000
3/16/32-7	Same as to Ohio Co.....	4,500
3/16/32-7	Same as to Tyler Co.....	600
3/16/32-7	Same as to Wood Co.....	1,000

12/13/33-27	Law Library at Lewisburg (Greenbrier Co.) established and appropriation to of.... And Librarian at Richmond to transmit to—one copy of each of the books now constituting the Library Fund or which may hereafter be added to same.	1,200
3/10/35-16	State appropriation to.....	1,200
3/21/36-8	State appropriation to	1,250
3/28/39-13	State appropriation to.....	1,000
2/21/45-17	State appropriation to	500
3/16/50-13	State appropriation to.....	2,000
3/26/53-358	Joint resolution directing that in future, after making purchases necessary for State Library, such books as may be required by the judges shall be purchased out of Library Fund.	
3/22/58-117	Trans-Alleghany Lunatic Asylum. State appropriation for establishing—not over.....	25,000
1/ 6/60-105	Same to extent of $100,000, not over $50,000 of which to be paid in one year.....	100,000
2/ 9/44-23	West Liberty Academy (Ohio Co.) Loan to out of Literary Fund, to be secured by lien..	5,000
3/20/48-179	City of Wheeling (Ohio Co.) State guarantees bonds of to extent of $500,000 to pay City's subscription to stock of Baltimore & Ohio R. R. Co., to be secured by mortgage of said City	500,000
3/29/58-16	State Auditor to pay interest on these bonds due 1/1/58 ($15,000)	15,000
1/31/60-158	State Auditor to pay interest on these bonds due 1/1/59 ($15,000)..... This act affirms State's claim to the lien.	15,000

MISCELLANEOUS.

2/20/28-15 Repeals provision of 12th section of act to create fund for internal improvement that all dividends shall go to other subscribers than the State, and puts State on equal terms with other subscribers.

2/11/32-71 General conditions on which future subscriptions to joint stock companies to be made.

Must appear that at least 1/4 of the private subscriptions of not less than 3/5 of the capital has been paid and the remainder either paid or made by solvent persons.

When in any year funds of B. W. P. inadequate to pay installments due on State subscriptions actually made, then B. P. W. to pay, as far as funds will go, the installments of such subscriptions as stand first according to date of subscription, and fund not to be chargeable with interest.

All companies to make annual reports to B. P. W.

4/9/38-24 Act providing for negotiation of loans for purposes of internal improvement.

All loans heretofore or hereafter authorized on account of works of internal improvement to be negotiated according to the provisions of this act, except so far as otherwise specially provided by the acts authorizing such loans.

In effecting the loans the B. P. W. to borrow on credit of State, at most favorable rate of interest, not over 5 per cent. On payment of the money so borrowed into the treasury certificates of State to issue, with interest payable semi-annually.

"All loans negotiated in conformity to this act shall be irredeemable for twenty years, but shall afterwards be redeemed at the pleasure of the General Assembly."

The stock of any joint stock co. purchased with the money so borrowed, and all dividends and net incomes which may accrue are pledged for payment of interest and principal of amounts so borrowed. Surplus dividends, etc., remaining after payment of interest to be devoted to purchase of certificates.

3/27/39-9 Amends above act. State Treasurer, on requisition of B. P. W., to issue certificates for any loans which they are now or may hereafter be authorized to procure for purposes of internal improvement and without requiring the previous payment of any money into the State treasury on account thereof.

4/8/39-11 Authorizing loans for payment of subscriptions and appropriations.

B. P. W. authorized to borrow such sums as may be necessary for payment of subscriptions and appropriations made by law to works of internal improvement. Interest not to exceed 6 per cent. and in other respects the loans to conform to provisions of the act of 4/9/38-9 and amendments thereof.

3/22/50-5 Negotiation of loans for internal improvements.

B. P. W. may provide, if they deem it expedient that certificates to be issued by Treasurer shall be irredeemable for 25 years, and thereafter redeemable at pleasure of General Assembly. Interest not to exceed 6 per cent. Not necessary to show on face of certificate specifically what improvement it is for.

3/17/56-20 Act providing for redemption of outstanding drafts on B. P. W. on the internal improvement fund.

To be redeemed by issue of 6 per cent. registered bonds.

3/18/58-86 Act for the relief of certain internal improvement companies and holders of debts on account of construction of State works by an issue of State bonds.

Second Auditor to issue 6 per cent. registered bonds in payment of amounts due on account of construction of internal improvements on State account and on account of State's subscriptions to stock of internal improvement companies.

1/19/25-26 Act calling in the old 6 per cent. certificates.

2/24/32-13 Cancelling 7 per cent. certificates amounting to $319,000, held by Literary Fund, being part of the stock issued to Bank of Va. and to Farmers Bank (loan by act 2/1/1814 and issuing one new certificate for whole amount at same rate of interest.

3/25/37-68 Act Increasing Banking Capital of Commonwealth.

Makes State subscribe to 1/2 capital of several banks whose capital is increased in accordance with this act, for establishing offices of discount and deposit throughout the State; and providing how capital to be raised.

3/1/56-22 Act separting State from the Banks.

(See last act under Banks.)

3/4/53-77 Act authorizing State Treasurer to receive from banks as securities for their issues any bonds guaranteed by State.

3/11/37-101 General regulations for incorporation of Rail Road companies. State reserves right to subscribe for 2/5 of stock and increases of stock of any such Co., subject to provisions of this act.

3/18/41-91 Act authorizing B. P. W. to appoint agents to purchase property sold under execution, mortgage, etc., by direction of B. P. W.

2/26/56-289 Joint Resolution in relation to sale of works of internal improvement companies in which State is interested.

B. P. W. directed have some representative or agent attend the sale of such works and to purchase same for the State if in judgment of B. P. W. State's interests would be protected or promoted thereby.

3/15/48-353 Resolution providing for the map to be prepared by Crozet.

3/29/51-6 Coupon Bonds.

Act authorizing issue of—B. P. W. authorized to borrow from time to time on credit of State money necessary to pay State's subscriptions to chartered companies, and certificates (coupon bonds) for same to be issued therefor, the principal of which to be payable at a day fixed by B. P. W., not less than 35 years from date of bond. Coupons for interest to be attached. But the bonds for money so borrowed may, at option of purchaser, be issued in the form heretofore used.

5/25/52-22 Amends above. Changes redemption date from 35 to 34 years. Bonds may at option of purchaser be in the form prescribed in 67th Chapter of Code of Va. (See next below). No bond to be sold at less than par.

Chap. 67 of Code, 1849, Provides for issue of registered bonds bearing interest at 6 per cent., payable semi-annually, the principal to be payable so soon after 20 years from date of bond as the General Assembly may desire.

4/9/53-33 Further amends Coupon bond act above. Bonds to be made payable at a day named therein, not more than 34 years from date of bond. Bonds may, at option of parties to whom issued, be in the form prescribed in 67th Chap. Code of Va. No certificate to be sold at less than par if the interest it bears be 6 per cent. or more. Coupon bonds not to be issued for less amount than $500 nor greater than $5,000 apiece.

3/18/56-21 Act providing for and regulating issue of registered bonds in lieu of coupon bonds.

3/18/56-18 Act authorizing issue of Treasury Notes.

These notes to be made payable not more than one year from their respective dates. Limit to amount outstanding at any one time. When sale and delivery of—to cease. This limit changed by amendment of 4/2/58-9.

3/9/60-305 Act authorizing transfer of certain turnpike companies and plank road companies to the counties in which they lie.

B. P. W. authorized to turn over to the counties in which they lie any turnpike or plank road that in the judgment of said B. P. W. can not be made productive. Counties must consent, and so must stockholders of said companies.

Literary Fund.

2/12/1811-8 Created.

3/25/53-- Capitation tax appropriated to.

Sinking Fund.

3/10/35-7 Sinking Fund Created.

Sum of $50,000 appropriated to, to be applied to redemption of such portions of State bonds as are held by individuals and corporations and can be purchased at par.

The Governor, Treasurer, Auditor, and Second Auditor constituted a corporate body as Commissioners of Sinking Fund.

2/21/45-11 Act providing for redemption of 6 per cent. public debt by issue of new bonds at 5 per cent.

3/15/49-8 Act providing for gradual redemption of public debt.

Repeals act 3/10/35 (above). All certificates of State stock purchased by Commissioners of Sinking Fund cancelled. Bonds of James Riv. & Kan. Co. guaranteed by State heretofore held by Commissioners of Sink. F. transferred to B. P. W.

3rd Section. Sum of $100,000 to be annually set apart and paid over by warrant of Auditor to order of B. P. W., to be applied by the Board for the gradual redemption of so much of the public debt as shall be due or redeemable from time to time.

4th Section. If the annual appropriation be insufficient to redeem any bonds falling due, the B. P. W. authorized to raise temporary loans enough to effect such redemption. All State bonds so redeemed to be cancelled and filed in Treasurer's office.

Va. Constitution 1851, Art. IV, sections 29, 30, 31, (Acts 1852-3, p. 331) Provides that there shall be annually set apart from the accruing revenues a sum equal to 7 per cent. of the State debt existing on 1/1/52. The fund thus set apart to be called the Sinking Fund, and to be applied to payment of the interest of the State debt and the principal of such as may be redeemable. If no part be redeemable, the balance after paying the interest to be invested in bonds of Va. or of U. S. or some of the States of the Union, and be applied to payment of the State debt as it should become redeemable. Whenever a debt hereafter shall be contracted by the State, there shall be set apart annually for 34 years a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon, which shall be a part of the Sinking Fund and be applied in the manner before directed.

Legislature authorized to sell the stock held by State in internal improvement companies, but the proceeds to be a part of the Sinking Fund.

Legislature not to contract loans or cause to be issued any State bonds or certificates irredeemable for a period greater than 34 years.

3/26/53-29 Act creating Sinking Fund for payment of semi-annual interest on and redemption of the public debt.

Appropriation annually, commencing with 1853, out of accruing revenues of State the sum of $838,028.68, that being 7 per cent. on $11,971,838.30, the ascertained debt of the State on January 1, 1852. The sum so set apart to be called the Sinking Fund, and shall be applied to the payment of the interest on the State debt and the principal of such part as may be redeemable, and if no part be redeemable, then residue of Sinking Fund, after payment of interest, to be invested in bonds of Va., U. S. or some of the States of the Union, and applied to payment of said debt as it shall become redeemable.

Whenever a debt is contracted by State there shall be set apart in like manner annually for 34 years a sum exceeding by one per cent. the aggregate amount of interest agreed to be paid, which sum shall be a part of the Sinking Fund and be applied in the manner before directed.

If Legislature should sell State stock in any internal improvement and other companies, the proceeds of such sales to constitute a part of the Sinking Fund and be applied in like manner, etc., etc.

4/8/53-32 Act providing for transferring and cancelling certain stocks held by B. P. W.

Recites passage of Sinking Fund Act of 3/26/53 (supra). Repeals third and fourth sections of the act 3/15/49-8 (supra), etc.

3/15/56-21 Act regulating the application of the Sinking Fund to the redemption of the public debt.

Sinking Fund Commissioners to annually apply entire residue of the fund after the payment of interest on the public debt to the redemption of such part of said debt existing on 1/1/52 as may be redeemable, and if no part thereof be redeemable, said residue shall be devoted to purchasing and canceling any other outstanding bonds or certificates of said debt which may have been issued prior to 1/1/52.

2nd Section. Said Commissioners to appropriate any State bonds issued since 1/1/52 which they have heretofore purchased to the redemption of such outstanding State bonds as were issued prior to said date, in like manner as the annual residue of said fund after payment of interest on public debt is hereinbefore directed to be appropriated thereto.

3/27/58-6 Act to make State investments more profitable by forcing payment of interest and Sinking Fund on loans to internal improvement companies of dividends on preferred stock and the interest on bonds of such companies guaranteed by State.

4/3/58-9 Act providing for proceeds from sales of bank stocks owned by State to go into Sinking Fund.

4/6/58-9 Amending Act 3/15/56 (supra).

Sinking Fund Commissioners to annually apply entire residue of said fund after payment of interest on public debt as follows:

So much as arises from the 7 per cent. on the debt existing 1/1/52, together with the proceeds of sales of bank stocks, shall be applied to redemption of such part of said debt as may be redeemable; and if no part be redeemable, said residue to be devoted to the purchase at their market value and cancellation of any outstanding bonds or certificates of said debt; and so much of said fund as arises from 1 per cent. on the debt created since 1/1/52 to be invested in the outstanding bonds or certificates of said debt at their market value and held by said Commissioners for the benefit of said fund. But if no bonds or certificates of either issue can be purchased with the fund applicable thereto, the same shall be invested in the stocks or bonds of other States of the U. S..

Section 2 of act 3/15/56 (supra) repealed.

[*Vol. 5. May 6, 1909 Plaintiff's General Exhibit No. 1. Abstract of Acts.*]

AFTERNOON SESSION.

The hearing was resumed pursuant to the taking of recess.

Mr. Anderson: We desire now to tender an abstract of the acts of the General Assembly from 1828 to 1860, inclusive, relative to the State debt. I have stated to my friends on the other side that there is nothing in this abstract of a controversial character.

The Special Master: Does it duplicate the material already in where these various indebtednesses are related to and connected with the legislation?

Mr. Anderson: It is a synopsis of all the legislation in reference to the public debt. It recites the legislation upon which the debt is created, and it is really an answer to that part of the decree which directs an ascertainment of information as to the authority under which the debt was contracted.

Mr. Carlisle: This was put in a long while ago. We have no objection to it. It is simply an index.

Mr. Anderson: That is all; or at least it is very little more than that.

The Special Master: Is there any objection to it?

Mr. Carlisle: No.

The Special Master: There is quite a good deal of material here that does not seem to relate to the legislation. I suppose this is a duplication of facts already in?

Mr. Carlisle: Yes.

The Special Master: On the left-hand margin are marks indicating what it is, as I understand it.

Mr. Anderson: Yes, sir.

Mr. Spooner: Of course we cannot take the time now to verify it; but we will let it go in subject to revision.

The Special Master: Then that is understood.

Mr. Spooner: If you want to prove anything from the act of course you will have to take the act; but this will help in finding the act.

The Special Master: This would be plaintiff's exhibit A-2, would it not?

Mr. Spooner: If I did say so, I did not mean to say that it goes in subject to objection; I meant it goes in subject to correction.

Mr. Robinson: You have the A exhibits running to A-13 now, I think?

Mr. McClintic: I would suggest you apply another letter to it, the letter H, if that is right.

The Special Master: No; if this relates to paragraph 1—or does it relate to all the paragraphs?

Mr. Anderson: It relates to all the paragraphs.

The Special Master: We will make it plaintiff's general Exhibit No. 1, then.

(The document was accordingly marked by the stenographer plaintiff's general Exhibit No. 1.)

DEFENDANT'S GENERAL EXHIBIT NO. 2.

This deed, made this 30th day of July in the year Eighteen hundred and fifty eight (1858) between the Coal River Navigation Company of Virginia party of the first part, and James L. Carr of the County of Kanawha & State of Virginia, William A. Drown of Pennsylvania, Isaac A. Storm & Abraham B. Clarke of New York, parties of the second part.

Whereas the said Coal River Navigation Company is at present justly indebted by bond, note & otherwise to certain persons & parties, as will hereinafter be designated & enumerated. And whereas the said Coal River Navigation Company being desirous to secure more effectually the payment of all its present indebtedness. Its Board of Directors did *therefor* at a called meeting held in the town of Charleston Kanawha County on Monday the 26th July 1858 unanimously pass resolutions authorizing & empowering Thomas L. Broun President of the said Company, to make execute & acknowledge for record, for & in behalf of the said Coal River Navigation Company a proper trust deed or mortgage on the entire works & property of the said Company, and on the works hereafter to be constructed. And also on the tolls accruing therefrom after first deducting from the said tolls; current expenses, repairs & expenditures, necessary to be made to keep Coal River in a navigable order. As will more fully appear by reference to a copy of the said resolutions hereafter annexed.

Now this deed witnesseth that in consideration of the premises & in pursuance of the said resolutions, the Coal River Navigation Company aforesaid, by & through its President Thomas L. Broun, duly authorized & empowered as aforesaid, doth hereby grant unto the said James L. Carr, William A. Drown, Isaac A. Storm & Abraham B. Clark the following property to-wit:

(1) The Locks & Dams, and all other works made, erected & constructed on Coal River (meaning thereby Coal River proper and Little Coal River and Big Coal River) by the said Coal River Navigation Company for the purpose of improving the navigation of the said Coal River in and also all other works & improvements to be hereafter made, erected & constructed, on the said Coal River, for the purpose of repairing damages, restoring navigation, & making said Coal River navigable. Which said Locks & Dams are known & designated as follows to-wit"

Mouth Lock & Dam". Locks & Dams, No. *one*, No. *Two*, No. *Three* & No. *Four* located below the forks of Coal, and on Coal River *proper* Locks & Dams No. *Five*, No. *Six*, No. *Seven*, & No. *Eight*, located

above the forks of Coal & on Big Coal River, and finally Lock & Dam No. *A* located above the forks of Coal & on Little Coal River.

(2) All other property real or personal belonging to the said Coal River Navigation Company & in any wise appertaining to the navigation or the navigation improvements aforesaid.

(3) And also all tolls arising & accruing from the said navigation works & improvements, after *first* deducting from the said tolls; current expenses, repairs & expenditures necessary to be made to keep Coal River aforesaid in a navigable order.

In Trust to secure to the following persons & parties the payment of the following indebtedness to-wit:

To Henry S. Kupp of Pennsylvania the sum of Thirty three thousand, three hundred & thirty three dollars & thirty three cents ($33,333.33c) for bonds of the Coal River Navigation Company issued as follows thirty three bonds dated July 15th 1858 bearing 8 per cent interest per Annum, each for $1000. & payable on the 1st July 1863, to the said Henry S. Kupp or bearer. And one other bond for $333.33/100 dated and made payable in like manner to the said Kupp or bearer.

To J. Brice Smith of New York & others the sum of Nine Thousand dollars ($9000) for bonds of the said Company issued as follows. Five bonds dated July 15th 1858, bearing 8 per cent interest per Annum each for $1000 & payable on the 1st July 1863 to the said J. Brice Smith & to others And Eight other bonds of $500, each dated & payable in like manner. Which bonds ($9000) were issued for the purpose of completing the Lock & Dam at the mouth of Coal River & in persuance of a subscription made thereto.

To the Coal River & Kanawha Mining & Manufacturing Company the sum of Two Thousand six hundred & seventy eight dollars & sixty cents ($2678.60/100) for five bonds of the said Coal River Navigation Company, dated August 1857, bearing 8 per cent interest per annum each for $535.72/100 & payable on the 1st day of July 1862.

To Du Bois & Vandervort of New York the sum of one thousand & seventy one dollars & forty four cents ($1071.44) for two bonds of $535.72 Each, dated & payable as the bonds last aforesaid.

To Isaac A. Storm of New York the sum of One thousand & seventy one dollars & forty four cents ($1071.44) for two bonds of, $535.72 each dated & payable as the bonds last aforesaid.

To Charles M. Connally of New York the like sum of one thousand & seventy one dollars & forty four cents ($171.44) for two bonds of $535.72 Each dated & payable as the bonds last aforesaid.

To B. A. Munford of New York the sum of Five Hundred & thirty five dollars & seventy two cents ($535.72) for one bond, dated & payable as the bonds last aforesaid.

To John C. Thatcher of New York, the like sum of Five Hundred

& thirty five dollars & seventy two cents ($535.72) for one bond dated & payable as the bond last aforesaid.

To Henry A. Hurlburt, the sum of Five hundred & thirty five dollars & seventy two cents ($535.72) for one bond, date & payable as the bonds last aforesaid.

To William H. Webb of Kanawha the balance due on a judgment rendered in the United States Court held at Charleston Kanawha Co. in the Spring of 1856. The said balance being now about two thousand dollars ($2000)

To the Western Mining & Manufacturing Company, the sum of two thousand dollars ($2000) for four bonds of $500 each dated November 1857 payable on the 1st July 1861 & bearing 8 per cent interest per annum.

To J. Brice Smith of New York the sum of one thousand dollars ($1000) for bonds issued as follows; one bond for $500. dated June 6th 1857, made payable on the 1st July 1861 & bearing 8 per cent interest per annum and two other bonds for $250, each, dated & made payable in like manner as the last bond aforesaid.

To Ackerman & Mixer of New York, the sum of Five Hundred dollars ($500) for one bond dated & payable as the bonds last aforesaid.

To G. W. Coster of New York the sum of Five Hundred dollars ($500) for one bond dated & payable as the bond last aforesaid.

To Isaac A. Storm of New York the sum of Five hundred dollars ($500) for one bond dated & payable as the bond last aforesaid.

To Cornelius Dubois of New York, the sum of Five hundred dollars ($500) for one bond dated & made payable as the bond last aforesaid.

To Hazen Lathrop of Ohio, the sum of Three Thousand three hundred & eighty nine dollars & ninety four cents ($3389.94/100) for bonds issued as follows, three bonds dated May 24th 1858 each for $929.98 payable in 6, 12 & 18 months from date, with interest thereon from Oct. 13th 1857. And one other bond dated June 11th 1858 for $600 payable two years after date with interest likewise from Oct. 13th 1857.

To Watt & Jordan, the sum of one thousand, seven hundred & twelve dollars & nine cents ($1712.09) for bonds issued as follows; one bond dated 11th June 1858 for $1112.09 & payable six months after date, with interest thereon from the 7th Oct. 1857, and one other bond dated likewise 11th June 1858 for $600 & payable two years after date.

To Robert Blaine, the sum of One hundred & twenty five dollars & fifty cents ($125.50) for written order of Watt & Jordan on the C. R. N. Co. & accepted, dated October 5th 1857.

To H. Campbell & Co. of Ohio, the sum of Forty six dollars & forty

three cents ($46.43) for written order of Watt & Jordan on the C. R. N. Co. & accepted dated October 30th 1857.

To Ruffner Hale & Co. the sum of Five Hundred & thirty five dollars & twenty five cents ($535.25) for written order of Watt & Jordan on the said C. R. N. Co. & accepted for $689, but subject to a credit of $153.75 thereon dated November 2nd 1857 payable in six months after date to F. Walker agent of the said Ruffner Hale & Co. & bearing interest from date.

To W. F. & J. H. Goshorn, the sum of three hundred & twenty four dollars & seventy cents ($324.70) for written order of Watt & Jordan on the said C. R. N. Co. & accepted dated November 2nd 1857, payable six months after date & bearing interest from date.

To Benjamin F. Scott the sum of One Hundred & twenty six dollars & sixty cents ($126.60) for written order of Watt & Jordan on the said C. R. N. Co. & accepted, dated Nov. 18th 1857 & payable six months after date.

To Thomas B. Swann, the sum of three hundred & twenty five dollars & eighty-one cents ($325.81) for written order of Watt & Jordan on the said C. R. N. Co. & accepted, dated Nov. 2nd 1857 & payable six months after date, with interest from date.

To Henry H. Neal, the sum of Eighty seven dollars & Fifty seven cents ($87.57) for written order of Watt & Jordan on the said C. R. N. Co. & accepted, dated May 12th, 1858, & payable sixty days after date:

To James Gillespie, the sum of three hundred & twenty five dollars ($325) for note executed 13th July 1857, & payable 12 months after date, with interest thereon from date:

To Elliot R. Thomas, the sum of two hundred & seventy five dollars ($275) for note executed, dated & Payable as last aforesaid:

To James Canterbury & Ralph Thompson the sum of Three hundred dollars, ($300) for note executed, dated & payable on the 16th June 1858.

To Henry Roberts Thomas the sum of Two hundred & fifty dollars ($250) for bond dated 11th June 1858, & bearing interest from 17th August, 1857.

To Clement Smith of Peytona, the sum of Three hundred & ninety eight dollars & twelve cents ($398.12) for note executed & dated the 13th day of November, 1857 & payable nine months after date.

To the Western Mining & Manufacturing Co., the sum of three hundred dollars ($300) for bond dated & executed the 26th July 1858, & payable six months after the date thereof.

And finally to secure the payment of any other indebtedness of the said Coal River Navigation Company now due & not hereinbefore enumerated & specified.

In Trust nevertheless upon the following terms & conditions to-wit;

First: That no sale of the said works & property or any part *the* thereof shall take, place under & by virtue of this conveyance, before the 1st day of July in the year Eighteen hundred & sixty three (1863)

Secondly. That in default of the payment of the indebtedness aforesaid by the 1st day of July 1863, thence the said James L. Carr William A. Drown Isaac A. Storm & Abraham B. Clarke may thereafter, at the request of any of the said creditors, offer for sale & sell the works & property aforesaid of the Coal River Navigation Company.

Thirdly: That no such sale of the said Works & property shall however take place unless notice thereof shall first have been given, and the work & property advertised for a period of ninety days previous to the sale, in the Kanawha Newspapers & in the principal newspapers published in the city of Richmond; and also unless personal notice of the said sale, shall have been served on the Board of Public Works, ninety days previous to the sale.

And Fourthly That the entire controul, direction & management of all the works & property aforesaid and every part thereof of the said Coal River Navigation Company, shall notwithstanding this conveyance, be, remain, & continue under the power & authority of the stockholders, & Board of Directors of the said Coal River Navigation Company, as heretofore until a sale of the said works & property shall have been made as aforesaid.

It being the object intent & purpose of this deed to place all the creditors of the said Coal River Navigation Company on the same footing, and to create a lien, that will operate alike for the benefit of all the said creditors, on all the present work & property both real & personal, belonging to the said Coal River Navigation Company, and in any wise appertaining to the navigation improvements thereof, and also on all the works to be constructed & erected hereafter by the said Coal River Navigation Company, for the purpose of repairing damages, restoring & improving the navigation of Coal River as aforesaid, from its mouth to Manningsville on Little Coal River, and to Peytona on Big Coal River.

In testimony whereof the said Coal River Navigation Company has caused these presents to be signed in its behalf by its President Thomas L. Broun and its common & corporate seal to be hereunto affixed, at Charleston Kanawha County Virginia this 30th day of July 1858.

THE COAL RIVER NAVIGATION COMPANY

(SEAL) By THOS. L. BROUN. Pres'dt.

Teste:

J. M. DODDRIDGE.

Keeper of the Seal.

Extract from the minutes of a called meeting of the President and Directors of the Coal River Navigation Company held at the office of the said Company in Charleston Kanawha on Monday the 26th July 1858.

Present: Thos. L. Broun, President; John D. Vanhorn, William D. Pate, Henry W. Goodwin, Clement Smith, Directors.

"On motion it was unanimously resolved:

(1) That the President Thos. L. Broun be & is hereby authorized & empowered for & in behalf of the Coal River Navigation Company to make, execute & acknowledge for record a proper Trust Deed or Mortgage, on the entire works & property of the Company, and the works hereafter to be constructed, and also on all the tolls accruing therefrom; after *first* deducting from the said tolls current expenses, repairs, & expenditures necessary to be made, to keep the river in navigable order, in order thereby to better secure the payment of all the present indebtedness of this Company.

(2) That the said deed shall include & embrace all the present indebtedness hereinbefore enumerated, and it shall also contain a clause giving to any creditor that may be omitted the full right & benefit to share & participate in the said Deed in common with the other creditors:

(3) That James L. Carr of Kanawha, William A. Drown of Pennsylvania, Isaac A. Storm & Abraham B. Clarke of New York shall be the persons to whom the works & property aforesaid shall be conveyed as aforesaid to be by them held in trust for the benefit of the creditors aforesaid.

(4) That no sale of the said works & property or any part thereof shall take place before the 1st day of July, Eighteen hundred & Sixty three (1863)

(5) That in default of the payment of the indebtedness aforesaid by the 1st day of July 1863; The *the* said James L, Carr William A. Drown Isaac A. Storm, & Abraham B. Clarke, may thereafter at the request of any of the said creditors, offer for sale & sell the works & property aforesaid, of the Coal River Nav. Co.

(6) That no such sale of the said works & property shall however take place, unless notice thereof shall first have been given & the works & property advertised for a period of ninety days previous to the sale. in the Kanawha Newspapers & in the principal newspapers published in the city of Richmond and also unless personal notice of the said sale shall have been served on the Board of Public Works ninety days previous to the sale.

(7) That the entire control direction & management of all the works & property aforesaid & every part thereof of the Coal River Nav. Co., shall notwithstanding the conveyance aforesaid, be, remain & continue under the power & authority of the stockholders & Board

of Directors of the said Company as heretofore until a sale of the said works & property shall have been made as aforesaid.

J. M. DODDRIDGE.
Secretary Coal River Nav. Co.

Virginia: Kanawha County Court Clerk's Office 5th August, 1858.

The foregoing deed with the resolutions thereto appended was this day presented to me and duly acknowledged by Thomas L. Broun Esq., President of the Coal River Navigation Company and is thereupon admitted to Record.

Teste: A. W. QUARRIER. Clk.

A true copy from the record.

Teste: L. C. MASSEY Clerk.
Kanawha County Court.

Deed of Trust Book No. 1 Page No. 310.

(SEAL.)

DEFENDANT'S GENERAL EXHIBIT NO. 3.

This Deed, made this Twenty fifth day of October, Anno Domini Eighteen Hundred and Sixty five, Between James L. Carr of the County Of Kanawha and State of West Virginia, William A. Drown of the City of Philadelphia, in the State of Pennsylvania Isaac A. Storm of the City of New York and Abraham B. Clark of the Said City of New York of the first part, and Clement Smith of Peytona in the County of Boone State of West Virginia, William F. Johnson of the Said City of Philadelphia and J. Eugene Flandin of the Said City of New York parties of the second part, WITNESSETH: That Whereas, "The Coal River Navigation Company" of the Counties of Boone and Kanawha State of West Virginia, by a certain Deed bearing date the thirtieth day of July Anno Domini Eighteen Hundred and Fifty Eight and recorded in the Clerk's Office of the Said Counties of Kanawha and Boone, did grant unto the said James L. Carr, William A. Drown Isaac A. Storm and Abraham B. Clark, the following property to-wit;

(First) The Locks and Dams and all other works made erected and constructed on Coal River (meaning thereby Coal River proper, and little Coal River and Big Coal River) by the said Coal River Navigation Company, for the purpose of improving the navigation of the said Coal River and also, all other works and improvements to be hereafter made, erected and constructed on the said Coal River for the purpose of repairing damages, restoring navigation and making the said Coal River navigable, which Said Locks and Dams are known and designated as follows to-wit: "Mouth Lock and Dam", Locks and Dams, No. one, No. two, No. three and No. Four located below the forks of Coal River and on Coal River proper Locks and Dams No. Five, No. Six, No. Seven and No. Eight located above the forks of Coal and on Big Coal River and finally Lock and Dam No. A located above the forks of Coal on Little Coal River.

(Second) All other property, real or personal, belonging to the Said Coal River navigation Company, and in anywise appertaining to the navigation or the navigation improvements aforesaid;

In Trust to secure the payment of Henry S. Kupp of Pennsylvania the sum of Thirty Three thousand three hundred and thirty three dollars and thirty three cents ($33,333.33) for bonds of the Coal River Navigation Company, issued as follows: Thirty three Bonds dated July 15th, 1858, bearing eight per cent interest per annum, each for $1000 and payable on the 1st July 1863, to the said Henry S. Kupp or bearer and one other Bond for $333.33 dated and made payable in like manner to the Said Kupp or bearer and also to secure cer-

tain other indebtedness of the Said Company particularly Specified and Set forth in the Said Trust Deed, upon the following terms and conditions, to-wit;

First: That no Sale of the Said works and property, or any part thereof, Shall take place, under and by virtue of this conveyance before the 1st day of July, in the year Eighteen Hundred and Sixty three (1863)

Secondly: That in default of the payment of the indebtedness aforesaid by the 1st day of July 1863, then the said James L. Carr William A. Drown Isaac A. Storm and Abraham B. Clark may thereafter at the request of any of Said Creditors, offer for Sale and sell the works and property aforesaid of the Coal River Navigation Company.

Thirdly: That no such sale of the Said works and property Shall however take place, unless notice thereof Shall first have been given, and the works and property advertised for a period of ninety days previous to the Sale in the Kanawha Newspapers, and in the principal Newspapers published in the City of Richmond And also unless personal notice of the Said Sale Shall have been Served on the *Bord* of Public Works, ninety days previous to the Sale.

And Whereas the Said Coal River Navigation Company, failed to perform the requirements contained in Said Deed, and was on the first day of July Anno Domini Eighteen hundred and Sixty three in default of the payment of its indebtedness, Specified as aforesaid and of every part thereof; And the Said James L. Carr, William A. Drown, Isaac A. Storm and Abraham B. Clark, Trustees, were thereafter to-wit; on the fourth day of July A. D. Eighteen hundred and Sixty five requested and required by Sundry Creditors mentioned in Said Trust Deed, to offer for Sale and Sell the works and property aforesaid of the Coal River Navigation Company, according to the terms and conditions Specified in Said Deed of Trust: Whereupon the said James L. Carr, William A. Drown Isaac A. Storm and Abraham B. Clark, in execution of the said Trust, did on the Twenty fifth day of October A. D. Eighteen Hundred and Sixty Five after giving ninety days notice of the time and place of Sale by advertising the Same in the Kanawha Republican and West Virginia Journal two Newspapers published in the Town of Charleston, County of Kanawha, aforesaid, and also by advertising the Same *the Same* in the Richmond Whig, the Commercial Bulletin and the Register, three newspapers published in the City of Richmond, State of Virginia, and also by Serving Personal notice of Said Sale, ninety days previous thereto, on the *Bord* of Public Works, for the State of West Virginia, and by Serving a Similar notice of at the Same Time upon the *Bord* of Public Works, for the State of Virginia, Offer for Sale all the locks and dams and other works, made, erected, and constructed,

by the Said Navigation Company on Coal River, including Little and Big Coal Rivers and also all the Estate real and personal, belonging to the Said Company, together with all rights, privileges, franchises, and appurtenances, thereunto belonging or in anywise appertaining, At Public Auction to the highest bidder for cash in front of the Court House door of Kanawha County on Wednesday the Twenty fifth day of October, aforesaid, at which Sale the said Clement Smith, William F. Johnson and J. Eugene Flandin being the highest bidders became the purchasers, for the Sum of Six thousand Five Hundred Dollars ($6500.00)

Now Therefore This Deed further Witnesseth: that the said James L. Carr, William A. Drown, Isaac A. Storm, and Abraham B. Clark in performance of their duties as Trustees of and for the Said Coal River Navigation Company, and for and in consideration of the Sum of Six Thousand five hundred dollars to them the Said James L. Carr William A. Drown Isaac A. Storm and Abraham B. Clark, Trustees in hand paid by the Said Clement Smith William F. Johnson and J. Eugene Flandin before the Sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given granted, bargained, and sold and by these presents do give, grant, bargain, and Sell unto the said Clement Smith, William F. Johnson and J. Eugene Flandin, under the name of "navigation Company of Coal River" (which they have adopted by virtue of authority granted or *confered* upon purchasers of any public works by Section 27 of Chapter 61 of the Code of Virginia, of 1849) All the locks and dams and other works, made erected and constructed by the Said Coal River Navigation Company on Coal River including Little and Big Coal Rivers and also all the estate real and personal belonging to the Said Company, together with all rights, privileges, franchise and appurtenances thereunto belonging, or in anywise appertaining to the Said Coal River Navigation Company (For a fuller description of the property hereby conveyed, reference is here made to the Said Trust Deed recorded in the Clerk's Office of the County of Boone in Book 13 page 435 &c and in the Clerk's Office of the County of Kanawha in Book "W" page 310 &c.

Witness the following Signatures and Seals.

JAMES L. CARR. (Seal)
WILLIAM A. DROWN. (Seal)
ISAAC A. STORM. (Seal)
ABM. B. CLARK. (Seal)
Trustees.

State of West Virginia, County of Kanawha SS:

I, John A. Truslow, a Justice of the Peace for the County aforesaid in the State of West Virginia, do certify that James L. Carr whose name is signed to the foregoing writing bearing date on the

Twenty fifth day of October, A. D. Eighteen hundred and Sixty five has acknowledged the same before me in my County aforesaid.

Given under my hand this Twenty fifth day of October A. D. 1865.

JOHN A. TRUSLOW, J. P. (Seal)

State of Pennsylvania, City of Philadelphia, SS:

I, William V. Archer a commissioner appointed by the Governor of the State of West Virginia, for the Said City and State, do certify that William A. Drown whose name is Signed to the foregoing writing bearing date the Twenty fifth day of October, A. D. 1865 has acknowledged the same before in my city aforesaid.

Given under my hand this Eleventh day of November, A. D. 1865.

[W. V. Archer commissioner of deed Philadelphia, Penn.]

W. V. ARCHER. (Seal)
Commissioner for West Virginia,
Philadelphia, Penn.

City and State of New York SS:

I, Henry J. Cullen Jr. a commissioner appointed by the Governor of the State of West Virginia, for the Said City and State, do certify that Isaac A. Storm and Abraham B. Clark whose names are Signed to the foregoing writing bearing date the Twenty fifth day of October, A. D. Eighteen Hundred and Sixty Five have acknowledged the Same before me in my City aforesaid.

Given under my hand this Fifteenth day of November, A. D. 1865.

(Seal) HENRY J. CULLEN. JR. (Seal)
Commissioner for West Virginia in N. York.

Kanawha County Recorder's Office November 23rd, 1865,

This Deed was this day presented to me in this Office & together withe the Several Certificates of acknowledged thereon endorsed, and being duly Stamped according to Law was thereupon admitted to record.

Teste: JNO. SLACK. Recr.

A true copy from the record.

Teste: L. C. MASSEY Clerk.
Kanawha County Court.

Deed Book "Y" Page No. 546.

(SEAL)

DEFENDANT'S GENERAL EXHIBIT NO. 4.

To the Recorder of Kanawha County West Virginia:

The Undersigned Trustees, respectfully report, That in pursuance of the provisions of a certain Deed of Trust made by the Coal river Navigation Company dated July 30th 1858, and at the request of some of the creditors therein mentioned, They offered for sale, on the 25th day of October, 1865, after giving ninety days notice of the time and place of sale, by advertising the same in the Kanawha Newspapers, and in three of the newspapers published in the City of Richmond, State of Virginia, and also by serving personal ——— of said sale ninety days previous thereto on the Board of Public Works, for the State of West Virginia, and for the State of Virginia, all the Locks and Dams and other Works made, erected, and constructed by said Navigation Company on Coal River, including Big and Little Coal Rivers, and also all the Estate real and personal, belonging to the said Company, together with all rights, privileges, franchise and appurtenances thereunto belonging, or in any wise appertaining, at Public Auction, to the highest bidder for cash, in front of the Court House door of Kanawha County; at which Sale, Clement Smith, William F. Johnson and J. Eugene Flandin, being the highest bidders, became the purchasers, for the Sum of Six *Hundred* five hundred dollars ($6500)

And the undersigned Trustees, thereupon made, executed and acknowledged for record, a Deed of conveyance of the property thus sold, to the said purchasers, under the name of the "Navigation Company of Coal River," which they had adopted by virtue of authority conferred upon purchasers of any public Works, by Section 27 of Chapter 61 of the Code of Virginia of 1849.

After paying the expenses attending the sale, and the execution of the Trust which amounted to three hundred and ninety-four dollars and fifty cents ($394.50) Vouchers for which are herewith filed, there was left a balance of Six thousand one hundred and five dollars and fifty cents ($6,105.50) to be divided amongst the creditors of the Coal River Navigation Company, whose aggregate claims, with interest thereon to the 25th day of October, 1865, Amounted to the sum of Eighty five thousand Six hundred and ninety eight dollars and Seventy nine cents ($85,698.79c)—Shortly after the sale was completed, a notice was published in one or more newspapers, requesting the creditors of the company to present their claims for settlement and receive payment therefor in money, or Stock, in the Navigation Company, as each might elect.

The following Statement Shows the payments in money, thus far made by the Trustees.

Claim.	Amt. of Prin.	Creditors.	Amt. pro rata.	To Whom Paid.
2 Bonds	$ 1,071.44	J. A. Storm		
1 "	1,000.00	H. S. Kupp	$229.67	J. B. Storm
3 "	1,000.00	J. B. Smith	119.05c	H. Young
2 "	2,000.00	H. S. Kupp		
1 "	500.00	J. A. Storm		
2 "	1,071.44	Du Bois & al.		
2 "	1,071.44	C. M. Connally		
1 "	500.00	J. A. Ackerman		
1 "	250.00	H. A. Du Bois	627.11c	T. L. Brown Agt. &c.
3 "	2,789.94	H. Lathrop		
1 Note	600.00	H. Lathrop		
1 "	398.12	C. Smith		
1 Judgment	325.81c	T. B. Swann	434.15c	T. L. Brown Agt. &c.
2 Bonds	1,712.09	Watt & Jordan	180.90c	T. L. Brown Agt. &c.
1 "	535.72	H. A. Hulbut	63.25	D. DuBois Prest. &c.
26 "	26,000.00c	H. S. Kupp		
4 "	2,000.00c	Westn Ming & M. Co.	3,162.48	D. DuBois Prest. &c.
1 Judgt.	535.25	Ruffner, Hale & Co.	56.35c	J. L. Brown on suggestion.
1 "	325.00	I. Gillespie	34.65	I. Gillespie
1 "	125.50	R. Blaine	13.25	C. Blain, Ad. &c.
1 "	275.00	E. R. Thomas	25.00	E. R. Thomas
1 Note	250.00	H. R. Thomas	26.55	D. DuBois Prest. &c.
1 Judgt.	2,075.57	W. H. Webb	112.21	Smith & Knight on Sug.
1 "	324.70	W. F. & J. H. Goshorn	34.20	D. DuBois Prest. &c.

Amounting to the sum of $5,128.82, and leaving a balance (————) in the hands of James L. Carr one of the Trustees of nine hundred and Seventy six dollars and sixty eight cents ($976.68c), which is still unappropriated. The claims thus extinguished with the receipts and other vouchers are herewith returned, and the Trustees file also a report made by the "Navigation Company of Coal River" *compamy* a statement of the entire indebtedness of the Coal River Navigation," and showing what each creditor was entitled to in money on the 25th day of October, 1865. This report has been delayed in consequence of the inability of the Trustees to get together the Bonds and notes of the "Coal River Navigation Company" which were held by parties scattered from Kanawha to New York, and some of which is thought are now in Europe and not withstanding the time which has elapsed since since the sale was made; and the persistent efforts which have been used by advertisement and otherwise to procure all the bonds, several thousand of them are still out standing and unsettled.

All of which *us* respectfully submitted by

JAMES L. CARR for himself
and the other Trustees.

Kanawha County Recorder's Office, 30th July 1867.
This Report of Sale by James L. Carr Trustee was this day presented in this office and thereupon admitted to record.

teste. JNO. SLACK. Recr.

A true copy from the record.

Teste: L. C. MASSEY, Clerk.
Kanawha County Court.

T. D. No. 2 page 237.

(SEAL)

WEST VIRGINIA GENERAL EXHIBIT NO. 5.

AUDITOR'S REPORT.

AUDITOR'S OFFICE,
Wheeling, Nov. 25th, 1862.

The Governor of the Commonwealth having summoned the representatives of the people to meet in Extraordinary Session, on Thursday, the 4th day of December, 1862, the Auditor of Public Accounts, although not required so to do, deems it a duty, as a full fiscal year has passed since the last Session of the General Assembly, to lay before the Legislature the financial condition of the State, at the close of the fiscal year ending the 30th of September, 1862.

The whole amount of Revenue received from all sources, as well as the whole amount disbursed, for the fiscal year ending the 30th of September, 1862, is as follows:

Amount received for 1862	$205,251.80	
Amount disbursed for 1862	165,450.17	
		$ 39,801.63
Add surplus in the Treasury at the close of the fiscal year of 1861		80,355.84
Net surplus in the Treasury, 30th September, 1862		$120,157.47

Table A, will exhibit the amount paid into the Treasury in the fiscal year 1862, by each County of the State, with the miscellaneous payments from Banks, &c.

TABLE A.

Amount received from the following Counties for Tax on Land, Personal Property, License, and Tax on Deeds, &c.

Jackson County	$ 1,428.57	Marshall County	2,772.25
Upshur County	6,249.02	Tyler County	4,651.78
Northampton County	954.09	Wetzel County	4,288.73
Accomac County	3,069.72	Brooke County	929.76
Alexandria County	2,978.47	Pleasants County	2,573.46
Randolph County	160.00	Kanawha County	4,437.18
Barbour County	4,762.16	Taylor County	5,690.15
Tucker County	733.00	Hancock County	2,548.27
Lewis County	9,354.69	Marion County	11,670.59
Wirt County	3,753.37	Preston County	14,199.76
Mason County	8,614.95	Ohio County	25,968.20
Doddridge County	2,228.14	Monongalia County	10,044.09
Wood County	14,557.94	From Banks, Saving Banks, Insurance Companies, Railroads, Notary Publics, Redemption of Delinquent Lands	30,698.07
Harrison County	15,534.19		
Ritchie County	5,789.93		
Putnam County	4,420.25		
Roane County	191.02		
			$205,251.80

Table B, will exhibit the amount expended under the different appropriations for the fiscal year ending 30th September, 1862.

TABLE B.

Salaries of Officers of Civil Government	$ 10,711.35
Contingent Expenses of Auditor's and Treasurer's office	1,653.74
Contingent Expenses of Secretary's and Adjutant General's office	388.65
Board of Public Works	22.25
Salary of Adjutant General	1,403.06
Public Printer	2,888.18
Clerks in Auditor's office	900.00
*Appropriation for Military purposes	11,507.69
Janitor to Executive offices	339.00
Messenger to Executive	159.65
Executive Council	936.00
Adjutant General's Clerk	305.51
Expenses of Elections	376.68
*Civil Contingent Fund	16,884.86
Pay of Judiciary	10,829.43
Contingent Expenses of Courts	2,391.32
Commissioners of Revenue	10,503 47
Expenses of Legislature, July 1st, 1861	99.31
Expenses of Convention, August 6th, 1861	271.41
Sale of Uncurrent Funds	558.79
Lunatics in Jail	3,207.55
Criminal Charges	6,503.43
Sheriff's Commissions	250.66
Lunatic Asylum at Weston, under resolution of 1861	4,371.23
Lunatic Asylum at Weston, under Act of General Assembly of January 14th, 1862	21,684.00
Expenses of Militia of State	2,425.29
Expenses of Convention of Nov. 26th, 1861	16,399.25
Expenses of General Assembly, December 1st, 1861	20,592.90
Delinquent Taxes, 1861	2,430.77
*For Patrols of State	5,404.51
Thomas Hornbrook, per Act of 13th February, 1862	490.33
Coroner's Inquests	28.00
Expenses of General Assembly, 6th May, 1862	4,229.56
*Lunatic and other Asylums of the State	3,722.63
Miscellaneous account for which there was no appropriation	563.31
	$165,450.17

Items marked with a * were disbursed by order of the Executive, by special provisions of the Acts of the General Assembly.

Table C, will exhibit the amount of money received into the Treasury (as near as the Auditor can ascertain) for Capitation Tax, during the fiscal year of 1862. It is also proper to remark that other counties than those mentioned, have paid upon this fund, but owing to the absence of their Delinquent Lists, no proper estimate can be made of the amount.

TABLE C.

Amount of Capitation Tax, less Sheriff's Commission, paid into the Treasury by the following Counties, viz:

Doddridge County	$ 736.56	Monongalia County	$ 1,562.79
Wood County	1,436.76	Hancock County	584.82
Wetzel County	734.60	Wirt County	464.76
Preston County	1,756.27	Ritchie County	755.75
Brooke County	606.93	Pleasants County	388.34
Tyler County	821.67	Lewis County	600.00
Marshall County	1,192.34		
Ohio County	1,921.90		$13,795.44
Upshur County	232.85		

Table D. will show the amount received into the Treasury from Fines imposed by the Courts of the Commonwealth, and like the Capitation Tax, is a Fund for Educational purposes.

TABLE D.

Harrison County	$ 50.00
Ohio County	190.00
Mason County	6.00
Preston County	3.00
Wood County	10.00
	$259.00

Table E, will exhibit the amount paid into the Treasury, for Literary purposes, by the North Western Bank at Wheeling, on stock held by the Board of Literary Fund in that Bank.

TABLE E.

Dividends on 500 shares stock in North Western Bank, at Wheeling, Va.	$ 1,500.00

Table F, will exhibit the whole amount in the Treasury at the close of the fiscal year, 1862, subject to distribution for Educational purposes.

TABLE F.

Capitation Tax	$13,795.44
Fines imposed by Court	259.00
Dividends on Stock	1,500.00
	$15,554.44

The monies received into the Treasury for Literary purposes, are subject to distribution and apportionment under the 79th Chapter, page 416 of the Code of Virginia. The especial attention of the Legislature is requested to this Chapter and its provisions. It will be seen that by the 3d section of this Chapter, that the Auditor of Public Accounts is directed on the first day of January, in each year, upon the order of the Second Auditor, to set apart and pay into the

Treasury, to the credit of the Literary Fund for the purposes of Education, the amount of Capitation Tax received into the Treasury for the preceding year. The Second Auditor is then to apportion it out among the several Counties, Cities and Towns having Corporation Courts, under the provision of the 4th section of the same Chapter. The Second Auditor is to apportion it out by the white population of each County, City and Corporation of the State. Under this rule there would not be much for any County, and much the largest share would go to Counties, Cities and Towns of the Eastern part of the State, that have paid no part of the Fund into the Treasury. I think, therefore, the whole Chapter ought to be repealed.

Table G, will exhibit the amount received from the Banks of this Commonwealth, as a bonus, under provision of Chapter 59, page 348, section 48 of the Code of Virginia, and by that section, is a fund for the payment of the interest on the public debt of the State.

TABLE G.

Bonus from Bank at Fairmont	$ 269.87
Bonus from Merchants' and Mechanics' Bank, Wheeling	4,325.54
Bonus from North Western Bank, Wheeling	2,170.25
	$6,765.66

This section ought to be repealed and this money thrown into the Treasury, for while the law remains, the money arising from bonus now in the Treasury, or hereafter to come into the Treasury, cannot be made available for any other purposes.

Table H, will exhibit the money in the Treasury for Internal Improvement purposes.

TABLE H.

Dividends on 326 shares of Stock in the North Western Bank in the name of the Board of Public Works	$978.00

Table K, will exhibit the amount received from Militia Fines for the fiscal year 1862.

TABLE K.

Militia Fines for 1862	$134.87

At the regular session of the General Assembly of 1861-62, there was appropriated $5,000 to pay expenses of the Militia of the State. Under the appropriation, up to this date, over $3,000 have been paid to Drummers, Fifers, Adjutants, Mustering Officers, &c. The Legislature will see that only $134.87 have been received from Militia Fines altogether.

Under the late order of the Executive calling out the Militia of the State, there have been presented to this office large claims for services rendered under this order, as Drummers, Fifers and other charges, that the Auditor has been compelled to reject, there being no law authorizing the Auditor to pay them; many of these claims

amount to over one hundred dollars for one county. At this rate the sum necessary to meet these claims, if they are to be paid, will need not less than $10,000. It is a subject that the Auditor dare not venture an opinion upon, but hopes that the Legislature will give to it their proper attention.

Having furnished the Legislature with a true statement of the Finances of the State at the close of the last fiscal year, I now beg leave to call the attention of the Legislature to the necessity of some more legislation to enable the Auditor to have the Revenues of the State more properly collected. Without some additional legislation upon the subject, the Revenues of many of the Counties of the State will never be collected. The highest rates of commission now allowed to Sheriffs and Collectors of the Revenue, is 5 per cent. This is far too small a consideration for Sheriffs and Collectors, where there is no other business for the Sheriff and Collector to do. In many of the Counties it would not give the Sheriff or Collector over $150 or $200 for a whole year's work. The Legislature will see at once that an officer, competent to discharge the duties of Sheriff or Collector, cannot be obtained for so paltry a sum. Many of the Sheriffs and Collectors at work, are only temporarily engaged in the work, under the promise from the Auditor that some provision would be made by the Legislature to increase their compensation, and unless the Legislature does increase their compensation, it will be impossible for the Auditor to hold them.

I would, therefore, as a matter of justice, recommend that the Legislature pass a provision increasing the compensation of Sheriffs and Collectors of the tax on Lands and Property throughout the State, to 10 per cent., where the sum collected does not exceed Ten Thousand Dollars, and where the revenue exceeds Ten Thousand Dollars, 7 1/2 per cent. To pass anything but a general law, would only involve the Auditor in trouble, for the Counties of the State are so unequal in the amounts collected, that it would be impossible to pass laws that would equalize the compensation.—Some Counties would pay the Sheriff or Collector more than others. But the great object to be kept in view, is the collecting and paying of the Revenues into the Treasury; it is for the Treasury and not for the Collector, that this recommendation is made. No injustice is done by General Laws: injustice would be done by passing laws for each County. The Sheriffs and Collectors of the State have been exceedingly prompt, under all the circumstances, in paying into the Treasury; and by a provision of law, such as I have recommended, the Auditor is convinced that in many of the Counties that are now paying nothing into the Treasury, Sheriffs or Collectors could be procured, but without some such provision no hope can be entertained of our getting the Revenue of those Counties collected. The Auditor therefore hopes that his promises, heretofore made to many of these officers now engaged in the collecting of the Revenues, will not be

denied them by the General Assembly. If the experience of the Auditor is worth any thing to the Legislature upon any subject, surely it is upon this, the most important of all his duties. I need not assure the General Assembly (for they all know) that the Auditor has labored most assiduously to collect the public Revenues and place them in the Treasury; and I ask the Legislature to pass the provision referred to and make it retrospective, so as to embrace the Revenue of 1862.

The Auditor would most respectfully call the attention of the General Assembly to a provision of law passed by them at the last regular session, Chapter 59, page 55, of the Acts of the General Assembly, passed February 15th, 1862. The law, (as it is short,) will be copied into this report, it is as follows:

Be it enacted by the General Assembly, That the expenses incurred in prosecutions for Misdemeanor, shall be chargeable to the Commonwealth.

The interpretation placed upon this law by Clerks, is that all the expenses incurred by them, such as issuing Subpoenas, Docketing Indictments, Continuance Cases, and such like, in cases of Misdemeanors, are chargeable, under this law, to the Commonwealth, and payable under this law. Many of the Clerks have demanded payment for services, such as above mentioned, of the Auditor.—Even the witnesses for the Defendants have claimed their attendance fees under this law. Fortunately, for the Auditor, the Legislature did not make any appropriation by which prosecutions for Misdemeanors could be paid. The law must be repealed or changed, so as to designate what expenses are meant. The clear presumption is that it only intended to embrace expenses incurred by the Commonwealth in prosecution, and not all the expenses incurred by the Commonwealth and the Defendants; but without some interpretation of the Legislature, this statute must give trouble to the Auditor. If it is the intention of the General Assembly that the Commonwealth is to be chargeable with all the expenses of witnesses, jailor's fees and other expenses, in drunken riots and peace warrants, the Auditor hopes the Legislature will so frame a law that will make it plain what charges are to be paid and what not to be paid by the Auditor.

The attention of the General Assembly is especially called to the Act of the General Asembly, passed February 10th, 1862, called the "Military Fund Bill." The first section provides that the Governor of the Commonwealth shall receive from the United States, the monies heretofore advanced by the State for military purposes, and place them to the credit of the State Treasury. Nothing has been received into the Treasury of the State from that fund. The second section provides that in addition to the monies so to be collected and placed to the credit of the State, as in the first section

provided for, the additional sum of Forty Thousand Dollars was appropriated to aid in the further organization, arming, transporting and supporting the military forces of the State, in the service of the United States, or that might hereafter be mustered into the service of the United States. Under this provision, the Executive has paid $11,507.69 since the regular session of the General Assembly. In the opinion of the Auditor, this law ought to be repealed. Surely there can be no use for the State to be paying bills belonging to the National Government, when she has here, at the seat of Government, an officer whose business it is expressly to provide for the support, arming, equipping and transporting of her own troops. While this law remains, it is only a temptation to persons who cannot obtain payment for their claims of the regular army officers, to hope for relief under this provision. And with all due deference to the Legislature, the Auditor would venture the opinion that $50,000 already paid in aid of this object by the State, and not likely to be returned again, is quite enough for the paying Counties of the State.

The Legislature will see that for Lunatics in Jail and Lunatic Asylum, there was paid during the last fiscal year, $6,930.18. The Lunatic Asylum at Weston, Va., being now nearly completed, ought to be furnished as rapidly as possible, so that the lunatics of the State might be better provided for than many of them now are, by being confined in some cell in the Jails of the State. A large number of the female lunatics of the State have been kindly provided for at the Lunatic Asylum, at Columbus, Ohio. The generous offer of the State of Ohio, to take the female portion of these afflicted of our citizens, and provide for them, is deserving the thanks of the Legislature. Without this provision, many of them must have suffered sorely, if indeed, death had not taken them away. The State can now afford to make ample provision for them, and it is to be hoped that the General Assembly will not omit this important duty to the afflicted lunatics of the State.

As a matter of interest, I herewith present a Table showing the several amounts paid by each of the proposed Counties of the New State, into the Treasury of the State. This Table is taken from the Report of Auditor J. W. Bennet, for 1859-60. This Table shows only the Tax on Land, Property, Capitation and Licenses. To this may be added, at least, One Hundred Thousand Dollars more, for Taxes on Banks, Railroads, Express, Insurance and other companies, which would give a grand total of at least Six Hundred and Twenty Thousand Dollars, paid into the Treasury of the State by the Counties of the proposed New State, in 1860.

Monongalia County	$ 21,211.61
Hancock County	5,967.85
Brooke County	8,838.03
Ohio County	43,562.75
Marshall County	14,388.68
Wetzel County	6,036.41
Marion County	18,956.80
Preston County	14,252.13
Taylor County	9,755.61
Pleasants County	3,940.95
Tyler County	6,721.24
Ritchie County	7,642.86
Doddridge County	4,946.32
Harrison County	26,339.69
Wood County	20,684.65
Wirt County	3,411.71
Jackson County	10,155.98
Roane County	4,573.07
Calhoun County	2,150.60
Gilmer County	4,587.45
Barbour County	10,654.64
Tucker County	2,147.18
Lewis County	10,074.01
Braxton County	6,895.90
Upshur County	8,583.82
Randolph County	8,753.32
Mason County	18,892.00
Putnam County	8,600.64
Pocahontas County	$ 8,013.56
Kanawha County	25,827.92
Clay County	1,351.50
Nicholas County	6,286.24
Cabell County	14,050.44
Wayne County	7,402.27
Boone County	4,040.22
Logan County	3,360.45
Wyoming County	2,473.31
Mercer County	5,915.35
McDowell County	970.10
Webster County	not reported
Fayette County	6,682.98
Raleigh County	3,712.21
Greenbrier County	28,662.74
Monroe County	27,680.59
Pendleton County	8,622.70
Hardy County	20,128.07
Hampshire County	26,253.63
Morgan County	5,901.11
	$520,061.29
Add from Banks, Railroads, Express and other Companies of the State.	100,000.00
	$620,061.39

By reference to Table B, exhibiting the whole amount disbursed by the Auditor in the fiscal year, 1862, the Legislature will find the following items paid by the Auditor that do not properly belong to the ordinary expenses of the State, and in looking to a time of peace, will not be counted as part of the expenses of State to be provided for.

Table No. 1 will show the items referred to in Table B.

TABLE NO. 1.

Paid upon the order of the Governor for extraordinary purposes, as follows:

For Military purposes for the Government of the United States...	$11,507.69
Civil Contingent Fund	16,884.86
Pay of Patrols of State	5,404.91
Pay of Lunatic and other Asylums of State	3,722.63
	$37,520.09
Appropriation for Lunatic Asylum at Weston	21,684.00
Appropriation for the Convention to frame Constitution of New State	16,399.25
	$75,603.34

Deduct this amount from the sum disbursed in the fiscal year, as shown by Table B, as follows:

Whole amount disbursed in the year 1862	$165,450.17
Deduct as stated in Table No. 1	75,603.34
	$89,846.83

Eighty-nine Thousand Eight Hundred and Forty-six Dollars and Eighty-three cents ($89,846.83) is the actual expenses of the State if reduced to a state of peace; and the amount ought to be still further reduced, when the Legislature remembers that during the past fiscal year there was one Regular and One Extra Session of the General Assembly. The Legislature will see by referring to the Table enumerated, that there was a little more than one-half of the money disbursed in 1862, paid for extraordinary purposes, and shows the actual expenses of the State, for the fiscal year ending September 30th, 1862, at only $89,846.83. It will be remembered that this expenditure was not alone for the counties in the proposed New State, but embraces payments made for Alexandria, Accomac and Northampton counties.

If these figures can be relied upon, and when it is recollected that only twenty-nine of the forty-eight counties of the proposed New State, have as yet, paid anything into the Treasury, is it not clear, that with the New State formed and peace restored, the taxes could be reduced one-half, and then produce more revenue than would be required for an economical administration of the State. And here let me state that there will be outstanding and uncollected, due the State from Sheriffs, Collectors, and other persons, of the Counties of the proposed New State, when the State shall have been formed, a sum of not less than $200,000. This, with the balance in the Treasury, will give a sum almost equal to the whole expense of the erection of the Public Buildings of the New State. In this connection permit me to call the attention of the General Assembly to the necessity, if a New State is formed, to some legislation necessary to vest the power in the Courts of the New State to recover the outstanding balances in the hands of Sheriffs, Collectors, Banks, Saving Banks, Railroad Companies, Express Companies, Insurance Companies, Notary Publics, Clerks of Courts, Bridge Companies, Toll Gathers, Superintendents of State Roads, Canal Companies, Escheators or Escheated Lands, and other property, within the boundary of the proposed New State; as also the right to receive dividends on stocks standing in the name of the Commonwealth, Literary Fund, or Board of Public Works, in Banks and other Corporations, within the New State; as also the power to control these stocks until a settlement can be had with the Old State. Would it not be well for the Legislature to repeal the Acts of May last, making an appropriation of One Hundred Thousand Dollars to the New State, and re-enact it, so as to avoid the last clause requiring the New State, in its settlement with the Old State, to account for the One Hundred Thousand Dollars. The money in the Treasury, out of which this One Hundred Thousand Dollars is appropriated, was collected from the Counties of the New State and the Old State has

nothing to do with it. The settlement with the Old State ought to go back to the beginning of the rebellion, and settlement made from that time, if so, the New State is entitled to, and ought to have, not only the One Hundred Thousand Dollars, but all that shall be in the Treasury at the time of its admission. An Appropriation Bill to that effect ought to be framed. The money belongs to the Counties of the New State, and by any just rule, ought to remain with them. By this rule and with the uncollected balances due the State from Counties within the proposed New State, the New State would have the money ready to put up all of her Public Buildings, or nearly so.

The State has about Four Hundred Thousand Dollars worth of stock in the North Western Bank at Wheeling, standing in the name of the Commonwealth, part in the name of the Board of Public Works, and part in the name of the Literary Fund. The State has Fifty Thousand Dollars of stock or loan, in the name of the Literary Fund, in the Bank of Fairmont, and from Fifty to Seventy Thousand Dollars in the Exchange Bank at Weston, making about Five Hundred Thousand Dollars in all. She is also a stockholder in the improvement of the Kanawha river, how much, the Auditor does not know. The State is the owner of several important turnpike roads in the North-Western part of the State, and is a stockholder in many other turnpike and bridge companies. The power to control and use this stock, before and pending, the settlement with the Old State. Some legislation therefore, upon the subject, will be necessary.

Under the provisions of the Bill now pending before the Congress of the United States for the admission of the New State, the Convention that framed the Constitution for the New State, will have to again assemble, and it is respectfully submitted, whether the Legislature ought not to make a small appropriation to meet the expenses of that body while sitting.

All of which is most respectfully submitted.

SAMUEL CRANE,
Auditor of Public Accounts.

DEFENDANT'S GENERAL EXHIBIT NO. 6, A, B, AND C.

(Being Extract From the First Executive Journal of Governor Boreman, 1863.)

Special Message of Governor Arthur I. Boreman to the Legislature of West Virginia.

A.

Executive Department,
Wheeling, July 28th, 1863.

Gentlemen of the Senate and House of Delegates:

I have received from His Excellency, F. H. Peirpoint, Governor of Virginia, the enclosed communication and the accompanying report of S. P. Hildreth, Esq., on the subject of the Auditor's office and the state of the finances of the State of West Virginia at the time of the organization of the State of West Virginia, which I submit to you for your consideration and action. The report of Mr. Hildreth contains a statement showing as nearly as he could ascertain, the balance in the treasury on the 19th day of June, 1863, which is to be transferred to this State under the provisions of the Act of the General Assembly, passed February 4th, 1863: and also a statement showing the amount of money paid into the treasury by the counties of the State of Virginia outside the boundaries of this State, and the amount drawn therefrom for those counties, and the balance in their favor. The report also shows that some of the appropriations made by the General Assembly of Virginia have been overdrawn, and, as the money in the treasury after paying the appropriations, is the property of this State, it will be necessary for the Legislature to make an appropriation to meet the amount overdrawn, and thereby legalize what has been done. It will also be seen that many of the appropriations have not been exhausted.

It will also be seen from the communication of Governor Peirpoint, that there is a large number of claims against the State of Virginia, held by persons within the boundaries of this State, for the payment of which no appropriations have been made: and that there are no such claims held by persons in the remaining State of Virginia. As the balance in the treasury is to be transferred to this State, it may

become necessary to make provision for the payment of those claims due our own citizens, when they are ascertained. At present, I am unable to state their character or amount, but would suggest that the subject be referred to th proper committee to inquire into and report thereon, and the several sums that it is proper, should be paid out of the treasury in discharge of the claims referred to.

It will also be seen from the communication of Governor Peirpont, that he appreciates fully the difficulties that might occur in the absence of the books, papers, &c., of the Auditor's office, or of copies of the same, and, therefore, he proposes to leave those books, papers, &c., in the hands of the officers of this State for the present, but requests that you pass an Act directing that they be all delivered to the proper authorities of the State of Virginia, if they shall be demanded. He does not know that they will or will not be demanded. I recommend that such an Act be passed, and, in view of the contingency mentioned, and of the very great injury that must result to this State, if we should be left without those books, papers, &c., or copies of them, I recommend that provision be made to have copies of them made, in the event that they shall be called for by the proper authorities of Virginia.

By section 6th of the Act passed February 3d, 1863, page 65, of Acts 1862-1863, these books, papers, &c., were directed to be copied, and the copies to be delivered to the Governor of this State "when his election should be officially declared:" and I am informed that the appropriations of the same session of the General Assembly, included a sum sufficient, and was enlarged for the purpose (although not expressed) of copying the same.

But from some cause, unknown to me, the copies have not been made, and, of course, the money appropriated to pay for the same passes to this State by the Act transferring the balance in the treasury of the State of Virginia. The money intended to be used for this purpose thus remains in the treasury.

As these books, papers, &c., or copies of them, are needed almost daily for the purpose of ascertaining balances due from collecting officers, making settlements, &c., I hope the Legislature will take speedy action on this subject. I may say that had it not been that my attention, as well as the attention of the Legislature, has been given to military matters for a few days past, the necessity for which is known to all, this communication would have been made at an earlier day.

LETTER OF GOVERNOR F. H. PEIRPOINT, SENT TO GOVERNOR ARTHUR I. BOREMAN, AND BY HIM TRANSMITTED TO THE LEGISLATURE OF WEST VIRGINIA WITH HIS SPECIAL MESSAGE OF JULY 28, 1863.

B.

Wheeling, July 22d, 1863.

To his Excellency A. I. Boreman,
Wheeling, West Va.:

Sir,—By act of General Assembly of Virginia, passed February 3d, 1863, page 64, it is provided among other things, that all property and debts due the State lying within and owing from persons resident in the boundaries of the new State, should belong to the State of West Virginia, without further transfer. Provision is made also in the same act, requiring the Auditor of Public Accounts of the State of Virginia to procure fit blank books and transcribe therein true copies of all the records, &c., which may be useful to the State of West Virginia. These copies were to be certified by the executive and "**delivered to the Governor of West Virginia, when his election was officially declared,** for the use of said State of West Virginia." There was also an act passed on 4th of same month (page 68) appropriating one hundred and fifty thousand dollars to the State of West Virginia, and also the residue in the treasury after certain deductions therein named.

The Auditor and Treasurer of the State having resigned on the 19th day of June, 1863, it became my duty to appoint successors. I was informed that the copies of the records required by the General Assembly for use of West Virginia had not been made out by the Auditor of Public Accounts—nor had any statements of moneys received and expenditures made, &c., in accordance with the second section of last Act, been made, to ascertain the proper payment to be made to West Virginia out of the Treasury. I therefore directed the Treasurer and Auditor, by the assistance of Mr. Hagans, the Secretary of the Commonwealth, to examine the books, &c., of the Auditor's office and report to me their condition, with a view to ascertain whether any copies were needed of books and papers, &c. Also to ascertain and make statements in regard to the money in the treasury and sources whence derived, &c.

The Treasurer, S. P. Hildreth, furnished me the enclosed report, which I herewith send you.

I suppose it will involve the State of West Virginia in great difficulty to arrive at its rights, under the Acts of Assembly, above referred to, without the original books and papers for reference.

I find there is a number of claims against the State, held by persons in the bounds of the new State, which cannot be paid without further appropriation, the money appropriated, applicable to that subject, having been all expended. You will see from Mr. Hildreth's report the appropriations which have been overdrawn and the amounts. There is also a large number of accounts not audited, connected with the delinquent list and other papers, and with this is the unascertained school fund belonging to counties. (See report.)

There are but four counties in the State of Virginia from which any revenue has been derived. There are no unsettled claims from that sections that I am aware of. If there are any, I can have them arranged, if it is by further legislation. But as the money which is now in the treasury, derived from the counties in West Virginia, will be handed over to the treasury of the State, and as the officers cannot pay a portion of the claims without further legislation, and as it would subject the parties residing in the west to great inconvenience and delay to await legislation in Virginia, and then bring their claims there for payment, it occurs to me that this business should all be settled here by such legislation as may be necessary. Mr. Hildreth states that some of the delinquent lists are not returned, and others incorrect. It occurs to me that there might be difficulty on the part of the State of Virginia, now that the State is divided, to enforce the returns, &c., that may be necessary to settle the accounts with the different counties in regard to the literary fund derived from capitation tax.

I am anxious for the welfare of the new State of West Virginia. I desire to furnish the greatest facilities for securing her interests, and in view of that, I propose to leave the books, papers, &c., with you for reference and settlement, asking that your Legislature will pass an Act directing that they all be delivered to the proper authorities of the State of Virginia when demanded. They may be demanded and may not. I have no authority to say that they will not.

With sincere desire for the future welfare of your new State of West Virginia,

I am yours, &c.,

(Signed) F. H. PEIRPOINT,

Governor.

STATEMENT MADE TO GOVERNOR FRANCIS H. PEIRPOINT BY MR. SAMUEL P. HILDRETH, CONCERNING THE FINANCIAL TRANSACTIONS BETWEEN THE NEW STATE OF WEST VIRGINIA AND THE COMMONWEALTH OF VIRGINIA, JULY 14, 1863.

C.

Wheeling, W. Va., July 14, 1863.

His Excellency F. H. Peirpoint:

Dear Sir,—In accordance with your request, I would respectfully report that, with the assistance of Messrs. L. A. Hagans and Dr. Webb, I have examined the papers, vouchers, and memorandums of accounts kept in the Auditor's office of the Commonwealth since the restoration of the Government.

In a book called "Sheriff's Accounts," we found where the amount of taxes reported annually by Commissioners of the revenue were charged to the Sheriffs of the Commonwealth, we compared the Land and Property Books with the accounts as charged, and found the following errors:

Sheriff of Brooke county is overcharged tax on town lots, in 1861, $21; Sheriff of Putnam county, overcharged tax on town lots, $252.80, in 1861; Sheriff of Jackson county is charged tax on personal property, $754.98; it should be $2,241.07; Sheriff of Upshur county is charged tax on personal property for 1862, $506.27; it should be $2,552.50. This Sheriff, according to the account, had paid his indebtedness to the State, and his account has been closed.

Sheriff of Gilmer county is charged tax on lands, $3,093.16; it should be $3,039.16.

Sheriff of Kanawha county is charged tax on town lots, $9,078.94; it should be $1,456.32, and $3, in same account, an undercharge in tax on personal property. For some of the accounts we could not find any land books or property books to compare with.

We next examined a book called "License Book" in which was charged the taxes on licenses. In this we also found some errors, the largest of which was $20, and we concluded to take no account of them.

Next came a book (without any index) called "Railroads, Banks, Express and Insurance Companies," in which was charged the taxes on dividends; in this we found that on the 14th of March, 1863, the Sheriff of Ohio county collected from three Institutions (here in the city) taxes amounting (less his commissions) to $866.59. The whole amount was credited to each of the institutions, in addition to which they were credited with commissions, 5 per cent.

While on the subject of licenses, we omitted to mention that in some instances the Sheriffs owed largely for 1861, while they were over credited for 1862. The proper plan, we think, would have been to have made the Sheriffs pay all that they owed for one year before crediting them anything for the taxes of a subsequent year.

We have no doubt that a number of the accounts in both the sheriffs and license tax books could be closed if they were credited with their delinquent lists and commissions. It is true that owing to the disturbed state of affairs in the State, a number of delinquent lists have not been sent to the office, and it is also true that those which have been sent are not properly credited. After a great deal of patient examination we failed to understand the subject of delinquent lists. In some instances we found them credited to the account, direct, while in others the accounts were credited with the Auditor's warrant for the amount, which was charged to an appropriation called "Erroneous Assessments and Delinquent Tax," in a book called "Journal," (we could find no such appropriation,) whether or not this is the correct plan we are not unable to say.

In a book called "Journal" to which we have referred, we found the amount in the Treasury on the 1st October, 1862, to have been	$120,159.01
Amount received since that time to 19th June, 1863	252,529.71
Total	$372,688.72

Out of which the following have been paid:

Salaries of Officers of Civil Government	$ 6,264.10
Salaries of Judges and Atty's for Commonwealth	12,091.71
Contingent Expenses of Court's Commonwealth	1,635.65
Criminal Charges	8,078.24
Civil Contingent Fund	17,052.57
Militia of State	1,785.45
Lunatics in Jail	3,126.73
Public Printing	1,626.11
Patrols and State Volunteers	134.00
Expenses of Auditor's and Treasurer's Office	1,469.74
Expenses of Secretary and Adj't General's Office	105.68
Contingent Expenses Adj't General's Office	430.67
Pay of Auditor's Clerks	900.00
Pay of Adjutant General's Clerk	374.97
Pay of Treasurer's Clerk	100.00
Pay of Adjutant General	862.27

Pay of Janitor of Executive Offices	225.00
Expenses of Elections	33.82
Coroner's Inquests	70.85
Military Purposes	1,144.03
Lunatic and other Asylums	2,377.83
Erroneous Assessments and Delinquent Tax	1,650.54
Miscellaneous Appropriations	518.05
Expenses of General Assembly 4th December, 1863	18,322,67
Expenses of Board of Public Works	6.50
Expenses of Convention 26th November, 1861	25.00
Expenses of Convention 12th February, 1863	7,000.00
Special Appropriations	1,146.91
Expense of Collecting Arms	86.30
Weston Lunatic Asylum	40,000.00
Educational Purposes	11,984.72
Commissioners of Revenue	6,778.58
	$147,408.89
Balance in Treasury 20th June, 1863	$225,279.83

Which is deposited in the following banks:

North Western Bank, Wheeling	$ 94,785.59
North Western Bank, Parkersburg	27,776.62
North Western Bank, Wellsburg	9,399.80
Merchants and Mechanics Bank, Wheeling	79,002.35
Merchants and Mechanics Bank, Clarksburg	7,271.16
Merchants and Mechanics Bank, Morgantown	7,044.55
	$225,280.07

Observe a difference of 24 cents between the amount in Bank and what there should be. We hunted for the cause of the difference, but were unable to find it.

The following appropriations are overdrawn:

	Amts. paid.	Appropriated.	Overdrawn.
Judiciary	$12,091.71	$10,000.00	$2,091.71
Criminal Charges	8,078.24	6,000.00	2,078.24
Lunatics in Jail $3,126.73			
Lunatics other Asylums 2,377.83			
	5,504.56	5,000.00	504.56
Public printing	1,626.11	1,500.00	126.11
Expense of General Assembly	18,322.67	17,000.00	1,322.67
			$6,123.29

In the appropriations of Salaries of Officers of Civil Government an item appears. Voucher No. 945, S. Crane's salary is charged $466.66, which is an error; it should be $441.95. He has overdrawn $24.61. In pay of Auditor's Clerks, Vouchers No's 948 and 949, it appears that both the Auditor's Clerks have been paid from April 1st to July 1st, 1863, overdrawn in one case, $22,23, and the other, $11.12. The following table will show the amount yet unexpended of the different appropriations:

	App.	Expended.	Balance.
Salaries officers Civil Government	$12,500.00	$ 6,264.10	$6,235.90
Contingent expenses Courts Commonwealth	5,000.00	1,635.65	3,364.35
Commissioner's Revenue	10,000.00	6,778.58	3,221.42
Civil Contingent Fund...$15,000.00			
Credited by Gov. Peirpont 2,630.43			
	17,630.43	17,052.57	577.86
Contingent expenses Auditor and Treasurer's Offices	2,500.00	1,469.94	1,030.96
Pay Auditor's Clerks	1,500.00	900.00	600.00
Pay of Adjutant General's Clerk	625.00	374.97	250.03
Janitor Executive Offices	400.00	225.00	175.00
Pay Treasurer's Clerk	200.00	100.00	100.00
Expenses of Elections	200.00	33.82	166.18
Coroner's Inquests	100.00	70.85	29.15
Pay of Adjutant General	1,200.00	862.27	337.73
Expenses taking care of arms	1,000.00	86.30	913.70
Contingent exp. Adjt. Gen. Office	500.00	430.67	69.33
To defray expenses of sick and wounded soldiers	2,000.00	.....	2,000.00
Vaccine Agent	500.00	.....	500.00

The amount received from the counties outside the State of West Virginia is as follows:

From Alexandria County	$16,920.91
From Accomac County	6,370.28
From Fairfax County	219.75
From Northampton County	1,063.65
	$24,574.59

Paid out in same counties:

Members General Assembly	$4,501.60	
Convention August, 1861	128.00	
Salary Judge Circuit Court	2,675.90	
Lunatics	4,420.69	
Commissioners Revenue	1,332.75	
Courts	98.00	
Criminal charges	1,479.79	
		$14,636.73
Receipts over expenditures		$ 9,937.86

It would require too much time to endeavor to ascertain the amount set aside by law for educational purposes, (which is the capitation tax,) as it would necessarily involve another examination of delinquent lists, and we doubt very much that it could be ascertained correctly. There has been no capitation tax account kept in the books. In conclusion we would say that if the Legislature of West Virginia would pass an Act by which you could get possession of them whenever you require it, we would deliver the books to the Executive of West Virginia, so that the accounts in them might be properly settled, for they can be of no manner of use to you unless they were demanded by the General Assembly of Virginia hereafter.

Very respectfully,

(Signed) S. P. HILDRETH.

Other Evidence and Proceedings Relating to the Several Paragraphs of the Decree and the Case Generally.

[*Vol. 1. Nov. 16, 1908. Plan for marking Exhibits.*]

The Special Master: I will mark the first paragraph of the decree A, the second B, and so on. So I will say the first exhibit offered will be "Plaintiff's Exhibit A 1", and the one that is now offered will be "Plaintiff's Exhibit B 1", B representing the second paragraph. 56

[*Vol. 1. Nov. 16, 1908. Procedure as to objections.*]

The Special Master: Let me see if I get this right. I understood Attorney General Anderson to state that they were willing to agree to adopt a suggestion made by Mr. Spooner with reference to the time when the objections should be finally settled and passed upon, but they would much prefer as we go along for you to 13 make such salient objections as occur to you, without stopping to discuss them, so that they might be in a way advised, but not foreclosing you from raising other objections, and leaving all the objections to be finally passed upon. Do I get your meaning correctly?

Mr. Anderson: That is satisfactory. That is a fair statement of our position.

Mr. Spooner: Then I did not understand the gentleman.

The Special Master: I suppose the idea of the Attorney General is that if there is something that it is quite obvious ought to be objected to, they ought to have your objection at the time, in order to save time and make progress, because they might pursue another course if they knew a certain thing might be objected to which was obviously inadmissible. Do I state it correctly? 14

Mr. Anderson: Yes; that is satisfactory.

The Special Master: Then we will have that understanding, that the case may go on and evidence may be introduced by either party to be subject to all objections, objections to made *de bene* so far as they may occur to counsel as they go along, but not to be argued or discussed, though perhaps the grounds should be set forth; that the making of an objection of that sort is not to foreclose either party making any objections they may have to make ultimately, the ques-

tion of objections to be passed upon later by the Master with the understanding that if testimony is excluded coming from either side, such side will be given fair opportunity to submit other evidence bearing upon that same point, as they may be advised is necessary in order to protect their rights. Either party or both parties will have full opportunity to bring into this case any evidence that has any legitimate connection with it or any legal bearing upon the issues, that is, within reasonable limits. Now, does that state the understanding satisfactorily?

[*Vol. 1. Nov. 16, 1908. Plaintiff's Exhibit H-1. Auditor's Report 1860-1861.*]

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TESTIMONY ON BEHALF OF THE COMPLAINANT.

In reference to Exhibit H 1.

Mr. Conrad: We now offer in evidence, if your Honor please, the biennial report of the Auditor of Public Accounts for the years 1860 and 1861 of the Commonwealth of Virginia. It was transmitted by the Auditor of Public Accounts to the Governor in November 1861. It gives the statement by counties, each county in the state, and a summary at the close, showing the number of square miles, the personal and real property, the number of slaves taxed, and so on.

Mr. Mollohan: Whose Auditor was he?

Mr. Conrad: He was a native of West Virginia, and perfectly loyal to Virginia and to the Confederacy until that calamity occurred in 1865. Then he returned to the State of West Virginia which had become a state in the meantime and became just as loyal to West Virginia as he had been to Virginia; and he appeared on behalf of West Virginia and made another report of this very debt, some years later. That is as much of his biography as I think appropriate to the submission of this book and the suggestion of my brother.

Mr Mollohan: At the proper time, we expect to object to the book.

Mr. Conrad: Do you object to the book now? It is an official publication.

Mr. Mollohan: We object now, because he is nobody's Auditor.

The Special Master: The book is admitted, subject to objection, under the agreement we have already entered into: 86
and if the counsel for West Virginia see fit at this time to indicate in a general way the character of their objection, it is perfectly open to them to do so. That will give notice to the other side.

Mr. Mollohan. We rely on a number of documents which we will present at the proper time.

The Special Master. Very well; it is admitted *de bene*, according to the understanding.

Mr. Anderson. I do not suppose you object to this as being the Auditor's report, but you object to the Auditor's report being competent evidence.

Mr. Mollohan. No; he was no Auditor.

Mr. Anderson. He was the Auditor of the Richmond Government, which our friends claim was only a *de facto* government of Virginia at that time, but still it was a government. The Supreme Court of the United States has decided it was a government.

Mr. Mollohan. This was before the State of West Virginia was formed.

Mr. McClintic: Samuel Gray was the Auditor of Virginia at that time.

Mr. Anderson. A portion of this is the Auditor's report for 1860, when he was the Auditor of the undivided State of Virginia.

Mr. Mollohan. Not in 1861.

Mr. Anderson. Part of this is for 1860. These items here are for 1860, the ones we rely on chiefly, when he was undoubtedly the Auditor of the undivided State. 87

Mr. McClintic: He was only a private citizen, making a report.

Mr. Anderson: Not in 1860.

Mr. McClintic: He did not make the report until 1861.

The Special Master: I suppose the significance of the information depends upon whether or not you both agree upon the facts as stated. If you disagree, then the question comes as to what is the best evidence of the facts.

Mr. Mollohan: We disagree as to this statement. He has our counties all wrong. If you take the map to-day and measure it, you will see it is wrong. He evidently arrives in that book at his area by taking the acreage of land and supposing that every acre charged represented an acre of territory. Our land is charged sometimes three and four times over.

The Special Master: All these suggestions will be entitled to weight, so far as they have weight in impeaching the validity of any computations that may be made.

Mr. Spooner. I was not trying to impeach the witness.

The Special Master: I understand. I remember now the allegations of the bill, and of course the facts stated are quite diverse.

Mr. Anderson: I do not think there will be any controversy between us as to the area. It is a question that cannot be accurately determined from those records. It can only be approximated. The witness took it from the best sources of record he could find.

The Special Master: This will make a start on it, anyway.

Mr. Spooner: Here is a map of West Virginia, prepared by 89
the Auditor of Virginia before the State was divided. It gives the number of square miles of the old State of Virginia as 61,352 square miles.

Mr. Anderson. West Virginia is only 24,000 square miles instead of 45,000.

The Special Master: That book will be marked, "Plaintiff's Exhibit H-1".

(The book referred to, entitled, "Biennial Report of the Auditor of Public Accounts, 1860 and 1861," is filed herewith, marked "Plaintiff's Exhibit H-1.")

Mr. Robinson: That has evidence in it on all the paragraphs of the decree.

Mr. Anderson: If the Master please, we have no further evidence to offer at present on behalf of Virginia.

[*Vol. 6. May 7, 1909. Defendant's Balance Sheet of Receipts* 515
and Disbursements.]

Mr. McClintic: If your Honor please, I wish to make a short statement. We desire to file, as soon as we get the copies here—and we expect to have them ready by noon today—a statement of all the cash receipts and disbursements of the State of Virginia from March 19, 1823 to January 1st, 1861, beginning with the balances that stood in the various funds on the books of Virginia March 19, 1823; the total of which shows $85,002,130.72. Then we have the counter part of that. I spoke of receipts and disbursements; I should have said those figures represented the receipts. Then we want to show the disbursements from March 19, 1823 to January 1st, 1861, having of course the same balance, a general detail of all those things. This copy that I have here is a preliminary copy. As I have
said, we will have complete and correct copies here, probably 576
by 12 o'clock.

The Special Master: In what way will that affect the schedules already put in?

Mr. McClintic: We want to show by that the character of the examination made by Mr. Dixey and his assistants in this case, that he took up each item from books of original entry, beginning March 19, 1823 and running to January 1st, 1861, and this is the complete balanced account which shows, as they say in accountants' language, control of the figures during that time.

Mr. Anderson: I do not understand that this paper Mr. McClintic has referred to has been introduced in evidence.

Mr. McClintic: Not yet; but we will introduce it as soon as the copies of the same, to which I have referred, arrive. I have simply been making a statement from this copy that I have.

Mr. Anderson: We have not seen it and of course we reserve the right to object to it.

The Special Master: But there is no objection to his making the statement?

Mr. Anderson: Not at all. We simply reserve our rights.

By Mr. McClintic:

Q. Please look at this paper and state what it is (handing witness paper).

A. I am holding a carbon copy of the statement prepared by me and under my direction, showing balances of the various funds March 19, 1823; the total receipts of the Commonwealth of Virginia from that date to January 1st, 1861; the total disbursements from March 19, 1823, to January 1st, 1861; and the cash balances in the various funds at the end of that period; together with the supporting schedules showing the details of those receipts and disbursements. 577

Q. Does that account show an absolute balance between the receipts and disbursements?

A. Yes, sir.

Q. And you believe it to be absolutely correct?

A. I have verified it, yes.

Mr. McClintic: We will offer it, then, as soon as we get the copies.

[*Vol. 6. May 7, 1907. Nature and Effect of agreement between accountants.*] 726

Mr. Spooner: Your Honor has suggested that these accountants get together and reconcile differences. I suppose that means mathematical differences?

The Special Master: Certainly.

Mr. Spooner: That does not go to any principle?

The Special Master: Not at all.

Mr. Spooner: And if they cannot agree on mathematics, then it will be referred to you. 727

The Special Master: The suggestion is this. The way these accounts have been stated, there are a good many items, which, in the first place, do not appear to be quite identical. In the second place, there seems to be some controversy as to the amount. Now,

the great bulk of those things, I suppose, if the accountants get together, can be reconciled and agreed upon, so far as they are able to agree upon them. That will eliminate them as subjects of controversy in the various schedules. So far as they can not agree upon them, I will hear the controversy as to those particular items, and of course pass upon the question of amount myself.

Mr. Spooner: That is where the items are identical, while they differ in total?

The Special Master: Yes; but so far as the principle involved that underlies either schedule or anything the accountants submit is concerned, there is nothing the accountants will do between themselves that will bind the parties, so far as I am concerned.

Mr. Spooner: Before you decide at all any of those things, either party will be heard.

The Special Master: Absolutely; yes. I will hear you in regard to everything in controversy between the parties, involved in every schedule.

Mr. Spooner: That is what I assumed.

The Special Master: Certainly; the parties are to be heard. The only purpose of the accountants getting together is to eliminate elements of controversy in detail. Of course we could 728
sit here and try out each individual difference, but that would be interminable, and entirely unnecessary if the accountants between themselves can agree.

[*Vol. 7. July 2, 1909. Introduction of Official documents into evidence.*]

Mr. Moon: At that meeting in New York I understand we 1016
are to be allowed to introduce official documents that have a bearing—

The Special Master: Each party will be allowed to introduce anything that is not already in; but the auditor's books are in the case already, the acts of assembly are in, and all official records are in, as I understand it. All the acts of West Virginia and Virginia that have any relation whatever to any part of this controversy, are a part of this controversy and will be in. Does that cover your ground?

Mr. Moon: I am not sure that they are all in.

Mr. Harrison: I do not know that we have referred to all of the auditor's reports.

The Special Master: I will say this. Now, after looking the case over, after the case is printed, if either counsel discovers that

they have left out anything that is important, I will re-open the case and give them an opportunity to put it in. I appreciate, of course, that we have gone very rapidly here to-day, and it may possibly be that counsel have inadvertently overlooked something. I do not say that I will open the case for any thing trivial, and of course counsel would not ask that, but if there is something of importance that you find you ought to be heard on and ought to have evidence on, the case will be opened, and you will be given an opportunity to be heard. That may be a little unusual, but I think that is the proper thing to do in a controversy of this magnitude. So you need not either of you feel that you are by any inadvertence prejudicing either side. Is that agreeable to both of you?

Mr. Anderson: Yes, sir.

Mr. Conley: Yes, sir. 1017

Mr. McClintic: It applies to both sides?

The Special Master: Certainly; it applies to both sides.

[*Vol. 1. Nov. 16, 1908. Direct Examination of A. G. Potter. His qualifications.*]

TESTIMONY ON BEHALF OF THE COMPLAINANT.

Under Paragraph 1 of the decree.

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ARTHUR G. POTTER,

was called as a witness for the complainant, and being duly sworn by the Special Master, testified as follows:

By Mr. Anderson:

Q. What is your professional occupation, Mr. Potter?

A. Public accountant.

Q. State how many years experience you have had as a public accountant.

A. Eight years.

Q. What has been the character of that experience and how extensive has it been?

A. It has extended over general mercantile accounting mat- 27
ter, manufacturing and financial.

Q. Have you done work of that kind in connection with litigated cases?

A. I never did.

Q. Have you any diploma or certificate or license of an official character from any government?

A. I have a certificate of the Regents of the State of New York, making me a certified public accountant.

Q. What are the requisites for granting that certificate? Is there any examination made of the party?

A. There is an examination in the theory of accounts, practical accounting, commercial law, and auditing—four subjects.

Q. Have you had experience, and if so what, in auditing accounts of corporations, firms or individuals?

A. I was an auditor for five years prior to entering the duties of a public accountant. Since that time my work has been of a general public accounting nature, which includes auditing as well as other lines of accounting work.

Q. Please state to the Master whether you have made any investigation—

The Special Master: Just one moment, Mr. Anderson. I do not know whether the counsel for West Virginia raise any question as to the qualifications of the witness. If they do, it will be open to them now, I suppose, to cross examine Mr. Potter upon that point. I do not know that they will raise any question.

Mr. Spooner: No.

The Special Master: You may proceed, then. 28

By Mr. Anderson:

Q. Have you made up any statements or accounts relative to the matters in controversy between the Commonwealth of Virginia and the State of West Virginia in this cause?

A. I have.

Q. How long a time have you devoted to those investigations, and to that work?

A. Approximately seven months and a half.

Q. Did you have assistants in the conduct of those duties?

A. I did.

Q. Were they trained accountants?

A. Yes, sir.

[*Vol. 4. May 5, 1909. Cross Examination of A. G. Potter. Methods and Sources.*]

ARTHUR G. POTTER, 213
resumed the stand for
Cross Examination.

By Mr. Carlisle:

Q. Mr. Potter, you are the accountant who made the accounts for the State of Virginia in this matter?

A. I am.

Q. Will you state about how long you were engaged in that work; —actively engaged?

A. About seven months and a half. I have not the exact length of time, but about seven months and a half. 214

Q. Do you mean you were actually engaged in the work about seven months and a half, or that it was seven months and a half from the time you began until the time you quit?

A. No, sir; seven months and a half actual work.

Q. Not continuously, as I understand, but counting the time that you were actually engaged it makes seven months and a half?

A. Yes, sir; we started on the 1st of February and completed our work at the time of the first hearing, with one or two months intervening that we did not work.

Q. From what sources did you procure the information which you embodied in your report?

A. As to the board of public works, from the board of public works' published reports, and later checked those with the internal improvement books, the original manuscript books.

Q. All of them?

A. All of them.

Q. All of those accounts?

A. Yes, sir.

Q. From what sources did you get the other accounts, excluding now the accounts of the board of public works?

A. The Commonwealth accounts we took from the published reports of the treasurer, and the auditor of public accounts, and verified some of them from the original records.

Q. About what proportion did you verify from the original records?

A. Well, if we had occasion to get further description as to roads, internal improvements companies, &c, we referred to 215 the original books. Otherwise we took the accounts of the treasurer and auditor of public accounts.

Q. What proportion of those accounts, as nearly as you can state, did you ascertain by an examination of the original books?

A. We ascertained the amounts paid in by the counties of West Virginia entirely from the original manuscript books. The items of ordinary expenses of government, we took from the published reports?

Q. Did you go to the books of original entry for all the items which are included in the debits and credits to West Virginia?

A. Yes, sir.

Q. What books do you mean?

A. The ledgers and day books of the auditor of public accounts, in which there were accounts with sheriffs, coroners, clerks and so forth.

Q. From what source of information did you get the data which you put in the ordinary expenses of State government?

A. The published reports of the auditor of public accounts.

Q. From what source did you procure the information embodied in your report concerning the amounts expended in West Virginia?

A. The reports of the board of public works and the original manuscript books, as I have explained before.

Q. What proportion did you procure from the published re- 216
ports, and what proportion, as nearly as you can state, from the original books?

A. I believe I have testified that we verified all the figures we took from the published reports by the manuscript books.

Q. What do you mean by manuscript books?

A. The books of original entry.

By the Special Master:

Q. The books on file in the State Department?

A. Yes, sir; as to the auditor's office.

Q. Of the Commonwealth of Virginia?

A. Yes, sir; as to the auditor's office.

By Mr. Carlisle:

Q. Did you examine the ledgers and journals, or only one?

A. The ledgers and the journals.

Q. You examined the journals?

A. Yes.

The Special Master: Let him state, Mr. Carlisle, what books were kept at that time.

Mr. Carlisle: Yes; I was going to come to that.

By Mr. Carlisle:

Q. Will you state now what books were kept and what books you found among the public archives of the state?

A. There was ledger A and ledger B of the board of public works, and the journals that went with them. I think there were three journals for those two ledgers. There were two or three ledgers of the literary fund, I don't recall which. I think there were three, and the journals that went with those. There 217
were the books of the James River Company, ledger and journal, the books of the Northwestern Turnpike Company, ledger, journal and minute books, the books of the James River Company, ledger, journal, minute book and an old minute book which was not filed in the library, but which I found in the top of the Capitol building here, and the ledger, journal and minute book of the Covington & Ohio Railroad. I believe those are all the books.

Q. What other books of original entry, if there are any, did you examine?

A. Ledgers and day books, I believe, and journals in the office of the auditor of public accounts.

Q. Did you examine all of them?

A. I think we examined all of them; yes, sir.

Q. Did you examine all you could find? What do you mean when you say you think you examined all of them?

A. We examined all the books that were necessary to find the receipts from the various counties during the period under review. I think they embraced all of the books in the office of the auditor of public accounts.

Q. There were no original books there except those which showed the receipts from the original counties. Is that what you mean to say?

A. I don't understand your question.

Q. Do you mean to say you found no books there of original entry, or examined no books of original entry, except those books which showed receipts from various counties?

A. These same books showed disbursements, many of them, 218
but as I testified before, we examined the books of the auditor of public accounts for the purpose of ascertaining the amounts paid by the counties into the public treasury.

Q. What counties?

A. The counties of Virginia and West Virginia.

Q. You see, Mr. Potter, I think you misunderstand the scope of my question. I am asking you not what books you examined with respect to any particular matter, or any particular account. I want to ascertain from you, if I can, all the books of original entry which you examined—about what proportion of them, putting them all together.

A. I believe we examined them all in both the office of the auditor of public accounts and the second auditor's office. In other words, we covered the entire bookkeeping system for the period.

Q. Did you afterwards balance your accounts, balance everything, to see whether you had examined all the entries as to receipts by the state during that time, and all the disbursements of the State during that time, and whether they balanced or not?

A. We did make such a balance.

Q. Have you that balance?

A. I haven't it with me; no, sir.

Q. Did you submit it with your report?

A. No, sir.

By the Special Master:

Q. You have it in your notes?

A. Yes, sir.

Q. Are the notes here in Richmond? 219
A. Yes, sir.
Q. But not present here in court?
A. No, sir; I haven't them with me. They are in the library.

The Special Master: Do you wish those produced?
Mr. Carlisle: Yes.

By the Special Master:
Q. Will you produce them after the intermission today?
A. I would like to have a copy made of them. I have only one copy of the balance.

By Mr. Carlisle:
Q. Have you any memorandum showing the books of original entry you examined?
A. No, sir.
Q. You did not make any memorandum?
A. No, sir.
Q. Have you any memorandum showing the printed official reports which you examined?
A. Showing the what?
Q. The printed official reports you examined?
A. We examined all of the printed official reports of the board of public works, of the Commonwealth and of the literary fund.
Q. Will you tell us how you know you examined them all?
A. By starting in with the figures with which, for instance, the board of public works started, adding the total receipts for that year, deducting the disbursements, and arriving at a new balance at the end of the first year. Taking that balance, we added the receipts for the second year, deducted the disbursements, and ar- 220
rived at a new balance for the second year. Taking that balance, we went to the third year, and so on during the forty years.
Q. That is not shown in your report?
A. No, sir; that is the balance statement I have referred to.

By the Special Master:
Q. You have that on your notes?
A. Yes, sir.
Q. You had better have your notes here in the afternoon, so that if they have occasion to inquire about them, you can produce them without delay.
A. Yes, sir.
Q. Could you send for them now, Mr. Potter, without any trouble?
A. No, sir; my assistant does not know where they are.
Mr. Carlisle: We would like to have them.
The Special Master: Get them during the intermission.

Mr. Conrad: He can get them in twenty minutes.

The Special Master: Do not suspend for that purpose now. He can get them during the intermission and have his notes here with him. Counsel on both sides had better keep that in mind, and have their original notes here, so that if any question arises about the notes, that can be produced without any delay.

By Mr. Carlisle:

Q. When you examined the published official reports, did you find a detailed itemized statement of receipts and expenditures in those books? 221

A. It was somewhat summarized. It was not a detail statement.

Q. Somewhat summarized? What do you mean by that?

A. Well, the criminal charges for one year were given in one item for the whole year.

By the Special Master:

Q. Do you mean for the whole State?

A. Yes; for the whole State?

By Mr. Carlisle:

Q. Now, take that item, for illustration. Did you itemize that item by reference to the books of original entry, to see whether it was correct or incorrect?

A. We did not.

Q. Was that the only item you found on the official reports summarized in that way?

A. There were other items of general expense, such as court charges, the penitentiary charges, and such things as that.

By the Special Master:

Q. They were lumped instead of being summarized, as I understand?

A. There was one total for each year in the published reports.

Q. They aggregated the year instead of giving the details?

A. Yes, sir.

By Mr. Carlisle:

Q. When you found that to be the case in regard to any other official report, did you simply take that total as stated there and include it in your account, or did you analyze that item to see that it did cover? 222

The Special Master: To get at the details from which it was made?

By Mr. Carlisle:

Q. Yes; to get back to the original source?

A. No, sir; we did not.

Q. Did you do that in any case?

A. We did that with respect to the board of public works expenses. We analyzed all the board of public works expenses.

Q. How about the literary fund?

A. Not the literary fund.

Q. How about the Commonwealth fund, as it was called?

A. No; we did not analyze the details of those general headings.

Q. There were very large expenditures which you have included in your account under those?

A. There were.

Q. And very large as to all these others you speak of?

A. Yes; they were very large.

[*Vol. 5. May 6, 1909. Direct Examination T. B. Dixcy. His Qualifications and Methods.*]

THOMAS B. DIXCY,

produced as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

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By Mr. Carlisle:

Q. What is your occupation or profession?

A. I am a professional accountant, a certified public accountant, under the laws of the State of New York.

Q. How long have you been engaged in that business?

A. I have been actively engaged in professional accounting since 1900, as an active professional accountant.

Q. What were you doing before that time; were you an accountant?

A. Not a professional accountant. I have been an accountant all my life; yes; but not a professional accountant; not practicing personally.

Q. State, in a general way, what your experience as an accountant has been?

A. I have been manager for Haskins and Sells, an accounting firm of New York. I left them in order to go in a special capacity with the Delaware & Hudson Company of Albany, to take charge of their accounting department and do special work. I returned to professional accounting after leaving the Delaware & Hudson Company and have practiced it since. I was in a professional capacity with the Delaware & Hudson Company, but not generally. 467

Q. State whether or not you have made any examination of

the accounts in the States of West Virginia and Virginia under the decree of the Court.

A. I have, sir, made such an examination.

Q. How long a time were you engaged in that?

A. We have been engaged in it for approximately 15 months. It will be 15 months the middle of May.

Q. In what way did you ascertain the items in the charges and credits?

A. We took the books of original entry in the Commonwealth of Virginia in all cases where such books of original entry were in existence. They were in existence without any commission so far as this account was concerned, but we had reference to other books in reference to the examination and the accounting.

Q. Did you examine any public papers and documents in connection with the accounts?

A. All such papers and documents as had reference to the information that was required under the decree.

Q. State to the Court whether you and your assistants personally examined the items upon the books of original entry which entered into your accounts?

A. Yes; we went directly to the books of original entry.

Q. About how many items do you think you examined?

A. I estimated in round numbers;—and carefully estimated, 468
it was not a guess—about 750,000.

Q. And you took them off the books, did you?

A. Yes; we took them off our books. They are tabulated in what we call our working papers.

Q. And you have what you call your working papers?

A. Yes, sir.

Q. How many men did you have with you?

A. I had from five to nine.

Q. That many all the time?

A. All the time; varying between those numbers.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixcy. Methods, and Sources.*]

Cross Examination.

By Mr. Harrison:

Q. I understood you to say that you were the professional 579
accountant, who had charge of the investigation of records here for the State of West Virginia?

A. They were made under my supervision and direction, yes, sir.

Q. And you say you occupied in the performance of that work approximately sixteen months?

A. Fifteen months, I think I said. It will be fifteen months the middle of this May.

Q. You began when?

A. We began the 14th of February. 580

Q. And concluded when?

A. The men are still here. They are working on some of the details now; but we turned in our last schedule completed, I think, on May 3rd.

Q. May 3rd of this year?

A. Of this month, yes, sir.

Q. And you began in February, 1908?

A. A year ago this last February, yes.

Q. How much of that time did you spend here in connection with the work?

A. You mean personally?

Q. Yes, personally.

A. I cannot answer that with definiteness. I was here during some months a longer period than during other months. I have no idea without referring to my diary, so as to state it in specific terms.

The Special Master: State it approximately.

The Witness: I have always said that I have spent about half of my time here. I think that would be approximate. Latterly I have spent more of my time here. I have been here continuously for the last six weeks or so.

By Mr. Harrison:

Q. Did not Mr. Potter, who was in charge of the work for Virginia, propose to you that you unite and collaborate together?

A. I don't recall that. My recollection of that incident is that Mr. Potter suggested that we accept a certain amount as shown in one of the Acts, I think the Sinking Fund Act of 1853, as establishing the debt September 30, 1852, and as I knew 581 the books themselves did not substantiate the amount shown in the Act I refused to accept that. I also said to Mr. Potter that our method of examinations, that is the principle on which ours was conducted was so different from his that it would be impossible to collaborate on the other features.

Q. How did you know that; how did you know on what principle he was conducting his examination?

A. I had a very fair idea of the principle on which he was conducting it. I knew what books he was examining.

Q. He was examining the same books you were, I presume?

A. No; he did not examine all the books that we did.

Q. He must have examined some of them.

A. He did examine some of them.

Q. You were at work in the same capitol?

A. No, sir; he was working here and we were in the State Library Building.

Q. You were examining together the public records of Virginia, were you not?

A. We were examining them at the same time.

Q. And had a common object in view, did you not?

A. I don't know that the object was a common one.

Q. You do not? You say you had a general idea of the principle upon which he was working, and am I to understand that you derived that idea solely from the fact that you knew some of the books he was examining? 582

A. Not at all. Mr. Potter and I saw more or less of each other when we were down here, and in a general way there was no secret about what we were attempting to do; but the differences were such that it was impossible to collaborate and get along together—differences of principle.

Q. Did not Mr. Potter suggest as the reason for his proposal to you that it would insure a uniformity of plan in the statement of the accounts that you both were engaged in examining?

A. I do not recollect any such suggestion. Certainly I could not have acceded to it in any event.

Q. You could not have acceded to it?

A. No, sir.

Q. Then, if he had made a proposal, you must have declined it?

A. If the proposal was made I certainly should have declined it.

Q. Why would you have declined it?

A. Mr. Potter was acting under instruction of counsel for Virginia and I was acting under instruction of counsel for West Virginia.

The Special Master: In what respects did your methods differ?

The Witness: Our methods differed as to the detail in which we went into the accounts and the classification of the items.

By the Special Master:

Q. You say you differed in the details. That does not 583 illuminate me very much. In what particular did you differ as to how you went into the details?

A. Am I qualified to testify as to what Mr. Potter did? I can tell you what I did.

Q. If you do not know I will not bother you.

A. I was not familiar, of course, with all the details of Mr. Potter's work. I know we examined books that Mr. Potter did not examine, books of original entry, ledgers and journals.

Mr. Anderson: Can you specify what books?

Mr. Conrad: This is important.

The Witness: I can specify, but I will have to look it up.

The Special Master: Was the principal respect in which your methods differed the fact that Mr. Potter took the aggregates in many instances, and that you examined the details.

The Witness: Very largely that was the difference.

The Special Master: I rather inferred that. So that, in substance, was the difference in method between the two. Excuse me for interrupting.

Mr. Harrison: We are very much obliged to you for bringing that out.

The Witness: I should fancy—well, I don't want to guess.

By Mr. Harrison:

Q. You don't want to guess?

A. No.

Q. You did no guessing in your examination? 584

A. I tried not to.

Q. For the purpose of considering for a moment the degree of work expended by yourself in this compilation, I will refer you to page 4 of the defendant's exhibit D-1, 4, 5, and 6, which relates to the expenses of the Government of Virginia, classified there as Ordinary Expenses. You stated in your examination in chief that you did not make the examination which is the foundation of that summary?

A. That is true, sir.

Q. But that you did compare the totals and verify them.

A. Yes, sir.

Q. With what did you compare the totals?

A. I said I verified—I don't think I said I compared the totals. If I did say that it was an inadvertence. I verified them, and my verification is right there.

Q. What do you mean by verifying them?

A. I mean, to put it specifically, as to the amounts charged to the various accounts.

Q. Verified them as to the amounts charged to the various accounts?

A. Yes.

Q. Well, did you examine every item?

A. I certainly did not; I made no attempt to.

Q. You did not compare the totals, then, with the books from which the items were taken?

A. Certainly, absolutely. We used every method of verification—

Q. I ask you if you did it?

A. I personally? 585

Q. Yes.

A. I did not in all cases.

Q. We are talking about the case that I have called to your attention.

A. I did not so far as all the items are concerned. I have already testified, I think, that in regard to details my personal examination was confined to an examination about some questions which arose in the course of examination.

Q. Then you have no personal knowledge of the details that enter into and make up the summary of this statement, Exhibit D-1?

A. I should say that was rather a broad statement.

Q. You can answer it in as broad a way as you choose.

A. I think that I have a rather intimate knowledge of the details that enter into the account; but as to specifying the exact amount of each one of the items that went into the account, or to say that I extracted that myself from the books of original entry or that I examined it after it had been extracted from the books of original entry would be very wide of the mark, because in the tremendous volume of items examined that would be impossible for one man to accomplish.

Q. My whole object is simply to ascertain how much you know about foundation of these summaries.

A. I understand that. 586

Q. I am not questioning the fact that they have been correctly taken off.

A. I understand that. I am trying to give you fully my personal relation to the matter.

Q. If I understand correctly, you did not compare the totals that you speak of having verified with the books yourself?

A. Not in all cases, no, sir.

Q. The books of original entry I am referring to now.

A. Yes, sir.

Q. And you did not have any part personally in the investigation of the books of original entry that resulted in the summary shown in Exhibit D-1?

A. I would like to add something there, if I may. You speak of comparing totals with the books of original entry .

Q. Yes.

A. I hardly know what you mean by that, because the books of original entry do not contain totals. They contain items. The

books of original entry do not contain totals, but are made up of individual items.

Q. That is what I presumed.

A. And it would be impossible for me to compare totals with the books of original entry.

The Special Master: What he wants is just exactly what you mean when you say you verified these items. Now, he wants to know, first exactly what you did in the verification. That is what Mr. Harrison wants to get at, just exactly what processes you went through when you did what you say you did and verified these items. Now, what did you do with reference to that which resulted in verification? 587

The Witness: May I explain how the work was done?

The Special Master: Of course that is exactly what he wants, as I understand it.

Mr. Harrison: That is exactly what I want.

The Special Master: Explain exactly what you did when you say you verified these items. What did you do personally. That is what he wants to get.

The Witness: First, the total amounts were drawn off very similarly to the manner in which the Virginia totals were drawn off, I imagine, from the public records. Then we took the books of original entry, and an accountant and an assistant were assigned to abstract from the books of original entry all the items entered therein under a certain heading. For instance, Court charges, criminal charges, civil prosecutions, and various items of that kind. Each account was assigned to a team of accountants, or to an accountant and an assistant, and they went through the books of original entry and abstracted all the items in the period under examination from that account. Another set of accountants, another team, took some other accounts; and in that way all the items of receipts and disbursements were abstracted from the books of original entry and segregated. Then the total of those items, the individual items of each account, made the total account as appears on these schedules.

By the Special Master:

Q. Where did you come in; what did you do in the verification? 588

A. My work was supervisory, and in case any question arose or any question came up I examined that particular account personally, as I did in a number of cases, and passed on the matter where I could pass on it. When I could not pass on it it was submitted to counsel.

Q. Is that what you mean by verification?

A. No, sir; that is not what I mean by verification. Then the accounts were brought together in this final schedule, which we ex-

pect to introduce, showing the total of all these accounts, and the balances at the beginning and at the end of the period, and that account being in balance is an absolute verification of all the work that was done, and that I verified.

Q. Then I understand that you verified these various aggregates in connection with this general statement?

A. As a whole.

Q. For the purpose of ascertaining whether the thing balanced in the end?

A. Yes, sir.

By Mr. Harrison:

Q. The classification of the work and the detail work was done by the gentlemen who were employed under you?

A. Under the constant direction of Mr. Scoville, who was my chief of staff, and who was here all the time.

[*Vol. 6. May 7, 1909. Direct Examination of C. E. Scoville. His qualifications and methods.*]

CLIFFORD E. SCOVILLE,

was produced as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

696

By Mr. McClintic:

Q. State your occupation?

A. I am a public accountant.

Q. State how long you have been engaged in the business of public accounting?

A. I have been engaged as a public accountant continuously for the last nine years.

Q. State where you are registered, if you are registered, if that is the proper term?

A. I have not taken the State examination in any State.

Q. State when you came to Virginia to engage in this 697 present work?

A. On the 14th of February of last year.

Q. How much time have you given it since the 14th of February, 1908.

A. Continuously.

Q. You have been here continuously from that time to this time?

A. Yes, sir.

Q. Giving your full time and attention to this particular work?

A. Entirely ,sir.

Q. What position did you occupy in relation to the work?

A. Chief of Mr. Dixcy's Staff of accountants, engaged on this examination.

Q. There has been filed here a number of accounts as exhibits. Please state generally what you had to do with all those exhibits and the making thereof, if anything?

A. A considerable portion of the work I did personally, and all of the work in preparing the details, working up to the schedules, was prepared under my direct supervision. I was present while all the work was done, and closely in touch with it all the time.

[RECORD OF THE OPENING AND ADJOURNMENT OF THE SESSIONS BEFORE THE SPECIAL MASTER.]

[*Vol. 1. Nov. 16, 1908.*]

In the Supreme Court of the United States

No. 4 Original. October Term, 1907.

Commonwealth of Virginia, Complainant,

vs.

State of West Virginia, Defendant.

PROCEEDINGS BEFORE THE SPECIAL MASTER.

Richmond, Virginia,
November 16, 1908.

Counsel for the respective parties appeared before the Special Master, Charles E. Littlefield, Esq., at the rooms of the Corporation Commission of the State of Virginia, Richmond, Va., at 10 o'clock A. M.

Appearances:

W. A. Anderson, Esq., Attorney General of the Commonwealth of Virginia, Holmes Conrad, Esq., Randolph Harrison, Esq., John B. Moon, Esq., and Sanford Robinson, Esq., for the Commonwealth of Virginia. 106

William G. Conley, Esq., Attorney General for the State of West Virginia, John C. Spooner, Esq., William Mollohan, Esq., George W. McClintic, Esq., and Mr. Hogg, for the State of West Virginia.

1.

[*Vol. 1. Nov. 16, 1908.*]

The hearing was thereupon, at 4 o'clock P. M., adjourned until February 15, 1909, at 10 o'clock A. M.

[*Vol. 2. February 15, 1909. Second Session.*]

Richmond, Va.,
February 15, 1909,
10 o'clock, A. M.

The hearing was resumed, pursuant to adjournment, at the rooms of the Corporation Commission of the State of Virginia. 107

Present: Hon. Charles E. Littlefield, Special Master.

Hon. William A. Anderson, Hon. Holmes Conrad, Mr. Randolph Harrison, and Mr. John B. Moon, on behalf of the Commonwealth of Virginia.

Hon. William G. Conley, Hon. John G. Carlisle, Hon. John C. Spooner, Mr. Wesley Mollohan, and Mr. George W. McClintic, on behalf of the State of West Virginia.

[*Vol. 2. February 15, 1909.*]

(The hearing, at two o'clock P. M., was adjourned until May 4, 1909, at ten o'clock A. M.)

[*Vol. 3. May 4, 1909. Third Session.*]

Richmond, Va.,
May 4, 1909,
10 o'clock A. M.

The hearing was resumed, pursuant to adjournment. 207

Present: Hon. Charles E. Littlefield, Special Master.

Appearances: Hon. William A. Anderson, Attorney General, and Messrs. Holmes Conrad, Randolph Harrison, and John B. Moon, for the Commonwealth of Virginia.

Hon. William G. Conley, Attorney General, Hon. John G. Carlisle, Hon. John C. Spooner, and Messrs. Wesley Mollohan, George W. McClintic and William M. O. Dawson, for the State of West Virginia.

[*Vol. 3. May 4, 1909.*]

(The hearing, at 10:30 o'clock A. M., was adjourned until Wednesday, May 5, 1909, at 10 o'clock, A. M.)

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[*Vol. 4. May 5, 1909. Third Session Continued.*]

Richmond, Va.,
May 5, 1909,
10 o'clock A. M.

The hearing was resumed, pursuant to adjournment. 213

Present: Hon. Charles E. Littlefield, Special Master.

Appearances: Hon. William A. Anderson, Attorney General, and Messrs. Holmes Conrad, Randolph Harrison, and John B. Moon, for the Commonwealth of Virginia.

Hon. William G. Conley, Attorney General, Hon. John G. Carlisle, Hon. John C. Spooner, and Messrs. Wesley Mollohan, George W. McClintic, William M. O. Dawson, and Charles E. Hogg, for the State of West Virginia.

[*Vol. 4. May 5, 1909.*] 381

The hearing, at 4:55 o'clock P. M., was adjourned until Thursday May 6, 1909, at 10 o'clock A. M.

[*Vol. 5. May 6, 1909. Third Session Continued.*]

Richmond, Va.,
May 6, 1909,
10 o'clock A. M.

The hearing was resumed pursuant to adjournment of yesterday.

Present: Hon. Charles E. Littlefield, Special Master.
Appearances:
Messrs. William A. Anderson, Holmes Conrad, Randolph Harrison and John B. Moon for the Commonwealth of Virginia. 382
Messrs. William G. Conley, John G. Carlisle, John C. Spooner, Wesley Mollohan, George W. McClintic, William M. O. Dawson and Charles E. Hogg, for the State of West Virginia.

[*Vol. 5. May 6, 1909.*]

The hearing, at 5 o'clock P. M., was adjourned until Friday, May 7, 1909, at 10 o'clock A. M.

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[*Vol. 6. May 7, 1909. Third Session Continued.*]

Richmond, Va., May 7, 1909.
10 o'clock A. M.

The hearing was resumed, pursuant to adjournment. 537

Present: Hon. Charles F. Littlefield, Special Master.
Appearances:
Messrs. Anderson, Conrad, Harrison and Moon for the Commonwealth of Virginia.
Messrs. Conley, Spooner, McClintic, Mollohan and Hogg, for the State of West Virginia.

[*Vol. 6. May 7, 1909.*]

Thereupon, at 11:30 P. M., the further hearing of this cause was adjourned until June 22nd, at 10 o'clock A. M., at the same place.

[*Vol. 7. June 22, 1909. Fourth Session Adjourned. Fifth Session.*]

Richmond, Va., June 22, 1909.
10 o'clock A. M.

Owing to engagements of the Special Master and counsel, the meeting set for this time and place was adjourned until Thursday, July 1, 1909, at ten o'clock A. M., at the same place. 819

Richmond, Va., July 1, 1909.
10 o'clock A. M.

The hearing was resumed, pursuant to agreement.

Present: Hon. Charles E. Littlefield, Special Master.
Appearances:
Messrs. Anderson, Conrad, Harrison and Moon, for the Commonwealth of Virginia.
Messrs. Conley, McClintic, Carlisle, and Dawson, for the State of West Virginia.
Mr. Potter and Mr. Dixey, the accountants, and other former witnesses were also present.

[*Vol. 7. July 1, 1909.*] 949

(Thereupon, at 2:10 P. M., a recess was taken until to-morrow, Friday, July 2nd, 1909, at 9 o'clock A. M.)

[*Vol. 7. July 1, 1909.*] 1023

Richmond, Virginia, Friday, July 2, 1909.
9 o'clock A. M.

Met, pursuant to the taking of recess, at 9 o'clock A. M.

Present, the Special Master, and counsel for the respective parties.

We will now adjourn to meet in my office, 11 Pine Street, New York, on the 21st of September, for the argument of this case, at 10 o'clock in the forenoon.

Mr. Anderson: In the meantime we shall proceed with the printing?

The Special Master: Yes.

Thereupon, at 11:50 A. M., the adjournment was taken as above noted.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

DEFENDANT'S EXHIBIT

Summary of

CASH RECEIPTS AND DISBURSEMENTS

of the

COMMONWEALTH OF VIRGINIA

From March 19, 1823, to January 1, 1861

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

COMMONWEALTH OF VIRGINIA.

Summary of Cash Receipts and Disbursements from March 19, 1823 to January 1, 1861.

Balances, March 19, 1823:		
Commonwealth Fund	$ 180,019.23	
Internal Improvement Fund	21,022.19	
Literary Fund	94,021.42	$ 295,062.84
Net profit on State bonds and certificates of indebtedness purchased, below par, from March 19, 1823 to January 1, 1861, Schedule No. 1		90,788.35
Value of shares of stock of James River Company, at $500.00 per share, purchased by the Commonwealth prior to March 19, 1823, deducted from principal of annuity to stockholders of the James River Company included in the Public Debt, per Joint Exhibit "A-1":		
Shares		
Held by the Board of Public Works....284		
Held by the Literary Fund.....138		
Total 422		
422 shares at $500.00 per share		211,000.00

RECEIPTS.

Amount of the public debt on the first day of January, 1861, per Joint Exhibit "A-1"	$32,919,863.93	
All moneys paid into the Treasury of the Commonwealth from the counties included within the present State of West Virginia during the period from March 19, 1823 to January 1, 1861; admitted to this account by counsel for West Virginia, per Joint Exhibit "F-1"	7,051,215.56	
Moneys received from counties within the territory now constituting the Commonwealth of Virginia, per Schedule No. 2	38,482,170.14	
Obligations of the Commonwealth of Virginia, other than the debt for public internal improvements, outstanding on the first day of January, 1861, per Schedule No. 3	2,204,898.19	
Other receipts, per Schedule No. 4	3,702,135.98	
Total receipts		84,360,283.80
Total		$84,957,134.99

DISBURSEMENTS.

Expenditures on account of appropriations made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, from March 19, 1823 to January 1, 1861; not including subscriptions to capital stock of internal improvement companies, nor such other expenditures as have been rejected from this account by counsel for West Virginia, per Joint Exhibit "C-1"	$ 1,251,288.92	
Expenses of the government of Virginia from March 19, 1823 to January 1, 1861, admitted as "ordinary expenses" by agreement between counsel for Virginia and for West Virginia, per Joint Exhibit "D-1"	18,207,684.29	
Expenditures on account of subscriptions to capital stock of joint stock companies, including banks, wholly or partly within the territory now constituting the State of West Virginia, in which the value of the equity of West Virginia, therein, is to be ascertained, except in banks, where the value of such equity is shown in the exhibit, per Defendant's Exhibit "G-1"	11,083,051.04	
Expenditures on account of banks and public internal improvements charged, by the Defendant, to the present Commonwealth of Virginia, per Schedule No. 5	27,586,527.60	
Expenditures on account of items not charged, by the Defendant, to the State of West Virginia, per Schedule No. 6	24,356,330.05	
Investments in bonds other than State bonds (for public improvements) and other investments not charged to the State of West Virginia, per Schedule No. 7	305,375.64	
Total disbursements		$82,790,257.54
Balances due from State agents on account of State bonds delivered for sale; and loss thereon and discount on bonds sold; at January 1, 1861, per Schedule No. 8		1,062,502.97
Balances, January 1, 1861:		
Commonwealth Fund	255,180.99	
Internal Improvement Fund	5,958.28	
Literary Fund	23,985.18	
Sinking Fund	819,250.03	1,104,374.48
Total		$84,957,134.99

Net Profit on State Bonds and Certificates of Indebtedness Purchased, Below Par, from March 19, 1823 to January 1, 1861.

On State bonds issued under act of February 16, 1825, account of James River Company, par value of $7,400.00, purchased for $6,290.00, through the Internal Improvement Fund		$ 1,110.00
On State bonds and bonds of the James River and Kanawha Company guaranteed by the State, purchased by the sinking Fund, established by act of March 10, 1835		872.39
On State bonds purchased and canceled by the Sinking Fund, established by act of March 26, 1853, less interest accrued at time of purchase, where not separated from principal on books		12,091.04
On State bonds purchased by the Sinking Fund, established under act of March 26, 1853, and held uncanceled, less interest accrued at time of purchase, not separated from principal on books		65,905.42
On State bonds purchased by the Literary Fund, and held uncanceled		13,422.00
Total		$93,400.85
Less:		
Premium on a bond of the James River and Kanawha Company guaranteed by the State, par value $500.00, purchased, through the Internal Improvement Fund, for $507.50	$ 7.50	
Premium on $50,000 of State bonds issued under act of Feb. 24, 1823, account of James River Co., purchased through the Internal Improvement Fund	1,250.00	
Difference between value at $500.00 per share, at which amount the shares are included in the principal of the annuity to the stockholders of the James River Company, assumed by the State in accordance with act passed March 23, 1860, of 87 shares, viz: $43,500.00, and cost of these shares, viz: $44,855.00, purchased by the Literary Fund	1,355.00	
		2,612.50
Net profit		$90,788.35

SCHEDULE NO. 1.

Moneys Received from Counties Within the Territory Now Constituting the Commonwealth of Virginia.

Bonus, received in cash, from banks within the present State of Virginia		$ 1,036,932.93
Bristoe estate (presumed to be an escheat):		
Sale of lots in Prince William County	$17,289.18	
Net income from the estate	7,914.05	25,203.23
Buckingham Furnace Lands	5,671.77	
Less charges applicable thereto	973.66	4,698.11
Clerks of County and Corporation Courts		571,053.84
Clerks of Superior Courts		308,238.45
Clerks of District Courts		2,890.90
Clerks of Superior Courts of Chancery		12,427.29
Costs, Civil and Criminal Prosecutions		6,273.00
Dividends on bank stocks		5,936,628.70
Dividends and interest received from turnpikes and roads lying wholly within the present State of Virginia		118,115.18
Dividends and Interest received from railroad companies, wholly within the Present State of Virginia		1,748,570.23
Dividends and interest received from canal and navigation companies, wholly within the present State of Virginia		321,467.78
Dividends received from turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia; Virginia's proportion on mileage basis		1,545.35
Escheats, less refunds and expenses		51,400.55
Fines, forfeitures and penalties, less refunds, etc.		307,004.68
James River and Kanawha Company		9,739.79
Virginia's proportion of dividend, amounting to $10,092.00 on stock of above company, on the basis of amount of capital invested within the territory now constituting the two present States.		
Lands, sale of unappropriated		46,873.48
Lands, redemption of		26,050.07
Lands, sales of delinquent and forfeited		18,804.75
Lands, redemption of and sales of delinquent and forfeited, less refunds and expenses		5,024.29
Militia fines, net		360,268.92
Northwestern Turnpike Road		38,788.51
Tolls collected at gates located within the present State of Virginia.		
Staunton and Parkersburg Road		8,740.68
Tolls collected at gates located within the present State of Virginia.		

Southwestern Turnpike Road, tolls		28,117.91
Taxes, general, net		26,407,649.32
Taxes, capitation, net		307,362.97
Taxes, free negroes, net		79,720.29
Tax on dividends, net		362,659.18
Tax on railroad travel		123,613.34
Tax on notarial seals		177,994.21
Taxes, collateral inheritance:		
Virginia	3,330.24	
County not recorded	348.85	3,679.09
Voluntary enslavement		4,695.79
Miscellaneous:		
Virginia	10,069.73	
Undivided (not claimed for West Virginia.)	9,867.60	19,937.33
Total		$38,482,170.14

SCHEDULE NO. 2.

Obligations of the Commonwealth of Virginia, Other Than the Debt for Public Internal Improvements, Outstanding on the First Day of January, 1861.

Temporary loans, in anticipation of taxes, as per the act of March 7, 1851	$ 2,000.00
United States; amount of surplus revenue received by Virginia, which was distributed by act of Congress, approved June 23, 1836, and accepted by the State in accordance with act passed December 20, 1836	2,198,427.99
Unclaimed dividends of incorporated companies	4,470.20
Total	$2,204,898.19

SCHEDULE NO. 3.

Other Receipts.

Bank of the United States:		
Dividends	$ 45,750.00	
Sale of 500 shares	50,351.00	
		$ 96,101.00
Chesapeake and Ohio Canal Company:		
Interest on debt to state for interest paid on guaranteed bonds		6,372.00
Dismal Swamp Canal Company:		
Repayment of loan made prior to March 19, 1823..		37,500.00
Dividends on capital stock of the James River Company owned by the Board of Public Works, being dividends on and after July 1, 1835, received from the James River and Kanawha Company.....		166,140.00
Interest:		
On shortage of Jerman Baker, State Treasurer, in Commonwealth Fund	$ 1,258.65	
On surplus revenue of the United States, deposited with Virginia, loaned to banks, etc.....	111,419.37	
On loan to Richmond and Petersburg Railroad Company	2,695.88	
On debt of the James River and Kanawha Company, due the State	142,181.74	
On guaranteed bonds of the James River and Kanawha Company, less amount of interest accrued at time of purchase of the bonds.....	2,713.83	
On United States five per cent. stock of 1821....	388.67	
On loans to the James River and Kanawha Company	603,965.37	
On loans to Kanawha Board, of James River and Kanawha Company in accordance with act of March 23, 1860	1,500.00	
		866,123.51
James River Company (on State account):		
Tolls and other income, net	$557,677.38	
Re-sale of James River Company bonds, purchased prior to March 19, 1823	30,300.00	
		587,977.38
Literary Fund, amounts received on account of principal of investments made prior to March 19, 1823:		
United States six per cent. stock redeemed....	$ 13,000.00	
Farmers Bank of Virginia stock sold for $9,762.00, less $2,575.00, paid for stock purchased after March 19, 1823	7,187.00	
United States Bank stock	78,350.00	
Loans to individuals	80,000.00	
Washington College loan	2,000.00	
Profit on United States stock redeemed $818.18, less premium of $420.00 on City of Richmond stock purchased after March 19, 1823	398.18	
		180,935.18
Net income from sundry investments of the Literary Fund not including interest on State bonds, so held, dividends on James River Company stock paid by the State nor dividends from banks in the present State of West Virginia		968,195.03

Northwestern Turnpike Road:		
Profit on Investment in United States stock...	$ 805.43	
Profit on investment in Bank of the Valley stock..	378.00	
		1,183.43
Preston, John, State Treasurer, on account of shortage prior to the year 1820		53,884.40
Premium on State bonds sold		354,176.75
Rentals, net		49,158.99
Staunton and Parkersburg Road:		
Interest on sundry accounts		451.16
United States, Revolutionary Claims:		
Through the Commonwealth Fund	$ 474,475.46	
Less payments on account of half pay claims and fees	410,703.50	
	$ 63,771.96	
Through the Literary Fund, less commissions	182,441.48	
		246,213.44
Upper Appomatox Company:		
Repayment of loan made prior to March 19, 1823 and interest thereon		11,791.74
Winchester and Potomac Railroad Company:		
Annuity	$ 65,075.00	
Interest on loans	10,856.97	
		75,931.97
Total		$3,702,135.98

SCHEDULE NO. 4.

Expenditures on Account of Banks and Public Internal Improvements, Charged, by the Defendant, to the Present Commonwealth of Virginia.

On account of subscriptions to capital stock of banks within the territory now constituting the Commonwealth of Virginia	$ 2,108,591.00
On account of subscriptions to capital stock of turnpike and road joint stock companies, wholly within the territory now constituting the Commonwealth of Virginia	1,897,747.22
On account of subscriptions to capital stock of bridge companies, wholly within the territory now constituting the Commonwealth of Virginia	49,622.16
On account of subscriptions to capital stock of Navigation companies, wholly within the territory now constituting the Commonwealth of Virginia	908,173.17
On acccount of subscriptions to capital stock of railroad companies, wholly within the territory now constituting the Commonwealth of Virginia	13,713,256.55
On account of appropriations to turnpikes and roads wholly within the territory now constituting the Commonwealth of Virginia	791,888.04
On account of the construction of the Blue Ridge	

railroad	1,604,824.73
On account of appropriation for bridge at Covington	6,007.07
On account of appropriations to turnpikes and roads extending into and between the territory now constituting the two present States; Virginia's proportion on an actual cost and mileage basis	247,289.33
Alexandria Canal Company stock subscription	272,000.00
Amount of loans to railroad companies, wholly within the territory now constituting the Commonwealth of Virginia, which were unpaid on January 1, 1861	2,930,000.00
On account of the construction of the Covington and Ohio Railroad, lying partly in the present Commonwealth of Virginia and partly in the present State of West Virginia, no part of the cost of which has been charged to West Virginia by the Defendant, under instruction of her counsel	2,787,128.33
Winchester and Potomac Railroad Company:	
Subscription to capital stock..... $120,000.00	
Money loaned by the State..... 150,000.00	270,000.00
The above railroad lay, partly, within the territory now constituting the State of West Virginia. The stock and debt as above was surrendered, by Virginia, in the year 1846, for an annuity of $5,000.00. Under authority of an act passed by the Commonwealth of Virginia, February 22, 1866, the Winchester and Potomac Railroad Company was relieved from payment of the annuity by paying into the treasury of Virginia, bonds of the State amounting to $83,333.33, to cover the principal of the annuity, and a further sum to cover the amount of annuity in arrears. In view of the above no part of the original expenditure amounting to $270,000.00 is charged to West Virginia.	
Total	$27,586,527.60

SCHEDULE NO. 5.

Expenditures on Account of Items Not Charged by the Defendant to the State of West Virginia.

Brandonville, Kingwood & Evansville Road		$ 10,595.73
Bath, Town of, Loan to		2,500.00
Berryville & Charlestown Turnpike Co.		20,455.74
On account of subscription to the capital stock of the Berryville and Charlestown Turnpike Company, which turnpike extended into and between the territory now constituting the Commonwealth of Virginia and State of West Virginia. Omitted from Defendant's Exhibit "G-1" (the seventh inquiry of the decree of reference), because the road was purchased by the State, the stock interests, thereafter becoming valueless. A proportion of the purchase price paid for the physical property is included in Joint Exhibit "C-1."		
Birthplace of Washington, Land		139.21
Boundary Lines		16,704.78
Connollee, Thornton, Refund		186.70
Conventions, Expenses of		258,906.28
Chief Justice Marshall, Portrait of		500.00
Commission to South Carolina regarding Federal Relations		2,500.00
Contingent Fund (gun houses in Virginia)		1,000.00
Counterfeit Money, charged off		190.00
Cannon-house, 71st Regiment		110.00
Clarksburg & Buckhannon Turnpike Co.		19,259.36
Chesapeake & Ohio Canal Company stock subscription (in Maryland)		250,000.00
Calling out Militia at Wheeling in 1836		1,099.00
Damages remitted		93.96
Deaf, Dumb and Blind, Institute for:		
For site and buildings	$ 68,320.94	
Land, fencing, boiler-house, etc.	7,000.00	
Heating, lighting, etc., plant	25,341.00	
		100,661.94
Experimental Railway		10,000.00
Entertaining		3,602.03
Eastern Lunatic Asylum (Williamsburg):		
Buildings	$ 72,318.88	
Less receipts	4,054.69	
		68,264.19
Gas installation		6,000.00
Enclosure walls, etc.		13,161.00
Additional charges on buildings, etc.		38,589.00
Furniture, buildings, land, etc.		7,266.00
Exchange, expense of in paying interest on bonds		17,071.57
Expenses of the Board of Public Works	$ 203,379.38	
Less amount included in Joint Exhibit "D-1," as ordinary, amount excluded being extraordinary	164,917.76	
		38,461.62

Free persons of color—transportation to Liberia		26,103.50
Fugitive slave expense		2,201.00
Gun-house at Alexandria		900.00
Gun-house at Richmond, Fayette Artillery		1,079.09
Harper's Ferry raid	$ 255,745.77	
Less receipts	3,982.12	
		251,763.65
Insurrection of slaves in year 1831		18,969.41
International exchanges		2,836.19
Improvement of Public Square		1,456.91
Interest:		
On Public Debt	$18,324,044.50	
On Treasury Notes	133,527.34	
On Temporary Loans	107,844.57	
On old Military Debt of 1814 and prior	9,331.43	
		18,574,747.84
Interest on payment made to penitentiary before due		12,897.96
Interest on payments by the State for subscription to stock of Northwestern Bank of Virginia		8,091.33
Interest paid on bonds of the Chesapeake and Ohio Canal Company, guaranteed by the State		250,709.66
Interest on sundry current accounts, net		40,373.13
James River Company dividends, etc., accruing while property of that company was owned by State, paid afterward		3,619.09
James River Company:		
Dividends paid by the State to stockholders of, not including dividends on stock owned by the State	$ 81,415.28	
On account of annuity to stockholders assumed in accordance with act passed March 23, 1860	2,820.00	
		84,235.28
Jefferson, Statue		9,950.00
Kingwood & West Union Turnpike Co		18,140.61
Lafayette Reception		11,998.17
Lyle, amount received in 1780, refunded		125.38
Lemmon Slave Case—expense of prosecution		1,648.85
Lot on Governor street	$ 3,827.25	
Less, for lot on Franklin street, sold	2,843.33	
		983.92
Museum property		6,958.50
Maps (Commonwealth Fund)	$ 16,628.04	
Maps (through Internal Improvement Fund)	11,446.48	
		28,074.52
Medical College of Virginia (Richmond): Construction		25,000.00
Mexican War expense	$ 32,101.16	
Less receipts	27,943.66	
		4,157.50

Monroe Monument and Burial	$ 4,280.54	
Less receipts	393.00	
		3,887.54
Margaret Academy (Accomac county, Va.):		
For support	$ 500.00	
For improvement and repairs	1,000.00	
		1,500.00
Northwestern Turnpike Road, repairs, etc. (West Virginia's proportion)		109,587.74
Northwestern Turnpike Company of Alleghany, a Maryland corporation, formed for the purpose of constructing that part of the Northwestern Turnpike Road which ran through formerly Alleghany county, now Garrett county, Maryland, on account of subscription to the capital stock		7,882.92
Pensioners, Cincinnati Society		696.87
Pensioners		65,997.02
Penitentiary, erecting Hospital		9,346.98
Penitentiary, lot for		3,000.00
Penitentiary, pipe for water supply		1,600.50
Pauley, L. A. (Augusta county), claims dating from 1782		434.15
Powder, arms and armory, year 1860		79,471.59
Primary Schools, out of income		2,400,331.11
Slaves executed, condemned and transported	$ 575,450.03	
Less receipts from sales	247,761.46	
	$ 327,688.57	
Less net amount received through the Literary Fund for sales of runaway slaves and free negroes	16,520.22	
		311,168.35
Swords and medals voted by Assembly		11,681.35
Surveying: Paid to James River and Kanawha Company for surveying Potts and Second Creeks		852.37
Surveying		250,206.56
State bonds loaned to the James River and Kanawha Company, Kanawha Board, for improvements in accordance with act passed March 23, 1860, omitted from charges against West Virginia by the Defendant under instructions of her counsel		60,000.00

Staunton & Parkersburg Road, repairs, etc. (West Virginia's proportion)		21,700.74
State Courthouse		22,387.54
Square, Capitol, Governor's Mansion, etc.: Guard-house, grading, etc., installing water and gas, and purchase of lot		12,278.47
Treasury Notes, overpayment of		50.00
Treasury Notes, expense of printing, etc.		375.74
Tucker, J. Randolph, Attorney General, amount paid to, in the year 1859, on account of prosecution, etc., of Selden, Withers & Company		500.00
Trans-Alleghany Lunatic Asylum		27,000.00
University of Virginia, buildings and water system		25,000.00
Virginia Military Institute, buildings		151,000.00
Virginia Military Institute, Statue of Washington		10,000.00
Washington College, unexplained payment in 1848		8,114.64
Warehouses purchased in present State of Virginia		37,550.15
Washington Monument (at Richmond)	$ 262,249.22	
Less receipts	92,542.41	
		169,706.81
Wheeling, City of, for interest on guaranteed bonds	$ 30,627.45	
Less receipts	14,940.00	
		15,687.45
War, arms and munitions of		3,346.13
Wars, expenses of old		20,132.35
Weighmaster of Live Stock, land at Richmond		1,500.00
Western Lunatic Asylum (Staunton):		
Buildings	$ 164,642.37	
Less receipts	4,000.00	
		160,642.37
Water, gas and heating plant		40,685.00
Land, enclosure walls, etc.		25,988.01
Support, and, etc.		10,700.00
Total		$24,356,330.05

SCHEDULE NO. 6.

Investment in Bonds Other Than State Bonds (for Public Improvements), and Other Investments Not Charged to the State of West Virginia.

Through the Internal Improvement Fund:			
Bonds of the James River Company, issued under act passed February 17, 1820		$31,300.00	
State bonds issued for bonds of the James River Company, under act of March 18, 1840	$40,000.00		
under act of March 16, 1847	25,300.00	65,300.00	
			$ 96,600.00
Through the Literary Fund:			
Virginia Revolutionary 6% bonds		$ 3,074.77	
Bank of Virginia, stock		18,449.12	
University of Virginia, loan No. 5		40,000.00	
University of Virginia, loans No. 6 and No. 7		20,000.00	

Bonds of the James River Company, issued under act passed February 17, 1820, par value of $15,000.00 purchased for	15,960.00	
Richmond Academy stock	400.00	
Bank of the Valley, stock	10,134.00	
Loan to Emory and Henry College	18,000.00	
The Faculty of the Medical Department of the Hampden Sidney College, at Richmond: Amount invested in land and buildings	25,000.00	
Medical College in the valley of Virginia; invested in property (at Winchester)	6,400.00	
Davis's book on Criminal Law, copyright purchased	12,000.00	
		169,417.89
Through the Commonwealth Fund: Virginia Revolutionary 6% bonds		39,357.75
Total		$305,375.64

SCHEDULE NO. 7.

Balances Due from State Agents on Account of State Bonds Delivered for Sale; and Loss Thereon and Discount on Bonds Sold, At January 1, 1861.

From Selden, Withers Company:		
Account of coupon bonds	$548,173.98	
Account of sterling coupon bonds	265,447.83	
Total	$813,621.81	
Less amount received through the Sinking Fund, applied on above	22,800.00	
		$ 790,821.81
From James F. Soutter:		
Account of coupon bonds	$100,000.00	
Account of sterling coupon bonds	86,650.00	
Total	$186,650.00	
Less amount received through the Sinking Fund, in full settlement	17,333.59	
Loss		169,316.41
Discount on sterling coupon bonds sold by Selden, Withers and Company		102,364.75
Total		$1,062,502.97

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IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

APPENDIX TO THE RECORD.

BEING CERTAIN PUBLIC ACTS OF
THE LEGISLATURE OF VIRGINIA AND WEST VIRGINIA
AND OF THE CONGRESS OF THE UNITED STATES
AND
EXTRACTS FROM
THE CONSTITUTIONS AND CODES OF THE TWO STATES
PERTAINING TO THIS CAUSE.

Acts Relating to the Fund for Internal Improvment and the Board of Public Works.

CHAP. XVII.

An Act to create a fund for Internal Improvement.

[Passed February 5th, 1816.] 35

1. *Be it enacted by the General Assembly,* That a fund shall be, and the same is hereby created, to be denominated "The Fund for Internal Improvement," and to be applied, exclusively, to the purpose of rendering navigable, and uniting by canals, the principal rivers, and of more intimately connecting, by public highways, the different parts of this Commonwealth.

2. *And be it further enacted,* That this fund shall consist of the shares held by the Commonwealth, in the stock of the little River Turnpike Company, of the Dismal Swamp, Appomattox, Potowmac, and James River Canal Companies, of the Bank of Virginia and Farmers' Bank of Virginia, together with such dividends as may, from time to time, accrue to such shares of stock, and such bonus, or premiums, as may be hereafter received, for the incorporation of new Banks, or for the augmentation of the capitals, or the extension of the charters of the existing Banks.

3. *And be it further enacted,* That, for the purpose of preserving and improving this fund, and of disbursing such portions of it as the General Assembly may, from time to time, direct to be applied to any object of internal improvement, it shall be and the same is hereby vested in a corporate body, to be styled, "The President and Directors of the Board of Public Works," in which name they shall have a common seal, and perpetual succession, subject to the limitation hereinafter provided, shall be capable of suing and being sued, pleading and being impleaded, and shall have and enjoy all the rights and privileges of a corporation.

4. *And be it further enacted,* That the Governor of the Commonwealth shall be, ex officio, President of the Board of Public Works; that the Directors, a majority of whom shall constitute a Board for the transaction of any business devolving on the corporation, shall consist of the Treasurer and the Attorney General of the Commonwealth, for the time being, and of ten citizens thereof; of whom three shall reside westward of the Allegany mountain; two between

the Allegany and the Blue Ridge; three between the Blue Ridge and the great post road, which, passing through the territory of the Commonwealth, crosses the principal rivers thereof at, or about the head of tide water; and the residue, between that road and the sea coast.

5. *And be it further enacted*, That the Directors of the Board of Public Works, except the Treasurer and Attorney General, shall be chosen annually, by joint ballot of the two houses of the General Assembly, and receive such compensation for their services, as may be allowed by law, which, until otherwise provided, shall be the same mileage for travelling to and from the place of sitting, and the same pay per diem during the continuance of their session, as is now by law allowed to a member of the General Assembly. 36

6. *And be it further enacted*, That in the absence of the Governor, the board may elect a president pro tempore, from their own body, who shall preside over the deliberations of the board, until the Governor is enabled to attend.

7. *And be it further enacted*, That the President and Directors of the Board of Public Works shall have power to appoint a principal Engineer, or Surveyor of the Public Works, and a Secretary to the board; together with such other officers and assistants, as they shall deem necessary; each of whom shall receive for his services such compensation, as the President and Directors of the Board of Public Works may allow, to be paid out of the revenue of the fund for internal improvement, and to be reimbursed that fund, by an allowance to the Commonwealth of so much of the stock of any canal, or turnpike company, as shall constitute a reasonable compensation for the services rendered such company by the surveyor and his assistants.

8. *And be is further enacted*, That the President and Directors of the Board of Public Works shall hold an annual meeting in the city of Richmond, or at such other place as may be designated by law, to begin on the first Monday in November of every year, and to continue until the business of the board is transacted—But, that the President of the board may, at his own pleasure, or shall, at the request of any three Directors thereof, convene an extra meeting of the board, for the transaction of any extraordinary business which may devolve on the corporation.

9. *And be it further enacted*, That the President and Directors of the Board of Public Works may, at their annual meetings, enact, alter, or amend, such rules as to them may seem proper, for the purpose of regulating the order of their proceedings; that they may have power to adjourn the board for any period not exceeding six months, or, when occasion shall require it, to have an extra meeting at any other place than that designated by law, and shall have power to make and establish such bye-laws, rules and regulations, for the better ordering of the conduct of their officers, agents and ser-

vants, as to them may seem expedient, provided the same be not inconsistent with the constitution and laws of this Commonwealth, or of the United States of America. They shall also have power, at any time during the recess of the Legislature to fill any vacancy which may occur in their own body, either from death, resignation, removal, inability, or any other cause.

10. *And be it further enacted*, That the fund for internal improvement, subject to the order of the President and Directors of the board, shall be deposited in the Treasury of the Commonwealth, and kept distinct and apart from all other public money: It shall be paid out or delivered by the Treasurer of the Commonwealth to the order of the board, certified and subscribed by the Secretary, and countersigned by the President; that the Treasurer shall keep a fair and regular account of all such disbursements, and carefully preserve the certificates upon which the same shall have been made, and shall render an account thereof to the General Assembly, at the same time at which he renders his annual account of the disbursements of the ordinary revenue: that once in every year the Board of Public Works shall depute a committee of their body to examine the accounts of all disbursements made by order of the board, during the year next preceding the annual meeting of the board, and to compare these accounts with the Treasurer's books, and the certificates giving authority for the payment of the several sums of money, or stock, entered therein; that their reports shall certify to the board, that the same have been fully accounted for, or otherwise, as the case may be.

11. *And be it further enacted*, That the President and Directors of the Board of Public Works, shall be, and they are hereby authorized to subscribe in behalf of the Commonwealth, to such Public Works, as the General Assembly may, from time to time, agree to patronize, such portions of the revenue of the fund for internal improvement, as may be directed by law but that no part of the said fund shall be subscribed towards the stock of any canal, turnpike, or other Company, until three fifths at least of the whole stock, necessary to complete such canal, turnpike, or other public work of such company, shall have been otherwise subscribed; nor until, of the stock so subscribed, one fifth thereof shall have been actually paid in by the respective subscribers, or the payment thereof effectually secured by bond with approved security, or a deed of trust upon the real estate of such subscriber, of twice the value of such fifth part; such bond to be taken payable to the President, Directors and Company authorized to complete such public work, and to be recoverable against the obligor or his securities, on motion, after ten days' notice, in any court of record within the Commonwealth having jurisdiction thereof; and such deed of trust to be proceeded upon whenever the trustee therein named shall be required to do so by such President, Directors and Company.

12. *And be it further enacted,* That the dividends on the stock which may be subscribed by the President and Directors of the Board of Public Works shall go exclusively to other subscribers than the Commonwealth, until such portion of the stock of those subscribers, as shall have been actually paid in, shall have 38 netted to them six per cent. per annum, from the specified time of such payment; that any increase of profit, after that nett income shall have been assured to the subscribers, shall belong exclusively to the fund for Internal Improvement, until the nett annual income of the whole stock, actually expended by any company, shall reach six per cent per annum; after which, the Commonwealth and the other subscribers to the stock of the company shall divide the nett profits on such stock in proportion to their respective interests. That, whenever the nett income of any company, to which any part of the fund hereby created shall have been subscribed, shall be found, for two succeeding years, or upon an average of five succeeding years, to surpass fifteen per cent. per annum, the General Assembly may reduce the tolls, from which such income is derived, so as to limit the nett revenue of the company to that amount; *provided,* that should the tolls for any two succeeding years fail to yield a nett income to the company of ten per cent. per annum, the President and Directors of the Board of Public Works, on satisfactory evidence being adduced thereof, may authorise the tolls to be augmented, so as to assure to the company such nett income; *And provided, also,* that after the lapse of sixty days from the period at which such tolls shall have first netted ten per cent. per annum, the maximum profit of the company may be reduced to twelve per cent.; and after the lapse of one hundred years from the same period to ten per cent per annum.

13. *And be it further enacted,* That the President and Directors of the Board of Public Works shall vest in some productive fund the unappropriated dividends accruing upon any of the stock committed to their charge, until the same shall be specially applied by law to some object of internal improvement: and shall have power, subject to the control of the General Assembly, to sell, from time to time, as may be ordained by law, the whole or any part of the shares held by the Commonwealth, in the stock of any canal, turnpike or other company subscribed for under the provisions of this Act, for the purpose of investing the proceeds of sale in the stock of some other similar company, subject to the like conditions as have been before expressed in this Act.

14. *Be it further enacted,* That the President and Directors of the Board of Public Works shall have power to appoint, in behalf of the Commonwealth, so many directors of every Public Work, as shall bear to the whole number of the directors of such work the proportion of the Commonwealth's shares of stock in such work, which may be subscribed in pursuance of this Act, to the whole number of

shares subscribed thereto: *provided, however,* that whenever it shall be found expedient by the Legislature to authorise the subscription of any part of the fund hereby created to any company already incorporated, the provisions of this section shall not be construed as applying to such company, unless it be otherwise directed by the Act authorising the subscription.

15. *Be it further enacted,* That it shall be the duty of the President and Directors of the Board of Public Works, to keep a fair and accurate record of all their proceedings, which shall be at all times open to the inspection of the members of the General Assembly, and of the President, Directors and other officers of any company interested therein; that they shall report to the General Assembly, at or near the commencement of every annual session thereof, the exact state of the fund for internal improvement; the progress and condition, noting especially the nett income, of all the public works within the Commonwealth; the surveys, plans and estimated expense of such new works as they may recommend to the patronage of the General Assembly, together with such other important information, as they may have it in their power to collect, in relation to the objects committed to their trust.

16. *And be it further enacted,* That the public faith shall be and the same is hereby solemnly pledged to fulfill the appropriation made by this Act; and that the said appropriation shall continue in force until the first day of January, of the year one thousand eight hundred and sixty six, except at such times as the United States of America may be involved in war, or the safety of this Commonwealth may, in the opinion of the General Assembly require; when the General Assembly may withdraw (during the period of actual hostilities, or of such imminent danger,) the whole or any part of the said fund for the purpose of defence; provided such withdrawal can be made without a violation of any engagement entered into under this Act.

17. This Act shall commence and be in force from and after the passage thereof.

CHAPTER VIII.

An Act to amend an Act, entitled "An Act to create a fund for Internal Improvement."

[Passed February 21st, 1818.]

1. *BE it enacted by the General Assembly,* That the orders of the Board of Public Works, drawn and authenticated in the manner prescribed by the Act, entitled "An Act to create a fund for

Internal Improvement," which passed the fifth day of February, one thousand eight hundred and sixteen, instead of being payable at the Treasury, as is provided by the tenth section of the said Act, shall henceforth be presented to the Auditor of Public Accounts, who is hereby authorised and required to issue his warrant on the Treasury, for the amount specified in such orders.

2. *And be it further enacted,* That so much of the section aforesaid, as requires that the Treasurer shall preserve the certificates upon which disbursements of the fund for Internal Improvement have been or may be made, shall be and the same is hereby repealed; and all such certificates and vouchers shall be delivered, as soon as may be convenient after the passage of this law, to the Auditor of Public Accounts, together with a correct statement of all disbursements heretofore made, to be preserved by him in his office.

3. This Act shall commence and be in force from and after the passing thereof.

CHAPTER IV.—An act to amend an act, entitled, "an act creating a fund for internal improvement."—[Passed March 4th, 1819.]

8

1. *Be it enacted by the General Assembly,* That hereafter the annual meeting of the Board of Public Works shall take place on the first Monday after the meeting of the General Assembly in every year, instead of the time now prescribed by law.

2. *And be it further enacted,* That it shall be the duty of every such company, to the stock of which the Board of Public Works shall subscribe, as aforesaid, annually, on or before the seventh day of December in every year, to furnish to the Secretary of the Board of Public Works a report of the income and expenditure of every such company for the next preceding year, including payments made by the stockholders as well as tolls, together with a statement of the condition and progress of their works, and shall pay into the public treasury to the credit of the fund for internal improvement, within sixty days after any dividend may be declared, any such dividend, to which the Board of Public Works may be entitled; and in case of failure, either in furnishing such report, or paying such dividends as aforesaid, such company so failing shall forfeit and pay to the Board of Public Works a penalty not exceeding five hundred dollars, which said dividends and penalty may be recovered by motion in the general court, on ten days previous notice.

3. *Be it enacted,* That hereafter, it shall not be lawful for the President and Directors of the Board of Public Works, to subscribe for any part of the stock of any company, unless otherwise specially authorized by law, until they shall have received satisfactory evidence, not only that one-fifth part of the subscriptions of indivi-

duals has been secured according to law, but that the whole of such private subscriptions have either been secured as aforesaid, or are made by solvent persons, fully able to pay.

4. *Be it further enacted*, That when the said board, having made any subscription for the stock of any such company, shall have good reason to believe that the private subscriptions are improperly withheld, or that the funds of the company are misapplied or will probably be misapplied, it shall be the duty of the said board to withhold payment of their subscriptions, until proper legal measures can be taken to secure the faithful payment of private subscriptions, and the faithful application of the funds of the company.

5. *And be it further enacted*, That the pay and allowance for travelling and attendance, to the members of the Board of Public Works hereafter, and to those who have attended during the present session of the Legislature, shall be the same as that allowed by law to the members of the General Assembly—But, no member of the General Assembly who may be a member of the Board of Public Works shall have any allowance for his attendance, or mileage, as a member of the board, when coming to, or during the sitting of the Legislature.

6. *And be it further enacted*, That all acts and parts of acts coming within the purview of this act, be, and the same are hereby repealed.

7. This act shall commence and be in force from and after the passing thereof.

CHAPTER 45.—An act making more effectual provision to carry into effect, the act, entitled "an act to amend the act entitled 'an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers, and for other purposes."

[Passed February 24th, 1823.]

* * * * *

2. *And be it further enacted*, That there be appointed annually, by joint ballot of both houses of the General Assembly, an officer to be denominated the second auditor, whose duty it shall be to keep distinct accounts of the receipts and disbursements of the Literary Fund, of the fund for internal improvement, and of the fund constituted to effect the purposes of the act, the title of which is recited in the preamble to this act. He shall draw all warrants authorising the treasurer to receive monies on account of any of the funds before mentioned, after the amount shall have been adjusted by the other auditor, when by law, he is authorised to adjust the same, and audit all claims properly chargeable on them, and issue warrants to the

persons entitled thereto. He shall act, ex-officio, as accountant of the Literary Fund, as clerk of the president and directors thereof, and as secretary of the Board of Public Works: and the powers and duties of the persons holding those offices, respectively, shall thenceforth cease. And the said second auditor is hereby authorised to appoint a clerk, should the board of directors hereby established deem one necessary, to aid him in the discharge of his duties. All books and papers in any manner connected with the constitution, administration or regulation of the funds herein before mentioned, shall be deposited with the said second auditor, who shall carefully preserve them.

3. All monies belonging to any of the funds herein before mentioned, shall be kept in the public treasury, separate from other public monies; and regular and distinct accounts shall be kept of the receipts and disbursements, and a report thereof annually made by the treasurer to the General Assembly, on or before the fifth day of its session.

CHAPTER 21.—An Act to amend the Act entitled an Act to create a fund for Internal Improvement.

(Passed February 20th, 1828.)

1. *Be it enacted by the General Assembly,* That so much of the twelfth section of the act, entitled "an act to create a fund for Internal Improvement," as provides that the dividends on the stock which may be subscribed by the president and directors of the Board of Public Works, shall go exclusively to other subscribers than the Commonwealth, until such portion of the stock of those subscribers, as shall have been actually paid in, shall have netted to them, six per cent. per annum from the specified time of such payment, shall be, and the same is hereby repealed; and all dividends upon subscriptions hereafter authorised, or required to be made by the General Assembly, to any canal, road, bridge company, or other corporation, shall be made, and stand upon the same footing with subscriptions made by individuals.

2. This act shall be in force from the passing thereof.

CHAP. 14.—An ACT prescribing the ex-officio duties of the officers of government, and for other purposes.

(Passed March 5th, 1833.)

1. *Be it enacted by the general assembly of the commonwealth of Virginia,* That hereafter the governor, treasurer, auditor and second

auditor, *ex-officio*, shall constitute the board of public works, the James river company, the literary fund, and North-western turnpike road company; with full power to transact all the business of these various boards; to assemble when and where they choose and may deem expedient; and a majority being present, to proceed to the discharge of all or any business.

2. *Be it further enacted*, That whensoever either of these boards may think it necessary for the public good to assemble or meet at any other place than at the seat of government, or at any time to send one or more members of their body to examine the condition of any of the public works, or to transact any business connected with the discharge of the duties required in these various boards, all reasonable expenses incurred thereby shall be paid out of the fund, the business of which it may be intended to transact; the accounts to be allowed by the respective boards, and certified and paid in the usual manner.

3. *Be it further enacted*, That each of the boards shall adjourn its sessions from time to time; but any intermediate meeting may take place at the pleasure of a majority of said board, notice thereof being given to all the members of the time and place of meeting, to each individually, if may be, and if not, by publication in some newspaper.

4. Should the governor from any cause fail to attend at any session of any of these boards, the treasurer shall in his absence, act as president thereof.

5. All acts and parts of acts coming within the purview of this act shall be and the same are hereby repealed.

6. This act shall commence and be in force from the passing thereof.

No. 5.—Resolution providing that the register of the land office shall be ex-officio a member of the Board of Public Works.

[Adopted February 28, 1846.] 162

Resolved by the senate and house of delegates, That hereafter the register of the land office shall be *ex officio* a member of the Board of public works.

ACTS RELATIVE TO STATE EXPENDITURES IN INTERNAL IMPROVEMENTS OWNED PARTLY BY THE STATE, AND THE ORGANIZATION OF COMPANIES FOR THE CONSTRUCTION THEREOF.

Secs. 11 and 12 of the Act of Feb. 5, 1816.
(See Internal Imp. Fund & B. P. W.)

CHAP. XXXVIII.

An Act prescribing certain general regulations for the incorporation of turnpike companies.

[Passed February 7th, 1817.] 41

1. *Be it enacted by the General Assembly,* That, whenever it may be deemed expedient by the General Assembly, to grant a charter for the incorporation of a company to make a turnpike road, and an act shall actually pass the General Assembly for such purpose, the following general provisions shall be deemed and taken to be part of the said charter or act of incorporation, to the same effect as if the same were expressly re-enacted in reference to any such charter or act, except so far as such special grant, charter or act may otherwise expressly provide; viz: the commissioners named in any special act of incorporation, or a majority of them, shall have power to open books for subscriptions to the stock of the company, at such places as shall be named in the said special act, and to divide the capital stock authorized to be subscribed by the said act, into as many shares, not exceeding one hundred dollars each, in amount as they may deem proper, and to appoint any number of deputy commissioners to open books for a subscription to the stock of such company; and the subscriptions may be made by the subscribers to the said stock, either in person or by power of attorney in Virginia currency, or such medium as the commissioners or a majority of them may agree to receive. It shall be the duty of such commissioners, and deputy commissioners, to receive all monies which may be due upon the shares subscribed in their books, at any time before the first election of the president and directors of the company, as herein provided for; but all monies which may

be payable on such shares, after such election, shall be paid to the said president and directors, or to their order. The said commissioners and deputy commissioners shall, forthwith, after such election, pay over to the president and directors all monies received by them; and in failure thereof, the said president and directors may recover the amount due from them, or from any one or more of them, by motion, on ten days previous notice, in the superior or inferior court of any county or corporation wherein such commissioner or commissioners may reside; the clerk shall endorse, upon the execution, which shall issue upon such recovery, that no security shall be taken, and the sheriff or other officer shall govern himself accordingly.

2. The subscription books shall remain open until at least one half of the capital stock of the company shall have been subscribed; public notice of which event shall be given by any three of the said commissioners, who shall have power, at the same time, to call a general meeting of the subscribers, at such convenient place and time, as they shall name in the said notice: to constitute any such meeting, a number of persons entitled to a majority of all the votes which could be given upon all the shares subscribed, shall be present, either in person or by proxy; and if a sufficient number to constitute a meeting do not attend on that day, those who do attend shall have power to adjourn from time to time, until a meeting shall be formed. 42

3. If it shall appear to this meeting on examination of the books, that one half of the said capital sum shall have been subscribed, then the said subscribers, their executors, administrators and assigns, from the time of said meeting, shall be and they are hereby declared incorporated into a company, with all the rights, privileges and immunities of a corporation or body politic in law, and may make such bye-laws and regulations, not inconsistent with the constitution and laws of this state, or of the United States, as shall be necessary for well ordering and conducting the affairs of the company.

* * * * *

16. In consideration of the expenses the proprietors will incur in opening, improving and repairing the said road, the said road, with all the tolls and profits, shall be and the same is hereby vested in the respective proprietors forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever.

17. *Be it further enacted*, That, so soon as any section of five miles of the said road shall be completed, it shall be lawful for the president and directors to apply to the court of that county in which such section, or the greater part thereof, may lie, for the appointment of three discreet and disinterested freeholders to examine the same, who, or any two of whom, being sworn for that purpose, shall examine such section, and make a written report of the condition thereof

to the court; and if, after such report and such other evidence as shall be offered, the said court shall be satisfied, that such section is completed in the manner prescribed by this act, they shall make an order of record declaring that it is so completed, and it 48
shall thereupon be lawful for the president and directors, and they are hereby authorized to erect thereon a toll gate or gates, and they shall be entitled to demand and receive the following tolls upon the said section, to wit: for every score of sheep or hogs, six and one quarter cents; for every score of cattle, twelve and one-half cents, and so in proportion for any greater or lesser number; for every horse, mare, mule or gelding, three cents; for every two wheeled riding carriage, ten cents; for every four wheeled riding carriage, twenty cents; for every cart or waggon the wheels whereof do not exceed four inches in width, six and a quarter cents, for every four footed animal drawing the same; and for every cart or waggon the wheels of which exceed four inches in width, and roll less than seven inches, three cents for every four footed animal drawing the same; and for every cart or waggon the wheels of which are seven inches or more in width, one cent, for every four footed animal drawing the same: *Provided always*, that return waggons or carts shall pay one-half of the said tolls only: and the like rules and proceedings shall be had for every other section of five miles of the said road, when the same shall be completed, and the like tolls shall be paid for passing the same; and if, after all the full sections of said road shall be completed, there shall remain any fractional part of a section, a toll gate may be erected thereon after it shall be completed, in the same manner as is provided in relation to the full sections; and tolls may be demanded thereat, bearing the same proportion to the tolls allowed on a full section as the said fractional part bears to such full section.

* * * * *

24. *Be it further enacted*, That if the said president and directors shall fail to keep the said road in repair for the space of 51
eighteen months, then shall the interest of the said company in the road and tolls aforesaid be forfeited and cease forever.

* * * * *

28. *Be it further enacted*, If the said president and directors 52
not begin the said work within two years, after the passage of the act for incorporating the company, or shall not complete the same within ten years thereafter, in the manner hereinbefore directed, then the interest of the said company, in the road and tolls aforesaid, shall be forfeited and cease.

29. At the end of one year from the completion of the road, the president and directors shall report, to the baord of public works, a statement, shewing the whole amount of the capital stock expended in the construction of the road, the amount of tolls received during each preceding year, the expenses and charges incurred during each year, and the nett annual profit or loss, on the capital expended. If, from this statement and such other evidence as shall be offered,

the president and directors of the board of public works shall be satisfied, that the nett average profits of the three succeeding years, on the capital stock expended, will not equal ten per centum per annum, then the said president and directors of the board of public works shall so augment the tolls hereby allowed so as to make them sufficient, in their estimation, to yield such nett annual profit for the three succeeding years; and if the said board of public works shall be satisfied, from the evidence aforesaid, that the average nett profits of the said three succeeding years will exceed fifteen per centum per annum, on the capital stock expended, then they shall so diminish the tolls hereby allowed as to make them only sufficient, in their estimation, to yield an annual nett profit of fifteen per centum per annum, for the said period of three years. The president and directors of the turnpike company shall in like manner, at the expiration of every period of three years, after the said one year from the completion of the road, return to the board of public works a 53
similar statement shewing the amount of expenditures, receipts and nett profits of each year, of such period; and upon each return so made, it shall be the duty of the president and directors of the board of public works to regulate the tolls by increasing them when below the minimum, and diminishing them when above the maximum, upon the principle above laid down, so as to attain as nearly as practicable the following result, that is to say: that for each period of three years during the first twenty-one years, the average nett profits upon the capital stock expended shall not exceed fifteen per centum per annum, nor be less than ten per centum per annum; that, for each period of three years, for the next thirty years, the average nett profits upon the capital stock expended shall not exceed twelve per centum per annum, nor be less than eight per centum per annum; and that, for each period of three years thereafter, the average nett profits upon the capital stock expended shall not exceed ten per centum per annum, nor be less than six per centum per annum.

The president and directors of the board of public works may from time to time prescribe the form, in which the returns aforesaid shall be made, and the evidence by which they shall be verified; and if the president and directors of the turnpike company shall fail to make the return accordingly, and to produce the evidence required for its verification, without good cause for such failure to be shewn to the board of public works, it shall be the duty of the president and directors of the board of public works to make an entry upon their journal declaring such failure, and forthwith to reduce the tolls of said turnpike company, to an amount not exceeding one half the tolls hereby allowed, and calculated to yield a nett profit not exceeding in their estimation five per centum per annum. Such reduction shall be continued until the proper return shall have been made, verified by the proper evidence, or until good cause shall have been shown for the failure.

30. And the president and directors of the said company are hereby required, when they make their first report to the board of public works as herein required, to accompany the same, with a complete plat or map of their road.

* * * * *

32. The president and directors shall cause to be written or printed certificates for the shares of the stock in the said company, and shall deliver one such certificate, signed by the president, and counter-signed by the treasurer, to each person for every share subscribed by him, which certificate shall be transferable by him, subject however to all payments due or to become due thereupon; and such assignee, having first caused the transfer or assignment to be entered in a book of the company to be kept for that purpose, shall thenceforth become a member of the said company, and shall be liable to pay all sums due, or which shall become due upon the stock assigned to him: *Provided, however,* That such assignment shall in no wise exempt the assignor, or his representatives, from their liability to the said company, for the payment of all such sums, if the assignor or his representatives shall be unable, or shall fail to pay the same; *And provided, moreover,* That if the commonwealth shall desire to purchase the stock of such company, and shall vest authority to make such purchase in any person, body politic or corporate, it shall not be lawful for any proprietor of such stock to sell or transfer the same to any other person whatever, until he shall actually and with good faith have offered the same for sale, for the price which he is willing to take therefor, to the person, body politic or corporate so authorized to purchase by the Commonwealth; and after such person, body politic or corporate shall have been so authorized to purchase on behalf of the commonwealth, no transfer or assignment to any other person shall be registered, or entered in the books of the company, nor shall any such transfer or assignment vest any right whatever, unless it shall be proved to the satisfaction of said president and directors, that the stock so assigned, or transferred, had been, with good faith, previously offered to the person, body politic or corporate, so authorized, at a price at least as low as that at which it had been sold to such assignee, or transferree.

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35. *Be it further enacted,* That the powers hereby given to the president and directors of the board of public works, may be at any time transferred by the legislature to any other corporate or natural body, and all returns hereby directed to be made to the said board of public works may be hereafter in like manner directed to be made to any other body.

36. This act shall commence and be in force from the passing thereof.

CHAP. LXXXI.—An act prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the commonwealth.

[Passed February 11th, 1832.] 71

1. *Be it enacted by the general assembly,* That all subscriptions which are now authorized by law, and have not been made by the board of public works, or which may hereafter be so authorized shall be subject to the following conditions previous to subscription, to wit: In every case the board of public works shall be furnished with a certificate, under the seal of the company, signed by their treasurer, and countersigned by their president, stating that at least one-fourth of the private subscriptions of not less than three-fifths of the capital stock, has been actually paid up into the hands of the said treasurer, and that the remainder of said subscription is either so paid, or is made by solvent persons fully able to pay; and these facts shall be shewn to the satisfaction of the board of public works. They shall also be furnished with a list of the stockholders, shewing the number of shares standing in each name. If any private improvement shall have been commenced previously to the subscription thereto being authorized or made, the board of public works shall be furnished with a statement, shewing the amount of money received up to the date of such statement, and on what account received, and of the amount expended in the work, together with the balance of money on hand the contracts entered into for the construction of the improvement, the exact progress made therein, as near as may be, its dimensions, its mode of construction, and a correct map of its location.

2. The instalments on the future subscriptions of the board of public works, shall be payable in the manner, and on the conditions herein-after mentioned, when not otherwise specially provided by law; that is to say, one-fourth of such subscriptions shall be paid on the production of the draft of the treasurer, or other authorized agent of the company, for the same, in such form as the board of public works may prescribe and the remaining three-fourths on similar drafts, in six equal semi-annual instalments, or in instalments of the same proportions with future payments of private subscriptions, at the discretion of the board of public works: *Provided,* That before payment of the instalments aforesaid, the said board of public works shall be furnished in every case with a certificate in the form and manner required by the first section of this act, shewing the amount actually paid up by the private stockholders, which amount must be at least equal in proportion to the amount payable by the board of public works. But should the fund for internal improvement be inadequate, in the opinion of the said board, to the pay-

ment of the full amount of the instalments aforesaid, after providing for the subscriptions previously made, then their subscriptions shall be payable in such proportions, and at such periods, as the said board may deem expedient.

3. Whenever it shall happen in any year that the funds of the board, applicable to the purpose, shall prove insufficient to discharge when due the full amount of the instalments of subscriptions actually made, then and in that case, it shall be the duty of the said board to expend the funds so applicable, as far as they will go, in the payment of the instalments of such subscriptions as shall stand first in point of order, according to the date of resolutions of the board of public works making the said subscriptions: and 72 the fund for internal improvement shall not be chargeable with any interest, in consequence of such suspension in the payment of the whole, or any part of said instalments.

4. When the board of public works, having made any subscriptions to the stock of any company, shall have good cause to believe that the private subscriptions are improperly withheld, or that the funds of the company are misapplied, or will probably be misapplied, it shall be the duty of the said board to withhold payment of their subscriptions until proper legal measures can be taken to secure the faithful payment of private subscriptions, and the faithful application of the funds of the company.

5. The board of public works shall have the right to appoint such a number of the directors in all companies hereafter incorporated, to whose stock the board of public works may subscribe, as will be in proportion to the stock so subscribed; and the fund for internal improvement shall participate in all dividends declared by said companies, in the proportion which the amount actually paid on behalf of the state, bears to the amount of private subscriptions actually paid up at the time of declaring such dividends: and in all general meetings of the stockholders of such company, the proxy or proxies representing the interest of the fund for internal improvement, shall have the right to vote on all questions, and in the election of all officers except directors, in the manner, and under the limitations contained in the twentieth section of the act, entitled, "an act prescribing certain general regulations for the incorporation of turnpike companies," passed the seventh day of February, eighteen hundred and seventeen.

6. It shall be the duty of the president and directors of every such company, to the stock of which the board of public works shall subscribe as aforesaid, annually, on or before the seventh day of December, to furnish to the secretary of the board of public works a report of the income and expenditure of every such company, for the next preceding year, including payments made by the stockholders, as well as tolls, together with a statement of the progress and condition

of their works a list of the stockholders at the time of making said report, with the number of shares standing in each name, and such other information respecting the affairs of said company, as the board of public works may require. It shall also be the duty of the president and directors of such company, within sixty days after any dividend shall have been declared by them, to give information thereof to the second auditor, and to pay into the public treasury, to the credit of the fund for internal improvement, within the said period, any such dividend to which the board of public works may be entitled: and in case of failure, either on the part of the president and directors of such company, in furnishing such report and information, or of the treasurer of such company, in paying such dividends as aforesaid, the president and directors, or the treasurer, as the case may be, of each company so failing, shall individually forfeit and pay to the board of public works, a penalty not exceeding fifty dollars; which said dividends and penalty may be recovered by motion in the general court, on ten days previous notice. 73

7. All acts and parts of acts coming within the purview of this act, shall be, and the same are hereby repealed.

8. This act shall be in force from and after the passing thereof.

CHAP. 94.—An ACT to explain the act authorizing subscriptions on part of the commonwealth to the capital of joint stock companies.

(Passed March 18, 1836.) 69

Whereas the limited income of the fund for internal improvement will not justify subscriptions on the part of the state to all the canal, rail-road, turnpike, navigation, or other joint stock companies, which have been, or may be incorporated, for carrying on works of internal improvement, and it is expedient, until such income shall be adequately increased, that it shall be applied to the aid of such works, as by their character or position are best calculated to promote the prosperity of the state at large: Therefore,

1. *Be it enacted by the general assembly*, That nothing contained, or to be contained, in any acts incorporating companies for the purpose of executing and carrying on works of internal improvement, shall be considered as a pledge or assurance on the part of the general assembly, to subscribe on behalf of the state for any portion of the stock of such companies, unless the legislature expressly direct such subscription to be made in the act of incorporation, or by subsequent enactment.

2. This act shall be in force from its passage.

See Act April 9th, 1838, Chap. 12, under head "Interest on Public Debt."

ACTS RELATIVE TO THE REPAIR OF ROADS AND BRIDGES; ACTS AUTHORIZING THE TRANSFER OF ROADS AND BRIDGES TO THE COUNTIES IN WHICH THEY LIE; AND ACTS EFFECTING SUCH TRANSFERS.

[Code of Virginia, 1860.] 351

CHAPTER LXI.

Of works of Internal Improvement.

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Transfer of state's interest in roads to county courts. 365

52. It shall be the duty of the board of public works with the consent of the county court of *such counties*,† all the justices having been summoned for that purpose, a majority of the justices being present when such consent is given, when in their opinion the public interest will be promoted thereby, to transfer and convey the state's interest in any turnpike or plank road, or any part thereof, to the county or counties in which said road may lie. The transfer shall be made by formal resolution, to be entered on the records of the board of public works, and a copy to be transmitted by the secretary of the board to the clerk of the county court, for record in the clerk's office in each county or counties where such road may lie. 1850-61

Transfer of interest of private stockholders.

53. The private stockholders in any turnpike or plank road in which the state's interest has been transferred in accordance with the preceding section, with the like consent of such county court, may likewise, in lawful meeting of said stockholders, transfer and convey the interests of the stockholders other than the state 366 to the county or counties as aforesaid, by a process similar to that by which the state's interest is conveyed.

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† The title of the act from which sections 52, 53 and 54 are taken, authorizes "the transfer of certain turnpikes and plank roads to the counties in which they lie." The words "such counties," therefore, refer to the counties mentioned in the title.

Power of courts over roads when transferred.

54. The said county courts respectively, to which the interest of the state, or the entire joint stock interest in said roads shall be so conveyed, are hereby invested with all the rights, duties and powers in respect of said roads, now held and exercised by said board of public works, and may in their discretion change the mode and manner of keeping up said roads: provided the board of public works shall not transfer any turnpike or plank road that can in their opinion be made productive or self-sustaining: and provided this act shall not take effect until the stockholders other than the state shall have transferred their interest to said county.

CHAP. 230.—An ACT to transfer the Moorefield and Alleghany turnpike to the county court of Hardy county.

Passed January 20, 1858. 147

Whereas it is represented to the general assembly of the state of Virginia, that the travel upon the road known as the Moorefield and Alleghany turnpike in the county of Hardy, is insufficient to furnish the amount of toll necessary to keep the road in proper repair: therefore,

1. Be it enacted by the general assembly, that the main line of the Moorefield and Alleghany turnpike is hereby transferred to and vested in the county court of Hardy, to be held and kept in repair for public use, and to be in all respects subject to the authority of said county court, as other public roads in said county: provided, however, that the assent of the stockholders other than the commonwealth in said turnpike shall have been first obtained to the transfer: and provided further, that this act shall not apply to the Petersburg stem of said road.

2. This act shall be in force from the date of its passage.

CHAP. 129.—An ACT releasing the state's interest in the Wheeling and Marshall county turnpike road.

Passed February 25, 1858. 97

1. Be it enacted by the general assembly, of the state in the Wheeling and Marshall county turnpike road company in the counties of

Ohio and Marshall, is hereby released to the said counties of Ohio and Marshall: provided, however, that this act shall not take effect until the stockholders in the above named company shall relinquish their stock in the said road to the counties of Ohio and Marshall; and the said counties are authorized and required to keep said roads in order as other county roads.

2. This act shall be in force from its passage.

CHAP. 128.—An ACT releasing the commonwealth's interest in the Williamsport turnpike company to the county of Wood.

Passed April 7, 1858. 97

1. Be it enacted by the general assembly, that the interest of the commonwealth in the Williamsport turnpike company, and the road and toll houses and the grounds on which they are situate, in the county of Wood, be and the same is hereby released to the said county of Wood; to be subject to the control and disposal of the court of said county: provided, however, that before this act shall take effect, the individual stockholders in said company shall release to said county their interest.

2. This act shall be in force from its passage.

[Wheeling Acts Dec. 2, 1861.]

CHAP. 35.—An ACT transferring the State Stock in "The Marshall and Ohio Turnpike Company," to Marshall and Ohio counties.

Passed January 24, 1862. 20

Whereas, It is represented to the General Assembly, That the president and directors of "The Marshall and Ohio Turnpike Company" have failed to open and keep their road in repair, as required by the acts of assembly authorizing the construction of the same: Therefore,

1. Be it enacted by the General Assembly of Virginia, That all the stock now owned by this commonwealth in "The Marshall and Ohio Turnpike Company," be and the same is hereby transferred to, and vested in the counties of Marshall and Ohio, in the following proportions, that is to say nine-tenths of said stock to the county of Marshall, and one-tenth to the county of Ohio, to be under the control of the county courts of said counties, respectively.

2. Be it further enacted, That it shall be lawful for the said county

courts of Marshall and Ohio counties severally, to transfer the proportions, or either of them, or any part or parts of the said stock, vested by this act in the said counties of Marshall and Ohio, to any company that shall hereafter be lawfully organized, empowered and bound to open and keep in good repair said road. But until such transfer is made, the county court of Marshall county shall have entire control over all that portion of said road lying in the county of Marshall, and the county court of Ohio county shall 21 have control over all that portion of said road lying in the county of Ohio; and it shall be the duties of said courts to have their respective portions of said road worked and repaired, either by tolls to be collected therefrom, or by the mode prescribed, or that may hereafter be prescribed by law for the opening and keeping in repair of other county roads in said counties of Marshall and Ohio, respectively, or otherwise, in such manner and upon such terms as they may severally determine.

3. This act shall be in force from its passage.

[W. Va.]

CHAP. 30.—An ACT to authorize the Heirs of David Albright to establish a Ferry across Cheat River.

Passed August 3, 1863. 31

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful for the heirs of David Albright, deceased, their heirs and assigns, to establish and keep a ferry from their lands at or near the town of Albright, in Preston county, across Cheat river to some convenient point on the opposite shore, where a former ferry, known as "Snider's ferry," crossed said river, and immediately below the site of the recent wire suspension bridge, known as the "Cheat River Toll Bridge," until the first meeting of the board of supervisors of the said county. And said board of supervisors shall at their first meeting, or as soon thereafter as may be practicable, (if any other person or persons shall have title to said ferry landings, or either of them,) award such damages as they may deem just to such adverse claimants, for the use and occupancy of said real estate for the period said Albright's heirs may have used the same for said ferry.

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[W. Va.]

CHAP. 120.—An ACT providing for the construction and repair of Roads and Bridges.

Passed December 4, 1863. 178

Be it enacted by the Legislature of West Virginia:

1. The board of public works shall have power, by obtaining the consent of the board of supervisors, to transfer any road, bridge or turnpike to the county in which such road, turnpike or bridge may be. Such transfer shall be made by formal resolution to be entered on the record of the board of public works, and a copy of the same transmitted by the secretary of the board, to the clerk of the board of supervisors, for record in each county or counties where such road, turnpike or bridge may be; provided, the board of public works shall not transfer any road, turnpike or bridge which can in their opinion be made self-sustaining.

2. The private stockholders in any turnpike, road or bridge 179
in which the state's interest has been transferred in accordance with the preceding section, with the consent of the board of supervisors of such county, may likewise, in lawful meeting of said stockholders, transfer and convey the interests of the said stockholders to the county or counties as aforesaid, by a process similar to that by which the state's interest is conveyed.

3. The board of supervisors of each county shall provide for establishing, keeping in repair, changing the location of, or vacating any road, and keeping a record of all the county and township roads in their respective counties, subject to the provisions of this act.

* * * * *

44. The fifty-second chapter, and the fifty-second and fifty- 185
third sections of the sixty-first chapter of the Code of Virginia, second edition, and all other acts inconsistent with this act, are hereby repealed.

[W. Va.]

CHAP. 71.—An ACT to relinquish to the Elk River Bridge Company the Stock in said Company belonging to the State.

Passed February 28, 1865. 61

Be it enacted by the Legislature of West Virginia:

The interest or stock of this State in the Elk River Bridge Com-

pany is hereby relinquished to the said bridge company for the benefit of the stockholders thereof other than the state; provided, that this act shall be of no effect until the said bridge company shall cause to be erected across the said river a bridge suitable for passengers and wagons: Provided, however, that if the state, by her legislature, shall at any time within one year from the passage of this act, or at any time before the said bridge company shall have completed a bridge upon the piers and abutments owned by them, appropriate on the part of the state an amount toward the erection of the said bridge, proportionate to her interest in the same, then the interest so relinquished shall revert to and become the property of the 62
state as though this act had not been passed: Provided, further, that the state does not by this act relinquish her interest in any claim that she may have in common with the other stockholders in the bridge company against the government of the United States for the bridge destroyed by the army on the thirteenth day of September, eighteen hundred and sixty-two.

[W. Va.] 133

[No. 8.] Joint Resolution requesting the members of Congress from this State to secure the aid of the United States in repairing roads and bridges injured during the war.

Whereas, during the recent rebellion, our state, lying on the border, has been peculiarly exposed to the raids of the enemy and the ravages and desolations resulting from the oft repeated tread of advancing and retreating armies; and whereas, during this painful process, our citizens have endured suffering beyond weight or measure, in the loss of life in every form, at the hand of every variety of enemy—in captivity—in exile—in perils night and day; and in many parts of our state the general disruption of all organized legal and social order, and the embarrassment of even the ordinary pursuits indispensable to their comfort and existence. In this broad sweep of contending armies, and foes of lesser note, many of their churches, court houses—not to mention private property—have been injured or destroyed; but the roads and bridges, the most important of which, were in part owned by the state, and were used and many of them destroyed, by the Union armies—and the bridges burnt by order of the Union commanders as means of safety, leaving our principal roads impassable. Therefore,

Resolved by the Legislature of West Virginia, That our senators in congress be hereby instructed, and our representatives 134
requested, to respectfully, yet earnestly, present our grievances

to the attention of congress, and to adopt such measures as may best secure adequate relief in the premises; and that the governor transmit a copy hereof to each of our senators and representatives in congress.

ADOPTED, January 24, 1866.

[W. Va.]

CHAP. 117.—An ACT to provide for the repair of the Roads and Bridges throughout the State.

Passed February 28, 1866. 115

Be it enacted by the Legislature of West Virginia:

The interest of this state in all the turnpike roads and bridges within this state, is hereby transferred to the several counties in which the same or a part thereof may lie, and the boards of supervisors of the several counties in which such road or part thereof, or bridge, may lie, are hereby vested with all the rights, powers and duties heretofore vested in the state, as a stockholder in such road or bridge, among which shall be the power to establish gates and collect lawful tolls, and do and transact all other lawful business. The suspension bridges across the Monongahela river at Fairmont and Morgantown, and any other such bridge in this state, and the Kanawha turnpike, are not intended to be included in this act.

Provided, that this act shall not apply to the Maryland and Virginia Bridge Company.

ACTS RELATING TO THE WINCHESTER AND POTOMAC RAILROAD COMPANY.

CHAP. CXXII.—AN ACT to incorporate the Winchester and Potowmac railroad company.

(Passed April 8, 1831.) 187

1. *Be it enacted by the general assembly*, That it shall be lawful to open books in the town of Winchester, and at such other place or places, as a majority of the commissioners herein after named shall think fit, under the direction of John R. Cooke, Alfred H. Powell, Alexander S. Tidball, John Gilkison, Henry W. Baker, Joseph H. Sherrard, Henry M. Brent, John M. Brome and John Heiskill, or any five of them, for the purpose of receiving subscriptions to the amount of three hundred thousand dollars, in twelve thousand shares of twenty-five dollars each to constitute a joint capital stock, for the purpose of making a rail-road from the town of Winchester, to some convenient point on the Potowmac river, at or near Harper's ferry. The time and place of receiving subscriptions aforesaid, shall be advertised in such newspapers as the commissioners may direct and the books for receiving the same, shall not be closed in less than sixty days, and if it shall appear that more than twelve thousand shares of the capital stock aforesaid, shall have been subscribed for within the said sixty days, it shall be the duty of the said commissioners, or any five of them, to reduce the number of shares subscribed for among the subscribers, in fair and equal proportions to the amount of stock subscribed for respectively by each, until the whole amount of shares shall be reduced to twelve thousand; but if the whole number of shares shall not be subscribed for within sixty days from the time the books shall be opened to receive subscriptions, then the books may be closed or continued open, as a majority of the above named commissioners may judge to be most beneficial, until the whole number of shares shall be subscribed for.

2. When four thousand shares shall be subscribed in manner aforesaid, the subscribers, their executors, administrators and assigns, shall be, and they are hereby declared to be incorporated into a company by the name and style of "The Winchester and Potowmac Rail-Road Company," and in that name may sue and be sued, plead and be impleaded, and shall possess and enjoy all the rights, privileges and immunities of a corporation or body politic, in law, and may make all

such by-laws, rules and regulations, not inconsistent with the constitution and laws of this state, or of the United States, as shall be necessary for well ordering and conducting the affairs of the company. 195

* * * * *

33. This act shall be in force from its passage.

CHAP. CII.—An act to authorize a subscription on behalf of the commonwealth to the stock of the Winchester and Potowmac rail-road company.

(Passed March 14th, 1832.) 161

1. *Be it enacted by the general assembly*, That the board of public works be, and they are hereby authorized, to subscribe on behalf of the commonwealth for so much of the capital stock of the Winchester and Potowmac rail-road company, not exceeding one-fourth or seventy-five thousand dollars, as shall not be taken and subscribed for by individuals before the first day of April next; the said subscription to be made according to the provisions of the act, entitled, "an act prescribing certain general conditions on which future subscriptions to the capital of joint stock com- 162
panies," shall be made on behalf of the commonwealth, passed at the present session of the general assembly.

2. *Be it further enacted*, That the subscriptions hereby authorized, shall be made upon condition, that if any company heretofore incorporated, or which may be hereafter incorporated, for the purpose of constructing a rail-road within, or chiefly within, the valley between the Alleghany and Blue Ridge of mountains, and shall choose so to do, the said Winchester and Potowmac rail-road company shall permit such other company to connect and unite their rail-road with that between the said town and the Potowmac river, so as to enable the cars of each company to proceed along the rail-road of the other. And each of the said companies shall be, and they are hereby required, to permit the cars or other vehicles of the other company to proceed on and along their said road, to the termination, or to any intermediate point thereof, upon payment of the tolls allowed by law for the use of the said rail-road: *Provided*, That nothing in this act contained shall be so construed as to abridge or impair the right of the Shenandoah company to construct a canal, or other works authorized by their charter, along the margin of the Shenandoah river.

3. This act shall be in force from the passing thereof.

CHAP. 107.—An ACT to authorize a further subscription on behalf of the state to the stock of the Winchester and Potomac rail-road company.

[Passed January 31st, 1833.] 72

1. *Be it enacted by the general assembly*, That the board of public works be, and they are hereby authorized to increase the subscription on behalf of the commonwealth, heretofore authorized by law, to the stock of the Winchester and Potomac rail-road company, to two-fifths of the whole capital of the said company. And any subscription made by virtue of this act, shall be upon the same terms and conditions on which the subscription was authorized by the act, entitled, "an act to authorize a subscription on behalf of the commonwealth, to the stock of the Winchester and Potomac rail-road company," passed March the fourteenth, eighteen hundred and thirty-two.

2. This act shall be in force from its passage.

CHAP. 158.—An ACT authorizing a loan on the part of the state to the Winchester and Potomac rail-road company.

(Passed February 13, 1838.) 112

1. *Be it enacted by the general assembly*, That the board of public works be and they are hereby authorized and directed to loan on behalf of the commonwealth, out of the unappropriated income of the fund for internal improvement, to the Winchester and Potomac rail-road company, the sum of one hundred and fifty thousand dollars, upon condition that the salaries of the officers and servants of the said company shall not be directly or indirectly increased during the existence of this debt, and that the said Winchester and Potomac rail-road company, previous to the payment of any portion of the said loan, do execute to the president and directors of the said board of public works, a mortgage upon their whole property, real and personal, and upon the nett income of all their tolls and receipts, and cause the same to be recorded in the county court of Frederick county, to secure the payment of the interest on said loans semi-annually, and the repayment of the principal thereof in ten equal semi-annual instalments, beginning with the sixth payment of the semi-annual interest, into the treasury to the credit of the fund for internal improvement.

2. *Be it further enacted*, That if the income of the fund for internal improvement shall be inadequate to pay the said loan, the

said board of public works are hereby empowered to borrow such sum or sums as may be necessary therefor, agreeably to such terms and conditions as may be provided for loans for purposes of internal improvement, in any general act passed at the present session of the general assembly. But should no such act be passed, then the said board are hereby authorized to effect the said loan or loans upon the terms and conditions prescribed by the act passed February the sixth, eighteen hundred and thirty-four, entitled, "an act to amend the act, entitled, 'an act to authorize a subscription on behalf of the commonwealth to the stock of the Winchester and Potomac rail-road company, and for other purposes."

3. *Be it further enacted*, That if the said company accept the benefit of this act, it shall be upon condition that the legislature have the right to tax the stock, property and profits of said company, and that said company shall be subject to the thirty-sixth section of "an act prescribing certain general regulations for the incorporation of rail-road companies," passed March eleventh, eighteen hundred and thirty-seven.

4. *And be it further enacted*, That the loan granted by this act shall be first applied to the payment of so much of the debt due from said company, as is secured by lien upon the property of said company, and the remainder to any other portion of the debt of said company, and to no other purpose; and the board of public works are hereby required and authorized to make such arrangements as may be considered by that board necessary and proper to insure the faithful performance of the requirements of this act.

5. This act shall be in force from its passage.

CHAP. 116.—AN ACT to amend an act, entitled "an act to incorporate the Winchester and Potomac railroad company," passed April 8th, 1831.

[Passed February 24, 1846.] 89

1. *Be it enacted by the general assembly*, That the Board of public works shall be and it is hereby authorized to receive from the Winchester and Potomac railroad company, annually, from and after the first day of August eighteen hundred and forty-seven, the sum of five thousand dollars, in lieu of interest upon the debt due by said company to the commonwealth, and of dividends upon the stock of the commonwealth in said company.

2. *Be it further enacted*, That so long as said company shall, according to the provisions of this act, pay on the first day of August of each and every year as aforesaid, into the public treasury, the sum

of five thousand dollars, the same shall be received in lieu of interest and dividends as aforesaid, and the payment of the principal of said debt shall be so long postponed.

3. *Be it further enacted,* That if default shall be made in the payment of said annuity, the Board of public works shall have power to proceed to collect the whole of said debt and interest due, in the same manner as if this act had not been passed.

4. *Be it further enacted,* That the lien of the commonwealth upon said road now existing, be retained in full force, for the whole debt and interest, the object of this act being only to postpone the collection of the same as long as the conditions of this act are complied with.

5. *Be it further enacted,* That this act shall not affect the right of the said company to dispose of their road to the Baltimore and Ohio railroad company, under the act of the last session.

6. This act shall be in force from its passage.

[Va.]

CHAP. 332.—An ACT for the relief of the Winchester and Potomac Railroad Company.

Passed February 22, 1866. 439

Whereas the Winchester and Potomac railroad company have, by reason of the late war, sustained the loss of all its buildings, rolling stock, and other property, and a portion of the roadway itself, besides the use of the road from the commencement of the war: Therefore,

1. Be it enacted by the general assembly, That it shall be lawful for said company to pay into the treasury of the commonwealth, on or before the first day of January, eighteen hundred and sixty-eight, the sum of eighty-three thousand three hundred and thirty-three and one-third dollars (the principal sum owing), together with all interest due thereon. Such payment to be made in any bonds of the state, at their par value: and upon such payment being made, the claim of the state against said company shall be lifted and discharged.

2. This act shall be in force from its passage.

[Va.]

CHAP. 242.—An ACT to authorize the Winchester and Potomac Railroad Company to increase its Capital Stock and to Borrow Money.

Passed February 25, 1867. 674

1. Be it enacted, That the Winchester and Potomac railroad company is authorized to increase its capital stock by an amount not ex-

ceeding seventy-five thousand dollars, in shares of twenty-five dollars each, in order to have the debts due from the said company converted into stock, or such of the debts as the creditors may agree to convert; and that such new stockholders shall be subject to the same terms and conditions, and be entitled to the same rights and privileges, as the present holders of stock.

2. That the said company is hereby authorized to borrow a sum of money not exceeding fifty thousand dollars, on such time and for such rate of interest as may be agreed upon, and to secure the payment thereof by a lien upon the road and its real and personal property and franchise.

3. This act shall be in force from the passage thereof.

[Va.]

CHAP. 98.—An ACT to amend and re-enact an act entitled an act for the relief of the Winchester and Potomac Railroad Company, passed February 22d, 1866.

Passed April 25, 1867. 900

1. Be it enacted by the general assembly, That the act passed February twenty-second, eighteen hundred and sixty-six, entitled an act for the relief of the Winchester and Potomac railroad company, be amended and re-enacted to read as follows:

"Whereas, the Winchester and Potomac railroad company have, by reason of the late war, sustained the loss of all its buildings, rolling stock and other property, and a portion of the roadway itself, besides the use of the road from the commencement of the war: Therefore,

"§ 1. Be it enacted by the general assembly, That it shall be lawful for said company to pay into the treasury of the commonwealth, on or before the first day of January, eighteen hundred and sixty-eight, the sum of eighty-three thousand three hundred and thirty-three and one-third dollars (the principal sum owing), together with all interest due thereon, such payment to be made in any bonds of the state, at their par value; and upon such payment being made, the claim of the state against said company shall be lifted and discharged.

"§ 2. In case the said company find it necessary to borrow money for the purpose aforesaid, upon the terms of securing such loan by a subrogation of the lender to the lien of the state for the amount advanced, then the treasurer of this commonwealth is hereby authorized and required, upon the request of the president of 901
said company, to assign and transfer the lien now held by the commonwealth to such lender, for so much as he may advance and interest, and release the residue of the debt, but without any recourse to the state."

2. This act shall be in force from its passage.

ACTS RELATING TO THE COVINGTON & OHIO RAILROAD.

CHAP. 67.—An ACT to authorize the Board of public works to construct a railroad from Covington to the Ohio river on state account.

Passed February 15, 1853. 66

1. Be it enacted by the general assembly, that for the purpose hereinafter named, the Board of public works be and they are hereby incorporated and made a body politic, under the name of "The Covington and Ohio Railroad Company," with all the powers conferred by the Code of Virginia upon the Board of public works when they are required to cause works of internal improvement to be constructed on state account, and with such additional powers and privileges, and subject to such restrictions as are set forth in said Code in respect to companies incorporated to construct railroads.

2. That said company shall cause to be constructed and equipped a railroad with a heavy rail from some point at or near Covington or Clifton Forge in the county of Alleghany, by the best practicable route, to some point on the Ohio river not below the mouth of Big Sandy river nor above the town of Point Pleasant.

3. That in the construction of this railroad the Board of public works shall commence and continue the construction of said road from its western terminus east at the same time they are extending the said road from its eastern terminus west.

4. That the Board of public works are hereby authorized to borrow on the credit of the commonwealth, in the mode prescribed by existing laws, the money necessary to construct and equip said road, but not more than one million of dollars are hereby appropriated for the purposes of this act.

5. That in constructing said road said company shall not interfere with the route or track for its canal which the James river and Kanawha company may within six months after the passage of this act designate by location, but said Covington and Ohio company may, before the expiration of said six months, proceed to locate and construct said road, with the consent of the stockholders of the James river and Kanawha company first had and obtained: provided, 67
that six months notice shall be given to the James river and Kanawha company before proceeding to locate each successive section of fifty miles.

6. This act shall be in force from its passage.

CHAP. 99.—An ACT providing for the completion of the Covington and Ohio railroad.

Passed March 13, 1856. 83

1. Be it enacted by the general assembly, that the Board of public works be and are hereby authorized and directed to borrow from time to time, upon the terms now prescribed for making loans by existing laws or that may hereafter be prescribed, the sum of five hundred thousand dollars, to be appropriated to the construction of the Covington and Ohio railroad; to be expended within the present and succeeding year; and the sum hereby appropriated to be expended in the tunneling, grading, masonry and bridging of said road.

2. This act shall be in force from its passage.

CHAP. 105.—An ACT providing for the further construction of the Covington and Ohio rail road.

Passed March 20, 1858. 87

1. Be it enacted by the general assembly, that the Board of public works be and are hereby authorized and directed to borrow from time to time, upon the terms now prescribed for making loans by existing laws, or that may hereafter be prescribed, the sum of eight hundred thousand dollars, to be appropriated to the construction of the Covington and Ohio rail road; to be expended within the years eighteen hundred and fifty-eight and eighteen hundred and fifty-nine.

2. Be it further enacted, that the third section of an act passed February fifteen, eighteen hundred and fifty-three, entitled an act to authorize the Board of public works to construct a rail road from Covington to the Ohio river on state account, be and the same is hereby repealed.

3. This act shall be in force from its passage.

699

CHAP. 14.—An ACT to provide for the construction and equipment of the Covington and Ohio rail road.

Passed February 29, 1860. 107

1. Be it enacted by the general assembly, that the Board of public works be and are hereby authorized and directed to borrow from time to time, upon the terms now prescribed by law for making loans, or that may hereafter be prescribed, the sum of two and one-half millions

of dollars, to be appropriated to the construction and equipment of the Covington and Ohio rail road: provided, that not more than one million thereof shall be expended in any one year.

2. This act shall be in force from its passage.

[VA.]

CHAP. 200.—An ACT to incorporate the Covington and Ohio Railroad Company.

Passed February 26, 1866. 317

1. Be it enacted by the general assembly of Virginia, That the persons upon whom the benefits of this charter may be hereafter conferred, and who may be organized as hereinafter provided, shall thereupon be constituted a corporation, under the name and style of The Covington and Ohio Railroad Company, according to the provisions of the Code of Virginia (edition eighteen hundred and sixty), for the government of incorporated companies, and not inconsistent herewith.

2. The said Covington and Ohio railroad company, when fully constituted and certified as hereinafter provided, shall have all the rights, interests and privileges, of whatsoever kind, in and to the Covington and Ohio railroad, and appurtenances thereto belonging, now the property of the state of Virginia, upon condition that it shall, within six months after its incorporation, as provided in the tenth section of this act, commence, and, within six years, complete, equip and operate a railroad from some point at or near Covington, Alleghany county, Virginia, and connecting with the Virginia Central railroad, by the way of the White sulphur springs and the valleys of Greenbrier river, New river and Kanawha river, to a point at or near the mouth of Scarey creek, and thence to the Ohio river. The said road to be constructed in a style at least equal to that of the Virginia Central railroad, and with grades not higher than those adopted by C. B. Fisk, Esquire, the former engineer of the Covington and Ohio railroad. But this grant is not intended to include the unexpended amount heretofore appropriated by the state of Virginia to this work.

3. The said Covington and Ohio railroad company shall have the right to construct a branch from its main line, to connect with the Virginia and Tennessee railroad at such points as it may deem most expedient; and the said company is hereby empowered to acquire real property necessary for the construction of the said railroad and of the said branch.

4. The capital stock of the company shall not be less than three millions of dollars nor more than twelve millions, in shares of one

hundred dollars each; but if necessary to augment the capacity of said road, the capital may, from time to time, by a vote of two-thirds of the stockholders, be increased to an amount not exceeding twenty millions of dollars; and each stockholder shall be entitled to one vote for each share of his stock.

5. The stockholders, at their first meeting, shall elect directors, who, a majority thereof being necessary for a quorum, shall elect a president (from their own body), and shall appoint all other officers and agents, make by-laws, and transact all business necessary to promote the purposes of the corporation.

6. The president and directors may create indebtedness, in the manner prescribed by the by-laws, for the purchase of materials, the construction and equipment of said railroad, and for all other necessary purposes.

7. The rates of charge by said company, for passengers and freight transported on the main line and branches of said railroad, shall never exceed the highest allowed by law to other railroads in the state of Virginia; and no discrimination shall be made in such charges against any connecting railroad or canal company in which the state has an interest; and the right is reserved to the state of Virginia to connect, at any point within its limits, with said railroad, or any of its branches, any canal or railroad in which the state has an interest; and no taxation upon the property of said company shall be imposed by the state until the profits of the company shall amount to ten per centum a year on its capital.

8. If said company shall fail to commence work or to put the road in operation within the times specified in the charter, then the franchise hereby granted shall revert to the state of Virginia, and the commissioners hereinafter named shall take possession of the said road, after serving due notice, in writing, on the president of said company, that the said reversion and repossession is claimed.

9. John B. Baldwin, George W. Bolling, Thomas S. Flournoy, R. H. Maury and William J. Robertson are hereby appointed commissioners, to act on the part of the state of Virginia; but should a like number be appointed by the state of West Virginia, then (in that case) to act in conjunction with the same, whose duty it shall be to offer the benefits of this charter for the acceptance of capitalists, so as to secure the speediest and best construction, equipment and operation of said railroad. To this end, they are hereby empowered to make a contract with any parties who shall give the best terms and the most satisfactory assurances of capacity and responsibility, and to introduce into said contract any additional stipulations for the benefit of the state and in furtherance of the purposes herein declared, and not inconsistent with this act; which said contract shall be, to all intents and purposes, as much a part of this charter as if the same had been herein included at the time of the passage of this act: provided, that no act of the said commissioners, whether acting by themselves,

or in conjunction with commissioners to be appointed by the state of West Virginia, shall be valid or effectual, unless approved and voted for by at least three of the commissioners appointed by this act.

10. The certificate of the said commissioners of the due execution of the said contract, and the organization of the said company, shall operate to confer upon said company all the benefits of this charter, subject only to the general provisions of the Code of Virginia for the government of internal improvement companies, so far as the same may not be inconsistent herewith.

11. Should the forfeiture provided for in the eighth section occur, the said commissioners may make a new contract with any other parties, as though no former contract had been made.

12. The said commissioners may receive from the treasury of the state their necessary expenses incurred in the execution of the duty herein imposed upon them, and shall not directly or indirectly, receive any emolument from, or have any interest in any company created by this charter.

13. The governor of the commonwealth shall, upon the passage of this act, immediately communicate the same to the governor of West Virginia, and respectfully request that it be submitted to the legislature of that state for such action as it may deem necessary to carry out the objects and purposes of this act.

14. This act shall be in force from the day of its passage, and that the act passed February thirteenth, eighteen hundred and sixty-two, at Wheeling, entitled an act to incorporate the Charleston and Winchester railroad company, be and the same is hereby repealed.

[W. Va.]

CHAP. 131.—An ACT to incorporate the Covington and Ohio Railroad Company.

Passed March 1, 1866. 127

Be it enacted by the Legislature of West Virginia:

1. That the persons upon whom the benefits of this charter may be hereafter conferred, and who may be organized as hereinafter provided, shall thereupon be constituted a corporation, under the name and style of "The Covington and Ohio Railroad Company," according to the provisions of the code of Virginia, second edition, for the government of incorporated companies and not inconsistent herewith.

2. The said Covington and Ohio railroad company, when fully constituted and certified as hereinafter provided, shall 128
have all the rights, interests and privileges of whatsoever kind, in and to the Covington and Ohio railroad, and appurtenances thereto belonging, now the property of the State of West Virginia.

upon condition that it shall, within six months after its incorporation as provided in the tenth section of this act, commence and within six years complete, equip and operate a railroad from some point at or near Covington, Alleghany county, Virginia, and connecting with the Virginia Central railroad, by the way of the White Sulphur Springs, and the valleys of Greenbrier river, New river and Kanawha river, to a point at or near the mouth of Scary creek, and thence to the Ohio river, with the right to adopt the line of the West Virginia Central railway from Charleston to the Ohio river, upon such terms as may be agreed upon with the said West Virginia railway company. The said road to be constructed in a style at least equal to that of the Virginia Central railway, and with grades not higher than those adopted by C. B. Fisk, esquire, the former engineer of the Covington and Ohio railroad.

3. The said Covington and Ohio railroad company shall have the right to construct a branch from its main line to connect with the Virginia and Tennessee railroad at such points as it may deem most expedient, and the said company is hereby empowerd to acquire real property necessary for the construction of the said railroad and of the said branch.

4. The capital stock of the company shall not be less than three millions of dollars nor more than twelve millions, in shares of one hundred dollars each, but if necessary to augment the capacity of said road, the capital may from time to time, by a vote of two-thirds of the stockholders, be increased to an amount not exceeding twenty millions of dollars, and each stockholder shall be entitled to one vote for each share of his stock.

5. The stockholders at their first meeting shall elect directors, who, a majority thereof being necessary for a quorum, shall elect a president (from their own body) and shall appoint all other officers and agents, make by-laws and transact all business necessary to promote the purposes of the corporation.

6. The president and directors may create indebtedness in the manner prescribed by the by-laws for the purchase of materials, the construction and equipment of said railroad and for all other necessary purposes.

7. The rate of charge by said company for passengers and freight transported on the main line and branches of said railroad shall never exceed the highest allowed by law to other railroads in the state, and no discrimination shall be made in such charges against any connecting railroad or canal company chartered by the state, and no taxation upon the property of the said company shall be imposed by the state until the profits of said company shall amount to ten per cent on the capital of the company.

8. If said company shall fail to commence work or put the road in operation within the time specified in the second section, then the franchise hereby granted shall revert to the state, and the commis-

sioners hereinafter named shall take possession of the said road after serving due notice in writing to the president of said company, that said reversion and repossession is claimed.

9. George W. Summers, James Burley, Burton Despard, Joel McPherson and James O. Watson are hereby appointed commissioners to act on the part of the state of West Virginia, who shall act in conjunction with the commissioners appointed by the state of Virginia, whose duty it shall be to offer the benefits of this charter for the acceptance of capitalists, so as to secure the speediest and best construction, equipment and operation of said railroad. To this end they are empowered to make a contract with any parties who shall give the best terms and the most satisfactory assurances of capacity and responsibility, and to introduce into said contract any additional stipulations for the benefit of the state, and in furtherance of the purposes herein declared and not inconsistent with this act; which said contract shall be to all intents and purposes as much a part of this charter as if the same had been herein included at the time of the passage of this act. Provided, That no act of the said commissioners, whether acting by themselves or in conjunction with the commissioners appointed by the state of Virginia, shall be valid or effectual unless approved of or voted for by at least three of the commissioners appointed by this act.

10. The certificate of the said commissioners of the due execution of the said contract, and the organization of the said company, shall operate to confer upon said company all the benefits of this charter, subject only to the provisions of the code of Virginia, second edition, for the government of internal improvement companies, so far as the same may not be inconsistent herewith.

11. Should the forfeiture provided for in the eighth section occur, the said commissioners may make a new contract with any other parties as though no former contract had been made.

12. The said commissioners may receive from the treasury of the state their necessary expenses incurred in the execution of the duty herein imposed upon them, and shall not directly or indirectly receive any emolument from, or have any interest in any company created by this charter.

13. The governor shall, upon the passage of this act, immediately communicate the same to the governor of Virginia.

[W. Va.]

CHAPTER 93.—An ACT to provide for the completion of a line or lines of Railroad from the waters of the Chesapeake to the Ohio River.

Passed February 26, 1867.

102

Be it enacted by the Legislature of West Virginia:

1. That it shall be lawful for the Covington and Ohio Railroad Company, which may be organized under the act passed by the General Assembly of Virginia, on the twenty-sixth day of February, eighteen hundred and sixty-six, and the act passed by the Legislature of West Virginia, on the first day of March, eighteen hundred and sixty-six, entitled "An Act to incorporate the Covington and Ohio Railroad Company," to consolidate with the Virginia Central Railroad Company, with the West Virginia Central Railway Company, with the Southside Railroad Company, with the Norfolk and Petersburg Railroad Company, or with one or more of said companies, upon such terms as may be agreed upon by the stockholders of the companies proposing to consolidate, in general meeting.

2 The companies which may consolidate under the provisions of this act shall constitute one corporation, which shall be vested with all the rights, privileges, franchises and property which may have been vested in either company prior to the act of consolidation, and shall be known as the Chesapeake and Ohio Railroad Company.

3. Should the consolidation of all the companies not be effected at the same time, it shall be lawful for the Chesapeake 103
and Ohio Railroad Company, when formed by two or more companies, afterwards to consolidate with the remaining company or companies.

4. It shall be the duty of said company, within six years after its organization, to complete the railroad from Covington to the Ohio river, in a style and with grades and curves not inferior to those adopted by C. B. Fisk, Esq., late chief engineer, in his report and plans of said work; and they may select the mouth of Big Sandy river or the mouth of the Great Kanawha river as the Ohio terminus of their road, or may construct a branch of their road to both points and may occupy the line of the West Virginia Central Railway Company, with its consent, from Charleston to the Ohio river, and upon terms to be agreed upon by said companies; and the said Chesapeake and Ohio Railroad Company shall have the right to construct an air line railroad from Richmond to Charlottesville, or to make such changes in that part of the Central Railroad which lies between said points as will shorten the same, and shall have all the powers conferred by the code and laws of Virginia which may be necessary for this purpose.

5. Should the Southside Railroad Company and the Norfolk and Petersburg Railroad Company, or either of them, become consolidated

with the Covington and Ohio Railroad Company, it shall be the duty of the consolidated company within the time agreed upon in the terms of consolidation, to construct a railroad from the terminus of the Southside Railroad at Lynchburg to Covington, or a suitable point of connection on the Virginia Central Railroad; and said company shall be vested with all the powers conferred by the code of Virginia to enable it to construct said railroad.

6. The state reserves the right to connect with the works of this company any other work of internal improvement, and no discrimination shall be made in the charges of said company against the trade and travel of any connecting work.

7. Said company may have a capital stock not exceeding thirty millions of dollars, to be divided into shares of one hundred dollars each, and may make a part thereof preferred stock, and may borrow such sums of money, at a rate of interest not exceeding eight per centum per annum, as may be necessary for the construction and proper equipment of its road, and execute liens upon its property and revenues to secure the payment of the interest and principal of the same.

8. It shall be lawful for said company to acquire not exceeding five millions of acres of land in payment for subscriptions of stock or by purchase; provided, however, it shall not be lawful for said company, at the expiration of ten years after the completion of their road, to hold more land than shall be necessary for the use of the road.

9. Said company may elect such number of directors and provide for the election or appointment of such officers and agents as it may decide to be necessary for the management of its affairs.

10. Each stockholder shall have one vote in the meetings of the stockholders, for every share of stock held by him. 104

11. Should a vacancy at any time occur in the board of commissioners of the Covington and Ohio Railroad from the death, resignation or disability to act, of any of its members, it shall be the duty of the governor of the state in which such member resided to fill the vacancy by a new appointment.

12. It shall be lawful for the commissioners to cause books of subscription to the stock of the Covington and Ohio Railroad Company to be opened at such places and under the direction of such agents as they may appoint, with the view of organizing a company to accept the charter of the Covington and Ohio Railroad, and construct said railroad.

13. The said Chesapeake and Ohio Railroad Company shall have the right, at any time within two years after its organization, to purchase the stock held by the State of Virginia at the date of the purchase in said company, by transferring to the board of public works of Virginia, bonds of the State of Virginia, for an amount equal to the stock proposed to be purchased, and also to pay any debt which it may owe to the State of Virginia at the date of payment, on account of loans made to any of the companies which may have con-

solidated, by surrendering to the board of public works of Virginia, State bonds for an amount equal to the debts proposed to be paid, and may also purchase the right of the State of Virginia in and to the Blue Ridge Railroad by the surrender of State bonds to an amount equal to the value of said road at the time of purchase under the contract with the Virginia Central Railroad Company; said amount to be ascertained by the commissioners of the Covington and Ohio Railroad. It shall also be lawful for any stockholder in the Chesapeake and Ohio Railroad Company to purchase a part or the whole of the stock held by the State of Virginia at the time of purchase, in the company of which he is a stockholder, by transferring to the board of public works of Virginia, State bonds equal in amount to the stock proposed to be purchased. But nothing in this act contained shall be held to bind the State of West Virginia for any part of the debts of Virginia.

14. The Virginia Central Railroad Company and the West Virginia Central Railway Company, or either of them may contract with the Covington and Ohio Railroad commissioners for the construction of the railroad from Covington to the Ohio river, and in the event such contract be made, the said Virginia Central Railroad Company or West Virginia Central Railway Company, shall be known as the Chesapeake and Ohio Railroad Company and shall be entitled to all the benefits of the charter of the Covington and Ohio Railroad and to all the rights, interests and privileges which by this act are conferred upon the Chesapeake and Ohio Railroad Company when organized.

15. It shall be lawful for the board of supervisors of any county to take the sense of the qualified voters of their county upon the question of subscription of the stock of any company which may be authorized to construct the railroad from Covington, in the 105
State of Virginia, to the Ohio river; and, should three-fifths of the persons who may vote on such question, vote in favor of the proposed subscription, the said board of supervisors shall appoint an agent to subscribe for the amount of stock which may have been authorized by the vote of the county, and also an agent to negotiate a loan or loans in the name of the county, at a rate of interest not exceeding ten per cent per annum, for the purpose of paying such subscription of stock, and said board of supervisors shall be authorized to issue the bonds, coupon or registered, of the county for the amount of such loans; and said board of supervisors shall from time to time, assess and collect taxes upon the taxable subjects of their county sufficient to pay the interest upon such loans and the final extinction of the principal thereof.

16. James Burley, Z. D. Ramsdell, Harrison Hagans, Joel McPherson and John S. Cunningham are hereby appointed commissioners on behalf of West Virginia, in lieu of the commissioners appointed by the act passed March first, eighteen hundred and sixty-six, entitled

"An act to incorporate the Covington and Ohio Railroad Company," with all the powers vested in the former commissioners by said act, and said commissioners may act conjointly with the commissioners of Virginia or may act separately, but no act of the said commissioners whether acting by themselves or in conjunction with the commissioners appointed by the State of Virginia shall be valid or effectual unless approved or voted for by at least three of the commissioners appointed by this act.

17. It shall be the duty of the company which may be formed under this act to file, within thirty days after their organization, with the board of public works of Virginia and West Virginia, a duly certified and correct copy of the terms of consolidation.

[Va.]

CHAP. 280.—An ACT to provide for the completion of a line or lines of Railroad from the waters of the Chesapeake to the Ohio river.

Passed March 1, 1867. 705

1. Be it enacted by the general assembly, That it shall be lawful for the Covington and Ohio railroad company, which may be organized under the act passed by the general assembly of Virginia, on the twenty-sixth February, eighteen hundred and sixty-six, and the act passed by the legislature of West Virginia, on the first day of March, eighteen hundred and sixty-six, entitled an act to incorporate the Covington and Ohio railroad company, to consolidate with the Virginia Central railroad company, with the Southside railroad company, with the Norfolk and Petersburg railroad company, or with one or more of said companies, upon such terms as may be agreed upon by the stockholders of the companies proposing to consolidate in general meeting.

2. The companies which may consolidate under the provisions of this act shall constitute one corporation, which shall be vested with all the rights, privileges, franchises and property which may have been vested in either company prior to the act of consolidation, and shall be known as The Chesapeake and Ohio Railroad Company.

3. Should the consolidation of all the companies not be effected at the same time, it shall be lawful for the Chesapeake and Ohio railroad company, when formed by two or more of said companies, afterwards to consolidate with the remaining company or companies.

4. It shall be the duty of said company, within six years after its organization, to complete the railroad from Covington to the Ohio river, in a style and with grades and curves not inferior to those adopted by C. B. Fisk, Esq., late chief engineer, in his report and plans of said work; and they may select the mouth of Big Sandy

river, or the mouth of the Great Kanawha river, as the Ohio terminus of their road, or may construct a branch of their road to both points; and may occupy the line of the West Virginia Central railroad company, from Charleston to the Ohio river, upon terms to be agreed upon by said companies; and the said Chesapeake and Ohio railroad company shall have the right to construct an air line railroad from Richmond to Charlottesville, or to make such changes in that part of the Central railroad which lies between said points as will shorten the same, and shall have all the powers conferred by the Code and laws of Virginia which may be necessary for this purpose.

5. Should the Southside railroad company and the Norfolk and Petersburg railroad company, or either of them, become consolidated with the Covington and Ohio railroad company, it shall be the duty of the consolidated company, within the time agreed upon 706
in the terms of consolidation, to construct a railroad from the terminus of the Southside railroad, at Lynchburg, to Covington, or a suitable point of connection on the Virginia Central railroad; and said company shall be vested with all the powers conferred by the Code of Virginia to enable it to construct said railroad.

6. Should the Chesapeake and Ohio railroad company refuse to consolidate with the Norfolk and Petersburg railroad company and the Southside railroad company, on application, it shall be lawful for the Norfolk and Petersburg railroad company and the Southside railroad company to consolidate upon such terms as may be agreed upon by the stockholders of said companies, and the consolidated company shall be known by the name of The Norfolk, Petersburg and Covington Railroad Company; and shall be vested with all the rights, interests, franchises and property which belonged to either company prior to the act of consolidation, and shall be authorized to extend their road from Lynchburg to Covington, or a suitable point of connection on the Virginia Central railroad, and shall have all the powers conferred by the Code and the laws of Virginia to enable it to construct said railroad; and said company may have a capital stock not exceeding fifteen millions of dollars, to be divided into shares of one hundred dollars each, and may make a part thereof preferred stock, and may borrow such sums of money as may be necessary, and execute liens upon its property and revenues to secure the payment of the interest and principal of the same; and it shall be the duty of said company, within six years after its organization, to complete said railroad. The Chesapeake and Ohio railroad company, and the Norfolk, Petersburg and Covington railroad company, shall mutually furnish every facility for the transportation over their roads of tonnage and passengers coming from the road of one company to the road of the other company, and there shall be no manner of discrimination against trade and travel passing from the road of one of said companies to the road of the other company.

7. The state reserves the right to connect with the works of this

company any other work of internal improvements, and no discrimination shall be made in the charges of said company against the trade and travel of any connecting work.

8. Said company may have a capital stock not exceeding thirty millions of dollars, to be divided into shares of one hundred dollars each, and may make a part thereof preferred stock; and may borrow such sums of money, at a rate of interest not exceeding eight per centum, as may be necessary for the construction and proper equipment of its road, and execute liens upon its property and revenues to secure the payment of the interest and principal of the same.

9. It shall be lawful for said company to acquire not exceeding five millions of acres of land, in payment for subscriptions of stock or by purchase: provided, however, it shall not be lawful for said company, at the expiration of ten years after the completion of their road, to hold more land than shall be necessary for the use of the road.

10. Said company may elect such number of directors, and provide for the election or appointment of such officers and agents as it may decide to be necessary for the management of its affairs.

11. Each stockholder shall have one vote in the meetings of the stockholders for every share of stock held by him.

12. Should a vacancy at any time occur in the board of commissioners of the Covington and Ohio railroad from the death, resignation, or disability to act of any of its members, it shall be the duty of the governor of the state in which such member resided, to fill the vacancy by a new appointment.

13. It shall be lawful for the commissioners to cause books of subscription to the stock of the Covington and Ohio railroad company to be opened at such places and under the direction of such agents as they may appoint, with the view of organizing a company to accept the charter of the Covington and Ohio railroad and construct said railroad.

14. The said Chesapeake and Ohio railroad company shall have the right, at any time within two years after its organization, to purchase the stock held by the state in said company, at the date of the purchase, by transferring to the Board of public works bonds of the state for an amount equal to the stock proposed to be purchased, and also to pay any debt which it may owe the state at the date of the payment, on account of loans made to any of the companies which may have consolidated, by surrendering to the Board of public works state bonds for an amount equal to the debt proposed to be paid, and may also purchase the right of the state in and to the Blue ridge railroad by the surrender of state bonds to an amount equal to the value of said road at the time of purchase under the contract with the Virginia Central railroad company, said amount to be ascertained by the commissioners of the Covington and Ohio railroad; and should the Norfolk, Petersburg and Covington railroad company be orga-

nized, it may, within two years after its organization, purchase any stock held by the state therein at the date of purchase, by the surrender of state bonds for an amount equal to the stock proposed to be purchased, and may pay any debt due the state on account of loans made to the companies comprising it, by a surrender of state bonds for an amount equal to the debt proposed to be paid. The stock which may be purchased from the state by either of said companies shall be cancelled. It shall also be lawful for any stockholder in either the Chesapeake and Ohio railroad company, or the Norfolk, Petersburg and Covington railroad company, to purchase a part or the whole of the stock held by the state, at the time of the purchase, in the company of which he is a stockholder, by transferring to the Board of public works, state bonds equal in amount to the stock proposed to be purchased. 708

15. The Virginia Central railroad company may contract with the Covington and Ohio railroad commissioners for the construction of the railroad from Covington to the Ohio river, and in the event such contract be made, the said Virginia Central railroad company shall be known as the Chesapeake and Ohio railroad company, and shall be entitled to all the benefits of the charter of the Covington and Ohio railroad, and to all the rights, interests and privileges which by this act are conferred upon the Chesapeake and Ohio railroad company when organized.

16. It shall be the duty of the company or companies which may be formed under this act, to file within thirty days from their organization, with the Board of public works of Virginia and West Virginia, a duly certified and correct copy of the terms of consolidation.

17. It shall be the duty of the governor to communicate a copy of this act to the governor of West Virginia, with the request that it be laid before the legislature of said state, in order that such concurrent legislation may be had on the part of that state as may be necessary.

18. This act shall be in force from its passage.

[W. Va.]

CHAPTER 3.—An ACT confirming and amending the charter of the Chesapeake and Ohio Railroad Company.

Passed January 26, 1870. 5

Be it enacted by the Legislature of West Virginia:

1. That the contract, dated August thirty-first, eighteen hundred and sixty-eight, made by commissioners of Virginia and West Virginia, with the Virginia Central Railroad Company, by which the Chesapeake and Ohio Railroad Company was formed, and under which it has been organized, be and the same is hereby approved, ratified, and confirmed as follows:

Contract with Commissioners for completing the Covington and Ohio Railroad.

The parties to the contract are:

First. The commissioners of the state of Virginia, under the following acts of the General Assembly, viz: 1st, "An act to incorporate the Covington and Ohio Railroad Company," passed February twenty-sixth, eighteen hundred and sixty-six. 2nd, "An act to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio river," passed March first, eighteen hundred and sixty-seven.

Second. The commissioners of the state of West Virginia, under the following acts of the Legislature, viz: 1st, "An act to incorporate the Covington and Ohio Railroad Company," passed March first, eighteen hundred and sixty-six. 2d, "An act to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio river," passed February twenty-sixth, eighteen hundred and sixty-seven. 3rd, "An act to amend and re-enact the fifteenth section of an act providing for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio river, passed February twenty-sixth, eighteen hundred and sixty-seven," passed February sixth, eighteen hundred and sixty-eight.

Third. The Virginia Central Railroad Company:

The said commissioners of Virginia and West Virginia, by virtue of the authority given them by the statutes already referred to, and in order to secure the speediest and best construction, equipment, and operation of the said railroad from Covington to the Ohio river, according to the true intent and meaning of the said statutes, have contracted therefor with the said Virginia Central Railroad Company as the party giving the best terms and the most satisfactory assurances of having the capital, capacity and responsibility contemplated and required by the said statutes, and have introduced into the said contract the following additional stipulation, proposed by the stockholders of the said Virginia Central Railroad Company in general meeting on the twenty-ninth day of November, eighteen hundred and sixty-seven, and accepted by the said commissioners as being for the benefit of their respective states and in furtherance of the purposes declared by the legislature aforesaid, viz:

I. The work to be commenced and completed in the time and manner provided in the charter.

II. The company to guarantee four per cent semi-annual dividends upon any stock which may be subscribed for the construction of said road, after the completion of the road to the Ohio river, and in the meantime said stock shall be preferred in any dividends which shall be declared by the company, to an extent not exceeding four per cent semi-annually.

III. The company to borrow such sums of money at a rate of in-

terest not exceeding eight per cent per annum, as may be necessary, in addition to the funds arising from stock subscriptions for the completion of said road, and to execute a lien on its property and resources to secure the payment of the principal and interest of such loans: Provided, that subscriptions may be received to be applied to the construction of the work continuously from either end of the line.

IV. The company may guarantee the payment of principal and interest of bonds of cities and counties, receivable in payment of subscription to stock.

V. That bonds of cities and counties at ninety cents on the dollar, and bearing eight per cent per annum interest, convertible into preferred stock, be received in payment of subscription to stock.

VI. Nothing contained in any contract made by this company shall have the effect to deprive the present creditors of the company of their claims for satisfaction out of the present property of the company, and it shall be the duty of the president and directors, before executing any further lien on the present property of the company, to secure by mortgage any portion of the funded or floating debt, not heretofore so received, that cannot be promptly paid off in the ordinary administration of the affairs of the company.

And the said Virginia Central Railroad Company having undertaken and contracted to construct the said railroad, on the terms and conditions aforesaid, it is hereby declared and certified that the said company shall hereafter be known as "The Chesapeake and Ohio Railroad Company," and is entitled to all the benefits of the charter of the Covington and Ohio Railroad, and to all the rights, interests, and privileges which, by the statutes aforesaid, are conferred upon the Chesapeake and Ohio Railroad Company, when organized.

In testimony whereof, the commissioners of Virginia and West Virginia have set their hands and seals; and the said Virginia Central Railroad Company has caused the corporate seal of the company to be affixed, with the signature of Edward Fontaine, president of said company, this thirty-first day of August, eighteen hundred and sixty-eight.

JOHN B. BALDWIN, [L. S.]
GEORGE W. BOLLING, [L. S.]
THOMAS S. FLOURNOY, [L. S.]
WM. J. ROBERTSON, [L. S.]

Commissioners of Virginia.

JAMES BURLEY, [L. S.]
Z. D. RAMSDELL, [L. S.]
JOEL MCPHERSON, [L. S.]
JOHN S. CUNNINGHAM, [L. S.]

Commissioners of West Virginia.

E. FONTAINE,
President of the Va. Central Railroad Company.

2. That the Chesapeake and Ohio Railroad Company, formed and organized under said contract, shall have all the rights, benefits and privileges, and be subject to all the duties and responsibilities provided and declared in the said contract, and in the legislation of the states of Virginia and West Virginia, therein referred to; except only that the said company shall be allowed for the completion of the road from Charleston, in the county of Kanawha, to the mouth of Sandy, in the county of Wayne, the same time that is given by the charter for completing the other portions of the work within this state.

3. That the general meetings of the said company may be held at any station upon the line of the road, and meetings of the directory at such places as the by-laws may prescribe.

4. That upon the completion of the road, if the said company shall not deem it expedient to establish its principal office within this state, its place of business at or nearest Charleston, in the county of Kanawha, shall, for all purposes required by law, be deemed to be such principal office within this state. And, until such completion, all notices and legal process shall be sufficiently served upon the company if delivered in person to the president, vice-president, or any director of the company, whether in this state or elsewhere.

ACTS RELATING TO STATE'S EXPENDITURES ON "KANAWHA IMPROVEMENTS."

39

CHAPTER LVI.—An act to amend the act, entitled "an act for clearing and improving the navigation of James river," and for uniting the eastern and western waters, by the James and Kanawha rivers.

[Passed February 17th, 1820.] 39

Whereas it will be greatly beneficial to the good peopple of this Commonwealth to improve the navigation of the James and Jackson's rivers, from tide water to the mouth of Dunlap's creek, by navigable canals and locks, where necessary; to make a convenient road from thence to the great falls of the Kanawha river; and to make the last mentioned river conveniently navigable from the great falls thereof to the river Ohio. And, whereas there is reason to believe that the James River Company is willing to consent to such modifications of their charters as will enable the said company, as an agent acting and holding in trust for the benefit of this Commonwealth, to undertake and carry the said improvements into effect, in such manner as the General Assembly shall, from time to time, direct and require; and, under the direction and superintendence of such agent or agents as may from time to time be appointed for that purpose; by appropriating to these objects such sums of money as they may borrow, under the authority and by the direction of the General Assembly, and upon such terms as may be prescribed by law from time to time; and that the said company will moreover consent to apply all their surplus tolls and income of every kind which may accrue after the first day of January, eighteen hundred and twenty, from the works and property now belonging to them, or which they may hereafter acquire, to the payment of the interest on the money which they may so borrow, except only so much thereof, as may be necessary to defray the expenses of keeping their works now existing, or hereafter to be made, in complete repair, and all reasonable expenses necessary for collecting tolls, and managing all other affairs of the company; and, moreover, excepting so much of the said tolls and income as may be necessary to pay, in semi-annual instalments, a dividend upon the present stock of the said company, of twelve per centum per annum, for and during the term of twelve years from said first day of January, eighteen hundred and twenty, and fifteen per centum per annum from and after the expiration of the said term of twelve years, forever

thereafter; and that the said company will account for the said surplus tolls and income of every kind, to the General Assembly, and pay the same, at the time or times, and in the manner which the General Assembly shall direct; but upon the further condition that the General Assembly shall provide for making good any deficiency in the payment of the interest on any money so borrowed, which may remain to be provided for, after applying the surplus tolls and other income of the said company, with the exceptions aforesaid, to the payment of interest, as aforesaid:

1. *Be it therefore enacted*, That, if the James River Company shall, on or before the fifteenth day of March next, assent to the provisions of this act, by a resolution to that effect, entered on their journals, and certify the same to the Governor of this Commonwealth, who shall forthwith make proclamation thereof, then this act shall immediately commence and be in force; and shall thereafter be considered a compact between this Commonwealth and the said company; subject, however, at all times, to such change and modification, as the legislature may think proper to make; *Provided*, That no such change or modification shall be made as will take from the James River Company their right to the dividends, or any part of the dividends upon their stock, allowed to them by this act; and that no such change or modification shall be made as will take from those who may have loaned money to the said company, under the faith of this act, the security hereby pledged to them for the payment of the interest thereon.

2. *And be it further enacted*, That, in the event of the assent of said company, as aforesaid, the said company shall, during the present year, so far as their funds, hereinafter provided for, will enable them, and without delay, proceed to the execution, and steadily persevere to the completion, of the following works, and in the following order, that is to say: First, to render the Great Kanawha, from the great falls thereof to the Ohio river, navigable at all seasons of the year for boats drawing three feet water, according to the plan of the principal engineer, in his report to the Board of Public Works, made in January, eighteen hundred and twenty. Secondly, to improve the navigation of James river, from tide water to Pleasant's Island, by locks and navagable canals, affording at all seasons of the year at least three feet depth of water from tide water to said island, and so as to navigate conveniently boats carrying one thousand bushels of coal at all points below the highest point at which coal lands on James river are now known; and above such coal lands, by a canal, not less than thirty feet wide at top, and twenty feet wide at bottom, having, at all seasons of the year, not less than three feet depth of water, in every part thereof, according to the said report of the principal engineer, and make safe and convenient communications from the river, at such point or points as will afford ample accommodation to the coal trade. Thirdly, to make the best road practicable, at an expense of one hundred

thousand dollars, from the mouth of Dunlap's creek, to the great falls of the Great Kanawha river, and to expend in the making of said road, in each of the two successive years, immediately following the completion of the aforesaid works, the sum of fifty thousand dollars; the said road to be made in the most direct practicable route, not to exceed in any part five degrees of declivity or acclivity, and to be made according to the suggestions of the said report of the principal engineer. Fourthly, to make navigable canals and locks from Pleasant's island to the mouth of Dunlap's creek, according to the suggestions of the 41
said report of the principal engineer, as nearly as may be. And fifthly, to make safe and convenient communications from the river, at such points as will afford ample accommodation to the trade on the river: the road aforesaid to be completed according to the provisions of the act, entitled, "An act prescribing certain general regulations for the incorporation of turnpike companies," dispensing, however, with the summer roads required by the said act, except clearing the same of timber; and the winter road shall be improved, as required by the said act, at least twenty-two feet wide, except in difficult places, but in no place less than eighteen feet wide; and the said company shall constantly keep said road in good repair: *Provided, however*, That, if the sum of one hundred thousand dollars should be insufficient to improve the road in the manner described in this section, then such further sums shall from time to time be appropriated as will be adequate to that purpose. The improvements aforesaid, and all others, which may be prescribed by the legislature, shall, from time to time, be made under the superintendence of such commissioner or commissioners, agent or agents, as the General Assembly shall from time to time appoint.

2. *And be it enacted*, That, to enable the James River Company to open and complete the aforesaid road, and to keep the same constantly in good repair, which they are hereby required to do, they shall be entitled to avail themselves of all the provisions in favor of turnpike companies, which are to be found in the act, entitled, "an act prescribing certain general regulations for the incorporation of turnpike companies," as well for the condemnation of lands as for other purposes.

3. *And be it further enacted*, That, to enable the said company to acquire sufficient lands for the abutments of dams and bridges, or canal, locks, toll-houses, houses for keepers of locks, and other necessary purposes, it shall be lawful for them to purchase in fee simple, of the proprietors of such lands, a quantity thereof not exceeding two acres, for each abutment of a dam or bridge; not exceeding two acres where any lock or locks may be necessary; not exceeding two acres where any toll-house may be necessary; and not exceeding one hundred and fifty feet wide the whole length of any canal which may be necessary; and, in case of such purchase or purchases, to contract for and acquire the right of establishing any machinery and working the

same with the water from any canal or dam, so as not to impair the navigation by such use of water, and of again selling or leasing the same. And, in case the lands so necessary cannot be acquired by contract, that then the said company may proceed to have such necessary lands, according to the quantities aforesaid, or less at their discretion, condemned in the manner prescribed by the act, entitled, "An act prescribing certain general regulations for incorporating turnpike companies," for condemning land for the use of any turnpike road, changing the forms of proceedings as the nature of the case may require. And when damage may arise from the overflowing of the waters, occasioned by the works of said company, the same shall be assessed and paid in the same manner, varying the forms of the proceedings as the nature of the case may require. But, in case of such condemnation, the company shall only have the right of us- 42
ing the lands so acquired for the purpose of improving and for the convenient use of the navigation aforesaid, and the other purposes aforesaid, but may at any time thereafter acquire, by purchase, the right to use the same for machinery as aforesaid, or may at any time dispose of water power to the proprietor of the adjoining lands on such terms as they may agree upon, not endangering the navigation as aforesaid. And the said company shall have the right to enter on lands for laying out their canals, dams and other works, and in making examinations as to the best mode of improvement, in like manner as is allowed to turnpike companies by the act aforesaid. And if the said company should have occasion to carry materials for their works through the lands of others, or to deposit such materials on the lands of others, or to carry on any of their said works on such lands, and cannot contract with the proprietors of such lands for the privileges aforesaid, on reasonable terms, they may proceed to assess the value of such privileges, and acquire them as lands may be acquired as aforesaid, changing the forms of the proceedings as occasion may require. And in case any controversy shall arise in any county or other inferior court, in relation to the matters aforesaid, between the said company, their servants or agents, and others, the same shall be decided as soon as may be, having a due regard to justice, without regard to priority of other matters or suits upon the docket; and, in case of unreasonable delay herein in such court, such suit or controversy shall be removed by certiorari, in to the superior court having jurisdiction thereof, and there be speedily decided as aforesaid.

4. *And be it enacted*, That, so soon as the said works shall be completed in parts or sections, so as to be useful, the same shall forever thereafter be esteemed and taken as public highways for the transportation of all goods, commodities and produce whatsoever, upon the payment of such tolls as shall be prescribed by law; and the road, canals, locks, dams and other works, when perfected, with all tolls and other profits and emoluments arising therefrom, shall be, and the same are hereby vested in the said company as agents in trust for this

Commonwealth, and shall be deemed real estate, transferable only on the books of the said company, by the proprietor or proprietors, his, her or their agent or agents, duly authorised, and shall be forever exempt from the payment of any tax, assessment or imposition whatsoever.

5. *And be it enacted*, That, so soon as the improvements for the navigation of the Kanawha river shall be completed as aforesaid, from Slaughter's creek to the Ohio river, the said company shall be entitled to demand and receive, upon boats and commodities passing the said river, tolls at the following rates, that is to say: On salt, two cents per bushel; on bacon, twelve and a half cents per hundred weight; on every barrel of cider or beer, twenty cents; on every cask of linseed or other oil, ten cents; on every bushel of wheat, peas, beans, flax or hemp seed, one cent and a half; on every bushel of indian corn, oats, potatoes or apples, one cent; on every barrel of pork or beef, ten cents; on every barrel of flour, six and a fourth cents; on every bushel of indian meal, one cent; on every bushel of dried fruit, two cents; on every ton of hemp, potash, bar or manufactured iron, one dollar; every ton of pig iron or castings, forty-five cents; every hundred bushels of lime, one dollar; every chaldron of 43
coal, twenty-five cents; every hundred barrel staves or heading, one cent; every hundred hoop poles, one cent; every hundred cubic feet of plank or scantling, three cents; every hundred cubic feet of other timber, six cents; every hundred hogshead or pipe staves, two cents; every empty barrel, one quarter of a cent; on whiskey, apple and peach brandy, or other domestic spirits, fifty cents per barrel; on rum, wine, gin and french brandy, or other foreign liquors, three cents per gallon; every hundred weight of all other commodities or packages whatsoever, thirty cents; on every boat or vessel other than canoes, not having commodities on board, yielding a toll of at least one dollar and fifty cents, one dollar and fifty cents; and every canoe, having commodities on board, the rate of toll herein-before prescribed: *Provided*, That an empty boat, canoe or other vessel, returning, whose load has already paid tolls, shall return toll-free. Which said tolls shall be paid at or near the Tyler shoals, as the tolls of the James River Company are now payable and collectable by law; and the said company shall have all the remedies for recovering said tolls, as they now have by law for collecting and recovering their present tolls.

6. And, so soon as the said company shall have opened and improved the road aforesaid in sections, such as are specified in the act aforesaid, by the gradual expenditure of the said sum of one hundred thousand dollars, they shall be authorised to collect and receive, in the manner prescribed by the said act, tolls on the said road, in sections, to the amount of one half the tolls authorised by the said act, in relation to turnpike roads: and so soon as the said road shall be completed, according to the provisions of the said act, with the ex-

ceptions aforesaid, in sections, the said company shall be entitled to receive and collect thereon, the full tolls authorised by the said act.

7. And, so soon as the said canals and other works shall be completed, from tide water, to the highest point on James river, where coal is now raised, the said company shall be entitled to receive a toll of two cents per bushel, on all coal passing the same, or any part thereof, in lieu of the toll which they are now entitled to receive on coal.

8. And the General Assembly hereby pledge themselves, that, as the works aforesaid on the James and Jackson's rivers, and in the vallies of these rivers, shall progress, and shall contribute to reduce the expense of transportation, up or down the said rivers or canals, below the average price of transportation upon the said rivers, as they have been for the three years last past, they will authorise the said company to receive tolls thereon, in convenient sections, to the amount necessary, (with their other resources specified in this act, as applicable to the payment of interest on money to be borrowed by them,) for the payment of the interest on the money expended in such work; *provided*, that such additional tolls shall not exceed one third of the saving in transportation up and down the said rivers, which will accrue thereby to those who use the said improvements, taking the average price of transportation for three years last past, as the basis of the estimates.

9. *And be it enacted*, That fourteen commissioners be ap- 44
pointed, residing in the counties bordering on the James river and Jackson's river, for the purpose of ascertaining the average price of transportation, of the various commodities liable to toll, according to the terms of the charter of the James River Company, and all other commodities up and down the rivers aforesaid, for three years last past; that is to say, Daniel Warwick of the city of Richmond, William Trabue of Chesterfield, Tarlton Woodson of Goochland, Jacob Michaux of Powhatan, Francis B. Deane of Cumberland, John H. Cocke of Fluvanna, William J. Freeland of Buckingham, Robert Rives of Nelson, William Moon of Albemarle, John Horsley of Amherst, Richard Pollard of Campbell, Isaac Otey of Bedford, Robert White of Rockbridge, and James Cartmill of Botetourt. It shall be the duty of each commissioner, to enquire diligently and impartially, upon the oaths of such person or persons as may be well informed upon the subject, in their respective counties aforesaid, what has been the average price as aforesaid, of the transportation of all commodities up and down the said rivers, or otherwise, from and to Richmond, and from and to the principal landings and places of deposit on the said rivers, in the said counties respectively. And the said commissioner, in each of the said counties, shall forthwith return an account of such average prices ascertained as aforesaid, to the courts of the said counties respectively, to be there recorded, and shall moreover, return duplicates of said accounts to the president and directors of the James River Company,

to be recorded and preserved. To each of which accounts and duplicates, the said commissioner shall make affidavit that has justly, diligently and impartially discharged the duties prescribed by this act, and that such account, or duplicate, is the result of these inquiries. The said commissioner shall proceed to the execution of the duties aforesaid, as soon as he shall be required by the James River Company; and, in case of a vacancy occurring from any cause, it shall be supplied by the court of the county in which it shall happen.

10. *And be it further enacted*, That, from and after the period at which the said company holding, as an agent, in trust for the benefit of the Commonwealth, shall give their assent as aforesaid to this act, they shall not be obliged to work on the bed of James river as heretofore, except so far as may be necessary to render the navigation from the upper locks to Lynchburg as easy and equal in every part as may be practicable; and the said company shall, at all times hereafter, keep the bed of the river, above the point to which any new improvement contemplated by this act shall be completed for use and connected with the river and below Crow's ferry, as good and convenient for navigation as it now is, and as it will be after the repairs aforesaid shall be made: all which repairs are to be contracted for and made by the company, from time to time, under the control, direction and superintendence of the commissioners, on the part of the Commonwealth, for superintending the works aforesaid on the James and Jackson's rivers hereafter mentioned, or of such other commissioner or commissioners, superintendent or superintendents, as the legislature may appoint; except so far as the said company shall undertake said repairs before they shall have received directions from the commissioners aforesaid. And, so soon as the said company shall have assented to the provisions of this act, the writ of *quo warranto* depending against them at the instance of the General Assembly shall be dismissed.

11. *And be it enacted*, That nine commissioners shall be annually appointed by joint ballot of the General Assembly, for superintending the works aforesaid on the Kanawha river, and the road aforesaid; who shall be denominated "the commissioners for the Kanawha river and road;" the acts of a majority of whom shall be in all cases obligatory. And nine commissioners shall be annually appointed, by joint ballot of the General Assembly on behalf of this Commonwealth, for superintending the works aforesaid, on the James and Jackson's rivers; the acts of a majority of whom shall be in all cases obligatory. No contract or contracts made by the James River Company for improving the navigation of the Kanawha river and road, shall be binding, or carried into effect, until the same shall be submitted to and approved in writing by the commissioners named to superintend the works on said river and road: and no contract or contracts made by the said company for making any of the improvements on the James or Jackson's rivers, shall be obligatory or carried into effect until

the same shall be submitted to and approved, in writing, by the commissioners named to superintend the works on the last mentioned rivers, who shall be denominated "The Commissioners for the James and Jackson's Rivers." And the said company shall semi-annually lay before the last mentioned commissioners an account of their receipts and disbursements, to be by them examined, stated and settled, after comparing the same with the books and vouchers of the company, and be reported by them to the General Assembly and to the Board of Public Works: *Provided, however,* That the boards of commissioners, hereby appointed to superintend the Kanawha river and the road, and the James and Jackson's rivers, may from time to time, adopt such rules and regulations for the distribution of the powers and duties hereby assigned them, amongst the members thereof, as they may think proper.

12. *And be it further enacted,* That the treasurer of the state shall be ex-officio treasurer of the company, shall be liable, as such, to the same penalties and conditions, as he is, as treasurer of the Commonwealth, and shall give additional security, in the sum of two hundred thousand dollars, for his faithful discharge of the duties hereby imposed.

13. And, to the end that adequate funds may be provided for the purpose of completing the works aforesaid: *Be it enacted,* That it shall be lawful for the James River Company, and they are hereby required to borrow, annually, after the fifteenth day of March next, from such individuals or corporate bodies, as may be disposed to lend, at an interest not exceeding six per centum per annum, payable semi-annually, two hundred thousand dollars, or such greater or less sum as may be hereafter directed and authorised by law; and in such proportions, and at such periods of the year as the said company shall deem expedient, to be applied to the execution of the works and improvements aforesaid, or such other works and improvements as the General Assembly shall hereafter direct: which authority and obligation shall continue until it shall be otherwise directed by law. The said Company shall issue certificates, under their common seal, (which, for this and all other purposes they are hereby authorised to have and use,) for the money so borrowed, and register the 46
same; which certificate shall specify the sum borrowed, of whom borrowed, and to whom payable; the interest payable thereon; that the stipulated interest shall be paid semi-annually on the fifteenth day of July and the fifteenth day of January in each year; and that the principal sum so borrowed, shall be irredeemable for twenty years from and after the fifteenth day of March next, and, from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly. Each payment of interest shall made upon the production of the said certificates and not otherwise; and such payments shall be noted on the back of such certificate. Said certificates shall be transferable only on the books

of the said company by the person or persons, or corporate bodies entitled thereto, or by their agents legally qualified for that purpose. The tolls and all other income of the said company, (after setting apart so much thereof as may be necessary to discharge all expenses of repairs, of the collection of tolls, and other necessary expenses of conducting the affairs of the said company; and also so much thereof as may be necessary to pay to the stockholders of said company, for twelve years next after the first day of January, eighteen hundred and twenty, a dividend of twelve per centum per annum on their stock, in semi-annual payments, and for ever thereafter a dividend in like manner of fifteen per centum per annum,) shall be applied to the payment of the interest on money so borrowed; and the surplus of such tolls and other income, after the payment of the expenses, dividends and interest, as aforesaid, shall from time to time be paid into the treasury of this Commonwealth, to the credit of the fund for internal improvement, to be disposed of as may, from time to time, be directed by law. And, if, at any time, the said company shall fail or refuse, or the tolls and other income aforesaid, after making the deductions aforesaid, shall be insufficient to pay the interest due upon said certificates, upon demand, the holder of such certificate shall cause a protest to be made, by a notary public, stating such demand and refusal, and thereupon the president of the Board of Public Works shall, immediately upon the production of such certificate and protest, issue his order, countersigned by the secretary of said board, authorising the payment of such interest out of the income of the fund for internal improvement; and the auditor of public accounts shall thereupon issue his warrant upon the treasurer therefor, and endorse such payment upon the back of such certificate. And so much of the income of the fund for internal improvement as may be necessary for the payment of such interest, unpaid by the said company from time to time, is hereby pledged for that purpose in preference to any other object: *Provided, nevertheless,* that such pledge shall not exceed twelve thousand dollars per annum, to be taken from the income of said fund.

14. *And be it further enacted,* That, for all such payments made out of the income of the fund for internal improvement, before the works on the James river shall be completed from tide water to Lynchburg, the said company shall deliver to the president and directors of the Board of Public Works certificates of debt, as aforesaid, carrying interest at six per centum per annum, payable semi-annually; but the interest not to commence thereon until the works shall have been completed as aforesaid to Lynchburg. And for all such payments made, after the works aforesaid shall have been completed to Lynchburg, like certificates shall be issued, and the interest thereon shall commence from and after the date when the whole of the works aforesaid, or such other as the General Assembly shall hereafter direct in lieu of any part of them, shall be completed. 47

15. *And be it further enacted*, That the surplus of the tolls and income of the company aforesaid, remaining after the payment of interest due upon the certificates of debt so issued from time to time by the said company, and paid into the treasury of this Commonwealth, as herein-before directed, shall, from time to time, be applied by the president and directors of the Board of Public Works, to the purchase of such of the certificates aforesaid of debt as can be purchased. And the interest accruing on the said certificates of debt, so purchased, shall also, from time to time, be invested as aforesaid; and the whole so purchased shall be held subject to be disposed of as the General Assembly shall from time to time direct.

CHAPTER 46.—An act to amend the act, entitled, "an act to amend the act for clearing and improving the navigation of James River, and for uniting the Eastern and Western Waters, by the James and Kanawha Rivers."

48

[Passed February 28th, 1821.]

Whereas it is the opinion of this General Assembly, that the coal trade on the James river, and the salt trade on the Great Kanawha river, ought to be fostered and encouraged; and it being represented that the tolls to be received by the James River Company on those articles, when certain improvements in the navigation of those rivers shall have been made as provided for by the act, entitled, "an act to amend the act, entitled, an act for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers," may be found to be burthensome on both or one of those articles; and whereas it is expedient at this time to provide a remedy for such evil, should it, on experience, be found to arise;

1. *Be it therefore enacted*, That, until improvements contemplated by the above recited act, shall be completed, and the stock issued by the company for loans of money, shall be purchased in, as provided for by said act, or otherwise redeemed, the tolls on those 49
articles respectively, shall not be less than one cent per bushel; but that it shall be lawful for the said company, from time to time, as to them it may seem meet and expedient, and until it shall otherwise be regulated by law, to graduate the same respectively, by raising or lowering the said tolls, so that the same be not less than one, nor more than two cents per bushel.

2. The tolls on coal shall be receivable by the said company so soon as the trade in that article shall be facilitated, agreeably to the provisions of said act, should that happen before the improvements contemplated thereby shall have proceeded as high up the river as Pleasant's island.

And whereas it is represented, that many of the commissioners in and by the ninth section of the act above recited, have failed to perform the duties assigned to them in and by the said section; and whereas it is highly necessary that those duties should be promptly performed;

3. *Be it further enacted*, That the James River Company shall forthwith again require and notify the commissioners so failing, to proceed to execute the duties assigned to them as aforesaid; and that in case of the death, refusal, or inability to act, or continued failure of the said commissioners, or any of them, or of any commissioner or commissioners appointed in pursuance of this act, to perform the said duties, the said company are hereby empowered to appoint some other fit person or persons for that purpose, in the place of such commissioner or commissioners, so dead, refusing, unable, or failing to act, and who, being notified of his appointment, and not thereupon refusing to act, shall immediately proceed to perform the duties assigned to the commissioner, in and by the section above recited, whom he or they shall respectively be appointed to substitute as aforesaid.

4. *Be it further enacted*, That, instead of nine commissioners for superintending the works on Kanawha river and the road, as is provided by the eleventh section of the act above recited, there shall be five commissioners annually appointed, by joint ballot of both Houses of the General Assembly, for superintending the works contemplated by the said act, on the Kanawha; and that, in like manner there shall be appointed annually five commissioners for superintending the works on the road contemplated by said act; the acts of a majority of whom respectively, shall, in all cases, be binding; and no contract or contracts, made by the James River Company, for improving the navigation of the Kanawha river, or for making the road aforesaid, shall be binding, or carried into effect, until the same shall be submitted to and approved in writing by a majority of the commissioners appointed to superintend the works on the said river and road respectively.

5. *Be it further enacted*, That hereafter the James River Company shall semi-annually, to-wit; on the tenth day of July and tenth day of January in each year, lay an account of their receipts and disbursements before the treasurer of the state, the auditor of public accounts, and the clerk of the board of public works, instead of laying the same before the commissioners for the James and Jackson's rivers, as directed by the above recited act, to be by them, or a majority of them, examined, stated and settled, after comparing the same with the books and vouchers of the company, to be reported by them to the General Assembly, and to the board of public works.

6. And whereas it has been found inexpedient for the treasurer of the state to be treasurer of the said company: *Be it further enacted*, That the president and directors of the James River Company, shall, from time to time, appoint some fit person to act as their

clerk and treasurer, who shall hold his said officers at the will and pleasure of the said president and directors, and receive such compensation for his services, so long as he continues in their employment, as they shall from time to time ordain and appoint. He shall take an oath before some justice of the peace, that he will truly and faithfully execute the said offices; and shall moreover enter into bond, with one or more good sureties, payable to the company, and conditioned for the faithful discharge of the duties of said offices, and the payment of all monies according to law, which may come to his hands as treasurer, so long as he continues in said offices; which bond shall be in the penalty of thirty thousand dollars. It shall be the duty of the said treasurer to make weekly settlements and payments into such bank or banks in the city of Richmond, as the president and directors shall direct, to the credit of the James River Company, of all tolls receivable at the city of Richmond, and shall in like manner pay into bank all other profits and revenue of the said company, so soon as the same shall be received by him, there to remain, subject only to such order or check as the president and directors, by a resolution or resolutions entered on their journals, shall, from time to time, make and direct.

7. *And be it further enacted,* That all monies borrowed by the company, by virtue of the above recited act, of this or any other act of Assembly, shall be paid by the lender or lenders thereof into such bank or banks within the United States, to the credit of the James River Company, as the president and directors may agree upon with the lender or lenders thereof; and, when such payment is made into a bank or banks, not within the city of Richmond, it shall be the duty of the president and directors, from time to time, to adopt such measures as to them shall seem most proper, by a resolution or resolutions for that purpose entered on their journals, to have the same drawn and deposited to the credit of the company, in such bank or banks in the city of Richmond, as they may direct, there to remain for the use of the company, and only to be drawn for that purpose by a resolution or resolutions of the president and directors, entered on their journals, authorising one or more of their body to check therefor, and which check or checks shall be accompanied by a copy of such resolution or resolutions, certified by their clerk to the cashier of the bank on which such checks shall be drawn.

8. And the more effectually to enable the James River Company to borrow money as directed by the thirteenth section of the act above recited, or as may be directed by this or any future act of Assembly; *Be it further enacted,* That, hereafter, the company shall borrow no money agreeably to the section above recited, except so far as they shall be expressly authorised by act of Assembly fixing the amount so to be borrowed; and that each lender shall have a prior lien on the funds provided, or which may be provided, for the pay-

ment of interest on loans, in conformity with the date and number of his certificate of stock: and that the evidence of such 51
lien may be fixed and preserved, it shall be the duty of the James River Company to number, and register the number, as well as the date, of each certificate of stock; and that no two certificates shall bear the same number; and the date and number shall be preserved on any duplicate of any certificate, which, by reason of a sale and transfer, or otherwise, it may be proper for them to give: and it shall moreover be their duty so to provide that the funds aforesaid shall be applied to the payment of the interest, as the same shall become payable on each certificate of stock, agreeably to its date and number; and that the certificate issued to the president and directors of the literary fund, be number one. And, for the further security and satisfaction of lenders, and as evidence to them of the ability of the company to pay the interest on loans which may be authorised by law, the faith of the state is hereby pledged, that no loan will be authorised by law unless it shall appear to the satisfaction of the legislature, from the annual reports of the accounts and proceedings of the company, that their revenue, applicable to the payment of interest, together with the appropriation made for that purpose out of the fund for internal improvement, is sufficient, not only to pay the interest on loans theretofore authorised, but on each loan as the same shall be authorised; and, in case of any deficiency of funds for that purpose, it shall be the duty of the company to pay such deficiency out of any money in hand, or to borrow money for that purpose.

9. *Be it further enacted*, That, instead of limiting the sum to be drawn from the fund for internal improvement to twelve thousand dollars per annum, as is provided by the thirteenth section of the act aforesaid, that fund shall stand pledged, as is provided in and by the said section, for the payment of any interest which the surplus fund of the company, applicable to the payment of interest, shall be insufficient to pay; *provided*, the same shall not exceed the sum of eighteen thousand dollars per annum. And, to avoid expense and embarrassment to lenders by the protest made necessary in and by the said section before they can receive the interest due and payable out of the fund aforesaid, the president and directors of the company are hereby authorised to draw an order or orders on the auditor, for a warrant or warrants on the treasury, for any interest payable out of that fund, after the proper funds of the company for that purpose shall be exhausted.

10. *And be it further enacted*, That, if that part of the fund for internal improvement appropriated to the payment of interest, or any part of it, has not been, or shall not be drawn for the payment of interest in any one year, that the same shall be set apart, from time to time, in like manner with the other surpluses of the company, to be applied to the purchasing the certificates of loan of the company as is directed in and by the said act.

11. *And be it further enacted,* That the said company be authorised, as they are hereby authorised, to proceed to borrow, agreeably to the provisions of this and the above recited act, at such times and in such proportions as they may deem expedient, a sum, not exceeding in the whole three hundred thousand dollars, exclusive of the fifty thousand dollars already borrowed from the literary fund; and that the bank of Virginia and Farmers' bank of Virginia, be authorised 52 to loan money to the company, or to deal in the certificates of loan of the company, as far as the president and directors of those banks, respectively, may think proper.

12. And, whereas the urgent necessities of the country require as prompt an execution of the improvements contemplated by the act above recited, as is practicable, whilst at the same time their economical prosecution will be greatly advanced by contracts amounting in the aggregate to a large sum; which contracts, however, cannot be made, with a proper regard to punctuality and good faith on the part of the company, unless they have the certain command of money to the amount of such contracts: *Be it further enacted,* That it shall be lawful for the president and directors to employ such agents for negotiating loans, and to give them such compensation therefor, as they may from time to time deem most economical and expedient; and should large sums be borrowed, which would necessarily lie idle until wanted for the payment of contracts, whereby great loss of interest would accrue, the president and directors are furthermore empowered to invest said funds, until wanted, in such secure and productive stock as they may think proper and expedient, and again to sell the same when their necessities may require, and carry the whole proceeds of the interest on, and the amount of sales of, such stock, to the account of monies loaned, to be placed in bank as aforesaid, and applied to the improvements aforesaid.

13. *And be it further enacted,* That the commissioners for superintending the works on the James and Jackson's rivers, on the Kanawha river and the road, shall receive three dollars per day, for every day they shall severally be employed in the discharge of the duties assigned them by said act; to be paid by the James River Company, on a certificate from a board of said commissioners, respectively.

14. This act shall commence and be in force from the passage thereof.

CHAPTER 45.— An act making more effectual provision to carry into effect, the act, entitled "an act, to amend the act, entitled 'an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers, and for other purposes."

50

[Passed February 24th, 1823.]

Whereas, by an act passed on the 17th day of February one thousand eight hundred and twenty, entitled "an act to amend the act, entitled 'an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters by the James and Kanawha rivers,'" the James river company were directed to effect a canal navigation from the tide water of James river, to the mouth of Dunlap's creek; to make a road from thence to the great falls of the great Kanawha river, and to render the latter river navigable from the great falls to the river Ohio; and the present General Assembly, being fully sensible of the great interest which the good people of this commonwealth have in the success of the said objects, deem it necessary to adopt a more effectual mode to give them effect, than that heretofore provided,

1. *Be it therefore enacted*, That from and after the commencement of this act all the powers and duties of the existing president and directors of the James river company, except as hereinafter provided, shall be superseded and annulled, and thereafter no other election of president and directors shall be made in the manner now provided by law; but the governor, lieutenant governor, treasurer and auditor of commonwealth for the time being, and the second auditor, whose office is created by this act, and their successors in office, shall be ex-officio the president and directors of the said company; of whom the governor shall be president; and the said governor, lieutenant governor, treasurer, auditor and second auditor, from the time aforesaid, as president and directors of the said company, shall succeed to and possess all the rights, powers, duties and privileges of the existing president and directors, except so far as may be otherwise provided by this act. A board for the transaction of the business of the said company shall be constituted by any three, or more of the said officers. In the absence of the governor from the board, the lieutenant governor shall be president pro tempore; and in the absence of both, the treasurer shall preside.

2. *And be it further enacted*, That there be appointed annually, by joint ballot of both houses of the General Assembly, an officer to be denominated the second auditor, whose duty it shall be to keep distinct accounts of the receipts and disbursements of the Literary Fund, of the fund for internal improvement, and of the fund consti-

tuted to effect the purposes of the act, the title of which is recited in the preamble to this act. He shall draw all warrants authorising the treasurer to receive monies on account of any of the fund before mentioned, after the amount shall have been adjusted by the other auditor, when by law, he is authorised to adjust the same, and audit all claims properly chargeable on them, and issue warrants to the persons entitled thereto. He shall act, ex-officio, as accountant of the Literary Fund, as clerk of the president and directors thereof, and as secretary of the Board of Public Works; and the powers and duties of the persons holding those offices, respectively, shall thenceforth cease. And the said second auditor is hereby authorised to 51 appoint a clerk should the board of directors hereby established deem one necessary, to aid him in the discharge of his duties. All books and papers in any manner connected with the constitution, administration or regulation of the funds herein before mentioned, shall be deposited with the said second auditor, who shall carefully preserve them.

3. All monies belonging to any of the funds herein before mentioned, shall be kept in the public treasury, separate from other public monies; and regular and distinct accounts shall be kept of the receipts and disbursements, and a report thereof annually made by the treasurer to the General Assembly, on or before the fifth day of its session.

4. It shall be the duty of the James river company, forthwith, to pay into the public treasury any money which may remain in their hands, whether the same has been received from loans, tolls, rents, or otherwise; and they shall file with the second auditor, an account of their receipts and disbursements since the commencement of the act herein-before mentioned, which he shall carefully preserve: And all monies hereafter accruing to the said company, whether for tolls, rents, loans, or otherwise, shall be accounted for, by the several collectors and other agents, with the second auditor, and paid upon his warrant into the treasury: *Provided, however,* That if existing engagements with any toll gatherer, collector, or other agent, shall require the money falling into his hands to be otherwise accounted for and paid, it shall accordingly be accounted for and paid pursuant to such engagement; and the person receiving it shall, without delay, account for it with the second auditor, and pay it into the treasury, as above prescribed.

5. *Be it further enacted,* That the president and directors of the James river company shall, without delay, proceed to borrow, from time to time, as they may deem it prudent, at an interest not exceeding six per centum per annum, so much of the three hundred and fifty thousand dollars, which they have been heretofore authorised by law to borrow, as has not yet been borrowed; and if the president and directors should find it necessary to the completion of the three first sections of the work described in the second section of the act recited

in the preamble to this act, that is to say, to render the Great Kanawha navigable from the falls to the Ohio; to improve the navigation of James river from tide water to Pleasant's island; and to make the road from the mouth of Dunlap's creek to the Great Falls of Kanawha, together with the bridges provided for by this act; then, and in that case only, they are hereby authorised and required to borrow an additional sum not exceeding eighty thousand dollars. And to enable them the more readily to procure the said loans, they are hereby authorised and required, to cause all the monies, which shall be so loaned to them, to be paid into the public treasury, by the lender, on the warrant of the second auditor; and, upon the payment of each sum so loaned, the treasurer shall issue a certificate of stock for the amount thereof, purporting that the commonwealth owes to such lender, his executors, administrators or assigns, the sum loaned, together with interest thereon, at the rate agreed upon, not exceeding six per centum as aforesaid, and payable semi-annually, at the treasury of the commonwealth, computing the time from the date of the certificate. Such certificate shall also shew, on its face, that the loan 52
was made by authority of this act; that the principal sum loaned is irredeemable for twenty years; and afterwards to be redeemed at the pleasure of the General Assembly. It shall be signed by the treasurer, countersigned by the second auditor, and registered in a book to be kept by him for that purpose, and shall then be delivered to the lender, or his agent. Every such certificate of stock shall be transferrable on the books of the second auditor; and the semi-annual interest thereon shall be paid upon his warrant. The certificates of stock for monies heretofore borrowed by the James river company, may be produced by the owners to the second auditor, and shall thereupon be registered by him in a book to be kept for that purpose; and at all times afterwards, they shall be transferable on the books of the said auditor. The interest falling due on such certificates, after they shall have been so registered, shall be paid at the treasury, on the warrant of the second auditor, without the re-production of the certificate; and the interest, falling due on them before such registry, shall be paid at the treasury, on the warrant of the second auditor, to be granted on the production of the certificate. The tolls collected on James river since the fifteenth day of March, eighteen hundred and twenty, and those which may hereafter be collected, the nett proceeds of the tolls to be collected on the Great Kanawha river, and from the road and bridges, all water rents, and rents of land, to which the James river company is or shall be entitled, together with the annual sum of eighteen thousand dollars to be paid out of the revenue of the fund for internal improvement, are hereby pledged as a fund for the payment of the dividends to the stockholders of the James river company, and the payment of the interest on the loans heretofore made to said company pursuant to law, and hereafter to be made pursuant to this act; and no part of the said fund shall be diverted to any other pur-

pose: And the General Assembly, moreover, pledge themselves, that they will from time to time, provide such other revenues as shall be necessary, to pay the interest on any loan authorised by law, to carry into effect the improvements mentioned in this act.

6. Nothing in this act shall be in any wise construed, so as to take away, or in any manner impair, the security or preference pledged to those who have heretofore loaned money, by authority of law, to the James river company.

7. *Be it further enacted*, That deeds for the transfer of any share or shares of the stock of the James river company, held by any person, body politic or corporate, executed in the manner prescribed by law for the conveyance of real estate, attested and proved by two witnesses, or certified by justices of the peace, in the manner prescribed for the authentication of deeds for real estate, and registered in the office of the second auditor, in a book to be kept by him for that purpose; also, devises of such share or shares, duly executed, proved and recorded, in some court within this commonwealth, certified and registered in the second auditor's office, in the manner aforesaid, shall be sufficient to entitle the transferree or devisee, to the dividends on such shares.

8. The dividends due, or to fall due, to the owners of the shares of the stock of said company, shall be paid at the treas- 53
ury, on the warrant of the second auditor.

9. *Be it enacted*, That an officer be appointed annually by joint ballot of both houses of the General Assembly, to be denominated the commissioner of the James and Jackson's river canal, whose duty it shall be to execute the provisions of the said act, so far as respects the construction of locks, navigable canals, and other necessary works, from tide-water to the mouth of Dunlap's creek, in the manner directed by the said act, and according to its true intent and meaning: and all the powers and rights heretofore vested by law in the James river company for the purposes aforesaid, and within the limits aforesaid, are hereby vested in such commissioner; and it shall, moreover, be the duty of the said commissioner to keep the bed of the river in a good and convenient state for navigation, between Crow's ferry and the point to which any new improvement shall be completed for use, and connected with the river.

10. Before the said commissioner shall proceed to the execution of his office, he shall enter into bond with one or more good and sufficient securities, in the penal sum of forty thousand dollars payable to the James River company, conditioned that he will, faithfully and honestly and to the best of his abilities, perform the duties of his said office, according to the laws now in force, and such as may be passed by the General Assembly, from time to time; and he shall, moreover, take an oath or make affirmation, that he will faithfully and honestly, and to the best of his abilities, perform the duties required of him by law; that he will not directly or indirectly be concerned or interested

in any contract, which may be made with him or any person on his behalf, for any labor, material or other thing necessary for the prosecution of the said works; and every contract, made in violation of such oath, shall be utterly void. If said commissioner shall either directly or indirectly be concerned or interested in any contract, in violation of this act, it shall be deemed and taken to be a breach of the condition of the bond herein required to be executed by him, and judgment shall be entered against such commissioner and his securities, for a sum, not less than the amount of said contract, nor more than twice the amount of said contract, at the discretion of the jury.

11. *Be it further enacted*, That there be appointed, in manner before-mentioned, another officer, to be denominated the commissioner of the Kanawha road and navigation; whose duty it shall be to carry into effect such of the provisions of the act herein-before-mentioned, as direct the constructing and completing a road from the mouth of Dunlap's creek, to the great falls of the great Kanawha river, and that the latter river shall be rendered navigable from thence to the river Ohio, according to the true intent and meaning of said act; and all the powers and rights heretofore vested by law in the James river company, for the purposes aforesaid, and within the limits aforesaid, are hereby vested in the said commissioner.

12. Before the last mentioned commissioner shall be authorised to execute the duties of his office, he shall enter into like bond, and take like oath or affirmation, with that directed above, in relation to the commissioner of the James and Jackson's river canal; and the said commissioner of the Kanawha road and navigation, with his securities, and the contracts made by him, shall be subject to the like rules and regulations, liabilities and recoveries, as are prescribed above in relation to the commissioner of the James and Jackson's river canal, his securities and contracts. The bonds executed by the commissioners aforesaid, and the certificate of their oath of office, which may be administered by any justice of the peace, shall be filed with the second auditor, before they shall, respectively, be authorised to enter upon the duties of their office.

13. *Be it further enacted*, That the said commissioners shall 54
give their constant attendance in directing and superintending the respective improvements necessary for the promotion and final accomplishment of the objects contemplated by the act herein-before-mentioned, and respectively confided to them. Each commissioner shall appoint such engineers, managers or agents, as he may think necessary, who shall be under his control, and removable at his pleasure: *Provided*, That the engineer appointed by the Board of Public Works, shall, whenever, upon the application of said commissioners, he shall be directed by the ex-officio members of said board, attend the commissioners of the James and Jackson's river canal, and of the Kanawha road and navigation, when previous engagements of the engineer on subjects of greater importance, do not interfere. The said com-

missioners shall, each respectively, on behalf and in the name of the James river company, make such contracts for labor, materials, and other thing necessary in the prosecution of the work in their several precincts, as each of them may deem expedient. And a copy of every contract shall be immediately transmitted by the commissioner making the same, to the second auditor, to be carefully filed and preserved; and all reports of engineers, or estimates of work, shall in like manner be transmitted by the commissioners, and filed and preserved.

14. All monies which may become due to any person or persons, by virtue of any contract, made with either of the said commissioners, by virtue of this act, shall be paid by the treasurer out of the fund provided for the improvement of James river, on a warrant from the second auditor, which shall be issued on the order of the commissioner who authorised the contract; in which order, the consideration on which it is founded, shall be expressly stated: *Provided, however,* That no warrant shall be drawn by the second auditor, on any such order of the commissioner, unless the contract on which it is founded shall be filed with the said auditor, and shall appear to justify it. And, in order to prevent, as far as possible, any failure in the payment of any such sum of money, the said commissioners, respectively, shall, from time to time, ascertain the state of the disposable funds in the hands of the treasurer, and regulate themselves accordingly in making contracts.

15. Every contract made by the James river company, with any person or persons, relating to, or connected with, the purposes of the act herein-before-mentioned, shall be as valid as if the powers of the said company had continued. And the said commissioners, respectively, shall carry the same into effect as the said company could, or ought to have done; and all claims for money which have heretofore accrued, for services, labour, materials, or other thing, shall be settled and audited by the second auditor, and he shall grant warrants for such sums as may appear to be justly due. As to all monies falling due on or before the first day of May next, upon contracts now existing, made by the James river company, or under their authority, they shall be adjusted and settled under the authority of the president and directors of said company, now in office; and warrants shall be granted by the second auditor for the amount due, upon the certificate of said president and directors: *Provided,* Such settlement be made *or* or before the first day of May. But, if such settlement be not made on or before that time, then the claims shall be settled and adjusted, by the respective commissioners aforesaid, and the warrants granted upon their certificates. All superintendents, agents, and other officers appointed by the James river company, shall continue in office, pursuant to their appointments, till they shall be superseded, by appointments under this act, or their offices annulled by the provisions thereof.

16. The said commissioners shall, each, respectively, before the fifteenth day of every session, make full and detailed reports of their transactions, to the General Assembly, stating at length the expenses incurred by their contracts, or otherwise, and the progress of the work, and any other material matter that they may deem proper.

And whereas, it is represented, that it may be necessary to erect bridges over the Greenbrier river, and also over New river or Gauley river:

17. *Be it therefore enacted*, That the commissioners of the Kanawha road and navigation, shall have power to erect such bridges, if the same shall be found to be practicable at a reasonable expense; and, when completed, that he cause to be collected such tolls as may be reasonable, to be revised or altered by the legislature, as they may think necessary. And it shall be the duty of the said commissioner to transmit a list of the tolls to the General Assembly, at its next succeeding session; and likewise cause a list of said tolls to be recorded in the county where the bridge or bridges may be situate.

18. *And be it further enacted*, That the said last mentioned commissioner shall be, and he is hereby invested with full power and authority to collect the tolls directed to be collected by the act aforesaid, on the river Kanawha, and the road between the mouth of Dunlap's creek and the great falls of the Great Kanawha river; and, to this end, all the rights and powers vested by the law in the James river company, are hereby vested in the said commissioner; and payment for tolls to be imposed for passing the bridges, may be enforced in the same manner, and under the same regulations, as tolls on turnpike roads are collected and enforced.

19. Before the said commissioner shall have power to proceed to the collection of any of the said tolls, he shall execute a separate bond, with good and sufficient security, in the penalty of forty thousand dollars, payable to the James river company; conditioned, that he will make due returns of all tolls; well and truly account for all monies which may come into his hands by virtue of this act, and regularly pay the same into the treasury, at the end of ev- 56
ery six months, commencing from the date of the bond; and if he shall fail to make such returns regularly at the end of every six months, or within twenty days thereafter, it shall and may be lawful for the general court, on the motion of the second auditor, on behalf of the James river company, to enter up judgment against the said commissioner, and his securities, for a sum not exceeding five hundred dollars, and costs; and such motion and judgment may be repeated until a compliance with the provisions of this act shall be enforced: *Provided, nevertheless*, That the general court, at their succeeding term, shall have power to open such judgment, if it shall appear to them that the failure complained of was owing to circumstances which justified or extenuated it, and that the commissioner had not a fair opportunity to make them known, at the term when

the judgment was rendered against him; and the court may thereupon give such judgment as to the penalty, as the very right of the case may require.

20. *Be it further enacted*, That if from any semi-annual return herein-before directed, it shall appear that there is any sum of money in the hands of such commissioner, and he shall fail to pay the same within twenty days after the period, up to which such return has relation, it shall be lawful for the general court, on the motion of the second auditor, on behalf of the James river company, to render judgment for the amount so appearing to be due, with interest at the rate of ten per centum per annum, from the time such return closed, and costs: *Provided nevertheless*, that nothing in this act contained shall be so construed, as to prevent the said commissioner, from discharging any proper claim which ought to be paid according to the provisions of this act, out of any monies in his hands; but that, on furnishing proper vouchers, he shall be entitled to a credit for the sums so disbursed.

21. *Be it further enacted*, That so much of the act herein-before mentioned, or any other act, as provides for the appointment of ten commissioners, denominated, "the commissioners for the Kanawha river and road," and for the appointment of nine other commissioners, denominated, "the commissioners for the James and Jackson's rivers," be, and the same is hereby repealed; and all the power and authority of the said commissioners shall henceforth cease and determine.

22. *Be it further enacted*, That, whenever it shall become necessary to subject the lands of individuals to the purposes provided for in the said act, and the consent of the proprietor cannot be obtained, it shall and may be lawful for the said commissioners, within their respective precincts, to enter upon such lands, and proceed to the execution of such works as may be requisite; and that the pendency of any proceedings, in any suit of the nature of a writ of ad quod damnum, or any other proceedings, shall not hinder or delay the progress of the work; and no order shall be made, or injunction awarded, by any court, by which the progress of the work shall be arrested; it being the true intent and meaning of this act, that all lands shall be liable to condemnation, and that the proprietor shall be compensated, in damages. And it shall be the duty of every court to give precedence to controversies which are now pending, or which hereafter may arise, relative to the condemnation of land for any public purpose whatever, and to determine them in preference to all other causes; and no abatement or dismission of any 57
cause now depending, shall take place, by reason of any thing contained in this act.

23. *Be it further enacted*, That it shall and may be lawful for the commissioner of the James and Jackson's river canal, to subject to condemnation any land which may be necessary for the purpose of

erecting dams for feeders, or any land through which feeders may be conducted, and for the purpose of establishing reservoirs, in the same manner as lands are authorised to be subjected by law for the canal.

24. *And be it further enacted*, That, in any future assessment of damages, on behalf of any proprietor of land through which the canal or feeder may be conducted, no compensation for any fencing to separate the land condemned for the use of the James river company from his other lands, shall be allowed; nor shall any compensation be made to any such proprietor for any bridge or bridges over such canal or feeder, but such bridges, and such additional fencing, as shall have become necessary, by reason of such canal or feeder, shall be constructed by the commissioner of the James and Jackson's river canal, wherever he may deem them necessary; the expense of which shall be paid out of the fund provided to make the improvement on James river. If any proprietor of the lands through which the canal or any feeder may be conducted, shall believe a greater number of bridges, or bridges of a different kind, or other fencing, required for the use of his lands, than the said commissioner may deem necessary, or that they should be constructed at a different place or places from those fixed upon by the said commissioner, such proprietor, upon application to the clerk of the superior court of law for the county in which said lands lie, may obtain from said clerk a writ in nature of a writ of ad quod damnum, directed to the sheriff of said county, requiring him to summon a jury of twenty-four inhabitants of his county, being freeholders, not related to said proprietor, or commissioner, nor in any way interested, to meet on the lands through which the canal or feeder may be conducted, on a day to be expressed in the writ, not less than twenty, nor more than thirty days thereafter; and the sheriff, on receiving said writ, shall forthwith summon the jury; and, when met, shall administer to every juryman who shall appear, not being fewer than twelve in number, an oath or affirmation, that he will faithfully, justly, and impartially, determine the matters submitted to him, according to the true meaning and intent of this act, to the best of his skill and judgment; and, thereupon, the said jury shall proceed to determine how many bridges, of what description, and what fencing, may be reasonably necessary to the aforesaid proprietor, for the use of said lands, and at what places on said canal, or feeder, they should be constructed, and report, in writing, their finding on these subjects; which report shall be signed by the sheriff, and some twelve or more of the jury, and returned by the sheriff, within ten days after the execution of said writ, to the clerk of said superior court: *Provided, however*, That ten days previous notice be given to said commissioner of the time and place of executing said writ; and, at the next term after the return of said report, the said court, from the finding of the jury, as well as from other evidence, shall decide whether the number of bridges,

their description, and the fencing, fixed by the jury, or any greater or less number, or any other kind, or any other fencing, 58 be necessary to the proprietor, for the use of his lands; and whether the place or places fixed upon by the jury for the construction of such bridge, or bridges, or fencing, be proper: and may make such other order, touching the subject, as shall seem just and right; and the said commissioner shall cause a bridge, or bridges, and fencing, to be constructed, according to the judgment of the court; the expense of which shall be paid out of the funds provided for the improvement on James river. All bridges and fencing, to be constructed according to the provisions of this act, shall, at all times, be kept in good repair by the commissioner of the James and Jackson's river canal; and the expense thereof paid out of the tolls collected on James river.

25. *And be it further enacted*, That the second auditor shall receive annually the sum of fifteen hundred dollars, and the clerk he may employ, the sum of seven hundred dollars, to be paid quarterly; one third out of the revenues of the Literary Fund; one third out of the revenues of the fund for internal improvement; and one third out of the fund provided to make the improvements contemplated by this act.

26. The commissioner of the James and Jackson's river canal, shall receive two thousand five hundred dollars per annum; and the commissioner of the Kanawha road and navigation, fifteen hundred dollars per annum; to be paid quarterly out of the fund provided to effect the works which they are respectively to superintend; and the persons employed by them under the authority of this act, shall be paid such compensation for their services as the said commissioners, respectively, may certify them to be worth, according to the contract made with them, to be paid as other claims arising under this act are directed to be paid.

27. *Be it further enacted*, That, in case of the death, resignation or inability to act, of the second auditor, or of either of the commissioners appointed under this act, the executive shall have power to fill such vacancy; and the person or persons so appointed, shall continue in office till the end of the next session of the legislature.

28. *Be it further enacted*, That the second auditor shall, after his election, and before entering upon the discharge of the duties prescribed by this act, enter into bond with sufficient security, to be judged of by the executive of this commonwealth, payable to the governor thereof, in the penalty of twenty thousand dollars, conditioned for the faithful discharge of all the duties created by this act.

29. This act shall be in force from the passing thereof.

CHAPTER 9.—An act authorising a loan for the purposes of internal improvement.

12

[Passed March 8th, 1824.]

1. *Be it enacted by the General Assembly*, That the president and directors of the James River company be, and they are hereby empowered, as soon as may be necessary for the purposes herein declared, to borrow, on the credit of this State, a sum of money not exceeding four hundred thousand dollars, and at a rate of interest not exceeding six per cent. per annum. The monies so to be borrowed shall be paid into the treasury upon the warrant of the second auditor; and, upon the receipt in the treasury of the sums so borrowed, the treasurer shall issue a certificate of stock for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the sum loaned, together with the interest, at the rate of interest agreed on; and that the interest is payable semi-annually at the treasury of the Commonwealth. Such certificate shall shew, on the face thereof, that the loan was made under the authority of this act. It shall be signed by the treasurer and countersigned by the second auditor, and registered in a book to be kept by him for that purpose, and be then delivered to the lender or his agent. Every such certificate of stock shall be transferable on the books of the second auditor, and the semi-annual interest thereon shall be paid on his warrant. The principal sum authorised to be borrowed by this act is hereby declared to be irredeemable for twenty years; but shall be afterwards redeemed, at the pleasure of the General Assembly, within a period not exceeding fifteen years.

2. *And be it further enacted*, That, for the payment of the interest and the final redemption of the principal of the sums to be borrowed under authority of this act, there shall be, and hereby are appropriated and pledged the sum of eighteen thousand dollars, out of the income of the fund for internal improvement, the surplus tolls and rents of water-rights belonging to the James River company, and the nett proceeds arising from the canal and the tolls on the Kanawha road and river, when completed; also, the surplus fund belonging to the said company arising from the unexpended balances 13
of the appropriation of eighteen thousand dollars of the revenue of the fund for internal improvement. And if the foreging appropriations should be inadequate to the payment of the interest authorised to be borrowed by this act, and for the final redemption of the principal, the General Assembly pledges itself to provide other and sufficient funds for that purpose. Until such other sufficient funds shall be provided by law, so much of the revenue of the fund for internal improvement, as may be necessary to supply the deficiency, is hereby pledged for that purpose.

3. *Be it further enacted*, That the monies directed to be borrowed by this act, shall be appropriated towards completing the works commenced on the Kanawha road and river, in the manner prescribed by law, and to completing the James and Jackson's River canal and the works thereon to Maiden's Adventure falls, and to the making and constructing of a canal, along the margin of James River, from the lower end of Irish falls in the county of Amherst, to the mouth of the North river in the county of Rockbridge; and, so soon as the commissioner of the Kanawha road and navigation can, consistently with his present duties, he shall proceed to construct the canal from the lower end of Irish falls along the margin of James River, through the Blue Ridge, to the mouth of the North river, in all respects as is now required by law, except, that the said canal shall not be more than thirty feet wide at the top, nor more than twenty feet wide at the bottom.

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CHAPTER 46.—An act making further provision to carry into effect the act, entitled "an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers, and for other purposes."

38

[Passed February 16th, 1825.]

1. *Be it enacted by the General Assembly*, That the president and directors of the James River Company be, and they are hereby empowered, as soon as may be necessary for the purposes herein declared, to borrow, on the credit of the State, a sum of money not exceeding two hundred thousand dollars, and at a rate of interest not exceeding six per centum per annum. The monies so to be borrowed, shall be paid into the treasury upon the warrant of the second Auditor; and upon the receipt in the treasury of the sums so borrowed, the treasurer shall issue a certificate of stock for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators, or assigns, the sum loaned, together with the interest, at the rate of interest agreed on; and, that the interest is payable semi-annually, at the treasury of the Commonwealth. Such certificate shall shew, on the face thereof, that the loan was made under the authority of this act. I shall be signed by the treasurer, and counter-signed by the second Auditor, and registered in a book to be kept by him for that purpose, and be then delivered to the lender or his agent. Every such certificate of stock shall be transferrable on the books of the second Auditor; and the semi-annual interest thereon shall be paid on his warrant. The principal sum authorised to be borrowed by this act, is hereby declared to be irredeem-

able for twenty years, but shall afterwards be redeemed at the pleasure of the General Assembly.

2. *Be it further enacted*, That, for the payment of the interest and final redemption of the principal of the sums to be borrowed under authority of this act, the same pledges and appropriations are hereby made and given, as are contained in the second section of the act entitled, "an act authorising a loan for the purpoess of internal improvement," passed the eighth day of March, eighteen hundred and twenty-four.

3. *Be it further enacted*, That the money directed to be borrowed by this act, and the unexpended balance of the loan authorised by the act of the eighth of March last, shall be appropriated towards completing the works commenced on the Kanawha river and road, and to the extending the same road in the manner prescribed by law, and to completing the James and Jackson's river canal, and the works thereon to Maiden's Adventure Falls, and to the completing the canal now constructing along the margin of James river, from the lower end of Irish falls in the county of Bedford, to the mouth of the North river, in the county of Rockbridge. 39

4. *Be it further enacted*, That, if the commissioner of the Kanawha road and navigation, can, without loss to this Commonwealth, and without paying any compensation to the contractor, beyond the value of the work which he may have executed, procure an abandonment of the contract now existing, for the improvement of so much of the Kanawha river as lies between the town of Charlestown and the Great Falls of the same river, he shall then have full power and authority, and he is hereby required to extend the turnpike road, now constructing under his superintendence, from the said Great Falls, to the lower end of the salt works in the county of Kanawha, and shall pretermit any further improvement in the navigation of the river, above the town of Charlestown.

5. *Be it further enacted*, That the said road shall be laid out and located by the said commissioner, upon the best ground, to be selected by him, between the two points in this act mentioned the road aforesaid, to be completed according to the provisions of the "act to amend the act entitled, 'an act for clearing and improving the navigation of James river, and for uniting the eastern and western waters by the James and Kanawha rivers;" reducing, however, the width of the summer road to eleven feet, and in difficult places, dispensing entirely with such summer roads: *Provided*, That the county court of Kanawha shall finish the bridge contemplated, across Campbell's creek in said county, and shall keep the same in good repair at the county charge.

6. *Be it further enacted*, That so soon as the said road shall be completed, it shall and may be lawful for the president and directors of the James River Company, and they are hereby required, to erect a toll-gate, at such places on said rivers as to them may seem proper.

with such reasonable tolls as will pay to the said company, at least six per centum per annum, upon the sum of money which may be expended in constructing said road.

7. *Be it further enacted*, That to enable the James River Company to open and complete the aforesaid road, and to keep the same constantly in good repair, which they are hereby required to do, they shall be entitled to avail themselves of all the provisions which have been made by law for the opening and constructing the great road from Dunlap's creek to the falls of the Great Kanawha, as well for the condemnation of lands as for other purposes.

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CHAPTER 25.—An act authorising a loan for the purposes of Internal Improvement.

[Passed March 1st, 1826.] 26

1. *Be it enacted by the General Assembly*, That the president and directors of the James river company be, and they are hereby empowered, as soon as may be necessary, for the purposes herein declared, to borrow on credit of the State, a sum of money not 27 exceeding two hundred thousand dollars, and at a rate of interest not exceeding six per centum per annum. The sum so to be borrowed, shall be paid into the treasury, upon the warrant of the second auditor; and upon the receipt into the treasury of the sum so borrowed, the treasurer shall issue his certificate of stock for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the sum loaned, together with the interest, at the rate of interest agreed on, and that the interest is payable semi-annually at the treasury of the Commonwealth. Such certificate shall shew on the face thereof, that the loan was made under the authority of this act. It shall be signed by the treasurer, and countersigned by the second auditor, and registered in a book to be kept by him for that purpose, and be then delivered to the lender or his agent. Every such certificate of stock shall be transferable on the books of the second auditor, and the semi-annual interest thereon, shall be paid on his warrant. The principal sum authorised to be borrowed by this act, is hereby declared to be irredeemable for twenty years, but shall afterwards be redeemed at the pleasure of the General Assembly.

2. *Be it further enacted*, That for the payment of the interest, and the final redemption of the principal of the sums to be borrowed under the authority of this act, the surplus tolls, rents and water rights on the mountain section of the James river canal, and the works on the Kanawha river and road, are hereby pledged, and if these appropriations should be inadequate to the payment of interest, and the final

redemption of the principal of the sum now proposed to be borrowed, and that already expended on the said works, the General Assembly pledges itself to find other and sufficient funds, and until such other and sufficient funds be furnished, the revenues of the fund for internal improvement, are hereby pledged and appropriated. (*a*)

3. *And be it further enacted,* That the president and directors of the Literary Fund, shall invest the uninvested capital belonging to that fund, in the stock authorised by this act. And that each certificate of stock issued in pursuance of this act, shall have on its face a direct reference to the act which authorised it.

4. *Be it enacted,* That the commissioner of the Kanawha road and navigation, shall forthwith settle all the contracts for work on the mountain section of the James river canal, as far as the contractors have completed any jobs heretofore. He shall not contract for a farther extension of the Kanawha road, but is authorised to complete the improvements on the Kanawha river, up to the present termination of the turnpike road. The commissioner or commissioners, whose duty or duties it may be to carry into effect the third (*b*) section of this act, shall not do any act or make any contract which may subject the State to the payment of a sum of money exceeding in amount, the sum herein directed to be borrowed.

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CHAPTER 26.—An act to amend an act, entitled, "an act authorising a loan for the purposes of Internal improvement."

[Passed March 8th, 1826.] 29

Whereas a mistake has occurred in an act, entitled, "an act authorising a loan for the purposes of internal improvement," passed the first day of March, eighteen hundred and twenty-six:

1. *Be it therefore enacted,* That the money directed to be borrowed by the said act, and the unexpended balance of the loan authorised to be borrowed by the act of the sixteenth of February, eighteen hundred and twenty-five, shall be appropriated toward completing the works commenced on the Kanawha river and road, and to extending the same in the manner prescribed by law; and to completing the James and Jackson's river canal, and the works thereon, to Maiden's Adventure falls; and to completing the canal now constructing along the margin of James river, from the lower end of Irish falls, in the county of Bedford, to the mouth of North river, in the county of Rockbridge.

2. *Be it further enacted,* That the reference in said act to the third section, shall be taken as referring to this act.

3. This act shall be in force from the passage thereof.

CHAPTER 47.—An act providing for re-building Gauley bridge, the payment of existing contracts, and for other purposes.

(Passed March 7th, 1827.)

1. *Be it enacted by the General Assembly,* That the president and directors of the James River Company, are hereby authorised and directed to dispose of so much of the James River surplus and appropriation fund belonging to the fund for Internal Improvement, as will produce the sum of forty thousand dollars; which said sum is hereby appropriated for the purposes hereinafter mentioned.

2. *Be it further enacted,* That so much of the said sum as shall be necessary, shall be and is hereby appropriated to re-building the bridge across Gauley river, to be expended for that purpose under the direction and superintendence of the commissioner of the Kanawha road and navigation, who shall cause the said bridge to be built upon such model, as in his opinion will combine economy with public utility.

3. *Be it further enacted,* That the sum of twenty-eight thousand dollars of the aforesaid sum, shall be and is hereby appropriated for the purpose of enabling the James River Company, and the commissioner of the Kanawha road and navigation, to complete the works already contracted for and remaining unfinished, and to pay what may be now due on existing contracts.

4. *Be it further enacted,* That hereafter the following tolls shall be demanded and received on the tow-path of the mountain section of the James River canal, to wit: for every person on foot, six and a quarter cents; for every person on horse-back, six and a quarter cents; for every horse, mare, mule or work ox, two cents; for every head of neat cattle, two cents; for every score of sheep, hogs or goats, twelve and a half cents; and so in proportion for any greater or less number: And it shall henceforth be the duty of the 38
receiver of the tolls of the mountain section of the James River canal, and the bridge and tow-path thereof, to make quarter yearly payments of tolls received by him, to the commissioner of the Kanawha road and navigation, who shall in like manner make quarter yearly settlements of the said tolls with the president and directors of the James River Company: And it shall be lawful for the said commissioner to change the location of the toll-gates on the Kanawha road, and to make contracts for keeping the said road in repair by sections for any period not exceeding three years, taking bond and security of the contractor or contractors in a reasonable penalty, and conditioned for the faithful performance of such contract or contracts: And he is also hereby authorised and empowered to erect such buoys and ring bolts on the Kanawha river, as may in his opinion be expedient for the safe and convenient navigation thereof, and if necessary, to cause a house to be erected in, or near the said river

for the collection of tolls and registering and numbering all boats navigating the said river, and to make all such other arrangements as may be necessary for collecting the tolls on the said river.

5. *Be it further enacted,* That the commissioner of the Kanawha road and navigation, shall hereafter receive an annual salary of eight hundred dollars, in lieu of the salary now allowed him by law.

6. This act shall be in force from the passing thereof.

CHAPTER 71.—An act providing for the extension of the Kanawha turnpike road to Big Sandy river.

(Passed January 30th, 1829.) 45

1. *Be it enacted by the General Assembly,* That the President and Directors of the James River Company be, and they are hereby authorised and required to cause the present Kanawha turnpike road to be extended from the western termination thereof, to the mouth of Big Sandy river, and for defraying the expense that may be incurred under this act, the said President and Directors 46 are hereby authorised and empowered to borrow on the credit of the Commonwealth, at such time or times as they may deem proper, any sum or sums of money not exceeding fifty thousand dollars, provided the same can be obtained at a rate of interest not exceeding six per centum per annum, payable half yearly, and to issue to the loaners of the said money, certificates in the same form, transferable in the same manner, and redeemable at the same periods, with those which have been heretofore authorised and employed in the negotiations of the last loans obtained by the State for the purposes of internal improvement: and that the tolls hereafter raised upon the Kanawha turnpike road heretofore finished, as well as the tolls which may arise from the road hereby authorised to be made, after keeping the said road in repair, shall be, and the same are hereby pledged for the payment of the interest which may accrue on the money to be borrowed under the authority of this act, and for the final redemption of the stock which may be created under the provisions herein contained; and if the tolls shall be found inadequate to the payment of the said semi-annual interest, then, such deficiency shall be paid out of any monies belonging to the fund of internal improvement.

2. *Be it further enacted,* That the Principal Engineer as soon as may be after the passage of this act, shall proceed to lay out and locate the said road from the western termination of the said Kanawha turnpike road, to the mouth of Big Sandy river, of the same width of location, and of construction with the best parts of the road heretofore made: In the performance of which duty, he is hereby required to graduate the same as near a horizontal line as the inequalities of the

ground may admit of, but so that the said road when formed shall in no instance diverge more than five degrees from a horizontal line: That in making such location he shall so mark his stations, and levels, and indicate the sites of the bridges and culverts which he may deem necessary, that the superintendents of the work with the aid of his field notes, may be readily enabled to execute the same, according to the designs and plans of the said Principal Engineer.

3. *Be it further enacted*, That the Principal Engineer shall, in locating the said road, and in his report thereof, carefully estimate and describe the quantity and kind of labour to be done on each mile thereof, and the reasonable cost of the same. He shall also describe the number, kind and situation of the bridges, culverts and drains which he may deem necessary, accompanying his descriptions with profiles or drawings when he may deem the same useful; so that such report may form the basis of contracts for the execution of the entire work. And it shall be the further duty of the said Engineer, to deliver to the clerks of the county courts of Kanawha and Cabell counties, plats or maps of so much of the said road as may be within their respective counties, to be by them respectively recorded, and thereupon the land over which the said road shall be located shall become, ipso facto, vested in the Commonwealth for the use of the said road.

4. *Be it further enacted*, That if any person shall conceive himself, herself, or themselves, aggrieved by the location of the said road, and the investment of the land in the Commonwealth, over which the same shall pass, or by the erection of any bridges, abutments or other necessary work or building, in the formation and construction of the said road, it shall be lawful for such person or persons, within one year from the recording of the maps or plats as herein provided for, to file a suggestion before the superior or county court of the county where such land may be situated, setting out the grounds of the injury complained of, and for which damages are claimed, of which suggestion the person complaining shall give to the President of the James River Company at least thirty days notice, by serving him with a copy thereof; whereupon, the court before whom the suggestion may be filed, shall cause an issue to be made up and tried at the bar of the said court, as other issues of fact are tried, for ascertaining what damages the complainant hath sustained by reason of the matters alleged in his suggestion, over and above the advantages and benefits accruing to the complainant, by the opening and constructing the said road. And upon the certificate of the court trying such issue, the President and Directors of the James River Company shall pay the amount of the damages which may be so found, to the party appearing by said verdict to be entitled to the same, out of any unexpended funds in their hands: but all persons failing to file suggestions as herein provided, for the space of one year from the time at which such maps or plats

shall be delivered for recording, shall be held and deemed to have relinquished to the Commonwealth all claim to damages arising or supposed to arise from the execution of this act.

5. *Be it further enacted*, That the President and Directors of the James River Company, by themselves, their agents and servants, and the Principal Engineer, with the surveyors and assistants, shall have full power and authority to enter upon all lands and tenements, through which they may think it necessary to make examinations, and to lay out the said road as the Principal Engineer may judge most for the public advantage and benefit. And in the opening and constructing the said road, the President and Directors of the James River Company, their agents and servants, shall have the same power and authority, and be subject to the same limitations and restrictions as are provided in the twelfth and thirteenth sections of the "act prescribing certain general regulations for the incorporation of turnpike companies," passed February the seventeenth, in the year eighteen hundred and seventeen.

6. *Be it further enacted*, That the President and Directors of the James River Company be, and they are hereby authorised to select and appoint an able, capable, discreet superintendent of the road hereby directed to be made, and to allow him such salary as they may judge reasonable, not exceeding seven hundred and fifty dollars per annum. It shall be the duty of the said superintendent to make all contracts for the opening and constructing the said road, erecting bridges, and whatever else may be necessary for the fully finishing and completing the same, under the direction of the said President and Directors, and subject to their approbation and ratification. It shall also be his duty strictly and constantly to superintend the execution of all the works upon the said road, and perform such other duties as the President and Directors of the James River Company may from time to time appoint and direct; and the said President and Directors shall have full power and authority to re- 48
move from office, for any cause by them deemed sufficient, any superintendent by them appointed, and to appoint another in his place.

7. *Be it further enacted*, That as soon as a section of fifteen miles of the said road shall be completed, and as often as sections of that length shall be finished, it shall be lawful for the President and Directors of the James River Company to cause a gate or gates to be erected across the said road; to appoint receivers of tolls at said gates, and to exact and receive for the use of the said road, the same rates of toll as are now paid for the use of an equal distance of the Kanawha turnpike. And all the laws and regulations heretofore enacted in relation to the Kanawha turnpike, shall be held and taken as equally applying to the extension hereby directed to be made, so far as the same remains unchanged by the provisions of this act.

8. *Be it further enacted*, That it shall be the duty of the owners and proprietors of the ferries over water-courses on the line which may

be selected for the road, to graduate the banks to the angle hereby prescribed, and by permanent and sufficient wharfing to secure the same from abrasions, of such width, and in such manner and time, as the Principal Engineer shall prescribe, and at all times shall keep the same so covered with stone or gravel when necessary, as to render the approach to the ferry boat firm and dry; and every keeper or owner of a ferry over which the said road may pass, who shall fail to comply with any of the requisitions of this act, shall be subject to a fine of not less than twenty dollars, nor more than one hundred dollars, to be recovered by indictment or information in any court having jurisdiction thereof, for the use of the President and Directors of the James River Company; but nothing in this section contained, shall be so construed as to prevent the President and Directors of the James River Company from erecting bridges at any time hereafter over such water courses, reserving to the owners or proprietors of such ferries, all the rights and remedies given to the owners and proprietors of the land over which the road may be made.

9. This act shall commence and be in force from and after the passing thereof.

CHAPTER 72.—An act concerning the Kanawha Road and Bridges, and for other purposes.

(Passed February 28th, 1829.)

4. *Be it further enacted*, That for the purpose of discharging the unsatisfied demands against the company, for the construction of the public improvements under their direction, it shall be lawful for the President and Directors of the James River Com- 49
pany, and they are hereby authorised and required, to borrow a sum not exceeding ten thousand dollars, on the same terms and conditions, and on the same pledges, as are specified for the loan authorised by the act passed on the first day of March, one thousand eight hundred and twenty-six, entitled, "an act authorising a loan for the purposes of internal improvements," which sum, or any part thereof which may be borrowed, is hereby appropriated to the discharge of the demands aforesaid.

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CHAPTER 73.—An act prescribing a tariff of tolls on the Kanawha river, and for other purposes.

(Passed February 27th 1829.)

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9. *Be it further enacted*, That it shall be the duty of the President and Directors of the James River Company to cause buoys to be placed in the Great Kanawha river, so as readily and clearly to indicate and point out to navigators all the entrances and lines of the sluices, the wing-dams and the jetties, and generally the course of the channels. The said President and Directors shall also cause beacons to be placed on the bars, rocks and other obstructions to the navigation, not within the sluices or channels, but which, from their positions, or from other causes, are likely to endanger the safety of vessels or boats navigating the said river; which buoys and beacons shall be so constructed as to be visible, until the water of the river shall rise five feet above its ordinary lowest level. For the greater safety and convenience of the ascending trade of the said river, it shall be the further duty of the said President and Directors to cause large rings to be attached by suitable bolts to rocks or other stable bodies, along the sluices and at the ends of the wing-dams and jetties, for the better enabling the ascending boats to overcome the force of the currents, by warps and cords.

10. *Be it further enacted*, That it shall be the duty of the said President and Directors, to cause all depositions of sand, gravel, timber or other obstructions in the channels, sluices or passages of the said river, to be removed therefrom, so as to restore to the said channels, sluices and passages, the width and depth of water produced therein by the works recently constructed on the said river, and at all times to keep the said channels, sluices and passages, free from depositions or other obstructions which may impair or impede the navigation: *Provided*, That nothing in this act contained shall authorise the expenditure of a sum exceeding one thousand dollars.

11. *Be it further enacted*, That it shall be the duty of the Principal Engineer of this Commonwealth, and he is hereby required to attend during some dry season, to view the several improvements made on the said river and make report on their defects and the remedies necessary therefor, to the Board of Public Works at its next session.

12. This act shall be in force from and after the passing thereof.

CHAPTER 53.—An act making further provision for the extension of the Kanawha turnpike to Big Sandy river.

(Passed December 18th, 1829.) 45

1. *Be it enacted by the General Assembly*, That the President and Directors of the James River Company be, and they are hereby authorised and empowered to borrow on the credit of the Commonwealth, at such time or times as they may deem proper, any sum or sums of money, not exceeding eight thousand dollars, on the same terms, conditions and pledges, as are specified for the loan authorised by the act of the thirtieth of January, eighteen hundred and twenty nine, providing for the extension of the Kanawha turnpike to the mouth of Big Sandy river, and to be applied to the same purposes.

2. This act shall commence and be in force from and after the passage thereof.

CHAPTER 52.—An act authorising a change in the location of the Kanawha turnpike road.

(Passed January 30th, 1830.) 44

1. *Be it enacted by the General Assembly*, That the President and Directors of the James River Company be, and they are hereby authorised to vacate and annul the location made of the Kanawha turnpike road, by the Principal Engineer, between the land of John Shrewsbury, senior, and Campbell's creek, in the county of Kanawha, and to cause the same to be re-located along and near to the shore of the Great Kanawha river: *Provided*, they can procure a substitution of the one line for the other with the contractors for forming that part of the road, without increasing the expense of the execution thereof, or that the proprietors of the land shall defray the difference of the cost in the two lines; and if additional bridges or culverts should be rendered necessary by such re-location, the walls of the embankments, abutments and piers, shall be constructed of stone, under the direction of the Superintendent of said road, whose duty it shall be to have the same constructed of good materials, and in a workman-like manner: *And provided also*, That the pro- 45
prietors of the land over which the road shall pass near the river, shall release all damages or claims to remuneration for the land over which the said road may be conducted.

2. *Be it further enacted*, That on such re-location being made, the said President and Directors shall cause to be recorded in the office of the clerk of the county court of Kanawha, a map or drawing of the re-located section of road, which shall have the same legal effects,

and operate upon the land over which the road shall pass, in the same manner, and to the same extent, as if such location had been there made in the first instance, and the surveys and drawings thereof had been reported and recorded by the Principal Engineer.

3. This act shall commence and be in force from and after the passing thereof.

CHAP. CVI.—AN ACT making further provision for the extension of the Kanawha turnpike to Big Sandy river.

[Passed March 31, 1831.] 158

1. *Be it enacted by the general assembly*, That the president and directors of the James river company be, and they are hereby authorized and empowered to borrow, on the credit of the commonwealth, at such time or times as they may deem proper, any sum or sums of money, not exceeding fifteen thousand dollars, on the same terms, conditions and pledges, as are specified for the loan authorized by the act of the thirtieth of January, eighteen hundred and twenty-nine, providing for the extension of the Kanawha turnpike to the mouth of Big Sandy river, and to be applied to the same purposes.

2. This act shall commence and be in force from and after the passage thereof.

CHAP. LXXXII.—An act incorporating the stockholders of the James river and Kanawha company.

(Passed March 16th, 1832.) 73

Whereas the measures hitherto adopted by the general assembly for the purpose of connecting the tide water of James river with the navigable waters of the Ohio, have been found inadequate to effect that object, by such line of transportation as the public interest requires; and it is now deemed expedient for that purpose to incorporate a joint stock company, to which the interest of the commonwealth in the James river company shall be transferred at a fair value: Therefore,

1. *Be it enacted by the general assembly*, That the president and directors of the James river company shall, without delay, cause books of subscription to be opened in the city of Richmond, in the towns of Lynchburg, Lexington, Pattonsburg, Covington, Staunton, Fincastle, Lewisburg, Union, Charlestown upon the Kanawha, and such other places as they may deem expedient and under the superintendence of such commissioners as they may think proper to appoint, for the purpose of raising a capital stock of five millions of dollars, in shares of one hundred dollars each. At least thirty

days previous notice in some newspaper published most convenient to each place of subscription, and in such other newspapers as may be deemed proper, shall be given of the time and places of opening the books. The books shall be kept open for twenty days; and if within that time three-fifths of the capital stock shall not have been subscribed by persons, bodies politic or corporate, other than the commonwealth, they shall be again opened and may be continued open, if necessary, until the second Monday in December next. All subscriptions must be for one or more whole shares; none being allowed for any part of a share.

2. When the books are opened the state shall be regarded as a subscriber for ten thousand shares of the stock; to be paid for by a transfer of her whole interest in the works and property of the present James river company, and when they are finally closed they shall be returned to the second auditor, verified by the signatures of the commissioners, or some of them, and be laid before the president and directors of the James river company, in order that the amount of valid subscriptions may be ascertained and proper measures taken thereupon.

3. The second auditor shall forthwith give public notice, in such newspapers as he may think proper, or as the president and directors of the James river company shall direct, of the return of the books and of the amount of subscriptions appearing upon them; and after the expiration of twenty days from the publication of such notice, the president and directors shall proceed to ascertain the amount of valid subscriptions, regarding no person, body politic or corporate, other than the commonwealth, as a subscriber for any share, unless he shall have paid thereupon, into the bank of Virginia, or Farmers' bank of Virginia at Richmond, at least five dollars, to the credit of the James river company, and have furnished a certificate of such payment to the second auditor. If it be ascertained that three-fifths of the capital stock have not been subscribed by persons, bodies politic or corporate, other than the commonwealth, then the president and directors of the James river company shall direct the certificates of payment aforesaid to be returned to the subscribers, with the second auditor's warrant on the back thereof, for the re-payment of the money; and they shall report to the next general assembly the failure of the subscription, suggesting the probable causes thereof, and the means, if any, of obviating them.

4. When three-fifths or more of the capital stock shall have been so subscribed by persons, bodies politic or corporate, other than the commonwealth, but the whole capital shall not have been subscribed, then the commonwealth shall be regarded as a subscriber for the residue of the five millions; and if, including the commonwealth's subscription, more than five millions of capital shall have been subscribed, the subscriptions shall be reduced to five millions, by tak-

ing off the surplus from the highest subscriptions, other than that of the commonwealth; and when it shall happen that two or more of the highest subscriptions are equal, and the desired reduction cannot be made by subtracting equally from each, then it shall be decided by lot, from which subscription or subscriptions the greater number shall be subtracted; and the president and directors of the James river company shall order it accordingly.

5. When three-fifths or more of the capital stock shall have been so subscribed, by persons, bodies politic or corporate, other than the commonwealth, having paid as aforesaid, five dollars upon each share, then the subscribers, their successors, heirs and assigns, shall be a body politic and corporate, by the name of "*The James River and Kanawha Company*," and by that name shall have perpetual succession and a common seal, may sue and be sued, plead and be impleaded, purchase and hold, sell and convey real and personal property; and shall be, to every intent and purpose in law, the successors of the present James river company: provided, however, that they shall hold no real estate, except that which by this act, or some other act of the general assembly, may be specially vested in them, or they may be expressly authorized to acquire for the purpose of the improvements which they are required to make; and that they shall in no wise deal as bankers or merchants, or in buying and selling any produce or commodities whatsoever, except such as it is obviously convenient and proper for them to purchase and sell in the regular performance of the duties required of them by this act; and that they shall not be engaged in the establishment or conduct of manufactures, further than for the supply of their own consumption and that of the persons in their service, and in letting to farm or lease sites for mills and other machinery and water for their use.

6. The president and directors of the James river company, as soon as they shall have ascertained that three-fifths of the capital stock have been subscribed as aforesaid, so that the subscribers have become a body corporate, shall make publication of the fact in such newspapers as may be best suited to give notice to the stockholders, and shall appoint a day not more distant than thirty days for a general meeting of the stockholders, at some fit place in the city of Richmond, to the end that the company may be organized by the appointment of proper officers and agents. If on the day appointed a sufficient number of stockholders do not attend to constitute a general meeting, those present may adjourn from time to time till a sufficient number shall attend. To this meeting the second auditor shall deliver the original books of subscription, together with the certificates of payment into the banks by the subscribers, endorsing thereon his warrants for their payment to the order of the new company.

7. To constitute a general meeting, there must be present, either in person or by proxy, a number of stockholders, having a right to

give a majority of all the votes which could be given at a meeting of all the stockholders.

8. Each stockholder shall be entitled to one vote for each share held by him, as far as ten shares, and to one vote for every five shares above ten.

9. There shall be a stated general meeting of the stockholders at some fit place in the city of Richmond, on the second Monday in December in each year, or at such other time as the by-laws of the company may prescribe; and there shall be extra general meetings of the stockholders, convened from time to time, as occasion may require, in such manner as may be ordered by the by-laws. If on the day appointed for any stated annual meeting, a sufficient number of stockholders shall not attend, to constitute such meeting, it shall stand adjourned from day to day until a sufficient number shall attend.

10. The stockholders, in general meeting, shall have power to make all such by-laws, rules and regulations, not inconsistent with the constitution or laws of the land, as they may deem proper, for the well ordering of the affairs of the company, for the protection and preservation of their property, and for the maintenance of good order and good police among their officers, agents, servants and labourers, and among the boatmen and others who use their canal and other works.

11. At the first general meeting and at each stated annual meeting thereafter, the stockholders shall appoint a president and seven directors of the company, who shall hold their offices for one year and thereafter, until their successors shall be appointed, unless sooner removed by the stockholders in general meeting. Vacancies in the office of president or director shall be supplied by the stockholders in general meeting, or in such other manner as the by-laws may prescribe.

12. There shall be such other officers and agents of the company as they may think proper. Their duties, the tenure of their office and the mode of their appointment shall be prescribed by the by-laws; and bond with security for the performance of their duties may be required from any of them. The salary, pay and emoluments of the president, directors and all other officers and agents, shall be regulated by the by-laws.

13. Minutes of the proceedings of the stockholders at all general meetings, verified by the signature of the chairman or other presiding officer, shall be regularly kept and carefully preserved, in well bound books; and the names of all the stockholders present, whether in person or by proxy, shall be always entered on the minutes.

14. The president and directors of the company, subject to the control of the by-laws, shall be charged with the imme- 76
diate care and superintendence of the affairs of the company; with making and executing their contracts, either by themselves,

or by their lawful agents; with constructing and preserving their works; with the custody and preservation of all the property of the company; and with the control and direction of all their agents. A quorum for the transaction of business, shall consist of the president and a majority of the directors; or when the president is absent, of the directors, or any five of them, one of whom shall be appointed president, pro tempore.

15. They shall keep a regular journal of their proceedings, verified by the signature of the president, and preserved in well bound books, wherein the names of the members present shall be always entered, and the vote of each member recorded. They shall cause regular books of account to be kept of all the receipts and disbursements, and of all the dealings of the company; and shall cause their books to be regularly balanced, semi-annually, on such days as the stockholders in their by-laws shall appoint.

16. They shall keep a regular roll of their stockholders, and shall furnish to each one or more certificates of his stock as may be required, verified by the seal of the corporation, and the signature of the president. The stock shall be deemed personal estate, and as such, shall pass to purchasers, executors or administrators. Before the dividends on such stock shall be paid to any purchaser, executor or administrator, regular evidence of title shall be exhibited to the president and directors, and the original certificate of stock, or satisfactory proof of its loss, shall be produced; whereupon, the stock shall be transferred upon the books, and a new certificate or certificates granted. Until such evidence of title shall be produced to the president and directors, or they shall be restrained by legal process, they shall be justified in paying the dividends to the persons in whose name the stock stands upon their books; and the company shall not be chargeable therefor to any other claimant.

17. Within thirty days after the adjournment of the first general meeting of the stockholders, of which public notice shall be given in such newspapers as the president and directors may think proper, the stockholders other than the commonwealth, shall pay into one of the banks aforesaid, or into one of their offices of discount and deposit such as the president and directors may designate, the further sum of five dollars on each share of their stock; and they shall pay the residue of their subscriptions in such sums, at such times and in such manner, as the exigencies of the company may demand, and as the president and directors may from time to time require.

18. If any stockholder shall fail to pay the sum required of him by this act, within thirty days after the adjournment of the first general meeting, public notice having been given thereof in the manner above required, or shall fail to pay any other part of the subscription lawfully required of him by the president and directors, after such requisition shall have been advertised four weeks in some public newspaper printed in the city of Richmond, it shall be

lawful for the president and directors, after advertising the time and place of sale for four weeks, in some newspaper so published, to sell at public auction for cash, the share or shares of the delinquent stockholder, and to convey and transfer the same to the purchaser. And the said president and directors, after retaining from the purchase money the costs and charges of the sale, and the amount in arrear, and due to the company, shall pay over the surplus, if any, to the said stockholder, or his legal representative. If the purchase money shall be insufficient to pay the cost and charges of the sale, and the sum in arrear and due to the company, then the delinquent stockholder, as well as the original subscriber for the stock, and the heirs, executors and administrators of each of them shall be liable for the payment of the balance; and such balance may be recovered of the original subscriber and delinquent stockholder, jointly or severally, or from the heirs, executors or administrators of either, upon motion on ten days previous notice, in the inferior or superior court of the county or corporation in which the defendants, or either of them, may be found, or by warrant before a justice of the peace, where the sum to be recovered is within the jurisdiction of a single magistrate, or by any other proper action before any court having cognizance thereof. The purchaser at such sale shall be regarded as an original subscriber, and as such, he, his heirs, executors and administrators, shall be liable for all subsequent delinquencies.

19. When the other stockholders shall have paid such proportion of their subscriptions as will be equal to the proportion of the state's subscription paid by the transfer of their property as aforesaid, then the residue of the state's subscription shall be paid from to time, as nearly as may be, in the proportions in which the other stockholders shall be required to pay the residue of their subscriptions.

20. At the expiration of thirty days from the adjournment of the first general meeting of the stockholders as aforesaid, the whole interest of the commonwealth in the works and property of the present James river company, shall be, and the same is hereby transferred to the *James river and Kanawha company*, hereby incorporated, to be held by them forever, for the sole use and benefit of the stockholders; and from thenceforward, the company hereby incorporated shall be entitled to all the tolls, rents, and other emoluments, rights, privileges and immunities, which are now enjoyed by the James river company, subject however to the incumbrances, limitations and restrictions in this act declared. The president and directors of the new company, their officers and agents, at the expiration of the said thirty days, shall take possession of the property and works hereby transferred, and enter upon the receipt of the tolls, rents, and other emoluments thereof, for the benefit of the stockholders: but until the expiration of the said thirty days, the said property and works, the tolls, rents, and other emoluments

thereof, shall be and remain for the use of the commonwealth, in the same manner as if this act had never passed.

21. The *James river and Kanawha company* shall take the property hereby transferred to them, subject to the payment of the dividend of fifteen per centum per annum forever, to the stockholders of the old company, and subject moreover to the pledge of the surplus tolls of the company made by former laws, for the security of those public creditors, who on the faith of that pledge have lent money to the James river company, for the use of the commonwealth; but the general assembly hereby pledges the faith of the commonwealth to the new company, that they shall be 78
protected from the payment of any part of the principal or interest of the debt contracted by the loans aforesaid; and to this end the profits of the commonwealth's stock in the new company, and so much of the revenue of the fund for internal improvement, as now stands pledged for that purpose, shall be faithfully applied to the payment of the interest on the said loans; and if this should prove inadequate, other sufficient funds shall be provided.

22. The *James river and Kanawha company* are charged with the duty of connecting the tide water of James river with the navigable waters of the Ohio by one of three plans of improvement, at their election; that is to say, either by a continuation of the lower James river canal to some suitable point on the river not lower than Lynchburg, a continued rail-road from the western termination of that canal to some convenient point on the Great Kanawha river below the great falls thereof, and an improvement of the Kanawha river from thence to the Ohio, so as to make it suitable for steam boat navigation: or secondly, by a continuation of the James river canal as aforesaid, and a continued rail-road from its western termination to the Ohio river: or thirdly, by a continued rail-road from Richmond to the Ohio river. And whether they elect one or another of these plans of improvement, that which they elect shall be executed in a substantial, durable and workmanlike manner; their improvements shall be kept permanently in good repair, free and fit for public use, according to the provisions of this act; and the works which they shall construct, and the property which they shall acquire by purchase or condemnation, under the authority of this law, shall be vested in them and their successors forever, for their own use and benefit, exempt from all public taxes, burdens or charges, other than those which may be imposed or authorized by this act.

23. If the company elect to continue the lower James river canal to Lynchburg, or beyond it, as part of their improvement, then that canal in all its parts from Richmond to its western termination, shall be at least forty feet wide at top, and twenty-eight feet wide at bottom, with not less than four feet depth of water at all seasons of the year, shall be provided with a convenient tow-path,

and adapted throughout its whole extent to the navigation of boats of not less than thirty-five tons burden, propelled by horses. To avoid very great expense at difficult passes, and to furnish proper accommodation to the trade on both sides of the river, the bed of the river shall occasionally be used as part of the line of navigation, when the refluent water from the dams will admit the convenient application of horse power, and the safe and easy passage of the usual canal boats. The canal at its lower termination shall be connected with the tide-water, so as to enable the boats which usually navigate it with their cargoes, at all times conveniently to pass into tide water, and descend the river or return.

24. From the highest point on James or Jackson's river to which the navigation shall be carried as aforesaid, a rail-road shall be extended by the most convenient route, either to the Ohio river, or to some suitable point on the Kanawha river, below the great falls thereof, as the company may elect. Such rail-road shall be graduated, so as to be convenient for transportation both eastward and westward, and shall be furnished with two sets of tracks, and all other works and fixtures necessary for the accommodation of the trade thereon.

25. If the company should not choose to extend the lower James river canal, but should elect a continued rail-road from Richmond, then they shall construct a rail-road from the tide water at Richmond, following the course of James river beyond the Blue Ridge, and thence by the most convenient route to the Kanawha river, terminating either at the mouth of that river, or at some other convenient point below the great falls, or at some convenient point on the Ohio river. And for the accommodation of the trade on both sides of James river, they shall extend proper arms of the road across the river, to all towns, and other convenient places of deposit on the opposite shore thereof.

26. If the western termination of the rail-road should be at any point of the Kanawha above its mouth, then the navigation of the Kanawha river from thence to the Ohio, shall be improved by locks and dams, or otherwise, so that at all seasons of the year, it may be conveniently and safely navigated by steam-boats of not less than one hunderd tons burden.

27. The works hereby required of the James river and Kanawha company, shall be executed with diligence, and if they be not commenced within two years after the passing of this act, and finished within twelve years after the first general meeting of the stockholders, then their charter shall be forfeited, and all the works of the company, with the land on which they are situated, and all the rights, privileges and immunities hereby granted to them, shall be vested in the present James river company, for the benefit of the commonwealth; and in that event, the present James river company shall be regarded, to all intents and purposes, as the successors of

the company hereby incorporated, in no manner, however, liable for any debts which they may have contracted, or entitled to any part of their personal property.

28. If the capital of five millions of dollars shall be found insufficient to complete the works required of the company, they shall be at liberty to enlarge their capital to any amount which may be found necessary to that end. The commonwealth shall be at liberty to take two-fifths of the additional capital, or any portion thereof, and the other stockholders to take the residue. So much thereof as shall not be voluntarily taken by the commonwealth and the other stockholders, may be raised by opening new books, and receiving new subscriptions, under the superintendence and control of the president and directors. The additional capital shall be taken in whole shares of a hundred dollars each; and the subscribers, their successors, heirs and assigns, shall be thenceforth, to all intents and purposes, members of the company in like manner as if they had been subscribers to the original capital; and shall, in like manner, be compelled to pay the amount of their subscriptions, upon the requisition of the president and directors, be subject to all the burdens, and entitled to all the privileges of the original subscribers.

29. The president and directors, their officers, agents and servants, shall have full power and authority to enter upon all lands and tenements through which they may desire to conduct their road or canal, or any feeder of the canal, or against which they may desire to abut any dam; and to lay out their road, canal, feeders and abutments, according to their pleasure, so that neither the dwelling house, yard, garden, nor curtilage of any person 80 be invaded without his consent. They shall describe by certain limits the land which they desire to occupy for the purposes aforesaid, and such contiguous land as they may desire to occupy as sites for toll-houses, warehouses, stables and other buildings, for the necessary accommodation of their officers, agents and servants, their horses, mules, and other cattle, and for the protection of the property entrusted to their care: *Provided*, That the lands so laid out on the general line of the road, canal or its feeders, shall not exceed one hundred feet in width; that the adjoining land, for the sites of buildings, shall not exceed one acre in any one parcel, or one hundred acres in the whole, and that the land for an abutment shall not exceed one acre. It shall be lawful for the president and directors to purchase and hold the land so laid out, or any part thereof. And if they cannot agree with the owner on the terms of purchase, it shall be lawful for them to apply to the court of the county in which such land, or the greater part thereof, may lie, and upon such application, the court shall appoint five discreet, intelligent, disinterested and impartial freeholders, to assess the damages to the owner from the condemnation of his land for the purposes aforesaid. No such appointment, however, shall be made, unless ten

days previous notice of the application shall have been given to the owner of the land, or to the guardian, if the owner be an infant, or to the committee, the owner being *non compos mentis,* if such owner, guardian or committee, can be found within the county; or if he cannot be so found, then such appointment shall not be made, unless notice of the application shall have been published at least one month next preceding, in some newspaper printed as convenient as may be to the courthouse of the county, and shall have been posted at the door of the courthouse on the first day at least of the next preceding term of the said court. A day for the meeting of the said freeholders to perform the duty assigned them, shall be designated in the order appointing them; and any one or more of them attending on that day, may adjourn from time to time, until their business shall be finished. Of the five freeholders so appointed, any three or more of them may act after having been duly sworn or solemnly affirmed before some justice of the peace, that they will impartially and justly, to the best of their ability, ascertain the damages which will be sustained by the proprietor of the land from the condemnation thereof, for the use of the company, and that they will truly certify their proceedings thereupon to the court of the said county.

30. It shall be the duty of the said freeholders, in pursuance of the order appointing them, to assemble on the land proposed to be condemned, and after viewing the same, and hearing such proper evidence as either party may offer, they shall ascertain, according to the best of their judgment, the damages which the proprietor of the land will sustain, by the condemnation thereof for the use of the company. In performing this duty, they shall consider the proprietor of the land as being the owner of the whole fee simple interest therein: they shall take into consideration the quantity and quality of the land to be condemned, the additional fencing which will be required thereby, and all other inconveniences which will result to the proprietor from the condemnation thereof, and shall combine therewith a just regard to the advantages which the owner of the land will derive from the construction of the road or 81
canal, for the use of which his land is condemned.

31. When the said freeholders shall have agreed upon the amount of damages, they shall forthwith make a written report of their proceedings under their hands and seals, in substance as followeth:

"*We, freeholders, appointed by an order of the county court of for the purpose of ascertaining the damages which would be sustained by , the proprietor of certain lands in the said county, which the president and directors of the James river and Kanawha company propose to condemn for their use, do hereby certify, that we met together on the land aforesaid, on the day of , the day appointed therefor by the said order, (or the day to which we were regularly adjourned, from the day appointed for*

our meeting by the said order.) and that having been first duly sworn, and having viewed the premises, we proceeded to estimate the quantity and quality of the land aforesaid, the quantity of additional fencing, which would probably be occasioned by its condemnation, and all other inconveniences which seemed to us likely to result therefrom to the proprietor of said land: that we combined with these considerations, as far as we could, a just regard to the advantages which would be derived by the proprietor of the said land, from the construction of the rail-road, (or canal,) for the use of which the said land is to be condemned: that under the influence of these considerations, we have estimated, and do hereby assess the damages aforesaid, at the sum of . Given under our hands and seals this day of ." At the foot of the report so made, the magistrate before whom the said freeholders were sworn, shall make a certificate, in substance as follows: "*County, set: I, a justice of the peace for said county, do hereby certify, that the above named freeholders, before they executed their duties as above certified, were solemnly sworn (or affirmed) before me, that they would impartially and justly, to the best of their ability, ascertain the damages which would be sustained by the above named , from the condemnation of the above mentioned land, for the use of the James river and Kanawha company, and that they would certify truly their proceedings thereupon to the court of the said county. Given under my hand this day of .*"

32. The report of the freeholders so made, together with the certificate of the magistrate as aforesaid, shall be forthwith returned by the said freeholders, to the court of the county; and unless good cause be shewn against the report, it shall be confirmed by the court, and entered of record: but if the said report shall be disaffirmed, or if the said freeholders, being unable to agree, should report their disagreement, or if from any other cause, they should fail to make a report, within a reasonable time after their appointment, the court may at its discretion as often as may be necessary, supersede them, or any of them, appoint others in their stead, and direct another view and report to be made, in the manner above described.

33. On the confirmation of any such report, and on the payment or tender to the proprietor of the land, of the damages so assessed, or the payment of the said damages into court, when for good cause shewn, the court shall so have ordered it, the land viewed and assessed as aforesaid shall be vested in the *James river and Kanawha company*, in the same manner as if the proprietor had sold and conveyed it to them. 82

34. While these proceedings are depending for the purpose of ascertaining the damages to the proprietor for the condemnation of his land, and even before they shall been instituted, the president and directors, if they think that the interest of the company requires it, may by themselves, their officers, agents and servants

enter upon the lands laid out by them as aforesaid, and which they desire to condemn, and apply the same to the uses of the company. If when they so take possession, proceedings to ascertain the damages as aforesaid shall be pending, it shall be their duty diligently to prosecute them to a conclusion; or if none be then pending they shall without delay institute them, and diligently prosecute them to a conclusion. And when the report of the freeholders ascertaining the damages shall be returned and confirmed, the court shall render judgment in favour of the proprietor of the land for the amount thereof, and either compel its payment into court, or award process of execution for its recovery as to them shall seem right.

35. In the mean time no order shall be made and no injunction shall be awarded by any court or judge to stay the proceedings of the company in the prosecution of their works, unless it be manifest that they, their officers, agents or servants are transcending the authority given them by this act, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

36. If the president and directors shall take possession of any land before the same shall have been purchased by them or condemned and paid for according to the provisions of this act, and shall fail for forty days to institute proceedings for its condemnation as aforesaid or shall not prosecute with due diligence the proceedings commenced for that purpose, it shall be lawful for the proprietor of the land, upon giving to the said president and directors, or any one of them, ten days previous notice, to apply to the court of the county in which the land or the greater part thereof shall lie; and upon such application the court shall appoint five discreet, intelligent, disinterested and impartial freeholders to assess the damages to the owner from the condemnation of his land for the use of the company, shall appoint a day for their meeting, to perform the duties assigned them, and shall dismiss at the costs of the company any proceedings then depending on their behalf for the condemnation of the said land. The freeholders so appointed, any three or more of whom may act, shall proceed in the performance of their duties in all respects in the same manner as if they had been appointed on the application of the president and directors of the company. And the court shall in like manner confirm or disaffirm their report, supersede them or any of them, and appoint others in their stead, or direct another view and report to be made as often as may be necessary. And when any such report ascertaining the damages shall be confirmed, the court shall render judgment in favour of the proprietor for the damages so assessed, and double costs, and shall thereupon either compel the company to pay into court the damages and costs so adjudged, or award process of execution therefor as to them shall seem right.

37. When the judgment rendered for the damages assessed and

costs, shall be satisfied by the payment of the money into court, or otherwise, the title of the land for which such damages were assessed, shall be vested in the company in the same manner 83
as if the proprietor had sold and conveyed it to them.

38. The said president and directors, for the purpose of constructing their canals, feeders, dams and rail-road aforesaid, and the works necessarily connected therewith, or of repairing the same after they shall have been made, or of enlarging or otherwise altering or repairing their canals, and other works now in existence, shall be at liberty by themselves, their officers, agents or servants, at any time to enter upon any adjacent lands, and to cut, quarry, dig, take and carry away therefrom, any wood, stone, gravel or earth, which they may deem necessary: *Provided, however,* That they shall not, without the consent of the owner, cut down any fruit tree, or any tree preserved in any field or lot for shade or for ornament, or take any timber, gravel, stone or earth, constituting any part of any fence or building. For all wood, stone, gravel or earth taken under authority of this act, and for all incidental injuries done to the enclosures, crops, woods or grounds, in taking or carrying the same away, the said president and directors shall make to the owner a fair and reasonable compensation, to be ascertained, if the parties cannot agree, by any three impartial, intelligent and disinterested freeholders, who, being appointed for that purpose by any justice of the peace thereto required by the owner, shall be sworn by him, and shall then ascertain the compensation upon their own view of the wood, stone, gravel or earth taken, and of the injury done as aforesaid in taking them.

39. If the said president and directors, in entering upon the land of any person under the authority of this act, for the purpose of laying out or constructing, enlarging, altering or repairing any of their said works, shall, by themselves, their officers, agents or servants, do any wanton or wilful injury to such land or its appurtenances, or to the crops growing or gathered, or to any other property thereon, the *James river and Kanawha company* shall pay to the person so injured, double the amount of the damages which shall be assessed by a jury in any proper action therefor.

40. When the works of the said company shall cross any public road, now established, or hereafter to be established, it shall be the duty of the *James river and Kanawha company* to provide, as far as possible, that no obstruction to the convenient transportation of persons or property along such road, shall be opposed by their works; and to this end, they shall always maintain, in good repair, proper bridges upon their canals, and proper passways across their rail-road, where the public roads cross them. Whensoever their works shall be conducted through the lands of any one without his consent, it shall be their duty to provide for him safe and convenient passways across their works, from one part of his land to the

other. And if, by the enlargement or alteration of the canals now in existence, any bridge thereon, which the present James river company is bound to maintain for the use of the owner of the adjoining lands, should be destroyed or injured, the new company shall, without delay, re-build or repair it, so that the owner of the adjoining lands may sustain no detriment.

41. The general assembly will be at full liberty, at any time hereafter, to authorize any other rail-road to be joined to the rail-road of the *James river and Kanawha company*, or be conducted across it, on such terms as may be just, and in such manner as not to injure the works of the James river company, or obstruct the use of their road. 84

42. The present improvements on James river shall, as far as practicable, be kept in good repair by the company, and free for use, on the payment of the tolls now allowed, except so far as they may be substituted by the new works required by this act.

43. The *James river and Kanawha company* shall at all times keep open and in good repair, the present Kanawha turnpike, hereby to be transferred to said company, as well as the extension thereof to the mouth of Big Sandy river, from the time of the completion of the same, and shall be authorized to receive, for the use of the said road, and the extension thereof, such tolls as they may assess, provided they do not exceed those now imposed by law. In the mean time, the extension to the mouth of Big Sandy river shall be completed in the manner now required by law, under the direction of the James river company, or such other agent as the general assembly shall direct; and so soon as the same shall be completed, it shall be transferred to the possession and controul of the *James river and Kanawha company*.

44. When the improvements in the navigation of the rivers hereby authorized, shall have been made, their navigable waters shall be deemed public highways, free for the use of all persons whatsoever, paying the lawful tolls, and conforming to the lawful rules and regulations of the company; and the tolls shall be as follows: Upon James and Jackson's rivers, the company may demand and receive, on all articles transported by water on their line of improvement, such tolls as they may assess, provided they do not exceed an average of three cents per ton of two thousand two hundred and forty pounds, per mile, upon either the ascending or descending navigation, and that the tolls upon indian corn, wheat, rye, and other grains, and grass seeds; upon flour, corn meal and other meal; upon hemp, flax, cotton, tobacco, and all agricultural productions, shall not exceed two and a half cents per ton per mile; that the tolls upon salt, bar iron, pig iron, iron castings, and all other minerals and fossils, shall not exceed two cents per ton per mile; that the toll upon coal shall not exceed one cent per ton per mile; and that the tolls upon lime, lumber and gypsum, shall not exceed one half a

cent per ton per mile. These tolls shall be in lieu of the tolls now allowed by law.

45. When the improvements in the navigation hereby required shall be completed as far as Lynchburg, the tolls hereby allowed may be demanded and received upon the transportation between Lynchburg and Richmond, and shall be in lieu of the tolls now allowed on the lower canal: *Provided, however,* That until the improvements aforesaid shall be completed to the mouth of the North river in Rockbridge, the tolls from Lynchburg downward, on such articles as shall have passed the locks on the mountain canal, shall not exceed two cents per ton per mile. When the improvements shall be completed to the mouth of the North river in Rockbridge, the new tolls may be demanded and received upon the transportation below that point, in lieu of the tolls now allowed on the mountain canal: and if the aforesaid improvements shall be extended above the mouth of the North river, then the new tolls may be demanded and received upon the transportation on such parts of the extended line of improvement above that point, as may from time to time be completed and fit for use: *Provided,* That no such 85
tolls shall be received on parts of such extended line, until it shall be completed as far as Crow's ferry, and that none such shall be received on the transportation above Crow's ferry, on parts of such extended line, less than ten miles in extent.

46. Upon the Kanawha river, when the improvements on the same shall have been fully completed, as herein-before authorized and directed, from the point on said river where the rail-road may terminate, to the mouth thereof, the company may demand and receive, on all articles transported by water, on their line of improvements, in lieu of the tolls now allowed, such tolls as they may assess, provided they do not exceed one cent per ton per mile; but the tolls on salt, bar iron, pig iron and castings, shall not exceed one half of a cent per ton per mile; and upon lumber, lime, coal and gypsum, shall not exceed one-fourth of a cent per ton per mile: *Provided,* That all canoes and other small craft going to or returning from mill, shall be exempt from the payment of tolls. Until said river is rendered navigable in the manner above prescribed, from the termination of said rail-road to the mouth of the river, the *James river and Kanawha company* may demand and receive such tolls upon said river as they may assess, provided they do not exceed those now allowed by law.

47. Upon the rail-road hereby authorized, the company shall have the exclusive right of transportation. When it is completed, they shall at all times furnish and keep in good repair the necessary carriages and other requisites for the safe and convenient transportation of persons and property; and it shall be their duty at all times upon the payment or tender of the tolls hereby allowed, to transport to any convenient place of delivery on the road which the

owner of the goods may indicate, and there to deliver all articles which shall be delivered to them for transportation, or offered to them in proper condition to be transported at some place on the road convenient for the reception thereof. They shall give no undue preference in transportation to the property of one person over that of another, but as far as practicable shall carry each in the order of time in which it shall be delivered or offered for transportation, with the tolls paid or tendered. If the company, or any of its officers or agents, shall fail to receive, transport or deliver, in due time, any property so offered or delivered to them for transportation, they shall forfeit and pay to the party injured double the amount of the lawful tolls paid or tendered; and shall moreover be liable to an action on the case, in which full damages and double costs shall be recovered. The company shall be liable as common carriers for any loss or injury happening to goods in their possession, or in possession of their agents for transportation.

48. If the rail-road be not extended farther east than the western termination of the James river canal, at or above Lynchburg, then the company may demand and receive for transportation thereupon, such tolls as they may assess, provided they do not exceed an average of eight cents per ton per mile; and for the transportation of persons four cents each per mile. But if the rail-road should be continued from Richmond to the Kanawha, then they may demand and receive the same tolls per mile for carriage west of Crow's ferry, at the mouth of Looney's creek, and may demand and receive east of the said Crow's ferry at the mouth of Looney's creek for the carriage of all articles of property 86 from west to east, tolls not exceeding an average of four cents per ton per mile; for the carriage of all articles of property from east to west, tolls not exceeding an average of six cents per ton per mile; and for the carriage of persons, whether eastward or westward, they may demand and receive four cents each per mile: *Provided, however,* That the tolls upon lumber, salt and the other mineral and agricultural products above enumerated, shall not exceed the respective averages above declared; that the tolls on coal shall not exceed three-fourths of these averages; and the toll on gypsum shall not exceed one-half of these averages. The tolls hereby allowed are in full for all transportation on the rail-road; and no other compensation shall be demanded or received by the company.

49. Tolls on the rail-road may be demanded and received as soon as any part thereof shall have one set of tracks completed, and shall be prepared with the necessary carriages and other requisites for safe and convenient transportation. The company, if they deem it expedient, may defer laying down the second set of tracks until one set shall be completed throughout the whole extent of the road: but they shall thereafter lay down the second with all practicable dispatch.

50. While the works are in progress, and after they are com-

pleted, the president and directors of the company shall declare and make semi-annual dividends of so much of the surplus profits of the stock, after paying the dividends due to the old stockholders, as they may deem it prudent to divide. The dividends on the commonwealth's stock, or so much thereof as may be required, shall be applied towards the payment of the interest on the loans to the James river company, and the dividends on the stock of the other stockholders, shall be paid to their order in such manner as the by-laws may prescribe.

51. The annual nett profits of the company proceeding from tolls, rents, and all other emoluments, shall never exceed fifteen per centum upon their capital stock; and the tolls shall be regulated from time to time, so as to restrain the profits within that limit. All reductions of the tolls made for that purpose shall be made rateably, on the Kanawha river, on the line between that and Crow's ferry at the mouth of Looney's creek, and on the line from thence to Richmond. To the end, that this regulation may be enforced, and that the general assembly may always be informed of the condition of the company, it shall be the duty of the president and directors of the company, annually, to report to the board of public works, or to such other public authority as the law may prescribe, the true state and condition of the company, its income from tolls, rents and other emoluments, its expenditures, and its nett profits, to the end that the commonwealth and the other stockholders may enjoy the profits of the stock in proportion to the amount of their respective capitals; the dividends declared as aforesaid upon each share, shall always be in proportion to the amount actually paid thereupon by the stockholders; and the commonwealth shall be regarded as having paid the full amount of her original subscription, from the time when her interest in the property and works of the present James river company shall have been transferred to the new company.

52. If any person shall wilfully trespass on the possessions, or do injury to the works or other property of the company, he shall be deemed guilty of a misdemeanor, and be punished accordingly; except in those cases in which the offence is of a higher grade, or otherwise specifically punished by law. 87

53. In the event of the said company's constructing a road for the passage of carriages and heavy loaded waggons, and keeping the same in good repair, from a suitable point at or near the lower end of the existing canal at the mountain section, to a point on or near the North river, they shall be, and are hereby authorized to erect a gate thereon, and to demand and receive such tolls as are allowed by the act passed February the seventh, one thousand eight hundred and seventeen, entitled "an act prescribing certain general regulations for the incorporation of turnpike companies."

54. This act shall commence and be in force from and after the passing thereof.

CHAPTER 14.—Act of March 15, 1833. (See title: Fund for Internal Improvement, and Board of Public Works, p. 10

CHAP. 95.—An ACT to provide for the construction of a bridge and embankment over the ravine of Campbell's creek.

[Passed February 20th, 1833.] 59

1. *Be it enacted by the general assembly*, That for the purpose of constructing a bridge and embankment over the ravine of Campbell's creek on the line of the Kanawha road, the president and directors of the James river company shall be, and they are hereby authorized and required, should the funds provided by law for the extension of the Kanawha turnpike to Big Sandy river be insufficient for the construction of the said bridge and embankment, to borrow a further sum of money not exceeding four thousand dollars, upon the same terms and conditions on which loans were authorized by the act, entitled, "an act providing for the extension of the Kanawha turnpike road to Big Sandy river," passed January the thirtieth, eighteen hundred and twenty-nine.

2. This act shall be in force from its passage.

CHAP. 84.—An ACT to provide for the repair of the Kanawha road, and for other purposes.

(Passed March 11, 1834.) 99

1. *Be it enacted by the general assembly*, That hereafter the Kanawha turnpike road and the extension thereof, shall constitute one improvement, and the number of toll-gates thereon shall be regulated accordingly. The president and directors of the James river company shall be authorized to adopt such a system for the repair and preservation of the said road, of the navigation of the Kanawha river, and of the Blue Ridge canal, and for the transaction of all business connected with those improvements, as they may deem most efficient and economical: and for the purpose of executing the same, they may appoint two agents or superintendents, assign their respective duties, and fix their salaries: *Provided*, That these salaries shall not exceed the total sum of fifteen hundred dollars.

2. *Be it further enacted*, That in order to enable the president and directors of the James river company to repair and improve the

said turnpike, and to re-build or repair the bridges belonging to the same, in a complete and effectual manner, they are hereby authorized and empowered to borrow on the credit of the state, a sum of money not exceeding ten thousand dollars, on the same terms, conditions and pledges as are prescribed for the loan authorized by the first and second sections of the act, entitled, "an act authorizing a loan for the purposes of internal improvement," passed on the first day of March, eighteen hundred and twenty-six, and so much of the said sum as shall be necessary, is hereby appropriated for the purposes above mentioned.

3. This act shall be in force from and after its passage.

KANAWHA BOARD.

CHAP. 117.—An ACT providing more effectual means for the improvement of the navigation of the Kanawha river.

Passed February 15, 1858. 91

1. Be it enacted by the general assembly, that the number of directors in the James river and Kanawha company shall be increased by the appointment of six additional directors, three of whom shall be appointed by the Board of public works, and three by the stockholders in general meeting. Two of said directors to be elected by the stockholders in general meeting, shall be elected by the stockholders other than the state, and the third by the stockholders, including the state. That the three additional directors to be appointed by the Board of public works, and two of those to be appointed by the holders, shall be residents of the Kanawha valley, and shall, with the president of the company, constitute a board to be known as The Kanawha Board; which shall be entrusted with the control, management and supervision of the Kanawha improvement; subject, however, to the instructions of the stockholders of said company. All the authority now vested in the present board of directors over the Kanawha river, shall be vested in the Kanawha board 92 of directors herein authorized to be appointed; but said Kanawha board of directors shall have no control over any of the other works or affairs of said company. The Kanawha board may elect one of their number to act as president pro tempore, who shall preside, and discharge the other duties of president of the company, relating to the Kanawha river, in the absence of the president. Three of said directors, with the president of the company, shall constitute a quorum, and in the absence of the president, four of said directors shall constitute a quorum. The said Kanawha board shall have power to adopt such by-laws and regulations and to appoint such officers and agents as they may deem necessary for the management of the Kanawha improvement: provided, that in case the president of the company shall differ with the Kanawha directors in any matter involving in his opinion the general interests of the company, he shall have authority to call a meeting of the two boards of directors together, and submit such matter to them as one board; and their decision shall be carried into effect. The third director to be elected

by the stockholders, including the state as aforesaid, shall be a member of the board of directors of the James river and Kanawha company as at present constituted, and invested with full powers as such.

2. The James river and Kanawha company are hereby authorized to borrow on the credit of their works on the Kanawha river, now existing and hereafter to be constructed under this act, and the net revenues now on hand or due and unpaid, and that may hereafter accrue therefrom, a sum or sums of money sufficient to improve the navigation of the Kanawha river, from the mouth thereof to Loup creek shoals, and are hereby authorized to issue their bonds or certificates of debt, payable at a period of not less than twelve years from the issuing and date thereof, unless the company shall think proper to pay them at an earlier time. Such bonds or certificates of debt shall bear interest at a rate not exceeding the rate of interest allowed by an act of the general assembly passed March fifteenth, eighteen hundred and fifty-six, entitled an act for the relief of rail road and other companies, and to regulate the terms on which they may borrow money; and the company shall not sell the said bonds or certificates at a less rate than that allowed in the said act. The company are also authorized to apply the net revenues derived from their works on the Kanawha river from its mouth to Loup creek shoals, directly to the improvement of said river.

3. The James river and Kanawha company are authorized and empowered to give a mortgage upon their said works on and rights in the said Kanawha river from Loup creek shoals to its mouth, as well as the works hereafter to be constructed under this act, and upon their net revenues now due or in hand, and which may hereafter accrue from the said works, for the purpose of securing the payment of the interest and the ultimate redemption of the principal of said bonds or certificates of debt; but the said mortgage shall give the power to sell the said property thereby conveyed, only in case of default in the payment of the principal of the said bonds or certificates of debt, when they shall become due, and provide for the payment of the accruing interest thereon only from the accruing net revenue from said work, except such arrears of interest as may be unpaid, if any, when the company may make default in the payment of the principal; which arrears may be provided to be then paid, together with the principal, from the proceeds of the sale of the property conveyed by the said mortgage. And a sale of the property shall not then be made, unless it shall appear that the payment of the principal of said bonds cannot be made within five years out of the revenues to be derived from said improvement. Neither the said bonds nor any other contract of the Kanawha board shall be a charge upon or in any manner enforced against the other property, resources or credit of the company. Any liens or prior claims that the state may hold

on said works, rights and revenues, are hereby suspended in favor of such parties as may loan money to said company for the purposes of this act, or become the holders of said bonds, until such loan or loans, with the accruing interest thereon, have been fully paid and discharged: provided, however, when the debt with its accruing interest, which is herein authorized to be contracted for the improvement of the Kanawha river, shall have been fully paid and discharged, the state shall be reinstated to all the rights, privileges and priorities to which she was entitled previous to the passage of this act.

4. The James river and Kanawha company are hereby authorized, when the improvement of the Kanawha river has been commenced, to collect on all articles transported on the Kanawha river, in lieu of the tolls now authorized by law, such tolls as they may assess: provided they do not exceed four cents per ton per mile, but the toll on timber, lumber and coal shall not exceed one-fourth of one cent per ton per mile; upon salt, one-half of one cent per ton per mile; and upon bar iron, pig iron, grain and flour, one cent per ton per mile; and said company are also authorized to collect a rate of toll not exceeding one cent per passenger per mile for each person traveling on steam boats on said river.

5. The James river and Kanawha company shall not be liable for injury to boats, cargoes or other property at the points undergoing improvement, unless such injury be caused by a want 93
of ordinary care by the company or its agents in constructing the work.

6. The act of assembly passed February fifth, eighteen hundred and fifty-six, entitled an act authorizing the James river and Kanawha company to borrow money to improve the Kanawha river, and to pledge the tolls on said river for that purpose, so far as its provisions are inconsistent with or are changed by the provisions of this act, is hereby repealed: provided, however, that such repeal shall not affect the validity of the pledge heretofore made by the company, in pursuance of said act, of the tolls from the Kanawha river for the improvement of the said river.

7. The stockholders of the James river and Kanawha company shall have the power in general meeting to dispense with and terminate the powers of the said Kanawha board, composed of five directors as aforesaid, at any time they may deem it expedient to do so, after the improvement of the Kanawha river from its mouth to Loup creek shoals, as provided for by this act, shall have been completed. And this act shall expire by its own limitation, if the improvement of the Kanawha river, contemplated by it, shall not be commenced in good faith on or before the first day of July eighteen hundred and fifty-nine, and be completed within four years there-

after, unless the stockholders shall determine in general meeting, before the expiration of such period, to extend the said period for completing the work: provided, however, that if this act should be permitted to expire under the foregoing limitations, the rights and liens of the holders of bonds that shall have been issued and sold in pursuance thereof, shall not be affected thereby.

8. This act shall be in force from and after the time that the stockholders of the company shall accept the same in general meeting: provided, that the legislature hereby reserves the right at any time hereafter to modify, amend or repeal the powers and privileges hereby conferred, but the right of parties who may loan money under the provisions of this act for the improvement of the Kanawha river, shall not be affected or impaired by any such amendment, modification of repeal.

CHAP. 21.—An ACT to amend the Charter of the James River and Kanawha Company.

Passed March 23, 1860. 113

1. Be it enacted by the general assembly, that the capital stock of the James river and Kanawha company be and the same is hereby increased to twelve million four hundred thousand dollars, in shares of one hundred dollars each.

2. That in addition to the shares now owned by the state in said company, the Board of public works be and is hereby directed to subscribe, on behalf of the commonwealth, for seventy-four thousand shares of said capital stock, which shall be declared by said company a six per cent. preferred stock, on which six dollars per share shall be paid to the holders thereof before any dividend shall be paid on other stock of said company; whereof seventy-two thousand shares shall be taken in full satisfaction of the debt now due from the said company to the state, and for the assumption by the state of the debt for which the state is bound as the surety for said company, and the annuity to the old James river company; and for the residue of two thousand shares, the bonds of the state for the aggregate amount of two 114 hundred thousand dollars are to be delivered to the company, to be applied to the extinguishment of the floating debt of the company: provided, that an amount of said debt equal to the amount of said bonds, shall be extinguished thereby.

3. Upon the receipt of the certificates for the said seventy-two thousand shares of stock, the Board of public works shall give to the James river and Kanawha company a receipt in full for the said several debts due to the state, and for any claims against the company

on account of the debts for which the state is responsible as security of the company, or on account of the annuity to the old James river company; and shall, by proper deeds, release to said company all liens, whether by deeds of trust, mortgages or otherwise, held by the state upon the works and property of the company, to secure any debt due to the state, or which may be guaranteed by the state.

4. Upon the receipt of the certificates for the said seventy-two thousand shares of the stock, the Board of public works is hereby directed, upon the surrender by the holders thereof, of any of the bonds of the James river and Kanawha company, for the payment of which the state is responsible, to issue to said holders a corresponding amount of the bonds of the state, made in the manner prescribed by law, payable thirty-four years after their date, and bearing interest at the rate of six per centum per annum, payable semi-annually. And the board shall thereupon cancel and file the bonds so surrendered, and deliver to the James river and Kanawha company a statement thereof, with the number, amount and date of each bond.

5. And upon the receipt of the certificates of the residue of two thousand shares of said stock, the Board of public works is directed to issue and deliver to the company the bonds of the state for the aggregate amount of two hundred thousand dollars, to be applied to the extinguishment of the floating debt of the company.

6. The James river and Kanawha company shall have authority to borrow money, at a rate of interest not exceeding 115
seven per centum per annum, payable semi-annually, and not exceeding two million five hundred thousand dollars, for the purpose of completing the canal to Covington, carrying on their other works and paying the residue of their floating debt, and to execute bonds for the amount borrowed, and deeds of trust or mortgages, pledging their works, property and net revenues for the payment of the same: provided, that they shall not borrow in any one year a greater amount than five hundred thousand dollars. The said interest shall be paid semi-annually into the treasury of the commonwealth, for the benefit of the holders of said bonds, on or before the first day of January and July in each year; and the same shall be paid to the holders thereof, upon the warrant of the second auditor, out of said funds so paid into the treasury by said company.

7. The said company, after they may have issued such bonds, shall set apart, on the first day of January and July in each year, a fund not less than the rate of one per centum per annum for a sinking fund for the payment of the principal of such bonds, or such larger rate as may be necessary to provide a fund sufficient for such redemption, at the maturity of such bonds. And the amount to be set apart annually as a sinking fund, shall be paid by the company, one-half thereof on or before the first day of January and July in each year, to the commissioners of the Sinking fund, and invested by them in stocks, as required by the general law regulating the action of said commissioners;

and the said commissioners shall keep an account of, and hold and apply the same to the redemption of said bonds, in pursuance of this act: and shall make report to the general assembly, at each session, of their proceedings under this act.

8. Nothing in this act contained shall be so construed as to render the state liable, in any manner whatever, otherwise than as a stockholder of the company, to the holders of any bonds executed for money borrowed under this act.

9. Be it further enacted, that there shall be issued to, and placed under the exclusive control of the Kanawha board of 116
directors of said company, or their successors, as constituted under the act of the general assembly entitled an act providing more effectual means for the improvement of the navigation of the Kanawha river, passed fifteenth of February one thousand eight hundred and fifty-eight, three hundred thousand dollars of the six per cent. registered stock of the commonwealth, to be issued in the mode now provided by law, and the said stock so issued shall be used by said Kanawha board of directors for the improvement of the navigation of said river, from the mouth thereof to Loup creek shoals: provided, however, said Kanawha board shall not dispose of said registered stock at less than par. And said registered stock shall not be issued for an amount exceeding one hundred and fifty thousand dollars in any one year, nor exceeding twenty thousand dollars in any one month: But before any of said stock shall be issued, the said James river and Kanawha company, by the president thereof, shall execute a deed of trust or mortgage upon the works, property and net revenue of said Kanawha line of improvement, from the mouth thereof to said Loup creek shoals, to the commonwealth, for the payment of the principal and interest of said three hundred thousand dollars: or upon the failure or refusal of said company to execute such deed of trust or mortgage, when required by the Kanawha board, then the said Kanawha board, by their president pro tempore, or other agent, may execute such deed of trust or mortgage: and the same shall be deemed to have the same effect as though it had been executed by said company: and such lien shall take precedence over any lien created by said company, to secure their bonds authorized to be issued by this act. The said Kanawha board shall pay into the treasury of the commonwealth three and one-half per centum on or before the fifteenth day of June and December of each year, on such amount of said registered stock as may be issued under this section, for interest and to provide a sinking fund. The said Kanawha board are hereby authorized and directed to prosecute the construction of said Kanawha line of improvement, free from the control or direction of the president and directors of said James river and Kanawha company, and which is known as 117
the "Eastern board," and shall have the entire control and management of the same, free from such control and direction.

10. The debts of said company, which may not be paid as authorized by this act, or if the holders thereof shall refuse to receive in payment thereof the seven per centum bonds of said company, authorized to be issued by this act, shall not, by reason of the passage of this act, be in any better condition for enforcing the payment theerof; but the liens of the commonwealth existing before the passage of this act, on the works, property and revenue of said improvement, shall, as to them, be deemed to be in full force.

11. The Board of public works shall appoint three proxies to represent the state at the meetings of the stockholders; and the proxies so appointed shall have power to cast three-fifths of all the votes cast in the appointment of the president and other officers elected by the company, except directors of said company, and in fixing the salaries of officers, and in all other questions arising in a meeting of stockholders, and shall allow to said proxies a reasonable compensation for their services. And authority is hereby given to the Board of public works to revise and alter the rates of toll charged by said company, and are directed so to do, so as to adapt them to a remunerative standard. If the location proposed for the line of the canal between the present terminus of the Virginia Central rail road at Jackson's river and the town of Covington, will interfere at any point with any proposed location of the extension of said railroad, and the engineers representing respectively the canal and the rail road cannot agree upon an independent location for each work at such points, then the Board of public works shall determine such location, having due regard to the interest of the commonwealth as a stockholder in each company; and their decision shall be binding.

12. In addition to the rights and powers heretofore granted to and conferred upon the James river company 118
and the James river and Kanawha company, for the collection of tolls on the Kanawha river, the said James river and Kanawha company, their collectors and agents, are hereby authorized and empowered to sue out an attachment before any justice of the peace, against boats and cargoes upon the Kanawha river, for tolls due and unpaid by said boats and cargoes, their owners, masters or shippers.

13. That in case the said James river and Kanawha canal company shall not complete the canal to Covington or the western terminus of the Virginia Central rail road, within six years from the passage of this act, without any further application to the general assembly for aid, either by loan from the state, subscription, or otherwise, all the property, rights, franchises, and privileges of every kind and description of the said company, shall be transferred to and become the property of the state: and provided further, that the said company shall have no authority to contract any greater amount of debts, or in any other manner than is authorized by the provisions of this bill without the consent of the general assembly: and before this

act shall take effect or the Board of public works shall make the subscription to the stock of said company, authorized by it, or release or discharge the liens which the commonwealth holds on the property of the said company, the private stockholders of said company shall, in general meeting assembled, accept the provisions of this act, and duly certify their acceptance thereof to the Board of public works.

14. Be it further enacted, that before the provisions of this act shall take effect, the said James river and Kanawha company shall, in general meeting of the stockholders, accept the same, and such acceptance shall be deemed an acceptance of all the provisions of this act, and as a complete acquiescence in and recognition of all the authority and independent and other powers conferred upon the said Kanawha board by this act.

[Wheeling Acts, Dec. 2nd, 1861, p. 37.]

CHAP. 62.—An ACT to re-organize the Kanawha Board.

Passed February 8, 1862.

1. Be it enacted by the General Assembly, That until the individuals holding stock in the Kanawha River improvement shall hold a meeting within the jurisdiction of this assembly for the election of directors, the board of public works shall annually appoint five directors for the Kanawha board, with power to sue and be sued, as a body politic and corporate, who shall have control and supervision of the Kanawha River and Road, according to the provisions of the act providing more effectual means for the improvement of the Kanawha river, passed February fifteenth, eighteen hundred and fifty-eight, and an act to amend the charter of the James River and Kanawha company, passed March twenty-third, eighteen hundred and sixty, so far as the same may be consistent with the provisions of this act. The said board of directors shall hold their offices for one year, and until their successors are appointed, and shall have all the powers pertaining to the said board, as fully as if they had been appointed according to the provisions of the said act, passed February fifteenth, eighteen hundred and fifty-eight.

2. The said Kanawha Board is hereby authorized and required to prosecute the improvement of the Kanawha river by contract, according to the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty; or by appropriating the surplus tolls accruing on the river and road, as they may deem most expedient; and to this end shall proceed to collect all arrears of tolls or other dues; Provided, that nothing in this act shall be so construed as to authorize the new board to make any contracts binding on the commonwealth for the payment of money, or the issuing of bonds to supply any deficiency, not heretofore issued under the provisions of the aforesaid act passed March twenty-third, eighteen hundrd and sixty.

3. And the said Kanawha board shall also have full control over the Kanawha road, and shall appoint a general superin- 38
tendent, who shall have supervision of both the Kanawha river and Kanawha road, whose duty it shall be to collect from the gate keepers quarterly, the net proceeds of the tolls collected by said gate keepers, and keep such road in repair by the use of said tolls, and pay over the residue to the said board for the river improvement; also to take charge of and secure for the use of the said board all the boats, tools and other property now on the river, which was procured by the late Kanawha board, in and for the improvement of the Kanawha river and road and manage and superintend the improvement of the river, subject to the control of said board, and shall make quarterly returns to said board of his collections and disbursements, and shall receive for his services, annually, a sum not exceeding twelve hundred dollars.

4. The said collectors shall account quarterly to the board, and pay over to them all the monies collected by them.

5. The said board shall annually make full report to the board of public works of all their acts and doings.

6. All former laws in conflict with the provisions of this act are hereby repealed.

7. This act shall be in force from its passage.

[Wheeling Acts Extra Session, May 6, 1862, p. 14.]

CHAP. 18.—An ACT to amend and re-enact the act passed February 8th, 1862, entitled "An act to reorganize the Kanawha Board."

Passed May 15, 1862. 14

1. Be it enacted by the General Assembly of Virginia, That until the individuals holding stock in the Kanawha river improvement shall hold a meeting within the jurisdiction of this assembly, for the election of directors, the board of public works shall annually appoint five directors for the Kanawha Board, with power to sue and be sued, as a body politic and corporate, who shall have control and supervision of the Kanawha river and road, according to the provisions of the act providing more effectual means for the improvement of the Kanawha river, passed February fifteenth, eighteen hundred and fifty-eight, and an act to amend the charter of the James River and Kanawha Company, passed March twenty-third, eighteen hundred and sixty, so far as the same may be consistent with the provisions of this act. The said board of directors shall hold their offices for one year, or until their successors are appointed, and shall have all the powers pertaining to the said board, as fully as if they had 15
been appointed according to the provisions of the said act, passed February fifteenth, eighteen hundred and fifty-eight.

2. The board of public works shall appoint a collector of tolls for each of the two collection districts on the Kanawha river, with salaries to be fixed by the board aforesaid. That the said collectors shall give bond and security to the Kanawha board, in such sum, in each case, as the said board shall prescribe, for the faithful performance of the duties of their respective offices, as well as to account for the tolls collected by them respectively. The said collectors shall collect all tolls, which shall have accrued on the river in their respective districts prior to, and since the twenty-fourth of May, eighteen hundred and sixty-one, to the time of their qualification, and for this purpose may require manifests of the subjects of toll, from the parties who may owe them, to be made out on oath; and may also require such manifests of all steam boats, and other vessels navigating and carrying freight on the Kanawha river; and the said collectors shall make full report of all tolls collected, and from whom, and account quarterly to the board aforesaid for all monies collected by them and pay the same promptly to the said board or its order.

3. And the said Kanawha board is hereby authorized and required to prosecute the improvement of the Kanawha river by contract, according to the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty, or by appropriating the surplus tolls accruing on the river and road, as they may deem most expedient; provided that nothing in this act shall be so construed as to authorize the new board to make any contracts binding on the commonwealth for the payment of money or the issuing of bonds, to supply any deficiency, not heretofore issued under the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty.

4. And the said Kanawha board shall also have full control over the Kanawha road, and shall appoint a general superintendent, who shall have supervision of both the Kanawha river and road, whose duty it shall be to collect from the gate-keepers, quarterly, the net proceeds of the tolls collected by said gate-keepers, and keep such road in repair by the use of said tolls, and pay over the residue to the said board for the river improvement; also to take charge of and secure for the use of the board, all the boats, tools and other property now on the river, which was procured by the late Kanawha board, in and for the improvement of the Kanawha river and road; and manage and superintend the improvement of the river, subject to the control of said board, and shall make quarterly returns to said board of his collections and disbursements, and shall receive for his services annually, a sum not exceeding twelve hundred dollars.

5. The said board shall, annually, make full report to the board of public works, of all their acts and doings pertaining to said road and river improvement.

6. All former laws, in conflict with the provisions of this act, are hereby repealed.

7. This act shall be in force from its passage.

ACTS OF THE RESTORED GOVERNMENT OF VIRGINIA, ACTS AND CONSTITUTIONAL PROVISIONS OF WEST VIRGINIA, AND ACTS OF UNITED STATES CONGRESS IN CONNECTION WITH THE FORMATION OF THE STATE OF WEST VIRGINIA.

[Wheeling Acts, Session June 11, 1861, p. 5.]

A DECLARATION OF THE PEOPLE OF VIRGINIA, REPRESENTED IN CONVENTION, AT THE CITY OF WHEELING, THURSDAY, JUNE 13, 1861.

5

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed, and when any form or organization of government proves inadequate for, or subversive of this purpose, it is the right, it is the duty of the latter to abolish it. The Bill of Rights of Virginia, framed in 1776, reaffirmed in 1830, and again in 1851, expressly reserves this right to a majority of her people. The act of the General Assembly, calling the Convention which assembled at Richmond in February last, without the previously expressed consent of such majority, was therefore a usurpation; and the Convention thus called has not only abused the powers nominally entrusted to it, but, with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitably subject them to a military despotism.

The Convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the government of the United States, and against citizens of neighboring States, with whom they have heretofore maintained friendly, social and business relations:

It has attempted to subvert the Union founded by Washington and his co-patriots, in the purer days of the republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country:

It has attempted to transfer the allegiance of the people to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees:

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy, for offensive as well as defensive purposes:

It has, in conjunction with the State executive, instituted wherever their usurped power extends, a reign of terror intended to suppress

the free expression of the will of the people, making elections a mockery and a fraud:

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriation of the property of the Federal Government, and by organizing and mobilizing armies, with the avowed purpose of capturing or destroying the Capital of the Union:

They have attempted to bring the allegiance of the people of the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended ordinances, treason against the former.

We, therefore, the delegates here assembled in Convention to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy Commonwealth must be reduced unless some regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the Universe for the rectitude of our intentions, do hereby, in the name and on the behalf of the good people of Virginia, solemnly declare that the preservation of their dearest rights and liberties and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said Convention and Executive, tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said Convention and Executive, whether legislative, executive or judicial, are vacated.

[Wheeling Acts, Session June 11, 1861, p. 6.]

An ORDINANCE for the Reorganization of the State Government.

Passed June 19, 1861.

The People of the State of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. A governor lieutenant governor and attorney general for the state of Virginia, shall be appointed by this convention, to discharge the duties and exercise the powers which pertain to their respective offices by the existing laws of the state, and to continue in office for six months, or until their successors be elected and qualified; and the general assembly is required to provide by law for an election of governor and lieutenant-governor by the people as soon as in their judgment such election can be properly held.

2. A council, to consist of five members, shall be appointed by this convention, to consult with and advise the governor respecting such matters pertaining his official duties as he shall submit for consideration, and to aid in the execution of his official orders. Their term of office shall expire at the same time as that of the governor.

3. The delegates elected to the general assembly on the twenty-third day of May last, and the senators entitled under existing laws to seats in the next general assembly, together with such delegates and senators as may be duly elected under the ordinances of this convention, or existing laws, to fill vacancies, who shall qualify themselves by taking the oath or affirmation hereinafter set forth, shall constitute the legislature of the state, to discharge the duties and exercise the powers pertaining to the general assembly. They shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected. They shall assemble in the city of Wheeling on the first day of July next, and proceed to organize themselves as prescribed by existing laws, in their respective branches. A majority in each branch of the members qualified as aforesaid, shall constitute a quorum to do business. A majority of the members of each branch thus qualified, voting affirmatively, shall be competent to pass any act specified in the twenty-seventh section of the fourth article of the constitution of the state.

4. The governor, lieutenant-governor, attorney-general, members of the legislature, and all officers now in the service of the state, or of any county, city or town thereof, or hereafter to be elected or appointed for such service, including the judges and clerks of the several courts, sheriffs, commissioners of the revenue, justices of the peace, officers of the city and municipal corporations, and officers of militia, and officers and privates of volunteer companies of the state, not mustered into the service of the United States, shall each take the following oath or affirmation before proceeding in the discharge of their several duties:

"I solemnly swear (or affirm,) that I will support the constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the state of Virginia, or in the ordinances of the convention which assembled at Richmond on the thirteenth of February, eighteen hundred and sixty-one, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one."

5. If any elective officer, who is required by the preceding section to take such oath or affirmation, fail or refuse so to do, it shall be the duty of the governor, upon satisfactory evidence of the fact, to issue his writ declaring the office to be vacant, and providing for a special election to fill such vacancy at some convenient and early day to be designated in said writ; of which due publication shall be made for

the information of the persons entitled to vote at such election; and such writ may be directed, at the discretion of the governor, to the sheriff or sheriffs of the proper county or counties, or to a special commissioner or commissioners to be named by the governor for the purpose. If the officer who fails or refuses to take such oath or affirmation be appointed by the governor, he shall fill the vacancy without writ, but if such officer be appointed otherwise than by the governor or by election, the writ shall be issued by the governor, directed to the appointing power, requiring it to fill the vacancy.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

[Wheeling A A, Session June 11, 1861, p. 15.]

An ORDINANCE declaring null and void the proceedings of the Richmond Convention of 1861.

Passed August 9, 1861. 15

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. All ordinances, acts, orders, resolutions and other proceedings of the convention which assembled at Richmond on the thirteenth day of February last, being without the authority of the people of Virginia constitutionally given, and in derogation of their rights, are hereby declared illegal, inoperative, null, void, and without force or effect.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

[Ordinance of Convention at Wheeling, 11th June, 1861, p 16.]

An ORDINANCE to provide for the formation of a new State out of a portion of the territory of this State.

16

Passed August 20, 1861.

Whereas, it is represented to be the desire of the people inhabiting the counties hereinafter mentioned, to be separated from this commonwealth, and be erected into a separate state, and admitted into the union of states, and become a member of the government of the United States:

1. The people of Virginia, by their delegates assembled in convention at Wheeling, do ordain that a new state, to be called the state of Kanawha, be formed and erected out of the territory included within the following described boundary; beginning on the Tug Fork of Sandy River, on the Kentucky line where the counties of Buchanan and Logan join the same; and running thence with the dividing lines of said counties and the dividing line of the counties of Wyoming and McDowell to the Mercer county line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh county line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton, to the south-west corner of Hardy county; thence with the dividing line of the counties of Hardy and Tucker, to the Fairfax Stone; thence with the line dividing the states of Maryland and Virginia, to the Pennsylvania line; thence with the line dividing the states of Pennsylvania and Virginia, to the Ohio river; thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning; including within the boundaries of the proposed new state the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke and Hancock. 17

2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties, on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new state, as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a constitution for the government of the proposed state.

3. The convention hereinbefore provided for may change the boundaries described in the first section of this ordinance, so as to include within the proposed state the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section; if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed state, and shall elect delegates to the said convention, at elections to be held at the time and in the manner herein provided for.

4. Poll books shall be prepared under the direction of the governor for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed "For the New State," the other "Against the New State." And it shall be the duty of the commissioners who superintended, and the officers who conducted the election in May last, or such other persons as the governor may appoint, to attend at their respective places of holding elections, and superintend and conduct the election herein provided for. And if the said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending the said election, and to appoint officers to conduct the same. It shall be the duty of the persons superintending and conducting said election, to employ clerks to record the votes, and to endorse on the respective poll books the expenses of the same. 18

If on the day herein provided for holding said election, there shall be in any of the said counties any military force, or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of the commissioners superintending, and officers conducting said election, and the clerks employed to record the votes, each before entering upon the duties of his office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll books, and ascertain the number of votes recorded in each, and make a return thereof to the secretary of the commonwealth, in the city of Wheeling, which return shall be in the following form, or to the following effect:

We,..... commissioners, and..... conducting officer, do certify, that we caused an election to be held at ....., in the county of....., at which we permitted all persons to vote that were entitled to do so under existing

laws, and that offered to vote, and that we have carefully added up each column of our poll books, and find the following result:

For a new state,.....votes; Against a new state,.....votes

Given under our hands, this....day of..... 1861.

Under which certificate there shall be added the following affidavit:

.....County, to-wit:

I,.....a justice of the peace, (or any officer now authorized by law to administer oaths,) in and for said county, do certify that the above named commissioners and conducting officer severally made oath before me, that the certificate by them above signed is true.

Given under my hand, this.....day of.....1861.

The original poll books shall be carefully kept by the conducting officers for ninety days after the day of the election, and upon demand of the executive shall be delivered to such person as he may authorize to demand and receive them.

5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new state, who has been elected from their county to the convention, hereinbefore provided for, and shall certify to the secretary of the commonwealth the name or names of the person or persons elected to the said convention.

6. It shall be the duty of the governor, on or before the fifteenth day of November next, to ascertain and by proclamation make known the result of the said vote; and if a majority of the votes given within the boundaries mentioned in the first section of this ordinance, shall be in favor of the formation of a new state, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling, on the 26th day of November next, and organize themselves into a convention; and the said convention shall submit, for ratification or rejection, the constitution that may be 19
agreed upon by it, to the qualified voters within the proposed state, to be voted upon by the said voters on the fourth Thursday in December next.

7. The county of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monongalia, Preston and Wood shall each elect two; and the other counties named in the first section of this ordinance shall each elect one delegate to the said convention. And such other counties as are described in the third section of this ordinance, shall, for every seven thousand of their population according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred; but each of said counties shall be entitled to at least one delegate. The said delegates shall receive the same per diem as is now allowed to members of the general assembly; but no person shall receive pay as a member of the general assembly and of the convention at the same time.

8. It shall be the duty of the governor to lay before the general assembly, at its next meeting, for their consent according to the consti-

tution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new state, and also in favor of the constitution proposed to said voters for their adoption.

9. The new state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests in lands within the proposed state, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in the state of Virginia.

The lands within the proposed state, of non-resident proprietors, shall not in any case be taxed higher than the lands of residents therein. No grants of lands or land warrants, issued by the proposed state, shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last, which shall be located on lands within the proposed state now liable thereto.

10. When the general assembly shall give its consent to the formation of such new state, it shall forward to the congress of the United States such consent, together with an official copy of such constitution, with the request that the said new state may be admitted into the union of states.

11. The government of the state of Virginia as reorganized by this convention at its session in June last, shall retain, within the territory of the proposed state, undiminished and unimpaired, all the powers and authority with which it has been vested, until the proposed state shall be admitted into the union by the congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said reorganized state government in any county which shall not be included within the proposed state.

A. I. Boreman, *President.*

G. L. Cranmer, *Secretary.*

Extracts from the Constitution of the State of West Virginia proposed by a Convention which assembled at Wheeling on the 26th day of November, 1861, being the Constitution referred to in the Act passed May 13th, 1862, giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of Virginia.

CONSTITUTION OF WEST VIRGINIA.

1

ARTICLE I.

THE STATE.

1. The State of West Virginia shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

2. The following counties, formerly parts of the State of Virginia, shall be included in, and form part of, the State of West Virginia, namely: The counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Pleasants, Tyler, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe.

And if a majority of the votes cast at the election or elections held, as provided in the schedule hereof, in the district composed of the counties of Pendleton, Hardy, Hampshire, and Morgan, shall be in favor of the adoption of this Constitution, the said four counties shall be included in, and form part of, the State of West Virginia; and if the same shall be so included, and a majority of the votes cast at the said election or elections, in the district composed of the counties of Berkeley, Jefferson and Frederick shall be in favor of the adoption of this constitution, then the three last mentioned counties shall also be included in, and form part of, the State of West Virginia.

The State of West Virginia shall also include so much of the bed, banks and shores of the Ohio river as heretofore appertained to the State of Virginia; and the territorial rights and property in, and the jurisdiction of whatever nature over, the said bed, banks and shores heretofore reserved by, or vested in, the State of Virginia, shall vest in, and be hereafter exercised by, the State of West Virginia.

3. The powers of Government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment.

4. The Legislative, Executive and Judicial departments of the Government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with or exercise the powers of more than one of them at the same time.

5. Writs, grants and commissions issued under state authority, shall run in the name of, and official bonds shall be made payable to, The State of West Virginia. Indictments shall conclude "against the peace and dignity of the State of West Virginia."

6. The citizens of the State are the citizens of the United States residing therein; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.

7. Every citizen shall be entitled to equal representation in the government, and in all apportionments of representation, equality of numbers of those entitled thereto shall, as far as practicable, be preserved.

ARTICLE VIII.

15

TAXATION AND FINANCE.

1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property, may, by law, be exempted from taxation.

2. A capitation tax of one dollar, shall be levied upon each white male inhabitant who has attained the age of twenty-one years.

3. The Legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the State for each year; and whenever the ordinary expenses of any year shall exceed the income, shall levy a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such year.

4. No money shall be drawn from the Treasury but in pursuance of appropriations may by law, and an accurate and detailed statement of the receipts and expenditures of the public money shall be published annually.

5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.

6. The credit of the State shall not be granted to, or in aid of, any county, city, town, township, corporation or person; nor shall the State ever assume or become responsible for the debts or liabilities of any county, city, town, township, corporation or person, unless incurred in time of war or insurrection for the benefit of the State.

7. The Legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank. If the State become a stockholder in any association or corporation for purposes of internal improvement, such stock shall be paid for at the time of subscribing, or a tax shall be levied for the ensuing year, sufficient to pay the subscription in full.

8. An equitable proportion of the public debt of the Common- 16
wealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years.

[Wheeling Acts—Extra Session, May 6, 1862.]

CHAP. 1.—An ACT giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State.

Passed May 13, 1862. 1

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan, according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

2. Be it further enacted, That the consent of the legislature of Virginia be, and the same is hereby given, that the counties of Berkeley, Jefferson and Frederick, shall be included in and form part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for

the purpose, at such time and under such regulations as the commissioners named in the said schedule may prescribe.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the Union.

4. This act shall be in force from and after its passage.

[12 U. S. Statutes at Large.]

CHAP. VI.—*An Act for the Admission of the State of "West Virginia" into the Union and for other Purposes.*

Whereas the people inhabitating that portion of Virginia known as West Virginia did, by a Convention assembled in the city of Wheeling on the twenty-sixth of November, eighteen hundred and sixty-one, frame for themselves a Constitution with a view of becoming a separate and independent State; and whereas at a general election held in the counties composing the territory aforesaid on the third day of May last, the said Constitution was approved and adopted by the qualified voters of the proposed State; and whereas the Legislature of Virginia, by an act passed on the thirteenth day of May, eighteen hundred and sixty-two, did give its consent to the formation of a new State within the jurisdiction of the said State of Virginia, to be known by the name of West Virginia, and to embrace the following named counties, to wit: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan; and whereas both the Convention and the Legislature aforesaid have requested that the new State should be admitted into the Union, and the Constitution aforesaid being republican in form, Congress doth hereby consent that the said forty-eight counties may be formed into a separate and independent State. Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of West Virginia be, and is hereby, declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever, and until the next general census shall be entitled to three members in the House of Representatives of the United States: *Provided, always*, That this

act shall not take effect until after the proclamation of the President of the United States hereinafter provided for.

It being represented to Congress that since the Convention of the twenty-sixth of November, eighteen hundred and sixty-one, that framed and proposed the Constitution for the said State of West Virginia, the people thereof have expressed a wish to change the seventh section of the eleventh article of said Constitution by striking out the same and inserting the following in its place, viz: "The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and that all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein:" Therefore—

SEC. 2. *Be it further enacted*, That whenever the people of West Virginia shall, through their said Convention, and by a vote to be taken at an election to be held within the limits of the said State, at such time as the Convention may provide, make, and ratify the change aforesaid, and properly certify the same under the hand of the president of the Convention, it shall be lawful for the President of the United States to issue his proclamation stating the fact, and thereupon this act shall take effect and be in force from and after sixty days from the date of said proclamation.

APPROVED December 31 1862.

[Wheeling Acts Extra Session, Dec. 4, 1862, p. 71.]

No. 2.—Joint resolution requesting the House of Representatives of the United States to take up and pass without amendment, the bill for the admission of the State of West Virginia, passed by the United States Senate on the 10th of July last.

Passed December 9, 1862.

Resolved, That feeling the greatest anxiety and interest in the successful issue of the movement for a new state in West Virginia, we earnestly request the house of representatives of the United States to take up and pass, without alteration or amendments, the bill which passed the senate of the United States on the 10th of July last.

ACTS RESTORED GOVERNMENT AT WHEELING TRANSFERRING PROPERTY AND MONEY TO THE PROPOSED NEW STATE.

[Wheeling Acts Extra Session, May, 1862, p. 13.]

CHAP. 15.—An ACT making an appropriation to the proposed State of West Virginia.

13

Passed May 14, 1862.

1. Be it enacted by the General Assembly, That there shall be and is hereby appropriated out of any money in the treasury, not otherwise appropriated, to the state of West Virginia, when the same shall become one of the states of the Union, one hundred thousand dollars.

2. Be it further enacted, That so much of the public revenue due the state of Virginia from the counties embraced within the boundary of the proposed state of West Virginia, including bank dividends and all money from any source whatsoever, due the state, as shall not have been paid into the treasury of the state at the time of the admission of the proposed state of West Virginia as one of the United States, shall be the property of the said state of West Virginia, and the several sheriffs and other collectors of the public revenue, and all persons holding money due the state within the said boundary, shall pay the same into the treasury of West Virginia. All of the appropriation made by this act shall be charged to the state of West Virginia, in the settlement between the states of Virginia and West Virginia.

3. This act shall be in force from its passage.

[Wheeling Acts—Extra Session, Dec. 4, 1862.]

CHAP. 68.—An ACT transferring to the proposed State of West Virginia, when the same shall become one of the United States, all this State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, in counties embraced within the boundaries of the proposed State aforesaid.

58

Passed February 3, 1863.

1. Be it enacted by the General Assembly of Virginia, That all property, real, personal and mixed, owned by or appertaining to this

state, and being within the boundaries of the proposed state of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the state of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein contained; and shall include among other things not herein specified, all lands, buildings, roads and other internal improvements, or parts thereof situated within the said boundaries, and now vested in this state, or in the president and directors of the board of the literary fund, or the board of public works thereof, or in 59
any person or persons, for the use of this state to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries standing in the name of this state or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

2. Be it further enacted, That all unpaid and uncollected arrearages of taxes on lands, town lots, property tax, capitation tax, license tax, militia fines, fines imposed by courts, forfeitures and penalties, belonging to the state in the hands of sheriffs, collectors or individuals, in any or all of the counties embraced within the boundaries of the proposed state of West Virginia, as also all bonuses on the capital stock of any bank, taxes on the dividends declared by any bank, savings institution or insurance company; dividends on stock owned by the state, or by the board of public works, or the president and directors of the board of the literary fund, in any bank, bridge, or other corporation in any one of the counties aforesaid; also taxes on seals, deeds, wills, writs and other legal processes due from the clerks of the courts, notaries public or the secretary of the commonwealth; taxes on passengers and tonnage due from railroad companies, taxes on bank notes or other property transported by express companies within the counties aforesaid; also all fines, forfeitures and penalties incurred by railroads, express companies or other parties or persons within the counties aforesaid; also all judgments, decrees or penalties incurred by officers of the state, railroad or express companies, or other persons before or since the reorganization of the state government at the city of Wheeling; also all suits and their results now pending in the name of the board of public works, or of the president and directors of the board of the literary fund in any court of any of the counties aforesaid; also all taxes on lands, town lots, property tax, capitation tax, license tax, assessed in the counties aforesaid, and due the state for the year eighteen hundred and sixty-three, in the hands of officers of the state or individuals, together with all the rights of the state, or of the board of public works, or of the president and directors of the board of the literary fund to any and all moneys

and claims in the counties aforesaid that may not be specifically mentioned in this act, but that rightfully belong to the state or corporation for the use of the state, shall be the property of the state of West Virginia, when the same shall become one of the United States.

3. It shall be the duty of all sheriffs or collectors of the public revenue, also of all the presidents or other officers of railroad, express, bridge or internal improvement companies, presidents and other officers of banks, savings banks and insurance companies, clerks of courts, notaries public, the secretary of the commonwealth, and of individuals owing or having money in their hands due the state, or the board of public works, or the president and directors of the board of the literary fund, in any of the counties aforesaid, to pay the same into the treasury of the state of West Virginia, when the same shall become one of the United States.

4. Be it further enacted, For the purpose of carrying this act into effect, that suits may be brought in the name of this commonwealth for the use of the state of West Virginia, when it becomes one of the United States on any bond or claim which shall pass to or become the property of the state of West Virginia by virtue of this act.

5. Be it further enacted, That if the appropriations and transfers of property, stocks and credits provided for by this act take effect, the state of West Virginia shall duly account for the same in the settlement hereafter to be made with this state: provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.

6. It shall be the duty of the auditor of public accounts, the secretary of state, the treasurer, and the adjutant general of this commonwealth to procure fit and proper blank books for the purpose, and cause to be transcribed therein true copies of all such records, official acts, orders, minutes and memoranda, and like copies of original papers upon which any such official action was based, which from its locality or general state interest appertains to and will be useful and advantageous to the State of West Virginia; and the officers aforesaid shall severally certify to the governor of this commonwealth the correctness of their respective copies; and it shall be the duty of the governor to certify to all whom it may concern, the official character of such officers so certifying under the great seal of this commonwealth, and deliver all such copies to the governor of West Virginia, when his election is officially declared, for the use of said state of West Virginia.

7. This act shall take effect when the proposed state of West Virginia shall become one of the United States.

[Wheeling Acts—Extra Session, Dec. 4, 1862.]

CHAP. 72.—An ACT making an appropriation to the proposed new State of West Virginia when the same shall become one of the United States.

Passed February 4, 1863.

62

1. Be it enacted by the General Assembly of Virginia, That the sum of one hundred and fifty thousand dollars, be, and is hereby appropriated to the state of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the states of the United States.

2. Be it further enacted, That there shall be, and hereby is appropriated to the said state of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said state of West Virginia shall become one of the United States: provided, however, that when the said state of West Virginia shall become one of the United States, it shall be duty of the auditor of this state, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said state of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this state.

3. Be it further enacted, That the act passed May four- 63
teenth, eighteen hundred and sixty-two, making an appropriation of one hundred thousand dollars to the state of West Virginia, be, and the same is hereby repealed.

4. This act shall be in force from its passage.

ACTS AUTHORIZING RECEIPT OF CONFEDERATE MONEY FOR TAXES.

[Richmond, Va., 1861-2, p. 32.]

CHAP. 11.—An ACT authorizing the receipt of Confederate States Treasury notes in payment of Taxes and other Public Dues.

Passed March 22, 1862. 32

1. Be it enacted by the general assembly, that the Confederate States treasury notes shall hereafter be receivable by sheriffs and other collecting officers in payment of taxes and other public dues to the state.

2. The act shall be in force from its passage.

CHAP. 1.—An ACT imposing Taxes for the Support of Government.

Passed March 28, 1863. 3

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Confederate treasury notes receivable in payment of taxes. 33

109. The act entitled an act authorizing the receipt of Confederate States treasury notes in payment of taxes and other public dues, passed March twenty-second, eighteen hundred and sixty-two, shall be and the same is hereby amended and re-enacted so as to read as follows:

"Confederate States non-interest bearing notes of the denomination of, or over five dollars, dated and issued on and after the first day of April eighteen hundred and sixty-three, shall hereafter be receivable in payment of taxes and other public dues to the state."

ACTS RELATING TO ASSESSED VALUATION OF LANDS AND LOTS 1862 AND 1863.

[Richmond Acts, 1862-3.]

CHAP. 1.—An ACT imposing Taxes for the Support of Government.

Passed March 27, 1862.

Value of lands and lots not to be changed.

73. The value of lands and lots as ascertained by the assessment made under the tenth chapter of the acts of eighteen hundred and fifty-five and eighteen hundred and fifty-six, passed March tenth, eighteen hundred and fifty-six, under subsequent special acts, and under the thirty-fifth chapter of the Code in respect to new grants, shall be permanent and not be changed, except under the provisions of the said thirty-fifth chapter in case of a partition or conveyance; and the auditor of public accounts may so far change the form of the commissioner's land book as to show in one column the value of lands and lots, exclusive of buildings.

[Richmond Acts, 1863-4.]

CHAP. 1.—An ACT imposing Taxes for the Support of Government.

Passed March 28, 1863.

Value of lands and lots generally not to be changed.

90. The value of lands and lots, as ascertained by the assessment made under the tenth chapter of the Acts of eighteen hundred and fifty-five and eighteen hundred and fifty-six, passed March tenth, eighteen hundred and fifty-six, under special acts, and under the thirty-fifth chapter of the Code, in respect to new grants, shall be permanent and not be changed, except under the provisions of the said thirty-fifth chapter, in case of a partition or conveyance, and except as provided by this act; and the auditor of public accounts may so far change the form of the commissioner's land book as to show in one column the value of lands and lots, exclusive of buildings.

When the value of lands and lots may be changed.

91. And inasmuch as many tracts of land and lots, with improvements thereon, situate in counties invaded by the public enemy, have

been permanently diminished in value by said invasion, and despoiled and reduced in value by military occupation, and by the waste and violence incident to war, it shall be the duty of the commissioners of the revenue for such counties, upon the requisition of the owner of any real property situate in such counties, or of his agent, to make a new assessment of such real property, upon the following basis and mode of valuation, viz: The commissioner shall deduct from the amount at which such property stands assessed at its last assessment, such sum as is equal to a fair estimate of the permanent diminution in the value thereof, caused by the invasion of such county, and of the permanent injury and damage inflicted upon such property by military occupation thereof, and the waste and violence incident to war. In making which estimate, he shall appraise and fix the amount of suche permanent diminution, injury and damage, according to what would have been the standard and rate of valuation thereof, if such permanent diminution, injury and damage had been estimated during the year eighteen hundred and fifty-six; and the remainder left, after deducting the diminution, damage and injury thus estimated, shall be the valuation at which such property shall be assessed by the commissioner.

ACTS RELATING TO ITEMS IN JOINT EXHIBIT C-1 (PARAGRAPH III OF DECREE) CLAIMED BY PLAINTIFF AND EXCLUDED BY DEFENDANT.

Trans-Alleghany Lunatic Asylum.

24

[Wheeling Acts. Extra Session, July 1, 1861, p. 24.]

No. 5.—Resolution concerning the money received from the Branch of the Exchange Bank of Virginia at Weston.

Resolved, With the concurrence of the Senate, That the money taken from the Weston Branch of the Exchange Bank of Virginia, be sold for currency, and the premium be paid to said Branch.

Resolved, That out of the currency so obtained, there be placed at the disposal of the board of directors of the Lunatic Asylum west of the Allegheny mountains, five thousand three hundred and sixteen dollars and ninety-eight cents; of which sum three thousand three hundred and sixteen dollars and ninety-eight cents shall be for the payment of work done, services rendered and materials furnished for said Asylum prior to July first, eighteen hundred and sixty-one, and the balance shall be expended in protecting the building until the work shall be resumed.

Resolved, That as soon as the state of affairs in the country will allow the further prosecution of said work, it shall be completed.

[Wheeling Acts. December 2, 1861. p. 15.]

CHAP. 22.—An ACT appropriating Twenty-one Thousand Six Hundred and Eighty-four Dollars to the Northwestern Lunatic Asylum.

Passed January 14, 1862. 15

1. Be it enacted by the General Assembly, That the sum of twenty-one thousand six hundred and eighty-four dollars be, and the same is hereby appropriated, out of any money in the treasury not otherwise

appropriated, to the Northwestern Lunatic Asylum, to be expended under the direction of the board of directors, and so much as may be necessary shall be devoted to completing the south wing of said building, being the balance of the amount taken from the branch of the Exchange Bank of Virginia, at Weston, and deposited in the treasury, by joint resolution number five, of the extra session of the legislature, in July last.

2. This act shall take effect from the passage thereof.

Brandonville, Kingwood and Evansville Road.

CHAP. 142.—An ACT to provide for the construction of a road from Brandonville to the North-western turnpike.

(Passed April 7, 1838.) 99

1. *Be it enacted by the general assembly*, That Harrison Hagan, Israel Baldwin and Benjamin Jeffers, be, and they are hereby appointed directors, who, together with two other directors to be appointed by the board of public works, shall constitute a board to superintend and direct the construction of a road from Brandonville in the county of Preston, by Kingwood, to a suitable point on 100 the North-western turnpike near Evansville. The said road shall be constructed on the route heretofore surveyed and located for such a road, and on the plan and agreeably to the conditions prescribed for the road from the mouth of Fishing creek to the state line, in the direction of Smithfield, by the act passed March the fifteenth, eighteen hundred and thirty-six, entitled, "an act to provide for the construction of a road from the Ohio river by Morgantown to the Maryland line."

2. *Be it further enacted*, That the said board of directors be and they are hereby authorized to receive subscriptions and donations in money only, from individuals and from the county court of Preston county, for the construction of said road, and the said board of directors and county court may respectively exercise the like powers in relation to the payment of such subscriptions, as are provided in such cases by the aforesaid act of the fifteenth of March, eighteen hundred and thirty-six.

3. *Be it further enacted*, That the sum of ten thousand dollars be and is hereby appropriated from the public treasury to the construction of said road, to be paid upon the like terms and conditions and in like proportions with the payments by individuals and said court, as are prescribed by the before recited act of the fifteenth of March, eighteen hundred and thirty-six. And all the provisions of the said

act in relation to the powers and duties of the said court and board of directors, the bond of the treasurer, (which shall be deposited in the clerk's office of Preston county,) the duties of said treasurer, and the powers of the board of public works, (who shall from time to time request the auditor of public accounts to issue warrants upon the treasury for the appropriation aforesaid, as it shall be called for, agreeably to the terms herein provided.) shall be held and taken to apply as effectually to this act, and to the road herein authorized to be made, as if they were specially recited herein, so far as such provisions are applicable to the purposes herein contained: *Provided*, That whenever one thousand dollars shall be paid by individuals and the said court, such amount of the aforesaid appropriation shall be paid as will be in proper proportion hereto.

4. This act shall be in force from its passage.

CHAP. 104.—An ACT to provide additional capital for the Brandonville, Kingwood and Evansville road.

[Passed February 16, 1847.] 91

1. *Be it enacted by the general assembly*, That the capital stock of the Brandonville, Kingwood and Evansville road shall be and is hereby increased the additional sum of fifteen thousand dollars, two fifths whereof, or six thousand dollars, shall be and is hereby subscribed on behalf of the commonwealth; which subscription shall be payable in the manner prescribed with respect to the appropriation to said road, made by the act passed April the seventh, eighteen hundred and thirty-eight, chapter one hundred and forty-two.

2. *Be it further enacted*, That before the treasurer of said road shall be authorized to receive any part of the above appropriation, he shall produce to the Board of public works his certificate countersigned by the president of the board, and accompanied by the affidavit of said treasurer, taken before some justice of the peace, that the requisite proportion payable by the county and individuals has been received, and accompanied by a statement of the names of each contributor, and the amount paid by each. And he shall produce a similar affidavit from time to time, as other instalments of the state subscription may be called for, until the whole amount thereof shall be paid to said treasurer.

3. This act shall be in force from its passage.

CHAP. 172.—An ACT to increase the capital stock of the Brandonville, Kingwood and Evansville turnpike company.

[Passed March 21, 1851.] 116

1. *Be it enacted by the general assembly*, That the Brandonville, Kingwood and Evansville turnpike company is hereby authorized to increase its capital stock by the additional sum of ten thousand dollars, for the purpose of planking or macadamizing portions of their road, and making a branch thereof from the wire suspension bridge on Cheat river to the Kingwood and West Union turnpike road, either by the Ashby's gap route or up the river, at the discretion of said company.

2. And the Board of public works is hereby authorized and required to subscribe on behalf of the commonwealth for the three-fifths of said additional sum or of smaller sums from time to time, of which individuals and the county court of Preston have subscribed two-fifths, until the whole of the increase of capital aforesaid has been subscribed, and to pay said subscriptions in such convenient sums as may be required for the completion and extension of said road: *Provided*, That such payments by said board shall be made *pari passu* with those of individuals and other subscribers.

3. This act shall be in force from its passage.

Clarksburg and Buchanan Turnpike Company.

CHAP. 196.—An ACT to incorporate the Clarksburg and Buchannan turnpike company.

[Passed March 9, 1848.] 219

1. *Be it enacted by the general assembly*, That for the purpose of constructing a turnpike road from Clarksburg in the county of Harrison, to Buchannan in the county of Lewis, it shall be lawful to open books for receiving subscriptions to an amount not exceeding fifteen thousand dollars in shares of twenty-five dollars each. The said books shall be opened at Clarksburg in Harrison county, under the direction of George H. Lee, Robert Johnston, Charles Lewis, Edmund L. Stealey, Richard Fowks and Hamilton G. Johnson, or any one of them; at Romine in the same county, under the direction of judge E. S. Duncan, Andrew Radcliff, John H. Shuttlesworth, Edward Stewart and Martin E. Hall, or any one of them; and at Buchannan in Lewis county, under the direction of David S. Pennell, Leonard L. D. Lowden, Adam Carper, David S. Hazelden and John B. Brake, or any one of them. 220

2. *Be it further enacted*, That when two hundred and forty shares have been subscribed, the subscribers, their executors, administrators and assigns, shall be and are hereby incorporated into a company by the name and style of "*The Clarksburg and Buchannan Turnpike Company*," subject to the provisions of the act, entitled "an act prescribing certain general regulations for the incorporation of turnpike companies:" *Provided*, That the said company may dispense with a summer or side road to their turnpike, and shall not be compellel to pave or cover the same with stone or gravel; that said road shall be cleared at least thirty feet wide and improved sixteen feet wide, and shall no where exceed a grade of four degrees.

3. *Be it further enacted*, That the Board of public works shall subscribe on behalf of the commonwealth for three hundred and sixty shares or nine thousand dollars, that sum being three fifths of the capital stock of said company: *Provided*, That before such subscription shall be made the said board shall be satisfied that two fifths of the whole capital of said company has been paid or secured to be paid by subscribers, solvent and fully able to pay, other than the commonwealth. Said subscription shall also be made subject to the provisions of the act passed February the eleventh, eighteen hundred and thirty-two, "prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the commonwealth."

4. *Be it further enacted*, That the sum above authorized to be subscribed on behalf of the commonwealth shall be paid from any money in the treasury not otherwise appropriated.

5. *Be it further enacted*, That the county courts of Lewis and Harrison counties are hereby authorized to subscribe for so much as they may respectively think proper of the capital of said company: *Provided*, That at the court making such subscription a majority of all the acting justices of the county shall be present, all the acting magistrates having been summoned to attend; and further, that those voting for such subscription shall constitute a majority of the acting justices of the county. And the court so subscribing may raise the amount of such subscription by an assessment upon all the taxable property, real and personal, of citizens of the county, to be collected and accounted for by the sheriff of said county as county levies are collected and accounted for.

6. This act shall be in force from its passage.

CHAP. 177.—An ACT to increase the capital stock of the Clarksburg and Buckhannon turnpike company.

[Passed March 5, 1851.] 118

1. *Be it enacted by the general assembly*, That the Clarksburg and Buckhannon turnpike company be and is hereby authorized to in-

crease its capital stock the additional sum of five thousand dollars; and the Board of public works is directed to subscribe on behalf of the commonwealth for three-fifths of such increase, upon the same terms and in the same proportion to individual subscriptions and payments as are prescribed in relation to the subscription authorized to be made by said board by the act concerning said company, passed March the ninth, eighteen hundred and forty-eight.

2. This act shall be in force from its passage.

CHAP. 79.—An ACT to provide for macadamizing or planking certain parts of the Clarksburg and Buchanan turnpike road.

[Passed March 18, 1853.] 70

1. Be it enacted by the general assembly, that the Board of public works be and are hereby directed to have such parts of the Clarksburg and Buchanan turnpike road macadamized or planked as they may think stand in need of such improvement; and for the purpose of making said improvement, they are hereby authorized to borrow, from time to time, according to the laws now in force, such sums as may be necessary, not exceeding in any one year ten thousand dollars, and not exceeding in the aggregate the sum of twenty thousand dollars.

2. This act shall be in force from its passage.

Kingwood and West Union Turnpike Company.

CHAP. 193.—An ACT to incorporate the Kingwood and West Union turnpike company.

[Passed March 25, 1848.] 216

1. *Be it enacted by the general assembly*, That for the purpose of constructing a turnpike road from a point at or near the town of West Union on the Northwestern road in the county of Preston, to Kingwood in the same county, and thence to some point on the Beverley road west of Laurel Hill in the direction of Morgantown in the county of Monongalia, it shall be lawful to open books for receiving subscriptions to the amount of ten thousand dollars, in shares of twenty-five dollars each. The said books shall be opened at German Settlement in Preston county, under the direction of Jacob Stertsman, John Shaver and William H. Grimes, or any one of them; at King-

wood in the same county, under the direction of Buckner Fairfax, E. M. Hagans and Israel Baldwin, or any one of them; and at Morgantown in Monongalia, under the direction of Edgar C. Wilson, Alexander Hayes and William Lazier, or any one of them.

2. When one hundred and sixty shares shall have been subscribed, the subscribers, their executors, administrators and assigns shall be, and are hereby incorporated into a company by the name and style of "*The Kingwood and West Union Turnpike Company,*" subject to the provisions of the act, entitled "an act prescribing certain general regulations for the corporation of turnpike companies," passed February the seventh, eighteen hundred and seventeen: *Provided*, That the said company shall not be compelled to make a summer or side road to their turnpike; that said road shall be cleared not less than forty feet wide, and shall be improved not less than twelve nor more than eighteen feet wide, and that the grade of the same shall no where exceed four and a half degrees.

3. When two fifths of the capital stock of the company shall 217
have been paid or subscribed by persons other than the commonwealth solvent and fully able to pay, the Board of public works shall then subscribe on behalf of the commonwealth for six thousand dollars, or two hundred and forty shares, the remaining three fifths of the capital; such subscription by the Board of public works to be payable in proportion to the payment of the private subscription.

4. The sum herein authorized to be subscribed by the Board of public works shall be paid from any money in the treasury not otherwise appropriated.

5. The county courts of Monongalia and Preston shall have authority to subscribe to such amounts of the capital stock of said company as they may respectively think proper; all the acting justices of the said counties respectively having been summoned to consider of such subscription, and a majority of such justices in both or either of said counties actually voting for the same.

6. And the courts of said counties shall pay any expenses incurred within their counties by said company on account of the condemnation of land or materials for the use of said company; which expense with the subscriptions above authorized shall be paid by levies on taxable subjects other than tithables, to be laid, collected and accounted for in the manner of county levies.

7. This act shall be in force from its passage.

CHAP. 182.—An ACT to amend the act passed March the 25th, 1848, "incorporating the Kingwood and West Union turnpike company."

[Passed March 8, 1849.] 127

1. *Be it enacted by the general assembly*, That when one fifth of the capital stock of the Kingwood and West Union turnpike company shall have been paid or subscribed by persons other than the commonwealth, solvent and fully able to pay, the Board of public works shall subscribe on behalf of the commonwealth for one half of three fifths of the capital stock of the said company; and as often thereafter as additional subscriptions to the stock of said company shall be paid by persons other than the commonwealth, or made by such persons, solvent and able to pay, the said board shall subscribe, in the same proportion as above prescribed, on behalf of the commonwealth, until the whole amount of the capital stock is subscribed.

2. *Be it further enacted*, That the president and directors of the Cheat river tollbridge company shall have authority, if they shall deem it expedient, to construct their bridge at any point across the Cheat river, not exceeding one mile above the location designated by the first section of the act incorporating the company, passed January the fifteenth, eighteen hundred and forty-eight.

3. *Be it further enacted*, That the Board of public works is directed to subscribe on behalf of the commonwealth for three fifths of the capital stock of the said bridge company, such subscription being subject to the terms and provisions contained in the eighth section of the above cited act, and being in lieu of the two fifths subscription authorized by that section.

4. *Be it further enacted*, That the further time of one year shall be given for the commencement and completion of said bridge.

5. This act shall be in force from its passage.

CHAP. 171.—An ACT to increase the capital stock of the Kingwood and West Union turnpike company.

[Passed March 24, 1851.] 116

1. *Be it enacted by the general assembly*, That the Kingwood and West Union turnpike company is hereby authorized to increase its capital stock by the additional sum of ten thousand dollars, for the purpose of finishing their road to Kingwood, and of extending it to Morgantown by such route and termini at or near Morgantown as the said company may select.

2. And the Board of public works is hereby authorized and required

to subscribe on behalf of the commonwealth for the three-fifths of said additional sum or sums from time to time, of which individuals and the county courts of Monongalia and Preston have subscribed two- fifths, until the whole of the increase of the capital aforesaid has been subscribed, and to pay said subscriptions in such convenient sums as may be required for the completion and extension of said road: *Provided*, That such payments by said board shall be made *pari passu* with those of individuals and other subscribers: *Provided*, The cost of construction of said road shall not exceed four hundred dollars per mile.

3. This act shall be in force from its passage.

CHAP. 84.—An ACT to macadamize the Morgantown, Kingwood and West Union turnpike.

Passed February 28, 1853. 71

1. Be it enacted by the general assembly, that the sum of twenty-eight thousand dollars be and the same is hereby appropriated for the purpose of macadamizing the Morgantown, Kingwood and West Union turnpike from Morgantown in Monongalia county to the Cranberry Summit in the county of Preston, on the line of the Baltimore and Ohio railroad. And the Board of public works is hereby directed to borrow the said sum to pay the said appropriation as 72
is provided by law.

2. This act shall be in force from its passage.

Berryville and Charlestown Turnpike.

CHAP. 172.—An ACT concerning the Berryville and Charlestown turnpike company.

[Passed March 12, 1849.] 120

1. *Be it enacted by the general assembly*, That the further time of two years from the passage of this act, be allowed the Berryville and Charlestown turnpike company, to begin the work of said turnpike, and that the said work shall be completed within ten years from the passage of this act.

2. *And be it further enacted*, That when it shall be shewn to the satisfaction of the Board of public works, that two fifths of the capital stock of said company has been paid into the hands of the treas-

urer of the company, or has been subscribed by solvent persons fully able to pay, and that one fourth of such two fifths has been actually paid to the treasurer, then the Board of public works are directed to subscribe, on behalf of the commonwealth, for three 121
fifths of the capital stock of said company, agreeably to the terms of the act, so far as the same are applicable, passed February eleventh, eighteen hundred and thirty-two, entitled 'an act prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the commonwealth.

3. *And be it further enacted*, That the third section of the act passed March twenty-second, eighteen hundred and forty-seven, entitled "an act to incorporate the Berryville and Charlestown turnpike company," be and the same is hereby repealed.

4. This act shall be in force from its passage.

CHAP. 123.—An ACT to increase the capital stock of the Berryville and Charlestown turnpike company.

84

[Passed March 18, 1850.]

1. *Be it enacted by the general assembly*, That the Berryville and Charlestown turnpike company be and is hereby authorized to increase its capital stock the additional sum of twelve thousand dollars, so that the whole amount of capital stock may be thirty-five thousand dollars; and the Board of public works is directed to subscribe on behalf of the commonwealth for three-fifths of such increase upon the same terms and in the same proportion to individual subscriptions and payments as are prescribed in relation to the subscription authorized to be made by said board, by the act concerning said company, passed March the twelfth, eighteen hundred and forty-nine.

2. This act shall be in force from its passage.

No. 2.—Resolution in relation to the sale of works of internal improvement in which the state is interested.

289

Adopted February 26, 1856.

Resolved by the general assembly, that the board of public works be and are hereby authorized and directed to attend, either in person or by agent duly appointed by said board, the sale of any work of internal improvement in which the state is a stockholder or otherwise interested, whether such sale be made by virtue of mortgage, judg-

ment or other lien, and that said board be authorized to purchase, on the part and for the use of the commonwealth, any such public work so offered for sale, if in the judgment of said Board of public works the interest of the state would be protected or promoted thereby.

2. Be it further resolved, that no sale of any work of internal improvement in which the state is a stockholder or otherwise interested, shall take place, whether by virtue of mortgage, trust, judgment, decree or other lien, without ninety days' notice in the principal newspapers in the city of Richmond and in the local newspapers of the county wherein such improvement is situated, and further without ninety days' notice served on the Board of public works of this state by the person or persons authorized to make the sale.

CHAP. 124.—An ACT to provide for the payment fot the purchase money of the Berryville and Charlestown turnpike by the Board of public works.

Passed April 2, 1858. 95

Whereas it is represented to the general assembly, that the Board of public works, in pursuance of authority vested in them by a resolution of the general assembly, adopted on the twenty-sixth of February, eighteen hundred and fifty-six, at a sale made on 96
the eighteenth of January, eighteen hundred and fifty-eight, under a deed of trust executed to Andrew Hunter and Province McCormick, trustees, became a purchaser of the road, appurtenances and franchises of the Berryville and Charlestown turnpike, for the sum of seven thousand one hundred and fifty dollars: therefore,

1. Be it enacted by the general assembly, that a sufficient sum be and is hereby appropriated out of the public treasury to pay said sum of seven thousand one hundred and fifty dollars, together with the interest which may have accrued since the day of the sale. And the auditor of public accounts is hereby required to issue his warrant in favor of the said trustees for such sums as may be necessary to discharge the said claim.

2. Authority is hereby given to the Board of public works to appoint a superintendent of the said turnpike in the same manner that superintendents are appointed for other turnpikes having a state superintendent, whose salary is to be fixed by the said board at a sum not exceeding one hundred and fifty dollars per annum.

3. This act shall be in force from its passage.

Payments to School Commissioners in West Virginia.

CODE OF VIRGINIA, 1849.

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.

* * * * *

How the fund is appropriated. 367

§6. The following sums shall be annually appropriated out of the revenue of the literary fund, that is to say:—

First. The sum of seventy thousand dollars, to be so divided among the several counties and those cities and towns which have corporation courts, that the part of every such county, city or town, shall bear to the whole sum the same proportion which its free white population may bear to the whole free white population of the State, according to the next preceding census, taken under the authority of the *United States*, and to be paid to such local officers of such counties, cities and towns, and to be applied in such manner, as may be prescribed by law. But when any new county is created out of part or parts of one or more counties, after the time of taking such census, the school commissioners of the county or counties from which the new county is taken, shall, for the fiscal year in which the new county is created, apply the quotas allotted them out of the literary fund, in such part of the new county as is taken from their county or counties, in like manner as if the new county had not been created; and for subsequent years, until a new census is taken, the second auditor shall apportion the amount of the school quotas to be paid such new county and the county or counties from which it is taken, according to the first returns of persons subject to county levies, that may be made after the creation of the new county. This section shall apply to a case in which part of a county is added to another.

1 R. C. p. 87, ch. 33, § 18, 1820-21, p. 1, ch. 11, § 1, 1821-2, p. 1, ch. 13, § 1, 1823-4, p. 1, ch. 7. 1828-9, p. 11, ch. 14, § 1, 4, 1829-30, p. 1, 8, § 1, 2. 1832-3, p. 11, 11. 1835-6, p. 7, 1836-7, p. 11, 11. 1838, p. 31, 19, 20. 1839-40, ch. 1840-41, ch. 24, 26. 1841-2, ch. 1842-3, ch. 1843--4, ch. 1844-5, ch. 1845-6, ch. § 6, 7.; ch. 1846-7, p. 15, p. 22, ch. § 7, 8, 9; p. 36, ch. 29 1848-9, p. 105.

Extract from foot note to Chapter LXXIX of the Code of Virginia, 1849, appearing on page 366.

On the 21st of Feb. 1818, an act passed providing for the appointment, annually, by the court of every county and corporation, of commissioners of schools, at which poor children were to be educated. This act appropriated for each county and corporation, annually, such

proportion of $45,000 as its free white population might bear to the whole free white population of the state.

CODE OF VIRGINIA, 1860.

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.

* * * * *

Capitation Tax. 416

p. 43, 1, 2, 3. 3. The auditor of public accounts shall annually, on the first day of January, upon the order of the second auditor, set apart and pay into the treasury, to the credit of the literary fund, for the purposes of education in primary and free schools, the amount of the capitation tax for the preceding year, after deducting therefrom the commissions of sheriffs and collectors, and the amount of insolvent returns on account of the capitation tax allowed during the preceding year. The amount of said tax for the year eighteen hundred and fifty-two, after deducting the commissions of sheriffs and collectors, shall be set apart and paid as aforesaid immediately after the passage of this act. The second auditor shall cause the amount received during the present year to be apportioned and applied to the purposes of education in primary and free schools, as far as practicable, as if it had been received on the first day of January last, and after the first day of January next, and annually thereafter, the amounts received shall be apportioned amongst the several counties, and those cities and towns which have corporation courts, in 417 the same manner as the appropriations from the literary fund for the same purposes are now or may be hereafter made, and shall be paid and applied as is now or may be hereafter prescribed by law.*

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*This section is the act of 25th of March, 1853, which took effect from its passage. The constitution of the state requires at least a moiety of the capitation tax to be applied to the purposes of education in primary and free schools. Const. of Va. art. 6, §24. By act of 18th March 1856, p. 23, c. 16, the literary fund board were required to pay into the treasury to the credit of the commonwealth the sum of fifty thousand five hundred and sixty-two dollars and fifty-five cents, the amount reported by the second auditor for investment; and the auditor of public accounts was required to deliver to the said board a bond conditioned to pay the interest at the rate of six per centum per annum semiannually for that amount, and to redeem the principal at the pleasure of the general assembly.

How the fund is appropriated.

4. The following sums shall be annually appropriated out of the revenue of the literary fund, that is to say:—

First—The sum of *eighty*† thousand dollars to be so divided among the several counties and those cities and towns which have corporation courts, that the part of every such county, city or town, shall bear to the whole sum the same proportion which its free white population may bear to the whole free white poulation of the state, according to the next preceding census, taken under the authority of the United States, and to be paid to such local officers of such counties, cites and towns, and to be applied in such manner, as may be prescribed by law. But when any new county is created out of part or aparts of one or more counties, after the time of taking such census, the school commissioners of the county or counties from which the new county is taken, shall, for the fiscal year in which the new county is created, apply the quotas allotted them out of the literary fund, in such part of the new county as is taken from their county or counties, in like manner as if the new county had not been created; and for subsequent years, until a new census is taken, the second auditor shall apportion the amount of the school quotas to be paid such new county and the county or counties from which it is taken, according to the first returns of persons subject to county levies, that may be made after the creation of the new county. This section shall apply to a case in which part of a county is added to another.

1 R. C. p.
c. 33, §
1820-21, p.
16, c. 11,
1821-2, p.
c. 13, § 1,
1823-4, p.
c. 7
1828-9, p.
c. 14, § 1,
1829-30, p.
c. 8, § 1,
1832-3, p.
1835-6, p.
1836-7, p.
1838, p. 3
c. 19, 20
1839-40, c.
1840-41, c.
26
1841-2, c.
1842-3, c.
1843-4, c.
1844-5, c.
1845-6, c.
§ 6, 7; c.
1846-7, p.
15, p. 22, c.
8, 9; p. 2
c. 29 to 3
1848-9, p.
c. 105
1850-51, p.
c. 41, § 9
1853-4, p.
c. 33, § 1

Harper's Ferry Raid.

CHAP. 27.—An ACT appointing Commissioners to audit and pay the Expenses incurred by the Executive for the purchase of Arms and Munitions, and for the Defence of the Commonwealth.

128

Passed January 23, 1860.

1. Be it enacted by the general assembly, that the secretary of the commonwealth, the auditor of public accounts and the adjutant general, any two of whom may act, shall be and are hereby appointed commissioners, with authority to audit and settle all accounts for expenses incurred in assembling, arming, equipping and maintaining

†In the first edition this sum was "seventy" thousand dollars: by act of 1850 51, p. 33, c. 41, §9, it was increased to seventy-five thousand; and by act of 1853-4, p. 25, c. 33, §1, the sum of five thousand dollars additional was annually appropriated.

troops, and for transportation and pay of same, and for the purchase of arms and munitions, and for other incidental expenses incurred in the defence of the state, and in the execution of prisoners under sentence of the circuit court of Jefferson county.

Said accounts, before being allowed, shall be sustained by proper vouchers, verified by officers in command, or shall be such accounts as were incurred in the execution of legal orders issued by competent authority. And when the said accounts are so sustained and allowed, the said commissioners are hereby authorized to direct the auditor of public accounts to issue his warrants for the several amounts thereof in behalf of those severally entitled thereto; to be paid out of any money in the treasury not otherwise appropriated: provided, however, that no account claimed by or due to any general, field or staff officer or rail road company, shall be paid by the commissioners aforesaid; but the same shall, when audited, be reported by them to the general assembly; and in auditing any account or accounts due to any rail road company in arrear or indebted to the commonwealth, the amount due from said rail road company to the state shall be first deducted: and provided further, that if the commissioners aforesaid deem it doubtful what law of congress, under the Code of Virginia, fixes the pay of company and non-commissioned officers, musicians and privates, they shall report the fact to the general assembly: provided, however, that the appropriation hereby authorized shall not exceed the sum of one hundred and fifty thousand dollars.

2. The said commissioners shall keep an accurate account 129
of all moneys allowed by them, and paid by their order. They shall ascertain also the accounts heretofore paid by orders of the executive for similar expenditures; and it shall be their duty to report both amounts to the general assembly as soon as practicable.

3. Immediately after the passage of this act, the commissioners shall advertise for the presentation of claims; and unless the same are presented within six months from the passage of this act, they shall not be considered by said commissioners.

4. The commissioners aforesaid are authorized to employ a clerk.

5. This act shall be in force from its passage.

CHAP. 28.—An ACT making an additional Appropriation to defray the Expenses incurred for the Defence of the Commonwealth.

Passed March 6, 1860 129

1. Be it enacted by the general assembly, that the board created by the act entitled an act appointing commissioners to audit and pay the expense incurred by the executive for the purchase of arms and for the defence of the commonwealth, passed twenty-third January

eighteen hundred and sixty, shall continue to audit the claims which they are authorized to audit and pay by said act, and to issue warrants on the treasury for the amount due and unpaid, under the limitations and restrictions imposed by said act; and for that purpose, an additional sum of seventy-five thousand dollars shall be and the same is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated.

2. In the payment of any claim hereafter presented to the auditor, which has been allowed under this or the act aforesaid, no claim which shall have been assigned by the original claimant to another person prior to the passage of the joint resolution authorizing extra pay, shall be paid to any person but to the said original claimant, or his authorized agent, by an order given subsequent to the passage 130
of said resolution. But the general assembly disapprove of the principle adopted by the commission on the Harpers Ferry accounts in auditing the accounts of officers, insomuch as the allowances for horses and servants not in the service of such officers are concerned, and hereby direct the said commission to reaudit the said accounts so far as that point is concerned, and to exclude from their settlement all allowances of any kind for horses and servants not actually in the service of any officer, and all allowances for any service of a constructive nature, and not actually rendered by the officer making the claim.

3. This act shall be in force from its passage.

CHAP. 29.—An ACT making further Appropriations to pay Expenses for the Defense of the Commonwealth.

130

Passed March 28, 1860.

1. Be it enacted by the general assembly, that the additional sum of thirty-one thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of defraying the expenses incurred by the executive, in consequence of the raid on Harpers Ferry; to be expended upon the principles and under the restrictions imposed by the several acts passed at this session, making appropriations "to defray the expenses incurred for the defence of the commonwealth."

2. The commissioners appointed by the act to audit and pay the expenses incurred by the executive for the purchase of arms and for the defence of the commonwealth, passed January twenty-third, eighteen hundred and sixty, shall be and they are hereby authorized to pay all claims of officers and rail road companies which have been heretofore reported by them to the general assembly, and all claims of officers and rail road companies which may be hereafter audited by them,

upon the principles and under the limitations and restrictions imposed by the said act, and by the act making an additional 131
appropriation to defray the expenses incurred for the defence of the commonwealth, passed on the eighth day of March eighteen hundred and sixty.

3. This act shall be in force from its passage.

Surveys.

CHAP. CXIV. AN ACT directing a survey of the Shenandoah river, and the country adjacent thereto, and the South branch of the Potowmac.

(Passed March 30, 1831.) 164

1. *Be it enacted by the general assembly*, That the *ex-officio* members of the board of public works be, and they are hereby authorized and required to direct the civil engineer of the state, or one of his assistants, during the present year, to examine and survey the Shenandoah river from its mouth to the highest point capable of navigation, and also the Shenandoah valley on each side of the Massanutten mountain, with a view of ascertaining the practicability and relative advantages and disadvantages of the improvement of said river by locks and dams, or by a canal, or of a railroad through the said valley; and to estimate the cost of each method of improvement, and report the result of his examination to the said *ex-officio* members of said board, that such report may be laid before the next general assembly.

2. *Be it further enacted*, That the said engineer, or one his assistants, be also directed to survey, as soon as previous engagements will permit, the South branch of Potowmac, and report upon the practicability and expediency of its improvement by canal, locks and dams, or otherwise.

3. This act shall be in force from and after the passage thereof.

CHAP. 75.—An ACT to authorize a geological reconnoisance of the state, with a view to the chemical composition of its soils, minerals and mineral waters.

(Passed March 6, 1835.) 55

1. *Be it enacted by the general assembly.* That as soon after the passage of this act as it may be convenient, it shall be the duty of the board of public works to appoint a suitable person to make a geological reconnoisance of the state, with a view to the general

geological features of our territory, and to the chemical composition of its soils, minerals and mineral waters, and to report to the next general assembly a plan for the prosecution of a geological survey of the state, together with such facts as may have come to his knowledge during the progress of said reconnoisance, illustrative of any advantages likely to accrue from a more complete examination.

2. *Be it further enacted,* That the said board of public works shall have authority to allow to the geologist who may be employed under the provisions of this act, such compensation as they may deem reasonable, to be paid out of any unexpended moneys in the treasury: *Provided,* That such compensation shall not exceed the sum of fifteen hundred dollars.

3. This act shall commence and be in force from the passing thereof.

CHAP. 89.—An ACT directing a survey of Elk river.

(Passed February 21, 1835.)

1. *Be it enacted by the general assembly,* That the board of public works be, and they are hereby authorized and directed to appoint a competent engineer to survey, without delay, Elk river from its junction with the Great Kanawha, to the Union mills in the county of Nicholas, and to report to the board the best and most practicable plan of improving the navigation thereof the probable advantages of such improvement, and the cost of the method of improvement preferred by him.

2. This act shall be in force from its passage.

No. 13.—Resolution authorizing a survey and location of a route for a branch of the North-western turnpike road from Sistersville, by way of Middlebourne, to some point of intersection with said turnpike west of Clraksburg.

(Agreed to by both houses, February 20, 1834.)

Resolved by the general assembly, That the board of public works be, and they are hereby authorized and required to appoint a competent engineer to survey and locate without delay, the most practicable and best route for a turnpike road from Sistersville, by way of Middlebourne, to some point of intersection with the North-west-

ern turnpike road, west of Clarksburg: *Provided*, That the expense of said survey and location shall not exceed the sum of five hundred dollars.

No. 16.—Resolution for a survey of a road from Lewisburg to the Blue Sulphur springs in Greenbrier.

(Agreed to by both houses, March 13, 1834.) 324

Resolved by the general assembly, That the board of public works be required, as soon as previous arangements will permit, to employ an engineer to survey and locate the route for a turnpike road from Lewisburg to the Blue Sulphur springs in the county of Greenbrier, in pursuance of the act passed at the present session.

CHAP. 105.—An ACT directing the survey of a route for a road from Moorefield to the North-western turnpike.

[Passed March 16, 1836.] 83

1. *Be it enacted by the general assembly*, That the board of public works be and they are hereby instructed to cause to be surveyed by some competent engineer, as soon as existing engagements will permit, the best practicable route for a road from Moorfield in the county of Hardy to its intersection with the North-western turnpike, at or near the residence of Charles Blue in the county of Hampshire; and that such engineer be required to report an estimate of the cost of a road of the kind most proper to be made, and the probable advantages of its construction.

2. This act shall be in force from its passage.

CHAP. 106.—An ACT directing the survey of a route for a road from the North-western road to some point on Leading creek, in the county of Randolph.

(Passed January 12, 1836.)

1. *Be it enacted by the general assembly*, That the board of public works be, and they are hereby directed to instruct the principal

engineer of the state, during the present year, or as soon as his existing engagements will permit, to survey and locate a route for a road leaving the North-western turnpike at the German settlement in the county of Preston, and running about thirty miles south-west in the direction of Beverley in Randolph county, to some suitable point on Leading creek, so as to intersect the location for a road from Clarksburg to Beverley, and to report to said board the kind of road most proper to be made, and the probable 84 cost and advantages of its construction.

2. This act shall be in force from its passage.

CHAP. 107.—An Act directing the survey and location of routes for certain roads therein mentioned.

[Passed January 12, 1836.]

1. *Be it enacted by the general assembly*, That the board of public works be, and they are hereby instructed to direct the principal engineer of the state to survey and locate, during the present year, or as soon as his existing engagements will permit, the best and most suitable route for a road at the lowest practicable grade, no where exceeding five degrees, from the Pennsylvania line near the farm of Bushrod Hoge in the county of Monongalia, by Morgantown, to a suitable point of the North-western road west of Cheat river, so far as to intersect the road leading from Beverley to Clarksburg, at or near the house of Solomon Yeager; and also to survey and locate, in like manner, a route from Morgantown to the Pennsylvania line, in the direction of Uniontown or Monroe, and to report to said board the probable cost and advantages of each road.

2. This act shall be in force from its passage.

CHAP. 119.—An ACT directing a survey of the Little Kanawha river.

(Passed February 20, 1838.) 89

1. *Be it enacted by the general assembly*, That the board of public works be, and they are hereby directed to appoint a competent engineer to make a survey of the Little Kanawha river from its mouth to the Bulltown salt works, and report to the said board his opinion of the practicability and cost of a lock and dam navigation thereon, and

of such other mode of improvement as he may deem more advisable.

2. The act shall be in force from its passage.

Loan to the Trustees of the Town of Bath.

CHAP. 106.—An ACT to provide for the construction of a road from Bath in Morgan county, to the mouth of St. John's run on the Potomac.

[Passed March 8, 1847.] 92

1. *Be it enacted by the general assembly,* That the Board of public works be and is hereby authorized to pay from time to time, out of the Fund for internal improvement, a sum or sums of money not exceeding twenty-five hundred dollars, to the treasurer of the trustees of the town of Bath in the county of Morgan, upon the order of the said trustees, for the purpose of constructing a road from the town of Bath to the mouth of St. John's run on the Potomac. The said treasurer shall receive and account for the same, in his official character, to the said trustees, and shall pay or deliver such sums as may be required from time to time, upon their order, until the whole amount received by him under authority of this act shall be exhausted. And he shall be liable and proceeded against in like manner for any default in the payment of the money aforesaid as for other defaults upon his official bond.

2. *Be it further enacted,* That the said trustees shall have the disposition of the money aforesaid, and may employ and pay such engineer and superintendent, or other agents, as they may think proper for the construction of said road. And said trustees, by themselves and their agents, may exercise the same powers and shall be subject to the same restrictions in the acquisition of land and other materials necessary for said road as are prescribed to the president and directors of turnpike companies by the act passed February the seventh, eighteen hundred and seventeen. As soon as the road is completed they may demand and receive thereon such tolls as may from time to time be prescribed by the Board of public works; such tolls to be applied to the necessary expenses and repairs of the road; and any surplus remaining, to be applied in payment of the interest on the sum paid on the part of the commonwealth for construction of said road. Any deficiency of the nett surplus of tolls to pay said interest may be paid from the receipts on account of bathing at the medicinal springs belonging to the commonwealth in said town of Bath.

3. *Provided,* That no part of the above appropriation shall be advanced by the Board of Public works until the said trustees shall have given bond with good security, payable to the said board and approved by them, for the punctual payment of interest annually on the sum advanced by the commonwealth for the construction of said road: and for any default in the payment of such interest, the said board may recover judgment against said trustees upon motion in the county or superior court of Morgan county, by giving ten days notice of such motion.

4. This act shall be in force from its passage.

ACTS RELATING TO ITEMS IN JOINT EXHIBIT D-1, (PARAGRAPH IV OF DECREE) CLAIMED BY PLAINTIFF AND EXCLUDED BY DEFENDANT.

400

Tobacco Receipts.

CODE OF VIRGINIA, 1849.

CHAPTER LXXXVII.

OF THE INSPECTION OF TOBACCO.

* * * * *

R. C. p. 148, 151, 5, § 28, 32, 61.

§ 8. The governor may require the inspectors of the public warehouses, belonging to the state, to have all proper repairs of said warehouses made, the expense whereof, on being allowed 402
by the governor, shall be paid by the inspectors out of the rents received by them for the use of the state.

Books to be kept by inspectors; they prohibited from trading in 407
tobacco; not liable for defects of tobacco delivered out.

§ 40. The inspectors shall provide and keep books in which they shall enter the numbers, weight, marks and owners' names, of all tobacco received, inspected or delivered out by them, as well at the time the same was received, as at the time the same was 408
inspected or delivered out, and note the state and condition of each hogshead or cask; and in which also they shall keep fair and true accounts of all money received by them to the use of the proprietors of the warehouses or of the commonwealth, or for any tobacco sold by the min pursuance of law.

Salaries of inspectors; and other charges for inspection.

§ 44. The salaries to the inspectors in any warehouse are to be paid out of the receipts for inspection at such warehouse, and in no case is the state to be charged therewith, or with any other expenses of such warehouse.

Waste and sample tobacco, or tobacco remaining three years in warehouse, to be sold. 409

§ 52. All waste tobacco, and all samples drawn and not taken away from any warehouse by the owner or purchaser of the tobacco, shall be carefully preserved by the inspectors for the benefit of the state. Such samples and waste tobacco shall from time to time be sold, for the use of the state, by the inspectors, who shall have a commission of five *per centum* on the proceeds.

§ 54. When any tobacco shall have remained in any warehouse undemanded for three years from the time of its reception therein, the inspectors for each warehouse shall advertise in some newspaper published convenient to said warehouse, for three weeks successively, a list of the marks, numbers and weight of such tobacco, with the names of the persons to whom notes or receipts for it were given; and, if no owner claim the same, within three months after such advertisement, they shall proceed to sell the same and have the like commission on the proceeds as is prescribed in the fifty-second section for waste tobacco. The proceeds of such sale shall be paid into the treasury, after deducting therefrom all legal charges for storage, rent, duty and inspectors' fees. The amount so paid into the treasury, shall be refunded to the owner of said tobacco when he shall establish his right thereto. 410

2 R. C. p. § 70.

Inspectors to account for and pay money, received by them.

§ 56. Inspectors of tobacco shall annually return to the first auditor an account on oath of all money received, or which ought to be received by them for the state, within the year ending the thirtieth day of September, and they shall, before the tenth day of October, pay into the treasury all balances due to the state on such account. The said account shall state the number of hogsheads, casks or parcels, of tobacco received and delivered out during the said year.

Id. p. 159, § 48, 49.

Liability of commonwealth or inspectors for tobacco burnt.

§ 58. If any tobacco in any warehouse, where the same was received for inspection, shall, within a year from the date of its being received, be damaged therein by fire, the owner thereof may recover from the state a sum equal to the damage so sustained.

2 R. C. p. § 67. 1825-6, p. 14, § 7. 3 Leigh 241.

§ 59. If any tobacco, stored in any warehouse belonging to the state, be so damaged at any time while remaining in said warehouse, the owner may in like manner recover the amount of his damages.

Id.

§ 60. If the inspectors at any warehouse belonging to the state refuse to receive any inspected tobacco on storage, (of which refusal

Id.

they shall give a certificate,) and the same shall be stored in any other warehouse established by law in the same town, and be therein damaged by fire at any time within a year after such refusal, the owner of such tobacco may in like manner recover the amount of his damages.

Commissioners to examine warehouses; how inspectors may be removed. 412

C. p. 162, § 52. § 72. The court having the power to nominate inspectors to a warehouse shall annually appoint one or more commissioners, who shall visit such warehouse at least once in every two months, and report to the said court its condition, the quantity of tobacco it is capable of containing, and what repairs, if any, are required.

C. p. 162. § 75. Every such commissioner shall be allowed by said court two dollars for every day he is employed, which shall 413 be paid out of the treasury from the tobacco fund.

Constitutional Conventions.

CHAPTER 15.—An act to organize a Convention.

(Passed February 10th, 1829.) 17

Whereas, in pursuance of the act of the General Assembly, passed at the last session, entitled, "an act concerning a Convention," the sense of the good people of this Commonwealth has been taken on the question, whether they desire a Convention to amend the State Constitution, or not; and it has been thus ascertained, that it is the wish of the people that a Convention shall be called for the purpose aforesaid: In order, therefore, to the forming and assembling of such Convention:

1. *Be it enacted*, That the persons qualified according to law to vote for members of the House of Delegates, in each county, city and borough, within the several Senatorial districts of this Commonwealth, as at present established by law, shall assemble at their respective court-houses, or other places appointed by law for holding elections of members of the General Assembly, on the several court days of each county, city and borough, composing a district, in the month of May, in the year of our Lord one thousand eight hundred and twenty-nine, and then and there vote for four discreet and proper persons as members of the said Convention.

* * * * *

12. Every person authorised by law to compare the polls, as 20 aforesaid, shall receive for his services therein, one dollar and sixty seven cents for every day on which he shall necessarily attend

at the place appointed by law to compare said polls, together with all charges for ferriage and tolls, and four cents a mile for travelling to and from the county in which he shall meet for that purpose. Every claim for the compensation hereby allowed, shall be presented to the court of the county or corporation in which the claimant may live; shall be verified by the affidavit of the claimant, and by such other evidence as shall be satisfactory to the court, and being certified by them to be correct, shall be allowed by the Auditor and paid out of the public treasury.

* * * * *

14. The persons who shall be elected in pursuance of the provisions of this act, shall on the first Monday in October, in the year of our Lord one thousand eight hundred and twenty-nine, meet and assemble at the Capitol in the city of Richmond, in general Convention, to consider, discuss and propose a new Constitution, or alterations and amendments to the existing Constitution of this Commonwealth.

15. The said Convention shall be the judge of its own privileges and elections, and the members thereof shall have, possess and enjoy, in the most full and ample manner, all and every the privilege and privileges, which members elected to, and attending on the General Assembly, are entitled to; and moreover, shall be allowed the same pay for travelling to, and attending on, and returning from the said Convention, as is now allowed to the members of the General Assembly for travelling to, attending on, and returning from the same; and the said Convention shall be and is hereby empowered to appoint such officers, and to make them such reasonable allowances for their services as it shall deem proper; which several sums shall be allowed by the Auditor, and paid by the Treasurer of this Commonwealth.

* * * * *

CHAP. 8.—An ACT to take the sense of the people upon the call of a convention, and providing for organizing the same.

[Passed March 4, 1850.] 9

Whereas it is represented to the general assembly, that a portion of the good people of this commonwealth are desirous of amending the constitution of the state:

1. *Be it therefore enacted,* That it shall be the duty of the officers authorized to conduct elections within this commonwealth, at the time and places of holding their respective elections for delegates to the general assembly in the month of April next, to open separate polls for the purpose of taking the sense of the people upon the question, whether they desire a convention or not. The polls to be opened shall contain two columns, and shall be headed on the one

side of the poll-book thus: "Shall there be a convention to amend the constitution of this commonwealth?"

CONVENTION. | NO CONVENTION.

The officers conducting the elections shall take the vote on the question aforesaid, of every person qualified, according to the existing laws of this commonwealth, to vote for delegates to the general assembly, who shall come forward during such election to give his vote, and shall cause the names of those who vote for a convention to be written in the first column under the word "Convention:" the names of those who vote against a convention, to be written in the second column under the words "No convention;" and no person shall be permitted to vote on said question more than once, either in the same county or in different counties.

* * * * *

11. The said convention shall be the judge of its own privileges and elections, and the members thereof shall have, possess, and enjoy, in the most full and ample manner, all the privileges 11
which members elected to, and attending on the general assembly are entitled to; and moreover shall be allowed the same pay for travelling to, attending on, and returning from the said convention, as is now allowed to members of the general assembly for like services. And said convention is hereby empowered to appoint such officers, and to make them such reasonable allowances for their services as it shall deem proper, which several allowances shall be audited by the auditor of public accounts, and paid by the treasurer of the commonwealth upon proper warrants.

* * * * *

16. The sheriffs or other officers shall receive the same com- 12
pensation, and be paid in like manner for attending and comparing the polls under this act, as in cases of senatorial elections.

Slaves Transported and Executed.

[REVISED CODE OF VIRGINIA, 1819.]

C. 111.

An act reducing into one, the several acts concerning Slaves, Free Negroes and Mulattoes.

[Passed March 2, 1819.]

* * * * *

37. THE value of a slave condemned to die, who shall suffer 430
accordingly, or, before execution of the sentence, perish. 'escape,' or be sold for transportation by the Executive, to be estimated by the justices triers, shall be paid by the public to the owner.

* * * * *

39. THE Governor, with the advice of Council, shall be and is hereby authorised, when it shall be deemed expedient, to contract and agree with any person or persons, for the sale and purchase of all those slaves who may be under sentence of dath, for conspiracy, insurrection or other crimes. The person or persons, at the time of making such purchase, shall enter into bond with sufficient security, in the penalty of one thousand dollars for each slave, payable to the Governor and his successors, for the use of the literary fund, with condition that he or they will carry out of the United States, all the slaves by him or them purchased, who may be under sentence of death; and the sale and disposal of every such slave shall amount to a reprieve of him or them from such sentence of death; *Provided always,* That if any slave, sold pursuant to this act, shall return into this State, he shall be apprehended and executed under the condemnation of the court, as if no reprieve had taken place. 'And the owner or owners of any slave 'so executed, shall not be 'entitled to receive compensation from the public for his or her 'value.'

* * * * *

41. THE owners of slaves so sold or transported, shall be paid in the same manner as for slaves executed; which payment shall be immediately made, in the same manner as for slaves executed, so soon as the Executive shall determine on the sale or transportation of them.

* * * * *

64. IT shall not be lawful for any free negro or mulatto, to 437
migrate into this Commonwealth; and every free negro or mulatto, who shall come into this Commonwealth, contrary to this act, shall and may be apprehended and carried by any citizen before some justice of the peace of the county where he shall be taken; which justice is hereby authorised to examine, send and remove every such free negro or mulatto out of this Commonwealth, into that state or island, from whence it shall appear he or she last came; and for this purpose, the sheriff or other officer, 438
and other persons, may, by such justice, be employed within the Commonwealth, upon the same terms as are by law directed in the removal of criminals from one country to another; 'and the ex-'penses and charges of such removal, to be audited and paid out of 'the treasury as other public charges.' And every free negro or mulatto, who shall come, or be brought into this Commonwealth by water, from any country, state or island, may and shall be exported to the place, from whence he or she came, or was brought; and the charges attending the same shall be paid by the importer; to be recovered by motion in the name of the Commonwealth, upon ten days previous notice thereof, in any court of record; 'and every 'free negro or mulatto so removed or exported, and thereafter re-

'turning to this Commonwealth, (unless it be in consequence of 'shipwreck or some other unavoidable necessity,) upon proof thereof 'made before any magistrate of this Commonwealth, shall receive, 'by order of such magistrate, thirty-nine lashes on his or her bare 'back well laid on; which punishment may, at the discretion of any 'magistrate, be repeated once in every week, so long as such free 'negro or mulatto shall remain within the Commonwealth.'

[CODE OF VIRGINIA, 1849.]

CHAPTER XVII.

102

* * * CONCERNING THE GOVERNOR'S POWERS AND DUTIES.

Power to reprieve or pardon.

p. 24, p. 430, § 19. In the case of a slave under sentence of death, the governor may order a commutation of the punishment by directing that such slave be sold, to be transported beyond the limits of the 106 *United States.* The governor shall cause him to be sold, and the purchaser, before delivery to him of the slave, shall pay into the treasury the price agreed, and enter into bond, approved by the governor, in the penalty of one thousand dollars, conditioned that the slave shall within three months be transported beyond the limits of the *United States*, and shall never afterwards return into this state.

[CODE OF VIRGINIA, 1849.]

CHAPTER CC.

OFFENCES BY NEGROES. 753

p. 37. ch. p. 21, § 6. p. 125, 6. §4. If a slave plot or conspire to rebel or make insurrection, or commit an offence for the commission of which a free negro, at the time of committing the same is punishable with death or by confinement in the penitentiary for not less than three years, he shall be punished with death. But unless it be an offence for which a free white person, if he had committed it, might have been punished with death, such slave, instead of being punished with death, may, at the discretion of the court, be punished by sale and transportation beyond the limits of the *United States.*

§ 5. If a slave commit an offence for which a free negro, if he had committed it, might be punished by confinement in the penitentiary for a period less than three years, such slave shall be punished by stripes; and if, having been once sentenced for such offence, he afterwards commit an offence for which a free negro, if he had committed it, might be punished by such confinement, he shall be punished with death, or, at the discretion of the court, by sale and transportation as aforesaid. 754

1847-8, p. 125, § 2, 3, 14, 15.

§ 6. If a slave be sentenced to sale and transportation, under either of the next two proceeding sections, the same proceedings shall be had as in the case of a slave under sentence of death, whose punishment is commuted by the governor to sale and transportation.

[Code of Virginia, 1849.]

CHAPTER CCXII.

OF PROCEEDINGS AGAINST NEGROES.

* * * * *

Of slaves condemned to death.

§ 9. The value of a slave condemned and executed, or sentenced to, or reprieved for, sale and transportation, shall be paid to the owner out of the treasury; such value shall be the cash price for which he would sell at public sale, with a knowledge of his condemnation. It shall be fixed by the court, and entered of record. 787

1 R. C. p. 430, § 37, 41. 1839-40, p. 51, ch. 61, § 1. 1847-8, p. 162, § 7.

§ 10. If such slave be a slave only for a term of years, or for the life of another person, he shall be valued accordingly.

1839-40, id. § 2. 1847-8, p. 162, § 8.

* * * * *

Slaves sentenced as a free man. 788

§ 19. If a negro, condemned as a free man and executed, be claimed to have been a slave, the claimant may present his petition, under oath, to the court in which the conviction was, stating the grounds of his claim, and a jury shall be empanneled to enquire into the fact. If they find that the convict was the property of the claimant, when he was executed, his value shall be ascertained by the court, and paid to such claimant. In an enquiry under this or the preceding section, the attorney for the commonwealth, in the court, shall appear for the state. 789

1847-8, p. 161, § 19, 20.

[CODE OF VIRGINIA, 1860.]

CHAPTER XVII.

* * * CONCERNING THE GOVERNOR'S POWERS AND DUTIES.

* * * * *

Commutation of punishment; * * * 121

* * * * *

1-1, p. 24, 3. C. p. 430, 9. 20. In the case of a slave under sentence of death, the governor may order a commutation of the punishment by directing that such slave be sold, to be transported beyond the limits of the United States. The governor shall cause him to be sold, and the purchaser, before delivery to him of the slave, shall pay into the treasury the price agreed, and enter into bond, approved by the governor, in the penalty of one thousand dollars, conditioned that the slave shall within three months be transported beyond the limits of the United States, and shall never afterwards return into this state.

* * * * *

[CODE OF VIRGINIA, 1860.]

CHAPTER CC.

OFFENCES BY NEGROES.

* * * * *

3, p. 37, 1, § 3 2, p. 21, § 6 8, p. 125, 6, 5. 7. If a slave plot or conspire to rebel or make insurrection, or commit an offence for the commission of which a free negro at the time of committing the same, is punishable with death or by confinement in the penitentiary for not less three years, he shall be punished with death. But unless it be an offence for which a free white person, if he had committed it, might have been punished with death, such slave, instead of being punished with death, may, at the discretion of the court, be punished by sale and transportation beyond the limits of the United States 816

2, 3, 14, 15. 8. If a slave commit an offence for which a free negro, if he had committed it, might be punished by confinement in the penitentiary for a period less than three years, such slave shall be punished by stripes; and if, having been once sentenced for such offence, he afterwards commit an offence for which a free negro, if he had committed it, might be punished by such confinement, he shall be

punished with death, or, at the discretion of the court, by sale and transportation as aforesaid.

9. If a slave be sentenced to sale and transportation, under either of the next two preceding sections, the same proceedings shall be had as in the case of a slave under sentence of death, whose punishment is commuted by the governor to sale and transportation. Ante, c. 17, § 23 Post. c. 212, §

[CODE OF VIRGINIA, 1860.]

CHAPTER CCXII.

OF PROCEEDINGS AGAINST NEGROES.

* * * * *

Of slaves condemned to death.

9. The value of a slave condemned and executed, or sentenced to, or reprieved for, sale and transportation, shall be paid to the owner out of the treasury; such value shall be the cash price for which he would sell at public sale, with a knowledge of his condemnation. It shall be fixed by the court, and entered of record. 848 1 R. C. p. 436, § 37, 41. 1839-40, p. 51, c. 61, § 1 1847-8, p. 162

10. If such slave be a slave only for a term of years, or for the life of another person, he shall be valued accordingly. 1839-40, id. § 1 1847-8, p. 162

* * * * *

19. If a negro, condemned as a free man and executed, be claimed to have been a slave, the claimant may present his petition, under oath, to the court in which the conviction was, stating the grounds of his claim, and a jury shall be impanneled to enquire into the fact. If they find that the convict was the property of the claimant, when he was executed, his value shall be ascertained by the court, and paid to such claimant. In an enquiry under this or the preceding section, the attorney for the commonwealth, in the court, shall appear for the state. 849 1847-8, p. 160, § 19, 20 Ante § 9, 10

Boundary Lines.

CHAPTER 14.—An act to settle the western limits of this state, and the dividing and boundary line between this state and the commonwealth of Maryland.

[Passed February 28, 1822.]

1. *Be it enacted by the General Assembly of Virginia*, That the governor, by and with the advice and consent of the council, be, and he is hereby authorised to appoint three commissioners 15

on the part of this state to meet such commissioners as may be appointed for the same purpose by the commonwealth of Maryland, to settle and adjust, by mutual compact between the two governments, the western limits of this state and the dividing and boundary line between this state and the commonwealth of Maryland: to commence at Fairfax's stone on the head waters of the north branch of the Potowmac river, and to run a due north course to intersect the line between this state and the state of Pennsylvania; and the commissioners appointed as aforesaid, are required to report their proceedings in virtue of their appointment and 16
authority, to the general Assembly of this state, at the session next after the same shall have been concluded, for confirmation or rejection.

* * * * *

4. *And be it enacted,* That the commissioners appointed as aforesaid, shall receive four dollars per day, while employed in settling and adjusting the aforesaid divisional line; and they are hereby authorised to employ a surveyor, two chain-carriers, and one or more persons to mark the said line. And it shall be the duty of the said commissioners to ascertain the number of days the surveyor shall be so employed, and certify the same to the auditor of public accounts, who shall thereupon issue a warrant in favour of such surveyor for four dollars per day for his services: the said commissioners shall also certify to the auditor of public accounts, the names of the chain carriers and markers employed, the number of days 17
each has been so employed, and such daily allowance as to them may seem just: whereupon the auditor of public accounts, upon application, shall issue warrants in favour of such chain-carriers and markers.

5. *Be it further enacted,* That all expenses to be incurred in running and settling the aforesaid divisional line shall be paid out of any money in the treasury of this commonwealth not otherwise appropriated.

6. This act shall be in force from and after the passage thereof.

CHAP. 32.—An ACT to settle the western limits of this State, and the dividing and boundary line between this state and the commonwealth of Maryland.

[Passed March 5th, 1833.] 24

1. *Be it enacted by the general assembly of the commonwealth of Virginia,* That the governor be and he is hereby authorized to appoint three commissioners on the part of this state, to meet such

commissioners as may be appointed for the same purpose, by the commonwealth of Maryland, to settle and adjust by mutual compact between the two governments, the western limits of this state, and the dividing and boundary line between this state and the commonwealth of Maryland, to commence at the Fairfax stone, or at the first fountain of the Cohongoroota or North branch of the Potomac river, and to run a due north course to intersect the line between this state and the state of Pennsylvania. If, however, the commonwealth of Maryland shall fail to appoint commissioners, then, and in that event, the commissioners appointed by the governor of this commonwealth, or any two of them, shall run and mark said line, according to the provisions of this bill: and the commissioners appointed as aforesaid, are required to report their proceedings in virtue of their appointment and authority, to the general assembly of this state, at the session next after the same shall have been concluded, for confirmation or rejection:

And whereas, sundry citizens of this state, may hold lands in virtue of patents granted by the commonwealth of Maryland, before the divisional line shall have been settled and adjusted between the two states, and as it is proper that all inhabitants on either side of the boundary line, so to be settled and adjusted, who shall have obtained patents for their lands in Virginia or Maryland, should have their titles confirmed in whichever state they may happen to fall.

* * * * *

4. *And be it enacted*, That the commissioners appointed as aforesaid, shall receive four dollars per day, while employed in settling and adjusting the aforesaid divisional line; and they are hereby authorized to employ a surveyor, two chain carriers, and one or more persons to mark the said line. And it shall be the duty of the said commissioners, to ascertain the number of days the surveyor shall be so employed, and certify the same to the auditor of public accounts, who shall thereupon issue a warrant in favor of such surveyor, for four dollars per day, for his services: the said commissioners shall also certify to the auditor of public accounts, the names of the chain carriers and markers employed, the number of days each has been so employed, and such daily allowance as to them may seem just: whereupon, the auditor of public accounts, upon application, shall issue warrants in favor of such chain carriers and markers.

5. *Be it further enacted*, That all expenses to be incurred in running and settling the aforesaid divisional line, shall be paid out of any money in the treasury of this commonwealth, not otherwise appropriated.

6. This act shall be in force from and after the passage thereof.

No. 4.—Preamble and resolutions relative to the boundary between Virginia and Ohio.

[*Adopted March 23, 1847.*] 237

1. *Resolved by the general assembly of the state of Virginia,* That a board to consist of three commissioners, citizens of Virginia, be appointed by the governor of this state, who shall be authorized to meet a like board, to be appointed by the state of Ohio, at such time and place as may be agreed upon, and to enter into a compact with such Ohio commissioners, settling the jurisdiction or boundary, or both, upon that part of the Ohio river which divides the states of Virginia and Ohio. *Provided,* That such compact shall not be considered as binding until the same be ratified by the said states respectively, and by the congress of the United States.

2. *Resolved,* That the governor be authorized to supply any vacancy which may happen in the board of Virginia commissioners, and that said board report their proceedings, under these resolutions, to the general assembly of Virginia at the next session, and that they be allowed the sum of four dollars per day for each day they may be occupied in the business of their commission, and four dollars for every twenty miles of travel, to be paid out of any moneys in the treasury not otherwise appropriated, on the warrant of the auditor of state, who shall adjust their accounts.

3. *Resolved,* That the governor of this state forward a copy of these resolutions to the governor of the state of Ohio.

CHAP. 4.—AN ACT for running and marking the boundary line between North Carolina and Virginia.

Passed April 2, 1858. 4

Whereas there is some difficulty between the states of North Carolina and Virginia as to the precise point where the line dividing the two states now is: and whereas the citizens of each state immediately along the same, are equally desirous of having it more certainly fixed and established: therefore,

1. Be it enacted by the general assembly, that the governor be and he is hereby authorized and required to appoint a commissioner, who, together with the commissioner who may be appointed on the part of North Carolina, shall cause the said line to be accurately surveyed, traced, and marked with stone monuments, not exceeding five miles apart, beginning at the county line dividing Pittsylvania and Henry

counties, where it intersects with the North Carolina line, and thence running west to the intersection of the line of the state of Tennessee.

2. It shall be the duty of the commissioners, after running, locating, establishing and marking the said line, to make a report, setting forth all the facts touching the same, and to forward copies of the joint report to their respective legislatures. And upon ratification of such report by the legislatures of the states of North Carolina and Virginia, the said boundary line shall be fixed and established; to remain forever, unless changed by the mutual consent of the said states.

3. That the governor shall be and is hereby authorized to pay one-half of all the expense which may be incurred in running and marking said line as aforesaid, and also the sum of five dollars per day to the commissioner appointed by the executive of this state, for each day he may be engaged in performing the service, and ten cents per mile for each mile he may travel to and from his residence in going to and returning from the line aforesaid; to be paid, upon the order of the governor, out of any money in the treasury not otherwise appropriated.

4. This act shall be in force from its passage.

No. 14.—Resolutions concerning the Boundary Lines between Tennessee and Virginia.

Adopted March 9, 1860. 698

1. Resolved, that the general assembly do hereby disapprove and reject the line between Virginia and Tennessee, as run and reported by Leonidas Baugh and James C. Black, as commissioners on the part of Virginia.

2. Resolved, that the governor be and he is hereby authorized to settle with said Leonidas Baugh and James C. Black, for their services rendered and expenses incurred by them in running said line; and he is hereby empowered to draw his warrant on the treasury for the amount ascertained by him to be due, payable out of any money in the treasury not otherwise appropriated; and that he be further authorized, if he shall deem it necessary, to appoint a commissioner to examine the account and take evidence in relation to the said claim for compensation and expenses.

3. Resolved, that the governor be and he is hereby authorized to appoint one or more commissioners to run again and re-mark the line between Virginia and Tennessee, in strict conformity with the compact of eighteen hundred and two, ratified by the legislature of Virginia in eighteen hundred and three; and he is authorized to allow to

such commissioner or commissioners a reasonable compensation for their services.

4. Resolved, that the governor be directed to communicate a copy of these resolutions to the governor of Tennessee, with a request that the authorities of that state will concur, and appoint a commissioner on their part.

No. 15.—Resolutions concerning the Boundary Line between Maryland and Virginia.

Adopted March 10, 1860. 699

Whereas the legislatures of Maryland and Virginia have each passed an act (the former, March twenty sixth, A. D. eighteen hundred and fifty-two, and the latter, March twenty-ninth, A. D., eighteen hundred and fifty-eight), providing for the surveying, retracing and marking of the boundary line between the two states, which runs from Watkins' Point, on the Eastern Shore, to the Atlantic ocean:

And whereas, in accordance with the provisions of said acts, Colonel Thomas J. Lee, on the part of Maryland, and Colonel Angus W. McDonald, on the part of Virginia, were appointed commissioners, jointly to have (among other things) the said line retraced, surveyed and marked, and have, with the assistance of Lieutenant N. Michler of the United States corps of engineers, assigned to that service by the war department, caused said line to be retraced, surveyed and marked, and full and elaborate plats and maps of the same made and returned to each of said states: Therefore.

1. Resolved, that suitable and permanent monuments should be erected at the termini and along said line, to perpetuate the location of the same, at the joint cost of said two states, and that Virginia's portion of such cost is provided for by the said act of March twenty-ninth, eighteen hundred and fifty-eight.

2. And be it further resolved, that the governor of this commonwealth, if he deem it expedient, be, and he is hereby authorized and requested to send to England a competent agent, and obtain from thence all record and documentary evidence tending to ascertain and establish the true lines of boundary between Virginia and the states of North Carolina, Tennessee and Maryland: The cost of such agency not to exceed two thousand dollars; provision for which is also made by said act of March twenty-ninth, eighteen hundred and fifty-eight.

Maps.

CHAPTER 17.—An act to provide for engraving the Map of Virginia.

[Passed February 14th, 1825.] 19

1. *Be it enacted by the General Assembly,* That the Executive of this commonwealth be, and they are hereby authorized and required, to contract for engraving the general Map of the territory of this Commonwealth, prepared in conformity with the provisions of the act entitled, "an act to provide an accurate chart of each county, and a general Map of the territory of this Commonwealth," with such person, and upon such terms as they shall think best calculated to effect the object of the said act.

2. This act shall be in force from the passing thereof.

CHAPTER 15.—An Act making provision for furnishing the public offices with the new Map of Virginia, and for other purposes.

(Passed February 11th, 1828.) 13

1. *Be it enacted by the General Assembly,* That the Executive of this Commonwealth shall be, and they are hereby authorised and required to distribute to the committee of Roads and Internal Navigation, and to each of the other standing committees of the House of Delegates, who have not heretofore been furnished therewith, a copy of the Revised Code, and such of the Sessions Acts of the General Assembly, as may be in the Executive department for distribution, which shall be preserved by the clerks of the said committees respectively, for the use of the same. And the Executive shall moreover distribute to the public offices the new Map of Virginia, in the manner following, that is to say: To the Executive Chamber, one Map of the large size, hung on rollers; to the Register's office, one Map of the large size, hung on rollers, and one of the small size, in port folio form; to the Treasury and First Auditor's office, each one Map of the small size, in port folio form; to the Second Auditor's office, one Map of the large size, hung on rollers, and one of the small size, in port folio form: and to the committee of Propositions and Grievances, and of Roads and Internal Navigation, each one Map of the large size, hung on rollers.

2. *Be it further enacted,* That it shall be the duty of the clerks of the said committees respectively, to keep and preserve the said Maps during the session of the General Assembly, subject at all times to the use and reference of the said committees: and for the more secure and better preservation thereof, the Executive shall cause to be procured,

and furnished to the said clerks, tin cases of sufficient length and capacity to contain the same, which cases, with the Maps therein, the said clerks shall, at the close of the session of Assembly, deposit in the office of the clerk of the House of Delegates, for which he shall grant a receipt.

3. *And be it further enacted*, That the Executive are hereby authorised and required to present to the Government of the United States, and of each of the States within this Union, one of the new Maps of Virginia, of the largest size, the presentation thereof to be made to the Executive departments of said governments, and in such manner as the Executive of this Commonwealth may deem most proper and expedient.

4. This act shall be in force from the passing thereof.

CHAP. 93.—An ACT providing for a geological survey of the state, and for other purposes.

[Passed February 29, 1836.] 67

1. *Be it enacted by the general assembly*, That the president and directors of the board of public works be, and they are hereby required, as speedily as may be, to cause a complete and detailed geological survey of the entire territory of this state to be made and executed, and a careful and accurate chemical examination and analysis of the various soils which may be found in different parts thereof, as also of the principal ores, marls, saline and mineral waters within said territory.

2. *Be it further enacted*, That for the purposes of making such survey and analysis, it shall be lawful for the said president and directors to employ a competent and skilful geologist, and an assistant geologist if need be; and may also engage the services of, or employ a topographical surveyor, whose duty it shall be to make such observations and admeasurements as may be found necessary in the preparation and construction of the geological map of the state hereinafter provided for, and to perform such other labours connected with the general purposes hereby intended, as the geologist may from time to time prescibe and direct. In addition to the duties before mentioned to be performed, the geologist who may be employed by virtue of this act, shall also ascertain by accurate barometical observations the height of the principal mountains in the state; and in the progress of the surveys and examinations hereby directed, shall collect and preserve all such specimens of rocks, fossils, ores, mineral compounds and organic remains, as shall tend to exemplify the general geological structure of the state, or be in any wise useful or interesting. The specimens, so far as prac-

ticable, shall be collected in sufficient number to authorize a distribution of a suite thereof to the principal institutions of learning in the state, if it shall hereafter be found expedient to make such distribution.

3. *Be it further enacted,* That said geologist shall annually, and before the tenth day of January in each year, make report to the president and directors of the board of public works, of his progress in the work hereby authorized and required, accompanying 68
said report with such profiles and maps, together with a glossary of scientific or technical terms, as may be useful in illustrating the same; which reports, profiles and maps, it shall be the duty of the said president and directors immediately to lay before the general assembly.

4. *Be it further enacted,* That for the purpose of defraying the expenses which may be incurred under this act, a sum not exceeding five thousand dollars per annum, be and the same is hereby appropriated, to be apportioned among the several persons hereby authorized to be employed, in such manner, and in such amount as to the president and directors of the board of public works shall seem best, to be paid upon their certificate out of any moneys in the treasury not otherwise appropriated, upon the warrant of the auditor of public accounts: *Provided,* That the amount to be paid to the geologist and the assistant geologist shall not exceed the sum of three thousand dollars per annum, to be apportioned and divided between them in manner above directed, and the sum to be paid to the topographical surveyor shall not exceed one thousand dollars.

5. *Be it further enacted,* That when the entire work hereby contemplated and provided for, shall have been fully completed, it shall be the duty of the geologist in charge thereof to make a general and final report thereon, embracing in such report, in detail, the result of all the surveys, examinations and discoveries which shall have been made, geological, chemical and topographical, and all other matters connected therewith, which may be considered by him as likely to be in any manner useful to the public or interesting to science. He shall also construct and prepare for engraving, a complete geological map of the state, shewing not only the general geological structure thereof, but plainly and accurately delineating the stratification of its principal rocks, and the position and boundary of all the mineral deposites which may be now known or be ascertained by the investigations which shall have been made, accompanying said map with such a series of sections or profiles as may be necessary to a proper exhibition of the geology of the region to which they may relate. The final report, together with the map and the accompanying sections and profiles, the president and directors of the board of public works shall communicate to the general assembly as soon as may be, to be printed, engraved, published and disposed of, in such manner as to the said general assembly shall seem proper.

6. *Be it further enacted,* That the mineral materials and other

specimens which may be collected during the operations of the geologist and others who may be engaged with him, shall be carefully preserved in some convenient apartment of the library room, until otherwise provided for. A complete catalogue of such specimens and materials shall be made out, and preserved in the same apartment, shewing the name, locality and general properties and value of each, as ascertained by the analysis to which it may have been subjected, and referring to the corresponding number which shall be affixed to the specimen itself.

7. This act shall be in force from and after the passage thereof.

No 3.—Resolution providing for the preparation of a map of the internal improvements of the state.—[*Adopted March* 15, 1848.]

Resolved by the general assembly, That the Board of public 353
works cause to be prepared by C. Crozet, Esq., at a cost not exceeding fifteen hundred dollars, in some cheap and convenient form, a lithographic map of the state of Virginia, exhibiting all railroads, canals, M'Adamized and turnpike roads, constructed, surveyed or authorized in this state, distinguishing each kind of improvement, and as far as may be the condition thereof, and shewing their connection with the principal improvements of neighbouring states; and that he accompany the same with a brief outline of the history of each improvement, together with such portions of the reports of 354
engineers upon the same, as he may deem expedient; and that one thousand copies thereof be deposited in the office of said board, subject to the order of the next general assembly.

No. 5.—Resolution for completion of state map.

Adopted February 18, 1853. 358

1. Resolved by the general assembly, that for the purpose of enabling the Board of public works to improve the map of Virginia and to ascertain her true boundaries, they are hereby authorized to contract for the purchase of new plates, it being suggested that the old plates have been mislaid, and if found are unfit for use; and the said board for the same purpose are moreover authorized to cause the necessary astronomical observations to be made: provided the cost of such map and the taking of such observations shall not exceed the sum of three thousand dollars, to be paid out of the contingent fund.

6. Deaf, Dumb and Blind Institute.

CHAP. 19.—An ACT to provide for the establishment of the Virginia asylum for the education of the deaf and dumb and of the blind.

(Passed March 31, 1838.) 31

1. *Be it enacted by the general assembly,* That there shall be established on a site, at such place as the legislature may by joint resolution select, an institution to be called "The Virginia institution for the education of the deaf and dumb and of the blind," which shall be under the government of seven visitors, to be appointed annually by the president and directors of the literary fund, who shall notify them of their appointment, and prescribe a day for their first meeting, or in the event of failure, for a subsequent one.

2. The said visitors, or a majority, shall appoint from their own body, a president to preside at their meetings, and a secretary to record, attest and preserve their proceedings.

3. In the said institution, there shall be two schools, each separate and distinct from the other in all respects whatsoever. In one of them, such deaf mutes, and in the other, such blind pupils as may be placed in said institution, as hereinafter provided, shall be exclusively educated under so many professors, instructors and assistants as may be deemed necessary and expedient by the board of visitors.

4. The said visitors shall be charged with the erection, preservation and repair of the buildings, the care of the grounds and appurtenances, and of the interests of the institution generally. They shall have power to employ all necessary agents; to appoint and remove professors (two-thirds of the whole number concurring in every case of removal); to fix their compensation; prescribe their duties and the course of education in each school; to establish rules for the government and discipline of the pupils; to regulate tuition fees; to prescribe and control the duties and proceedings of all officers, servants and others, with respect to the buildings, 32 lands, appurtenances and other property and interests of the institution; to draw from the literary fund or the treasury, such moneys as are or shall be charged by law on either for the benefit and support of the institution; and in general, to direct and do all matters and things, which, not being inconsistent with the constitution and laws of the United States or of this state, shall seem to them most expedient for promoting the purposes and fulfilling the objects of said institution; which several functions they shall be free to exercise in the form of by-laws, rules, resolutions, orders, instructions or otherwise, as they shall deem proper.

5. The said visitors shall have such stated and occasional meetings as they shall themselves prescribe. A majority shall constitute a quorum for business, and all vacancies occurring by death, resignation, removal from the commonwealth, or failure to act for the space of six months, shall be supplied by the appointing power.

6. The president and visitors shall be, and they are hereby declared to be a body corporate, under the style and title of "The president and visitors of the Virginia institution for the education of the deaf and dumb and of the blind," with the right, as such, to use a common seal, to plead and be impleaded, in all courts of justice, and in all cases in which the interests of the institution are involved; and they shall be capable in law, and in trust for the institution, of receiving subscriptions and donations, real and personal, as well from bodies corporate, and persons associated, as from private individuals.

7. The institution hereby established, shall in all things, and at all times, be subject to the control of the legislature; and it shall be the duty of the board of visitors annually to make a report to the president and directors of the literary fund, (to be laid before the general assembly,) which shall embrace a full account of receipts and disbursements, the funds on hand, and a general statement of the condition of said institution.

8. There shall be maintained and educated at the public expense, at the institution hereby established, such poor and destitute deaf mutes and blind persons as are unable to pay for such maintenance and education, to be selected in the mode that the board of visitors shall prescribe: *Provided nevertheless,* That such selection shall be made with a due regard to the claims of every portion of the commonwealth. There shall also be educated in both of said schools, such other deaf and dumb and blind persons, whether from Virginia or elsewhere, and whether sent at individual or at state expense, as said board of visitors shall deem it advisable to admit, and upon such terms for their instruction and support as they may prescribe.

9. *Be it further enacted,* That there shall be appropriated out of the revenue of the literary fund which had accumulated prior to the passage of the act appropriating the surplus revenue of the literary fund, passed March the twenty-second, eighteen hundred and thirty-six, so much as shall be necessary, not exceeding twenty thousand dollars, for the purpose of procuring a suitable site or sites, and for erecting thereon the necessary buildings; and the further sum of ten thousand dollars shall be annually applied to the support of said institution: *Provided, however,* That not more than one-half of the first mentioned appropriation shall be expended in one year: *And provided also,* That no portion of the 33
annual endowment shall be paid until the institution goes into

actual operation; and it shall be discretionary with the president and directors of the literary fund, at any time, to withhold any part of said annual endowment, if not required by the wants of the institution.

10. *Be it further enacted*, That when the institution hereby established shall go into operation, the appropriation of the surplus revenue of the literary fund by the act of twenty-second of March, eighteen hundred and thirty-six, shall be limited to the sum of twenty-five thousand dollars; and all excess of such surplus, if any, not exceeding ten thousand dollars, shall be applied in payment of the annuity herein before granted; and if such excess should not amount to ten thousand dollars, the deficiency shall be charged upon the ordinary revenue of the state.

11. This act shall be in force from and after the passing thereof.

CHAP. 14.—An ACT directing the payment of a sum of money to the visitors of the Virginia institution for the education of the deaf and dumb and of the blind.

[Passed March 20, 1841.] 37

1. *Be it enacted by the general assembly*, That the auditor of public accounts be and he is hereby instructed to issue a warrant upon the treasury in favour of the visitors of the Virginia institution for the education of the deaf and dumb and of the blind, for the sum of six thousand two hundred and fifty dollars, being the amount expended by the said visitors in the purchase of furniture, musical instruments, books, apparatus, and other articles required for the outfit of the institution; which amount shall be paid out of any moneys in the treasury not otherwise specifically appropriated: *Provided*, That whenever there shall be any excess of the income arising from the Literary fund, over and above the appropriations 38 heretofore made of said income, such excess shall be paid into the public treasury until the sum herein appropriated shall be reimbursed.

2. *Be it further enacted*, That the auditor of public accounts shall not issue a warrant upon the treasury for the whole or any part of the sum herein appropriated, until a copy of the contract or contracts made by the said visitors for the erection of the necessary buildings as provided in the act establishing said institution, passed March the thirty-first, eighteen hundred and thirty-eight, signed by all the visitors who were present at the board when such contract or contracts were made, and likewise by the contractor or contractors, accompanied by the specifications of said contract or contracts, and

communicated to the president and directors of the Literary fund; and unless it shall appear to the said president and directors that the entire completion of said buildings, including the purchase of a site for the same, will not exceed the sum appropriated for that purpose in the before recited act. And if the said visitors have exceeded or shall exceed the said appropriation, they shall be held bound in their individual character, without any recourse to the commonwealth.

3. This act shall be in force from the passing thereof.

CHAP. 9.—An ACT making appropriation for the completion of the buildings of the deaf and dumb and blind institution.

[Passed January 23, 1845.] 13

1. *Be it enacted by the general assembly,* That the auditor of public accounts be and he is hereby authorized and directed to issue his warrants on the treasury in favour of the president and visitors of the Virginia institution for the education of the deaf and dumb and of the blind, for the sum of twenty-five thousand dollars, to be applied in completing the buildings of the said institution: *Provided,* That the said sum shall be paid in six equal semi-annual instalments; that is to say, four thousand one hundred and sixty-six dollars sixty-six cents within six months after the passage of this act, and the same sum within each of five successive periods of six months after the expiration of the first six months aforesaid: *Provided further,* That the aforesaid appropriation shall be so expended as fully to complete the said buildings in such mode and style as such appropriation would warrant.

2. This act shall be in force from the passing thereof.

CHAP. 18.—An ACT appropriating a sum of money to provide furniture for the institution of the deaf and dumb and of the blind.

[Passed February 24, 1846.] 20

1. *Be it enacted by the general assembly,* That the auditor of public accounts be and is hereby authorized and directed to issue his warrant on the treasury, in favour of the "president and visitors of the Virginia institute for the education of the deaf and dumb and of the blind," for the sum of five thousand dollars, to be expended in

providing the necessary furniture and fixtures for the buildings of the said institution: *Provided*, That two thousand five hundred dollars of this appropriation may be paid by the auditor immediately after the passage of this act, and the remainder in one year from the time of the first payment.

2. This act shall be in force from the passing thereof.

CHAP. 272.—An ACT authorizing the payment of a certain sum of money to William C. Adams.

[Passed March 20, 1847.] 230

1. *Be it enacted by the general assembly*, That the auditor of public accounts be and he is hereby authorized and required to issue his warrant upon the treasury (payable out of any money therein not otherwise appropriated) in favour of William C. Adams, or his legal representative, for the sum of five thousand nine hundred and ninety-eight dollars and ninety-eight cents, it being an allowance made to the said Adams on account of work done, materials furnished, and expenses incurred in the erection of the buildings of the deaf and dumb and blind institution near Staunton.

2. *Be it further enacted*, That the said auditor of public accounts shall be and he is hereby authorized and directed to retain and withhold out of the semi-annual instalment to fall due on the twenty-third day of January, eighteen hundred and forty-eight, by virtue of an act, entitled "An act making appropriation for the completion of the buildings of the deaf and dumb and blind institution," passed the twenty-third day of January, eighteen hundred and forty-five, the sum of three thousand six hundred and seventy-eight dollars, which said sum is to be deducted from the appropriation of the twenty-third of January, eighteen hundred and forty-five, aforesaid, and the balance to be applied as prescribed by the said act.

3. This act shall be in force from its passage.

CHAP. 15.—An ACT to increase the annuity to the Virginia institution for the education of the deaf and dumb and of the blind, and for other purposes.

[Passed March 16, 1847.] 16

1. *Be it enacted by the general assembly*, That from and after the passage of this act the annuity of the Virginia institution for the

education of the deaf and dumb and of the blind, shall be increased to the sum of fifteen thousand dollars.

2. *Be it further enacted,* That hereafter the surplus of the Literary fund, if any, above the sum of twenty-five thousand dollars set apart by the acts of the twenty-second day of March eighteen hundred and thirty-six, and of the thirty-first day of March eighteen hundred and thirty-eight, not exceeding fifteen thousand dollars, shall be applied in payment of said annuity to said Virginia institution; and if such excess should not amount to fifteen thousand dollars, the deficiency shall, as heretofore, be paid out of any money in the treasury not otherwise appropriated: *Provided, however,* That the sum of five thousand dollars, a part of said annuity, shall exclusively be paid out of the treasury of the commonwealth.

3. *Be it further enacted,* That the president and visitors of said Virginia institution be, and they are hereby authorized, to expend the sum of two thousand dollars in the purchase of twenty acres of land adjoining and lying south of the present institution lot; and the further sum of one thousand dollars in the purchase of such raised and common types, moulds and other printing apparatus, as may be required, as well in the deaf mute as in the blind department of said institution; and the further sum of two thousand three hundred dollars in the purchase of materials, machines and tools, for the various workshops of said institution, and for the completion of said workshops.

4. *Be it further enacted,* That in case of the passage of acts before the passage of this act appropriating more than the probable balance in the treasury on the thirtieth of September eighteen hundred and forty-seven, as estimated and reported by the auditor of public accounts, the president and visitors of said Virginia institution are hereby authorized to borrow, for a period not exceeding twelve months, and at a rate of interest not exceeding six per centum per annum, the sum of five thousand dollars, to be applied for the present year in aid of the annuity of ten thousand dollars already established by law, for the support of said Virginia institution; and the further sum of five thousand three hundred dollars, to be applied to the purposes specified in the third section of this act if so much shall be necessary; the sum so borrowed by said president and visitors, to be paid out of the revenue of the commonwealth for the year eighteen hundred and forty-eight.

5. *Be it further enacted,* That the property of said Virginia institution, whether real or personal, including servants hired for the use of said institution, shall hereafter be exempted from taxation under the revenue laws of the commonwealth, and from county and parish levies; and that the officers, attendants and servants of said Virginia institution, shall not in future be required to serve on

juries, to work on the public highways, or to perform military duty, except in case of actual invasion of the commonwealth.

6. *Be it further enacted,* That hereafter the fiscal year of said Virginia institution shall terminate with the calendar year; and the president and visitors shall hereafter cause their annual 17
accounts to be closed on the thirty-first of December in each year, and shall as soon thereafter as practicable make the annual report required by law.

7. *Be it further enacted,* That in consideration of the appropriation herein contained for printing materials and apparatus for said institution, the president and visitors of said Virginia institution shall cause to be printed for the use of the general assembly, at least three hundred and fifty copies of their annual reports, and at least three hundred and fifty copies of the annual reports of the president and directors of the Western lunatic asylum at Staunton, without charge to the commonwealth, except for paper and ink.

8. This act shall be in force from its passage.

CHAP. 12— An ACT to provide additional accommodations for the deaf and dumb and blind institution.

[Passed January 25, 1849.] 14

1. *Be it enacted by the general assembly,* That the auditor of public accounts is hereby directed to draw his warrants on the treasury, payable out of any money therein not otherwise appropriated, in favour of the president and visitors of the Virginia institution for the education of the deaf and dumb and blind, for such sum or sums as may be from time to time required by the said president and visitors, not exceeding in the aggregate four thousand dollars; which amount, or so much as may be necessary, the said president and visitors are hereby directed to apply to the erection of a plain, substantial brick building, of sufficient size to contain a laundry and bakehouse for the said institution, together with convenient accommodations for the servants employed therein.

2. This act shall be in force from its passage.

CHAP. 1—An ACT appropriating the public revenue.

3

[Passed March 14, 1850.]

* * * to pay for the furniture purchased for the increased 4
number of pupils received in the institution for the education of

the deaf and dumb and of the blind, under the act of March the sixteenth, eighteen hundred and forty-seven, and for arrears in support account of same institution, the sum of six thousand dollars; * * *

CHAP. 2.—An ACT appropriating the public revenue, and for other purposes.

[Passed March 7, 1851.] 4

* * * for completing the buildings of the institution for the deaf and dumb and blind, two thousand five hundred dollars. * * *

CHAP. 35.—An ACT appropriating two thousand dollars to purchase a library and philosophical apparatus and organ for the institution of the deaf and dumb and of the blind.

Passed June 5, 1852. 29

1. *Be it enacted by the general assembly,* That the sum of two thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of purchasing a library, philosophical apparatus and an organ for the Virginia institution for the education of the deaf and dumb and the blind; and that the same be paid, upon the warrant of the auditor of public accounts, to the president and visitors of said institution.

2. This act shall be in force from its passage.

CHAP. 145.—An ACT increasing the annuity of the institution for the education of the deaf and dumb and the blind, by the addition thereto of five thousand dollars, and appropriating twenty thousand dollars to erect a building at said institution, and to warm and light the same with steam and gas.

Passed February 24, 1853. 126

1. Be it enacted by the general assembly, that the annuity of the institution for the education of the deaf and dumb and the blind be and the same is hereby increased by the addition thereto of the sum

of five thousand dollars; which shall be paid in the manner prescribed by law in respect to the existing annuity of said institution.

2. The sum of twenty thousand dollars is hereby appropriated out of the treasury, to be paid on the orders of the visitors of the said institution; seven thousand dollars, part thereof, to be applied by said visitors to the construction of fixtures for warming the buildings of said institution with steam; five thousand dollars, another part thereof, to be applied to the construction of apparatus for lighting said buildings with gas; and eight thousand dollars, the residue thereof, to the erection of an additional building at said institution: one-half of said aggregate sum of twenty thousand dollars to be paid during the present fiscal year, and the remaining half of said sum to be paid during the next ensuing fiscal year.

3. This act shall be in force from its passage.

CHAP. 41.—An ACT appropriating ten thousand dollars for the purpose of supplying the Institution for the deaf and dumb and the blind with water.

Passed March 4, 1854. 30

1. Be it enacted by the general assembly, that the sum of ten thousand dollars be and is hereby appropriated for the purpose of enabling the board of visitors of the Institution for the deaf and dumb and the blind to provide said institution with an adequate and permanent supply of water, and that the same be paid on the orders of said board.

* * * * *

CHAP. 93.—An ACT making an appropriation to the deaf and dumb and the blind institution at Staunton.

[Passed March 13, 1856.] 80

1. Be it enacted by the general assembly, that there be and there is hereby appropriated out of the treasury of the commonwealth the sum of twelve thousand and eighty dollars and six cents, to be paid on the order of the board of visitors of the institution for the deaf and dumb and the blind, of which five thousand five hundred and eighty dollars and six cents shall be paid during the present, and the residue thereof during the next fiscal year, and to be applied by said board as follows: Three thousand dollars, part thereof,

in the purchase of an additional boiler and the erection of a suitable boiler-house, to complete the heating of the buildings of the said institution by steam; two thousand seven hundred and thirty-nine dollars and six cents, another part thereof, to meet the deficiency which has occurred in the support fund of the said institution during the two last fiscal years; one thousand dollars, another part thereof, in the purchase of a fire engine and the erection of an engine-house; fifteen hundred dollars, another part thereof, in addition to the sum already appropriated by a former act for the purchase of an organ; one thousand dollars, another part thereof, in fencing the grounds of said institution; and two thousand eight hundred and forty-one dollars, the residue thereof, to supply the deficiency on account of the chapel, steam and gas fund of the said institution.

2. This act shall be in force from the passage thereof.

CHAP. 12.—An ACT making an Appropriation to the Deaf and Dumb and Blind Institution.

Passed January 10, 1860. 106

1. Be it enacted by the general assembly, that the annuity of the Institution for the deaf and dumb and the blind be and the same is hereby increased, by the addition thereto of the sum of five thousand dollars; which shall be paid in the manner prescribed by law in respect to the existing annuity of said institution.

2. The sum of seven thousand dollars is hereby further appropriated out of the treasury, to be paid on the orders of the visitors of said institution; and to be applied by them to pay for the erection of a shop building at said institution, and to warm and light the same with steam and gas. 107

3. This act shall be in force from its passage.

International Exchanges.

No 1.—Preamble and resolutions relative to a national interchange of productions of art, science, industry and natural history. —[*Adopted March* 23, 1848.] 353

Whereas the legislature of Virginia regards with interests the noble design of a national interchange of productions of art, science, industry and natural history, projected by Mons. Alexandre Vatte-

mare, and patronized with such munificence by the French government, and is desirious of contributing to a work so important:

1. *Resolved by the general assembly,* That the spirit which has conceived this design is an admirable as the disinterested enthusiasm which has achieved it; and that this legislature, as a testimonial of its appreciation of the character and services of its distinguished author, hereby invite him to visit the halls of legislature during the session of the legislature, and hereby tender to him the appointment of agent of the state of Virginia, for conducting the exchange of such subjects as may be presented by Virginia to France.

2. *Resolved,* That the legislature has learned with gratitude that France, of whose prosperity we always hear with pleasure, and in whose misfortunes we always sympathize, has presented to Virginia, literary works of a rare, useful and costly character, for which it is incumbent to make some return even if inadequate.

3. *Resolved,* That the state librarian be instructed to forward to the agent of international exchanges such copies of the code and of the law reporters, of the journals and other legislative documents, or other works as may be spared without detriment to the library; he shall forward such reports of the moral, social and political statistics of Virginia as may tend to diffuse amongst other nations a correct knowledge of her institutions, her condition and her capacities; that he shall likewise forward any private donations intended for the department of international exchanges; and that he be required to report annually to the joint committee of the library.

Printing Treasury Notes.

CHAP. 11.—An ACT to authorize the issue of treasury notes.

Passed March 18, 1856. 18

1. Be it enacted by the general assembly, that the governor be and he is hereby authorized to cause to be prepared and signed, in order to borrow money thereon from time to time, as hereinafter provided, treasury notes for such sum or sums as he may be advised by the auditor of public accounts that the exigencies of the government require for purposes other than works of internal improvement: provided, that the amount of such notes outstanding shall not at any time exceed the limit hereinafter named.

2. The said treasury notes shall be made payable to the order of the person or persons to whom they are given in evidence of money borrowed, and shall also be payable at the treasury of the commonwealth not more than one year after their respective dates. From

which dates, until the dates at which they are severally payable and no longer, they shall bear such interest as shall be expressed on the face of the said notes. Which rate of interest upon each several issue of the said notes shall be fixed by the governor, with the advice of the auditor of public accounts; but shall in no case exceed the rate of six per centum per annum. The said notes shall be redeemed and paid at the treasury to the holders respectively, upon the warrant of the auditor of public accounts; and the said redemption and payment shall include the principal of each note, and the interest which may be due thereon at the time of payment. For this payment and redemption, at the times and place herein specified, the faith of the commonwealth of Virginia is hereby solemnly pledged.

* * * * *

9. The said treasury notes shall be prepared under the di- 19
rection of the governor, and shall be signed, on the part of the commonwealth, by the treasurer, and countersigned by the auditor of public accounts, from time to time, as they are delivered to the parties from whom money is borrowed, and to whose order they are made payable. And those officers respectively shall, as checks upon each other, and to secure the public safety, keep separate, full and accurate accounts of the number, date, denomination and amount of all the notes signed and countersigned by them respectively, and of the names of the persons to whose order the said notes are severally made payable. Which said amounts shall be carefully preserved and kept on file in their respective offices, and also similar accounts kept and preserved in the same manner of all the said notes redeemed, as the same shall be returned and canceled. The auditor of public accounts shall further account monthly for all notes delivered to him by the treasurer, to be countersigned for delivery. The said auditor is authorized, with the consent of the governor, to employ such additional temporary clerks as the duties enjoined on him hereby may render necessary: provided, that the expense of such clerks shall not exceed, in the aggregate, nine hundred dollars per annum.

* * * * *

12. A sum not exceeding five hundred dollars, to be paid out of any money in the treasury not otherwise appropriated, is hereby appropriated annually for three years, for defraying the expense of preparing, printing, engraving and signing the treasury notes hereby authorized, and other expenses incident thereto. The plate or plates for such engraving shall be carefully preserved, as the governor may direct, and shall be destroyed when the issue of the said notes shall cease.

* * * * *

[CODE OF VIRGINIA, 1849.]

Interest On Public Debt.

CHAPTER XLIV.

230

PUBLIC DEBT.

Of certificates of debt.

§ 1. If any of the old state certificates, which, by an act passed the nineteenth of January eighteen hundred and twenty-five, were required to be presented for redemption before the first day of September following, shall hereafter be produced, payment shall be made of the principal sum appearing due by such certificate, and interest thereon at the rate of six per centum per annum, to the day last mentioned. 1824-5, p. 29.

§ 2. Upon the new certificate for twenty-four thousand and thirty-nine dollars and seventeen cents, issued in lieu of the certificates mentioned in the said act, as held by the president and directors of the literary fund, interest shall continue to be paid annually at 231 the rate of six per centum per annum. Id.

§ 3. Upon the certificate for three hundred and nineteen thousand dollars, which, under an act passed the twenty-fourth of February eighteen hundred and thirty-two, was issued in favor of the said president and directors in lieu of three hundred and nineteen certificates for a thousand dollars each, purchased by them under an act passed the twenty-fourth of February eighteen hundred and sixteen, interest shall continue to be paid semi-annually on the first day of January and July, at the rate of seven per centum per annum, according to the act of the first day of February eighteen hundred and fourteen, under which the said money was borrowed. 1831-2, p. 13. 1815-16, p. 2, § 6. 1813-14, p. 27.

§ 4. Upon the certificates issued under the act passed the twentieth of February eighteen hundred and thirty-three, authorizing a subscription to the stock of the *Chesapeake* and *Ohio* canal company, amounting to two hundred and fifty thousand dollars, interest shall continue to be paid quarterly, at the rate of five per centum per annum. 1832-3, p. 97.

§ 5. Upon the certificates issued under the act passed the ninth of March eighteen hundred and thirty-nine, providing for subscriptions to the Exchange Bank, and Northwestern Bank of Virginia, amounting together to four hundred and fifty thousand one hundred and seven dollars, interest shall continue to be paid semi-annually, at the rate of six per centum per annum, according to the said act. 1839, p. 82

§ 6. The certificates before mentioned shall continue registered in the office in which the same are registered now, and all payments on account thereof shall be made upon the warrant of the first auditor.

p. 24, ch. 12. § 7. The certificates of debt now registered in the second auditor's office shall continue registered therein. All certificates for money borrowed hereafter by the board of public works shall be registered in the same office. In the book containing such registry, reference shall be made to the special act authorizing the loan.

§ 8. Every such certificate shall be signed by the treasurer and countersigned by the second auditor. All payments on account thereof shall be made upon the warrants of the second auditor.

CHAP. 97.—An ACT authorizing a subscription by the state of Virginia to the stock of the Chesapeake and Ohio canal company.

(Passed February 20th, 1833.)

1. *Be it enacted by the general assembly of Virginia,* That the treasurer of the commonwealth be, and he is hereby authorized and directed to subscribe, in the name and for the use of the commonwealth of Virginia, for two thousand five hundred shares of the capital stock of the Chesapeake and Ohio canal company, and to pay for the same in manner following, that is to say: the said treasurer is further authorized and directed to issue, in the name of the commonwealth, certificates of stock of the state, in sums of one hundred dollars each, bearing interest from the date thereof, at the rate of five per cent. per annum, payable quarterly, the principal sum whereof shall be irredeemable prior to the year one thousand eight hundred and fifty, to the amount of the par value of the said two thousand five hundred shares of canal stock; of which certificates he shall deliver to the treasurer or other proper officer or agent of the said company, on the first day of May next, or as soon thereafter as practicable, a sum equivalent, at their par value, 60 to that which the state of Maryland shall have on that day paid, or have been called upon to pay, on account of the like subscription of the said state to the capital stock of the said company, and the residue of the said certificates, the said treasurer shall, in like manner, pay over to the treasurer or other proper agent of the said company, as the other holders of the stock thereof shall be required to pay the several remaining instalments upon the stock subscribed by them respectively to the capital of the said company, until the whole amount thereof be issued and paid: *Provided,* That prior to the first day of May, one thousand eight hundred and thirty-three, the president and directors of the said company shall certify to the said treasurer, their agreement, under the corporate seal of the said company, to accept and receive in payment as aforesaid, the said certificates of the stock of the state, at par value, in satisfaction

of the subscription authorized and directed as aforesaid: *And provided, moreover,* That the said president and directors shall agree to appropriate a sum not exceeding in amount eighty thousand dollars, towards the construction of suitable locks to enable the river boats to reach the canal, and to return from it to the river again, at or near each of the following points on the river Potomac, to wit: the mouth of Goose creek and the base of the Ketocton mountain, in the county of Loudoun, the ferry across the Potomac at Shepherdstown, in the county of Jefferson, and the ferry across the same river at Light's, or at the mouth of the Opequon, in the county of Berkeley, and to cause the said locks to be constructed by the first of November, one thousand eight hundred and thirty-five, and sooner if practicable.

2. *Be it further enacted,* That the treasurer be, and he hereby is authorized and required, if the certificates directed by this act to be delivered to the treasurer or other proper agent of the Chesapeake and Ohio canal company, can be sold at a premium, or above their par value, to sell the same for the best price to be had, after advertising the time and place of sale for six weeks, in such newspapers as he may think expedient, and pay to the treasurer or other proper officer of said company, so much money as may be due and payable on account of the subscription of the state to the stock of said company, according to the provisions of this act; and pay the balance into the treasury to the credit of the fund for internal improvement.

3. This act shall commence and be in force from the passing thereof.

CHAP. 97.—An ACT to provide for the appointment of a proxy to represent the state in the Chesapeake and Ohio canal company, and for other purposes.

(Passed March 8, 1834.) 110

1. *Be it enacted by the general assembly,* That the stock held by the state in the Chesapeake and Ohio canal company, under the provisions of an act passed the twentieth of February, eighteen hundred and thirty-three, entitled, "an act authorizing a subscription by the state of Virginia to the stock of the Chesapeake and Ohio canal company," together with the dividends and other income which shall hereafter accrue thereon, shall be, and they are hereby transferred to, and vested in the president and directors of the board of public works, as a part of the fund for internal improvement: *Provided, however,* That the said stock, its dividends and other in-

come, shall be subject to such future disposition as may by law be directed for the payment of the interest and redemption of the principal of the sums borrowed under the act aforesaid.

2. *Be it further enacted,* That the appointment of proxy to represent the state in all meetings of the stockholders of the Chesapeake and Ohio canal company, shall henceforth be made by the board of public works, until otherwise provided by law. And it shall be the duty of the said proxy, if in his power, to cause to be transmitted to the said board copies of the annual and other reports of the president and directors of said company, the proceedings of the stockholders, and other interesting documents relating to the said improvement.

CHAP. 12.—An ACT providing for the negotiation of loans for purposes of internal improvement.

(Passed April 9, 1838.) 24

1. *Be it enacted by the general assembly,* That all loans hereafter authorized by law for the payment of subscriptions on behalf of the commonwealth to the capital of joint stock companies incorporated for purposes of internal improvement, or for defraying the expense of any work of internal improvement in which the state is or may be interested, as well as all such loans heretofore authorized, shall be negotiated according to the provisions of this act, except so far as may be otherwise specially provided by the acts authorizing the loans.

2. The board of public works, in effecting such loans, shall borrow upon the credit of the commonwealth, at the lowest rate of interest at which the necessary amount can be obtained, not exceeding in any case five per centum per annum. Upon the payment of the money so borrowed into the treasury, which shall be done upon the warrant of the second auditor, the treasurer shall issue a certificate or certificates of loan for the amount thereof, purporting that the commonwealth of Virginia owes to the lender, his heirs, executors, administrators and assigns, the principal sum so borrowed, together with the interest at the rate agreed on, that the interest is payable semi-annually at the treasury of the commonwealth, and that such certificate or certificates were issued under authority of the special act authorizing such loans. Each certificate shall be signed by the treasurer, and countersigned by the second auditor, and be registered in a book to be kept for that purpose by the second auditor, and shall be transferrable on the books of his office in person or by attorney. The semi-annual interest on such certi-

ficate shall be paid on his warrant, and upon the transfer of the whole or any part thereof, shall be delivered up and cancelled, and a new certificate or certificates equal to its whole amount, shall be issued and registered in manner aforesaid. All loans negotiated in conformity to this act shall be irredeemable for twenty years, but shall afterwards be redeemed at the pleasure of the general assembly.

3. For the payment of the interest, and the final redemption of the principal of any sum to be borrowed in conformity to this act, the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other nett income which may accrue therefrom to the commonwealth, or to the fund for internal improvement, shall be, and the same are hereby appropriated and pledged; and in like manner the nett income and other profits which may so accrue from works in which the state is interested, other than those of joint stock companies, and on which the money borrowed is to be expended, shall be and the same are likewise hereby appropriated and pledged for the payment of the interest and redemption of the principal of the money so borrowed: and if the stock aforesaid and the said dividends, nett profits and other income shall be inadequate to the payment of the said semi-annual interest, and the final redemption of the principal, of the respective loans, the general assembly pledges itself to provide other and sufficient funds, and for that purpose to levy, if necessary, an adequate tax upon any or all subjects liable to taxation under the constitution. Until such other sufficient funds shall be provided, so much of the income of the fund for internal improvement, not otherwise specially appropriated, as may be necessary to supply the deficiency, is hereby pledged for such purpose; and if at any time the dividends and other income arising from the stock or work as aforesaid, together with the income of the fund for internal improvement, shall be insufficient to pay the interest due upon the loan when demanded, the auditor of public accounts shall, upon the application of the board of public works, issue his warrant upon the treasury, directing the payment of such interest out of any moneys therein not otherwise appropriated. And in case of the inability of the treasury at any time to discharge such warrants, the board of public works shall be and they are hereby authorized to borrow the necessary amount from the banks of this state, at a rate of interest not exceeding six per centum per annum, on the credit of the commonwealth, to be repaid in such manner as the general assembly may by law direct.

4. The surplus dividends and other income arising from any stock or work as aforesaid, and remaining after the payment of the interest due upon the certificates issued for loans applied to such stock or work, shall from time to time be applied by the board of

public works to the purchase of such certificates, if to be procured on satisfactory terms; and if not, then of any other certificates of state debt, or any other public debt or other stock which can be so purchased, which shall be held as a fund for the payment of the interest and redemption of the principal of the loans obtained for the payment of such stock or such work, and the interest accruing therefrom shall also from time to time be invested and held in like manner: and the said certificates of debt so purchased, together with the stock pledged, shall be disposed of in such manner as the general assembly may direct: *Provided*, That the certificates so purchased on account of any particular loan, or such part thereof as may be necessary, shall from time to time be sold by the board of public works to reimburse the fund for internal improvement for all payments of interest made out of the income for that fund on account of such loan, by virtue of this act.

5. The board of public works shall be and they are hereby fully authorized and empowered to procure any or all of the loans authorized by law, either in the United States or in Europe, as they may deem most advantageous to the public interest, and for that purpose to appoint, if they see fit, one or more agents, with the necessary powers, and to allow him or them such compensation as they may deem reasonable. In the event of a loan or loans being effected in Europe, the said board may provide for the payment of the interest on the same semi-annually, in London or elsewhere, and may stipulate for the payment by the lenders of the amount of such loans in England or elsewhere, conforming the certificates to be issued to the terms of the loans. They shall also be empowered generally to do and execute all such acts and writings as may be necessary to complete the said loans, and to cause the prompt payment of the amount thereof into the public treasury.

6. *Be it further enacted*, That the person or persons, body or bodies politic or corporate, in whose names any of the certificates of the public debt of this commonwealth shall be issued, in conformity to the provisions of this act, shall be deemed as to the commonwealth the owner of the said stock until a transfer shall be duly made on the books of the second auditor, or other proper officer, to some other person or body politic or corporate. And if the person or body politic or corporate, in whose name the said certificate shall stand, shall for valuable consideration, and *bona fide*, sell and deliver the said stock to any other person, body politic or corporate, accompanied by a power of attorney duly executed and authenticated, such sale and delivery shall vest in the transferree all the title of the transferrer, either in law or equity, to the said certificate; and upon the application of the attorney, and delivery of the certificate of debt therein assigned to the second auditor, or other proper officer of the commonwealth, it shall be his duty to

transfer the same, and issue a new certificate or certificates therefor in the name of the transferree: *Provided, however,* That all payments made by the commonwealth prior to such transfer, on account of the interest on such certificate, shall discharge the commonwealth from all claim on account of the interest so paid.

7. If any person, in whose name the said stock shall stand on the books of the commonwealth, shall die without having made a sale or transfer thereof, and his executor or administrator shall produce to the second auditor, or other proper officer, the original certificate or certificates of the said stock, and duly authenticated evidence that he is, by the laws of the country in which such holder may have died, the lawful executor or administrator of such holder, the second auditor shall, on his application in person, or by power of attorney duly authenticated, transfer the said stock to the said executor or administrator, or to such person as he may direct.

8. Whenever any certificate of stock created in pursuance of the provisions of this act, or by authority of any previous act, for purposes of internal improvement, shall have been lost by the holder or holders thereof, it shall and may be lawful for the second auditor and treasurer to renew the same in the manner mentioned in this act: *Provided, however,* That such certificate shall not be renewed until the party applying for the same shall produce satisfactory proof of his having advertised the same for at least three months previously to his application; shall execute a bond with sufficient security, to the treasurer and his successors, conditioned to indemnify the commonwealth against any loss in consequence of the renewal of such certificate, and shall moreover file an affidavit, setting forth the time, place and circumstances of the loss aforesaid.

9. It shall be lawful for any bank incorporated in this commonwealth, through its proper officers, and by the authority, and under the direction of the said board, to act as the agent of the board of public works in negotiating, obtaining or contracting for any loan which may be so authorized, and to do all necessary acts for the transfer of the proceeds of such loan into the public treasury, in specie or other satisfactory funds, by bills of exchange or otherwise, and to make on behalf of the said board the necessary arrangements for the punctual and regular payment of the interest on such loan, according to the terms of the contract therefor.

10. And whereas, should large sums be borrowed, of which a 27
considerable part would necessarily lie idle until required for the purposes for which the loans may be respectively designed, whereby a great loss of interest would be incurred, the board of public works may deposite the same with the banks of this commonwealth, at such rate of interest as may be agreed upon by the board and said banks. The said board may also lend such part thereof to joint stock companies, as the said companies may be entitled by law

to receive from them at subsequent periods, on such conditions and security as the board may deem expedient.

11. This act shall be in force from its passage.

CHAP. 86.—An ACT to provide for further subscriptions on the part of the state to the Exchange bank and Northwestern bank of Virginia.

(Passed March 19, 1839.) 52

1. *Be it enacted by the general assembly,* That the treasurer of this commonwealth shall be, and he is hereby required to subscribe for four thousand five hundred shares of stock in the Exchange bank of Virginia on behalf of the commonwealth, and shall pay up, at par value, the entire amount of so many shares so subscribed for, as shall be equal in number to the shares fully paid up by subscribers other than the state, and shall also pay on the residue of the additional shares so subscribed for by him, as much as may, from time to time, be paid on a like number of shares by individuals other than the state, not exceeding, however, one hundred dollars per share; and for the purpose of paying such subscription, it shall be lawful for the treasurer, from time to time, to borrow upon the credit of the state, the amount required upon each payment so to be made, and to issue a certificate or certificates of loan to the lender for the amounts so borrowed, stating therein that the commonwealth owes the principal sums specified in such certificate or certificates with legal interest payable at the treasury semi-annually, and redeemable after twenty years, in whole or in part, at the pleasure of the commonwealth. Such certificates shall be made and signed by the treasurer of the commonwealth, and countersigned by the auditor of public accounts, and shall be transferrable in his office in the manner prescribed by law, for the transfer of certificates of loan issued for the purposes of internal im- 53
provement. And the general assembly hereby pledges itself to provide adequate funds for the redemption of the principal sums hereby authorized to be borrowed, and for the payment of the interest accruing thereon, at the time it shall become due: *Provided,* That the commonwealth shall receive upon the stock which may be hereafter subscribed in its name, such proportion of the dividends afterwards declared, as the period of time between the subscription and the making of the dividends, shall bear to the term of six months.

2. *Be it further enacted,* That to enable the treasurer of the

commonwealth to pay up the state's subscription to the Northwestern bank of Virginia, heretofore made, he is hereby authorized to borrow upon the credit of the state, the amount required to complete the same, and to issue a certificate or certificates of loan to the lender for the amount so borrowed, stating therein that the commonwealth owes the principal sums specified in such certificate or certificates, with legal interest, payable at the treasury of the commonwealth and redeemable after twenty years, in whole or in part, at the pleasure of the commonwealth; such certificate shall be made and signed, countersigned and transferrable in the same manner, and upon the same terms and conditions in all respects, as is herein provided for the payment of the additional stock to the Exchange bank of Virginia; and the general assembly doth hereby pledge itself to provide adequate funds for the redemption of the principal sums authorized to be borrowed by this section, and for the payment of the interest accruing thereon, at the time it shall become due.

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[CODE OF VIRGINIA, 1860.]

CHAPTER XLIV.

PUBLIC DEBT.

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Sinking fund.

1. There shall be and is hereby appropriated annually from the public treasury, commencing with the year one thousand eight hundred and fifty-three, out of the accruing revenues of the commonwealth the sum of eight hundred and thirty-eight thousand and twenty-eight dollars and sixty-eight cents, that being seven per centum on eleven millions nine hundred and seventy-one thousand eight hundred and thirty-eight dollars thirty cents, the ascertained debt of the commonwealth on the first day of January 1852. The sum so set apart shall be called "the sinking fund," and shall be applied as follows: So much of said fund as arises from the seven per centum on the debt existing on the first day of January eighteen hundred and fifty-two, together with the proceeds of the sales of bank stocks, shall be applied to the redemption of such part of said debt as may be redeemable; and if no part thereof be redeemable, the said residue shall then be devoted to the pur- 260
chase at their market value, and cancellation of any outstanding bonds or certificates of said debt; and so much of said fund as arises from one per centum on the debt created since the first

1852-3, p. 2 c. 17, § 1.
1855-6, p. 2 c. 14, § 1, 2.
1857-8, p. 9 c. 9, § 1, 2.

day of January eighteen hundred and fifty-two, shall be invested in the outstanding bonds or certificates of the said debt, at their market value, and held by said commissioners for the benefit of said fund. But if no bonds or certificates of either issue can be purchased with fund applicable thereto, the same shall be invested in the stocks or bonds of other states, or of the United States, as shall be deemed most advantageous by the said commissioners. In purchasing such bonds or certificates of debt, those which are redeemable at any early date shall be bought in preference to those which are redeemable at a later date: provided they can be bought at the same price.

55-6, p. 22, 15, § 4.
57-8, p. 10, c. 11, 4.

Future debts provided for.

52-3, p. 29, 17, § 2.

2. Whenever after the said first day of January eighteen hundred and fifty-two, a debt shall be contracted by the commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per centum the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner herein before directed.

* * * * *

Redemption of debt prior to 1852; interest, how and when paid.

§ 4.

4. It shall be the duty of the auditor of public accounts, upon the receipt of statements of the amount of the public debt herein after required to be furnished him by the second auditor, to pay into the treasury of the commonwealth, on or before the first day of January eighteen hundred and fifty-three, and annually thereafter, out of the accruing revenues, such portion of the sum set apart for the sinking fund provided by this act, as shall be applied to the redemption of the state debt existing on the first of January eighteen hundred and fifty-two. He shall, in like manner, pay into the treasury, to the credit of the said fund, on or before the first day of January eighteen hundred and fifty-three, and first day of July eighteen hundred and fifty-three, and on the same days of each successive year, the amount of the semiannual interest on said debt which shall be due and payable at each respective date.

Subsequent debts provided for.

§ 5.

5. It shall also be his duty, in like manner, to pay into the treasury, on or before the first day of January eighteen hundred and fifty-three, and annually for thirty-three years thereafter, out of the accruing revenues of the state, to the credit of 261 the sinking fund, one per centum on the aggregate amount

of debt contracted by the state between the first day of January eighteen hundred and fifty-two and said day; and also to pay, in like manner, one per centum annually for thirty-four years on the aggregate amount of debt which shall be contracted in each or any subsequent year. He shall pay, in like manner, into the treasury, to the credit of the said fund, on or before the first day of January and first day of July eighteen hundred and fifty-three, and on the same days in each successive year thereafter, the amount of the semiannual interest which shall be due and payable on the aggregate amount of such additional debts at those days respectively: provided, however, that the amount of the interest payable on that part of the debt created by the issue of coupon bonds, shall be set apart and paid into the treasury to the credit of said fund, thirty days in advance of the respective semiannual periods on which it shall be come due.

* * * * *

Treasurer's duty.

15. The treasurer shall receive and pay the moneys be- 262 1852-3, p. 30.
longing to the sinking fund as herein required. He shall keep a distinct account of the same, and report to each session of the legislature the aggregate receipts and disbursements on account thereof up to the first of October or first of January, as the case may be, preceding each session of the legislature, and the balance remaining unexpended at such time.

Transfers of evidences of debts between auditors.

16. In order to collect in one office the accounts of the debt of the commonwealth and the transactions of all business connected therewith, it is hereby provided that the existing certificates of debt of the state, registered in the office of the auditor of public accounts, and amounting to four hundred and fifty thousand one hundred and seven dollars, being part and remainder of the debt 263
created by authority of an act to provide for the further subscriptions on the part of the state to the Exchange Bank and Northwestern Bank of Virginia, passed March the nineteenth, eighteen hundred and thirty-nine, shall, on and after the twentieth of December next, be registered and transferred to the second auditor's office, and the semiannual interest accruing thereon shall be paid at the treasury out of the sinking fund, on his warrants, on and after the first day of January eighteen hundred and fifty-three, until the said certificates shall be redeemed. The new certificates issued on transfers of said stock shall be countersigned by him; and all other duties which are imposed on the auditor of public

Id. § 16. See Acts 1839, p. 52.

accounts, as well as any rights conferred in relation to said certificates of debt, shall, on and after the above day, be transferred to and devolve upon the second auditor, in whose office all the books and papers connected with said stock, which shall be necessary for the proper performance of said duties, shall be delivered to said second auditor: provided, that the amount of the semiannual installment of interest of the first of July eighteen hundred and fifty-two, and the unclaimed interest on said debt, which shall remain due and unpaid on the first of January eighteen hundred and fifty-three, shall be set apart and paid to the persons entitled thereto by the auditor of public accounts, in the manner, and out of the appropriations made by the laws now existing, and not out of the sinking fund herein provided.

Interest on revolutionary debt paid.

17. 17. The accruing interest on the six per centum revolutionary debt of twenty-four thousand and thirty-nine dollars and seventeen cents, and the seven per centum war debt of eighteen hundred and fourteen, of three hundred and nineteen thousand dollars, belonging to the literary fund, shall continue to be paid, when it becomes due, as heretofore, out of the public revenue, upon the warrant of the auditor of public accounts.

Interest on internal improvement debt.

8. 18. The semiannual installment of interest payable the first day of July eighteen hundred and fifty-two, on the aggregate internal improvement debt, registered at that date in the second auditor's office, shall be provided for and paid, as heretofore directed by law, on the warrant of the second auditor, and should that be insufficient, the deficiency to be paid out of the public treasury; and any portion of the said installment or previous installments which shall remain unclaimed and unpaid on the first day of January eighteen hundred and fifty-three, shall be paid in the same manner, from time to time, as it shall be applied for.

32, § 19. 19. The semiannual interest becoming due at the same time, on that part of the state debt of eighteen hundred and thirty-nine, registered in the office of the auditor of public accounts, shall, together with the unclaimed interest due thereon, be paid out of the public treasury on the warrant of said auditor: provided, that no part of the interest on the stock of either description above referred to shall be paid out of the sinking fund.

CONSTITUTION OF VIRGINIA.

(Adopted August 1st, 1851.) 34

ARTICLE IV.

* * * * *

Taxation and Finance.

29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent, of the state debt existing 47
on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the Sinking fund, and shall be applied to the payment of the interest of the state debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this commonwealth, or of the United States, or of some of the states of this Union, and applied to the payment of the state debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent, the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The general assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion.

CHAP. 17.—An ACT establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.

Passed March 26, 1853. 29

1. Be it enacted by the general assembly, that there shall be and is hereby appropriated annually from the public treasury, commencing with the year one thousand eight hundred and fifty-three, out of the accruing revenues of the commonwealth, the sum of eight hundred and thirty-eight thousand and twenty-eight dollars and sixty-eight cents, that sum being seven per centum on eleven million nine hundred and seventy-one thousand eight hundred and thirty-eight dollars

thirty cents, the ascertained debt of the commonwealth on the first day of January one thousand eight hundred and fifty-two. The sum so set apart shall be called the "Sinking Fund," and shall be applied to the payment of the interest on the state debt and the principal of such part as may be redeemable; and if no part of said debt be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of the commonwealth, or of the United States, or of some of the states of the Union, and applied to the payment of said debt as it shall become redeemable.

2. Whenever after the said first day of January eighteen hundred and fifty-two, a debt shall be contracted by the commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed.

3. If at any time the legislature shall direct a sale of the stocks held by the commonwealth in internal improvement and other companies, the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner. The sinking fund, and its accruing interest, shall not be otherwise appropriated than is herein directed, except in time of war, insurrection and invasion.

4. It shall be the duty of the auditor of public accounts, upon the receipt of statements of the amount of the public debt hereinafter required to be furnished him by the second auditor, to pay into the treasury of the commonwealth, on or before the first day of January eighteen hundred and fifty-three, and annually thereafter, out of the accruing revenues, such portion of the sum set apart for the sinking fund provided by this act, as shall be applied to the redemption of the state debt existing on the first of January eighteen hundred and fifty-two. He shall, in like manner, pay into the treasury, to the credit of the said, fund, on or before the first day of January eighteen hundred and fifty-three, and first day of July eighteen hundred and fifty-three, and on the same days of each successive year, the amount of the semi-annual interest on said debt which shall be due and payable at each respective date.

5. It shall also be his duty, in like manner, to pay into the treasury, on or before the first day of January eighteen hundred and fifty-three, and annually for thirty-three years thereafter, out of the accruing revenues of the state, to the credit of the sinking fund, one per centum on the aggregate amount of debt contracted by the state between the first day of January eighteen hundred and fifty-two and said day; and also to pay, in like manner, one per centum annually for thirty-four years on the aggregate amount of debt which shall be contracted in each or

any subsequent year. He shall pay, in like manner, into the treasury, to the credit of the said fund, on or before the first day of January and first day of July eighteen hundred and fifty-three, and on the same days in each successive year thereafter, the amount of the semi-annual interest which shall be due and payable on the aggregate amount of such additional debts at those days respectively: provided however, that the amount of the interest payable on that part of the debt created by the issue of coupon bonds, shall be set apart and paid into the treasury to the credit of said fund, thirty days in advance of the respective semi-annual periods on which it shall become due.

6. For the purpose of managing, preserving and applying the sinking fund created by this act, the auditor of public accounts, register and secretary of the commonwealth, for the time being, are hereby constituted a corporate body under the style of "The Commissioners of the Sinking Fund."

7. It shall be their duty to apply the moneys appropriated out of the said fund to the payment of the interest and redemption of the principal of the state debt at the respective periods prescribed in the fourth and fifth sections of this act for the payment of the sinking fund into the treasury by the auditor of public accounts, and to invest any part of the appropriations for the latter purpose, which cannot be so applied to the purchase of public stock, agreeably to the provisions of the second and third sections of this act.

8. The said commissioners, at their discretion, may apply that part of the sinking fund set apart for the redemption of the principal of the debt, to the payment in the first place of such bonds and certificates as the state is bound to redeem at fixed periods, provided such bonds and certificates shall be redeemable by the state before the arrival of such fixed periods.

9. All the certificates of debt which shall be redeemed under this act, shall be canceled by the second auditor, and delivered by him to the treasurer of the commonwealth at the time of payment therefor, who shall carefully preserve the same in his office.

10. At each period for the payment of the installment of interest and the redemption of any part of the principal of the debt, the said commissioners shall, by a special order entered on the minutes of their proceedings, authorize the second auditor to issue his warrants on the treasury, from time to time, to the persons entitled thereto, in the same manner as they have heretofore been paid in his office.

11. They shall cause to be published in the Enquirer and Whig of the city of Richmond, and in the Union and National Intelligencer of Washington city, a list of the bonds or certificates intended to be redeemed from time to time, at least three months previously to the time fixed upon by them for that purpose, showing the date, number and amount of each, and calling for the surrender thereof on or before a specified day, and stating that the interest thereon will cease on and after that day.

12. Any two of said commissioners may form a board for the transaction of business. They may appoint a secretary, and shall keep a correct journal of their proceedings, of which they shall make 31
a report to each regular session of the legislature. They shall hold their meetings in the second auditor's office, in which their books and papers shall be deposited for safe keeping.

13. It shall be the duty of the second auditor to prepare the necessary statements, showing the amount of the semi-annual interest payable on the public debt at each successive period, and the amount of the principal of the debt proposed to be redeemed at each or either of them, and to furnish the same to the commissioners of the sinking fund, by whom they shall, if approved, be certified to the auditor of public accounts for his government. He shall also prepare and deliver to the commissioners of the sinking fund, lists in detail of such bonds or certificates of state debt as they shall from time to time designate, for redemption, and furnish them with such other statements and information as they may at any time require of him. He shall keep the accounts of the sinking fund with the treasury in such manner as to show distinctly at all times the amount of the transactions, on account of each appropriate head of receipts and expenditures, and shall report the same to each session of the legislature.

14. All moneys belonging to the sinking fund shall be paid into the treasury on the warrant of the second auditor, and shall be paid out in like manner when authorized by the commission of said fund.

15. The treasurer shall receive and pay the moneys belonging to the sinking fund as herein required. He shall keep a distinct account of the same, and report to each session of the legislature the aggregate receipts and disbursements on account thereof up to the first of October or first of January, as the case may be, preceding each session of the legislature, and the balance remaining unexpended at such time.

16. In order to collect in one office the accounts of the debt of the commonwealth and the transaction of all business connected therewith, it is hereby provided that the existing certificates of debt of the state, registered in the office of the auditor of public accounts, and amounting to four hundred and fifty thousand one hundred and seven dollars, being part and remainder of the debt created by authority of an act to provide for the further subscriptions on the part of the state to the Exchange Bank and Northwestern Bank of Virginia, passed March the nineteenth, eighteen hundred and thirty-nine, shall, on and after the twentieth of December next, be registered and transferred to the second auditor's office, and the semi-annual interest accruing thereon shall be paid at the treasury out of the sinking fund, on his warrants, on and after the first day of January eighteen hundred and fifty-three, until the said certificates shall be redeemed. The new certificates issued on transfers of said stock shall be countersigned by him; and all other duties which are imposed on the auditor of public accounts, as well as

any rights conferred in relation to said certificates of debt, shall, on and after the above day, be transferred to and devolve upon the second auditor, in whose office all the books and papers connected with said stock, which shall be necessary for the proper performance of said duties, shall be delivered to said second auditor: provided, that the amount of the semi-annual installment of interest of the first of July eighteen hundred and fifty-two, and the unclaimed interest on said debt, which shall remain due and unpaid on the first of January eighteen hundred and fifty-three, shall be set apart and paid to the persons entitled thereto by the auditor of public accounts, in the manner, and out of the appropriations made by the laws now existing, and not out of the sinking fund herein provided. t

17. The accruing interest on the six per cent. revolutionary debt of twenty-four thousand and thirty-nine dollars and seventeen cents, and the seven per cent, war debt of eighteen hundred and fourteen, of three hundred and nineteen thousand dollars, belonging to the Literary fund, shall continue to be paid, when it becomes due, as heretofore, out of the public revenue, upon the warrant of the auditor of public accounts.

18. The semi-annual installment of interest payable the first day of July eighteen hundred and fifty-two, on the aggregate internal improvement debt, registered at that date in the second auditor's office, shall be provided for and paid, as heretofore directed by 32
law, on the warrant of the second auditor, and should that be insufficient, the deficiency to be paid out of the public treasury; and any portion of the said installment or previous installments which shall remain unclaimed and unpaid on the first day of January eighteen hundred and fifty-three, shall be paid in the same manner, from time to time, as it shall be applied for.

19. The semi-annual interest becoming due at the same time, on that part of the state debt ofeighteen hundred and thirty-nine, registered in the office of the auditor of public accounts, shall, together with the unclaimed interest due thereon, be paid out of the public treasury on the warrant of said auditor: provided, that no part of the interest on the stock of either description above referred to shall be paid out of the sinking fund.

20. It shall be the duty of the Board of public works to cause to be paid into the treasury, to the credit of the commonwealth, on the first day of January and first day of July one thousand eight hundred and fifty-three, or within thirty days after such dates, and semi-annually thereafter, the net surplus revenue of the Fund for internal improvement during each half year preceding those days respectively, after deducting the fixed and incidental charges and special appropriations made by law on the revenue of said fund: provided, however, that nothing in this act is intended to discharge the said board from the obligation to pay the future semi-annual installments of the

interest on the certificates of the internal improvement debt owned and held by the Literary fund, as they shall hereafter become payable on and after the said first day of January eighteen hundred and fifty-three; but said interest shall be duly paid or set apart as a charge on said revenue before such surplus shall be ascertained and paid over as herein directed.

21. This act shall be in force from and after its passage.

See also Acts of Assembly referred to on plaintiff's and defendant's Joint Exhibit A-1.

Sinking Fund.

See Section 29, Constitution of Virginia, 1851,
Under heading interest on public debt, supra.

See also Chap. 17, Act of March 26, 1853,
printed under title of interest on public debt, supra.

Literary Fund.

CHAP. VIII.

An Act to Provide for the Education of the Poor.

8

[Passed February 12, 1811.]

1. *Be it enacted by the General Assembly,* That all sums of money which have accrued, or may hereafter accrue to the literary fund established by an act, entitled an act, to appropriate certain escheats, penalties, confiscations and forfeitures to the encouragement of learning, shall be, and the same are hereby vested in the following persons, to wit: The governor, lieutenant governor, treasurer, attorney general and president of the court of appeals of this commonwealth for the time being, and they and their successors are hereby constituted a body politic and corporate under the denomination of the president and directors of the literary fund, with power to sue and be sued, plead and be impleaded, and to hold lands and tenements, goods and chattels, and the same to sell, dispose of or im-

prove for the purposes hereafter mentioned. And the said commissioners, or any three of them shall have power to constitute a board for the transacting of all buisness relative to the said fund, of which board, when present, the governor shall be president, and they shall have power to appoint a clerk without their own body, and such other officers as they may deem necessary, and 9 to make such rules and regulations for the better ordering of their proceedings as to them may seem meet; *Provided* they be not inconsistent with the constitution and laws of this commonwealth. And the said president and directors shall report to the general assembly once in every year the state of the funds committed to their charge, with such recommendations with regard to the improvement thereof, as to them shall seem advisable.

2. *And be it further enacted*, That in further aid of the said fund, the said president and directors are hereby empowered to raise annually for a term of years not exceeding seven, by lottery, any sum not exceeding thirty thousand dollars. In recovering money due for tickets in said lottery, the said president and directors may have remedy by motion against the purchasers thereof, and the agents and their securities who may be appointed to sell the same: *Provided moreover*, that it shall be lawful for the said president and directors to conduct all the operations of such lottery in person or by commissioners or agents by them appointed for that purpose, or if it be deemed more advisable, to contract for the drawing of the said lottery, with any undertaker or undertakers for such share of the profit thereof as to them may appear reasonable, reserving to the fund which it is designed to aid, or not, at their discretion, a greater or less interest in such lottery.

3. And for the more speedy and certain collection of the literary fund throughout the commonwealth, the said president and directors are authorised and required to appoint in each county and corporation therein an attorney or agent for the collection of the funds of that county or corporation, who shall act without any fee or emolument, and whose duty it shall be to report to the president and directors, from time to time, such portion of the said fund as any officer appointed to collect the same may have collected and failed to pay into the public treasury, or such portion thereof as may be uncollected in the hands of any person, and to authorise proper actions to be instituted for the recovery thereof in the name of the said president and directors, the costs of which shall be defrayed by the said president and directors out of the literary fund: Provided, that nothing in this act shall be construed to prevent the sheriffs of the respective counties from collecting such fines and other sums of money as they are at present by law authorised and required to collect and account for.

4. *And be it further enacted*, That as soon as a sufficient fund shall be provided for the purpose, it shall be the duty of the directors thereof to provide a school or schools for the education of the poor in each and every county of the commonwealth.

5. And whereas by an act, entitled an act to appropriate certain escheats, penalties, confiscations and forfeitures to the encouragement of learning, it is provided, that the literary fund herein mentioned shall be appropriated to the sole benefit of schools to be kept in each and every county in this commonwealth, an object equally humane, just and necessary, involving alike the interests of humanity and the preservation of the constitution, laws and liberty of the good people of this commonwealth; the present general assembly solemnly protest against any other application of the said funds by any succeeding general assembly to any other object than the education of the poor.

6. This act shall commence and be in force from the passing thereof.

[CODE OF VIRGINIA, 1849.]

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.

Of what it consists and its objects. 366

1. 82, ch. 10. 1. 29, ch. 8. § 1. All money, stocks, or other property, which now or hereafter may belong to the literary fund, shall be devoted to the promotion of learning.

1. 82, § 1. 1. 8, ch. 8. 1. 31, ch. 26. § 2. To the literary fund shall belong whatever shall accrue to the state from escheats, forfeitures, or fines, (except militia fines,) from the estate of a decedent of which there is no other distributee, or from any other property as derelict and having no other owner; and also whatever shall be received from the *United States*, on account of payments by this state to officers of the Revolution, for half-pay, or commutation thereof; and whatever may arise from lands for taxes thereon, for the year eighteen hundred and thirty-one, or any year prior thereto.

1. 13, ch. § 3. The clerk of the circuit court of each county west of the Alleghany mountains, shall annually, before the first day of December, transmit to the first auditor an abstract of all orders of such court, for the sale of land by the commissioners of forfeited and delinquent lands, or for the confirmation of such sales, or for the payment

of the proceeds of such sales into the treasury. Such abstracts shall shew the name of each purchaser at any such sale, the 367 amount of money in the commissioners' hands, deducting the commissions allowed by the court, and the expenses of sale, and also whether the said commissioners have made reports of their proceedings according to law. Any clerk failing to comply with this section shall forfeit six hundred dollars.

See post, ch. § 1, 2, 3, and to those sec

CHAP. 26.—An ACT appropriating the entire capitation tax to the purposes of education in primary and free schools.

Passed March 25, 1853. 43

1. Be it enacted by the general assembly, That the auditor of public accounts shall annually, on the first day of January, upon the order of the second auditor, set apart and pay into the treasury, to the credit of the Literary fund, for the purposes of education in primary and free schools, the amount of the capitation tax for the preceding year, after deducting therefrom the commissions of sheriffs and collectors, and the amount of insolvent returns on account of the capitation tax allowed during the preceding year.

2. The amount of said tax for the year eighteen hundred and fifty-two, after deducting the commissions of sheriffs and collectors, shall be set apart and paid as aforesaid immediately after the passage of this act.

3. The second auditor shall cause the amount received during the present year to be apportioned and applied to the purposes of education in primary and free schools, as far as practicable, as if it had been received on the first day of January last and after the first day of January next, and annually thereafter, the amounts received shall be apportioned amongst the several counties, and those cities and towns which have corporation courts, in the same manner as the appropriations from the Literary fund for the same purposes are now or may be hereafter made, and shall be paid and applied as is now or may be hereafter prescribed by law.

4. This act shall be in force from its passage.

See also title "Payments to School Commissioners," Supra.

Virginia Military Institute. 17

CHAP. 20—An ACT amending and reducing into one the several acts concerning the re-organization of the Lexington arsenal and the establishment therewith of a military school at Washington college.

Passed March 29, 1839.

Whereas it is represented to the general assembly, that the state arsenal situated near the town of Lexington, in the county of Rockbridge, can be advantageously converted into a public military school without endangering the public arms, or other property, thereto belonging, and without imposing any additional expense upon the commonwealth:

1. *Be it therefore enacted*, That the sum of six thousand dollars, be and the same is hereby appropriated annually from the public treasury for the establishment and support of a military school at the said arsenal, upon the plan hereinafter provided for, which said school shall be called the "Virginia Military Institute."

2. *Be it further enacted*, That the governor of this commonwealth shall annually appoint nine fit and proper persons, who, together with the adjutant general shall constitute a board of visitors for said military school, any four of whom shall constitute a quorum for the transaction of the mere ordinary business, but in making arrangements for the erection of buildings, or for material and permanent alterations of the present buildings, as well as the removal of professors from office, not less than six shall constitute a quorum. And it shall be the duty of said visitors on or before the first day of June next, and annually thereafter, at such times as they themselves shall designate, to meet at said arsenal, and there to establish and declare such regulations as they may deem necessary and proper for the organization and good government of said school. Said visitors shall have power to establish such by-laws for the management of the school, and the protection of the public property, as shall not be inconsistent with the laws of this state, or of the United States; shall appoint a treasurer, taking from him bond with ample security, made payable to the governor, and his successors in office, and conditioned for the faithful keeping and disbursement of such moneys herein appropriated, and such other moneys as shall be allowed by said visitors, from time to time, to come into his hands; they shall also examine and settle his accounts an- 18
nually or oftener; inspect the public arms and other property, at said arsenal, and make minute and full report of their condition, as well as the condition of the school to the governor, to be by him

laid before the general assembly; shall have power to appoint one or more professors qualified to give instruction in military science, and in other branches of knowledge, which they the said managers may deem essential; to fix the salaries of said professors, and to remove them for a good cause; but in every case of removal, a majority of the whole number of visitors shall concur, and shall communicate to the governor in writing, a full statement of the reasons upon which the removal was made. Besides prescribing the general terms upon which students may be admitted, the course of their instruction, the kind and duration of their service, (which duration shall not exceed five, nor be less than two years,) the said visitors are still further empowered to admit as the regular students or cadets at said military school any number of young men not fewer than twenty, nor exceeding forty, and who shall not be less than sixteen nor more than twenty-five years of age; and in this admission to be made upon undoubted evidence of fair moral character, a strict regard shall be had to the proportionate population of the four great constitutional divisions of the state, taking in the first place one from each senatorial district offering one, so that the relative claims of each one to a due participation in the benefits of said school may be secured; but in the event of any of the constitutional divisions of the state not furnishing their full proportions of students, the board of visitors after having given due notice of such deficiency, shall be and are hereby authorized to fill such vacancy or vacancies, with proper applications from any other of the constitutional divisions of the state. The students at the school thus admitted shall be formed into a military corps, and shall constitute the public guard of the arsenal aforesaid. And whenever the said visitors shall certify to the governor that the said school is ready to go into operation, and that a sufficient number of students or cadets have been admitted, to guard effectually the public arms, and other property at the said arsenal, the governor shall forthwith disband the present public guard, and order the grounds, buildings, arms and all other property belonging to said arsenal, to be surrendered to said visitors, or to any one thereof, who may have been designated by them to receive such surrender. And the said professors and military students shall be collectively and individually responsible for the safe keeping, protection and preservation of the said grounds, buildings, arms and other property, in all respects, as the commandant, other officers and public guard are now responsible.

3. Any three of the visitors may form a board for the transaction of business, and all vacancies occurring from death, removal, refusal to act or otherwise, shall be immediately communicated by the residue of said visitors to the governor, who shall forthwith proceed

to supply them. All reasonable expenses incurred by said visitors in discharging the duties hereby imposed upon them, (not including however any wages or per diem compensation,) shall be allowed, and when admitted by the governor, shall by him be caused to be paid by warrant on the treasury.

4. Any commissioned officer of the militia of Virginia, may enter as a pupil the school hereby established for a period of time not exceeding ten months, and receive instruction in any- 19
or all of the departments of military science, therein taught, without being required to pay any fee or charge whatsoever, but such officer shall not be recognized as a regular student, and as such admitted to the further privileges hereafter provided for.

5. And whereas it is believed by the general assembly, that some auxiliary connexion between the arsenal hereby erected into a public school, and Washington college, which is situated in its vicinity, might be established, and in such way as to promote the purposes and benefits of instruction, in both: *Be it therefore enacted,* That the visitors aforesaid shall have full power to enter into any legal arrangement with the trustees of said Washington college, by which the students at the arsenal and those at the college may respectively be admitted to all the advantages and departments of instruction provided for at either place, and upon such terms as said parties shall mutually stipulate, and which terms may from time to time be varied, or may be revoked as the parties may mutually determine.

6. That it shall be lawful for the board of visitors to expend so much of the appropriation herein provided, as may be proper for the repair and erection of such buildings as may be necessary for the accommodation of officers and students of said military school. Said board of visitors shall be and are hereby authorized to contract for and have erected, at such time as they may deem proper and necessary, such additional building or buildings: *Provided however,* That such expenditure shall not exceed one thousand dollars annually for the first three years, and in any subsequent year shall not exceed the sum of five hundred dollars.

7. The act, entitled, "an act re-organizing the Lexington arsenal, and establishing a military school in connexion with Washington college," passed March the twenty-second, eighteen hundred and thirty-six, is hereby repealed.

8. This act shall be in force from the passing thereof.

CHAP. 15.—An ACT providing for the erection of a steward's house, and for furnishing a supply of water for the Virginia military institute.

[Passed March 6, 1840.] 26

Whereas it is represented to the general assembly, that a reorganization of the Lexington arsenal has taken place, agreeably to the provisions of the act passed March the twenty-ninth, eighteen hundred and thirty-nine, entitled "an act to reorganize the Lexington arsenal, and to establish a military school thereat," and that a military school is now in successful operation; and whereas it is represented by the board of visitors, as well as by the principal professor of the Virginia military institute, that a house for the steward and his family is greatly needed, as also a supply of good water within the enclosure of said institute:

1. *Be it therefore enacted,* That the sum of four thousand five hundred dollars be and is hereby appropriated out of any money in the treasury not otherwise appropriated, which sum shall be applied to the erection of a steward's house, the conveying of water by iron pipes to the institution, and to such other purposes as the board of visitors may consider necessary to its prosperity: *Provided nevertheless,* That the said sum of four thousand five hundred dollars shall be paid by the warrant of the first auditor on the treasury in three payments, as follows: fifteen hundred dollars in the present year, fifteen hundred dollars in the year eighteen hundred and forty-one, and fifteen hundred dollars in the year eighteen hundred and forty-two: *And provided also,* That no money shall be expended under this act, until a contract or contracts shall have been made to complete the several works herein provided for, so that the entire cost thereof shall not exceed the above mentioned sum.

2. This act shall be in force from the passing thereof.

CHAP. 27.—An ACT providing for the erection of a magazine and shelter for artillery at the Virginia military institute.

[Passed February 14, 1844.] 22

Whereas it is represented to the general assembly that a magazine for the safe-keeping of powder is necessary, as well to the security of the public property as to the safety of the professors and cadets of the Virginia military institute, and that a shelter for the artillery at that post is also necessary for its preservation:

1. *Be it therefore enacted*, That a sum not exceeding one thousand dollars shall be and is hereby appropriated for the erection of the said buildings; the work to be contracted for by the superintendent of the institute, with the sanction of the board of visitors, upon whose certificate of the execution and cost of the work, the auditor shall issue his warrant or warrants for the amount, to be paid out of any money in the treasury not otherwise appropriated.

2. This act shall be in force from the passing thereof.

CHAP. 17.—An ACT concerning the Virginia military institute, the University, and the colleges of the commonwealth.

[Passed March 7, 1848.] 18

Whereas it is represented to the general assembly by the board of visitors of the Virginia military institute, that they have been constrained to provide a residence for the additional professor authorized by the act of the last session of the general assembly; and also, that a small but convenient hospital should be erected for said institute:

1. *Be it therefore enacted*, That for the purpose of erecting a house for said professor, and for the purpose of erecting a hospital at said institute, the sum of four thousand five hun- 19
dred dollars be, and the same is hereby appropriated, payable out of any money in the treasury not otherwise appropriated, to the treasurer of the said institute: *Provided*, That the money hereby appropriated shall be so expended as to fully complete and finish the buildings hereby authorized to be erected.

* * * * *

CHAP. 19.— An ACT making an appropriation for the erection of new barracks at the Virginia military Institute.

[Passed March 8, 1850.]

Whereas it appears to the general assembly, by various reports of the board of visitors of the Virginia military institute, that the buildings occupied as quarters for the cadets are wholly inadequate in extent, are unsuitable in their construction for the purposes of a military school, are in a dilapidated and uncomfortable condition, exposing the health of the cadets and subjecting the large

amount of public property in the arsenal to destruction by fire, and that improvements in regard to other buildings and to the grounds and enclosures are absolutely necessary: 17

1. *Be it therefore enacted by the general assembly,* That the sum of eleven thousand five hundred dollars a year for four years shall be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, to be applied to the construction of suitable buildings for quarters for the cadets and for other purposes, as specified in the report of the board of visitors of the fifteenth September, eighteen hundred and forty-nine; this appropriation to be drawn upon the order of the board of visitors from time to time, after contracts have been made and approved by the said board for the said buildings and improvements.

2. This act shall be in force from its passage.

CHAP. 20.—An ACT appropriating the public revenue for the fiscal year 1851 and 1852.

[Passed June 5, 1852.] 20

* * * military school at Lexington, for support, seven thousand, seven hundred and ten dollars; and for balance of appropriation for erection of new barracks, under the act of eleventh of March, eighteen hundred and fifty, five thousand dollars; * * *

CHAP. 34.—An ACT making provision for additional accommodation for the cadets of the Virginia military institute.

[Passed May 29, 1852.] 29

Whereas it is represented by the board of visitors of the Virginia military institute that the quarters provided in the new barracks erected under the act of March eighth, one thousand eight hundred and fifty, are insufficient to accommodate the additional state and pay cadets designed to be admitted, and an addition of funds is needed for this purpose, and also to meet the cost of the improved heating and lighting arrangements introduced by the board of visitors:

1. *Be it enacted by the general assembly,* That the sum of thirty thousand dollars be and the same is hereby appropriated, from any funds in the treasury not otherwise appropriated, for these pur-

poses, and the auditor of public accounts is hereby instructed to issue his warrant for the same, upon the order of the president of the board of visitors.

2. *Be it further enacted,* That so much of the first section of the act, entitled "an act appropriating the public revenue," passed March seventh, one thousand eight hundred and fifty-one, as appropriates the sum of twenty-three thousand dollars to the military school at Lexington for erecting new barracks, be and the same is hereby repealed.

3. This act shall be in force from its passage.

CHAP. 42.—An ACT providing for the completion of the barracks and the erection of a mess hall at the Virginia military institute.

Passed March 1, 1854. 31

1. Be it enacted by the general assembly, that the sum of twenty thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of completing the barracks and erecting a mess-house at the Virginia military institute, to be paid in installments of five thousand dollars each: the first to be paid on the first day of April eighteen hunderd and fifty-four; the second, on the first day of June, eighteen hunderd and fifty-four; the third, on the first day of August eighteen hundred and fifty-four; and the fourth, on the first day of October eighteen hundred and fifty-four.

2. The expenditure of the appropriation herein authorized shall be made under the supervision of an architect to be appointed by the board of visitors.

3. This act shall be in force from its passage.

CHAP. 162.—An ACT making an appropriation to the Virginia military institute for the purpose of completing its buildings, enclosing its grounds and procuring a supply of water for said institute.

Passed March 31, 1858. 115

1. Be it enacted by the general assembly, that the sum of twenty-five thousand dollars be and is hereby appropriated to the Virginia military institute out of any money in the treasury not otherwise appropriated, to be expended as follows: Sixteen thousand dollars to meet the deficiency in the building fund and complete the barracks and

mess hall; six thousand for procuring a supply of water for the institution, and three thousand for enclosing the grounds; but not more than ten thousand dollars of the appropriation herein made shall be called for in any one of the two fiscal years ending on the thirtieth of September eighteen hundred and fifty-nine.

2. Before any part of the money herein appropriated shall be expended for the objects severally specified, except the sum of ten thousand dollars to meet the present deficiency in the building fund, the board of visitors shall obtain from competent men, practically acquainted with such matters, in no wise connected with the said institution, plans and estimates of cost for each item of expenditure; and if the estimated cost shall not exceed the sums herein specified for each of the objects contemplated, and are approved by the board, the work shall be contracted for by the board, and executed under the supervision of the superintendent of the said institution: provided, that it shall be the duty of the board to contract for such work at the lowest price for plain and substantial constructions suitable to said several objects, and shall not under any circumstances exceed the amounts thereto respectively appropriated, or pledge the faith and credit of the state in any manner to pay a greater sum therefor than is herein specially provided: and provided further, that if more work is done than is contemplated by this act, or at a cost greater than that therein specified, the said superintendent alone shall be responsible therefor. 116

3. Nothing in this act is to be construed as an approval of the board of visitors in exceeding the appropriations heretofore made to the military institute; and it is the express intent and purpose of the general assembly that no contract shall be entered into for any work or object contained in this act, unless the same is strictly limited to an amount not exceeding the sums respectively designated for such work or object.

4. This act shall be in force from its passage.

CHAP. 7.—An ACT making an additional appropriation to the Virginia Military Institute.

103

Passed March 28, 1860.

1. Whereas it is represented to the general assembly of Virginia, by the board of visitors of the Virginia military institute, that the present buildings at the said institute are insufficient for the purposes of the school as a military organization, and that additional appropriations are absolutely required to provide additional accommodations for cadets and for the support of the school: and it appearing further, that the corps of cadets, in the course of their regular military education,

may readily be employed to prepare such munitions of war as may be demanded by the wants of the state:

1. Be it enacted by the general assembly, that the sum of twenty thousand dollars be and the same is hereby appropriated from any money in the treasury not otherwise appropriated, for the erection of such additional buildings as may, in the judgment of the board of visitors, be demanded for giving effect to the purposes of this act: the same to be drawn in two annual payments—one-half in eighteen hundred and sixty, and the other half in eighteen hundred and sixty-one, upon the order of the board of visitors aforesaid.

2. The board of visitors shall admit, as state cadets, free of charge for board and tuition, not less than fifty young men, in lieu of the number now required, with the qualifications now prescribed by law, one of whom shall be selected from each of the senatorial districts as at present constituted. Whenever a vacancy has occurred, or is likely to occur, due notice of the time and place of making the appointment to supply the vacancy shall be given. If, after such notice, no suitable person shall apply from any district, the vacancy may be supplied from the state at large. And for the purpose of providing a fund for the support of the state cadets herein required to be admitted, the additional sum of five thousand seven hundred and ninety dollars is hereby appropriated annually; and the auditor of public accounts is hereby authorized and required to issue his warrant or warrants 104
on the treasury for the same, in the manner that other warrants to the said institute have been heretofore issued.

3. This act shall be in force from its passage.

University of Virginia Water Supply.

CHAP. 36.—An ACT making an appropriation to the University of Virginia for certain purposes.

Passed February 28, 1854. 26

1. Be it enacted by the general assembly that the sum of twenty-five thousand dollars be and the same is hereby appropriated to the University of Virginia, for the purpose of repairing and improving the buildings thereof, and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the institution.

2. The appropriation hereby directed shall be paid out of the treasury of the commonwealth, upon the order of the bursar of the university, on the auditor of public accounts, and shall be applied to the purposes named in the first section of this act, and to none others whatsoever.

3. This act shall be in force from its passage.

Improvements Capitol Square.

CHAP. IV.—An act providing for repairs to the Capitol.

[Passed March 19th, 1832.]

1. *Be it enacted by the general assembly,* That the superintendent of public buildings be and he is hereby authorized and required to contract, on behalf of the commonwealth, for such repairs to the capitol in the city of Richmond, as in the opinion of the said superintendent may be deemed necessary for the preservation and good appearance of the building, including stuccoing, plastering, carpenter's work, painting, stone masonry, and any other description of mechanical labour which may be necessary to effect that object; and to make a suitable communication between F street and the capitol square, at the northern end of the Museum, or other suitable place at or near thereto: also for such alterations in the ground floor of the building, as may be calculated to improve the condition of the public offices, and preserve the public records and papers deposited therein: and it shall be the duty of the said superintendent to cause the stoves now in the hall of the house of delegates to be removed, and to substitute therefor either suitable fire places or open stoves, to be placed in such parts of the hall as will more comfortably and effectually warm the same; and also to make such alterations in the fire-places in the senate chamber as may be necessary, or to substitute Franklin stoves therefor; also to purchase a neat and substantial chandelier for the use of said hall, and also one for the use of the senate chamber. The said superintendent shall, in such manner as the governor may direct, cause to be fitted up and put in good order a room for the office of the clerk of the senate, and also a room for the office of the clerk of the house of delegates, for the preservation of the books and papers belonging to their respective offices: *Provided, however,* That the expenditures for all the said repairs and improvements, shall not exceed the sum of ten thousand five hundred dollars.

2. *Be it further enacted,* That any contract made by the superintendent, under the authority of this act, shall be submitted to the governor and be approved by him, before any such contract shall be binding on the commonwealth, and that it shall be the duty of the said superintendent to superintend the execution of the work hereby authorized, and see that the same be faithfully performed according to contract. All accounts for the repairs and improvements hereby required to be made, shall be certified by the superintendent of public buildings and approved by the governor, whereupon they shall be paid out of the treasury on the auditor's warrant for the same.

3. This act shall be in force from and after the passage thereof.

CHAP. 11.—An ACT authorizing the purchase of certain vacant lots adjoining the public square, and the sale of a strip of land near the law building of B. B. Minor.

[Passed April 3, 1848.]

1. *Be it enacted by the general assembly,* That the executive be and he is hereby authorized and required to purchase, or cause to be purchased, for and on behalf of the commonwealth, the vacant ground on Governor street, at or near the southeastern corner of the capitol square, and adjoining the government grounds attached to the governor's house; and also so much of the adjoining lot of Mr. Joseph Allen, as may be desirable: *Provided,* That said lots can purchased at a price not exceeding forty dollars per foot, fronting on said street, or at that sum per foot front on such other street or cross street, as any part thereof may front, and to which a good, sufficient and valid title in fee simple, can be made by the owner or owners thereof, by such deed or deeds conveying the same to the executive, or governor of the commonwealth for the time being, and his successors in office, for the use and benefit of the commonwealth, as may be approved by the attorney general, (and duly admitted to record in the proper office,) as good and sufficient to convey such title in and to the same. Whereupon the auditor of public accounts shall, upon the production to him of such deed or deeds, duly certified by the clerk of the proper court, as having been admitted to record in his office, accompanied by a certificate from the executive that all the preliminaries of the conveyance have been fully complied with, issue his warrant or warrants on the treasury, in favour of the grantor or grantors, or their order, or their heirs or assigns, their executors or administrators, for the amount of such purchase money, payable out of any money therein not otherwise appropriated. The said deed or deeds, shall be filed and preserved in the executive chamber. And after the said purchase shall be completed, the said land or lots shall be considered as part of the government grounds composing the public or capitol square, and under the same care and control until otherwise ordered.

2. *Be it further enacted,* That the executive be and is hereby authorized to sell to B. B. Minor, or to his heirs or assigns, a certain strip of the public ground near to, and corresponding in length with his law building erected upon so much of the public lot on Franklin street as was sold to him under the authority of the act, entitled "an act to provide for the repairs of the capitol and governor's house, and the erection of a courthouse," passed March the second, eighteen hundred and forty-six, and not exceeding in depth twenty feet, at such price, and on such terms as may be agreed upon by and between the said parties: and not exceeding, if any credit be allowed, six, twelve

and eighteen months, taking from the purchaser a lien upon the property, with personal security, to secure the payment of such purchase money. And the money arising from such sale, shall be paid into the treasury of the commonwealth, after being duly audited according to the provisions of this act, and such contract as shall be made with the executive for the sale thereof, (which contract shall be filed in the office of the auditor of public accounts,) deducting only the proper or necessary expenses, if any, attending the execution of such contract and sale. 16

3. This act shall be in force from the passing thereof.

Fugitive Slave Expense, and Rewards, (Additional.)

CHAP. 48.—An ACT to amend the 24th, 25th, 26th, 27th and 28th sections of chapter 192 of the Code of Virginia, so as more effectually to prevent the escape of slaves. 41

Passed March 17, 1856.

1. Be it enacted by the general assembly, that the twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth sections of chapter one hundred and ninety-two of the Code of Virginia be and the same are hereby amended and re-enacted so as to read as follows:

* * * * *

Any free white person, who will give such information as will lead to the conviction of a free white person engaged in carrying off or attempting to carry off a slave, or in any manner concerned in aiding or persuading a slave to escape or attempt to escape, shall be entitled to a reward of five hundred dollars; to be paid by the state on the order of the court convicting the party of such offense: provided such conviction be procured by other testimony than that of the informer; or if such testimony be used upon the trial, that the same shall be sustained by other corroborating facts or circumstances, to be certified by said court. 43

* * * * *

CHAP. 49.—An ACT to amend the 4th section of chapter 105 of the Code so as to increase the rewards for the arrest of runaway slaves.

Passed March 17, 1856. 43

* * * * *

7. Upon the arrest of a fugitive slave in a nonslaveholding state, when under the provisions of this section the person making such arrest is entitled to a reward of as much as or more than one 44

hundred dollars from the owner of such slave, it shall be the duty of the auditor of public accounts to issue his warrant on the treasury for the sum of fifty dollars, in favor of such person or his assigns: provided, that a certificate from the court of the county in which the value of such slave has been ascertained, under the provisions of this section, (or when it appears to the said court that such value has been agreed upon by the parties, stating the fact of such arrest and the amount of such reward,) shall be presented to the auditor within three months from its date, and within twelve months from the date of such arrest; which, in all cases, shall be stated in such certificate.

8. The amount herein provided to be paid by the auditor of public accounts, to the person holding the certificate of the county court as aforesaid, shall only be payable out of any moneys in the treasury arising from fines, forfeitures and confiscation, imposed and made under the provisions of laws now existing and hereafter to be enacted, providing for the punishment of persons aiding and abetting the escape of slaves, or interfering with the rights of property in slaves, and from funds arising from the sale of free negro convicts failing to leave the state after the expiration of their term of imprisonment.

9. Whenever the said reward, to be paid by the owner of the slave so arrested, shall have been certified by the court, as herein provided, to be due to the person apprehending such slave, and the same shall not be paid or satisfied within thirty days from the date of such certificate, after demand made therefor, the owner or holder of such certificate shall be empowered and he is hereby authorized to recover the same by motion, after ten days' notice, together with the costs of such motion, before any court of record in the county where the owner of said slave may reside, or in which the said slave may be.

* * * * *

Penitentiary.

CHAP 19.—An ACT concerning the penitentiary institution.

(Passed March 9th, 1833.) 18

1. *Be it enacted by the general assembly of Virginia,* That the governor be, and he is hereby authorized to cause to be erected at the penitentiary, a suitable and convenient hospital for the accommodation of the sick therein; also, to cause the outer walls of the prison to be well ventilated, in a secure and substantial manner, and to have erected suitable buildings and sheds easy of access from the work shops, and perfectly secure against escapes, for the preservation and security of timber and manufactured articles, and if found necessary for security, to enlarge a part of the outer walls to take them within the enclos-

ure. A sum not exceeding seven thousand dollars shall be, and the same is hereby appropriated to defray the expense of the aforesaid improvements, to be paid on the orders of the governor.

2. *Be it further enacted*, That the solitary confinement of convicts in the penitentiary, constituting a part of the sentence of the court, shall not exceed one twelfth part of the whole term of imprisonment, and it shall be inflicted at intervals not exceeding one month of solitude at a time; any law to the contrary notwithstanding.

3. *Be it further enacted*, That the fourth section of the act passed the twenty-seventh day of February, eighteen hundred and twenty-nine, entitled, "an act concerning the penitentiary institution," shall be and the same is hereby repealed.

4. *Be it further enacted*, That the governor be required to cause to be made an estimate of the expense of draining the pond near the penitentiary, by means of a culvert or otherwise.

5. This act shall be in force from its passage.

Calling out Militia at Wheeling in 1838.

CHAP. 34.—An ACT concerning certain volunteer companies of the fourth regiment of Virginia militia.

41

(Passed April 7, 1838.)

Whereas it appears to the general assembly that the colonel commandant of the fourth regiment Virginia militia, upon the requisition of the sheriff of Ohio county, made on the fifth day of June, eighteen hundred and thirty-six, ordered into service the Wheeling guards, the City blues, and the Wheeling riflemen, three infantry companies attached to said regiment, and that said companies did continue in actual service from the fifth to the fifteenth day of August, eighteen hundred and thirty-six, in guarding the jail and protecting the persons and property of the citizens of said county, for which it is right that they should receive the usual pay of the militia when in actual service:

1. *Be it therefore enacted*, That the auditor of public accounts is hereby authorized and required to issue and deliver to the colonel of said regiment, or his order, a warrant upon the treasury for the sum of one thousand and ninety-nine dollars, payable out of any money therein not otherwise appropriated: *Provided*, That the auditor shall first take bond with good security, in the penalty of two thousand dollars, payable to the governor or chief magistrate of this commonwealth, conditioned for the faithful distribution of the said 42
sum of money as hereinafter directed.

2. *Be it further enacted,* That the said colonel of the said regiment shall distribute the said sum of money between the said three companies in proportion to the number of officers and privates employed in each company, and shall pay the same into the treasury of each company for the use and benefit of said companies,

3. This act shall be in force from the passing thereof.

Medical College of Virginia.

CHAP. 8.—An ACT appropriating $30,000 to the Medical College of Virginia, for enlarging its Hospital or Infirmary; for extending the College Buildings, and for the improvement and extension of the College Museum.

Passed March 1, 1860. 104

1. Be it enacted by the general assembly, That there be and is hereby appropriated out of the treasury, out of any money not otherwise appropriated, the sum of thirty thousand dollars; to be paid to the Medical College of Virginia for the purposes herein after set forth.

2. The Medical college of Virginia shall apply the sum of money hereby appropriated solely to the purpose of enlarging the hospital or infirmary annexed to the college; of extending the college buildings for the accommodation of a larger number of students, and for the improvement and extension of the college museum: And the said sum of money shall be applied to the several purposes herein stated, in such proportions as shall be deemed proper by the trustees of the said Medical college of Virginia.

3. Provided, that the said sum of thirty thousand dollars shall not be paid until a deed, conveying all the property of said college to the Literary fund, shall be prepared by the attorney general, and approved of by the governor of the state, and executed by the college authorities acknowledged and duly recorded: And provided further, that the money shall not be drawn from the treasury until, in the opinion of the governor, it is needed for the purposes contemplated by this act.

4. This act shall be in force from its passage.

Lunatic Hospitals.

EASTERN ASYLUM AT WILLIAMSBURG.

CHAPTER 90.—An act to provide for the enlargement of the lunatic hospital in the city of Williamsburg.

(Passed March 5th, 1824.) 93

Whereas it is represented to this General Assembly, that the females confined in the lunatic hospital, are entirely destitute of a convalescent apartment; and whereas it is also represented, that many citizens unfortunately suffering under mental derangement, are now confined in common jails within this Commonwealth, because of the want of accommodation for them in the said hospital, and whose situation humanity loudly and justly calls upon the General Assembly to relieve;

1. *Be it therefore enacted by the General Assembly*, That the court of directors of the hospital in the city of Williamsburg, for the maintenance and cure of persons of unsound mind, be and they are hereby authorised to contract for, or let to the lowest bidder,, the erection of an additional brick building, containing a convalescent apartment for the females, and as many cells or separate apartments for the accommodation of patients, as to the said court of directors shall seem necessary. To enable the said directors to erect the aforesaid additional building, they, or a majority of them, are hereby authorised, through their treasurer, in the manner now prescribed by law, from time to time, to draw upon the auditor of public accounts, for such sums as may be required for the completion of the aforesaid additional building, not exceeding five thousand dollars; for which draft or drafts the auditor of public accounts is hereby authorised and required to issue warrants on the treasury, which shall be paid out of any money therein not otherwise appropriated. The accounts for money expended in erection of the aforesaid building, shall be settled by the treasurer with the court of directors, and certified in the same manner as all other accounts of the hospital are passed and certified.

2. This act shall commence and be in force from and after the passage thereof.

CHAP. 29.—An ACT to provide for extending and enlarging the lunatic hospitals.

[Passed March 1st, 1833.] 22

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital, or any seven of them, shall be, and they are

hereby empowered to contract for the extension of the buildings of that institution, so as to make the same fit for the reception and accommodation of an additional number of lunatics, having previously given public notice, by advertisement, in some newspaper printed in the city of Richmond, and in some other newspaper printed in the town of Staunton, for sixty days, that they will receive proposals for the building thereof; and shall take bond with sufficient security, from the contractor or contractors, in the penal sum of twenty thousand dollars, payable to themselves, and their successors in office, conditioned for the faithful performance of said contract, under the immediate superintendence of said directors.

2. The said directors shall have full power, from time to time, to order and direct their treasurer to draw upon the treasurer of the commonwealth, (to be audited by the auditor of public accounts,) for such sums of money as may be necessary to defray the expenses of said additional building: *Provided*, That the plan and dimensions of said building shall be agreed upon and prescribed by said directors, and shall contain no more than forty cells or apartments: *And provided*, That the whole expense thereof shall not exceed six thousand dollars.

3. *Be it further enacted*, That the court of directors of the Western lunatic hospital shall, in like manner, be and they are hereby authorized to contract for conducting an ample supply of good spring water to the said hospital, in iron pipes, without the use of forcing pump or other machinery: *Provided*, The whole expense thereof shall not exceed one thousand dollars.

4. *Be it further enacted*, That the directors of the lunatic hospital at Williamsburg, shall be and they are hereby empowered, in like manner, and for the same purposes as above prescribed, to contract for and cause to be erected, an additional building for that institution, calculated to accommodate an additional number of lunatics, not exceeding forty: *Provided*, That the mode of making the contracts therefor, and the payment on that account from the treasury, shall be the same as above provided for the Western lunatic hospital: *And provided*, That the whole expense shall not exceed six thousand dollars.

5. This act shall be in force from the passage thereof.

CHAP. 19.—An ACT to amend an act, entitled, "an act to provide for extending and enlarging the lunatic hospitals," passed March 1st, 1833.

(Passed March 12, 1834.)

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital, and the directors of the lunatic hospital at

Williamsburg, shall have full power to order and direct their treasurers, respectively, to draw upon the treasurer of the commonwealth (to be audited by the auditor of public accounts) for such sums of money as may be necessary to defray the expenses of the additional buildings of those institutions, authorized by an act of this legislature, passed the first of March, eighteen hundred and thirty-three, entitled, "an act to provide for extending and enlarging the lunatic hospitals:" *Provided*, The whole expense thereof shall not exceed nine thousand dollars for each hospital, over and above the amount already appropriated to those objects by the said act of the first of March, eighteen hundred and thirty-three.

2. This act shall be in force from and after the passing thereof.

CHAP. 17.—An ACT providing for a further appropriation to complete the improvements at the lunatic hospitals at Williamsburg and Staunton.

(Passed March 12, 1835.) 17

1. *Be it enacted by the general assembly*, That the directors of the lunatic hospital at Williamsburg be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth for the sum of two thousand six hundred and sixty dollars, which sum it has been represented will be necessary to complete the additional buildings at said institution, which said amount of two thousand six hundred and sixty dollars the treasurer of the commonwealth is hereby authorized and empowered to pay to the order of the treasurer of the institution aforesaid out of any money in the treasury not otherwise appropriated.

2. *Be it further enacted*, That the directors of the Western lunatic hospital be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth, to be audited by the auditor of public accounts, for such further sum of money in addition to the sum appropriated by the act of March first, eighteen hundred and thirty-three, as may be necessary for the fulfilment of their contract for conducting an ample supply of good spring water to the said hospital in iron pipes: *Provided*, The said additional sum hereby appropriated shall 18 not exceed the sum of twelve hundred dollars.

3. *Be it further enacted*, That the directors of the Western lunatic hospital be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth, to be audited by the auditor of public accounts, for such further sum of money in addition to the sums heretofore appropriated by the act of March the first, eighteen hundred and thirty-three, and the act of

March the twelfth, eighteen hundred and thirty-four, as may be necessary for the fulfilment of their contracts for the completion of the additional buildings authorized by said acts: *Provided*, The said further sum hereby appropriated shall not exceed the sum of fifteen hundred dollars; and for completing the graduation, and building partition walls for the male and female wards, the sum of fifteen hundred dollars.

4. This act shall be in force from and after the passing thereof.

CHAP. 19.—An ACT concerning the Western lunatic hospital and the lunatic hospital at Williamsburg.

(Passed March 31, 1837.) 18

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital and the directors of the lunatic hospital at Williamsburg, be and they are hereby authorized and empowered, in behalf of their institutions, severally to direct their treasurer to draw upon the treasurer of the commonwealth, (to be audited by the auditor of public accounts,) for such sum or sums of money as may be necessary for the purchase of land, near each of said hospitals, a neat two horse carriage, and a pair of horses, and such other articles as are recommended in the report of the physician of the Western lunatic hospital, communicated by the directors thereof to the present general assembly, and by them caused to be printed, as are calculated in the opinion of the directors of said hospitals, to aid in the restoration of patients confined in a lunatic hospital: *Provided*, That the expenditures thereby incurred, do not exceed the sum of one thousand dollars, for each of said hospitals, and which sum is hereby appropriated for said purposes.

2. This act shall be in force from the passing thereof.

CHAP. 21.—An ACT providing for the enlargement of the lunatic hospitals of the commonwealth, and for other purposes.

(Passed April 3, 1838.) 33

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic asylum, or any seven of them, shall be, and they are hereby empowered to contract for the extension of the buildings of that institution, so as to make the same fit for the reception and accommodation of an additional number of lunatics, having previously given

public notice by advertisement in some newspaper printed in the city of Richmond, and in some other newspaper printed in the town of Staunton, for sixty days, that they will receive proposals for the building thereof; and shall take bond, with sufficient security, from the contractor or contractors, in the penal sum of twenty-four thousand dollars, payable to themselves, and their successors in office, conditioned for the faithful performance of said contract, under the immediate superintendence of said directors.

2. The said directors shall have full power, from time to time, to order and direct their treasurer to draw upon the treasurer of the commonwealth (to be audited by the auditor of public accounts) for such sums of money as may be necessary to defray the expenses of said additional building: *Provided*, That the plan and dimensions of said building shall be agreed upon and prescribed by said directors: *And provided also*, That the whole expense thereof shall not exceed twelve thousand dollars.

3. *Be it further enacted*, That the directors of the lunatic hospital at Williamsburg, shall be, and they are hereby empowered, in like manner, and for the same purposes as above prescribed, to contract for and cause to be erected an additional building for that institution, calculated to accommodate an additional number of lunatics: *Provided*, That the mode of making the contracts therefor, and the payment on that account from the treasury, shall be the same as above provided for the Western lunatic hospital: *And provided also*, That the whole expense thereof shall not exceed twelve thousand dollars.

4. *Be it further enacted*, That the directors of the Western lunatic hospital are hereby authorized and empowered, in behalf of that institution, to direct their treasurer to draw upon the treasurer of the commonwealth (to be audited by the auditor of public accounts) for such sums of money as may be necessary for the purchase of land near said hospital, the erection of workshops, the purchase of tools and materials for manufacture, and such other articles as are recommended by the report of the physician of the Western lunatic hospital, or by the report of the directors of said institution to the present general assembly: *Provided*, That the expenditures thereby incurred do not exceed five thousand dollars.

5. *Be it further enacted*, That the directors of the lunatic hospital at Williamsburg, shall be, and they are hereby empowered to contract for the enclosures and other buildings recommended in the report of the directors of that institution, to the present general assembly, on the terms they may think most suitable; and they shall have full power to order their treasurer to draw on the treasurer of the commonwealth for such sum or sums of money (to be audited by the auditor of public accounts) as may be necessary to complete the same: *Provided*, That the whole expense thereof shall not exceed five thousand dollars.

6. This act shall be in force from its passage.

CHAP. 19.—An ACT providing for the enlargment of the lunatic asylums of the commonwealth.

[Passed March 25, 1842.] 16

1. *Be it enacted by the general assembly,* That the directors of the Western asylum for the maintenance and cure of insane persons, shall be, and they are hereby empowered to contract for the extension of the buildings of that institution, after having first given at least sixty days notice, by advertisement in some newspaper published in the city of Richmond, and a newspaper published in the town of Staunton, that they will receive proposals for the work authorized; and on the letting out of said work, they shall take bond with approved security, from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they deem sufficient, conditioned for the faithful execution of the contract.

2. *Be it further enacted,* That a sum not exceeding twenty-four thousand dollars be, and the same is hereby appropriated, for the entire completion of the additional buildings hereby authorized, to be paid out of the treasury of the commonwealth upon the order of the court of directors of said Western asylum, in favour of the treasurer thereof, on the auditor of public accounts, in the following manner: eight thousand dollars on the ratification of the contract and the execution of the bond required; eight thousand dollars in twelve months thereafter; and the remaining eight thousand on the completion of the building, provided the same shall not be in less than twelve months from the last payment.

3. *Be it further enacted,* That the directors of the Eastern asylum for the maintenance and cure of insane persons, shall be, and they are hereby empowered in like manner to contract for and cause to be erected an addition to the Eastern asylum, at an expense not exceeding twelve thousand dollars, to be paid in the following manner:
six thousand dollars when the contract is ratified and the bond 17
duly executed; and the remaining six thousand dollars on the completion of the building, provided the same shall not be in less than twelve months after the first payment is drawn. The mode and terms of contracting shall be the same as that provided for in the erection of the addition to the Western asylum, except as to the cost and payment, and that the advertisement for proposals shall be in some newspaper published in the borough of Norfolk instead of the town of Staunton.

4. This act shall be in force from the passing thereof.

CHAP. 12.—An ACT appropriating a sum of money therein mentioned to John B. Hart and Martin Tutwiler, securities of John K. Sheperson for the erection of an additional building to the Eastern lunatic asylum at Williamsburg.

[Passed February 12, 1844.] 17

1. *Be it enacted by the general assembly,* That the auditor of public accounts be and he is hereby authorized to issue his warrant on the treasury, (upon the requisition of the directors of the Eastern lunatic asylum at Williamsburg,) in favour John B. Hart and Martin Tutwiler, securities for John K. Sheperson, who contracted with said directors for the erection and completion of an additional building to the said asylum, and who failed to complete the same according to contract, for the sum of two thousand dollars, being so much allowed to them in advance upon the remaining instalment, to enable them to complete such additional building; said sum to be paid to Hart and Tutwiler, so soon as they shall have executed their bond with approved security, made payable to the directors aforesaid, and conditioned for the true and faithful appropriation of the said sum of two thousand dollars, and for the completion of said additional building, according to the terms of the contract entered into between the said Sheperson and the aforesaid directors of the Eastern lunatic asylum at Williamsburg. And in making said requisition upon the auditor, the said directors shall certify that said bond has been duly executed in accordance with the provisions of this act.

2. This act shall be in force from the passing thereof.

CHAP. 11.—An ACT making an appropriation for the Eastern lunatic asylum.

[Passed February 14, 1844.] 16

1. *Be it enacted by the general assembly,* That the sum of five thousand dollars be, and the same is hereby appropriated for the purpose of remodelling and repairing the body of the old building of the Eastern lunatic asylum at Williamsburg, to be paid to the treasury of said asylum, on the requisition of the board of directors thereof, at any time after the first day of July next; and the auditor of public accounts is hereby authorized and required, on the requisition of said board, at any time after the said first day of July, eighteen hundred and forty-four, to issue his warrant on the treasury of the commonwealth, in favour of the treasurer of said asylum, for the amount above mentioned.

2. *And be it further enacted,* That before the repairs mentioned in the preceding section shall be contracted for, the said board of directors shall advertise the time and place of letting out the same, and shall let out the same to the lowest bidder, taking bond and good security of the contractor or contractors for the due execution of the contract; and the terms of the contract shall not be altered after being entered into, without the previous consent of the general assembly: *Provided however,* That said board may let out the work hereby provided for in one contract, or may let it out in two or more contracts, as to them may seem proper.

CHAP. 12—An ACT to authorize the enlargement of the lunatic asylums of the commonwealth.

[Passed January 17, 1848.] 16

1. *Be it enacted by the general assembly,* That the directors of the Western asylum for the maintenance and cure of insane persons, shall be and they are hereby empowered to contract for the extension of the buildings of that institution, after having first given at least sixty days notice by advertisement in some public newspaper published in the city of Richmond and in the newspapers published in the towns of Staunton and Winchester, that they will receive proposals for the work authorized: and on letting out of said work they shall take bond with approved security from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they deem sufficient, conditioned for the faithful execution of the contract.

2. That a sum not exceeding thirty-six thousand dollars be and the same is hereby appropriated for the entire completion of the additional buildings hereby authorized, to be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Western asylum, in favour of the treasurer thereof, on the auditor of public accounts, in the following manner: Seven thousand dollars on the ratification of the contract and the execution of the bond required; seven thousand dollars on the first of July, eighteen hundred and forty-eight; seven thousand dollars on the first of January, eighteen hundred and forty-nine; seven thousand dollars on the first of July, eighteen hundred and forty-nine, and eight thousand dollars on the first of January, eighteen hundred and fifty: *Provided,* That said buildings shall be completed on the day last aforesaid; if not, then upon the completion thereof.

3. *Be it further enacted,* That the directors of the Eastern asylum

for the maintenance and cure of insane persons, shall be and they are hereby empowered to contract for the extension of the buildings of that institution, after having first given at least sixty days notice by advertisement in some public newspaper in each of the cities of Richmond, Petersburg and Norfolk, that they will receive proposals for the work authorized; and on letting out of said work, they shall take bond with approved security from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they deem sufficient, conditioned for the faithful execution of the contract.

4. *Be it further enacted,* That a sum not exceeding twenty-five thousand dollars be and the same is hereby appropriated for the entire completion of the additional buildings in said last section authorized, to be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Eastern asylum in favour of the treasurer thereof, on the auditor of public accounts, in the following manner: Five thousand dollars on the ratification of the contract and the execution of the bond required; five thousand dollars on the first of July, eighteen hundred and forty-eight; five thousand dollars on the first of January, eighteen hundred and forty-nine; five thousand dollars on the first of July, eighteen hundred and forty-nine, and five thousand dollars on the first of January, eighteen hundred and fifty: *Provided,* That said buildings shall be completed on the day last aforesaid; if not, then upon the completion thereof.

5. This act shall be in force from its passage.

CHAP. 13.—An ACT providing for the purchase of furniture for the Eastern and Western asylums, and for other purposes.

[Passed January 13, 1849.]

1. *Be it enacted by the general assembly,* That a sum not exceeding eight thousand five hundred dollars be and the same is hereby appropriated for the purchase of furniture for the two additional buildings heretofore directed to be built by the directors of the Western asylum for the maintenance and cure of insane persons, and of such clothing as may be necessary for the additional number of patients to be admitted into said asylum; and that said sum of money be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Western

asylum, in favour of the treasurer thereof, on the auditor of public accounts.

2. *Be it further enacted,* That a sum not exceeding six thousand two hundred and sixty-six dollars be and the same is hereby appropriated for the purchase of furniture for the additional building referred to in the report of the directors of the Eastern asylum for the maintenance and cure of insane persons, and of such clothing as may be necessary for the additional number of patients to be admitted into said asylum, and to pay the excess of the price of the buildings contracted for by said directors, over and above the appropriation of the last session; and that said sum of money be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Eastern asylum, in favour of the treasurer thereof, on the auditor of public accounts.

3. This act shall be in force from its passage.

CHAP. 17.—An ACT providing for the payment of arrears on buildings, and furnishing water and additional accommodations for free colored insane persons at the Eastern lunatic asylum.

[Passed January 22, 1850.] 16

1. *Be it enacted by the general assembly,* That for the purpose of paying arrears on building account at the Eastern lunatic asylum for the maintenance and cure of insane persons, to provide additional accommodations for free colored insane persons, to purchase furniture for the new building now being erected, and to furnish the said asylum with a sufficient supply of water, the sum of eleven thousand five hundred dollars be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated; and the auditor of public accounts is hereby directed to draw his warrant on the treasury in favor of the treasurer of the said Eastern asylum, upon the order of the board of directors of said asylum, authorizing him to receive the same, for the said sum of eleven thousand five hundred dollars, to be applied by the said directors to the purposes aforesaid.

2. This act shall be in force from its passage.

CHAP. 144.—An ACT appropriating seven thousand dollars for repairing and erecting buildings at the Eastern lunatic asylum.

[Passed January 21, 1853.] 126

1. Be it enacted by the general assembly, that the directors of the Eastern asylum for the maintenance and cure of insane persons, shall be and they are hereby empowered to contract for repairing or rebuilding the granaries, stables and other out-houses of the institution, and for remodeling the building used for colored patients, after having first given at least sixty days' notice by advertisement in some newspaper published in the city of Richmond, and a paper published in the city of Norfolk, that they will receive proposals for the work authorized; and on letting out the said work, they shall take bond with approved security from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they may deem sufficient, conditioned for the faithful execution of the contract.

2. That the sum of seven thousand dollars be and the same is hereby appropriated for the completion of the buildings and other work hereby authorized, and for the purchase of the Six-Chimney lot recently made by the directors of the Eastern lunatic asylum; to be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Eastern asylum, in favor of the treasurer thereof, on the first auditor, in the following manner: Six hundred and sixty-one dollars for the purchase of the lot hereinbefore mentioned; eighteen hundred and thirty-nine dollars on the ratification of the contract and the execution of the bond required; two thousand five hundred dollars after the work shall have been half completed, and two thousand dollars on the completion of the contract hereby authorized.

3. This act shall be in force from its passage.

CHAP. 39.—An ACT appropriating seventeen thousand seven hundred and fifty dollars for erecting and repairing buildings and enclosures at the Eastern lunatic asylum; for purchasing a lot of land for the use of the asylum, for improving its grounds, for providing furniture and other conveniences for the same, and for lighting the institution with gas.

[Passed March 1, 1854.] 29

1. Be it enacted by the general assembly, that the sum of eleven thousand seven hundred and fifty dollars be and the same is hereby

appropriated for erecting and repairing buildings and enclosures at the Eastern lunatic asylum, for purchasing a lot of land for the use of the asylum, for improving its grounds and for providing furniture and other conveniences for the same; which sum shall be paid out of the treasury of the commonwealth upon the order of the court of directors of the said asylum, in favor of the treasurer thereof, on the auditor of public accounts, in the following manner, to-wit: three thousand seven hundred and fifty dollars on the first day of July next; four thousand dollars on the first day of January next, and four thousand dollars on the first day of July, eighteen hundred and fifty-five.

2. Be it further enacted, that the directors of the said asylum be and they are hereby empowered to contract for the lighting of that institution with gas, after having given at least sixty days' notice by advertisement in the Virginia Gazette, in some newspaper published in the city of Richmond, and in one other newspaper, to be selected by them, that they will receive proposals for the construction of the fixtures and works necessary for the purpose. The said directors shall, on letting out the work, take bond with approved security from the contractor or contractors, payable to the said directors and their successors in office, in such penalty as they may deem sufficient, and with the condition that the contract be faithfully executed. For this purpose, the sum of six thousand dollars is hereby appropriated, to be paid out of the treasury of the commonwealth, upon the order of the court of directors of the said asylum, in favor of the treasurer thereof, on the auditor of public accounts, in the following manner, viz: Two thousand dollars on the ratification of the contract and the executing of the bond aforesaid; two thousand dollars when the work shall have been, in the estimation of the said directors, half completed, and two thousand dollars on the completing of the work according to the contract.

3. This act shall be in force from its passage.

Western Asylum at Staunton.

CHAPTER 35.—An act to authorise the establishment of a Western Lunatic Hospital.

[Passed January 22d, 1825.] 30

Whereas it appears to the General Assembly, that the present public hospital for persons of unsound minds, is insufficient for the reception and cure of all such unfortunate persons:

1. *Be it therefore enacted,* That John S. Barnes, of the county of Monongalia, Joel Shrewsbury, senior, of the county of Kanawha, Briscoe G. Baldwin, of the county of Augusta, John B. George, of the county of Tazewell, and Allen Taylor, of the county of Botetourt, be, and they are hereby appointed commissioners, for the purpose of selecting a site for the erection of a lunatic hospital on the west side of the Blue Ridge. It shall be the duty of the said commissioners or a majority of them, to meet at Lewisburg, on the first day of April next, or as soon thereafter as practicable, and shall forthwith proceed to execute the duty required by this act, and make report thereof to the Executive of this Commonwealth. In case of the death, or refusal to act, or inability of the said commissioners, or either of them, the Governor with advice of council shall be, and he is hereby authorised to supply such vacancy or vacancies. The said commissioners shall be entitled to receive four dollars each per day, for every day they shall be employed in carrying into effect the provisions of this act.

2. When the said commissioners shall have made the selection and report as aforesaid, the Executive shall forthwith appoint a court of directors, consisting of thirteen persons as convenient to the place selected as may be, who shall be, and they are hereby constituted and appointed, with their successors to be chosen when vacancies happen by the Executive, a body politic and corporate, to have perpetual succession by the name of "The Directors of the Western Hospital of Virginia, for the maintenance and cure of persons of unsound mind," and by that name may sue and be 31 sued, and may and shall have and use a common seal, and are enabled to take any estate real or personal, given or to be given to the said hospital or to themselves for the use thereof; so as the annual income of such donations, shall not exceed the sum of three thousand dollars; any law or statute to the contrary notwithstanding.

3. The said directors shall and may, so often as it may be necessary, choose a president, to continue in office until his death, resignation or removal; and they or any seven of them shall form a court, and shall from time to time ordain regulations for the government of the said hospital, and appoint a keeper and matron thereof, with nurses and guards when they shall be necessary; and provide for the accommodation, maintenance and cure of the patients received, or to be received therein: *Provided, nevertheless,* That any five of the said directors shall form and constitute a court for the examination of ideots and lunatics, and shall have power as may seem to them best to receive or reject any applicant.

4. The said directors, or any seven of them, shall be and they are hereby empowered to purchase a piece or parcel of land not

exceeding four acres, the most healthy in situation that can be procured, and as convenient as may be, to the site selected by the commissioners appointed under this act; and to contract for the building thereon, a commodious house or houses, fit for the reception and accommodation of persons of unsound minds, having previously given public notice by advertisement published in the Richmond Enquirer, and in some newspaper published in Staunton for sixty days, that they will receive proposals for the building thereof, and shall take bond with sufficient security, from such person or persons, in the penal sum of twenty thousand dollars, payable to themselves and their successors in office, conditioned for the faithful performance of said contract, under the immediate superintendence of the said directors. The said directors shall have full power from time to time, to order and direct their treasurer to draw upon the treasurer of this Commonwealth, (which shall be audited by the Auditor of Public Accounts,) for such sums of money, including the cost of the site aforesaid, as may be necessary to defray the expenses of said building or buildings; which shall be paid out out of any money in the treasury not otherwise appropriated: *Provided*, That the whole expense thereof, shall not exceed the sum of ten thousand dollars.

5. When the said hospital shall have been erected, the expenses thereof shall be provided for and paid in the same manner, that the expenses of the present hospital are provided for and paid; the jurisdiction, powers and duties of the directors and keepers of both the said hospitals shall in all respects be the same; the proceedings by magistrates and courts concerning the examination of persons of unsound minds, or those supposed to be so, and their removal to the hospital hereby established, shall in all respects be the same as are now required or observed in examining such persons, and removing them to the present hospital; and the persons and estates of persons who may be removed to the hospital hereby established, shall be in the same condition, and subject to the same laws, as are now in force in relation to the persons and estates of those removed to the present hospital.

6. The court of directors shall have power to appoint a clerk, attending physician and treasurer; to each of whom they may make a reasonable compensation for their services. The 32
treasurer, (who shall not be a member of the court of directors,) shall be appointed annually, and shall be required, before entering on the duties of the office, to give bond with approved security, in the penalty of twenty thousand dollars, payable to the president and directors and their successors in office, conditioned for the faithful discharge of the duties of his office, and for the settlement of his accounts before the said court of directors, once in six

months; which accounts the said court of directors are hereby required to cause to be certified to the auditor, to be audited as other public accounts. And the said court of directors, shall have power and authority to draw through their treasurer for the whole amount, or any part of the annual appropriation, for which draft or drafts when presented, the auditor of public accounts is hereby authorised and required to issue a warrant on the treasury: *Provided however*, That no such draft made upon the appropriations of one year, shall be allowed, until all monies drawn on account of the appropriations of one year next preceding, shall have been duly accounted for by the treasurer of the hospital.

7. The said directors shall, so soon as the hospital hereby established, shall be finished, give notice thereof by advertisement in some paper printed in the city of Richmond, to be published thirty days; a copy whereof shall be sent, under the direction of the Executive, to every county and corporation court of this Commonwealth; upon the receipt whereof, it shall be the duty of all magistrates or courts, having custody of or jurisdiction over persons of unsound mind, to have all such as may be confined in the county jails or elsewhere, (for want of room in the present public hospital,) removed to the hospital hereby established. And in all cases that may afterwards occur west of the Blue Ridge, wherein it may be necessary to remove persons of unsound mind, they shall be removed to the hospital hereby established, so long as it can conveniently receive them. If it be full, they shall be sent to the hospital now at Williamsburg. And, so long as the latter hospital cannot conveniently receive any persons that may be sent to it, such persons shall be sent to the hospital hereby established, from whatever part of the Commonwealth they may come. When the hospital at Williamsburg can conveniently receive them, all such persons east of the Blue Ridge shall be sent thither.

8. All acts and parts of acts coming within the purview of this act, shall be and the same are hereby repealed.

9. This act shall be in force from and after the passing thereof.

CHAPTER 4—An act making farther appropriation for the completion of the Western Lunatic Hospital.

[Passed February 24th, 1827.] 9

1. *Be it enacted by the General Assembly*, That the sum of twelve thousand dollars be, and the same is hereby appropriated

out of any money in the Treasury, not otherwise disposed of, toward the completion of the Western Lunatic Hospital, to be paid by instalments, as the progress of the work may require: And the Auditor of Public Accounts is hereby required to issue a warrant on the Treasury, to the order of the Court of Directors for the said hospital, for such sum as the said court may from time to time deem necessary, so as not to exceed the appropriation aforesaid.

2. *Be it further enacted,* That the said Directors shall not enter into any contract whatever, beyond the sum hereby appropriated.

3. This act shall commence and be in force from and after the passing thereof.

CHAPTER 7.—An act concerning the Western Lunatic Hospital.

[Passed February 28th, 1828.] 9

Whereas, it is represented to this General Assembly, by the court of directors of the Western Lunatic Hospital, that the land purchased by them is not sufficient for the humane purposes of the institution:

1. *Be it therefore enacted,* That the said court of directors be, and they are hereby authorised, if they shall deem it expedient, having a due regard to economy, to procure by purchase, an additional quantity of land, adjoining the present lot, not exceeding six acres: But if they, the said president and directors of the Western Lunatic Hospital, shall be unable to procure the said quantity of land, situate as aforesaid, on terms by them deemed fair and reasonable, they may proceed to have the same condemned for the purpose aforesaid, by applying to the county court of Augusta, for a writ of ad quod damnum; having given ten days previous notice to the proprietor thereof, if he be found in the county, and if not, then to his agent, if any he hath, which court shall thereupon order their clerk to issue such writ, to be directed to the sheriff, commanding him to summon and impannel twelve fit persons, to meet upon the lands so proposed to be condemned for the use of the said Hospital, on a certain day to be named by the court, and inserted in the said writ, of which notice shall be given by the sheriff to the proprietor or his agent as before directed. The freeholders taken, shall be charged by the said sheriff impartially and to the best of their skill and judgment, to view the lands so situate as aforesaid, and to locate and circumscribe by certain metes and bounds six acres thereof, or any smaller quantity, as desired by the said president and directors, and to appraise the same according to its true value. The inquest so made and sealed by the said jurors, together with the said writ,

shall by the said sheriff be returned to the succeeding court, who shall thereupon order summonses to be issued to the several persons, proprietors or tenants of the lands so located, to shew cause why the same shall not be condemned for the use aforesaid. If on such inquest, or other evidence, it shall appear to the court, that the valuation of the said lands, has been just and reasonable, and the location has been properly made, they shall order the same to be recorded, whereupon the said president and directors of the Western Lunatic Hospital, shall out of any funds which are or may be appropriated for the completion of the said Hospital, make payment of such assessed valuation, to the proprietor or proprietors thereof, according to the said inquest, and the land so located shall vest in the Commonwealth absolutely, for the uses and purposes aforesaid.

2. This act shall commence and be in force from and after the passage thereof.

CHAPTER 6.—An act amending the acts concerning idiots and lunatics, to provide for clothing the public guard, and for other purposes.

(Passed February 17th, 1830.)

* * * * *

5. *Be it further enacted*, That the directors of the Lunatic Hospital at Staunton be and they are hereby authorised to cause the buildings of that asylum, with the lot, to be enclosed with a suitable wall of stone or brick, in their discretion, for which purpose the sum of five thousand dollars shall be and the same is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated.

See Act March 1st, 1833, Chap. 29, under "Eastern Asylum at Williamsburg," supra.

See Act March 12, 1834, Chap. 19, under "Eastern Asylum at Williamsburg," supra.

See Act March 12, 1835, Chap. 17, under "Eastern Asylum at Williamsburg," supra.

CHAP. 8.—AN ACT appropriating a further sum of money for completing the improvements of the Western lunatic hospital.

(Passed March 22, 1836.) 9

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth, to be audited by the auditor of public accounts, for such further sum of money, in addition to the sums heretofore appropriated for the same purposes, as may be necessary to fulfil their contracts for the completion of the additional buildings heretofore authorized to be erected, and also for the completion of the partition walls authorized to be erected by the act of March the twelfth, eighteen hundred and thirty-five: *Provided*, That said further sum hereby appropriated shall not exceed six thousand dollars.

2. This act shall be in force from its passage.

See Act of March 31, 1837, Chap. 19, under head "Eastern Asylum at Williamsburg," supra.

See Act April 3rd, 1838, Chap. 21, under head "Eastern Asylum at Williamsburg," supra.

CHAP. 17.—An ACT concerning the lunatic asylums of this commonwealth.

[Passed April 10, 1839.] 14

1. *Be it enacted by the general assembly*, That the directors of the western lunatic hospital shall be, and they are hereby authorized to contract for conducting an ample supply of good spring water to the said hospital in iron pipes, without use of forcing pumps or other machinery, from some point sufficiently elevated to allow the water to be conducted into the upper story of the principal building of said hospital, and for the purpose of defraying the expense thereof, 15 the said directors are hereby empowered to direct their treasurer to draw upon the treasurer of the commonwealth, (to be audited by the auditor of public accounts,) for any sum not exceeding five thousand dollars, in addition to the sum heretofore appropriated for that purpose.

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CHAP. 18.—An ACT providing for paying the workmen for completing the additional building to the Western lunatic asylum.

[Passed March 8, 1842.] 16

1. *Be it enacted by the general assembly,* That the sum of nine thousand and sixty dollars and forty-four cents be, and are hereby appropriated out of any money in the treasury, to discharge in full, including any claim for interest, the debt due from the commonwealth to the workmen for completing the additional building to the Western lunatic asylum; and the court of directors of that institution are authorized to direct their treasurer to draw on the treasurer of this commonwealth for the same.

2. This act shall be in force from the passing thereof.

See Act of March 25th, 1842, Chap 19, under head "Eastern Asylum at Williamsburg," supra.

See Act Feb. 12, 1844, Chap. 10, under head "Eastern Asylum at Williamsburg," supra.

CHAP. 17.—An ACT concerning the Western lunatic asylum at Staunton.

19

[Passed March 4, 1846.]

Whereas it is represented to the general assembly by the president and directors of the Western lunatic asylum, that the interests of that institution would be greatly promoted by the acquisition of an additional quantity of land:

1. *Be it therefore enacted,* That the court of directors of the said asylum be and they are hereby authorized to procure by purchase an additional quantity of land, adjoining the lands belonging to said asylum, not exceeding one hundred and twenty acres. But if the said directors shall be unable to secure the said quantity of land, situate as aforesaid, on terms deemed by them reasonable, they may proceed to have the same condemned, or so much thereof as they may deem necessary for the purpose aforesaid, by applying to the county court of Augusta, who are hereby authorized and required to appoint five fit and discreet freeholders of said county, who after being first

duly sworn for that purpose, before some justice of the peace for said county; and after having given at least ten days previous notice to the owner or owners of such land, their agent or attorney, shall, on such day as they may appoint, go upon the lands which the directors of said asylum may require to be condemned for the use of the same, and value the same at cash price, according to the best of their skill and judgment, and after they shall have ascertained the value of such land or lands as they may be required to condemn, shall make report to the next court for the said county, who shall, on the return thereof, direct summons to issue to the several persons, proprietors or tenants of the lands so condemned for the use aforesaid, returnable to the first term thereafter. And if on the return of such summons, the party on whom the same has been executed, shall fail to appear and contest the same, the said county court shall confirm the said report or reports; and on payment of the valuation of such land or lands to the person or persons entitled to the same, the said land or lands shall be fully vested in the directors of the said asylum for the time being, and their successors in office forever. But if the owner or owners of said land or lands, or either of them, shall appear and contest said report, the said county court shall hear and determine the same in the same manner as is now prescribed by law in cases of writs of *ad quod damnum*, awarded on the report of viewers of a road. And the proceedings under this act subsequent to the return of the report of the commissioners aforesaid, shall in all things conform to the proceedings in cases of roads: *Provided, however,* That in proceeding to make condemnation of the necessary quantity of land, it shall not be lawful to interfere with the private residence, garden or yard of the individual, whose land it may be necessary to condemn.

2. *Be it further enacted,* That the sum of four thousand dollars be and the same is hereby appropriated, for the purpose of carrying into effect the object of this act, out of any money in the treasury not otherwise appropriated. And the president and directors of the Western lunatic asylum are hereby authorized to draw on the auditor of public accounts for the said sum of four thousand dollars, as soon as it may be necessary for them to pay for any land or lands acquired under this act.

3. This act shall be in force from the passing thereof.

See Act Jan. 17, 1848, Chap. 12, under head, "Eastern Asylum at Williamsburg," supra.

See Act Jan. 13, 1849, Chap. 13, under head, "Eastern Asylum at Williamsburg," supra.

CHAP. 16—An ACT for providing for the erection of necessary out-buildings at the Western asylum, and requiring that the funds of said asylum shall be kept in the Valley Bank at Staunton.

[Passed January 19, 1850.]

1. *Be it enacted by the general assembly,* That for the purpose of erecting at the Western asylum for the maintenance and cure of insane persons, a plain and substantial building, to contain a kitchen, bakery, pantry, store-rooms, dining-room, chapel, clothes-rooms, medicine and library-rooms, and other rooms rendered necessary by the great enlargement of said asylum by previous acts of the general assembly, the sum of fourteen thousand five hundred dollars be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, and that the auditor of public accounts draw two warrants on the treasury in favor of the treasurer of said Western asylum, each for seven thousand two hundred and fifty dollars, the first payable the first of July, eighteen hundred and fifty, and the second payable the first of January, eighteen hundred and fifty-one, together making the said sum of fourteen thousand five hundred dollars; that sum being sufficient, in the opinion of the directors of said asylum, to complete entirely the necessary out-buildings, in conformity with the present enlarged plan of said asylum.

* * * * *

CHAP. 36.—An ACT appropriating the sum of five thousand dollars to construct fixtures and apparatus for lighting the Western lunatic asylum with gas.

[Passed February 25, 1852.]

1. *Be it enacted by the general assembly,* That the sum of five thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of constructing suitable fixtures and apparatus for lighting the Western lunatic asylum with gas, and that said sum of money be drawn from the treasury, upon the warrant of the auditor of public accounts, in favor of the directors of said Western lunatic asylum.

2. This act shall be in force from its passage.

CHAP. 40.—An ACT appropriating thirty-four thousand one hundred and eighty-eight dollars to heat the buildings of the Western lunatic asylum by steam, to erect covered connections and verandahs, and to enclose the grounds of said asylum.

29

Passed March 1, 1854.

1. Be it enacted by the general assembly, that there be and there is hereby appropriated out of the treasury of the commonwealth the sum of thirty-four thousand one hundred and eighty-eight dollars, to be paid on the orders of the board of directors of the Western lunatic asylum, to be applied by said board as follows: Fifteen thousand dollars, part thereof, to the heating by steam of the buildings of said asylum; nine thousand one hundred and fifty dollars, another part thereof, to the erection of covered connections and verandahs between the said buildings, and ten thousand and thirty-eight dollars, the residue thereof, to the enclosing of the grounds of said asylum: one-half of said aggregate sum of thirty-four thousand one hundred and eighty-eight dollars to be paid during the present fiscal year, and the remaining half of said sum during the next succeeding fiscal year.

2. This act shall be in force from its passage.

CHAP. 166.—An ACT appropriating the sum of ten thousand dollars to procure a supply of water for the Western lunatic asylum.

Passed March 19, 1858. 116

1. Be it enacted by the general assembly, that the sum of ten thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of procuring a supply of water for the Western lunatic asylum, and that the said sum of money be drawn from the treasury upon the warrant of the auditor of public accounts in favor of the directors of the said Western lunatic asylum; one-half in the present fiscal year, and the other half in the next succeeding fiscal year.

2. Be it further enacted, that the directors of said asylum be and they are hereby authorized and empowered to contract with the owner of any springs and land which may be deemed proper for the said supply of water, for the purchase of such springs and land as may be necessary adjacent to the same, not exceeding half an acre, and for such rights of way and other privileges as may be requisite for the purposes contemplated by this act; and in the event that they cannot agree with the proprietors of said springs and land for the purchase of the same and the necessary rights of way and other privileges, the

said directors are hereby authorized to proceed, in the mode indicated in sections six to eleven, inclusive, of chapter fifty-six of the Code, to obtain title to the same.

3. This act shall be in force from its passage.

CANNON HOUSE IN SURRY COUNTY.

CHAPTER 98.—An act concerning John Peter.

(Passed February 20th, 1824.) 101

1. *Be it enacted by the General Assembly,* That the auditor of public accounts shall be, and he is hereby authorised and required to issue a warrant on the public treasury in favor John Peter of the county of Surry, for the sum of one hundred and ten dollars, (being a balance due said Peter for the erection of a cannon-house, for the seventy-first regiment,) to be paid to the said Peter or his legal representative, out of any money therein not otherwise appropriated.

2. This act shall commence and be in force from the passing thereof.

GUN HOUSE RICHMOND ARTILLERY.

CHAP. 21.—An ACT to amend the several laws concerning the militia of this commonwealth, and for other purposes.

(Passed March 11, 1835.) 21

* * * * *

6. *Be it further enacted,* That the governor be, and he is here- 22
by authorized to furnish immediately to the Richmond Fayette and Portsmouth artillery companies, and from time to time to any other companies of artillery in the state, which may be furnished with cannon, and shall require the same, as many caissons and other needful equipments as, in his opinion, may be necessary and proper; and cause, where they may be necessary, suitable houses or shelters to be erected for the preservation and safe keeping of such caissons and cannon, with their necessary equipments; and also to arm and equip any troop or troops of cavalry, if he shall deem it expedient to do so. Any expense which may be incurred in pursuance of the provisions of this act, shall be defrayed out of any money in the treasury not otherwise appropriated.

JOINT RESOLUTIONS OF THE WEST VIRGINIA LEGISLATURE RELATING TO THE VIRGINIA DEBT QUESTION.

HOUSE JOINT RESOLUTION NO. 10, CONCERNING THE VIRGINIA DEBT.

(Adopted February 7th, 1895.) 494

Resolved by the Legislature of West Virginia:

That this Legislature hereby declines to enter into any negotiaton with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution.

HOUSE JOINT RESOLUTION NO. 3.

(Adopted January 21, 1897.)

A resolution relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that West Virginia does not owe one cent of the so called "Virginia debt," and that this Legislature is opposed to any negotiation on that subject.

(H. J. R. No. 6)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1899)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this legislature declines and refuses to take any action in regard to what is known as the Virginia debt, or Virginia deferred certificates, either by considering any propositions of adjustment or settlement, so called, or by authorizing the appointment of any committee or committees having for their purpose the consideration of the same; and that it is the sense of this legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt or certificates.

(S. J. R. No. 2.)

JOINT RESOLUTION NO. 21.

(Adopted January 16, 1901.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia: 495

That this legislature declines or refuses to take any action in regard to what is known as the Virginia Debt, or Virginia Deferred Certificates, either by considering any proposition of adjustment for settlement so called, or by authorizing the appointment of any committee, or committees, having for their purpose the consideration of the same.

And, That it is the sense of the Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt, or certificates.

(H. J. R. No. 3.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1903.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject. And, *further*, that this legislature declines, and most emphatically refuses, to take any action in regard to what is known as the Old Virginia debt, or Virginia deferred certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee or committees having for their object or purpose the consideration of same; and that is the sense of this legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt or certificates. Nor do we owe any other state or territory in this Union.

(H. J. R. No. 7.)

JOINT RESOLUTION NO. 3.

(Adopted January 20, 1905.)

Relating to the Virginia debt.

Resolved by the Legislature of West Virginia:

That it is the sense of this legislature that the state of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject.

In the Supreme Court of the United States

No. 2, Original. October Term, 1915.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

In Equity.

Motion for an Order [illegible]

Stipulation [illegible]

In the Supreme Court of the United States

No. 2. Original. October Term, 1913.

COMMONWEALTH OF VIRGINIA,

v.

STATE OF WEST VIRGINIA.

In Equity.

MOTION OF THE COMPLAINANT.

SUPPLEMENT TO RECORD.

The following correspondence having taken place since the preparation of the notice given in this case, which is returnable on the first day of the October term of the court, 1913, is submitted by way of supplement to the record presented in the said notice, to-wit:

(Copy)

FAIRMONT, WEST VIRGINIA,
September 22, 1913.

My Dear Sir:

I am instructed by a sub-committee of the West Virginia commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of

the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia, relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia commission, that the West Virginia commission has in course of preparation a proposition to be presented to your commission at the earliest moment; but that it will yet require some three or four months time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee and hope it will be agreeable to your commission to consider the same favorably.

In the meantime, if your commission should desire to submit any suggestions or propositions to this commission, looking to the same end, we would gladly and without unnecessary delay, consider the same.

With great respect, I remain,

Yours, etc.,

JOHN W. MASON,
Chairman West Virginia Commission.

HON. J. B. MOON,
Chairman Virginia Debt Commission,
Charlottesville, Virginia.

(Copy)

September 24, 1913.

Judge John W. Mason,
Chairman West Virginia Debt Commission,
Fairmont, West Virginia.

My Dear Sir:

Your favor of the 22d inst., reached me this morning. Last Saturday, the 20th, the Virginia debt commission had a conference with the Attorney General of Virginia, and concluded that under present conditions the only course left open

to us was to press for an order speeding the cause in the Supreme Court, of which the Attorney General of Virginia has, I presume, already notified your Attorney General.

I do not know that this would prevent further negotiations if your commission is in a position to enter into an agreement which would be effective, but no understanding having been reached after you called off our proposed meeting of August 12th, the Virginia commission did not see that there was anything left for them to do except to ask for some final adjudication of any matter which was possibly left open in the last decision of the Supreme Court.

I am sure you will pardon my adverting to the fact that more than two years and a half ago, (March 6th, 1911) the court referred the interest question and any other matter of detailed computation to the two States for their possible agreement and we promptly sent a sub-committee to your State, who returned without being able to accomplish any results.

Our commission therefore felt constrained to ask for some conclusion of the question of interest involved in the controversy and requested our Attorney General to act accordingly, though I do not know that this would preclude an agreement, if one could be arrived at in the premises.

Yours very truly,

JOHN B. MOON.

JBM|CP

Respectfully submitted,

SAMUEL W. WILLIAMS,

Attorney General of Virginia.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs. } In Equity.

THE STATE OF WEST VIRGINIA

BEFORE

HON. CHARLES E. LITTLEFIELD,

MASTER.

At Richmond, Virginia,

August 17-19 and Sept[illegible]

Volume [illegible]

RECORD OF HEARINGS

ERRATA.

Page 530, fifth line of figures from the top should read "$85,158.71" instead of "$285,158.71."

Page 711, eleventh line from the top, after the word "made" insert the word "under."

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

THE STATE OF WEST VIRGINIA

In Equity.

BEFORE

HON. CHARLES E. LITTLEFIELD,

MASTER.

At Richmond, Virginia,

August 17-19 and September 2-12, 1914.

VOLUME I.

RECORD OF HEARINGS.

General Index

This index is divided into 107 groups, the groups being arranged so far as feasible with the defendant's supplemental answer, and are numbered 1 to 107 consecutively.

The following is an index to the "groups" showing briefly the subjects included under each group. Immediately following is the detail index under each group.

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1	Class A.—Cash in the treasury of Virginia January 1, 1861.
2	Class B.—Richmond, Fredericksburg & Potomac Railroad.
3	Class C.—Recapitulation of assets in Class C.
4	Classes C. & D.—Orange & Alexandria Railroad.
5	Classes C. & D.—Richmond & Danville Railroad.
6	Classes C. & D.—Richmond & Petersburg Railroad.
7	Classes C. & D.—Virginia Central Railroad.
8	Classes C. & D.—Blue Ridge Railroad.
9	Class C.—Alexandria, Loudoun & Hampshire Railroad.
10	Classes C. & D.—Winchester & Potomac Railroad.
11	Classes C. & D.—Virginia & Tennessee Railroad.
12	Classes C. & D.—Southside Railroad.
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17	Class C.—Dismal Swamp Canal Co.
18	Classes C. & D.—Loan to Washington College.
19	Classes C. & D.—Richmond Academy Bonds.
20	Classes C. & D.—Claim against the United States Government.
21	Class C.—Claim against Selden, Withers Company.
22	Classes C. & D.—Richmond, Fredericksburg & Potomac Railroad.
23	Class D.—Recapitulation of assets in Class D.
24	Class D.—Loan to Kanawha Board of J. R. & K. Co.

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27	Class E.—Bank of Virginia.
28	Class E.—Bank of the Valley.
29	Class E.—Exchange Bank.
30	Class E.—Northwestern Bank.
31	Class E.—Fairmont Bank.
32	Class E.—"Running account" relating to all banks.
32	Act authorizing sale of bank stocks, etc.
33	Class F.—Securities sold to A. M. & O. Co.
34	Class G.—James River & Kanawha Company.
35	Class G.—Manassas Gap Railroad (claimed as asset 20 in class C.)
36	Class G.—Stock in various companies.
37	Moneys collected from West Virginia counties after June 20, 1863.
38	Summary of claims of West Virginia as set out in 1861 exhibits.
39	Dividends and interest collected by Virginia after January 1, 1861.

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43	Classes C. & D.—Orange & Alexandria Railroad.
44	Classes C. & D.—Richmond & Danville Railroad.
45	Classes C. & D.—Richmond & Petersburg Railroad.
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48	Class C.—Alexandria, Loudoun & Hampshire Railroad.
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50	Classes C. & D.—Virginia & Tennessee Railroad.
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52	Classes C. & D.—Norfolk & Petersburg Railroad.
53	Class C.—Roanoke Navigation Co.
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57	Classes C. & D.—Loan to Washington College.
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60	Class C.—Claim against Selden, Withers Co.
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63	Class D.—Bank dividends accrued June 20, 1863.
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80	Quotations on Virginia bonds, stocks, etc.
81	Class C.—Plaintiff's summary of Defendant's exhibits for Class C.
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83	Class D.—Act passed March 21, 1866, to provide for funding interest upon the public debt.
84	Class F.—Deed of trust given by the A. M. & O. Co. to the Board of Public Works of Virginia.
85	Plaintiff's recapitulation of assets in classes A, B, C, D, E, F & G, as of January 1, 1861.
86	Plaintiff's recapitulation of assets in classes A, B, C, D, E, F & G, as of June 20, 1863.
87	Plaintiff's exhibit relating to interest.
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90	Statement of old unfunded bonds of Virginia.
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1861

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Defendant's Exhibit No. 3, Asset 18.
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Class D.—Interest on loans and dividends on stock accruing prior to January 1, 1861, upon common investments, and collected by the State of Virginia after January 1, 1861, and still unaccounted for.

Class E.—Bank stock purchased by Virginia with joint funds prior to January 1, 1861, and in her possession on that date.

Class F.—Railroad stock purchased by the State of Virginia, out of the common funds of the two states, in various railroads, prior to the first day of January, 1861, and sold by her subsequent to the 20th day of June, 1863, without the knowledge or consent of West Virginia, and for which Virginia has never accounted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

THE STATE OF WEST VIRGINIA

In Equity.

BEFORE

HON. CHARLES E. LITTLEFIELD,

MASTER.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA
vs.
THE STATE OF WEST VIRGINIA
} *In Equity.*

NEW YORK, *June* 17, 1914.

APPEARANCES:

HON. JOHN G. POLLARD (Richmond, Virginia),
Attorney General of Commonwealth of Virginia.

MR. RANDOLPH HARRISON (Lynchburg, Virginia),
of counsel.

MR. WILLIAM A. ANDERSON, (Lexington, Virginia),
of counsel.

MR. JOHN B. MOON (Charlottesville, Virginia),
(*Chairman of the Debt Commission for Virginia*),
of counsel.

MR. HOLMES CONRAD (Washington, D. C., Winchester, Virginia), and MR. SANFORD ROBINSON (New York).
Attorneys for the Bondholders.

HON. A. A. LILLY (Charleston, West Virginia),
Attorney General for West Virginia.

MR. JOHN H. HOLT, (Huntington, West Virginia),
of counsel.

MR. CHARLES E. HOGG (Point Pleasant, West Virginia),
of counsel.

MR. R. L. GREGORY (Parkersburg, West Virginia),
of counsel.

It is understood and conceded that so far as the issues raised by the supplemental answer filed by West Virginia are concerned, that West Virginia has the burden of proof and that West Virginia opens and closes both in the taking of testimony and in the argument of the issues involved in the supplemental answer, it being also understood that this stipulation does not in any way relate to the question of interest or in any way prejudice either of the parties in relation thereto.

The Master: The understanding is, that the Master will begin the taking of testimony at Richmond, Virginia, at 10 o'clock on Monday, August 17th, at some convenient place to be selected by the counsel for Virignia, notice of which is to be given to the counsel for West Virginia ten days in advance of the hearing. The parties upon each side, subject to unavoidable circumstances and absolutely necessary delays, are to be prepared to go on and finish the taking of the testimony in a continuous hearing.

No time has been agreed upon for the argument, it being impossible at this stage of the proceeding to determine how much would reasonably be needed by the parties upon either side. The Master makes this suggestion however, that while the arguments in the other case were without limit, he will feel it necessary in this case to limit the arguments, and his tentative suggestion is that the parties had better be prepared by either two or three counsel on either side to make such argument as they think may be necessary, the specific time to be limited by arrangement after the testimony is taken; but meanwhile the attorneys who are to argue can be in condition

where they can be making their tentative and preliminary preparation for argument so that when the time comes they will not need any more time after the testimony is concluded than is absolutely necessary. The time for argument will be divided equally between Virginia and the bondholders and West Virginia. So far as counsel may have occasion to cite authorities or argue authorities which might bear upon any branch of the case, either upon competency of the testimony and its admissibility and the weight to be given to it or upon the main issues of the case, I will expect the counsel upon either side to have a memorandum of all of the authorities upon which they expect to rely in argument prepared and submitted before they begin argument to the counsel on the other side and to the Master, so that the Master can have before him for his future consideration the authorities from each side upon which either party relies and that counsel upon either side will have in advance of the argument the authorities to be relied upon by the other side.

Mr. Harrison: Virginia will ask the Master to pass upon the question of West Virginia's liability for interest on the principal sum found by the Court in its opinion to be due by her, the question of interest being one of the issues distinctly raised by the supplemental answer and referred to the Master for report, and Virginia at this time desires to give notice to West Virginia to be prepared at the hearing to begin on the 17th of August to present such evidence and arguments as she may be advised to present on that question at that time.

Judge Holt: As presently advised the State of West Virginia is of the opinion that the question of interest has not been referred to the Master by the Court; but if the Master and the State of West Virginia should reach the conclusion that such question has been referred, then and in that event West Virginia will be prepared to offer any necessary evidence upon that subject at the same time she offers evidence upon the principal questions.

The Master: The parties will understand that the contentions of either side with reference to the question of interest will be a subject matter of presentation, argument and dis-

cussion before the Master at some time during the hearing beginning on the 17th of August; and so far as evidence relating thereto may be pertinent, the parties may be heard in relation thereto also; the object of the notice given by Virginia being, as I understand it, that West Virginia must be prepared to meet any contention that may be made by Virginia with reference to the question of interest, and will not be in a position at the hearing to ask for any delay when a question of that sort may be raised.

Judge Holt: I so understand.

The Master: While I have suggested that the proof introduced follow substantially the lines of the items mentioned in the various classes which are made an exhibit to the supplemental answer of West Virginia, it must also be understood that if there are any other issues raised by the answer that may not be included in the schedule I shall expect the parties to be prepared upon those issues also. In other words, West Virginia must be prepared not only as to the items mentioned in her schedules but as to any other items that she sets up affirmatively by way of defense in her supplemental answer, if there are any other than those mentioned in the schedules, and the parties upon both sides must of course be prepared accordingly.

Judge Holt: Meaning that we must be prepared at that time upon our whole contention?

The Master: Exactly so, yes, sir; meaning, as suggested by Mr. Holt, that West Virginia and Virginia must be prepared at that time upon their whole contention raised by their supplemental answer. It is suggested by the Master and understood by the parties that the counsel for West Virginia, as they complete their preparation, so far as it may result in computations and schedules, will so far as is possible submit the result of their work from time to time to the counsel for Virginia, and that counsel for Virginia upon the other hand so far as their preparation involves computation and schedules will reciprocate, and that in addition to this the counsel on either side will confer with each other and eliminate by agree-

ment so far as is possible all of the items that may be involved in the controversy, the object of this suggestion being to narrow down the record and eliminate so far as possible every element of controversy.

This will terminate the hearing for this morning as far as the Master is concerned, and he wishes to say that he is very greatly obliged to all the gentlemen present for their attendance and courtesy and effort to make progress and facilitate despatch.

Adjourned to August 17, 1914, at 10 A. M., to meet at Richmond, Virginia.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA
vs.
THE STATE OF WEST VIRGINIA
} *In Equity*

RICHMOND, VIRGINIA, *August* 17, 1914.

APPEARANCES:

HON. JOHN G. POLLARD (Richmond, Virginia),
Attorney General of Commonwealth of Virginia.

MR. RANDOLPH HARRISON (Lynchburg, Virginia),
of counsel.

MR. WILLIAM A. ANDERSON, (Lexington, Virginia),
of counsel.

MR. JOHN B. MOON (Charlottesville, Virginia),
(*Chairman of the Debt Commission for Virginia*),
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MR. JOHN H. HOLT, (Huntington, West Virginia),
of counsel.

MR. CHARLES E. HOGG (Point Pleasant, West Virginia),
of counsel.

MR. R. L. GREGORY (Parkersburg, West Virginia),
of counsel.

Mr. Holt: Mr. Master, what will be our hours of meeting and adjourning?

The Master: We will suspend at one and come in at half past two, and sit until half past five, for the time being, subject of course, if counsel on either side want any change to suit their convenience we will change it.

I will state for the information of the counsel that of course the case undoubtedly will have, before we get through, more or less in the line of schedules; and I have instructed the stenographer as follows, in the first place, as the schedules come in they will be marked as usual; in this case we will mark them Plaintiff's Exhibits 1, 2, 3, etc., and Defendant's Exhibits 1, 2, 3, etc., so that they will be numerically numbered and identified as to party; and whatever is introduced as schedules, if it is an original paper and you want to leave the original paper on file of course that is agreeable to me, on the other hand if it is an original paper and you agree to take a copy that is agreeable, but they are all to be left with the stenographer. Personally, I do not intend to take charge of them. So that when we get all through I am going to depend upon him to be prepared to furnish me all of the schedules that have been introduced into this case. So you will have to look to him if you have to get a schedule after you have introduced it. If you have occasion to get any schedule you will have to go to the stenographer, and I am going to hold him responsible for the exhibits that are filed. I want to be able, when I get

through, to call upon him not only for the transcript but for every exhibit and every schedule that is introduced. I shall hold him responsible for their safe care. Of course it is understood that all schedules and all exhibits are open to the inspection of everybody during the whole course of the trial.

Mr. Holt: We have done this, Mr. Master; every exhibit and schedule that we have prepared, we expect to introduce in the form on which we shall rely. We have had twenty-five blue prints thereof made, so that one may be handed to you, one to the stenographer, and one to each of these gentlemen on the other side, and have enough reserved for our own inspection; and I suppose that after we are through at least one of them will survive the wreck, so that the Master ought to have something to go by.

The Master: Of course I will have mine as I go on, but ultimately I am going to depend upon the stenographer to produce to me all schedules and exhibits actually introduced.

Mr. Holt: We will furnish the Special Master with a bound copy of them, so that there will be no trouble about their order and so on, and they will speak for whatever they may be worth.

CONWAY W. HILLMAN,

called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Holt:

Q. Please give the stenographer your full name?

A. Conway W. Hillman.

Q. Where do you reside, what is your age, and what is your business?

A. I reside at the City of Evanston, Illinois, am 58 years old, and I am President of the Mutual Audit Company and a public accountant by profession.

Q. How long have you been a public accountant?

A. A little over eight years as a public accountant.

Q. What experience have you had as such, what is the extent and the character of that experience?

A. Since becoming a public accountant I have been employed to a very large extent on the different railroad rate cases which have been taking place over the country, with a view of a thorough audit and analysis of railway accounts and books in order to determine various costs and other points which would come up in the various cases and being in dispute. In addition to that we have conducted, that is my firm, the Mutual Audit Company, have conducted various other audits, and investigations of various characters with which I have been familiar as President of the company.

Q. In your experience, what if any connection have you had with the Minnesota rate cases?

A. I was the accountant for the State of Minnesota in the Minnesota rate case.

Q. What experience have you had, if any, in the service of other states in matters involving railroad accounts and the value of railroad stock?

A. I was accountant for the State of Alabama in their two cent passenger rate case, which also involved the commodity

rates on 107 different commodities. I was accountant for the State of Florida in their three cent passenger rate case some years ago and also in several litigations that they have had since, and am now retained by them in a case which is to come before the Circuit Court concerning the freight rate cases on the L. & N. in the State of Florida. I am also employed by the State of Florida to analyze and put on file with the Railroad Commission all of the accounts of the different railroad companies which operate in and out of the State of Florida, and in that their specialty is the investigation of the capitalization of these roads and the amount of value which their stocks represent. I have served the State of North Carolina in both its two cent passenger rate cases, some six years since and in the other rate case which has just been concluded by them. I have served the State of Indiana in their express rate cases, the State of Minnesota again in their express rate cases and again in Minnesota on some railroad rate cases besides the case which is generally understood as the Minnesota rate case. I have served the State of Ohio in the Wheeling and Lake Erie Coal Rate cases. I served the State of New Jersey in their proposed but not yet carried out telephone rate cases. I have served the State of Missouri as a consulting accountant for the firm of Haskins & Sells, which had charge of their railroad rate cases. I mean by that consulting with that firm, not as their employee. I have served the State of Arkansas in the same way and with the same firm. I have served the State of Kentucky in their raidroad rate cases. I have served the States of both North and South Dakota in their various railroad rate cases and have been in consultation on a large number of cases of private individuals against railroads wherein the matters were taken up. I also served the State of West Virginia in their two cent passenger rate case, which I had overlooked in making my statement. I have also served the City of Jacksonville in the audit and systemization of their city accounts; and besides that have been engaged in a number of smaller audits and investigations of a commercial and financial character, but my principal and heavy business, as I have stated, has been in the investigation of railroad accounts and the determination of costs.

Q. Mr. Hillman, in your experience as an accountant in the way you have described, tell the Master whether or not you have had an opportunity or it has been your business to investigate from the records and activities of the various railroad companies, the question of the value of their stocks?

A. Yes, sir, it has in a number of cases.

Q. You may tell us whether or not you have examined the records of the Commonwealth of Virginia for the purpose of ascertaining the amount of cash in the hands of the Treasurer of that Commonwealth from the 1st day of January, 1861, and the distribution of such amounts if any among the various funds to which it is credited?

A. Yes, sir, I have.

Mr. Harrison: Mr. Master, I think we may have it understood that any objections which we may desire to offer to the introduction of the testimony of this witness shall be understood as not waived because we do not make them as we go along, but that all rights for that purpose are reserved.

The Master: No objection to that I suppose?

Mr. Holt: I think that is entirely proper, Mr. Harrison; I think that ought to be understood.

The Master: It will be understood that the competency of any of the testimony as offered, even though the question may not be raised at the time it is introduced, will be open to the parties on either side upon final argument. I shall expect simply that either side will call my attention specifically to matters of that sort that they rely upon, in their briefs.

Mr. Harrison: Either competency or relevancy or materiality?

The Master: Certainly. The main question will be whether a certain piece of testimony is proper to be considered by me in connection with a particular proposition. That will be open from the beginning until the end, but I want counsel on either side to be very careful to call my attention specifically to what they rely upon in that regard in the briefs which they submit to me before the case is concluded.

Q. What books, Mr. Hillman, upon this question did you examine?

A. Literary Fund Ledger.

The Master: Have any of these schedules been submitted to the counsel on the other side, in accordance with the suggestion made at our preliminary hearing, Mr. Holt?

Mr. Holt: They have not, your Honor, for the simple reason, laboring under difficulties that we have had, some of these schedules were not completed until five o'clock this morning. I have not been in bed more than thirty minutes since yesterday, so we have just done the best we could.

The Master: That is a sufficient answer. The only purpose of my inquiry was that if they had been and if any large number of these were agreed upon, of course it would eliminate the necessity for examination; under the circumstances of course you have not, and you can only go on as you do.

Mr. Holt: I believe that we will get together on a good many.

The Master: Yes. We can take our time about that, but meanwhile proceed *de bene.*

Mr. Holt: I asked the witness a question about what books he examined, and before he had completed his reply I broke in with another question.

Q. Complete your answer if it were not finished.

A. In addition to the Literary Fund Ledger which I have just mentioned I examined the Literary Fund Journal; I examined the Board of Public Works Ledger B, which Board of Public Works Ledger, is often denominated Internal Improvement Fund Ledger, the terms seeming to be used frequently interchangeably. I examined the Commonwealth Fund Ledger that is kept in the First Auditor's office of the State of Virginia, all of the others being kept in the Second Auditor's office. I examined the Sinking Fund Ledger No. 1, and from these sources I obtained the information which is set out in the exhibit which will be filed later.

The Master: Better refer to that by number as we go along, which is a thing sometimes overlooked in the hurry of a trial. When counsel is inquiring about a paper it will be just as well to identify it so that neither of us will have any trouble in locating the testimony. I make such suggestion

now, so that this will probably I suppose be Defendant's Exhibit No. 1.

Mr. Holt: I will ask a question which will absolutely identify it.

Q. What did you ascertain to be the amount of cash on hand in the Treasury of the Commonwealth of Virginia from the 1st day of January, 1861?

A. At the opening of business, January 1, 1861, the amount of cash on hand in the Treasury of the State of Virginia amounted to $1,102,036.16.

Q. What part of that did you find if any in the Literary Fund?

A. I found in the Literary Fund of State funds $23,985.18. In addition to this amount and in addition to the total amount I have mentioned, there was in the Treasury of the Literary Fund $2,890.90 of the so-called Dawson fund, which is a trust fund and not a State fund, but is in the custody of the Literary Board.

Q. What of that amount, if any part thereof, did you find in the Board of Public Works Fund?

A. $5,958.28.

Q. What in the Commonwealth Fund?

A. $252,842.67.

Q. What if any in the Sinking Fund?

A. $819,250.03.

Q. Have you prepared a schedule or tabulated statement showing the amount of cash on hand at the date named, and the distribution thereof between the various funds?

A. Yes, sir, I have prepared such a statement?

Q. How have you marked that statement?

A. Exhibit Hillman No. 1 on the upper right hand corner, and on the upper left hand corner, Class A, to identify it with the supplemental answer of the State of West Virginia in this case.

Q. Will you file this exhibit with and as a part of your testimony, marked Exhibit Hillman No. 1?

A. Yes, sir, I so file it.

The Master: Do you want to make this your first exhibit, Mr. Holt?

Mr. Holt: Yes, sir.

The paper was admitted in evidence and marked Defendant's Exhibit No. 1, August 17, 1914, C. B.

Q. You may state whether or not the exhibit you have filed states the book and page in each instance from which you have made up the exhibit.

A. Yes, sir, it does. Perhaps I had better further state that in the case of the Literary Fund the postings are made at intervals, and the interval at which the posting was made overlapped the date; therefore the amount would not show on the ledger, and it was necessary for me to take the receipts and disbursements for the quarter from October 1 to December 31, 1860 add them, and deduct them from the balance shown on September 30, 1860, in order to arrive at the correct balance December 31, 1860, or at the opening of business on January 1, 1861.

Q. You may state whether or not Defendant's Exhibit No. 1, so filed by you correctly states the result of your examination of the records of the Commonwealth of Virginia and truly presents the state of the cash account on the date named.

A. It is correct, and shows this account as stated on the books of the State of Virginia.

Mr. Holt: Now, your Honor, we might as well raise the question right here, in order that there may be no misunderstanding about it. Of course we can go downstairs here and bring certified copies of those books, if these gentlemen or the Master should require it; but we do not want to be put to that expense and trouble unless some point is made of it. We might not even then come under the rules of evidence, on account of there being various books, and all that sort of thing —but we wanted to have some understanding. On each of these exhibits we have given the book and the page, so that it may be easily verified, and the correctness of his result checked. But if the Master should require us now to file instead of that exhibit, or along with the exhibit, certified copies of these books, of course we will go and get them. But we deem it to

be sufficient, the exhibit showing the result, and the sworn testimony of a competent accountant who has examined the books.

The Master: Unless some question is raised as to the accuracy of the result, which involves an inspection of the original books, so far as I am concerned I do not want to be bothered with the books. Of course it is going to be open to both sides to go to the original sources. My own notion is that after Mr. Hillman submits the results of his work, and while it is going on, it will probably be verified by the other side, and if there is any question about its accuracy that involves an inspection of these books, to my mind that is a matter that might involve perhaps their examination. Of course I do not imagine that the other side care anything about the books except to be satisfied that these results are accurate. Subject to that suggestion, as far as I am concerned I have no occasion to examine the books. In the first place, if you agree, that eliminates all controversy. If you do not happen to agree and there is anything about the books that will aid me in determining any controversy between you, of course I will look at the books. Will that be agreeable?

Mr. Harrison: So far as the introduction of the original source from which the exhibits are prepared, as a matter of course we reserve the right upon cross-examination to test the accuracy of the exhibits, and if it be necessary to refer to those original sources then of course we will do it. And if not we will not. There is no necessity now, as Judge Holt suggests, for them to take upon themselves the labor and trouble of introducing those original records.

The Master: Or copies of them?

Mr. Harrison: Or copies of them?

The Master: Subject, of course, to any controversy that may arise.

Mr. Holt: Then we will go to the original source, of course.

The Master: You want the question settled that there is no question raised about the accuracy.

Mr. Holt: Yes, and of course the materiality is always subject to challenge. Now, before passing to Exhibit No. 2,

your Honor, I wanted to make an inquiry, and that is whether or not these gentlemen would like to cross-examine on Exhibit No. 1 now, or whether they prefer to wait until we get all of the exhibits in. It is just a question of their convenience.

The Master: What have you to say about that, Mr. Attorney General and Mr. Harrison?

Mr. Harrison: I think so far as this particular exhibit is concerned we might dispose of it by a brief cross-examination at this time, but inasmuch as other exhibits are to be introduced which may involve some consideration and conference on our part before we attempt to cross-examine, we would prefer to have the whole case put in.

The Master: That is, before you begin to cross-examine at all you would like to have the other side put in their whole case?

Mr. Harrison: Yes.

The Master: That I suppose is agreeable?

Mr. Holt: Yes, it is just a question of what they prefer.

The Master: Have it understood, Mr. Harrison, so far as you can, that when you come to cross-examine you will exhaust each class as you go on.

Mr. Harrison: We shall have that in view.

Mr. Anderson: At times there may be such connection between these exhibits that we cannot anticipate what we may desire to ask until they are all in..

Q. Mr. Hillman, have you examined the books and records of the Commonwealth of Virginia with the view of ascertaining whether or not it owned on the 1st day of January, 1861, and immediately prior thereto any stock in the Richmond, Fredericksburg & Potomac Railroad Company and with a view of ascertaining in the event it did have such ownership, the extent thereof?

A. Yes, sir, I have.

Q. You may state whether or not the State of Virginia owned any stock in the Railway Company on that date.

A. It owned, according to its books, 2,752 shares of the par value of $100, each, making a total par value of $275,200. This is shown on page 17, ledger B, Second Auditor's office.

Q. Second Auditor's office I suppose of the Commonwealth of Virginia?

A. Of the Commonwealth of Virginia, yes, sir.

Q. You may state whether or not the records of that State show any disposition of that stock at any time or whether or not it is still owned by the State of Virginia.

A. It is still owned by the State of Virginia.

Q. Where are the general offices of the Richmond, Fredericksburg & Potomac Railway Company located?

A. In the First National Bank Building, City of Richmond, Virginia.

Q. Have you or have you not examined the records of that company with a view of ascertaining therefrom the book value of that stock as of the 1st day of January, 1861?

A. Yes, sir, I have examined the records of that company with a view of ascertaining the book value of the stock as of the date mentioned, January 1, 1861.

Q. What did you ascertain therefrom to be the book value of that stock on the 1st day of January, 1861, that is the value per share?

A. I found that the value on March 31, 1860, was $148.40 per share; that the value on March 31, 1861, was $150.40 per share; that there was no trial balance on these records as of date of December 31, 1860, whereby the exact value could be determined on that date; but that the stock advanced in value in twelve months two points, from $148.40 to $150.40. I have assumed that the value would grow according to the time, and that therefore three-quarters of this increment should be added to the value of March 31, 1860, in order to determine the value January 1, 1861. This brings the value to $149.90 per share, so I have called it $150. per share on this exhibit.

Q. Taking that as the actual value of the stock as of January 1, 1861, what would be the full actual value of the entire holding of the Commonwealth of Virginia in the stock of that Company on that date?

A. $412,800.

Q. What books, papers, or records of the Richmond, Fredericksburg & Potomac Railway Company did you examine with a view of ascertaining the matters you have stated?

A. From the official credit reports of this Railroad Company on file in bound volumes in the Treasurer's office in Richmond, Virginia?

Q. Have you prepared a schedule or statement showing the result of your examination of these books?

A. Yes, sir, I have.

Q. What have you marked it?

A. Defendant's Exhibit No. 2.

Q. Or do you call it Exhibit Hillman No. 2?

A. Exhibit Hillman No. 2 in the upper right hand corner, and in the upper left hand corner, Class B, in order to identify it with the class in the supplementary answer of West Virginia.

Q. Does that schedule or statement correctly show the actual value of the stock of that company as of the date named as appears from the books of that company?

A. Yes, sir, I should say that it did.

Q. Will you file the exhibit referred to as Defendant's Exhibit No. 2?

A. Yes, sir, I so file it.

The paper was admitted in evidence and marked Defendant's Exhibit No, 2, August 17, 1914, C. B.

Q. Will you tell the Master, please, how you arrived at the actual value per share of that stock from the books of that company as of January 1, 1861, and illustrate the thing from the exhibit you have filed if you can.

A. I have arrived at that value by dividing the outstanding capital stock into surplus as shown by the books of the company. On March 31, 1860, outstanding stock was $1,043,700.; the surplus was $505,403.22 or 48.4 per cent. of the capital stock. Therefore the stock was shown to be of a book value of $148.4.

Q. That was for what year?

A. 1860, March 31.

Q. What for 1861?

A. For the year ending March 31, 1861, there was outstanding $1,116,100. of stock. The surplus was $562,819.05, making a book value of $150.4.

Q. Did you make an examination, and if so do you show it upon this exhibit, the book value of this stock for the year 1862?

A. Yes, sir. The book value March 31, 1862, was as follows: Outstanding stock $1,142,900; surplus $656,577.85; book value $167.4.

Q. You may tell us whether or not you examined the records of this company for the purpose of determining whether or not it declared any dividends upon this stock in the year 1861 and in the years immediately preceding and the years immediately succeeding that date.

A. Yes, sir, I examined the books of the company to see whether or not dividends had been declared upon the stock.

Q. What period, Mr. Hillman, did you cover in this dividend examination, beginning with what year and ending with what year?

A. I commenced the year 1850 and ran it up to 1864, and entered it upon this exhibit.

Q. What were the dividends declared by this company on its stock in the years 1850, 1851, 1852 and 1853, what rate I mean?

A. 7 per cent. paid in cash each year.

Q. What in the years 1854 and 1855?

A. In 1854 the dividends were 7 per cent., paid 3½ per cent. in cash and 3½ per cent. in bonds, which were called dividend bonds and were afterwards redeemed, as will be shown in our subsequent schedule, at par, having in the meantime paid interest.

The Master: Interest in full?

The Witness: Yes, sir.

The Witness: In 1855 there was seven per cent. paid on this stock in bonds which were afterwards redeemed as the amount in prior years.

By Mr. Holt:

Q. Well, go ahead with the dividends, please?

A. From 1855 to 1859 there were no dividends paid on the $1,000,000 common stock outstanding. They did, however, pay a dividend of seven per cent. upon the preferred stock which was outstanding, which is the amount of stock shown on this exhibit above $1,000,000. I have made a notation to that effect, but I did not carry out the amounts for the reason that the stock would be issued at different times during the year, and the computation made from that to the dividend date as to when it should be paid, and it would be a very confusing matter to follow that, when you can make the general statement and cover it by stating that on the preferred stock they treated it as an interest obligation and paid it at the rate of seven per cent. per annum. In 1859 they paid seven per cent. in bonds; in 1860 they paid seven per cent in bonds; and all of these bonds which I have mentioned were afterwards redeemed at par, and having paid interest regularly in the interim. In 1861 there was a dividend declared of three and one-half per cent. but it was not paid until 1873, and then after a law suit. This fact has been noted upon this exhibit. In 1862—

The Master:

Q. How was it paid then, interest on the dividend?

A. Paid in cash, sir.

Q. But was the principal sum paid only, or was the amount of the dividend with interest up to 1873 paid?

A. The amount of the dividend with interest and costs.

Q. Up to 1873?

A. Yes, sir. I will state from 1866—they commenced for some reason in that court business to accrue interest in 1866 instead of back as far as this date, and paid it at that date.

Q. The interest did not run clear back to 1861?

A. No.

Q. But commenced in 1866?

A. Commenced the latter part of 1865 or the first part of 1866, I am not quite sure which.

Q. And from that time on up to the termination of the litigation the interest and costs were paid in full?

A. Yes, sir.

Q. At what rate of interest?

A. Interest at 6 per cent.

The Master: Excuse me from breaking in.

Mr. Holt: I am glad you did.

By Mr. Holt:

Q. Well, go ahead with the dividends, Mr. Hillman?

A. In 1862 there were 5½ per cent. dividends declared, paid in cash; in 1863 there were 26½ per cent. dividends paid in cash; in 1864 there were 13 per cent. dividends paid in cash; the whole period covered in this is fifteen years in which there were 104½ per cent. paid in dividends or almost exactly seven per cent per annum.

Q. From what period to what period?

A. From the year 1850 to 1864; both inclusive.

Mr. Holt: Now again, at this point, your Honor, it is the same question and I do not want to annoy or disturb by repetition, but in order that we may get it clearly on the record, if demanded by our friends upon the other side or by the Master particularly, if they want us to bring these annual reports of the Richmond, Fredericksburg & Potomac Railroad, the volume and page of which is shown upon the exhibit, we will do it; but not unless requested or required.

The Master: As I understand it, there will be no occasion to do that unless the accuracy of it is challenged, and the figures will be accepted as competent proof in the absence of the original.

Q. I notice, Mr. Hillman, from your Exhibit No. 2, just filed, in ascertaining the book value of this stock you use in one column the amount of outstanding stock, in the next following column surplus, and in the third column following book value. What do you mean by surplus there?

A. I mean the amount that remains on hand of assets after deducting all liabilities outside of the capital stock, all bonds and current accounts owed are deducted from the assets which

they have on hand in the way of cash, moneys invested in the loan, supplies on hand and other items of that character. In other words the differences between the assets and the liabilities are taken and divided up amongst the stockholders.

By The Master:

Q. In order to get your surplus you have also deducted your capital stock, have you not?

A. Yes, sir.

Q. And after deducting your capital stock you have left so much surplus, is that right?

A. Yes, sir.

Q. Inadvertently I understood you to suggest that you had not deducted your capital stock, but you do have to deduct your capital stock to get your surplus?

A. You have to add to your percentage of surplus 100, which represented the stock itself.

Q. In other words, after allowing for all the indebtedness outside of the capital stock, you had on hand not only the capital stock but the surplus also, that is what you mean, is it not?

A. Yes, sir.

By Mr. Holt:

Q. Now then, Mr. Hillman, dividends, had they or had they not been declared before you ascertained the amount of surplus? In other words from the books of this company did they affect or diminish in any way this surplus by the declaration of dividends thereout?

A. That I am unable to answer. The companies frequently pay the dividends and treat them as an outstanding obligation.

By The Master:

Q. Now you say the companies, do you mean this company?

A. The railroad companies, railroad companies as a general proposition.

Q. What about this particular company?

A. I do not know whether they had at that time declared this dividend or not; but by notation—

Q. Do not the books of the company show the date of the declaring of the dividends?

A. Yes, sir.

Q. Well, now was that date before or after the date to which the surplus is computed?

A. I can solve that, your Honor.

The Master: That is what Mr. Holt wants.

Mr. Holt: That is the idea exactly.

The Witness: In this computation the dividend has been practically eliminated from the value of the stock as if it had already been declared, for the reason that it happened to be paid in dividend bonds which were taken up as a liability of the company, and therefore being practically deducted from the amount of the surplus.

Q. But you have quite a number of cash dividends and the real question as I understand it is, if I am right about it, whether or not after the dividend was declared there was still on hand the surplus that you have indicated on the dates you have given. Do I make that clear?

A. There would not be in the case of a cash dividend.

Q. Then was a cash dividend declared after the computation of the surplus was made, so that when the dividend was paid it would reduce the surplus to that extent, is that what you mean?

A. Yes, sir, but unfortunately the dividend dates and the fiscal year dates are not coincident.

Q. That all may be, but if the dividend date was subsequent to the date to which the surplus was computed, to ascertain the real surplus and the dividend you would have to add the dividend to the surplus?

A. Yes, sir.

Q. Can you give us the dividends that were declared on the various dates as to which you have computed surplus?

A. Yes, sir.

The Master: You can draw that out. I would like to have the counsel feel that if I make any suggestion or inquiry, if it disturbs the progress of your case, say so, on either side.

Mr. Holt: Not a particle, your Honor; all we want is the whole truth and nothing but the truth.

The Master: If in any way any suggestion I make disturbs counsel on either side in the presentation of the case, why you need not hesitate to say so, and I will simply subside and let you work it out in your own way.

By Mr. Holt:

Q. You may state whether or not, Mr. Hillman, this surplus was made up out of an accumulation of profits out of which no dividends were declared, if you can?

A. Yes, sir, it was made up by an accumulation of profits after paying the dividends.

By The Master:

Q. Do you mean by that that this surplus, for instance, of March 31, 1859—no, I will take March 31, 1860—that the surplus was made up after the preceding dividend had been declared, or after the dividend of 1862 was declared? Do I make that clear?

A. Yes, sir, you make it clear. I have not examined to see whether or not that dividend had been taken out.

Q. That is easily ascertainable from the books, is it not?

A. Yes, sir. As a general proposition I should say that the latter dividend, the last dividend declared had not yet been taken out of that stock. I could not tell—

Q. You mean had not been taken out of the surplus?

A. Out of the surplus. I could not tell until I have looked at the date of the dividend and the date of its payment.

Q. That you can verify without any difficulty?

A. Yes, sir, without any difficulty.

The Master: I do not know whether it may be material, but if there is any question about it you ought to have the fact as it actually exists; and a little later, if there is no objection Mr. Holt, the witness may state that as part of his testimony, so as to have it all together. State it in each instance. I suppose what is true as to one instance is true of all instances.

By Mr. Holt:

Q. I will ask you to explain, Mr. Hillman, in your own way to the Master, and in general terms, how you arrived at the

book value of this stock for the year 1861, January 1st?

A. I took the book value of the stock on March 31, 1860, which was 148.4. I then took the book value of the stock March 31, 1861, which was 150.4. The stock had increased in value then in this year two points, or 2 per cent., on its par. Up to December 31, 1860, nine months, or three-quarters of this year, had elapsed. I assumed that the value of the stock had progressed from month to month.

By The Master:

Q. In the same proportion?

A. In the same proportion.

The Witness: And took three-fourths of the two per cent. advance, which was 1.5 per cent., which I added to the book value of March 31, 1860, of 148.4, which gave a value on January 1, 1861, of 149.9, or as I have used it, 150.

By Mr. Holt:

Q. That is based upon book value of 1860?

A. Yes.

Q. How did you ascertain the book value of 1860?

The Master: State the factors that enter into the book value on the books of the company.

The Witness: The outstanding capital stock—

The Master: The various factors that enter into the book value.

The Witness: The outstanding capital stock on March 31, 1860, was $1,043,700. The surplus was $505,403.22. Applying the surplus to the capital stock gives us a surplus on the capital stock of 48.4 per cent., which added to its par value of 100. makes its value 148.4.

Q. Mr. Hillman, does the ascertainment of the book value of the stocks involve a comparison of the assets and liabilities of the company?

A. Yes, sir, the surplus is always the difference between assets and liabilities.

Q. Then in order to arrive at the book value of stock you institute a comparison, as I understand you, between the assets and the liabilities?

A. Yes, sir.

Q. And what you mean by surplus is what you have left after the assets have been applied to the liabilities?

A. Yes, sir.

The Master: Treating the capital stock as a liability?

The Witness: Yes, sir; it is what is left over.

Mr. Robinson: I suppose the Judge is talking about the book value of the assets and the book value of the liabilities?

The Master: I understand it so.

Mr. Holt: Yes. You will find in these exhibits, Mr. Robinson, that these reports of officials and boards of directors are sworn to, and they state their assets at so much, if I may be permitted to make the statement, and their liabilities at so much, and he takes those records. Now, if they have overvalued the assets or if they have underestimated the liabilities, that of course is for you gentlemen to inquire into.

The Master: If Mr. Hillman has it right handy, how would it do to insert right here in the record the list of the assets upon which this book value is predicated? If he has not it, he need not bother to do it. If it is too long, why then he need not bother, but this would be the natural place to look for it in the record.

The Witness: No, your Honor, I have not taken them off in detail for those years. It can be done, and I will agree if your Honor desires, to furnish a copy of Sheet 2 on this exhibit.

Mr. Holt: Of Exhibit No. 2.

The Witness: Of Exhibit No. 2, and it would probably be some statement of some twenty items on each side.

The Master: I would like to have that made a part of the record. I suppose the other side may have occasion to examine into that, but you may submit that as Sheet No. 2, of Exhibit No. 2.

Mr. Holt: We will do that, your Honor. I think in the exhibits to follow that all of those details, assets and liabilities, are set up in the exhibits. I do not mean in the case of this particular company.

The Master: You mean in connection with other items?

Mr. Holt: In connection with other items, yes, sir.

Q. I have but one general question to ask you on this matter, Mr. Hillman, whether or not the Exhibit No. 2 just filed by you correctly and truly represents the result of your examination of the books of this company?

A. Yes, sir, it does.

Mr. Holt: Now, your Honor, so far as we are concerned that is all I believe we care at the present time to ask about Exhibit No. 2, and we could go on except that they are blue printing the next set, and we won't have them for a few minutes, so if it is agreeable to your Honor to adjourn until the afternoon we will be ready with them then.

The Master: Then we will suspend here until two o'clock.

Mr. Holt: I think the other exhibits will be ready at that time.

Mr. Robinson: I suppose Mr. Hillman will be glad to tell Mr. Potter the pages where the dividends are found, for the purposes of cross-examination.

The Master: Yes. I do not see any objection to the accountants on either side conferring with each other as to all these details so as to facilitate the progress of the case.

At this point a recess was taken until 2 P. M.

AFTER RECESS.

Mr. Holt: Your Honor, we have one suggestion to make that we made this morning, but nothing was done with it, however. We have put in our schedule that covers Class A, that is, the cash on hand; we have put in our schedule, Class B, which is the ownership in the stock of the Richmond, Fredericksburg and Potomac Railroad Company, just following them along as your Honor suggested; but each one of those things is a complete item in itself; and if these gentlemen could cross-examine on schedule A when we get done with it, and lay the chief examination and cross-examination aside as a completed class, we would be very glad indeed. Likewise with Class B, when we introduce such evidence on the value of the stock embraced in that and exhibit our schedule, if they will

cross-examine on that, and then lay that upon one side and have the whole evidence upon that class complete; and then go on to C and D, etc., without the necessity of coming back to all of then in the end.

The Master: Do you have any oral testimony to submit under Class A, I mean in addition to Mr. Hillman's testimony, of course?

Mr. Holt: No, we have not.

The Master: So far as you have oral testimony in the various classes, you contemplate putting it in when you reach the class, I suppose.

Mr. Holt: Yes.

The Master: That suggestion is agreeable to me; and the counsel for Virginia, of course I should be inclined to consult their convenience; but this suggestion could be made, if it is agreeable to them they could take up the cross-examination on the schedule as they go in, with the understanding that if they have any desire to resume the cross-examination that can be done at any time, or if they prefer to wait until they all go in they may take that course. I feel like consulting their convenience about it.

Mr. Harrison: As I stated this morning, if your Honor please, it would not be either convenient or satisfactory to us to attempt to cross-examine the witness or witnesses as they deal with the respective items. It is very important from our point of view that we may have the benefit of their entire case; and we are not at all sure but what the examination may be facilitated by that course rather than by attempting at once to embark upon the cross-examination of a witness in reference to an item about which he has just testified, without the opportunity to consider it, its bearing, and how far we may care to cross-examine.

The Master: I am inclined to be governed by your suggestion at present.

Mr. Harrison: And we would prefer that the case might be conducted in the manner in which it is now going on, with the assurance that we will expedite the cross-examination in every possible way.

The Master: Of course both sides understand that while generally speaking we are governed by the ordinary legal rules, these legal rules are not enforced to embarrass anybody, and at any time during the progress of the hearing it is going to be open to either side to put into the case anything that they may have omitted, even though technically speaking they may have put in the case in chief.

Mr. Harrison: I might say in respect to one of the schedules that has just been gone over in chief, that we are not in possession of some of the data that has been suggested by the examination, and we will want to look into it and inform ourselves about it.

The Master: Then, Brother Holt, we will go on as we have been going, if there is no objection.

Mr. Holt: We have put in, your Honor, Schedule No. 1, Exhibit No. 1, covering Class A; likewise Exhibit No. 2, covering Class B. Now, it is our purpose of course to come to Class C and then to Class D. But we find that the blueprints on those are not quite completed, so that with your Honor's permission we will jump to Class E with our exhibits.

The Master: That is perfectly satisfactory, Mr. Holt, and I take it, satisfactory to the other side.

Mr. Harrison: Yes.

Continuation of the direct-examination of

CONWAY W. HILLMAN.

By Mr. Holt:

Q. Mr. Hillman, have you examined the records of the State of Virginia with a view of ascertaining how much stock, if any, that is the number of shares therein, that the State of Virginia owned in the Bank of Virginia, on the 1st day of January, 1861?

A. Yes, sir, I have.

Q. How many shares of stock, as shown by the records of that state, did she own in that bank at that time?

A. 13,766 shares, at the par value of $70 per share.

Q. How many of those shares were credited to the Literary Fund?

A. 2,121 shares, par value of $148,470.

Q. I will ask you about the value later on.

A. Very well.

Q. How many shares of that number were credited to the Board of Public Works Fund?

A. 8,395 shares.

Q. How many to the Commonwealth Fund?

A. 3,250 shares.

Q. Where do you find the authority for saying that 2,121 of those shares were credited to the Literary Fund?

A. Page 13, Literary Fund ledger.

Q. Where, that 8,395 are credited to the Board of Public Works Fund?

A. Page 319, ledger B, Second Auditor's office.

Q. Where, that 3,250 shares out of that sum total were credited to the Commonwealth Fund?

A. There is no record on the Commonwealth Fund ledger on that date of these shares of stock. I would say that that ledger is exceedingly incomplete in a great many particulars, but, however, page 57, journal K-K of the Treasurer, shows the payment of dividends of 3½ per cent. declared January 1, 1861, on $227,500, and paid to that fund.

Q. How many shares would that be dividends declared on?

A. 3,250 shares.

Q. Then you infer from that, as I understand you, that 3,250 of these shares were credited to the Commonwealth Fund?

A. Yes, sir, and from the further fact that in ledgers, both prior to that and subsequent to that date, the same amount shows on the ledgers.

By the Master:

Q. You mean by that that there is an account on the ledgers that discloses that entry prior and subsequent, but does not disclose it on that date?

A. Yes, sir, that is what I mean. On the ledger which covers that period there is a blank space, evidently erased for some reason or other for that, or a blank—I will withdraw that remark "erased," because it was not erased, it was simply a blank space opposite that entry, but the dividends were drawn by this same fund on that same amount on that date, and there is no entry on the journal to show that that had been disposed of at that time and then acquired afterwards, and there is no entry to show either a disposal or an acquisition, therefore the assumption must be that it was on hand.

Q. That is the accounts in the ledger that you find show in the preceding year the entry?

A. Yes, sir.

Q. And in the succeeding year a similar entry?

A. Yes, sir.

Q. But in the intervening year there does not appear to be any entry?

A. Yes, sir, but a dividend paid on that date on that stock. As I said before, I would like to emphasize the fact that that ledger is quite incomplete, which prevented me from presenting a full trial balance of the books of the State of Virginia on that date.

Q. What was the par value per share of that stock of the Bank of Virginia?

A. $70.

Q. Did you undertake to ascertain the actual value of that stock per share as of January 1, 1861?

A. Yes, sir, I did.

Q. What did you ascertain it to be as of that date?

A. $78.75 per share. I would say in that that I omitted a very minor fraction at the end of that computation and made it round figures.

The Master: Does this mean, Mr. Holt, book value or actual market value?

Mr. Holt: I mean the book value. I am going to show that in a moment.

The Master: You have a line of inquiry predicated on book value all the way along?

Mr. Holt: Yes, sir.

The Master: And this is the book value as distinguished from the actual market value?

Mr. Holt: Yes.

By Mr. Holt:

Q. You mean $78.75 per share that that was the book value per share, do you, Mr. Hillman?

A. I do, yes, sir.

Q. Was there any dividend declared on the 1st of January, 1861, on this stock?

A. Yes, sir, a dividend of $3.50 for every hundred dollars, or $2.45 for every share of stock.

By the Master:

Q. Was that a three and a half per cent. dividend?

A. Yes, sir.

By Mr. Holt:

Q. Have you deducted that $2.45 from the book value of each share of stock?

A. Yes, sir, I have.

Q. What does that leave you?

A. $76.30 per share.

Q. Now, what does the $76.30 represent?

A. It represents the par of the stock, plus the undivided profits.

Q. Does it or does it not represent the book value of the stock as of that date, less the dividend declared on that date?

A. It does.

Q. Why do you deduct the dividend of January 1, 1861, from the book value of the stock?

A. Because under Class D we have shown that dividend as a claim.

Q. Against the State of Virginia?

A. Against the State of Virginia.

Q. So this deduction then is made to the end that you may not make the claim a second time; is that so?

A. That is correct.

Q. Now, Mr. Hillman, I wish you would explain to the Master how you arrived at the book value of $78.75 gross and $76.30 net per share, as of January 1, 1861. How do you get those figures?

A. I took the total assets of the bank as shown in the report of the officers of this bank, on page 6, document 14, of the annual report of the Auditor of the State for the year 1861, on file in the Second Auditor's office, and marked Vol. 2. From that I deducted the liabilities of the bank outside of capital stock and profit and loss. I then divided the capital stock into the balance, and found that it yielded $78.75 per share as the value.

Q. And from that you deducted the dividend as before described?

A. Yes, sir.

Q. Now, Mr. Hillman, in ascertaining the book value in the exhibit that you will file, have you set forth the assets of the bank and the liabilities of the bank in detail?

A. Yes, sir, I have.

Q. Whence did you derive those assets and those liabilities?

A. From the printed report of the Auditor of the State for 1861, wherein he sets forth the report of the officers of this bank, under oath, as to its condition on January 1, 1861. This is set forth on page 6, document 14, of the State Auditor's report of that date.

Q. You may now state whether or not you examined either the records of the State of Virignia or the records of the Bank of Virginia, the corporation under inquiry, with a view of ascertaining whether or not it declared any dividends in the year 1861 and prior thereto and subsequent thereto, and if so the amount of such dividends; have you made such examination?

A. Yes, sir, I have.

Q. What records did you examine for the purpose of ascertaining the dividends declared and paid, the records of the bank or the records of the State of Virginia?

A. The records of the State of Virginia were the most convenient for me to examine and I examined them, wherein is shown the amount of stock outstanding and the percentage of the dividends which they received from the banks.

Q. What years did you cover in your examination upon the subject of dividends?

A. From 1856 to 1863.

Q. What dividends were paid in the year 1856 as shown by this record?

A. Eight per cent. of the par value of the stock, or $5.60 per share.

Q. What dividend was paid in 1857?

A. 7½ per cent. on the par value of the stock, or $5.25 per share.

Q. What in the year 1858?

A. 7¼ per cent. on the par value of the stock, or $5.075 per share.

Q. What in the year 1859?

A. 7¼ per cent. on the par value of the stock, or $5.075 per share.

Q. The year 1860?

A. 7¼ per cent. on the par value of the stock, or $5.075 per share.

Q. The year 1861?

A. 7 per cent. on the par value of the stock, or $4.90 per share.

Q. 1862?

A. 7 per cent. on the par value of the stock, or $4.90 per share.

Q. 1863?

A. 5½ per cent. on the par value of the stock, or $3.675 per cent.

Q. Have you prepared a tabulated statement or schedule showing the result of your examination of the records of Virginia and the books of this bank as you have detailed it?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it Hillman Exhibit No. 5 in the upper right hand corner, and Class E in the upper left hand corner.

Q. Then it really is Class E, Hillman Exhibit No. 5, is that correct?

A. Yes, sir.

Q. Will you now file this schedule as a part of your deposition and mark it Defendant's Exhibit 5, No. 1?

A. Yes, sir, I now so file, marking it in the way you have indicated.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet No. 2, August 17, 1914, C. B.

Q. Now as I understand it, Mr. Hillman, there are five banks embraced in Class E?

A. Six, sir.

Q. Six?

A. Yes, sir.

Q. And you have prepared a tabulated statement for each one of them?

A. Yes, sir.

Q. And the one you have filed as Exhibit 5, as Class E, Hillman Exhibit No. 5, Sheet No. 1?

The Master: The suggestion of the witness is that he start with the Bank of Virginia instead of the Farmers' Bank of Virginia, which chronologically is in order.

Mr. Holt: He has this sheet marked No. 1.

The Master: I would make them harmonize with the answer; arrange your numbers so as to have them in harmony with the answer, and then there will not be confusion. Put them right in so that they correspond with the answer.

Mr. Holt: This will be page 2 then instead of page 1.

The Master: Yes, that is right; then we will change that.

Q. I will ask you, Mr. Hillman, whether or not this Sheet No. 2, as corrected from Sheet No. 1, being the schedule on the Bank of Virginia, correctly represents and truly the result of your examination of the records referred to?

A. Yes, sir, it does.

The Master: When this transcribing is done, Mr. Stenographer, have Sheet No. 1 appear in its chronological order, which is coming in now; have Sheet No. 1 come in ahead of Sheet No. 2.

Q. Mr. Hillman, have you examined the records of Virginia or the books of the Farmers Bank of Virginia with the view of ascertaining the number of shares of stock therein, if any, owned by the Commonwealth of Virginia in that bank on the 1st day of January, 1861?

A. Yes, sir, I have.

Q. What was the total number of shares of stock owned by her in that bank on that day?

A. 9,626 shares.

Q. What was the par value of a share?

A. $100.

Q. How many of those shares were to the credit of the Literary Fund?

A. 1,054.

Q. How many to the credit of the Board of Public Works Fund?

A. 3,522.

Q. And how many shares to the credit of the Commonwealth Fund?

A. 5,050.

Q. What was the total par value of those shares?

A. $962,600.

Q. Did you or did you not undertake to ascertain the book value of a share of that stock on January 1, 1861?

A. Yes, sir, I did.

Q. What did you ascertain it to be as of that date?

A. $115.07 per share.

Q. How did your ascertain that book value?

A. By deducting from the assets of the bank its liabilities outside of its capital stock and the profit and loss, and dividing the capital stock into the result.

Q. And that gave you?

A. $115.07 as the book value of the stock on January 1, 1861, it always being understood when we say January 1, 1861, that we mean at the opening of business on that day.

Q. You may state whether or not in the exhibit you are about to file you set forth in detail the assets of the company as of that date and its liabilities from which or upon which you base this calculation?

A. Yes, sir.

Q. Where did you get those assets and those liabilities?

A. From State document No. 14 of the annual report of the Auditor for 1861, pages 14 and 15, which reprints the statement of the officers of the bank under oath as to its condition on January 1, 1861.

Q. Was there any dividend declared on that day?

A. Yes, sir.

Q. What was it per share in dollars or in percentage?

A. 3½ per cent., or $3.50 per share.

Q. You may state whether or not you deducted that from the book value of $115.07 per share?

A. I did, yes, sir.

Q. What did it leave you?

A. $111.57.

Q. Why did you make that deduction for the purpose of getting the net book value of a share of stock as of that date?

A. Because we are claiming under Schedule D the cash which was received for that dividend, and therefore we cannot have it in twice.

The Master: That is and duplicate the item?

The Witness: Yes, sir.

The Master: Is that a semi-annual or an annual dividend, that 3½ per cent.?

The Witness: Semi-annual, sir.

Q. You may tell us whether or not you examined the records of Virginia or the books of the Farmers Bank of Virignia with a view of ascertaining whether or not dividends were declared on State stock from 1856 to 1863?

A. Yes, sir, I made such an examination, basing my views on the payment of dividends on certain stock, not considering it necessary to go to the bank books as they were paid dividends, the same as any other stockholder.

Q. What dividends, if any, were declared and paid upon this stock in the year 1856?

A. 8 per cent.

Q. In 1857?

A. 8 per cent.

Q. In 1858?
A. 7½ per cent.
Q. In 1859?
A. 7½ per cent.
Q. In 1860?
A. 7¼ per cent.
Q. 1861?
A. 7¼ per cent.
Q. 1862?
A. 7 per cent.
Q. 1863?
A. 7½ per cent.

Q. Have you prepared a schedule showing the result of your examination into this bank in accordance with your testimony just now given?

A. Yes, sir, I have.

Q. How have you marked it or designated it?

A. In the upper right hand corner, Exhibit Hillman No. 5, Sheet No. 1; in the upper left hand corner, Class E.

Q. Will you now file the same as a part of your deposition and mark it Exhibit No. 5, Sheet No. 1.

A. Yes, sir, I now so file it.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet No. 1, August 17, 1914, C. B.

Q. You may state whether or not the exhibit just filed by you correctly represents the facts as taken from the records examined by you?

A. Yes, sir, it does.

Q. Have you examined the records and archives of the Commonwealth of Virginia or the books of the Bank of the Valley with a view of ascertaining the ownership of the shares of stock in that bank by the Commonwealth of Virginia?

A. Yes, sir, I have.

Q. What number of shares did the State of Virginia own in that bank on the 1st day of January, 1861?

A. 4,839 shares.

Q. What total of that number was credited to the Literary Fund?

A. 92 shares.

Q. What to the Board of Public Works Fund?

A. 1,047 shares.

Q. What to the Commonwealth Fund?

A. 3,700 shares.

Q. What was the par value of a share, Mr. Hillman?

A. $100.

Q. Were these shares or were they not in this bank all owned by the Commonwealth of Virginia prior to January 1, 1861?

A. Yes, sir, they were.

Q. What was the total par value of these shares?

A. $483,900.

Q. Did you undertake to ascertain from the books of the bank or the records of Virginia the book value of this stock on January 1, 1861?

A. Yes, sir, I did.

Q. What, from those records and books, did you ascertain that book value to be per share?

A. $114.70, or 114.7, if you use the quotation value.

Q. How did you ascertain that book value? Explain, Mr. Hillman.

A. By deducting from the assets of the bank its liabilities, outside of its capital stock and profit and surplus liabilities, and dividing the capital stock into the remainder.

Q. Have you in the exhibit that I will presently ask you to file set forth accurately and truly and in detail the assets and the liabilities of this bank as of that date upon which you have based this calculation?

A. Yes, sir, I have.

Q. You may state whether or not a dividend, semi-annual or otherwise, was declared upon this stock on the 1st day of January, 1861.

A. Yes, sir, there was a dividend declared then.

Q. What did that dividend amount to?

A. 3½ per cent. or $3.50 per share.

Q. You may state whether or not you deducted that from the book value of the stock of $114.70 per share.

A. Yes, sir, I did.

Q. What did that leave you as the net book value of the stock on the date referred to?

A. 111.2, or otherwise $111.20 per share.

Q. Why did you make this deduction?

A. For the reason that I, in a statement to be filed hereafter under Schedule D, have claimed this amount of dividend as a cash item due consideration in this period.

Q. Then as the Master puts it, you made a deduction here in order to keep from duplicating claims, is that right?

A. Yes, sir.

Q. Did you examine the records of Virginia or the books of this bank, either or both, for the purpose of ascertaining whether or not dividends were paid upon this stock from 1856 to 1863, inclusive?

A. Yes, sir, I did.

Q. What dividend, if any, was declared upon the stock of the Bank of the Valley for the year 1856?

A. Ten per cent.

Q. What for the year 1857?

A. Nine per cent.

Q. What for 1858?

A. Eight per cent.

Q. 1859?

A. Eight per cent.

Q. 1860?

A. Seven and a half per cent.

Q. 1861?

A. Six and three-quarters per cent.

Q. 1862?

A. Four per cent.

Q. 1863?

A. Four per cent.

Q. Have you prepared a schedule showing the result of your examination of these books, Mr. Hillman?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it in the upper right hand corner Exhibit Hillman No. 5, Sheet No. 3, and in the upper left hand corner Class E.

Q. Will you file the same as a part of your deposition and mark it Defendant's Exhibit No. 5, Sheet No. 3?

A. Yes, sir, I file the statement so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet No. 3, August 17, 1914, C. B.

Q. I further ask you, Mr. Hillman, whether or not this schedule truly represents the result of your examination of the books and records referred to and truly and accurately discloses the discoveries you made therein?

A. Yes, sir, it does.

Q. Have you made an examination of the records of the Commonwealth of Virginia and of the books of the Exchange Bank, either or both of them, with a view of ascertaining the number of shares, if any, of stock owned in that bank by the Commonwealth of Virginia on the 1st day of January, 1861?

A. Yes, sir, I have made such an examination.

Q. What did you find the total number of shares owned by that State at that date to be?

A. 8,755 shares.

Q. What was the par value of that stock?

A. $100.

Q. What number of shares so owned by Virginia was held to the credit of the Board of Public Works Fund?

A. 267 shares.

Q. What to the credit of the Commonwealth Fund?

A. 8,488 shares.

Q. What was the total par value of the shares held by both funds?

A. $875,500.

Q. Did you undertake from the records of that State or the books of that Bank to ascertain the book value of a share of that bank's stock on the 1st day of January, 1861?

A. Yes, sir, I did.

Q. What did you ascertain it to be?

A. 110.9 when expressed in percentage, or $110.90 per share.

Q. How did you ascertain that book value?

A. By deducting from the total assets of the bank all of the liabilities save the capital stock, contingent fund and profits, and dividing the capital stock into the remainder.

Q. In the exhibit that I will presently ask you to file did you set forth in detail the assets and the liabilities of that bank upon which you base that calculation?

A. Yes, sir, I did.

Q. Where did you obtain those assets and liabilities?

A. From document No. 14, page 22, of the annual report of the Second Auditor in the State of Virginia, for the year 1861; and this record is taken from the printed report of the officers, under oath, to the State.

Q. Officers of the Bank?

A. Of the Bank, yes, sir.

Q. Was any dividend declared, Mr. Hillman, on January 1, 1861, upon this bank's stock?

A. Yes, sir.

Q. What was it?

A. 3½ per cent. on par, or $3.50 per share.

Q. Tell us whether or not you deducted that $3.50 per share from the book value of that stock as you ascertained it.

A. Yes, sir, I did.

Q. Leaving you as the net book value what, per share, of that stock on the date involved?

A. 107.4, or $107.40 per share.

Q. Why did you make that deduction?

A. For the reason that I am claiming the consideration of this dividend as a cash item under Class D.

Q. Tell us whether or not you examined the records of Virginia and the books of this bank with the view of ascertaining what dividends, if any, were paid upon this bank's stock in the years from 1856 to 1863, inclusive.

A. Yes, sir, I have made such an examination.

Q. What was the dividend declared and paid upon that stock, if any, in the year 1856?

A. Nine per cent.
Q. 1857?
A. Ten per cent.
Q. 1858?
A. Eight per cent.
Q. 1859?
A. Nine per cent.
Q. 1860?
A. Seven and a half per cent.
Q. 1861?
A. Seven and a quarter per cent.
Q. 1862?
A. Seven per cent.
Q. 1863?
A. Eight per cent.

Q. Have you made a schedule or tabulated statement showing the result of your examination of these records, in accordance with your testimony?

A. Yes, sir.

Q. How have you marked it?

A. I have marked this Exhibit Hillman No. 5, Sheet 4, in the upper right hand corner; and Class E in the upper left hand corner.

Q. Will you file the same as a part of your deposition and mark it Defendant's Exhibit No. 5, Sheet 4?

A. I now so file it, marked as you have indicated.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet 4, August 17, 1914, C. B.

Q. Tell us whether or not the exhibit just filed truly gives the figures representing the condition of that bank as ascertained from the records examined by you.

A. It does, yes, sir.

Q. Was the dividend declared of 3½ per cent. on January 1, 1861, upon this stock a semi-annual or an annual dividend?

A. Semi-annual.

Q. Does this exhibit indicate the book and page of the records from which you have derived these figures and these facts?

A. Yes, sir, it does in each case.

Q. The books and pages are indicated then on Sheet 4 of Exhibit 5?

A. Yes, sir.

Q. Have you examined the records of Virginia or the books of the Northwestern Bank with a view of ascertaining the book value of the stock of that bank on the 1st day of January, 1861?

A. Yes, sir, I have.

Q. What did you find the book value to be per share on that date?

$111.90.

Q. How many shares of that stock did you ascertain to be owned by Virginia on that date, if any?

A. 3,744 shares.

Q. What number to the credit of the Literary Fund?

A. 500 shares.

Q. What to the Board of Public Works Fund?

A. 326 shares.

Q. What to the Commonwealth Fund?

A. 2,918 shares.

Q. What was the total par value of the shares owned by the State of Virginia?

A. $374,400.

Q. And the total book value owned by her?

A. $418,953.60.

Q. How did you ascertain the book value?

A. By deducting from the assets of the bank all of its liabilities, save the capital stock, contingent funds and profits, and dividing into this remainder the capital stock of the bank.

Q. Does the exhibit that you will presently file set forth in detail the assets and the liabilities of that bank as of that date?

A. Yes, sir, it does.

Q. Are they correctly set forth in that exhibit as appeared from the records where you obtained them?

A. Yes, sir.

Q. Did you examine the records of Virginia for the pur-

pose of ascertaining whether or not any dividends were declared and paid upon that stock from 1856 down to and including the year 1863?

A. Yes, sir, I did.

Q. What was the dividend paid then in 1856?

A. Ten per cent.

Q. What in 1857?

A. Five per cent.

Q. 1858?

A. Seven and a half per cent.

Q. 1859?

A. Eight per cent.

Q. 1860?

A. Seven and a half per cent.

Q. I find no dividend set down here for the years 1861, 1862 or 1863. What is the reason for that, Mr. Hillman?

A. The Northwestern Bank was located in the counties which afterwards became West Virginia, and there was a deal made whereby the assets of this bank were transferred to those counties, and from that date on the books of Virginia are silent as to whether or not any dividend had ever been received.

By the Master:

Q. Do the books show the transfer?

A. Yes, sir, the books show the transfer, and it is also shown in the testimony which has already been taken in this case.

Q. You mean at the former hearing?

A. Yes, sir, where the assets, stocks and so on were divided, and where I believe the Grazier Bank was afterwards set up as being the Virginia portion of this Northwestern Bank.

By Mr. Holt:

Q. Have you prepared a tabulated statement or schedule showing the facts concerning which you have just testified upon the subject of this bank?

A. Yes, sir.

Q. How have you marked it?

A. I marked it in the upper right hand corner Exhibit Hillman No. 5, Sheet No. 5, and in the upper left hand corner Class E.

Q. Will you file the same as part of our deposition now and mark it Defendant's Exhibit No. 5, Sheet 5?

A. I now file it as an exhibit marked as indicated.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet No. 5, August 17, 1914, C. B.

Q. Are the figures embraced in Exhibit No. 5, Sheet No. 5, correctly taken from the records upon which they are based?

A. Yes, sir, they are.

Q. What is the value of the Northwestern Bank stock?

A. $100 per share.

Q. And what is the book value as you ascertained the same as of January 1, 1861, by a comparison of its assets with its liabilities?

A. $111.90.

Q. I see you have marked upon this schedule net value $108.40. What is the explanation of that?

A. A dividend of 3½ per cent. being declared upon this stock January 1, 1861, has been deducted from the book value of that date, since the claim for the consideration of this dividend will be made by us later, on our examination of Class D.

Q. Was that a semi-annual dividend?

A. Yes, sir.

Q. I see, Mr. Hillman, that you have a parenthetical note under the heading "The Commonwealth Fund," on Defendant's Exhibit No. 5, page 5. Please explain that.

A. On page 47, ledger from 1856 to 1861—

Q. Page 47 or 46?

A. Page 46, ledger 1856 to 1861, in the Auditor's office, shows an entry of $400,000 of this stock on the Commonwealth Fund.

By the Master:

Q. Where does it show it, on what side of the account?

A. As a debit item, and therefore as an asset. There were no subsequent entries following the original entry in 1856 on this ledger; as I have stated before, it is very incomplete; but in the Sinking Fund journal of February 27, 1857, it shows the sale of 1,082 shares of this stock, and the subsequent payment of dividends confirmed the sale of this stock, as they were paid annually on 2,918 shares. All sales of securities when they are made, even though they may be held by the Commonwealth Fund, are under the terms of the bond issue for which they were paid turned over to the Sinking Fund, so that the Sinking Fund journal is the one which shows the transaction.

By Mr. Holt:

Q. Then you have taken into account—

By the Master:

Q. What is this ledger that you have been speaking of apparently posted from?

A. It is supposed to be a ledger of the First Auditor's office and is called the Commonwealth Fund ledger.

Q. Yes, but what is it posted from, from books of original entry in that office?

A. Yes, sir.

Q. Does the Sinking Fund constitute one of the books from which that ledger is posted?

A. No, sir. I would say with reference to that that the supporting books of this ledger, the journal, etc., are missing.

Q. You do not find them on the files?

A. No, sir; they are supposed to be in Washington, having been taken away from Richmond at the close of the war, and starting to get them further, and they were captured later on and some of them shipped back to Washington. I believe that the authorities in Virginia are on the trace of them, and I have no doubt that they will be returned to the proper place and filed. Of course that is only a side remark.

Q. You have not traced them back?

A. We think they are probably in Washington, going there in war time as trophies. Perhaps it is well to say right here that that stock of that bank was sold at a premium, which I will mention later on, bringing slightly over five per cent. on that date.

Q. That fact appears from some of the books to which you have had access?

A. Yes, sir, from the Sinking Fund, where it shows the amount of actual money received for $108,200.

By Mr. Holt:

Q. Then in your Exhibit No. 5, Sheet No. 5, you do not take into account, as I understand you, the 1,082 shares of this bank stock that were sold in 1857?

A. No, sir, I do not.

The Master: That is, not in his aggregate. He accounts for them in this way, but they do not appear in his aggregate.

The Witness: I thought it best to make that notation in case it is looked up by a party not familiar with the books, so that they would have no difficulty in locating the reason.

The Master: Which explains the discrepancy that otherwise would appear?

The Witness: Yes, sir.

Q. Can you tell the Master whether or not the State of Virginia owned these 3,744 shares prior to the 1st day of January, 1861?

A. Yes, sir, they did.

The Master: Prior to and on the 1st day of January, 1861?

Mr. Holt: Yes. He has already said that the books show that they owned them on that day.

The Master: And now you are going beyond that?

Mr. Holt: Yes.

Q. What is the fact in respect to all of these bank stocks embraced in Schedule E? I mean in Class E of the answer.

A. They were all owned by the State of Virginia prior to January 1, 1861, and also, as the Master says, on that date.

Mr. Hogg: And for several years prior, if you please.

The Master: I do not understand that any of these schedules undertake to trace back the bank stock to their date of origin?

Mr. Holt: No.

The Master: But you go back to an arbitrary date which you use for the purpose of comparison?

Mr. Holt: Yes, sir.

The Witness: I would state to your Honor that if necessary that can be furnished.

Q. I will ask you how far back of 1861 you have traced their ownership to the Commonwealth of Virginia.

The Master: You mean in this instance now or in all instances?

Mr. Holt: In each one of the five banks.

A. In each instance I traced them back to their origin.

Q. Traced by you?

A. Back to the time the investment was made.

Q. And do you recall how many years before 1861 that was?

A. No, sir, I do not; I made no mental memorandum of it, but these exhibits themselves show on all that are filed that they were owned prior to 1856, since we quote the dividends from that date on.

Q. I do not recall, Mr. Hillman, whether you explained with reference to Sheet No. 5 the absence of a dividend in 1861, 1862 and 1863 on the Northwestern Bank.

The Master: No, he has not made any explanation about that so far.

Q. Please explain why you have not set down upon that schedule the dividends for 1861, 1862 and 1863, if any dividends there were.

A. This bank was located in the counties which were afterwards made into the State of West Virginia, and as such there was a settlement made between the states whereby the Northwestern Bank was cut off from its Virginia connections, and I believe the Grazier Bank of Virginia established on the Virginia part and the Northwestern Bank still continued under the same name in the West Virginia part.

The Master: What county was the Northwestern Bank in?

The Witness: It was Wheeling.

Mr. Hogg: In Ohio County.

The Master: What county is Wheeling in?

Mr. Holt: Ohio County.

The Witness: As I said a few minutes ago, that matter is taken up on the report of the testimony which has already been given in this case, showing the transfer of those securities from the territory of one state to the territory of the other.

The Master: And the books of Virginia of course show no dividends were received by Virginia after that date?

The Witness: No, sir.

The Master: That is after the date of 1860?

Mr. Holt: After 1860; seven and a half per cent. in 1861.

Q. Have we now Sheet No. 6, Mr. Hillman? Have you examined the records of Virginia and the books of the Fairmount Bank or either for the purpose of ascertaining the ownership by the State of Virginia of stock in that bank on January 1, 1861, and prior thereto.

A. Yes, sir, I have.

Q. What books have you examined, Mr. Hillman, upon that subject?

A. The Literary Fund ledger; page 42 shows the investment.

Q. What was the total number of shares owned by Virginia in that bank on January 1, 1861?

A. 500 shares.

Q. To the credit of what fund were they set down?

A. The Literary Fund.

Q. What was the par value of a share of that stock?

A. $100.

Q. Have you undertaken to ascertain the book value of it as of January 1, 1861?

A. Yes, sir, I have.

Q. What did you ascertain it to be per share?

A. $106.87 per share.

Q. How did you ascertain it?

A. By deducting from the assets of the bank all of the liabilities save capital stock and surplus, and then dividing the capital stock into the remainder.

Q. Where did you get the detail of its assets and its liabilities as of that date?

A. From page 156, document 14, Auditor's Report for 1860-1861, copy of the book on file in Second Auditor's office, wherein is printed the report of the officers of the bank under oath, as to its condition.

Q. They reporting its assets and liabilities?

A. Yes, sir, as of date of January 1, 1861.

Q. Do you know when Virginia acquired this stock?

A. It was within a short time prior to 1861, I believe a little over a year.

Q. And did she still own the stock on that date?

A. Yes, sir, she did.

Q. How far after that date have you traced her ownership?

A. I have not traced her ownership after that date as yet.

By the Master:

Q. What does the book from which you got this information show as to ownership subsequent to January 1, 1861?

A. She still owned it and owned it for some time. The exact date I am not prepared yet to state.

Q. Do you mean what the books show as to the exact date of sale or transfer you are not prepared to state?

A. No, sir; I would state that to the best of my recollection and belief, I have looked over the matter but I have not burdened by memory with it, is that it went to pot in 1865.

Q. It went to what?

A. It went to pieces in 1865; I am not sure—

Q. What do you mean, the bank went to pieces?

A. Yes, sir, I am not sure whether it was included in the smash-up at the end of the war or not.

Mr. Holt: We will have exhibits tracking it by the books to 1863 at least. We will show those things by other schedules.

Mr. Anderson: The auditor transferred it to West Virginia.

The Master: I have sent on by express all my original papers in the case, and whether I put in one or two duplicate copies of my report or not I am not sure. Has anybody here an extra copy which I may use?

Mr. Robinson: You may use mine at any time.

The Master: Then that will save sending back to my office for it.

The Witness: I think you will find that that is one of the stocks which was transferred to West Virginia, and taken up in your former settlement of this matter. May I ask that my statement from memory, which I feel is wrong, that this bank is one of those that went to pieces, be stricken from the record.

The Master: Just as you fancy, so far as I am concerned. Of course you must all appreciate that a statement like that won't have any weight with me unless there is something on the record that shows a foundation for it.

The Witness: I should deem it a rather bad thing to have that go on the record.

The Master: You have no objection to that?

Mr. Holt: No, he wants to make that correction according to the fact.

By Mr. Holt:

Q. Was a dividend, semi-annual or otherwise, declared upon this stock on the 1st of January, 1861, Mr. Hillman?

A. Yes, sir.

Q. How much?

A. 3 per cent., or $3.00 per share.

Q. Did you deduct that from the book value as of January 1, 1861?

A. Yes, sir, I did.

Q. What did it leave you?

A. 103.87.

Q. Why did you make the deduction?

A. For the reason that the matter of this dividend and its amount will be presented for consideration hereafter under Class D, being a cash item.

Q. Did you examine the books of this company or the records of Virginia with a view of ascertaining the declaration or payment of any dividend upon this stock?

A. Yes, sir, I did.

Q. What dividends did you find declared and paid, if any?

A. In 1860, 4½ per cent. I have not followed the books further than that.

Q. Have you prepared a schedule or tabulated statement showing the matters that you have testified to concerning this bank stock?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it in the upper right hand corner, Hillman Exhibit No. 5, Sheet No. 6; in the upper left hand corner, Class E.

Q. Will you file this exhibit as a part of your deposition and mark the same Defendant's Exhibit No. 5, Sheet 6?

A. I now file it, marked as requested.

The paper was admitted and marked Defendant's Exhibit No. 5, Sheet No. 6, August 17, 1914, C. B.

Q. You may likewise tell us whether or not this exhibit truly sets forth, and accurately, the figures as derived by you from the records and books examined by you upon the subject?

A. It does.

Q. Mr. Hillman, have the blue prints of Class C come in yet?

A. Not yet.

Mr. Holt: Your Honor, they are about to complete the schedules of Class C and Class D, but we have not had an opportunity to run over them ourselves, and if you will indulge us until to-morrow morning we will run through them to-night. There are a great number of old railroads included, and it is rather an intricate matter.

Mr. Robinson: How about F and G?

Mr. Holt: We are taking those up, too.

Mr. Robinson: We would not have any objection to your going ahead with those carbon copies.

Mr. Holt: We want the witness to make such explanations as are necessary as we go along.

The Master: If there is no objection we will suspend until to-morrow morning.

Mr. Robinson: We would like to have them at the hotel to-night if possible.

The Master: Can you furnish them to Mr. Robinson?

Mr. Holt: Yes, we will do that.

The Master: Then you will hand them over to the other side so that they may examine them between now and to-morrow morning, and they may make their preparation for cross-examining on them to-morrow.

Mr. Holt: Yes.

Adjourned to August 18, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Va., August 18, 1914.

PRESENT: Same counsel as on yesterday.

Mr. Anderson: On behalf of the Commonwealth I desire to submit a motion, which, if granted, will greatly facilitate the hearing and decision of this case and promote, in my judgment, the ends of justice. I will read the motion:

"The plaintiff, by her counsel, moves that the Master do rule that June 20, 1863, the date of the creation of the State of West Virginia and the date as of which the court has ascertained the value of the property in the two States as a basis for the apportionment of the debt, is the date as of which the values of the alleged credits asserted in the supplemental answer of the defendant must be ascertained, should the defendant be found to be entitled to any of said alleged credits; and that the Master will exclude from consideration any evidence directed to the fixing of any other date for the ascertainment of said values."

Now, if your Honor please, I shall very briefly present, with your indulgence, the grounds on which this motion is based. And I will premise by saying that all the facts which need be considered by your Honor, or by any other tribunal in passing upon this question, are now in the record. The decision of the question does not depend upon any facts which will have to be supplied by the introduction of additional testimony in this cause. So that question, if your Honor please, is as ready for decision as it will be at the end of this investigation. Its decision now, as your Honor will observe, will

save both parties the duplication of labor, the unnecessary expenditure of time and of money for the purpose of preparing this case upon two branches, when it will only be ultimately necessary that it shall be submitted upon one; and when it will certainly be decided upon that one. West Virginia dates her existence from the 20th of June, 1863. Down to that time, she constituted a corporate and integral part of the Commonwealth of Virginia. According to the principles of public law and of equity controlling such matters, not only would the debt be ascertained as of that date, but all the rights of the parties would be determined as of that date, June 20, 1863, *independently of any agreement or convention between the two States.*

The date as of which the amount of the debt is to be ascertained was prescribed by the convention between the States, not by the Wheeling Ordinance, although it was prescribed by the Wheeling Ordinance, but it was more effectively prescribed by the agreement of the two States,—the compact between the two States arising from the Act of the General Assembly of Virginia at Wheeling, of May 13, 1862, which gave the consent of the Commonwealth of Virginia to the formation of the State of West Virginia out of her territory. In accordance with the provisions of the Constitution adopted for the State of West Virginia by the convention which met on the 30th of November, 1861, at Wheeling and framed a Constitution for the new State.

The Eighth Section, refreshing your Honor's recollection about some matters of detail which perhaps may have escaped you, the Eighth Section of the Eighth Article of that Constitution provides that the new State shall assume an equitable portion of the debt of the Commonwealth of Virginia existing prior to January 1, 1861.

Now but for that stipulation, West Virginia would have been bound, under public law and by analogy, to principles established in respect to partnerships and other cases of the ownership of property in common would have been bound for her equitable portion of the debt existing on the 20th of June, 1863. It so happens, and is a part of the history of this case

and of this subject, that West Virginia practically controlled the whole matter. West Virginians constituted the Restored Government of Virginia at Wheeling, which gave this consent, and they also constituted the convention which framed the Constitution for the new State. It chose then to incorporate into that Constitution this provision, which was afterwards accepted by Virginia by her Act of Assembly of May 13, 1862, granting her consent to the formation of the new State upon the stipulation that West Virginia's liability for any portion of this debt should be limited to such debt as existed on the 31st of December, 1860.

It is proper that I should say that there was some reason, from the standpoint of the then citizens of Virginia living in northwestern Virginia, and who moved in the creation of the new State, for limiting this liability to some date prior to June 20, 1863. The 17th of April, the date of the adoption of the Ordinance of Secession by Virginia, might not have been an arbitrary date. The 11th of June, 1861, would not have been perhaps an arbitrary date, as that was the date on which the revolutionary convention which met in Wheeling created the restored government of Virginia and repudiated the Confederate Government of Virginia by the ordinance adopted on that day. But the 1st day of January was adopted in the interest of West Virginia, the great object being doubtless to avoid West Virginia's being shouldered with any portion of any liability created by the government of Virginia at Richmond, after the representatives from northwestern Virginia had withdrawn from the Legislature of Virginia and from the Virginia Convention, then in session.

Whether it was justifiable or not, that stipulation was made between the two States, and West Virginia's liability, so far as the amount of the debt is concerned, was determined as of the 31st of December, 1860. The fact is that a very large sum was added to the public debt of Virginia after the 31st of December, 1860, which had not been brought into this account, and could not be under the circumstances. Large expenditures were made on the Covington & Ohio road and large expenditures on other works of internal improvement, under

contracts made before January 1, 1861, but which had not become ascertained or liquidated liabilities of the State until after that date. The Board of Public Works issued and sold, as they were authorized by law to do, bonds for large amounts, after that date, which equitably and justly are binding upon West Virginia, independently of the provisions of the Constitution of that State, as any other portion of the debt. Relief from liability on account of this indebtedness was thus contracted for by West Virginia and as a consideration therefor she agreed to assume an equitable portion of the debt existing prior to January 1, 1861.

If your Honor please, I am unable to discover any ground upon which the proposition I lay down can be questioned. As a matter of public law and of right, all the rights of the two States and the liabilities of the two States, independently of agreement, were absolutely determined as of the 20th of June, 1863. It follows that this is the date of which the values of any credits and any charges against the State of Virginia shall be determined. West Virginia will base her contention that this date should be fixed or may be fixed as to the value of these assets on the 1st day of January, 1861, or at some other time, because they strangely contend in this case, as is shown by their answer, that Virginia held all these assets in trust, as I understand that answer, for West Virginia, or in trust for her creditors, and that West Virginia has a right to demand that Virginia shall perform that trust, and that therefore Virginia must account for whatever could be fairly and for whatever has been realized from the sale of these assets. Their answer and their contentions as exhibited so far in this case do not seem to be consistent. They sometimes rely upon the view that Virginia is a trustee and as such must account for the fair value of these securities. Then in other parts of their answer they contend that Virginia shall account for whatever she received and realized, no matter when, from these assets. All of these contentions are based upon the provisions of the Constitution of Virginia of 1851 and the Act of Assembly of Virginia of 1853 in regard to the public debt. These provisions of the Constitution are found in the Supple-

ment of the Record, which contains nearly all of the acts of either State germane to the Virginia or West Virginia debt. At page 200 of that volume will be found the extract from the Constitution and also the Act of 1853. I will not tire your Honor by reading them. The Constitution is simply a provision for Virginia's own government, an entirely voluntary arrangement on her part, creating neither a contractual nor a fiduciary obligation upon her, by which for her own convenience in dealing with this debt she provides that there shall be a sinking fund created; that the Legislature shall set apart seven per cent. upon the amount of any debt created, one per cent. of which shall be used for the purpose of the extinguishment of the principal and six per cent. of which shall go to pay the interest; and the Act of 1853, beginning on the same page, merely carries out that provision of the Constitution, and accordingly makes a continual appropriation for that purpose.

Now, they have both been repealed by Virginia. The constitutional provision was repealed by the Constitution of 1864 and again by the Constitution of 1869 of Virginia, these repeals being entirely within the competency of the Commonwealth, and not violative of anybody's rights. But West Virginia had no interest in that. If any trust had been created it would have been for the benefit of the creditors, but the creditors derived no rights from that—

The Master: The bondholders.

Mr. Anderson: The bondholders— *Their* rights had been determined by their bonds. At pages from 220 to 229, and I believe to 285 of the record your Honor has already been informed as to what the provisions and stipulations of those bonds were. None of them relate to the Constitutional provisions of 1851 or to the legislative enactments of 1853. Those loans were made entirely upon the credit of Virginia, upon her promise that the bonds, the interest and principal of those bonds, should be paid in accordance with the terms of those contracts; but no collateral was put up or agreed to be put up by her; no security except her own word was given to the creditors, nor was any security demanded by the creditors.

Her credit at that time stood as high as that of any State in the Union. Here is one of those bonds, page 285,—they always recited the acts under which they were issued. This was called old "Virginia stock," but it was really the obligation of the State for the payment of money, not for the payment of dividends; it was called "stock" just as English consols were called and are still called "stock."

"Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at six per centum per annum, from the first day of 18 , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July of each year; being stock issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd of March, 1860, entitled 'An Act to amend the Charter of the James River and Kanawha Company,' the principal whereof is irredeemable for thirty-four years from the first day of January, 1860, and then to be redeemed.

"This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

"Witness the hand of the Treasurer, the day and year above written."

That is *mutatis mutandis* a copy of each one of the bonds issued by Virginia. None of them relates to this legislation. The claim of West Virginia seems to be that Virginia is bound here as trustee in a fiduciary relation to set apart these assets and appropriate them so as to provide for the payment of its debt and for the exoneration of West Virginia.

It seems to me that this question has been practically settled by the tribunal which has already given its decision in this case. In ascertaining the liability of West Virginia that court took the taxable resources of the two States, the assessed values of the two States, as modified by the testimony. The court had to adopt a date as of which those values could be ascertained, and acting in accordance with the settled prin-

ciples which I have endeavored to present to your Honor. That court adopted the 20th of June, 1863, as the date—which is indeed the only date that could be considered for the determination and apportioning of the taxable property in the two States. Every consideration, every argument which can be adduced in favor of that ruling of the court applies with emphasis to the question to which I am endeavoring to direct your Honor's attention. Now, if that is the date, as is demonstrable to be the case—why should we take up the time of this Commission and of counsel in all these elaborate schedules and proofs as to the values of these properties on the 1st day of January, 1861? It may be that your Honor, under the decree of the court, would feel that it was proper for you, as I think was your ruling on the former hearing, to allow evidence of this kind to come in "*de bene*" and its competency ultimately to be passed upon by you, or else the question to be referred to the court; but, sir, conditions presented here are such that great inconvenience and great cost will be imposed upon the parties and upon your Honor and upon the court, if this record is loaded down with proofs as to the value of these assets in 1861 and then as to their values in 1863, when the latter date is the only date to be considered. If January, 1861, is the proper date, it would be a mistake for your Honor to waste your time and subject the parties here to the cost and expense and delay of hearing this case upon the question of the value of these assets in 1863. I recognize, if your Honor please, that there may be some connection, though very remote, as I think will appear from a brief consideration, between the value of these properties on the 1st of January, 1861, and on June 20, 1863; and if that was the purpose for which this testimony was introduced, that is, to cast light upon values in 1863, my objection would go to its weight rather than to its competency; but that is not the purpose. The purpose is avowed and shown here. They introduce their evidence here for the purpose of fixing the first day of January, 1861, as the date as of which the values shall be ascertained, and not for the purpose of proving or introducing evidence to prove, the values of these properties at any

other date than January 1, 1861, because of the light that those facts might throw on their value in 1863. For that purpose other dates would be as competent and as effective as the 1st of January, 1861, and many dates that I could conceive of would be far more pertinent. It would be difficult to fix these values in June, 1863, as it would be exceedingly difficult to fix them in 1861, but it can be done. Most of these securities, we think, had no appreciable value then, and that can be shown; but what have the conditions on January 1, 1861, to do with that question? When your Honor comes to pass upon the question of the value of these properties in 1863 it will be necessary for you to place yourself as far as possible in the environment which surrounded Virginia and the atmosphere which enveloped Virginia in June, 1863.

The conditions which existed on the 1st of January, 1861, have no bearing whatever upon the conditions in June, 1863.

If your Honor please, it will save time and expedite and facilitate the decision of this matter, now to adopt the ruling which we suggest. We hope your Honor will see your way clear to grant the motion. I do not hesitate to say that it will be in the interest of justice, of economy, time and effort, and money, that your Honor should consider this case upon that one of these branches which your judgment may determine and make your report to the Court accordingly.

If the other side are not satisfied with the dates fixed by your Honor, they may present their objections to the court and have the question decided. They may have to come back to fix the value as of the date of 1861, if the court should sustain that view. If the evidence is to be introduced both as to the value of 1861 and 1863, I am afraid we will be here for a long time after the second Monday in October, if this case is to be fully and fairly presented on both sides.

Mr. Conrad: If your Honor please, as West Virginia should have a full opportunity of replying to every ground that is urged in support of this motion, I would ask your Honor to hear my associate Mr. Robinson, upon an additional ground, which is that the court has already decided that very

identical question. You will find from the record that West Virginia made a motion to change an order of reference from 1863 to 1861, and presented an argument in support of its motion, and the court overruled the motion and held to 1863.

Will your Honor hear Mr. Robinson?

The Master: Mr. Robinson.

Mr. Robinson: If your Honor please, we do not admit at all that any of these credits could possibly act as a set-off and reduce the amount. We will address ourselves to that when the point arises. But I wish to call your attention to Chief Justice White's opinion—

The Master: Which opinion is that?

Mr. Robinson: The last one.

The Master: The very last?

Mr. Robinson: Yes.

The Master: The one referring the case back to me?

Mr. Robinson: Yes, at the bottom of page 2.

"Without intimating any opinion whatever as to whether the items with which the proposed supplemental answer deals entered in the processes of calculation or reasoning by which the sum was previously fixed, and moreover, without intimating any opinion as to how far the items embraced in the answer could serve as credits upon the sum previously found due, and therefore to that extent reduce the amount"—

But leaving that consideration out for a moment, I should like to call your attention to a motion made by West Virginia in 1907, after the first decree was entered. That was the motion which modified the decree of reference. Paragraph 5 of the decree before you reads, "and also on the basis of the fair estimated valuation of the property, real and personal, by counties of the State of Virginia," which was taken June 20, 1863. West Virginia sought to add to that paragraph the words, "during the same period," referring back to 1861. The court denied that motion. They also sought to modify paragraph 6, and the court denied that motion. West Virginia made a request for five changes in the decree. One re-

quest was granted, the word "assessed" was inserted between "and" and "valuation" in the second paragraph of the decree. But all the requests of West Virginia to change the date from 1863 to 1861 were denied. The wealth of the two States upon which this debt has been so far apportioned, has been taken as of June 20, 1863. I take it that this very point has been passed upon by the court absolutely.

The Master: I have not got my copy of that compilation. Has anybody a duplicate copy so that I may have it in my hand?

Mr. Robinson: Yes.

Mr. Holt: Your Honor, of course it has been perfectly apparent from the very beginning, when this cause was opened up and we should come before the Master for the purpose of investigating the value of the securities claimed here as set-offs against the amount of principal found against the State of West Virginia, that West Virginia would contend that the value of those assets should be ascertained as of the 1st day of January, 1861. And it was equally apparent from the beginning, in the absence of any motions or indication even from the other side, that the Commonwealth of Virginia would contend upon the other hand that their value should be ascertained as of the 20th of June, 1863, or some later date.

Of course, our contention is, and this testimony is introduced for the purpose of showing the actual value of the stocks here involved as of January 1, 1861; something that Virginia supposed, on account of the passage of time, we might be unable to do. But this value we expect to demonstrate from the records of these books as of that date before we quit, if permitted by your Honor so to do.

Now we seriously considered making a motion in the beginning, just as my learned friend has. But our motion was the direct opposite of the one made by Virginia, namely, that the Master should, upon the very threshold of this investigation, determine that January 1, 1861, was the date of these values, and not June 20, 1863, as embodied in the present motion.

We did not do that, for the simple reason that we sup-

posed your Honor would hear the testimony upon both dates, and that you would then be in a better situation to determine which date in law should govern. In consequence of that feeling and disposition, we did not make our motion, but proceeded at once to introduce testimony upon values as of January 1, 1861, not expecting to stop there, but to introduce corresponding schedules subsequently for the purpose of demonstrating to your Honor the value of these same securities, upon the other date, namely, the 20th of June, 1863. And then the question would come for your Honor to determine which was the proper date.

I will grant my learned friend that if you could at this time fix definitely and certainly upon the one date or the other, that that would eliminate perhaps about one-half of the testimony from this controversy at the present time. But suppose your Honor should fix the one date or the other, and the testimony should stop at that point, we might have to come back here and try it all over again, because the court might disagree with us and your Honor and instead of reaching the conclusion that you had reached that January 1, 1861, was the proper date should determine that June 20th was the proper date. It looks to me that taking any other course than that which has been proposed by the defendant here, would be making unnecessarily two bites of one cherry. However, if your Honor believes that that question should be settled at this time, and this date should be fixed at this time, and that the evidence should be confined to the date determined, we would be very glad indeed, but would want to indulge in a pretty full argument upon January 1, 1861, before we finally submitted the matter to your Honor.

We have just as strong convictions that January 1, 1861, is the proper date as my friend has that June 20, 1863, is. In fact, briefly and simply by way of introduction at this time, we cannot see how it is possible to take a liability as of one date and an asset as at another date. No concern, partnership, joint tenancy or anything else was ever settled upon any such basis as that. To illustrate, if you had a partnership that was dissolved, the first thing that would be done would

be to gather in the assets, to ascertain the liabilities, carrying the two along together as of the same date and time, and after you had deducted the liabilities from the assets, if there was any surplus left it would be divided between the partners of course in proportion to their respective interests in the partnership. If, upon the other hand, the liabilities out-measured the assets after the assets had been applied to the liabilities and a balance of indebtedness should be the result, that would be contributed to by the respective partners in proportion to their respective interests in the firm. Or if, upon the other hand, you are not going to have a voluntary dissolution, but an involuntary one, and wind up your partnership by a bill in equity and consequent receivership and dissolution, the court in that instance would carry the liabilities and the assets right along together, treat them together as of the same time and place, and make the adjustment then and there.

Now let us apply that analogy to the situation between Virginia and West Virginia. Our constitutional contract or constitutional promise, section 8 of Article VIII of the West Virginia Constitution of 1861, promised to pay an equitable proportion of the Virginia debt existing prior to the 1st day of January, 1861. Any debt that might have existed but that had been paid prior to that date could not be considered. Any debt that might have been subsequently contracted by the Commonwealth of Virginia could not be considered. But you must, under that contract and constitutional promise, take the 31st day of December, 1860, as the time when the entire debt of the Commonwealth is to be determined, before you can equitably apportion it between the two sections.

Now I take it that if on that day and date the sum total of the indebtedness of the Commonwealth was thirty millions of dollars, by way of illustration, that being the amount of the common debt, and on that day and date there were twenty millions of common assets, you would, sir, of necessity, when you talk about equitable apportionment, deduct the twenty millions of assets from the thirty millions of liabilities; and then you will apportion your remaining ten millions between the two parties litigant according to the equities of the case.

It may be that this was not done by the Supreme Court when they ascertained the total indebtedness on January 1st, 1861, at thirty millions of dollars, and make the deduction at that time; they did not do it, and that is the reason that we are here now. We are not here without the authoriy of law or the decree of this court. We are here in the name and under the mandate of this court, directed to your Honor as its Special Master. It would not be safe to take the matters that have been discussed and ascertained by that court upon a former hearing as being final, in the face of a re-opened case, sent to you upon a rehearing.

Why, the whole complaint of the answer that we moved that honorable court to permit us to file, the supplemental answer, was that they ascertained a total indebtedness against the Commonwealth on December 31, 1860, of thirty millions in round numbers, and apportioned unto West Virginia, as her equitable part thereof to be paid 23½ per cent., and unto Virginia 76½ per cent. But that they had not given West Virginia the benefit of assets which at that very day and date she had the same per cent. of interest in that she had per cent. of liability in the debt. It is just as deep seated equity, we say, that we shall get our per cent., and the same per cent. of the assets, as that we shall pay a fixed per cent. of the liabilities.

Why, before we get through with this hearing I believe it will appear that this very bonded indebtedness was incurred in the purchase of these very assets, 23½ per cent. of which we claim.

Now, then, how is it possible, and would it be fair? Here is a Commonwealth that is about to split in two. It has a common debt that must be paid in proper proportion by the two debtor populations that are to constitute the new states. At the same time it has a whole lot of common funds upon hand and valuable common property. Would it be fair to sit down and say, We will ascertain the debt of January 1, 1861, and apportion it between you two debtor populations regardless of the funds on hand, regardless of securities and property that are applicable to the reduction of that debt? Now, you must find it as of that date. It would be unfair both to

the Commonwealth of Virginia and to the State of West Virginia, to take the debt as of one date and the assets as of a subsequent date. And why? They were all left in the possession of the Commonwealth of Virginia, and she might through her management of them increase them to such an extent in the course of time as that West Virginia's equitable proportion therein, might, through the good management of Virginia, inequitably minimize her proportion of the debt theretofore ascertained.

Or, upon the other hand, she having taken and kept possession of these securities, by her management of them might so depreciate and destroy them as that West Virginia's part therein would be worth nothing, although the whole of her proportion of the debt, ascertained at a preceding date, would be still in existence and undiminished.

Why, we have a case at bar. Take the bank stocks. On the 1st day of January, 1861, our part of the debt was seven millions and something. At that very time there were millions of dollars worth of bank stocks, of an actual value as of that date above par—millions of them. Well now, then is the time when you ascertain the debt, to deduct the credit or file the off-set. It is true it was not done in the first instance, but we are back here for that purpose now. Because, if you do not, if you postpone the ascertainment of our equity in those bank stocks until 1863 or 1865, they have depreciated and in many instances have become worthless. But that is just the illustration of one side of it. If upon the other hand Virginia's management of them has so greatly increased them in value at this subsequent date, let her get the benefit of it. But if they have become depreciated, if the live stock on hand, by way of illustration, has died and become lost, it is not fair to reach out into the future for the purpose of applying an off-set or a credit, the value of which was susceptible of ascertainment upon the same date that the debt was ascertained.

It seems to me, your Honor, that as a matter of practice you are bound to carry the debt and the assets on hand at the same time, hand in hand. You really cannot find the amount of the liabilities without ascertaining the amount of the assets,

and whenever you do ascertain the debt, upon the same date necessarily must you ascertain and apply the assets. Now the only reason it was not done before was because that phase of the case was not presented at that time. But that does not mean to say that we are foreclosed. Because if we had been foreclosed by the position of the court upon that proposition we would not be back here. But they have recognized our right to present that very question; and we are here for that purpose. Of course they ascertained that we owed $7,182,000, it appearing that there were no securities on hand of value. We came in with the supplemental answer, saying that there were, and we wanted our per cent. of their value as of that date, to be applied to our proportion of the liabilities as then ascertained. It looks to me, your Honor, as if upon principle and equity that you could not ascertain the value of these securities as of any other date than as of the date when the liability is inquired into and fixed. The balance must be struck at that time. To let Virginia fasten on us 23½ per cent. of the liability as of January 1, 1861, and carry the ascertainment of the assets into the future and to such another date as that they have been destroyed, you thereby defeat our right to participate therein, because we will never enjoy any participation therein except as they may be applied to the reduction and discharge or diminution of this debt, to the payment of which we must contribute.

Now we were prepared—are prepared I think—to give the valuation of these stocks upon both dates; and we did not feel that we ought to come back here, if perchance through a mistake some date should be fixed, upon which we had taken no evidence at all. But if your Honor thinks that the date should be fixed in advance, then we must insist, not that my friend's motion shall prevail but that its opposite should be entered as your finding and conclusion.

Mr. Hogg: If the Master please, the motion submitted by General Anderson, it seems to me, at least, contemplates action on the part of the Master which possibly should be left to the ultimate adjudication of the Court.

The Court, in referring this case to the Master, prescribed

the limits of the inquiry. And your Honor will notice that the conclusion of the opinion provides:

"That the subject-matter of the supplemental answer as traversed be at once referred for consideration and report to Charles E. Littlefield, Esq., the Master before whom the previous hearings were had, with directions to hear and consider such evidence and testimony as to the matters set forth in the supplemental answer as the State of West Virginia may deem advisable to proffer, and such counter showing on the part of the State of Virginia as that State may deem advisable to make. The report on the subject to embrace the testimony so taken and the conclusions deduced therefrom, as well as the views of the Master concerning the operation and effect of the proof thus offered, if any, upon the principal sum found to be due by the previous decree of this Court. Nothing in this order to vacate or change in any manner or in any particular the previous decree, and the same to stand wholly unaffected by the order now made or any action taken thereunder until the examination and report herein provided for is made and this Court acts upon the same."

It seems to me that in framing the reference and empowering the Master to act in the manner indicated by the decree the object was to give the parties full opportunity to present every question which could possibly arise, and to *do* that all proper evidence will be necessarily introduced. Now, for instance, the debt that Virginia owed was held by the creditors. The amount of the debt so far as the burden of discharging it was concerned would represent the difference between the available resources of the State properly applicable to the discharge of the debt and the debt itself, the difference between the two. We will be able to present to the Master the action of the executive officers of Virginia every time it became necessary to present the amount of this indebtedness in order to ascertain what the sinking fund would amount to. The debt was increasing from year to year, beginning with 1852. From 1822 down to 1852 the debt was about eleven millions of dollars. From 1851 or 1852 down to 1861 the residue of the debt created was about $22,000,000. At that

time a spirit of activity characterized the people of Virginia along the line of internal improvements. In order to carry out the enterprises that they conceived at that time it became necessary of course to increase the debt. In order to satisfy the people, the sinking fund was provided for by the Constitution of 1851, carried into effect by an act of the Legislature of 1853. Now, from that time on the assets were itemized and by the Second Auditor of the State of Virginia presented to the public, showing that they were available for the discharge of that debt, although the debt was increased from year to year, so that, when 1861 came, these resources were almost as large as the debt itself. When the State of West Virginia put into her Constitution that she would assume an equitable proportion of that debt, she knew just as well as any of the people of Virginia *now* know that those resources were applicable to the discharge of that debt; she also knew that the burden would be comparatively light, either to herself or to Virginia. That Constitution was adopted in 1861 and ratified by Virginia in May, 1862. Now then, later in 1863 these assets were in existence, and we will be able to show to the Master that they were then estimated in the market to be worth practically the amount of the debt, not in Confederate currency, not in depreciated currency, because at that time there was no market for such stocks as we are now investigating the value of within the Confederate limits. If these bank stocks were sold, if these railroad stocks were sold, if those various other securities were marketed, they had to be marketed outside of the Confederacy, and in 1863 they could have been marketed for a sum almost equal to the amount. We will also be able to show, if the Master please, that there were no expenditures made upon any of these improvements in which these stocks were held from 1861, practically no improvements thereafter; in other words, that the investments had been completed. The expenditures were all made prior to January 1, 1861, so that thereafter Virginia did not take upon herself any additional burden for the purpose of increasing the value of these stocks or adding to their marketability, but they stood in *statu quo* from that time on.

The Master: That is, your contention is that they had already been credited?

Mr. Hogg: That they had already been credited; in other words, just the same as if they had been credited and that they stood there in parallel columns, the debt on one side and the assets on the other, and that the Auditor of State in keeping an account of these resources, and an account of the debt, carried them along together and reported them to the people of the State of Virginia, so that they when they were voting upon themselves a sinking fund knew that it would only be a period of a very short time when it would be dispensed with because the necessity for it would no longer exist. Now, West Virginia knew that Virginia knew this, and she very cheerfully put into her Constitution that she would assume an equitable proportion of the debt. Virginia ratified that Constitution and it went to the Congress of the United States with those provisions in it, and the representatives of the restored government of Virginia in Congress and the people of West Virginia who were advocating and supporting that Constitution knew of this debt and knew of these resources and knew that they were not voting upon their people a heavy burden with reference to this debt.

Now, then, coming back to the original decree in this case embodied in the form of a conclusion to the opinion delivered by the court, I think that the court designed—

The Master: When you say the original decree, you mean the decree under which I am acting?

Mr Hogg: Yes, sir. I say the original proposition.

The Master: There have been several. The one you have in mind is the one under which I am now acting.

Mr Hogg: Yes, sir. The court designed to accord to the Master the widest latitude of inquiry in order to determine the value of these assets. Suppose, if the Master please, it would be difficult from the records or from any other proper source to obtain evidence relating to the value of these stocks on June 20, 1863, provided the Master should determine *that* to be the proper date or providing the Supreme Court should determine it as the proper date, if there had been no change in the physi-

cal values of the properties which these stocks and bonds represent, and there had been no additional money expended to make them of greater value, and that they had not suffered from destruction by reason of physical causes, the value in 1861 would be very persuasive with this court in the absence of better evidence as to what the value of these assets is on the 20th day of June, 1863, provided there is no change in the conditions of this investment, as, for illustration, suppose that the dividend paying value of the property in 1858, 1859 and 1860 was seven or eight per cent., that the dividends on this same property in 1861, 1862, 1863 and 1864 was seven and eight per cent., and there is no evidence that Virginia has expended any money in keeping them up, but they were self sustaining, the reasonable presumption is that in the space of two years there could have been very little material change in the value of those assets. Now, I wish to say frankly that we are wholly committed to the view that the 1st day of January, 1861, in equity and upon reason is the true date to be fixed to determine the value of these assets, these resources, applicable to the discharge of this debt. We may, however, be wrong about it. Our opinion is subject to the review of the Master, it is also subject to the review of the Court, and we, as is said by my worthy colleague, want to free the Master and want to free the Court from any embarrassment, and we want to avoid delay in the final adjudication of this controversy, the final settlement, and consequently we prepared our testimony with reference to the date of 1861, January 1st, and we also have prepared our evidence with reference to June 20, 1863. However, we do this simply as a precautionary measure. We feel confident that January 1, 1861, is the true date; at the same time, we do not wish to sacrifice our better judgment as to what ought to be done with reference to fully determining this case and avoiding delay to our own confidence. We wish to let these two dates go together and appear in the record.

Now, as to the modification of the decree on the former application for a reference—

The Master: You mean the refusal of the court to adopt the suggestion made by West Virginia?

Mr. Hogg: Yes, sir—the truth of the matter was that the whole object, as the Master will see upon reading the original opinion of the court upon the demurrer in that case, was to settle the debt, to determine the proportion of the debt that West Virginia should equitably assume under the ordinance and the Constitution. The crucial point of time of course with reference to that matter was January 1, 1861, because the date was fixed both by Section 9 of the ordinance and Section 8 of Article VIII of the Constitution, and therefore we concluded that 1861 should be taken, from these considerations. The Court, however, held that the ordinary expenses of the State government of Virginia continued in contemplation of law until the two states were divided, and also the State continued to receive the revenues from the counties composing the State of West Virginia until the old State was divided; that there was no population to count in West Virginia until she became a State, and so on, and therefore, following the ordinance itself, it became necessary for us to take the date of June 20, 1863, in order to determine the equitable proportion of the debt assumed by West Virginia under her Constitution. This question that we are now presenting was not in the case, in fact it could not have been in the case under the former theory. We therefore submit that the matter now before the Master has not been adjudicated; it is a question entirely new; it has never been raised before the Supreme Court until our supplemental answer was filed; it was not raised in the former hearing before the Master, and now for the first time in the whole history of this case has this question become material and of course all controlling, as we think, in the disposition and allowance of these assets.

Mr. Holt: Pardon my making a suggestion before you sit down, that the motion to amend the decree of reference referred to details of a narrow character, not involved here at all.

Mr. Hogg: Entirely.

The Master: Your point is that they were details and did not involve the main proposition?

Mr. Hogg: Yes.

Mr. Conrad: The question here as I apprehend it is a date upon which an account as to liabilities shall be taken. It is very much to be regretted that West Virginia when this order was made by the court, announced by the court, had not asked in the interest of definiteness that a time be fixed; especially is it unfortunate because West Virginia was admonished by her experience in the matter when she adventured before, not as a matter of detail but as a matter that reached down to the very fundamentals of this case, that the date of January, 1861, would not be fixed by the court as a time.

I think if my strength holds out I will show that my learned friend has been misled, I fancy by a false analogy. He has taken the case of a partnership as furnishing an analogy, which he seems to argue as if it was on all fours. I have taxed my ingenuity, limited as it is, for twelve months before this bill was filed to find out an analogy to which this matter could be likened, and there is none. It is not a case of a co-partnership or a joint tenancy or any joint interest; it is a case of a division of an existing entity, a governmental entity, a thing that never occurred before, not even in the partition of Poland; they did not regard its public debt. Here is where a commonwealth has been partitioned, and I can find nowhere in history an illustration. The text books vapor a good deal about hypothetical cases, but nowhere do the instruments cover an exact specific case.

Why did they fix January 1, 1861, as the time beyond which West Virginia should not be liable for any debt created by Virginia, why did they fix that date? Some period of time must be fixed, not capriciously, nor arbitrarily, some date must be fixed upon apparent reason. Why did they fix January? Because January is the beginning, I fancy, of the fiscal year. Within ninety days war was flagrant. In August of that very year a government was set up west of the Allegheny Mountains, not a separate government, but a government claiming to be the State of Virginia was set up; and wisely and properly was it said that West Virginia afterwards created, should not be made liable for any portion of any debt created by the

State of Virginia after this other government, by whatever name, in whatever form it might present itself, should have been set up. The restored government of Virginia is the State of West Virginia; therefore January, 1861, was a very proper date to fix beyond which West Virginia should not be made liable for any debt created by Virginia. My friend says, in carrying out his analogy of partnership, that assets and liabilities are * * * Oh, no, not at all. There could not be a semblance of partnership here until an antagonistic interest arose that would warrant a partition or dissolution, and they did not arise until June, 1863. There was no antagonistic interest set up that would have warranted a dissolution of partnership, as, for instance, one partner claiming to be the exclusive owner of a portion of the assets, and one partner claiming to exercise exclusive control over a part of the partnership property—that did not occur until June, 1863, and that was the reason why it was held that the value of the debt must be fixed as of January, 1861. There was no question of off-sets, counter claims, antagonistic interests to arise in this case until June, 1863, because then for the first time did the antagonistic interests arise and appear, and that runs through all the history of this case. I find that as early as February 3, 1863, that all property, real, personal and mixed—this is an act of the restored government of Virginia—"That all property, real, personal and mixed, owned by or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this State, or in the president and directors of the Literary Fund, or the Board of Public Works thereof, or in any person or persons for the use of this State, to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president

and directors, or of the said Board of Public Works in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this State, or of the said president or directors or of the said Board of Public Works, or of any person or persons for the use of this State." Now, note that please; that is in February, 1863, the restored government of Virginia, which was only another name for West Virginia, as we all see, that government said that every piece of property, real, personal and mixed, including stocks in all corporations within the boundaries of the proposed State of West Virginia should upon the creation of that State become the property of that State. There was a policy made and accepted by West Virginia when it became a State, provided for in February, 1863, six or seven months before the State actually became a State, and which included all property, real, personal and mixed, stocks of every corporation, that they should upon the creation of the State of West Virginia become its property without further deed, *ipso facto,* by virtue of that act alone. Can it be possible that a partition can be made as of one date as to one partner and a partition of the same property be made as of another date as of the other partner? How can you say that West Virginia shall stand liable for this property and by its very act should provide for liability in a future accounting as of the date when West Virginia was admitted into the Union, but that the State of West Virginia on her part shall account for her share of those assets of January, 1863? I want to call your Honor's attention, and I do not claim at all and do not wish to be understood as claiming that I am giving the construction and interpretation of the entire answer of West Virginia—I have read it with great care I think, but I find this on page 20. Part of the answer of the defendant alleges that "Under the provisions of Sections 28, 29, and 30 of the Constitution of Virginia of 1851, in force January 1, 1861, (Code of Virginia, 1860, page 47), she became, and was, entitled, under her Constitution adopted and in force on June 20, 1863, to an equitable proportion of and in-

terest in the stocks, bonds and other securities, credit and settlement for which she now seeks to obtain by her supplemental answer." That fixes the date, and she has a right to come into court when the thing becomes vital, when she has a right to demand a day in court, under the very provisions of the answer, that is in June, 1863, when her Constitution took effect, because that is the date she sets up in her answer as the date on which under the Constitution, by virtue of which she acquired an interest in this property for the first time. Hitherto her interests had been common, that of the whole state, and then for the first time her antagonistic interest appears, and then for the first time she claimed the right to demand an accounting and a settlement, and it was only under that Constitution that she acquired any rights, it was only on that date she acquired any rights. The power of Virginia to create further liability by public debt was fixed on January, 1861, and on that day and for that reason and that reason only the right of West Virginia to acquire and fix the value on that day accrued. West Virginia has a right to oppose set-offs and counter claims, to oppose the claim of Virginia existing only at the time when West Virginia acquired a separate entity from Virginia, when separate rights and interests accrued to her, among those, a right of action; she could not have it at a period when she did not exist.

Mr. Lilly: If the Master please, supplementing hurriedly the remarks made in answer to this motion on behalf of the defendant, I want to correct one or two mistakes of my friend just closing on behalf of the plaintiff. He suggested that there was a reason why the debt should be ascertained as of January 1, 1861, and gave as that reason that it was presumably the end of a fiscal year. I desire to state that at that time the end of the fiscal year was September 30th, and not the first of the calendar year, hence that reason would not prevail.

The Master: Fiscal year in Virginia you mean?

Mr. Lilly: Yes; but there was a reason, if the Master please. The black clouds of war were hovering in the horizon in this fair land of ours, as they are desolating the European countries today, and that country west of the mountains,

as my friend said, had both reins of the government, not only for Virginia but West Virginia, and she said "we will protect our rights in the amount of this debt and we will limit it to the 1st day of January, 1861. Why? Because of the roll of the drum, the increased debt that Virginia is going to heap upon the entire people because of war, and we are going to protect our rights by limiting the date to January 1, 1861." Would not those same fathers that protected us in the amount of the debt have held the same desire to protect us in the subject of debt and in the assets? Were they all penny wise and pound foolish? Were they going to protect as to the amount of the debt and then say it makes no difference what becomes of the assets? The same motives that actuated them to protect the counties west of the Alleghanies as to the *amount* of the debt would operate to protect them under Section 8 of Article VIII of the Constitution which uses the word equitable and evidently contemplates the assets, and why and how did it so do? The section says that West Virginia will assume an *equitable* proportion of the debt—when? As of January 1, 1861. What is the debt? Is it a part of an accounting? Is it a partial determination? Is it running one side of the page of the ledger and not the other? You don't know what a debt is until the credits are taken from it; you don't know as a matter of fact that there is a debt, and there can be no debt broadly and equitably speaking until the assets are taken from the liabilities and the balance struck. In Section 8 of Article VIII, by the terms of the contract, our fathers beyond the mountains were protected in their assets, because it is a strange course of reasoning, it is a forced necessity, that requires the plaintiffs in this case to want to saddle a debt on us as of a certain day and then after the devasting floods of war have destroyed those assets, bring them in and say "Here they are." The gentleman first speaking and who made the motion said that all of the facts are in the record necessary for a determination of this litigation. Possibly so from the plaintiff's standpoint, but there are *other interests* which belong to the defendant, and the Court apparently was of the opinion that they were not in the record; otherwise, why the necessity of referring this

case back to this Master to determine certain facts if they were already in the record? It is a presumption for me to argue and say to this Honorable Master that the facts upon which this defendant relies were in the record or were insisted upon, but, as the last gentleman, Dr. Hogg, associated with me in this case said, it is now for the very *first time* that it becomes material to ascertain the value of these assets. All of the gentlemen on the other side argue that the value of the assets must be determined as of 1863. I desire to refer the gentlemen to the resolution of their own State, not the restored State, but their own, because that recognized a different theory, as in 1866 or 1867 when they came over to ask West Virginia to come back they said if she won't come back then let us partition the assets, ascertain the debt and partition the assets, and that was I think in at least three separate resolutions and acts. If you take it as of 1863, you can as well take it as of any subsequent date. They say we have a back to be whipped by placing an enormous debt upon us, but we have no right or no such standing that we can partake of any of the benefits as of the same date that that enormous debt is sought to be placed upon us. Is it equitable for the gentleman sitting there on one side and myself to be in business—and this is more nearly a partnership relation than anything I know of—for him to take the flour and bacon and meal and sugar and corn unto himself and say "You shall pay so much of the debt as of this date and let me take practically all the assets over and dispose of them"—let him take them foreign to the purpose for which he was holding them and for which the common property was not held, and depreciate part and destroy a part, and then, come back to me and say "Nothwithstanding I have destroyed these goods, notwithstanding the fact that I will keep some of them, notwithstanding the fact that I gave some of them away, notwithstanding the fact that I sold many of them and treated them as my own absolute assets, now that there is a loss occasioned, whether right or wrong, by my own act, I am going to fix some date where they will be of the least value and give you your rights as of that date." It was said by the last gentleman that there was no antagonistic interest

between the territory east of the mountains and west of the mountains until June 20, 1863. Back as early as the constitutional convention of 1829 and 1830 that same rumbling, that same discord, that same disagreement that later gave force in cannon and war existed at that time, and on the 17th day of April, 1861, a few months after January of 1861, Virginia said she would cast her destinies with the Southland, away from the regular organized federal government, and would take the assets with her. She did not possibly say she would take the assets in so many words, but her act, her deed, spoke louder than any words. Then in June the loyal people west of the mountains set on foot the establishment of the real government of Virginia loyal to the Union. Was that an antagonistic condition? And on August 20th of that same year those fathers beyond the mountains said "We give West Virginia a right to organize a State within our territory." Was that antagonistic? And so it followed.

I want this feature especially impressed, that while West Virginia did not assume her legal status in the galaxy of states until June 20, 1863, yet, by every tie of blood, by every dissenting influence of war, she was a territory unto herself, and Virginia, with what she was and hoped to be and had been, was a territory unto herself. And it was only awaiting the evolutionary process of time and certain formal regulations until West Virginia should assume her legal existence. But to all intents and purposes she was separated and divorced from the old Commonwealth, the old Commonwealth with her idols in one direction, and the new-to-be commonwealth or state with her idols in another direction. And while, as I said a moment ago, she did not take on her legal attitude until June 20, 1863, yet in deed and in truth she was living in another clime, she was having her other conventions, she was having her other legislatures, and the government of Virginia was doing likewise. And it is equitable to say that we shall have to pay the debt as of a certain day, referring back to my former statement, and yet allow Virginia, who created the debt (and outside of the record, primarily for her own benefit) to take these assets and destroy them or do with them

as she pleases, and make us account on some future day?

And recurring back to what I said in opening if we are to assume an equitable proportion of the debt as of January 1, 1861, how can we do it unless you give us credit for our portion of the assets? We feel that this is a vital question. If it is thought proper, as my associate counsel, Judge Holt, said, to determine it now, it is up to the Master to conclude. We believe, we shall insist, that January 1, 1861, is the date, not only the date under the contract as set forth by Section 8 of Article VIII of the Constitution, because it so says, according to our interpretation, but it is the proper date in equity and good conscience; and after all, as the Supreme Court has said, and as your Honor has said, this is a case to be determined upon the broad equities of right and wrong; of course guided within reasonable limitations by the rules of law and procedure.

It is inequitable to establish the date as of June 20, 1863. It is equitable to establish the date as of January 1, 1861. It is legal to do it. And if the Master cares to rule on it, we insist, as Judge Holt says upon the converse of the motion of the gentleman representing the plaintiff.

I am calling the Master's attention to an idea that was suggested by a gentleman sitting by. If your Honor will remember, in ascertaining the amount of the debt nine hundred and seventy-seven thousand dollars past interest from July 1, 1860, to January 1, 1861, was added in the total of the debt, notwithstanding the fact subsequently introduced in this evidence shows at least eight hundred and nineteen thousand dollars was then and there in the sinking fund, provided by the Constitution of 1851 and 1852 and by the Act of March 23, 1853, for the specific purpose of paying the debt. Now would it be equitable for the accrued interest, nine hundred and seventy-seven thousand dollars to be put into the debt to swell it, to let them in the meantime, from January 1, 1861, to June 20, 1863, appropriate this eight hundred and nineteen thousand dollars provided for the very payment of that debt or the interest and we get no benefit from it? Because within a month's time after January 1, 1861, this eight hundred and

nineteen thousand dollars, with other money, went to pay this interest, the interest added in the total of the debt, and according to the equitable settlement that is insisted upon on the other side, this asset of eight hundred and nineteen thousand dollars would have vanished in thin air, they pay the interest out of our common assets, and according to their theory that would absolutely disappear.

And there is another reason why January 1, 1861, ought to control and prevail, and that is because at that time we were in a better position to know and determine as to the value of these assets. Because if you wait until June 20, 1863, in the intervening days of war it is harder to determine. And then you take the date as of January 1, 1861, suppose there is a loan, and interest running up to 1863, here is six per cent. to the interest fund, one per cent. under the Constitution and Act of 1852 and 1853 goes to the liquidation of the principal. Where would that go to? Certainly not to reducing our part of the debt, because it has been definitely determined as of January 1, 1861. And yet, while our assets were being dissipated in various ways, this one per cent., coming out of our assets, reducing the principal, we get no benefit thereof. I thank the Master.

Mr. Harrison: If your Honor please, the discussion of this motion has taken a very wide range. Many matters have been dealt with that have no legitimate bearing upon it. The reasons for it we think are obvious and can be briefly stated.

If West Virginia is entitled to credits to be applied upon her share of the principal of the debt, then it must follow that the *value* of those credits must be ascertained as of some date. You cannot inform and advise the court, as you are required by the decree of reference to do, without ascertaining the date, if credits are to be allowed, upon which you will determine their value.

Therefore, it seems obvious that the proper thing to do is to fix that date at once, in order that the evidence introduced, may have reference to it. It is contended by the other side that the date should not be fixed until all of the evidence has been introduced relating to more than one date, because as

it is said, your Honor and the court would thereby be the better enabled to determine what date should be adopted. But the date does not depend upon the evidence that may be introduced as to *the value of the assets.* The value of the assets must be determined with reference to a *date,* but the date is not determined by the preponderance of proof in respect to values at different periods.

Therefore the motion calls upon your Honor to advise the parties and their counsel the date as of which credits, if any, will be ascertained and allowed, in order that they may address themselves to that date in the introduction of evidence. It surely would be an advantageous thing to do, if it will result, as Judge Holt says, in shortening this proceeding by one-half. If we can be spared one-half of the time, labor and expense necessary to be expended in pursuing the course now being pursued, by determining in advance the date as of which the value of these assets must be ascertained, surely we ought to do it.

The contention of the defendant is that those values must be determined as of January 1, 1861, while the motion submitted by the plaintiff asks your Honor to rule that June 20, 1863 is the date as of which they must be ascertained; if the defendant should be found to be entitled to any credits.

There seem to me to be conclusive reasons why the 20th of June, 1863, must be the date adopted. West Virginia became a State upon the 20th of June, 1863. The dismemberment of the old State, became an accomplished fact upon that date. Prior to that period the territory now forming the State of West Virginia was part of the State of Virginia. There had been in fact, whatever may have been contemplated, no actual division of the territory of the Mother State until June 20, 1863; and obviously therefore no conflicting interest or rights between the two could arise until that date. Now it happens that January 1, 1861, was specifically fixed as the date for ascertaining the *amount* of the debt, with reference to West Virginia's liability for a share of it. Reasons have been stated why that was done. It is immaterial why that was done. We know the fact, that there was a stipulation, that the amount

of the debt should be fixed as of the 1st of January, 1861, but the stipulation went no further.

I presume the reason was, as stated, to avoid any liability after that date for any debt that Virginia might create. That doubtless, as the Attorney General of West Virginia said, was the all-sufficient reason that moved the "fathers" to fix a definite period for ascertaining West Virginia's share of the original debt. But I say that agreement did not extend any further.

Now the question before us is not the period from which the debt shall be fixed, but the period as of which the value of alleged credits shall be ascertained. And the value of those credits must necessarily be determined as of the date of the separation, in the absence of any stipulation to the contrary, because not until that date was it possible for any conflict of interests to arise, in respect to the avails of the original debt.

Now Judge Holt said, and he made the point with his usual force and earnestness, that you cannot take a liability as of one date, and the value of an asset as of another date, for the purpose of applying set-off against that liability.

I have the authority of the Supreme Court of the United States for saying that it can be done. In the opinion of the Court delivered 6th of March, 1911, it is said: "The amount of the debt, January 1, 1861, that we have to apportion, no longer is in dispute." We have here the judicial declaration of the fact that January 1, 1861, is not only the undisputed date as of which the amount of that debt should be ascertained, but also of the fact that the amount of the debt was no longer in dispute. Continuing the Court said:

"The Master's finding was accepted by West Virginia, and at the argument we understood Virginia not to press her exception that it should be enlarged by a disputed item."

Now the thing that the Court had to decide was the apportionment of that debt, that is to say, on what basis, and as of what date would it make that apportionment.

We find the Court settled these questions as follows:

"We are of opinion that the nearest approach to justice that we can make is to adopt *a ratio* determined by the Master's estimated valuation of the real and personal property of the two States upon the date of the separation, June 20, 1863."

I submit, if your Honor please, that if the Supreme Court of the United States found that the nearest approach to justice was to apportion the debt itself on the basis of values, *as of June*, 1863, the same considerations require that the assets, if they are to be apportioned must be divided, or their value ascertained, as of the same date. Judge Holt was mistaken therefore when he stated that you cannot take a liability as of one date and apportion it on the value of an asset as of another date.

Mr. Holt: You certainly do not contend that the Supreme Court was then comparing assets and liabilities?

Mr. Harrison: I have shown that a debt, the amount of which was fixed on January 1, 1861, was apportioned by the Court on the basis of values ascertained, as of June 20, 1863, the date of the creation of the two States. And it must follow, that if it was in the interest of justice, to apportion the debt on the day of the separation, it is likewise in the interest of justice to ascertain the values of these so-called credits as of the same date.

I submit that it is not an open question. On reason and authority I am justified in saying that the date of the division of the territory of the Mother State, and the erection out of her territory of a new State, is the date upon which their respective rights must be fixed, *quoad* the property of the original State.

I respectfully submit that this motion should be granted. I do not see how your Honor can inform and advise the court in respect to the matters referred to you, without fixing a date for the ascertainment of the value of these assets, if West Virginia is entitled to a share of them.

How can your Honor reach a conclusion as to the effect or operation of the evidence upon the principal sum found by the court without knowing, if you should be of the opinion that credits should be allowed, the value of those credits? And

you cannot determine their value without fixing the date as of which you will take their value. It will be absolutely necessary for your Honor, if you should be of the opinion that any of these so-called credits should be allowed, to show the Court to what extent they diminish the principal sum. And to do that you must ascertain their value as of a given date, before you can apply them as a credit to the principal sum.

Now, it is perfectly immaterial to us whether our friends on the other side continue the introduction of evidence to show the book value on January, 1861. They can do that if they think that has any actual bearing upon the value in June, 1863. It may be that they will ask you to allow them to introduce evidence of the value of the Richmond, Fredericksburg & Potomac stock at this time. I think you might as well introduce evidence of value about an estate in the moon, so far as it has any relevancy here; and yet they may be of opinion that such evidence would have some bearing upon the value of the stock in 1863. But the point that we ask your Honor to rule upon is that notwithstanding what we may think as to the probative value of proof as of some other date, that the date as of which you will ascertain the values is June 20, 1863. We do not ask you to foreclose West Virginia's counsel from introducing this evidence if they are so minded.

Mr. Holt: Mr. Harrison, pardon me, but do not misunderstand us as acquiescing in that suggestion. We are not introducing the date of 1861 as an embracement for 1863, we are introducing evidence on the date 1861 because we say that is the right date; that is our position.

The Master: That is as I understand it.

Mr. Harrison: The motion is as follows: "The plaintiff by her counsel moves that the Master do rule that June 20, 1863, the date of the creation of the State of West Virginia, and the date as of which the court ascertained the value of the property in the two States as a basis for the apportionment of the debt, is the date as of which the values of the alleged credits asserted in the supplemental answer of the defendant must be ascertained, should the defendant be found to be entitled to any of the said alleged credits." And we have

asked you to rule that June 20th is the date as of which the values of these credits must be ascertained, should West Virginia in the last analysis be found to be entitled to any. But we go further and ask that the Master will exclude from consideration any evidence directed to the fixing of any other date *for the ascertainment of said value.*

Now, what I said just now was that our friends may be of the opinion that the evidence of value at some other date than June 20, 1863, may have some probative value in determining values on June 20, 1863. If they think so they may introduce such evidence.

One suggestion is that your Honor will rule now and fix definitely the date so that we may govern ourselves accordingly. What we ask in the second paragraph will necessarily follow.

The Master: One is the logical sequence of the other?

Mr. Harrison: Yes.

The Master: Of course whichever way I rule, legal consequences follow.

Mr Harrison: It has been said on the other side, that the Court meant when it referred this case back, to reopen it, and thereby recognize that there was merit in West Virginia's contention, and that the intention of the Court was to suspend its former decision and give West Virginia the widest field for the introduction of evidence. Now, it was asserted here by my associate that we have travelled over a pretty wide field in this case. It is new to our friends on the other side because they are new in the case. But it is a pretty old story to the rest of us. And my friend and associate was within the bounds of accuracy when he said that there was already in this case all of the information furnished from the archives of this State that has any bearing upon any question that has ever been raised in it, including that raised now. And in support of that statement I cite an extract from the last opinion, delivered by the Chief Justice:

"Without intimating any opinion whatever as to whether the items with which the proposed supplemental answer deals entered in the process of calculation or reasoning by which

the sum due was previously fixed, and moreover without intimating any opinion as to how far the items embraced in the answer could serve as credits upon the sum previously found due, and therefore to that extent reduce the amount, we think it is obvious that most of the items embraced in the answer were contained in the Master's report and in any event all were available then for every defense now based upon them if their consideration had been pressed in the aspect and with the assertions of right now made."

Now, we press this motion upon your Honor, at this time because we do not think we should be required to travel over this ground again if there is no use in it. But I started to say, when I digressed, that it has been suggested or urged that the court meant to suspend its former decree. In other words, for the time being, to set aside what it has heretofore said and what it has heretofore done, and leave West Virginia to roam at will without restraint in asserting the defense that she is now making. But that is a mistaken view.

The Court said:

"Nothing in this order to vacate or change in any manner or in any particular the previous decree, and the same to stand wholly unaffected by the order now made or any action taken thereunder until the examination and report herein provided for is made and this Court acts upon the same."

Mr. Holt: It never said anything else.

Mr. Harrison: I do not think, therefore, that the Court intended to let down the bars and invite an indefinite investigation about matters that we are all familar with.

Now, to sum up, I say, if your Honor please, that it is important for you to fix the date as requested. Nothing will be gained by reserving your decision as to that. If it is to go to the Court, I think the surest and speediest way is to let it go to the Court now, and ask the Court for instructions. But I say, in my humble judgment, the Court has sufficiently indicated its opinion on that point. The Court from the beginning has shown that June 20, 1863, is in its judgment the date upon which the rights of the two States in the common property of the old State, must be adjusted.

I think our friends fully realize that fact. They will contend against it as a matter of course, but the record shows that our friends here appreciate the fact that they are contending for a proposition that in good conscience and in the light of reason and the decision of this Court cannot be allowed.

If your Honor will look at their answer you will find that wherever they allude to the evidence of the value of these so-called assets, they allege that they had the same value in June, 1863, that they did in January, 1861. They give two dates always. I might read one extract for example.

The Master: What page?

Mr. Harrison: I will read on page 27, of their answer where they are dealing with the Tennessee Railroad, and they say that they have the value there stated not only as of the 1st day of January, 1861, but as of the 20th day of June, 1863. Why did my friends assert that they had the same value in June, 1863, that they had in January, 1861?

The Master: They probably took chances once and got left, and did not want to take any chances again.

Mr. Holt: I think it is perfectly plain why, Mr. Master.

Mr. Harrison: We have all been in that situation no doubt.

On page 20, they recognize June 20th as the constitutional date fixed for the determination of their interests in the so-called assets of the common states.

The Master: In paragraph 4?

Mr. Harrison: Yes.

Mr. Holt: We could not have any debts either until we had an existence. So that horse is as long as it is broad.

Mr. Harrison: The answer throws a side light on the mind of the draftsman. He was doing the best he could, under the circumstances. But still the definite fact had to appear, and it did appear in the answer that West Virginia claims an equitable proportion of the stocks, etc., as of the 20th of June, 1863.

Therefore, we appeal to your Honor, if it commends itself to your judgment, to settle this question now, so that in the future conduct of this case we may know how to govern ourselves with reference to the introduction of proof and not be

wandering over a wide field without any limitation upon us. We say that this motion is not only in the interest of the economy of time, labor and money, but it is in the interest of justice. You cannot, in my opinion, meet the expectations of the Court unless you advise them definitely whether or not the principal shall be reduced, and if so to what extent; and you cannot do that without knowing the date as of which you will ascertain or determine the values of the so-called credits. And you cannot take two dates. And there is no reason why we should waste time in introducing evidence about two dates, any more than there would be about three or more. The question is the fixing of a definite date in order to state an account, and that date does not depend upon the evidence of values that is to be introduced; it depends upon the fact, the definite fact, that West Virginia's existence dates from *June* 20, 1863, from which date flow her rights as against Virginia. The Court has pointed the way for you by taking that date as the date to apportion the principal of the debt, which had been arbitrarily fixed at a prior date.

It seems to me, therefore, that all doubts disappear in the light of the facts, and the action of the court, and that the course for your Honor to pursue is plain and clear.

I submit the matter to your Honor.

The Master: Have you anything further, Judge Holt?

Judge Holt: Nothing further, I believe, your Honor.

The Master: Then I am prepared to announce the ruling. I think, in the first place, it is my duty to take such course in connection with this hearing as will most effectively promote the final, speedy and conclusive determination of the great issue between these two parties.

West Virginia has already had her legal day in court in connection with the controversies raised by this amendment. But that is a matter however that is not for my consideration. The Supreme Court has reached the conclusion that under the circumstances she is entitled to a further day in court, and that she has a right to be heard upon all these matters set up by her in this supplemental answer.

The motion made by ex-Attorney General Anderson, and

supported by him in a very able argument—and I may say that the whole discussion has been characterized by very great ability and legal intelligence—of course raises a very vital question; and its determination one way or another will come very near determining the rights of the parties to this controversy. If I sustain this motion and it is held ultimately that I erred in sustaining it, then the question comes back upon the hypothesis raised and urged by West Virginia.

The other course that is open to me is to hear all of this contention upon either of these hypotheses, reach my conclusion later if I find it necessary to do so, as to which is the right conclusion and perhaps report in the alternative to the court, so that the court will have before it the full contention of each party.

Now, in the first place, so far as this question is concerned, it is not only vital but it is an important legal proposition, and I desire to say that so far as I am concerned my mind is as yet open as to the proper conclusion to reach as to which is the right date upon which this value should be assessed. In a hearing of this importance and magnitude, if I were going to decide definitely which date should be fixed upon by me and as to which date the evidence should be introduced, I should feel bound to suspend the matter until I could more carefully examine the case and reach a conclusion. I would not want to take my chances in a decision right off the bench, immediately at the close of the argument. In reaching a conclusion here that I would hope would ultimately be sustained by the Supreme Court I should not want to reach a conclusion that would not be sustained, it would not be justice to either of the parties. And I doubt whether it would be wise for me, in the interests of both parties concerned, to undertake to definitely determine that specific date. I shall hold that only two dates are in issue, first, January 1, 1861, and second, June 20, 1863.

If I should rule in favor of either and rule erroneously this case comes back and we have to traverse this ground again. My judgment is that it is wiser for all concerned for me to hear the testimony that will be introduced by either party

directed to either of these dates, and if I determine ultimately to make an alternative finding, why then the court will have the benefit of my conclusion predicated upon either date.

This litigation ought to be terminated, it has been going on long enough. I do not want to take any action here that will lead the Supreme Court to say or feel that either party to this controversy has been foreclosed from presenting any legitimate evidence that may properly bear upon this controversy. If this had been a controversy between private parties this controversy here this morning would not be here before me, evidently, from the opinion of the Supreme Court. But the Supreme Court took a more liberal and broader view in respect to this controversy than they would ordinarily take. I do not want to give any such direction to the hearing here so that either party that may feel aggrieved may be in a position where the litigation can be further continued or further delayed. I can appreciate that if I ruled one way or the other I would shorten this case one-half, but on the other hand it might prolong it about one hundred per cent. My own judgment is that under the circumstances it is my duty to hear this case upon both hypotheses, first, that the value may be determined possibly as of the date of January 1, 1861; secondly, it may be determined as of the date of June 20, 1863; and I shall therefore so rule.

And also with this understanding, that I shall endeavor to present this case to the Court finally so that the Court will realize that at this hearing both Virginia and West Virginia have been fully and completely heard, that there is no legitimate legal consideration that has any proper tendency to affect the result on either of those dates, as to which both Virginia and West Virginia have not had the fullest opportunity to present all legitimate evidence. Now that does not mean that the door is opened entirely wide, but it means this, so far as I am able to determine it in a hearing of this sort, it means if I undertake to reach a conclusion, that is when I do reach a conclusion if I reach it upon either date, it will be done upon what I believe to be legal principles. And that means also that the evidence that is introduced for

the support of either hypothesis must be evidence that is legally competent in its character and has a legitimate tendency, whether it may be remote or otherwise, to establish the hypothesis contended for. Of course the case may develop so that it may be up to me to say whether evidence that is offered upon one side or the other may or may not be too remote. I intend, however, to give what is every reasonable latitude. I intend, however, to keep the case within what I look upon as proper legitimate limits. But subject to that, I want the parties to feel, and I propose to have the court ultimately to feel and know that you have both had ample, full and complete opportunity on each hypothesis. And I hope when you get through with this hearing to present it to the court in such shape that there will be an end to the controversy between the parties. It may take us longer, but it is an important case, and we are here for this purpose. And with these suggestions we will now proceed with the hearing.

Do I make the matter clear to the parties on both sides? I would like to say before we separate, I have not any question, from the attitude of the learned counsel on each side, because they are all distinguished men and evidently anxious to reach a proper and legitimate result, that none of them will be captious as to the application of the rule, but you must both bear in mind that the proceeding is being conducted upon legal principles, and while I hope to make a broad and proper application of them, we must both understand that we are to keep within the rules, and of course the counsel upon either side know what they are. And in the progress of the trial of course if anything comes along in which counsel upon either side feel that the counsel on the other side are going into things that are too remote, it is open to them to call the attention of the Master to it; and I shall not hesitate to rule. But subject to the general rules I hope both parties to this case in the end will feel and know that everybody connected with this case has had every opportunity that is possibly open to them in connection with this hearing, so that hereafter, while they may not agree with my conclusions, I

do not intend to have it left so that they will feel that they have not had the fullest and most complete opportunity to be heard.

At this point a recess was taken until 2:30 P. M.

AFTER RECESS

Continuation of the direct examination of

CONWAY W. HILLMAN.

Mr. Holt: On yesterday we took up the schedules in the order of A and B, then passed Classes C and D and came to E, because the blue prints for C and D at that time were not quite ready.

The Master: Now you propose to resume with C?

Mr. Holt: Now we come to C, which consists of 18 different items.

Q. Mr. Hillman, turning to the first item of Class C as exhibited with the answer, that is to say, the Orange & Alexandria Railroad Company, stock and loan, I will ask you if you have examined the records of Virginia or of the Orange & Alexandria Railroad Company with a view of ascertaining what shares of stock if any the State of Virginia owned in that company on the 1st day of January, 1861?

A. Yes, sir, I have.

Q. What was the number of shares owned by her of that stock on that date?

A. 17,490 shares.

Q. What was the par value per share?

A. $50 per share.

Q. You may further state whether or not she acquired

that number of shares on that date or owned them prior to that time?

A. She owned them on that date and had owned them for some time previous to that date.

The Master: Approximately how long?

The Witness: I should say at least from 1854, as we afterwards have a record of dividends declared in 1854 and paid in 1854.

The Master: Approximately seven years?

The Witness: It was before that date that they owned, I know it was on that date. All that information will be furnished to your Honor if it is desired.

The Master: At least seven years?

The Witness: Yes, sir, at least that.

Q. What was the total par value of the stock of that company owned by her?

A. $874,500.

Q. Did you examine the books of that company or the records of the Commonwealth of Virginia for the purpose of ascertaining the book value of that stock as of January 1, 1861?

A. I examined the records of the State of Virginia as published in Document No. 17 of the Auditor's Report for the State made annually for the different years, to determine that point. There are no books or records showing the Orange & Alexandria trial balances as of that date. I am informed by the Southern Railway, who now owns the property, that they have none of those records, they all having been destroyed by fire some years ago, and there is not extant as far as I know any record of the company itself, and therefore we have to take the reports made by the State.

Q. Based upon the reports of that company made to the State of Virginia, were you able to ascertain the book value, taking those reports to be true, of that stock as of January 1, 1861?

A. Yes, sir, I was able to establish the value for that stock.

Q. What was that value per share?

A. $53.32. Allow me to state that at the time that was made out I had taken the value and shown it as $100 per share. I have since made investigation that it was $50 a share. Therefore the book value would have to be $53.32 per share, but for every $100, the usual share value, it is worth $106.64; in other words, the stock has a $6.64 premium.

The Master: But per share of $50 the par value is $53.32?

The Witness: It was; 6.64 per cent. premium.

Q. Allowing that advance over the par value, what was the total value as of that date of the block of stock owned by Virginia in that road?

A. $932,566.80.

Q. Have you prepared a schedule wherein you have traced all of the 18 items embraced in Class C?

A. Yes, sir, I have.

Q. How have you marked that schedule?

A. In the upper right hand corner, Hillman Exhibit 3-A, and it should be marked in the upper left hand corner Class C, but unfortunately it has been omitted. I will ask that it be so marked for those holding copies, and will furnish the stenographer with one so marked.

Q. Will you now file that exhibit and mark the same Defendant's Exhibit No. 3?

A. I so file it, marked as requested.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, August 18, 1914, C. B.

The Master: The book value that you have given of $106.64, that is predicated on $100 par value; as a matter of fact, the par value was $50, and in order to be entirely accurate that should be $53.32?

The Witness: If it is treated as per share, yes, sir.

The Master: Your final computation I take it is predicated on $50 per share?

The Witness: Yes, sir.

The Master: With the premium that you allow?

The Witness: Yes, sir. I will say, your Honor, that the books of the company do not show the value of this share, how much it was, how much par was. I had to go to the side record and find it in their reports to the State, that it was at $50 per share; that is the reason it did not appear on the first original report.

By Mr. Holt:

Q. I have already inquired of you, Mr. Hillman, concerning the first item, that is the Orange & Alexandria Railroad Company stock on this Exhibit No. 3. I will now ask you by what process you ascertained the book value of each share of stock of that company on that date to be $53.32?

Mr. Holt: I may say to the Master and to the gentlemen on the other side that there is a supporting exhibit going with that first item on Exhibit 3, which explains its purposes, so we will turn to it. I will exhibit it in a moment.

Q. My question is by what process did you ascertain the book value of that stock per share to be on January 1, 1861, $53.32.

A. On the report of this road to the State for year ending September 30, 1856, all of which is found in Document No. 17 of the respective years which are hereafter mentioned in the Auditor's report to the State. There was a complete trial balance of this road wherein the par of the stock was $1,457,000 and the profit was $7,571.28, making a book value of $100.45 for each $100, or $50.23 for each share of stock.

Q. At $50 a share?

A. $50 a share. In 1856 no further trial balances are shown. We therefore took the profits as shown on Document No. 17 and added each year's profits over and above operating expenses, taxes and interest on the funded debt or floating debt to the surplus which had been determined for the year ending September 30, 1856, and in that way arrived at the available surplus or amounts which should be or would be distributed to the stockholders had the road been closed and the assets properly distributed, the corporation liquidated. We found that in 1857 there was $1,830,303.89 worth of stock outstanding. The odd amounts I would say

are due to the partial payment plan adopted for outside parties in paying for their stock.

The Master: Does that represent the actual amount of stock outstanding or the amount of money actually paid in for stock outstanding?

The Witness: It represents both, sir, as the stock was not fully paid until all assessments on it had been paid; it carried with it only the amounts that had been turned in, and if a man failed in his subscription the stock was only partially paid up.

The Master: Does this figure represent the amount actually paid in as distinguished from the amount atcually out?

The Witness: Yes, sir, from the amount actually paid in as distinguished from the subscriptions to the stock.

A. (Continuing.) The profits above operating expenses, taxes and interest were $61,441.15. There were dividends paid on the preferred stock of the company amounting to $5,954.63, leaving a total profit for the year above interest and dividends which could be carried into surplus of $55,486.52, which added to the profits from the previous year, gave us profit at the end of this year of $63,057.80. Dividing this surplus by the amount of outstanding stock we have a book value of the stock of $103.44 for every $100 worth of stock, or for each share $52.71.

Q. Now, what did you do, if anything, with the year 1858?

A. I proceeded in the same way for the year 1858, taking it from the same record, Document No. 17, but of the date of 1858 report.

Q. What did that give you as the book value for that year of the stock?

A. The book value was $104.93 for each $100, or $52.47 for each share.

Q. Tell us whether or not you investigated and treated the year 1859 in the same way?

A. Yes, sir, I did.

Q. What result did you arrive at there?

A. $105.30 for every $100 worth of stock, or $52.65 per share, book value.

Q. How did you ascertain the book value for the year 1860 of this stock?

A. I obtained that in the same way.

Q. With what result?

A. That it was worth $106.64 per $100 of stock, or $53.32 per share.

Q. Now how about the year 1861?

A. In 1861 the receipts of the road increased over 50 per cent. They had no expenses that year save an estimate by the superintendent. Because of the war the books were in Alexandria and this superintendent in Richmond had no access to them. He estimated his expenses at $220,000, which was $8,000 less than the previous year in spite of the fact that the earnings were over 50 per cent higher. If we had taken his figures it would have added for the year 1861 $263,909.85 to the profits of that year. I deemed that that must be erroneous and declined to take that into consideration in setting up the value of this stock. If my judgment is in error it can be corrected.

Q. What did you determine it to be worth, the book value of that date, 1861?

A. I did not determine the book value of that date.

Q. That is to say $106.64 for every $100 of stock represents if I understand you the 30th day of September, 1860, is that correct?

A. Yes, sir.

Q. In 1860, is that correct?

A. Yes, sir, the nearest date which we could get to January 1, 1861.

Q. Now, have the processes by which you arrived at this book value been set forth in an exhibit or tabulated statement prepared by you and marked Hillman Exhibit No. 3, Asset 1?

A. Yes, sir, they have, and I would ask that Class C be written in the upper left hand corner.

Q. Will you file this supplement exhibit to Exhibit No. 3 and mark it Defendant's Exhibit No. 3, Asset 1?

A. I file it, marked as requested.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 1, August 18, 1914, C. B.

Q. You may state whether or not Defendant's Exhibit No. 3, Asset 1, correctly and truly—

The Master: Why does he call that asset 1, what is the significance of the language?

Mr. Holt: By turning to the answer, we were claiming each one of the matters as an asset in that class C, and he has just followed that.

The Master: These are not assets as distinguished from the other items that you have already been proving.

Mr. Holt: No.

The Master: Just simply used as a matter of convenience in connection with Class C?

Mr. Holt: Yes.

The Master: None of the other exhibits were marked assets, just Class so and so.

By Mr. Holt.

Q. You may state whether or not Defendant's Exhibit No. 3, Asset 1, correctly and truly sets forth the result of your examination of the books and reports concerning that company, and truly sets down the figures in relation thereto.

A. It does.

Mr. Robinson: I suppose it is understood that the words down there, value January 1, 1861, in themselves are no proof of value unless some other evidence is put in to support it.

The Master: I so understand it.

Mr. Holt: Of course we could not set down a conclusion.

The Master: Everything that you have given so far are book values.

Mr. Holt: Book values and also dividends declared, because the books tell us that that is another way of determining the actual value of the stock.

The Master: Then what conclusion they require is another thing, but what you fix as values upon these other schedules are the book values, and how much weight is to be given to that is a matter to be determined later. What weight that

is entitled to in reaching the actual value is a matter to be determined later.

Mr. Holt: Except of course the par value appears.

The Master: That is a feature of the book value.

Mr. Robinson: I was particularly referring to the matter of the loan.

Mr. Holt: You will find that the supporting sheets looked at the debtor.

The Master: All those matters are open to cross-examination.

Mr. Holt: Of course when we set down two columns of figures, 2 and 2, we expect that the addition will show 4 in the end, but the addition is to be made later on.

The Master: Yes, certainly. Take Exhibit 3, where it reads, with reference to the first item, book value $106.64, and then the next column is "Value January 1, 1861," that should read, book value January 1, 1861.

Mr. Holt: That is what that is intended for.

The Master: I think we had better have on here, before we get through with this exhibit, Brother Holt, as to this book value, in red ink, $53.32, because this $106.64 is apparently predicated upon par value.

Mr. Holt: That is it.

The Master: And it is just twice the par value. I take it the results will be the same.

Mr. Holt: Absolutely.

The Master: It may result in confusion unless you put that in.

Mr. Harrison: Write "book" in front of "value."

Mr. Holt: In the last column. Now it may be that we are wrong in part about that. However, we will develop that part of that sum total there is made up of the book value and an actual value, and that is why those stars are at the bottom, to make the explanation. We will develop that in a moment though, and make it clear, your Honor.

The Master: Well, so far as there is any difference in character between the factors that enter into an aggregate, that you can explain on the record. The main thing is, though,

that as the testimony goes in, let it go in plain and clear so that there won't be any confusion between us as to what it means. This suggestion of yours, I take it, Judge Holt, does not relate to the par value proposition.

By Mr. Holt:

Q. Returning now to Exhibit No. 3, we find under the first item, Orange & Alexandria Railroad stock, the word loan, and thereafter under the word par $398,650.60, and the same amount carried out in the last column, with a star before it, and after the word star in the bottom margin, "Actual value January 1, 1861." What do you mean by these entries upon this exhibit? Please explain the same and tell us how you arrive at it.

A. I mean that that was the actual cash value of the principal of the loan on January 1, 1861.

Q. Well, who made the loan and to whom? Let us get a little history of it.

A. It was a loan made by the State of Virginia to the Orange & Alexandria Railroad Company, for which the Orange & Alexandria acceptances or acceptance were taken.

By the Master:

Q. When you say actual value, as I take it, you proceed on the assumption first that it was an actual existing loan, and second that the Railroad Company was amply responsible to pay and that the debt would be collected in full, that is what you mean by that, is it not?

A. Yes, sir, and the exhibit which I am just filing as a subsidiary paper shows those facts, both the value of the loan on that date and its subsequent payment in full.

By Mr. Holt:

Q. Now, have you prepared an exhibit, Mr. Hillman, explaining this loan to the Orange & Alexandria Railroad Company, in addition to the supporting exhibit just filed with reference to stock, marked Asset No. 1—have you prepared an additional supporting exhibit relating to the loan?

A. Yes, sir, I have.

Q. How have you marked it?

A. It is marked Hillman Exhibit 3 and 4 in the upper right hand corner, and immediately below it, sheet 1, asset 1. There is also a sheet 2 of asset 1 and a sheet 3 of asset 1, it taking three sheets in order to run this asset down and show its full payment. On the upper left hand corner is marked Class C and Class D, for the reason that there are references to both classes on this supporting exhibit, since it was settled in full with interest on the principal as well as the principal, and necessitated both being carried on one exhibit with a double reference as to the class at the top, Class C being principal of stocks or other securities, and Class D being interest, dividends, etc., which were due; and it became necessary to show the amount of interest which was due and earned at the same time that the principal was due, it became necessary to carry these upon the same exhibit in order to thoroughly show how much was principal, how much was interest, and how much of each was due. Therefore, these supporting papers will refer both to Class C and Class D.

By the Master:

Q. So far as these supporting exhibits refer to both classes, do they contain all of the data relating to the two classes?

A. Yes, sir, they do.

Mr. Holt: If I understand you, your Honor, you have Class C, which is made up of the stocks of certain companies, and loans made to certain companies; in addition to that you have Class D, which confines itself exclusively to the interest on those loans and to the dividends on those stocks. Now, while he is treating in Defendant's Exhibit No. 3 the subject of stocks, he has a separate and distinct set of supporting exhibits, the first of which has been introduced, and when it comes to the subject of loans he has another set of supporting exhibits, and they are marked C and D because they are the supporting exhibits for both Class C and Class D.

The Master: For both principal and dividend?

Mr. Holt: Yes.

The Master: And he is prepared of course to separate the details?

Mr. Holt: Yes, sir.

By Mr. Holt:

Q. Mr. Hillman, will you file your supporting exhibit, that you have marked Hillman Exhibit 3 and 4, Sheet 1, Asset 1, Class C and D, with and as a part of your deposition and mark it Defendant's Exhibit 3, Sheet 1, Asset 1?

A. I do file herewith the exhibit in question, marked Hillman Exhibit 3, Sheet 1, Asset 1, Sheet 2 of Asset 1 and Sheet 3 of Asset 1, in the upper right hand corner, and Class C and Class D in the upper left hand corner.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Sheet 1, Asset 1, August 18, 1914, C. B.

Q. Will you take the exhibit last referred to and explain to the Master how you have indicated therein, or explained therefrom how you have ascertained the value of the loan to the Orange & Alexandria Railroad Company, heretofore referred to, to be worth $398,670.60 on the 1st day of January, 1861?

The Master: In the first place that is the full amount of the loan?

Mr. Holt: Yes, sir, that is the full amount of the loan.

A. On page 241, ledger B, under the sub-heading of B, A being stock and B being the loan—

The Master: Unless we keep the distinction in mind, the exhibits will be a little confused. The situation is this, first we have Defendant's Exhibit 3, which contains 19 items. Then we have Defendant's Exhibit 3, Asset 1; then we have Defendant's Exhibit 3, Sheet 1, Asset 1, Defendant's Exhibit 3, Sheet 2, Asset 1, and Defendant's Exhibit 3, Sheet 3, Asset 1. Am I right about that?

Mr. Holt: That is right. I am confining myself to one phase of the exhibit.

The Master: I understand that the witness proposes to give the facts upon which he reached his conclusion that this loan was worth its full face value, and while you have the detail on here you desire the oral explanation to elaborate the detail?

Mr. Holt: That is it exactly.

The Witness: This exhibit has both A and B on it, A being the stock and B being the loan. We are examining the loan for the present. The loan is found on page 241, ledger B of the internal improvement fund to be carried there at par value of $400,000, which was the original loan. This loan was finally paid off and settled—

By the Master:

Q. Where you say carried at par value, there is not any such thing as par value of a loan.

A. That was the original loan and was the way it was carried on the books at that date.

Q. Par value is predicated upon stock, not upon a loan. You mean to say that the books show that that was the amount of the loan on that date?

A. Yes, sir.

Mr. Holt: I think par value is a little misleading, except that his explanation shows what he means.

The Master: A loan is one thing and stock is an entirely different thing.

The Witness: The settlement of this loan, its final settlement, is found on pages 389 to 392 of Journal N of the Public Works, which is the internal improvement fund, the two titles being used interchangeably on the books, as follows, starting out with the $400,000, the amount of the loan, it was shown that interest up to February 23, 1859, amounted to $6,075.31, that on February 11, 1859, the Railroad Company paid in on account of interest or on account of the loan, $5,250.

Q. What was the fact, on account of the loan or on account of the interest?

A. It is on account of both, if your Honor will allow me just a moment.

Q. How did the entry read?

A. The entry reads, for interest on loan. They were charged seven per cent. The understanding was that six per cent. of that was paid on the loan and the other one per cent. of that was to go to liquidation of the security, so that it would be partial payment and wipe it out, and this is the plan that is followed here in wiping it out.

Q. Do you get that from the documents which stated the original loan?

A. No, sir, from the documents which show the settlement.

Q. Was one per cent. sort of a sinking fund?

A. Yes, sir.

Mr. Holt: It was an application to principal, the one per cent.

The Witness: The Virginia bonds had the same provision in them, and they were thereby wiped out at a certain date. These loans were made as a general thing on the same plan. That left on February 23, 1859, $625.31 to be added to the principal. On the date of that same date the railroad company paid into the treasury $2,154.71 on account of their loan, which left the amount of the principal on the loan $398,670.60.

Q. How does that credit entry read, I mean on the book?

A. There is no credit on the books until we come to the final settlement. On the original books it meant just simply a payment of interest on loan.

Q. That is the item of $2,154.71 appeared on the books as payment of interest on loan?

A. Yes, sir, payment of interest on loan. It was only when we came to the settlement that we determined how much was applicable to the principal and how much to the interest. That left $398,670.60 due on the principal of the loan on February 23, 1859. On September 15, 1859, the interest was again calculated, amounting to $10,415.94, upon which the road paid $9,086.81, thus failing by $1,329.33 to meet their interest payment. The interest due to April 17, 1860, was $14,019. The company paid $9,840.47, thus failing to meet their interest payment by $4,178.53.

Q. Does that $14,019 include the balance of interest overdue?

A. No, sir, it was a new calculation of interest.

Mr. Holt: You will find that that thirteen hundred, your Honor, is set out in the column just above.

The Master: Oh, yes, that makes up the aggregate.

The Witness: On July 1, 1860, there was due interest of $5,035.18, and the company paid on that date $4,139.53, being $875.65 less than their full interest. Therefore up to July 1, 1860, there had been no payments upon the principal of this loan, and the loan remained at $398,670.60, since the next payment of interest on this loan did not occur until October 20, 1862, as will be seen from the first entry upon sheet 2 of this exhibit. The side calculations at the bottom here, carried away over to the extreme right, on the last lines of sheet No. 1, are to determine the amount of interest which was due upon January 1, 1861, and will be explained when we come to Exhibit No. D.

Q. When you say there have been no payments made on account of principal up to 1860, you left the item of $2,154.71 to be accounted for later, because that evidently reduced the principal according to your figures here, and operated as a partial payment on principal—you left that item I suppose to be figured in later on, when you say there had been no payments on account of principal up to that date?

A. Oh, yes, that had already entered into the payment on account of principal.

Mr. Holt: The statement was that since the ascertained payment of principal of $398,000 no further payment of principal had been made.

The Witness: We will refer to this exhibit in chief again, your Honor, when we come to Exhibit D. I will call your attention to the fact that it is progressive, Sheets 1, 2 and 3, and finally shows the payment of the loan in full upon Sheet 3 of this exhibit, showing that full value had been received for the loan.

By Mr. Holt:

Q. Does the Sheet 3, Asset 1, show when the loan was finally settled in full?

A. Yes, sir, October 28, 1872.

Q. Then, as I understand you, going back to the main exhibit No. 3, where you set down the value of this loan at three hundred and ninety-eight thousand and some dollars as of January 1, 1861, you base that conclusion upon Sheets 1, 2 and 3, and treat it as of that value as of that date in consequence of the fact that that was the amount originally loaned and that it was finally paid with interest?

A. Yes, sir. Allow me to just correct slightly, it was not the amount which was originally loaned, but it was the amount of the original loan which remained after the partial payments which had been made upon it before the 1st of January, 1861.

Q. The original loan was $400,000, was it?

A. Yes, sir.

Q. We come now, Mr. Hillman, to the second item on Exhibit No. 3, being Richmond & Danville Railroad stock. State whether or not you examined the same records for the purpose of ascertaining the stock ownership by the Commonwealth of Virginia in that company.

The Master: One moment, before you pass the other exhibit, the balance due on the loan, if I get the exhibit correctly, with the capital stock of the road, under some arrangement was taken care of by bond issue and not paid in cash? I infer that from the appearance of the exhibit.

Mr. Holt: I would like the witness to answer that question if he will do it promptly and go along and relieve me.

The Master: Mr. Witness, please state what the fact is with reference to the manner in which the balance due on this loan was finally paid, whether or not it was paid in cash as a separate item, and if not paid in cash, if it was adjusted and how it was adjusted.

The Witness: It was adjusted by a payment of $834,398.88 in Virginia State bonds which carried with them unpaid in-

terest of $186,548.49. Then in addition to that they anticipated their payments. They were to pay by installments of one, two, three, four, five and six, at six months intervals. They anticipated those and were allowed a discount for those anticipations, which are shown in detail on the last page, the total being $1,137,906.99, which happens to be just $1.02 over the amount of the loan.

The Master: The amount of the loan and stock?

The Witness: The amount of the loan and stock, yes, sir.

The Master: That is to say, you have an entry there of par of stock $874,500, which makes your estimate of $1,137,906, that with the balance due on the loan was taken care of by surrender to the State of these bonds with the overdue interest thereon and these anticipations which you have testified to?

The Witness: Yes, sir, discounting the payment. In the meantime the reduction of the loan from the $400,000 down to the $212,000 shown at the top of Sheet No. 3 of Asset 1 had been paid in money. The interest payments or these payments of so much per annum, annuity payments they might be called, had reduced the loan from its original value of $400,000 down to $212,844.94 as shown upon the first entry of Sheet No. 3 of Asset No. 1, and those payments which had entered into that reduction of loan had been made in money and not in bonds.

The Master: Was the $874,500 in par value of stock held by the State of Virginia in this road?

The Witness: Yes, sir.

The Master: And the road was therefore paying the State the amount of this stock in this adjustment?

The Witness: Yes, sir.

The Master: As well as the amount of the balance due on the loan?

The Witness: Yes, sir.

Mr. Holt: As I understand, the date at which the settlement was effected was October 17, 1872?

The Witness: Yes, sir.

The Master: On March 28, 1872, or October 17th, which date?

The Witness: October 28th, the last payment was made.

Mr. Holt: October 28, 1872.

The Master: That is when the State bonds were returned?

The Witness: Yes, sir. You will notice that there is a payment on March 28th, which is after the first installment.

The Master: Yes.

The Witness: But whatever it was it does not seem to have anything above it at that time, and the totals of it are included in the bonds which are listed below, which is the reason that a heavy line is drawn under it, and while there is nominally a payment on March 28, 1872, yet the total of that installment together with the following installment is all settled on October 28th, and exactly what became of whatever was turned in for that first installment of $188,000 the books are silent, but the next entry, October 28, 1872, accounts for the entire price of the stock and loan.

The Master: Held by the State?

The Witness: Yes, sir.

The Master: I understand now the items. I was not quite certain that I understood exactly the method of adjustment.

By Mr Holt:

Q. Now, coming to the second item of Exhibit No. 3, Richmond & Danville Railroad stock, I will ask you, Mr. Hillman, whether or not you have examined the same records and books with a view of ascertaining the stock ownership if any of the Commonwealth of Virginia in that railway company on the 1st day of January, 1861, and prior thereto.

A. Yes, sir, I did.

Q. What number of shares did she own in 1861, January 1st, in that road?

A. 12,000 shares of stock, at a par value of 100, but at a cost to her of $1,188,598.50.

Q. Was that purchase price above or below par?

A. It is slightly below par.

The Master: Does that appear on the exhibit, does it show these details?

The Witness: Yes, sir; that appears on the original Exhibit 3-A, 12,000 shares—

By Mr. Holt:

Q. Mr. Hillman, I suppose that by dividing 12,000 into $1,188,598.50 you would ascertain what was paid per share, would you not?

A. Yes, sir; it would be almost exactly $99 per share.

Mr. Harrison: Where do you find that?

Mr. Holt: I have asked him a question. He has the data for the calculation, but not carried out.

The Master: That particular computation does not appear.

Mr. Holt: No, it does not appear.

The Master: Does anything appear on the books to show how it happened that that peculiar price of $99 was paid?

The Witness: No, sir, there is nothing on the books at that date to say how many shares the State acquired. The total cost of the shares is all that is shown on the books until we come to the settlement, and then it was shown that the State did own 12,000 shares and had acquired them at a cost of $1,188,598.50, but until we come to the settlement nowhere does the number of shares that they held show.

The Master: Then on account of these facts which you have just stated you make your deduction that it cost the State about $99 per share?

The Witness: Yes, sir.

By Mr. Holt:

Q. Did you examine the books of that company or the record of Virginia with a view of ascertaining the book value per share of that stock on January 1, 1861?

A. Yes, sir, I did.

Q. What did you ascertain from there its book value to be?

A. On September 30, 1860, the book value was $137.37 per share, the 100 being par of the stock. I did not bring

the value any further than this because it was the nearest date to January 1, 1861.

Q. Your last column then of $1,632,777.76 represents, as I understand it, the book value of the 12,000 shares, the total book value as of September 30, 1860?

A. Yes, sir.

Q. Now, have you a supplemental exhibit that shows the detail of your calucations and your processes in arriving at this book value?

A. Yes, sir, I have.

Q. How have you marked the schedule just referred to?

A. Hillman Exhibit No. 3 in the upper right hand corner, Asset No. 2.

Q. Will you file this schedule as a part of your deposition and mark the same Defendant's Exhibit No. 3, Asset No. 2?

A. Yes, sir, I file it and it is so marked.

Admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 2, August 18, 1914, C. B.

Q. Mr. Hillman, will you please explain to the Master this Defendant's Exhibit No. 3, Asset No. 2, showing the process by which you arrived at the par value per share of the Richmond & Danville Railroad Company stock as of September 30, 1860?

A. The same methods were pursued in this case as in the case of the Orange & Alexandria Railroad, and for the same reasons, there being no records as far as I could find outstanding of this Richmond & Danville road. The Southern Railway Company stated to me personally that all their records concerning it were burnt and they had nothing to show. I was compelled therefore, as in the Orange & Alexandria case, to go back to the original record filed with the State.

The Master: When did this fire take place?

The Witness: I do not know the date of the fire. I was so informed of that by Mr. Plant, the comptroller of the Southern Railway, five weeks ago in Ashville, North Carolina where I was in attendance on a railway rate case and made

the request of him to allow the examination of these books. I understand that there has been considerable correspondence since to see whether they could be obtained from other officials of the company, though the comptroller is the proper custodian, and that those also are without avail, that they have not got them.

The Master: You did not learn when the fire took place?

The Witness: I did not ask that, but I understood it was some years ago.

Mr. Holt: I was also informed by Mr. Thom, the general counsel of the Southern at the present time, that those ancient records were destroyed by fire several years ago.

The Master: Was this an accidental destruction or intentional?

Mr. Holt: Accidental.

The Witness: I would say, your Honor, that it was long before this case was thought of.

The Master: I did not mean that. I was wondering whether they were old records that they had got through with and had burned up or whether the fire was accidental.

By Mr. Holt:

Q. What was the last trial balance if any you found for this road in the records of Virginia?

A. On this same public document No. 17 which has been mentioned before, in the report of 1856, in the trial balance of this road, wherein the par of the stock is shown as $1,975,040.

The Master: What was shown on that trial balance?

The Witness: The par value of the stock.

The Master: Is that par value or book value?

The Witness: The par value of the stock on the books of the company.

The Master: You mean the total stock?

The Witness: Yes, sir.

The Master: Not stock held by Virginia?

The Witness: No, sir.

The Master: Then that explains an apparent discrepancy on these schedules. I understand that this item of $1,975,040 was the total capitalization so far as stock is concerned of this railroad, but that the State of Virginia held only $1,200,000 in par value, is that it?

The Witness: Yes, sir, certainly.

The Master: That explains it.

By Mr. Holt:

Q. Mr. Hillman, you might run through with this since we have started on it. Hereafter I would like to abbreviate in some way if I can.

A. In 1857 we find that the operating profit is $139,489.12, which added to the previous profit was $337,008.02, or $117.04. Here again the method of reporting to the State had been changed and we were without complete trial balances and had therefore carried the profits from year to year above operating expenses, taxes, interest and dividends as a profit which should be added to the profit and loan account of the last trial balance which we had on hand. In 1858 there was added a profit of $154,305.76, making a total profit up to date of $491,313.78, showing the stock to have a book value of $124.80. In 1859 there were added $103,287.94 to the profit and loss account, making the surplus $594,601.72, or $130 per share. In 1860 there were added $145,821.08 to the previous surplus, making $740,422.80 per share, which gives a book value of $137.37 per share of $100 of the Richmond & Danville stock at the nearest date to January 1, 1861. In order to avoid any trouble or criticism I have applied that value which I found of $137.37 to the amount of money which the State had invested in this road and not to the 12,000 shares which it had invested in the road.

The Master: You have treated the actual purchase price as par value instead of nominal par value?

The Witness: Yes, sir, for this purpose only.

The Master: For the purpose of reaching the book value?

The Witness: Yes, sir.

The Master: Had there been any dividends declared and paid by this company during this period?

The Witness: Yes, sir, in 1859—

Mr. Holt: That is shown in Class D.

The Master: Then I am anticipating. Does that complete that branch of it?

Mr. Holt: That completes that, I think, your Honor.

The Master: Then we will suspend for five minutes.

Mr. Holt: My idea was simply to show, Mr. Harrison, the book value of that Richmond & Danville Railroad stock by the supporting exhibit, asset No. 2.

Q. What was the exhibit that you just testified to, how was it marked, Mr. Hillman?

A. Hillman Exhibit No. 3, Asset 2, in the upper right hand corner; it should be marked Class C in the upper left hand corner.

Q. Was there anything further that you wanted to explain with reference to the stock of the Richmond & Danville Railroad Company? You have given us its book value on Exhibit No. 3 and the process by which you arrived at it on No. 3, Asset 2, have you not?

A. Yes, sir.

Q. You completed all there was on that Asset No. 2 sheet, did you not?

A. Yes, sir.

Q. I will take up the loan now of the Richmond & Danville, and that is where you get into a sheet that has both the stock and the loan mixed up?

A. Class C and D in the upper left hand corner.

Q. Mr. Hillman, we come now to the loan to the Richmond & Danville Railroad. It is set down on Exhibit No. 3 as of the value of January 1, 1861, of $565,803.34. Have you prepared a supporting exhibit showing how you have arrived at that value of that loan as of that date?

A. Yes, sir, I have.

Q. How have you marked the Exhibit?

A. Hillman Exhibit 3 and 4.

Q. Is it not Exhibit No. 3, ought it not to be so filed at least, Exhibit No. 3? Is there more than one sheet of it?

A. There are two sheets of it.

The Master: One is not marked at all, and the other one is marked Sheet 2.

Q. Go on and tell how you have marked it?

A. I have marked it Hillman Exhibit 3 and 4, Asset C-2, Asset D-2, in the upper right hand corner; and Class C and Class D in the upper left hand corner.

Q. Will you file this exhibit and mark it Defendant's Exhibit No. 3, Asset 2, Sheets 1 and 2?

A. Yes, sir; I now file it marked as you have stated.

The sheets were admitted in evidence and marked Defendant's Exhibit No. 3, Asset 2, Sheets Nos. 1 and 2, August 18, 1914, C. B.

Q. Please take the exhibit just now filed and explain to the Master how you arrived at the value of the loan to the Richmond & Danville Railroad Company, as set down in Defendant's Exhibit No. 3.

A. The loan is shown upon Ledger B at folio 240 of the Internal Improvement Fund as of January 1, 1861, to have a value of $600,000.

By Mr. Harrison:

Q. To have a value, do you mean that is the amount of the loan?

By the Master:

Q. You mean that is the entry on the book?

A. That is the entry on the book, yes, sir.

The Master: That settles that, and it is all you can say about it. Now you establish the value of the loan by other evidence. The entry speaks for itself.

By Mr. Holt:

Q. When you start out with your answer I wish you would state what sheet you are testifying from. I am looking mainly on one, and you seem to be speaking from No. 2?

A. On sheet No. 2 of this exhibit is shown an entry from Folio 240, Ledger B, Internal Improvement Fund, date January 1, 1861, $600,000, for the Richmond & Danville loan. Due to the partial payment plan on which this and other loans were computed, as shown by page 12 of Senate document and Journal No. 12, in 1881-82, its value on September 30, 1860, was $567,786.54.

By Mr. Harrison:

Q. You mean that was what was shown on the books?

By the Master:

Q. You mean that the books show that on that date the amount of that loan, after those computations and entries were made and taken into account was $567,786.54—that is what you mean, is it not?

A. Yes, sir.

By Mr. Holt:

Q. The value, Mr. Hillman, is what we are trying to prove; we do not want to assume it.

The Master: Get the amounts in the books in the first instance, and then follow it up by trying to show its value.

Mr. Holt: Proceed, Mr. Hillman?

A. Following this plan we arrive at a value on January 1, 1861, as follows—these now are my computations, based on the same plan, since the next entry on this book which I have quoted, Senate document and Journal, carries it far beyond January 1, 1861.

By the Master:

Q. Do you mean by that that this item that you are now giving is not predicated upon actual entries on the books or that it is predicated upon items of yours independent of the books?

A. The item at which I am going to arrive is predicated upon a computation.

Q. But the computation does not appear upon the books?

A. No, sir, for the reason that the next computation is a year later on, on this book. They make no computation January 1, 1861. The next computation is September 30, 1861, so I have to follow the same plan.

Q. Is your computation predicated upon entries in the books and made to fit the date of January 1, 1861?

A. Yes, sir.

Q. So that the computation is predicated upon actual entries? You say following this plan—when you say following this plan, you mean that you take the entries upon the books, and while they only carry you up to September 30, you make a computation on the same plan from September 30, 1860, up to January 1, 1861?

A. Yes, sir.

Q. You have to make the computation in order to get the figure on that date, there being no computation of January 1, 1861?

A. Yes sir. That would add interest from September 30, 1860, to January 1, 1861, of $8,516.80. There would then be due an annual payment upon this stock.

By Mr. Holt:

Q. Is it stock or loan?

A. Upon this loan interest was accrued on January 1st of $21,000, being a six months interest for annuity payments. As the computation had already been made on the Senate document up to September 30th, we are only entitled to a credit of one-half of that amount, or $10,500. We have therefore deducted $10,500 from the sum of the principal on September 30, 1860, plus interest up to January 1st, which amounted to $576,303.54, and thus obtained the value of this loan on January 1, 1861, as $565,803.34.

By Mr. Harrison:

Q. What do you mean by less one-quarter annuity of $42,000?

A. Each year they were compelled to pay 7 per cent. on $600,000, which made $42,000. They had established in this Senate document the value of this loan—excuse me, the face of this loan, as $567,786.54 on September 30, 1860. There was therefore due on January 1, 1861, one-quarter of the annual payment, which amounts to $10,500.

Q. Well you add first $8,516.80 of interest up to January 1st, from September 30th?

A. Yes, sir.

Q. And then deduct the one-quarter of the $42,000?

A. Yes, sir.

Q. Was that paid?

A. Yes, sir, that was afterwards paid. On February 4, 1861, the $21,000, of which this $10,500 was a part, was paid into the treasury of Virginia.

By the Master:

Q. How was it paid, in semi-annual installments?

A. Yes, sir.

Q. And you have treated it as a credit here in order to carry both sides of the account up to January 1, 1861?

A. Yes, sir. It was due January 1, 1861, but it was not paid until February. There was no account made of that lapse of interest, however.

By Mr. Holt:

Q. What was the final disposition of this loan as shown by this exhibit, if so shown?

A. The loan was finally paid on July 8, 1884; as shown upon the Journal N, Board of Public Works, Folio 631, on July 1, 1882, for the first payment—

Q. What was that payment, how much and what manner of payment?

A. $282,000 of coupon bonds of the State of Virginia and fractional certificates of $10,436.41.

Q. When was the next payment on it made, and where do you get the record on it, if you get any record?

A. The next payment was made on September 28, 1882, folio 632 of Journal N, Board of Public Works Department, wherein there was paid in State bonds $38,500, and fractional certificates of $13.76. On the same date, page 635 of the same book, there was paid in bonds of $91,996 and fractional certificates of $86.91. On July 8, 1884, from the record book of the Sinking Fund, on file in the Second Auditor's office, folio 285, it was shown that $15,700 of bonds was turned in, and fractional certificates for $166.37, and cash for 55 cents, making a total payment of $438,900, to which amount the principal of this loan has been reduced on the partial payment plan upon this date.

By the Master:

Q. How did you happen to get that last item in out of its order in your exhibit, was there any reason for that?

A. No, sir, it was accidental, and I do not know how it occurred.

Q. I did not know but there might be some occasion for it?

A. No, sir, it was accidental. I do not know how it occurred.

By Mr. Harrison:

Q. In that connection, does your record show when those bonds were issued?

A. No, they do not.

Q. Do you mean to say the State records do not show? I asked you if your record did not show?

A. My record does not show.

By Mr. Holt:

Q. Have you examined the records of Virginia or the records and books of the Richmond & Petersburg Railroad Company with a view of ascertaining the ownership of stock in that company by the Commonwealth of Virginia on and prior to the 1st day of January, 1861?

A. Yes, sir, I have.

Mr. Harrison: Before you continue that subject, Judge, I would like to call your attention to the fact that we were handed a sheet in connection with the Richmond & Danville Road, dealing with stocks, showing their disposition, I suppose, which has not been testified to.

Mr. Holt: The point about it is just this—

Mr. Harrison: If it is not intended to be, I want to know.

Mr. Holt: A part of that exhibit we now use and a part we do not use until we come to Class D.

Mr. Harrison: You did, however, use that same sheet with reference to the Orange & Alexandria?

Mr. Holt: But only for the purpose of showing what it showed on the subject of loans.

The Witness: But I think a red pencil should be drawn across those to show what I have not testified to. Owing to the haste in which those exhibits were gotten up, the final disposition of the stock was not shown upon them.

The Master: I should like to have the counsel see that that is taken care of, because if I should find that a certain schedule was not supported by oath I should have to disregard it.

Mr. Holt: It was not my intention to make any inquiry at all concerning the disposition of those stocks.

The Master: But you do intend to inquire about it later?

Mr. Holt: Yes, when we come to Class D it may become necessary. What I am trying to get through with is this omnibus Exhibit No. 3. Take the Orange & Alexandria by way of illustration, it sets down thereunder the number of shares of stock and what its book value was on a certain date. Then we come to a supporting exhibit, which is Asset No. 1, Exhibit 3, which shows the process by which he arrived at the book value of that stock set down in the omnibus exhibit. Then we come to loan on that railroad, and then we come to supporting exhibits to show the value of that loan on a certain date. But those exhibits have certain things on them which I did not intend to inquire about at this time.

The Master: Of course it will be understood by counsel on both sides that the blue prints submitted by Mr. Hillman are not proof and go for nothing, unless supported either by Mr. Hillman's evidence or that of some other party. If my attention is later called to the fact that it is not supported by oath, the blue print of itself will go for nothing.

Mr. Holt: Of course the Master understands that we have reserved the right to inquire about those things if we choose.

The Master: Oh, yes, it is open to anybody at any time until the hearing is closed to do that. But I would like to have the counsel see that whatever they desire is at some time in the case put in. My recollection is that in the main you have supported all the schedules you have put in here before.

Mr. Holt: Yes, sir, we have undertaken to do so at least.

By Mr. Holt:

Q. How many shares of stock did the Commonwealth of Virginia own in the Richmond & Petersburg Railroad Company on January 1, 1861, if any?

A. 3,856 shares, par value of $100 each.

Q. Have you undertaken to ascertain from the books and records of Virginia, examined by you, or any other books and records, especially of this company itself, the book value of its stock as of January 1, 1861?

A. Yes, sir, I have.

Q. What have you ascertained it to be?

A. At the nearest date to January 1, 1861, which is September 30, 1860, I have ascertained it to be $121.86 per share, the shares being $100.

Q. Have you prepared a schedule or exhibit showing the processes and the figures and the references to books from which taken, by which you have ascertained that book value?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it in the upper right hand corner Hillman Exhibit No. 3, Asset 3.

Q. Will you file it now as part of your deposition and mark it Defendant's Exhibit No. 3, Asset 3?

A. I now file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 3, August 18, 1914, C. B.

Q. Does this exhibit show the processes by which you arrived at the book value per share of the Richmond & Petersburg Railroad Company on January 1, 1861, or September 30, 1860?

A. Yes, sir, it does.

Q. Will you please go over this exhibit in detail and explain to his Honor how you reached the par value per share of $121.86?

The Master: As far as I am concerned, Judge, I do not know how it may appeal to the other side, but *prima facie*, as far as I go, all you need to ask him is whether this blue print correctly states the method of computation; unless you desire it more in detail as far as you go, leaving the criticism of it to the other side.

Mr. Holt: I was going to do that after the process was thoroughly understood by going over one exhibit.

The Master: So far as I am concerned it is sufficient to have the witness state that the exhibit states accurately the computations that he has made.

By Mr. Holt:

Q. You may tell the Master, Mr. Hillman, whether or not this exhibit, Hillman No. 3, Asset 3, correctly and truly sets forth the result of your examination and your calculation indulged in in making or ascertaining the book value of this stock?

A. Yes, sir, it does.

Q. Under the third item on Defendant's Exhibit No. 3, under the heading of Richmond & Petersburg Railroad stock, I find the item Dividend bonds, $33,408. What is meant by that item?

A. It means that in lieu of issuing dividends in cash for some prior years, the Richmond & Danville had issued a bond to its stockholders to represent the dividend, of which the

State had received $33,408, which it had on January 1, 1861, as a dividend.

Q. What road were you talking about then?

A. Richmond & Petersburg.

Q. You said Richmond & Danville?

A. I will ask the stenographer to correct it if I did.

Q. Have you prepared an additional exhibit on this item?

A. Yes, sir, I have.

Q. How have you marked it?

A. Hillman Exhibit No. 3, Asset 3, Sheet 1, in the upper right hand corner; Class C and D in the upper left hand corner.

Q. Will you file this exhibit and mark it Defendant's Exhibit No. 3, Asset No. 3, Sheet 1, as part of your deposition?

A. I now file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 3, Sheet No. 1, August 18, 1914, C. B.

Q. You may tell us whether or not this exhibit truly sets forth the result of your examination of the records of Virginia or the books of the company involved and the calculations made by you therefrom?

A. Yes, sir, it does.

Q. Does this exhibit give the reference to the volume, file, book, page, etc., of the records examined by you upon which these conclusions are based?

A. Yes, sir, it does. Perhaps I had better call attention to the fact that the dividend bonds were cashed in in this instance.

By the Master:

Q. They were paid in cash by the railroad?

A. Yes, sir.

Q. With interest?

A. Yes, sir, interest being kept up on them continually

from the time they were issued until the time they were paid off, paid regularly.

Q. That is, interest on these dividend bonds was paid when due by the railroad company?

A. Yes, sir.

Q. The item of inteest does not appear on this schedule; I do not see any item of interest here.

A. No, sir, it does not appear, as it had been paid, upon these dividend bonds; it had been paid, though due January 1st, it had been paid right up to this date by an entry on December 31st.

Q. Whatever the fact was about the interest, the interest that had accrued was paid?

A. Yes, sir.

Q. And you also said that the principal of these bonds was paid to the State in cash November 7, 1861?

A. Yes, sir.

Q. What is the entry that you have, dividend due January 1, 1861, paid February 28, 1861? That is in addition to the bond dividend?

A. Yes, sir.

Q. That is in addition to the dividend paid by bond?

A. Yes sir. The dividend paid by bond had been paid on account of dividend due some years prior and had been entered on the company's books as bonds.

Q. This next entry, ledger B, internal improvement fund?

A. It is ledger of the internal improvement fund, folio 184, January 1, 1861, which shows the par of the stock outstanding to be $385,600, and immediately below it we show the disposal of that stock. In showing the disposal of the stock, the original ledger entry had been lost sight of, as the stock was disposed of at 150.

Mr. Harrison: You mean all stock of the Richmond & Petersburg Railroad Company?

The Witness: Yes, sir; that is, the amount held by the State.

Mr. Harrison: That is the amount of stock owned by the State?

The Witness: Yes, sir, the amount of the stock held by the State was $385,600, which was disposed of at $150 per share, and made a return of $578,400.

Mr. Harrison: Settled by bonds of the State taken at $150?

The Witness: Yes, sir.

Q. To whom was that stock sold?

A. It was sold to the Richmond & Petersburg Railroad Company, and that railroad now forms part of the Atlantic Coast Line Railway.

Q. The railroad bought its own stock?

A. Yes, sir, paying for it as shown immediately below the entry.

By Mr. Holt:

Q. Mr. Hillman, in the exhibit under discussion as well as the exhibits heretofore filed, covering Classes A and B and E, and Class C, as far as we have gone through with it, they refer to various books and records, giving the volume and page, folio, etc. Where are those books kept?

A. The books of the Commonwealth Fund are kept by the First Auditor of the State of Virginia; the books of the Literary Fund, Sinking Fund and Department of Public Works or the Board of Public Works are kept by the Second Auditor.

Q. Second Auditor of what?

A. Of the State of Virginia. Some of the old journals of the Department of Public Works—

The Master: You say Board of Public Works or Department of Public Works?

The Witness: It is the Board.

The Master: Do not then confuse it. Keep to the Board all the time.

The Witness: The Board of Public Works, they are kept or are in custody of the State Corporation Commission, though they keep no books, but some of them are there on file and are held by them.

Q. The State Corporation of what, Jericho or Jerusalem?

A. State of Virginia.

Q. These various entries that appear here, Mr. Hillman, under the heading of C, showing the manner in which this $578,400 was paid—

Mr. Harrison: That was not an obligation; that was the value of the stock. It took $578,400 of bonds to pay off—

The Master: I understand that $578,400 was the amount that the State received for its stock at $150 a share.

The Witness: Yes, sir.

Mr. Anderson: That was paid in State bonds.

By the Master:

Q. Referring to the various entries that appear under this, showing the details of that payment, were those payments in cash or what were those payments in? What do the books show? For instance, here is page 351-2, journal, Internal Improvement Fund, $100; is that cash or State bonds or what?

A. They were paid in State bonds.

Q. How about all the other items; were they paid in State bonds or in cash?

A. All of them were paid in State bonds.

By Mr. Holt:

Q. That is, on this sheet?

A. On this sheet, yes, sir.

The Master: I mean on this schedule. The payments in State bonds aggregate $578,424.13?

The Witness: Yes, sir.

Q. Now, your item of $525.93, was that paid in State bonds or is that a computation of interest upon State bonds?

A. That is interest on bonds.

Q. Was that in cash?

A. No, sir; it was accrued interest on bonds that were turned over.

Q. Here are a number of payments; they were principal of bonds?

A. Yes, sir.

Q. And then the others were interest on bonds, that is, they took the bonds that were paid in and computed the in-

terest and then credited the parties making the payment with the principal and interest, is that right?

A. Yes, sir; it was accrued interest on the bonds which were turned in.

Q. So that if the bonds were paid in they were figured with the amount of the bonds with the accrued interest at the date of payment?

A. Yes, sir.

The Master: That covers that. The next item I think is 4, Virginia Central Railroad.

By Mr. Holt:

Q. Mr. Hillman, item No. 4, in Defendant's Exhibit No. 3, is Virginia Central Railroad stock. Have you examined the records of Virginia or the books of that railway company for the purpose of ascertaining the ownership of stock therein, and if any such stock was owned by Virginia, the extent of the holding on the 1st of January, 1861, or prior thereto?

A. Yes, sir, I have.

Q. What did you find her stock ownership to be on January 1, 1861, and prior thereto?

A. I only found the entry on the books of the company showing the aggregate amount which it had invested in the stock and which was on the books of the company $1,927,382.57.

Q. What did you say that aggregate was?

A. The amount paid for the stock of this company as shown upon the books, $1,927,382.57.

Q. You don't know how many shares that covered?

A. No, sir, I don't know exactly how many shares that covered. There is a statement which shows that at one time they owned—

By the Master:

Q. What is the statement, where do you find it?

A. It is found in a disposal of this stock later on, which we will come to when the Virginia Central is absorbed by another road, where they sold 26,433 and 39/100 shares.

Q. Who sold?

A. The State of Virginia sold to the Virginia Central; it sold it in 1888 and in 1890. The stock was disposed of on various dates and in quantities and prices seen below, as per journal O, Board of Public Works—

Mr. Harrison: What are you reading from?

The Witness: From a subsequent exhibit which I intend to file.

Q. Do you mean to say that there is not anything in any of these accounts of the State of Virginia which contains entries relating to the investment in the stock of this road, which tends to indicate the amount of that stock prior to some twenty-seven years after 1861?

A. No, sir. I have not been able to find anything on either side of the account; there was nothing that would show the par of the stock which they held. I know the amount of money which they had expended to acquire what they had.

Q. We know what the books show as to the purchase, but just exactly what that represents in par value you were not able to ascertain from the books?

A. No, sir.

Q. Where are the books of this Virginia Central Company, are they also destroyed or lost?

A. Yes, sir, there is no trace of them.

Q. And is there anything on the books of Virginia indicating any purchase of stock between January 1, 1861, and this date in 1888?

A. Yes, sir, they purchased; they made several payments.

Q. You introduce them later on?

A. Yes, sir.

Q. Does this entry from which you get your item of $1,927,382.57 consist of one entry or is it the aggregate of entries?

A. It is the aggregate of several entries.

Q. Covering what period of time?

A. It was prior to January 1, 1861.

Q. Yes, but it is the aggregate of several entries?

A. Yes, sir.

Q. Then my question is what period of time do those entries cover?

A. I have not got that data here with reference to that. I can get it for you in a very short time if you desire and answer your question in ten minutes.

Q. Is there not anything on those books that indicates the amount of stock that was purchased by those various payments?

A. No, sir.

Q. How does the entry read, if you can remember? Just give me the verbatim entry.

A. It is generally credit the Treasurer and debit the stock with payment on account of stock on such and such company, so much money; sometimes shares are mentioned, and then we are able to determine, and sometimes they are not.

Q. But in this particular road are the shares mentioned.

A. No, sir. I would not like to say that in no instance are they mentioned.

Mr. Anderson: I do not think there is any doubt in the world that certificates of stock were issued, and were held by the Board of Public Works for all this stock in this road. All this evidence that we have had today has not, so far as I can see, the remotest bearing upon the question of the value of these assets either on the 1st of January, 1861, or on the 20th of June, 1863.

The Master: That is a matter of course to be discussed later.

Mr. Anderson: It is such a waste of time. This Virginia Central Railroad stock was sold as low as two dollars, in the public market in New York, and sold by the thousand shares as low as two dollars.

Mr. Holt: When?

Mr. Anderson: Before this transaction we are talking about, along in 1880 and 1881, 1879 and 1880.

Mr. Holt: We are not interested in 1881.

The Master: Is it contended that the book values as disclosed by competent testimony, either from the books of Virginia or from the books of the railroad company, is not competent evidence bearing upon the question of the actual market value? Because that is the single question raised by the testimony.

Mr. Anderson: What Virginia got for the stock has nothing to do with its value, we claim.

The Master: That depends altogether upon the remoteness or otherwise of the evidence. Of course if Virginia had this stock on hand January 1, 1861, and succeeded in selling it on January 31, 1861, it would be difficult to say that the price that she obtained was not some evidence of value. That only shows that the period and time when the sale took place may of course affect the probative value of the evidence, and it may be so remote that in my judgment it won't have any value at all; but the question now before us is whether or not the book value as evidenced by the books of the Commonwealth or by the books of the railroad company or any legitimate source, whether that is or is not a competent factor bearing upon the question of value.

Mr. Holt: Our position is this, we are not asking this witness nor do his schedules show whether Virginia ever sold those stocks. In the case of the Virginia Central Railroad he sets out the book value as of January 1, 1861, as $131.16. Then we come in a moment to the underlying exhibit that shows the processes by which and the records from which he arrives at that book value, the contention being, as your Honor has already indicated, that a very strong evidence always of the value of a stock is its book value, because the courts have held from the earliest periods—

The Master: I do not think that the Virginia people seriously contest the fact that that may be a factor entering into the value. I will not say in advance what I am going to hold, but I may not hold that book value is actual market value. The only question here now is, if Virginia raises the question that the testimony is not competent, as to whether or not I shall admit the testimony as having a bearing upon the question as to what the market value is. Everything that you have put in up to date practically relates to the book value.

Mr. Holt: Except that in the case of some of these companies we have given you the dividends received semi-annually, which is another factor. The Supreme Court of the United States and all of our courts have repeatedly held that

those are the factors from which—you may not do it singly and alone, but from which in the aggregate the actual value is determined. There may be a difference between market value and actual value; it may have an actual value, but may have no market value, and we have to be governed by the circumstances of each particular case, and especially where there is no market value, the Supreme Court held that you must ascertain its actual value by a comparison of its assets and liabilities and the activities of the securities in arriving at the book value, which is the main factor for actual value.

The Master: The only question I wished to ascertain right now was whether the counsel for Virginia seriously contest the competency of the testimony as to the book value as a factor bearing upon what may ultimately be held to be the actual value.

Mr. Anderson: We cannot answer that, because we do not know what you propose to make of this evidence; but what my remarks related to was this, that what Virginia got ten or fifteen or twenty years after the formation of West Virginia has nothing on God's earth to do with the value of that property. We will prove that the stock was worthless at intermediate times.

Mr. Holt: There is not a word on that exhibit about what she got for this stock.

The Master: There is no contention about that. I understand perfectly General Anderson's proposition, and when we come to that question, that is a question which will be considered and passed upon; but the only question now is whether the testimony showing the book value is a competent factor to take into account in determining the actual value, whether it is a factor to be taken into account, one of the factors.

Mr. Anderson: I just want to call attention to the worthless testimony of the witness, as to its probative value I mean, as to the value of this stock twenty or thirty years ago; I am not talking about these exhibits, but his testimony.

Mr. Holt: We showed when loans were finally paid off; we had to show that to show a solvent debtor, in order to get at the value of the loan as an asset.

Mr. Anderson: Capital stock is not a loan.

Mr. Holt: It has some bearing upon it. To use the illustration of Brother Robinson, if I loan A five hundred dollars, whether or not it is worth anything at all depends upon the financial condition of Mr. A, but if we find that Mr. A comes up and settles in full principal and interest we can take it for granted that he was solvent at least and the loan worth something.

The Master: That of course is one way of answering the proposition.

Mr. Harrison: In response to your Honor's inquiry as to whether or not we were raising the objection as to the competency of the evidence, the proof as to the book value of this stock as having a bearing upon its actual value, so far as I am concerned, and I think I state the views of my associates, we will contend at the proper time that the so-called book value established here is no evidence whatsoever and does not aid at all in establishing the question of the actual value of these securities at that particular time; but we are not raising that question now and making an objection to it and asking your Honor to pass upon it, because, as I understand from your ruling this morning, you do not propose to throw any obstacle in the way of the introduction of anything that our friends on the other side or we either may choose to put in which we may think has a tendency to support our respective positions.

The Master: The ruling which I announced this morning is not quite as broad as that. I propose to make a liberal application of the rules of evidence, but when it comes to the question whether or not it is competent or otherwise, I am going to determine that; I am not going to turn that over to the counsel on either side.

I do not understand now that serious objection is made to this line of inquiry, and that being the case it is not necessary for me to rule. When a question arises and there is a reasonable doubt about the matter I shall probably give counsel on either side the benefit of the doubt, but I am not going to admit everything that counsel think they want to get into

the case, that is, I am not going to admit in advance that their judgment is going to guide mine; but within reasonable limits whatever either side wishes to put in I shall let in; if it is a reasonably debatable proposition I am going to give either party the benefit of the doubt, and if you get beyond what I think is a reasonable limit I shall shut you out.

Mr. Holt: I have one suggestion, and that is this, taking up one illustration, on the schedules that we introduced on the bank stocks we showed unquestionably, I think beyond controversy, in the case of all these banks that on the dates selected by us that they had a book value above par. We showed that during five years before and upon that year, and five years succeeding they were paying 8 per cent. dividends; we put in that evidence, and the market quotations might go in at the same time. Then we come to these railroad stocks, and put in evidence the actual demonstrable values from the records as of that date. Then when that evidence was all in we expected to discuss that question before your Honor as to the factors to be considered for the purpose of ascertaining the actual value of stock. We have already briefed the case, but we do not want to put the cart before the horse.

The Master: Precisely. There is no misunderstanding of course. I appreciate General Anderson's proposition too. You may proceed.

By Mr. Holt:

Q. I will ask you, Mr. Hillman, what you ascertained to be or to have been the book value of the Virginia Central Railroad Company's stock as of January 1, 1861, or the nearest date thereto ascertainable.

A. $131.16 per share.

Q. Is that set down on your Exhibit No. 3?

A. It is, yes, sir.

Q. Have you prepared a supporting or underlying exhibit showing the records upon which you relied and the calculations made by you therefrom in ascertaining this book value?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it in the upper right hand corner Hillman Exhibit No. 3, Asset No. 4.

Q. Will you file it as part of your deposition, marking it Defendant's Exhibit No. 3, Asset No. 4.

A. I will file it, marked as stated in the upper right hand corner, and also mark it Class C in the upper left hand corner.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 4, August 18, 1914, C. B.

The Master: I understand the witness has testified that this is an accurate statement of his computation from the records.

The Witness: I have one explanation that I wish to make.

The Master: Certainly, make it.

The Witness: You will note on Exhibit No. 3, the original exhibit of which this is the supporting exhibit, that the par of the stock or the value of the stock which we have used, is $131.16, which is less than the face holding of the stock—

The Master: What you mean is that it is less than what appears by the books to have been paid for the stock?

The Witness: Yes, sir.

The Master: In the absence of any number of shares you cannot state any of the holdings; why do you make that change?

The Witness: For this reason, that the amount of stock upon which $131.16 per $100 was shown, when we found the value of this stock, showed only $1,891,670.60 paid by the State, and therefore we could not derive a value from a lesser amount of stock and then apply it to a larger amount of stock; that we had to take the stock paid in on that date when we determined the value of $131.16, paid in by the State on that date and apply that value to that lesser amount.

The Master: Let me see if I understand this. Do I understand that the books that you had access to showed paid in by the State on January 1, 1861, $1,891,670.68?

The Witness: No, sir.

The Master: What did they show?

The Witness: They showed that on September 30th, the date upon which we determined the value of this stock was $131.16.

The Master: Where did you find the entry of $1,927,382.57?

The Witness: That is the amount that the State had invested on January 1st, three months later.

The Master: Then the books showed this; on September 30, 1860, they showed an aggregate of $1,891,670.68, and the books also showed that between that date and January 1, 1861, enough in addition had thereto been paid in to make up the aggregate of $1,927,382.57, is that right?

The Witness: Yes, sir.

The Master: As I understand it now, you have in making your computation of the book value, predicated your $131.16 per $100. par value a share upon the amount that appeared to have been paid off September 30, 1860, instead of upon the amount that appears to have been paid off by the State, January 1, 1861?

The Witness: Yes, sir.

The Master: In other words, you have given to the State the benefit of the doubt, is that it?

The Witness: That is my intention.

The Master: Was there any other reason why you took the smaller instead of the larger sum?

The Witness: None at all.

The Master: And that explains the discrepancy between the two?

The Witness: Yes, sir.

Mr. Holt: Let me see if I understand it, your Honor. He finds that on the 30th day of September, 1860, which was a settlement period, that Virginia owned the lesser amount of stock.

The Master: He finds that she had paid that sum, the lesser sum.

Mr. Holt: But that then three months after she had paid more and owned more stock.

The Master: Precisely.

Mr. Holt: Now, he does not undertake to get the book value sharply as of January 1, 1861, but as of the nearest ascertainable date, namely, September 30, 1860; therefore he must take the lesser amount of stock on hand or paid for at that time, is that the idea?

The Master: That is the way I understand it.

The Witness: That is correct.

The Master: Of course counsel upon both sides understand that whenever I put an inquiry here the object is to clear up something that is not entirely clear in my own mind. I ought to say perhaps that since I made my report I have not examined either the report or anything in this case; I have not made any examination of any kind. I thought I would come here with my mind entirely open, and it is not only entirely open but pretty nearly vacant as to a great many of these details, so it is necessary for me to make some of these inquiries in order for me to get into touch with the details. I thought I would take the case as it developed and I would have it fresh in my mind.

Mr. Hogg: Your mind will not be vacant when you get through with this case.

The Master: I thought the better way for me would be to wait for the case to develop, and the result is that on many of the details I will need to refresh my mind when I come to write my report, so I may make some apparently unintelligent inquiries as I go along.

Mr. Holt: No. My experience has been that in your inquiries you not only help yourself but you are helping us too. We are not complaining at all.

Q. Mr. Hillman, you may tell us whether or not the exhibit just filed, No. 3, Asset No. 4, correctly sets forth and accurately and truly the calculations made by you upon this subject derived from the books and records examined by you?

A. Yes, sir, they do.

Adjourned to August 19th, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Va., August 19, 1914.

Present same counsel as on yesterday.

[NOTE.—Mr. Holt, of counsel for the State of West Virginia, moved the court for a continuance of the cause for a period of two weeks from this date, stating as his reason that the witness on the stand on the day previous, Mr. C. W. Hillman, had received a telegram that his wife was probably dying, and that he had gone to her bedside in Evanston, Ill.

In further support of his motion, Mr. Holt informed the court that Mr. Hillman was the chief accountant for West Virginia and had prepared all the schedules which would be offered in evidence and that he alone knew the facts set forth in the numerous items, and that as one of counsel for the defendant he felt that he and his associates could not proceed further in the absence of the witness.

After a full discussion of said motion, it was agreed by counsel representing both States, with the consent of the Master, that a continuance be had until September 2, 1914, at 10 A. M., providing, however, that the defendant file in evidence all schedules as of 1861, then prepared, the same to be treated as having been testified to as true by the witness, Mr. C. W. Hillman, but subject to cross-examination.

The facts as contained in this note were inadvertently omitted from the stenographer's record by counsel having charge of the editing of the same, and this interpolation is inserted to preserve its continuity.]

The Master: In the multitude and magnitude of this work, of course we can appreciate what Judge Holt says, that the schedules involve a prodigous amount of work. It is easy to see how with the multitude of work these schedules may not have been passed over as quickly in some instances as they might have been. I make the suggestion this morning that from now on when you get your schedules such as you are going to use, after they have had the approval of Judge Holt and of the other counsel for West Virginia, that you

hand them to the counsel for Virginia as early as may be before we get around to the hearing. All those things will facilitate progress. I do not know whether Virginia has any schedules or not, but if they do have—

Mr. Anderson: We have not.

The Master: Whatever you may have, as soon as they are completed hand them to West Virginia. I understand that the counsel for Virginia feel that their duty to their clients requires them to say they ought to have the whole case of West Virginia before they begin with the case of Virginia. Am I right about that?

Mr. Harrison: Yes, sir, substantially right.

The Master: I am going to say this, it is just as well to be frank with both sides, I am not going to compel West Virginia to proceed with this case, humanly speaking, unless it is absolutely necessary, in the absence of the testimony of the witness that they believe to be essential to the proper presentation of the facts from their viewpoint. Of course that involves Mr. Hillman, and for the reasons that they have already given, which seem to me at least very satisfactory. Now, the probabilities are that Mr. Hillman would be available for this case as early as the first of next week. Of course we cannot be absolutely certain of that, but I understand from the report made by Governor Hatfield that the great misfortune is liable to occur sometime today. That is the impression you got, Governor?

Governor Hatfield: That is the statement of the doctor.

Mr. Holt: I think we have solved it, your Honor, as far as we are concerned along the same line exactly. I just had a talk with Mr. Harrison. We are willing to do this, and we do not mean to say that things are always dependent upon our volition, we do not state it in that sense at all, but, we are willing to do this, to put in, in accordance with the suggestion made by these gentlemen this morning, the residue of the schedules covering Classes C and E, let them go into the hands of counsel for Virginia, into the record and into the hands of the Master. Then go right along and put in the schedules covering Class F, and then the final Class G;

in other words, all schedules in the case covering all classes relative to the year 1861, January 1st. Now, when we shall have done that, your Honor, we will have gone just as far as we presently can go. The accountants are working up the other material now, and as I understand the suggestion of Mr. Harrison, when we shall have accomplished that, they will not oppose the two weeks adjournment for the completion of the schedules.

The Master: That is the way I understand the suggestion; and in the meanwhile it will give you an opportunity, which I have no doubt you will be able to arrange among yourselves. Will you be able meanwhile, will you have anybody connected with your office who will be able to help some one that may represent Virginia to look to the original sources so as to verify so far as they can?

Mr. Hogg: They are all indicated on the schedules.

The Master: I do not know how that may be.

Mr. Hogg: Most of them are.

The Master: There may be something that is not covered on the schedules, and can you have some one who will be available to co-operate with some representative of Virginia so that when we get together at the end of two weeks—can it be understood, Judge, will it be feasible for your people to have some one representing you so far as the sources of information are not indicated on the schedules, to co-operate with some expert accountant representing the plaintiff, so that during this two weeks, they can get at the original sources and then be able to either co-operate or intelligently criticise when they get together at the end of the two weeks?

Mr. Holt: Here is our situation in that regard, we have three or four men here, I do not recall the number, and it is going to keep them exceedingly busy, even if they are free from interruption, to complete all the schedules covering June 20, 1863.

The Master: Yes.

Mr. Holt: Now of course, we have to appreciate the fact all the while, your Honor, that when we hand a schedule over to Virginia for the purpose of being checked up by her ac-

countant, that he might meet with some difficulty unless he had the man who made it to go over it with him; but in order to obviate that trouble you will find that every one of these schedules has on it the folio, the page, the volumes, just where the item comes from; and under the circumstances we thought it would not be necessary for one of our men to stay with Mr. Potter, their accountant, all the time; it would hardly be fair to take him away from the work on our side of the case to just go and turn pages for another man.

The Master: No, I do not see why it should be.

Mr. Holt: And when we have set down in this schedule the books, the office, the folio, the page where this thing appears, then he will be able to find it for himself. Of course if he should find any difficulty, mere ordinary courtesy would compel the other man to answer the questions. They will help as far as they can.

Mr. Harrison: Of course we do not mean for you to direct a man to work for Virginia entirely, but Mr. Potter has worked here before with your experts together whenever one wanted to know what the other was doing.

Mr. Holt: I really believe, Mr. Harrison, that we will find that our accountants when they begin to check up will get along pretty well together.

The Master: The understanding is then that in the verification of these schedules if Mr. Potter runs across anything that he is not able to ascertain from the schedules, he will have no embarrassment in calling on some one representing West Virginia to help him solve the difficulty.

Mr. Holt: We will ask Mr. Potter now whether even up to the present time he has not been working with these gentlemen and if they have not been answering his questions.

Mr. Potter: Yes, sir. There are certain calculations on these schedules that are not in the records of Virginia, and I will be compelled to ask the accountants on the other side for explanations of their calculations. So far as relates to the original books, I have most of them already.

The Master: Now, the understanding is that there will be no embarrassment so far as the accountants on either side

are concerned in having them confer with each other when there is anything that develops in the investigation as to which either accountants desire information; they will be quite at liberty to talk with the accountants on the other side.

Mr. Holt: We will go and give explicit directions to that effect to the accountants.

Mr. Anderson: I would like to ask our friends to furnish us with the schedules for June, 1863.

The Master: They have not got those prepared.

Mr. Holt: There is a mass of stuff there out of which the schedules for 1863 are now being evolved. This much is all completed, and when we return here on the eve of this adjournment, whatever the arrangement may be, the schedules covering January 1, 1861, will be completed; and then just as soon as the schedules for June 20, 1863, are completed they will go to you, at the same time they come to us, that is, after we have examined them, I should not say at the same time, but immediately thereafter. Of course I understand that the Master wants to open wide the door to the truth of the situation, and where these accountants can get together and agree, why it is all folly to have any delay or fuss about it.

The Master: Yes. Now, of course I do not know whether Judge Holt may be familiar with the situation that developed in the other case. I will refer to it as indicating the course which was then pursued and which facilitated progress very much. At the original hearing both sides came in with very elaborate and extensive schedules, and the first question that was raised was whether or not they agreed with each other, and it very promptly developed that there were minor items of disagreement involving anywhere from one to five hundred or one thousand dollars, and we heard testimony bearing upon those discrepancies for half a day or so, and finally I ordered the hearing suspended in order that the accountants on each side could get together with their two sets of schedules and harmonize them if possible and so far as they were able, to adjust differences, and the result was that when we got to the next hearing we had one set of schedules covering the whole case, and every schedule harmonized so far as the amount

was concerned, which saved a great amount of trouble. I do not mean to say that this same situation will develop here, but I am not going to sit here if it comes down to that and listen to controversies over small items in these various schedules without in the first place making an effort to compel these accountants on either side, assuming that this should develop to get together on those items. I cannot spend my time and the time of the counsel in struggling over small details of that sort, that is mere details that in all probability can be agreed upon; and my hope is that when we get through here, that so far as the computations are concerned and statistics and the figures, there will be an agreement upon all of them, so that all I will have to do is give to them the proper legal weight that they may be entitled to, and it is with that in view that this suggestion is made on the part of Virginia. Do you get my point Mr. Holt?

Mr. Holt: I get your point, and I think this matter will settle itself in the present case in this way, that the schedules for 1861 will be in the hands of Mr. Potter and his accountants and he will check them up, and our people will assist him in checking them, and the chances are that so far as figures are concerned upon which these calculations are based, that there will be no divergence of opinion.

The Master: I do not anticipate that there will be.

Mr. Lilly: I suggest, if your Honor please, that during the two weeks, they will prepare counter statements possibly, and we would like to have those as soon as we can get them.

The Master: The understanding is that any counter statements that are statistical in their character which involve an examination of the books of any kind are to be prepared and presented as early as prepared by Virginia. Now, do you want to go right along, or suspend until the afternoon?

Mr. Harrison: Let us go right along and finish it.

Recess until 2:30 P. M.

AFTER RECESS.

The Master: This printing, I suppose, is going on, and the understanding is that some responsible attorney for both

the plaintiff and the defendant supervise this manuscript and eliminate as they go on what they think can be properly eliminated from the record. My own notion is that most of the colloquies that take place, although they are not very extensive, may just as well be eliminated from the record, and so far as that is concerned what ever I may have said during the progress of the hearing, I see no reason why that should not go out of the record. Still, if you want it in it may stay in.

Mr. Holt: Wherever it is necessary to preserve the exact condition of the case it may go in.

The Master: It is not so important to have the colloquy printed in this hearing, because this testimony will be considered on rather broad grounds, and whatever is admitted will be considered if it is competent, no matter what the particular objection was or what assertion may have been made by counsel when it was offered. So my own notion is that you do not need either the colloquies or any suggestions that I have made. Of course if you want them in you may have them in.

Mr. Hogg: Your idea is to have an attorney for each side, working together?

The Master: Yes. I think you ought to have a responsible man on each side who will take the responsibility of saying what ought to go out of the record, and what you do not both agree upon as being proper to go out of the record will be printed. Have some responsible attorney to represent each side, and let them cut out whatever they can agree on.

Mr. Pollard: Will some attorney from West Virginia stay here?

The Master: The stenographer will give you this afternoon everything up to date, and they will have an opportunity to look it over some time this afternoon or evening, and then you can attend to the printing afterwards. All these schedules as far as I can see will have to be printed, and that is going to involve quite a good deal of work, but the printer might just as well be putting it in type. When we get back here we shall have substantially the whole case up to date in print, so far as I can see—I don't see why not.

Mr. Pollard: Are you gentlemen prepared to designate some counsel for that purpose?

Mr. Holt: I suppose Mr. Gregory will be here all the time, and we will try and make some arrangement about it.

The Master: Now, Judge Holt, have you your material in order so that we may proceed?

Mr. Holt: We will do the best we can, your Honor. At the adjournment on yesterday we had reached item 4 on Defendant's Exhibit No. 3, Virginia Central Railroad Company stock, but had not as I recall offered the underlying or supporting exhibit showing the processes by which a book value of $131.26 was given to the stock of that company as of September 30, 1860. I now therefore offer that exhibit.

The Master: That is marked Defendant's Exhibit 3, Asset 4, Sheet 1?

Mr. Holt: I think that asset had only one sheet. This exhibit seems to have been marked by Mr. Hillman as Hillman Exhibit No. 3, Asset 4. We now desire to file it and mark it. Defendant's Exhibit No. 3, Asset 4. It is offered, exhibited and filed as marked, with the understanding, in the absence of Mr. Hillman, that he has testified and the record may so show that said exhibit correctly and truly shows the result of his examination, just as if he had testified to the items herein set down and thereon appearing.

The Master: That same statement and understanding will apply to all of the schedules that are offered this afternoon, so it won't be necessary to repeat it. That covers the whole ground.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 4, August 19, 1914, C. B.

Mr. Holt: We come now to item No. 4 on this Exhibit No. 3, loan by the Commonwealth of Virginia to the Virginia Central Railroad Company, and in support and explanation thereof—

The Master: Brother Holt, the accountant has handed me one that relates to the disposition of the stock. Which do you wish to offer?

Mr. Holt: We do not care to take up the question of the disposition of the stock at this time, your Honor. The exhibit that I have just filed shows the processes by which the accountant arrived at the book value of the stock.

The Master: Then I will lay that one on one side.

Mr. Holt: We come now to the loan by the Commonwealth of Virginia to the Virginia Central Railroad Company, amounting to $90,032.82, and file in support and explanation thereof an exhibit that we mark Defendant's Exhibit No. 3, Asset C-4 and D-4.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 4, August 19, 1914, C. B.

The Master: Now, have you one relating to the dividends?

Mr. Holt: This exhibit also covers and explains the item dividend bonds embraced under No. 4 on main Exhibit No. 3. You will find towards the bottom of the page that dividend bonds are there set forth in detail.

The Master: After the letter C?

Mr. Holt: After the letter C. These dividend bonds amount to $143,508.

Next is Item No. 5, on Exhibit No. 3, Blue Ridge Railroad, built by the State, $1,604,723.23, with a value as shown on the main Exhibt No. 3, as of January 1, 1861, of $625,348.80; and we file in support thereof Defendant's Exhibit No. 3, Asset C. No. 5.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 5, August 19, 1914, C. B.

Mr. Lilly: There is an error in the caption.

Mr. Holt: We observe that in the caption of this exhibit the Blue Ridge Railroad is described as having been built by the State of West Virginia, and it should read built by the State of Virginia.

The Master: Strike out "West."

Mr. Holt: The sixth item on the main exhibit, Defendant's

Exhibit No. 3, is Alexandria, Loudoun & Hampshire Railroad stock, $993,248., with a value indicated thereon as of January 1, 1861, of $49,662.05; and in support thereof we file the supporting or underlying exhibit marked on the right hand corner Hillman Exhibit No. 3, Asset C-6, and mark the same as Defendant's Exhibit No. 3, Asset C-6. Now it may eventuate, your Honor, that some of these letters may mix the thing up somewhat; I stated that yesterday; but if we can make it plain we will get at the truth somehow.

The Master: We will have these printed up to date, and when we come to look the print over if there is any inconsistency or confusion we will straighten it up and have the print correspond.

Mr. Holt: That is the idea exactly..

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 6, August 19, 1914, C. B.

Mr. Holt: The seventh item on the main exhibit of the defendant, No. 3, is Winchester & Potomac Railroad loan, $83,333.33, with an indicated value thereon as of the date of January 1, 1861, of the same amount; and we file in support thereof an underlying or supporting exhibit marked in the top right hand corner, Hillman Exhibit No, 3, Asset C-7, Asset D-5; in the left hand corner at the top, Class C, Class D, and ask that the same be marked Defendant's Exhibit No. 3.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 7, August 19, 1914, C. B.

Mr. Holt: No. 8 on the main exhibit of the defendant No. 3, is Virginia & Tennessee Railroad loan, indicated theron as $1,000,000., and set down thereon as of a value on January 1, 1861, of $886,685.; and in support thereof we file Exhibit No. 3, Asset No. 8, Sheets 1 and 2.

The papers were admitted in evidence and marked Defendant's Exhibit No. 3, Asset 8, Sheets Nos. 1 and 2, respectively, August 19th, 1914, C. B.

Mr. Holt: The ninth item on the main exhibit No. 3, is Southside Railroad Company loan, indicated thereon at $800,000.; and in support thereof we file the underlying exhibit marked in the right hand corner at the top, Hillman Exhibit No. 3, Asset 8, and ask that the same be marked as Defendant's Exhibit No. 3, Asset 8.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 8, August 19th, 1914, C. B.

Mr. Holt: Coming now to No. 10, upon the main Defendant's Exhibit No. 3, we have Norfolk & Petersburg Railroad loan, indicated there as $300,000., and likewise indicated thereon as of the value of January 1, 1861, of $137,000.; and file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-10 and Asset D-9, and in the left hand corner, Class C and Class D, and mark the same Exhibit No. 3, Asset No. 10.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 10, August 19, 1914, C. B.

Mr. Holt: No. 11 upon the main Exhibit No. 3, is Roanoke Navigation Company stock, indicated as $80,000., and likewise indicated thereon as of the value on January 1, 1861, of $3,832.; and we file the underlying exhibit in support thereof, marked in the upper right hand corner Exhibit Hillman No. 3, Asset C, No. 11, and mark the same as Defendant's Exhibit 3, Asset 11.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 11, August 19, 1914, C. B.

Mr. Holt: No. 12 upon the Defendant's main Exhibit No. 3 is Alexandria Canal Company stock, indicated thereon at $252,000., and as having a value on January 1, 1861, of $764.47; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset

C-12, and ask that it be marked Defendant's Exhibit No. 3, Asset 12.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 12, August 19, 1914, C. B.

Mr. Holt: The name of the company, your Honor will keep us straight even if our letters should confuse us. There are so many letters and figures here, and although somewhat of a mathematician, I am confused.

The Master: It is likely to result in confusion unless great care is exercised.

Mr. Holt: No. 13, on the main Defendant's Exhibit No. 3, is Upper Appomattox Company stock, shown as $56,500, and with an indicated value thereon of $16,144.26 on January 1, 1861; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-13, and in the left hand corner at the top, Class C, and ask that the same be marked Defendant's Exhibit No. 3, Asset 13.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 13, August 19, 1914, C. B.

Mr. Holt: No. 14 upon the Defendant's main Exhibit No. 3, is Dismal Swamp Canal Company stock, indicated thereon at $190,000., and as having a value on January 1, 1861, of $9,935.99; and we file in support thereof the underlying exhibit marked in the upper right hand corner, Hillman Exhibit 3, Asset C-14, and ask that it be marked Defendant's Exhibit 3, Asset 14.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 14, August 19, 1914, C. B.

Mr. Holt: No. 15 upon the Defendant's main exhibit No. 3 is loan to Washington College, indicated thereon at $2,000. and as having a value on January 1, 1861 of $2,000., and we file

in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit 3, Asset C-15, Asset D-11 and ask that it be marked Defendant's Exhibit No. 3, Asset 15.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 15, August 19, 1914, C.

Mr. Holt: No. 16 upon the Defendant's main Exhibit No. 3 is Richmond Academy bonds, indicated thereon at $400.00, and as having a value on January 1, 1861, of $400.00; and we file in support thereof the underlying exhibit marked in the upper right hand corner Hillman Exhibit 3, Asset C-16, Asset D-12.

The paper was admitted in evidence, marked Defendant's Exhibit No. 3, Asset 16, August 19, 1914, C. B.

Mr. Holt: No. 17 upon the Defendant's main exhibit No. 3 is claim against United States government indicated thereon at $298,369.74, and as having a value on January 1, 1861 of $298,369.74; and we file in support thereof the underlying exhibit marked in the upper right hand corner, Hillman Exhibit No. 3, Asset C-17, and ask that the same be marked Defendant's Exhibit No. 3, Asset 17.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 17, August 19, 1914, C. B.

Mr. Holt: No. 18 upon the Defendant's main exhibit No. 3 is claim against Selden, Withers & Company, indicated thereon as having a value on January 1, 1861 of $152,023.04; and we file in support thereof the underlying exhibit marked in the upper right hand corner, Hillman Exhibit No. 3, Asset C-18, and ask that the same be marked Defendant's Exhibit No. 3, Asset 18.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 18, August 19, 1914, C. B.

Mr. Holt: No. 19 upon the Defendant's main exhibit No. 3 is Richmond, Fredericksburg & Potomac Railroad loan, indicated thereon at $149,984.00, and as having a value on January 1, 1861, of $149,984.; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-19, and ask that the same be marked Defendant's Exhibit No. 3, Asset 19.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 19, August 19, 1914, C. B.

The Master: Have you anything in addition to these?

Mr. Holt: Yes, we have others. We come now to Class D, as indicated by the exhibits to the supplemental answer filed in this cause; and in support of that class file a schedule marked in the right hand corner, Hillman Exhibit 4, in the left hand corner at the top, Class D and ask that the same be filed as Defendant's Exhibit No. 4.

The paper was admitted in evidence and marked Defendant's Exhibit No. 4, August 19, 1914, C. B.

Mr. Holt: We will state in connection with this exhibit that the underlying or supporting exhibits heretofore filed in connection with Class C perform likewise the office of supporting exhibits to this class, and they are specified in detail as follows:

Class D.	*Class C.*	
Asset 1	Defendant's Exhibit 3, Asset 1	(2 sheet)
Asset 2	Defendant's Exhibit 3, Asset 2	(2 sheet)
Asset 3	.....	
Asset 4	Defendant's Exhibit 3, Asset 4	
Asset 5	Defendant's Exhibit 3, Asset 7	
Asset 6	Defendant's Exhibit 3, Asset 19	
Asset 7	Defendant's Exhibit 3, Asset 8	(2 sheet)
Asset 8	Defendant's Exhibit 3, Asset 9	

Asset 9	Defendant's Exhibit 3, Asset 10
Asset 10	.....
Asset 11	Defendant's Exhibit 3, Asset 15
Asset 12	Defendant's Exhibit 3, Asset 16
Asset 13	Defendant's Exhibit 3, Asset 17
Asset 14	.....
Asset 15	.....
Asset 16	.....
Asset 17	.....
Asset 18	.....
Asset 19	.....
Asset 20	Defendant's Exhibit 3, Asset 5

Mr. Holt: In addition to the supporting exhibits filed with Class C, we now file in support of Class D, an exhibit marked in the upper right hand corner, Hillman Exhibit 3, Assets D-14 to 19, and in the left hand corner marked Class C and Class D, and this we ask to have marked as Defendant's Exhibit No. 4, Assets 14 to 19.

The paper was admitted in evidence and marked Defendant's Exhibit No. 4, Assets 14 to 19, August 19, 1914, C. B.

Mr. Holt: In addition to the foregoing we will have to prepare and will present at the next meeting an exhibit in support of this main Defendant's Exhibit No. 4, underlying or supporting item No. 10, which is not yet completed.

The Master: It occurs to me to make this suggestion, that something has been said with reference to what the record in the prior hearing already contains relating to these matters now in controversy. As to what the fact may be in that regard I do not know. But of course it is competent for either side to call attention to whatever may be bound in that record, but I should want each side to be prepared when we come together again to give to the other side a reference to such pages of the original record as they may have occasion to refer to or rely upon, so that if Virginia has any reference she desires to make, you will have them, and so on, and the under-

standing will be that those will be the pages and the only pages to which my attention will be directed on final argument. Whatever may be in the record I shall want pointed out by page so that I won't have to look it up, and so that the other side will have notice in advance, if there is anything of that sort.

Mr. Holt: That will be done, your Honor, of course. In the briefs we will not only make a citation of authorities, but it is our purpose to spare no labor or expense in making printed comments on the citations, so that we may aid your Honor; but the suggestion that you now make brings me to a matter that I wanted to speak to this morning, but had no opportunity to do so. Of course the statement is persisted in by the gentlemen on the other side that we are bringing nothing new into the record. Of course we do not agree with them on that proposition. Our understanding of it is this, and that brings us right to the matter you mention, that while a great many of these assets may have been mentioned in the record as it formerly stood, the main point now is the value of those assets as of given dates. Our contention is that their values were never ascertained at all heretofore and that those values are not set down in those records. That is the supplemental work that we are trying to do now. In the argument before the court at Washington, every time that we would mention one of these assets our friend upon the other side would produce the record and say, well, here is the Richmond, Fredericksburg & Potomac embraced in the former hearing and embraced in the former report, and we were only threshing over for the second time straw from which the wheat had been theretofore winnowed.

Now, while the Richmond, Fredericksburg & Potomac was mentioned in the former hearing, the value of the stock as of January 1, 1861, in that company and its value as of June 20, 1863, was not determined, and those are the matters that we are now trying to inject into the record, in case your Honor did not hear theretofore, nor the court theretofore hear, of the Richmond, Fredericksburg & Potomac stock, but that the inquiry as it then stood did not call for its valuation, but that

the court has sent us back to you now with authority to supplement the record by ascertaining the value as of those dates.

The Master: Your point is that whatever may have been said about these various items in the previous hearing was for one purpose, and whatever is said about them now is for another purpose?

Mr. Holt: Yes.

The Master: And that they are entirely distinct and separate?

Mr. Holt: Yes, sir.

The Master: Whatever the fact may be, of course it is entirely open to you, the purpose that you are now undertaking to serve, there is no question about that. My only suggestion is that if there is anything in the old record that has any legitimate bearing upon this issue, of course if the old record was introduced for one purpose, and the fact that it was introduced has no relation whatever to the pending purpose, it is of no consequence whatever. Upon the other hand, if it has any legitimate bearing upon the present issue, that I believe is a matter for fair consideration.

Mr. Holt: And we should put our fingers, and so should they, upon that portion of the record that has that bearing.

The Master: I simply call attention to that now because I am not going to search the original record. If there is anything in the original record that in the opinion of counsel on either side has any tendency to elucidate this controversy now pending, I want counsel to call my attention and the attention of the other side, when we get together again, to the pages or the schedules, so that we will have in the record just exactly what either side relies upon. I am very glad to get the suggestion of Judge Holt as to the detailed analysis, and anything that either side is able to do in connection with an analysis of the testimony that is introduced here, upon legal principles, of course will be of very great assistance to me in reaching my ultimate conclusion. Anything that will save digging this record over and over again will be of very great assistance. Of course I expect that from either side, and while I did not before insist upon formal printed briefs

with citations of authorities as to the various propositions upon which the counsel relied, and I did not then have printed briefs going into detail—of course I did not have the questions then that I have now; but this time when we get around to the argument I want each side, and the bondholders as well, prepared to give me a full detailed brief as to both authorities and the analysis of the facts. Then I will have the full contention of either side.

Mr. Holt: Your Honor, in support of Class F as exhibited with and as a part of the supplemental answer in this cause we file and ask to be marked as Defendant's Exhibit No. 6, being Class F, the following schedule or statement, marked in the upper right hand corner, Hillman Exhibit No. 6.

The paper was admitted in evidence and marked Defendant's Exhibit No. 6, August 19th, 1914, C. B.

Mr. Holt: And as a supporting and underlying exhibit thereto we likewise file a schedule marked in the upper right hand corner, Hillman Exhibit 6-A, and ask that the same be marked as Defendant's Exhibit No. 6-A.

The paper was admitted in evidence and marked Defendant's Exhibit No. 6-A, August 19, 1914, C. B.

Mr. Holt: We come now, your Honor, to Class G, as exhibited with the supplemental answer, and in support thereof we file a paper marked in the upper right hand corner, Hillman Exhibit No. 7, Asset 1, and in the upper left hand corner, Class G, consisting of two sheets, and ask that the same be marked as Defendant's Exhibit No. 7, Sheets Nos. 1 and 2.

The papers were admitted in evidence and marked Defendant's Exhibit No. 7, Sheets 1 and 2, August 19, 1914, C. B.

Mr. Holt: We likewise file as a supporting exhibit thereto one marked in the upper right hand corner, Hillman Exhibit

No. 8, and in the upper left hand corner Class G, and ask that it be marked Defendant's Exhibit No. 7-A.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7-A, August 19, 1914, C. B.

Mr. Holt: We also file in support thereof another supporting exhibit, marked in the upper right hand corner, Hillman Exhibit No. 9, and in the upper left hand corner Class G, and ask that it be filed and marked as Defendant's Exhibit No. 7-B.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7-B, August 19, 1914, C. B.

Mr. Holt: Gentlemen, you have noticed what was offered here. We stopped, you will observe on Class G, Exhibit No. 7-B. Attached to the papers that were handed to you I suspect were a lot of our schedules concerning taxes and so on. Now, we want to get those papers back, because they are mere private memoranda, and if they should be used hereafter we will furnish them beforehand; but the purpose is not to use them now and perhaps not at all.

The Master: With that suggestion, does that conclude the exhibits?

Mr. Holt: Yes.

Adjourned on motion of defendant to which plaintiff did not object to September 2, 1914, at 10 A. M. because of the extreme illness of the wife of the witness, Hillman, the expert accountant of the defendant.

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BEFORE THE MASTER.

Richmond, Va., September 2, 1914.

Met pursuant to the adjournment of August 19th. Present, the same counsel who appeared on the previous days.

The Master: While we are waiting for Judge Holt and Mr. Hillman, I want to find out whether either side has given any notice to the other side of any evidence that was taken in the former hearing that they expect to use and rely upon in connection with this hearing.

Mr. Hogg: If your Honor please, we are at work on that now, but we have not completed it yet on our side.

The Master: Then that will be attended to?

Mr. Hogg: That will be attended to in due time, your Honor.

Mr. Harrison: We have not attempted to do that because we are at liberty to rely on any evidence in the record.

The Master: For the convenience of the other side and myself I want to know what there is in the other hearing that either side may decide to rely on.

Mr. Harrison: That will be pointed out.

The Master: You ought to point out to the other side and they ought to point out to you what is relied on.

Mr. Hogg: We are arranging that, and we will call their attention to it later.

The Master: Do not fail to have it done a sufficient time before the hearing closes so that either side may have an opportunity to put in anything further that they may desire to put in. The suggestion I made to Judge Holt last evening was that he put on Mr. Hillman and complete his direct-examination in relation to the schedules relating to January 1, 1861, and then if it was agreeable to the counsel for Virginia,

they could cross-examine as to all the schedules up to 1861, and then later on take up June 20, 1863, and take the direct and cross-examination as to that date, and that will get the testimony all together, if that is agreeable.

Mr. Harrison: I think, if your Honor please, it would be very much more satisfactory to have the witness in chief not only introduce whatever evidence they propose to put in through him relating to the date of January, 1861, but also to June, 1863.

The Master: Before you cross-examine at all?

Mr. Harrison: Yes, sir. It would be not only more logical, but would be in accordance with our own plan and arrangement to complete with both of those dates at the same time.

The Master: Well, whatever you think is the proper method, as far as you are concerned, is agreeable to me. Judge Holt, the counsel for Virginia think that the better way would be to have all the evidence in chief on the part of West Virginia, both as to 1861 and 1863, come in before their cross-examination as to either period. They have so arranged their case, and I should be inclined to allow them to follow their own ideas in connection with that. So that we will start right along this morning with Mr. Hillman, if it is agreeable to you, finishing up with your 1861 schedules, and then taking up your 1863 schedules, and going on with those, if that is agreeable to you, Judge.

Mr. Lilly: If the Master please, we do not want to be captious or over insistent on their going ahead with the cross-examination, but it occurs to me in view of the fact that they have had our schedules and evidence two weeks and have had full and ample time to go over them and check up on our schedules, that they would be in as good position now to cross-examine as at any other time; and ordinarily in investigations of this kind each paragraph is taken separately. I remember recently in an investigation in the Senate of the United States they had several paragraphs or sub-headings, and they completed one at a time; and your Honor on the previous reference finished a paragraph at a time. I think there were seven

specifications in the decree and you took them separately; and it occurs to me that it would tend to facilitate the case and tend to bring the direct issue to bear by cross-examining Mr. Hillman as soon as we get through with 1861. 1861 is separate from 1863, and there is going to be a serious contention, I take it, on both sides as to which will control and govern; and it occurs to me that the more distinct and separate you can keep those dates the more marked will be the contrast, and we will be better able to determine which date ought to prevail. They cannot be taken by surprise because they have had plenty of time to be up; and besides, we hardly are in shape to go ahead with 1863. We have been blue printing a good part of the night and having our stenographers at work, and I cannot see any real objection to that course and while it is true that the plaintiff may object, yet it is a matter in the discretion of your Honor, and they are separate and distinct dates and we feel that we ought to finish up 1861 as to the schedules, and as to the examinations. Another thing, Mr. Hillman's wife is yet in a very delicate condition and we do not know how long he can remain here, and it would be better if possible to get 1861 finished up while we are at it, especially as to the record evidence and cross-examination in relation thereto.

The Master: While that is in accordance with my own personal notion about it, I do not feel at liberty to require Virginia to pursue the examination in the method that does not appeal to them as being the one best calculated to produce advantageous results to them. I do not know what their special reasons may be, but assume that they are at least satisfactory to counsel.

Mr. Harrison: Absolutely.

The Master: And while I would rather prefer the method suggested by Mr. Lilly, I do not want to so much take the direction of the case as to deprive the counsel for Virginia of handling it along the line which they consider most advantageous to Virginia. If they agree to that I will be very glad to give the case that direction, but inasmuch as they feel that the better method for them is to have the whole case from

Mr. Hillman, both as to 1861 and 1863, before they cross-examine, I suppose I should not feel inclined to require them to go on contrary to their judgment. We will start right along with Mr. Hillman if that is agreeable.

Mr. Lilly: All right.

The Master: Of course it is understood all along that we maintain this chronological order so far as is feasible so that when we come to look our record up we won't have confusion and have to run the record all over for examination as to the various classes.

I will say for the benefit of the gentlemen who represent either side, in connection with the preparation of the record, that if they will take up the matter carefully and see that the record is scrutinized and excised so far as they can excise it, as soon as may be after the transcript is placed in their hands by the stenographers, Mr. Harris has an arrangement by virtue of which the printing will go right along concurrent with the hearings. The sooner he gets the transcript the sooner he will be able to print the record, and for that reason the gentlemen representing both Virginia and West Virginia should devote their time to it immediately upon receipt of the transcript from the stenographers. They will get the forenoon transcript sometime in the afternoon, and they will get the afternoon transcript early in the evening, and then they can have it all ready.

Mr. Anderson: I understand colloquies are to go out.

The Master: Yes. I suppose the stenographer is taking what we said now, but there is no use in having it printed.

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recalled for further examination, testified as follows:

The Witness: Your Honor, I would like to ask the correction of a clerical error on my first exhibit.

The Master: What page?

The Witness: Second exhibit, page No. 2, of the exhibit.

Mr. Holt: We do not understand what is going on.

The Master: This is simply the correction of an error.

This is a very nice arrangement; I want to compliment the men on the manner in which they have gotten up the record. So far as I have seen it looks to me to be in very nice shape. These exhibits are all by themselves and separated by a red sheet, which makes it very handy. When we come to the exhibits of 1863 they will be put in in the same way, which will help us a great deal. The matter just now pending before the Master is the suggestion made by Mr. Hillman that he wants to correct an error in Defendant's Exhibit No. 2, found on page 2.

Mr. Holt: Is that Richmond, Fredericksburg & Potomac?

The Witness: Yes.

The Master: What is the correction you want to make?

The Witness: On page 2 of Defendant's Exhibit 2, on page 481 of said record I have marked March 31, 1859, that the outstanding stock was $1,033,600., and surplus was $352,-967.30, and book value was 144.2. The correct figures should be: Outstanding stock, $1,043,700.; the surplus should be $461,134.54; the book value remains as it is. That will be showr to be correct by pages 4 and 5 of the same record. It seems that after having determined the 144.2 from my record, my eye going back caught 1858, which was just ahead of that, and the figures for 1858 were inadvertently copied.

The Master: Unless there is some objection I am going to order the original record to be corrected in accordance with the suggestion of Mr. Hillman, and not have the colloquy appear in the record at all, so that when we get the final print the record will be accurate without the necessity of an explanation at all. Mr. Harris, you will see, please, that that change is made in accordance with the suggestion made by Mr. Hillman. Everything of this kind can be corrected without taking any space in the record, or causing any confusion; so that the original record will read, outstanding stock, $1,043,-700.; surplus, $461,134.54. And this colloquy will not appear in the record at all. Is that agreeable, Mr. Harrison?

Mr. Harrison: Yes, sir.

The Master: Is there any other change desired, Mr. Hillman?

Mr. Holt: There is one other thing, your Honor, it seems that some of the headings of the columns of exhibits for 1861 now printed should be changed. By way of illustration, a column will be headed book value when it plainly appears it should have been face value or par value. We have made the discovery in the preparation of the exhibits for 1863, and I think those corrections, when we have them noted, may be made without tearing down the type at all, but just simply changing the column.

Mr. Harrison: Are not the corrections which you suggest corrections of your own account? The witness has given the caption to the columns embraced in his own work, and you want to correct those captions. You want to correct your own account?

Mr. Holt: No, he should correct his account.

Mr. Harrison: In other words, if the accountant has called a thing "book value" and has made a caption accordingly, counsel want to correct it and call it something else; and I do not think that is proper.

Mr. Holt: We want to correct that through him; he is making the correction, not we.

The Master: There won't be the slightest difficulty about it. The direction I am trying to give to the hearing is to save all the time I can for both sides. Judge Holt, please make a memorandum in order to make your schedules in accordance with what you think the facts are, and submit that memorandum to the other side, and if they have no objection we will have the changes made. If they want to cross-examine as to why those changes are made, that is open to them. But meanwhile, you submit the memorandum, and if they agree to it that is the end of the controversy. If they think that impeaches the integrity of the account, that is another thing. On the other hand when they look them over, if they think that the changes are not material and are willing they should be made, we will have them made the same as this first change has been made. You submit your memorandum.

Mr. Holt: We will do that. I only wanted to bring it up now because your Honor inquired whether there were any other corrections.

The Master: Of course this does not preclude anybody from having the record changed to be in accordance with the facts, but if there are any others that you can think of now, you may correct them. Can you think of anything further, Mr. Hillman?

The Witness: Page 16 of the testimony, the eleventh line from the top, reads now, "It was necessary for me to *make* the receipts and disbursements," it should be, "*take* the receipts and disbursements."

The Master: Any objection to changing that?

Mr. Harrison: No, sir.

The Master: Mr. Harris, are you keeping track of these?

Mr. Harris: Yes, sir.

The Master: Of course leave out all this colloquy when you print the report. Do you think of anything more, Mr. Harrison?

Mr. Harrison: No.

The Master: Do you, Judge Holt?

Mr. Holt: No, not now.

The Master: Of course if any changes are to be made in this record as printed, why before they are made we will have attention called to them in open session, so that if any question is suggested upon either side it can be raised then. There is no reason why, as we go on, we should not have this record in complete, perfect shape. Of course you have just received your copy and have not had a chance to give it critical examination. Now, I think we are ready, Judge Holt. Mr. Harris, I suppose while this record is going on you can be gradually getting together your final index of the witnesses and exhibits, and all that sort of thing, so that when you get your final print made your index will be practically completed.

Mr. Harris: Yes, sir; all this matter is standing for correction, and we will keep the index up-to-date.

By Mr. Holt:

Q. Mr. Hillman, if you have the printed volume of the evidence before you, so far as it has gone, please turn to page 46 of the exhibits, under the heading Defendant's Exhibit No.

4, and to item 10, James River & Kanawha Co., $250, and state whether or not you have prepared from the records of the State of Virginia an underlying or supporting exhibit in explanation and confirmation of that item?

A. Yes, sir, I have.

Q. Will you file that schedule or supporting exhibit as a part of your deposition, and mark it Defendant's Exhibit No. 4, Asset D 10.

A. Yes, sir, I now file it so marked in the upper right hand corner, and in the upper left hand corner marked Class D.

Q. This exhibit seems to be marked State of Virginia, or entitled rather, State of Virginia, Kanawha Board of the James River and Kanawha Company. Please explain that schedule to the Master.

A. Treasurer's blotter, January 4, 1861, which is not paged, shows the receipt of an interest item of $250 from the Kanawha Board of the James River & Kanawha Company, and that this is a partial payment of the interest on a loan of $100,000., to the above company made by the State of Virginia, and which interest was due on January 1, 1861.

Q. You may state whether or not that schedule truly gives the figures therein set down as ascertained by you from the records of Virginia therein referred to?

A. Yes, sir, it does.

By the Master:

Q. That shows that $250 went into the treasury of the State of Virginia?

A. Yes, sir.

Q. Does that $250 item enter into any other aggregate that appears in any of your computations as a part of the fund on hand in the treasury of Virginia?

A. No, sir, it does not. It does not enter into any subsequent computations of interest or payments of principal.

Q. It does not enter into any computation that you have made showing funds in the hands of the State of Virginia on January 1, 1861?

A. No, sir.

Q. So it is not duplicated?

Mr. Holt: As I understand the object of the Master it is to ascertain whether that $250 constituted any part of the cash set down in Schedule A as of January 1, 1861.

The Master: That is it exactly.

Mr. Harrison: That was not the Master's question.

The Master: That was what I wanted. Of course I have not examined these schedules that I assume you have here somewhere—schedules showing cash on hand at some date. What I wanted to find out was whether or not this $250 was a part of an aggregate.

The Witness: It was not.

Mr. Harrison: What was not? What was the question?

The Master: It is not part of the aggregate contained in any schedule showing cash on hand in the State of Virginia on January 1, 1861. That is what I understand.

The Witness: Yes, sir.

Mr. Holt: Mr. Harrison, the very first exhibit, Defendant's Exhibit No. 1, undertakes to show the total of cash on hand December 31, 1860, or January 1, 1861, and the funds among which it has been apportioned. The question was whether this $250 was embraced in that.

The Master: Yes.

Mr. Harrison: I understand that; but the Master's question in the beginning was broader and the answer was broader, and he said it did not enter into any computation.

The Master: My question was broader, but it was directed mainly of course to that state of facts. What I simply wanted to know was whether that item of $250 was an item to be added to any previous fund or whether it was included in some other sum, and I understand it is not included in any other sum which is shown in your schedule; is that right?

The Witness: You are correct.

The Master: Some of these questions I put may be unintelligible, but I am simply making these inquiries as they occur to me.

Mr. Holt: I think, if you will pardon me, that I caught it right off the reel—what you intended. It was plain to me.

By Mr. Holt:

Q. Have you the copy of the printed supplemental answer before you?

A. Yes, sir, I have.

Q. Please turn to page 60 thereof.

A. Yes, I have it.

The Master: What is this, Judge Holt?

Mr. Holt: I am referring to the printed answer.

Q. I see a statement therein, at the page referred to, as follows: "In addition to the foregoing, the State of Virginia, after the division of the old Commonwealth into two states, June 20, 1863, collected large amounts of money from several counties then and now located in the State of West Virginia, and aggregating the sum of $[illegible],078.06.;" and I will ask you whether or not you have examined the books and records of the Commonwealth of Virginia for the purpose of ascertaining the truth or falsity of that statement.

The Master: This item, Judge Holt, as I understand it, is not included in either one of the seven classes.

Mr. Holt: That is the reason I am taking this pains to describe it.

A. Yes, sir, I have made such an examination.

Q. What did you find the total of taxes thus collected, if you found that any had been so collected?

A. For the taxes and the redemption of lands which had been sold for taxes. I found the sum of $224,799.63 had been collected from the West Virginia counties from June 20, 1863, up to April 1, 1865.

Q. Have you prepared an exhibit setting forth in detail this examination and the result thereof?

A. Yes, sir, I have.

Q. Will you please file the same as a part of your deposition and mark it Defendant's Exhibit No. 10?

A. Yes, sir, I now file the paper marked Defendant's Exhibit No. 10.

The paper was admitted in evidence and marked Defendant's Exhibit No. 10, September 2, 1914, C. B.

Q. Turning now to that exhibit, I find, Mr. Hillman, the first item thereon, general taxes assessed after January 1, 1861, and, under the heading, period June 20, 1863, to April 1, 1865, the sum of $189,643.31. Please explain that item.

A. That is the amount which the West Virginia counties paid into the treasury of Virginia on account of general taxes assessed after January 1, 1861. This amount was taken off in detail from the books of the Commonwealth of Virginia, First Auditor's office, wherein the receipts of taxes are set out in detail. These are on my working papers, showing the pages and the amounts on each page, and are susceptible of check if so desired. They were too voluminous to put into an exhibit to present to the Court.

Q. During what period were the taxes embraced in this item paid?

A. Between the period June 20, 1863, and April 1, 1865.

By the Master:

Q. Does that mean that there were no taxes paid on account of those prior to June 20, 1863?

A. No, sir, it does not; it means that there were paid subsequent to that date, June 20, 1863, and up to April 1, 1865, the amounts which I have stated.

Q. Then that simply means this, that after the organization of the State of West Virginia, the people living in the counties, what was after that time the State of West Virginia, paid this amount of taxes?

Mr. Harrison: In some of the counties.

Q. In some of the counties?

A. Yes, sir, that is what it means; and I have the details.

By Mr. Holt:

Q. You may now explain the second item on Exhibit 10.

A. Those are the law processes assessed, or the amounts collected by the County Clerks of amounts assessed after January 1, 1861, and collected during the period mentioned, June 20, 1863, to April 1, 1865.

By the Master:

Q. What do you mean by law processes assessed?

A. They have certain fines and certain charges against litigants in courts, which are collected not through the regular tax department but through the County Clerks, instead of through the Sheriff. They are listed separately from the regular taxes collected at that time by the Sheriffs of the counties, and therefore they appear separately from the general taxes such as the per capita tax and the regular taxes upon land and property.

Q. Well, they are not really assessed at all, but they are simply the costs of legal proceedings during that period?

A. During the period prior to January 1, 1863.

Q. It is not assessed by any public body constituted for the purpose of making assessments, but simply the costs of legal proceedings which are collected by these various county officers?

A. Yes, sir.

Mr. Holt: If I understand it, and I do so understand, subject to correction by the gentlemen who practiced under those laws, this was simply a tax on legal processes.

The Master: I understand it now.

The Witness: They are court costs rather than tax assessments.

By Mr. Holt:

Q. Mr. Hillman, you may take the third item upon that Exhibit 10.

The Master: That is of the same character I take it?

The Witness: Yes, sir, it is of the same character, law process assessed—

The Master: Became due, or a tax, you may put it that way, costs taxed against litigants prior to January 1, 1861, that is what that is?

The Witness: Yes, sir, prior to January 1, 1861, and collected during the period June 20, 1863 to April 1, 1865.

Q. What was the amount of that third item?

A. $1,158.13.

Q. Now the fourth item?

Mr. Anderson: It is understood we are not now interposing objections. They are attempting to charge loyal Virginia with the acts of the Richmond government.

The Master: The materiality of this of course is open to both sides.

Mr. Holt: That will have to be taken care of when we come to it.

Q. (Question repeated).

A. The fourth item consists of the general taxes assessed prior to January 1, 1861, and collected during the period from June 20, 1863, to April 1, 1865, from the West Virginia counties, and amounts to $22,715.93.

By The Master:

Q. What is it that differentiates that from your first item?

A. One was taxes which were assessed subsequent to January 1, 1861,—

Q. One is after and the other is prior?

A. Yes.

By Mr. Holt:

Q. Explain the fifth item, license taxes of May, 1861, and give the amount thereof as shown by the exhibit.

A. License taxes were assessed and collected twice a year. For convenience in auditing I have separated license taxes of May, 1861, from the other general taxes, and therefore simply noted that license tax of 1861 instead of consolidating it with the other general taxes which had accrued after January 1, 1861, making simply a separate item.

By The Master:

Q. What were these licenses on, occupations?

A. On occupations, dogs, horses, guns, vehicles, for bars and peddlers' licenses and all other items. It is merely for convenience that it was placed there in that way. That amounts to $1,231.33 paid in the period June 20, 1863, to April 1, 1865.

By Mr. Holt:

Q. Explain the sixth item of Exhibit 10, lands redeemed.

A. Lands had frequently been sold for taxes. They were allowed to be redeemed, and this represents the amount, $552.49, which was collected from these counties on account of the redemption of lands in the West Virginia counties which had been sold for taxes. It amounted to $552.49. The items were on account of lands redeemed prior to January 1, 1861, which had been sold for taxes which accrued prior to January 1, 1861.

By The Master:

Q. When did the redemption take place, after January 1, 1861?

A. The redemption took place in the period June 20, 1863, to April 1, 1865.

Q. But you say the sales had been made prior to January 1, 1861?

A. Yes, sir, or had been sold for taxes which accrued prior to that date.

Q. Predicated upon taxes assessed before January 1, 1861?

A. Your Honor, I would like to say right here that where the date was not mentioned, and quite frequently it was not mentioned—

Q. You mean the date of the sale or the date of the assessment?

A. The date of the tax.

Q. The date of the assessment?

A. The date of the assessment, and the tax for which the land was sold, where that was not definitely mentioned I omitted it because it was not so distinctly stated, and therefore I could not locate it as being prior to 1861.

Q. That is, where you found an item of lands redeemed from tax sales, where the records did not disclose the date of the assessment of the tax, you did not include that in your item, did you?

A. I did not, no, sir.

By Mr. Holt:

Q. The next item appears to be delinquent taxes. Explain it, please.

A. In this item are the delinquents, where the taxes had run into the delinquent column and were afterwards collected frequently with some costs added to them. I have included in this case not only the amount of the tax but the amount of the assessment for delinquencies.

By The Master:

Q. What do you mean by that, assessments for delinquencies? Do you mean by that that you have included the tax, with the interest and cost of collection, or was there some separate independent assessment made upon delinquent tax payers which increased the amount due from them on account of the fact that they were delinquent?

A. Yes, there was an item in addition to the tax for delinquency, there were also included certain costs where they had to sue for them. In this case I have taken the entire amount of the taxes, of the penalty for being delinquent, and of the costs, and included the whole amount.

Q. You have the original tax, the amount of the penalty and the amount of the costs all included, is that right?

A. Yes, sir, for the reason, your Honor, that the records did not show exactly how much was tax, how much was penalty and how much was costs, but it was lumped in one sum. And the papers of course for that amount would be so inaccessible that I did not go into details on that.

Q. You were not able to find anything in the records that differentiated between the three items?

A. I was not.

Q. And you therefore gave the aggregate item, assuming that in some cases at least the three items were included is that right?

A. That is right, yes, sir.

By Mr. Holt:

Q. Well, what was the amount of the delinquent taxes in that item?

A. $351.95.

Q. And when collected?

A. Collected during the period June 20, 1863, to April 1, 1865.

Q. Please explain now the last item upon that Exhibit 10.

A. This is an account of delinquent and forfeited lands, where the land had been seized and sold for delinquent taxes and afterwards had been redeemed. This again is taken for the total amount, and also only where I could locate the fact that it was prior to January 1, 1861.

By The Master:

Q. You mean "it" was prior, that the tax was assessed prior to January 1, 1861?

A. Yes, sir.

The Witness: The amount is $8,210.30, for the period June 20, 1863, to April 1, 1865.

By Mr. Holt:

Q. What is the sum total, now, of the moneys embraced in that exhibit?

A. $224,799.63.

Q. How does that sum compare with the amount alleged in the answer?

A. The amount alleged in the answer was $225,078.06, a difference of $278.43.

Q. That is that much less than the allegation of the answer?

A. Yes, sir. Perhaps it might be well to explain, your Honor, that I stopped at April 1, 1865, for the reason that there was a very decided break in the books of Virginia at that period, for from three to six months. And having done it thus far, it seemed to me to be a very good stopping place, and I stopped at that point and did not continue the investigation beyond April 1, 1865.

By The Master:

Q. What do you mean by break in the books, that there seemed to be minus entries after that date?

A. Yes, sir, for three months there are no entries.

Q. They were apparently doing something else at that time besides keeping books?

A. Yes, sir.

Mr. Harrison: The witness has stated that he has the detail figures upon which the totals in this exhibit that he has been testifying about are based, and that they can be checked up if desired. We would like to have him turn those detail papers over to Mr. Potter, in order that he may check them up.

The Master: There is no objection to that, I suppose?

Mr. Holt: The two accountants will get together, and Mr. Potter will be given an opportunity to check them.

The Master: Then Mr. Potter will call at his convenience upon Mr. Hillman or upon one of his assistants for these detail statements so as to make the verification. If you have it in separate shape you had better hand it to Mr. Potter. If you have only one copy, that is one thing, but if you have duplicate copies you may hand it to him.

The Witness: I have only one copy, but I see no reason why Mr. Potter should not have that copy to check it.

The Master: Well, hand it to him for the purpose of checking it up.

The Witness: Of course it is understood, your Honor, that he return the copy.

The Master: Oh, certainly, we won't have any trouble about anything of that kind.

By Mr. Holt:

Q. Have you prepared another exhibit or schedule, being a a summary of all your exhibits or schedules for January 1. 1861, from one to ten inclusive?

A. Yes, sir, I have.

Q. What caption have you given that summary?

A. State of West Virginia, summary of claims of West Virginia for consideration in settlement of debt, as set up in Hillman Exhibits January 1, 1861.

Q. Will you please file the same and mark it Defendant's Exhibit No. 11?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 11, September 2, 1914, C. B.

Mr. Holt: I suppose, your Honor, it is not worth while to go into that. These gentlemen and your Honor will see at a glance what it is; it is a summary of what we claim these exhibits show.

The Master: It is understood that these items, although they may not be specifically called to the attention of Mr. Hillman, are in the record with the support of his oath that they are correctly made, and that of course opens the whole question to cross-examination by the other side.

Mr. Holt: Yes, sir.

Q. I will ask you this question, however. Is this a correct summary of these exhibits?

A. Yes, sir, it is.

Mr. Holt: Will your Honor please turn to page 41 of the printed exhibits. We now offer in support of Defendant's Exhibit No. 3, Class D, Asset 13, and Class C, Asset 17, two certificates. The first is the certificate on the Assistant Secretary of the Treasury of the United States in accordance with an act of Congress, as we understand it, and under the seal of the department, relating to a settlement between Virginia and the government of the United States on account of the moneys owed by the latter to the former and set forth in the exhibits referred to.

The Master: Why can't you have the record show, if there is no objection on the part of Virginia, that the accounts of the United States government show the following facts for whatever they may be worth? You do not need to print this certificate and you do not need to print any formal matter in connection with it unless it is required by the other side. If there is no objection I see no reason why you may not put in an excerpt from the books of the United States.

Mr. Holt: The truth is that the exhibit—

The Master: It may be that you cannot accomplish what

you want by this suggestion; if not, proceed by your own method.

Mr. Holt: The truth is that Defendant's Exhibit No. 3, Assets 13 and 17, really set forth all the details that are embraced in these certificates of the Assistant Treasurer, but our only idea was to—

The Master: I would suggest this, submit them to the other side and let them examine them, and if this schedule is an accurate statement of this certificate, simply have an entry made in the record that the certificate is in accordance with the facts as disclosed by the books of the United States, instead of encumbering the record with the details, unless you prefer it the other way.

Mr. Holt: We do not prefer it. Allow me however to make the second offer before I hand it to them. The second certificate is likewise that of the Assistant Secretary of the Treasury of the United States, dated August 4, 1914.

The Master: Submit that to the other side and have them examine it during the recess and see if a short statement can be put in the record that will make it unnecessary to print the whole certificate. You get my point?

Mr. Harrison: Yes, sir.

The Master: If for any reason either of you wish the details printed, that may be done, but otherwise it may just as well be stated what the certificate shows unless one side or the other requires that the details be printed. There is no occasion for lumbering the record up with duplication of proof.

Mr. Anderson: There will be no contention as to the figures.

The Master: Everything of that sort may just as well be summarized and stated provided there will be no controversy about it.

Mr. Holt: This completes as now advised our schedules covering January 1, 1861; but before proceeding to the schedules for June 20, 1863, we desire to offer in evidence and in support of Defendant's Exhibit No. 7, sheets 1 and 2, James River & Kanawha Canal Company, and for other purposes,

a copy of an act of the General Assembly of the State of Virginia entitled "An act to amend the charter of the James River and Kanawha Company passed March 23, 1860—

Mr. Harrison: It is already in the record.

The Master: In the old record?

Mr. Harrison: Yes, sir.

The Master: Do you need the whole act for your purposes, Judge?

Mr. Holt: I rather suspect to.

Mr. Harrison: The whole act is already in the record.

Mr. Holt: Let me finish this statement, and then we will discuss your point.

The Master: If it is in the record the probability is, if it was relied upon by the other side, I shall have it reprinted in this record. That is one reason why I want these matters referred to. I do not know what turn this may take ultimately, but I do not want to leave the Supreme Court of the United States in a position where they have not only to look over this record but have to go to work and hunt up the other record in the old case. When we get to the end of this I will endeavor to present to them in one volume the whole thing. Everything that is already in the original record that is material here we will have reprinted in this record. Of course you can hardly expect the Supreme Court of the United States to look over both these records and read through them both. That strikes me to be very much the most convenient and handy way and does not involve very much, so that so far as this is concerned here, if it is printed on the suggestion of Judge Holt it would render unnecessary the reprinting of it from the original record. Do you get my point?

Mr. Harrison: Yes, sir.

The Master: Of course it is going to leave the case, that is if I am going to put the case before the Supreme Court predicated partly on this record and partly on the other record, it is going to be in rather clumsy shape. I think everything that is going to be called attention to should be in this record. If that involves reprinting something that is in the other record, I think a few dollars spent in reprinting would be counterbalanced by the convenience to everybody.

Mr. Holt: I desire to add, your Honor, that the copy of this Act offered will be found on pages 113 to 118 inclusive of a volume entitled, Acts of Assembly, 1859-60. These are Virginia Acts.

The Master: What is the rule here in Virginia with reference to private and public acts, public acts the court takes judicial notice of and private acts have to be proved, is that right?

Mr. Harrison: Yes.

The Master: In some states, I know, both private and public acts are made matters of judicial notice, and you do not have to prove them; but in this State that only applies to public acts.

Mr. Harrison: I think so.

The Master: If counsel on either side wants these things on the record they ought to go in.

Mr. Holt: We are going to go over all these acts again, and we are going to use as few of them as possible, because we have no disposition to encumber the record. But we do appreciate the suggestion of your Honor, the question of convenience.

The Master: I am not going to decide this case on two records, and I think the court would be rather bothered if I should put it up to them on two records. It is too much to ask the Supreme Court to look over two records, it seems to me. I would not want to do it if I were situated as they are; and I do not want to do it as I am situated here.

Mr. Harrison: We do not want to consider two records; but I want to emphasize the fact that we are permitted to rely upon anything in the old record.

The Master: Certainly.

Mr. Holt: The copy of the act referred to which I now hand the stenographer is simply an unattested, uncertified copy; but I suppose there will be no objection to it on that ground.

Mr. Harrison: We will take the printed copy as correct.

Mr. Holt: I supposed you would. And I may add that we construe it to be a legislative declaration on the part of Vir-

ginia as to the value of that date of the James River and Kanawha stock.

The Master: In other words an admission of the State of Virginia that at that time there was the value declared upon admitted by them.

Mr. Holt: Yes, sir. That is why it is offered in connection with the exhibit that I have mentioned.

The Master: I understand you.

Mr. Holt: Your Honor, would it be convenient for the gentlemen upon the other side, and for your Honor as well, to have us start in on 1863 after lunch?

The Master: Yes.

Mr. Holt: I want to get 1861 out of my head before I start with the other, if I can.

Chapter 21 of Acts of General Assembly 1859-60 was admitted in evidence and marked Defendant's Exhibit No. 12, September 2, 1914, C. B.

The Master: We will suspend here until two o'clock.

Recess until 2 P. M.

AFTER RECESS.

The Master: Judge Holt, as I understand it you begin this afternoon on your schedules relating to the values as of June 20, 1863.

Mr. Holt: Yes, sir.

The Master: Unless there is some special explanation that you desire from Mr. Hillman, is there any objection to these schedules going right in as the testimony of Mr. Hillman, and then simply call his attention to items that you may desire to have him explain? That is it would be shorter than to take them up one by one. Of course I do not control the method by which you put them in, but I simply suggest this as a method of saving time.

Mr. Holt: My idea is that after the first one or two, your Honor, in order to get the hang of the matter, we would put them in one at a time, but without inquiring of their details.

The Master: I assumed the other side would have no ob-

jection to the schedules going in as the testimony of Mr. Hillman.

Mr. Holt: It may be that we may catch something going along that needs correction.

The Master: I only suggest that as facilitating progress and saving time.

Mr. Holt: I will be very brief with them after the first one or two.

The Master: All right. At the conclusion of the introduction of these schedules, and the testimony in chief of Mr. Hillman, I understand that Virginia will be prepared to go on with the cross-examination.

Mr. Harrison: Yes, sir.

The Master: I am just in receipt of a telegram indicating that it is very desirable for Mr. Hillman to return as early as possible to Chicago, under the unfortunate and painful circumstances, and of course we want to do everything that we can to facilitate that result, subject of course to both sides having an opportunity to get from Mr. Hillman everything that they desire.

Mr. Harrison: At the close of the examination in chief of Mr. Hillman we will be ready to go on and cross-examine right away.

Continuation of the direct-examination of

CONWAY W. HILLMAN.

By Mr. Holt:

Q. Mr. Hillman, we come now to the schedules upon the subject of values as of June 20, 1863, and I will ask you whether or not you have examined the books of the State of Virginia for the purpose of ascertaining the amount of cash in the hands of the Treasurer of that State to the credit of its various funds of June 20, 1863.

A. Yes, sir, I have.

Q. Have you prepared an exhibit or schedule showing the detail of your examination?

A. Yes, sir, I have.

Q. Will you please file the same and mark it Defendant's Exhibit No. 1, 1863?

A. I have filed the exhibit marked as requested. This consists of two sheets.

The paper was admitted in evidence and marked Defendant's Exhibit No. 1, 1863, September 2, 1914, C. B.

Q. What did you find on that date to the credit of the Literary Fund?

A. $20,916.29, of which amount $8,600. was the Dawson or trust fund, leaving as the State funds $12,316.29.

Q. What to the credit of the Board of Public Works Fund?

A. $563,930.99.

Q. What to the credit of the Commonwealth Fund?

A. $1,739,773.11.

Q. What to the credit of the Sinking Fund?

A. $143,195.90.

Q. What was the total cash on hand in all the funds as of that date?

A. $2,459,216.29.

Q. You may state whether or not this exhibit truly sets down the figures as taken from the records of Virginia and the result of your examination derived therefrom.

A. Yes, sir, it does.

Q. Have you examined the records of the State of Virginia with a view of ascertaining the ownership by that State of stock in the Richmond, Fredericksburg & Potomac Railroad Company on the 20th day of June, 1863?

A. Yes, sir, I have.

Q. Have you prepared an exhibit showing the result of your examination?

A. Yes, sir.

Q. Will you please file it, marking it Defendant's Exhibit No. 2, 1863.

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 2, 1863, September 2, 1914, C. B.

Q. Of how many sheets does that exhibit consist?

A. It consist of one sheet with three supporting sheets, wherein the trial balance—

By The Master:

Q. What are they called, sub-sheets?

A. Yes, sir.

Q. You will excuse me, but keep your nomenclature harmonious.

A. Yes.

Q. In your testimony follow right along with your exhibit, so that there won't be any confusion.

A. Yes, sir.

By Mr. Holt:

Q. As I understand the answer then, it consists of one sheet and three sub-sheets?

A. Yes, sir.

The Master: I suppose, Judge, and Mr. Hillman, that up to January 1, 1861, so far as they relate to the same items it is a duplicate of the preceding exhibits under January 1, 1861?

The Witness: Yes, sir.

The Master: That is, so far as the same items are peculiar to each exhibit it is a duplicate of the preceding exhibit?

The Witness: Yes, sir.

By Mr. Holt:

Q. How many shares of stock of that company did Virginia own on the 20th of June, 1863?

A. 2,752 shares, of $100 each, $275,200.

Q. What did you ascertain the book value of those shares to be as of that date, if you ascertained it at all?

A. I ascertained the book value to be $184.50 per share. I was compelled to take the value of the stock as shown by the books of the company for the year ending March 31, 1863, to March 31, 1864, as there existed no intermediate balance which would show this.

By The Master:

Q. How did you get the date, on a pro rata basis?

A. Yes, and on these two dates I ran the date on time pro rata up to June 20, 1863, as is shown in the notation on this exhibit.

By Mr. Holt:

Q. I notice now on this exhibit that you have a column which is headed value, June 20, 1863, per share $184.50. What value do you mean in that column?

A. I mean that that is the value of the stock as shown by the books of the Richmond, Fredericksburg & Potomac Railroad Company on that date.

Q. Do you mean by value, book value?

A. Yes, sir, book value per share.

Q. Should then not that column be changed to read book value?

A. Yes, sir, I would so mark it.

By The Master:

Q. And the next column the same?

A. Yes, sir.

Q. The third column the same?

A. Yes, sir.

The Master: That is, if you want to make it consistent.

Mr. Holt: Yes, let him do that also.

The Master: I suppose it is understood that all the values given by Mr. Hillman in these schedules are book values?

Mr. Holt: Except where there is a value based upon dividend declarations.

The Witness: Your Honor, that is noted in the immediate line just below here where book value is mentioned, but I should have repeated it above as you have suggested.

Q. Don't indicate any departure from your usual plan because the term book does not happen to be inserted prior to value, and we want to understand unless there is a mark specially to indicate to the contrary, the values that you give are book values that you found from the books; that is right, is it not?

A. Yes, sir.

The Master: That will save examinations as to details if there are any other items as to which that criticism may be applied.

By Mr. Holt:

Q. You may now state the total value of the stock held in that company by the State of Virginia on that date.

A. $507,744.

Q. Did you likewise examine the books of the Richmond, Fredericksburg & Potomac Railroad Company for the purpose of making up this exhibit?

A. Yes, sir.

Q. You may now tell us whether or not this Exhibit No. 2, 1863, with its sub-sheets 1, 2 and 3, correctly set forth the result of your examination of the records of Virginia and the books of the Richmond, Fredericksburg & Potomac Railroad Company.

A. Yes, sir, they do.

Q. Have you examined the records of the State of Virginia with a view of ascertaining the sale of securities by her after January 1, 1861, that were owned by her prior to that date, and embraced in Class C in the exhibit to the supplemental answer?

A. Yes, sir, I have.

Q. Does the exhibit prepared by you cover the 18 items embraced in Class C of the supplemental answer, and likewise an item No 19, being a dividend bond of the Richmond, Fredericksburg & Potomac Railroad Company?

A. Yes, sir, it does.

Q. You may state whether or not the exhibit so prepared correctly shows the result of your examination of the records of Virginia upon these 19 subjects.

A. Yes, sir, it does.

Q. Will you file that exhibit and mark it Defendant's Exhibit No. 3, 1863?

A. Yes, sir, I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, September 2, 1914, C. B.

Mr. Holt: I suggest, your Honor, that I may make some inquiry about the items here, but when I come to the supporting schedules, in order to save time we will just file them.

The Master: Yes.

Q. I see that the first item in the exhibit just filed is Orange & Alexandria Railroad Company stock, and you have the amount there $874,500., under the word "Par." Please explain that.

A. That means 8,745 shares of the Orange & Alexandria Railroad Company owned by the State of Virginia, $100 each.

Q. That then is the total par value?

A. Yes, sir.

Q. Of that stock as owned by her on that date?

A. Yes, sir.

Q. What was the book value of that stock on that date?

A. The book value was $134.25.

The Master: That is June 20, 1863, Mr. Hillman? That is the date you refer to, Judge Holt?

Mr. Holt: Yes.

The Witness: That is the date of September 30, 1863.

The Master: You should keep a little more careful watch. This date is September 30, 1863, and you have an adjusting computation by which you reach the result?

The Witness: It has not been adjusted.

The Master: The $134.25 is predicated on September 30, 1863?

The Witness: Yes, sir.

The Master: And you made no adjustment to bring it back to June 20, 1863?

The Witness: Upon that there has been none made.

Mr. Holt: I observed that yesterday, your Honor, and I supposed that June 20th to September was such a short time that I did not pay any attention to it.

The Master: That simply develops the fact, and just exactly what conclusion follows from it is a matter of argument.

The Witness: Under the circumstances my man had overlooked that little adjustment.

The Master: The only thing is to develop what the fact is, and the general question as to what it is worth will be taken up later. Of course strictly speaking the book value on a particular date must be predicated upon what is found on the books, but as long as we know what it is there will be no trouble.

By Mr. Holt:

Q. What did you find the book value of that total stock to be on June 20, 1863, if you ascertained it and put it upon this exhibit?

A. I did not ascertain it for June 20, 1863, it was ascertained for September 20, 1863.

Q. Then should not your column, next to the last, "Value, June 20, 1863," be changed to September 30, 1863?

A. For that item, yes, sir.

Q. What is the meaning of the item $874,500 relative to the Orange & Alexandria Railroad Company stock under a column designated "Disposed of for?"

A. That is the amount which was finally received by the State of Virginia for this stock.

Q. When did she sell it?

A. In 1872, the first payment being March 28, 1872, the next payment being October 17, 1872, and the final payment October 28, 1872.

Q. Are those facts shown upon any supporting exhibit, Mr. Hillman?

A. Yes, sir.

By The Master:

Q. What is this $874,500; is that the aggregate of the three items that you referred to?

A. No, sir; that is the aggregate of the par of the Orange & Alexandria stock.

Q. But the question was when was it sold, and you have given the dates of the sale and given three dates. My question is whether the amounts that appear to have been received on those dates make up this item of $874,500.

A. They make up the aggregate of $874,500, plus a loan which was settled at the same time of $212,844.

The Master: That all appeared in the previous examination; I remember now.

By Mr. Holt:

Q. Have you prepared a supporting exhibit to this stock, statement of the Orange & Alexandria Railroad Company, just discussed in the main exhibit?

A. Yes, sir, I have.

The Master: Haven't you already got one in that takes care of that under your 1861 date?

Mr. Holt: I have it here; I think there are some additions to it.

The Master: Very well.

Q. Will you file this supporting exhibit and mark it Defendant's Exhibit No. 1, 1863, Asset 1—it is Asset 1, is it not?

A. Yes, sir. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 1, 1863, Asset 1, September 2, 1914, C. B.

Q. What books and records did you examine for the purpose of making up this supporting exhibit, Asset 1?

The Master: Where does that appear in this exhibit that I have?

Mr. Hogg: It is the first page after Defendant's Exhibit No. 3, containing the nineteen different railroads.

Mr. Holt: Right up in the right hand corner you will find page No. 8; it runs along consecutively.

The Master: And then the following schedule is a continuation of it, I understand.

A. I examined the records of the State of Virginia in the Congressional Library at Washington; these reports for the years being missing from the files in the Library of the State of Virginia in this building. That is the same report which we examined in making up our 1861 schedules, that is the report of the Board of Public Works of the State of Virginia,

document 15, pages 7 to 24, for 1862, and pages 25 to 39 for 1863.

Q. Of how many sheets does this supporting exhibit consist?

A. Of but one sheet.

Q. You may state whether this supporting exhibit, Asset 1, correctly represents the records that you have examined of Virginia.

A. Yes, sir, it does.

Q. The second item under Orange & Alexandria Railroad Company is a loan, $377,772.65. Have you prepared a supporting exhibit to what appears concerning this loan on the main exhibit No. 3?

A. Yes, sir, I have.

Q. What records did you examine in making up these supporting exhibits?

A. Ledger B, folio 241, Internal Improvement Fund, State of Virginia, showing the face value of this loan on June 20, 1863, following the details taken from pages 389 to 392 of Journal M, Public Works Department, or the Internal Improvement Ledger, State of Virginia, showing the final disposition of this loan and its eventual settlement up to November 1, 1868, and from that point on Journal N of the Internal Improvement Department, State of Virginia, pages 407 to 410, showing the final settlement of the loan.

Q. Was the loan paid in full?

A. Yes, sir, it was paid in full, and $1.02 over.

By The Master:

Q. It was paid by bonds, was it not?

A. Yes, sir, bonds and discounts.

By Mr. Holt:

Q. I see down on the main exhibit under the column headed, disposed of for, this item, $377,772.65. What does that mean?

A. That means that on June 23, 1863, there was a payment and settlement made, or the settlement was brought up to that date, on this Journal N, pages 389 to 392, being within

three days of June 20, 1863, and the actual value of the loan on that date was $377,772.65, as will be shown by reference to page 10.

Q. Of how many pages does the supporting exhibit consist?

A. Of three.

Q. What pages are they as you have them marked here consecutively?

A. Pages 9, 10 and 11.

Q. You may state whether or not that supporting exhibit, 9, 10 and 11, correctly represents and reports the records of the State of Virginia upon that subject?

A. Yes, sir, it does.

Q. We come now upon the main exhibit, Defendant's Exhibit No. 3, 1863, Richmond & Danville Railroad Company stock. I find an item of $1,188,598.50 in a column designated par. What is meant by that?

A. That is the cost of the stock to the State of Virginia.

By The Master:

Q. In that case you were not able to find the number of shares that were purchased; the only thing you did find was the amount of money paid for the stock, is that right?

A. Yes, sir.

The Master: That is the same item, isn't it, Judge?

Mr Holt: I think so.

Q. That accounts for the odd figures there?

A. Yes, sir.

By Mr. Holt:

Q. What is the meaning of the item 162.27 under the column designated book value?

A. It means that that was the book value of this stock on September 30, 1863, the nearest fiscal year date to June 20, 1863.

Q. What is the meaning of the item of $1,928,738.79 under value June 20, 1863?

A. It means that the par of the stock or the face value of the stock on the books of the State of Virginia was multiplied

by 162.27, the book value, and the result is a cash book value of $1,928,738.79.

Q. As of what dates, Mr. Hillman?

A. As of September 30, 1863.

The Master: I do not find that sum as the result of any computation on any of the supporting schedules. I simply want to get the identity here so when I come to look the matter up I wont have any confusion about it. Where do you find that on your supporting schedules, this $1,928,738.79, what supporting schedules do you find that result on?

The Witness: There is no supporting schedule to that It is simply the multiplication of the face value of $1,188,598.50 by 162.27.

The Master: So I do not have any occasion to look at a supporting schedule for any computation that results in the sum of $1,928,738.79?

The Witness: No, sir.

The Master: That is a computation that is made entirely independent of the schedule?

The Witness: Yes, sir.

The Master: Except as you get your data from the schedule you make it from?

The Witness: Yes, sir. The book value is determined from the sub-schedule. No computation is made.

The Master: Ordinarily you carried those details out in the schedule, and I did not know but what I had omitted or failed to find it in this instance. I get your point now.

By Mr. Holt:

Q. What is the meaning of the amount $1,085,636.57 set down under the column designated "disposed of for"?

A. That means that the stock of the Richmond & Danville Railroad Company was finally disposed of for the sum of $1,085,636.57.

Q. Do you mean the stock in that company owned by the State of Virginia was disposed of?

A. Yes, sir.

Q. When was the disposition made?

A. Commencing December 13, 1870, ending August 31, 1871 as far as negotiations were conducted between the R. & D.

Company and the State, and final payment made under a decision of the Court, which was made in 1877, April 13.

By The Master:

Q. Was that all settled for in bonds?

A. Yes, sir, it was all settled for in bonds with the accrued interest on those bonds.

By Mr. Holt:

Q. Have you prepared a supporting exhibit to this item of stock, Richmond & Danville Railroad Company?

A. Yes, sir, I have.

Q. Of how many sheets does it consist?

A. Of one sheet.

Q. What is the page of it as you have it here?

A. Page No. 12.

Q. In order to prepare this supporting exhibit, page No. 12, what records or books did you examine if any?

A. The report of the Board of Public Works of the State of Virginia, on file in the Congressional Library in Washington, D. C., Document No. 15, pages 127 to 144 for 1862, and pages 145 to 161 for 1863.

Q. Will you file that exhibit and mark it Defendant's Exhibit No. 3, 1863, Asset 2.

A. Yes, sir, I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset No. 2, September 2, 1914, C. B.

By Mr. Holt:

Q. Does it correctly exhibit the records and the result of your examination thereof which you have referred to?

A. Yes, sir, it does.

Q. Coming back now to the main exhibit, Defendant's Exhibit No. 3, 1863, I find under Richmond & Danville Railroad Company a loan of $544,861.46. What does that item mean, Mr. Hillman?

A. It means the value of the Richmond & Danville loan on June 20, 1863.

Q. How did you ascertain the value of that loan as of that date?

A. By taking the settlement made for that loan and tracing it up to June 20, 1863, and thus determining its value.

Q. Was the loan paid?

A. No, sir, it was never paid in full.

Q. How much was paid on it?

A. $438,900.

Q. When was that paid?

A. Paid in 1882 and 1884.

Q. Under the caption, disposed of for, I find the sum of $439,900. What does that mean?

A. It means that that amount in bonds and interest on those bonds, Virginia bonds, was received for this loan.

Q. Have you prepared a supporting exhibit on the matter of this loan to the Richmond & Danville Railroad Company?

A. Yes, sir, I have.

Q. How many sheets does it contain?

A. It contains one sheet.

Q. What is it paged?

A. Paged 14. I would like to call your Honor's attention to one thing on page 14, and that is I make the statement there, "Loan was finally disposed of as follows"—

Q. Mr. Hillman, wont you wait a moment until I get that exhibit in, and then you may make your comments on it.

A. All right, sir.

Q. What books did you examine in making up the supporting exhibit referred to?

A. Ledger B., Internal Improvement Fund, page 12; Senate document Journal 1881 and 1882; record book of the Sinking Fund, Second Auditor, State of Virginia, page 285. Journal N., Board of Public Works, State of Virginia, folio 631; Journal N., Board of Public Works, State of Virginia, folio 632; and the same book, folio 635.

Q. These are all records of the State of Virginia, are they?

A. Yes, sir.

Q. Now you may tell us whether this supporting exhibit is true or not?

A. Yes, sir, it is.

Q. Will you file it as a part of your deposition and mark it Defendant's exhibit No. 3, 1863—what are the assets?

A. Assets C-2 and Assets D-2.

Q. What do you say to that, will you file it?

A. Yes, sir, I so file it.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-2 and Asset D-2, September 2, 1914, C. B.

By Mr. Holt:

Q. Now you desired to make a statement in explanation to the Master concerning this supporting exhibit. What is it, Mr. Hillman?

A. That there is no record that I could find whereby this loan had been reduced to the final settlement figure of $438,900, but that as the settlement was made on that date we have made the statement on this exhibit that it had been reduced by the partial payment plan used above to this sum, which would correct my statement which I made a moment ago that the loan was not paid in full. I found no method of bringing it down to that figure, $438,900, but I presumed that it had been brought down by some computations somewhere extant to that figure, as the loan was finally settled in full and as the Richmond & Danville was a company which could afford to settle in full.

By The Master:

Q. So far as the books are concerned, it does not appear on the face of the books that it was paid in full, but the amount paid in settlement you assumed to have been the result of some computation that reached that amount?

A. Yes, sir.

Q. Before you leave that schedule, explain to me where you get your $515,194.79 which I find on here in red pencil marks and also $544,861.46, just explain to me how those are the results of any computation you made upon that subject. This is page No. 14 that I have, Hillman Exhibit, Asset C-2. On my exhibit here is a red pencil mark $515,194.79 under $580,126.36.

Mr. Harrison: Those figures are not on this exhibit which I have at all.

A. I discovered in the interval at noon there had been a mistake made in the computation of this interest. I had it corrected. I had time only to correct yours, the Judge's and mine, and I handed those corrections to the accountant for the other side and asked him to put it on their sheets. It seems he did not have time to do it.

Q. Make it a little more clear to me just exactly what it corrects. Give me the details. I want to know how you reach this result of $515,194.79. Put it in the record so that I know where you got your figures from and if there is an error, give me the amount of the error and give me the details of it so I can see myself what the result was and how the error occurred, because as it stands here I cannot understand it at all.

A. Your Honor, will you allow Mr. Leeds just to put a figure in on that now?

Q. Yes. I want you to state on the record how you got that result of $515,194.79. State it so that everybody can hear it.

Mr Holt: We supposed that their accountant could accommodate us by making the correction now.

The Master: I am not going to take a chance. Make the statement orally so that the reporter can get it, because what you tell me here I wont carry in my head. Make the explanation so that it goes in the record, so that everybody can understand it. There is not a thing on this exhibit that tells me where those figures come from.

Mr. Holt: He is going to undertake that, but they have engaged him now to do something else, which is what I am complaining of.

Mr. Harrison: I think I have a right to have him show me what his correction is. The thing is absolutely unintelligble to me what he is talking about.

Mr. Holt: That may be true, but he has explained that he had it corrected, and he asked your accountant to correct yours.

Mr. Potter: He made a mis-statement in that regard, because he did not show me the figures that he wanted changed.

Mr. Holt: That I know nothing about.

Mr. Harrison: I only ask him to give me the figures that he now relies upon.

Mr.Holt: There is no reason for being disturbed about it I presume.

Mr. Harrison: No, I do not think so.

The Master: Instead of 515 it should be 574.

Mr. Holt: If you will be kind enough to ask him for the explanation, your Honor, I think we will all get through.

The Master: This item that I have been inquiring about is not $515,194.79, but $575,194.79. Your assistant has put upon my sheet $23,749.84 to take the place of $28,681.41, and tells me that that sum added to $551,444.95 produces the result of $575,194.79; that is right, is it?

The Witness: Yes, sir.

The Master: Where do you get $544,861.46?

The Witness: That is the value of September 30, 1862, of this loan as shown on page 12 of Senate document and Journal for 1881 and 1882.

The Master: Is $544,861.46 to take the place of $544,198.32? You have on my exhibit in red pencil $544,861.46, and right under it is $544,198.32. Is the last item assumed to be stricken out?

The Witness: Yes, sir.

The Master: And $544,861.46 treated as in its place?

The Witness: Yes, sir.

The Master: And that you say is the result of a computation showing the amount due on that loan on June 20, 1863?

The Witness: Yes, sir.

The Master: I get it now.

The Witness: Did I understand your Honor wished me to explain how we arrived at June 20, 1861?

The Master: I would like to have you put into the record the computation which results in $544,861.46.

A. Yes, sir.

Q. If you have it right handy by just put it into the record so that we can see what it is.

A. Yes, sir. The value of this loan as shown upon Senate Document and Journal, page 12, 1881 and 1882, on September

30, 1862, was $551,444.95. The interest is calculated upon this sum from September 30, 1862, up to the end of June 19, 1861, at the rate of six per cent. per annum, which gives us 262 days of the 365 days which make up the calendar year. Therefore, taking it upon that basis, the amount of interest which would have accrued in that period, 262 days, would be $23,749.84, which we add to the principal which was due on September 30, 1863, and that gives us the $575,194.79. There was an annuity of $42,000 a year due upon this loan each year and paid by the company. Of that annuity 8 months and 20 days had elapsed up to June 20, 1863.

Q. Or 8 months and 20 days had accrued of the annuity?

A. Yes, sir.

Q. The time had elapsed but the annuity had accrued?

A. Yes, sir, that is correct.

Q. And for that reason you deduct that from the sum you have last mentioned?

A. Yes, sir, since that annuity was afterwards paid in cash, and that makes a deduction from that amount of $575,194.79 of $30,333.33, and leaves this loan as of a value of $544,861.46.

By Mr. Holt:

Q. As of what date?

A. As of June 20, 1863.

By The Master:

Q. My impression is that you have inadvertently stated a date as to which you have computed interest. I think you said you computed interest up to 1861 when you must have meant 1863; is not that so?

A. Yes, sir, that is true.

Mr. Holt: We will travel more rapidly your Honor, after we have passed this omnibus blue sheet we have now.

The Master: I will watch you and see if you do.

Mr. Holt: You can apply the spur.

By Mr. Holt:

Q. Mr. Hillman, on the main exhibit, Defendant's Exhibit

No. 3, 1863, the third item is Richmond & Petersburg Railroad Company stock. How much of the stock of that company as shown by that exhibit did the State of Virginia own at par in that company on June 20, 1863?

A. 3,856 shares, $100 each, $385,600.

Q. What was the book value of that stock as shown by the exhibit on June 20, 1863?

A. $141.24 per share at the nearest date, September 30, 1863.

Q. What was the total value of the stock as of September 30, 1863, according to the books?

A. $544,621.44.

Q. Explain the item on that same subject of $578,404.13. You find it, do you, in the column?

A. Yes, sir. That was the price which was finally obtained for the stock when it was sold in 1871.

Q. By whom?

A. By the State of Virginia to the Richmond & Petersburg Railroad Company. The item there where it says "with interest" refers to the fact that there was an over payment of $4.13 due to accrued interest on bonds which was never adjusted, which means that the stock was sold at $150 per share, paid in bonds, and that there was $4.13 left over, owing to accrued interest on the bonds which was not adjusted by cash or otherwise.

By The Master:

Q. That is there was an overpayment of that amount?

A. Yes, sir.

Q. Affecting the interest on the bonds?

A. Yes, sir.

By Mr. Holt:

Q. Have you prepared a supporting exhibit explaining and sustaining this matter of the stock of the Richmond & Petersburg Railroad Company?

A. Yes, sir, I have.

Q. What page is it?

A. Page No. 16.

Q. Is it page 15 or page 16?

A. Page 16.

Q. Page 15 and page 16 seem to relate to that matter of stock.

A. Yes, sir, page 15 relating to the book value and page 16 to the amount received.

Q. Then you have two supporting exhibits instead of one?

A. Yes, sir.

Q. Will you file the first supporting exhibit and mark it Defendant's Exhibit No. 3, 1863, Asset No. 3.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset No. 3, September 2, 1914, C. B.

Q. Will you likewise file the second supporting exhibit referred to and mark it Defendant's Exhibit No. 3, Asset 3-C; Asset 3-D.

A. I have filed it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset 3-C; Asset 3-D, September 2, 1914, C. B.

Q. What books or records did you examine if any for the purpose of making up the supporting exhibit referred to, asset No. 3?

A. I examined the report of the Board of Public Works of Virginia, Document No. 15, Pages 103 to 208, years 1863 and 1864, on file in the Congressional Library in Washington, D. C.

Mr. Holt: My information further is this that the Governor of this State in 1865 undertook to remove the capitol to the City of Lynchburg from Richmond, and they got as far as Buckingham with these records. The water in the canal gave out, and they stopped their journey; and in the meantime the Federals came along and scooped the whole business, and these

records went to Washington, and have been there ever since.

The Witness: I understand that since this investigation has been in progress the officials have taken steps to have the records returned.

Q. You have stated that you examined certain records of the State of Virginia, deposited in Washington, from which you made up the exhibit referred to. You may now tell us whether you found those same records or not in the achives at the Capitol at Richmond?

A. No, sir, I did not find them there.

The Master: I suppose that is true in each instance, wherever he predicates his conclusions upon records found in Washington, there was an absence of the same records here in Virginia.

By Mr. Holt:

Q. How is that, Mr. Hillman?

A. That is right.

By The Master:

Q. And those there were simply used to supplement the absence of those that you could not find here?

A. Yes, sir.

By Mr. Holt:

Q. Is the supporting exhibit, Defendant's Exhibit No. 3, 1863, Asset 3, page 15, true?

A. Yes, sir.

Q. Is the supporting exhibit, Defendant's Exhibit No. 3, 1863, Asset 3-C, Asset 3-D, true?

A. Yes, sir, it is.

The Master: Is that page 16?

Mr. Holt: That is page 16.

The Witness: The small foot note there shows how that $4.13 originated.

Q. That you have already explained, have you not, orally?

A. Yes, sir.

Q. Coming now to item No. 4 on the main Exhibit No. 3, 1863, we have Virginia Central Railroad Company stock, $2,013,987.52. What does that represent?

A. That represents the par of the Virginia Central stock owned by the State, as far as it could be determined, we not being able to determine just how many shares were held. It is the amount which they expended in order to obtain whatever stock they owned in the Virginia Central.

Q. Did it own that stock on the 20th of June, 1863?

A. Yes, sir, it did.

Q. What is the meaning of the item $164.61?

A. That represents the book value of the Virginia Central stock on September 30, 1863, the nearest date to June 20, 1863, that was obtainable.

Q. What is the meaning of the item $3,315,224.86?

A. It means that the par or face value of the stock owned by Virginia in the Virginia Central Railroad Company, viz, $2,013,987.52, calculated at a book value of $164.61 per share of $100, amounts to $3,315,224.86.

Q. Then that is the total of the book value of the holdings of Virginia in the stock of that company on September 30, 1863?

A. Yes, sir.

Q. What is the meaning of the figure in the last column $241,858.50?

A. That means that the holdings of the State of Virginia in the Virginia Central Railroad Company were finally disposed of for the sum of $241,858.50.

Q. When was that disposition or sale made?

A. It was made in 1888 and in 1890.

By The Master:

Q. Was it cash or bonds?

A. It was made in cash.

Q. Do the books show to whom it was sold?

A. No, sir, they do not, and I did not examine back of that to show to whom it was sold. I simply took the fact of the sale on the face of the books and made no investigation of that.

Q. In some of these other cases the transactions seem to have been between the company and the State, but you have no recollection as to how it was in this case?

A. No, sir, my recollection is, however that they were sold through brokerage firms.

Q. Sold in the public market?

A. Yes, sir.

Q. Does it appear that the total holdings were sold for that sum?

A. Yes, sir.

Q. So that whatever they held in par value in 1863 on the date that you have now given was ultimately sold in the public market for the sum of $240,000?

A. Yes, sir, and I would state that in that sale they sold 26,433.39 shares.

Q. Does that tally with your original estimate of the par value that they held?

A. Yes, sir.

Q. It does?

A. Yes, sir.

Q. Look now, please, Mr. Hillman, at blue print marked page No. 17, and you will find—

Mr. Holt: We have not offered that yet, your Honor. We are coming to that now.

The Master: Very good. Excuse me.

By Mr. Holt:

Q. Mr. Hillman, have you prepared a supplemental exhibit supporting and explaining the Virginia Central Railroad Company's stock about which you have just testified?

A. Yes, sir, I have.

Q. Will you please file it, marking it Defendant's Exhibit No. 3, 1863, Asset No. 4.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset 4, September 2, 1914, C. B.

Q. What books and records if any did you examine in making up this supporting exhibit?

A. The report of the Board of Public Works, State of Vir-

ginia, Document No. 15, pages 41 to 64 for 1862, and pages 65 to 85 for 1863, on file in the Congressional Library at Washington, D. C.

Q. You may state whether or not this supporting exhibit is true and correctly sets down the result of your examination?

A. Yes, sir, it does.

Mr. Holt: Now your Honor, we would be glad to have you ask any questions.

By The Master:

Q. How do you reconcile these two items? Under item 4 Defendant's Exhibit 3, Virginia Central Railroad Company's stock is stated as $2,013,987.52, and on this schedule you have just put in you have stated here that the par of the stock is $3,292,444.73. Just tell me how you reached that result?

A. This is the total amount of outstanding stock of the company, but it is necessary to divide into the profits in order to determine the book value.

Q. It is the total for the whole company?

A. Yes, sir.

Q. That of course explains it, although there does not need to be anything on the exhibit to indicate what that is.

Mr. Holt: Is it in the record now, your Honor.

The Witness: Perhaps I ought to add this, your Honor. We do not know nor have we any trace until the State of Virginia commenced to dispose of this company's stock as to how much par value they held, and in order to take the safe side of the matter I did not take and make this calculation on 26,433.39 shares, which were afterwards sold, but took it at the figure which appears on the books of the company.

Q. Instead of taking what the value was declared to be by the number of shares that they held as a basis of your computation, you took what it appears they actually paid for the stock?

A. Yes, sir.

Q. You predicated your conclusions on that?

A. Yes, sir.

The Master: That takes care of that. I understand that

now. Of course it is easy now to see how that conclusion was reached, but they did not put anything on the exhibit to indicate it.

By Mr. Holt:

Q. Have you prepared a second supporting exhibit concerning this Virginia Central stock?

A. Yes, sir, I have.

Q. That is page No. 18, is it?

A. Yes, sir.

Q. Will you file it as Defendant's Exhibit No. 3, 1863, Asset C-4?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-4, September 2, 1914, C. B.

Q. Does it truly represent the result of your examination?

A. Yes, sir, it does.

Q. Taking the item, loan to the Virginia Central Railroad Company, I find an item amounting to $210,000. What does that represent, Mr. Hillman?

A. That represents a loan made by the State of Virginia to the Virginia Central Railroad Company.

Q. Was that loan made prior or subsequent to January 1, 1861?

A. My recollection is that part of that loan was made prior to 1861, $90,000, and that the balance was made subsequent to January 1, 1861, $120,000.

Q. Well, what was the date of the last part of the loan?

A. On March 31, 1861, $90,000 in addition to the $90,000 prior to it, January 1, 1861. On June 30, 1861, $30,000.

Q. Making a sum total of what?

A. $210,000.

Q. Was that loan ever paid in full?

A. Yes, sir, it was paid in full with interest.

Q. Do you recall when it was paid?

A. July 1, 1870.

Q. Have you prepared an exhibit in support of and giving the history of this loan?

A. Yes, sir, I have.

Q. Will you file it, marking it Defendant's Exhibit No. 3, 1863, Asset C-4, Asset D-4?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-4, Asset D-4, September 2, 1914, C. B.

Q. It is page 19 of these exhibits, is it not?

A. Yes, sir.

Q. What books did you examine in making up this supporting exhibit?

A. Ledger B., Internal Improvement Fund, State of Virginia; Cash Book 10, Internal Improvemnt Fund, Second Auditor's office, State of Virginia; and a statement on file in the File Room of the Corporation Commission of the State of Virginia, dated July 1, 1870, which is on file in a filing box in that Corporation Commission's rooms, and which is confirmed by the report of the Second Auditor in the State Book of Virginia of 1871.

Q. Does that exhibit state the truth?

A. Yes, sir, it does.

By The Master:

Q. How was that loan paid, in bonds or cash?

A. That was paid in bonds.

By Mr. Holt:

Q. The next item under the Virginia Central Railroad Company is dividend bonds, face value $58,650, as shown on the main exhibit. What does that mean?

A. That means that the Virginia Central had issued in lieu of dividends a bond, and that the State of Virginia owned $58,650, face value, of these dividend bonds, and that they were afterwards paid off in full by the Virginia Central Railroad Company to the State of Virginia.

By The Master:

Q. How were they paid, in bonds or in cash?

A. They were paid in bonds, sir.

By Mr. Holt:

Q. You have the same amount set down in the second column on the main exhibit, under the heading value June 20, 1863. What do you mean by that?

A. I mean that these dividend bonds were of par value in 1863, $58,650.

Q. What is the meaning of the same item in the last column?

A. It means that they received this amount for those bonds when they were finally cashed in.

Q. Who received them?

A. The State of Virginia.

By The Master:

Q. On what date were they paid?

A. August 25, 1870. And I would say that in the meantime these bonds had carried interest, and the interest had been paid upon them, as is shown in the same exhibit that we have just filed.

Q. How does that interest appear to have been paid, in cash or was it accumulative and finally adjusted by an exchange of bonds?

A. It was sometimes paid in the interim in cash and sometimes in bonds, paying it along as it accrued.

Q. That practice does not seem to have been uniform so far as the payments were concerned?

A. No, sir.

Mr. Anderson: Does your Honor refer to the principal of those dividend obligations or the interest on them?

The Master: The interest on them. A part of the interest on these bonds was paid in cash as it accrued, and such as was not paid in cash, as I understand it, was taken account of and paid in bonds.

Q. Am I right about that?

A. Yes, sir. Your Honor will note that this last payment

which appears on page 19, the exhibit we have just filed, happened to be a cash payment and was paid in money.

Q. That is the item of $2,390.99?

A. Yes, sir.

By Mr. Holt:

Q. Mr. Hillman, is this item of dividend bonds explained in detail in any of your supporting exhibits?

A. Yes, sir.

Q. Which one is that?

A. Page 19.

Q. And that is Defendant's Exhibit No. 3, 1863, Asset C-4, Asset D-4, is it?

A. Yes, sir.

Mr. Holt: The point there was that we did not have a separate underlying exhibit for that item.

The Master: Yes.

Q. We come now to the fifth item on the main Exhibit 3, 1863, Blue Ridge Railroad Company, built by State of Virginia. Please explain the item, $1,674,723.23 thereon appearing.

A. That is the total cost to the State of Virginia for the construction of the Blue Ridge Railroad.

Q. What is the meaning of the same item in the first column on the main exhibit under the heading, value June 20, 1863?

A. It means that the value of the Blue Ridge Road in 1863 was taken as its cost to the State of Virginia.

By The Master:

Q. When was it constructed?

Mr. Holt: I think the underlying exhibit would show that, may be.

Mr. Anderson: It was all constructed prior to 1861.

Mr. Holt: Yes, I think so.

Q. Yes, but how long prior to 1861?

A. I can tell you in just a moment, your Honor.

Q. When was the road constructed?

A. It was constructed almost entirely prior to January 1, 1861.

Q. Oh yes, but when prior? That does not give me any information; that amounts to nothing. Was it one year or ten years? When did they begin the construction and when did they complete it? Simply to say prior to January, 1861, is no use to me.

A. I will give you that date in just a moment, your Honor.

Q. Of course what you have done is you have carried along as the value of this road on June 20, 1863, what it cost as an aggregate at some prior time. What I want to know is what that prior time was.

A. The construction of the Blue Ridge Railroad was commenced September 30, 1850, first payment, and it was finished in 1861. The amount invested after January 1, 1861, was $90,147.62.

By Mr. Holt:

Q. My next question, Mr. Hillman, is what do you mean by the item on the main exhibit in the last column $625,348.08?

A. That is the price which was obtained by the State of Virginia when they sold the Blue Ridge road to the Virginia Central.

Q. When was that sale made?

A. April 1, 1870.

Q. What was used in payment, bonds, cash or what?

A. Bonds for $574,921.48, accrued interest on these bonds of $50,417.64, and a check for $8.96, making a total of $625,348.-08.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What page is it?

A. Page No. 20.

Q. Will you please file this exhibit as a part of your deposition, marking it Defendant's Exhibit No. 3, 1863, Asset C-5; Asset D-20.

A. I file it, so marked.

The paper was admitted in evidence and marked Defend-

ant's Exhibit No. 3, 1863, Asset C-5; Asset D-20, September 2, 1914, C. B.

Q. What books did you examine in making up this underlying or explanatory exhibit?

A. Ledger B., Internal Improvement Fund, folio 187; Journal D. Internal Improvement Fund, State of Virginia, folio 171.

Q. Is that exhibit true?

A. Yes, sir, it is.

Q. As appears from the books examined by you?

A. Yes, sir.

Q. Turning now to this supporting exhibit, I find that you have the same amount, $625,348.08, that appears on the main exhibit, and that you have added an item thereto that does not appear on the main exhibit of $5,833.81, making an aggregate of $631,201.89. Please explain the same?

A. The item of $5,833.81 belongs to our Schedule D which is an accrued dividend and does not appear in Schedule C, which relates to the sale of stocks and bonds and holdings of the company.

By The Master:

Q. While you claim you are entitled to the benefit of it, you claim it under another schedule and not this schedule?

A. Yes, sir.

Q. Does anything appear on the books that shows these transactions where the consideration paid to the State for bonds, that indicates the issuance of bonds that were involved, or is the entry just simply bonds?

A. The entry is generally coupon bonds or registered bonds with the interest.

Q. Does the entry refer to the class of bonds, I mean by that the purpose for which they were issued, or anything of that sort, or just simply coupon bonds or registered bonds?

A. Coupon bonds or registered bonds. Sometimes the date of issue of those bonds is mentioned, and they could probably be traced back by that.

Q. But that is not universal?

A. No, sir.

Q. That is, that is not true of every entry.

A. It is not. I suppose, your Honor, by going back to the bond record where individual bonds are mentioned, and picking out that date, covering the several thousand numbers which would be there, that it could be obtained.

Q. That is, with a sufficient amount of work they could probably be traced?

A. Yes, sir.

Q. So that you would be able to tell from what issues they were made?

A. Yes, sir.

Q. But there is nothing in the books that gives that information so far as the entries are concerned?

A. No, sir, now and then there might be an isolated case where we could.

By Mr. Holt:

Q. The sixth item on the main exhibit is Alexandria, Loudoun & Hampshire Railroad Company stock, $1,017,248 Please explain that sum.

A. That is the amount of the money which the State of Virginia had invested in the stock of the Alexandria, Loudoun & Hampshire Railroad Company, and there is no record, as far as I know, to show how many shares of that stock were obtained by the state for this expenditure of money.

Q. What does the same item mean in the first column of the main exhibit?

A. It means that that was considered the value on June 20, 1863, it being carried on the books of the State of Virginia at that sum.

Q. What is the meaning of the item, $50,862.40 in the last column?

A. It means that this stock was disposed of at $5. a share on November 25, 1867.

Q. To whom? Who was the purchaser?

A. Bought by the Alexandria, Loudoun & Hampshire Railroad Company.

By The Master:

Q. By what?

A. By the railroad company itself.

Q. The same company purchased its own stock?

A. Yes, sir.

By Mr. Holt:

Q. Have you prepared an exhibit, a supplemental exhibit, in support and explanation of this item?

A. Yes, sir, I have.

Q. What page is it marked, please?

A. Page 21.

Q. Will you file it as a part of your deposition and mark it Defendant's Exhibit No. 3, 1863, Asset C-6?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-6, September 2, 1914, C. B.

Q. In making up this supporting exhibit what record or books, if any did you examine? Instead of enumerating those I will change that and put it in this way. Does this supporting exhibit show upon its face the books and records examined by you in making up the same?

The Master: And why don't you say, and are the amounts correctly stated, and that will cover it all.

The Witness: Yes, sir, it does.

By The Master:

Q. And the amounts are correctly stated?

A. Yes, sir.

By Mr. Holt:

Q. The seventh item upon the main exihibit 3 is Winchester & Potomac Railroad Company loan, $83,333.33; and on that exhibit it is set down as of the same value as of June 20, 1863, and in the last column as having been paid in full. Is that correct?

A. That is correct.

Q. Have you prepared an exhibit in demonstration and explanation of this item?

A. Yes, sir, I have.

Q. What page is it, please?

A. Page No. 22.

Q. Will you file this supporting exhibit as a part of your deposition and mark it Defendant's Exhibit No. 3, 1863, Asset C-7?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-7, September 2, 1914, C. B.

Q. Does this supporting exhibit upon its face show the books and records examined by you in making up this exhibit?

A. Yes, sir, it does.

Q. And does the exhibit correctly represent those books and records?

A. Yes, sir.

By The Master:

Q. How was that loan paid, in cash or bonds?

A. Bonds. Your Honor, there is no record of whether that was a bond or cash received; it was received by the Treasurer of the Commonwealth, and no statement made as to whether it was money or bonds.

Q. Is there no cash book extant?

A. There is no cash book, it was journal entry, Journal D. September 30, 1862.

Q. Is there any cash book covering that period? Is there or is there not?

A. There is a cash book, yes, sir, for that period.

Q. What does the cash book show as to that item?

A. I cannot say, but I will know in a few minutes.

Q. Look it up. The cash book ought to determine whether it was cash or bonds.

A. Yes, sir.

Mr. Holt: When we get through all of this we are going to ask a general question about that matter of bonds and cash.

The Witness: I find it was paid in bonds.

By Mr. Holt:

Q. The next item upon the main exhibit No. 3, 1863, is No. 8, Vrginia & Tennessee Railroad Company, Loan, and the item is $800,000. Please explain it.

A. That is the face value of a loan made by the State of Virginia to the South Side Railroad Company.

Q. Is it the South Side now or the Virginia & Tennessee?

A. I beg pardon, the Virginia & Tennessee.

Q. When was that loan made, Mr. Hillman, if you know?

A. It was made prior to January 1, 1861.

Q. We find the same item in the first column, $800,000., on the main exhibit. What does that mean?

A. It means that this loan was taken at its face value, being so carried upon the books of the State of Virginia.

Q. What does the item $686,685, upon that subject in the last column mean?

A. It means that that was the amount for which the loan was finally disposed of.

Q. Do you mean settled or paid?

A. Paid, yes, sir.

Q. To whom?

A. Paid to the State of Virginia by the Virginia & Tennessee Railroad Company.

Q. When was it settled or paid?

A. There was a payment of $200,000, made on it on June 19, 1863, reducing the loan from $1,000,000 to $800,000; on June 30, 1863 a further cash sum of $300,000 was paid; on August 6, 1863, $100,000 was paid; on August 7, 1863, $100,000; on September 11, 1863 there was $186,685 paid. There were no further payments made, as far as we can find on account of this loan.

Q. Have you prepared an exhibit in support of this item?

A. Yes, sir, I have.

Q. What page is it?

A. Page 24.

Q. Page 23 here is a statement of loans and interest, Virginia & Tennessee Railroad Company and page 24 is the same thing.

The Master: Page 23 does not seem to fit in very well.

By Mr. Holt:

Q. Please explain what is the difference between page 23 and page 24, composing the underlying exhibits. One relates to one subject and the other to another, does it not?

A. Yes, sir.

Q. What are they?

A. Page No. 23 relates to the payment of the interest on the loan of this million dollars, of which the $800,000, was a part; and page 24 relates to the payment of the principal.

Q. Very well. Now then, in support of this item you have prepared two exhibits, one relating to interest and one relating to principal; is that so?

A. Yes, sir.

Q. Will you please file the one relating to interest on this loan as Defendant's Exhibit No. 3, 1863, Asset C-8 and Asset D-7.

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-8 and Asset D-7, September 2, 1914, C. B.

Q. Will you now likewise file the second supporting exhibit, page No. 24, relating to the principal of this loan, and mark it Defendant's Exhibit 3, 1863, Asset C-8 and Asset D-7.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-8 and Asset D-7, September 2, 1914, C. B.

Q. Do these two supporting exhibits last mentioned set

forth the records and books examined by you in making up the same?

A. Yes, sir, they do.

Q. Do they correctly represent those books?

A. Yes, sir.

By The Master:

Q. As I understand it all payments on this loan were cash payments?

A. Yes, sir.

Q. Do the books show anything as to whether or not this loan was adjusted for the final payment of $186,685, leaving the total payments on account of principal at $686,685?

A. They show no such adjustment.

Q. The account of that transaction stops with that item?

A. Yes, sir.

Q. And that leaves a balance due on the principal?

A. Yes, sir.

Q. Which apparently has not been paid?

A. Yes, sir, and in addition to that I call your attention to the foot note on page 24, wherein I state that the loan was never paid in full, but the unpaid balance was turned over to the A. M. & O., together with other items of the Southside Railroad, Virginia & Kentucky Railroad and Norfolk & Petersburg Railroad, for four million dollars; see our Exhibit 6 of Class F.

By Mr. Harrison:

Q. What was the amount of the unpaid balance?

A. From this statement in the Journal entry where this statement is made it does not show what the unpaid balance was.

Q. Does your exhibit show?

A. It does not show any unpaid balance.

Q. Don't you show how many payments were made?

A. Yes, sir.

By The Master:

Q. The computation is not made on the schedule?

A. That is what I mean.

Q. Where do you find the account of the balance that appears to be due on this loan that entered into this aggregate of four million dollars that you have just been speaking of? Do you find that on the books of Virginia somewhere?

A. Yes, sir, we find the mention of the balance of the loan made, but no amount mentioned, it simply mentions turning over Vrginia's interest in this loan to the A. M. & O., but not mentioning any value.

Q. What is the A. M. & O.

A. The Atlantic, Mississippi & Ohio Road.

Q. Well, is there anything anywhere that shows the items which aggregated the four million dollars?

A. Yes, sir.

Mr. Holt: That is in a separate schedule, your Honor, that A. M. & O.

Q. Then when we come to that that will show how the various items are accounted for?

A. Yes, sir.

Q. And that ought to leave a balance due on this loan?

A. Yes, sir, but there are no figures representing what that balance was; it simply turns over all the State of Virginia's interest in the loan, without mentioning any amount.

Q. Yes, but there are other details mentioned which go to make up the four millions?

A. Yes, sir, but the aggregate of the other details mentioned amounted to considerably more than four million dollars, and four million dollars was taken in settlement.

Q. A lump sum adjustment?

A. Yes, sir.

The Witness: There was an act passed on February 22, 1866, to relieve this road from the amount that they owed the State, which then amounted to about $146,000, by the payment of $83, 333.33, in State bonds.

The Master: That is the Winchester proposition?

The Witness: Yes, sir.

By Mr. Holt:

Q. The next item upon the main exhibit is No. 9, South Side

Railroad Company loan, $800,000, is the first sum mentioned. Please explain it, Mr. Hillman?

A. That was the face value of the loan by the State of Virginia to the South Side Railroad Company prior to January 1, 1861.

Q. What is the meaning of the same item in the first column of the main exhibit, $800,000.

A. That this loan was carried on the books of the State of Virginia at face value of $800,000.

Q. What is the meaning of the note, turned over to Atlantic, Mississippi and O., on this subject in the third column?

A. That the A. M. & O. bought this loan as well as other items when they paid $4,000,000., to the State of Virginia for their holdings in the Virginia & Tennessee, South Side, Norfolk & Petersburg, and the Virginia & Kentucky Road, which Virginia & Kentucky Road was not mentioned here.

By the Master:

Q. You refer to that transaction when they gave a second mortgage on the road for $4,000,000?

A. Yes, sir.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this item No. 9?

A. Yes, sir, I have prepared a sub-statement showing the interest, the settlement of the interest upon the above loan.

Q. Of $800,000?

A. Of $800,000, yes, sir.

Q. Is it page No. 25?

A. It is, yes, sir.

Q. Will you be kind enough to file it as part of your deposition, marking it Defendant's Exhibit No. 3, 1863, Asset D-8; Asset C-9?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset D-8; Asset C-9, September 2, 1914, C. B.

Q. Does that supporting exhibit indicate upon its face the books and records examined by you in making up the same?

A. Yes, sir, it does.

Q. Does it correctly and truly set forth the condition of the books and records so examined by you?

A. Yes, sir.

Q. No. 10 on the main exhibit is Norfolk & Petersburg Railroad Company loan—

The Master: On page 25, these items of payments are noted in detail here as payments of interest?

The Witness: Yes, sir.

The Master: And payments in cash?

The Witness: Payments of interest in cash, yes, sir.

Q. No. 10 on the main exhibit is Norfolk & Petersburg Railroad loan, $300,000. What do you mean by that?

A. I mean that on June 20, 1863, the Norfolk & Petersburg Railroad Company had a loan from the State of Virginia of $300,000. It was not discovered apparently by the State of Virginia until 1870 that part of this investment in the Norfolk & Petersburg Railroad was stock and part of it was a loan. The entry was then made separating the two and relating at length that such an error had been made on its books.

Q. The $300,000 represents the loan when separated from the stock, does it?

A. Yes, sir.

Q. What does the item $137,000 in that connection mean in the first column?

A. It means that of this $300,000 loan there had been paid in cash $137,000 prior to the date of December 22, 1870. This appears from the Journal entry wherein the $4,000,000 is taken up as the purchase price of these four roads and shows that there was a balance outstanding in this road of that date of $168,000. and that $137,000 had been paid. It is the only evidence of value we have of that loan at the date June 20, 1863, or how much it was disposed of for outside of its inclusion in the lump sum of $4,000,000 and therefore the sum of $137,000

is entered as its value June 20, 1863, and disposed of for the same amount.

By the Master:

Q. Was there a regular account of the State of Virginia with this road dating back to the time when they appear to have invested in the sum of $1,499,970?

A. Yes, sir.

Q. Is there anything about that account that indicates how they ascertained that $300,000 was a loan and not an investment in stock?

A. No, sir, nothing except this Journal entry, which was not made until 1870.

Q. $137,000 in cash had been paid in meanwhile, which must have thrown the account out of joint a good deal.

Mr. Harrison: Why do you speak of that entry as a discovery?

The Witness: I mean that the State of Virginia did not discover the fact that they had a loan outstanding until 1870, or if they did discover it, no record of it was made on their books until that date when the Journal entry states that they had discovered that $300,000 was a loan.

Mr. Holt: I expect the underlying exhibit will give that history.

Q. On that very date the $137,000 was probably paid in I infer from what you say about the books.

A. Yes, sir; I have an inference that it was paid in from the fact that only $163,000 of that was outstanding when they turned it over to the A. M. & O.

Q. Was that in 1870?

A. Yes, sir.

Q. At the very time that the entry shows that there was a loan of $300,000 it also shows the facts from which you infer that the loan was only $165,000?

A. No, sir, there is no entry on the books to show that fact; there is only the inference that they disposed of the entire amount for $4,000,000.

Mr. Holt: All he can do, your Honor, is to give the facts for whatever your Honor may consider them to mean hereafter.

Q. I understand the fact is that there is a Journal entry in these records that shows that in making this mortgage of $4,000,000 there also among other things was taken into account $163,000.

A. Yes, sir.

Q. That was said to be a loan to this Norfolk & Petersburg Railroad?

A. Balance of the loan, yes, sir.

Q. And that same entry is the first entry that indicates the existence of a $300,000 loan, am I right about that?

A. No, sir. There is an entry on the books transferring from the stock of the Norfolk & Petersburg to a loan of the Norfolk & Petersburg $300,000.

Q. Does that antedate this general entry upon which the $4,000,000 transaction was predicated, and if so by how much?

A. It is made the same date.

Q. On the same day?

A. Yes, sir.

The Master: Of course we have to take it for what it is worth.

By Mr. Holt:

Q. Have you prepared, Mr. Hillman, an exhibit in support and explanation of this loan—

The Master: I think we had better have those entries copied and put in the record. You can simply say "I make the entries above referred to part of my testimony and put them in," so that when we have occasion to look for it we can see just exactly what the entries show. Put in the date and everything.

The Witness: Your Honor, I will have copies of those entries made and filed.

The Master: Just simply say "I make those entries part of my testimony," and then let them go right in here.

By Mr. Holt:

Q. My question is whether you have prepared an exhibit explaining this loan to the Norfolk & Petersburg Railroad Company or have you prepared a supporting exhibit covering

the loan and stock; the stock we have not inquired about yet?

A. I have prepared an exhibit covering the loan and the stock.

Q. Then before coming to that Exhibit I will ask you about the stock of the Norfolk & Petersburg Railroad Company, No. 10, Main Exhibit. What is the meaning of the item $1,199,970 in that connection?

A. It means that that is the amount of the money which the State of Virginia invested in Norfolk & Petersburg Railroad stock.

Q. Distinct from the $300,000 loan or included in the $300,000 loan?

A. Distinct from the $300,000 loan.

Q. What is the meaning of the same item in the first column of the main exhibit?

A. It means that this was carried on the books of the State of Virginia at $1,199,970. I would like to say here that they had an even amount of stock of $1,200,000 for an investment of $1,199,970.

Q. What is the meaning of the note in the last column, turned over to A. M. & O.?

A. It means that this stock was turned over to the Atlantic, Mississippi & Ohio Railroad Company.

Q. In the $4,000,000 transaction?

A. In the $4,000,000 transaction.

Q. Does page No. 26 represent the exhibit in support of the loan and stock of the Norfolk & Petersburg Railroad?

A. Yes, sir, it does.

Q. Will you please file it as part of your deposition and mark it Defendant's Exhibit No. 3, 1863, Asset C-10 and D-9.

A. I so file it, marked as requested.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-10; Asset D-9, September 2, 1914, C. B.

Q. Does this supporting exhibit last referred to show upon

its face the books and records and official documents examined by you in making up the same, and is it correct?

A. Yes, sir, it does and it is.

Q. The next item upon the main exhibit is No. 11, Roanoke Navigation Company stock. The item is $80,000. Please explain it?

A. It represents the amount of the Roanoke Navigation stock held by the State of Virginia June 20, 1863, par value and amount expended to acquire the stock.

Q. What is the meaning of the same item in the first column on the main exhibit?

A. It means that it was carried upon the books of the State of Virginia at par on $80,000.

Q. As of what date?

A. June 20, 1863.

Q. What is the meaning of the items $3,832 in the item marked "Disposed of for?"

A. It means that this stock was disposed of for the amount of $3,832 face.

Q. Who sold it?

A. It was sold by decree of the court.

By The Master:

Q. What sort of a proceeding was it, a dissolution of the company?

A. What is it?

Q. Was it a dissolution of the company or what was it?

A. Yes, sir.

Q. A dissolution of the company?

A. A dissolution of the company.

Q. And the result of the dissolution and the sale of all the stock was a distribution to the State of that sum of money?

A. Yes, sir.

Mr. Harrison: What was the amount?

Mr. Holt: That was the amount, Mr. Harrison, realized by decree of the court for Virginia's holding in the company.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the number of the page?

A. 27.

Q. Will you file it as a part of your deposition and mark it Defendant's Exhibit No. 3, 1863, Asset C-11.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-11, September 2, 1914, C. B.

Q. Will you state whether or not this exhibit shows upon its face the books, records and official documents examined by you in making up the same, and also state whether or not it is true.

A. Yes, sir.

Q. The next item upon the main exhibit is No. 12, Alexandria Canal Company stock. The item is $272,000. What does it mean?

A. It means that the State of Virginia had invested $272,000 in the Alexandria Canal Company stock, and had received that amount par, $272,000, of that stock.

By The Master:

Q. Do you mean it shows that they bought $272,000 worth at par?

A. Yes, sir.

By Mr. Holt:

Q. Did she own this stock on June 20, 1863?

A. Yes, sir.

Q. What is the meaning of the same item on the first column of the same exhibit?

A. It means that that was the par of the stock.

Q. Did she carry it upon here books at that valuation?

A. And was carried upon her books at $272,000, the par, on June 20, 1863.

Q. What is the meaning of the item in the last column, $764,47?

A. It means that in 1887 the Orange & Alexandria stock was disposed of for $816., and that on the same—

Q. You do not mean Orange & Alexandria, do you?

A. I beg your pardon, and that the Alexandria Canal Company stock was disposed of for $816., and that the costs of this sale, which were entered upon the same memorandum, amounted to $51.53, leaving a net receipt of $764.47.

Q. To the State of Virginia?

A. To the State of Virginia.

Q. Now, the date of that sale was what?

A. July 1, 1887.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the number of the page, please, sir?

A. Page 28.

Q. Will you file the same as a part of your deposition, marking it Defendant's Exhibit No. 3, 1863, Asset C-12?

A. Yes, sir, I so file it.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-12, September 2, 1914, C. B.

Q. Does this exhibit show upon its face the books, records and official documents examined by you in making up the same, and does it truly represent them?

A. Yes, sir.

Q. The thirteenth item on the main exhibit is Upper Appomattox Company stock. The item is $66,500. What does that represent.

A. That represents the amount of the Upper Appomattox Company stock bought by the State of Virginia at par, $56,500.

Q. Did she own that on the 20th day of June, 1863?

A. Yes, sir.

Q. What does the same item mean in the first column of that exhibit?

A. It means that it was carried on the books of the State of Virginia at par, $56,500, on June 20, 1863.

Q. What is the meaning of the item in the third column, $16,144.26?

A. It means the price which was obtained for this stock when sold by the State of Virginia.

Q. When was the sale made?

A. Partly in 1875, partly in 1881, and the final payment made in 1884.

Q. Well, those were the payments, but when was the sale made, or were there three sales?

A. The sale was made in 1875, with the first payment, and then the payments dragged along until 1884 before they were finally settled.

By The Master:

Q. To whom was it sold? No matter, if you cannot remember.

A. It was sold to its ownself, it was bought by the Upper Appomattox Company.

Q. Well, the corporation bought its own stock?

A. Yes, sir.

By Mr. Holt:

Q. How did it pay for the same?

A. On February 24, 1875, there was a cash payment made of $3,000; on January—— date omitted——1881, there was a payment made of $2,280.

By The Master:

Q. Cash?

A. Cash.

The Witness: And on July 8, 1884, there was a payment made of $10,500 in Virginia coupon bonds, of $300 in Virginia registered bonds, and $64.26 in fractional certificates of Virginia bonds.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the number of the page, please?

A. Page No. 29.

Q. Will you file this supporting exhibit and mark the same Defendant's Exhibit No. 3, 1863, Asset C-13?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-13, September 2, 1914, C. B.

Q. Does this supporting exhibit indicate upon its face the books, records and official documents from which you made up the same?

A. Yes, sir, it does.

Q. Is it a true exhibit?

A. Yes, sir.

Q. The fourteenth item upon the main exhibit is Dismal Swamp Canal Company stock. The item is $190,000. Explain it, please.

A. This is the amount of money that Virginia invested in the Dismal Swamp Canal Company stock at par, $190,000.

Q. Was she the owner of that stock still on the 20th of June, 1863?

A. Yes, sir.

Q. What is the meaning of the same item in the first column upon the main exhibit?

A. That on June 20, 1863, this stock was carried at par on the books of the State of Virginia.

Q. In the last column what is the meaning of the item, $9,935.99?

A. It means that in 1868 the State of Virginia sold its entire holdings in the Dismal Swamp Canal Company to that company for $9,935.99 cash.

Q. What was the date of that sale—I believe you did give me the year, though, 1868.

A. Yes, sir, it is on pages 238 and 241 of the Journal N of the Board of Public Works, but unfortunately the date has been omitted, the exact month and date.

Q. But the year is given?

A. The year is given and the pages are given.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number of it?

A. Page No. 30.

Q. Will you file the same as a part of your deposition, marking it Defendant's Exhibit No. 3, 1863, Asset C-14.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-14, September 2, 1914, C. B.

The Witness: I call the attention of the Court to the fact that the Board of Public Works, after receiving this money, invested it in Virginia bonds, and turned those into the sinking fund in lieu of the cash, as will appear from an investigation of the foot note upon the exhibit which I have just filed.

Q. Do you mean the underlying exhibit, the supporting exhibit?

A. Yes, sir.

Q. Page 30?

A. Page 30.

Q. It is explained there?

A. Yes, sir.

Q. Does this supporting exhibit indicate upon its face the books, records and official documents from which you made up the same?

A. Yes, sir.

By The Master:

Q. And is it true?

Mr. Holt: I was going to ask him.

By Mr. Holt:

Q. Did you truly make it up?

A. Yes, sir.

Mr. Holt: I am a little awkward on that, your Honor. I beg your pardon.

Q. The fifteenth item upon the main Exhibit 3 is loan to Washington College. The item is $2,000. What does it mean?

A. It means that upon June 20, 1863, Washington College owed the State of Virginia $2,000 on account of moneys advanced to that college.

Q. When were they advanced to the college?

A. They were advanced prior to 1861, and the loan had been reduced from $4,000 to $2,000.

Q. On what date?

A. Between 1861 and 1863; I do not know the dates.

Q. What is the meaning of the same item in the first column of the main exhibit?

A. It means that this loan was carried on the books of Virginia at its face value, $2,000.

Q. What is the meaning of the same item in the last column?

A. It means that the loan was finally paid on January 1, 1896, in full, in the meantime having paid interest.

By The Master:

Q. In the meantime having paid the interest?

A. Yes, sir.

By Mr. Holt:

Q. How was this payment made, in cash or in securities of any kind?

A. In money.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number of it?

A. Page 31.

Q. Will you file the supporting exhibit and mark it Defendant's Exhibit No. 3, 1863, Asset C-15, Asset D-11?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-15, Asset D-11, September 2, 1914, C. B.

Q. Does this exhibit show upon its face, books, records, and official documents from which you made up the same, and is it true?

A. Yes, sir.

Q. The sixteenth item upon the main exhibit is Richmond Academy bonds, and the item is $400. Tell us what it is.

A. It is an investment of the State of Virginia in the bonds of the Richmond Academy at par, $400, or at face value.

Q. Did she own these bonds on the 20th day of June, 1863?

A. Yes, sir.

Q. What is the meaning of the same item in the first column of the main exhibit?

A. That the bond is carried at its cost, par, or face value, on the books of Virginia, June 20, 1863.

Q. What is the meaning of the same item in the last column?

A. That on February 5, 1896, the State of Virginia received the par of this bond, it having in the meantime paid the interest regularly.

By The Master:

Q. In cash?

A. In cash.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number?

A. Page No. 32.

Q. Will you file the same as a part of your deposition marking it Defendant's Exhibit No. 3, 1863, Asset C-16, Asset D-12?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-16, Asset D-12, September 2, 1914, C. B.

Q. You may now tell us whether or not this exhibit indicates upon its face the books, records, and official documents from which you made it up, and whether or not it truly represents these documents?

A. Yes, sir.

.....

Q. The 17th item upon the main exhibit is claim against the United States Government; the item is $298,369.74. Please explain it.

A. This is the principal of a loan made by Virginia to the United States Government as of the date of July 1, 18—.

Q. What is the meaning of the same amount set down in the first column of the main exhibit?

A. It means that the value of that loan on June 20, 1863 was $298,369.74.

Q. Do you mean that was the principal of the loan as of that date?

A. Yes, sir.

Q. As shown upon the books of Virginia?

A. No, sir, it does not show upon the books of Virginia. There is no place that it shows on the books of Virginia.

By The Master:

Q. It does not have any account with that loan?

A. There is no record that we can find of that loan on the books of Virginia.

By Mr. Holt:

Q. Where then do you get your authority for this, Mr. Hillman?

A. From a record of the settlement of this claim with the United States Government, which is on file in the Second Auditor's office in a particular file kept in his vault.

Q. Of Virginia?

A. The Second Auditor of Virginia, yes, sir. And the

settlement is confirmed by the papers which we have here this morning, a statement from the Assistant Treasurer of the United States—

Q. Do you mean the two certificates I offered in evidence this morning, made by the Assistant Treasurer of the United States?

A. Yes, sir.

Q. That relates only to principal, as I understand, this amount?

A. Yes, sir.

Q. What is the meaning of the same amount in the last column?

A. It means that the State of Virginia received $298,369.74 for the face of this loan.

Q. When was it received?

A. It was received in 1903, but the transaction was dated back to 1894.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number?

A. Page No. 33.

Q. Will you file this supporting exhibit and mark it Defendant's Exhibit No. 3, 1863, Asset D-13, Asset C-17?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset D-13, Asset C-17, C. B.

Q. Does this exhibit show upon its face the documents, records and books upon which it is based, and does it truly represent the same?

A. Yes, sir, it does.

Q. The next item upon the main exhibit is No. 18, claim against Selden, Withers & Co., and it seems to be $132,842.74. Please explain it?

A. This is the amount which was collected from the firm of Selden, Withers & Co., which had failed and which at the time of the failure had had in their hands a large amount of Virginia securities for disposal, and also had disposed of a large amount of securities which were unaccounted for; and

these were the relics that they were able to collect on account from their various assets and assignments for their debt after 1861.

Q. When was this collection made by the State of Virginia?

A. It was made in the years from 1866 on to 1891, at various dates.

Q. Have you prepared an exhibit in confirmation and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number?

A. Page No. 34.

Q. Will you file this supporting exhibit as a part of your deposition, marking the same Defendant's Exhibit No. 3, 1863, Asset C-18?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-18, September 2, 1914, C. B.

Q. Tell us now whether or not this exhibit indicates upon its face the records, books and public documents from which you made it up, and whether or not it truly represents the same.

A. It contains the pages and references to each document from which the amounts were drawn. Whether or not it represents all that was received from this firm on account of the debt I am unwilling to say, but I am willing to state that at least this much was received, and it is all that I could trace.

By The Master:

Q. Well, it represents all that you could find on the books?

A. All that I could find, yes, sir. May I call your attention—

Q. Is there anything on the books to show the total amount of the indebtedness of the stock broker's concern to the State?

A. No, sir. May I call your attention to the fact that some of these accounts which were received in Marietta & Cincinnati stock were converted into cash, and afterwards the cash invested in State bonds.

By Mr. Holt:

Q. What State bonds?

A. The State bonds of Virginia, sir; and that is shown in a foot note on this Page 24, and explains how the item of $152,023.04 claimed in our supplemental answer was originally determined.

Q. Did you mean page 24 or page 34?

A. 34.

Q. The last item on the main exhibit is No. 19, Richmond, Fredericksburg & Potomac Railroad Company, dividend bonds. The item is $122,464. Please briefly explain that item.

A. This is the amount of bonds issued by the Richmond, Fredericksburg & Potomac Railroad Company in lieu of cash dividends and is called not only a dividend bond but is sometimes called a certificate of debt of the Richmond, Fredericksburg & Potomac road. This is the amount which the State of Virginia received on its account, $122,464.

By The Master:

Q. Then they carried it on their books at that sum, and they still have it on, is that right?

A. Yes, sir, and it has paid interest and dividends ever since.

Q. Do you mean to say that they have regularly paid interest on the dividend bonds?

A. Yes, sir.

Q. And are they still held in the treasury of the State of Virginia? I see your schedule here says they are on hand.

Mr. Holt: He is looking for the answer to your question.

A. They are not on hand. They were sold.

Q. Explain it?

A. It was paid on July 1, 1863.

By Mr. Holt:

Q. You say "it;" do you mean they, the bonds?

A. Yes, sir, the bonds, or the certificate of debt.

By The Master:

Q. Then what you mean by on hand is that they were on hand June 20, 1863, is that it?

A. They were on hand, but the notation says on my exhibit that they are on hand; they are not; it is an error in that second column.

Q. Sold or paid—were they paid?

A. Yes, sir, paid, as my supporting exhibit or sub-exhibit shows that sale.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this last item, No. 19?

A. Yes, sir, I have.

Q. What is the page number?

A. Page No. 35.

Q. Will you file the supporting exhibit and mark the same Defendant's Exhibit No. 3, 1863, Asset D-6; Asset C-19?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset D-6; Asset C-19, September 2, 1914, C. B.

Q. Does this exhibit indicate upon its face the books, records and documents from which you made it up and have you truly made it up therefrom?

A. Yes, sir.

Mr. Holt: Now, your Honor, I believe that finishes that omnibus and is at least one half of all these exhibits.

The Master: That would seem to be, yes.

Mr. Holt: Now, if your Honor is willing to let us go, we will be glad to do it.

The Master: We will adjourn in a few moments to tomorrow at 10 o'clock. It may be that I ought to make a sug-

gestion something like this. In the first place, I am offering no opinion one way or the other on anything that is before me; but there is a large mass of detail material that has been placed in here by the State of West Virginia and as to which they contend that their evidence either does show or will ultimately show or tend to show a certain condition as to value. I would expect the State of Virginia, so far as those contentions can be answered by available proof, to meet each one of the items. If it should happen to turn out that there is an item suggested by West Virginia as to which there may be some evidence tending to establish a certain value and there is no countervailing testimony, it may place me in a position where I would have to find in accordance with whatever testimony might be submitted by them. I only make this suggestion with the object of having each side be careful as to all these items, whatever they may be. I cannot carry these in my head, and if it should turn out that some of these items do not happen to be certain, of course the parties must bear in mind that the Master may have to take into account the case exactly as he finds it, even though the evidence may not be very strong, if there does not happen to be anything in opposition. The parties must understand that the Master may be in a position where he may have to take what he finds, and report accordingly.

Mr. Harrison: We expect to deal with each item.

The Master: Then we will suspend until tomorrow at 10 o'clock.

The Witness: This cash that I have marked on hand here will change the total of this omnibus exhibit, and I will have Mr. Leeds of my force just make the changes.

The Master: Certainly. Make the changes on the schedule which you submit to the stenographer and make a like change upon the exhibits that they have, so that they will be in a position to check the thing up accordingly.

I think we have made very good progress today.

Adjourned to September 3, 1914, at 10 A. M.

BEFORE THE MASTER

Richmond, Va., September 3, 1914.

Present the same counsel as on yesterday.

Mr. Holt: Your Honor, in looking at page 379 of the typewritten report of the evidence, I find that pages 9, 10 and 11, constituting one of the underlying exhibits inquired about yesterday, were proven but not filed and marked. It seems that we came to the point where Mr. Hillman stated that they correctly represented the books of the State of Virginia, and then we became diverted for some reason or other, and they were not filed.

The Master : If there is no objection the stenographer can insert right there, wherever you wish it, the statement that they are filed, or that they were filed and marked. This correction need not appear this morning in the record, but the record will be corrected in accordance with that suggestion.

Mr. Holt: They should be marked Defendant's Exhibit No. 3, 1863, Asset C-1, Asset D-1, consisting of sheets 1, 2 and 3.

The papers were admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-1, Asset D-1, three sheets, September 2, 1914, C. B.

Mr. Holt: We have also discovered that page 13, being one of the underlying exhibits, was not filed, and we desire now to file it and mark it Defendant's Exhibit No. 3, 1863, Asset C-2, Asset D-2.

The Master: We will have that filed and have it appear in the transcript in the place where it ought to have been put in. When the case is printed, Mr. Harris, you will look out for that.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-2, Asset D-2, September 2, 1914, C. B.

The Master: I understand Mr. Hillman wants to make some change in some schedule.

Mr. Hillman: They have all been changed.

Continuation of the direct-examination of
CONWAY W. HILLMAN

By Mr. Holt:

Q. Is there any explanation, Mr. Hillman, that you desire to make or any correction relative to the exhibits introduced yesterday?

A. No, sir. That correction of which I spoke will appear in the exhibits which we are about to take up, and I have corrected the copies.

The Master: My attention is called this morning to the fact that so much of the case as is already printed, involving several hundred pages here, is of course still in type, and with the capacity of the office here it would be a convenience to them to be able to distribute this type as soon as may be. In order to do that they will have to strike off their final number of copies and then distribute this type and keep going on. They are in a position where they can do that provided that this record as we have it now is satisfactory to both sides. I would like to inquire whether or not you have made such examination of it upon both sides that we can now tell the printer that he can distribute this type after he has printed the required number of copies, and if not—how is it from Virginia? Have you examined so that you are satisfied that the record is all right?

Mr. Harrison: I did not examine it with a view of anything except refreshing my mind about the matter. I have been over a good part of the report that was handed to me last night.

The Master: Then before it is distributed you prefer to have somebody look at it carefully?

Mr. Anderson: I observed some typographical errors in the printing.

The Master: There are several changes to be made, that is, changes that have already been called attention to are to be made. If with those changes made the record is agreeable to both sides, it would be a convenience to the printer to let him print his complement of copies up to that stage and distribute his type and go on. I suppose he has not type enough without embarrassing him to keep all standing. If it is agreeable I will simply say to Mr. Harris that when the corrections that have been suggested are made the record may be considered as final and he may print the final hundred copies and distribute his type and then be prepared to go on with the balance of the case. Is that agreeable? Of course the suggestion is that if either side desire additional copies in addition to the one hundred they will notify the printer so that he will print them. I thought one hundred would be all that we would need.

Mr. Anderson: I would like to examine the record a little more critically than I have.

Mr. Holt: I would rather the printer would hold his type for a little while yet, for this reason, there are some additional corrections to be made, not of a formal nature but of a substantial nature. Mr. Hillman has called my attention to them. We will try and accomplish them to-day so that the type may be used.

The Master: We will let the question of distributing the type suspend until to-morrow morning. Of course I do not wish to push you unduly, but other things being equal it would be great convenience to the printer if we could let him distribute his type. So the understanding will be if possible to-morrow morning both sides will report such changes as they desire to be made.

Mr. Anderson: As to any variations in the schedules, we will have to leave that to our friends of West Virginia.

The Master: Whatever either side does, the record should show and our attention be called to it in open session and if there is any objection to any correction, of course that correct-

tion must not be made until each side has the opportunity to make examination.

Mr. Holt: Of course, your Honor, any corrections that we will undertake to make will be made upon the witness stand.

The Master: Certainly. Subject to a substantial controversy about some item, what I intend is to have the original record, with these corrections that may be suggested, printed, so that the record will not disclose the fact that any errors have been made. There is no reason why that should not be done. There is no reason why the record should be encumbered with immaterial changes or immaterial errors. We will have one clean record when we get through, unless something comes up which anybody thinks should be changed on the record.

Mr. Anderson: I have to report to your Honor that in going over the typewritten copy of the proceedings of yesterday, the representative of West Virginia and myself were not able to agreee as to what might be eliminated. It seems to me that we might eliminate a large mass of that report containing the colloquies between the Master and counsel, as to immaterial questions, because the court will never consider them for a moment, as to the mode of procedure here, and matters of that kind. Deferring to the wishes of our friends from West Virginia I have not insisted on striking it out, but I think it is my duty to report the facts to the Master.

The Master: I am not going to enter into the question of whether it ought to go out or whether it ought to stay in. Of course I am required to report this record. I cannot perhaps anticipate in advance just what may be material on one side or the other. My own view of it is that you ought to agree among yourselves and make the record as concise as possible, but I shall expect that you agree on that, because I am not going to be in a position when I get through with this case of being criticised by one side or the other for having eliminated anything from the record which either side may think would shed some light on the controversy. This need not go into the record.

(The Master then made some further observations which were not recorded by the stenographer.)

Mr. Hogg: I think we shall have no trouble about agreeing what ought to go in and what ought to come out.

Mr. Holt: Your Honor, the reason why—of course your Honor does not know it, but my colleague does—why I have been rather a stickler for the printing of the whole thing is this. You will observe when you come to read over some of those colloquies even, that they partake of the nature now and then of stipulations, some of them do, and would not be subject to dispute hereafter. And it is for fear that something in the nature of a stipulation or an agreement might be omitted that I feel that it should all be printed. Now, so far as your Honor's statement of a moment ago was concerned, while it was not taken, by your direction, I think it would have been very well if it had been taken.

The Master: I have no objection to its being taken.

Mr Holt: It shows that you have warned us about certain things, and nobody can raise any complaint hereafter. I find it best always to get what has occurred, and let either side utilize it afterwards as they think proper.

The Master: There is no suggestion of criticism from me. There is only one purpose to be accomplished in narrowing down this record, and that is the convenience of counsel in looking over the record and making up their argument, it makes less material for them to go through; and then, so far as I am concerned, it will make less material for me to wade through when I am making my report. I would not leave anything out of the record that had any reasonable tendency to affect any of these issues, whether it was testimony or whether it was discussion. So far as your cutting anything out is concerned, it is only a matter of a few dollars, and I do not think that makes much difference in a case of this importance.

Mr. Holt: It wont make a matter of a hundred dollars difference.

The Master: And suppose it was four or five hundred dollars; what is a matter of four or five hundred dollars in printing in a case of this size.

Mr. Anderson: I do not propose to strike a word out of the record; the record of this hearing is this transcript made by

the stenographer. I only propose that we shall strike out of this record immaterial matter so far as the Court is concerned, matter that would not be informing to the Court in this case, and which the Court would not consider for one minute, and which simply encumbers the record and is confusing. As far as any stipulation is concerned, it will remain here in black and white in the stenographer's transcript to refresh the memory of either party.

Mr. Holt: My idea would be to get the stenographic report in print and let them correspond. So far as General Anderson is concerned, we all know that he will be both safe and fair in anything that he might strike out. I would not care even to look at it. I will say that.

The Master: The record that this case is going to be determined on, unless there is some decided objection to this procedure—you may take this down—the record that this case is going to be determined upon by me, and of course it will be ultimately determined upon by the Court, will be this printed record. That is what I am going to certify. I am not going to send up this typewritten transcript. Of course we are taking the typewritten transcript for the purpose of preserving what has been done here, but when I decide the case I am going to decide it on the printed record, and of course the Court will do the same thing. Whatever you both agree on will go up as the record. If there is anything that you do not both agree on, it will all be printed. If you agree to eliminate it, it will go out; and if you do not agree, it will go in. I think that makes it all clear. And consistently with that, of course both sides will do the best they can to give us as concise and as brief a record as is compatible with the interests of both parties. I am very glad to have these matters called up. A little statement of the matter clarifies the atmosphere and leaves us so that we know where we are. Now, you may proceed, Judge.

By Mr. Holt:

Q. Mr. Hillman, we come now to Class D as it appears in the exhibits to the Supplemental Answer, consisting of interest on loans and dividends on stock accrued prior to January 1,

1861, upon common investments and collected by the State of Virginia after January 1, 1861. Have you prepared a general or main exhibit analyzing this Class D?

A. Yes, sir, I have.

Q. What is the page number on the blue prints of this exhibit?

A. Page No. 36.

Q. You may state what records, books and public documents, if any have been examined by you and upon which you have based this exhibit.

A. The list is a very long one.

The Master: Excuse me, Judge. This is the summary you are inquiring about?

Mr. Holt: No. We have now come to Class D., page 36, and this is the omnibus, just like the other was the omnibus in Class C. But I want to say for the consolation of the Court that all of the underlying exhibits, with the exception of one that supports this omnibus, have already been introduced in support of the other omnibus or main Exhibit No. 3, so that this will be very short compared with the other.

The Master: Would it be a satisfactory answer to you for him to say—

Q. If you can state that they are set forth in the underlying exhibits heretofore filed in support of Schedule C, you may do so.

A. Yes, sir, they are stated in the underlying or sub-exhibits heretofore filed, with one exception, and that is on items 14, 15 16 and 17, wherein the supporting exhibit will be filed with another class and as you call for it.

Q. Will you file this exhibit, page 36, and mark it Defendant's Exhibit No. 4, 1863?

A. Yes, sir, I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 4, 1863, September 3, 1914, C. B.

Q. Does this exhibit just filed, or does it not, correctly state the figures and records examined by you?

A. Yes, sir, it does correctly state them.

Q. Looking at the first item thereon I find the Orange & Alexandria Railroad Company stock and after the same the amount $31,604.09. Will you please explain that item?

The Master: Can an explanation be made that is characteristic of all of the items that follow?

Mr. Holt: I think I can in a moment or two do that very thing. I am going to make this one very short, because the underlying exhibits are all in with one exception. Some of them require, as you will see, a little explanation, overpaid and things like that.

A. This amount represents a dividend on the Orange & Alexandria stock declared in 1854, but paid in 1864. The reference would be found on page 9 of the exhibits already filed.

Q. Do you mean that that was one dividend or is it an accumulation of dividends?

A. It was one dividend.

Q. Please explain the item just below that, overpaid $1.02.

A. If you will allow me, Judge, before answering that question, I would like to call attention to page 9 on this set of schedules wherein this amount of $31,604.09 is set out, that there was on the same page of Journal B., page 157, of the Department of Public Works of Virginia another dividend of $34,912 paid at the same time.

The Master: That is, paid in 1864?

The Witness: Yes, sir.

A. (Continuing) But no date was given as to when that dividend was declared, or what period it covered. It is therefore entered here as doubtful and no claim has been made.

The Master: You simply make a note of it and refer to it as doubtful, but do not include it in your computation, am I right about that?

The Witness: You are correct.

The Master: By reason of the fact that you are not able to fix from the books the time when the dividend accrued and was paid?

The Witness: Yes, sir.

Q. That though is no part of the $31,604.09?

The Master: No, entirely independent, as I understand it.

A. Yes, sir.

Q. The question is, Mr. Hillman, explain that $1.02 overpaid?

A. That appears upon page 11 of the exhibits which we have filed.

Q. Of this set of exhibits? I like that term.

A. Of this set of exhibits, 1863 exhibits, in the foot note, wherein there was $1.02 overpaid in the final settlement of the stocks and loans, which have been added to the dividends on the Orange & Alexandria stock of $31,604.09, so as to make the total which we have claimed for consideration of $31,605.11.

Q. Then that explains the difference between the total in the second column and that in the first, or the $31,604.09 and the $31,605.11?

A. Yes, sir.

Q. Mr. Hillman, you have prepared, I believe an exhibit in support of this item. Has it already been filed?

A. Yes, sir, it has.

Q. What underlying exhibit is it?

A. It is Exhibit No. 3, 1863, Asset C-1 and D-1, pages 9, 10 and 11.

Q. The second item upon that main exhibit is Richmond & Danville Railroad Company, stock nothing; loans nothing. What is the meaning of that?

The Master: Judge, right there, if there is no objection, wont you ask him what the significance of this item is. This follows some previous schedules which you have introduced; and what I want to get into my mind, as we start out is whether this is to be added to or subtracted from any schedule.

Mr. Holt: I can explain that in one moment, your Honor. You will find by turning to pages 54 and 55 of the supplemental answer that class C, which was covered yesterday, is made up of the proceeds of the sale of securities purchased with common funds of the two states by the State of Virginia, prior

to the 1st of January, 1861, and sold by the State of Virginia afterwards, while Class D is the one that we are now upon, which covers interest on loans and dividends upon stock in Class D. The schedules to-day relate to interest on loans and dividends on stock, while Class C. of yesterday related to principal of the loans and the amount of the stock.

The Master: Yes. But you do not perhaps get my point. What I want to get into my head is the use that I am going to make of this schedule when I come to reach my conclusion. This relates to Class D. Now the first item under Class D. is Orange & Alexandria Railroad Company, $18,144.29. Now, this item is $31,605.11. Of course I have not carried these things in my head, but what I want to get at is, is that item substituted for this item, or is it to be added to or taken from it.

Mr. Holt: Answer, Mr. Hillman.

The Witness: It is a substitute for item 1 on Class D in the supplemental answer.

By The Master:

Q. Are these items that follow here on page 36 of the same character and introduced for the same purpose?

A. Yes, sir.

The Master: If they are all of that class that answer covers the whole ground.

Mr. Holt: That is the case.

The Master: But in the absence of some explanation it would be difficult for me to understand it.

Mr. Holt: Of course your Honor understands this, that all these items set down in this schedule are to be added to the items set down in Schedule C.

The Master: Yes, but as to Class D., let me see if I understand this correctly now—as to Class D which aggregates $1,834,409.28, I am to take, as the case of the defendant, Schedule 36, which aggregates $1,355,267.63—I am right about that, am I?

Mr. Holt: That is right.

The Master: And the schedule gives the details showing the changes that it has been found necessary to make, when

you come to get at your actual facts and make your computations.

Mr. Holt: That is right.

The Master: So that practically you substitute page 36 for the schedule found under Class D. on pages 55 and 56.

Mr. Holt: That is right.

The Master: Subject to that, go ahead with the explanation. That saves me any confusion.

The Witness: Of course your Honor understands that Class D. as made up on page 55 of the supplemental answer is the January 1, 1861, schedule, while the one under discussion is the one of June 20, 1863.

Mr. Holt: You have already a schedule in under 1861.

The Master: This schedule shows the changes that were found necessary to make in order to predicate your conclusions on June 20, 1863.

Mr. Holt: Yes, that is correct.

The Master: I pay no attention to Class D. in the answer, but I do devote my time to this schedule. As to January 1, 1861, the schedule and the answer still stands so far as it is consistent.

By Mr. Holt:

Q. The second item upon this Exhibit 4 is Richmond & Danville Railroad Company, stock, nothing, nothing; and under it, loan, nothing, nothing. What does that mean?

A. It means that all interest had been paid up to this date, and that there was no accumulation of interest on the loan, and no dividend on that stock had been paid which would be prorated over this date, so that it would remain at zero as far as any interest or dividend were concerned.

Q. The third item is Richmond & Petersburg Railroad Company stock, $41,857.80. What is that?

A. That is the proportion of the semi-annual dividend from the Richmond & Petersburg stock which was declared on June 30, 1863 and paid July 1, 1863, to the sum of $23,136. The $21,857.80 is the proportion which accrued from January 1st, up to June 19, 1863.

Q. Have you filed a supporting exhibit already to this item 3?

A. Yes, sir.

Q. How has it been marked?

A. It is Exhibit No. 3, 1863, Asset 3-C and 3-D. It is numbered page 16.

Q. Page 16 of this set of exhibits?

A. Yes, of this set of exhibits.

The Master: The thing that tended to mislead me was the heading on this exhibit. I have this suggestion to make. The way this reads is: "Recapitulation of Schedule 'D' Assets. Results of revision of Schedule 'D' assets by Hillman." Now I do not find anything that relates to June 20, 1863. Taking that statement the idea presented to my mind was that it would be necessary to revise Schedule D. Now this is the revision of Schedule D as of June 20, 1863, assets by Hillman, with that in there of course the whole thing is intelligible. With it out, unless I made this inquiry, I might have had to look the record over for several hours to get the information.

Mr. Holt: That is misleading.

The Master: Suppose we have the title read this way, "Results of revision of Schedule D, as of June 20, 1863, assets, by Hillman." That makes it intelligible.

Mr. Lilly: That is a good suggestion. I think.

Mr. Holt: There is not a thing in the world on that sheet to indicate 1863.

The Master: Not the slightest in the world, and I might have to spend a day to satisfy my own mind without this explanation. Now, all these things ought to have some finger mark sticking out somewhere so that I will know what it means the minute I look at it.

The Witness: Your Honor, just a moment. You must remember that in 1861 Schedule D has also been revised and adjusted. The 1861 Schedule D, as set up by me, is not the same as that set up in the supplemental answer.

The Master: That is all true, and that would simply add to my confusion unless I have something to go and come on.

Q. Is there any reason why that heading should not be entered?

A. No.

The Master: I get to work on this schedule and I do not find anything on it to indicate what it is. If I find two revisions one of them not indicated, and what it is and what it relates to, why it would leave me in almost endless confusion.

Mr. Holt: Your suggestion is to insert after the word revision, "As of June 20, 1863," of Schedule D.

The Master: Yes. I know then that he has taken Schedule D. and adapted it as to the date of June 20, 1863.

Mr. Holt: That is exactly right.

The Witness: The heading is, "Results of revision as of June 20, 1863 of Schedule D., assets by Hillman."

Q. The fourth item is Virginia Central Railroad Company, stocks nothing, loans $6,903.33; dividend bond $2,390.99 in the first column and $9,294.32 in the second column. Please explain that briefly.

A. There was no dividend on the stock which had been traced up to that date, which it was necessary to take into account in order to determine what was due prior to June 20, 1863; therefore opposite stock the zeros are entered.

By The Master:

Q. You mean how much was due or how much had been paid?

A. Both. There is nothing to show that there was anything even due.

Q. But isn't your schedule predicated upon actual payments?

A. Subsequent payments, yes, sir.

Q. Then why do you suggest the qualification of due? What I want to get clear in my mind is this, I do not understand your estimating here things that are due in this schedule; you are estimating the things that have been actually received, and if that was due do not confuse it by referring to things that are due or not due, because that simply introduces an element that will confuse me. It must have been due in order

to have been paid, but if it is due and not paid I do not care anything about the question of it being due. This is simply a question as to whether it was paid or not; am I right about that?

A. Yes, sir.

Mr. Lilly: But the dividends and matters of that kind would have had to have accrued before June 20, 1863, and paid thereafter.

The Master: Yes, but if they had accrued but were still unpaid they ought not to have appeared in that schedule.

The Witness: Not unless they had been taken into consideration and paid afterwards.

Q. But it is necessary to make your explanation refer to dividends that are due and not paid. Just simply make an explanation so that I will not get confused.

A. I understand the criticism, your Honor.

Q. You get my point?

A. It is correct, yes, sir.

Q. What I am trying to do is so that when I look at it I won't have any trouble in studying it out, I will have it so that it will all be an open book to me and I won't have to waste any time in trying to find what a particular thing means.

Mr. Holt: I presume that all of that business on the stock of Virginia Central Railroad Company means that so far as West Virginia is concerned there is no claim whatever made on that stock.

By Mr. Holt:

Q. Go on Mr. Hilllman, please.

A. On the loans there had accrued interest, January 1, 1863, up to June 19, 1863, both dates inclusive, of $6,903.33, the total amount for the six months ending July 1, 1863, amounting to $7,350, and which was paid on July 21, 1863 as shown upon the supporting exhibit which has been filed in this case, page 19. The next item $2,390.99, is the proportion of the interest on the dividend bonds of the Virginia Central Railroad Company which Virginia held at that time and is the proportion of that interest which accrued from October 15, 1862, up to

June 19, 1863, inclusive. The payment of this dividend is shown upon the cash book No. 10, Board of Public Works, and on file in the Second Auditor's office, State of Virginia, and was for $3,519 cash.

Q. Have you heretofore filed an exhibit in support of these items?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, Asset No. 3, 1863, Asset C-4, D-4, page 19, of the exhibits in this set of schedules.

Q. The fifth item is Winchester & Potomac Railroad Company, nothing. I will ask this question, do the ciphers in item 5 after the Winchester & Potomac Railroad Company mean that there were no dividends upon stocks nor interest upon loans to be considered so far as this schedule is concerned?

A. Yes, sir.

Q. The sixth item is Richmond, Fredericksburg & Potomac Railroad Company, dividend certificate, $3,631.69; decree of court, dividend bonds, $17,556.68; and in the last column $21,188.37. Please explain this item and its details.

A. The $3,631.69 was the proportion of interest on the dividend bonds of the Richmond, Fredericksburg & Potomac which had accrued from January 1, 1863, to June 19, 1863, both dates inclusive. the interest was afterwards paid—

By The Master:

Q. Was it afterwards paid in a general item of yearly interest?

A. Yes, sir.

Q. That will explain the whole thing.

A. June 30, 1863, the amount of $3,866.56, the $3,631.69 being the proportion which had accrued from January 1st, up to June 19, 1863, inclusive. The next item of $17,556.68 was the amount which was recovered by a suit and on a decision of the Circuit Court of Richmond on account of interest which had not been paid upon the dividend bonds of the Richmond, Fredericksburg & Potomac Railroad. The judgment was rendered on December 30, 1872, as per Journal N, Folio 416, Board of

Public Works, State of Virginia, the State receiving $17,806.68 less an attorney's fee of $250., or $17,556.68.

Q. What was the dividend accrued, up to what time?

A. In 1861 and 1862, interest on dividend bonds.

Q. And interest up to what date? This item was interest on dividend bonds which accrued on bonds in 1861 and 1862?

A. Yes, sir.

Q. And up to what date was the interest included upon which the judgment was rendered?

A. For those two years, sir.

Q. You mean to say that the judgment was rendered for interest to June 20, 1863, or up to what date was interest paid in the decree of the Court?

A. December 30, 1872.

Q. How was the interest computed, up to that date?

A. Yes, sir.

Q. What was the total decree of the Court?

A. $17,806.68, less $250 attorney's fees.

By Mr. Holt:

Q. Mr. Hillman, the Court asked you how many years of interest were embraced in the judgment and you answered that the interest had been computed up to in the 70's sometime, although the suit was only brought covering interest for the years 1861 and 1862. Which is it?

A. It was brought for the interest on the dividend bonds which had accrued in 1861 and 1862 and had not been paid.

By The Master:

Q. Did the amount of interest thus overdue for which this suit was brought in the aggregate amount to $17,556?

A. No, sir.

Q. What was the amount of it? In other words, of what is the judgment of $17,556 made up? Of course if that was the amount of the interest due to say June 20, 1863, that is one thing; if on the other hand a certain sum was due on June 20, 1863, or in 1861 or in 1862 and the Court figured interest up to 1872, that is quite a different thing.

A. This was the amount of the judgment including both interest which was due on the dividend bonds and the interest which had accrued on that interest up to the date that the judgment was rendered.

Q. Then you have brought the interest up to 1872 instead of stopping it at June 20, 1863?

A. Yes, sir.

Q. Don't you want to revise that item, that is, if that is the fact?

A. It looks very much like an error of judgment, sir.

Q. An error of computation, it is not a question of judgment, it is simply a question of fact. You are predicating this schedule upon June 20, 1863, and all your computations run up to and stop at that date. Now you have an item here that seems to have been made up of interest that ran up to 1872, nine years longer.

A. If you will allow me, I will have that matter looked up and report within half an hour as to whether I am correct in stating that it is interest up to 1872.

Q. You can have that ready when we come in after the recess at noon or after the short recess which will be taken in a few minutes.

A. My assistant says I am mistaken in making that statement, and I will let him get his figures and bring them down.

By Mr. Holt:

Q. Have you filed a supporting exhibit to this item heretofore?

A. Yes, sir.

Q. How was it designated?

A. Defendant's Exhibit No. 3, 1863, Asset D-6 and C-19, numbered page 35 of the record.

Q. The seventh item is Virginia & Tennessee Railroad Company loan. Please explain that item.

A. It consists of the proportion of interest accruing upon Virginia & Tennessee loan from March 31, 1863, to June 19, 1863.

Q. Was it paid?

A. This amount was afterwards paid on August 15, 1863, anticipating the payment slightly, which was due on September 30, 1863, and was paid in cash to the full amount, $35,000.

Q. That is Virginia & Tennessee Railroad Company loan?

A. Yes, sir.

Q. The item seems to be $15,469.61 on the main exhibit.

A. Yes, sir. I have stated that that was the proportion which had accrued of the $35,000.

Q. I understand it now. Have you filed an exhibit in support of this item?

A. I have, yes, sir.

Q. How has it been numbered?

A. It is Exhibit No. 3, 1863, Asset C-8 and D-7, page 23 in this set of schedules.

Q. Item No. 8 is South Side Railroad Company loan. Please explain this item.

By The Master:

Q. Now, is that the proportion of a previous schedule already filed, the proportion up to June 20, 1863?

A. Yes, sir.

Q. Why can't you in your answer simply say that it is the proper proportion between two dates of item so and so?

A. The schedules, your Honor, have been explained, in so far as they relate to the principal of these loans, of Class C. But they have not been explained at all in so far as they relate to Class D., which is the interest or dividend on those.

The Master: Then that may be stricken out, because there is no occasion for it. I did not know but the connection was such that we might have a concise answer and save any trouble in having a detailed explanation. From now on I am quite likely to leave out what I say in an off-hand manner of this kind, and if anyone has any objection, it may stay in. These suggestions do no go in. I can perhaps help the gentlemen to excise this record somewhat.

By Mr. Holt:

Q. The question is as to item No. 8, South Side Railroad Company loan. Please explain that item.

A. The item on the South Side loan represents the amount of unpaid interest on that loan which had accrued up to June 20, 1863, and is $208,375.69.

By The Master:

Q. Was it afterwards paid?

A. And it was afterwards paid in cash.

Q. When?

Mr. Holt: That is what I was about to ask, your Honor.

A. July 29, 1863, $55,000; August 1, 1863, $63,000; August 8, 1863, $28,000; August 17, 1863, $21,000; September 16, 1863, $28,000; and a payment made on July 6, 1863 of $28,000, again of which interest had accrued up to June 20, 1863, of $12,375.69.

Q. You mean you have apportioned it in reaching your result?

A. Yes, sir.

Q. That is the item of $28,000 is the item as to which you make the apportionment in figuring the interest up to June 20, 1863?

A. Yes, sir. This payment of $28,000 having at this time been anticipated from September back.

Q. It was paid in advance?

A. Yes, sir.

By Mr. Holt:

Q. Have you heretofore filed an exhibit in support of this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Assset D-8 and C-9, and being page 25 in this set of schedules.

Q. I notice in this item, Mr. Hillman, that a correction has been made, from five hundred and thirty-seven thousand and some dollars to the amount given by you, two hundred and eight thousand and some dollars.

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The Master: Why do you encumber the record with that, Judge?

Mr. Holt: I want to find out.

Q. The question is, have you made the same correction in your underlying exhibit?

Mr. Holt: I do not want them to be in conflict.

The Master: This schedule when it is printed won't show any correction, it will be printed in accorance with your correction.

Mr. Holt: I want to be sure that the underlying one has been corrected.

The Master: If you will excuse me, why don't you ask him if the underlying exhibit is consistent with this.

Mr. Holt: He might not know what I meant by consistency if I did not call his attention to the particular item, is my fear.

The Witness: I might say that it was a clerical error in transcribing from the sub-exhibit to the general exhibit.

Q. Then they are consistent?

A. Yes, sir.

Q. Ninth, Norfolk & Petersburg Railroad Company—

The Master: I would suggest that all be left out, because when you get your print there won't be any correction that will appear on it, and there won't be anything that this inquiry can be predicated upon, and it will result necessarily in confusion —that is, if you have no objection.

Mr. Holt: I think it is a very good suggestion. All I wanted to get was the fact.

The Master: You wanted to know whether your supporting schedule agreed with this.

Mr. Holt: Yes.

The Master: Then that may go out of the record, because there is no occasion for it. The schedules being consistent, we do not want anything in the record about the correction at all. The schedule won't show the correction. If it is out we won't have any confusion.

Mr. Holt: So that all goes out about correction.

The Master: Absolutely.

Q. Item No. 9 is the Norfolk & Petersburg Railroad Company, stock and loan. Please explain it.

A. It consists of two items, a dividend on the stock, which was for the six months January 1, 1863, to July 1, 1863, $2,475. The $2,324.52 being the proportion of that which accrued from January 1, 1863 to June 19, 1863.

By The Master:

Q. To and inclusive of June 19, 1863?

A. Yes, sir.

The Witness: The dividend was paid in cash, as shown on page 149, Journal B., Internal Improvement Fund, State of Virginia.

Q. On what date?

A. I do not know, sir. The date was left out; it was inadvertently omitted here.

Q. Make a note of that and supply it, because they probably will want it. Just say on the blank date and put it in.

A. Very well.

(The witness afterwards supplied the date as September 7, 1863.)

By Mr. Holt:

Q. Is there anything else you want to say? If not I will proceed to the next one.

The Master: You have not examined him as to the loan.

The Witness: The loan consists of four and a half years interest on the $300,000 loan from January 1, 1859, to July 1, 1863, at six per cent., and was paid January 11, 1864, as shown on folio 158, Journal B, Internal Improvement Fund, State of Virginia, $94,500. Apportioning that up to June 20, 1863, gives us $93,866.57.

By The Master:

Q. Well, now, that item was not a payment of loan but was a payment of interest on loan?

A. Yes, sir.

Mr. Holt: The underlying exhibit shows that.

The Master: Put in there "Interest on Loan" and then you will have it right under your eye. Put right ahead in the exhibit the words "Interest on."

The Witness: Would it not be well to put that in the heading of the schedule, as the same remark would apply to all schedules.

The Master: I would rather have it right there on the item, for my information. I know just what it means when it is right there.

Mr. Hogg: You would precede the word "Loan" with "Interest on."

The Master: Yes.

Mr. Lilly: Does your Honor want that before all of these?

The Master: No, I had not noticed the others.

Mr. Lilly: There are three or four other loans set down.

The Master: Then I would say "Interest on Loans" in each case. Precede the word "Loan" all the way through this schedule, if it is a fact—Iwould put in the word "Interest on" and then there cannot be any question.

Mr. Hogg: And as to stock, "Dividend on."

The Master: Yes. The significance of that is that you will get it all from this schedule; otherwise you might have to look through several schedules to find out.

Mr. Holt: He is making the changes on the schedules.

The Master: Do not put this colloquy in the record.

Mr. Holt: I think that makes it absolutely clear, your Honor.

The Master: Then we will have it all in.

Q. Have you heretofore filed a supporting exhibit on this item?

A. Yes, sir, I have.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset C-10 and D-10 and D-9.

Q. I notice that the tenth item is James River & Kanawha Company with nothing but ciphers set opposite. That means, I suppose, that there was nothing upon the subject of divi-

dends upon stock or interest upon loan to be considered so far as this schedule is concerned?

A. Yes, sir.

Q. No 11, loan to Washington College, $56.35. Explain.

A. It represents the amount of interest on a loan of $2,000 to Washington College from January 1, 1863, to June 20, 1863.

Q. Was it ever paid?

A. Yes, sir.

Q. When?

A. It was paid on August 26, 1863, in full for the six months ending June 30, 1863, $60.

Q. Did you apportion it then so as to arrive at the amount of $56.35?

A. Yes, sir.

Q. Have you filed an exhibit in support of this item?

A. I have.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset C-15 and D-11, and bears the number, page 31 of this set of schedules.

Q. No. 12, Richmond Academy bonds, $11.26. Explain.

A. This is the amount of interest from January 1, 1863 to June 19, 1863, on the Richmond Academy bonds of $400.

By The Master:

Q. Do you mean interest to June 19th, or to and inclusive?

A. To and inclusive.

Q. Sometimes you tell us interest to June 20, 1863, and then you tell us up to June 19, 1863. I presume you mean exactly the same thing. You will excuse me for the suggestion, but if you will use exactly the same language in each instance you would not give rise to any question as to what you might mean by it. If you will say to and inclusive, that means up to June 20, 1863, and if you say up to June 20, 1863, that is inclusive of the 19th. I notice sometimes you give it one way and sometimes the other, and I was wondering what the occasion for it was.

A. It was just an inadvertence in expressing myself, your Honor. I will say hereafter June 20th.

Q. Make the expression harmonious all the way through.

What you mean now is to and inclusive of June 19th?

A. Yes, sir.

By Mr. Holt:

Q. Have you filed an exhibit in support of this item?

A. Yes, sir.

Q. When was this interest paid?

A. It was afterwards paid, August 26, 1863.

Q. Have you filed an exhibit in support of this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset C-16 and D-12, and it is numbered page No. 32 of this set of schedules.

Q. No 13, claim against the United States Government, $872,260.07; what is that?

A. It represents the interest which had accrued on the loan to the United States Government of July 1, 1814, from that date up to June 20, 1863.

Q. Have you filed an exhibit in support of this item?

A. Yes, sir, I have.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset D-13, C-17, and is page 33 of this set of schedules.

Q. Has that interest ever been paid?

A. Yes, sir.

Q. When?

A. It was paid in 1904 as of the date of, however, February 11, 1894.

By The Master:

Q. In full?

A. In full, yes, sir.

Q. Up to 1894?

A. Yes, sir.

Q. That is, interest did not run after 1894?

A. No, sir.

Q. But it was paid in full up to 1894?

A. I would say that this was paid in bonds of the State of Virginia.

Q. Bonds of the State of Virginia?

A. Yes, sir.

Q. By the United States?

A. Yes, sir, with the exception that the United States did send Virginia a check for $5.50 in order to balance it.

By Mr. Holt:

Q. I want to inquire again when this settlement was made—we have had some little discussion here—when this payment of interest was made. I do not know that it is material, but I just want the fact.

A. In 1903, but dated back to February 11, 1894, the actual settlement being in 1903, but the settlement made as of the date of February 11, 1894.

By The Master:

Q. All the computations were made up to February 11, 1894?

A. Yes, sir.

Q. But the papers and adjustment of the claim were not actually delivered by either party until sometime in 1903?

A. They were not delivered until then and the adjustment was not made until that date?

Q. They made a computation as of that date?

A. Yes, sir.

Q. In 1903?

A. Yes, sir.

Mr. Lilly: At the time the respective claims would come nearest balancing.

The Witness: They settling interest on each one, bringing the claim from 1814 up to a point where the claim of the United States Government against the State of Virginia would come nearest to being balanced, and in 1903 they found that that date of nearest balance was February 11, 1894, and which only required then the interchange of securities and $5.50 in cash.

The Master: It must be conceded that they came pretty near the result.

By Mr. Holt:

Q. Item No. 14, Farmers' Bank of Virginia, $4,762.16; what does that represent?

A. It represents the proportion of the dividend on the Farmers' Bank of Virginia which had accrued from June 1, 1863, to June 19, 1863.

Q. You mean to June 19th or to June 20th?

A. To June 20, 1863, which dividend was declared December 1, 1863 and paid in two installments, December 19, 1863, $3,932.43, and December 19, 1863, of $829.73, one payment being made to the Commonwealth Fund and the other to the Literary Fund.

By The Master:

Q. You mean it was paid to the State in those items? Was it semi-annual dividends or annual?

A. Semi-annual dividends.

Q. What was the total semi-annual dividend?

A. $45,780 due to the State.

Q. That is six months?

A. Yes, sir.

Q. That is a little over $7,000 a month, and the proportion that was due on June 20, 1863, was then $4,726.16, that is it, is it?

A. Yes, sir. I quoted it in two payments because it happens to show in the cash book in two separate items on account of the stock being entered up at different times.

Q. Do you mean to say that there is an entry on the cash book showing the receipt by the State of Virginia of the sum of $829.73?

A. Yes, sir.

Q. That precise sum?

A. And also $3,932.43.

Q. And those two specific sums are entered on the cash book?

A. No, sir.

Q. That is what your testimony would show, but I did not suppose that was what you meant. What you mean to say is that there were payments of cash and that the proportion that is to be allotted to this item is as follows, but your statement would show that the cash book would show these very items. It did not seem to me credible that it could, and you do not mean that?

A. No, sir, I do not.

By Mr. Holt:

Q. Explain what you do mean.

A. I mean that the cash book shows that there was a payment of dividends on December 1, 1863, on this bank stock amounting to $45,780 and that the proportion which had accrued on that from June 1 toJu ne 20, 1863, was $4,762.16.

The Master: I understand what you mean, although that is not what you said.

Q. And that was apportioned between two funds, those payments, were they?

A. Yes, sir.

Q. Have you filed an exhibit in support of this item heretofore?

A. No, sir.

Q. Have you prepared such an exhibit?

A. Yes, sir, I have.

Q. What page is it?

A. Page No. 37.

Q. Will you now file as part of your deposition the supporting exhibit referred to and mark the same Defendant's Exhibit No. 4, 1863, Assets D-14 to 19.

The Master: That covers it although it does not show the computation which results in the aggregate of $4,216; but I know how he reaches it.

Mr. Holt: There are several other banks that are also in this exhibit.

A. I file it so marked.

The paper was admitted in evidence and marked Defend-

ant's Exhbit No. 4, 1863, Assets D-14 to 19, September 3, 1914, C. B.

Q. Does the supporting exhibit just now filed indicate upon its face the sources of information from which the exhibit was made up?

A. Yes, sir, it does.

Q. Does it truly represent the records from which it is taken?

A. Yes, sir.

Q. The 15th item is Bank of Virginia, $36,189.14. What does that mean?

A. It means that the proportion of the dividend declared on that bank stock on July 1, 1863, amounted to this sum for the date January 1, 1863, to June 20, 1863.

Q. Should you not say for the period from January 1, 1863, to June 20, 1863?

A. Yes, sir.

Q. Instead of the date?

A. Yes, sir.

Q. Was that amount ever paid, and if so when?

A. Yes, sir, it was paid in three separate payments.

Q. Give them, please.

A. July 25, 1863, $29,382.50, of which the June 20th proportion was $27,596.76; on June 20, 1863, there was paid $7,423.50 which has—

Q. Well, was there an apportionment to be made of that?

A. I will have to look up that date. I have sent a man downstairs to look it up.

The Master: Well, while we are waiting I will ask a question.

By The Master:

Q. As I understand it you are now testifying about the dividend which was due and payable July 1, 1863.

A. Yes, sir.

Q. And were there payments made on account of this dividend prior to July 1, 1863?

A. Yes, sir.

Q. Then they were in anticipation of its coming due?

A. Yes, sir.

Q. How did that happen? Did you see anything on the books which indicated why they should advance to the State, in advance of having declared a dividend?

A. That was sometimes done. But, your Honor, I find that opposite this entry which was paid in advance, they have got a date that this dividend was due in June instead of July, and that was the reason I have sent my man downstairs to verify that item and see how that came about.

Q. You say it not infrequently appears that some of these corporations anticipated the payment of the dividends by payments to the State?

A. Yes, sir.

The Master: That fact had not appeared before, and that is the reason why I was inquiring about that.

The Witness: I spoke of it a moment or two ago on one of these loans, they paid $28,000 that was not due at the time.

The Master: But in connection with dividends the statement had not been made before. I can understand how it might be done, but my attention had not been called to it before, and I wanted to be sure I was right about it.

Mr. Holt: The stockholders were all hard up, I suppose.

The Master: The State, among others.

Mr. Holt: Yes.

The Master: Well, I do not suppose that is really a novel condition as to stockholders.

Mr. Holt: No.

Q. Have you got the information now?

A. Yes, sir.

By Mr. Holt:

Q. Proceed, Mr. Hillman, please.

A. Referring to the matter of the payment of those dividends, I would say that the payment of June 20, 1863, was made to the Literary Fund, $7,423.50, and it is described on the Literary Fund cash book as being on account of the dividend

due June, 1863, on 2,121 shares of stock. Being June, 1863, according to the entry in the books, we have taken it that the entire amount accrued on this date.

By The Master:

Q. When were the other payments made aggregating the whole amount of the dividend due July 1, 1863?

A. On December 29, 1863, there was paid a dividend on the stock marked as due December 1, 1863, again to the Literary Fund, of $11,135.25, of which the proportion from June 1, 1863, to June 20, 1863, was $1,168.88. The sum of these three items I have mentioned—

Q. Does that sum appear as a dividend due in December, 1863?

A. Due in December, 1863.

Q. When was the balance on the dividend that was due on July 1, 1863, paid? This last relates to another dividend does it not?

A. Yes, sir.

Q. The dividend you are trying to account for is the dividend due July 1, 1863.

A. Your Honor, I was misled by the fact that there are two dividend dates mentioned here, which is so unusual that I simply jumped to the conclusion that it was July 1st. There are two dividend dates here. The dividend due July 1, 1863, was paid July 25, 1863, and amounted to $29,382.50, of which the proportion accruing up to June 20, 1863, was $27,596.76. That ends the July dividend.

Q. Now what was the total dividend July 1, 1863, that you predicate your computation from January 1, 1863, to June 20, 1863, upon?

A. $29,382.50.

Q. You mean that that was the total dividend that was due on that stock on July 20, 1863, for the period beginning January 1, 1863, and ending July 1, 1863?

A. Yes, sir.

Q. What significance has the entry that you have been testifying about, predicated upon an entry of July 20, 1863? If the dividend was all paid before that, that exhausts the sub-

ject, does it not?

A. No, sir, for the reason that there was a dividend due in June, 1863, which was not taken into account.

Q. Do you mean that there were two dividends on this stock, one due in June, 1863, and one due on July 1, 1863?

A. According to their books, yes, sir. That seems a little unreasonable.

Q. Is not that a little incongruous?

A. Yes, sir.

By Mr. Holt:

Q. The record so shows, does it not, Mr. Hillman?

A. Yes, sir.

The Master: There ought to be some way of finding out just what the dividend was on July 1, 1863.

Mr. Holt: I will make this suggestion, your Honor, if I may be allowed. He has now explained the payments of one dividend. Now let him explain the payments of the other dividends.

The Master: I want to know what I have got to take into account as the actual dividend at either July 1, 1863, or June 1, 1863, and the amount that this account is entitled to on a pro rata basis. I do not want to have to settle in my mind whether there is a confusion between July 1, 1863, and June 1, 1863, or whether there were two dividends. I want to know whether this accountant can tell me what the actual dividend was on July 1, 1863. And if he has got that amount that he is satisfied about, and if that eliminates June 1, 1863, I do not care, I want it eliminated. What I want to know is what the real dividend was on July 1, 1863, if Mr. Hillman can tell me from an examination of these books, and then I want the proportion that accrued up to June 20, 1863. Do I make that clear?

The Witness: Yes, sir.

The Master: What I want to know is whether you can take the books and tell me what that actual dividend was, no matter what these entries show; and whether the dividend has actually been paid. Then I want the proportion of that actual dividend up to June 20, 1863. While I am somewhat interested in this

confusion of the books, I do not want to have to settle that confusion myself, I want Mr. Hillman's solution of it. Do I make that clear?

The Witness: Yes, sir.

The Master: Give me that information.

The Witness: Of course you do not mean this moment.

The Master: No, but make it as a part of your testimony. If you want to suspend here, you can make that answer when we come in after recess. If I have not made that clear I want to make it clear.

The Witness: I understand you perfectly.

The Master: I want the judgment of the witness as to what the fact actually is and what you are prepared to stand by. Then if they criticise it I will judge of the weight of the criticism. This colloquy you can leave in.

By Mr. Holt:

Q. Have you filed heretofore an exhibit in support of this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 4, 1863, Assets D-14 to 19, and is numbered page 37.

Q. That then was the supporting exhibit filed this morning?

A. Yes, sir.

Q. No. 16, Bank of the Valley, $23,848.83.

A. This consists of the dividends declared by this bank on June 1, 1863, and July 1, 1863, June 1, 1863, being taken in total as due, and the July 1, 1863, being taken and apportioned upon the time pro rate from January 1, to June 20, 1863.

By The Master:

Q. What was the amount of those two dividends respectively?

A. The dividend due June 1, 1863, was $18,500; the dividend due July 1, 1863, was $5,695.

Q. Is that the total dividend or the amount that is to be apportioned to this item?

A. That is the total dividend paid on stock owned by Virginia. The amounts apportioned are $18,500, being the June item in full.

Q. 20-30ths of the $5,000, roughly speaking?

A. Yes, sir. Again, your Honor, I will look this matter up in connection with the other, as there seem to be two dividend dates stated on Virginia's books for this stock.

Q. See if you can give any explanation of it.

A. Yes, sir.

By Mr. Holt:

Q. Have you filed an exhibit heretofore in support of this item?

A. Yes, sir.

Q. How has it been designated?

A. Defendant's Exhibit No. 4, 1863, Assets D-14 to 19, and numbered page 37.

Mr. Harrison: You did not state when those payments were made.

Mr. Holt: I will inquire about that.

Q. Were these dividends paid, Mr. Hillman?

A. Yes, sir.

Q. When?

A. August 1, 1863.

Q. Both of them?

A. Yes, sir.

By The Master:

Q. Paid in one item, in one sum, that is, were the two added together and all paid in one sum on August 1, 1863?

A. No, sir. They were paid to the different Boards, one paid to the Commonwealth—

Mr. Holt: You do not mean Boards; you mean Funds.

A. Funds, one paid to the Commonwealth Fund and one paid to the Internal Improvement Fund, and the other paid to the Literary Fund.

Q. How does that appear on the books of the State, does an entry like that show in the first place that an aggregate

amount of cash was received and that then subsequently it was distributed among these various State Funds?

A. No, sir.

Q. Or does it show, does the cash book show the receipt of the particular items that went to the particular funds?

A. The cash book shows the receipt of the particular items to the particular funds.

Mr. Lilly: Each fund had an interest in the stock.

The Master: Yes. sir. The stock had been distributed to these various funds.

Mr. Holt: Each fund received its proportion of the stock and received its dividends.

The Witness: All of this appears on the different cash books.

The Master: I understand it. For the time being it escaped my recollection that the various funds had moneys invested in this stock. Of course that furnishes an adequate reason for the payment of the dividends.

Mr. Anderson: I did not get the date on which this $23,840 had been paid.

The Witness: It is all shown on page 37.

By Mr. Holt:

Q. No. 17, Exchange Bank, $8,304.02. Give us briefly the history of this item.

A. Exchange Bank of Virginia shows a dividend accrued December 1, 1863, of $67,904 on the stock owned by the Commonwealth Fund, of which the proportion from June 1, 1863, to June 20, 1863, would be $7,050.14. It shows also a dividend due July 1, 1863, on stock held by the Internal Improvement Fund of $1,335, of which the proportion from January 1, 1863, to June 20, 1863, would be $1,253.88. Again there seems to be a discrepancy which will be looked up as to dates of dividends as requested by your Honor.

Q. Do these two amounts so apportioned aggregate the $8,304.02?

A. Yes, sir, they do.

Q. Were those dividends paid, and if so when?

A. The one from which was received $7,050.14, that is the dividend of December 1, 1863, was paid January 13, 1864.

By The Master:

Q. When did that dividend accrue?

A. December 1, 1863.

By Mr. Holt:

Q. When was the other one paid?

A. July 10, 1863.

Q. Have you filed an exhibit in support of this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 4, 1863, Assets D-14 to 19, and is numbered page No. 37 in this set of schedules.

Q. I notice that the eighteenth item on this main exhibit is Northwestern Bank 00. I suppose that means that there were no dividends upon the stock held by the Commonwealth of Virginia in that company with which this schedule has to do, is that so?

A. Yes, sir.

Q. Is the same true of the nineteenth item, Fairmount Bank, 00?

A. Yes, sir.

By The Master:

Q. Before you come to that, I would like to make an inquiry about the Exchange Bank. As I understand it, the stock upon which these dividends were predicated was held by two funds, one fund, that is the Commonwealth Fund, was it, held how many shares?

A. 8,488 shares.

Q. That is the Commonwealth Fund?

A. Yes, sir.

Q. There is another fund held how many shares?

A. 267 shares.

By Mr. Holt:

Q. What fund was that, Mr. Hillman?

A. Internal Improvement Fund.

Q. Was there any dividend declared on the Commonwealth stock on July 1, 1863, or was there a dividend only on the stock held by the Internal Improvement Fund declared July 1, 1863, so far as the books show? There seem to be two dividends.

A. On the Internal Improvement only, as far as the books show.

Q. Then there was a dividend declared upon the stock held by the Commonwealth Fund, December 1, 1863?

A. Yes, sir.

Q. But none appears to have been declared upon the same stock held by the Internal Improvement Fund on December 1, 1863, is that it?

A. Yes, sir.

Q. I wish you would look that up and see if there is any explanation. It seems unexplainable.

A. I will look it up.

By Mr. Holt:

Q. See if you can discover anything on the books to explain that apparent incongruity.

A. I will find it.

By Mr. Holt:

Q. I now come to the twentieth and last item, No. 4, Blue Ridge Railroad Company, tolls for use, $5,833.81. Please explain that.

A. For the tolls for the use of the Blue Ridge Railroad Company, which were paid by the Virginia Central.

Q. Virginia Central what?

A. Virginia Central Railroad. There had accrued for the quarter ending July 1, 1863, $6,576.50. The proportion of that on the time pro rate from January 1, 1863, to June 20, 1863, was $5,853.81, which is the amount on Defendant's Exhibit No. 4, 1863.

Q. What do you mean by tolls paid by the Virginia Central Railway Company to the Commonwealth of Virginia on account of the Blue Ridge?

A. They used the Blue Ridge Railroad and tunnel and paid them tolls on passengers and freight.

Q. You mean that the Virginia Central used it and paid the Commonwealth of Virginia tolls therefor?

A. Yes, sir.

Q. Have you filed heretofore a supporting exhibit on this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset C-5 and D-20, page No. 20, of this set of schedules.

Mr. Harrison: He has not stated when they were paid.

The Witness: They were paid on March 2, 1864. I call attention to a note on this exhibit which has just been quoted, on the supporting exhibit, that subsequently there was received from the Virginia Central the following amount in tolls which may or may not be considered as part of the purchase price, March 21, 1864, cash book No. 10, Board of Public Works, $64,984.49. They were allowed to expend that amount of tolls on the road instead of paying it to Virginia.

By The Master:

Q. Was that taken into account in your computation?

A. No, sir, I have not taken it into account anywhere. I have simply made a note of it.

By Mr. Holt:

Q. Returning now for a moment, Mr. Hillman, to the sixth item, there was an item of $17,556. 68, covered by a judgment, which I wish you would please explain.

The Master: That involves that question of interest.

Q. Are you ready now to explain it?

A. Yes, sir. This judgment was rendered for the amount of the interest which had fallen due upon the dividend bonds in 1861, and 1862, and which had not been paid.

By The Master:

Q. Aggregating how much?

A. Aggregating $17,806.68, from which was deducted, as

we have stated, attorney's fees of $250, leaving the net sum $17,556.68.

The Master: That shows that interest was not computed on those sums up to the date of judgment.

Mr. Holt: He is reading from a copy of an order paying those attorney's fees.

The Master: The question in doubt before us was whether the judgment included interest up to the date the judgment was rendered, or whether it was predicated upon the principal sum due without interest from the dates when they were due. This shows that it is predicated upon the principal sums due without interest. That is the effect of it.

Mr. Holt: Yes, sir.

The Master: That makes that certain. That was an element of uncertainty before.

Mr. Holt: That, your Honor, brings us to something that we can go on with more rapidly after lunch.

The Master: Then you would like to suspend here?

Mr. Holt: Yes.

The Master: Then we will suspend here until half past two.

At this point a recess was taken until 2:30 P. M.

AFTER RECESS.

Continuation of the direct-examination of

CONWAY W. HILLMAN.

The Witness: I have found that the dates of those dividends are December and June.

By Mr. Lilly:

Q. The bank dividends?

A. The bank dividends, for all of the banks in controversy, regardless of the entries which have been made upon the books of the State of Virginia in regard to the date upon which these dividends accrued.

By The Master:

Q. So that the date of July 1st, is an error?

A. It is an error and will be corrected. Do you wish me to state now, why I came to that conclusion.

The Master: No I do not care for that unless Mr. Harrison would like to have it.

Mr. Harrison: He had better state it.

The Master: Very well then, give your reasons.

The Witness: The State of Virginia put a tax upon bank dividends declared by all banks within the State, and headed it "bonus on bank dividends" although it was a tax upon those dividends. And referring to the entries on their books wherein those bonuses were collected from the banks, it shows that in each case of these banks in which the State owned stock, that the dates were December and June, and not July and January. We will have the exhibit re-made on that basis, if your Honor so wishes, or an extra one put in.

The Master: So far as I am concerned that is adequate.

The Witness: Shall we have an extra sheet put in showing how the books follow?

The Master: Just as you like about that.

Mr. Lilly: It will not affect the amount?

The Witness: Yes, sir, it will affect the amount.

Q. Does it lead to a re-adjustment of the computation?

A. Yes, sir.

Q. Then why don't you make a re-adjustment of your computation and put upon it the proper schedules, and notify the other side, so that the schedules as printed will be upon the re-adjustment on the information you have obtained? I would not put an additional schedule in for the purpose of carrying out those details, but make the changes in the schedules to carry out the explanation you have now made, and your explanation of the situation covers the matter, as far as I am concerned. Unless counsel on either side desires a detailed statement that will be sufficient.

A. Very well.

Mr. Holt: That will be satisfactory to us.

The Master: How about the other side?

Mr. Harrison: I think that is sufficient.

The Master: When you make the change put it on the official schedule—put it on the schedules that the Virginia people have so that they will be kept in touch with the matter.

Mr. Holt: The witness says he will simply correct those schedules. There are only one or two items.

The Master: Very good; and make the same correction upon the schedules which have been handed to counsel for Virginia so that they will be in touch with the change.

By Mr. Holt:

Q. We come now, Mr. Hillman, to the exhibits or schedules for 1863 covering Class E, being the various bank stocks. Have you made a search of the books and records of the State of Virginia as well as in the Congressional Library at Washington for the purpose of ascertaining the statements of the Farmers' Bank of Virginia for the years 1862 and 1863?

A. Yes, sir, I have.

Q. With what result?

A. That we were unable to find any statement of the banks for those dates.

Q. Then page No. 38 as I understand it, being the schedule for 1863, concerning the Farmers' Bank of Virginia, is nothing more than a copy of the corresponding exhibit with relation to that bank for the year 1861 with the note found thereon at the bottom; is that so?

A. Yes, sir.

Q. Please read that note at this point.

A. Diligent search was made for statements of this bank, covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia, without result. The fact that this bank declared dividends in 1863 even greater than in 1861 would tend to indicate that the bank stock was at least of equal value in 1863 as in 1861.

The Master: Right at this point, did the law at that time

require the publication of the returns of banks in any newspaper? In a great many of our states the law requires a return of that sort to be published, which is practically the sort of return that you have included in more or less all of these schedules.

Mr. Holt: We have an act of the Legislature of Virginia here directly, your Honor, that may answer your question. I have not looked at it recently, but I think it provides how these banks should keep their books and what returns they should make. I do not know whether it covers the question of publication or not.

The Master: Of course in these days nearly every state, at least every state that I am familiar with, requires statements to be published.

Mr. Holt: Yes.

The Master: And at the proper period of the year you will find your newspapers full of those statements.

Mr. Holt: That is true.

The Master: My inquiry is whether that was the fact during this period, and if so whether any investigation of the files of the newspapers has been made for the purpose of getting the information. I do not know what the fact is. My impression is that in connection with the other hearing I found something of that sort, that is in connection with my own investigation. I am not quite certain, however. I do not know whether it was on this line, but I got some information.

By Mr. Holt:

Q. Have you examined any newspapers, Mr. Hillman, for the purpose of ascertaining whether or not the banks published their statements under the laws of Virginia during the year 1863?

A. I have not, no, sir.

Mr. Holt: We will look into that, your Honor, and see. I do not know what the law of Virginia was myself.

The Master: I do not know either, except that I do know that that is a very general custom now.

Mr. Hogg: The two banks that were before us on the

former hearing were the Northwestern Bank at Wheeling and the Fairmount Bank.

The Master: I do not think there was anything of that sort in connection with the former hearing.

Mr. Holt: I would like to ask the gentlemen on the opposite side of the table whether or not the laws of Virginia in 1863 required banks to publish their annual statements in the newspapers.

Mr. Anderson: I do not remember whether it did or not, but I have seen them published frequently.

Mr. Holt: We require those publications in our state now, but whether or not Virginia did in 1863 I do not know.

Mr. Anderson: I do not know whether it was done in 1863.

The Master: That is a matter that can be investigated, and if there is any information of value to be obtained from that source, of course we can have it without any trouble.

Q. You say that you examined the records of the War Department and Congressional Library at Washington upon this subject for those years. Why did you examine the records of the War Department and of the United States Government?

A. Because, as has been stated here, the records of the State of Virginia were attempted to be moved from Richmond over to Petersburg, I believe.

Q. Lynchburg.

A. Lynchburg—during the war—or at the close of the war, and they had only proceeded part of the way when their journey was interrupted, and the records were seized by the Federal troops, and were taken by them, at least in part, to Washington, and that some of those records are still on file in the War Department. And therefore we examined the records as far as we could get at them in the War Department, as well as going to the Congressional Library to see if any of the books had been preserved there.

Q. And examined the records of Virginia here at Richmond in addition thereto?

A. Yes, sir.

Q. With the result that you have stated?

A. Yes, sir.

Q. We will now ask you to file the exhibit referred to and mark it Defendant's Exhibit No. 5, 1863.

A. I file it herewith, so marked, being page No. 38.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, 1863, September 3, 1914, C. B.

Q. The exhibit you have just filed consists of how many sheets?

A. Do you mean for the whole class.

Q. Just covering the banks in Class E.

A. Six sheets.

Q. And these six sheets cover what banks? Give me the names of each of them.

A. Farmers' Bank of Virginia, Bank of Virginia, Bank of the Valley, Exchange Bank of Virginia, Northwestern Bank, and Fairmount Bank.

Q. These sheets of Exhibit No. 5, as I understand it, correspond exactly with the sheets in the schedules for 1861, except that there is a note on the bottom of each which you read a moment ago?

A. Yes, sir.

By The Master:

Q. That note explains how it is, although there was some lapse of time, that this is a duplicate of the other? That is to say, you have not been able to get any original information that enables you to make any change?

A. Yes.

By Mr. Holt:

Q. Then the only difference in the sheets for 1861 and for 1863, if any there be, is in the caption? Is there a difference in the caption?

A. There is, yes, sir; the caption being in this instance, statement showing ownership of stocks in various banks by the Commonwealth of Virginia, June 20, 1863, and the value of the same as shown by the banks' statements of January 1, 1861.

The Master: And as to these items you rest your case upon the same evidence as was submitted as to January 1, 1861, as to the reasons you have given.

Mr. Holt: Yes, sir.

The Master: In other words you have exhausted all the sources of information that were open to you.

Mr. Holt: And the only point being that in 1863 they were declaring bigger dividends than in 1861. Of course that is embraced in the note and shown by the dividends that are set down in the sheet.

The Master: Yes. All those facts appear on the original exhibit.

Mr. Holt: Yes, sir.

The Master: Or original exhibits. Now, whether any information is obtainable from the newspapers during that period, that is a matter that remains to be investigated.

Mr. Lilly: We will pursue that.

Mr. Holt: We have been ransacking the newspapers on other matters, and we will try and see what they furnish on this matter.

Q. You may state whether or not as appears by these bank exhibits for 1863, the Commonwealth of Virginia owned the same number of shares of stock in these banks on June 20, 1863, that she owned therein on January 1, 1861.

A. Yes, sir, she owned the same amount.

Q. Class F, in the exhibits to the supplemental answer, showing the sale of various stocks and loans by the State of Virginia to the Atlantic, Mississippi & Ohio Railroad; you may state whether or not you have examined the books, records and public documents of the Commonwealth of Virginia with a view of ascertaining what stocks embraced in this class if any were sold by the Commonwealth of Virginia to the Atlantic, Mississippi & Ohio Railroad Company and the amount received thereon or to be received thereon and the security taken therefor if any.

A. Yes, sir, I have.

Q. Have you prepared an exhibit showing the result of your examination and the figures taken from these records of Virginia?

A. Yes, sir.

Q. Will you file the same as a part of your evidence, marking it Defendant's Exhibit No. 6, 1863.

A. I file it so marked, being also numbered page 44.

The paper was admitted in evidence and marked Defendant's Exhibit No. 6, 1863, September 2, 1914, C. B.

Q. Does the exhibit just filed by you show the documentary or record sources upon which it was made up?

A. Yes, sir, it does.

Q. Is this exhibit accurate and does it truly represent the documents examined by you and noted on its face?

A. Yes, sir. I would like to add to that statement the foot note which will be found on this page 44 that the records of the Atlantic, Mississippi & Ohio Railroad, their first trial balance sheets, have also been examined in order to determine whether or not this $4,000,000 was outstanding at that time, and I have so found.

By The Master:

Q. At what time?

A. At the time that the books of the Atlantic, Mississippi & Ohio were opened, the first trial balance.

Q. What date was that?

A. On September 30, 1871.

Q. What was the outcome of this $4,000,000 mortgage, was it ever paid or whatever happened to it?

A. The railroad went into the hands of a receiver and was foreclosed and the State finally accepted $500,000 in lieu of its mortgage.

Q. Was that $500,000 in cash or bonds?

A. Cash.

Q. What date was that?

A. The date was————————.

Q. Do you know what the amount of the first or underlying mortgage was? You need not bother now if it is any trouble.

Mr. Holt: I thought perhaps we could develop that history through the exhibit your Honor.

The Master. Very likely.

Mr. Holt. The history of it is simply this, if I may be permitted to state it. In the first place they sold all these odds and ends to the A. M. & O. Railroad for the sum of four millions of dollars, and took a second mortgage on the property of the vendee of the stocks. And a little later the A. M. & O. got into trouble and a foreclosure suit took place under its first mortgage, and the proceeds of the sale never reached the second mortgage. But afterwards, when the road was reorganized, in order to get rid of any equitable claim that Virginia might have, they came in and offered her a half a million, and she accepted it. That is now the Norfolk & Western Railroad Company.

The Witness: Your Honor, you asked a question a moment ago—

The Master: I am inclined to think that those facts had better appear.

Mr. Holt: We have a contract that we will exhibit directly that will show that.

The Witness: You asked what were the first mortgage bonds which preceded or had precedence of this second mortgage. They amounted, on September 30, 1891, to $5,493,008.11. That is shown by the trial balance September 30, 1871 of the A. M. & O.

Mr. Holt: It was a reorganization, it changed its name, and I do not know how far it was identified with the old one.

The Master: Does the date of the foreclosure appear in the record? Or will that appear in your Exhibit?

Mr.Holt: I think, your Honor, that we will be able to show directly a contract between the Norfolk & Western, or its then President, Mr. Kimball, and the State of Virginia, with the recitals that give all the facts that you inquired of, at the time the half million was paid. We have that paper somewhere. I haven't seen it.

The Master: That will give the history of the whole transaction?

Mr. Holt: Yes, but that will be introduced independently of this exhibit of course.

By Mr. Holt:

Q. I wish you would explain briefly, Mr. Hillman, and in your own way, this Defendant's Exhibit No 6, 1863.

Mr. Holt: I think that will be the briefest way to do it, your Honor.

The Master: Is this the one relating to the $4,000,000 loan?

Mr. Holt: Yes, sir, page No. 44.

The Master: Yes, I have it.

A. On pages 178 and 179, Journal 9, Internal Improvement Fund of the State of Virginia, it is shown that the following stocks of the face value or cost value, as shown, were transferred to the Atlantic, Mississippi & Ohio Railroad Company for $4,000,000 second mortgage bonds; first, 8,175 shares of the Norfolk & Petersburg Railroad Company stock of the cost value and a par value of $817,500; second, 825 shares of the Norfolk & Petersburg guaranteed stock, face value and par value of $82,500; third, 3,000 shares of the Norfolk & Petersburg preferred stock of the face value and the par value of $300,000; fourth, 8,035 shares of the South Side Railroad Company, par value and face value of $803,500; fifth, 17,168 shares of the Virginia & Tennessee Railroad, par value and face value of $1,716,800.

Q. Is there any difference between par value and face value?

A. Yes, sir, by face value I attempted to convey the amount at which it was carried upon the books of the State of Virginia.

Q. Very well, go ahead.

A. Perhaps that is not a very felicitous term.

Q. Well, the two are the same in this instance anyhow?

A. Yes, sir.

Q. Very well.

A. Sixth, 832 shares of the guaranteed stock of the Virginia & Tennessee Railroad, face value and par value $83,200. Seventh, 5,000 shares of the Virginia & Tennessee preferred stock, face value and par value $500,000. Eighth, 1,034 shares of the Virginia & Kentucky Railroad, face value and par value $103,400. Also bonds and notes as follows: First, note of the Norfolk & Petersburg Railroad Company for interest due and

unpaid on loan of $300,000, $13,271.41. Second, note of the Norfolk & Petersburg Railroad for interest accrued and unpaid on July 1, 1870, on 825 shares of guaranteed stock, $27,225. Third, unpaid balance of the principal of the $300,000 loan, $163,000. Fourth, all the claims the State may have against the South Side Railroad on account of the principal and interest due upon the loan of $800,000; no monetary value attached.

By The Master:

Q. Was that the value of loan when due?

A. Yes, sir.

Q. So that if that had been carried out in the column it would be $800,000, giving the nominal value?

A. Yes, sir; but on the Journal entry there was no value carried out.

Q. And for that reason you don't put any value on it?

A. Yes, or do not carry it out.

Q. If you were to treat it as you treated the other items you would carry $800,000 out?

A. Yes, sir. Fifth, registered certificates of the Virginia & Tennessee Company, being for interest unpaid on 832 shares of the Virginia & Tennessee guaranteed stock up to July 1, 1870, $79,040. Sixth, all claims, rights and privileges which belong to the State of Virginia on account of a loan of $1,000,000.

Q. Was that full amount due at that time on the $1,000,000?

A. Yes, sir.

Q. And if they were treated like the other items you would simply carry that out in the column to increase the aggregate by a million?

A. Yes, sir. For all of the above there is charged against the Atlantic, Mississippi & Ohio Railroad $4,000,000. That the above was a second mortgage for this amount and not a charge against the road is evidenced by the above pages in the preamble to the entry and by the first general balance sheet of the Atlantic, Mississippi & Ohio Railroad Company, September 30, 1871, on file in the Comptroller's office of the Norfolk &

Western Railroad Company at Roanoke, Virginia, and examined by Mr. Parsons of my force, wherein the item, second mortgage to the State of Virginia, $4,000,000, is shown in the road's liabilities.

Q. Is this item of $163,000, item No. 3, under the heading of bonds and notes, is that the item that we were discussing this forenoon as included in this aggregate of $4,000,000.? We had an item this forenoon which was said to make up part of this $4,000,000 transaction. Is that the item? My memory is that it is, but I wanted to be sure about that.

A. Yes, sir, except the discussion was yesterday instead of this morning.

By Mr. Holt:

Q. The books of these roads, namely, the Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky, are now in the possession as I understand of the Norfolk & Western Railway Company at Roanoke, Virginia?

A. Yes, sir, they are.

Q. Did you examine, or cause them to be examined in making up this exhibit?

A. I did, yes, sir.

Q. The Norfolk & Western then I suppose was the successor to the Atlantic, Mississippi & Ohio Railroad, was it?

A. Yes, sir.

Q. And in that way got possession of the Atlantic, Mississippi & Ohio books?

A. Yes, sir. They have not a perfect file, but they have files which fortunately cover the matters which we have in hand.

Mr. Holt: I have found the matter of the $500 payment, and the contract mentioned a moment ago, actually embodied in an Act of the Legislature of Virginia. And I presume that as a supplement to this exhibit, Defendant's Exhibit No. 6, 1863, it should be offered in evidence at this point.

The Master: Yes, I think so, because it is cognate matter, and we should get the material all together.

Mr. Holt: We offer a copy—

The Master: Does it include other material?

Mr. Holt: No, sir, it just recites and embodies this contract and ratifies it.

The Master: Is it several pages?

Mr. Holt: I can read it.

The Master: No, I do not think there is any occasion for that. Do you need the whole of it?

Mr. Holt: Yes, sir, we need the whole of it. It is two pages and a half. We offer as a supplement to Defendant's Exhibit No. 6, 1863, a copy of an Act of the General Assembly of the State of Virginia, entitled an Act ratifying the sale by the board of Public Works of the claim of the State against the Atlantic, Mississippi & Ohio Railroad, approved February 9, 1882.

Mr. Harrison: What is the reference to that Act, Judge?

Mr. Holt: Acts of the General Assembly of Virginia, 1881-82.

The Master: What is the volume and page?

Mr. Holt: There is only one volume, on pages 76-8. They are bound in separate session acts.

The Master: You do not need to read it. The record shows that you have put it in.

The paper was admitted in evidence and marked supplement to Defendant's Exhibit No. 6, 1863, September 3, 1914, C. B.

Mr. Holt: This morning you asked, as I recall, Mr. Master, for the original entry showing this four million dollar transaction.

The Master: Yes, there were two entries.

Mr. Holt: The A. M. & O. road.

The Master: Yes, that is right.

Mr. Holt: Mr. Hillman has produced them here in full from the records, and I do not know that anybody wants to hear them read. One of them is quite lengthy.

The Master: Just insert them in the transcript at the place in his testimony where he would have introduced them.

Mr. Lilly: It comes in very well now. We are just finishing the A. M. & O.

The Master: Well put them in right here.

Mr. Holt: After this Act, I will introduce them in some way.

The Master: That is right.

Mr. Holt: This morning the Master asked the witness to embody in the record the original journal entries covering the disposition of the securities for four millions of dollars to the A. M. & O. Railway Company, and in response to that request we now file two papers, being copies of the entries on said journals and mark the first Defendant's Exhibit No. 6, 1863, B., and the second Defendant's Exhibit No. 6, 1863, C.

The papers were admitted in evidence and marked Defendant's Exhibit No. 6, 1863, B, and Defendant's Exhibit No. 6, 1863, C, respectively, September 3, 1914, C. B.

Defendant's Exhibit No. 6, 1863, B, is as follows:

Journal "D," page 176, Internal Improvement Fund:

"241 Loan to Norfolk & Petersburg Railroad
182 To Norfolk & Petersburg Railroad Company
Stock
For this amount improperly charged to latter. .$300,000."

Defendant's Exhibit No. 6, 1863, C, is as follows:

Journal "D," page 178, Internal Improvement Fund:

December 22, 1870.

"284 Atlantic Mississippi & Ohio Rail Road Co.:

175 To Stocks & Loans & made to Int. Impt. Co. (that have been sold, &c.")

"Whereas by the terms of an act June 17, 1870, entitled 'An Act to authorize the formation of the Atlantic Mississippi and Ohio R. Road Company, the B. P. W. is empowered and directed to sell and transfer to the A. M. & O. R. R. Co. all of the stock held by the State in the Norfolk and Petersburg, in the South Side, in the Virginia and Tennessee, and in the Virginia and Kentucky Rail Road Companies, for and in consideration that the Commonwealth of Virginia is absolved from all and whatever liability by reason of her unsatisfied subscription to the Va. & Ky. R. R. Co. It is expressly stipulated by the terms of said Act that the payment of $4,000,000 shall be secured by a second mortgage upon the property of the said Atlantic Miss. & Ohio Rail Road Co. In accordance therewith the Board Public Works have this day, sold, & delivered over to the said A. M. & O. R. R. the following property:

I. Stock certificate No. 39 Norfolk & Petersburg Rail Road Company for 8175 shares of ordinary stock	817,500	
II. Stock Certif. No. 40 of same, for 825 shares of stock guaranteed to pay 6 per cent. annually....	82,500	
III. Stock Certif. No. 41 of ditto, for 3000 shares of stock preferred to pay (7 per cent) annually....	300,000	
		1200,000
IV. Stock Certif. No. 881 of the South Side Rail Road Co. for 8035 shares of ordinary stock.....		803,500
V. Stock Certif. No. 1770 of Va. & Tenn. R. R. Co. for 17,168 shares of ordinary stock	$ 1,716,800	
VI. Stock Certif. No. 1771 of the Va. & Tenn. R. R. Co. for 832 shares of guaranteed stock	83,200	

VII. Stock Certif. No. 1772 of same for 5000 shares of preferred stock	500,000	
VIII. Stock Certif. No. 1 Va. & Ky. R. R. Co. for 1034 shares.....		2300,000 103,400

Also the following claims against the aforesaid companies:

11. The note of the Norfolk and Petersburg Rail Road Co., the same being for interest due and remaining unpaid as of the 1st July, 1870, upon the loan of 300,000 dollars	13,271.41
I. The note of the same, being for interest accrued and remaining unpaid as of the 1st July, 1870, on the 825 shares of guaranteed stock	27,225
III. The amount remaining to be due of the $300,000 loan to Norfolk & Petersburg Rail Road and unredeemed	163,000
IV. All the claim which the State may have against the South Side Rail Road Co. on account of principal & interest due upon the loan of $800,000 made in 1853 to said company.....	
V. Registered certificate of the Virginia and Tennessee Rail Road Co., the same being for interest accrued upon the 832 shares of guaranteed stock as of July 1, 1870, held by the State in said company	$ 79,040

VI. All claims, rights & privileges which belong to the State of Virginia on account of the loan of 1,000,000 dollars made to said company under an Act February 9, 1853, &c.

For the above considerations the former account is chargeable to the latter account..... $4,000,000"

See Proceedings B. P. Works, Journal M, Dec. 22, 1870.

Q. Mr. Hillman, have you prepared an exhibit showing the book value of the securities listed under Class F as of the date of June 20, 1863, or the nearest possible date thereto?

A. Yes, sir, I have, as far as the railroad stocks therein were considered.

Q. Will you file that exhibit and mark it Defendant's Exhibit No. 6-A, 1863?

A. I file it so marked.

Q. What page in this series of exhibits is it?

A. Page 45.

The paper was admitted in evidence and marked Defendant's Exhibit No. 6-A, 1863, September 3, 1914, C. B.

Q. Does that exhibit indicate upon its face the records from which it was made up?

A. Yes, sir it does.

Q. Does it truly represent those records?

A. Yes, sir.

Q. Take that exhibit and explain it as far as you may deem it necessary.

The Master: I would suggest that if the explanation consist in a statement of what appears on the exhibit, why, he can simply do that by saying that so far as that part of it is concerned it appears on the exhibit, which will save duplicating of the record and save your time.

Mr. Holt: I want to avoid what occurred a moment ago if I can.

The Master: In this other one all he did was to read the schedule. That gets it in the record, and it will also appear on the schedule, and it took quite a long time. My idea is to both shorten the time here and shorten the record also, that is, if it is agreeable to you.

Mr. Holt: I prefer it that way if I can get it.

The Master: If you do not succeed in doing it, I will try hard.

By Mr. Holt:

Q. Does this schedule, 6-A, relate to stocks or does it cover loans also?

A. It relates to stocks, the loans having been put forth under Class C.

Q. What do you mean by the nearest date to June 20, 1863?

A. The nearest date to which we could obtain the profits of these roads in order to determine what their book value was.

By The Master:

Q. Is this subject to the same embarrassment as the other schedule was, that is, the inability to get at additional data?

A. Yes, sir, there were no records of these roads on file.

Q. I know, but does the same condition exist, with respect to your inability to get additional original data, with reference to this schedule, as to the one you testified about before?

Mr. Holt: What the Master means is, did you have to go to Washington.

The Master: Does the same condition exist?

Mr. Holt: I do not think it does.

The Witness: We obtained these from the files of the Norfolk & Western Railroad at Roanoke, Virginia.

By Mr. Holt:

Q. I will then ask you the general question, Mr. Hillman; how did you arrive at the book value for June 20, 1863, of those stocks? Give us the process. You need not go into the

details of repeating and reading the schedules.

A. By taking the trial balance of the road for the nearest date we could find and seeing whether there was a profit or a loss on that trial balance, and then determining the value of the stock according to the amount of such profit and of such loss.

Q. Such profit or loss occurring when?

A. At the date, the last date which we could obtain. Shall I quote them?

Q. What was that date?

A. For the Virginia & Tennessee Railroad, January 30, 1860; for the South Side Road, September 30, 1861; for the Virginia & Kentucky there is no trial balance; for the Norfolk & Petersburg, March 31, 1861.

The Witness: Your Honor, I am going to ask on this page 45 that has just been filed that a line be drawn through the notation in the second paragraph of "no claim, too indeterminate."

Q. Where does that occur on the schedule?

A. In the second paragraph, page 45.

Q. What do you mean by paragraphs on this schedule?

A. It is divided into three paragraphs by horizontal lines.

By The Master:

Q. What is it you want to do to that entry?

A. I want a line drawn through it, as the claim is made elsewhere on our schedules. The notation, "no claim, too indeterminate," was a private memorandum that I had on my own working sheets, and intended for private guidance and not intended to be written here, since the claim had been made elsewhere for the value of these loans.

The Master: Now, if there is no objection I will have that struck right out of the schedule and the explanation go out with it.

Mr. Harrison: No, I would rather have that in.

The Master: Very well.

Mr. Holt: Not let the "too indeterminate" stand, but let the explanation stand.

Mr. Harrison: I want his explanation to stand.

The Master: Then the original schedule stands as it appears with the explanation made by Mr. Hillman. That of course is subject to cross-examination.

Mr. Holt: Very well. As I understand it the words "too indeterminate" are to be stricken out at the request of the witness, but his explanation of the fact that he has stricken it out is to remain in the record; is that the situation?

The Master: The schedule is already in with his endorsement on it, and it will be so printed, and the record will show that the witness desires to amend that schedule, by striking that out, and that will appear in the record. They object to having the original schedule, otherwise I would strike it out altogether. They object to having that done, therefore the record will have to show first, the record as put in, and second his request to amend.

Mr. Lilly: Would not we have the right, your Honor, to correct our own schedule to confirm to our views?

The Master: I should have to say this about that, that after you have introduced a schedule it must stand for whatever it shows. You have a perfect right to change or amend your schedule, but the other side are entitled to any benefit they may get from the effort you make to amend.

Mr. Holt: I do not think it makes a particle of difference. It is just as broad as it is long. The witness has given his position here.

The Master: Either side may have the benefit of any inaccurate statement that the witness may make. If they insist upon it the record must show that.

The Witness: I simply made the mistake of allowing the Judge to file that before I drew my pencil through it.

Mr. Hogg: I do not know whether his explanation applies to both statements there. I understand from the witness that it does, but I do not know whether he has made himself plain on that.

By Mr. Holt:

Q. How is that, Mr. Hillman?

A. It applies to both, claim having been made for those loans elsewhere, and this being simply a private memorandum on working papers, and not intended to be copied.

The Master: Of course after a schedule has once been put in so that it becomes a matter of evidence, if any change is to be made there is no objection to making the change, but of course if the other side insist the record will have to show the circumstances under which the change was made.

Mr. Holt: We are satisfied.

Q. Have you prepared a schedule showing the value of the property of the James River & Kanawha Canal Company as absorbed and capitalized by the Richmond & Allegheny Railroad Company, 1881?

A. Yes, sir, I have.

Q. What books and records if any did you examine in making up this schedule?

A. The first general balance sheet of the Richmond & Allegheny Railroad on file in the office of the Vice-President of the Chesapeake & Ohio Railroad Company in the City of Richmond.

Q. What year was that?

A. 1881.

Q. What else did you examine in the shape of records, if anything?

A. The trial balance sheet of the same road for 1882, the second trial balance sheet on file in the same office of the same railroad company.

Q. Of how many sheets does the exhibit so prepared by you consist?

A. Two.

Q. Will you file this exhibit as a part of your evidence, marking it Defendant's Exhibit No. 7, 1863?

A. I file it, so marked. It consists of pages 46 and 47.

The papers were admitted in evidence and marked Defendant's Exhibit No. 7, 1863, sheets 1 and 2, September 3, 1914, C. B.

Mr. Holt: My idea is this at this time but it may be that a suggestion can be made by the Master or someone else that would throw it into more convenient shape, to supplement at this point Defendant's Exhibit No. 7, 1863, relative to the value of the James River & Kanawha Canal Company by the introduction of such acts of the General Assembly of Virginia as according to our contention constitute a legislative declaration or admission concerning the value of that property and the stock therein. I thought those acts might come right in after this exhibit and be read along together.

The Master: Yes, I should think that would be the proper place for them.

Mr. Anderson: Would it not be more convenient to have all of the acts that you rely upon on this hearing published together in one volume instead of scattering them all through the record?

The Master: The Judge's idea is this, General, that here is a particular subject matter and it may be convenient for all concerned to have all of the material that relates to that particular subject matter marshalled at this point so that when we come to examine the record hereafter, either by way of argument or by way of reaching a conclusion, everything will be right under our hands, and readily attainable. That phase of it seems to me to be all right. In any event, I should be inclined to accede to the suggestion of Judge Holt as to the order in which he would like to have his case go in.

Mr. Holt: And then if it should be deemed by the Master or the counsel on both sides hereafter that it would be more convenient to bind the Acts in one volume, why, we could do that.

The Master: It may be that the Acts may be published in one volume anyway. The matter of duplicating a few pages where the printing can be of use in conserving your convenience and my convenience in facilitating a speedy and easy result, to me is not a matter to be considered very much.

Mr. Holt: I do not think so.

The Master: There is no harm, and if I can I want to get this case in the end so that everything that relates to these

various propositions will be in the handiest and most concise form possible, and if that should result in a duplication of printing, that will not be a very large matter in my judgment, and no harm will be done. On the other hand, it may be that a great deal of good may be accomplished. Anything that we can do here that will save us work hereafter is something that in my judgment we ought to do. As to these Acts, Judge, I do not know the contents of them sufficiently to know whether or not certain sections, or certain parts could be printed without printing the whole. Of course you know what you want, and if you need the whole, all right; on the other hand, if a section of one of these Acts would be everything that you require, that is all that you need offer, and if the other side want to put the balance in, we would have it all in at this stage. You get my point.

Mr. Holt: I do.

The Master: Whether you can shorten it any or not, I do not know.

Mr. Holt: It has been some time, your Honor, since I have read them, I thought I would not take the time now to stop to read them, but they will be published section by section, and if there should be an inappropriate section in there we can leave it out.

The Master: That is simply in the interest of conciseness and weeding out of immaterial matter. You get my suggestion, General Anderson, in relation to that?

Mr. Anderson: Yes.

Mr. Holt: These have never been printed, gentlemen. I have the printed Acts in the old record before me, and I defy these gentlemen to find a single one of them in there. We have been confronted with that statement a great many times. I have had them examined by three different gentlemen this morning.

Mr. Harrison: But the Act you referred to before was already in the record.

Mr. Holt: The one Act that we put in yesterday was printed before, but none of these have been.

Mr. Harrison: We have not said that those were in the

record. We cannot tell until you mention what they are.

The Master: I ought to make this suggestion, whether this bears on what we have before us right now, whether everything that is to be relied upon by you and passed upon by me is to be made strictly a part of this particular print and of this record; and the more I think it over the more I think it is absolutely necessary, for this reason. I do not remember how many copies were printed before, but the usual number were placed on file with the Supreme Court of the United States, and I suppose they were distributed, a copy to each Judge, and I assume that each Judge did as they usually do when they get through with a record, throw it out. The result of that probably is that there is not on file in Washington in the Supreme Court enough copies of the original report to go around among the Judges in case we undertook to make that a part of my report, and it would be perfectly absurd for me to undertake, therefore, to make as part of this record the former record, when there are not enough copies available for the court to use. I think that is probably the situation. The result of all that will be that this report of mine must show the whole record. Otherwise we could not be sure that the Court would have the benefit of everything.

Mr. Harrison: Certainly; it is a matter of convenience and we will incorporate them.

The Master: Anything that is to be relied upon, by way of argument or otherwise, is going to go into this report. Now, Judge, you may make your offer, please.

Mr. Holt: As a supplement to Defendant's Exhibit No. 7, 1863, and the corresponding exhibit for 1861, we offer a copy of an Act of the General Assembly of Virginia, entitled "An Act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River and Kanawha Company thereto," passed March 29, 1861, and found on page 70 of the Acts of Assembly of 1861; which copy we will mark Defendant's Exhibit No. 7, 1863, A.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, A, September 3, 1914, C. B.

The Master: And the purpose of this evidence is to show an admission on the part of the State of Virginia, that is, that is the ultimate purpose of it, and as tending to show the value of this property at that time.

Mr. Holt: As of both dates.

The Master: Yes, I understand, as of both dates. That simply gives notice to the other side and to me that that is the only purpose for which I am to spend any time in examining this Act at all.

Mr. Holt: We likewise offer, for the same purpose, a copy of an Act of the General Assembly entitled, "An Act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River & Kanawha Company thereto, passed March 29,1861," passed February 3, 1866; and mark the same Defendant's Exhibit No. 7, 1863, B.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, B, September 3, 1914, C. B.

Mr. Harrison: What is the Act?

Mr. Holt: This Act is found on page 93 of Acts of Assembly 1865-6.

Mr. Harrison: What page?

Mr. Holt: Page 93. We likewise offer, and for the same purpose, a copy of a joint resolution of the two legislative houses of the State of Virginia, entitled, "Joint resolution in relation to an act entitled an act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, etc., passed February 3, 1866," adopted February 9, 1866; and found upon page 458 of the Acts of General Assembly of Virginia, 1865-6. We ask that that be marked Defendant's Exhibit No. 7, 1863, C.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, C, September 3, 1914, C. B.

The Master: Suppose you say "We put them in," instead

of saying that you offer them. The suggestion of offering might be open to the question that it was offered but not admitted.

Mr. Holt: In accordance with the suggestion of the Master we put these copies into the record and mark them as above indicated.

The Master: You get my point?

Mr. Holt: Yes, sir. It might be well in this connection also, your Honor, while on this subject of the James River & Kanawha Canal Company, to introduce the acts of the legislature by which as we claim, it was given away, as charged in our supplemental answer. We might just as well complete it I think while we are at it. It does not go to value so much as it does to the gift.

The Master: Your contention being that *quo ad* this controversy that was a misappropriation of it?

Mr. Holt: Yes, sir. In this connection we likewise offer and put into the record a copy of an Act of the General Assembly of Virginia entitled, "An Act to authorize the James River & Kanawha Company, to make sale and transfer of all its works, property, and franchises to the Richmond and Allegheny Railroad Company, and to define the powers and duties of the Board of Public Works in respect thereto," approved February 27, 1879. This Act is found on page 118 of Acts of Assembly of Virginia, 1878-79; and mark the same Defendant's Exhibit No. 7, 1863, D.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, D, September 3, 1914, C. B.

Mr. Holt: We also make a part of the record a copy of an Act of the General Assembly of Virginia entitled, "An Act to authorize the James River & Kanawha Company to make sale and transfer of all its works, property and franchises and to invest the purchaser or purchasers with certain corporate rights, powers and franchises," approved April 2, 1879. This Act is found on page 386, Acts of Assembly, Virginia, 1878-79, and mark the same Defendant's Exhibit No. 7, 1863, E.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, E, September 3, 1914, C. B.

Mr. Holt: We incorporate in the record a copy of an Act of the General Assembly of Virginia entitled "An Act authorizing the Board of Public Works to adjust the claims of the James River & Kanawha Company and appropriating the proceeds and providing for the safe keeping of certain deposits and authorizing the said James River & Kanawha Company to sell and convey its works and franchises to the Richmond & Allegheny Railroad Company," approved March 4, 1880. This Act is found on page 172, Acts of Assembly, Virginia, 1879-80, and mark the same Defendant's Exhibit No. 7, 1863, F.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, F, September 3, 1914, C. B.

Mr. Holt: I want also to offer, your Honor, the deed transferring this property, but I have not a copy of it before me, but I have the reference to it.

The Master: Have it appear in the record that you put it in, and then when you get the copy, hand it to the stenographer so that it will be printed at this place. Let the record show that you introduced it now. Do you need the deed in full or is all you need the descriptive parts for consideration?

Mr. Holt: I would have to read it again to determine that, your Honor, that is the trouble. We incorporate into the record a copy of the deed conveyance from the James River & Kanawha Company to the Richmond & Allegheny Railroad Company dated the blank day of blank, 18—, and mark the same Defendant's Exhibit No. 7, 1863, G.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, G, September 3, 1914, C. B.

Mr. Holt: I believe those are all of the Acts on the subject of value, legislative declarations of value and transfer, etc.

Q. Take up the second item, Manassas Gap Railroad Com-

pany, Class G, of exhibits to supplemental answer. Have you prepared an exhibit for the year 1863 upon that subject, Mr. Hillman?

A. Yes, sir, I have.

Q. What is the page number in this series of exhibits?

A. Page No. 48.

Q. Does that exhibit show upon its face the sources from which it was made up?

A. Yes, sir.

Q. Is it a true exhibit?

A. Yes, sir.

Q. Will you file the same, marking it Defendant's Exhibit No. 8, 1863?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 8, 1863, September 3, 1914, C. B.

Q. I see it corresponds to Exhibit 8 of January 1, 1861, or at least it is so marked. What is the difference between that exhibit if any and the one filed for 1861?

A. The insertion of the date of June 20, 1863, after the words "at that time" so as to identify the exhibit.

Q. That is the only difference then between the two schedules?

A. Yes, sir.

Q. Could you tell from the records of Virginia examined by you, Mr. Hillman, whether or not any moneys have been expended upon the Manassas Gap Railroad Company between January 1, 1861, and June 20, 1863?

A. Yes, sir. There had not, according to the records of Virginia.

Q. Have you prepared a schedule, being a statement of stocks in and claims against Internal Improvement companies held by the Commonwealth on August 22, 1914?

A. Yes, sir, I have.

Q. Does that exhibit show upon its face the sources from which it was made up?

A. Yes, sir, it does.

Q. What were those sources, in a general way? I do not mean for you to give me volume and page, but briefly. Were they records of Virginia?

A. Yes, sir. Generally from the Department of Public Works records.

Q. Of that State?

A. Of the State of Virginia.

Q. Does the exhibit correctly represent the public records examined?

A. Yes, sir.

Q. Will you file the same as a part of your evidence, and mark it Defendant's Exhibit No. 9, 1863?

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 9, 1863, September 3, 1914, C. B.

Q. What is its page number following this list of schedules?

A. 49.

Q. I see marked in the upper right hand corner thereof that it corresponds with Exhibit No. 9, January 1, 1861. What is the difference between the two exhibits, if any?

A. None.

Q. What is the reason therefor?

A. The securities were all—

By The Master:

Q. Is not the reason this, that there is no change in the status, so far as the records of Virginia show, between January 1, 1861, and June 20, 1863,—is not that the reason.

A. Yes, sir.

The Master: Well, then, that covers it all.

Mr. Holt: That is disposing of it just right.

The Master: I suppose that is what you wanted.

Mr. Holt: Absolutely.

The Master: It puts it in a nutshell, and then we know right where we are.

Q. Have you prepared another exhibit showing the amount

of taxes, fines, etc., paid by West Virginia counties to the State of Virginia after June 20, 1863?

A. Yes, sir, I have.

Q. Will you file the same as a part of your evidence and mark it Defendant's Exhibit No. 10, 1863?

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 10, 1863, September 3, 1914, C. B.

Q. I notice in the upper right hand corner thereof a statement that it corresponds with Exhibit 10, January 1, 1861. What is the difference between it and the exhibit for 1861, if any?

A. There is no difference.

Q. What is the reason therefor?

A. There having been no change on the books of Virginia in the interval between January 1, 1861, and June 20, 1863, as regards the matters dealt with in this exhibit.

Mr. Holt: Now, gentlemen, we come to the final exhibit. Have you gentlemen been furnished with a white paper in place of the resume on the last blue-print?

The Master: That is subject to some pencil qualifications which have been made.

Mr. Holt: That is what I am trying to find out, whether their copies have been changed.

The Witness: That is the corrected bank statement.

Mr. Holt: Of course the white sheet now is the summary, in lieu of the blueprint, page No. 51, which goes out because of those corrections during the examination.

Q. Mr. Hillman, have you prepared a statement, being a summary of the claims of West Virginia for consideration in settlement of debt as set up by your exhibits for 1863?

A. Yes, sir, I have.

Q. This, as I understand it, is a statement of the result as claimed by the defendant, based upon the exhibits of 1863?

A. Yes, sir.

Q. What do you find to be the sum total of all the assets

embraced in the various classes set forth in the exhibits for 1863?

A. $33,348,660.78.

Q. Have you indicated thereon what 23-½ per cent. thereof would be, or West Virginia's proportion of the value of those assets as claimed by her?

A. Yes, sir.

Q. What is the amount thereof?

A. $7,836,935.28.

Q. Does that summary likewise embrace the amount of taxes paid by West Virginia counties to Virginia after 1863?

A. No, sir, it does not.

Q. What is the item $224,799.63?

A. That is the item of the taxes paid by West Virginia counties to Virginia after June 20, 1863.

Q. That is on this summary statement, is it not?

A. Yes, sir, it is.

The Master: All it means by that is that it is not a part of the summary as to which he has testified.

Mr. Holt: But it is a part of this paper.

Q. When you add the $224,799.63 to the $7,836,935.28, what result do you have?

A. $8,061,734.91.

Q. Will you file this summary as a part of your evidence and mark it Defendant's Exhibit No. 11?

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 11, 1863, September 3, 1914, C. B.

Q. That is page 51 of this series of schedules, is it?

A. Yes.

Mr. Holt: Now then, your Honor, this deed from the Kanawha Company to the Richmond & Allegheny Railway Company is in process of copying and will be ready to hand in in the morning.

The Master: Hand it in to the stenographer when it is copied.

Q. Mr. Hillman, during the course of your examination upon the schedules of the defendant or the defendant's exhibits for 1863 you frequently stated that certain securities of the State of Virginia were sold and that sometimes they were paid for in cash and sometimes in bonds, and other times partly in cash and partly in bonds. What bonds did you mean in that connection?

A. I meant the bonds of the State of Virginia.

Q. When bonds were taken in payment of stock sold by the Commonwealth of Virginia in those schedules as set forth by you at what value were those bonds received by the Commonwealth?

A. At par and interest.

Mr. Holt: Your Honor, of course with the understanding that if we have omitted any question that we should have asked Mr. Hillman in chief, we will have the opportunity to inquire of him later, we now tender Mr. Hillman to the State of Virginia for cross-examination.

The Master: Then we will stand adjourned until tomorrow morning at ten o'clock, accompanied by the suggestion that I would like to have all concerned here promptly on the hour. We lost about twenty minutes this morning, and that means quite a good deal for all concerned. And while we are keeping these hours, I would like to have the parties, so far as reasonable and feasible, be on hand promptly on the hour.

Adjourned to September 4, 1914, at 10 A. M.

BEFORE THE MASTER

Richmond, Virginia, September 4, 1914.

Present, the same counsel who appeared on yesterday.

The Master: Now, Mr. Harrison, I suppose in your examination you will follow the order that we have been proceeding under; that is, you will start with the first class and go right along, of course subject to such necessary modification as may be necessary, and then we will have the record so we can pick it right up in the regular order.

Mr. Harrison: I expect to follow out the order that they did.

The Master: Before we proceed, it was suggested yesterday morning that neither side had had the necessary opportunity to make a careful examination of the record as printed up to date for the purpose of ascertaining whether there were any additional corrections to be made. I would like to inquire this morning whether each side is ready to state that the record is satisfactory or that they have some changes they wish to make.

Mr. Anderson: I find the record is admirably printed, and as far as I am able to discover the errors are almost entirely typographical.

Mr. Hogg: I have not had an opportunity to examine into that, if your Honor please, but I will do so at the noon hour.

The Master: And report at the beginning of the afternoon session?

Mr. Hogg: Yes.

Mr. Anderson: I have not compared the figures in these different schedules; there are thousands of them and it would take several days to do it, possibly.

The Master: I assume that the figures are all right.

Mr. Anderson: I have no doubt they are correct. That is up to the proof-reader.

Mr. Holt: There is only one thing, so far as I am concerned. The other day I called attention to the fact that the headings of some of the columns were a little misleading in the exhibits for 1861, and I wanted Mr. Hillman upon the witness stand to change their nomenclature.

The Master: Would you like to have that done this morning before we proceed, or would you like to look that over and do it the first thing this afternoon? Of course you both understand that even if the record continues to get printed and develops some error, that will be corrected; but what I want to do is to keep pretty careful watch, and when we do close, then the record will read all right.

Mr. Holt: I see that those columns in this printed matter and also on the books, General Anderson have been changed. It corrects itself.

The Master: Then we will have a report from Professor Hogg at the opening of the afternoon session, dependent upon which I will give instructions with relation to the final printing of so much as is already in type, so that they can distribute the type.

Now you can proceed, Mr. Harrison. Mr. Hillman will take the stand.

Continuation of the examination of

CONWAY W. HILLMAN.

Cross-examination by Mr. Harrison:

Mr. Harrison: In cross-examining this witness we do not intend thereby to waive our objections to his testimony.

The Master: That is understood.

Mr. Harrison: Our position being that if it should become pertinent to ascertain the values of the investments that are listed in the defendant's supplemental answer, the date as of which those values must be determined is June 20, 1863, and that any testimony attempting to fix their values as of

January 1, 1861, or to show how and on what terms Virginia disposed of them after June 20, 1863, is wholly irrelevant and immaterial. With this understanding I will now proceed with the cross-examination of the witness.

The Master: The understanding is that you reserve all your rights.

Mr. Holt: Will you allow us to make a statement in that connection too?

The Master: Certainly.

Mr. Holt: That it must be understood, and now our position is repeated upon that proposition, that by the offering of schedules on 1863 we do not mean to waive by implication or otherwise our contention that 1861 is the proper date.

The Master: That is perfectly understood.

Mr. Holt: Nor do we intend to waive our position with reference to 1861 by the introduction of schedules showing what was actually received upon them at a later date, but that is simply a part of the history of the situation.

The Master: Precisely. Neither side will assume at this stage of the investigation what date will be ultimately determined upon, and it is incumbent upon both sides in my judgment to try their case upon each hypothesis, so that whatever may turn out as to the final conclusion their case will be fully presented as to either hypothesis, and the fact that they are establishing one and at the same time another that may be inconsistent therewith will not have the slightest effect upon the ultimate result. I think I understand the thing perfectly.

By Mr. Harrison:

Q. Are you the accountant who made up the statement upon which the supplemental answer of the defendant is based?

A. No, sir.

Q. Have you examined the exhibit filed by the defendant in the record in this case beginning at page 1053 and extending to page 1065?

The Master: What record is that, Mr. Harrison?

Mr. Harrison: The printed record.

The Master: You mean the original record?

Mr. Harrison: Yes, sir.

The Master: You do not refer to the record in this case, you refer to the original record?

Mr. Harrison: I said the record in this case, not this hearing.

The Master: I did not get just exactly what you meant.

Mr. Harrison: If the witness misunderstands me I will ask him again.

The Master: Won't somebody furnish me with a duplicate of that record. I do not happen to have one on my desk.

Mr. Gregory: We have sent for a copy, your Honor.

Mr. Harrison: Please repeat the question to the witness.

(Question repeated by the stenographer).

The Witness: Do not take this down.

Q. You had better answer the question.

A. I have not the book before me to say whether I looked at it or not.

The Master: While he is looking that up, I will simply make this inquiry. Of course there are a very large number of details involved in these schedules which have been submitted by the defendant. I assume that they have all been checked up by an accountant representing the plaintiff. Now will it be proper for me to assume, later on, when I have occasion to examine these for any purpose, that so far as they are not questioned by the cross-examination their accuracy as to amounts is admitted? I should like to have some arrangement or understanding about that so that I will know right where I am. Would it be proper for me to do that?

Mr. Harrison: I am inclined to think that that would be true.

The Master: Of course at some stage I would like to know just exactly what the issues turn on, and if it is left in that way, if it is not questioned, I will know that they are conceded and we won't have to spend any time on such items.

Mr. Holt: We have assumed that their accountant has gone all over them and checked them, and if he does not criticise them he has found them correct.

The Master: I would like to have the record show, so that there will be no confusion.

Mr. Harrison: I would not like to be concluded on that at the beginning of the cross-examination.

The Master: Oh, no. All I want is not to be in confusion as to what may or may not be in conflict.

The Witness: No, sir, I did not examine the pages mentioned.

Q. Had you seen it before this morning when it has just been exhibited to you?

A. Yes, sir, I have read over the testimony in this book.

By The Master:

Q. Well, now, you say this book. Make some reference to it. Do you refer to the original record?

A. The original record.

The Master: It would be more satisfactory to me if both counsel and the witness, when they refer to the original record, designate it as the original record, because otherwise it might result in confusion.

Mr. Harrison: It is really Volume 1 of the record.

The Master: No, it won't do to say that it is Volume 1 of the record, because as I have already explained the case cannot go before the Supreme Court in that way. It will go on the record that I put before it in this case. Then if we refer to whatever we have here as the record and to that as the original record, we will understand it. If you are referring to the original record simply say the original record.

Mr. Lilly: That is known as Volume 3 of the West Virginia compilation.

The Master: The original record is a very fair designation. If it is convenient I would like to have the counsel and the witness accomodate themselves to this idea.

Mr. Harrison: I am referring to it as the record.

Mr. Holt: But that is what the Master is not doing.

The Master: The point is this—

Mr. Holt: He is calling the present record the record, and that the original record.

Mr. Harrison: I intended to say the original record.

The Master: Now whenever a reference is made, and I

make this suggestion now for the guidance of all concerned throughout the continuation of the examination—for instance the slip Mr. Hillman made in saying this book—now this book does not convey any information on the record. Of course I happened to sit here and see what he had in his hand, but the Court did not see it. Whenever reference is made to any document it should be identified.

The Witness: I understood that the question identified the document, and the reference was not to the book I had in my hand but to the book he mentioned.

The Master: That is simply a matter of detail, but what I want is, as we go along in the record, I want the questions just to indicate what they are directed to and the answers of course to follow the same line. It may be understood from now on that so far as any reference need to be made to the record taken prior to this time it may be referred to as the original record. When we refer to the record, we will refer to the record on this hearing. When we say the record I will understand it to be the record of this particular hearing on the amendment to this answer. The original record will mean everything that precedes that. I think that is clear now.

By Mr. Harrison:

Q. Do I understand from your last answer that you have read the exhibit?

A. I have read the original record, but casually, and have not examined the pages of the original record which you mentioned critically or in detail.

Q. I did not ask you whether you had read the original record. I did ask you, however, if you meant to say by your preceding answer that you had read the exhibit referred to.

A. I say then that I have not read the exhibit referred to.

Q. Have you given it any examination at all?

A. Only the most casual.

Q. Will you please tell me whether you find on that exhibit the figures which you have given as constituting what you call cash on hand January 1, 1861?

The Master: This relates to Class A?

Mr. Harrison: Yes.

A. On page 1054 of the original record, I find the figures which are on my exhibit No. 1, with one exception, which is the commonwealth fund.

Q. I find the commonwealth fund is stated on the exhibit referred to in the original record under the caption balance on January 1, 1861, as $255,180.99. What do you show on your exhibit?

A. $252,842.67.

Q. There is then a difference in the figures shown by you and the figures shown by the exhibt of how much?

A. $2,338.32.

Q. The exhibit which we are now referring to shows the Internal Improvement Fund to be $5,958.28. Any difference between those figures and the ones shown by you on your exhibit?

A. No, sir, none.

Q. Any difference between the figures shown by the exhibit and your figures under the Literary Fund?

A. No, sir.

The Master : He says there is no difference between the figures shown by his exhibit and the Literary Fund?

Mr. Harrison: They are the same.

Q. Any difference between your figures and the figures shown by the exhibit for the Sinking Fund?

A. No difference between the figures shown on page 1054 of the original record and the figures shown upon my exhibit No. 1, in regard to the Sinking Fund.

Q. Now, the total of balances on January 1, 1861, as shown on the exhibit in the original record at page 1054—

The Master : You refer now to exhibit 1, but in addition to that just say page 1. Page 1 will mean the present record.

Mr. Holt: I do not believe that the exhibits for 1861 were paged along as they are for 1863.

The Master: Yes, they are in the printed record. If he says page 1, I will know he means the printed record, and if I have occasion to trace it down I will be able to put my finger right on it.

The Master: I am having the tops of these pages changed, partly for the reason that I had occasion yesterday to try and find a certain exhibit, and I ran this record through at least four times before I could put my finger on it. I am going to have at the top of these columns something which will show me where I can find out in a minute without spending any time. Where we refer to an exhibit that is printed in this record you can refer to it by the page, and then I can simply trace it back right away. That is one great advantage that we are going to have with this concurrent print.

Q. Now the total of balances on January 1, 1861, shown on the exhibit in the original record at page 1054 is $1,104,374.46. This total shown on your exhibit is what?

A. Shown on my exhibit No. 1, page No. 1, of the Defendant's Exhibits in the present record, is $1,102,036.16.

Q. So that you and the exhibit are in agreement as to the amount of cash shown on hand January 1, 1861, with the exception of the difference you stated a while ago in the Commonwealth Fund, amounting to $2,338.32; is that correct?

A. Yes, sir.

Q. Will you please state the amount of cash on hand, as it is called, according to your statement, your exhibit, June 20, 1863?

Mr. Holt: You are going now to the exhibit which is the corresponding exhibit for 1863, Mr. Harrison?

Mr. Harrison: I will withdraw that question.

Q. I find the supplemental answer states the value of the stock of the Richmond, Fredericksburg & Potomac Railway Company, January 1, 1861, at $275,200. That is the par value of the stock, is it not?

A. Yes, sir, it is.

Q. You have testified, as shown on your exhibit No. 2—

The Master: That is page 54 that you just referred to, of the supplemental answer.

Mr. Holt: Mr. Harrison, if I do not interrupt you, may I request the stenographer to read me your question and answer.

Mr. Harrison: Yes.

(Question and answer repeated by stenographer).

The Master: If you can, without too much inconvenience, just locate the page.

Q. In other words, the state owned on that date 2,752 shares of stock of the par value of $100 per share, aggregating $275,200; that is correct, is it not?

A. Yes, sir.

Q. I find that you have testified as shown by your exhibit that the book value of that stock on January 1, 1861, was $150 a share, making the total value of the stock $412,800. Please tell me what you mean by book value.

The Master: That exhibit that you refer to now is page 2?

Mr. Harrison: Yes, sir.

A. The book value means the par of the stock plus the amount of profit which had accrued on the stock and which could be or would be divided up amongst the stockholders if the corporation were closed up.

Q. Does it mean the same thing as actual value?

A. Yes, sir.

Q. Then if you were employed to advise a client whether or not he should buy stock, you would advise him to buy it according to the book value, that truly representing its actual value, and would make no further inquiries on the subject as to its value; is that correct?

A. No. If I were acting in an advisory capacity concerning the purchase of a stock I would take into consideration more than the book value of the stock. I would take into consideration its earning capacity and also the method which had been followed in determining the book value.

Q. Do you mean to say that those additional considerations would be taken account of in order to determine its actual value?

A. In order for me to give the advice to the client whether or not to purchase the stock.

Q. My question is would those additional considerations be

taken account of in order to determine the actual value of the stock.

A. No, sir; the actual value of the stock would be determined by its books.

Q. Without reference to whether the securities in which the surplus was invested were good or bad?

A. Oh, no, sir; we would have to enter into an investigation to determine whether or not the surplus or the price of securities had been marked up unduly beyond their value or their cost; we would have to enter into a computation as to whether their supplies and the material on hand had really been paid for and were worth the amount at which they were carried on the books; we would have to go through their assets and also their liabilities and determine all of those facts.

Q. Do I understand you now to testify as an expert that you would accept the value of stock shown on the books as constituting the true actual value of that stock without any further investigation?

A. No, sir, I would not.

Q. Then there must be a difference between book value and actual value, is there not?

A. Yes, sir, there is.

Q. Then you were wrong when you said that there was no difference, were you not?

A. Yes, sir, taking that view of it, that was not the proper statement.

Q. Nevertheless you have charged to the State of Virginia this book value as its true value, have you not?

A. Yes, sir, I have given the book value of the Richmond, Fredericksburg & Potomac stock as $150.

Q. My question was if you had not charged this so-called book value to the state of Virginia as the true actual value of the stock January 1, 1861.

A. My answer to that is that I have made no charges to the State of Virginia; that I have entered the actual value upon my Exhibit No. 2, page 2.

Q. Do you mean to say that you have not testified, as shown by your exhibit, that Virginia should be held accountable for

that stock on the 1st of January, 1861, at a value of $150 a share?

A. No, sir, I have made no such testimony.

Q. You have not?

A. No, sir.

Q. Do you now mean to say that she should not be charged with it on that date as of that value?

A. I mean to say that I have no determination, nor is it my province to state whether or not she should be charged. It is my province to state the facts, which I have done.

Q. Then have you testified as a fact that $150 per share, as of January 1, 1861, was the true actual value of the stock?

A. I have testified that it is the book value of the Richmond, Fredericksburg & Potomac stock. I have testified to nothing else.

Q. But not its true actual value?

A. I have said nothing on that point.

The Master: I do not understand that the schedules of West Virginia are predicated upon anything except book value. I understand they contend—that they do not insist that they are legally synonmous.

Mr. Harrison: This witness has, however, extended in his summary the book value of these stocks as constituting their actual value.

The Master: I do not so understand it. It does not have that effect with me. Of course the whole purpose of this examination is to put upon the record information that will be information to me. I can simply say how I understand it. Of course it is all open on cross-examination. The way I understand these schedules is this; I do not understand, in the first place, that the witness has undertaken to testify to actual value at all, but I do understand that these schedules are all predicated upon book value. I do not understand that West Virginia contends that they are synonomous with actual value, but I do understand that they contend that that is evidence tending to show what the actual value is on that date, subject of ccurse to criticism. Now, I do not understand that any of the schedules, at least they do not produce that effect on my

mind, that any of the schedules introduced on the part of West Virginia are intended to be *per se* probative of actual value. They do show book value, and that is all they do show. Do I understand it correctly?

Mr. Holt: You do.

The Master: That is the way it lays in my mind.

Mr. Holt: That is unquestionably so, and of course when the proper time comes we will be armed with the authority to show what that means under the circumstances of this case.

The Master: Of course I will hear you on that later on.

Mr. Holt: Certainly.

The Master: But I do not understand that either the witness or the schedules undertake to establish that this is the actual value. You may later on have authority, as you say, that that results in the conclusion that that is book value.

Mr. Holt: Under the circumstances of this particular case.

The Master: Entirely so, but it is proper for Virginia to criticise the book value as they are now doing. I simply want Mr. Harrison to get what my mind is as to the probative value of the schedules as they now stand. I shall not treat book value necessarily as actual value.

Q. Will you be good enough to state what you show as the surplus of the Richmond, Fredericksburg & Potomac Railroad on January 1, 1861.

A. I show no surplus January 1, 1861. I mean by that I do not show a surplus; I do not mean that there is not any, but I mean that I do not show any figures on that date.

Q. As of what date do you show a surplus in 1861?

A. March 31, 1861.

Q. Will you state now what the surplus is as shown by you as of that date?

A. $562,819.05.

Q. Did you or not base your $150 a share on that surplus as of March 31, 1861?

A. On that surplus in connection with the surplus of March 31, 1860.

Q. Was that done for the purpose of finding the surplus January 1, 1861?

A. It was done for the purpose of determining the book value of the stock on January 1, 1861.

The Master: That is not a direct answer to the question. I do not think it is intentional on your part, but I am going to make some of these suggestions as we go along. In the first place, this case is not being tried before a jury. I am hearing it, and the witness must, so far as he can, in answering questions answer directly. I am simply giving a general suggestion that will be of use to the witness. If the witness simply answers the question directly and stops we can get along a great deal better than if he carries his mind forward to a conclusion that he thinks may be in the mind of the examiner. The examiner knows what he is asking the witness for, and all the witness has to do is simply give a direct and short concise answer and stop right there. That is not a direct answer to that question. His question was, was that for the purpose of ascertaining the surplus on January 1, 1861. You went further than that. I am simply commenting on this so that you will appreciate the situation. The record will be cleaner. And you do not get anywhere by an indirect answer, because I am hearing the whole thing and I know what an indirect answer is. I know that you do not intend to do it, but the answer to that question was undoubtedly that it was for the purpose of ascertaining the surplus on January 1, 1861. That is so obvious that it is hardly worth discussing. You anticipated and went further than that, because you thought that he was aiming for another point, which undoubtedly he was, but that was not the kind of answer which you ought to have made. You answer directly every question that is put to you upon either side and when you get through stop, and then if they want anything more they will ask it. Do you get my point?

The Witness: Yes, sir.

The Master: This is not intended as a lecture to you, but simply a suggestion to get the record as short as possible and it will shorten the examination tremendously when those rules are followed by both counsel and witness. Excuse me, Mr. Harrison, for interrupting. It was a good place to interrupt

here because no possible harm was done by either the question or the answer, and it may save difficulty and friction perhaps, later on.

The Witness: I knew what the next question was going to be.

The Master: You won't do it every time but five times out of ten when you anticipate that way you will get into trouble.

The Witness: All right, sir.

The Master: That is the trouble that most witnesses have; they are too anxious to facilitate progress. That is why fools and children make the best witnesses. Then cannot anticipate and all they can do is just tell what they are asked.

(Question and answer repeated by the stenographer).

Q. I ask you again to answer my last question.

A. Yes, sir, it was.

The Master: I want to make this suggestion. I do not know what the fact may be, but I imagine that Mr. Harrison may desire to go into a great many of the details which result in some of these conclusions, and I would suggest that you have your assistant get your working material where you can put your hand on it readily so that we do not have to wait in the course of the examination.

The Witness: I think we have everything that will be called for.

The Master: That is all right then. If you have everything handy by you it will save time.

The Witness: As far as we can determine we have all the papers.

Q. Now, will you please state on what the 1861 surplus of $562,819 is predicated.

A. Upon the trial balance of the Richmond, Fredericksburg & Potomac Road dated March 31, 1861. This is shown on pages 8 and 9 of the present record, which is Exhibit No. 2.

Q. Does the trial balance to which you have just referred show how that book surplus is invested, how it is represented, if so please give us that information?

A. No, sir; it does not show the direct investment which represents the surplus.

The Master: Unless that is pursued further, for my information I want to know just exactly what the witness means by that.

By The Master:

Q. Do you mean that the trial balance does not show—

Mr. Harrison: I am going to pursue it, if your Honor please.

The Master: Then I will strike that out.

Mr. Harrison: If I do not pursue it so as to develop the matter that you have in mind I would be only too glad to have you bring it out.

The Master: Strike that out then.

By Mr. Harrison:

Q. Were you not instructed, or rather asked by the Master, on your examination in chief, to furnish that information? For your information I will turn to page 43 of this record wherein on that subject the Master had this to say: "If Mr. Hillman has it right handy, how would it do to insert right here in the record the list of the assets upon which this book value is predicated? If he has not it, he need not bother to do it."

The Master: You are reading from the stenographer's transcript?

Mr. Harrison: Yes, sir.

The Master: Hereafter, after today, I wish you would get your printed record. I will follow you on this transcript.

Mr. Harrison: It is the printed record at page 28.

Q. (Continuing) "If it is too long, why then he need not bother, but this would be the natural place to look for it in the record." To which you replied: "No, your Honor, I have not taken them off in detail for those years. It can be done, and I will agree if your Honor desires to furnish a copy as sheet No. 2 on this exhibit," You are not prepared with that information this morning, then, are you?

A. No, sir, I cannot give the exact way in which this surplus was invested.

Q. The trial balance to which you have referred, and upon which you rely to show the book value of this stock in January, 1861, where did you find it?

A. In the Treasurer's office of the Richmond, Fdericksburg & Potomac Railroad Company, in the First National Bank Building in the City of Richmond, in the form of a printed report, which printed reports were bound in volumes.

Q. Then you did not find that information in any of the records of the State of Virginia?

A. No, sir.

Q. Well now, did you examine those books in the office of the Richmond, Fredericksburg & Potomac Railway at Richmond yourself?

A. Yes, sir.

Q. Did you make this copy yourself?

A. No, sir, I did not make that copy myself.

Q. How then can you say that it is a copy, of your own knowledge?

A. For the reason that I sent one of my men over to do it; it was done under my direction.

Q. Then when you say that it is a copy, it is not based upon your personal knowledge but upon information derived from others?

A. From information derived from one of my own men, another individual.

By The Master:

Q. What is his name? Give his name.

By Mr. Harrison:

Q. What is the name of the man?

A. My recollection is that I sent Mr. Parsons of my force over there to copy that.

Q. Now, looking at that balance sheet which you have been testifying about—

Mr. Holt: I thought it was understood, Mr. Harrison, that

Mr. Potter would check that up, as it was copied here. We can bring a certified copy of it, if they are going to make that character of point.

The Master: Of course I cannot anticipate.

Mr. Holt: We discussed all that in the beginning.

The Master: If that question is raised, Judge, you will have opportunity to do it.

Mr. Holt: And we furnished a copy of it to them two weeks in advance.

The Master: If any question is raised as to the foundation of any of the testimony which makes it necessary to supplement the record, it is going to be open to West Virginia, as it will be to the other side under similar circumstances, to put in additional testimony.

Mr. Holt: I understood that they were not going to require anything of that kind.

The Master: I cannot anticipate just exactly what purpose Brother Harrison has in his mind, but there may be another purpose than the one that you and I have in our minds, for the examination, which purpose I won't discuss, because if I did it might render it nugatory.

Mr. Harrison: I want to test, as I go along, the accuracy of the witness in testifying.

The Master: I had a suspicion that that might be in your mind.

Mr. Harrison: I want to show whether he is testifying as to his own knowledge or from information that he has been furnished with by somebdy else.

The Master: That is a proper inquiry.

The Witness: Will you allow me to supplement my answer?

The Master: Yes, unless there is objection.

The Witness: That I did take off personally from the Richmond, Fredericksburg & Potomac books the surplus of $562,819.05, and that my assistant was sent over to make the copy of the trial balance which resulted in that profit and loss account, which I understand was the document that the court wished laid before him.

Q. You have several times referred to having examined the books of this railroad in its office at Richmond. What you actually examined was a printed copy of an original report, was it not?

A. Yes, sir.

Q. You never saw the original papers, did you, the books of original entry?

A. No, sir, I did not.

Q. Now, will you please refer to that trial balance sheet of March 31, 1861, filed by you as Exhibit No. 2, and tell me if you can how much, if any, of that apparent or book surplus is invested in the road itself as rolling stock, station buildings, etc? Is any of it so invested?

A. I cannot tell.

Q. Now, let me see if I cannot assist you. What are the current assets shown on that sheet, liquid assets, accounts and bills receivable?

The Master: You are referring now to Defendant's Exhibit No. 2, found on pages 8 and 9 of the printed record?

Mr. Harrison: Yes.

A. $230,453.97.

Q. Now, what are the current liabilities, as shown by that trial balance?

A. $77,642.57.

Q. Now, if you deduct the current liabilities from the current assets it will give you what figure as representing the net current assets?

A. $152,811.40.

Q. Very well. Now, if there is net $152,810 of current assets, deduct that from the book surplus.

The Master: That is the item of $562,819.65?

Mr. Harrison: Yes, sir.

Q. And what does it leave?

A. $410,007.65.

Q. Then we find that of that $562,819 of so-called surplus $152,811 is represented by current assets and four hundred

and ten thousand and odd dollars is represented by construction account, is it not?

A. Yes, sir.

By The Master:

Q. Do you remember right now when this road was constructed, when its construction was begun? That may appear somewhere.

Mr. Anderson: It was chartered in 1834, built about 1837.

A. Your Honor, the first printed record of a report, which happened to be an incomplete one, but would show that the road was in some kind of operation, was dated June 20, 1835.

Q. So that the item of $2,211,189.90 represents total construction cost from sometime in 1834 up to 1861, is that right?

A. Yes, sir.

Q. How much during that time had been charged off to maintenance or for repairs or anything of that kind you are not able to state?

Mr. Harrison: I was just coming to that in my next question.

Q. Are you able to state during that time how much had been charged off to maintenance or repairs or depreciation, either one of the items?

A. No, sir; that is all included in a total of the operating expenses which I have not in detail. I can give you the total operating expenses for that period.

Q. Well, do the items of operating expenses contain any charge offs for depreciation?

A. At that date, no, sir, they did not. It was all in renewals or repairs; they charged no depreciation at that time.

Q. Were the charges for renewals included in operating expenses, or were the charges for renewals in this aggregate of $2,211,189.90?

A. I should say that they were included in the operating expenses.

By Mr. Harrison:

Q. Why should you say so, have you any evidence on which to base that?

By The Master:

Q. Are there any entries that you have been able to examine that enable you to reach that conclusion?

A. I have made no examination on that point, but I know that that was the custom of railroads up until the 70's.

Q. Then your statement that this road charged renewals to operating expenses and did not charge it into construction costs is not predicated upon your knowledge of the action of this road, but your general information of other roads during that period, is that it?

A. Yes, sir.

Q. What we want is what the books show, and if these outside facts are material and relevant they will be given also; but so far as you are concerned as a witness we are entitled to ascertain just exactly what the accounts show. Isn't that so, Mr. Harrison?

Mr. Harrison: Yes, sir.

The Master: Then let us have this understanding, as far as the accounts themselves show, as the result of the examination of Mr. Hillman, they disclose nothing with reference to the question of either depreciation or renewals—or I will put it this way.

Q. The books show nothing with reference to any item of depreciation so far as you have been able to ascertain?

A. I have made no effort to ascertain that.

Q. That does not answer the question. So far as you have seen the books you have seen nothing on the books that indicates what was done with reference to a charge or otherwise for depreciation, is that right?

A. I cannot say that, your Honor, for the reason that I made no examination.

Q. You are not able to give us any information as to whether or not the books of this company make any account or made any account of the item of depreciation?

A. No, sir, I am not.

Q. Now then, so far as your examination shows are you able to give us any information as to what was done with ref-

erence to renewals, whether renewals were as a matter of fact, not based now upon your general impression as to what roads usually did during that period, but the question is were you able to ascertain from the books of this company whether or not they charged renewals to operating expenses or to construction cost?

A. No, sir; I made no such determination.

Q. And you are not able to give us any information on that point?

A. Not from the examination I have made so far.

Q. Well, precisely.

A. I mean by that that if that is requested I can do so.

Q. But up to date you are testifying as to knowledge you now have?

A. Yes, sir; I cannot do so.

Q. We won't speculate on what you may hereafter obtain, because if that is essential we can look that up later and get the exact facts rather than speculate as to what the fact may be.

A. Yes, sir.

Q. I notice in what Mr. Harrison terms as liquid assets an item there bills receivable, $135,849.31. Did you make any examination of the details entering into that aggregate to ascertain the character of the bills receivable, whether of long or short standing and as bearing upon the probability of value to the road or otherwise?

A. No, sir, I did not.

By Mr. Harrison:

Q. Did you make any investigation to ascertain the value of the stock, the stock of the Potomac Steamboat Company in which $38,900 is invested?

A. No, sir, I made no investigation as to the value of this security.

Q. Then you know nothing at all about the value of the assets as shown on that trial balance sheet of 1861?

The Master: Perhaps you had better say actual value so as to keep up the distinction between book value and actual value.

Q. I will say market value.

The Master: You had better keep the distinction right up.

Q. Answer the question.

A. No, sir.

Q. Does your trial balance sheet show the cost of the road on the 31st of March, 1859?

A. Yes, sir, on page No. 4, of the Defendant's Exhibits in this present record.

The Master: Pages 4 and 5.

Q. What is the amount?

A. $2,002,331.41.

Q. Do you include engineering expenses, etc., of $2,321.87? If not, why not?

A. The reason is that that is mentioned separately and is for a survey, pending the extension of the road, which may or may not be made later on; and until it becomes part of the construction, the engineering expense may turn out to be simply a charge to income on account of the proposed extension being afterwards abandoned.

By The Master:

Q. That is to say, it might never be actual construction?

A. Yes, sir.

By Mr. Harrison:

Q. Don't you include it on your trial balance sheet of March 31, 1860?

A. Yes, sir.

Q. Then if it is proper in one why is it not proper in the other?

A. Because at that time it had been transferred by this trial balance to the account, cost of road and property, and therefore, having been transferred by the company in its report as part of the cost of the road and property, I assumed

that the survey had become a fact of construction, or a construction fact, and that it was therefore a proper charge.

Q. Now what do you show to be the construction of the road, the total construction cost, of the 31st of March 1863?

By The Master:

Q. Before you pass to that, is it not a fact that these trial balances are transcripts of the trial balances that you found, and that if there is any re-arrangement of items that appear in these transcripts that you submit here, it is because that re-arrangement existed in the original from which you made the transcript?

A. Yes, sir.

Q. Is not that the fact about it?

A. Yes, sir.

Q. And this item of $2,321.87, the fact that that appears in a different column is not because of any re-arrangement of yours, but is a fact because you made the copy from the original balance sheet, is that it?

A. Yes, sir, that is correct.

Q. And the suggestion which you made as to why the change occurred is your judgment as to why the party who made up the original trial balance changed the item, is not that it?

A. Yes, sir.

Q. The truth is that you simply copied these trial balances as you found them, is that it?

A. Yes, sir.

Q. That is what I thought.

A. I beg your pardon for going into these, but sometimes—

Q. The explanation is that you simply copied the trial balances as they were presented to you?

A. Yes, sir.

Mr. Holt: These are simply the trial balances of the road itself copied by him, that is all.

The Master: He was leaving it somewhat confused, and I wanted to know what the fact was.

Mr. Holt: They are not his trial balances.

By Mr. Harrison:

Q. Now what do you show to be the construction of the road, the total construction cost, on the 31st of March, 1863?

A. $2,247,976.91, shown on Defendant's Exhibit No. 2, 1863.

By The Master:

Q. What page?

A. Page No. 4.

By Mr. Harrison:

Q. Of the blue print?

A. Of the blue print..

The Master: Of the record, is it not?

Mr. Holt: That has not been printed yet.

Mr. Lilly: I might call your attention to the printed record 10, 11, and 12, and it seems to be headed, Trial Balance, March, 1862, and continued Trial Balance, March, 1863.

The Master: That is an error that will have to be corrected. I am glad you have called attention to that.

By Mr. Harrison:

Q. Please state whether there was any increasse in the cost of construction between the dates that you have mentioned, March 31, 1859, and March 31, 1863, and if so how much.

A. $245,645,50.

Q. Then within a period of four years between March, 1859, and March, 1863, the construction account of the road had increased $245,000 and no depreciation charged off as shown by the testimony of the witness?

A. That is the correct amount of the increase, $245,645.50.

Q. And nothing charged off for depreciation, is that true?

By The Master:

Q. Well, not as far as you know, of course?

A. Not as far as I know.

The Master: Let us make more progress. You have stated half a dozen times that you had not found any information on

that, and you could answer that readily.

The Witness: Nothing has been charged off for depreciation.

The Master: The answer is that as far as you know nothing has been charged off, that is true, is it not?

Mr. Holt: The difficulty is, with the witness, that it might have been charged off in construction account.

Mr. Lilly: Or in operating expense.

Mr. Holt: In other words, his information is confined to the trial balance, not his trial balance, but the trial balance of the Richmond, Fredericksburg & Potomac Railroad, and if there is nothing charged off for depreciation he does not know anything about it.

The Witness: Then I will be allowed to answer that I do not know?

The Master: Why certainly.

The Witness: I was asked the direct question that it did not contain.

The Master: You are not obliged to make a categorical answer. You answer the question according to your understanding of the facts, that is all you are to do. Of course I knew what your answer to that question must be before you made it; that is, if it was consistent with what you had already said, which I had no doubt that it would be.

Mr. Holt: The point of the Master on that proposition, and I concurring of course, is this; Mr. Hillman is simply testifying on what he found there. He has not been keeping books for the Richmond, Fredericksburg & Potomac Railroad.

The Master: Exactly, nor has he seen their books.

Mr. Holt: It was their own trial balance that they made up.

By Mr. Harrison:

Q. Now did you look and investigate at all to see if there was any quotation, market quotation on this stock, in January, 1861?

A. No, sir, I did not.

Q. You did not?

A. No, sir.

The Master: You mean now in the stock market?

Mr. Harrison: Yes, sir, as shown by the newspapers of Richmond on that date.

Mr. Holt: Mr Harrison, I would like to get that question and answer. I did not hear it.

(Testimony read by stenographer.)

Q. I am informed, and you can at your convenience verify my information, if you desire, that on January 4, 1861, the stock of the Richmond, Fredericksburg & Potomac Railroad Company as shown by the Richmond Dispatch, the financial reports published in the Richmond Dispatch of that day, it was 76½.

The Master: Per share.

Mr. Harrison: Per share, yes, sir.

Q. Now I should like to ask you, if, in view of the facts that we have developed, namely, that $410,000 of this alleged surplus was represented in construction account of the road, and that so far as you know nothing had ever been charged off for depreciation, and that $152,000 of the surplus, the remaining part of it, was invested in stocks, notes, of which you have no knowledge whatever as to their value; and in view of the further fact, assuming that to be a fact, that this stock was quoted on the market through the newspapers of the City of Richmond on the 4th of January 1861, at seventy-six and a half dollars a share—

Mr. Holt: That is in 1863, is it?

Mr. Harrison: 1861.

Q. Are you still of the opinion that the correct value of the stock is $150 a share, as testified to by you in chief?

The Master: I do not think, brother Harrison, that that is just exactly the thing. Inadvertently it contains the assumption that he has testified that that was the value. That he has not done. He has given the book value. Your question is perfectly proper, except that it perhaps ought not to contain that

qualification. Because a little thing like that sometimes embarrasses a witness a good deal. He has given that as the book value, but I do not understand him to have given that as the actual value.

Mr. Holt: We have asked him to show the book value.

The Master: There is no confusion about it.

Mr. Holt: He has gone no farther.

The Master: I understand it exactly.

Mr. Lilly: He has shown the earning value by giving the dividend.

Mr. Harrison: If it is not a fact he can say so, that he has not testified as to value at all, but has merely undertaken to say what this trial balance shows.

The Master: But a witness ordinarily does not like to dissect a question that way. With that modification, I think the question is proper. The question is, Mr. Hillman, upon these various hypotheses suggested by Mr Harrison, what do you say is the fair actual cash value of that stock on January 1, 1861. That is what you want, is it not, Mr. Harrison? Or do you say that it was $150 a share, which is the same thing?

The Witness: I would like the question read.

(Question repeated by stenographer.)

The Master: I do not understand that Mr. Harrison intends to assume that you have testified other than you have although the concluding part of his question might lead to that inference. I do not understand you have so testified.

Mr. Holt: We do not want to be interposing formal objections.

The Master: If you object I shall insist upon the question being reframed.

Mr. Holt: We do not want to insist upon that.

The Master: My conclusion is that the concluding part of the question contains an assumption that is not borne out by the record.

(Last part of question repeated by the stenographer.)

The Master: That is the part of the question that they object to, on the ground that it contains an assumption that is not in accordance with the facts. That objection is sustained.

Mr. Harrison: I would rather not ask a question that is subject to objection. I will strike out that part of it.

Q. Please state what in your opinion as a railroad expert—

The Master: Do you withdraw the whole question?

Mr. Harrison: No.

The Master: You strike out the concluding part and add this?

Mr. Harrison: Yes.

Q. Please state what in your opinion as a railroad expert accountant the true or actual value of this stock was on January 1, 1861.

The Master: You may answer.

The Master: If you want to take the time to get together to answer that, we will suspend here for five minutes, unless you prefer to have the question answered before you suspend.

Mr. Harrison: Suppose you let him answer it.

The Master: Of course upon a question like this, which is a question of some importance, you must understand that you are at liberty to take such time as may be necessary in order to reach what in your judgment is a proper conclusion. You need not feel embarrassed about the delay. You take your own time.

The Witness: Your Honor, the question also—

Mr. Harrison: We withdraw that question.

The Master: That question is withdrawn and that colloquy is also withdrawn.

Q. If I understand your testimony, you do not undertake to testify as to the actual value or market value or true value of this railway stock as of the 1st of January, 1861; am I correct in that understanding?

A. You are, yes, sir.

Q. If I understand you correctly also, all you have done in so far as your examination is concerned was to confine your examination to the liability side of the balance sheet from which you took the amount of the outstanding capital stock and the paper surplus without paying any consideration to or taking any account of the actual value of the assets or whether the road and its intangible assets had an equal or any value

whatsoever at that period. Am I correct about that?

A. Yes, sir. I have simply determined the book value of the Richmond, Fredericksburg & Potomac Road in this case.

Q. That is not an answer to my question.

The Witness: I claim, your honor, that it is a direct answer to his question.

Q. The first part of it was. I do not know whether you intended to qualify it by the last part or not. You began by saying yes, sir. That was directly responsive.

The Master: I think he would have a right in answering a rather comprehensive question like that not only to answer categorically but to conclude his answer by such explanation that seems to him to be necessary in order to state the facts. You can follow him up with such features as you desire.

Mr. Holt: Otherwise, your honor, the witness feels as if he was in a straight jacket. He cannot testify at all if he is a man of conscience.

The Witness. There are half a dozen questions included in that.

The Master: I hold that the witness is within his rights.

Mr. Harrison: Read the question and answer and let us see if there is any difficulty about the question.

The Master: If you have not everything you want, why follow it up.

(The question and answer were repeated by the stenographer.)

The Master: I do not think the concluding part of his answer qualifies it any to amount to anything. That is practically what your question involved, book value, and he simply emphasizes by repeating it.

Mr. Harrison: I would like him to show how he arrived at that book value.

The Master: I cannot hold the witness too close on a thing of that kind.

Q. All that was necessary for you to reach the result that you have reached, which you described as a book value of this stock in January, 1861, was to know the capital stock and the paper surplus, was it not?

A. Yes, sir.

Q. Had you seen that published in the newspapers or had gotten it from any other source, it would have done just as well, would it not?

A. No, sir.

Q. Why not?

A. For the reason that it would not have been authentic.

Q. Then with that exception the result would have been the same?

A. Yes, sir.

Q. Now, will you please state what book value you give this stock on June 20, 1863?

A. 184.50 as shown upon Defendant's Exhibit No. 2, 1863, page No. 3 of that series of Exhibits.

Q. You arrived at that by following the same method that you did in 1861, for the 1861 period, did you not?

A. Yes, sir.

Q. Now, what is the amount of the surplus which you show on June 20, 1863?

A. I do not show any surplus for June 20, 1863.

Q. Well, for whatever period you show it? You show it for some period. Suppose you state that at the same time that you correct me as to the date that I directed your attention to.

A. Well, what date do you want?

Q. Whatever date you show the surplus during the year 1863.

A. March 31, 1863.

Q. What do you show it to be on that date?

A. $952,160.86.

Q. Have you undertaken to show that this 184.40 is the book value of this stock as of June 20, 1863?

A. Yes, sir.

Q. Well, on what surplus is it predicated?

A. Upon the surpluses March 31, 1863, and March 31, 1864, spacing the increase in the surplus on a time pro rated between those dates, so as to bring it up to June 20, 1863.

Q. Let us look at the assets if you please as shown on your

trial balance sheet for March, 1863, and then for March, 1864. You have stated that the surplus amounted to $952,160.86, on the 31st of March, 1863. How was that invested, in other words, what did it represent?

A. It represented the excess of the assets over the liabilities.

Q. Now, I did not ask you how you arrived at it. I asked you how it was invested.

Mr. Lilly: You asked what it represented.

The Witness: Will the stenographer please repeat the question?

Mr. Holt: Read the question and answer.

Q. I asked you how it was invested.

Mr. Holt: Let us have it from the stenographer.

Mr. Harrison: I know what I said.

Mr. Holt: I do not, and I want to hear what you said.

Mr. Harrison: I am going to state now what I said.

Mr. Holt: I would like to have the question read as it stands in the record.

The Master: Yes, the stenographer will read it.

Mr. Harrison: Yes, but I propose to exercise my privilege of saying what I wish to say.

Mr. Holt: I am asking a privilege the Master has accorded me.

The Master: You are both right.

Mr. Harrison: In my question I intended by saying what does it represent to be explanatory of my inquiry how is it invested.

Mr. Holt: I had proposed to put my own construction of your question after I had ascertained what it was.

Q. Will you tell me how it was invested?

Mr. Holt: I would like to have the question and answer read.

The Master: The stenographer will repeat the question and if Mr. Harrison wants to modify it he has a perfect right to.

(The question and answer were repeated by the stenographer.)

Question repeated as follows: Now, I did not ask you how you arrived at it. I asked you how it was invested.

A. $503,455.20 can be considered as being invested in the liquid assets, which you have called them, and $448,705.66 in cost of road.

Q. Now, the liquid assets, I see by looking at the sheet—

The Master: Page No. 4, is that right?

Mr. Harrison: Yes, sir.

The Witness: Page No. 4 of Defendant's Exhibit No. 2, 1863.

Q. —that $19,068.13 is shown to be invested in bills receivable. The character of that you know nothing about, that is correct, is it not?

A. That is correct.

Q. And that $97,181 was invested in what is described as open accounts—about that your answer would be the same, would it not, you know nothing?

A. I do not know what they were.

Q. I also observe that $193,312 was due from the Confederate Government for the transportation of freight and passengers. Do you know anything about that, and whether it was paid?

By The Master:

Q. Do you know anything about it except what appears on the trial balance?

A. Nothing except what is shown upon the trial balance sheets. Part of it was paid, from the trial balance sheets, which are on file in this case. How much I do not know.

By Mr. Harrison:

Q. Then I also notice that $22,422 of it was said to be due from the Confederate States Government for expense of reconstruction of bridges destroyed. I suppose your answer would be the same as to that, that you know nothing about it?

A. I do not know what its value was.

Q. I also observe that $24,612 of it was invested in Seaboard & Roanoke Railroad Company stock, and $38,900 in the

Potomac Steamboat stock, which we have noticed before, as to neither of those stocks you know anything of their par value?

A. I happen to know that the Seaboard & Roanoke stock is good stock.

Q. How did you happen to know that?

A. From investigations of the Seaboard Air Line Company of which this became a part, made by me a little over a year ago for the State of Florida.

By The Master:

Q. What do you mean by good stock, do you mean that it was worth par?

A. Yes, sir.

By Mr. Harrison:

Q. Do you undertake to testify in this case from your outside knowledge that in June, 1863, Seaboard & Roanoke Railroad stock was worth par?

A. Yes, sir.

Q. In gold?

A. I do not know whether in gold or not.

Q. I see $240,000 was invested in Confederate States bonds. Perhaps your outside investigation has enlightened you about that. How about it?

A. I have never investigated Confederate States bonds, and do not know what their value was.

Q. Now, I think we can get same light on that subject probably, Confederate values, on the sheet that relates to March, 1864, that enters into this computation. Looking at the securities that constitute the assets on that sheet, in which the surplus was invested, I find this item, specie bought to purchase supplies with, $500, in gold, at $30 for one, $15,000; and that to purchase $5.02 in silver it took $22 for $1, or $110.14 to buy $5.02 worth.

The Master: That beats 16 to 1.

Mr. Harrison: Yes, I believe it is even worse than that.

(Question not answered.)

Q. Why did you carry in a column in order to base value

upon in March, 1864, $15,110.14 which only represented as shown by your statement, $505.02 of actual value, of real money?

A. Because this is a copy of the trial balance of the company, it was so stated by them.

Q. Then you could see, could you not, whether the books contained those figures or not, that that so-called book value was based in part on $15,110 that possessed at that time only $505.02 of real value?

A. I had noted that fact, that the gold and silver were both at a heavy premium.

Q. Your surplus of 1864 also seems to contain about $333,000 of Confederate State bonds, does it not?

A. Yes, sir.

Q. So the surplus then for the year 1863 and 1864, the liquid part of it, as we are calling it, was represented by Confederate values, was it not?

A. Yes, sir; there were a large proportion of them in Confederate bonds.

Q. It has been proved in this record, in the original record, and has never been questioned therein, that the only medium of exchange, the only currency in Virginia in 1863 was Confederate currency and that all values were measured by that currency. If that is true then Confederate values would be the test of the value of all of the assets in June, 1863, which constitute the paper surplus as shown on your exhibit, would it not?

A. If that is true, yes sir.

Mr. Holt: Now, Mr. Harrison, the exhibit, as you have suspended for a moment, last referred to is what, please?

Mr. Harrison: I have been using two exhibits.

The Master: Page No. 5. The last exhibit that has been examined from is page No. 5 of Defendant's Exhibit No. 2 1863.

Mr. Holt: 1863?

The Master: Yes.

Mr. Harrison: I am dealing with 1863 and 1864.

Mr. Holt: I wanted to ask at a time that my question would not break into your question.

The Master: I am not certain but that you will find something in the Master's report on the question of basing values on Confederate currency.

Mr. Harrison: So it is. I said the original record; I did not specify your report.

Mr. Holt: All of which, if I may be permitted to say so, shows the utter futility of going to the date of June 20, 1863, the chief value of our exhibits on that subject.

The Master: A little preliminary argumentative suggestion.

Mr. Holt: Yes, sir.

Mr. Harrison: We certainly agree with you in that view.

Mr. Holt: Yes, but that is the year you are claiming on.

The Master: It may be if you both agree that no values are to be determined upon the hypothesis of June 20, 1863, we can eliminate all these matters upon either side appearing on that date.

Mr. Holt: Even on that we can overleap the allegations of our answer.

The Master: I do not think you are bound by the alternative allegations of your answer.

Mr. Holt: Oh, no.

The Master: It is a quite familiar practice that we throw out all the anchors to windward that we can think about. While they are conferring, I think Attorney General Lilly called attention to the fact that there is an apparent error here in the exhibit printing on page 12. Page 10 and page 11 start with what purports to be the trial balance March 31, 1862, and the last line on page 11 says carried forward, etc., and the next page is apparently a continuation, but it is headed trial balance March 31, 1863. I suppose that must be 1862.

Mr. Hogg: Evidently.

The Master: See that that is corrected. I think we called attention to this before, and that is what I wanted Mr. Harris to have in mind, to see that that 3 is stricken out and 2 inserted in its place. It has given me about twenty-five minutes work sitting here to figure that out.

The Master: Mr Harris, page 12 should read Trial Balance

1862 instead of 1863. An error like that in the print is extremely annoying.

Mr. Hogg: It looks as though it might be a misplaced page.

Mr. Harrison: If your Honor please, I am ready to go on with another subject.

The Master: Class C?

Mr. Harrison: No.

The Master: Another item under Class B?

Mr. Harrison: They skipped Class C and Class D and went to Class E.

The Master: But in the print, the print will show that the whole thing went along in its regular order. As a matter of convenience we did skip. But I do not care to have that skipping done now, because it is important to have it in chronological order.

Mr. Holt: We did it because we did not have the blue prints.

The Master: We did it as the result of an understanding, but the understanding was that when the case was printed it should be printed in its chronological order, and it is so printed. And for that reason, unless it would subject you to embarrassment, I would follow the chronological order. You are right in your suggestion that that is what was done. But the printed record will show that the record went along in chronological order. Before you go to another subject, I want to make this inquiry. Is there any question raised as to the accuracy of any of the items found in Defendant's Exhibit No. 1, page 1, of the printed record? That is, is the accuracy of the figures conceded, or is there any contest about them?

Mr. Harrison: I think we are in agreement on that subject.

The Master: I understand they do not agree with some of the other statements in the original case. But what I want to know now is whether any question is now raised as to the accuracy of these computations made by Mr. Hillman, and if so what is the question, and what is the item.

Mr. Harrison: No question.

The Master: Then that takes care of these. Now I would like to make the same inquiry as to Class B. These concessions

of course do not concede that they prove anything, they simply state that the items as stated, are correctly stated. Now the question is, is there any objection made as to the items that appear in Mr. Hillman's computation as to Class B.

Mr. Lilly: As to accuracy?

The Master: Yes, as to the accuracy of the computations and the amounts.

Mr. Holt: As to the Richmond, Fredericksburg & Potomac road?

The Master: Yes.

Mr. Harrison: I understand that is so.

Mr. Holt: We are to understand from that then that Mr. Potter, their accountant, has checked not only the figures covering Class A, but Class B also, and has found them to be correct, for whatever they may be worth.

The Master: That is correct as I understand it. So that that cleans that up as we go along.

Mr. Holt: This admission I suppose applies not only to schedules covering Classes A and B for 1861, but for 1863, as well, because they have been carrying in their cross-examination the two sets of schedules together.

The Master: Do you hear that suggestion, brother Harrison?

Mr. Harrison: Sir?

The Master: Judge Holt's inquiry is whether that concession applies to parallel schedules relating to Classes A and B predicated upon June 20, 1863; and I suppose it does.

Mr. Harrison: I think so.

The Master: So that takes care of the accuracy of the details for the amounts stated for 1861 and 1863.

Mr. Lilly: That is making progress.

Mr. Holt: That is real progress.

The Master: Well, we know where we are. I prefer, brother Harrison, to have you take a little extra time to have you go along in the chronological order.

Mr. Harrison: I find I can go right on now. I find I have omitted one or two quesstions.

Q. Please state, in order that I may have it conveniently

before me in the record, what you show the value of the capital stock of the Richmond, Fredericksburg & Potomac to be at $184.50 a share in June, June 20, 1863—what does it amount to, the capital stock held by the State of Virginia?

A. $507,744, as shown on Defendant's Exhibit No. 2, 1863, page 3 of those exhibits.

Q. That you carried into your second item on page 51 of your exhibits of summary of claims of West Virginia, did you not?

A. Yes, sir.

Q. In other words, that you have treated as furnishing the basis of a claim of actual value on behalf of West Virginia, have you not?

A. Yes, sir.

Mr. Harrison: I find some of the original documents which we have sent for have not been sent over, and I am not prepared to go on at once.

The Master: I think in the interest of having the record harmonious that it is better to suspend here. When do you want to come in, at two or half past two?

Mr. Harrison: Two I should say.

The Master: Then we will suspend here until two o'clock, because I think it is infinitely preferable to take this up in chronological order.

Recess until 2 P. M.

AFTER RECESS

Continuation of the cross-examination of

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. I will take up now, next in order, the Orange & Alexandria Railroad, being the first item on the statement designated as Class C, Asset 1, Hillman Exhibit 3-A, being Defendant's Exhibit No. 3. You state under the caption par of stock of the Orange & Alexandria Railroad Company for September 30,

1856, $1,457,000. Please state whether that is the stock, the amount of the stock subscribed or the amount paid in?

The Master: Paid in and issued you mean?

Mr. Harrison: Yes.

A. That is the total amount of the subscribed stock.

Q. Where did you take that item from?

A. From general balance sheet, Orange & Alexandria Railroad Company, of September 30, 1856, as expressed on pages 946 and 947 of Document 17, report of the State of Virginia.

Q. By a reference to that document, No. 17, at page 947, I find the total amount of the stock paid in stated to be—I mean subscribed—to be $1,457,500.

The Master: What do you refer to now, brother Harrison?

Mr. Harrison: Do not take this down.

Q. There is then a discrepancy in the figures shown by you purporting to be taken from this document and the figures as shown in the document, is there not?

A. Yes, sir. My original notes show $1,457,500 and it has been transcribed as $1,457,000 even, and the error has not been discovered in checking over the par of the stock.

The Master: Do you concede that that item should be corrected by adding $500 to it?

The Witness: Yes, sir. The computation where the book value is shown immediately below is however made on the basis of the $1,457,500.

Mr. Holt: The correct amount?

The Witness: Yes, sir.

Mr. Holt: I would like to inquire right there, your Honor, if it is not inappropriate, whether or not Mr. Potter when he would check over with Mr. Hillman, if he would discover a discrepancy, if he would call it to Mr. Hillman's attention.

Mr. Potter: I did not check these over with Mr. Hillman.

Mr. Holt: Did you check them over with yourself.

Mr. Harrison: I have had him helping me on this.

Mr. Holt: I supposed it was a sort of mutual exchange of checks back and forth.

Mr. Harrison: No; no mutual exchange of checks back and forth when it comes to material errors.

The Master: The answer to the present inquiry is that Mr. Potter did not check this one up with Mr. Hillman, as I understand it; but Judge Holt's suggestion was that if he did check up and found there were errors, at the time he found them did he call Mr. Hillman's attention to them.

Mr. Holt: Did they try to get together, which was the understanding.

The Master: Yes, that was the understanding; if there were any errors observed they were to try to get together if they could.

Q. Will you please tell me whether you took as the basis for the par of the stock for the years 1857, 1858 and 1859 the amount subscribed as you did in the case of 1856?

A. Yes, sir, I took the amount subscribed.

Q. Now, in case of the years 1860 and 1861 did you take as a basis for the par of the stock the amount subscribed—for the year 1860, I mean, did you take as the basis for the par of the stock subscribed, as you did in the four years previous, or the amount paid in?

The Master: The cross-examination is directed to the exhibit found on pages 14 and 15 of the printed record.

A. The amount paid in.

Q. Why did you take a different basis for the years 1856, 1857, 1858 and 1859 from the basis you took for the years 1860 and 1861 for the par of stock?

A. I do not know, sir.

Q. Which is right?

A. The amount paid in.

Q. Then if you were right for the years 1860 and 1861 you were wrong in your basis for the years 1856, 1857, 1858 and 1859?

A. Yes, sir.

Q. Does this not change the basis on which you figured your so-called book value?

A. It would change the basis for 1857, 1858 and 1859; the unpaid subscriptions being $48,048.58.

By The Master:

Q. The unpaid subscriptions?

A. Yes, sir.

Q. For what year?

A. For 1857, being $48,048.58, for 1858, $45,169.10, for 1859, $44,059.63.

Q. That does not appear on the exhibit?

A. No, sir. It was to show the amount of the statements if it should be questioned.

By Mr. Harrison:

Q. I find you have on your exhibit a caption headed profit—I mean a caption, profit, and underneath the figures $7,571.28. What is your authority for writing the word profit above that, above those figures?

A. For the reason that it is so shown on the trial balance of the Orange & Alexandria Railroad September 30, 1856.

Q. Now, will you look at the volume and see if you are correct about that. What is the caption there, or designation of those figures?

A. Profit and loss account.

Q. Then you have no authority for writing the word profit above and designating that as a profit for that year?

A. Certainly, sir.

Q. What is it?

A. Because it on the side of the account where it would be necessary to have a profit in order to balance the accounts.

Q. I ask you, is that the profit for that year or the accumulated profit up to that time.

A. That is the accumulated profit up to that time.

Q. Does the report of the president of the road for that year show any net earnings of the company for the past year?

The Master: That is, does the trial balance show any net earnings, is that what you mean?

Mr. Harrison: No; does the president's report show.

The Master: It is the report you are examining from?

Mr. Harrison: Yes.

The Master: The question is whether that shows any net earnings for the year preceding September 30, 1856.

A. I could not say; I did not examine it.

Q. I find that he states in his report in this document that you qoute from as follows: "The net earnings of the road over its working expenses proper for the half year amount to sum of $138,822.22." You did not discover that, you say?

A. I did not look for it and therefore did not discover it.

Q. What were you looking for?

A. The profit and loss account as shown upon the trial balance of the company, 1856, September 30.

Q. You show under the caption of book value the value of this stock January 1, 1861, to be $106.64.

The Master: That stock as a matter of fact was $50 par value?

Mr. Harrison: $50 par value I think, yes, sir.

Q. Now, will you tell me on what that book value is based.

A. It was based upon the profits of the profit and loss account as shown upon the trial balance sheet of September 30, 1856, plus the profits of operation above interest, taxes and dividends declared as far as we could determine them from the annual reports of this company made to the State of Virginia, adding in for each year the profit so shown to the last available profit as shown by the trial balance of the company, September 30, 1856.

Q. Then it is based on income and expenses, is it not?

A. Yes, sir.

Q. I thought you testified heretofore that a book value should be based on assets and liabilities. How then could you base a book value on income and expenses and arrive at a just or correct result?

A. For the reason that there does not to my knowledge exist any trial balance of the Orange & Alexandria Railroad subsequent to the one that I have mentioned, September 30, 1856, from which the profit and loss account or the assets and liabilities could be correctly made up, and that therefore the only method left was to add to the last determined profit the successive operating profits above interest, taxes and dividends for each year, and thus arrive at what might be considered the surplus or the amount to be divided among the stockholders.

Q. Then, if I understand you, you did not possess the data upon which to arrive correctly at the book value of the stock, is that right?

A. Yes, sir.

Q. Can you give us any information as to what constituted the investments of this road upon which this alleged book value was based?

A. At what date, may I ask?

Q. I will say the date to which your testimony has related January, 1861.

A. I could do so approximately, yes, sir.

Q. From what source would you draw that information?

A. From the Document 17—

Q. Just say the same document.

A. From the same document, 1860.

Q. No. 17?

A. Yes.

Q. Does that show anything further than the construction account and the cost of maintenance and operating expenses and so on?

A. Yes, sir, it shows other items.

Q. Well, suppose you mention some of them that constitute investments of the alleged surplus of the company.

A. May I preface that by the statement that the trial balance is not quite complete, but that it can be made to correspond quite closely with the figures that I have used. The cost of the road, as shown, is $5,097,577.21. Miscellaneous items, not specified—

Q. What table is that you are reading from?

A. This is on page 19 of this record of the State. Miscellaneous items, $26,827.61; wharf and other property, $60,730.40; stock of the company, subject to redemption, $69,515; on page 38 I find a further item, cash and other material, amounting to $72,793; giving us a total on the asset side of our account of $5,327,443.22. On the other side of the account, that is the liabilities, we have the paid in capital stock of $2,039,603.73; a bonded indebtedness of $2,517,500; a floating debt of $631,756.98; making a total on the liability side out of the balance

sheet, if it could be completed, of $5,188,850.71. The difference between these two sides of the account would be $138,592.51, which would represent the profit and loss account at this date, had we been able to obtain every other item in the assets and liabilities; but to put it a little differently, if the items which we have mentioned include all the other assets and liabilities of this company. The amount which I have used as a dividend in order to determine the book value of this road is $135,495.49.

By The Master:

Q. You say you used as a dividend, don't you mean used as a profit?

A. Yes, sir, used as a profit.

Q. Do not get it confused in that way, because it was not a dividend at all, you used it as a profit and you assumed that that would have gone into the surplus account?

A. Yes, sir.

Q. If the trial balance had been completed, am I right about that?

A. Yes, sir.

The Master: Now be careful about that, because dividends are sifted all through the record as dividends, but this is not a dividend at all.

The Witness: A difference between the amount which would be shown by the asset and liability side of the account if they had all been correctly stated and of the amount which I have arrived at by my computations of $3,097.02, the figures which I have used being that much less than those shown above.

The Master: That much less than the discrepancy?

The Witness: Yes, sir.

Q. You have no evidence of the value of this stock except this printed report found in Board of Public Works bound printed volume, Document No. 17 to which you have been referring?

A. No, sir, I have no other information on this subject.

Q. And any testimony you have given or exhibits you have filed relating to value as of the period in question, January 1, 1861, is based upon what you have found there?

A. Yes, sir.

Mr. Holt: May I ask a question there. Does that bound volume show the dividends paid on the stock of that road?

The Witness: Yes, sir, it does.

Q. Please state if the result you obtained in respect to the value of this stock in June 1863, page No. 8—

The Master: Page No. 8 what?

Mr. Harrison: Page No. 8, Class C.

The Master: You mean of the exhibits of 1863?

Mr. Harrison: Yes, sir.

The Master: Be careful and indicate.

A. The result shows a surplus on September 30, 1863, of $705,298.40 profit, a book value of 134.25. This is shown on Defendant's Exhibit No. 3, Asset No. 1, 1863, page No. 8.

Q. It seems to have increased, this value, from 1861 to 1863 from $106.64 per share to $134.25 per share or a difference of $27.61 per share; is that correct?

A. Yes, sir, excepting the date was 1860 instead of 1861.

Q. Did you examine the President's report and the Engineer's report found in this Document No. 17 relating to this road in 1861, the report of 1861, showing the condition of the road?

A. Yes, sir, I read it over.

Q. Did you observe that the President reported that sections of the track had been destroyed and bridges burnt from Cameron to Bull Run, a distance of 22 miles?

A. Yes, sir.

Q. What is the total mileage of the road, or was?

The Master: Upon which these reports are predicated.

A. I did not look at that, but my recollection is it is about 72 miles.

Q. What?

A. My recollection is about 72 miles, I couldn't tell you though because I don't know.

The Master: About thirty per cent. had been destroyed.

Mr. Holt: That is the bridges on thirty per cent.

The Witness: Your Honor, the mileage will be mentioned on these reports.

The Master: I presume the result of that would be that on about thirty per cent. of the road the bridges had been destroyed and the track had been torn up.

Mr. Lilly: Did it say all the track had been torn up?

Mr. Holt: Bridges destroyed between those two points.

Mr. Harrsion: I am going to file these two reports.

The Master: While they are looking that up, inasmuch as General Anderson is here, and Professor Hogg, what I want to find out is what changes if any are necessary in this print, so far as it has been made.

Mr. Hogg: None that we have observed, and we have gone over it carefully.

Mr. Harrison: None:

Mr. Hogg: I want to ask one question of Mr. Hillman in relation to the record.

The Master: You may ask it now.

By Mr. Hogg:

Q. On page 2 of the exhibits of 1861. I understand that is page 184, ledger B, Internal Improvement Fund, instead of ledger B, Second Auditor's office. Is that right or is it correct as it is?

A. Your Honor, what is called to my attention is merely the change of a page from 17 to 184, which my assistant informs me is correct.

By The Master:

Q. That is, instead of reading page 17, ledger B, it should be page 184?

A. Yes, sir.

The Master: Well, that is all right, that change will be made.

Mr. Holt: I wanted to get whether that was the report of the destruction of bridges between two points or of the entire road between two points.

The Master: I understood the extract to read in substance that the track had been destroyed and the bridges had been burned over a distance of about twenty-two miles of the road.

Mr. Holt: Its earnings kept increasing all the time, so that there must have been some track left there.

The Master: That is a matter of argument, of course.

Mr. Holt: That is why I am asking the question. You get one idea and I get another.

The Master: Just read the extract, please.

Mr. Harrison: I am going to put it all in; I do not want to stop to read it.

The Master: Read the extract.

Mr. Harrison: They are talking about the evacuation of Alexandria by the State Troops. "Sections of the track were destroyed and the bridges were burned from Cameron to Bull Run, and twenty-two miles of the railroad in the direction nearest Alexandria surrendered to the control of the enemy or rendered useless to the company. After the battle of the 21st of July the streams between Manassas and Fairfax Station were temporarily bridged again by order of our military authorities for the use of the army only. And recently this part of the line has been again abandoned. This together with the loss of the workshops and their furniture and other property, unavoidably left behind in Alexandria, will constitute a large amount, which in justice at the proper time ought to be paid by the State or the Confederate Government to the stockholders of the company."

Mr. Holt: Now, the date of that, Mr. Harrison, please?

Mr. Harrison: The president's report does not bear date, but he refers in his report to the superintendent's report, which is transmitted along with his own report, and the superintendent's report bears date November 5, 1861.

Mr. Holt: November 5, 1861?

Mr. Harrison: Yes.

By Mr. Harrison:

Q. I further observe in this report of the president that he states that about 122 miles of the main line and the branch to Warrenton are in operation, so you must have been mistaken when you gave the total length of the road at 70 miles.

A. If you recall, I gave it simply as my recollection, that

I had not looked it up, and stated that you having books there I would accept any length that you gave.

Mr. Harrison: The road extended from Alexandria as far as Lynchburg.

Mr. Holt: We have gotten the only fact we inquired of and wanted to know, which was what you stated a moment ago about the destruction between two points twenty miles. I thought it related to the bridges alone, and you have read the point that covers my question. Now, we do not want further to interrupt your examination, and if that is to be read in the record, read it in proper order.

Q. I observe also in this report that the president states that among the assets of the company, in fact he states them thus, I will give the three items, he gives as the indebtedness, total funded debt $2,609,000; total temporary debt $572,673. Against these indebtednesses the actual resources of the company may be stated as follows: Cash in bank, $40,637.42; due by the government, $161,903.72; freight bills and accounts due by the Post Office Department and Express Company, $22,183.38, making a total of resources against the indebtedness just stated of $224,724. The president adds to this that individual subscriptions of stock included $23,437.09, and mortgage bonds of the several issues either by hypothecation as collarteral security or on hand and unsold, $691,000. Of this last, all are of the last issue except $73,000. The new issue of mortgage bonds to the amount of $700,000 authorized by the last meeting of the stockholders to pay off the heavy existing floating debt of the company has been duly prepared and only a small amount so far disposed of. The company has paid up all the interest due upon these bonds of the several issues where the coupons have been presented except that part held at the north, the payment of which was arrested by Act of Congress and public policy.

Now, I wish to read for your benefit as a foundation for the question an extract from the report of the—

Mr. Holt: Is that intended as the basis of a question or are you reading at this point this report into the record?

Mr. Harrison: I am reading such extracts as I am into the record, and expect to use them in the examination of the witness. I expect to follow up both of these reports.

Mr. Holt: When you have cross-examined and you have your case in chief. You started out by calling the attention of the witness to three items as I thought.

Mr. Harrison: My dear sir, I am going to conduct the examination with as due regard to time and the proprieties as I know how to. I am laying the foundation for the examination of this witness.

Mr. Holt: Then you are introducing that in chief for the purpose of cross-examining him upon your own evidence I presume. Is that your idea of propriety?

Mr. Harrison: I do not think you and I would differ upon that score at all, Judge.

Mr. Holt: I did not suppose we would.

Q. Have you read the report of the engineer?

A. I have read those reports, yes, sir.

Q. Then you are familiar with the contents of these reports?

A. I cannot say that I can recall them without reference to them.

Q. My purpose now is to refresh your memory. The engineer says in his report "that it is not possible for me to make a detailed report of operations of this road in my department or to give you the aggregate working expenses owing to the fact that my books showing this information from the 1st of October, 1860, to the 1st of May, 1861, are not in my possession. I can only estimate them from my recollection and by the operation since May for information in a general way."

Mr. Holt: What is the date of the engineer's report?

Mr. Harrison: November 5, 1861.

Q. (Continuing) In speaking of the condition of his road he says, "We have 16 locomotives belonging to us. One of them was undergoing repairs in the machine shop at Alexandria at the time of the invasion and was in such condition that it could not be removed. Another, the Fairfax, was regarded only valuable as old iron, and a third, the F————, though brought out of Alexandria, has been of no service owing to her light weight and general uselessness, so that we have 13 locomotives in actual use, and at this time they are all in

running order. Since the 17th of April these engines mostly have been without shelter and dependent upon a lathe and blacksmith's forge for repairs. It seems almost that they felt it to be their duty to keep themselves in order for the occasion, though much credit is due to those connected with the machinery and the running department for their skill and watchfulness. The road department has not been placed in as complete a condition as it would have been had we been able to supply ourselves with iron rails and ties. But I consider it in good order, and with materials on hand and procurable can keep it so." Great credit and praise is due the men under him for the hardships that they have endured, and so on. Now, you have shown a remarkable increase in the value of this stock, paper increase, between 1861 and 1863, an increase of some $27 a share by June 20, 1863. In view of the condition of this road as shown by the president's report, in November, 1861 and the conditions that existed from that time in Virginia continuously to and including June 20, 1863, and the large indebtedness shown by the president's report, bonded indebtedness, gold obligations, resting upon the road, would you say that there is any basis whatsoever upon which to found this paper increase in the value of the stock?

A. Yes, sir.

Q. What is it?

A. That the road, in spite of the fact of its supposed partial destruction, was in such a condition that it was earning heavily and with most remarkable facility each year, showing that as an operating tool its utility had not been materially lessened even by the destruction, and that its earning capacity was large and increasing.

The Master : Just one moment. Mr. Harris, with the exception of changing upon page 2 of the Defendant's Exhibit the figures 17 to 184, this record is conceded to be correct.

Mr. Hogg: With the corrections already made.

The Master: Yes, with the corrections that you have already made. Now call the attention of the printer to that page. When that is done you tell the printer to strike off his hundred copies, and he can distribute his type, and ask him

to hurry along with his exhibits relating to 1863, because we would like to have those as soon as we can get them.

Mr. Lilly: What is you Honor's idea about how you will number these schedules of 1863? You see we may have some more schedules on 1861.

The Master: I would call them 1863 schedules. We are already going to have on this print at the head class so and so, 1861.

Mr. Hogg : At the head of the page?

The Master: Yes.

Mr. Holt: We can take care of that.

The Master: That will appear right at the head of the page, class so and so, 1861, and when we come to 1863, it will be class so and so, 1863.

Q. Were not the chief resources of this road, so far as document No. 17 shows, upon which you rely, amounts due by the Confederate Government for the transportation of troops? I am referring to the period now between 1861 and 1863.

A. I do not know, sir.

Q. I just called your attention to document No. 17, the president's report, wherein he gives a total of $224,724 of resources in November, 1861, of which $161,903 was due by the Confederate Government. Does not that represent considerably the larger part of the resources, as shown by this volume?

A. No, sir, I think not.

Q. Well, will you state what else?

A. I have not had an opportunity to examine document No. 17.

Q. (Handing book.) I will hand it to you and ask you to do so now. I am referring now to the actual resources as shown by the report of the president of the road. If you have not had a chance to examine the report why did you say that there were other resources than those that I have stated?

A. For the simple reason that you had stated in your report that there were some $2,242,845.65 worth of stock of road equipment stated by your president and also that they had cash in bank of $40,637,42; so, necessarily, from your own

statement there must have been a large amount of other assets.

Q. I confine my question to the resources that that road derived during that period, my question was if the report of the president did not show that the larger part of the resources consisted in the amount due by the government to the road, the total amount as shown by his report being $224,000, including the cash in banks which you have just referred to. I mean free resources, I am not talking about the cost of the road.

The Master: You mean available resources?

Mr. Harrison: Available resources. I am not asking now what the road cost.

The Master: You are distinguishing resources from assets.

Mr. Holt: Does it mean income by that, or accumulated income or what?

Mr. Harrison: I will examine the witness.

Mr. Holt: I did not know what it meant, and that is why I asked the question.

The witness: In addition to the $224,724.52 which you have mentioned, the president also mentions upon the same page, 36, document 17, that to this add individual subscriptions of stock uncollected, $23,437.09, mortgage bonds, of several issues, either hypothecated as collateral security or on hand and unsold, $691,000; which would indicate considerably more liquid resources than you have mentioned.

Q. Let me have the book, if you have finished.

A. Yes.

Q. You have given it as your opinion that the condition of this road as shown by the president's report, and the conditions prevailing in Virginia during the period about which we are inquiring when war was raging, did not affect the value of this stock or the earning capacity of the road because it appears that its dividends steadily increased. I have not asked you anything about that—

Mr. Holt: I do not think the witness made that statement.

Mr. Harrison: Just let me ask my question, if your Honor please.

The Master: Let Brother Harrison complete his question,

and then if Judge Holt has any criticism to make I will hear it.

Mr. Harrison: I would greatly prefer that. If there is any ground of objection to any question I ask, let the objection be stated; but I think I should be allowed to state the question without interruption.

The Master: We rather got the impression that you had concluded your question, and I must say that I got the same impression, but we were both wrong. You are entitled to finish your question, and if there is any criticism to be made of it I will hear Judge Holt.

Q. I have not asked you anything about the cost of the construction of the road or its bond issue, all of which I have myself read in full, but I did ask you—

The Master: You are going to complete your question now?

Mr. Harrison: Yes, sir.

Q. And I now repeat, if it does not appear from the president's report, which is the only source of information, it seems, you have had on this subject, or that any of us have for the present for that year, shows that the larger amounts of the resources of the road, the earnings of the road, the cash that it received, whether it received it or not, that the larger amount of the resources, as the president himself describes it, consisted of an amount due by the government.

The Master: The Confederate Government?

Mr. Harrison: Yes, sir.

Q. That amount being $161.903 out of a total of $224,000 as shown by him, to which may be added $23,000 of individual subscriptions that were uncollected, but that is not earnings of the road.

The Master: That follows from your characterization of the president's report.

Q. Now I ask again if it is not true that the road was dependent for its earnings largely, as shown by this report, upon what it earned from the government.

A. That is impossible to say. Their earnings that year were $604,025.44, very much in excess of the previous year. Whether or not all of that, or more than the one hundred and

sixty odd thousand which you have mentioned, was due from the Confederate Government I cannot say.

Q. I see you have now turned to the engineer's report in answer to my last question, and I will ask you to look at it again. He there is making an estimate, he said, of what the earnings of the road were, in the absence of the books, being unable to do more than that. And I observe he states the receipts from passengers to be $206,668, does he not?

A. I don't know, sir, without reference to the book, as to what passengers would be.

Q. What did you refer to just now when you stated the total resources of the road?

A. From a memorandum which I had taken off of the total earnings of the road.

Q. Then you did not refer to the report itself. Where did you get that memorandum from?

A From that book.

Q. From what part of the book?

A. Document No. 17.

Q. From what part of Document No. 17.

A. I cannot give you the page without seeing the document; I cannot carry those in my head.

Q. Suppose you look at that and tell me. You know you took it from the superintendent's report, don't you.

Mr. Holt: You said the engineer a moment ago.

Mr. Harrison: Well, engineer and superintendent, that is what he is called; it is the same thing.

The Master: It is interchangeable.

Mr. Harrison: Yes, sir.

The Master: I am very glad to learn that, because I got the impression there were three reports, and on the contrary, there were only two.

Q. Have you a reference to the book in your memorandum, the page?

A. Yes, sir, page 54, Document 17. It reads table H, earnings, receipts and payments from passengers $401,494.20; from freight, $159,241.77; from mail, $28,709.12; from other sources, $14,580.35; total $604,025.44.

Q. How does that total compare with the total given by the engineer and superintendent in his report?

A. The same.

Q. Now, the engineer has itemized those items, hasn't he?

A. Yes, sir.

Q. Suppose you read them.

A. From passengers, $206,668.85; from government troops, $194,520.35; from government freight, $67,104.34; individual freight, $92,137.43; United States mail, $22,600.79; Confederate States mail, $6,108.33; Southern Express, $7,071.33; Adams Express, $6,846.95; News agency, $305.00; Telegraph, $662,07; total $604,025.44.

Q. The largest items then in this list of receipts shown by the engineer and superintendent on November, 1861, are the two items of $194,520 and $67,104, are they not?

A. No, sir.

Q. What are the others?

A. Passenger receipts, immediately above that, $206,668.85, and receipts from other freight, below that—

The Master: Does that aggregate all show receipts or is it an aggregate of earnings a part of which have not been received? I see there is an item there of one hundred and sixty odd thousand dollars apparently still due from the Confederate Government and I was wondering whether that was in the earnings.

The Witness: Your Honor, supposing I finish my answer without the interpolation.

The Master: Yes.

A. (Continuing.) Which amount I am not able to state without looking at it on the record, but which will amount to more than the receipts from the transportation of government troops and supplies.

Q. What amount was received as shown by this list from the government? Give me the aggregate of those two items.

A. $261,624.66.

Q. From passengers there was received $206,668, and from freight, $67,104. Those are separate items, but even if they are added together, what do they aggregate, the two?

A. $273,772.85.

Q. What is the difference then between the total passenger and freight receipts and the following items received as shown from the Confederate Government? I will leave out the United States Government—$194,520; $67,104, government freight; $6,108.33 Confederate mail, what is the aggregate of those three items?

A. Will you kindly give me United States mail to go on the other side of the account?

The Master: He has not asked you about that.

Q. Will you kindly answer my question.

The Master: You are anticipating, Mr. Hillman. That does not answer his question. He is asking you the aggregate of these three items; that is all you are called upon to give now. What is the aggregate?

The Witness: $267,732.99.

The Master: That cleans that up.

The Witness: May I be allowed to make a statement?

The Master: If it is responsive to any question that Mr. Harrison has put and explanatory of any answer you have made.

The Witness: It is explanatory.

The Master: If the character of it is right and proper for you to make.

The Witness: It seems so to me; that in the item which I have given of passengers and freight outside of the Confederate Government I have not included the Union, the United States mail, while it is included in the sum which I have given in response to Mr. Harrison's question as the amount.

The Master: That is perfectly obvious from the examination; there is no question about that. You want me to tell you about this particular thing. That is not legitimately explanatory of your answer. I know what you have in mind and you know what the counsel has in his mind, and I appreciate the whole situation, but as a matter of fact that is not an explanation of any answer you have given. It is an argumentative suggestion, perfectly proper from one point of view, but you need not bother yourself about that. The gentlemen sitting at the end of the table will take care of anything of that kind that you want taken care of.

The Witness: Then, will your Honor have the entire matter stricken out.

The Master: You need not have the slightest embarrassment about it, but everything of that kind these people over here will keep watch of, and if there is anything to take care of they will take care of it. There is not the slightest harm in this instance, not the slightest.

The Witness: Will it be stricken out of the record then?

The Master: I do not care whether it goes out or not. If the West Virginia people want it out, let it go out.

Mr. Lilly: Let it stay in. It helps balance.

The Master: Judge Holt and the Attorney General are sitting over here keeping watch of this, and if there is anything dropped in or dropped out that they think wants to be taken care of, it is up to them to attend to it. I would not bother with it if I were you, let them take care of it.

Q. You show on your schedule then as what you call value, book value I presume it is, of this stock, January, 1861, the stock owned by the State on January 1, 1861, at $106.64 a share, aggregating $932,566.

A. Yes, sir.

Q. And the aggregate amount is $932,566?

A. Yes, sir.

Q. You carried that amount into your summary of West Virginia's claim against Virginia, did you not, for 1861?

A. Yes, sir, of items which should be considered in that claim.

Q. As constituting the value of that item as the basis for her claims, is that true or not?

A. Yes, sir.

Q. Did you intend that in that connection to be accepted as its true or actual value or are you to be understood now as you testified before recess that you are not undertaking to express any opinion or to give any testimony as to actual value?

A. I put that in there as being what I considered the book value of the stock and not as expressing an opinion as to whether it should be considered as the actual value.

The Master: We will suspend here for five minutes, but before we actually suspend, my attention has been called to the fact that Monday is Labor Day, and then I have in mind the further fact that I suppose most of us in practice are in the habit of having one-half day off Saturday. Everybody at my office takes a holiday Saturday afternoon whether I do or not. I simply wanted to have a little understanding now if I could as to just what we will do in relation to that. So far as I am concerned, I will sit all day Saturday just as we are doing today, and I will also sit Labor Day provided it is agreeable to all concerned.

Mr. Harrison: Entirely agreeable to us.

The Master: Of course you understand that I am consulting the convenience of everybody, but we all want to get through just as fast as we can, so unless there is some objection we will sit all day tomorrow and also sit on Monday precisely the same notwithstanding the fact it is Labor Day, and if there is any public holiday here under which these rooms will be closed on Labor Day I would expect the Attorney General of Virginia or someone representing Virginia to see that this room is kept open for us. Is that agreeable to all concerned?

Mr. Lilly: That is all right for us.

Mr. Hogg: It is very agreeable to this side.

Mr. Harrison: It is entirely agreeable to us.

Mr. Holt: May I at this time, your Honor, ask Mr. Hillman a question, so as not to break in on Mr. Harrison when he starts? It is relevant to this same matter.

The Master: Certainly.

By Mr. Holt:

Q. I will ask you, Mr. Hillman, whether or not in your schedules you considered the earnings of the Orange & Alexandria Railroad Company at all for the year 1861.

A. No, sir, I did not, as is shown on Defendant's Exhibit No. 3, 1863, Asset 1, page No. 8.

By Mr. Harrison:

Q. Did I understand you to say that you based your in-

creased values in 1863 on the earnings, in part, the accumulated earnings?

A. Yes, sir, on the accumulated net earnings, meaning by that above all of the operating expenses, interest charges and taxes.

Mr. Holt: What I referred to, Mr. Harrison, was a note on that schedule itself, where that statement is made really. It speaks for itself as a matter of fact.

Q. Where did you get the data from upon which this exhibit is based?

The Master: Do you mean page 8, Brother Harrison?

Mr. Harrison: Yes, page 8.

Q. Is it shown on the exhibit itself? This statement is compiled from a report of the Board of Public Works which you found in the City of Washington, is that correct?

A. Yes, sir, in the Congressional Library at Washington.

Q. Who examined that book and took off the report?

A. Mr. Bray.

The Master: Now, you have developed that fact, and I make this suggestion. Of course I do not know how far the counsel for Virginia may want to follow it, but if they have occasion to pursue the examination of Mr. Bray I would expect the other side to keep Mr. Bray in attendance so that there would not be any delay.

Mr. Holt: He is right here.

The Master: That will apply to all. Wherever the existence of any witness is disclosed, that the other side gives notice that they may want to examine him, you will see that he is here so that no delay will take place.

The Witness: Could I have notice of that a little before hand, as I am compelled to use Mr. Pettijohn, who did some of this work, in Chicago; and Mr. Parsons will be down in Florida a little while; and may I have some notice to get them back?

The Master: I do not know that they will want to call Mr. Bray, but of course it is conceivable that they may want to examine him. But so far as it is feasible, when they develop the fact that the link in the testimony develops the fact that

they want some witness other than yourself, I would like to have the counsel for Virginia indicate that they would like to have the party in attendance.

Mr. Harrison: We will do that.

Mr. Lilly: Mr. Bray is the only accountant that examined the records in Washington.

The Master: He is right here, and we can have him at any time. But if any of the others are needed we will give you as much notice as possible. I would expect counsel for Virginia to give at least twenty-four or forty-eight hours' notice.

Mr. Harrison: We will do that.

Mr. Holt: I suppose that Mr. Bray is the only man who would be involved in the examination of any records at a distance. The others would be right here in this town.

The Witness: I want to be sure that you would not consider that I was derelict in my duty, because I have to use my men in other quarters in order to carry on my work.

The Master: Of course you will have to be given proper notice, so that you will have your men here when they are needed. All I am interested in is that we shall have them here when they are needed; I do not want to stop this hearing on account of the absence of one or two witnesses who, with proper and seasonable notice, might have been in attendance.

Q. Now, I would like for you to tell me, please, so that I may get it there in this connection, the value as shown by you of this Orange & Alexandria Railroad Company stock owned by the State in June, 1863, where you show a book value, I think you call it, of $134.25. What does that amount to, that is to say, the total value of the State's holdings at that period, June, 1863?

A. $1,140,566.62.

Q. That is an increase in value over January, 1861, of how much?

A. $207,999.82.

Q. Did you examine to ascertain what the market quotations of that Orange & Alexandria stock were in the City of Richmond, either in January, 1861, or June, 1863?

A. No, sir, I did not.

Q. And you have no information on that subject, have you?

A. No, sir.

Mr. Holt: If you will permit me, Mr. Harrison, I will state that we have another accountant who has probably made those examinations.

Q. Now, in the matter of the Richmond & Danville Railroad Company, what do you find as a total par value of the stock for the year 1856?

A. $1,975,040.

Q. Is that amount correct?

A. Yes, sir.

By The Master :

Q. What sheet are you referring to?

A. Exhibit No. 3, Asset No. 2.

Q. Page what?

A. Page 13 of the printed book.

Mr. Holt: That is an exhibit for the year 1861 and has been printed.

Mr. Anderson: That is Exhibit No. 3, page 13, volume 1 of this record.

The Master: I have that all right. I was tracing up on the blue prints for 1863.

The Witness: Page 19, your Honor, of the present record.

By Mr. Harrison:

Q. On what do you rely for that statement?

A. On Document No. 17.

Q. What page?

A. 622-23.

Q. I observe that on that page the amount of the stock is stated to be, the total subscription is stated to be $2,000,000, and unpaid $24,980, leaving $1,975.020, as the amount instead of $1,975,040, as you have it.

A. That may be, but my record on that happens to read unpaid, $24,960. It may have been an error in checking it off which would make an error of $20, in outstanding stock.

The Master: Do you concede it to have been such an error?

The Witness: No, sir, not without examination of the document.

The Master: Take the document right there. Let us clean that right up when we are on it. We might just as well settle these matters as we go along. Look at it and see just exactly what you concede is right. It is a simple matter to be sure but we may as well clean it up.

The Witness: It will be $1,975.020.

The Master: Instead of $1,975.040.

The Witness: Yes, sir.

Mr. Holt: That was the point of my inquiry this morning, your Honor. The understanding was, as I understand it at least, that in the checking between Mr. Potter and Mr. Holt, that whenever Mr. Potter discovered anything of that kind it would be arranged between them, and not come in here and inflict it upon us here. Mr. Potter appears here with his checks for the first time it seems. We supposed it was mutual.

The Master: I cannot control that very well.

Mr. Holt: I know you cannot, but I am simply calling attention to it. We have done our best to obey your request.

Mr. Harrison: And as far as we are concerned we can say the same thing, we have done our best to obey your request.

Mr. Holt: My point is, if Mr. Potter discovered a mistake of $20 in checking up with Mr. Hillman, he did not call Mr. Hillman's attention to it, but comes in here to correct it with a long rigamarole of evidence.

Q. In the case of Orange & Alexandria you use in some instances the amount subscribed and in other instances the amount paid in as a basis for what you call your book value. Which method did you apply in regard to the Richmond & Danville?

A. In 1856 I applied the amount paid in.

Q. And in 1860?

A. The amount paid in.

Q. You show, do you not, the book value of this Danville stock in 1860 to be $137.37?

A. Yes, sir.

Q. Is that intended to represent the book value as of January 1, 1861?

A. No, sir, on September 30, 1860, the nearest date we have.

Q. Then it is the only book value which you have introduced with reference to 1861, is it not?

A. Yes, sir.

Q. And it is used for that purpose to represent its value as of that date?

A. Yes, sir.

Q. Now, how did you arrive at that, by the same method that you arrived at the book value of the Orange & Alexandria Railroad?

A. Yes, sir, adding the profits each year above operating expenses, taxes, interest and dividends to the last trial balance profit which could be determined.

The Master: You mean trial balance surplus?

The Witness: Surplus, yes, sir, which could be determined.

Q. Have you any knowledge of the Richmond & Danville stock, its value, whether book or otherwise, except what you have derived from the volume called Document No. 17, which we have been using here?

A. No, sir.

Q. And your figures are based upon what you found in that document?

A. Yes, sir.

Q. You took the profits, the alleged profits, the alleged profits as shown in that volume as a basis for determining book value, did you not?

A. Yes, sir, I took the profits as shown in that volume as the basis.

Q. I notice on your exhibit you took $79,247.90 as a dividend paid in 1860.

A. Yes, sir.

Q. Was it paid?

A. Yes, sir.

Q. Where did you find that?

A. From Document No. 17, dividend 4 per cent.

Q. Will you refer me to the page in that report wherein it states that that dividend was paid?

A. I cannot do so without reference to the report.

Q. I hand you the report.

A. I fail to find it there.

The Master: If you cannot find it right away, why, come in in the morning and show where it is. We do not want to stop to have him look these books over. I will give you all the opportunity to test his recollection, but we cannot wait ten or fifteen minutes.

Mr. Lilly: I would like to suggest, your Honor, without any intended criticism of the gentlemen on the other side, that these schedules were furnished two weeks ago, and we have helped their accountant to check up these matters, and if there was a mistake in the dividend, if it was improperly there, it seems to me in fairness to us it ought to have been pointed out before now, and not wait to come in here now at this time and delay the record. Of course if they want to pursue that, all right, but I think it would have been better to have acted differently.

Mr. Harrison: Mr. Pollard informs me that he pointed this out to Mr. Hillman's assistant in his absence.

The Witness: I can settle the matter right now and state where it was derived from.

The Master: If it is necessary, I am going to give either side the full opportunity, but if it is necessary to make an examination during a hearing they can make it during the intermission and come in and state it later. Now you say you are ready on that point?

The Witness: Yes, sir. Journal D. folio 5, Board of Public Works, State of Virginia, shows December 15, 1859, Richmond & Danville Railroad dividend of four per cent., due December 1, 1859. Finding that this was paid upon the stock belonging to the State, we have deducted from our profits four per cent. on the entire capitalization of the Richmond & Danville Road for the year September 30, 1860, in order to be on the safe side, finding that a dividend had been paid to the State we have assumed that it had been paid to all stockholders, and have deducted it.

By The Master :

Q. That is, in order to reach your result as to profits on which you predicate your book value, is that what you mean?

A. Yes, sir.

The Master: My only suggestion is this when we reach something which requires time in investigation, the witness will simply have to state that he cannot on the spot answer that question but will answer it later. I cannot stop here for ten or fifteen minutes to have a search made. This is not a criticism upon Mr. Hillman, of course, because it is an absolute impossibility for a man to keep all these things at the ends of his fingers, to answer right off the bat. My idea is that when you come to something that you cannot answer right off you will simply have to say that you will do it later. Is that all right, Mr. Harrison?

Mr. Harrison: Yes, sir.

By Mr. Harrison:

Q. Do I understand you now, in your explanation, to assume that the same dividend was paid in 1860 that was paid in 1859?

A. No, sir.

Q. Well, your answer seemed to relate to the year 1859, while my question related to the year 1860.

A. The date which I mentioned, December 1, 1859, is included in the fiscal year which we have under discussion which ends September 30, 1860.

Q. Is there any evidence to show that this dividend was paid?

A. Yes, sir, I have just quoted it.

Q. What do you say?

A. I have just quoted it, Journal B, page 5, Department of Public Works—

Q. Do not repeat those things any more, they are just really unnecessarily consuming time. If that is what you really rely upon I will ask you to bring it in at your convenience.

The Master: Bring it in in the morning. We won't spend any more time on that. The understanding is that Mr. Hillman is to produce in the morning the original entry that you are now testifying about, that is if the book is here where you can reach it. I suppose it is here, is it not?

Mr. Harrison: Yes, sir.

The Master: In the morning bring it in, the first thing, the original entry, so that we can check it.

Q. Did you find, in this document, upon which you rely for the statements which you have prepared and introduced here, any evidence of any allowance for depreciation in the case of the Richmond & Danville Railroad Company?

A. No, sir.

Q. Or in the case of the Orange & Alexandria?

A. I found no specific instance of an allowance for depreciation.

By The Master:

Q. Do you find anything on the books tending to show whether or not renewals were charged into operating expenses or charged to construction costs or was your examination negative in that respect?

A. Entirely negative, your Honor, simply taking the operating expenses which they had expressed upon the record. I made no examination further.

Mr. Harrison: We have here the documents from which these exhibits were prepared and we want to submit them to your Honor so that you can see for yourself just what they show.

The Master: That would come along when you are putting in your case in chief, or, so far as I am concerned it is perfectly agreeable to me to have everything of that sort come along in the order of cross-examination.

Mr. Holt: In so far as it is evidence in chief, I would rather they would carry the books than we would have to bring them out.

Mr. Harrison: The books have already been referred to by the defendant and its case founded upon them, and our

friends said in the beginning that they would produce them if they were desired. Now, I do not see why they want to repudiate the books.

The Master: I do not understand that they do.

Mr. Holt: The only point is this, your Honor and Mr. Harrison, that in so far as it is legitimate for cross-examination it is perhaps up to us to bring them in if you request them, but in so far as it may constitute an examination in chief we do not feel called upon to bring them, that is, if you are going to introduce such books. We thought, coming back to what I said before, that these two accountants had been directed by the Master to compare notes and if either found a mistake in the other's calculations or reference, to call the other's attention to it and only present to the court an admittedly correct statement. If they would get together on that it would save a great deal of time. That was your suggestion in the first place.

The Master: Or if there was a disagreement as to an item, to call my attention to the item.

Mr. Holt: Yes, bring it to you.

The Master: That was in a general way the understanding. Of course they can develop their case on cross-examination in their own way, even under that arrangement; but before we conclude tonight I was going to see how far we could tie up some of these schedules on that basis, before we adjourn. Of course the object of that suggestion and that arrangement was not to embarrass either side to the controversy, but it was to facilitate results.

Mr. Harrison: I am passing for the time being the inquiry that I was upon just now about the payment of that dividend until the book can be brought in upon which reliance is placed. I do not mean for it to be sent for now unless it is convenient. If you can get it, then all right.

The Witness: It is in the building and we can lay hands on it in one moment.

Mr. Harrison: I am going to wait for that.

The Master: I am not going to wait for those things, I do not mean a minute or two minutes, but I am not going to

have long delays waiting for details of that sort, because I won't have the hearing prolonged that way.

Q. What do you show the book value as described in the Richmond & Danville stock in June, 1863?

A. $162.27.

Q. That then is an increase over 1861 of $24.90 a share, is it not?

The Master: $21.99 is the way I have it. Page 12, Brother Harrison, that I have shows, 1861, book value, $141.28, and 1863, $162.27.

Mr. Harrison: $137.37 is shown.

The Witness: Your Honor, he is referring to the value that we used in January 1, 1861, which was of September 30, 1860. Your Honor is looking at September 30, 1861.

The Master: Oh, I see, yes.

A. Yes, sir, $24.90 increase per share.

Q. What do you show the total value of the State's holdings of the Richmond & Danville to be on January 1, 1861, at $137.37 a share?

A. $1,632,777.76 as shown by page 13 of the Defendant's Exhibits in this case.

Q. And the total value of the State's holdings, June 20, 1863, to be how much?

A. $1,928,738.79 as shown on Defendant's Exhibit No. 2, 1863, page 7.

Q. Being an increase over 1861 of how much?

A. $295,961.03.

Q. And that amount you carried in as representing whatever value the document shows that you relied upon in your summary of West Virginia's claims for 1863, did you not?

A. Yes, sir.

The Master: Now, I notice the witness has produced this entry, and I suggest that you put it right in now so as to have it as near as possible at the place you inquire about. Have you submitted it to the inspection of Mr. Harrison?

Mr. Harrison: Yes, it has been submitted to us.

The Witness: Shall I read the entry, your Honor?

The Master: Yes, read it into the record.

The Witness: (Reading.) John S. Calvert, Treasurer of the Commonwealth, to sundries, dr. "Amongst these sundries are, under date of December 16, 1859, Richmond & Danville Railroad Company dividend of four per cent., as of December, 1859, $17,543.94; and on December 21st, the same in part, ditto, ditto, $10,000, showing that it was made in two payments.

Q. What is the total of the two entries you have given?

A. $27,543.94.

Q. My question related to the deduction of the dividend of $79,247.90 for the year 1860. As I understand it you have referred to entries where two items appear aggregating some $27,000, being a four per cent. dividend paid in 1859, paid in December, 1859. I do not see the connection between the two.

A. If the State received a dividend of four per cent. upon stock, and the books of the State of Virginia show the receipt of four per cent. during the fiscal year in question, of four per cent. upon its stock, it is but reasonable to presume that the road paid to all of its stockholders four per cent. on its stock and therefore the amount has been calculated at four per cent. on the total outstanding stock and deducted from the net earnings.

By The Master:

Q. That calculation results in this $79,000 that you speak of, is that what you mean?

A. I mean that the total—

Q. Mr. Harrison's inquiry is as to a specific sum that seems to have been paid in dividends. What he wants to know is how you got at that, and if I understand it right you ascertained that result by finding that there was upon these books as a matter of original entry a dividend of four per cent. made on the stock of the State of Virginia. You assumed that the same dividend was made on the whole capital stock, and you computed the dividend on the whole capital stock at the rate of four per cent, which produced this result of $79,000?

A. Yes, sir.

Q. Is that what you mean?

A. Yes, sir.

The Master: That is the situation, is it?
Mr. Harrison: Yes.

By Mr. Harrison:

Q. Then you did not find any entry showing the payment of $79,000 for the year 1859 or the year 1860 either?

A. No, sir.

Q. Now, it seems that this payment we are talking about relates to the year 1859, that you are talking about, so far as the receipts you have produced, in the dates, the year 1859. The dividend about which I am inquiring, as shown by your exhibit, is for the year 1860. Your exhibit shows that in 1859 a four per cent. dividend of $79,239.90 was paid. Your exhibit also shows that in 1860 a dividend of $79,247.90 was paid. Now what I have asked you for was to show the evidence of the payment of the dividend of 1860 and not the dividend of 1859.

The Master : That is, what do you find on the books that justifies you in stating upon your exhibit that there was a four per cent. dividend in 1860, is that not it, Mr. Harrison?

Mr. Harrison : Yes, sir, that it was paid, that there was any payment of that dividend as this purports to read.

The Witness: The journal entry which I have just quoted distinctly states that the dividend was due December 1, 1859, which date is included in the fiscal year which we have under discussion, which reaches from September 30, 1859, to September 30, 1860, and therefore that four per cent. must have been paid during the year which we have under discussion, and therefore was deducted from the total receipts of this year.

By The Master:

Q. Well, you do not find any specific entry of any $79,000 having been paid in dividends by anybody or to anybody, is not that true?

A. That is true.

Q. The dividend is the result of a computation?

A. Yes, sir.

Mr. Holt: As I understand it, if your Honor will permit me, it is this—

Mr. Harrison: Judge, I would much rather the witness would testify.

Mr. Holt: I am not going to testify.

Mr. Harrison: I would like to continue my examination.

Mr. Holt: I was undertaking to make a statement before you continued.

The Master: I understand strictly speaking that is the rule.

By Mr. Harrison:

Q. Did you examine the president's report for that year, September 30, 1859 and 1860, of the Richmond & Danville Railroad Company, in document No. 17, page 421?

A. Yes, sir, the particulars I did.

Q. He quotes in his report as follows, "Both the financial condition of the country and of the company in the opinion of the board make it unwise to declare a dividend at this time, but they trust at no distant date to declare semi-annual dividends of two per cent."

The Master: What is the date of the report?

Mr. Harrison: Ending September 30, 1859 and 1860, that is the way it is headed. I take it for granted it is for that year. It says for the year 1859 and the year 1860. The report itself is not dated, except with that caption, but it starts with that year.

The Master: The necessary inference is that it relates to the year after 1860.

Q. Is not that inconsistent with your statement, your assumption that a dividend was paid in 1860?

A. Not in the slightest.

Q. It it not?

A. No, sir.

Q. What is your authority now for saying that a dividend was paid in 1860 of $79,247?

A. An entry on the books of the State of Virginia where, on December 16th, and December 21, 1859, both dates being within the current fiscal year which we are examining, that they received a four per cent. dividend upon the stock which

they owned in the Richmond, and Danville Railroad Company, and further the assumption is that the State did not receive any dividends on its stock unless the dividend was declared upon the stock generally, and therefore that four per cent. was declared during this fiscal year upon the entire capital stock of the company.

Q. Well, now, will you be good enough to give me your authority for saying that a dividend was paid in 1859, also, of $79,239.90?

Mr. Lilly: Is not that just what you have asked, Mr. Harrison?

Mr. Harrison: I was asking about 1860.

The Master: There are two years on the exhibit, one for 1859 and one for 1860. And Mr. Harrison wants to find out what he predicates his 1859 statement on. Am I right about that?

Mr. Harrison: Yes, sir.

The Witness: Your Honor, may I look at document 17 again, of 1859?

The Master: Yes, certainly, but if it is going to take much time we will not wait. If you can find it in just a few minutes all right, but we cannot have any more ten minutes' wait.

Q. Where does it show it?

A. It shows the declaration of the 1859 dividend.

Q. Does that show payment?

A. No, sir.

Q. And how is it declared, how is the declaration shown? Are you relying upon what the president said in his report for your statement?

A. Yes, sir, I thought that was sufficient: I did not look further through the report to see if it is on the cash.

The Master: Suppose you suspend further answer to that question and between now and to-morrow morning you examine such original data as is open to you and then tell us whether there is anything in addition to that report of the president upon which you rely as the basis of that statement. That will take care of that. You need not stop to look that over any more now. Come in in the morning with it.

Q. You evidently have not examined this question before yourself, but are depending on the examination made by others, is that true?

A. No, sir.

Q. Have you examined before to see whether these dividends were paid?

The Witness: Page 456, Document No. 17, 1859, Board of Public Works report, State of Virginia, state—I am quoting now—"And the generally prosperous condition of its affairs in the opinion of the Board justifies the declaring of a dividend of four per cent. upon the capital stock of the company. This dividend in the aggregate amounts to nearly $80,000."

The Master: What is the date of it?

The Witness: From the president's report. The report is not dated. It was subscribed and sworn to by the treasurer and superintendent on the 29th day of November, 1859, as shown on page 458.

Q. Does that show payment?

A. I say that the report was subscribed and sworn to on that date.

Q. I ask you now if you have shown two payments of $79,239.90 and $79,247.90 respectively for the years 1859 and 1860.

A. Yes, sir, I think so.

Q. You think so?

A. Yes, sir.

Q. And it is shown by what you have read from this document just now, does that show payment of the 1859 dividend?

A. Yes, sir.

Q. Your first reference was to the document book.

A. Yes, sir.

Q. You were corrected and reminded if there was any record at all it was in another book, were you not?

A. No, sir. I went to that other book of my own volition. I will state that I had used every source that I could to determine any charges against the income of these roads, and when I found a reference to the charge—to the income of the road I have deducted it from that income so as to be sure that I was deducting every item that could possibly be legally or properly

deducted from it, and that is the reason why the four per cent. was taken in 1859 from the declaration of the president that it had been declared and that the four per cent. was taken in 1860 from the records of the State of Virginia showing that they had received a dividend December 31, 1859, which fell in the 1860 fiscal year.

Q. According to that then it would be a payment of a dividend nine months before it was due, would it not?

A. No, sir, not at all.

Mr. Holt: Your Honor will perceive right there that even if that other dividend had not been declared and paid it makes it all the worse for us, because he has actually deducted two dividends when he should have only deducted one.

Mr. Harrison: I was not addressing my inquiry on that subject with reference to the effect it would have on the State of Virginia or West Virginia, but to show the accuracy of this account.

Mr. Holt: That may be true, but wherever we err, if err we do, it is on the safe side in ascertaining book value, that is my point.

The Master: I understand its effect.

Mr. Holt: Of course you are not interested in Virginia any more than you are in West Virginia, I know that of course.

Mr. Harrison: I am actuated by avaricious motives altogether.

Q. You have no information in respect to the value of this stock at either date, January, 1861, or June, 1863, except what you obtained in this document No. 17? You may have answered that, I may have perhaps asked you that question, but I have forgotten it and I want to be sure that I have got it in.

A. Yes, sir; I have been able in this case to construct an incomplete trial balance of the Richmond & Danville Road on September 30, 1860, which I consider rather as indicative than actual.

Q. What did you construct it from?

A. From Document No. 17.

Q. Did you examine to see if you could ascertain what the

market value of any of these stocks was in January or June, 1861, or 1863?

A. No, sir, I did not.

Mr. Holt: Do you mean by that market quotations?

Mr. Harrison: Yes, sir, I mean market quotations.

The Witness: Your Honor, I am now prepared to answer the question concerning dividends of four per cent. on the Richmond & Danville stock in 1859 and 1860. The answer is that this dividend was declared in 1859 payable in the fiscal year ending September 30, 1860, and that therefore there was but one dividend in the fiscal years 1859 and 1860, and that in order to be on the safe side in determining these earnings I have, as I said before, deducted it from both years so as not to over state it.

Mr. Lilly: That would increase the surplus $79,000, wouldn't it?

The Witness: It would, yes, sir.

The Master: If it was not deducted.

Mr. Lilly: But he deducted it for two years and he said it was only declared for one year.

The Master: If he had not deducted it it would have increased the surplus, but he has deducted it, so that diminished the surplus.

Mr. Lilly: What I mean to say is this, that having deducted it, that would entitle us to increase the surplus $79,000 or increase the book value of that road.

The Master: It would if you corrected it upon the assumption that there was only one dividend to be deducted.

By The Master:

Q. Do I understand that you deducted two dividends from one year's value?

A. No, sir, one for the year 1859 and one for 1860.

Q. They did not declare them for both years. If the 1859 dividend had not been declared I suppose there would have been that much more in profit and loss account.

A. I find that the dividend which the president spoke of as being declared in 1859 was declared payable in 1860. Finding

the declaration in 1859 I deducted it from my 1859 net earnings. Finding the payment on the books of the State as December 1, 1859, included in the next year, in order to be on the safe side I also deducted from that year so as not to over state my surplus.

By Mr. Harrison:

Q. In reference to the Richmond & Petersburg Railroad Company, will you please state what you ascertained to be the book value of the State's holding of that stock on January 1, 1861—I mean the book value of that stock on January 1, 1861?

A. $121.86.

Q. $121.86 a share?

A. Yes, sir.

Q The total amount of the State's holdings in that company were what of stock, at that time?

A. $385,600.

Q. That is the par value?

A. The par value.

The Witness: Your Honor, this is shown on page 13 of the current record in the exhibits.

Q. You ascertained the book value of that stock in the same manner that you did the previous railroad stocks that we have been inquiring about?

A. Yes, sir.

Q. And relying upon the same book, Document 17 of the Board of Public Works?

A. Yes, sir.

Q. You have no knowledge of the value of that stock other than you derived from that book?

A. No, sir, I have not.

Q. And your book value there was based upon the profits as shown in the source of information on which you relied?

A. Yes, sir, the profits added to the profit and loss account on the last trial balance.

Q. Now what did you show to be the book value of the Richmond & Petersburg stock in June, 1863?

A. $141.24, as shown on Defendant's Exhibit No. 3, 1863 page No. 15.

Q. That is an increase of $19.39 a share, is it not, over 1861?

The Master: I have it here page No. 7. That contains the recapitulation. It is the same thing, I suppose.

Mr. Hogg: Page 15 is the one that he is looking at.

The Master: Well, that is identical with the other page.

The Witness: It is the sub-exhibit, your Honor.

Q. (Question repeated.)

A. $19.38 over September 30, 1860.

Q. Well that makes a total increase then in June, 1863, over January 1, 1861, in the State's holdings of this stock, how much?

A. $74,729.28.

Q. Did you rely upon Document No. 17 for your statement of the value of this stock in June, 1863, as you did in January, 1861?

A. Yes, sir, it is the same report, but I see it is noted as document 15 in that year, on file in Washington, D. C., Congressional Library.

Q. And your testimony is based exclusively on whatever information you derived from that book?

A. Yes, sir.

Q. And you have carried those items respectively in your summaries for 1861 and 1863 as constituting a claim on the part of West Virginia, have you not?

A. Yes, sir.

Q. I presume in this case, as in others, you found no evidence of any allowances being made for depreciation?

A. I found none; I looked for none.

Mr. Harrison: We can suspend here.

The Master: Perhaps on account of the suggestions that have been made I had better make this inquiry, whether or not Mr. Potter has had the opportunity to check up these '63 schedules with the accountants on the other side and if so whether they have been checked up.

Mr. Potter: The calculations are being checked now. Most of them are finished.

The Master: Will there be any objection—of course I do not want to make any suggestion that will embarrass either side, but after Mr. Potter completes his checking up will there be any objection to his notifying the other side as to what items he disagrees with them on, so that we may confine any controversy there may be to those items?

Mr. Harrison: I do not suppose there would be any objection to that. Mr. Potter can explain.

Mr. Potter: I would like to make a little explanation. The gentlemen on the other side seem to feel that I have not acted in good faith in this matter. I have. I have been in constant touch with Mr. Leeds, in Mr. Hillman's absence. Mr. Leeds made the same explanation that Mr. Hillman has since made , and I knew of it on the 24th of August, and I so noted it in my record. And it was not changed in the final schedule, so I had no choice in bringing these matters before the attorneys. It is not up to me to say what will be presented here or discussed. That is the item of $79,000 of dividends.

The Master: In the other item of $20.—

Mr. Potter: I cannot say that I remember that particular item, but there are a great many items that we have gotten together and agreed on.

The Master: The understanding is that you will pursue your investigations and checking, and as to the items that you are not able to agree on, why those can be reported to me and I will pass on them. Otherwise, everything is all cleaned up. If I understand it correctly, Mr. Harrison, no question is raised as to the accuracy of the schedules and the supporting schedules submitted by Mr. Hillman with reference to items 1, 2 and 3, which have been examined about this afternoon and found on page No. 7; that is, the Orange & Alexandria Railroad Company, the Richmond & Danville Railroad Company and the Richmond & Petersburg Railroad Company. That is, it is conceded that the items are accurately expressed and that the computations are accurately made as to those three items

in the schedules and the supporting schedules. Am I right about that?

Mr. Harrison: I understand from Mr. Potter that the figures and the calculations as far as he has checked them, are correct. We have no idea of making any question about them, because if we found any error in the calculations, why, we would have it made right. But on those lines that your Honor suggested, so as to limit any controversy as to whether the calculations are right, why I have no question on earth that we will be able to agree on that.

The Master: That cleans up those three items. As to the other items, if disagreements are developed, the accountants will do the best they can to get together on them, and if they do not get together on them I will pass on them. With that suggestion we will adjourn until to-morrow morning at 10 o'clock.

Adjourned to September 5, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Va., September 5th, 1914.

Present, the same counsel who appeared on yesterday.

The Master: You had completed, as I understand it, Mr. Harrison, items 1, 2 and 3 of page 7. Are you ready to proceed?

Mr. Harrison: Yes, sir.

Continuation of the cross-examination of

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. Mr. Hillman, please state what amount of stock you show on your exhibit, Defendant's Exhibit No. 3, page 13, was owned by the State of Virginia on the 1st day of January, 1861, in the Virginia Central Railroad.

A. $1,927,382.57, in a side note in brackets after the amount $1,891,670.68. I notice that in the print that $1,927,382.57 is out of line. I had not noticed it before.

The Master: The type is distributed on that. Of course that is no particular harm, but at the same time you can see how that would immediately give rise to confusion.

Q. What do you show the book value of that stock to be on the 1st of January, 1861?

A. $131.16 per share of $100.

Q. What sum did you charge to Virginia at $131.16 per share, as shown by your exhibit?

A. $2,481,115.26.

Q. What sum did you multiply by 1.3116 to reach that result?

A. $1,891,670.68.

Q. What significance then have the figures in brackets to which you have referred, of $1,927,382.57?

A. To identify the amount of stock owned by the State of Virginia in the Virginia Central, so as to connect it with the amount upon which I had calculated its value on the book value basis.

Q. But those figures do not enter into your calculation, do they?

The Master: I do not quite understand that question. What Mr. Harrison wants to know is what the significance of $1,927,382.57 is, and I think you would make that plainer if you would state in the first place just exactly what that is and what you got it from, and then make your distinction if you have any distinction. I do not understand your answer.

The Witness: Folio 185 of Ledger B, Internal Improvement Fund, shows that on January 1, 1861, the cost value of the Virginia Central Stock held by the State of Virginia was $1,927,382.57.

Mr. Harrison: Let him answer my last question in that connection.

The Witness: And the amount put in brackets upon page 13 of the exhibits in this case is to identify the amount of this stock so that it can readily be traced upon the books of Virginia as well as upon the statement which shows the final settlement of this stock. In short, it is for identification purposes only that it is entered here.

By Mr. Harrison:

Q. (Question repeated).

A. No, sir, they do not.

Q. The figures $1,891,670.68 which are extended under your column of values at 131.16 represents what?

A. The amount of the subscription of the State.

Q. As of what date?

A. As of September 30th, 1860.

Q. To the capital stock of this road?

A. To the capital stock of the Virginia Central.

Q. And the figures that are enclosed in brackets which do not enter into your calculation, namely, $1,927,382.57, represent for identification what?

A. The amount of the subscription or paid subscription to the

Virginia Central stock by the State of Virginia on January 1, 1861, three months later.

Q. Why did you not extend those figures at the price per share?

A. For the reason that the price per share had to be determined of the date of September 30th, 1860, and therefore, having determined the book value of that date, we applied it to the subscription of that date, as further subscriptions to the stock would upset the book value by having a larger divisor into the surplus.

By the Master:

Q. Do I understand that on September 30th, 1860, the State of Virginia had subscribed and paid for stock to the amount of $1,891,670.68, and that on January 1, 1861, it had subscribed and paid for stock to the amount of $1,927,382.57, is that the fact?

A. Yes, sir.

Q. How does it happen, I suppose these shares are $100 par value, are they not? I don't quite understand how you get the odd figures in subscribing and paying for stock, particularly if it is subscribed and paid for at par; for instance, you get $70.68 in one aggregate and $82.57 in another aggregate, and neither one of those can represent a share of stock. What I would like to know is if there is any explanation on the books how that irregular number appears there, if it is predicated upon a definite number of shares and the payment thereof.

A. Yes, sir, there is an explanation, and it is this, that the subscriptions to the stock were taken in in installments, and, as the public, the general public, would subscribe and pay an installment the State would then pay a proportional amount to public subscriptions on its account.

Q. Now do you mean that that was true even where it resulted in the fractional part of a share?

A. Yes, sir.

The Master: That is all right then, I understand it. If that is the explanation that makes it clear.

By Mr. Harrison:

Q. Do you mean by the explanation that you have given that you had no means of ascertaining the book value of this stock on January 1st, 1861, and that for that reason you took the book

value of September 30th, 1860, and based your calculation on the amount subscribed, as of that date, September 30th, 1860?

A. Yes, sir.

By the Master:

Q. Then this item is not exactly in harmony with your heading on the schedule. Your schedule says par at the opening of business on January 1st, 1861, and it now develops that this was September 30th, 1860. Am I right about that?

A. Yes, sir, you are.

By Mr. Harrison:

Q. Did you not find the total value of the Richmond & Danville stock by multiplying the stock paid in under January 1st, 1861, by the book value which you ascertained as of September 30th, 1860?

A. Yes, sir.

Q. Then you apply a different method in relation to the Richmond & Danville from that that you now apply in the matter of the Virginia Central, do you not?

A. No, sir, for the subscription to the Richmond & Danville Railroad stock was the same on both dates, September 30th, 1860, and January 1st, 1861.

Q. Now did you arrive at the book value of the Virginia Central road by the same method that you arrived at the book value of the stock held by the State in the other roads that you have testified about?

A. Yes, sir.

Q. And did you rely upon the same source of information?

A. Yes, sir.

Q. Namely, the book referred to as Document No. 17?

A. Yes, sir.

Q. Which book contains the annual reports of the officers of the road, does it not?

A. Yes, sir.

Q. You ascertained the value then on the basis of income and expenses as shown by those reports, did you not?

A. Income and expenses after September 30th, 1856, yes, sir.

Q. No allowance was made by those reports for depreciation, was there?

A. That I am totally unable to answer, whether there was or was not.

By the Master:

Q. Well you can state whether or not the reports so far as you saw them showed any allowance for depreciation, I suppose?

A. Yes, sir.

Q. What is the fact in that regard?

A. As far as the reports go there was no entry on them under the heading of depreciation.

Q. That is consistent with your statement the other day that so far as you were able to ascertain from either reports or books that there had never been anything charged off to depreciation so far as you knew?

A. That is correct.

Q. So far as the reports go they show no direct charge to depreciation?

Mr. Lilly: As I understood, he did not know but what it was included in some of these items.

The Master: All he could say was that so far as his examination went, both as to the reports and the account, nothing appeared in there that showed that no charge had been made, or as far as he was concerned had not been made.

Q. The books and the records were entirely negative on that proposition, is not that right?

A. Yes, sir.

Q. And that I take it applies to all of these railroad accounts?

A. Yes, sir.

Mr. Holt: I have understood the statement of the witness heretofore to have been, which is the same thing, that there was no specific charge on that subject in any of these railroad accounts.

The Master: I understand. In other words if that was the issue they do not contain any evidence of it one way or the other, simply leave us to speculation.

Mr. Holt: That is it exactly.

The Master: That is the way I understand it.

Mr. Holt: So do I.

By Mr. Harrison:

Q. Your testimony in relation to this stock value is based

wholly upon the annual reports as found in this document No. 17, is it not?

A. Yes, sir.

Q. Do you intend the value to which you have testified, based on the reports of these officers as of January 1st, 1861, to be taken as your opinion as to their value?

A. No, sir, I do not. I have made the statement in the record quite frequently that I am determining as far as possible the book values of these stocks as of the date of January 1, 1861, or the nearest date to that which was available; further than that I have not testified.

Q. Now, referring to Defendant's Exhibit No. 3, Asset No. 4, page 25 of the printed record, you show that this stock held by the State in the Virginia Central Railway was disposed of on various dates for a sum total of $241,858.50, which appears from that exhibit to have been paid in 1888 and 1890. Was that the total amount received by the State for that stock at those dates?

A. Yes, sir.

Q. On your exhibit I see you have taken 95 & 7-10ths per cent. of that total amount received by the State. What is the significance of that?

A. As shown by this page 25 which we are examining, there were invested after January 1, 1861, five items in the stock of this road bringing the total up to $2,013,987.52, and $1,927,382.57 is 95 & 7-10ths per cent. of this. I have therefore percented according to the amount of the investment on January 1, 1861, the total amount received for all of the stock purchased both before and after 1861.

Q. What use is made of that per cent. as shown on your exhibit?

A. It is applied to the total receipts for the stock of $241,858.50 and equals $231,458.58.

Q. Is that the amount then properly chargeable against Virginia, is that what you intended it for?

A. Yes, sir, if this is considered the basis upon which a charge should be made to Virginia.

By the Master:

Q. You mean January 1, 1861, is considered the basis, is that what you mean by that?

A. No, sir; I mean that if the total receipts for the stock, that is the total amount realized on the stock eventually, is considered the basis of the charge, that $231,458.58 is the amount which should be considered in determining West Virginia's claim as of the date of January 1, 1861.

Q. That is, if Virginia is to be charged on the basis of what she actually received, rather than on the basis of value on a certain date, why this should be the basis of the charge?

A. Yes.

Q. It is simply a calculation made to meet that contingency?

A. Yes, sir.

By Mr. Harrison:

Q. Now, turn to your 1863 schedules of the Virginia Central Railroad.

The Master: What sheet page is that?

Mr. Harrison: Page No. 7 of the blueprints.

Mr. Lilly: The underlying page would be 17.

Q. You take as the par of the stock owned by Virginia on the 20th of June, 1863, $2,013,987.52. That represents the total amount as of that date?

A. Yes, sir.

Q. You have under the heading book value $164.61. Was that intended to represent the book value of that stock, and if so as of what date?

A. That represents the value upon the nearest date, September 30th, 1863.

Q. According to your exhibit this stock had increased in value from January 1st, 1861, to September 30th, 1863, how much per share?

A. $33.45 per share of $100.

Q. And the total amount extended by you as representing the value of this stock, under the column value June 20th, 1863, is how much?

A. $3,315,224.86.

The Master: It occurs to me that I am going to give the printer this instruction; I am going to instruct him to print for me two extra copies of these schedules separately from the record.

Mr. Anderson: We had that done before to the great convenience of everybody.

Mr. Holt: We would like four copies for West Virginia.

The Master: There may be fifty copies made.

Q. Then according to your figures this stock had increased in value from January 1, 1861—I mean the States interest in this stock—to June 20th, 1863, or rather to September 30th, 1863, $834,-109.60, had it not?

A. Yes, sir.

Q. Your testimony in relation to the value of this stock as of September 30th, 1863, I understand is based upon the reports of the officers of the road as you have heretofore testified?

A. Yes, sir.

Q. And which are found in the Board of Public Works' records bound volumes numbered 17, etc.?

A. I believe the numbers on those volumes in Washington is 15, not 17, document 15 and not 17, and it is noted on the stub sheets.

Q. Based I intended to say upon the same data.

A. Yes, sir.

Q. Those reports did not undertake to state the value of the stock, but you have used the figures shown there to reach this result, have you not?

A. Yes, sir.

Q. And this is put in by you for what it is worth as showing value without intending to be an expression of your opinion on that subject?

A. I have expressed no opinion on that subject.

Mr. Holt: Mr. Harrison, before you begin another question, it was our object in the examination in chief during the time Mr. Hillman was here to ask him, and we believe we did, whether these exhibits do not in each instance indicate book, document, volume and page of all the sources of his information. It was our purpose to make the exhibit show just what his entire source of information was.

Mr. Hogg: You want to propound that question to him now.

Mr. Holt: We propounded it to him a hundred times.

The Master: I think it will be understood that the question was asked as often as was necessary in order to complete the proof on the part of West Virginia. It is so understood by the Master and by both parties to the controversy.

Mr. Lilly: With that in view, it looks as if the cross-exami-

nation might—just a slight suggestion—be relieved somewhat.

The Master: I cannot instruct the other side how they shall cross-examine.

Mr. Lilly: I appreciate that.

The Master: Although I have made that suggestion two or three times. And of course I cannot be expected at this stage to comment on it. It is quite a familiar right of cross-examination that the fellow on the other side has the right to have the same facts stated under his cross-examination that the other fellow had if he wants it.

Mr. Holt: It may be introductory to something else.

The Master: Mr. Harrison is within his rights.

Mr. Holt: We are not criticizing Mr. Harrison.

Mr. Harrison: I understand.

The Master: There is no serious suggestion to the contrary. What Mr. Lilly meant was that he did not know but what you might make a little more rapid progress by eliminating some part of it, but that was rather an expression of a wish than a criticism.

Mr. Harrison: I do not think that involves over two questions anyhow, and they are very quickly answered.

Q. Now in respect to the stock which you have just been testifying about, Virginia Central, Mr. Hillman, have you made any investigation to ascertain the market quotations of this stock at the period about which you are testifying.

The Master: In connection with any of these roads.

Q. In connection either with this stock, that is to say the Virginia Central, or any of the railway stocks about which you have testified in this case.

A. No, sir, I have made no investigation as to the market value or quotations.

Q. And the data upon which you based your figures to ascertain the book value of the Virginia Central stock were silent, or contained nothing as to whether or not anything had been charged off for depreciation?

A. That is correct.

Q. I call your attention to a heading, disposed of for, on your 1863 exhibit, page No. 7. What are those figures under that heading intended to represent?

A. They are intended to represent the amount finally realized by the State of Virginia for the securities in question.

Q. Opposite the Virginia Central Railway you have $241,858.50, instead of 95.7 per cent. of that sum which you have testified represented the amount for which her holdings were disposed on January 1st, 1861—I should say which was the percentage of the amount with which you said Virginia should be charged. Why did you not insert in lieu of the $241,858.50 the true amount with which you said she should be charged if those figures should be utilized at all?

A. Because between the dates January 1st, 1861, and June 20th, 1863, the investment of Virginia in the stock of the Virginia Central road had increased to $2,013,987.52, or 100 per cent., and therefore when the date of June 20th, 1863, is considered, of course the full amount received, viz., $241,858.50 must be considered.

By the Master:

Q. One principal related to one date and the other principal related to the other date?

A. Yes, sir.

Mr. Harrison: That is what I wanted to get clear on the record.

By Mr. Harrison:

Q. Now take up item No. 5 of Defendant's Exhibit No. 3, page 13, the Blue Ridge Railroad built by the State. What was the total amount expended by the State for that road January 1st, 1861?

A. $1,604,723.23, as shown on page 27 of the printed record.

Q. What value as of January 1st, 1861, do you put upon the total expenditure made by the State in the Blue Ridge road which you have just given?

A. $625,348.08.

Q. How did you arrive at the value of that investment as of that period?

A. It was the sales value as of that period.

Q. When did the State receive the money or bonds, as the case may be?

A. April 1st, 1870.

Q. Was it paid in money or bonds?

A. It was paid in bonds and money.

Q. How much money?

A. $8.96.

Q. It is a small matter, but I believe that eight dollars and something was represented by a check, was it not?

A. Yes, sir.

Q. Which the Speaker's report shows was not collected?

A. I did not follow that.

Q. Didn't you?

A. No, sir.

Q. Do you know how that valuation was arrived at, did your investigation involve an inquiry into that or have you been informed about it?

A. No, sir, I do not know how that value was arrived at.

Q. It is all shown in the original record and embraced in the Master's report, but you did not have your attention called to that.

The Master: Please state the page of the original record.

Mr. Anderson: The acts which show the terms on which this transaction was carried out are found at pages 33 to 49 of the appendix to the original record. They were concurrent acts of the State of Virginia and the State of West Virginia.

Q. On your exhibit, Defendant's Exhibit No. 3, page 27, the reference you give for taking this item of $625,348.03, as the amount received by the State in April, 1870, for expenditure in the Blue Ridge Railroad, you refer to Journal D, Internal Improvement Fund, page 171. Did you not find there full information as to how that value was reached? Did you not see, in other words, a report of the Commissioners of the two States, Virginia and West Virginia, or rather, find there that the value was based on their reports? I just want to know.

A. No, sir, I do not recall that fact; it may have been there.

Q. Refer to your exhibits for the year 1863, page 7, and please state what amount you charge Virginia with under the head of June 20th, 1863, on account of her expenditure in the Blue Ridge Road.

A. $1,674,723.23, or the total amount which they had expended.

Q. Then according to your figures the value of that investment had increased from 1861 from $625,348.08 to $1,674,723.23 by June 20th, 1863, hadn't it?

A. Yes, sir, as the exhibits are made up that is the net result.

Q. How do you explain that?

A. I explain it by the fact that I have two columns on page

No. 7, Defendant's Exhibit 3, 1863; one, value June 20th, 1863, and the other, disposed of for; and that the par value is carried into the column June 20th, 1863, and the value of $625,348.08 was carried into the column, disposed of for; and that on page 13 of the present record I had allowed the value of the expenditure to remain in a column headed par, and had carried into value January 1st, 1861, the disposal price.

Q. My question was this; why did you charge Virginia on June 20th, 1863, with the total cost of construction of the Blue Ridge Road as its value, and yet charge her on January 1st, 1861, with $625,348.08 as the value of that total cost of construction at that time, January 1st, 1861.

The Witness: Now, Mr. Stenographer, will you please read the question prior to that, which I had answered.

(Testimony read by stenographer.)

A. That is an inadvertence upon my part.

By the Master:

Q. What is the inadvertence upon your part?

A. That there was a different charge made, or that it was headed differently.

Q. Well, now, you are getting me confused. Where is it headed differently, that is what I would like to know. Now, is not this all there is about it—let me see if I understand it. I understand that on January 1st, 1861, you have got in a schedule here on page 27 of the printed record an item of $1,604,723.23. That you say represents, according to the books, the cost of construction up to that date; am I right about that?

A. Yes, sir.

Q. Now, then, you have got another schedule for June 20th, 1863, an item of $1,674,723.23. Do I understand that that represents the cost of construction up to June 20th, 1863?

A. Yes, sir.

Q. Well, now, then that shows that there was additional cost of construction from January 1st, 1861, up to June 20th, 1863, does it, of the difference between those two sums, is that right?

A. Yes, sir.

Q. Now, I do not understand that you have done anything,

so far as disposal is concerned, except to stick to the item of $625,348.08; am I right about that?

A. Yes, sir.

Q. Where is the confusion then?

A. The confusion is that in one case, which is on page No. 7, Defendant's Exhibit, No. 3, 1863, under value of June 20th, 1863. I have entered the par value; on page No. 13, under the value of January 1st, 1861, I have entered the disposal value.

Q. Wait a minute and let me get that. Page 13?

A. Page 7 of the 1863 exhibits.

Q. I have that page, and under the head of the disposal value you have $625,348.08?

A. Yes, sir.

Q. Now, give me the other disposal exhibit where you have given a value at any other sum.

A. On page 13 the same disposal value is shown.

Q. Now, page 13 shows what—you say page 13 of the exhibits of 1863?

A. Page 13 of the printed record.

Q. That is another thing. Page 13 of the printed record shows the valuation of par January 1st, 1861, of $1,604,723.23, which is exactly the item we have been talking about; it shows a disposal value of $625,348.08.

Mr. Hogg: That is the sales value.

Q. I suppose that column on page 13 is marked value instead of disposal value, is that the trouble?

A. Yes, sir, it is marked value January 1st, 1861.

Q. I get it now. That is the difficulty. In other words your schedule does not accurately state the exact situation?

A. Yes.

The Maser: In order to have his schedule consistent with what he claims the facts are, instead of having a heading, value January 1st, 1861, on page 13, he ought to have said disposed of for, because every other item there is predicated upon, disposed of for.

Mr. Hogg: That foot note would explain that.

Mr. Holt: I think there is a foot note there that fully explains that, on the exhibit itself.

The Master: I get it now. But I wanted to get at what the confusion was. The examination does not enlighten me any unless I understand it as it goes on. I get the point now. Clearly

enough that item appears, so far as the designation is concerned, independent of the explanation, in an improper column, that is all. That is your point, is it not, Mr. Harrison ?

Mr. Harrison: No, sir, it is not a question of improper columns with me. If your Honor would have let me had a minute or two more you would probably have seen the point I was driving at.

The Master: I wanted to see if I was keeping up, that is all. Go ahead and develop your idea.

Mr. Harrison: It was not a question of columns. He started off with an answer concerning some explanation, but he was giving the correct statement of the second line, which was that he had made a mistake.

The Master: Instead of being illuminated, I was getting confused.

Mr. Harrison: In order that your Honor may understand what I was driving at, I am contrasting the values that this witness has placed upon the State's expenditure in the Blue Ridge road as of two dates, January 1, 1861, and June 20th, 1863, and you will find that on his schedule where he gives the value of that expenditure, amounting to more than a million and a half; in January, 1861, he states it at six hundred and twenty-five thousand and some odd dollars.

Mr. Holt: The sale price.

Mr. Harrison: The price for which the investment was sold in 1870.

The Master: I get your point.

Mr. Harrison: Now, when you turn to the 1863 sheet you find that he has charged Virginia with the total expenditures of that road; in other words, more than a million dollars or something along there more in 1863 than she should be charged with in January, 1861, and when he was asked to explain that, he then had started to say that he had made a mistake, and at that point your Honor came in, because you had not gotten hold of the point.

The Master: Page No. 70 is the schedule you refer to where he charged you with $1,674,723?

Mr. Harrison: Yes, sir, that is the 1863 schedule.

The Master: On page No. 7, of the blue print schedules.

Mr. Harrison: Yes, sir.

The Master: I get it. I understand that your contention now

is that he admits that this item of $1,674,723 is an error.

Mr. Harrison: That is what I understood him to say.

The Master: Very well. Start from there on, if that is the understanding.

Mr. Harrison: I really have forgotten where I was.

The Witness: Your Honor, since the counsel has made the statement into the record that I stated it is an error, I wish to make a further statement then. Am I entitled to one?

Mr. Harrison: I stated that I understood that to be your reply.

Mr. Holt: So did I; but let him go on.

The Master: I shall have to allow Mr. Harrison's wishes in that respect. Mr. Harrison is conducting the cross-examination and his idea is that the witness has made a statement as a result of that examination. It is Mr. Harrison's privilege to pursue the examination from that on if he desires to do so, and then after, as he goes along, if the witness has any occasion to make an explanation, very well. Of course, without Mr. Harrison's permission I should hardly want to allow the witness to go on now when the examination has stopped and make an explanatin. Mr. Harrison has a right to pursue his cross-examination, and if the cross-examination does not clear it up in accordance with the views of the other side or in accordance with the views of the witness, as he goes along, the witness can make such explanation as is proper as he goes along.

Mr. Harrison: I am of course not undertaking to object to the witness making any explanation.

The Master: True; if it is agreeable to you he can make any statement, but if you prefer to pursue your cross-examination, you have that right.

Mr. Harrison: I would like very much to get back to base again and see if I can take up the thread.

The Witness: Your Honor, the objection that I made was that Mr. Harrison stated into the record that I had admitted that I made an error. That is a statement that does not appear in the record, and I must insist on correcting it.

The Master: Mr. Hillman, don't discuss this case with Mr. Harrison. You are simply the witness; you are under his cross-examination, and you do not make any statement here except it is in response to some question put by him, unless he is willing that you

should make some statement in the record. There can be no discussion between the witness and counsel. You will have a full opportunity to make all explanation that you think may be necessary or that the attorneys for West Virginia may think will be necessary.

Mr. Holt: I have no doubt that Mr. Harrison's further questions will give him an opportunity to make an explanation. The only trouble with Mr. Hillman was this, he was fearful that the statement made by Mr. Harrison into the record would bind him.

Mr. Lilly: He misquoted him, he thinks.

Mr. Harrison: I did not misquote him. I said what I thought he said, and if I am mistaken about it, his own answer would correct me. I said that I had understood the witness when he started to reply to the second question, that he had stated that that was a mistake or inadvertence. If I am mistaken about that, his answer will correct it.

Mr. Holt: If you are mistaken then I am mistaken. I received the same impression; but your further examination will clear this thing up.

Mr. Hogg: I would like to submit one observation in regard to this argument—

The Master: No, I would suggest this, I do not think I can allow any discussion of this testimony as it is coming in, one way or the other. The situation is this, and I suppose perhaps I myself am responsible for breaking in and adding to the confusion. The difficulty with me was I was perhaps too anxious to get the purport of it before I allowed Mr. Harrison to complete. Mr. Harrison is conducting the cross-examination and so far as he is concerned it is for him to say how he will do it. We have reached a stage now where the witness has answered a certain question. Mr. Harrison has got a right to develop his cross-examination along that line without any suggestion from the other side or without any suggestion from anybody or without any discussion between himself and the witness. The witness is not to argue this case with counsel, and if Mr. Harrison does not wish it, nobody is to comment upon this examination as it goes in by way of explanation or otherwise. A comment might destroy the effect of a cross-examination. You can appreciate how that may be. This whole thing from now on is between Mr. Harrison and Mr. Hillman, and from now on it will be conducted in

this way, Mr. Harrison will ask the questions; Mr. Hillman will answer the questions and stop when he gets through with his answers. He will not try to argue the case or try to make any explanation relative to the answer to a question that he makes. I understand that to be the proper legal rule.

Mr. Hogg: I would like to make this statement. I have not interfered with the examination or the cross-examination. I have kept very quiet. I do not understand this schedule—

The Master: That is not to be discussed now unless Mr. Harrison wishes to go into it.

Mr. Harrison: No, I do not.

Mr. Hogg: I wanted to see whether I understood it.

The Master: That is not to be made the subject of colloquy between counsel unless Mr. Harrison desires it.

Mr. Harrison: I would rather go out in the hall and discuss it with him.

The Master: Here is exactly the situation—

Mr. Holt: I am making the request of Mr. Harrison to proceed, that is all I am doing.

Mr. Hogg: And I was making a request to allow me to ask him a question.

The Master: I cannot allow this to develop into a colloquy between counsel unless it is agreeable to Mr. Harrison. There is not the slightest question about his legal rights right at this juncture. The witness is on the stand and being cross-examined, and Mr. Harrison has got a right to go on with that cross-examination, and it is between himself and Mr. Hillman and nobody else, and so far as counsel on the other side is concerned, either by way of suggestion or inquiry or anything else, it is not open until they get him, not at this stage, unless Mr. Harrison is willing that it should be done. Now the hearing will proceed on that basis.

(The last question put by Mr. Harrison and the answer thereto were read by the stenographer.)

Q. How would you correct it?

A. By charging Virginia with $1,604,722.23, on page 13 of the printed record.

Q. Do I understand now that it was an inadvertence in that you did not charge to Virginia on January 1st, 1861, the total cost of the construction as representing its then value?

A. Yes, sir. I depended upon the stars preceding each of these

items to explain exactly how the charge was made up as far as page 13 of the printed record goes. I made a little different handling of it on page No. 7 of Defendant's Exhibit No. 3, 1863. The facts show in both schedules.

Q. Then the inadvertence did not occur in the 1863 schedule?

A. No, sir.

Q. Then you were wrong when you said it was an inadvertence in answer to my question a moment ago, were you not?

A. Yes, sir, I should have proceeded further and said it was an inadvertence in making out the schedules on different bases; I mean by that on a different plan of expressing them.

Q. In what respect do the schedules differ in the matter of the plan of expressing them?

A. I should have had on page 13 of the printed record a column headed value June 20th, 1863, and a column, disposed of for. Instead of that I had relied upon the stars to indicate the exact status of the case. In other words, the Defendant's Exhibit 3, 1863, page 7, is in a more complete and concise form than is page 13.

Q. We cannot then derive the meaning of your page 13 without reference to your page 7, can we?

Mr. Lilly: Pardon me, wouldn't it be well to say printed page 13?

Mr. Harrison: Yes.

The Master: That is page 13 of the print and page 7 of the blueprint.

A. Yes, sir, I think that reading page 13 of the printed record, together with the stars and foot notes, would indicate fully the state of the case.

Q. What evidence do you rely upon to give the value of the State's expenditure in the Blue Ridge Road January 1st, 1861, at your new value now given, $1,604,723.23?

A. The cost of construction up to January 1st, 1861, as shown on page 187, Ledger B, Internal Improvement Fund, State of Virginia, and expressed on page 27 of the printed record.

Q. Then you have taken the cost of the road and embraced that in your schedule and testimony as representing its value, have you not?

A. Yes, sir.

Q. Have you any other information about its value than the entry showing its cost?

A. None save the entry showing its final price obtained.

Q. Was it an operating road at that time?

The Master: You mean January 1st, 1861, is that the time you refer to.

Mr. Harrison: yes.

A. It was being operated, or its tracks were being run over by the Virginia Central Railroad.

Q. You do not know the location of this road, do you, the Blue Ridge?

A. It is what is now part of the Chesapeake & Ohio and contains the Blue Ridge tunnel.

Q. Do you know to what extent that work had been completed at that time?

The Master: You refer now to the tunnel?

Mr. Harrison: Yes, sir.

A. It had been completed almost entirely at January 1st, 1861. There was a further expenditure of in the neighborhood of $70,000 after that date.

Q. Did it have any equipment or rolling stock?

A. I do not know. I do not think it did, but I do not know.

Q. Why did you take the cost, the amount expended by the State on that work, as representing its value?

A. Because the State had expended up to that date that much actual cash on the road, presumably expended for value received in the building of the road.

Q. I observe by reference to the defendant's supplemental answer, page 54, that the accountant who made up the figures upon which that answer was based seems to have made the same inadvertence that you did—

Mr. Lilly: Now, I want to make a correction there. It is evident—

Q. —by charging to the State of Virginia $705,280.82 as the value of the State's interest in that road in January, 1861?

Mr. Lilly: If the Master please, that is not what the answer states, with due deference. It says, sales of securities purchased with common funds. It says that is what was received; it does not say it was the value as of January 1st, 1861.

The Master: I am inclined to think that is correct.

Mr. Harrison: But that is the value put on it in their summary.

The Master: Well, you are referring to page 54. Page 54, where that amount appears, is under a head which relates to the proceeds of securities.

Mr. Harrison: That is the value put upon that piece of work.

Mr. Holt: That is the sale price, clearly indicated.

Mr. Lilly: It corresponds with the $625,000, as in the Hillman schedule.

The Master: The figures are not identical.

Mr. Lilly: But it is meant to correspond, with a different basis of calculation.

The Witness: Your Honor, since we are on that point of the $705,280.82, I would call your attention to the fact that that $705,280.82, is made up of the two items shown upon page 27 of the printed record, viz., the amount obtained for the cost of the road, $625,348.03, and subsequent tolls received by the Virginia Central of $79,932.74.

By Mr. Holt:

Q. Received by or from the Virginia Central?

A. From the Virginia Central.

The Witness: I make this statement merely so that the two items can be identified.

By the Master:

Q. That is your suggestion is, that the aggregate of those two items produce $705,280.82?

A. Yes, sir, or within five cents of that, which happened to be five cents over on interest of bonds which was never adjusted.

Mr. Harrison: Now, I want an answer to my first question.

The Master: I can see where the aggregate occurs, but it is not a very happy statement of the items in the answer. That is, there is not anything in the answer that would indicate that detail. I can see where that computation of course produces the result. Just how significant it may be is a different matter. Of course strictly speaking in the first place this schedule does not show the value, and then strictly speaking it does not aptly describe that value. I suppose it is easy enough to see what is meant. Your proposition is that that item means this other item.

Mr. Holt: That schedule undertook to set forth the sales price or amounts received for certain securities, and into it, how-

ever, slipped the Blue Ridge, which was not a question of securities at all.

The Master: Precisely.

Mr. Holt: But it would represent its sale price as well.

Mr. Harrison: I do not see that there is any necessity of discussing those questions. My question was a very simple one, and I am going to put it in a different way.

Mr. Holt: This discussion was not addressed to your question.

Mr. Anderson: I want to call the attention of the Master to an inadvertence on the part of my friend; that item of $705,280.82, item No. 5 in Class C of the answer, is not mentioned in the answer with the meaning that my friend states, but it is recited there as being proceeds of sale of purchased securities with common funds of the two States by the State of Virginia, etc.

Mr. Holt: Yes, I say that it happened to get into a column representing the sale of securities when it was not the sale of securities at all.

Mr. Anderson: Sale of property.

Mr. Holt: Sale of the road, the property.

The Master: That is a matter to be dicussed later; it does not refer to Mr. Harrison's cross-examination.

Mr. Lilly: I was excepting to the accuracy of Mr. Harrison's question.

The Master: Read the question.

Mr. Harrison: I will put my question in a different way.

The Master: Then the pending question is withdrawn.

Mr. Harrison: And all that follows it.

By Mr. Harrison:

Q. The accountant who made up the statement upon which the supplemental answer of the defendant is based seems to have fallen into the same inadvertence that you did with reference to the value of the State's expenditure in the Blue Ridge Road in January, 1861, by not charging Virginia with the total expenditure as representing its value; isn't that true? I refer to page 54 of the supplemental answer.

A. Yes, sir, that is true. In his final summary he has presented as a charge against the State of Virginia the sales price.

Q. Now, let us take up the next item, Item No. 6 of Defendant's

Exhibit No. 3, page 13 of the printed record, Alexandria, Loudoun & Hampshire Railroad stock. What do you give there as the total amount of the State's holdings in that road January 1, 1861?

A. $993,248.

Q. You give no book value for that, do you?

A. No, sir.

Q. What do you give as the value of those holdings January 1st, 1861?

A. Referring to page 13 of the printed record I give the value of $49,662.05 with the double star which indicates that it is the sales value.

Q. That sales value was had after the war, wasn't it, realized after the war?

A. Yes, sir, November 27th, 1867.

Q. Now, what do you charge to Virginia as the value of her holdings in that road June 20th, 1863?

A. $1,017,248, the total amount expended up to that date.

Q. For the purchase of stock?

A. Yes, sir.

Q. Then you have made a difference in the values you put upon her holdings in that road by charging her with $49,662.05 as its value January 1st, 1861, and by charging her with $1,017,248, a total expenditure as its value in June, 1863. How do you explain that?

A. In the same way as we have explained at considerable length the matter of the Blue Ridge Road.

Q. How would you correct it if it needs correction?

A. In the same method, by introducing a column of value on January 1st, 1861, on page 13 of the printed record and entering thereon $993,248, as the value, and then having the disposed of value column on page 13 also wherein $49,662.05 would show.

Q. Haven't you a column on your January, 1861, schedule headed value, January 1st, 1861?

A. I have, yes, sir.

Q. And haven't you under that column opposite Alexandria, Loudoun & Hampshire Railroad Company $49,662.05 as representing the value of her holdings at that time in that road?

A. I have that amount entered there marked with two stars, which referred to a foot note, "states that it was sales value."

Q. I understand that, that it is sales value, that is shown on

your schedules very largely, and the foot note merely calls attention to that. Does the foot note explain the mistake in any other way excepting by mentioning the fact that that was the proceeds of the sale of her interest in that road realized afterwards? Does the foot note serve any other purpose than to indicate that the figures there were the sales price?

A. No, sir; it serves no other purpose than to indicate that it was the sales price.

Q. Then if I understand you, you want to correct your exhibit of January 1st, 1861, is that correct?

A. No, it is not.

Q. I thought you said it was a mistake.

Mr. Holt: No, that was your language.

Mr. Harrison: Or inadvertence then.

Mr. Holt: On the question of this road he has not used either word.

Q. Very well. Then I will ask you to explain why you have charged Virginia with $49,662.05 January 1st, 1861, as the value of her holdings in the Alexandria, Loudoun & Hampshire Railroad and charged her with $1,017,248, June 20th, 1863, as the value of her holdings, why did you do that and how do you account for that difference?

A. I have already explained that at considerable length, but I will do so again. The notation on page 13 of the printed record distinctly states that it is the sales value which I had considered there, $49,662.05. There is another column which shows the par value of that stock or the amount which had been expended by Virginia up to January 1st, 1861, viz., $993,248. In Defendant's Exhibit, No. 3, 1863, page 7, these facts were stated in a different manner, having two columns, one headed value June 20th, 1863, and the other one "Disposed of for." In the value June 20th, 1863, was entered the amount expended up to that time on the Alexandria, Loudoun & Hampshire Road. In the next column, "Disposed of for," was entered the amount which Virginia finally received for its stock in this road. I have relied upon the stars on Exhibit No. 13 to make my meaning clear on that page, and in putting it in "Value January 1st, 1861," I will admit these schedules would have been in better shape had they been made more in conformity with one another rather than left as they are.

Q. Is it a fact that you have charged Virginia as of January 1st, 1861, with $49,662.05 as the value of her holdings in the Alexandria, Loudoun & Hampshire Railroad? Page 13 of the printed schedule I have before me and I referred you to.

A. Yes, sir. That has been entered in the summary of the amount to be charged to Virginia for consideration in this case as $49,662.05.

Q. Is it a fact that you have charged to Virginia as of June 20th, 1863, $1,017,248?

A. Yes, sir.

Q. As the value of her holdings in this road?

A. Yes, sir.

Q. On that date?

A. Yes, sir.

Q. Is the first charge correct or do you wish to amend it?

A. If it needs amendment, page 13 should be amended as I have stated.

Q. What I will ask you, and you will have to determine whether it needs amendment or not, because it is your work and not mine, have you correctly stated as you intended to do the value of her interest in this road on January 1st, 1861, on your Exhibit No. 3, page No. 13, as $49,662.05?

A. No, sir. The amount therein entered should be $993,248.

Q. Then you made a mistake, did you not?

The Master: In place of $49,662.05?

The Witness: Yes, sir.

Q. Then you made a mistake in that exhibit, did you not?

A. I have stated right through this testimony, or the cross-examination I mean, that the expression of these amounts on the two schedules should have been synonomous and not left to be carried by the notations which I have made, and therefore the exhibit may be considered as erroneous in form.

By the Master:

Q. The simple question is did you make a mistake with reference to that item. Mr. Harrison has a right to an answer to that question. You can answer that and then you can explain in your own way. Is it or is it not a mistake. The question is, when you inserted in the schedule the item of $49,662.05 which ought

to be $993,248, Mr. Harrison wants to know whether that is a mistake or not, is that it?

Mr. Harrison: That is what I am asking him.

A. Yes, sir, $993,248, should be entered under value January 1st, 1861, instead of $49,662.05.

By the Master:

Q. Now then was it a mistake? What is the answer to that question? Was that entry under those circumstances a mistake, or was it not? Was it or was it not, and if it was, give your reasons.

A. It was a mistake.

Q. Now, then if you want to explain it go on and explain it.

A. I do. For the reason that the value of the stock on January 1st, 1861, should be considered as the amount of the investment in the stock in 1861, and the claim based upon that value; this in accordance with our method of treating this on June 20th, 1863. The alternative column should then show, upon page 13 of the printed record, the amount which was finally received for the stock in the same manner as has been done on page 7, Defendant's Exhibit 3, 1863.

By Mr. Harrison::

Q. Now I understand that you wish to correct your Exhibit No. 3, page 13, of the printed record, by substituting in place of $49,662.05 as the value of Virginia's holdings in the Alexandria, Loudoun & Hampshire Railroad Company with $993,248, the par value of the stock held by her in that road; is that correct?

A. No, sir; I do not propose, unless instructed to by the Court, to correct the exhibit; having given my testimony as to what I consider the proper amount should be considered there, and as the full information concerning the method of handling is contained upon page 13 of the printed record.

Q. Which of those items will you charge against Virginia in your summary, or have you charged against her in your summary?

A. I have only charged $49,662.05 in my summary.

Q. And you do not intend to correct your summary of 1861 by striking that charge out and putting in the greater charge?

The Master: I am looking for that summary of 1861, and I do not seem to find it.

Mr. Lilly: It was not introduced until the second sitting.

Mr. Harrison: Let him answer my question.

The Master: You may answer.

A. No, sir; unless instructed to by the Court I do not propose to.

The Master: Before we go on I want that summary of 1861.

Mr. Anderson: Unfortunately it has not been printed.

The Master: But I want it, because I have got to keep track of it.

Q. If Virginia should be charged with $993,248, January 1st, 1861, instead of with $49,662.05, why will you not correct your summary and charge her with the proper amount?

A. For the reasons that I have stated, with the explanation as given in full on both exhibits, and that it is the province of the Court and not of the witness to say what the amount is which should be charged against Virginia in this final settlement, and that having all the facts laid before the Court I deem it sufficient, unless instructed by the Court to make up the statement for its information and guidance on the plans which I have outlined in my explanation of this matter.

Q. Which amount, according to your judgment as the accountant making up this statement for the guidance of the Court and the Master, should Virginia be charged with—in your summary as of January 1st, 1861, on account of the Alexandria, Loudoun & Hampshire Railroad Company?

The Witness: Is that a proper question?

The Master: Yes.

A. $993,248.

Q. Why then would you not correct your summary and put in it the proper amount according to your judgment?

A. I have already answered that question.

Q. If you intend your summary to be of assistance to the court?

A. I think I have already answered that question sufficiently in this answer.

The Master: That is not a proper answer. Let me explain this to you, and we won't have any trouble. The cross-examination has developed the fact that did not quite appear before, which

entitles Mr. Harrison to ask this question; I am not going to discuss it in detail, but it is simply up to you to give the best answer you can to this question without reference to what you may have said before. It is a proper question, and you are to answer it without predicating your answer on what you may have stated before. Give the answer to the question right now.

The Witness: What is that question?

(Question repeated by stenographer.)

A. For the reason that I think the matter as it stands now is in sufficient form and fullness for the information of the court without making a summary in the method outlined.

Q. Unless you make the correction your summary will now, according to your judgment, be correct, will it?

A. No, sir.

Q. Then you think that you will assist the court and the Master by submitting to them a summary of results which you say does not truly represent your judgment as to what it should be?

A. Yes, sir; I deem with the explanation that I have made that the summary is sufficient.

By the Master:

Q. This cost of construction by the State of the Blue Ridge Railroad, I take it, is taken from the books of the State?

A. Yes, sir.

Q. And that I assume shows in detail what the cost of construction consisted of?

A. Yes, sir, it does.

Q. In what way is that divided in the account? Give me the large and salient items making up that aggregate?

A. It is spread out, if my recollection serves me, and I think it is correct, in detail, showing how much paid to contractors, showing how much paid for ties, rails, and all kinds of different things, all the usual construction expenditures, sometimes taking a page or a page and a half of detail to make up one entry which is entered during say the current quarter.

Q. Well, when did the construction begin? I think it is probably already in the record, but I would like to have it right here?

A. Your Honor, I will have to refer to the commencement of the construction of that Blue Ridge road.

Q. Can you give the year, without giving the date? The year

will be enough for my purpose; I simply want to get an idea about what period this covered.

A. I cannot do so without looking at the ledger. It will take but a moment, and I will give it to you. The stenographer will just leave a blank for it.

(The witness later supplied the date of the commencement of the work as September, 1850.)

Q. Is there anything to indicate how much of this road had been in operation prior to January 1st, 1861, if any?

A. Yes, sir; there had been tolls paid by the Virginia Central for the use of this road prior to 1861, and subsequent to that date.

Q. Is there anything on these books showing the cost of repairs or maintenance?

A. No, sir.

Q. That is, what I mean by that is, is there anything on these books af the State showing the cost of repairs and maintenance of this road during this period or any part of it?

Mr. Lilly: May I call your Honor's attention to the fact that the road was leased, and that would probably be in the Virginia Central's items?

The Master: That has not appeared. I rather got the impression that the tolls were tolls for the use of the tunnel.

Mr. Anderson: The State owned ten miles of the road, and the approaches on the east were several miles long, and there were two or three tunnels there.

The Master: What was this Blue Ridge road, a tunnel?

Mr. Anderson: Ten miles of road, including two or three tunnels.

The Master: Let us see if we can get this from the witness.

Q. I understand that the Blue Ridge road included about ten miles of construction, the principal part of which was tunnels, is that the information you get from the books?

A. I do not know concerning the length of the road or whether it was tunnels, that is what you might say is hearsay information as far as I am concerned. But I do know that this road was leased, practically leased by the Virginia Central for payment of tolls of both passengers and freight passing over this portion of the line, and was operated by the Virginia Central and presumably kept in repair as part of their lease, as no charges as far as I can

find out were ever made against the tolls of the road or its receipts for operating.

Q. Then as I understand it, in its incomplete condition, the Virginia Central leased it, and under this lease the State of Virginia was continuing to complete the road up to and beyond January 1st, 1861, notwithstanding that it had already been leased and was being operated by the Virginia Central, is that the practical condition?

A. Yes, sir, with this explanation, that they made the agreement with the Virginia Central road that they should complete this construction, and that they would allow them a rebate on their tolls to the extent of the sum which they expended to complete the road. There was $90,000 really expended, but there was only charged up $70,000 as the amount which Virginia assumed of that, through cancellation of the West Virginia Central Railroad Company's tolls, which were due it.

Q. And that was charged to construction?

A. Yes, sir.

By Mr. Holt:

Q. You don't mean West Virginia Central?

A. Virginia Central.

By the Master:

Q. Was there any account of depreciation in connection with the road?

A. No, so far as I know, none.

Q. Was there any construction upon the part of the State of Virginia after the leasing to the Virginia Central except through its insisting on tolls and under and by virtue of the terms of the lease?

A. No, sir.

Q. So that the bulk of this item of construction had been incurred by the State prior to the lease to the Virginia Central?

A. Yes, sir.

Q. What was the date of the lease to the Virginia Central?

A. I will get that for your Honor.

Q. Put the date in the record. You need not stop for it now.

A. The first tolls were paid in September, 1858, by the Virginia Central.

Q. That is as near as you can get to it?

A. Yes, sir.

Q. Is it a fact that after the lease to the Virginia Central the increased cost of construction that appears upon the books is the result of the application of sums that were received or rebated on account of the tolls under the lease?

A. Yes, sir.

The Master: That covers that.

Q. Is there any fixed percentange of depreciation that is applied to the construction account of a railroad and its operation, and if so, what is it?

A. No, sir; there is no fixed percentage. Each road is allowed to make that depreciation, subject to the approval of the Interstate Commerce Commission, for itself. The whole proposition on maintenance of way and structure accounts, which includes the roadway and track and the buildings, is that the buildings depreciate to the extent of about five per cent. per annum and that roadway and track are taken up by renewals and by means such as might be called consolidation of the roadbed through its use, so that there is no depreciation on roadbed and track of a railway. Bridges being structures, of course, are subject to depreciation and are generally considered to have twenty-five years of life.

Q. Which would be four per cent. per annum depreciation?

A. Yes, sir.

Q. You say that is an Interstate Commerce rule?

A. Well, that is the general method of handling it with all roads, though the Louisville & Nashville Railroad charge up on depreciation their roadbed, rails and ties. They are as far as I know the only railroad that do it.

Q. What do they charge up?

A. They charge up two per cent. on roadbed, five per cent. on ties and I think seven and a half per cent. on rails. They are very liberal in their charges to operating accounts, and depreciation accounts are now included in operating accounts.

Q. And of course the depreciation upon a roadbed and operating factors depends very largely upon the amount expended for repairs and maintenance?

A. Yes, sir.

The Master: That is all.

By Mr. Harrison:

Q. Let us take up item No. 7, Defendant's Exhibit No. 3, page 13 of the printed record, Winchester & Potomac Railroad loan, which you show to be $83,333.33, which amount you have charged to Virginia, January 1st, 1861, at $83,333.33. Why did you do that?

A. Because that was the amount which was entered on page 241, Ledger B, Internal Improvement Fund, as the par of the loan and was also shown on folio 175 of Journal D, Board of Public Works, under September 30th, 1873, as the amount received in full settlement of this loan.

Q. Settled how?

A. It was settled by the payment of bonds, which included not only the principal, but included the interest or unpaid proportion of the annuity, as this Winchester & Potomac had been boiled down to an annuity instead of calling it an interest charge.

Mr. Harrison: This matter is covered by the Master's report, page 64.

The Master: Is there any question but that the facts are accurately stated in my report in relation to that item, on either side?

Mr. Harrison: No, sir; they are all correct.

Mr. Lilly: I think the facts are quite clear in regard to it.

The Master: Yes. As I understand, we have gone through items 4, 5 and 6, and do I understand that it is conceded that the schedules submitted by West Virginia are accurate so far as they are a statement of figures and the computations made on the schedules, that there is no criticism of any of the items except such as may be inferred from the cross-examination?

Mr. Harrison: So far as mathematical accuracy of the figures I take it there is no error in the figures.

The Master: I would like to make this inquiry, so far as counsel for West Virginia are concerned, we have this schedule on page 13 of the printed record stated under head of values January 1st, 1861. Am I to understand that that represents the claim that West Virginia proposes to make and that the sums stated there under that heading are sums by which they expect to be bound so far as the amounts are concerned? I will leave that question to be answered when we come back.

Mr. Holt: We are looking at the figures referred to. As I understand it, this is Exhibit No. 3, page 13.

Mr. Hogg: The aggregate there is $9,163,256.70.

The Master: Yes; we will let it suspend for a moment then. We suspend now until half past two.

At this point a recess was taken until 2:30 P. M.

AFTER RECESS.

Mr. Holt: Your Honor, at the adjourning hour you requested of the counsel for West Virginia to know whether they intended to rely on the last column in Defendant's Exhibit No. 3, and the sum total thereof on page 13 of the printed record, or whether they desired to correct the items therein in accordance with the development upon the cross-examination this morning, which related to the Blue Ridge Railroad Company and the Alexandria, Loudoun & Hampshire Railroad Company. We desire to make the correction in that schedule, and also the summary based upon it, so as to conform the situation to the facts. Mr. Hillman prepared two schedules, one for 1861, and a corresponding one for 1863. His columns were somewhat different in 1863 from what they are upon the schedule for 1861. And in the case of the Alexandria, Loudoun & Hampshire Railroad Company he carried forward $49,662.05 as the amount of the claim on account of that item that we would make against Virginia, that is 23 1-2 per cent. thereof, the $49,000 representing the sales price of Virginia's interest in that road instead of $993,248, which was the cost of construction. Now the cross-examination developed the fact to be that in connection with the Blue Ridge Railroad Company, built by the State, he took as the value to be claimed by us the sales price of $625,348.08 instead of $1,604,723.23. And we desire to correct the schedule in that particular also. Now it will develop that this same inadvertence occurred in the case of the Virginia & Tennessee Railroad loan, where the amount of the loan finally paid, $886,685, is claimed by us in the exhibit instead of $1,000,000. We desire to make that correction. Also in the case of the Roanoke Navigation Company, $3,832, as the sale price is claimed, instead of $80,000, the purchase price of the stock. And finally, in the case of the Alexandria Canal Company stock, the sales price of $764.47 is claimed by us in this schedule,

when according to the explanation of Mr. Hillman the cost price of the stock, $272,000, should be claimed. And those matters should be carried forward into the summary schedule.

Now then, it is not proposed to withdraw either one of these schedules, but let them lie in the record as they are; but as soon as they can be prepared, add the new schedules thus readjusted, because that represents our contention. Mr. Hillman, in other words, has already in the body of his testimony made the corrections, but has declined to carry that correction into the schedule, which now we request him to do. I may say in addition to that, however, and in justification of this situation, that Mr. Hillman has labored under adverse circumstances, being away a good portion of the time, and troubled with distress of mind, and the different mode of getting up the two forms of schedules for 1861 and 1863, upon these items was a matter that might very readily have been expected to have resulted under the circumstances.

The Master: Proceed.

Mr. Lilly: I might state that Dr. Hogg is feeling indisposed this afternoon and will not be here for some time.

Mr. Anderson: I want to suggest to our friends on the other side that a more serious difficulty confronts them in that in their answer they have committed themselves to the propriety of the set-off exactly in the form in which it is alleged in the answer as to these items. I do not know that a party will be allowed to change pleadings of that kind at will.

Mr. Holt: We are not asking to amend the answer. We will take care of that proposition when we reach it. We understand your contention, General Anderson.

The Master: There cannot be any amendment of the pleadings.

Mr. Holt: No, sir, I do not ask that.

The Master: If this explanation is in the record that takes care of it. The cross-examination will go on and develop their point of view, whatever they see fit to develop in relation to it. I do not think you need to encumber the record with a new schedule. The explanation I take it is clear to me and also to the other side. At any rate, they will proceed with their cross-examination and develop whatever they have occasion to.

Mr. Holt: Our idea was for Mr. Harrison to go on at this moment, but that it might be made clear by putting in that corrected schedule later on.

The Master: If you want to do that, all right, but as far as I am concerned, I understand it.

Mr. Lilly: We would prefer to file a supplemental schedule.

The Master: If there are any supplemental schedules to be submitted, they should be prepared and submitted before Mr. Hillman leaves the stand, so that the other side can cross-examine on them. You can do that between now and to-morrow.

Mr. Lilly: They are advised as to the purport of the amended schedules.

The Master: While this may be obvious what the schedules will be, still they ought to be submitted before Mr. Hillman leaves the stand, so that the other side can cross-examine if they wish in relation to it.

Mr. Harrison: I do not intend at this point to discuss the question, if your Honor please, but I do not wish to be understood as waiving our right of objection to the proposal now to amend schedules that have been prepared and tendered and put in proof by counsel on the other side as representing the case upon which they will rely. The mistakes, so far as they relate to form, are perfectly immaterial. We are making no objection to the forms of the schedules but to the substance of them.

Continuation of the cross-examination of

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. I refer you now to item 8 in Defendant's Exhibit No. 3, page 13 of the printed record, which item is Virginia & Tennessee Railroad loan, $1,000,000. What value do you give that loan on that schedule as of January 1st, 1861?

A. $886,685.

Q. How do you arrive at that? Upon what evidence do you rely for that statement?

The Master: What schedule are you referring to now Mr. Harrison?

Mr. Harrison: Page 13 of the printed record, the same one we are dealing with.

Mr. Anderson: It is item No. 8.

The Master: I get it, yes.

A. Upon the final payment of that loan, as shown in detail on page 31 of the printed record.

Q. Does that show the final payment of the loan?

A. It shows the final payment on the loan, not of the loan.

Q. By reference to the sub-sheet that you have called attention to, I observe such payments are set forth, with the dates, as follows: Payment on above loan made as follows: June 19th, 1863, $200,000, June 30th, 1863, $300,000, August 6th, 1863, $100,000, August 7th, 1863, $100,000, September 11th, 1863, $186,685, making a total of $886,685. Are those the payments to which you referred?

A. Yes, sir.

Q. Were not those payments repudiated by the Board of Public Works?

The Master: What is the trouble about that Mr. Hillman? Do you know anything about it? Take all the time you want, but I do not want to wait too long.

A. One-half of this loan was afterwards turned over by the Board of Public Works to the Literary Fund and marked by them as one-half refunded to them because of a resolution of the Board of Public Works of even date. I have a copy of that resolution, which has been furnished me, which I could not find at the time.

The Master: Is that what you refer to, Mr. Harrison?

Mr. Harrison: Yes.

The Master: I do not want you to understand that you are not to take plenty of time, but if you had that fact in mind I do not like to delay.

Mr. Lilly: He was trying to hunt the paper.

The Master: There are so many of these delays that it takes up a lot of time. I want Mr. Hillman to take all the time he needs; if he can give an oral answer and then he needs further time for the detail or any original memorandum, why then we may decide that later we will have the original memorandum come along. You shall have all the time you want to make a full and complete statement, but I do not like to wait for the detail when we can have the detail coming along a little later and save time, perhaps.

The Witness: I would say with reference to that matter then, your Honor, that the resolution which I saw afterwards, is

not at all clear as to what was authorized to be done, at least to my mind, or what was done, and that there seems to be no further entry than the one which I have mentioned of the Board of Public Works, handing over to the Literary Fund one-half of the amount which had been paid in on this loan, whether from its own resources or not, I do not know.

By the Master:

Q. Now, you will produce that resolution as soon as your assistant can bring it in?

A. Yes, sir.

The Master: Can you go on from that, Brother Harrison?

Mr. Harrison: Yes, sir; I will go on.

By Mr. Harrison:

Q. Now, my question was if those so-called payments had not been repudiated by the Board of Public Works.

Mr. Harrison: I would like to know, if the witness knows, whether that is a fact or not?

A. I do not know.

Q. Did you examine in connection with this loan, Journal N of the Board of Public Works?

A. No, sir; I do not think that I did.

The Master: What is that journal, a book of original entry?

Mr. Harrison: Yes, sir.

Q. Then I call your attention now to a resolution of the Board of Public Works adopted Tuesday, February 4th, 1868, found on pages 249, 250 and 251 of Journal N, Board of Public Works, dealing with that specific subject.

Mr. Holt: What is the date of that journal entry, Mr. Harrison?

Mr. Harrison: February 4th, 1868.

Mr. Holt: A payment made in 1863?

Q. I will read at this point the following extract from the minutes of the Board: "And, whereas, during the late war, and while the authorities of the State Government at Richmond City, adhering to the Confederate States, and when and while the said Railroad Company had no right to pay and no officer of said Government had any right to receive payment of the principal or interest or any part thereof, specified in the mortgage aforesaid"—

that refers to the original mortgage of one million dollars—"acceding to the terms thereof according to law, under and as recognized by the said State Government or otherwise, in whatever currency or money which might be tendered, yet the said Second Auditor of said State Government received from the president of the said Railroad Company in pretended satisfaction of the debt and interest, then not due, but secured by said mortgage, such sums in Confederate Treasury notes at par, though grossly depreciated and almost worthless, to-wit: on the 26th day of June, 1863, $200,000; on the 30th of June, 1863, $300,000; on the 6th of August, 1863, $100,000; on the 7th of August, 1863, $100,000, and on the 11th of September, 1863, $186,685, in all $886,685; which act of the Second Auditor was unauthorized, illegal and void. And, whereas, the Commissioners of the Sinking Fund, at a meeting on the 6th of December 1864, as appears by their records, reciting that said act of said Second Auditor was unauthorized and that they had no control over said Confederate Treasury notes other than to return them, ordered that said Second Auditor return said notes to said company by his warrant on the Treasurer on account of the amount paid into the Treasury without authority. And, whereas, in pursuance of said order the said Second Auditor, made and presented to the president of said Railroad Company, his warrant on the Treasurer, and the said President refused to receive the same, by reason whereof the said Treasury notes unlawfully received remained in the Treasury until they perished; and, whereas, it is represented by this Board that the funds of the said Virginia & Tennessee Railroad Company had been attached at Knoxville, Tennessee, whereby the receipts and interests of the Board and the Commonwealth are jeopardized, and it seems to appear necessary and opportune that some measures should be adopted to protect the receipts and interests aforesaid, it is, therefore, resolved, that the principal and interest of the said loan of $1,000,000 to the Virginia & Tennessee Railroad Company, falling due after the 1st day of July, 1863, according to the terms of the mortgage of said company above mentioned, remain wholly unpaid and due to the Board of Public Works of Virginia for the Commonwealth of Virginia, as also the interest on the several arrearages, resolved that the receipt of the Confederate currency by the Second Auditor, by the said Virginia & Tennessee Railroad Company, or an officer

thereof above mentioned, was wholly unauthorized, illegal and void, and constitute no payment or discharge of the indebtedness of the said Company described in and secured by the aforesaid mortgage. Resolved, that the Governor be, and he is hereby authorized and requested to adopt such measures as he may deem proper for the protection of the rights and interests of the Board and the Commonwealth, secured by the mortgage aforesaid, now jeopardized by the said attachment at Knoxville, and that he adopt such other measures as he may deem necessary and proper for securing the payment of the principal and interest due on the said mortgage." Signed, F. H. Pierpont. And the Board adjourned.

Now, I will also call your attention to and read into the record from the record book of the Sinking Fund under date of December 5th, 1864, the following: "Present all the Commissioners. Whereas, it appears that the Virginia & Tennessee Railroad Company has paid into the Treasury of the State of Virginia to the credit of the Commissioners of the Sinking Fund the sum of $886,685.47 in Confederate States Treasury notes on account of the debt of the company for money loaned to the same above State; and, whereas, it further appears that such payment into the Treasury was made without authority of the Board of said Commissioners of the Sinking Fund and after a decision by said Board that they had no authority to receive it and that this Board has no other or further control over said money than to return it, it is therefore ordered that the Second Auditor do issue his warrant on the Treasury in favor of said Virginia & Tennessee Railroad Company for the $886,685.47 in Confederate States Treasury notes on account of the moneys so paid into the Treasury without authority." Neither of those resolutions you say you have seen or heard of in the course of your investigation?

A. I had heard of them but was unable to locate them. I had heard of the resolution wherein that money was returned for certain reasons to the Sinking Fund, but I could find no reason for its return and no source from which it was returned to them.

Q. Did you say returned to the sinking fund?

A. I think it was returned to the sinking fund.

Q. Returned to the sinking fund or by the sinking fund?

A. To the sinking fund, I think.

Q. Who returned to the sinking fund?

A. That is what I do not know?

Q. I am talking about its being repudiated by the Board of Public Works as well as by the sinking fund and ordered to be returned to the railroad company, and my question was whether the two resolutions bearing on that subject which I have just read had been called to your attention before.

A. No, sir; I had not seen them before.

Q. Did you not state in answer to a question propounded by the Master on your direct-examination that the full amount of this loan of $1,000,000 was due to the Commonwealth of Virginia at the time it was transferred to the Atlantic, Mississippi & Ohio Railway? I refer you to your direct examination, page 548.

A. No, sir; I did not so testify.

Q. Then I will read your answer in the record. At page 548 of the typewritten record the question is as follows: "Was that full amount due at that time on the $1,000,000?" The $1,000,000 was referred to in the question before and that time was July 1st, 1870. Your answer was, "Yes, sir." Do you wish now to correct that answer?

Mr. Holt: Look at your testimony if you want to.

The Witness: I want to look at the testimony. I think there are some things that preceded that that explain fully what I mean.

Mr. Holt: The question is what did you say in answer to the question?

(The witness refers to the typewritten record of his testimony.)

The Witness: Yes, sir. My direct testimony in answer to your question reads as has been stated by you.

The Master: His question is whether you want to correct it or not.

The Witness: Yes, sir, I certainly do. What I had intended to say there and what I felt very sure I had said was made plain, and the reason for my reading the record was that the full amount of the loan of $1,000,000 was due on January 1st, 1861, and that the balance unpaid, whatever it might be, had been transferred by this $4,000,000 transaction and no money carried out into the body of the transaction to represent it. I see that I have, however, made the statement baldly that the loan on that day was $1,000,000 and further stated that I would have carried it out for $1,000,000 into the margin. I am surprised that I was led into that or that I said that, as I had no intention of saying it, and at the same time

I had a full recollection that I had said an entirely different thing. It was merely to state that the loan had not been paid in full that I emphasized the matter that all the State's right and title in that loan had been carried into that transaction though no sum had been carried opposite.

Q. You have charged in your January 1st, 1861, schedule, which we now have before us, page 13 of the printed record, the alleged payments aggregating $886,685, as the value of that $1,000,000 on January 1st, 1861, whereas I find on page 7 of the manuscript exhibit, the blue print, under head of value June 20th, 1863, you have charged $800,000 as the value of that loan on that date. How did you arrive at that value you have placed upon this loan for June 20th, 1863?

A. By deducting from the face value of the loan a payment of $200,000 on June 19th, 1863.

Q. Where did you get that date from, June 19th, 1863?

A. Cash book No. 10, Board of Public Works.

Q. Do I understand that you wish to correct the figures stated in either or both of these schedules for January, 1861, and June 20th, 1863?

A. Yes, sir.

Q. In what respect?

A. In making the entry on page 13 of the printed record $1,000,000, instead of $886,685.

Q. Any other correction?

A. No, sir.

Mr. Holt: Do you mean with respect to the other roads or just that one item, Mr. Harrison?

Mr. Harrison: I am dealing with those two dates, but that particular item. I have not gone to any other as yet.

The Master: Do you include that particular item in your statement?

Mr. Holt: Yes, sir.

Q. If the $200,000 payment which you have just referred to as made on this loan of June 19th, 1863, was repudiated, then you should amend the figure you have in your June 20th, 1863, schedule, should you not?

A. I am by no means certain on that point as—

The Master: Is not that a matter of computation right on its face? Mr. Harrison's question is if that payment of $200,000 was

eliminated or repudiated, whether that would not result in a change from your standpoint of $1,000,000.

The Witness: If it was returned, yes, sir.

Mr. Holt : It depends upon what you mean by repudiated.

The Master: Eliminated; I assume he means eliminated.

Mr. Holt: The fact shows the payment in 1863 and repudiation in 1865.

The Master: Mr. Harrison's question was put upon the assumption—he does not concede that it was repudiated by answering on that assumption, that is, he does not to my mind. Am I correct about that, Mr. Harrison?

Mr. Harrison: Yes, sir.

The Maser: Of course the answer to that question is simply a matter of computation. It is obvious right on its face.

Mr. Holt: The witness does not understand all those things.

The Master: He has got to answer it in one way.

Q. Now will you tell us what became of the State's interest in that $1,000,000 loan to the Virginia and Tennessee Railroad?

A. It was turned over to the Atlantic, Mississippi and Ohio Railroad Company.

Q. When? The date of the deed is December 22nd, 1870. Have you seen the deed?

Mr. Holt: Let him find out whether his date agrees with yours.

Mr. Harrison: Very well.

A. July 1st, 1870.

Q. Where did you get that date from? That must be the date of the act.

A. In answer to your question I would say that the computation of interest was made up to July 1st, 1870, and therefore the settlement took place as of that date.

Q. Now how much of the loan was turned over by the State?

A. That is an irdeterminate quantity. The sixth item reads, and the sixth item is this loan, all rights, claims and privileges which belong to the State of Virginia on account of the loan of $1,000,000. No amount carried out.

Q. If $886,685. had been paid, why should the amount be indeterminate?

A. Because it is not memtioned.

Q. That would not leave it inderterminate, would it?

A. No, sir; but it is not mentioned in the transaction or in the

journal entry, and therefore denominated inderterminate.

Q. Do you mean by that that it had not been mentioned in the deed when you say indeterminate?

A. I mean that it had not been mentioned in the journal entry.

Q. Then I am correct, am I, in understanding you mean by indeterminate, not mentioned?

A. Yes, sir.

Q. According to your schedule you could determine the amount that had been paid over, could you not?

Q. Yes, sir; I could.

Q. Turned over, I mean?

A. Yes, sir; I could.

Q. And when you say turned over to the Atlantic, Mississippi & Ohio road, do you mean that that was one of the items, that is to say, that is to say this million dollar loan made by the State to the Virginia & Tennessee Railroad, was one of the items turned over to the Atlantic, Mississippi & Ohio Railway Company as part consideration for their $4,000,000 second mortgage which was given by that road to the State of Virginia?

A. No, sir.

Q. What do you mean?

A I mean the article sixth which I have read, all claims, rights and privileges which belong to the State of Virginia on account of loan of $1,000,000. The distinction is very marked in the wording as between the claims, rights and privileges under the loan, and the turning over of the loan itself at its face of $1,000,000.

Q. Do you mean to say that no part of the loan was turned over to the Atlantic, Mississippi & Ohio?

A. I do not know whether it was or not. According to my interpretation of the records of Virginia the sum of $113,315 would have been turned over to the Atlantic, Mississippi & Ohio Railroad in that transaction.

Q. Then according to your interpretation $113,315 of the $1,000,000 loan to the Virginia & Tennessee Railroad was turned over to the Atlantic, Mississippi & Ohio Railroad in 1870, as part consideration for the mortgage of $4,000,000 given by that road?

A. According to the interpretation which I would make if I had made any, yes, sir.

Q. Well, have you in your computations included any part of that loan in the $4,000,000 mortgage transaction?

A. No, sir.

Q. And that item is charged against the State in addition to the $4,000,000 transaction that we are speaking of?

A. Yes, sir.

Mr. Harrison: Now I will take the next item.

The Master: Before you leave that, I have not stopped to figure it, but does the total of the items found in Defendant's No. 6, page 56, of the printed record, aggregate $4,000,000, or does it aggregate more than that?

A. It aggregates more than that.

Q. Before you leave that item, or before you go any farther with it, is there any evidence in existence other than this resolution of the Board of Public Works, as to the nature of that transaction which resulted in an apparent credit upon the amount of this million dollar loan having been in Confederate Treasury notes during that period?

Mr. Harrison: None that I know of, except the Act of Assembly and the deed of trust, in which the million dollar loan is referred to.

The Master: Does the Act of Assembly set out what you claim is an attempted payment?

Mr. Anderson: No, sir; not explicitly.

The Master: Then the only evidence in existence as to the character of the payment is found in this resolution of the Board of Public Works for the Sinking Fund?

Mr. Anderson: Yes; I remember it is referred to in one of the messages of March, 1870, of Governor Walker, who was then Governor of the Commonwealth, in which he shows that the claim had not then been paid.

The Master: What I wanted principally to know was whether there was extant any contemporaneous evidence of the payment. These resolutions are declarations subsequent to the act.

Mr. Anderson: The resolution of the Sinking Fund was afterwards.

The Master: Well, the next year.

Mr. Anderson: They refer to the fact that there was no authority in the Second Auditor to receive payment at all.

The Master: I understand that.

Mr. Anderson: Under the law then and under the law now, the Second Auditor had no right to receive any money at all.

The Master: My attention of course can be called to the law relating to that. But what I wanted to get at now was whether there was anything tending to the establishment of the fact, other than these resolutions.

Mr. Harrison: I intend to put into the record at the proper time the Act of February, 1853, under which the loan was made, and showing the terms upon which it was to be paid.

The Master: Of course I understand that at present nothing but cross-examination is going on.

Mr. Harrison: The loan was repudiated because they had no authority to take it.

Mr. Holt: Do you want all this to go down?

Mr. Harrison: No, that can be taken out.

The Master: Of course these other matters are matters for later consideration.

By Mr. Harrison:

Q. Now I come to the next item, No. 9, Defendant's Exhibit No. 3, page 13 of the printed record, as follows: South Side Railroad Company loan, $800,000. What value do you put upon that loan in your schedule under date of January 1st, 1861?

A. I have entered no value opposite it.

Q. Then according to your schedule it had no value on that date; that is correct, is it not?

A. Yes, sir.

Q. Now I find on your schedule, blue print, page No. 7, June 20th, 1863, you have entered that loan as having a value of $800,000 on June 20th, 1863. If it had no value on January 1st, 1861, how did you conclude that it had a value of $800,000 on June 20th, 1863?

A. The par of the loan—

Mr. Lilly: Face Value.

The Witness: The face value of the loan was entered as its value on June 20th, 1863. The face value of the loan should have been entered on the schedule of January 1st, 1861, page 13.

Mr. Holt: That was one of the items is my statement likewise.

Mr. Harrison: I do not think you mentioned it, Judge, but that is immaterial. I have no doubt that you intended to mention it.

The Master: I do not think you did mention it, Judge.

Mr. Holt: I had them checked on a book here.

The Master: The Judge's statement may be amended.

Mr. Harrison: I make no point of that.

The Master: I do not think you did mention it as a matter of fact.

Mr. Holt: I would not swear to it at all.

Q. I observe on your 1863 schedule immediately opposite the entry of $800,000, the amount of this loan, as constituting its value June 20th, 1863, you have written under the column "disposed of for" as follows: "Turned over to A. M. & O." If it was turned over to the A. M. & O. and covered by the mortgage of four million dollars, the second mortgage, does not this constitute a double charge?

A. No, sir, I hardly think it does.

Q. Why not?

A. Because the fourth item in this journal entry reads: "All claim the State may have versus the South Side Railroad Company on account of the principal and interest due upon the loan of $800,000," but no amount is carritd out into the total column to show how much there was due on this loan, either principal or interest. It is again merely a matter what I considered at the time as of a release of possible claims and not a transfer of a principal amount.

Q. The fourth paragraph of the deed under which the four million dollar mortgage was created relating to this particular loan reads as follows: "All and whatever claims, rights and privileges which are accrued to the State of Virginia under and by reason of a deed executed by the South Side Railroad Company to the Board of Public Works to secure the payment, principal and interest, of a loan of $800,000, made by the Commonwealth to the said Railroad Company under an Act of the Assembly passed February 6th, 1853, and modified by an Act of Assembly passed January 18th, 1866." Do I understand you now to say that you do not for the purposes of your statement consider that any part of the loan was turned over, transferred or assigned to the Atlantic, Mississippi & Ohio Railroad Company under and by virtue of that deed?

A. No, sir, you do not.

Q. Well, what have I to understand?

A. You are to understand exactly what is said, that all claim

the State may have versus the South Side Railroad on account of the principal and interest due upon the loan of $800,000, which simply means that any title or right or anything that they had was turned over to them and that no amount was specifically mentioned as the value of that loan; it was merely rights under a loan of that amount. This opinion is further influenced by the immediately preceding item of this transfer which is on page 56 of the printed record, and numbered 3 under bonds and notes, where it says "Unpaid balance of the $300,000 loan on the Norfolk & Petersburg Road," and that item is carried out, $163,000, in the amounts which are set out as cancelled by this loan. Therefore, as no specific amounts were carried out as unpaid balances and merely their rights under it surrendered in the journal entry, I have not included any value in this $4,000,000 as far as money goes.

Q. Did you find that anyone else had any interest in this loan except the State of Virginia?

A. Not that I know of.

Q. Did you find that any part of it had been paid off?

A. No, sir, I did not find any record of any part of it being paid off.

Q. Then if no part of this had been paid off and no one had any interest in it but the State of Virginia and she transferred all her right and title in it to the Atlantic, Mississippi & Ohio, would not that have carried the entire loan?

A. Yes, sir; I think that would have carried the entire loan.

Q. Then if that is true why isn't this a double charge?

A. For the reason that there is no sum specifically entered in the $4,000,000 is the compensation, amount to considerably more and that the sums which are mentioned in the transaction where the $4,000,000 is the compensation, amount to considerably more than the $4,000,000.

Q. But here is a specific sum mentioned in the assignment, all the State's right and title in a loan of $800,000. If none of it had been paid and no one else had any interest in it but the State of Virginia, why then was not the whole of the $800,000 mentioned transferred by the assignment? You have just said, did you not, that that would be true?

A. Yes, sir.

Q. Then if that is true why is this not a double entry?

A. I made the statement quite frequently—

The Master: Is that the only reason that you can give that it is not a double entry?

The Witness: Yes, sir.

Q. That is just what I was going to ask you, if that is the only reason that you can give.

The Witness: No, your Honor.

The Master: If you have another reason, go ahead and give it.

The Witness: No, sir; the reasons would be simply in amplification and repetition of what I have already stated. It is not necessary to repeat that.

The Master: Then those are all the reasons?

The Witness: Yes, sir.

Mr. Holt: May I ask a question right there to clarify it?

The Master: I have no objection unless they have.

Mr. Harrison: I would rather you would reserve it.

Mr. Holt: I will do so then.

Mr. Harrison: Because I think I have clarified this thing. I have no doubt that you have got some clarification.

Mr. Holt: One thing is axiomatic to my mind, which would not take more than three words to explain. I will not persist.

Q. Now, will you turn to page 32 of the printed exhibits, called asset No. 8, Class C, wherein you state as follows: "The loan itself, asset C-9, was never paid." That is the South Side Railroad Company loan of $800,000, is it not?

A. Yes, sir.

Q. Then that statement was followed with this further statement: "It was turned over with the stock to the A. M. & O. R. R., with other roads for $4,000,000." If according to your testimony as shown there the loan was never paid but was turned over as you also note to the A. M. & O. and other roads for $4,000,000, why did you charge it under Class C against Virginia?

A. I did not charge the $4,000,000 to the State of Virginia, as will be seen by reference to my summary of charges.

By Mr. Anderson:

Q. You mean your summary for 1861?

A. Yes, sir.

By Mr. Harrison:

Q. I am not at all concerned with what you had included in what you describe as $4,000,000 in your summary, but I directed your attention to your own statement wherein you say that the State of Virginia turned over all her right, title and interest in that loan of $800,000 to the Atlantic, Mississippi & Ohio Railway Company, which was secured by a general mortgage, which along with a number of other items aggregating a large amount was secured by a mortgage for $4,000,000. If that is true that the State's interest in the loan which included its interest in the entire loan, as it has not appeared that any part of it was paid off, was turned over to the Atlantic, Mississippi & Ohio Road, my question is why have you charged it as a separate charge against Virginia?

A. Because the $4,000,000 which you mentioned is not charged against the State of Virginia; it is not on the summary and it is not charged.

Q. Is that an additional reason now that you are giving for it not being a double charge?

A. It is the reason that it is not a double charge.

Q. It is a new reason, isn't it?

A. It is a new reason and it is the reason why it is not a double charge.

Q. You were asked a little while ago by the Master if you could give any further reasons than the one you had already given, and you said you could not except by amplifyig what you had already said. Now, you are furnishing us with a new reason, are you not?

A. Yes, sir, I am. The answer before had reference to the fact that this was included in a statement wherein I showed that certain items were disposed of for $4,000,000. That $4,000,000 was never charged by me to the State of Virginia and therefore items of duplicate charge do not enter into the account at all.

Q. The State of Virginia turned over to the Atlantic, Mississippi & Ohio, or rather assigned to the Atlantic, Mississippi & Ohio, a number of debts and claims due to her, considerably in excess of $4,000,000, did she not?

A. Yes, sir.

The Master: There were fourteen items in all.

Mr. Harrison: Quite a number of them.

The Master: Yes, fourteen.

Q. And they footed up an amount considerably in excess of

$4,000,000, but they were all turned over for the $4,000,000, were they not?

A. Yes, sir, they were. But we made no claim for the $4,000,000 in our exhibits or in our summary.

By Mr. Anderson:

Q. Either 1861 or 1863?

A. Either in 1861 or 1863. Our claim for those securities was based upon an entirely different computation.

By Mr. Harrison:

Q. What does your 1861 exhibit show that you claim?

A. $4,276,044.39.

Q. And what does your exhibit for 1863 show that you claim?

A. $4,566,015.61.

Q. Then in both cases you charged more than $4,000,000, didn't you, to the State of Virginia?

A. Yes, sir.

Mr. Anderson: I have here $4,487,000.

Mr. Lilly: I expect that was changed.

The Witness: This will be found upon page 57 of the printed record. The 1863 sum will be found on Defendant's Exhibit 6, 1863, page 45 of the blue prints.

Q. On page 57 of the printed record, on your Exhibit No. 6, you have not extended any value opposite the South Side Railroad Company loan of $800,000, have you?

A. No, sir.

Q. You have marked opposite that no claim, no claim, too indeterminate.

The Master: That is struck out.

Mr. Harrison: I understand.

Q. You desired that struck out, you say?

A. Yes, sir.

Q. Because that was a memorandum you had made for your private guidance, did you not?

A. Yes, sir.

Q. Do you mean by that that your private judgment was that it was no claim?

A. No, sir; the matter was that it had been considered in other respect, that these items had been taken up before, and that what

balance would be left over, if any, or if payments had been made would be too indeterminate for me to make any notation of them at this point. I had afterwards determined just that there were no payments on the South Side loan, and that the Norfolk & Petersburg loan had been paid, all except $137,000, which I had not determined at that point; and therefore that notation was left on my working papers.

Q. But my question is, that your notation of no claim, too indeterminate, must have meant, if the language means what it purports to mean—it seems to amuse you?

A. Decidedly.

Q. Well, I am going to continue to do it, because I always study to please. My question is, that your notation of no claim, too indeterminate, must have meant, if the language means what it purports to mean, that you could base no claim, for the reason given on that item, and your explanation of your purpose to strike it out was that that was intended for your private guidance and not to be testified to. Now, my question is, if that was true as a matter for your private guidance, why is it not true for all purposes, for public expression, for the purpose of your testimony here?

A. For the reason that that being on my working papers at the time I was working on it, the amount of this loan which was to be turned over to the Atlantic, Mississippi & Ohio under this date, and therefore enter into the value, was not determined by me and was intended at first to be taken up here as a balance, afterwards I found that it could not be, and the notation was left in that form.

Q. Do you now mean to say that you subsequently found that it could be determined and that you were mistaken in your opinion that it was indeterminate?

A. Yes, sir; that is a notation which was made on private papers where you are not always strictly classifying your ideas but are guiding yourself, and I never intended that for any more than a personal guidance to me in making further investigations. It is quite unfortunate that the wording was put in that way. I think I have explained that several times.

Q. Does your explanation mean that you have taken this $800,000 South Side Railroad Company loan out of the Atlantic, Missis-

sippi & Ohio holdings where it was placed by the State of Virginia and have charged it as a separate item under C?

A. Yes, sir; it means that I have charged it under the statement C. I have not removed it from the $4,000,000.

Q. Then what do mean by your explanation of no claim, too indeterminate, that you have charged it elsewhere? If you charged it elsewhere you must have taken it out of the place where it had belonged, didn't you?

A. No, sir; I think not. It was to my mind necessary to mention that matter as being in here and I see no impropriety in the way that I have treated it whatever.

By the Master:

Q. In one of your answers in stating the disposition of the $800,000 loan you stated that it was surrendered. What do you mean by that? Is there any entry on these books anywhere that shows that this was surrendered?

A. No, sir.

Q. What do you mean by that, by the term surrendered?

A. I mean just the notation which we have just quoted on——

Q. You do not mean this notation about no claim, indeterminate?

A. No, sir; I mean on page 56 of the printed record, item No. 4, under bonds and notes, It is surrendered under the following terms or under the following words—

Q. Then what you mean is it was assigned under this deed?

A. Yes, sir.

Q. That makes it all clear. I could not quite understand what you meant by saying surrendered. If that is what you mean, you mean it was part of the items that were assigned?

A. Yes, sir.

Q. Then it is all right. I know what you mean now. I could not seem to make out what you meant by surrendered. Surrendered of course would be returned to the company that gave the loan. That was not this fact at all, as I understand it?

A. No, sir.

Q. Am I right about that?

A. They gave up their rights in it, whatever they may be.

Q. But that is what you mean, you simply mean that they transferred and assigned whatever claim they had when you used the term surrendered?

A. Yes, sir.

Q. Then I know what you mean.

Mr. Holt: He used surrendered instead of assigned.

The Witness: I meant by that to make a distinction between that and a sale for a specific sum.

Q. I must say that I do not think you illuminate the situation any. What in your mind by the way is the distinction between transfer and assignment and sale?

A. An assignment and transfer may be made without specified consideration of value; a sale must have a specified consideration of value in it.

By Mr. Harrison:

Q. We will take up now the next item, No. 10 on the printed schedule, Exhibit No. 3, page 13, described as Norfolk & Petersburg Railroad Company loan, $300,000. You have extended under the column Value, January 1st, 1861, $137,000 as constituting the value of that loan at that time. What does that $137,000 represent?

A. It represents the proportion or the amount of this loan which had been paid prior to its final disposal, amongst other securities, to the Atlantic, Mississippi & Ohio Railroad.

Q. Where is the rest of it, $163,000., charged?

A. It appears on page 179, Journal D, Internal Improvement Fund—

The Master: His inquiry is, where is the charge here in these proceedings, he does not mean on the original books.

The Witness: It is not charged at all.

Q. Why not?

By The Master:

Q. The question is, why not.

A. I think, your Honor, it should have been charged.

Q. Your answer to that is, then, that it was overlooked, that it ought to have been charged?

A. It was overlooked; it should have been charged.

By Mr. Harrison:

Q. How was that $137,000 paid?

A. I do not know.

Q. In money or in bonds?

A. I do not know. There is nothing in the books showing that payment; it is only an inference from the fact that when this loan was turned over to the Atlantic, Mississippi & Ohio it was turned over as the balance of the loan, $163,000. The inference is unavoidable therefore that $137,000 of it must have been paid in the interim. There is no entry that I can find showing in any way that payment.

By The Master:

Q. Then that accounts for the whole principal of the loan, and it proceeds on the assumption that there was no overdue interest?

A. Yes, sir.

Q. And about the overdue interest, if any, you have left that out of the account altogether?

A. I have left it out because there was nothing to indicate whether there was any overdue interest or not.

Q. The assumption is that the interest was unpaid and accrued, and therefore should be added to principal, is it not? If there is nothing on the books to show the payment of any interest on this amount, the assumption is that it drew interest, and therefore interest had accrued, and in order to get at the accurate amount of the loan you would take the principal and the accrued interest?

A. No, sir; your Honor, they had been paying interest on that loan right along, from the time, and I did not make any specific—

Q. Well, if the interest had been subsequently paid up to date of course that is taken care of?

A. Yes, sir.

Q. That is in accordance with your explanation the other day?

A. Yes, sir. That is shown on the next schedule, which I suppose will be arrived at in a short time.

Q. Is there anything in this original record or in these reports that you have had access to that gives any reason in detail why the aggregate of these 14 securities was lumped at the sum of $4,000,000 or why any of them were carried out at the prices fixed, or do you just simply find the entries and that is all there is to it?

A. Just find the entries, and we have filed the whole Journal entry of that as a supplementary answer to this—

Q. Not as a suppiementary answer, but as a supplementary exhibit?

A. As a supplementary exhibit.

Q. If the whole journal entry is in, that covers the scope of my inquiry?

A. Yes, sir.

Q. I remember now that you quoted from the Journal entry in one or two instances.

A. Yes, sir.

Q. But I had forgotten that the whole journal entry was put in as an exhibit?

A. It was.

By Mr. Harrison:

Q. You have referred in your Exhibit No. 3, Asset No. 10, page 34, of the printed record, notation, to a report made by John O. Steger as Senate Document No. 2, pages 19 and 20, and dated 1874 and 1875, and transmitted to the Senate as an appendix to the Governor's message. Did not that report show how this $137,000 was paid?

A. No, sir.

Q. Your own notation there, going further, shows, "The report further says that the book entries were missing and that he counted the bonds in many instances"—"There is shown to have been paid on this loan $151,524.49 and the report further says that the book entries were missing and that he counted the bonds in many instances, and that report can be relied upon as very nearly, if not absolutely, accurate." Would not your own notation indicate that it had been paid in bonds?

A. That would look so; but his reference that he counted the bonds in many instances refers to other items upon which he reported besides this $151,524.49.

Q. As a matter of fact, his report applied strictly to that loan of $300,000 this portion of it, this portion of the loan of $300,000, and upon this loan his report shows that the company paid as follows, 1867, new registered stock, $65,436.90; 1868, old registered stock, $60,500; new coupon bonds cancelled, $7,500; 1860, old registered stock, $8,000 fraction new, $87.59 new registered stock $10,000 footing up $151,524.49 as shown in your notation, with this accompanying note found in Stegar's report, the coupon bonds paid by the company, $7,500 were cancelled; the balance due on the loan was merged in the contract between the State and the Atlantic,

Mississippi & Ohio Railroad Company for $4,000,000 which is still due and unpaid. So it appears then that the $137,000 was paid in the bonds of the Company?

A. Do I understand you to say bonds of the company or bonds of Virginia?

Q. I mean to say bonds of Virginia of course.

A. I am perfectly willing to accept as a fact that the payment was made in bonds.

Q. Do you charge Virginia with any value for stock held here in the Norfolk & Petersburg Railroad Company on January 1st, 1861?

A. No, sir; I have made no charge against the Norfolk & Petersburg Railroad for stock held by the State of Virginia.

The Master: You mean you have made no charge against Virginia?

The Witness: Against Virginia for stock held by Virginia in the Norfolk & Petersburg Railroad.

Q. Did you make any charge against Virginia for stock of the Norfolk & Petersburg Railroad Company, June 20th, 1863?

A. Yes, sir, I did.

Q. To what extent?

A. $1,199,970.

Q. Why did you charge Virginia with that valuation of stock in this road June 20th, 1863, and make no charge against her on the same account January 1st, 1861?

A. That was in error. There should have been a charge made against her for the par of that stock on January 1st, 1861.

Mr. Holt: Is that one of the roads I mentioned in my statement?

The Master: No, I do not think you had that in, Judge, I do not remember that you did. That is not referred to on the schedule. The schedule is simply silent on that.

Mr. Holt: I just want to get them all, that is all.

The Master: You will not be censured for lack of diligence on that line.

Mr. Harrison: Judge, I will understand that you intended to include all such items.

Mr. Holt: Yes, that was my idea.

Q. You have got opposite your charge against Virginia of $1,199,970, as the value of this stock June 20th, 1863, this notation: turned over to A. M. & O. What did you mean by that?

A. I meant by that that this stock was turned over to the A. M. & O. Railroad Company in the transaction which we have mentioned wherein four million dollars was the consideration.

Q. Well, if the State's interest in that stock was turned over, as you have stated, to the Atlantic, Mississippi and Ohio, this is a double charge, is it not?

A. Yes, sir, it is. I have made the claim there twice; having made the claim for this stock on Defendant's Exhibit 6, 1863, page 45 of the blue prints.

Q. The next item is No. 11, Defendant's Exhibit No. 3, page 13, of the printed record—

A. Before you ask this question, Mr. Harrison, may I state that Mr. Stegar in his report, as shown in printed document No. 2, appendix to the Governor's messages for 1874 and 1875, on pages 18 and 19, does discuss other matters than this particular loan.

Q. The report is a very full and comprehensive one?

A. Yes, sir.

Q. And embraces a variety of matters?

A. Yes, sir.

By the Master:

Q. Is it to be understood from that that the items referred to in your notation relate to other matters, or that they relate to the matters suggested in the note?

A. It relates to this, that the item of $151,000 was stated as specific payment, and the amounts noted; but that the notation which I have used, that he had examined and counted the bonds in several instances and so on, refers not only to that item but to a number of others.

Mr. Harrison: That has no bearing here.

Q. That does not affect the significance of the $151,000?

A. No, sir.

Q. But that is your point?

A. Yes, sir, that he had reported on other matters.

By Mr. Harrison:

Q. Now we come to item No. 11, Defendant's Exhibit No. 3, page 13 of the printed record, reading as follows: Roanoke Navigation Company stock, the par value of which seems to be $80,000.

What value does that exhibit show that you placed upon that stock January 1st, 1861?

A. $3,832, being marked with a double star, and being the sales value.

Q. Then on the 1st of January, 1861, as shown by this exhibit, you accepted as the then value of that stock what was realized for it after the war on a sale in 1882, did you not?

A. Yes, sir, I did.

Q. Now, in 1863, on June 20th, 1863, on the blue print No. 7, what did you charge to Virginia as the value of that stock?

A. $80,000, being par.

Q. Why did you charge $3,832 on January 1st, 1861, as its value and $80,000 on June 20th, 1863, as its value?

A. That is in the same category as these previous items, where the item should have been charged at $80,000 on January 1st, 1861.

Q. And that error you wish to correct by substituting $80,000 for $3,832 on your 1861 exhibit?

A. Yes, sir.

Q. That $80,000 simply represents, as shown by the books, the cost of the stock, does it not?

A. Yes, sir.

Q. It has no other bearing or relation to its value than its cost, does it?

A. Its cost and par.

Q. Well, it is the par value, and it cost par, and that the State paid $80,000 for it, and other than that it has no relation to its value, has it?

A. None.

Q. Now, the next item is No. 12, which is on the same exhibit, page 13 of the printed record, described as Alexandria Canal Company stock, $272,000, the par value of it. What did you place on that exhibit as the value of that stock January 1st, 1861?

A. On page 13 of the printed record I have carried opposite that, under the value column, $764.47, marked with a double star, which means the sales value.

Q. And that was realized for it in what year?

A. July 1st, 1887, as shown upon page 36 of the printed record.

Q. The same stock you show on your 1863 exhibit as having a value of $272,000 June 20th, 1863, as against $764.47 as shown on

your January, 1861, exhibit. Do I understand that that was an inadvertence also?

A. That is in the same category as the previous ones, and is desired to be corrected or amended as they were.

Q. By placing on your January, 1861, schedule $272,000 instead of $764.47 as its value?

A. Yes, sir.

Q. That $272,000 simply, as shown by the books, represented the cost of the stock?

A. The cost of the stock and its par.

Q. Did it show that it had been paid for?

A. I did not go back to see whether it had been paid for or not. I only know that it was carried at par on the books of the State of Virginia. I did not go back to see whether it had been paid for in actual cash up to its par value, or whether they had received a higher par value than they had invested money.

Q. At all events it would represent in no event anything more than the cost, would it?

A. No, sir, nothing more than the cost to the State.

Q. And would have no other bearing on its value than that?

A. None.

By Mr. Holt:

Q. Was that its par, may I be permitted to ask?

A. Yes, sir, it was.

By Mr. Harrison:

Q. The next item I find is No. 13, on Defendant's Exhibit 3, page 13 of the printed record, described as Upper Appomattox Company stock, the par of which is stated to be $56,500; the value of which, on January 1st, 1861, you have placed as $16,144.26; that is correct, is it not?

A. Yes, sir, that is carried at that value and is marked with the double star, which means that it is the sales value.

Q. That then was the sum the State realized for her interest in that company at what period?

A. In 1875, first payment, 1881, second payment, 1884 final payment, as shown on page 37 of the printed record.

Q. That stock you have valued on the 20th of June, 1863, as shown by your blue print, Exhibit No. 7, at $56,500. Is that one

of the items also that was inadvertently made and that you wish to correct by placing on the January 1st, 1861, exhibit, the par of the stock as you have on the June 20th, 1863, exhibit?

A. Yes, sir, it is.

Q. That sum represents the par and the cost of the stock?

A. Yes, sir.

Q. In respect to that entry do you know whether it was paid—I mean the full subscription was paid or not? If not, you can just say so.

A. I do not know.

Q. But at all events it has no other bearing upon the value of the stock then to show that it originally cost the State $56,500?

A. That is right, and was as far as I know the par value of the stock held.

Q. The next item on the same exhibit, page 13 of the printed record, numbered 14, is described as Dismal Swamp Canal Company stock, $190,000 par. What value do you place on that stock on January 1st, 1861, as shown by that exhibit.

A. $9,935.99.

Q. And how did you arrive at that?

A. There were 760 shares, $250 each, being $190,000, and it was sold for $9,935.99.

Q. In what year?

A. In 1874.

Q. And so far as this exhibit is concerned you adopted that price realized for the stock in 1874 as its value on January 1, 1861?

A. Yes, sir.

Q. That same stock is shown on your exhibit, page 7, for 1863, as having a value of $190,000, on June 20th, 1863; that is the par of the stock, is it not?

A. Yes, sir.

Q. And is this also one of the items which you wish to amend?

A. Yes, sir.

Q. You wish then to change your 1861 schedule by striking out $35,925.99 and substituting in its place $190,000, is that right?

A. Yes, sir.

Q. That $190,000 represents as shown by the books I suppose that you examined the cost of the stock as well as its par?

A. Yes, sir.

Mr. Holt: You are making our corrections very complete indeed, and I thank you and congratulate you.

Q. And the figures have no other bearing upon the value of the stock at either period than as showing what the stock originally cost the State and its par value?

A. None.

Q. The next item shown on this exhibit, page 13 of the printed record, No. 15, I mean is numbered 15 and described as loan to Washington College, $2,000; you carried that as of a value on January 1, 1861, at $2,000, is that correct?

A. It is correct, yes, sir.

Q. Do you wish to change that?

A. No, sir, that is the correct amount.

Q. That same amount is shown on your 1863 schedule, is it not, as the value of the loan on June 20th, 1863?

A. Yes, sir.

Q. Do you wish to make any change in that?

A. No, sir.

Q. The next item shown on this exhibit, page 13, of the printed record, is numbered 16 and described as Richmond Academy bonds, $400, which is extended on January 1, 1861, under the column value at $400. Is that correct?

A. Yes, sir, it is.

Q. And the same amount is shown on your schedule for 1863, page No. 7 of the blue prints, as having a value June 20th, 1863, of $400. Is that correct?

A. It is.

Q. Were those two loans paid?

A. Yes, sir.

Q. Can you tell us when?

A. The $2,000 loaned to Washington College was paid on January 1, 1896.

Q. And the Richmond Academy?

A. The Richmond Academy was paid on February 5, 1896. The dates are shown on pages 39 and 40 of the printed record.

Q. Now, the next item on this exhibit, page 13 of the printed record, and numbered 17, is described as a claim against the United States Government, put down under the column paid at $298,369.74, and extended at the same figures under the column Value January 1, 1861. Now, will you explain that item for us and

your reasons for entering it there as a charge against Virginia, having a value on January 1, 1861, of $298,369.74.

A. Yes, sir; as shown on page 41 of the printed record, the principal of the loan made by Virginia to the United States Government, July 1, 1814, was $298,369.74. This loan was afterwards paid in full as shown by the same page of the printed record with interest in full up to the date of settlement, which was fixed between Virginia and the government as February 11, 1894, although the settlement was not made until 1903 actually.

Q. How much money did the United States Government pay to Virginia in settlement of the claim?

A. In acual money they paid over $5.50.

Q. On what date did you say?

A. It was in 1903, the settlement being made as of the date of February 11th, 1894.

Q. In other words, the result was reached as of February, 1894, and settlement made on that basis in 1903?

A. Yes, sir.

Q. By a check from the Government to Virginia of $5.50?

A. Yes, sir; and the return to Virginia of certain Virginia State bonds.

Mr. Holt: How much were the bonds?

The Witness: The principal, $581,800 of Virginia bonds; Chesapeake & Ohio guaranteed bonds, principal $13,000; interest on the $594,800, being the sum of the Virginia bonds and the Chesapeake & Ohio guaranteed bonds, from January 1, 1861, to February 11, 1894, $1,181,669.33, making a total of principal and interest of $1,776,469.33, from which is deducted the interest which Virginia had paid, 1867 to 1870, of four per cent. on the principal of the $581,800 State bonds of $69,816, which left $1,706,653.33 as the Virginia payment.

The Witness: I think I had better continue that entry to its end. There was also paid to the restored State of Virginia, no date given, $16,928.50, and cash paid to Virginia by the United States, as a balance of settlement, of $5.50, making a total payment of $1,723,582.53, which payment was in bonds of Virginia and cash.

Q. What you are now reading from is the statement of the account shown on page 41 of the printed exhibits, is it not?

A. Yes, sir.

Q. The statement of the account between the State of Virginia and the Government wherein the respective claims were balanced?

A. Yes, sir.

Mr. Harrison: If your Honor please, we expect to file with the record the report of the Second Auditor.

The Master: Relating to this same subject matter?

Mr. Harrison: Yes, sir, on September 30th, 1904, which deals with that subject.

Q. The second item to which I ask your attention, shown on Defendant's Exhibit No. 3, page 13 of the printed record, and numbered 18, is described as the claim against Selden, Withers & Company. Nothing is stated under the column par for that claim, but under the column headed value January 1st, 1861, is given the following figure, $152,023.04. What does that represent, those figures that are set down as constituting the value of that item?

A. Excuse me, you have misquoted it, it is $132,000.

Q. No, I did not.

A. That figure that you have quoted, $152,023.04 is placed there in order to reconcile the statement which I have made upon pages 42 and 43 of the printed record with the supplemental answer. The amount which I have taken into consideration as the value on June 20th, 1863, is $132,842.74.

By Mr. Holt:

Q. Is that the same as the value on January 1st, 1861?

A. Yes, sir, that is the value of January 1st, 1861.

By Mr. Harrison:

Q. Do you mean to say that you want to correct the January 1st, 1861, exhibit by stating the value at $132,842.74 instead of $152,023.04?

A. Yes, sir, I do. That claim of Selden, Withers & Company should have been $132,842.74, the same as it is in 1863. That is an error in making this summary. The amount due is $132,842.74. And since I am correcting that summary I will ask permission to include this with the other corrections.

Q. The next and last item, No. 19, on this printed Exhibit No. 3, page 13 of the record, is described as Richmond, Fredericksburg & Potomac Railroad loan. It was not a loan, was it? They were dividend bonds, were they not?

A. Yes, sir; they were dividend bonds.

Q. Then that word loan ought to be substituted for dividend bonds?

The Master: You mean that the word dividend bonds ought to be substituted for the word loan?

Mr. Harrison: Yes.

A. Yes, sir, to describe it exactly.

Q. You show the par of that was $149,984?

A. Yes, sir.

Q. And you give the same figures as constituting the value of those dividend bonds January 1st, 1861.

A. Yes, sir.

Q. How did you arrive at that?

A. For the reason that that was the face of the bonds, and they afterwards were paid in full with interest.

Q. When were they paid and in what currency? Or you can just state when they were paid.

A. $27,520 of this loan was paid on March 13th, 1863; the balance of the loan was paid on July 1st, 1863, as shown on page 44 of the printed record.

Q. Then these dividend bonds, as shown by you, were paid off during the midst of the war, were they not?

A. Yes, sir, in 1863.

Q. On your exhibit for 1863 you show the amount of those dividend bonds as paid and possessing that value, $122,464. That refers to the payment made after June 20th, 1863, does it not?

A. Yes, sir, the $27,520 having been paid prior to June 20th, 1863.

Q. And that is not included then?

A. No, sir.

Mr. Harrison: What is the next item that we come to?

The Master: Does that complete your schedule?

Mr. Harrison: Yes.

The Master: I understand it to be conceded that the schedules that have been filed as exhibits on the part of the defendant, relative to this list of items found on page 13 of the printed record of the schedules, as to January 1st, 1861, and also as to June 20th, 1863, and the supporting schedule, that as to all of those the amounts therein stated and the computations therein made are conceded to be correctly stated and correctly made, so far as the

figures are concerned. Am I right about that, Mr. Potter?

Mr. Potter: Yes, sir.

The Master: Then that may go on the record. That undoubtedly is the obvious inference from the examination, but there is no harm in having these matters from time to time cleaned right up. That takes care of the schedules up to this point, both for 1861 and for 1863; and the suggestion that has been heretofore made in relation to the accuracy of the schedules as to the amounts stated and the computations made is understood by me to apply to the schedules for 1861 and June 20th, 1863, as they are related to the items preceding this schedule that I have just referred to. So that up to date all of the schedules for 1861 and 1863 are taken care of by this admission. That is your understanding?

Mr. Holt: Yes, sir. And if Mr. Harrison is now through with this Class C, if that is the one, I want to hand to the stenographer the promised copy of the deed that was introduced the other day from the Commonwealth of Virginia to the Richmond & Alleghany Railway Company, conveying the property of the James River & Kanawha Company. I am only making a record of that because I do not want to be charged with its loss hereafter.

The Master: I think perhaps, as it is twenty minutes of six, that this may be as good a place to stop as any, and we will suspend until Monday morning at ten o'clock. And I think we have made pretty good progress.

Adjourned to September 7th, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Virginia, September 7, 1914.

Present the same counsel as on Saturday last.

Mr. Lilly: Before proceeding, if the Master please, I would like to ask the opposing counsel if they have any schedules or data to submit to our side, that we may be going over it and checking it.

Mr. Harrison: No, we have no schedules.

Mr. Holt : If it be not improper, may I inquire whether or not you will have any schedules, Mr. Harrison, on the subject of market quotations.

Mr. Harrison: Yes, we are going to introduce some testimony on that subject, and will probably do it in the form of a prepared statement or memorandum.

The Master: That you will submit to them as soon as you have it prepared.

Mr. Harrison: Yes, as soon as we get it ready.

Mr. Conrad: I understood Judge Holt to have said the other day, I may have misunderstood him, that you have a witness to prove those things.

Mr. Holt: We said that we had a man to examine them, not Mr. Hillman.

The Master: You said it was some one else.

Mr. Holt: Yes.

The Master: The statement was that they had an accountant making that up. But that being so, you want what they have on that line?

Mr. Holt: Yes. We may not offer anything on that line at all on account of the condition the quotations are in.

The Master: Exactly so.

Continuation of the cross-examination of

CONWAY W. HILLMAN.

The Master: I have a little examination of the witness I would like to make providing you are about to go to the next paragraph.

Mr. Harrison: Yes, I am about to take up the next paragraph. I was waiting for Major Anderson.

The Master: Then if you are through I want to make an inquiry or two, and I will do that while the General is coming in, if it is agreeable.

By The Master:

Q. Mr. Hillman, in the case of any of these railroads whose trial balances or annual statements appear in the record have made any charge for depreciation during the period covered by the statements, in what item of the trial balance would you expect to find the charge reflected or indicated?

A. In the Maintenance of Way and Structures account, sub-heading, Repairs of Buildings and Fixtures.

Q. Well, do you mean that a depreciation charge would be charged to maintenance account?

A. Yes, sir. It is now charged as maintenance account under a separate heading.

Q. Well, you mean under existing conditions?

A. Yes, sir.

Q. But as a matter of bookkeeping, if an annual charge or depreciation had been made, you would expect that to be reflected in the operating expenses or the maintenance charges?

A. Yes, sir.

W. Well, we have not any maintenance charges in any of these statements. Now take for instance, there is the Richmond, Fredericksburg & Potomac Railroad Company, page 4. I just call your attention to that. That is the printed record. All we have there on the asset side is the cost of road, new cost of superstructure, then engineering expense, and debts due the company and bills receivable, etc. and investments. Now we do not have any account there relating to maintenance

or operating expenses. What I want to get at is, if there had been any charge made during this period for depreciation, would you find it indicated in any of these items, and if so in what item?

A. In the item on page 5, expenses of transportation since the commencement of the work, March 31, 1859, etc.

Q. That is, it would be a liability?

A. Yes, sir, operating expenses. Does you Honor wish an explanation?

Q. Yes. What I want to get at is whether there is anything in these trial balances that will give us any information as to whether or not any annual charge for depreciation was made?

A. There is nothing in the trial balances which would give you that, and to the best of my recollection there is no entry on the details of the operating expenses, which are also on file in these volumes of reports, which would indicate that there had been a direct charge to depreciation. In those days it was repairs and renewals, and renewals were supposed to keep the property up to date.

By Mr. Harrison:

Q. How do you know what renewals were supposed to be fifty odd years ago?

By The Master:

Q. There is nothing in the accounts to indicate it one way or another?

A. No, sir.

Q. Why should not a charge for depreciation reduce the construction cost? Isn't that the real essence of a charge for depreciation? For instance, you have a property that has cost a million. If it has depreciated $100,000, why does not that leave the actual cost $900,000? This is simply for purposes of illustration. I am seeking now illumination with reference to getting at the value of the property. For instance, if a property cost a million and it depreciated $250,000 during a period of years, or even $50,000 how can it with any propriety be still said to be worth a million or to be carried as of a million dollars in value upon the books of the company?

A. For the reason that this depreciation cost which is charged against operating expense is supposed to be put back into the property, not as repairs, but to renew a depreciation as distinct from actual repairs. A building, in spite of whatever repairs you make, will gradually become old and depreciated where it is necessary that it be renewed, and against that the roads are allowed to charge up to their operating expenses a certain amount of depreciation; the same with their rolling stock, and especially with their rolling stock. That is anticipating the time when despite all repairs that you can make to a car or to a building, that car will become obsolete or depreciated beyond any repair, and it will be necessary to renew it or get a new one.

Q. We have not got anything here that gives us any information as to whether or not there was a renewal account?

A. No, sir, there is nothing to show a renewal account.

Q. Whether the renewal account and repair account were all charged up against operating expenses or not?

A. No, sir.

Q. And we have nothing either that indicates depreciation. The figure you gave for depreciation for rolling stock was twenty-five years, that is, based upon renewal at the end of twenty-five years?

A. For engines, locomotives, yes, sir; about twelve years for freight cars.

Q. And how about passenger cars?

A. Passenger cars run about twenty years.

Q. Those all originally of course have gone into the construction cost item?

A. Yes, sir.

Q. And if renewed and paid for by operating expenses, why they have been taken care of on that side of the account?

A. Yes, sir.

Q. Assuming that to be the fact?

A. Yes, sir.

Q. But in the absence of any knowledge of the fact, it is altogether a matter, I suppose of speculation?

A. Yes, sir.

Q. Do you keep in your bookkeeping, in order to be able to establish from your books, a presumptive value of the road? Do you keep a constant figure for its construction?

A. Yes, sir.

Q. That is, you start out with a total construction and that item never changes?

A. That is right.

Q. If that is affected one way or another it is affected by whatever may be charged into or out of operating expenses?

A. Yes, sir.

Q. And taken care of by operating expenses?

A. Yes, sir, with this other statement that you will find in the reports now that they have the cost of road and they have deducted an amount of depreciation from that cost.

Q. Under existing conditions do they have an operating construction account predicated upon the amount of depreciation from time to time?

A. Yes, sir.

Q. Why was not that true away back in 1850 and 1860?

A. For the reason that at that time we did not take into consideration depreciation at all. We had an account which we called, instead of repairs, we called it repairs and renewals, and where we were supposed from time to time to renew the rolling stock or to renew our buildings to the 100 per cent full value and take care of our depreciation by renewals.

Q. Do you mean that there was an arbitrary charge to renewals irrespective of the actual fact, in order to take charge of theoretical depreciation?

A. No, sir; it was the actual amount expended.

Q. Whether or not that took care of depreciation depended altogether upon the amount of the renewals?

A. Yes, sir.

Q. If the road was run properly and economically and kept up in first class shape, why then the renewal charge might take care of the depreciation?

A. Yes, sir.

Q. On the contrary, if the road was run with as little expense as possible and clear away down to the bone, you might

not get much of any repairs and you would not get anything for depreciation?

A. Yes, sir.

Q. Whether these factors have any influence or not in the value of the road would depend altogether upon the history of each particular road in that respect?

A. Yes, sir.

Q. And what the policy of the road was?

A. Yes, sir.

Q. If it was the policy of the road to minimize renewals and repairs and increase dividends, why, the natural tendency of that would be to decrease value, notwithstanding dividends may have been paid?

A. Yes, sir.

Q. On the other hand, if it was the policy of the road to make liberal charges for depreciation, keep the renewal account or keep renewals up so that the road was in first class condition, that might minimize the dividend paying value and still leave the property worth very much more than the property would be under other conditions?

A. Yes, sir.

Q. The result of all that is here, that with these statements before us, we have not any definite information as to what policy was pursued in connection with any road?

A. That is right.

Q. Under these circumstances, state whether or not in your judgment the book value, or what was in your judgment the book value, under those conditions, should be entitled to receive in determining actual cash market value on a particular day. What I mean now is a practical proposition, with our lack of knowledge and information of the conditions to which I have just called your attention.

A. As roads were operated at that date, I would not like to accept the book value of the stock as its actual value.

Q. Well would it be fair to say this—I don't want you to go any farther than you can properly go, but I want to get your candid judgment about it—would it be fair to say that under the conditions developed, that the element of book value

was of more or less doubtful value in determining the actual cash market value on any particular day? Is that a fair statement of it in your judgment?

A. Yes, sir; that is fair.

Q. It is impossible of course for you to state anything definite in relation to it? That is, you cannot minimize by a percentage, because you have not any basis upon which to make any calculation; that is correct is it not?

A. That is correct.

Q. And of course what you have done, and what we will all have to do of course, is to take the best evidence possible, and then reach the safest and most satisfactory conclusion?

A. Yes, sir.

The Master: That is all. You may proceed.

The Witness: I understand, your Honor, that you do not care to have me go into any particular discussion of these different roads and the amount of their operating expenses with reference to what might or might not be a proper charge, and all that.

The Master: I will tell you what I think perhaps you had better do; of course I have developed this general proposition, and my notion is that if that needs any further explanation I think you had better take it up with the counsel for West Virginia, and let them exercise their judgment as to what in addition had better be done with reference to the details. Of course the embarrassing position that we are all in I am not expressing any opinion one way or the other, but this perhaps embarrasses me more than it does you—but the embarrassing position that we are in is the paucity of the proof, and it may be that I will have more difficulty coming from each quarter so far as that is concerned. I do not know how that may be. My only purpose is so far as I can t get into the record the most definite facts upon which I will have to reach my conclusion. And in this respect I wanted to get Mr. Hillman's judgment as to the particular weight to be given to this particular factor. Now if there are any particular roads as to which there is data in existence that enables you to make any more definite statement, that may be one thing; but my suggestion

would be now—I do not wish to take it out of the hands of the counsel for West Virginia—my suggestion would be that the wiser thing for you to do would be to take the matter up with the counsel for West Virginia, and let them pursue it farther along in detail, if they see fit. I have not any personal objection to your taking it up in your own way, but I think perhaps the counsel had better be consulted.

The Witness: That, your Honor, was what I was leading to when I asked the question.

The Master: If I was sitting there as they are I would rather have the witness talk it over with me before he went into details, than to give the details on his own responsibility; and that is the reason I make the suggestion. But it is agreeable to me, if counsel are satisfied, to go on and make any explanation that you may desire.

Mr. Harrison: Explanation about what? I do not understand, if your Honor please. He has gone into the subject on direct examination and cross-examination very fully, and had effectually stated the basis of any—

The Master: I think perhaps the phase that I developed this morning has not been specifically emphasized.

Mr. Harrison: Were you suggesting that he make some further investigation?

The Master: No, he suggested that he might have some further statement to make about these roads, I inquired about this morning. My suggestion about that was that perhaps it would be better for him to confer with his counsel before he undertook to make the statement in detail. But so far as I am concerned it is quite agreeable to me to have him make the suggestions independent of that.

Mr. Holt: When the cross-examination is finished we will have some questions.

The Master: But you would prefer to go over the subject with him yourself first?

Mr. Holt: Yes.

The Master: I presumed that would be the fact. I do not know enough about the details to go into the matter. You get my point, Mr. Harrison?

Mr. Harrison: Yes.

The Master: Then if you are ready, Mr. Harrison, you may proceed.

By Mr. Harrison:

Q. I will take up Class D, which appears on Defendant's Exhibit No. 4, page 46 of the printed record, which purports to be the statement of interest on loans and dividends on stocks accrued prior to January, 1861, and collected by the State of Virginia after January, 1861. Your first statement is Orange & Alexandria Railroad Company stock, $31,604.09. Will you please state on what date that was collected by the State of Virginia or paid by the railway company?

The Master: You are examining now from page 46?

Mr. Harrison: Yes, sir.

The Master: That is the summary.

Q. That I take it is intended to be a dividend on the stock, is it not?

A. Yes, sir.

Q. When was that paid?

A. It was paid in 1854.

Q. 1854?

A. 1864, excuse me, as per page 157 of Journal D.

Q. You cannot give the month?

A. I can in a moment. I see it has been omitted from here, but I can do so in just one moment, if you desire.

Q. I would prefer to have it, but I do not want to lose any time. If you have got to send out for it, I would rather let it go as 1864.

A. Well, it was paid—I will leave the date blank and fill it in.

Q. Now the next item is Orange & Alexandria loan, $20,336.98. Was that intended to represent the payment of interest on a loan by that road?

A. Yes, sir.

Q. And when was that paid?

A. There are four items going to make that up, as shown on page 16 of the printed record.

Q. I would like to get them in the record here. Will you give the date?

The Master : Let me make one inquiry to clarify my mind a little. We have supporting exhibits here for Class C and Class D, it being convenient to put them in that shape. What I want to inquire is whether those supporting exhibits, so far as they are joint and relate to Class D, are in their chronological order. Will I find the others following right along in their regular order?

The Witness: Yes, sir. There may be slight breaks in that, due to the fact that some of the Class C items have no entry in the Class D items.

The Master: Well, you can call attention to the discrepancy when there is any.

Q. Can you give the dates of the payment of interest on that loan?

A. The first item is the interest up to September 15, 1859, wherein there had accrued $10,415.94; and on that date there was paid $9,086.61, leaving a balance of $1,329.33 of the interest due up to September 15, 1859. The second item is the interest up to September 17, 1860—

Mr. Lilly: Is not that April?

The Witness: April 17, 1860, of $14,019. On the same date there was paid $9,840.47, leaving an unpaid balance of $4,178.53. There then matured interest on this same loan from this date, from the last mentioned date, up to July 1, 1860, of $5,035.18; there was paid on July 1, $4,159.53, leaving an unpaid balance of interest of $875.65. This loan then ran on from July 1, 1860 and bore interest. We have therefore calculated the interest from July 1, 1860, to January 1, 1861, which amounted to $13,953.47. The sum of these four items which I have mentioned amounts to $20,336.98, as shown on page 46 of the printed record.

By The Master:

Q. That detail does not appear on page 16, does it, Mr. Hillman?

A. Yes, sir.

Q. Where do you get it? Oh, I see it. Where do you get your computation?

A. Six months interest at 3½ per cent.

Q. Is that statement made on the schedule? I do not find it on mine, that is any place where you have those three items aggregated.

A. No, sir, I simply took the aggregate—

Q. Give me the three items that make up your $20,336.98?

A. Four items.

Q. Yes.

A. $1,329.33, $4,178.53, $875.65 and $13,953.47.

The Master: I get it now all right.

By Mr. Harrison:

Q. They foot up $20,336.98?

A. Yes, sir.

Q. Now my question was, when were they paid?

A. The payments of interest from that date, July 1, 1860, on up to the final settlement of the loan, were made in piecemeal, as shown on pages 17 and 18 of the printed record, and finally both loan and interest paid up in full.

Q. You have not answered my question yet. I asked you when were those items paid. You have never given me any date when they were paid?

A. The first item was paid on September 15, 1859, $1,329.33—

Q. I am not talking about that. The Class refers to interest on loan and dividend that accrued prior to 1861 and were paid after 1861; and you have shown that $20,336.98 was paid after 1861?

A. Yes, sir; I see your point.

Q. Now, when?

A. It was paid at various dates afterwards. There was no specific payment of these items, but interest was calculated along on balances, and payments made on account of these balances, until, at the final end, the entire loan and its interest was retired. Payments have been made, but in piecemeal, as shown on pages 17 and 18 of the printed record.

Q. You have not given me any date yet when they were paid.

By Mr. Holt:

Q. Do pages 17 and 18 give the dates of those partial payments?

A. Yes, sir.

By Mr. Harrison:

Q. Well, won't you please give them to the stenographer?

A. Yes, sir.

Q. Answer my question. On what dates were the several items that you detailed paid, after January 1, 1861?

A. There was brought forward from page 16, $405,054.11 Up to October 20, 1862 interest charges had accumulated on that sum of $54,934.61. In this sum which I have just mentioned is included the six months interest, which is mentioned as the last item on page 16. On October 20, 1862 there was paid, on account of the above $54,934.61, $10,071.

Q. Now is that one-half of the twenty thousand and odd dollars that you take up?

A. No, sir, it is not.

Q. Is it any part of it?

A. Yes, sir, it is.

Q. What part?

A. That is an indeterminate matter. No one can tell.

Q. Do I understand then that some part of it, but how much you do not know, was paid on the 20th of October, 1862?

A. That is a matter that no one can tell exactly, what that $10,071 was paid upon. It may have been paid upon back interest, it may have been specifically designated as the interest for a certain period.

By The Master:

Q. The books would show that, wouldn't they?

A. No, sir. It just simply shows that it was a payment on account of interest.

Q. Well, I do not understand that Mr. Harrison asks you for anything except what appears from the books.

Mr. Harrison: Of course that is all I want.

The Master: He does not want anybody to speculate about what is outside of the books. We could all speculate about that.

Q. He wants you to tell him where you find on these books the entries in which you claim these amounts that aggregate twenty odd thousand dollars were paid.

The Master: That is in substance what you want, is it not, Mr. Harrison?

Mr. Harrison: Yes, sir.

Q. Now go right to the books and tell him what you know about that?

Mr. Holt: May I ask, Mr. Master, if pages 17 and 18 are not copies of the books themselves.

The Master: I so understand it. I am not testifying.

By Mr. Holt:

Q. What is the fact Mr. Hillman?

A. That they are copies of the books of the company.

The Master: I suppose what Mr. Harrison would like to have Mr. Hillman state, as an accountant, is just exactly which one of these credits of the payments of interest Mr. Hillman in getting up his account has allocated to these four items aggregating $20,000. Is not that in substance what you want?

Mr. Harrison: Well what I want to know is the date of the payments of the four items, that he said footed up $20,336.98, represented to have been paid after January 1, 1861.

The Master: Precisely, and it is up to Mr. Hillman now to take his books, or the copies of the books, and do the best he can to answer the question.

Mr. Holt: It is a question of allocation entirely.

The Master: It is up to Mr. Hillman, and they have a right to find out about that.

Mr. Harrison: This witness ought certainly to be able to say whether he can give me the information.

The Witness: No, sir, I cannot give that information.

By Mr. Harrison:

Q. Then if you cannot give the dates of the payments, how can you say that it was paid after January 1, 1861?

A. For the reason that the entire loan, with its accumulated interest, was finally paid in full. Therefore all items of interest, which had accumulated up to January 1, 1861, must have been paid.

Q. When was that final settlement made to which you have referred, of the entire loan and the accumulated interest?

A. It was made in October, 1862.

Q. Now do I understand you to say that all you can say so far as indicating the date upon which that charge of twenty thousand and odd dollars of interest was paid, is that it was between January 1, 1861, and October, 1862?

A. Yes, sir; it was paid during that period.

Q. You show on page 17 of the printed exhibits that there was a payment made of $10,071 on the 20th of October, 1862, do you not?

A. Yes, sir.

Q. And you also show that there was a payment made of twenty thousand and odd dollars on the 25th of October, 1862, both items being described by you as interest. Now what is the rule as to the application of payments for interest?

The Master: In the absence of any agreement between the parties, is that what you mean?

Mr. Harrison: That is what I mean.

A. I should consider that it applied to the back interest which had accrued up to that date.

Q. Well, these items that make up this twenty thousand and odd dollars are back interest, are they not?

A. Yes, sir.

Q. Then according to that rule, would not the first payments be applied to the discharge of those items?

A. I should say they would, yes.

Q. And according to that rule those two payments made in October, 1862, would discharge the twenty thousand and odd dollars that you have shown on your exhibit at page 46, would they not?

A. Yes, sir.

Q. So that according to your last answer that interest was paid on October 20th and October 25, 1862, was it not?

A. On the assumption that I have made that these payments would be paid to back interest, yes, sir.

Q. Now, going to the first item just for a moment, a question I omitted to ask you, that is the dividend on the stock of the Orange & Alexandria Railroad Company, put down at $31,604.09, which you have stated was paid in 1864, when did that dividend accrue?

A. It is marked as accruing—as declared in 1854, paid in 1864.

Q. Now, come to the second item, Richmond & Danville Railroad stock. You show no dividend opposite that. Is that correct?

A. Yes, sir.

Q. On the Richmond & Danville Railroad Company loan you show a payment of interest amounting to $10,500 after January 1, 1861. When was that paid?

A. Page No. 21 of the printed record, it was paid on a date subsequent to January 1, 1861. I have not entered the date here, but it was included in a payment of $21,000, which is a semi-annual payment of the interest on this loan. If the date is material I will furnish it.

Q. I would like to know the date. Haven't you got it on page 21?

The Master: He said part as semi-annual payment of interest, as I understand.

Q. Did you say it was included in the semi-annual interest that was due when? I don't know that I understood your last answer.

The Master: He did not state when it was due. He said part was in the semi-annual payment.

Q. I want to know when that was paid?

A. This was paid February 21, 1861.

By The Master:

Q. That appears on your printed schedule?

A. Yes, sir.

By Mr. Harrison:

Q. Does that entry on your schedule at page 21 of the printed record, "This was paid February 21, 1861," refer to the payment of the semi-annual installment of interest?

A. Yes, sir.

Q. It is not opposite then the correct figures, is it?

A. No, sir, it is not.

The Master: That does not seem to have anything in the figure column in relation to it.

Mr. Harrison: In other words, what I wanted to show was that the date he has given as the date of the payment is not indicated by the exhibit.

The Master: No, but evidently that was intended as a notation to follow that item.

Q. The next item is Richmond & Petersburg Railroad Company stock, a dividend of $9,640, entered as paid after January 1, 1861.

The Master: I suppose this printing has gone so far that we cannot make any changes now, but I just call your attention, here is an element of confusion in this schedule, and if it is not too late we will have it fixed. On page 21, it states that this was paid February 21, 1861 and in parentheses July to January, six months, and then follows a little line carrying out to $576,303.34, which has not the slightest earthly connection with this notation. That ditto line should be stricken out if you can get it out. It has confused you, and I have been studying over that for five or ten minutes and finally got it cipered out. But we have got to get that ditto line out because it has not the slightest earthly connection with the item. I mention this now because every little while I run across something of that sort. I do not know how it happened to get in there. I suppose the printer stuck it in.

The Witness: Your Honor, we cannot blame the printer for that. It is in the original writing with the intention of applying to the line above, but it happened that on this account it comes in opposite that other line.

The Master: It is impossible that more or less of that sort of a thing cannot happen as we go along, but we will straighten it out as far as we can. Personally, I think I will remember most of this as I go along, so it will not bother me when I get to it, but a little thing like that is sometimes a source of infinite annoyance.

By Mr. Harrison:

Q. (Question repeated as follows.) The next item is Richmond & Petersburg Railroad Company stock, a dividend of $9,640, entered as paid after January 1, 1861. When was that paid?

A. Page 23, of the printed record shows that it was paid on February 28, 1861, page 82, Journal D, Internal Improvement Fund.

Q. No. 4, on page 46 of the printed record, described as Virginia Central Railroad Company stock, and nothing opposite that. Does that mean that no dividend was paid on that stock after January, 1861?

A. None that had accrued prior to that date, yes, sir.

Q. That is what I mean, prior to January, 1861.

A. Yes, sir.

Q. Virginia Central Railroad Company, interest on loan, is entered as paid $1,159.34, after January 1, 1861. When was that paid?

A. January 2, 1861, Cash Book No. 10, Board of Public Works, Second Auditor's office, as shown on page 26 of the printed record.

Q. Virginia Central Railroad Company, dividend bonds; there is entered as payment of interest on these bonds $5,-959,-80 accrued prior to January, 1861, and paid after that date. Can you give the date of payment?

A. On January 19, 1861.

Q. The next item is No. 5, Winchester & Potomac Railroad Company. There is an amount of $833.33 as paid after January, 1861. Does that mean stock or loan, is that interest or dividend?

A. That is an annuity.

Q. Can you give the date of that payment? You mean it is on account of an annuity?

A. Yes, sir.

The Master: That is that $83,000 item?

Mr. Harrison: Yes, sir.

Q. Give me the date of payment.

A. It was paid July 27, 1861, anticipating the date of its maturity.

Q. The next item is No. 6, Richmond, Fredericksburg & Potomac Railroad Company, dividend certificate, opposite which is an entry of an amount of $4,467.41 as paid after January 1, 1861. That means interest on those dividend certicates?

A. Yes, sir.

Q. Can you give the date of that payment?

A. January 16, 1861, as shown on page 44 of the printed record.

Q. The next item is No. 7, Virginia & Tennessee Railroad Company loan, opposite which there is entered $280,000 as a payment on account of interest after January, 1861. On what date or dates was that amount paid?

A. That was paid at various dates as shown on page 30 of the printed record:

May 21, 1861,.....	$ 6,000.00
May 23, 1861,.....	10,000.00
June 3, 1861,.....	10,000.00
June 26, 1861,.....	7,952.00
July 9, 1861,.....	1,653.57
January 11, 1862,.....	14,394.43
February 7, 1863,.....	90,000.00
March 5, 1863,.....	50,000.00
May 14, 1863,.....	55,000.00
August 15, 1863,.....	35,000.00

Q. The next item, No. 8, South Side Railroad Company loan opposite which is entered $264,500 as a payment of interest on that loan after January, 1861. Can you give the date

or dates of different payments?

Page 32 of the printed record:

November 10, 1862,.....	$ 12,500.00
October 2, 1862,.....	56,000.00
July 29, 1863,.....	56,000.00
August 1, 1863,.....	63,000.00
August 8, 1863,.....	28,000.00
August 27, 1863,.....	21,000.00
September 16, 1863,.....	28,000.00

Q. The next item, No. 9, Norfolk & Petersburg Railroad Company stock opposite which is entered $9,900 as a dividend paid on that stock after January, 1861. On what date was it paid?

A. It was paid on January 22, 1862, as shown on page 117, Journal D, Internal Improvement Fund, page 33 of the printed record.

Q. The next item immediately under is Norfolk & Petersburg Railroad Company loan, showing payment of interest of $36,000 on that loan after January, 1861. Can you give me that date now?

A. Yes, sir.

Q. What is that?

A. That is shown on page 33 and was paid January 11, 1864, four and a half years interest which had accumulated up to July 1, 1863, $94,500; and the $36,000 is the proportion of that from January 1, 1859, to January 1, 1861.

Q. The date, I believe you gave of payment was January 11, 1864?

A. Yes, sir.

Q. The next item, No. 10, is James River & Kanawha Company, opposite which is entered $250. What does that mean?

A. That means that there was paid a dividend on the James River & Kanawha Company of $250.

Q. Dividend on its stock?

A. On the stock owned by the State of Virginia.

Mr. Lilly: Was not that on a $100,000 loan? It is not in

these exhibits; it was introduced since they were printed.

The Witness: I find that that is a partial payment of interest on a loan of $100,000 to the above company, made by the State of Virginia.

The Master: Made to the State of Virginia?

The Witness: No, sir, made by the State of Virginia.

The Master: Oh, loan made by the State of Virginia.

The Witness: Yes, which was due January 1, 1861, and was paid January 4, 1861, as shown on the treasurer's blotter which is not paged. This exhibit has been filed by us later than the printed record, but in 1861.

Q. Did you examine the cash book No. 9 of the Board of Public Works with reference to this payment which you have now described as a payment of some interest on a loan? If you did, did you find it described as you have stated? I will proceed with the examination as you are not ready to answer that question. Take item No. 11, loan to Washington College. What does the $60 entered there represent?

A. The interest accruing on loan made to Washington College.

Q. Accruing before January, 1861?

A. Yes, sir.

Q. And paid when, if you can state?

A. And paid March 29, 1861, as shown on page 39 of the printed record.

Q. The next item, No. 12, Richmond Academy bonds, shows a payment of $12. Does that mean interest on this bond paid after January, 1861?

A. Yes, sir.

Q. And which had accrued prior to that date?

A. Yes, sir.

Q. The date of payment?

A. As shown on page 40 of the printed record, July 9, 1861.

Q. The next is item No. 13, entered as claim against United States Government, $832,451.57. What is that?

A. That is the amount of interest at 6 per cent, from July 1, 1814, to January 1, 1861, which had accrued upon the loan to

the United States by the State of Virginia, the principle of which was $298,369.74.

Q. Is that the same transaction that you testified about under Class C, showing the payment by the Government of the United States to the State of Virginia of $5.50 in February, 1903?

A Yes, sir.

Q. On a balancing of accounts between them?

A. Yes, sir, shown on page 13, item No. 17 of the printed record.

By The Master:

Q. Does the transcript that you have from the treasurer's office show that the loan bore interest at the rate of 6 per cent?

A. The settlement of that account is in the Second Auditor's office.

Q. Wherever it comes from.

A. And it was calculated at the rate of 6 per cent. per annum on both sides of the account.

Q. The settlement shows that?

A. Yes, sir.

Q. The answer is that the rate of 6 per cent. interest was computed on both sides of the loan?

A. Yes, sir.

Q. That is, the note or account or claim of Virginia against the United States on one side bore 6 per cent. interest, and the bonds of Virginia which were surrendered to the United States as part of the settlement were also at 6 per cent. interest?

A. Yes, sir.

Q. So they have the same rate on each side?

A. Yes, sir.

Mr. Harrison: It would be unprofitable to be asking the witness for any opinion about that item. The whole matter is shown by the records of Virginia, and of the United States as General Anderson suggests, and I intend to put in, as I stated on Saturday, a copy of the Second Auditor's report.

The Master: I do not suppose anything that Mr. Hillman can say will affect the rights of the parties one way or the

other with reference to that. It is probably a matter of legal construction; but I was simply getting right here just the facts so I will have them in my mind.

Mr. Holt: These documents are very plain.

The Master: If there is any peculiar legal construction to be given, that will be for me on argument rather than for Mr. Hillman to express an opinion about as an accountant. It is a matter of construction, that is your idea, isn't it?

Mr. Harrison: Yes, sir.

By Mr. Harrison:

Q. The next item is No. 14, the Farmer's Bank of Virginia, opposite which there is an entry of $33,691.00. Does that represent dividend paid on the stock of that bank after January 1, 1861, which had accrued prior to that date?

A. Yes, sir.

Q. The next items, 15, 16, 17, 18, and 19, represent several payments of interest, I presume on the dividends of those banks, do they not, similiar to that of the Farmers' Bank, similarly situated?

A. Yes, sir, they do.

Q. Having accrued prior to and paid after January, 1861?

A. Yes, sir.

Q. I want to know the date of the payments of those entries representing dividends on the stock of those banks respectively. If they were all paid at the same time or approximately the same time you might give one date; if not, I would like to have the separate dates.

The Master: That is the dates of the payments you mean. You said interest, but what you mean is amounts?

Mr. Harrison: Yes, sir, dates of the payments of the several amounts of dividends on the stock respectively indicated as owned by the State in those banks.

Q. Is it shown on page 47 of the printed exhibits?

A. Yes, sir, it is shown on page 47 in detail.

Q. Does that show they were all paid in the year 1861?

A. Yes, sir.

Q. And all of them paid on some date in January, 1861 and three in February 1861?

A. Yes, sir.

Q. That is sufficient. No. 20 is Blue Ridge Railroad Company, tolls for use of, showing $1,534.69. When were those tolls paid?

A. January 26, 1861, as shown by page 27 of the printed record.

Mr. Harrison: We are through with that schedule.

The Master: As to that schedule, I understand it is conceded that all of the principal exhibits and the supporting exhibits and the summary of the amounts are correctly stated and the computations accurately made; that is so, is it not?

Mr. Harrison: As far as the mathematical part of it is concerned, the additions and multiplications, I presume that is correct.

The Master: I am stating that so as to eliminate any question hereafter.

Mr. Holt. Of course the Master is not trying to indicate the value.

The Master: Not at all, simply this, so that when I come to look this over, whatever argument may be predicated on this, I will have no disturbance as to the figures; I may be satisfied that the figures are all right.

Mr. Holt: And before Mr. Harrison goes on I want to congratulate him for the expedition with which he has gone through Class D. He has done it rapidly and beautifully, you will permit me to say.

The Master: And if the Judge has no objection, I desire to concur without the slightest reservation in the statement made by the Judge, and in a very adequate manner taking care of the interests of Virginia also.

Q. Now, we come to Class E. Class E is described in the supplemental answer as bank stock purchased by Virginia with joint funds prior to January 1, 1861, and in her possession on that date. The first one of these banks in the list is the Farmers' Bank of Virginia. What is the amount of stock you

show owned by the State in that bank January 1, 1861?

A. 9,626 shares, par $100, $962,600.

Q. What do you value that stock at as of January 1, 1861, per share?

The Master: In order that there may not be any confusion—this does not interfere with your cross-examination—I do not understand that Mr. Hillman predicates any idea of value upon the banks other than the same method that he has used in connection with the railroad companies, but of course this question literally speaking is based upon the actual value, but I suppose what you mean is his method of computation.

Mr. Harrison: I am going to pursue that through.

Mr. Holt: That is a book value of course, your Honor.

The Master: Yes.

Mr. Holt: There is some difference between the values of a bank and a railroad.

The Master: Yes.

Q. The question was what do you show to be the value per share of that stock January 1, 1861?

A. $111.57.

Q. How do you describe that value?

A. Net value.

Q. What do you mean by net value, does that have the same significance as book value?

A. Yes, sir, the net being taking the book value and deducting the amount of the dividend from that book value, and I have therefore denominated it net.

Q. It means the same as book value in this connection?

A. Yes, sir, book value less the dividend.

Q. You relied for your exhibit on the printed report of the officers of the bank to the Board of Public Works, did you not?

A. Yes, sir.

Q. And you had no other source of information than that upon which you have predicated your exhibit or based your testimony, did you?

A. None.

Q. Is your exhibit an exact copy of the report of the officers

upon which you relied, or have you changed in any way the designations of the items found in the report?

A. My recollection is that that is a copy and I have not changed the titles.

Q. I call your attention to the fact that on your exhibit, page 48 of the printed record, Farmers' Bank of Virginia, you have an item of $337,067.05, which you have described as profit and loss. Now look at the report itself and see how that is described.

A. It is described as surplus and contingent fund.

Q. Why did you change the description of that item to profit and loss, did you have any reason for that or object in it?

A. No, sir, none.

Q. Profit and loss is a different thing from Surplus and Contingent Fund, isn't it?

A. No, I think not.

Mr. Holt: Do you mean generally or in this particular instance.

The Witness: In this particular instance.

Q. Now, look at the next page of the original report and see how it is there described, that same entry. That is page 16 of the report.

A. It is there described as contingent fund.

Q. You don't mean to say the contingent fund is the same thing as profit, do you?

A. Yes, sir, in this case it would be.

Q. For the purpose of figuring the net value?

A. Yes, sir.

Q. What does contingent mean? It must mean that its value is contingent upon something, does it not?

A. Yes, sir.

Q. Well, if its value is contingent you can call it profit?

A. The assets of the bank are stated—

Q. That is not an answer to my question. I do not care having you go into an account of the assets of the bank, but I would like to have an answer to my question.

The Witness: All right. Your Honor, the question cannot

be answered unless I do go into it. I submit that to your Honor.

The Master: I cannot tell in advance how he should answer the question. You are an accountant, Mr. Hillman, and you go ahead and answer that question as directly and concisely as you can. You are answering the question that Mr. Harrison is asking you, and it is up to you to say what the answer is, and I expect you to make it as responsive as is compatible with the circumstances.

Mr. Holt: May we have the question repeated now?

The Master: Yes.

(Testimony read by stenographer.)

The Master: Go ahead and make the best answer you can and make it in your own way, and cover the ground from your point of view as fully as you can.

Mr. Harrison: I do not want the best answer, I want a true answer to the question, fully.

The Master: If it is an untrue answer it would be a bad answer and not the best answer.

The Witness: A contingent fund is intended to cover a possible depreciation in assets, or some contingency that might arise of that character. It has therefore been specifically laid aside and distinct from all other liabilities of the bank. Until that contingency arises, and until the fund is expended it is a profit of the bank, or an asset which can be considered as a profit.

Q. Then the bank's statement itself described that fund as a contingent fund, whereas you have described it as profit and loss, as a profit?

A. Yes, sir.

Q. You have taken it as a profit, although the bank called it contingent?

A. Yes, sir.

Q. Now why didn't you put on your schedule the description that the officers of the bank used in their report, instead

of substituting for it a different description? Your schedule, in other words, is not accurate.

A. For a special reason, that I considered it a profit and loss account, it being entered as surplus and contingent funds, on page 15 of Document 14, the bank statement.

Q. But if you were undertaking to transcribe here an accurate statement from the report of the officers, why didn't you give the report as you found it instead of giving your construction of it as being an accurate statement of the report itself?

A. There is no reason why I did so, excepting that I have stated that I considered it a profit and loss account, and so entered it.

Q. Does the statement show any bad debts or doubtful debts?

A. No, sir.

Q. Look on page 16, the tabular statement of the condition of the bank, which is part of the report of the officers, and tell me whether or not it shows any bad or doubtful debts included in the assets?

A. Yes, sir, it does on page 16.

Q. What are the bad debts there shown?

A. $70,773.96.

Q. What are the doubtful debts shown?

A. $45,437.24.

Q. Did you base your book value on $116,210, in part, of bad doubtful debts?

A. Yes, sir, it looks as if I had not taken that into account in my statement. I have taken the trial balance only, as shown on pages 14 and 15.

The Master: What do those bad debts aggregate?

Mr. Harrison: $116,210 bad and doubtful debts.

Q. Then your book value is based on a surplus which contains $116,210 of bad and doubtful debts, and an unknown contingent fund, is it not?

A. No, sir.

Q. Well, why?

A. For the reason that it is—

Q. Did you take account—

Mr. Holt: Let him answer.

The Witness: Let me answer the question, will you?

Q. Go ahead.

A. For the reason that it is shown on page 16 that there are bad debts and doubtful debts to the amount of the $116,211.30 mentioned, but that the contingent fund is not mentioned as a doubtful item at all, it is mentioned as a distinct item.

Q. Now for the year 1861, as shown by that statement, how much did the bank apparently earn as profit, assuming that there was nothing else to deduct except the bad and doubtful debts?

A. I do not know how much they earned that year.

Q. Well, what does your exhibit on page 48 show to have beeen the profits for the year 1861, of the Farmers' Bank of Virginia?

A. The total profits up to January 1, 1861, $475,168.23.

Q. If you will look at the comparative statement of the officers of the bank on page 15, do you not find there the profits stated for the year 1860 and the year 1861?

A. Yes, sir, on that page 15 there are two years mentioned 1860 and 1861.

Q. Now what are the profits shown for the year 1860 on that statement, the report of the officers which you hold in your hand?

The Master: Is it shown there?

Mr. Harrison: Of course it is.

The Master: Why don't you state it then?

The Witness: It shows the total profits, yes, sir. For 1861 it shows the surplus and contigent fund and the profits of the institution $475,168.87.

Mr. Harrison: I did not ask that question.

By The Master:

Q. Does that report that you have got there show that the officers state what the profit was?

Mr. Harrison: That is what it shows, "Profits of the institution for the year 1861."

The Master: What objection is there to reading that and putting it into the record? I want to tell you from now on I do not want you to sit five minutes and look at an entry like that to determine what you are going to say about that. Now that entry shows right on its face what the profits were. I hope that is clear. There is no progress made by that. I have got to see these reports; and it is stated right there what it is and you have no right to wait five minutes deciding whether you are going to answer that question. Now read it.

The Witness: The profits of the institution show $138,101.18.

By Mr. Harrison:

Q. And does it not show the same item on your report?

A. Yes, sir.

Q. As to profit for 1861?

A. I do not know whether it is profit for the year or not. It is headed profits of the institution.

Q. It is headed profit for the year 1861, under the report of the officers, is it not?

A. Yes, sir. Whether it is cumulative for the year or not I do not know; the report does not say.

Q. Does not the same comparative statement, page 15, show what the profits were of the institution for the year 1860?

A. Yes, sir.

Q. What is it?

A. $145,813.47, subject to the same comments I made on the other.

Q. Then the profits for the year 1861 could not be cumulative, could they, when they are shown to be less than they were for the year 1860?

A. Not unless they had paid a dividend in excess, and so reduced the value. I do not know.

Q. Now what dividend was paid by this bank?

The Master: Before you leave that, please, I have a question.

By The Master:

Q. I notice, and that is where I am getting into a little confusion, on page 48, Mr. Hillman, you have an item profits of institutions, $138,101.18. Now should that read "Profits of institution"? I was just going to inquire what these "institutions" were. I suppose that is the bank itself. What is the fact about that? Because, as that reads in the exhibit, it would lead me to think they had some stock in some other institutions.

Mr. Harrison: The report of the officers reads "Profits of the institution."

The Master: That is what I thought "Profits of the institution." Then that, I suppose, is the entry we ought to have on the exhibit. We will strike off the "s" on "institutions," so that relieves me of any confusion about that.

By Mr. Harrison:

Q. Now I want to know what dividend this bank declared and paid for the year 1861?

A. 7¼ per cent.

Q. What would be 7¼ per cent upon the total capital stock of the bank, the total capital stock of the bank being $3,150,900.

A. $228,440.25.

Q. Then if the dividend declared amounted to $228,000 and the profit of the institution was $138,101 for that year, they did not earn their dividend, did they?

A. If that is true—I mean if those figures are true—they did not earn their dividend.

Q. By how much? What was the deficit?

A. $90,339.07, if those figures are correct.

Q. I am taking the figures from the report of the officers.

A. Yes, sir, and it is for that very reason that I do not accept the fact, if it is a fact, that those profits of the institution do show the profits for the year 1861.

By The Master:

Q. That is because they have declared a dividend larger than that amount?

A. Yes, sir, and there does not show between the two years a corresponding reduction of surplus and contingent fund and final profits, and therefore there must have been some other item than the par after all profits entered in there and it must have been cumulative, either in the way of additions or of deductions on account of other payments or dividends.

Q. In other words it does not look like either good bookkeeping or good business, is that it? It is either not good bookkeeping or it is not good business?

A. Yes, sir. It shows that that item is not the profits of the year, that is all.

By Mr. Harrison:

Q. These statements, you have several times said, were made under oath; that is true, is it not?

A. Yes, sir.

Q. I am taking the statements as I find them, and I am not indulging in suppositions or conjectures about them, and my questions are based upon the figures in the report upon which you have undertaken to base your conclusion.

Mr. Lilly: Do not argue with the witness.

Q. Now was there a falling off in the profits of the institution, under the comparative statement of profits for the years 1860 and 1861, and if so to what extent?

A. The item which you have mentioned, profits of the institution, showed a falling off of $7,712.29.

Q. Is there any falling off in the deposits for the year 1861 as compared with 1860, as shown by the report of the officers?

The Master: While he is making that computation I wish you would get word to Mr. Harris to have this print changed, while there is time to do it, so that instead of "Profits of institutions" it will read as it ought to read, "Profits of the institution." We will have all these things checked up as we go along, and then we won't have any confusion.

Mr. Holt: I should certainly think that could be done, especially in those volumes that embody the exhibits alone.

A. The deposits declined from 1860 to 1861, $296,404.77.

Q. Now will you please tell me whether there was any falling off in the circulation of the bank between 1860 and 1861, as shown by the comparative statement referred to?

A. Yes, sir; there was a falling off in bank circulation.

Q. To what extent?

A. $237,294.

Q. Well, now, was there any falling off in specie which the bank owned between 1860 and 1861, as shown by the same comparative statement?

A. Yes, sir; the specie on hand was less in 1861 than it was in 1860.

By The Master:

Q. By how much?

A. $132,692.50.

By Mr. Harrison:

Q. Was there any increase in the debts of the bank between 1860 and 1861, as shown by the same statement?

A. No, sir; there was a decrease in the debts of the bank.

Q. Debts due to other banks, of debts due by the bank to other banks, was there any increase between the two years in that item?

A. Yes, sir, in the debts due by this bank to others, there was an increase.

Q. Of how much? In the year 1861, of course I refer to. Now what was the amount?

A. $110,527.39.

Q. Now then, taking the report, which contains the only information you have had in respect to the condition of this bank in January, 1861, and upon which your figures are based of $111.57 as its book value on that date, in view of the facts that we have just brought out, namely, that the bank did not earn its dividend for the year 1860 by ninety thousand and some hundred dollars, that the profits had declined between 1860 and 1861, by $7,700, that the deposits had fallen off—I have forgotten the number of dollars, but it was several hundred thousand—that the circulation had decreased two or three

hundred thousand, that the specie had decreased by $132,000, and its debts to other banks had increased by over a hundred thousand dollars, what would you say as to the condition of the bank in January, 1861? Would you call it good or would you call it bad, or would you call it indifferent? Now remember that your answer is based on the evidence that we are all relying on.

A. In the first place, leaving out—I beg your pardon, I would say that if I am restricted only to the items which you have mentioned, the bank was in worse condition in 1861 than it was on January 1, 1860. And if I accept as a fact that the profits of the institution were only the amount that you say, they did not earn their dividend.

Q. Instead of being worth eleven dollars and some odd cents premium, would it, confining your answer to the facts that have been laid before you, in your judgment be worth par?

A. If I am restricted to the facts which you have mentioned, and not allowed to take anything else into consideration, it would not be worth par. But I consider that but a partial statement of it.

By The Master:

Q. In other words you do not concede the assumption to be predicated upon the facts, the assumption in the question?

A. Not on the full facts in the case, that is all.

Q. But assuming all the facts stated by him in his question to be true, you make that answer?

A. And that there are no other facts in the case.

The Master: That can be determined later on. If we have got to take the examination by piece-meal we cannot answer it in a minute.

Mr. Harrison: We cannot go outside of the facts represented by the figures in the document on which the witness relies.

Mr. Holt: I think he has answered your question.

The Master: He concedes, on the facts stated by you, that the stock would not be worth par.

Mr. Harrison: I have not stated anything as a fact that is not contained in the report of the officers, upon which he has based his statement.

The Master: Well, may be that is the subject of argument.

The Witness: Mr. Master—

The Master: All that you are required to do Mr. Hillman is to answer the questions put by Mr. Harrison. If there is any impropriety about the question, that matter will be raised by Judge Holt.

The Witness: I understand that I am restricted to the facts stated in his question.

The Master: You have answered the question exactly right from his point of view and from your point of view. My suggestion is that if he happens to put a question that is not a proper question, the objection to that question will have to come from Judge Holt or Attorney General Lilly, and until it does come the question goes, and you are compelled to answer. You have done it all right and answered all right with all necessary qualifications. I think I understand it right?

Mr. Holt: I think so. I would like to inquire— I may have misunderstood a moment ago, I may have misunderstood the question, that the liabilities of the bank had increased or decreased, which was that?

The Master: The liabilities had increased.

Mr. Harrison: Had increased a hundred thousand.

The Master: There is not any question about that fact.

The Witness: I beg pardon, they show that the liabilities as regards circulation—

The Master: Does the Judge refer to the total liabilities?

Mr. Holt: Yes.

The Master: I had in mind debts of the bank.

Mr. Holt: What answer did he give a while ago? Let the stenographer read it.

(Testimony read by stenographer.)

By Mr. Harrison:

Q. Now what do you show on your exhibit, and on what page will it be found, the value of this Farmers' Bank stock June 20, 1863?

A. Page 38 of the blue prints.

The Master: Before you proceed, I want to make just one additional inquiry in relation to this dividend and the profits of the institution. Assuming that the profits of the institution are correctly stated by the officers in their sworn report, it would indicate that they had declared something like ninety thousand dollars out of their capital as a dividend, wouldn't it?

Mr. Lilly: It would be out of surplus, wouldn't it?

The Master: If they had any surplus.

Mr. Lilly: The record shows that they had $337,000 surplus.

By The Master:

Q. It would be $90,000 out of their surplus?

A. Yes, sir, out of their surplus.

Q. Which had already been reduced to somewhere over a hundred thousand dollars by bad debts?

Mr. Harrison: Yes, and they called it, not surplus, but contingent fund.

The Master: I am glad you called my attention to that, I wanted to get that into the record.

Q. There was surplus enough on hand to have justified the declaring of a dividend in excess of the current profits, that is the fact, I suppose?

A. Yes, sir, and the surplus fund increased in 1861 over 1860.

By Mr. Harrison:

Q. How much?

A. $6,026.96.

Q. What value do you give this stock of the Farmers' Bank on June 20, 1863, as shown by your exhibit at page 38 of the blue prints.

A. Taken at the same value as January 1, 1861.

Q. Namely, a value of $111.57 per share?

A. Yes, sir.

Q. And you have based that on the same report that you used for 1861?

A. Yes, sir.

Q. In other words it is simply a duplication of your 1861 report, is it not?

A. Yes, sir, with the notation which I have made below on page 38.

Q. Using the date of June 20, 1863, instead of January 1, 1861?

A. Yes, sir.

Q. Will you tell us, if you please, what became of this bank?

The Master : Before you reach that—this schedule contains the same error that the other contained, "Profits of institutions." Now be sure on the original that goes into the case that the "s" is stricken off and that the "The" is inserted.

Mr. Lilly: If the Master please, we do not want to be captious, but we object to that question and state the reason now that it is not material.

(Question repeated by stenographer.)

The Master: I shall admit that. I cannot tell what weight it may have.

Mr. Lilly: I just want to call the Master's attention to the fact that we made the objection, but do not insist on it at this time.

A. I do not know.

Q. Is it in existence today?

A. I do not know.

Q. Have you really any doubt on that subject?

A. I have no doubt on the subject, but I have no evidence on the subject save hearsay.

Q. Except hearsay?

A. That is all.

Q. Well, according to hearsay what became of the bank?

Mr. Holt: I object to that, your Honor. If they want to prove that the bank went out of existence they can do it.

The Master: If they insist on that I cannot admit it.

Mr. Harrison: There are some things that we all take

knowledge of, historical facts, and I presume it is as well known to this witness as it is to you.

The Master: Well I do not know anything about it.

Q. If you do not know anything about that subsequent history of the bank, if you want to give that answer you can do it.

The Master: He has no knowledge except hearsay, he has no legal knowledge.

Q. Do you know of any such bank in existence today?

A. No, sir, I do not.

Q. Do you know that it was in existence after June 20, 1863?

A. Yes, sir, I do.

Q. How do you know that?

A. For the reason that I have traced some payment of dividends on this bank stock into the record subsequent to June 20, 1863, in order to make up these statements.

Q. Then how long did the bank continue to exist, according to the trace that you made of its history and its existence?

A. I know that it was in existence in January, 1865; I do not know any further than that.

Q. Now do you not know anything at all about its value, the value of the stock, June 20, 1863, as appears from your testimony here; that is true, is it not?

A. I know nothing whatever of its book value.

Q. On June 20, 1863?

A. On June 20, 1863.

Q. All you have done with reference to testifying in respect to its value on that date is to file figures taken from the report of the officers of the bank for January 1861, as you did in that case?

A. Yes, sir, as shown on page 38 of the blue prints.

By Mr. Holt:

Q. Right there pardon me a moment. What is the difference between the schedule for 1861 and for 1863?

A. The simple notation that we were unable to find any further statements of the bank, and simply that the continued

payments of dividend at the same rate would tend to indicate that the stock was of at least equal value.

Q. That last fact does not appear on the 1861 schedule, and that is the difference between the two schedules, is it not?

A. Yes, sir.

By Mr. Harrison:

Q. The real difference is a date, as you have already called attention to. One is January 1, 1861, and the other is June 20, 1863.

A. Yes, sir.

Q. We come now to the Bank of Virginia. What was the State's ownership in the stock of that bank?

A. 13,766 shares, par $70, total value $963,620, par.

Q. (Handing book.) I observe on your exhibit, page 50 of the printed record, you have described, as you did in the case of the Farmers' Bank, the item shown in the report of the officers as surplus and contingent fund, as profit and loss. You did not make an accurate transcription of the report in this case in that particular, did you?

A. No, sir, I used the term profit and loss instead of surplus and contingent fund.

Q. Now, Mr. Hillman, I also find on your exhibit, page 50, under the heading assets, you have an item of $18,900, which you have described as unredeemable—stolen notes. How was it described in the report of the officers, that item?

A. Lost by robbery at Portsmouth in $100 notes.

Q. Have you included in the assets of the bank upon which you have based your calculations of book value that item of $18,900, described in the report of the officers as loss by robbery at Portsmouth in $100 notes?

A. Yes, sir.

Mr. Holt: What was the amount of that item, Mr. Harrison?

The Master: $18,900.

Q. Is it proper to include that item of loss in estimating the profits of the bank?

A. Yes, sir, in this case I should say it was.

Q. Why in this case any more than in any other case? If the bank had lost $18,900, how can that constitute an asset upon which you can base value?

A. Because the entry of that item, where it appears in the 1859 report, is stated as notes not to be redeemed because of robbery at Portsmouth. They had their entire amount of liability on account of their circulation outstanding, but here is an item which they would never be called upon to redeem. Practically, payment had been stopped on those notes, and therefore they had included it as an asset, when they should have deducted it from their circulation. The amount would show the same in either case.

Q. How could the bank stop payment on notes that it had issued, because they had been stolen?

The Master: He did not say they could.

Mr. Harrison: He is basing his answer upon some assumption of that sort.

The Master: Not exactly upon that; he was simply using that as an illustration, as I understood it.

The Witness: They had stopped payment and took it up as an asset to offset outstanding notes.

Mr. Lilly: Their circulation was charged up as a liability, and naturally they would not have to pay.

Q. Is your answer a matter of assumption?

The Master: When you say that they had stopped payment, that is what he means.

A. No, sir, it is not assumption.

Q. Where is there evidence that the bank had stopped payment?

A. The notation in the 1859 report.

Q. Have you got that before you?

A. No, sir, I have a note from that report, on the side.

By Mr. Lilly:

Q. Suppose you read the notation?

Mr. Harrison: I would rather he would produce the original.

The Witness: Notes not to be redeemed because of robbery at Portsmouth, $18,900.

Q. Does that show that the payment had been stopped? In other words that is what you rely upon for your conjecture or statement that payment had been stopped, is that true?

A. Yes, sir.

Q. And is it your testimony now that payment had been stopped? Is that your construction of that entry?

A. Yes, sir.

The Master: I was mistaken in my suggestion.

Mr. Holt: No, you were right as his answer originally stood, he was illustrating simply, that as they treated it practically it would be the same.

Q. Now will you please tell us whether—

The Witness: Your Honor, may I read from this document which has been asked for?

The Master: If there is no objection on the part of Mr. Harrison.

Mr. Harrison: I do not object to his reading anything that is pertinent.

The Master: Is it something that explains that item?

The Witness: Yes, sir.

The Master: All right.

The Witness: Document No. 14, page 8, under the date of January 1, 1859, reads, "Lost by robbery at Portsmouth office in $100 notes, not to be redeemed, $18,900," carried as an asset.

Q. Do you find on this entry that you have just read the words "Carried as an asset," which you gave as purporting to be the language?

A. I did not give it as purporting to be a quotation.

Q. That is your own statement then?

A. Yes, sir.

Mr. Holt: He has just told the stenographer where to put the quotation marks, while you were looking at it.

Q. Now will you tell us whether the statement, the report of the officers upon which you rely, shows whether that bank

had any bad or doubtful debts on hand as per the statement of January, 1861, if so, how much?

The Master: As a part of this asset.

Q. That is page 8, Document No. 14, the tabular statement of the Bank of Virginia, January, 1861?

A. From that statement I am afraid I will have to give it up, I do not know.

Mr. Harrison: There are two items right under the caption on the tabular statement.

The Master: What is the trouble about that, Mr. Hillman, about this $6,412?

The Witness: That is for the quarter ending January 1, 1861. There are three other items mentioned below about which nothing is said. I could not tell what that entry meant without examination of the whole matter.

Q. Is January 1, 1861, the date of the balance sheet?

A. Yes, sir.

The Master: I will tell you what this shows, quarter ending January, 1861, bad debts, $6,412, and then doubtful debts. The next entry is 1860, November 1st, and then December 1st, and then the next notation is January 1, 1861. I can understand how you might want to take it to look it over, but it seems to me that is pretty plain. I wanted to see what the book showed, to see why it was necessary to take four or five minutes to get the answer to that question.

Mr. Holt: When an entry of that kind is asked for, Mr. Hillman, give it. If you have any explanation to follow it then give that.

The Master: We cannot all wait here to look this whole matter over. The effect of this testimony is not up to you, Mr. Hillman. You are to give it and let counsel take care of the effect of it.

The Witness: One page 8, Document 14, under the heading quarter ending January, 1861, there are bad debts shown for $6,412; doubtful debts, $43,973.57.

The Master: We will suspend right here until half past two, and instead of running along until half past five, which would be our regular time, on account of the fact that the

stenographers have been bothered a good deal by not having any electric power and have had to dictate to the typewriter, and might have to work until about midnight, I am going to stop at five to give them an opportunity to get their work out.

Mr. Holt: Before you adjourn, there is one matter that I want to call attention to. On Saturday evening I asked our friends upon the other side, General Anderson, Mr. Harrison, Mr. Robinson and Mr. Potter, to expedite the matter if they could in one direction by a stipulation according to what I believe to be the fact, and that was that all of the assets that we are now seeking to vouch were paid out of the proceeds of the bonds that constitute the debt in controversy here, of Virginia. And it was suggested upon the other side that that was true, as I understood these gentlemen, and the loans also were made out of the proceeds of the bonds that evidence the debt of Virginia prior to 1861; that was true with respect both to stocks and to bonds, except in a few instances where the proceeds were so used and earnings were derived from the investments thereof, and the earnings used also in the purchase of the assets sought to be valued here. I thought they were going to agree to that, and so I prepared a stipulation to this effect:

"It is stipulated of record by counsel for the States of Virginia and West Virginia, as well as by counsel for the bondholders, that the various stocks and bonds mentioned and described in Classes B, C, D, E, F and G set forth in the exhibits to the defendant's supplemental answer herein, were purchased by the State of Virginia prior to the 1st day of January, 1861, out of the proceeds of the bonds of the State of Virginia evidencing the public debt of said State that was apportioned between the two States by the decision of the Supreme Court of the United States rendered in this cause on the 6th day of March, 1911, or with the earnings of securities so purchased. Also, that the loans mentioned and described in said Classes B to C inclusive were made out of the proceeds of said bonds or the earnings from the investment of said proceeds; and that the Blue Ridge Railroad was likewise con-

structed out of the proceeds of said bonds or the earnings from investment of their proceeds."

Now I learned this morning that there may be some little difficulty about their agreeing to that; and the reason I bring it up at this time is this; if these gentlemen feel that they cannot stipulate those matters I want to know it at as early a date as possible, because it means a tremendous pile of documentary evidence here, and I am seeking to avoid that and shorten the record and save time. If these gentlemen believe or know those things to be facts I hope they will see their way to the stipulation.

The Master: Well, if they are true or they are willing to concede they are true, with such exceptions as they may stipulate or specify, that would narrow the inquiry as to those exceptions. I have not any doubt, as far as that is concerned, that the counsel for Virginia are prepared to make every concession that they can legitimately make with safety to the rights of their clients.

Mr. Anderson: I will very briefly reply to what my friend has said. Counsel for Virginia will be very glad to enter into any stipulation which will expedite the hearing of this case—

Mr. Holt: And which is according to the truth.

Mr. Anderson: —without doing injustice to either of the parties, or conceding as true what we do not know to be true. We could not agree to this stipulation because these securities were not purchased—that is an inaccurate and we think a misleading statement. That is one objection we have to it, but not the most important. The fact is that, in every case in which these stocks were acquired by the State, or in which loans were made by the State to these improvement companies, they were not made primarily as investments at all. As the former record of this case overwhelmingly shows, they were made in carrying out an internal improvement policy of Virginia, in aid, not for the purpose of gain by the State but in aid of these internal improvement companies, for the purpose of developing the Commonwealth, and more especially for the purpose of developing that portion of the Commonwealth which now constitutes West Virginia.

The Master: I do not understand that the stipulation goes so far as to foreclose you from taking that position.

Mr. Holt: Oh, no.

Mr. Anderson: It would if we signed this paper, because it says they were purchases made by the State. If your Honor please, at great cost of time and labor the truth in regard to this matter has already been put into this record. This record shows in detail every bond issued by the State of Virginia, and the purpose for which it was issued, and it shows too, *prima facie* at least, for what purpose every dollar of the avails of those bonds was expended. It is not true, as we find, your Honor, that all of the money which went into these improvements came from the sale of these bonds; a very considerable part of it came from other sources, not only from dividends on these bank stocks, which do not represent these bonds at all. A large portion of them went to the internal improvement, as my friends well know, as certainly the senior counsel, Mr. Hogg, knows, because it was proved in this case, and never controverted by West Virginia. In addition to that, in some cases, as we are satisfied, the surplus general revenue of the State went into the construction of some of these internal improvements. So that we cannot agree to this.

The evidence is all here; my friends have it here in this record, showing how every dollar was expended and whence it was derived. And why we should be asked now to concede facts which we do not believe to be facts and which the record does not show to be facts, I cannot understand.

The Master: West Virginia has made a suggestion as to which they are willing to enter into a stipulation. The counsel for Virginia do not feel at liberty to agree to the stipulation, and that is the end of it.

Mr. Anderson: Just one word—

The Master : If we do not get anywhere there is no use arguing it.

Mr. Anderson: Let me call attention to the fact that Exhibit A-1 of the Decree, shows the purpose for which the bonds of Virginia were issued. The exhibit designated in this record as Plaintiff's Exhibit No. 1, gives every Act of Assembly which

was passed by Virginia making appropriations as authorizing the issue of bonds; and shows for what purpose it was made.

The Master: If all that appears in the record there is no reason why these two accountants should not sit down together, or somebody, and cipher that out; and as to what that shows you can agree. There is no occasion for printing a lot of detail that is indisputably proved. That is my judgment about it. Whether they would be willing to accede to your broad judgment, Judge Holt, does not seem to be possible. But if a large number of items can be eliminated by taking what is in the record, you may agree as to that.

Mr. Holt: Of course if my stipulation is too broad—I expected to correct it and make the necessary exceptions. I do not want to ask these gentlemen to stipulate anything into the record as a fact that is not true. But where any portion of the securities that we are now seeking to value were purchased with the proceeds of the bonds evidencing the debt I would like to have a stipulation to that effect. And where there are others that were paid out of general revenue, let them be excepted.

The Master: Yes.

Mr. Holt: And by a few lines in that way we can shorten the record very much. In the first place it will relieve us from putting in a lot of Acts here that we would like to avoid putting in, but even if we were to fall back upon the original record, it is not sufficiently full for our purposes, and yet the intimation is very strong there in the direction of what we contend for. All I ask these gentlemen to do is not an unreasonable thing, but where they can fairly admit that, and safely, to be a fact, we hope they will do it. But wherever it becomes necessary to make an exception, of course we would not ask them to stipulate without naming the exception.

The Master: What is the reason that Judge Holt, or some one else representing West Virginia, cannot sit down with some one on the other side this evening and go through this matter in detail and find out as to what you can agree and as to what you disagree?

Mr. Conrad: Or even perhaps better than that, let Judge

Holt submit specifically the objects for which he believes the proceeds of the public debt had been invested. Where we find that is the fact I think we can say it will be conceded.

Mr. Holt: That is really along the same line as the Master's suggestion, except I am to do it alone instead of two.

Mr. Conrad: The proposition comes from you; West Virginia is making the proposition in the interest of economy of time. I suggest that that motive, that object, can be promoted vastly, if you would just by a memorandum indicate certain specific objects in which you believe the proceeds of the public debt have been invested, and then we can in a few moments from the record and memoranda in our possession see whether you are right.

The Master: We will suspend now until 2:45.

Recess taken until 2:45 P. M.

AFTER RECESS.

Continuation of the cross-examination of

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. Did you make any allowance for the bad and doubtful debts in figuring your book value of this stock?

A. No, sir.

Q. Please tell me by reference to the comparative state of the Bank of Virginia, including the branches, on the 1st day of January, 1861, and the 1st day of January, 1860, as shown on document No. 14, pages 6 and 7, whether there was any falling off in the deposits of the Bank of Virginia.

A. Yes, sir, there was between the year ending January 1st, 1860, and January 1st, 1861.

Q. What was the amount?

A. $428,180.31.

Q. Now, was there any falling off between those two periods, namely, January 1st, 1860 and January 1, 1861, of the bills and accounts receivable of that bank, if so to what extent?

A. I do not see any such item on the account.

Q. I call it bills and accounts receivable; I had reference to the first asset, debt outstanding. It is on the asset side.

A. Yes, sir, there was a decrease in the outstanding debt on the asset side.

Q. To what extent?

A. $235,911.36.

Q. Was there any falling off in the third column, stocks, on the asset side?

A. Yes, sir, there was.

Q. To what extent?

A. $37,650.

Q. Now, was there any falling off between the years 1860 and 1861 of the fourth item, specie, on the asset side?

A. Yes, sir.

Q. To what extent?

A. $152,190.04.

The Master: I want to suggest here that if we do not exhaust this line of inquiry this afternoon, I want Mr. Hillman to come in prepared with computations on this same line, because I do not want to wait here and have the computations made here, that is, if we do not exhaust it this afternoon.

Mr. Harrison: I think we will exhaust it.

The Master: If not, I want him to make the computations out of court and let him testify to it without delay. I cannot delay the hearing any more than is absolutely necessary for the computations. It takes an awful lot of time to get this testimony in in this way. I am sorry we had not thought of this this forenoon. Cannot you have somebody outside take these other banks and go through these banks so you can have them right ready to you?

The Witness: No, sir. We only have one copy of this book and I am constantly asked questions on it.

The Master: I do not want to hurry it at the expense of being accurate, but if somebody else could be doing it, we could pull this right off very readily.

Mr. Lilly: The delay now is occasioned by Mr. Harrison.

The Master: Yes, that is true.

Mr. Lilly: And Mr. Hillman cannot anticipate these questions.

The Master: It is not Mr. Hillman's fault. Mr. Hillman is all right. He cannot carry these things in his head.

Q. What does the tabular statement of the bank that we are now dealing with, in document No. 14, show in respect to the surplus, is there an increase or decrease in the surplus between the years 1860 and 1861?

A. There is a decrease in the Surplus and Contingent Fund.

Q. To what extent?

A. $14,906.45.

Q. You have shown by your Exhibit No. 5, page 49, that on the 1st of January, 1861, this stock had a book value of $6.30 premium or $76.30 a share.

The Master: That is $70 par value.

A. Yes, sir.

Q. Now, I ask you whether in view of the analysis of this statement upon which your figures are based and which we have just gone over, the condition of the bank, in your judgment as an expert, was good, bad or indifferent.

A. Based on the figures which had been quoted only, it would show a bad state of affairs; based on the entire trial balance it is not a bad showing.

By The Master:

Q. Does it indicate a prosperous condition or otherwise on the part of the bank?

A. Prosperous, when I take the entire trial balance into account. If I am confined only to the items mentioned it will show a very bad state of affairs.

By Mr. Harrison:

Q. The report I guess will speak for itself, the tabular statement that we are dealing with.

A. Yes, sir.

Q. Do you show the same result for the year 1863 that you do for January, 1861, in respect to this bank?

A. Yes, sir, with the same notations on the exhibit, page 38 of the blue prints.

Q. You relied for the year 1863 upon the same report of the officers and tabulated statement that we have been considering and which you relied upon for January, 1861?

A. Yes, sir.

Q. And outside of what is shown on that statement, you have no knowledge or information about the value of the stock of this bank at either period, January 1, 1861, or June 20, 1863?

A. Nothing outside of the statement shown on page 38 of the blue prints.

Q. And that statement is founded upon the report of the officers found in Document No. 14, is it not, which we have just been investigating and analyzing?

A. Yes, sir, it is, together with the notation of the dividend which is found in other places.

Q. You did not I believe look to the question of a market quotation for the stock of this bank at either period?

A. No, sir, I have made no investigation as to the market quotations of this stock.

Q. Is the market quotation of stock an important element in determining what its value is?

A. No, sir, I would say it was a secondary evidence only.

Q. That then according to your judgment would not be a matter that one would take into consideration in determining the value of stock?

A. No, sir, only as a secondary evidence.

Q. What do you mean by secondary? Do you mean to say that it would not influence your judgment as to the value of this stock?

A. I mean that in the value of the stock as evidenced by market quotations other elements enter into it which have nothing to do with the stock in question, for instance, the tightness of money, and often times a corner in stock or shortage in stock.

Q. I am not referring now to any special circumstance that might be taken account of in the matter of market quotations of stock, but I am inquiring as to the general proposition

whether the market quotations of stock, that is to say, the market value of the stock, as represented by the sale as shown by the market quotation—

The Master : Why don't you confine your inquiry to bank stock?

Mr. Harrison: I will take bank stock. I was inquiring with reference to any stock.

The Master: I do not know that you want to make it as broad as that.

Mr. Harrison: I may have done that already in reference to railroad stock, but I thought the question would be applicable to any security.

The Master: I have no suggestion to make. I did not know but what perhaps you would prefer to confine it to bank stock rather than cover the whole broad field of stock speculation generally, but you pursue your own idea.

Q. I just want to know if I correctly understand you as giving the expert opinion that the market quotations if of any importance at all, are only secondary in influencing the judgment as to the value of that stock at a particular time.

A. Yes, sir.

By The Master:

Q. What do you consider the primary factor in determining the actual cash market value? Now, it is not a question of intrinsic value, but a question of the actual cash market value, which may be quite a different thing from intrinsic value. You appreciate that difference I take it?

A. Yes, sir.

Q. What do you consider the primary factor? You say this is secondary. What in your judgment is primary in determining the actual cash market value, that is, what it will sell for?

A. In determining the actual cash market value it would be the quotations of an active or reasonably active market.

Q. You mean that would be the primary factor?

A. Yes, sir.

Q. I may have got you wrong, but I understood you to say

in answer to Mr. Harrison's examination that it was a secondary factor.

The Master: I simply want the witness to have an opportunity to place himself right.

Q. Your judgment is then that a normal market quotation, uninfluenced by corners or artificial efforts to control the market, would be the primary factor, is that what you mean?

A. Yes, sir, necessarily because that would indicate what the cash value was, and you could not get more for it than the stock quotation.

The Master: I think that covers the whole ground. I was simply trying to get what the primary factor was.

Mr. Harrison: That is what I am trying to get at.

The Master: Have I helped you some?

Mr. Harrison: Yes, sir, you have helped us both.

By Mr. Harrison:

Q. Then if I correctly understand you, market quotations of bank stock are of primary importance in determining the actual cash value of the stock?

A. Yes, sir; you understand me correctly in determining the amount of cash which you could get for the stock, is that what I understand?

Q. You draw your own distinctions.

A. In determining the amount of the cash which you could obtain for the stock at that period.

Q. Does not that represent its market value?

(No answer.)

Q. What became of this bank, if your investigations tended to devolop the subsequent history of the bank, after June 20, 1863.

A. I don't know what became of it.

Q. Your investigations did not extend beyond June 20, 1863?

A. Yes, sir, we ran a little beyond June 20, 1863, in determining whether or not dividends had been paid on this stock

later on, so that we ran beyond that date up to, I think, if my reccollection serves me, January 1, 1865.

By The Master:

Q. What did you find there?

A. Dividends being paid on the stock.

Q. Did you find any after that date?

A. No, sir, because we ended all investigations, as I told you, in April, 1865, on account of a break in the books of the State of Virginia, and we stopped all investigations at that point, unless we came to sales of stock afterwards, but taking off dividends or anything of that kind, we stopped there.

By Mr. Harrison:

Q. You found the books of Virginia broken, but did not find the banks broken?

Mr Holt: He did not say that.

A. I made no investigation of what became of the banks after the payment of that dividend.

Mr. Harrison: I will at this moment because my attention is called to it, go back to Class D, page No. 36 of the blue prints, and the question I want to ask is merely because your Honor inquired this morning if there was an agreement between the accountants in respect to the accuracy of the figures stated.

The Master: Yes.

Mr. Harrison: Did that inquiry apply to 1863 or to 1861?

The Master: That was intended to apply to both 1861 and 1863. Now, if there is any inadvertence about that we can correct it of course. I will say this, where that statement appears generally to have been made it will not foreclose either side from raising a question as to an item, but if no questions are raised to items, why, the admission goes. We can clean the record up by the admission, but that does not foreclose you from showing that inadvertently an admission was made that ought not to have been made. But unless attention is called to some particular item, the admission goes and the record is cleaned up as far as that is concerned.

Mr. Harrison: Yes, sir. In that connection I will say

that item 20 on that blue print, Blue Ridge Railroad, tolls for use of, this is June 20, 1863, there is extended under the totals an item of $5,853.81.

The Master: Yes.

Mr. Harrison: And the attention of the West Virginia accountants was called to that item this morning as an erroneous item, it having been paid on March 2, 1863.

The Master: That does not affect the accuracy of the mathematical statement?

Mr. Harrison: No.

The Witness: I say that the item which is entered there was entirely erroneous, the entry as of the date of January 1st.

The Master: Put that this way, the entry of $5,853.81 under the column headed totals is an erroneous entry, is that right?

The Witness: Yes, sir; it should be $30,266.80.

The Master: That is, $5,853.81 should be stricken out and this item of thirty thousand odd dollars should be inserted in its place?

The Witness: Yes, sir.

Mr. Harrison: We just wanted to get his statement of whatever correction he wanted to make.

The Witness: Shall I proceed?

The Master: Yes.

The Witness: The entry as mentioned here was of January 1, 1863, and should have been entirely ignored, since we are dealing with the date of June 20, 1863. It seems however that my assistant's eye got that entry and used that, which was the line above the one he should have used, and pro rated that from the date of its payment, March 2, 1863, using the date 1864 which applied to the entry below, and therefore the mistake was made. He was catching one line above the proper entry.

The Master: You say then there ought to be inserted this $30,000 in its place?

The Witness: Yes, sir, which is an amount paid March

31, 1864 of $64,984.49, totals for the year ending January 1, 1864, which pro rated on the time basis yields $30,266.80.

The Master: That item will be checked up later by Mr. Potter?

Mr. Harrison: Yes, sir.

By Mr. Harrison:

Q. Take up the next item, Bank of the Valley, shown on Exhibit No. 5, page 51 of the printed exhibits. What do you show the total number of shares owned by the state in the stock of that bank to be?

A. 4,839 shares.

Q. And with a par value of what?

A. 100; total of $483,900.

Q. And what is the book value of that stock according to your exhibit as of January 1, 1861?

A. $111.20.

The Master: Per share?

The Witness: Yes, sir, per share. Your Honor, I will have to make a corrected statement here on my testimony a moment ago, and that is, the last dividend that I find paid to the state on account of its bank stock was, on the Bank of Virginia, January 3, 1863; Farmers' Bank, June 11, 1863; Valley Bank, January 23, 1863; Exchange Bank, July 10, 1863, and the Northwestern Bank, February 4, 1861, as that bank was over in West Virginia.

Mr. Holt: Do you mean by that that those are the last dividends you found paid by those banks?

The Witness: Paid by the banks to the State of Virginia.

Mr. Holt: That is what I mean.

The Witness: Yes, sir.

Q. Look at the balance sheet of the Bank of the Valley, document No. 14, page 35.

A. Yes, sir.

Q. I will ask you if you have not based your calculation of the value of this bank on a surplus which contains a possible loss of over $43,000, represented or rather shown by the statement on a payment deficiency in the cash account of the late

teller of the mother bank, arising from overdrafts and so forth remitted by him, $13,522.12, and this notation by the directors of the bank, "In addition to the amount of ascertained liabilities as stated, it is proper to add that there may probably be due to the mother bank the bank's deposits above $30,000 for omissions on the part of the late teller to enter credits for remittances and deposits. The precise amount not yet accurately ascertained. No ultimate loss however to the bank by his credits is apprehended."

A. However that may affect the balances of the profit and loss in the bank, I have not considered it.

Q. Referrring to our schedule, page 53, do those notations that I have just read and the description of the deficiency due on account of the overdrafts permitted by the teller appear?

A. No, sir.

Q. Why not? Should they not appear in order to be an exact copy of the balance sheet?

A. No, sir, they should not be a copy of the balance sheet, they should not appear.

Q. They are on the balance sheet as shown by the report of the officers, are they not?

A. They appear as foot notes on the same sheet where the sheet is shown, they are not part of the balance sheet.

Q. If they are explanatory of the balance sheet ought they not to be shown?

A. No, sir, I think not, when the foot note on page 35 is considered, no ultimate loss however to the bank is apprehended.

Q. If you were auditing the bank would not you take that up as a contingent liability?

A. I would mention it, but I would not take it up as a liability until I had determined the amount.

Q. Then as the directors saw fit to mention it on their report, their balance sheet, my question was, in order that we might have the benefit of an exact copy as was purported to be of that balance sheet, why did you not include it?

A. Because it is not included in the balance sheet.

Q. What do you mean by not included in the balance sheet?

Do you mean to say it is not on the page that the balance sheet appears on?

A. Yes, sir, it is printed on that sheet.

Q. That is what I mean, that it is on the balance sheet, it is printed on the same sheet that the figures are printed on.

A. All right, sir, it is printed on the same sheet that the figures are printed on. I did not take it into account, nor would I consider it necessary to take it into account.

Q. And it is explanatory of the account?

Mr. Holt: I would like to ask a question.

Mr. Harrison: I would rather you would re-examine him.

Mr. Holt: I want to ask whether in adding up the liabilities on the one side and the assets on the other side the item appears in either column.

The Witness: No, sir, it does not.

Q. Do you mean to say that the $13,522.12 is not in either column?

A. Yes, sir, that is taken into account.

Q. And that is the item that the directors qualified by saying that it is a deficiency in the cash account of the teller?

A. Yes, sir.

Q. With a foot note explaining it?

A. Yes, sir.

Q. Neither foot note have you put on your alleged copy of that document or have you put on it the explanation which the directors gave of that item of $13,522.12?

A. No, sir; I have not copied either footnote nor another foot note which is headed indebtedness of directors, which immediately precedes this foot note.

The Master: How much did the directors owe?

The Witness: January 1, 1861, it shows $52,308.59.

Q. Does the comparative statement show any decrease in the profits of this bank between 1860 and 1861, the comparative statement on the next page?

A. Yes, sir, it shows a decrease of $4,519.60.

Q. That is profit and loss and surplus, isn't it?

A. Yes, sir.

Q. Now, as to the deposits?

A. That also shows a decrease in deposits.

Q. Of how much?

A. Of $48,051.99.

Q. Do you give the same value to the stock of this bank, to the Bank of the Valley, in June 1863, that you do in January 1861?

A. Yes, sir.

Q. And is the value of June, 1863, based upon the same reports that the value for January, 1861, is based on?

A. Yes, sir.

Q. And independently of those reports you have no knowledge or information as to the value of this stock at either period?

A. No, sir, outside of that and of the dividends quoted as declared upon sheet No. 40 of the blue prints, 1863.

Q. I will ask you the same question in reference to this bank, did your investigations or inquiries lead you to the ascertainment of the fact as to what became of the bank, whether it ceased to exist or whether it is still in existence?

A. No, sir, I made no investigation.

Q. Do you know what became of the state's holdings in this or either of the other three banks that we have been discussing?

A. No, sir, I do not.

Q. Now, I call your attention to the Exchange Bank, shown on your exhibit No. 51, page 52. What is the total holdings of the State in that bank as shown by your exhibit, January 1, 1861?

A. 8,755 shares.

Q. And par value of how much?

A. Par value of $100, $875,500.

Q. What do you show the net value, you call it book value of that stock, to be January 1, 1861?

A. $107.40 per share.

Q. Or premium of $7.40, wouldn't it be?

A. Yes, sir.

Q. Well now what do you show to be the profits on which your book value is based?

A. $342,170.29.

Q. Does not that include $191,584.24 described as a contingent fund?

A. Yes, sir, it does, and is so stated on page 52.

Q. What were the earnings of this bank, as shown by the tabular statement found on page 23 of Document 14, for December 31, 1860?

A. The profits of the institution entered there are $150,586.05.

By The Master:

Q. Is that the way it appears in the report, "Profits of the institution?"

A. Yes, sir.

The Witness: And I do not consider that they are the profits of the bank for the year at all.

By Mr. Harrison:

Q. What dividend was the bank paying, or did it pay for that year?

A. 7½ per cent.

Q. What would the total dividend amount to?

A. $235,282.50.

Q. Then if the total dividends amounted to that figure, namely $235,282.50, and the profit earned, the profit of the institution earned as of December 31, 1860 was $150,586.05, the bank did not earn its dividend, did it?

A. If those are the facts it did not earn its dividend.

Q. Well, now by how much did it fail to earn its dividend, based on those figures?

A. Supposing those to be the facts, it failed to earn its dividend by $84,695.45.

Q. I find that the sworn statement of the officers of the bank report the profits of the institution of that year to be $150,586.05, as you have testified to. What is there in the statement to indicate that the sworn statement of the officers is not correct?

A. That is a running account, the profits of the institution,

to which the profits are added and from which the dividends are deducted, and from which from time to time payments may be made to a contingent or surplus fund. It is a running account and does not represent the earnings.

Q. How do you know it is a running account? Have you seen anything except this statement upon which you base that statement?

A. No, sir, but it can readily be deducted by a comparison of the profits and losses for this year and for the last year.

Q. Then it is a deduction that you draw in spite of the explicit statement of the directors?

A. It is an absolute fact which you can draw from these two statements. The profits of the institution, I state are a running account, and that when this statement is made of the directors—

By The Master:

Q. How did you know what was in that running account if you had never seen it?

A. For the reason, your Honor, that the dividends must come from the earnings or from the surplus. It is shown that in each of these years which we have examined the dividends have exceeded this amount which they say were profits of the institution. If they had been the entire profits that would have been a wiping out of the profit and loss account and a severe reduction of the surplus account. Therefore that must be a running account, and the profits which are carried to that account before the deductions for dividends or other items are made must have been larger than this amount. Therefore it is absolutely sure that the profits must have been larger.

By Mr. Harrison:

Q. That is your deduction? Am I correct in that?

A. Yes, sir.

Q. Now, how does your June 20, 1863, statement turn out in respect to the value which you give this stock as of that date?

A. We have used the same value, viz. $107.40 per share, in 1863, page 41 of the blue prints, as in 1861.

Q. And you have no other information or knowledge as to its value on either date except what you have derived from the statement of the officers of the bank as contained on Document No. 14?

A. None save that and the notation as to dividends paid which I have made on page 41 of the blue prints.

Mr. Lilly: Mr. Harrison, may I ask just one question?

Mr. Harrison: Yes.

By Mr. Lilly:

Q. You have given an explanation with reference to this last bank. Does that apply to the other banks concerning which Mr. Harrison has asked you?

A. Yes, sir, it does.

By Mr. Holt:

Q. In other words running account covers the profits of the institution?

A. Yes, sir.

Q. In the case of all banks?

A. Yes, sir.

Mr. Holt: That will save a tremendous amount of re-direct examination on that point.

By Mr. Harrison:

Q. Now, we come to the next item—

The Master: Before you go to that I should like to have you put into the record his theory by which he demonstrates the existence of this running account.

Mr. Lilly: I think I could make a statement possibly—

Mr. Harrison: Let the witness state.

Mr. Lilly: I thought he had finished with that examination.

By The Master:

Q. What I want is, you say you can take the history of this bank for two years and demonstrate that this item of profits

of the institution does not cover all of the profits of the institution. Now take the trial balances, for two years and give me your figures, and put the demonstration on the record so that I can understand it. I want to know how it is, from the trial balances of this bank, it can be demonstrated that there was in existence a running account, the result of which was $150,586.05. Now cipher that out for me so that I can understand it.

Mr. Lilly: Your Honor does not mean to call for it at this moment?

The Master: Yes, I want him to put it right in here now. He can do it if it does not take too long.

Mr. Harrison: He might do it over night.

The Master: Then I won't let him stop to do it now. but I will have him bring that in to-morrow morning the very first thing. Be prepared with a concrete, precise, mathematical demonstration of this proposition, so that it can be clear on the record, so that I can understand it. I feel bound to say that I do not understand it now, and it does not go for anything unless I do understand it.

The Witness: All right.

The Master: You know what I want, Mr. Hillman.

The Witness: Yes, sir.

By Mr. Harrison:

Q. Now we come to the Northwestern Bank, page 53. What is the amount that you show there to be the holdings of the State of Virginia in that bank on January 1, 1861?

A. 3,744 shares, $100 each, $374,400.

Q. How much of that 3,744 shares was what was described as bonus stock?

A. I do not know, sir. I do not know what you mean by bonus stock.

Q. Well, it all appears in the original record, and there—I will give the reference if it is necessary, but I won't stop to do it now—there it appears that 326 shares of that amount was called bonus stock, and conceded that the State had not paid

any consideration for it, but it came as a bonus with a subscription.

Mr. Lilly: You mean to introduce proof of that later?

Mr. Harrison: I will refer to the record. I am not going to prove it; it is in the original record now. I thought the accountant had said something about it in his direct examination.

The Master: Of course if you rely on part of the original record to establish that fact it will be necessary to call their attention to it undoubtedly. It is in the summary of the Master's report.

Mr. Lilly: I have not seen that. They ought to introduce it.

The Master: It cannot go into the record without your attention being called to it.

The Witness: No, sir, I am not familiar with that fact, if it is a fact, that 326 shares is bonus stock.

Mr. Holt: It would be immaterial on the question of value anyhow, whether it was given to the State or bought by it. We owned it, however it was.

Mr. Harrison: I am going to refer to that again.

Q. What do you show to be the market value of 3,744 shares not market value, I mean your book value, of the Northwestern stock, January 1, 1861?

A. $108.40.

Q. That gives a total value of how much?

A. $405,849.60, page 53 of the printed record.

Q. You have charged that to the State of Virginia have you not?

A. Yes, sir.

Q. Why did you do that?

A. Because the State of Virginia at that time owned these shares.

Q. Did you charge the value of that stock to the State of Virginia under your statement of June 20, 1863?

A. Yes, sir.

Q. Why did you do that?

A. The books of Virginia showed that amount of stock still on them as still on hand.

Q. Were you aware that the supplemental answer of the defendant conceded that whatever value that stock possessed should be charged to the State of West Virginia?

Mr. Lilly: I want to correct that as a statement of fact because we concede only a certain part of it. Part of it was taken over by the Jefferson people.

Mr. Harrison: I said whatever value the stock possessed was included in the part that he charged to the State of West Virginia.

Mr. Holt: You misunderstood Mr. Lilly.

The Master: If there is any question raised about what the answer says, refer to it.

Mr. Harrison: I will withdraw my last question and put it over again.

Q. Were you aware that the supplemental answer of the defendant conceded that $210,200 of the value of that stock should be charged to the State of West Virginia?

A. Yes, sir; I was.

Q. And in spite of that you charged the whole of it to the State of Virginia?

A. Yes, sir, I put the whole of it up for consideration. I had as yet made no deduction from the totals on account of the transfer of that stock of the Northwestern Bank; and at the same time I might mention, of the Fairmount Bank, to West Virginia.

Q. Why were you putting up for consideration the item that West Virginia did not claim?

A. We have this item to show the total value of that stock on that date. Afterwards there was practically a payment made on the stock, you might call it so, by transfer to the State of West Virginia, of certain bank stocks, which I have not taken into consideration in this computation. I did not consider that it had its place here.

Q. You know how much this stock cost the State of Virginia?

A. I should say it cost the State of Virginia par as far as my knowledge goes.

Q. Do I understand you to say now that the State of Virginia paid $374,400 for this stock, for the 3,744 shares?

A. Yes, sir.

Q. What is your authority for that statement?

A. I have only the authority that it was entered upon the books as of that value, par value, on that date. I did not run back to see whether it had been actually paid in in money; I supposed of course it had.

Q. Now by reference to Defendant's Exhibit G-1, page 10, page 820 K of the original record, paragraph 7 of the Decree you will find the total amount of that stock, January 1, 1861, is shown to be 3,418 shares, which exhibit did not take into account 326 shares which the State had acquired without paying any money for them. Do you find the total given there?

A. Yes, sir.

Q. As 3,418 shares?

A. I do, yes, sir

Q. Now by reference to the report of the Master, at pages 189 to 192 inclusive—have you examined the report of the Master?

A. Yes, sir, I have read it.

Q. Did you examine what he had to say about this stock?

A. Yes, sir, I have read his report.

Q. Well, he charges to West Virginia the total value of the 3,418 shares, does he not?

A. I do not recall, sir.

Q. Well, if you will look at the page, I will be glad if you will so that we may be in agreement about it. Have you got the report before you?

A. I have not.

Q. I will hand it to you—or I will read it to you.

The Master: What is the page of the report?

Mr. Harrison: The discussion begins on page 189, about the center of the page, and the precise reference is about the middle of page 190.

Q. As appears from the report of the Master it was first conceded by West Virginia that the total value of 3,418 shares should be charged to her—

Mr. Holt: Is that conceded in the Master's report?

Q—the point being made that West Virginia ought not to be charged with the 326 shares, which Virginia did not press. Subsequently, after making the concession that West Virginia should be charged with the whole value of 3,418 shares, West Virginia's counsel amended that contention and insisted that she ought not to be charged with more than $105,100, as shown on page 190 of the Master's report. But under the findings of the Master, which are concluded on page 192, the West Virginia contention was rejected, and West Virginia was charged by the Master with 3,418 shares, at a value of $125 a share, which he ascertained to be the reasonable value of the stock as of January 1, 1861.

Mr. Holt: At what do you put the value of that stock on your schedule there?

The Witness: $108.04.

Q. Making a total charge against Virginia on account of the Northwestern Bank of $427,250, which excluded 326 shares, because West Virginia thought she ought to be excused from accounting for that, as the State has not in the first instance paid money for it.

Mr. Lilly: Is it contended that West Virginia got the branch bank over in Jefferson?

Mr. Harrison: I did not understand your question.

Mr. Holt: The part of that finding, your Honor, if I understand it, is the result of the lack of evidence.

Mr. Harrison: All the evidence was here, I think, Judge.

Mr. Holt: Well, if I am wrong you will correct me. The theory being that the whole of that Northwestern Bank went to West Virginia, when as a matter of fact it did not.

Mr. Harrison: That was the contention that West Virginia's counsel made.

Mr. Holt: It had a branch bank in Tazewell, Virginia, that carried a part of these assets with it and never got across the State line at all. How much was that, Mr. Lilly, $160,000?

Mr. Lilly: Well my memory is about $160,000; I do not remember definitely.

Mr. Holt: The theory there was that it was all over in West Virginia, when it turned out subsequently, or seems to be a fact now at least, that one of its branches was still in Virginia and we did not get that at all.

Mr. Lilly: And the Confederate government took charge of it.

Mr. Holt: Of course that will be up to us to show.

Mr. Lilly: It is up to them to show it.

Mr. Anderson: My recollection is it was a claim set up here after the hearing was closed, and some exhibits filed or sought to be filed by West Virginia, asserting the fact just now stated by Judge Holt.

Mr. Harrison: Even if there was a branch at Tazewell County, that would not affect the disposition of the stock of the bank.

Mr. Holt: Certainly not, but we are trying to ascertain now the value of that stock. Then any portion of it that West Virginia got of course would be deducted from the sum total.

Mr. Harrison: That value has been once definitely ascertained, the value of the stock of the Northwestern Bank. If there is to be any amendment now it would be to increase the charge against West Virginia by charging her with 326 shares that were omitted before, after the value ascertained by the Master.

Mr. Lilly: The value ascertained by the Master was solely on the basis of dividends, and now we show the dividends and we show the financial standing of the bank.

Mr. Harrison: You can impeach the report of the Master as much as you please; I am merely showing what the report was.

Mr. Lilly: We are willing to take that as the financial basis of valuing stock of all the banks.

Q. In spite of the findings of the Master, as called to your attention again, and with which you say you are familiar, that 3,418 shares of the stock of the Northwestern Bank had been charged to West Virginia, and in spite of the admission

of the defendant in her supplemental answer that she should be charged with $210,200 of the value of said stock, you have charged Virginia with the ascertained book value of all of the stock of the bank, including bonus, have you not?

A. Yes, sir, leaving the settlement of how much was returned to Virginia as an after consideration.

By Mr. Lilly:

Q. To West Virginia?

A. To West Virginia as an after consideration.

By The Master:

Q. How much was received by West Virginia and for which she should be charged, that is what you mean?

A. Yes, sir, I will amend my answer that way.

Mr. Holt: Now that is the state of his exhibit, and it speaks for itself.

The Master: Then any controversy about the foundation for any of these conclusions as to which you do not agree I will hear you on later and determine.

By Mr. Harrison:

Q. Now instead of crediting Virginia by the value of the Northwestern Bank stock you have charged her with it and included it in $4,060,487.02, have you not, carried into your summary?

A. Yes, sir, I have carried it into the summary of $4,060,487.02.

Q. Now if that is taken out it will have to be taken out twice, won't it? If it is an improper charge it will have to come out, won't it?

A. Yes, sir.

Q. And if it ought to be charged to West Virginia you would have to take it off again, wouldn't you?

A. No, sir.

Q. If it was charged instead of being credited, won't you have to take it off twice?

A. No, sir, it is included in the items for which Virginia has got to account to West Virginia, supposing it of course to be of value, and in accounting to West Virginia they are allowed a credit of the full amount of the stock, but the charge should be for mutual consideration as to the cost of that stock before the full credit is allowed.

Q. Now you have charged this item to Virginia, have you not?

A. Yes, sir.

Q. If it is an erroneous charge it ought to come out, ought it not?

A. It is afterwards to be taken out for whatever it is worth.

Q. Now if it turns out to be an erroneous charge it will have to come out, if it also turns out that Virginia is entitled to be credited with it you will have to take it out again, won't you?

A. No, sir.

Q. Are you quite sure of that?

A. Yes, quite postive.

The Master: Then watch his question, and when you answer it don't spend any time as to the effect of the answer upon the results of the case, but just notice what his question is and answer the question. I am afraid you have not got just the full purport of the question. It is not up to you what the consequences of the question are, but just get the question that he asks you. And whether it is a proper question or whether it is predicated upon anything that exists is not up to you. I am afraid you may have gotten a little bit confused on that.

The Witness: No, sir, I think that is a correct answer.

Q. I will try you again. I find in the summary of $4,060,-487.02 you have charged an item of $405,849.60 against Virginia—

Mr. Holt: That is to the joint account of Virginia and West Virginia.

Mr. Harrison: Now Judge, I do not know what you are talking about when you are talking about the joint account. I am dealing with the witness' summary.

Mr. Holt: Well, I have described it accurately.

The Master: Your assistance does not seem to be appreciated, Judge.

Mr. Holt: It does not.

Mr. Harrison: I would like to see if the witness and I cannot have a chance to understand each other about the idea.

The Master: That you shall have.

Q. I will begin again. You have charged in your summary of charges against the State of Virginia an item of $4,060,487.02. Am I right about that?

A. Yes, sir.

Q. Included in that item is a charge against Virginia of $405,849.60 on account of the Northwestern Bank, is there not?

A. Yes, sir, I understanding of course that this is a charge against Virginia items for amounts which are afterwards to be prorated. It is not a direct charge against Virginia of that amount.

Q. Now I say if you have charged that item improperly, if it was an erroneous charge, it ought to go out, ought it not?

A. Yes, sir, if it is an erroneous charge.

Q. And if you took it out what would be the balance left?

A. $3,654,638.22.

Q. Now if, instead of charging it as has been erroneously done, you credit Virginia with it, what would be the amount left?

A. If I make a duplicate charge against West Virginia for it, I would then have to make a further deduction from the $3,654,638.22.

The Master: Now that is exactly the legal purport of the question that Mr. Harrison put to you about ten minutes ago, and if you had watched him carefully you would have answered him in the same way then. You had in mind that it was a different proposition. We would have been just that much farther along. That is why I suggested that you pay a little more careful attention to what he says. You ignored the idea of crediting it. Of course you have landed in the same place now.

The Witness: I think, your Honor, when you come to study the case you will find that my answer covers the case exactly.

The Master: You are not to blame perhaps for being somewhat confused about it, but you would have landed just where you have now landed.

The Witness: Your Honor, I think when you analyze what I have just now said and what I said five minute ago that they coincide exactly.

The Master: Well, there is no harm done anyway.

Q. Now we will take up the next bank in order, Exhibit No. 5, page 55, Fairmount Bank. What do you show to be the total number of shares owned by the State of Virginia in that bank?

A. 500 shares, par $100, total $50,000.

Q. Are you not mistaken in respect to the number of shares and the par?

A. I think not. I have looked over the accounts and I see nothing on the books which would indicate whether it was 1,000 shares at $50 each or 500 shares at $100 each.

Q. It appears from the original record in the case, paragraph 7 of the Decree, page 820-K, the same page that we examined in connection with the Northwestern Bank, that the total amount of shares held by the State in the Fairmount Bank was 1,000, and that the par value of the stock was $50 a share, or $50,000.

Mr. Lilly: Does it appear where that was taken from?

Mr. Harrison: That is an agreed schedule between the two accountants, and the evidence does not show that fact. I did have the page a while ago but I have lost it, and I do not want to take the time to hunt it up again; but that is the fact.

Mr. Holt: The total capital is $50,000.

Mr. Harrison: The total capital is correctly stated, but the schedule is incorrect as to the par and the number of shares.

Q. Now what value do you put upon that stock?

A. $103.87 for every $100 worth of stock.

Q. And do you give it the same value in 1863?

A. Yes, sir, I do.

Q. Have you charged the value of that stock to the State of Virginia?

A. I have charged that value upon my summary.

Q. Upon your summary of what?

A. Of the amounts which should be taken into consideration in determining the amount due from Virginia to West Virginia. In that sense I have charged it to Virginia.

Q. Why did you charge it in any sense to Virginia, in view of the concession of the defendant in her supplemental answer that that should be charged to West Virginia?

A. For the same reason as mentioned in regard to the previous stock, that whatever credits were due should be or would be taken up as an after consideration and not at this point. At this time the stock had not been turned over to West Virginia.

Q. Now if it is charged to Virginia and you merely give her credit for it she would not be getting any value, would she? She would not be getting the benefit? She ought not to be charged with it at all, ought she, if it is properly chargeable to West Virginia?

A. I am charging to joint account, I say, and leaving the credits afterwards to take care of themselves.

Mr. Holt: Your Honor, will you permit me to make a little statement right there, because I do not want any confusion of our theory. I think Mr. Harrison has our theory on that. We are trying now to ascertain the total value of the common assets as of 1861, we will say. The banks are included. When we get that total value, 76½ per cent. thereof Virginia is entitled to, and we are entitled according to our contention to the remaining 23½ per cent. But we have to get the total value of the joint assets. Then of that we first take 23½ per cent. to find West Virginia's part and when we find that, if it should be subsequently discovered that any part of that has been heretofore paid over to her, as in the case of the banks across the mountains, why it would be deducted from

that 23½ per cent. of ours. You would not be charging up and deducting in one place the whole joint asset in another.

Mr. Harrison: Your Honor will perceive the fallacy of the statement of Judge Holt, coming here and selecting from a number of investments made by the original State of Virginia certain of those investments which it is said West Virginia is entitled to participate in, to have a percentage of those investments assigned to her. Would it be proper to include in that list an investment that West Virginia had gotten the entire benefit of and has gone with, and which it is conceded Virginia had no share in whatsoever? That is the point, and there is the fallacy of the Judge's statement—of his position I mean, when he speaks of having a joint account which is to be divided according to a percentage, to go to one side or the other. The theory of the supplemental answer is that they have discovered something, that they have discovered a certain number of named investments which it is said Virginia failed to account for and which West Virginia is entitled to a certain share of. Well, surely, if that is true it would not be right to include in that list an investment that West Virginia got the entire benefit of. You could not hold Virginia accountable for somethng that West Virginia has had the entire benefit of, incorporate that in the list and say you will give West Virginia another share of it. Therefore, when we tried this case before there was no difficulty of course in eliminating those particular assets that it was conceded on all hands West Virginia had gotten. She was chargeable with those. Now here, take the Northwestern Bank and the Fairmount Bank, the Fairmount Bank about which there is no dispute, no difference of opinion, that West Virginia reaped the benefit of that entirely, and not one copper of benefit accrued to Virginia; my point is that it has no place in any column of figures that purports to embrace items for which Virginia is liable, and for which West Virginia is entitled to a percentage of. We are

not dealing with any joint account that would bring about such a result as that.

The Master: I think I understand the contention of the parties.

Mr. Conrad: As a recent distinguished citizen said, this is a condition and not a theory. You ascertained it in your former report; it is *res adjudicata,* that it was exclusively the property of West Virginia and that Virginia had no right to participate in it at all. I have been somewhat at sea at some observations that have fallen from you as to what the extent of this previous record is. It may not be out of place for me to express my doubt. I apprehend that your Honor proposes to efface the entire record. I challenge your right to do that. This is the record of the Supreme Court of the United States. The decree under which we are assembled here now does not efface this at all. This comes in under a supplemental answer, and these are supplemental proceedings to what has occurred. I have heard you several times, if I understood you correctly, speaking of having to prove something that was in this record, and God forbid; that is fixed by the decree of the court. The court has confirmed the report which you made on that record. I do not consider the decree under which we are now meeting here as in any degree or to any extent setting aside the decree confirming your report. That decree of confirmation stands. The court says that nothing in this decree shall be construed as affecting in any way its previous determination in this case. Now, you have decided and the court has confirmed your finding that this particular item here of $50,000 of stock in the Fairmount Bank is exclusively, absolutely the property of West Virginia.

Mr. Lilly: May I ask you a question. In the ultimate determination of the case did the Northwestern Bank or the Fairmount Bank computation enter into it whatever?

Mr. Conrad: My Lord, yes. You will find in the report of the Master, confirmed by the court, that the Fairmount Bank's

asset of $50,000 was conceded and admitted and adjudicated to be exclusively the property of West Virginia, and therefore all this matter about undertaking to ascertain the distributive or contributive share of Virginia in the matter is absurd logically, not personally.

Mr. Holt: Your Honor, just one word. I think we are speaking somewhat at cross purposes.

The Master: I do not think that any of this discussion is going to be productive of any advantageous result. It is all anticipating what comes later. And I may say here that I do not understand that the finding of the court in the previous case as to the Fairmount Bank in the slightest degree militates against the contention now relied upon by West Virginia; I do not think it affects it in the slightest. I will not go over it in detail, but I think I understand the situation. The only question here now is what we want in here as evidence. I will admit anything that either of you have to offer upon this item. As to the effect to be given to it, I will hear you all later. Of course the suggestion of Judge Holt or as to their theory and contention was perfectly answered by Mr. Harrison from the standpoint of Virginia; but neither of those contentions concern me right now. We are taking up the evidence and we want the evidence in, and later I will hear you all as to the effect of this evidence. There has not been a thing said on one side or the other that affects the admissibility of anything either of you want to prove in respect to this item. Mr. Harrison's cross-examination is a perfectly proper cross-examination on the schedules made by Mr. Hillman, and it is perfectly proper for him to show how Mr. Hillman understands them and how he understands them. I have succeeded in being misunderstood as to this original record. I have never intended to say that the original record was not a valid record and part of the record in this case, but what I have tried to say two or three times and what I am trying to have done is this, that when I make up my record to go to the court it will include

not only what is testified to here, but will include all of the original record that either party relies upon in connection with the contentions here, so that when the Supreme Court takes this case up and passes on it and when I take it up and pass on it I will have one record made up of the testimony in this case and all that has been introduced before so far as either of you think what has been introduced before tends to illuminate the situation here. Do I make that clear? That does not preclude the court and does not eliminate the original record, but my idea was, whatever either side relied on as a part of this original record as being legitimately probative of any fact that is pending before me here, I want them to point it out to me so that I will look those things up in the original record without going over the whole record myself, and then I wanted it pointed out to the other side so that if the other side wanted to take anything from the original record that tends to explain the matter relied upon by Virginia they will have an opportunity to do that. Of course I have no doubt but that the two records might perhaps be properly termed the legal record in this case; but we are all practical people. The Supreme Court expects me to put this case up in as concrete and concise shape as can be, and that is what I am hoping to do. Of course I am not going to make up a record here that anybody objects to. If the counsel for Virginia when they come to make up this record insist that the whole of the original record goes up as part of my record, I will put it in; or if the counsel for West Virginia insist on that, I will put it in, but the object of that suggestion was and my opinion is that it is going to be better for all concerned if we take the record we make here and then make a part of that as much of the original record as either side may think is pertinent and proper. Do I make myself clear, Mr. Conrad?

Mr. Conrad: Perfectly clear, but I do not agree with you. Pardon me. I represent in this case—

The Master : I do not propose to give this as a direction

that is going to foreclose anybody. If Mr. Conrad feels that all ought to go in, it will go in.

Mr. Conrad: It is not what is going in, but what I think ought to be kept out. I represent here the people who are paying for all of this. They have paid now nearly three hundred thousand dollars of money, and the case has not yet been decided. I want to keep down every dollar of expense that is possible to do and you talk about reprinting this record that has already cost thousands of dollars, the stenographic report of which cost over ten thousand dollars.

The Master: Eight thousand dollars.

Mr. Conrad: Ten thousand dollars I am told.

The Master: About eight thousand. It cost enough anyway.

Mr. Conrad: That is enough. I am absolutely opposed to requiring us to reprint anything that is in that book. You have spoken once or twice of not having two records for the Supreme Court. This is all one record. It may be in a dozen volumes. I have a case in the Supreme Court with fifteen distinct volumes in it. Volumes do not make any difference to the court at all. This record must remain intact. It is a record of the Supreme Court of the United States.

The Master: It can all be stipulated.

Mr. Conrad: You cannot strike any part of it out.

The Master: I do not propose to.

Mr. Conrad: If there is any conflict in this case between the record previously made and the record which is made here, if they should come in conflict, I should feel at perfect liberty, either myself or vicariously to call the attention of the Supreme Court to that fact. What has aroused me here, perhaps indiscretely, certainly for my own physical comfort, is the suggestion, the intimation, that whatever is in this record has got to be reprinted and called to the attention of these gentlemen. Why, God forbid that we should say that this is not West Virginia, the same West Virginia, that led to this intolerably

lengthy record. They are not people who are coming in here now who have not been parties or privies to this matter here before. They are affected by everything in the record, bound by everything in the record. Why should we even call their attention to anything in it? It is their record as well as ours. And now we talk about printing the bill, the demurrer, the answers, already printed. No, I protest against that; I protest against anything being reprinted that is in the record, Let it be referred to in this record by reference.

The Master: As far as I am concerned I do not care whether it is or not.

Mr. Conrad: I speak for the people who have to pay the money for this—

The Master: We will not have any difficulty about it. In the first place, you have not got to print anything from the original record that you want to refer to.

Mr. Conrad: There is a great deal in it that we want to refer to.

The Master: I do not suppose anybody will have any objection to calling my attention to what they rely on in the original record.

Mr. Conrad: This very stipulation that was proposed here this morning covers over one hundred pages, seventy-five or one hundred pages.

The Master: It can all be stipulated.

Mr. Conrad: I won't stipulate anything.

The Master: Very well, I cannot require you to.

Mr. Holt: The stipulation involves even more than the one hundred pages, because the record of the Board of Public Works is not in Exhibit No. 1; there is the difficulty; and we have been compelled to supplement that exhibit with long-winded oral testimony. I do not misunderstand the suggestion of the Master at all. The suggestion is along the line of convenience, to have a complete record, either side to have the privilege of calling to the attention of the Master such portions of the old record as may be relied upon. Of course we are not trying to destroy the record of the Supreme Court as it

stands, but as a matter of fact there has never been a decree in this case excepting the decree of reference.

The Master: I do not think we need have any misapprehension or any trouble. I understand the significance of Mr. Conrad's suggestion and I sympathize entirely with him; as far as he is concerned I do not blame him for having more or less disturbance and annonyance about the expense and the delay. The expense has been large and the delay has been great; and consistently with other things, as far as I am concerned, I propose to consult his wishes and his convenience as well as that of the other counsel in the case. I do not think we will have the slightest trouble in giving a direction as to what may be done in that regard that will be agreeable to all concerned, and certainly as far as I am concerned I shall do my level best to keep the thing within the narrowest possible limits on the line of expense. I can understand perfectly well exactly how Mr. Conrad feels about it, and it is perfectly justifiable from his point of view. I am sorry he has got the impression, at least I did not intend for him to get the impression that I thought the original record was not the record, because it is all a part of the record. I do not think we will have any difficulty about that, and especially if you are able to come to some understanding in relation to the matters suggested in connection with this stipulation.

By Mr. Harrison:

Q. What is the total amount that you have charged in your summary on account of these figures for the year 1861 and June 20, 1863?

A. $51,935.

Q. No, I intended to say for all of the banks, the total.

A. $4,060,487.82.

Q. Now, what have you charged for June 20, 1863?

A. The same amount, $4,060,487.82.

Q. Do I understand you to say that you intend to give the same explanation of your charge of the Fairmount stock in your summary against Virginia that you give in the case of the Northwestern Bank stock?

A. Yes, sir.

(Adjourned to September 8, 1914, at 10 A. M.)

BEFORE THE MASTER.

Richmond, Va., September 8, 1914.

Present, the same counsel as on yesterday.

The Master: We have the first proof of the work that is now being done by the printer laid on our desks this morning, and I would like to call the attention of the counsel on either side to it so that they can at the earliest moment examine it, so that when the time comes we can have the necessary copies struck off and this type distributed. I hope you will be prepared to give us some suggestions on that line tomorrow morning.

Continuation of the Cross-examination of

CONWAY W. HILLMAN.

By the Master:

Q. Now Mr. Hillman, just read me what you have in relation to the demonstration as to the question of whether or not the items of profits of the institution does or does not include the whole profits. I want to see just what you have on that line. Read it right into the record.

The Master: And then after that we will have the statement from Judge Holt, and Mr. Harrison will go on with his cross-examination.

A. Farmer's Bank of Virginia, one of the specimen banks, January 1, 1859—

Mr. Holt: Haven't you given us the Bank of Virginia?

The Witness: No.

The Master: I told him he could give us any one by way of illustration.

Q. You have prepared a detailed computation relating to the Farmer's Bank of Virginia and the Exchange Bank of Virginia, which in your judgment demonsrates this proposition?

A. Yes.

The Master: Now we will put that right into the record; I won't stop to have it read, and I will look it over, and if I want anything further I will examine further about it, and either of you gentlemen, if you want anything further, may examine about it. But at this time I won't take time to examine further about it. You may put it right into the record. Is that agreeable?

Mr. Lilly: Yes, sir.

The Master: As far as I am concerned I would be very much better qualified to examine about it after I had looked it over. That may go right into the record as part of your statement.

The Witness: The statement is as follows: Statement showing that "Profits of Institution" is not the total annual profit of Banks as shown by Document No. 14, and that it is a "running account" only.

FARMER'S BANK OF VIRGINIA.

January 1, 1859. Page 24, Document 14.

Had surplus and contingent fund of	$ 343,477.53
And profits of the institution,	166,695.72
Total available for dividends	510,173.25
In 1859 dividends were declared for	236,317.50
being 7½ per cent. on $3,150,900.00 Capital, which, if taken out of the above would leave a balance of	$ 273,855.75

Instead of this the bank showed on January 1, 1860, Page 24, Document 14

Surplus and Contingent	$ 331,040.09
Profits of the Institution	145,813.47
	$ 476,853.56

Which proves conclusively that the amount of $166,695.72 WAS NOT the entire earnings.

Advance now to the next year, January 1, 1860, Page 24, Document 14.

Surplus and Contingent Fund was.....$ 331,040.09
Profits of the Institution 145,813.47

$ 476,853.56

Dividends for 1860, 7¼ per cent. on $3,150,900.00...$ 228,440.25
Which would leave a balance of..... 248,413.31
Instead of this the bank showed January 1, 1861,
Pages 14 and 15, Document 14.....
Surplus and Contingent .....$ 337,067.05
Profits of the Institution 138,101.18

Or .....$ 475,168.23

Which proves conclusively that $145,813.47 was NOT the entire earnings. Therefore, we can confidently state that $138,101.18 was not the total earnings for year ending January 1, 1861.

EXCHANGE BANK OF VIRGINIA.

December 31, 1858, Page 46, Document 14, shows in this bank .....
"Excess of Surplus and Assets" Dec. 31, 1858.....$ 391,955.50
"Excess of Surplus and Assets" Dec. 31, 1859.....$ 359,632.71
This latter item is on page 28, 1861, statement, divided as follows:
Contingent Fund .....$ 205,047.67
Profits of the Institution 154,585.04

$ 359,632.71

Thus surely indicating the "identity" of Contingent Funds with surplus and profits as contended for by Mr. Hillman. It also indicated the correctness of the following:

Exchange Bank of Virginia and Branches, December 31, 1859, Pages 46 and 47, Document 14.

Excess of Assets, or Surplus—

Contingent Fund	$ 205,047.67
Profits of the Institution	$ 154,585.04
Total	$ 359,532.71

Then was declared a dividend in 1859 of 9 per cent. on $3,048,600.00 Capital Stock or $ 274,374.00

Leaving a balance of $ 285,158.71

Instead of this, the bank showed on December 31, 1860—

Contingent Fund	$ 191,584.24
Profits of the Institution	$ 150,586.05
Total	$ 342,170.29

Proving conclusively that $154,585.04 was NOT the entire earnings.

The Master: Judge Holt, if you are prepared with your statement in a general way as to what the State of West Virginia expects to show further in chief, I would be very glad to have you make it.

Mr. Holt: We expect, your Honor, when the examination and the cross-examination and the re-direct examination of Mr. Hillman shall have been completed, to take up first the Acts of the Legislature of the State of Virginia authorizing the purchase of all these stocks in question as well as the issuance of bonds thereunder. Now, we may do that by taking the Acts themselves or by taking such portions of Plaintiff's Exhibit No. 1, in the original record which gives a synopsis of these Acts as we will desire, and may probably undertake to supplement that with certain journal entries of the Board of Public Works showing the expenditures of the money under those Acts.

The Master: That for the purpose of showing that the loan is the source of the assets that you claim?

Mr. Holt: Yes, sir.

The Master: And that will be done unless you are able between you to agree on some short statement covering the record.

Mr. Holt: Of course a stipulation along that line as indicate by us yesterday would relieve us from that necessity.

The Master: Meanwhile counsel have an opportunity to get together and see what they can agree on so as to save time and space in the record.

Mr. Holt: Next after that we expect to introduce two Acts of the Legislature of Virginia, I don't recall their date just now, requiring all these railway and bank companies to make annual reports to the Governor of the Commonwealth of Virginia, and it is these reports from which we have been making up these schedules, that were directed to be made by the Acts.

The Master: That can all be taken care of by a short stipulation in the record, that all of these reports were made by authority and under requirement of the law. What you want to show is that these were official in their character, and I suggest to the other side that they have in mind that question. There is no occasion for that legislation going into the record if its effect can be stipulated in two or three lines; that is, if it is true that these reports have all been made by virtue of provisions of law, which is what you want to show, that can be stipulated and take care of that whole question.

Mr. Anderson: They are not official reports made by State officers.

The Master: They want to show that the Laws of Virginia required them to make the reports, and they want that legislation in as tending to give an official character to the information. That of course they are entitled to, and if what they state is correct there is not reason why it should not be stipulated.

Mr. Holt: In other words, there is no contention that these reports are made by State officials but they are made by railway and bank officials under the requirements of the State statutes.

The Master: Precisely.

Mr. Holt: Afterwards we will undertake to introduce the Acts of Virginia relating to the establishment, regulation and conduct of the Sinking Fund, and in that connection will introduce the Constitution of the State for the purpose of showing that these assets that we are dealing with were intended for the payment of the debt upon which we have been sued. In addition to that,

we will introduce the Acts of the Legislature upon the subject of refunding this debt. The only bearing that that could possibl have, I take it in this inquiry, would be upon the subject of interest, and and whether the question of interest should be considered pertinent before your Honor or not, still if those Acts were in the record they could be utilized by us, and we expect to introduce them.

Mr. Anderson: Which Acts are those, Judge, since the war?

Mr. Holt: Yes, sir.

Mr. Anderson: They are all in the record now; they are exhibited and printed with the bill.

Mr. Holt: I presume that some of them, if not all of them, are in there; but we should want to bring forward into the present record either the Act itself, for the purpose of convenience, or a synopsis of it or such sections of it as we would want to rely on. That is a question of convenience more than anything else.

Mr. Anderson: There have been at least two reprints of that already besides the original bill.

Mr. Holt: We likewise expect to introduce certain auditors' reports of the State of Virginia bearing upon the condition, amount and value of these assets, and likewise one or more reports of the Chief Executive of the State bearing upon the same subject. We will also perhaps introduce a map taken from the records of the State of Virginia, showing the situation with respect to all these railroads. It is a photograph of the thing that enables us to understand what was going on from a geographical standpoint better than anything else. It is for purposes of illustration more than anything else. Then there are certain exhibits that were filed with our answer that have not been proven as yet that we will prove by oral testimony as well as by the offer of the exhibits. Upon the subject of market quotations, we do not expect to offer any. We understand from the gentlemen upon the other side that they intend to do that and we will rely upon that statement, because in fact we have, in consequence of the discussion here yesterday and the day before, as I understand it, stopped our investigation along that line except for the purpose of testing the accuracy of those furnished by them.

In a general way, your Honor, this will complete our case.

The Master: Now, this is very largely documentary in its character and is not susceptible of much if any oral testimony,

so that I do not see that will take very much time, as far as the plaintiff is concerned, to meet a very large proportion of what is now proposed to be put in by West Virginia, so that relieves the plaintiffs apparently of what might perhaps be more or less embarrassment in that respect in the line of preparation. So that the only controversy that can be possibly pending here of course is as to the value of these various items that are referred to. And as to those I assume that both sides have been in a state of substantial preparation for at any rate the time since the beginning of this hearing. So that I cannot see any reason why we cannot go on without any delay. Now, Mr. Harrison, you may proceed with your cross-examination. From now on in the interests of progress, where upon the part of either side the examinations are going to involve details and computations, so far feasible I want notice given in advance so that the accountants on either side may have these computations practically made, and bring them in so that they may testify to them without delay. I do not think it is proper for me to drag this case along by having the accountant sit here before me and make a lot of detailed computations. But I am not intimating that they are not proper computations and ought not to be made, but what I mean, is, so far as possible, if we have anything of that sort from now on I want either side to be prepared with the detailed computation, so that the accountant can testify right along without these interminable delays. The accountants are doing the best they can, but I cannot wait for the witness on the stand to make the computations, provided it is feasible to have them made outside and brought in so that they may be readily testified to upon either the direct or cross-examination. If we could have anticipated, we could have saved pretty nearly forty per cent. of our time yesterday and the day before by having a lot of these computations made in advance and all ready to be testified to as the examination was going on. Of course I do not mean by that to foreclose either side from testing the accuracy or the judgment or the intelligence of any witness by requiring him to make computations on cross-examination on the spot. You get my point, Brother Harrison?

Mr. Harrison: Yes.

The Master I know how that may be, sometimes it is important to have a computation made. Of course both sides may feel

entirely free to go into that branch of the subject as far as they see fit. I do not intend for a minute to restrain anybody from any proper legitimate test on cross-examination, only to make progress. Now, then, Mr. Harrison, if you are ready.

Mr. Harrison: In respect to the exhibit which has just been offered this morning, we have not yet had an opportunity to examine it, but we reserve the right to cross-examine the witness in respect to it after we have had an opportunity to analyze it.

The Master: Certainly, that is the understanding.

By Mr. Harrison:

Q. You have testified, I think, that you did not pursue your inquiry in respect to the ownership of the State in the stock of the several banks which are under investigation in order to see what disposition the State made of these stocks. Am I right about that?

A. Yes, sir.

Q. Why didn't you do it as you did in the case of the stock and bonds of the railroad companies which the State owned?

A. For the reason that I had no method of determining what had become of them. There is nothing to show on the books of Virginia what became of them, and so far as I could learn there was nothing elsewhere; and I did not pursue any further investigation.

Q. You mean that the records of the State are silent as to the disposition which Virginia made of the stock which she held in these banks?

A. Yes, sir, I think they are.

By the Master:

Q. Were you instructed to make such investigation?

A. No, sir, I was not.

By Mr. Harrison:

Q. Did you examine Journal D of the Board of Public Works to see whether any entry was there made to close these accounts?

A. No, sir; I do not think that I did examine it for that purpose.

Q. By reference to Journal D of the Board of Public Works, under date of September 30, 1872, I find the following entry with

reference to these stocks: "To balance latter account, same having been lost at the close of the war in 1865," and those bank stock accounts were closed with that entry.

Mr. Holt: Your Honor, we object to that mode of examination. That is not cross-examination. Here is a witness who is not requested to trace these bank stocks beyond their value in 1863, is not requested to investigate their final disposition, no allegation upon that subject in the answer, he has never opened his mouth upon the subject in his examination in chief, and this is in chief upon the part of the gentlemen upon the other side. We do not believe that it should be lugged in here as a part of the cross-examination. If they want to introduce record evvidence showing the final and ultimate loss, and the date thereof, of these bank stocks, that is part of their case and it is not a part of the cross-examination.

Mr. Harrison: It may go in as a part of our case, whether it is strictly speaking cross-examination or not.

Mr. Holt: That is not the way to do it.

The Master: I do not suppose as a matter of fact that Virginia can establish as a matter of proof by a cross-examination of this character the existence of these facts. That will have to be done undoubtedly in another way. Now, just exactly what use Mr. Harrison intends to make of this question on the cross-examination, I do not yet quite know, because he has not finished his question. It might be necessary—of course I should give pretty broad latitude on cross-examination—but it may be distinctly understood that I do not understand that a reference to a public document or a reference to a fact in this manner is proof of that fact. If the plaintiffs rely upon it they will have to establish it in some other way. They cannot establish it by putting it into a question on cross-examination. But I cannot anticipate just what Mr. Harrison may have in his mind as to the cross-examination, and if it has any reasonable legitimate tendency bearing upon the accuracy of Mr. Hillman's testimony, I will rule upon that when we get the question. If you will just put the whole question, bearing in mind that the fact cannot be proved by a question in that manner, and that it will be admissible only so far as it tends to illustrate what Mr. Hillman has already testified to, I do not go quite so far as to say that I shall not allow cross-examination

upon some fact that may have been specifically testified to by Mr. Hillman, because I do not know what the rule may be here, but I do not think as a matter of fact it is of any great consequence whether we rely with great strictness on the rule. It won't make a great deal of difference to me whether it comes from Mr. Hillman on the direct-examination or cross-examination. The legal rule of course I will apply. And strictly speaking, if the United States rule applies here, Mr. Hillman cannot be cross-examined on any subject as to which he has not been examined on the direct.

Mr. Anderson: If we go beyond that we make him our witness.

The Master: That technical proposition is of very little consequence in this hearing.

Mr. Harrison: I thought so.

The Master: It will make very little difference to me whether it comes on the cross or whether it is strictly speaking in chief on the part of Virginia. Judge Holt's main criticism I think is true. I do not know that Mr. Harrison was expecting to establish as a matter of evidence the existence of this record by the questions he puts in his cross-examination.

Q. Did you find that entry on Journal D of the Board of Public Works?

A. No, sir, I did not.

Q. Did you look for it? Did you examine with reference to informing yourself in respect to that matter?

A. No, sir, I did not.

Q. Now, my question is, and I will repeat it, why did you not do it in the case of the banks as well as you did in the case of the State's holdings in the various railroad companies about which you testified? In other words, if you deemed it of importance to pursue that investigation in respect to the railroads why did you not likewise deem it of importance to pursue it in respect to the State's holdings in the banks?

A. The principal reason was because in the supplemental answer there was nothing mentioned as to what the final disposal of those bank securities was, and for that reason I did not follow it.

The Master: Does the supplemental answer refer to the disposition of the railroad stocks?

Mr. Holt: Yes, sir.

By the Master:

Q. Did you have any instructions from the counsel for West Virginia with reference to either class of securities?

A. No, sir.

Q. I mean as to this specific point, as to how far would you pursue your investigation, that is, did they instruct you to look up the matter of the disposition of the railroad stocks?

A. Yes, sir; to confirm as far as possible and get the absolute facts of the several allegations in their supplemental answer, those were the instructions.

Mr. Holt: That answer alleges, your Honor, what became of the railroad stocks, but not what became of the bank stocks. Of course his instructions were based on that answer. I do not believe there will be very much objection if they want to stipulate on that subject to show that th ebanks in the later's 60's went to pieces.

The Master: I do not know what Virginia may desire to introduce on that score, but this is a proper cross-examination and there is no objection made to it as I understand. It is competent for them to develop the circumstances under which the investigation was made.

Mr.Harrison: We intend also to introduce the annual report of the Auditor of Public Accounts for September 30, 1866, showing the State's holdings in these banks were a total loss in consequence of the war.

Mr. Holt: Now, your Honor, upon that proposition, is not that going to derange all the exhibits for them to inject into a cross-examination their part of the case?

The Master: It is not introduced. Mr. Harrison is only indicating what he proposes to do. It does not prove anything or produce any result. I do not understand that you offer it now, Mr. Harrison. It is simply the suggestion that when they get into their side of the case it is their purpose to introduce that report. Is that what you mean, Mr. Harrison.

Mr. Harrison: Yes, sir. I did not suppose that it was worth while for us to be constrained by any rigid rules of evidence in this investigation, but for the purpose of saving time I assumed there would be no objection to putting in these records at this point in order that we might save time and go on; but if the gentlemen would prefer to have it put in later, we will do it.

Mr. Holt: I have only one idea in the world and that is that we should get in the bound printed volumes, your side of the case running consecutively along and not inject it here and there. That was a question of convenience. Of course there is no real substantial objection outside of that.

The Master: I did not get the full purport of Mr. Harrison's suggestion. I did not get the idea that he was offering it now, but the impression left on my mind was that it was simply something that he proposed to offer. Do I understand that you are offering it now, Mr. Harrison?

Mr. Harrison: I say I will not do it now if the gentlemen prefer that we do not.

By Mr. Harrison:

Q. I ask you if you examined the Auditor's report, the Auditor of Public Accounts of the State of Virginia, of September 30, 1866, in connection with your investigations in this case.

A. No, sir, I did not.

Q. I call your attention to Defendant's Exhibit No. 6, page 56 of the printed exhibits, the caption of which is sale of various stocks and loans to the Atlantic, Mississippi & Ohio Railroad. What is the total of the items embraced in your Exhibit No. 6, Class F, page 56 of the printed record?

A. $4,689,436.41.

Q. There are two items in that list of stocks and loans embraced in the sale to the Atlantic, Mississippi & Ohio Railroad Company which are not extended, namely, the claim of the State on account of a loan of $800,000, due by the South Side Railroad Company—

The Master: That is No. 4?

Mr. Harrison: Yes, sir.

Q. —and all of the State's claim to a loan of $1,000,000 made

to the Virginia & Tennessee Railroad Company. If those two items are extended, your total will be what?

The Master: That last is No. 6?

Mr. Harrison: Yes, sir.

A. $6,489,436.41.

Q. What amount of the items embraced in this exhibit is charged in your summary against Virginia under Class F?

A. There are none of the items on this exhibit charged against the joint account of Virginia and West Virginia from this exhibit. If your question calls for it or desires it I will state what items are finally carried into that total and from what exhibits. Is that your desire, Mr. Harrison?

Q. My question was, what is the total charged under Class F in your summary against Virginia.

A. $4,276,044.39.

Q. What amount of the items in this same exhibit, page 56, are charged in your summary against Virginia under Class C?

A. $1,023.685, as shown on page 13 of the printed record.

Q. Didn't you testify that the South Side Railroad loan of $800,000 should be included under Class C as a charge against Virginia?

A. Yes, sir.

Q. Why then don't you include it now?

A. For the reason that we have not yet filed our exhibit amending page 13 to show these amounts or what you might call the corrected or amended exhibit, and I am quoting only from page 13, as the totals are shown there.

Q. But you intend to add the $800,000 as a proper charge under Class C, don't you?

A. Yes, sir.

Q. Then what will be the result with that added?

A. $2,100,000.

The Master: Why cannot we have that corrected schedule tomorrow morning or to-day noon? You ought to have it for convenience of cross-examination, Mr. Harrison.

The Witness: That is all ready.

The Master: Then hand it to the other side right now so that they can have it for cross-examination, because it is involved right here at this point. You would like to have it, wouldn't you,

Mr. Harrison?

Mr. Harrison: Yes, sir.

By Mr. Harrison:

Q. Before you added the $800,000. South Side loan didn't you testify that the total was $1,023,685.00?

A. Yes, sir.

Q. Then if you add $800,000 to that what will it make?

A. If I add $800,000 to that it would make $1,823,685; but on the amended exhibit or the corrected one there would be $163,000 further added to that on account of the Norfolk & Petersburg loan, and $113,315 on account of the Virginia & Tennessee loan, which would bring the total up to $2,100,000.

By the Master:

Q. You have got that corrected exhibit right there, have you not?

A. Yes, sir.

Q. Just hand Mr. Harrison a copy of it and hand me a copy of it, so that I can follow right along.

A. Yes, sir.

By Mr. Harrison:

Q. Now I will ask you again, in order that we may have it before us, what is the total of the items in this same exhibit that we are examining, which you have charged in your summary against Virginia under Class C, of the items embraced in the exhibit found on page 56 of the printed exhibits.

A. $2,100,000 on the amended page 13, is in process of preparation.

Q. Then of the items embraced in this exhibit, page 56 of the printed record, which Virginia transferred to the Atlantic, Mississippi & Ohio Railway Company, you charge Virginia with a total of $6,376,044.39, do you not?

The Master: That is taking into account both schedules?

Mr. Harrison: Yes.

The Master: That simply involves adding the item of $4,000,000 to $2,000,000.

Mr. Harrison: That is all.

The Master: That is a computation that can be made in about a second. Add your four million to the balance of $2,100,000, and answer the question.

The witness: Your Honor, the question was that I should make it $6,376,044.39.

Mr. Harrison: I may have given you the wrong addition.

The Master: The answer to that question is so obvious that it is hardly worth discussing.

The Witness: No, sir; I do not charge it.

Q. Didn't you just testify that of the items embraced in this Atlantic, Mississippi & Ohio schedule you had charged to Virginia $4,256,044.39 in your summary under Class F, and $2,100,000 under Class C?

A. I beg your pardon; yes, sir, I did.

Q. Then what is the total of those two sums?

A. You are correct; $6,376,044.39.

Q. Then I am correct when I say that you have charged Virginia with $6,376,044.39 as the value of the securities which she transferred to the Atlantic, Mississippi & Ohio Railway Company?

A. Yes, sir.

Q. For which she took a mortgage of $4,000,000, did she not?

A. Yes, sir.

Q. So then you have charged Virginia on the basis of these figures with $2,376,044.39 more than the amount of the mortgage which she took in exchange of those securities, have you not?

A. Yes, sir; but you must recall at the same time that Virginia has received in cash for one of these securities $886,685.00, being the Virginia Central Road.

Q. You are referring now, when you say that she has received that, to the payment made in Confederate notes, which was repudiated, as has appeared in your testimony heretofore, are you not?

A. I do not think that I testified on that subject at all. I simply made the statement that they had received this amount of money, $886,685. The balance of it was read into the record by yourself.

Q. You are referring then to the payments shown by the exhibit read into the record as having been repudiated by the State of Virginia, are you not?

A. Yes, sir; the money for which was never returned to the Virginia Central Road.

Q. Did you in the course of your investigation—

By the Master:

Q. How do you know that, that the money was not returned to the Virginia Central Road? Where did you get the information on that subject?

A. For the reason that there is no record of any such payment on the books of the State of Virginia.

By Mr. Harrison:

Q. No record of any such payment?

A. Any such payment or repayment by the State of Virginia, as far as I know.

By the Master:

Q. You found it entered on the debit side of the cash in the first instance?

A. Yes.

Q. But did not find it in any case entered on the credit side of the cash, is that what you mean by that?

A. Yes, sir.

By Mr. Harrison:

Q. Did your investigation lead you to the ascertainment of the amount which Virginia realized for this $4,000,000 mortgage which was accepted by her as consideration for $6,376,044.39 of securities listed on this exhibit, page 56?

A. Yes, sir, it did.

Q. What was the amount?

A. The $4,000,000 was—

By the Master:

Q. They were paid a certain sum for the purpose of getting the release of their equity?

A. That is the word I want. For the release of their equity they afterwards obtained $500,000.

By Mr. Harrison:

Q. Do you mean the State of Virginia received $500,000 in satisfaction of the second mortgage she had of $4,000,000.

A. I do not know what it was for, it was what they received for their entire claim against the Atlantic, Mississippi & Ohio.

Q. Do you know when it was received?

A. I have made no notation of the date, and I could not recall it now.

The Master: Does not the date of those foreclosure proceedings appear somewhere in the record, Mr. Harrison?

Mr. Harrison: Yes.

The Master: The statement is in substance that in the first place the mortgage was foreclosed by the first mortgage bondholders, and that the result of that was that the apparent equity of the State of Virginia in this $4,000,000 loan, being a second mortgage, was wiped out. But in order to get a perfect and complete title without any question or controversy, the road finally paid to Virginia $500,000, which of course must have been some little time after these foreclosure proceedings. Now the date of these foreclosure proceedings must be in here somewhere.

Mr. Harrison: January 25, 1883.

The Master: Have I got the transaction correct in my mind?

Mr. Harrison: Yes, sir.

Mr. Holt: We have the date as March 1st, 1882.

The Master: I do not suppose you are particular about the date.

Mr. Harrison: They are so near together that it does not make much difference. January 25, 1883, is the date when the money was received, but that date is immaterial. It was an act of 1882, but the money was paid in January, 1883.

The Master: I was going to suggest that we had better not have any apparent inconsistency between the date set up in the supplemental answer and the testimony, but still if the date is correct we had better let it stand.

Mr. Holt: I take it that Mr. Harrison has given the correct date of the payment under the Act; that is probably true.

The Master: That is not the way the answer reads, but probably that is what the answer meant. There is no harm done, because the date is of no consequence.

By Mr. Harrison:

Q. Now looking on page 57 of the printed record, at this exhibit, Plaintiff's Exhibit No. 6, the transfer of the loss of securities there shown of the Atlantic, Mississippi & Ohio Railway Company, you have put down under head of book value of June 30, 1860, $99.90 opposite the Virginia & Tennessee Railroad Company stock. Does that purport to be the book value of that stock on the 30th of June, 1860?

A. Yes, sir.

Mr. Holt: It should be the 20th of June, 1860.

A. Yes sir.

The Master: No, this is not 1863. That is the end of the fiscal year of the road, I suppose.

Q. And the South Side Railroad Company's stock, the same exhibit shows, you have given the book value to be $105.98 as of the 30th day of September, 1861, have you not?

A. Yes, sir.

Q. And the Virginia & Kentucky Railroad Company's stock you have put under the caption book value, par, $100, is that correct?

A. Yes, sir; that entry means that—it was intended to mean that the stock was taken at par and there was no book value. It is an entry at par.

Q. And the Norfolk & Petersburg Railroad Company stock you have given a book value of $89.52 as of the 31st day of March, 1861, have you not?

A. Yes, sir.

Q. Now, will you state if you please how you arrived at the book value of the stock in those four roads as shown on this exhibit.

A. By reference to the trial balances of these roads on the dates mentioned in the margin, shown by their printed annual report on file in the Comptroller's office of the Norfolk & Western Railroad Company in the City of Roanoke, Virginia. The Norfolk & Western being the successor of the Atlantic, Mississippi & Ohio, which had absorbed these roads, and they having these reports on file.

Q. Is there anything on your exhibit to show from what

records the figures there stated were taken?

A. No, sir, there is not.

Q. Do you include the Virginia & Kentucky Railroad Company in the explanation you have just given as to how you arrived at the value of these stocks?

A. No, sir. The Virginia & Kentucky Railroad Company had not as far as I know any trial balance or annual report of any kind. That is simply the amount of the stock held and the cost of that stock to the State of Virginia.

Q. You have taken the State's holding in that road and put down a book value of par for it?

A. Yes, sir. I have made the entry, as I stated before, to show that I have taken it—intending to show that I have taken it at par and that I had not determined the book value.

By the Master:

Q. Then there is not a thing on your exhibit nor is there anything on the books that you had access to that tends to demonstrate even the book value of the stock you have just referred to? You simply took the par and that is all there is of it?

A. No, sir; it was just an expenditure, and my recollection is that the road had never been operated.

Q. That rather tends to raise the inference that the stock was of very little value.

Mr. Lilly: Maybe it was under construction though.

Q. I do not know how that may be, but you must have something in the record that enables me to reach some intelligent conclusion. The statement that a certain road never was operated does not go very far towards establishing value; it rather tends to negative value. If there is anything in addition to that, you ought to put it in.

Mr. Holt: Does the witness say it never has been operated?

The Master: I understood him to say so.

Mr. Holt: Does he say it never had been operated up to that time?

The Witness: It had not been operated up to that time. It was under construction at that time and whatever there was of it was turned over to this other company.

Q. That is a very inchoate admission. What I was inquiring about in the first instance was whether there was anything on the records of the company that tended to demonstrate what you call a book value, and you say that there was not?

A. It was simply the construction value which had been turned over to this road. There was no trial balance.

By Mr. Harrison:

Q. Opposite the Virginia & Tennessee Railroad Company stock on your exhibit at page 57 you have under the caption par $3,452,813.32. What does that represent?

A. That represents the total amount of stock outstanding June 30, 1860, on the Virginia & Tennessee Railroad Company.

Q. It does not then represent the amount of stock held by the State of Virginia?

A. No, sir; that is shown in the second paragraph on page 57.

Q. Take the South Side Railroad Company where you have a par of $1,362,900. Does the same answer apply to that, that is to say, that that is the total stock issued by the road and not the total held by the State?

A. Yes, sir; the total held by the State being shown in the second paragraph of page 57.

Q. And the Norfolk & Petersburg stock $1,800,800, under the caption par is the total issue and not the amount held by the State?

A. That is right.

Q. Now, do you know anything about the physical condition of any of these roads at the time about which you are testifying?

A. No, sir; I have not examined their physical condition; I have only examined their trial balances.

Q. Do you know anything about their assets or liabilities?

A. Yes, sir; I do.

Q. Is it shown on this exhibit, what you know?

A. No, sir; it is not.

Q. Where will I find what you know about the assets and liabilities of these roads? Have you testified to it or shown it on any exhibit?

A. No, sir; I have not. You will find that on the annual reports of the companies which I have mentioned.

Q. But you have not filed those annual reports with us, and we have no knowledge or information about them?

A. No, sir, I have not filed any of those annual reports.

By the Master:

Q. The annual reports refer to three roads only, the Virginia & Tennessee, the South Side Railroad and the Norfolk & Petersburg?

A. Yes, sir, those only.

Q. The Virginia & Kentucky having no annual report?

A. The Virginia & Kentucky having no annual report.

By Mr. Harrison;

Q. When you speak of annual reports, are you referring to the records of the Virginia & Tennessee Railway Company?

A. In this case I am referring to the annual reports for these three roads on file in the Comptroller's Office of the Norfolk & Western Railway. They are the reports of these separate roads, but have fallen into the possession, through legal inheritance I suppose, of the Norfolk & Western Road.

Q. And whatever they may contain or show in respect to these roads as far as the Court and Master are concerned is shown on your exhibit, page 57?

A. Yes. sir, unless they desire to examine the records themselves or have copies furnished as sub schedules to this printed record on page 57. They are quite lengthy.

Q. Do their operating accounts show any charges for depreciation.

A. No, sir, no direct charge for depreciation.

Q. Would any one be able to tell whether the road was solvent from its income and expense account?

A. Yes. sir, from its income and expense account, and its interest charges of course being included in this case as I understand.

Q. Would that fix the value of the assets of the road?

A. No, sir; the earning capacity does not fix the value of the assets.

Q. As a matter of actual fact, have you not to judge solely and exclusively in respect to the solvency of the road from its assets and liabilities?

A. Yes. sir, that would be the final determination.

Q. And you have judged this book value from income and expense?

A. I have not.

Q. Well, does your exhibit show anything to the contrary?

A. Yes, sir.

Q. What does it show?

A. It shows that the liabilities of for instance the Virginia & Tennessee Road on June 30, 1860, exceeded its assets by $3,285.30; page 57 of the printed record.

By the Master:

Q. You find that under the head of profits?

A. Yes, sir.

By Mr. Harrison:

Q. Do you mean to say that that or anything else there shows what the assets and liabilities of the road were?

A. No, sir; it shows simply the difference between the assets and liabilities.

Q. Do you mean to say that this book value that you have given here is based upon the assets and liabiities of the road?

A. I do, yes, sir.

Q. Where are the assets shown?

A. On the annual report from which this profit and loss account was taken.

Q. You are testifying now to something that you have seen, but something that you did not deem of enough importance to produce here in evidence, is that true?

A. My recollection on that subject is that the offer was made in my direct testimony to have those books produced or to have copies of them made if it was deemed necessary. I think that was the offer that was made.

The Master: That does not answer the question. Repeat the question, Mr. Stenographer.

Q. (Question repeated by the stenographer.)

By the Master:

Q. In other words, have you got it in the schedules which you have produced, that is what that question practically calls for.

Have you produced any fact in relation to the assets and liabilities of the Virginia & Tennessee Railroad Company except what appears here on page 57, and if you have, in what schedule have you produced it?

A. I have not produced any such schedule. I would say, your Honor, I made the offer to produce it if deemed necessary or asked for.

Q. Isn't your book value in this case predicated specifically upon the diminution of the stock and the loss of profits during the preceding year, one per cent.

A. No, sir; it is the amount of loss which is shown on their books. It may not be due entirely to operation, and it may. It is the loss that their books show. They are that much shy in assets as regards liabilities.

Q. You took this I suppose from the profit and loss account; you have got it here under the heading of profits.

A. Yes, sir.

Q. And instead of being a profit, it is a loss; on that trial balance instead of having it on the credit side you have it on the debit side?

A. Yes, sir.

Q. Now, you put a star here which indicates to us that although under the column of profits, as a matter of fact that was a loss sustained in the operation of the road during the preceding year?

A. Yes, sir.

Q. Now, you take that sum of $3,285.30, being the loss, and you take the percentage that that bears to the total capitalization, and reach your book value of the stock in that way, don't you?

A. Yes, sir.

Q. You reach your book value in this way, in other words, you take the net loss, and upon the basis of the net loss, the percentage that that bears to the capitalization, you figure the book value? Without figuring it out, it seems to me that must be the result. That is right, isn't it?

A. Yes, sir.

Q. And do the same thing with reference to the Norfolk & Petersburg road, which according to the star here met with a net loss of that year of $189,942.12?

A. That is right, your Honor, with one exception; the loss may not have been incurred in that year. It is the total net loss up to date, up to that date, this being a trial balance.

Q. Well, the way you get your book value, you take that net loss of $189,942.12 and take the percentage that that bears to the total capitalization, and then work out your book value accordingly?

A. Yes, sir.

Q. And you say that loss may not have occurred during the preceding year, that is the whole of it?

A. No, sir. Or it may have gained slightly during the preceding year, but it is the net result up to date.

Q. Have you such a recollection of the account so that you can tell us whether there was a gain or loss on that last year? You need not stop to run it through. You have not any such recollection?

A. I have not the recollection, but I can tell you in a very short time, and I will have it handed to you at recess time.

The Master: We will suspend for a few minutes and just hand it to us then. And give us the net loss or profit during the last year.

The Witness: Yes, sir.

The Master: We will suspend here for five minutes.

By the Master:

Q. Now, can you give up those figures, Mr. Hillman?

A. No, sir; I am sorry to say, your Honor, that it does not show for the year. It is taken up in total, and does not show for the year. And I did not examine the accounts in detail enough to take off year by year their earnings or expenses.

Q. So that you have not data enough here upon which you can predicate the statement as to whether during the preceding year there was or was not a profit or loss on operations?

A. I have no data.

The Master: You may proceed, Mr. Harrison.

By Mr. Harrison:

Q. What amount do you carry into your summary for June 20, 1863, as a charge against Virginia on account of the various

items mentioned in Exhibit No. 6, page 56, being the securities turned over by Virginia to the Atlantic, Mississippi & Ohio Railroad Company?

A. $4,566,015.61.

Q. Why is there a difference in the amount you show on that summary and the amount you show on the summary for January 1, 1861?

A. Because in the meantime the roads had been operating and increasing their surplus.

Q. Haven't you taken the same book value as the basis for determining the amount?

A. I beg your pardon, yes, sir, I have taken the same book value, but their holdings had in the meantime increased.

Q. Whose holdings?

A. The State of Virginia's.

Q. You mean that the difference is accounted for by the fact that the State had paid more on her subscription by June, 1863, than she had on January 1, 1861?

A. Yes, sir.

By the Master:

Q. What is the number of the blueprint schedule?

A. Page 45 of the blueprints.

By. Mr. Harrison:

Q. Now, let us take up this Exhibit No. 7, page 58 of the printed schedules, which purports to be a statement of the value of the James River and Kanawha Canal Company as it was absorbed and capitalized by the Richmond & Alleghany Railroad Company. What amount is shown by that exhibit to have been charged to the State of Virginia as the value of the James River and Kanawha Company as of January 1, 1861?

A. $5,437,341.38.

Q. Now, what is the total which you carry to your summary as a charge against Virginia on that account?

A. $5,410,429.54, as shown on page 60 of the printed record, which is the amount taken from the second annual report of the road, not the first annual report.

Q. Now, are the figures the same in your summary for June 20, 1863?

A. Yes, sir.

Q. Why do you charge Virginia with that amount at January 1, 1861, and June 20, 1863?

A. That amount is charged to this joint account for the reason that this is the amount which the Richmond & Alleghany Road valued the franchises and property which is acquired from the State of Virginia through the James River and Kanawha Canal Company on its books, and on the opening of its accounts.

Q. Still Virginia did not own the franchise of the James River & Kanawha Canal Company, did it?

A. It owned the stock of the company, and therefore I suppose was proprietor of all that went with the company.

By the Master:

Q. Do you mean it owned all the stock?

A. Yes, sir.

By. Mr. Harrison:

Q. What is your authority for that statement?

A. Well, I cannot say that I have authority for its owning every share of stock. I know that it was the party that sold the James River and Kanawha Canal Company to this railroad company, and I did not investigate to see whether or not they had up to that time acquired every share of stock or not. My impression is and was that they were the sole owners.

Q. You say you know the State is the party that sold the James River and Kanawha Canal Company to the Richmond & Alleghany Railroad Company. What is your authority for that statement?

A. The deed which they gave to the Richmond & Alleghany Railroad Company, conveying the property.

Q. Have you the deed?

By the Master:

Q. That is the deed that the State gave, you mean?

A. Yes, sir.

By. Mr. Harrison:

Q. Have you the deed?

A. I have not the deed, but the deed has, I believe, been placed on file.

Mr. Lilly: It has been introduced.

Q. I wish you would put your hands on it then, and let us see the deed which the State made.

Mr. Harrison: Is the deed here, Judge?

Mr. Holt: We have the deed here, and we have already introduced the deed and also introduced the Act.

Mr. Lilly: It is in the typewritten record.

Q. (Handing paper) I hand you Defendant's Exhibit No. 7, 1863, G, being a copy of the deed referred to. Look at it and tell us who made the deed to the Richmond & Alleghany Railroad Company.

The Master: That is, who is the grantor.

Q. Who was the grantor?

A. The James River and Kanawha Company.

Q. Then you were mistaken when you said that the State of Virginia made the deed to the Richmond & Alleghany, were you not?

A. Yes, sir.

Q. Then your schedule is based upon a mistaken fact, is it not, that is to say that the State owned the entire stock in the James River and Kanawha Company?

A. I do not know whether or not it is a fact that they did not own all of the stock.

Q. Your schedule, however, is based upon that hypothesis, is it not?

A. Yes, sir, that they owned the entire stock.

Q. If you are wrong in that hypothesis your schedule would be wrong, wouldn't it?

A. Yes, sir; it would have to then be reduced by the percentage that that outstanding stock bears to the total—I mean the outside stock bears to the total stock of the company. By the outside stock I mean that which is owned by other parties than the State.

Q. Now, tell us from what source you derived the statement—or you have made up the statement that is shown on this Exhibit 7, page 58, called trial balance sheet, first general balance sheet of the Richmond & Alleghany Railroad Company. Where did you derive the information upon which that statement was made?

A. From the first general balance sheet of the Richmond & Alleghany Railroad Company, on file in the office of the Vice-President of the Chesapeake & Ohio Railroad in the City of Richmond.

Q. That is not a complete balance sheet, is it, that you put in your exhibit?

A. No, sir; I have not put in a complete balance sheet.

Q. Why didn't you put in the complete balance sheet?

A. I did not consider that it was necessary, as its terms are specifically mentioned in that balance sheet.

Q. This statement on page 58 of the exhibits sets out that the Richmond & Alleghany Railway Company acquired the property of the James River & Kanawha Company and the Buchanan and Clifton Forge Railroad Company at a cost in stocks and bonds of $6,389,511.93. To whom did the Richmond & Alleghany deliver the stock and bonds there mentioned?

A. I do not know.

Q. You have treated it as if the railroad company had delivered them to Virginia; have you not?

A. No, sir.

Q. Did the Railway Company pay any part or deliver any part of that sum to Virginia?

A. No, sir; I do not know of their having delivered, or having any record of having delivered any stock or bonds to the State of Virginia.

Q. How much of that amount have you charged to Virginia?

The Witness: Your Honor, just a moment, this is a general observation if you please. When we say charge to Virginia it is understood we are presenting and including in our final account for adjudication between the States, and it is not charged against Virginia but placed in that column for final adjudication. Is that understood? I am not charging the State with it. I have noticed that right through, and it may be a little confusing later on.

By the Master:

Q. I suppose what you mean is that you have prepared these schedules and worked up this account and charged to what might be termed assets certain things?

A. Yes, sir.

Q. And then propose later on to make some distribution of the assets thus collected together?

A. Yes, sir.

Q. I do not think we will have any misunderstanding.

Mr. Harrison: I have not the slightest misunderstanding at all.

Q. Mr. Harrison considers a charge to assets practically a charge to Virginia, and that is the way the matter lies in his mind.

The Master: We do not misunderstand it, do we, Mr. Harrison?

Mr. Harrison: No, sir.

A. I have been answering under that supposition.

Q. You do not give rise to any false impression. Mr. Harrison carries the matter in his mind on the assumption that the charge to assets is practically a charge to Virginia, and so treats it all the way through.

The Master: I am right about that, Mr. Harrison.

Mr. Harrison: Yes, sir.

Q. Did any of those four railroads that are mentioned on page 57 declare any dividends at any time, and if so, does that appear in any exhibit? You can answer that question when we come in after lunch. If they did I want the facts to appear, that is all, or if they did not.

A. I am not sure that I can tell you.

Q. Then you need not bother to take the time to look it up now, but answer that question on coming in after recess.

The Master: Excuse me, Mr. Harrison, for the interruption.

By. Mr. Harrison:

Q. (Question repeated).

A. $5,410,429.54.

Q. If you have no evidence of any part of that sum having ever been received by Virginia why did you charge her with it?

A. For the reason that I am charging in this case, or trying to charge, the value of the property which was turned over, and not dealing with what was received for it, nor have I considered that matter.

Mr. Holt: The allegation of the answer is that she gave that away, and that we own part of it.

The Master: Your contention is that she ought to account for it at its par value?

Mr. Holt: Yes, sir.

Q. Were the assets which the Richmond & Alleghany Railway Company acquired under the deed of the James River and Kanawha Company encumbered?

The Master: That is, were there any liens on these assets?

A. Yes, sir; there was a lien upon them, shown on page 58 of the printed record.

Q. There are liens shown on page 58 also. Was there a mortgage or mortgages on these assets?

The Master: That, is in addition to the item of $1,393,637.66.

Mr. Harrison: Yes, sir; undoubtedly in addition to that.

A. Those liens were not mortgages. They were for supplies, etc.

Q. I want to know if there was any mortage or mortgages on the assets which the railroad company acquired from the James River and Kanawha Company.

A. Yes, sir, $1,393,637.66.

Q. You have already referred to those which are put down as liens. My question was in addition to that amount were the assets encumbered by a mortgage?

A. That is a mortgage, sir.

By the Master:

Q. That is not the question. The question is in addition to this item of $1,393,637.66 was there any mortgage in addition to that? If there was not, simply say so.

A. No, sir; I believe not.

The Master: That covers it.

By Mr. Harrison:

Q. Why do you say you believe not? Do you know it to be a fact?

A. No, sir.

Q. What is the foundation of your belief?

A. Because I did not run across any other mortgage in the investigation.

Q. Then what was the $6,389,511.93 issued for by the railroad company?

A. They issued that of their own mortgage bonds and their own stocks.

By the Master:

Q. Who do you mean by their own?

A. Richmond & Alleghany Company.

By Mr. Harrison:

Q. What did they get for it?

A. That I have not the slightest idea, what they got for it. They got this property for it.

Q. I thought they got the property for nothing?

Mr. Lilly: They did so far as Virginia is concerned, with certain limitations.

A. They issued these mortgages and stocks on the basis of the property that they acquired from the James River and Kanawha and Buchanan and Clifton Forge Railroad.

Q. For what purpose did they issue it?

The Master: If you know? If you don't know, say so.

A. I don't know.

Mr. Holt: Then just answer.

The Witness: I don't know what they issued them for.

The Master: I do not want to hurry you, Mr. Hillman, but do not take time when you don't know. If you don't know, say so, and that exhausts the subject of inquiry. You are not responsible for what you don't know, and you are not subject to criticism about it. In a question like that, if you don't know, say so and say so right off, and then we will go on.

By Mr. Harrison:

Q. Well, what is your answer?

A. I have answered it.

The Master: In the confusion Mr. Harrison did not get it. See what the record shows.

Mr. Harrison: I saw only the exhibition of a very tired feeling, but I did not know that he had answered the question.

(Testimony read by stenographer.)

Mr. Holt: As I understand it, your Honor, they acquired this property from the James River—

Mr. Harrison: Now, Judge, I would rather pursue my examination of the witness without having your explanation at this point.

The Master: That you are entitled to do. Of course the Judge does not insist on it if you object. Brother Harrison has a right to develop it from his point of view, and if he does not develop it satisfactorily you will have your turn.

Mr. Holt: It is so long and tedious.

The Master: I do not know about that. They have a right to develop it in their own way for whatever it may be worth. I am not intimating by any means that your statement would not have been both instructive and illuminating. My observation has been that they usually are.

Q. Have you a complete transcript of the balance sheet, which is partially shown on your Exhibit No. 7, page 58, of the printed record?

A. Yes, sir; I have.

Q. What is the total of the invested assets as shown on the balance sheet? The complete balance sheet I refer to now.

A. September 30, 1881, assets $13,510,248.46.

Q. Does not that sum include over eleven million dollars of invested assets?

A. Yes, sir; $11,798,156.36.

Q. That was the figure I asked you for.

By the Master:

Q. Now, for my information, is this the balance sheet from which the figures found on page 58 are taken?

A. Yes, sir.

Q. That is 1881. When was this transfer made, in 1881?

A. Made in 1880.

Mr. Harrison: The Act was passed February 27, 1879.

The Master: Now, then, this has significance so far as it has a tendency to establish value in 1861, twenty years earlier?

Mr. Harrison: I presume that is what he is introducing it for.

The Master: This is a balance sheet in 1881, as tending to show value in 1861?

Mr. Harrison: I presume so.

Mr. Lilly: That is right, your Honor.

By Mr. Harrison:

Q. Now, what was the capitalization of the company?

A. $5,000,000.

Q. And the amount of the mortgage bonds, that is to say, what was the capital and the mortgage bonds, the aggregate, including the Alleghany Car Trust?

By the Master:

Q. Have you not got a copy of this balance sheet right there?

A. Yes, sir; but I have to add them up.

By Mr. Harrison:

Q. (Handing paper), I will hand you a copy that is added.

A. $10,824,000.

Q. Then is it not a fact that the liens are taken up on both sides of the sheet?

A. No.

Q. Among the assets and liabilities?

A. No.

Q. Do you mean to say that the assets and liabilities are not taken up on both sides of the sheet, not shown on both sides of the sheet—the assets and the liens I mean?

A. That question is totally incapable of being answered, your Honor, it does not mean anything. I will have to have the meaning.

The Master: Well, try it again.

Q. I find on the sheet James River & Kanawha Company and Buchanan and Clifton Forge Railway Company liens, among the liabilities. Is that true or not?

A. Yes, sir, $1,393,637.66.

The Master: Well, now, that does not happen to be the amount. Have you not got the copy of the trial balance?

Mr. Harrison: I have given him the exact copy.

The Master: He is confused about it in some way, because that is obviously wrong. He asked you for the James River & Kanawha and the Clifton Forge liens, and that appears on that sheet among the liabilities as $1,537,381.41.

The Witness: Yes, sir.

The Master: As a matter of fact the witness gave the James River & Kanawha Company's lien.

The Witness: It is the list of liens that are on file with the trustee.

Q. As part of the cost of the road?

A. As part of the cost of the road.

Q. Then if that is true the capital stock and the bonds issued must have been for the other items of assets, were they not.

A. I do not know what they were issued for.

Q. All right, sir.

By the Master:

Q. Does not your note, Mr. Hillman, on page 58, show what these stocks and bonds were issued for? You say, "Acquired the property of the James River & Kanawha and the Buchanan and Clifton Forge Railroad at a cost in stock and bonds of $6,389,-511.93, thus securing legal right of way for its railway lines, basins and docks in Richmond, and other property." Does not that show?

A. Yes, sir, that shows. The reason I answered as I did was when I had made that statement that these stocks and bonds were issued for that purpose, in the acquirement of that property, I was then asked to state why they were issued, and I supposed it was the same question coming over again.

Q. Then you said you did not know, and as a matter of fact it is so obvious you did know that it is hardly worth discussion, is that it?

A. Yes, sir.

Q. You do not mean to say that that is an adequate reason, after you had stated in your schedule just exactly what these stocks and bonds were issued for, and then you were asked what they were issued for and you said you did not know, and the reason you did not know was because you had stated the information in your note, is that the way you explain that?

A. No, sir; it is so obvious what they were issued for, and I made the statement what they were issued for, that I mistook this for the second question that was asked me some time ago, as to what this big issue of stocks and bonds going out, to whom they were paid, and what they were paid for, meaning why should they obtain a property for practically a small amount and issue stocks for a large amount, and it was to that that I said I did not know. I know why they were issued upon these properties that they acquired.

The Master: That is a pretty intricate process of reasoning.

The Witness: If your Honor will follow some questions just immediately preceding this you will see the trend that my mind took on this subject, because it was so obvious that I did not think they could ask that question.

The Master: You must not conduct so elaborate a process of reasoning in testifying in this case. Suppose they put the same question half a dozen times; it calls for the same answer, does it not?

The Witness: Yes, sir.

The Master: You just wipe out this process of reasoning and devote your time to answering particular questions, and your examination will get along better. Excuse me for this lecture, but that is pretty near the fact.

By Mr. Harrison:

Q. Is there anything whatever in this balance sheet to justify the assumption that the assets acquired by the Richmond & Alleghany Railway Company were not covered by an equal amount of liabilities?

A. I do not understand that question.

Mr. Harrison: I will let the stenographer read it.

(Question repeated by stenographer.)

A. Yes, sir.

Q. What is it?

A. The liabilities assumed being between one and two million dollars, and the stock and bonds issue being for between six and seven millions, would indicate that there was a value conveyed above the amount of the mortgage or lien.

Q. If the issue of $10,824,000 capital stock and bonds was not intended or designed for the purchase of the assets shown on the balance sheet, what is your theory as to what they were intended for? How would you, as an expert account for the issue of $10,824,000 of securities, stocks and bonds, under such a state of affairs as the question embodies?

A. That they had acquired a property of a great deal of value at a very small figure, and were then capitalizing it up to its value; or else that there was a bald steal in the issue of the stocks and bonds.

Q. That the railway had perpetrated a bald steal, is that the meaning of the answer?

Mr. Holt: Let the answer itself be read.

(Answer read by stenographer.)

By the Master:

Q. I suppose, in other words, you would term it water or wind?

A. Yes, sir.

By Mr. Harrison:

Q. What would be the natural construction when you find on a balance sheet an item of assets which includes the right of way and franchise, which cost $5,588,609.76, the cost of road $4,607,217.53, the cost of equipment, the cost of the Richmond Dock property, and real estate, all items aggregating $11,798,156.36 of assets, which cost that much money, or evidencing money; and you find under the liabilities, capital stock and bonds amounting to $10,824,000? What would be the natural inference to draw from those two statements? Would it be that the capital stock and mortgage bonds had been issued to acquire the assets enumerated above?

A. Yes, sir; that would be the inference.

Q. Have you not testified that of the stock and bonds issued by the railroad company $6,389,511.93 were issued to acquire the right of way and the docks in Richmond, and other property?

A. Yes, sir; I have quoted that from the report, and it is in my testimony, page 58.

Q. And have you not also testified that the State of Virginia received no part of it?

A. As far as I know they received none of it.

Q. And that, notwithstanding you were charging Virginia with $5,410,429.54 of it?

A. Yes, sir; being the value of the property on that date as shown on page 60 of the printed report.

By the Master:

Q. You mean the value of the property in 1881?

A. Yes, sir.

Q. And you therefore assume that that is the value on January 1, 1861?

A. That is the value at that date, yes, sir.

Q. That is, you fix the value at January 1, 1861, because you find that value in this report of January 1, 1881.

A. Yes, sir.

Q. Or September 30, 1881?

A. Yes, sir.

The Master: I want to keep the connection in my mind. I get it now.

By Mr. Harrison:

Q. You have applied the value which you have figured out on your exhibit, page 58 of the printed record, under the sale of the James River and Kanawha Company's property to the Richmond & Alleghany Railroad Company in 1881 as the value of the property January 1, 1861, and June 20, 1863, have you not?

A. No, sir, I have not. I have taken the value on the next date, shown on Page 60, the reason being that on page 60 the value was slightly less than shown on page 58, and I thought I would take that instead of the prior date.

Q. It is only a few dollars less, isn't it?

A. About $46,000, yes, sir.

Q. Then the value that you have taken and applied as of January, 1861, and June, 1863, is shown on page 60 to be $5,410,429.54, is that right?

A. Yes, sir; on January 1, 1861, and June 20th, 1863.

Q. And that is the result of your statement as to the value of the property acquired by the Richmond & Alleghany Railroad Company in 1881, is that right?

A. Yes, sir.

Q. Did you find in the course of your investigation whether the James River and Kanawha Company had paid a dividend on its stock?

A. No, sir; there had been some dividends paid from time to time on the stock. I did not investigate it.

Q. You didn't think that of any importance?

A. No, sir.

Q. Haven't you in the course of other securities deemed it of

very vital importance in reaching your conclusions about value at these distant dates in the past?

A. No, sir; I have not.

Q. Then you do not attach any importance in your testimony in relation to values that you have given here to the question of the payment of dividends on the securities?

A. Not as far as my statements which I have made in this case go, no, sir; I have not considered the dividend basis save in making a statement on my blueprints for 1863 concerning the bank stocks where I have no other data to go on, and simply made the statement that they had continued to pay dividends at the usual rate.

Q. But the question of the payment of dividends you regarded as an unimportant question?

A. I did not consider it.

By the Master:

Q. Well, what do you say about that question? He asks you if you considered the payment of dividends an unimportant question. You say you did not consider it; but that does not answer the question. What do you say to that question? Do you or do you not consider the question of dividends an unimportant factor, that is the question and I would like to get your views about that.

A. I do not consider it unimportant.

Q. You do not consider it unimportant?

A. No, sir.

Q. The result is that you do look upon it as an important factor?

A. It is a factor which enters into the determination of every value, but how far it was controlling depends upon individual cases and instances.

By Mr. Harrison:

Q. You now say you consider the question of payment of dividends important. If so, why then didn't you take account of it in your testimony in the matter of values? You have testified that you did not consider it; why not, if they were important?

A. For the reason that I have determined as far as possible actual values and not values based upon dividends.

Q. Actual values?

A. As far as I could.

Q. Do you mean now to testify that the figures you have testified to here constitute actual values?

A. Yes, sir; as far as could be determined.

Q. And not book values?

A. A book value is an actual value.

Q. You would accept these book values as constituting the actual cash value of the securities in each case?

A. As constituting the actual value of the securities.

Q. And would advise their purchase on that basis?

A. That is an entirely different matter.

Q. A horse of another color, isn't it?

A. Advice as to purchase is an entirely different matter from dividend value.

By the Master:

Q. Don't you understand that the result we are trying to reach here is equivalent to a purchase? Do you think we are trying to get a value here that is distinct from what would be the fair value on the basis of purchase?

A. No, sir, I do not.

Q. Then your conception of the whole situation is that we are practically determining the fair purchase value, isn't it?

A. Yes, sir; that is the point to be determined.

The Master: Precisely. The cross-examination may proceed, Mr. Harrison.

By Mr. Harrison:

Q. Haven't you several times testified that you did not wish to be understood as testifying to anything except what the books showed, whether it was cost or whatever it might be that was to be put down as value, without expressing any opinion as to whether or not that represented actual value?

A. Yes, sir, I have.

Q. Is that your present position or do you now wish to change that?

A. That is the position that I have wished right along to hold, and from which I have been forced by the cross-examination, time and time again, to an expression of an opinion instead of confining myself to the actual facts which I have presented here.

By the Master:

Q. The question is now whether you intend to change your base upon your own examination and your own method. Do you intend to change from book value to actual value or is it now your contention that the book value is the actual value?

The Master: That is your question, isn't it, Mr. Harrison?

Mr. Harrison: Yes, sir.

A. That is just what I finished saying, your Honor,

Q. How am I to understand you? You have said that you were testifying to the book value only; that was entirely aside from my questions that have been asked you on cross-examination on another hypothesis; and you have stated that the book value was one thing and the actual cash market value was another. Now, do I understand that you adhere to that as a general proposition or that you now say that the book value in your judgment is the actual cash value? That is what I want to know. Which do you say?

A. Your Honor, if you will leave out the word cash I could answer that better. Cash value—

Q. I do not leave it out; I will leave it in.

Mr. Holt: His answer I believe will explain his position.

Q. I simply want to know whether the hypothesis upon which you have been proceeding is the one under which you now stand or whether we are to understand from now on that you proceed on a different hypothesis.

A. I proceed under the book value as showing the actual value of the security which we have under consideration. It is always understood that a book value, if used that way, is predicated on the fact that your books have been honestly kept. You have asked concerning the cash value, and I believe the question was brought up yesterday, and I answered that the cash value was practically the market value, and I meant by that statement that if you wanted to determine how much cash you could get for a security at a given date you would have to find out what other people got for their securities at that date, and that is the amount of the cash that you could realize on it, not necessarily its value.

Q. Do you wish me to understand that in your opinion the book value is equivalent to the actual cash market value? Do I make that question plain?

A. No, sir; the two are not equivalent.

The Master: That is all.

By Mr. Harrison:

Q. Did you ascertain and do you show in any exhibit the book value of the James River and Kanawha stock on either of these dates, either January, 1861, or June, 1863, or any other date?

A. No, sir, I do not.

Q. Why didn't you do that in order to determine the value of the State's holdings in the company?

A. Because the book value of that would be simply the par value of the stock.

Q. It would be?

A. Yes, sir.

Q. Do you mean to say the books of the company show that?

A. It shows that the State has paid that money over and that that money has been invested in the construction of the canal. It was one of the requisites before the State would invest that subscriptions should be made and work should be done, and therefore the amount of work done would be shown by the total amount paid in, and that would be par, and the State's value then would be $10,400,000.

By the Master:

Q. You mean that is the State's par holding in the James River and Kananwha Canal Company?

A. Yes, sir.

By Mr. Harrison:

Q. Do you mean to say that the amount expended by the State in the purchase of its holdings would represent its book value?

A. Yes, sir.

Q. You said you examined the Master's report; am I right about that?

A. Yes, sir; I read it over.

Q. On page 192 and 193 of his report he states the James River and Kanawha Canal Company value, and I will read you this extract:

"A detailed statement of the investment of the Commonwealth in the capital stock of the James River and Kanawha Company appears on pages 820-L and 820-M of the record. By this it appears that 3.49 per cent. of the improvement was located in West Virginia (page 820-M). The only dividend that the Company appears to have ever paid is $10,092, in 1836 (page 820-L). Under these circumstances I find that the stock of this company had no value on June 20, 1863."

Q. In the course of your investigation of this report, did you find that conclusion of the Master?

A. Yes, sir.

Q. And did it serve as any guide to you in your investigation?

A. I read that, yes, sir.

Q. Did you find any other dividend than the one which he states was paid?

A. No, sir.

Q. Did you find that?

A. I did not look for it.

By the Master:

Q. Mr. Hillman, this item No. 2, franchises and right of way, $5,588,009.76; did you make any investigation of the accounts of either of these companies to ascertain upon what that item is predicated, how much of it is attributable to right of way and how much of it to franchises?

A. No sir; there is nothing to show that at all on the books of the Company.

Q. Are the books of the James River and Kanawha Canal Company out of existence or nonexistant?

A. I do not know of any; I have not run across any; I could not say whether there are any books or not.

Q. Then in the absence of the books of the James River and Kanawha Canal Company it is pretty difficult for you to make any statement about that company, isn't it? What I want to get at, I want to see how much of that item is treated as franchises, and I want to see how much of it is treated as right of way, and then I want to find out whether this was a franchise granted to this Company by the State of Virginia, that the Canal Com-

pany has put an arbitrary value on, that is, I want to see what that item means.

Mr. Harrison: The railroad company.

Q. Yes, the railroad company. I want to see how much they call franchises and how much they call right of way.

A. There is no record now, your Honor, that will give you that.

Q. The books of the James River and Kanawha Canal Company can give it, that is if they are kept as they ought to be kept. You have not seen them?

A. No, sir.

Q. Are they in existence?

Mr. Anderson: I have no doubt they are.

A. I do not think, your Honor, that they would show.

Mr. Holt: The only schedules that seem to be extant so far as the evidence is concerned are the schedules in this deed where the transfer was made to the Richmond & Alleghany Company. They just simply turned it over to the Richmond & Alleghany Railroad Company, their road, and the Railroad Company, laid down the ties and rails.

The Master: Yes, but here is an item upon which is predicated a large charge to the asset column, and this item is stated as franchises and right of way. What I would like to know is how much of that is right of way, and I would like to know how much is franchises, and if that is right of way I would like to know how much it cost somebody, and if it is franchises I would like to know whether or not that is the legal situation that is created by a grant of the State of Virginia to this James River and Kanawha Canal Company and that they call their franchise, the right to use this property, and I want to see how much that item is and I want to see how much value that item had. If I am to pass on this intelligently I want to know what makes up that item.

Mr. Holt: So far as we go, as I understand it, there was no separation in those items at all. They just recapitulated.

The Master: Have you any information, Judge, except what you got from Mr. Hillman?

Mr. Holt: From the Acts of the Legislature that are in here and from the deeds that are in here. The James River and Kanawha sold to the Richmond & Alleghany whatever they had there.

The Master: Of course I have not seen the deeds and I do not know what light they may give.

Mr. Holt: All the property that they had was just bunched and given to them.

The Master: I want to get at this question, I want to find out how much this cost, at some time, if it cost them anything. And then I want to find out about this Richmond dock right, $1,000,000. I want to ascertain if that appears in this statement of this Richmond & Alleghany Railroad Company as representing actual value and expenditure by somebody at some time, or whether it is put in here as a basis for capitalization. There is quite a difference between the two. And if the information is in existence I want that before this case is concluded, from one side or the other.

Mr. Anderson: If your Honor please, there is not simply evidence, but I think there is absolute proof of it.

The Master: I want one side or the other to present to me before this hearing concludes—you can see what is in my mind—for instance here is Richmond dock, $1,000,000; of course I have not the slightest knowledge of this, they may have cost someone $100,000, and this company may have put them in here as the basis for capitalization at a million dollars. If that is true, and I am to give serious consideration to this, I want to know about it. And they may have cost considerably more than a million, I do not know. The mere statement of it here as one million dollars as the basis for capitalization does not convey to my mind the idea that I would like to have to predicate actual values on. I have got to find what the value of this property was in 1861, predicated upon a statement made in 1881 as the basis for capitalization, I want more information than I have here to make that conclusion on. Do I make that clear?

Mr. Harrison: Yes, sir.

The Master: I do not know how it may develop, but as it stands here and speaking right as it does, I have not got the information that I want in order to reach an intelligent conclusion.

The Witness: Your Honor, on page 59, answering one of your inquiries, you will see that there was $1,000,000 arbitrarily assigned to Richmond docks and basin, leaving the charge to right of way and franchises, $5,588,609.76.

The Master: Who assigned that?

The Witness: The Richmond & Alleghany Railroad Company.

The Master: That tends to increase my suspicion that a good deal of this is the basis of capitalization and not value.

Mr. Holt: Your Honor, we expect this schedule, whether it be weak or strong, is simply offered for whatever persuasion it may have in it. We put it in for what it is worth. We expect to offer some more evidence on that subject.

The Master: I simply call attention to it now so that both sides can see how the matter lies in my mind. I want all the facts connected with the matter.

Mr. Holt: We are going to give all we can find.

Mr. Anderson: We will bring out from Mr. Hillman facts that will show the value of this property.

The Master: I do not want to be up against an item of five or six million dollars and have to speculate and guess about it.

By Mr. Harrison:

Q. I will ask you a question in relation to this matter. Did your investigation of this matter of the affairs of the Richmond & Alleghany Railway Company lead you to the ascertainment of what became of it? Did you go beyond 1881?

A. No, sir, I did not.

Q. You did not ascertain that the Richmond & Alleghany Railway went into the hands of a receiver about 1883?

A. I know that that is a fact, that it did, that it went into the hands of a receiver later on.

The Master: How much later on?

Mr. Harrison: About two years, it became insolvent and went into the hands of a receiver. It was sold under foreclosure proceedings here in the Circuit Court of the City of Richmond.

The Master: By the way, when you are looking up these accounts, tell me whether or not from the time of the declaration of those dividends, did I specify in my report this Canal Company was operated at a loss or a profit. If they did not declare any dividends I would like to know whether they accumulated anything.

Mr. Harrison: All that we went into in the former investigation from one end to the other.

Mr. Holt: I think you are mistaken about that, Mr. Harrison.

The Master: I think so too, because I think if the other record

had disclosed the operations of the company in addition to that dividend, I think I should have stated it in my summary. My impression would be that all that appeared in connection with that was a dividend of $10,000, away back in 1836. However, we should have it in this record.

Mr. Lilly: And the character of the work that was done over on the West Virginia side.

Mr. Hogg: In determining the expenditures made by Virginia in West Virginia that was the only phase in which it was up.

Mr. Harrison: We went into the history of the old James River Company, the parent company, and the James River and Kanawha Company.

Mr. Anderson: Three-quarters of that record was never printed. A great deal of the evidence was not printed.

Mr. Holt: We do not deny that you gave a history of the company in one sense, but it is pretty silent on the question of value, that is our point.

The Master: I am afraid it may develop that that particular question was not very much at issue in the previous hearing and I have not read, since I made my report, the various paragraphs that I was requested to find on, but my impression is that when you read them you won't find that I had any authority to determine the value of any of these assets that were in controversy here. I may be wrong about that. The suggestion is only made here that the issue is pending here, my impression is, without having read the paragraphs, was not specifically presented to me before. I am not suggesting whose fault it was, or that it was anybody's fault. Now if it was not, then whatever came in came in on another hypothesis, and was considered by me upon this hypothesis. Of course that is merely a suggestion. All these things are for argument later on. It does not make any difference what my report showed, each side is entitled to the benefit, and I shall consider it all. I am simply making that suggestion. And even if it was, the whole thing is now raised before me on this supplemental answer, and I cannot shut out either side from the submission of anything that they think is material as bearing on that. Of course right now we are on this James River and Kanawha Canal Company. If anybody can satisfy me that any conclusion I reached in that report was wrong, I shall

so hold. Of course I shall have to be satisfied. I do not mean that I will not change it if you can satisfy me, but you must satisfy me. This subject is to be resumed. If it is in the original transcript I will take that.

We will suspend until twenty minutes past two.

Recess until 2:20 P. M.

AFTER RECESS.

Continuation of the cross-examination.

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. The second item in the supplemental answer at page 59, Class G, is Manassas Gap Railroad Company, which is dealt with by its exhibit No. 7-A on page 61 of the printed exhibits. Do you show on that exhibit amount expended by the State, either in the purchase of stock or otherwise, on that road, or on account of that road?

A. No, sir, I do not.

Q. What do the figures represent that you have on that exhibit?

A. They represent the cost.

Q. The total cost of the road?

A. The total cost of the road and the amount of stock which was paid up on the road.

Q. And does not show the holdings of the State in the stock of that road?

A. No, sir; the holdings of the State on January 1, 1861, were $2,105,000 par.

Q. Why did you not show on that exhibit the amount expended by the State, to-wit, $2,105,000 for the stock of that road?

A. For the reason expressed in the foot note there, and that no claim was made by us for the consideration of this item in our final exhibit.

By Mr. Conrad:

Q. By us?

A. By West Virginia.

By Mr. Harrison:

Q. I see no explanation in the foot note to which you refer, such as you have given. The foot note reads as follows, if you call it a foot note, "The road was not operated at that time and no other value than the above was obtainable."

A. And further, "In 1869, the State gave its stock in this road to the Orange & Alexandria Road, forming the Orange, Alexandria & Manassas Gap Road, the condition being that shares of new stock should be issued to all outside holders of old," that is other than the State.

Q. You have not extended then in your summary of charges against Virginia the amount which she expended for stock in that road?

A. No, sir, I have not.

Q. Why did you not do it?

A. For the reason that this road was not sold for anything, and was given away simply on the condition that the stockholders outside of the State should be taken care of, and therefore I did not put it on.

Q. Then you pursued a different method—

Mr. Lilly: I just want to make one statement, that we will have other data and evidence in reference to the value of this road as of the dates relied on.

Mr. Harrison: I would like to be able to pursue my cross-examination without any interruption. I do not intend to be captious, I have been as patient as anybody could be, but I would like to wind up with this witness without any interruptions. If you gentlemen want to put in some statements, just reserve them until I get through.

Q. Then you pursued a different method with respect to this road from other items that you have testified to, did you not?

A. Yes, sir, I did.

Q. Why did you do that?

A. For the reasons that I have just stated.

Q. Was there any other reason, than that this interest was given away, that you did not charge it to Virginia?

A. Yes, sir.

Q. Well, what was it?

A. I will state that in Class G, in the supplemental answer, pages 58, 59, and 60, these were classed as you might say as a special lot of securities of doubtful value, as is shown by the assumption that they were only worth 25 per cent. of their face; and for that reason I did not put in any value for this road or any of the other ones there, excepting the James River and Kanawha.

Q. Why did you except the James River and Kanawha and treat that differently from the rest of the items in Class G when it stood on the same footing?

A. Because it went right to a road where we could trace it thoroughly, and where we could trace its valuation and get some idea as to what it was worth and how much it was worth.

Q. Then you treated the James River and Kanawha—the State's interest in that company—different from the others because you could trace that item and have something to say about its value?

A. Yes, sir; and because it seemed worth while to trace it.

Q. Have you not charged to Virginia, in other instances, as of value on January, 1861, and January, 1863, the cost of her expenditures?

A. Yes, sir; I have.

Q. Then why did you do that in some cases and yet not charge the item of cost in the Manassas Gap Railroad Company?

A. I have just explained that once, that this being a class by itself in the supplemental answer, I did not do so save in this one case.

Q. Then you pursued a different principle when you ascertained the alleged value of these securities, from that which you pursued in respect to the Manassas Gap Railroad Company?

A. Yes, sir.

Q. You knew what the cost of the State's expenditures in the Manassas Gap Railroad Company was, did you not?

A. Yes, sir.

Q. It was shown on the books, was it not?

A. Yes, sir.

Q. And yet you did not charge that to Virginia as its value in 1861 or 1863?

A. No sir, I did not.

Q. In other cases you knew no more than you did in respect to the Manassas Gap Railroad, that is, you found on the books what it had cost her to acquire an interest in them, didn't you?

A. Yes, sir.

Q. And yet you charged that to her as cost in January, 1861, and June, 1863, didn't you?

A. Yes, sir.

Q. And you have no other reason for that than that the Manassas Gap Railroad was included in a class in the supplemental answer which stated that the values were uncertain?

A. Yes, sir.

Q. Was the value of the Manassas Gap Railway any more uncertain than the other items which you charged at cost as representing their value in January, 1861, and June, 1863?

A. That I couldn't say.

Q. You knew the cost in each instance, didn't you?

A. Yes, sir.

Q. And yet you did not know anything more than that the books showed the cost. Then why cannot you say?

A. I can say, but I did not say.

Q. You can say that you cannot say, was that your answer?

A. Let the stenographer read the answer.

(The witness' answer was repeated by the stenographer.)

Q. I have asked you to say.

A. Please repeat the question.

(Question repeated by the stenographer.)

The Witness: I think my answer covers that, your Honor. Does it or not?

Q. I will give you a specific instance. You have charged Virginia with $272,000 as the value of her interest in the Alexandria Canal Company stock as of January 1, 1861, that item representing the cost to Virginia. If it was proper to charge Virginia with $272,000, based upon the cost of her interest in that company, why wasn't it proper to charge her with $2,103,000 as the value of her interest in the Manassas Gap Railroad Company,

that item representing the cost to her of her holdings in the latter company?

A. It would have been proper to have charged her with the cost of the Manassas Gap road.

Q. Then why didn't you do it if it was proper to do it?

A. For the reason that I have just stated, which perhaps may not be considered a sufficient one, that it was in this Class C, wherein they were prorated on a basis, and the statement is on page 59, "The evidence of the actual value of this stock as of that date has become so obscure that it was thought best, etc., to place a value thereon at the rate of 25 cents on the dollar," and for that reason I did not make any claim on the securities here outside of the one I have mentioned, the James River and Kanawha.

Q. You now say that it was proper to have charged the cost to the State of her interest in the Manassas Gap as its value in January, 1861, and June, 1863?

A. Yes, sir; to present that matter for consideration, as I have said before.

Q. But you did not do it?

A. I did not do it.

Q. No claim I believe you said being made for it because of its uncertain value?

A. Because of the statement, yes, sir, which I read from G.

Q. Now, if the State's interest should not have been charged to her as cost of her interest in that road, then you were wrong in charging the Alexandria Canal Company stock to her at cost, were you not?

Mr. Lilly: I object to the question, because he said it should have been charged, and now you assume that it should not have been, and you are reasoning from a false hypothesis.

Mr. Harrison: I thought you had a legal objection to make to my question, Mr. Attorney General. I would like to have a chance to have this witness answer my questions unaided.

The Master: Mr. Lilly suggests that your hypothesis is not justified by the facts as they exist.

Mr. Harrison: Absolutely justified.

The Master: Let us see what the question is.

(Question repeated by the stenographer.)

Mr. Lilly: Does the Master get my objection?

The Master: Yes; I am inclined to think that it does include to a certain extent perhaps an erroneous assumption, Mr. Harrison.

Mr. Harrison: If your Honor please, the witness has given at least two or three reasons for not charging to the State the cost value of her interest in the Manassas Gap road.

Mr. Lilly: But he said he should have done it.

Mr. Harrison: His reasons in the beginning were that it was not proper to do it, he could not tell anything about the value of it. The answer itself said the value was uncertain, and he had no means of fixing any value for that charge. Now it turns out that all of the other stock, or substantially all of it, has been charged at cost value, and when pressed on that line he says, to be consistent, that this doubtless should have been charged as the other was charged; it would have been a proper charge. But yet it was not made because—referring to the answer again. Now my question is that if it ought not to have been charged, then the other items similarly situated ought not to have been charged either.

The Master: But the trouble about it is this; he has not conceded on your cross-examination the item of $2,105,000 is as a matter of fact a proper charge. You finally reached that result with him. Now you are trying to measure his previous charge by what he now admits to be the proper basis in respect to this charge, and on the assumption that there is a distinction between the two.

Mr. Harrison: He has testified that he had applied a different principle.

The Master: He has admitted on your cross-examination, Mr. Harrison, that this was equally a proper charge. Now I think perhaps you are assuming.

Mr. Harrison: Haven't I got a right to assume if it is a proper charge—

The Master: Well, and you have asked.

Mr. Harrison: But he has not answered that.

The Master: The final result of your cross-examination of him was that this was a proper charge. He did not make it. He says that the $272,000 was also a proper charge, and you have now succeeded in drawing from him the admission that this item of $2,000,000 is likewise a proper charge. Now the question is if this charge was not made here the other charge should not have

been made. That is practically what it comes down to. It is argumentative, but the fact about it is that the witness has admitted your hypothesis out from under you. He says himself now that although he did not make this charge that it was a proper charge. You cannot measure in my judgment the propriety of the two hundred and seventy-two thousand dollar charge on an assumption that in a sense is inconsistent with the admission of the witness. It is a technical objection, to be sure, but of course if they insist on it it seems to me that inadvertently you have asked an improper question.

Mr. Harrison: I do not think it would hurt if we got all the light we could on this subject.

The Master: I do not think it would either.

Mr. Harrison: I am testing his reasons and the accuracy of his knowledge.

The Master: And you have done it very well. But of course if they raise the question of the legal propriety of this question I shall have to pass on it as the rule requires.

Mr. Lilly: We do not care to raise the technical objection, but he says that the $2,105,000—

The Master: Your objection is that the question assumes a fact that is contrary to the admission that the witness has made, and on that assumption proposes to measure the previous charge. I think it tends to include an erroneous assumption, and for that reason I should feel bound, if the technical objection is made, it seems to me that the question is open to the criticism that in a sense in any event it assumes a hypothesis, as the basis of the question, that the witness himself does not admit.

Mr. Lilly: I might say that as to this item of the Manassas Gap, that this is not all the evidence that we rely upon.

The Master: My judgment is that it would not do any harm to have the witness answer the question, but if they raise a legal proposition that requires me to pass as a matter of law upon the form of the question, I feel bound to say that it seems to me that it is open to criticism.

Mr. Harrison: All right, if you do not want the question answered, let it go unanswered.

Q. Now we will take the third item in Class G, page 62 of the printed schedule—

The Master: Before we pass that item, I want to make an inquiry. I would like to know whether West Virginia still insists on this Manassas Gap item.

Mr. Harrison: He has not extended it as part of the claim.

The Master: I get the impression, as the result of Mr. Harrison's cross-examination, that it is not insisted on, and I would like to have a statement, either from Mr. Hillman or the counsel on the other side as to whether or not they do insist on it.

Mr. Lilly: We do insist on it, and we expect to bring in other evidence to show the materiality, and what it was worth as of those dates and simply because it has not been carried out on those dates, it is simply a tentative summary.

Mr. Harrison: My friend says that is only a tentative summary. I would like to know what an exhibit is—when it becomes final. Here are exhibits tendered here by this witness and sworn to, and now we are told on the cross-examination that they are tentative and mean nothing.

The Master: I do not quite so understand it.

Mr. Lilly: He did not say that.

The Master: I do not think he intended to convey that impression. I will say this, if either side gets in on this record a schedule or a statement as to which during the course of this hearing they see fit to change their base and take another attitude, I shall have to allow them to do it. Of course that depends altogether upon what sort of a criticism the schedule is subject to. Any position that is taken on either side here is a position that either side, if they see fit to reverse, they can reverse it. Now I think they are confined to this supplemental answer, but subject to that any schedule that they put in here, until this hearing is closed, they can amend it if they see fit, of course subject to the criticism of the other side. And that suggestion of course would apply to any position you take in relation to any of these questions. If you see fit to reverse your attitude in connection with them, you have the privilege of doing it. Now as to this, I was simply trying to make this matter certain in my own mind. I am frank to say that the result of Mr. Harrison's cross-examination, left upon my mind, was that they did not insist on this item.

Mr. Harrison: That is what the witness said.

The Master: Yes, that is what the witness said, but we under-

stand of course, that the witness cannot conclude the other side; that while he is their expert, in the last analysis it is for them to say.

Mr. Harrison: They can repudiate him altogether if they want to.

The Master: So far as this item goes, I do not care what you call this schedule, whether you call it tentative or otherwise, but so far as I am concerned, the schedules they put in here are going to bind the other side unless they show me why they should not bind them.

Mr. Harrison: You have extended them all the latitude they could ask for.

The Master: Of course all we have now is this particular item, and as I understand now West Virginia does not waive this item but insists upon its receiving such weight as the evidence they have introduced may show it is entitled to.

Mr. Lilly: We have in some cases left the amount blank, because we were not in a position to get all the information. If it is worth a million dollars as of a certain date, if it is worth two hundred thousand, or if it is worth par, that is what it should be. Mr. Hillman may have gotten the idea, or counsel, originally, that because in 1869 it was turned over to the Orange & Alexandria, that we go back to the basic date of 1861 or 1863, and whether or not it was given away later, as both counsel on the other side have said, is not material.

The Master: As far as this item is concerned, you have it to meet.

Mr. Harrison: I have it to meet?

The Master: Yes; that is, they still insist upon it, they claim it.

Mr. Harrison: I do not know whether they do or not. If they do, I wish they would give me an opportunity of examining about it.

The Master: You have the statement of the witness of course as the result of your cross-examination, and I know the impression created on your mind, and you have an idea of the impression created on my mind, but of course I cannot hold that Mr. Hillman can conclude the defendant here.

Mr. Harrison: I do not ask for that, if your Honor please.

The Master: Of course when Mr. Hillman testifies about a

fact, that is one thing; but when he undertakes to state what the position is, or what the attitude is, why that does not conclude them. If there are any admissions of that sort to be made, they are going to be made by the counsel for West Virginia, and just so with Virginia; that is, I would not take the statement of a witness on either side as binding upon either party as to such a matter.

Q. Do you know anything about the value of the State's interest in the Manassas Gap Railroad Company other than you have already testified to?

A. No, sir.

Q. The third item in our exhibit, on page 62, under Class G, is the Roanoke Valley Railroad.

By the Master:

Q. Did the Manassas Gap Railroad ever pay any dividends?

Mr. Harrison: He says he knows nothing about it.

Q. I simply ask you that one question, as far as you know.

A. I cannot recall.

By Mr. Harrison:

Q. What do you give on your exhibit as the amount of the State's holdings in the Roanoke Valley Railroad?

A. $177,402, the common stock, and $130,000 preferred stock.

Q. That is a total of?

A. $307,402.

Q. You have got those figures stated under the column headed par value or cost to January 1st, 1861, have you not?

A. Yes, sir.

Q. Did you extend them in your summary as a charge against Virginia?

A. No, sir.

Q. Why didn't you do that?

A. For the same reasons as stated at length under the Manassas Gap Road.

Q. Because of the statement made with reference to them in the answer?

A. Yes, sir.

Q. You have written opposite the Roanoke Valley stock "Given away." Where did you get that information from?

A. Act of the General Assembly, February 18, 1866, pages 333 and 334.

Q. Did you see an entry on the Journal about it?

A. Yes, sir; there was an entry which cancelled the stock.

Q. Do you know how the entry read?

A. It is an entry where stocks are written off as sold, abandoned or useless. That is the heading of the account to which they are written off.

Q. Did the journal entry to which you refer with reference to this stock read as follows: "To balance this account under Act passed February 8, 1866, Chapter 212, the road and all the property be sold to satisfy the mortgage and floating indebtedness?"

A. I do not know how the journal entry read.

Q. Were you or not instructed by counsel not to extend those items in your summary against Virginia?

A. That was my understanding, that none of the items outside of the James River and Kanawha should be extended to the summary.

Q. If they were treated however as you have treated the Alexandria Canal Company and other similar companies, they should be extended into the summary, should they not?

A. They should, yes, sir.

Q. In other words, they are just as much a proper charge against Virginia as the Alexandria Canal Company or the Roanoke Navigation Company and others, on the principle which you have charged the latter?

A. Yes, sir.

Q. Now, without taking them under inquiry one at a time. I will direct your attention to the fact that there are included in the Class C besides the items that we have just been considering, the Fredericksburg & Gordonsville Railroad, Richmond & York River Railroad, Rappahannock Company, Rivanna River Navigation Company, Smith's River Navigation Company, Slate River Company, Kempsville Canal Company, Hazel River Navigation Company, Goose Creek & Little River Navigation Company, Dragon Swamp Navigation Company and Chesapeake & Ohio Canal Company and Potomac Company, all of them shown on your Exhibit No. 7-B, page 62 and page 63 of the printed schedule, with the amounts of the State's holdings in the respective companies opposite, are they not?

A. Yes, sir.

Q. None of those are extended in your summary of charges against Virginia?

A. No, sir.

Q. For the same reason that you have given with respect to the Manassas Gap Railroad and the Roanoke Valley Railroad?

A. Yes, sir.

Q. And what you have had to say with reference to the first two and the principles upon which you have fixed value applies to the latter as well as those two?

A. Yes, sir.

By the Master:

Q. Do you know as much about the value of the $272,000 item as you know about the value of these items you have just been inquired about?

A. No, sir; I have some slight further information on that subject which consisted of the amount for which this was disposed of, that is all.

Q. That relates to the $272,000 item?

A. Yes, sir; for which the $272,000 was disposed of.

Q. And what was that?

A. $754.47.

Q. I notice that you have here on this exhibit, on page 62, this notation, Act of General Assembly, February 18, 1866. I understood Mr. Harrison, a moment ago, to refer to an Act of Assembly dated February 8, 1866, and I inferred from the character of his question that he probably had in mind the same Act. What I want to get is whether they are identical or whether there were two Acts.

Mr. Harrison: I presume they are the same. I read from the Journal F.

The Master: I want to get the right date.

Mr. Harrison: I read from the Journal entry.

The Master: That said February 8?

Mr. Harrison: Yes, sir.

Q. Where did you get your date from, Mr. Hillman?

A. We got that date from looking at the Act itself.

By Mr. Harrison:

Q. What do you say is the date?

A. February 18, 1866.

Mr. Harrison: We have it here February 8; he may be right about it. Somebody has made an error in putting down the date.

The Master: If it is the same Act, there is no question about it.

Mr. Harrison: The same Act, and the same pages are given. We have a transcript of the Act here dated February 8, but that may be a mistake. It may be February 18. I do not know that it is, but one or the other has made a mistake in taking down the date of the month.

Q. I observe on this exhibit of yours that you have opposite a great many of those lists of stocks that I have just read off "On hand." Take for example the Fredericksburg & Gordonsville Railroad Company. Do you mean by that statement on your exhibit to say that Virginia has that stock on hand?

A. According to their ledgers, yes, sir, they have.

Q. Did you see the stock.

A. No, sir; If you will look at the foot note on Exhibit 9 you will see "None of these securities representing the total, $1,028,-020.18, have been inspected by us."

Q. What authority have you for saying it is on hand other than that you find the cost item of it on the books?

A. That is the supposition, that if the article had been disposed of it would have been written off the books, the same as other items were.

Q. Were not those books discarded years ago?

A. Those books were rewritten I suppose or restarted later on, but there are no entries on the books where these appear showing that they have been disposed of in any way.

Q. Do you mean to say that those items are carried on in current books of the State of Virginia?

A. I do not know whether they are or not, I only know that they have not yet been written off the old ledgers; they still remain there.

Q. Well, I will take one of them just as an illustration, the Potomac Company, that seems to be one that you have added to that schedule that is not mentioned in the answer, on page 63.

A. I beg your pardon, it is mentioned in the answer in this

way, that the Potomac Company—see page 59, supplemental answer—the Potomac Company and the Chesapeake & Ohio Canal Company are combined in one item on page 59 of the supplemental answer.

Q. Well, that is immaterial. That is included in the Chesapeake and Ohio Canal Company?

A. Yes.

The Master: There is nothing in the supplemental answer that shows that.

Mr. Harrison: No, nothing at all, it is all down as the Chesapeake & Ohio Canal Company.

By the Master:

Q. How do you get at that fact, that it is included in that item?

A. For the reason that the canals were afterwards made one, but still carried on the books of Virginia as two items, the Chesapeake & Ohio Canal and the Potomac Company.

By Mr. Harrison:

Q. Have you before you the date of the charge on the books of Virginia of the Potomac Company?

A. No, sir, I have not.

Q. The original entry?

A. No, sir.

Q. You do not know when that was made, you are not able to testify now about that?

A. No, sir; we took it as shown on the page there.

Q. You saw nothing but the original entry?

A. We took the entry as shown on Ledger B, page 191, of the Board of Public Works.

Q. You have an exhibit numbered 10, the amount of taxes found—

The Master: As to that, I have just one or two inquiries I want to make.

By the Master:

Q. The only element of differentiation between the item of two

hundred thousand odd dollars and the item Mr. Harrison has just been inquiring about, bearing upon the question of value, is this fact, that some time in 1872 the $272,000 par value of securities, was sold for $754, a little over two and a half cents on the dollar, am I right about that?

A. Yes, sir.

Q. And that is the only element involving value that differentiates that item from these other items?

A. Yes, sir.

Q. You find nothing anywhere that gives you any aid in reaching value in connection with these items that Mr. Harrison has been referring to, of any kind?

A. None whatever.

Q. And the only advantage that the $272,000 item has is that you do find something that indicates that at some date that was worth two and a half cents on the dollar?

A. It was sold for three cents per share of $100—I mean 30 cents for each $100, three-tenths of a cent. And from that was deducted the cost of sale.

Q. From the three per cent?

A. Yes, sir.

Q. It was sold at 30 cents a share, or three per cent?

A. Three-tenths of one per cent.

Q. And you do not even find any indication of that sort in connection with any of these other items which have been inquired about?

A. Nothing at all.

Q. I notice that you have here in reference to Richmond and York River Railroad Company, sold by decree of court, just about the same time that this sale took place that we are now referring to. What was the amount of that sale?

A. The Richmond & York River Railroad Company was foreclosed under decree of Chancery Court and the stock wiped out.

Q. Then the stock was not sold?

A. No, sir.

Q. The road was sold, that is what you mean by that?

A. The road was sold and the stock was wiped out.

Q. The road was sold on a foreclosure sale, and the stock was of no value, it did not bring enough to pay the mortgage, I suppose?

A. It was wiped out.

Q. Now, then, Smith River Navigation Company is another item that you have in here that I do not find in the supplemental answer; it seems to have been abandoned. That was for $4,383.12.

Mr. Harrison: It is in the supplemental answer.

Q. What do you mean by abandoned, that is what was abandoned?

A. The whole item, the Smith River Navigation Company was abandoned, it ceased to exist.

Q. Do you mean the enterprise was abandoned?

A. Yes, sir; the enterprise was abandoned.

Q. So that the expenditure was worthless?

A. Yes, sir.

Q. Is that the way you understand it?

A. Yes, sir.

Q. So that that item is evidently of no value whatever, is that right?

A. Yes, sir.

Q. When was it abandoned, prior to January 1, 1861? That is all I want.

A. No, sir, it was subsequent to that date.

Q. Well, when?

A. It was in the 70's.

Mr. Harrison: September 30, 1873.

Q. What is the fact about this Slate River Company? That seems to have been marked abandoned. When was that abandoned?

A. That was on the same date, your Honor.

Q. How does that appear on the books, that is the fact that it was abandoned? What sort of an entry did you get that from?

A. It is stocks sold, abandoned and useless.

Q. Well, do you mean that this appears under a heading of stocks sold, abandoned and useless?

A. Yes, sir.

Q. Well, now, what is there to indicate that this was abandoned instead of being either sold or useless, in the entry? I want to get at the detail of it to see just what the significance of it is.

A. Because you could tell from the fact of the journal entry itself that it was abandoned.

Q. What does the journal entry say?

A. The journal entry would show that it was abandoned.

Q. Well, does the journal entry in this particular case show that this enterprise was abandoned?

A. Yes, sir.

Q. Does it state any reason?

A. I do not recall that.

Q. What is the date of that journal entry?

A. That journal entry is the same as the other, 1873. I took that because it is upon the same ledger folio.

Q. Now, what do these two items represent that I have just been inquiring about, the Smith River Navigation Company and the Slate River Company, do they represent the amount of stock that the State held in corporations of that name, or do they represent public improvements that the State had originated and paid out that sum of money for?

A. It represents the stock held.

Q. Do you have any idea what the amount of the total stock was in each instance?

A. No, sir.

Q. Or how long the companies had been in existence?

A. I made no investigation of it, none.

Q. Or when it was originally organized?

A. No, sir.

Q. Well, you have treated that practically as of no value?

A. Yes, sir.

Q. Do you consider it as of no value, or do you think it has value?

A. I do not think it has any value.

Q. Did it have any value on January 1, 1861, in your judgment?

A. Yes, sir; it might have some value in 1861.

Q. Well, how much?

A. I could not say, sir.

Q. But on what do you predicate your statement that it had value on January 1, 1861? Is that a mere conjecture or have you anything definite on which to base it? What I want is to get some information about it, so as to see what weight to give to it.

A. That is a conjecture, your Honor, that in 1861, owing to the fact that railroads were infrequent, that stocks of navigation

and river companies would have a value, from being in operation. That is the sole basis of saying that I thought it had a value on January 1, 1861.

Q. But you have not any data that enables you to make any definite statement about it?

A. No, sir, I have not.

Q. Whether it is worth five cents on the dollar or fifty cents on the dollar?

A. I have not.

Q. Or nothing on the dollar?

A. I have not.

Q. That is simply your impression of the value that may have existed at that time, for the reasons that you give?

A. Yes, sir.

Q. Is that also true of the Slate River Company?

A. Yes, sir.

Q. Here is the Dragon Swamp Navigation Company. That is also abandoned. Does that also appear about the same time?

A. Yes, sir; it is on the same entry, Journal D, page 176.

Q. Have you any information that enables you to express any opinion as to whether that was worth anything on January 1, 1861?

A. No, sir.

Q. Have you any information that enables you to express any opinion as to the value of any of these stocks that appear on pages 62 and 63, on January 1, 1861?

A. No, sir; I have made no investigation on that line.

Q. And then you cannot give me any opinion on it?

A. No, sir.

The Master: That is all.

By Mr. Harrison:

Q. I started to inquire about your Exhibit No. 10 on the blue print, under the caption of amount of taxes, fines, etc., paid by West Virginia Counties to the State of Virginia, after June 20th, 1863.

The Master: What is the page number?

Mr. Holt: Page 50.

Q. When did those taxes accrue and become payable? Prior to January, 1861?

A. Some of them prior to January, 1861, and some of them after January 1, 1861.

Q. And they were paid when?

A. In the period between January 20, 1863, and April 1, 1865.

The Master: What page of the supplemental answer sets this up Mr. Harrison?

Mr. Harrison: It is in the summary on page 60.

The Witness: In the supplemental answer at the top of page 61.

The Master: Oh, collected from West Virginia counties; yes.

Mr. Lilly: On page 60 is the reading in regard to that, "In addition to the foregoing," etc.

The Master: It not appearing in the recapitulation, I rather supposed it would not be found there.

The Witness: Your Honor, those corrected pages 13 have been finished by my stenographer.

Q. The largest item you have on that list is $189,643.31, said to be general taxes assessed after January 1, 1861. Do I understand that you took that as a charge against Virginia as of January 1, 1861?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir; that should be in there, although the taxes had accrued subsequent to that date. But this is a little different from the former ones, from the other ones; and being a direct collection of taxes from West Virginia, I have entered it on both summaries.

By the Master:

Q. You mean by that the summary of 1861 and the summary of 1863?

A. Yes, sir; 1861 and 1863.

Q. The question now is, whether if this matter is settled and adjusted as of January 1, 1861, whether taxes assessed and collected after that date are a proper charge in that settlement.

The Master: That is what you mean, is it not, Mr. Harrison?

Mr. Harrison: Yes, sir; that is my question.

The Master: That is the question. If it is adjusted as of January 1, 1861, are the taxes that were assessed and afterwards col-

lected, or assessed and collected after that date, a proper item to take into account in adjustment as of that date. That is your question, is it?

Mr. Harrison: Yes, sir.

The Witness: Yes, sir.

By Mr. Harrison:

Q. Why?

A. For the reason that when you have made your adjustment of 1861, here comes an item that Virginia simply takes. It has got to be considered somewhere, no matter what the date of the adjustment is, whether it is 1861, 1862 or 1863.

By the Master:

Q. Well, if the statement is of a certain date, how is it that items that occur after that date have got to be considered?. That is what Mr. Harrison would like to know and what I would like to know. If the settlement is as of a particular date, how is it that matters that occur after that date are taken into account in the settlement as of that date?

A. Your Honor, it might not be considered as due on that date or as of that date. Perhaps I do not make myself clear. Having made the settlement of all these items which are due on January 1, 1861, there then occurs an item where Virginia has collected from West Virginia counties a large amount of money, which if the settlement is made as of January 1, 1861, and no mention made of that subesequent collection, it will be immediately lost sight of, and West Virginia will not have its proper credit. In order that it may not be lost sight of, in any event, having made the data for this settlement of January 1, 1861, I have mentioned that matter and put it *in toto* against West Virginia.

Q. The real question then I take it is this—

The Master: I do not want to take the examination out of your hands, Mr. Harrison, but the real question, I take it, is this—

Mr. Holt: Isn't the real question one of law?

The Master: Certainly.

Q. But the real question I suppose is this, if you were requested to state the debit and credit side of this account up to January 1, 1861, would you include items that accured after that date? That is the substance of Mr. Harrison's question.

A. No, sir, I would not.

The Master: Of course that does not settle the question; it is a question of law; but as a matter of accounting it is reasonably obvious that if you state the account as of a certain date that ends it, and that is what Mr. Harrison is trying to get into the record I take it.

Mr. Harrison: I am not dealing with a question of law but a question of accounting.

By Mr. Harrison:

Q. You have denominated those various items as taxes assessed by Virginia in West Virginia counties and paid by West Virginia counties to the State of Virginia. Please tell me how it happened that West Virginia counties were assessed for taxes by Virginia and paid money to Virginia in settlement of taxes during the period mentioned.

A. I don't know; they simply did and they were simply assessed and paid.

Q. Have you a list of the counties?

A. Yes, sir.

By the Master:

Q. And the amounts collected from each county?

A. Yes, sir; I have it in detail from each county. I have, your Honor, prepared a list of the counties—

Q. You prepared a list of the counties upon which you predicate this statement?

A. Yes, sir.

Mr. Lilly: And the amount paid by each county?

The Witness: I have not it in that form, but I have it in sufficient form to make that statement.

Mr. Harrison: I will not wait for that.

The Master: Do you want that put in later?

Mr. Harrison: Yes, I will see. I will let him check it up with him.

The Master: I am inclined to think I would like to have that in.

Mr. Lilly: I think we would too, your Honor. We will put that in later.

The Master: Because otherwise it is a trifle indefinite; Mr.

Harrison wants the counties upon which you predicate this computation. That detail must be submitted.

The Witness: I will submit that later, your Honor.

By Mr. Harrison:

Q. You say you cannot give any explanation of how it happened that West Virginia counties were paying taxes to Virginia during the period you mention there from 1861 to 1863 when they were assessed and paid from 1863 to 1865?

A. No explanation further than perhaps to state that these counties perhaps recognized their fealty to the old State of Virginia rather than West Virginia, though they were included, some of them subsequently and some at the time, in West Virginia.

Q. West Virginia did not become a state until June 20th, 1863, did she?

A. No, sir.

Q. Then all of the counties were counties of Virginia, were they not?

A. They were counties of Virginia and have been denominated West Virginia counties. They were then part of the State of Virginia until the new State was created.

By the Master:

Q. June 20, 1863?

A. Yes, sir; but I have noted them as being West Virginia counties to distinguish them from the regular Virginia counties.

Q. You mean that these counties that you have given were counties that afterwards became part of West Virginia?

A. Yes, sir.

Q. Were these taxes assessed and collected prior to 1863?

A. They were collected after 1863.

Q. Were they assessed prior to 1863?

A. Some of them were and some of them were not.

By Mr. Harrison:

Q. But your exhibit shows that they were all assessed prior to 1863?

The Master: No, it does not. He shows a period June 20, 1863, to April 1, 1865.

Mr. Harrison: That is my recollection of his testimony, that

they were all assessed prior to 1863, and were paid after that date and by 1865.

The Master: I was not clear about that and that is why I was inquiring.

The Witness: The bulk of them were assessed after January 1, 1861.

By the Master:

Q. Yes, true; but prior to June 20, 1863 were they assessed during that period? Of course it is after January 1st, 1861, now, but what I want to get is to get this a little closer.

A. I don't know the exact amounts. I can give that in my detail though.

Mr. Holt: You do not get the Master's question.

The Witness: Perhaps I do not.

Mr. Holt: Were any of these assessments made after June 20, 1863?

The Witness: Yes, sir; I think they were.

By Mr. Harrison:

Q. If you think they were I will be glad if you will be a little more specific and tell us how much.

A. I cannot tell without examining.

By the Master:

Q. You will furnish a statement showing that?

A. Yes, sir.

By Mr. Harrison:

Q. I would like to ask you if these counties that were assessed and taxed by Virginia up to June 20, 1863, or even if you found any of them assessed after that, and which paid taxes to Virginia between 1863 and 1865, if they were not within the jurisdiction of and under the government of the State of Virginia?

Mr. Lilly: Isn't that a matter of law?

Mr. Harrison: It might be a matter of law. I am not asking him for any opinion on a question of law. I would like to know if he knows that fact.

The Master: I suppose he may state the fact.

A. Yes, sir: they were under the jurisdiction of the State of

Virginia, I believe, as far as my knowledge of it goes, up to June 20, 1863.

By the Master:

Q. I would like to know upon what source you rely for your answer to that question. How is it possible for you to have original knowledge of the existing condition of things away back in 1863? I have no doubt you have a reason satisfactory to your own mind. I would like to know where you get the source of your opinion.

A. Because the State of West Virginia was not formed until June 20, 1863.

Q. Then it comes down to this, that it is not any information at all, so far as you are concerned, but that you assume that because the State of West Virginia was not organized until June 20, 1863, that the full territory of old Virginia was still within its jurisdiction, and therefore these counties were within its jurisdiction, is that it?

A. That is it.

Q. Then you do not know anything more about it than we do, but I wanted to know exactly what your sources of information were.

Mr. Harrison: He could have found all that information in the original record, where these counties are set forth by name and which were subject to the government of the State of Virginia at Richmond.

Mr. Lilly: We want to have the amount collected after June 20, 1863, that is the purpose of that charge.

By Mr. Harrison:

Q. If you were balancing accounts between these counties and the State of Virginia you would have to know how much Virginia spent in maintaining the government in those counties, wouldn't you, to balance that against the contributions that they made in taxes to her treasury?

A. Yes, sir; that would be an important point.

Q. And that you have not ascertained, have you?

A. I have put in no exhibits on that point of the expenses and taxes.

Q. Your examination showed who collected taxes in those days, didn't it? The Sheriffs of the counties collected them?

A. The Sheriffs and County Clerks.

By the Master:

Q. Would it be proper to take your total charge without qualification in the absence of information as to the public expense in the territory, in your judgment as a matter of accounting?

A. Yes, sir, it would.

Q. As covering the period between January 1, 1861, and June 20, 1863.

A. No, sir; not that period, but it would for the period which we have mentioned here, June 20, 1863, to April, 1865.

Q. But the information you have got here does not separate and segregate anything. I cannot tell anything about it, as to when, how or where. With the information you have got before me now you do not think it would be proper to take in account this charge without qualification, without the knowledge of the expense involved in the administration of these counties, as I understand it, between January 1, 1861, and June 20, 1863?

A. No, sir; not from the information which is on file.

Q. That is what I mean.

Mr. Lilly: I want to ask counsel on the other side if it is contended by Virginia that she expended money in the West Virginia counties after June 20, 1863, in administering affairs of government in the West Virginia counties?

Mr. Harrison: Yes, Mr. Lilly. As a historical fact there were a number of counties, some ten or twelve, that were included on paper as part of the territory of West Virginia that remained within the Confederate lines and subject to the government of the old State of Virginia up to the close of the war, and the only government maintained in those counties was the government of the State of Virginia, and whatever there was contributed in taxes was just like any other county in the State. But when the war ended they were then in fact under the jurisdiction of the State of West Virginia.

The Master: Was there not some question about the line at one time and how many counties were included?

Mr. Lilly: Only as to three counties. It is decided in the 11th Wallace.

The Master: As to those things, you must get the facts on the record. Of course as it stands here I am just a little uncertain.

Mr. Harrison: All those facts are in the original record, and in the schedules that were furnished they were set forth, and the assessed values were taken account of with reference to Confederate currency in those counties, West Virginia getting the benefit of the scale of Confederate value. It will all come to your Honor if you will run your eye over it but it is all cold for the present.

Mr. Lilly: The fact that Virginia collected from the West Virginia counties after June 20, 1863, $224,799.63 is not in issue is it?

The Master: You mean here?

Mr. Lilly: Yes.

The Master: I do not understand that they raise any question as to the figures and computations. I am going to put that general question covering all these schedules when we get around to them. The effect of the figures is one thing and the actual expenses is another. Of course it is easy enough to see that taxes that may have been assessed between January 1, 1861, and June 20, 1863, and that were assessed after June 20, 1863, there may have been a very profound distinction as to what the facts were. I suppose that the jurisdiction in which the territory is, is subject to discussion during that period, and of course they are entitled to the benefit of the public expenditures, and if they did not happen to be collected during the period, the State is assumed to have gone on and discharged its public obligation, and it may not have collected revenues necessary to pay the expense of these obligations until a later period, notwithstanding that the taxes assessed during a certain period might perhaps be properly considered applicable to the public expenses during the same period. Of course I do not know how all these things may work out, but what I want is details and facts showing all these things, and then you can reach your conclusion, and your schedules I understand show that?

The Witness: Yes, sir.

By the Master:

Q. I would like to have you say as far as you know when these taxes were assessed.

A. We will have the details in a few minutes and I can county them, put them by counties in a very few minutes more.

The Master: I am going to suspend in five or ten minutes or if it will be more convenient for Mr. Harrison I will suspend now.

Mr. Harrison: No.

The Master: I will go on then until four o'clock

The Witness: I think we can have them in about ten or fifteen minutes.

The Master: It will be better to have them right at this point, and if they want to pursue it on cross-examination it will be right in the place where the subject matter appears in the record.

By Mr. Harrison:

Q. Bearing upon this question I would like to inquire if you determined through your investigation or inquired into the question of whether Virginia, the old State, expended any money on works of internal improvement in West Virginia after January, 1861. I refer particularly, as that may have come under your notice, to the Covington & Ohio Railroad, and you may confine your answer to that work. I am speaking now of after January 1st, 1861.

The Master: And the territory now within the State of West Virginia?

Mr. Harrison: Yes, sir; the territory which became a part of the State of West Virginia.

A. No, sir; I made no investigation regarding that point.

Q. Your analysis of the disbursements by the Board of Public Works, January 1st, 1861, and June 20th, 1863, would show the expenditures the State of Virginia had made on that work, would it not?

A. No, sir; it would not.

Q. Do you mean to say you just took the totals?

A. No, sir; I did not take Covington & Ohio at all.

Q. I am talking now about the cash account of the Board of Public Works.

A. I thought you were still on the Covington & Ohio.

Q. I said, would not your analysis of the cash account of the Board of Public Works, January 1st, 1861, and June 20th, 1863,

show whether any sum had been expended after January 1st, 1861, on the Covington & Ohio Railroad.

A. I say I do not know. It would not show it.

By the Master:

Q. What is that that does not show it?

A. My analysis would not show it.

The Master: I understand. I did not know but what you referred to the books as not showing it.

Mr. Harrison: No, all I wanted to know was whether he analyzed the cash account of the Board of Public Works as of those dates. If he did not analyze it of course he could not tell.

The Witness: No, sir, I did not.

By Mr. Harrison:

Q. Now will you please state the total amount, according to your schedules, of West Virginia's claim as a set-off against her liability to Virginia as ascertaned by the decree of the Court fixing the principal sum for which she was liable?

Mr. Hogg: As of what date, Mr. Harrison?

Mr. Harrison: Either January 1st, 1861, or June 20th, 1863, or any other date.

A. January 1st, 1861, total offered for consideration is $29,611,784.62; 23 1-2 per cent. of which is $6,958,769.39; to which, if we should add the item which is under discussion, as shown upon Exhibit No. 10, $224,799.63, would make a total of $7,183,569.02. This is the total shown by the summary; it does not include any proportion of the items on pages 61, 62 and 63 of the printed record.

Q. Is the statement you have just rendered us on the basis of the changes you have made since your cross-examination began?

A. Yes, sir.

Q. In your January, 1861, schedule?

A. Yes, sir.

Q. Those changes increased the amount of your summary several millions of dollars, didn't they?

A. Yes, sir.

Q. Can you give us the amount, just approximately?

A. I can give it to you exactly in a moment; $3,547,919.08,

subject to the application of course of the 23⅓ per cent; that is the total gross charge was increased that much.

Q. The figures you have just given us I do not mean the last figures, but the statements you have just made show that West Virginia's claim against Virginia is $7,183,569.02. Does that mean as of January 1, 1861?

A. Yes, sir.

Q. Is that final? In other words, can we rely upon that now as final?

A. No, sir; I have stated that it does not include any items from pages 61, 62 and 63.

Q. Are we to understand then that you cannot give us a final statement of West Virginia's claim against the State of Virginia?

A. Yes, sir; I can.

Q. You say you can?

A. Yes, sir; I can.

Q. Well, please give it to us.

A. The amount to be prorated on the basis of 23⅓ per cent. is $31,716,784.62, which when prorated, will give as the West Virginia proportion $7,453,443.48; to which, if we add the items on Exhibit No. 10 of the present record, viz., $224,799.63, will give us a total claim of West Virginia of $7,678,243.11.

Q. How have you increased the item since your last answer?

A. By adding the amount of the State's holding in the Manassas Gap Railway Company of $2,105,000, to the totals which have already been mentioned.

Q. Have you added any other items in Class G?

A. None, outside of the James River and Kanawha and the Manassas Gap.

Q. Why didn't you add the rest of them if you added those?

A. Because I was instructed by the attorneys for West Virginia that no claim would be made on account of the other items.

By the Master:

Q. Now what is included in the other items?

A. Page 59—

Q. I would like to have those mentioned right there.

A. Roanoke Valley Railroad Company—

Q. Just make the statement this way: That is correct, I was

instructed by the attorneys for West Virginia to state that no claim has been made on account of the following items.

A. I was instructed by the attorneys for West Virginia to say that no claim has been made on account of the following items, pages 62 and 63 of the printed record: Asset No. 3, Roanoke Valley Railroad Company stock—shall I mention the amounts, your honor?

Q. No, you need not bother about that.

A. Asset No. 4, Fredricksburg & Gordonsville Railroad Company stock.

Item No. 5, Richmond & York River Railroad Company, stock.

Item No. 6, Rappahannock Company stock.

Item No. 7, Rivanna River Navigation Company stock.

Item No. 8, Smith's River Navigation Company stock.

Item No. 9, Slate River Company stock.

Item No. 10, Kempsville Canal Company stock.

Item No. 11, Hazel River Navigation Company stock.

Item No. 12, Goose Creek & Little River Navigation Company stock.

Item No. 13, Dragon Swamp Navigation Company stock.

Item No. 14, Chesapeake & Ohio Canal Company stock and Potomac Company stock.

Mr. Holt: We may be wrong, your Honor, but we have always looked upon that as a mere junk pile, that part of it.

The Master: You are merely throwing it off the sidewalk now.

Mr. Holt: Well, yes.

By Mr. Harrison:

Q. Am I correct now in saying that you have stated West Virginia's claim against the State of Virginia as of January 1, 1861?

A. Yes, sir.

Q. To be $7,678,243.11?

A. If you will, please make that 244.02?

Q. Then the correct figures are $7,678,244.02?

A. Yes, sir.

Q. That you say is final and not subject to change? We can rely upon that?

A. Yes, sir.

Q. Now what is the amount of her claim as of June 20, 1863?

The Master: Before you leave that I would like to make this suggestion, the schedule that I have, page 51, does not agree with this aggregate, and I simply suggest that they take this back and revise it, and hand me a schedule that is correct, with the final amount.

The Witness: Page No. 51 is the page we are just coming to.

The Master: I see, I was confusing that for the time being as 1861.

A. While we are computing this, I will just say that I made a slight correction on account of a clerical error in this computation, and if it is all right I will just give the stenographer the corrected figures for that, instead of the other figures which are put in. It should be $7,678,244.02. Now the total to be prorated upon the basis of 23¼ per cent to West Virginia amounts to $23,478,100.77; 23½ per cent. of which is $7,867,353.68; to which if we add the total of Exhibit No. 10, the tax collection exhibit, $224,799.63, we would have a total of West Virginia credits of $8,092,153.31, as shown on page 51 of the blue print.

The Master: That does not agree with mine, so just please revise it and I will put it on my file.

Mr. Harrison: Every time he figures it it gets bigger.

The Master: I guess you are getting the atmosphere so chilly that this snow ball rolls up.

The Witness: Your Honor, may I have ten minutes to get that tax matter straightened out?

The Master: I think perhaps what you had better do is to straighten that out by to-morrow morning. Take your time and straighten it out between now and to-morrow morning. I would rather do that than to delay here, and let them go along with their examination.

Q. You have not amended your figures since you gave $8,092,153.31 as the amount of West Virginia's claim against Virginia for June 20, 1863, have you?

A. No, sir.

Q. And that is final and not subject to change?

A. Yes, sir.

Q. Have you taken any account in your computations of the amount of cash that West Virginia received upon its organization from the State of Virginia?

A. No, sir; I have filed no exhibits on that point.

Q It is all in the original record. You are aware of that fact, are you not, that all of that information is contained in the original record?

A. I am not aware of that. I am aware of the fact that there was some money passed.

Q. You are aware of the fact, however, that there was some money that did pass to West Virginia on the organization?

Mr. Lilly: Can you give us some record of where that appears?

Mr. Harrison: Not now, but I can do so.

Q. You have taken no account of that, you say?

A. I have not taken it into account.

Mr. Harrison: Plaintiff's Exhibit G—1, page 819 of the original record, will show the payments to West Virginia on her organization, by the State of Virginia. Now an exhibit was handed us this morning, if your Honor please, a paper, I do not know whether it is an exhibit or not, undertaking to show some fact in connection with the cash account of one of the railroads, the profits, I have forgotten now how it was described—I think it was the running account of the Farmer's Bank. We have not had an opportunity to examine that, and I reserve the right to cross-examine on that when I have examined it. With that statement, and with the further understanding that if we should find that we have omitted something that we want to inquire about, why I assume we may cross-examine further—

The Master: Yes, anything that occurs to you at any time that you want to examine about, you may do so.

Mr. Holt: Now, your Honor, we are in this situation with respect to the re-direct examination; we have made some notes, and the cross-examination has been quite lengthy, and we would like to have a little opportunity to go over what we have, so that we may press into a small compass any queries we may have to make. I expect we could make some time even by letting it go until morning. I think half a dozen questions will cover what we want if I understood what he said, but of that I am not quite positive.

The Master: You are not in a position to make any progress on other lines?

Mr. Holt: I do not believe I am. Here, by way of illustration, this was the thing that I had in mind; I have not looked at it—

I have looked it over, but I want to think about it a little bit.

The Master: What have you to say as to that suggestion, brother Harrison?

Mr. Holt: I think we could promise to be through with Mr. Hillman in the morning in three-quarters of an hour or an hour's time, and then hurry on to the matters outlined this morning.

The Master: I think both sides ought now, so far as it is possible, to finish the examination of Mr. Hillman, because it does not seem to me that he ought to be kept here under this embarrassment any longer, and of course conditions might develop that would make it absolutely neccessary for Mr. Hillman to leave the hearing at once. Of course we hope that that won't be the case, but in any event if it is feasible I think both sides ought to get through with Mr. Hillman at the earliest possible moment, on his account and also on our account. I do not want to have the hearing postponed again on account of any inability to reach Mr. Hillman. What have you to say about that, Mr. Harrison?

Mr. Harrison: I have no disposition in the world to make any objection to Judge Holt's request.

Adjourned to September 9, 1914, at 9:30 A. M.

BEFORE THE MASTER,

Richmond, Virginia, September 9th, 1914.

Present: The same counsel as on yesterday.

The Master: Mr. Hillman submits this morning and makes a part of the record his detail schedule in relation to the gross item of $224,000 for taxes collected from West Virginia counties, and I would suggest in relation to that that if there is any cross-examination, if the counsel can in looking it over for a moment or two determine whether there is, if there is any cross-examination in relation to that I will have that take place before Judge Holt goes on with his re-direct examination, so as to have the whole cross-examination together.

The schedule submitted by Mr. Hillman is as follows:

Amounts of Taxes assessed by the State of Virginia and paid by West Virginia Counties to the State of Virginia from June 20, 1863, to April, 1865.

LAW PROCESSES.
1863 and Subsequent.

Counties.	Amounts.
Pendleton	$ 34.20
Greenbrier	350.15
McDowell	13.34
Mercer	38.83
Jefferson	46.71
Monroe	114.00
Pocahontas	57.00
	$ 654.23

REDEMPTION OF LANDS.
1863 and Subsequent.

Monroe	$ 73.26	
Greenbrier	42.53	
McDowell	7.79	
	$ 123.58	

GENERAL TAXES, 1863, AND SUBSEQUENT.

Mercer	$ 31,206.46	
Monroe	45,488.57	
Greenbrier	74,664.07	
McDowell	1,200.00	
Pendleton	15,400.00	
Gilmer	3,317.24	
	$171,276.34	$172,054.15

Delinquent Taxes & Forfeited Lands. NO DATES. Being judgments on bond of Commissioner's of delinquent and forfeited lands.

Gilmer County	$3,936.13	
Kanawha County	699.17	
Lewis County	3,575.00	
	$8,210.30	8,210.30
	Total	$180,264.45

Continuation of the examination of

CONWAY W. HILLMAN.

By The Master:

Q. This schedule, Mr. Hillman, does not separate the as-

sessments unless it be a fact that none of these assessments were made prior to 1863. If that be the fact, the schedule is all right, but if any of these assessments as to which the details are shown were made between 1861 and June 20th, 1863, that ought to appear. Were they, as a matter of fact?

A. No, sir.

Q. All made after June 20th, 1863?

A. Yes, sir, that is the 1863 taxes are payable in September, 1863; I do not know the date of the absolute levy of the taxes.

Mr. Hogg: We will put the statute in on that so that your Honor may have the benefit of the statute as to when they are payable.

Q. These items do not include any taxes that were assessed prior to the assessment for 1863?

A. No, sir. I call your attention, your Honor, to one item, which is the last item, delinquent taxes and forfeited lands, no dates, being judgments on bond of Commissioner of Delinquent and Forfeited Lands. I do not know the dates of those, and therefore I have entered them as a special item, and they are subject to any criticism because they have no dates on them.

Q. When do they appear to have been paid; that is, when were the redemptions made?

A. They were paid in 1864.

Q. The chances are at least even that those taxes were assessed prior to 1863. I do not know what the machinery is.

A. Yes.

The Master: We cannot tell until we get the statutes. Of course they pursued the method of delay, I suppose, and then sold in time to preserve the liens and all that. However, that is a matter for cross-examination. Do you wish to cross-examine in relation to that now, Mr. Harrison?

Mr. Harrison: I do want to examine him on that, but I do not know whether I will have a chance at this moment. I expect I had better wait, if your Honor please.

The Master: Under those circumstances, if it is agreeable,

Judge Holt, I would like you then to proceed with your re-direct examination.

Mr. Holt: I have nothing to ask on that particular schedule unless they have. If they have any cross-examination, then I will have some examination.

The Master: Take up your re-direct examination, gentlemen, then.

The Master: I want the transcript of the proceedings of yesterday, because when we get on to it I want to refer back to Judge Holt's statement as to the character of proof, etc., so as to follow him along when he gets around to that branch of the case.

Mr. Holt: We have made a memorandum, your Honor, of the outline, which I will hand you by the time I get to it.

The Master: All right.

RE-DIRECT EXAMINATION.

By Mr. Holt:

Q. Mr. Hillman, upon what theory and for what purpose were your schedules heretofore filed prepared?

A. Book value.

Q. Do you mean by that for the purpose of showing the book value?

A. Yes, sir.

Q. If the books of a corporation be correctly and truly kept, what should the book value represent?

A. The actual value of the security in question.

Q. That is bound to be so, is it not?

A. Yes, sir.

Q. What do you understand by market value?

A. That is what the stock has been selling for.

Q. And market quotations then represent the sales, do they, or the prices at which sales were made?

A. Yes, sir.

Q. In making up your schedules for the purpose of ascer-

taining book values, did you take into consideration dividends declared and paid?

A. No, sir, I did not. I made an entry, however, of amounts of dividends declared and paid, on the sheets whereon I showed book value.

By The Master:

Q. That is, you have a statement of the dividends independently of the statement showing book value?

A. Yes.

The Master: That is what you meant, Judge, is it not?

Mr. Holt: Yes, they did not enter into the book value computation; they were put there for any purpose it was decided that we might want to use them for.

By Mr. Holt:

Q. Suppose that a stock should be considered at par that pays a six per cent. dividend, what premium would it bear upon a seven per cent. dividend?

A. 16 2-3 per cent., or the stock would be worth $116.66 for every hundred dollars worth.

Q. Upon a 7½ per cent. dividend?

A. Each $100 share of stock would be worth $125.

Q. A share of the par value of $100?

A. Yes, sir.

Q. What an eight per cent. dividend paying stock?

A. A share at par value of $100 would be worth $133.33.

Q. May the market value be the same as the—

The Master: Judge, do I understand from him that that in his judgment would be a demonstration of its selling price, or what would be the price computed upon that basis?

The Witness: The price computed upon that basis.

The Master: That is what I supposed you had in mind.

Mr. Holt: Yes.

Q. May the market value be the same as the book value of the stock?

A. It may; yes, sir.

Q. Is it necessarily the same?

A. No, sir.

Q. It may be above it or below it, as I understand it?

A. Yes, sir.

Q. Upon what does the market value of stock depend as distinguished from its book value?

A. It depends upon the demand and supply of the stock, and the conditions of the money market at that time.

Q. What do you mean by market quotations on stock?

A. I mean quotations which are made from day to day on stocks which are actively dealt in and are, you might say, on the market for continuous sale and purchase.

Q. Are they or are they not subject to certain fluctuations, market values?

A. They are, yes, sir.

Q. May those fluctuations take place without any change in the real value of the property?

A. Yes, sir.

Q. May not, by way of illustration, Northern Pacific be 100 in the forenoon and only 40 in the afternoon, without any change in the plant or earnings of the property or company?

A. Yes, that could be.

The Master: I suppose those are matters of common knowledge, when we come right down to it.

Mr. Holt: Yes, sir.

The Master: That is, at least I am situated where I hear more or less of that; and I happen to be the assignee of a bankrupt brokerage concern.

Q. Upon cross-examination yesterday, Mr. Hillman, with reference to your schedules upon the subject of banks your attention was called to a report of one of the banks accompanying the balance sheet that had been utilized by you, wherein the statement was made that there were $100,000, as I recall it, of bad debts and $50,000 of doubtful debts. Do I get the amount correct?

The Master: I do not think you get the amount correct. I

suppose your question is general. I think the doubtful debts was the largest item and the bad debts the smallest; but, however, that is near enough I suppose for the purposes of your question.

Q. Well, take the Farmers' Bank of Virginia, the bad debts seem to have been reported at $70,000 and the doubtful at $40,000. Now, was there anything in the bank balance utilized by you to show whether those debts were included in the asset column?

A. Nothing.

Q. There was no item in the balance sheet designated then either as bad or as doubtful debts?

A. No, sir.

Q. What would be the natural presumption if an officer would accompany his balance sheet with a report showing bad debts, as to what had been done with the bad debts, in banking?

A. The presumption would be that they had been charged off from his assets.

Q. How about the doubtful debts?

A. They would be probably allowed to remain.

Q. For what reason?

A. For the reason that they are a possible asset, and until they become worthless it is not probable that they would be charged off.

Q. In other words, the very next year they might become good?

A. Yes, sir.

Q. And they would not be charged off until they had been determined to be bad?

A. That is the presumption, yes, sir.

Q. Now, in your schedules upon these same banks, in the balance sheet utilized by you, or balance sheets, there is an item, profits of institution or profits of the institution. What is the exact language used?

A. Profits of the institution.

Q. And you stated on yesterday upon cross-examination, as

I recall, that if the sum of money set down under that heading represented the whole of the profits of the institution for that year, that then the dividends declared were in excess of the profits named. Was that true?

A. Yes, sir.

Q. Have you since examined that account or balance sheet and analyzed the item profits of the institution with a view of determining whether or not it was a running account?

A. Yes, sir, I have.

Q. What conclusion did you reach upon that subject?

A. That the account headed profits of the institution is a running account.

Q. Have you prepared a schedule at the request of the Master in an effort to demonstrate that position?

A. Yes, sir, I have.

The Master: That schedule is already in.

Mr. Holt: It was not marked in any way. I want to have him explain it now, if he can.

The Master: If it is in the record, I would not duplicate it, if it is in the record already.

Mr. Holt: That is true.

The Master: Unless the stenographers have failed to follow my directions.

Mr. Holt: I want to get it marked in some way; I do not want to duplicate it at all.

The Master: I have no objection to your marking the schedule, but I would not duplicate it in the record.

Mr. Holt: That was not my purpose.

Q. Was that schedule filed by you on yesterday?

A. Yes, sir, it was.

Q. Do you recall whether or not it was marked as any particular exhibit?

A. I do not think it was marked, I do not recall any such marking.

The Master: It was not marked. You may have it marked, it you want to.

Q. This exhibit covered how many of these banks?

A. Two of them.

Q. What were they?

A. The Farmers' Bank of Virginia and the Exchange Bank of Virginia.

Q. Will you mark this exhibit Defendant's Exhibit No. 13?

A. I file this and mark it Defendant's Exhibit No. 13, 1861.

The paper was admitted in evidence and marked Defendant's Exhibit No. 13, 1861. September 9th, 1914, C. B.

Q. What do you mean now by a running account, Mr. Hillman?

A. An account to which the profits of the institution would be credited from time to time, and to which there would be made charges on account of dividends paid or on account of bad debts charged off, or doubtful debts charged off, if any such would be charged in the course of their business.

Q. And it is debited with charges from time to time?

A. Yes, sir.

The Master: He does not go quite so far as to say that, he infers the existence of an account of that sort.

Mr. Holt: I am speaking now of a running account generally. I am going to take up the running account as applied to this bank directly.

The Master: I understand that as a result of his computation he assumes there must have been a running account; he never has seen a running account; but on that assumption he assumes also that the running account contains these items back and forth. Am I not correct about that? He stated on his examination the other day that he had never seen any such account; he now assumes that it existed; and if it existed it had these features.

Mr. Lilly: The Judge was asking him about a running account generally.

Mr. Holt: And then I wanted to fit this to his description of a running account.

Q. Mr. Hillman, will you take Exhibit No. 13 and in a brief manner, and according to your own ideas, explain how this ex-

hibit demonstrates the profits of the institution to have been a running account.

A. Yes, sir. Farmers' Bank of Virginia, January 1st, 1859, as shown on page 24 of document 14, the report which we have been considering in the banks, it shows that this bank had a surplus and dividend fund of $343,477.53, and had profits of the institution $166,695.72, a total available for the declaration of dividends or applicable to the declaration of dividends of $510,173.25. It has also been shown, according to our bank exhibit, page ——.

The Master: If there is nothing in this, Judge, except mere repetition of what is in the schedule, why doesn't it cover your whole ground to have him state that the schedule accurately gives his computations, unless you desire some elaboration of the schedule? If he is simply reading it, we have got it all in the record now. It does not help me any to have him repeat it, unless you have something in addition to what he has already explained.

Mr. Holt: I thought perhaps his going over it would suggest something to me and suggest some question that you might want to ask in connection with it.

The Master: I have already gone over it as far as I am concerned. I think I understand fully his modus operandi; but still I do not want you to limit your examination, except it does not seem to me that it will help any by simply having him read the schedule. If he has something in addition to what he has on the schedule, that might be important, but so far as reading is concerned, I have already read it and his re-reading it does not do me any good.

Mr. Holt: My object was to take only one bank. I did not intend to prolong it by going into the Exchange Bank, which is the same thing.

The Master: I do not object to your proceeding, Judge, in your own way, except I was simply making that suggestion in the interests of saving time. Why won't this examination do, Judge—excuse me if I have disturbed your train of thought—I was going to say why would not this cover it? Of course he has this and I have it, and if there is anything by way of ex-

planation that it is important to add in addition to what he has stated, why does not that cover your whole ground? Still, if you prefer to have him go over it, I shall not object.

Mr. Holt: I do not, if the Master is satisfied.

Q. I will ask you whether or not this Exhibit No. 13 explains itself?

A. Yes, sir, it does.

By The Master:

Q. Is there anything that should be stated in addition to what you have already put in the record, in order to make it intelligible, and if there is, we shall be very glad to have you state it; but if you have covered the whole ground, that exhausts the subject.

A. Yes, sir, one little item, if they will please correct my subtraction under the Exchange Bank of Virginia of $274,000 and $359,000, and leaving $285,000 instead of $85,000.

By Mr. Holt:

Q. Correct your exhibit then according to the fact.

A. That is all.

Q. Now, are the figures on that exhibit correct?

A. Yes, sir, they are.

Q. With that correction?

A. Yes, sir.

By The Master:

Q. You want to change the $285,000 to $85,000?

A. Yes, sir.

Q. That is obvious enough, but I did not notice it, though.

A. I did not until I happened to hit it this moment.

The Master: It is a clerical error, obviously, but still it ought to be corrected. You are right about that.

By Mr. Holt:

Q. Also, in your cross-examination relative to these banks, or upon the subject of these banks, Mr. Hillman, you were asked several questions concerning the designation of an item as profit

and loss account, and also criticised, we might say, for putting the word contingent into the profit and loss account. Will you explain that and tell the Master why you did that, where you got it from and whether or not the bank did it, and if so, in what year it began to do it?

A. Yes, sir. On pages 8 and 9 of the Second Auditor's report, January, 1860, we have the general state of the Bank of Virginia wherein there is an item denominated profit and loss showed for 1859 and 1860, January 1st of each year, which item of January 1st, 1860, is $337,455.84, which, when it is carried over into the next year on pages 6 and 7 of the Document No. 14 of the next year, is called surplus and contingent fund; the same amount, $337,455.84, and carried in that same column for 1861, is the $322,549.39, which I had denominated profit and loss and for which I was criticised. The reason that I did not make that change in the notation was that I have set these three years up in consecutive columns, putting the notation right down on the first column and then followed it with 1859, 1860 and 1861, and of course I had not changed profiit and loss, seeing that the same amount was carried through.

By The Master:

Q. Your suggestion is that the designation of this column as profit and loss did not originate with you, but it did originate in the report of this bank in 1860?

A. Exactly so.

Q. And that the modification of items in 1859, and that the change in description followed along on that same item?

A. Yes, sir.

Q. And your suggestion is that you followed the first description and did not make the modification that appeared in the reports; that covers that, doesn't it?

A. Yes, sir.

Q. That is what you mean by that?

A. Yes, sir. The same can be followed, if necessary, with the Exchange Bank of Virginia.

Q. You say the same facts appear?

A. Yes, sir.

By Mr. Holt:

Q. I believe you stated that you got these figures that you have just now been discussing from the Second Auditor's report of Virginia?

A. Yes, sir, Document No. 14.

Q. Is that the source of all the matters you have set down in your schedule concerning these banks?

A. Yes, sir.

Mr. Holt: I believe they may ask him again.

The Master: You are through with your re-direct examination?

Mr. Holt: Yes, sir.

Mr. Harrison: Most of his testimony relates to matters that have been already fully covered by the cross-examination, and we will not ask more than one or two questions.

RE-CROSS EXAMINATION.

By Mr. Harrison:

Q. Referring to your Exhibit No. 13, as I understand you, you have assumed that the balance sheet of the Farmers' Bank of Virginia shows that the profit account was a running account?

The Master: Profits of the institution.

Q. The profits of the institution was a running account. If that is true, why don't your figures on your exhibit $273,855.75 and $331,040 agree?

A. That is just the reason, that we show that it is a running account; because they do not agree proves that it is a running account.

Q. Do you know why they do not agree?

A. I do not know that, but I can probably state the reason, that the dividends are payable semi-annually.

Q. If you do not know, how can you say?

A. I cannot say.

Mr. Holt: He suggests a reason, however, which we think he is entitled to do. Of course you will take it for what it is worth.

The Master: Well, I understand it to be his opinion; I do not understand he has any basis for stating that he knows it to be a fact, but it is his conclusion from the conditions which he believes.

Mr. Lilly: It was not his opinion that the dividends were paid semi-annually; he states that as a fact.

The Master: I understand that, but I am speaking now with reference to the running account.

Mr. Harrison: That is all we want to ask him.

By The Master:

Q. Is it your idea that this running account, which you assume undoubtedly existed in order that this result may appear in the trial balance, had credited to it from time to time profits as they accrue? I understood that to be your statement.

A. Yes, sir.

Q. I am not quite certain that I understand it. How do you understand the profits were ascertained from time to time, that they would take an individual transaction and reckon the profits upon that transaction and credit the profits upon that transaction to this running account; is that the way you understand the books were kept?

A. Yes, sir; they would be kept through what they would call their interest and discounts, and exchange accounts. Those are the principal items of profits in banks.

Q. Well, your idea is that the individual items, as they developed and occurred in connection with the business, would be transferred to this account?

A. Not individually; no sir. They would be first transferred through the medium of the interest account, discount account and premiums on exchange, and then the total every six months of those taken and transferred to profit.

Q. Well, then, would the profits be transferred from time to time, or only at the expiration of a period of six months, which do you mean?

A. At the expiration of periods.

Q. Well, what periods?

A. I should say every six months; it might possibly be quarterly.

Q. What gives rise to the assumption that it might be done quarterly? I want to get your idea of the method of book-keeping that produces this account.

A. In the bank statement which we have examined there is a notation on document No. 14, page 8 of the 1861 reports, wherein certain items are marked with a star, and below it says, "The acts of the legislature passed in 1856, March 17th, extending the jurisdiction of most of the banks in the state, require that each quarterly statement shall give amounts on the first day of each month in the quarter under the heads marked star." I assumed from that, that quarterly statements were compelled, and that therefore these profits would be entered quarterly.

Q. Then when you say in your statement that from time to time these profits would be credited, you mean there were stated times, either provided by law or by the practice of the bank, when these items would be summarized in one account and the result carried to this account you have in your mind—am I right about that?

A. That is right.

Q. I got the other impression from your statement, that there was a sort of a running arrangement, you calling it a running account and then stating that the credits were made from time to time. But your opinion is that there was probably an account of the character that I have just now described?

A. Yes, sir.

Q. In other words, you do not see any way in which this balance could have been carried along without the existence of an account of that sort; is not that what it comes to?

A. That is right.

Q. Now, do I understand you this morning to say that in your judgment the book value which you have shown is the equivalent of actual value?

A. Yes, sir.

Q. Do you mean by actual value liquidating value?

A. I beg your pardon, the book value which I have shown. You will recall that on several of my exhibits where I establish the book value I was without the data for the book value and had to estimate the earnings which had accrued. With that exception, yes, sir.

Q. I am only calling attention to this now as a general proposition. I understand it is subject to such exceptions as may appear in the book, that do not come within your general proposition. Now do I understand it to be your opinion that the book values that you have given, except in these cases to which you now refer, is the equivalent to the actual value of the stock?

A. It is the equivalent to the actual value of the stock.

Q. Now, I want the actual cash value—I want to know what you mean by actual value. Somebody has got to pay for this, that is, if the contention is sound, and there is nothing of any use to me here unless it tends to show to me what this is worth, and what somebody must be charged for it. Do I understand you to take a ground that the book value is the equivalent of the actual cash value that Virginia should account for? That is the point with me.

A. Yes, sir.

Q. Now, then, that is the liquidating value, is it not?

A. Yes, sir.

Q. Your book value is a mathematical computation upon these figures given here of what that stock would produce mathematically?

A. Yes, sir.

Q. Without any allowance for bad debts or failure to realize on the assets, or anything of that sort?

A. Yes, sir.

Q. Now, take for instance—I want to get your idea of this—in the first place I will take the Richmond, Fredericksburg & Potomac Railroad Company; that is Exhibit No. 4—

Mr. Holt: Will your Honor permit me to interrupt at that point just a moment?

The Master: Yes.

Mr. Holt: You say without taking into account bad debts or anything of that kind? You will notice that my question was predicated upon this theory, that where the books are correctly kept the book value is the actual value. If they have not charged off bad debts, why the books have not been correctly kept, that is all.

The Master: I noticed your question and had it in mind, but that does not go far enough to help me. I want to go farther.

Q. Now, in the first place, I will take the Richmond, Fredericksburg & Potomac Railroad Company, your book value is predicated on the assumption that those assets on liquidation would produce precisely the sums they are mentioned at in the aggregate, is not that right?

A. Yes, sir, that is right.

Q. Do you think that is a safe rule for me to take in determining the value of that stock and what Virginia should be charged for it; is that your judgment, on the basis of its actual value?

A. In case of the Richmond, Fredericksburg & Potomac?

Q. Yes, it applies to all of them.

A. Yes.

Q. In the first place, that involves actual liquidation at the precise sum fixed on the assets. Is there any cost involved in liquidation, or does not that enter into it?

A. Yes, sir, there is a cost involved in liquidation, undoubtedly.

Q. What would that be in connection with the Richmond, Fredericksburg & Potomac Railroad; what would be the cost of a liquidation of a road like that, with $2,566,331.71?

A. I should say it would cost five per cent.

Q. Well, ought that to be taken out or ought it to be considered a part of the assets in determining the actual value that you ought to charge to Virginia?

A. I would take that out.

Q. Then your book value is not the actual value, is it, as to that item?

Mr. Holt: Well, I would submit this, your Honor, if you will pardon me again. In the case of the Richmond, Fredericksburg & Potomac it would not make one particle of difference, for this reason, that the Richmond, Fredericksburg & Potomac stock is still owned by the State of Virginia, and its income and dividends are enjoyed by her. It is not going through a process of liquidation. Its value as of a certain date, 23½ per cent. thereof must be taken. If you were to go and liquidate it to-day you will find it is worth $200 a share, or maybe $350. It is a pretty live asset, that road is.

The Master: I am simply using this as an illustration.

Mr. Holt: I am simply trying to help, and I know that your Honor is trying to help everybody.

The Master: I want to get the basis of this conclusion that the book value is the actual cash market value.

Q. You concede then that five per cent. should be deducted from the assets in determining the actual value, or don't you?

A. I think it would cost that amount to liquidate it, yes, sir.

Q. Well, do you concede that it should be deducted? You have conceded it—do you still stand by that concession?

A. Yes, sir.

Q. Then, if that is true, the book value is not the actual cash market value as to that item; that is right, is it not?

A. That is right.

Q. Then your actual cash value proceeds upon the assumption, in connection with the Richmond, Fredericksburg & Potomac Company, that in case of liquidation the road could realize $2,002,331.41, which had been put into the construction of that road and property. Now, what have we before us to show that that is worth that sum of money, and what have you on January 1st, 1861?. What I want to get at is what have you got here that satisfies me that in case of the liquidation of that company on January 1st, 1861, that sum could be realized upon that expenditure?

A. The only thing is that that being the cost of the road and the property, that it could not be duplicated for less than that sum.

Q. Well, now, do you assume that to be a fact?

A. Yes, sir.

Q. How long had the road been in existence?

A. The road had been in existence at that time some thirty years.

Q. Well, now, without knowing anything about the manner in which the accounts had been kept, and assuming that they were kept properly, I do not know what that may mean—

Mr. Holt: Is not that the necessary assumption?

The Master: I do not know; I do not know what you put into the word "properly." That is what I have got to find out. "Properly" may cover a vast multitude of things. Of course we do not know whether there was any depreciation charged off on this road.

Q. Don't you think the presumption is that this sum is the exact cost, without reference to depreciation, without any knowledge of what was done? What do you think about that?

A. In case of the Richmond, Fredericksburg & Potomac, no, sir, I do not think it was the exact cost.

Q. Now, why don't you think so; what is there in this record that will justify me in assuming that it is not the exact cost, and what do you know about this road that will enable me to safely conclude that this aggregate of $2,002,331.41 is not the total cost of the construction up to date; what have you got to show me that I can predicate an opinion on in saying that that sum of money would be realized upon that asset?

A. There is nothing in the record so far.

Q. Does that mean that your suggestion in that line is pure conjecture?

A. No, sir, it does not.

Q. What have you got outside of the record that you can put in that will enable me to say as a fact that that represents the total expenditure or that it does not represent the total expenditure; what have you that will enable me to make that conclusion?

A. From time to time, as I ran along through these accounts I simply glanced over the cost of road and equipment and noted its increase from year to year, mentally. It increased but a slight amount each year, while in the body of reports there were from time to time noted considerable improvements that had been made to the road, which indicated to my mind that the expenditures on the road and on its equipment were greater than the actual amounts by which they had increased the cost of the road.

Q. I wish you would put into the record details which you think will justify me in concluding that $1,531,238.40 is not the total cost without any allowance for depreciation. I would like to have you look the records over. You need not stop to do it now, but I want you to do that, because I want to know if I can whether that represents what that road is probably worth or whether it represents what it has cost during the period of thirty years; or do you wish to be understood that in your opinion that if the road had been in existence from twenty to thirty years and its total cost during that period was $1,531,238.40, that on liquidation that sum could be realized on that expenditure; is that what you mean?

A. Yes, sir, that is what I mean.

Q. You mean if that was the total cost without any allowance for depreciation, you think the road would be worth that at the end of thirty years?

A. I do, yes, sir.

Q. Is that in accordance with your experience as an expert in railroad matters?

A. It depends entirely upon the individual road. In this case I think it would.

Q. Do you think as a reasonable proposition that if the road cost over a period of thirty years without any allowance for depreciation $1,531,238, that it would sell in the market for its total cost after that period, without any knowledge as to what had been done in relation to renewals or by way of improvements; do you think that its cost could be produced on a sale?

A. I could not say that if I did not look at the amount of money which had been spent in renewals and how the road had been kept up.

Q. You have not look that up, because you have not been able to find it?

Mr. Holt: No, he said he had discovered those things, but they were not in the schedule.

The Master: Not renewals, simply increases in cost.

Mr. Holt: But not charged here in this exhibit.

The Master: I do not know about that; that is what I want to find out. What I am up against, for instance, here, and if it turns on this, I have to find it.

Q. You have given me a mathematical computation predicated upon the book value of certain assets, and there is no other hypothesis upon which that book value can be consistent with actual value. I do not want to be in the position of undertaking to find that the total amount expended in the construction of a road over a period of thirty years is the sum total that it would bring in cash if it was sold at the end of thirty years if no allowance was made for depreciation; I shall not be likely to put that finding in my report, because it does not seem to me to be reasonable. Do you get my point?

A. Yes, sir.

Q. If you can give me anything that will tend to show to me that as a result of that history of this road this item approximates the real cash value for which it could be sold, that is one thing; you get my point, don't you?

A. Yes, sir.

Q. I do not understand that you contend that if that is the total cost of construction without any allowance for depreciation, that the road after thirty years of wear would sell for just exactly what it originally cost; you do not take that ground, do you?

A. No, sir.

Q. I did not suppose so. That is right where I am. If this really represents the total cost without any allowance for de-

preciation, do you think that that sum can be realized in liquidation, or, in other words, that it ought to be charged up as a cash value to people that have to account for it on a certain date?

A. Not under the circumstances that you have mentioned, and I think your Honor will be served better by giving you that statement.

Q. Yes, exactly. Upon the state of facts that appears in this record up to date,—I have given you the exact situation—the parties have not given me anything to go and come on other than I have indicated to you in my questions, and so far as your testimony is concerned, it of course was predicated upon what is put in the record, and your testimony was that the book value was the equivalent of the actual cash value. Now, that involves this further consideration—I am only taking this as an illustration—here for instance it proceeds on the assumption that the bills receivable, $63,877.40, is all collectible, doesn't it?

A. Yes, sir.

Q. If they do not happen to collect any of them, that throws your calculation out that much, and if they collect only 50 per cent., that throws it out that much?

A. Yes, sir.

Q. Do you know whether they could collect any of it or have you any knowledge about it at all?

A. Not of that specific item.

Q. What is your experience in matters of bills receivable?

A. My experience is that they are either collected or charged off.

Q. Very true.

A. And that from year to year that balance would hold pretty steadily—

Q. We had in connection with one of these banks, we had doubtful debts of something like $40,000, and those you think were included in the trial balance? The bad debts, your judgment is, were charged off? Now then, there does not appear to be anything in connection with these railroad exhibits relative to either bad or doubtful debts. Of course I do not know

what presumption that raises, but your statement that the book value is the actual value is predicated on the assumption that the total amount could be collected, isn't that true?

A. Yes, sir.

Q. And you do not know whether it could be or not, and there is no way wherein it can be found out?

A. None.

Q. Except you have this fair presumption, your idea is it is a fair presumption, inasmuch as it is carried out as bills receivable, that they are all, generally spreaking, collectible, that would be your conclusion?

A. Yes, sir.

Q. Otherwise, your opinion is that they would be charged off to bad debts?

A. Yes, sir.

Q. That same thing is true as to sundries on open account, $84,863.20?

A. I should say, your Honor, that on open accounts those were all collectible, for the reason that there is—

Q. They are the accounts with people with whom they are doing business?

A. Yes, and they have to have an approved standing to do business. I am speaking generally of railroading and other transportation companies, and they are absolutely collectible.

Q. You have here in this trial balance $53,800 as the value of the Potomac Steamboat stock and Potomac Steamboat Company bonds. I do not believe that we have anything in this record indicating the character of that interesting company; but your statement proceeds on the assumption that those are worth par. If they do not happen to turn out to be worth anything, that throws your computation out?

A. Yes, sir.

Q. Have you got any information about that?

A. No, sir.

Q. Do you think it would be safe for me to assume that that is worth par simply because it is carried in the trial balance, when I am asked to charge, for instance, Virginia with its

value, without some investigation as to whether that was an asset of value, particularly in view of the fact that we have run across a great many corporations that seem to be more or less infirm. I do not know a thing about this, but do you think it would be a prudent thing for me to do?

A. No, sir, I think not.

Q. Now, then, taking into account the suggestion which you have made in connection with this trial balance, do you think it would be prudent for me to assume that the book value was the actual cash value that should be charged to Virginia?

A. No, sir, not the actual cash value.

Q. That is what you understand in the end is to be done, do you not? The contemplation is that Virginia must account for its assets at their fair cash value; isn't that your view of it?

Mr. Lilly: What does the decree of reference say in that regard?

The Master: I do not remember.

Mr. Lilly: I think the Master is a little strong on the terms.

The Master: I am not indicating what my conclusion is. I want to get Mr. Hillman's idea. The important thing with me is I want to be able when I make this report to make it on a basis that I can stand upon, and I do not want to get from the record here some fluke conclusion that perhaps Mr. Hillman himself would not stand behind. I want to get an idea of just exactly what weight I ought to give to the various factors involved in this. I doubt a great deal whether any one factor—of course, I cannot tell about that; it may be that there is no one factor which will determine it, and if not, what I want is something that I may get in the record that I can bottom myself on and feel safe on. How do you understand that? I do not know what the decree does read in that respect.

Mr. Lilly: My memory is it says to ascertain the value of the assets.

The Master: That is the value that is to be charged to Virginia.

Mr. Hogg: Our theory is that Virginia acquired this stock in her policy of internal improvement; that she did not buy it

necessarily for commercial purposes, but that if she now holds it as her own and it is of value to her, that it need not necessarily be a cash value; and furthermore, the lapse of time is so great under the circumstances of this case that it might be that all we can do is to get the best evidence of which the case is susceptible.

The Master: I do not go so far now as to say what rule I shall adopt, but I shall have to adopt some rule, and I would like to have the parties on either side address themselves to the hypothesis that I may possibly adopt the rule of actual cash value. I would like to have all these hypotheses discussed. Of course I appreciate the difficulty about lapse of time, Professor Hogg, but I feel bound to say that the lapse of time will probably not change the legal rule. I can understand how the parties are embarrassed, and the embarrassment may be on the other side also.

Mr. Holt: Our theory is further this, your Honor, we have no concealment from the other side or the Master, either.

The Master: I understand.

Mr. Holt: The books have considered all these questions. The cases are just as plentiful as blackberries in August, and when we show a balance sheet and the records, if the padding of assets or the shrinking of liabilities is to be resorted to for the purpose of showing us to be taking an incorrect position, impeaching our contention, that is squarely up to the other side. In other words, the books tell us that when we present the books and balance sheets, that we have made a prima facie case.

Mr. Lilly: We have assumed the burden.

Mr. Holt: And the burden shifts. Now, we find hundreds of cases along that line and they show that where you have no better evidence you will compare the assets with the liabilities and add to that perhaps as another factor the activities of the particular corporation.

The Master: A going concern.

Mr. Holt: A going concern; and really we feel, while we want to get in all the facts that we can, that in the light of the

authorities your Honor will discover that we have made a pretty strong case.

The Master: I think that may be all true. It is true that the burden is upon the other side, of course, to negative the contentions—I beg your pardon, Judge Holt, I think I may have cut you off.

Mr. Holt: I was only going to call attention to the fact that we have Supreme Court decisions, I mean of the United States, on the subject, as well as State cases, and we may fall down, but in the light of the authorities, I do not think so. There are really cases that go that far, that where it is an ancient situation the presumption must be rebutted that par shall not obtain. Some of the cases would relieve us from going any further than showing the par value of the stock, and then it is up to the other side to show whether or not it is above or below par; but we have not confined ourselves, of course, to that.

Mr. Anderson: Our friends will find cases that will sustain almost any proposition.

The Master: You are both entitled to the benefit that you can get from all those cases, and if you will call the attention of the Master to them you may be certain he will look them all over and read them all.

Mr. Holt: And when we find one in the Supreme Court of the United States, as my friend General Anderson suggests, we cannot consider that a mere vagary, and I know the Master will not.

The Master: When either side can show me a rule that in my judgment controls in this case, which is announced by the Supreme Court of the United States, it will come pretty near being final. But Judge Holt is perfectly right in his suggestion that this may be perfectly proper evidence because of the contentions made by counsel on the other side. Now, that is true, but at the same time of course I am sitting here as Master in this case, and it involves very large considerations of very great importance.

Mr. Holt: Do not understand us as criticizing the inquiry of the Master. I can see that if I was sitting there as Master

I would make the same inquiry. I am not taking that stand.

The Master: I just simply say, of course, that it is not only probable but possible that there are phases of this case that impress me in a manner in which they do not impress counsel on either side, and mine is the mind that must be satisfied in the end, and the only opportunity I have in connection with a matter like this, is to improve it as I go along. Any examination which I make is not to be considered a reflection upon counsel on either side, or a suggestion to counsel on either side. It is simply to clear up the situation that has been created in my mind by the case as it goes along. I think I have covered pretty much this subject. I won't take the time to go over it, but I have simply called your attention to this particular exhibit for the purpose of making an application of the general rules. I doubt very much whether we disagree about that.

Mr. Holt: Your Honor, it may be of course, I thought we would put in all our schedules, but under the examination by the Master of the witness it may be now that we will ask Mr. Hillman to put in an additional exhibit showing the present condition for whatever it may be worth of the Richmond, Fredericksburg & Potomac Railroad that would reflect something upon it.

The Master: It is pretty late now to fix one up; however, I shall let anything of that kind in that either of you think is material, and as to what weight I give to it will depend upon argument ultimately.

Mr. Lilly: You will use a pruning hook.

The Master: Of course we are all reasonably intelligent men, and it is easy enough to understand that a great many things happen in corporations during a period of time, and just exactly how much weight I might give would depend altogether upon whether there was a condition that made the situation today applicable to some prior time. But, however, anything that either of you might consider to be pertinent and relevant on those lines, I am going to leave the door extremely wide open.

Mr. Holt: Of course I could not say that that would have any value.

The Master: Well, I would not expect counsel to encumber

the record with evidence that they did not think had value, of course. But anything that any of you feel—of course we are not trying this case down to the question of hard pan on the question of remoteness—and there is another thing about this, you appreciate, and so do I, that neither of you have any remedy in case I exclude any testimony, except possibly to have this case sent back for another trial before the Master. Now I am going to lean away beyond what in my judgment would probably be the rule, under those circumstances. That is, you have no exceptions to anything that I rule out here, or rule in. If I rule out a piece of testimony and either party think it ought to go in, the only remedy there is, is to argue that proposition before the court, and if they think I have not admitted what ought to come in, it would have to come back to be heard again. I am going away beyond the rule so as not to give anybody any cause for complaint. If we had exceptions here, and we had the ordinary case, I would rule the best I could in accordance with the strict legal rules. But you appreciate my position. Neither of you have any adequate remedy in case I rule incorrectly. Under those circumstances, I am going to let the relevancy of this testimony rest largely upon the judgment and professional conduct of the men engaged in the case, and I am going to leave the door very wide open. I am going to have the record show that, so that there won't either of you have any opportunity to complain when you get before the Supreme Court.

The Witness: I do not recall, your Honor, whether there is a question or not.

The Master: I do not think there is.

The Witness: Do I understand that you want me to bring a statement of that item in?

The Master: I am not stating now what I am going to do, but I am undertaking to provide for every contingency.

Mr. Lilly: You would like to know whether depreciation has been taken care of?

The Master: Yes.

Mr. Lilly: We will look into that.

The Master: If that is the total sum that has been expended, without any allowance whatever during that whole period of

thirty years, nobody sitting around this table would expect me to hold that that road had that cash value at the end of that time. It would make me ridiculous if I did.

Mr. Holt: Do you understand what the Master wants on that line?

The Witness: Yes, sir, with reference to the construction account, whether or not depreciation can be determined to have entered into it, and whether or not there have been items expended in the road itself which had not been taken into the cost of it, on both sides.

The Master: What can you find in connection with the accounts of any of these banks that tends to show that the item of cost approximates really what its value is on January 1st, 1861, and is not a statement of the total expenditures, without any deduction therefrom. Of course, you will see right off where I would be on that proposition. You get my point, don't you?

Mr. Holt: Yes, sir.

Mr. Lilly: That is all, Mr. Hillman.

The Master: Subject to that, I suppose Mr. Hillman may be excused by both sides.

Mr. Holt: We have some other schedules.

The Master: He may be excused by the plaintiff, and then the defendant can let him go if they want to.

Mr. Lilly: We have two or three schedules in course of preparation.

Mr. Anderson: Mr. Harrison has some questions to ask on what has been developed lately.

Mr. Harrison: I want to call the attention of the witness, as well as the Master, to this exhibit he has furnished here this morning, relating to the taxes.

The Master: Has that been marked heretofore?

The Witness: No.

Mr. Anderson: It is a sub-sheet of Exhibit No. 10.

The Master: Then mark it as a sub-sheet of Exhibit No. 10,

Mr. Lilly: Mark it sub sheet of Defendant's Exhibit No. 10.

The paper was admitted in evidence and marked Defendant's

Exhibit No. 10, sub sheet, September 9th, 1914, C. B.

By Mr. Harrison:

Q. I would like to know first if this exhibit is to take the place of the other on this subject of taxes?

A. No, sir.

Q. The total you show is different, is it not?

A. Yes, sir

Q. Which one, then, do you rely upon as correct?

A. This one is correct for the collection of taxes accruing subsequent to June 20th, 1863, both assessed and collected after those dates.

Q. Is this the one, then, that the Master is to rely upon?

A. That is for the attorneys in this case to say, Mr. Harrison, and not for me.

Q. I thought you were going to furnish us with a corrected exhibit that would show the result of your investigation in the matter of these taxes that you claim should be charged against Virginia.

The Master: Let us see if we understand it the same. I understood that the witness was to furnish a detailed statement of the taxes that he said were assessed and collected, allocating it to the various counties, which was supplemental. I do not understand this is a correction of the other schedule, but that it is an amplification of the other schedule. As I understood it, Mr. Hillman was to amplify the other schedule, not necessarily to correct it, but to give us more details and show us just exactly the counties that these taxes came from.

Mr. Hogg: I understood it differently yesterday. Yesterday it did not appear from Exhibit 10 whether the tax had been levied prior to June 20th, 1863, and collected afterwards.

The Master: That is one question.

Mr. Hogg: And then it became a question whether we ought not to put in the record whether the taxes were levied after the formation of the State and collected afterwards, and therefore we have put in this one, so that if we are correct, that we have a right to all of the taxes, whether levied before or after 1863;

then we could rely on No. 10. That is what I understood the witness was to prepare.

The Master: The discussion covered two questions, one was whether taxes were assessed during the period between January 1st, 1861, and June 20th, 1863, and his original schedule did not show that; and the other was the counties and the amounts collected from the counties, of the taxes involved. Now he has given us in one detailed schedule both of those facts, as I understand it.

Mr. Hogg: Yes, sir.

The Master: So that this schedule is rather an amplification, rather than a correction of the other schedule.

The Witness: Yes, sir. And from this there is also omitted the taxes collected after 1861, which had been assessed prior to 1863.

The Master: Oh, well, then, it is a correction, too. It is both a correction and an amplification.

Mr. Lilly: I do not understand that it is a correction, your Honor.

The Master: Well, it is entirely immaterial as far as that is concerned. It simply eliminates one item. What is the other schedule?

Mr. Harrison: This schedule, if your Honor please, does not answer the purpose that you had in mind, and does not certainly answer the purpose that we had in mind.

The Master: You state that, and we will have it done.

Mr. Harrison: It was pertinent to inquire how much was the total of these taxes and the items constituting them that were assessed prior to June 20th, 1863. It does not show it.

Mr. Lilly: Mr. Harrison, would not that be the difference between the $224,000 in Exhibit 10, and $180,000 in sub sheet No. 10?

Mr. Harrison: No. I understand the totals are different. There is $180,000 shown on this one, and $224,000 on the other. The caption says, "Amount of taxes assessed by the State of Virginia and paid by West Virginia counties to State of Virginia from June 20th, 1863, to April, 1865." And then the sub-

heading is, "Law Processes. 1863, and subsequent." Now if that means that the several items appearing there accrued, were assessed in 1863, I would like to know when in 1863. Take the matter of the redemption of lands, 1863, and subsequent; they are small items, they only aggregate $123, but it is altogether indefinite. Now when you come to the general taxes and delinquent taxes and forfeited lands, being judgments on bonds of Commissioner of Delinquent and Foreited Lands, now we all know that you could not get a judgment on a bond over night; that is generally a slow process. If you have got to sue a sheriff in order to recover a judgment against him for the amount that he is liable for for delinquent taxes, it is not a matter that is done in a week or a few months; it is generally a long affair. There are $8,000 of those sort of items that are said to have accrued between January 1st, 1863, and June 20th, 1863. I say that is impossible.

The Master: Suppose you either develop right away on cross-examination the difficulties that you see, or else state to him specifically what you want in addition to what you have.

Mr. Harrison: If I undertook to cross-examine him, I have got this book before me, it would probably take us a half a day. I would take up each one of these items and make him find it here and show me; I think I could correct it, but it would take too long.

The Master: What is the reason that Mr. Hillman cannot take those books and make those comparisons and not take our time?

Mr. Harrison: I suppose he could.

The Master: Suppose you do this, suppose you state to Mr. Hillman what you want in addition.

Mr. Harrison: I would like to have the details upon which those figures in each instance are based, showing the dates of the assessments. That is what I would like to see.

The Master: And the payment.

Mr. Harrison: And the payment. When we get that, we have got something we can rely on.

The Master: It does not show that, Mr. Hillman. Do you want anything in addition to that?

Mr. Harrison: No. Then we will have it before us, and we can see the thing for ourselves.

The Master: It is true, of course, that this schedule does not do that. Your general statement covers it, and they desire that, and of course they are entitled to have it. Now suppose you have some of your assistants take this schedule and elaborate it and give the date of assessments and the date of collection, and the items that aggregate these items here, if there are any such, and before that is submitted have your accountant check it up with Mr. Potter, so that he can check up and save the time—I cannot take time to examine all those items here. The accountants must do this. You can do it while we are not in session; have some one of your men do it; it is not necessary for you to do it personally—you do not insist on Mr. Hillman doing this work personally, do you?

Mr. Harrison: Not at all.

The Master: Now you could get it up and work it out in detail, and before you present it submit it to Mr. Potter, and let Mr. Potter check it up, and then we can tell in five minutes whether you want to spend any time on it or not.

The Witness: Will you allow a moment?

The Master: Yes, certainly.

The Witness: The question between us is entirely as to the date of the assessment and the date on which the taxes were payable.

The Master: Yes.

The Witness: I do not know the date of the assessment.

The Master: Just take out of the books what you rely on as the basis for these statements. Get it up in that shape, and go over it with Mr. Potter. I am not going to delay this hearing to cross-examine on small items.

The Witness: Your Honor, this has been checked with Mr. Potter, and the entire question that comes up is the date of the assessment, whether the date of the assessment of taxes which are denominated 1863 were prior to June 20th. They were assessed at a certain date, possibly September, 1863.

The Master: As I understand it, there is not anything on these books of account that shows the dates of these assessments. What the original assessments would show, if you were able to get at them, is another thing. But the law provides that those assessments should have been made on a certain date.

Mr. Hogg: On the first of February.

The Master: Yes, on the 1st of February; the law provides that the assessments should have been made on the 1st of February, 1863, payable in 1864.

Mr. Hogg: Payable on the 1st of July.

The Master: Of course, these items here—this schedule does not show the taxes that could be allocated to the assessment of 1863, as distinguished from assessments after 1863, if there be any after 1863.

The Witness: There are some, and we have the details.

The Master: Get that detail up and check up that detail with Mr. Potter. I will not delay this hearing.

Mr. Harrison: I do not want to delay it.

Mr. Anderson: Mr. Hogg is mistaken.

The Master: I will not spend time discussing that, because there cannot be any controversy about it; that is in the law, and when you hand me the law, if you people disagree, I will decide what it is. It is not worth our while discussing that.

Mr. Hogg: I want to make this suggestion. You have in mind the month in which the assessment was made. For instance, if property was assessable on the 1st of February, 1863, and not payable until July or October following, we could not pay the tax claimed by Virginia because the county would have to account to its own State.

The Master: That is a question of law, and just exactly what the law says—in the first place, we labor under the same infirmity and misfortune in connection with this, and it is going to bother me more than it is you; if I could have here the usual, ordinary indications of value established beyond controversy, I would not have any trouble in deciding this case—but we have the same misfortune here that you have in connection with the other items; the records and books do not show speci-

fically what was done. Now, the next best evidence may be the law itself, and about that there cannot be any controversy; we will have it in here, and then what flows from it will depend upon how the facts are to be applied to it.

Mr. Hogg: No question about that.

The Master: We do not want to spend any time discussing pro and con what the law is, because that is going to be settled without any trouble later on. But we do want in this schedule every fact that bears upon that situation. And I want that stated as fully as you can state it, and I want it compared by Mr. Potter, and I am not going to allow time to be taken—and Mr. Harrison does not want it either—for cross-examination as to items making up these details. There is no need of it.

Mr. Harrison: No, not any at all.

The Master: There are some of these things that must be done. I am not going to delay the hearing for things that these accountants can do.

Mr. Holt: We felt that we had gone far enough when we showed that a tax, whenever it may have been assessed, was in reality collected after June 20th, 1863; that if you could establish that fact it raises then the only point of law that we make. It don't make any difference what the date of it was, just so you can fix the fact that it was collected by Virginia after June 20th, 1863; and according to our theory it makes no difference when it was assessed.

The Master: They have another theory.

Mr. Holt: Yes, they may have another theory.

The Master: I think we have spent enough time on it.

The Witness: I have already checked Mr. Potter's details, we have checked them jointly, and it will take but a short time.

The Master: Then do it at the noon recess, if it won't take but a short time.

The Witness: It can be done in half an hour.

The Master: I am simply taking this out of the hands of the attorneys and putting it in the hands of the accountants.

Mr. Anderson: It is a very unimportant item.

The Master: That is all the more reason why we should not

take time on it.

Mr. Harrison: I was just going to illustrate, so that the accountant might know just what we wanted.

The Master: That is right.

Mr. Harrison: Take for example these taxes carried forward here, and said to be judgment on bonds of commissioners for delinquent taxes. Take one item, page 194 of this journal, and we find that there is one item on a judgment against the Sheriff and his sureties for one-quarter share of the land and property and license taxes of the year 1861, $1,600. That was collected on the 23rd of June, 1863. Well, now, there are taxes that had accrued for the year 1861, you see, on which the Sheriff was subsequently sued, and final collection made June 23rd, 1863. Now, if there are items of that sort carried in there, we want that to appear, that is all.

The Master: You get the point, Mr. Hillman?

The Witness: Yes, sir. There are none of that kind in there.

The Master: Well, give all the details that there are, and have that exhibit complete and full. I do not want to have it necessary to have a single question asked in regard to that schedule. I want your work so complete and so accurate, checked up by Mr. Potter, that we can put it right in the record and call it final. Is there any further cross-examination?

Mr. Harrison: No.

The Master: Anything by way of re-direct examination?

Mr. Holt: I think not, your Honor.

The Master: We will suspend for five minutes then.

Mr. Holt: Before we suspend I would like to ask a question of my friends across the table. The other day I asked for a stipulation which they felt that they could not subscribe to. Perhaps I can narrow that to the point where they will agree, and if so it will exclude some lumber from the record, according to our theory. I do not believe I would take this argument down.

(Counsel discussed the subject for twenty-five minutes.)

Mr. Holt: For the purpose of showing that the reports of the banks upon which our exhibits have been based were made to the State of Virginia under compulsion of law, we read into the record sections 25, 26 and 27 of chapter 58 of the Code of Virginia of 1849 as follows—

The Master: You need not stop to read it.

Mr. Holt: I believe, as that is very short, I will read it.

The Master: All right.

Mr. Holt: (Reading): C. 25. The board shall annually in January, and quarterly thereafter, transmit to the governor a statement of the condition of the bank on the first day of the month, wherein shall be specified the amount of capital stock subscribed, with the amount paid and the amount unpaid thereon, the value of the real estate of the bank, the total amount of debts due to and from it, noting specially the amount of dealings in exchange, and the premium paid thereon, and also bad and doubtful debts; the amount on hand of gold and silver and other coin; amount of money deposited; amount of each denomination of bills in circulation, and the aggregate of the whole; amount of bills on hand of solvent banks incorporated by this state, and also of those incorporated elsewhere; and the rate and amount of the last dividend of profits, with the amount of the surplus or contingent fund; which statement shall be signed by at least a majority of the directors, and verified by the oath of the president or cashier.

26. In addition to the said quarterly statements, the several banks shall report to the governor a comparative statement of their condition for the corresponding quarter of the preceding year, and the governor shall have the same published in at least two newspapers in the City of *Richmond*.

27. There may at any time be an inspection of the books and examination into the proceedings of any bank, by a joint committee of the two houses of the general assembly, or a committee of either house, or one or more commissioners appointed by the assembly or the governor.

The Master: I have to suggest that there is about a page

and a half of the record that could be dispensed with by the statement that it is conceded that the reports of the various banks which have been introduced in this case were filed by authority of law and under the requirements of law. But, however, you need not do that unless you want to. That seems to be the fact. Now what is the reason you cannot put in the record a statement that it is admitted that at the time these reports were filed the law required reports of that character to be filed? Why does not that cover the ground?

Mr. Anderson: I have not any doubt about that being the law of the state.

The Master: Then what sense is there in having that statute go into the record?

Mr. Anderson: But the law did not state what the probative value of that was.

The Master: If you want this report to be full of all these things it will be full of them.

Mr. Anderson: I see no objection to it, but the law nowhere made it evidence.

The Master: Do you want printed two or three sections of this record?

Mr. Conrad: We accept it.

The Master: Then it may be stated that it is admitted that at the time the reports of the banks in question were filed they were filed in accordance with and subject to the requirements of the statutes of Virginia. Does that cover the whole question?

Mr. Holt: And that the law of the State upon the same subject in the year 1860 is identical with the Code of 1849.

The Master: And that such had been the law of Virginia since 1849. That covers it.

Mr. Holt: I am going on, on the theory that I am unable to get any stipulation.

Mr. Conrad: You need not.

The Master: It would save time if we had made that admission in the beginning.

Mr. Conrad: We made a suggestion two or three days ago

that if the Judge would specify in detail, we would take it up.

Mr. Holt: I am going to prepare that general admission and hand it to these gentlemen, and they will see how innocent it is.

The Master: Now, what is the next?

Mr. Holt: We now offer and read into the record for the purpose of showing that the laws of Virginia not only required railroads to make reports to the State, but even prescribed the form therefor.

Mr. Hogg: That included other companies in the same Act.

Mr. Holt: Railroads and other different improvement companies. Resolutions in relation to the form of annual reports of railroad and other companies, adopted March 15th, 1856, and found at page 286 of the Acts of Assembly of Virginia of 1855-6.

The Master: Just hand that original Act to the other side, and unless they desire to make a stipulation that will render its extension into the record unnecessary, it may go into the record.

Mr. Conrad: There is nothing more dangerous than to rely upon an Act. Have you looked in the Code of 1860, or subsequent legislation, to see whether that Act has been modified in any way within the period covered by our inquiry? We have a piece of literature known as Matthew's Digest, which is the Code of 1849 and 1850, with annotations showing the modifications by legislation and decisions up to the time—

Mr. Holt: We have done the best we could to find all that was possible on the subject.

The Master: Of course if this goes in and nothing else goes in I will take this to be the law from then on, and it is up to the other side to negative its continued existence. We will not stop to read that, because that is practically a duplication of what we have already had. Submit it to the other side and if they desire to make a stipulation, which will be agreeable to West Virginia, it will not be printed, and if they do not care to make the stipulation, it will be printed.

Mr. Lilly: We have furnished the stenographer a typewritten copy.

The Master: That is right, and if you reach that point, also furnish him the stipulation which will eliminate the Act.

Mr. Conrad: We just feel as if it had been submitted to us.

The Master: I have instructed them to submit it to you, and if after you examine it you desire to make a stipulation that will render unnecessary the extending of that in the record, and they agree to the stipulation, we will not have the Act printed; in other words, if you do not agree on the stipulation, that will go into the record. Now, let us have your next.

Mr. Conrad: We could keep all that mass of matter out of the record and save the cost of printing, if the Judge would just indicate in a little memorandum the different Acts.

The Master: He is going to do that.

Mr. Holt: The memorandum I was going to prepare related to that first effort at a stipulation. These Acts are all very brief, and there are not many of them, and unless they can be stipulated right along, they should go in at this place.

The Master: We are not going to take any more time with these, what may be called desultory Acts of the Legislature relating to various unrelated subjects. Judge Holt can go right along with them, and they will take exactly the same course that I have prescribed in relation to this one. Submit them to the other side, and if the other side are willing to make a stipulation which you agree to, that will eliminate them; if not, the Acts are to be printed.

Mr. Hogg: The same law was in force in 1860.

The Master: That is up to them, Mr. Hogg.

[No stipulation having been subsequently agreed upon, the Act of March 15, 1856, is here inserted.]

ACTS OF ASSEMBLY OF VIRGINIA—1855-56.

The following resolution will be found on pages 286-289:

No. 1.—Resolutions in relation to the form of annual reports of railroad and other companies.

Adopted March 15, 1856.

1. Resolved, That every railroad corporation in which the Commonwealth is interested as a stockholder or creditor, or whose road is wholly within the State, shall make an annual report to the board of public works of its condition and the state of its affairs on the thirtieth day of September, and of the operation of its road during the year ending on that day; which report shall be verified by the oaths of its treasurer or president and acting superintendent of operations, and be filed in the office of the said board by the fifteenth day of November in each year—and shall contain full information upon the several items hereinafter enumerated to-wit:

First. As regards its capital stock: The amount as by charter; the amount subscribed by the State, and amount subscribed by others; the amount paid in by the State, and amount paid in by others; the amount of further subscriptions on the part of the State authorized contingently. The information under this head to be so given as to show the several amounts as per last report, and the additions thereto or deductions therefrom, as the case may be, within the year.

Second. As regards its funded debt: The total amount; the time or times it will fall due; the rate or rates of interest thereon; the portion thereof due to the State. The information under this head to be so given as to show the several amounts as per last report, and the additions thereto or deductions therefrom, as the case may be, within the year.

Third. As regards its floating debt: The total amount, stating when and for what general objects it was incurred; the amount for each of those objects; and the rate or rates of interest thereon. The information under this head to be so given as to show the several amounts as per last report, and the additions thereto or deductions therefrom, as the case may be, within the year.

Fourth. As regards interest, the loss, if any, from the sale or disposition of bonds or other obligations at less than par, and all other expenses incurred in raising money: The total amount, stating what portion was for each of the above objects. The information under this head to be so given as to show the several amounts as per last report, and the additions thereto within the year.

Fifth. As regards the cost of the road and its equipments, also of buildings of all kinds, land, land damages and fencing, viz: For gradation and masonry; for superstructure of wooden bridges, for superstructure of iron bridges for superstructure of the road, including iron; for water stations, including the cost of procuring water and conducting it to them; for passenger and freight stations, buildings and fixtures; for engine and car-houses; for machine shops, machinery and fixtures; for all

other buildings; for land, for land damages and fencing; for locomotives and fixtures and snow ploughs; for passenger and baggage cars; for freight cars; for cars used on the repairs of the road and on construction; for engineering and agencies; for all work and property not enumerated above; the total cost of the road and equipment, as above. The information under this head to be given as to show the several amounts as per last report, and the additions thereto within the year.

Sixth. As regards the characteristics of the road: The length of the road; the track laid, including sidings; the weight of the rail per yard; the total rise and fall; the maximum grade in each direction; the length of the same in each direction; the total curvature; the shortest radius of curvature, with length of line on which it occurs; such other information, in detail, in regard to grades and curves and the location of the road, as the board of public works may require; the number of water stations; the aggregate length of wooden truss bridges between abutments; the aggregate length of iron bridges between abutments; the aggregate length of all other bridges between abutments; the whole length of road unfenced on both sides; the number of public roads crossed at grade; the number of railroads crossed at grade; the length of road, if any, unfinished, and estimated amount required for its completion, also what sum beyond the means already provided is required for that purpose; the length of branches owned by the company, and such information in detail in regard to them as the board of public works may require.

Seventh. As regards the equipment of the road, its depots, shops and other equipment of buildings: The number of locomotives, stating their weight; the number of passenger cars of each class, rated as eight-wheel cars; the number of baggage cars, rated as eight-wheel cars; the number of merchandise cars, rated as eight-wheel cars; the number of gravel and other cars used on repairs on construction, rated as eight-wheel cars; the number of depots of each class; the number of engine-houses; the number of machine shops; the number and character of other buildings. The information under this head to be so given as to show the several numbers as per last report, and the additions thereto within the year.

Eighth. As regards the doings of the year in transportation, and total miles run; the miles run by passenger trains; the miles run by freight trains; the miles run by gravel trains and other trains, employed on construction or repairs of the road; The rate of fare charged each class of passengers per mile; the number of passengers of each class carried in cars; the aggregate number of miles traveled by each class of passengers, or number of passengers of each class carried one mile; the rate charged per ton (of two thousand pounds) for each class of freight carried in cars; the number of tons of each class of freight carried in cars; the number of miles carried or total movement of each class of freight in miles; the average rate of speed adopted by ordinary passenger trains, including stops; the average rate of speed adopted by passenger trains when in motion; the average rate of speed adopted by express trains, including stops; the average rate of speed adopted by express trains when in motion;

the average rate of speed adopted by freight trains, including stops; the average rate of speed adopted by freight trains when in motion; the estimated aggregate weight in tons (of two thousand pounds) of passenger trains, exclusive of passengers and baggage, carried one mile; the estimated aggregate weight in tons (of two thousand pounds) of freight trains, exclusive of freight, carried one mile; the estimated aggregate weight in tons (of two thousand pounds) of gravel and other trains employed upon construction and repairs and their loads carried one mile, stating separately the aggregate weight of the trains and of their loads; the average weight in tons of passenger trains, inclusive of passengers and baggage; the average weight in tons of passenger trains, exclusive of passengers and baggage; the average weight in tons of freight trains, exclusive of freight; the average gross, also average net weight ordinarily drawn by the different classes of locomotives when worked to their full capacity, stating the weights respectively of the locomotives and of their tenders, and the ruling grades over which they pass when thus worked; the total amount of freight in tons, viz: The product of the forest; the product of animals; vegetable food; other agricultural products; manufactures; merchandise; other articles.

Ninth. As regards the expenses for the year of maintaining the road, showing separately the portions chargeable to passenger transportation and to freight transportation; the cost of the repairs of roadbed and railway (excepting the cost of the renewal of track and the repairs of the superstructure of wooden and iron bridges), viz: The cost of labor and materials, also the cost and expenses attending and consequent upon the use of engines and trains employed upon the repairs and maintenance of the road, also the repairs of such engines and trains and all items of cost connected with keeping the road in order; the length in feet of iron used in the renewal of track, with weight and cost thereof, also the weight and cost of all other iron used in the renewal of track; the cost of labor employed upon the renewal of track; the cost of the repairs of the superstructure of wooden bridges; the repairs of buildings; the repairs of fences and gates; the taxes on real estate; the totals of the above expenses of maintaining the road. The whole of the information under this head to be so given as to show separately the cost of materials and the cost of labor.

Tenth. As regards the expenses for the year of repairing machinery: Repairs of engines and tenders; the repairs of passenger and baggage cars; the repairs of tools and machinery in shops; the incidental expenses, including fuel, oil, clerks and watchmen about shop. The whole of the information under this head to be so given as to show separately the cost of materials and the cost of labor.

Eleventh. As regards the expenses for the year of operating the road, showing separately the portions chargeable to passenger transportation and to freight transportation: Office expenses, stationery, etc.; agents and clerks; labor, loading and unloading freight; porters, watchmen and switch tenders; wood and water station attendance; conductors, baggage and brakemen,

enginemen and firemen; fuel (quantity, first cost and labor of preparing for use), showing separately the quantity, etc., of coal and the quantity, etc., of wood; oil and waste for engines and tenders; oil and waste for freight cars; oil and waste for passenger and baggage cars; loss and damage of goods and baggage; damages for injury to persons; damages to property, including damages by fire and cattle killed on road; general superintendence; contingencies; the totals of the above expenses of operating the road.

Twelfth. As regards the gross earnings, cash receipts and payments other than for constructions within the year: First, gross earnings from passengers; from freight; from carriage of the United States mail; from other sources. Second, cash receipts from passengers; from freight; from carriage of the United States mail; from other sources. Third, payments other than for construction—for transportation expenses, viz: Expenses of maintaining and operating the road and of repairs of machinery; for interest; for dividends (stating the rate per centum and when declared) to surplus fund; total amount of surplus fund.

Thirteenth. As regards accidents: The number of persons injured in life and limb, and the cause of the injury, and whether passengers or persons in the employ of the company, also whether caused from carelessness or negligence of any person in the employment of the company, and whether such person is retained in employ.

Fourteenth. Statements, etc., to accompany the report, viz.: A statement of the name, makers' name, dimensions and weight of each engine, together with the cost of repairs and number of miles run, and the condition of each for the year; a statement of the number of tons of freight transported, and of the number of passengers carried in each month of the year in each direction, showing separately the through freight and the through passengers in each direction, also of the aggregate amounts charged for the transportation of freight and carriage of passengers in each month of year in each direction, showing separately the amounts charged for through freight and through passengers in each direction, and the amounts charged for way freight and way passengers in each direction; a statement of the tonnage sent from, and of that received at each depot of the road in each month of the year, and also of the passengers leaving and of those arriving at each of said depots; a statement of the amount charged to construction during the year, with a distribution thereof among the several objects to which it was applied; a statement exhibiting in parallel columns: First, the gross earnings of the road during the year; second, the total expenses of maintaining and operating the road and of the repairs of machinery, and of all other expenses chargeable to the business of the year; and third, the net revenue of the year, so distributed as to show what portion of the said "gross earnings," "total expenses," etc., and "net revenue" should be credited to or charged against each class of tonnage transported, and each class of passengers carried in the year, or any other services that may have been performed by the

company in said year, to be followed by a brief statement of the profit or loss, as the case may be, per ton of each class of freight transported, and per passenger of each class of passengers carried in the year, and of the profit or loss, as the case may be, for any other services performed by the company in said year.

2. Resolved, That the board of public works be and are hereby authorized and directed to prescribe the form or forms to be used by the several companies referred to in the preceding resolution, in making the annual reports required of them by the said resolution; and in preparing the said form or forms, the said board are hereby authorized and directed to call for any additional information that in their opinion would be necessary or useful in showing the true condition of the said companies, and the cost of transportation on their respective roads.

3. Resolved, That the several canal and navigation companies in this State shall also, on or before the fifteenth of November in each year, make a report to the board of public works of their condition, and the state of their affairs on the thirtieth of September, and of their operations in the year ending on that day, in such form as the board of public works shall prescribe; and that in preparing such form or forms the board of public works are hereby authorized and directed to require that the reports from the said companies respectively shall contain as full and minute information in regard to their condition, affairs and operations as is required by the preceding resolutions in regard to the condition, affairs and operations of the railroad companies referred to in said resolutions.

4. Resolved, That it shall be the duty of the board of public works to cause to be arranged, in tabular form, the information contained in the reports called for by the preceding resolutions, omitting only such details in the statements accompanying the said reports as may not be of general interest, and prepared together with the said reports, in a single document; and have the same printed by the fifteenth day of December of the year in which the said reports are made.

5. Resolved, That any railroad, canal or navigation company referred to in the preceding resolutions, which shall neglect to make the report required by the said resolutions, and as prescribed therein, shall be liable to a penalty of five hundred dollars, and that it shall be the duty of the board of public works to sue for the said penalty in the name of the Commonwealth.

6. Resolved, That it shall be the duty of the board of public works to furnish each of the railroad and canal and navigation companies aforesaid, on or before the first day of September in each and every year, with at least two copies of the form or forms aforesaid.

Mr. Holt: For the purpose of showing the establishment of the sinking fund and the object thereof created by the State of Virginia, we now read into the record Sections 28, 29 and 30 of Article 4 of the Constitution of Virginia of 1851. These Sections will be found at page 47 of the Code of Virginia of 1860.

For the same purpose, we read into the record an Act of the General Assembly of Virginia, entitled An Act establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt, passed March 26th, 1853, and beginning at page 29 of the Acts of Assembly of Virginia of 1852-3.

The Master: The same course will be pursued in connection with that as has already been suggested in connection with legislation relating to railroad and navigation companies.

CODE OF VIRGINIA, 1860.

Article IV, Constitution of Virginia, Sections 28, 29, *and* 30, *page* 47.

28. The liability to the State of any incorporated company or institution to redeem the principal and pay the interest of any loan heretofore made, or which may hereafter be made by the State to such company or institution, shall not be released; and the General Assembly shall not pledge the faith of the State, or bind it in any form, for the debts or obligations of any company or corporation.

29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the Sinking Fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the Sinking Fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this Commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the Commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the Sinking Fund, and shall be applied in the manner before directed. The General Assembly shall not otherwise appropriate any part of the Sinking Fund or its accruing interest, except in time of war, insurrection or invasion.

30. The General Assembly may, at any time, direct a sale of the stocks held by the Commonwealth in internal improvement and other companies; but the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the Sinking Fund, and be applied in like manner.

ACTS OF GENERAL ASSEMBLY OF VIRGINIA—1852.

Chapter 17.—AN ACT establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.

Passed March 26, 1853.

1. Be it enacted by the general assembly, That there shall be and is hereby appropriated annually from the public treasury, commencing with the year one thousand eight hundred and fifty-three, out of the accruing revenues of the Commonwealth, the sum of eight hundred and thirty-eight thousand and twenty-eight dollars and sixty-eight cents, that sum being seven per centum on eleven million nine hundred and seventy-one thousand eight hundred and thirty-eight dollars and thirty cents, the ascertained debt of the Commonwealth on the first day of January, one thousand eight hundred and fifty-two. The sum so set apart shall be called the "Sinking Fund," and shall be applied to the payment of the interest on the State debt, and the principal of such part as may be redeemable; and if no part of said debt be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of the Commonwealth, or of the United States, or of some of the States of the Union, and applied to the payment of said debt as it shall become redeemable.

2. Whenever after the said first day of January, eighteen hundred and fifty two, a debt shall be contracted by the Commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed.

3. If at any time the legislature shall direct a sale of the stocks held by the Commonwealth in internal improvement and other companies, the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner. The sinking fund, and its accruing interest, shall not be otherwise appropriated than is herein directed, except in time of war, insurrection and invasion.

4. It shall be the duty of the auditor of public accounts, upon the receipt of statements of the amount of the public debt hereinafter required to be furnished him by the second auditor, to pay into the treasury of the Commonwealth, on or before the first day of January, eighteen hundred and fifty-three, and annually thereafter, out of the accruing revenues, such portion of the sum set apart for the sinking fund provided by this act, as shall be applied to the redemption of the State debt existing on the first day of January, eighteen hundred and fifty-two. He shall, in like manner, pay into the treasury, to the credit of said fund, on or before the first day

of January, eighteen hundred and fifty-three, and first day of July, eighteen hundred and fifty-three, and on the same days of each successive year, the amount of the semi-annual interest on said debt which shall be due and payable at each respective date.

5. It shall also be his duty, in like manner, to pay into the treasury, on or before the first day of January, eighteen hundred and fifty-three, and annually for thirty-three years thereafter, out of the accruing revenues of the State, to the credit of the sinking fund, one per centum of the aggregate amount of the debt contracted by the State between the first day of January, eighteen hundred and fifty-two, and said day; and also to pay, in like manner, one per centum annually for thirty-four years on the aggregate amount of the debt which shall be contracted in each or any subsequent year. He shall pay, in like manner, into the treasury, to the credit of the sinking fund, on or before the first day of January and first day of July, eighteen hundred and fifty-three, and on the same days in each successive year thereafter, the amount of the semi-annual interest which shall be due and payable on the aggregate amount of such additional debts at those days respectively: provided, however, that the amount of interest payable on that part of the debt created by the issue of coupon bonds, shall be set apart and paid into the treasury to the credit of said fund, thirty days in advance of the respective semi-annual periods on which it shall become due.

6. For the purpose of managing, preserving and applying the sinking fund created by this act, the auditor of public accounts, register and secretary of the Commonwealth, for the time being, are hereby constituted a corporate body under the style of "The Commissioners of the Sinking Fund."

7. It shall be their duty to apply the moneys appropriated out of the sinking fund to the payment of the interest and redemption of the principal of the State debt at the respective periods prescribed in the fourth and fifth sections of this act for the payment of the sinking fund into the treasury by the auditor of public accounts, and to invest any part of the appropriations for the latter purpose, which cannot be so applied to the purchase of public stock, agreeably to the provisions of the second and third sections of this act.

8. The said commissioners, at their discretion, may apply that part of the sinking fund set apart for the redemption of the principal of the debt, to the payment in the first place of such bonds and certificates as the State is bound to redeem at fixed periods, provided such bonds and certificates shall be redeemable by the State before the arrival of such fixed periods.

9. All the certificates of debt which shall be redeemable under this act, shall be canceled by the second auditor, and delivered by him to the treasurer of the Commonwealth at the time of payment therefor, who shall carefully preserve the same in his office.

10. At each period for the payment of the installment of interest and the redemption of any part of the principal of the debt, the said commissioners shall, by a special order entered on the minutes of their proceedings, authorize the second auditor to issue his warrants on the treasury, from time to time, to the persons entitled thereto, in the same manner as they have heretofore been paid in his office.

11. They shall cause to be published in the Enquirer and Whig of the city of Richmond, and in the Union and National Intelligencer of Washington city, a list of the bonds or certificates intended to be redeemed from time to time, at least three months previous to the time fixed upon by them for that purpose, showing the date, number and amount of each, and calling for the surrender thereof on or before a specified day, and stating that the interest thereon will cease on and after that day.

12. Any two of said commissioners may form a board for the transaction of business. They may appoint a secretary, and shall keep a correct journal of their proceedings, of which they shall make a report to each regular session of the legislature. They shall hold their meetings in the second auditor's office, in which their books and papers shall be deposited for safe keeping.

13. It shall be the duty of the second auditor to prepare the necessary statements, showing the amount of semi-annual interest payable on the public debt at each successive period, and the amount of the principal of the debt proposed to be redeemed at each or either of them, and to furnish the same to the commissioners of the sinking fund, by whom they shall, if approved, be certified to the auditor of public accounts for his government. He shall also prepare and deliver to the commissioners of the sinking fund, lists in detail of such bonds or certificates of State debt as they shall from time to time designate, for redemption, and furnish them with such other statements and information as they may at any time require of him. He shall keep the accounts of the sinking fund with the treasury in such manner as to show distinctly at all times the amount of the transactions on account of each appropriate head of receipts and expenditures, and shall report the same to each session of the legislature.

14. All moneys belonging to the sinking fund shall be paid into the treasury on the warrant of the second auditor, and shall be paid out in like manner when authorized by the commissioners of said fund.

15. The treasurer shall receive and pay the moneys belonging to the sinking fund as herein required. He shall keep a distinct account of the same, and report to each session of the legislature the aggregate receipts and disbursements on account thereof up to the first of October or first of January, as the case may be, preceding each session of the legislature, and the balance remaining unexpended at such time.

16. In order to collect in one office the accounts of the debt of the Commonwealth and the transaction of all business connected therewith, it

is hereby provided that the existing certificates of debt of the State, registered in the office of the auditor of public accounts, and amounting to four hundred and fifty thousand one hundred and seven dollars, being part and remainder of the debt created by authority of an act to provide for the further subscriptions on the part of the State to the Exchange Bank and Northwestern Bank of Virginia, passed March nineteenth eighteen hundred and thirty-nine, shall, on and after the twentieth of December next, be registered and transferred to the second auditor's office, and the semi-annual interest accruing thereon shall be paid at the treasury out of the sinking fund, on his warrants, on and after the first day of January, eighteen hundred and fifty-three, until the said certificates shall be redeemed. The new certificates issued on transfers of said stock shall be countersigned by him; and all other duties which are imposed on auditor of public accounts, as well as any rights conferred in relation to said certificates of debt, shall, on and after the above day, be transferred to and devolve upon the second auditor, in whose office all the books and papers connected with said stock, which shall be necessary for the proper performance of said duties, shall be delivered to said second auditor; provided, that the amount of the semi-annual installment of interest of the first of July, eighteen hundred and fifty-two, and the unclaimed interest on said debt, which shall remain due and unpaid on the first of January, eighteen hundred and fifty-three, shall be set apart and paid to the persons entitled thereto by the auditor of public accounts, in the manner, and out of the appropriations made by the laws now existing, and not out of the sinking fund herein provided.

17. The accruing interest on the six per cent. revolutionary debt of twenty-four thousand and thirty-nine dollars and seventeen cents, and the seven per cent. war debt of eighteen hundred and fourteen, of three hundred and nineteen thousand dollars, belonging to the Literary Fund, shall continue to be paid, when it becomes due, as heretofore, out of the public revenue, upon the warrant of the auditor of public accounts.

18. The semi-annual installment of interest, payable the first day of July, eighteen hundred and fifty-two, on the aggregate internal improvement debt, registered at that date in the second auditor's office, shall be provided for and paid, as heretofore directed by law, on the warrant of the second auditor, and should that be insufficient, the deficiency to be paid out of the public treasury; and any portion of the said installment or previous installments which shall remain unclaimed and unpaid on the first day of January, eighteen hundred and fifty-three, shall be paid in the same manner, from time to time, as it shall be applied for.

19. The semi-annual interest becoming due at the same time, on that part of the State debt of eighteen hundred and thirty-nine, registered in the office of the auditor of public accounts, shall, together with the unclaimed interest due thereon, be paid out of the public treasury on the warrant of said auditor; provided, that no part of the interest on the stock of either description above referred to shall be paid out of the sinking fund.

20. It shall be the duty of the board of public works to cause to be paid into the treasury, to the credit of the Commonwealth, on the first day of January and the first day of July, one thousand eight hundred and fifty-three, or within thirty days after such dates, and semi-annually thereafter, the net surplus revenue of the fund for internal improvement during each half year preceding those days respectively, after deducting the fixed and incidental charges and special appropriations made by law on the revenue of said fund; provided, however, that nothing in this act is intended to discharge the said board from the obligation to pay the future semi-annual installments of the interest on the certificates of the internal improvement debt owned and held by the Literary Fund, as they shall hereafter become payable on and after the said first day of January, eighteen hundred and fifty-three; but said interest shall be duly paid or set apart as a charge on said revenue before such surplus shall be ascertained and paid over as herein directed.

21. This act shall be in force from and after its passage.

Mr. Holt: and for the same purpose we read into the record an Act of the General Assembly of the State of Virginia, entitled An Act to consolidate, re-establish and regulate the sinking fund of the State of Virginia, approved March 31st, 1875, and found beginning at page 420 of the Acts of Assembly of Virginia, 1874-5, page 420.

The Master: You will pursue the same course in connection with that.

ACTS OF ASSEMBLY OF VIRGINIA—1874-5.

Chapter 331—AN ACT to Consolidate, Re-establish and Regulate the Sinking Fund of the State of Virginia.

Approved March 31, 1875.

1. Be it enacted by the General Assembly, that the bonds of the State of Virginia, heretofore purchased by the commissioners of the Sinking Fund, which was established under the act of Assembly passed March thirtieth, eighteen hundred and seventy-one, known as the funding act, all bonds which have been received by the State on account of debts due to her, or on account of the disposition of her interest in any of the railroad or other internal improvement companies, since the thirtieth day of March, eighteen hundred and seventy-one, the bonds received from the following sources being included: From the Richmond and Danville Railroad Company, eight hundred and twelve thousand four hundred and seventeen dollars and forty-four cents; from the Richmond and Petersburg Railroad Com-

pany, five hundred and thirty-one thousand two hundred and fifty-seven dollars and seventy cents; from the Orange and Alexandria Railroad Company, eight hundred and seventy-four thousand six hundred and fifty-seven dollars and thirty-one cents; from the Norfolk and Petersburg Railroad Company, one hundred and forty-four thousand twenty-four dollars and forty-nine cents; from the sale of the Desert tract of land, sixteen thousand dollars; from the Dismal Swamp Canal Company, twenty-four thousand eight hundred and thirty-nine dollars and ninety-eight cents; from the board of public works, on account of claims against Selden, Withers and Company, the Chesapeake and Ohio Canal Company, one hundred and forty thousand eight hundred and fifty-three dollars. Also the bonds of the State now in the hands of the auditor of public accounts, which were received by him in settlement of claims due to the State, amounting to forty-six thousand four hundred and thirteen dollars and five cents; and the principal and accumulated interest of the bonds held by the commissioners of the Sinking Fund, which was established by the Act of Assembly, passed March twenty-six, eighteen hundred and fifty-three, shall constitute the Sinking Fund of the State of Virginia, and the interest upon the bonds thereof shall be applied, from time to time, as the same shall accrue, to the purchase of other bonds of the State; which shall, when so purchased, continue to bear interest and constitute a part of the Sinking Fund.

2. Whatever sums may be realized from the claims of the State against Selden, Withers and Company, the Chesapeake and Ohio Canal Company, from the interest on the debt due to the State by the Richmond and Danville Railroad Company; and from the principal of the said debt when paid; from dividends and interest paid by any and all railroad or other internal improvement companies; upon stock or bonds owned by the State or debts due to the State; from the sale or disposition of such stocks, bonds, or debts; and all sums which may be realized from the claims of the State against the United States, and from the sales, or rents, or profits of any real estate now belonging to the Commonwealth, and from damages which may be recovered by the State against defaulting revenue officers, shall be paid into the treasury of the State to the credit of the Sinking Fund, hereby authorized and established.

3. The commissioners of the Sinking Fund are directed to calculate the interest on the bonds of the old Sinking Fund, established by the act of March twenty-six, eighteen hundred and fifty-three, up to the first day of January, eighteen hundred and seventy-five; and to fund the principal and interest thereof in registered bonds, in their name; and all bonds now belonging to the said fund, or assigned thereto by this act, and all bonds hereafter purchased with the funds thereof shall be so converted or transferred.

4. The commissioners of the Sinking Fund shall keep regular and sufficient set of books, wherein shall be recorded all of their proceedings, showing their receipts and disbursements, and shall report the condition of the fund, and their proceedings with reference thereto, at each regular session of the General Assembly. The books and papers of the commis-

sioners shall be kept in the office of the second auditor; the bonds shall be kept in the office of the treasurer.

5. Before the payment of interest on any portion of the public debt the auditor of public accounts shall pay into the treasury, to the credit of the Sinking Fund, the sum of one hundred and fifty-four thousand three hundred and twenty-four dollars, for arrearages of interest at four per centum per annum, due to that fund, as established by the act of March thirtieth, eighteen hundred and seventy-one. And upon the Sinking Fund, as established by this act, he shall pay into the treasury, on the first day of July, eighteen hundred and seventy-five, and the first day of January, eighteen hundred and seventy-six, and on the first day of July, and the first day of January, every year thereafter, a sum equal to two per centum upon the whole amount of bonds held by the said fund, and the residue of State revenue in excess of the amount appropriated for the payment of interest on the public debt and the necessary expenses of government, which sums, when authorized by the commissioners of the Sinking Fund, shall be drawn from the treasury, on the warrant of the second auditor, from time to time, as may be ordered by the said commissioners, and shall be by them invested in the purchase of bonds of the State of Virginia; which shall, when so purchased by them and registered in their names, become a part of Sinking Fund, and continue to bear interest, in like manner with the other bonds of the said fund. In making their purchases under this act, the said commissioners shall be guided by the state of the market, giving the preference to that class of bonds which can be bought at the lowest rates.

6. In all cases in which bonds shall be funded under this act, West Virginia certificates shall be issued for one-third of the amount, in the name of the said commissioners, and shall be held by them as an offset against any claim which the State of West Virginia may hereafter set up against this State upon final settlement of the respective liabilities of the two States for the public debt.

7. This act shall be in force from its passage.

Mr. Holt: I introduce an Act of the Legislature of Virginia of February 11th, 1832, prescribing general conditions on which future subscriptions to joint stock companies are to be made, found at page 71 of the Acts of the General Assembly of Virginia of 1832. Also in the same connection I introduce an Act of the Legislature of Virginia providing for the negotiation of loans for the purpose of internal improvement, passed April 9th, 1838, found in the Acts of the General Assembly of Virginia of 1838, at page 24.

ACTS OF ASSEMBLY, 1831-2.

(Page 71)

Chap. LXXXI.—AN ACT prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the Commonwealth.

(Passed February 11th, 1832.)

1. Be it enacted by the General Assembly, That all subscriptions which are now authorized by law, and have not been made by the Board of Public Works, or which may hereafter be so authorized, shall be subject to the following conditions previous to subscription, to-wit: In every case the Board of Public Works shall be furnished with a certificate, under the seal of the company, signed by their treasurer, and countersigned by their president, stating that at least one-fourth of the private subscriptions of not less than three-fifths of the capital stock, has been actually paid up into the hands of the said treasurer, and that the remainder of said subscription is either so paid, or is made by solvent persons fully able to pay; and these facts shall be shown to the satisfaction of the Board of Public Works. They shall also be furnished with a list of the stockholders, showing the number of shares standing in each name. If any private improvement shall have been commenced previously to the subscription there to being authorized or made, the Board of Public Works shall be furnished with a statement, showing the amount of money received up to the date of such statement, and on what account received, and of the amount expended in the work, together with the balance of money on hand, the contracts entered into for the construction of the improvement, the exact progress made therein, as near as may be, its dimensions, its mode of construction, and a correct map of its location.

2. The instalments on the future subscriptions of the Board of Public Works, shall be payable in the manner, and on the conditions hereinafter mentioned, when not otherwise specially provided by law; that is to say, one-fourth of such subscriptions shall be paid on the production of the draft of the treasurer, or other authorized agent of the company, for the same, in such form as the Board of Public Works may prescribe, and the remaining three-fourths on similar drafts, in six equal semi-annual instalments, or in instalments of the same proportions with future payments of private subscriptions, at the discretion of the Board of Public Works: Provided, that before payment of the instalments aforesaid, the said Board of Public Works shall be furnished in every case with a certificate in the form and manner required by the first section of this act, showing the amount actually paid up by the private stockholders, which amount must be at least equal in

proportion to the amount payable by the Board of Public Works. But should the fund for internal improvement be inadequate, in the opinion of the said board, to the payment of the full amount of the instalments aforesaid, after providing for the subscriptions previously made, then their subscription shall be payable in such proportions, and at such periods, as the said board may deem expedient.

3. Whenever it shall happen in any year that the funds of the board, applicable to the purpose, shall prove insufficient to discharge when due the full amount of the instalments of subscriptions actually made, then and in that case, it shall be the duty of the said board to expend the funds so applicable, as far as they will go, in the payment of the instalments of such subscriptions as shall stand first in point of order, according to the date of resolutions of the Board of Public Works making the said subscriptions: and the fund for internal improvement shall not be chargeable with any interest, in consequence of such suspension in the payment of the whole, or any part of said instalments.

4. Whenever the Board of Public Works, having made any subscription to the stock of any company, shall have good cause to believe that the private subscriptions are improperly withheld, or that the funds of the company are misapplied, or will probably be misapplied, it shall be the duty of the said board to withhold payment of their subscription until proper legal measures can be taken to secure the faithful payment of private subscriptions and the faithful application of the funds of the company.

5. The Board of Public Works shall have the right to appoint such a number of the directors in all companies hereafter incorporated, to whose stock the Board of Public Works may subscribe, as will be in proportion to the stock so subscribed; and the fund for internal improvement shall participate in all dividends declared by said companies, in the proportion which the amount actually paid on behalf of the State, bears to the amount of private subscriptions actually paid up at the time of declaring such dividends; and in all general meetings of the stockholders of such company, the proxy or proxies representing the interest of the fund for internal improvement, shall have the right to vote on all questions, and in the election of all officers except directors, in the manner, and under the limitations contained in the twentieth section of the act, entitled, "an act prescribing certain general regulations for the incorporation of turnpike companies," passed the seventh day of February, eighteen hundred and seventeen.

6. It shall be the duty of the president and directors of every such company, to the stock of which the Board of Public Works shall subscribe as aforesaid, annually, on or before the seventh day of December, to furnish to the secretary of the Board of Public Works a report of the income and expenditure of every such company, for the next preceding year, including payments made by the stockholders, as well as tolls, together with a statement of the progress and condition of their works, a list of the stockholders

at the time of making said report, with the number of shares standing in each name, and such other information respecting the affairs of said company, as the Board of Public Works may require. It shall also be the duty of the president and directors of such company, within sixty days after any dividend shall have been declared by them, to give information thereof to the second auditor, and to pay into the public treasury, to the credit of the fund for internal improvement, within the said period, any such dividend to which the Board of Public Works may be entitled: and in case of failure, either on the part of the president and directors of such company, in furnishing such report and information, or of the treasurer of such company in paying such dividends as aforesaid the president and directors or the treasurer, as the case may be, of each company so failing, shall individually forfeit and pay to the Board of Public Works a penalty not exceeding fifty dollars; which said dividends and penalty may be recovered by motion in the general court, on ten days' previous notice.

7. All acts and parts of acts coming within the purview of this act shall be, and the same are hereby, repealed.

8. This act shall be in force from and after passing thereof.

ACTS OF ASSEMBLY, 1838.

Chapter 12.—An ACT providing for the negotiation of loans for purposes of internal improvement.
(Passed April 9, 1838.)

1. Be it enacted by the General Assembly, that all loans hereafter authorized by law for the payment of subscriptions on behalf of the Commonwealth to the capital of joint stock companies incorporated for purposes of internal improvement, or for defraying the expense of any work of internal improvement in which the State is or may be interested, as well as all such loans heretofore authorized, shall be negotiated according to the provisions of this act, except so far as may be otherwise specially provided by the acts authorizing the loans.

2. The board of public works, in effecting such loans, shall borrow upon the credit of the Commonwealth, at the lowest rate of interest at which the necessary amount can be obtained, not exceeding in any case five per centum per annum. Upon the payment of the money so borrowed into the treasury, which shall be done upon the warrant of the second auditor, the treasurer shall issue a certificate or certificates of loan for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators and assigns, the principal sum so borrowed, together with the interest at the rate agreed on, that the interest is payable semi-annually at the treasury of the Commonwealth, and that such certificate or certificates were issued under authority of the special act authorizing such loans. Each certificate shall be signed by the treasurer, and countersigned by the second auditor, and be registered in a book to be

kept for that purpose by the second auditor, and shall be transferable on the books of his office in person or by attorney. The semi-annual interest on such certificate shall be paid on his warrant, and upon the transfer of the whole or any part thereof, shall be delivered up and cancelled, and a new certificate or certificates equal to its whole amount, shall be issued and registered in manner aforesaid. All loans negotiated in conformity to this act shall be irredeemable for twenty years, but shall afterwards be redeemable at the pleasure of the General Assembly.

3. For the payment of the interest, and the final redemption of the principal of any sum to be borrowed in conformity to this act, the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other net income which may accrue therefrom to the Commonwealth, or to the fund for internal improvement, shall be, and the same are hereby appropriated and pledged; and in like manner the net income and other profits which may so accrue from works in which the State is interested, other than those of joint stock companies, and on which the money borrowed is to be expended, shall be and the same are likewise hereby appropriated and pledged for the payment of the interest and redemption of the principal of the money so borrowed; and if the stock aforesaid, and the said dividends, net profits and other income shall be inadequate to the payment of the said semi-annual interest, and the final redemption of the principal of the respective loans, the General Assembly pledges itself to provide other and sufficient funds, and for that purpose to levy, if necessary, an adequate tax upon any or all subjects liable to taxation under the constitution. Until such other sufficient funds shall be provided, so much of the income of the fund for internal improvement, not otherwise specially appropriated, as may be necessary to supply the deficiency, is hereby pledged for such purpose; and if at any time the dividends and other income arising from the stock or work as aforesaid, together with the income of the fund for internal improvement, shall be insufficient to pay the interest due upon the loan when demanded, the auditor of public accounts shall, upon the application of the Board of Public Works, issue his warrant upon the treasury, directing the payment of such interest out of any moneys therein not otherwise appropriated. And in case of the inability of the treasury at any time to discharge such warrants, the Board of Public Works shall be and they are hereby authorized to borrow the necessary amount from the banks of this State, at a rate of interest not exceeding six per centum per annum, on the credit of the Commonwealth, to be repaid in such manner as the General Assembly may by law direct.

4. The surplus dividends and other income arising from any stock or works aforesaid, and remaining after the payment of the interest due upon the certificates issued for loans applied to such stock or work, shall from time to time be applied by the Board of Public Works to the purchase of such certificates, if to be procured in satisfactory terms; and if not, then of any other certificates of State debt or any public debt or other stock which can be so purchased, which shall be held as a fund for the payment of the interest and redemption of the principal of the loans obtained for the pay-

ment of such stock or such work, and the interest accruing therefrom shall also from time to time be invested and held in like manner; and the said certificates of debt so purchased, together with the stock pledged, shall be disposed of in such manner as the General Assembly may direct: Provided, That the certificates so purchased on account of any particular loan, or such part thereof as may be necessary, shall from time to time be sold by the Board of Public Works to reimburse the fund for internal improvement for all payments of interest made out of the income for that fund on account of such loan, by virtue of this act.

5. The Board of Public Works shall be and they are hereby fully authorized and empowered to procure any or all of the loans authorized by law, either in the United States or in Europe, as they may deem most advantageous to the public interest, and for that purpose to appoint, if they see fit, one or more agents, with the necessary powers and to allow him or them such compensation as they may deem reasonable. In the event of a loan or loans being effected in Europe, the said Board may provide for the payment of the interest on the same semi-annually, in London or elsewhere, and may stipulate for the payment by the lenders of the amount of such loans in England or elsewhere, conforming the certificates to be issued to the terms of the loans. They shall also be empowered generally to do and execute all such acts and writings as may be necessary to complete the said loans, and to cause the prompt payment of the amount thereof into the public treasury.

6. Be it further enacted, That the person or persons, body or bodies politic or corporate, in whose names any of the certificates of the public debt of this Commonwealth shall be issued, in conformity to the provisions of this act, shall be deemed as to the Commonwealth the owner of the said stock until a transfer shall be duly made on the books of the second auditor, or other proper officer, to some other person or body politic or corporate. And if the person or body politic or corporate, in whose name the said certificate shall stand, shall for valuable consideration, and bona fide, sell and deliver the said stock to any other person, body politic or corporate accompanied by a power of attorney duly executed and authenticated, such sale and delivery shall vest in the transferree all the title of the transferrer, either in law or equity, to the said certificate; and upon the application of the attorney, and delivery of the certificate of debt therein assigned to the second auditor, or other proper officer of the Commonwealth, it shall be his duty to transfer the same, and issue a new certificate or certificates therefor in the name of the transferree: Provided, however, that all payments made by the Commonwealth prior to such transfer, on account of the interest on such certificate, shall discharge the Commonwealth from all claim on account of the interest so paid.

7. If any person, in whose name the said stock shall stand on the books of the Commonwealth, shall die without having made a sale or transfer thereof, and his executor or administrator shall produce to the second auditor, or other proper officer, the original certificate or certificates of the

said stock, and duly authenticated evidence that he is, by the laws of the country in which such holder may have died, the lawful executor or administrator of such holder, the second auditor shall, on his application in person, or by power of attorney duly authenticated, transfer the said stock to the said executor or administrator, or to such person as he may direct.

8. Whenever any certificate of stock created in pursuance of the provisions of this act, or by authority of any previous act, for purposes of internal improvement, shall have been lost by the holder or holders thereof, it shall and may be lawful for the second auditor and treasurer to renew the same in the manner mentioned in this act: Provided, however, that such certificate shall not be renewed until the party applying for the same shall produce satisfactory proof of his having advertised the same for at least three months previously to his application; shall execute a bond with sufficient security, to the treasurer and his successors, conditioned to indemnify the Commonwealth against any loss in consequence of the renewal of such certificate, and shall moreover file an affidavit setting forth the time, place and circumstances of the loss aforesaid.

9. It shall be lawful for any bank incorporated in this Commonwealth, through its proper officers, and by the authority, and under the direction of the said board, to act as the agent of the Board of Public Works in negotiating, obtaining or contracting for any loan which may be so authorized, and to do all necessary acts for the transfer of the proceeds of such loan into the public treasury, in specie or other satisfactory funds, by bills of exchange or otherwise, and to make on behalf of the said board the necessary arrangements for the punctual and regular payment of the interest on such loan, according to the terms of the contract therefor.

10. And whereas, should large sums be borrowed, of which a considerable part would necessarily lie idle until required for the purposes for which the loans may be respectively designed, whereby a great loss of interest would be incurred, the Board of Public Works may deposit the same with the banks of this Commonwealth, at such rate of interest as may be agreed upon by the board and said banks. The said board may also lend such part thereof to joint stock companies, as the said companies may be entitled by law to receive from them at subsequent periods, on such conditions and security as the board may deem expedient.

11. This act shall be in force from its passage.

The Master: I will say, so far as counsel for Virginia are concerned, they do not have to button right down to this thing now. Any time before we suspend this hearing this record may be modified to suit the judgment or the agreement of both parties concerned. That means, of course, they do not have to take it up during the intermission and take their time and work on it.

Mr. Lilly: The greater expense is in the stenographic work rather than the printing.

The Master: If the stenographers get the Acts out and later on they are stipulated, they will of course have to be paid for it.

Mr. Holt: We now offer and read into the record for the purpose of showing an official admission on the part of the State of Virginia made on the 7th day of September, 1863, that the assets then on hand were sufficient to practically discharge the total indebtedness of the State of Virginia, the message of John Letcher, then Governor of said State, to the Senate and House of Delegates of Virginia.

The Master: Found in what volume?

Mr. Holt: Found in volume entitled Journal, House of Delegates, 1863-64, Virginia.

The Master: That I presume you would want printed in full, because if a construction like that is predicated upon it I would want the whole document.

Mr. Holt: I said we offered the message, but I should have said a part of the message which I will indicate. The portion of the message to be read into the record begins with the last paragraph found on page 16, and continues through page 17 to the signature of the Governor.

JOURNAL HOUSE OF DELEGATES—CONFEDERATE VIRGINIA, 1863-64.

On pages XVI-XVII, Doc. No. 1, of said volume will be found certain paragraphs from Governor Letcher's message of date of September 7, 1863, pertaining to the indebtedness of the State of Virginia.

* * * * * * *

"I suggest whether it would not be wise to dispose of the interest which the State holds in our various internal improvement companies, under such restrictions as may be deemed proper, and apply the proceeds arising therefrom to the payment of the State debt. We could at this time dispose of these stocks to great advantage; and such an application of the proceeds would reduce the debt to a comparatively small sum. It is the part of wisdom to extinguish our debt as rapidly as possible, and any measure which will produce this result, will greatly increase public confidence.

The total permanent debt of the State is reported to be....		$34,399,680 30
This sum includes interest on the public debt uncalled for, the greater portion of which is due to the United States and her citizens...	$2,730,891 61	
It includes also the sum borrowed by us to aid in the prosecution of the war, and which by agreement is to be refunded by the Confederate government, amounting to.....	8,500,000 00	
		$11,230,891 61
These sums, making $11,230,891.61, when deducted, will leave as our State debt the sum of.....		23,168,788 69
Deduct debt purporting to be due the literary fund, which belongs to the State, and is a debt by mere fiction of law..		2,662,691 38
		$20,506,097 31
To pay which we have available bank stocks belonging to the literary fund, railroad and other stocks belonging to the internal improvement fund, worth in the market, and from which can be realized at any time the state may direct, the sum of.....		16,543,055 31
		$ 3,963,042 00
In addition, the Commonwealth owns $2,340,600 worth of bank stocks, which will readily command in the market the sum of		3,019,125 00
Leaving only to be provided for.....		$ 943,917 00

This statement has been prepared with great care, and after consultation with our auditors, and will, I believe, be found accurate and reliable.

I have thus brought to your attention such matters as are deserving of consideration at this session of the General Assembly. I have only to add, in conclusion, that I hope harmony and unity will attend your deliberations; that wisdom will dictate your measures, and that they will promote the honor, interests and prosperity of the Commonwealth and the Confederacy.

Respectfully,

JOHN LETCHER."

In conjunction with the message of Governor Letcher, we now introduce, and for the same purpose, the message to the Legislature of the State of Virginia of Governor Gilbert C. Walker, dated the 8th day of March, and found in Journal of the House of Delegates, 1869-70, Document No. 6.

The Master: That will be printed in full.

Mr. Lilly: So far as it refers to the debt.

The Master: Certainly, so much of it as relates to the debt.

SENATE JOURNAL AND DOCUMENTS, 1869-70.

(Pages 141 to 148.)

MESSAGE OF GOVERNOR GILBERT C. WALKER.

Resources.

The assets and securities owned by the State on the first day of January, 1870, are as follows:

Balance in treasury		$ 567,891 89
Alexandria, Loudoun and Hampshire Railroad Company bonds		50,862 40
Blue Ridge Railroad, owned by State (cost)		1,744,723 23
Chesapeake and Ohio Railroad Company:		
Six per cent. bonds	$ 58,500 00	
Interest on the same	17,550 00	
Common stock	2,013,987 50	
Seven per cent. loan	210,000 00	
Interest on the same	66,150 00	
Amount due from use of Blue Ridge Railroad, under act of March 5, 1849	117,947 24	
		2,484,134 74
Norfolk and Petersburg Railroad Company:		
Seven per cent. loan, secured by mortgage	$ 136,591 64	
Interest due on the same	4,780 18	
Six per cent. preferred stock	382,500 00	
Common stock	817,470 00	
		1,341,341 82
Orange and Alexandria Railroad Company:		
Seven per cent. loan, secured by mortgage	$ 249,962 27	
Interest due on the same	26,245 62	
Preferred stock	210,000 00	
Common stock	664,000 00	
		1,150,207 89
Richmond and Danville Railroad Company:		
Seven per cent. loan, secured by mortgage	$ 600,000 00	
Interest on the same	58,987 02	
Common stock	1,188,598 50	
		1,847,585 52

Richmond and Petersburg Railroad Company:		
Common stock		385,600 00
Richmond, Fredericksburg and Potomac Railroad Company:		
Common stock		275,200 00
Richmond and York River Railroad Company:		
Preferred stock	$ 200,000 00	
Common stock	290,999 52	
		490,999 52
Southside Railroad Company:		
Seven per cent. loan, secured by mortgage	$ 800,000 00	
Interest due on the same	280,000 00	
Common stock	303,500 00	
		1,383,500 00
Virginia and Kentucky Railroad Company:		
Common stock		103,433 69
Virginia and Tennessee Railroad Company:		
Loan	$1,000,000 00	
Interest on the same	455,000 00	
Preferred stock	582,500 00	
Common stock	1,717,500 00	
		3,755,000 00
Marietta and Cincinnati Railroad Company:		
First-class preferred stock	$ 166,600 00	
Second-class preferred stock	35,850 00	
First and second-class preferred scrip	161 91	
		202,611 91
James River and Kanawha Canal Company:		
Common stock		10,400,000 00
Other navigation companies		1,192,616 39
Interest in sundry plank roads, turnpikes and bridge companies		4,761,564 49
Claims against Chesapeake and Ohio Canal Company, about		900,000 00
Claims against Selden, Withers & Co		436,000 00

Unsettled claims against the State of West Virginia.

Of these various stocks, bonds and claims, some are worth about par, some are much below par, but constantly improving in value, while others are worthless.

Considering them in the order above named, it is probably safe to say that the bonds of the Alexandria, Loudoun and Hampshire Railroad Company are good, and that the full amount, $50,862.40, will be paid. These bonds were given by the company in payment for stock held by the State, and sold to the company at $5 per share, and are secured by mortgage upon

its franchise and real and personal property. There are three bonds of $16,954.13 each, and due, respectively, on the 7th day of April, in the years 1872, 1874 and 1877; and the terms of sale of the stock by the State, as well as the prosperous condition of the company, justify the confident expectation that they will be promptly paid at maturity.

The Blue Ridge Railroad was built by the State at a cost of $1,744,723.23. By an act of the General Assembly, passed March 1, 1867, the Chesapeake and Ohio Railroad Company was authorized to purchase the interest of the State in this work, "by the surrender of State bonds to an amount equal to the value of said road at the time of purchase under the contract with the Virginia Central Railroad Company, said amount to be ascertained by the commissioners of the Covington and Ohio Railroad." The Chesapeake and Ohio Railroad Company have not yet completed the purchase of this interest, nor is it authoritatively known by the Board of Public Works that said commissioners have ascertained the amount which is to be paid by the same, although it is believed that the amount will be from one-third to one-half of the amount of said interest.

The Chesapeake and Ohio Railroad Company was formed by the consolidation of the Virginia Central and the Covington and Ohio Railroad Companies, under the law above mentioned, and succeeds to all the rights and liabilities of each of those companies. By the terms of said law, said company has "the right, at any time within two years after its organization to purchase the stock paid by the State in said company at the date of the purchase, by transferring to the Board of Public Works bonds of the State for an amount equal to the stock proposed to be purchased, and also to pay any debt which it may owe the State at the date of the payment, on account of loans made to any of the companies which may have consolidated, by surrendering to the Board of Public Works State bonds for an amount equal to the debt proposed to be paid." The consolidation above referred to was perfected August 15, 1868, and by the terms of the above quoted law, the right of said company to purchase the stock or pay the debts which the State holds in and against the same, will expire on the 15th day of August, 1870. The debt due the State by this company for loans and interest on the same, and for the use of the Blue Ridge Railroad, amounting to $460,147.24, is perfectly good, and will be paid. It is also hoped that this company will redeem the stock owned by the State therein, amounting to $2,013,987.50, as provided by the law above quoted. This company has been recently reorganized, and now numbers in its board of directors some of the ablest and wealthiest financiers, as well as some of the most experienced, energetic and competent railroad men in the country. The unfinished portion of the road is being put under contract, and the whole work, it is said, will be rapidly pushed to an early completion to the Ohio River. When completed it will indoubtedly prove to be one of the most profitable and valuable public improvements of the country, and of immense commercial and pecuniary advantage to our State. It must soon become one of the greatest arteries through which will be poured the vast and increasing commerce of the

Ohio and Mississippi valleys and the Northwest to our own cities and seaboard, as well as to cities and communities to the north of us. The interest of the State in this company, if not purchased by it, will, it is confidently believed, at no distant day rise to par in value; provided, always, that the undertakings and representations of those now controlling this improvement are fully and promptly executed.

The Norfolk and Petersburg Railroad Company's bonds, held by the State and secured by a first mortgage upon its property, are worth nearly par. No dividends have been paid upon either the preferred or common stock since the war, but if the road continues to prosper and increase in its business and capabilities as it has for the past four years, the stock will soon be as valuable as any railroad stock in the State.

The bonds of the Orange and Alexandria Railroad Company are also secured by first mortgage on the company's property, and rate much higher in the market than our State bonds. The Manassas Gap Railroad has been transferred to this company, under an act of the General Assembly, passed February 14, 1867, and the corporate name of the company changed to the Orange, Alexandria and Manassas Railroad Company; and in that transfer the State surrendered or donated to this company its interest in the original Manassas Gap Railroad. The road from Manassas Junction has been rebuilt and extended to Harrisonburg, so that it now commands the business of a very large, wealthy and growing section of the State. No dividends have been paid upon either the preferred or common stock since the war, nor is it safe to anticipate a resumption of payment of dividends for some years to come, although the business of the company is constantly improving and the stock daily increasing in value.

The Richmond and Danville Railroad Company's loans, amounting, with interest, to $658,987.02, are well secured, and may be reckoned among the solvent and best assets held by the State. This road has rapidly recuperated since the war, and with its large increasing business, ought to be able, in a few years, to resume the payment of dividends upon its common stock.

In the Richmond and Petersburg Railroad Company, the interest of the State consists only of common stock, not now dividend paying, but with the general increase of prosperity and business, it ought in a few years to be nearly or quite at par.

The stock of the Richmond, Fredericksburg and Potomac Railroad Company rates higher than any other railroad stock in the State, and will doubtless soon become dividend paying.

The Richmond and York River Railroad Company's preferred and common stock, held by the State, will not, for some time to come, prove a source of revenue to the State.

The State owns $800,000 of the 7 per cent. mortgage bonds of the Southside Railroad Company, and on the 1st of January, 1870, the accrued and unpaid interest thereon amounted to $280,000. These bonds were

originally secured by a first mortgage upon the property of the company, but the legislature, by an act passed January 18, 1866, authorized the company to issue and dispose of its bonds to an amount equal to an amount not exceeding the balance due upon a loan made to the company by the State under an act of the General Assembly passed February, 1853 (the same loan above mentioned), to be secured by a mortgage upon the property of the company, "the full force and effect of such mortgage to the State (first above mentioned) being hereby suspended, and the claims thereof are hereby postponed until the bonds issued under the mortgage herein authorized to be given in its place and stead, as aforesaid, shall have been paid." (See Acts of Assembly, 1865-6, pages 337-8.) The company mortgaged its property to secure about $700,000 of its bonds, issued by authority of this act, but notwithstanding the subrogation of this mortgage to the lien of the State, the claim of the State, amounting, with interest, January 1, 1870, to $1,080,000, is considered a solvent asset, and it is believed the company will soon be able to resume the payment of interest thereon. The common stock, under the impulse of prosperity, and the increasing business of the company, is constantly appreciating, and if the wise policy which now controls the management of this road shall continue, it will one day, not many years in the future, become a dividend paying stock.

The stock held by the State of the Virginia and Kentucky Railroad Company, amounting to $103,438.69, is at present valueless. Work upon this road will probably be soon resumed, and when completed this stock may become valuable.

The Virginia and Tennessee Railroad is one of the most valuable and important public improvements in the State. The volume of business has annually increased since the war, and if its success in the future shall continue to increase in the same ratio as it has during the past four years, within the next five years it will be able to pay a dividend upon its common stock. Its preferred, and even common stock, will, in four or five years, rate at or near par. A loan made by the State to this company of $1,000,000 is claimed by the company to have been paid during the war, but this claim is disputed by the State, and can only be settled by the courts. As soon as our courts are organized a statement of the facts can probably be agreed upon by the State and the company, and the case be submitted to and decided by the proper tribunal. If judgment shall be given in favor of the State it will be paid by the company. The claim and interest amounted, on the 1st of January, 1870, to $1,455,000.

The stock of the Marietta and Cincinnati Railroad Company was obtained by the State by Selden, Withers & Co. It is improving in value, but not worth par.

The interest on the James River and Kanawha Canal Company owned by the State, amounting to $10,400,000, is of no considerable marketable value. The State and private stockholders in this company could well afford, if authorized, to surrender gratuitously all its and their interests to any persons or corporation who would undertake, under suitable guaran-

tees, to complete that important improvement. The interest of the "other navigation companies" is of no particular value.

The interest of the State in the various plank-road and turnpike companies, amounting to $2,182,318.72, is comparatively worthless.

The claim of the State against the Chesapeake and Ohio Canal Company, being for interest paid on account of the bonds of that company guaranteed by the State, is in process of settlement; and the agents of the State who have the matter in charge are confident that the State will soon realize therefrom, less expenses, nearly or quite the sum of $600,000.

From the claim against Selden, Withers & Co., it is believed the State will realize about the sum of $150,000.

Relative to the claims against the State of West Virginia, for her proportion of the public debt, three commissioners have been appointed by this State, and provision has been made for the appointment of a like number by West Virginia, to adjust the same. It is hoped that an early settlement will be reached. Any discussion of the merits or amount of this claim would be out of place in this paper. It may not be improper to remark, however, that it would seem from the language of the act of March 21, 1867, that our General Assembly were of the opinion that West Virginia ought to assume and pay one-third of the public debt.

From this brief review of the assets and securities held by the State it will be observed that $2,612,776.37 are considered of equal or greater value than State bonds at present quotations, consisting of the following items—viz.:

Bonds Alexandria, Loudoun and Hampshire Railroad Company	$ 50,862 49
Bonds Chesapeake and Ohio Railroad Company, with interest, and including use of Blue Ridge Railroad	460,147 24
Bonds of Norfolk and Petersburg Railroad, with interest	141,371 82
Bonds Orange, Alexandria and Manassas Railroad Company, with interest	276,207 89
Bonds Richmond and Danville Railroad Company, with interest	658,987 02
Stock Richmond, Fredericksburg and Potomac Railroad Company	275,200 00
Amount to be realized from claim vs. Chesapeake and Ohio Canal Company, less expenses, and claim vs. Selden, Withers & Co.	750,000 00
	$2,612,776 37

(The balance in the treasury is not included among these items, for the reason that a portion of it will, necessarily be used to meet the current expenses of the government, and the disposition of the remainder is at the discretion of the General Assembly.) It will also be observed that of the assets, $10,048,267.91, it is hoped in a few years will be equal in value to State bonds, and will be available for the redemption of the State debt, as follows:

Stock Chesapeake and Ohio Railroad Company	$ 2,013,987 50
Stock Norfolk and Petersburg Railroad Company	1,199,970 00
Stock Orange, Alexandria and Manassas Railroad Company	874,000 00
Stock Richmond and Danville Railroad Company	1,188,598 50
Stock Richmond and Petersburg Railroad Company	385,600 00
Stock Southside Railroad Company	303,500 00
Stock Virginia and Tennessee Railroad Company	2,300,000 00
Stock Marietta and Cincinnati Railroad Company	202,611 91
Bonds Southside Railroad Company, including interest	1,080,000 00
	$10,048,267 91

Deducting the amount of solvent assets which are immediately available for the redemption of the State debt, viz: $2,612,776.37, together with those which it is hoped and believed will become available for that purpose in a few years, viz: $10,048,267.91, from the gross amount of assets first above mentioned, leaves a balance of $21,302,233.62, which is not now, and probably never will become, of much value to the State. But, in addition to this large amount, the State has lost, abandoned or surrendered and released the following large sums, viz:

Subscription paid to Covington and Ohio Railroad Company	$3,206,461 83
Subscription paid to Fredericksburg and Gordonsville Railroad Company	163,299 00
Subscription paid to City Point Railroad Company	110,000 00
Subscription paid to Blue Ridge Railroad Company, say	1,100,000 00
Subscription paid to Manassas Gap Railroad Company	2,280,000 00
Subscription paid to Portsmouth and Roanoke Railroad Company	406,650 00
Subscription to Roanoke Valley Railroad Company	207,402 00
Subscription to Winchester and Potomac Railroad Company	270,000 00
Subscription to Alexandria, Loudoun and Hampshire Railroad Company	1,017,248 00
Subscription to navigation and other companies	293,032 05
Loss by Selden, Withers & Co., and Chesapeake and Ohio Canal Company	580,000 00
	$9,789,092 88

Which, added to the amount above stated as comparatively valueless, makes the enormous sum of $31,041,326.50, or nearly the amount of the old State debt.

Mr. Holt: In conjunction with the sinking fund, we introduce into the record Section 27 of the Constitution of Virginia, adopted in 1864, and found in the Acts of the General Assembly of Virginia, 1861-5, page 15.

ACTS OF ASSEMBLY, VIRGINIA, 1861 to 1865.

Sections 27, 28 *and* 29, *Constitution of the State of Virginia,* 1864.

27. The General Assembly shall provide by law for adjusting with the State of West Virginia the proportion of the public debt of Virginia, proper to be borne by the State of Virginia and West Virginia respectively; and may authorize, in conjunction with the State of West Virginia, the sale of all lands and property of every description, including all stocks and other interests owned and held by the State of Virginia in banks, works of internal improvement, and other companies at the time of the formation of the State of West Virginia, and no ordinance passed by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one adjusting the public debt between Virginia and West Virginia, shall be binding upon this State.

It shall not provide for the payment of any debt or obligation created in the name of the State of Virginia by the usurped and pretended State authorities at Richmond. And it shall not allow any county, city or corporation, to levy or collect any tax for the payment of any debt created for the purpose of aiding any rebellion against the State or the United States.

The Legislature shall not provide for the payment of any bonds now held by rebels in arms against the State or United States government.

28. The General Assembly may at any time direct the sale of the stocks held by the Commonwealth in internal improvements, and other companies located within the limits of this Commonwealth, but the proceeds of such sale, if made before the payment of the public debt, shall be appropriated to the payment thereof.

29. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State or to suppress insurrection, repel invasion or defend the State in time of war. If the State becomes a stockholder in any association or corporation for purposes of internal improvements, such stock shall be paid for at the time of subscription, or a tax shall be levied for the ensuing year sufficient to pay the subscription in full.

Mr. Holt:

Now, upon the subject of interest, in the event that question should be involved before the Master, we read into the record the report of the case of Virginia against West Virginia, found in 11th Wallace, Supreme Court Reports, at page ——, showing when this suit was instituted and when it was terminated.

(A stipulation was subsequently entered into covering the report referred to.)

Mr. Holt:

Likewise as bearing contingently upon the subject of interest, and I might add for any other purpose found useful, we read into the record an Act of the General Assembly of Virginia, approved March 30th, 1871, providing for the funding and payment of the public debt, found in Acts of the General Assembly of Virginia, 1870-1871, Chapter 282.

The Master: The same understanding applies to that as to the railroad and navigation companies' legislation.

ACTS OF GENERAL ASSEMBLY OF VIRGINIA, 1870-71.

Chap. 282.—AN ACT to Provide for the Funding and Payment of the Public Debt.

Approved March 30, 1871.

Whereas, in the formation of the State of West Virginia, there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas, in the ordinance authorizing the organization of said State, it was provided that the said State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this State, and will continue to be made as long as may be necessary; and, whereas, the people of this Commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and, whereas, it has been suggested that the authorities of West Virginia may prefer to pay that State's portion of said debt to the holders thereof and not to this State, as the Constitution of this State provides; now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

1. Be it enacted by the General Assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness, shall be issued for any portion of the debt of this State; nor shall any interest be paid upon any part or portion of said debt, except as hereinafter provided.

2. The owners of any of the bonds, stocks, or interest certificates heretofore issued by this State, which are recognized by its Constitution and laws as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the old James River Company, and the bonds of the James River and Kanawha Company guaranteed by this State, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred and seventy-one, in six per centum coupons or registered bonds of this State of the denominations of one hundred, and the multiples thereof, dated that day, and to become due and payable in thirty-four years after that date, but redeemable at the pleasure of the State after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order of bearer, and the coupons to bearer, at the treasury of the State, and bonds payable to order may be exchangeable for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or vice versa, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts, dues and demends due the State, which shall be so expressed on their face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars, or any multiple thereof, shall be exchangeable for bonds of the character herein authorized to be issued for any fractional sums less than one hundred dollars, which may remain in making such exchange.

3. Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of the said amount with interest thereon at the rate prescribed in the bond surrendered will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and that the State of Virginia hold said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the

interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved or litographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared, shall commence the issuance of same as herein provided. The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a fac simile of his signature shall be stamped or engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and the bonds of each series shall be numbered from one upwards, as they are issued; and the coupons in addition to the number of the bond to which they are attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate, to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amount for which certificates shall be issued, under the second and third sections of this act; which calculations shall be endorsed, dated and signed by him on the back of such bond, certificate of stock, or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock, or interest certificate, to be made and kept in his office. After such endorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for the several amounts, respectively, according to said endorsement. The second auditor, after making a proper registry of said bond or bonds, and certificates to be kept in his office, shall deliver the same to the person entitled to them. The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest certificate so surrendered and delivered to him, cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserve in his office a proper registry of every bond and certificate delivered by him to the second auditor, and whenever a coupon bond shall be issued payable to the order

of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable.

5. Whatever sum may be realized from the claims of this State against Selden, Withers and Company, and the Chesapeake and Ohio Canal Company, and from the sale or disposition of the stocks and bonds, and debts owned by the State in and against any and all railway and other improvement companies, and all sums which may be realized from the claims of this State against the United States, and from any sales of any real estate now belonging to the Commonwealth, shall be paid into the treasury of the State to the credit of the sinking fund hereby authorized and created. In the year eighteen hundred and eighty, and annually thereafter, until all the bonds issued under and by authority of this act shall have been paid, there shall be levied and collected, the same as other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the State, which shall be paid into the treasury of the State to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued by authority of this act.

6. All necessary expenses incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same, signed by the treasurer and second auditor, and approved by the Governor.

7. This act shall be in force from and after its passage.

Mr. Holt: Also an Act of the General Assembly of Virginia, approved March 28th, 1879, relating to the funding of the Virginia debt and providing a plan of settlement of the same, found in the Acts of the General Assembly of Virginia, 1878-9, Chapter 24, page 264.

The Master: That is subject to the same condition.

ACTS OF GENERAL ASSEMBLY OF VIRGINIA, 1878-79.

Chap. 24—AN ACT to provide a plan of settlement of the public debt.

Approved March 28, 1879.

Whereas, it is believed by the General Assembly that the rate of interest heretofore agreed to be paid by the State on the public debt is greater than can be borne without destroying the industrial interests of the State; and whereas, the counsel of foreign bondholders of London, England, and the funding association of the United States of America, Limited, have, in view of this belief, expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest; and whereas, it is highly expedient, in the best interest of the State, to secure an amicable settlement with the creditors by which the credit of the State may be restored and enhanced, and the aggregate amount of interest payable by the State reduced within the limits which will not be too onerous to the population; therefore,

1. Be it enacted by the General Assembly of Virginia, That to provide for funding the debt of the State, the Governor is hereby authorized to create bonds of the State, registered and coupon, dated the first day of January, 1879, the principal payable forty years thereafter, bearing interest at the rate of three per centum per annum for ten years, and at the rate of four per centum per annum for twenty years, and at the rate of five per centum per annum for ten years, payable in the cities of Richmond, New York or London, as hereinafter provided, on the first days of July and January of each year, until the principal is redeemed. The State shall have the option of redeeming any or all of said bonds by the payment of principal and accrued interest at any time after the expiration of ten years from the first day of January, eighteen hundred and seventy-nine, on public notice to the holders of its purpose to make such redemption. The coupons of said bonds shall be receivable at and after maturity for all taxes, debts, dues and demands due the State, and this shall be expressed on the face of the registered bonds and on the face of such certificate. All obligations created under this act shall be forever exempt from all taxation, direct or indirect, by the State, or by any county or corporation therein, and this shall be expressed on the face of the bonds. The said bonds shall be of the denominations of one hundred dollars, five hundred dollars and one thousand dollars, at the option of the creditors, respectively, and the bonds, as well as their coupons, shall be payable at Richmond and New York, or, if desired, may be made payable in sterling at London, at the fixed rate of exchange of one pound sterling for five dollars. The bonds hereby authorized shall be issued only in exchange for the outstanding debt of the State, as hereinafter provided.

2. For the purpose of designation, the outstanding indebtedness of the State is divided into two classes, as follows, to-wit:

Class I, which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one into such tax-receivable coupon bonds.

Class II, which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one, as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds.

3. The outstanding indebtedness of the State shall be funded in the new bonds, to be issued under this act, as follows: Bonds shall be presented for exchange with all coupons attached maturing after the date of presentation, and shall be exchanged at the face value of said bonds, dollar for dollar, for the new bonds, with all coupons attached maturing after the date of such presentation; provided, that the proportion of Class II, refunded, shall never exceed in amount one-third (1-3) of the total amount refunded, until eighteen million dollars of Class I have been retired. The new bonds to be issued may be coupon or registered, at the option of the holders, and at the like option coupon bonds may at any time be converted into registered bonds.

4. All due and unpaid interest may be funded under the provisions of this act at the rate of fifty cents on the dollar, and shall be fundable at that rate under the third section of this act, and taken, under the provisions of said section, in lieu of bonds of Class II.

5. If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the Governor their assent to and acceptance of the terms of this act, the same shall be taken to be a contract between the State and the said corporations and the Governor shall forthwith provide for the preparation of the bonds provided for by this act. The said corporations may present for funding, and in the proportions hereinbefore provided, at least eight millions of dollars of the outstanding obligations of the State prior to the first day of January, eighteen hundred and eighty; and during each period of six months, from and after the thirty-first December, eighteen hundred and seventy-nine, they may present an additional amount of at least five million of dollars, until the whole debt is funded; but any excess over said amounts, which may be presented during any of said periods may be estimated in requirement for the succeeding six months. So long as the said corporations shall present for funding the obligations aforesaid, in the amounts and in the periods aforesaid, they shall have the exclusive privilege of funding the outstanding debt under the provisions of this act; provided, that the said corporations shall arrange to receive the outstanding bonds at the city of Richmond, when the holders thereof shall so desire. But if the said corporations shall fail to file with the Governor their assent and agreement as aforesaid by the first day of May, eighteen hundred and seventy-nine, or shall fail to

present for funding the outstanding bonds in the proportions and amounts and during the periods hereinbefore specified, then the Governor may, in his discretion, make a like contract with responsible parties for the funding of the debt of the State under this act.

6. The rules prescribed under the act approved March thirtieth, eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act; provided, that all bonds and certificates which may be necessary to be printed shall be printed from a plate which shall be the property of the Commonwealth, and shall remain in the keeping or under the control of the Second Auditor. Whenever an obligation of the State shall be presented to the Second Auditor to be funded under this act, he shall note the fact and date on the proper register in his office, shall punch a hole through the name of the Second Auditor signed or countersigned thereto, and shall issue his warrants upon the Treasurer for the new obligations required. There shall be endorsed upon the said warrants a description of the old obligations, and the calculation of the principal and interest for which the new obligations are to be issued. The said old obligations and warrant shall be carried by the Second Auditor to the Treasurer, who shall note the fact and date of funding on the proper register in his office, and if he shall find the warrant correctly drawn, shall sign the proper obligations to be issued, register the same in his office, clip therefrom the past due coupons and punch the same, and deliver the said obligations to the Second Auditor, taking his receipt therefor upon his warrant. The Second Auditor shall countersign the obligations so delivered to him, register the same in his office, and deliver the same to the proper person, taking his receipt therefor. The Treasurer shall jacket and file in his office the warrant upon which the new obligations were issued, with the surrendered obligations attached to said warrant, and shall number and date the jacket so as to make it easy for reference. But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so cancelled shall be filed for reference.

7. The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the State of Virginia will negotiate or aid such creditors holding all such certificates issued under this act, or previous acts, in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued

under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability on account of the said certificates.

8. The General Assembly will, by necessary and appropriate legislation, provide for the prompt payment of the interest on the bonds issued under this act.

9. In the year eighteen hundred and eighty-five, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be levied and collected the same as, and together with other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the State, which shall be paid into the treasury of the State to the credit of the sinking fund. The Treasurer, the Auditor of Public Accounts and Second Auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued under this act. All the certificates of debt which shall be funded, redeemed or purchased under this act shall be cancelled by the Second Auditor and delivered by him to the Treasurer of the Commonwealth at the time of payment therefor, who shall carefully preserve the same in his office. All certificates of debt acquired under the operation of the sinking fund, created by the act of March thirtieth, eighteen hundred and seventy-one, shall also be cancelled and delivered.

10. Executors, administrators and others acting as fiduciaries, may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

11. The Treasurer shall, upon the first days of July, eighteen hundred and seventy-nine, and January, eighteen hundred and eighty, and upon the same days in each year, pay or cause to be paid to the holders thereof the half-yearly interest then due upon each of the bonds of the Commonwealth issued under this act.

12. Whenever there shall not be a sufficient amount of money in the treasury of the State to meet the accruing interest on the said bonds promptly, the Auditor is hereby authorized and directed, by and with the advice of the Governor of Virginia, to raise by temporary loan, to be returned out of the accruing revenues of the State, a sum sufficient to enable him to meet promptly the said interest as it accrues. And in case the Auditor shall not be able to raise a sufficient sum for the said purpose by loans, he is hereby authorized and directed to issue non-interest-bearing certificates of indebtedness of this State, to be signed by himself and countersigned by the Treasurer, and properly registered in the office of the Auditor and Treasurer, for the sum of one dollar and multiples thereof, the same to be printed from plates, which shall be the property of the State, and to sell the same at not less than a minimum price to be fixed by the commissioners of the sinking fund, which shall not be less than seventy-

five cents upon the dollar. The said certificates shall be receivable for all taxes, debts, dues and demands due the State, and this shall be expressed on their face. The amount of such certificates which may be issue at any time shall be fixed by the commissioners of the sinking fund, and the proceeds of the sale thereof shall be devoted exclusively to the payment of interest as aforesaid. The Auditor shall report regularly to the General Assembly the amount and character of certificates issued under this act, and the net proceeds thereof. In case the Auditor shall not be able to borrow the sums needed as aforesaid without security, he shall be and is hereby authorized to hypothecate such amounts of the said certificates as may be fixed on by the commissioners of the sinking fund, at a value to be fixed as aforesaid, but in no case to be at a less value than seventy-five cents upon the dollar; and in case of a sale of said certificates, wheter they may have been so hypothecated or not, they shall be offered for sale in suitable and proportionate amounts in the different counties, towns and cities of this State, so far as practicable, under regulations to be fixed by the commissioners of the sinking fund. The said certificates shall be received by the Treasurer of the State, and be cancelled on receipt thereof, under the same regulations and prohibitions now existing in relation to coupons for interest on the public debt, except that no tax shall be deducted therefrom, and the fact of their cancellation shall be noted on the said registers.

13. The act approved March fourteenth, eighteen hundred and seventy-eight, and all acts inconsistent with the provisions of this act, are hereby repealed.

14. This act shall be in force from its passage.

Mr. Holt: Likewise an Act of the General Assembly of Virginia, approved February 14th, 1882, regarding Virginia's equitable share of the State debt, found in the Acts of the General Assembly of Virginia, 1881-2, pages 88-98, Chapter 84.

ACTS GENERAL ASSEMBLY OF VIRGINIA, 1881-2.

Chap. 84—AN ACT to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering same, and the regular and prompt payment of interest thereon.

Approved February 14, 1882.

Whereas, to the end which this act comprehends, a full statement of the debt is essential; and whereas, the following has been carefully made up from the records of the second auditor's office of the State, it is confidently submitted as presenting a true state of the accounts between the State and her creditors—the account is as follows:

A STATEMENT OF THE PUBLIC DEBT OF THE STATE OF VIRGINIA.

Principal outstanding at this date:	
1861, January 1st, sterling debt bearing 5 per cent. interest..	$ 1,973,000 00
Dollar debt bearing 6 per cent. interest.....	29,533,582 90
Debt guaranteed bearing 6 per cent. interest.....	294,130 00
Total principal	$31,800,712 90
Past due and uncalled for at this date.....	$ 101,023 63
Maturing at this date, January 1, 1861.....	944,156 38
Total interest	$ 1,045,183 01

1863, July 1st. The State of West Virginia was formally admitted into the Union June 20, 1863. The property and resources of Virginia, upon which the above debt has been founded, were, by this partition of the old State, reduced, one-third of her territory and one-fifth of her population going to form West Virginia. This and the consequences of war to her and her people made a loss of full $500,000,000 of property, and her taxable values were reduced from $723,000,000 to $336,000,000, and her annual revenues from over $4,000,000 to $2,500,000.

		Interest.	Principal.
Sterling debt bearing 5 per cent. interest	$ 1,973,000 00		
Dollar debt bearing 6 per cent. interest	29,827,712 90		
Bonds issued since January 1, 1861, in discharge of debts contracted and appropriated, made prior to that date	1,340,500 02		
Total principal July 1, 1863			$33,141,212 92
Interest July 1, 1863:			
Past due January 1, 1861, and uncalled for	$ 1,045,183 01		
Accrued between January 1, 1861, and July 1, 1863, inclusive.	4,909,533 07		
Total interest to July 1, 1863, inclusive		$ 5,954,716 08	
July 1st.—Two thirds of the above debt, principal and interest to this date, is assumed as Virginia's equitable portion in consideration of the partition of her terrtory, population and resources, upon the well-established principle that debt in such cases follows territory. Upon that basis, Virginia's portion of the debt of the entire State is—Principal:			
Two-thirds of $1,973,000 sterling debt	$ 1,315,333 34		
Two-thirds of $31,168,212.92 dollar debt	20,778,808 62		
Total principal, two-thirds, to July, 1863, inclusive			22,094,141 96

Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive	$ 3,969,810 72		
Less amount of interest paid by Virginia since January 1, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto	3,662,434 55		
Balance of interest due and unpaid July 1, 1863, inclusive		307,376 17	
July 1, 1871.—Principal July 1, 1863, in sterling bonds, as above	$ 1,315,233 34		
Principal July 1, 1863, in dollar bonds, as above	$20,778,803 62		
Less amount of dollar bonds redeemed between July 1, 1863, and this date	3,710,449 67		
Total dollar bonds	17,068,353 80		
Total principal			18,383,692 29
Interest from July 1, 1863, to July 1, 1871, inclusive:			
On $1,315,233.34 sterling bonds at 5 per cent	$ 526,133 28		
On $20, 778,803.62 dollar bonds at 6 per cent	9,973,826 14		
	$10,499,961 42		
Less amount covering time of the redemption of the $3,710,449.67 dollar bonds redeemed	$ 445,257 53		

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Less amount paid in money during that period—July 1, 1863, to July 1, 1871.....	3,594,289 11			
		4,039,546 69		
To which add balance on account of interest to July 1, 1863, as above		307,376 17		
Total interest to July 1, 1871.....			6,460,414 73	
Principal:				
1879, July 1st—Sterling bonds as above.....	$ 1,315,333 34			
Less bonds redeemed between July 1, 1871, and this date.....	42,175 77			
Total		273,157 57		
Dollar bonds, as above.....	$17,068,358 35			
Less bonds redeemed between July 1, 1871, and this date.....	1,498,482 35			
Total		15,569,876 60		
Total of both classes of bonds.....				16,843,034 17
Interest from July 1, 1871, to July 1, 1879, inclusive:				
Eight years—On $1,315,333.34 sterling bonds at 5%	$ 526,133 34			
On $17,068,538.95 dollar bonds at 6%.....	7,763,804 28			
Total to July 1st.....		8,289,937 62		

1882, July 1st—Interest on $1,273,157.57 sterling bonds at 5 per cent	$ 180,981 62		
Interest on $15,569,876.60 dollar bonds at 6 per cent	2 802,578 79		
		2,983,560 41	
		11,273,498 03	
Add interest accrued to July 1, 1871, as above		6,767,790 90	
Total		18,041,288 93	
Less amount paid between July 1, 1871, and October 1, 1881, in money	$ 2,415,973 53		
In coupons	8,707,615 50		
Less amount covering average time of the redemption of the $1,540,685.12 bonds redeemed	331,800 00		
Less tax receivable coupons outstanding October 1, 1881, and to be paid as part of the floating debt	895,722 00		
Less tax receivable coupons maturing in January and July, 1882	1,117,724 87		
Amount of interest (special), redeemed and cancelled	380,110 03		
Total deductions		13,848,945 95	
Balance of interest to July 1, 1882			4,192,342 98

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Total debt to July 1, 1882:	
Principal, as above	16,843,034 17
Interest, as above	4,192,342 98
Total	$21,035,377 15

Including bonds held by the Literary Fund to the amount of $1,428,245.25, and interest on the same in arrears July 1, 1881, $516,322.19, and interest added from that date to July 1, 1882, $85,694.71, making $602,016.90 included in the above sumof $4,192,342.98.

Total debt	$21,035,377 15

And whereas, by this account it appears that Virginia owes her creditors, as af the first of July, eighteen hundred and eighty-two, including the bonds held by the Literary Fund and arrears of interest thereon twenty-one million thirty-five thousand three hundred and seventy-seven dollars and fifteen cents; and that she may cause to be issued her own bonds for the same, and provide for the certain payment of interest thereon, that is for her equitable share of the bonds known as consols, and here designated as Class A, and whereof there are outstanding fourteen million three hundred and sixty-nine thousand nine hundred and seventy-four dollars and eighty-one cents; and for her equitable share of the bonds known as ten-forties, and here designated as Class B, and whereof there are outstanding eight million five hundred and seventeen thousand six hundred dollars; and for her equitable share of the bonds known as peeler, and here designated as Class C, and whereof there are outstanding two million three hundred and ninety-four thousand three hundred and five dollars and twelve cents; and for her equitable share of the interest thereon, designated as Class D, and whereof there is now in arrears nine hundred and twenty-eight thousand eight hundred and eighty-seven dollars and forty-five cents, and counted to the first of July, eighteen hundred and eighty-two, makes the amount of such interest then to be in arrears one million seventy-two thousand five hundred and forty-five dollars and seventy-five cents; and for her equitable share of the bonds known as unfunded bonds—dollar and sterling here designated as Class E, and whereof there are now outstanding, computed at two-thirds, three million seven hundred and seventy-three thousand four hundred and ninety-three dollars and sixty-eight cents; and for her equitable share of the interest thereon now in arrears, two million six hundred and thirty-six thousand four hundred and forty-four dollars and thirty-four cents, and counted to the first of July, eighteen hundred and eighty-two, making as of that date (two hundred and twenty-six thousand four hundred and nine dollars and sixty-two cents more), the sum of two million eight hundred and sixty-two thousand eight hundred and fifty-three dollars and ninety-six cents, and here designated as Class F; and for her equitable share of the bonds held by the Commissioners of the Literary Fund, whereof there are one million four hundred and twenty-eight thousand two hundred and forty-five dollars and twenty-five cents; and whereas, the rate of interest which any people can safely undertake to pay must be determined by the measure of their productive resources; and whereas, these have long been burdened by a rate of taxation which is conceded to be as high as can be endured; and whereas, the means of prompt and certain payment should be apparent to the creditor, while the people have assurance for the support of government and the maintenance of their schools, as required by the Constitution; and whereas, the net revenues of the State, remaining and so derived, after providing for the proper and gradual liquidation of the balance of the moneys heretofore diverted from the public free school fund, after liquidating gradually the arrearages to the Literary Fund, and leaving some small margin for the immediate and subsequent exigencies, which are, and are likely to be demanded by the public welfare—notably

in respect of the humane institutions now inadequate to the proper accommodation of that unfortunate class of every population—do not warrant the assumption of a larger rate of interest than three per centum upon the full amount of Virginia's equitable share of the debt of the old and entire State, as the same is ascertained and now formally declared by the foregoing account; therefore,

1. Be it enacted by the General Assembly of Virginia, That the board of commissioners of the sinking fund of the State, be, and they are hereby, empowered and directed to create bonds, registered and coupon, and to such extent as may be necessary to comply with the provisions of this act.

2. The said bonds shall be dated July first, eighteen hundred and eighty-two, and be payable at the office of the treasurer of the State on the first day of July, nineteen hundred and thirty-two; provided, that the State may, at any time from time to time, after July first, nineteen hundred redeem any part of the same, principal and interest at par. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said board of commissioners, and notice of the bonds so selected to be paid shall be given in a newspaper published at Richmond, New York, London, England, when interest from and after ninety days from the date of such publication in London, shall cease upon the bonds so designated to be paid.

3. The form of the bond shall be as follows, to-wit:

The Commonwealth of Virginia acknowledges herself indebted to..... .....(in the case of a coupon bond to the bearer, and in the case of a registered bond, inserting the name of the person or corporation), in the sum of.....dollars, which she promises to pay in lawful money of the United States at the office of the treasurer of the State, Richmond, Virginia, on the first day of July, nineteen hundred and thirty-two, with the option of payment at par, principal, and interest, before maturity, at any time after July first, nineteen hundred; and interest at the office of the treasurer of the State, in such lawful money, on the first days of January and July, at the rate of three per centum per annum, until paid (according to the tenor of the annexed coupons, in the case of coupon bonds).

In testimony whereof, witness the signature of the treasurer and the counter-signature of the second auditor, hereto affixed according to law.

.....Treasurer.

.....Second Auditor.

4. The form of coupon for coupon bonds shall be as follows, to-wit:

No.....(of bonds).

The Commonwealth of Virginia will pay to bearer..... dollars, in lawful money of the United States, at the office of the treasurer, Richmond, Virginia, on the first days of January and July, alternately—the first coupon to be payable January first, eighteen hundred and eighty-three.

.....Treasurer.

$\$$———

Each coupon to be impressed on the back with its number in the order of maturity, from one forward.

5. The said board of commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of different time; provided that registered bonds may be issued of any denominations, multiple of one hundred; all registered bonds to be of the same time; and they are authorized to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore enumerated, including the bonds held by the literary fund, as follows, that is to say:

(A) For her equitable share of Class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act (principal and accrued interest, at par, from the preceding date of maturity to the date of exchange) are to be given for every hundred dollars, face, principal and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest which may be past due and unpaid upon the same, funded bonds issued under this act may be given, dollar for dollar.

(B) For her equitable share of Class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of Class A.

(C) For her equitable share of Class C, at the rate of sixty-nine per centum, as in the cases of Classes A and B, and accounting for the same as provided in Class D.

(D) For her equitable share of Class D, at the rate of eighty per centum.

(E) For her equitable share of Class E, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of Classes A, B and C, and accounting for the same as provided in Class F.

(F) For her equitable share of Class F, at the rate of sixty-three per centum.

(G) For her equitable share of the bonds of the literary fund, as in the case of Class C; her equitable share of the arrearages of interest—three hundred and seventy-nine thousand two hundred and seventy dollars—to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate as follows:

No.....

The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ..... dollars, held by ....., dated the ..... day of

....., and numbered ....., leaving a balance of ..... dollars, with interest from ....., to be accounted for by the State of West Virginia, without recourse upon this Commonwealth.

Done at the Capitol of the State of Virginia, this ..... day of ....., eighteen .....

.....Second Auditor.

.....Treasurer.

7. The said board of commissioners are empowered to issue for any fractional part of one hundred dollars of the indebtedness funded under this act, the following certificate:

FRACTIONAL CERTIFICATE.

Register No. ..... Transaction No. .....

This certificate entitles the holder thereof to the sum of ..... dollars, fundable at its face in the bonds of the Commonwealth of Virginia, authorized by an act approved ..... day of ..... eighteen hundred and eighty-two, when presented with certificates of like tenor or in conjunction with other evidences of debt fundable under said act in amounts of one hundred dollars, and multiples thereof.

Done at the Capitol of Virginia, this ..... day of ....., eighteen hundred and eight.....

.....Second Auditor.

.....Treasurer.

The certificates so issued shall be registered by the second auditor in a register kept for that specific purpose, giving the date and number of the transaction to which it relates, the amount of the same, and the name of the person or corporation to whom it was issued; and as such certificates are refunded, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

8. All the bonds and certificates of debt and evidences of past-due and unpaid interest taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are acquired, and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so cancelled, from time to time, shall be certified by said board and filed with the treasurer for preservation.

9. All the coupons and registered bonds and fractional certificates issued under this act, shall be separately registered by the second auditor in books kept for this specific purpose, and in each case giving the date, number and amount of the obligations issued, and the name of the person or corporation to whom issued, and the date, number and amount and description of the bond, bonds or indebtedness surrendered.

10. The plates from which the bonds and fractional certificates authorized by this act are printed, shall be the property of the said board of commissioners of the sinking fund.

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the State each year two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the sinking fund; and the commissioners of the said sinking fund shall, annually or oftener, apply the same to the redemption or purchase (at a rate not above par) of the bonds issued under this act, and the bonds so redeemed shall be cancelled by the said board, and the same registered by the second auditor in a book to be kept for that purpose, giving the number, the date of issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act.

12. Executors, administrators and others acting as fiduciaries may exchange any State bonds held by them as provided, for bonds issued under this act, when so authorized by the court having jurisdiction in the premises, and the same, when so made, shall be considered a lawful investment.

13. The treasurer of the Commonwealth is authorized and directed to pay the interest on the bonds issued under this act, as the same shall become due and payable, out of any money in the treasury not otherwise appropriated.

14. All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated, on the warrants of the auditor of public accounts drawn upon the treasurer, on the order of the board of sinking fund commissioners.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this State, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

16. This act shall be in force from its passage.

Mr. Holt:

I also introduce an Act of the Legislature of Virginia, approved February 20th, 1892, providing for the settlement of the public debt of Virginia not funded under the Act of 1882, found in the Acts of the General Assembly of Virginia, 1891-2, page 533, and an Act of the General Assembly of Virginia, approved January 31st, 1894, relating to the settlement and the funding of the public debt of Virginia, 1893-4, Chapter 110.

ACTS OF ASSEMBLY, VIRGINIA, 1891-'92.

Chapter 325—An Act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882.

Approved February 20, 1892.

Whereas, by a joint resolution of the General Assembly of the State of Virginia, adopted on the third day of March, eighteen hundred and ninety, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the State not funded under the act known as the "Riddleberger Bill," approved February fourteenth, eighteen hundred and eighty-two, from a properly constituted representative of her creditors; and

Whereas, said Virginia debt commission has submitted a report to the General Assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central Trust Company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, Jr., Hugh R. Garden, and John Gill, constituting a committee for certain of the creditors of Virginia, called the "Bondholders' Committee," have proposed to said commission to surrender to the State in bulk not less than twenty-three million of dollars of the public debt, unfunded under said act, approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves appointed; and that, in pursuance of said proposal, an agreement has been entered into unanimously between the said commission and the said Bondholders' Committee, subject to approval by the General Assembly, whereby in exchange for the said unsettled obligations of the State held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the Commonwealth pursuant to law and by the United States), together with the interest thereon to July first, eighteen hundred and ninety-one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety-one, and maturing one hundred years from said date, with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually; of which aggregate debt of about twenty-eight million of dollars, the said Bondholders' Committee represent that they now hold and agree to surrender not less than twenty-three million of dollars; and

Whereas, said report and agreement contemplate the surrender of the obligations held by the Bondholders' Committee as an entirety, and do not contemplate an apportionment by the General Assembly between the various classes of creditors so represented by said bondholders committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the State (except those issued under the act of February fourteenth, eighteen hundred and eighty-two, the evidences of debt held by the public institutions of the State in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act; therefore,

1. Be in enacted by the general assembly of Virginia, That the commissioners of the sinking fund, a majority of whom may act, be, and they are hereby, empowered and directed to create "listable" engraved bonds, registered and coupon, to such an extent as may be necessary to issue nineteen million of dollars of bonds in lieu of the twenty-eight million of dollars of outstanding obligations, not funded under the act approved February fourteenth, eighteen hundred and eighty-two, hereinbefore recited.

2. The said bonds shall be dated July first, eighteen hundred and ninety-one, and be payable at the office of the treasurer of the State, or at such agency in the city of New York as may be designated by the State, on the first day of July, nineteen hundred and ninety-one, and shall bear interest from date, payable semi-annually on the first days of January and July in each year, at the rate of two per centum per annum for the first ten years and three per centum per annum for the remaining ninety years; the said interest may be payable in Richmond, New York and London, or at either place, as may be designated by the State; provided that the State may at any time, and from time to time, after July first, nineteen hundred and six, redeem at par any part of the principal with accrued interest. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said commissioners of the sinking fund, and notice of the bonds so selected to be paid shall be given by publication beginning at least ninety days prior to an interest-due date, in a newspaper published in Richmond, Virginia, one in New York city, and one in London, England; and the interest from and after the next succeeding interest-due date shall cease upon the bonds so designated to be paid: provided that no registered bonds shall be so redeemed while there are any coupon bonds outstanding.

3. The form of the bonds shall be substantially as follows, to-wit:

Issued under act of assembly, approved ..... day of ....., eighteen hundred and ninety-two.

The Commonwealth of Virginia acknowledges herself to be indebted to ..... (in case of a coupon bond to the bearer, and in case of a registered bond inserting the name of a person or corporation, or assigns), in the sum of ..... dollars, which she promises to pay in

lawful money of the United States, at the office of the treasurer of the State, or at such agency in the city of New York as may be designated by the State, on the first day of July, nineteen hundred and ninety-one, with the option of payment at par with accrued interest, before maturity at any time after July first, nineteen hundred and six, and interest, at the office of the treasurer of the State, or at the agencies of the State in New York city and London, England, or at either place as may from time to time be designated by the State, in such lawful money aforesaid, at the rate of two per centum per annum for ten years from the first day of July, eighteen hundred and ninety-one, and at the rate of three per centum per annum thereafter until paid, payable semi-annually on January first and July first in each year (according to the tenor of the annexed coupon bearing the engraved signature of the treasurer of the Commonwealth in case of coupon bonds). And this obligation is hereby made exempt from any taxation by the said Commonwealth of Virginia, or any county or municipal corporation thereof.

In testimony whereof, witness the signature of the treasurer and the countersignature of the second auditor of the Commonwealth of Virginia, hereto affixed according to law.

(Seal)

....., Treasurer,

....., Second Auditor.

4. The form of coupon for coupon bonds shall be substantially as follows, to-wit:

COUPON NO. .....

On the first day of ..... the Commonwealth of Virginia will pay to bearer ..... dollars in lawful money of the United States, at the office of the treasurer of the State, or at the agencies of the State in New York city and London, England, or at either place, as may be designated by the State; the same being six months' interest on bond number ....., ... dollars.

....., Treasurer.

Each coupon to be impressed on the back with its number, in order of maturity, from number one consecutively.

5. Said commissioners of the sinking fund are authorized to issue coupon bonds in denominations of five hundred and one thousand dollars each, as may be necessary to carry out the provisions of this act: provided that registered bonds may be issued of the denominations of one hundred dollars, five hundred dollars, one thousand dollars, five thousand dollars, ten thousand dollars; and they are authorized and directed to issue said bonds, registered or coupon, in exchange for the said outstanding obligations up to and including July first, eighteen hundred and ninety-one (exclusive of evidence of debt held by public institutions of the Commonwealth as aforesaid and by the United States) as follows:

A. Said bondholders' committee may at any time on or before the thirteenth day of June, eighteen hundred and ninety-two, present to said commissioners for verification bonds and other evidences of debt, and coupons or other evidences of interest thereon, obligations of the State of

Virginia, held by said committee, for exchange as aforesaid; and said commissioners shall determine whether the obligations so presented are genuine obligations of the State and whether the coupons or other evidences of interest represent interest accrued on such obligations (exclusive of evidences of debt held by public institutions of the Commonwealth as aforesaid and by the United States).

B. Such of the obligations so presented for verification as may be determined by said commissioners to conform to the requirements of paragraph "A" hereof, shall be sealed in convenient packages as the examination proceeds. Each of the packages shall be numbered, and upon each package shall be endorsed the amount and character of the obligations therein contained. Such endorsement on each package shall be signed by said commissioners or a majority thereof, and the package shall then be delivered to said committee or its agent. Said commissioners shall keep in a book to be provided for the purpose a record of the numbers of all such packages and of the amount and character of the obligations contained in each. Such obligations presented by said bondholders' committee as do not conform to the requirements of paragraph "A" hereof shall be returned to said committee; but said commissioners shall keep a record thereof in the book aforesaid.

C. After said bondholders' committee shall have presented to said commissioners for verification bonds and other evidences of debt and coupons, or other evidences of interest thereon accrued on or before July first, eighteen hundred and ninety-one, obligations of the State of Virginia, all conforming to the requirements of paragraph "A" hereof, as determined by said commissioners, and amounting in the aggregate to not less than twenty-three million of dollars, after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided. All coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount or the face value thereof in cash, shall be surrendered with such bonds, the said cash to be returned if proper coupons are subsequently tendered. And when the said bondholders' committee shall have presented for exchange the obligations aforesaid to an amount of twenty-three million of dollars or more, if the engraved bonds hereinbefore authorized are not ready for exchange, the said commissioners shall, upon application of said bondholders' committee, issue to said bondholders' committee a manuscript registered bond of the State of Virginia, substantially of the form of the bond hereinbefore specified for the aggregate amount to which the said committee may be entitled for the obligations so presented under this act, the said bond to be exchangeable for the engraved bonds aforesaid of character and

amount required by said committee, as prescribed in this act, and interest in the meantime on said manuscript bond shall be paid as herein provided for on the engraved bonds.

D. The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: Nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph "C" of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered: provided that no certificates issued on account of the proportion of West Virginia of the obligations of the State shall be funded under this act. When said bondholders' committee shall have surrendered and exchanged such obligations as aforesaid to the amount of at least twenty-three million dollars, said committee may at any time thereafter up to and including the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification, surrender, and exchange additional obligations, principal and interest, as aforesaid; all coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, to be presented with such bonds, the cash, if paid, to be returned if proper coupons are subsequently tendered. After said commissioners shall have determined that said obligations conform to the requirements of paragraph "A" hereof, said commissioners shall accept the obligations so presented for surrender and exchange by said committee, and shall deliver to said committee in exchange therefor new bonds issued under the provisions of this act in the same proportion as is set out in this paragraph of this section, after making the deductions provided for in paragraph "C" of this section.

E. If on making the exchange provided for in this act said committee shall be found entitled to a fractional amount or amounts less than one hundred dollars in addition to the new bonds delivered to it, said commissioners of the sinking fund shall issue to the committee a certificate or certificates for such amount or amounts. Such fractional certificates shall be exchangeable for the bonds authorized by this act to be issued in sums of one hundred dollars, or any multiple thereof, and certificates of like character shall be issued for any fractional amount which may remain in making the exchange.

6. For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the Commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz.:

No. ..... The Commonwealth of Virginia has this day dis-

charged her equitable share of the (registered or coupon, as the case may be), bond for ..... dollars, dated ..... day of ....., and No. ....., leaving a balance of ..... dollars, with interest from ....., to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this Commonwealth.

Done at the capitol of the State of Virginia, this ..... day of ....., eighteen hundred and ninety-two.

....., Second Auditor,

....., Treasurer.

The certificates so issued under sections five and six of this act shall be recorded by the second auditor in a book kept for that purpose, giving the date and number of the transaction to which it refers, the amount of certificates, and the name of the person or corporation to whom issued and delivered; and as such certificates, authorized by paragraph "E," section five of this act, are exchanged, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the State as may be presented to said commissioners; provided, that said commissioners shall not receive on deposit for the purposes aforesaid any outstanding obligations of the State which have been once deposited with the bondholders' committee, or may be hereafter deposited with them; the said verification and exchange for the new bonds of the obligations so deposited to be conducted in the same manner as hereinbefore provided with respect to the obligations deposited with the said bondholders' committee, and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act, in exchange for the obligations so deposited, bonds authorized by this act as follows, namely: to each of the several classes of said depositing creditors the same proportion, as nearly as may be found in their judgment practicable by the commissioners of the sinking fund, as the same class shall receive under the distribution which shall be made by the commission for the creditors represented by the bondholders' committee: provided that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-two, nor shall any coupon bonds be received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one; but for any such coupons as may be missing, coupons of like class and amount or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subsequently tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by him, or a commission equal in amount to that which may at any time hereafter be fixed by the said committee of bondholders upon

any bonds deposited with them, not, however, in any case to exceed three and one-half per centum; and said sinking fund commissioners shall cover the fund thus received into the treasury of the Commonwealth.

8. All the coupons and registered bonds issued under this act shall be separately recorded by the second auditor in books provided for the specific purpose, in each case giving the date, number, amount of obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the obligations surrendered.

9. All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are required, and by him carefully preserved, subject to disposition by the general assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasurer for preservation.

10. In the year nineteen hundred and ten, and annually thereafter, there shall be set apart of the revenue collected from the property of the State each year up to and including the year nineteen hundred and twenty-nine, one-half of one per cent. upon the bonds issued under this act, as well as upon the outstanding bonds issued under act approved February fourteenth, eighteen hundred and eighty-two; and in the year nineteen hundred and thirty, and annually thereafter until all the bonds issued under this act and the said act approved February fourteenth, eighteen hundred and eighty-two, are paid, there shall be set apart of the revenue collected from the property of the State each year one per cent. upon the outstanding bonds issued under the aforesaid acts, which shall be paid into the treasury to the credit of the sinking fund, and the commissioners of the sinking fund shall annually, or oftener, apply the same to the redemption or purchase (at a rate not above par and accrued interest) of the bonds issued under the aforesaid acts, and the bonds so redeemed shall be cancelled by the said commissioners and the same registered by the second auditor in a book to be kept for that purpose, giving the number and date of issue, the character, the amount, and the owner at the time of purchase, of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act. All bonds of the State issued under the provisions of the act aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund, shall, as soon as at least fifteen million dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be cancelled by said commissioners and preserved in the office of the treasurer of the Commonwealth.

11. Executors, administrators and others acting as fiduciaries may participate in the settlement of the debt herein specified in the manner

hereinbefore provided, and such action shall be deemed a lawful investment of their trust fund. Executors, administrators and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

12. All coupons heretofore tendered for taxes and held by said taxpayers in pursuance of such tender, shall be received in payment of the taxes for which they were tendered, and upon their delivery to the proper collector or the amount thereof in money, the judgments obtained against the said tax-payers for such taxes shall be marked satisfied; provided the said tax-payers shall have paid in money and not in coupons the costs of said judgments. All coupons heretofore tendered for taxes and held by the officers of the Commonwealth for verification, in pursuance of the statute in such case made and provided, shall be received in payment of the taxes for which they were tendered, and the money collected for such taxes returned to the parties from whom it was received; provided the said tax-payers shall have paid in money, and not in coupons, all costs incurred in legal proceedings to verify said coupons.

13. The treasurer of the Commonwealth is authorized and directed to pay the interest on the bonds issued under this act as the same shall become due and payable out of any money in the treasury not otherwise appropriated.

14. The plates from which the bonds and fractional certificates authorized by this act are printed shall be the property of the Commonwealth.

All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated on the warrants of the auditor of public accounts, drawn upon the treasury on the order of the commissioners of the sinking fund.

16. The act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, and the amendments thereto, to-wit: an act entitled "an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved August twenty-seventh, eighteen hundred and eighty-four; and the act entitled "an act to amend and re-enact an act approved August twenty-seventh, eighteen hundred and eighty-four, entitled an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts of eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved November twenty-ninth, eighteen hundred and eighty-four, are hereby repealed.

17. The commissioners of the sinking fund are authorized, if it shall seem to them for the best interest of the Commonwealth, to make one extension of the time for the funding of the said twenty-eight million of dollars of outstanding evidences of debt for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-two.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds issued under this act into registered bonds in the denominations hereinbefore provided, and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund; and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

19. This act shall be in force from its passage.

Chap. 110—AN ACT to amend and re-enact sections 7, 17 and 18 of an act approved February 20, 1892, entitled an act "to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon, approved February 14, 1882," and to provide for carrying the same into effect.

Approved January 31, 1894.

Whereas it has come to the knowledge of this General Assembly, through the officers charged with the exchange and funding of outstanding obligations of the State under the provisions of an act to provide for the settlement of the public debt of Virginia, and so forth, approved February twentieth, eighteen hundred and ninety-two, that holders of a portion of the unfunded debt, some of whom are residents of Virginia, and others residents of foreign countries, were barred from accepting the provisions of said act approved February twentieth, eighteen hundred and ninety-two, by reason of circumstances beyond their control, and who now desire to accept the terms provided in said act, and it is believed that equitably they should be permitted to do so; and whereas the terms of settlement of the debt of the State having been proposed by her creditors, it is deemed just to adhere to the provisions of the act approved February twentieth, eighteen hundred and ninety-two, except as hereinafter provided; and whereas, it is the earnest desire of the General Assembly to finally dispose of the debt question without inflicting any wrong upon the creditors of the State either at home or abroad, but declaring the adherence of the State to the terms

of the act of February twentieth, eighteen hundred and ninety-two, as modified by this act, which should be taken as a final settlement of the State with her creditors; therefore,

1. Be it enacted by the General Assembly of Virginia, That sections seven, seventeen and eighteen of an act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and for the prompt and regular payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two, shall be amended and re-enacted to read as follows:

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the State as may be presented to the said commissioners; the said verification and exchange for the new bonds of the obligations to be conducted in the same manner as hereinbefore provided, with respect to the obligations deposited with the said bondholders' committee; and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act in exchange for the obligations so deposited, bonds authorized by this act as follows, viz.: To each of the several classes of said depositing creditors the same proportion as the same class receives under the distribution made by the commissioner for the creditors represented by the bondholders' committee: provided, that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-four, nor shall any coupon bonds be received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one; but for any such coupons as may be missing, coupons of like class and amount, or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subsequently tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by him, and said sinking fund commissioners shall cover the fund thus received into the treasury of the Commonwealth.

17. The commissioners of the sinking fund are authorized, if it shall seem to them for the best interest of the Commonwealth, to make one extension of the time for the funding of the outstanding evidences of debt due by the Commonwealth not heretofore funded under said act of February fourteenth, eighteen hundred and eighty-two, and February twentieth, eighteen hundred and ninety-two, for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-four.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds of the State issued under the act of February twentieth, eighteen hundred and ninety-two, into registered bonds, and vice versa,

and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund, and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

2. The bonds issued hereunder may be the same heretofore engraved under the provisions of said act of February twentieth, eighteen hundred and ninety-two, and in the same form as prescribed in said act, and the plates for the engraving of said bonds under said act of February twentieth, eighteen hundred and ninety-two, may be used by the commissioners of the sinking fund in the preparation of bonds to be issued hereunder, and all bonds thus issued shall be in all respects valid.

3. The commissioners of the sinking fund are hereby authorized to advertise for the reception of bonds for exchange under the provisions of this act in such financial centres as they may deem best.

4. This act shall be in force from its passage.

The Master: These last four are subject to the same conditions.

Mr. Holt: In the same connection, that is, upon the funding of the debt and for the same purpose, we introduce a joint resolution of the General Assembly of Virginia, adopted in 1866, relating to the settlement of the Virginia debt, and found in the Acts of the General Assembly of Virginia, 1865-66, page 453, and also an Act of the General Assembly of Virginia for the adjustment of the public debt with the State of West Virginia approved February 18th, 1870, and found in the Acts of the General Assembly of Virginia, 1869-70, Chapter 6.

ACTS OF ASSEMBLY, VIRGINIA, 1865-66, Page 453.

No. 7—Joint Resolution on the restoration of the State, and the adjustment of the public debt.

Adopted February 28, 1866.

1. Resolved by the General Assembly of Virginia, that the people of Virginia deeply lament the dismemberment of the "Old State" and are sincerely desirous to establish and perpetuate the reunion of the States of Virginia and West Virginia; and that they do confidently appeal to their brethren of West Virginia to concur with them in the adoption of suitable measures of co-operation in the restoration of the ancient Commonwealth of Virginia, with all her people, and up to her former boundaries.

2. That three Commissioners, resident citizens of this State, shall be appointed by the joint vote of the two houses of the General Assembly, to proceed forthwith to the seat of government of West Virginia, for the

purpose of communicating to the Governor and General Assembly of that State a copy of the foregoing resolution, and the report of the committee accompanying the same, with authority to treat on the subject of the restoration of the State of Virginia to its ancient jurisdiction and boundaries provided, that the result of such negotiation, if favorable to such restoration on any terms, shall be subject to the approval or disapproval of the legislatures or conventions of the respective States, as may be hereafter mutually agreed upon.

3. The commissioners appointed under the foregoing resolution, are also empowered and directed to treat with the authorities of West Virginia, upon the subjects of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and of a fair division of the public property; subject, however, to the approval or disapproval of this General Assembly.

4. The said commissioners are hereby authorized to treat upon either or both of the subjects mentioned in the two preceding resolutions, as circumstances may demand, with instructions to suspend or forbear any action on the subject of adjusting the debt of the State, or a division of the public property, if in their opinion the probable restoration of the State of Virginia to its ancient boundaries may render an effort at such adjustment unnecessary. The action of said commissioners to be subject to the approval or disapproval of this General Assembly.

Chap 6.—AN ACT for the adjustment of the public debt with the State of West Virginia.

Approved February 18, 1870.

1. Be it enacted by the General Assembly, That three commissioners, resident citizens of this State, be appointed by the Governor to treat with the authorities of West Virginia upon the subject of the proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and of a fair division of the public property: provided, however, that the action of the said commissioners shall be subject to the approval or disapproval of this General Assembly.

2. The said commissioners shall enter upon their duties without delay, and shall receive the same pay and mileage as members of the General Assembly while actually engaged in the discharge of them; and they shall, within the next sixty days after their appointment, make a full report of their proceedings to this General Assembly.

3. This act shall be in force from and after the passage thereof.

The Master: These last two are subject to the same conditions.

Mr. Holt: Now, I think, your Honor—

Mr. Conrad: Let us agree to this, it is hereby stipulated and agreed between the parties to this cause by counsel that the foregoing Acts and public documents above recited are regarded as in evidence as if fully set out herein.

The Master: You can arrange that detail later on. We will suspend here until 2 o'clock, with the understanding that you come in with your full list this afternoon, so that we can put it right in.

At this point a recess was taken until 2 P. M.

AFTER RECESS.

Mr. Holt: We introduce an Act of the General Assembly of Virginia directing the Board of Public Works to sell the State's interest in the various internal improvement companies, approved March 28th, 1871, and found in Chapter 210 of the Acts of General Assembly of Virginia, 1871-1872.

We also introduce an Act passed by the General Assembly of the State of Virginia, January 17, 1872, and which is Chapter 17 of the Acts of said Assembly of 1871-2.

[Acts inserted two paragraphs below.]

The Master: What is the purpose of these two Acts? That is, do they elaborate any of the other topics to which you refer, or do they relate to a new matter?

Mr. Holt: They might come under the head of the Sinking Fund.

ACTS OF ASSEMBLY, 1870-71, Page 299.

Chap. 210.—AN ACT Directing the Board of Public Works to Sell the State's Interest in the Various Internal Improvement Companies of the Commonwealth.

Approved March 28, 1871.

1. Be it enacted by the General Assembly, That the Board of Public Works be and the same is hereby authorized and directed, to sell to each railroad and internal improvement company in this State, the interest of the State in the same, including all bonds, stocks, loans and claims

(for the sale of which provision has not already been made by law), for an equal amount of State bonds, except the stock held by the State in the Richmond and Petersburg Railroad Company, which stock the Board of Public Works is hereby authorized and directed to sell to Henry K. Elyson, Joseph R. Anderson, Isaac Davenport, junior; Fred R. Scott, Franklin Stearns, John B. Davis, James H. Cox, A. F. Harvey and Reuben Ragland, at the rate of one hundred and fifty dollars for each share of said stock, payable in registered or coupon bonds of the State of Virginia, at par, within six months after the passage of this act, according to the provisions of a proposal to purchase said stock, signed and sealed by the parties aforesaid, and dated on the sixth day of March, eighteen hundred and seventy-one; which proposal is hereby accepted and made a binding contract between the State and the said parties; and the clerk of the House of Delegates, with whom the said contract is now filed, is instructed, on the passage of this act, to deliver it to the Board of Public Works: provided, that before this sale shall be made, the Board of Public Works shall obtain from the Richmond and Petersburg Railroad Company a valid contract, binding said company to allow any connecting work all proper facilities in and for the formation of a physical junction with the railway track of the same, and that it shall make no higher rates of charge on freights and passengers coming from the line of any such connecting work, and destined for the line of any such connecting work, than is made by said company, or the like class of freights and passengers for transportation on its own line for the same distance: provided, such connecting work shall observe the same rule in its charges for the transportation of such freights and passengers, and to permit the Atlantic, Mississippi and Ohio Railroad Company to build and construct a road track upon its road bed and across its bridges for its own use, upon such terms as may be agreed upon between the said companies; and if they fail to agree, then upon such terms as may be fixed by the Board of Public Works, as an arbiter between them: and provided further, that if the sale provided for in this section shall, for any cause, not be completed within six months from the passage of this act, then the Board of Public Works is hereby empowered and expressly directed to sell the State's interest in the Richmond and Petersburg Railroad, to the Atlantic, Mississippi and Ohio Railroad for one hundred and fifty dollars in State bonds for every share of said stock.

2. Any company desiring to avail itself of the provisions of this act, shall signify to the Board of Public Works its acceptance of the same, within six months from its passage, and thereupon it shall become binding and obligatory upon it.

3. Any company accepting the provisions of this act shall, within twelve months from the passage of the same, deposit with the treasurer of the Commonwealth, State bonds to an amount equal to one-sixth of the whole interest of the State in said company, whether the same consist of stock, bonds, or claims; and the fact of such deposit shall be certified by the treasurer to the Board of Public Works, who shall thereupon surrender to said company an equal amount of the State's interest in such

company. And said company shall, every twelve months thereafter, make a like deposit, and the Board of Public Works shall surrender a like interest, until the whole interest of the State shall have been paid for and surrendered; it being the intent and meaning of this act that the interest of the State shall be sold and the same purchased by the company, in six equal instalments, the first to be made within twelve months from the passage of this act, and one instalment every twelve months thereafter, until the whole purchase shall have been completed. But such company may anticipate all or any of said instalments, and receive such interest as it may pay for, from time to time.

4. In any purchase and transfer, under the provisions of this act, that interest which is the least valuable, shall be first purchased and surrendered, and the claims and securities held by the State shall continue to draw interest, and the same shall be paid as now provided by law, so long as the same are held by the State. And upon the transfer, by the Board of Public Works, to any company, of any stock under the provisions of this act, every stockholder shall be entitled to cast one vote for each share of stock held in the company, at all meetings of the stockholders thereafter held. And the stockholders shall determine what disposition shall be made of the stock so transferred and acquired, with power to extinguish, reissue, sell or hypothecate the same, after the whole interest of the State in such company shall have been paid for; but whilst said stock is held by the company it shall not be voted on in any meeting of the stockholders of said company.

5. If any company, after accepting this act, shall make default in the payment of any of the instalments as herein provided, the Board of Public Works is authorized and directed, after sixty days' notice to said company, to take such steps as to it may seem for the best interest of the State to enforce the conditions of the same; and for that purpose may institute a suit or suits for the recovery of the amount due, or if the State prefer, then the defaulting company shall after a lapse of three months from and after such default, return to the State all stocks, bonds, loans and claims acquired by it under this act, and the State shall be as fully reinvested with all its rights over and to the same, as if this act had not been passed; and thereupon the State bonds delivered to the State by said defaulting company shall be returned to said company, but without interest while remaining in the State treasury. And further, upon the happening of such default by said company, the State shall have one vote for each share of stock owned or held by it in the company so defaulting.

6. The privilege of purchasing the interest of the State in any work of internal improvement, under the provisions of this act, shall remain in such company unimpaired for six months after the passage of this act, within which time the stockholders of such company, in general meeting assembled, may waive any exemption from taxation now enjoyed by them, whether such exemption is allowed by its charter or by law, and if the company shall so waive the exemption, this act shall for the future be taken to be a part of such charter, as fully as if specially re-enacted with reference to such company; and should no such meeting of

stockholders be called or if called, shall refuse to make such formal waiver of exemption from taxation, then the Board of Public Works shall proceed to sell the interest of the State in such work of internal improvement, in the manner prescribed by section eight of this act.

7. All State bonds and stocks received by the treasurer under the provisions of this act, shall be by him forthwith turned over to the second auditor, who shall hold the same, subject to the future action of the General Assembly.

8. If any internal improvement company of the State shall fail or refuse to accept the provisions of this act within six months after its passage, then the Board of Public Works are hereby authorized and directed to sell the stocks and interest held by the State in said companies, to the highest bidder, at public auction, after sixty days' notice, published in the papers of the city of Richmond, for the best price that can be obtained for them, payable in the bonds of the State at their par value. At any such sale, any company may become a purchaser of the State's interest in said company. But no such sale shall be made under the authority of this act for less than the original cost of said stocks and interest, or for less than the market value thereof.

9. This act shall be in force from its passage.

ACTS OF ASSEMBLY, VIRGINIA, 1871-72.

Chap. 17.—AN ACT to amend and re-enact the eighth section of an act entitled "An act directing the Board of Public Works to sell the State's interest in the various internal improvement companies of the Commonwealth," approved March 28, 1871.

Approved January 17, 1872.

1. Be it enacted by the General Assembly, That the eighth section of "an act directing the Board of Public Works to sell the State's interest in the various internal improvement companies of the Commonwealth," approved March twenty-eighth, eighteen hundred and seventy-one, be amended and re-enacted so as to read as follows:

"§8. If any internal improvement company of the State shall fail or refuse to accept the provisions of this act within six months after its passage, then the Board of Public Works are hereby authorized and directed to sell the stocks and interest held by the State in said companies to the highest bidder, at public auction, after sixty days' notice, published in the papers of the city of Richmond, for the best price that can be obtained for them, payable in the bonds of the State at their par value. At any such sale, any company may become a purchaser of the State's interest in said company; but no such sale shall be made of any stocks,

bonds, loans or claims held by the State in or against the said companies for less than the par value of such stocks, bonds, loans or claims and the interest which may have accrued and is now due thereon, or for less than the market value thereof, where the market value exceeds the par value of said stocks, interest, etc.

2. This act shall be in force from its passage.

It is stipulated of record by counsel for the States of Virginia and West Virginia, as well as by counsel for the Bondholders, that the stocks and loans mentioned in Classes B, C, D, E, F and G of the defendant's supplemental answer filed herein were subscribed for and made the authority of legislative enactment by the State of Virginia, and were paid for and made out of the proceeds of the sale of a part of the bonds representing the debt of Virginia existing prior to January 1st, 1861.

Mr. Holt: That saves us from 61 Acts, as we saw it.

The Master: The counsel for Virginia and the Bondholders need have no feeling of annoyance and disturbance about this stipulation, because, if it should turn out that it was inadvertently made, it will simply be wiped out, and we will start over again.

Mr. Holt: Suppose it should turn out that it misrepresents their view or ours.

The Master: Yes, either side would have the opportunity of having the necessary change made in it. You need not either of you understand that you are bound even by this. Of course if nothing is said about it, it goes. But if either side finds on reflection that it is not adequate, it may be made adequate by further stipulation or by evidence on either side.

Mr. Lilly: This morning there was a stipulation entered into with reference to Acts requiring the banks to make certain reports, Chapter 58, Sections 25, 26 and 27 of the Code of 1849, page 306. That is not a very long act, and after looking it over we have decided we would prefer the full Act extended, that is those three sections.

The Master: I shall let you print it.

Mr. Lilly: It specifies certain features which we think would be of help.

CODE OF VIRGINIA, 1849.

(Pages 310 and 311, Part I.)

REPORTS TO THE STATE AND ITS POWER TO EXAMINE THE BANKS.

Sec. 25. The board shall annually in January, and quarterly thereafter, transmit to the Governor a statement of the condition of the bank on the first day of the month, wherein shall be specified the amount of capital stock subscribed, with the amount paid and the amount unpaid thereon, the value of the real estate of the bank, the total amount of debts due to and from it, noting specially the amount of dealings in exchange, and the premiums paid thereon, and also bad and doubtful debts; the amount on hand of gold and silver and other coin; amount of money deposited; amount of each denomination of bills in circulation, and the aggregate of the whole; amount of bills on hand of solvent banks incorporated by this State, and also of those incorporated elsewhere; and the rate and amount of the last dividend of profits, with the amount of the surplus or contingent fund; which statement shall be signed by at least a majority of the directors, and verified by the oath of the president or cashier.

Sec. 26. In addition to the said quarterly statements, the several banks shall report to the Governor a comparative statement of their condition for the corresponding quarter of the preceding year, and the Governor shall have the same published in at least two newspapers in the city of Richmond.

Sec. 27. There may at any time be an inspection of the books and examination into the proceedings of any bank, by a joint committee of the two houses of the General Assembly, or a committee of either house, or one or more commissioners appointed by the Assembly or the Governor.

Mr. Holt: Now in explanation of, or in addition to Defendants Exhibit 10, and the sub sheet to Exhibit 10, we offer, upon the subject of the collection of taxes, when they fall due, etc., and are collectible, portions of Chapter 36 of the Code of Virginia of 1860. We will try and point out such sections of that as we want.

The Master: This Act goes in, subject to the suggestion that it is to be inspected by the other side, and if counsel on each side are able to agree on a summary that will adequately state, from the standpoint of either side, the substance of this statute,

that will shorten the record, they are at liberty to do so.

Mr. Holt: I believe about all we have to ascertain from that is, under the Act, when the assessments were made.

Mr. Conrad: I think we can stipulate that.

The Master: If you do not stipulate, the Act goes in. If you do stipulate, the Act goes out. I do not want to take time to stipulate it now.

Mr. Holt: And under the same circumstances, and for the same purpose, we likewise offer the Chapter 35 of the Code of Virginia of 1860. I have no doubt we will be able to stipulate as to that.

The Master: That is subject to the same suggestion of stipulation.

Mr. Holt: That covers the subject of assessments and taxes on personal property.

The Master: That goes in subject to the same suggestion. Of course the examination of these various Acts, and the arranging of these stipulations, is going to involve some work on the part of counsel outside of the session. I cannot sit here and discuss those stipulations, because it takes too much time. There is quite a lot of this material that is going in here, subject to this suggestion that I have made, that if you agree among yourselves to stipulate as to the effect of this legislation, then all you need to print is the stipulation. My notion of the better way to get those stipulations up is not to discuss them back and forth together here, but to sit down and write them out, and you are much more likely to get the proper stipulation than you are when we make the suggestion offhand from side to side here in the hearing, and it does not take the time of the hearing. I do not want to take the time of the hearing to make any effort to agree on any of these stipulations from now on. Now, Judge Holt, let us have your next suggestion.

Mr. Holt: By reference to page 41 of the supplemental answer, you will find this allegation:

"She says that the State of Virginia, as this defendant is informed, has received from time to time, in addition to the amounts hereinbefore set out in paragraph six of this supplemental answer, dividends upon the bonds, stocks and securities

hereinbefore described to an amount equal to $5,782,240.09, and did likewise, at the time of the separation of the two States, retain, without accounting unto the State of West Virginia for any part thereof, all of the public buildings," etc.

We thought we had our schedules complete, but we omitted them, and now we want to introduce some schedules upon this subject, not for the purpose of utilizing them for the reduction of the debt, but upon the subject of interest, for the purpose of showing that we—

The Master: You mean the reduction of West Virginia's indebtedness to Virginia, when you say the reduction of the debt?

Mr. Holt: Yes. Not for the purpose of reducing West Virginia's indebtedness to Virginia, but as having some bearing upon the question whether or not we should be charged with interest upon that indebtedness. I recall that in the argument before the Supreme Court, Chief Justice White kept distressing me more or less by asking for some broad equity or equitable reason why we should not pay interest, and our theory is that this is one of those broad equities.

Mr. Conrad: Judge White in his oral opinion included in it a reference to the subject of interest, but in the opinion as published it is omitted. I did not find it in the opinion that is published. This question of interest is submitted to you for report, and you have it before you, have you not?

The Master: Yes.

Mr. Conrad: In his oral opinion—I was sitting very near to him and was struck with the fact, and gratified by it, but when the opinion came out I observed that the question of interest was omitted from it. The newspaper reports of his opinion contained a reference to the subject of interest.

Mr. Anderson: All the issues raised in the answer are referred to the Master.

The Master: Whatever the original opinion may mean, I suppose I am confined to it. These schedules are introduced, as I understand it, not for the purpose—

Mr. Holt: I only want to identify them and mark them and then I will drop them.

The Master: That is right. These schedules are introduced

not for the purpose of affecting any particular sum that may be due, but for the purpose of shedding some light upon the question as to whether or not the State of West Virginia is liable to interest on such sum as may be due.

Mr. Holt: That is it exactly, that is the situation.

CONWAY W. HILLMAN,

recalled for further re-direct examination, testified as follows:

By Mr. Holt:

Q. Mr. Hillman, have you prepared an exhibit showing the various amounts of dividends received by the State of Virginia from stocks held by said State subsequent to June 20th, 1863?

A. Yes, sir, I have.

Q. Were they dividends upon stocks that she had acquired prior to January 1st, 1861?

A. Yes, sir

Q. Of how many sheets does that exhibit consist?

A. Of seven sheets.

Q. Are they numbered by pages?

A. They are numbered by sheets in the upper left-hand corner.

Q. They are numbered by sheets, then?

A. Yes, sir

Q. Do these sheets, or does this exhibit, show upon its face the sources from which it was made up?

A. Yes, sir

Q. Does this seven sheet exhibit correctly represent the books and documents from which it is taken?

A. Yes, sir.

Q. Is it correct?

Mr. Conrad: You mean whether they are correctly copied or transcribed, but not correct in fact.

A. Yes, sir.

By The Master:

Q. Has this schedule been checked up with Mr. Potter?

A. No, sir.

The Master: Have that checked up so that we can clean this up with the other.

Mr. Holt: You see we are going between times as hard as we can go.

By Mr. Holt:

Q. Where is the one on interest?

A. Commencing with sheet 5.

Q. Well, then, did the whole seven sheets of the matter that I have been talking about cover dividends at all?

A. No, sir, they did not.

Q. Of how many sheets is that statement composed?

A. Three.

Q. And how are they numbered?

A. In the upper left-hand corner sheets, 5, 6 and 7.

Q. Do these interest sheets state upon their face the sources of information from which your schedule or statement is made up?

A. Yes, sir.

Q. Do they correctly represent and state the contents of the records, books and documents from which they are taken?

A. Yes, sir.

Q. Now, I will ask you to file sheets 1 to 4, inclusive, and mark them as Defendant's Exhibit No. 12, 1863. Will you do so?

A. I file them so marked.

The schedule was admitted in evidence and marked Defendant's Exhibit, No. 12, 1863 (four sheets), September 9th, 1914. C. B.

Q. And I will ask you to file the sheets from 5 to 7 inclusive, covering the subject of interest on loans, and mark them as Defendant's Exhibit No. 13, 1863. Will you do so?

A. I file them so marked.

The schedule was admitted in evidence and marked Defendant's Exhibit No. 13, 1863 (three sheets), September 9th, 1914. C. B.

The Witness: I would like to call your attention to the fact that the total then of Defendant's Exhibit 12 will be carried forward and included in the total mentioned on Exhibit 13.

Q. Do you mean on the summary?

A. Yes, sir.

The Master: That is next?

Mr. Holt: That is all on that subject, I believe. Now, this exhibit has the same bearing as the one last introduced, but it is to cover the dividends declared on stocks after January 1st, 1861 and I suppose down to June 20th, 1863; is that right?

The Witness: Down to the present time.

Mr. Holt: Of course that is in the alternative as to which date might be adopted as the proper date of settlement.

Q. Have you prepared an exhibit, Mr. Hillman, showing the amount of dividends received by the State of Virginia after January 1st, 1861, declared upon stocks acquired by her prior to that date?

A. Yes, sir, I have.

Q. Of how many sheets does this consist?

A. Of six sheets.

Q. How are they numbered or indicated?

A. In the upper left-hand corner, sheets 1 to 6, both numbers, inclusive.

Q. Have you prepared a corresponding exhibit upon the subject of interest covering the same dates?

A. Yes, sir.

Q. How are they indicated?

A. Sheets 7 to 10 printed in the upper left hand corner.

Q. Do both of these exhibits indicate upon their face the sources of information from which they were made up?

A. Yes, sir, they do.

Q. Do they correctly represent the documents, records, etc., thereon indicated from which they are made up?

A. Yes, sir.

Q. Will you file the one relating to the dividends on stocks, being sheets Nos. 1 to 6, inclusive, and mark it Defendant's Exhibit No. 12?

A. Yes, sir, I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 12, 1861 (six sheets), September 9th, 1914, C. B.

[This exhibit is printed as "Defendant's Exhibit No. 12, 1861—ten sheets."]

Q. Will you likewise file the one relating to the subject of interest upon loans, as a part of your testimony, running from pages 7 to 10, inclusive, and mark it as Defendant's Exhibit No. 13?

A. Yes, sir, I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 13, 1861 (four sheets), September 9th, 1914, C. B.

[This exhibit is printed as "Defendant's Exhibit No. 12, 1861—ten sheets."]

The Master: Neither of these last two exhibits affects in any way the principal sum due, but are only to be used so far as they may be pertinent in determining the interest upon whatever sum may be found due?

Mr. Holt: That is it exactly.

Q. Mr. Hillman, the Master asked you this morning to ascertain and file a statement, if you could, made up from the books of the James River and Kanawha Canal, showing a balance sheet thereof or whatever you could get upon that subject from its books. Have you any such statement prepared?

A. No, sir. My man is working on that now over at the C. & O. office on what information he can get. The original books, so he informs me, of the J. R. & K. were burnt in 1865, when Richmond was taken, or to a large extent destroyed, but that he has some documents there from which he thinks he can get the

data that I desire, and he is working on it now. Also, I would say, your Honor, that as soon as I can finish here we will complete the statement that you desired of the Richmond, Fredericksburg & Potomac Railroad, which I expect to have ready to file the first thing in the morning.

The Master: Any time before we conclude the hearing will take care of that, leaving opportunity enough to cross-examine if desired, and I tell you what I would like to have you do when you complete these schedules, submit them to Mr. Potter and have him verify them so that when we get all through I want Mr. Porter if it is possible to be able to say that he has compared all these computations and all these statements of facts, and so far as their accuracy is concerned, he has no criticism to make, so you keep right in touch with him and let him verify it.

Q. Then there is one other exhibit that I understand you have in course of preparation, and that is a statement showing the cost of public buildings in the State of Virginia. Is that true?

A. Yes, sir.

Mr. Holt: That of course is to be addressed to the same subject of interest—that is not to be taken as a deduction of principal.

Mr. Lilly: Mr. Harrison, you heard what Judge Holt was stating with reference to the value of State buildings, and so on. Do you think that you people could come to some stipulation as to what they were reasonably worth in 1861?

The Master: Take that up with them outside, during some intermission.

Mr. Lilly: I might suggest that we think it does not show what it was worth, but the Bennett Commission in the early 70's found them worth $3,875,000.

The Master: See what you can do on that question, between the counsel.

Mr. Holt: I do not see Mr. Potter here, but one matter was left open this morning on this question of taxes, collected by Virginia from West Virginia counties, that he and Mr. Hill-

man were to check up. I want to straighten that out. How is that, Mr. Harrison?

Mr. Harrison: I think that will be all right. We won't keep Mr. Hillman to testify to that. I understood from Mr. Potter that he had checked up with him, and that he would be prepared to say whether it was subject to amendment. I do not think it is.

Mr. Holt: So that Exhibit 10 and the sub sheet to it stand as produced this morning.

Mr. Harrison: Mr. Potter is not here, but I think so.

The Witness: Here is one thing, the item of $8,010.30, that is marked no date; in other words, the date is uncertain. That is the reason that there are two totals on that sheet.

The Master: I will suspend here for five minutes, and then I expect West Virginia will be prepared to clean up in chief.

Mr. Holt: We expect to be able to clean up this afternoon with the exception of bringing in those schedules to-morrow morning, and one witness on oral evidence to-morrow morning.

Mr. Holt: We would like Mr. J. K. Anderson sworn, and Mr. Lilly will examine him.

J. K. ANDERSON,

called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Lilly:

Q. What is your name?

A. J. K. Anderson.

Q. What is your residence?

A. I reside in Charleston, West Virginia.

Q. What is your occupation?

A. Chief Engineer of the Public Service Commission of West Virginia.

Q. Have you taken any course in engineering, and if so, when?

A. I graduated in engineering with the degree of Bachelor

of Science in Engineering in 1899 from Swarthmore College.

Q. Since then, have you been occupied in that work from time to time?

A. I have been occupied in engineering the greater part of the time since that date.

Q. Have you had occasion to make an investigation with reference to any improvements on file in the archives of the State of Virginia?

A. I have.

Q. Did you find a map bearing date 1859; if so, please state where you found it?

A. I found a map in the office of the State Librarian of Virginia in this building with the following title.

Q. Please read it.

A. Map of the State of Virginia reduced from the nine sheet map of the State in conformity to law by Herman Boye, 1828, corrected by order of the Executive by L. V. Buckholtz, 1859, with a scale which is practically one inch equal to ten miles.

Q. I see you have a blue print here representing certain railroads and canals. From what were they taken?

A. A tracing was made from this map just mentioned in the Library of the State of Virginia on which I showed the different railroads in which the State of Virginia was interested by investment of moneys in some form. I also showed or traced from this map the James River and Kanawha Canal and the Chesapeake & Ohio Canal, the Dismal Swamp Canal, the Alexandria Canal—

Q. You traced the various navigation and canal projects as shown on that map, did you?

A. I did.

Q. The map, I believe, purported to show the railroads built and located as of the year 1859. Did you do anything to bring the map down to show the location of the railroads as of January 1, 1861?

A. I did.

Q. In what way did you do that, Mr. Anderson?

A. I examined in the office of the Librarian certain copies of Document No. 17, which were reports of public utilities to

the Virginia State Board of Public Works, and from the various reports therein made for subsequent years I ascertained what extension, if any, should be added to the map before mentioned in order to show the situation as of January 1st, 1861.

Q. Take the railroads as laid down on the map of 1859, together with the extensions as indicated in this report that you refer to, or document of Virginia, does this map truly and correctly lay down the railroads as then constructed and located?

A. It does. I would like to say in this connection, by way of explanation, that that map of 1859, to which reference has been made, showed two classifications; it showed railroads finished and railroads unfinished; it showed canals finished and canals unfinished. For the better understanding of conditions as then existing, I have on this map which I have prepared shown the following designation, a solid red line to show railroads in operation, a dashed red line to show railroads under construction, and a dotted red line to show railroads located.

Q. These various canal navigation companies, as I understand it, are copied correctly from the map of 1859?

A. The map of 1859 did not show any navigation companies.

Q. How did you place them on?

A. I ascertained the location of these navigation projects as best I could by examination of maps wherever filed with the State Corporation Commission.

Q. Of Virginia?

A. Of Virginia.

Q. They were the official maps and data and documents of that commission?

A. Yes, sir. I found very few of those maps; and I have indicated on this map more the streams, without showing the particular amount of stream which was improved. I was unable to ascertain just the extent of the improvement on these various streams, but have indicated with a green color over small circles, and connected with a single straight line, the location of the streams, and perhaps approximately what proportion of those streams was improved. That part was unknown to me.

By The Master:

Q. Do you refer to the canalization of the streams?

A. No, sir, I refer to the old improvement projects, not the canals.

By Mr. Lilly:

Q. Were the canals laid down on the map?

A. The canals I have heretofore mentioned, with the exception of Kempsville Canal, were shown on the map on file with the State Librarian.

Q. Have you the James River and Kanawha Canal laid down as laid down on the map of 1859?

A. I have, in so far as it was contstructed or finished. There was some projection of unfinished canal which I have not laid down here on the map.

Q. I see here a red star for banks, a square with half of it red, marked Asylums and Hospitals, and a red triangle for Schools, and a red diamond for other public buildings. Have you correctly located those various objects on the map?

A. I have.

Q. And were those institutions located as of January 1st, 1861?

A. I want to say, I had no particular knowledge as to that date. I have located these institutions last mentioned in accordance with a list which was handed to me by the State of West Virginia's counsel.

Q. The purpose was to locate these institutions that existed on and prior to January 1st, 1861?

A. I so understood it, but I have no knowledge myself of whether they were in existence at that time or not.

By The Master:

Q. You have placed them on the map on the assumption that they were?

A. Yes, sir.

Q. But that information you received from counsel?

A. Yes, sir.

By Mr. Lilly:

Q. If they existed at that time, are they correctly located?

A. They are.

Q. I see that the names of the various railroads are written thereon. Are they transcribed from that map in the main?

A. Yes, sir.

Q. There has been some reference to the Manassas Gap Railroad. I wish you would tell the Master the beginning of that road, where it begins, and where it ends; that is, of January 1st, 1861?

A. The road began at a point on the Orange & Alexandria Railroad, 27 miles west of Alexandria. There was nothing to indicate it at the time, but at Manassas, I presume, and went in a westerly direction to Strasburg, and then southwesterly to Mount Jackson, with a further amount of road under construction as far as Harrisonburg.

Q. Mount Jackson would be at the end of the heavy red line?

A. Yes, sir, at the end of that line.

Q. South of Strasburg, about the two letters RR?

A. Yes, sir.

Q. When was that road completed to Mount Jackson?

The Witness: I should like to refer to some of my notes.

The Master: Certainly.

A. I found on Document No. 17 for the year 1860, in the office of the State Librarian, on page 207, the president's report on the Manassas Gap Railroad. This report was made to the stockholders, and I should like to quote from that.

Q. Go ahead.

A. "The road has been in use as far as Mount Jackson during the twelve months ending the 30th of September, 1860, five months longer than the use of the same part during the previous year."

Q. When was the road constructed from Mount Jackson on to Harrisonburg?

A. I presume that the road was constructed during the year 1860, and perhaps 1861, between those points.

Q. Upon what do you base that presumption?

A. I should like to quote again from the same volume, page 208, of the same report: "The whole line between Harrisonburg and Mount Jackson under contract and full force at work." Then I have contracted a little by leaving out some unessential words. "The engineer advises against track laying until spring Every step preparatory to commencement at that time has been taken, rails ordered are ready for shipment; contracts for crossties let; bridge timbers partly in place; bridge masonry and excavation all in such state of forwardness as leaves no obstacle to the beginning of work of track laying as soon as frost leaves the ground in the spring, and of the uninterrupted continuation of work which insures its completion to Harrisonburg by the 1st of October next."

Q. What October would that be?

A. That would be October 1st, 1861.

Q. Where was the road constructed, if you know, in 1859, how far?

A. I should like to quote from Document No. 17 for the year ending September 30th, 1859, on page 241: "On March 1st trains ran from Alexandria to Mount Jackson, 12 miles beyond Woodstock on the valley line. A considerable part of graduation and masonry between Mount Jackson and Harrisonburg is now done. $350,000 additional appropriation with funds on hand will complete to Harrisonburg within 18 months from the time when work is started."

Mr. Holt: That was in 1859?

The Witness: This was a report as of September 30th, 1859.

Q. Suppose you read the rest of that note or report.

A. "The independent line to Purcellville and Loudoun Branch still lies half done. Sections 104 and 105 two miles north of Harrisonburg under contract by Shands, contractor, and thirteen miles under his charge now more than two-thirds graded, can be finished within the coming year. The whole length of first track laid on main line and branches, exclusive of second track and siding, is 86.73 miles. The Orange & Alexandria R. R. from Alexandria to Manassas Jct. is twenty-seven miles." That is the end of the quotation.

Q. Do you understand that the line between Manassas and Alexandria was owned by the Manassas Gap, or was it under a lease?

A. It was leased.

Q. Upon what do you base that? Read the record there.

A. In document No. 17, for the year 1860, also to be found in the State Librarian's office, on page 220, I find the following reference to Manassas Gap Railroad, in one of their reports. It is given in this way: "Item 98. Branch lines leased, rented or run by company." On the next line below that, "Of the Orange & Alexandria R. R. from Alexandria to Manassas Junction, 27 miles."

Q. What was the length of the main structure of the Manassas Gap, do you say?

A. They give in this same table on the same page—

Q. Read that table.

A. It reads as follows: The heading of the table is as follows: "Table C. Characteristics." Then the next line—these questions are all numbered, or the answers to them—"80. Length main line, Alexandria to Harrisonburg, 139.30 miles." The next one is, "81. Length of single track laid, 77.77 miles." I omitted one or two. And then comes, "84. Branches or other lines owned by company. To Harper's Ferry, 44.12 miles. From Orange and Alexandria road to Gainesville, 7.96 miles. From main line to Front Royal, 1.00 mile." The next line is, "85. Length of single track laid on same, 8.96 miles." The next is 97; I skip some lines. "97. The whole length of first track laid on main line and branches, measuring the road, exclusive of second tracks and sidings, 86.73 miles." That completes the abstract.

Q. Do you know when the Manassas Gap began construction?

A. I do not. That was a matter that I was looking up, but I had not determined that when I was called.

Q. Will you please find that data and give it to the stenographer later?

A. Yes.

Q. What was the length of the James River & Kanawha Canal as of January 1st, 1861; that is, the completed part?

A. Approximately, 195 miles from Richmond to Buchanan, going west along the James River.

Q. Did it have a branch line?

A. It did, the branch to Lexington, which was approximately 22 miles from Lexington on the north fork of the James River to its mouth at Balcony Falls.

Q. What, then, would be the entire length of the constructed part of the canal as of January 1st, 1861?

A. About 217 miles.

Q. Is there a tow path in connection with the canal?

A. Yes, sir.

Q. I wish you would describe to the Master the width and nature and general features in connection with the tow path.

A. The canal consists of a bed in which the water was held, with a tow path on one side which varied in width according to the amount of material which they removed from the bed of the canal in the work of construction. This width, so far as I could notice—I did not measure the width—was from 14 to 25 or 30 feet wide.

Q. What was the condition of the two path with reference to being level?

A. It was perfectly level between locks. At that point at the time I inspected the canal, there had been grading done to adapt it to railroad construction. The part of the upper lift at the lock had been cut down somewhat, and an incline approach had been created or filled from the lower level of the tow path to the upper level.

Q. It is in evidence, Mr. Anderson, that the James River & Kanawha Canal Company was transferred to the Richmond & Alleghany Railroad Company, and that that company constructed a railroad along this tow path. I wish you would give the Master your best idea as to how much additional excavation and work would be necessary to change the tow path into a road bed for railroad purposes?

A. I did not examine that especially with that question in

view; but I should assume that the percentage would be small, not over five or ten per cent. additional graduation work being required to adapt that old tow path and the structures that were then in use for the canal to the railroad bed and uses of the Richmond & Alleghany Railroad.

Q. Then the tow path was of practical railroad grade for the Richmond & Alleghany, with the addition of perhaps five or ten per cent. additional grading; is that correct?

A. Yes, sir.

By The Master:

Q. Did this extend the whole length of the canal?

A. This extended for practically the whole length of the canal. There were certain points which, by reason of the short curvature on the tow path of the canal, where sharp rocks jutted out into the old James River bed, that made it necessary for them to leave the tow path at those places. At some other places, by reason of the better location, the old right of way of the James River & Kanawha Canal was left entirely, and they proceeded to acquire a new right of way and constructed their line in an entirely different location.

By Mr. Lilly:

Q. About how much of this entire length of right of way was not utilized by the Richmond & Alleghany?

A. I could not answer that. I have some right of way map sheets.

Q. We will come to that a little later. Just give your best idea?

A. I would suppose not over five or ten per cent.; that is a rough guess.

By Mr. Holt:

Q. You do not mean, Mr. Anderson, that that part of the tow path that was involved in the Branch Canal up to Lexington was used, do you?

A. Yes, sir.

Q. Did the Richmond & Alleghany build on that, too?

A. Yes, sir, to within a mile or so below Lexington, as far as the old tow path extended.

By Mr. Lilly:

Q. You spoke with reference to locks in the canal. Were they of value for any purpose outside of the use proper of the canal, if the canal should quit being used for canal purposes?

A. I would think not. Certain dams were built in connection with the canal which were useful for power purposes.

Q. Where were those main dams located?

A. There was one at Bosher's Dam.

Q. When did you make your examination of the road?

A. That was in August.

Q. This last August?

A. Yes, sir.

Q. As I understand it, you personally inspected the whole length of it?

A. I made an inspection like this, your Honor, I secured map sheets of the old Richmond & Alleghany Railroad Company, blue prints of their original tracings, which showed the old canal bed, the right of way of the old James River & Kanawha Canal Company, the location of locks, the lock keepers' houses, the dams, and in addition to that it also showed the center line of the Richmond & Alleghany Railroad as laid down upon the old tow path or where it may have left the path, and it also showed the additional right of way acquired by the railroad company in their construction work. I took those maps, which were to the scale of one inch equals 200 feet, and which were marked corresponding with the number on the mile posts, so that it was divided up, each sheet showing one mile section. I went up on the morning train and made at best only a horseback observation of each mile section, in connection with each one of these sheets, putting down the estimated valuation of the cost of grading, taking into consideration the additional work necessary to be done at the locks, and estimating as best I could roughly about what the right of way might be worth for those several miles. That was as to the upper part and where the rail-

road track followed closely the tow path. For the lower end I took my sheets, showing the old Richmond basin, which was at the lower end of the canal, and also the dock property connecting that old canal with tide water at about 28th street, in Richmond.

Q. So that, in the main, your information is drawn from the original sheets?

A. With those to guide me. This was only a horseback estimate.

By Mr. Lilly:

Q. Could you tell where the tow path ran with reference to where that railroad ran?

A. Very readily.

Q. You could do that from the blue prints you had?

A. You could observe the curvature, also the mile posts; also the old canal bed, the old locks, the lock keepers' houses and the two path itself at frequent intervals.

Q. How could you observe the tow path? Explain that to the Master.

A. At some places the original tow path, or at least the fill, which was made out of or arising from the excavation, extended wider than the road bed or the track and ballast as actually laid out.

Q. The track would be about 14 feet wide, wouldn't it?

A. Usually they had the width of fills at the top about 14 feet wide.

Q. The upper part of the canal you inspected from the rear end of the train with these blue prints and the data you had, and the lower end, as I understand, you walked over with the blue prints and made a personal inspection on foot?

A. Yes, sir.

Q. You say that you estimated the value of the rightof way the best you could, taking into consideration the character of the country, and based your opinion of what it would be worth in 1861?

A. My idea, your Honor, was estimating that as of the date

at which the railroad actually acquired the property and took it over.

Q. That was along about 1880?

A. About 1880.

Q. Did you estimate the value of the excavations and the value of the tow path per mile outside of or separate from the right of way?

A. I did.

Q. At what basis of value per day for work, that is the price of labor, did you take that into consideration?

A. I would like to say, your Honor, that my principal railroad experience in construction work was at a time when labor was worth about $1.00 a day, and I have no knowledge as to the value of labor in 1880, and that this judgment of mine is based largely on about what the work would have cost at the rate of a dollar a day. I do not know what it would be in 1880. My experience was largely in 1889 and 1890.

Q. I do not want to lead, but I want to hurry along. As I understand, Mr. Anderson, as you went along over the road you rode at the end of the train and had these map sheets, and each mile you passed you put down your value of the right of way in one column and then the value of the road bed as made up from the tow path in another column?

A. I made my memoranda directly on those map sheets in yellow crayons, and somewhat abbreviated them, because I put down figures which represented thousands.

Q. Do you have copies of your estimates in that regard?

A. I have none outside of this private report.

Q. Will you please file your estimates of each mile both of the right of way and of the excavations?

A. I will.

The Master: What do you mean by excavations?

Mr. Lilly: In the tow path, that is the value of the excavations in the tow path.

The Master: You mean the excavation out of the canal basin into the tow path?

Mr. Lilly: No, I mean the value in the tow path.

By The Master:

Q. Let me get this exact. What you mean by excavation, you mean what it would cost to excavate from the canal basin and pile into the tow path?

A. No. This estimate of mine was made on this basis, I tried to estimate what the value of that work would be—what the cost of that work would have been to the railroad or what the value of that old tow path was in the matter of graduation to the railroad.

Q. In other words, if the Richmond & Alleghany were going to build a railroad in that vicinity, and there was not any tow path there, your estimate is as to what the tow path as you found it would have been worth to them as a matter of construction that they would have had to make?

A. That was the point, your Honor.

The Master: That is what you mean by excavation?

Mr. Lilly: Yes, sir.

The Witness: Taking into consideration the additional work that you would have to do at each lock to grade a suitable approach.

Q. That is, being the owners of this right of way, estimating that way, it cost them a certain sum less to put the road in that vicinity or in that locality than it would have if the tow path had not been previously constructed by somebody?

A. That is the point.

By Mr. Lilly:

Q. You speak of some extra work having to be done at each lock in order to get the road on grade. About what was the amount of that work at each lock?

A. I don't know; I did not have time to ascertain. I just tried to estimate, making an allowance that I thought would be compensation for each mile as I went along. I cannot recall what it was at each particular lock.

By The Master:

Q. How long were you making this trip?

A. I went up one morning, leaving here about nine o'clock

in the morning, and reaching Buchanan about, I think it was about three or four o'clock in the afternoon, and spent the night at Balcony Falls, and went up the next morning to Lexington.

By Mr. Harrison:

Q. And you made your observations while going up on the railroad?

A. From the rear of the railroad train.

Q. And made your estimate going twenty-five or thirty miles an hour?

A. I suppose we were going that the larger part of the time. It is a horseback opinion, going a little faster.

Q. A kind of lightning calculation?

A. It was simply a horseback opinion, and going pretty fast.

By Mr. Lilly:

Q. As you passed along, could you identify each sheet or blueprint with each mile?

A. Very readily, by the mile posts and also by the curvature in alignment and locks, and things which were marked on the map.

Mr. Lilly: We now offer the following, estimate values of grading and rights of way of the Richmond & Alleghany Railroad Company as of date of 1880, as estimated by J. K. Anderson.

Mr. Harrison: Are you introducing the map, Mr. Lilly?

Mr. Lilly: No, not the map.

The Master: He is introducing the detailed estimate made under these conditions.

Mr. Lilly: Yes, which is as follows: Would you like me to read it?

The Master: Not as far as I am concerned. Have you duplicates of it?

Mr. Harrison: How many pages are there?

Mr. Lilly: There are 195 entries, one entry for each mile.

The Witness: About 217 entries, one entry for each mile. I put the estimated value as to each mile section.

By Mr. Harrison:

Q. How in the world could you make an estimate of the cost of construction or the value of right of way for each mile when flying by at the rate of thirty miles an hour?

A. It is a rough estimate, as I stated.

Q. Could you make it as well if you had been here in Richmond?

A. No, not nearly so well. You would fail to note that here in Richmond, the depth of fill or width of fill.

Q. How could you tell the depth or the width of fill, going by at that speed?

A. You can get a rough idea of it the same as you can riding over it on horseback, of any railroad work.

Mr. Harrison: I did not mean to interrupt you.

Mr. Lilly: That is quite all right. We do not claim that it is accurate to the cent, but it is the best evidence we have.

The Master: What you mean is that it is the best evidence you could get going at that rate of speed?

Mr. Lilly: Yes.

The Master: I do not suppose it would be conceded that a more accurate estimate could not be made.

Mr. Lilly: We agree to that.

The Master: I think Mr. Anderson knows how he could get at that.

The Witness: I was pushed for time, your Honor.

The Master: There is no doubt that you have done the best you could, going at that lightning speed.

The Witness: Yes, sir.

Mr. Lilly: That was going some, was it not?

The Master: It rather strikes me that it was.

By Mr. Lilly:

Q. I wish you would read the summary in reference to the canal.

Mr. Conrad: If your Honor please. I do not think that the

record should be encumbered or that we should go to the expense of copying into the record at all. It is perfectly evident that this gentleman is incompetent to speak of the value of this work. He might just as well have gone over it in an aeroplane. The idea of introducing that great mass of matter here—

Mr. Lilly: It is not a great mass.

Mr. Conrad: The idea of putting that into a record, and if it has to go to the court or has to be paid for, I object to it on that ground. It is not evidence that tends to prove the amount or the value of the cost, or the value of anything. I think the gentleman himself would admit that he would not buy, himself, on the statement of a civil engineer—

By Mr. Conrad:

Q. Were you ever a contractor?

A. No, sir.

Q. Then your business has been simply that of a civil engineer?

A. Yes, sir.

Q. Who ran a level, or something of that sort?

A. A little more extensive than that, perhaps.

Q. Well, perhaps.

Mr. Conrad: I submit that the evidence is incompetent to prove, it does not tend to prove the end which it is introduced for. It is a waste of time and a consumption of money in putting it into the record. I object to it on that ground.

Mr. Lilly: We would have had the figures before you would have got through, Mr. Conrad.

The Master: The objection that Mr. Conrad has is that it encumbers the record with details that are of no value.

Mr. Conrad: And the additional objection that the gentleman, from his own statement, does not show that he is an expert.

Mr. Lilly: If the Court please, there are about five pages of that detail. It begins a mile north—

The Master: That really does not go to the question of its admissibility. Of course, if they raise it seriously I will have to rule on it.

Mr. Lilly: I would like to say a word or two with reference to that. It shows his estimate of the right of way and his estimate of the excavation. It seems to me that when he has a blue print of that particular mile, with a bird's eye view showing the center of the railroad, showing the tow path grade, and showing the whole matter, that he could go along and see this fill and that excavation and the whole situation; it is only an estimate, but whatever it is worth, we think we are entitled to it. Later that is a matter for argument. If they can show that he is wrong, they may do so.

Mr. Conrad: He has not qualified himself as an expert, from his own statement.

Mr. Lilly: There is a railroad 217 miles long that was created that we own 23½ per cent. of, and we are asking for our 23½ per cent. of that value. Now, we have shown what the Richmond & Alleghany considered it worth in 1882, and we are going to show what Mr. Anderson considered it, from his observation, as worth; and a part of it he went over on foot. Whether he is mistaken or not is for them to show, and the weight of it is of course for the Master. But it certainly would have some weight. In other words, as the record stood before Mr. Anderson came on, there is nothing to show that there was a tow path, nothing to show the width or the grade or anything about the physical situation.

The Master: They are not objecting to that. Their objection is that the witness is now undertaking to give an estimate of what it would cost and what it was worth, and what the new right of way construction cost.

Mr. Lilly: No, not the right of way.

Mr. Harrison: The value of it as a railroad right of way and as a canal right of way are two different things. We did not utilize it as a railroad. The stockholders of the James River and Kanawha Canal Company owned a canal right of way. What was it worth as a canal right of way?

Mr. Lilly: What it was worth for any purpose, that is our contention.

The Master: The question raised before me is whether this is competent testimony, and Mr. Conrad raises the question

that the witness has not shown that he is qualified to testify as to the cost or value in 1880 in this locality. Now, I suppose it is a familiar rule of law, that is if the objection is insisted upon, that the witness cannot testify as to the cost of construction in a certain locality unless he has shown in the first instance that he is familiar with that cost of construction at that period of time. That is the first proposition. Then, I understand the witness to say that there are a number of instances here where there is a right of way used by the railroad which is not coterminous with the railroad tow path, and that the general question which you have covers that. Now, I suppose, in order for the witness to be able legally to testify to that he must show that he has some knowledge of what a right of way would cost in that locality at that time. Of course that involves in the first place the cost of the right of way, and in the next place the cost of the construction on the right of way. So if they insist upon it, I do not see but you will have to bring your witness up to a point of showing in the first place, 1880—well, that is nineteen years after the date—that in the first place makes it extremely doubtful as to its value; but in any event, you will have to show, as far as I can see, that the witness has the original knowledge of the conditions that existed in that locality at that time, in order to qualify him to legally express an opinion, without now discussing the evanescent and moving picture character of the description made as the basis for the information he gives.

Mr. Lilly: We can show his experience in making railroad estimates and surveys, and his general information with reference to the cost of construction work.

The Master: I do not see but what you have got to qualify him by showing his knowledge of construction in this locality and vicinity. Of course, I do not know what the witness' general knowledge may be. Here is 1880 as your date. Take, for instance, in the first place, your right of way. Of course, I cannot let this witness testify as to what a right of way would cost on the line of this road in 1880, without some intimation that he knows what the conditions were as to the value of the land that was taken for the right of way. That is so obvious

that it is hardly worth discussing. Your question was broad enough to cover that, for instance. Of course I cannot let Mr. Anderson say what a right of way on this James River and Kanawha Canal would cost in 1880, unless he has some knowledge of what it would cost. His experience in some other place may or may not qualify him generally, but this right of way is located here, and he must have some knowledge of the conditions in this location, and at that time, in order to entitle him to express an opinion of what the right of way would cost at that time. That is the way it seems to me. That is as to the right of way. When you come to the question of the construction, the same general principles apply. I do not know what the fact was about 1880, I do not know what labor cost, I do not know what the factors were.

Mr. Lilly: He bases it on a dollar a day.

The Master: That does not fix it. If a dollar a day was the running price in 1880, why that might furnish a basis. Of course the objection is hardly technical. In the first place, it is nineteen years after the event that you are trying to establish. In the next place, Mr. Anderson has done the best he could with this almost chain lightning examination. The question is whether, under the circumstances, you want to encumber the record with the testimony, under these conditions. Of course, if they insist on it, I should have to compel you to prove cost and value in 1880 in that locality by some witness who had some knowledge of those facts at that time. I understand that to be the rule, and I should have to hold you to it.

Mr. Anderson: I want to say for the benefit of my friends on the other side, it seems to me that there is a more conclusive objection to this testimony than any that has been mentioned. If it be proved that this grading cost fifty thousand dollars a mile, and that it would not have cost but twenty thousand dollars a mile if the canal had not been there, that would have no legal bearing in my judgment upon the real question in this case. The question in this case is, what was the value of Virginia's $10,400,000 of stock. In what? In the James River and Kanawha Canal Company, either on the 1st of January, 1861, or on the 20th of June, 1863. Now, your Honor, any evi-

dence of that sort is too remote to cast any light upon the value of the canal in 1863 or 1861. Why, if that sort of evidence is to go into this case, sir, it will last ten years.

Mr. Lilly: If you force us to send experts to measure it, it will.

Mr. Anderson: I do not think the evidence would be competent if an actual survey had been made by West Virginia. See what it leads to. I happen to know a great deal about this canal and about this railroad. I happened to be counsel upon its upper division for this railroad at one time, and I know something about what it cost. Suppose we could show that that right of way, instead of costing almost nothing, as the witness would seem to indicate, cost, between Lexington and Balcony Falls, over thirty thousand dollars; that as much as three thousand dollars was paid for a single mile of right of way. The company had only a right to build a canal, not a railroad. So that as to some portions of that road, it cost thousands of dollars to acquire the right of way. The witness could have gotten definite evidence if he had wanted to, by going to the records of the Richmond & Alleghany Railroad Company. But it would not be competent here. It would throw no light on the value of the canal in 1863, when there was no suggestion of building a railroad thereon. This railroad, as will be shown here, a very short time after its construction, went into the hands of a receiver, and it was sold. And it will be shown that it was bought for far less than the par of its bonds, and that the stock was absolutely worthless. It was sold to the Chesapeake & Ohio Railroad Company, who did not then pay for it in money, but paid for it in bonds, about six million dollars, according to my recollection.

The Master: I appreciate the significance of these suggestions made by General Anderson, and they are very significant, of course. But of course the question pending here before me is not involved in the objection that he makes. If counsel for Virginia insist upon it, I must hold that a man cannot make a statement as an expert, as to the cost of construction in 1880 on the line of this Kanawha Canal Company, unless he has some knowledge of conditions that existed there at that time

and at that place. This is no impeachment of the intelligence of Mr. Anderson. He knows that as well as I do or any of us do. And my judgment is that Mr. Anderson has done a first-class piece of work under the circumstances and so far as he is able to go. Of course if they raise that point I am obliged to hold that a man cannot qualify as an expert unless he has knowledge of those conditions at that time and under those circumstances. Of course we all know this question of construction sometimes involves more than a few shovelfuls of dirt. And it does involve the actual cost at that time, the cost of labor and all those things. Of course if the counsel for West Virginia feel that they want to go into that detail in connection with that, with Mr. Anderson, my judgment is that Mr. Anderson is not able to legally qualify as an expert on the question of the value of this road in 1880. Now if the West Virginia people feel that they want to go into more elaborate investigation on that point, the question might be raised as to whether or not it is too remote. But that I do not pass on now. My judgment is that Mr. Anderson is not able, under the circumstances, to testify.

Mr. Anderson: It opens up an endless field.

The Master: This is a practical question for the counsel for West Virginia. Mr. Anderson, in my judgment, has done a very nice piece of work, and has gone just as far as any man in his situation could go. He is not responsible for not knowing the conditions in 1880.

The Witness: I was only eleven years old then, your Honor.

The Master: Of course the facts that he has testified to, why that is another thing.

Mr. Conrad: Is not the point that has been made of more significance and force than your Honor gives it? Virginia did not own a foot of this ground.

Mr. Lilly: She owned ten millions of the twelve millions of stock.

Mr. Conrad: But a stockholder does not own the land. The company in its corporate character owns the land.

The Master: I appreciate that.

Mr. Conrad: Now Virginia is charged here with owning ten million dollars of stock, of which these gentlemen claim 23½ per cent. That is of the stock. Great heavens, it is not of the road bed or the canal bed. I have always understood that the stone on that canal was the most costly thing in the internal work of Virginia. It is what was the value of the stock, not what was the value of the road bed. There may have been a gold mine under it.

The Master: Their contention is, that here was a valuable road bed, which is a factor to be included in determining the value of the stock.

Mr. Holt: General Lilly has withdrawn his question and is going to put another.

The Master: We are now ready for another chain lightning expedition.

By Mr. Lilly:

Q. Now, as to the lower end of the canal or the dock part, did you have any maps or blue prints showing the location of it?

A. I had two; one was the Sheet A and one was Sheet B, of the same scale as the other map; they show basins, locks and wharves of the old original basin and also of the dock proper.

Q. Just tell hurriedly where it was located.

The Master: Are you going to have a blue print of that?

Mr. Lilly: No, he had a blue print and he went on foot and examined this.

The Master: A general description of that is all you need.

Mr. Lilly: Yes, sir.

The Witness: I have a blue print at the hotel.

By The Master:

Q. Just describe it in your own way.

A. From about 7th Street, which is south of the Capitol, to the eastward to about 28th Street.

By Mr. Lilly:

Q. In Richmond?

A. In Richmond, Virginia.

Q. How long was that property and about how wide?

A. Well, I should judge that it was not more than a mile and a quarter long, and it varied in width at the different points, in some places a hundred feet wide or more, perhaps 200 feet wide in the widest place, and other places 50 or 75 feet wide.

By The Master:

Q. You say beginning at 7th Street?

A. Yes, sir.

Q. What is that, above tidewater?

A. Seventh Street is right down here at Byrd Street station.

Q. How far is it above tidewater?

A. I think about 50 feet in elevation.

Q. I mean up the river?

A. About a mile and a quarter, perhaps.

Q. Above tidewater?

A. Yes, sir.

Q. And then did it run down to tidewater?

A. It did.

Q. So that it was located practically in the heart of the city?

A. Yes, sir, the business section, I should say.

The Master: That is all I want.

By Mr. Lilly:

Q. And you spoke about water power. What was the height of the fall, the entire fall?

A. The fall available varied from 18 or 20 feet, and in some instances it was mentioned as being about 50 feet, or the possibility of obtaining about 50 feet.

By The Master:

Q. Were they utilized?

A. Yes, sir.

Q. All of them?

A. Well, I do not believe all of the water power was utilized. There was some additional power that was not utilized. There were certain old contracts made, your Honor, going back to seventeen hundred and something, and some subsequent to that date, and some before the war and some after the war.

Q. How are those water powers to-day, for instance?

A. I understand they are now in use by the Tredegar Mills and some others.

Q. Is that water power right adjacent to Richmond?

A. Yes, sir.

Q. The main fall was right in the City of Richmond?

A. Yes, sir, that is the main fall was rather an extension of falls or rapids, and they utilized the full head by means of this canal.

Q. How many horsepower did they develop?

A. I cannot give you that, your Honor.

Q. You have not got factors enough so that you could give that?

A. No, sir, I did not have the necessary data.

The Master: That is all that I wanted to inquire about.

By Mr. Lilly:

Q. Do you know what the docks earned for the year 1861, or about that date, the gross earning and the net earning?

The Master: Were they segregated from the canal generally?

Mr. Lilly: Yes, sir.

The Master: A separate proposition?

Mr. Lilly: They are all owned together, but the revenue is kept separate.

A. May I refer to my notes?

Mr. Anderson: There was a lower and an upper dock.

The Witness: They acquired the lower dock and added to it, the total cost being something over $800,000. If you will let me refer to my notes, your Honor, I can give some further information on that.

The Master: We are getting something now that has some relation to the item of $1,000,000?

Mr. Lilly: Yes.

The Witness: In Document No. 17, page 117, being the report for the fiscal year ending September 30th, 1855, made by the James River and Kanawha Canal Company, I find the following under the head of unfinished improvements: "Disbursed on construction from Buchanan to Covington, $164,605." That was on locks, as I understood, beyond the part that was then finished, and to the extreme west. Then, on page 118 of the same report is shown, under the heading "Tidewater connection, excess of disbursements over receipts, on account of improvements and operation, $497,436." On page 123 of the same report, under the head of new improvements and subject heading disbursements is shown the following:

Purchase of Richmond dock	$244,721.
Tidewater connection prior to loan of 9th March, 1849,	9,233.
Tidewater connections	582,945.

Making a total as of date September 30th, 1855, $836,899

For the year ending September 30th, 1860, in Document 17, page 275, under the heading new improvement, subject heading disbursements, appear the following:

Purchase and improvement of Richmond dock	$244,721.
Tidewater connections prior to loan of 9th March, 1849	9,233.
Tidewater connections	598,199.
Total as of September 30th, 1860	$852,153.

In the same volume, on page 237, is found the following, under the heading of "Receipts from revenue:"

Dock	$50,128.03
Canal	238,991.27

Q. What date was that that the earning of the canal was $238,000?

A. That was on the same date, as of September 30th, 1860.

Q. Give what the expense was?

A. Under the heading Disbursements, Docks, $7,721.52.

Tidewater connection	$842.07.
Canal	$138,099.03.

Q. As I understand, those figures refer to the income and disbursements on the dock and canal as of September 30th, 1860?

A. Yes, sir.

Mr. Holt: Ending with what year?

The Witness: That was the end of the fiscal year.

The Master: What is the aggregate of the disbursements?

The Witness: On the entire canal and docks?

The Master: Yes.

Q. Give the income and then the disbursements.

The Master: Were there any fixed charges outside of those?

Mr. Lilly: I suppose so, your Honor.

The Master: We will see what those were. I think we can get it all in here. If there were fixed charges, we will see what they were and what the next result was.

Mr. Lilly: I think Mr. Hillman is trying to look up the balance sheet.

The Master: You think he will supplement that?

Mr. Lilly: Yes, sir.

The Witness: The total of disbursements, your Honor, in the estimates just mentioned for the fiscal year ending September 30th, 1860, $146,662.62.

Q. Give the total of income from the docks and canal?

The Master: The receipts.

A. The total receipts for the same period of time, received from the docks and canal, $289,119.30.

The Master: Do you know what the interest charges were upon the indebtedness of the canal company for that year?

A. I am not informed.

The Master: We will get that from Mr. Hillman.

Q. How much was the excess of the income over the disbursements for the year ending September 30th, 1860?

A. $142,456.68.

Mr. Lilly: We will now offer the map in evidence.

The map was admitted in evidence and marked Defendant's Exhibit No. 14, September 9th, 1914, C. B.

The Master: We will suspend here until 10 o'clock in the morning.

Adjourned to September 10th, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Virginia, September 10th, 1914.

Present the same counsel as on yesterday.

Mr. Lilly: There was some evidence given yesterday with reference to Mount Jackson on the map that was filed, and Mr. Anderson has had that put on some of the other maps; and we ask to substitute that.

The Master: These were not put in yesterday.

J. K. ANDERSON,

recalled for further examination, testified as follows:

The Witness: Leesburg was put on, it being another terminus of the operating road.

The Master: I was going to make this inquiry about this blueprint. Of course if that is a part of the record I will have to get it in in some place in the record. Would it be feasible to reduce this by a photographic process, say fifty per cent., and make it reasonably equally effective? There are a lot of these names on here that could be reduced fifty per cent. and be read all right. If we could reduce this fifty per cent. it would make a blueprint that would go very conveniently into the record, but as it is now it is pretty large to go in.

Mr. Lilly: We could use this for the original record now, but when it is put in print it could be reduced.

The Master: Mr. Anderson can attend to that. That will make it a pretty convenient exhibit to go right along in the print. Was this map put in?

Mr. Lilly: Yes, your honor, marked Exhibit No. 14.

By Mr. Lilly:

Q. Mr. Anderson, how much railroad was in operation and completed in the State of West Virginia as of January 1st, 1861?

The Master: West Virginia?

Mr. Lilly: Yes, the number of miles.

The Master: You mean now of these systems involved in the controversy?

Mr. Lilly: Yes, sir.

The Master: So that it is confined to that?

Mr. Lilly: Yes, I mean to confine it to the railroads in which Virginia was interested as a stockholder.

The Master: And as to which claims are made in this answer?

Mr. Lilly: Yes, sir.

The Master: So that confines it to the record itself. I suppose that is what you meant?

Mr. Lilly: Yes, that is what I meant.

Mr. Harrison: All that is in the record now.

The Master: It won't take but a minute, if they want it.

A. There was approximately in that part of old Virginia which now constitutes West Virginia about 18 miles of operated road, being a part of the Winchester & Potomac Railroad.

By the Master:

Q. That was in 1861 and 1863?

A. In 1861, January 1, 1861, your honor.

The Master: And does that also apply to June 20th, 1863?

Mr. Lilly: I do not know whether he has investigated with reference to that.

The Witness: No, sir, I have not.

By Mr. Lilly:

Q. What was the total mileage of railroad in what is now Virginia as of January 1, 1861, in which Virginia was a stockholder and to which claims are set up in the defendant's supplemental answer?

The Master: To which this controversy relates; that covers the whole ground.

A. 1,199.99, I might say 1,200 miles.

Q. Did you bring with you the blue prints showing the dock's properties?

A. I did not; they are at the hotel.

Mr. Lilly: That is all at present.

The Master: You may cross-examine.

Mr. Anderson, of counsel for Virginia: If your honor please, I mention this for information, my instructions from the master—I would like to have Dr. Hogg's attention—I thought your honor had ruled out the evidence of Mr. Anderson yesterday.

The Master: I ruled out his opinion as to the cost and value.

Mr. Anderson: And as to his inspection?

The Master: There is nothing in on that. I did not rule out what he stated about the tow path and the road, those things that he could see; anybody could see that. His testimony is competent upon that point. I did rule out everything that he was expected to testify to on the question of cost of excavation or value of existing tow paths to be utilized by the road and covering that general question. As to the physical conditions, there was no objection made to his testimony. The only objection that was made to his testimony was when you got down to the point where he was asked to put into the record his opinion as to the question of excavation. Then an objection was made and I sustained the objection. No objection was made to any of the balance of his testimony and I did not have any occasion to rule it out.

Mr. Holt: All that portion of his testimony as to which your statement about the airship had application went out.

The Master: Yes, the horseback observation. We know that Mr. Anderson made it, but it is not in as a factor. Nothing else was objected to.

Mr. Anderson: We do not care to cross-examine him. We have evidence that takes his evidence out of the case.

Mr. Harrison: I want to ask him one question.

CROSS EXAMINATION.

By Mr. Harrison:

Q. I want to know the length of the Orange & Alexandria railroad.

A. The distance from Alexandria to Gordonsville was 88.3 miles. Then there is a piece over the Virginia Central from Gordonsville to Charlottesville, and then they had an additional length of line from Charlottesville to Lynchburg of 60 miles, and then a branch line from Warrenton Junction to Warrenton, making a total of 157.2 miles of main line and branches.

Mr. Harrison: That is all I want to ask.

Mr. Holt: I wanted to understand from Mr. Anderson what he said, if anything, upon the subject of the state of completion of this canal of January 1st, 1861.

Mr. Harrison: He did not say anything.

Mr. Holt: I will ask you the question and run the risk of repetition.

By Mr. Holt:

Q. Was the James River and Kanawha Canal completed and in operation on January 1st, 1861?

A. My only source of information regarding that was this map of 1859, which so showed it as being completed or finished, to use their own term, from Richmond to Buchanan and also from Lexington down the north fork of the James River to Balcony Falls.

Q. From Balcony Falls to Buchanan, is there any hiatus there?

A. No. I mentioned from Richmond, which passes Balcony Falls to Buchanan.

Q. Was that canal complete and in operation on January 1st, 1861, then?

Mr. Anderson: It undoubtedly was, to near Lexington, not quite to it.

The Witness: I said a few miles below Lexington.

Mr. Anderson: I would not say it was completed, it was in operation.

The Master: The towpath was about a mile short of Lexington.

Mr. Holt: If Mr. Hillman will now take the stand we will give the Master the requisite information on the Richmond, Fredericksburg & Potomac road. But while he is coming, yes-

terday when we introduced this interest account, interest collected on securities from 1861, we had nothing but the white sheet or matrix, and although it was filed as an exhibit, we have now the blueprints to distribute. Have they been handed to you gentlemen already?

Mr. Harrison: I reckon so, Judge; I really do not know.

The Master: Do you want the original blueprint to go on file as the official exhibit?

Mr. Holt: We really marked it that way yesterday.

The Master: Have you anything else that you can do while Mr. Hillman is coming?

Mr. Holt: I believe not. We have one other accountant that we want to get a short schedule from.

The Master: My attention was called to the fact this morning that there is some question as to how the original schedule found on page 13 of the print in the case will be treated in connection with the corrected schedule. Of course that schedule has been very extensively and profoundly modified by the corrections subsequently made. I understand West Virginia would prefer to have the schedule 13 go out and the corrected schedule take its place, and Virginia prefers to have it stay in and the corrected schedule go in also.

Mr. Harrison: Undoubtedly.

The Master: Of course unless there is an agreement between the parties that would have to be the course pursued, because that was the course developed upon the hearing.

Mr. Holt: We make no question about that; let them both go in.

Mr. Harrison: Put in the original schedule and the revised schedule.

The Master: I suppose they want the benefit of whatever change they have compelled the witness to make during the course of the hearing.

Mr. Lilly: If it explains the change, let it go in.

The Master: Exhibit No. 11, page 66, has also been changed. And I suppose the Virginia people prefer to have the changed schedule in addition to the original schedule. If not we will change it.

Mr. Harrison: Yes, we want it just as before, let the original stand and put in the corrected schedule.

The Master: Let the original stand as it is and let the corrected schedule go in, so that the record will show the original schedule and the corrections made during the hearing.

CONWAY W. HILLMAN,

recalled for further examination, testified as follows:

By Mr. Holt:

Q. Mr. Hillman, upon yesterday or the day before the master requested you to give him and put into the record any additional information that you might find with respect to the Richmond, Fredericksburg & Potomac Railway Company, throwing light upon the character of its balance sheet as put in by you.

The Master: And principally the large item called cost of construction, so that we could get an intelligent idea of what that really represented.

Q. Have you made an additional search and if so, have you found anything throwing any light upon that subject?

A. Yes, sir, I have.

Q. What is that?

The Master: Does this include all that there is, and has he accompanied it with all the explanation that will be useful? Because if he has you submit it to the other side and put it right into the record and I will take it for what it is worth later on. If the memorandum which you hold in your hand, Judge Holt, contains everything that Mr. Hillman has found and if it contains all the explanations that occur to him as being essential and the same thing that he would make orally, put it into the record and hand it to the other side, and as far as I am concerned, I will look it over later and the other side can have an opportunity to cross-examine in relation to it.

Q. Have you prepared, Mr. Hillman, a written statement showing the result by items of your new search?

A. Yes, sir, I have.

Q. Will you file it as a part of your testimony and mark it

Defendant's Exhibit No. 15?

Mr. Harrison: What does that exhibit purport to be?

Mr. Holt: I will hand you a copy of it right now.

A. I file it so marked.

The Master: This is the data which he has found bearing upon the weight to be given to the balance sheet of the Richmond, Fredericksburg & Potomac Railroad?

Mr. Holt: Yes.

The paper was admitted in evidence and marked Defendant's Exhibit No. 15, September 10th, 1914, C. B., and is as follows:

In matter of the Potomac Steamboat Company stock included in the assets of the Richmond, Fredericksburg & Potomac railroad, March 1, 1861, $38,900.00.

Page 350, R. F. & P. report of 1853, referring to the Washington & Fredericksburg Steamship Company, (the original company of the Potomac Company) says: "In consequence of the low price paid for the Steamboat Company stock, the R. R. Company have since received 12 to 14% annual dividends," but states that this year (1853) the Steamboat Company lost money because they had to make connection with two trains per day. This loss was made the basis of a more liberal allowance by the R. F. & P. to the Steamboat Company in the division of rates, and then the Steamboat Company seems to have just paid its expenses.

Page 502, March 31, 1861 report, shows that the four boats of this company were seized by the U. S. Government for transports and war vessels. On the same report a dividend is shown on this stock, and carried in surplus, of $33,360.00.

In April, 1862, page 507, they had credited this account $83,385.00, which increase of $50,025.00 was explained in the report of November, 1864 (written and not paged), when it was stated that Capt. J. M. Robinson had turned over to the State the $50,025.00, their share of the amount paid by the U. S. Government for the four boats. This establishes that January 1, 1861, this asset was at least worth par.

In the Matter of Bills Receivable:

This account varies from year to year, sometimes greater and sometimes less than the amount March 31, 1861. There is also shown in the disbursements from year to year purchases of bills receivable, hence it is inferrable that the account was good and collectible.

In the Matter of Value of Cost of Road and Equipment:

The cost is carried forward carefully year to year, generally under classified headings, such as "Engineering," "Grading," "Bridges," &c., and contains no items that are not legitimate.

They had a yearly report by directors as to general conditions of road, and in almost every instance they report on roadway and rolling stock, and the report is always in excellent condition, showing that the repairs and renewals had taken care to keep the road in good condition.

In addition to this, we have the following items of "extraordinary" expense charged to operating expenses, which extra expenses were additional items of cost of road and equipment.

Page 295, R. F. & P. report, September 30, 1848, shows expenditure from earnings in capital accounts not charged to cost of road and equipment	$ 11,266.46
Page 10, R. F. & P. report, 1849, shows extraordinary expenses	27,875.92
Page 362, 1852 report, says that the revenue has been sufficient not only to pay current expenses and the usual dividend, but to lay down heavier rail and carry 9 to 10,000 to surplus, no specific amount mentioned, but not charged to cost of road and equipment	
Page 346, 1853 report, says that the " expenses included cost of two locomotives, two additional coaches, and new depot and passenger office at Fredericksburg," not charged to cost of road.	

Page 379, May, 1854, shows paid out of earnings for one new engine, four coaches and improvements to road and structures (in detail on report)		20,986.55
No charge to cost of road for these.		
Page 420, September 30, 1855, shows extraordinary expenses of		17,470.00
Consisting of rolling stock	$13,970.00	
Improvements to way and structures	3,500.00	
Page 452, same book of reports, shows extraordinary expenses		20,700.00
being rolling stock	16,200.00	
Improvements	4,500.00	
Not charged to cost of road		$ 98,298.93
Amount brought forward		98,298.93
Page 468, March 31, 1858, shows $17,810.00 extraordinary expenses, of which rolling stock is $7,810.00, and $6,000.00 may be classed as renewals, and balance seems doubtful we take..		7,810.00
Page 483, March, 1859, shows extraordinary expenses, all rolling stock, not added to cost of road and equipment		11,085.00
Page 496, March, 1860, shows extraordinary expenses $17,096.58, of which $7,846.58 may be considered renewals $9,250.00, (viz.: taking care of depreciation) and balance is new rolling stock not charged to cost of road		9,250.00
Page 508 of report of March 31, 1861, shows $24,549.45 extraordinary expenses, of which only $6,400.00 is entitled to consideration as a capital expenditure		6,400.00
Total improvements determinable		$132,843.93

The Master: So far as I am concerned, I will take this and look it over during the intermission or this evening. By the way, do you want to excuse Mr. Hillman or do you intend to keep him here for a day or two longer?

Mr. Holt: We think we will keep him here for another day in order to be on the safe side.

The Master: As far as I am concerned, I will look at this memorandum this evening. I may not have time during the recess at noon; and the other side can also have an opportunity to examine it, and if they want to cross-examine in relation to it, they can call Mr. Hillman later, or would you prefer to take it up right now, Mr. Harrison?

Mr. Harrison: No, sir, I am not prepared to cross-examine on it now.

The Master: You would not be any better prepared if he simply read it orally?

Mr. Harrison: No, sir. It will take a little time to look it over.

The Master: I think then if it is agreeable I will take that course with it and we will put it in the record, and later if you wish to ask any questions about it or I wish to ask any questions about it, we will call Mr. Hillman. That saves a little time.

Mr. Harrison: If this purports to be transcripts of the reports of the road taken from the books of the company or whatever it came from, it just seems to be excerpts with comments by this witness upon these excerpts, deductions, conclusions.

The Master: That is right.

Mr. Harrison: If they are worth anything we ought to see the data itself from which they are drawn.

The Master: Why don't you turn this memorandum over to Mr. Potter and let Mr. Potter examine it, unless you prefer to examine the original data yourself? That is, I do not like to take the time to have it brought in here. Just turn this right over to Mr. Potter, or if you want and you prefer to examine the original data, simply put the original data where they can reach it, and later if they have anything that they want to cross-

examine about, we will take it up.

Mr. Anderson: This is a question of what the reports mean.

The Master: This is in response to my question. They do not offer it as evidence. What I wanted him to do was to look at the records and books of this company and see if he could give me any information that would be worth anything tending to show what weight was to be given to this entry as bearing upon its representing the actual value of the road at that date, and Mr. Hillman has done the best he could and has got everything he could find.

Mr. Hogg: And states that he would state that orally if he was examined.

The Master: Yes; but there is no occasion to take the time to do that. I suggest you turn it over to Mr. Potter and let him look at these original sources, and if there is anything later you want to cross-examine about, Mr. Hillman may be cross-examined.

Mr. Anderson: Just from glancing at the paper, I do not think it would be legal evidence if he stated it in detail.

The Master: It is not offered as legal evidence. He has brought it here at my request.

Mr. Anderson: It is inferences of the witness from facts that do not appear here.

Mr. Harrison: The point I make is that he has not brought enough here. If the reports that he has examined in the offices of the company and upon which his original testimony was based show more than the exhibits which he filed from those books originally, and he now wants to base some conclusion or conjecture or theory founded upon something else than those reports show, he ought to have brought us a complete transcript. It is not for us to go and hunt them up.

The Master: No. I think you misunderstand the situation, Mr. Harrison. Mr. Hillman brings here these trial balances and he states what they are, and I examined him on the trial balances, and when I got to examine on the trial balances I found this item that is carried along three or four years, at exactly the same sum, and my examination was directed to the question as to whether or not on a liquidation of this company

that sum could properly be realized from the assets, and in connection with that I asked Mr. Hillman to look over for me the books of this company and its reports and anything that he could find that would tend to show to me anything that in his judgment would help me in determining whether that was the total cost of the road after a period of some thirty years, and if that is all there was to it, the weight that I would give to it, and it is in response to that suggestion and request of mine that Mr. Hillman brings this data. Mr. Hillman did not produce it and the other side did not produce it. He has brought it here at my request because I wanted to see if the books showed anything that would give me any light on the proposition as to whether that big item was simply aggregate cost without any cost for depreciation and simply showed whatever they paid out during thirty years, so that I could tell whether or not in my judgment the road that during a period of thirty years had cost say a sum of money would now sell for that same sum. It is in response to that that he has done this work. Of course if it does not appear to you that he has gone into it thoroughly enough, have Mr. Potter do it and bring in anything that will tend to give me any light at all on this proposition.

Mr. Harrison: I do. My point is that it does not shed any light on the subject.

The Master: Then if it does not, it does not amount to anything.

Mr. Harrison: You have just stated that you had requested him to furnish you additional information bearing on this balance sheet that would show what was included in cost of construction, etc., or whether something else included cost of construction. Take this statement he has made, let me read it—

The Master: Can't we save time in this way. Suppose you look it over and I will look it over, and if it does not throw any light on the subject it won't amount to anything.

Mr. Harrison: I think it would be an absolute waste of time to cross-examine about this thing.

The Master: I have not read it. Of course if you want to pursue that course I will have him examined in detail about it, and you can go on with the cross-examination now. But

my suggestion is that we let him put this statement in here—I suppose he has done the best he could—

Mr. Harrison: No, I do not think he has. I think he should have brought us the reports from which these extracts are made.

The Master: Then have the reports examined.

Mr. Harrison: I do not think it is up to us to examine them. It seems to me that if he has found something in the reports that he says is favorable to his construction, that it would be proper for him to bring the whole report here and not merely his excerpts.

The Master: Where is the report?

The Witness: The report, sir, is in room 1401, First National Bank building, treasurer's office of the Richmond, Fredericksburg & Potomac road.

The Master: Where is that, in Richmond?

The Witness: Yes. They will not allow them to go out of their possession.

The Master: They will open them to inspection of Mr. Potter?

The Witness: Yes, undoubtedly.

Mr. Harrison: I do not think the duty ought to be imposed upon us to send somebody there to go over those reports and see what else they contain, but my point is if there is anything contained in those reports that would help to elucidate the balance sheet of this road, the reports themselves ought to have been brought and not ex-parte extracts from them.

The Master: He was not requested by me to bring the reports, and he is not subject to criticism for not bringing them.

Mr. Harrison: Can it not be done now?

The Master: If they do not want to let those reports go out of their possession, it cannot be done.

Mr. Harrison: He can make copies.

The Master: I do not think that is required. I think Mr. Potter or you should go there and check them up.

Mr. Harrison: There is nothing to check up.

The Master: Of course if you do not care to do it you need not do it. There cannot be any confusion about this. Mr. Hillman has done just exactly what I asked him to do. He

has found these things, I do not know whether any of them gives me any light at all, I have not stopped to read them, and I assume that Mr. Hillman has dug up everything that he thinks in any way could have anything to do with what I asked him about. Did you?

The Witness: Yes.

The Master: They won't allow the books to come here I suppose, and the only thing you can do, Mr. Harrison, is to go and look at them, and if there is anything that you want in that is not in, why, have it in. It is just as if I had sent some independent accountant there to ascertain these facts. I do not think that the schedule or the trial balance put in here, from my point of view, was a sufficiently exhaustive investigation. Neither side undertook to go any further. Now, I have gone further on my own motion. Inasmuch as he was the only witness who had been here, he undertook to get this for my information. If they would allow these books to come here they could be brought.

By the Master:

Q. Did you make any application to bring them here?

A. Yes, sir, they will not be allowed to leave the secretary's office unless they are brought here by legal process.

The Master: I do not suppose you would want to subpoena them?

Mr. Harrison: No, sir.

The Master: Your suggestion may be absolutely well founded, that they may not be anything here that will be of any use to me; I have not read a word of it yet. I suggest that we put this on the record, and I will read it and you read it, and if you think there is anything in it that needs examination or that ought to be checked up, of course I would like to have you people check it up. If there is not, it simply goes for nothing. The situation here is that Mr. Hillman has done the best he could to follow my instructions, as I understand it. Is not that it?

The Witness: That is right, yes, sir.

The Master: Now, whether I have got anything by making

that effort, of course I do not know. I think we will let this go on and say that the cross-examination as to the memorandum furnished by Mr. Hillman is for the time being suspended, until, if the parties desire, an opportunity may be given to investigate the original sources, and until I may make any examination I want to make. And after you look it over carefully, if you are satisfied it does not shed any light, you may say nothing further about it. Do I make myself clear, Mr. Harrison?

Mr. Harrison: Yes, sir.

The Master: Didn't I make an inquiry at one time about the large items in the James River and Kanawha Canal Company matter involving franchise?

Mr. Hogg: Yes, sir.

The Master: And dock facilities? Have you prepared anything on that?

Mr. Holt: We have nothing, your honor, except what Mr. Anderson said yesterday about the docks.

The Master: That is, there is nothing else that can be developed.

Mr. Holt: It seems that those books are practically destroyed. Some of them are in existence, but it is just a piecemeal business, as I am informed. Do you gentlemen expect to put into the record the market quotations on James River and Kanawha stock?

Mr. Harrison: I think so. I think that is included in our list. We have some market quotations on that.

Mr. Holt: There was one other matter here—

The Master: Before we leave this, Judge, let me see if I fully understand it. Where is the James River and Kanawha exhibit, what page?

Mr. Holt: Mr. Hillman, if you have it, give it to the master.

Mr. Lilly: It is next to the last, about page 60, as well as I remember it.

Mr. Hogg: Have those schedules been printed yet?

The Master: Yes.

Mr. Lilly: I find it is page 38, your honor.

The Master: What I wanted was this, and if further investigation develops that nothing can be ascertained on that

line I will have that appear right now. Here is this item of franchises and right of way, $5,588,609.76. I wanted the information, if it was in existence, that would show to me how much of that item was allocated to right of way and how much of it was called franchise. And then in addition to that I wanted the information, if it was obtainable, that would tell me whether that franchise represented an actual expenditure by Virginia or by the Canal Company, or whether it was simply an item of franchise that they were undertaking to value as being something they had received from the State, consisting of the right to construct and build this canal, and they were using it as a basis for capitalization, and with reference to which no actual expenditure had been made. Now, if there is anything in existence that will give me any light on that I would like to have it. But if investigations have been made since I made the inquiry, and the developments are negative, why that simply leaves it just as I find it. You all appreciate the significance of the inquiry, but that is what I want to know. It really comes down to this, whether they were capitalizing the franchises at an arbitrary price put on it by themselves, or whether they were capitalizing it on the actual cash that had been paid out by somebody at some time.

Mr. Anderson: As I understand, the franchise was an intangible right.

The Master: There is nothing to show me that.

Mr. Anderson: The charter is in.

The Master: Even the charter does not show me. Of course I know that this Canal Company cannot exist and operate this canal without a franchise from the State. I suppose under this franchise they have a right to exercise eminent domain. In the first place they have the franchise of being a corporation, and in the second place they have a public franchise which they exercise in the construction of this public utility, which involves the responsibility of a common carrier, and invests them with the right of eminent domain. What I want to find out is when they put in this balance sheet, whether it is simply their valuation of that public franchise, for which they have not paid a copper, possibly, unless they paid something to the

state, and that therefore it is an arbitrary sum, or whether that represents the actual expenditure of cash.

Mr. Anderson: I do not think they ever expended a dollar of money. We cannot prove that.

The Master: Of course if the books of the company are accessible, there is not any question but that the proper accountant can demonstrate to me what the fact is in regard to that item. Well, now, if they are not in existence, and if there is no evidence accessible we will simply have to take it as it stands. As it stands it does not show anything one way or the other.

Mr. Anderson: I do not know what the books of the company would show about it at all.

The Master: Of course I make myself clear to counsel on both sides on that item?

Mr. Anderson: Virginia never charged anything for the charter except the charter fee.

The Master: Of course it may be that this whole sum of money was paid out for right of way, and that they simply put in franchises as a description of that phase of their assets. Of course I cannot tell. The point with me is that if there is anything in existence that will render this factor certain I would like to have it.

Mr. Holt: So far as I am able to discover, your honor, there is nothing extant that would throw any light on your inquiry outside of the deed itself. The deed goes into very considerable detail, and you may find it helpful.

The Master: Very well.

Mr. Holt: But beyond that I do not belive there is anything.

The Master: Then that exhausts the whole inquiry. Of course that is simply one of the unfortunate conditions we are up against on account of the expiration of this long period of time. I want the record to show right here that every effort has been made to make that factor certain, and the only thing that either side can get is what may be contained in this deed.

Mr. Lilly: There is something here that might throw some light on it.

The Master: Suppose you look that up, Mr. Attorney-General, during the noon recess.

Mr. Lilly: All right, your honor.

The Master: Have you any other witness?

Mr. Holt: We may straighten it out without calling him. Some question was made the other day about the fact that one of Mr. Hillman's schedules was based upon an examination made by an assistant, of records at Washington and not upon the personal examination made by himself. We have Mr. Bray here this morning who made that examination, and I presume we would be permitted to conclude that his examination was accurate and correct unless the gentlemen want to examine him upon the subject.

The Master: Then the record shows that West Virginia has offered Mr. Bray as a witness for the purpose of establishing the verity of the computations that were made by him and subsequently adopted by Mr. Hillman; and that unless desired by the counsel on the other side they wont' take up the time to formally establish those facts. But they are ready to produce him and subject him to cross-examination.

Mr. Harrison: I understand that Mr. Bray would testify that these were true copies?

Mr. Holt: Yes.

Mr. Anderson: Of what is shown by the books referred to.

The Master: Judge Holt stating that it was his work that was used by Mr. Hillman, and that it was accurately and correctly done. Do you want to cross-examine him?

Mr. Harrison: We say if the witness will testify, as we understand that he will do, that he investigated the reports in Washington and that the copies that he made are true transcripts of the copies that he examined, that may go.

The Master: Relying on the accuracy of Judge Holt's statements with reference to this witness, the counsel for Virginia do not require him to be produced and examined.

Mr. Holt: I have the man coming right here.

Mr. Harrison: No necessity for that.

The Master: It developed in the course of the hearing that some of the original investigation as to another schedule or schedules was made by Mr. Leitch, an assistant of Mr. Hillman, and that Mr. Hillman has utilized the information thus collected by Mr. Leitch. Mr. Holt states that Mr. Leitch accurately transcribed the work that he did, and from which Mr. Hillman testified, and they are ready to produce him this morning as a witness in chief for that purpose and subject him to cross-examination, unless it is satisfactory to Virginia to concede that he would so testify. I state it right, do I?

Mr. Holt: Yes, that is right, except that I want to be absolutely truthful about it. I really have not discussed that with Mr. Leitch. He is right here, and it may be that under the circumstances we had better ask him.

Mr. Harrison: It is a mere question of accuracy of his reports.

The Master: I believe they are correct.

Mr. Harrison: It is simply as to the accuracy of the transcripts of the reports he has made in Washington.

The Master: Under these circumstances, counsel for Virginia do not consider it necessary to require the production of Mr. Leitch, and concede that the information thus acted upon by Mr. Hillman was accurate.

Mr. Harrison: Was accurate in the sense that it was a correct transcript of what he found in Washington.

Mr. Hogg: What he found in the treasurer's office of the Richmond, Fredericksburg & Potomac railroad at Richmond.

The Master: Accurately transcribed from the books of the company in the treasurer's office at Richmond.

Mr. Holt: I have just asked the Washington man, and he says they are all O. K.

The Master: I want to call attention to the fact that I have taken the precaution to write to the Supreme Court of the United States for the purpose of ascertaining what the facts were in relation to existing duplicate copies of the original record, and I get this letter from the clerk and I read it here so that we can all have the information and govern ourselves accordingly: "Replying to your letter of the 8th instant in

reference to the case of *Virginia* v. *West Virginia*, No. 2, Original, October term, 1914, I beg to say that I think there will be no difficulty in supplying the court with the record heretofore made in this case." I intimated that I thought there might be trouble. It turns out that there will not be. I thought that this ought to be stated so that you will be able to make some arrangement in connection with the details on that hypothesis. I thought I had better get the information right from the original source, and then we would know what we are talking about.

Mr. Holt: We desire to read into the record at this point and in connection with an Act of the General Assembly of Virginia, approved February 20th, 1892, Acts of the General Assembly of 1891-92, page 533, the report of the commission appointed at the session 1889-90 to receive proposals for settling the existing unsettled obligations of the State, submitted January 14, 1892, and extending from page 17 to page 36 inclusive, of a pamphlet entitled "Special Message of the Governor of Virginia transmitting report of the commission appointed on the public debt, Richmond, 1892."

(The act of February 20, 1892, has already been printed in this record, beginning on page 695.)

GOVERNOR P. W. M'KINNEY'S SPECIAL MESSAGE.

At a session of the General Assembly of Virginia held in 1892 in the city of Richmond, Governor P. W. McKinney sent the following special message to the said Assembly in reference to the Virginia debt, which said message is reprinted in the Journal of the House of Delegates of Virginia, session 1892.

"In my regular message I made no mention of the settlement of the public debt agreed upon by your commission with the committee representing the bondholders on the 19th of November, 1891. At the time the Legislature assembled, the bondholders had not held their meeting to consider the settlement which had been made with the Virginia commission, and what their action would be was a matter of conjecture. The newspapers asserted that there was serious opposition to the settlement, and that some of the bondholders would endeavor to withdraw their bonds from the possession of the committee and oppose the proposed ratification; and it was reported also, as showing their hostility, that remarks were made by some of the bondholders, more harsh than polite, against the State of Virginia, when the head and front of her offending was that her

commission had accepted the proposition of settlement, made by agents of their own selection, not a member of whom was chosen by any suggestion of hers, and were strangers to her and her people. I, therefore, thought it best to reserve for the time being what I had to say on the subject, as well as the report of your commission, until something more definite was received. On the 7th day of January, 1892, I was officially informed that the plan of settlement agreed upon on the 19th of November, 1891, had been approved by the advisory board for the creditors, by the London advisers, and by the bondholders, and I now make haste to submit for your consideration this special message, with the accompanying documents, which contain all the correspondence and the various propositions for settlement, resulting, finally, in the agreement herewith submitted for your ratification.

THE PUBLIC DEBT.

Since Virginia resumed her position in the Union there has been no question of such grave importance to her people as the just and honorable settlement of her public debt. She has never been forgetful of her former credit, and it has always been the desire of a majority of her citizens to settle upon a fair and honorable basis, all just liabilities held against her, and liquidate the same as speedily as possible, having a proper regard to the ability of her people to pay such reasonable taxes as are necessary for the purpose.

As evidence of these facts, we give a brief summary of her legislation on the subject.

THE FUNDING BILL.

On the 30th of March, 1871, the first session of the General Assembly, after reconstruction, an act was passed to provide for funding and paying the public debt. This unfortunate and remarkable bill was rushed through the Legislature without that consideration which its peculiar provisions and its great importance demanded. It was the origin and the cause of all our subsequent unfortunate legislation on the subject of the public debt. It assumed on the part of the State the payment of $31,393,910.96 of principal, which required annually, the sum of $1,865,450.90 for interest —an amount of principal and a rate of interest which her resources were inadequate to meet, without imposing such enormous taxation that the people in their impoverished condition were unable to bear. It was unjust and inequitable, because it assumed the payment of the whole debt, with accumulated interest during the war, and the years of reconstruction, compounded, less one-third for West Virginia's portion, "she having agreed at the organization of her State government to assume and pay an equitable proportion of the debt of the Commonwealth of Virginia." This settlement did not receive the approval of the people.

THE McCULLOCH BILL.

On the 28th of March, 1879, another act was passed, popularly known as the McCulloch bill, its professed object being to provide a new plan for the settlement of the public debt, by which "the credit of the State might be restored, and the aggregate amount of interest payable reduced within limits which would not be too burdensome to the population." New bonds were proposed, payable in forty years, bearing interest at the rate of three per cent for ten years, four per cent for twenty years, and five per cent for ten years, until the principal was redeemed. The coupons attached to said bonds "were to be receivable for all taxes, debts and demands due the State, and this was to be expressed on their face."

This new proposition was not more favorable to the State than that of 1871, save in the rate of interest. The new bond had the objectionable tax-receivable coupon feature. Under this bill the average annual amount of interest to be paid was $1,249,083.45. Like the other funding bill, it was not approved by the people. It soon became evident that so large a portion of the taxes would be paid in coupons, and not in money; that the government could not be maintained unless there was such an increase in the rate of taxation that the people could not pay it. Several efforts were made to induce the bondholders to retire their tax-receivable coupons and consent to a settlement which would bring the annual amount of interest within the resources of the State, all of which proved abortive.

THE RIDDLEBERGER BILL.

Still desirous of satisfying the creditors, if it could be done without imposing an insufferable burden upon the taxpayers, on the 14th of February, 1882, the Legislature passed what is known as the Riddleberger bill. It restated the public debt, eliminating such items as had been improperly admitted, thereby largely decreasing the principal claimed to be due, and new bonds were ordered to be issued, payable in fifty years, at three per cent interest for the amount of our indebtedness, thus equitably ascertained with non-tax paying coupons attached. This act was approved by the people, but not by the bondholders, after its merits had been elaborately discussed. Those who held the tax-paying coupons of the issues of 1871 and 1879, finding that there would not be sufficient revenue to support the government and pay the interest on the debt, made strenuous efforts to force coupons into the treasury of the State in payment of taxes.

THE SITUATION.

Though the Riddleberger bill was passed ten years ago, the debt is still unsettled, and a disagreeable litigation, distressing to the State and unprofitable to the creditors, has been going on, increasing in bitterness and extent each year. It has sorely vexed our people and consumed our revenues; and the State, like a culprit, has been dragged before the courts

of the Commonwealth and the inferior and supreme courts of the United States. She has been subjected to more harsh criticism in the last ten years than in all the past of her history. Her laws have been made the theme of harsh animadversion; her motives impugned; her integrity questioned; her public officers seized and imprisoned for obeying her statutes. Her credit, which had been equal to that of any State in the Union, has been destroyed by a combination of unfortunate circumstances, against which she has contended with a heroic fortitude which has commanded the admiration of the world, and a self-sacrificing devotion to which history has no parallel. Finally, overwhelmed by numbers and resources, her territory dismembered, her towns and cities burned, her homes in ruins, her fields devastated, her sons slain, her property confiscated, her currency worthless, her young men fled from this picture of poverty and desolation and sought employment and homes elsewhere, leaving the state less able to pay the smallest sum ever mentioned as a settlement of her indebtedness than she was to pay the whole debt at the time it was contracted.

In consequence of the harsh action of the creditors, her progress in wealth and population has been impeded; enterprise has been driven away; capital has been afraid to invest—timid always and easily induced to believe that a State that does not pay its own obligations cannot be relied on to enforce the obligations held against her people, and that if she makes laws to protect herself against her creditors she will make them also to protect her people for their creditors. This being the situation, every business has felt its baneful influence, and all the people have suffered for it, and her credit, which today should be as stainless as her honor, has been destroyed by a cruel fate which every loyal son has struggled, but struggled in vain, to avert.

A COMMISSION APPOINTED.

This being her unfortunate situation, on the 5th day of March, 1890, the General Assembly, by a joint resolution, selected a commission, in part from the Senate and in part from the House of Delegates, together with the Lieutenant Governor and the Governor of the State, to receive proposals for funding the debt. The commission was authorized to agree upon the terms of a contract with parties proposing to fund, upon the principles set forth in the act of February 14, 1882, which is the Riddleberger bill, subject to ratification by the General Assembly.

On the 2d of May last I received a letter dated New York, April 28, 1891, and addressed to me in my official capacity, by which I was informed that the bondholders' committee was prepared to submit a proposition for the settlement of the State debt of Virginia, and asking me to name "a very early day," when some of their members might meet us and confer on the subject, etc. After some correspondence, I fixed on Tuesday, the 2d of June, for the proposed meeting, and invited the committee of bondholders, composed of F. P. Olcott, chairman; Hugh R. Garden, William L. Bull, Charles D. Dickey, Jr., Henry Budge and John Gill, to meet the

Virginia commission at my office in Richmond, for the purpose referred to in their letter.

The propositions of the bondholders' committee were carefully considered and declined by your commission on the 3d of June—all of which will appear from the report accompanying this message.

THE SECOND CONFERENCE.

In September I received another communication, dated the 11th of August, from the bondholders' committee, making another proposition for the settlement of the debt. I declined at that time to call the committee together, because it was during the political canvass, and I did not deem it prudent to have a conference until the election was over.

By letter, dated the 28th day of October, 1891, the bondholders' committee again requested that the Virginia commission be convened "at as early a day as practicable," not later than the 15th day of November. In compliance with this request, I convened the commission on the 17th of November, the 15th being Sunday. After many conferences and much discussion, on the 19th of November your commission and the committee of the bondholders agreed upon the terms of settlement, which were unanimously approved by the commisson and the committee, as just and honorable to the creditors and the debtor.

OUR AGREEMENT.

The agreement is as follows: "We will recommend a proposition to issue a maximum amount of $19,000,000 of bonds to be exchanged for the outstanding obligations of the State mentioned in the Riddleberger act (other than those held by schools and colleges) now in the hands of the public, but not including bonds already funded under that act, such new bonds to run for one hundred years, and to bear two per cent interest for ten years, and three per cent interest for ninety years. The bonds and interest obligations shall be of the same general character as those provided by the Riddleberger bill; and it is distinctly understood that the coupons or other interest obligations are not to be receivable for taxes. The proposed new bonds shall be exchangeable for the outstanding obligations aforesaid in the proportion of nineteen of the former for twenty-eight of the latter. This recommendation is, of course, to be made conditional on the understanding that your committee hold and has the authority to exchange the obligations mentioned in your previous communication to us, amounting to at least $23,000,000." Which agreement was signed by the entire commission as follows: P. W. McKinney, R. H. Cardwell, H. T. Wickham, J. Hoge Tyler, Taylor Berry, W. D. Dabney and Robert H. Tyler; and attested by its secretary, P. C. Warwick, and transmitted to the bondholders' committee.

On November 19, 1891, we received a reply from the committee of bondholders, in which they say: "That the proposition submitted by us, as

amended by you, will go to our constituents with our cheerful recommendation," etc.

THE SETTLEMENT EARNESTLY ENDORSED.

It would transcend the limits of this message for me to give in detail the work of your commission, or elaborately discuss the various phases of the public debt, for which I refer you to the report of the commission; but I cannot submit a question of so much importance to you without declaring that I have given it my best consideration, and earnestly commend it to you as the most favorable proposition for the settlement which has been presented to the Legislature for its approval and ratification. I give below a brief statement of each of the propositions for the settlement which have been approved by the Legislature, and you can readily decide upon the comparative merits of the four propositions.

FIRST FUNDING BILL.

Bonds issued under act of March 30, 1871, to run thirty-four years from July 1, 1871, due July 1, 1905, redeemable at the pleasure of the State after ten years. Rate of interest six per cent per annum, tax-receivable coupon.

Total principle on 1st July, 1871 (if all indebtedness had been funded). $31,393,910.96. requiring annual interest in tax-receivable coupons of $1,865,450.90.

SECOND FUNDING BILL.
(McCULLOCH BILL.)

Bonds issued under Act March 28, 1879, to run forty years from January 1, 1879, due January 1, 1819, redeemable after the expiration of ten years from 1st January, 1879. Rate of interest three per cent for ten years, four per cent for twenty years, and five per cent for ten years. Tax-receivable coupons.

Total principal on 1st January, 1879 (if all the indebtedness had been funded), $31,227,083.64, requiring annual interest in tax-receivable coupons, averaging $1,249,083.35.

THIRD FUNDING BILL (RIDDLEBERGER BILL.)

Bonds issued under act February 14, 1882, to run fifty years from July 1, 1882. Due July 1, 1932. Option of payment after July 1, 1900; rate of interest three per cent per annum; no tax-receivable coupons. Total principal on July 1, 1882 (if all indebtedness had been funded except bonds held by colleges), $21,796,304.30. This is the amount which is claimed to be due by a calculation which is in the preamble of the Riddleberger bill, requiring annual interest on tax-receivable coupons, $653,888.83.

FOURTH—THE OLCOTT SETTLEMENT.

By the settlement, unanimously agreed upon by the commission appointed under joint resolution of March 7, 1890, with the Olcott committee of New York, the bonds are to run one hundred years from July 1, 1891. Due July 1, 1991. Interest two per cent for ten years, and three per cent for ninety years; non-tax-receivable coupons. Principal on 1st July, 1891, of new bonds (if all indebtedness be exchanged), $19,000,000. Principal on 1st July, 1891, of three per cent bonds now in the hands of the public and literary fund, $6,081,242.50. Total principal outstanding 1st July, 1891, $25,081,242.50 (exclusive of bonds held by colleges).

The total annual interest due by the State under the settlement with the "Olcott committee," including interest on Riddleberger three per cent bonds held by the literary fund and in the hands of the public on October 1, 1891, $562,437.27—an annual saving of interest for ten years to the State, over a settlement under the Riddleberger bill, of $91,451.56, which aggregates $914,515.60.

The auditor reports as applicable for the payment of interest on the public debt, from the revenues of the State (including taxes on railroad property), about $490,307.29.

The second auditor reports annual dividends on the stock, etc., of the Richmond, Fredericksburg and Potomac Railroad Company, $32,748.

Amount of revenue available for payment of interest on the "public debt," $523,053.29; amount annually required to pay interest on the public debt, $562,437.27; amount to be provided for, about $39,383.98, if all the bonds are exchanged at once, which is scarcely probable.

THE PROPOSED SETTLEMENT.

By an examination of the joint resolution you will observe we were restricted to an agreement based upon the principles of the Riddleberger bill. We do not believe that we have materially transcended our powers. In ascertaining the amount due to the creditors, we have adopted the basis of settlement used in the Riddleberger bill. Ten years having elapsed since its passage, there has been a considerable increase in the debt by way of interest.

We agreed that $19,000,000 should be the maximum amount of new bonds to be issued in exchange for the outstanding obligations of the State, now in the hands of the public, but not including bonds already funded under the act of February 14, 1882. There were on October 1, 1881, $6,081,242.50, of these bonds in the hands of the public and the literary fund, which with the proposed new issue, will make the sum of $25,081,-242.50. On this amount we will be compelled to provide annually for the accruing interest. This appears to be an increase in principal over the settlement of 1882. The consideration of how this principal is to be met is postponed for a hundred years. We do not think it worth while to concern ourselves about the financial condition of Virginia a hundred

years from now. We have interposed four generations between us and the payment of this principal. It is sufficient to affirm that unless all of our calculations prove delusive, based as they are on the constant increase of taxable values in the past ten years, the State will be much better able to take care of the principal of the debt than we are to provide for the interest now.

We adopted the form of the Riddleberger bill, as far as it is cable to this contract, with its non-tax-paying coupons. This is a matter of much moment. It relieves us of this device which enabled the coupon holder to intercept the taxes due by the citizen before they reached the treasury of the State. To prevent this, has been a fruitful source of controversy, and the suits arising from this subject have been the cause of forcing the State as a litigant in the State and federal courts. The tax-paying coupon is an imputation upon the good faith of the Commonwealth and a reflection upon her financial integrity, by giving a lien upon her revenues, which is unusual, unnecessary and humiliating. Our people would never ratify a settlement which embraces a bond with this feature attached, however favorable it might be in other respects.

We are to pay two per cent interest for ten years, and after that three per cent for ninety years. Our greatest difficulty will be for the first ten years. Our settlement we are assured will be the cause of bringing population and capital into this State. Each emigrant will help us to bear the burden of taxation, and every dollar's worth of property introduced will contribute its due proportion to our revenues.

WILL WE BE ABLE TO MEET THE INTEREST WITHOUT INCREASING THE RATE OF TAXATION?

I have no doubt of it. See the facts. The report of our auditor shows that in 1880 the amount of property assessed for taxes was $304,663,969; in 1885 it was $347,840, 967; in 1890 it was $380,531,815.

In 1880 the taxable value of our railroads was.....$ 9,876,306 00
In 1885 the taxable value of our railroads was..... 35,955,924 00
In 1890 the taxable value of our railroads was..... 42,500,845 00

With this rate of increase, there is scarcely room for doubt that at our present rate of taxation we will be able to support the government, take care of our charitable institutions and schools and colleges, and our old soldiers, without embarrassment to our finances at present. There will be new sources of revenue; the amount depending upon the prosperity and development of the State, which gives every reasonable assurance that we are not too sanguine in our calculations, and satisfies me of our ability, at the end of ten years, to meet the three per cent rate of interest, and at the end of one hundred years to provide for the principal.

REDUCTION OF EXPENSES.

Upon an examination of my regular message, you will see I have pointed out the way by which our expenses may be reduced thousands

of dollars every year. If you will heed my advice, and enforce my suggestions by proper legislation, enough may be saved to meet any increase necessary for the payment of the annual interest upon the public debt. If in these suggestions we are in error, it is a fact about which there is no speculation, that we have money enough now in the treasury to meet any ordinary deficit, if not wasted by injudicious expenditures.

THE OLCOTT SETTLEMENT BETTER FOR THE STATE THAN THE RIDDLEBERGER.

Had all the outstanding debt been funded in Riddleberger bonds in 1882, the time of its passage, except the bonds held by schools and colleges, we would have had to pay annually, $653,888.83, which up to this time would be $5,884,999.47. This would have taken all of our available revenues, and without increasing the taxes, it would have been impossible to have met our necessary expenses. The State has saved in consequence of the bondholders failing to fund under the Riddleberger bill, in interest, $4,594,850.91. This has enabled her to spend $1,885,085.53 in the purchase of $2,357,576.60 of her own bonds, and thereby reducing her debt to that extent. She has also paid one million dollars arrearages due public schools, and $379,000 of interest due the literary fund; $600,000 to her disabled soldiers, and she has spent over a million dollars in enlarging improving, and in the support of her eleemosynary institutions. This indispensable work could not have been done with our present rate of taxation, had the whole debt been funded in 1882. Money which would have been paid to satisfy the interest (the creditors refusing to fund), we have used in part for the purposes above indicated, and have compromised the amount by adding to the principal due in 1882, to be paid a hundred years hence. Now our taxable values have increased to such an extent that we can meet all necessary demands for our revenues. If the government be "economically administered," there is no need for a higher rate of taxation. By the two per cent interest for ten years we will save $91,451.56 each year. With this sum judicially invested, we may be able to so reduce the principal of our debt that when we are compelled to pay the three per cent rate of interest, the annual amount due will be within our present revenues, even though there should be no increase in our taxable values, which is scarcely possible.

When we consider the time of this settlement, and the terms of it, there can be no doubt that it is the most favorable proposition we have ever received. Let us then not be in default, but do everything which is required of us to make good the agreement on our part, by an acceptance of the Olcott settlement, and provide for the liquidation of the amount assumed.

By this settlement we will have accomplished much for Virginia beyond what the figures disclose We have eliminated the public debt from the politics of the State, where it has been a harassing question for many years, dividind the people and embittering party feeling. Besides, it will

restore confidence in us, and strengthen our credit, because the business and commercial world will see that in good faith we have done all we could do, and all that we were asked to do, to satisfy our creditors. They have selected their own agents, strangers to us, watchful of their rights and zealously guarding their interests, and after much deliberation and a thorough examination of this delicate and perplexing question, have prepared and proposed a plan for the equitable adjustment of the debt, which has been accepted by your commission on the part of Virginia, "the bondholders' committee cheerfully recommending it (the settlement) to their constituents." It was submitted to their advisory board, men of their choice—such men as Cleveland, Bayard and others of national reputation—their friends, not ours. They approved and recommended the plan of settlement of the "Virginia debt," after having carefully considered the question in all of its complications.

If, then, they have sent to us their agents with their proposition, and we have accepted it, and are prepared to comply with the terms of the settlement on our part, the odium of repudiation does not rest on us, and when charged against Virginia is false and slanderous.

The acceptance on the part of the State of their own proposition, so modified that we will be able to meet the accruing interest without increasing our rate of taxation, will unite all classes of our people, and every man who loves his State and will vindicate her honor, will come now to her assistance and the coupon vendor will find no sale for his depreciated currency among our patroitic taxpayers, and the coupon will become as worthless as the shinplaster of a past generation.

But should I be mistaken in this, and there can yet be found taxpayers who are willing to claim protection of Virginia's laws, and will still endeavor to make her crouch at the feet of these few merciless bondholders, in that event legal remedies (yet untried) will be used against all such persons, which will protect our treasury from an influx of the coupons from the bonds held by those who are unwilling to accept the terms of the settlement which Virginia now offers.

NO INCREASE OF TAXATION.

I will say to the bondholders, who are still hoping for better terms, and will not fund under the proposed law, that this is impossible without increasing the taxes. The people will not, and cannot, submit to an increase of taxation—so say they all. They have said so in the Legislature; they have said this in their conventions, and at all times and everywhere. Our people are united on this subject, without distinction of party. And they declare further that their children shall be educated; that the light of our higher schools and colleges shall not be extinguished. We intend also that our unfortunte insane shall be cared for; our old soldiers and their widows shall not be neglected. These determi-

nations are fixed in the hearts of the people of Virginia, and they will not abandon them. These we consider are our highest obligations, and to them we will be faithful, though a cruel necessity may compel us to be delinquent to others. These declarations are not intended as threats, but are a frank expression of the opinions of the people.

Let us be prepared to carry out, in good faith, the agreement which your commission has made with the agents of the bondholders, and in due time all will be well.

For these reasons, I advise that you pass a resolution ratifying and confirming the agreement entered into by your commission with the Olcott committee for the settlement of the debt of Virginia, and that the agreement be referred to an appropriate committee to prepare a bill to carry it into effect."

Mr. Holt:

I want to ask one gentleman a question, your honor, and I think we will be done when we have that one piece of oral testimony.

The Master: I will take a recess then until 11:30.

WILLIAM D. ORD,

called as a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Holt:

Q. Give the stenographer your full name.

A. William D.Ord.

Q. Where do you reside, Mr. Ord?

A. Landgraff, West Virginia.

Q. What is your business or occupation?

A. Coal operator.

Q. Are you a member of what is called the West Virginia Debt Commission?

A. I am.

Q. Do you recall when you were appointed by the governor of that State?

A. About the month of April, 1913.

Q. Did that commission organize after that time?

A. It did.

Q. Were you present at the organization?

A. I was not. It is the only meeting of the commission I have not been present at.

Q. You may state whether or not you or that commission had any knowledge of the value or the disposition by Virginia of the securities mentioned in the supplemental answer of the defendant?

A. At that time?

Q. At that time.

A. I did not, and so far as developed in the discussions by the commission no member of the commission did have. The first thing that attracted the attention of the commission were the words in Justice Holmes' opinion of March 6th, 1911, "As it does not appear that there are any stocks of value on hand."

Q. Did you make that the basis of your investigation?

A. That suggested an investigation, yes, sir.

Q. How was that investigation made by your commission?

A. The commission appointed a sub-committee for the purpose of investigating that point.

Q. Who was chairman of the subcommittee?

A. I was the chairman of the subcommittee.

Q. What did you do then, please, upon the subject suggested by this remark in the opinion?

A. We secured accountants from the tax commissioner's office of the State of West Virginia, and sent them here to make such investigation as the limited time would permit. We

were being hurried by motions to speed the cause in the Supreme Court, and only got time for more or less hurried examination.

Q. Where did the data come from upon which the supplemental answer was based?

A. It came from these accountants to the subcommittee, and through the subcommittee to the whole committee.

Q. You may state whether or not you discussed about that time, or at any time, with Governor Hatfield of West Virginia, or the Board of Public Works, or any of the State officials, the question of these values, and if you did whether or not they evinced any knowledge upon the subject prior to this investigation.

A. I had several discussions at that time with Governor Hatfield on the matter, one or two with the Board of Public Works.

By the Master:

Q. Was that the Board of Public Works of West Virginia?

A. Yes, sir, the Board of Public Works of West Virginia.

The Witness: And with various other State officials, and I do not remember any of them disclosing any knowledge of those things.

By Mr. Holt:

Q. After this investigation had been made by your subcommittee were any negotiations had with the Virginia Commission looking to a compromise and adjustment of this matter?

A. Yes, we had negotiations with Virginia, commencing in Washington on March 4th, 1914.

Q. You may state whether or not the West Virginia Commission made a proposition to the Virginia commission?

A. The West Virginia Commission did make a proposition to the Virginia Commission.

Q. Was that proposition in writing?

A. It was.

Q. Has a true copy thereof been exhibited with the supplemental answer?

A. It has, on page 47 of the printed supplemental answer, Exhibit A.

Q. Did the Virginia Commission make a response thereto?

A. It did.

Q. Was that response in writing?

A. Yes, sir, it is Exhibit B, on page 63 of the printed supplemental answer.

Q. Was any rejoinder thereto made by the West Virginia Commission?

A. There was. It is found on page 66, marked Exhibit C of the supplemental answer.

Q. That is of the printed supplemental answer?

A. Yes, sir.

Q. You may state whether or not this proposition was made wholly in an effort at compromise, or for any other purpose?

A. Solely as a compromise proposition.

Mr. Holt: The object was simply to prove these exhibits.

The Master: I understand that that was simply a negotiation, and was not therefore binding as a proposition.

Mr. Holt: Exactly.

The Master: It will be so treated.

Mr. Holt: Gentlemen, you may cross-examine.

Mr. Harrison: I do not think we need to cross-examine.

Mr. Holt: Now, your honor, I believe we have reached the point where we can rest, with the understanding, however, as suggested by the master heretofore, that if we have overlooked a schdule or a statute or a fact we may have an opportunity to introduce it.

The Master: With precisely the same effect as if it was introduced now.

Mr. Lilly: I might make one inquiry, and that is with reference to the exhibits that were offered several days since the reference to the settlement of the United States Government. There were two large exhibits showing that in detail, and there was something said with reference to a stipulation or agreement, and I do not know whether the exhibits were

really filed or just passed over for examination, and we would like to understand in that regard.

The Master: Does not your record disclose that?

Mr. Lilly: My memory is that they were not filed.

Mr. Hogg: I do not think the record shows that. My recollection is that they were offered and the master stated that they looked a little cumbersome and they should be stipulated in order to save space; but while they were not marked, yet the understanding as I recall it was that they were in unless stipulated out.

The Master: It may be so understood.

Mr. Holt: I suppose that will be satisfactory.

The Master: Yes.

Mr. Hogg: The record shows that.

The Master: With the exception of these schedules relating to dividends and interest on loans submitted by West Virginia showing those matters in detail, I understand those have not been checked up, and I do not know whether you care to check them up, but with the exception of those schedules I understand that no question is raised as to the accuracy of the schedules submitted by West Virginia covering the whole case in so far as they state facts from the records and in so far as they make computations. The conclusions that are sought to be drawn therefrom by West Virginia are not conceded by Virginia, but the accuracy of the figures themselves is conceded

Mr. Harrison: That is my recollection.

The Master: Unless something develops some error in that admission, that cleans up every schedule that West Virginia has thus far put in as a matter of statement of figures and as a matter of computation.

Mr. Holt: I think Mr. Potter concedes them all.

The Master: This takes care of it. As to these schedules in relation to the question of interest, whether you care to go over these or not I do not know, but you can advise me about that later.

Mr. Harrison: Yes, sir.

The Master: Are you ready to proceed, Mr. Harrison:

Mr. Harrison: Yes, sir. I think it has already been under-

stood, has it not, that any evidence or facts that either side may deem pertinent shall be admitted and considered by the master after this hearing has been closed and before the matter is finally submitted to the Master? Is not that the understanding? Did you not indicate yesterday that that would be true?

The Master: Yes. I will make this statement. I expect the parties on either side, so far as is possible, to close the hearing while we are going on now, and put in everything that is within their reach, so that the case in a sense may be considered as closed. Now, then, after that is done, if it develops that either side, when they come to prepare their argument in connection with this case finds that any fact that they deem to be material has been inadvertently omitted, I shall open the case at the time of the argument to give either side an opportunity to prove such fact; and at that time giving the other side, if necessary, time to answer such fact that may be proved by the other side. The purpose of this suggestion is that, while I want everything closed up now, I do not want the counsel to feel that they are absolutely foreclosed. And I want the Supreme Court to know from this record that no inadvertence that may be discovered before this case passes from my hands will fail to be corrected, with a full opportunity, by either party. So that when it finally reaches the Supreme Court they will know that each party has had every possible opportunity to establish their contentions and to prove every fact that they deem to be necessary. Do I cover the ground now?

Mr. Conrad: We know of nothing. But of course after a case is finished, sometimes something occurs to us.

The Master: I thought it wise to make this suggestion. Of course I know how counsel feel. Sometimes you feel a sense of annoyance about something that you have omitted. If that is the case, no harm will be done, because each of you will have an opportunity to put in anything that you may have omitted. Do I make that perfectly clear?

Mr. Lilly: Yes, your honor.

PLAINTIFF'S TESTIMONY

ARTHUR G. POTTER,

called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Harrison:

Q. Mr. Potter, please state your residence and occupation.

A. I live in New York City and I am a certified public accountant by profession.

Q. Mr. Potter, will you please state in a general way your experience as an accountant and the character of work which you have done as such.

A. I became a professional accountant in 1900 and have been following general practice ever since. That includes such matters as financial investigations, audits, advising systems for various lines of business, etc., the general practice in accountancy.

Q. Are you the accountant who had charge of the investigation made in this case which was embodied in the original record?

A. Yes, sir.

Q. Have you prepared a schedule, Mr. Potter, relating to the sinking fund, receipts and disbursements, under Class A?

A. Yes, sir.

Q. Please state what the exhibit shows and hand copies to counsel on the other side and one to the Master.

A. This exhibit is a summary of the transactions of the sinking fund from January 1st, 1861, to December 31st, 1871. It starts with a balance on hand as shown in the record in this case, and there is added thereto the receipts between January 1st, 1861, and June 20th, 1863. Then follow the receipts between June 20th, 1863, down to December 31st, 1871, arriving at a total. That covers receipts. As to the disbursements, they are shown first between January 1st, 1861, and June 20th, 1863, a balance struck, and then between June 20th, 1863, and December 31st, 1871.

By the Master:

Q. And your balance on hand agrees with the statement in the supplemental answer?

A. Both on January 1st, 1861, and June 20th, 1863.

By Mr. Harrison:

Q. And that balance is shown on your exhibit?

A. Yes, sir.

Q. The balance January 1st, 1861, was shown to be $819,250.03. That is correct, is it not?

A. Yes, sir.

Q. And the balance June 20th, 1863, was shown to be $143,195.90; that is correct, is it?

A. Yes, sir.

Q. And those two items correspond with the exhibit filed by the defendant in this case?

A. They do.

Q. You continue the statement to December 31st, 1871, do you not?

A. Yes, sir.

Q. Showing the total receipts to that date and total disbursements also?

A. Yes, sir.

Q. Please give the totals as of December 31st, 1871.

A. Total cash on hand December 31st, 1871?

Q. No, not that. I want you to state the total interest paid by Virginia from January 1st, 1861, to December 31st, 1871, on the public debt as it existed on the 1st day of January, 1861, as shown by the record.

A. $7,094,103.61.

Mr. Holt: Your honor, we do not care of course to interrupt the examination, but I suppose it is understood that any objection we may have to a portion of this schedule as being immaterial, I suppose that is understood.

The Master: That is reserved, yes.

Q. Now, you have just stated that the net interest paid by Virginia on January 1st, 1861, to December 31st, 1871, was $7,094,103.61. Was that the net interest paid by the Com

nonwealth of Virginia on the debt as it was ascertained by he original record to exist on the 1st day of January, 1861?

A. No, sir, it was the interest paid on the entire debt of he State of Virginia. There were some issues after January st, 1861. This is a transcript of the operations of the sinking und, taken from the sinking fund cash book.

Q. And it shows the payment on the entire debt prior to 861?

A. Yes, sir, and also what was issued after January 1st, 861, the items being inseparable without a great deal of labor, o determine what issues came out after January 1st, 1861.

Q. Now, state what your exhibit shows in respect to bonds issued after 1861, and for what purpose they were issued.

A. The third sheet in this exhibit is a copy of the second auditor's report of December 1st, 1861, table B, page 9, in which is stated the amount of bonds issued under the act of March 2nd, 1866, for interest which had not been paid in cash.

Q. In what amount?

A. $6,576,913.60.

Q. Now, your statement also shows an item of unfunded interest due the 1st of January, 1867, and fundable in bonds under the act approved March 20th, 1861, which you have added to the amount of the bonds, $582,761.79, does it not?

A. Yes, sir.

Q. Making the total amount of the bonds issued under the act of March 2nd, 1866, to pay interest, and the unfunded interest due January 1st, 1867, $7,159,675.39?

A. Yes, sir.

Q. Now, please give the amount of your totals shown on that third sheet of your exhibit, and what they represent.

A. The $7,094.103.61 is the total interest paid by the State on the unfunded debt and cash as shown on the first and second sheets of this exhibit.

Q. Between what dates?

A. Between January 1st, 1861, and December 31st, 1871. The item of $6,576,913.60 is the amount of the bonds issued under the authority of the act of March 2nd, 1866. It will be observed that I did not add to this the amount of the unfunded

interest fundable, which you have just spoken about; the total of these two items is $13,671,017.21, representing the interest paid by the State of Virginia on the unfunded debt in cash and in bonds. I might say as at the 1st of December, 1871, as that is the date of the second auditor's report.

Q. Your pages 1 and 2 of your exhibit show the interest paid in cash from January 1st, 1861, to December 31st, 1871, by the State of Virginia, on the undivided debt, does it not?

A. Yes, sir.

Q. It goes into these details there?

A. Yes, sir.

Q. And the third page shows the payments made by her in bonds in satisfaction of interest between those two dates?

A. Yes, sir.

Q. And the total cash payments and payments in bonds is also shown on the third sheet?

A. Yes, sir.

Q. I will ask you to have that exhibit marked Plaintiff's Exhibit No. 1.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 1, September 10th, 1914, C. B.

Mr. Harrison: Will it be proper to identify this in some way as on the rehearing, because in the original records there are original exhibits.

The Master: I think we can go right ahead with Plaintiff's Exhibit 1 in this record. If any reference is made to the other record we will call it the original record, and when we say the record, that means this hearing.

Mr. Hogg: That distinction is made already in the record.

The Master: Plaintiff's Exhibit No. 1 refers to this record. If you want to refer to exhibits in the other record refer to the exhibit by number in the original record. I think that explanation will be all right.

Mr. Harrison: Now, we shall want to file, we have not a copy of it this morning, an act of March 2nd, 1866, under which

bonds were issued for the purpose of paying interest as shown by the exhibit.

The Master: Then funish the stenographer with the volume and page, etc. and he can insert that in the record, and that is subject to the suggestion that the effect of it may be stipulated and make it unnecessary to publish the whole act.

Mr. Harrison: I think that will be sufficient. We do not want to publish the whole act.

By the Master:

Q. I understand you have no criticism of the following items found on Defendant's Exhibit 1, page 1 of Exhibits, balance State funds $23,985.18; Board of Public Works $5,958.28; Commonwealth fund $252,842.67, which with your balance of $819,250.03 results in an aggegate of $1,102,036.16, I understand you have no criticism of these items?

A. No, sir.

Mr. Harrison: Class B, the testimony which we want to introduce at this time by this witness under this class with relation to the Richmond, Fredericksburg & Potomac Railroad stock are the market quotations which have not yet come up to us, but we will introduce them later, and I simply mention it and pass on.

By Mr. Harrison:

A. Please insert in the record the market quotations that you have compiled relative to the Richmond, Fredericksburg & Potomac Railroad Company, and state the sources from which the quotations have been derived.

Mr. Holt: I would like to inquire at this point, your honor, how far Mr. Potter has covered those market quotations, how far down he came.

Mr. Robinson: I can say that the quotations in respect to the Richmond, Fredericksburg & Potomac as well as everything else that we could find, in some cases goes further than others, but the exhibit will be up here very shortly. It covers 1861 and 1863 in this case.

Mr. Holt: Does it come down to the present time?

Mr. Robinson: No.

Mr. Harrison: It relates to the two dates that are under inquiry, 1861 and June 20th, 1863.

Q. Under Class C, Mr. Potter, of the original answer, page 54, proceeds of sales of securities, etc., have you prepared an exhibit on that subject?

A. I have.

Q. Please state first what it shows?

Mr. Lilly: May I ask a question?

By Mr. Lilly:

Q. Have you submitted that or any other exhibits to West Virginia's counsel or accountant, Mr. Potter?

A. We did not have your final exhibit until about noon yesterday. We have had no opportunity to submit anything.

Mr. Lilly: I do not want to be captious or even tending towards biliousness, but we have consistently furnished the gentlemen on the other side with our records, our data, our schedules and everything else; and here we are confronted, after this case has been going on three weeks, with a great array of schedules, not one of which, or any part thereof, has ever been submitted to us. I do not think it is in keeping with our treatment towards them in that regard, or in keeping with the suggestion of the Master.

The Master: All I can say about that is—

Mr. Harrison: Just let me say one word, if your honor please. If my memory serves me correctly our friends never handed us any exhibit until they were handed to us by the witness.

Mr. Lilly: Was it not agreed that you should submit them to us?

Mr. Harrison: We could not get up exhibits until we had your work. We have been working against time to complete these, and really have not finished them yet.

The Master: This is the situation; of course this does not affect the legal rights of either party—I can only say this, it has been incumbent upon the plaintiff to submit to the other

side everything in the line of a schedule that they intended to rely upon, as soon as it was prepared. That is as far as I can go. If they have done that they have complied with my instructions, and if they have not done it they have not complied with my instructions.

Mr. Harrison: We have done it as far as we were able to.

The Master: If it turns out that the Virginia people have not submitted these exhibits from time to time, as fast as they have had them completed, to West Virginia, they have not followed my instructions; and if it be true that West Virginia has not done the same thing, they have not followed my instructions.

Mr. Lilly: We have submitted them before we could check them up, even with inaccuracies in them.

Mr. Harrison: The inaccuracies were discovered by the cross-examination.

The Master: We do not need to take time for discussion on this matter. I do not say that it is not proper for Mr. Lilly to call attention to it.

Mr. Anderson: I do not think either side is in default here at all, as I recall the facts. This tentative agreement was made in the preliminary hearing of this case in New York, and it was then understood that West Virginia would furnish to us in advance of the hearing here, as fast as they could prepare them, all of the schedules which they proposed to submit, which they could prepare before the hearing. When we came here, two months had elapsed, and during that time we had not received a single schedule from our friends. When we came here on the first of August we were furnished with a few schedules. Now we could not prepare replies to those schedules until we had them, and we could not prepare them during the hearing, because our expert accountant had to be here during the hearing to understand what was meant by the figures in the schedules submitted by the other side. We are not complaining of them, but we prepared the schedules just as soon as we could after we had the information which enabled us to prepare them. We had to know what their schedules were in order to know what their claims were, and we could not reply

to them until after the hearing, because our expert accountant had to be here, as they understand very well, during the whole of the examination. He could not work here and prepare those schedules at the same time.

Mr. Lilly: This schedule refers to Class A that we introduced nearly three weeks ago, and there is not a thing that they did not know then and could not have had up. I do not care to pursue it further. I just want to make that protest.

Mr. Holt: The fact remains that all of our exhibits for 1861 have been in the hands of the opposition for nearly three weeks.

The Master: I am going to make this suggestion. Of course the fact that a schedule has not been furnished by one side to the other does not necessarily affect the integrity of the schedule. My attention is not called to it for that purpose. If it develops that a schedule has been withheld from the other side for a purpose that is ulterior and that affects the integrity of the schedule, that will develop as we go along. It is open to West Virginia to find out on cross-examination when all of these schedules were completed by the accountant, and if they were not submitted to the other side according to the request of the counsel it is up to them to find out why. And if that has weight and significance, they are entitled to the benefit of it. Of course, we do not get anywhere by discussing it further now. I want it understood that as far as I am concerned it does not prejudice either party, so far as the hearing at present stands; and the only significance it can possibly have is the effect it may have upon the integrity of a schedule. Whether it has any or not, that will be a matter for me to say when the facts are developed, if there are facts to be developed.

Mr. Harrison: I never saw the schedules until yesterday myself, and we are not much better off upon our side than the counsel on the other side. I knew what was being prepared, but I never laid my eyes on them until yesterday evening about four o'clock, and then only two of them.

The Master: Of course, without commenting further, I think I appreciate the significance of the situation, and I want to repeat that it is perfectly proper for the Attorney General

of West Virginia, if he thinks they have not had the treatment that they ought to have received, to call attention to it. And with the suggestion that I have made, we will go right along.

Q. The question, Mr. Potter, was to explain what that exhibit shows.

The Master: So far as the schedules themselves show just exactly what the witness would say, I suggest whether it would be necessary to go over them in detail.

Mr. Harrison: That is exactly the reason I asked the question in the form I did. I want him to make a general statement of what the exhibit shows, but I do not want to take up the items in detail.

The Master: That was exactly my suggestion.

A. This schedule shows in the first column the amounts claimed by West Virginia under Class C, bringing it to the same total as shown by the revised schedule which I received yesterday for Class C, the Defendant's revised Schedule C. The next column, or the next two columns, show the par and the market of the bonds of the State of Virginia, received by Virginia from these internal improvement companies, issued by Virginia prior to January 1st, 1861, and surrendered by the internal improvement companies in payment of the State's interest to that internal improvement company. They are then extended at the market value, as near as it could be ascertained on the date on which the company surrendered the bonds to the State. The next two columns show the same thing with respect to bonds issued under the Act of 1866. In some of the records of the State these bonds are designated as old and new, the old applying to issued prior to January 1st, 1861, and the new applying to the issue of 1866. Next comes a column in which is the amount of cash received from these same companies, in full or part payment of their debt to the State; following which comes a column in which this cash is reduced to a gold basis. And the column at the extreme right is the total net gold value of the entire recovery by the State of Virginia for her interest in these 19 items under Class C. I must make one qualification in regard to this. The bonds received from the United States Government claim were intended to be

entered, but I notice just now that they have been omitted. I would like the privilege of changing the schedule to that extent.

Q. Where would you insert that?

A. On the second page, opposite No. 17, under the value of bonds issued prior to January 1st, 1861, under par, and extended under market at a market quotation as near to the date on which Virginia received the bonds back as is obtainable.

The Master: Do this the first thing in the intermission.

The Witness: Then the schedule is supported by sheets showing the details of these bonds, new and old, and the market quotations and the dates; but those sub-schedules have not yet been finished. This schedule was finished not more than an hour ago. I do not know just how soon the sub-schedules will be in, but they merely amplify the information contained on the top schedule.

Mr. Hogg: To be read in connection with this, I suppose?

The Witness: Yes, sir, that is the intention.

Q. Your first column under the head of claimed by West Virginia as value January 1st, 1861, represents the figures testified to by West Virginia as being the value of those respective items on that date, does it not?

A. Yes, sir.

The Master: Represents the books value?

Mr. Harrison: Yes, it represents the book value or whatever kind of value. It was sometimes called book, sometimes face, and sometimes other kinds.

The Master: Except as Mr. Hillman may have qualified his statement as the result of his examination, I understand that West Virginia up to date relies practically upon what is known as book value, so far as stocks are concerned.

Mr. Harrison: Yes, sir.

The Master: And so far as loans are concerned, on face value, so that there will not be any misunderstanding about it.

Mr. Harrison: That column contains the West Virginia figures.

The Master: As finally corrected.

Q. The West Virginia figures in respect to the value of the stocks and the bonds mentioned in that column?

A. Yes, sir.

Q. Now, Mr. Potter, please state the sources from which you derived the data that you have embraced in this schedule?

A. Par value of the bonds surrendered by these internal improvement companies is the same I believe in almost every instance as used by West Virginia and derived from the same sources. That is also true of the cash. The quotations, the market quotations at which they have been reduced, have been taken from the files of newspapers in the State Library on the floor above us, particularly the Richmond Dispatch. It contains quotations from the New York Exchange, the Baltimore Exchange and the Richmond Exchange. We have used the nearest quotation that we could find to the date on which the internal improvement companies surrendered the State bonds. In a number of instances, the dates were not given with any exactness, and on those dates we applied the dates which appeared in the sinking fund records, the journal of the sinking fund being quite definite in that regard. The rate at which the cash is reduced is a part of the original record, being Plaintiff's Exhibit E-2, on page 647 of the original record, showing the value of Confederate currency in gold from 1861 until 1865.

Q. You have prepared this schedule on the basis of what West Virginia claims as book value; am I right, book value of the respective items in that list?

A. Yes, sir, that is my understanding.

Q. You did not take the par?

A. Par of what, Mr. Harrison?

Q. The par of those items, the par value as shown on the West Virginia exhibit. Take, for example, the Orange & Alexandria Railroad Company. By reference to Defendant's Exhibit No. 3, page 13, I find that stock par value is $874,500, while the book value given January, 1861, is $932,566. Those are the figures that you took?

A. Yes, sir.

Q. And you do not make this statement on the basis of the par value?

A. No, sir. Those figures are merely put there to identify the item, and the calculations to the right of the first column are not based on any value, either book, par or anything else as of record, but they are based on what Virginia got.

Mr. Holt: It would be book value in the case of stock, and in the case of loan, what we call face value, I suppose.

Q. The calculation is on the basis of what Virginia actually received for the several securities mentioned in the list?

A. Yes, sir.

Q. I will ask you to mark that exhibit Plaintiff's Exhibit No. 3, and file it?

A. I file it so marked.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 3, September 10th, 1914, C. B.

Q. Going back a moment to Plaintiff's Exhibit No. 1, Mr. Potter, I think I omitted to ask you the sources of your information upon which that exhibit is based and the accuracy of it as well as the accuracy of the last exhibit which is filed.

The Master: You agree with the other side on that. I would not spend any more time on that.

Q. You can state just the sources of your information briefly.

A. The cash book of the sinking fund now in the Second Auditor's office as to the first two pages. There are some extracts or notes on that page which are not shown entirely in that book, but the information is all in the record I believe now in regard to the item on the first page relating to the $443,300. Do you wish me to go into this categorically?

Q. No, I just want you to give a general statement as to the sources of your information so that it may appear.

A. The next regarding the—

The Master: You need not give any more detail about that. There is no disagreement between the two of you on that.

The Witness: The information on the third page is, as in-

dicated, taken from the annual reports of the officers of the State of Virginia for 1871, and is a copy of the Second Auditor's report.

Mr. Lilly: There is no page reference and there is no guide to our accountant by which we can ascertain or check up your data.

The Witness: My impression is that the cash book is not paged. There is only the one and I am sure that your accountant knows all about it.

Mr. Holt: The point is, your exhibit does not give the book or page for showing the source of information, that is it.

The Witness: It does not mention any book, it does not give any page on the first and second pages for the reasons stated.

Mr. Holt: You referred to certain reports. Did you mean printed reports?

Mr. Harrison: The report of the Auditor is on page 3.

The Witness: Printed annual reports.

The Master: The third page gives the source.

Mr. Lilly: We are talking about Exhibit 1, your Honor.

The Master: Yes, the third page states on Exhibit 1, Second Auditor's report of December 1, 1871, Table B, page 9, right on the head of it.

Q. Before leaving Schedule 1, Plaintiff's Exhibit No. 1, Mr. Potter, it might be appropriate to put in there an exhibit or two as it relates to an item in that schedule. I refer to the payment of $886,685 under the caption Virginia & Tennessee Railroad, account of mortgage, $1,000,000. I want to file with your testimony an extract which was read here bearing upon that payment and its repudiation. Have you those extracts with you?

A. No, sir, they have not been copied yet.

Mr. Harrison: I thought they had, or I would not have stopped you. I will have to do that later on.

Mr. Holt: Was it not read into the record the other day, Mr. Harrison?

Mr. Harrison: Yes, I did read it in and intended it to go

in as proof, but I understood you gentlemen to object to that method, and say that you wanted it put in with our evidence.

The Master: Have it struck out there and put in here. I think there was a question raised about that, as to whether the evidence would be put in in that way, and I simply said that if it was insisted on it could not be done by way of an answer; but Mr. Harrison did read those extracts into the record. If it is agreed, those extracts may be cut out of the record in that place and inserted here.

Mr. Lilly: But there were questions based on them.

The Master: I think you can cut out the whole examination. My recollection is that the examination was not material.

Mr. Holt: Suppose in order to avoid the cutting out process we treat them as having been introduced.

Mr. Harrison: Just treat them as introduced.

Mr. Lilly: By the plaintiff.

The Master: Yes. Treat them as having been already properly introduced, and that saves repeating them here. Had you completed with this schedule, Mr. Harrison?

Mr. Harrison: Yes, I am through with it.

By The Master:

Q. Mr. Potter, in the column marked par, if I understand it correctly, you have inserted all sums received, and then where they were received in bonds you have carried out the market value of the bonds at the time of their receipt, is that right?

A. Yes, but I think you will find that under that column, prior to 1861, and bonds of 1866, there is nothing else but market. That relates solely to the bonds surrendered, those four columns. There is no cash entered in those columns. The cash is taken up in a separate column just beyond.

Q. Yes, cash received.

A. Yes, sir.

Q. So as to be sure I am correct, the first item, Orange & Alexandria Railroad Company, par of $745,341.48, that represents bonds that were received in connection with the payment

of that stock and loan, prior to January 1st, 1861?

A. Yes, sir.

Q. And then in addition to those there was received bonds issued under the Act of 1866, found under the other column par $129,365.83?

A. Yes, sir.

Q. Those two added together show the total amount of bonds and the class of bonds received in connection with the payment for that stock and that loan?

A. Yes, sir.

Q. And then you have figured out the par of those separate issues of bonds in the column indicated?

A. Figured out the market?

Q. Yes, the market.

A. Yes, sir.

Q. At the time of the transaction?

A. Yes, sir.

The Master: I get it then.

By Mr. Harrison:

Q. Now, Mr. Potter, I will ask you if you have prepared an exhibit dealing with Class D?

A. Yes, sir.

Q. Found on page 53 of the Defendant's supplemental answer?

A. I have.

Q. If so, will you please explain, as you have been doing, what that exhibit shows?

The Master: We are right close to adjournment, and I will suspend here until half-past two.

At this point a recess was taken until 2:30.

AFTER RECESS.

Mr. Harrison: I will go back for a moment to Class C.

The Master: I find bound into my Class C the supporting

schedules, and as I understand it you want to include those.

Continuation of the direct-examination of

ARTHUR G. POTTER,

By Mr. Harrison:

Q. Have you corrected Schedule C, Plaintiff's Exhibit 3, in respect to showing the amount of the bonds held by the State of Virginia, of the United States Government?

A. Yes, sir.

Q. And the market value of the same?

A. Yes, sir.

By The Master:

Q. And have you made that correction on the copies the other side have?

A. Yes, sir.

By Mr. Harrison:

Q. And have you extended the totals?

A. Yes, sir.

Q. And have you attached the supporting exhibits showing the market quotations of the securities?

A. I have in some of the copies, to the one furnished to the stenographer and the two to West Virginia; and the others will follow as soon as they are finished.

Q. The question was if you had attached them to the exhibit which you now file?

A. Yes, sir.

Q. Are you prepared to introduce Schedule No. 2, the quotations?

A. Yes, sir.

Q. Please explain Exhibit No. 2 briefly and file it with the stenographer and mark it Plaintiff's Exhibit No. 2.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 2, September 10, 1914, C. B.

The Master: This, Mr. Stenographer, will be inserted in its proper chronological order in the record.

A. This exhibit contains quotations on Virginia State stock or Virginia bonds beginning with 1860, and giving quotations at various dates up to 1887. Following that are quotations on the Farmers' Bank of Virginia, Exchange Bank of Virginia and Bank of Virginia as of the latter part of 1860, and the beginning of the year 1861, and as of 1863, as near June 20th, as it was possible to find them. Following that are quotations on Orange & Alexandria Railroad Company six and eight per cent. bonds and some on the stocks of the Orange & Alexandria. Following this is quotations on the Chesapeake & Ohio Canal Company, Manassas Gap Railroad Company, Richmond & Danville Railroad Company, Richmond & York River Railroad Company, South Side Railroad Company, Virginia Central Railroad Company, Virginia & Tenessee Railroad Company, James River and Kanawha Company, Richmond & Petersburg Railroad Company, Richmond, Fredericksburg & Potomac Railroad Company. These are the only quotations we have been able to find in our researches, and we used for the purpose the files of the Richmond Dispatch in the Public Library in this building.

Q. Quoted on the dates set opposite the quotations, are they not?

A. Yes, sir.

The Master: As I understand it, this exhibit, Mr. Harrison, refers to the quotations you have been able to find relating to any of the subject matters involved in the controversy.

Mr. Harrison: That is what I understand.

The Master: All of which are stated in detail by Mr. Potter?

Mr. Harrison: That is correct.

The Master: And so far as they cover dates, for instance, it is from one date to another date, that all the quotations between those dates—

The Witness: No, not necessarily. For instance, we wanted to use a value of January 21st, and one at June, 1863, and if the quotation happened to be the same on two or three

different dates, we would take the nearest date.

Q. In other words, between two given dates, no quotations are left out that would vary the statement?

A. No, sir.

Q. And if none are stated, either none appeared or they are identical with those that are stated?

A. Yes, sir.

The Master: That gives me an idea of the effect of it.

The Witness: That is not entirely true of the matter of the Virginia State bonds, because there we got quotations on dates at which internal improvement companies settled with the State, and there might be November, 1860, or thereabouts, and the next one might be June, 1863.

The Master: Yes, exactly.

The Witness: Or 1873, or 1883.

Q. You would not carry all the quotations exactly from 1860 to 1873?

A. No, sir.

Q. But all the quotations that you have undertaken to give, grouped around a certain date are given in full?

A. Yes, sir.

By Mr. Harrison:

Q. Mr. Potter, referring to your Exhibit 3, the supporting exhibit filed with that now, beginning with the heading "Bonds," shows the computations—or you can state what that shows?

A. It shows in more detail than was possible on the top schedule the amount of the bonds and the date received and the market quotations at which the amounts are extended. Following that are several sheets covering cash transactions, giving the date the cash was received, the gold equivalent on that date, and the extension.

Q. Were the market quotations the nearest to the date on which the stocks, etc., were received?

A. Yes, sir.

By The Master:

Q. And you have taken the nearest quotation as the proper

quotation for that date?

A. Yes, sir.

Q. Wherever you have not found a quotation on that date?

A. Yes, sir.

Q. Am I right about that?

A. Yes, sir.

Mr. Holt: Now quotations is Exhibit No. 2, is it?

Mr. Harrison: That is right.

The Master: The detail of quotations is Exhibit No. 2, but on Exhibit 3 he has quotations that are applied to various items.

Mr. Harrison: Applied to items on Exhibit C.

The Master: And those quotations in Exhibit 3 will of course be found duplicated in Exhibit 2.

Mr. Robinson: They are copies from 2.

Mr. Holt: In other words, No. 2 Exhibit, which is devoted exclusively to quotations, embraces everything that is in on the subject of quotations.

The Master: That is the way I understand it. All the quotations that are found on Exhibit 3, Class C, except errors that may have been made in transcription, are identical with the same entries that will be found on Exhibit 2; that is right, is it not?

The Witness: Yes, sir, that is right.

The Master: Of course unless some errors have been made in carrying the account forward. If there should happen to be an error, I suppose we should be safe in relying, probably, on Exhibit 2, because that is devoted entirely to quotations.

By Mr. Harrison:

Q. Have you corrected the sub-schedule to Exhibit No. 3, in reference to the claim against the United States Government, or have you only corrected the top schedule?

A. Only the top schedule in that case, Mr. Harrison. I did not have time to fix the other one. The sub-schedule would simply show that a certain amount of bonds of old unfunded bonds—

The Master: When you say top schedule, you simply mean

this schedule as distinguished from the sub-schedule?

Mr. Harrison: Yes.

Q. What was the date of your quotation, Mr. Potter, on that item? You might as well put it in and correct it.

A. The quotations on fundable Virginia bonds were the same on January 1st, March 12th, and March 15th, in the year 1892, that is 26; and that is the rate I used in reducing the bonds received from the Government.

By The Master:

Q. I thought that was the adjustment made as of 1894.

A. Which was the nearest date that I could find on the Virginia bonds.

Q. Your sub-schedule shows that?

A. It does not now, but I will make it show it.

Q. You will see that it does?

A. Yes, sir.

Mr. Robinson: The record shows it right here anyway; that is the point.

The Master: Exactly.

By Mr. Harrison:

Q. Now, I will take up the exhibit with reference to Class D. Will you please state as you have been doing what that exhibit shows?

A. It shows the net cash equivalent received by the State of Virginia for the income, interest and dividends which had accrued prior to January 1st, 1861, and was received by the State after January 1st, 1861, from internal improvement companies as shown in Defendant's Class D.

Q. Class D in the supplemental answer related to interest on loans and dividends on stock accrued prior to January 1st, 1861, upon common investments and collected by the State of Virginia after January 1st, 1861, and your exhibit relating to that class shows the scale value, does it not, of those receipts?

A. Yes, sir.

By The Master:

Q. It reduces the items mentioned in Class D to a gold basis as of the dates of their receipt, is that right?

A. Yes, sir.

Q. That is the effect of your Exhibit No. 4?

A. Yes, sir.

By Mr. Harrison:

Q. Will you file that exhibit and mark it Plaintiff's Exhibit No. 4?

A. Yes, sir.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 4, September 10th, 1914, C. B.

By The Master:

Q. With that exception the schedule agrees with the schedule on the same subject already introduced by the defendant, as I understand it?

A. It deals with the same figures.

Q. The same items?

A. The same items and merely reduces them to the gold basis.

Q. The only discrepancy there would be between your schedule, Plaintiff's Exhibit No. 4, and the schedule of the defendants relating to the same class would be the difference resulting from a reduction of the items as of the dates of their payment to a gold basis?

A. Yes, sir.

Q. The principal sum remains the same?

A. The principal sum remains the same.

The Master: Now, we come to Class E.

By Mr. Harrison:

Q. Now, in respect to Class E, Mr. Potter, please state whether or not any exhibit that you have filed deals with the values of the bank stocks set forth in Class E?

A. Yes, sir, Plaintiff's Exhibit No. 2.

Q. By giving the market quotations?

A. By giving the market quotations, yes, sir.

By The Master:

Q. Do the items in Exhibit 2 which deal with these six items in Class E differ in any way from the same items presented by the schedules of the defendant except in a reduction of the items to a gold basis upon their respective dates?

A. No.

Q. The principal sum remains the same?

A. I don't quite get the question.

Mr. Robinson: He has not given any computations. The summaries on that are not ready yet; they are being worked on.

The Master: What you propose is a little later to file in concrete shape a schedule under this class, but the data will be drawn from Exhibit No. 2, but for convenience it will be put into concrete shape under Class E?

Mr. Harrison: Yes, sir.

The Master: I get your point.

By Mr. Harrison:

Q. Which of those bank stocks do the quotations relate to?

A. Farmers' Bank of Virginia, Exchange Bank and Bank of Virginia.

Q. You found no quotations as to the Bank of the Valley?

A. No, sir, no quotations as to the Bank of the Valley.

Q. Did you examine for quotations as to the Northwestern Bank and Fairmount Bank?

A. We did not make any search for those banks.

The Master: Those are evidently a little different class from the others. By the way, right there, I do not remember just now whether the schedule of West Virginia differs very much from my finding in the report. The amount stated in the answer here as far as the Fairmount Bank is concerned is identical with the finding in my report, and so far as, I think, the Northwestern Bank was rendered subject to adjustment by reason of the fact as I understood somebody to say, that

there was a branch somewhere in Virginia, but I have not seen any evidence in the case relative to that. You want to bear that in mind, that that is a factor to be considered. Something must be put in the record so I will know something about it. As I understand, the suggestion is that the whole of the Northwestern Bank should not be charged in the last analysis to West Virginia by reason of the fact that one of its branches was then and continued to remain in the State of Virginia. I think all there is in this record that tends to show that is the statement of Professor Hogg that that was the fact. That of course is not evidence, and if you want that fact to appear, somebody must see that it gets into the record so if it is entitled to consideration it will receive it. I call your attention to the fact, because you may have omitted that. My recollection is very distinct that there is not a word in this record so far as the testimony goes that tends to establish that fact, if it is a fact.

Mr. Robinson: You will find it in the original record.

The Master: Of course I do not carry that original record in my head.

Mr. Lilly: I suppose Virginia charges us with whatever we got out of the Northwestern Bank. It is not in the record yet that we got anything except possibly by an Act.

The Master: I think the original record establishes more or less facts on that ground. It would not be safe in any event to rest on that, because when we get through they may call your attention to facts in the original record which tend to establish a different proposition. I simply call attention to this now so that if either side rely upon the fact that there was a branch in Virginia which should minimize the amount to be charged to West Virginia, whoever relies upon that proposition had better see that it gets into the record. It may be in the original record. All I can say about that is that I have not got the slightest recollection about it.

Mr. Hogg: All of the branch banks, both of the Farmers' Bank and the Northwestern Bank, appear in Plaintiff's general Exhibit No. 1. The branches that were established ap-

pear in Plaintiff's Exhibit No. 1 in the original record.

Mr. Holt: It is conceded to be a supplemental exhibit if it is already in the record, and there is evidence enough in the record to show the value of the branch in Virginia, and there is no controversy but that it remained in Virginia. I guess neither side have any care about it.

The Master: I would like to have you look into that.

Mr. Hogg: We will do that in conjunction with the Master's report.

The Master: I would not want an error made on that as a result of some inadvertence. Subject to that, I was going to inquire whether there was any serious controversy about the value I found in the other report. I think I found that the value of the Fairmount Bank is $51,200, and what I thought was that if these two items were practically agreed upon we could eliminate them.

Mr. Anderson: As to the Jeffersonville Bank, the facts as to that cannot increase the charge against Virginia, because they were like all the other banks that went up in the war.

The Master: Well, this is not a charge against Virginia, this is a charge against West Virginia.

Mr. Anderson: It will be—

The Master: I will suspend any further discussion about that until you have an opportunity to ascertain about this branch bank, and when we get to that, why, if you can agree upon the value of those two banks, that eliminates so much from my consideration, that is all. We won't bother with it any further now.

By Mr. Harrison:

Q. You say your Exhibit 2 does not show any quotations for the Bank of the Valley?

A. No, sir.

Q. Did you fail to find any quotations on that bank?

A. Yes, sir, I found no quotations for that bank.

The Master: Where was that located?

Mr. Anderson: Winchester.

Mr. Robinson: Staunton, was it not?

Mr. Anderson: And Staunton, too, I think. There were probably several branches of it.

Q. Now, Mr. Potter, taking up Class F of the supplemental answer, which embraces, as you will observe, some classes of stock beginning with the Virginia & Tennessee Railroad Company, and loans, etc., have you any exhibits relating to that, and if not, will you have one? Do you show the quotations, or have you shown the quotations?

A. The quotations are shown in this Plaintiff's Exhibit No. 2 for Virginia & Tennessee Railroad Company stock and bonds, for some of the dates; and South Side Railroad bonds are given, but we found no quotations on the stock.

Q. Virginia & Kentucky Railroad Company stock?

A. We found no quotations on Virginia & Kentucky Railroad Company stock.

Q. Did you find any on Norfolk & Petersburg Railroad Company stock?

A. No, sir, I found nothing on the Norfolk & Petersburg stock.

Q. Have you before you a copy of the mortgage deed by which the State of Virginia was secured to the extent of $4,000,000 against the Atlantic, Mississippi & Ohio Railway Company, the assignee of those stocks and loans?

A. I have such a copy, yes, sir.

The Master: That is the second mortgage that has been re-referred to?

Mr. Harrison: Yes, that is the second mortgage. And I thought it would be well to file a copy of that.

The Witness: I have not got it ready for filing.

Mr. Harrison: We will file that, marked Plaintiff's Exhibit No. 5.

Mr. Holt: I suppose it can be copied afterwards.

Mr. Harrison: Yes.

Mr. Holt: May I ask a question right there?

Mr. Harrison: Yes.

By Mr. Holt:

Q. Where do you get that, Mr. Potter, that mortgage?

A. From a manuscript copy on file in the office of the Corporation Commission, in the box there.

Q. It is one of their records, is it?

A. One of their very choice records; they would not let me take it out of the office.

Mr. Holt: I suppose none of us makes any question about those things.

The Master: Is it not a matter of record?

The Witness: I do not find it printed anywhere, it may be.

The Master: Is it not recorded in the office of the Register of Deeds?

Mr. Harrison: I suppose so.

Mr. Holt: I suppose on most of these things it is understood that the objections of both sides go to the materiality, rather than to the form.

The Master: Exactly.

Mr. Holt: Under those circumstances, we simply object to the materiality and not to the form of his evidence.

The Master: Of course, as a matter of legal evidence, this copy would not be admissible, but that point is not raised.

Mr. Harrison: If necessary, I can send for the original.

Mr. Holt: We do not want you to do that.

The Master: It is understood that you offer the original. But let us see if we have the exhibit number right. The last exhibit here is number 4. Class E will be No. 5.

Mr. Harrison: There has been an Act filed, the Act of February, 1866, under which certain bonds were issued to take up interest, a short Act. We may not file that. I think just a reference will be regarded as sufficient.

The Master: This will have to be the case in connection with that; you file that deed, and if you can stipulate among yourselves that a statement of its effect will take the place of the record, the deed will be eliminated from the record and the statement will go in its place. Now, then, the same thing will apply to this mortgage. Of course if this mortgage is made a part of this record it will have to go up with the record unless between you, you make some arrangement to put upon the record what you agree is the substance of this mortgage. Other-

wise, the whole mortgage would have to go in.

Mr. Holt: Well, that gives them the benefit of it, whether anything is ever done with it or not. I fear that there will be so much left to stipulation, and the time is so short, that we won't have time to get together and arrange the matter.

The Master: I am going to make a suggestion about that later on.

Mr. Robinson: You said "deed"; you meant "act."

The Master: I remember now, Mr. Potter said the Act was very short. We had better have an exhibit as to Class E, and that will have a number in the exhibits. I want to keep this chronological order regular. Class E, will be Exhibit 5, and the schedule for Class F, which is in process of preparation, as I understand, Mr. Harrison—

Mr. Harrison: Yes.

The Master: The schedule for Class F will be Exhibit 6, and this mortgage—

(At this point Mr. Robinson made a statement which he requested should not be made part of the record.)

The Master: I want to be sure that we get into this record all of this material in its chronological order, and by that I mean that the classes must appear one after the other. As far as I am concerned I would be very glad to have you consolidate F and G, or any other two.

Mr. Robinson: They will all be consolidated, A, B, C, D, E, F, and G.

The Master: That would take care of Classes E, F and G, which would complete the classes, and that would be your exhibits, as the case may be.

Mr. Robinson: It won't be, but it will be an exhibit.

The Master: That will maintain the chronological order all right; you will have the individual exhibits for the individual classes, and then you will have these three all grouped in one. When will that summarized schedule be ready?

Mr. Robinson: I hope to-morrow morning; they have been working on it to-day.

The Master: Now about this mortgage, the understanding is that the mortgage is in, and unless between the parties there is some stipulation that can take its place upon the record and that will correctly and succinctly state what Virginia desires and what West Virginia may also want by way of explanation, the whole mortgage would probably have to be printed in the record.

Mr. Robinson: The Act will be marked Plaintiff's Exhibit No. 5, and the Deed of Trust will be marked Plaintiff's Exhibit No. 6.

By Mr. Harrison:

Q. Now, Class G of the supplemental answer, which contains a list of securities said to have been subsequently given away, have you any quotations of the James River and Kanawha Company stock, which heads the list of those?

The Master: I want to make this suggestion before you begin that. As to Class G and the schedule appearing there, I understand that the defendants have struck out everything except the first two items, and no longer claim anything on account of the balance. So that that carries down to those two items. I am correct about that, am I not?

Mr. Holt: Yes, sir.

Q. Now, we take up this James River and Kanawha Company item under Class G. Have you any quotations of the James River stock, Mr. Potter?

A. Yes, sir.

Q. As of what dates?

A. November and December, 1860.

Q. Where are they found?

A. In the Richmond Dispatch.

By The Master:

Q. In your Exhibit 2?

A. Yes, sir, I beg your pardon, in Plaintiff's Exhibit No. 2.

By Mr. Harrison:

Q. Those quotations are contained in your Exhibit No. 2?

A. Yes, sir.

By Mr. Holt:

Q. And were obtained from the Richmond Dispatch?

A. Yes, sir, 1860, 1861 and 1863, certain dates.

By Mr. Harrison:

Q. Well, what was the quotation of the James River stock as shown on your exhibit at the nearest date to June 20th, 1863?

A. On June 16th it was 22, and on June 27th it was the same. I found no intervening quotation.

Q. Well, now, about the Manassas Gap Railroad; did you find any quotations on that, Mr. Potter?

A. I found no quotations on the stock, but the bonds were quoted in November, 1860, and April and November, 1863.

Q. Are those quotations shown on your Plaintiff's Exhibit No. 2?

A. Yes, sir.

Q. What were the quotations of those bonds?

A. The six per cent. bonds on November 2nd, there was no bid—

Q. What year?

A. 1860.

Q. What was it?

A. 65 asked, no bid. And that ran through November 9th, 16th, 23rd and 30th. On April 8th, 1863, there was bid 58, no quotation, nothing asked. On November 20th, 1863, 150 bid. I found no quotation between November 20th, 1863, and April 8th, 1863.

By The Master:

Q. Where was that quotation found?

A. Richmond Dispatch.

Q. Did it indicate it was on the Richmond Exchange?

A. Yes, sir, it so states in my Exhibit No. 2. The exchange is quoted here in every instance; or it was my intention to have

it in—some Baltimore Exchange quotations and some New York Exchange quotations.

Mr. Harrison: Now, we have not the summaries yet ready, which have already been referred to. They are being prepared, and if we get them this afternoon we will put them in. I now offer an exhibit which you can mark Plaintiff's Exhibit No. 9, which is a statement of the interest due to October 1st, 1914, upon West Virginia's share of the debt of the undivided State of Virginia unpaid and outstanding January 1st, 1861. I will say by way of explanation to our friends on the other side that this computation has been filed on one or two occasions with the briefs of counsel, but has not heretofore been introduced into the record, and I will ask Mr. Potter to say whether he made those computations and to file it as requested.

The Witness: I made the computations, yes, sir, and the stenographer has a copy.

By Mr. Harrison:

Q. You file it as requested?

A. Yes, sir.

Q. Are the computations correct, Mr. Potter?

A. Yes, sir.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 9, September 10th, 1914, C. B.

Q. Now, Mr. Potter, I will ask you a question, and it will apply to all—perhaps I have asked it with reference to each—but are the exhibits which you have filed taken from the records of the State of Virginia, and are they accurately transcribed, and the computations accurate in each instance?

A. If you consider the files of newspapers as part of the records of the State of Virginia I would say yes to all of them, and the calculations are properly made to the best of my knowledge and belief. I have checked most of them personally. I believe that they are all absolutely right.

By Mr. Holt:

Q. Now, let me ask right there, Mr. Potter, you mean by the records of Virginia, do you, the newspapers that are on file in the Library giving market quotations, and some original records and some printed reports?

A. Yes, sir, the same documents that were used by Mr. Hillman throughout.

Mr. Holt: I take it that the newspaper is a record of Virginia so far as that is concerned.

The Master: The facts are stated, and it goes for what it is worth.

Mr. Anderson: It is not the record of the State, but it is the evidence of contemporaneous history.

Mr. Harrison: We will have, as has already been stated, some additional exhibits. One other exhibit which he has not completed is computations of the interest from December, 1871, down to date on what are known as college bonds; that is to say, bonds held by the educational institutions upon which Virginia has paid six per cent. interest continuously. Mr. Potter's exhibit goes as far as 1871. We are having that computation made on those bonds because she has paid the entire interest on them, and they were never funded down to date, and is doing so to-day, and they constituted a part of the original debt. They are included in the exhibit that he has made down to 1871, but these particular bonds which were never funded, and upon which the State has continued to pay six per cent,, we want an exhibit to show them.

The Master: That is a computation you are having made?

Mr. Harrison: Yes, sir. And we are having one further exhibit made showing the entire amount of the debt that Virginia has paid since January 1st, 1871, with the interest added to it on account of the ante-bellum debt, the debt of the undivided state, and as her share of it, that she has paid, that she has attempted to pay and has paid; that is altogether on account of her share.

Mr. Anderson: I have shown our friends on the other side a deed from Leland, a commissioner appointed by the Circuit Court of the City of Richmond in the foreclosure suit insti-

tuted in 1883, in which all the property of the Richmond & Alleghany Railroad Company was sold. The Richmond & Alleghany Railroad Company, your Honor will remember, as has been testified in the last day, was the successor of the James River and Kanawha Company; it purchased the property of the James River and Kanawha Company, and upon its towpath built a railroad and completed it sufficiently for operation in November, 1880. In 1883 foreclosure proceedings were instituted, the record of which I have here, the whole case to foreclose the mortgages executed by that company, one for $5,000,000 and one for $4,000,000, the proceeds of which were expended in the building of the road, the completion of the road and its equipment, and on the decree of the court in that case, that consolidated case, the road was sold by the commissioner and was purchased by a committee for $5,000,000. I do not care to encumber this record with all the proceedings of that suit, but all the substantial facts in regard to it are recited in detail in this deed from the Commissioner of the Circuit Court of the City of Richmond to this purchasing committee, conveying the property to it, and I would like to have our friends on the other side agree to a stipulation that the facts recited in that deed are in accordance with the proceedings of the court and the decree recited. It will save trouble and a good deal of expense.

Mr. Holt: That sale was confirmed, was it, General?

Mr. Anderson: As I remember, the deed was also submitted to the court and confirmed.

Mr. Holt: What was the date of the deed from the James River and Kanawha to the Richmond & Alleghany?

The Master: I think it was 1880.

Mr. Anderson: That must have been 1879 or 1880.

The Master: 1880, I think.

Mr. Holt: Now, here is a deed dated the 20th of May, 1889, from Leland, Special Commissioner, to a purchasing committee, conveying the property of the Richmond & Alleghany Railroad as a result of a foreclosure suit. In other words, after they received their deed for this property from the James River and Kanawha Company they went on and built their road and

executed a mortgage upon the road, and it was subsequently sold under that mortgage in 1889, the deed evidencing the conveyance springing out of that sale. The deed recites the history of the situation.

Mr. Anderson: Yes, it recites the salient facts of record, the suit, the decrees and all.

Mr. Holt: My suggestion is that you prepare such a stipulation embodying that.

Mr. Anderson: I will.

Mr. Holt: Then I think we can sign it.

The Master: The deed is introduced and marked and it is understood that it is to be printed in the record, subject to a stipulation between the counsel, which may eliminate the necessity of its being printed. That covers your ground?

Mr. Anderson: Yes, sir. The deed includes certain facts that we do not ask any stipulation about, but the recitals of the deed we would like to have, that are sustained by the record.

The Master: You can probably arrange a stipulation that can take care of it.

By Mr. Harrison:

Q. I will ask you, Mr. Potter, to read into the record two extracts, one from the journal entry and one from the Auditor's report, giving the dates in each instance, relating to the subsequent history after the war of the several banks of circulation that we are concerned with that are set up in Class E of the defendant's answer.

A. I find in the printed annual report of the State of Virginia for 1866, the following extract, which is a part of the annual report of the Auditor of Public Accounts for the fiscal year ending September 30th, 1866—

Mr. Holt: Those reports were printed by the State of Virginia?

Mr. Harrison: Yes, sir.

Mr. Holt: Suppose you let that go into the record for the benefit of both of us, that these printed reports were published by the State of Virginia.

Mr. Harrison: That is my understanding; I understand they were, certainly, yes.

A. (Continuing) This extract is taken from page 12 of this report referred to, and is as follows, in 1860—

Mr. Harrison: All you want the record to show is that they were official reports?

Mr. Holt: That is all.

The Master: Either printed by or under the authority of the State of Virginia.

Mr. Holt: Let it go right into the record, please.

A. (Continuing) "In 1860 there were 66 banks and branches in the state with a capital of $15,520,550 and a circulation of $12,000,000. Of these, 20 were located in West Virginia with a capital of $3,468,800. The residue, 46, were in this state with a capital of $11,631,900. The amount of dividends and bonus paid into the treasury by these banks in 1860 was $368,853.43. Such of them as are located in this state have been ruined by circumstances over which they had no control. Their stocks are worthless and their circulation selling in your streets at from 10 to 30 cents on the dollar. The state own of the stock of these banks, estimating the value per share at par, $3,760,020." Further extract is found further on in the—

Mr. Holt: What was the statement there about their circulation selling for 10 cents on the dollar.

The Witness: "Their stocks, etc., are worthless and their circulation selling in your streets at from 10 to 30 cents on the dollar."

Mr. Holt: What is the difference between circulation and the stocks, Mr. Harrison?

Mr. Harrison: Circulation is notes, notes issued by the bank.

Mr. Holt: In other words, that is a statement that the stock is of no account at all and the circulation is 10 cents on the dollar?

The Master: The banks' notes were only worth 10 to 30 cents on the dollar.

A. (Continuing) "State securities were selling in 1860 at

par or at a price very nearly approximating it. They are selling now at only 40 cents on the dollar. Thus 60 per cent. of the value of your stocks and bonds, held principally by your own citizens, have been destroyed by the fortunies of war."

Q. Now read the other entry.

A. The other entry referred to is a journal entry found in Journal D, I have not the page before me, but the date is September 30th, 1872. By this journal entry the accounts carrying the cost of the bank stock held by the Board of Public Works were closed, the entry reading as follows: "To balance latter accounts, some having been lost at the close of the war in 1865."

Mr. Holt: What journal entry is that?

The Witness: That is in the Internal Improvement journal.

Mr. Holt: What office?

The Witness: In the Second Auditor's office, Internal Improvement Fund, Journal D, September 30th, 1872.

Mr. Harrison: Now, on that point I would like to inquire, Judge, whether it will be agreeable to you gentlemen to enter into the stipulation that was handed to you yesterday, before we shall proceed further with testimony on this line.

Mr. Holt: We will give you an answer on that in the morning, and so far as we are concerned I think we will probably say yes. The only difficulty in my mind was this, that the Master seemed to think he would prefer something more.

Mr. Harrison: The only thing we are concerned with is the stock and this Auditor's report. This report that we found showed that even the notes of the bank had no value.

Mr. Holt: As I understand, it amounts to this, that through the fortunes of war by 1865 or 1866 the stocks owned by the State of Virginia in these various banks had become worthless.

Mr. Harrison: Yes.

Mr. Holt: We will see what we can do in the morning.

The Master: My suggestion was this, that the mere fact the stock became worthless was not necessarily a full demonstration of the financial condition of the banks. Of course, if this statement, if it is evidence, that the circulation was sell-

ing on the street from 10 to 30 cents on the dollar, why that has some tendency to go further, and if it is true, which up to date I have not seen proved in this case, that the circulation was a prior charge upon the assets and preceded liability to the depositors, that of course is another salient fact; but these things have all been suggested here this afternoon, and the case was entirely barren of them until now. What I think would be more satisfactory, if there are decrees of court liquidating these various banks, would be a concrete statement of exactly what those decrees show. If this testimony is of any value at all, it would be very much more satisfactory to me than these general statements, and so far as I am concerned, if it is relied upon by either side and the decrees are available, I would like to have stated in this record a concise summary of just what those decrees show. It can be done in a paragraph in the case of each bank.

Mr. Harrison: I think the difficulty is that the decrees which you speak of are really not available.

The Master: That is another thing.

Mr. Harrison: Mr. Conrad did suggest that some litigation had been had over two or three of them in the Federal Courts in Richmond. We examined there yesterday and conferred with the clerk about it and could not find it. As far as he could see, he could not find any record of the proceedings in the Federal Court over 50 years ago relating to any of those banks at all. He did not know where the papers had gone or whether he had overlooked it in tracing it down, but he could not find it.

Mr. Anderson: That clerk's office has been moved once or twice.

The Master: Would they be naturally wound up in the Federal Court?

Mr. Anderson: Yes, sir, they were.

The Master: It seems to me if they were State banks, unless they had foreign creditors—

Mr. Harrison: Litigation arose over them in the State courts; that is, individual suits where somebody who owed the bank would be sued.

The Master: My suggestion is this, isn't it true that when you come to the liquidation of a state institution, the state tribunal is the tribunal that would liquidate it?

Mr. Harrison: I will have some further evidence on that.

The Master: I was given to understand that these decrees were in existence. If they are not in existence, that is of course another thing.

Mr. Harrison: They may be perhaps; They must be in some repository somewhere, but it would take a good deal of time to hunt around and find them.

Mr. Holt: Won't it be true that you will find the individual suits, against individuals, I mean, where they undertook to offset notes of the bank, were in the Federal court, and that the liquidating suit was in the State court?

The Master: But that does not necessarily determine the condition of the bank, a suit between individuals.

Mr. Holt: That is the reason, I mean, why they cannot find any decrees or litigation in the Federal Court.

The Master: It seems to me a little incongruous that you should have a decree liquidating a State bank found in the Federal Court.

Mr. Anderson: The suits must have been brought by non-residents, that is all.

The Master: Even then, of course, I have not examined it, but it strikes me as incongruous. Suppose you have the records in your State courts run down. It cannot be a great job, because the clerk's index of the various actions during the period of ten years will show it.

Mr. Anderson: My recollection is perfectly distinct, it was just after the war, that such suits were pending in the Federal courts here.

The Master: What I would like is this. Of course I cannot anticipate in advance what weight may be given to this or what weight I might feel like giving to it; but when I come to think it over, I would like to have all of the available facts that are in existence that tend to demonstrate the financial condition of those banks as near to 1861 and 1863 as is feasi-

ble. I do not know what weight I may give it; I may not give it any, so far as that goes. Of course there are a good many complications that are involved in this case, and of course the counsel will go into that on their argument. It is possible that I may decide that this evidence is entitled to weight; now if it is, I want all the evidence there is on the point.

Mr. Harrison: I do not know whether I will be able or not, or any of us will be able, to find the decrees. I would not really know what court to go to, to look for them.

The Master: Of course you will do the best you can; that is all.

Mr. Harrison: I will put into the record something that bears on the question. I want to put into the record the Act of February 12th, 1866. That Act required the banks of the Commonwealth to go into liquidation. The object that the Legislature had in mind was to take care as far as possible of the interest of the parties interested, by prescribing a method for going into liquidation at once; they were staggering along, and it required them to go into liquidation, and they made assignments immediately, and I think assignments are dated the same date, of two of the banks, that the Act is dated. I will put that Act in. Now several suits originated, and there were various questions that arose naturally in a complicated state of affairs such as were involved in those banks, and the case went to the Court of Appeals in the two suits, Exchange Bank of Virginia, for Camp, Trustee, against Knox; and Farmers' Bank of Virginia, for Goddin, etc., against Anderson & Company. The two suits were heard together, as they involved the same questions, and the Act of the Legislature was construed that required them to go into liquidation, and the real object of those suits, the question involved was the right of a debtor of the bank to offset the bank's circulation against his liability to the bank. The debtor owed the bank. The receivers of the bank sued the debtor. He tendered as an offset the notes of the bank. And in discussing those questions—and that was refused, he did not succeed—the court said:

"The sole question, therefore, presented in these two rec-

ords is, whether or not, these depreciated bank notes thus acquired, can be set off against the demands of the plaintiffs, suing for the use of the trustees of the creditors of the banks. It is to this question that I shall confine my opinion."

The Master: You mean the deed of trust, which was the beginning of the liquidation proceedings?

Mr. Harrison: That is right, it began with a deed of assignment to the trustees. The court further said:

"The close of the late civil war found all the banks of circulation in the State in a condition of hopeless insolvency. They were compelled to suspend business, and there was scarcely a remote possibility of a resumption. In this state of things, forced upon them by the calamities of war, nothing remained for them but to go at once into a course of liquidation, and to distribute among their creditors such remnants of their assets as might yet be realized.

"In this condition of things, and to effectuate this object upon equitable terms, the general assembly passed the act of the 12th of February, 1866, entitled an act requiring the banks of the Commonwealth to go into liquidation.

"The purpose of that act was to provide regulations, by which, as recited in the preamble, 'a speedy settlement of the affairs of said banks should be made, in order to a legal and proper distribution of their assets amongst all persons entitled to share in such distribution.'"

The court decided there that the debtor of the bank that acquired the notes of a bank after assignment for the purpose of liquidation could not offset them against his liability to the bank.

The Master: That is what volume?

Mr. Harrison: That in Volume XIX of Grattan's Reports, page 739.

The same question arose two or three years later in the case of the Bank of the Valley. The trustees under the general deed of assignment made by the Bank of the Valley sued a

debtor of the bank, and that debtor sought to offset against that liability notes of the bank which he had acquired after the date of the assignment. And there the same questions arose, and the court said:

"The act of the general assembly, passed February 12th, 1866, requiring the banks of the Commonwealth to go into liquidation, was the subject of judicial construction and interpretation by this court in the case of 'Exchange Bank v. Knox,' and 'Farmers' Bank v. Anderson,' 19th Gratt., 739; which cases were afterwards reaffirmed in 'Saunders v. White,' 20 Gratt., 327. By these decisions it was held—

"1. That the act forbids and prevents all preferences among the creditors of the bank.

"2. That a debtor of the bank cannot set off notes of the bank bought up by the debtor after the execution and recording of the deed and notice thereof to the debtor.

"3. The banks being utterly insolvent, the trustees are the trustees of the creditors, not of the banks, and are purchasers and assignees for value of all the property and effects of the banks for the benefit of the creditors.

"4. Though the charters of the banks require them to take these notes in payment of debts due to them, this does not authorize debtors of the bank to pay their debts in the notes of the bank, bought up after the execution and recording of the deeds conveying their assets to trustees for the benefit of their creditors, because the debts are no longer due to the bank, but to the creditors of the bank.

"These principles must govern the case now before us."

The court goes on, and in the body of the opinion it appears that there had been litigation in the Federal Court here in Richmond, and it seems that the Virginia Court of Appeals did not follow the ruling of Judge Underwood, who had ruled that they could offset those notes against the debts due to the bank.

"At that term the defendant tendered a plea in the following words: 'The defendant for further plea states, that pursuant to a decree and order of the Circuit Court of the United States, made in the cause of the Merchants Bank of Baltimore v. The Bank of the Valley of Va. et al., in which case the said Fant was appointed receiver, dated day of September, 1869, herewith exhibited, he, the said defendant Marshall, did heretofore, to wit, on the day of , 1870, offer to pay the whole sum with interest and costs claimed in the plaintiff's declaration in circulating notes (commonly called bank notes) issued theretofore, and put in circulation by the said nominal plaintiff to the said Fant as receiver; which offer was by said Fant refused, saying that he would not receive said circulation; and said defendant brings said money in court with this plea, and has already filed the same with his plea of set-off. Wherefore he says, that he has fully tendered the whole sum claimed by the plaintiff in a currency which he was bound by said decree to take in payment; and this he is ready to verify,' &c., &c."

Showing that the Federal Court here had authorized that to be done. I do not care to go on and read this, except it says this:

"Conceding that the order of Judge Underwood was imperative on his receiver, yet when the judgment of the Circuit Court of Frederick (that is where Winchester is located) was entered (July term, 1872), this order of Judge Underwood had been rescinded by Judge Bond (the Circuit Judge of the United States), who followed the decision of the Supreme Court of this State, which had declared that a debt due to the bank could not be paid in the depreciated notes of the bank, acquired after notice of the assignment of the assets of the bank."

Mr. Hogg: What is that case?

Mr. Harrison: Bank of the Valley against Marshall, 25 Grattan, 378. Those decisions, taken in connection with the

Act of the Legislature and the records here in the Capitol, it seems to us show conclusively—

The Master: You say here in the Capitol?

Mr. Harrison: The extract from the journal and the extract from the Auditor's report—show that the stock itself, whatever may be said of the circulation of the bank, was absolutely worthless.

The Master: This is a proposition that the counsel for Virginia are interested in more than anybody else in this case. These opinions show that the banks were insolvent, but that is all they do show; they do not show to what extent, they do not show how small the assets were, and there is not a word in them that would authorize me to find how small the assets were or what the remnants were. If this is entitled to weight on this proposition, the fact that they were simply insolvent and that the stock was not worth anything is of course one thing. The extent to which they are insolvent is a very much longer step, as tending to show what their condition may have been at a preceding date. I am telling you how this lies in my mind. But there is not a word in this record or in these opinions that gives me the information, beyond the fact that they were insolvent. They may have been worth ten cents on the dollar. The stock might have been worth par or nothing five years after that time. Just exactly how much this evidence of the condition of these things after certain dates is going to be worth, of course I cannot tell. I am going to explain this somewhat the way it lies in my mind, so that you can appreciate the situation. Here is 1863 and 1861. 1861 is a time of peace. And nothing has appeared here in this record to show that there are any financial disturbances or conditions that would adversely affect any industry or enterprise in Virginia. I am stating simply what this record shows. I do not understand that there is any controversy about that, January, 1st, 1861. Now, June 20th, 1863, of course is another proposition, but both of these dates are involved here. Now, I say that if testimony showing the condition of the bank in 1866, as bearing on its value in 1861, is to have value, a good deal depends upon the financial condition of that bank in 1866. If it was

simply insolvent and its stock worth nothing, why that might be one thing. If it could pay five cents on the dollar to any of its creditors, it might be quite a different thing, and be very much more probative in its character as to 1861. And the same is true as to 1863. Now, do I make this plain? The mere fact that the stock was not worth anything in 1866, may or may not demonstrate that it was not worth anything on January 1, 1861, and it may not go a great ways towards it. On the other hand, if the bank was entirely devoid of assets in 1866, it may go a good deal farther towards showing that its stock was not of much value January 1st, 1861, and the same of June 20th, 1863. Now, do I make that plain?

Mr. Holt: Yes.

The Master: That is all there is to it. Now, my suggestion is simply this, of course I am discussing this a great deal more than I would in an ordinary litigation—this is not a question of catching anybody in a trap. When I get around to this, I want to get this in accordance with what the facts are, and as I say, I cannot tell—here are a great many conditions; I suppose it will be contended that intervening January 1st, 1861, and 1866, a good many things did happen.

Mr. Anderson: I do not think there is much controversy about the value in 1861; it certainly had value in 1861.

The Master: I do not know what you are going to contend.

Mr. Anderson: We have proved it; both sides have put in evidence on that.

The Master: Then you come to June 20th, 1863; a good many things happened after June 20th, 1863, before 1866. The battle of Gettysburg was fought in July, 1863, and up to the date of the battle of Gettysburg a decently satisfactory condition of hope of success existed in the part of the country where we now happen to be, up to July, 1863. The people down here did not consider the situation hopeless up to that time. Now, a good many things happened after June 20th, 1863. Well, among other things, this stock turned out to be worthless. Suppose evidence was introduced to satisfy me that after June 20th these banks did not have anything of any value. The fact that their stock turned out to be worthless in 1866 is an-

other thing. I am simply illustrating this, because I have got to pass on all these things. I do not know as I have any title perhaps to give my notions about this at this stage of it, but I want to get at these facts. It seems to me too obvious for discussion, that if the fact that these banks were utterly worthless—I will put it as strong as that, but that does not appear here, and there is nothing that will justify me in finding that—the utterly worthless character of this stock in 1866 and the utterly worthless character of the bank itself in 1866 are quite different things. The stock might not be worth a dollar, and there might have been money enough realized out of these assets of those banks to pay all its deposits and its full circulation and every creditor, and leave the stockholders without a cent. So far as the stock is concerned, the bank might have had assets on hand and been in a sense absolutely insolvent. Now, the point is, if this condition in 1866 is going to have weight, to be taken into account as a factor, in my judgment it is important to get as near as you can to the exact condition. Now, do I make that clear?

Mr. Harrison: That is what we have been trying to do.

The Master: When we get around to this, I am not going to suggest what West Virginia is going to argue, but I know what they are going to argue, and of course you know what they are going to argue; there will be a contention here that there was such a profound change between June 20th, 1863, and 1866, that the evidence that you offer in connection with 1866 is entirely worthless and should not be taken into account. That is what West Virginia is going to argue. Suppose that does not impress me as fully as they expect to impress me with it. Then I come down to the question whether there was anything in this bank in 1866. Now, 1866 is nearer 1863 than it is 1861. Of course they may say that somebody stole it in 1865, for instance, or 1864. Well, if they satisfy me, or if it appeared that these banks had full treasuries in 1864 or 1865, and either the Federal Army or the Confederate Army took it, that does not affect the value of the stock in January, 1863, if it was on hand at that time. Take the naked proposition of the financial condition of the bank itself, and if I reach

the conclusion that the condition in 1866 is entitled to weight as tending to show what the condition was on June 20th, 1863, it is of importance for me to know.

Mr. Harrison: We will see if we cannot get them.

The Master: I am not arguing this case, but I can come pretty near repeating the arguments on both sides before they are made. I am not trying this case on one side or the other, but I want everything from every point of view. I want it here so that when I come to decide later I will have as much foundation as possible. I had a lot of trouble before on account of the extremely barren condition of the testimony on some subjects. This is no criticism on the counsel, because the counsel did the best they could. If they cannot get it, of course they cannot produce it, and I cannot have it. But so far as you can get it, I want it. I hope I have not elaborated that too much.

Mr. Harrison: I understand your Honor, and if we can get it we certainly will do it.

The Master: I hope West Virginia does not feel that I have unduly interfered at this time in the trial of the case.

Mr. Lilly: It is all right, sir.

The Master: You are expected to argue this fully, notwithstanding that I have intimated that I can state the argument.

Mr. Harrison: I do not think that we will be able to put the balance of those exhibits in.

The Master: Why can't they cross-examine Mr. Potter as to Exhibit 1?

Mr. Harrison: They may go ahead. Can you do that, Judge Holt?

Mr. Holt: Our difficulty is that we have had no opportunity to go over these exhibits with our accountant. We will be very brief, though, when we do start.

The Master: We have an hour and a half. If you say you want the time, I will give it to you; I understand the practical conditions, but what I want to do is to make as much progress as we can; and of course if you feel, Judge, that under the circumstances you can make as much progress by suspending until morning, unless you are prepared to go on with

something else—have you anything else, Mr. Harrison, you can take up the time with? Of course, it must be understood that if this case goes in a little criss-cross, like a Virginia rail fence, while it is going in, it will come out all right. I simply want to use up all the time.

Mr. Harrison: We have some exhibits to put in, but it won't take but a moment to do it.

The Master: I will suspend here for five minutes, and in the meanwhile you may confer.

Mr. Holt: May I ask what will be the residue of their evidence? I would like to have some outline of it.

The Master: I will suspend for five minutes; in the meantime Mr. Harrison will get ready with such additional exhibits as they have. And they propose, Mr. Harrison, to take up after a short recess the inquiry as to what you may have in addition to these schedules.

Mr. Harrison: The witness offers as a further exhibit the photographic copies of the balance sheet, etc., of the banks that have been used in the testimony of the defendant's witness, Mr. Hillman.

The photograph's were admitted in evidence and marked Plaintiff's Exhibits Nos. 10, 11, 12, 13, 14 and 15, respectively, September 10th, 1914, C. B.

The Master: Judge Holt, you feel under the circumstances that you would prefer to suspend the cross-examination of Mr. Potter until morning?

Mr. Holt: I would prefer it, your Honor. And I really believe we would lose nothing by it.

The Master: I believe that is a reasonable suggestion, taking everything into account. In the meanwhile, if the counsel for Virginia can make any progress, they have some few schedules that they can put in, and if in addition to that they have anything else they can do I would be glad to have them do it. If it is agreeable to the counsel for Virginia, Judge Holt would like to have the counsel for Virginia indicate what they have in addition to the testimony of Mr. Potter and the general sub-

jects to which it relates, so that we can get some judgment as to how much time you may require.

Mr. Harrison: I think we could wind up in an hour if we were prepared this afternoon.

Mr. Holt: Then when you complete the schedules and Mr. Potter's examination and Mr. Williams' examination, you are ready to rest?

Mr. Harrison: Yes, the schedules and Mr. Potter and Mr. Williams, and we are trying to get one or two other gentlemen—we would not need any if we could make the stipulation.

The Master: What is that, as to the Confederate money?

Mr. Harrison: Yes.

Mr. Holt: We have not considered the Confederate money stipulation, only the banks.

The Master: We will suspend here, so that the cross-examination of Mr. Potter can begin to-morrow morning. How would half-past nine do, Judge?

Mr. Holt: That would suit me.

The Master: If the plaintiff's are ready to-morrow morning to complete the examination of Mr. Potter with these summarized exhibits, of course they will complete it, and immediately on its completion I expect that Judge Holt will be prepared to go on with his cross-examination. And then your two other witnesses, and then subject to odds and ends the case is practically closed. I am right about that, am I, Mr. Harrison?

Mr. Harrison: Yes.

The Master: I want to congratulate counsel on both sides on the fact that we have made great progress to-day. Meanwhile, it is understood that Mr. Hillman of course has all of the data that has been submitted, so that he and his assistants can check up everything, so that when we get through I want to get the same statement in the record with reference to Virginia's compilations that I have now with reference to West Virginia's. And that cleans up everything with respect to computations.

Adjourned to September 11th, 1914, at 9:30 A. M.

BEFORE THE MASTER.

Richmond, Va., September 11, 1914.

Present, the same counsel as on yesterday.

CONWAY W. HILLMAN, recalled for further examination, testified as follows:

By the Master:

Q. I call your attention now, Mr. Hillman, to the memorandum you submitted in response to my request that you make further investigation in connection with the Richmond, Fredericksburg & Potomac Railroad, and I would simply like to have you supplement the statement you have given by giving to me the amount which appears carried as the cost of the road on September 30, 1848, 1849, 1855 and 1858. Just add those.

A. Yes.

Q. I want the gross amount that they carry in their annual statements under the cost of road, which was carried as $1,531.000.

A. Yes, sir.

Q. Just duplicate that item.

A. Yes, sir.

Q. These items that you refer to as extraordinary expenses in 1858 and 1859 and 1860 and 1861, those do not appear to be charged in or connected with the main item of cost of construction, but appear in other items of cost involved in the balance sheet, as I understand it.

A. They are included in operating expenses classed as extraordinary expenses.

The Master: That covers it all as far as I am concerned. Have you your schedules this morring?

Mr. Robinson: We were at work pretty nearly all night, but Mr. Harrison has not seen them yet, we have some of them.

The Master: Then let Mr. Holt go right along with the cross-examination of Mr. Potter on the schedules that are now in. You are ready to proceed with the cross-examination, are you not. Judge Holt?

Mr. Holt: Yes, sir.

The Master: Just as soon as Mr. Harrison comes in we will

proceed with the cross-examination. I give both sides notice now that I am not going to wait the hearing for the accountants to get together and do any checking up that may be necessary in order to verify. I want it all checked up and verified, but I am not going to wait the hearing for that purpose.

The Master: Mr. Harrison, before you came in I called Mr. Hillman's attention to this memorandum that was submitted to me in connection with the Richmond, Fredericksburg & Potomac Railroad Company, and suggested to him that in addition to what is on that I wanted him to give to me the item of cost of road and property, etc., that appeared for the years 1848, 1849, 1855 and 1858; and then he testified on my examination that the item referred to as extraordinary expenses, to which he has called attention, was charged in to operating expenses and made no part of this item of the cost of construction. I did that while I was waiting for you. I want to make this suggestion on the record, and then I want Mr. Holt to proceed with the cross-examination of Mr. Potter. There has been some discussion as to the circumstances under which this $1,000,000 loan of one of the roads was paid in part, the contention being on one side that there was no authority in law for the payment. As far as I know there is nothing yet in this record which would enable me to reach a conclusion upon that legal proposition. I know what the contention is, but so far as I remember my attention has not been called, except by oral statements, to any statute from which I can reach the conclusion as to whether or not that payment was or was not authorized and therefore binding. I simply call attention to that so that if it has been omitted and you want it in you may put it in. Now, Judge Holt, you may proceed with the cross-examination. You may have it in, but if you have, it has escaped my attention.

Mr. Holt: The idea was, as I recall, that the officer who received this payment had no authority to receive it.

The Master: I do not know of anything in the record that establishes that fact.

Mr. Harrison: Except the entries in the journal, the minutes of the Board of Public Works and the Sinking Fund.

The Master: That is simply a declaration of the Board of Public Works and involves their construction of what the law was. Of course if you want to rest on that, with that suggestion, that leaves the case in that position. I do not know of anything in this record that would enable me as an original propo-

sition to determine whether or not that payment was authorized. I simply call attention to it now here so that if there is any defect in it, then the defect may be remedied. Now, you may proceed, Judge Holt.

Mr. Holt: I will be very brief.

Mr. Robinson: If your Honor please, in our Exhibit No. 1, Mr. Harrison asked a question of Mr. Potter whether this cash interest paid by Virginia from January 1, 1861, to December 31, 1871, represented entirely and exclusively interest upon the debt as it existed January 1, 1861, and Mr. Potter answered that it did not exclusively represent interest on that debt. That was a surprise to Mr. Harrison and to myself. We had supposed that it did, and learned for the first time that between 1861 and 1871 there was about a million dollars of bonds issued in payment of work that had been contracted for prior to January 1, 1861, so that to that extent we have overlooked in our case as originally tried about a million dollars of the common debt. We are not making any point of that now, but what I wish to state is that we will correct this schedule in that regard and hand it in as soon as we can. We cannot do it to-day. It is one of the things which is a surprise that has come at the last minute, but what we want this schedule to show is the interest on the undivided debt paid by Virgnia down to December 31, 1871, the time of her first refunding act.

The Master: That may go as the statement of the witness if it is agreeable to Mr. Holt, by way of additional explanation to Exhibit No. 1, Class A.

Mr. Harrison: It explains his former answer.

The Master: Is there any objection to that being treated as a statement of Mr. Potter in explanation?

Mr. Holt: How is that, Mr. Potter?

Mr. Potter: That is the fact.

Mr. Anderson: If your Honor please, in regard to that matter, the fact that Virginia had issued nearly a million dollars of bonds in settlement of antecedent obligations of the State, that is obligations contracted before January 1, 1861, was well known to me and I think to the other counsel for Virginia during the former hearing. We did not set up those claims because by the compact between the two States evidenced by the provision in the constitution of West Virgina, Section 8 of Article 8 of the Constitution of West Virginia, and the Act of Assembly of Vir-

ginia, according to the provisions of that Constitution we thought we could not set up any portion of the debt contracted before 1861, this was really contracted before 1861, but evidenced by bonds. We did not set this up because there were intermediate contributions by West Virginia to the treasury of Virginia against which we thought this would be a fair set off, and it will be found that it sets off everything that West Virginia could possibly have paid between 1861 and 1863.

The Master: Now, Mr. Holt, you may proceed with your cross-examination.

Continuation of the examination of

ARTHUR G. POTTER.

Cross Examination by Mr. Holt:

Q. Mr. Potter, I believe you stated on yesterday that you were the accountant in this case upon its former trial. Did you mean that that you were the accountant appointed by the Court or that you represented only the State of Virginia?

Mr. Harrison: I said representing the State of Virginia, as far as I remember; if I did not, I intended to say so.

The Master: There is no question about that fact.

A. I represented the State of Virginia.

Q. Turning now to your Exhibit No. 1, which relates to the Sinking Fund, I believe that you stated on yesterday in response to a question by Mr. Harrison, that the balance in that fund on January 1, 1861, as given by you at $819,250.03, tallies with the Defendant's Exhibit No. 1?

A. Yes, sir.

Q. And that the amount to the credit of that fund on June 20th, 1863, of $143,195.90, tallies with Defendant's Exhibit No. 1, 1863?

A. Yes, sir.

Q. So there is no disagreement there?

A. No, sir.

Q. I note that you have an item under the head of Sinking Fund, disbursements, January 1, 1861, to December 31, 1871, of $443,300.

A. Yes, sir.

Q. And that you do not carry it out in your computation for

the reason that, according to your contention, it was refunded, is that true?

A. I would not go so far as to say that it was refunded; a tender was made of it according to the entries on the books.

Q. That was a part of a payment, was it not, of $886,685, made by the Virginia & Tennessee Railroad Company on the million dollar mortgage?

A. Yes, sir.

Q. What part of that $886,685, if any, was permitted to remain in the Sinking Fund?

A. Judging from these figures, found in the cash book of the Sinking Fund I should say it would be the difference, $443,385.

By the Master:

Q. And what sum?

A. What is that?

Q. The difference between $443,000—

A. No, sir; the difference between $443,300 and $886,685, or $443,385.

Q. Just one-half?

A. One-half with the $85 off.

By Mr. Holt:

Q. That amount then was permitted to remain in the Sinking Fund?

A. That is the only conclusion I can arrive at from the entries on the books.

Q. And so far as the balance of eight hundred and eighty-six thousand and some dollars is concerned, namely $443,300, was it not simply transferred to the Commonwealth Fund and not refunded?

A. I cannot say as to that. I can give you the exact wording of the entry covering that transfer if you wish it.

The Master: When you say refunded, Judge, I suppose you mean returned?

Mr. Holt: Yes, returned.

The Master: I suppose the use of the term refunded arises from the fact that it is used in the entry. But we all understand it was returned by the parties who made the alleged illegal payment.

Mr. Holt: Yes.

The Master: Proceed.

Q. You say you have that entry before you?

A. Yes, sir.

Q. What is it, Cash Book B of the Sinking Fund, March 27, 1863?

A. Yes, sir.

Q. What does that entry show?

A. On the credit side of the Cash Book, by Commonwealth of Virginia, by order of Commissioners of Sinking Fund, it being one-half of the amount paid by Virginia & Tennessee Railroad which said Commissioners refused to receive, which now has to await further legislation, $443,300.

Q. Which has to await future legislation, is it not?

A. I beg your pardon, it is future.

Q. Have you another entry upon the Auditor's Day Book, 1861-65, page 309, before you?

A. No, sir; I have not that entry.

The Master: Can you send for that book. Would you like to have it, Judge?

Mr. Holt: I have a memorandum of it.

The Master: You may be able to read it right in from that memorandum of it.

Mr. Holt: I would like to have it if we can get it in just a moment.

The Master: Send for it, Mr. Potter. I would suggest if you have there a memorandum showing what than entry is, why can't you put it in by asking him if such an entry does not exist. If they do not make any point about it that will answer the purpose as far as I am concerned.

Mr. Holt: I will.

Q. I will ask you if there is not an entry on the First Auditor's Day Book, 1861-1865, page 309, under date of March 27, 1865, reading as follows: To the Commissioners of the Sinking Fund, from said fund on account of money transferred to the Commonwealth by the Commissioners, $443,300.

A. I do not know, I have not seen such an entry.

Mr. Holt: We will have that brought in.

The Master: You can proceed and take that up later, can you, Judge?

Mr. Holt: Yes.

(At this point the book was produced.)

Q. Have you found the entry that I have just refered to?

A. Yes, sir.

Q. Read it.

A. J. S. Calvert, debit to sundry accounts. Under that heading, to the Commissioners of the Sinking Fund from said fund on account of money transferred to the Commonwealth by the Commissioners, $443,300.

Q. Give the page on which you find it?

A. Page, 309.

By Mr. Anderson:

Q. What is the date?

A. February 28, 1865.

By the Master:

Q. What is the book?

By Mr. Holt:

Q. Is it under of February 27, 1865?

A. March 31st.

By the Master:

Q. What year?

A. 1865.

By Mr. Holt:

Q. My reference is to March 27th.

A. There is a 27 there. I do not know whether that means—I think that means the 27th of the month. The whole entry is dated March 31st. I believe that is the entry for the whole month, and this 27 means the 27th of the month.

By the Master:

Q. Then just say that that entry is dated March 27th.

A. Yes, sir; that entry is dated March 27th, and appears on page 309 of the Day Book, Auditor's Office of Virginia, 1861-1865.

By Mr. Holt:

Q. Then, according to that entry, Mr. Potter, that $443,300 was not returned but was simply transferred from the Sinking Fund to the Commonwealth?

A. This would indicate that it was paid to the Treasurer of the Commonwealth, yes, sir.

By the Master:

Q. That is, from one fund to the other? The point that Judge Holt has in mind is that there is nothing on these entries that shows that anything representing this payment was returned to the parties who originally paid it.

A. Not that this entry shows.

Q. You do not have anything on the books that shows it?

A. No, sir.

Q. You do not find anything on the books that shows that any of the consideration that is alleged to have been received on account of this fund was returned to the parties who originally paid the same?

A. Not on this book, no, sir.

By Mr. Holt:

Q. Now, you have upon Exhibit No. 1, Mr. Potter, an aggregate item of interest paid on the State debt between June 20, 1863, and April 1, 1865, of $1,503,957.88; is that correct?

A. Yes, sir.

Q. The object of your exhibit then as I understand is to show that Virginia paid in the shape of interest upon the undivided debt between those dates that amount?

A. Yes, sir.

Q. And you claim that for her?

A. Yes, sir.

Q. This exhibit does not reduce the $1,503,957.88 to the gold standard, does it?

A. No, sir.

Q. Where in this and your other exhibits when a settlement was made by the turning over of any assets owned by the State of Virginia in which West Virginia claims 23½ per cent., you do reduce it to the gold basis, do you not?

A. Yes, sir.

Q. Through all your exhibits?

A. Yes, sir; where cash is involved.

Q. That is, wherever any stocks in which West Virginia claims an equity have been utilized in the cancellation of any part of the undivided debt you reduce the matter to a gold basis?

A. I do not want to evade the question, but I want to be accurate about it. We reduced the cash to a gold basis and the stocks to a market basis; if you refer to that as a gold basis, my answer would be yes.

Q. Why, now, when West Virginia uses bonds in the payment of any portion of the principal or interest of the undivided debt do you give her the full benefit at par of those bonds, but on the other hand when a bond is cancelled or redeemed by any asset, in order to cut down West Virginia's credits, do you reduce that transaction to a gold basis?

A. I believe that the value of the investments sold by Virginia is more nearly shown by what Virginia got for it at the market value of the bonds than it is by the par value.

By the Master:

Q. That is not quite the question. The question is why you have used the gold basis in one factor of the equasion and do not use it in the other.

A. I did not understand his question that way.

Q. And whether it relates to any item except this $1,503,957.88 or not, I do not know, because that is the only one that has been developed. The suggestion that Judge Holt's question conveys to my mind is that when you are minimizing the charge to Virginia in the interests of Virginia and to minimize the amount due to West Virginia, you reduce the various factors to a gold basis so far as cash is concerned, but, upon the other side of the account, when you are crediting Virginia with the disbursements you have not reduced that to a gold basis, and he wants to know why if you did it in the one case you did not do it in the other.

A. My answer to that is Virginia is not makng any claim here. West Virginia is making the claim. I have been instructed to try to arrive at a fair valuation, and I have attempted to do that to the best of my ability. This calculation is merely operations of the sinking fund for a series of years. There is no reduction and no addition made to this schedule.

Q. Do you mean by that as far as this schedule goes this is rather illustrative than probative?

A. If I understand your question, yes, sir.

Mr. Robinson: Isn't your question a question addressed to counsel more than to the accountant?

The Master: I think it is a proper question for the accountant.

Yes, I think it is all quite true, but I allowed that method of inquiry on the part of Virginia, and I think it is legitimate as far as Mr. Potter is concerned. He is a qualified accountant. This is exactly the same line of inquiry that was pursued with Mr. Hillman; that is, in substance. Of course in the last analysis both of you understand that I am going to be governed by the contentions, that is so far as the attitude of the various parties are concerned, by the attitude asserted by their counsel. I do not say I am going to take the assertions of the counsel, but I am going to hold them to the theories which their counsel stand for in final argument.

Mr. Holt: Of course these exhibits from first to last show that wherever we set up a credit they minimize it by a reduction to the gold basis, where, on the other hand, they want to show how glorious has been the conduct of Virginia, they do not reduce it to the gold basis.

The Master: Of course the purpose of this cross-examination is to emphasize that fact.

Mr. Holt: And I wanted to know what reason there was for it, if any.

The Master: You have a perfect right to it, and as I understand, Mr. Potter has done the best he could to give the reasons from his point of view. There is no question about the propriety of the cross-examination.

Mr. Harrison: In response to the comment made by my friend on the other side, which of course embodied a veiled criticism of the motives and integrity of Virginia—

The Master: I do not think so; it does not convey any such idea to my mind. It is quite proper for both sides of this controversy to put their best foot forward, and make the best and most satisfactory showing that they can. I do not think there is a thing in this objection, Mr. Harrison, that reflects upon the sincerity or integrity of either Virginia or its accountant.

Mr. Harrison: I want to call your Honor's attention to what this exhibit means. I apprehend the witness has not conveyed that idea yet clearly to your Honor's mind, in respect to the item of interest under criticism, the aggregate amount being $1,503,957.88 I merely want to say that that column headed Interest on State debt, including the item that has been criticized shows that so much of the State's public obligation had been discharged. In other words, that a total of $4,086,136.27 of the obligation of the

State to pay interest, whether it was paid in chips or whet-stones, or not, it was paid in a currency that was accepted by the creditor, and discharged that much liability. And that was all that column was intended to show, and all that it does show.

The Master: I understand that.

Mr. Harrison: That there had been lifted between those dates, the dates mentioned here, at the particular date that Judge Holt refers to, there had been lifted one million nine hundred thousand dollars of interest that had accrued on the undivided debt, and no longer rested as an obligation.

The Master: It bears more upon this question of interest, and at the same time of course, so far as Judge Holt's criticism may be founded upon the record, he is entitled to make it.

Mr. Harrison: I wanted to explain just what the real purpose was. And the object was, whatever effect this may have, as an offset, to be relieved of interest and so on.

The Master: This does not offset against anything.

Mr. Harrison: I understand that.

Mr. Holt: Would it not be equally true if Virginia would use some Richmond & Danville Railroad stock for the purpose of lifting one of her thousand dollar bonds?

The Master: Do you want that addressed to the witness?

Mr. Holt: I have addressed it to Mr. Harrison.

The Master: I would a little rather have it addressed to the witness. This little side discussion is simply anticipating the discussion that is going to take place before me when we get through with this case.

Mr. Holt: We will come to those items in another schedule.

The Master: I do not think we have any misunderstanding, Mr. Harrison, of your position.

By the Master:

Q. This is simply a transcript of the book, is that it?

A. Yes, sir; that is all.

Mr. Hogg: That is reduction added, as I understand, to a gold basis.

The Witness: No, no gold basis.

Q. You have not changed the interest you found on the books. This is simply a photograph of the Sinking Fund operation?

A. Just a condensed statement of the Sinking Fund operation for that period of years.

Q. You have not modified any item?

A. No, sir.

Q. You have not changed any item?

A. No, sir.

The Master: That is the way I understood it.

Mr. Holt: We so understood it, but we had a modest idea that what was sauce for the goose ought to be sauce for the gander.

The Master: It excited your curiosity?

Mr. Holt: Yes.

By Mr. Holt:

Q. Now, turning to the last page of the same exhibit we find that you have made some payments here, Virginia has, by bonds, coupon bonds dated the 1st of January, 1866, registered bonds, 1866, coupon bonds, 1867, and so on, amounting to $6,576,913.60. Now, there was no reduction in those transactions as shown by your schedule, either to a gold basis or to a market value, was there?

A. No, sir.

Q. All bonds cancelled and all bonds issued and turned over were set down at their face value, were they not? This does not purport to set down any bonds cancelled.

Q. These were bonds issued for the purpose of paying interest?

A. Yes, sir.

Q. Of course it resulted in no bond cancellation, but they are set down here, the bonds so issued, as at their face value?

A. As reported in the Second Auditor's report. This is a copy of the figures found in that report.

Q. Were those bonds later funded?

A. I do not know that all of them were, but I know that some of them were.

Q. Were they not at a later date funded at 50 cents on the dollar?

A. I do not know.

Q. Well, have you no means of ascertaining the fact so that you may answer the question?

A. I presume I could find out; yes, if the records are there.

Q. I wish you would do that.

The Master: Have you got somebody that is assisting you, Mr. Potter?

Mr. Robinson: The bill shows that on account of Virginia's share of this debt she has already paid over seventy millions of dollars. These were refunded several times, not these particular bonds, but the bonds under this statute. Virginia has been paying interest on refunded bonds, and when we get through we will show that for every dollar of these bonds Virginia has probably paid a dollar and a half or maybe two dollars. That is a computation that we have not made.

The Master: That may all be true, but of course they are entitled if they want it, on a cross-examination, to this detail. It is a legitimate cross-examination and a legitimate inquiry. It may well be that later on you may cover the whole ground, but of course you understand that they are not required to accept your method of covering it.

By the Master:

Q. Have you now anybody working with you, Mr. Potter?

A. Yes, sir; but nobody sufficiently familiar with this matter to go into it.

Q. How long would it take to get this information?

Mr. Anderson: That would be an exceedingly difficult matter to work out, your honor.

The Master: When these items appear here and some effect is going to be claimed for them, they are entitled to cross-examine on them.

Mr. Robinson: This is a new schedule. Why don't they have some of their men look it up?

The Master: They are entitled to proceed and get all the information from Mr. Potter that they can. We need not spend any time discussing what is going to be done, because if Mr. Holt insists that Mr. Potter get it for him, he will have to do it.

Mr. Harrison: If they want any further information, why can't they get it for themselves?

The Master: They have a right to get it from Mr. Potter if they see fit.

Mr. Harrison: I never called for any statements to be made and never assumed that I would have a right to impose on their witness.

Mr. Lilly: You wanted our man to go and get a private book from one of the railroad companies.

Mr. Robinson: It is a computation that will take three days.

The Master: Of course I cannot help that.

Mr. Harrison: The only point that I am making is, not that there is any objection in the world to getting it, I would be glad to have them get it, but I think they ought to get it for themselves. I do not think they ought to require us to furnish them with additional information that requires the examination of books

Mr. Holt: We find on the last page of this exhibit, your honor, six millions of dollars and seven millions of dollars, an aggregate of over thirteen millions of what Virginia has done. And we have heard a great deal about the seventy million dollar business that she has done in this direction heretofore. And we find that this is a bond transaction, and we have very strong suspicion that these bonds were subsequently funded at 50 cents on the dollar, and have probably been funded again two or three times and pared again, so that thirteen million dollars does not sound so big.

The Master: I think you have a right to minimize it.

Mr. Robinson: We will put in a schedule.

Mr. Holt: We do not ask for a schedule, we simply ask if these bonds were subsequently refunded at a less amount than their face, and if so at what amount.

The Master: If you are prepared to furnish a schedule here, why can't Mr. Potter take the information and make that statement?

Mr. Robinson: It will take two or three days.

The Master: We will proceed here with the understanding that if it is feasible Mr. Potter will furnish the information.

The witness: I would like to know exactly the information I am to supply to them.

The Master: You have got five items of bonds on the last page of your Exhibit No. 1, and what Judge Holt wants to know is whether or not that list of bonds was not afterwards refunded at 50 cents on the dollar or some sum less than par and a subsequent refunding of those bonds at a sum less than par. In other words, so far as you can he wants you to trace out the final disposition of these particular bonds with reference to the question as to whether they were or were not refunded on a basis less than par, and if so how much.

The Witness: I can answer that question to an extent as to some of those bonds.

The Master: Do not stop to make those figures now.

The Witness: I have some of the data before me. There was one million—

The Master: I am not going to spend time here on something that does not get us anywhere; I am not going to wait around here for another day to allow accountants to compute. I want to know how adequately you can answer that question from the data you have there. If you can do it with sufficient adequateness to satisfy Judge Holt you may answer it now.

The Witness: I can account for a million and a half of it.

The Master: Will that answer your purpose Judge Holt?

Mr. Holt: I do not think it covers it.

The Master: We won't spend any more time on it now. You need not spend a minute on it now. You have a right to minimize that item, if you can, and the ouly question now is how that is going to be done in the most feasible way. You shall do it as far as that is concerned, and the other side do not object to it. But I am not going to wait here for Mr. Potter to make any computations now, because that delays the hearing. What we will do about that will depend upon some arrangement we will make later. But the understanding is that that will be done.

Mr. Robinson: Every one of those refunding Acts covers the bonds and interest. You have got to figure the interest.

The Master: What I am going to do this morning is to clean up this hearing, and matters like this that are going to be the subject of arrangement and adjustment we will take up after I finish the hearing. I want to get this hearing through. It is all right enough, but we will have a definite understanding. Can you proceed, Judge, with that understanding?

Mr. Holt: Yes, sir; I will go right along.

The Master: I am not going to run an accountant's office here in this hearing any longer. I did that on the other side quite a good deal; there is no reflection on anybody but time is too short and life is too uncertain. These accountants can figure a good deal better to themselves than right here.

Mr. Holt: We promise to be short.

By Mr. Holt:

Q. We will come now, Mr. Potter, to Exhibit 2, quotations on Virginia bonds from newspapers and likewise quotations on stocks set up in the supplemental answer.

The Master: If you have no objection, I have one or two questions of my own that I would like to ask in relation to that, if I will not be disturbing you in your cross-examination, on Exhibit 2. There are one or two items that I want to make some inquiries about.

By the Master:

Q. What is the meaning of this term that I find in here, Peelers, 6's? Look at it under December, 1874, there are 6's and Peelers. What are Peelers?

Mr. Robinson: Peelers are a bond that you have nothing to do with. They are merely bonds of 1872 that repealed the clause in 1871 making coupons acceptable for taxation.

The Master: Is there any objection to that explanation?

Mr. Anderson: The fact is, in December, 1871—

Q. You refer to consols?

A. That means $100 bonds.

Q. What is the occasion for the insertion of Peelers in here at all?

A. These quotations are just copies. They were quoted that way in the newspapers.

The Master: But if there is no such thing as Peelers in controversy here, I want Mr. Potter to strike that out of his schedule, because I do not want to be confused by it later on.

Mr. Holt: In other words, there is no neccessity of copying the whole quotations.

The Master: No. I suppose he has taken the quotations that he found.

Mr. Anderson: The only thing is that they have a different market value.

The Master: What good does that do me in finding the market value of other bonds? It simply confused it. Here are Consols. Are consols involved here? What are consols?

Mr. Robinson: Consols of the issue of 1874. You must remember that we are reducing bonds received in exchange for certain securities under Class C, and all kinds of bonds are coming

in. I am not sure whether or not there were any Peelers or any Consols, but it does not take very much of space to give the quotations for all Virginia bonds.

The Master: A quotation that does not relate to a bond that was used in payment of some of these securities not only does me no good, but confuses me and has not any bearing on this case, as it seems to me. What I want Mr. Potter to do is to go through this schedule and strike out of it everything, every single security that is not involved in this controversy.

Mr. Holt: You do not want market quotations of Swiss Tunnel stock.

The Master: What good does it do me except to confuse me? With that understanding I see no objection to it. I do not want it in here. I do not know what it proves, and when I come to look it over in the absence of the testimony of the witness I will be wondering what it is all about anyway.

Mr. Harrison: This is just a general statement of the quotations, but he applies that later on.

The Master: Yes, but I want this schedule cleaned up in this way, I want Mr. Potter to cut out every single item here that does not relate and which he does not know that it relates to some security involved in this controversy, and then I have a clear field before me. Have you any objection, Judge Holt?

Mr. Holt: I want them out.

The Master: Then Mr. Potter is to cut them out, and the checking in that regard is to be subject to the checking up of the accountants on either side. Now, proceed Judge.

By Mr. Holt:

Q. Mr. Potter, on the first page of Exhibit No. 2, you give quotations for 1860, 1861 and 1863 upon Virginia bonds; is that so?

A. Yes, sir.

Q. In the year 1860, I see 89, 88 and as low as 82 and a fraction?

A. Yes, sir.

Q. 1861, as low as 78½?

The Master: 78 is the lowest.

Mr. Holt: Yes, sir.

Q. Do you mean that these are quotations as of those dates,

market quotations upon Virginia bonds that constituted a part of the debt of Virginia prior to January 1, 1861?

A. I believe so; yes, sir.

Q. The Supreme Court in getting after us charged us the par of these bonds, didn't they?

A. They did, yes, sir.

Q. What is the object then of introducing a lot of market quotations on a bond here that the Supreme Court of the United States has said as far as we are concerned we shall be charged with at par?

A. I do not know, there is no object that I know of. I was not advised as to the object. I was requested to get these quotations.

Mr. Holt: I just could not see the materiality of it.

The Master: That puts it right up to counsel and they have notice in advance what they are expected to discuss on the argument.

Mr. Harrison: That is all right.

Q. What stock exchanges furnished these quotations?

A. The quotations in the paper shown are the quotations from the New York Exchange and the Richmond Exchange and the Baltimore Exchange in some cases.

Q. Did the City of Richmond have any stock exchange?

A. I do not know of personal knowledge, but I am advised on good authority that they did.

Q. Is it not a fact that there was no Stock Exchange in the City of Richmond in 1860 and 1861, and that the market quotations found in the newspapers of that municipality as of those dates were simply furnished by a single firm of brokers in that city?

A. I don't know.

Q. Do not the papers themselves show from which you got these quotations that to be the fact.

A. When these quotations—

The Master: The question is whether the papers show that to be a fact, that is all.

The Witness: I was just going to say that I did not see the papers. The quotations were compiled by two of my assistants, one checking the other, and I believe they are accurate.

The Master: You simply do not know because you did not see the papers?

The Witness: No, sir.

Q. Then you got these quotations second hand?

A. That is a fact.

The Master: That is, the work of getting them up was done by his assistants, is that what you mean by that?

Mr. Holt: Yes, sir. I have no doubt that is all right.

The Master: Perfectly. Unless it is conceded by you, in order to establish the continuity of legal proof, you will have to produce the assistants, but there will be no trouble about that.

Mr. Harrison: We will do that if it is required.

The Witness: I think the Judge will understand it would be impossible for me to compile as many quotations as that in the time I have had.

The Master: There is no criticism of you, Mr. Potter. They only want to get at just what the fact is.

Q. In order to make it specific, because we may ask one of your assistants about it, were not all these market quotations published in the papers consulted by you or by your assistants furnished by Lancaster & Company, brokers, or by Sutton & Comany, brokers, in the City of Richmond?

A. I don't know.

Q. I notice on the same page and for the year 1863 you have a quotation purporting to be taken from the New York Times. Did you consult the New York Times itself?

A. Yes, sir; copies of the New York Times in the library room up-stairs.

Q. I was going to ask you where did you get them from, from the New York Times?

A. My assistant reports to me that he got it from an original copy of the New York Times in the Virginia State Library.

Q. Then you did not go to the City of New York to make the examination.

A. No, sir.

Mr. Holt: My real object in that, your Honor, is to find out whether or not we could check it without going to New York.

The Master: Exactly so, yes.

The Witness: They have some incomplete files of the New York Times, I believe, upstairs, of about that time.

Q. I notice on this same page 1, under date of January, 1863, that you have a quotation taken from the Richmond Dispatch

of a bid on bonds of 110, and that under date of January 4, 1863, the day following, you have a quotation purporting to have been taken from the New York Times upon the same bonds of 62.

A. Yes.

Q. How do you explain the difference?

A. I believe it is accounted for by the quotation of 110 being in Confederate and the 62 being in the currency used in New York.

Q. Would that be gold in New York or would that be greenbacks?

A. I cannot answer that question; I don't know.

Q. You have no authority then for saying that any of these New York quotations are made upon the gold basis?

A. No, sir; it does not specify that as I understand it in the papers.

Q. What is your judgment in the premises, if you have any?

A. I have no judgment in the premises. I do not know anything about the afterward history.

The Master: That exhausts it if you have not any judgment.

Q. I will ask you the further question if gold were at a great premium upon that date would you expect the market quotation in New York to be on a gold basis or to speak in greenbacks, what would you expect under such circumstances?

A. I think it would be quite natural to expect that they would be quoted in the currency, which was most used, and if gold, it would be specified as gold, provided there was a high premium.

Q. In other words, you would expect it to be a greenback quotation?

A. Quite probably; yes, sir.

Q. Now, what is the ratio there of difference between the New York quotations that I have referred to and the Richmond quotation?

A. It is nearly, approximately 2 to 1.

Q. Nearly two to one?

A. Not quite.

Q. Would you not infer from that then that it only took so far as market quotations are concerned about two Confederate dollars to make one dollar of greenbacks?

A. No, I would not conclude that.

Q. Why then would the same bond that was bringing in the

City of Richmond 110 in Confederate currency bring $62 in greenback currency in the City of New York?

A. I believe it is a matter of record that Confederate currency was much more depreciated than greenbacks at that time.

Q. The ratio there though is about 2 to 1. In reducing to a gold basis in your subsequent schedules have you not utilized a greater ratio than 2 to 1?

A. I have used the ratio quoted as already in the record on the date or as near to the date as I could get to it when the payment was made.

Q. What is the smallest ratio you have used in your subsequent calculations?

A. I think 2 to 1, in some cases, 3, 5, 7 1-2.

Q. And 7 1-2; and what is the highest ratio?

A. I think it went as high as 23, twenty odd.

Q. Can you discover that much difference in any of your market quotations in New York and Richmond?

A. I have made no examination along those lines.

Q. I wish you would glance over your Exhibit No. 2 and see whether or not you ever at any time have set down the difference of 7 or 20 to 1 between the market quotation at the two different points, upon the same bond.

A. In July, 1863, I have used a quotation of 9.

Q. What page, please?

A. I find that in my Schedule D. In reducing cash received on that date—during July, I find a quotation of 135 on Virginia 6's.

Q. Where is that quotation, please?

A. That quotation is 63, July 17th.

Q. At what place, though, Richmond or New York?

A. Richmond Dispatch—or, Richmond, Virginia. And on the 13th of the same month the New York quotation was 61.

Q. What would the ratio be there?

A. That is about the same that you quoted.

The Master: The fact that you want to develop is that he has not in any instance undertaken to reduce them to gold basis predicated upon the statement that he uses elsewhere.

By the Master:

Q. Is not that true, that you have not made any effort to re-

duce this table of quotations that you have made here to a gold basis?

A. That is true.

By Mr. Harrison:

Q. (Handing book). There is January 4th, 1864.

The Master: Is that the date?

By Mr. Holt:

Q. The question about that was whether all of these quotations had not been furnished, and is not the fact apparent upon the paper?

The Master: The question is whether the paper does not show it.

Mr. Harrison: Here it is on the book.

The Witness: Sales of stock in Richmond by John A. Lancaster & Son, No. 197 Main Street, two doors above the Farmers' Bank, for the week ending January 2, 1861. Virginia six per cent. registered bonds, sales, $80.

Mr. Harrison: They all show sales. It is a weekly report of sales.

Q. But I find upon this page, no sales, under this date of January 3, 1863, but a bid of 110.

The Master: You do not want to take time to go through and check up these items. What you do want is to have the accountant do that, and if the checking up shows a condition that you want to have appear in the record—

Mr. Holt: Your Honor will not quarrel with me when you see my purpose. What I wanted to know was whether or not all of these market quotations on bonds taken from the Richmond papers were not furnished to the Richmond papers by one or the other of those brokerage firms.

The Witness: The quotations that I have just read would indicate that as to this date. I have not examined the other dates.

Q. Well, can you conveniently and speedily look at another one or two there by way of illustration?

A. On January 11th that is true, the same house.

Q. And does it show that they are all private sales? Is there not something in those newspapers to indicate that?

Mr. Holt: I have sold some few bonds at times when I was so hard up I could hardly walk, for anything I could get.

The Master: You were lucky to have them at that time. Why can't we have those papers gone over and have a succint statement made for whatever it may be worth.

Mr. Holt: We probably would like to have it when we come to the stocks.

The Master: Whatever may be needed in that regard, we will have that done, but before we conclude I would like to have you indicate just exactly how far you would like to have him go in that respect.

Mr. Holt: Well, he might perhaps, after an examination, put into the record this, if it be the fact, that all of the market quotations taken from the Richmond papers relative to Virginia bonds for 1860, 1861 and 1863, and for every other year given in his Exhibit No. 2, were furnished by private brokers, based upon private sales; that is, if that be the fact.

The Master: Now, have the original sources examined by somebody and see whether that can be accurately stated; and if it can be, why, have that statement made. The real point that Judge Holt has in mind is that there was no public stock exchange in Richmond, and that this information is simply information published from private sales by brokerage concerns from time to time.

The Witness: I have found that term used, Richmond Exchange, frequently; and I made some inquiries around Richmond and was told that there was an exchange.

The Master: You cannot testify to that.

Mr. Lilly: We do not think it is a fact.

Mr. Holt: I will ask him one question on that point, and that will test the exhibit too.

The Master: That is right.

By Mr. Holt:

Q. You have no authority then for saying that there was a Richmond Exchange in existence upon the dates embraced in this exhibit, other than hearsay?

A. No, sir.

Q. Turn now to page 8 of this same exhibit, Farmers' Bank of Virginia, 1860, November 2nd, quotation 102. Where did you

get that quotation?

The Master: What date is that, Judge?

Mr. Holt: November 2nd, 1860.

A. The Farmers' Bank of Virginia.

Q. Where did you get the quotation under that date of 102, showing a premium?

A. From the Richmond Dispatch.

Q. Does your exhibit show it?

A. There is a note added—it was omitted when this was originally written up, but there was a note added, and if it did not get into your exhibit, it was meant to.

Mr. Holt: I have nothing here to show.

The Master: I have a note here.

Mr. Holt: It is not here.

The Master: It is on mine.

Q. After you have examined the newspapers that you have just now consulted, do you want to change your statement that they are taken from the Richmond Stock Exchange?

A. If I find that this is not in accordance with the fact I certainly want to change it.

Q. You are not satisfied yet?

A. I am not satisfied, no.

The Master: Now, I suggest that when you are prepared to make your general statement in relation to the Richmond Dispatch, I do not know whether these quotations are bid and asked, and it is evident that the Richmond Dispatch so far as you have produced it does not show either bid or asked but does show sales; and if that be the fact, simply have it appear that they are reports made by brokers of sales, which is something that your exhibit does not show.

Mr. Holt: I think some of those brokers' reports simply show bids and what was asked; I do not think it is uniform. Some of them show sales.

The Master: Then in that case my suggestion could not be followed.

Q. What was the quotation, according to your Exhibit No. 2, on Farmers' Bank of Virginia stock upon the date nearest to January 1, 1861?

A. 100, on January 4, 1861.

Q. What would be the quotation on the next nearest date to January 1, 1861?

A. December 14th, at 100—December 14, 1860, at 100.

Q. You find then the stock of that bank quoted at par a few days before January 1, 1861, and three days after January 1, 1861?

A. Yes, sir.

Q. Do you know whether either one of those quotations was an actual sale?

A. No, sir; I have not that information before me.

Q. Do you know whether they represent a bid?

A. That is my understanding of these quotations, that they were bid prices.

Q. And you do not know whether any sales resulted, that is whether those bids were accepted or not?

A. I cannot say.

Q. And you do not know how many bids were made?

A. No, sir.

Q. Suppose a bid of $100 was made on the 4th day of January, 1861, upon 10 shares of the Farmers' Bank of Virginia, which bid was not accepted, would you take that as any evidence at all of the value of the stock on that day in the market?

A. I think it would be an indication of what people were willing to pay for it, and that would establish the value to a certain extent.

Q. Would not that be a pretty weak evidentiary fact, if some man through a private broker were to offer you par on 10 shares of stock in the Farmers' Bank of Virginia on that date, and you had refused it?

A. Well, I do not know, because I would have to know something about what value I put on it.

Q. Well, would that indicate the state of the market at all?

A. I think it would.

Q. Upon that bank stock?

A. I think it would give a fair indication of what the market was. They would not take the time and trouble to quote them otherwise.

Q. Would you be willing to advise a client upon evidence of that kind that that was the market value of that stock?

A. Absolutely not.

Q. You would consider that pretty slim picking?

A. I would have to see some evidence of sales at that price.

Q. On January 18, 1861, you have the Farmers' Bank of Virginia, 99. Was that a bid or what was asked, or does it represent a sale?

A. I will have to make the same answer to all of this, Judge. I do not know of my own personal knowledge. I believe that they are bid quotations.

The Master: There is no occasion for having this record left in that uncertain condition, and I do not want it left in that way. I want you to check this up and put on some kind of a notation so that when I look this over I will know whether these are bids or offers or sales, all of them. There is no occasion for leaving this in this uncertain condition, and I cannot have it left in that way. I suppose you would like to have that done too, Judge?

Mr. Holt: Yes, sir.

The Master: Check it all up, so we will know whether they are bids or offers or sales. That of course you can do later.

The Witness: I will.

The Master: And I want you to check it up with the accountant on the other side.

Q. Now, in 1863, on January 7th, the same stock you have quoted at 103, and on January 21st of 1863 at 105, January 29th, 105, and February 7th, 107 1-2, March 14th of 1863, 111, and on April 8th, 1863, 131, and April 18th, 1863, 128. Do you know whether those quotations represent bids, sales or prices that were asked?

A. I do not.

Q. Nor do you know, as I understand you, how much stock was involved in either one of those quotations?

A. No, sir.

Q. Whether, if it was a sale, one share or a thousand shares were sold?

A. No, sir.

Q. If it were an offer whether it was made upon one share or a thousand shares?

A. No, sir.

The Master: And there is another thing that you may put in when you check up and give us the detail; if the sources of your

information show the amount of the transaction, put that in.

Mr. Holt: I was going to ask that.

Q. Then your schedule does not show, in either instances, the amount of the transaction?

A. No, sir.

Q. Or whether it involved more than one transaction?

A. No, sir.

The Master: We will suspend here for five minutes.

By Mr. Holt:

Q. Taking the Exchange Bank quotations now upon the same page of Exhibit No. 2, we find on November 2, 1860, this stock quoted according to your exhibit at 105 1-2. Was that a bid?

A. I believe it was. I do not know positively.

Q. Was it accepted?

A. I don't know.

Q. How about on the 9th of November, the quotation of 104½, was it a bid?

A. I don't know, I think it was.

Q. On November 16th, 1860, 104½?

A. The same is true.

Q. November 23, 1860, 100?

A. The same.

Q. And a bid I presume simply on December 14th, of 101?

A. Yes, sir.

Q. There was nothing to show what was asked?

A. No, I have not anything before me to show that.

Q. Nor does your exhibit show whether any sales were made upon either of those dates?

A. No, sir.

Q. Taking the various quotations in the year 1861 upon the stock of this bank, what have you to say in the same respect thereto?

A. The same answer as to your previous questions.

Q. How about the quotations under the year 1863?

A. The same answer.

Q. Taking the bank of Virginia, you have a quotation under date of November 9th, 1860, of 70. What do you mean by that, what was the par value of that stock?

A. 70.

Q. Then that quotation is at par?
A. Yes, sir.
Q. And it was the same upon all the dates given in that year?
A. Yes, sir.
Q. From what paper were those quotations taken?
A. The Richmond Dispatch.
Q. Do they represent bids, sales or offers?
A. I believe they represent bids.

By the Master:
Q. Have you any original knowledge on that point?
A. No.
Q. Did you see the Dispatch?
A. No; I stated a while ago that I had not prepared this personally. My answer is the same as to these questions.
Mr. Holt: Then the witness had better say he does not know.
The Master: Yes; that is all you want to answer to that question.
The Witness: I don't know.
The Master: You simply don't know and that exhausts that subject. If they want to pursue it further, then they will have to pursue it with some other witness.

By Mr. Holt:
Q. You may take the quotations on the stock of the Bank of Virginia for the year 1861. Do you know where those quotations came from?
A. The Richmond Dispatch.
Q. Do you personally know that?
A. It was reported to me by my assistant who took them from that paper.
Q. You did not examine the paper yourself?
A. No, sir.
Q. And you have no personal knowledge upon the subject whether those quotations represent bids, offers or sales?
A. No, sir.
Q. Nor how much stock was involved in either transaction.
A. No, sir.
Q. Is the same true so far as the quotations given throughout the year 1863?

A. With one exception in 1863, the quotation of November 27th as I read it would be 122 bid and 123 asked.

By the Master:

Q. As far as your knowledge of the facts goes the same is true as to all these quotations that you have here in your exhibits, is that right?

A. Yes, sir.

Q. These quotations are the result of work done by two of your assistants.

A. Yes, sir.

Q. And you have not any personal knowledge of the sources from which they came?

A. Except that I told them to take certain books; if they took any others, I don't know; they would not be likely to do that.

Q. That does not give you personal knowledge of the quotations.

A. That is true..

Q. You know what they went for, but you did not see it?

A. No.

Q. You did not have anything to do with it?

A. No.

The Master: That covers the whole ground as far as you are concerned.

Mr. Harrison: In a similar situation in the examination of the defendant's chief accountant, where his testimony related to exhibits that were compiled by his assistants, we made no question at their request as to the integrity of the work upon which he based his testimony, conceding without requiring them to bring their witness who had made the investigation to the stand that it might be accepted as truly and accurately made. I assumed the same course would be pursued here, as one man cannot be on a dozen different jobs at the same time. Now, if it is not going to be pursued and we are to be required to bring in witnesses to vouch for the integrity or the accuracy of the work, I would like to know it.

The Master: There has not been anything said yet to indicate that they propose to question it, so far as that is concerned.

Mr. Holt: The point with me, Mr. Harrison, is that I feel that the entries here on November 27 of 122-123, I have no

doubt that is correctly taken from the paper, so I am not questioning that. But what I did want to get was some additional information, and that is whether or not that represented a bid or a sale or an offer.

By the Master:

And that Mr. Potter does not know, and I have already instructed Mr. Potter to elaborate this schedule and make it appear with reference to every item—first, whether it is asked or bid or a sale, and, second, if it shows the amount of the transaction, so that when this schedule is completed it will show all those details so far as they are available. Of course that Mr. Potter cannot do because he does not know anything about the original information. They are not raising that question. They are simply developing this in order to straighten the thing out. Of course I know that Mr. Potter cannot testify to those things, and Judge Holt is simply developing the fact that he could not do that.

Mr. Holt: Simply indicating that we want the additional information.

The Master: Precisely, and I have instructed Mr. Potter to elaborate this schedule so it will give everything that the original sources do show on that point.

Mr. Holt: I was going to ask the names of his assistants, but that perhaps is unnecessary under the circumstances.

The Master: Not the slightest objection to that. Who are they?

The Witness: The man who worked first on this is Mr. Wallerstein, a young attorney in the Attorney General's office here, and later on I had his figures checked up by my assistant, Mr. Haddock.

By Mr. Holt:

Q. Should not the quotation of November 2, 1860, 105 1-2 be 104 1-2?

A. Exchange Bank?

Q. Yes.

A. I have no knowledge whether it should be or should not be.

Q. Turn now to page 9 of the same exhibit, Orange & Alexandria Railroad Company stocks. Does your exhibit show any quotations on the stock of that company for the year 1860?

A. No, sir.

Q. It is confined to bonds?

A. Yes, sir.

Q. For the year 1861?

A. The quotations are of bonds.

Q. You have none for that year on stocks?

A. No, sir.

Q. And the only market quotations you give on the stock of that company are found in the year 1863?

A. Yes, sir.

Q. Do you know whether or not your assistants searched for market quotations upon the stock of this company for the year 1861?

A. I believe they did; my instructions were to do so.

Q. I see also that you have marked upon this page, all the way through, the subject of bonds, Richmond Exchange. By what authority did your assistants do that?

A. I do not know.

By the Master:

Q. Well, you assumed without investigation that there was an exchange, I suppose? Whether there was or not you do not know.

A. The assumption, if it might be called such, was based upon the figures found by my assistants. I judged that there was a Richmond Exchange, and I made some inquiries, and I was told that there was.

The Master: I will have it appear in the record that the Master has sent for the directories of Richmond for 1860 and 1866, and has examined those two directories, and is unable to find anything in the directories that indicates the existence of a Stock Exchange in either one of those years. I have looked under the head of Richmond, I have looked under the head of Stock, and I have looked under the head of Exchange, and I do not find anything to indicate that there was any Richmond Stock Exchange, in the directory, for whatever that may be worth. We do not find the directories between 1860 and 1866. A curious thing is that in 1860 we do not find the Richmond Dispatch in the directory at all. I do not understand why, exactly, but it is not there. Whether there are in existence any other directories or not I do not know.

The Witness: It is probably the Daily Dispatch.

Mr. Lilly: It is marked the Daily Dispatch in the 60's, your Honor.

Mr. Anderson: I think witnesses that we will examine will tell us about that. Mr. Williams will tell us about that. He was a broker and banker. He remembers Lancaster & Company.

Mr. Howard: May it please the Master, if the gentlemen on the other side will accept this, I was asking a son-in-law of Mr. Lancaster, of the old firm of Lancaster and Company, and he told me that Lancaster & Company came here some time in the 40's, and there was no Stock Exchange here whatever at that time, and there were several brokers representative offices here after that time, Davenport & Company, Lancaster & Sons, but my information is that there was not any Stock Exchange during the war. And if you were to examine those papers further on during the war to its close, you will find where they have sold at public auction a whole lot of stocks.

The Master: I suppose we might find out when the Stock Exchange of Richmond was incorporated.

Mr. Holt: We have sent for that information.

The Master: As the evidence stands before me now there is no evidence before me that there was any Stock Exchange in 1860 or 1866, or in the intervening years. If there is any evidence, and it is obtainable, it will be produced, of course.

Mr. Anderson: I am very sure there was no Stock Exchange in Richmond until after the war.

The Master: The New York Stock Exchange is not incorporated.

Mr. Holt: The gentleman we sent down to make the investigation will find out whether it is incorporated or unincorprated.

Mr. Howard: There were only two or three brokers here, as far as any of the records show there in the papers or anywhere else.

By Mr. Holt:

Q. Turn to page 10, Manassas Gap Railroad Company. Have you set down any market quotations on the stock of that company for any year in your exhibit?

A. No.

Q. You have undertaken, however, to give the market quota-

tions on bonds of that company for 1860 and 1863?

A. Yes, sir.

The Master: There were 17 brokers here in 1860.

Mr. Howard: I had no such idea.

The Master: The directory entertains that idea. That simply shows that we cannot trust to memory away back there.

Q. Is anything said about bonds of the Manassas Gap Railroad Company in the supplemental answer of the defendant filed in this cause?

A. No, sir

Q. They are not claimed anywhere by the defendant as an asset, are they?

A. The Manassas Gap? Not the bonds; no, sir.

Q. Page 11, Richmond & Danville Railroad Company, stocks. You have given certain quotations here upon the stock of that Company, market quotations during the year 1860. They are set down as 60, 60, 60 and 58 upon various dates. Do you know whether those quotations represent sales or offers?

A. No, sir.

Q. Have you any knowledge upon the same subject with respect to quotations on that stock set down by you during the year 1861?

A. No, sir.

Q. During the year 1863?

A. No, sir.

Mr. Holt: It is understood, I believe, your Honor, that in the amended or supplemental schedule it will give this additional information upon this stock.

The Master: Yes, the additional information inquired for is to apply to every item on that schedule so far as applicable. That is understood, is it, Mr. Potter?

The Witness: Yes, sir, I will provide that.

Q. Page 12, Richmond & York River Railroad Company, stocks. Did you find any market quotations upon the stock of that company for the year 1860?

A. No, sir.

Q. For the year 1861?

A. No, sir.

Q. You found nothing but quotations, which you have set down, during the year 1863?

A. Yes, sir.

Q. Were there any market quotations upon the stock of the Richmond & York River Railroad Company during the year 1861?

A. I don't know.

Q. Either in New York, Baltimore or Richmond?

A. I do not know.

Q. Or in any place else?

By the Master:

Q. All you can say about that is, I suppose, that you instructed your assistants to get them if they were in existence, and their reports were negative on those points?

A. Yes, sir.

Q. Is that it?

A. That is it, yes, sir.

By Mr. Holt:

Q. Did you find any market quotations upon the stock of the South Side Railroad Company for years 1860, 1861, 1862 and 1863?

A. No, sir.

Q. There were none, were there?

A. I do not know.

Q. Well, if there were no market quotations they could hardly enter into the valuation of the stock as a factor, could they?

A. Obviously.

Q. Turn to page 13, please, Mr. Potter, Virginia Central Railroad Company, stocks. You have quotations here upon the stock of that company for the year 1860, the year 1861, and the year 1863. Do you know upon what transactions those quotations were based?

A. No, sir.

Q. You don't know whether they were bids, offers, or sales?

A. No, sir.

Q. Or how much was involved in the transaction?

A. No, sir.

Q. What was the quotation on that stock, as given by you, upon the date nearest to January 1, 1861?

A. January 4, 1861.

Q. What was the quotation?

A. 50.

Q. Upon the next nearest date to January 1, 1861?

A. January 11, 1861.

Q. What was that quotation?

A. 47 1-2.

Q. Upon the next nearest date?

A. January 18th.

Q. Was it January 18, 1861, or December 14, 1860?

A. January 18th would be a little nearer, one day.

Q. What was that quotation?

A. 47 1-2.

Q. What was it upon December 14, 1860?

A. 50.

Q. Page 14, Virginia & Tennessee Railroad Company, stock. Did you find any market quotations for the year 1860?

A. No, sir.

Q. 1861?

A. No, sir.

Q. You only found two quotations, and they were in the year 1863?

A. Yes, sir.

Q. One was July 24th of that year, 115, and the other September 3d of that year, 135?

A. Yes, sir.

Q. Did you search the New York papers for the purpose of ascertaining whether they contained any market quotations upon this stock for 1860 or 1861?

A. I do not think so, Judge; I am not sure.

Q. Did you examine the Baltimore papers with the same view?

A. No; we made no examination of any Baltimore papers. The quotations that I have indicated here as coming from the Baltimore Exchange are quotations found in the Richmond Dispatch.

Q. Then all of your quotations, as I understand, are derived from the Richmond Dispatch, wherein they state the New York, the Baltimore and the Richmond quotations, is that correct?

A. Well, with the exception that there was one file of the New York Times which we examined, and it is indicated there New York Times, New York Exchange. If it says Richmond Dispatch. New York Exchange, it means the quotations on the New York

Exchange reported to the Richmond Dispatch or the Daily Dispatch.

Q. However, no quotations were found anywhere upon the stock of this company for the years 1860 or 1861?

A. No, sir.

By the Master:

Q. Then the files of the New York papers have not been examined for the purpose of ascertaining what the conditions were in connection with any of these stocks or bonds; that is, I mean the files in New York?

A. I had an inquiry addressed to the Financial Chronicle, but I could not get any satisfactory information from that paper.

Q. What do you mean by an inquiry addressed to the Financial Chronicle?

A. I sent to one of my partners and had him go there and see if they had files, and they did not.

Q. You mean to say that the Financial Chronicle did not have files of the New York newspapers?

A. No, they did not have their own files.

Q. They did not have any files that went back that far?

A. No, sir. The Commercial and Financial Chronicle is the full name.

Q. They did not have any files that went back that far?

A. No, sir.

Q. You did not pursue the investigation far enough to go to the New York Times office or the New York Herald office or the office of any of the New York papers which were current publications of those dates?

A. No, sir, my inquiry—

Q. Your inquiry as a matter of fact did not go so far as to go through the files of the New York newspapers that were then published?

A. No, sir.

Q. Which undoubtedly contain all of the New York Stock Exchange quotations of that period?

A. No, we did not make such examination.

Q. So what that would disclose does not appear in this record, as to market values or as to quotations upon these various stocks or bonds?

A. No, sir.

Q. What is the reason?

A. I do not know that there is any reason.

Q. Well, you get it. I would like to have that in the record. I do not care which paper you go to. I suppose the Times or the Herald or the Sun or any of those papers. Take any of those papers and give us what they show over this period in relation to these stocks and bonds.

The Master: If we are going into that subject we might just as well exhaust it; don't you think so, Mr. Harrison?

Mr. Harrison: I see no objection in the world.

Mr. Holt: We were just contemplating sending a man there for that purpose.

The Master: The understanding is that that is to be done, that a schedule is to be furnished—of course we do not have to stop for that. Which paper do you prefer to take, Judge?

Mr. Holt: I should be inclined to leave that to the gentlemen who make the investigation. They may take more than one.

The Master: I imagine of course, subject to typographical errors, I never have known any instance where one financial column was not a duplicate of the other.

Mr. Holt: Either one of those papers, the Herald or the Times.

The Master: I suppose the New York Herald is considered as good a financial authority as any paper in the country. Suppose we have the New York Herald.

Mr. Holt: The New York Tribune during the war seems to have been looked upon with some favor.

Mr. Anderson: I expect any one of those great dailies would give an accurate report of each day's quotations on stocks. I applied to the present president of the New York Stock Exchange, Mr. Noble, who is a friend of mine, for information with the object of getting evidence about this matter, and he told me after inquiring into the matter that there was no record kept of transactions of the New York Stock Exchange during the war, and that the only source of information was what your Honor suggested, the daily papers, the great dailies of New York. Their reports would be the only things available.

The Master: I think that is true. I suppose we would all concede that while the late lamented H. G. had charge of the Tri-

bune, that some departments at any rate were very valuable authority. Whether H. G. knew as much about finance as he thought he knew about some other things may be a question of some doubt.

By Mr. Holt:

Q. Page 15. I see you have upon that page of Exhibit 2 the heading, one column, James River and Kanawha; the second column, Richmond & Petersburg Railroad Company, and the third column, Richmond, Fredericksburg & Potomac Railroad Company, and in each of these columns you have certain years purporting to give quotations, but nothing to indicate whether they were market quotations upon bonds or stocks. Which do they represent?

A. Stocks.

Q. Take the first item, James River and Kanawha Company, what did you find to be the market quotation on the stock of that company on November 2, 1860?

A. I think it is 18 1-4, may be 18 1-2.

Q. Which is it, a quarter or a half?

A. My copy is blurred.

Q. It is a half here.

A. 1-2.

Q. What was it quoted at on November 9, 1860?

A. The same.

Q. Is it not true that all the quotations during the year 1860 on the stock of that company are the same?

A. Yes, sir.

Q. It stood as shown then by this schedule as having a market value from November 2d to December 14th of 18 1-2, a value of 18 1-2?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. What was it for March 1, 1861?

A. 18.

Q. It seems to have been pretty regular as shown by that exhibit?

A. The quotations indicate that.

Q. Would that indicate a uniform value in the market without much fluctuation?

A. I think so. We have no quotations between December 4th and March 1st.

By the Master:

Q. Why would not it indicate that the stock was inactive?

A. Yes, it would.

Mr. Holt: Would it indicate that, your Honor, or would it indicate that it just stood uniform and not subject to fluctuation?

The Master: I suppose when you get right down to it, it is probable that some stock broker would have more intelligent information about that than perhaps any of us have.

By Mr. Holt:

Q. Now, you have given the market quotations likewise for the stock of that company during the year 1863. What was the lowest quotation during that year?

A. 19.

Q. What was the highest?

A. 22.

Q. And what the intermediate quotations?

A. 20, 20 1-2.

Q. Then it ran from 19 to 22, did it?

A. Yes, sir.

Q. You have given the market quotations of the Richmond & Petersburg Railroad Company for 1860?

A. Yes, sir.

Q. Uniformly at 64?

A. Yes, sir.

Q. And in 1861 running from 57 1-2 to 64?

A. Yes, sir.

Q. And in 1863 at 140?

A. Yes, sir.

Q. Where did you get the market quotations on the stock of the Richmond, Fredericksburg & Potomac Railroad Company for the year 1860?

A. From the Richmond Dispatch.

Q. Does your exhibit show that?

A. There is a foot note on that page, and if it is not on your copy, it is an oversight.

Q. I have another copy with the foot notes on it, but it is not

there. From the same source during the year 1861?

A. Yes, sir.

Q. And 1863?

A. Yes, sir.

Q. I would like to inquire now whether you consulted the present market quotations of that road?

A. No, sir.

Q. Then you have no knowledge or information upon that subject?

A. No, sir. I have heard it stated once or twice, but I do not remember what the figures were.

Q. Is it not a fact that the stock of that company is now selling at 320?

A. I don't know.

The Master: Which one is that?

Mr. Holt: Richmond, Fredericksburg & Potomac. I will want to file a memorandum on that, your Honor, but it must be borne in mind that that was never disposed of.

The Master: If there is one thing surviving and seemingly healthy and vigorous, that would be a good idea to have it shown.

Mr. Holt: There is another thing that might be shown as we go along, and I will ask him that question.

Q. All of these railroad companies and other corporations whose securities have been listed in the supplemental answer, that survived the Civil War, went right out of one system of currency into another without any jar, did they not?

A. I couldn't answer that question; I don't know.

Q. Have you any evidence that any of them ever changed their securities or anything of that kind, just moved right along out of one regime into another, didn't they?

A. I don't know. I have not made any inquiry looking toward the ascertainment of that fact.

Q. Did not the report of the Auditor of the Commonwealth of Virginia indicate that?

A. I have no knowledge of any such statement in the Auditor's report.

Q. Have you any evidence anywhere or knowledge that would lead you to believe that their securities were changed or that they did anything but go right along?

A. No, sir, I have no information on that point.

Mr. Holt: Now, I do not want to take the time, your Honor, to detail all the stocks mentioned in the supplemental answer, but I will perhaps cover my point by this question:

Q. Have you set forth in this schedule all of the market quotations that you were able to find upon the stocks of the various companies mentioned in the defendant's supplemental answer?

A. To the best of my knowledge and belief, yes, sir.

Q. So quotations have not been obtainable upon the stocks enumerated in the supplmental answer save and except those set down in your Exhibit No. 2?

A. No, sir.

Mr. Holt: Of course your Honor sees our point.

The Master: Certainly. Now, I am going to give this instruction in relation to this matter of the schedules, provided it is acceded to by both sides. This schedule of course has got to be very elaborately amended. Now, my judgment is—please note what I am saying—my judgment is that the convenience of all concerned is going to be served by striking out this schedule that is now in, and putting in its place this new schedule. This new schedule must show these things: first, a column showing the amount, that will show the amount of the transaction; second, whether it is asked or bid or a sale. Now, there are four columns that must appear in the amended or revised schedule. Each one of these stocks and each one of these transactions must appear, if they do appear, under all of those four heads; amount, asked, bid, sale. Now, that will have to be done in relation to every one of these items; and when we get the new schedule, it seems to me it will absolutely supersede this old one; and my judgment is that the printing of the old one in the record will be a matter of no consequence; I shall not look at it, the new schedule is the one I shall go by, I do not care anything about the old one. And the new work that is done must be done on the same basis; there must be columns, so that when I look at it and the counsel look at it they will see right off the amount of the transaction. Of course if it is simply a bid or an offer, there is not anything under the column of the amount; if it is a sale, the amount of the transaction will appear. My own opinion is that this amended schedule is the only schedule that is worth while at all to print. Of course that renders a good deal of Mr. Holt's cross-examination entirely unnecessary, but when we get this amended schedule that will ren-

der a large amount of his cross-examination unnecessary, because it will show just exactly what he developed on the cross-examination. My idea would be to strike out the first schedule and not print it at all, and simply print this completed schedule as the original schedule, and that will cover everything that he has in here, and it will cover everything that the accountants are able to find by this examination in New York. Now, if it is agreeable to both sides, I will give that instruction. Of course, strictly speaking, you will have to agree; if they do not agree, this schedule that has been put in, you will duplicate that schedule practically with the information that we are going to have. Now, as far as I am concerned I shall never look at the original schedule, it is not worth my while. The final schedule will give me all the facts. And the Court won't look at it. Of course if you feel under the circumstances you have some advantage by having the record disclose that it is your cross-examination that has developed the necessity for amending the schedule, that you are entitled to and that you will have. Unless you do feel that, I will wipe that all out and simply put in the completed schedule.

Mr. Holt: Your Honor, the other day when Mr. Hillman was on the stand the cross-examination resulted in the correction of a schedule.

The Master: Yes.

Mr. Holt: Our friends insisted on the original schedule remaining and the corrected one going in.

The Master: That is right, they did.

Mr. Holt: And we would prefer that in this case. Because while the Master may not look at it, it may cause some comments.

The Master: You are entitled to the benefit of that.

Mr. Harrison: It is pefectly agreeable to us that that be done.

The Master: I am by no means certain that if I was in the position of the counsel for West Virginia, I would not insist on that. Of course your cross-examination led to the instructions to prepare this final schedule, and so far as that bears on any of the issues you are entitled to the benefit of it. Now, will you proceed with the cross-examination further?

Mr. Holt: And I have just been handed a little pamphlet, your Honor, of the Richmond Stock Exchange; it seems to have been organized April 8, 1873.

Mr. Harrison: I would like to ask that you suspend at this

point in order that we may put on the stand Mr. John L. Williams, and one or two witnesses who have come in and who cannot remain here until after the lunch hour.

The Master: When we have the transcript printed it will be printed right along in its order, but for the convenience of the parties we will suspend here and take their testimony.

Mr. Holt: We have no objection, Your Honor. I think perhaps it is in the interest of expedition, and perhaps a matter of courtesy. And one other thing, too, perhaps I should call your attention to, Your Honor. I have just been handed a note to this effect; there is a file of the New York Herald for 1860 and 1861 in the library, upstairs.

The Master: That does not cover 1863.

Mr. Holt: No it does not.

The Master: It may be that you could work out as a matter of convenience 1860 and 1861, right here, and then finish 1863 in New York. However, consult your convenience about that.

JOHN L. WILLIAMS,

called as a witness on behalf of the plaintiff, being duly sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows;

The Witness: That is a little hard thing to say, sir; I am here to give testimony about things that occurred sixty years ago. It is hard to tell whether I am telling the truth or not. I am not telling anything wrong deliberately.

The Master: You will do the best you can.

The Witness: Yes.

Mr. Holt: I think he exhibits enough conscience to be reliable, as far as I can see.

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Where do you live, Mr. Williams?

A. Where I have lived for 83 years, sir, Richmond.

Q. The city of Richmond?

A. Yes, sir.

Q. What is your occupation?

A. Banker.

Q. Where is your place of business? In what community or city?

A. In Richmond.

Q. How long have you been engaged in the banking business in the city of Richmond, Virginia?

A. Lets see, 1868, I think—hold on a minute, no, it was 1858. Now you can calculate. Between fifty and sixty years, sir.

Q. Since what year have you been engaged in that business in the city of Richmond?

A. Since about 1858, I think, sir.

Q. Have you been engaged in that business alone or as a member of a firm?

A. As a clerk with John A. Lancaster & Son in 1858. After that, during the war, I was a member of the firm of Lancaster & Company. Well, then, in 1873 they broke, and I started on my own account, and have been in business more or less.

Q. Were you engaged then in the banking business in the City of Richmond during the entire period of the war?

A. Yes, sir.

Q. From 1861 to 1865 inclusive?

A. Yes, sir.

Q. Please state, Mr. Williams, what was the currency in circulation in Virginia and in the City of Richmond after 1862 and until the close of the war, between the States?

A. To the best of my knowledge, information and belief, sir, it was Confederate money.

Q. In what currency were the current transactions of that period conducted?

A. In Confederate money ordinarily, divers styles of Confederate money.

Q. With reference to what currency, as a measure or standard of value, were the transactions of Confederate Virginia conducted?

A. Say that again.

Q. With reference to what currency as a standard of value, measure of value, of current transactions, were these transactions conducted during that period?

A. Why, everything, all business was done in Confederate money; and gold was a commodity, a thing that was bought and sold, I suppose from 1861 on it disappeared pretty well; from the opening of the war gold was bought and sold.

Q. And disappeared from circulation?

A. Oh, yes.

Q. In what currency and with reference to what currency were the accounts and transactions of the banks in Virginia, in Confederate Virginia, conducted during that period?

A. There was never anything else but Confederate money, sir.

Mr. Holt: Now, what period is that, Major Anderson?

Mr. Anderson: The period of the war, the period from 1861 to 1865, inclusive.

Mr. Holt: But what time in 1861?

The Master: Major Anderson first started out with the inquiry by limiting it after 1862, during the war; and the examination developed that the witness made it broader, and stated that that was the fact practically after the war. You get it now, do you, Judge Holt?

Mr. Holt: When did the war begin?

Mr. Conrad: April 17th, 1861.

The Master: Is that the date when Sumter was fired on?

Mr. Anderson: April 12, 1861.

Mr. Holt: It goes into the record then that Virginia was out of the Union on the 17th of April, 1861.

Mr. Conrad: She tried to do it.

The Master: Under the authority of the Texas case we do not concede that she ever went out.

Mr. Holt: If she had not tried to do it the banks would have been worth something now. The Confederacy would have lasted about sixty days if Virginia had stayed in.

Q. Mr. Williams, in what currency were the asstes, liquid assets, of the banks represented during that period?

A. I never knew any currency but Confederate currency.

Q. In what currency were their dividends paid in 1861, 1862, 1863, 1864 and 1865?

A. Nothing that I know of, only Confederate currency; I never knew of any other.

Q. In what currency were the deposit accounts kept after 1861?

A. Nothing but Confederate money.

Q. For instance, if a man or the State of Virginia had a million dollars on deposit in any one of these banks, in what currency would it be payable?

A. In Confederate currency.

Q. Their accounts at the beginning of the war, of course, were kept with reference to gold and silver as the standard of value, at the beginning of the war, before the war began?

A. Except in the case of banks, you know, and then they stopped paying in gold; before the War we made no difference between gold and bank notes.

Q. Well, did those deposits and current assets of the banks just gradually drift into Confederate money?

A. Only Confederate money. There was no difference made—nothing said about gold at all.

Q. All payments then of current accounts were made in Confederate money during that entire period?

A. That is my recollection of it, yes, sir.

By the Master:

A. I suppose that would include payments to and payments by the banks?

A. Yes.

By Mr. Anderson:

Q. Please state from your recollection what became of those State banks, the Bank of Virginia, the Exchange Bank of Virginia, the Farmers' Bank of Virginia and the Bank of the Valley of Virginia, if you know—what became of them at the close of the war.

A. My recollection is they all went out near about.

Q. All went to pieces? What do you mean, that they all went out?

A. What is that?

Q. You say that they all went out at that time?

A. All went to pieces, that is all. You know what that is, don't you?

Q. I understand you, I think, sir, very well. State whether they became insolvent, whether they could pay their deposits or their notes in full.

A. Major, they "disappeared like the baseless fabric of a vision, left not a wrack behind" except Confederate money.

Q. Did you have occasion to travel over the State to any extent?

A. No, sir—oh, look here, you are a little trying my memory. What is it you want to know?

Q. I want to know whether you had any occasion to observe the condition of the railroads.

A. Oh, no, I cannot tell you anything on that subject.

Q. What is the style of your present firm?

A. John L. Williams & Sons.

Q. Yourself and your sons?

A. Yes, sir.

Q. Mr. John Skelton Williams is a member of your firm, is he not?

A. Yes, sir.

Q. Your oldest son?

A. Yes, sir.

Mr. Anderson: You may cross-examine.

CROSS EXAMINATION.

By Mr. Holt:

Q. When, Mr. Williams, did the banks mentioned by Mr. Anderson go out or break up?

A. Now look here, you will have to talk a little louder, because I am deaf.

(Question repeated by the stenographer).

A. At the close of the war, sir.

Q. Do you recall the year, in what year?

A. Why the 3rd of April, the whole business, they broke up and went to pieces, in 1865. You recollect what the 3rd of April, '65, meant?

Mr. Conrad: He does not recollect. He was too young.

Q. Was it in 1865 or in 1866?

A. The Confeederacy went up in 1865 on the 3rd of April, sir. I thought everybody on the face of the earth knew that.

Q. When did the banks go up? If the Confederacy went up in 1865, did the banks go up that year?

A. I will tell you, you will allow me now, you are having your fun with me and I will tell you this. Soon after the 3rd of April, Mr. John Minor Botts met old Daniel London on the ruins of the banks. He says, "Mr. London, I am so happy to meet you here in the garden of the Confederacy." Mr. Botts was a great

Yankee man. Then the banks were all burnt up, the buildings, and previous to that, a day or two before that, they had all gone with whatever they had left. I do not know what became of them.

Q. The only question I asked was the date.

A. On the 3rd of April, I suppose you might call it, was the day of their conclusion. Some suits were brought about them afterwards, but that was all that remained of them.

Mr. Holt: Do you gentlemen want to take the position that that is the fact, the 3rd of April, 1865.

The Witness: I would like very much to know what you want to know about.

Mr. Conrad: He was speaking of some suits which were brought.

The Witness: Some of them thought they would make something out of the shares, you know, and several suits I think were brought, but I never heard that any of them got anything from it.

Q. Did any of these banks have in their vaults at the evacuation of Richmond gold or silver?

A. How on the face of the earth could I know, sir; I do not know anything about the vaults and I could not tell you.

Q. And did not the Confederate soldiers rifle those vaults and carry the specie away?

A. You are asking me a whole parcel of questions. About that time we were all in a stir. The town was all on fire, but previous to that, I think the Sunday previous, we were informed that the Yankees—that General Pillsbury was coming, and then it was that everything broke, banks and Confederate officers, they made for Danville, just previous to the 3rd of April.

Q. The banks did the same thing, did they?

A. Yes, they did as far as I know; but why are you asking me things of that sort. I was only in the crowd, I could not tell you any particulars about those things.

Q. Did they make off for Danville too, the banks, did the banks cut out for Danville too?

A. That is my impression, sir.

Q. That is what you mean by that?

A. Yes, sir.

Q. Were you connected with the Northwestern Bank in any way?

A. No, sir.

Q. With the Exchange Bank?

A. No.

Q. With the Bank of Virginia, were you an officer or director or stockholder in either of those banks?

A. I don't think so.

Q. Were you an officer, director or stockholder of the Northwestern Bank of Virginia?

A. Knew nothing in the world about them, don't know anything about them.

The Master: Ask him if he knows who the officers of these various banks were at that time and then whether any of those officers are now living and if so where they are. Excuse me for the suggestion.

Q. Do you know, Mr. Williams, the names of any of the officers or directors of any of those banks in the year 1865?

A. 1865, that would be about fifty years ago, I do not recollect, I do not recall. I run away back in the past and I am a little apt to get things mixed. Old Mr. James Caskey was President of the Bank of Virginia, I think, and Mr. McFarlane of the what do you call it, the Farmers, and John Adam Smith of the—I cannot tell you a thing worth hearing.

Q. Are either of those gentlemen alive now?

A. I think they are as dead as Hector, sir, all of them.

Q. You then cannot tell me who the officers of these banks or any of them were in 1865?

A. I would not undertake to do it, sir, now.

Mr. Holt: I believe that is all.

RE-DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Williams, you were employed by the firm of Lancaster & Company before the war, were you not?

A. Only as a clerk. During the war I was a member.

Q. There are certain quotations here in the Richmond Dispatch of sales of stocks and bonds. Of course you know nothing about them now.

A. Of course not.

Q. Do you know that the reports were made by your firm for

publication in the Richmond Dispatch?

A. Yes, sir.

Q. Do you know anything as to the correctness of those?

A. No doubt if they are in the papers they came from our concern.

Q. Do you know anything as to their correctness?

A. No, sir.

Q. Not now?

A. No.

By the Master:

Q. Was there any such thing as a stock exchange in Richmond in 1860, 1861, 1862 and 1863?

A. Not that I recollect, sir. There was a stock exchange here that started after the war.

The Master: That is all.

Mr. Anderson: Much obliged to you, Mr. Williams.

The Master: Now can you proceed with the cross-examination of Mr. Potter or go on with any other witness?

(At this point Mr. Conrad made a statement which he requested the stenographer not to make a part of the record.)

Mr. Holt: We would be perfectly willing to have Mr. Conrad's statement go into the record as evidence, without his being sworn.

The Master: You may state, Mr. Holt, what you are willing to put in the record as a concession predicated on the statement of Mr. Conrad.

John F. Glenn, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Glenn, where do you reside?

A. Richmond.

Q. What is your occupation?

A. One of the officers of the Merchant's National Bank.

By Mr. Holt:

Q. How old are you, Mr.Glenn?

A. Well, I suppose anywhere over forty years of age.

Q. Yes, I know, but so was Mr. Williams over forty years of age.

By The Master:

Q. What is your age?

A. 78.

Q. A native of Richmond, Virginia?

A. No, sir.

Q. How long have you resided in Richmond, Virginia?

A. Since 1864.

Q. And what business were you engaged in in 1864?

A. I was a book-keeper in a merchant house.

Q. In the same bank in which you are now an officer?

A. Oh, no; I was a book-keeper in a commercial firm.

By Mr. Anderson:

Q. Where were you living during the war between the States from 1861 to 1865?

A. From 1861 to 1864 I lived in Petersburg, or rather from the time I landed in Virginia.

Q. Are you not a native of Virginia?

A. No, sir.

Q. A native of Ireland?

A. A native of the north of Ireland.

By The Master:

Q. And in 1864 you came from Petersburg to Richmond?

A. Yes, sir.

Q. So that during the whole period of the rebellion you were living in the State of Virginia?

A. Yes, sir.

By Mr. Anderson:

Q. You were connected with business houses during that whole time as a clerk?

A. Yes, sir.

Q. When did you come into the banking business?.

A. In 1866, first of April, 1866.

Q. Were the houses by whom you were employed during the war between the States engaged in the business of buying and

selling property of what was the character of the business?

A. Well, one was a wholesale dry goods establishment and the other was a wholesale grocery and commercial business in Petersburg.

Q. Can you state, Mr. Glenn, from your knowledge of transactions during that period with reference to what currency all current transactions were conducted in during the period of the war in Virginia?

A. Well, all transactions were conducted generally in what was called Confederate currency.

Q. What were the exceptions?

A. Well, I don't know. I suppose that some people may have sold property for those. I don't know that I ever heard of any.

By The Master:

Q. Were general commercial and business transactions during that period so far as you know conducted upon the basis of Confederate currency as the medium of exchange?

A. Yes, sir.

Q. In what currency were accounts with banks and transactions of banks conducted at that time?

A. Confederate currency.

By The Master:

Q. Was there any other universal medium of exchange in the State of Virginia during that time than Confederate currency?

A. Well, some of the cities used currency known as the City of Richmond. debt.

Q. That would be in municipal currency?

A. Yes, sir.

Q. But with the exception of the municipal currencies that may have been current, was there any other universal medium of exchange in Virginia during that time other than Confederate currency?

A. No, sir; none that I ever heard of.

Q. Do you say you never knew of any individual transactions that were conducted on a gold basis?

A. No.

Q. You don't go so far as to say that there may not have been transactions which were predicated upon a gold basis; there may have been individual transactions of that sort, but if they were they were not within your knowledge, is that right?

A. That is right, yes, sir.

By Mr. Anderson:

Q. Were railroad tickets paid for in Confederate money?

A. So far as I know.

The Master: Why do not these general questions cover your whole ground? Excuse me for interfering in the examination. My object was to facilitate.

Mr. Holt: I do not believe it was possible for any one man to know what four hundred million people did.

The Master: All the witness can do is to tell as far as he knows.

Q. From your personal observation what was the condition of the railroads of Virginia at that time, in what condition were they as to repair and condition of cars and tracks?

A. Pretty well worn out.

Mr. Anderson: That is all, I believe

CROSS EXAMINATION.

By Mr. Holt:

Q. Mr. Glenn, over what railroads in the State of Virginia did you travel during the war?

A. I do not think I traveled over any except between Richmond and Petersburg.

Q. What railroad did you use for that purpose?

A. That was the Richmond & Petersburg Railroad.

Q. Did you travel on the Richmond & Danville?

A. I don't remember, I think not though.

Q. How far is it from Petersburg to Richmond?

A. 22 miles.

Q. Then the extent of your travel during the war over the railroads was confined to 22 miles, is that so?

A. Yes, sir.

Q. Was not there a State currency extant here during the war?

A. Yes, what they called Virginia Treasury Notes.

Q. That was in addition to and distinct from Confederate currency?

A. Yes, sir.

Q. And this municipal currency you have described was likewise distinct from Confederate currency, was it not?

A. Yes, sir.

Q. Was there no gold in this country at all?

A. Oh, yes; there was some. I do not know how much, though there was some gold, some people hoarded their gold you know and treated it as a commodity.

Q. Any silver?

A. Well, I suppose there was some silver too.

Q. Most of it was hoarded up in the banks was it not?

A. Well, I do not know about that; I think probably that it was, except that the Confederate government had some gold.

Q. Well did not the Yankees bring any of their money around down here?

The Master: You mean of course prior to the rebellion?

Mr. Holt: Yes.

The Witness: What is that question?

Q. Did not the Yankee soldiers bring any of their money down here during the war?

A. Well, there were places in Virginia that they occupied during the war, and I suppose they did use some greenbacks in paying for anything that they bought.

Q. Well, McClellan's armies used greenbacks, didn't they?

A. Well I do not know, I suppose they did though.

Q. And General Butler's?

A. Yes, sir; I suppose so.

Q. And Pope and Burnside and Banks and Hooker, fighting Joe Hooker?

Mr. Harrison: Butler used spoons.

Mr. Holt: He did in New Orleans, and they were silver too. Well I believe that is all.

By The Master:

Q. Was there such a thing as a Stock Exchange in Richmond then Mr. Glenn?

A. No, sir.

Q. How long has the Stock Exchange been in existence?

A. Well I do not know really. I think it must have been started shortly after the war, a few years after the war.

Q. Well, was there any Stock Exchange during the years 1860, 1861, 1862, 1863 and 1864, in Richmond?

A. As I was not living in Richmond during the first three years of the war I do not know anything at all about it, and I never heard of any at any time during the war.

RE-DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Glenn, you have mentioned that besides the Confederate currency there were Virginia Treasury Notes and notes issued by the cities. The notes issued by the cities were generally denominated shin plasters, were they not?

A. No, I think the little fifty cent and twenty five cent notes were called shin plasters.

Q. I will ask you whether that paper currency, that issued by the cities and that issued by the State of Virginia, passed interchangeably at par with Confederate money or not, or was that State currency at a premium?

A. No, I think not, I think it was on a par.

Q. With Confederate money?

A. Yes.

Q. It passed interchangeably?

A. Yes, sir.

Q. What office have you held in the Merchants National Bank?

A. I have been a book-keeper and a cashier, and I am now second Vice-President.

Q. How long were you cashier of that bank?

A. From 1882 to about three years ago.

Mr. Anderson: That is all.

RE-CROSS EXAMINATION.

By Mr. Holt:

Q. When did the Confederate currency pass out of existence?

A. Well, the Confederate currency passed out of circulation at the close of the war, but the Confederate currency never did go out of existence, because there is some of it stored away now.

Q. I do not mean in existence in the sense of this stuff that we see in the windows around, but when did they stop using Confederate currency?

A. Well, just around the close of the war.

Q. When was that?

A. The 3rd of April, 1865.

Mr. Holt: I believe that is all, your honor.

William H. Lucke, called as a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. What is your full name?

A. William H. Lucke.

Q. What is your age and what is your occupation, Mr. Lucke.

A. 69.

Q. And what is your occupation?

A. I am associated with John L. Williams & Sons in the banking business at present.

Q. Where were you living during the war between the States?

A. In Richmond.

Q. How were you occupied, how were you engaged?

A. Well, at what particular dates do you want? Can you specify?

Q. Well, in 1862 and 1863 and 1864.

A. Well, part of the time I was in the employment of the Confederate Government, up to about 1863, I think; at that time I was with Lancaster & Company, brokers, stock brokers.

Q. Did you remain with Lancaster & Company from 1863 to the close of the war?

A. Yes, sir.

Q. What was the currency which constituted the medium of exchange and the standard of value at that time within Confederate Virginia?

The Master: In all commercial and business transactions.

Q. In all commercial and business transactions?

A. Confederate money.

Q. Were the dividends of the banks paid in Confederate money?

A. I think so; I cannot say postively about collecting any dividends, but everything of the kind was in Confederate money.

By The Master:

Q. Does that mean, Mr. Lucke, that when the banks had disbursements to make they made them in Confederate money?

A. Yes, sir.

Q. And then when they had collections to make they also made them in the same Confederate money?

A. That is my recollection.

Q. That is all the transactions on either side, payments by parties to and payments of parties from were all made in Confederate money?

A. Yes, sir.

Q. And this State currency and the municipal currency, was that interchangeable at par with the Confederate currency?

A. To the best of my recollection it was.

By Mr. Anderson:

Q. Mr. Lucke, Lancaster & Company, what was their business?

A. Stock brokers.

Q. Did they do a general banking business too?

A. No, sir; they did not do a general banking business, just stock brokers.

Mr. Anderson: You may cross-examine.

The Master: Just one question.

By The Master:

Q. Is it not in accordance with your recollection that there was no stock exchange in Richmond during that period?

A. There was not.

The Master: That cleans up that schedule absolutely so far as the stock exchange is concerned.

CROSS-EXAMINATION.

By Mr. Holt:

Q. How old were you on January 1st, 1861?

A. 16 years old.

Q. What currency did you have here in Virginia then?

The Master: That is three months before the war opened, January 1st, 1861.

A. The notes of the various banks of this State, and gold and silver currency too at that time.

Q. You did not have Confederate currency then?

A. No, sir.

Q. When did Confederate money first come on to the stage?

A. I cannot give the exact date of that, but very soon after the Confederacy was formed.

Q. Was it in 1862?

A. I do not remember that. I cannot say when it first appeared in circulation.

Q. Were you, either in 1861, 1862 or 1863, connected with any bank in the City of Richmond?

A. No, sir.

Q. You do not know then personally whether they received gold on deposit during those years?

A. No, sir; I do not.

By The Master:

Q. What business were you engaged in, in 1861, 1862 and 1863?

A. Well, I was a boy then. First I was in an insurance office, then as I say, I was employed by the Confederate Government.

Q. In what capacity?

A. I was a clerk in the medical department.

Q. And then from that you went into the Lancaster concern?

A. Yes, sir.

By Mr. Anderson:

Q. In 1863 you went with Lancaster, was it not?

A. Yes, sir.

By Mr. Holt:

Q. Where was the Farmers' Bank of Virginia located?

A. On Main Street between 10th and 11th.

Q. How many branches did it have?

A. I do not know.

Q. And where were those branches, such of them as you do know about, located?

A. I do not remember.

Q. Were any of its branches located in the City of Richmond?

A. I think not. The mother bank was here.

Q. Where was the Bank of Virginia located?

A. Right next to the Farmers' Bank.

Q. How many branches did it have?

A. I do not know.

Q. You do not know where they were located either?

A. No, sir.

Q. Where was the Bank of the Valley located?

A. My recollection is Winchester; I am not certain about that.

Q. It was not in Richmond at all was it?

A. No, sir.

Q. Did you know anything about it?

A. No, sir.

Q. Where was the Exchange Bank located?

A. On Main Street between 11th and 12th.

Q. Did it have any branches?

A. I do not know, I cannot remember.

Q. And if it had of course you do not know where they were located?

A. No, sir.

Q. Do you know the location of the Northwestern Bank?

A. No, sir.

Q. It was not in Richmond, was it?

A. It was not in Richmond.

Q. How many branches did it have?

A. I do not know.

Q. You do not know where they were either?

A. No.

Q. Where was the Fairmount Bank located?

A. I do not know.

Q. It was not in Richmond, was it?

A. No, sir.

Q. Did it have any branches?

A. No, sir; I do not know if it had any branches or not; it was not in Richmond.

Mr. Holt: I believe that is all.

Mr. Conrad: I am going to make another statement, not as a witness—the Confederate Government issued Confederate cur-

rency at Montgomery, Alabama, before Virginia went into the Confederacy.

The Master: We have reached the usual hour for recess. Now, we ordinarily take a recess for an hour and a half. It seems to me we are getting pretty close to the end of this case, and I want to close it to-night if I can. That lets us all get away. I was going to suggest that as far as I am concerned I would rather have a short recess of an hour. And even if we do not bother with lunch, if we can run along through until five or six o'clock, and with reasonable convenience clean everything this afternoon—now it may be that counsel can tell me whether we would be likely to clean up without any difficuty if we have the usual intermission. Of course I won't make this a short intermission unless it is agreeable to all concerned.

Mr. Harrison: We all share your feeling about getting away to-night, but we have some schedules that are not yet completed, and the chances are that we are going to run over into the morrow.

The Master: So far as these schedules are concerned, I think we could make this arrangement—

Mr. Robinson: Could we not have them handed in afterwards?

The Master: Yes, and go into the record, subject to their being agreed to by the other side. If that is all, I do not think that ought to delay us. Of course if you have anything that you want to explain about them, that is another thing.

Mr. Holt: We may not be able to understand their schedules. We might want to cross-examine upon them.

The Master: I do not insist on it.

Mr. Anderson: If the schedules are ready we can get through this afternoon.

Mr. Holt: I am ready to go right on now without an adjournment.

The Master: How would it do to suspend—if we can clean up everything I want to clean it up this afternoon; my own notion is, say we spend half an hour and come back and use the other hour that we would ordinarily use for lunch in the hope of being able to clean up and get through. Is that agreeable?

Mr. Harrison: Suppose you suspend for an hour?

The Master: I will make it an hour. We will suspend until two o'clock.

At this point a recess was taken until 2 P. M.

AFTER RECESS.

The Master: I place in the record the additional information that Mr. Hillman was requested to get for me this morning, in relation to the Richmond, Fredericksburg & Potomac Railroad. A copy of this has been handed to counsel on either side. This may be incorporated in the record.

The statement furnished by Mr. Hillman is as follows:

Memo to accompany Hillman Report on R. F. & P. R. R. Company.

Cost of Road & Property to Sept. 30, 1848.....$1,478,916.33
(Page 22 Report of 1848—Vol. of Reports 1835 to 1851 Inclusive.)

Cost of Road & Property to Sept. 30, 1849.....$1,483,199.94
(Page 9 Report of 1849—Vol. of Reports 1835 to 1851 Inclusive.)

Cost to Sept. 30, 1855:

Richmond to Acquia Creek.....	$1,531,238.40	
Net Cost Superstructure	236,430.60	$1,767,669.00

(Page 418 of Report 1852 to 1873).

N. B.—Observe change in date of report following:
Cost to March 31, 1858—

Richmond to Acquia Creek	$1,531,238.40	
Superstructure	452,018.55	$1,983,256.95

(Page 466 Reports 1852 to 1873.)

Mr. Harrison: These schedules that Mr. Robinson has called my attention to are argumentative. He suggested to me that you

had suggested that they might be handed to the other side and incorporated in the briefs. I would much prefer to have them in the record. There is nothing about which I imagine there is any necessity for cross-examining, but of course I am not undertaking to dictate to the other side how they shall manage their case. But as we have got all these in the record, I would just like to have the record complete.

Mr. Hogg: We introduced the case of Virginia vs. West Virginia, reported in 11th Wallace, and we did that for the purpose of showing when the suit was instituted and its objects, and we can stipulate on that exhibit.

Mr. Harrison: I cannot imagine that there is any occasion for counsel on either side to be stipulating authorities into the record. We may refer to a number of authorities. I think that may be done as a matter of course.

Mr. Hogg: I did that to show when the suit was instituted.

The Master: I am not going to take any time on these stipulations that may be made, because this record shows, in connection with every exhibit that has been put into this case that is susceptible of a stipulation, that the instruction is that the exhibit is in and is to be printed in extenso unless the parties themselves agree to a stipulation that will eliminate the necessity of the printing of the exhibit. Now that ends it as far as this hearing is concerned.

Mr. Holt: That is up to the parties.

The Master: That is the end of it as far as this hearing is concerned. And if the parties in the interest of narrowing up this record and reducing cost and expense, want to make stipulations about those things, they can do that after the hearing. Now, Judge Holt, the witness is ready for your cross-examination. I am advised by the other side that they have finished their oral testimony, except as they may have something additional from Mr. Potter, in addition to the schedules. That is right, is it not, Mr. Harrison?

Mr. Harrison: Yes.

The Master: I have this suggestion to make. Of course you do not need to follow this. Of course it is an absolute demonstration here now that there was not any stock exchange in Richmond during the period in controversy, and I would strike out all the examination and cross-examination on that subject.

Mr. Lilly: It may be that it ought to be affirmatively shown as a matter of law, your Honor.

The Master: As far as I am concerned I have affirmatively shown it from three witnesses myself. Unless there is somebody that can show the contrary, you may be certain that it will be found that there was not any stock exchange. That is all you want, is it not?

Mr. Lilly: It might be material to show that.

The Master: I am going to find on this record, if it is material, that up to 1866, which covers all these dates in controversy, there was no stock exchange in Virginia.

Mr. Anderson: That is in accordance with the truth.

The Master: You might save half a dozen or ten pages of this record by striking out all that testimony about the stock exchange, and then put in a stipulation.

Mr. Anderson: It runs through it so.

The Master: The finding will be that there was no stock exchange, and the result of that of course is that these sales were sales from brokers' offices so far as they were sales.

Mr. Harrison: Quotations that were advertised by the local brokers who were in business in Richmond.

The Master: Well, I do not know about that, I suppose the strict statement of that is that they were sales that were reported by the brokers to the papers as a matter of daily news.

Mr. Lilly: The evidence shows that it was mostly bids.

The Master: So far as they show anything they simply show that they were reports made by the brokers as a matter of current news to the newspapers.

Continuation of the cross-examination of

ARTHUR G. POTTER.

By Mr. Holt:

Q. Mr. Potter, you have filed an exhibit upon Class C and marked it No. 3. Take the first item thereon, Orange & Alexandria Railroad Company, loans, you have set down under the column marked par the sum of $745,341.48, and in the same line and under a column marked par the further sum of $129,365.83. Also under the same heading cash received $125,556.48. What do those three items represent?

A. You are talking about the first page, the summary?

The Master: Yes, the Orange & Alexandria, the first item. He is talking about the first two pages of Class C, and the item No. 1, Orange & Alexandria loan. His question is what do those three items represent.

The Witness: It represents a total of $398,670.50.

Q. It represents what?

A. If I get your figures right—

By The Master:

Q. You have not got the figures right. The question is this, that you have got under three headings, par $745,341.48, par $129,365.83, and then $125,556.48. What do those three items represent?

A. The total face value of the recovery by Virginia for the stock and the loan of the Orange & Alexandria Railroad Company.

By Mr. Holt:

Q. Where do you get your evidence that Virginia received $125,556.48 cash on that loan?

A. The total amount of cash that the State received was $188,179.26, of which a part applied to interest and the balance applied to the loan. It is a deduction from the facts shown in the exhibits of Mr. Hillman.

Q. From what book and from what page of that book do you derive the $125,556.48 cash item?

A. It does not appear on that item. There is no place in the books of Virginia where that particular item is given, but if you will refer to Mr. Hillman's exhibit under Orange & Alexandria you will find that there were $348,179.26 received in payment on this loan, part of which was in bonds, namely, $188,000, and the rest in cash.

By The Master:

Q. Where do you find that exhibit, in the printed exhibits or is it the 1863 list?

A. On page 17 of the exhibits.

By Mr. Holt:

Q. What exhibit is it?

A. Defendant's Exhibit 3, Asset 1.
Q. Is that 1863 or 1861?
A. 1861, page 17 of the printed exhibits.
Q. What page of the printed record?
A. 17 of the exhibits.

By The Master:

Q. See if I understand it. You say that you get that result of $125,556.48 by taking those items and adding them together and deducting that from the total, representing the amount of cash?

A. Yes, that gives the total amount of cash paid on account of principal and interest up to the date when the loan was $212,844.

Q. Up to the date when there was a balance left due of $212,-844?

A. Yes. Now, it is a matter of calculation to determine how much of that applied to interest and how much to principal, but it is all there in Mr. Hillman's schedules.

Q. And you get your information from his schedule?

A. No. I had practically the same information before and have verified his. I have conceded that his figures here are right.

By Mr. Holt:

Q. I know, but does that exhibit of Mr. Hillman show the receipt on that loan of any cash at all?

A. Why, yes.

Q. Well, where is it shown? I do not so understand it.

A. The first item, October 20th, 1862, $10,071, that probably applied all to interest. The next, October 20th, 1862, $20,000.

The Master: Now Judge Holt's suggestion is that exhibit of Mr. Hillman does not show that those payments were made in cash, and that is true, so that you cannot get the information from the exhibit *per se* that those payments were made in cash; now he wants to know any payments that were made in cash. That is right, Judge Holt?

Mr. Holt: Yes.

The Witness: This exhibit says paid, December 31st, 1864, $14,000. Next to that comes an item, or second from that comes an item, paid in State bonds and interest, $150,037.73. The first one is not designated as a payment in bonds, and I have proved that it was a payment in cash, from the original records.

By The Master:

Q. While he does not denominate it cash, you make that inference by reason of the fact that he specifies the others as bonds, and you say you have verified that from the original record?

A. Yes, sir.

Q. So that you know that all the payments except those mentioned in bonds were payments in cash, is that right?

A. Yes, sir; the only way that this $125,000 can be derived is to apply the portion of the total amount here which is applicable to interest, and the balance of it applies to principal.

By Mr. Holt:

Q. What is the sum total as shown by you received upon that loan?

A. The sum total shown in my exhibit covers both the loan and the stock; it is not divided between the two.

Q. On your Exhibit No. 3?

Mr. Harrison: That is Class C.

The Master: Yes.

Q. What is the total of the three items to which I have called your attention? I will try it that way.

A. $441,662.98.

Q. That would be impossible, Mr. Potter, seven hundred and forty-five thousand and some dollars added to one hundred and twenty-nine thousand and something, plus one hundred and twenty-five thousand would make more than $441,662.98.

A. Yes, sir.

The Master: He wants to know where you get that figure.

Mr. Holt: What I want to know, before the reduction what the sum total at par received upon that loan was.

The Master: Add those three items right up.

The Witness: Yes, sir, $1,000,263.79.

Q. Now look at page 18 of the printed exhibits, Defendant's Exhibit No. 3, Asset No. 1, and tell me what the total received on account of that loan was, as shown by that exhibit.

A. I do not know what that means, that number 6.

Q. Does it not appear there that the sum total is $1,137,906.99?

A. Yes, but I think the difference is accounted for by the fact that there was interest accrued on the bonds, and I have not taken that up in my schedule.

Q. That is exactly what I am coming to. I have asked you what the sum total shown by the Hillman exhibit is, and what the sum total shown by yours, and then I will get at what I want.

A. On page 18 it says paid as follows—I do not know whether it is added together or not.

The Master: Do not stop to read the details. Give the aggregate.

The Witness: I cannot do it until I see what it means. 1 is $1,137,909.99; if that is the total, under the heading payments.

Mr. Holt: That is the way we understand it.

The Master: Well, it is the way I understand it.

Q. Now what is the explanation of the difference between your aggregate and his?

The Master: Something like $137,000 between the two. Now where is it and why for?

Mr. Holt: That is it.

The Witness: There is a difference in the amount of the bonds surrendered and the interest thereon, as shown by certain records of the State of Virginia. The Board of Public Works journal shows one amount, and the Sinking Fund register and the Funding register show another amount. And I referred this matter to Mr. Leitch, in Mr. Hillman's absence. He took the record of the Journal of the Board of Public Works, but I think the more accurate record is the Sinking Fund, and I think that accounts for the $37,000 difference.

The Master: It is $137,000 if I remember right. You had $1,137,000, and you have $1,000,000, so that there is a discrepancy of $137,000. If he cannot do that right off I will suspend a little later for a half hour to give him time to look those schedules over.

Mr. Holt: The discrepancy is established; I have asked him now to explain it, and he has said there are two different accounts given of it.

Q. Is not the explanation this, in part if not wholly, that you have not added into your payments the accumulated interest that was due at the time of the settlement, which was likewise settled as well as the principal? Is not that the explanation of it?

A. No, sir; that is not the explanation of it. If you will permit me I will explain how I arrived at a balance between Mr. Hillman's figures and mine. I have taken the par value of the

stock and the balance of the loan as stated by Mr. Hillman, with which I agreed. I showed that there was received State bonds and interest and cash, so much, and there was a computation of interest on that loan for anticipated settlement of $116,959.62. The total of the items that I have used agrees exactly with the balance of the loan shown by Mr. Hillman and the par of the stock. I start with that point.

By The Master:

Q. Where do you separate, where do you get the $137,000 away from him?

A. I have a note here, "West Virginia relies on Journal entry of October 18th, 1872, in the Board of Public Works, Journal D, page 180, showing interest $186,548.49." The accumulated interest seems to be more accurately stated in the funding transaction on which new bonds were issued, $155,947.19, resulting in the difference of $30,601.30. There are several details in which we differ. I mean, they rely upon one record and I rely upon the other. There is no difference in the net result, I do not think, because the bonds themselves are not in dispute except—yes, the bonds are in dispute. There are some bonds that they have not included in the total recovery that I have included, and I rely upon the Sinking Fund Journals and the transactions shown there.

By Mr. Holt:

Q. Were not the actual settlements made and recorded on Journal D?

A. No; I believe that Journal D was practically discontinued at the time of the war and the entries that followed in Journal D after the war were made in an effort to sort of balance up or straighten up the old books of the Iuternal Improvement Fund. They are not complete in every detail, and I do not think the books of the Second Auditor were ever balanced after the war, so that those journal entries in there are not specific in my opinion.

Q. Will you have Journal D brought in please so we can see just what it does show. Now, you have given no note on any of your exhibits, have you, to indicate the book, page or anything. We are just fighting around in the dark without data of that kind.

A. I believe that in all of these except Orange & Alexandria we are using the same figures that you are using in your exhibits, and having called the attention of the accountant on the other side to the difference in those bonds, I did not think it was necessary.

Q. My question was whether this exhibit of yours or any of your other exhibits shows the sources of your information.

A. No, sir.

Q. They do not?

A. No, sir.

The Master: That is inadvertent probably. The third page of the first exhibit does show the source, the third page of Exhibit 1, Class A, states: "Copied from Second Auditor's Report of December 1, 1871, Table B, page 9." I do not suppose that could strictly be understood not to be a reference to the source. In the main I think Judge Holt is correct.

Mr. Holt: That was our difficulty in checking last night. Mr. Potter was busy with other schedules and we had no reference to which we could go for the purpose of testing him at all.

The Master: Certainly.

By the Master:

Q. The fact is that with very few exceptions the items contained in your schedules do not indicate on the schedules the source from which they are derived. I suppose that is true, isn't it?

A. Yes, sir; that is true. I did not understand that it was necessary to have those references.

Q. It does not make any difference what you understood about it, as far as this question is concerned. The question is as to the fact in the first instance, and the fact is that as a rule and in almost every instance you did not refer to the original sources. Of course you, from your point of view, had a good reason therefor but the fact remains.

A. That is true.

(At this point Mr. Robinson made a statement which he requested the stenographer not to make a part of the record.)

Q. The only computations you intended to cover by these schedules are the figures entered in the reduction of the various

items to their market value predicated upon what you found to be as to their price at which they were sold and quoted?

A. Yes, sir.

Q. You did not intend to go far enough to show the total amounts that may have been received on account of various securities? The total amount received covers of course principal and interest.

A. With the exception of interest.

Q. When a bond is received the bond and interest go to make up the amount of the payment?

A. Yes, sir.

Q. I take it that the total is the bond and interest?

A. Yes, sir.

Q. That is what I mean. You did not undertake to show the total amount received?

A. No, sir.

Q. Because if you did it would have been necessary to have included the interest?

A. Yes, sir.

Mr. Holt: That illustrates the point we make upon the schedule. It is based upon evidence of settlements made and does not show the full settlement.

The Master: That is the criticism of the schedule?

Mr. Holt: Yes, sir.

The Master: I understand it.

By Mr. Holt:

Q. Then as I understand you the accumulated interest up to the date of the settlement was paid but not included by you?

A. I don't understand that it was paid, no. The interest applied as a payment against the State's holdings.

Q. Well, I mean the loan with the interest on it was paid in that way.

A. Yes, sir.

Q. Now, if you were to put that interest in added to your principal, the statement would agree with Hillman's exhibit?

A. Yes, I believe it would in every instance.

Q. As a matter of fact, in the case of the Orange & Alexandria Railroad, would there not be a difference of about $200?

A. I don't know whether there would or not.

Mr. Holt: Never mind, we will not go into that.

The Master: If you wish it I will have him make that computation outside, that is, I won't stop now, but he may make it outside.

Mr. Holt: Very well, make it.

By the Master:

Q. Bear in mind, Mr. Potter, that you are to have that computed and figured, and you better come in with the details of it so that if they want to know what the details are you will be able to show it. Do not stop now to figure it out, but you are to figure it out.

By Mr. Holt:

Q. Did you allow in these items the discounts for anticipated payments?

A. No, sir.

Q. That is another difference, isn't it?

A. Yes, sir.

Q. I believe you may look now on that book we have caused to be brought in a moment ago, and we will see what the interest there is.

Mr. Holt: I am not going to pursue that detail. This is illustrative.

The Master: I understand. I understand the real question to be whether these are the original entries or whether this was written up afterwards; is that the point?

The Witness: This entry is dated October 18, 1872.

By the Master:

Q. And relates to a transaction of what date?

A. Under an Act of March 28th, 1871, entitled an Act directing the Board of Public Works to sell the State's interest. That is a general Act covering all of this. I presume that this October 18, 1872, is the date approximating the date of this settlement, which reads as follows: "The amount on the 28th of March, 1872, was as follows, balance of principal due on account of loan, $212,844.94; interest on same to date $43,510.92; 17,490 shares of stock $874,500; total $1,130,855.85." The account on the 18th of October 1872, adds the interest from the 28th of March, 1872, to the 28th of October, 1872, on the $212,844.94, total $7,050.11, brought down

$1,137,905.97. That is the grand total of the claim.

By Mr. Holt:

Q. That is principal and interest?

A. Principal and interest.

Q. Now, turn to page 18 of the exhibits, printed record, and tell us whether or not that same total does not appear in the Hillman exhibit.

A. Yes, sir.

By the Master:

Q. Except the discrepancy of $1.02?

A. He shows that exact figure, $1,137,905.97.

The Witness: (Reading). In consideration of the above sum the following State securities were received. In State bonds and other certificates of debt, old coupons, $74,500; new coupons, $53,000; old registered debt, $665,016.48; new registered debt, $41,882.40; total, $834,398.88. Interest due to 1st July, 1871, $151,715.87; interest due from 1st July, 1871, to date, October 13th, 1872, $34,832.62. Rebate or discount allowed for anticipated payment, $116,957.58.

By Mr. Holt:

Q. Coming now to the Richmond & Danville Railroad Company, you have under the same headings to which attention has been called in the case of the Orange & Alexandria Railroad Company: $58,200, $460,017.98, $16,000, $31,960.41, $352,399.46 and $33,600. Do those six items represent the full amount that was paid to the State of Virginia for her ownership in the stock of the Richmond & Danville Railroad Company?

A. Yes, sir.

Q. Can you tell me what those items aggregate?

A. As we have computed it, it is $460,777.85.

By the Master:

Q. Those six items do you mean?

A. That cannot be right.

Q. You must be mistaken about the question. Two of them amount to more than $800,000.

A. I was relying on my assistant to take them down, and he did

not get them down right.

Mr. Robinson: Then, if Your Honor please, we concede that in every case here there is no interest taken into consideration in these computations. That was not the basis on which the schedule was made up. The schedule was made up on the market values only, and the market value is computed on the par, and in every instance no interest is taken into account at all.

The Master: That has already been stated. Of course if it is so it is open to them to cross-examine upon it from their point of view.

The Witness: $952,177.85.

By Mr. Holt:

Q. Turn to page 20 of the defendant's exhibits and see what the total there appears to be.

A. Under column, disposed of for?

Q. Yes, that is right.

A. $1,085,636.57.

Q. What is the difference in amount between the two?

The Master: Do you wish to go through the schedule in the same method?

Mr. Holt: Yes.

The Master: Because I will have some accountant make the computations so that we don't have to wait.

Mr. Holt: I will ask a general question as to the others.

The Witness: The difference, I have not got the exact figure, Judge, I would have to sit down and work it out. But I am sure the difference is the interest and the recovery for abated interest. I have balanced my figures with Mr. Hillman's total.

Q. Then the discrepancy between the two is accounted for by the failure to include the interest settled and the interest abated—the failure to include them in your schedule?

A. Yes, sir.

The Witness: May I amend that answer please?

The Master: Yes.

The Witness: The difference is the exact amount of interest on the bonds, the abated interest—or rather the bonds received for the recovery under the law suit for this abated interest are included in my total bonds here in this schedule.

Q. So that in this particular item the difference is the omission of interest?

A. Yes, sir.

Q. And the abated interest you have included?

A. Yes, sir.

Q. Now, turn, under the head of loan, to the Richmond & Danville Railroad Company and tell us, please, where you get your $126,903.34.

A. The total amount of bonds surrendered by the Richmond & Danville for that loan was $565,803.34, of which $126,903.34 are stated in the Sinking Fund records—I have not the page here—to be past due coupons, and $438,900 are State bonds.

Q. Who turned the $126,000 item into the Sinking Fund?

A. The Richmond & Danville Railroad.

Q. Could you give us the page for that transaction?

The Master: That is the page of the Sinking Fund account.

Mr. Holt: Yes, sir.

A. No, I cannot give you that.

Q. Give it to us a little later, please.

A. Yes, sir.

The Master: Look that up and put it in the record. And hand it to the other side when you find it.

Q. Mr. Potter, coming to the third item, Richmond & Petersburg Railroad Company stock, under the column par, $869,486.67, and under the other column of par $161,771.03, neither of those items, as I understand you, include the interest that was settled?

A. No, sir.

Q. And it is likewise true in the case of the Virginia Central Railroad Company?

A. Yes, sir.

Q. That you did not include interest?

A. Nor, sir; no interest included.

Q. Was interest included in the Blue Ridge Railroad Company items?

A. Yes, sir.

Q. Interest included?

A. Interest was included in the settlement.

By the Master:

Q. No, but in this statement, in this schedule.

A. In this statement, no, sir.

The Master: Pay better attention then to the question. You

have already stated that it was not included in any of these items. Now, you are asked about the item in detail, and you did not get the question, Mr. Potter. The question was whether interest was included in this statement.

The Witness: It is not.

By Mr. Holt:

Q. Can you tell me what the interest settled was, what it amounted to?

A. $50,714.64.

Q. That is the Blue Ridge Railroad Company?

A. Yes, sir.

Q. I see you have under the head of cash in the Blue Ridge Railroad Company, $8.96. How was that paid?

A. It is described in Mr. Steger's report in 1864 as uncollected check now on hand, $8.96.

Q. In showing the amount received by the State of Virginia for its stock in the Alexandria, Loudoun & Hampshire Railroad Company, did you include interest? That seems to have been, Mr. Potter, a single cash item of $50,682.40.

A. This cash is the face of the three notes given by the Alexandria, Loudoun & Hampshire. The accumulated interest is not shown in this case.

Q. The accumulated interest is not shown?

A. No, sir.

Q. That is interest that had fallen due at the date of the settlement?

A. That is true.

Q. Is the same true with respect to the loan by the State of Virginia to the Winchester & Potomac Railroad Company?

A. There is no interest included in my schedule with respect to that.

By the Master:

Q. Is there any interest included in any of this schedule?

A. No, sir.

By Mr. Holt:

Q. Do you know what the interest was in the case of the Winchester & Potomac Railroad Company loan?

A. $7,387.22.

Q. Do you know what the interest was as settled upon the loan to the Virginia & Tennessee Railroad Company?

A. I do not understand that the Virginia & Tennessee settled for this loan.

The Master: That is not the question. If you know anything about the interest, answer the question.

The Witness: Do you refer to the million dollar loan?

The Master: Yes.

Mr. Holt: Yes, that is item 8.

The Master: If you know anything about the question of interest, say what you know about it and all about it.

The Witness: No, I do not know anything about the question of interest without referring to my papers. I cannot testify from memory as to it.

Q. Then I believe that it is admitted by you, as stated by Mr. Robinson, that in stating upon this schedule the amounts received by the Commonwealth of Virginia, either for the stocks therein sold by her—described as sold by her—or in the settlement of the loans made by her, you did not embrace the accrued interest.

A. No, sir.

Q. That is true with respect to the whole schedule?

A. Yes, sir.

Q. Have you the loan on this schedule anywhere made by the State of Virginia to the United States Government?

A. No, sir; the amount of the claim is there; the amount of the loan is not.

Q. Well, what do you mean by the item $581,800?

A. That is the par of the bonds, Virginia State bonds, received back from the United States Government.

Q. In settlement of that loan?

A. In the adjustment of this counter account.

Q. What was the total principal and interest involved at the date of the settlement between the Virginia and the United States Governments?

The Master: He means by that in 1894, although the settlement was not made until 1903.

A. The account is stated in the records of the Auditor as $1,723,583.73, that is the total of principal and interest of this claim.

The Master: As of that date?

The Witness: Yes, sir.

Q. Now, then, the United States Government at that time settled that claim with Virginia, both principal and interest, did she not?

A. She did.

Q. And yet you have set the matter down there as being $581,800 instead of $1,130,821.31.

A. I do not concede the instead of, but I put down $581,800 as bonds received.

Q. The $1,130,821.31 shows the full amount of the claim of Virginia of that date, principal and interest, does it not?

A. Yes, sir; to February 11th, 1894.

Q. I am mistaken about the $1,130,821.31; that is calculated upon 1861. The total of principal and interest of the claim of Virginia against the United States as of the date of settlement seems to have been $1,723,582.53.

A. That is what I have just stated.

Q. Yes, but it was my mistake. Now, instead of setting that sum down you have put down $581,800?

A. Yes, sir.

Q. And then you fastened upon that as I understand your exhibit a market value of $151,268?

A. Yes, sir.

Q. And then in the last or total column you carried forward the same amount, $151,268?

A. Yes, sir.

Q. What do you mean by that entry?

A. The market value of the old unfunded bonds at the nearest date I could find a quotation was 26, under date of January 1st, 1893, and the $581,800 is reduced at 26.

Q. Well, now, Virginia received bonds, received her own bonds as I understand it from the Government of the United States in settlement of that loan, principal and interest?

A. Yes, sir.

Mr. Anderson: The fact is, Judge, that one claim was set off against the other.

Mr. Holt: I understand that.

Q. She owed the Government of the United States the bonds, didn't she?

A. Yes, sir.

Q. And the Government of the United States owed her the principal and interest of the loan?

A. Well—

The Master: Virginia owed the bonds with accrued interest, that is right, isn't it?

Mr. Holt: Yes, sir.

Mr. Anderson: There is a difference about the facts.

The Master: He understands about that, but he has asked it for another purpose. Virginia owed the United States at that time those bonds with the accrued interest thereon.

Mr. Holt: That is it, exactly.

The Master: Which amounted roughly to $1,700,000 in round figures.

Mr. Holt: Yes, and the Government of the United States owed her at the same time a loan and interest thereon amounting to $1,723,582.53.

The Master: And the little balance of cash which the United States paid to balance the matter up, $5.50.

Mr. Anderson: There is this difference between the two claims, that Virginia recognized that she owed the United States $581,000, but the United States denied that she owned Virginia a cent of it for thirty or forty years.

Mr. Holt: I would rather not be interrupted at this point with an argument on the matter, because I want to get the facts.

The Master: That is right.

By Mr. Holt:

Q. Then each Government paid its debt, that is, they offset one against the other, did they not?

A. Yes, sir.

Q. Well, then, Virginia by surrender of this loan to the Government of the United States settled an equal amount of her own bonds, principal and interest?

A. An equal amount did you say?

Q. Yes, an amount equal to the loan.

The Master: An equal amount of the bonds, principal and interest.

The Witness: An amount in excess.

The Master: Well, $5.50.

The Witness: You mentioned as to principal.

Q. Principal and interest, the question is, whether Virginia did not settle an amount of her bonds, principal and interest, aggregating that amount except this $5.50 cash.

A. Yes, sir.

Q. Well, now, Mr. Potter, if you owed me a thousand dollars and I owed you a thousand dollars and we should meet and settle and offset the one against the other, why should you then thereafter in making up an account or statement showing the amount of money that you received from me or anything else discount it in any way by showing the market value of the security that evidenced my debt to you?

A. I would not.

Q. You would not?

A. No.

Q. Well, you have done it in this schedule, haven't you?

A. No, sir, because the $298,000 is not a recognized claim; it was not recognized by the Government as a claim.

Q. The Government of what?

A. The Government of the United States.

The Master: They recognized it when they paid it.

The witness: By settlement.

The Master: That does not make any difference. They recognized the liability when they paid it.

The witness: The Second Auditor's report states that the United States would never have paid it unless they had these bonds in their possession.

The Master: That all may be, but they paid it, and they recognized the claim when they paid it. We are not to understand that the United States made somebody a present of $1,700,000.

Mr. Anderson: It was a compromise settlement, there is no doubt about that.

The Master: Yes, but that does not change the fact that the United States recognized that amount of liability to Virginia and they paid Virginia in Virginia bonds with accrued interest, and now of course Mr. Potter is to explain why he makes this entry here under these circumstances.

Mr. Robinson: It is the market value of the securities, that is all.

Mr. Holt: I understand that.

Mr. Lilly: Those very bonds and accrued interest were charged in the debt, January 1st, 1861.

Mr. Harrison: No interest was charged on those bonds on the debt.

The Master: The suggestion is that these bonds were made at par a part of the aggregate of thirty million dollars indebtedness.

Q. I will ask you whether or not the Virginia bonds received by the State of Virginia in the settlement of her claim against the Government of the United States were not embraced in the debt at par that the Supreme Court of the United States has said we should pay a part of at par.

A. Yes, sir, it is so stated in our schedule.

Mr. Harrison: It is so stated in the record.

The Master: Is there anything that appears here that shows when the United States acquired these Virginia bonds? Does anybody know anything about that? Non constat the United States may have paid one hundred cents on the dollar and Virginia may have paid twenty-five cents on the dollar. I simply suggest that. Proceed.

Q. So then your exhibit is intended to show an account of your market value calculations that Virginia only received for this asset in the shape of a claim against the Government of the United States the sum of $151,268, is not that the object of the exhibit?

A. That is the intent, to show the par value, the market value at that time.

Q. And West Virginia if a settlement should finally be had upon that basis, upon the statement of our contention, would be entitled only to 23 1-2 per cent. of $161,268, instead of 23 1-2 per cent. of $1,723,582.52, isn't that true?

A. That is the intent of the schedule. Personally I would not admit it at all.

Q. That is the object of the schedule.

A. Yes, sir.

Q. I know you would not agree to it, as far as that is concerned. Would you deem that equitable to make us pay par on bonds and get credit where we happened to own some of the same bonds not for par but for ten cents on the dollar?

Mr. Harrison: If your Honor please, we object to that question. There is no use of addressing an argumentative question to the witness as to what his opinion may be about a thing.

The Master: I allowed a question of that same character to be propounded to Mr. Hillman.

Mr. Harrison: I do not remember propounding any question of that sort to Mr. Hillman. The schedule is made up as he was instructed to make it up. He has put it in at the market value for whatever it may be worth, and whether we will contend for the market value or——

The Master: I think on cross-examination I am not going beyond the limit to allow him to answer that question. There was more or less general examination of that character with reference to Mr. Hillman on that line; but whether there was or not, I would not want to say it was beyond the legitimate scope of the examination of an expert witness for what it may be worth.

Q. (Question repeated.)

A. I do not know that I can answer that question; I do not understand it.

Q. Would that be common sense or justice is what I mean?

The Master: I do not suppose that makes your question any more clear.

Mr. Holt: We will let the answer stand as it is.

The Master: Were you going to pass from that item?

Mr. Holt: Yes.

By the Master:

Q. What did you do with the interest that was accumulated on these bonds, on the basis of reduction to par value, the interest being in the neighborhood of $1,200,000. I do not see any mention made of interest, but as a matter of accounting, if you predicated the bonds on this par value what do you do with the accrued interest of this $1,200,000?

Mr. Holt: Throw that away altogether?

The witness: I did not understand that you were addressing the question to me.

Q. Oh, yes. What did you do with the interest?

A. Nothing. I have not considered it.

Q. Well, what would you do with it in this case as an accountant?

A. In this case I do not think it ought to be treated at all. It is a counterclaim.

Q. That does not answer the question at all. In stating this account if you predicated a market value upon the stock that is a factor that enters into the settlement, and on that stock about $1,200,000 of interest was computed, what would you do as an accountant with that interest on that same general theory?

A. I cannot answer the question because there was interest on the other side of the account of almost an equal amount. It is perfectly true that it covered a different period, but in view of the circumstances and what I have seen reported in connection with this claim, I would not consider such a claim at all. I think it ought to be turned out of this calculation altogether.

Q. That does not answer my question, it does not come within a hundred miles of it.

A. I want to answer your question if I can.

The Master: If that is the best you can do I will leave it right there.

By Mr. Holt:

Q. You would not consider it at all, but as a matter of fact all this indebtedness of Virginia, covered by this claim of hers against the Government of the United States, constituted a part of the debt prior to 1861, of Virginia, did it not?

A. Yes, sir.

Mr. Holt: We have to do something with that, is what is troubling us. It does not seem to be worth anything on the credit side, but a tremendous amount on the debit side.

Mr. Anderson: He said he would not either charge it or credit it.

Mr. Holt: I think we have all the facts on the subject, your Honor.

The Master: Yes, I think we have all the light we can get.

Q. Now we will turn back a little ways to some of these we inquired about a moment ago. We find that in the case of the Orange & Alexandria Railroad Company, Virginia received in settlement of the loan she had made to that company $745,341.48 and $129,365.83, exclusive of interest, and $125,556.48; and she received in payment of that loan as I understand you, her own bonds issued outside of the cash indicated by you?

A. Yes.

Q. Then that amount of her public debt was cancelled, was it not?

A. Yes, it was.

Q. And that was a part of her debt existing prior to January 1st, 1861?

A. The $745,341.48 was.

Q. And it was treated as a payment by her, was it not, on that debt of hers? She gave up the loan in payment of it, didn't she?

A. Yes, sir.

Q. Then you, instead of taking those bonds at par, as she did, reduced them to 57 cents?

A. 44 cents.

Q. No, reduced them to 44 cents. And upon the theory of market value you make it appear in this schedule that she received much less than the par value of her bonds caused to be cancelled by her, is not that so?

A. That is the intent of the schedule, yes, sir.

Q. The object being to show that although West Virginia may have to pay 23 1-2 per cent. of those same bonds at par, as being a part of Virginia's debt prior to January 1st, 1861, yet when you come to the credit side she is only to receive 23 1-2 per cent. of a much less sum, is that the object of the schedule?

A. I do not—

Mr. Robinson: If your Honor please, I object to that question. If they want to argue this case here we are prepared to do it now. Joint Exhibit No. 1 of the old record shows on its face clearly that these bonds, as they existed in 1861, included the bonds received from the United States and bonds subsequently received by Virginia, surrendered to Virginia in exchange for the stock of the Board of Public Works; and on the face of that statement West Virginia admitted that she was to be charged with these bonds, and that finally was found on her admission. I do not understand that the filing of a supplemental answer revokes that admission made by West Virginia, and in the face of that admission I do not see how the amount of bonds outstanding is to be cut down. The only other theory with which Virginia could be charged with the value of these assets received is their market value, and their market value is found by multiplying their par by the market quotation.

The Master: The only question before me is whether or not

this question submitted by Judge Holt is a proper question on cross-examination.

Mr. Robinson: In the light—

The Master: Yes, in the light of everything. And the proper light on this question is that Mr. Potter produces a schedule, the purpose of which he is supposed to know. Now Judge Holt wants to know what its purpose was, and he wants to probe his purpose, as I understand, for the purpose of discovering what the whole purpose was.

Mr. Holt: Of course.

The Master: Here is his schedule. If it is not his purpose, if somebody else instructed him, I do not know anything about that. But he has a purpose and he has made the schedule, and the Judge has a right on cross-examination to probe that purpose clear to the end. I think the question is competent for that reason.

A. I have prepared the schedule at the direction of counsel, the purpose of which I possibly anticipate, but I am not absolutely clear as to what use will be made of it.

The Master: The question is directed to you as to what your purpose is; is not that so, Judge Holt?

Mr. Holt: Yes, sir.

The Master: That is a perfectly proper inquiry. He wants to know what your purpose was, and if you have answered it fully why that covers the ground, unless the Judge wishes to pursue it further.

The Witness: My purpose was to show the total par value of the securities received by Virginia in payment of debts due her, and the net value of such payments.

The Master: Of course I have got to pass on the testimony of the witness, it is not the ultimate effect on the case itself. And I am going to be extremely liberal as I have already indicated, on these rulings. I want counsel on both sides to feel that they have all the decent latitude that they need or could under any circumstances be entitled to.

Q. In the case of the loan made by the State of Virginia, Item No. 7, to the Winchester & Potomac Railroad Company, you show at par that she received thereon the sum of $45,000. Is that correct?

A. $45,000 of the bonds—of issues prior to 1861.

Q. Prior to 1861?

A. Yes, sir.

Q. And how much as par of other bonds?

A. $36,130.90.

Q. Making a total of how much?

A. $111,130.90.

Q. Then by taking the quotation of the old bonds, at 53 1-4 I believe it is, you ascertained the market value of the bonds aggregating $45,000 to be $23,962.50?

A. Yes, sir.

Q. $66,130 of the new bonds, at 53 cents, to be $45,039.48.

A. Yes, sir.

Q. And those two amounts you added together and got your total of $59,011.88?

A. Yes, sir.

Q. As the real value of the bonds that at par aggregated one hundred and eleven thousand and some dollars?

A. Yes, sir.

Q. Those bonds were the debt of Virginia, were they not?

A. Yes, sir.

Q. And she took them up, settled them, and cancelled them, did she not?

A. I cannot state positively that she cancelled them. Some bonds were taken into the Sinking Fund and funded, and were in the possession of the Sinking Fund Commissioners, but the effect would be the same I suppose.

Q. In other words they were not out in the hands of other people?

A. No, sir.

Q. Well, there would be considerable difference between them, making a calculation between 23 1-2 per cent. of one hundred and eleven thousand dollars and fifty-nine thousand dollars?

A. Yes, sir.

Q. Now the same process of reduction of value has been indulged in by you in the case of the Norfolk & Petersburg Railroad Company loan?

A. Yes, sir.

Q. And the Roanoke Navigation Company stock?

A. No, that was sold for cash.

Q. That was sold for cash?

A. Yes, sir.

By the Master:

Q. The same thing is true, so far as bonds and stock exist, in relation to every item on this schedule, is it not?

A. Yes, sir.

Mr. Holt: That covers that point.

By Mr. Holt:

Q. Now what is the date of the market quotations that you have used here on these bonds of Virginia?

A. Those dates are shown in the sub sheets, for instance Orange & Alexandria, October 17th, 1872.

Q. Is the quotation of 44 in the case of Orange & Alexandria a quotation of 1872?

A. Yes, sir, the nearest date that I can find to that date is October 17th.

Q. Well what is the date of the quotation given opposite Richmond & Danville Railroad Company?

A. December 13th, 1870.

Q. Richmond & Petersburg Railroad Company?

A. I beg your pardon, there are three dates under Richmond & Danville, 1870, 1871 and 1877.

Q. Richmond & Petersburg, the quotation being 66.

A. We have used an average of the market quotations between March and September, 1871, on there.

Q. Now the date, please, of the quotation with reference to the Virginia Central Railroad Company, which is 73.

A. 1871.

Q. Without detailing any further, do any of those market quotations relate to the years 1860, 1861, 1862 or 1863?

A. No, sir.

Q. Turning now to that portion of the exhibit under discussion, No. 3, that falls under the heading bonds; that treats, as I understand it, only of the bonds of the railroad companies named therein?

A. The State bonds surrendered by the railroad companies.

Q. They were surrendered at their par, were they not?

A. Yes, sir, they were.

Q. And you have reduced them by the same process on the subject of value?

A. Yes, sir.

Q. To whom were they surrendered?

A. I believe they were actually surrendered to the Board of Public Works, and later on turned over to the Sinking Fund.

Q. They were surrendered, however, to the Commonwealth of Virginia?

A. Yes, sir.

The Master: Have counsel for Virginia any additional schedules other than those that have been handed to the other side?

Mr. Robinson: We have some typewritten exhibits.

The Master: Are they schedules?

Mr. Harrison: Here is one schedule.

The Master: Hand it to the other side.

Q. Mr. Potter, turning now to the residue of this exhibit No. 3, under the heading of cash, I suppose you mean by that cash paid by the various railroad companies therein named to the Commonwealth of Virginia?

A. Yes, sir.

Q. And you have reduced all of those cash payments to a lower level by the same process of market quotations, have you not?

A. No, only those that antedated the close of the war, only those received during the Confederate period.

Q. What proportion of those cash payments were made by those roads to the Commonwealth after 1865 or the close of the war?

The Master: Roughly speaking, give the percentage.

The Witness: I should say a little more than half was received after the war. That is very rough, I have not been able to compute.

Q. The reason I asked the question was because this schedule at least does not show the date of the payments.

A. I beg your pardon, Judge, it does in every instance.

Q. Then I have overlooked it.

A. The dates are put down below as to the first one. There are two stars in front of the $125,556, and carried down below.

By the Master:

Q. Nearly fifty per cent. were received after the war period?

A. Yes.

Mr. Holt: I thought he said more than fifty per cent.

Q. What did you say?

A. I cannot tell without going over it.

Q. In the neighborhood of fifty per cent. were received after the war period, and as to those items you have made no reduction to the gold basis?

A. No, sir.

Q. And that appears in your schedule, is that so?

A. Yes, sir.

By Mr. Holt:

Q. Now why didn't you reduce those to a gold basis, would not greenbacks have satisfied you?

A. I do not quite understand that there is any object of satisfying me in the matter.

The Master: If you have any personal reason state it. Just answer that question; it is up to you. You have made the schedule, and it is a perfectly proper question. Now then, why did you make that reduction? You had some reason.

The Witness: Because, when this money was received by the State it was worth in gold a certain amount, a certain amount less than its face, as is shown by an exhibit in the former case.

By the Master:

Q. The further question is why you did not make the computation in greenbacks instead of gold, greenbacks being at that time a legal medium of exchange. Answer that.

A. I do not think greenbacks were a medium here, I think Confederate notes were about the only medium. There was some gold and silver.

By Mr. Holt:

Q. Gold does not seem to have been a medium here then, does it?

A. Not a very common one.

By the Master:

Q. Neither was a medium of exchange, is not that true?

A. I believe Confederate currency was the only medium of exchange.

Q. Neither gold nor greenbacks was what we have been denominating here a medium of exchange within the Confederate lines or within the State of Virginia?

A. I think not.

Mr. Holt: He has denominated both as real money.

The Master: Does that conclude that schedule, Judge?

Mr. Holt: Yes, sir.

The Master: I am going to suspend for half an hour in order to give the counsel for West Virginia an opportunity to examme the schedules that have just been submitted to them by the other side; and if half an hour is not enough I am going to wait so that they can with satisfaction to themselves and intelligently cross-examine in relation thereto. I do not want you to feel that you have got to rush about it, but if you can do it in half an hour and make the examination you may, and if not take more time. We will resume, unless Judge Holt is not ready to complete his cross-examination, in a half hour.

Is there any detail you can put in while they are having the intermission for this purpose, because if there is I would like you to get it together. As far as your exhibits are concerned, he will come along with those.

Mr. Harrison: We will have some things to put in.

The Master: What I mean is to be ready to put it in as soon as we finish the cross-examination of Mr. Potter. I want to say this, that the mere fact that the accountants may not have an opportunity to check up these schedules will not in my judgment constitute a justifiable occasion for delaying the whole hearing, because it can be done later.

By Mr. Holt:

Q. Mr. Potter, we will now briefly take up Plaintiff's Exhibit No. 4. As I understand it, you simply take the claims made by the defendant in its schedule covering Class D in the supplemental answer and reduce those amounts to a gold basis; is that true?

A. Yes, sir.

Q. The tables for the accomplishment of which appear on page 647 of the original record?

A. Yes, sir.

Q. Do you know whether or not those were at a premium on the 1st day of January, 1861?

A. No, sir; I do not.

Q. I notice that you make no reduction of these claims of ours as stated for the year 1861 or as of the date of January 1, 1861; is that so?

A. All payments in 1861 were taken at the State's values.

Q. They were not reduced then to a gold basis?

A. No, sir.

Q. Well, if gold were at a premium on January 1, 1861, why would not you reduce them to a gold basis the same as you had reduced them on such premiums in subsequent years?

A. Because the premium was very small in 1861, and I believe the quotations that went in the record began in the latter part of that year.

Q. You say now they were very small, and you just told me a moment ago you didn't know whether gold was at a premium in 1861 or not.

A. I am speaking now to the subject of whether the Confederate notes were at a discount, not whether gold was at a premium.

Q. Well, there were no Confederate notes on January 1st, 1861?

A. No, sir.

Q. Have you any way of telling us whether or not gold was at a premium on January 1st, 1861?

A. I might ascertain. I believe I could, but I have no knowledge at this time.

Q. Does not page 647 of the original record show a premium on gold in 1861?

A. I do not know: I would have to refer to the record.

Q. Please look at it and see what it does show for that year.

The Witness: There does not seem to be one in the court room. I will get one.

(Book produced.)

Q. (Question repeated).

The Witness: In answer to your question, Judge, I believe this table you refer to is the table of Confederate values in gold. Is that what you have reference to?

Mr. Holt: No, I had reference to the premium on gold in another currency before Confederate currency came into being.

By Mr. Harrison:

Q. Do you find it on the page that you refer to?

A. No.

By Mr. Holt:

Q. Does not the page 647 referred to show a premium on gold as compared with Confederate currency in the year 1861?

A. Yes, sir.

Q. Well, then, if you are going to reduce us to a gold basis in 1863, on account of gold premiums, why didn't you reduce us for the year 1861 in the same way?

A. There is no particular reason, except that the premium was so slight that we did not consider it.

By Mr. Harrison:

Q. Weren't you taking the account as of the 1st of January, 1861?

A. Yes, sir.

Q. Is there any gold reduction on January 1st, 1861?

A. No, sir.

The Master: The question was as to whether or not there was some premium on Confederate money during the year 1861, and the answer was that there was, and then Judge Holt wanted to know why he did not apply that reduction to the figures in 1861; isn't that it?

Mr. Holt: Yes. I mixed Mr. Harrison or myself up by first inquiring of the particular date January 1st, 1861, and I subsequently undertook to change January to the year 1861.

Q. What is page 647 of the old record, is it an exhibit?

A. It is called Plaintiff's Exhibit E-2.

Q. Is there anything in that record showing a verification or proof or admission of the truth of that exhibit?

A. It is signed by H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia, in which he certifies it.

Q. What does he certify it as being?

A. "I, H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia, certify that the foregoing is a true extract from the record of Dearing's administratrix vs. Rucker, decided by the Supreme Court of Appeals of Virginia at its April Term, 1868, and that the table therein copied showing the value of Confederate States Treasury notes at various times during the war, is the

only table filed, or to be found in the record of said cause. Given under my hand this the 1st day of July, 1909. H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia."

Mr. Holt: We submit that that does not establish the premiums set forth there.

The Master: You take the ground that it is not competent evidence?

Mr. Holt: It is incompetent evidence for that reason.

The Master: Then the other side can take note of that and govern themselves accordingly. I shall let it stand of course for the time being, and if the other side think it necessary to bolster it then it is up to them.

Mr. Harrison: We do not propose to debate the question.

The Master: They take the ground that it is not competent evidence tending to show the value of Confederate money at that date.

Mr. Harrison: That question we do not propose to debate.

The Master: Very good.

Mr. Holt: I am simply saving the point, and if it is worth anything will discuss it later.

The Master: Precisely so, and if the other side see fit they can rest on the case as it is, and that they say they will do, so we do not need to take any time discussing it.

Mr. Harrison: I do not see any use discussing it.

The Master: Not the slightest on earth.

Mr. Anderson: I think it is too late to raise the question.

The Master: That is a matter that you will take up later.

Mr. Anderson: You will find that has been established again and again in Virginia.

Mr. Holt: That may be, Mr. Anderson. Our point may be worth nothing, that may be true, I don't know.

The Master: That gives the other side notice that you raise it.

Q. In this Exhibit No. 4, as I understand it, you have not embraced any of the items of interest, but have taken simply principal sums and reduced them?

A. No; this exhibit shows all of the items taken up in your Class D, income, it is all interest, as I understand, interest and dividends.

Q. Well turn over to page 2 of the exhibit and see whether

or not you embraced under item 13 interest on loan collected by Virginia from the Government of the United States.

A. I will have to acknowledge that I did not. With that exception my former statement stands, I believe.

Mr. Holt: I believe, your Honor, that our accountant tells us that the amounts in these columns as taken from our Exhibit D are correct.

The Master: Well, I am not going to hold the parties today or require them to agree to a verification of the schedules that have been recently submitted by Virginia, because I think it is fair to give the accountants on the other side more time to make the examination if they desire it. The understanding will be, when we suspend, that these schedules that have been submitted by Virginia are subject to verification by the accountants on the other side at the convenience of the accountants within the next few days. If it should turn out that they do not agree on any of these items, why the items in disagreement will have to be submitted to me at the time of final argument, with such comments or testimony as the parties may have, and I will pass on them at that time. I do not think I would be justified in delaying the hearing for the purpose of getting at the result of the verification by the accountants. I assume they will probably agree. Of course if the verification by the accountants of West Virginia results in the change of any of the items, those changes of course can be made by the accountants, and it can be done in any way that West Virginia desires. If they wish the schedule to simply be corrected without it appearing that the change has been made, after the inspection by their accountant, that can be done. If on the other hand they prefer to have the record show that fact, that after the inspection by their accountants it became necessary for the accountants for Virginia to make a change in the schedule, that may be appear, if they want it to appear. Do I make that all clear now? Are you through with Class D, Judge?

Mr. Holt: Yes, that is Exhibit 4.

The Master: This cross-examination goes into the transcript in its chronological order, although taken out of its chronological order. When the examination is printed I want the cross-examination and the items put in their chronological order.

Q. No. 9 seems to be a statement of interest due October 1st, 1914, upon West Virginia's share of the debt of the undivided State of Virginia, unpaid and outstanding January 1st, 1861, com-

puted from January 1st, 1861, according to the terms written in the bonds. As I understand the exhibit, Mr. Potter, you computed the interest to date.

A. Yes, sir.

Q. Upon all bonds that were payable at the pleasure of the Commonwealth?

A. Yes, sir.

Q. And you computed interest upon those bonds, payable at a fixed date, to that date?

A. Yes, sir.

The Master: That is to the fixed date?

Mr. Holt: Yes, sir, to the fixed date.

Q. Do you recall what the percentage of the whole debt payable by West Virginia was decreed by the Supreme Court of the United States to be?

A. 23 1-2 per cent.

Q. I note in the last line on the first page of this exhibit you have this statement, percentage of whole debt payable by West Virginia, 21.2 per cent.

A. Yes, sir, that is true.

By the Master:

Q. Why is it?

A. The $7,182,507.46 as applied to the whole debt, $33,897,073.82, is only 21.2 per cent.; the original debt having been scaled or reduced somewhat by the Supreme Court in their decision. The seven millions would be 23 1-2 per cent. of the original amount.

Mr. Robinson: If your Honor will recall, under the decision of Chief Justice Holmes, he scaled West Virginia's share because he said Virginia had scaled hers. This seven millions is only 21.2 per cent.

Mr. Holt: If Mr. Robinson will permit me I will get what I want there and make it plain.

By Mr. Holt:

Q. What was the total indebtedness as found by the Supreme Court to be apportioned between the two States, was it not $30,563,861.56?

A. I have not a copy of the decree before me. I do not know.

Mr. Anderson: Here it is, Mr. Potter (handing paper).

The Witness: What page is that on?

Mr. Holt: I have the official report, page 35 of this volume.

(Question repeated by stenographer.)

The Witness: Yes, sir.

Q. And they further found that West Virginia's part thereof was 23 1-2 per cent., did they not?

A. Yes, sir.

Q. Now, then, why do you change the ruling of the Court?

A. I have not changed it.

Mr. Robinson: I would like to ask Judge Holt, if he concedes that they are liable for any interest, that they are liable for 23 1-2 per cent., because we would be very glad to take 23 1-2 per cent. rather than 21.2 per cent.

Mr. Holt: You would like to take anything you could get.

A. I made the computations at the request of counsel.

Q. If you were to take 21.2 per cent. as her proportion of the debt instead of 23 1-2 per cent., and the same rules should be applied to the credits, it would make a very considerable difference, would it not?

A. Yes, sir.

The Master: Does that finish that schedule, Judge?

Mr. Holt: Yes.

The Master: Now you have three schedules, as I understand it that have not yet been put in; and they have been submitted to the other side. Now, let us have the first one. What number will it be?

Mr. Robinson: This exhibit will be No. 4-A, and this is a summary of defendant's Class D as of June 20th, 1863, reducing the income therein mentioned to a basis of gold as per page 647 of the original record at the reduction as stated in the schedule and as of the time stated in the schedule. The amounts are taken from defendant's Class D, and the computations are verified by Mr. Potter and are correct. Is that right, Mr. Potter?

The Witness: Yes.

The Master: Make that Exhibit No. 4-A.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 4-A, September 11th, 1914, C. B.

Mr. Robinson: The next schedule is a summary of West Virginia's claim under Classes B, E and G as of January 1st, 1861,

on the basis of the market value of the securities, with the exception of the Manassas Gap Railroad Company under Class G for which no quotation has been found. Attached to that is a summary entitled total amount of West Virginia's claim as of January 1st, 1861, taking cash at face, securities under Class C as per Plaintiff's Exhibit No. 3, income as per Plaintiff's Exhibit No. 4, securites under Class F at $500,000, and Classes B. E and G at market as per preceding page. We do not concede that these are proper measures of value. The object is merely to show the income, how West Virginia's claim would work out on this basis. Attached to that is a sub-schedule marked XX, in which the banks are figured at their market quotations as of January 1st, 1861, the Farmers' Bank, the Bank of Virginia, and the Exchnge Bank, taken at the quotations as per our Exhibit No. 2. No quotation was found of the Farmers' Bank, and the value of the quotation is taken at par because two of the other banks were at par and one at 101. My inquiry of Mr. Potter is whether he has verified these computations from the sources as stated in his exhibit.

The Witness: I have.

The papers were admitted in evidence and marked Plaintiff's Exhibit, No. 7, September 11th, 1914, C. B.

Mr. Robinson: Plaintiff's Exhibit No. 2 of West Virginia's claim under Classes B, E and G, as of June 20th, 1863, is based on the market value of the securities with the exception of the Manassas Gap Railroad Company in Class G, for which no quotation has been found.

The Master: Is that the same class of schedule as to 1863 as you have already filed as to 1861?

Mr. Robinson: Yes.

The Master: If that is so you need not go into detail about that.

Mr. Robinson: With this exception, in 1861 in our total summary we have annexed as the value under C, the market value that we found in our Exhibit, No. 3, and as regards schedule F, we have put in $500,000. In making up this summary of 1863 we have only put in values where we found quotations; in other words, we do not even concede that the sales and market values that we found are the values as they existed on June 20th, 1863.

The Master: And your question of Mr. Potter is whether

these computations have been accurately and correctly made.

The Witness: Yes, sir.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 8, September 11th, 1914, C. B.

Mr. Robinson: Now, we introduce No. 16, statement of the old unfunded bonds of Virginia for which Virginia issued her new bonds in full without setting off one-third as West Virginia's share. The details are taken from the Second Auditor's manuscript record of school and college bonds. This shows the interest paid from January 1st, 1872, to October 1st, 1914, on these bonds and is a supplement to our Plaintiff's Exhibit No. 1.

The Master: And your question to Mr. Potter is whether these computations have been correctly and accurately made.

The witness: They have.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 16, September 11, 1914, C. B.

Mr. Robinson: The next is the copy of that deed of trust which was marked in yesterday as Plaintiff's Exhibit No. 6. The signatures are omitted from the copy.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 6, September 11, 1914, C. B.

The Master: Have the verifications and the signatures added to that exhibit. That takes care of that. Have you any other exhibits?

Mr. Robinson: Yes, we have.

We read in yesterday Exhibit No. 5, the statute of March 2nd, 1866. The stennographer can get that and copy it into the record, because it is only a page and a half long.

Chapter 9—An Act to provide for Funding the Interest upon the Public Debt.

Passed March 2, 1866.

1. Be it enacted by the General Assembly, That the holders of the registered bonds of the State of Virginia, issued before the seventeenth day of April, eighteen hundred and sixty-one, be and they are hereby authorized to invest the interest due upon said bonds in registered bonds of the State, bearing the same rate of interest as the principal of the bond bears, and payable at any time the holder may elect, not less than ten nor more than thirty-four years from the date. Such bonds shall bear date on the first day

of January, eighteen hundred and sixty-six, and may be issued for sums of one hundred dollars, or any multiple thereof, and shall be in the form and executed in the mode prescribed by law for the issue of the certificates of registered debt of the State. But the interest upon the bonds so issued shall not be payable before the first day of July, eighteen hundred and sixty-seven.

2. The holders of the coupon bonds issued by the State before the seventeenth day of April, eighteen hundred and sixty-one, are hereby authorized to invest the interest due upon said bonds in either coupon or registered bonds of the State, bearing the same rate of interest as the principal of the bond bears; and the interest thereon, if the bond is a coupon, shall be payable at the place where the interest on the principal bond is provided to be paid; and such bond may be payable at any time the holder may elect, not less than ten nor more than thirty-four years from its date. Such bonds shall bear date on the first day of January, eighteen hundred and sixty-six; and if coupon, may be issued for sums of five hundred dollars, or any multiple thereof, or if registered, in sums of one hundred dollars, or any multiple thereof, and shall be in the form and executed in the mode prescribed by law for the issue of the certificates of registered or coupon bonds of the State. But the interest upon the bonds so issued shall not be payable before the first day of July, eighteen hundred and sixty-seven.

3. For any fractional sums of interest which cannot be invested under the two preceding sections of this act, certificates shall be issued in the form and mode prescribed by law for the issue of certificates of the registered debt of the State, payable in two, three or four years, with such interest thereon as is provided in the case of the bonds hereinbefore authorized to be issued.

4. The holders of any of the bonds of the State issued before the seventeenth day of April, eighteen hundred and sixty-one, may, after the first day of January, eighteen hundred and sixty-seven, invest the interest which shall be then due thereon, and not invested under the first and second sections of this act; and may also invest the certificates of debt, mentioned in the preceding section, in bonds of the State, bearing date the first of January, eighteen hundred and sixty-seven, in all respects similar to the

bonds provided for in said first and second sections; and for any fractional sum of interest which cannot be so invested, certificates shall be issued as is provided in the preceding sections.

5. The holders of bonds of the State issued by the restored government of Virginia since the creation of the State of West Virginia, are hereby authorized to invest the interest now due thereon, or which may become due up to the first of January, eighteen hundred and sixty-seven, in the same manner as is hereinbefore provided for the interest due or to become due upon the debt of the State of Virginia incurred before the seventeenth of April, A. D. eighteen hundred and sixty-one.

6. The auditor of public accounts shall have the bonds which shall be required, prepared, and shall perform all the duties under this act which are required by law to be performed by the second auditor in the issue of the certificates of debt of the State.

7. This act shall be in force from its passage.

The Master: That has gone in subject to the stipulation. If the parties see fit it may be stipulated out, and if not it will be printed in full.

Mr. Robinson: I think the stipulation would be longer than the Act.

Mr. Anderson: In connection with the last exhibit, which is as I understand an assignment of the State's interest in the several railroads which constituted the Atlantic, Mississippi & Ohio Railroad Company, we desire to put into the record as Plaintiff's Exhibit No. 17, Sections 9 and 10 of the Act of the General Assembly of Virginia, approved June 17, 1870, entitled An Act to authorize the formation of the Atlantic, Mississippi & Ohio Railroad Company, found at pages 183 and 184 of the Acts of Assembly of Virginia, 1869 and 1870.

The same was admitted in evidence and marked Plaintiff's Exhibit No. 17, September 11, 1914, C. B.

The Master: What is the next exhibit?

Mr. Harrison: I offer an extract from the annual reports of 1866, annual report of Auditor of Public Accounts, September 30, 1866, page 12. And also a copy of a journal entry, internal im-

provement journal, D, page 172. The extract from the Auditor's report relates to the condition of the banks after the war, as showing their worthless condition, and the extract from the journal of the internal improvement company is an entry showing that the stocks of those banks were charged off in 1872. Is not that right, Mr. Potter?

The Witness: Yes.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 18, September 11, 1914, C. B.

Mr. Harrison: I offer now a copy of the minutes of the proceedings of the Board of Public Works, dated February 11, 1868, in relation to the repudiation of the alleged payments by the Virginia & Tennessee Railroad Company on its million dollar loan made by the State, and also from the minutes of the Sinking Fund, page 188, dated December 5, 1864, relating to the same subject, beginning "Present all the Commissioners. Whereas it appears that the Virginia & Tennessee Railroad Company has paid," etc., and ending, "And then the Commissioners adjourned."

The Master: Counsel for Virginia must notify counsel for West Virginia within five days after the adjournment of this hearing as to how much of the original record they will rely upon in the argument.

Mr. Harrison: I would not like to be put under that limitation, or under any limitation, because I expect to make whatever use, at the argument of the case or in the preparation of a brief, I find it necessary to make of the original record. I do not expect them to give me notice of what they rely on.

The Master: If you do not want notice on either side, and you refer to the original record, and at the argument either side thinks they are taken by surprise and ask for time—

Mr. Harrison: I do not expect to be taken by surprise by any citation made from the original record.

The Master: I wanted in the beginning to have indicated what parts of this original record the parties intended to rely on.

Mr. Harrison: I could not state. There may be other matters in this record that we will find necessary to refer to. I have no doubt of it, and I have no doubt they will too.

The Master: If either party is taken by surprise, as to anything that is taken out of this original record, and they have to dig it up, they will have to have time, that is all there is about it.

Mr. Harrison: I do not see why anybody should be surprised by anything in this old record.

The Master: But I cannot see why notice should not be given by each side to the other as to what they rely on.

Mr. Harrison: The depositions I am referring to are the depositions of Colonel John P. Branch, page 753 of the record—

The Master: Suppose you put it this way. You intend to rely on all of the depositions that relate to Confederate currency and its use as a medium of exchange, and you give notice now you may comment on them in your argument.

Mr. Harrison: Yes, we rely on them. Now, here is an exhibit that we want to file, an extract from the report of the Second Auditor of Virginia, dated the 30th day of September, 1904, relating to the settlement of the claim of the Commonwealth of Virginia against the United States.

The Master: Has a copy of that been submitted to the other side?

Mr. Holt: We have it.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 20, September 11, 1914, C. B.

Mr. Anderson: If your Honor please, we desire to put into the record as Exhibit No. 21, a report of E. R. Leland, Special Commissioner of the Circuit Court of the City of Richmond, Virginia, in the suit of Tirill and Bocock, trustees, and Alexander and Ellyson, as trustees, against the Richmond & Alleghany Railroad Company, found at pages 198 and 199 of the second volume of the Court proceedings of those causes.

Mr. Hogg: What Court was that in?

Mr. Anderson: The Circuit Court of the City of Richmond. Secondly, the decree of the Court confirming that sale, found at page 202 of the same volume of the same record; and third, the deed from Leland, Commissioner, to Davis, Cox and Tod, the purchasers of the property of the Richmond & Alleghany Railroad Company, from page 229 to page 235 of the same volume. We wish to file all these as one exhibit.

The Master: That may be done.

Mr. Anderson: And also this stipulation, to save putting in a number of extracts from that record:

It is agreed by counsel for the plaintiff and defendant and for the bondholders that the recitals contained in the deed from Spe-

cial Commissioner Leland, of date May 20, 1889, to Erwin Davis, Charles F. Cox and J. Kennedy Tod, correctly recites the facts shown by the record of the Chancery suits of Tirill and Bocock, trustees, and of Alexander and Ellyson, trustees, against the Richmond & Alleghany Railroad Company, lately pending and heard together in the Circuit Court of the City of Richmond, under decrees in which cause the property of the said railroad was sold.

Mr. Harrison: I have not had a copy of this made, but I want to offer a letter dated July 30, 1914, of Decatur Axtell, first vice-president of the Chesapeake & Ohio Railway, to Mr. Potter, Mr. Arthur G. Potter, on the subject of the James River and Kanawha Company, which was taken over by the Richmond & Alleghany Railroad Company. I would have had Mr. Axtell here as a witness, except that he is on the line, as they call it, more or less of the time, and I could not tell when we could use him. But he could not state, as far as I know, anything more than is contained in this letter. I will either read it or hand it to these gentlemen.

Mr Lilly: We feel constrained to object to such evidence as that.

Mr. Harrison: Very well, then, we will examine Mr. Axtell. We have heretofore been stipulating a good deal in this case, and all the agreements to stipulate seem to have been confined to this side. I have not yet found our friends ready to stipulate to anything that we want to stipulate to . If they are not willing to stipulate that Mr. Axtell, if he were present, would say under oath what he said in that letter, why we can adjourn and I will get him here whenever I can.

The Master: Let us see what he proposes to say.

Mr. Holt: Let it be read without taking it down.

(Mr. Harrison then read the letter.)

Mr. Harrison: I would like to know if you gentlemen have any objection to it.

The Master: He really does not know much about it, when you get right down to it.

Mr. Lilly: I do not think we will agree to that. If he can prove it is insolvent, let him come here and do it and let us go into that.

The Master: What do you say about that?

Mr. Holt: So far as the purchase price is concerned, our complaint was that they did give away a valuable property in which

we were interested.

The Master: The condition is this, is it not, that the State of Virginia was a stockholder in the James River & Kanawha Company; the Richmond & Alleghany bought the property of the James River & Kanawha Company; they dealt, I suppose, with the James River & Kanawha when they made the purchase. I presume there is enough in this record to show what that transaction was. It would be very extraordinary if a stockholder in the James River & Kanawha was receiving some consideration that the James River & Kanawha Company did not receive itself. I do not know about the insolvency, but I have not seen anything in this record yet that goes beyond a transaction between one corporation and another corporation. In the first corporation it happened that the State of Virginia was a stockholder. The consideration between the James River & Kanawha and the purchasing company, so far as I am concerned, unless something appears in this case to the contrary, will be the whole transaction. How far that goes I do not know, but I think that is the legal situation.

Mr. Harrison: If these gentlemen won't consent to it, that is all right.

Mr. Lilly: We cannot agree that the company is insolvent.

Mr. Harrison: I will make no further effort to induce you to agree to any stipulations that we ask. I will say that.

The Master: You are not obliged to make a stipulation because they have. The only obligation about a stipulation here is to reduce the expense. What have you got, Brother Harrison, besides this statement of Mr. Axtell?

Mr. Harrison: I want to examine Mr. Axtell.

The Master: Here is a question pending then. Mr. Robinson wants to prove by Mr. Axtell, so far as he can, the statements he makes in this letter. Do I understand that West Virginia is not willing to concede that he would so testify so far as is admissible?

Mr. Lilly: We would want to cross-examine him.

The Master: What else have you by way of testimony of any kind, exhibits or otherwise?

Mr. Harrison: This thing of trying to rush through is rather unsatisfactory. The Treasurer of Virginia, for example, has been sick for three or four days, and we have expected to examine him on some very important matters.

The Master: Where is he?

Mr. Harrison: He is home, sick.

The Master: What do you expect to prove? Perhaps they will admit it.

Mr. Harrison: I would not like to ask them.

The Master: I am not embarrassed about it; I will ask them.

Mr. Anderson: We wish to prove by him what is really the cash book of Virginia, in which all of the receipts of money are recorded, that go to the treasury of the State—the deposit of that money is shown there. In that book is entered every one of these payments made to Virginia on account of dividends in the different corporations, on account of dividend obligations on account of indebtedness of those different corporations to the Commonwealth. They are all recorded there. And that book shows where those funds were deposited, and practically what became of them and what we want to show is that they went into these banks, were mixed up with the other receipts of the Commonwealth from taxes and so on, and remained there until the close of the war.

The Master: What is the significance?

Mr. Anderson: That these funds were paid in Confederate money and lost.

The Master: You have got this case all full, without any contradiction or impeachment of the fact that every commercial transaction and every business transaction in the State of Virginia during the war period was handled upon the basis of Confederate currency being the medium of exchange. You have proved it and there is not a word of contradiction about it. Now, does this add anything?

Mr. Anderson: It only shows that this Confederate money was absolutely lost and perished to the extent of $1,700,000.

The Master: Do you add anything to your existing proof?

Mr. Harrison: There are some other features that we want to examine him about. But we can take their depositions, and any others that we see fit to take. We will give the other side notice and take them between now and the argument.

The Master: Is there anything else?

Mr. Robinson: I stated this morning that there were some bonds issued in January, 1861, and Mr. Potter would check that up and furnish to the other side computations as soon as he could do it. As a supplement to Plaintiff's Exhibit No. 1, I also stated that Mr. Potter would compute the bonds of 1866 and 1867 on the

basis of the various refunding acts and furnish the other side with that, and that would go in as a supplement to Exhibit No. 1. In regard to Plaintiff's Exhibit No. 9, which is our interest schedule, we propose to have a computation made showing the interest on the amount that West Virginia would pay upon the sum found by the Court on the basis of the refunding acts of Virginia, and that will go in as a supplement to Plaintiff's Exhibit No. 9. As soon as Mr. Potter can make the computations he will furnish the other side with a copy. The only other computation that we have will be Plaintiff's Exhibit No. 22 and will be a computation of the amount of Virginia's bonds now outstanding and the amount thereof which Virginia has paid to date, paid off, and the amount of interest which Virginia has paid from 1861 to date on account of her share of this debt and what she now owes.

The Master: Is there anything else?

Mr. Robinson: That ends us.

The Master: And all these computations are to be submitted to the other side as soon as made in order that their accountant may verify them. Can you proceed, Judge, with your cross-examination, because that will be the only thing left now except what you may have in rebuttal.

Mr. Holt: We have several exhibits here, your Honor, I suppose half a dozen, that we want to examine. I have gone over them, but not in a satisfactory way, and I can proceed and go as far as I can, but I doubt very much whether we can complete our cross-examination this evening on the residue of these exhibits. I regret very much to say that, your Honor.

The Master: You need not be embarrassed about that. As far as I am concerned, of course if we can get through I will go home to-night, but if not, I am not going home until we get this case finished and finished in a way that counsel on both sides feel is the proper way, and if you do not feel that you can complete this cross-examination this evening—if we could clean the case up by half past six except this matter of Mr. Axtell, as to that I will see what we will do about it, and I would like to go on and do it, but I am not going to ask Judge Holt to close this cross-examination if he has any feeling that he is not making it as complete and adequate as he wants to make it. I do not think that is a proper thing to do and I shall not do it, and I am going to rely altogether on his judgment upon that.

Mr. Holt: Then upon the subject of taking depositions, your Honor—

The Master: As to that I will say this, I have not heard any adequate reason stated so far why if I stay here to-morrow Mr. Axtell cannot be here as a witness.

Mr. Harrison: If you will be here to-morrow, I will try and get him up here.

The Master: I do not know that they contend that he cannot be gotten here to-morrow.

Mr. Harrison: I will say that I did not make any special effort to have him remain over here or anything of that sort, because I did not have any doubt but what we would agree to let what he writes go in as a statement which he would make if he had been here.

The Master: That is a pretty vigorous letter that he writes, and I do not think they are the subject of criticism if they do not want to concede that he would so testify and deprive themselves of the opportunity for cross-examination.

Mr. Lilly: He seems to make the statement offhand, guess work.

The Master: It is a pretty vigorous statement and I do not want to criticize the other side if they think they ought to have an opportunity to cross-examine. Under the circumstances, Judge, you do not feel that you would like to conclude the cross-examination to-night?

Mr. Holt: I would rather not.

The Master: Suppose we have an understanding that Mr. Axtell is to be produced here to-morrow morning at half past eleven o'clock, at which time I should hope that Judge Holt would be through with his cross-examination, and that will give us ample time to take his testimony. When I suspend I am going to suspend until half past nine, and that certainly ought to give counsel on both sides an opportunity to examine everything they care to take up, and fag ends, and clean their case up without any difficulty to-morrow forenoon or to-morrow afternoon.

Mr. Holt: I do not believe we will have any difficulty about it, your Honor.

The Master: Have you anything by way of rebuttal?

Mr. Holt: We have two or three memorandum statements here that are matters of record; they are very short.

The Master: We will suspend until half past nine to-morrow morning, at which time Judge Holt will go on with his cross-examination of Mr. Potter, and meanwhile so far as is feasible, I do not want to tax Mr. Potter too much, because he is very tired, but so far as is feasible I would suggest that the accountants for West Virginia proceed with their checking up. Before we suspend, is there anything that occurs to either of you that you want to suggest in the line of getting everything cleaned up to-morrow, anything that you want from me or anything that you want from the other side?

Mr. Harrison: No, sir; I do not know of anything.

Mr. Robinson: How about that stipulation on account of eliminating acts from the record, Judge Holt?

Mr. Hogg: I will dictate this stipulation now:

It is hereby stipulated between counsel on behalf of the Commonwealth of Virginia and of the State of West Virginia and counsel representing the bondholders that the suit of Virginia against West Virginia relating to the question of the territorial boundaries of the latter was instituted in the Supreme Court of the United States on the —— day of February, 1866, and was pending until the 6th day of March, 1871, before it was finally ended, and that the object of said suit was to determine the question whether or not the counties of Jefferson and Berkeley constituted a part of the territory of West Virginia the State of Virginia claiming that the said counties constituted a part of her territory; and the stenographer is hereby directed not to copy the report of the case appearing in 11th Wallace.

The Master: Before we adjourn of course I want to have an understanding as to when this case is going to be argued, and I want the counsel upon either side to think the matter over so that when they come in here in the morning, or some time before we adjourn to-morrow, they will be prepared to give me their judgment as to what they can do and how they can get along.

Mr. Harrison: We would like to have a suggestion from the other side now.

Mr. Holt: Here is another stipulation that was presented by Mr. Robinson to this side, the tail end of which we have cut out, but the fore part of it we are willing to agree to. I will read it as far as we subscribe to it:

It is hereby stipulated that all copies of Acts of Virginia, opinions of the court and reports of committees read into the

record by West Virginia on September 9th and 10th, shall be copied directly into the printed record without having the same transcribed into the typewritten record.

We are perfectly willing to agree to it that far. That would save some expense.

The Master: There are some practical conditions involved in printing things, and printers do not take a book and print from the book, because they cannot do it that way, and somebody has got to present to them a typewritten copy of whatever is going to come out of these books and documents. Somebody has got to make the copies.

Mr. Holt: We had already made the typewritten copies ourselves and intended to furnish them to the stenographer so that he under this condition would not embrace them in the stenographic report but would place them with the printer.

The Master: If they have got typewritten copies—have you got duplicates?

Mr. Robinson: We will take their typewritten copies; we do not care for duplicates.

Mr. Harrison: What is the last part of the stipulation?

Mr. Holt: This is the part that we do not agree to:

And that so far as any of said papers appear either in the original record in this case, the appendix to the original record, or in the West Virginia compilations, Volumes 1 and 2, they shall not be printed in this record.

And our reasons for that are these. First, I have not a complete set of the old record; secondly, a part of the old record was never printed; thirdly, I would like to have such of these acts as we rely upon printed in a convenient form together. Some of them may have appeared heretofore and some of them may not.

The Master: I have already stated that there will have to be an agreement between the parties on both sides.

Mr. Holt: If it be desired by these gentlemen to make the first part of the stipulation I will agree to it.

The Master: That stipulation need not be made part of the record, that simply shows how the record is being made up.

Mr. Harrison: What suggestion have you to make about the argument of the case?

Mr. Lilly: We will take that up to-morrow.

Mr. Holt: I would like to inquire of the Master where he would expect us to argue.

The Master: In New York, and unless otherwise arranged, in my office. Or if you prefer to take a room at the Bar Association, that is agreeable to me.

Mr. Holt: I had hoped that the Master might like to visit White Sulphur Springs at that time.

The Master: That is of course only a matter of a night's travel. I will say this. My own personal preference is, the arguments are to be confined to two counsel on each side, one counsel to represent the bondholders if they desire, two counsel on the part of West Virginia, that is what I suggested in New York, I think, unless of course there is some good reason that you think is important why somebody else should take a hand in it, that is all right, but on general principles I thought I would make that modification.

Mr. Harrison: Major Anderson and I will argue the case on behalf of the plaintiff.

The Master: If they desire I shall hear someone representing the bondholders. And if West Virginia feels that there are three men on the other side, and therefore want three men to take part in the argument, I should agree to that of course. As to the limit of argument, why I am inclined to think that I shall let each man take his own time. Personally I always feel mean if I have got to cover a certain amount of ground, and I sometimes feel worse if I have to keep within a certain limit.

Mr. Harrison: I doubt the wisdom of going to White Sulphur Springs to argue this case.

Mr. Holt: On account of books?

Mr. Harrison: Yes, especially on that account.

The Master: If the case is argued in New York at the Bar Association, why everything that is in existence from a legal standpoint is conveniently available.

Mr. Harrison: When shall we have this argument?

The Master: How long do you want to make your preparation?

Mr. Harrison: We would like to have West Virginia's brief.

Mr. Anderson: And they would like to have ours before they make their argument. How is that, Judge?

Mr. Holt: It would be very desirable.

Mr. Harrison: Suppose you get the printed record on Monday the 21st, how long would you want to prepare your brief.

Mr. Lilly: It ought to take a month to prepare a brief, but of course I understand we would not have that long.

Mr. Hogg: Why not the plaintiff's counsel confer and we will confer, and come in, in the morning.

Mr. Holt: How much time would your Honor want after the argument in which to prepare your report?

The Master: I ought to have probably two weeks.

Mr. Lilly: The briefs have to be printed after they are prepared.

Mr. Harrison: Do you expect us to use before you printed briefs?

The Master: Yes, I would like to have each side submit me a printed brief.

Mr. Harrison: We did not do that before.

The Master: There were some printed briefs before. Of course it would be a very great convenience to me if the briefs were submitted in printed form.

Mr. Hogg: We ought to have as much time as we could possibly get.

Mr. Holt: I would like to make one inquiry, and I would like the gentlemen on the other side to hear it. Is it expected that the Master will be back in Washington with his conclusions on the 13th of October?

The Master: I shall do it if I can, but that will depend upon when I get the briefs. I took about six weeks or nearly two months on the other case.

Mr. Holt: If the Master could give us until about the 10th of October before he would require argument, that would give us about 22 days in which to prepare and file and print the briefs. Then we could argue it before the 13th, and at that time he would report to the Court that the evidence had been taken, briefs filed, and the matter in his hands, and that he would be ready to report say on the 10th of November.

The Master: You would have to get around earlier than that. The 10th of October is Saturday, and there is an intervening Sunday.

Mr. Anderson: Suppose we hold the matter over until tomorrow.

Adjourned to September 12th, 1914, at 9:30 A. M.

BEFORE THE MASTER

Richmond, Va., September 12, 1914.

PRESENT: Same Counsel as on Yesterday.

Continuation of the cross-examination of

ARTHUR G. POTTER.

By Mr. Holt:

Q. Mr. Potter, your Exhibit 4-A seems to be a summary of Defendant's Class D, 1863, reduced to actual values as per page 647 of the original record. What is meant by reduced to actual value?

A. Reduced to the quotations in gold on Confederate currency on the dates of the receipt of the items embraced in that schedule.

Q. In other words it is reduced to a gold basis?

A. Yes, sir. There is a slight typographical error in that statement on the first page.

Q. I will call your attention to one of them directly. Look at page 8, South Side Railroad Company. You have an item here of $8,400. Is that correct?

A. No, sir, that should be $84,000. The extension, however, is correct. It is a typographical error.

Q. The extension is correct, and you discovered that sum would even it up.

A. Yes, sir.

Q. Now as I understand you, in this exhibit you take the claim of West Virginia as set forth in her schedule covering Class D, reducing the amount, treating it as if paid in Confederate money and reducing it in amount to its value in gold?

A. Yes, sir.

Q. That is true of the first item?

A. Yes, sir.

Q. I see you have Richmond & Petersburg Railroad Company marked the third item. How does that come?

A. There is no claim for income of the second item.

Q. What is it?

A. That is an extension on the same basis.

Q. I understand that, but you have jumped from 1 to 3. You are numbering these items Orange & Alexandria Railroad Company 1, and next the Richmond & Petersburg Railroad 3 instead of 2. Is anything omitted from our schedule?

A. I think that there is nothing extended on your schedule for No. 2, Richmond & Danville—that is true, on page 36 of the blue prints, there is no extension.

Q. That is the explanation then is it?

A. Yes, sir.

Q. Because no claim was made on account of that class by West Virginia to the Richmond & Danville you have omitted it?

A. Yes, sir.

Q. Turn to page 2, Mr. Potter and see whether or not you have carried out anything on account of item No. 13, United States Government.

A. No, sir, nothing extended.

Q. Well, West Virginia in her schedule made a claim on that item, did she not?

A. Yes, sir.

Q. This exhibit is entitled summary of Defendant's Class D, 1863.

A. Yes, sir.

Q. Reduced to actual value as per page 647 of the original record?

A. Yes, sir.

Q. Then you have not taken our schedule on Class D, the whole of it, and reduced it to a gold basis?

A. No, sir.

Q. What was the claim made by West Virginia on account of that item, United States Government, in the Class D?

A. 1863, $872,260.07.

Q. Therefore in taking up this schedule of ours and reducing it from our claim to a gold basis you have not included all the items or claims set forth in our schedule?

A. No, sir, that is the exception, United States Government.

Q. Why did you omit it?

A. At the direction of counsel.

Mr. Holt: I believe that is all of 4-A, your Honor.

The Master: Let me have duplicates of these various exhibits Mr. Robinson. I have not had a copy of this.

Mr. Holt: Now, the next exhibit we have, I believe is No. 7. I want, Mr. Harrison, to get the numbers straightened out in my own mind, if I can. We have gone over now No. 1, 2, 3, 4, and 4-A as well as 9. Now after 4-A what comes, No. 7? I mean in the shape of schedules, or was it a statute making 5 and a deed of trust being 6, and then we come to the schedule No. 7?

The Witness: Yes, sir.

Q. No. 7 is the next schedule, is it Mr. Potter?

A. Yes, sir.

The Master: These are really computations; neither one of them introduced any new factor in the case as I understand it?

Mr. Holt: Well, that is practically the situation. I want to see if I understand it.

The Master: Yes.

Q. Your No. 7, Mr. Potter, seems to be a summary of West Virginia's claim under Classes B, E and G, as of January 1, 1861, on the basis of the market value of the securities, with the exception of the Manassas Gap Railroad Company, under Class G, for which no quotation has been found?

A. Yes, sir.

Q. Now Class B, as I recall it related to the Richmond, Fredericksburg & Potomac Railroad Company?

A. Yes, sir.

Q. And Class E to the banks?

A. Yes, sir.

Q. While Class G is the last one and the one in which you find the James River & Kanawha Canal Company and the Manassas Gap Railroad Company?

A. Yes, sir.

Q. Then the item under Class B, Richmond, Fredericksburg & Potomac Railroad Company, is a calculation, taking

the market quotation upon the stock of that company for 1861, of 76½ cents, and multiplying it by what?

A. $75,200, the par value of the stock held by the State.

Q. And that gives you $210,528., which is how much less than par?

A. 23½ per cent.

Q. Well, it would be about $64,000.

A. About $64,600.

Q. Now then, if that market quotation of 76½ was not taken from any stock exchange but from a mere unaccepted bid on the stock at the date covered by it, the calculation would not give much idea of the total value of the stock at that time, would it?

A. I think it would be an indication of the value.

Q. Well it would not be a strong indication, would it?

A. I think it would.

The Master: I suppose the original books of Lancaster & Company and Sutton Brothers & Company are accessible and available.

Mr. Anderson: I fear not. The places where their offices were, were burnt down.

The Master: Do you know anything about it?

Mr. Anderson: No, I do not.

Mr. Harrison: Mr. John L. Williams would know if anybody would.

The Master: You may be up against the proposition as to whether or not a report of somebody to a newspaper and published in a newspaper is legal evidence of the sale. I have not examined that at all and do not express any opinion about it. My suggestion is that if there is in existence a set of original books which show actual sales it may turn out that that is the best evidence.

Mr. Harrison: If there are, we will see if we can get them.

The Master: I simply suggest that.

Mr. Holt: Especially a private report of one sale, I think the books do hold that it is not evidence.

The Master: I am not intimating anything about it one way or the other. I am simply saying that you might have that

point raised on you at the final argument, and if there was in existence legal evidence tending to show these facts you might feel as though you ought to have it. Of course it is understood that it is open to either side to raise any question as to the competency of the testimony upon either side and as to its admissibility, even though they raise it for the first time at the argument. The case has been tried on that basis. You get my point, Mr. Harrison, I simply suggest this.

Mr. Harrison: I understand.

By Mr. Holt:

Q. The market quotation taken in Exhibit No. 7, upon the Richmond, Fredericksburg & Potomac Railroad Company, of 76½ cents is of January 4, 1861.

A. Yes, sir.

Q. And was taken, as I recall, and put into your Exhibit No. 2 from the Richmond Dispatch?

A. Yes, sir.

Q. And you were unable to say whether that represented a single transaction or many transactions, a sale, a bid or an offer?

A. No, sir.

By The Master:

Q. What is your answer to that, no, sir?

A. Yes, sir.

Q. Well, your answer is yes, sir, that you are not able to say?

A. I am not able to say.

Q. All of these quotations that have been used in these subsequent computations involved in these exhibits are subject to the same testimony that you gave in relation to Exhibit No. 2?

A. They are, sir.

Q. In other words you have no original information as to those schedules, and all that you know about them is what appears upon the schedules themselves?

A. That is true.

Q. That simply shows that you have no knowledge as to any of the details as to any of those items, is that right?

A. That is true, yes.

By Mr. Holt:

Q. The Schedule 7, so far as market quotations are concerned, is based, as I understand it, solely upon the market quotations in your Exhibit No. 2?

A. Yes, sir.

Mr. Holt: The point I was getting at, your Honor, was that this was marked a summary of West Virginia's claim on the basis of the market value of the securities with the exception of the Manassas Gap Railroad Company under Class G, for which no quotation has been found. It does not indicate upon its face that it is based upon Exhibit No. 2.

The Master: I understand that it is based upon Schedule 2, and that all the other computations are based upon Schedule No. 2.

The Witness: Yes, sir.

Q. Class E, transfer as per sub-schedule XX, as I understand that now, turning to sub-schedule XX, you take the market quotations on the Farmers' Bank of Virginia as of January 4, 1861, from your Exhibit No. 2, and the market quotations on the Bank of Virginia as of the same date from the same schedule, and then take the amount of the claim made by West Virginia in Class D, and make your calculation?

A. Well, there is no calculation to be made there because it is par, Judge. The market quotation is par.

By The Master:

Q. Well, you have put down the results?

A. Yes, sir.

By Mr. Holt:

Q. Then you don't rely upon any of our exhibits for any of these amounts?

A Excepting par of the stock as stated in your schedules.

Q. I mean it is not taken from any claim made by West Virginia?

A. No, sir.

Q. You took the Farmers' Bank of Virginia and the Bank of Virginia and treated the stock held by the Commonwealth of Virginia therein at par because you found the market quotations taken from your Exhibit No. 2 to be par at that date, is that so?

A. Yes, sir.

Q. And then you took the Bank of the Valley and treated it at par because the market quotations taken from your Exhibit No. 2 did not show it to be par as of that date, isn't that so?

The Master: Did not show any quotations.

A. Yes, sir.

Q. In other words, when the market quotation put it at par you utilized it, and when it does not put it at par or anything else you put it at par anyhow?

A. Yes, sir.

The Master: That only applies to one bank?

Mr. Holt: Yes, that is the Bank of the Valley.

The Master: And that bank is located in Winchester as I understand?

Mr. Holt: Yes, sir.

Q. Now, the Exchange Bank is treated in the same way as the Farmers' Bank of Virginia?

A. Yes, sir.

Q. And based upon the market quotations for that date from Exhibit 2?

A. Yes, sir.

Q. Now, I notice that in treating the Northwestern Bank on your sub-schedule XX you have not carried forward any amount at all, neither have you carried forward any amount on account of the Fairmont Bank in arriving at your total of $3,294,375. Why did you not enter something on account of those banks?

A. The entire schedule was made at the direction of counsel and I was instructed to leave them out.

Q. The stock held by the Commonwelth of Virginia in the Northwestern Bank was just as much its property as the stock held by it in the Farmers' Bank of Virginia, was it not?

A. Yes, sir.

Q. And the stock held by the Commonwelth of Virginia in the Fairmount Bank was just as much its property as the stock held by it in the Farmers' Bank of Virginia?

A. Yes, sir.

Q. Now, why would you omit that, why did you out of these six banks embrace four and exclude four?

A. I have just answered that it was done at the direction of counsel, Judge.

Q. You have no reason at all—

By The Master:

Q. Is that all you know about it?

A. That is all, yes. sir.

By Mr. Holt:

Q. If you were seeking to make a settlement between West Virginia and Virginia, and the settlement depended upon the common assets, in order to get right as an accountant you would consider all the assets, would you not, Mr. Potter?

A. I believe so, yes.

Q. Don't you know so?

A. Well, there might be some special circumstances surrounding it. If this went to West Virginia why no, I would not.

Q. Well, suppose only a part of it went to West Virginia?

A. I would extend only the part that Virginia retained.

Q. Do you know how much West Virginia received out of the Northwestern Bank?

A. I have not the figures before me, no, sir.

Q. Do you know how much Virginia got out of it?

A. No, sir.

Q. Would it make any difference, so far as the statement of this account is concerned, at this point, whether West Vir-

ginia got any part of the Northwestern Bank or not? Is not the effort here to total the assets first, the common assets?

A. Do you mean in this schedule?

Q. Yes.

A. I do not know what the effort is here.

Q. Well is not the effort here to show the value of all the assets that Virginia had in the shape of bank stocks at that time, based upon market quotations?

The Master: You mean the effort generally in the hearing, or do you confine that to this exhibit?

Mr. Holt: I am speaking of this exhibit.

A. No, sir, not in this schedule.

Q. What is the object of this schedule?

A. To show the market value, or as near the market value as it is possible to get, of the four banks, the stock held in four banks by the State of Virginia. The other two are omitted.

Q. Well, she held stock in the Northwestern and in the Fairmount just as well as in the others. That brings me right back to the question, why would you make a partial statement of the value of her assets represented by bank stock?

A. I made the statement at the request of counsel, sir.

Q. Very well, we will let it go at that. Class G, turning back to the first sheet, No. 7, is Manassas Gap Railroad Company; and you have no entry opposite that item at all, because you found no market quotation thereon?

A. That is true, sir.

Q. Then so far as the Manassas Gap Railroad Company is concerned, that schedule means nothing, does it?

A. That is true, sir.

Q. I did not ask you, I believe, anything about the James River and Kanawha Company on that?

A. No, sir.

The Master: You mean in relation to this schedule?

Mr. Holt: In relation to this schedule. Well, that will do for No. 7; I see it does give the market quotations on that stock.

Q. No. 8 is a summary of West Virginia's claim under Classes B, E, and G as of June 20, 1863, on the basis of the

market value of the securities with the exception of the Manassas Gap Railroad Company under Class G, for which no quotation has been found. What is the difference then, Mr. Potter, between No. 7 and No. 8?

A. That in the Exhibit No. 8, the market quotations, which are taken as Confederate quotations, are reduced to gold.

By The Master:

Q. Is that exactly like the preceding schedule with that exception?

A. Yes, sir.

By Mr. Holt:

Q. Well, you have different market quotations for 1863, have you not?

A. Yes, sir, different market quotations.

By The Master:

Q. I understand that, but it is on exactly the same plan with that exception?

A. Yes, sir.

By Mr. Holt:

Q. In other words you take the same number of shares of stock in the different companies in both schedules?

A. Yes, sir.

Q. But you take different market quotations on account of the difference in dates?

A. Yes, sir.

Q. And in 1863, Confederate currency being then rampant, you reduced your result to a gold basis?

A. Yes, sir.

Q. That is what this means?

A. Yes, sir.

Q. What did you take as the market quotation on James River and Kanawha Canal stock in 1863?

A. 22.

The Master: Are you going to examine Mr. Axtell?

Mr. Harrison: No, sir. He left town last night.

The Master: Do you want to examine him?

Mr. Harrison: Yes, sir, I want to take his deposition.

Mr. Holt: I think that is hardly fair, your Honor. I do not want to be running over to this town.

The Master: Do not let us discuss that now. We will take it up in its order.

Q. Will you turn now to sub-schedule 3-X and look at the items Northwestern Bank and Fairmount Bank?

A. Yes, sir.

Q. I see you have made no entry to be carried into your sum total after either of those banks.

A. That is true.

Q. Unless you do embrace those banks the title to your exhibit would scarcely be correct, would it?

A. The title is an indication of what is contained. It is not all embracing, I think; I did not read it that way.

Q. You say in your title as I understand it that the exhibit is a summary of West Virginia's claim on account of certain classes. West Virginia made a claim on account of the Northwestern Bank, did she not?

A. Yes, sir.

Q. And she made a claim on account of the Fairmount Bank?

A. She did.

Q. And yet you have omitted from this amended summary both of these claims?

A. Yes, sir.

By The Master:

Q. To that extent it is inconsistent with the title, isn't it?

A. To that extent, yes, sir.

By Mr. Holt:

Q. Why did you omit them in this schedule, for the same reason that you omitted them from the corresponding schedule in 1861?

A. Yes, sir.

Q. Turn to your exhibit No. 16, Mr. Potter, being a statement of old unfunded bonds of Virginia for which Virginia issued her new bonds in full without setting off one-third as West Virginia's share.

The Master: Is that the one that you do not have a copy of?

Mr. Anderson : We have copies of it.

The Master: I do not know how significant this all may be, but it is not particularly intelligible to me unless I have something to trace it up from. However, go on and do not delay it on my account.

Q. Tell us briefly what this schedule is intended for and what it means.

A. The schedule lists under seven groups the old unfunded bonds of the State of Virginia, or issues prior to 1861, which were held by the various schools and colleges in the State of Virginia. In—I have not the date before me, but I think it was in 1892, the State took up these old unfunded bonds and issued certificates for them. The State has been paying six per cent. interest on these bonds ever since the war, and this schedule groups them the same as in our Exhibit No. 9; and the interest is figured in accordance with that grouping, at six per cent. on each group, and the total extended to the right, showing that between January 1, 1872, and October 1, 1914, the interest would be $2,218,319,81, all of which has been paid except that portion which applies from July 1st, I believe, this year, to October 1st.

By The Master:

Q. The judge wants to know what the purpose of that schedule is. What is the object of it, so far as you know?

A. The schedule was prepared at the request of counsel; I do not know what the object was.

Q. That is, the use to be made of this you are not able to state?

A. I am not informed, no, sir.

By Mr. Holt:

Q. What was the aggregate of these bonds?

A. $864,842.03.

Q. So the principal is eight hundred and sixty-four thousand dollars and the interest thereon is two and a quarter millions practically?

A. Yes, sir.

Q. About what per cent. would that be?

A. About 250 per cent.—260 per cent.

Q. Is it not nearer 300 per cent?

A. Well, about 275 per cent.; I have not figured it.

Q. That is one place where the shadow is much deeper than the substance, is it not?

A. Referring to it in those terms, yes.

The Master: It extends over a greater space.

Mr. Holt: It seems to be thicker too.

The Master: Now, are there any other schedules showing computations that have not been handed to me?

Mr. Robinson: You have all that we have prepared. He has some other dates that he is going to prepare.

Mr. Holt: When are we going to get them?

Mr. Robinson: You will have to ask Mr. Potter that.

The Master: If these schedules are matters of computations really, and are really going to be used by counsel in their argument—this particular schedule, for instance, does not shed any great light on this controversy just now, because we do not know what purpose this is put in for—I am not intimating of course that it has not a legitimate purpose—but if these schedules are simply matters of computation, I doubt whether it is wise for me to delay this hearing simply to have the computations put in here.

Mr. Harrison: That is what they are.

The Master: Strictly speaking they are not evidence, when you come right down to it. If you have anything of that sort, —this hearing is closing.

Mr. Robinson: But we only began our case on Friday.

The Master: But you knew about it six weeks ago. I am not going to sit here and let witnesses compute all the

time, because strictly speaking that is not evidence, and we all know it. If you were trying this case in court you could not sit in here and ask the witness to make computations and figure things. The Court would say that the witness would state facts and the Court could make the computations. I have given you immense latitude on this question of computation, on both sides.

Mr. Holt: I think so, but I believe it was a good thing to do, your Honor.

The Master: I am not finding fault about it, except that I do not want to be delayed beyond today.

Mr. Robinson: The only computations that we are making are the computations that we were asked to make by the other side on the question of refunding these bonds. The other things are things that we have got to investigate, and Mr. Potter has got to have a couple of days to look at the record after we get through, to get the facts.

Q. Who owned and held these bonds aggregating $864,842.03?

A. The colleges and educational institutions shown at the left of this schedule.

By The Master:

Q. Under group No. 1?

A. No, the names are at the left of group No. 1.

By Mr. Holt:

Q. They were all Virginia educational institutions, were they not?

A. Yes, sir.

Q. The Virginia Military Institute that is set down there is a State institution, is it not?

A. I do not know.

Q. Don't you know, Mr. Potter, that it is supported by the State?

A. No, sir, I do not know.

Q. Well, don't you know that the University of Virginia, another one of them, is a State institution?

A. Judging from the name I should say that it was likely to have State support, but I do not know anything about it.

By The Master:

Q. Well, that exhausts your knowledge on that subject?

A. Yes, sir.

By Mr. Holt:

Q. Every one of these institutions is a Virginia institution, isn't it?

A. Yes, sir.

Q. Do you know how those institutions collected the bonds?

A. No, sir, with the exception one, I know one instance.

By The Master:

Q. Which one is that?

A. Washington and Lee acquired one block of bonds through it; they were presented.

By Mr. Holt:

Q. Now, you have the University of Virginia set down here at $23,200. If she held that many bonds and was a State institution, then the State must have provided her with those bonds, must she not?

A. I don't think that conclusion is necessary, no, sir.

Q. If she is supported by the State of Virginia would she not get these bonds through the one who supports her?

A. I cannot testify to that, I don't know.

Q. As I further understand your exhibit, when Virginia sat down and undertook to apportion this debt between the two states by legislative enactment or otherwise, she set apart one-third to West Virginia and assumed responsibility for the remaining two-thirds except in the case of these bonds?

A. Yes, sir, that is true.

Q. She did not undertake to apportion these at all?

A. No, sir.

Q. But because they were held by educational institutions within her own limits and territory she thought she would take care of those bonds herself?

A. I don't know the motives that actuated this arrangement.

Q. Well, she did this then thereafter, did she not, took care of them by issuing new bonds or certificates and delivering the certificates to these educational institutions in lieu of the bonds held by her?

A. Yes, sir.

Q. And none of the bonds were ever affected at all by any of the scaling acts which we have heard so much about in this case.

A. No, sir.

Q. I will repeat the question, Mr. Potter. You do not know whether any of these educational institutions were supported by the State of Virginia?

A. No, sir, I do not.

Q. You have no personal knowledge derived from records or otherwise on this subject?

A. No, sir.

Mr. Holt: We are through with Mr. Potter. Plaintiff's Exhibit No. 20 reminds us that we offered here a certificate of the Assistant Secretary of the Treasury of the United States, dated August 13, 1914, and another certificate upon the same subject, dated August 14, 1914, of the Assistant Secretary of the Treasury of the United States Government, relative to the settlement of the loan made by the State of Virginia to the Government of the United States; but something was said about a stipulation at the time, which stipulation has never been made, nor have these two certificates gone into the record. We would now like to have them put in as of the place where we first presented them.

The Master: They may be so inserted, so that they will appear at the precise place where they were apparently offered, and they will be printed just exactly as they read, unless the parties agree on a stipulation that will be satisfactory to West Virginia, giving their effect. In my judgment you ought to strike out these formal certificates.

Mr. Lilly: Has not that been printed?

The Master: It has not been printed in the final print. There is no reason why this formal certificate should go in, simply say certified—that is if you follow my judgment. Those go into the record. There is no occasion for this colloquy this morning to appear in the print. These will go into the record at the place where they were offered, and they will be printed just exactly as they read, certificates and all, unless the parties after this hearing adjourns agree on a stipulation that will shorten the record. I think that takes care of that.

Mr. Holt: My suggestion would be that these certificates be marked Defendant's Exhibits Y and Z.

The papers were admitted in evidence and marked Defendant's Exhibits Y and Z, September 12, 1914, C. B.

[These exhibits appear in Volume II at their proper place.]

The Master: Now, that completes the cross-examination of Mr. Potter. Has Virginia anything further to submit?

Mr. Harrison: Yes, sir. In the examination of the defendant's accountant reference was made and some testimony given from the report of the President and the Engineer and Superintendent of the Orange & Alexandria Railroad for the year 1861. I want to file at this point the President's report and the Chief Engineer and General Superintendent's report which are found in Document No. 17 of the Board of Public Works, beginning at page 35 and down to page 39 inclusive, and I will ask the stenographer to copy them into the record.

The same was admitted in evidence and marked Plaintiff's Exhibit No. 21, September 12, 1914, C. B.

Plaintiff's Exhibit No. 21 is as follows:

ORANGE AND ALEXANDRIA RAILROAD COMPANY.
PRESIDENT'S REPORT.

In presenting the usual and annual statement to the stockholders, of the operations of the company for the fiscal year ending 30th September last, the directors regret their inability to make it more full and comprehensive as regards details.

The invasion of the territory of the state, and occupation of the city of Alexandria by the federal troops on the 24th of May last, deprived the company of its established general offices, disturbed its regular system of auditing accounts, and necessarily produced much confusion in the management of its business. The inconvenience caused thereby, as regards the records, will be only temporary, as sufficient data can hereafter be procured to supply any omissions or errors in the accounts. and the proper corrections can be readily incorporated in a subsequent report, if upon examination the necessity therefor should exist.

The accompanying letter of the general superintendent, H. W. Vandegrift, Esq., exhibits briefly the condition of his department, and the appended tabular statements of the treasurer (marked A and B) will show in detail the financial state of the company.

Receipts from transportation for the past year amount to the sum of $604,025.44.

The working expenses for the same period cannot be precisely stated at this time, but are estimated by the general superintendent at thirty-seven per cent. of the earnings.

At the last annual meeting the monthly receipts from May to October 1860, inclusive, showed an average return of $50,000 per month. If these receipts per month could have been maintained up to the 1st of May last, the aggregate revenue of the road for the year just past would have been exceedingly large; but unfortunately for the finances of the company, the result of the presidential election last fall, and the political alienation of the sections of the country, arrested the accustomed intercourse and travel between the north and south, and reduced the receipts for the months referred to down to the previous minimum amount.

The transportation of troops and military stores since the act of secession has afforded a very large business, and taxed to its utmost capacity the somewhat limited equipment of the road. This class of transportation, however, is only charged at half rates, and from its extent and peculiar quality,

causes much wear and tear, both of roadbed and equipment. Such precautions in the way of reduced rates of speed in running trains, and the most economical modes of transportation, have been adopted as would best protect the interests of the company under the circumstances.

Since the 24th of May last the road has not been operated by the regular passenger trains beyond Manassas station, its present eastern terminus.

Shortly after the evacuation of Alexandria by the state troops, sections of the track were destroyed and the bridges burned from Cameron to Bull Run, and twenty-two miles of the railroad in the direction nearest Alexandria surrendered to the control of the enemy, or rendered useless to the company.

After the battle of the 21st July, the streams between Manassas and Fairfax station were temporarily bridged again, by order of our military authorities, for the use of the army only; but recently this part of the line has been again abandoned.

This, together with the loss of the work shops and their furniture, and other property unavoidably left behind in Alexandria, will constitute a large account, which in justice ought at the proper time to be paid by the state or confederate government to the stockholders of the company.

Notwithstanding all the damage incurred, it is some satisfaction to the stockholders of the company to know, that but for the construction and existence of this railroad, the state could not have been defended as it has been, or its military requirements so efficiently supplied.

About one hundred and twenty-two miles of main line and the branch to Warrenton are now in daily operation by the trains. Some limited arrangements have been provided for shops at Gordonsville, which, with such facilities as are afforded at Lynchburg, will enable the company to repair and keep in order its rolling stock.

In maintaining repairs of roadbed, it is in contemplation of the directors to employ for another year slave labor upon a part of the line.

FINANCES.

The financial condition of the company may be briefly stated as follows, viz:

Total funded debt	$2,609,000.00
Total temporary debt	572,673.79

Of the debt and bills payable due by the company, it appears that the sum of $52,759.99 is owing to northern parties.

As this matter will be brought to the cognizance of the courts under the law of Congress, the company ought to set up its equitable right to retain this small amount, in view of the heavy losses incurred by the war, at least to that extent.

Against its indebtedness, the actual resources of the company may be stated as follows, viz:

Cash in banks, &c.	$ 40,637.42
Due by government,	161,903.72
Freight bills and accounts due by post office department and by express company,	22,183.38
Total	$224,724.52

To this add:

Individual subscriptions of stock uncollected	$ 23,437.09
Mortgage bonds of the several issues either hypothecated as collateral security, or on hand and unsold	691,000.00

Of this last all are of the last issue except $73,000.

The amount of debt paid during the past fiscal year, in cash, $185,918.38.

The new issue of mortgage bonds to the amount of $700,000 authorized at the last meeting of the stockholders to pay off the heavy existing floating debt of the company, has been duly prepared, but only a small amount so far disposed of. The company has paid up all the interest due upon its bonds of the several issues, where the coupons have been presented, except that part held at the north, the payment of which was arrested by Act of Congress, and public policy.

It may be proper to state in this connection, that the delay in paying the coupons of the company during the past summer, arose from the fact that the government failed to pay its bills

of military transportation for several months after their maturity and the company had no other resource. The interest was promptly met as soon as the collection referred to could be made of the government at Richmond.

In conclusion, the directors take pleasure in bearing testimony to the zeal, industry and efficiency with which the officers and employees of the company generally have discharged their ardous and responsible duties of the past year.

The transportation of troops and supplies for the army of the Potomac has entailed upon the company, since May last, a labor of vast difficulty and importance, the exigencies of which have been fully and faithfully met by those charged with its execution.

The general superintendent, Mr. Vandegrift, whose fidelity was most unjustly assailed, has, from the beginning to the present time, performed his whole duty.

The annals of railroad operations do not anywhere exhibit examples of such continuous laborious services as have been performed for months together by the men who have run the trains to and from Manassas station, and transacted the business of the road at that place, without a house to shelter them from the weather, or for purposes of rest, poorly supplied with necessary food, and the impossibility of obtaining assistance for their relief; by day and by night they have stood to their posts without complaint, and performed an amount of work scarcely to be conceived as within the compass of human efforts.

The thanks of the stockholders are especially due to the general agent at Manassas, Mr. James A. Evans, for the faithful and satisfactory manner with which he has discharged his ardous and responsible duties at that point. Much credit is due also to another agent of the company, Mr. W. A. Duncan, who rendered especially most valuable service, by the spirit and address which he displayed in reclaiming some valuable books and records of the company from the possession of the enemy, into whose hands they had casually fallen at Alexandria.

The directors indulge the hope, that before another annual meeting, the stockholders will again assume possession of

all their property, and be able to assert authority over their entire line to the city of Alexandria.

Respectfully sumbitted, on the part of the directors, by

JOHN S. BARBOUR, Jr., Pres.

Stockholders O. & A. R. R. Co.

ENGINEER AND SUPERINTENDENT'S REPORT.

Office Orange and Alexandria R. R. Co.,
Charlottesville, Va., Nov. 5, 1861.

SIR:

It is not possible for me to make a report in detail of the operations of the road in my department for the past fiscal year, or to give you the aggregate working expenses, owing to the fact that important books, containing that information from the 1st of October 1860 to the 1st of May following, are not in my possession. I can only estimate them from recollection, and by the operation since made, for information in a general way, and to show a comparison between them and the revenue.

I am quite confident that when the books are obtained, that they will not increase them over my estimate of two hundred and twenty thousand ($220,000) dollars; which gives a ratio of working expenses to revenue, of thirty-seven per cent., the revenue being six hundred and four thousand and twenty-five dollars and forty-four cents ($604,025.44), made up from the following sources, viz.:

From passengers	$206,668.85
Government troops	194,520.35
Government freight	67,104.34
Individual freight	92,137.43
United States mail	22,600.79
Confederate States mail	6,108.33
Southern Express	7,071.33
Adams' Express	6,846.95
News agency	305.00
Telegraph	662.07
Total	$604,025.44

We have sixteen locomotives belonging to us. One of them was undergoing repairs in the machine shop at Alexandria at the time of the invasion, and was in such condition that it could not be removed; and another, the "Fairfax," was regarded only valuable as old iron; a third, the "Fauquier," though brought out of Alexandria, has been of no service owing to her light weight and general uselessness—so that we have thirteen locomotives in actual use; and at this time they are all in running order. Since the 17th day of April these engines mostly have been without shelter, and depending upon a lathe and a blacksmith's forge for repairs.

It almost seems that they felt it to be their duty to keep themselves in order for the occasion, though much credit is due to those connected with the machinery and running department, for their skill and watchfulness.

Of course they are wearing considerably, and whenever we shall have time, will require both work and expense to place them in the condition they were in, at the commencement of the extraordinary demand upon them.

The road department has not been placed in as complete a condition as it would have been, had we been able to supply ourselves with iron rails and ties; but I consider it in good order, and with the materials on hand and procurable, can keep it so.

Three accidents have occurred to the trains during the year; one at Orange courthouse, on the 25th of May, caused by the passenger train running into a standing troop train on the main track, causing the death of one person, and injury to two persons: one between Gordonsville and Madison, caused by breaking of a coupling on a descending grade, and a collision between the two parts of the train, causing the death of two persons; and the third was near Rappahannock station, to an empty freight train, caused either by the breaking of a cord or a small bridge, or by some derangement of the cars upon the bridge, resulting in the breaking of three freight cars, but no injury to any one.

Great credit and praise are due to officers and men in our service, for the manner in which they have performed their

several duties, enduring the hardships of their various posts, without faltering or murmuring.

I regret that for the want of material I am obliged to make you so meagre a report; but I am gratified that the result of the operations of last year is the best that we have had since the opening of the road.

Respectfully,

H. W. VANDEGRIFT,
Ch. Eng. & Gen. Supt.

J. S. Barbour, Jr., Esq., Pres.

Mr. Harrison: In the original record in the testimony of Major Robert W. Hunter concerning the conditions of property in Virginia in the war period he referred to an article that would soon appear, it had not then been published, but was about to be published from Professor John W. Mallet of the University of Virginia.

Mr. Holt: That is the old chemist, is it?

Mr. Harrison: Professor of Chemistry of the University of Virginia, a great scientist with an international reputation. Professor Mallet was ordnance officer during the war with the rank of Colonel. The article that Major Hunter referred to he said contained data and information bearing upon the subject that he was then testifying to. We have that article which was published in the Richmond Dispatch on Monday, June 13th, 1909. Dr. Mallet has been dead for two or three years, and we would like to read into the record an extract from it, which I will read without it being taken down at this point.

Mr. Lilly: I would like to suggest that the other day Mr. Glenn swore to the conditions of the roads, and on cross-examination he had never been more than twenty miles. It is unfortunate that we do not know how much Professor Mallet traveled.

The Master: Is there any objection to this extract?

Mr. Harrison: It is part of the history of the times.

Mr. Lilly: We feel constrained to object to that. It is a newspaper article.

The Master: I am going to do this about this piece of evidence. Of course I have not my mind fresh about the rules that relate to testimony of this character, and we are all familiar with the general situation. My impression is, Mr Harrison, that it is not admissible, but I am going to admit it *de bene* with notice to you that if when my attention is called to the authorities my judgment is it is not admissible, I shall simply exclude it from consideration. You will have to take that chance.

Mr. Harrison: All right.

The Master: Of course it is not doing me any harm, if I exclude it from consideration. I make this suggestion. It is not final, I shall admit it with the understanding that if I ultimately decide that it is not competent within the well recognized rules, I shall exclude it, and I simply make that suggestion so that if you want to cover the ground in any other way anticipating that it may be excluded, you have an opportunity to do it.

Mr. Harrison: All right.

The Master: But I will admit it with that suggestion.

Mr. Holt: Your Honor, in order to illustrate that character of evidence—

The Master: It is all disposed of, Judge. We won't take any time.

Mr. Holt: This is only two lines in a morning paper under the title of "What was news fifty years ago," taken from the Richmond Dispatch, September 12, 1864, "The net earnings of the Virginia and Tennessee Railroad Company for the year ending June 3rd was $1,157,551.33."

The Master: Do you want to offer that? If you do I shall admit it, subject to the same suggestion. Of course this case is not being tried by a jury.

Mr. Harrison: Let it go in with the date.

Mr. Holt: One other line from the same news of fifty years ago. "Gold was quoted in New York on September 7th at 241."

The Master: What year?

Mr. Holt: 1864.

Mr. Harrison: The date is very material. What is the year?

Mr. Holt: It is from the Richmond Dispatch of September 12, 1864.

The Master: It is one of these familiar columns of "Fifty years ago today."

Mr. Holt: That is it.

The Master: Now, do the West Virginia people offer it?

Mr. Holt: Not now.

Mr. Harrison: We would be glad to have it in if you want to have it in.

The Master: Now, proceed.

Mr. Harrison: I want the stenographer to get this.

The Master: Just hand it to the stenographer and he will put it in.

Mr. Harrison: We offer from the Times-Dispatch, Richmond, Virginia, Sunday, June 13, 1909, to be known as Plaintiff's Exhibit No. 23, the following extract from article headed "Work of Ordnance Bureau of the War Department of the Confederate States, 1861-1865. By J. W. Mallet, Ex-Lieutenant Colonel of Artillery and Superintendent of Confederate States Ordnance Laboratories:

"Besides the immediate work of the Ordnance Bureau it had to undertake a great number of most onerous outside tasks rendered necessary by the disorganized condition of society. While indispensable help was obtained from the railroads, they had in turn to be helped, and largely, in making repairs to their rolling stock and tracks. In fact, a silent partnership grew up, and materials and labor had to be used almost in common for a common end. It is easy to see how vitally necessary it was that the railroads should be kept going, but few people now seem to be aware how nearly exhausted at the close of the war the railroad system of the south had become. Almost every yard of siding that could be spared had been taken up, to patch the main lines, less important roads had been despoiled to help out the greater ones, fractional parts of wrecked locomotives had been built up into new ones of more or less feeble constitution, cars had been mended until they would

hardly hold together, and it may not unreasonably be doubted whether, aside from other sources of weakness, this alone might not in a few months more at furthest have put an end to the maintenance of Confederate armies in the field."

Mr. Harrison: I want to ask Mr. Potter a question.

By Mr. Harrison:

Q. Mr. Potter, please refer to the original record, beginning at page 1053 and continuing from that page to page 1065 inclusive, being an exhibit denominated Defendant's Exhibit, and headed summary of cash receipts and disbursements of the Commonwealth of Virginia from March 19, 1823, to January 1, 1861. Please state what that exhibit contains with reference to the assets.

The Master: Don't you cover everything when you give notice that you rely on that exhibit? Have you got any further examination? This is in the case, it is not necessary to prove it by Mr. Potter.

Mr. Harrison: I want to prove that that exhibit contains the assets that are enumerated in the supplemental answer.

The Master: Does not the exhibit show it?

Mr. Harrison: I think it does.

The Master: Just give notice that you propose to refer to it. Mr. Potter cannot strengthen that exhibit any. Don't that cover your ground?

Mr. Harrison: I think it may be well to have him answer that question.

The Master: All right, go ahead.

By The Master:

Q. The question is, does it cover the items referred to in the supplemental answer?

A. It covers the cost of all of the assets treated in the supplemental answer.

Q. The exhibit shows for itself, does it not, what it covers?

A. Yes, sir.

By Mr. Holt:

Q. It does not show the value or the disposition?

A. No, sir.

The Master. That exhibit will be read by everybody. You cannot add anything to it and you cannot take anything from it.

Mr. Holt: Well, I was asking for information.

The Master: Anything else, Mr. Harrison?

Mr. Harrison: No.

The Master: Of course it is understood that this original record can be used by either side at the argument.

Mr. Harrison: Yes. I have nothing further to ask Mr. Potter, but I would like to know—are you gentlemen through?

The Master: It is up to you. Are you through.

Mr. Harrison: Would it be agreeable to you to take the deposition of Mr. Axtell?

The Master: Have you anything else?

Mr. Harrison: I do not think we have.

The Master: Then the only thing left is this question about the testimony of Mr. Axtell. What is your suggestion about that, Mr. Harrison?

Mr. Harrison: We will take his deposition, fix a date at some time that will suit the convenience of the other side, as soon as possible.

The Master: What have you to say about that on the other side?

Mr. Harrison: I hoped they would be willing to save themselves the trouble by letting this letter go in.

The Master: They have stated they will not admit that letter without cross-examination.

Mr. Lilly: I do not think we ought to be expected to.

The Master: You need not discuss that part of it. The only question now is what have you to say as to the suggestion about the deposition.

Mr. Holt: My feeling about that is this: We have been here for several weeks. It is a pretty long journey, for a sick man at least, and Mr. Axtell has been in this town to my personal knowledge frequently during this inquiry. And why we should be dragged back here simply to take his deposition, when it could have been taken here during this time, I am unable to understand.

Mr. Harrison: I can explain that, Judge. It is true we have been here several weeks. But all of that time has been occupied by your side, by the putting in of your evidence, and we have had barely two days, and have gone under whip and spur to expedite matters and to save ourselves and you the trouble of prolonging this investigation beyond this week. And under such disadvantages have we labored in order to do that that we have had to receive schedules prepared here at the bar, without any opportunity for previous examination. It was an embarrassing thing to examine the witness, because of the lack of opportunity first to familiarize ourselves with the details. Now, I do not think in fairness we are subject to criticism for not having rushed Mr. Axtell in during the two days that we have been rushing to get in all of our testimony. We have done the best we could. We have occupied two days, where you have had several weeks. Now, we are in this situation; we want his testimony. And as much as we regret the necessity of having to trouble ourselves or you to take it, I do not see how we can avoid it.

The Master: Of course the testimony of Mr. Axtell, as indicated by that letter, must have been as obvious after this supplemental answer was filed as it is now, because it relates fully to this James River and Kanawha Canal Company. It certainly is not dependent upon any schedule that anybody has put in. He does not know anything about the schedules, and his information is not of that character. Now, there cannot be any doubt about that fact, as it seems to me, because on the basis of preparation, his testimony must have been known to be as significant then as it is now. Of course if he had been here I suppose we could have had his attendance almost at anytime; we could have arranged that. I suppose you have not been able to get in touch with him since we adjourned last night?

Mr. Harrison: I called his office up the first chance I had, and I was told he left town last night.

Mr. Lilly: May I ask the date of that letter, Mr. Harrison?

Mr. Harrison: I think it is July 30th.

The Master: It is rather an embarrassing situation. I do not want to leave either party here in a position where there

is going to be lacking of something that they think is material. How does this suggestion take care of the situation, what is the reason Mr. Axtell cannot be brought to New York and examined when we get there for argument? Everybody knows what he is expected to testify, and it relates to simply one item. Can you do that?

Mr. Harrison: Anything the Court suggests.

The Master: If the other side are willing to agree to that, I think that under the circumstances the plaintiff ought to accede to it. Of course I know the difficulties about a case of this size and magnitude, but when you come to this specific concrete proposition it is pretty difficult for me to find that Mr. Axtell could not have been discovered.

Mr. Harrison: If your Honor please, there is no question about the discovery of Mr. Axtell and the accessibility of Mr. Axtell. I did not know until ten days ago that he had written a letter and made some report in connection with the James River and Kanawha Company. I did not see the letter until about ten days ago, and then I made up my mind that the first opportunity I would get, if these gentlemen would not admit his letter, I would get him here. My mind has been occupied and all of us here have been occupied with other things. It was a mere incident in the examination.

The Master: I do not want to give a direction that is going to deprive the Virginia people of the opportunity to adduce this examination.

Mr. Harrison: If your Honor thinks we are not entitled to examine him, that is all right. Let it appear on the record.

The Master: I have not intimated that I do not think you are entitled to examine him.

Mr. Holt: I think we can relieve the situation by a suggestion. One suggestion by way of introduction, first. Of course any time that they would have brought Mr. Axtell in here your Honor would have stopped and heard him, whether in place or out of place, just as our cross-examination was stopped yesterday for the purpose of examining Mr. Williams and the other gentlemen. The Master has accommodated us in every respect and we have made no objection to the order

of proof at all. But we are perfectly willing, and this entirely removes the objection I have to coming back here and taking this testimony—we are willing if they will bring him to New York at the hearing to let his deposition then be taken, giving us an opportunity to cross-examine. I am given to understand that Mr. Axtell is frequently in New York.

Mr. Harrison: I will bring him to New York if he will come. Mr. Axtell is a busy man.

The Master: Of course he is a man of substance and business and I do not think you will have any trouble in that respect.

Mr. Harrison: I do not know whether I will or not. I cannot answer for that except to say that I will do it if I can.

The Master: My judgment is that there is not going to be any doubt about his being accommodating enough to be there. We will leave the matter in that way, that Mr. Axtell will be examined prior to the beginning of the argument in New York.

Mr. Harrison: I do not want to be confined to this proposition, that we cannot examine him unless we can examine him in New York.

The Master: Of course when we reach that condition if you are in a position of embarrassment I will take that up then, but Mr. Harrison will do everything that he reasonably can do to get Mr. Axtell there. Have you anything more, Mr. Harrison?

Mr. Harrison: It is understood that these other exhibits are being prepared?

The Master: Yes, absolutely. I will have the printers keep the case in type so that when we get there and get Mr. Axtell's examination I will have it put right in, so that so far as the record is concerned there will not appear to be any hiatus and it will be part of the original record.

Mr. Robinson: Some arrangement will be made so that we will be given copies of this record as quick as it will be ready?

The Master: I am going to try to make that arrangement.

Mr. Holt: Now, your Honor, we are ready in about five minutes to complete.

The Master: Go ahead then.

Mr. Lilly: If your Honor please, we have the blueprints and maps showing the dock property and towpath, etc., of the James River and Kanawha Canal and also the location of the Richmond & Allegheny Railroad Company with reference to that, and it consists of something like two hundred maps, and of course we do not want to encumber the printed record unless it is insisted on, but we want to introduce it and let the Master inspect it, and use it for argument.

Mr. Holt: I suspect the gentlemen will agree that it may be omitted.

The Master: It is admitted for that purpose, and if Mr. Anderson says they are genuine blueprints, that is all that is necessary.

J. K. ANDERSON,

recalled for further examination in behalf of the defendant, testified as follows:

By Mr. Lilly:

Q. Mr. Anderson, I note you have some blueprints here with reference to the Richmond & Allegheny Railroad. Where did you get them?

A. I received them from the Chesapeake & Ohio Railroad Company through their chief engineer in August, 1914.

The Master: All that is necessary for him is to say that they are genuine duplicate blueprints of what they purport to show.

Mr. Lilly: They are the original blueprints.

The Witness: They are the blueprints taken from the original map tracings or tracing of the map entitled "Property Maps of the Richmond and Allegheny R. R., Richmond to Clifton Forge, including the Buckingham R. R. and the Lexington Branch. Property acquired by the R. & A. R. R. Co.—yellow."

The Master: They are what they purport on their face to be?

The Witness: With these exceptions, your Honor, that they only show the line of road from Richmond to Buchanan and up the Lexington Branch to Lexington or close to it.

Q. These are the original blueprints that you got from the Company, are they?

A. Yes, sir; I compared them with the tracings and they were made from the original tracings in the possession of the company.

By Mr. Holt:

Q. You made the blueprints?

A. No. sir, they made the blueprints and furnished them to me.

Q. They are the blueprints that the railroad furnished you?

A. Yes, sir.

By Mr. Lilly:

Q. What are the first two sheets of the blueprints? Just tell the Master what the first two sheets are.

The Master: Don't they show for themselves?

Mr. Lilly: I want to get it in the record.

A. I think that perhaps a word of explanation would be better. Sheet No. A shows the lower end of the dock property in the city of Richmond, Virginia. Sheet No. B shows the upper end and a portion of the basin or lower end of the old canal property. Sheet No. O shows the lower end of the canal property.

Q. Just file those three and mark them Exhibits AA, BB, and CC.

The Master: These will be placed in the custody of Mr. Bonynge and he will take care of them.

Mr. Lilly: And we also wish to file the title page as DD.

The maps were admitted in evidence and marked Defendant's Exhibits AA, BB, CC, and DD, September 12, 1914, C. B.

Q. What are the rest of these blueprints, Mr. Anderson?

A. The remainder of these sheets show the alignment of the old R. & A. from the first mile post or station O to Buchanan and up to Lexington on the branch line.

Q. Do they show the amount of new right of way that it was necessary for the R. & A. to acquire in order to construct this line?

A. They do. The amount which they acquired is simply checked off in yellow check marks, the old James River and Kanawha right of way being left uncolored, but originally colored red.

Q. I understand these blueprints show the original canal and towpath and the location of the Richmond and Allegheny Railroad center line, and any additional right of way that was necessary for the R. & A. to purchase in order to construct its road?

A. Yes, together with the locks and other structures.

Mr. Lilly: We will file those, marked R. & A. Exhibits from O to 195 inclusive.

The Master: An exhibit consisting of pages from O to 195, one exhibit.

The Witness: And on the Lexington Branch, from 174 to 195.

Q. Mr. Anderson, on page 1240 of the typewritten record you were asked certain questions with reference to the Manassas Gap Railroad, and you have extended your answers. I wish you would submit a copy to the gentlemen on the other side, and we would like to have these two sheets placed in the record where they should have been the other day, simply asking the amount invested at certain times in the construction of the road and when it first began construction and its progress up to 1860.

A. I find in Senate Journal & Document 1852-53, filed in the Virginia State Library at Richmond, Virginia, Document 24 on page 8, which is a report of the Senate Committee of Finance & Claims relative to the debt of the State from September 30, 1850, to September 30, 1852, and to the receipts and disbursements of the Treasury during years 1852 and 1853, and under a separate heading in said report, entitled "Funds & Resources of the State on 30th of September, 1851, stocks in improvement companies not completed—

Manassas Gap Railroad Co. .....$38,981.00."

I also find in this same document, on page 9, loans obtained by the Board of Public Works to pay subscriptions which have been made to the following companies:

Railroad Companies: $2,043,144.00
Manassas Gap Railroad Co. 176,775.54

I also find in said library, Document No. 17 for the years 1853 and 1854, page XXII, Report of the Board of Public Works to the General Assembly, dated January 28, 1854, the following data:

Manassas Gap Railroad
Length 112
Completed 42 1-2
In progress 69 3-4.
Capital stock authorized $2,400,000.00
Payment made by State 502,000.00

I also find in the same document No. 17, page 287, which is a report for the fiscal year ending September 30, 1853, the following extract from the proceedings of a meeting of stockholders:

"Pursuant to public notice, the stockholders of the Manassas Gap Railroad Company met at Liberty Hall, January 12, 1853, and organized."

Also in the same Document No. 17, page 304, I quote from the President's Report to the stockholders:

"The trains have been running to Markham, 38 miles, since 10th of December last, and for a day or two past to the Summit Cut. Some few days will elapse before the obstacles in the way of access to the station at the Summit, Linden, can be removed. This station is at the summit of the Blue Ridge, the point of diversion of the eastern and western waters, distant 42 miles from the junction and 70 from Alexandria on the east, 8 miles from the river, and 18 miles from Strasburg on the west.

Provision was made for the completion of the road to this point as early as May last."

Delay caused by failure of delivery of rails from England and a riot in June last among the hands at Summit Cut, which was suppressed by armed patrols and those remaining were kept at work by guard since the riot.

The road from Linden to Strasburg is all under contract and some sections completed. Mr. Goldsborough calculates

to have the road bed ready for superstructure by June first next and track ready for trains to Strasburg by the first of September, or sooner."

And on page 312, Document No. 17, I quote as follows:

"Expended on construction from its organization on the 1st day of August, 1850, to the 30th day of September, 1853—

Total amount expended.....	$1,166,573.84
Less other items—	
$59,565.08	
92,000.00	
4,021.59	155,586.67
Actual Cost Expenses.....	$1,010,987.17"

And on page 313, Document No. 17, from August 10, 1852, to September 30, 1853—

"Disbursed on construction, etc.....	$470,925 72
Spent on construction, etc., from August 1, 1850, to August 10, 1852..	540,061.45"

From this I conclude that the work of construction began in 1850, or early in 1851.

Mr. Holt: I will ask you to refer to the report of the president of the Richmond & Alleghany Railroad for the year 1882, and will then ask that it be read into the record, the annual report, Richmond & Alleghany Railroad Company, ending September 30, 1881.

The Master: Hand the duplicate of it to the other side.

Mr. Holt: I will do so.

Mr. Anderson: We object to the competency of this evidence. I do not know how he can say anything that is evidence.

The Master: There is quite a good deal of the same character of testimony in the record. There are a good many reports of presidents. All these are subject to objection. Of course all these reports of presidents and anything else, if you can satisfy me that it is not competent evidence, out it

goes. This is open to every objection. If the report of the president is admissible for one purpose, probably it is for another.

Mr. Holt: The report is as follows:

ANNUAL REPORT

THE RICHMOND & ALLEGHANY RAILROAD CO.

Ending September 30, 1881.

This printed volume is in the possession of Mr. Decatur Axtell, Vice-President of the Chesapeake & Ohio Railroad Company, of Richmond, Virginia. I quote as follows from page 5, &c.:

"To the Stockholders:

The Board of Directors respectfully submit herewith their report for the fiscal year of the company ending by law of State, 30th September, 1881, with the accompanying statements.

The report of the General Manager is added. The fiscal reports of the James River & Kanawha Company, and the Buchanan and Clifton Forge Railroad Company, are presented herewith, and will be published by this Company.

The Richmond and Alleghany Railroad Company acquired the properties, works and franchises of the James River and Kanawha Company, and the Buchanan and Clifton Forge Railway Company, at a cost, in stock and cash, of $6,389,511.93, thus securing legal right of way for its railway lines, basin and docks in Richmond, and other property, including liens of $1,537,381.42.

The Company acquired rights of way needed by improved location at a further cost, in cash, of $199,097.83. These disbursements have been arbitrarily divided "Distributed" between Richmond dock property, valued at $1,000,000, and rights of way and franchise, $5,588,609.76. Total $6,586,609.76.

Under an agreement between the trustees of the first mortgage and this Company, provision was made out of proceeds of first mortgage bonds for existing liens, which liens were to be acquired by the trustees and held uncancelled as a muniment of title and for further assurance.

The amount of these liens outstanding was	$1,537,381.42
Of which the Trustees on the 30th September, 1882 had acquired	1,393,637.66
They have since delivered to the State of Virginia	74,743.04
	$1,318,894.62

The amount of liens outstanding has been diminished by State bonds for maintenance of convicts employed on B. & C. F. Ry	79,128.15
County of Rockbridge bonds acquired by completion of road	50,000.00
City of Lynchburg bonds acquired by water works contract	35,000.00
	$ 164,128.15

The amount of liens now outstanding, as held by First Mortgage Trustees	$1,318,894.62
Held by others	54,358.65
Total outstanding	$1,373,253.27

CONSTRUCTION.

The main stem, Richmond to Williamsons (with arrangement for temporary use of track of Virginia Midland through Lynchburg, as contemplated by statute), was completed 12th

September, 1881; the branch to Lexington 14th October, 1881.

The road was opened under the auspices of the Board of Public Works of the State of Virginia on 15th October, 1881, and upon certificate of the consulting Engineer, in presence of passengers brought to Howardsville by trains from Richmond, Williamsons and Lexington, the final instalment of U. S. bonds, deposited as pledge for fulfillment of statutory contract, of 5th March, 1880, was delivered to the Company. The statutory period for completion of 50 miles west from Richmond, and 56 miles from Williamsons to North River, in all 106 miles was 5th July, 1881; these sections were completed 13th April, 1881, at which date 146½ miles on both sections had been completed.

The date of completion of 250 miles was 15th October, 1881.

OPERATION AND INCOME.

During period of construction neither canal nor railroad could be operated profitably, as the energies of the organization and its equipment were largely engaged in hastening construction. The severity of the winter of 1880 greatly retarded the work, and the canal from a source of revenue became one of expense, the result showing a charge of more than ten thousand dollars on this account. On the other hand, the facilities for the transportation and distribution of material afforded by the canal may be safely estimated to have saved the construction account a much larger amount. The receipts for water power were nine thousand dollars.

These accounts present only sums received from the public, and no constructive charges against 2,702,000 mile-tons of construction material transported have been credited as earnings. The materials have been charged only with the sums disbursed for transportation and labor.

The resulting balances show a net profit, from operation of the railway, of seventeen thousand dollars during the period of constructions, and of nearly thirty-eight thousand dollars from the Richmond docks. The total general expenditures

from acquisition of the property were sixty-one thousand dollars, leaving a final charge to construction account of $6,002.92.

WATER POWER.

An engineer of water power has been appointed and under careful supervision it is believed that this department of the property will become an important one. Little has been done, or could be done, while the pressure of building absorbed attention and resources. When the property was acquired rents were in arrears, obsolete methods prevailed in use of water, and litigation and claims impaired the value of existing grants. Measures are under consideration for the material improvement of the power of Richmond.

The power owned by the City of Manchester has been acquired by this Company.

The difference between the authorities of Lynchburg and the canal company, as to their several rights and liabilities at that point, have been happily adjusted—The Company builds a substantial stone dam, toward the cost of which the city contributed by releasing the debt and lien of $35,000 upon that level, and the rents, held as collateral, come to this Company.

One dam (Varneys Falls), not needed for water power has been destroyed, others will follow doubtless. Those whose maintenance will be justified by the power supplied, must under requirements of law be furnished with fish-ways.

CONSOLIDATION.

The important events in the history of the Company are, first, the contract entered into with the Ohio Central Railroad Company, of Ohio, the Atlantic & Northwestern Railroad Company, of West Virginia, and this company, for the consolidation of the three companies; the subscription of five million dollars, secured for completion of existing lines; extension of the Ohio Central to the Ohio River; bridging of the Ohio and construction of railroad to Charleston, West Virginia.

The special meeting of Stockholders, held in Richmond on 23rd June, ratified this contract by a stock vote of 47,231 shares of the 50,000, all in favor of the proposition.

The projected route of the extension is from Eagle Rock, seventeen miles north of Buchanan, following the valley of Craig's Creek, and by tunnel of one mile to the valley of Sinking Creek, a tributary of New River. The route admits of a line with maximum grade of thirty feet. The length of the entire lines, consolidated and to be constructed, may be stated at 800 miles.

The basin property in Richmond is the site selected for local freight and passenger stations. Application has been made to this company for accomodation for other railways, and a union station may be conveniently located here.

The connection between this basin and the docks by trestles and bridges is in progress, and will be completed about May 1, 1882. The dam at Lynchburg, above referred to, it is hoped will be completed by August 1, 1882. Both are expensive structures.

CONSTRUCTION.

(p. 10)

Excepting along Maiden's Adventure Pond, Tye River Pond, and about a mile on the south side of James River, near the Joshua Falls Bridge, the track was everywhere laid upon the tow-path between Richmond and Lynchburg.

It has since been removed from the tow-path in several places where the curvature was excessive, and placed upon unobjectionable alignment. This work could only be done economically after the suspension of navigation upon the canal.

Between Lynchburg and Buchanan and Lexington newly-graded roadbed is almost continuous and is nearly everywhere higher than the tow-path. From Buchanan to Williamsons this road was built upon the unfinished work of the Buchanan and Clifton Forge Railroad. The character of the work has been commended by competent critics, and there is no doubt that

after the new embankments become settled the expenses of maintenance can be kept at a very low figure. Experience with the maintenance of the track upon the tow-path has fully sustained the expectations of those who have asserted its advantages as a roadbed.

At Richmond a commodious freight building with necessary track is under construction in the basin. A timber trestle has been decided upon, extending from Eleventh Street to Nineteenth Street, upon property owned by the company, excepting the station near to the Richmond & Danville R. R., across which right of way has been obtained under an agreement requiring this company to span the yard with two iron bridges resting on three masonry piers.

A.

CONDENSED BALANCE SHEET.

September 30, 1881.

ASSETS.

Rights of Way and Branches...	$5,588,609.76	
Cost of Road.....	4,607,217.53	
Cost of Equipments.....	453,312.78	
Richmond Dock Property.....	1,000,000.00	
Real Estate.....	149,016.29	$11,798,156.36
J. R. & K. Co., and B. & C. F. Ry. Co. Liens, with Trustees 1st Mortgage.....	1,393,637.66	
Bills Receivable & Open Accounts	107,721.03	
United States Bonds at par.....	142,000.00	
Cash	45,373.37	
Material	23,359.84	
	$13,610,348.26	

LIABILITIES.

Capital	$5,000,000.00
First Mortgage Bonds	4,925,000.00
Second Mortgage Bond	729,000.00
Alleghany Car Trust Series "A"	170,000.00
J. R. & K. Co. and B. & C. F. Co. Liens	1,537,381.42
Accrued Interest (not due)	105,725.00
Bills Payable	744,186.71
Accounts Payable (Pay Rolls, &c. September	298,955.13
	$13,510,248.26

B.

INCOME ACCOUNT.

EARNINGS.

Rents	$	545.20
Water Rents		9,062.45
Canal Earnings		12,468.52
Dockage		47,533.33
	$	69,609.60

EXPENSES.

Canal and Water Power	$	22,728.97
Richmond Docks		9,666.84
	$	32,395.81
	$	69,609.60
		32.395.81
		37,213.79

SUB ACCOUNTS.

Basin Grading.....	$ 11,474.96	
Trestles	7,286.84	
Track	3,511.24	
Freight Depot Building....	11,665.18	$ 33,938.22

MISCELLANEOUS.

A series of maps are being prepared which will, when completed, show the complete alignment of the road as well as the boundaries of the rights of way and other real estate belonging to the company.

Much attention has been given to the work of collecting and arranging the evidences of title to the rights of way and the numerous outlying pieces of real estate that belong to the company; when it is remembered that some of these titles date back a century, and that many of the original papers were destroyed by fire at the time of the evacuation of Richmond in 1865, some idea may be formed of the amount of painstaking labor involved.

Nearly everywhere below Lynchburg the canal intervenes between the track and the hills and thus affords protection. The tow-path has proven a most excellent roadbed, which is greatly conductive to economy in maintenance. Free from undulating grades the road admits of steady rates of speed by passenger and freight trains and enables quick time to be made without the dangers and discomforts of rapid descents and slow and expensive ascents of gradients, advantages seldom possessed by railroads as ordinarily constructed. The only drawback to these advantages is the sharp curvature in a number of places.

To meet the obligation of existing losses the water must be maintained in the canal for about seventy miles between Richmond and Lynchburg and for about eight miles above the latter city. The dams furnishing water and the canal banks have needed but slight repairs during the past year; but mainte-

nance of a supply of water for such a distance involves much risk to the road bed, and aside from the risks it is unprofitable to keep up long levels to supply the wants of small consumers. The conditions are very different from those which obtained when the canal was used for navigation. The supply of power to wayside mills was incidental and the revenue therefrom clear gain; now the petty rentals cut a small figure in the added cost of maintenance which they involve. For these reasons the Receivers have decided to grant new leases at points near the dams only, a conclusion further warranted by the fact that manufacturing enterprises of importance, such as should be fostered, must needs locate near the source of supply.
(P-58.)

The Receivers have caused inducements to be offered to manufacturers to the end that some of the vast amount of power now idle at the numerous dams may be put to some good work that will aid in the development of the country and of the road: but thus far no results have attended the efforts, except in the re-opening of the large iron and nail works above Lynchburg.
(P-59.)

In the minds of the promoters of the road and the early investors, the value of the Richmond docks, the water power and the minor outlying parcels of real estate, was rated very high. It is probably safe to predict that, if rightly managed, these properties will ultimately justify the early expectations; but it should be kept in mind that, like any large estate, the value of which is largely potential, they will require time, watchful care and a sacrifice of immediate gains, if they are to be made to realize their best possibilities.

CROSS EXAMINATION

By Mr. Anderson:

Q. Mr. Anderson, do you know anything as to the condition of the Manassas Gap Railroad in 1861?

A. Nothing at all.

Q. Do you know anything at all as to its condition on June 20, 1863?

A. No, sir.

Q. Do you know whether in fact it was completed until after the war, to Harrisonburg?

A. No, sir.

Q. Do not the facts which you have discovered indicate that it was not completed to Harrisonburg?

A. I so stated in my testimony, that it was completed to Mount Jackson, from such information that I could obtain and was under construction to Harrisonburg, from Mount Jackson to Harrisonburg.

Q. You have no personal knowledge as to its condition or whether it was completed to Harrisonburg in 1861 or 1863?

A. No, sir.

The Master: He was not born at either of those dates, so he could not know anything about that.

Mr. Anderson: That is all.

Mr. Holt: We read into the record, your Honor, an act of the General Assembly of Virginia, an Act to convert the branch of the Northwestern Bank of Virginia at Jeffersonville into a Separate and Independant Bank, passed March 13, 1862, and found in the Acts of the General Assembly of the State of Virginia, passed in 1861-2, found at page 90 of the book referred to, as follows:

Chap. 75.—An Act to convert the Branch of the Northwestern Bank of Virginia at Jeffersonville into a Separate and Independant Bank.

Passed March 13, 1862.

Whereas the armed occupation of Northwestern Virginia, by lawless enemies of this state, has entirely destroyed all business intercourse and relations between the Northwestern Bank of Virginia at Wheeling and its branch at Jeffersonville, to the great detriment of the state and loyal stockholders, and it seems proper under the circumstances to dissolve the connection heretofore subsisting between said bank and its

branch at Jeffersonville, and of authorizing the latter to transact business as a separate and independent corporation:

1. Be it therefore enacted by the General Assembly, that the branch of the Northwestern Bank of Virginia at Jeffersonville be and the same is hereby constituted, created and incorporated a separate, distinct and independent bank, under the corporate name of Graziers Bank of Virginia; and all the power, control, direction, supervision, relation and connection of said Northwestern Bank of Virginia over and with the said branch at Jeffersonville, are hereby dissolved, abrogated and annulled.

2. All the assets held by said branch (embracing all bills and notes discounted, whether the same be in suit, protested, due or maturing, all judgments, balances due on accounts current, all money, either in coin or currency, all evidence of debt or other securities, all real estate, and every right and interest) are absolutely vested in the said Graziers Bank of Virginia; and in every case where suit has been instituted in the name of the Northwestern Bank of Virginia for the recovery of money or other thing, to which said branch is entitled the suit so brought shall be prosecuted in the name of the Northwestern Bank of Virginia, for the use and benefit of said Graziers Bank of Virginia; and in every case where suit shall hereafter be instituted for the recovery of money or other things belonging to said branch, the suit shall be in the name of said Graziers Bank of Virginia.

3. The said Graziers Bank of Virginia is subject to all the liabilities of the said branch, except so far as the said liabilities are modified by the following sections of this act.

4. The said Graziers Bank of Virginia shall in no event be required to account to the said Northwestern Bank of Virginia for any portion of the net profits or contingent fund of the said branch, nor to contribute to the payment of, or pay out of the assets of said branch, or otherwise, to any stockholder, billholder or creditor of the said Northwestern Bank, any sum or sums of money which any such stockholder, billholder or creditor may be entitled to demand and have of said Northwestern Bank of Virginia.

5. At any time within three months from the passage of this act, any loyal holder of stock in the Northwestern Bank of Virginia, whose stock in said bank was purchased through the said branch, or whose dividends have usually heretofore been credited to him at said branch, may return and assign to said Graziers Bank of Virginia such stock, and demand and receive in lieu thereof a certificate for a like number of shares of stock in the said Graziers Bank of Virginia.

6. As soon as may be after the expiration of the said three months from the passage of this act, the governor of the state shall cause certificates of the stock held by the state in the said Northwestern Bank of Virginia, for an amount equal to the balance of the capital stock of said branch, not exchanged under the previous section, to be in like manner returned and assigned to said Graziers Bank of Virginia, for a like number of shares of the stock thereof.

7. The Graziers Bank of Virginia, hereby established, shall be required to redeem, from loyal citizens of the Confederate States of America, in notes of its own issue, all such notes of said branch as may be in their possession at the passage of this act; provided the same be presented in six months after notice of this provision shall have been published for one month in some weekly newspaper published in the city of Richmond; and provided further, the amount offered for redemption shall not exceed one hundred and eighty thousand dollars.

8. The legislature reserves the power to provide, after the termination of the war with the United States, the extent, mode and time of redemption by said Graziers Bank of Virginia, of any outstanding notes of said branch, with which, according to the principles of equity, justice and right, it is chargeable. But as it is represented to this general assembly that the said branch has a special deposit of twenty-four thousand dollars in gold with the said Northwestern Bank of Virginia, heretofore made by said branch to meet the redemption of its notes; and as notes payable at said branch may have been issued by the said Northwestern Bank of Virginia, which have not been reported to said branch, nor charged to said Northwestern Bank of Virginia, and which it would be evidently unjust to

require the said branch to redeem, it is hereby expressly provided and enacted, that the whole amount of circulation of the said branch, which the said Graziers Bank of Virginia shall be required to redeem, under the provisions of this act, and of any subsequent act of the legislature, taken collectively, shall not exceed the balance of the circulation of said branch, after deducting therefrom the sum of twenty-four thousand dollars on account of said special deposit, and also any amount or amounts of circulation payable at said branch (if any such there be), issued by the said Northwestern Bank of Virginia, of which the said branch has not heretofore received notice from said Northwestern Bank of Virginia.

9. The cashier shall forthwith, after the expiration of three months from the passage of this act, out of the surplus or contingent fund of the said branch, pass to the credit of the stockholders of the said Graziers Bank of Virginia and to the state, a dividend of ten per centum upon their stock issued under the provisions of the fifth and sixth sections of this act.

10. The said Graziers Bank of Virginia shall be located and transact its business at the town of Jeffersonville.

11. The said Graziers Bank of Virginia may, by sales of new stock, increase its capital to two hundred thousand dollars.

12. The present board of directors for the said branch shall continue to act as a board of directors for the said Graziers Bank of Virginia until a new board shall be appointed under the general law.

13. Except so far as the same may be inconsistent with the provisions of this act, the general banking law of the state shall apply to the said Graziers Bank of Virginia: and the general law of joint stock companies shall apply to the said Graziers Bank of Virginia, so far as the same is applicable to it, and not inconsistent with the provisions of this act.

14. This act shall be in force from it passage, but may be repealed, altered or modified, at the pleasure of the General Assembly."

Mr. Holt:

We read into the record another act upon the same subject, of the General Assembly of Virginia, entitled "An Act amend-

ing and re-enacting the 5th and 6th sections of the act passed March 13, 1862, entitled an act to convert the Northwestern Bank of Virginia at Jeffersonville into a separate and independent Bank, passed March 11, 1863, and found in the Acts of the General Assembly of Virginia, passed at a called session, 1862, found at page 84 of the volume of Acts referred to, as follows:

Chap. 51.—An Act amending and re-enacting the 5th and 6th sections of the act passed March 13, 1862, entitled an Act to convert the Northwestern Bank of Virginia at Jeffersonville into a separate and independent Bank.

Passed March 11, 1863.

1. Be it enacted by the General Assembly, that the fifth and sixth sections of the act passed March thirteenth, eighteen hundred and sixty-two, entitled an act to convert the branch of the Northwestern Bank of Virginia at Jeffersonville into a separate and independent bank, be amended and re-enacted so as to read as follows:

"3. At any time within three months from the passage of this act, any loyal holder of stock in the Northwestern Bank of Virginia, whose stock in said bank was purchased through said branch, or whose dividends have usually heretofore been credited to him at said branch, may return and assign to the said Graziers Bank of Virginia such stock, and demand and receive in lieu thereof a certificate for a like number of shares of stock in said Graziers Bank of Virginia: provided, however, that if before the first day of July eighteen hundred and sixty-three, satisfactory reasons shall be shown to the board of directors of the Graziers Bank for the failure of any such stockholder to avail himself of the benefits of the foregoing provision, the said board shall certify such reasons, with their opinion on the same, to the governor.

"6. As soon as may be after the expiration of the said three months from the passage of this act, the governor of the state shall cause certificates of the stock held by the state in the

said Northwestern Bank of Virginia, for an amount equal to the balance of the capital stock of said branch, not exchanged under the previous section, to be in like manner returned and assigned to said Graziers Bank of Virginia, for a like number of shares of the stock thereof: provided, however, that on the certificate authorized in the preceding section being received by the governor, it shall be his duty to transfer to the stockholder to whom the same shall be given, out of the stock herein directed to be transferred to the state, a quantity thereof equal to the amount held by such stockholder in the Northwestern Bank, together with any dividends thereon which may have accrued to the state under the sixth section of said act.

2. This act shall be in force from its passage."

Mr. Holt:

In that connection we will have to show by some one that Jeffersonville, unless these gentlemen will admit it, was in the County of Tazewell which is now a part of the State of Virginia.

The Master: And always has been?

Mr. Holt: And always has been.

The Master: Is that conceded, that Jeffersonville is in the County of Tazewell which was then and is now in the State of Virginia?

Mr. Anderson: That is a fact of which the Court will take cognizance.

Mr. Harrison: I have no knowledge on that subject at all.

Mr. Holt: Of course if this Court will take judicial cognizance of it when we call its attention to the fact, that will be satisfactory.

The Master: I will try and do that. If the map shows it is now in Virginia, it will be so held by me when the time comes.

Mr. Holt: We read into the record an Act of the General Assembly of Virginia entitled An Act authorizing the receipt of the treasury notes of the Confederate States in payment of taxes and other public dues, and regulating when and how the same shall be received, passed March 2, 1864, found in the Acts of the General Assembly of the State of Virginia, passed at

called session, 1863, on page 8 thereof, and is as follows:

Acts of Assembly of Confederate Virginia 1863-4.
On page 8 of said volume will be found the following:

Chap. 3.—An Act authorizing the receipt of the treasury notes of the Confederate States in payment of taxes and other public dues, and regulating when and how the same shall be received.

Passed March 2, 1864.

1. Be it enacted by the General Assembly, that the non-interest bearing treasury notes of the Confederate States, issued after the first day of April eighteen hundred and sixty-four, shall be received in payment of taxes and other public dues, and the non-interest bearing notes of the Confederate States, issued prior to the first day of April eighteen hundred and sixty-four, except the notes of the denomination of one hundred dollars, shall in like manner be received in payment of taxes and other public dues, after the first day of April eighteen hundred and sixty-four, and until the tenth of December eighteen hundred and sixty-four, but only at the rate of sixty-six and two-thirds cents for one dollar of such notes. No sheriff or other collecting officer shall have credit for the notes issued prior to the first day of April eighteen hundred and sixty-four collected by him, unless he shall pay the same into the treasury on or before the twenty-fifth day of December eighteen hundred and sixty-four. Notes of a less denomination than five dollars, issued by said Confederate States, shall be received without abatement at any time.

2. It shall be lawful for sheriffs and other collecting officers of taxes and other public dues to receive, without abatement, until the first day of April eighteen hundred and sixty-four, the non-interest bearing treasury notes of the Confederate States, issued prior to the first day of April eighteen hundue prior to the first day of April eighteen hundred and sixty-four. But no sheriff or other collecting officer shall receive credit But no sheriff or other collecting officer shall receive credit,

unlesss he shall pay the same into the treasury on or before the twenty-fifth day of June eighteen hundred and sixty-four, nor until he shall make oath that the notes offered in payment by him were severally and actually received by him in payment of taxes and other public dues, at the times and rates specified in this act.

3. The non-interest bearing treasury notes of the Confederate States of the denomination of five dollars, issued prior to the first day of April eighteen hundred and sixty-four, may be received without abatement in payment of taxes and other public dues until the tenth day of June eighteen hundred and sixty-four; provided the same shall be paid into the treasury on or before the twenty-fifth day of June eighteen hundred and sixty-four.

4. The act passed September fourteenth, eighteen hundred and sixty-three, entitled an act amending and re-enacting the one hundred and ninth section of an act entitled an act imposing taxes for the support of government, passed March twenty-eighth, eighteen hundred and sixty-three, is hereby repealed.

5. It shall be the duty of the keeper of the rolls to cause this act to be published immediately after its passage, in at least five newspapers published in Richmond, for a period of four weeks.

6. This act shall be in force from its passage.

Mr. Holt:

For the purpose of showing that the stocks in these banks that appear in the supplemental answer of the defendant, owned by the State of Virginia, really became a part of the Sinking Fund of that State, we read into the record an Act of the General Assembly of Virginia entitled "An Act to amend and re-enact the 4th section of an act entitled an act to separate the state from the banks, by a sale of its stock therein, and the application of the proceeds to the redemption of the public debt passed March 18, 1856, was passed April 3, 1858, and found at page 9 of the acts of the General Assembly of Virginia, 1857 and 1858," as follows:

"Chap. II.—An Act to amend and re-enact the 4th section of an act entitled an act to separate the state from the banks, by a sale of its stocks therein, and the application of the proceeds to the redemption of the public debt, passed March 18, 1856.

Passed April, 1858.

1. Be it enacted by the General Assembly, that the fourth section of an act entitled an act to separate the state from the banks, by a sale of its stocks therein, and the application of the proceeds to the redemption of the public debt, passed March eighteenth, eighteen hundred and fifty-six be amended and re-enacted so as to read as follows:

"4. The proceeds of the sales of the bank stocks hereby directed to be sold, shall be paid into the Sinking Fund, to be applied to the payment and redemption of such part of the state debt as may be redeemable; and if no part thereof be redeemable, then to purchasing and canceling such outstanding bonds or certificates of the debt of this commonwealth as were issued prior to the first day of January eighteen hundred and fifty-two. In purchasing such bonds or certificates of debt those which are redeemable at an early date shall be bought in preference to those which are redeemable at a later date: provided they can be bought at the same price."

2. This act shall be in force from its passage.

The Master: These are all public acts I understand, referable to by counsel on either side, whether they are put in or whether they are not put in.

Mr. Hogg: That is true.

Mr. Robinson: And already a part of the record.

We now read into the record report of the Virginia Debt Commissioners of 1871, addressed to his Excellency J. J. Jacob Governor of West Virginia, and signed J. J. Jackson, J. M. Bennett and A. W. Campbell together with the schedules accompanying same.

REPORT
of the
VIRGINIA DEBT COMMISSIONERS OF 1871.

To His Excellency,
J. J. Jacob,
Governor of West Virginia:

Sir: Under the joint resolutions passed by the West Virginia Legislature on the 15th and 24th days of February, last, the undersigned were appointed Commissioners by you "to treat with the authorities of Virginia on the subject of a proposed adjustment of the public debt of that State prior to the first day of January, 1861," and were directed by the Legislature "to make report thereof to the Governor," which we have the honor to do as follows:

On the 9th day of August last the Commissioners met in Parkersburg to confer together upon the subject matter of their appointment and to organize a programme of procedure in respect thereof. They addressed a letter to your Excellency notifying you of their meeting and organization and also the following letter to Governor Walker, of Virginia:

Parkersburg, W. Va.,
August 9, 1871.

To His Excellency, the Governor of Virginia:

Sir: The undersigned have the honor to inform you that under the joint resolutions passed by the Legislature of West Virginia on the 15th and 24th days of February last, they have been appointed Commissioners by the Governor of West Virginia to treat with Virginia in regard to the debt as it stood on the first day of January, 1861.

Also that they met in this city today for the purpose of entering upon the discharge of their duties, and to this end have designated General John J. Jackson as their chairman, through whom they propose to receive such communications as your Excellency may be pleased to submit.

Will your Excellency be pleased to indicate at your earliest convenience what action, if any, has been or is likely to be

taken by Virginia in the matter of appointing commissioners, or, in the event of no such appointments, what channel of communication will be open to us.

We have the honor to be,

Your Excellency's most Obedient servants,

JOHN J. JACKSON,
J. M. BENNETT,
A. W. CAMPBELL.

After forwarding this letter, together with the one to your Excellency, the Commissioners adjourned to meet in Richmond on a day to be agreed upon later in the season, there to confer with the authorities of Virginia, and to make such examination of public documents as might enable them to carry out the objects of their appointment.

Meanwhile they received from the Governor of Virginia, in answer to their letter of August 9th, a letter dated September 7th, the same purporting to be a copy of a letter addressed to your Excellency, and which is as follows:

Executive Chambers,
Richmond, Sept., 7, 1871.

His Excellency,
J. J. Jacob,
Governor of West Virginia:

Sir: I have the honor to acknowledge the receipt of your communication of the 17th ulto., notifying me of the appointment of Messers. Bennett, Jackson and Campbell as Commissioners on behalf of the State of West Virginia to treat with the authorities of this State upon the subject of the State debt. I have also received a certified copy of the joint resolution empowering you to make these appointments. Absence from the capital has prevented an earlier response to these several communications.

On the 18th of February, 1870, an act was passed by the Legislature of this State, and approved by me, authorizing the Governor to appoint three Commissioners on behalf of this State to treat with the authorities of West Virginia upon the

subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and a fair division of the public property.

Commissioners were promptly appointed under this act, and notice of their appointment, together with an authenticated copy of the act, were at once forwarded to the Governor of West Virginia. No response whatever to my communication was made by the Governor of West Virginia, but I learned through other sources that the matter was promptly submitted to the Legislature then in session, by which, either by act or resolution, the Governor was authorized to appoint Commissioners to meet and confer with those appointed from Virginia. I have never been informed, however, of the appointment of any Commissioners under the authority thus conferred.

A history of these proceedings, together with a statement of my own views upon the subject, was submitted to our Legislature in my annual message of December last, a copy of which I herewith enclose. The Legislature, acting upon the suggestion of the message, on the 11th day of February last, by a joint resolution, authorized the Governor to tender to the State of West Virginia "an arbitration of all matters touching a full and fair apportionment between said States of the said public debt," an authenticated copy of which joint resolution, together with the tender of an arbitration as therein authorized, was promptly forwarded to the Governor of West Virginia.

This joint resolution, while it does not in terms repeal the act of February 18, 1870, was intended to supersede it, and therefore I do not feel authorized to appoint Commissioners. Our tender of an arbitration has not been withdrawn, and I regret exceedingly that the authorities of West Virginia declined to accept it. I cannot understand what reasonable objection can be raised to this fair and equitable mode of adjustment so frequently resorted to by individuals and nations, and I trust that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia, to the end that prompt justice may be

done to the creditors of the Old State, and that harmony and good feeling may prevail between the people of the two States.

Very respectfully,

Your Excellency's Ob't servant,

G. C. WALKER.

Governor of Va.

(P. S.—Accompany the above.) "The foregoing is a copy of the original letter mailed to Governor Jacob."

From this letter we at once understood that so far as a conference with Commissioners or other persons authorized to represent Virginia in that capacity was concerned, our mission was at an end. But the joint resolution under which we were acting, copies of which you had forwarded for our guidance, directed that we should "ascertain and report the amount of the debt of Virginia on the first day of January, 1861, and what said debt was incurred for, and what amount of this State debt was then held by the Commissioners of the Sinking Fund, and by the Board of the Library Fund." Also that we should "ascertain and report the amount of all investments then held by the State, their respective amounts and character, and what thereof were then productive, and the dividends therefrom, and whether any of such investments then held by said State have since been donated, changed, converted or disposed of by the authorities of said State, and, if so, the amount and how disposed of." Also that we should "ascertain and report the revenue derived from the fiscal year ending on the 30th of September, 1860, from all sources by the State of Virginia within the present territory of Virginia and the amount derived from all sources from the territory now comprising the State of West Virginia;" and also that we "report any other relevant matter deemed proper" by us.

In addition to the foregoing duties thus devolved upon us by the terms of the joint resolution passed on the 15th day of February, we "were further empowered," in the language of the additional joint resolution passed on the 24th of the same month, "to proceed as soon as practicable to adjust, award and

determine upon fair, just and equitable principles what proportion of said public debt of Virginia should in their opinion be paid by West Virginia, and what part thereof should be paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia."

Under this authority and direction, thus minutely specified to us, we felt called upon to take substantially the same steps after the receipt of Governor Walker's letter of September 7th as we would have taken had we expected to meet Commissioners representing Virginia, viz; to go to Richmond and endeavor to gather the information expected and required under the terms of our appointment.

Accordingly we met in that city on the 9th of November last and after spending several days in the examination of such public documents as were available to us at the Capitol, and realizing the necessity for further and more explicit and official information than we could gather of ourselves unassisted from said documents, we addressed the following note to the Second Auditor of Virginia :

Richmond, November 14, 1871.

To the Second Auditor of Virginia:

Sir: I am directed by the Commissioners representing West Virginia in the matter of the public debt of Virginia prior to the first of January, 1861, to procure from your office points, viz:

1. The actual amount of the public debt of Virginia on the first of January, 1861. And under this head the amounts of said debt owned by the Sinking Fund, the amount owned by the Literary Fund, and the amount owned by the Library Fund.

2. What portion of the bonded debt was invested, and how invested on the first of January, 1861. Also what portion of the investment was productive, what were the dividends or profits arising therefrom for the year 1860, and whether any such investments have since been donated, changed, converted or otherwise disposed of.

3. What portion of the appropriations expended in West Virginia for public improvements came from the sales of State bonds and what portion from the revenues or taxes of Virginia.

4. A copy of the advertisement for the redemption of a portion of the public debt on the first day of January, 1861.

5. A statement of the amount of public debt actually redeemed on the first of January, 1861, pursuant to said advertisement.

Upon these points the Commissioners desire to hear from you at your earliest convenience.

Very respectfully, your obedient servant,

A. W. CAMPBELL,
Secretary.

In reply to the foregoing communication we received the following note at 5 o'clock on the evening of the 16th of November, after a lapse of two and a half days, and after we had abandoned all hope of assistance asked for in our letter, and after, in fact, we were on the eve of our departure for home:

Second Auditor's Office,
Richmond, Nov., 16, 1871.

A. W. Campbell, Esq., Secretary, &c.:

Dear Sir: Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to us in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,

Most respectfully yours,

ASA ROGERS.

With the reception of this note the Commissioners closed their labors in Richmond, finding that a further stay was not likely to add to the scant information already gleaned by them from the public documents.

It is proper to say in connection with the Second Auditor's communication that we, in delivering our own communication to him, caused it to be verbally understood that we were ready and willing to pay for the services of an expert, competent to to obtain for us the information requested, and that we did not desire or intend to trench upon the services of any one with whose duties the labor required might seriously conflict.

After this termination of their visit to Richmond, the Commissioners agreed to meet again on the 12th of December following, at Parkersburg, there to prepare and transmit to your Excellency such information as they had been able to obtain, and such as they might still further obtain, and along with it such an expression of opinion as is called for in the joint resolution of February 24th.

Accordingly we met in Parkersburg at the date named, and after nearly two weeks of examination and comparison of all the sources of information accessible to us, agreed upon and drew up the facts and statements hereinafter presented.

Previous to this meeting we had just recieved copies of the Richmond papers of December 7th, containing Governor Walker's message to the General Assembly of Virginia at its meeting on the 6th, in which we observed that among other allusions to the debt question pending between the two States, and after reference to our correspondence with him of August last and his answer thereto, as already quoted, he proceeds to arraign the good faith of the authorities of this State as follows:

"Now if the authorities of West Virginia entertained an earnest desire to make a speedy and final settlement of this

matter, why did they not accept our tender of arbitration? A mode of settlement of such controversies universally recognized by both nations and individuals as right and appropriate. Suppose an equal number of Commissioners appointed by each State, and that they should meet and disagree upon any or all points involved, who is to decide between them? And yet, beyond a doubt, they would radically disagree upon the first or chief point to be settled, viz: the basis or principle upon which the settlement should be made. But suppose that the Commissioners should finally agree, does any one suppose that their finding would be ratified by the legislatures of the two States disagreeing as the people do radically upon the merits of the question at issue? Of course not."

This quotation from Governor Walker's message fairly exhibits the spirit in which he has seemed to view not only our own efforts to carry out the objects of our appointment but likewise the sincerity and good faith of the Legislature of West Virginia in providing for the appointment of such a commission by your Excellency.

And yet while this is the case it is not to be forgotten that Virginia herself initiated this method of attempting to adjust the debt question. And the language of the Governor would seem to be all the more gratuitous in such a connection from the fact that in his annual message of December 7, 1870, he considered it worth while to allude to the political change that had taken place in this State at the preceding October election, and bespoke in so many words for the "new administration" an "opportunity of manifesting its intentions and its appreciation of honesty and fair dealing." And yet notwithstanding this language by himself thus voluntarily employed on our behalf, and notwithstanding also the fact that one of the early acts of the "new administration" was to respond to the policy that Virginia herself had initiated, and before it was known in this State that she had changed that policy, and while the appointees under the response were in Richmond seeking in vain from the proper authority of Virginia for such information as every debtor is entitled in law to receive from his creditor, saying nothing of that spirit of "fair dealing" that was

so conspicuously spoken in our behalf, Governor Walker proceeds in his late message to asperse the good faith of the State of West Virginia after the manner and in the words that we have quoted.

The authorities of West Virginia have never assumed to themselves any right of precedence in the matter of a policy for adjusting the difficulties surrounding the debt question. But in the joint resolution passed on the 24th of February last they did assume the modest right of adhering to the policy already inaugurated by the State of Virginia, and by her so freely tendered heretofore for their acceptance, and therefore they respectfully declined to adopt a new and different proposition from her until they could test the merits of the one already adopted.

Apparently the present Executive of Virginia from an enforced familiarity with the workings of "personal government" which he so much deplores, has acquired ideas as to the right of the initiative between equal contracting parties that are scarcely consistent with the delicacy of the issue pending between this State and his own. For instance, in his letter of September the 7th, he tells us that the legislature of Virginia, upon his suggestion, has tendered an arbitration to this State, and he trusts "that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia." And again in his late message, he says that "the better course to be pursued is for the two States to submit the whole question to arbitration," and West Virginia is arraigned as heretofore shown, for not concurring in his opinions. Apparently it did not occur to the Governor that since Virginia had proposed both modes of settlement to this State, the latter might make her choice between them without subjecting her motives to imputation. And yet all that she had assumed to do is simply to choose between the policies initiated by Virginia. Unless, therefore, it can be shown that it is the prerogative of that State to prescribe the terms upon which the debt shall be adjusted the question should hereafter be discussed in a spirit better calculated to allay all sectional irritation.

But we pass from this incidental reference to Governor Walker's strictures upon the attitude of this State towards the debt question to the action of the Virginia legislature upon the same question as embodied in the act approved on the 30th of March last, and known as the Funding Bill. This act is in keeping with the initiatory legislation in regard to the debt to which we have just referred. It assumes to apportion the debt of that State arbitrarily, notwithstanding her authorities had six weeks before the passage of the act received notice of the joint resolution of the West Virginia Legislature providing for the appointment of Commissioners. It assumes, also, to apportion the debt, not as it stood on the first day of January, 1861, but as it would stand on the first day of July, 1871, after the interest had been twice compounded, once in 1866, and again at the date last named; and to apportion it, too, upon the basis of territory and population, and without any reference to the equities that should always govern an assignment of debt between sections that were so notorious in our own case. In other words it assumes to apportion to West Virginia one-third of the debt as it now stands, simply on the ground that she has one-third of the territory and population formerly belonging to Virginia, and without reference at all to the question of resources and values. This is apparently the practical result which Governor Walker hoped to reach when he urged upon us the "more speedy and satisfactory mode of settlement proposed by Virginia," inasmuch as he tells us in his late message that this is the "plan for a reorganization of the State debt," which he "had recommended twelve months before."

But without reference to the authorship of this or any other "plan" for adjusting the debt question, we propose to consider as briefly as possible the real cause now pending between Virginia and West Virginia as we understand it.

The tables or statements which we annex as part of our report show, among other things, the following facts:

That the funded debt of Virginia on the first day of January, 1861, was $31,778, 867.32, after all reductions.

That all or nearly all, of this debt was incurred for and actually expended in works of public improvement, such as canals, railroads, turnpikes, plank roads and bridges.

That this vast sum, upwards of $30,000,00 was expended for improvements in the present State of Virginia, and only about two and a half millions in the present State of West Virginia.

That the present State of Virginia contains 41,352 square miles and West Virginia only 20,000 square miles, or less than one-third.

That the counties composing what is now Virginia contained by the census of 1860 a population of 1,220,829, and those composing West Virginia only a population of 374,985, or less than one-fourth.

To these exhibits we append others, under our instructions from the legislature, but they are such as do not enter into our argument here, which is to show that no just apportionment of the debt can be made upon the basis of population and territory alone, which is the basis upon which the Virginia Funding Bill is confessedly predicated.

This theory of apportionment is apparently quite current among the people of that State, and is defended with ability by Judge Meredith, of Richmond, in a carefully prepared paper on the subject. His position is that West Virginia should pay one-third of the debt because, as he says, it is a principle of international law governing the division of nations that "the obligations which had accrued to the whole before the division are, unless they are the subject of special agreement, ratably binding upon the different parts." This he gives as a quotation from Phillimore. Two inquiries present themselves in connection with it, First, was Virginia a nation in the sense intended by Phillimore? and, second, what are we to understand by a ratable part of a debt? We presume that it will not be contended that the general rights and obligations of a nation, as defined by international law, belonged to Virginia prior to the division of the State, and therefore we cannot admit the applicability of the quotation in that particular. Neither can we admit Judge Meredith's construction of the word ratable. He applies it exclusively to territory and population and excludes everything in the shape of resources and value, such as public works, buildings and in-

stitutions, which, as we all know, vitally affected the equity of a division of territory.

Judge Meredith next adduces the following quotation from Chancellor Kent to sustain his position:

"If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement those rights are to be enjoyed and those obligations fulfilled by all the parts in common."

This quotation is much more intelligible and just, and we think will tend to sustain the conclusions we have reached, as hereinafter stated.

In addition to the two quotations already given, Judge Meredith cites other authorities to sustain his position that West Virginia is chargeable with one-third of the debts, but we do not regard them as applicable to the case under consideration. First, because Virginia is not a nation. Second, because in all the cases referred to in the authorities quoted, treaty stipulations had more or less to do with the question. Third, because the debts were war debts, the benefits of which, if any, accrued to each individual, and the obligations of which therefore rested upon each. In no instance was the debt created for internal improvements which necessarily confer partial and local benefits that in most cases exceed the general benefit to the State at large. We, therefore, fail to see the proper analogy that should exist to make these citations precedents for the case of Virginia and West Virginia.

Judge Meredith winds up these references to various authorities, by two general deductions of his own, as follows:

1. "That the public debt of a State is not affected by a change in the form of its government, nor by the partition of its territory into two States, but remains in full force and must be discharged."

2. "That if a State be divided into two or more States, the debts which had been contracted by the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts in proportion to territory and population."

The first deduction it is not necessary to consider, as West Virginia, in her ordinance of separation from Virginia, as also in her constitution, agreed to pay an equitable proportion of the public debt. What that equitable proportion is we are now considering.

In reference to the second deduction we have to remark that Judge Meredith draws a conclusion from his authorities which they do not sustain. Phillimore, for instance, says that "if a nation be divided into various distinct societies, the obligations which had accrued to the whole before the division are ratably binding upon the different parts." Here Phillimore and the authorities stop. But this does not suffice for the Virginia side of the question, and Judge Meredith adds after the word "parts" the words "in proportion to territory and population." These words are not found in any of the authorities, so far as we are advised and certainly not in any of the quotations adduced by the Judge.

A moments consideratin will show that a division of debt according to population and territory would not only be impracticable but would conflict with common sense. It would be impracticable because it does not determine the relative value of each one of the two elements of population and territory. Suppose the population to be twice as much as the territory, or suppose the territory to be three times as great as the population, which element has the greater value in determining the result?

Without pursuing this thought further it is manifest that nothing is settled by such a rule. You must fix the relative value of the two elements before you can reach a conclusion It is, therefore, plain why the books do not give the rule as stated by Judge Meredith, because of its indefiniteness, but mainly because of its injustice. Would any sane man lay down a rule for the division of a State which would ignore the great cities, public improvements, public works, institutions of all kinds, great commercial advantages, such as rivers and harbors and the great advantage of fertility of soil; all of which and many other elements of wealth, property and power, might

be found in one division and be wholly absent in the other. Hence we say that such a rule is repugnant to common sense.

A public debt is mainly a charge upon the wealth and resources of a people. It is represented by taxes, and taxes are imposed not on numbers or square miles but on resources and values. How much stronger is the case when the very debt under consideration was created in developing and enriching one portion of the State almost exclusively. May, more, when that division of the State is in possession of and enjoying, giving away and selling at auction and otherwise disposing of the very subjects for which the debt was created.

These considerations afford abundant reason why no authority would say, in the absence of a compact (unless there was perfect homogeneity) that it would be just to divide a "nation" any more than an individual estate by population and territory. We doubt not that Judge Meredith himself would scout the idea of dividing an estate on such a basis and without reference to the quality of the land and the improvements made. Why then would he ignore such considerations in apportioning a public debt between two divisions of a State? Chancellor Kent, whom he has quoted, does not sustain him in so doing. The quotation already given from that author says that "if a State should be divided in respect to territory its rights and obligations are not impaired; and if they have not been apportioned by agreement, those rights are to be enjoyed and those obligations fulfilled by all the parts in common." Not a word in this quotation about a division ratably according to population and territory. According to this authority the State of Virginia was only a tenant in common with West Virginia in all the public works, improvements and property of the original undivided State, and had no authority to alienate, sell, give away, or dispose of any of the public works, and being in possession and holding them for her own exclusive use and benefit, by ousting West Virginia, she would be bound to account to the latter for her share. This would seem to be the legitimate conclusion from the authorities relied on by Judge Meredith, even admitting their applicability to the case under

consideration, which we do not concede by any means; and, therefore, with this reference we pass them by.

We think we take a more practicable view of the subject, and one which will attain all the ends of justice. The table accompanying this report shows that the bonded debt of Virginia on the first day of January, 1861, represented money borrowed and expended in improving the State by canals, railroads, turnpikes, plank roads and bridges. All these expenditures conferred a local and special benefit, were expended, not only by the outlay of the money in creating a market and stimulating enterprise and trade, but in otherwise developing the resources of particular localities to an extent quite equal to the general benefit of the State at large. And this local and general development is the sum of the value of the improvements to the section where located, and gives them an inestimable and abiding value to that section. This value is progressive and not susceptible of being fixed. So certainly is this the case that it is probable, if it were practicable to utterly extinguish these improvements, and thereby extinguish the debt, that the State where they are located would not listen to such a proposition.

It may be assumed then that the public works for which the debt was created are worth what they cost. Virginia, by selling, donating, and disposing of these works as her own property, without regard to the rule laid down by Chancellor Kent, and without consulting West Virginia, must be taken to have accepted them on that basis, and is therefore chargeable with them on that basis.

When the tables are consulted they will show an expenditure of over thirty millions in Virginia and about two and a half millions in West Virginia. Much of this latter was expended at comparatively recent dates, whereas the expenditures in Virginia range through a period of fifty years, with benefits accruing more or less throughout that period. In the light of such facts, we submit that no intelligent mind, wishing only to do justice, can doubt for a moment that the benefits conferred, and not the territory and population, should be the principal, if not the only basis of an adjustment of the

debt. The Governor of Virginia, in his message of 1870, and again in 1871, and the Legislature of that State, by its funding bill, seem, however, to have entirely overlooked the foregoing considerations, and to have jumped to the conclusion that West Virginia should pay one-third of the debt.

We see the case differently. On the one hand, for instance, we see rich cities, commercial marts of all kinds, navigable rivers, fine harbors, a highly improved productive territory, wealthy capitalists and a well to do people, public institutions, such as a State Capitol and extensive public grounds, an Executive Mansion, a Penitentiary, Armory, University, two Lunatic Asylums, a Military Institute, a Blind Asylum, a valuable miscellaneous and law library, a large literary fund and the United States deposit of surplus revenue, all these resources in addition to the vast millions invested in canals and railroads and other avenues of inland commerce.

On the other hand we see set in the balance against these rich resources the territory of West Virginia, less than one-third of the old State, much of it broken into barren mountains and hills, no navigable streams penetrating it in every direction, no railroad but the Baltimore & Ohio, no public works or institutions, her lands mostly covered with unbroken forests and rewarding industry but grudgingly, no outlets in the interior for the little surplus existing, the people poor and subsisting by rough work in the woods and fields, possessed of no capital wherewith either to develop their localities or ameliorate their own condition in life in fact, their only wealth being for the most part their poor soil, their untiring perseverance and their indomitable love of liberty.

And yet, notwithstanding this great discrepancy between the conditions and resources of the two States, Virginia assigns one-third of her funded and compounded debt to West Virginia to pay, simply because the latter has one-third of the territory and one-fourth of the population formerly belonging to the whole State. And, this, too, notwithstanding her papers have often proclaimed that West Virginia was a foster child of the old State, and as such dependent upon her bounty. This opinion we shall not stop to discuss, and we only refer to it as showing the inconsistency

between the theory and practice of our Virginia friends. Supposing it to be correct, the explanation as to how it came about can never be made creditable to those who lavished all their favors on one section of the State, and withheld them from the other, and the vindication of the step taken by West Virginia during the war in separating from the old State consists largely of this traditional discrimination against her. And in this connection it may not be out of place to notice that the increase of populaion in West Virginia during the decade from 1860 to 1870 was of a character to still further vindicate the step taken, it being about thirty per cent. This large increase illustrates her onward march since her separation from her former foster parent, and tends to suggest how far in advance of her present position she really might have been had she received in the past anything more than "the crumbs that fell from the rich man's table."

We come now to the conclusion of our report. Having given our reasons why we dissent entirely from the position of Virginia in reference to the debt, we proceed to state our own conclusions in regard to it as follows:

Statement A, as annexed to our report shows that the bonded debt of Virginia, on the first of January, 1861, after all deductions, was $31,779,067.32.

The statement also shows that all of said debt was expended within the present State of Virginia, with the exception of $2,784,329.29.

Statement E, shows that $328,706.22 was collected from counties in West Virginia after January 1, 1861.

Statement F, shows that the amount of expenditures for all purposes in West Virginia was $3,343,929.29.

We are not able to say certainly what part of this expenditure was from the proceeds of State bonds, (and, therefore, a part of the State debt) and what part was appropriated from the regular receipts of the treasury. We have had access to no data that could determine the question. Our letter to the Second Auditor at Richmond sought information on this point in vain. But we have given Virginia the benefit of it all as a credit on her side of the account, although the resolutions

under which we are acting contemplate nothing on the part of West Virginia but an assumption of her proportion of the bonded debt, inasmuch as both sections and particularly Virginia, received appropriations out of the ordinary receipts of the treasury.

We have charged West Virginia with all that we have found expended within her limits, viz: The amount of the funded debt created for improvements within her territory, the amount invested in her banks, the amount expended on the Lunatic Asylum at Weston, and the estimated value of the property known as the Lewisburg Law Library.

On the other hand we have credited her with her share of the estimated value of the public property and assets of Virginia, other than the property represented in the bonded indebtedness. This latter equalizes itself, and therefore does not enter into the account. Virginia has the property and owes the debt which it represents. We refer only to the public buildings, institutions, and other assets as given in statement G. As to West Virginia's share in these we can only venture an approximate estimate. The public buildings, the common property of the two States, paid for out of the general revenue, we have estimated at $3,875,000 as per statement G. and it would be reasonable we think to estimate West Virginia's interest in them at one-fourth on the basis of population.

The same statement shows that the surplus revenue of the United States deposited with the State under the act of Congress, June 23, 1836, gave Virginia $2,937,237.34, of which sum she appears to have received at least $1,932,809.33. This act assigned to each State its share of deposits on the basis of its representation in Congress, and Virginia having, in 1860, thirteen representatives, three of whom were from West Virginia, it would seem that three-thirteenths of that fund belonged to the latter.

To this share of the deposits, and her interest in the public property, we add, as per statement, her proportion of the Literary Fund. This fund at the date quoted in statement G, amounted to $1,509,583.16. As it was apportioned throughout the State on the basis of the white population, we follow that

rule in assigning to West Virginia three-sevenths of it, that being her ratio of white population in 1860.

Upon the data thus ascertained and explained, we summarize the account between the two States as follows:

WEST VIRGINIA TO THE STATE OF VIRGINIA.

Dr. For the amounts expended and invested in her territory as set forth in statement F..		$ 3,343,929 29
Cr. By one-fourth of the estimated value of the public buildings and other assets, as given in statement G.....$	968,750 00	
Cr. By three-thirteenths of the United States surplus fund as per same statement.....	446,032 92	
Cr. By three-sevenths of the Literary fund as per same...	647,079 92	
Cr. By the amount collected in West Virginia after January 1, 1861, as per statement E..	328,706 22	2,390,569 06
Balance due Virginia.....		$ 953,360 23

This is the balance as we find it after a protracted examination of such sources of information as were available to us. And the ascertainment of it naturally brings our labors to a conclusion. We commend our investigations to Your Excellency's favorable consideration. From the beginning we realized that the results arrived at must necessarily be only proximate in their character, inasmuch as our sources of information were limited. Subsequent inquiry, under more favorable circumstances, may change the general result a few thousands for or against either State, but such a contingency is of course unimportant. The principle upon which the debt should be adjusted is the important point to settle. And it is to this point

as set forth in these pages, that we beg leave, through your Excellency, to call the attention of the Legislature.

Very respectfully,
Your Excellency's most obedient servants,

J. J. JACKSON
J. M. BENNETT
A. W. CAMPBELL

STATEMENT A.

Showing the Amount of the Public Debt of Virginia on the first day of January, 1861, and the amounts thereof held by that State. Also the amount thereof incurred for Public Improvements in West Virginia.

The debt of Virginia on the first day of January, 1861, as per the Auditor's report to the extra session of the Legislature on the 10th of December preceding, was as follows:		
Debt of January 1, 1852.....	$10,508,815 30	
Debt created since that time...	23,379,946 33	
Total		$33,888,791 63
Less the amount redeemed on 31st December, 1860.....$	237,731 31	
Less amount in the Sinking Fund	1,462,993 00	
Less amount in the Literary Fund.....	248,000 00	
Less amount in the Library Fund.....	16,000 00	
Less Bonds lost on Steamship Arctic.....	145,000 00	$ 2,109,724 31
Net amount of the debt January 1, 1861..		$31,779,067 32

This debt as will be seen by Statement B, was mainly incurred for works of public improvement.		
*Statement F, shows that only $2,784,329.29 of it was incurred for improvements in West Virginia.		
Said improvements are as follows:		
Joint Stock Turnpike.....$	906,196 32	
Roads on State Account.....	1,145,619 07	
Bridge Companies	76,612 50	
Navigation Companies	207,840 00	
Railroads.....	500,000 00	
Lunatic Asylum at Weston..	125,000 00	$ 2,961,267 89
Deduct Virginia's pro rata for improvements lying in both States.....		176,938 60
		$ 2,784,329 29

*The statement shows as total expenditure in West Virginia of $3,343,929.29, but only the above amount for public improvement.

STATEMENT B.

Showing the amount and character of the investments held by the State of Virginia on the first of January, 1861, together with those that have since been donated or otherwise changed, as per Governor Walker's message to the Virginia Legislature of March 8, 1870.

Alexandria, Loudoun and Hampshire Railroad .....$	50,862 00
Blue Ridge Railroad	1,744,723 00

Chesapeake & Ohio Railroad..	2,484,134 00	
Norfolk & Petersburg Railroad	1,341,341 00	
Orange and Alexandria Railroad.....	1,151,207 00	
Richmond and Danville Rail road	1,847,585 00	
Richmond and Petersburg Railroad	385,600 00	
Richmond & York River Railroad	490,999 00	
South Side Railroad	1,883,500 00	
Virginia & Kentucky Railroad	103,348 00	
Virginia and Tennessee Railroad	3,755,000 00	
Marietta and Cincinnati Railroad	202,611 00	
James River and Kanawha Canal	10,400,000 00	
Other Navigation Companies..	1,192,616 00	
Plank roads, Turnpikes and Bridges	4,761,564 00	
Chesapeake and Ohio Canal...	900,000 00	
Selden, Withers & Co.....	436,000 00	
Total		$33,131,090 00
To this amount add, as per Governor Walker's message of March 8, 1870, for amounts "lost, abandoned, or surrendered and released," the following sums, viz:		
Subscription paid to Covington & Ohio Railroad Co.....$	3,206,461 83	
Subscription paid to Fredericksburg & Gordonsville Railroad Company	163,299 00	
Subscription paid to City Point Railroad Company	110,000 00	

Subscription paid to Blue Ridge Railroad Company	1,100,000 00	
Subscription paid to Manassas Gap Railroad Company.....	2,280,000 00	
Subscription paid to Portsmouth & Roanoke Railroad Company	406,650 00	
Subscription paid to Roanoke Valley Railroad Company...	307,402 00	
Subscription paid to Winchester & Potomac Railroad Company	270,000 00	
Subscription paid to Alexandria, Hampshire and Loudoun Railroad Company ...	1,017,248 00	
Subscription paid to Navigation and other companies....	298,032 05	
Loss by Selden, Withers & Co., and Chesapeake & Ohio Canal Company	580,000 00	
*Total		9,739,092 88
Grand Total.....		$42,870,182 88

We add these amounts simply because we find them given by the Governor as addenda to the $33,131,090.00, and not because we find them in any official record to which we have had access.

STATEMENT C.

Showing the amount of revenue contributed by the counties composing the State of West Virginia to the Treasury of Virginia for the fiscal year ending September 30, 1860, together with the amount in the aggregate contributed by the present State of Virginia.

COUNTIES.	
Barbour .....$	11,402 86
Berkeley	31,819 72

Boone	4,481 95
Braxton	6,968 90
Brooke	9,112 34
Cabell	14,353 52
Calhoun	2,105 50
Clay	1,820 82
Doddridge	5,765 72
Fayette	6,642 01
Gilmer	4,875 78
Greenbrier	30,863 02
Hancock	6,068 57
Harrison	27,117 22
Hampshire	26,856 45
Hardy	19,986 40
Jackson	11,357 91
Jefferson	47,263 59
Kanawha	26,922 46
Lewis	12,004 97
Logan	4,444 96
Marion	19,985 80
Marshall	15,657 33
Mason	20,257 22
Mercer	5,936 80
Monroe	25,343 32
Monongalia	22,116 00
Morgan	6,111 98
Nicholas	6,156 59
Ohio	48,710 29
Pleasants	3,981 46
Preston	15,081 36
Pocahontas	8,380 89
Putnam	8,465 10
Pendleton	8,588 99
Randolph	8,537 30
Ritchie	8,778 51
Raleigh	3,979 31
Roane	4,930 46
Taylor	10,530 33

Tyler	7,213 93
Tucker	2,237 74
Upshur	9,661 71
Wayne	8,156 39
Webster	534 35
Wetzel	6,450 94
Wirt	3,913 52
Wood	22,114 67
Wyoming	2,304 99
Total	$ 626,351 97
Add for taxes on bank dividends	$ 10,214 99
Bank dividends themselves	10,513 00
	$ 647,079 96
Total revenue of Virginia for the fiscal year ending September 30, 1860	$ 4,182,510 27
Less the amount borrowed that year	245,636 71
Revenue proper	$ 3,936,873 56
Deducting amount paid by West Virginia	647,079 96
Leaves the amount paid by Virginia as	$ 3,289,793 60
By this Virginia would pay of the public debt	$26,547,582 22
West Virginia would pay of the same	5,231,485 10

*The taxation on dividends of branches of Virginia banks in West Virginia is not included, because not ascertained.

STATEMENT D.

Showing the population of West Virginia, by counties in 1860, *also the area in square miles as given by Boye's map of the counties existing at date of its publication. Also, the years in which said counties were formed.*

NOTE—*There is a discrepancy of several thousand square miles between Boye's map and Mitchell's. The former gives the area of Virginia at* 65,624 *and the latter at* 61,352.*

COUNTIES.	Population.	Sq. Miles.	Formation of County.
Barbour	8,959	308	1772
Berkeley	12,525	202	1796
Boone	4,840	1,033	1809
Braxton	4,992		
Brooke	5,494		
Cabell	8,020		
Calhoun	2,502		
Doddridge	5,203		
Fayette	5,997		
Gilmer	3,759		
Greenbrier	12,210	1,409	1778
Hampshire	13,913	989	1754
Hancock	4,445		
Hardy	9,864	1,156	1786
Harrison	13,790	1,095	1784
Jackson	8,306		
Jefferson	14,575	225	1801
Kanawha	16,150	2,090	1789
Lewis	8,029	1,754	1816
Logan	4,938	2,930	1824
Marion	12,721		
Marshall	13,001		
Mason	9,185	904	1804
McDowell	1,535		
Mercer	6,818		
Monongalia	13,048	721	1776
Monroe	10,759	614	1790
Morgan	2,731	271	1820
Nicholas	4,636	1,431	1813
Ohio	22,432	375	1776
Pendleton	6,165	999	1718
Pleasants	2,945		
Pocahontas	3,958	794	1821

Counties.	Population.	Sq. Miles.	Formation of County.
Preston	13,312	601	1818
Putnam	6,301		
Raleigh	3,367		
Randolph	4,990	2,061	1787
Ritchie	6,847		
Roane	5,382		
Taylor	7,463		
Tucker	1,428		
Tyler	6,517	855	1814
Upshur	7,292		
Wayne	6,747		
Webster	1,553		
Wetzel	6,703		
Wirt	3,751		
Wood	11,046	1,223	1799
Wyoming	2,861		
Totals	374,987	24,040	

Note.—On a debt of $31,779,967.32 divided equally between a population of 1,594,291 (which was the whole population of Virginia in 1860 would be nearly $19.03, 3.7-100 miles each, and would impose a debt on the above population of 374,087 amounting to $7,474,642.46.

*No complete survey of the State has ever been made, and in consequence of the irregular exterior lines no reliable estimate of the State's area appears to have been attained. By Herman Boye's map, made in 1825, the area is as above. By L. Von Buchoitz's map by authority of Virginia in 1860, the mean length of the State is given at 360 miles, and the mean breadth at 200 miles, giving a horizontal area of 61,352 miles which is the same as given in Mitchell's map.

A Table showing the Approximate Number of Square Miles in Virginia and West Virginia.

By Boye's map, the number of square miles in Virginia prior to the division was 65,624, or 41,999,360 acres.

By the Auditor's report for 1861, the number of square miles in the State was reported at 81,549, or 52,191,360 acres.

There appears to be not only a wide discrepancy in these respective authorities, but likewise an error in reducing the square miles to acres. These errors are no doubt to be accounted for by the notorious fact that under the Virginia system of patenting lands the same lands are on the Commissioner's books several times.

By Mitchell's General Atlas for 1868, the area of Virginia is given at 41,352 square miles, and that of West Virginia at 20,000, which would give to West Virginia something less than one-third of the joint territory.

There being no map that gives the area of the counties of West Virginia separately, we have assumed that the statement given by Mitchell is approximately correct.

STATE MENT E.

Showing the Revenue Paid Into the Treasury of Virginia Since the First Day of January, 1861, From Counties Now Included Within West Virginia.

Amounts marked with a * were collected by judgments or executions in the year named, but for what particular year is uncertain.

Where it was plain that any collections were arrears for 1860, they have not been brought into this statement.

Counties—	1861	1862	1863	1864	1865	Total.
Barbour	$ 726 14	$	$	$	$	$ 726 14
Braxton	797 50			*1,000 00		1,797 50
Boone	381 02	*2 00				383 02
Cabell	739 08					739 08
Calhoun				*2,307 82		2,307 82
Fayette	391 35					391 35
Gilmer				*84 57		84 57
Greenbrier	26,945 81	44,084 83	79,227 26			150,257 90
Hardy	16,508 10					16,508 10
Jackson	800 00					800 00
Jefferson	32,269 06					32,269 06
Kanawha	1,590 76	*1,694 33	*2,738 00	*3,467 00		9,490 09
Lewis	946 10					946 10
Logan	472 52		*25 63	*1,410 08		1,908 23
Marshall	107 95					107 95
Mason	675 66					675 66

STATEMENT E—(*Continued*)

COUNTIES—	1861	1862	1863	1864	1865	Total.
Mercer			*1,111 91			1,111 91
McDowell			1,200 00			1,200 00
Monroe	22,415 34	33,470 48				55,885 82
Morgan	615 00					615 00
Nicholas			5,000 00			5,000 00
Pleasants	365 00					365 00
Pendleton	8,006 61	6,000 00	16,900 00			30,906 61
Pocahontas	7,714 00					7,714 00
Putnam	746					746 10
Raleigh			*600 00			600 00
Ritchie	21 12					21 12
Roane			*3,487 81			3,487 81
Upshur	660 75					660 75
Wayne	354 74					354 74
Webster	20 00					20 00
Wyoming					*624 97	624 97
						$328,706 22

*On the exclusion from this statement of taxes levied in 1860 and collected in 1861, the commissioners were not unanimous. For it was maintained that the taxes of 1860 were levied and collected chiefly to pay interest falling due January 1 and July 1, 1861. One-fourth of the taxes especially designed to pay the July interest was not payable into the treasury until about the 15th of February, 1861. The taxes were collected off of the people who had assumed the burden of the debt and ought to be applied to their relief.

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STATEMENT F.

West Virginia's Indebtedness to the State of Virginia.

Showing (approximately) the amount of the public debt of Virginia that was incurred for works of improvement in the territory now included within the State of West Virginia, and such other sums as West Virginia is chargeable with.

These improvements consist of works in which Virginia was a joint stockholder with private companies and of works constructed wholly on her own account, and certain miscellaneous expenditures.

Date of the several acts authorizing these expenditures is given as far as ascertained.

These expenditures are classified as follows:

(1) Joint Stock Companies.
(2) Roads Constructed on State Account.
(3) Bridge Companies.
(4) Navigation Turnpike.
(5) Railroads.
(6) Miscellaneous.

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STATEMENT F

Date of Act.			Class 1—Joint Stock Turnpikes.
			Back Creek Valley Turnpike .....
			Berkeley & Hampshire Turnpikes....
1849,	March	15	Buckhannon and Little Kanawha....
			Brandonville, Kingwood & Evansville.
1848,	February	9	Clarksburg and Buckhannon .....
1849,	March	13	Clarksburg and Philippi .....
1850,	February	10	Cranberry Summit & Brandonville..
1850,	February	2	Clarksburg and Wheeling .....
1838,	April	3	Cacapon and North Branch .....
1835,	January	22	Charleston and Point Pleasant .....
1860,	March	9	Charleston, Ripley and Ravenswood..
			Dunkard Creek .....
			Elk River .....
			Franklin and Circleville .....
1833,	March	30	Fish Creek Road ....
			Gnatty Creek and West Union .....

(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$ 1,500 00	$ 1,140 00	$ 360 00	
21,600 00	16,750 00	4,850 00	
7,773 00	7,773 00		24
6,000 00	3,193 46	2,806 54	
32,000 00	28,514 49	3,485 51	27¾
6,000 00	5,446 25	553 75	22
4,815 00	4,120 11	694 89	18¼
10,200 00	4,195 35	6,004 65	18
12,000 00	12,000 00		45
31,260 00	31,260 00		56
30,000 00	27,519 41	2,480 59	
6,000 00	6,000 00		
37,000 00	116 00	36,884 00	
2,400 00	2,175 00	225 00	
6,000 00	6,000 90		25
10,800 00	5,700 55	5,099 45	

STATEMENT F

Date of Act.			Class 1—Joint Stock Turnpikes.
1850,	March	21	Grave Creek and Penn. State Line...
1853,	March	29	Gilmer and Braxton .....
1850,	March	19	Gilmer, Ripley and Ohio .....
1837,	March	1	Giles, Fayette and Kanawha.....
1849,	March	15	Hardy and Winchester .....
1849,	March	15	Hampshire and Morgan .....
			Hardy and Randolph .....
1848,	March	28	Harrisville .....
1850,	February	9	Hedgesville and Potomac.....
1849,	March	9	Hillsborough and Harper's Ferry....
1838,	March	2	Holiday's Cove .....
1832,	March	20	Huntersville and Warm Springs....
1851,	March	29	Holiday's Cove and New Cumberland.
1837,	March	30	Ice's Ferry Road .....
1846,	February	2	Kanawha and Logan .....
1848,	February	25	Kingwood and West Union .....
			Letart's Falls and New Columbia....
1834,	March	12	Lewisburg and Blue Sulphur.....
			Leading Creek and Buffalo .....
			Logan, Raleigh and Monroe .....
1848,	February	11	Marshall and Ohio .....
1849,	March	17	Martinsburg and Potomac .....
1849,	January	20	Martinsburg and Winchester.....

—(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$ 4,800 00	$ 1,800 00	$ 3,000 00	4¾
7,200 00	6,699 80	500 20	26¼
30,000 00	29,974 80	25 20	61
45,000 00	44,990 60	8 40	
23,400 00	23,400 00		70
6,600 00	6,510 00	90 00	18
18,000 00	7,134 78	10,865 22	
8,100 00	6,000 00	2,100 00	20¾
6,000 00	6,000 00		20¾
6,000 00	6,000 00		8
15,000 00	10,650 00	4,350 00	6
10,359,24	6,159 24	4,200 00	26¼
2,400 00	2,400 00		8
1,358 00	1,358 00		5¼
5,000 00	5,000 00		52
40,000 00	34,083 18	5,916 87	31
21,000 00	2,950 00	18,050 00	
4,950 00	4,950 00		15¼
9,600 00	5,847 84	3,752 16	
27,600 00	7,320 24	20,278 76	
12,000 00	11,948 75	56 25	9¾
18,000 00	15,290 00	2,710 00	12½
27,000 00	27,000 00		22¼

STATEMENT F

Date of Act.			Class 1—Joint Stock Turnpikes.
1854,	February	18	Middleway and Gerardstown .....
1848,	March	24	Milwood and Berryville .....
			Moorefield and North Branch.....
1849,	March	15	Moorefield and Alleghany .....
1849,	March	15	Morgantown and Bridgeport .....
			Morgantown and Beverly .....
1851,	February	25	Morgan and Frederick .....
1851,	March	28	Newark .....
1850,	February	25	New Creek and Hardy .....
1848,	April	4	New Manchester .....
1850,	March	11	Patterson's Creek Valley .....
1851,	February	17	North River .....
1850,	March	11	Parkersburg and Elizabethtown ....
1853,	March	30	Pleasant Valley and Tunneltown....
1851,	March	4	Potomac .....
1850,	February	18	Ravenswood and Reedy Creek .....
1851,	March	21	Reedy and Harrisville .....
1836,	January	13	Red and Blue Sulphur Springs.....
1851,	March	12	Ritchie and Gilmer .....
1854,	February	28	Raleigh and Boone ....
			Raleigh and Wythe Line .....
1851,	March	10	Salem and Harrisville .....
1851,	March	31	Sandy .....

—(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$ 12,000 00	$ 11,943 75	$ 56 25	12
9,000 00	9,000 00		6½
39,300 00	28,137 75	11,162 25	
10,200 00	8,779 78	1,420 22	27½
27,600 00	10,687 40	16,912 60	36
7,999 96	2,999 96	5,000 00	
9,000 00	8,005 00	995 00	20
3,600 00	3,000 00	600 00	10
6,000 00	5,431 24	568 76	20½
2,000 00	2,000 00		6
9,900 00	9,000 00		37¾
5,400 00	5,400 00		24½
4,800 00	4,800 00		21⅝
6,000 00	4,078 45	1,921 55	28
2,700 60	2,489 70	210 30	9½
9,000 00	9,600 00		23
7,200 00	1,751 87	5,448 13	44¾
8,856 00	8,856 66		32¾
9,000 00	8,891 18	108 82	51
1,800 00	1,800 00		39
4,800 00	2,800 00	2,000 00	
7,200 00	3,817 92	3,382 08	39
3,000 00	3,000 00		24

STATEMENT F

Date of Act.			Class 1—Joint Stock Turnpikes.
1851,	March	24	St. Marys
1816,	January	31	Shepherdstown and Smithfield
1849,	March	15	Sweet and Salt Sulphur Springs
1847,	February	1	Sistersville and Salem
1850,	February	7	Shinston
1830,	February	18	Smithfield, Charleston and Harper's Ferry
			Walnut Gap Road
1848,	March	9	Weston and Fairmount
1848,	March	25	Weston and Gauley Bridge
1850,	March	7	West Milford and New Salem
1847,	March	20	Wheeling, West Liberty and Bethany
1822,	March	2	Wellsburg and Washington
1849,	March	15	Wellsburg and Bethany
			Weston and West Union
			West Union
1849,	March	15	Williamsport
1831,	January	8	White and Salt Sulphur
			Total

—(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$ 6,000 00	$ 6,000 00	$	24
18,575 00	18,575 00		13¾
10,200 00	10,104 00	96 00	29
20,000 00	20,000 00		26½
13,302 26	13,302 26		33½
14,000 00	14,000 00		14
1,800 00	1,305 37	494 63	
98,000 00	97,962 50	37 50	40¾
66,000 00	64,098 31	1,901 69	106
13,800 00	10,526 32	3,273 68	29¼
21,000 00	21,000 00		15¼
7,071 01	7,071 01		6
16,200 00	12,590 22	3,609 78	6
8,400 00	5,538 21	2,861 79	
3,200 00	3,054 00	146 00	
6,000 00	5,130 65	869 35	15¾
4,000 00	4,000 00		20½
$1,108,620 14	$906,196 32	$202,428 82	

STATEMENT F

Date of Act.		Roads Constructed Wholly on State Account.
		Alleghany and Huntersville .....
		Abbs' Valley and Tug Road .....
		Beverly and Fairmount .....
		Cove Spring and White House Road.
		Clear Fork Road .....
		Franklin and Monterey .....
		Fairmount and Wheeling .....
		Huttonsville and Huntersville .....
		Huntersville and Lewisburg .....
		Marlin's Bottom and Lewisburg ....
		Middlefork .....
1831, March	19	North Western Turnpike .....
		Ohio River and Maryland Road.....
		Princeton and Red Sulphur Springs..
		Staunton and Parkersburg .....
		Slavin Cabin and Summersville.....
		Wyoming Court House and Bluffs ..
		Road from South Branch to Petersb'g
		Road from South Branch to Brook's Gap .....
		Berryville and Charlestown .....

—(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$11,600 00	$11,462 67	$ 137 33	
5,000 00	4,450 00	550 00	
77,000 00	75,384 65	1,615 35	
2,500 00	2,500 00		
3,000 00	600 00	2 400 00	
14,000 00	14,000 00		
31,848 85	31,848 85		
23,168 72	23,168 72		
20,000 00	19,976 47	23 53	
12,615 09	12,615 09		
15,000 00	14,467 34	532 66	
452,579 87	452,579 87		
95,934 37	95,934 37		
4,200 00	4,200 00		
368,277 51	355,864 30	12,413 21	234
37,000 00	16,372 08	20,627 92	
3,000 00	1,894 66	1,105 34	
900 00	900 00		
1,400 00	1,400 00		
6,000 00	6,000 00		
$1,185,024 41	$1,115,619 07	$ 39,405 34	

STATEMENT F—(*Continued*)

Class 3—Bridge Companies.

Date of Act.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
Cheat River	$ 6,000 00	$ 4,612 50	$ 1,387 50
Coal River	3,000 00	3,000 00	
Fairmount and Palatine	12,000 00	12,000 00	
Guyandotte	12,000 00	12,000 00	
Morgantown . ..	24,800 00	24,800 00	
South Branch . .	4,200 00	4,200 00	
Virginia and Maryland	10,000 00	10,000 00	
Elk River	6,000 00	6,000 00	
Total	$ 78,000 00	$ 76,612 50	$ 1,387 50

STATEMENT F—(*Continued*)

Class 4—Navigation Companies.

Date of Act.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
Coal River Co....	$ 96,000 00	$ 96,000 00	$
Guyandotte River Company	120,000 00	106,800 00	13,200 00
Tug Fork River Company	5,040 00	5,040 00	
Total Navigation Companies ..	$221,040 00	$207,840 00	$ 13,200 00

STATEMENT F—(*Continued*)

Class 5—Railroads.

There is but one item of expenditure, under this head, viz.: The appropriation for the Covington & Ohio Railroad, say	$ 500,000 00

Class 6—Miscellaneous.

Stock of Virginia in West Virginia banks	$ 539,600 00	
The Lunatic Asylum at West on	125,000 00	
The Lewisburg Law Library	20,000 00	
		$684,600 00

TABLE 1.

Showing the pro-rata expenditures in Virginia on account of certain of the foregoing improvements that lie in both States.

Hardy and Winchester	$ 11,700 00	
Hillsborough and Harper's Ferry	4,800 00	
Martinsburg and Winchester	13,500 00	
Millwood and Berryville	4,500 00	
Franklin and Monterey	7,000 00	
Northwestern Turnpike	38,192 40	
Staunton and Parkersburg	91,246 20	
*Berryville and Charlestown	6,000 00	
		$176,938 60

*It is understood that this road has been sold by the State of Virginia.

RECAPITULATION.

Total expenditures on account of Joint Stock Turnpikes....
Total expenditures on account Roads constructed on State account .....
Total expenditures on account Bridge companies .....
Total expenditures on account Navigation companies.....
Total expenditures on account Railroads.....
Total expenditures on account Miscellaneous.....

Total ....

From these deduct on account of Virginia's pro rata for certain expenditures as given in Table 1—Statement F.....
Leaving a total expenditure in West Virginia of.....
Deducting from this total the stock of Virginia in West Virginia Banks and the value of the Lewisburg Law Library, as given in Class 6, viz.: .....
And we have left as the total expenditure in West Virginia on account of Public Improvements .....

Note.—It does not appear from any documents examined what exact proportion of this $3,343,929.29 enters into the bonded debt of Virginia, and what proportion was paid out of the current revenue. That matter is left open for settlement hereafter.

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
$1,108,620 14	$ 906,196 32	$ 202,423 82
1,185,024 41	1,145,619 07	39,405 34
78,000 00	76,612 50	1,387 50
221,040 00	207,840 00	13,200 00
500,000 00	500,000 00	
684,600 00	684,600 00	
$3,777,284 55	$3,520,867 89	$ 256,416 66

	176,938 60
	$3,343,929 29
	559,600 00
	$2,784,329 29

STATEMENT G.

Showing the property and other assets of the State of Virginia on the first day of January, 1861, not included in any of the foregoing tables.

Lunatic Asylum at Williamsburg	
Lunatic Asylum at Staunton	
Deaf, Dumb and Blind Asylum at Staunton	
Virginia Military Institute at Lexington	
University of Virginia at Charlottesville	
Penitentiary of Virginia at Richmond	
Armory of Virginia at Richmond	
Capitol and public grounds, Richmond	
Governor's House, Richmond	
Public miscellaneous library	
Public Law Library	
Total	$3,875,000 00

OTHER ASSETS.

By a provision of an act of Congress of June 23, 1836, there was directed to be deposited with the State of Virginia of the surplus revenue of Unites States, $2,937,237.34.

And it appears by the document, number 52 of the session of 1839-40, that of the amount there was actually received by Virginia and subscribed to the stock of certain banks of the State, the following amount, say, $1,932,809.33.

Whether the residue of this sum was ever paid to Virginia, the Commissioners have not ascertained.

The Literary Fund, as given in Document No. 4, Second Auditor's Report of September, 1884, is $1,509,853.16.

This fund is given as it stood many years ago. By the first of January, 1861, it had probably increased, from fines, forfeitures and amercements, one or two hundred thousand dollars.

STATEMENT H—Banks.

Settlement showing the amount of stock owned by the State of Virginia in the several banks in the year 1840, *and how that stock was paid for.*

In What Banks.	In What Name Held.			Total number of Shares.	Par value of Shares.
	Commonwealth of Virginia.	Board of Public Works.	Literary Fund.		
(A) Bank of Virginia	$ 3,250	$3,365	$2,121	13,736	$1,373,600
(B) Farmers Bank of Virginia ..	5,050	3,442	1,054	9,546	954,000
(C) Bank of the Valley of Va. .	3,700	1,000	52	4,792	579,200
(D) Northwestern Bank of Va. ..	4,000	271	500	4,771	477,100
(E) Exchanke Bank of Va. ..	9,000	50		9,059	905,900
(F) Merchants and Mechanics Bank of Wheeling		125		125	12,500
	$ 25,000	$13,262	$3,727	42,029	$4,302,900

Notes.—(A) Bank of Virginia.—Subscribed by the Commonwealth per act of 30th January, 1804, payable in ten annual installments, to meet which the tax on merchant's license and dividends on the stock itself was pledged. The dividends during the time amounted to .....$ 300,000 00
Bonds and profit on sale of new stock of the bank, under act 20th January, 1814 ..... 494,700 00

Purchased out of the disposal funds of the Board of Public Works	41,800 00
Purchased out of the permanent capital of the Literary Fund	205,600 00
Out of undrawn school quotas in treasury	6,500 00
Subscribed and paid for out of the United States surplus revenue on deposit in the treasury	325,000 00
	$1,373,600 00

(B)—FARMERS BANK OF VIRGINIA.

Bonus under act 13th February, 1812	$ 333,400 00
Purchased out of permanent fund of the Board of Public Works	4,700 00
Out of the disposable funds of the same	6,100 00
Out of the permanent capital of the Literary Fund	105,400 00
Subscribed and paid out of the United States surplus revenue on deposit	505,000 00
	$ 954,600 00

(C)—BANK OF THE VALLEY.

Bonus under act February, 1817	$ 90,000 00
Purchased out of the disposable funds of Board of Public Works	100,000 00
Purchased out of permanent capital of Literary Fund	9,200 00
Paid out of United States surplus revenue	370,000 00
	$ 569,200 00

(D)—NORTHWESTERN BANK.

Bonus under act 5th February, 1817	$ 23,100 00
Bonus under act 25th March, 1837	4,000 00

Paid out of United States surplus revenue.....	282,809 33
Paid for dividends of stock itself	24,908 67
Paid for State's 6 per cent. scrip	92,282 00
Paid for out of permanent capital of the Literary Fund	50,000 00
	$ 477,100 00

(E)—EXCHANGE BANK OF VIRGINIA.

Bonus under act 25th March, 1837.....$	5,900 00
Paid for out of United States revenue.....	450,000 00
Paid for in State's 6 per cent. scrip	295,000 00
Due on subscription of $900,000 by Commonwealth, $155,000, which was subsquently paid	155,000 00
	$ 905,900 00

(F)—MERCHANTS AND MECHANICS.
Bank of Wheeling.

Bonus under act of 7th March, 1834.....$	12,500 00

Mr. Holt: We also read into the record report of the Senate Finance Committee of 1873 dated Charleston, December 22, 1873, and signed J. M. Bennett, Chairman, John W. Grantham, A. E. Summers, J. T. McClaskey, R. B. Sherrard and Elliott Vawter, found on pages 490 to 493, inclusive, of the book entitled Virginia v. West Virginia, Volume 1, Record of Suit as follows:

REPORT OF THE SENATE FINANCE COMMITTEE OF 1873.

State of West Virginia,
Charleston, December 22, 1873

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share

which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subject their most earnest and careful attention as a matter fraught with more than ordinary consequence to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be approved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations of fundamental condition, by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of this State, (Virginia) "passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly a constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it

to secure the exact fulfillment of the treaty stipulations as aforesaid.

By article eight, section eight of the constitution, it was provided that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and that the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This subject has received a careful consideration by commisioners appointed by authority of this State, and while this committee see much to approve in the Report of the Debt commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may rise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State."

But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claims for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of Assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separtation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department and subsequently affirmed by the Supreme Court of the United States. and may at this day be accepted by the public as firmly engrafted into obligations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, lead us to the following conclusions which are the results of a mathematical demonstration, founded upon public and official records, appropriate to determine how much of the bonded debt of Virginia existing prior to January, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to $3,366,929.29 and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which had been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there

would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioners aforesaid.

From the amount of the foregoing expenditures, must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to $63,000; and in that year the total of the expenses of the State government chargeable to us was $47,000, leaving an excess of $16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed, the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to $512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to $647,079.96. In the same year our proportion of the ordinary expenses of government amounted to $135,000, which left the surplus aforesaid of $512,079.96. It will be observed that the committee have referred only to the surplus in 1882 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to $3,892,000 which is in excess of expenditures within our limits by $525,000.

It will thus be seen that our State is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts by conditions precedent prescribed by Virginia under the restored government

which government has been approved as aforesaid by Congress by the Executive and by the Supreme Court of the United States.

Notwithstanding the satisfactory condition of our finances and our material resources, the attention of the committee has been called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar in money of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which this State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount of its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second, that we are either unable or unwilling to pay the debt which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued by West Virginia and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration to cultivate our forests, and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders

by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which has so far absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dollar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM
A. E. SUMMERS
J. T. McCLASKEY
R. B. SHERRARD
ELLIOTT VAWTER

Mr. Holt: I will ask Mr. Hillman to take the stand one minute.

CONWAY W. HILLMAN.

recalled for further examination in behalf of the defendant, testified as follows:

By Mr. Holt:

Q. Mr. Hillman, have you any explanation to make of an item found in the balance sheet of the Richmond, Fredericksburg and Potomac Railroad Company relative to Confederate securities?

A. Yes, sir, I have.

Q. Make it, please, as briefly as you can.

A. On the trial balance sheet of March 31, 1863, being Defendant's Exhibit No. 2, Sub-Sheet No. 1, 1863, we have certificates of debt due in U. S., United States, in 1857, 1869, and in 1879 for $1,606.32, $264,979.40 and $138,653.20. In the following table, being Defendant's Exhibit sub-Sheet No. 2, and page 5 of the blue prints, we have these same items marked as certificates of debt due in C. S., for Confederate States. We have the same notation made in the balance sheet of September 30, 1864. The two balance sheets last mentioned are not printed

but written out in hand and on there it is marked C. S. or Confederate States. I have examined the subsequent trial balance for 1865 of the Richmond, Fredericksburg & Potomac, which is a printed one, and thereon are these items I mentioned as due in the U. S. My attention was called to them by the fact that a certificate of debt due in the C. S. or Confederate States in 1857 was an item which could not be considered as having any existence because the States were not in existence. I therefore took occasion to look that up with this result. However, the copies of the record on file in the R. F. & P. read C. S. for those two exhibits.

Q. Do their reports or balance sheets for the years preceding read in U. S.?

A. Yes, sir.

Q. And for the years succeeding U. S.?

A. Yes, sir.

Q. Are they the same items?

A. Yes, sir.

Q. In your examination of such papers and documents and records as you have examined relative to the financial condition of those companies in which the State of Virginia owned stock that are set forth in the supplemental answer did you find anything to indicate that there was any readjustment of securities by these companies issuing these securities passing from Confederate to what may be called a Federal basis?

The Master: From one period to another.

A. Yes, sir. In the Richmond & Danville Railroad there was an adjustment wherein on both the asset and liability side of the account one-half was taken off on account of Confederate currency. It did not, however, interefere with the apparent solvency of the company according to the trial balance sheet where the reduction was made.

Q. How was it with respect to all the other companies?

A. There was nothing on them to show any reductions on account of the Confederate currency or the change from one currency to the other.

Q. Did they then move from the Confederate regime into the new regime without any adjustment of securities?

A. I should say, sir, that they did.

Mr. Holt: That is all.

CROSS-EXAMINATION

By Mr. Harrison:

Q. You are now testifying in relation to the Richmond, Fredericksburg & Potomac Railroad in respect to something that you have investigated since your examination was closed, are you not?

A. Yes, sir.

Q. And you say that your attention was called to the particular subject that you have since investigated. How was your attention directed to it?

A. By my assistant, Mr. Leitch, who came to me and asked whether that should be Confederate States or the United States.

Q. Have you brought here a transcript of what the documents show that you have since investigated with reference to that matter?

A. No, sir, I have not.

Q. Where are they?

A. On file in the Treasurer's office of the Richmond, Fredericksburg & Potomac Railroad Company, First National Bank Building, this city, room 1401.

Q. Did you examine them?

A. No, sir. I sent one of my men to look up the point, the same one that made the original documents for this exhibit.

Q. So you have no information on the subject then except what you derived from someone else?

A. Except what one of my men took there under my direction.

Q. Why didn't you bring a transcript of the books here in order that we might have it before us?

A. I did not consider it necessary.

Mr. Holt: If these gentlemen desire, we will get a transcript of them.

The Master: If they desire it I will give them an opportunity to examine it.

Mr. Harrison: I may want to do that. It is very difficult to examine about something we do not see.

Q. In reference to the Richmond & Danville, you have testified to what their books show. That investigation has been made since your testimony closed, you say?

A. Yes, sir.

Q. Did you make it?

A. Yes, sir.

Q. Whereabouts did you make it, where?

A. From a volume of reports which was handed me, the first printed report of that road, which I understand is the only one in existence, which was withdrawn from the engineers of the Southern Railroad, in North Carolina at present, and sent to me.

Q. Who handed it to you?

A. Mr. Howard handed it to me.

Q. Where is it?

A. I have returned it.

Q. To whom did you return it?

A. To the party that handed it to me.

Q. Mr. Howard?

A. Yes, sir.

Q. Who is he?

A. He is one of the men in this investigation.

The Master: You mean one of the men employed by West Virginia in this matter?

The Witness: Yes, sir.

The Master: Where is the book, is it available?

The Witness: Yes, sir, I can have it brought for investigation.

The Master: You ought to have it right here.

The Witness: Your Honor, I will state that I did not anticipate that question and therefore I did not hold on to the book.

The Master: You ought not to expect to testify to the contents of a book at this stage of this hearing without having the book produced. It is so obvious that it is hardly worth talking about that the other side would want to see it. Send and get it right away.

Q. Do I understand that your statement with reference to the transition from the one period to another is your conclusion from what you saw?

A. Yes, sir.

Q. And that is all; it does not purport to state a fact; you do not undertake to state a fact shown by the books, but your deductions from what you did see, is that right?

A. That is correct.

Mr. Harrison: That is all I want to ask him.

The Master: Do I understand you want an opportunity to examine the records that he has testified to before you conclude your cross-examination?

Mr. Harrison: Of course we would like to have had the original sources from which he traced his conclusion and his statement, but I do not want to delay this matter for that purpose.

The Master: So far as I am concerned, you have until six o'clock tonight. I want the record to show that you have an opportunity to go to those original sources if you desire to.

Mr. Holt: We are sending for the book, your Honor.

The Master: Yes, but there are other books he has testified about.

Mr. Holt: It was just that one of a balance sheet of the Richmond, Fredericksburg, & Potomac.

The Master: If the other side want an opportunity to examine these books that have been testified to in relation to the Richmond, & Danville Railroad, why, I should give them the opportunity.

Mr. Holt: In order to avoid any trouble, if that will relieve the situation, I am perfectly willing to strike out of the record any reference to the Richmond & Danville that has been indulged in now, and that will leave it to the furnishing of a balance sheet of the Richmond, Fredericksburg & Potomac.

Mr. Harrison: Then Mr. Hillman can go.

The Master: Everything that is to be furnished is to be furnished today, this afternoon, and that means that if Mr. Hillman stays he stays, and if it means he goes, why he goes, but anything that either side can put into this case that they

have here that they want to get in I want them to put in today.

Mr. Holt: I was not caring anything about a specific statement concerning the Richmond & Danville which led to this book business; that was volunteered. I say it may go out of the record if that will relieve the situation.

The Master: Whatever is agreeable to you.

Mr. Holt: And that leaves but the one thing for investigation, and that is the statement relative to the balance sheets of the Richmond, Fredericksburg & Potomac, and in order that your Honor may understand what that is, I will state it. It seems that in the balance sheet of that road, that he utilized in making up his exhibits, that there was an item of assets there that were set down as Confederate States securities, when as a matter of fact further investigation of the books of that company showed that the same item was in there and marked as U. S. securities, years before the Confederate States were ever formed.

The Master: In the same amount?

Mr. Holt: In the same amount, and the same item was likewise in the balance sheets of that road following the year he utilized again set down as U. S. securities.

The Master: You simply wanted to show the continuity of the item?

Mr. Holt: That is all.

The Master: As far as I am concerned, Mr. Hillman can go this minute.

Mr. Harrison: Yes.

The Master: It is all up to the counsel for Virginia. My only suggestion is this, I want everything put into this case that can be put in that is available from either side now. All that is suspended is the deposition of Mr. Axtell to be taken in New York, but my original statement still holds, that if it turns out on the preparation of the briefs and the argument that there has been anything inadvertently omitted, it may be put in; but that does not apply to testimony that you have here now. Whatever you have here now must go in now. Do I make that clear?

Mr. Harrison: Yes, sir.

Mr. Holt: I want this understood, when I said a moment ago that the reference to the Richmond & Danville might be stricken out of the record I did not mean that my general question or his answer thereto should be stricken out.

The Master: But that relates to the Richmond & Danville.

Mr. Holt: That relates to all of these securities. I asked whether or not they did not pass from one regime to another without any jar in their administration.

The Master: The question was to establish the fact that so far as the accounts of these various companies that he has examined are concerned there is no distinction between the periods.

Mr. Holt: And then at that point he volunteered the exception in the case of the Richmond & Danville which had a discount of fifty per cent., on both sides of the account.

The Master: It was necessary for him to make that explanation because his general answer would have covered everything.

Mr. Holt: We will wait a moment for the book, Your Honor.

By Mr. Harrison:

Q. When you say that the books—and I thought the question confined you to the Richmond & Danville, but if you meant to apply to all of the securities, I will ask you again—did you say that the books of the various railway companies after the close of the war showed a transition from one period to the other without any indication of change in value of the securities of the company?

A. Yes, sir.

Q. What other companies have you examined, what other books have you examined for the purpose and when did you do it besides the Richmond & Danville?

A. We ran up the Richmond, Fredericksburg & Potomac, the Norfolk & Petersburg, the Southside and the Virginia and Tennessee were also examined by me. The Richmond, Fredericksburg & Potomac running continuously, the other roads on

sub-balance sheets of each road under the general classification of the A. M. & O. running to 1872.

Q. You say you made these investigations since your testimony was closed?

A. Yes, sir.

Q. Where did you examine the Southside Railroad books to testify as you have done this morning?

A. It was a document from the library which is in the former President Davis' house. It is not the State Library. I do not recall the name of the institution at present, but this was discovered and handed to me and I noticed the seal of the public library, whatever its name may be, on the side of it, and looked over that to see whether these roads were still at this date after the close of the war in an apparently good shape.

Q. That is a document then which has been discovered since you testified?

A. Yes, sir.

Q. And had not before been referred to?

A. No, sir.

Q. Have you got it with you?

A. No, sir.

Q. And you cannot describe it other than to call it a document?

A. It is a regular annual report.

Mr. Anderson: It is from the Confederate Memorial Association.

By The Master:

Q. Was it a printed volume?

A. Yes, sir.

By Mr. Harrison:

Q. Where did you find out about this Virginia & Tennesse and Orange & Alexandria?

A. I did not testify to the Orange & Alexandria. The Virginia & Tennessee, the Southside and the Norfolk & Petersburg are all included in this volume to which I have referred.

Q. And what do you say that volume shows, as of what dates?

A. 1872.

Q. You were taking the date 1872 to show that the assets of those roads possessed the same value after the close of the war in April, 1865, that they did just before the close?

A. I did not say that they possessed the same value. I said that it showed that they passed from one set of conditions, which might be called Confederate States conditions, to United States conditions without being affected to the extent that they became worthless.

Q. How do you know that, how do you know that the entries that you saw show anything about their worthlessness or their value anything more than your conclusion?

A. I know nothing more than the conclusions which I have drawn from the entries that I have seen.

Q. There is a gap, a hiatus between 1865 and 1872 in respect to the dates upon which your conclusions are drawn and with respect to what you call the transition period, is there not?

A. Yes, sir.

Q. You don't know what is shown between those dates?

A. No. I found nothing on these three roads between those dates.

By The Master:

Q. What did you see on those dates, the trial balances?

A. Yes, sir.

Q. How did the cost of the road in 1872 compare with the same item that we carried in 1861?

A. The cost of the road was larger on the latter date than on the former.

Q. How much larger?

A. I do not recall, sir.

Mr. Harrison: I am through.

By Mr. Anderson:

Q. Mr. Hillman, did you examine the books of any of these companies for 1865?

A. No, sir, I do not think that I did; I do not recall having done so.

Q. How could you say then that their accounts were carried without any change from 1864 and 1865 to 1865 and 1866?

A. From the reason that we ran these accounts up to 1863, 1864 or possibly 1865, I am not sure, but I do not think we ran any up to 1865, and then came the break of the war, and then we took them up at this new date, and therefore I have jumped from the date examined in 1863 or 1864 up to the next date that I found the trial balance, which I believe was 1872.

By The Master:

Q You did not examine the accounts or books in connection with either date, you got your results from the trial balance?

A. Yes, sir.

Q. And what the accounts or books may or may not have shown you only infer from the condition of the trial balance sheets that you found?

A. Yes, sir.

Q. You said that in case of one road the cost of the road in '72 was in excess of what it was in '61. What road was that?

A. I think the Virginia & Tennesse.

Q. How about the other two?

A. The Southside and the Norfolk & Petersburg, I think they all showed an increase.

Q. How much of an increase?

A. I did not examine that, your Honor, with any attention that would fix it in my memory.

Q. You were examining it so far as to satisfy your mind that there had not been any change in condition as the result of the ending of one period and the beginning of the other. Do you have memory enough about it so that you can estimate the percentage of increase?

A. No, sir.

Q. Do you have memory enough so you can say whether it was fifty per cent?

A. My memory on the point is utterly blank, sir; I fixed no figures in my memory. If I had expected—

Q. The only reason why you are able to state—

A. If I had expected this question I would have prepared myself on it. The question really was unexpected on this or I would have prepared myself.

Q. Then the only reason why you are able to state so far as you do state that there was no change in the accounts and securities from one period to the other is the information you get from a trial balance of 1872, that is right, is it?

A. Yes, sir.

Q. And from that you look back to the trial balance in 1861?

A. Yes, sir.

Q. And you did not see anything on it that suggested to your mind that there had probably been any change on account of the change in the market or par value or the exchange value of the medium of exchange?

A. No, sir; I merely looked at the surplus and saw there was a surplus in the earlier year and a surplus in the latter year, and I stopped right there.

Q. Then you did not look at the cost of the road at all?

A. Yes, sir, I did, but I did not carry anything in my memory; but I knew the cost of the road had increased.

Q. Had the surplus increased or decreased?

A. I do not know, sir.

Q. The examination produced a pretty hazy result in your mind?

A. Yes, sir, because I was making a casual examination for a general purpose, without any idea of making a definite examination.

Q. You cannot give me a single detail as a result of your examination in relation to a single item?

A. I cannot, no, sir.

The Master: That is all.

By Mr. Anderson:

Q. For all you know, there may have been an adjustment in 1865 as a result of the war basis and then a readjustment when you got around to 1872 as a result of a normal peace basis?

A. Yes, sir. They may have been hit very severely in 1865 and recovered themselves by 1872.

By The Master:

Q. All those things might have happened and there may have been a transition from one period to the other involving modifications as predicated upon the market and the medium of exchange which may not have been reflected in your 1872 proposition at all?

A. Yes, sir.

The Master: That is all.

Mr. Anderson: Those are the facts I supposed the cross-examination would bring out. Your Honor has brought them out.

Mr. Holt: Your Honor, I suppose we will have the liberty if we deem it material to present at New York before the argument a transcript provided we have Mr. Hillman there for purpose of cross-examination, taken from these books upon that subject?

The Master: I think that if that can be done today it ought to be done today. My suggestion as to New York was not for the purpose of relieving the counsel of the responsibility of trying this case out fully before we adjourned. So far as you can of course I do not see any reason why we ought not to suspend this case this afternoon, but I cannot consent that testimony that could be submitted here with the exercise of diligence with the exception of this Axtell matter, can be withheld and suspended until the hearing in New York. I want the hearing now concluded so far as the exercise of reasonable diligence on either side can conclude it. If it should turn out that you have inadvertently omitted anything, that will come up in New York.

Mr. Holt: We will do our best to leave nothing undone.

By Mr. Holt:

Q. Mr. Hillman, can that book be gotten now?

A. I do not know, sir. I will do what I can to get it.

Mr. Holt: When you get out of here, suppose you get that

book, and if we can utilize it this afternoon we will do so, I mean this Confederate Museum book.

The Master: Do you want it, Mr. Harrison?

Mr. Harrison: No, sir, I do not want it now. I am satisfied with the cross-examination on that subject.

Mr. Holt: You are through with Mr. Hillman?

Mr. Harrison: Yes, sir.

Mr. Holt: I might add to this other suggestion that has been made that we are not quite sure whether we have embraced in our offers one or two Auditor's reports of the State of Virginia. When we look over our memorandum if we find that we have not introduced them we will introduce them at New York before the argument. We may have them in. We do not want to stop to check up now.

The Master: We will suspend for two hours or three hours in order to give counsel on either side an opportunity to look over and complete anything that they want to put in. I will suspend now and come back here at three o'clock. I am willing to suspend here for two or three hours to give counsel on either side all the opportunity they desire to look their case over and see if they have omitted anything.

Mr. Holt: My idea is that ten minutes will be enough for us to determine this question.

The Master: Suppose I suspend now for half an hour, and that will be before we go to lunch, and then we can come back here at half past twelve and close up everything. Will that be all right?

Mr. Holt: I have one witness I want to put on the stand. Regarding the transcript of these balance sheets on that Confederate currency question of the Richmond, Fredericksburg & Potomac, we will send down and get them right now. Of course they may require a little adjournment.

Mr. Harrison: We will want to examine the records of that road for several years.

The Master: Why don't you suspend for half an hour and get this thing together? I will do anything you say.

Mr. Holt: I thought that I could get rid of a man who is sitting back of me here, who is the sole remaining witness we have.

Mr. Harrison. Put him on.

The Master: I will do anything you want, suspend or go on.

EVERETT A. DOVER

called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Holt:

Q. Give the stenographer your full name.

A. Everett A. Dover.

Q. Where do you reside?

A. Charleston, West Virginia.

Q. What public position do you hold there, if any?

A. Chief accountant in the State Tax Commissioner's office.

Q. Have you examined the market quotations upon the stock of the Richmond, Fredericksburg & Potomac Railroad Company for the year 1914 from January 1st to September 1st?

A. I have.

Q. Have you prepared a schedule showing the result of that examination?

A. I have.

By The Master:

Q. From what paper did you get your market quotations?

A. Times-Dispatch, Richmond.

By Mr. Holt:

Q. Did it purport to be a report of the Richmond Stock Market?

A. Yes, sir.

Q. The schedule you have prepared is headed market quotations for stock of Richmond, Fredericksburg & Potomac Railroad reported by Caskie G. Burch & Company, Richmond,

Virginia, as shown by the Times-Dispatch, Richmond, Virginia, filed in the Virginia State Library, January 1, 1914, to September 1, 1914. Will you file it as a part of your testimony and mark it Defendant's Exhibit Dover No. 1?

A. I will file it so marked.

The paper was admitted in evidence and marked Defendant's Dover Exhibit No. 1, September 12, 1914, C. B.

Q. Look at the date July 2, 1914, and state whether or not the quotation showed any bid on the stock of that company.

A. It showed a bid, 300.

Q. It did show a bid, did it?

A. Yes, sir.

Q. What is the amount shown?

A. 300.

Q. Does it show what was asked on that date?

A. Yes, sir.

Q. What amount?

A. 320.

Q. Under the date of July 25th, of the same year, does the exhibit show a bid?

A. Yes, sir.

Q. What amount?

A. 290.

Q. What was asked?

A. 302.

Q. Does this exhibit correctly represent the quotations with the explanations of bid, asked, etc., as taken from the Richmond Dispatch?

A. It does.

CROSS EXAMINATION.

By Mr. Harrison:

Q. It does not show any quotations after July 25th, does it?

A. No, sir.

Mr. Holt: Didn't the Stock Exchange close then?

Mr. Harrison: I presume that is the explanation of it, I suppose so.

By The Master:

Q. Did any of these market reports show any sales of this stock during any of this period?

A. It simply shows bid and asked.

Q. It does not show any sales?

A. No.

Q. So far as these quotations are concerned then, there were no actual transactions in the stock?

A. No, sir.

Q. Did these quotations you have here purport to come from the Stock Exchange?

A. It is headed Richmond Stock Market.

Q. Without indicating the source of the information?

A. It is reported by Caskie G. Burch & Company.

Q. That is, the report in the paper?

A. Yes, sir, I presume they are brokers, I don't know.

Mr. Holt: They reported, as shown by the exhibit, your Honor, the stock exchange quotations, the information that comes from the stock exchange.

The Master: It is headed Richmond Stock Market and purports to be made by some gentleman whose name he gives, and then the information stops there. It does not go far enough to show that it is the result of the action of the stock exchange. There may be more to it. I did not know but that the examination would leave it without bringing it home to the stock exchange.

Mr. Holt: I find it is the Richmond Stock Market. I thought it read stock exchange.

The Master: And the statement in it would not bring it home to the stock exchange.

Mr. Holt: I see I misread the exhibit.

Mr. Harrison: We have no further questions to ask.

The Master: That is all.

Mr. Holt: With the exception of the little odds and ends that they are trying to clean up on those book values, we are done.

The Master: Do you want to suspend for a little time?

Mr. Holt: I suspect we had better suspend.

The Master: For how long would you like to suspend? Would you like to come back after lunch or suspend for half an hour? I will do whatever you wish. Suppose we suspend for fifteen minutes.

At this point a short recess was taken.

CONWAY W. HILLMAN

recalled for further examination, testified as follows:

Mr. Holt: Mr. Hillman during the recess has gone down and made the transcript from the balance sheet of the Richmond, Fredericksburg & Potomac Railroad Company involving the explanation of the difference between the Confederate States securities and the United States involved in one of these schedules, and in the meantime Mr. Harrison and myself have discovered, I did not know it before, that this item appears on the liability side of that balance sheet and not on the asset column.

The Master: Which item?

Mr. Holt: It is an item of $1,500 which was described in some balance sheet as being a United States security and others as a Confederate security. Now, as I understand it, Mr, Harrison after having made that discovery does not care to cross-examine Mr. Hillman on that point or to require of him any transcript from the Richmond, Fredericksburg & Potomac road; is that so, Mr. Harrison?

Mr. Harrison: No, so long as you make the explanation on the record as you are doing.

Mr. Holt: In other words, if they had known that, they would not have made the point. Mr. Hillman is really simply trying to correct—

The Master: So long as that is a transcript of the trial balances, suppose he puts that right into the record. Let him put that in the record and stop right there.

STATEMENT OF THE AFFAIRS OF THE

Page 10.

Cost of Road and Property:		
From Richmond to Aquia Creek	$1,538,804 69	
Cost of new superstructure, heavy iron, &c.	563,649 47	
Engineering expenses to Manassas and Quantico	2,321 87	
Property conveyed by Ed. Robinson	148,308 13	
		$2,253,084 16
Debts Due the Company:		
From individuals on new stock	1,820 00	
From bills receivable	10,118 13	
From indls. in open acct.	32,723 70	
		44,661 92
Investments:		
Stock of this company	21,602 00	
Stock of the Potomac S. S. Co.	38,900 00	
Stock of Seaboard & Roanoke R. R.	42,209 94	
Specie	125 02	
		102,836 96
Cash:		
On hand Sept. 30th, 1865		18,017 69
		$2,418,600 73

R., F. & P. R. R. CO., SEPT. 30, 1865.

Page 11.

Capital stock		$1,142,900 00
Debts due by the Co. (of a permanent nature):		
Coupon bonds convertible, due in U. States, 1875	21,000 00	
Coupon bonds convertible, due in London, 1875	57,333 33	
Convertible bonds due in U. S. in 1875	172,800 00	
Coupon bonds, 8%, due in U. S. in 1867	92,936 58	
Certificates of debt due in U. States, 1857	1,564 32	
Certificates of debt due in U. States, 1869	181,011 90	
Certificates of debt due in U. States, 1879	98,599 20	
		625,245 33
Debts due by Notes and Open Accts.:		
Dividends on common stock . . .	$ 165,765 33	
Dividends on guaranteed stock . . .	6,828 62	
Int. on certificates of debt	37,213 65	
Int. on bonds due in London	13,871 71	
Int. on bonds due in U. S. to English bondholders	52,315 20	
Debts due indls. and cos., open acct.	24,266 79	
Bills payable	17,370 65	
		317,631 95
Profit and Loss		332,823 45
		$2,418,600 73

By Mr. Holt:

Q. Now, Mr. Hillman, have you found the book relating to the Richmond & Danville Railroad Company that you referred to before recess?

A. Yes, sir, I have.

Q. Read its title to the stenographer, please.

A. Reports, R. & D. R. R., 1865 to 1871. The library mark is T. M. R. Talcott.

Q. Is that the book that came from North Carolina?

A. Yes, sir.

Q. Furnished, you said this morning by Mr. Howard; but by whom was it furnished to you?

A. By Mr. Hall. Mr. Howard had furnished another book and I had them tangled for the moment.

Q. Will you refer to the matter therein, giving the page upon which you based your statements concerning the Richmond & Danville road made before recess.

A. The trial balance of the Richmond & Danville road for September 30, 1865, shown on pages 22 and 23 of this volume, where both receipts and disbursements are carried out in Confederate currency and in National currency; also the trial balance of September 30, 1866, on pages 94 and 95 of the same volume, where the cost of the road, receipts, are shown and where all receipts are marked less Confederate currency reduced, the reduction being approximately fifty per cent., where the cost of road and property is also reduced by less Confederate currency; where the cost of transportation as carried on that trial balance is also reduced by less Confederate currency, and where the trial balance is carried forward from one year to the other with no reduction in the capital stock; no reduction in the funded debt shown, simply in the cost of road, in transportation and expense items, that is, the Confederate currency taken out, the road continues its business and has not gone into liquidation or disturbed any of its capital accounts.

The Master: Why don't you put in the figures of those two trial balances and then we will have them right before us? You need not bother to do that today.

Q. How many trial balances have you referred to?

A. Only two.

Q. What years?

A. September, 1865, and September 30, 1866.

Q. I thought you had 1871 in there.

A. That was on the other roads.

The Master: Make photographs of those two the same as Mr. Potter has of the others, and then whatever significance it is entitled to, we will have it before us.

Mr. Holt: With that understanding Mr. Hillman is going to leave his assistant here, Mr. Leeds, who will have those figures made.

[The exhibits from photographic copy, above referred to, appear in Volume II, Exhibits, marked "BB, 2 sheets," along with "Extract from Report of Richmond & Danville Railroad Company."]

By Mr. Holt:

Q. A while ago, as I recall, you stated in substance that certain railroad companies named by you passed out what I may call the Confederate regime into that of the Federal without a jar necessitating reorganization or anything of the kind, and based your conclusion to that effect if conclusion it were simply upon a book that you had obtained or to which your attention had been called found in what is known as the Virginia State Library. Take the book now handed you and state whether or not it is the one referred to. This book is entitled Third Annual Report of the President and Directors of the Atlantic, Mississippi & Ohio Railroad Company for the fiscal year ending September 30, 1873.

A. Yes, sir, this is the book. I was mistaken as to its source. It was the State Library and not the Memorial Library from which it was obtained.

Q. Is it the State Library?

A. Yes, sir.

Q. Will you turn to the pages of that book and the contents thereof upon which you based the conclusion just referred to.

A. Pages 16 and 17 of that report, which are headed Report of Treasurer for the Norfolk & Petersburg Division from organization to Termination of Fiscal Year ending September 30, 1873.

Q. Does that page cover the whole thing?

A. That covers the entire statement of the Norfolk & Petersburg.

Q. Go right along and explain how you arirved at your conclusion with respect to that road.

A. Under the liabilties of this road are the amounts of the capital stock which aggregate $1,798.800, on page 16 of this report. On page 45 of the blue prints, Defendant's Exhibit 6-A, 1863, the outstanding stock is given at $1,810,800, showing that the capital stock had not in these ten years increased. The Norfolk & Petersburg in 1863 showed a loss of $189,942.12. On page 16 of this report it showed a profit of $84,493.48.

Q. For what year?

A. For the year ending September 30, 1873, I mean from its organization up to that point.

Q. Does that mean that it had no surplus in 1863 but had a surplus in 1873?

A. Yes, and the same outstanding capital stock.

By the Master:

Q. You are reading from a trial balance?

A. Yes, sir.

Q. Why don't you put the trial balance right in?

A. I understand that is the intention, to have it copied the same as the Richmond & Danville was.

Q. State the next road if you are now through with that.

A. The next is on pages 188 and 189 of the same report, and is for the South Side Division, from its organization to the termination of the Fiscal year ending September 30, 1873. On the same page above mentioned of the blue prints—

The Master: If you put the exhibit, the trial balance, in that shows all these things, doesn't it, or do you want that stated in detail?

Mr. Holt: We wanted the question of surplus italicized.

The Master: You want it emphasized?

Mr. Holt: Yes.

A. (Continuing) On Defendant's Exhibit 6-A, 1863, blue print page 45, the stock outstanding of the South Side road

is carried as $1,362,900. On page 18 of the report of September 30, 1873, stock is shown $1,365,600, an increase of some $2,700 only. It is the same stock. The profits in 1863 were $84,471.88. In 1873 they are shown to be $527,791.86. On pages 20 and 21 of the Atlantic, Mississippi & Ohio report, September 30, 1873, is shown the report of the Treasurer for the Virginia & Tennessee division from its organization to the end of the fiscal year, September 30, 1863. In this the capital stock is show as being outstanding $3,506,300. On page 45, Defendant's Exhibit 6-A, 1863, we have the outstanding stock, $3,452,813.32. It is the same stock. On the blue print, page 45, we have a loan shown of $3,285.30.

Q. For the year 1863?

A. Yes, sir. On page 20 of this report, which is at the end of the fiscal year, September 30, 1873, there was a profit of $797,644.78. On pages 22 and 23 of the same report, September 30, 1873, we have the report of the Treasurer for the Virginia & Kentucky division from its organization to the the termination of the fiscal year, September 30, 1873, in each case they are called now divisions of the Atlantic, Mississippi & Ohio instead of separate roads. In this case there is no profiit shown on Defendant's Exhibit 6-A, 1863, page 45. The stock is shown as $82,000.61. On September 30, 1873, this report shows a total outstanding stock of $451,200, the first item of which is by Atlantic, Mississippi & Ohio Railroad Company purchased of the state of Virginia $103,400, which would serve to identify it with the $82,000.61 in character of stock which is mentioned upon page 45 of the blue prints. The loss on this stock up to September 30, 1873, is shown to be $25,-539.68. There was no profit or no loss shown upon Defendant's Exhibit 6-A, 1863, page 45, for the reason that at that time we had no data on the Virginia & Kentucky road. It is upon the examination of these figures that I made the general statement that these roads had passed from one regime or one set of currency to the other without being appreciably jarred in the final result.

By The Master:

Q. So far as the trial balances show?

A. Yes, sir.

The Master: Those trial balances all go in.

By Mr. Holt:

Q. How many pages of the trial balances are there?

A. Eight, four separate trial balances, two sheets each.

Q. It is understood that you will leave directions with your assistant, Mr. Leeds, to have those trial balances figures made.

The Master: Have them appear right in the record.

[These exhibits appear in Volume II, marked "AA, 4 sheets."]

By the Master:

Q. You have no knowledge of these conditions except what you derived from these trial balances?

A. None, sir, except what I derived from reports.

Q. What do you mean by reports, anything different than trial balances?

A. I meant from these trial balances.

The Master: The trial balances will go in the record so that we will have the same sources that you have. Is that all, Judge?

Mr. Holt: You gentlemen may examine.

CROSS EXAMINATION.

By Mr. Harrison:

Q. You have testified in respect to an entry which you speak of having discovered since your last examination of a trial balance of the R. F. & P. Railway which should have been entered on your schedule No. 5 for 1863 as U. S. instead of C. S. I want to get that straight on the record. State what items you referred to.

A. On the blue print, page No. 4, they are called certificates of debt due United States in 1857, $1,606.32; ditto due in 1869, $264,979.40; ditto due in 1879, $138,653.20. On page 5 of the blue prints these are entered as certificates of debt due

in C. S., in 1857, $1,564.32; due in 1869, $181,011.90; due in 1879, $98,599.20.

Q. Due by whom?

A. Due by the Richmond, Fredericksburg & Potomac road as part of its indebtedness.

Q. And they are shown on the liability side of your exhibit, are they?

A. Yes, sir.

Q. What significance has the change?

A. For the reason that we have here an exhibit which is showing C. S. when the conclusion is inevitable—

By The Master:

Q. What change do you want to make? Do you want to strike out the abbreviation C. S. in Exhibit 5, and put in its place U. S.?

A. No, sir.

Mr. Holt: He has made the explanation in the record this morning, your Honor, as I understand. It is correctly set down as taken from the balance sheet, but his conclusion is that where the balance sheet makes it as Confederate States it does it by mistake, because he finds the same item carried forward under U. S. certificates beginning in a year before the Confederacy was established.

The Master: I get the point. He has made a correct transcript of the trial balances, but his judgment is that the trial balance is erroneous in that regard.

Mr. Holt: Is mistaken on that item.

Mr. Harrison: But it has no significance whatever.

Mr. Holt: None whatever. I agreed with you on that sometime ago. If I had understood it in the beginning I would not have bothered myself to inquire about it.

Mr. Harrison: The Judge thought it was on the asset side. He did not know it was a debt due by the company; he thought it was one due to the company.

The Master: It is not an error of Mr. Hillman.

Mr. Holt: I wanted to explain that for your benefit, that there is nothing in it.

By Mr. Harrison:

Q. Now, you have testified again and given us a repetition of your conclusion based on what you call trial balances that you referred to, that the Richmond & Danville Railroad Company passed from Confederate time to the period immediately after the war without any embarrassment of its resources; is that what you meant to say?

A. No, sir; I did not say that.

Q. You did not mean to say that it suffered no loss by reason of the termination of the war?

A. No, sir.

Q. You did not mean to say that in respect to any of these roads about which you testified, did you?

A. No, sir.

Q. Do you know how much the bonded indebtedness created by the Richmond & Danville Railroad was between 1865 and 1872?

A. I do not know, I have not looked at it.

Q. And you do not wish to be understood by whatever conclusion or deduction you have drawn and stated that the assets of these companies suffered no loss or embarrassment by reason of the close of the war?

A. I do not wish to be so understood.

The Master: I suppose your question really means by reason of the operation of the war?

Mr. Harrison: I mean by reason of the operation of the war, I mean to say as a result of the war.

Q. Either you or Judge Holt, one or the other, defined what you mean by saying that the roads were likened to a man with rheumatism who got over the rheumatism in time; but you do not know what remedies were applied to relieve the roads of the rheumatism that they came out of the war with?

Mr. Holt: I added that they took no additional medicine.

Q. You do not know whether they had to take medicine or not to be relieved of the rheumatism that afflicted them when they emerged from the period of the war, do you?

A. No, sir; I do not know what they did save that they did not find it necessary to reorganize.

Q. You do not know what financial arrangements any of these roads made after the war?

A. No, sir, I do not.

Q. As of what date were you testifying in respect to the Norfolk & Petersburg and those roads, and the Virginia & Tennessee?

A. September 30, 1873, and September 30, 1863.

Q. On September 30, 1873, in the book that you find here and from which you have referred did you find any statement or balance sheet of the Atlantic, Mississippi & Ohio Railroad?

A. Yes, sir.

Q. Do you know of what roads that road was composed?

A. Yes, sir.

Q. What were they?

A. It was composed originally of the four roads which we have mentioned, the Virginia & Tennessee, Virginia & Kentucky, Norfolk & Petersburg and the South Side road.

Q. Then there had been a reorganization by September 30, 1873, of the four roads which you mentioned and their consolidation in the Atlantic, Mississippi & Ohio?

A. No, sir, there had not been a reorganization.

Q. What would you call it?

A. A consolidation.

Q. A consolidation and merger.

A. Yes, sir.

Q. Did you find that they were encumbered with any mortgages?

A. I did not look further than the statements of each of the separate units of the Atlantic, Mississippi & Ohio road.

Q. Can you state when the Atlantic, Mississippi & Ohio Railroad was formed and took over the roads which you have mentioned?

The Master: 1880, wasn't it?

The Witness: That is my recollection, sir.

Mr. Harrison: He is talking about a balance sheet of the Atlantic, Mississippi & Ohio now of September 30, 1873.

Mr. Anderson: It was chartered in 1870. We put the charter in.

The Witness: I should judge, your Honor, it was in 1870, because this is called the third annual report and it is dated in 1873. I will therefore say 1870, 1869-70.

Q. Now, in reference to the Richmond, Fredericksburg & Potomac Railroad, glancing over a memorandum on page 6 of your blue print exhibits for 1864, September 30th, the nearest period we have got to 1865, the close of the war, that shows investments by that road of $272,500 in Confederate cotton bonds. What became of them at the close of the war, if you know?

A. They have either been disposed of by sale, or have been written off the books of the company, and they do not appear on the next trial balance, September 30, 1865. I do not know what became of them.

Q. Do you make the same answer as to the $47,000 of Confederate State 8 per cent. registered bonds which the company appears to have included among its assets, September, 1864?

A. Yes, sir.

Q. And the same answer would apply as to the $40,725 of Confederate States cotton bonds in addition to the ones that I mentioned awhile ago?

A. Yes, sir.

Q. Those assets also include due from the Confederate States for transportation, $166,153.12 and $22,472.67 for reconstruction of bridges. Were these items collected or did they disappear at the next balance sheet?

A. I don't know, but my judgment would be that they had been written off and disappeared.

By the Master:

Q. You do not know anything about it except what you see from this trial balance sheet, do you?

A. Only from this trial balance and the next trial balance of the company.

Q. It simply appears on one and does not appear on the other, and that is all the information that the trial balances convey, and as to what happened, that is a matter of pure conjecture, isn't that right?

A. Yes, sir.

Mr. Harrison: We are through.

The Master: That is all of the cross-examination. Is there any re-direct?

Mr. Holt: Your Honor, we are pleased to be able to announce the conclusion upon our part.

The Master: We will assume that the preliminary proclamation has been made, whatever that may mean. Judge Holt says that they have concluded. Now, is there anything by way of re-rebuttal or rejoinder on the part of Virginia?

Mr. Harrison: We are through.

The Master: The only thing left as far as I know then is to determine on the time when this case shall be argued. Now, the suggestion made last night was that the briefs were to be printed and the case argued on he 7th of October, at the Bar Association in New York. Has any one any suggestion to make in relation to that this afternoon. That is as far as we got last night.

Mr. Holt: There is one question I would like to ask the gentlemen upon the other side, and that is whether in their briefs they expect to take up the question of interest.

Mr. Harrison: Yes, we do expect to present that question. It has already been covered very fully in our discussions. We intend to ask the Master to take that matter under consideration and report upon it.

Mr. Lilly: May I inquire of the Master what his opinion is as to whether or not he shall report on the question of interest, whether or not it has been referred to him?

The Master: Yes, you may make that inquiry, but in the absence of argument from either side I hardly would feel at liberty at this time to state my final conclusion. After the statement of Major Conrad the other day I do not know just in regard to that the position of Virginia might be; I have not examined it. I made an intimation when we had our preliminary meeting in New York. My first impression has been, without looking the thing over at all, that the item of interest was not submitted to me. Of course, as I said then I would have to say now, I would not want to conclude that if

the plaintiff in the case seriously insists upon it without hearing them fully upon that proposition. I do not say that my mind is made up on it.

Mr. Holt: I want to know whether these gentlemen expect to discuss the question of interest in their briefs. The only reason I made the inquiry was this, I suppose on account of the shortness of the time both sides here would just simply have to take the whole time in the preparation of their briefs and they will really not be able to furnish one to the other their briefs before we meet in New York.

The Master: I presume there may be difficulty in that respect.

Mr. Anderson: The trouble about the case is that the argument will be so related to the schedules and to the evidence that we cannot carry in our minds, that it is absolutely necessary to have the printed record before we commence to prepare our briefs. We cannot spend time getting up authorities.

The Master: Unless there is some hiatus in the arrangements you will have the printed record a week from Monday morning.

Mr. Anderson: It would seem to me from my experience in connection with this and other cases where we had very large records and a great many questions in detail and in general that two weeks for the preparation of this brief would not be a very long time, in fact I do not think it is any more than sufficient. If the counsel prepares the brief on one side or the other and does not do anything else he has to confer with his associates and he has to examine again and again the record and the authorities, and it takes a great deal of time to file such a brief as will have to be gotton up in this case. It will shorten the brief, we will write very much shorter briefs if we have ample time than if we have to write it in a hurry.

The Master: We will have the understanding that the case is set down for taking the testimony of Mr. Axtell and for argument at 10 o'clock in the morning on the 19th of October, in New York, at the Bar Association.

Adjourned to October 19, 1914, at 10 A. M. to meet at the Bar Association, New York.

Doc. No. 17

James River and Kanawha Company

PROCEEDINGS

Of the Stockholders of the James River and Kanawha Company, at their Twenty-Sixth Annual Meeting in October, 1860.

Richmond, Monday, October 22, 1860.

The twenty-sixth annual meeting of the stockholders of the James River and Kanawha Company was held at the office of the said company in Richmond, on Monday, the 22d day of October, 1860; present:

The Bank of Virginia, by Clement R. Barksdale, Alfred T. Harris and R. Milton Cary, proxies, having	632 votes
The city of Richmond, by Peachy R. Grattan, Samuel D. Denoon and Jas. M. Talbott, proxies, having	1449 "
The city of Lynchburg, by Samuel McCorkle, proxy, having	175 "
Total corporate representation other than the state	2256 "

Individual stockholders, in person, having	483	votes
Individual stockholders, by proxy, having	1490	"
Total number of votes other than the state	4229	"
The commonwealth of Virginia, by William B. Taliaferro of Gloucester, Samuel McCorkle of Lynchburg and James B. Dorman of Lexington, proxies, having a number of votes equal to three-fifths of the whole vote present	6343	"
Total	10572	"

being a majority of the votes that could be given on all the stock of the company as at present held.

On motion of General Taliaferro, the meeting was organized by the appointment of Philip St. George Cocke, Esq., as chairman—William P. Munford, the secretary of the company, attending as clerk.

The president, Col. Thomas H. Ellis, on behalf of the board of directors, submitted the annual report and accompanying documents.

The report having been previously printed for the use of stockholders, on motion of Mr. Grattan, the reading of the same was dispensed with.

The president made a statement in regard to the returns from the Kanawha board, and in reply to an enquiry, read the portion of the report relating to this subject.

The president likewise informed the stockholders, that since closing the report just submitted, he had received a letter from Mr. Ernest de Bellot des Minieres, dated Bordeaux, October the 1st; that Mr. De Bellot arrived in Paris on the 26th September, and soon after left for Bordeaux, the residence of his family, in consequence of several of the principal persons connected with the proposed Virginia canal company being in Algeria—they being, also, the chief persons interested in an important concession made by the French government for the construction of railroads in that posses-

sion of France; that, awaiting their return to Paris, he intended to remain in Bordeaux until the 12th instant. He writes that his hopes of a satisfactory conclusion of the object of his visit to France, are more than ever good—that the political horizon, though much clouded, does not alarm him —and that he is highly gratified at his brothers' impressions in reference to the agreement of the first of September.

On motion of General Taliaferro, the report of the board of directors, and the documents accompanying it, were referred to a committee of thirteen; which was constituted as follows: William B. Taliaferro of Gloucester; Samuel McCorkle of Lynchburg; James B. Dorman of Lexington; Peachy R. Grattan, Clement R. Barksdale, Joseph Mayo, Thomas W. McCance, Bolling W. Haxall, R. Milton Cary, Henry C. Cabell, Dr. O. A. Crenshaw, Samuel T. Bayly and Samuel D. Denoon of Richmond.

On motion of Mr. Grattan, the meeting adjourned until tomorrow evening at 7:30 o'clock.

Tuesday, October 23, 1860.

The stockholders met pursuant to adjournment. In the absence of Mr. Cocke,

On motion of General Taliaferro, Peachy R. Grattan, Esq., was called to the chair.

General Taliaferro presented and read the following report and resolutions:

The committee to whom were referred the report of the board of directors and the accompanying documents, have duly considered the same, and beg leave respectfully to report:

That they congratulate the stockholders on the improved and apparently improving condition of the company in every department of its affairs. The increase in the receipts from its several works—dock, canal, connections, turnpikes, bridges and ferry, amounting in the aggregate to more than sixty

thousand dollars during the year—has, of itself, evidently afforded relief to the administration, and, doubtless, imparted new energy to the entire organization; while the great measure of converting the debt into stock, granted by the legislature last winter, has relieved the company from a load of oppressive embarrassment, and contributed to produce a most happy effect upon the public mind in reference to the value of the improvement.

Nothing has occurred, so far as the committee are apprised, to cast doubt upon the success of the arrangement heretofore approved with such remarkable unanimity by the stockholders, for the completion of the improvement by the employment of French capital: And therefore the committee confidently anticipate that brilliant future for the company and for Virginia, to which the report of the board directs attention.

Among the subjects presented by the board in their report, none seems to call for a special resolution on the part of the stockholders.

The omission of the president pro tempore of the Kanawha board to present a report at this meeting, is presumed to have been accidental; since by the by-laws of the Kanawha board it is his duty, at every annual meeting, to lay before the stockholders a report of the condition of the improvement under the control and direction of that board, the progress of the works under its direction, the conduct of the officers and agents appointed or employed by it, the state of its finances, and such other matters as he may deem interesting. Though not required by the by-laws, it is obviously proper that a statement of the receipts and disbursements of the Kanawha board should be duly transmitted to the secretary here, for the purpose of being incorporated into his summary statement of the receipts and disbursements of the company. A resolution on that subject is herewith reported.

It affords the committee pleasure, while performing, as they conceive, an act of justice, to pay a deserved compliment

to an intelligent, faithful and assiduous officer; and recognizing the inadequacy of the compensation heretofore allowed to the secretary for his constant services, they unanimously recommend an increase of his salary.

The following resolutions are accordingly respectfully submitted:

1. Resolved, that hereafter it shall be the duty of the Kanawha board to return to the secretary of this company, on or before the fifteenth day of October in each year, a summary statement of the receipts and disbursements of that board for the preceding fiscal year.

2. Resolved, that the salary of the secretary of the company be fixed at the rate of two thousand five hundred dollars, commencing on the first day of October instant.

3. Resolved, that when this meeting adjourns, it will adjourn to meet on Monday, the 28th day of January, 1861, unless the interests of the company should require an earlier meeting. In which event, the president is hereby empowered and directed to convene the company at an earlier day, giving reasonable notice thereof to the stockkholders.

On motion of Col. Cabell, the report and resolutions were unanimously adopted.

The president stated that the commonwealth, in consideration of her increased subscription to the capital stock of the company, would be entitled to the appointment of one of the directors heretofore appointed by the stockholders other than the state. He submitted a letter from Mr. Boyd, addressed to the board of directors some time since, conditionally resigning his place as a director.

Mr. Grattan stated, that as a friend of Mr. Boyd, he felt authorized to withdraw his name from an election in which there might be a competition between him and Col. Bondurant for the office of director.

The meeting then proceeded to the election of officers.

On a nomination by General Taliaferro, Col. Thomas H. Ellis was unanimously re-elected president.

On a nomination by General Taliaferro, David J. Burr, Esq., was re-elected director on the part of the state and the private stockholders.

On a nomination by Col. Cabell, Col. Thomas M. Bondurant was re-elected director on the part of the private stockholders.

The chairman announced the following committees:

Committee to examine the books, papers and accounts of the company for the present fiscal year: Messrs. Lewis Webb, Samuel Marx, Bolling W. Haxall, Lewis D. Crenshaw and Thomas W. McCance.

Committee to examine the books, papers and accounts of the Kanawha board for the past and present fiscal years: Messrs. James C. McFarland, Thomas L. Broun and George S. Patton.

On a nomination by Mr. Dorman, Messrs. James L. Carr and John D. Lewis, were re-elected directors on the part of the private stockholders for the Kanawha board

On motion of Mr. Barksdale, the meeting then adjourned.

Documents accompanying the Proceedings of the Stockholders, at their Annual Meeting in October.

No. 1—Report of president and directors.

No. 2—Tables showing the trade of the dock.

No. 3—Report of the chief engineer.

No. 4—Report of the superintendent of repairs on the first division.

No. 5—Report of the superintendent of repairs on the second division and North River improvement.

No. 6—Toll gatherer's table showing the quantity and probable value of all articles cleared at the Richmond office.

No. 7—Toll gatherer's table showing the quantity and probable value of all articles cleared at the Lynchburg office.

No. 8—Toll gatherer's table showing the quantity and probable value of all articles cleared at the Buchanan office.

No. 9—Secretary's table showing the quantity and probable value of all the articles conveyed on the canal.

No. 10—Statement showing the quantities of the principal articles conveyed on the canal in each fiscal year from 1842 to 1860.

No. 11—Statement showing the amount of actual tonnage, the amount of tolls on tonnage and passengers, the amount paid for expenses and repairs, etc., in each fiscal year from 1841 to 1860.

No. 12—Table showing the number of tons and amount of tolls under each rate in the tariff.

No. 13—Monthly receipts of dockage.

No. 14—Monthly receipts of lock tolls.

No. 15—Monthly receipts of tolls on the canal.

No. 16—Report of the agent on the Kanawha road.

No. 17—Summary statement of the receipts and disbursements of the company for the fiscal year.

No. 18—Summary statement of receipts and disbursements from the organization of the company.

No. 19—Letter from Governor Letcher to the president.

No. 20—Report of the Kanawha board.

(R.)—Abstract of tolls collected at Charleston.

(A.)—Statement of receipts and disbursements of the Kanawha board for the fiscal year.

(B.)—Statement of receipts and disbursements by Kanawha board of six per cent. registered stock.

No. 21—Contract for the improvement of the Kanawha River.

No. 22—Report of the committee of stockholders on the books, papers and accounts of the company.

No. 1

President's Report

Richmond, Oct. 22, 1860.

Gentlemen:

The board of directors now make their report of the condition of the company for the year ending the 30th of September, 1860.

The business of the Richmond dock continues to be marked by the same steady progression which has been noted for the last six years. Its revenue has increased $3,712.16 during the past fiscal year, indicating an increase in many of the leading articles received and shipped, which is more particularly shown by the following comparative statement:

ARTICLES	Year ending September 30, 1859.	Year ending September 30, 1860.	Increase.
Inward Trade.			
Coal	15,062 tons	29,897 tons	14,835 tons
Fish	16,404 barrels	25,470 barrels	9,066 barrels
Guano	17,223 tons	22,778 tons	5,555 tons
Hay	20,220 bales	29,813 bales	9,593 bales
Iron, pig and scrap	6,051 tons	13,333 tons	7,282 tons
Lime	28,349 casks	48,491 casks	20,142 casks
Oats	26,032 bushels	27,035 bushels	1,003 bushels
Oyster shells	6,050 bushels	33,512 bushels	27,462 bushels
Plaster	5,832 tons	8,149 tons	2,317 tons
Salt	25,729 sacks	73,177 sacks	47,448 sacks
Shingles	3,037,485	3,116,600	79,115
Tar and rosin	1,604 barrels	2,053 barrels	449 barrels
Wheat	317,806 bushels	360,918 bushels	43,112 bushels
Outward Trade.			
Flour	389,635 barrels	423,194 barrels	33,559 barrels
Tobacco	54,977 packages	56,367 packages	1,390 packages
Tobacco	576 tierces	1,117 tierces	541 tierces
Wheat	102,309 bushels	143,000 bushels	40,961 bushels

The trade with the northern cities seems to have fallen off; since the number of assorted cargoes which arrived from Baltimore, New York and Boston, during the year 1859 was 205, while the number during the year 1860 was 170—a decrease of 35 cargoes. The whole number of arrivals of boats and vessels in the dock, was 2,123, the whole number of departures, 2,337. The usual statement, furnished by the collector, is herewith communicated.

The receipts from dockage, and the disbursements on account of the dock, during the year, have been as follows:

Received,		
From dockage		$50,128.03
Disbursed,		
For expenses and repairs	$3,457.26	
For salaries of agents	4,264.26	7,721.52
Net income		$42,406.51

The receipts from dockage, it is believed, would be increased, if additional accommodation were afforded for landing heavy articles, such as lumber and plaster, on the south side. The condition of the company, however, until recently, has been such as to forbid any expenditures of money not called for by necessity.

The paving of Water street, from 23d street to Rocketts, by the city, has been completed, and the paving from 14th to 17th streets is in progress. This will render necessary the raising of the wall on the north side of the dock from 14th to 17th street, and from 23d to 26th street, an aggregate length, including the intermediate quays, of about 2,200 feet of stone work, which has been let to contract, and is already commenced.

A practical enlargement of the dock has been effected, by the removal of the stationary bridge, in the line of 17th street, and the substitution of an iron pivot bridge, which being turned at pleasure, admits masted vessels into the upper

basin, extending to 14th street. A part of the old abutment was removed, and a new pier built in the centre. This bridge has a span of 31 feet 5 inches at each side from the centre, and when turned, presents a passage of 29½ feet in the clear, for vessels. The girders, being nearly 32 feet long, 2 feet wide, and ⅜ of an inch thick, are said to be the longest single pieces of iron of the same dimensions ever rolled. This bridge brings into available use about 1,300 lineal feet of additional wharfage. It was built by Mr. Joseph Heindl, at the cost of $4,883.50. A contract has been made with the same gentleman to build wrought iron bridges over the canal at the intersection of 5th, 7th and 12th streets in the city of Richmond, to substitute the wooden structures now requiring expensive repairs. The road bed of 5th street bridge is to be increased from 12 to 18 feet, and that of 7th street bridge, from 52 to 60 feet. They are to be of the same strength, and guaranteed in every respect, as railroad bridges are. Mr. Heindl, who is a graduate of the polytechnic school of Munich, proposes to form in this city an establishment for cast iron bridge building and iron superstructures of every kind.

It is with much satisfaction the Board are advised that the Richmond and Danville railroad company contemplate renewing their depot bridge, and that in doing so, actuated partly by a disposition to accommodate this company, they will construct it of iron instead of wood, which will enable them to give nearly two feet of additional height between the surface of the water in the canal and the lowest part of the superstructure. The permission to build the depot bridge originally, was granted by our company in a friendly spirit; but the bridge has been found by experience too low to admit the convenient passage of unloaded boats. The disposition, then, on their part to remedy this evil, evinces a sense of justice and comity towards a sister improvement which the board takes pleasure in recognizing.

Adjacent to the Danville depot lot, Messrs. Richard Barton Haxall and Lewis D. Crenshaw, present proprietors of the Columbia mills, have, with the permission of this com-

pany, built a handsome iron bridge over the canal, so that loaded wagons may pass from Virginia street to and from their mills. In the line of 13th street, near lock No. 5, they have likewise built a substantial stone bridge. They are constructing a lateral arched canal, leading from the "extended lock" of the Tide water connection into the body of a large addition to their mills, the foundation of which has been built up to the service. These are but indications, not less than an enlightened spirit of improvement, than of a material progress, in and around Richmond, perceptible to the most casual observer—a state of things, due in no small degree, as your board believe, to the facilities afforded by the several improvements of the James River and Kanawha company. Prominent among the establishments, public and private, recently erected, connected with the business of the dock or canal, the board would mention the new inspection warehouse for tobacco, belonging to Edward Mayo, Esq., eligibly situated near the Danville depot, between the dock and the river. The first inspection was made in the month of June last. This warehouse, embracing an area of more than four acres of land, will, when completed, be capable of holding seven thousand hogsheads of tobacco on the ground, covered by water-tight sheds.

The plaster mill of Mr. John H. Claiborne, the machinery of which is propelled by the waste water from the dock, at Shockoe creek aqueduct, receives between four and five thousand tons of plaster per annum from quarries in Nova Scotia, and furnishes from twenty-five to thirty thousand barrels of the purest ground plaster for agricultural uses. The capacity of the mill is equal to about double this product. The mill of Messrs. D. Lambert & Co., also on the dock, grinds from sixty to seventy barrels of plaster per day.

Messrs. R. J. White & Co. have erected on the south side of the dock an establishment for the manufacture of Foster's patent building block. This new building material, which is artificially composed of sand, gravel, lime and cement in cer-

tain proportions, is subjected while moist to great pressure, in steel moulds, and in the form of hollow blocks, and acquires the hardness of stone upon exposure to the atmosphere. The blocks are commonly ten inches long, five inches wide, and four inches high, and being formed by compression, and not baked, are consequently not distorted when finished, but perfectly true in form, as well as uniform in size. An air chamber running vertically through the center of each block, is so arranged to insure a circulation of air through the entire wall. Those who have used this material, speak of it in high terms. It makes a smooth, solid, well ventilated wall or house, in appearance equal to the finest dressed granite or free stone—becomes harder with age, and consequently absorbs a diminished quantity of water after each successive wetting, and is about as cheap as good common brick. The armory, now being constructed for the volunteers of Richmond, is to be built of this material.

On the north side of the dock, occupying the site of the former city gas works, is the estabiishment of the Lester Sewing Machine Company, nearly completed, and about to give employment to two hundred mechanics.

Messrs. Talbott & Brother and Ettenger & Edmond have considerably enlarged their establishments on the line of the dock; and near at hand are the well known "Eagle Works" of Mr. Philip Rahm. These gentlemen, in the manufacture of railroad engines, cars, machinery and fixtures, fire engines, saw mills, etc., give employment regularly to about four hundred hands, and turn out from their shops annually about $375,000 worth of work, which it is believed will compare favorably with that of any other establishments whatever. About $220,000 worth of their work is sent to states south of Virginia.

At Rocketts, this very day, Mr. Charles Y. Morris commences operations at his sugar refinery—expecting to refine from one hundred and fifty to two hundred barrels of sugar weighing from thirty to forty thousand pounds, per day.

Fronting this establishment, at Rocketts, is the ship yard of Messrs. Abrahams & Co., who have attained reputation for scientific skill in shipbuilding. These gentlemen have heretofore constructed for Richmond owners, at the yard in Baltimore, one ship of eighteen hundred tons, and twenty-nine schooners, brigs and barks, averaging about three hundred and seventy-five tons each, and all now afloat except one or two. The first ship of the Richmond and Liverpool line of packets, a vessel of eighteen hundred tons burden, built by those gentlemen at their Baltimore yard, will be launched in a few weeks; while the keel of the second ship, of the same line, has been laid in their yard at Rocketts. The yard which they have established here, within the past year, has two launching ways, and the capacity to construct about three thousand tons per annum. The best ship timber is obtained from the lands bordering on James River and the waters of the Chesapeake bay. But little of our mountain timber has yet found its way to the coast for shipbuilding purposes. Yet we know the illimitable supply and the superior quality which the region upon the line of the canal affords; and it is remembered as a remark often made by Judge Mason, after serving under two administrations as secretary of the navy, and while president of this company, that Virginia possessed a source of wealth in her mountain forests of which her citizens generally seemed to be unaware, and which he deemed second only in importance to her wonderful mineral deposits. There is adjoining the ship yard above referred to, a steam marine railway, of sufficient capacity to haul out the largest vessel or steamer that can come into this port. It is reputed to have a power equal to any in the United States. The fine bark Abigail, of 383 tons, belonging to the Richmond and Rio line, has been lately recalked and recoppered at this station—being the first vessel ever coppered in Richmond. The same vessel on her last voyage brought from the Plate River the first cargo of bone ash and bones ever imported into Richmond.

On the first level of the canal, within the enclosure of the Tredegar Iron Works property, the Virginia Car Spring Com-

pany have commenced the manufacture of vulcanized India-rubber car springs, of a quality reputed superior to those made under the famous Goodyear patent by the New England Car Spring Company—a corporation that has hitherto had a monopoly of this important item of railway supplies. The Virginia company vulcanize their rubber by new processes recently patented, and their springs possess a form which is believed to be better adapted to the strain they are to bear than any heretofore in use. But the most interesting feature of the enterprise is, that it fills up almost the only blank in the list of railway supplies now manufactured at Richmond—thus contributing to make Richmond one of the great railroad centres of the country, and enabling the directors of southern roads to purchase every thing they need at home.

Adjacent to the same property, the flouring mill of Messrs. Crenshaw & Fisher has been converted into a woolen factory, whose operations, while giving direct profitable employment to more than fifty hands, male and female, are doubtless but the beginning in one of the most interesting branches of industry, and will contribute to excite a spirit for the improvement of sheep and wool in every part of the state having convenient access to this market.

While thus adverting to industrial pursuits, so intimately connected with our own improvement, and owing, in a great degree, their prosperity, if not their origin, to it, it might appear invidious to pass without notice the extensive establishment of Messrs. Joseph R. Anderson & Co., known as the Tredegar Iron Works. These truly grand works are a pride to our city. Their importance as an adjunct to the canal may be estimated, when we consider the amount of rent they pay for water-power—that they employ from eight hundred to a thousand men—consume annually about four hundred thousand bushels of coal, some ten or twelve thousand tons of pig iron—and that they supply Virginia, and the states south of Virginia, and the Island of Cuba, from their rolling mill, spike factory, brass, iron and cast steel foundries, locomotive, boiler

and blacksmith shops, more than a million dollars of manufactured material every year. Here the enormous boilers of the United States frigates Roanoke and Colorado were built; and they are at this time casting heavy guns for the United States Navy, and water pipes, two feet in diameter, for the city. The same firm have just entered into a contract with the commissioners of the state, for enlarging and equipping the state armory, which also draws its supply of water power from the canal, with improved machinery for manufacturing, on a large scale, every description of fire arms.

Contemporaneously with these substantial evidences of prosperity and advancement, the city of Richmond laudably perseveres in her endeavors to improve the navigation of James River at and below Rocketts, so as to bring vessels of larger tonnage and deeper draught to our wharves. From a memorandum furnished by Washington Gill, Esq., the engineer in charge of the river improvement, the board learn that the contractors for removing the reef at Rocketts bar have succeeded remarkably well with their chisel and dredge, in breaking up and removing the solid granite and large boulders from the bed of the river, affording at this time a depth of from fifteen to twenty feet water over the rocks, where formerly only about twelve feet could be obtained. An outlay of a few thousand dollars more will open a channel one hundred feet wide and from eighteen to twenty feet deep through this reef. A contract has been entered into with the same parties for dredging a channel fifty feet wide and sixteen feet deep through Rocketts, Richmond and Warwick bars. The work of dredging was commenced early in July last. A channel has already been cut through Richmond bar, in compliance with the contract. More than twenty thousand cubic yards of sand and gravel have been removed up to this time. The entire work, under the contract for dredging, is expected to be completed early next spring. The importance of this river improvement, to the city of Richmond, as well as to the state at large, is too self-evident to require comment at our hands.

The board are much disappointed that a steam dredging machine built by the patentee in Philadelphia for the company, at an expense of $6,500, and intended chiefly to be employed in dredging at the mouth of Tye River, Judith's Creek and other places where heavy sand bars are formed in the ponds on the upper part of the line, proves unavailable for that purpose. Though built according to the dimension furnished, it turns out, that in consequence of the bulging of the sustaining walls of several of the old locks on the first division, the machine cannot pass through them. It will therefore be employed on the first level, in the dock, and at the mouth of the ship lock, taking the place of the old machine which was bought from the United States Government six years ago, and which is, indeed, so worn out as to require repairs almost equal to the cost of reconstruction.

The receipts from lock tolls have been $3,415.29, and the disbursements on account of the five locks of the Tide water connection, for repairs, $26.51, for salaries of agents, $549.98. Other expenditures chargeable to the Tide water connection have amounted to $842.07.

The board regret to announce the death of William S. Richardson, inspector at Richmond. He died on the 3d instant, having performed the duties of this responsible office, with firmness and integrity, for seven years. His place has been supplied by the appointment of George N. Skipwith, Esq., formerly an assistant engineer on the Richmond and Danville Railroad.

Reports from the chief engineer, and from the superintendents of repairs on the first and second divisions of the canal, and the North River improvement, are herewith submitted; also, the usual returns from the toll gatherers at Richmond, Lynchburg and Buchanan, and the secretary's statements, showing the quantities, classification and probable value of all tonnage and of tolls, the rates of toll, and the monthly receipts of tolls.

These documents exhibit a state of things in many respects highly gratifying. Neither from freshets, nor decay, nor ac-

cident, has there been any serious suspension of navigation. In the month of January the line was closed by ice from the 1st to the 13th day of the month, and in the month of February, from the 3d to the 6th, by the same cause; and in the month of July, the water was withdrawn from some of the levels for the usual systematic repairs; but beyond these, there was no detention of boats on the main line of the improvement at any time exceeding twenty-four hours. The most formidable impediments occur generally at the mouth of Tye River, and in some of the ponds on the second division, where the quantity of deposit brought down by heavy floods is often astonishingly large, rendering the constant employment of dredging machines more or less necessary. The present condition of the canal, so far as it affects navigation, is very good.

The number of boats which passed through the first lock above Richmond, during the fiscal year just past, was	9,974
The number for the previous fiscal year	7,510
Increase	2,464
The amount of tonnage during the past fiscal year, was	244,273 tons
For the previous fiscal year	206,295 "
Increase	37,978 tons
The amount of tolls on tonnage, collected during the past fiscal year, was	$224,179.90
For the previous fiscal year	172,849.62
Increase	$51,330.28
The amount of tolls on passengers, during the past fiscal year, was	$5,076.64
For the previous fiscal year	2,125.40
Increase	$2,951.24

Showing an improvement in every particular, for the fiscal year 1860, compared with the fiscal year 1859, and this too, notwithstanding the fact, that the wheat crop in Virginia and Tennessee, always so important to this line, has fallen far short of its usual standard of quality and quantity. An inspection of the statements just submitted will show:

Articles brought down the canal:	1859	1860
Bushels of wheat	723,479	695,388
Decrease, 28,091 *bushels.*		
Barrels of flour	104,434	78,711
Decrease, 25,723 *barrels.*		
Boxes of manufactured tobacco	57,181	53,076
Decrease, 4,105 *boxes.*		

There was a considerable increase in the articles of leaf tobacco, tobacco stems, coal, stone, wood, dried fruit, cotton, manganese, etc., descending the canal, and of articles ascending, a considerable increase in salt, plaster, coal, castings, nails, guano, etc.

The diminished quantity of flour and manufactured tobacco transported on our line, as above noticed, is owing not perhaps so much to the smaller products of these articles, as to another cause, which the board will briefly advert to.

The stockholders are aware that an injurious rivalry existed for several years between the South side railroad and the canal, for the transportation of freight, and that, under the instructions which they gave in March, 1858, the board adopted a low tariff, with the view to prevent any diversion of our accustomed trade. This was met by a counter movement on the other side, which rendered still further reductions on our part necessary. There is but one history for all such controversies: loss on both sides—which both parties would willingly avoid. In this case, we felt it to be peculiarly hard: the railroad was the junior improvement, minor in interest, and controlled by a policy which seemed to aim at trade for the

largest stockholder, to wit, the city of Petersburg, regardless of dividends, or consequences to the state and the other stockholders—the most urgent necessity existing in the meantime for the largest possible revenue derivable from the canal. The state being the principal ultimate sufferer in both cases, there was frequent protest and complaint in the legislature against the courts of the two companies. As far back as February of last year overtures were made by the South side company, which were met in an amicable spirit by our board. No schedule, however, was submitted or agreed upon for about a year, when one was adopted, to go into operation on the 20th day of February last. Since that time, therefore, the canal and railroad have been operating under a tariff of charges and tolls mutually agreed upon. This company has had reason to proclaim of a departure from the agreement in some respects, by the South side company—and among them, of arangements made which affect our trade in the important articles of flour and manufactured tobacco shipped at Lynchburg for northern markets. Nevertheless, in view of a steadily increasing aggregate revenue on our side, and in consideration also, the board take pleasure in saying, of fairer remuneration to a neighboring improvement and a sister city, they have been reluctant to give the notice, which either party is at liberty to give, for terminating the agreement.

Reference is made to the chief engineer's report for detailed information in regard to the principal works undergoing repair.

Bosher's Dam is so nearly completed, that the final estimate may be taken by the first of January next, if the weather and stage of water be favorable for such work. The company have paid $9,130 towards its reconstruction during the past fiscal year. The pond formed by this dam is important not only to admit the coal from the Norwood pits and the Burfoot pits, the castings from the Bellona arsenal, the granite (of which one of the finest quarries on our line has been developed by the construction of the dam), the daily supply of wood for

city use, and the agricultural product of the several estates on the south side extending from Bosher's Dam to Maiden's Adventure Dam, a distance of eighteen miles, but important also, as a feeder to the fourth level, upon which the Westham Iron Works depend for their supply of water power. In consequence of untoward circumstances, among which was an irregular supply of water, this valuable establishment, after going into blast about the first of May, was obliged to suspend having continued in blast only six or eight weeks. An incorporated company has recently been organized, under the name of the Westham Iron Company, by which the property is to be managed in the future. They will recommence work in a few days, and it is hoped, that hereafter nothing will occur to impair the public usefulness of the establishment or disappoint the just expectations of its owners.

The board regret to state that very unsatisfactory progress has been made with the Joshua Falls Dam, notwithstanding their anxious desire to see it completed at the earliest practicable day. This dam is in two parts—the main or original portion, extending from the northern shore to a southern abutment, and the new or secondary portion, which became necessary after the freshet of July 1842, extending from the original southern abutment to the present southern shore. The reconstruction of the latter portion, which is most urgently demanded, was first let to contract, and is that which is here referred to. The former portion was afterwards contracted for by the same person; but he having declined to go on with his work under the second contract, the board have determined again to call Mr. Duncan Grant into the service of the company, and to have it rebuilt with all expedition by a force employed under him.

When the freshet of May 1857 occurred, and the board were considering plans of repair at Lynchburg, the expediency of building a dam across the river from the north abutment of the water-works dam to the Amherst shore, was strongly urged by the superintendent of repairs on that division.

These views were at first concurred in by the chief engineer, but afterwards, for reasons stated in a well considered report, he recommended a less expensive plan, which was adopted by the board. The work then determined upon has never been fully executed, though the board have long been aware that prudence dictated its speedy completion. Since the relief afforded by the legislature last winter, the board have taken up the original suggestions of a dam across the river; and being satisfied that it is the most safe and desirable improvement they could adopt at that important point, they have entered into a contract with Mr. Charles Scott, whose known skill, energy, and ample means, afford a guarantee that the work will be completed in the shortest practicable time.

The last dam on the North River improvement has been complete, and the contractor's forces are now engaged on the tow-path in sight of the bridge at Lexington. It is presumed that the final estimate on this work will be returned before the first of January. Some assessments of damages remain to be made, but measures have been taken to have them determined according to the provisions of the Code.

The receipts and disbursements on account of the canal have been as follows:

RECEIPTS.

From tolls	$225,554 79
From lock tolls	3,415 29
From rents	9,734 73
From penalties	286 46
	$238,991 27

DISBURSEMENTS.

Expenses and Repairs:		
Five locks	$26 51	
First division	72,722 80	
Second division	15,922 56	
Salaries of Agents:		
Five locks	549 98	
First division	22,199 73	
Second division	6,750 00	

General Administration:

Salaries of officers	7,313 32	
Pay and mileage of directors	1,462 75	
Expenses of meetings of stockholders, legal expenses, printing, etc	6,115 20	
Construction:		
Lynchburg feeder canal	2,825 34	
Third division	1,573 14	
Fourth division	637 70	138,099 03
Net income		$100,892 24

On the South side connections, the receipts have been $425; the disbursements, for insurance, $450; for superstructure of the New Canton Bridge, $1,559.43.

On the Blue Ridge turnpike road and ferry, receipts $217.-27; disbursements $755.26.

On the Rivanna connections, disbursements for sections, $270.60; for damages, $1,780.92.

On the North River improvement:

Receipts:

Tolls at the Jordan's Point Bridge	$ 450.00

Disbursements:

Expenses and repairs	1,481.58	
Pay of engineers	3,066.66	
Construction	23,477.31	28,025.55
Excess of disbursements over receipts		$27,575.55

At Bent Creek, a commodious warehouse has been built, for the accommodation of the South side trade. The cost of the building was two thousand dollars, for which sum the bond

of the company has been executed, payable without interest in October 1861.

The legislature at its last session made provision for a subscription of sixty thousand dollars to the stock of the Rivanna Navigation Company to be wholly expended in the extension and completion of that improvement. Upon the application of the Rivanna Company, the chief engineer of this company was allowed to take charge of their work without interference, however, with his duties upon this line. The entire unfinished work was let to contract in July, is in active progress, and may be expected to be completed in twelve months from this time. It is not doubted that the Rivanna improvement will be a valuable tributary to the canal, when the navigation shall be extended to and above Charlottesville.

The report of the agent on the Kanawha turnpike road is submitted, showing satisfactorily the condition of the road and an increase in the receipts at the toll gates of $908.66, compared with the receipts of the previous fiscal year. The total receipts and disbursements were as follows:

Receipts:		
From toll		$8,818.48
Disbursements		
On road account	$6,696.96	
On bridge account	1,832.87	
On agency account	883.32	9,413.15
Excess of disbursements over receipts		$ 594.67

Up to the time of placing this report in the hands of the printer to be printed as usual in advance of the meeting of the stockholders for their use, no statement had been received from the Kanawha board of the state of their finances, subsequent to the first of May. The remaining portion, there-

fore, is necessarily omitted from the secretary's general statement of the receipts and disbursements of the company for the fiscal year.

It will be remembered that the Kanawha board were authorized and directed, by the act of assembly passed March 23, 1860, to prosecute the construction of the Kanawha line of improvement, free from the control or direction of the president and directors of the company; they having been, by previous act, invested with all the authority vested in the then existing board of directors over the Kanawha River. In view of these circumstances, when the board here were making their first quarterly report to the auditor of public accounts, of the number of passengers transported, and the gross amount received for the transportation of freight on the canal, as required by the act passed March the 30, 1860, entitled an act for the assessment of taxes on persons and property, the auditor was referred to the Kanawha board for the required report and payment of tax so far as applicable to the Kanawha portion of the company's improvement. The Kanawha board at first declined to make report or pay the tax, conceiving that the Kanawha River was not included in the provisions of the act. The auditor, however, being advised by the attorney general, called for a report and demanded payment from the company as a corporation aggregate, looking to the president alone as its official organ; and upon this fact being made known to the Kanawha board, they furnished a statement of the gross amount received by them for the transportation of freight on the Kanawha River, and paid the tax thereon out of the funds under their control, but paid it under protest, through the president of the company.

The amount of tax paid by the company under this act, for five months of the fiscal year, was as follows:

Tax at the rate of one mill for every mile of transportation of each passenger transported on the canal		$ 893.01
Tax of one-half of one per centum of the gross amount received by the company for the transportation of freights:		
On the canal	$481.76	
On the Kanawha River	17.92	
		499.68
Total		$1,392.69

The company thus paying this tax, is not to be assessed with any tax on its lands, buildings, boats, or other property which it is authorized by law to hold or have.

Summary statements, prepared by the secretary, are herewith submitted, showing the receipts and disbursements of the company for the year ending September 30, 1860; also the receipts and disbursements from the organization of the company in 1835. A synopsis of the transactions for the part fiscal year will exhibit the following view:*

*The returns from the Kanawha board having been received before the printer's form was distributed, they have been included in the synopsis as now published; so that the balance on the 30th September 1860 appears to be $106,258.02, instead of $86,917.78, as reported to the stockholders.

RECEIPTS.

From revenue:		
Dock	$ 50,128 03	
Canal	238,991 27	
South side connections	425 00	
Blue Ridge turnpike and ferry	217 27	
North river bridge	450 00	
Kanawha road	8,818 48	
Kanawha river	9,864 28	
		$308,894 33
From interest	$2,587 84	
From amounts refunded	1,078 76	
From property sold	4,500 00	
From state loan, for interest	132,429 30	
From original capital stock	43 60	
From new capital stock	7,400,000 00	
From state release	360,214 44	
From state loan, for Kanawha river	40,000 00	
		7,940,853 94
		$8,249,748 27

Sum on hand 1st October, 1859		20,286 98
		$8,270,035 25

DISBURSEMENTS.

Dock		$7,721 52
Tide water connection		842 07
Canal		138,099 03
South side connections		2,009 43
Rivanna connection		2,051 52
Blue Ridge turnpike and ferry		755 26
North river improvement		28,025 55
Kanawha road		9,413 15
Kanawha river		2,116 24
Kanawha river improvement		28,407 80
		$219,441 57
Interest:		
On bonds and notes	$39,067 42	
On bond to the state	1,280 00	
On guaranteed bonds	132,579 30	
On North river bonds	13,200 17	
		186,126 89
State tax		1,374 77
Bills payable		196,619 56

State of Virginia:			
Debt	$5,790,214 29		
Interest	1,301,500 15		
Annuity	118,500 00		
Principal of annuity	350,000 00		
		7,560,214 44	
			8,163,777 23
Balance 30th September, 1860			$106,258 02
Held thus:			
In the Bank of Virginia at Richmond, after deducting warrants afloat		$4,445 78	
In the branch of the Bank of Virginia at Charleston		6,178 40	
Due by the collector on the Richmond dock		11,528 80	
Due by the toll gather at Richmond		4,133 64	
Due by the toll gather at Lynchburg		604 53	
Due by the toll gather at Buchanan		129 95	
Due by the agent on the Kanawha road, after deducting amount due to former agent		472 69	
Due by the collector at Charlston on the Kanawha river*		11,269 83	
Bills receivable		4,976 95	
State stock as per certificate No. 434		42,100 00	
State stock in the hands of the Kanawha board		20,000 00	
Cash in the hands of the Kanawha board		417 45	
			$106,258 02

The amount of bills payable outstanding on the 30th September was as follows:

Negotiable notes		$64,366 99
Bent Creek lumber house bond		2,000 00
Lynchburg level bonds		6,000 00
Third division bonds		23,694 86
Eight per cent. bonds		57,500 00
Total		$153,561 85

Thus maturing:

Bonds past due (of this amount, the company has been enjoined from paying $12,788.69)	$22,694 86	
Payable in the last quarter of 1860	50,700 00	
In the first quarter of 1861	8,375 35	
In the third quarter of 1861	60,596 44	
In the fourth quarter of 1861	2,000 00	
In the year 1862	3,195 20	
In the year 1863	6,000 00	
		$153,561 85

*As to the balance appearing due by the collector at Charleston, Kanawha:

The whole of this amount is reported by him as "tolls in arrear," but stands charged on the books of the company as cash in his hands.

This does not include the bonds of the North River Navigation Company, the payment of which was assumed by the James River and Kanawha Company under the agreement entered into for the transfer of the franchises of the North River Navigation Company, confirmed by an act of the general assembly passed March 16, 1858. The amount issued was $200,000; of which amount $1,000 has been redeemed, leaving outstanding, $199,000.00

Payable as follows:

1st July 1861	$ 2,600.00
1st January 1862	2,000.00
1st July 1862	2,325.00
1st January 1863	2,000.00
1st July 1863	2.000.00
1st July 1866	134,075.00
1st July 1872	54,000.00
	$199,000.00

The trustee appointed under the original agreements providing for the guarantee, holds $42,122 of these bonds, purchased by him on account of the sinking fund, so that there remain $156,878 yet to be redeemed.

Of the six per cent. registered stock of the commonwealth, issued to the company in purchase of two thousand shares of capital stock, and applicable to the extinguishment of an equal amount of the floating debt, under the act of March 23, 1860, there remained on hand on the 30th September, forty-two thousand one hundred dollars.

No bonds have been issued, and no mortgage or deed of trust given, for the purpose of borrowing money to be applied to the completion of the canal to Covington and other works of the company, and the payment of the residue of the float-

DARK PAGE BLEED THRU

ing debt, as authorized by the act of the 23d March, 1860. The board deemed this course obviously proper in view of the negotiations which were for some time pending with Messrs. Bellot des Minieres, Brothers & Company, and which resulted the project of agreement first signed on the 25th July.

The board of public works being required by the act passed March 23d. 1860, to deliver to this company a statement of the number, amount and date of each guaranteed bond of the company canceled by them, it appears that the amount surrendered and canceled up to the 30th September, has been, of the issued:

Under the act 23d March, 1839	$ 874,775.00
Under the act 9th March, 1849	293,900.00
Under the act 12th March, 1849	135,500.00
Under the act 15th March, 1850	360,000.00
Total	$1,664,175.00

Leaving five hundred and ninety-five thousand eight hundred and twenty-five dollars outstanding. The bonds not yet surrendered, may be converted, as the others have been, into six per cent. registered stock of the commonwealth of Virginia, at the pleasure of the holders thereof, upon application at the office of the board of public works.

No report has been received during the year from the agent for the collection of the Hamilton debt.

In reply to the request of the stockholders adopted at their meeting in August, that the Governor would call an extra session of the legislature for the purpose of considering the agreement authorized by them to be entered into with Messrs. Bellot des Minieres, Brothers & Company, the board are informed that he will convene the legislature for that purpose on the 14th of January next. A copy of his letter is herewith communicated. The agreement in question was duly signed

and sealed on the first day of September, and the requisite acknowledgments and certificates for use in France having been subsequently obtained, Mr. Ernest de Bellot des Minieres left this city on the fifth of September and departed from New York by steamer on the twelfth, taking a duplicate of the agreement with him.

On this subject the board have but little additional information to communicate. Advices are daily expected from France. Since your called meeting in August, the French consul has received another dispatch from the minister of foreign affairs of his Government, recommending the scheme of Messrs. Bellot des Minieres, Brothers & Company to his care and requesting him to lend to them all the moral support which may seem to him to comport with their design. In Virginia, the indications of public sentiment are at once decided, and singularly unanimous, in support of the scheme. The prospect of the immediate completion of the canal, through the agency of the proposed Virginia Canal Company, appears to be everywhere received with satisfaction. A brilliant future for Virginia is generally anticipated, from the development of the mineral, agricultural, manufacturing and commercial resources which the completion of the canal would bring about; and this, too, not only without adding to the burdens of the state, but with immediate actual relief to the public finances, and all the material advantages which would result from the expenditure of so large an amount of foreign capital as would be required, to say nothing of the demand for labor, provisions and supplies necessarily incident to such an undertaking. The subject indeed seems to have expanded into national interest, since many of the most intelligent and influential journals of the country have noticed it, with expressions of pleasure, if friendly to the end proposed, or of detraction, if influenced by a spirit of rivalry. In short, no one doubts that the speedy completion of the James River and Kanawha Canal, upon an enlarged and improved plan, is

of immeasurable importance to the power and prosperity, not of Virginia only, but of the whole South.

The board of directors naturally feel a peculiar interest in the success of this undertaking. Their earnest hope and constant effort will be for the accomplishment of an event which they deem worthy of our state and country.

All which is respectfully submitted.

THOMAS H. ELLIS, *Pres.*

Stockholders J. R. & K. Co.

No. 2

Table Showing the Trade of the Dock

Quantities of the Principal Articles entered and cleared in the Richmond Dock, exclusive of the Trade to and from points on James River, during the several periods specified.

Inward Trade Articles.	Year ending September 30, 1855.	Year ending September 30, 1856.	Year ending September 30, 1857.	Year ending September 30, 1858.	Year ending September 30, 1859.	Year ending September 30, 1860.
Coal	13,000 tons	13,764 tons	18,887 tons	18,500 tons	15,062 tons	29,897 tons
Coffee	5,035 bags	7,900 bags	15,073 bags	20,479 bags	33,137 bags	24,408 bags
Fish	21,216 barrels	20,238 barrels	27,796 barrels	23,702 barrels	16,404 barrels	25,470 barrels
Guano	15,220 tons	16,639 tons	18,024 tons	15,568 tons	17,223 tons	22,778 tons
Hay	13,793 bales	19,955 bales	38,268 bales	28,117 bales	20,220 bales	29,813 bales
Ice	2,484 tons	2,137 tons	2,825 tons	9,227 tons	9,139 tons	6,645 tons
Iron, pig and scrap	3,304 tons	2,722 tons	2,732 tons	4,372 tons	6,051 tons	13,333 tons
Lime	18,596 casks	36,635 casks	32,195 casks	35,570 casks	28,349 casks	48,491 casks
Lumber*	4,868,383 feet	4,951,000 feet	5,816,781 feet	6,941,423 feet	27,539,423 feet	25,600,576 feet
Molasses	4,000 barrels	3,335 barrels	2,241 barrels	8,459 barrels	2,905 barrels	7,672 barrels
Oats	13,845 bushels	60,706 bushels	25,463 bushels	10,058 bushels	26,032 bushels	27,035 bushels
Oyster shells	53,000 bushels	23,043 bushels	38,265 bushels	17,308 bushels	6,050 bushels	33,512 bushels
Plaster	8,625 tons	6,218 tons	5,190 tons	6,435 tons	5,832 tons	8,149 tons
Salt	52,500 sacks	59,747 sacks	57,182 sacks	47,154 sacks	25,729 sacks	73,177 sacks
Shingles	2,029,338	1,805,950	1,144,400	1,251,955	3,037,485	3,116,600
Sugar	3,202 hhds.	3,485 hhds.	2,693 hhds.	3,298 hhds.	2,810 hhds.	1,959 hhds.
Tar and rosin	1,650 barrels	956 barrels	1,623 barrels	1,729 barrels	1,604 barrels	2,053 barrels
Wheat*	149,391 bushels	314,456 bushels	207,026 bushels	483,404 bushels	317,806 bushels	360,918 bushels

* The river trade in wheat and lumber is included.

Outward Trade Articles.	Year ending September 30, 1855.	Year ending September 30, 1856.	Year ending eptember 30, 1857.	Year ending September 30, 1858.	Year ending September 30, 1859.	Year ending September 30, 1860.
Coal	275 tons	None	5,263 tons	1,234 tons	1,366 tons	972 tons
Copper ore	708 tons	930 tons	603 tons	264 tons	738 tons	739 tons
Domestics	1,644 bales	3,265 bales	2,504 bales	1,603 bales	2,107 bales	1,708 bales
Flour	335,917 barrels	410,000 barrels	429,299 barrels	525,344 barrels	389,635 barrels	423,194 barrels
Feed	345,530 bushels	365,840 bushels	278,984 bushels	600,880 bushels	394,449 bushels	380,763 bushels
Iron-spikes, &c	2,300 tons	4,005 tons	3,859 tons	1,555 tons	2,527 tons	2,586 tons
Nails	11,950 kegs	14,434 kegs	13,536 kegs	14.583 kegs	18,924 kegs	10,016 kegs
Tobacco	78,600 packages	89,269 packages	90,013 packages	52,069 packages	54,977 packages	56,367 packages
Tobacco	23,857 hhds.	24,404 hhds.	23,416 hhds.	30,547 hhds.	30,308 hhds.	20,434 hhds.
Tobacco	387 tierces	297 tierces	240 tierces	576 tierces	576 tierces	1,117 tierces
Wheat	57,520 bushels	185,288 bushels	83,177 bushels	137,964 bushels	102,309 bushels	143,000 bushels
Assorted Cargoes.						
New York packets	60	80	62	65	58	56
Baltimore packets	40	50	31	79	110	75
Boston packets	29	41	40	46	37	39
Boats and Vessels						
Entered the dock	1,217	1,359	1,395	1,752	2,062	2,123
Left the dock	1,337	1,622	1,549	1,891	2,273	2,337

No. 3.

Richmond, October 20, 1860.

Gentlemen:

I ask leave to present the following report of the condition and progress of the work under my charge during the past year:

The increasing trade of the Richmond dock demands that the wharf on the south side of the dock should be extended down to the ship lock; and the improvements made by the city in the grading and paving of Water Street, renders it also necessary to continue the raising of the wharves and sheds on the north side, as far down as the lower slip. I strongly recommend and hope that these improvements will be made during the following year.

The pivot bridge over the dock at 17th street will be completed in a few days. The north abutment of the old bridge was taken down and a new abutment erected 10 feet inside of the old one, and a pier 17 feet long and 10 feet wide was built between the two abutments, leaving an opening of 31 feet for the passage of vessels. The bridge consists of two iron girders 31½ feet long, two feet wide, and ⅜ths of an inch thick, extending from the pier to each abutment. These girders are from the factory of Messrs. Abbott & Son of Baltimore, and are, I believe, the longest that have ever been rolled in one entire piece in this country. The castings and other iron work were furnished in this city; and the bridge was put together and erected by Messrs. Turner & Brother, under the

superintending of Mr. Joseph Heindl, the contractor. The cost of changing the abutment and building the pier was $1,633.50. The cost of the superstructure will be $3,250. Vessels drawing less than seven feet water can now pass into the upper dock, and thereby afford more room for larger vessels in the lower dock.

A handsome iron bridge, just above the Danville depot, and a substantial stone arch in the line of 13th street, have been constructed over the tide water canal by Messrs. Haxall, Crenshaw & Co. They propose the additional improvement of a stone wall on the southern margin of the canal, between the two bridges. These structures add very much to the general good appearance of the canal and of that part of the city.

Bosher's Dam is very nearly completed. About 815 feet in length of the dam is finished. There remain now to be built up, only the five sluices which were left for the passage of the water during the construction of the dam. High water may prevent this being done this year, but every exertion will be made to bring the whole to a close by the first of next January. The total cost of this dam, so far, has been about $51,000. The estimated cost of completion is $10,000.

Joshua Falls Dam remains, I regret to say, very nearly in the same condition as it was this time last year. For the want of the adequate means, the contractor did not resume work on this dam before August last. He commenced then with a small force, and will probably build the southern section of the dam—which is about 200 feet in length—up to ordinary low water, and can finish this part of the dam in the early part of next summer. The same contractor also entered into a contract to rebuild the northern section of the dam, but from some misapprehension in regard to the terms of the contract, he has declined its execution. The company must therefore take some other steps to insure the speedy completion of this dam; and I would recommend that they employ a competent force and have the work done under the super-

intendence of Mr. Grant. Every exertion should be made to have it completed next year.

A contract has been entered into with Mr. Charles Scott, to construct a new dam across the north arm of the river at Lynchburg, which will be an extension of the water-works dam to the northern shore. The work has been commenced, and the contract requires that it shall be completed by the first day of January 1862. This dam is intended to supersede the embankment on Daniel's Island and the three small dams connecting Daniel's, Jones' and Pettyjohns' Islands with the northern shore of the river.

After the disastrous freshet of 1857, the board became painfully alive to the great insecurity of the guard bank on Daniel's Island. It has suffered two tremendous breaches from the freshets of 1847 and 1857, which were repaired at an expense of about $15,000, and involved the company in the loss of a much greater amount from the suspension of navigation, besides causing great inconvenience and loss to the citizens of Lynchburg, from the cutting off the supply of water for domestic and manufacturing uses. The policy of building a continuous dam across the river was then strongly recommended to the board, as a substitute for the plan that had been adopted for the raising of the Lynchburg level; but the board, while they conceded the importance and superiority of the plan of a continuous dam, decided to adhere to their original plan of raising the old dams and the guard bank, as it was much the cheaper, and better adapted to the then crippled state of the company's affairs. The original plan had been executed only so far as to raise the three small dams—the waterworks dam and the guard bank being yet untouched—when the company was relieved from its pressing embarrassments; and the board then decided to abandon the first plan, and carry out the more desirable and permanent one, of a continuous dam across the river.

When we consider the magnitude of the interests, both of the company and of the city, which are involved in the stabi-

lity of the works at Lynchburg, it must be conceded that the board have acted wisely in thus placing them in a state of the utmost security and permanency.

The North River improvement is completed, with the exception of about half a mile of tow-path above dam No. 1, and the walling around the basin at Lexington, which will be completed by the end of the year.

The total amount of money which has been expended by the James River and Kanawha Company for the execution of work on the North River improvement, thus far, is $80,716. The estimated cost of completing the work, including the cost of basin and gauge dock, is $10,000.

The reports of the superintendents of repairs will show the present condition of the canal and the repairs that have been made during the year.

The present condition of the canal is better than it was during the previous year, though it is still far from being in a perfect state of repair.

The bars in the ponds, especially the one in the Judith pond, continue to be serious obstacles to the perfect navigation of the canal.

The steam dredging machine which was purchased for the removal of those bars, unfortunately proved to be too large to pass through some of the locks. It was ordered to be fourteen feet wide, which was thought to be narrow enough, and was made according to order; but being square on the sides, and drawing more water than was supposed, it hung in the curves of the old locks below the water line, and could not be made to pass through them without the great delay and inconvenience of unloading at each of those locks. Being thus incapacitated for the uses for which it was intended, it was thought best to work it as the tail of the ship lock and in the dock, where it can be economically and permanently employed. But as the necessity still exists for employing one of these machines on the second division, I recommend that another one be ordered of rather lighter construction and different

shape in the hull. The one now in use works well, and I am satisfied of the economy and necessity of working these machines at various points on the line.

In view of the probability (I may say certainty) of the speedy extension of the canal above Buchanan, whether under the present or a different organization, it is my duty to call your attention to the fact, that although the third division has been definitely located and surveyed for condemnation, yet such a long time has elapsed since the field work was done, that the most of the stakes have been removed and the land marks obliterated; and it will be necessary, before the work can be offered for contract and the land damages assessed, that the location shall be retraced and the land marks restored; and for that purpose a corps of engineers should be placed in the field at least sixty days before the contemplated letting of the work. I bring this matter to your notice, that you may take such steps as you may think proper, in order to prevent any unnecessary delay in the prosecution of the work.

Respectfully submitted,

E. LORRAINE,

Chief Engineer.

To the President and Directors J. R. & K. Co.

No. 4.

Richmond, October 1st, 1860.

Sir:

I respectfully refer you to the following report, for the necessary information relative to the repairs made under my supervision, on the dock, the five locks, and on the first division of the canal, during the last fiscal year, together with such other information in connection with the improvement as may be worth communicating:

The line was favored by the elements during the year; there were no breaches, and no bad leaks to interfere with the running of boats; and there was no interruption by high water or by low water, except on the 4th level of the canal, where boats were sometimes detained when the water was low in Bosher's pond. The canal was frozen over and navigation suspended from the first to the thirteenth of January, and again on the third, fourth and fifth days of February.

The navigation was suspended in part from the first to the fifteenth of July, to make repairs to certain works of art, which could not be done with the line open to trade. Such a course has been pursued at the same period every summer, commencing in 1850, because there is less trade and travel then than at any other season, except in January, when the weather is unsuitable, and the forces generally not organized in time.

The number of master mechanics and overseers allowed by the board of directors, less one, were retained in service. But in consequence of the wages of the white labor, and the hires

of the slaves not having been paid when due, there was considerable difficulty experienced in keeping up an organization on the line. The masons, quarrymen, blacksmith, and one carpenter (all under the charge of the master mason) quit work on the first of November, and did not resume their places again until the middle of April. Some of the other carpenters also quit from time to time. The force of slave labor, authorized to be hired on the first of January, was not secured in full, and, in fact, the complement of hands for each of the old squads were not all hired until within the last few weeks.

One small additional squad under the charge of a foreman mason, was organized between the middle of April and the last of August. Another additional squad, authorized to be made up, was not attempted, in consequence of the difficulty of procuring labor. With these difficulties to contend with in the hiring of hands, it will be perceived that I can only report an average of the labor worked; which I will endeavor to make approximate as near as possible to what is right.

The force consisted of 1 master mason, 2 master carpenters, 4 overseers, 1 supply agent, 3 stone masons, 13 carpenters, 8 quarrymen, 3 blacksmiths, 8 boatmen, 8 cooks and 38 common laborers, making a total of 89—of whom 18 were white men, 1 a free man of color, and 70 slaves hired by the year.

The force, under the head of masonry, quarried and shipped to different points on the line about five hundred cubic yards of granite; built three new bridge abutments; built new sustaining walls to locks Nos. 21 and 29, and repaired the masonry behind the chambers of those and other composite locks. They have, besides, cut stone for new sustaining walls at lock No. 32, and for two new bridge abutments.

The carpenters built 4 new capstans at the ship lock for opening the gates, and made some repairs about the lock and dock. They put up new superstructures at the bridges over the Tide water connection, on 10th, 11th and 12th streets, and repaired the lock gates and foot bridges on the said connection. They put up a new superstructure at the bridge on

7th street in this city; framed and put in 38 lock gates; constructed 1 new dredge boat and 3 lighters; put new superstructures at 3 tow-path bridges; framed 2 new kitchens; put in new wood work entire in the outlet lock leading to Reins' Island; put on new cap sills, and made other necessary repairs to the chambers and upper wings of 14 other composite locks; made repairs to 21 old lock gates, and 11 farm bridges; repaired 3 lock houses, 2 rock boats, 4 house boats, 7 lighters; put in trunks and apertures for supplying water power at 2 mills, and made repairs to Seven Island and Joshua Falls Dams.

The four squads of common labor were employed in assisting the mechanics on the repairs of the locks, opening ditches, clearing the vegetable growth from the banks. All the rest of the time they could be spared from other necessary work, they were employed dredging the mud from the bottom of the canal, using it for raising and dressing the face of the tow-path, it having proved to be the very best material that can be used for such a purpose. It combines as much sand as is necessary to make a dry and solid track for teams, and is at the same time much less liable to abrasions, when put on the face of the banks, than any other material.

The supplying of rations, oil, provender, etc., on company account, by the use of its own boat, under charge of its own agent, was carried on very satisfactorily, and on much better terms than it could have been done by contract—the average cost of the rations, all expenses included, being $1 each, and the oil 75 cents per gallon.

Respectfully submitted,

E. L. CHINN,

Supt. of Repairs.

Col. Thomas H. Ellis, Pres. J. R. & K. Co.

No. 5.

Holcomb's Rock, October 5, 1860.

Sir:

The fiscal year having closed, I again lay before you my report of the condition of that portion of your improvement under my supervision, the operations of the force, and such other information that I deem of any interest to be reported.

The condition of the canal at the present time is perhaps as good as it has been at any time heretofore since its construction, especially when taken as a whole. The embankments in many places have been strengthened and riprapped; all the stone dams have been filled in behind with stone; a large number of new lock gates have been constructed and put in during the year; and but for the sand bars, which have been accumulating at the mouths of streams emptying into the different pools ever since the dams were built, I should be enabled to say that the second division was in much better condition than it ever has been heretofore. No breach having occurred on this division during the year, shows conclusively that the banks are becoming more and more permanent every year.

There has been no cessation to the navigation during the year between Lynchburg and Buchanan, except a few days in January, occasioned by ice. There was fifteen days' suspension between Lynchburg and the combined locks at the head of Joshua Falls Pond, occasioned by drawing off the Lynchburg level to do necessary repairs about the water works guard lock. In the month of July there were some obstructions to the navigation on the second division, and

also on the North River Canal. On the second division, it was caused by extreme low water in the river, and by the leaky condition of the Blue Ridge Dam, which rendered the water too shallow at the sand bars to pass boats fully laden. This, however, was but of short duration, as the depth of water was increased as soon as our machines could do it.

On the North River Canal, the leaky condition of several of the dams, and especially the one near Edmundson's mills, was cause of some interruption to the navigation. The back of this dam was badly sheeted, and has been in a leaky condition ever since its construction.

It became necessary to draw the water off of this dam, put in new draw gates, and new sheeting, where necessary, and gravel behind the dam. This occupied about ten days; after which there was no obstruction to the navigation. The only breach which occurred during the year was on the North River Canal, which happened on the 4th of December last, near Wm. W. Major's mill. It was mended in six days, by the assistance of two squads of hands, from the second division, and caused a suspension of the navigation for three days.

Owing to the embarrassed condition of the company on the 1st of January, I was unable to procure the number of hands authorized to be hired for this division and the North River improvement. Instead of 54 hands, authorized to be hired, I could only procure 44 by the 1st of March. Three others have been hired since, one on the 1st of June, and two others from the 1st and 12th of September to the end of the year. This force was lessened by two deaths. One was a man belonging to George H. Damron as guardian, who died March 22d, with typhoid fever. The other was a man named Jonas, belonging to Robert Ridgeway, Sr., who was accidentally drowned at lock No. 18, on the 19th of May—leaving the force to consist, on 19th of May, of 4 black and 4 white carpenters, 2 smiths, and 36 common laborers. Four of these laborers were consigned to the North River improvement, and

the remainder distributed to the best advantage on the second division.

The carpenters' force on the second division, were 4 black and 3 white carpenters, a cook and a boy. This force did the following work for the quarter ending 31st of December, 1859, viz: Built new windlass frame at head of Joshua Falls Pond; put on new balance beam at combined locks; put in new wicket, at lock No. 47; put new roadway beams under Sackett's Bridge; put in new head gates at lock No. 7; new tail gates at guard lock No. 2; new tail gates at lock No. 8; new tail gates at lock No. 9; made and put in trunk on North River Canal, to supply Messrs. Jordan, Winn & Co. with water power; built 3 new change bridges across lock; made new railroad to draw out boats; made on new skiff, 24 new wheelbarrows, and repaired 20 old ones, put necessary lining on lock gates, and repaired bridges, from the head of Joshua Falls Pond to Wasp Rock Dam, and put in a new rack at the cement mills.

They did the following work during the quarter ending 31st of March, 1860, viz: Pulled out and repaired house boat No. 3; repaired 2 mud flats; pulled out and repaired one mud machine: built one new flat for mud machine; made 30 wheelbarrows, and repaired 25 old ones; made and put in three trunks on the Lynchburg level, to furnish water power to A. G. Dabney, Messrs. Langhorn & Morris, and George S. Duiguid; spliced one heel post at lock No. 51; made a full set of lock gates for lock No. 3, and head gates for lock No. 4, on the North River Canal, and pulled out and repaired house boat for Thomas Oney. The charges for timber, iron and labor furnished from second division, on account of construction North River Canal, amount to $1,229.

They did the following work during the quarter ending 30th June, viz: Pulled out and repaired boat Waterwitch; put in new head gates at guard lock at Pedlar Dam; put new head gates in guard lock at Judith's Dam; new head gates in guard lock at water works dam; put in a crib below the

abutment of Dolan's Dam, 50 feet long, 10 feet wide, and 7 feet high; a crib at the north end of said dam, 19 feet long, 8 feet wide, and 6 feet high; built 57 panels of fencing around garden lot at lock No. 21; built new waste gates at Weir River lock No. 5; made a screw pump 16 feet long, and 16 inches in diameter; made 30 wheelbarrows, painted carpenters' house boat, and repaired several horse carts.

They did the following work during the quarter ending 30th September, viz: Built about 300 feet in length of coffer dams above and below the water works guard lock, for the purpose of putting in foundation of sustaining wall, which was undermined, and had given way; put in a timber foundation below the feeder at Lynchburg, 50 feet long, by 35 feet wide, and planked over the same; spliced heel post at lock No. 48; made and put in tank at lock No. 3, for Robert G. Scott to take water from the canal; repaired 4 flat boats; built a farm bridge on Tyree's farm; repaired Beaver Creek Aqueduct; repaired one mud machine; built a crib across the mouth of Reed Creek, 50 feet long, 10 feet wide and 6 feet high; put in head gates at lock No. 49, tail gates at lock No. 10, and head gates at lock No. 3; put in head gates at guard lock at Big Island Dam, and head gates in guard lock at Coleman's Falls Dam.

The force of common laborers was organized as heretofore, into three squads, each with 10 men and an overseer. This force, when not engaged in dredging the canal and attending to the ordinary repairs, have been engaged in raising the towing path and protecting it with riprap at such points along the line as most needed it.

About the 1st July it became necessary to concentrate the whole force at the water works dam, in order to take down and rebuild speedily one of the retaining walls of the feeder at Lynchburg. The wall on the south side of the guard lock had been undermined by the action of the water passing through the wicket next to the wall, and was likely to fall down and cause great injury to the guard lock. This was a

very expensive piece of work to the company, on account of the great amount of coffer damming necessary to be built before the masonry could be commenced. The pumping was also a very expensive item in this job, as it had to be kept up night and day, in order to enable the foreman mason to found the wall on solid rock. This was effected 8 feet below the foundation of the guard lock, which rests upon timbers. This work was done in a substantial manner by the foreman mason, Philip Powers. An apron was extended 50 feet below the gates of the feeder; which will prevent any further undermining of the sustaining wall which gave way.

North River Improvement

The force employed to keep this improvement in repair, was one foreman carpenter (who acted in the capacity of overseer), one carpenter employed constantly, two white men employed a part of the year as rough carpenters or laborers, as the exigency of the work required, and four negro laborers. I am gratified to have it in my power to say that this force, though small, has, under the energetic supervision of the foreman carpenter, kept this improvement in good condition, and performed a large amount of work properly chargeable to construction account, as the following exhibit will show:

During the first quarter, ending 31st December, 1859, they did the following work, viz: Built lock house at lock No. 13; straightened canal bank at lock No. 12; mended the breach at Major's Mill, with assistance of two squads from second division; boated stone, and riprapped banks at same breach; cut and hewed the timber for bridge at William W. Major's Mill; and built a kitchen at lock house No. 10.

During the second quarter, ending 31st March, rebuilt flat for William W. Major, which had been damaged by breach

in canal; built the bridge across canal at Major's Mill, 125 feet long (dispensing with abutments); made 8 wheelbarrows; pumped out water at lock No. 4, and put in a full set of lock gates, two hollow quoins six feet long, of heart pine, and framed and put up bridge No. 3.

During the third quarter, ending 30th June, cut and hewed the timber in the woods for the lock gates of locks Nos. 14 and 16; framed one pair of same, and put bridge across lock No. 4; hand railed bridge at John W. Hamilton's; put in lock gates at lock No. 3; widened the tow-path on pond No. 3, and built new foot bridge over the canal at Mrs. Miller's.

During the fourth quarter, ending 30th September, they did the following work, viz: Drew off the water at dam No. 9, and cleaned out lock No. 16; graveled, in part, dams Nos. 3, 4, 5, 6, 8, 9 and 10; put in two new gates at lock No. 14; two new gates at lock No. 16; made four new draw gates, and did other repairs to dam No. 6; made two new gates for waste weir at Edmundson's mill; cut and hewed stringers for four farm bridges on the land of Wm. W. Major; built road bridge over the canal at Edmundson's mill; framed lock gates at lock No. 1 (Reid's Dam); blasted off ledge of rock above lock No. 6, to give better entrance to the lock; besides which they did many other repairs, such as ditching, graveling the banks, etc.

The work necessary to be done on this improvement during the next fiscal year will be as follows, viz: Two lock houses to be built—one at lock No. 3, and the other at lock No. 11; lock gardens to enclose at locks Nos. 3, 8, 10, 13, 16 and 19; a carpenter's shop, lumber shed and stable to be built at lock No. 10; some lock gates perhaps to be put in; tow-path to be made around pond No. 5; five farm and road bridges to be replaced; two ferry flats to be built—besides the necessary repairs to the following works of art, viz: 10 dams across North River, 23 locks, 12 lock houses, 12 farm and road bridges, 10 change bridges, 5 aqueducts and 4 ferries to be kept up.

The work which will be necessary and indispensable to be done on the second division, as far as I can now ascertain, is as follows, viz: About 24 new sets of lock gates to put in; 3 or 4 farm and road bridges to be constructed anew; a large lumber shed to be erected for the preservation of timber at Pedlar dam; a toll house and a shed over the gauge dock at Lynchburg; a substantial waste weir of masonry, 100 feet in length, on the Lynchburg level, for the escape of the surface water on this level when the machinery is not in motion—together with the usual repairs to be kept up, consisting in part of the following important works of art, viz: 15 dams, including three wooden dams between the islands above Lynchburg, 43 locks, 42 lock and toll houses, 3 aqueducts, 10 road and farm bridges, 15 tow-paths and 24 change bridges over locks, 2 rope ferries to keep up—besides a large number of culverts, waste weirs and over-drains—all of which occasionally need some repairs.

The laboring force (to place it on the most economic footing) should be adequate to keep the canal in good navigable condition, and do such extra work where it is needed to place the canal, if possible, beyond the contingency of being seriously damaged by high tides in the river. I would therefore recommend to the company that the laboring force on this division should consist of at least 3 squads, and each squad to consist of 13 men and an overseer—two of the squads to have as at present, each a common dredging machine—and the other to have charge of a steam dredger. This force, with the present force of carpenters—augmented if exigencies require it—can, I think, if worked properly, keep the canal in good navigable condition, and also protect every point on the canal where there is any likelihood of the banks being damaged by a high tide.

I recommend that the laboring force on the North River improvement for the next fiscal year, be increased to 9 laborers and 1 cook, and that the carpenters' force remain the same as at present constituted.

Raising the Lynchburg Level

Nothing has been done to this work since my last annual report, with the exception of the raising of the tow-path to its required height, between Sacket's Bridge and the Blackwater Aqueduct.

The feeder canal was brought into use, by the action of the common council of Lynchburg, about the 1st of July, and answers well the purpose for which it was intended.

As your law agent, I have nothing to report adverse to the interest of the company. I trust that the action taken by the board, at their late meeting in Lynchburg, in reference to the suits pending in the courts of Amherst and Nelson, may lead to their speedy and satisfactory termination.

Though I have not all the data to estimate the liabilities incurred on account of expenses and repairs for this division during the last fiscal year, yet I have enough, I think, to warrant me in saying that they will not exceed per mile those of the previous year.

All which is respectfully submitted by

Your obedient servant,

JAMES M. HARRIS,

Sup. Rep. 2d Div & N. R. Improvement.

Col. Thomas H. Ellis, Pres. J. R. & K. Co.

TABLE NO. 1.—*Showing the Quantities and Probable Value of All Articles conveyed on the Canal of the James River and Kanawha Company, which were cleared at the Toll Gatherer's Office in Richmond during the Fiscal Year ending 30th September, 1860, Classified so as to exhibit the Quantities and Probable Value of the Products of the Forest, of Agriculture, of Mines, of Manufactures, and of Merchandise generally.*

	Brought down the Canal		Carried up the Canal		Totals	
PRODUCTS	Pounds Weight	Value	Pounds Weight	Value	Pounds Weight	Value
The forest.....	49,581,750	$136,445 00	4,308,562	$19,613 18	53,890,312	$156,058 18
Agriculture.....	55,371,220	2,820,071 59	4,180,328	146,795 53	59,551,548	2,966,867 12
Mines.....	127,519,441	148,747 30	31,077,005	97,967 87	158,596,446	246,715 17
Manufactures.....	9,024,174	98,309 56	9,820,722	299,261 09	18,844,896	397,570 65
Merchandise.....	157,486	59,598 60	72,477,812	13,106,825 95	72,635,298	13,166,424 55
	241,654,071	$3,263,172 05	121,864,429	$13,670,463 62	363,518,500	$16,933,635 67
Tons of 2,000 lbs.	120,827	.....	60,932.2	.....	181,759.2	.....

R. B. SNEAD, T. G.

Toll Gatherer's Office, Richmond, Oct. 1, 1860.

No. 7

TABLE No. 2.—*Showing the Quantities and Probable Value of All Articles conveyed on the Canal of the James River and Kanawha Company, which were cleared at the Toll Gatherer's Office in Lynchburg during the Fiscal Year ending 30th September, 1860, Classified so as to Exhibit the Quantities and Probable Value of the Products of the Forest, of Agriculture, of Mines, of Manufactures, and of Merchandise generally.*

PRODUCTS	Brought down the Canal		Carried up the Canal		Totals	
	Pounds Weight	Value	Pounds Weight	Value	Pounds Weight	Value
The forest	30,448,663	$45,801 64	8,599,222	$39,653 68	39,047,885	$85,455 32
Agriculture	40,122,118	1,221,248 89	2,067,485	47,589 06	42,189,603	1,268,837 95
Mines	19,134,779	182,034 03	356,127	1,600 66	19,490,906	183,634 69
Manufactures	11,531,379	926,724 02	300,428	16,108 82	11,831,807	942,832 84
Merchandise	633,453	135,910 28	2,269,773	73,611 83	2,903,226	209,522 11
	101,870,392	$2,511,718 86	13,593,035	$178,564 05	115,463,427	$2,690,282 91
Tons of 2,000 lbs.	50,935.2		6,796.5		57,731.7	

W. HENDERSON, T. G

Toll Gatherer's Office, Lynchburg, Oct. 1, 1860.

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TABLE NO. 3.—*Showing the Quantities and Probable Value of All Articles conveyed on the Canal of the James River and Kanawha Company, which were cleared at the Toll Gatherer's Office in Buchanan, during the Fiscal Year ending 30th September, 1860, Classified so as to exhibit the Quantities and Probable Value of the Products of the Forest, of Agriculture, of Mines, of Manufactures, and of Merchandise generally.*

	Carried down the Canal		Brought up the Canal		Totals	
PRODUCTS	Pounds Weight	Value	Pounds Weight	Value	Pounds Weight	Value
The forest	2,539,948	$9,661 00			2,539,948	$9,661 00
Agriculture	3,134,346	136,198 54			3,134,346	136,198 54
Mines	3,678,755	485 83			3,678,755	485 83
Manufactures	159,666	28,846 25			159,666	28,846 25
Merchandise	52,114	11,147 00			52,114	11,147 00
	9,564,829	$186,338 62			9,564,829	$186,338 62
Tons of 2,000 lbs.	4,782.8				4,782.4	

Toll Gatherer's Office, Buchanan, Oct. 1, 1860.

A. FINNEY, T. G.

No. 9

TABLE NO. 4.—*Of the Quantities and Probable Value of all the Articles conveyed on the James River and Kanawha Canal during the Fiscal Year ending 30th September, 1860, Classified so as to Exhibit the Products of the Forest, of Agriculture, of Mines, of Manufactures, and of Merchandise generally.*

	Brought down the Canal		Carried up the Canal		Totals	
PRODUCTS	Pounds Weight	Value	Pounds Weight	Value	Pounds Weight	Value
The forest.....	82,570,361	$191,907 64	12,907,784	$59,266 86	95,478,145	$251,174 50
Agriculture.....	98,627,684	4,177,519 02	6,247,813	194,384 59	104,875,497	4,371,903 61
Mines.....	150,332,975	331,267 16	31,433,132	99,568 53	181,766,107	430,835 69
Manufactures.....	20,715,219	1,053,879 83	10,121,150	315,369 91	30,836,369	1,369,249 74
Merchandise.....	843,053	206,655 88	74,747,585	13,180,437 78	75,590,638	13,387,093 66
	353,089,292	$5,961,229 53	135,457,464	$13,849,027 67	488,546,756	$19,810,257 20
Tons of 2,000 lbs.	176,544.6	.....	67,728.7	.....	244,273.3	.....

WM. P. MUNFORD, SEC.

Office James River and Kanawha Co.
Richmond, Oct. 1, 1860.

No. 10

Statement showing the Quantities of the Principal Articles conveyed on the Canal of the James River and Kanawha Company, several periods specified

Year Ending.	ARTICLES BROUGHT DOWN THE CANAL																ARTICLES CARRIED UP CANAL								
	Hhds. Tobacco.	Boxes Manufactured Tobacco.	Hogsheads Stems.	Barrels Flour.	Bushels Wheat.	Bushels Corn.	Bushels Oats.	Tons Pig Iron.	Tons Bar Iron.	Tons Coal.	Tons Stone.	Tons Copper Ore.	Tons Bar and Pig Lead.	Dried Fruit.	Barrels Apples.	Cords Wood.	Sacks Salt.	Tons Plaster.	Tons Coal.	Tons Castings.	Tons Bar Iron.	Barrels Fish.	Kegs Nails.	Tons Guano.	Total Tonnage Each Year.
November 30, 1842 (11 months)	20,800	23,006	805	60,139	167,603	8,343	2,986	2,406	93	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	112,707
October 31, 1843 (11 months)	18,985	17,158	717	63,886	201,825	3,534	1,777	2,366	54	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	113,742
October 31, 1844	11,851	33,323	1,053	71,442	281,703	2,609	641	2,588	127	18,418	3,983	.....	.....	...	.....	.....	28,205	1,010	130	....	.....	.....	.....	.....	122,695
October 31, 1845	15,028	39,717	1,547	79,190	299,982	1,700	500	3,865	339	36,446	10,780	.....	.....	.....	.....	.....	19,327	4,860	204	....	.....	.....	.....	.....	134,759
October 31, 1846	12,220	44,146	1,429	113,890	222,474	814	740	6,697	74	23,462	10,595	.....	.....	.....	.....	.....	24,968	4,190	365	....	.....	.....	.....	.....	125,653
October 31, 1847	14,467	60,815	1,598	76,767	242,937	145,711	4,825	8,533	109	27,446	11,651	.....	159	....	.....	.....	32,366	3,548	875	436	260	3,580	4,522	.....	146,442
October 31, 1848	9,255	58,873	1,294	91,692	327,483	51,314	4,562	8,056	500	30,797	10,594	.....	122	....	.....	.....	34,889	5,894	1,735	156	385	2,805	5,602	.....	155,950
October 31, 1849	14,046	53,717	1,196	137,315	495,991	147,606	7,601	8,445	227	37,997	9,390	.....	165	....	.....	.....	40,911	6,847	1,653	731	521	3,029	7,126	.....	175,201
October 31, 1850	11,335	64,170	1,463	128,250	490,013	47,341	2,940	6,182	126	35,937	17,190	.....	285	....	.....	.....	28,161	5,551	3,287	408	643	2,521	10,816	.....	177,381
September 30, 1851 (11 months)	7,135	60,673	1,040	95,473	445,747	16,316	2,459	3,352	18	27,531	28,528	.....	343	....	.....	8,011	29,022	5,372	2,916	168	2,657	3,958	5,627	1,977	174,615
September 30, 1852	11,999	102,616	1,509	110,231	506,056	9,035	3,257	1,307	41	21,752	22,729	.....	622	....	.....	7,958	40,246	6,366	4,558	362	4,974	4,563	11,110	3,064	210,040
September 30, 1853	9,395	11,840	2,456	114,932	682,694	10,704	1,927	3,195	88	21,098	14,915	.....	649	....	.....	6,994	38,390	10,094	5,354	505	5,357	5,183	13,661	3,573	231,032
September 30, 1854	11,742	72,224	1,628	109,298	760,849	16,340	531	2,353	17	20,533	11,535	.....	400	....	.....	7,620	33,489	6,968	6,114	384	4,796	4,768	14,101	7,515	225,613
September 30, 1855	12,876	52,689	1,360	106,881	482,144	12,923	1,578	4,339	35	21,152	7,028	.....	225	....	.....	7,396	34,341	8,109	5,373	270	3,235	5,221	11,827	7,696	201,721
September 30, 1856	14,954	43,959	1,755	117,034	687,959	17,311	1,984	5,166	....	19,084	7,560	.....	78	....	.....	5,623	31,777	6,213	5,311	211	4,131	5,311	12,246	6,654	194,626
September 30, 1857	10,428	39,931	1,485	94,183	619,065	5,069	2,248	5,640	624	28,828	3,475	.....	.....	....	.....	6,406	26,577	4,033	7,734	247	642	4,669	9,280	7,045	183,363
September 30, 1858	16,285	48,408	1,138	112,969	926,482	10,457	690	5,298	....	17,477	3,309	226	507	....	.....	6,076	27,621	6,112	6,226	62	486	5,315	11,364	6,304	196,991
September 30, 1859	13,183	57,181	1,378	104,434	723,479	12,865	999	4,814	....	14,156	7,015	1,072	371	226	2,103	5,689	25,586	5,145	6,631	259	2,601	6,246	14,288	8,209	206,295
September 30, 1860	15,268	53,076	2,308	78,711	695,388	10,933	577	4,177	....	21,305	20,898	1,064	109	171	307	9,540	26,045	9,075	9,724	362	2,518	3,952	16,390	9,072	244,273

No. 11

Statement showing the amount of Actual Tonnage, the Equivalent Tonnage for one mile, the Equivalent Through Tonnage, the Annual Average Rate of Tolls per ton per mile, the amount of Tolls on Tonnage and on Passengers, the amount for Rent of Houses, Lots and Water Power, the Gross Receipts from Tolls, Rents and Scale House Fees, the Annual Expenses and Repairs of the Canal (including damages by freshes), with Salaries of Agents and the Net Revenue for the peroid stated.

	Actual Tonnage Conveyed on the Canal.	Equivalent Tonnage One Mile.	Equivalent Through Tonnage.	Average Rate of Toll per Ton per Mile, Cents.	Amount of Tolls on Tonnage.	Amount of Tolls on Passengers.	Amount of Rent for Houses, Lots and Water Power, and Scale House Fees.	Gross Receipts from Tolls, Rents and Scale House Fees.	Expenses and Repairs of Canal (including damages by freshets), Salaries of Agents, &c.	Net Revenue from the Canal.
From January 1 to November 30, 1841.....	110,141	6,426,271	44,015	1.81	$116,382 93	$5,368 36	.....	$121,751 29	$62,140 96	$59,610 33
From December 1, 1841, to November 30, 1842..	112,707	5,802,007	39,740	1.78	103,430 94	5,797 74	5,584 28	114,812 97	95,439 02	19,373 95
From December 1, 1842, to October 31, 1843....	113,742	6,258,896	42,869	2.62	163,595 87	4,299 05	7,826 93	175,721 85	74,706 98	101,014 87
From November 1, 1843, to October 31, 1844....	122,695	6,009,719	41,162	2.88	173,569 29	4,189 29	9,630 06	187,388 64	54,337 56	133,051 08
From November 1, 1844, to October 31, 1845....	134,759	7,108,163	48,686	2.56	181,772 11	5,313 69	6,565 25	193,651 05	65,131 47	128,519 58
From November 1, 1845, to October 31, 1846....	125,653	7,640,263	52,331	2.15	163,930 58	7,258 04	7,189 15	178,377 77	51,889 29	126,488 48
From November 1, 1846, to October 31, 1847....	146,442	8,588,821	58,828	2.27	194,896 81	8,708 79	8,155 54	211,761 14	71,342 74	140,418 40
From November 1, 1847, to October 31, 1848....	155,950	8,998,032	61,630	2.18	196,628 89	6,241 22	5,912 09	208,755 20	83,128 14	125,627 06
From November 1, 1848, to October 31, 1849....	175,210	10,319,149	70,680	2.21	237,188 89	4,347 44	8,193 45	249,729 78	74,090 29	175,639 49
From November 1, 1849, to October 31, 1850....	177,381	9,708,415	66,496	2.33	226,547 56	3,791 58	9,345 35	239,684 49	83,715 47	155,969 02
From November 1, 1850, to September 30, 1851..	174,614	9,983,968	68,383	2.10	209,500 41	3,943 65	8,669 51	222,113 57	64,146 78	157,966 79
From October 1, 1851, to September 30, 1852....	210,040	16,224,732	82,569	1.64	264,860 51	4,350 30	8,238 16	277,448 97	95,258 50	182,190 47
From October 1, 1852, to September 30, 1853....	231,032	19,545,183	99,467	1.43	278,808 45	5,190 15	9,514 32	293,512 92	123,144 11	170,368 81
From October 1, 1853, to September 30, 1854....	225,612	21,873,334	111,315	1.27	277,731 52	5,081 01	8,785 47	291,598 00	130,942 90	160,655 10
From October 1, 1854, to September 30, 1855....	201,721	19,600,825	97,205	1.12	220,972 25	2,896 18	10,140 74	234,009 17	126,723 10	107,286 07
From October 1, 1855, to September 30, 1856....	194,626	18,166,552	92,451	1.07	196,892 49	2,304 97	11,519 59	210,717 05	104,340 65	106,376 40
From October 1, 1856, to September 30, 1857....	183,363	13,961,039	71,230	1.27	179,495 70	2,129 05	9,628 36	191,253 11	181,753 47	9,499 64
From October 1, 1857, to September 30, 1858....	196,991	17,174,512	87,148	1.18	203,475 00	2,183 86	9,751 66	215,410 52	221,766 86	6,356 34
From October 1, 1858, to September 30, 1859....	206,295	15,946,077	81,154	1.03	172,849 62	2,125 40	14,087 18	189,062 20	127,833 56	61,228 64
From October 1, 1859, to September 30, 1860....	244,273	17,650,750	89,826	1.30	224,179 90	5,076 64	9,734 73	238,991 27	133,062 85	105,928 42

No. 12

Table Showing the Number of Tons and Amount of Tolls under each rate in the Tariff, for the year ending September 30, 1860.

RATE OF TOLL	TONS.	TOLLS.
¼ cent per ton per mile	87,851.	$9,460 56
½ cent per ton per mile	40,241.4	19,524 01
1 cent per ton per mile	43,300.4	27,792 81
1½ cents per ton per mile	16,584.3	35,247 53
2 cents per ton per mile	15,625.8	38,642 64
2½ cents per ton per mile	17,835.5	16,953 81
3 cents per ton per mile	10,496.1	40,408 50
4 cents per ton per mile	12,912.5	35,015 12
	244,847	$223,044 98
Penalties		291 64
Passengers		5,076 64
Boat tolls		1,686 23
		$230,099 49
Refunded		731 34
		$229,368 15

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NO. 13.

Monthly Receipts of Dockage—Commencing September 1, 1854.

MONTHS.	1854–55.	1855–56.	1856–57.	1857–58.	1858–59.	1859–60
September	$2,400 00					
October	$3,100 00	$3,800 00	$3,000 00	$3,430 42	$4,600 00	$5,837 95
November	3,200 00	3,316 89	3,250 00	2,560 00	3,620 31	4,714 85
December	2,097 71	2,942 21	3,398 91	3,641 11	3,146 94	4,155 90
January	1,957 80	350 00	350 00	1,634 61	2,005 30	1,750 00
February	1,668 00	.....	1,556 92	2,750 00	3,500 00	2,900 00
March	2,837 21	4,385 48	4,886 46	3,905 16	4,300 31	4,974 36
April	2,960 30	3,384 00	3,500 00	3,504 12	3,359 53	4,080 00
May	2,600 00	3,750 00	3,400 00	2,850 00	3,790 00	3,058 00
June	2,406 72	2,712 14	3,261 73	3,295 10	3,770 03	4,628 17
July	2,750 63	2,880 00	2,600 00	3,450 00	4,132 00	3,938 70
August	3,784 23	4,462 25	5,000 00	4,700 00	4,900 00	4,808 16
September	3,609 86	4,731 31	5,349 91	5,955 60	5,291 45	5,281 94
Total	$32,972 46	$36,714 28	$39,553 93	$41,676 12	$46,415 87	$50,128 03

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No. 14

Monthly Receipts of Lock Tolls. Commencing September 1, 1854.

Months	1854–55	1855–56	1856–57	1857–58	1858–59	1859–60
September	$198 51					
October	$257 94	$180 72	$203 84	$230 76	$233 07	$299 49
November	283 50	138 45	209 00	212 97	296 63	288 50
December	134 52	124 78	244 00	249 29	208 89	202 74
January	203 95	.....	17 87	148 80	207 27	286 14
February	123 63	35 10	61 29	143 61	137 05	262 79
March	250 11	189 23	300 59	255 58	214 09	376 14
April	167 08	213 58	219 94	380 08	272 78	255 03
May	106 87	226 16	200 04	232 02	243 64	262 21
June	92 16	125 42	135 75	126 26	176 53	342 80
July	120 72	146 14	99 14	199 50	100 23	234 41
August	191 45	223 20	319 07	309 38	327 58	315 78
September	141 55	231 38	383 92	308 66	296 33	289 26
Total	$2,073 48	$1,834 26	$2,394 45	$2,796 91	$2,714 09	$3,415 29

JAMES RIVER AND KANAWHA COMPANY

No. 16

Lewisburg, Sept. 27, 1860.

Sir:

I comply with the regulations of your company, by submitting to you a report of receipts, disbursements and condition of the Kanawha road and bridges for the fiscal year ending August 31, 1860.

Receipts.

Balance on hand, as per last annual report	942.12
Received from the turnpike gates	5,537.09
Received from Gauley Bridge	1,085.98
Received from Greenbrier Bridge	2,045.41
Received for two yoke of oxen	150.00
	9,760.60

Disbursements.

Road account	$6,607.63	
Bridge account	1,375.88	
Agency	883.32	
		$8,866.83
Leaving in agent's hands unexpended, a balance of		$893.77

Operations.

By reference to my report of 1859, you will note that the road in the Alleghany and Sewell region received great damage by the equinoctial gales that raged with much violence a few days previous to the date of my report. As indicated in that report, I proceeded to have the damages repaired without delay. The operations for the present season have been arduous and expensive on the entire road, and particularly so on the mountainous and hilly sections of the road, increased more than twofold by the frequent and washing rains that occurred in the months of July and August—indeed, no in-

No. 15

Monthly Receipts of Tolls—Commencing January, 1st, 1841.

Months.	Year Ending September 30, 1841.	Year Ending September 30, 1842.	Year Ending September 30, 1843.	Year Ending September 30, 1844.	Year Ending September 30, 1845.	Year Ending September 30, 1846.	Year Ending September 30, 1847.	Year Ending September 30, 1848.	Year Ending September 30, 1849.	Year Ending September 30, 1850.
October	.....	$11,017 18	$16,002 39	$19,500 14	$18,766 23	$21,512 79	$19,185 58	$23,208 79	$26,954 95	$29,996 79
November	.....	10,091 80	14,841 35	17,562 65	16,629 30	14,571 14	12,492 98	15,564 91	20,957 69	26,114 98
December	.....	6,407 97	9,057 82	12,333 92	13,441 73	9,557 62	14,177 86	2,684 63	18,395 78	14,980 84
January	4,157 95	3,578 80	7,518 58	6,348 24	4,328 89	11,925 57	7,965 65	9,212 68	12,722 81	11,423 57
February	5,160 71	5,493 05	6,451 46	8,269 43	10,553 47	11,539 42	12,115 09	19,231 58	13,499 19	15,659 24
March	12,438 00	7,489 40	10,436 21	16,239 47	14,278 43	13,391 91	14,758 47	18,081 78	20,531 56	24,850 17
April	11,403 53	8,992 81	11,807 94	16,151 29	12,368 90	18,466 03	19,923 31	21,130 03	19,862 22	21,170 19
May	15,309 38	12,206 45	22,183 88	18,460 40	15,327 37	16,815 51	10,982 01	16,703 52	21,440 50	19,741 57
June	13,043 72	12,240 49	27,192 73	16,681 13	17,008 87	13,214 53	23,418 38	13,349 53	19,809 25	14,541 74
July	12,878 31	5,719 20	17,521 66	17,167 22	14,980 31	14,178 01	22,106 36	12,713 10	14,512 35	14,455 02
August	14,195 03	6,560 19	18,518 88	15,624 29	20,967 99	15,444 47	19,628 08	22,810 12	22,105 15	16,498 45
September	11,872 68	9,716 59	17,705 62	14,110 45	25,552 58	13,001 86	22,828 62	24,396 28	27,703 04	24,325 01
Total	$100,459 31	$99,513 93	$179,238 52	$178,448 63	$184,204 07	$173,618 86	$199,582 39	$199,086 95	$238,494 49	$233,757 57

Monthly Receipts of Tolls—Continued.

Months.	Year Ending September 30, 1851.	Year Ending September 30, 1852.	Year Ending September 30, 1853.	Year Ending September 30, 1854.	Year Ending September 30, 1855.	Year Ending September 30, 1856.	Year Ending September 30, 1857.	Year Ending September 30, 1858.	Year Ending September 30, 1859.	Year Ending September 30, 1860.
October	$26,578 36	$25,876 80	$31,768 70	$35,715 57	$28,953 63	$19,994 05	$22,429 82	$18,626 93	$18,332 01	$20,778 35
November	20,403 88	20,255 89	22,236 49	26,404 80	25,701 36	18,960 14	20,161 02	17,138 55	14,826 53	17,957 58
December	14,060 01	11,288 89	17,238 65	19,823 73	11,153 74	11,801 51	13,333 20	15,592 17	9,866 66	13,204 84
January	17,312 53	12,565 69	16,163 28	14,120 41	17,402 04	530 13	121 14	15,557 01	9,881 73	9,658 76
February	16,540 24	22,644 44	20,850 69	22,906 25	10,898 08	1,565 56	11,629 37	14,982 26	12,813 73	15,793 97
March	21,654 70	31,736 88	33,286 35	27,511 75	25,912 45	22,790 51	26,809 70	20,806 46	17,058 66	28,300 24
April	24,795 73	20,690 87	28,073 44	22,957 31	21,097 70	24,954 92	20,340 29	21,662 37	17,023 62	22,961 35
May	21,436 11	27,127 86	22,100 52	18,863 53	13,082 43	26,381 18	6,533 66	18,758 97	13,582 89	17,585 99
June	15,196 33	21,549 09	17,002 69	17,524 00	13,149 97	11,403 13	12,311 74	11,529 68	11,017 94	17,097 96
July	15,945 85	17,276 25	18,404 65	18,374 47	14,650 99	15,313 83	8,990 48	12,994 06	9,503 67	13,041 38
August	20,632 83	25,131 35	20,141 02	25,552 75	19,756 31	20,333 39	17,909 10	17,544 27	20,739 64	25,668 46
September	25,487 79	33,066 80	36,729 12	33,057 96	22,109 73	25,169 11	21,053 03	20,466 13	20,327 94	27,207 66
Total	$240,044 36	$269,210 81	$283,998 60	$282,812 53	$223,868 43	$199,197 46	$181,622 55	$205,658 86	$174,975 02	$229,256 54

considerable portion of our road on the mountains and hills as often as three different times. Nearly the whole is at this time in good repair, and the whole will be in a few days more. Its condition is such, I think, that that portion of the road approximating to a level will require but little work next year, compared to the amount we have done this. The mountains and hilly portions may, if we have as many and as violent storms as we have had this year, require as much work upon them.

Bridges.

The bridge carried away in Little Sewell Valley was replaced with entire new timbers, except the flooring, which lodging a short distance below the site of the old bridge, was hauled back and put on the new under work. The other bridge also in Little Sewell Valley was rebuilt in the spring, except the flooring. All of the bridges in the Gauley range east of Gauley Bridge have been generally repaired and newly floored this year. The abutments of the bridge over Witcher's Creek were considerably damaged by refluent water from the Kanawha River in the fall of 1859. The damages were repaired as quickly as masons and laborers could be obtained. A new floor has been put on this bridge. The bridge at the Burning Spring had settled very much on the lower side, so much so as to cause complaint. I have had it righted up, and additional braces added thereto. This bridge, as also the bridge nearest Charleston, I have had newly floored during the summer. The upper bridge over Mud River is now being refloored and repaired. The lower bridge over the same stream will be reshingled this fall. The Greenbrier Bridge is yet only partially reshingled, I regret to inform you, owing to the failure of the contractor to get the shingles in compliance with his contract. I have contracted for the deficit with a new contractor; and if he complies with his contract, the whole bridge will be reshingled in November. The bridges generally are in much better condition than they were at this time last year.

Another year of extensive repairs will put the whole of them in such condition as to require but little to be done to them for several years thereafter—accidents by flood and fire excepted.

Respectfully submitted by

Your most ob't servant,

A. MICHAELS,

Agent W. I.

Col. Thomas H. Ellis, Pres. J. R. and K. Co.

No. 17

SUMMARY STATEMENT of Receipts and Disbursements of the James River and Kanawha Company for the year ending September 30, 1860.

IMPROVEMENTS IN OPERATION
WESTERN IMPROVEMENTS

KANAWHA ROAD

Receipts:			
From tolls at gates and bridges.....			$8,818 48
Disbursements:			
Road account.....		$6,696 96	
Bridge account.....		1,832 87	
Agency account.....		883 32	
			9,413 15
Amount in agent's hands.....	$472 69		

KANAWHA RIVER

Receipts:				
From tolls			$9,864 28	
Disbursements:				
River expenses and agency			2,116 24	
			$7,748 04	$594 67

KANAWHA IMPROVEMENT

Receipts:				
From state stock		$40,000 00		
Disbursements:				
Pay and expenses of engineers	$1,849 35			
Dams and sluices	23,832 00			
Kanawha board, Pay and expenses	2,726 45			
		28,407 80		
			11,592 20	
				19,340 24
				$18,745 57

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Amount in agents hands less amount reported by collectors as delinquent.....	$11,269 83	
Amount in Bank of Va. at Charleston.....	6,178 40	
Amount in hands of Kanawha board.....	417 45	
Amount of state stock on hand.....	20,000 00	
Bought forward.....		$18,745 57

BLUE RIDGE TURNPIKE AND FERRY

Receipts:		
From tolls.....	$217 27	
Disbursements:		
Expenses and repairs.....	755 26	
		537 99
		$18,207 58

RICHMOND DOCK

Receipts:			
From dockage		$50,128 03	
Disbursements:			
Expenses and repairs	$3,457 26		
Salaries of agents	4,264 26		
		7,721 52	
			42,406 51
			$60,614 09
Amount in agent's hands	$11,528 80		

CANAL FROM RICHMOND TO BUCHANAN

Receipts:		
From tolls on canal	$225,554 79	
From tolls on five locks and dock	3,415 29	
From penalties	286 46	
From rents	9,734 73	
		238,991 27

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Disbursements:				
Expenses and repairs:				
First division		$72,722 80		
Second division		15,922 56		
Salaries of agents:				
First division		22,199 73		
Second division		6,750 00		
General administration:				
Salaries of officers		7,313 32		
Pay and mileage of directors		1,462 75		
Expenses of meetings of stockholders, legal expenses, printing, etc		6,115 20		
		$132,486 36		
Five locks T. W.:				
Expenses and repairs		$26 51		
Salaries of agents		549 98		
			133,062 85	
				105,928 42
Amount in agent's hands	$4,868 12			$166,542 51

MISCELLANEOUS ACCOUNT

Receipts:		
From South side connections:		
Bent Creek bridge	$100 00	
New Canton bridge	225 00	
Brought forward	325 00	$166,542 51
Hardwicksville bridge	100 00	
North river bridge	450 00	
From contruction of works, 1st division:		
Property sold	4,500 00	
From interest on state stock	2,182 88	
From bills payable:		
Certificates to First auditor	132,369 30	
Certificates to Second auditor	60 00	
From interest	404 96	
From subscribers to J. R. & K. Co.	43 60	
From second division A. N. R.:		
Damages	52 14	

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From release of commonwealth's liens.....	360,214 44	
From capital stock (preferred).....	7,400,000 00	
From fourth division:		
Expenses of engineers.....	1,020 62	
		7,901,722 94
Disbursements:		
Construction.....	$23,477 31	
Expenses and repairs.....	1,481 58	
Pay of engineers.....	3,066 66	
Interest on North river bonds.....	13,200 17	
Construction of works 1st division:		
Lynchburg feeder canal.....	2,825 34	
Fourth division:		
Expenses of engineers.....	637 70	
Interest.....	39,067 42	

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Rivanna connection:	
Sections	270 60
Damages	1,780 92
State tax	1,374 77
Interest on bond to state	1,280 00
Bills payable	196,619 56
South side connections:	
New Canton bridge:	
Construction	1,559 43
Insurance	150 00
Bent Creek bridge:	
Insurance	150 00
Hardwicksville bridge:	
Insurance	150 00
Tide water connection:	
Dock wall	842 07
Dividend on guaranteed loan	150 00

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Certificates to 1st auditor:			
Dividends of 1839	80,913 30		
Dividends tide water connection	20,853 00		
Dividends S. S. and R. connections	9,003 00		
Dividends third division	21,600 00		
Certificates to 2d auditor:			
Dividends of 1839	60 00		
Brought forward	420,512 83		
Disbursements included in settlement with the commonwealth:		$420,512 83	$7,001,722 94 $100,542 51
Loan of state stock	$250,000 00		
State's loan of interest money	57,559 00		
State's loan for resumption of works	1,236,000 00		
State's loan for completion of works	110,000 00		
State's loan, act 5th June, 1852	120,000 00		
State's loan for completion of T. W. C...	130,000 00		

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State's loan for 3d division	580,000 00
State's loan for T. W. C.	60,000 00
Guaranteed loan, old issue	1,400,000 00
Guaranteed T. W. Con.	350,000 00
Guaranteed S. S. and R.	150,000 00
Guaranteed 3d division	360,000 00
Bills payable, notes	46,000 00
Certificates:	
To first auditor	469,188 30
To second auditor	202,821 30
Bond given to the state	268,645 33
Interest on bond to the state	125,676 73
Interest on loan of state stock	95,000 00
Interest on state's loan for resumption	469,680 00
Interest on state's loan for completion	41,800 00
Interest on state's loan, act 5th June, 1852	45,600 00
Interest on state's loan, act 2d March, 1852	255,382 28
Interest on state's loan for completion T. W. C.	28,583 33

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Interest on state's .loan for T. W. Con...	24,500 00		
Interest on state's loan of interest money	46,006 48		
Interest on bills payable.....	11,684 75		
Interest on certificates to 1st auditor....	45,775 93		
Interest on certificates to 2d auditor....	60,620 25		
Dividends on guaranteed loan.....	33,603 40		
Dividends on T. W. Con.....	7,324 00		
Dividends on S. S. and R. Con.....	3,063 00		
Dividends on 3d division.....	7,200 00		
Dividends of the J. R. Co.....	118,500 00		
Principal of the annuity.....	350,000 00		
		7,560,214 44	
			7,980,727 27
			79,004 33
			87,538 18
Excess of disbursements over receipts, September 30, 1859.....			283,194 58
Excess of disbursements over receipts, September 30, 1860.....			$195,656 40

UNFINISHED IMPROVEMENTS.

Third Division (From Buchanan to Covington).

Balance October 1, 1859		$303,481.56
Receipts:		
From amount refunded on account of expenses of engineers		6.00
		$303,487.56
Disbursements:		
Locks		1,573.14
		$301,914.42
Balance of appropriation for third division	$301,914.42	
Excess of disbursements over receipts, on account of improvements in operation	195,656.40	
Balance		$106,258.02
Balance in Bank of Virginia, October 1, 1860	$ 7,286.02	
Balance in Bank of Virginia, at Charleston, October 1, 1860	6,178.40	
Amount in agents' hands	28,556.89	
Amounts of bills receivable:		
Notes	4,976.95	
State stock	62,100.00	
		$109,098.26
Warrants afloat		2,840.24
Balance		$106,258.02

E. E.

WM. P. MUNFORD, Sec.

Office James River and Kanawha Company,
Richmond, October 1, 1860.

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No. 18. *RECEIPTS AND DISBURSEMENTS of the James River and Kanawha Company from its organization to the 30th September, 1860*

OLD IMPROVEMENTS AND NEW WORKS IN OPERATION.

Receipts:

From income of old works, viz.:		
Old canal (tolls and rents)	$291,807 87	
Kanawha road	238,558 99	
Kanawha river	226,228 55	
Blue Ridge canal (including turnpike and ferry)	36,750 14	
		$793,345 55
From income of the new canal from Richmond to Buchanan, viz.:		
Tolls	$4,061,852 15	
Rents	168,265 66	
Scale-house fees	774 11	
		4,230,891 92
From premium and interest on state's loan for resumption of works above Lynchburg	$43,734 38	
From premium and interest on state's loan for completion of works to Buchanan	2,180 53	
From premium and interest on guaranteed loan:		
For the tide water connection	4,290 61	
For the south side and Rivanna connections	3,006 97	
For the third division	4,498 11	
		57,710 60
From bills payable	$152,055 12	
From tolls at Bent Creek Bridge	582 28	
From tolls at New Canton Bridge	892 25	
From tolls at Hardwicksville Bridge	685 30	
From insurance on New Canton Bridge	10,000 00	
From tolls at the North river	516 23	
From income of the Richmond dock	332,209 35	
From income of five locks T. W. C	15,426 99	
		512,367 52
		$5,594,314 59

Disbursements:

For repairs and maintenance of the Old Canal, from Richmond to Maiden's Adventure	$60,436 98	
Kanawha road	225,739 67	
Kanawha river	80,385 77	
Blue Ridge canal (including turnpike and ferry)	45,150 55	$411,712 97
New Canal, from Richmond to Buchanan	$1,811,260 93	
Damage to canal by fresh of July, 1842	67,542 23	
Damage to canal by fresh of November, 1847	21,424 48	1,900,227 64
Additional charges on revenue, viz.:		
Annuity to the old James river company	$517,500 00	
Dividends of the James river and Kanawha company	11,599 59	
Dividends on guaranteed loan of 1839	1,179,134 44	
Dividends on guaranteed loan for the tide water connection	93,454 00	
Dividends on guaranteed loan for the Southside and Rivanna connections	42,678 37	
Dividends on guaranteed loan for the third division	75,474 00	
Interest on bond given to the state	267,858 47	
Interest on state's loan for resumption of works	840,120 00	
Interest on state's loan for completion of works to Buchanan	61,600 00	
Interest on loan of state stock, March 1842 and June 1852	271,723 90	
Interest on state's loan of March 2, 1853, for third division	278,426 34	
Principal of the annuity to old James river company	350,000 00	
Interest on state's loan, March 29, 1863, and March 3, 1854, for T. W. connection	58,697 67	
Interest on bonds of the North river navigation company	80,590 57	
Interest on state's loan of 5th June, 1852	45,600 00	
Interest on state's loan of interest money	46,006 48	
Interest on bills payable	11,684 75	
Interest on certificates to first auditor	45,775 93	
Interest on certificates to second auditor	60,620 25	
Other items of interest and discount	121,164 59	
Expenses of general administration of company	177,642 46	
Certificates to the first auditor	469,188 30	
Certificates to the second auditor	202,821 30	5,309,361 38
For repairs and maintenance of Richmond dock	74,280 58	
For repairs and maintenance of five locks T. W. C	5,606 93	79,887 51
State tax		1,374 77
		$7,702,564 27

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NEW IMPROVEMENTS.

Brought forward				$5,594,315 59
RECEIPTS.				
From capital stock (original)		$5,000,000 00		
Less:				
State's credit for old works	$1,000,000 00			
Uncontrolled stock subscriptions	68,669 29			
		1,068,669 29		
			$3,931,330 71	
From capital stock (preferred)			7,400,000 00	
From release of commonwealth's liens			360,214 44	
From interest on State stock			2,182 88	
From State stock for Kanawha improvement			40,000 00	
			$11,733,728 03	

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From sale of land received from the old James River company..	$28,484 46		
From post notes afloat.....	3,222 69		
		31,707 15	
			11,765,435 18
			$17,359,750 77
Brought forward.....			$7,702,564 27
DISBURSEMENTS.			
For construction of works, Richmond to Lynchburg.....		$5,365,307 06	
Expenditures on works above Lynchburg, previous to their suspension.....		482,428 57	
Purchase and improvement of Richmond dock.....		244,721 98	
Tide water connection, prior to loan of 9th March, 1849.....		9,233 00	
Tide water connection.....		598,199 21	
South side connections.....		164,694 52	
Rivanna connection.....		117,094 76	
Western surveys.....		25,028 99	
Third division, from Buchanan to Covington.....		638,085 58	
Fourth division, from Covington to Greenbrier River.....		12,668 15	

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North River improvement	109,037 50	
Kanawha River improvement	45,376 14	
		7,811,875 46
For loss by General Hamilton's agency		
Notes from delinquent subscribers and others, for arrearages	63,820 45	
Securities in agents' hands collecting stock arrearages	4,241 84	
	381 73	
		68,444 02
For construction of works from Lynchburg to Buchanan, viz.:		
Above North River	717,959 68	
Below North River	952,649 32	
		1,670,609 00
Balance on hand		106,258 02
		$17,359,750 77

WM. P. MUNFORD, Secretary.

Office of the James River and Kanawha Company, Richmond, October 1, 1860.

No. 19.

Richmond, Va., Sept. 14, 1860.

Dear Sir:

I have read, and carefully considered the contract and accompanying papers, relating to the James River and Kanawha Canal Company, which were submitted to me, by you, on Friday evening last.

The only provision in the contract, to which I object, is contained in the eighth section, which authorizes "the tolls on way trade" to "be increased one-third" beyond the rates that are imposed upon the through trade. This is a discrimination against our own citizens, in favor of citizens of other states, that is in my judgment unjust. I can see no reason for the imposition of heavier tolls upon way trade than are levied upon through trade.

The subject is, in the highest degree, important to the people of Virginia, and deserves the serious consideration of the legislature. I have determined, therefore, to comply with the request contained in the second resolution adopted at the late meeting of the stockholders, and will "convene the general assembly in extra session, for the purpose of considering the agreement which has been approved" by them.

The fourteenth day of January next will be the day on which the general assembly will convene.

I am, truly,

Your obedient servant,

JOHN LETCHER.

Thomas H. Ellis, Esq., Pres. J. R. and K. Co.

No. 20.

(The report of the Kanawha board and the documents accompanying it were received at the office of the company, through the hands of George W. Randolph, Esq., on the 29th October.)

Gentlemen:

I have the honor to submit, on behalf of the Kanawha board, the following report for your consideration:

The position of the Kanawha board, at the date of its last annual report, is familiar to you all. The Eastern board had sought, by the exercise of arbitrary power, to terminate the existence of the Kanawha board; had passed a resolution declaring it functus officio; had appointed a commissioner to take charge of its books and papers, and directed the collectors on the Kanawha River to disregard its authority, and to enter into new bargains, and make their reports direct to the office in Richmond. Against this action the Kanawha board appealed to the stockholders, and suggested in their report that an application be made to the next general assembly of Virginia, so to amend the act of the 15th February, 1858, as to define more accurately the rights, powers and duties of the boards with reference to the Kanawha improvement. The course of the Kanawha board was sustained by the stockholders in general meeting assembled, in October, 1859, and at the ensuing session of the legislature, an act was passed on the 23d of March, 1860, entitled an act to amend the charter of the James River and Kanawha Company and placing under the exclusive control of the Kanawha board of directors three hundred thousand dollars of the six per cent. registered stock of the commonwealth, to be used by them for the improvement of the navigation of the Kanawha River, from the mouth thereof to Loup Creek Shoals; and the Kanawha board was authorized and directed to prosecute said improvement, and

was invested with the entire control and management of the same, "free from the control or direction of the president and directors of said James River and Kanawha Company, and which is known as the Eastern board." It is worthy of remark, that the president of the company, in submitting this act to the stockholders for their acceptance, deemed it his duty to protest against the terms of the provision made for the improvement of the Kanawha river.

The act passed March 23, 1860, was accepted by the stockholders of the company, at a called meeting held the 25th day of April, 1860; at the same time the president of the company was instructed by them to execute a deed of trust or mortgage upon the works, property and net revenue of the Kanawha line of improvements from the mouth of the Kanawha river to Loup Creek Shoals, to the commonwealth, for the payment of three hundred thousand dollars of six per cent. registered stock of the commonwealth, which by the act was directed to be issued and placed under the control of the Kanawha board, for the improvement of the Kanawha River.

Although no official notice of these proceedings had been communicated to the board, yet as the board had seen in the public papers that the amendatory act referred to had been accepted by the stockholders, and the president of the company instructed to execute the deed of trust required on the Kanawha line of improvement, it felt authorized to receive such propositions for the improvement of the river as might be submitted to its consideration.

At a meeting of the board held on the 14th day of May, 1860, two proposals to do the work were laid before the board —one by Mr. A. E. Cromwell, and the other by Messrs. Theodore D. Barton and Orville Robinson. The proposition of Messrs. Barton & Robinson being the lowest in amount, and most satisfactory in other respects, was accepted by the board; and on the 15th day of May, 1860, a contract was made and signed with those parties—a copy of which has been already

furnished to the president of the company, who will no doubt submit it to your consideration.

At the same meeting, the board elected John A. Byers, Esq., engineer of the improvement at a salary of $2,500 per annum, and authorized him to employ, when necessary, two assistant engineers—the first, at a salary of $1,000 per annum; the second, at a salary of $750 per annum; their salaries to commence from the date of their respective appointments, and to be paid at that rate for the time they are employed. Under the authority given him by the board, the engineer engaged the services of Wm. P. Douthat and James R. Houston as his assistants, each of whom had assisted in the preliminary survey of the river under the direction of Edward Lorraine, Esq., chief engineer of the James River and Kanawha Company, and was familiar with the surveys and levels throughout the line of the improvement. Each of the assistants has had three persons to help him in laying out the channel, and attending to the construction of the work—and occasionally, when current was unusually strong, it has been found necessary to employ an extra hand. The board directed the contractors to provide, as soon as practicable, four dredge boats, with the necessary dump and surface boats to tend them, and to commence to work at Elk Shoals with the two first completed, and which were to be built at the mouth of Elk River; and with the others, as soon as they could be ready, at the foot of Loup Creek Shoals, in the neighborhood of which they were to be built. This arrangement was adopted to save the expense, trouble and delay of towing the dredge boats, which are large and unwieldy, up the river.

In accordance with this arrangement, when the surveys at Elk Shoals were about completed and the channel marked out, the engineer corps was divided. Mr. Douthat with his party was directed to commence the work at the foot of Loup Creek Shoals and proceed down the river, while Mr. Houston and his party prosecuted it from Elk Shoals downwards. House boats were provided for each party, to enable the men to be at all times convenient to their work, and to have the

entire control of their time. These boats were purchased by the Kanawha board, but the furniture and supplies are, and will be, provided by the several parties at their own expense. Mr. Douthat commenced the work on Elk Shoals on the first of June, 1860, and up to the close of the fiscal year had, in addition to the work done by him there, surveyed and laid out the channels from the foot of Loup Creek Shoals to the foot of Hunter's Shoals, comprising seven shoals and riffles, having an aggregate fall of 17½ feet in a distance of 6 2/5 miles, and requiring about 50,000 cubic yards of excavation; and Mr. Houston, who commenced work on the 15th June, 1860, had, up to the same period, prepared the work for the contractors from the head of Elk Shoals to the foot of Tyler Shoals, comprising four principal shoals with a fall of 12.64 feet in a distance of 4½ miles, and requiring about 47,000 cubic yards of excavation. It is proper to remark, that the frequent occurrence of freshets in the river during all the past summer, has interfered very much with the progress of the surveyors; and in addition to this, a greater proportion of the time of the engineers than was anticipated has been taken up in attending to the work of construction, in consequence of their being required to renew, almost daily, stakes, floats, levels and other work by which the line of the channel had to be designated.

It was not deemed expedient to disband the parties under the control of the engineers, whenever a rise would occur in the river, which stopped them from a survey of the channel, because of the delay of getting them together again and the unwillingness of the men to engage unless they had some assurance of permanent employment. The engineer was therefore directed to employ them during those intervals in surveying the various tributaries of the Kanawha, and in collecting information in relation thereto, with the view of preparing a complete and accurate map of the river, embracing the whole line of the improvement.

At the time the contract was made with Messrs. Barton & Robinson, the Kanawha board had already procured the ma-

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chinery for one dredge boat, and had the wood work for the same, and for the tenders thereto, in process of construction. These boats were turned over to the contractors at cost, they agreeing to repay what the board had already expended for them, and to meet the deferred payments on them as they fell due.

The contractors commenced work on Elk shoals, on the 20th of June, 1860, with the dredge boat, the machinery for which had been procured and transferred to them by the Kanawha board; and of the three additional dredges which the contractors were required to furnish, two of them were to be at work by the middle of July, and the third by the first of August. But owing to the failure of the machinists to deliver the machinery in time, and other unexpected delays, it was the first week in September before a second dredge boat was at work, and as late as the first day of October before the remaining two were put into operation.

On the first day of October the shoal near the foot of Loup creek was about completed. At Elk Shoal there was 900 cubic yards of excavation and about $5,000 worth of rock and timber work remaining to be done. The bar above the mouth of Two Mile Creek, called "Young Two Mile," containing about 1,200 cubic yards, was completed, and about 700 cubic yards of excavation removed at Two Mile Shoal. The work done, and the materials and machinery furnished by the contractors, up to the close of the fiscal year, amount to the sum of $21,660.

By the terms of the contract, the contractors are bound to complete the work within fifteen months from its date. But in consequence of the delays referred to, and the interruptions which may be reasonably expected from ice and high water during the coming winter and spring, it is the opinion of the engineer that it will probably not be completed before the first of March, 1862. Although the work at Elk Shoal, which is upwards of 1,800 feet in length, is not entirely finished, enough has been done to enable boats to navigate the new channel with safety; and when the remaining work

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is done, it is thought that it will meet all the requirements of the trade.

In addition to the work done by the contractors upon the river, a competent force under Capt. Johnson, was employed to set the buoys, repair damages caused by ice and high water, and to remove such obstructions as had been carried into the chutes and channels during the past winter and spring. This party set 235 buoys, put in ring bolts, and removed all temporary obstructions from the chutes and channels, at a cost, including tools and materials for the work and supplies for the hands, of $335.34.

A copy of the report of Wm. J. Rand, collector of tolls at Charleston, is herewith submitted, which returns the gross amount of tolls accounted for by him during the fiscal year, at $8,092.20. This shows a falling off from the gross amount of the last year, which is to be accounted for by the fact that there has been an entire suspension of the shipment of coal and a partial suspension of the shipment of salt, until Elk Chute is complete.

In explanation of the list of delinquents reported, it is proper to say that the item of $1,146.17 was permitted to accumulate, because the parties claimed damages of the board for salt lost upon an obstruction in the channel. The matter has been recently compromised and adjusted. The other accounts, with perhaps one exception, he expects to close up during the present month. The attachment law passed last winter has been of material service in the collection of tolls; but even with its aid, some delay seems to be unavoidable. See paper marked (R).

Previous to the first of January last the compensation of Mr. Rand had been a fixed salary of $1,000 per annum; but at the December meeting, 1859, the board changed the terms of his compensation, and fixed them as follows: "Two per cent. on all tolls collected, until the compensation amounts to $600; five per cent. on all over, until the compensation amounts to $200 more; and ten per cent. on all collections beyond these." This change took effect from the first of January,

1860, and was made to embrace only collections made by the collector of current tolls from and after that period, without recourse to courts of law, the resolution providing that the proceeds of all suits then brought or which should thereafter be brought for tolls, should be paid directly to the secretary, and deposited by him in bank to the credit of the board.

The gross amount of tolls collected by W. W. Sherwood, collector at Point Pleasant, during the fiscal year ending the 30th September, 1860, was	$1,825.30
Deduct compensation as heretofore paid by the board	494.05
Leaves the net amount received	$1,331.25

In accordance with the provisions of the act of March 23, 1860, and by the orders of the board, five several drafts for $20,000 each of the six per cent. registered stock of the commonwealth, have been drawn by the president pro tem. of this board, upon the board of public works. These drafts were drawn monthly, in the months of May, June, July, August and September, and each draft was accompanied by a copy of the resolution passed by the board of public works, and the certificates of stock ($40,000 in amount) received and deposited in the Bank of Virginia at Charleston, Kanawha.

The financial statement of the secretary is herewith submitted to your inspection, showing the amount of registered stock and moneys received and disbursed by the board during the fiscal year ending the 30th day of September, 1860.

A synopsis shows there has been received in registered stock $40,000.00

Disbursed in stock 20,000.00

Balance on hand in registered stock $20,000.00

See statement (A).

Received in money from tolls—in suit, etc	$	373.53
Received in money from current tolls		9,206.25
		$9,579.78
Disbursed in money		9,398.94
Balance on hand in money	$	180.84

See statement (B).

The president of the company, in a letter addressed to the president pro tem. of this board, dated the 14th day of May, 1860, which was accompanied by a manuscript report of the proceedings of the stockholders at their meetings on the 25th and 26th of April, 1860, called attention to sections 58 and 59 of the act of the 30th March, 1860, entitled an act for the assessment of taxes on persons and property. The communication of the president and the sections of the law referred to, were submitted to the board for its consideration, and after mature deliberation, and consultation with counsel, the board decided that the sections did not, in its opinion, apply to the Kanawha board.

In the month of September, at the instance of the president of the company, this matter was again brought to the notice of the board, when the board acting by the advice of its counsel, the Hon. G. W. Summers, furnished the statement and remitted the amount of tax imposed, accompanied by a protest, to the president of the company, to be used as in his discretion he might deem right. A copy of the opinion of the counsel of the board upon this legal question will be furnished as soon as it can be procured.

A "project of an executory agreement" for the sale of the entire line from Richmond to the Ohio river, to a French company, yet to be formed, together with the remarks of the president of the company and the proceedings of the stockholders in relation thereto, have been communicated to the president pro tem. and laid before the Kanawha board.

As to so much of this extraordinary agreement as embraces that portion of the line extending from Richmond to the Kanawha river, it is perhaps unnecessary for the Kanawha board to express any opinion. The Kanawha board was not consulted in regard to this agreement, and will not be entitled to share any part of the credit or discredit which may hereafter attach to it.

But against that part of the scheme which proposes to sell out the Kanawha river, it is the imperative duty of the Kanawha board to protest, respectfully but earnestly, against such sale to the French or Dutch, or any other adventurous purchaser, whether foreign or domestic. Especially does it protest against a scheme, the provisions of which if it is carried out are calculated to delay the improvement of the Kanawha river, to paralyze the industry of the country by prohibitory tolls, and to retard the development of the valley. And it appeals to the stockholders to reconsider their action and to retrace their steps in regard to the Kanawha river.

At present, so far as is known to the Kanawha board, the Frenchmen concerned in this scheme own no lands within the limits of Virginia,—but the legislature confirm to them this contract, and it will subject in a great degree the mineral wealth of the entire Kanawha valley to their control.

At its last session the legislature passed a law making provision for the improvement of the Kanawha River, and authorizing the Kanawha board to put the work under contract. That contract has been made, signed and sealed, and the improvement is steadily and successfully progressing. Under these circumstances the Kanawha board appeals to the stockholders and to the legislature not to sell out the improvement, but to permit it to be completed.

All of which is respectfully submitted.

JAMES L. CARR,
Pres. pro tem. of the Kanawha Board.

Stockholders of the J. R. & K. Co.

R.

An Abstract of Tolls Collected at Charleston, Kanawha.

1859.			
October	Gross amount of tolls this month..		
November	Gross amount of tolls this month..	$332 85	
December	Gross amount of tolls this month..	595 31	
1860.			
January	Gross amount of tolls this month..	343 50	
February	Gross amount of tolls this month..	539 20	
March	Gross amount of tolls this month..	1,224 08	
April	Gross amount of tolls this month..	995 82	
May	Gross amount of tolls this month..	1,058 99	
June	Gross amount of tolls this month..	996 48	
July	Gross amount of tolls this month..	588 82	
August	Gross amount of tolls this month..	615 17	
September	Gross amount of tolls this month..	532 08	
Total for the year.....			$8,092 20
To cash received on previous year.....			1,880 66
Total.....			$9,972 86

from October 1, 1859, to October 1, 1860.

1859.			
October	By cash paid into bank	$874 83	
November	By cash paid into bank	278 87	
December	By cash paid into bank	469 80	
1860.			
January	By cash paid into bank	391 45	
February	By cash paid into bank	244 44	
March	By cash paid into bank	2,451 70	
April	By cash paid into bank	728 46	
May	By cash paid into bank	533 02	
June	By cash paid into bank	526 91	
July	By cash paid into bank	579 83	
August	By cash paid into bank	313 75	
September	By cash paid into bank	400 00	
	Total for the year		$7,793 06

A list of delinquents accrued in the year above reported:

S. Robinson	$155 47	
Winifred M. & M. Co	312 62	
Merrein & Oakes	1,146 17	
Jas. M. Laidley	130 10	
Wm. R. Cox	29 01	
A. P. Terry & Bro	125 62	
Wm. A. Jackson	64 56	
R. W. Grogan	216 25	2,179 80
Total		$9,972 86

W. S. RAND, Col.

A copy from a paper filed in this office.

ALEX. T. LAIDLEY,
Secretary Kanawha Board.

A.

Statement Showing the Receipts and Disbursements of the the Commonwealth

RECEIPTS.

1860

Aug. 25, Received of the board of public works, in certificates of $1,000 each, and numbered from 356 to 375, inclusive $20,000.00

Sept. 28, Received of same, in certificates of $1,000 each, and numbered from 463 to 482, inclusive 20,000.00

$40,000.00

Sept. 30, Balance of registered stock on hand at date, as per contra $20,000.00

Kanawha Board of the six per cent. Registered Stock fo to Sept. 30, 1860.

DISBURSEMENTS.

1860

Sept. 30, This amount paid Barton & Robinson, contractors of the improvement of the Kanawha river, in stock, to date.....$20,000.00
This amount to balance..... 20,000.00

$40,000.00

JAMES RIVER AND KANAWHA COMPANY

B.

Annual Statement showing the Receipts and Disbursements by the
the year ending the

RECEIPTS.

1859.			
October	To balance in hand at date of last report.....		$82 99
	And the following received from collectors:		
	Received of Mr. Rand, Charleston office.....	$874 83	
	Received of Mr. Sherwood, Pt. Pleasant office.....	158 09	1,032 92

Kanawha Board of the James River and Kanawha Company, for 30th September, 1860.

1859.	DISBURSEMENTS.		
October	This amount paid Mr. Rand, salary and sundry accounts..	$99 33	
	This amount paid Mr. Ayres, for work on river.....	25 00	$124 33
November	This amount paid president pro tem, salary.....	300 00	
	This amount paid Mr. Rand, salary and sundry accounts..	101 53	
	This amount paid expenses of Mr. Byers, authorized to go north to contract for dredging machine, &c.....	200 00	
	This amount paid expenses for printing report, &c.....	21 00	
	This amount paid office rent...	12 50	635 03
December	This amount paid secretary, on his salary.....	151 89	
	This amount paid per diem of directors.....	95 00	
	This amount paid counsel fees.	100 00	
	This amount paid W. S. Rand, salary.....	83 33	
	This amount paid secretary, on his salary.....	30 00	
	This amount paid president pro tem, salary.....	150 00	
	This amount paid sundry accounts for work on river.....	195 54	805 67

RECEIPTS.

1859.			
November	Received of Mr. Rand.....	278 87	
	Received of Mr. Sherwood.....	27 99	306 86
December	Received of Mr. Rand.....	469 80	
	Received of Mr. Sherwood.....	24 05	493 85
1860.			
January	Received of Mr. Rand.....	391 45	
	Received of Mr. Sherwood.....	13 87	405 32
February	Received of Mr. Rand.....	244 44	
	Received of Mr. Sherwood	14 54	258 98

DISBURSEMENTS.

1860.			
January	This amount paid expenses of president pro tem to Richmond, on business of the board.....	340 00	
	This amount paid president pro tem on his salary.....	60 00	400 00
March	This amount paid Mr. Rand, sundry accounts.....	140 00	
	This amount paid expenses of removing and protecting machinery for dredge boat.....	32 00	
	This amount paid president pro tem on salary.....	200 00	372 00
April	This amount paid office rent..	12 50	
	This amount paid office expenses	5 10	
	This amount paid secretary on his salary.....	21 25	
	This amount paid Gorham's bill for goods, &c.....	12 64	
	This amount paid Osgood on dredge machinery.....	3,000 00	3,051 49
May	This amount paid Sherwood, commissions on collections..	13 19	
	This amount paid Rand, same.	71 90	
	This amount paid per diem of directors.....	69 00	
	This amount paid in service boats for dredge.....	600 00	
	This amount paid president pro tem on salary.....	333 33	1,087 42
June	This amount paid Sherwood, commission on collections...	17 00	

RECEIPTS.

1860.			
March	Received of Mr. Rand.....	2,451 70	
	Received of Mr. Sherwood.....	484 04	2,935 74
April	Received of Mr. Rand.....	728 46	
	Received of Mr. Sherwood.....	52 77	781 23
May	Received of Mr. Rand.....	533 02	
	Received of Mr. Sherwood.....	95 35	628 37
June	Received of Mr. Rand.....	526 91	
	Received of Mr. Sherwood.....	61 48	588 39
July	Received of Mr. Rand.....	579 83	
	Received of Mr. Sherwood.....	235 80	815 63

JAMES RIVER AND KANAWHA COMPANY

DISBURSEMENTS.

1860.			
June	This amount paid for work on river	6 00	
	This amount paid Rand's commissior on collections	53 00	
	This amount paid secretary, on his salary	28 75	
	This amount paid for recording deed in Putnam county	2 61	
	This amount paid for office expenses	3 00	
	This amount paid engineer, for his department	300 00	410 96
July	This amount paid Sherwood, commission on collections	6 14	
	This amount paid Stalnaker, for removing obstruction from river	5 00	
	This amount paid Blaine, for timber	25 00	
	This amount paid president pro tem, his salary account	100 00	
	This amount paid Johnson, for setting buoys	155 25	
	This amount paid office rent	12 50	
	This amount paid engineer, for his department	100 00	403 89
August	This amount paid engineer, for his department	570 00	
	This amount paid Rand, commission on collections	57 90	
	This amount paid Sherwood, same	3 58	
	This amount paid Johnson, for setting buoys	150 19	

RECEIPTS.

1860.			
August	Received of Mr. Rand, Charleston office	$313 75	
	Received of Mr. Sherwood, Pt. Pleasant office	203 76	517 51
September	Received of Mr. Rand	400 00	
	Received of Mr. Sherwood	41 45	441 45
	Received of Dr. Hale, on account of arrearages of tolls due from him, and which were in suspension on account of his claim for damages	339 58	

DISBURSEMENTS.

1860			
August	This amount paid Mr. Fry, director, per diem.....	15 00	
	This amount paid president pro tem, salary.....	100 00	896 67
September	This amount paid Rand, commission on collections.....	31 37	
	This amount paid Sherwood, same.....	40 37	
	This amount paid for recording deed in Mason county.....	2 47	
	This amount paid rent of office for directors.....	45 00	
	This amount paid directors, per diem, &c.....	62 00	
	This amount paid Wm. Kuhn & Co., bill of lumber.....	13 56	
	This amount paid Gorham's bill.	16 34	
	This amount paid office rent...	12 50	
	This amount paid Rand, commission on collections this month.....	40 00	
	This amount paid Sherwood, commission on collections this month.....	4 14	
	This amount paid president pro tem, on salary.....	160 00	
	This amount paid engineer, for his department.....	375 00	
	This amount paid for two books for office and office expenses..	5 00	
	This amount paid Dr. Hale on account of lost salt, the same having been settled by the board..... $363 30		

RECEIPTS.

September.			
	For interest on same.....	33 95	373 53
			$9,662 77
1860.			
Sept. 30	Balance of receipts on hand at date, per contra.....		$180 84

JAMES RIVER AND KANAWHA COMPANY

DISBURSEMENTS.

1860.				
September	This amount paid interest on same.....	40 43	403 73	1,211 48
	This amount, being balance as given in account of receipts on hand at date of last report, which upon an examination of the bank account, was found to be an error.....			82 99
	This amount to balance, now on hand in bank to the credit of the board, at date.....			180 84
				$9,662 77

E. & O. E.
Teste.

33

ALEX. T. LAIDLEY, Sec.

Opinion of Judge Summers on the Fifty-eighth and Fifty-ninth sections of the Tax Law of 1860.

SIR:

In reply to your enquiries, I am of opinion that the 58th and 59th sections of the act passed on the 30th of March, 1860, entitled an act for the assessment of taxes on persons and property, have no relation whatever to the improvement on the Kanawha River. Those sections embrace only railroad and canal companies engaged in the transportation of freight and passengers. The works and improvements of the James river and Kanawha company are of a mixed character. That corporation owns a canal, a turnpike road, and an open river navigation upon the Kanawha. So far as it is the proprietor of a canal, it is to be governed by the provisions prescribed for canal companies. So far as the Kanawha river is concerned, the corporation is not a canal company any more than it is a railroad company, because the owner of a turnpike. The duties, authority and liabilities of the company in each instance are to be ascertained by looking to the nature of the several distinct improvements constituting its line. The company, among other things, was charged with improving the navigation of the Kanawha river for the common use of all, with authority to demand a prescribed toll in compensation for that use. It was also required to construct and keep in repair a turnpike road from Covington to Big Sandy for the public travel, with right to take tolls for its use. The company is no more a transportation company in the one case than in the other.

Canal and railroad companies are required by the 58th section to report to the auditor, quarterly, "the number of passengers transported," and the "gross amount of freight received by such company for transportation of freight over

such road or canal." By the 59th section, such company is required to pay into the treasury, at the time of making its report, "for every passenger transported, a tax at the rate of one mill for every mile of transportation of each of such passengers, and of one-half of one per cent. for such gross amount received for the transportation of freight."

Now, upon the Kanawha river the company never has charged toll for passengers, nor has it ever received, or been authorized to receive, anything for the transportation of either freight or passengers. It has no means of furnishing the number of passengers. It is not engaged in carrying freight or passengers on this part of the line, but is merely the proprietor of certain improvements on a stream open to the navigation of the public, and for the use of which improvements it is authorized to take compensation in the form of toll, as upon a public highway. The company own no boats or vessels for transportation, and never did. The river is wholly navigated by others, owning their own boats and doing the entire carrying trade.

The sections referred to do not impose a tax upon tolls, but upon the amount received by the company for transporting passengers and freight.

I am of opinion that the Kanawha board is not required to make the report contemplated by the 58th section of the act referred to, and that the James river and Kanawha company is not liable to the taxes imposed by the 59th section, inasmuch as it receives nothing for the transportation of either freight or passengers.

Respectfelly, your ob't serv't,

(Signed) GEO. W. SUMMERS.

James L. Carr, Esq., President pro tem. of the Kanawha Board James River & Kan. Company.

A copy.

ALEX'R T. LAIDLEY,
Sec. Kanawha Board.

No. 21.

Articles of agreement, entered into this 15th day of May in the year eighteen hundred and sixty, between the James River and Kanawha Company, acting by and through James L. Carr, president pro tem. of the Kanawha board, of the one part, and Theodore D. Barton and Orville Robinson of the state of New York, of the other part:

1. Witnesseth, that the said Theodore D. Barton and Orville Robinson promise and agree to improve the Kanawha river from the foot of Loup creek shoals to the Ohio river, in conformity with the annexed specification and with the plans and profiles of the improvement, as exhibited by Engineer John A. Byers, and with such alterations thereof as may be hereafter adopted by the said Kanawha board, and to furnish all the materials and do all the work in a substantial and workmanlike manner, at the prices specified in their proposal to the Kanawha board, hereto annexed, which may be necessary and proper therefor, according to the specification, and of such quality as the engineer of said board may approve.

2. The said engineer, or his assistant by his direction, shall, as soon as practicable after the end of each month, make out an estimate of the quantity and value of each species of work done, pursuant to this contract, at the prices contained in the annexed proposal, and also of any extra work done in consequence of any alteration in the plan of the improvement, which may have been adopted by the said Kanawha board.

And it is mutually agreed between the contracting parties, that any estimate made and approved as aforesaid, shall be final and conclusive, unless objected to before payment, and within twenty days after it shall have been returned to the Kanawha board. In which case, the party objecting shall give notice to the other party in writing, stating the grounds of objection—and the board shall thereupon return the objections so made, together with said estimate, to the said engineer,

who shall immediately consider the matters of complaint, and make his report to the board in writing—which report shall be final and conclusive upon both parties, without further appeal; and the making and receiving payment upon any estimate to which objections may have been offered, shall be taken as evidence that such objections have been waived; and in like manner, the decision of the engineer upon any questions that may arise as to the meaning of this agreement, relating to work done by the contractors, shall be conclusive.

3. Within ten days after the return of any monthly estimate to the said Kanawha board, the amount appearing to be due for work done and materials furnished since the preceding estimate, less 15 per cent., shall be paid to the contractors in six per cent. registered stock of the commonwealth of Virginia, at par, as the same is authorized to be issued by the act passed the 23rd March, 1860: provided, however, that the said board shall not be required to pay out and deliver said registered stock in amounts larger than they are enabled to procure the same under the provisions of the said act. And no portion of the remaining 15 per cent. shall, under any circumstances, be paid, until this contract is fully fulfilled on the part of said contractors. But the said Kanawha board shall, on the certificate of the said engineer in writing, that any portion of the work is fully completed, receive such work so far as to relieve the contractors from further liability as to injury to this particular work, by high water of the river or otherwise.

4. Within thirty days after the whole improvement shall have been completed according to the true intent and meaning of this contract, a final estimate shall be made and approved in the manner provided for making and approving monthly estimates; and any objections thereto which may arise, shall be disposed of and finally settled as in the case of monthly estimates; and within thirty days after the adjustment of the final estimate, the balance due thereon shall be paid in the same manner, and with the same stock, and subject to the

same provisions as the payments are contracted to be made in the third clause of this agreement.

Time of Beginning and Completing.

5. It is mutually agreed between the parties to this contract, that the work on the aforesaid improvement shall be commenced within forty days from this date, and be prosecuted, without intermission, by such force as in the opinion of the said engineer will secure its completion on or before the 15th day of August, 1861; at which time it shall be fully completed and delivered up. And it is further agreed, that in case the work shall not be commenced and prosecuted and completed, or if the contractors, on being required thereto by the written order of the engineer, shall fail or refuse to increase the force employed in the improvement, to such extent as in the opinion of the said engineer shall be necessary to insure the completion in the stipulated time; or in case the contractor shall disobey the written orders of the engineer, or shall violate any of the conditions of this agreement, then on a certificate of the fact by the said engineer, either the president pro tem. or the president pro tem. and directors of the Kanawha board may declare this contract abandoned; and the said Kanawha board shall thereupon be exonerated from every obligation thence arising; and the reserved per centage on the contract price, as well as all materials furnished and work performed, upon which no estimate may have been made, shall be forfeited to and become the right and property of the Kanawha board; and the said board may thereafter agree with any other person or persons for the execution of the unfinished work, in the same manner as if this contract had never been made.

6. The contractors shall give their personal attention to the execution of the work hereby contracted for; and it is mutually agreed that this contract shall not be let or assigned, either in whole or in part, to any other person.

7. The said engineer shall have power to prescribe the manner of preparing for, beginning and conducting every species of work to be done under this agreement, with reference to its purpose and the durability of such work, and his instructions shall be promptly obeyed; and if he shall disprove of the quality of any work, it shall be the duty of the contractors, at their own expense, to take down and rebuild so much thereof as shall be disapproved of; and if the contractors shall neglect or refuse to take down or rebuild work so disapproved of, the engineer shall cause the same to be done at their cost.

8. It is understood and agreed that all orders given by an engineer, which shall cause an increase of diminution in the value of the work to be performed, shall be given in writing; and that when any claim shall be made by the contractors for extra compensation for work performed under such orders, the order shall be produced.

9. It is further understood, that in case of the death, resignation or absence of the engineer, the board may depute any other engineer to act in his place.

10. And it is mutually agreed between the parties to this contract, that all the terms and conditions therein expressed, as well as the terms and conditions contained in the annexed specifications and proposal, which are deemed and taken to be a part of this contract, shall be binding upon the parties respectively, according to their true intent and meaning.

In witness whereof, the said James river and Kanawha company have hereunto set their name, acting by and through James L. Carr, president pro tem. of the Kanawha board, and have affixed hereto the private seal of the said president pro tem. (the Kanawha board having no seal); and the said

Theodore D. Barton and Orville Robinson have hereunto set their hands and affixed their seals the said 15th day of May, A. D. 1860.

THE JAMES RIVER AND KANAWHA CO.
By JAMES L. CARR. (Seal.)
Pres. pro tem. of Kanawha Board.
THEODORE D. BARTON. (Seal.)
ORVILLE ROBINSON. (Seal.)

A Copy.
ALEX'R T. LAIDLEY,
Sec. Kanawha Board.

May 24, 1860.

Proposal to the Kanawha Board.

The undersigned hereby propose to improve the Kanawha river, according to the foregoing specification and plans of your engineer, and under his direction, at the following prices:

1. For solid rock excavation, per cubic yard..... $3.00
2. For all other excavation, per cubic yard..... .45
3. For borrowed stone for riprap, per cubic yard..... 1.50
4. For materials for riprap, obtained from the excavation, per cubic yard..... .30
5. For materials, other than riprap, obtained from the excavation and necessarily transported over two hundred feet, and put in dams, per cubic yard..... .05
6. For oak plank, board m. at per M..... 15.00
7. For iron in the work, per lb..... .10
8. For timber in the work, per lineal foot..... .16

The registered stock of the state of Virginia, as authorized to be issued by the act passed on the 23rd March, 1860, will be received at par, in payment for the above work.

The undersigned propose to complete the above work within fifteen months after the date of contract, or forfeit to the Kanawha board five per cent. on the whole amount of work embraced in this proposition.

THEODORE D. BARTON,
ORVILLE ROBINSON.

May 14, 1860.

Copy-Teste,
ALEX'R T. LAIDLEY,
Sec. Kanawha Board.

May 24, 1860.

Report of the Committee of the Stockholders, on the Books, Papers and Accounts.

The undersigned committee, charged with the duty of examining the books, papers and accounts of the James River and Kanawha Company, beg leave to report, that under authority of resolutions of the stockholders adopted on the 17th of December, 1839, and 27th of October, 1859, they have employed Mr. Thomas H. De Witt to make the examination required of them, and have received a report from him in the following terms:

"To the Comimttee of the Stockholders on the Books, Papers and Accounts of the James River and Kanawha Company:

Gentlemen:

I have under your instructions examined the books and accounts of the James River and Kanawha Company, from the 1st October, 1859, to the 30th September, 1860, inclusive, and now respectfully report, that I have entire confidence in the correctness of the various statements and accounts made by the company to the stockholders at the late annual meeting, having examined into every entry made in the day book, journal and ledger, and found them to agree in every particular. I examined into every source of income, either from tolls or other sources, and found them correctly entered to the credit of the company, and also the disbursements, and found them in all cases sustained by proper vouchers, which were carefully endorsed, regularly filed and preserved, and easy of reference.

The condition of the company on the 1st October, 1860, is as follows:

Balance to the credit of the company on the 1st October, 1859, in Bank of Virginia		$2,948.89
Balance in the Bank of Virginia at Charleston, 1st October, 1859		6,278.40
		$9,227.29
Amount received from tolls, rents and other sources during the year		655,557.58
		$664,784.87
Deduct		
Amount of warrants issued during the year ending 30 Sept., 1860	$644,295.18	
Amount of warrants afloat on the 1st October, 1859	9,765.51	
		$654,060.69
Balance on the morning of the 1st October, 1860, as shown by ledger		10,724.18
There were afloat on the same day of warrants issued and not presented at the bank		2,840.24
		$13,564.42
Balance per bank book of Bank of Virginia, 1st October, 1860		$7,286.02
Balance in Bank of Virginia at Charleston		6,278.40
		$13,564.42

All of which is respectfully submitted,

THOMAS H. DE WITT."

In addition to which, your committee find on a personal examination, that the books of the company's office are neatly kept, and the papers arranged in a manner favorable alike to their safe keeping and the dispatch of business.

SAM'L. MARK,
LEWIS D. CRENSHAW,
THOS. W. MCCANCE.

Richmond, December 1st, 1860.

SECOND AUDITOR'S OFFICE.

Richmond, Va., November 21, 1914.

I, Rosewell Page, Second Auditor of Virginia, do hereby certify that the foregoing is a true and accurate copy of that part of Document No. 17, found in volume "*Board of Public Works* (*Turnpikes*) 1860," from page 224 to 296, inclusive, relating to The James River and Kanawha Company, which volume is in the possession of the Virginia State Library at Richmond, Va.

ROSEWELL PAGE,
Second Auditor of Virginia.

BOARD OF PUBLIC WORKS, ANNUAL REPORTS 1860.

DOCUMENT NO. 17, PAGES 272–3 AND 274–5.

Receipts and Disbursements (Table No. 18) of the James River & Kanawha Co. from its Organization to the 30th of September, 1860, Old Improvements and New Works in Operation.

RECEIPTS.

Income from Old Works:		
Old Canal, Kanawha Road, Kanawha River & Blue Ridge Canal	$793,345 55	
New Canal from Richmond to Buchanan	4,230,891 92	
Premiums and Interest on State Loans, etc	59,893 48	
Bridge Tolls	2,159 83	
North River Tolls	516 23	
Richmond Dock Income	332,209 35	
Five Locks, Tide Water Connection	15,426 99	
Total Income		$5,434,443 35

Bills Payable	$152,055 12	
Insurance on New Canton Bridge	10,000 00	
Capital Stock, Original, net	3,931,330 71	
Capital Stock, Preferred	7,400,000 00	
Release of State Liens	360,214 44	
State Stock for Kanawha Improvements	40,000 00	
Sale of Land	28,484 46	
Total other Receipts		11,922,084 73
		$17,356,528 08

DARK PAGE BLEED

THRU

DISBURSEMENTS.

Repairs and Maintenance of Old Canal from Richmond to Maidens Adventure, Kanawha Road & River & Blue Ridge Canal, Road & Ferry	$411,712 97	
Repairs and Maintenance of New Canal from Richmond to Buchanan	1,900,227 64	
Additional Charges to Revenue:		
Annuity to the Old James River Co	517,500 00	
Dividends on Guaranteed Loans	1,390,740 81	
Interest on State Loans	1,870,032 83	
Interest on North River Navigation Co. Bonds	80,590 57	
Interest on Bills Payable	11,684 75	
Interest on Auditors' Certificates	106,396 18	
Other Interest and Discount	121,164 59	
Expenses of General Administration of Company	177,642 46	
Repairs to Richmond Dock and Five Locks	79,887 51	
State Tax	1,374 77	
Loss by General Hamilton Agency	63,820 45	
Other Losses	4,623 57	
Total Charges to Income		$6,737,399 10

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Construction	$9,482,484 46	
Principal of Annuity, Old James River Co	350,000 00	
Dividends of the James River & Kanawha Co	11,599 59	
Certificate to the State Auditors	672,009 60	
Total other Disbursements		10,516,093 65
Cash Balance at September 30, 1860	$106,258 02	
Less Past Notes Afloat	3,222 69	
		103,035 33
		$17,356,528 08

I hereby certify that the figures in this Schedule were taken by me from the Annual Report of the James River & Kanawha Co. for the fiscal year ended September 30th, 1860, and that they are grouped to display the total Receipts for revenue and the Disbursements for maintenance, upkeep, expenses and interest. These figures show that at September 30th, 1860, there was a deficit of not less than $1,302,955.75 without making any allowance for depreciation on the Company's property.

A. G. POTTER.

JAMES RIVER & KANAWHA COMPANY.

Receipts and Disbursements for Four Years: October 1, 1859, to September 30, 1863, taken from Printed Volumes of Annual Reports of the Company in the Possession of the Chesapeake & Ohio Railroad Company at Richmond, Virginia.

RECEIPTS.	September 30, 1860.	September 30, 1861.	September 30, 1862.	September 30, 1863.
Revenue.				
Dock	$50,128 03	$20,415 46	$5,389 42	$9,966 04
Canal	238,991 27	133,434 22	128,765 15	286,068 35
North River Canal			2,103 26	3,943 87
Southside Connection	425 00	218 75	75 00	425 00
Blue Ridge Turnpike & Ferry	217 27	96 95	287 83	172 02
North River Bridge	450 00	182 77	249 06	213 15
Kanawha Road	8,818 48	5,523 52	6,321 12	1,655 53
Kanawha River	9,864 28	675 96		
	$308,894 33	$160,547 63	$143,190 84	$302,443 96

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Interest	2,587 84	1,972 01	1,969 30	11,333 81
Bills Payable		19,627 62	90,869 62	130,000 00
Amounts Refunded	1,078 76			
Property Sold	4,500 00		1,000 00	60,924 81
State Loan (for Interest)	132,429 30			
Original Capital Stock	43 60			
New Capital Stock	7,400,000 00			
State Release	360,214 44			
State Loan for Kanawha River	40,000 00			
	$8,249,748 27	$182,147 26	$237,029 76	$504,702 58
On hand 1st October, 1859	20,286 98	106,258 02	58,048 11	105,277 17
	$8,270,035 25	$288,405 28	$295,077 87	$609,979 75

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DISBURSEMENTS.				
Dock	$7,721 52	$18,094 04	$1,286 84	$1,960 74
Tidewater Connection	842 07			
Canal	138,099 03	163,457 57	143,154 58	355,315 85
Southside Connection	2,009 43	1,090 78	317 50	
Rivanna Connection	2,051 52			
Blue Ridge Turnpike & Ferry	755 26	1,051 60	973 59	1,146 50
North River Improvements	28,025 55	16,594 97	24,515 05	12,432 64
Kanawha Road	9,413 15	4,716 90	6,192 44	2,281 65
Kanawha River	2,116 24			275 00
Kanawha River Improvements	28,407 80	1,098 74		
	$219,441 57	$206,104 60	$176,440 00	$373,412 38
Interest on Bonds and Notes	39,067 42	14,356 45	11,449 25	13,981 30
Interest on Bond to State	1,280 00		563 85	
Interest on Guaranteed Bonds	132,579 30			
Interest on North River Bonds	13,200 17	8,985 73	798 85	41,371 62
State Tax	1,374 77	904 69	548 75	2,714 91
Dividends		5 70		
	$406,943 23	$230,357 17	$189,800 70	$431,480 21

DISBURSEMENTS—*Continued.*

Brought forward	$406,943 23	$230,357 17	$189,800 70	$431,480 21
Bills Payable	196,619 56			77,802 79
State of Virginia Debt	5,790,214 29			
Interest	1,301,500 15			
Principal of James River Annuity	350,000 00			
Annuity	118,500 00			
	$8,163,777 23	$230,357 17	$189,800 70	$509,283 00
Balance 30th September	106,258 02	58,048 11	105,277 17	100,696 75
	$8,270,035 25	$288,405 28	$295,077 87	$609,979 75

Richmond, Va., November 20th, 1914.

THE DEPOSITIONS OF JOHN L. WILLIAMS AND OTHERS, taken by consent of parties, by counsel, this 20th day of November, 1914, at the office of H. T. Wickham, General Counsel of the Chesapeake & Ohio Railway Co., First National Bank Building, Richmond, Virginia, to be read as evidence in behalf of the plaintiff, before SPECIAL MASTER CHARLES E. LITTLEFIELD, in a certain suit in equity pending in the Supreme Court of the United States, wherein the COMMONWEALTH OF VIRGINIA is plaintiff, and the STATE OF WEST VIRGINIA is defendant.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Of Counsel for Plaintiff;

Hon. A. A. Lilly, Atty-Genl.,
Hon. John H. Holt,
Of Counsel for Defendant.

JOHN L. WILLIAMS, being first duly sworn, deposes and says, as follows:

Examined by Mr. Anderson:

1 Q. Please state the facts within your knowledge with reference to the firms of John A. Lancaster & Son and Lancaster & Co.; whether those firms, or either of them, were in business in the city of Richmond, Virginia, before and during the war between the United States and the Confederate States; and, in respect to sales of stocks and bonds by said firms, as to whether any reports of such sales were made and published by said firms in the Dispatch newspaper of the city of Richmond; and as to what credit was given to such published reports by the business community in which they were published.

A. I have known the firms of John A. Lancaster & Son and Lancaster & Co., bankers and brokers, of the city of Richmond, for the period of fifty-six years. I was a clerk in the firm of Lancaster & Son, and subsequently, during the civil war and afterwards, was a member of the firm of Lancaster & Co. In particular I know the fact that the firms of Lancaster & Son and Lancaster & Co. furnished accurate market reports of sales of railroad stocks and bonds before, during and after the period of that war. I also recall that those firms and other reputable firms in the city of Richmond, such as Davenport & Co., caused the quotations of such sales of stocks and bonds to be published in the Richmond Dispatch, a reputable newspaper published in the City of Richmond before, during and after that war, and that the market reports of such stocks and bonds, so published, were recognized and accepted by the business community and relied on accordingly. And, generally, I know that John A. Lancaster & Son and Lancaster & Co. made the sales reported by them therein in the course of their business, at the prices stated.

Cross-Examination by Mr. Holt:

1. XQ. Mr. Williams, do you know who composed the firm of John A. Lancaster & Son, in the year 1860?

A. In 1860? Mr. Robert A. Lancaster, Mr. Philip J. Wright and myself. Oh, 1860, John A. Lancaster (old Mr. Lancaster) was the senior partner, and Mr Robert A. Lancaster—they were the only members of the firm of John A. Lancaster & Son.

2 XQ. That was in 1860?

A. Yes.

3 XQ. When did you become a member of the firm?

A. I rather think it was about 1863; it was not long before I got married, in 1864. About '63, I reckon.

4 XQ. Do you recollect what time in the year '63 you became a member of the firm?

A. Now you are getting too hard for me. It was sometime in the year '63.

5 XQ. You do not know what month?

A. No.

6 XQ. Was it in the early part of the year, or in the latter part of the year?

A. Now, you are a little too hard for me; that has been about sixty years—about fifty or sixty years ago, and I can not recollect exactly the time. It was sometime during the year 1863, I rather think possibly the middle of the year.

7 XQ. You don't know whether it was in the spring, summer, autumn or winter of '63, do you?

A. What are you after, please, sir? I was in the concern as confidential clerk, acquainted with everything that they did; Mr. Lancaster was an intimate friend of mine—an old school friend—and in the course of our business he took me in with him, but what month it was I do not know; I know it was before I was married, some time. I was married in 1864.

8 XQ. But you don't know whether you became a member of the firm of Lancaster & Co. in the spring, summer, autumn or winter of '63?

A. No, sir. My impression is that it was possibly about the middle of it, may be; that is my impression.

9 XQ. That would be in the middle, would it, Mr. Williams?

A. Yes.

10 XQ. And after you went into the firm who were its members?

A. Mr. Lancaster, Mr. Philip J. Wright and myself I think were all; nobody else.

11 XQ. What had become of the son?

A. Sir?

12 XQ. What Lancaster was it?

A. Robert A. Lancaster; the old man died in 1860, I think, and Mr. Lancaster ran the concern as John A. Lancaster & Son until Mr. Wright and myself became partners.

13 XQ. When did you first go into the office of John A. Lancaster & Son, as a clerk, before you became a partner?

A. I rather think it was in 1858.

14 XQ. How old were you then?

A. Let me see—I was born in 1831; you can make the calculation for yourself—that would make my age 27, would it not?

15 XQ. What were your duties with respect to making market reports to the newspapers? Did you have anything to do with that in the year 1860?

A. Well, my impression is rather that after 1860, that may be I furnished most of the reports. I rather think I did.

16 XQ. Did you furnish the alleged market reports for the Richmond Dispatch, of that firm, in the year 1860?

A. I rather think I did, sir. Whatever went there was with the knowledge of all who were there; it had the approval of all the members of the concern, and clerks. We did our best to tell the truth.

17 XQ. How often did John A. Lancaster & Son publish market quotations of stocks and bonds, in the Richmond Dispatch, during the year 1860?

A. You can see from the paper itself; I rather think it was day to day; that is my impression.

18 XQ. Was that a daily paper, Mr. Williams?

A. Yes.

19 XQ. And your recollection is that you published daily market reports?

A. I think so; that is my impression.

20 XQ. Did you have any stock Exchange in the city of Richmond at that time?

A. I rather think that the Stock Exchange was formed after the war. That is my impression. I think the stock board was made after the war; but Lancaster & Co. were the leading bankers and brokers of the city.

21 XQ. Where would you get your information in making up these stock reports? What would you base it on, if there was no Stock Exchange here at that time?

A. On absolute sales of our own; we kept a record; we were thoroughly acquainted with the market; it was our business to know the prices, and our business to keep up with the market, and as intelligent and conscientious brokers we gave those reports, sir.

22 XQ. What did you base the reports on?

A. On my own ears and sense, that is about all I can say —and observation.

23 XQ. Well, suppose a share of stock in the Richmond, Fredericksburg & Potomac Railroad Company was sold on January 1st, 1861, would you make any report of that?

A. On January 1st, 1861?

24 XQ. Yes.

A. Some of these were actual sales, and some of them were what we regarded as the true market price, on our own judgment.

25 XQ. How would you make up your judgment on that?

A. By the use of my mind; that is all I know; I do not know of anything else.

26 XQ. I know, but your mind operates on facts, when you use it?

A. Yes, sir, that of a conscientious man does.

27 XQ. On what kind of facts would you base that judgment?

A. Actual transactions, and acquaintance with the institution itself.

28 XQ. What institution?

A. The corporations, whatever they were—sometimes Richmond, Fredericksburg & Potomac, sometimes Richmond & Petersburg, and sometimes others—knowledge of the business of the concerns and how they were going on. Gracious mercy!

29 XQ. Did you make all the sales of stocks of these various companies, through the brokerage firm of John A. Lancaster & Son?

A. Did I, individually?

30 XQ. No, did that firm?

A. Did we make what?

31 XQ. In the year 1861, did anybody make any sales of stocks here, except Lancaster & Son?

A. My impression is that we did almost all the business.

32 XQ. There was no other brokerage firm that dealt in those stocks?

A. Maury & Co.; but I do not think they did anything like as much business as we did; we were pretty much recognized as the leading brokers of the place.

33 XQ. What was that other firm you named?

A. R. H. Maury & Co. was the name of a firm here—but you are asking me to go away back yonder and tell you of matters between fifty and sixty years ago.

34 XQ. But I didn't bring you here; you have undertaken to testify about it, and I want to see what your recollection is, in a fair way. Now, then, when you would make a market report you would base it on sales, would you?

A. Upon sales, and upon my knowledge of the market.

35 XQ. Would you go and inquire of the other brokerage firms what they had been selling, before making your market quotations?

A. No, indeed; I do not recollect any other brokers, except the Maurys, at that time.

36 XQ. Then you think that in 1861 there were only two brokerage firms—one was John A. Lancaster & Son, and the other was R. H. Maury & Co.?

A. Yes.

37 XQ. Well, if you were to make a sale of five shares of stock in any company, on the 1st day of the month, would you utilize that for the purpose of putting a market quotation in the newspapers upon the value of that stock?

A. If I made an actual sale, whether it was more or less—whatever the sale was, small or great, we would quote it.

38 XQ. When you would quote it, how would you quote it? Suppose a man would bring into your firm 100 shares of Richmond, Fredericksburg & Potomac stock, to sell, and you would sell it at a certain price on the first day of January, 1861, and that was the only sale that your firm had made, what market quotation would you give on that stock?

A. That at which I had made the actual sale.

39 XQ. Would you report the sale, or would you report a market price for that stock based on that sale?

A. Both, I reckon.

40 XQ. Is that the way those reports were made up?

A. They were made up by intelligent and conscientious gentlemen, of good judgment and experience; as honorable men, and knowing our business, we gave those quotations. Now that is about as much as I can tell you if you were to ask me one hundred and fifty more questions.

41 XQ. No, I don't want to ask you any more than I think necessary; because it is not pleasant to me, any more than it is to you. Suppose you made, we will say—this is

illustrative—on the first day of January, 1861, sale of 100 shares of Richmond, Fredericksburg & Potomac stock; that is, suppose John A. Lancaster & Son did that. Now, suppose you sold it at par. Then, when you would put into the Richmond Dispatch a market quotation on that stock, you would quote it as selling at par?

A. As an actual sale. I will tell you: Lancaster & Son were accepted in this town as about the best authority on the prices of stocks; we were consulted on that subject.

42 XQ. That's all right, but I want to see whether they deserved that reputation, or not; that is all—doubtless they did.

A. I would presume that is a fact you would like to know, what our reputation was, would you not? I will swear to it.

43 XQ. We understand that, but we are asking for illustrative purposes. On the 1st of January, suppose stocks were put into the hands of John A. Lancaster & Son, for sale, and we will suppose that those stocks consisted of 100 shares of Richmond, Fredericksburg & Potomac Railroad Company's stock, and on that day you would sell those 100 shares at par, and those were all the sales you had. Now when you made out a market quotation for the Richmond Dispatch, or the newspapers, after that, what would your market quotation be?

A. Exactly what we had made the sale at.

44 XQ. That would be at par, would it not—$100 a share?

A. Yes.

45 XQ. Now, would you do that regardless of what R. H. Maury & Co. had sold stock at?

A. Entirely; we rather thought we knew more about the value of stocks than they did.

46 XQ. But you did not base your market quotation upon your judgment, but upon the stock sales you had made. Now, suppose in the meantime Davenport & Co. were——

A. They were not in existence at that time, I believe.

47 XQ. When did they come into existence?

A. I think it was after the war.

48 XQ. Now suppose R. H. Maury & Co., or whatever the name of the firm was, was selling stock at the same time, you would make a market quotation based upon the sale your firm made?

A. Yes.

49 XQ. Regardless of what Maury & Co. might have been selling them at?

A. Entirely, I think.

50 XQ. You didn't know whether Maury & Co. had sold the same stock at a greater price, or not?

A. We regarded ourselves as better authority on the value of stock, than Mr. Maury.

51 XQ. That may be true, but the question is what were those stocks bringing in the market. The question is not what your judgment was, but what those stocks were bringing in the market. Now you would go and make that market quotation regardless of what Maury & Co. might be selling them at?

A. Entirely so, sir.

52 XQ. Now, if Maury & Co. had sold stocks for more than you sold them in the market, that would not affect your market quotations, would it? They would be based upon the sales made by you?

A. I think not. You have stated an entirely hypothetical and possible case. Let me tell you—if you want to know all I know about this thing I will tell you; we were the best authorities, we gave the quotations of actual sales, and when we gave the quotations they were what we believed to be the true value of the stocks.

53 XQ. Well, now, I understand you. There were other people in the same business as yourselves, in the city of Richmond, at that time?

A. I think that Maury did very little of it.

54 XQ. I am not asking about the quantity they did, I am asking you concerning the fact whether or not there were other people in the same business at that time?

A. I don't think there were any others, except the Maurys.

55 XQ. I say, Maury was in the business at that time. You think there were two firms—R. H. Maury & Co. and John A. Lancaster & Son?

A. Yes, that is my impression

56 XQ. And they were both selling stocks, were they not?

A. Observe, now—

57 XQ. Well, answer my question: were they both selling stocks?

A. You must let me answer, please—

58 XQ. Were they both in the same business?

A. My impression is that the Maurys did very little of that business.

59 XQ. I am not talking about the quantity, I am talking about the character of the business. Were R. H. Maury & Co. and John A. Lancaster & Son in the same business? Were they both stock brokers?

A. That is my impression. I think the Maurys were chiefly money brokers.

60 XQ. Well, were both firms selling stocks in the market?

A. I think so, sir.

61 XQ. They were—and at the same time?

A. I think so, sir.

62 XQ. And that was in the years 1860 and 1861?

A. I rather think so; that is my impression.

63 XQ. And perhaps earlier and later? Well, now, when you would make a market quotation for the Richmond papers, you would base it upon the sales made by you, regardless of any sales that might be made by Maury & Co.? You would pay no attention to those sales, would you, of the same stock?

A. I never inquired of them what they had done; and not only that, I suppose they would keep their business to themselves.

64 XQ. Now you had no stock exchange at the time?

A. I think not.

65 XQ. You might get a better price for stocks, sometimes, then Maury & Co., might you not?

A. Yes.

66 XQ. And they might get a better price for the same stocks, sometimes, than you might get?

A. Not likely, sir.

67 XQ. I know, but would you know whether they would, or not?

A. What you are asking me is, whether we knew Maury's business and kept up with Maury's business, and whether I would consult them in the management of my business? I will tell you what, we knew so little about it—we knew the value of property and sometimes would buy stock from them and sell it at what we believed to be the market price; our customers depended on our judgment. Lancaster & Co. were the authorities and were most depended on by the capitalists of this place. I think that with the Maurys, their stock business was a secondary part of their business; that is my impression.

68 XQ. That may be. Then I will ask you this question: did you keep up with the sales of stocks made by Maury & Co.?

A. No, we didn't make any inquiry, or know anything about them.

69 XQ. You didn't know what prices they got?

A. No, sir.

70 XQ. You didn't know whether their prices were greater or less than what you got?

A. We had nothing to do with their business.

71 XQ. Answer my question: do you know whether their prices were greater or less than what you got, for the same stocks?

A. I would like to know how I was going to know.

72 XQ. You can say whether you did know?

A. I did not know.

73 XQ. That is all we are trying to get at. Now, then, there was more than one firm engaged in the sale of stocks in Richmond in the years 1860, '61, '62 and '63, and any market quotations that were published in the Richmond papers at the time, by John A. Lancaster & Son, were based upon their own experience, regardless of what the other brokerage firms were doing?

A. Yes, sir.

74 XQ. There was no stock exchange, I believe you have stated, at that time? That was established after the war. All stocks were sold at private sale, either by the buyer and seller themselves, or individual brokerage firm?

A. I think we did almost all the business, or most of the business that was done. I think it was a mere incident to the Maurys'.

75 XQ. Well, now, suppose this case, Mr. Williams. Suppose you would make a sale of Richmond, Fredericksburg & Potomac stock on the 1st of January, and you would make no more sales of that stock until the 1st day of July, 1861, and yet you were publishing daily quotations. What would you base those quotations on?

A. We would put there, always, in those cases, last sales. Look at them and you will find them designated as "last sales."

76 XQ. Would you give the date of the sales, however?

A. The last sales?

77 XQ. Yes.

A. No, indeed, it would remain in the stock list, last sales.

78 XQ. You would not in the stock quotation give the date of the last sale?

A. No.

79 XQ. Therefore, a man who would look at a stock quotation as published by you on the 1st day of July, 1861, based upon the last sale, could not tell from the quotation whether

that sale had been made the day before, or twelve months before, could he?

A. I reckon not; if he wanted to, he could look back at the papers and see how long it was there; he would have to look back at the paper to see when the last sale was.

80 XQ. And if the papers carried him back a year, he would have to go back to that?

A. If he wanted to go back to the last sale.

81 XQ. Then, I understand whenever a sale was made by John A. Lancaster & Son, you would carry that as the quotation of the stock until the next sale was made?

A. Yes, sir, we would have it on the last sale.

82 XQ. You would base it on the last sale, and that quotation would stand until the next sale was made, is not that a fact?

A. Certainly.

83 XQ. And if that were in six months or a year, it would not make any difference?

A. No, sir.

84 XQ. Because it was based on the last sale?

A. Yes, sir.

85 XQ. Well, then, if on the 1st day of January, 1861, you had a market quotation in the Richmond Dispatch on stock, based on the last sale, from that paper alone—without running back to the last sale—you could not tell whether that was based on a sale made in 1861, or '58 or '59, could you?

A. You could use your own judgment about that. What do you think about it?

MR. HOLT: Well, my judgment would be that you could not.

WITNESS: I would like very much to know what I am here for, because you are asking me a great many questions that really make me just the least bit impatient. I am trying to tell you the truth, the whole

truth, and nothing but the truth—and all about it. I have told you that Lancaster & Co.——

86 XQ. I mean, Mr. Williams, that the paper, itself, showing a market quotation, would not show the date of the last sale?

A. Of course not.

87 XQ. And when you did run it back it would simply be a sale made by John A. Lancaster & Son, would it not?

A. Very likely.

88 XQ. And regardless of sales made by anybody else?

A. Very likely. We were unquestionably the authorities on those values, during all that time.

89 XQ. I noticed, Mr. Williams, that when our friends propounded to you the first and only question they asked you, that you read your answer from a paper?

A. Yes, I did. I read it from this paper. (Witness indicates paper.)

90 XQ. Will you let me see the paper?

A. Yes, sir. (Witness hands the paper to counsel.)

91 XQ. Who prepared this paper that you read in response to their question?

A. I rather think that Major Anderson made it up out of my last testimony.

92 XQ. Do you know who put it through the typewriter?

A. I do not.

93 XQ. It is in typewritten form?

A. Yes.

94 XQ. Did you have it typewritten, or was it handed to you in that shape?

A. It was handed to me in that shape.

95 XQ. By whom?

A. By Major Anderson, I think.

96 XQ. By Major Anderson you mean counsel in this case?

A. I do mean so, sir.

97 XQ. The former Attorney-General?

A. Yes, sir.

98 XQ. You state in the second paragraph of this typewritten answer, as follows: "In particular I know the fact that the firms of Lancaster & Son and Lancaster & Co. furnished accurate market reports of sales of railroad stocks and bonds before, during and after the period of that war."

A. That is my recollection, sir.

99 XQ. Do you know whether the market reports furnished by them prior to January 1st, 1861, were correct? Do you have any personal knowledge on the subject?

A. I have no doubt about them.

100 XQ. I know, but have you, Mr. Williams, any personal knowledge on the subject?

A. I was clerk and book-keeper there, and knew everything that was done.

101 XQ. That was before you became a member of the firm?

A. Yes, sir. Mr. Lancaster and myself were old schoolmates and college-mates, and on the most intimate terms.

102 XQ. You were examined as a witness in this case up at the Supreme Court rooms some weeks ago, were you not?

A. I think so, yes.

103 XQ. Were you not at that time asked concerning these same market reports the following question: "Do you know anything as to the correctness of those?" and did you not make this answer: "No doubt if they are in the papers they came from our concern." Question: "Do you know anything as to their correctness?" Answer: "No, sir." Were not those questions asked you, and did you not make those answers?

A. I don't know how they got there. Look here, you are asking me these particulars of sixty years ago, and I answer the best I can. Now, I have no manner of doubt that I was thoroughly familiar with them. As for catching me telling a story, that is another question—that raises another matter.

I don't know exactly whether that was my reply, or not; I am not prepared to say that is was, because in answering questions I qualify everything. I am trying to tell you the truth. I tell you now, whatever I said then, the fact of the business is, I think, my impression is that I must have. As for swearing to the quotations exactly as they were, that is another question. You are asking me to tell you about figures of sixty years ago. I tell you that I was informed of everything that went on in the concern, and that being so, that all the quotations came under my observation, and were certified by me. My impression is now, really, that they would have to pass under Mr. Lancaster's own eye first; he was the head of the firm —I was a clerk, so I was not responsible; Mr. Lancaster was responsible for them. But I have no manner of doubt that they were correct. Without being able to say positively about my information, I have no manner of doubt that they were correct. This thing of being catechised about whether I am telling the truth, is not a thing I am at all used to, and am very restive under it.

104 XQ. Do you know anything about the reports of Davenport & Co., of stock quotations published in the Richmond newspapers in the years 1860, 61, '62 and '63?

A. I have no recollection of them.

105 XQ. Do you know whether or not they made any market quotations in those years, in the Richmond papers, on stocks and bonds?

A. I really do not recollect.

106 XQ. Do you know whether or not Davenport & Co. caused any market quotations to be published in the newspapers of the city of Richmond in the years 1860, '61, '62 and '63?

A. I do not recollect.

107 XQ. Now, in the paper I now have before me, that you read a moment ago in response to my friend, Mr. Anderson's question, you say this: "I also recall that those firms and other reputable firms in the city of Richmond, such as Davenport & Co., caused the quotations of such sales of stocks and

bonds to be published in the Richmond Dispatch." Did you not read that statement into the record, Mr. Williams?

A. If I stated so, it was my recollection at the time, but I really do not recollect about that; when I referred to the general fact of reputable concerns, I do not recollect that Davenport & Co. were in existence at that time—but it has been a very long time ago. Why, is not this later on than '60,'61, '62 and '63? Davenport & Co. did not come in existence until afterwards. You are making me swear that Davenport & Co. were in existence in 1861, '62 and '63. I do not recollect that they were; I refer to them afterwards. My impression is that they did not come into existence until after the war. I do not say that Davenport & Co. were in existence during the war.

108 XQ. Didn't you state a moment ago, in reply to the first question that was asked you, that during and after the war Davenport & Co.——

109 XQ. Davenport & Co., yes.

109 XQ. Davenport & Co., yes;?

A. Or after the war, Davenport & Co.? Davenport & Co. were after the war. Things are a little mixed there, that is all—and not during the war—when I used the expression—I have been trying to tell you the truth, now, and you are trying to put me in a bad fix. If Major Anderson put it in the wrong way he is responsible for it, and not I. You are trying to make me say that Davenport & Co. were in existence during the war. Now, I do not recollect that they were. When I read that thing——

110 XQ. I will repeat my question: Did you not, in response to Major Anderson's question, answer from the paper you handed me a moment ago, that Davenport & Co. caused market quotations of stocks and bonds to be published in the Richmond Dispatch during and after the war?

A. Let me see that, please, sir. We have got to take care of ourselves here.

MR. HOLT: That is right.

WITNESS: (Reads) "I also recall that those firms and other reputable firms in the city of Richmond, such as Davenport & Co., caused the quotations of such sales of stocks and bonds to be published in the Richmond Dispatch, a reputable newspaper published in the city of Richmond before, during and after the war." Well, some of them did, and some did not. Davenport & Co. did not come into existence until afterwards. You change the thing to please. I do not say Davenport & Co. were in existence during the war; I do not think they were; but Lancaster & Co. and Davenport published their sales, some of them during the war, and some of them afterwards. Now, just put that in, please—some of them during the war and some of them afterwards.

111 XQ. I have not changed the paper at all; I have simply read from the paper you handed me; it speaks for itself, of course. Now, when did you first see this paper that you read as your answer to the first question propounded to you?

A. Oh, I read it down at the office. That especially struck me, about that, but I thought it was just a general statement covering the whole case.

112 XQ. You say "at the office"; where is the office? What office do you mean?

A. At the corner of 8th and Main Streets.

113 XQ. How far is that from here?

A. It is about a square.

114 XQ. When did you first see this paper?

A. I rather think it was this morning. But you understand, now, let me tell you, I read that thing not carefully; it was a general statement that Lancaster & Co., during the war, and before the war, and Davenport & Co. after the war, published these quotations; it covers the whole case, and so I regarded it. If you mean to say you discredit my testimony,

sir, we had just as well stop now. This statement was made as a general statement, and as far as my stating that Davenport & Co. were in existence during the war, I am either an imbecile or else I told a story; now, let us put it on one of those horns, please. I am trying to tell you the truth, and exactly how things were. My impression is that Davenport & Co. did not come into existence until after the war; but Major Anderson put them together—not being familiar with the facts, he lumped them all together; some of them were before the war, and some afterwards. That is the way I read it and so understood it, and so signed it; but I did not mean to say that Davenport & Co. were in existence before or during the war. If you want to discredit my evidence, why, discredit it and let it go for what it is worth. I am a little out of patience under this thing, because I have tried to tell you the truth, and nothing but the truth. I will tell you again, that Lancaster & Co. were authorities on the values of stock before and during the war; they gave these quotations, and were pretty much accepted as authorities on those questions; and there were others—probably Maury & Co. after the war, and I think there was another, D. T. Williams & Co., after the war.

115 XQ. Have you examined the files of the Richmond Dispatch?

A. No, sir.

116 XQ. For the years 1860, '61, '62, '63, for the purpose of ascertaining the market quotations furnished by Lancaster & Son to that paper, for those periods, on any stocks?

A. No, sir.

117 XQ. Have you looked at the market quotations furnished by John A. Lancaster & Son to the Richmond Dispatch, on Richmond, Fredericksburg & Potomac Company stock, of November 2, 1860?

A. No, sir.

118 XQ. Or the same quotations furnished by them to the same paper, on the 9th of November, 1860?

A. No, sir.

119 XQ. Or on December 14th of the same year?

A. No, sir.

120 XQ. Or on January 4th, of the year 1861?

A. No, sir.

121 XQ. Have you examined the market quotations as furnished by John A. Lancaster & Son to the Richmond Dispatch, involving either the Richmond, Fredericksburg & Potomac Railroad Co., Virginia Central Railroad Company, or the stocks of any other company, for the years 1860, '61, '62 or '63?

A. No.

122 XQ. Now, Mr. Williams, we will ask you to file as a part of your deposition, the paper that you read from, in response to Major Anderson's first question.

A. You have raised that question about Davenport & Co. being here. I do not recollect that they were here during the war, but afterwards they were, and when I read it, it was having reference more especially to during the war—Lancaster & Co. and any other brokers; I do not recollect any others except Maury; I do not recollect that Davenport was here then. I am told now that Davenport & Co. were in business here then—I do not recollect it. Do you want me to say here that Davenport & Co.——

123 XQ. No, all I ask you, Mr. Williams, is to do this: I will put the question in this shape: Will you please file, as a part of your deposition, the paper from which you read your answer to Major Anderson's first question, and mark said paper "Exhibit No. 1?" The question calls for an answer "yes" or "no." Will you do that?

A. What was that question you asked me and made me answer "yes" or "no" to? What was that?

124 XQ. I do not recall what question you refer to, Mr. Williams. My question now is, will you file this paper I have referred to, and mark it "Exhibit No. 1?"

A. Yes. What was that question you made me answer "no" to, at the last examination?

125 XQ. That was on page 877.

A. I don't think the reporter reported me right on that; it was about those quotations; the "yes" or "no" was about figures and facts. That is no way to do, gentlemen, I assure you it is not. I am a witness, but I have my rights as an American citizen, not to be trifled with; that is all.

MR. HARRISON: They have no idea of trying to impeach your testimony, Mr. Williams; it is only to test your memory.

MR. HOLT: We are not going to quarrel with you, at all; but we want to test your memory.

WITNESS: Well, for you to throw off these insinuations and intimations, and then to tell me that you do not mean anything by it, is not the way to do, according to my understanding. I am a lawyer myself, and have some knowledge of the way things are conducted, but I have never yet come to the point where I could submit to being brow-beaten.

MR. HOLT: I do not blame you for that, because I am opposed to it myself.

WITNESS: Well, it is far from pleasant.

126 XQ. Well, now, Mr. Williams, why did you read your answer to Major Anderson's question, instead of answering it off-hand?

A. Don't you know that sometimes—I relied entirely on Major Anderson's memory and upon his judgment, believing that he was trying to put down there exactly what was the truth, and I took the best view of what he said about the brokers—that that is what he meant. As I understand, there is a principle of law that if there are two ways of understanding a thing, if a man means to be honest, and if you know he means to be honest, you must take him as honest. Now, I took the right view of Major Anderson's statement. Is not that law?

127 XQ. Then if I understand you, Mr. Williams, you felt that you were unable to give a reliable oral answer, without a written preparation beforehand?

A. I thought that Major Anderson meant that expression, with reference to the different brokers, as covering before and after the war, without the succession in which they are written.

128 XQ. I am not referring to Davenport & Co. alone—that part of the answer—but I am referring to the whole written answer.

A. That was, I was perfectly satisfactory to do; I let it go. I know what I meant. If anybody chooses to misunderstand it, and think I meant to tell a story, they can make the most of it.

129 XQ. Then you relied upon Major Anderson rather than upon yourself, did you not?

A. Why, we were together. Rather than upon myself?

130 XQ. Yes.

A. What use is there of asking me that sort of question? I was dealing with a gentleman who tried to do his best. I am not an idiot nor an imbecile. I read it, and I thought that is what was meant.

MR. HARRISON: He is referring to Davenport & Co. now, altogether.

MR. HOLT: Yes, I understood him to mean that.

131 XQ. What I want to get at is this: you had the question propounded to you by Major Anderson, and instead of answering it off-hand as you are answering my questions now, you took a written answer that had been prepared theretofore to that question by Major Anderson. Now, you did that, as I understand you, because you would rather rely upon him to make the answer, than upon yourself; is not that the fact?

A. Not at all. I relied upon him as trying to express, and coming pretty near the expression of what was the fact—very close to the expression of the absolute facts.

132 XQ. Could you not have expressed it without his assistance?

A. Why, yes. I came here with the understanding that I was to be occupied two minutes, and here I have been kept—I don't know that I was ever subjected to a much more uncomfortable questioning in any matter, and one in which I took less interest.

133 XQ. How many times have you read that paper that you gave here as your answer to his question?

A. I could not tell you.

134 XQ. Could you repeat its contents now?

A. Verbatim?

135 XQ. Not verbatim, but substantially.

A. Why, yes.

136 XQ. I wish you would try and do it, please. I don't want you to read it, but to give its substance, while I hold it. Can you now give the stenographer the substance of that paper that you read as your answer to Major Anderson's question?

A. Well, I state there that I have known the firms of Lancaster & Son, and Lancaster & Co. for —— 58 years, was it? that I was a clerk with Lancaster & Son from about 1858; that I was made a member of the firm of Lancaster & Son, I think in the year 1863—it was certainly somewhere about that time; that Lancaster & Son and Lancaster & Co. were in the habit of publishing quotations, regular quotations, I think, from day to day; that we would give actual sales; that when there were no original sales we would give the last sales; that when actual sales were made, the actual sales were reported. I would like to put in also that Lancaster & Co. were the accepted authorities—that the concern of old Mr. Lancaster and his son, and the firm of Lancaster & Co., were accepted as the leading authorities on stocks and bonds. Davenport & Co., according to my recollection, became brokers after the war. My impression was that Maury & Co. were the only other stock brokers at that time; that Lancaster & Son and Lancaster &

Co. were the parties who gave these quotations, and our quotations were received generally as the best. The dealings of the other concerns were rather subordinate to ours. That is the way they stood—that we were the leading authorities during all those periods, on the prices of bonds and stocks. So far as the reference in this paper to Davenport & Co. is concerned, I did not recollect that Davenport & Co. were really stock-brokers during the war. I overlooked it, if it is so. My reference to the other leading brokers rather embraced the period after the war, than during the war and before that. Please put that down, that my reference to Davenport & Co. and other leading brokers, had reference rather to the whole period, including after the war; some of the brokers, as D. T. Williams & Co., came in after the war. I think Cannon & Schoolcraft also came in after the war; but before and during the war, there were different brokers. But the fact you are interested in, and upon which I pledge my honor, is that we were the accepted authorities on the prices of stock, and my recollection is that we furnished the quotations to that paper; we were the concern that were responsible for them. I do not recollect that these other people ever supplied—or took our place. We considered it a privilege to furnish those things, and furnished them, and I do not recollect that anybody ever interfered with us.

137 XQ. Mr. Williams, how old are you now?

A. On the 13th of July I was eighty-three years old, sir.

138 XQ. On the 13th of last July?

A. Yes, the 13th of last July.

139 XQ. Do you know whether the Richmond Dispatch in 1860, '61, '62 and '63 was owned by a corporation, or was it a private enterprise?

A. My impression is that Cowardin & Ellyson owned it then.

140 XQ. You don't know whether it was a partnership publication, or a corporate one?

A. I never heard of it as anything else but Cowardin & El-

lyson. After the war Ellyson died, and then it became, I think —well, I don't recollect, but during the war, and immediately after the war, it was Cowardin & Ellyson.

141 XQ. Well, do you know who were the owners of the Richmond Dispatch in the year 1860?

A. My impression is that the owners were Cowardin & Ellyosn.

142 XQ. In 1861?

A. I think it lasted all during the war, and after.

143 XQ. The question that Major Anderson propounded to you here a moment ago, to which you read your reply, was also written, was it not?

A. I do not recollect whether he wrote it or not. I did not.

144 XQ. I repeat my question: Major Anderson asked you one question, and you read your answer thereto. His question had been written out before hand, too, had it not?

A. I suppose so. I understood that to be a sort of categorical answer to his question.

145 XQ. Well, his question had been written out before he read it to the stenographer, had it not?

A. I presume so.

146 XQ. Had you read it beforehand?

A. What, his question?

147 XQ. Yes.

A. I do not recollect. I was trying to give my testimony as to the facts in this case. I don't know what you are after.

MR. HOLT: Well, I think that is all.

WITNESS: Well, I think this is too much. I have never before been subjected to a more uncomfortable arraignment; I have told you the best I know how, but you have been trying to lead me wrong, and have treated me as if I had no sense and was either an idiot or an imbecile; that is more than I can stand.

Note by Mr. Holt: Defendant's counsel refers the Master to page 877 of the new record—a part of Mr. Williams' evidence given heretofore.

Re-Direct Examination:

By Mr. Anderson:

1 RDQ. I will ask you first as to the preparation of this paper, by which you made your answer to the first question. Please state whether I saw you in your office this morning.

A. Yes, sir.

2 RDQ. And went over the facts in regard to this matter, with you?

A. Yes, sir.

3 RDQ. And took down from you a statement of those facts?

A. Yes.

4 RDQ. Is that correct?

A. I think so, sir.

5 RDQ. Do you remember if I read that statement, in pencil, to you?

A. I think so, sir.

6 RDQ. And do you remember whether you assented to it as a proper statement of the response you had given me?

A. I think so, sir.

7 RDQ. As I understand, you did not understand that statement, so far as it referred to Davenport & Co., to affirm that Davenport & Co. were in business in Richmond during the war, or made reports during the war?

A. I did not.

8 RDQ. You did not understand it that way?

A. No, I simply understood it as covering the whole case —all the brokers—not the question of succession.

9 RDQ. The statement was read to you before it was copied in your office?

A. Yes, sir.

10 RDQ. Do you know the fact that it was copied in your office, by a typewriter, under the direction of your son?

A. He went out to have it done; I did not follow it out, sir.

Note by Mr. Anderson: I think it is proper I should state here that I saw Mr. Williams this morning, in regard to this matter; made inquiries of him as to the facts stated in that answer, and took down his answer in his own language, as I understood it, and it was read to him, and he approved it. I feel sure that Mr. Williams did not hear distinctly the responses, as I took his language down. He either did not hear my inquiries of him, or he did not hear distinctly, because as has been evidenced from this examination his hearing is defective. His responses I wrote down, in his own language, as I understood him. The only possible error in that answer of Mr. Williams, as taken down by me, was in the reference to Davenport & Co., as to their being in business during the war. I did not know that Mr. Williams had any question about that, at all. The statement was written out by me in pencil, and copied by a clerk in his office.

WITNESS: I thought it was a question simply lumping all the brokers together. I did not understand it as stating that Davenport & Co. were in existence during the war.

11 RDQ. I want to ask you now, if Davenport & Co. were engaged in business during the war, and made reports of sales, would such reports have been accepted by the public as reliable reports? In other words, were Davenport & Co. a reputable concern?

A. Unquestionably, Davenport & Co., if they were in existence, were a reputable concern; but we were so largely the brokers of the place that we a little bit disregarded the balance; that is pust about all.

12 RDQ. Now, Mr. Williams, in rference to the published reports of market quotations made by John A. Lancaster & Son, and by Lancaster & Co., when they reported sales, if they referred to recent or remote sales did they refer to sales within a comparatively short time of the date of the report, or to sales six, eight or twelve months, or two years before?

A. To recent sales.

MR. HOLT: We object to the question.

WITNESS: (Addressing Mr. Holt) I want to say something in reference to what you quote me as having said on my previous examination, that I did not know —what was your question, to which I answered "No?"

MR. HOLT: In response to your request, Mr. Williams, I will read a portion of your re-direct examination before the Master, Mr. Littlefield, found at the bottom of page 876 and the top of 877 of the printed record. The questions and answers are as follows: (Reads)

"Re-Direct Examination by Mr. Anderson:

Q. Mr. Williams, you were employed by the firm of Lancaster & Co. before the war, were you not?

A. Only as a clerk. During the war I was a member.

Q. There are certain quotations here in the Richmond Dispatch, of sales of stocks and bonds Of course, you know nothing about them now?

A. Of course not.

Q. Do you know that the reports were made by your firm for publication in the Richmond Dispatch?

A. Yes, sir.

Q. Do you know anything as to the correctness of those?

A. No doubt if they are in the papers they came from our concern.

Q. Do you know anything as to their correctness?

A. No, sir.

Q. Not now?

A. No."

WITNESS: I just simply say that I had no manner of doubt about their correctness, but as to certifying as to their absolute correctness in there, you, nor anybody else will make me swear to that. From my relation to the head of the concern, and the whole management of the business, I have no doubt of their correctness, but I could not swear to the figures. Now just put that down, please.

By Mr. Anderson:

13 RDQ. Do you have any independent present recollection as to whether those reports were correct, or not?

A. No, indeed.

14 RDQ. Is that what your answer meant, that you had no independent present recollection of whether they were correct, or not?

A. Of course—I could not.

Re-Cross Examination:

By Mr. Holt:

1 RXQ. Have you any personal knowledge upon the subject, whether or not Lancaster & Son published in the Richmond Dispatch the market quotations that are embraced in the record in this case?

A. How on the face of the earth am I to know? I have no doubt that they were regularly and conscientiously published and made up, and that they are to be relied on.

2 RXQ. The question is, do you know whether or not your firm really furnished those quotations to that paper? Have you any personal knowledge upon that subject?

A. Well, from the general course of things, I have no doubt of it. Relying on the general course of business then, I have

no doubt that they were regularly published, and are reliable.

3 RXQ. They may have been regularly published, but are you willing to swear, Mr. Williams, that your firm furnished those to that paper, for publication?

A. From my recollection, I have no manner of doubt that they were. I have no doubt that they were, but as for swearing that they were, that is another question.

4 RXQ. I am asking you the question whether or not you are willing to swear that they did furnish those quotations to those papers.

A. I will swear to this: my connection was such that any honorable gentleman would be willing to say, and I have no manner of doubt, that they are correct.

5 RXQ. That may be, but, Mr. Williams, are you willing, and do you mean to swear now that Lancaster & Son furnished those quotations to the Richmond Dispatch—I do not mean, as a general proposition, but I mean the quotations that are printed in this record? Do you know whether they did, or not, and do you mean to swear whether they did, or not?

A. I have no manner of doubt that they were furnished by them. That is all you are going to get me to say.

6 RXQ. Did you take them over to the newspaper yourself?

A. Do you suppose I am going to answer you that question, that I did?

7 RXQ. You can answer me whether you know, or not?

A. My recollection is that it was the business of an employee of the paper to come for them.

8 RXQ. Well, do you know now whether they actually came and got from your firm the quotations that are set forth in this record here?

A. I have no manner of doubt that they were regularly made out and were regularly taken, and were regularly published. I have no manner of doubt of it.

9 RXQ. Well, now, the only reason that you have no doubt,

Mr. Williams, as I understand you, is because it was your practice to furnish them, and it was their practice to come after them. That is why you have no doubt, is it not?

A. It was the regular course of business to do so.

10 RXQ. It is simply because it was the regular course of business?

A. It was the regular course of business.

11 RXQ. You have no personal recollection on the subject —about these particular questions, have you?

A. Of course I have not.

And further this deponent saith not.

NOTE: The following statement of Major William A. Anderson, of Counsel for the Plaintiff, was made by him on November 21st, 1914, the day following the taking of the deposition of Mr. John L. Williams, but is here inserted in order that it may follow Mr. Williams' testimony:

WILLIAM A. ANDERSON, being first duly sworn, deposes and says as follows:

I think it is due to Mr. John L. Williams, to myself and also to Judge John H. Holt, of counsel for the defendant, that I shall make the following statement:

Upon Mr. Williams' examination on yesterday, in response to the first question, he read his answer from a paper which he held in his hands, and which was a transcript of a pencil memorandum which I had prepared. The facts in regard to that matter are as follows:

I had a conference with Mr. Williams in reference to the facts within his knowledge as to the sales of stock and other securities by John A. Lancaster & Son, and Lancaster & Co., formerly doing business in the city of Richmond. I went over the subject carefully with Mr. Williams, and he very briefly, but clearly, stated the facts within his knowledge. He had

already made a statement in regard to the matter, which had been reduced to the form of an affidavit, which was before us at the time, and which I suppose is now in his possession, but a copy of which can be produced. That affidavit had been sent to me. It is almost identical with this paper, except as to a part of one clause, as I remember. I have not the affidavit before me. Have you a copy of it, Mr. Harrison?

Mr. Harrison: Yes, sir. (Mr. Harrison here produces the copy.)

The Witness: I wrote down, in Mr. Williams' presence, in pencil, the statements which he made to me, and then read them to him. The paper was then handed, either by me or by Mr. Williams' son—by his son, I think—to a clerk in their office, who typewrote the paper. She afterwards handed me the typewritten copy, and the pencil memorandum which I have, and I availed myself of the first opportunity when I could see Mr. Williams to hand to him the typewritten copy. He sat down and read it in my presence, and told me it was correct, and I left it with him, with the understanding that it would be used by him for aiding his recollection as to what the facts were within his knowledge, as already stated by him in his own language. Here is the original affidavit, a copy of which I have. I informed Mr. Williams that it would be necessary to have his deposition, or testimony, that the affidavit could not be used.

Now, I want to call attention to a mistake into which I think Judge Holt was led, probably from hearing Mr. Williams' answer to the first question. I want to say that Mr. Williams never told me during the interview that Davenport & Co. were engaged in business in the city of Richmond, as brokers, during the war, nor does this statement, as I understand it from reading it, so aver. The reference to Davenport & Co. is as follows:

> "I also recall that those firms," (that is, Lancaster & Son, and Lancaster & Co.) "and other reputable firms in the city of Richmond, such as Davenport & Co., caused

the quotations of such sales of stocks and bonds to be published in the Richmond Dispatch," (I am reading it according to the punctuation) "a reputable newspaper published in the city of Richmond before, during and after that war, and that the market reports of such stocks and bonds so published were recognized and accepted by the business community and relied on accordingly."

All the paper states, and all that it was designed to state in that regard, is, that the Richmond Dispatch, a reputable newspaper, was published in the city of Richmond during the period of the war; not to state that Davenport & Co. were engaged in business during the war. I am sure if Judge Holt had read the paper he would have seen that that was the natural and proper construction, and perhaps some of his cross-examination and some of the annoyance resulting from it, to Mr. Williams, would have been avoided.

I want to say for both Judge Holt and Mr. Williams that I was sure, at the time, that there was no purpose on Judge Holt's part to raise any question whatever as to the veracity or integrity of Mr. John L. Williams, for I am sure if Judge Holt knew, as he probably does know, the reputation of that gentleman, he would recognize that no man stands higher in this community. I want to say of Mr. John L. Williams that he is one of the truest, noblest and best men whom it has ever been my privilege to know; and I am sure Judge Holt did not intend to do him any injustice or to cast any imputation upon him, or to make any reflection upon him. Indeed, he assured me that he had no such purpose or intention. I did not tell Mr. Williams to read this paper. I thought he could use it for the purpose of reading it over and making his statement in his own way. The question which I propounded was never mentioned in Mr. Williams' hearing, but was written out in his presence and in the presence of counsel, and in the presence of the Notary—merely a rough draft of the question—upon a tablet lying on the table in the room where the examination was being conducted, and it was merely used by myself as a

guide in dictating the question, which I did, orally, to the stenographer. I frequently do that in important cases, particularly when I wish to submit a very comprehensive question.

I have known the firms of John A. Lancaster & Son and Lancaster & Co., bankers and brokers, of the city of Richmond, for the period of 56 years. I was a clerk in the firm of Lancaster and Son, and, subsequently, during the civil war and afterwards, was a member of the firm of Lancaster & Son.

In particular I know the fact that the firms of Lancaster & Son and Lancaster & Co. furnished accurate market reports of sales of railroad stocks and bonds before, during and after the period of that war.

I also recall that those firms and other reputable firms in the city of Richmond, such as Davenport & Co., caused the quotations of such sales of stocks and bonds to be published in the Richmond Dispatch, a reputable newspaper published in the city of Richmond before, during and after that war, and that the market reports of such stocks and bonds so published were recognized and accepted by the business community and relied on accordingly. And, generally I know that John A. Lancaster & Son and Lancaster &Co. made the sales reported by them therein the course of their business, at the prices stated.

JOHN L. WILLIAMS.

Exhibit No. 1

O. RAYMOND BROWN,

Notary Public.

WILLIAM H. PALMER, being first duly sworn, deposes and says as follows:

Examined by Mr. Harrison:

1 Q. Colonel, will you please state your place of residence, your occupation, and your age?

A. My place of residence is Richmond, Virginia; occupation, President of the National State and City Bank, of Richmond; I am seventy-nine years old.

2 Q. Please state whether or not you were acquainted, by reputation or otherwise, with the firms of John A. Lancaster & Son, and Lancaster & Co., and Davenport & Co., during the period of the Civil War—prior thereto, and during that period.

A. I knew of the firms in the brokerage business very well —Lancaster & Son, before the war and after the war. I do not remember when Davenport & Co. commenced; but Lancaster & Co. I knew before the war. I dealt with them.

3 Q. Did you or not deal with Lancaster & Co. both before and during the war?

A. Both before and after the war.

4 Q. I don't know whether your answer covered that, or not. Were those firms, according to your recollection, engaged in business during the war?

A. They were.

5 Q. How were they regarded, Colonel, in the business world?

A. They were regarded as first class brokers.

6 Q. Were you, or not, familiar with the Dispath, a newspaper published in the city of Richmond?

A. Yes; I received it nearly every morning.

7 Q. Did your acquaintance with the Dispatch relate to the period both prior to and during the war?

A. Yes.

8 Q. What was the character and standing of that newspaper?

A. Very high.

9 Q. As a matter of fact, you may say, Colonel, if you know, how long after the war it continued its publication, and by what paper it was succeeded.

A. It was bought out by Joseph Bryan, and it is now incorporated as the "Times Dispatch"—I do not remember the exact date, but it was some years after the war.

10 Q. The Times Dispatch then is the successor of the Dispatch?

A. Yes.

11 Q. State whether or not you remember seeing market quotations published in the Dispatch, either prior to the war or during the Civil War—market quotations of stocks and bonds.

A. Yes.

12 Q. In the name of what firm or firms were those publications made?

A. I saw the market quotations both before and during the war. I take it that they were from those firms, but I could not swear that they were from those firms. I read the market quotations very regularly during the war, before and after the war, in the Dispatch.

13 Q. Then the market quotations of stocks and bonds did appear in the Richmond Dispatch, both before and during the period of the war?

A. Yes.

14 Q. And you frequently read them and consulted them?

A. I read them and consulted them, yes.

15 Q. How were they regarded, Colonel, with respect to their reliability?

A. Absolutely as the transactions of the day, and as correct.

Cross-Examination:

By Mr. Holt:

1 XQ. Colonel, you were not a member, as I understand it, either before or during the war, or at any time, of the firm of Lancaster & Son?

A. No, sir.

2 XQ. Nor of either or any of the brokerage firms about which Mr. Harrison has asked you?

A. No, sir, I was not a member of any of them.

3 XQ. You have no personal knowledge of any market quo-

tations in the Richmond Dispatch, but just such information as the paper purported to give; is that true?

A. I have before the war and since the war, knowledge; during the war I was engaged in the army.

4 XQ. I mean the quotations that appeared in the Dispatch during the years 1860, '61, '62 and '63—you have no personal knowledge about those reports, have you?

A. Except that I saw them in the paper.

5 XQ. I mean the whole information you have is what appeared in the paper itself?

A. Not absolutely, because I had a good many securities in my hands during the war.

6 XQ. You never made any market reports, yourself, to the Richmond Dispatch, did you?

A. No.

7 XQ. You never helped Lancaster & Co. or any other firm, make up any market reports, did you?

A. No, sir, I never did.

8 XQ. And the only information you have concerning the reports that appeared in that paper, was what the paper itself showed?

A. That is true.

9 XQ. You really don't know, from your own personal knowledge, whether Lancaster & Son, or Lancaster & Co., or any of the brokerage firms referred to, furnished those reports, or not, do you?

A. I do not. I was in the army during the war.

10 XQ. You were in the army?

A. For four years.

11 XQ. What time did you enlist?

A. April 21st, 1861.

12 XQ. When did you come out?

A. At Appomatox Court House.

13 XQ. You took the whole thing in, then?

A. Yes.

Re-Direct Examination:

By Mr. Harrison:

1 RDQ. You spoke, Colonel, of having a good many securities to handle during the war, and in that way had some independent knowledge of the market?

A. Yes.

2 RDQ. Did you deal wih Lancaster & Co.?

A. I dealt with Lancaster & Co. before the war and after the war. I simply knew of the securities that were in my hands, belonging to an estate, and so on; but I naturally looked at the quotations published during the war, from having these securities. I examined the quotations for that reason, that I was interested in them.

3 RDQ. Then you did examine the quotations that appeared in the Richmond Dispatch during the war, because you were interested in seeing what the market quotations were?

A. Yes, sir.

4 RDQ. As a matter of fact, did your father have any connection with Lancaster & Co., in business; was he instrumental in starting them in business, or anything of that sort?

A. My grandfather started Lancaster in business.

5 RDQ. Your grandfather started Lancaster in business?

A. Yes.

6 RDQ. John A. Lancaster was in business then for many years before the war?

A. Yes. My grandfather started the old man in business, and his son, both, and I knew them, of course.

And further this deponent saith not.

(Signature waived.)

NOTE: The further taking of these depositions was here adjourned, and continued to November 21st, 1914, at 12:00 o'clock, M., at the office of Mr. John P. Branch, in the Merchants National Bank, Richmond, Va.

O. RAYMOND BROWN,
Notary Public.

OFFICE OF JOHN P. BRANCH,
Merchants National Bank Building,
Richmond, Va., November 21, 1914.
12:00 o'clock, M.

The further taking of these depositions was resumed this day, pursuant to adjournment.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Hon. Holmes Conrad,
Of Counsel for the Plaintiff.

Hon. A. A. Lilly, Atty.-Genl.,
Hon. John H. Holt,
Of counsel for the Defendant.

JOHN P. BRANCH, being first duly sworn, deposes and says as follows:

Examined by Mr. Anderson:

1Q. Please state your age, residence and occupation.

A. Eighty-four years of age; President of the Merchants National Bank of Richmond, Virginia; residence, Richmond, Virginia.

2 Q. Where were you residing during the war between the States—1861 to '65, inclusive?

A. My home was in Petersburg, Virginia, when I went in the army.

3 Q. Were you a member of any firm engaged in business during that period? If so, where was that firm engaged in business, and what was its business?

A. I am trying to think—I think I was a member of two firms; let me see. I don't know the name of the firm, but I was a partner in a firm consisting of my father and my brothers and brothers-in-law.

4 Q. And yourself?

A. Yes, and myself. We had several firms, and I do not know what they were called; I do not remember now.

5 Q. Where were they engaged in business?

A. In Petersburg, Virginia.

6 Q. And what was their business, Colonel Branch?

A. Well, we were mostly in the banking business.

7 Q. Were you acquainted with the Richmond Dispatch newspaper, as a newspaper, at that time?

A. Yes—it was published in Richmond.

8 Q. What was the standing, reputation and character of that journal, at that time ?

A. Very good.

9 Q. What was its standing as a journal giving information upon financial matters—as to the information furnished by its financial columns?

A. Well, sir, it was very reliable.

10 Q. Do you remember, Colonel Branch, anything as to the market quotations of the values of stocks and other securities, appearing in that paper during that period, particularly from 1861 to '63?

A. I do not.

11 Q. You have no independent recollection of them?

A. No.

12 Q. Do you know that there were such publications in the paper?

A. Yes. They were published in the newspaper referred to by you.

13 Q. Can you state how they were esteemed and regarded by the business public, in this community and in Virginia?

A. Well, I will say, in Richmond and Petersburg, and the vicinity, very good.

14 Q. Can you say whether they were accepted by the public as reliable quotations of the values of those stocks and securities?

A. They were accepted by the public—they were relied on by the public, as being true, so far as I know and believe.

15 Q. Were you acquainted with the firm of John A. Lancaster & Son, and its successor, the firm of Lancaster & Co.?

A. I was, yes, and had business transactions with them.

16 Q. Do you know the standing and reputation of those firms, as brokers and bankers? If so, please state what the same was.

A. They were considered very reliable people—reliable and honest.

17 Q. How were any stock quotations furnished by Lancaster & Son, or Lancaster & Co., and published in the Richmond Dispatch or other newspapers, regarded by the public?

MR. LILLY: We object to that question.

A. I do not know, as a matter of fact, that they published any of these quotations, but the newspapers did publish them and state that they were the quotations of these banking firms. What I mean by that is, I did not see the type put up, or anything of that sort, but they were believed to be their quotations.

By Mr. Conrad:

18 Q. The market quotations furnished by Lancaster & Co. to the Richmond Dispatch, of market prices, how would they be accepted by bankers and the public generally?

Mr. Lilly: We make the same objection to that question.

A. They were accepted by me and by other people who dealt in securities; as far as I know and believe, they were accepted by all of them.

Cross-Examination:

By Mr. Lilly:

1 XQ. As a matter of fact you do not know that Lancaster & Co., or Lancaster & Son ever furnished any market quotations to the papers for the purpose of publication, do you?

A. No further than what I read in the newspapers; they have told me that they were publishing them, but I have no recollection of it at all. It is my belief that they were their quotations, because what I saw in the papers was considered very reliable. I never saw them set up the type, and never was in the printing office.

2 XQ. And you don't know who furnished them, only from what you saw in the paper?

A. I may have known at the time, but I do not recollect it now. No, I do not recollect any information on that subject. I believe what I saw in the papers were their quotations, and that they were correct.

3 XQ. But you base that only upon what you saw in the paper?

A. Well, I would not say that, because I knew what the quotations ought to have been, in the paper, and I have no recollection that they were not exactly what was correct, as they appeared in the newspaper. It would be impossible for me to remember in detail what any particular security sold for.

Re-Direct Examination:

By Mr. Anderson:

1 RDQ. State if you can with reference to what currency, as a standard of value, were these quotations made during the war period.

MR. LILLY: We object to that question, as being foreign to the purpose for which these depositions are being taken, and outside of the reference permitted by the Master in New York.

A. During a part of the war the currency traded in was bank notes. Later on during the war, the only currency that was a medium of exchange, I would say, was Confederate money.

And further this deponent saith not.

(Signature waived.)

NOTE: An adjournment was here taken to the office of Davenport & Co., 1113 East Main Street, Richmond, Virginia, where the following depositions were taken:

COLEMAN WORTHAM, being first duly sworn, deposes and says as follows:

Examined by Mr. Harrison:

1 Q. Mr. Wortham, please state your age, residence and occupation.

A. I am forty-two years of age—I was born the 18th of June, 1872. I have lived in Richmond all my life, and I am engaged in the stock brokerage business and fire insurance business.

2 Q. Under what firm name?

A. Davenport & Co.

3 Q. Is Davenport & Co. an incorporated concern, or a partnership firm?

A. Partnership.

4 Q. How long have you been connected with Davenport & Co.?

A. As I came with them in February, 1899, as a clerk, and on the 1st of January, 1900, I became a member of the firm.

5 Q. Your associates at the time you became a member of the firm were who?

A. Mr. Virginius Newton.

6 Q. And who are your present associates?

A. Mr. George W. Warren and Mr. J. J. Ballou, Jr.

7 Q Mr Wortham, I hand you a book which I ask you please to examine, and state what it is. What is the record of, and what has been its custody up to this time?

A. It is a book of the old firm of Davenport & Co.; it appears to have been used during 1863, and along during the war times. It was found, along with some other books that I did not know were in existence until Mr. Le Gendre came here some little time back and found it in the vault there (witness indicates vault in office). The entries of auction sales had by Davenport & Co. appear to be entered on this blotter during the year 1863, and subsequent to that date there are some entries here, too. In addition to that, in the back of this book there seems to be the Journal—Davenport & Co.'s Journal for 1863. These entries in the Journal were taken from the Cash Book, at that time, of Davenport & Co.

8 Q. Is the Cash Book before you?

A. One of these books here is the Cash Book. (Witness here produces another book.) This is the Cash account of Davenport & Co., for 1863; and from the Cash Book the items

were journalized, and from the Journal they were posted to the Ledger of Davenport & Co.

9 Q. Is the Ledger before you?

A. (Witness here produces a third book.) Here is the Ledger of Davenport & Co. Here is a record of the stock sales.

10 Q. You have then before you three of the original books of entry of the old firm of Davenport & Co., showing stock sales during the year 1863, and subsequent to that time—the Cash Book and the Ledger, into which those sales were carried—

A. Together with what would be called a "Scratcher" or "Blotter"; the Blotter and Journal are in the same book.

11 Q. Have you, Mr. Wortham, any knowledge, either personal or by reputation, of how far back the firm of Davenport & Co. were engaged in business in the city of Richmond?

A. I didn't know until I found this book that the firm was started until 1865, but sometime since I was in New York and there I saw the minutes——

MR. LILLY: We object to that character of evidence.

12 Q. So far as you knew, yourself, you were under the impression that Davenport & Co. began business in 1865?

A. Yes.

13 Q. The old vault that you spoke of is here in the room that we are occupying, is it not? I mean in the building of Davenport & Co.?

A. In this building, yes, sir. The building does not belong to Davenport & Co.

14 Q. I mean in the building occupied by your firm, Davenport & Co.?

A. Yes.

15 Q. You say there have been a large number of old books stored in that vault?

A. It has been the custom, ever since I have been here,

whenever we got through with anything to throw it up into that old vault.

16 Q. And you were not aware that these books of original entry of Davenport & Co., that are now introduced, covering the period of 1863, were in existence, until recently when they were found by an examination into that old vault?

A. I was not.

17 Q. I will ask you, Mr. Wortham, if the handwriting of the entries in the three books that you have referred to, of Davenport & Co., appears to be the same, or not?

A. They all appear to be in the same handwriting. If you will allow me—you can trace the entries from the Blotter to the other books.

18 Q. I was going to ask you to trace one. I will ask you to trace from the Blotter the entries through the Journal and the Ledger.

A. Here is what appears to be the March, 1863, sales.

19 Q. On what page?

A. On page 34 of the Blotter. These sales appear to have been transferred from the Blotter—

20 Q. The aggregate amount, you mean?

A. The aggregate amount; here appears to be the gross amount of sales for March, $79,153.38—for March, 1863—on page 34 of the Blotter—carried forward to the Cash Book, page 102, $78,323.38. There is a difference there, you will see, of $830.00 $650.00 there on the same date, added to this amount makes a discrepancy of $180.00, that is, between those two cash entries and this amount here; that is accounted for by an item of Bolling Haxall, of $180.00, which does not appear to be paid for. In other words, the total of this, less $180.00, is the amount of the two cash book entries. Then from the Cash Book, these two amounts were transferred to the Journal, and from the Journal they were posted to the Stock Sales; the total amount is $153,338.87. That completes the entry. They are transferred from the Blotter to the Cash

Book, from the Cash Book to the Journal, and from the Journal to the Ledger.

21 Q. What date is that?

A. This appears to be April 1st, 1863, and these were evidently for transactions in March, 1863, and put into the Cash Book the 1st of April.

22 Q. Then, beginning with page 34 of the Blotter you will find the aggregate amount of sales—gross sales—for the month of March, $79,153.38?

A. Yes, sir.

23 Q. You find on that page that Bolling Haxall was charged with $180.00?

A. Yes.

24 Q. Now the next transfer is to what book?

A. From the Blotter to the Cash Book.

25 Q. Then you find the aggregate of those sales, less the $180.00?

A. Made up by these two items.

26 Q. Transferred to the Cash Book—is that right?

A. Yes, sir.

27 Q. And the total appearing on the Cash Book is transferred to the Journal?

A. The Journal.

28 Q. At what page?

A. Page 300.

29 Q. The total of $153,338.87 appearing on the Cash Book, on page 102, and transferred to the Journal on page 300, does that complete it?

A. It is transferred from the Journal to the Ledger, page 54.

30 Q. That amount, $153,338.87, is posted on the Ledger, page 54, is that correct?

A. Yes, sir.

31 Q. And that completes the transaction?

A. That completes the March sales.

MR. LILLY: Why do you call them the March sales?

WITNESSS Because the caption in the Journal is "Gross Sales, March 28th."

32 Q. The caption in the Blotter, page 34, is "Richmond, Va., 1863, Debtors. Gross Sales, March 28th"?

A. You see that is simply a resume of two or three pages of the Blotter before that.

33 Q. Do I understand that the method you have described, of the original entries in these books, was the system used as shown by these books, of making the entries on the Blotter, and transferring them to the various other books of entry, as you have just shown?

A. Yes, sir.

36 Q. I may have been inaccurate in describing the Cash Book, Journal, and Ledger, as books of original entry. Please state whether they are books of original entry, or whether the "Blotter" or "Scratcher," in which the original sales are entered and recorded, is the only book of original entry?

A. The Blotter is the record of the sale—that is the original entry—and from the Blotter the items are carried to the Cash Book, and from the Cash Book they are journalized; that was an old system they had; and from the Journal they were posted to the Ledger. So the entry was originally made in the Blotter and went on through to the Ledger.

37 Q. I find published in the Richmond Dispatch of Tuesday, April 7th, 1863, under the caption "Financial and Commercial," a list of bonds and stocks sales at Messrs. Davenport & Co.'s auction sale "today"; and among the stocks and bonds sold are Virginia Sixes, registered, at 112 and 114. Do you find a corresponding entry on the Blotter?

A. On page 38, this is April 7th, 1863, there is a record of

$1,400 and $500 of Virginia 6's, sold at 114 and 112, respectively.

MR. HOLT: Those are bonds, are they?
WITNESS: I imagine so, from the record here.
MR. HARRISON: They are described as Virginia Sixes.
MR. HOLT: But I mean, they are bonds?
MR. HARRISON: Oh, yes.

By Mr. Harrison:

38 Q. Does the Blotter show for whose account they were sold?

A. For account of C. W. Purcell & Co., and sold to W. M. Sutton & Co.

39 Q. I find under the market quotations of the date mentioned above, Farmers Bank stock appears to have been sold at 131. Do you find a corresponding entry on the Blotter?

A. Yes. Farmers Bank, 40 shares at 131. That is on page 36. Sold by Samuel J. (or I.) Harrison, to W. M. Sutton & Co.

40 Q. I also find in the same market quotation, for April 7th, 1863, described above, Bank of the Commonwealth stock sold at 121. Do you find a corresponding entry in the Blotter of Davenport & Co.?

A. Yes, sir. Bank of Commonwealth, 16 shares sold at 121; sold for account of Isaac Davenport, Jr., and bought by B. H. Nash.

41 Q. I also find in the same market quotations published, of sales made April 7th, 1863, James River & Kanawha Company's stock sold at 19. Do you find any corresponding entry on the Blotter?

A. Yes, sir. James River & Kanawha Company, 100 shares at 19.

42 Q. For whose account?

A. Sold for account of H. Hancock, and bought for account of George S. Palmer.

NOTE (By Mr. Conrad): It is hereby agreed by the parties, by their counsel, that the photographs, numbered consecutively 1, 2, 3, 4 and 5, herewith produced, are accurate copies of the Richmond Dispatch of the dates mentioned thereon.

NOTE (By Mr. Holt): But the defendant, the State of West Virginia, objects to them on the ground of their immateriality and irrelevance in this case.

43 Q. I find in the Richmond Dispatch under date of July 20th, 1863, under the caption "Financial and Commercial," the following: "Bonds and Stocks—At Messrs. Davenport & Co.'s auction sale last week." In this statement of sales dated July 20th, 1863, as having been made "last week," I find Virginia registered bonds at 160. Do you find any corresponding entry on the Blotter? The sales were made on a date prior to July 20th, 1863—Virginia registered, at 160?

A. Here is a record of Virginia sixes, at 160, on page 64, July 16th, 1863.

44 Q. I also find here Virginia Central Railroad stock, at 116.

A. Here is an entry of 18 shares at 116, on page 62 of the Blotter, July 16th, 1863.

45 Q. I find in the advertisement last referred to, Bank of the Commonwealth stock sold at $135. Do you find any corresponding entry on the Blotter? These sales are published in the Dispatch of July 20, 1863, as having been made "last week"; they would be of a date, therefore, prior to July 20, 1863?

A. I do not find that sale recorded.

Cross-Examination.

By Mr. Holt:

1 XQ. Mr. Wortham, how old are you?

A. Forty-two.

2 XQ. When did Davenport & Co. go into business in the city of Richmond, so far as you know?

A. I could not answer that question—I do not know.

3 XQ. When did you first know them?

A. I knew them when I was a youngster in tow, Judge Holt; my cousin was a member of the firm of Davenport & Co.

4 XQ. Do you recollect when that was?

A. Certainly as far back as 1891 or '92.

5 XQ. You didn't know them then in the '60's?

A. No, sir, not very well; I didn't know anything then.

6 XQ. Now you have produced three books here. Please name them.

A. We call this book the Blotter—the book of original entry.

7 XQ. And the next two?

A. This is the Cash Book, and this is the Ledger. The back part of the Blotter was used for the Journal.

8 XQ. Then the three books you have produced may be described as "Blotter," "Ledger" and "Cash Book."

A. I would describe them as the "Blotter and Journal" (because the Journal is kept in the back of the Blotter), "Cash Book" and "Ledger."

9 XQ. When did you first see these books?

A. About two weeks ago, when they were found in this vault.

10 XQ. And you never saw them before?

A. No, sir.

MR. CONRAD: Do you see anything on those books, anywhere, to indicate what business house they belong to?

WITNESS: Yes, sir; we see the auction sales; the first entry in the book, on the auctions—here is an auction sale held on March 28th. This auction sale was car-

ried through the proper channels into the Journal, which is in the same book as the Blotter, and the Journal is marked "Journal, Davenport & Co., Richmond, Va."

MR. HARRISON: Both are under the same cover?

WITNESS: Yes.

11 XQ. Then your answer to Major Conrad's question is that they carry the name of Davenport & Co.?

A. Yes, sir.

12 XQ. Do you know who made the entries in those books?

A. I do not.

13 XQ. Are you familiar with the handwriting in those books?

A. I never saw it until the books were discovered a short time since, that I know of.

14 XQ. Then you can not say whether the books are genuine, or not; all that you know about them, as I understand it, is that you found them in the vault in the building you now occupy?

A. I found them in the vault of Davenport & Co., with their papers and old books in there.

15 XQ. In the building you now occupy?

A. Yes.

16 XQ. You are not familiar with any writing in those books?

A. No, sir.

17 XQ. And you could not swear to their genuineness or correctness, either, could you, from personal knowledge?

A. Not from personal knowledge.

18 XQ. All then you know about them is what you infer from the place you found them?

A. And from what I see in the books.

19 XQ. Do you find anything in either of those books bearing the date of January 1st, 1861?

A. I have not found it, Judge—I have only looked at these that are here. (Witness here turns the leaves of one of the books.) Here are some entries made back in September, 1858; I will see whether they go further than that. Here are some entries in 1861. Here is (reads) "May, 1861, Paid Dispatch for advertising."

MR. HARRISON: How much?

WITNESS: $45.00.

20 XQ. Do you find any entry in either of those three books —any market quotations—as early as January, 1861?

A. I have not found them.

MR. CONRAD: Have you looked?

WITNESS: No, sir.

21 XQ. Will you look and see if you find any entries relating to market quotations as early as January, 1861?

A. From these books, the stock sales appear to have begun in March, 1863—March 28th.

NOTE (By Mr. Holt): The defendant, State of West Virginia, through counsel, objects to the whole of the testimony of this witness relative to the three alleged books of Davenport & Co., discovered by him, upon the ground that the same are irrelevant; and it further objects to the photographs heretofore introduced, upon the ground that they do not relate to any market quotations that were embraced in the plaintiff's revised exhibit No. 2, heretofore filed in the record.

NOTE: The three books referred to in the testimony of this witness are marked respectively, "Exhibit C. W.—A," "Exhibit C. W.—B," and "Exhibit C. W.—C."

And further this deponent saith not.

(Signature waived.)

Monday of the next session of Congress.

A motion to reconsider the vote postponing the bill was agreed to by the following vote—ayes 81 noes 70.

FINANCIAL AND COMMERCIAL

TUESDAY, April 7, 1863.

SPECIE AND BANK NOTES.—We continue to quote gold at 61 premium, selling rate, with more firmness in the market reported. Silver may be quoted at 63 75 premium. Bank notes have advanced. The brokers to-day were asking 75 per cent.

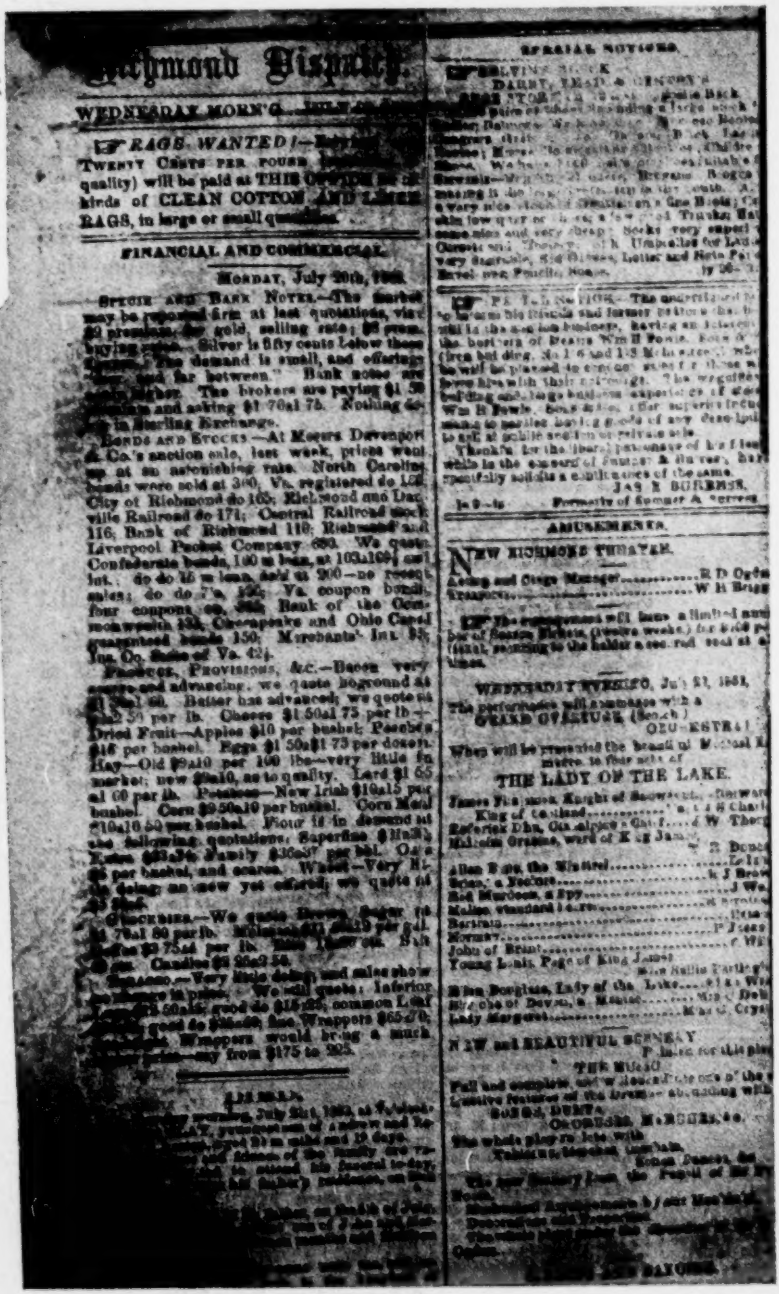
BONDS AND STOCKS.—At Messrs. Davenport & Co's auction sale to-day, which was largely attended, Confederate bonds, (15 M. loan,) coupons, brought 157; do. registered, 115@118; do. do., (100 M. loan,) registered, 1872, 103; do. do., 8 per cent convertibles, 106@107; Confederate Treasury notes, interest bearing, par and interest; Virginia sixes, registered, 112@114; Georgia sevens 49@50; Memphis City L. B. bonds, sixes, 58; Orange and Alexandria R. R. bonds, 1st mortgage sixes, 102; Traders' Bank stock, 104; Bank of Commonwealth, 121; Farmers' Bank, 131, (a large advance;) Bank of Richmond, 100@101; Bank of Montpelier, 103; James River & Kanawha 70, 19; Richmond and Liverpool Packet Co 690; Old Dominion Ins. Co., 3 1-4; Va. Fire and Marine Ins. Co., 47. All the bonds were sold with interest added to the day of sale.

PRODUCE, GROCERIES, &c.—Apples, $3@30 ₱ barrel; very few in market. Butter in demand at $3@3 25 ₱ lb. Bacon—hoground, $1 25@1 40—Beeswax, $1 50 ₱ lb. Beans, $15@18 ₱ bushel. Corn, $10 ₱ bushel; very scarce, and in demand. Corn Meal, $10@12 ₱ bushel. Candles, $3@3 25 ₱ lb. Dried Apples, $13@14 ₱ bushel. Dried Peaches, $15@18 ₱ bushel. Flour—Superfine, $31@32; Extra, $34; Family, $36 ₱ bbl. Hay, $6@7 50 ₱ cwt. Lard, $1 20@1 60 ₱ lb. Potatoes—Irish, $8@10; Sweet, $10@11 ₱ bushel.—Peas, $15@18 ₱ bushel. Oats, $6 50 ₱ bushel.—Seeds—Timothy, $7—season over; Clover, $4@5. Tobacco—no sales of leaf for two days past, and we make no change in quotations; the breaks are somewhat larger. The market for manufactured is less animated. Wheat—nothing doing, and we repeat the nominal quotations of $1@1 50 ₱ bushel. Sales have been made for horse-feed at 65@75. Dressed Fowls are very high, hucksters in the market demanding $2@2 25 ₱ pair for indifferent chickens; Turkeys are held by commission merchants at $1 25 ₱ lb. Eggs, $1 50 ₱ dozen.—Sugar, Brown, $1 50@1 75 ₱ lb as to quality.—Molasses, $1 75@2 ₱ gallon. Coffee, 40@5 ₱ lb. Salt, 50c. ₱ lb. Rice, 5@6c.

John Van Buren said at the St. Patrick's dinner in New York that Lincoln should not stop to consider the color of the

Photograph No. 1

O. Raymond Brown, Notary Public



Richmond Dispatch.

WEDNESDAY MORN'G ...

RAGS WANTED!—... TWENTY CENTS PER POUND ... quality) will be paid at THIS OFFICE for all kinds of CLEAN COTTON AND LINEN RAGS, in large or small quantities.

FINANCIAL AND COMMERCIAL.

MONDAY, July 20th, 1863.

SPECIE AND BANK NOTES.—The market may be reported firm at last quotations, viz: $2 premium for gold, selling rate; $2 prem. buying rate. Silver is fifty cents below these ... The demand is small, and offerings ... and fair between." Bank notes are ... higher. The brokers are paying $1 50 ... and asking $1 70a1 75. Nothing ... in sterling Exchange.

BONDS AND STOCKS.—At Messrs Davenport & Co.'s auction sale, last week, prices went up at an astonishing rate. North Carolina bonds were sold at 340. Va. registered do 102; City of Richmond do 105; Richmond and Danville Railroad do 174; Central Railroad stock 116; Bank of Richmond 110; Richmond and Liverpool Packet Company 680. We quote Confederate bonds, 100 m loan, at 103a105; sml int. do do 15 m loan, do'd at 200—no recent sales; do do 7's, 100; Va. coupon bonds, four coupons on, 95a; Bank of the Commonwealth 135; Chesapeake and Ohio Canal guaranteed bonds 150; Merchants' Ins. 95; Ins. Co. State of Va. 42½.

PRODUCE, PROVISIONS, &c.—Bacon very scarce and advancing, we quote hoground at ... Lard 60. Butter has advanced; we quote at ... per lb. Cheese $1 50a1 75 per lb.—Dried Fruit—Apples $10 per bushel; Peaches $16 per bushel. Eggs $1 50a$1 75 per dozen. Hay—Old $9a10 per 100 lbs—very little for market; new $8a10, as to quality. Lard $1 65 a1 60 per lb. Potatoes—New Irish $10a15 per bushel. Corn $9 50a10 per bushel. Corn Meal $10a10 50 per bushel. Flour is in demand at the following quotations: Superfine $[illegible] Extra $[illegible] Family $[illegible] per bbl. Oats $5 per bushel, and scarce. Wheat—Very little doing; no new yet offered; we quote at $3 50a6.

GROCERIES.—We quote Brown Sugar at ... $1 75a1 80 per lb. Molasses $[illegible] per gal. Rice ... $3 75a4 per lb. Teas 1 dollar ... Salt ... per bu. Candles $2 25a2 50.

TOBACCO.—Very little doing, and sales show ... Manufactured in price. We still quote: Inferior ... $[illegible] good do $15a25, common Leaf ... $[illegible] good do $30a40; fine Wrappers $65a70; ... Wrappers would bring a much ... price—say from $175 to 225.

[illegible]

SPECIAL NOTICES.

[illegible]

DAISY, HEAD & CHENEY'S ...

[illegible]

FOR SALE.—The undersigned ... to inform his friends and former patrons that he ... still in the same old business, having an interest ... the business of Messrs Wm H Fowle, Sons & ... (late Ast'd dirg. No 1 6 and 1 8 Main street), ... he will be pleased to see one and all of those ... favor him with their custom. The well-known ... building and large business experience of Messrs ... Wm H Fowle, Sons & Co., offer superior facilities ... making to parties having goods of any description ... to sell at public auction or private sale.

Thanking for the liberal patronage of his friends ... while in the concern of Sumner & Harvey, he ... respectfully solicits a continuance of the same.

JAS R BOULDEN.

Jy 9—1m Formerly of Sumner & Harvey.

AMUSEMENTS.

NEW RICHMOND THEATER.

Acting and Stage Manager.....R D Ogden
Treasurer.....W H Brien

The engagement will have a limited number of Season Tickets, (twelve weeks,) for sale previous to the ... at the Ballot Box, (which will be open ... from 10 A. M. to 2 P. M.) ... Tickets to be had at the Box Office ... hours.

WEDNESDAY EVENING, July 22, 1863,

The performance will commence with a
GRAND OVERTURE, (Bench)
ORCHESTRA!

When will be presented the Drama of Musical ... more in four acts of

THE LADY OF THE LAKE.

James Fitz-James, Knight of Snowdoun.....Stewart
King of Scotland.....[illegible] Charl...
Roderick Dhu, Chieftain of the Gael.....W Thorp
Malcolm Graeme, ward of King James.....[illegible]
[illegible] Dougl...
Allan Bane, the Minstrel.....Le Ha...
Brian, a Hermit.....[illegible] J Brow...
Red Murdoch, a Spy.....J Wa...
Malise, standard bearer to Roderick.....[illegible]
Bertram.....[illegible]
Norman.....P Jones
John of Brent.....[illegible]
Young Lewis, Page of King James.....
Miss Nellie Farley
Ellen Douglas, Lady of the Lake.....Miss Wi...
Hermit of Devan, a Monk.....Miss [illegible] Dob...
Lady Margaret.....Miss G. Cry...

NEW and BEAUTIFUL SCENERY

[illegible]

THE MUSIC!

Full and complete, and will include some of the ... Favorite Features of the Drama—abounding with ...

SONGS, DUETS,
CHORUSES, MARCHES, &c.

The whole play to be with
Tableaux, Stage[illegible] ...
Scenic Dances, &c.

The last Scenery from the Pencil of Mr ... Work.

[illegible] Improvements by our Machinist.

Decorations and Properties.

The whole to be under the Direction of Mr. ...

Open... [illegible] BAYOUS.

Photograph No. 2

O. Raymond Brown, Notary Public

hold their position on our artillery, ammunition. Capt. Freeman, who had been sent a prisoner to the rear. We thereafter took no more prisoners.

We took three of the guns back and killed large numbers of the enemy, but heavy reinforcements arriving out of Nashville, we found it expedient to retire.

FINANCIAL AND COMMERCIAL.

FRIDAY, April 17, 1863.

SPECIE AND NOTES.—Gold was heavy to day, and some of the brokers were only asking $4 75 premium. The buying rates may be quoted at $4@4 25 premium. Bank notes are selling at 75@80 ₱ cent premium—the inside rate for Virginia's For Confederate Treasury notes, old issue, the brokers are now offering 3½ ₱ cent premium.

BONDS AND STOCKS.—At Messrs. Lancaster & Co.'s sale, this week, Confederate bonds (5,000,000) coupon, brought 15½@16½ and interest; do. do. (100,000 0's) short dates, registered, 104 and int; long dates, 109@110½ and int; Virginia sixes, registered, 112@113 and int; do. do., coupon (4 coupons on) 109; North Carolina eights 110 and int.; Tennessee sixes (2 coupons on) 136, Richmond city bonds, due 69 and '70, 133 and int; do. do., due '80, 132@139; Old Dominion Insurance stock 39@40; Insurance Company of the State of Virginia 43@44½; Insurance Company of the Valley of Virginia 61; Importing and Exporting Company 73@75½; Bank of Virginia 8 ½; Bank of the Commonwealth 12½, Farmers' Bank 128, Midlothian Coal Mining Company 110; James River and Kanawha Canal Company 2½; Manchester Cotton and Woolen Manufacturing Company 215; Richmond, Fredericksburg and Potomac Railroad stock 110@111; Virginia Central Railroad stock 100@101½; Orange and Alexandria Railroad stock (common) 37½; Confederate Treasury notes, interest bearing, 99½@99½ and int.

PRODUCE, &c.—Apples, $3@$10 ₱ bbl., as to quality. Bacon—the market is well supplied, and we note a decline; sales by commission merchants at $1 35 for hog round; hams, $1 40@1 45. Butter $2 75@3. Beans, $90 ₱ bushel. Corn, $6@8 50 ₱ bushel. Corn Meal, $10. Candles—tallow $1 10@2 75. Dried Apples, $12@14 ₱ bushel; do. Peaches, $16@ 0 Eggs, $1 50 ₱ dozen. Flour—Superfine, $11@12; Extra, $34; Family, $36.—Hay—sales at $15@20 ₱ cwt. Lard $1 40@1 60

gers made us way

THE CONSCRIP
the 7th Ohio caval
Somerset, Ky., a
number of letters
says the Democra
a bloody business
be conscripted.

You never saw
The whole country
rallies to meet
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each township to
King Lincoln, or
from our home.
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Lincoln. This is
a despotism.

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comes on us—not
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such an infamous
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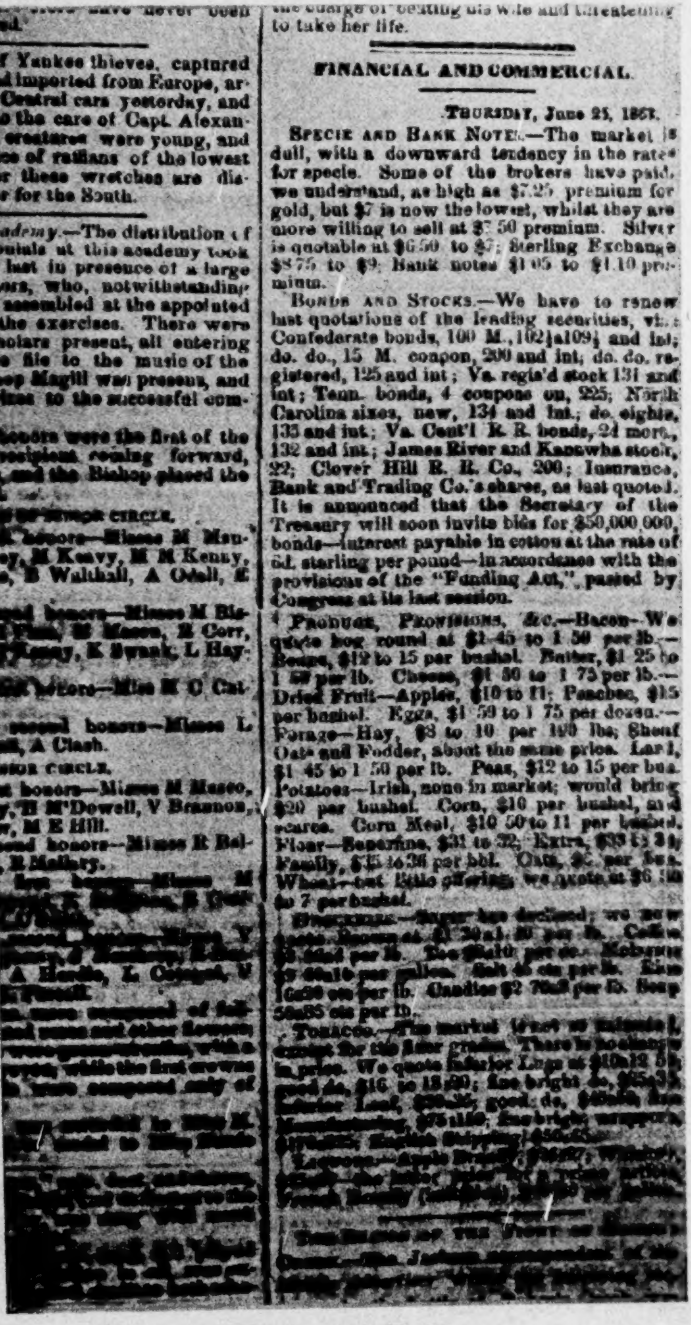
Photograph No. 3

O. Raymond Brown, Notary Public



of Yankee thieves, captured
and imported from Europe, ar-
Central cars yesterday, and
to the care of Capt. Alexan-
creatures were young, and
ace of ruffians of the lowest
her these wretches are des-
ter for the South.

Academy.—The distribution of
pounds at this academy took
y last in presence of a large
tors, who, notwithstanding
, assembled at the appointed
the exercises. There were
scholars present, all entering
ole file to the music of the
Bishop Magill was present, and
prizes to the successful com-

honors were the first of the
recipient coming forward,
, and the Bishop placed the
d.

SENIOR CIRCLE.

honors—Misses M Man-
ney, M Keavy, M M Kenny,
le, E Walthall, A Odell, E

ond honors—Misses M Bis-
Flinn, M Mason, E Corr,
Kenny, K Swank, L Hay-

JUNIOR CIRCLE.

honors—Miss M C Cal-

second honors—Misses L
ell, A Clash.

NIOR CIRCLE.

st honors—Misses M Mason,
y, H M'Dowell, V Brannon,
w, M E Hill.

ond honors—Misses R Bel-
, E Mallory.

[illegible] honors—Misses M
[illegible]

[illegible] honors—Misses M
[illegible]

A Hardin, L Colegrad, V
Powell.

[illegible] composed of fall-
and roses and other flowers
[illegible]

[illegible] composed only of

[illegible] awarded to Miss M.
[illegible]

the charge of beating his wife and threatening to take her life.

FINANCIAL AND COMMERCIAL.

THURSDAY, June 25, 1863.

SPECIE AND BANK NOTES.—The market is dull, with a downward tendency in the rates for specie. Some of the brokers have paid, we understand, as high as $7.25 premium for gold, but $7 is now the lowest, whilst they are more willing to sell at $7 50 premium. Silver is quotable at $6 50 to $7; Sterling Exchange $8 75 to $9. Bank notes $1 05 to $1.10 premium.

BONDS AND STOCKS.—We have to renew last quotations of the leading securities, viz.: Confederate bonds, 100 M., 102@109; and int; do. do., 15 M. coupon, 200 and int; do. do. registered, 125 and int; Va. regis'd stock 131 and int; Tenn. bonds, 4 coupons on, 225; North Carolina sixes, new, 134 and int.; do. eights, 135 and int; Va. Cent'l R. R. bonds, 24 mort., 132 and int; James River and Kanawha stock, 22; Clover Hill R. R. Co., 200; Insurance, Bank and Trading Co.'s shares, as last quoted. It is announced that the Secretary of the Treasury will soon invite bids for $50,000,000 bonds—interest payable in cotton at the rate of 6d. sterling per pound—in accordance with the provisions of the "Funding Act," passed by Congress at its last session.

PRODUCE, PROVISIONS, &c.—Bacon—We quote hog round at $1 45 to 1 50 per lb.—Beans, $12 to 15 per bushel. Butter, $1 25 to 1 50 per lb. Cheese, $1 50 to 1 75 per lb.—Dried Fruit—Apples, $10 to 11; Peaches, $15 per bushel. Eggs, $1 50 to 1 75 per dozen.—Forage—Hay, $3 to 10 per 100 lbs; Sheaf Oats and Fodder, about the same price. Lard, $1 45 to 1 50 per lb. Peas, $12 to 15 per bus. Potatoes—Irish, none in market; would bring $20 per bushel. Corn, $10 per bushel, and scarce. Corn Meal, $10 50 to 11 per bushel. Flour—Superfine, $31 to 32; Extra, $33 to 34; Family, $35 to 36 per bbl. Oats, $6 per bus. Wheat—but little offering, we quote at $6 50 to 7 per bushel.

[illegible]—Sugar has declined; we now quote Brown at [illegible] per lb. Coffee [illegible] per lb. Tea [illegible] per lb. Molasses [illegible] per gallon. Salt 45 cts per lb. Rice [illegible] cts per lb. Candles $2 70@3 per lb. Soap 50@55 cts per lb.

TOBACCO.—The market [illegible] except for the finer grades. There is no change in prices. We quote inferior Leaf at $10@12 50; good do. $16 to 18 00; fine bright do. $[illegible]; Lugs, $[illegible]; good do. $[illegible]; fine bright [illegible]; Manufacturing, $75@110; fine bright [illegible]; Stemming, $[illegible]; Shipping [illegible]

[illegible]

Photograph No. 4

morning was appointed for secret session, for the examination of charges against some one or two members of the Conference, involving their integrity.

Rev. D. J. C. Slaughter was, at his own request, placed on the supernumerary list.

Financial and Commercial.

Since our last report specie has gone up considerably. We now quote $15 as the buying, and $16 as the selling price for gold. Silver is bought by the brokers at $12, and sold at $13.

Bank Notes.—Southern bank notes are bought by the brokers at $2.75, and sold at $3.

Bonds and Stocks.—At the auction sale of Lancaster & Co., on Wednesday, bonds and stocks commanded the following figures: Confederate 8 per cent. coupons, 1861, 114; do., 1871, 112; registered bonds, 1868–9, 110; convertibles, 113 to 115; 15 million loan coupons, 100; do. registered bonds, 133½ to 135; Virginia registered bonds, 1891–'94, 253; do., 1890, 255; do., 1887, 257; registered bonds, past due, 197 to 198; North Carolina 8's, coupons, 235; city of Richmond 6's, 246; Lynchburg coupon bonds, 255; Norfolk bonds, registered, 165 to 166; Alexandria coupon bonds, 235; Va. and Tenn. railroad bonds, second mortgage, 242; Va. Central railroad bonds, second mortgage, 245; Va. Central railroad dividend bonds, 6 per cent., 210; R., F. and P. railroad 7 per cent. convertibles, 253; do. 6 per cent., 205; Orange and Alexandria railroad bonds, first mortgage, 6's, 230; Manassas Gap railroad, first mortgage, 6's, 150; Orange and Alexandria railroad stock, 56; Richmond Importing and Exporting Company, 930 to 960.

Grain.—The receipts of Grain are still very light. We have heard of sales of Wheat ranging from $10 to $15 per bushel, according to quality—the latter figure for a choice article. Corn is selling at from $15 to $18 per bushel, and very little in market.

Country Produce and Vegetables.—Bacon, hog round, $2.75; Lard $2.50; Butter $3.75; Eggs $3; Irish Potatoes $8; Sweet do. $10 to $12; Tallow Candles $3.75 to $4; Salt 40 to 45c. These are the wholesale rates.

In the city markets fresh meats are worth $1.25 to $1.50 for Beef and Mutton, and $2 for Pork; Chickens, $6 to $8 per pair; Ducks, $7 to $8 per pair; Butter, $4.50 to $5 per lb.; Sweet Potatoes, $2.50 per half peck; Irish Potatoes, $2 per half peck.

Groceries.—Coffee, wholesale, $9 per lb.; retail, $10; Sugar, $3 to $3.25; Sorghum Molasses, wholesale, $12 per gallon, and $14 to $15 at retail.

Liquors.—Whiskey, $55 to $65 per gallon; Apple Brandy, $45 to $50; high proof Rum, $50; French Brandy, $60 to $100.

Leather.—The supply of Leather in the market is somewhat improved. We quote Sole Leather $6.50 to $7.50 per lb.; Upper do., $7.50 to $8; Harness do., $6.50 to $6; Hides are quoted at $2.50 to $2.75 for dry, and $1.50 for salted green; Tanners' Oil, $4 to $5 per gallon.

Tobacco.—The demand for the different brands of Tobacco is improved, and prices tending upwards.

The "English" Imported Goods.—The remaining cargo of the Margaret and Jessie, a block ade running steamer, captured by the Fulton, has been taken out at New York. Most of the original cargo had been thrown into the sea or burned before she was captured. A New York paper says:

landed. The town of Brownsville was set on fire by Confederate cavalry, but the Unionists resisted them and a bloody fight occurred. (?) The 13th Maine regiment was ordered to the support of the Unionists.

Gen. W. H. F. Lee, confined at Fortress Monroe for several months, has been sent to Fort-Lafayette.

The steamer Sunnyside was destroyed by fire a few days ago, near Island No. 16, twenty-six miles below New Madrid. The cargo consisted of 1,300 bales of cotton, which, together with the boat, is a total loss. Thirty passengers, including eight ladies, were drowned in attempting to get ashore.

It is rumored that Gen. Gamble and Lieut. Gov. Gamble, of Missouri, will shortly tender their resignations.

An arrival from Havana brings later advices from Mexico. It is said that the Interventionists have been defeated in various engagements by the troops of the Juarez Government. It is also said that the party of the Republic is gaining strength with the people. Gen. Comonfort is at the head of the National troops. The arrival of Maximilian is anxiously looked for by the friends of the monarchy.

The Confederate steamer Georgia put into Santa Cruz, Tenneriffe, on the 15th ult., to obtain supplies of coal and provisions.

A lot of rebel documents were captured in the Cornubia, among them letters from Mr. R. De Leon, of Paris, to President Davis, in one of which he expresses the belief that there is no intention on the part of France to recognize the Confederacy.

Gold in New York, Monday, 147¼. Virginia sixes, 55.

European Items.

The Mexican Consuls at Paris, Bordeaux, and Havre, had been compelled to cease the discharge of their duties. The Consuls of Gautemala were acting for them

Earl Russell has proposed a basis of negotiation between Germany and Denmark on the Holstein question.

It is stated that the authority to build the rebel rams in France was given under the assurance that they were intended for the Chinese.

From Texas-Mississippi.—A correspondent of the Mobile *Advertiser*, writing from Houston, Texas, gives the annexed news:

Investigations are being made into the alleged cotton frauds in Texas. No discoveries have yet been made, though it is believed there will be such, implicating several agents of the Government, if not officials.

Public meetings are being held all over Texas, and a serious revival of patriotism is in progress. Gov. Lubbock, Col. J. A. Wilcox, Judge Gray, Col. W. Carter, Judge Oldham, and Gen. Gano, are the principal speakers.

The Yankee General Franklin, with a force said to number 20,000, has been for several weeks slowly advancing from Vermillion, La., in the direction of Alexandria, on Red river. At this date his force is divided, one section being at Opelousas and the other at Washington. Alexandria is threatened; but, unless heavily reinforced, the Federals will hardly be able to reach that point, for Gen. Dick Taylor, with his force, is in a position to oppose their advance much further in that direction. A battle at or near Moundville is imminent, and we have not much doubt that the result will be favorable to our army.

Confederate money in Houston, which has been as low as twelve for one, is now five for one, and steadily advancing.

Our troops throughout the Mississippi Department are now well clothed, well fed and in the best of spirits.

In regard to the rumors about disaster among our troops west of the Mississippi river, the Advertiser's correspondent says: "Do not believe any report that may reach you that our troops in Texas, Louisiana and Arkansas are deserting or becoming demoralized for any cause. Such is not the case anywhere. On the contrary there was never more loyalty than at present among them, as the enemy will yet learn, if he ventures too far within our borders. Do not give yourselves any uneasiness about us on this side; we are all right, and will keep up our end of the pole."

The Federals hold Little Rock, but no other point in this vicinity, and at present seem disposed to remain very quiet.

There is an abundance of everything to eat all through this country—plenty of salt at $3 per bush-

Photograph No. 5 O. Raymond Brown, Notary Public

R COPY

RICHARD B. WASHINGTON, being first duly sworn, deposes and says, as follows:

By Mr. Harrison:

1 Q. Mr. Washington, please state your place of residence, your age and your occupation.

A. My present place of residence is Richmond, Virginia; I am in my 27th year; I am a clerk in the employ of John L. Williams & Sons.

2 Q. Mr. Washington, did you make a comparison of some of the quotations and sales of stocks and bonds shown on what is called the record of exhibits filed in this case by the plaintiff—I refer now to Plaintiff's Revised Exhibit No. 2—with the book of Davenport & Co. introduced in evidence, being the "Blotter," showing the record of sales of stocks and bonds made by them during the year 1863?

A. Yes; Mr. Le Gendre and myself checked those up, and then I went back over it and compared them, and also compared them with the Dispatch, I believe.

3 Q. I hand you a statement, which I will ask you to file with your deposition as "Exhibit No. 1," containing certain data in relation to the sales of the securities named thereon. Will you please state if that is the result of the work which you did, and which you have just mentioned in your preceding answer?

A. Yes, sir, this is one of them. I believe there were several.

By Mr. Conrad:

4 Q. Do you know that they are accurate, and correct?

A. Yes, sir.

MR. HOLT: The defendant objects to the exhibit just filed, upon the ground that it is irrelevant and immaterial; and upon the further ground that it does not fall within the purview of the supplemental testimony that is now being taken at the suggestion of the Master.

By Mr. Harrison:

5 Q. Now, Mr. Washington, the first reference on the exhibit you have just filed is to Davenport & Co.'s folio, page 36. Does that mean the Blotter? If so, please turn to that page and see if you find there the record of the sale described on your exhibit.

A. I would not recognize the book by its name, but would recognize it when I see it. (Witness here turns to page 36 of the Blotter.)

6 Q. Do you find on that page the entry of the sale under date of April 8th, 1863, of Virginia State sixes, at 114?

A. Yes, sir, here it is, $5,000 sold at the price of 114.

7 Q. Now on page 38 do you find the entry of the sale of $1,400 Virginia State sixes?

A. Yes, here it is, 1400 at 114, and 500 at 112; and another 500 at 114.

8 Q. Those entries then which appear on your exhibit, are found on pages 36 and 38 of Davenport & Co.'s book—the Blotter?

A. Yes.

9 Q. You say you checked those entries with the Dispatch, as of those dates, and found the sales advertised there, as shown on your exhibit?

A. Yes. Have you the other exhibit? I can tell better by that.

NOTE: An adjournment was here taken to 3:15 P. M. at which time the deposition of the witness was resumed, as follows:

By Mr. Harrison:

10 Q. Please look at page 330 of the printed record, Plaintiff's Exhibit No. 2, and state whether or not any quotation is shown of Virginia State sixes, under date of April 8th, 1863.

A. Yes.

11 Q. What is it?

A. Virginia sixes, registered, Davenport & Co., 112, asked 114.

12 Q. Now look at page 36 of Davenport & Co.'s Blotter, and state whether there is any sale of Virginia State sixes corresponding to that quotation.

A. On page 36 of Davenport & Co.'s book, I see Virginia State sixes, 5,000 sold at the rate of 114.

13 Q. Now look at page 330 of the printed record, Plaintiff's Revised Exhibit No. 2, and state whether there is any quotation of Virginia State sixes for April 8th, 1863?

A. Yes.

14 Q. What is it?

A. Virginia sixes, registered, Davenport & Co., at 112 and 114.

15 Q. Now look on page 38 of Davenport & Co.'s Blotter, and state whether or not any sales of Virginia sixes were made on that day, corresponding with that quotation.

A. On page 38, I find Virginia State sixes, 1,400 were sold at rate of 114; 500 were sold at rate of 112, and 500 again, at the rate of 114.

16 Q. Now look at page 335 of the printed record, Plaintiffs Revised Exhibit No. 2, and state what quotation is shown there of James River & Kanawha stock, under date of May 2, 1863?

A. On May 2, 1863, Davenport & Co., 20, James River & Kanawha Company.

17 Q. Those are the quotations?

A. Yes, sir.

18 Q. Now look at page 48 of Davenport & Co.'s Blotter, and see whether there are any sales of that date corresponding with that quotation?

A. James River & Kanawha, 3 shares were sold at $20 per share.

19 Q. Do you find any other sales on that day?

A. James River & Kanawha, 128 shares at $20 a share.

20 Q. For whose account?

A. For the account of John Jones & Co., the first one—and John Jones for the second one.

21 Q. Now look at page 337 of the printed record, Plaintiff's Revised Exhibit No. 2, and state what market quotation is there shown of Virginia Central Railway stock under date of May 2, 1863?

A. Here it is—Davenport & Co., 94; that is the quotation.

22 Q. Now look at page 48 of Davenport & Co.'s Blotter, and state whether any sale is there recorded of Virginia Central Railway stock, corresponding with that quotation.

A. On page 48, the Virginia Central Railroad stock, 10 shares, were sold at $94 per share.

23 Q. Now look again on page 337 of Plaintiff's Revised Exhibit No. 2, printed record, and state if there is any market quotation shown of Virginia Central Railroad stock under date of July 22, 1863.

A. Under date of July 22, 1863, Davenport & Co., 116 is the quotation.

24 Q. Now look at page 62 of Davenport & Co.'s Blotter and state whether any sale is there recorded of Virginia Central Railroad stock, corresponding with that quotation.

A. On page 62 of Davenport & Co.'s Blotter there were 18 shares of Virginia Central Railroad stock sold at 116, on that day, July 22, 1863.

25 Q. Now look at page 339 of the printed record, Plaintiff's Revised Exhibit No. 2, and states what quotation is there shown under date of May 16, 1863, of Richmond & Danville Railroad Co.'s stock.

A. On May 16, 1863, Davenport & Co., 121 is the quotation.

26 Q. Now look at page 54 of the Davenport & Co.'s Blotter, and state whether or not on the same day any sale of Richmond & Danville stock is shown, corresponding with that quotation.

A. Richmond & Danville Railroad stock was sold, 10 shares at the rate of 121, on that date.

27 Q. Now look on page 341 of the printed record, Plaintiff's Revised Exhibit No. 2, and state what quotation is there shown under date of April 8, 1863, of Farmers Bank stock?

A. April 8, 1863, the quotation was 131.

28 Q. Now look at page 36 of Davenport & Co.'s Blotter, and state whether on the same date any sale is shown of that stock, corresponding with that quotation?

A. Farmers Bank of Virginia, 40 shares at 131, sold.

29 Q. I now hand you, and ask you to file as Exhibit No. 2 with your deposition, a schedule of sales taken from the books of Davenport & Co. relating to the plaintiff's revised exhibit No. 2, showing sales of Richmond, Fredericksburg & Potomac stock, Virginia Central Railroad stock, James River and Kanawha stock, Richmond & Danville Railroad Co.'s stock, Virginia & Tennessee Railroad stock, and Richmond & Petersburg Railroad stock, under the dates in 1863 shown on that schedule. Please state whether you prepared that from the Blotter of Davenport & Co.

A. This is the one I prepared from Davenport & Co.'s book, right here.

30 Q. Please state if that is an accurate transcript from the Blotter of Davenport & Co. which has been introduced in evidence.

A. This was taken direct from the Blotter of Davenport & Co.

31 Q. By you?

A. By me—by Mr. Le Gendre and myself together, and I checked it up.

32 Q. And is correct?

A. And is correct.

33 Q. Now I hand you a schedule of sales from Davenport & Co.'s books, relating to the plaintiff's revised exhibit No. 2, showing sales of the Farmers Bank stock, the Exchange Bank stock, and the Bank of Virginia stock, under the dates in 1863, shown on that schedule. Please examine it and state whether you prepared it, and whether it is an accurate transcript from the Blotter of Davenport & Co.

A. This was prepared by me, and is an accurate transcript from Davenport & Co.'s Blotter.

34 Q. Please file it with your deposition, marked "Exhibit No. 3."

A. I file it herewith, marked as requested.

35 Q. I now hand you a schedule showing sales of Virginia State bonds under the dates in 1863 shown on said schedule, showing also the number of the page of Davenport & Co.'s folio. Please examine it and say whether you prepared it, and whether it is a transcript from the blotter of Davenport & Co., and whether it is accurate.

A. This is a transcript that was prepared by Mr. Le Gendre and myself, and was copied by me and checked up by Mr. Le Gendre and myself, from Davenport & Co.'s Blotter, and is accurate.

36 Q. Please file it with your deposition as Exhibit No. 4.

A. I file it herewith, marked as requested.

Cross-Examination:

By Mr. Holt:

1 XQ. How many exhibits have you filed with your deposition?

A. Four, I believe, sir.

2 XQ. And those exhibits show a list of sales of bonds and stocks by Davenport & Co.?

A. Yes, sir.

3 XQ. You say that you made them up from the books of Davenport & Co.?

A. Yes, sir, they were taken off of the Blotter of Davenport & Co.

4 XQ. How do you know that that is a book of Davenport & Co.?

A. I do not know, of my own personal knowledge, that that is a book of Davenport & Co., but it shows, I believe, that the sales were made by the firm.

MR. CONRAD: They were produced to you as the books of Davenport & Co.?

WITNESS: Yes.

5 XQ. Where did that Blotter come from?

A. My understanding is that this Blotter was taken from the old vault in the room there (indicates room).

6 XQ. Did you take it therefrom?

A. No, I did not.

7 XQ. Are you familiar with the handwriting in that book?

A. I am not.

8 XQ. Did you make the entries in it?

A. I did not.

9 XQ. Do you know who did?

A. I do not.

10 XQ. You have no personal knowledge with respect to that book, at all, Mr. Washington, as I understand you?

A. No personal knowledge.

11 XQ. Then when you made up these exhibits you made them from the book which you have described, but you do not know who made up the book?

A. No, sir.

12 XQ. You did not take those exhibits where they purport to give the sale prices of stocks, from any newspaper, did you?

A. I do not understand the question. Do you mean did I compare them with any newspaper?

13 XQ. No. You made up the exhibits—you got the data for your exhibits out of this book supposedly of Davenport & Co.; you did not get the data for those exhibits out of any newspaper, did you?

A. No; the first transcript was made direct from the Blotter of Davenport & Co., and where the Dispatch quotation is shown it was compared with the paper, only.

14 XQ. How many sales are mentioned in your first exhibit?

A. I have not the faintest idea, without counting them. (Witness here counts them.) Twenty-four.

15 XQ. What dates do they cover? What period of time do they fall within?

A. April, '63, and July, '63.

16 XQ. Twenty-four sales then, occurring in the months from April, '63, down to and including July, '63; is that right?

A. Yes, sir, that's right.

17 XQ. Are any of those sales given in the plaintiff's revised exhibit No. 2, printed in the record in this cause?

A. Yes, sir.

18 XQ. How many of them?

A. I believe all of them are given in plaintiff's revised exhibit No. 2, except one that was compared with the Dispatch.

19 XQ. How many of those 24 sales were bond sales, and how many were stock sales?

A. Sixteen of them were of bonds, and 6 of stock—that is, including the one that was compared with the Dispatch, and that does not show whether it is stock or bonds.

20 XQ. How many sales are given in your exhibit No. 2?

A. Thirty-four—all of which are stock.

21 XQ. How many of those are set forth in the plaintiff's revised exhibit No. 2?

A. Well, I have not compared this one; I can pretty quickly tell though.

22 XQ. Within what periods did those sales occur?

A. They fall between April, '63, and October, '64, inclusive.

23 XQ. How many sales are embraced in your exhibit No. 3?

A. 17.

24 XQ. How many of them are bonds and how many stocks?

A. They are all bank stock.

25 XQ. Within what period of time did they fall—or during what period were those sales made?

A. They were made during the period from April, '63, to October, '64, inclusive.

26 XQ. How many sales are embraced in your exhibit No. 4?

A. 137.

27 XQ. What period of time do they cover?

A. From April, 1863, to March, 1864, inclusive.

28 XQ. Do any of those sales embrace stocks, or are they all bond sales?

A. All on this exhibit seem to be Virginia sixes, bonds, and Virginia Treasury Notes; also Virginia Treasury Bonds.

29 XQ. They are not stocks then, in any company?

A. No, they are not stocks of any company, at all.

30 XQ. Now, all of these exhibits, as I understand you, Mr. Washington, were made up from what you have supposed to be the books of Davenport & Co.?

A. That is true.

31 XQ. You have not made up those lists of sales embraced in those exhibits, or either of them, from any newspaper publication of quotations, have you?

A. They are not made up from any newspaper publications; they are made up from the book of Davenport & Co.

32 XQ. Do those four exhibits cover all of the sales that are disclosed on the books of Davenport & Co.?

A. No.

33 XQ. There are other sales, are there?

A. There are other sales.

34 XQ. Covering other periods of time?

A. Yes.

35 XQ. How old are you, Mr. Washington?

A. I am in my 27th year.

36 XQ. How long have you been in business in the city of Richmond?

A. I have been with John L. Williams & Sons since March of this year.

37 XQ. Did you ever know Davenport & Co.?

A. No.

38 XQ. Did you ever know any member of the firm of Davenport & Co.?

A. No.

39 XQ. Did you ever work in their office, at all?

A. No.

40 XQ. Have had no business transactions with them, or either member of the firm?

A. None whatever.

41 XQ. I believe you have already stated that you have no personal knowledge with respect to the genuineness of this book of Davenport & Co.?

A. Yes.

42 XQ. You have told us all that you know about it?

A. Yes.

And further this deponent saith not.

(Signature waived.)

MR. HARRISON: We will ask the stenographer to copy into the record the market quotations shown in the Richmond Dispatch, of Richmond, Va., which are on file in the State Library, in the city of Richmond, under the following dates: April 8, 1863; April 18, 1863; May 2, 1863; May 16, 1863; June 16, 1863; July 22, 1863; January 4, 1861, and November 2, 1860.

MR. HOLT: To the copying into the record of the quotations requested, the defendant objects; first, because they are irrelevant; second, immaterial; and third, because they are beyond the purview of the direction of the Master.

NOTE: The following lists of quotations were copied from the Richmond Dispatch, of the dates mentioned, by the Stenographer, pursuant to agreement of counsel.

RICHMOND DISPATCH.

Friday Morning, Nov. 2, 1860.

Sales of Stock in Richmond.

By John A. Lancaster and Son, No. 197 Main Street, two doors above Farmers Bank, for the week ending November 1, 1860.

Virginia 6 per cent. registered bonds, sales $89.

Richmond City Bonds, sales $90 and int.

Petersburg City Bonds, last sales $90—no recent sales.

Lynchburg City Bonds, last sales $90—no recent sales.

Norfolk City Bonds, last sales $78—no recent sales.

Exchange Bank Stock, sales $104½.

Farmers Bank Stock, offered at $102—no recent sales.

Bank of Virginia Stock, offered at $72.

Bank of the Commonwealth Stock, last sales $97.

Richmond and Danville R. R. Bonds, guaranteed by State of Virginia. No recent sales.

Virginia Central R. R. Bonds, guaranteed by State of Virginia. No recent sales.

City of Petersburg Bonds, guaranteed by State of Virginia, No recent sales.

Old Dominion Insurance Co. Stock, last sales $28.

Richmond Fire Asso. Stock, last sales $40.

Va. Fire and Marine Ins. Stock, last sales $40.

Merchants Insurance Stock, last sales $75½.

Virginia Central R. R. 1st mortgage bonds, $85 and int.; no recent sales.

Virginia Central R. R. 2nd mortgage bonds, $82½ and int.; no recent sales.

Virginia and Tennessee R. R. 1st mortgage bonds; no recent sales.

Virginia and Tennessee R. R. 2nd mortgage bonds; no recent sales.

Virginia and Tennessee R. R. 3rd mortgage bonds; no recent sales.

Orange and Alexandria R. R. 6 per cent. bonds, last sales $81 and int.—no recent sales.

Orange and Alexandria R. R. 8 per cent. bonds, last sales $92 and int.

Richmond and York River Railroad 8 per cent. bonds, last sales $90.

Manassas Gap R. R. 6 per cent. bonds, offered at $65.

South-Side R. R. Bonds; no recent sales.

South-Side R. R. Bonds, guaranteed by Petersburg, no recent sales

Richmond, Fredericksburg and Potomac Railroad Stock, sales $80.

Virginia Central Railroad Stock, sales $50.

Richmond and Petersburg Railroad Stock, last sales $64.

Richmond and Danville Railroad Stock, sales $60.

James River and Kanawha Stock, last sales $18½.

Virginia Life Insurance Stock, last sales $112.

Insurance Company of State of Virginia, last sale, on time, $115.

RICHMOND DISPATCH,

Friday Morning, Jan. 4, 1861.

Sales of Stocks in Richmond.

By John A. Lancaster & Son, No. 197 Main Street, two doors above Farmers Bank, for the week ending January 2, 1861.

Virginia 6 per cent. registered bonds, sales $80.

Richmond City bonds, sales $87½.

Petersburg City bonds—no recent sales.

Lynchburg City bonds—no recent sales.

Norfolk City bonds—no recent sales.

Exchange Bank stock, $101 offered.

Farmers Bank stock, last sales $100.

Bank of Virginia stock, last sales $70.

Bank of the Commonwealth Stock, last sales $94.

Richmond and Danville R. R. bonds, guaranteed by State of Virginia; no recent sales.

Virginia Central R. R. Bonds, guaranteed by State of Virginia; no recent sales.

City of Petersburg Bonds, guaranteed by State of Virginia, no recent sales.

Old Dominion Insurance Co. stock, last sales $29.

Richmond Fire Asso. stock, last sales $38.

Virginia Fire and Marine Insurance stock, no recent sales.

Merchants Insurance stock, sales $75 on time.

Virginia Life Insurance Co. stock, last sales $115.

Insurance Co. of State of Virginia, last sales $115.

Virginia Central R. R. 1st mortgage bonds, last sales $84.

Virginia Central R. R. 2nd mortgage bonds, no recent sales.

Virginia and Tennessee R. R. 1st mortgage bonds, no recent sales.

Virginia and Tennessee R. R. 2nd mortgage bonds, no recent sales.

Orange and Alexandria R. R. 6 per cent. bonds, no recent sales.

Orange and Alexandria R. R. 8 per cent. bonds, last sales $90.

Manassas Gap R. R. 6 per cent. bonds, no recent sales.

South-Side R R. bonds, no recent sales.

South-Side R. R. bonds, guaranteed by Petersburg, last sales $88.

Richmond, Fredericksburg and Potomac Railroad stock, last sales $76½.

Virginia Central Railroad stock, last sales $50.

Richmond and Petersburg Railroad stock, last sales $64.

Richmond and Danville Railroad stock, no recent sales.

James River and Kanawha stock, no recent sales.

RICHMOND DISPATCH.

Wednesday Morning, April 8, 1863.

FINANCIAL AND COMMERCIAL.

Tuesday, April 7, 1863.

SPECIE AND BANK NOTES:—We continue to quote gold at $4 premium, selling rate, and with more firmness in the market reported. Silver may be quoted at $3.75 premium. Bank notes have advanced. The brokers today were asking 75 per cent.

BONDS AND STOCKS:—At Messrs. Davenport & Co.'s auction sale today, which was largely attended, Confederate bonds (15M. loan) coupons, brought 137; do. registered, 116 a 118; do. do (100M. loan) registered, 1872, 106; do. do. 8 per cent. convertibles, 106½ a 107; Confederate Treasury Notes, interest bearing, par and int.; Virginia sixes, registered, 112 a 114; Georgia sevens, 149 a 150; Manassas Gap R. R. bonds, sixes, 58; Orange and Alexandria R. R. bonds, 2nd mortgage sixes, 102; Traders Bank stock, 121; Bank of Commonwealth, 121; Farmers Bank, 131 (a large advance); Bank of Richmond, 100 a 101; Bank of Monticello, $100; James River and Kanawha Co., 19; Richmond and Liverpool Packet Co., 620; Old Dominion Insurance Co., 35½; Va. Fire and Marine Insurance Co., 47. All the bonds were sold with interest added to the date of sale.

PRODUCE, GROCERIES, Etc.:—Apples, $37 a 50 per bbl. very few in market; Butter in demand at $3 a 3.25 per lb.; Bacon—hoground, $1.35 a 1.40; Beeswax, $1.50 per pound; Beans, $15 a 18 per bushel; Corn, $10 per bushel, very scarce and in demand; Corn Meal, $10 a 12 per bushel; Candles, $3 a 3.25 per pound; Dried Apples, $13 a 14 per bushel; Dried Peaches, $15 a 18 per bushel; Flour—Superfine, $31 a 32; Extra, 34; Family, $36 per bbl.; Hay, $8 a 8.50 per cwt.; Lard, $1.50 a 1.60 per pound; Potatoes—Irish, $8 a 10; Sweet, $10 a 11 per bushel; Peas, $15 a 18 per bushel; Oats, $6.50 per bushel; Seeds—Timothy, $7, season over; Clover, $24 a 25; Tobacco—no sales of leaf for two days past, and we make no change in quotations; the breaks are somewhat larger. The market for manufactured is less animated. Wheat—nothing doing and we repeat the nominal quotations of $4 a 4.50 per bushel. Sales have been made for horse feed at $6 a 6.50. Dressed Fowls are very high, and hucksters in the market demanding $8 a 12 per pair for native chickens; Turkeys are held by commission merchants at $1.25 per pound; Eggs $1.50 per dozen; Sugar, Brown, $1.20 a 1.30 per pound, as to quality; Molasses $10 a 12 per gallon; Coffee, $4 a 5 per pound; Salt, 50c. per pound; Rice, 30 a 35c.

RICHMOND DISPATCH.

Saturday Morning, April 18, 1863.

FINANCIAL AND COMMERCIAL.

Friday, April 17, 1863.

SPECIE AND NOTES:—Gold was heavy today, and some of the brokers were only asking $1.75 premium. The buying rates may be quoted at $4 a $4.25 premium. Bank notes are selling at 75 a 80 per cent. premium—the inside rate for Vir-

ginia's. For Confederate Treasury Notes, old issue, the brokers are now offering 2½ per cent. premium.

BONDS AND STOCKS:—At Messrs. Lancaster & Co.'s sale this week, Confederate Bonds; (15,000,000) coupons, brought 158½ a 166½ and int.; do. do. (100,000,000) short dates, registered, 104 and int., long dates 109 a 110½ and int.; Virginia sixes, registered, 112 a 113 and int.; do. do. coupons (4 coupons on), 160; North Carolina eights, 130 and int.; Tennessee sixes (2 coupons on), 136; Richmond City bonds, due '69, '70, 133 and int.; do. do. due '80, 138 a 139; Old Dominion Insurance Co. stock, 39¾ a 40; Insurance Company of the State of Virginia, 39¾ a 42¾; Insurance Company of the Valley of Virginia, 64; Importing and Exporting Co., 731 a 750; Bank of Virginia, 89½; Bank of the Commonwealth, 122; Farmers Bank, 128; Midlothian Coal Mining Co., 110; James River and Kanawha Canal Co., 20½; Manchester Cotton and Woolen Manufacturing Co., 215; Richmond, Fredericksburg and Potomac Railroad stock, 110 a 111; Virginia Central Railroad stock, 100½ a 101½; Orange and Alexandria Railroad stock (common), 27½; Confederate Treasury Notes, interest bearing, 98½ a 99½ and int.

PRODUCE, Etc.:—Apples, $30 a 50 per bbl., as to quality; Bacon—the market is well supplied, and we note a decline; sales by commission merchants at $1.35 for hoground; Hams, $1.40 a 1.45; Butter, $2.75 a 3; Beans, $20 per bushel; Corn, $8 a 8.50 per bushel; Corn Meal, $10; Candles—Tallow, $3.10 a 3.75; Dried Apples, $13 a 14 per bushel; do. Peaches, $16 a 18; Eggs, $1.50 per dozen; Flour—Superfine, $31 a 32, Extra, $34, Family, $36; Hay—sales at $15 a 20 per cwt.; Lard, $1.60 a 1.65 per pound, retailing at $2; Pease $20 per bushel; Oats, $5 per bushel; Potatoes—Irish, $10, Sweet, $10 a 11; Seeds—Timothy, $7.50, Clover, $24 a 25; Wheat, $6 a 7 per bushel.

TOBACCO:—The market is lower and we now quote as follows: Inferior Lugs, $14 a 15; good do. $16 a 20; common

Leaf, $20 a 25; good do. $27 a 40; and Flue, $45 a 55; fine Manufacturing Leaf, $50 a 75. Receipts very light. The market for manufactured continues dull.

GROCERIES, Etc.:—Sugars, $1.13 a 1.35; Molasses, $9 a 11 per gallon; Coffee, $3.87½ a 4.50; Salt, 40 a 50c.; Rice, 15 a 30c.; Soap, 50 a 70c.

AUCTION SALE:—At the auction sale of Robinson, Adams & Co., yesterday, choice brown Sugar sold at $1.14 a 1.30; White clarified do., at $1.75; Molasses, $9.50; Coffee, $4; Bacon, hoground, $1.19 a 1.28; Tallow Candles, $3.10; adamantine do., $4.55; Salt, 38c.; Potatoes, $10; Nails, $75 a 78.

RICHMOND DISPATCH.

Saturday Morning, May 2, 1863.

FINANCIAL AND COMMERCIAL.

Friday, May 1, 1863.

SPECIE AND BANK NOTES:—The market is dull at last quotations—$4 premium for gold, $3.75 for silver, and 65 a 70 per cent. for bank notes.

BONDS AND STOCKS:—At Messrs. Davenport & Co.'s sale, today, the following prices were obtained: Confederate Bonds, 15M. loan, coupons, 195, closing at 192 for 16,550; do. do. registered, 121 a 122; do. do. 100M. loan, 106⅛ a 107; do. do. new issue, eights, 102 a 103; do. do 8 per cent. convertible, 106 a 108; Va. 6's, registered, 111¼ a 111½; North Carolina bonds, old issue, 173½; Missouri 6's, 4 coupons, 154; Va. and Tennessee Railroad bonds, 2nd mortgage, 121 a 123⅛; Richmond and Liverpool Packet Co. stock, 650; 1 share Richmond Importing and Exporting Co., 725; Traders Bank, 117; Bank of Richmond, 98 a 99; Virginia Central R.R. 94; James River and Kanawha Canal, 20; $10,500 coupons of the 15M. loan, 161; $1000 Alabama bank notes, 158½.

PRODUCE AND PROVISIONS:—The Bacon market varies, according to quality, from $1.10 to 1.30 for hoground; some that is badly salted is run off at the first-named price, while as high as $1.35 has been obtained for an extra fine article, within two days past; Beans, $18 a 20 per bushel; Butter, $2.25 a 3 per pound; Corn, $6 a 6.50 per bushel; with an advancing tendency. Corn Meal is unsettled, sales at $7.50 per bushel; Dried Apples, $12.50 a 13; do. Peaches, $18 per bushel; Flour—Superfine, $31 a 32; Extra, $34; Family, $35 per bbl.; Eggs, $1.25 per dozen; Hay—sales at $15 per cwt.; Lard, $1.65 a 1.70 per pound; Oats, $5 a 5.50 per bushel; Potatoes—Irish, $8 a 10, Sweet, $10 a 11; Pease, Black-eyed, $18 a 20 per bushel; Wheat, $6.50 a 7 per bushel.

TOBACCO: There is no new feature in the tobacco market, except a continued activity in the demand for the finer qualities, which are scarce. We correct our quotations from actual sales, as follows: Common Lugs, $10 a 15½; good, $16 a 22½; common Leaf, $25 a 30; good, $35 to 45; fine Shipping, $50 to 57½; fine Manufacturing Leaf, $75 to 100, and Wrappers of bright color from $100 to 205.

GROCERIES: Sugars, $1.20 to 1.40—the latter the retail price; Molasses, $10 to 12 per gallon; Coffee, $4 to 4.50; Tea, $10 to 14; Rice, 20 to 25c.; Salt, 45 to 55c. per pound; Soap, 50 to 60c.

RICHMOND DISPATCH.

Saturday Morning, May 16, 1863.

FINANCIAL AND COMMERCIAL.

Friday, May 15, 1863.

MONEY, BONDS, Etc.:—The brokers have had a dull season for the past ten days. The transactions in gold have been confined to occasional sales at $4.25 premium. Nothing of

importance in Bank Notes. At Messrs. Davenport & Co.'s auction sale, today, Confederate Treasury Notes, interest bearing, were sold at 98½ a 99; also the following bonds, with interest added: Confederate Bonds, coupon, 15 million loan, 188 to 184; do. do 100 million loan (1868 to 1871) 102¼ to 103; do. do. registered (1881), 106; Virginia sixes, 111¾ to 112; Va. Central R.R. bonds, first mortgage, 125; also North Carolina 6's, old issue, at 171 flat; and the following stocks: 2 shares Richmond and Liverpool Packet Co., $645; 9 do. Importing and Exporting Co., $735; 10 do., Richmond and Danville R.R. Co., 121; 3 do. Richmond and York River R.R. Co., $50.

PRODUCE, Etc.:—Breadstuffs continue scarce and high. Corn is nominally $8.50 per bushel, and Corn Meal, $9. Wheat, $6.50 a 7 per bushel; there is but a limited supply of flour in market, and we give the quotations as follows: Superfine, $31 a 32; Extra, $35; Family, $36 per bbl. Oats, $5 a 5.50 per bushel; Irish Potatoes, $8 a 9 per bushel; Sweet, $10 a 11; Bacon firm at $1.35 for hoground; Baled Hay, $12 per cwt.; Butter, $2.50 to 3.50, the latter at retail.

TOBACCO:—There have been no recent sales in public, and there is no data by which to fix quotations. We will give this in our next semi-weekly report.

GROCERIES, Etc.:—The following prices were obtained at the auction sale of Robinson, Adams & Co. today: Common Sugar in hhds., $1.21 to 1.23; in barrels, $1.22 to 1.27; Molasses, $10.30 per gallon; Coffee, $3.85 to $4.; Black Teas, $6.30 to 6.70; Young Hyson and Imperial, $7; Bacon, $1.40; Peanuts, $11.75 a 12 per bushel; Dried Apples, $11.50 to 12.25; Candles, $2.75 per lb.; Rice, 18 to 20c.; Clover Seed, $20 per bushel; Potatoes, $6.50 to 7.25 per bushel

RICHMOND DISPATCH.

Tuesday Morning, June 16, 1863.

FINANCIAL AND COMMERCIAL.

Thursday, June 15, 1863.

SPECIE AND BANK NOTES:—The rise in the "precious metals" continues, and curiosity will soon be excited to discover to what height of premium they will go. If there were only one hundred barrels of flour in Richmond, prices would in a very short time go up to a "pretty figure," and so, when the amount of gold offered for sale is reduced to a mere handful, as comparatively speaking it is today, we should not be surprised that the premium ranges high, very high. The brokers are now offering $7.50 for $1 in gold, and offering to sell, when they have any, at $8 a 8.50. Bank notes are now quotable at 90 a 95 per cent. premium—auction sales of $5,650 a 92½.

BONDS AND STOCKS:—The market continues active. At Messrs. Davenport & Co.'s sale, last week, Confederate registered bonds, 8's, 1868-'72, brought 102¼ a 103½; do. do 1876-'81, brought 104 a 106½; do. do. 15 m. loan, coupon, 194 a 196; Va. sixes, registered, long date, 130½. $125,000 R. & D. R. R. bonds, sixes, at 133 a 137½; Richmond Importing and Exporting Co. stock, $1,490, now held, we learn, at $2,000. We note private sales, since, of N. Carolina sixes at 227½; do. do. eights, at 133 and int.; Merchants Insurance stock at 95; James River and K. Canal, 22; Richmond Fire Asso., 37½.

PRODUCE, PROVISIONS, Etc.:—The following quotations are wholesale; retail prices are fixed according to the views of the dealers: Bacon, hoground, $1.45 a 1.50 per lb.; Beans, $15 a 16 per bushel; Butter has declined, and we now quote it at $1.50 a 1.75 per lb.; Corn—very little in market, it commands $10 per bushel readily; Corn Meal, $11 a 12 per

bushel—scarce and in demand. Dried Fruit—Apples, $10 a 12; Peaches, $15 a 18 per bushel. Eggs in demand at $1.50 per dozen; Forage has a declining tendency; we quote Hay at $9 a 10 per one hundred pounds; Fodder and Sheaf Oats worth about the same, very little coming in; Flour—Superfine, $31 a 32; Extra, $32 a 33; Family, $36 a 37 per bbl.; Lard, $1.50 a 1.60 per lb.; Oats, $6 per bushel; Pease, $15 a 16 per bushel; Potatoes—few in market; we quote Irish at $9 a 10 per bushel; Wheat, $6.50 a 7 per bushel.

GROCERIES:—Sugars have declined—we now quote prime Brown in hhds., at $1.35 a 1.40; in bags and bbls., at $1.40 a 1.50 per lb.; Molasses, $10.50 a 11 per gallon; Coffee, $3.75 a 4.25 per pound; Tea—Black, $8 a 10 per pound; Green, $8.50 a 11; Salt, 40 a 45c. per pound; Rice, 18 a 20c. per lb.; Candles—Tallow, $2.50 a 2.75, Adamantines, $4.50 a 4.75; Sperm, $6.50 a 7 per pound; Soap, 60c. per pound.

TOBACCO:—The breaks that have increased for a few days past, by persons pushing their tobacco into market to avoid the 8 per cent. tax. No change in prices. We quote inferior Lugs, $14 a 16; good do. $17 a 19; fine do. $20 a 25; inferior Leaf, $35 a 40; good do. $45 a 50 a 60; good Manufacturing, $65 a 70; fine do. $80 a 150; fine bright Wrappers, $200 a 260; Shipping, $45 a 60.

LEATHER:—Sole, $3.50 a 4 per pound; Harness, $3.75 a 4.25; Upper, $4.50 a 5; Calfskins, none in market; would bring $325 a 400 per dozen. Green Salted Hides, 95 a $1 per pound; Dried do. $1.25 a 1.50.

LIQUORS:—Good Whiskey, $30 a 35; Apple Brandy, $26 a 28; French Brandy (imitation), $50 a 60; a pure article, $100 per gal.

RICHMOND DISPATCH.

Wednesday Morning, July 22, 1863.

FINANCIAL AND COMMERCIAL.

Monday, July 20th, 1863.

SPECIES AND BANK NOTES:—The market may be reported firm at last quotations, viz.: $9 premium for gold, selling rate; $8 prem. buying price. Silver is 50 cents below these figures. The demand is small, and offerings "few and far between." Bank Notes are again higher. The brokers are paying $1.50 premium, and asking $1.70 a 1.75. Nothing doing in Sterling exchange.

BONDS AND STOCKS:—At Messrs. Davenport & Co.'s auction sale, last week, prices went up at an astonishing rate. North Carolina bonds were sold at 300; Virginia registered do., 160; City of Richmond do., 165; Richmond and Danville Railroad do., 171; Central Railroad stock, 116; Bank of Richmond, 110; Richmond and Liverpool Packet Co., 680. We quote Confederate Bonds, 100 M. loan, at 103 a 109½ and int.; do. do. 15 M. loan, held at 200—no recent sales; do. do. 7's, 100; Va. coupon bonds, four coupons on, 325; Bank of the Commonwealth, 135; Chesapeake & Ohio Canal guaranteed bonds, 150; Merchants Insurance Co., 95; Insurance Co. State of Virginia, 42½.

PRODUCE, PROVISIONS, Etc.:—Bacon, very scarce and advancing; we quote hoground at $1.50 a 1.60; Butter has advanced, we quote at $2 a 2.50 per pound; Cheese, $1.50 a 1.75 per pound; Dried Fruit—Apples, $10 per bushel; Peaches, $16 per bushel; Eggs, $1.50 a 1.75 per dozen; Hay—held $9 a 10, as to quality; Lard, $1.55 a 1.60 per lb.; Potatoes, new Irish, $10 a 15 per bushel; Corn, $9.50 a 10 per bushel; Corn Meal, $10 a 10.50 per bushel; Flour is in demand at the fol-

INDEPENDENT SCHEDULE OF SALES FROM D. & Co's. BOOKS RELATING TO

PLAINTIFF'S EXHIBIT—Quotations and Sales of Virginia State Bonds

Exhibit R. B. Washington. No. 1.

O. Raymond Brown, Notary Public.

D. & Co. Folio No.	Plaintiff Folio No.	Date.	On Account of	Name of Security	Amount	Rate
36	330	4/ 8/63	James River & Kanawha.....	Va. State 6's.....	$5,000	114
38	330	4/ 8/63	C. W. Purcell & Company.....	Va. State 6's.....	1,400	114
		4/ 8/63	C. W. Purcell & Company.....	Va. State 6's.....	500	114
		4/ 8/63	C. W. Purcell & Company.....	Va. State 6's.....	500	112
48	330	5/ 2/63	James River & Kanawha.....	Va. State 6's.....	10,000	111¼
		5/ 2/63	James River & Kanawha.....	Va. State 6's.....	3,000	111¼
		5/ 2/63	James River & Kanawha.....	Va. State 6's.....	2,000	111½
58	330	6/16/63	James River & Kanawha.....	Va. State 6's.....	10,000	130½
62	330	7/17/63	Williams & Carrington.....	Va. State 6's.....	1,000	160
		7/17/63	Williams & Carrington.....	Va. State 6's.....	2,000	160
68	331	7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	4,000	300
		7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	1,000	300½
		7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	1,000	300
		7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	3,000	300
48	335	5/ 2/63	John Jones & Company.....	James River & K. Co.	128	20
		5/ 2/63	John Jones, Esq.....	James River & K. Co.	3	20
..	335	6/16/63	.....	James River & K. Co. (From Dispatch).		22
48	337	5/ 2/63	C. W. Purcell & Company.....	Va. Central Rwy.....	10	94
64	331	7/17/63	Geo. R. Wilson.....	Va. State 6's.....	5,000	160
		7/17/63	James River & Kanawha.....	Va. State 6's.....	5,000	160
62	337	7/22/63 (7/22/63?)	W. M. Sutton & Company.....	Va. Central R. R. Co..	18	116
54	339	5/16/63	C. W. Purcell & Company.....	Richmond & Danville.	10	121
36	341	4/ 8/63	Sam'l I. Harrison.....	Farmers Bank of Va..	40	131

Richmond, Va., November 4, 1914.

I, Richard B. Washington, hereby certify that the items in the above Schedule are supplementary in part to the Schedule already furnished, adding the Folio Pages of Davenport & Company to the pages of the Plaintiff's Exhibit. The above items have been checked by the books of Davenport & Company.

(Sig.) RICHARD B. WASHINGTON.

STATE OF VIRGINIA,
CITY OF RICHMOND, VA. } To wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Richard B. Washington, whose name is signed to the foregoing writing, bearing date November 4th, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notarial seal the 5th day of November, 1914.

(Sig.) WILLIAM R. TRIGG, Notary Public.

I, Arthur G. Potter, hereby certify that I have compared the above record of sales with the books of Davenport & Company, and find that it agrees therewith.

The item noted "From Dispatch" is found in the Richmond Dispatch under date of June 16th, 1863, but has not been found in Davenport & Company's books.

A. G. POTTER.

STATE OF VIRGINIA,
CITY OF RICHMOND, VA. } To wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Arthur G. Potter, whose name is signed to the foregoing writing, bearing date November 7th, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notarial seal the 7th day of November, 1914.

.....Notary Public.

INDEPENDENT SCHEDULE OF SALES from D. & Co's books relating to Plaintiff's Revised Exhibit No. 2 (Continued).

QUOTATIONS AND SALES

DAVENPORT & COMPANY'S SALES

Exhibit R. B. Washington, No. 2. O. Raymond Brown, Notary Public.

D. & Co. Folio No.	Date.	On Account of	No. Shares	Par value	Sold at
		RICHMOND, FREDERICKSBURG & POTOMAC R. R. Co.			
42	4/18/63	Samuel C. Greenhow.....	20	100	105
		VIRGINIA CENTRAL R. R.			
30	3/28/63	Samuel C. Greenhow.....	8	100	101
32	3/28/63	Lancaster & Co.....	50	100	100
60	6/12/63	Mr. Carpenter.....	2	100	98½
62	7/16/63	W. M. Sutton.....	18	100	116
146	1/22/64	Mr. Garrett.....	4	100	146
160	2/12/64	R. H. Maury & Co.....	110	100	160
168	2/26/64	R. H. Maury & Co.....	10	100	148½
176	3/15/64	R. H. Maury & Co.....	10	100	125
186	3/18/64	City Savings Bank.....	10	100	110
212	9/13/64	Wm. H. Pleasants.....	10	100	117½
		JAMES RIVER & KANAWHA COMPANY			
30	3/28/63	Franklin Stearns.....	39	100	21
32	3/28/63	Lancaster & Co.....	300	100	20
36	4/ 7/63	H. Hancock.....	100	100	19
44	4/18/63	Dr. Price.....	10	100	19
48	5/ 1/63	John Jones & Co.....	128	100	20
48	5/ 1/63	John Jones, Esq.....	3	100	20
136	1/ 8/64	E. Carrington.....	15	100	24
		RICHMOND & DANVILLE R. R. COMPANY			
30	3/28/63	Samuel C. Greenhow.....	4	100	131
42	4/18/63	Edmond & Davenport.....	43	100	120
54	5/15/63	C. W. Purcell & Co.....	10	100	121
110	11/ 6/63	Peyton Bayley.....	1	100	207½
156	2/12/64	Geo. S. Palmer.....	15	100	237
174	3/15/64	G. W. Carrington.....	1	100	212½
176	3/15/64	R. H. Maury & Co.....	9	100	212½
176	3/15/64	R. H. Maury & Co.....	31	100	200
222	10/26/64	Merchandise.....	40	100	200
222	10/ 9/64	Merchandise.....	160	100	185
		VIRGINIA & TENNESSEE R. R. COMPANY			
118	11/20/63	Jacob Guggenheimer.....	12	...	145
170	2/26/64	City of Richmond.....	10	...	197
170	.....	City of Richmond.....	660	...	196
170	.....	City of Richmond.....	30	...	196
170	.....	City of Richmond.....	100	...	196
		RICHMOND & PETERSBURG R. R. COMPANY			
76	9/ 4/63	Mrs. Sarah Munford.....	...	8	156½

Richmond, Va., Nov. 5, 1914.

I, Richard B. Washington, certify that the items contained in the above Schedule are transcripts of sales made by Messrs. Davenport & Company of the City of Richmond, and are taken from their Sales Record Book, not having been known until found on October 30, 1914, as certified to by Coleman Wortham, Esq., a member of the firm of Davenport & Company, dated November 3, 1914.

RICHARD B. WASHINGTON.

STATE OF VIRGINIA
CITY OF RICHMOND } to wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Richard B. Washington, whose name is signed to the foregoing writing, bearing date November 4, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notarial seal the 5th day of November, 1914.

WILLIAM R. TRIGG, Notary Public.

INDEPENDENT SCHEDULE OF SALES from D. & Co's books relating to Plaintiff's Revised Exhibit No. 2 (Continued).

QUOTATIONS AND SALES

DAVENPORT & COMPANY'S SALES

Exhibit R. B. Washington, No. 3. O. Raymond Brown, Notary Public

D. & Co. Folio No.	Date	On Account of	No Shares	Par Value	Rate
		FARMERS BANK			
44	4/18/63	Lewis Webb.....	5	...	122
...	4/18/63	Lewis Webb.....	1	...	122
154	2/12/64	Sam'l I. Harrison.....	5	...	187
158	2/12/64	W. L. Cowardin.....	9	...	189
214	9/13/64	Andrew Johnson.....	6	...	185
218	10/18/64	H. P. Edmond.....	10	...	164
222	10/29/64	J. and G. B. Davenport.....	2	...	165
		EXCHANGE BANK			
42	4/18/63	Sam'l I. Harrison.....	6	...	121
178	3/15/64	City Savings Bank.....	10	...	149
...	3/15/64	City Savings Bank.....	20	...	145
180	3/15/64	City Savings Bank.....	63	...	145
		BANK OF VIRGINIA			
44	4/18/63	Lewis Webb.....	2	...	87
76	9/ 4/63	C. W. Purcell & Company...	8	...	111
138	1/ 8/64	N. Y. Pate.....	4	...	137
174	4/15/64	J. T. Whitfield.....	5	...	126
214	9/13/64	Andrew Johnson.....	20	...	135
222	10/29/64	J. and G. B. Davenport.....	8	...	125

Richmond, Virginia, November 4, 1914.

I, Richard B. Washington, certify that the items contained in the above Schedule are transcripts of sales made by Messrs. Davenport & Company of the City of Richmond, and are taken from their Sales Record Book found in an old vault, the existence of said Sales Record Book not having been known until found on October 30, 1914, as certified to by Coleman Wortham, Esq., a member of the firm of Davenport & Company, dated November 3, 1914.

RICHARD B. WASHINGTON.

STATE OF VIRGINIA
CITY OF RICHMOND } to wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Richard B. Washington, whose name is signed to the foregoing writing, bearing date November 4, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notorial seal the 5th day of November, 1914.

WILLIAM R. TRIGG, Notary Public.

lowing quotations: Superfine, $31 a 32; Extra, $33 a 34; Family, $36 a 37 per bbl. Oats, $6 per bushel and scarce; Wheat—very little doing, no new yet offered; we quote at $5.50 a 6.

GROCERIES:—We quote Brown Sugar at $1.70 a 1.80 per pound; Molasses, $11.50 a 12 per gal.; Coffee, $3.75 a 4 per pound; Rice, 18 a 20c.; Salt, 49c.; Candles, $2.25 a 2.50.

TOBACCO:—Very little doing; the sales show no change in prices. We still quote inferior Lugs, $12.50 a 15; good do., $15 a 25; common Leaf, $30 a 35; good do., $35 a 40; fine Wrappers, $65 a 70; fine Bright Wrappers would bring a much higher price,—say from $175 to 225.

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS.–
Taken from the Records of Davenport & Company, November 2, 1914.

Exhibit R. B. Washington. No. 4. O. Raymond Brown, Notary Public.

D. & Co. Folio No.	Date.	On Account of	Name of Security.	Amount.	Rate.
36	April 7, 1863	James River & Kanawha.....	Virginia State 6's.....	$5,000	114
38	April 7, 1863	C. W. Purcell & Co.....	Virginia State 6's.....	1,400	114
	April 7, 1863	C. W. Purcell & Co.....	Virginia State 6's.....	500	112
42	Apr. 18,-1863	C. W. Purcell & Co.....	Virginia State 6's.....	1,000	135
44	Apr. 18, 1863	James River & Kanawha.....	Virginia State 6's.....	3,000	112
48	May 1, 1863	James River & Kanawha.....	Virginia State 6's.....	2,000	111½
	May 1, 1863	James River & Kanawha.....	Virginia State 6's.....	10,000	111¼
	May 1, 1863	Wm. Fowle.....	Virginia State 6's.....	3,000	111¼
54	May 15, 1863	James River & Kanawha.....	Virginia State 6's.....	2,000	111¾
	May 15, 1863	Peoples Savings Bank.....	Virginia State 6's.....	6,000	112
	May 15, 1863	James River & Kanawha.....	Virginia State 6's.....	3,000	111¾

58	May 15, 1863	James River & Kanawha	Virginia State 6's	10,000	130½
62	May 15, 1863	Williams & Carrington	Virginia State 6's	2,000	165
	May 15, 1863	Williams & Carrington	Virginia State 6's	3,000	160
64	July 16, 1863	Geo. R. Wilson	Virginia State 6's	3,000	160
	July 16, 1863	James River & Kanawha	Virginia State 6's	5,000	160
66	July 24, 1863	J. G. Read, Admr	Va. Reg. Stock	400	160
	July 24, 1863	Sam'l I. Harrison	Va. Reg. Stock	500	176
68	July 24, 1863	Gardner, Carlton & Co	Virginia State 6's	4,000	300
	July 24, 1863	Gardner, Carlton & Co	Virginia State 6's	1,000	300½
	July 24, 1863	Gardner, Carlton & Co	Virginia State 6's	1,000	300
70	Aug, 7, 1863	A. U. Stokes	Virginia State 6's	3,000	300
72	Aug. 7, 1863	C. W. Purcell & Co	Virginia Reg. Bonds	600	207½
76	Sept. 4, 1863	C. W. Purcell & Co	Virginia Reg. Bonds	1,000	207
	Sept. 4, 1863	A. G. Nalle	Virginia Reg. Stock	500	195
	Sept. 4, 1863	A. G. Nalle	Va. Coup. old Issue	7,000	420
	Sept. 4, 1863	A. G. Nalle	Va. Coup. Old Issue	3,000	420
			Va. Coup. Old Issue	5,000	400

78	Sept. 4, 1863	J. A. Byers	Va. Reg. Stock	1,000	195
	Sept. 4, 1863	Geo. W. Munford	Va. Reg. Stock	6,000	195
	Sept. 18, 1863	Col. T. B. Bigger	Va. 6% Reg. Bonds	1,400	187
	Sept. 18, 1863	Col. T. B. Bigger	Va. 6% Reg. Bonds	400	141½
92	Sept. 18, 1863	C. W. Purcell & Co	Va. 6% Reg. Bonds	800	187
	Sept. 18, 1863	C. W. Purcell & Co	Va. 6% Reg. Bonds	500	186
	Sept. 18, 1863	C. W. Purcell & Co	Va. 6% Reg. Bonds Past Due	2,300	141½
	Sept. 18, 1863	W. O. George	Va. 6% Reg. Bonds	500	185
	Sept. 18, 1863	W. O. George	Va. 6% Reg. Bonds	2,000	183
	Sept. 18, 1863	W. O. George	Va. 6% Reg. Bonds Past Due	1,250	141½
	Sept. 18, 1863	S. Rosenfels	Va. 6% Reg. Bonds	1,000	187
	Sept. 18, 1863	S. Rosenfels	Va. 6% Reg. Bonds	1,000	185½
	Sept. 18, 1863	S. P. Mitchell, Exor	Va. 6% Reg. Bonds Past Due	733	141½
	Sept. 18, 1863	S. P. Mitchell, Exor	Va. 6% Reg. Bonds	1,505	183
	Sept. 18, 1863	Ro. E. Blankenship	Va. 6% Reg. Bonds Past Due	2,300	141½ & Int.
	Sept. 18, 1863	James V. Brooke	Va. 6% Reg. Bonds	5,000	187
	Sept. 18, 1863	L. H. Lyne	Va. Coup. Bonds	2,000	420

96	Sept. 18, 1863	L. R. Spilman	Va. 6% Reg. Bonds	100	183
100	Oct. 9, 1863	L. W. Lyne	Va. State 6% Old Issue	$2,000	406
102	Oct. 9, 1863	G. W. Munford, Tr	Va. Reg. 6% Stock	3,300	200
	Oct. 9, 1863	G. W. Munford, Tr	Va. Reg. 6% Stock	11,900	198
	Oct. 9, 1863	G. W. Munford, Tr	Va. Reg. 6% Stock	6,000	199
	Oct. 9, 1863	G. W. Munford, Tr	Va. Reg. 6% Stock	1,000	198½
	Oct. 9, 1863	James River & Kanawha	Va. Reg. 6% Stock	10,000	200
	Oct. 9, 1863	S. P. Mitchell	Va. Reg. 5% Past Due	700	142½
104	Oct. 9, 1863	Dr. Cabell	Va. Reg. 6% Past Due	1,300	172½
	Oct. 9, 1863	Thos. Branch & Sons	Va. Reg. 6% Past Due	2,000	172½
106	Oct. 9, 1863	A. Carlton	Va. Reg. 6%	5,000	400
	Oct. 9, 1863	A. Carlton	Va. Reg. 6%	1,000	406
108	Nov. 6, 1863	Sheppard & Allen	Va. 6% Coupon	5,000	400
110	Nov. 6, 1863	Dr. Browne	Va. 6% Coupon Past Due	2,000	427½
	Nov. 6, 1863	A. Carlton	Va. 6% Coupon Past Due	2,000	400
	Nov. 6, 1863	James River & Kanawha	Va. Registered	10,000	239
	Nov. 6, 1863	Stephen Dunnington	Va. Registered Past Due	300	227½
	Nov. 6, 1863	Stephen Dunnington	Va. Registered	700	210
	Nov. 6, 1863	G. W. Royster	Va. Registered Past Due	900	210

114	Nov. 20, 1863	H. Hancock	Va. Registered Past Due	700	207
	Nov. 20, 1863	Rev. Saml. Lambeth	Va. Registered 1890	1,200	254
	Nov. 20, 1863	Rev. Saml. Lambeth	Va. Registered 1893	500	253
	Nov. 20, 1863	Rev. Saml. Lambeth	Va. Registered 1876	400	250
116	Nov. 20, 1863	N. Frank	Va. Coupon Bonds	1,000	515
	Nov. 20, 1863	W. H. Fowle	Va. Coupon Bonds	3,000	440
	Nov. 20, 1863	James River & Kanawha Co.	Va. Reg. 6% Long Date	5,000	255
	Nov. 20, 1863	J. Gilmour & Co	Va. Reg. 6% 1894	2,000	255
	Nov. 20, 1863	J. Gilmour & Co	Va. Reg. 6% Past Due	5,000	206
118	Nov. 20, 1863	Williams, Carrington & Barksdale	Va. Reg. 6% 26 Years	700	254
	Nov. 20, 1863	Mrs. Sarah Munford	Va. Reg. 6% 1868	400	255
122	Dec. 11, 1863	R. Cabell	Va. Registered Bonds	2,700	243
	Dec. 11, 1863	R. Cabell	Va. Registered Bonds	1,400	238
	Dec. 11, 1863	R. Cabell	Va. Registered Bonds	2,100	237
	Dec. 11, 1863	Jno. E. White	Va. Reg. 6% Bonds	700	236
124	Dec. 11, 1863	Judge Daniel	Va. Reg. 6% Bonds	1,000	236
	Dec. 11, 1863	Judge Daniel	Va. Reg. 6% Bonds Past Due	500	203
	Dec. 11, 1863	James River & Kanawha	Va. Reg. 6% Bonds	2,000	250

	Dec. 11, 1863	James River & Kanawha.....	Va. Reg. 6% Bonds.....	1,000	247
	Dec. 11, 1863	James River & Kanawha.....	Va. Reg. 6% Bonds.....	2,000	245
	Dec. 11, 1863	J. Jackson, Jr.....	Va. Reg. 6% Bonds.....	1,500	232
	Dec. 11, 1863	Mrs. Pulliam, Ex.....	Va. Reg. 6% Bonds.....	2,000	232
	Dec. 11, 1863	Dr. Meade.....	Va. Reg. 6% Bonds.....	3,000	232
126	Dec. 11, 1863	D. F. Williams.....	Va. Reg. 6% Bonds.....	1,000	232
	Dec. 11, 1863	D. F. Williams.....	Va. Reg. 6% Bonds Past Due	1,612.50	204
136	Jan. 6, 1864	Baldwin & Williams.....	Va. Reg. 6% Bonds 1893–97.	1,300	246
	Jan. 6, 1864	Baldwin & Williams.....	Va. Reg. 6% Bonds 1890....	4,100	243
	Jan. 6, 1864	Baldwin & Williams.....	Va. Reg. 6% Bonds.....	4,200	241
	Jan. 6, 1864	Baldwin & Williams.....	Va. Reg. 6% Bonds Past Due	1,200	198
138	Jan. 8, 1864	D. G. Watkins.....	Va. Coupon Bonds.....	2,500	655
	Jan. 8, 1864	Spotts & Harvey.....	Va. Registered.....	1,000	244
	Jan. 8, 1864	J. B. Stegal, Tr.....	Va. Registered.....	900	244
	Jan. 8, 1864	J. B. Stegal, Tr.....	Va. Registered Past Due....	200	198
	Jan. 8, 1864	James River & Kanawha.....	Va. Registered Long Date...	15,000	245
140	Jan. 8, 1864	Young and Bros.....	Virginia State Reg. 6's.....	1,000	235
150	Jan. 22, 1864	Mr. Inlois.....	Virginia State Past Due.....	500	205

152	Jan. 29, 1864	A. Y. Stokes & Co	Virginia State 31 Years	900	255
	Jan. 29, 1864	Davenport & Company	Virginia State Past Due	2,500	205
156	Feb. 12, 1864	Board of Trade	Va. Coup. Bonds	1,000	530
	Feb. 12, 1864	Board of Trade	Va. Coup. Bonds	1,000	525
158	Feb. 12, 1864	Old Dominion Ins. Co	Virginia Reg. 6's	6,300	259
	Feb. 12, 1864	J. A. Poindexter	Virginia Reg. 6's 1887	1,000	257
	Feb. 12, 1864	Isaacs & Company	Virginia Reg. 6's	200	225½
	Feb. 12, 1864	Isaacs & Company	Virginia Reg. 6's	200	247½
162	Feb. 15, 1864	J. A. Poindexter	Virginia Reg. 6's	1,500	260
	Feb. 15, 1864	J. A. Poindexter	Virginia Reg. 6's	2,500	263
164	Feb. 24, 1864	J. A. Meredith	Va. Treasury Notes	10,000	150
168	Feb. 26, 1864	A. Carlton	Va. Reg. 6's	1,000	255
	Feb. 26, 1864	J. R. Anderson	Va. Reg. 6's 1894	1,000	255
	Feb. 26, 1864	J. R. Anderson	Va. Reg. 6's 1895	2,000	255
	Feb. 26, 1864	J. R. Anderson	Va. Reg. 6's Past Due	5,000	194
172	Feb. 26, 1864	J. R. Anderson	Va. Reg. 6's	1,000	200
174	Mar. 15, 1864	J. C. Rutherford	Virginia Treasury Bd	700	200
	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	6,000	140

	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	1,000	138
	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	1,000	137
	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	10,000	135
	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	1,000	136
176	Mar. 15, 1864	I. Meredith	Va. Registered Bonds	1,000	200
	Mar. 15, 1864	I. Meredith	Va. Registered Bonds	1,000	197½
	Mar. 15, 1864	I. Meredith	Va. Registered Bonds	1,000	195
178	Mar. 15, 1864	John Craeme	Va. 7.3% Treasury Notes	200	135
182	Mar. 18, 1864	Coleman & Wortham	Va. 6% Registered Bonds	1,000	205
	Mar. 18, 1864	J. A. Poindexter	Va. 6% Reg. Bonds Past Due	1,000	150
184	Mar. 18, 1864	T. C. Merddun	Virginia 6% Bonds	4,000	200
188	Mar. 18, 1864	C. W. Purcell & Company	Virginia 6% Bonds	3,500	195
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	1,000	132
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	8,000	130
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	15,000	129
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	4,000	127
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	4,000	126½
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	9,500	126
192	Mar. 25, 1864	W. T. Williams	Va. Treasury Notes	30,000	120

Richmond, Virginia, November 5, 1914.

I, Richard B. Washington, hereby certify that the items herein before given on pages 1, 2, 3, 4, and 5, are transcripts of sales made by Messrs. Davenport and Company of the City of Richmond, and are taken from their Sales Record Book found in an old vault, the said Sales Record Book not having been heretofore known to exist until found on October 30th, 1914, as certified to by Coleman Wortham, Esq., a member of the firm of Davenport and Company, dated November 3, 1914.

RICHARD B. WASHINGTON.

STATE OF VIRGINIA,
CITY OF RICHMOND. To wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Richard B. Washington, whose name is signed to the foregoing writing, bearing date of November 4, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notarial seal the 5th day of November, 1914.

WILLIAM R. TRIGG, Notary Public.

GEORGE L. CHRISTIAN, being first duly sworn, deposes and says as follows:

Examined by Mr. Anderson

1 Q. Judge Christian, please state your age, residence and occupation?

A. I am in my 74th year; I reside in Richmond, and my occupation is that of a lawyer.

2 Q. Please be kind enough to state what positions, civil, political or judicial you have held during your life in the city of Richmond?

A. I have been President of the City Council; President of the Chamber of Commerce; President of the National Bank of Virginia; President of the Virginia State Insurance Company, and I was at one time Clerk of the Court of Appeals of Virginia.

3 Q. What judicial position have you held?

A. I was Judge of the Hustings Court of the City of Richmond, five years.

4 Q. Are you acquainted with the standing and reputation of the Dispatch newspaper of the city of Richmond?

A. I think so, sir.

5 Q. How long have you known that paper?

A. I have known it ever since I have lived in Richmond, which has been the 1st of July, 1860.

6 Q. Please state what is the character of that paper—whether it is a reputable newspaper, and regarded as reliable?

A. I think it has always been regarded not only as a reputable newspaper, but a very reliable and accurate newspaper.

7 Q. Are you prepared to state what the standing of that newspaper has been in reference to its financial and commercial reports?

A. I never heard them questioned in any way, Major. I believe the financial reports as contained in that paper were generally relied on, as much so as reports in any newspaper.

8 Q. What are you prepared to say in reference to its quotations of the market values, and sales of stocks and bonds, and securities generally, sold in the markets of Richmond?

A. My opinion is that they were recognized as being reliable, and were regarded as authentic, not only by this community, but by the different communities throughout the circulation of the paper.

9 Q. Have you been acquainted, and if so, how long, with the brokerage firms of John A. Lancaster & Son and Lancaster & Co.?

A. I have known them—at least I knew the concern of John A. Lancaster & Son, afterwards Lancaster & Williams —as long as the concerns existed, I mean from the period I came to Richmond to live. I came here as a boy, in 1860.

10 Q. What has been the character, standing and reputation of those firms, in this community?

A. Very high.

11 Q. Will you answer the same question with reference to the firm of Davenport & Co.?

A. I would make the same answer with reference to the firm of Davenport & Co. I knew all the members of both firms, personally.

12 Q. And both were reputable firms?

A. Just as high as any firms in the country, I believe.

Cross-Examination.

By Mr. Holt:

1 XQ. Judge Christian, have you any personal knowledge with respect to the market reports, or market quotations, upon stocks, furnished by Lancaster & Co. or John A. Lancaster & Son, to the Richmond Dispatch?

A. None whatever, sir.

2 XQ. Have you any personal knowledge with respect to the fact, whether or not Davenport & Co. ever furnished to that newspaper market quotations on stocks?

A. No, sir. Personal knowledge, you say?

3 XQ. Yes.

A. No.

4 XQ. Then you have no personal knowledge, as I understand it, Judge, as to whether Davenport & Co. ever furnished any market quotations upon stocks, to the Richmond Dispatch, in the years 1860, '61, '62 or '63?

A. None whatever, sir.

5 XQ. You have no personal knowledge upon the subject whether or not John A. Lancaster & Son or Lancaster & Co. ever furnished any such quotations, in said years, to said newspaper?

A. No, sir.

And further this deponent saith not.

(Signature waived)

JAMES B. PACE, being duly sworn, deposes and says as follows:

Examined by Mr. Anderson:

1 Q. Mr. Pace, will you please state your age, residence and occupation?

A. I am in my 78th year, sir. I am a resident of the city of Richmond, and am at this time Treasurer of the City.

2 Q. What positions, civil or financial, have you held during your life of constant credit and honor?

A. I was President of the Planters National Bank of this city for thirteen years, from 1882; prior to that I was a manufacturer of tobacco.

3 Q. Where did you reside during the War between the States?

A. Danville, Virginia.

4 Q. What was your occupation during the war?

A. I was a manufacturer of woolen cloths.

5 Q. In the city of Danville?

A. Yes, sir.

6 Q. Were you acquainted with the Richmond Dispatch newspaper during the period of the war?

A. Yes, sir.

7 Q. Do you know the character and standing of that paper, in the community in which its circulation extended?

A. The character of it was of the highest order; it was so regarded.

8Q. What was the standing and credit given to its financial columns and reports?

A. It was considered very reliable.

9 Q. Please state whether the reports published in that paper of sales of stocks and bonds and securities generally, and the market quotations of those securities, were accepted by the business public as reliable, during that period?

A. I think so. As far as I know, the public received them as being accurate and reliable.

10Q. Were they, within your knowledge, of that character?

A. I really could not say of my own knowledge. I, of course, noticed the quotations every day or two, as made by the different brokers of the city, which were regarded as reliable.

11Q. Were you acquainted with the standing and reputation and character of the firm of brokers and bankers doing business under the firm names of John A. Lancaster & Son and Lancaster & Co., during that period?

A. Only by reputation.

12 Q. I wish to know what their reputation was.

A. It was considered to be of the very best, and of the highest order.

13 Q. What was the reputation, standing and character of the firm of brokers and stock auctioneers doing business in this city at that time under the firm name of Davenport & Co.?

A. It was considered to be of the highest order.

Cross-Examination.

By Mr. Holt:

1XQ. Mr. Pace, when did you move to the city of Richmond; in what year?

A. I moved here, sir, in December, '65.

2XQ. You were not then a resident of the city of Richmond at any time prior to the year 1865?

A. No, sir; not prior to December, 1865.

3 XQ. Where did you live prior to that time?

A. Danville, Virginia.

4 XQ. How far is Danville from Richmond?

A. One hundred and forty miles southwest.

5 XQ. Did you know the editors or proprietors of the Richmond Dispatch prior to 1865?

A. Not personally.

6 XQ. Did you know any member of the firm of Lancaster & Co. or John A. Lancaster & Son?

A. Not personally.

7 XQ. Did you know any member of the firm of Davenport & Co.?

A. Not personally.

8 XQ. Did you ever have any stock dealings with either of those firms prior to 1865?

A. None whatever.

And further this deponent saith not.

(Signature waived.)

STIPULATION.

It is agreed by and between counsel that the following may be taken and read as the testimony of RICHARD W. MAURY, a gentleman who resides in the city of Richmond, Virginia, who is over 80 years of age, and who was engaged in the brokerage business in the said city, during the period of the Civil War:

Richmond, Va., October 30th, 1914.

The firms of Lancaster & Company, Brokers, and Davenport & Company, Stock Auctioneers, were to my personal knowledge, reputable firms in Richmond during the Civil War, 1861-1865. The members of the above firms were personally known to me. I further beg to state that the Richmond Dispatch was a reputable paper during the above mentioned period, and in its columns were found Stock and Bond quotations which were deemed reliable.

STIPULATION

It is agreed by and between counsel that the following may be taken and read in this cause as the testimony of John B. Purcell:

Richmond, Va., Nov. 4th, 1914.

I, JOHN B. PURCELL, of the City of Richmond, President of the First National Bank of Richmond, hereby certify that I have known the firms of Jno. A. Lancaster & Son and Lancaster & Co. for many years up to the time the succeeding firm went out of business, and during this period was embraced the time occupied by the late Civil War in which I was engaged; that they were dealers in stocks and bonds and other securities in the City of Richmond, and that I further have known and seen advertisements of market reports of stocks and bonds advertised to be sold and as sold in the financial columns of public prints. I have also been acquainted with the firm of Davenport & Co., of Richmond, who have also been dealers in stocks and bonds and are at this present day, and were during the period of the Civil War. The above firms were known to me as reputable concerns of this city.

I recall financial notices and market reports in the Richmond Dispatch, a newspaper in good standing in the city of Richmond, and in the prints of its predecessor known as The Dispatch and published in the city of Richmond, and that such market reports have always been regarded as dependable and relied upon by the business community of this city.

STATE OF VIRGINIA,

CITY OF RICHMOND, to-wit:

I, O. RAYMOND BROWN, a Notary Public in and for the City of Richmond, in the State of Virginia, do hereby certify that the foregoing depositions of John L. Williams, William A. Anderson, William H. Palmer, John P. Branch, Coleman Wortham, Richard B. Washington, George L. Christian and James B. Pace, were duly taken before me at the times and places mentioned in the caption thereof, after the said witnesses had been sworn according to law. And I do further certify that by consent of counsel both for the plaintiff and defendant, the signatures of the witnesses to their respective depositions were waived.

Given under my hand and Notarial Seal, this 21st day November, 1914.

O. RAYMOND BROWN,
Notary Public.

Fee of Notary (and Stenographer as such) $41.60.

New York, December 7th, 1914.

Met pursuant to direction of the Master.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Sandford Robinson, Esq.,
of counsel for plaintiff.

Hon. A. A. Lilly, Attorney General,
Hon. Charles E. Hogg,
Hon. John H. Holt,
of counsel for defendant.

THE MASTER: I understand that the counsel for Virginia claim that there are authorities which show that the book value is not a legal factor to be considered in determining the value of the stock. My recollection of my examination of the authorities is that I have not found any such authority. Now what I would like the counsel for Virginia to do is to give me the name of the case on which they rely for that proposition, and I will have the book sent for, so that we can discuss it, so that we can submit it to the other side, and I can also see it myself. If there is a case or cases that hold that, I would like to see them and look them over before we get through with this hearing. Now, Mr. Robinson, if you will give me, at your convenience, the volume or volumes that contain the cases that you rely on for that proposition, I will send out and get them, and we can look them over, and can have that point cleared up before we adjourn this hearing.

How far along are the counsel on each side with the analysis of the facts bearing upon all the items, that I desired to have them make?

MR. ROBINSON: I will be ready not later than Wednesday.

THE MASTER: How is it with you, Mr. Lilly?

MR. LILLY: Ours is under headway. There are some possible corrections and additions.

MR. HOGG: That is the analysis that you called for in your letter?

THE MASTER: Yes, that is the analysis of the facts. What I want to be able to do with regard to that is, I want to be able to state in my report, and I want to be able to refer to everything that either side contends ought to be considered under any of the items, and the various items, so that I shall not overlook anything that ought to be taken into account. Without that analysis I could not be sure that I would do that.

MR. HOLT: Is it your purpose, Mr. Robinson, to print your analysis?

MR. ROBINSON: No.

THE MASTER: I do not require either side to do that. I would like it better, but I do not require it.

MR. LILLY: If we have the time of course we will print ours.

MR. HOLT: It is more easily handled.

THE MASTER: You both realize the purpose for which I want this analysis. I do not want to go on with a lot of these items, and later on discover that I have omitted something that I ought to have taken into account, when I reach my conclusion, when I come to take up the item. I assume that the counsel are better qualified to call my attention to everything involved than I am. And unless I happened to have an index that stated everything, it is quite possible that I might leave out something that I ought to have had in mind; and that I do not want to do.

MR. HOLT: Our analysis is practically completed. There are a few additions and corrections; and we went over it last night. But I suspect we will print it. That will take a day or two.

THE MASTER: That will be agreeable to me.

MR. HOLT: I do not like to read caligraphy, and handwriting I positively cannot read. I can scarcely read my own.

MR. ROBINSON: Do you want those cases now?

THE MASTER: Yes.

MR. ROBINSON: I gave you a memorandum dated November 12th, 1914, which I sent to the gentlemen from West Virginia. It was an examination of the cases cited by them. I confine myself to that. And certain of those cases decided the point that book value was not evidence of value.

THE MASTER: Now let us have those cases.

MR. ROBINSON: They are Carey vs. Williams; it is cited in West Virginia's brief and in my memorandum.

MR. HOGG: What is the citation of Carey vs. Williams?

THE MASTER: He will give us the page.

MR. ROBINSON: That is cited on page 57 of Professor Hogg's brief.

THE MASTER: What do you say that holds?

MR. ROBINSON: I claim that it is a distinct authority against the principle contended for by the defendant. It holds that entries on the books of a corporation showing the purchase of stock by a person, and payments made by him thereon, are not prima facie evidence that he is a stockholder. The Court says at page 909 of that volume, that

"Corporations are not exempt from the ordinary rules of evidence, and there is no stronger presumption of honesty, or regularity or accuracy as to their books or records than there is in the case of natural persons."

At page 911 the Court said:

"The books and records of corporations, when properly kept, are evidence of the acts and proceedings of the corporate body."

At page 912 the Court said:

"The business entries in the books of a corporation are no more evidence against its members than they are against strangers."

And it cites for that purpose Rudd vs. Robinson in 216 New York, page 113.

THE MASTER: That does not reach the point I have in my mind.

MR. ROBINSON: Now Rudd vs. Robinson, 216 New York, 113, the Court there states this, they say that after a careful consideration of all the cases they can find no principle upon which the account books of a corporation are evidence against a member of the corporation as to the accounts and entries therein. The officers and bookkeepers of a corporation are not agents of the members.

THE MASTER: That does not reach the point.

MR. ROBINSON: What is the point?

MR. HOLT: Upon this point, before you leave it, I know that we have a decision of the Supreme Court of the United States that holds exactly to the contrary.

THE MASTER: I will tell you what I am inclined to think—I do not say that I have reached my conclusion about this—but I am inclined to hold that the reports of corporations in which the state was a stockholder, and where the state required the returns to be made to

it on oath, and where the state published those reports as verities, I am inclined to hold for the purposes of this case that that is equivalent to an admission on the part of Virginia of whatever those reports show are true and in accordance with the facts. Now, that proceeds on an entirely different basis from the discussion of the Court in these two cases. I do not say that I hold that, but my mind is leaning that way. This case is differentiated from nearly every case in that respect. It would be rather unusual if Virginia was to require reports to be made to it on oath under the sanction of a statute enacted by itself, and then publish those reports to the public as accurate information, that they would not be treated later on at least as admissions of hers that the facts therein stated were correctly stated. But that is not the point that I have in my mind.

MR. ROBINSON: Just on that point—what stocks other than the banks had to be reported on under oath?

THE MASTER: All these stocks in the various improvement companies. The case before me shows that there is a statute of Virginia that requires reports of banks to be made on oath, and reports of navigation companies and railroad companies to be made on oath. Those reports were made on oath, and Virginia published them to the world as being accurate reports. Now, that was away back in 1861 and 1863, and as I say my mind is drifting towards the conclusion that that is an admission on the part of Virginia. I do not mean to say that that cannot be explained. That is only a question of the method of proving. I am speaking now of the manner of proving, not the effect of the proof. The impression that I got was this, that Virginia claimed that there were authorities that held that the book value was not a factor to be considered in reaching the actual value. Now, those cases are what

I want my attention called to. The manner of the proof is one thing, and the effect of the proof is quite a different thing. Now, what I want is, if there are any cases that completely hold that book value is not a factor to be considered, I do not mean the determining factor, but is not a legal factor to be considered in reaching the actual value, I want my attention called to those cases, and I will get the cases and look them over and thresh them out here, and see what we all think about them. Do I make myself clear on that, Mr. Robinson?

MR. ROBINSON: On that proposition Judge Holt has cited a line of cases, on page 41 of this brief, under this heading:

"If stocks have no known market value, or if the quotations thereof be not obtainable, or, if obtainable, be not dependable, the actual value of the stock, by all the authorities, may be ascertained by a comparison of the assets and liabilities of the company issuing them, coupled with its activities, as evidenced by dividend declarations, or otherwise."

Now, there is a line of cases, and there does not one of them say that the book value can be considered in determining either the value of the stock or the value of the assets. I have criticised all those cases in this memorandum.

MR. HOLT: Let me reply to your brief, because it is certainly a remarkable document in the light of those cases.

THE MASTER: I have examined all those cases myself, and I have not yet found, either in your brief or in the brief submitted by the other side—and it may be that I have not carefully enough examined the cases to ascertain—I have not yet found a concrete case that holds that book value is not a factor under certain cir-

cumstances to be considered. Now, if there is such a case that holds that—I have examined Judge Holt's cases, and quite a number of them do not sustain his general proposition, but the Judge evidently was not intending to state the substance of all of his cases in his omnibus statement as to what he expected the cases to show, at least I assume that is so——

MR. HOLT: That is true.

THE MASTER: Some of them do not sustain the general statement, and others do tend to sustain it.

MR. ROBINSON: When I was interrupted by Judge Holt, when he said it was a remarkable document, I would be glad to have him point out any inaccuracies in the statement, because I tried to make it accurate.

The case of Cabbel vs. Cabbel, 111 Appellate Division, page 426, is in line with the Rudd vs. Robinson case. There the value of the stock was proved by the testimony of the person having knowledge of the corporation. The Court rejected an inventory of the assets prepared by the corporation, the Court rejected consideration of it. And they cited People vs. The Insurance Company, 107 New York, 541. And then they laid down the rule——

THE MASTER: That is a tax case, People vs. Insurance Company?

MR. ROBINSON: Yes. Then they laid down the rule that the value of shares should be determined by considering the business, property, value of the assets, amount and nature of the liabilities, dividends, market value, or any or all of these. And then the Court in that case went on to say that to get the book value of corporate assets the value of the assets would have to be estimated independently, and they could not be considered at what they were carried on the books.

THE MASTER: That all may be, but that is a question of proof. That case, I understand it, in terms does hold that the book value is an element of value.

MR. HOLT: Absolutely.

THE MASTER: That is the question I am asking. The extract you have just read in almost so many words holds that the book value is an element to be considered in reaching the value. I examined that case with great care, and also the case which precedes it, which were cases as to values under the Tax Statute. Was that the opinion of Judge Finch?

MR. ROBINSON: I do not remember.

THE MASTER: But that does not reach the point.

MR. ROBINSON: When they reject the inventory of corporate assets and take a man's testimony over the inventory prepared by the corporation, and you say that is not an authority of value, you and I cannot argue any more.

THE MASTER: I say that that authority does not pass except affirmatively in favor of the proposition that the book value of the assets, which is the same thing, the assets and property, is to be considered in reaching the value; that the question that you now refer to, or the phase of it you now refer to, is an element of proving what that value is. What I want to get is, if there is any case that holds that the book value of the assets, the property and the business of the company, which is the basis of book value, is or is not a value to be considered in reaching the value. Now, as to whether it would be proved by an inventory, one way or another here, without the testimony of witnesses, is entirely beside that proposition. What I want to get is, what the effect of the proof is if the proof is made. I am not disturbed very much as to how the facts are going to be proved under the peculiar circumstances

of the case. I want to get at, is there a case that holds that the book value, or the assets and property, is not a factor to be considered in reaching the value of the stock.

MR. ROBINSON: Of course I would concede at once that the value of the assets should be considered in reaching the value of the stock. But I say that the book value is no evidence whatever, no competent evidence whatever of the value of those assets, as between Virginia and West Virginia.

MR. ANDERSON: Unless the book value is made upon some sore of approximately accurate value of the assets.

MR. HOLT: Suppose it is made under a statute and upon oath, and accepted by Virginia as being correct, and published to the world as true?

MR. LILLY: And kept in her archives.

MR. HARRISON: That is a mere assumption. No such condition of things exists, as a matter of fact.

THE MASTER: I think it comes pretty nearly being shown by the record. The record shows that there are statutes of Virginia in case of banks and in case of railroads requiring the returns to be made on them.

MR. HARRISON: What returns, the values?

THE MASTER: Yes.

MR. HARRISON: I think your Honor is mistaken.

THE MASTER: The trial balances which have been put in in this case have been made in accordance with the statute requiring them to be made on oath. Virginia was a stockholder in all those concerns, she took those returns herself, made on oath, and published them as true, and they have been circulated as such for public information ever since. The only question

for me is whether, under the circumstances, that is equivalent to an admission of Virginia that they are true; not a conclusive admission, but that is on the question of the manner of proof. It is quite a different thing as to how the thing presents itself, that is as to the method of proof. Now, the question as to how it should be proved does not disturb me so much, as, if it is contended that if proved the book value is not a factor, I would like to see the cases that show it. Do I make myself clear on that?

MR. LILLY: Yes.

THE MASTER: This case that you refer to, Mr. Robinson, does not cover that.

MR. ROBINSON: Mr. Harriman wants to know how this came up.

THE MASTER: Mr. Robinson called my attention to the fact that the book value was not a factor to be considered in determining the value, not a legal factor to be considered; and pending your coming in I was asking him to give me the cases upon which he relied to establish that legal proposition. The cases that you speak of I have examined myself very carefully, and in my judgment they do not either of them show it.

MR. ROBINSON: You do not think the case of Rudd vs. Robinson, in 216 New York, shows that?

THE MASTER: No, of course it does not show that the book value of the assets and the property is to be considered.

MR. ROBINSON: I do not understand that the book value is equivalent to that.

THE MASTER: The book value is nothing under heavens but the assets and the liabilities, that is all, when you come right down to it.

MR. ROBINSON: The book value may be fifty million dollars and the assets may be worth ten thousand dollars.

THE MASTER: That is all the book value is, the contrast between the value of the assets and liabilities.

MR. ROBINSON: It is a contrast between what the books carry the assets and the liabilities at.

THE MASTER: Then it is up to me to say whether the book value is actually proved or not. Virginia is a party to this controversy, she is a stockholder in all these corporations. Under her own statutes these returns are required to be made on oath, and she published them as true, and it is from those returns thus made on oath, and thus published by her, that the facts in this case have been drawn. It would be going a long ways for me to say that that was not equivalent to an admission by Virginia that the facts stated in those returns were true, not a conclusive admission. But in the absence of any other evidence, can it be said that Virginia in 1861, in a corporation in which she is a stockholder, for the public information would require the corporation to make a return on oath of these fundamental facts, showing their trial balances, and then publish them to the world—what did she publish them for?—and then not be affected, after putting them out to the country as facts in connection with those corporations? I cannot conceive any purpose for which Virginia should require those returns to be made, and have them published, in corporations in which she herself was interested, unless it was for the purpose of publishing the facts to the public, so that the public, who are interested, the people of Virginia, who are interested in these investments, who had contributed in taxes to pay these sums that were put into these investments, would know the facts concerning these various properties in which they were interested.

I cannot conceive any reason why that should be done, except to give them the facts relating to these various corporations. That, in a general way, gives you my idea of what the proof is up to date.

MR. ROBINSON: You talk about all these balance sheets. Now, in the case of the banks there were some balance sheets. It appeared on the examination that the title to some of those accounts had been changed from "contingent fund" to "profit and loss," that there were certain bad and doubtful debts that had not been taken into account.

THE MASTER: I have all those in my mind. That is one reason why I want you people on each side to give me a complete analysis from your point of view of these various facts. For instance—I remember all those circumstances, I have gone over that already, and I have my notes already made on those particular cases, and I do not mind saying that when I get around to it I am going to take out of the assets of those corporations those doubtful accounts. Wherever they appear to be doubtful or bad they are going to be cut right out; I can tell you that right now, on both sides, so that you will know how it stands. That is one reason why I want this analysis. If I should go on and take the statement of a bank, and inadvertently omit considerations of that sort, I might reach a wrong conclusion. And that is why I want both sides in this case to call my attention in detail to anything that they wish to have considered in connection with those.

MR. ROBINSON: This is the fact that I want to call your attention to. Outside of those banks, and the Richmond, Fredericksburg & Potomac Railroad Company, where there was a balance sheet, there it not another balance sheet in this case. All the other book values are merely par value as of 1856——

MR. ANDERSON: Either that or cost.

MR. ROBINSON: Plus alleged paper profits. The existence of the profits, or the substance of it, is not at all attempted to be shown.

THE MASTER: That does not affect the principle at all. That detail I want you to give me when you give me your analysis. And if you will all give me your analyses, and give them carefully, you may be sure that everything you say will be considered by me in reaching my conclusion. I am discussing now the question of principle. There may be but one balance sheet to which this question applies. I do not see why Virginia is not to be treated here like any other party to a litigation. If she makes a statement and an admission—and as far as that is concerned there is very much more reason why a statement she makes as verity should be held as verity, as far as she is concerned—now whether that applies to one of the items or all of the items, I will take your various analyses, and I will see how far it does apply. I have no objection to your discussing it, but I am not discussing now the detail of the case as to how far this principle would affect my conclusion. In the first place I want to get two principles settled, the manner in which these facts should be proved with referenced to book value, and if proved whether they are a legal factor to be taken into account in reaching a conclusion as to the value. I do not mean that they may be the determining factor, because there are various factors involved in reaching a conclusion as to value. But if there are any cases that hold that the book value, or in other words the assets and liabilities, as shown by the balance sheet of the corporation, if properly established, are not to be considered as an element in reaching value, I want to get those cases so that we can look them over. But my at-

tention, up to date, has not been called to a specific case that shows that.

MR. ROBINSON: Do you mean established by the fact of the entry or established by extrinsic proof?

THE MASTER: I mean book value as a fact, throwing out of account altogether the manner in which it is established.

MR. ROBINSON: What is book value? Is book value the value as shown by the figures themselves, or is it a value which may appear on those figures but which may be established by extrinsic proof as to what it is?

THE MASTER: That is the question of the method of proving book value. Does it exist? If it exists, that depends upon the proof. Suppose the proof shows that it does exist. If it exists, what weight is to be given to it in this case? Do I make that clear?

MR. ROBINSON: Not to me.

MR. HOLT: The point in Mr. Robinson's mind seems to be this, that the book may display a column of assets and a corresponding column of liabilities, but that is no proof of the value of those assets. But you have already answered that. And there is another answer to it, too. The very statute under which these reports were made to the Commonwealth of Virginia required these banks and canal and other internal improvement companies to report the condition of the companies, and they do that by reporting assets and liabilities. Of course that means the true assets and the true liabilities; otherwise you would not reach the result showing the condition of the company under the statute. That is the way the statute reads.

THE MASTER: It is for me to say whether this is proved. But suppose I hold it proved, under the circumstances of this case, and for the purposes of this

case, then the question is, what effect is to be given to the proof. There are two propositions. Suppose I hold that the book value is established, now then am I to give any weight to it in reaching the conclusion as to the value of these assets?

MR. HOLT: Yes, because the book value is the accurate value if the books have been correctly kept.

THE MASTER: I understood Virginia to claim that the book value, if established, was not a proper factor to be taken into account in fixing the value of the stock. If there are authorities that hold that, I would like to have my attention called to them before I get through with this hearing, so that I can look them over, and so that the other side may comment on them.

MR. HOLT: I understood your position and the distinction you made between the method of proof and the conclusiveness of the proof.

THE MASTER: All I can say is that the cases to which my attention have been called up to date do not show this.

MR. HOLT: May I make inquiry as to what has been printed of that document No. 17? There was some correspondence between yourself and counsel on both sides about what of that document was to be printed. Has the whole thing been printed? Does it embrace everything relating to the James River and Kanawha Company?

THE MASTER: Judge Holt's inquiry is whether the printed copy headed James River and Kanawha Company embraces everything relating to the James River and Kanawha Company. My understanding is that it does, and if it does not I will have whatever there is of the original document that has been left out, added.

MR. HOLT: The reason for my inquiry, if your Honor will pardon me, is this——

THE MASTER: My instructions were to have everything in document No. 17 that related to the James River and Kanawha Company printed. From page 1187 to page 1194 is to be treated as though it had not yet been introduced, as I did not intend to have that printed.

MR. HOLT: The point of my inquiry, your Honor, was this. We lodged with you the other day, in response to some exhibits upon this subject tendered by Mr. Potter, three or four new exhibits prepared by Mr. Hillman, and the one of them marked Supplemental Exhibit No. 4 contains what purport to be a lot of extracts and excerpts from this document No. 17, and we do not find them in the printed pamphlet to which you have just referred. It may be that they have been overlooked in the printing, or it may be that I have overlooked them in reading the pamphlet

THE MASTER: The pamphlet ought to contain everything in that document No. 17 that relates to the James River and Kanawha Company. Whether it does or not I do not know.

MR. HOLT: The supplemental exhibit, as I said before, that we filed, is largely made up of extracts from document No. 17; but I do not find those extracts in this printed pamphlet, therefore everything relating to that is not included. This will illustrate. (Reading)

"Page 225, Document 17, September 30th, 1860. Resolutions of Investigating Committee of Stockholders. 'That they congratulate the stockkholders on the improved and apparently improving condition of the Company in every department of its affairs.'"

And then this:

"Page 232, Document 17, September 30th, 1860. Extract from president's report. 'And in the month of July, the water was withdrawn from some of the levels for the usual systematic repairs.'"

And then again:

"On page 692 of the same volume the president of the James River and Kanawha Company values the property at $10,000,000, which was in the year 1859."

And you will find that those extracts from the report, all the way through, of the president, show that the repairs had all been kept up, as we understand it, out of the revenues earned. So there was no depreciation.

THE MASTER: The first thing to be ascertained is whether or not this document as furnished to me is a correct transcript of that document. If it is not correct we will have it made correct. I read through Mr. Hillman's exhibit when I received it, and I started to try and pick out from the report which I have here, this page of the report, before I got the print, the references made by Mr. Hillman. Of course I found out right away that Mr. Hillman's references to pages were undoubtedly to the pages of the printed document on file in Virginia. I assumed that it was probably all in here somewhere, and that he could find it. If it is not all in here, as far as the James River and Kanawha Company is concerned the hearing stops right here until it is completed. I have had so much inconvenience in getting at this original data that I do not propose to make any move until I have what I believe to be the original report, or a transcript of it, so that I may know what I am looking at. I rather assume that Mr. Hillman could probably find his references in this, but if they are not here and this document is not com-

plete, that is the end of the investigation this morning on the James River and Kanawha Company.

MR. HILLMAN: I am looking for those.

THE MASTER: You run it down while we are discussing something else. It may be that you will find it. If you do not find it, then we have not yet succeeded in getting the exact facts with relation to the James River and Kanawha Company. And I shall insist on those facts being in here. While Mr. Hillman is doing that, I call the attetion of the counsel for Virginia—I do not think Mr. Harrison has seen this, and Mr. Robinson has just hurriedly looked it through—West Virginia presents here now an extract from a public document which they find on the files in West Virginia, purporting to have been published by Virginia, which gives details that have not heretofore been available in connection with this Jeffersonville Branch. You look that through carefully and see what you have to say about it.

MR. LILLY: I can wire and get the book here tomorrow.

THE MASTER: We might just as well take our time now and clean this all up. My suggestion still holds, that if either of you finds that there is something that ought to be put into this case, that ought to go in, you will have a chance to put it in; and also if I find anything that I think ought to go in it will go in.

MR. HOGG: You do not want any unconsidered factors in this case.

THE MASTER: Not if I know it. Of course this exhibit tends to throw some light on this Jeffersonville business. I shall hold that the burden is on West Virginia to show the value of these various stocks on these respective dates, that is so far as the burden amounts to anything one way or the other on the ques-

tion of proof. Now, on this particular matter the bearing would be this; Mr. Dixcy, who was the accountant for West Virginia in the former hearing, filed an exhibit in which he stated that West Virginia was chargeable with the full amount of that stock. And I held its value to be $427,250. I think the value that you claim now is less than that. That was based on everything I had before me at that time.

MR. HOLT: Had not Mr. Dixcy heard of the Graziers' Bank?

THE MASTER: He did not say anything about it, and, of course, nobody else said anything about it. What Mr. Dixcy had heard about and what he knew, I do not know. The practical situation about that is this; West Virginia stands here in this hearing with its expert in the former hearing conceding that the full amount of the Northwestern Bank stock was chargeable to West Virginia. Now under those circumstances the burden is on West Virginia to satisfy me that that is not proper. If West Virginia says the facts are the other way, it is up to her to show me some facts that will justify me in holding the other way. It is up to West Virginia to satisfy me by some legally competent testimony that I should reach that conclusion.

MR. HOLT: We recognized the difficulty from the beginning. We put in the statutes showing the lopping off of the Branch at Jeffersonville, and the subsequent establishing of the Grazier Bank. The question was how much of that should be subtracted from the charge against West Virginia on account of the Northwestern Bank. But at the time we were at Richmond we did not have any evidence on the subject. And all we could do was to establish the fact that that Branch had been lopped off, and the Grazier Bank established.

THE MASTER: That statute shows that there was $25,000 in gold still on deposit in Wheeling that was alleged to be the property of the Grazier Bank, if I remember right. This exhibit here tends to show that the stock of the Jeffersonville Branch was about $164,000.

MR. HOLT: There are two or three matters in the record now, in what I call the new record, showing that Virginia in the sixties, after the establishment of the Grazier Bank, continued to receive dividends on about $164,000.

THE MASTER: $146,000 I think it was.

MR. LILLY: $146,000.

THE MASTER: Let us get that right now. About all there is in this record that tends to establish the size of the Jeffersonville Branch—

MR. ROBINSON: It is on page 74.

THE MASTER: Page 74 of the exhibits?

MR. ROBINSON: Yes, sir.

THE MASTER: There was a dividend in 1862 of $14,000, April 1st; July 22nd, 1862, $640, ten per cent. What does that $640, ten per cent, July 22nd, 1862, represent? I cannot guess about this too much you know. Is there anything about it in the record? Here is $640, ten per cent., July 22nd, 1862. Here is July 22nd, 1862, $7,320, five per cent.; and January 20th, 1863, $7,320, five per cent. Will it be assumed that that is perhaps a yearly dividend of $14,640, at ten per cent.?

MR. HOGG: That is five per cent. semi-annually undoubtedly.

MR. HOLT: Suppose you look at page 80 also, on the same subject. There are some more dividends on Graziers' Bank stock there.

MR. ROBINSON: Judge Holt, where is the exhibit showing the incorporation of the Graziers' Bank?

THE MASTER: July 28th, 1863, $6,820, five per cent., dividend on 1,346 shares.

MR. HOLT: That shows that Virginia had at that date 1,346 shares in the Graziers' Bank; at least she was receiving dividends on that amount.

THE MASTER: It shows that she was receiving dividends. Now, the only other fact in this record that tends to establish the size of this Jeffersonville Branch is the fact that a certificate for $50,000, par value of the Graziers' Bank, was found on the files of Virginia.

MR. LILLY: That, your Honor, was a school fund.

THE MASTER: But that is all that appears. If there is anything further, that is if there is anything to connect these things—of course I do not know what they may say about this here, of course if this is a correct extract from an original record it may have some tendency to clear up the situation.

MR. LILLY: I will wire for the book, your Honor.

THE MASTER: It is almost incredible to my mind that there is not somebody in existence in Jeffersonville, or some books or records—if this does not prove to be what we want—if there are not some books or records or some living witnesses around Jeffersonville or Tazewell who have some knowledge about the size and condition of that bank. Of course, it may be that there are not. I do not suppose either side has made any effort to ascertain that fact from anybody living in Tazewell. Is that true?

MR. ANDERSON: We have not.

THE MASTER: Neither has the other side.

MR. HOLT: I think you will find the statute establishlishing the Graziers' Bank is March 13, 1862, page 984 of the record.

THE MASTER: Here I have on one hand dividends on a certain basis, and I have on the other hand a certificate of stock on an entirely different basis; and an entire absence of any evidence as to what may be obtained in Tazewell or Jeffersonville. Of course, I am not speaking now of the effect of what you produce here this morning.

MR. HOLT: I know that we left Richmond feeling distinctly that we had only, so far as our testimony then given was concerned, introduced an Act showing the cutting off of the Jeffersonville Branch, and another Act establishing it into the Graziers' Bank, but that so far we had discovered no evidence showing what deduction should be made from the Northwestern on that account, except as to the dividends.

MR. LILLY: There is a law in Virginia after a certain time not allowing her to invest in bank stocks, and the presumption is that it would be the old stock.

THE MASTER: Let me ask Mr. Robinson and Mr. Harrison—they present here this morning an extract from a document, and they say they can produce the document here. Do you want them to produce the document here? Of course that is a significant report.

MR. ROBINSON: We would like to see it.

MR. LILLY: I will telegraph for it at once.

THE MASTER: I suppose that perhaps is as far as we can go with this Jeffersonville Branch, right now.

MR. HOLT: This is a report by the cashier of the Jeffersonville Branch to Governor Letcher, in consequence of the fact that he could not report to the parent bank at Wheeling.

THE MASTER: That was the Confederate Government?

MR. HOLT: Letcher was the Confederate Governor of Virginia. His report is dated October 17, 1861. "I again enclose you quarterly statement of the condition of this office, being excluded from communicating with parent bank."

MR. LILLY: The idea I am suggesting, there is an Act prohibiting Virginia from investing, in the future, in any internal improvement stocks or bank stocks, and therefore this must have been the stock that was converted into the Graziers' Bank stock.

THE MASTER: I think the case shows this, that whatever appears to be invested by Virginia in the Grazier Bank, so far as I can see on this record, it is to be inferred it was her portion of the Northwestern Bank. The question now is what it was.

MR. HOLT: Mr. Lilly's idea was that that would show, by this statute, that she had not purchased any more stock in the Grazier Bank after it had been clipped from the Northwestern.

MR. LILLY: Our idea was that in the discussion of the matter we might refer to these various statutes.

THE MASTER: This is not a very large item. It certainly was not cleaned up at the previous hearing, except that West Virginia assumed the responsibility of the whole business, and there was not any occasion for going into it. When I come to go into it I find these things confronting me. Wherever my report may vary from my previous report, I must give some reason why I vary it, at least I shall try to, or else I won't vary it.

MR. HOLT: I do not know, I may misunderstand, but as I understood it you had invited us here, Mr. Littlefield, for the purpose of seeing where we were on the

following matters. First, the James River and Kanawha Company, which would cover the exhibit since the last hearing, filed by Mr. Potter, and the reply exhibits filed by Mr. Hillman. Secondly, the exhibit filed by Mr. Potter, relating to the Blue Ridge Railroad Company, filed since the last hearing—

THE MASTER: That, I think, is not printed.

MR. HOLT: —and the reply exhibit filed by Mr. Hillman. Third, the Northwestern Bank; and fourth, the depositions taken at Richmond, under the suggestion of the Master, relative to the subject of market quotations. Those are the four matters.

THE MASTER: Yes.

MR. HOLT: And I suppose that none of the exhibits presented by Mr. Potter, and that none of the exhibits just now mentioned by Mr. Hillman, have been embraced or printed in the record.

THE MASTER: Some of Mr. Potter's exhibits have been printed, but they are not in the case, and until supported by Mr. Potter, or unless supported by Mr. Potter, they will be taken out of the case. I did not intend to have them printed. The Blue Ridge exhibit is not printed at all, I think, and I did not intend to have the others printed, because I was going to treat them all on the same basis. Those that have been printed may be treated as not in the case, and won't be in unless supported by Mr. Potter's statement. That I think covers your ground, does it not, Judge?

MR. HOLT: Yes, sir. Now, in what way can we make further progress this morning?

THE MASTER: Until Mr. Hillman makes such examination of this printed case, so as to be able to know whether that is a complete extract, why, I do not see that we can make much progress on the James River and Kanawha Company. We have tentatively cleaned

up this matter of the Tazewell Branch, and that now awaits the bringing on of this original report, which can be brought on here. If the original report, when it is brought on, does not show sufficient detail I shall either want the counsel on one side or the other to make an investigation at Tazewell, or I will have it made myself; because, in the absence of being able to get satisfactory information, I do not think the case ought to be closed until somebody ascertains what is or is not in existence, by sending somebody to Jeffersonville or Tazewell to find out what facts may be ascertained there. Of course, if Virginia wants to concede on the record that what West Virginia claims should be allowed for the Tazewell Branch should be allowed, that will take care of it. But if they contest it, why I want that information. Of course they would not want to say about that, I suppose, right off the bat. All these items, as far as I am concerned, if the parties agree on them, if you set up a claim as to value and the other side admits it, I shall not spend any more time on it. But if you disagree, and there are facts which in my judgment ought to be available, and which have not been produced, why I shall wait until I get them.

Now, the Blue Ridge matter, of course Mr. Potter is not here.

MR. LILLY: Why not adjourn and let our accountants get to work, and be ready by the time Mr. Potter gets here?

THE MASTER: Suppose we suspend until two o'clock this afternoon, or ten o'clock tomorrow morning?

MR. LILLY: Will it do any good to meet at two o'clock this afternoon if Mr. Potter is the first witness?

MR. ROBINSON: We might take up the question of the depositions.

THE MASTER: The deposition matter is entirely a matter of comment and argument.

MR. HOLT: With one exception, and perhaps it is only an inquiry of General Anderson or Mr. Harrison—while in Richmond, as I recall, they instructed someone to copy from a book of Davenport & Company a list of sales of stock. I do not find that list of sales attached to or embodied in the stenographic report of the testimony anywhere.

MR. HARRISON: Won't you refresh your memory by looking at the evidence?

THE MASTER: Mr. Leeds calls my attention to the fact that there is a document on file in Richmond that shows, referring now to an element that we had in the discussion this morning, in which I stated that where it appeared that there were debts that were doubtful or uncertain I should cut them out—he says that that shows that most of those debts were collected. And he wants know what can be done about getting these reports. Of course that question was opened in Richmond, and Mr. Harrison disclosed on his cross-examination that infirmity about that trial balance. I did not state what I was going to do about it. Of course everybody must know that I would have to reach some conclusion about it. And that matter of course should have been produced by West Virginia at that time. But I am not going to hold them down to that. If there is evidence tending to negative the effect of the evidence disclosed by Mr. Harrison on cross-examination, under the circumstances of this case, with all the parties involved, why I am going to let the other side produce it. While, strictly speaking, I think it was their business to have produced it in Richmond, it was all disclosed there to them and they ought to have anticipated the effect that evidence of that kind would have on my

mind—whatever should go in here, even though I do not think you have exercised the diligence you ought to have exercised—because I think the right kind of diligence would have produced that evidence in Richmond—it will be introduced, I will hear it. I am going to have an end of this, but, of course, I can understand that there are a good many details connected with it, and it may be that it will be a little rank to hold that counsel for West Virginia were not exercising due diligence if they did not dig this up. But if it is a fact, and they want to produce it, they may produce it. Now, the question is how are we going to get at that. Mr. Leeds wants to know. That is a document on file in Richmond.

MR. LEEDS: We ought to have the one about the James River and Kanawha Company.

MR. ANDERSON: Receipts from whom and by whom?

MR. LEEDS: There are trial balances of the bank which show that they lost this year fifty thousand dollars bad or doubtful debts, the next year the balance will show twenty thousand dollars bad or doubtful debts, showing that there have been thirty thousand dollars collected.

MR. HARRISON: It does not show that they were collected.

THE MASTER: If there is anything that West Virginia thinks is important on that line, I think it is incumbent upon me to let it in. I do not say now what weight I shall give to it, but I think they are entitled to the benefit of any fact that it is proper to show.

MR. ANDERSON: I am very sorry that Mr. Potter is not here, because I feel very sure that any stock ownership by Virginia in the Northwestern branch bank at Jeffersonville which afterwards went into the Grazier Bank, is shown by records in Richmond. It has

been overlooked in some way. I do not think there is an item of ownership of stock that is not shown.

THE MASTER: I have called Mr. Potter in for the purpose of having Mr. Potter make some effort to get this information. All that Mr. Potter knows about that is this, and I think the record shows it, that there were found in Virginia at one time a certificate for fifty thousand dollars of the par value of the stock in the Grazier Bank. I think there was another certificate found, perhaps for the same amount.

MR. ANDERSON: The stocks owned by Virginia were either held by the literary fund or by the board of public works, and their records show all the facts.

THE MASTER: I am telling you now all that Mr. Potter knows about it, unless he has discovered something since he talked with me. Because I put it right up to Mr. Potter to give me what information he had showing how much stock Virginia held in this Jeffersonville branch, and all that Mr. Potter knew about it is what appears in this record. And, at my request, Mr. Potter wrote to the postmaster down at Tazewell to see if he could get some information from him, and he had not heard from him up to the last time I saw him. That is the whole case on the details as to the branch in Tazewell.

MR. LILLY: Do you suppose, your Honor, on the new phase, you could phone the Auditor at Virginia and get him to send us Volume 14 and Volume 17?

THE MASTER: I would be very glad to telegraph him. I suppose he would do that quicker for you, Mr. Harrison, than he would for me, wouldn't he?

MR. LILLY: It is the original volume of documents 14 and 17.

MR. ROBINSON: Document 14 is of the banks and document 17 is the railroad and canal companies, and shows the James River and Kanawha Company. Why not ask Mr. Page to send those up with a messenger at the Master's expense?

MR. HARRISON: If you want to try and get those books up here, why not telephone Mr. Page and ask him to send them up?

THE MASTER: Let us be sure and get the right book, and let us be sure that we do not want anything else, because I am fully as anxious, and more anxious than anybody else, to get this matter finished.

MR. HARRISON: Is there anything else that you want?

THE MASTER: In looking over Mr. Hillman's exhibit there were some references made to some original documents and extracts made from original documents. From now on whenever anybody makes any extracts from original documents I want the whole document; if it is a table, I want the whole table; if it is an abstract from statistics, I want all the statistics, because there is almost always a controversy between the parties as to what the facts may be. If either party relies on any original document I want the whole of that document to which they make reference, so if there is any controversy I can make up my mind as to whose contention is correct. We have had more or less confusion as to what this shows or that shows. If there is any controversy about it I want to know myself what it shows. If there is any dispute between the parties, then I can decide it in short order. If there is anything that Mr. Hillman refers to in his exhibit that would be covered by my suggestion, let us have it here. Then if there is a question about it I will hear both of

you, and I will take the original and make up my mind about it very quickly.

MR. HOLT: If Mr. Page comes, upon your invitation, Mr. Littlefield, he might bring both document 14, which is referred to by Mr. Leeds, and document 17, which covers the James River and Kanawha Company; and then with the original here we can see whether this document covers those extracts.

MR. HARRISON: I think he will send them up to you.

THE MASTER: I will call him on the phone. The question is, is there anything more that we want.

MR. HILLMAN: We have an entry here from the James River and Kanawha Company reports on file in the Chesapeake and Ohio offices. We have no method of getting those that I know of.

THE MASTER: Mr. Harrison is attorney for the Chesapeake and Ohio, and he can get those.

MR. HARRISON: What would you ask for? What shall I send for?

MR. HILLMAN: Volume 5—I will make a memorandum of it for you.

THE MASTER: Mr. Page can either bring these himself or send them up by a messenger that he has confidence in, and let it stay here until we get through with the document.

MR. HOLT: If Mr. Harrison at the same time telegraphed to the Chesapeake and Ohio and had those documents sent to Mr. Page, they might be brought at the same time.

MR. ROBINSON: Can't you dispose of the depositions this morning?

MR. HOLT: When we get these things straightened out from those books, then is it your idea to print the last exhibits?

THE MASTER: Yes, whatever takes place here goes in as additional record.

MR. HOLT: You want to transmit these as part of your report?

THE MASTER: Yes.

Adjourned to meet at the Bar Association, December 8th, 1914, at 10 A. M.

New York, December 8th, 1914.

Met pursuant to adjournment.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Sandford Robinson, Esq.,
of counsel for plaintiff.

Hon A. A. Lilly, Attorney General,
Hon. Charles E. Hogg,
Hon. John H. Holt,
of counsel for defendant.

After considerable discussion as to the production of original documents and some efforts to agree on a stipulation, adjourned to December 9th, 1914, at 10 A. M.

New York, December 9th, 1914.

Met pursuant to adjournment.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Sandford Robinson, Esq.,
of counsel for plaintiff.

Hon A. A. Lilly, Attorney General,
Hon. Charles E. Hogg,
Hon. John H. Holt,
of counsel for defendant.

ARTHUR G. POTTER, recalled for further examination on behalf of the plaintiff, testified as follows:

Direct Examination:

By Mr. Robinson:

Q. Mr. Potter, have you made a schedule containing extracts from Document No. 17, James River and Kanawha Company, being part of the report of the Board of Public Works?

A. Yes, sir.

Q. Will you please state what that extract is?

MR. LILLY: What page is that?

MR. ANDERSON: Page 107 of the printed document.

Q. Please state what that extract is and how it was made up.

THE MASTER: In the first place state on what pages of the print it is to be found.

THE WITNESS: It appears at pages 1187, 1188, 1189 and 1190.

MR. LILLY: You might call this Volume 3, I suppose, of the last print.

THE MASTER: Yes, Volume 3.

THE WITNESS: This statement is a summarizing of the report of the James River and Kanawha Company of receipts and disbursements from the organization of the Company to the 30th of September, 1860, made as a statement in condensed form of the same information contained in this same volume, printed at pages 1148-A, 1149, 1150 and 1151. The figures are exactly the same in both instances, with the exception that the outstanding warrants at the end of the period are deducted from my cash balance, instead of being footed in on the other side. The totals are exactly the same, with that exception.

By the Master:

Q. You say page 1148-A?

A. Page 1148-A, this large statement, Mr. Littlefield, that is the beginning.

MR. HOLT: It is marked 1148-A at the bottom of the page.

THE WITNESS: Yes, and it goes over to the next following two or three pages.

MR. ROBINSON: Pages 1149 and 1150 and 1151 are a continuation of an account which starts on this wide sheet here.

THE MASTER: The big wide sheet I notice is marked at the bottom 1148-A.

By Mr. Robinson:

Q. Now, Mr. Potter, in computing the disbursements for the James River and Kanawha Company I notice you have omitted——

THE MASTER: Take first whatever you have to say about the receipts. I want this to go in its order, so that when I come to look at it it will all ravel right out in the order in which it comes. Then follow that up with your succeeding matter, unless that disarranges unnecessarily your mehod. Otherwise, when I come to look at the record I will have to keep shifting back and forth.

Q. Will you please explain how the total of receipts shown on the bottom of page 1187, of $5,434,443.35 was arrived at?

A. It was arrived at by adding the first three items on page 1148-A, namely, $793,345.55, $4,230,891.92 and $57,710.60, and one item which appears on page 1149, namely, $2,182.88, from interest on State stock. I combined that with other items of interest and premiums. It shows a total income of $5,434,443.35. In other words, I have merely excluded all of the capital receipts in this statement appearing at page 1148-A. and stated in that total the income from operations and interest, etc.

Q. If I understand you then, your statement of receipts includes all entries that are receipts of income, and excludes all entries that are receipts from capital account?

A. Yes, sir. I would like to amend my previous answer. I want to add that I included in the total of $5,434,443.35 the items of tolls appearing in the last total on page 1148-A, and income from the Richmond Dock, and income from the five locks, tide water connection, T. W. C. it is here.

By the Master:

Q. Does that include everything except bills payable?

A. No, sir; bills payable and insurance on New Canton Bridge.

Q. With the exception of those two items, it includes everything in that item?

A. Yes, sir. My total on page 1187 of $5,434,443.35 includes all the items at the left of page 1148-A, with the exception of bills payable $152,055.12, and insurance on New Canton Bridge, $10,000.

By Mr. Robinson:

Q. Mr. Potter, will you explain how you arrived at your statement of disbursements?

MR. HOLT: Where are they, Mr. Robinson?

Q. Contained at pages 1189 and 1190 of Volume No. 3.

A. The items on page 1189 are taken from page 1148-A, all of the items on the right hand side, except the following: dividends of the James River and Kanawha Company, $11,599.59, certificates of the First Auditor, $469,188.30; and certificates of the Second Auditor, $202,821.30; and it includes three items on page 1151, namely: loss by General Hamilton's Agency, $63,820,45; notes from delinquent subscribers and others, for arrearages, $4,241.84, and securities in agents' hands collecting stock arrearages, $381.73. The total of these items is $6,737,399.10, as shown on page 1189.

Q. Mr. Potter, referring to the entry or referring to the item, dividends of the James River and Kanawha Company, $11,599.59, please state when that dividend was paid.

MR. ANDERSON: What page is that?

MR. ROBINSON: That is page 1148-A.

THE MASTER: If there is something in the record that shows that, just state where it is, so I can check it.

THE WITNESS: It is Exhibit G-1, page 11 of that exhibit——

THE MASTER: It is Exhibit G-1 of the original record?

THE WITNESS: Of the original record, page 11 of that exhibit, paragraph 7 of the decree——

MR. HARRISON: Pages 820-L and 820-N of the original record.

THE WITNESS: This is on page 820-L of the original record; it shows that there was paid in 1836 $10,092 as dividend—that exhibit shows this to be dividends received by the Commonwealth; the difference between the $10,092 and the $11,000 shown in this report.

By the Master:

Q. $11,599.59?

A. Yes, sir; that is doubtless the amount paid to individual stockholders other than the State of Virginia.

By Mr. Harrison:

Q. The dividend is also shown on page 193 of the Master's report as paid in 1836?

A. Yes, sir.

By Mr. Robinson:

Q. Why did you not include among your disbursements the certificates to the First Auditor for $469,188.30, and the certificates to the Second Auditor of $202,821.30?

MR. HOLT: What page is that, Mr. Robinson?

MR. ROBINSON: On page 1148-A.

A. Because I could not determine exactly what those payments were made for. I believe that they were made for interest—they were interest payments, but I could not prove it.

By Mr. Anderson:

Q. Interest payments paid by whom?

A. Paid by the James River and Kanawha Company to the First and Second Auditors for money loaned by the State to the James River and Kanawha Company.

By Mr. Robinson:

Q. They are entries on the liabilities' side of the account, are they not, Mr. Potter?

MR. ANDERSON: Will you ask him the date of those?

A. They are entries on the disbursements' side, Mr. Robinson, which indicates that they were payments.

Q. Payments?

A. Yes, sir. And they are under the heading, additional charges on revenue. So I think that it is perfectly reasonable to put that construction on them, that they are interest payments.

Q. However, you have not included them in your schedule?

A. No, sir; I have not.

Q. Will you please state the effect of not including them in your schedule?

A. The apparent deficit would be $672,009.60 more than I have stated it on page 1190. And in my certificate I said that the deficit was not less than $1,302,955.75, because under the construction that I have just indicated it would be nearly $2,000,000, not quite $2,000,000.

Q. Will you explain why you excluded any other entries upon the disbursements' side of this account?

A. The disbursements found on page 1150 are evidently all construction disbursements, amounting to $7,811,875.46, and $1,670,609 on page 1151—that is, pages 1150 and 1151.

Q. Do I understand that you have included all disbursements chargeable to income and excluded disbursements chargeable to capital, with the exception of the three entries that I have specifically called your attention to?

A. Yes, sir.

By the Master:

Q. What do you mean by disbursements chargeable to income?

A. The statement shows under the heading of disbursements, first, for repairs and maintenance; then it gives four items, then there is another group of three items, the first one says new canal, from Richmond to Buchanan, $1,811,-260.93; inasmuch as that came under the general heading for repairs and maintenance I take it that is what it means. It is followed by two items, damage to canal by fresh—I suppose that means freshet—of July, 1842, $67,542.23, and damage to canal by fresh of November, 1847, $21,424.48.

MR. ROBINSON: I think you have misunderstood the Master's question.

THE MASTER: My question was, what do you mean by disbursements chargeable to income? Do you mean by that that the disbursements are chargeable to operating expenses?

MR. ROBINSON: There were operating expenses and capital charges.

THE MASTER: I do not see the significance of disbursements chargeable to income.

Q. Do you mean by that disbursements properly chargeable to up-keep?

A. Yes, sir.

Q. As distinguished from disbursements for capital account?

A. Yes, sir.

THE MASTER: I see it now. I wanted to get the significance of the disbursements chargeable to income.

MR. ROBINSON: We offer in evidence Mr. Potter's schedule as printed at pages 1187 to 1190 inclusive.

MR. HOLT: That does not then embrace, as I understand your offer, page 1148-A?

MR. ROBINSON: The Master has put that in.

THE MASTER: The document, James River and Kanawha Company, was put into the case under my instructions. That was an original document, and I put it in. And I understand that both sides propose to make a deduction from that.

MR. ROBINSON: That will be Plaintiff's Exhibit No. 24.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 24, December 9th, 1914, C. B.

By Mr. Robinson:

Q. Mr. Potter, referring to Plaintiff's Exhibit No. 24, just introduced, and which appears at pages 1187 to 1190 inclusive of the printed record No. 3, will you please state the difference between the receipts from income and the charges to operation, as shown upon that exhibit?

A. In dollars and cents, do you mean?

Q. Yes.

A. $1,302,955.75.

THE MASTER: Your question is not quite broad enough to cover that answer, unless by charges to operation you mean to include maintenance, up-keep, expenses and interest. Of course, operation may be one thing, and a fixed charge of interest quite another thing. Do you see?

MR. ROBINSON: Yes, sir. Just change the question that way.

THE MASTER: I want you all to keep the distinction in mind between operating expenses and fixed charges.

Q. I will repeat my question. Mr. Potter, referring to Plaintiff's Exhibit No. 24, just introduced in evidence, and appearing at pages 1187 to 1190 inclusive of the printed record No. 3, will you please state the difference between the receipts from income and the charges for maintenance, up-keep, expenses and interest, as shown upon that exhibit?

A. $1,302,955.75.

Q. The disbursements exceeded the receipts by that amount?

A. The disbursements from income.

Q. The disbursements we have just stated?

A. Yes, sir.

THE MASTER: What is that, the disbursements from income?

Q. That is the disbursements for maintenance, up-keep, expenses and interest?

A. Yes, sir.

Q. That exceeded the income by that amount?

A. Yes, sir.

By the Master:

Q. And if the items of the certificates to the First Auditor and Second Auditor were items of expense, or expenditure for interest, it would add to the deficit how much?

A. $672,009.60.

THE MASTER: I want to inquire right here—and unless there is objection, as I go along on all of these items, as a matter occurs to me that I want to know about, I will make the inquiry at the time.

MR. ROBINSON: Of course that is proper.

THE MASTER: I would like to know why it is that the books of Virginia do not show what those two items of payment were for, and if any effort was made to ascertain what they were for from the books.

THE WITNESS: I went through the report of 1860, the auditor's report, and I could not see any amounts or descriptions which tallied with them. I think it may be there, but in smaller items, in groups of items which are designated under different heads; but I did not see anything that would tally, would seem to tally with those two amounts.

Q. You did not find any groups which compared with these two groups?

A. No, sir. You see, Mr. Littlefield, this extends over a period of twenty-five years.

Q. I understand this is supposed to have covered a period of twenty-five years, but you did not go over that period of twenty-five years of the account?

A. No, sir; I did not.

Q. For the purpose of ascertaining what might have represented these?

A. No, sir; and furthermore, I found no entries on the books as certificates of the auditors. It seems that they had a certain kind of paper called certificates of auditors, but I did not find any.

Q. Did you make any examination of the books of Virginia for the purpose of ascertaining how much the James River and Kanawha Company had paid to the State of Virginia for interest during this period?

A. No, sir; I did not make such inquiry. But I can say this much about that, that the Board of Public Works had an account which they called revenue, and that revenue ac-

count contained the revenue from all the companies. It was not credited to an account called interest from the James River and Kanawha Company, it was credited to an account called revenue, with quarterly or half-yearly credits through the journal. It would mean analyzing the journal to find out where the interest came from.

Q. That is the credits of interest were in lump sums?

A. Yes, sir.

Q. Without indicating the sources from which the interest came?

A. In the final resting place in the ledger, but in the journal it indicated exactly where the money came from; but the items were legion.

Q. In other words, you did not ascertain the lump sum items for the purpose of ascertaining where the items came from, for the purpose of developing the source of those?

A. No, sir.

Q. And you did not find anything on the books of Virginia that gave any explanation of certificates?

A. No, sir.

Q. Or indicated that certificates were made an element of the account?

A. No, sir.

THE MASTER: That is all.

MR. HARRISON: They are included, however, here on the original document, as disbursements.

THE MASTER: The difficulty is, so far Mr. Potter is not able to state whether they are interest charges or not. They are certificates of some sort for some purpose. Whether they are interest or not, he is not able to say, and therefore he does not include them in the deficit. Is that it?

THE WITNESS: Yes, sir; that is it.

By Mr. Robinson:

Q. Mr. Potter, do the receipts from capital, stated at page 1188 of your exhibit, exceed the charges to construction, plus the principal of the old James River annuity, plus the dividends of the James River and Kanawha Company, plus the certificates to the State auditors heretofore mentioned, by this same sum of $1,302,955.75?

A. It does, with the exception that there is a balance of cash of $103,000.

Q. Then I will repeat my question. Do the receipts from capital stated at page 1188 of your exhibit, exceed the charges to construction, plue the principal of the old James River annuity, plus the dividends of the James River and Kanawha Company, plus the certificates to the State auditors heretofore mentioned, plus $103,035.33, cash on hand, by this same sum of $1,302,955.75?

A. Yes, sir.

Q. Stated at page 1190 of your exhibit?

A. Yes, sir; $1,302,955.75.

MR. ROBINSON: Whenever I refer to expenses of operation I always intend to include the maintenance, up-keep, expenses and interest, because I look upon them all as expenses of operation.

MR. HOLT: Do you mean fixed charges or a part of expenses of operation?

THE MASTER: Strictly speaking, I suppose they are not, but if you intend to include them, we understand in what sense you use the language.

MR. ROBINSON: Usually a company does not operate very long after they stop paying their fixed charges.

MR. HOLT: That is true, but interest on bonds is hardly an operating expense.

MR. ROBINSON: We are just quarreling with words; our ideas are the same.

THE MASTER: We had better use the same words in the same sense all the way through, and then I won't have any confusion.

Q. Mr. Potter, have you prepared another schedule, showing the receipts and disbursements of the James River and Kanawha Company for four years, October 1st, 1859, to September 30th, 1863, taken from the printed volumes of annual reports of the Company in the possession of the Chesapeake & Ohio Railroad Company at Richmond, Virginia, printed at pages 1191 to 1194 inclusive, of Volume 3 of this record?

A. Yes, sir.

Q. Will you please explain how——

By the Master:

Q. The document you refer to is also printed in the record as the James River and Kanawha Company, is it not?

A. Yes, sir.

THE MASTER: The document you refer to upon which this statement is predicated is printed in the third volume of the record, is it not?

MR. ROBINSON: No, those are all in the books of the Chesapeake & Ohio.

MR. HARRISON: He has prepared this statement from that report.

THE MASTER: Is not this the original document I ordered printed?

THE WITNESS: So far as 1860 is concerned it is, but so far as 1861, 1862 and 1863 are concerned there is nothing printed in this report.

THE MASTER: As to September 30th, 1860, this statement you have prepared is predicated upon the document already printed in this case?

THE WITNESS: Yes, sir; at page 1103 of Volume 3.

Q. The statement of receipts and disbursements contained in Document No. 17, and printed in this record at pages 1103 to 1105 inclusive, ending with the entry to balance, September 30th, 1860, $106,258.02, is the source from which you compiled this schedule, so far as the entries under September 30th, 1860, are concerned?

A. Yes, sir.

Q. Will you please state how you arrived at these items of revenue?

THE MASTER: Suppose we dispose right now of 1861, 1862 and 1863. Those are predicated upon some original documents that are not here. Now, have they any such significance that you want to use them? If they have not I will strike them out; and if they have, those books ought to have been sent for along with the other books.

THE WITNESS: There is no point in printing this at all unless you are going to have the comparison.

Q. What volumes are they in? We have coming now Volumes 2 and 5 of the Chesapeake & Ohio. Are they not among those papers?

A. I judge they must be in Volume 5.

MR. ROBINSON: Do you know, Mr. Hillman?

MR. HILLMAN: In Volume 5 it has the years prior to 1860. I do not know whether it has these three years in or not; I could not say.

THE WITNESS: They were yearly volumes, 1861, 1862 and 1863; they were separate books.

Q. The statement of receipts and disbursements contained in Document No. 17, and printed in this record at pages 1103 to 1105 inclusive, ending with the entry to balance, September 30th, 1860, $106,258.02, is the source from which you compiled this schedule, so far as the entries under September 30th, 1860, are concerned. Will you please state how you arrived at those items of revenue?

A. I arrived at the items of revenue stated on page 1191, for the year ending September 30th, 1860, merely by taking the same items that appeared in the original document, which is printed at page 1103, and the figures are identical.

Q. How did you arrive at the items of disbursements shown on page 1193, the total of $219,441.57?

A. That figure is identical with the total in the original document, on page 1104.

Q. How did you arrive at the total shown at the bottom of the page, amounting to $406,943.23?

A. By adding the items appearing on page 1104, under the caption of interest, $186,126.89, which is the total of four items, and the State tax of $1,374.77.

By Mr. Harrison:

Q. By adding those to what, Mr. Potter?

A. By adding those to the previous figure, I arrive at the total of $406,943.23.

By Mr. Robinson:

Q. Does this show that the disbursements for maintenance, up-keep, expenses and interest exceeded the receipts for revenue for that year?

A. Assuming that all of these disbursements were made for up-keep and maintenance, all of the items contained in the total of $219,441.57, then the total that I have shown covers maintenance, up-keep, interest and expenses of maintaining the Company for that year.

By Mr. Harrison:

Q. Do they exceed the income from revenue?

A. Yes, sir.

By Mr. Robinson:

Q. By how much?

A. $98,048.90.

MR. HOLT: Now that is for the year ending when?

MR. ROBINSON: September 30th, 1860.

Q. Are there any items for disbursements shown on page 1193 that you can say were disbursements for construction?

A. Not positively; no, sir. I merely copied the statement as it appears on page 1104, without making any inquiry as to whether any of those items were for actual capital account. My belief at the time was that they did not, because the captions of the account do not seem to indicate that.

By the Master:

Q. That is, whether they were construction proper, as distinguished from repairs or up-keep?

A. Yes, sir.

Q. Or renewals?

A. Yes, sir.

Q. That is, whether they would be additions to the plant or whether they were simply moneys expended in keeping the plant in condition?

A. There was nothing to show on the face of this statement exactly what it was.

Q. Is there anything in Document No. 17 that throws any light on that subject?

MR. ROBINSON: I was just going to ask him to state off the record——

MR. HOLT: What do you mean by stating off the record?

MR. ROBINSON: I do not want it on the record. The point I want to have you see here, as we go along, that even if all of that item were construction items, there would still be a deficit in that year, because Mr. Potter says the deficit is $98,048.90, as shown by his figures.

By Mr. Robinson:

Q. Now, Mr. Potter, if you will please turn to page 1194 of your Exhibit. And will you read the amount of interest on the State debt to Virginia, and the amount of annuity, of the old James River annuity, that was due and unpaid on September 30th, 1860?

A. The interest due the State was $1,301,500.15.

THE MASTER: You say that was due and unpaid?

MR. ROBINSON: Yes, sir.

MR. HOLT: I think that was paid off by taking preferred stock.

THE MASTER: But at that date in 1860 this Act was passed, which authorized the converting of the debt into preferred stock. What they are undertaking to do now is to bring the account up to that date, as I understand it.

MR. HARRISON: That is right.

THE WITNESS: The annuity was $118,500, as indicated on unpaid balances on the principal of $300,000.

Q. How was this unpaid annuity and past due and unpaid interest discharged by the James River and Kanawha Company?

A. By issuing to the State of Virginia capital stock.

Q. Will you please state the amount, and where that is shown in your exhibit?

A. This statement which we are discussing covers the receipts of cash from revenue and other sources, and takes up as a receipt the new capital stock issued, $7,400,000.

By Mr. Harrison:

Q. Just give the page please.

A. On page 1192.

By Mr. Robinson:

Q. Please state the pages of Document 17, as printed in the record, where the entries for the capital stock and for the past due interest and annuity are shown.

A. That is on page 1103.

Q. What does that show?

A. For new capital stock, $7,400,000—no, it says from new capital stock, $7,400,000; from State release, $360,214.44; from State loan, for Kanawha River, $40,000.

Q. Where are the statements of past due and unpaid interest and the over-due annuity, entered?

A. On page 1105, at the top of the page.

Q. Will you read what they are?

A. State of Virginia: Debt, $5,790,214.29; Interest, $1,301,500.15; Annuity, $118,500; Principal of annuity, $350,000.

By the Master:

Q. How do I understand, right here, that if this item of interest unpaid of $1,301,500.15, as you say, and annuity, $118,500, if those two items had been paid it would have increased this deficit of $1,302,955.75 by that amount, is that the way you understand the account?

A. You are talking about two different statements now, Mr. Littlefield.

Q. I want to get them straight in my mind.

A. This is the statement of 1860, wherein they take up on the debit side and credit side the items that offset each other.

Q. For that year, do you mean?

A. Because the transactions occurred in that year.

Q. Does that show there was a balance of interest still due and unpaid to the State, of $1,301,500.15?

A. Yes, sir.

Q. Is that balance included in the $1,302,955.75, the general statement covering the whole period of twenty-five years, or should it be added to it?

A. No, the summary statement is a complete summary statement, including these offsetting items.

Q. Then the fact that $1,301,500.15 of interest was not paid does not in any way affect the deficit that you have reported from the statement covering the period of twenty-five years?

A. No, sir.

By Mr. Robinson:

Q. Mr. Potter, I call your attention to an extract from a report to the stockholders, presented by General Taliaferro, printed at the top of page 4 of Document No. 17, as contained in Volume 3, and reading as follows, "While the great measure of converting the debt into stock, granted by the Legislature last winter, has relieved the Company from a load of oppressive embarrassment, and contributed to produce a most happy effect upon the public mind in reference to the value of the improvement," and ask you to state to what that refers.

A. It refers to the conversion of the debt owed by the James River and Kanawha Company to the State of Virginia, as shown on page 1105.

Q. What was the amount of that debt?

A. $5,790,214.29.

THE MASTER: As shown on page 1105, and as provided for by Act so and so. Just put that Act in there, so I can have it all together.

MR. HARRISON: I think it was March 23d, 1860.

THE MASTER: Is not that already printed here?

MR. HARRISON: It is all in the old record.

THE MASTER: Let us have a reference to it.

MR. HARRISON: I had the date right, March 23rd, 1860. It is page 108 of the appendix to the old record.

MR. ROBINSON: It is re-printed in the new record at page 67 of the exhibits, Volume 2 of the new record.

Q. What was the amount of that debt?

A. $5,790,214.29.

Q. What does that represent?

A. It is entered under the heading of debt to the State of Virginia.

By the Master:

Q. What page is that?

A. Page 1105 of Volume No. 3.

By Mr. Harrison:

Q. Give the balance of the items.

A. Interest, $1,301,500.15; annuity, $118,500; principal of annuity, $350,000; total, $7,560,214.44.

By Mr. Robinson:

Q. What did the State accept from the Company in exchange for the discharge of these obligations?

A. The capital stock of the James River and Kanawha Company.

THE MASTER: And when? What does the account show?

MR. ROBINSON: It shows that it happened in that year, that is all.

THE MASTER: Is there anything to show the date when?

MR. ROBINSON: No, there is not.

MR. ANDERSON: Before the 30th of September, 1860. A part of the claim was realized by the State, $360,000.

By the Master:

Q. There is no doubt about the identity of the two items?

A. No, sir; none whatever.

By Mr. Robinson:

Q. Now, Mr. Potter, referring to the items on your exhibit at page 1191, under date of September 30th, 1861, please state whether all the items under that column, on pages 1191, 1192, 1193 and 1194, are exact copies of the whole of an account similar to the one stated for the year 1860 on pages 1103 to 1105 of Volume 3.

A. Yes, sir; they are.

THE MASTER: Before you go into that, what is the significance of the years 1861, 1862 and 1863?

MR. ROBINSON: They show that there was the same deficit for each of those years.

MR. ANDERSON: There was a deficit—not the same deficit.

MR. ROBINSON: Showing a deficit for each of those years.

THE MASTER: Let me see if I get this. Your contention is that these reports for 1861, 1862 and 1863 show a deficit of maintenance, up-keep, expenses, repairs and interest, notwithstanding the conversion of the debt of Virginia into capital stock?

MR. HARRISON: Yes, sir, down to the year 1863.

MR. HOLT: That is beginning with September 30th, 1860, and running to September 30th, 1863; that is the way I understand it.

THE MASTER: Now then, I get that. Now of course if the other side requires it, and if I think as it develops that I want to see it, I shall have to see these original reports for 1861, 1862 and 1863. They ought to have been here.

MR. HILLMAN: It is possible that they may be included in Volumes 2 and 5.

THE MASTER: From now on I shall want to be in a position where I can see either the original records or what I can look upon as the complete extracts.

MR. HARRISON: These statements were furnished to other side.

THE MASTER: It may not be enough for me, to satisfy the other side, I have got to be satisfied. We will see how that works along. But, subject to that suggestion, of course we will go right along. I want to treat both sides exactly alike on this proposition, and no matter what may be developed, if anything turns up where I want to see the original I shall have to have it.

MR. HOLT: As I understand, Volumes 2 and 5 will disclose this.

THE MASTER: I hope they will.

MR. ANDERSON: I would like to ask Mr. Potter whether he examined any volume of higher number than 5.

THE WITNESS: I cannot remember; I cannot answer that.

(Testimony read by stenographer.)

Q. Do they show that the disbursements for maintenance, up-keep, expenses and interest exceed the receipts from revenue, and if so, by what amount?

A. They show, for the year ended September 30th, 1861, there was a deficit——

THE MASTER: Put that in this way, please——give the total receipts and the total disbursements, and then give the difference, so that I will know just exactly what you take it from.

THE WITNESS: For the fiscal year ended September 30th, 1861, the revenue receipts are stated at $160,547.63.

THE MASTER: That is at page 1191?

THE WITNESS: Yes, sir; that is, at page 1191. The disbursements for maintenance, up-keep, expenses and interest are $230,357.17.

THE MASTER: That is, at page 1193, is it not?

THE WITNESS: Yes, sir; that is at page 1193. Leaving an indicated deficit of $69,809.54. There is an item in there of $5.70, down at the bottom of the page, that might possibly be thrown on to the next page. It was so small I did not pay any attention to it. I do not know what it is.

Q. Please state the same facts with reference to the year ended September 30th, 1862.

A. The revenue receipts for that year are shown to be $143,190.84.

THE MASTER: That is at page 1191?

THE WITNESS: Yes, sir; that is at page 1191. And the disbursements for maintenance, up-keep, expenses and interest are shown to be $189,800.70.

THE MASTER: That is at page 1193?

THE WITNESS: Yes, sir; that is at page 1193. Leaving an indicated deficit of $46,609.86.

Q. Please state the same facts with reference to the year ending September 30th, 1863.

A. The receipts from revenue are $302,443.96; that is on page 1191; the disbursements for maintenance, up-keep, expenses and interest are $431,480.21; that is on page 1193; showing an indicated deficit of $129,036.25.

MR. ROBINSON: I ask to have this schedule, headed James River and Kanawha Company, printed at pages 1191 to 1194 inclusive of Volume 3, marked in evidence as plaintiff's Exhibit No. 25, and filed in this case.

MR. HOLT: That is the one, the original source of which we have not before us.

THE MASTER: Subject to the suggestions before made, it is admitted.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 25, December 9th, 1914, C. B.

THE MASTER: In regard to the Blue Ridge Road, I want to make a general inquiry and see whether anybody is able to state the facts from the record. I got the impression that the Blue Ridge Railway was substantially a tunnel through the mountain. I want to get on the record the fact about that. How long is the road, and how much of it is tunnel?

MR. ANDERSON: There are several tunnels.

MR. LILLY: The road is sixteen miles long.

MR. ANDERSON: No, no; ten miles long.

THE MASTER: See if there is anything in the record. I would like to have this stated here before we begin on this subject. I want to see just what that Blue Ridge tunnel is.

MR. LILLY: I can show your Honor where it is on the map.

THE MASTER: I would like to get approximately the facts about that. I have searched the record a good deal for that, and I did not find anything that satisfied me about it. In the first place, does the Blue Ridge Railroad tunnel——

MR. HOLT: It begins on the eastern side, as I understand it, of the Blue Ridge, and runs up the Blue Ridge, and tunnels through two or three spurs of it before it finally reaches the main tunnel through the Blue Ridge Mountains.

THE MASTER: Now, what is the total length of the Blue Ridge Road, approximately?

MR. ANDERSON: I understood it to be ten miles of railroad; that may be exclusive of the tunnel.

MR. HOLT: Does that embrace or exclude the tunnel?

MR. ANDERSON: I do not know whether it embraces or excludes the tunnels.

MR. HOLT: It is nearly all tunnel, is it not?

MR. ANDERSON: No, the main tunnel is seven-eighths of a mile—the Hoosac Tunnel was the only tunnel in America that was longer when that was built, as I understand it. And then there were three or four small tunnels, from a few hundred feet to a quarter of a mile in length.

THE MASTER: Is it agreed practically that the whole road is ten miles in length?

MR. LILLY: I think it is sixteen miles.

THE MASTER: I would like to have the physical character of the road right in the record here, and then if I have occasion to discuss it I will have it before me.

MR. ANDERSON: The Blue Ridge Railroad cost nearly $1,700,000.

MR. HOLT: It was very expensive on account of the tunnels.

THE MASTER: The impression I got was that it was such an expensive piece of railroad that the State had to build it, no railroad company wanted to build it. Am I right about that?

MR. ANDERSON: I know the State built it and owned it exclusively.

THE MASTER: Is there anything here to show when it was built? Look at the origial record in the table of Acts appropriating money, that may tell when it was started. That is in the back part of the book, General Anderson.

MR. ROBINSON: Why not leave it until Mr. Harrison finds out just exactly what that was?

THE MASTER: I would like to have it right in a nut shell at this point, while I am at it. According to this table of Acts appropriating money, the Blue Ridge seems to have been started in 1849.

MR. ANDERSON: It was not built for several years after that. They had a temporary road over the Gap for several years while they were building it.

MR. HOGG: It was incorporated as a railroad on the 5th day of March, 1849.

THE MASTER: Well, put that in. That is near enough.

MR. ANDERSON: It was probably built by about 1853 or 1854.

MR. HOLT: I think one of our exhibits here gives the expenditures up to a certain time.

MR. LILLY: I do not think it was completed until about 1859. I am not speaking for the record, but that is about the time they commenced getting toll for it.

MR. HOLT: If you will turn to page 27 of Volume 2, new record, you will find that the cost of construction up to January 1st, 1861, was $1,604,000. Then you will find that there was invested in it after that date $90,000 more.

THE MASTER: Yes, but that does not give us when it was started.

MR. HOLT: But that tells you when it was completed.

THE MASTER: I have been all over this to find out something about that, and I have read that statement over and over again. All these statements, practically, when they give acts up to a certain date—I do not know as one of them tells when the construction was begun. I have dug up more or less of it by looking into the index of the appropriation Acts.

MR. LILLY: There are reports here that show the number of miles, and then the next year it would show a different number, and what part was under construction.

THE MASTER: We won't keep everybody waiting here while we are looking that up, but I would like to have that put right in there. What I want is the approximate length and the approximate amount of the road that is tunneled, so as to get some sort of an idea about it.

MR. ANDERSON: Did your Honor have a volume of the Board of Public Works report sent to you?

THE MASTER: Document 14 is here.

MR. ROBINSON: Why don't we go along, and put it in afterwards?

THE MASTER: That is all right, put it in afterwards. We won't stop for it now.

Q. Mr. Potter, I call your attention to a paper marked Blue Ridge Railroad Company, basis of valuation April 1st, 1870, by joint commission, Virginia and West Virginia, and ask you to state what that paper is.

A. That paper is a copy of an original pen written document found on file in the office of the State Corporation Commissions in Richmond, Virginia, in a box of original documents labeled Blue Ridge Railroad. This box cotains copies of contracts and other miscellaneous papers.

Q. Relating to the Blue Ridge Railroad Company?

A. Yes, sir.

Q. Can you state whether the copy is a correct copy?

A. I cannot state positively. I think it is a correct copy, because it is signed by both the cashier——

Q. Can you state whether your copy is a correct copy of the paper on file?

A. Yes, sir, it is a correct copy.

MR. ROBINSON: I ask to have that paper marked in evidence.

MR. HOLT: I do not understand that to be a copy from which he took it, that was the original paper, was it not?

THE WITNESS: I understood Mr. Robinson to refer to the original document. I want to withdraw that, and simply say that I know this is a correct copy of the original document, from which it was copied.

MR. HOLT: I understood what you wanted to get at, but then you were discussing the one in the box down there as if it were a copy.

MR. ROBINSON: I am much obliged to you, Judge.

By the Master:

Q. Let me get the significance of your answer. Does your answer imply that all of the typewritten material upon this exhibit is an accurate extract from the original on file, beginning, "Value on the 1st day of April, 1870, ascertained by the rule established by award of the Commissioners of the Covington and Ohio Railroad, dated May 25th, 1867"?

A. Yes, sir.

Q. That statement appeared in the original document?

A. Yes, sir.

Q. So that this document here is a literal transcript?

A. Yes, sir; that is a literal transcript of the original document down to the final footing of $122,187.77. Then it is signed and certified correct by the cashier of the Chesapeake & Ohio Railroad and by the secretary of the Board of Public Works; but in both cases their signatures appear, which I did not copy at the time. This copy was taken for another purpose, and then it was used for this purpose afterwards. Then the endorsement on the back of that report, the stars there indicate that something has been omitted, I believe. Are there some stars in that endorsement, Mr. Littlefield?

THE MASTER: Yes.

THE WITNESS: That is not a complete endorsement. In other words, there was something omitted here.

MR. ANDERSON: I find the length of the Blue Ridge Road given here, at page 127, as 16.8104 miles, being the report of the Virginia Central Railroad Company for 1860, page 129 of Document 17.

By Mr. Robinson:

Q. Is the endorsement as stated in the paper a correct copy of the endorsement on the original document?

A. It is not a complete copy. So far as it goes it is verbatim.

Q. Are the signatures the same?

A. They are.

Q. All the signatures appearing upon the original document are contained in your copy?

A. Yes, sir.

Q. And no signatures are omitted, on the endorsement?

A. No, sir.

MR. ROBINSON: I ask to have that paper marked in evidence as Plaintiff's Exhibit No. 26.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 26, December 9th, 1914, C. B.

THE MASTER: Plaintiff's Exhibit No. 26 does not contain any comments of Mr. Potter?

MR. HARRISON: None whatever. It is simply a transcript.

PLAINTIFF'S EXHIBIT No. 26.

No. 2

BLUE RIDGE RAILROAD COMPANY.

Value on the 1st day of April, 1870, ascertained by the rule established by award of the commissioners of the Covington and Ohio Railroad, dated May 25th, 1867.

1.—Amount due to the State.

Cost of Blue Ridge Railroad	$1,694,870.85
Amount actually paid in tolls, etc.	191,458.32
Amount remaining unpaid	$1,503,412.53

Amounts of tolls, etc., accrued but not paid—

Payable at the end of each year:

For the year	
1865	$ 8,976.16
1866	19,655.33
1867	25,471.36
1868	31,780.99
1869	32,061.40
To April 1, 1870	4,240.53
Whole amount to April 1, 1870	$122,187.77
Balance payable in tolls, etc., yet to accrue	$1,381,224.76

No. 2.—Annuity.

The largest amount of tolls, etc., accrued in any year, exclusive of 1861-1862-1863 and 1864 was for the year 1869	$	32,061.40
Sum to be discharged by the Annuity		$1,381,224.76
Number of years required		Forty-three

No. 3.—Value of Annuity.

Amount of Annuity above	$	32,061.40
Value of each Annual dollar to run forty-three years according to tolls in 2 Rob. Pract. page 384		15.3061
Present value of Annuity of $32,061.40 running forty-three years		490,734.99

4.—Summary

The claim of the State is:	
For amount of tolls, etc., accrued and unpaid	122,167.77
For present value of tolls, etc., to accrue	490,734.99
Amount of Principal Money	$612,922.76

5.—Interest Account.

If interest is charged upon the tolls, etc., as they annually accrued the account will be:		
Due January 1, 1866	$	8,978.16
Interest to April 1st, 1870	$2,289.43	
Due January 1st, 1867		19,655.33
Interest to April 1st, 1870	3,832.78	
Due January 1st, 1868		25,471.36
Interest to April 1st, 1870	3,438.63	

Due January 1st, 1869		31,780.99
Interest to April 1st, 1870	2,383.57	
Due January 1st, 1870		32,061.40
Interest to April 1st, 1870	480.91	
Due April 1st, 1870		4,240.53
	$12,425.32	$122,187.77

Office of the Chesapeake & Ohio Railroad Company,

Richmond, Virginia, April 1, 1870.

Certified correct by the Cashier, Chesapeake& Ohio Railroad.
" " " " Secretary, Board of Public Works.

Endorsement

"Said Commissioners do hereby ascertain said value as "of said 1st day of April, A. D. 1870, to be $625,348.08 "This valuation being made by them in conformity with "the rule established by their decision of 25th of May, "1867, then made at the request of the Virginia Central "Railroad Company." * * *

(Signed) Thos. S. Flournoy Joel McPherson
R. H. Maury T. D. Ramsdell
Wm. J. Robinson Jno. S. Cunningham
Commissioners of Virginia Commissioners of West Virginia

MR. HARRISON: I want to call attention to the Acts, Mr. Littlefield. The document or paper just filed, Plaintiff's Exhibit No. 26, being the value, ascertained by the Commissioners of Virginia and West Virginia, of the Blue Ridge Railroad, as of April, 1870, was made under and in pursuance of the concurrent Acts of the State of Virginia and the State of West Virginia, which are published and contained in the appen-

dix to the original record, beginning at page 35 and extending to page 49, inclusive. I think these Acts have been refiled.

MR. LILLY: I think they have been reprinted.

MR. HARRISON: Perhaps I had better give a list of them, for convenience. The Acts referred to are as follows:

An Act of the State of Virginia to incorporate the Covington and Ohio Railroad Company, passed February 26th, 1866, found at page 35 of the appendix to the original record.

An Act of the State of West Virginia to incorporate the Covington and Ohio Railroad Company, passed March 1st, 1866, and found at page 37 of the original record.

An Act of the State of West Virginia to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio River, passed February 26th, 1867, found at page 40 of the original record.

An act of the State of Virginia to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio River, passed March 1st, 1867, found at page 43 of the original record.

An Act of the State of West Virginia confirming and amending the charter of the Chesapeake and Ohio Railroad Company, passed January 26th, 1870, found at page 46 of the original record. This Act includes the contract with the Commissioners for the completion of the Covington and Ohio Railroad.

MR. HOLT: Do you recall, Mr. Harrison, whether or not any of these Acts detailed the power of these Commissioners?

MR. HARRISON: It gave them carte blanche power.

MR. HOLT: By what authority, in other words, is my inquiry, did they undertake to value the Blue Ridge Railroad?

MR. HARRISON: The authority conferred upon them by the Act of the State of West Virginia, which is identical with the Act of the State of Virginia, which is as follows, "And may also purchase"—that is the Chesapeake and Ohio Railroad that had been chartered —"And may also purchase the right of the State of Virginia in and to the Blue Ridge Railroad by the surrender of State bonds to an amount equal to the value of said road at the time of purchase, under the contract with the Virginia Central Railroad Company, said amount to be ascertained by the Commissioners of the Covington and Ohio Railroad Company." In other words, there was no limitation upon the power of the Commissioners of the Covington and Ohio Railroad Company imposed by the Act of either State, but they were given unrestricted authority to ascertain the value.

THE MASTER: Are those the same Acts that required the Covington and Ohio to construct a railroad from Covington to the Ohio River?

MR. HARRISON: Yes, sir.

THE MASTER: This map indicates that at that time, or in 1861, the road from Covington to the Ohio River was simply located and not built.

MR. HARRISON: It was was not built; no, sir.

THE MASTER: This map indicates that about nine-tenths of that road would be in Virginia and about one-tenth in West Virginia. Have I got it right in my mind here?

MR. HARRISON: If your Honor will recall, the little town of Covington——

THE MASTER: It was constructed up to Covington, according to this map.

MR. HARRISON: It was. When the War began they were building the tunnel, several millions of dollars were spent in building the tunnel under the Alleghany Mountains.

THE MASTER: The practical fact is that in 1861 a road had been constructed to Covington and was in operation.

MR. ANDERSON: No, sir; in 1861 only to Jackson's River.

MR. HARRISON: How far is that from Covington?

MR. ANDERSON: About six or seven miles.

MR. LILLY: And it had been graded up to Covington.

MR. ANDERSON: A great deal of money had been spent west of Covington, there had been three or four millions spent west of Covington. The State was the sole owner of the Covington and Ohio.

THE MASTER: Let me see if I have this correct. I want it in the record. According to this plan, the Covington and Ohio Road had been constructed to within about five or six miles of Covington, and was in operation in 1861?

MR. ANDERSON: Yes, sir.

THE MASTER: And it had been created and partly constructed to this line of division between the two States, and from that line on to the Ohio River it had simply been located and not constructed; and as a part of the consideration for this sale the Chesapeake & Ohio Railroad agreed to construct the road from Covington to the Ohio River?

MR. HARRISON: Yes, sir.

THE MASTER: That road, as a part of this sale, was under obligation to construct and operate a railroad from Covington to the Ohio River, and that in 1861 had been built up to the line.

MR. ANDERSON: No, further than that.

THE MASTER: Beginning at Covington and going towards the Ohio River there had been grading done up to the White Sulphur Springs, and from the White Sulphur Springs on, to a point somewhere near Gumbot, the road had simply been located.

MR. ANDERSON: There had been some money spent there.

MR. HOLT: There was no road constructed up to Covington.

THE MASTER: The contract under which the Blue Ridge Railroad Company was sold required the Chesapeake & Ohio to construct and complete and operate a road clear to the Ohio River. Am I right about that?

MR. HARRISON: That is right, sir.

THE MASTER: We have not anything definite in the record to show how much of the roadbed had been constructed.

MR. ANDERSON: But your former report showed how much had been expended in Virginia.

MR. LILLY: $1,114,000, or something like that, that had been expended.

MR. HOLT: That was not done by the State of Virginia, however?

MR. ANDERSON: Yes, that was done by the State of Virginia. The State of Virginia was the sole stockholder of the Covington and Ohio Railroad.

MR. HARRISON: That was one of the things that the State of Virginia agreed to do in 1861, to build that road.

THE MASTER: One of the main considerations of this sale was the $625,000, or whatever the amount is, and the agreement to construct and operate the road.

MR. HARRISON: To build from a point near the State line to the Ohio River. In other words, to carry out the original design of the Covington and Ohio Railroad, and the two States passed concurrent Acts so as to satisfy the Covington and Ohio Railroad Company.

MR. LILLY: You charged under your report $1,146,460.42 as expended in Virginia.

THE MASTER: Up to 1861?

MR. LILLY: Yes, sir.

THE MASTER: What page of the report is that found on?

MR. ANDERSON: Page 83 of your report, Covington and Ohio Railroad Company, $1,146,460.42. How much, and where, that was spent, I think, did appear in the testimony in a general way. A good deal of it was on the tunnels.

MR. HOLT: What was the eastern terminus of the Virginia Central Railroad?

MR. ANDERSON: The eastern terminus was Richmond.

MR. HOLT: Was it Richmond?

MR. ANDERSON: Yes, it was Richmond.

MR. HOLT: Was that the headwaters of the Chesapeake?

MR. HARRISON: It was the James.

MR. HOLT: These co ent Acts of the Legislature contemplated building a road across both States, with a bigger mileage in Virginia than in West Virginia.

MR. ANDERSON: The contract required them to build from Richmond. The road was already built to Richmond.

THE MASTER: The mileage of the road when fully constructed would be how much?

MR. ANDERSON: About 420 miles, something about that, from Richmond to Huntington.

THE MASTER: Evidently it would be more in Virginia than in West Virginia.

MR. ROBINSON: You may cross-examine.

By the Master:

Q. I want to inquire of Mr. Potter this. Have we got anything here which shows what this rule is that is referred to in the first part of this extract, "The rule established by award of the Commissioners of the Covington and Ohio Railroad, dated May 25th, 1867"?

A. No, sir.

Q. Do you know anything about the rule?

A. No, sir.

MR. ROBINSON: That is all, Judge Holt.

THE MASTER: I want to ask Mr. Potter another question.

R COPY

Q. We have an Act in here authorizing the organization of this road under auspices of these Frenchmen. What was that Act?

MR. ANDERSON: There was one before the War and one after the War.

MR. ROBINSON: That begins on page 176 of the exhibits.

THE MASTER: I want to inquire of Mr. Potter and see whether he knows anything about this. I understand that this proposed Virginia Canal Company and the arrangement with the French people never was consummated?

MR. ANDERSON: No, it never was.

THE MASTER: But this Act, in Section 6, page 189 of the exhibits, provided that the Virginia Canal should issue to stockholders of the James River and Kanawha Company, other than the State, certificates, etc., and then pay annually to the holders of such certificates five per cent. per annum on the amounts thereof. What I want to find out is whether there is anything in the history of this legislation or of the James River and Kanawha Company upon which that peculiar provision was predicated, and whether that Act would have required that Company to pay to the stockholders other than the State, five per cent. Can anybody give me any information about that? This is February 3rd, 1866. Can anybody give me any information of any facts, legislative or otherwise, upon which the peculiar provisions of that Act were apparently predicated?

MR. HARRISON: Nothing but the expectation——

THE MASTER: Was there anything in legislation or anything in the records of the Company that would

lead to the differentiation, so far as the dividend is concerned, as far as stockholders other than the State are concerned?

MR. ROBINSON: It appears that that was embodied in the statute passed March 29th, 1861, and that that statute incorporated a resolution of the stockholders passed on the 1st day of September, 1860.

THE MASTER: Where is that?

MR. ROBINSON: That is in the Act.

THE MASTER: Where do you find it in the Act?

MR. ROBINSON: If you begin at page 176 you will find the Act quoted, and the first paragraph is a Whereas, and then at the second paragraph there begins the agreement. That Whereas recites that the James River and Kanawha Company at their meeting in August, 1860, authorized an agreement between the president of the Company, in pursuance of such authority, and Bellot des Minieres and his associates, to which the Board of Public Works of the State gave its assent, as evidenced by the signature of its president. And then the agreement recites that it was entered into on the 1st day of September, 1860, and that agreement, among its other terms, provides, on page 178, that the outside stockholders may exchange two shares of their stock for one share of the new five per cent. stock.

MR. ANDERSON: They gave up half their stock, in other words.

THE MASTER: That Company was never incorporated?

MR. ANDERSON: The Virginia Central was incorporated.

THE MASTER: There is a tentative piece of legislation under which nothing was done.

MR. LILLY: I think the answer would be this, your Honor. At Section 6, the outside stockholders had certain rights there, but in Section 17 Virginia took care of herself by requiring an annuity of $135,000 a year, or the equivalent of six per cent. on $2,500,000 —I believe it to be $2,500,000.

MR. ANDERSON: Five per cent. on $2,500,000.

MR. LILLY: She was taking $135,000 a year.

THE MASTER: That is Section 17, on page 182?

MR. LILLY: Yes.

THE MASTER: That may take care of the whole situation.

MR. HOLT: And the whole thing fell through.

MR. ANDERSON: I suppose the State expected to get collateral benefit from the development of her territory.

THE MASTER: This clears the matter up, because it shows that the outside stockholders were taken care of in one way, and the State of Virginia in another way. The whole thing fell through, to be sure. This Section 17 shows that they were taking care of themselves as well as of the outside stockholders.

MR. LILLY: They were to invest not less than $20,000,000, and they had to widen the canal basin.

MR. ANDERSON: Where they would get water to fill the upper levels of that canal was left to conjecture.

MR. HOLT: Was that the thing they were going to carry over the mountains?

MR. ANDERSON: Yes, sir.

MR. LILLY: Section one on page 188 of Volume 2, shows the amount to be not less than $20,000,000, nor more than $35,000,000.

MR. HARRISON: It contemplated an expenditure of an enormous amount of money to carry that out.

At this point a recess was taken until 2 P. M.

AFTER RECESS:

MR. HARRISON: Mr. Littlefield, those books are here, four or five of them.

THE MASTER: Did you get all you wanted?

MR. HARRISON: It is understood that as soon as we are finished with them I would like to express them back to Mr. Axtell and get rid of the responsibility for them.

Continuation of the examination of ARTHUR G. POTTER:

Cross-Examination by Mr. Holt:

Q. In your Exhibit No. 24, Mr. Potter, relating to the James River and Kanawha Company, I understand that you cover a period of twenty-five years, from 1335 to September 30th, 1860; is that correct?

A. Is that page 68, Judge, in the exhibits?

THE MASTER: His question is whether in your Exhibit No. 24, beginning on page 1187 and running up to page 1190, you cover a period of twenty-five years of the James River and Kanawha Company.

THE WITNESS: I used the caption used in the report, and I am not sure whether it is twenty-five years. It is from the date of the organization of the Company to September 30th, 1860, and I have not inquired as to the exact date of the organization.

Q. And the object of your exhibit was to show that the expenditures exceeded the income during that period by $1,302,955.75; is that true?

A. Yes, sir; that is true.

Q. Now you embraced in your sum total of expenditures, on page 1189, the following items, as I understand it; annuity to the old James River Company, $517,500——

A. Yes, sir.

Q. Likewise the dividends on the guaranteed loans, of $1,390,740.81?

A. Yes, sir.

Q. Interest on State loans of $1,870,032.83?

A. Yes, sir.

Q. Interest on North River Navigation Company bonds of $80,590.57?

A. Yes, sir.

Q. Also interest on bills payable, interest on auditors' certificates, other interest and discount. All of those items which appear on page 1189 of Volume 3, new print, as I understand your exhibit, help to make up the sum total of what you call operating expenses; is that so?

A. No, sir; my certificate says for maintenance, up-keep, expenses and interest. I do not designate them as strictly operating expenses.

Q. Would the annuity to the old James River Company be an operating expense?

A. It was a constant charge on the revenue of the Company; I believe it would.

Q. It would be an operating expense, you think?

A. In that sense, that any money paid for the carrying along of the Company's obligations would be an operating expense.

Q. Would dividends on guaranteed loans be an operating expense?

A. I believe that is interest on guaranteed loans; that would be an expense.

Q. I am reading from the exhibit, dividends on guaranteed loans $1,390,740.81.

A. Well, I believe that the word dividends meant interest, because dividends, strictly speaking, would be declared by the Board of Directors, and these were obligations assumed for loans.

Q. Well, would that be an operating expense, call it interest or dividends?

A. I think it would be a charge against revenue, and I would not call it an operating expense, strictly speaking, but the result is about the same, that it would come out of revenue before any dividends could be declared by the Company.

Q. Interest on State loans, would that be an operating expense?

A. In the same sense that I have just stated, it would be.

Q. Interest on North River Navigation Company bonds, would that be an operating expense?

A. The same answer.

Q. And you make the same answer on bills payable?

A. Yes, sir.

Q. Likewise as to interest on auditors' certificates?

A. Yes, sir.

Q. Also with respect to other interest and discount?

A. Yes, sir.

Q. Now it is by adding of these and other amounts together that you get the sum from which you deduct the total income for the period covered, in order to get at the deficit?

A. Yes, sir.

Q. Can you tell us, without too much inconvenience, Mr. Potter, what those items would aggregate to which I have called your attention?

A. $4,098,109.73.

Q. Now if you will subtract the amount of that deficit from that, it will leave you what? Your deficit is $1,302,955.75.

A. $2,795,153.98.

Q. Then if the items aggregating the $4,098,109.73 were not to be treated as an operating expense and were to be stricken from your exhibit, it would leave you $2,795,153.98 as the net operating income covering that period, would it not?

A. The net operating income, exclusive of interest on the Company's obligations; it would be $2,795,153.98.

Q. When did this interest cease?

A. I judge from these figures that it ceased with the exchange by the State of Virginia of capital stock in the James River and Kanawha Company for the debt owed by the Company to the State.

Q. Do you recall what year that was?

A. 1860.

Q. Do you know what kind of stock she received in payment of these debts upon which this interest accumulated?

A. I judge from the Act that it was preferred stock.

Q. Was it preferred as to income or preferred as to income and principal both, under the Act?

A. I do not know. The Act I presume would show.

MR. HOLT: Is that Act in the record? I presume it is.

THE MASTER: Yes.

MR. HARRISON: In the old record or in the new one?

MR. ANDERSON: In the old record. That is the Act of the 23rd of March, 1860.

THE MASTER: The preference is as to income, as I remember it; not as to principal and income, but as to income only.

MR. HOLT: Of course that is always the way they arranged preferred stock, but Virginia had apparently a peculiar way of doing many things, by her Legislature. What is the date of that Act?

THE MASTER: I presume it is March 23rd, 1860; I presume that is right. What page is that found on in the new record? Wherever these references can go in, it saves me a good deal of work.

MR. HOLT: Page 1147 of Volume 3.

THE MASTER: That is right. It was passed March 23rd, 1860. The Act was to take effect when accepted by the stockholders of the James River and Kanawha Company. I do not know whether there is anything in the record that shows that or not.

Q. Now, I believe you said you excluded from your aggregate of expenditures certificates to the First Auditor amounting to $469,188.30, and the certificates to the Second Auditor amounting to $202,821.30?

A. Yes, sir.

Q. Those two groups were omitted, were they not?

A. Yes, sir.

Q. I believe you said you could find nothing that indicated to you what they were?

A. Well, in the limited time that I had at my command I could find nothing.

Q. Is it not a fact that all of those certificates to the First and Second Auditors represented dividends?

A. That I do not know.

Q. Will you turn to page 1145 of the James River and Kanawha, Volume 3, which analyzes those certificates for the year 1880, and tell me whether or not they do not all represent dividends.

A. It states that they are dividends, yes. I believe they are interest on loans.

Q. Well, page 1145 is part of a certificate of Mr. Rosewell Page, is it not?

A. Yes, sir.

Q. And that is the record—I mean that is a certified copy made by him from the records at Richmond, is it not?

A. Yes, sir.

Q. Well, he sets down there the certificates to the First Auditor in each case to be dividends, does he not?

A. Yes, sir.

Q. And likewise the certificates to the Second Auditor to be dividends?

A. Yes, sir.

Q. Well, why would you say then that you believe them to be interest?

A. Because I do not think the dividends would be paid except on capital stock, and there is no record anywhere of dividends being paid on capital stock; therefore I conclude that these dividends must mean interest on loans.

Q. Well, the record calls them plainly dividends.

A. Yes, sir.

Q. In every instance?

A. Yes, sir.

MR. ANDERSON: No, not on page 1142.

MR. HOLT: I am talking about page 1145 now.

Q. How would a dividend be paid to the State of Virginia on capital stock?

A. I presume by a check of the Company, drawn to the First or Second Auditor.

Q. It would be a certificate, would it not, or a check?

A. It would be a check, yes, or a voucher.

Q. I believe you said this, Mr. Potter, that you did not find any evidence of construction account——

THE MASTER: Just a moment before you pass that, Judge. Do I understand that you think the item of $420,512.83 is practically identical with $469,188.30? You have just been inquiring about the dividends of 1839, dividends tide water connection, dividends S. S. and R. connections, and there are a lot of items that aggregate $420,512.83?

MR. HOLT: No, page 1145 simply gives the analysis of the payments for 1860, to the First and Second Auditors, and we thought that was indicative for all the years.

THE MASTER: The first item says dividend of 1839. I simply want to get it into my head as we go along. Here are certificates of Second Auditor, dividends of 1839. I would like to have explained, if it was a dividend, how a dividend of 1839 turns out to have been paid in 1860, twenty-one years afterwards.

MR. LILLY: They did that on the various railroads.

THE MASTER: I want to get something into the record, I do not want it to be a matter of conjecture, but I want to know if there is anything in the record that will give me any information about it.

MR. HOLT: All that we know about it is what this page shows. We have the record there covering the year 1860, in connection with the James River and Kanawha Company, which analyzes the certificates for that year to the First and Second Auditors. Well, they are said to be dividends, and we thought that that would be a pretty strong indication as to what the certificates back on page 1148-A meant.

THE MASTER: What I want to get at is, how a dividend for 1839 happened to be postponed until 1860.

MR. HOLT: There seems to be nothing here to show.

THE MASTER: Well, then that covers that.

By the Master:

Q. Do I understand you to say that interest to the State would be paid by certificates to the First Auditor?

A. No, I said it would be likely that it would be in the form of checks drawn to the First Auditor or the Second Auditor, according to the manner in which the loan was made to the Company.

Q. What are those certificates to the First Auditor, how do they come about?

A. I am at a loss to understand.

MR. ROBINSON: I was going to state, by way of explanation.

THE MASTER: Well, put it in later. Any statements outside of the record don't go.

MR. HOLT: I would like to hear Mr. Robinson's explanation, but the stenographer need not take it.

THE MASTER: Yes, let the stenographer take it. What is the use of asking Mr. Robinson to make an explanation that does not go into the record? I am not going to determine the case on something that is said that does not go into the record. Mr. Robinson or any other counsel need not make any explanation to me— what I mean is, whatever explanation goes in here on either side must be predicated upon some fact in the record, so that I can fall back on the fact.

MR. HOLT: I was asking for an explanation for my benefit.

THE MASTER: Go ahead and make it, Mr. Robinson, and take it right into the record. All of these things ought to go into the record, because I ought to have them where I can refer to them later on, if they are going to have any influence on me.

MR. ROBINSON: On the original hearing West Virginia filed an exhibit, Defendant's Exhibit G-1, found at pages 820-A to 820-M; and the last two pages of that exhibit, 820-L and 820-M, refer to the James River and Kanawha Company, and the dividends received by the Commonwealth on its capital stock in that Company are given in that Exhibit, and they show one dividend of $10,092, paid in 1836.

MR. LILLY: How does that explain other dividends?

MR. ROBINSON: Just a minute. That was the only dividend ever paid by this Company, according to this exhibit filed by West Virginia on the original hearing.

THE MASTER: Now, where does that exhibit show that it was paid in 1836?

MR. ROBINSON: The last two pages. The exhibit is about ten or twenty pages long. There it is right there (indicating).

THE MASTER: Oh, yes, I see it.

MR. ROBINSON: On the strength of this exhibit the Master found, at page 193 of his report, "The only dividend that the Company appears to have ever paid is $10,092. in 1836," referring to page 820-L of the record. Referring to page 1105 of Volume 3, being Document No. 17, it appears that there was overdue interest owing to the State amounting to $1,301,500.15. And as, according to West Virginia's Exhibit, no dividends were ever paid on the stock, I take it that these certificates are certificates issued to the State from time to time for interest that has not been paid. In other words, they are returns on loans and not on stock; you can characterize them as dividends or you can characterize them as interest, but they are returns on loans, and they are not returns on stock. The holdings of the State up to 1860 were very largely in bonds of the Company, and I think you can assume the accuracy of the statement and the correctness of the figures. That was checked by Mr. Potter, the accountant for Virginia, we understood.

MR. HOLT: But still the fact remains the same, that we find in this exhibit, certified from the records by Mr. Page, a declaration here of dividends, dividends, dividends——and what on?

MR. ROBINSON: You constantly say that dividends were paid on loans. Look at page 1145 and page 1144.

MR. HARRISON: Take page 1147.

THE MASTER: Let us have one page at a time.

MR. HARRISON: Take page 1147, and you will find that these dividends are described as dividends on guaranteed loan, $33,603.40.

MR. ROBINSON: Also page 1144.

MR. HOLT: I know, but on page 1146 and also page 1147 you find certificates here to First Auditor, interest on bond to the State, interest on loan of State stock, interest—wherever it is interest, it calls for interest.

MR. ANDERSON: I think the explanation is this, if your Honor please, and I think it is shown by this record; your Honor will find that at page 1148 there is an item among the disbursements of this Company of $118,500, dividends, declared on James River Company. That was an annuity which that Company, the James River Company, was primarily bound for, but which the State had guaranteed.

MR. ROBINSON: I would like to finish my statement. Now, referring to the items that Judge Holt mentioned on page 1145, and looking at the same items on the large sheet, page 1148-A, and comparing the dividends of 1839 on page 1145 with the dividends on guaranteed loan of 1839, it becomes apparent that they both refer to a loan as of that date.

MR. HOLT: They are separate items, are they not?

MR. ROBINSON: One is for the year, and the other is for the entire period. Then comparing dividends tide water connection with dividends on guaranteed loan for tide water connection, and in the same way comparing dividends S. S. and R. connections with dividends on guaranteed loan for the Southside and Rivana connections, and comparing dividends third division with dividends on guaranteed loan for the third division, the first statement referring to 1860, and the other to the entire period, it appears that the return is on a loan instead of on the stock, irrespective of the way that it is characterized.

THE MASTER: This will simplify it somewhat. On the strength of the exhibit that was put into the case originally on the first hearing, by West Virginia,

checked up by the accountants of Virginia, the books of Virginia show that only a dividend of $10,000 was paid in 1836. Now, then, I shall hold that there was no other dividend paid on the stock of Virginia during that period, unless somebody can show me some record from the books of Virginia showing that an additional dividend was paid. That does not necessarily dispose of these items of course, but that takes care of that phase of it, so far as the stock is concerned.

MR. HOLT: These items on page 1145 are an exact copy of the record as it stands down there.

THE MASTER: Yes, I understand that.

MR. HARRISON: I would like to call your Honor's attention there to this fact—or perhaps Mr. Robinson did that——

THE MASTER: What is that

MR. HARRISON: It is in explanation of that entry on page 1145, of dividends in 1839, which you commented upon as being strange that they should be receiving a dividend in 1860 that was declared in 1839.

THE MASTER: Yes, precisely.

MR. HARRISON: Now, if you will look on page 1148-A you will find among the disbursements there dividends on guaranteed loans of 1839, $1,179,134.44.

THE MASTER: "Dividends of 1839, $60." That is evidently an abbreviated way of stating that interest amounting to $60. had been received and credited on the loan of 1839.

MR. ANDERSON: The total amount is $1,179,000.

THE MASTER: I get the point. But we are looking now at the accounts that appear to have been kept by somebody in the employ of the James River and Kanawha Company. Now, there are two sets of accounts

that appear to relate to these accounts of the James River and Kanawha Company; one set is kept by Virginia, and now here is another set, and these are open to explanation and comment. I shall hold that so far as the books of Virginia are concerned, that she did not receive any dividends upon her stock, unless I can be shown that there is some book that shows that there was a dividend in excess of $10,000. What I hold about this is what I find about the items here and their relation to that.

MR. HOLT: I thought somebody could give us a little light, but instead they are simply indulging in commentaries on the record that we already have before us. In other words, that is a matter of argument rather than of proof or help.

THE MASTER: They are simply calling attention to other facts in the record which they think explain it, that is the idea, and that gives us the benefit of their idea at this time.

MR. HOLT: Shall we go on with the examination, your Honor?

THE MASTER: Yes, go on with the examination.

By Mr. Holt:

Q. Mr. Potter, I understood you to say that you saw nothing in the books that would indicate what portion or proportion of these expenditures, tabulated by you, were on account of construction. Is that the fact?

A. I so testified, with the exception that since I made these figures certain exceptions have been called to my attention.

Q. Well, now, look at the copy of the record of the James River and Kanawha Company, page 1143, Volume 3, and see if you do not find several items there under the general heading

disbursements, that were on construction. Take the item of $23,477.31; that is expressly designated as construction, is it not?

A. Yes, sir.

Q. Then, you have an item of $3,066.66, pay of engineers; that would be on construction, would it not?

A. Yes, sir.

Q. Then, you have the Lynchburg feeder canal, $2,825.34; that would be construction, would it not?

A. It says construction, yes.

Q. Then, you have expenses of engineers, $637.70.

A. That might be either construction or general maintenance charge.

Q. Turn to page 1099 of the same record, and see if that item can be traced.

A. Those are the items which I have just referred to.

THE MASTER: At page 1099?

THE WITNESS: Yes, sir, page 1099.

Q. On page 1099 of Volume No. 3, under the head of construction you have, Lynchburg feeder canal, $2,825.34; third division, $1,573.14; fourth division, $637.70. That is the sum of expenses of engineers on page 1143, is it not?

A. $637.70, yes sir; it is there designated as construction, yes, sir.

Q. Turn now, Mr. Potter, to page 1142, printed Volume No. 3, and see if you do not find another construction item of $1,559.43.

A. Yes, sir, New Canton Bridge.

Q. Also turn to page 1148 and tell us whether or not the item under disbursements, locks, of $1,573.14, is construction.

A. It is under the heading of unfinished improvements. The natural presumption would be that it was construction.

Q. It would be construction?

A. That is the natural presumption.

Q. Turn now to page 1099 and see if you do not find this item of $1,573.14 set down expressly as under the head of construction.

A. $1,573.14 on page 1099, that is right, construction, third division.

Q. Then these books and records down at Richmond do disclose the construction account, do they not?

A. Yes, sir.

Q. And you made up your exhibit regardless of construction?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you not put everything into disbursements, whether it was construction or what not?

A. No, sir.

Q. Well, have you no construction items in there?

A. Yes, sir, page 1190, $9,482,484.46.

Q. No, I mean in striking your deficit, the difference between income and out-go, did you not——

THE MASTER: What do you mean now, for the whole period or for the first year?

MR. HOLT: For the whole period. I am going to take both.

Q. In striking your deficit, the differences between income and out-go, did you not utilize construction items?

A. I utilized them as capital expense, ignoring them as income and operating expense.

Q. Now, in the year 1860 did you not treat construction items, or moneys spent in construction, as if they were disbursements in the ordinary operation of the canal?

A. No, sir, I did not.

Q. You did not?

A. I merely made a copy of the figures as they appeared in the reports of the Company.

Q. But construction items do there appear?

A. Yes, sir.

Q. Well, would they properly be chargeable to operating expenses?

A. Certainly not.

Q. But you have so used them, have you not?

A. No, sir, I merely made a statement of receipts and disbursements, classifying them as they appeared in the books containing the reports of this Company; and in my direct examination I simply stated that if those items contain construction items the deficit that I indicated would be reduced to that extent.

Q. But not having picked them out, you do not know what the reduction in the deficit would be?

A. No, sir.

Q. Therefore your deficit is unreliable, is it not?

A. The deficit that I have certified, and the only statement that I have certified, is not unreliable; it is reliable as based on the figures published.

Q. What I mean is this, Mr. Potter; is it not misleading? Does it in reality show the difference between income and expense of operation?

A. To which period do you refer now, before I answer that question?

Q. Well, I am referring to the year 1860 in these last questions.

A. I have told you that I have made no conclusions for the year 1860, except as qualified by the statement I made under the examination of Mr. Robinson.

Q. Well, the year 1860, a portion of it at least, was embraced in your first period, was it not, from 1835 down to September 30th, 1860?

A. Yes, sir.

Q. And that is the period during which you found this deficit of $1,300,000 odd?

A. A deficit of not less than $1,300,000.

Q. Not less than that now?

A. Yes, sir.

Q. And that deficit was arrived at, as I understand you, in part at least, by using the construction items that were in part in the year 1860?

A. No, sir, your understanding is wrong. I testified that I took the figures that I found in the published reports, the secretary's report of the receipts and disbursements, from the beginning of the organization of the Company to 1860, September 30th, and in that group of accounts is a construction account to the extent of $9,482,484.46, which I understand contains all of the items which you have asked me about in these preceding pages. I have made no inquiry to determine whether they did or not, accepting the figures as they were reported, and certifying to that extent.

Q. Coming now to the Blue Ridge Railroad Company, Mr. Potter, I believe that you filed as your Exhibit No. 26. Am I right about that, Exhibit No. 26?

A. Yes, sir.

Q. What valuation did these commissioners, according to this exhibit, put upon the Blue Ridge Railroad?

A. $625,348.08.

Q. Are you not in error about that?

A. I think not, sir.

Q. Did they not put a valuation on it of $490,734.99?

A. No, sir.

Q. And did they not obtain the $600,000 by adding to the $490,734.99 unpaid tolls?

A. The $490,734.99 is the present value of tolls to accrue, that is not the value of the road.

Q. What was it they were valuing?

A. They were valuing the tolls to accrue, as I understand it.

Q. They were valuing the tolls to accrue, and were treating that as the value of the road, were they not?

A. Not necessarily.

Q. Then they never valued the road at all?

A. Maybe that is true.

Q. Well, I want to find out what it means. Did the Commissioners of Virginia and West Virginia value the Blue Ridge Railroad Company?

A. I rely upon the original document, to which I refer here, for the conclusion that they did.

Q. And you think the value they placed on it was $612,922.76?

A. No, $625,348.08. That is the price they paid for the road.

Q. What is the difference in the figures?

A. Interest.

Q. The $625,348.08 is made up of what items, Mr. Potter?

A. Amount of tolls, etc., accrued and unpaid, $122,187.77; present value of tolls, etc., to accrue, $490,734.99; and interest, $12,425.32.

By the Master:

Q. Where do you get that last item?

A. It is a combination of five items appearing at the bottom of the page, interest to April 1st, 1870, $2,289.43; interest to April 1st, 1870, $3,832.78; interest to April 1st, 1870, $3,438.63; interest to April 1st, 1870, $2,383.57; interest to April 1st, 1870, $480.91.

MR. HOLT: That interest, your Honor, explains the difference between the amount I gave as the valuation a while ago and the corrected amount that was given. I gave $612,922.76, and you said it was $625,348.08, which it is after you add that interest.

THE MASTER: I understand the $12,425.32 added to $612,922.76 amounts to $625,348.08; is that it?

THE WITNESS: Exactly, and that is the amount that the Commissioners ascertained to be the value of the road on the 1st day of April, 1870, as disclosed on the document that I have referred to.

By Mr. Holt:

Q. Now, then, can you tell us how they arrived at the $490,734.99?

A. No, sir, I have made no inquiry.

Q. Did they not ascertain it according to the actuary tables?

A. I do not know.

Q. What was the largest toll paid by that road for any one year?

A. I do not know. It says here, amount of tolls accrued and not paid—the largest amount there is $32,061.40.

Q. And that was in the year 1869, was it not?

A. Yes, sir.

Q. What was the original cost of the Blue Ridge Railroad?

A. According to this statement it is $1,694,870.85.

Q. Now, if you will deduct $191,458.32 from the cost of the Road, leaving you $1,503,412.53, and divide that by the toll for the year 1869, you will get 43, won't you?

A. I merely copied this statement; I merely copied it.

Q. I understand, but we want you to analyze it now. You can do it better than I can, that is why I am asking you. You get forty-three years—well, we will call it years. Then when you look at the actuary table——

THE MASTER: What actuary table?

MR. HOLT: I have one here, furnished by the Chesapeake & Ohio Railroad; it is one they use.

THE MASTER: Have you got this rule referred to there? If you have, let me have it right now.

MR. HOLT: I was going right on through to show what they did, by Mr. Potter. They took the cost of the road, then they took the largest toll in any one year, and divided that toll into the cost of the road, and they got 43 as the result. They turned to the actuary tables to find out what number they must then multiply by in order to get the present value of those tolls—it is like the old mortality tables—and it

gave them $490,000; to which they added tolls unpaid but accrued theretofore, which lifted it to the $600,000.

THE MASTER: On the theory that it was worth that much?

MR. HOLT: It would take the annual tolls just forty-three years to pay the cost of that road; and when you turn to the actuary tables you will find they used the decimal 15 to get the present value.

THE MASTER: If they had taken an average of those tolls——

MR. ROBINSON: It might have been more. $490,000 is the present worth of $32,000 for forty-three years; and $32,000, for forty-three years would give the total cost to the State, less the tolls already received.

Q. That is what they did, Mr. Potter—is not that evident to you now?

A. Yes, sir, it is evident on the face of the figures.

Q. Now let me put this case to you. Suppose, Mr. Potter, that the State of Virginia on the 1st day of January, 1860, had completed the Blue Ridge Railroad, at a cost of $1,600,000, and had turned it over to the Virginia Central to operate, upon the payment of tolls, and that the tolls from January 1st, 1860, down to January 1, 1861, had amounted to $32,000; and then this joint Commission had sat down to find the value of that road, and had taken the $32,000 of tolls, and ascertained that it would take tolls of that amount a period of 43 years to produce the cost of the road, and had arrived at a value on the 1st day of January, 1861, of $490,000, by that process, of that road, would you say that that would represent the value of the road at all?

A. No, I do not think so.

Q. In other words, the State of Virginia under such circumstances would spend $1,600,000, and then sell it on a toll

basis, in less than twelve months, for $490,000—would not that be the result, taking the illustration I have given?

MR. LILLY: I do not want to criticize, and I know it is inadvertent, but I notice some counsel are suggesting or talking before the witness answers there.

THE MASTER: Is not the fact of more or less income a feature in the value of the property? Suppose they had spent $1,500,000, and it was not worth on the earning basis more than $500,000?

MR. HOLT: That may be true, your Honor, but so is my suggestion. You cannot tell what it was worth in 1861 by ascertaining what it was worth in 1870.

THE MASTER: I do not see how you can ignore the income bearing value of the property.

MR. HOLT: We ignore it for this reason, that the actuary tables do not value property upon the income basis at all. The theory of the actuary tables is the payment of a toll that will discharge principal and interest within a given time. And that is not the history behind this Road at all.

Q. Do you know, Mr. Potter, what the contract between the State and the Virginia Central Railroad Company was, upon which these tolls should be paid?

A. No, sir.

MR. HOLT: You need not take this in the record——

THE MASTER: Yes, take it in the record; I want it all.

MR. HOLT: It was never contemplated by the State of Virginia or by anybody else that they should lease this Road out until it should be paid for by tolls. Under the contract, as I understand it, the Virginia Central would have gone on paying the tolls, and after

they had paid all the tolls, and the State had received them, the State would still own the Road.

THE MASTER: Have we got that contract in the record?

MR. HOLT: I do not know whether we have or not. I think we had better have it in.

THE MASTER: I think so, too. I want the contract.

MR. HOLT: Your Honor might construct a house today and rent it to me for $5,000 a year for five years; after I had paid you the $25,000, the rental for five years, you would have the rental and still have the house. In other words, they have adopted a rule of valuation here that goes to actuary tables, and that was never contemplated at all. The State of Virginia simply leased the Road to the Virginia Central.

THE MASTER: What you mean is that the Commissioners of Virginia and of West Virginia adopted a false basis, and the Legislatures ratified it.

MR. ANDERSON: They agreed in advance that that should be the value; it is West Virginia's act as much as Virginia's, and Virginia is the only person that suffered by it.

MR. HARRISON: If there was any suffering at all.

MR. ANDERSON: We will show you before we get through that that is undoubtedly the truth in this case.

MR. HOLT: We did not have, according to the theory of things here, any interest in or control over the property at all. We had an equity in it, it is true, according to our theory. But here is a Road that is valued—I do not care by whom—in the year 1870, which is an utterly immaterial date, on any horn of the dilemma, to take in this case, whether it is January 1, 1861, or June 20, 1863. But this exhibit we do not

deem worth anything at all; they never did value the Road; they went upon the theory of annuities, that had nothing in the world to do with this transaction, nothing whatever.

THE MASTER: Well, what did it have to do with? Here are two sets of Commissioners, appointed by these two States, for the purpose of selling this property. Now they reach a certain basis for a certain reason. Now, what did it have to do with?

MR. HOLT: They undertook, and the language of the Act, as Mr. Harrison read it there this morning—they were given power to value, that is true, to value that property as of that date, 1870. They undertook to do that. Now, even if both States are bound by it, still that does not affect this suit, because its value in 1870 does not constitute its value at any other time. But even for 1870, the way they value it, even though everybody might be bound by it, it strikes me as being utterly ridiculous. I could, by leasing my road out one year, after it had cost me $100,000,000, by that process let some fellow take it away at one-tenth of its cost, and perhaps at one-tenth its actual value. They are applying to it an annuity table, which the history of the Road never contemplated at all.

MR. ANDERSON: That is just as much West Virginia's mistake as it is Virginia's.

MR. HOLT: I understand your point on that. My answer to that is this, that even though the two States, West Virginia included, had the power, under legislative enactments, to value that Road in 1870, that is an utterly immaterial finding so far as this case is concerned.

THE MASTER: You stopped when you stopped on your direct examination the other day. The only time

when you made a change of base was when Mr. Hillman increased his schedule.

MR. HOLT: The value we claim in our exhibits is $1,600,000.

THE MASTER: You claim that that is the sales value, and the notes show it. Mr. Hillman testified before that that was the sales value, $625,000.

MR LILLY: That is what they got for it.

THE MASTER: That is what they say is its sales value.

MR. HOLT: Sales price.

THE MASTER: He said it was the sales value, and you stopped your case on it

MR. HOLT: Oh, no, your Honor.

THE MASTER: In your examination in chief you stopped your case on Mr. Hillman's statement that it was the sales value; and then he said on the cross-examination that, under the circumstances, to make the schedules consistent, he would make the claim for 1861 $1,600,000. That is exactly how the case developed.

MR. ROBINSON: If you will turn to page 13 of the exhibits you will find defendant's summary filed on the direct-examination, and you will see the Blue Ridge Railroad Company, built by the State, par $1,604,-723.23, value $625,348.08.

MR. LILLY: There is a double star, and it says, "Sales value;" that is what it brought.

THE MASTER: That is what I am saying; when you stopped your case in chief you stopped on the testi-

mony of Mr. Hillman that that was the sales value. If he had seen this, he did not take the pains to give us the benefit of it.

MR. HOLT: That may be true, but let me give you the history of this exhibit here.

MR. HARRISON: Judge, will you let me interrupt you?

MR. HOLT: No, I want to make my statement first.

MR. ANDERSON: This argues the case in piecemeal.

THE MASTER: This is perfectly proper.

MR. HOLT: The Master asked me about this exhibit.

THE MASTER: Certainly, and we can develop this right here as well as we can later on. I want to get his views and your views.

MR. HOLT: If you will turn to Volume 2 of the present record, marked Exhibits, you will find on page 13 the original exhibit filed by Mr. Hillman. That gave as its value its sale price, $625,348.08. Now he corrected that by a substitute exhibit.

THE MASTER: What page is that?

MR. HOLT: That you will find on page 12-A, and that is where we ended our part of the case; and under the head of value we put it $1,604,723.23. And then under the head of claim disposed of for, just as an independent fact, $625,348.08. But the value claimed in that corrected Exhibit is the cost price of that Road.

THE MASTER: That is the corrected exhibit.

MR. HOLT: Yes, that is the corrected exhibit. Now, you have in mind this fact, that we never did correct it until his cross-examination came along; and as the

result of that cross-examination we substituted this new exhibit on page 12-A for the old exhibit on page 13.

THE MASTER: Well, now, my recollection is correct, is it not?

MR. HOLT: Absolutely correct, except that when we rested our case we rested it on this exhibit.

THE MASTER: When you see the record you will notice I do not go so far as this exhibit. I say, when you rested your case on his examination in chief——

MR. HOLT: It was the cross-examination that resulted in the correction of the exhibit.

MR. LILLY: What I wanted to call your Honor's attention to about those two stars there, alongside of the $625,000, there is a marginal note there that that is the sales value; and what was meant by that is sales price, and what we meant by it was the cost of construction.

THE MASTER: Page 12-A is a schedule that is filed subsequently to the schedule on page 13.

MR. LILLY: Even in that, when he said sales value it referred to the price Virginia got for it.

THE MASTER: If Mr. Hillman knew all about these facts when he drew that original schedule, No. 13, I want him to explain to me why he did not put them in.

MR. HOLT: You mean the report of the Commissioners?

THE MASTER: Certainly. The way this thing stopped was on Mr. Hillman's schedule of $625,000, and one statement by you in the record of $625,000. Now, if he knew about this statement here, and the manner in which this result was ascertained, what I

would like to have him explain when he gets on the stand is why he did not give me the information at that time.

MR. HOLT: All he was doing at that time, I presume, and he must have seen it, because there is where he would give the price at which it was disposed of——

THE MASTER: On this schedule he must have been expecting me to take his $625,000. Now, an entirely different condition develops. If he knew all about it at that time, I would like to have him explain, when he goes on the stand, why he did not put it in.

MR. HARRISON: Now I want to refer your Honor at this point——

THE MASTER: He is going on with the cross-examination.

MR. HARRISON: It is in connection with the cross-examination. I would like to call your Honor's attention to page 394 of the new record, where the cross-examination on the subject of the Blue Ridge Road began, my cross-examination there about the middle of the page:

"Q. Now take up item No. 5 of Defendant's Exhibit No. 3, page 13, the Blue Ridge Railroad built by the State. What was the total amount expended by the State for that Road January 1, 1861?

"A. $1,604,723.23, as shown on page 27 of the printed record.

"Q. What value as of January 1, 1861, do you put upon the total expenditure made by the State in the Blue Ridge Road which you have just given?

"A. $625,348.08.

"Q. How did you arrive at the value of that investment as of that period?

"A. It was the sales value as of that period.

"Q. When did the State receive the money or bonds, as the case may be?

"A. April 1, 1870."

MR. HOLT: That is all true, Mr. Harrison; I recall that; and it was as the result of your cross-examination that we put in the corrected exhibit, claiming the cost price instead of the sales price as of January 1st, 1861.

THE MASTER: That is the way I understand it.

MR. HOLT: That is the history that lies behind it. I thought the Master said when we rested our case we stood on it, but you did say and meant when we rested Mr. Hillman's direct-examination. Your statement was accurate.

MR. HARRISON: Your Honor will find by pursuing that—I do not care to go into all that, but when he was being cross-examined on that and asked to explain why he gave the sales value as of one period and the cost value as of another period, he wanted then to correct and make them harmonious, and exclude the sales value, and put the cost value at both periods, both 1861 and 1863.

THE MASTER: Go right along, Judge Holt. Anything further you have on that line you may reserve for your cross-examination, Mr. Harrison.

By Mr. Holt.

Q. Mr. Potter, have you ever examined the contract by which the State of Virginia let the Virginia Central Railway operate the Blue Ridge Railroad?

A. No, sir.

MR. HOLT: Do you know, Mr. Robinson, or you, Mr. Harrison, whether that contract is in this record anywhere, old or new?

MR. ROBINSON: It is not.

THE MASTER: It is not; I have looked for it very carefully. We had better have that contract, had we not?

MR. HOLT: I suspect we should have that contract. I do not know whether it is in existence or not. I never saw it.

THE MASTER: Does anybody know whether that is in existence or not?

THE WITNESS: I have seen it; it is in the records somewhere.

MR. HILLMAN: The cash book or journal where this entry starts, concerning this $90,000 which shall be added to the cost of the Road and expended by the Virginia Central, and then allowing them to reimburse themselves from the tolls, simply states that that is the agreement, but it does not enter into any details of the agreement. There must, of course, have been some understanding back of that, but I have never seen the agreement back of that, nor did I look for it.

THE MASTER: I think we ought to have that if you can find it.

MR. HOLT: Of course, that contract, if it is what I infer it is, would knock the valuation by mortality tables all to pieces.

THE MASTER: Well, whatever the fact is, it ought to be put in and given all the weight it is entitled to. We want to get all the facts, whatever they are.

MR. ANDERSON: I think there is a complete reply to Judge Holt's attitude.

THE MASTER: I cannot have go into this case as argument statements of fact that do not appear in this record, because they do not do me any good, and I cannot reach any opinion on them. Whatever there is that bears on this item that ought to be here in order to enable you to make your argument, and in order to enable me to reach a conclusion, must go into this record as a fact; because otherwise I have not anything to go and come on. I shall not make any finding unless there is something in this record that I can predicate it on. Arguments and explanations may be all right—I do not say now that the argument does not clean it up perfectly—but if the argument is not predicated upon something that is in the case it will fall right to the ground.

MR. HOLT: We could not expect you to do otherwise. What is it you suggest, Mr. Anderson?

MR. ANDERSON: It is all in the printed record, and was before we ever came here. I do not think it is wise to argue this case piecemeal as we go along; but there is an unanswerable argument in answer to your position.

By Mr. Holt:

Q. Mr. Potter, returning for a moment to your exhibit concerning the James River and Kanawha Company, you speak of a deficit occurring in a certain period of time of $1,302,955.75, without making any allowance for depreciation on the Company's property. Is it not a fact that they were renewing the property all the while, and spending money out of their revenues in that direction?

A. I have found statements in various reports indicating that that was done, but I have found also statements indicating that the property was in bad condition and needed further repairs, further replacements, etc.

Q. Can you tell me just where those statements are to be found?

THE MASTER: You mean the last statements?

MR. HOLT: Yes, sir, the ones indicating the property to be in bad condition.

A. On page 715 of this Volume 5 of reports of the James River and Kanawha Company for the years 1855 to 1860, at the top of the page, the chief engineer, E. Lorraine, reports——

THE MASTER: Is that printed here in this document?

THE WITNESS: It is not printed in the record in this case, but is to be found in Volume 5 of the James River and Kanawha Company reports.

THE MASTER: Very well.

THE WITNESS: The chief engineer reports, under date of December 14, 1859:

"Upon the first division the canal is generally in good condition, but the repairs of the mechanical work have not been kept up as well as usual, nor as well as economy and even safety demands."

Further on he says:

"The culvert near Pemberton, and the one on Mr. Mayo Cabell's Estate require re-building, both of them having been disrupted by breaches in the canal. There is constant danger at both of these culverts."

Then at the foot of the same page:

"I beg leave respectfully to urge upon you the propriety, nay, the absolute necessity of paying the present mechanics on the line, and re-instating those who have left because they were not paid."

Continuing, the report merely points out that there were many things that require—it is quite a long report—that require attention and require money.

Q. Now, you read the president's report for the same year, did you not?

A. I have read most of it, I believe, yes.

Q. And as you said a moment ago, you found some things indicating it was out of repair, and others that they were making renewals out of revenue?

A. Yes, sir. These notes presented by Mr. Hillman in these two sheets that I have looked over would indicate that many repairs were being made out of current revenue.

THE MASTER: Just exhibit that original record there to the counsel on the other side, so that either now or later they may read into the record anything that is explanatory of the statements that you have read, I want what both of you think is the whole record on this. You need not do it right now. When it is read in, read it at this place.

MR. HOLT: I believe that is all we care to ask Mr. Potter, your Honor.

MR. HARRISON: We do not care to re-examine Mr. Potter.

MR. HOLT: Then that is all with Mr. Potter.

By The Master:

Q. Mr. Potter, have you made any examination of the books of Virginia or any of the accounts for the purpose of ascertaining whether any dividends were paid by the James River and Kanawha Company after January 1, 1861?

A. No, sir.

Q. You have not made any examination?

A. No, sir, I have not.

Q. Then you do not know anything about it?

A. No, sir, I do not.

THE MASTER: Now we have these original documents here, and, unless it is agreed to, the statement of no witness as to what the original documents show will be accepted. If there is no objection made, I have no objection to these witnesses stating what they think the record shows, provided the record is handed to me so that I can see what it shows.

MR. HOLT: What I want to get at with Mr. Hillman is this, all of the extracts that he has in this exhibit come out of the president's report, do they not?

MR. HILLMAN: Some of them from document No. 17, but they are already printed in the record.

MR. HOLT: Then all those that have not heretofore been printed come out of the president's report?

MR. HILLMAN: Yes, sir.

MR. HOLT: In other words, we will get all we want by printing the president's report.

THE MASTER: I suppose it would be competent for West Virginia to ask Mr. Hillman if he had a certain

document, and if the document did or did not contain certain things, and on cross-examination they might go into it. Of course, on objection, I won't allow any witness to put in a statement of what is in the record, as long as I have the original record here. You can pick out what you want and they can pick out what they want, all subject later to the fact that I am to see the whole original myself.

CONWAY W. HILLMAN, recalled for further examination, testified as follows:

By the Master:

Q. What is the fact, does the president's report that you are looking over now contain the facts upon which you predicate the statements in your summary, outside of the facts that are already in the record?

A. Yes, sir.

THE MASTER: They may read in such parts of the report as they like, and the other side may read such parts as qualify it, if that is agreeable. Meanwhile, I want the whole report myself to look over, because there may be something that I think ought to go in which does not impress the distinguished counsel as being necessary to put in.

MR. HARRISON: Judge, might you not go on now with the first exhibit, and we can deal with this when we get to it? We might make progress if you can begin with the figures that you want to examine Mr. Hillman about.

THE MASTER: Have you the rule that was referred to in this Blue Ridge Railroad matter?

MR. HOLT: I am going to see if I can ascertain that from Mr. Hillman.

Direct-examination by Mr. Holt:

Q. Mr. Hillman, have you examined Plaintiff's Exhibit No. 26, today filed by Mr. Potter, relative to the Blue Ridge Railroad Company?

A. Yes, sir, I have.

Q. Have you prepared a counter-exhibit embodying your criticisms upon the method adopted by the joint Commissioners of Virginia and West Virginia for the valuation of that Road?

A. Yes, sir, I have.

Q. (Handing paper) Take the paper now handed you and state whether or not it is the counter-exhibit prepared by you.

A. It is.

Q. Are the figures therein used correct?

A. Yes, sir, they are.

Q. Did the Commission appointed by Virginia and West Virginia, as shown by the Exhibit 26 of Mr. Potter, value the Blue Ridge Railroad as of January 1, 1861?

A. No, sir, they did not.

Q. As of what date did they value it?

A. They valued it as of the date of 1870.

Q. Can you explain to the Master the process resorted to by them in arriving at this valuation?

A. Yes, sir, I have figured it out, and it is as follows: the tolls for a certain year, namely, 1869, as shown on Plaintiff's Exhibit No. 26, were taken and divided into the cost of the Road, as shown on the books of the State of Virginia, after deducting from that cost the amount of tolls which the Blue Ridge Road, or its lessees, had turned in; which left the value $1,503,412.53. Paying in that much per annum, a little over $32,000, it would take 43 years to amount to the $1,503,-412.53. Therefore the actuary's table was referred to as to the present value of one dollar, for a payment which would extend and pay principal and interest in 43 years. That amounts, according to the exhibit filed, which exhibit is a copy of a paper or report of this Commission, to 15.3061. The $32,061.40, the tolls for 1869, is then multiplied by 15.3061, and produces the sum of $490,734.99, as the present value of annuity of $32,000. To that sum is then added the amount of tolls for which the lessee was in default, and then certain items of interest which had accrued on those tolls, the total of which makes up the $625,348.08, for which the Road was sold. I have before me one of the actuary tables, which is an extract from the interest and bond tables of the Mutual Life Insurance Company of New York, by William H. C. Bartlett, LL.D., their actuary, dated 1878, which was furnished me by the Chesapeake & Ohio people, and was evidently the one they have used, since by reference to it, on a 6 per cent. basis the 40 year figure would be 15.0463, and the 45 year figure would be 15.4558. Therefore it is evident that the 43 year figure which details happen to be omitted on the paper before me, would coincide with the figure used on Exhibit 26, of 15.3061.

By the Master:

Q. Is that a method of capitalizing the earning power—assuming $32,000 to be the earning power per year, is that a method of capitalizing it?

A. No, sir, not unless you were capitalizing it with a view that the earning power should be not only the interest on the

investment, but at the same time should be sufficient to pay the principal.

Q. That would be capitalizing both the principal and interest?

A. Yes, sir.

Q. Would that be a method of capitalizing the earning power of that amount, would it be a proper method of capitalizing the earning power of $32,000, if you wanted to take care of both principal and interest?

A. If it was assumed, sir, that this amount was the amount which was to take care of both principal and interest.

Q. Well, assuming that this was a total earning power, the $32,000, would that be a proper method of capitalizing the sum that would take care of the principal and interest?

A. No, sir.

Q. How would you capitalize it?

A. I would capitalize it on the basis of its earning power, upon the basis of six per cent per annum, and allow the principal to run indefinitely as an investment.

Q. Then, would that be a proper basis of the sale of property, or ought it not to be capitalized on the basis of taking care of both principal and interest, on the transfer of the title of the property? Here was a case where the transfer of the title of the property was made, and the seller must receive its equivalent in some way.

A. I should not think that he was receiving its equivalent.

Q. Why not?

A. For the reason that in this method he would receive no return upon his investment. He has simply taken and divided——

Q What do you mean by receiving no return on the investment; do you mean the aggregate investment?

A. Yes, sir.

Q. Or, the investment measured by its earning power?

A. The investment measured by its earning power.

Q. That is $32,000 a year, is it not?

A. Yes, sir.

Q. Well, on this basis of capitalization he would not receive the principal?

A. No, sir; he would simply receive his interest.

Q. What would be the sum that would have been reached by these Commissioners if they had taken an earning power of $23,000 a year, instead of $32,000 a year? That is, what principal sum would they have reached on the same basis of calculation, on the basis of $23,000 earning power as compared with $32,000? Would it be 23/32 of $625,000?

A No, sir; it would not. I will figure it out for you. I will use the value of $1,503,000, the same as he has.

Q. Yes, exactly, figure it on the same basis that he has.

A. That runs a little beyond my actuary table—I can give it to you approximately.

Q. You need not stop to do it now, you can make it and put it in later

A. It will only take a moment.

Q. I was simply getting at a hypothetical estimate here I have taken the five years of tolls, and the average is $23,548, and roughly speaking I wanted to see what that would be as compared with the $32,000 on the same theory.

A. About $379,500. Your Honor, I will say that that is somewhat approximate—it will not be far from the value—for the reason that my actuary tables only run for 50 years, and I had to add an estimate for 65 years.

By Mr. Holt:

Q. Do you consider that a proper method of arriving at the actual value of the Blue Ridge Railroad?

A. No, sir.

Q. You may tell the Master at this point whether or not you had ever seen before this computation which is Plaintiff's Exhibit No. 26.

A. No, sir; I had never seen it before.

Q. Where had you gotten the sales price of that Road for your former exhibit, named as about $620,000?

A That is taken from the records of the Company in toto, amounting to $625,348.08, shown on page 27 of the exhibits in this case, which is journal D, internal improvement fund, page 171.

Q. That then was the source of your information upon the subject of sales price, and not this paper that has been exhibited as Plaintiff's Exhibit No. 26?

A. Yes, sir.

By the Master:

Q. You took that item without any knowledge as to how the result was reached.

A. I did; yes, sir.

By Mr. Holt.

Q Will you file this exhibit relative to the Blue Ridge Railroad Company, prepared by you, as a part of your testimony, and mark it Defendant's Supplemental Exhibit No. 1?

A. Yes, sir; I file it so marked.

The paper was admitted in evidence and marked Defendant's Supplemental Exhibit No. 1, December 9th, 1914, C. B.

Defendant's Supplemental Exhibit No. 1 is as follows:

State of West Virginia.

Cost of the Blue Ridge Railroad.

Comments on exhibit as given by A. G. Potter, as to value of the Blue Ridge Railroad.

Mr. Potter's exhibit is merely a statement as to how the price for which the Blue Ridge was sold, was arrived at by the Joint Commission, and for which price the road was afterward sold.

The whole transaction was based upon 1869 toll payments, and has little or no relation to the value of the property on January 1, 1861.

It is erroneous for two fatal reasons. First, that it is based upon a date 10 years subsequent to the date contended for, and secondly, because the whole matter is based upon an erroneous method of valuing property, (the actuary process), which unfortunately has been followed in final settlement.

Its fallacy is evidence because of the fact that they treat the return as an annuity, that pays principal as well as in-

terest, when no such construction was ever intended when the road was built by the State of Virginia and leased to the Virginia Central R. R. for its tolls.

Page 19, Volume of C. & O. Reports of 1867-76, shows that they took up the cost of this road on their books as follows, Sept. 30, 1871:

Amount of tolls paid as per last report	$ 271,687.53
Common stock issued for purchase of road & tunnel	2,000,000.00
Total added to cost of road and property of the C. & O. R. R. on account of the acquisition of this Blue Ridge Railroad	$2,271,687.53

which looks a little better than the meager $490,734.99 allowed as its value by the actuary process.

It would seem that the road having cost $1,604,723.23, in 1861, and valued by a railroad at $2,271,687.53 in 1871, would suggest very strongly that it was worth its cost in 1861 and always continued to be.

I certify that all the figures used in the above exhibit have been correctly taken from the original records as noted above.

C. W. HILLMAN,
Accountant for West Virginia.

MR. HOLT: I do not know whether we have any other supplemental exhibits that conflict with that or not.

Q. I note from this exhibit, Mr. Hillman, that you give the figures at which the Chesapeake & Ohio Railroad carried this Road upon its books. Will you state what those figures were?

A. $2,271,687.53.

Q. What do they represent?

A. The amount added to the cost of property by Chesapeake & Ohio Railroad Company upon the acquisition of this Blue Ridge Railroad.

Q. From what record do you take those figures?

A. Page 19, Volume of Chesapeake & Ohio reports, 1867 to 1876, the date being September 30th, 1871. This book is in the room now, having been sent up by the Chesapeake & Ohio Railroad Company officials for our inspection.

Q. Have you correctly transcribed those figures into your exhibit?

A. Yes, sir.

MR. ROBINSON: I have a question or two on that exhibit. Shall I ask them here and let it go right into the record now?

MR. HOLT: I think that will do just as well as any other time.

MR. ROBINSON: I think the Master might like to have it with the others.

By Mr. Robinson:

Q. Mr. Hillman, this reference to which you refer, page 19 of the report as of September 30th, 1871, contains the entry, "For cost of Blue Ridge Railroad and Tunnel by last report." Referring back to page 15 of the report for September 30th, 1870, there is an entry for Blue Ridge Railroad and tunnel, "Tolls to the State for the Blue Ridge Railroad and tunnel, by last report," carried down to a total of $271,687.53. So that your characterization of that item appears to be correct. There is also an entry, total added——

THE MASTER: Over what period were those tolls paid?

MR. ROBINSON: Oh, away back, a number of years.

THE MASTER: I want to know about it.

MR. ROBINSON: That is all the tolls to date.

THE MASTER: Is there anything there that shows what the annual sum received was for tolls?

MR. ROBINSON: The entry as of September 30th, 1870, is as follows, "For Blue Ridge Railroad Company tunnel, tolls to the State for the Blue Ridge Railroad and tunnel, by last report, $247,352.46; tolls and interest in April 1st, 1870, $80,508.24; express charges on bonds and expense of settling with the State, $445; making a total of $328,305.70." Then there is an entry, "Less difference value Virginia registered bonds and interest, $56,618.17," making a total of $271,687.83. In other words, tolls of a face value of $80,508.24 are settled in Virginia bonds, which have a discount of $56,618.17, making a difference of a little less than $24,000 in money paid to discharge the tolls for that year. But the point that I want to bring out here, before we come to these tolls, relates to the entry of capital stock. The entry reads, "For capital stock issued for purchase of road and tunnel, $2,000,000."

Q. I would like to ask you, Mr. Hillman, if you looked into the report to see what consideration the State got for that $2,000,000 of capital stock. You looked up the other item; did you look up this item?

A. The State?

Q. No, the Company.

A. I do not know.

Q. You did not look that up?

A. Oh, no.

Q. Well, I refer to page 10 of the report to the stockholders at their annual meeting, November 25th, 1870, where, under the heading, "Purchase of the Blue Ridge Railroad Company and tunnel," page 10, the report states, "Under the administration of our immediate predecessors arrangements were made for the purchase by this Company of the interest of the State of Virginia in the Blue Ridge Railroad and tunnel. These arrangements have been carried out on the terms and conditions approved by the late Board of Directors in November last, and by you at your last annual meeting. This object has been accomplished by the issue of 20,000 shares of the capital stock of the Company, which have been given in payment for the requisite amount of the bonds of the State of Virginia." Would that indicate to you what the State received for its $2,000,000 of capital stock?

A. Do you mean the State?

Q. What the Company received for its $2,000,000 of capital stock I should have said.

A. It would indicate that they had bought the bonds with it, or exchanged it for bonds.

Q. You say that it would indicate that they had given $2,000,000 of stock for sufficient Virginia bonds with which to purchase the Blue Ridge Railroad?

A. Yes, sir; that would be a proper interpretation, provided that is the proper statement.

MR. HARRISON: That was a report of the president and directors to the stockholders.

THE MASTER: This $625,000 odd was paid in bonds of the State?

MR. ROBINSON: Yes, the $625,000 odd was paid in bonds of the State.

THE MASTER: And the $2,000,000 of capital was issued for the bonds?

MR. ROBINSON: Yes, sir. This is a report of the officers to the stockholders.

Q. Now I refer to page 13 of the history of the Chesapeake and Ohio Railroad Company, dated at Richmond, 1868, found in the same volume, which states in regard to the Blue Ridge Railroad and tunnel as follows: "Blue Ridge Railroad and tunnel at Rock Fish Gap built by the State, costing $1,800,000, by a contract with the Commissioners under the Act of 1867, can be bought for $300,000, adding to the above unencumbered basis $1,500,000 for the value of the Road." Would that entry indicate to you the cash value of the Virginia bonds or the amount which would have to be expended to secure the Virginia bonds to purchase the Blue Ridge Railroad Company?

A. Yes, sir; that would indicate that the amount of these bonds—that these bonds, some $625,000, could have been purchased at about 50 cents on the dollar.

By the Master:

Q. Cash?

A. Yes, sir. It would also indicate to me, from the excerpt read, that the valuation placed upon it by the Road was $1,500,000 more than that, since it added that to their unencumbered value of the road.

Q. Do you mean by that that the report to the stockholders gave them to understand that they were getting a property worth $1,500,000 for $325,000?

A. That is my interpretation of the excerpt that was read to me; yes, sir.

Q. Does that mean property that cost that sum of money?

A. Yes, sir; if you will deduct the $300,000 which these bonds are supposed to cost from the $1,800,000, which they have stated that the tunnel originally cost, it would leave $1,500,000, unencumbered, which they should add to the value of the Road.

Q. Does it mean any more than that they reported to their stockholders that they could buy a property that cost $1,800,000 for $1,300,000?

A. Yes, sir.

Q. That is what it means?

A. It means that, and that therefore they had added to the value of their property $1,500,000.

Q. You would not think that they were conveying to the stockholders the idea that they were making a profit of $1,500,000?

A. That would be my interpretation of it.

Q. Do you really think that the officers were reporting to the stockholders that they could buy a property for $300,000, property that was actually worth $1,800,000?

A. Yes, sir.

MR. HOLT: Is not that what it says?

THE MASTER: I would like to inquire where the State of Virginia was when this transaction was going on. I think the practical situation is obvious enough. Have you anything more from Mr. Hillman, Mr. Robinson?

MR. ROBINSON: That is all.

THE MASTER: Suppose we go on until six o'clock, and then suspend for dinner, and get back at eight o'clock. I will suspend now for about five minutes.

THE MASTER: What about this rule established May 25th, 1867, have we got that rule anywhere?

MR. HOLT: I do not think we have; the only reference I have ever seen to it is in that document there. They evidently met and held some sort of a confernce, and agreed how they should do things, I infer from that statement.

THE WITNESS: I think I can explain that, your Honor, if Judge Holt is willing.

MR. HOLT: Go right along.

THE WITNESS: If you recall, on these large loans that they had, they have always been, we might say, discounted for cash. Those loans consisted of a return which should be paid in of 7 per cent., 6 per cent. to represent interest and 1 per cent. to represent the sinking fund. And evidently the rule of 1867 is the rule by which they determine the present value of those different loans, which you remember were settled for less than their face value frequently, as is shown in our prior exhibits.

THE MASTER: I do not see how that has any necessary connection with this. I do not see any evidence of any discount here; they seem to have taken an arbitrary sum and worked out a theory, but I do not see that they have made any discount for anticipation of payments made in advance.

THE WITNESS: The proposition was that 7 per cent., running a certain number of years, would pay both the principal and interest of the loan, and they

have then applied that rule, which I suppose is the rule of 1867, although I have no evidence on the subject, about this loan.

THE MASTER: Our whole theory of computation is predicated upon a 6 per cent. basis, is it not?

THE WITNESS: Yes, sir.

THE MASTER: So that I do not see how that gives us any explanation, that they had a computation based upon a 7 per cent. basis in 1867, and then ultimately worked it out on a 6 per cent. basis. I do not know as that would be of any value, if we could get it, but I would like to see what they decided to do, and it may give some reasons why they decided to do it. Of course that was away back there, and there were three men representing each State. Is there any way we can get that rule?

MR. ANDERSON: I do not know.

MR. ROBINSON: Judge Holt has pointed out that the rule is arbitrary, and we have not said that it was not.

MR. HOLT: I think that paper shows on its face what they did.

THE MASTER: There is no doubt that it shows what they did; but my idea was that if we could get this rule, they might give some explanation as to how they reached the conclusion. Has anybody made any search for it?

MR. HOLT: I think not.

THE MASTER: No effort has been made to find it. Now what about the tolls, beginning when it first began to pay tolls? Do you know anything about that, Mr. Hillman? What is the first year in which tolls

were begun to be paid, and can you give me the tolls for that year and the succeeding years, up to 1870?

THE WITNESS: Will you let me just think a moment, and see whether amongst my books and papers I have anything.

THE MASTER: Yes, certainly.

THE WITNESS: No, sir; I know that tolls were paid prior to 1861, January 1st, 1861. I remember that fact. How long prior I do not know. The sum total of my absolute knowledge upon that point is shown upon page 27 of Volume 2 of the present record.

THE MASTER: Well, that simply gives——

THE WITNESS: That shows actual payments up to December 31st, 1863, of $79,932.74, and forgiven tolls, at the head of the page, for the same period, of $90,147.62.

THE MASTER: Where is that, forgiven tolls?

THE WITNESS: Right after the cost of construction it says "Amount invested in road after January 1st, 1861, was $90,147,62, all of which was allowed to the Virginia Central Railroad, which was to do the work, as a credit on their toll account, and which amount was in addition to the tolls mentioned below."

THE MASTER: That evidently went into construction .

THE WITNESS: Yes, sir; but it was a toll account which was due, and they were allowed to offset it.

THE MASTER: They were allowed to use it in construction instead of offsetting it as a toll.

THE WITNESS: Yes, sir.

THE MASTER: When did they commence to pay tolls, do you know?

THE WITNESS: I do not know when they commenced.

THE MASTER: Here is a statement which has just been put in as plaintiff's Exhibit No. 26, showing amounts of tolls accrued but not paid, payable at the end of each year; for the year 1865, $8,976.16; for the year 1866, $19,655.33; for the year 1867, $25,471.36; for the year 1868, $31,780.99; for the year 1869, $32,061.40. Do you have any means of determining whether that is a fair statement of the average tolls that were paid in by this Road, or paid for the use of the Road? Would that average $23,548 a year?

MR. HOLT: Will your Honor let me interject something there parenthetically?

THE MASTER: Certainly.

MR. HOLT: Is it not the fact that what was meant by toils was simply that the railroad was to pay so much to the State for every ton of freight, and so much for every passenger transported? That being true, there would be no regular annual toll agreed upon at all, but it would be one thing one year and another thing the next year, according to the business of the Road. I think that was the situation.

THE MASTER: But in that event it would be the return to the State on its investment. I want it for each year, if we can get it.

By the Master:

Q. Have you any information except what is contained in the schedule that you filed, page 27, and this schedule filed today?

A. No, sir; I have not.

Q. Have you ever made any investigation to ascertain what was paid in tolls during those succession of years?

A. Only from 1861 to the end of 1863, as shown on page 27 of my report, which shows for four years from January 1st, 1861, to December 31st, 1863, the aggregate was $170,080.36.

Q. That is adding the $90,000 to the $79,000?

A. Yes, sir.

By Mr. Harrison:

Q. You refer to your report and what exhibit?

A. My exhibit, Volume 2, page 27, which is an average of $42,520 per annum.

Q. Average of how much?

A. $42,520 per annum.

By Mr. Anderson:

Q. That was during the War?

A. Yes, sir; that was during the War.

By the Master:

Q. And that is all the information you have, that schedule of yours and this schedule just introduced today?

A. Yes, sir.

Q. I suppose those figures are available, are they not?

A. Yes, sir.

Q. It is easy enough for somebody to find out just what those tolls were during a period of years?

A. Yes, sir.

THE MASTER: I want to know if the figures are available that show the amount of tolls that were received on account of this investment, from the date when the Road was first opened for traffic up to 1869 or 1870.

THE WITNESS: Yes, sir; they could be determined from the very probable break from this date, I think, in 1863, to where they were taken up in 1865, at the close of the War, and there is a very probable break right in there.

THE MASTER: I would like to have furnished by one side or the other a statement of the annual tolls and of all the annual tolls that were received by Virginia on account of the use of the Blue Ridge Railroad, from the date when it was first opened for traffic up to the time when it was sold to the Chesapeake & Ohio. Who will furnish me with that?

THE WITNESS: I will send Mr. Leeds to Richmond for it, and if Virginia desires they can have one of Mr. Potter's men check it up.

THE MASTER: We have part of it, and I would like to get the whole of it, and I would like to have it made by years.

THE WITNESS: Before I make that statement perhaps I had better ask whether I am authorized to do that.

GOVERNOR HATFIELD: Certainly.

THE WITNESS: And at the same time have one of Mr. Potter's men check it up.

MR. ANDERSON: They have the records of the old Central Railroad, the contract was with the Central Railroad.

THE MASTER: If the contract is in existence I think it should be produced and put in the record, so that both parties may have the benefit of it.

THE WITNESS: Do you wish search made at the same time for that contract, or for the terms of that contract which might exist on a ledger entry?

THE MASTER: Yes, if the contract is in evidence I would like to have the contract; and if there is any statement on the records showing the substance of the contract, I would like to have that statement copied.

THE WITNESS: There is one point I am going to look up, for my own information, which you will pardon me if I report to you, and that is whether that $90,000 there was a forgiven toll prior to 1861 or subsequent to 1861.

THE MASTER: Your statement shows it was subsequent.

THE WITNESS: Yes, sir.

THE MASTER: If you will get the statement I am speaking of it will cover the whole ground. I want you to begin at the time when this road was opened for traffic, then I want the amount that the lessee paid in tolls for the use of that Road for each year. Now when we get that we get the whole thing, so far as the tolls are concerned, and the $90,000 will take care of itself.

THE WITNESS: From the time that the State road was leased to the other road?

THE MASTER: Yes. Or if the State itself operated it and got anything from tolls, I want that. From the time it was opened for traffic I want to get everything that the State received during that period, if I can.

And with that and the contract, we have everything in the case, as far as I can see, that has any legitimate bearing on the value of the property.

By Mr. Holt:

Q. Mr. Hillman, have you prepared an exhibit stating the net earnings applicable to return upon the capital of the James River and Kanawha Company?

A. Yes, sir; I have.

THE MASTER: During what period? Do you mean prior to 1860?

MR. HOLT: I am asking him generally about it.

Q. What period does that exhibit cover?

A. This exhibit which I hold in my hand covers a period of 7 years, from October 1st, 1853, to September 30th, 1860.

THE MASTER: This that I have here says September 30th, 1859.

THE WITNESS: You will find one year entered below there, to avoid the necessity of having two exhibits; and this is the consolidation of the two totals.

THE MASTER: That is all right; I had not run my eye down far enough.

Q. What do you find and state to be the annual earnings of that Company during the period you have mentioned, omitting the year 1860, the average annual income?

A. $109,646.55 for the 6 years ending September 30th, 1859.

Q. For the 6 years?

A. Yes, sir; 6 years.

MR. HARRISON: Does that appear on your exhibit?

THE WITNESS: He wants me to omit——

Q. I will repeat my question. I want to show what is on your exhibit.

A. Will you read the question, please?

Q. What do you find and state to be the annual earnings of that Company during the period you have mentioned, omitting the year 1860, the average annual income? Does your exhibit anywhere show? Look at it. Does it show what the average annual income of the Company was during the period covered by that exhibit?

A. Yes, sir.

Q. What is that amount?

A. $115,554.21.

Q. How do you arrive at that, Mr Hillman?

A. By taking the earnings, the net operating revenue for the period of 6 years, which amount to $657,879.33, and adding thereto the earnings of $151,000.14 for the following year, which makes a period of 7 years, and gives a net operating revenue for the 7 years of $808,879.47, which is an average of $115,554.21.

Q. Have you capitalized that average net income?

A. Yes, sir; I have

Q. What did that give you?

A. On a 6 per cent. basis, $1,925,903.50

Q. Does your exhibit show the net operating revenue of this Company for the year ending September 30th, 1860?

A Yes, sir; it does.

Q. What is that revenue?

A. $151,000.14.

Q. Have you capitalized that?

A. Yes, sir.

Q. What did it produce?

A. $2,516,669.

Q Then a capitalization of the net operating revenue of that Company for the year ending September 30th, 1860, produces $2,516,669?

A. Yes, sir.

Q. How did you arrive at the net operating revenue as stated in that exhibit?

A. For the revenue derived from operation I deducted the operating expenses.

Q. Did you deduct any items or any expenditures on account of construction?

A. Yes, sir.

Q. Would you consider that a part of operating expense?

A. No, sir; I do not.

THE MASTER: Either you are mixed or he is.

MR. HOLT: Yes, one of us is evidently mixed.

Q. I asked you how you obtained the net operating revenue. What was your answer to that?

A. I deducted from the operating revenue the operating expenses, which gave me the net operating revenue.

Q. Well, now, in the figure that was deducted from the other, did you embrace money spent on construction, I asked you?

A. No, sir; I did not.

By the Master:

Q. That is, in that computation you excluded all items that were disbursed for construction?

A. I did; yes, sir.

By Mr. Holt:

Q. Did you take into consideration, or did you exclude, in ascertaining that figure and arriving at that result, moneys paid by the Company on account of interest?

A. I excluded them.

Q. Why would you exclude them, Mr. Hillman?

A. Because moneys paid on account of interest are a return upon investment and not an operating expense.

Q. What is the difference between Mr. Potter's statement and your own exhibit to which your attention is now called, in that respect?

A. The difference is that Mr. Potter has charged interest on investment, or return upon capital, against his revenue account, and included those in amongst his operating expenses.

By the Master:

Q. How would you pay them on your theory, what would you pay them out of, fixed charges?

A. You would have to pay them out of the net revenue.

Q. If the fixed charges were paid, you would not have any net revenue, would you?

A. Yes, sir; you would have a net revenue but no net income.

Q. If the fixed charges were paid would you have any net revenue applicable to the payment of dividends on the stock?

A. No, sir; you would not.

Q. Your result would be just like Mr. Potter's then, in that respect, when you come to get right down to the final analysis?

A. Yes, sir.

Q. As to whether anything was applicable to a dividend upon the capital stock, you would land right where he does?

A. Yes, sir; if the bonded indebtedness was still extant.

Q. Well, it was extant prior to 1860, was it not; and in 1860?

A. Yes, sir; it was.

Q. And the account for 1860 shows over $186,000 paid for interest in 1860?

A. I do not recall the amount.

Q. This James River and Kanawha report or document shows a payment for interest in 1860 of $186,126.89, does it not?

A. Yes, sir.

Q. That is, of disbursement for that purpose?

A. Yes, sir.

Q. And so far as 1860 is concerned, there was evidently a deficit, when you take the operating expenses and the fixed charges and apply the revenue thereto?

A. Yes, sir; there was.

Q. And there was during the preceding 7 years that your computation covers?

A. Yes, sir.

Q. And your figures in that respect, when you make the same kind of an allowance for fixed charges that Mr. Potter did, or if he made the same kind of a computation that you did, substantially agree?

A. Yes, sir.

By Mr. Holt:

Q. Now, Mr. Hillman, Mr. Potter shows a deficit covering a period of 25 years, I think. What occasions that deficit?

A. The payments of interest and dividends, or in other words the payment of return upon capital or upon investment.

Q. Had there been no interest charges, would there have been a deficit during that period?

A. There would not.

Q. When did these interest charges cease?

A. During the fiscal year ending September 30th, 1860.

Q. Had not the bonds and debts that gave rise to these interest charges been taken up, paid or cancelled, and were they not out of existence on the 1st day of January, 1861?

A. They were; yes, sir.

Q. How was that bonded debt taken up?

A. By the issuance of preferred stock to the State of Virginia by the James River and Kanawha Company.

Q. Will you file the paper to which I have called your attention as part of your testimony, and mark it Defendant's Supplemental Exhibit No. 2?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Supplemental Exhibit No. 2, December 9th, 1914, C. B.

DEFENDANT'S SUPPLEMENTAL EXHIBIT No. 2.

State of West Virginia

Statement of the Net Earnings, Applicable to Return Upon the Capital of the James River & Kanawha Company.

Earnings from Operation, Oct. 1, 1853, to Sept. 30, 1859, pages 711-12 of Volume 5, reports of the James River & Kanawha Co. on file in Vice-President's Office of the Chesapeake & Ohio R. R. Co., City of Richmond		$1,751,392.51
Operating expenses, same record as above, same period, as follows:		
Page 712, Richmond Dock	$35,814.43	
" " 5 Locks to tidewater	5,030.44	
" " Canal.....	790,044.78	
" 713 Expenses and Repairs, North River Improvement	2,031.68	
" " Expenses and Repairs, Blue Ridge turnpike and ferry.	5,953.01	
" " Reconstruction items as follows.....	98,435.75	
Maiden's Adventure dam....$36,393.91		
Grant's dam 30,559.89		
Bosher's dam 28,481.95		
Joshua Fall's Dam 3,000.00		
Page 713 Expenses Kanawha Turnpike.	57,280.02	
" " Kanawha River (1st 3 items).	19,809.07	

Page 714 Kanawha Board Directors	$ 495.00		
Delegates to meeting	71.00		
Secy's salary	231.76		
Rent.	92.30	890.06	
" " General Administration		78,223.94	
Total operating expenses for six years. . . .			$1,093,513.18
Net operating Revenue applicable to return upon Capital stock for the six years. . . .			$ 657,879.36

Earnings from operation Oct. 1, 1859, to Sept. 30, 1860 (as per certified Report of Rosewell Page, Second Auditor of Virginia, and confirmed by A. G. Potter, Accountant for the State of Virginia, in Exhibits filed with the Master, subsequent to the closing of the testimony) $308,894.33

Disbursements (same authority as above—checked) $219,441.57

Of the above disbursements the following were construction items, as will be seen by reference to pages noted of document 17, Board of Public Works State Reports of Va., 1860.

Page 235 of the $138,099.03 Canal Expenses, there is construction.	$ 5,036.18	

Page 235 of the South Side Expenses, there is construction...	$2,099.43	1,559.43	
" " of the North Riv. Impvt. there is construction...		26,543.97	
" 266 All of the Kanawha Riv. Impvt. charges are construction...		28,407.80	
Total Construction included in disbursements		$61,547.38	
Total operating expenses for the year		$157,894.19	$157,894.19
Net operating Revenue applicable to capital stock for year ending Sept. 30, 1860.			$151,000.14

Combining the two above statements we obtain a seven years' total as follows:

Earnings for seven years to September 30, 1860	2,060,286.84
Operating expenses for seven years to September 30, 1860	1,251,407.37
Net operating Revenue for seven years to September 30, 1860 ..... (Applicable to return on capital stock)	808,879.47

Yearly average for seven years.....	115,554.21
Which capitalized on six per cent. basis equals $1,925,903.50	
The year ending Sept. 30, 1860, shows net operating Revenue of	151,000.14
Which capitalized on six per cent. basis equals. $2,516,669.00	

I hereby certify that the figures in this Schedule were taken by me from the original record as noted above of the James River and Kanawha Company or of the State of Virginia, for the periods mentioned, and that they have been so grouped as to show the true operating expenses as well as the earnings of the said Company.

C. W. HILLMAN,
Accountant for West Virginia.

Q. The operating revenues then of this canal exceeded the operating expenses, excluding interest therefrom?

A. Yes, sir; they did.

Q. What kind of stock did the State get for its debts, or bonds?

A. Preferred stock.

Q. What effect would that legislation and the issue thereon of preferred stock in payment of bonds have upon the value of the stockholdings of Virginia thereafter?

A. It would make them valuable, or give them a degree of value commensurate with the amount of net earnings which would be applicable to return upon that stock, there then being no interest charges which need to be taken into consideration.

MR. ROBINSON: I assume that is a statement by Mr. Hillman of his opinion, and not of a fact.

MR. HARRISON: You are asking for his opinion.

MR. HOLT: Let it go for what it is worth.

Q. (Handing paper) Take the paper now handed you and mark it Defendant's Supplemental Exhibit No. 3, and state where you took the figures therein contained from.

A. I took those figures from Mr. Potter's Exhibit which is now filed in this case and numbered Plaintiff's Exhibit No. 24.

Q. Are the calculations in that exhibit correct, I mean in this Exhibit marked Defendant's Supplemental Exhibit No. 3?

A. Yes, sir; they are correct. I have checked Mr. Potter's figures.

Q. Will you mark it as part of your testimony, marking it as I have indicated?

A. Yes, sir; I file it herewith, marked Defendant's Supplemental Exhibit No. 3.

The paper was admitted in evidencee and marked Defendant's Supplemental Exhibit No. 3, December 9th, 1914, C. B.

DEFENDANT'S SUPPLEMENTAL EXHIBIT No. 3.

State of West Virginia

James River and Kanawha Company.
Analysis of Mr. Potter Excerpt from Document 17, Pages 272-3 and 274-5, to Show Revenue, Operating Expenses and Net Operating Revenue from the Inception of the Company, June 27, 1835, to Sept. 30, 1860.
Figures all taken from Mr. Potter's Exhibit filed in this case after close of testimony and therefore not numbered.

Earnings from Operation		$5,434,443.35
Operating expenses:		
Repairs and maintenance of the old Canal Richmond to Maiden's Adventure, Kanawha Road and River, Blue Ridge Canal Road and Ferry	$411,712.97	
Repairs and maintenance of new canal Richmond to Buchanan	1,900,227.64	
Expenses General Administration	177,642.46	
Repairs to Richmond Dock and 5 locks	79,887.51	
State Tax	1,374.77	
Losses	68,444.02	
Total operating expenses and taxes		2,639,289.37
Net operating Revenue applicable to return on capital stock		$2,795,153.98

And not an operating loss of $1,302,995.75 as would be inferred from Mr. Potter's statement, unless report had been properly analyzed and stated. Which loss of $1,302,995.75 if not so analyzed would indicate that the property was valueless as an earning proposition. It will be noted from the above statement of twenty-five years' earnings that the company averaged almost exactly $111,800.00 per year. It would not be proper to reduce this return to capitalization because of the fact that the property was not in full operation until 1859. By full operation we mean as far as it had progressed when stopped by the war.

I hereby certify that the above figures were checked by me and are the correct figures from Mr. Potter's exhibit above mentioned and have been arranged by me to show the true revenue, operating expenses and net revenue of the James River and Kanawha Company for the period mentioned.

C. W. HILLMAN,

Accountant for West Virginia.

By the Master:

Q. This excludes the fixed charges, does it?

A. Yes, sir.

Q. Do you think that that is just exactly the kind of comment you ought to make on Mr. Potter's report, with the knowledge that he takes into account another factor, the comment you have got there? You say, "And not an operating loss of $1,302,995.75, as would be inferred from Mr. Potter's statement, unless report had been properly analyzed and stated. Which loss of $1,302,995.75 if not so analyzed would indicate that the property was valueless as an earning proposition." Now when you come to analyze this report there is

not any difference between you and Mr. Potter at all. You simply ignore an element, which you do not take into account. Do you think that is a proper comment to make upon his statement, when you ignore an item, and a determining item, when you know you ignore it—do you think that is the way you ought to characterize his report?

A. I will admit that is expressed a little strongly, your Honor.

Q. But ought you to do that, when you know that Potter has taken into account an item which it is his duty to take into account, a fixed charge—do you think that is a comment you ought to make upon his report?

A. Yes, sir, if you will allow me an explanation.

Q. Yes, make any explanation you like, if you want to stand by it.

A. At the time that these were filed I did not suppose, nor did we suppose, that there would be any further testimony taken, or any chance for any other explanation than such as we might have by the filing of these contra exhibits, and hence there were comments made on them which would not have been made had we thought there would be further evidence taken.

Q. Even so, you know you made your statement on a basis entirely different from what Mr. Potter made his on, and you knew that Mr. Potter took into account, as he ought to have taken into account, the fixed charges; and with that knowledge, do you think that is the kind of a comment you ought to make on Mr. Potter's report, even though you thought you would not have a chance of explaining it? You could not help knowing it, because you understood the distinction between the two. That is quite a reflection upon Mr. Potter's statement, and I understand you now to state that Mr. Potter's statement is exactly right upon the facts as they existed.

MR. HOLT: Of course, your Honor understands this, that the sole object of our exhibits, contrasting them with Mr. Potter's, is to show that fixed charges, according to our theory, constitute no part of an operating expense. As a matter of fact, however, in the final analysis, of course they have to be paid, just as your Honor suggested a moment ago. And we wanted to emphasize the fact that the deficit that he speaks of took place in that portion of the history of the Company where it had interest charges to meet. While, when we come down to the period at which we seek to value the stock in that Company, 1861, those interest charges no longer exist. And our statement will show what that Company would have done in that period back there had it had no interest charges, as it had none in 1861.

THE MASTER: That all may be; that works out of it, but—I won't go any farther.

THE WITNESS: I would be very much pleased to strike that from this report, if you desire.

THE MASTER: These accountants put in propositions here before me that I suppose they expect me to rely on, and unless they are explained or they are overhauled by cross-examination, they expect me to take them as they leave them. And I think it is up to the accountants on both sides to put these statements in here so that they will hold water and stand analysis and stand criticism. Now nothing is gained by undertaking to present to me an exhibit that I know does not agree with the conditions that existed, and then undertaking to break down another exhibit that is in accordance with the conditions as they existed. There is no objection to calling attention to this fact, of course; I appreciate your position; but I do not like to have an exhibit presented here that, if I undertook to go by it, would be absolutely misleading. There is not a word said in your exhibits about fixed charges,

you have to wait until it is drawn out on cross-examination or supplemental examination. If I took your exhibit as it stands I would capitalize this road on the basis of what you say was its net revenue. Now, there was not any net revenue during that period. I appreciate the argument that you have, but I do not want either side to present to me an exhibit that, on its face, would lead me into a place where I ought not to go, if I did not go any farther into it.

MR. HOLT: Of course our theory is, your Honor, that strictly and technically speaking the fixed charges are no part of operating expenses.

THE MASTER: I do not see how there can be any dispute about that.

MR. HOLT: And Mr. Potter presents an exhibit here covering a certain period, that shows a deficit. Then of course the only effect of our exhibit would be to show that that deficit was brought about in consequence of the payment of interest charges.

THE MASTER: There is not any question about that.

MR. HOLT: But that is the date as of which we desire to ascertain the value of this stock. The property ran along with the same business, but with the interest charges no longer in existence.

THE MASTER: That is an argument that you are entitled to the benefit of, but the difficulty with these exhibits is that on their face they do not present that conclusion, and they do not make any reference whatever to this other consideration. If I take them just as they stand, without explanation, I would be holding that there was a net revenue from this canal during that period, and a net revenue in 1860. Of course there was not any such. This is a criticism that I

have on an exhibit like this, for instance, "Net operating revenue applicable to capital stock for year ending September 30th, 1860, $151,000.14." That is not correct, because there was not any net revenue applicable to that purpose; there was a deficit, and the accounts show it. Of course with the explanation that you give, I understand what you mean by it, but taking the exhibit as it stands, the exhibit is not accurate.

THE WITNESS: It was so thoroughly understood, at least by me ——

THE MASTER: But your exhibit on its face did not give me any thorough understanding. If I had taken this exhibit alone, without any cross-examination or any reference to the original exhibits, where would I have landed with it? I would have held that there was a profit of $150,000. There was another witness who has already testified that there was a profit of $142,000.

MR. HOLT: Is it not plain from this exhibit, though, that in this statement of Mr. Hillman it is just a difference in the two exhibits, the nomenclature, nothing else in the world? He undertakes to state what operating expenses are, and Mr. Potter calls something else operating expenses.

THE MASTER: No, Mr. Potter does not call it operating expenses, he calls it interest charges. The difficulty that I had with it was this—of course with the oral explanation that you give, it cleans up the exhibit all right, but you take the exhibit as it stands, and as far as I am concerned the exhibit would mislead me.

MR. HOLT: I thought that it was apparent from this that we were not considering fixed charges at all, but we were sticking strictly to what we defined to be operating expenses.

THE MASTER: The explanation clears it up.

MR. HOLT: We felt that here was a canal, with a great bonded indebtedness, the interest upon which was eating up its income, we will say; but, could it get rid of that, it would have a net income, as shown by its past experience, which would make its stock valuable. Then we come right along and show that this canal company would produce that result, and we follow it right up by showing that it then eventually got rid of the interest charges, and therefore the stock must be profitable thereafter; because, on the 1st of January, 1861, you had the same canal, the same business, practically the same or a greater income, increasing all the time, as shown by this very record, with the interest charges gotten rid of.

THE MASTER: Now suppose you run it right down to the time of sale, and see what happened then.

MR. ANDERSON: You have not gone into that, have you?

MR. HOLT: This exhibit of Mr. Page shows that.

MR. ROBINSON: We filed the exhibits for 1863, and so on, showing that the deficit existed.

MR. HOLT: We are utilizing this simply for the purpose of showing what the value of that stock would be on January 1st, 1861, with interest charges gotten rid of, which were excluded or done away with by this Act of March 23rd, 1860.

MR. ANDERSON: You do not now propose to prove anything as to the effect upon the business of the Company after 1861?

MR. HOLT: No, we are not going beyond January 1st, 1861, with this, because it is all here in this exhibit of Mr. Page, the whole thing.

THE MASTER: You have got more than that in your record.

THE WITNESS: Your Honor, perhaps I should explain, that to me the fact of a net operating revenue conveys such a distinct impression as to what it is, that it does not include interest charges, that perhaps I did not make it as plain as I should on these exhibits.

THE MASTER: The fault may be mine, because I may not be sufficiently familiar with the way in which these things were expressed.

MR. HOLT: That exhibit, to my mind, plainly excludes interest, as Hillman's Exhibit stands, and there is nothing deceptive about it at all.

MR. HARRISON: Well, Judge, is it not misleading in this, as it stands; you say there is $151,000.14 applicable to capital stock for the year ending September 30th, 1860; that could not be so applicable as long as interest charges remained unpaid, they having a primary right to be paid out of the operating revenue before there could be anything applicable to capital stock.

THE MASTER: I do not think we need to spend any more time on this phase of it. Perhaps I am overfussy. I understand the situation, and the oral explanation explains the situation so that I understand perfectly the circumstances under which the exhibit was made, and the idea that Mr. Hillman had in his mind when he made it. You have in here, Judge Holt, an exhibit No. 7,—1863—F, pages 207 to 220, which shows the accumulation of additional indebtedness of nearly $2,000,000. in this James River and Kanawha Company.

MR. HOLT: When did that take place?

THE MASTER: Some of this indebtedness was issued in 1856, some in 1857, some in 1870, some in 1877, some in 1880, some in 1878, some in 1879, and some all the way along there.

MR. HOLT: I think you will find this to be true, Mr. Littlefield, that the bonded indebtedness on January 1st, 1861, and the interest thereon that had been created in the one case and had accrued in the other prior to that date, were all gotten rid of under the Act of March 23rd, 1860.

THE MASTER: There is not any doubt about that.

MR. HOLT: And that as of the date March 1st, 1861, there was nothing of the kind in existence, unless perhaps it was some little interest that had accumulated before the Act of March 23rd, 1860, that remained yet unpaid. That may have been true.

THE MASTER: Now, your case shows the extinguishing of this debt in 1861 or in 1860.

MR. HOLT: March 23rd, 1860.

THE MASTER: Well, the next thing that you show is that up to the time of its sale to the Richmond and Allegheny its operation had resulted in accumulating an indebtedness of about $2,000,000, and your case does not show now the payment of any dividends, nor does it show any net income after 1860. They put in in 1861, 1862 and 1863—I want to call your attention to the condition of the record so that you will know exactly where this is—unless I am mistaken about it, and of course if I am I want to have my attention called to it, the debt to Virginia was extinguished some time in 1860. Now presumptively the earnings perhaps may have continued. Now, the other side have put in figures from 1861, 1862 and 1863, showing the deficit

in those three years. You have put in an exhibit showing that from 1861, when this indebtedness to the State was extinguished, or from 1860, up to 1880, that the operations of this canal resulted in accumulating a further indebtedness of nearly $2,000,000., and it does not show any dividends during that period, and it does not show any net earnings during that period. Now, that is what the record shows, if I have got it right.

MR. HOLT: Well, there is a period of time there, we will say on January 1st, 1861, we have shown by this exhibit, that in the absence of, or relieved from, interest charges, what this property was doing. It was then producing an annual net income of $151,000. a year. Then came the Act of March 23rd, 1860, which eliminated the interest charges, through the settlement of the debt, and this exhibit of Mr. Page shows that up until, and even after, January 1st, 1861, not only the old business, that produced $151,000 net income, leaving interest charges out, kept up, but actually increased in volume. Now, you will see here in some portion of this exhibit that the articles that they were carrying multiplied very rapidly——

MR. HARRISON: Do you mean Mr. Page's exhibit in the figures shows an increase in the business?

MR. HOLT: Yes, it shows the sacks of coffee that were hauled at one time——

THE MASTER: Why is it not reflected in the receipts?

MR. HOLT: After you pass March 1st, 1861, and come down to April, 1861, or whatever it was, when the War broke out, then the volume of its business became nil, it all went to pot then. But if we are right in the date of our valuation, as of January 1st, 1861, we are not interested in the effect of the War upon the

business of this canal. Let me state once more. We have exhibits here showing that in the year 1860 there would have been a net income of $151,000.14, with the volume of business it was then doing, had it at that time been relieved from the payment of interest charges. The exhibit of Mr. Page shows that that volume of business did not only keep up, that produced $151,000. a year, until, but even after, January 1st, 1861; and the Act of the Legislature shows that on March 23rd, 1860, we were relieved from the interest charges. So that even if its volume of business had kept up to just what it had been when it produced $151,000., why, we would have had a net income of $151,000. after the interest charges had been eliminated, and that would reflect some value upon the stock. But he shows that the business increased until and after January 1st, 1861.

THE MASTER: You mean this James River and Kanawha Company document?

MR. HOLT: Yes, sir. In other words we had the business there that, for the year ending the 30th of September, 1860, eliminating interest charges, produced a net income of $151,000.; which, capitalized at 6 per cent., would give a value to that property of between $2,000,000. and $3,000,000., $2,500,000. odd. The only trouble there was that we had no net income, because we had to destroy it by the payment of interest charges, but we kept along with the same business up to January 1st, 1861, with the elimination of interest charges, therefore it would be fair to assume that after the elimination of the interest charges the income would be $151,000. a year.

THE MASTER: What do you say about the property being operated at a loss of $2,000,000., and upon the sale the State receiving nothing for its stock?

MR. HOLT: This is from Mr. Page's exhibit. Take the item of coal alone; now in 1855——

THE MASTER: What page is that, Judge?

MR. HOLT: That is page 1110-A of Volume 3. Take by way of illustration the first item of coal; they transported 13,000 tons in the year ending September 30th, 1855. When you come over to September 30th, 1860, it is 29,897 tons. Then take coffee; in 1855, 5,000 bags, in round numbers; and in 1860, 24,000 bags, in round numbers. When you get down to the question of lumber, in 1855 you have nearly 5,000,000 feet, and in 1860 you have nearly 26,000,000 feet. And this business was growing right straight along up there until it was destroyed by the War. It went all to pieces almost immediately after April, 1861; but it had not done that on January 1st, 1861. So that if it would produce a net income of $151,000. in 1860, down to September 30th, it was still doing that well, or better, upon an increased business, on January 1st, 1861, and it was in reality at that time net income, because the only thing that had kept it from being net income before, namely, interest, had been by the Act of March 21st, 1861, eliminated. Now it ran into trouble again of course later on, as your Honor suggests. But that occurred during the War, and after the date upon which we rely. We are trying to ascertain, according to our theory—of course we know the theory of the other side, your Honor—the value of this property as of January 1st, 1861. Well, it did not have any $2,000,000 indebtedness at that time, it was a $2,000,000 indebtedness that was incurred long after that time. It was in pretty fair shape on January 1st, 1861, a large business and no interest charges, and an increasing volume of business.

MR. HARRISON: Did they not have an impaired capital on January 1st, 1861?

MR. HOLT: I think not. The truth of the business is that Virginia—her stock was all preferred stock, we will say, on January 1st, 1861, and the common stock may not have been worth anything at all, but her preferred stock, with that state of business, and with the capacity to make a net income of $150,000. a year, when rid of interest, would make her preferred stock worth a good deal, because that preferred stock would consume everything that was earned, the common stock got nothing.

MR. ROBINSON: Judge, if you will turn to page 1211 of Volume 3 you will see that the Company paid interest of about $23,000. for the year, and in 1863 it got up to $65,000.

MR. HOLT: The explanation of that is this, if I understand it, that at the time that this thing was refinanced, that is by the Act of March 23rd, 1860, some old unpaid interest charges were still hanging over, that were paid afterwards. Anyhow, in argument we will undertake to explain our position on that.

MR. HARRISON: Right there, I do not know what you rely on for that statement that there was some interest unpaid.

MR. HOLT: The interest was practically eliminated.

THE MASTER: Instead of the State holding a debt upon which they tried to get their interest, they took stock upon which they hoped to get a dividend.

MR. HOLT: They took stock in a property which, in the absence of interest, could earn a net income.

MR. ROBINSON: If it had been a different company it might have been otherwise.

MR. HOLT: That was another reason for filing out counter-exhibits. We get out of our exhibit—and that was the sole idea, we did not want to use any exhibit that would be deceitful or misleading to the Court—but he had not shown in his exhibit what the property would do with interest eliminated, and we undertook to present an exhibit to show what it would do with interest eliminated; because interest, at the time that we tried to fix the value, had been eliminated.

THE MASTER: Perhaps this is a good place to stop. What do you say to adjourning for dinner and coming back at eight o'clock?

MR. ROBINSON: It suits me.

MR. HOLT: I would rather not go on tonight. Now, I subscribe to the criticism of Mr. Harrison upon this little commentary at the end here, I mean from the standpoint of the law of evidence, and I think we will probably offer the president's report in lieu of that. Then I will be through with Mr. Hillman. I am going to put these papers in, and turn these gentlemen loose to cross-examine him if they want to.

THE MASTER: Whether we shall go on this evening I will leave to the counsel on both sides; I am ready to come here and go on. But of course I do not want to oblige Judge Holt to come here tonight if he does not care to.

MR. ANDERSON: I would like to see the case finished tomorrow, and I do not think we can finish tomorrow unless we sit tonight.

MR. ROBINSON: I cannot be here tomorrow. We think we will finish in an hour, and we take two days.

MR. HOLT: So far I am concerned I am only going to ask him a couple of questions, just to put these papers before the Master, and then give you an opportu-

nity to cross-examine. That is about all I want to do. They speak for themselves, if they get properly in here once.

THE MASTER: Well, what do you say, Mr. Harrison and Judge Holt? I would like to have you agree as to what we shall do this evening.

MR. HOGG: I would rather come in in the morning myself, but I am willing to do whatever the other counsel want to do.

MR. HOLT: I do not believe anyhow that we will get through tomorrow, that is if we undertake to discuss some of these questions here, your additional testimony on market quotations and so on. I think we will probably be here longer than tomorrow.

THE MASTER: I think that the counsel ought to get through with Mr. Hillman, so as to let Mr. Hillman go. Mr. Hillman is attending these sessions under a good deal of personal strain, and I do not think you ought to keep him here after tomorrow anyway. If you can get through with Mr. Hillman tomorrow forenoon that may do, and if you are not sure of getting through with him by tomorrow afternoon you ought to come back here and examine him tonight.

MR. HOLT: We will guarantee to be through with Mr. Hillman in the morning in ten minutes. The matter that you read from this exhibit a moment ago, Mr. Harrison, which was made up of extracts, if we could strike from it the paragraphs you commented upon, we could perhaps get what we want without lumbering the record with the whole report.

MR. HARRISON: Suppose we leave that then until the morning, and deal with that then; but on the first two exhibits that you have examined him about, let us cross-examine him now.

Cross-examination by Mr. Robinson:

Q. Mr. Hillman, if you will refer to your Supplemental Exhibit No. 2, Volume 5 of the reports of the James River and Kanawha Company, extract from pages 712, 713 and 714, and looking at page 714 of that record, I will ask you if you have included in your report an item of the expenses of the committee for negotiating a loan, amounting to $950.

A. No, sir, I have not.

THE MASTER: Let me look at it so that I can get the significance of it as I go along.

MR. ROBINSON: This is a statement of the expenses of the Committee. He says he has omitted that item.

Q. There is another entry, annuity to stockholders of the old James River Company, $21,000. Did you include that item?

A. Certainly not. Are you going to ask me any other questions concerning that $950.?

Q. No.

A. Then if you will allow me to state that that Kanawha Board is a construction board entirely, as will be shown by the Act creating that Board and by this president's report which is quoted here, and is entirely a construction Board, and quite properly I would have been authorized in dropping all of those expenses. I took those, however, which might be considered as an operating expense; but when it came to the expenses of negotiating a loan, I cut it out, as a capital charge.

Q. Do you mean to say that that is a capital charge?

A. Yes, sir, the Kanawha Board is a construction board, it is not the management of the Kanawha Company at all.

Q. Would not this be a fair charge to construction if the Company cared to do it that way?

A. No, sir. The only receipts that the Company had were the $40,000. from the State which they were to apply to the Kanawha Board's expenses, and they were a construction board.

By the Master:

Q. How did you happen to omit the $21,000. annuity? Is not that an annual charge?

A. No, sir, it is not an operating charge, sir.

Q. Is it not a charge that should be deducted from your net sum applicable to the stock?

A. No, sir.

Q. Where do you pay it, where do you get it out of?

A. You understand, you Honor, according to our view of the matter, the capital charges for bonds and annuities had all been wiped out, and we are showing the net result when annuities have been disposed of and when interest charges have been disposed of.

Q. Was this annuity capitalized?

A. Yes, sir; that shows $350,000., capitalized.

THE MASTER: It is subject to the same argument as the capitalization is.

MR. HARRISON: Is not this a statement for seven years?

THE MASTER: That they have explained.

By Mr. Robinson:

Q. Then there are a collection of items under the head of interest on debts to the State, amounting to $137,203,23. Have you included them?

A. No, sir, that was interest on debt, and is not included.

Q. Then there are a collection of items under the heading interest on debt guaranteed by the State, amounting to $746,-460.90. Have you included those items?

A. No, sir.

Q. And then there are further items under the heading of interest, exchange and discount, amounting to $80,223.22. Have you included those items?

A. No, sir, they are not included.

Q. Will you please state the total of those times?

A. $985,837.35, subject to verification.

Q. If you had added this amount, $985,837.35, to the other expenses of the Company during those years, would you have had any balance applicable to the payment of dividends?

A. No, sir, there would have been a deficit of $327,958.02.

Q. As a matter of fact, on the actual transactions of the Company was there not that deficit of $327,958.02 for those years?

A. Including the fixed charges, yes, sir.

Q. You do not contend that the payment of dividends comes ahead of fixed charges, do you?

A. No, sir.

MR. ROBINSON: That is all. The other items have all been brought out. They are in Document No. 17.

THE MASTER: Then we will stand adjourned until ten o'clock tomorrow morning?

MR. HOLT: Yes, sir. I would like to ask Mr. Potter a question before we adjourn.

ARTHUR G. POTTER, recalled for further cross-examination, testified as follows:

By Mr. Holt:

Q. Mr. Potter, you showed a deficit, I believe, in this Canal Company's business for the year ending September 30th, 1863?

A. No, sir, the statement that I prepared and certified covered the operations of the Company from the organization to September 30th, 1861.

Q. Well, didn't you give us the actual operations for 1861, 1862 and 1863 also?

A. The cash operations, receipts and disbursements.

Q. Well, did you not show a deficit for the year ending September 30th, 1863?

A. I did, with this qualification, that if any of the times charged among the disbursements were capital expenditures they would reduce the deficit that I indicated by that amount.

Q. I am not trying to confuse or take advantage, I am trying to get the fact. What did that conditional deficit amount to?

A. For 1863?

Q. Yes.

A. $129,036.25.

Q. Is that expressed in Confederate currency?

A. Well, yes, I presume it is.

Q. If that were reduced, by the table that you have heretofore used, to real money, what would it amount to ? Will you make that calculation for tomorrow morning, please?

A. Yes, sir.

Q. Now, coming to the year ending September 30th, 1862, what was the conditional deficit in amount there?

A. $46,609.86.

Q. Will you reduce that to real money?

A. I will.

Q. And the same way with respect to the deficit for the year ending September 30th, 1861?

A. Yes, sir.

Adjourned to December 10th, 1914, at 10 A. M.

New York, December 10th, 1914.

Met pursuant to adjournment.

PRESENT:

Hon. William A. Anderson,

Hon. Randolph Harrison,

Sanford Robinson, Esq.,

Of counsel for plaintiff.

Hon. A. A. Lilly, Attorney General,

Hon. Charles E. Hogg,

Hon. John H. Holt,

of counsel for defendant.

CONWAY W. HILLMAN, recalled for further direct-examination, testified as follows:

By Mr. Holt:

Q. (Handing paper) Take the paper now handed you and marked Defendant's Supplemental Exhibit No. 4, and state who made it, prepared it.

A. I prepared that paper, sir.

Q. Of what does it consist?

A. It consists of excerpts from the report of the James River and Kanawha Canal Company to its stockholders, by their president, for the year ending September 30th, 1860.

By the Master:

Q. Is this the document I have just been looking at?

A. Yes, sir.

Q. That is a letter from the president to this des Minieres, the Frenchman, is that it?

A. I beg your pardon, your Honor.

Q. Identify it so that I will know what you are talking about.

A. The excerpts that I have been talking about are from Document 17 of the Public Works Department.

Q. Are they from the same document that contains this reference to the opinion of the president?

A. That is one of them.

MR. HOLT: There is more than one document quoted from.

Q. Well, give us the next one.

A. The next is Volume 5 of the reports of the James River and Kanawha Company.

Q. What is that one, is that one that contains the reference to the president's opinion?

A. As to the value of property, yes, sir.

Q. That is the one I have just been looking at?

A. Yes, sir.

By Mr. Holt:

Q. What documents are those extracts taken from? Detailed documents. What original documents?

A. From Department of Public Works, Document No. 17, State of West Virginia, September 30th, 1860, and——

By the Master:

Q. Now, right there, is that the document that is already in print?

A. Yes, sir, it is.

Q. Now, go on.

A. And the president's report of the James River and Kanawha Company. Volume No. 5, pages 661 to 692.

By Mr. Holt:

Q. Volume of what, do you mean?

A. Volume of reports of the president of the James River and Kanawha Company.

By the Master:

Q. Now, let me have that book that you are referring to.

A. It is right there at your hand, sir.

By Mr. Holt:

Q. I will ask you this question, Mr. Hillman, whether or not these extracts that make up this exhibit give—whether

or not the exhibit gives the document and the pages from which they are taken.

A. Yes, sir, it does.

THE MASTER: You see, the exhibit itself, your Honor, shows exactly where the extracts come from; in other words, it identifies the original sources.

THE MASTER: And I will identify it right here now.

By the Master:

Q. This document that you refer to containing the statement of the president is what purports to be a letter from the president to Mr. Ernest de Bellot des Minieres, dated November 21st, 1859, is that it?

A. I believe it is, yes, sir.

MR. HOLT: Look at it and see, Mr. Hillman; there is no necessity for saying what you believe.

Q. See if that is the letter of the president to Mr. des Minieres, if that is what you mean.

THE MASTER: I want to suggest now, while he is looking for this, that there is a lot that has gone into this record here that does not need to be printed. I shall not have time to submit this to the counsel on either side, and I am going to take the responsibility of censoring this transcript myself.

THE WITNESS: It is a letter from Mr. des Minieres, included in his general report to the stockholders.

By Mr. Holt:

Q. Are the extracts that make up that exhibit correctly copied from the documents of original sources?

A. Yes, sir, they are.

Q. Will you take the one that is before the Master and is intended to be filed as an exhibit in the cause, and strike from it the paragraphs that you have stricken from this, so that they will tally.

A. Yes, sir, I will.

MR. HOLT: We offer this exhibit, your Honor.

The paper was admitted in evidence and marked Defendant's Supplemental Exhibit No. 4, December 10th, 1914. C. B.

DEFENDANT'S SUPPLEMENTAL EXHIBIT NO. 4.
STATE OF WEST VIRGINIA.

STATEMENT AND EXCERPTS FROM VARIOUS DOCUMENTS, AS NOTED, SHOWING THAT PROPERTY WAS KEPT UP TO FAIR OPERATING STANDARD THROUGH CHARGES TO OPERATING EXPENSE AND THAT THEREFORE NO DEPRECIATION SHOULD BE CONSIDERED IN THE ULTIMATE VALUATION OF THIS PROPERTY.

My statement of the earnings and operating expenses for the years 1853-60 shows a charge to operating expenses for reconstruction items, which are certainly a renewal of property offsetting depreciation and amount to $98,435.75 in the five years 1853-59. In addition to these special items please note the following excerpts from the annual reports of the company and from their report to the State of Virginia as evidenced in Document 17, 1860.

Page 225, Document 17, Sept. 30, 1860. Resolutions of investigating committee of stockholders. "That they congratulate the stockholders on the improved and apparently improving condition of the Company in every department of its affairs."

Page 232, Document 17, Sept. 30, 1860. Extract from President's report. "And in the month of July, the water was withdrawn from some of the levels for the usual systematic repairs."

Page 232, Document 17, Sept. 30, 1860. The President speaking of the deposits brought down by the Tye and other rivers says that "This renders the constant employment of dredging machines more or less necessary. The present condition of the canal as far as it affects navigation is very good."

Page 249, Document 17. Extract from the report of superintendent of Second Division and North River Improvements. "The condition of the Canal at the present time is perhaps as good as it has been at any time heretofore since its construction, especially when taken as a whole. The embankment in many places has been strengthened and riprapped, all the stone dams have been filled in behind with stone; a large number of new lock gates have been constructed and put in during the year, and, but for the sand bars which have been accumulating at the mouth of streams emptying into the different pools ever since the dams were built, I should be able to say that the second division was in much better condition than it ever has been heretofore. No breach having occurred in this division during the year, shows conclusively that the banks are becoming more and more permanent every year."

Page 691, Volume 5. Reports of James River and Kanawha Company. Extract from letter of the President. "If ever there has been a stretch of authority, it has been toward the great end and design of the charter, the vigorous prosecution, early completion, and permanent maintenance and good order of the improvement."

On page 692 of the same Volume the President of the J. R. and K. Co. values the property at $10,000,000.00, which was in the year 1859.

On page 225, Document 17, 1860, the President reports as follows: "While the great measure of converting the debt into stock, granted by the legislature last winter, has relieved the Company from a load of oppressive embarrassment." The above is quoted to show what the records of the Company also show, that at this time all the debt had been returned and only the stock was left to be dealt with and that, therefore, all net returns of the Company were applicable to the stock and no deduction was necessary for interest on funded debt. Nor should it be overlooked the fact which is shown in the record of this case that $7,400,000.00 of the stock held by the State was preferred stock.

In addition to the above investigation I have investigated the amount charged to construction on Mr. Potter's exhibit above referred to of $9,482,484.46 and found the amount to be correct, and also that the entire amount was spent in construction, right of way, land damages, and nothing whatever charged against the cost of the property on account of its franchise. This statement made with reference to questions along this line asked by the Master.

We find from the records of the James River and Kanawha Co. on file in the C. & O. Rwy. Offices as above that there was outstanding capital stock of $11,331,330.71, of which the State of Virginia owned $10,400,000.00 or 91.77%. Applying these figures to the valuation shown on prior exhibits made by me and transmitted herewith, we have the following, for the value of $1,925,903.50 for the whole stock of the J. R. & K. Co., which is shown on the seven years earning basis, capitalized

at six per cent., the value of the State's holdings to be $1,767,-401.64. Applying 23.5% to this would entitle West Virginia to $415,339.39. On the basis of the last year, previous to a period January 1, 1861, the capitalization value on the six per cent. basis equals $2,516,669.00. 91.77% of this equals the Virginia proportion is $2,309,547.14, of which West Virginia is entitled to 23.5% or $542,743.58.

I hereby certify that the figures in the above statement were taken by me from the original records as noted.

C. W. HILLMAN,
Accountant for West Virginia.

MR. HOLT: We now offer in evidence a letter dated Richmond, Virginia, November 21st, 1859, addressed to Mr. Ernest de Bellot des Minieres, and signed by Thomas H. Ellis, president, that is found beginning at page 661 and extending to page 694, inclusive, of Volume 5, reports James River and Kanawha Company, 1855-1860.

The letter was admitted in evidence and is considered as Defendant Supplemental Exhibit No. 5.

Defendant's Supplemental Exhibit No. 5 is as follows:

OFFICE JAMES RIVER AND KANAWHA CO.

Richmond, Va., Nov. 21, 1859.

MY DEAR SIR,

At the twenty-fifth annual meeting of the company, which was held at their office in Richmond on the 24th of October last, the board of directors informed the stockholders of the offers which were made by yourself and your associates, some time since, for the completion of the James River and Kanawha canal. The subject was referred to a committee for consideration, and the committee afterwards reported a resolution, which was unanimously adopted, in these words, to wit:

"RESOLVED, That the president be requested to continue his correspondence with Mr. E. de Bellot des Minieres, with a view to the negotiation of an arrangement for the completion of the James River and Kanawha canal, upon terms satisfactory to the board of directors, subject to the approval of the general assembly."

It affords me pleasure to comply with this request of the stockholders.

In doing so, I shall pursue generally the order of topics, suggested by the letter which you did me the honor to address to me in March last, and will furnish you, as far as I can, in a condensed form, the information you then desired.

A history of the James River and Kanawha Company would undoubtedly be both instructive and interesting—and, to some extent, is obviously appropriate to such a negotiation as that you have proposed to us—but within the brief time, at my dis-

posal, previous to the meeting of the legislature, surrounded as I am daily by urgent official duties, it would be impracticable for me to collect, and perhaps tedious to relate, all the facts and events which otherwise I would be gratified to lay before you. I shall therefore, by way of narration, only attempt to show that the projected line of the James River and Kanawha improvement, constituting the central water-line through Virginia, has long been regarded with interest by some of the most eminent men of our state, and that it promises, when completed, as grand and brilliant results as perhaps ever followed the construction of any improvement whatever.

It should be promised that the construction of canals, for transportation, is of comparatively modern date in those countries with which Virginia has been most in communication. The first important canal constructed in France was that of Briare, begun in 1605, during the reign of Henry IV, and completed in 1642. The first considerable work of this kind in England was the Sankey canal, for which an act of parliament was passed in 1755. The Duke of Bridgewater commenced the execution of his project in 1758. In 1765, the general assembly of Virginia passed an act for improving the navigation of James River, from Westham downwards through the great falls, and the north branch of James River (now called the Rivanna), from the mouth thereof upwards, and authorized the trustees to contract for the cutting of such canals, and the building and placing such locks therein, as they might think proper, in the execution of those purposes. This is the act to which Mr. Jefferson (the third president of the United States) refers, when asking himself the question, "Whether his country was the better for his having lived at all?" "The Rivanna," he writes, "had never been used for navifiation; scarcely an empty canoe had ever passed down it. Soon after I came of age, I examined its obstructions, set on foot a subscription for removing them, got an act of assembly passed, and the thing effected, so as to be used completely and fully for carrying down all our produce."

The idea of a communication by a public highway, between the valley of the Ohio River and the valley of the James River, we may suppose to have originated with Governor Spotswood, when, on the 20th of August, 1716, he sat out from Williamsburg on his expedition over the Apalachian mountains, as he called them, but which we call the Blue Ridge. Previously, these mountains had been considered an impenetrable barrier to the progress and enterprise of the whites. It was he who, accompanied by his troop of rangers (men appointed for the defense of the frontiers), a few friendly Indians, and some of the gentlemen of the colony, effected the first passage over them, on horseback; in commemmoration of which event, he received from his king the honor of knighthood.

The first suggestion, however, of a through line, which I have seen, is contained in a letter of the Rev. James Maury (a nephew of John Fontaine, who accompanied Governor Spotswood in his trans-montaine expedition), dated Louisa county, Fredericksville parish, January 10, 1756. He is writing to one of his uncles of a map, and pamphlet explanatory of the same, published by Lewis Evans of Philadelphia, and says:

"Though both it and the pamphlet be liable to several exceptions, and I believe just ones, yet both are very useful in the main, and together, give an attentive peruser a clear idea of the value of the now contested lands and waters to either of the two competitor princes, together with a proof amounting to more than probability, that he of the two who shall remain master of Ohio and the lakes at the end of the dispute, must, in the course of a few years, without an interposal of Providence to prevent it, become sole and absolute lord of North America; to which I will farther add, as my own private opinion, that the same will one day or other render either Hudson's River at New York, or Potomac River in Virginia, the grand emporium of all East Indian commodities! Marvel not at this, however surprising it may seem; perhaps, before I have done with you, you will believe it to be not entirely chimera.

"When it is considered how far the eastern branches of that immense river, Mississippi, extend eastward, and how near they come to the navigable, or rather canoeable parts of the rivers which empty themselves into the sea that washes our shores to the east, it seems highly probable that its western branches reach as far the other way, and make as near approaches to rivers emptying themselves into the ocean to the west of us, the Pacific Ocean, across which a short and easy communication, short in comparison with the present route thither, opens itself to the navigator from that shore of the continent unto the Eastern Indies."

The "dispute" above referred to, was that known in Virginia as the "Seven years' war," or the "French and Indian war," commencing with the seizure of the post occupied by the Ohio company, at the fork of the Ohio River, and the erection there of Fort Duquesne, by Captain Contrecoeur, in the spring of 1754; which brings me to speak of one of the earliest and most illustrious friends, if not the real projector, of the James River improvement.

As early as 1748, George Washington, then just entering his seventeenth year, had been employed by Thomas, the sixth Lord Fairfax, to survey and divide portions of his land on the south branch of the Potomac River; which service brought him first into acquaintance with the region of the Alleghany mountains. The following year he was appointed a public surveyor, the duties of which office he performed for three years, and which again carried him into the same wild region.

In 1753, the governor of Virginia, Robert Dinwiddie, received information of a body of French forces being assembled in a hostile manner on the Ohio River. With the advice of the counsel, he selected and appointed Washington as an express messenger, to bear a letter to the commandant of the French forces, instructing him at the same time as to the nature of the enquiries and observations he was to make on his journey.

This expedition is an exceedingly interesting event in the life of Washington. It was accomplished amid sufferings and perils that required the constant exercise of extraordinary resolution, fortitude and endurance.

Leaving Williamsburg on the last day of October, he returned on the 16th day of the ensuing January, and delivered the letter which he had brought from the French commandant to the governor, and with it a manuscript journal of his travels.

It is said, that Washington on this occasion, in his interview with the governor and council, urged the importance, as well for commercial as for military purposes, of a connection between the east and the west. Be this as it may, it is known that he cherished such a scheme the balance of his life. In 1770, 1772 and 1774, he made tours of examination, with the view to supply himself with facts which would enable him to show the feasibility, expense and advantages of the connection. In a letter to Mr. Jefferson, dated the 29th, March, 1784, he informs him that more than ten years previously he had been struck with the importance of a communication between the waters of the Ohio and Potomac; that he became the principal mover of a bill in the general assembly, of which body he was then a member, to empower a number of subscribers to undertake, at their own expense, the extension of the navigation of the Potomac from tide water to Wills' creek, a distance of about one hundred and fifty miles, with a portage between it and the streams capable of improvement which run into the Ohio; that his plan comprehended a similar improvement and connection for the James River, and that it was in a tolerably good train, when he set out for Cambridge in 1775, to take the command of the army. The war afterwards, he writes, naturally called men's attention to different objects, and all the money they could raise was applied to other purposes.

General Washington resigned his commission as commander-in-chief, in December, 1783. At that time, he supposed that he was taking his "leave of all the employments of public life." Three months afterwards, we find him turning to his cherished project, and writing to Mr. Jefferson, "with you I am satisfied that not a moment ought to be lost in recommencing this business;" and then intimates that he could not determine how far, upon mature consideration, he might depart from the resolution he had formed, of living perfectly at his ease, exempt from every kind of responsibility. "The trouble," he continues, "if my situation at the time would permit me to engage in a work of this sort, would be set at nought, and the immense advantages which this country would derive from the measure, would be no small stimulous to the undertaking, if that undertaking could be made to comport with those ideas, and that line of conduct, with which I meant to glide gently down the current of life."

On the first day of September following, he left Mount Vernon on another tour to the west. The intention which mainly prompted this journey was to make an extensive and critical reconnaissance of the summit range which intervenes between the head waters of the Potomac and the Ohio rivers, and to supply himself with facts and arguments relative to the proposed double line of communication between the east and the west. The entire distance he traveled exceeded six hundred and fifty miles. Generally, it was performed on horseback; but in numerous instances, on account of the rough and rocky character of the country, he was compelled to dismount, lead his horse, and travel on foot. With few intervals, the routes that were examined lay through uncultivated, wild mountainous districts. When he reached the first settlement beyond Fort Cumberland, he was advised of the great dissatisfaction which prevailed among the Indians inhabiting the country, and cautioned, not unnecessarily to expose himself to their wiles and treachery. The information did not in the least deter him from the pursuit of his patriotic object. He kept a journal, in which were minutely recorded his conversations

with every intelligent person whom he met, respecting the facilities for internal navigation afforded by the rivers which have their sources among the Alleghany mountains, and flow thence either to the east or the west. He returned to Mount Vernon on the 4th day of October, and on the 10th of the same month communicated the results of his observations to the Governor of Virginia, Benjamin Harrison, a warm personal friend of Washington, and the father of William Henry Harrison, ninth president of the United States. In his letter introducing the subject, Gen. Washington says, "I shall take the liberty now, my dear sir, to suggest a matter, which would (if I am not too short sighted a politician) mark your administration as an important era in the annals of this country, if it should be recommended by you, and adopted by the assembly." And then proceeds, "It has long been my decided opinion, that the shortest, easiest, and least expensive communication with the invaluable and extensive country back of us would be by one or both of the rivers of this state; which have their sources in the Apalachian mountains."

Governor Harrison communicated the subject to the legislature with a message, as follows:

"IN COUNCIL, October 18, 1784.

"To the Honorable Speaker of the House of Delegates:

"The opening of the navigation of our western waters is of such immense consequence to the state, that it has engaged the attention of our late worthy commander-in-chief, and induced him to favor me with his opinion on the subject, which I enclose and request the favor of you to lay it before the assembly. His reasoning is so conclusive, that I have not a doubt of the utility of the measure remaining with me, and shall feel myself extremely happy if the assembly should coincide with me in opinion, and should set on foot the surveys recommended as a necessary prepartory step to the undertaking."

He then presents various considerations in its support.

On the 15th of November, General Washington arrived in Richmond, where the general assembly was then sitting. The house of delegates being informed of his arrival, adopted unanimously a resolution expressive of their reverence for his character and affection for his person, and appointed a committee of five members, of whom Patrick Henry was chairman, to wait upon him with the respectful regards of the house. The object of his visit was, not only to meet the Marquis de La Fayette, who arrived in the city on the 17th, but also to promote in the legislature his view of a plan of internal improvement.

On the 15th of December it was ordered in the house, that leave be given to bring in a bill for opening and extending the navigation of James River; and Mr. Madison, afterwards president of the United States, was made the chairman of the committee who were instructed to prepare and bring in the same. This bill became a law on the 5th of January, 1785, on which day the speaker, John Tyler (the father of John Tyler, the tenth president of the United States), signed the following enrolled bills, viz.: "An act for clearing and improving the navigation of James River;" "an act for opening and extending the navigation of the Potomac River;" "an act for vesting in George Washington, Esq., a certain interest in the companies established for opening and extending the navigation of Potomac and James rivers."

The act for clearing and improving the navigation of James River, authorized books of subscription to be opened in the City of Richmond, the Borough of Norfolk, at Botetourt Courthouse, at the Town of Lewisburg in Greenbrier county, and at Charles Irvings's store in Albermarle. The books were to be opened on the first day of February then next ensuing, and to be continued open until the tenth day of August following; and on the twentieth day of August there was to be a general meeting of the subscribers at the City of Richmond.

The subscriptions were limited to one hundred thousand dollars, provision being made for scaling them, in case more than that sum should be subscribed. The subscribers were incorporated into a company, by the name of The James River Company. They were empowered and required to elect a president and four directors, for conducting the undertaking and managing all the company's business and concerns, for and during such time, not exceeding three years, as the subscribers, or a majority of them, should think fit. There was to be a general meeting of the proprietors on the first Monday of October in every year, at such convenient town as should be from time to time appointed by the general meeting. The stock was declared to be real estate. Tolls were prescribed, but were allowed to be paid on condition only that the company should make the river well capable of being navigated in dry seasons by vessels drawing one foot water at least, from the highest place practicable, to the great falls, beginning at Westham, and should at or near the said falls, make such cut or cuts, canal or canals, with sufficient locks, if necessary, each of eighty feet in length, and sixteen feet in breadth, as would open a navigation to tide water, in all places at least twenty-five feet wide, except at all such locks, and capable of conveying vessels or rafts drawing four feet water at the least, into tide water, or should render such part of the river navigable in the natural course. The work was to be commenced within one year after the company should be formed, and completed within ten years thereafter.

A meeting of the subscribers was held in the City of Richmond on the 20th of August, 1785, when those books only which had been opened in Richmond, were laid before them; by which it appeared that the whole number of shares was nearly completed; but it was thought advisable to postpone the admission of other subscribers until the success of the books opened elsewhere could be known. Soon after the meeting rose, one of the managers above the falls reached the city, and gave an account of subscribers, which rendered it proba-

ble that the capital sum was overrun. On the next day the meeting proceeded by ballot to the election of a president and four directors; when George Washington was elected president, and John Harvie, David Ross, William Cabell and Edmund Randolph were elected directors.

Edmund Randolph (afterwards attorney general and secretary of state of the United States under General Washington's administration), in communicating these facts to the general, wrote:

"I endeavored to deliver you from the appointment of the office of president, but the universal suffrage called you to the post, without an expectation, however, that you should undergo more of the business than your own convenience may reconcile to you."

The regular annual meeting took place in October, when the same officers were elected for the term of three years. Subsequently, Jas. Buchanan was elected by the board of dirctors treasurer, James Harris was elected manager, and James Brindley engineer.

This constituted the "Old" James River Company. It continued until the year 1820. The presidents successively were: George Washington, from the 21st, August, 1785, to the 5th, October, 1795; William Foushee, from the 5th, October, 1795, to the 20th, January, 1818; John G. Gamble, from the 21st, January, 1818, to the 22d, March, 1819; Wilson Cary Nicholas, from the 22d, March, 1819, to the 20th, February, 1820.

On the 17th, February, 1820, the legislature passed an act entitled "an act to amend the act entitled an act for clearing and improving the navigation of James River and for uniting the eastern and western waters by the James and Kanawha rivers." The provisions of this act were made subject to the ratification of the James River Company, which having been duly given, the act was thereafter to be considered a compact between the commonwealth and the company. By the terms

of the compact, the rights and interests of the company were transferred to the commonwealth, the company acting as an agent and holding in trust for the benefit of the commonwealth, but executing the improvements under the control, direction and superintendence of commissioners appointed by the legislature. By an act passed February 24, 1823, this mode of prosecuting the work was abandoned, and from and after that time all the rights, powers, duties and privileges of the president and directors were conferred upon the governor, lieutenant governor, treasurer, auditor and second auditor of the commonwealth, ex-officio, whose transactions were to be still in the name of the "James River Company." This organization continued until the year 1835. The president under the compact was John Coalter from the 29th, February, 1820, to the 17th, March, 1823. The governors, who were presidents ex-officio, were James Pleasants, John Tyler, William B. Giles, John Floyd, Littleton Waller Tazewell.

The James River and Kanawha Company was incorporated March 16, 1832, and organized May 25, 1835. By the charter the whole interest of the commonwealth in the works and property of the then existing James River Company was transferred to the James River and Kanawha company; the state being interested in the latter to the extent of three-fifths of its capital stock, and individuals and corporations to the extent of the remaining two-fifths. No change of organization has since been made. The presidents have been Joseph C. Cabell, from the 28th, May, 1835, to the 10th, February, 1846; Walter Gwynn, from the 5th, March, 1846, to the 7th, May, 1847; William B. Chittenden, from the 7th, May, 1847 to the 12th, February, 1849; John Y. Mason, from the 11th, May, 1849, to the 26th, October, 1853; Thomas H. Ellis, from the 26th, October, 1853, to the present time.

The old James River Company constructed a canal around the falls of James River, extending from the city of Richmond to Westham, a distance of about seven miles, and improved the

bed of the river by sluices as high as Looneys' creek in the county of Botetourt. The capital was $140,000—one-half owned by the state, the other half by individuals. In addition to the capital, which was expended in original work, there was expended out of the profits, in constructing locks at Richmond to communicate with tide water, and other permanent improvements, in improving the navigation of the North River in Rockbridge county, the Rivanna River in Fluvanna county, and Willis' river in Cumberland county, and in repairs, the sum of $234,000. For the rights of the James River Company in the waters of James River, and the improvements and works of the company, the state agreed to pay the stockholders an annual dividend of 12 per cent. for the term of twelve years, and of 15 per cent. forever thereafter, upon their shares. The stock is now owned and held as follows, viz.:

By the commonwealth of Virginia	250	shares
By the Board of public works	34	"
By the Literary fund	225	"
By Washington college	100	"
By William and Mary college	22	"
By Individuals	69	"
Total	700	"

Which are estimated at $500 per share.

The second James River Company, on state account, enlarged and reconstructed the former canal from Richmond to Westham, and extended the same to Maiden's Adventure in Goochland, a distance of 28 miles; constructed a canal through the Blue Ridge, seven and a half miles long; constructed a turnpike road from Covington to the mouth of Big Sandy River, two hundred and eighty miles long; and improved the Kanawha River by wing dams and sluices, from Charleston to its mouth a distance of about sixty miles. According to a re-

port made by the second auditor to the house of delegates, dated 23rd, December, 1843, these several improvements cost the state (exclusive of the expenditure by the old James River Company) as follows:

James River canal	$ 643,808.28
Blue Ridge canal	368,609.28
Kanawha turnpike road	263,837.63
Kanawha River	91,666.72
	$1,367,921.91

These works were sold to the James River and Kanawha Company at the valuation of one million of dollars, the state receiving a credit for that amount in part of her subscription to the capital stock. The new company moreover was charged with the payment of the annuity of $21,000 forever to the stockholders of the old James River Company; and as this sum is equivalent to a principal of $350,000 at six per cent. interest, it will be seen that the present company took the old works at the price of $1,350,000, which makes their proportional cost as follows:

James River canal	$ 635,373.39
Blue Ridge canal	363,779.92
Kanawha turnpike road	260,380.94
Kanawha River	90,465.75
	$1,350,000.00

For an exceedingly able and interesting review of the affairs of this company, and vindication of its general policy, I refer you to the supplement to the eleventh annual report, prepared by the first president, Joseph C. Cabell, Esq. [See Annual Reports, vol. 2, p. 627 to 769.]

For an equally lucid and conclusive exhibit of the very striking advantages afforded by this improvement, I refer you to the report made by Edward Kenna, Esq., chairman of a select committee, to the twenty-first annual meeting [see Annual Reports, vol. 5, p. 104 to 166], and to a report, or rather "notes and memoranda," furnished by Chas. B. Fisk, Esq., chief engineer of the Covington and Ohio railroad, for the use of an internal improvement convention, which assembled at the White Sulphur Springs in the summer of 1854. This document is herewith separately communicated, together with a map and profile.

Experience in this country has not been altogether favorable either to the construction or management of public works exclusively on state account. It is believed that objections are applicable also to corporations over which the state has no control. We, here in Virginia, have adopted what is known as the "joint stock" system—combining public and private subscription, and regulated by a scale of voting, which is intended to make the power of the state a conservative, preventive power, while generally the governing power is left to that vigilance, prudence and economy which private interest is presumed to impart. In the case of the James River and Kanawha Company, each stockholder may, in person or by proxy, give the following vote, on whatever stock he may hold in the same right, to wit: one vote for each share of such stock not exceeding ten, and one vote for every four shares exceeding ten: but the vote of the state shall not exceed two-thirds of the whole number of votes given by others in the same elections, or on the same question.

The capital stock is at present held as follows:

By the commonwealth of Virginia	30,000	shares
By the Bank of Virginia	5,004	"
By the city of Richmond	5,768	"
By the city of Lynchburg	673	"
By Washington college	100	"
By individual stockholders	8,455	"
Total	50,000	

To constitute a general meeting, there must be present, either in person or by proxy, a number of stockholders having a right to give a majority of all the votes which could be given at a meeting of all the stockholders.

The stock held by the state is represented in these general meetings by three proxies appointed by the Board of public works.

The affairs of the company are administered by a president and six directors, constituting a board, chosen as follows: the president is elected by a vote of all the stockholders present in general meeting; one director is elected in the same manner; two directors are elected by vote of the private stockholders alone; and three directors are appointed by the Board of public works. These appointments and elections are made annually.

A branch organization, which is meant to be merely temporary, called The Kanawha Board, has been recently introduced, for the purpose of aiding in improving the navigation of the Kanawha river from its mouth to Loup creek shoals. It is composed of the president of the company and five directors, three of whom are appointed by the Board of public works, and two elected by the stockholders other than the state. The directors are required to be residents of the Kanawha valley. The Kanawha board, as special agents, are en-

trusted with the control, management and supervision of the Kanawha improvement, subject to the instructions of the stockholders, but have no control over any of the other works or affairs of the company. In case the president shall differ with the Kanawha directors in any matter involving in his opinion the general interests of the company, he has authority to call a meeting of the two boards of directors together, and submit such matter to them as one board; and their decision shall be carried into effect.

By the act of incorporation it is provided that the works which the James river and Kanawha company "shall construct, and the property which they shall acquire by purchase or condemnation, under the authority of this law, shall be vested in them and their successors forever, for their own use and benefit, exempt from all public taxes, burdens or charges, other than those which may be imposed or authorized by this act."

I come now to a description of the line.

What is usually known as the Virginia water line, extends from the capes of Virginia to the Ohio river, a distance of 636 miles, and consists of—

I. The James river, from its mouth to the head of navigation at the city of Richmond, a distance of 151 miles; and

II. The James river and Kanawha improvement, extending from the city of Richmond, to Point Pleasant, at the mouth of the Kanawha river, a distance of 485 miles.

James river is navigable for ships of one thousand tons burden, drawing seventeen feet, from its mouth to City Point, 36 miles below Richmond. From City Point, vessels drawing fifteen feet water, can ascend to Warwick, five miles below Richmond. From Warwick to Richmond the river is navigable at this time for vessels drawing eleven and a half feet water. But improvements are in progress, at the expense and

under the supervision of the city of Richmond, by which the depth will be increased to sixteen feet, from Richmond to City Point.

The James river and Kanawha company have, however, no authority over James river below Richmond.

For the purpose of description, the James river and Kanawha improvement will be divided into—

1st. The Richmond dock and tide water connection, ...1 mile

2nd. The first division of the canal, extending from Richmond to Lynchburg, ...146½ miles

3d. The second division of the canal, extending from Lynchburg to Buchanan, ... 50 miles

4th. The third division of the canal, extending from Buchanan to Covington, ... 47 miles

5th. The fourth division of the canal, extending from Covington to the Greenbrier river, ...33½ miles

6th. The Greenbrier and New rivers to Loup creek shoals on the Kanawha, ... 119 miles

7th. The Kanawha river from Loup creek shoals to the Ohio river, ... 89⅓ miles

First. The Richmond Dock and tide water connection—By means of this improvement, vessels ascend from the river into the dock, where they are met by canal boats, which ascend from the basin at the terminus of the canal, and lay alongside the vessels, for the purpose of exchanging cargoes; or, the canal boats can descend to the river, and without breaking bulk, be towed to City Point or Norfolk.

Vessels enter the dock by means of a ship lock, which is founded upon solid rock, and built of the most substantial cut granite. It is 180 feet long between the gates, 35 feet wide, has a lift of 15 feet, and has 16 feet water on the mitre sill. It will pass vessels of 500 tons.

The dock is 4,100 feet long from the ship lock to 17th street, and has a continuous wharf, protected by a granite wall, for its whole length on the north side, and for about 1,000 feet on the south side. The depth is from 11 to 15 feet, and the average width 100 feet. Above 17th street is a continuation called "the upper dock," which is also surrounded by a substantial granite wall, and is now only used by canal boats, but whenever the trade shall demand it, it can be made accessible to vessels, by means of a pivot bridge, thrown across in the line of 17th street extended. This upper portion is 800 feet long and 200 feet wide.

The dock is connected with the basin by means of five locks, having an aggregate lift of 69 feet. These locks are built of hewn granite, and, with the ship lock, will in their style and finish compare favorably with any similar works in this country.

The total cost of the dock and tide water connection has been $851,312. It was completed in the year 1854.

Second—the first division of the canal, extending from the basin in Richmond to the city of Lynchburg, comprising 137¾ miles of canal and 8¾ miles of slackwater navigation.

The trunk of the canal is 30 feet wide at the bottom, and 50 feet at the water line, and was originally cut to the depth of five feet. The tow-path is 12 feet wide and the berm bank 8 feet.

The locks are 100 feet long between the gates, and 15 feet wide in the chamber. The total lockage from the basin in Richmond to Lynchburg is 429 feet. The works of art on the first division consist of—

Fifty-two lift locks having a total lift of 429 feet; 6 guard locks; 2 accommodation locks; 3 principal dams across James river, affording slack-water navigation; 9 other dams across James river, or to islands in the river, which serve for the purpose of feeders to the canal, or for connection with the

south side of the river; 11 aqueducts, three of which have wooden trunks, and the remainder are of cut stone; 191 culverts; 133 farm and road bridges over the canal; 3 tow-path bridges.

Of the locks 22 are built of cut stone, and the remainder of rubble masonry, faced with timber and plank.

For a minute description of this division of the canal, see the 5th annual report of the president to the stockholders, from page 515 to page 542.

It was completed in the year 1840, and has cost $5,837,628, or $39,982 per mile.

On the first division are works connecting the canal with the south side of the James river, usually called the South Side Connections. These works are a dam and an outlet lock at Cartersville, and three bridges; one at New Canton, one at Hardwicksville, and one at Bent Creek. These bridges are wooden, arched, and covered, and built upon cut stone abutments and piers. The total cost of the South Side Connections has been $162,685

There is also a connection on the north side of the river with the improvement of the Rivanna river, an important tributary to the James, which has cost the James river and Kanawha company the sum of $115,043.

Third—The second division of the canal extends from the city of Lynchburg to the town of Buchanan, a distance of 50 miles, and consists of 22 miles of canal and 28 miles of slackwater navigation.

The principal works of art on this division are—

Thirty-eight locks, having a total lift of 299 feet, built with a few exceptions of cut stone; 4 stone dams, and 7 timber dams, across James river; 1 aqueduct of 50 feet span; 8 culverts; 48 square drains; 17 tow-path bridges, 2 farm bridges

and 1 street bridge, of 100 feet span, over the basin at Lynchburg.

For a minute description of this division, see 17th annual report, from page 218 to 225.

It was completed in the year 1850, and has cost $2,422,556, or $48,451 per mile.

Connected with the second division is the North river improvement, extending from the mouth of North river to the town of Lexington, a distance of 19¾ miles. Of this improvement 10 miles are canal, and 9¾ are slack-water navigation. The principal works of art are——

Twenty-two locks, all of rubble stone masonry, and of the same size as those on the main line of the canal, and having a total lift of 188 feet; 9 stone dams, and one timber dam, across North river, and 4 aqueducts.

For a more particular description of this work, see the 23d annual report, from page 373 to 375. This work is not yet completed, but will be by the end of the following year. It has already cost, including the outlay of the North river navigation company, by which company it was commenced, $506,551; and to complete it, it is estimated will cost about $30,000 additional.

Fourth—The third division of the canal, follows the valley of James and Jackson rivers from Buchanan to Covington, a distance of 47 miles.

This division has been definitely located, and the first 15 miles above Buchanan was put under contract in the year 1853, but, for the want of funds, the work was suspended in the year 1856.

Forty-one miles are canal, and six miles slack-water navigation. The total lockage is 436¾ feet.

The principal mechanical structures are 36 lift locks, two guard locks, one guard and lift lock, four aqueducts across James river, each about 320 feet long, three aqueducts of 50 feet span, and three dams across James river. There are also the Marshall tunnel 1,900 feet long, and the Mason tunnel, 198 feet long; by means of which, 5⅝ miles of distance are saved.

Of this work there are now nearly completed ten lift locks, and the abutments and piers of three of the aqueducts over James river. The foundations of two of the dams, up to the surface of low water, have been put in; about 800 feet of the Marshall tunnel has been excavated, and the Mason tunnel is completed. The mechanical work upon this division is executed in the best style, and of the most substantial material, all of the structures being built of hewn limestone, laid with hydraulic cement.

The estimated cost of this division, based upon careful surveys and accurate cross sections of the whole line, and estimated at prices for which a good deal of the work has been let and partly executed, is	2,555,131.00
The amount of work done is	511,094.00
Leaving the amount still to be done,	$2,044,037.00

Fifth—The fourth division of the canal, extending from the town of Covington to the Greenbrier river, 33⅓ miles.

At Covington the canal crosses Jackson's river by an aqueduct, and follows the valley of Dunlap's creek to Crow's tavern, at the base of the Alleghany mountain, a distance 17½ miles; for a description of which see 20th annual report, page 756.

At Crow's the line of canal leaves the valley of Dunlap's

creek, and following the bed of Fork run, ascends the eastern side of the Alleghany mountain, by a series of locks and dams, to the summit level.

The distance from Covington to the eastern entrance of the Alleghany tunnel is 20.7 miles, and the total lockage is 675 feet.

The summit level is 4½ miles long, and 1,921 feet above tide water, and pierces the Alleghany mountain by a tunnel 2 6-10 miles long.

Emerging from the western side of the Alleghany mountain, the canal descends by the valleys of Tuckahoe and Howard's creeks, 241 feet in a distance of 10 miles to the Greenbrier river.

The summit level, and the portion of the canal on each side of it between Dunlap's creek and the Greenbrier river, a distance of 15½ miles, will be supplied with water chiefly from Anthony's creek. Upon this creek a reservoir is to be made, covering 2,753 acres of land, and having an average depth of 60 feet, from which the water will be conducted by a feeder canal about 9 miles long, to the summit level. For information and proof of the sufficiency of the supply of water for the summit level, see "reports on the survey of summit level," in 17th and 18th annual reports.

The works of art on this division east of the Alleghany, will be 63 locks, 8 dams across Dunlap's creek, and 1 across Brush creek; one aqueduct over Jackson's river 250 feet long, and one over Dunlap's creek 100 feet long; and west of the Alleghany, there will be 24 locks, one aqueduct of 50 feet span over Tuckahoe creek; one aqueduct of 50 feet span over Howard's creek, and one dam across Howard's creek.

The estimated cost of the fourth division is as follows:

1. From Covington to the eastern entrance of the Alleghany tunnel 20.7 miles, based upon an estimate made by John B. Mills, Civil engineer, in 1851, to which the chief engineer adds 25 per cent., making	1,574,086.00
2. From the eastern entrance of the Alleghany tunnel to Greenbrier river, 12.63 miles, including the reservoirs and feeders for the summit level, based upon surveys made in the year 1851, by Edward Lorraine, now chief engineer, revised and corrected, with 20 per cent. added for contingencies	2,842,821.00
Total estimated cost of fourth division	$4,416,907.00

Sixth—The Greenbrier and New rivers, from the mouth of Howard's creek to Loup creek shoals on the Kanawha, 119 miles.

From the mouth of Howard's creek to the Ohio river, the character of the improvement will be changed. The line that we have been heretofore occupied with from Richmond to the Greenbrier river is to consist of a canal of the dimensions previously described under the head of the "First division." The line down Greenbrier, New and Kanawha rivers, will consist of an improvement of those rivers for steam boat navigation—and the mouth of Howard's creek, or what is known as "Greenbrier bridge," will be either the point of transhipment from steam boats to canal boats, or the point where canal boats having been towed up by steam boats, will change steam power for horse power, and vice versa.

1. Greenbrier river, from Greenbrier bridge to New river, 49.62 miles.

This part of the line was surveyed by Edward H. Gill, civil engineer, in the year 1841, and an estimate of the cost of a mixed improvement for canal and slack-water navigation was furnished.

The present chief engineer has estimated this section of the improvement from Mr. Gill's notes of the width and fall of the river, but has provided for locks and dams adapted to steam boat navigation. The dams and locks to be of stone. The locks to be 200 feet long between the gates, and 40 feet wide in the chamber, which will admit steam boats of 350 tons burden, or four canal boats at once.

Twenty-one dams 300 feet long and 25 feet high, with locks as above, at $116,500 each, $2,446,500.

2. New river, from the mouth of Greenbrier to the foot of Loup creek shoals, 69.28 miles.

This part of the line was estimated by Mr. Gill for a lock and dam improvement, adapted to steam boat navigation, the locks to be 130 feet long and 30 feet wide. [See his report, in the 7th annual report, page 61.]

As his estimate was for stone dams and locks, the present chief engineer has adopted it, and made the requisite addition thereto for the increased length of the locks.

The economy of increasing the length of the locks will be obvious, when you consider that the short locks will only pass steam boats of 175 tons burden, or two canal boats, while the long locks will pass steam boats of 350 tons, and four canal boats, thus doubling their capacity, at a cost of about $765,000, or about 37 per cent. on the original estimate.

After making the addition for the increased size of the locks, Mr. Lorraine adds 20 per cent. to the whole, for contingencies, which brings the estimate for the New river division, to $3,396,480.

It may be proper to state that the surveys of the Greenbrier and New rivers have not been so elaborate nor so exact as those of other parts of the line, but they have been surveyed sufficiently to obtain a correct profile, and the general character of the beds of the streams, and to establish beyond any doubt the practicability of their improvement in the manner proposed. Of the practicability of their improvement, we may feel well assured by the concurrent opinions of Benjamin Wright, Edward H. Gill and Charles B. Fisk, three eminent, practical, hydraulic engineers. Judge Wright, after acquiring practical experience and high reputation on the Erie canal, was selected as the first chief engineer of the James river and Kanawha company. In his letter to the board of directors, published in the 7th annual report, page 73, he says: "From the facts disclosed by the survey on the lines of the Greenbrier and New rivers, I am satisfied that the difficulties of improving those rivers have heretofore been overrated. and that the plans now proposed for that purpose are both practicable and expedient. I have carefully examined the estimates for the rivers above named, and am impressed with the belief, that with good management the work can be successfully executed for the amount of those estimates."

Mr. Fisk, the late eminent chief engineer of the Chesapeake and Ohio canal, has also personally examined the Greenbrier and New rivers, and approved of the proposed plan for their improvement. See his "report on the improvement of the Kanawha, New and Greenbrier rivers," in the 21st annual report, page 74.

Seventh—The Kanawha river from Loup creek shoals to its mouth, a distance of 89-3/10 miles.

This river is already navigable for steam boats for 70 miles above its mouth, for about ten months in the year, but the navigation is interrupted by low water for four months in the year, and entirely suspended for about two months.

It is proposed to improve this stream by straightening and deepening the channels, and by concentrating the water in them by means of wing dams.

The estimate of the cost of this section is based upon recent surveys made under the direction of the present chief engineer, and is as follows:

Dam at Lyken's shoal, 650 feet long and 20 feet high, with guard and lift lock of 10 feet lift, all of stone,	139,750
From Lyken's shoal to Point Pleasant, improved for sluice navigation, as above described,	410,565
	550,317
Add for contingencies, 10 per cent.	55,031
Total cost of improving Kanawha river	$605,348

I will remark that the proper plan for the improvement of the Kanawha River has been a subject of contention since the organization of the company. In 1838, Mr. Charles Ellet, Jr., at that time the chief engineer of the company, recommended an improvement by sluices, and canals, and locks in the river. Judge Wright, the consulting engineer of the company, dissented from these views of Mr. Ellet, and recommended an improvement partly by sluices and partly by locks and dams across the river. See 4th annual report, page 462 to 491. In 1854, Mr. Charles B. Fisk was requested to examine the Kanawha, and report a plan for its improvement, which he did, and recommended an improvement by open dams. See his reports, 20th annual report, page 741, and 21st annual report, page 74. Mr. Fisk's plan was formally adopted by the stockholders in January, 1858. In March, 1858, the stockholders resolved to employ Mr. Charles Ellet, jr., to examine the Kanawha river, with a view to its improvement

by means of reservoirs. Accordingly, in the ensuing summer, Mr. Ellet made a survey, and at the 24th annual meeting submitted an elaborate "report on the improvement of the Kanawha, and incidentally of the Ohio river, by means of artificial lakes." Thereupon the stockholders rescinded their resolution of January previous, and referred the whole subject to a committee of eleven, with authority and instructions to decide upon what plan the river should be improved. The committee of eleven met on the 24th of February last, and adopted Mr. Ellet's plan of improvement. The stockholders, upon receiving the report of this committee, at the last annual meeting, merely ordered it to be laid upon the table.

The committee, while adopting Mr. Ellet's plan, recommended that it be carried out only in part at present, by an improvement estimated to cost $250,000.

The estimated cost of improving the Kanawha river upon Mr. Fisk's plan, is $605,348.

The cost of improving the river on Mr. Ellet's plan, is estimated by him at $500,000.

It is the opinion of the present chief engineer, that the bed of the river cannot be improved upon any plan adequate to the accommodation of the through trade, for a less sum than the estimate for Mr. Fisk's plan; and that if Mr. Ellet's reservoirs be built, the sum of $529,080 should be added, making the total estimated cost of improving the Kanawha river, $1,134,428.

In the present state of the case, I have taken Mr. Lorraine's estimate of $605,348, as the cost of improving the river from its mouth to Loup creek shoals.

RECAPITULATION.

Cost of the finished portion of the James river and Kanawha improvement:

Dock and Tide water connecton, ...	851,312
First division, Richmond to Lynchburg, ...	5,837,628
South side connections, ...	162,685
Rivanna connection, ...	115,043
Second division, Lynchburg to Buchanan, ...	2,422,556
North River improvement, as completed, ...	536,551
Third division, work done, ...	511,094
	$10,436,869

Estimated cost of the unfinished portion of the James river and Kanawha improvement:

Third division Buchanan to Covington, 47 miles, ...	2,044,037
Fourth division, Covington to Greenbrier river, 33.33 miles, ...	4,416,907
Greenbrier river, 49.62 miles, ...	2,446,500
New river, 69.28 miles, ...	3,396,480
Kanawha river, 89.30 mles, ...	605,348
Total miles, 288.53	
	$12,909,272

Let us now try to estimate the future trade of this line.

In considering this branch of our subject, it will be of course impossible to use that exactness of expression and accuracy of facts and figures which I have been enabled so far to use when speaking of the past. We enter now somewhat into the region of probabilities; making our comparisons of a future, not however wholly speculative or fanciful—but a future which, based upon certain facts, and governed by certain laws, must produce certain results. The laws of trade are as fixed and sure as those of nature. One of them is, that all other things being equal, freight will seek the shortest and cheapest route to market. If, then, it can be shown that the water line route through Virginia is the shortest and cheapest transit for the products of the great west to the Atlantic seaboard, and thence to a European market; if it can be shown that this route possesses eminent and distinguishing advantages over every other route; the question will be, not what will be the trade of the James and Kanawha canal, but what the capacity of the canal: for its trade will be the trade of the great west, limited only by its capacity to accommodate that trade.

I have already invited your attention to Mr. Cabell's "supplement," and Mr. Kenn's and Mr. Fisk's reports. I now again adduce them, for proof of the position just taken in regard to the superiority of the Virginia water line route. If I mistake not, you will admit their arguments to be absolutely conclusive on this point. In reference to Mr. Fisk particularly, I deem it appropriate to say, that he is one of the most distinguished civil engineers in the United States, and one who is remarkable for the caution with which his statements are made, and their accuracy when made. You will observe in his report, that while his object is to prove the advantages and value of the Covington and Ohio railroad, he has demonstrated that that road is chiefly indebted to its connection with the water line for its superiority over other routes in the transportation of heavy freight.

I can add but little to the facts and arguments presented by these gentlemen, in their respective reports; yet I may show, that Virginia possesses not only the best route from the Ohio to the Atlantic, but that upon her Atlantic seaboard she possesses the most capacious safe and convenient harbor from Florida to New Foundland; and for this purpose I take the testimony of Lieutenant Matthew F. Maury, of the United States navy, whose contributions to nautical science have elicited the applause of the world. In a series of letters to his son, upon the internal improvements of Virginia, published in the year 1854, he thus describes the commercial advantages of Norfolk:

"As to the natural advantages of position, depth of water, and accessibility by land and sea, NORFOLK HAS NO COMPETITOR AMONG THE SEAPORT TOWNS OF THE ATLANTIC.

"Midway the Atlantic coast line of the United States, Norfolk is the most convenient, because the most central point where the produce of the interior may be collected, and whence it may be distributed, north and south, right and left among the markets of the seaboard.

"Its climate is delightful. It is exactly of that happy middle temperature where the frosts of the north bite not, and where the pestilence of the south walketh not. Its harbor is commodious, and as safe as can be. It is never blocked up with ice, and as to the egress and ingress between it and the sea, it possesses all the facilities that the mariner himself could desire. It has the double advantage of an outer and inner harbor. The inner harbor is as smooth as any mill pond; in it vessels lie with the most perfect security, where every natural facility imaginable is offered for lading and unlading. Being ready for sea, the outward bound trader dropping down from this snug mooring, and approaching the sea, finds a storm

raging from outside. The outer harbor then affords a shelter until the fury of the gale is spent, when the white-winged messenger trips her anchor, trims to the breeze, and goes forth rejoicing on her way to the haven where she would be.

"Moveover, the prevailing winds in the parallel of Norfolk are westerly winds, which are fair for coasting, and for going seaward in any direction. A little to the south of that parallel you find the northeast trades, which are fair winds for the inward bound Norfolk vessel.

"Then there is the gulf stream—that mighty river in the ocean—upon the verge of which Norfolk stands. It flows up with a current which, without the help of sweeps, sails or steam, will carry the European bound vessel out of Norfolk at the rate of nearly one hundred miles a day, directly on her course.

"Then at the sides of this, and counter to it, are eddies which favor the same vessel on her return to Norfolk. These hawse her along and shorten her voyage by many a mile.

"Next, to complete the survey seaward, cast your eye down to the great Amazonian water shed of South America. That river drains a district of country twice as large as the whole Mississippi valley. The volume of water discharged by the Amazon, into the sea, exceeds by six fold that which the Mississippi empties into the gulf; and it opens a highway for commerce and navigation from the sea to the foot of the snow capped mountains that rise upon the rim of this great basis, and touch the clouds under the equator. This country is to be the CORNUCOPIA of the world. Its climate is that of an eternal spring, its soil the most prolific on the face of the earth, and its minerals the richest and the rarest, and the most abundant that ever adorned the person, or ministered to the convenience of man.

"But you have read your uncle Lewis Herndon's Exploration of the Amazon—you have studied with me the physical geography of the country drained by it, and you understand how and why the winds are constant and fair both ways for vessels trading between that river and Norfolk.

"Such are the natural advantages of Norfolk seaward. Let us look ashore, and consider them landward. You will better appreciate these by studying them in contrast. Therefore, we will compare them with the natural inland advantages of New York.

"A bay or harbor which is conveniently accessible to the sea, is supposed to offer natural advantages for a commercial city in proportion to the fertility and extent of the back country that is tributary to it. The back country that is naturally tributary to the city of New York, is confined to the counties that are drained by the Hudson, or washed by the waters of the sound. And if there were no such things as internal improvements—no way in the interior by which produce and merchandise could be transported from one water shed to another—the people for whom New York would export and import would be those who live in the valley of the Hudson, or who inhabit the shores of Long Island sound.

"Now, contrast the fertility and extent of this country with the back country that is tributary to Norfolk. Both shores of Chesapeake Bay are tributary to it; and this magnificent sheet of water is the natural receptacle also of the drainage and surplus produce of the valleys of the James river, the York, the Rappahannock, the Potomac, and the Susquehanna, and surplus produce of the valleys of the James river, the their shores. The back country therefore which, without portage, is naturally tributary to Norfolk, not only surpasses that which is tributary to New York, in mildness of climate, in fertility of soil, and variety of production, but also in geographical extent by many square leagues, the proportion being as three to one in favor of the Virginia port.

"But there are such things as natural portages, by which commerce even in a rude state may pass from one river valley to another on its way to the sea. Now let us see what portions of country are nearer to New York and what to Norfolk, assuming that if these natural portages be equally improved, all that country which they will bring nearer to Norfolk will be tributary to Norfolk, and all that they may bring nearer to New York will in like manner be tributary to New York.

"Therefore, to divide and lay off this back country, turn to the map; stretch a string upon it from Norfolk to New York, and make a dot half way between them. Now seek a point on the south shore of lake Erie, that is equidistant from New York and Norfolk; draw a line from the dot to this point, and you will have a dividing line of distance between the two places, every point along which will be just as far from the one place as the other. You will find that this line runs through Delaware, and cuts lake Erie near Cleveland, Ohio.

"Thus you will perceive that Chicago, in Illinois, and St. Louis, Missouri, are actually nearer to Norfolk than they are to New York, even by an air line. You see, moreover, that as between New York and Norfolk, the natural advantages here are greatly in favor of the latter. THE MOST DIRECT WAY TO THE SEA THROUGH EITHER OF THESE PORTS, FROM MOST OF THE LAKE COUNTRY, AND FROM ALMOST THE ENTIRE MISSISSIPPI VALLEY, LIES THROUGH VIRGINIA. The natural advantages then, of Norfolk, in relation to the sea, or to the back country, are superior beyond comparison to those of New York."

The present delegate elect from the city of Norfolk to the general assembly (Mr. Bisbie, wrote a pamphlet two or three years ago, entitled "An appeal for the speedy com-

pletion of the water line of Virginia," which has been extensively circulated, and has attracted much attention, in which he thus strongly groups his views of what he calls the two grand centres of Atlantic and interior trade.

"We beg the reader to look again at the map; to observe that the junction of the Ohio with the Mississippi is the grand converging point of the Kansas, Nebraska, Missouri, Mississippi, Illinois, Ohio, Cumberland and Tennessee rivers—the geographical centre of their trade, and the converging and diverging point of full ten thousand miles of inland steam boat navigation—a vastly greater amount than any other gathering point in the world!

"Then look at Norfolk, the great central seaport of the Atlantic; at the very centre of the Atlantic coast; on the finest, most convenient, safe and capacious harbor on this continent: open at all times of the year; accessible from any point and with any wind; and, all in all, better calculated for a mighty trade than any harbor in the world!

"Then consider, this vast centre of interior, and this vast centre of Atlantic trade, are, excepting the little space occupied by the 'unfinished section,' connected by an unbroken water line, which is at once shorter, safer, cheaper, and more reliable than any other, and open to trade for eleven months in the year.

"Does it not look as if these two great centres were made expressly for each other—and that we are almost abusing Providence in letting the little gap remain unfinished?"

The present patriotic, able and eloquent chief magistrate of our state, in his letter to Mr. Lacouture, of the 12th April, 1857, expresses himself to the same effect. He describes Norfolk as "a point where there is a harbor spacious enough and deep enough for all the merchant and naval marine of the world, and affording a site for a city rivaling in the

course of time New York or London." He portrays in the most graphic language the resources of Virginia within her own limits—demonstrating that her counted and uncounted wealth alone, is enough to justify all her expenditure and taxation, past and prospective, for the completion of her main lines of improvement—and particularly that line which is to join the waters of the Chesapeake to those of the Ohio—which has ever been a favorite improvement with him. And he adds: But if Virginia were a waste from the seaboard to the Ohio, without a tithe of this perpetual resource, still the back country beyond her is interminable and exhaustless, AND HER ELIGIBILITY OF TRACK FOR ITS PRODUCE IS WORTH TEN FOLD MORE MILLIONS THAN SHE CAN EVER BE CALLED ON TO EXPEND!"

The evidence would thus appear to be conclusive, that when the Virginia canal is completed, it will command the trade of the west, and doing that, must be worked to its utmost capacity; and therefore, in calculating the future trade of this improvement, we have only to decide upon its actual capacity for through freight, in connection with its tributary and way freight.

The capacity of the canal at Richmond will be limited by the number of boats that can be passed through the first lock above the city. To ascertain this, we will suppose a boat to pass through this lock every 7½ minutes; which was the daily average on the Erie canal at lock No. 3, in the year 1853, when that canal did its heaviest business; and we will assume that the canal will be in working order for eleven months in the year, or 330 days, and that the average load of a boat will be 50 tons, or 100,000 pounds. There would then pass this lock in one year, 63,360 boats and 3,168,000 tons. This is less than the actual tonnage on the Erie canal in 1853, which amounted to 1,742,056 tons of up freight, and 2,505,797 tons of down freight, a total of 4,247,853 tons. Assuming then that 3,168,000 tons will enter or leave the basin at Rich-

mond, it is necessary to determine the different points to and from which this freight will be shipped, and how much of it will be throught freight. The present tonnage on the canal is about 200,000 tons, of which about

10,000 tons are carried ..... 196 miles
80,000 tons are carried ..... 146 miles
110,000 tons are carried ..... 50 miles

If the work were fully and fairly in use, I think we might calculate upon the following increase and distribution of freight:

140,000 tons, an average distance of 50 miles, at 1½ cents per ton per mile	105,000.00
130,000 tons, to and from Lynchburg, a distance of 146 miles, at 1 cent per ton per mile	189,800.00
20,000 tons, to and from Buchanan, a distance of 196 miles, at 1 cent per ton per mile	39,200.00
30,000 tons, to and from Covington, a distance of 243 miles, at ¾ cent per ton per mile	54,675.00
100,000 tons cannel coal and oil from the Kanawha valley to Lynchburg, a distance of 250 miles, at ½ cent per ton per mile	125,000.00
200,000 tons cannel coal and oil from Kanawha valley to Richmond, a distance of 400 miles, at ¼ cent per ton per mile	200,000.00
2,548,000 tons through freight, 485 miles, at 2 mills per ton per mile	2,471,560.00
Revenue from tonnage of the Kanawha River westward	100,000.00
Revenue from the Richmond dock	100,000.00
Revenue from water rents	30,000.00
Revenue from passengers	10,000.00
	$3,425,235.00

That the estimate of 2,548,000 tons for the through tonnage is moderate, will, I think, be acknowledged, when it is known that the actual capacity of freight boats, of the largest size now navigating the canal, is from 80 to 90 tons. If the calculation were made upon a basis of 70 tons to the boat, the result would be a capacity for through freight of 3,815,-200 tons. Moreover, in consequence of the deposits of mud, and washings of sand from the hill sides, the canal has not its full depth of 5 feet, but has actually filled up in some places to about 3½ feet, and that is the depth to which the boats are now loaded. A very little additional expense (which in consequence of the embarrassed condition of the company's affairs they cannot now encounter) would maintain a depth of 4½ feet, and then the capacity of boats would be increased to 100 tons. Nor in this estimate do I consider the effect of steam as a motive power, which will most probably, at an early day, be introduced upon the canal.

The estimate of revenue above given is based upon assumed rates and quantities, the value of which you are as competent to determine as I am. For instance, you will be able to say whether thirty thousand tons to and from Covington, independently of all reliance upon the Covington and Ohio railroad, be a sufficient estimate, considering even the lumber trade alone, which I doubt not will be immense, immediately upon the completion of the canal to that point. So, too, as to the quantity of cannel coal and cannel oil, from Kanawha to Richmond. If I be not mistaken in the future demand for these articles at this point, one-fourth of the capacity of the canal would probably be required for that trade alone. Then again, the articles of salted meats, flour, grain and tobacco, seeking exit to Europe. Here the difficulty is rather to keep the estimate within limits which shall appear to be reasonable, than to exaggerate it. Credulity is indeed taxed, when we consider the products of the great central region of the west—that almost illimitable region of the richest land upon earth, which most remarkably has so small a number of outlets by water to connect it with the rest of the globe; these being the Mississippi river in one direction and

the St. Lawrence river in another; both of which we know are liable to many obstructions and dangers. And so far as the artificial routes through the states of New York, Pennsylvania and Maryland are competitors, we know equally that our line possesses admitted and decided advantages over them. On this point I beg to quote the language of my honored predecessor, Judge Mason. In his last report to the stockholders, before proceeding upon his mission to France, speaking of the canal and the Covington and Ohio railroad, he thus expresses himself. (See 19th Annual Report, page 561):

"In the great valley to which these improvements are tending, the estimated annual production of articles of commerce for transportation to the Atlantic ports of the United States, is seventeen million tons of freight. Considering the physical objections to the down stream transportation by way of New Orleans, arising from the heat and moisture of the climate, often highly injurious to bread-stuffs, the cereal grains, tobacco and provisions, and the interruption of the northern routes, for many months in the year, by the severity of the climate, I have not doubted that if lines of transportation shall be established through Virginia to the Ohio River, they must and will command a considerable portion of the trade of the valleys of the Mississippi and the Ohio. The capacity of the railroad is not equal to the transportation annually of more than four hundred thousand tons. The capacity of the canal is to carry nearly three millions. Both improvements will find most remunerating employment. The length of your improvement will be 483 miles; and if it can command one million tons of extra-territorial freight, conceding to the railroad all the passengers, and as much freight as it can carry, you may reduce your tolls to one cent per ton per mile, and your revenue will be four millions eight hundred and thirty thousand dollars, exclusive of freight on articles of consumption taken in return, and of the way freight furnished by the people of Virginia, along the whole length of the line.

"Is this an extravagant anticipation? The articles of freight making the enormous aggregate before stated, are the surplus

products of the interior, and must find their way to market by some line of navigation or improvement. The competing lines are limited in number. The Virginia lines will have the advantage of distance and of climate over both southern and northern routes; and over those by the lakes, this controlling advantage, that the great productions of provisions and breadstuffs, being ready for market in December and January, cannot use the northern waterlines, while obstructed by ice, but through Virginia they may be sent to market in the winter months, thus avoiding the necessity of keeping them on hand at risk of injury or loss, with the advantage of applying labor to getting them off, at a season when it could not be very advantageously employed in the field; and of the commercial advantage of converting them into money at an earlier day. The interest on the proceeds of sale, by our routes, for the period which must elapse before they can be sent by the New York canal, would make a most important item in our favor."

In estimating the value of this canal, I do not propose to consider the subject in the enlarged aspect of its value to the state—as a means of developing agricultural, mineral and manufacturing resources, of increasing population and wealth, of creating a domestic and foreign trade, of imparting greatness and splendor to the metropolis, of building up Norfolk as a center of commerce, but simply of its value as a moneyed investment.

The actual cost to the James river and Kanawha company of all the works and property belonging to the company has been		10,413,996.00
The estimated cost of completing the waterline is, in round numbers		13,000,000.00
Supposing that it would take five years to complete the work, there would then be an interest account of:		
5 years on say, $2,000,000.00, at 6 per cent.	600,000.00	
4 years on say $3,000,000.00, at 6 per cent.....	720,000.00	
3 years on say $3,000,000.00, at 6 per cent.....	540,000.00	
2 years on say $3,000,000.00, at 6 per cent.....	360,000.00	
1 year on say $2,000,000.00, at 6 per cent.	120,000.00	
		2,340,000.00
Total cost when completed		$25,753,996.00
Estimated revenue	3,425,235.00	
Expenses of repairs, salaries of agents &c., at $750 per mile	363,750.00	
Net income		$3,061,485.00

Which is very nearly twelve per cent. upon the whole cost of the work.

The financial condition of the company is of course a matter of great concernment in a negotiation like the present.

A few brief paragraphs under this head will suffice to make you understand our present condition and the cause of all our woes.

The original capital was five millions of dollars—of which the state paid one million in old works, and of the private subscription there proved to be insolvent $73,336.46—leaving $3,926,663.54 as the actual available cash capital; and even this, in consequence of the failure of the Bank of the United States, the commercial disasters of the years 1836 and 1837, and other unfavorable circumstances, was collected slowly, irregularly, and at heavy cost. All beyond the capital thus realized, has been borrowed money, on which the company has been required to pay interest from the day it was received, before it was expended, and of course long before it began to yield any return. The amount of interest actually paid is $2,765,397.25, exclusive of the annuity of $399,000 paid to the stockholders of the old James river company.

The charter of the company, section 28 (Annual Reports, vol. 1, p. 755), is as follows:

"If the capital of five millions of dollars shall be found insufficient to complete the works required of the company, they shall be at liberty to enlarge their capital to any amount which may be found necessary to that end. The commonwealth shall be at liberty to take two-fifths of the additional capital, or any portion thereof, and the other stockholders to take the residue."

As the work progressed, the cost considerably exceeding the estimate, it became apparent even before the completion of the line to Lynchburg, that an increase of capital would be required for its continuous prosecution. Application was therefore made to the legislature, at the session of 1838-39, praying that honorable body to subscribe on the part of the state three-fifths of the sum of six millions of dollars, proposed to be added to the company's capital stock, and to give

authority to the company to subscribe on its own part the other two-fifths of this additional capital with certain conditions annexed. But the legislature preferred to authorize the company to borrow on the credit of the corporate funds, the sum of one million five hundred thousand dollars, provided the loan could be negotiated at an interest not exceeding six per centum per annum, payable at some place either in the United States or in Europe, the faith of the state being pledged as guarantee for the punctual payment of the interest, and the redemption of the principal, according to the terms of the loan. This was the act, passed March 23, 1839, under which the first guaranteed bonds were issued. The president, in laying it before the stockholders, expressed his sincere regret at the failure of the proposition submitted by the company, because, as he stated, it was introducing the policy of operating exclusively on borrowed funds, at an earlier period than was desirable by the company. Nevertheless, in view as well of the evils which its rejection would produce, as of the benefits which its adoption would confer (among which was, that the judicious and economical expenditure of the amount of the loan would carry the work into the heart of the Valley of Virginia), he recommended to the stockholders to give their sanction to all the provisions of the act—and the act was accordingly accepted and adopted as an amendment of their charter. No mortgage or other specific lien was at that time required of the company.

About a year thereafter, a gentleman of South Carolina, of well known abilities and of high character, being about to proceed to Europe to negotiate a loan for the republic of Texas, the company entrusted to him, under suitable instructions, an amount of five per cent. sterling bonds, equivalent to $550,000. This gentleman visited various cities in Europe, earnestly endeavoring to effect a sale of the bonds; he pledged a part of them with a house in London, for a small advance, which was duly remitted; and finally effected a credit with a house in Amsterdam, on an hypothecation of the remainder

of the bonds, but applied the money chiefly to the uses of the Texan government, under the expectation, as he afterwards declared, that the misappropriation would be of very short duration, and that it would be rectified from the proceeds of the Texan negotiations.

Immediately upon the receipt of these embarrassing tidings in Richmond, they were communicated by the president and directors to the general assembly, then in session, accompanied by a memorial and all the documents and correspondence relating to the negotiation; and the committee to which they were referred, after a careful and deliberate investigation, by an almost unanimous vote, reported a bill in conformity to the prayer of the petition.

The two houses of assembly, however, did not concur in the views of the committee. The bill as reported encountered an active and violent opposition; and on the 25th March, 1842, an act was passed authorizing a loan to the company of $250,000, in certificates of state stock, for the purpose chiefly of redeeming the guaranteed bonds which had been pledged in London and hypothecated in Amsterdam. But the act required——

First—That the company should execute to the Board of public works a mortgage or other specific lien on all their property, real and personal, and upon the net income of all their tolls and receipts:

1. To secure the payment of the annuity to the old James river company;

2. To secure the state from loss by reason of her responsibility for the guaranteed loan under the act of March, 1839;

3. To secure the payment semi-annually of the interest, and repayment of the principal of the certificates then authorized to be issued.

Second—That when redeemed, the company should return to the treasurer of the commonwealth one hundred thousand dollars of the guaranteed bonds, to be by him canceled.

Third—That the company, until authorized by the legislature, should enter into no new contract or engagement for work to be done on the line of its improvement.

Fourth—That the certificates of stock authorized to be issued under this act should not be at any time disposed of at less than their par value, without the consent of the Board of public works, that the company should be prohibited from making any new issues or reissues of scrip or post notes; and that instead of one proxy to represent the stock of the commonwealth in the annual or other meetings of the stockholders of the company, there should be three proxies, appointed by the Board of public works, who were instructed to propose and vote for a reduction of at least ten per cent. in the salaries and compensation of all the officers of the company, except those whose salary did not exceed $500.

I need go but one step further to account for a paralyzed credit. This will be found in an act passed March 24th, 1843, entitled an act authorizing the company to increase their tolls, and for other purposes, the sixth section of which is in these words:

"6. Be it further enacted, That if the said company shall make default in the payment of any money now advanced, or hereafter advanced for the payment of the interest on the guaranteed debt of the company by the commonwealth, or any installment of the annuity to the old James river company now in arrear, or which may hereafter become in arrear, when payment thereof shall be required by the general assembly, or the Board of public works, it shall be lawful for the Board of public works to recover the sum or sums so due, with lawful interest thereon, by motion in the name of the common-

wealth, on ten days' notice, in any court having jurisdiction of motions in behalf of the commonwealth, against public defaulters. And to enforce the execution of any judgment recovered on such motion, the court in which such judgment shall have been recovered, may, on application of the commonwealth, direct a writ of sequestration to issue against the goods, chattels, lands and revenues of said company, the execution of which writ shall be under the control of the court. On the levy of the said writ, the revenues of the said company thus sequestrated shall be applied, first to support and preserve the works of the company—second, to the payment of the interest on the guaranteed debt of the company, or installments of the annuity to the old James river company, which may be in arrear during the pendency of the writ—and finally to pay the judgment, interest and costs. The sequestration shall continue until these objects are accomplished. Nothing in this act shall be construed to waive or impair the right of the commonwealth to enforce the mortgage executed in pursuance of the provisions of the act of assembly, passed March twenty-fifth, eighteen hundred and forty-two."

This enactment which was required to be adopted, and was adopted, as an amendment of the charter, was substantially repeated in the second section of an act, passed February 21st, 1845, entitled an act for the relief of the company.

I now submit to you the following statement, showing the amount invested in the works and property of the company, from its organization in May, 1835, to the 30th September, 1859:

COST OF CONSTRUCTION:

Richmond dock	244,721.98	
Tide water connection	606,590.14	
Canal	8,934,783.49	
South side connections	162,685.09	
Rivanna connection	115,043.24	
North River improvement	81,011.95	
Blue Ridge turnpike road	9,273.80	
Kanawha turnpike road	192,874.78	
Kanawha river improvement	67,011.66	
		10,413,996.13

COST OF REPAIRS AND MAINTENANCE:

Richmond dock	66,559.06	
Tide water connection	5,030.44	
Canal	1,843,069.53	
Blue Ridge canal, turnpike and ferry	35,121.49	
Kanawha turnpike road	216,326.52	
Kanawha river	95,237.87	
		2,261,344.91

GENERAL CHARGES:

Dividend on stock	11,599.59	
Annuity to old James river company.	399,000.00	
Interest on debt to the state	736,524.01	
Interest on guaranteed debt	1,878,980.71	
Interest and sinking fund on North river bonds	67,390.40	
Interest and discount on temporary loans.	82,502.13	
Expenses of the general administration of the company	162,751.19	
Loss by General James Hamilton....	63,820.45	
Loss by notes and securities received in satisfaction of stock subscriptions.	4,623.57	
		3,407,192.05
Total expenditure of every kind		16,082,533.09

CAPITAL SUBSCRIBED:

By the commonwealth	3,000,000.00	
By individuals 2,000,000.00		
Less amount uncollected. 68,712.89		
	1,931,287.11	
Debt without interest		4,931,287.11
		11,151,245.98

CAPITAL BORROWED:

From the commonwealth	3,351,784.99	
From guaranteed bonds	2,260,000.00	
From banks and individuals.....	394,674.68	
From post notes	3,222.69	
Debt bearing interest		6,009,682.36
Income invested		5,141,563.62

DERIVED THUS:

From tolls, rents, penalties and fees..	5,065,655.54	
From sales of real estate	28,484.46	
From premium and interest on bonds and state stock	57,710.60	
From insurance	10,000.00	
		5,161,850.60
Balance 1st October, 1859		$ 20,286.98

The indebtedness of the company is as follows:

1. To the state of Virginia, for state stock and money loaned under successive acts of the legislature, to wit:

25th March, 1842	250,000.00
21st February, 1845	268,645.33
18th December, 1846	57,559.36
1st March, 1847	1,236,000.00
25th January, 1850	110,000.00
5th June, 1852	120,000.00
7th January, 1853	67,770.00
2nd March, 1853	640,000.00
29th March, 1853	70,000.00
3rd March, 1854	60,000.00
19th January, 1856	135,070.80
15th March, 1856	67,350.90
22d December, 1857	269,388.60
Aggregate	$3,351,784.99

On nearly the whole of this debt there is an arrearage of several years' interest.

2. To the holders of bonds, issued by the company and guaranteed by the state of Virginia, under successive acts of the legislature, to wit:

23d March, 1839	1,400,000.00
9th March, 1849	350,000.00
12th March, 1849	150,000.00
15th March, 1850	360,000.00
Aggregate	$2,260,000.00

These bonds are irredeemable for a given number of years from their date, and then payable at the pleasure of the company, except those issued under the authority of the act of the 9th March, 1849, which are payable 25 years from their date, or at any time within that period, at the pleasure of the company, on giving six months' notice to the holders thereof. The semi-annual installment of interest which became due on these bonds, on the 1st day of July last, is unpaid.

3. To the stockholders of the old James river company a perpetual annuity of $21,000 guaranteed by the state of Virginia, under the 21st section of the act of the 16th March, 1832. This sum, payable in semi-annual installments, and continuing forever, represents a capital (at 6 per cent. interest) of $350,000.

4. To private and corporate creditors, to whom money is due by obligations of several kinds, to wit:

1. Salaries and wages of officers, agents and employees, for services;

2. Accounts for supplies of clothing, provisions, oil, lumber and other materials, &c.;

3. Bonds for the hire of slaves;

4. Negotiable notes given in settlement of amounts due for services, supplies, hires, &c.;

5. Estimates for work on the New Canton bridge, Bosher's dam, Joshua falls dam, and North river improvement;

6. Bond for money borrowed on account of the Tide water connection;

7. Bonds issued to contractors for work on the third division;

8. Bonds issued to contractors for constructing a canal to supply the city of Lynchburg with water, and for raising the level of the canal at Lynchburg, with a view to an increase of the water power;

9. Bonds issued to contractors for work on the North river improvement;

10. Bond for the purchase of real estate at Lexington, in connection with North river improvement;

11. Eight per cent. bonds, given in exchange for bonds originally issued for work on the third division.

The aggregate of this fourth class of debt, which we will call the "floating debt," was on the first day of October last, $428,932.82.

In addition to the foregoing, certain bonds of the North river navigation company, which were issued prior to the act of 16th March, 1858, authorizing the transfer of the franchises of the North river navigation company to the James river and Kanawha company, have been guaranteed by this company under the authority of an act of the general assembly, passed March 9th, 1853. In pursuance of the last mentioned act, agreements have been entered into between the two companies, whereby the James river and Kanawha company has pledged the tolls to be reecived by it upon the tonnage passing to and from the improvement of the North river navigation company, over and above the sum of $5,000, as security for the payment of the interest and redemption of the principal of the loan. A trustee has been appointed to receive and apply the tolls so pledged. The whole amount of bonds issued is $200,000; on which 6 per cent. interest, and 5 per cent. as a sinking fund (making $22,000), are annually paid in semi-annual installments; but the trustee having invested the sinking fund and the semi-annual interest upon the same in these bonds, there is now outstanding held by others than himself, only the sum of $160,378.

To secure the debts due to the state, and the debts guaranteed by the state, and the annuity to the old James river company, mortgages have been executed by the company to the Board of public works as follows:

One dated 9th May, 1842,
One dated 28th June, 1847,
One dated 27th February, 1851,
One dated 7th April, 1851,
One dated 30th April, 1853,
One dated 30th June, 1853,
One dated 9th March, 1854.

And deeds of trust have been given as follows:

One dated 14th February, 1856,
One dated 1st February 1858.

These indentures convey all the property, real and personal, of the company, with all and singular the rights, privileges and appurtenances thereto belonging, and all the rents, issues and profits, and especially the tolls which may be derived therefrom; but the deeds of mortgage contain the proviso, that until the mortgages be foreclosed, the company, their officers, agents and servants may remain in the undisturbed use and possession of the property, may collect and receive the tolls and other income thereof, and may defray therefrom the necessary charges for the repair, support and management of their canal and other works, and for the administration of the company, before applying any part to the payment of the annuity, interest or principal intended to be secured. And the deeds of trust contain the proviso that the trustee shall not have the right to sell, except upon being required so to do by an act of the general assembly, prescribing the manner and terms of sale, and the time of previous notice.

It is proper that I should mention also the existence of several suits against the company for claims, the justice of which is denied, and which are therefore resisted. The most important of these are ——

1. A case from the county of Kanawha, involving a judgment for $5,400; to which a writ of supersedeas has been allowed by the court of appeals.

2. A case from the county of Amherst, involving a judgment for $3,363.20; which has been sent back by the court of appeals for a new trial, upon principles favorable to the company. A second case of the same nature is depending and undetermined in the circuit court of the same county.

3. A case from the county of Fluvanna, involving a judgment for $2,000; from which the company means to appeal.

Supersedeas bonds have been or will be given in these and other cases.

Two suits have been instituted in the circuit court for the district of Columbia, the object of which is to recover, out of the funds to be paid by the government of the United States to the creditors to the late republic of Texas, the sum of $98,-104.68, with interest on $63,820.45, part thereof, from the 12th day of August, 1852. Injunction bonds have been given in these two cases.

When the work upon the third division was suspended for the want of means, in December, 1856, the contracts were closed and liquidated damages paid; but the contractors reserved to themselves the right to resume operations under their original contracts, whenever the company should decide to go on with the work of construction, provided they elect to do so within thirty days after notice to them respectively of such decision. Fifteen miles of this division of the canal, except the light section work, and the farm bridges upon it, were put under contract for construction in August, 1853. The estimated cost of the work thus let to contract was $815,-188; the amount of work that has been done is $374,170—leaving the amount remaining to be done, estimated at $441,018.

On other portions of the line, there are existing contracts as follows:

1. For the completion of the North river improvement.
2. For the reconstruction of Bosher's dam.
3. For the reconstruction of the Joshua falls dam.
4. For completing the raising of the Lynchburg level, including the guard bank on Daniel's Island.

The aggregate estimated cost of these several improvements is (approximately) $123,333.

There are a number of exisiting contracts for the supply of water power to milling and manufacturing establishments upon the line of the canal. The right of the lessee to the use of the water is subservient to the navigation in all cases but two—one at Richmond, the other at Lynchburg. The amount receivable from this source at present is about $10,000 per annum. Some years ago, the chief engineer estimated that the revenue from the sale of water at Richmond alone would in time be equal to the interest on a capital of two millions of dollars. I think it highly probable, that such an extent of water power, in positions so eminently advantageous, as our line affords, is not to be found elsewhere in the United States.

The number of officers and agents at this time in the service of the company, is as follows:

The president,
Six directors,
The secretary,
One book keeper,
One clerk,

The president pro tem. of the Kanawha board,
Four directors of the Kanawha board,
The secretary of the Kanawha board,
The chief engineer,

Two assistant engineers
Two superintendents of repairs,
Three toll gatherers on the canal,
Three toll gatherers' clerks,
Three inspectors of boats,
Ninety-eight lock keepers,
One distributing agent,
Two master masons,
Four master carpenters,
Six overseers,
One ferryman,
One collector on the dock,
Two collectors on the Kanawha river,
Four bridge gate keepers,
Two turnpike agents,
Thirteen turnpike gate keepers,
One patrol.

Whole number of officers and agents, one hundred and sixty-five, who may receive an annual compensation of $55,746.

There are of course, in addition to these, a number of subordinate mechanics and laborers employed in the various operations of the company.

In regard to the charter, about which you enquire particularly, it would be impossible for me, without great labor, to furnish you a copy which would be either useful or intelligible. The James river and Kanawha company are the successors of both the James river company and the Richmond dock company. The act incorporating the James river company was passed at the "October session, 1784"; since which time other acts and parts of acts relating to that company have been passed, to the number of sixty-eight. The act incorporating the Richmond dock company was passed February 19, 1816;

since which time acts and parts of acts relating to that company have been passed, to the number of eleven. The act incorporating the James river and Kanawha company was passed March 16, 1832; since which time acts and parts of acts relating to the company have been passed, to the number of eighty-three.

By their acceptance of the conditions prescribed by the general assembly in an act passed March 2d, 1853, the James river and Kanawha company became "subject to the provisions of the Code of Virginia, so far as they relate to internal improvement and joint stock companies." Under the provisions of the Code, the charter may now be altered or modified by any future legislature, as may seem to it proper, except that no law shall be passed for taking from the company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in chapter sixty-one.

The twenty-seventh section of the act incorporating the stockholders of the James river and Kanawha company provided, that if the works required of the company were not finished within twelve years after the first general meeting of the stockholders, then their charter should be forfeited, and all the works of the company, with the land on which they are situated, and all the rights, privileges and immunities of the company should be vested in the James river company (as then existing) for the benefit of the commonwealth; and in that event the James river company was to be regarded as the successor of the James river and Kanawha company, but not to be liable for any debts contracted by them, or entitled to any part of their personal property. By an act passed March 1st, 1847, the time limited for the completion of the works of the company was extended to the 25th May, 1859.

The Code (chapter 61, section 31) contains a general provision applicable to any company which shall fail to commence and complete its works within the time prescribed by its act of incorporation.

It is not for me to determine how far the legislature would be justified in taking advantage of the clause of forfeiture in the charter of the James river and Kanawha company. Mr. Cabell, the first president, in his supplement before referred to, considers the question in an exceedingly interesting and earnest manner, recalling to recollection the position in which the improvement stood, and the light in which it seemed to be regarded by the state, at the period of the adoption of the new charter. Replying to the suggestion, that the improvement was a mere trust confided to the present company, and that the period for the execution of the trust was about to expire, he states (p. 752), "I can only declare it as my solemn conviction, that if such doctrine had been advanced, and had been respectably maintained at the period of the adoption of the charter, it would have been fatal to the subscription, and the company would not have been formed." Again (p. 759), "not only did the legislative and executive departments of the Government thus actively and avowedly encourage the citizens of Virginia to come forward and support the new scheme of improvement, but the whole course of the proceedings, and the whole history of the period bear the most ample testimony to the general expectation then entertained, that the enterprise in which they were invited to embark millions of money, was to be a manly, dignfied and permanent effort, and that the charter about to be consummated would, in the event of no act of malfeasance on the part of the company, be, in point of fact, a perpetual grant." And again (p. 762), "I repeat that I believe that it was the general, if not the universal expectation, at the period of the enactment of the charter, that the system then proposed to be adopted, if carried into execution, was not to be changed or abandoned for slight or transitory causes, and that, in the event of no act of malfeasance being committed on the part of the company, the stockholders might be fully persuaded that the legislature would always be too just and too magnanimous to regard the chartered privileges in any other light than in the nature of a perpetual grant. Believing

sincerely that such were truly the intentions of the general assembly, I did not hesitate in the course of numerous public addresses to the people of the counties on the line, delivered in the course of the years 1833 and 1834, to treat with contempt, indignation and scorn, the idea that the legislature ever would wield the power conferred by the forfeiture clause in the charter for any other end than to secure integrity and good faith on the part of the company, with a view to the ultimate consumation of the scheme."

The forfeiture of a charter differs, I believe, from the expiration of a charter. In the latter case, there is an unqualified limitation, depending upon the lapse of time, so that the corporate powers and obligations cease on a given day, unless otherwise specially provided, as of a bank, which may collect debts, &c., after the expiration of its charter; but in the former case, limitation or forfeiture depends upon the performance of a condition, which there may have been good and sufficient reason for not complying with. Hence, I am advised, our courts hold that the franchises of a corporation cannot be forfeited without a judgment, either on scire facias, or quo warranto; nor can real estate conveyed to a corporation be divested by non-user alone, without a judicial sentence. In other words, the forfeiture must be ascertained by the sentence of a competent court in a proper proceeding for the purpose.

Should an action be instituted to enforce a repeal of the charter, or dissolution of the body, in the case of the James river and Kanawha company, it would not be difficult I think to adduce many extenuating circumstances. There is indeed nothing in the history of this company, of which I am aware, to cause just apprehension that proceedings will be instituted to enforce a repeal of the charter. The corporation has been guilty of no willful abuse or improper neglect; there has been no misapplication of the powers entrusted to it—no omission to comply with any condition which it was in its power to perform—nothing producing, or having a tendency to produce

mischievous consequences to anyone. So far from willful nonfeasances, scarcely a session has elapsed that the company has not besieged the legislature with applications to enable it to comply with the main condition of the charter. If ever there has been a stretch of authority, it has been toward the great end and design of the charter—the vigorous prosecution, early completion, and permanent maintenance and good order of the improvemet. The whole capital has been expended honestly, if not in all cases judiciously. But the errors or administration commonly alleged, have been long since excused by the legislature itself. So far as I can perceive, no interest of the state would be promoted by the dissolution—no existing danger to the community requires it—it is not pretended that stockholders more zealous or more patriotic could be found than those now associated with the state—in short, nothing can be urged against the company except insolvency—and that, resulting in great degree, as has been partially shown, from legislative action, against which the company protested at the time. Admitting, however, the forfeiture incurred, the legislature may easily by grant revive or renovate the old corporation with the old corporators.

There is an act of assembly, of which I feel it my duty likewise to apprise you, entitled "an act to make investments of the commonwealth more productive, by enforcing the payment of interest and sinking fund on loans to internal improvement companies; of dividends on preferred stock, and the interest on the bonds of such companies guaranteed by the state," passed March 27, 1858. [See Acts of Assembly 1857-58, chapter 7, page 6].

In the case of the James river and Kanawha company, the president and directors have done nothing but what they were authorized and required by the legislature and their mortgages to do—that is to say, they have applied the revenue first to the payment of the current expenses of the administration of the company, and the repairs of the improvement. They consider themselves therefore fully within the exceptional clause of the

second section of the act, which is in these words: "But so much of the revenue of any company as may have been pledged, with the express assent of the general assembly, to the payment of any other debt, in preference to the debt to the state, shall not be included in the gross revenue hereinbefore mentioned." Moreover, the board consider, there was a condonation by the legislature up to the last mortgage or deed of trust given; the legislature having then recognized the existing state of things, and made provision for it. Nevertheless, I am informed that the auditor of public accounts has notified the attorney general of the failure of the company to make payments into the treasury in the cases and manner named in the second section of the act, but so far as I am apprised, the attorney general has not yet moved for judgment against the company.

I have thus, as minutely and particularly as you seemed to desire, given you such a narration of the history and affairs of the company, as I suppose sufficient to enable you to comprehend the present condition and future prospects of this great improvement. You have seen the early beginning of the scheme under the immediate auspices of the illustrious father of his country. You have seen how much was accomplished in its prosecution under the auspices of the state. You have seen how much, I should rather say, how little has been accomplished under the auspices of the state's successor, the present company. Should this view have brought you to the same conclusions with myself, you will find it difficult to understand how Virginia could have so long permitted such an improvement to remain incomplete. To me, I confess it is amazing, that the people of the state have not years ago sent up their delegates to the general assembly, with instructions to employ all the means, and concentrate all the energies at their command for the accomplishment, in the shortest possible time, of an enterprise, which when completed, will pour a tide of trade and commerce into the towns and cities and seaports of the state, the richness of which, I verily believe, no man can esti-

mate. While I may be permitted, as a son of Virginia, to bewail this great remissness, as I conceive it to be, on her part, my present purpose is, however, to deal with things existing rather than with things past.

Having in my letter to you of the 8th of September last, submitted several inquiries, with the view to elicit proposals from which I might select, I beg leave now particularly to call your attention to the last of those enquiries, and to suggest that I think an arrangement might be made upon the basis therein indicated, with mutual advantage to yourselves and the company.

The scheme is briefly this:

I value the works and property of the company at....		$10,000,000
And propose that the present stockholders shall contribute them at that valuation.		
The engineer estimates the cost of completing the improvement at	13,000,000	
And estimating five years as the time necessary for completion, there should be allowed an interest account of, say....	2,000,000	
I propose then that you shall undertake as contractors to complete the improvement, at prices to be agreed upon, you receiving your pay in stock, which may amount to, say		15,000,000
		$25,000,000

On which, if so much, dividends will be declared and paid in proportion to the amount of stock held by the parties respectively.

What are the inducements for you to make such an arrangement?

First—As I understand, you are the owners and possessors of three hundred thousand acres of lands up the waters of the Guyandotte, the Tug fork of Big Sandy and branches of the Great Kanawha rivers—being a part of the lands formerly belonging to Col. James Swan, which by an act of the general assembly, passed in the year 1833, were vested in J. P. Dumas, curator, for the benefit of Colonel Swan's creditors, and have now been confirmed to you and your associates by the decree of a competent court, from which no appeal has been taken.

These lands abound in minerals, unequaled, it is believed, by any in the world, in variety, extent and value, and particularly in bituminous, splint and cannel coals, which as yet remain almost literally undisturbed. Who can estimate the value of such a domain, this improvement being completed? In my deliberate judgment, you and your associates would, in that case, be no contemptible rivals of the Bourse or the Credit Mobilier of your own country.

Secondly—As contractors, having the control of large means, and therefore able to command labor, supplies, and all the appliances requisite to conducting an enterprise with vigor, skill and judgment, you might expect to realize, under what we are accustomed to regard ordinary cash prices in this country, a profit in itself fully remunerative.

Thirdly—No well informed person can doubt what would be the dividends upon a judicious outlay of the capital necessary to complete this improvement in a durable manner. Hence, your profits in this particular would probably exceed those of any investment you could expect to make in Europe;

and therefore, the acquisition of stock, even in this aspect, ought to be acceptable and satisfactory.

I will not conceal my earnest desire to complete an arrangement with you on terms which shall be satisfactory to my company and the legislature. Of course I could expect you to do nothing, in the present embarrassed condition of the company, without the full concurrence of the legislature—and therefore I must ask you to assume, as the basis of a final arrangement, that the legislature, in order to obtain for the state the advantages which it is admitted would result from the completion of the improvement, will relieve the company of every existing lien and liability, so far, at least, as you and your interests may be affected thereby.

On the other hand, it is assumed that you will satisfy the legislature of your ability to comply with any contract you may make with the company.

Why should the ability be wanting? If the financial notabilities of your country, men whose personnel and means alike command the public confidence, and who are known in every money market, and are accustomed to look abroad through the world for opportunities of investment, can be made to understand the facts of the case, I see no reason why, with our stock in hand, you should not be able to obtain advances to any extent which might be called for by possible deficiency on your part and the exigency of the work. Why, indeed, should not the emperor of your great nation see in such a contract, coupled with the relations which unhappily exist between the northern and southern states of this Union, an opportunity of which he might avail himself, as by a coup d'etat, to establish direct trade between the southern states and France? France! once our ally, having no sympathy now with Exeter hall, or its mischievous doings, and ready, as she is able, to quadruple the current exchange of values between herself and the south, the southwest and the west of this wonderfully productive

country. France! in whose magnificent capital you find today, a decisive mark of our regard, in the bust of the noble marquis, which was voted by the commonwealth of Virginia to the city of Paris at the very moment that Washington was inaugurating the great work which we are called upon to complete.

I submit with deference these views and suggestions, and soliciting your favorable consideration of them.

Remain, dear sir,

With great respect,

Your very obedient servant,

THOMAS H. ELLIS,
President.

To Mr. Ernest de Bellot des Minieres, &c. &c. &c.

THE MASTER: You had better follow that right up with the next letter that follows it, which relates to the same subject matter.

MR. HOLT: And also a letter signed by Thomas H. Ellis, president, addressed to the same party, dated Richmond, December 3, 1859, and found at pages 694 to 696, inclusive, of this same Volume 5.

THE MASTER: That relates to the same subject matter, sort of a recapitulation.

MR. HOLT: Yes, sir.

The letter was admitted in evidence and is considered as Defendant's Supplemental Exhibit No. 6.

Defendant's Supplemental Exhibit No. 6 is as follows:

Office James River and Kanawha Co.
Richmond, Dec. 3, 1859.

Gentlemen,

Under the reservations contained in the 4th resolution which was adopted by the stockholders, at their meeting on the 27th of October last, I respectfully submit to yourselves and your associates the following scheme for the completion of the James river and Kanawha canal:

The present stockholders to contribute their works at the price of		10,000,000
You to complete the improvement, the estimated cost of which is	13,000,000	
Interest to be allowed on the sums advanced by you from time to time for that purpose, which may amount to, say	2,000,000	
		15,000,000
Total cost when completed (estimated).....		$25,000,000
Of which the public share or share of the state of Virginia will be, in shares of stock, at $100 per share	8,000,000	
The private share, exclusive of yours, will be.	2,000,000	
Your share —— the whole amount of your advances not exceeding	15,000,000	
Total		$25,000,000

You to pay $500,000 (part of the said $15,000,000) for the purpose of relieving the company of its floating debt; of which sum, $250,000 to be paid as soon as a definite agreement shall be signed, and the balance paid in sufficient time to meet the residue of the debt as it becomes due; or, the said balance may be paid at the same time with the first $250,000, if you so prefer. Certificates of stock to be issued for the amount paid at the time of payment.

The company to contract with you for you to execute the work at prices and on terms to be agreed upon, the work to be completed by or before the 4th day of July, 1865—the plan and the mode of executing the work to be exclusively under the control, judgment and discretion of the company—but the prices to be fixed by agreement between the company and yourselves—and in case the company and yourselves should differ, or be unable to fix such prices by agreement, the difference to be decided by arbitrators— one to be selected by the company and one by yourselves, with power in the arbitrators, in case of their disagreement, to call in an umpire, whose award shall be final.

Estimates of the work performed, and materials furnished, to be taken quarterly by the engineers of the company, in the mode provided for in the contract, and interest to be allowed on the quarterly estimates; but twenty per cent. of the said estimates respectively shall be left in the hands of the company until the completion of the work, when the same, with interest, shall be settled for in stock at par upon a final settlement between yourselves and the company.

It is to be understood, nevertheless, that the company reserve to themselves, and are to have the right, in case the commencement of your operations be unreasonably delayed, or after they are commenced shall be neglected, or prosecuted without reasonable diligence, to give notice and rescind the contract between the parties, and treat the same as abandoned on your part; in which case the whole reserved percentage in the hands of the company shall be forfeited.

The balance of the estimates (after deducting the reserved twenty per cent. before mentioned) and the interest upon said balances respectively to be paid from time to time in stock at par, until the aggregate sum, composed of the said balances, with interest, and the reserved sum, with interest, shall reach $15,000,000—if so much be necessary for the completion of the work. But the amount of stock to be held by you, and in regard to which your interests as stockholders shall be regulated, shall be governed by the amount of your payments, advances and estimates, with the accrued interest, for which stock at par shall be issued, as afore mentioned. All amounts beyond the said sum of $15,000,000, if any, to constitute debt from the company to you, on which interest shall be paid before dividends. If preferred by you the aggregate of stock may be limited to $8,000,000; all beyond that sum being debt from the company to you, on which interest shall be similarly paid. But your rights and interests as stockholders, in case of such limitation, to be dismissed in conformity therewith.

Dividends out of the net profits of the work to be payable semi-annually, in proportion to the amount of stock held, but not to exceed the per centum allowed by the charter.

When $500,000 shall have been paid in cash, your vote in a meeting of the stockholders shall be one-fourth of the vote given in any election, or on any question, by others than the state and yourselves; when the improvement has been completed to Covington, your vote shall be one-half of the vote given by such others; and when the entire improvement has been completed, your vote shall be two-thirds of the vote given by such others. The vote of the state in respect of her present stock, which amounts to $3,000,000, to remain as at present, to wit: not to exceed two-thirds of the whole number of votes given in the same election, or on the same question, by others than yourselves. In respect of her additional $5,000,000, the vote of the state to be one-third of the vote given by yourselves. This provision is based upon the expectation that you will be stockholders to the extent of $15,000,000. In case of

your being stockholders for a less amount, your vote will be proportionately diminished, observing the same ratio in regard to other votes as results from the proportion above indicated on the supposition that your stock would be equal to $15,000,000.

In the event of your assigning any shares of your stock, the votes of your assignees shall be ratable in proportion to their respective amounts of stock—the whole of your and their votes together not to exceed the vote which you could give if there were no assignment.

Such books shall be kept as may be necessary to distinguish this particular stock.

This scheme presupposes that the state will convert into stock the whole debt of the company, other than the floating debt, and will surrender the existing liens.

I have the honor to be, gentlemen,

With much consideration,

Your obedient servant,

THOMAS H. ELLIS,
President.

Messrs. Ernest de Bellot des Minieres and Theodore Olivari, &c. &c.

Q. I will ask you, Mr. Hillman, whether or not this letter first introduced is a part of the report of the president to the stockholders of the James River and Kanawha Company.

A. Yes, sir, it is.

THE MASTER: What does he say it is, a part of the report of the president?

MR. HOLT: It is a part of the report of the president to the stockholders, as I understand it.

Q. Where did you get the evidence of that, Mr. Hillman?

A. He starts out with his report in the beginning, and goes right through, making a long statement to his stockholders, and shows how far the negotiations with the French Syndicate have gone.

Q. Does he exhibit this letter as a part of his report, does he make it a part of his report?

A. I will look at the document.

Q. Does he, in his report, call attention to that letter in any way, manner, shape or form?

A. Yes, sir, he does.

Q. Let me see where it is, please.

A. Page 652 of this record.

Q. What does he say at that point?

THE MASTER: Read it right into the record.

Q. Read it right into the record.

A. (Reading):

"Third—Under your request that I would continue my correspondence with Mr. Bellot des Minieres, for the purpose of negotiating an arrangement for the completion of the Canal, on terms to be approved by the Board of Directors, and subject to the sanction of the Legislature, I addressed a letter to him, dated the 21st of November, giving such information in regard to the affairs of the Company as he had previously desired of me for the use of his associates in France. Mr. Bellot des Minieres, who for more than a year past has resided in Charleston, Kanawha, attending to a large

landed interest, and studying the mineral, industrial and agricultural resources of that portion of our State, having seen in the published reports of your last annual meeting the resolution relating to himself, came to Richmond with Mr. Olivari, one of his co-partners. then recently arrived from Europe, and the two together indicated their earnest desire to receive without delay an expression of my preference and views on the propositions originally submitted by Mr. Bellot des Minieres. * * * * A copy of the two letters referred to, and of the bill to amend the charter of the Company, are herewith submitted (Nos. 3, 4 and 5)."

The numbers 3, 4 and 5 refer to the index on page 659 of this Volume 5 of the James River and Kanawha reports, wherein the documents accompanying the proceedings of the stockholders at their adjourned meeting in January are listed and numbered.

Q. Well, is the letter as offered by me one of the letters referred to in that report?

A. Yes, sir, it is No. 3.

MR. HOLT: You gentlemen may inquire of him.

MR. HARRISON: We have no questions to ask.

By the Master:

Q. Is it your understanding of this estimate of $10,000,000, that that is an estimate that I would be justified in taking as the basis of valuing the stock?

A. No, sir.

Q. The report shows the contrary, does it not, that is the letter of Mr. des Minieres? That is simply a basis on which they were proposing to put the improvement in on the basis of a new capitalization, is not that what it is?

A. Yes, sir, it is the value of the stock for the purposes of the completion of the canal.

Q. Well, they were proposing to put the property in on a proposed stock organization basis at that valuation?

A. Yes, sir.

Q. It does not undertake to be a statement of the net value of the property to the stockholders even?

A. I do not so understand it.

Q. They were to contribute the property on the basis of $10,000,000, and the des Minieres Company were to put in some additional construction on a basis of $15,000,000, and stock to be issued on that basis?

A. Yes, sir.

Q. I have not read this through carefully enough to see—does the report show what the indebtedness of the Company was at that time? I have not gone through it enough to be able to tell that.

A. I am not familiar enough to say.

MR. HOLT: What was the date of that report?

THE MASTER: 1859, November 21, 1859. That is the date of the letter.

Q. When did you first see this James River and Kanawha report that we have in here, that is printed?

A. After Mr. Potter's exhibits had been submitted to me for revision—not revision, for review.

Q. Since the last hearing you mean?

A. Yes, sir.

Q. And prior to that you had not seen it?

A. No, sir.

Q. Well, were you present when Mr. Anderson made his statement purporting to be extracts from this report?

A. No, sir.

Q. Giving some computations which were predicated upon this report?

A. No, sir, I was not present. I was in Richmond——

Q. Were you not at the hearing?

A. No, sir, I was not at the hearing.

Q. Don't you remember my asking him the question as to what the fixed charges were, and his stating that he had not any information, and my stating that we would look to you for that? I will turn to the record and see what did occur there.

MR. LILLY: Did not Mr. Anderson say that he did not know——

THE MASTER: I will read just what Mr. Anderson said. I have a little curiosity to see just what he did say about this. I know I tried to find out what the fixed charges were from somebody, and did not succeed in getting it.

MR. HOLT: And with sort of a promise that we would furnish them through Mr. Hillman, and my recollection is that Mr. Hillman was in Chicago at the time. I may be wrong about it.

THE MASTER: I do not think so, I think he was present and heard the statement.

MR. LILLY: You will find his direct examination on page 721.

THE MASTER: No, it is in the cross-examination.

MR. LILLY: That begins at page 749.

Q. Have you ever looked up Mr. Anderson's testimony with reference to this James River and Kanawha report that is now printed in the record?

A. I do not think that I have read Mr. Anderson's testimony.

Q. Here is the question—that is on page 745:

"THE MASTER: Do you know what the interest charges were upon the indebtedness of the Canal Company for that year?

"A. I am not informed."

Now it turns out that the table from which he got his figures contained all that information, and right close by the figures from which he must have made his extract. Then I say:

"THE MASTER: We will get that from Mr. Hillman."

Now was your attention ever called to the fact that I wanted that information?

MR. HOLT: Is there anything to indicate that Mr. Hillman was present at that hearing?

THE MASTER: It does not make any difference whether he was or not; I want to know whether his attention was ever called to the fact that I wanted that information that Mr. Anderson did not seem to be able to give.

Q. I want to know if your attention was ever called to the fact that I wanted the information that Mr. Anderson did not seem to be able to give, which he claimed—and he had taken some figures from a tabulation—was your attention ever called to the fact that I wanted that from you?

A. No, sir, not as far as I can recall.

Q. Now, did I call your attention at the last hearing—I would like to see what you understood by this—this is at page 2803 of the transcript:

"THE MASTER: I do not know what Mr. Hillman did, but it is quite evident that I expected Mr. Hillman to get the information and enlighten me."

Now, I had in mind exactly this part of the examination. You were present then?

A. Yes, sir.

Q. (Reading):

"MR. LILLY: I understood he could not get the information.

"THE MASTER: What about that, Mr. Hillman?

"MR. HILLMAN: I found nothing on file that I could determine the points that were asked about, and I notified the counsel and abandoned it."

What did you mean by that answer?

A. I meant that at the time we were looking up the James River and Kanawha Company for the purpose of finding the costs of the Company and its property, the canals and general information concerning it, that I looked over the records and found nothing on the subject, and I so informed the counsel.

Q. Well, did you understand what I was inquiring about when I asked for this information? I was after the fixed charges in this exhibit, or in this original record from which Mr. Anderson had made some extracts, and I had called attention to it in the original record and suggested that you get it. And here at the argument I asked you this:

"I do not know what Mr. Hillman did, but it is quite evident that I expected Mr. Hillman to get the information and enlighten me."

Now, I meant that information, did you understand me to mean it, or what did you understand me to mean?

A. I understood you——

Q. What information did you think I was after?

A. I understood that you wanted that information.

Q. In relation to these fixed charges?

A. In relation to these fixed charges.

Q. Now what do you say to that?

A. I said that I had looked and not found any records. Not having found any records of any character at that time, I, of course, answered the general proposition.

Q. Now, am I to understand that when you started to look for records to which Mr. Anderson referred, that you did not make any inquiry from him as to the source from which he got his information, is that the character of an investigation you made? Answer that.

A. Yes.

Q. When you came to investigate what Mr. Anderson had done, in answer to an inquiry I put to you, you did not take pains to inquire from Mr. Anderson the source from which he got his information?

A. Yes, sir, because I did not know that Mr. Anderson had——

Q. And you gave me to understand that there was not any information obtainable, that without having inquired from Mr. Anderson the source of his information, you assumed that there was not any obtainable, is that what you did?

A. No, sir, not exactly.

Q. Let me read what you did. Wait a minute. I do not like to be bothered in digging this stuff up in this sort of way. You said:

> "I found nothing on file that I could determine the points that were asked about, and I notified the counsel and abandoned it."

Now you tell me that you did not even ask Mr. Anderson the source from which he got his information. You knew that I wanted information in relation to that particular point, and you did not ask Mr. Anderson where he got his information; and yet you tell me that you could not find the information, and you notified the counsel and abandoned it. Is that what you mean? Is that the way you made the investigation?

A. That is the way I made the investigation. Will you allow me to explain it?

Q. I will read the rest, and then you can explain it.

"THE MASTER: Were there any books of the Company?

"MR. HILLMAN: I did not find any anywhere. I do not mean that I wilfully abandoned the search, your Honor, but I had to let it go."

And you did not even ask Mr. Anderson what books he relied on, is that what you mean?

A. Yes, sir, except——

MR. HOLT: Well, if you will pardon me——

Q. (Reading):

"THE MASTER: Of course the canal may have been worth a decent sum of money in 1860, and it may not have been worth anything in 1880. I presume, when you come right down to it, that modern methods of transportation gradually eliminated this canal. I presume likely that might have been the fact. So that you might have a condition in 1880 that would not obtain at all in 1860.

"MR. HOLT: Exactly, I believe you will find now that the bond issue——

"THE MASTER: Let me ask this question. Are the books of the James River and Kanawha in existence anywhere?

"MR. HILLMAN: I do not think there are any such books in existence. As I said, I tried to find them and was unable to find any trace of them."

Now the effort you say you made was, you did not even ask Mr. Anderson what he relied on as a basis of his statement in making that investigation, and led me to understand—what do you mean by that?

A. I mean that I did not know that Anderson had testified on the point.

Q. You tell me right now that you knew what I was looking for. You must have known from somebody what Mr. Anderson testified to, and then you tell me practically that there is nothing in existence that discloses any of these facts.

MR. HOLT: No, your Honor, I think that that is an unfair statement. He does not say that there is nothing in existence; he says he did not find anything. And you ask him if he asked Mr. Anderson. If he knew anything about Anderson at all he knew that Anderson knew nothing about it, as least he so said, and we don't go to people for information who don't know.

THE WITNESS: That was a hearing in this room, your Honor?

THE MASTER: It was at the conclusion of the argument, and it was at the end of that that I insisted that this information that we have here now should be produced if it could be procured. Nobody knew whether it could be procured or not. Counsel on neither side had any information about it at all.

THE WITNESS: That was in the argument in this City?

THE MASTER: Yes.

THE WITNESS: That is what I understood.

THE MASTER: The answer I got from you was that you had looked it over and could not find anything, and then I insisted on these reports being produced.

THE WITNESS: I had looked in Richmond for the reports of the James River and Kanawha Company, and was not able to find any, and based my answer to you on that, that I was not able to find any; and I did not know, nor was my attention called to Mr. Anderson's testimony, that he had such a record and had seen it, and I knew nothing about it.

Q. And you did not know that I was trying to find out what those fixed charges were, is that what you say now?

A. I knew that you were trying to find out the fixed charges; I certainly did.

Q. The fixed charges that Mr. Anderson had no information about, you knew what fixed charges I meant, did you not?

A. I knew that you meant the fixed charges of the James River and Kanawha Company. I did not know that Mr. Anderson was brought into it.

Q. Do you mean to say that you did not know what I was inquiring about when I put this question:

"THE MASTER: I do not know what Mr. Hillman did, but it is quite evident that I expected Mr. Hillman to get the information and enlighten me."

Now, did you know what information I wanted when I put that question to you?

A. Yes, sir, you were after the fixed charges, as well as other information, concerning the James River and Kanawha Company.

Q. The fixed charges stated by Mr. Anderson?

A. I did not know——

Q. Did you know what he had stated up to that time?

A. No, sir, I did not.

Q. Had your attention been called to the fact that I desired that information, by anybody? And if it had not, how did you know what I was inquiring about? If your attention had been called to it by anybody, who called your attention to it, that I wanted that information, the fixed charges that Mr. Anderson claimed he had no information about—who called your attention to that?

A. I knew that you were getting after the fixed charges——

Q. Answer this question, please. Who called your attention to the fact that I wanted information as to the fixed charges, as to which Mr. Anderson said he had no information? Had your attention been called to it?

A. Not as far as I can recall, no.

Q. Well, did you know that I wanted that information, and if you did not know, how could you answer that question intelligently?

A. I do not recall that I knew that you wanted it. I should say no.

Q. That is all.

A. If the matter is as you state there, you have asked for certain information. Having looked for the records, and not being, up to that time, able to find any records, I was perfectly justified in stating that I could not answer that question.

THE MASTER: That is all.

MR. HOLT: Let me give my recollection of this, if there is any point in it.

MR. LILLY: I do not see that it is important enough to create all this discussion anyway.

THE MASTER: I have examined him all I want to.

MR. HOLT: I was not seeking to ask him any questions, Mr. Littlefield.

THE MASTER: I have no objection to your examining him.

MR. HOLT: I say I do not want to ask him, but I want to make a statement about this.

THE MASTER: Yes, certainly.

MR. HOLT: My recollection is that when Anderson was upon the witness stand you asked him the question—he was talking about income, and you asked him the very pertinent question, whether he had any knowledge upon the subject of the fixed charges that had to be met by this Company, and he said he did not, he did not know. Then either Attorney General Lilly or myself volunteered that we would have Mr. Hillman look that up. I think that occurred at Richmond. Now, whether Hillman was present at the time or not, I do not recall, or whether he had gone to Chicago. You know there was an interim there, Mr. Littlefield, when he was away.

THE MASTER: Yes, that is right.

MR. HOLT: Then the matter seems to have dropped out of our minds, out of mine at least, I do not know what was done after that; the investigation was abandoned for some reason, I do not know what. But when we came here to the argument, at the conclusion your Honor brought it up again, and said you would like to know what those fixed charges were, and asked if it were possible to get any information upon the subject about whether or not these books might be in existence somewhere. And we were all of the opinion at that time—I think Mr. Harrison will bear me out in

that—that both sides were of the opinion that no records were on hand or were accessible. You will find that you asked Mr. Harrison something about it there, and he was standing in just about the same dilemma that I was. Hillman was here, but he was going to Chicago after that, he was not going back to Richmond at all; and he did not undertake to make any investigation after that time. And the first knowledge he ever had of this matter that is in here now was when the recent exhibit of Mr. Potter was handed to him. We thought, so far as we were concerned, that we had all the information that there was on that subject. It turns out now that we did not have.

THE MASTER: Suppose I had relied on Mr. Hillman's statement that he made to me at that time, would that have given all this information that we have here now?

MR. HOLT: You did rely upon it as far as it goes. Hillman did not say there was no such material in existence; he simply said that he did not find it, just like Mr. Harrison would have made the same statement, or I would have made it. There was no such information on hand, so far as his knowledge went. Well, that does not say that there is no such information. And, of course, if you wanted to investigate to satisfy your own mind whether there was or not, you would do it independently of a statement of that kind. I could have truthfully said, and perhaps did, that there was no information I had on the subject that I knew of, but that is quite different from saying there is none.

THE MASTER: It is quite different from saying that you had looked the records up and could not find any.

MR. HOLT: He said he had looked for records.

MR. LILLY: And I suppose he did look in all the offices there, the Public Works and auditor's.

MR. HOLT: Had Mr. Potter looked for it?

THE MASTER: Mr. Potter had not been charged with the responsibility of looking for it.

MR. LILLY: Mr. Hillman had to go to Chicago and his people were sick, and he was not down in Richmond, and it was up to Mr. Potter.

THE MASTER: That would have been a very good way to answer the whole thing when I inquired of him; but instead of that he certainly made the impression on my mind that he had been requested to investigate that. My recollection of Mr. Hillman's absence in Chicago is that, as a rule, he was present at practically all of the hearings.

MR. HOLT: No, all of the exhibits practically for the year 1863, I think, were put in in his absence.

MR. LILLY: And the last of 1861.

THE MASTER: However, the impression that he left on my mind was that he had been requested to ascertain this information that Mr. Anderson did not seem to have, and that he had made an investigation, and there was not anything that gave any light on it. If he had not made any such investigation—however, we won't stop to discuss it. I simply wanted to find out what the situation was. The record, as it stood, left the impression on my mind, beyond all question.

MR. HOLT: The point is this, Mr. Littlefield, that we think it is unfair to us and unfair to the witness—you may not mean it, but it puts us in the attitude of deliberately having attempted to deceive the Master

here. I am sure I have withheld nothing from the Master that I know about this case.

THE MASTER: You have not received any intimation from me that you have.

MR. HOLT: I do not mean myself exclusively. It looks as though the intimation on the part of the Master was that we had either, through our witness or personally ourselves, kept from him something. We knew nothing about it.

MR. LILLY: If we had known that, we would have brought it all in at first, because we think it helps our case. And why would he not have brought it in?

THE MASTER: I cannot tell you about that.

MR. LILLY: It impugns a motive without a reason, as far as we can see.

THE MASTER: I am not impugning any motive—I want to say this, that I was very much surprised, after the statement that Mr. Hillman made to me after the close of the last hearing, with what this long exhibit developed.

MR. HOLT: You were not any more surprised than he was.

THE MASTER: If I had taken Mr. Hillman's statement, it never would have been here. But I declined to accept his statement as final, and insisted on this document being found if it could be found. Neither side, as far as the counsel are concerned, had made any effort to examine, themselves. Mr. Anderson produced some extracts from it, and I wanted to see the whole exhibit to ascertain what the facts were in relation to it. If I had rested on Mr. Hillman's statement, it never would have been here at all. There cannot be

any question about that on this record. What Mr. Hillman intended about it, or meant about it, I do not know. But I simply wanted to develop for my own personal satisfaction just exactly what this situation is. I do not think that counsel on either side are subject to any criticism on the matter one way or the other. But I do not quite like the matter being put up to me in that way by Mr. Hillman.

MR. HOLT: In speaking of Mr. Hillman's knowledge of Mr. Anderson's testimony, the Master must bear in mind that we had Mr. Hillman at work in the various offices all the time that anybody else was on the witness stand. I do not think he heard Mr. Anderson's testimony at all. We had to send for him every time we wanted to use him, because he was pressed for time, and out of the room when other people were testifying in the room. Well, we desire to ask no further questions.

THE MASTER: That is on this schedule, you mean?

MR. HOLT: Yes.

MR. HARRISON: We have no questions to ask.

THE MASTER: I thought you had another schedule, the Northwestern Bank. What is the understanding now about this admission that Judge Holt suggested as to the payment in full by the capital stock? This is what you said, at page 2967 of the transcript:

"MR. HOLT: My suggestion to this, it is stipulated by and between the parties to this record that all of the securities mentioned in the Schedules A, B, C, D, E, F, G and H were paid for by Virginia at par in cash prior to the 1st day of January, 1861, except as may affirmatively otherwise appear in this record. That will cover the whole thing."

Is that agreeable?

MR. HARRISON? Yes.

THE MASTER: You do not want that extract put in then?

MR. LILLY: No.

MR. HOLT: We now offer, your Honor, a letter dated at Jeffersonville, October 17th, 1861, by John A. Kelly, cashier, to His Excellency, John Letcher, Governor of Virginia, together with the statement enclosed.

THE MASTER: Is that a report made on oath?

MR. LILLY: Yes.

MR. HOLT: It is a letter, and I am going to follow it with the report. This is a letter dated Jeffersonville, October 17th, 1861, by John A. Kelly, cashier, addressed to His Excellency, John Letcher, Governor of Virginia, found on page 555 of a volume marked Documents, 1861-1862, Part 2, and likewise the accompanying report transmitted with that letter of the condition of the Northwestern Bank of Virginia, found at pages 556 and 557 of the same volume. Also the affidavit attached to said report, and found upon page 558 of said volume.

The paper was admitted in evidence and marked Defendant's Supplemental Exhibit No. 7, December 10th, 1914, C. B.

Defendant's Supplemental Exhibit No. 7 is as follows:

DOCUMENTS—1861 and 62—PART 2.

STATE OF WEST VIRGINIA.

CONDITION OF THE NORTHWESTERN BANK.

Quarterly Statement—October 1861.

Office of Northwestern Bank of Virginia,

Jeffersonville, October 17, 1861.

Sir:

I again enclose you quarterly statement of the condition of this office, being excluded from communicating with parent bank.

Very truly yours,

JOHN A. KELLY, Cashier.

His Excellency JOHN LETCHER,

Governor of Virginia.

Statement of the Condition of the Jeffersonville Branch of the Northwestern Bank of Virginia on the 1st, October, 1861.

Assets:

Bills and notes discounted (all domestic)	$328,042.52
Notes of the parent bank and other branches	8,535.00
Notes of other Virginia state banks	3,032.00
Notes of banks of other states	240.00
Virginia and Confederate States treasury notes	750.00
Checks, etc.	434.66
Specie	52,332.16
Due by other banks to this office	9,530.66
Expenses	30.70
Real estate owned by this office (estimated cash value)	11,815.18
	$414,742.88

NOTE.—$24,000 of the specie reported is a special deposit with the parent bank. A short time before intercourse with the bank was interrupted, Cashier Lamb wrote to this office that the specie was untouched.

Liabilities:

Capital paid in		$164,200.00
Circulation—5s	$152,035.00	
Circulation—10s	52,690.00	
Circulation—20s	880.00	
Circulation—50s	800.00	
		206,405.00
Due by this office to the parent bank		1,796.11
Due by this office to other banks		2.95
Due to depositors		6,469.46
Discount and interest account		2,718.16
Exchange and premium account		44.03
Profit and loss account		33,107.17
		$414,742.88

VIRGINIA—Tazewell County, to wit:

This day John A. Kelly, cashier of the Northwestern Bank of Virginia at Jeffersonville, made oath that he believes the foregoing statement is correct.

Given under my hand this 17th day of October, 1861.

R. B. GILLESPIE, N. P.

MR. HOLT: We likewise offer and ask to have incorporated in the record the report of Chester D. Hubbard, dated at Wheeling, West Virginia, February 23, 1871, certified by J. S. Darst, auditor, under his hand and official seal, on the 26th day of February, 1910, and found at pages 355 to 358 inclusive of the Lilly compilation.

The report was admitted in evidence and is considered as Defendant's Supplemental Exhibit No. 8.

Defendant's Supplemental Exhibit No. 8 is as follows:

REPORT OF HONORABLE CHESTER D. HUBBARD

Wheeling, West Virginia, Feb. 23, 1871.

Hon. W. E. Stevenson, President.

Dear Sir: In accordance with the instructions of the Board of the School Fund in their action of the 15th, I have ascertained and herewith transmit a statement of the stock held by the state in the National Bank of West Virginia at Wheeling, the First National Bank of Wellsburg, and the Parkersburg National Bank, and the different funds to which said stock is credited.

I also proceeded to Wellsburg and exchanged as directed the stock of the Internal Improvement Fund in the First National Bank of Wellsburg, 163 shares, for United States 5-20 coupon bonds (the Bank had no registered bonds) receiving therefor sixteen bonds of $1,000 each and three bonds of $100 each lettered and numbered as follows: $1000 K 134,401, 134,403, 134,404, 134,405, 134,406, 134,407, 134,413, 134,414, 163, 792, G. 142,990, 142,991, 142,981, 142,982, 142,983, 142,-984, 142,985. $100 each I. 177,876, C. 102,938, D. 236,517. These bonds carry the coupons of July 1, 1871, and were issued July 1, 1867, under the act of 1865.

I have sealed the bonds in an envelope writing my name across the seal and labelling them as belonging to the School Fund of West Virginia, and have deposited them as a special deposit in the First National Bank of Wheeling. The bonds can be exchanged for registered bonds by sending them to

Washington. I will attend to it if you desire it to make any other disposition of the bonds you may direct.

The Bank declined to exchange for the stock held in the name of the state, believing that they could not safely do so under section 7, article 8, of the Constitution, besides I was not certain that my authority extended to such an exchange. If I am to make any other disposition of the bonds, please advise me at your earliest convenience.

The stock exchanged at Wellsburg will modify the bond statement to that extent. Very respectfully,

C. D. HUBBARD.

Statement of Stock held by the State of West Virginia in "The National Bank of West Virginia at Wheeling," "The First National Bank of Wellsburg," and "The Parkersburg National Bank," and the different funds to which said stock is credited.

1837—(July 18)—The Commonwealth of Virginia subscribed 4,000 shares of stock in the Northwestern Bank of Virginia		$400,000.00
1857—March 3—The Bank purchased of this stock 1,082 shares as follows:		
Northwestern Bank of Virginia at Wheeling.	332 shares	
Northwestern Bank of Virginia at Wellsburg.	250 shares	
Northwestern Bank of Virginia at Parkersburg.	250 shares	
Northwestern Bank of Virginia at Jeffersonville.	250 shares	
	1,082 shares	
		108,200.00
Leaving 2,918 shares		$291,800.00

1865—March 2—The Bank charged to the Commonwealth of Virginia all the stocks of the Bank of Jeffersonville, on the plea that the State had taken possession of that Bank, 1,642 shares	$164,200.00
And transferred the remaining stock to the State of West Virginia, 1,276 shares	127,600.00
1866—July 1—On the organization of the present Bank this 1,276 shares was transferred at 50 cents on the dollar, as follows, viz:	
National Bank of West Virginia at Wheeling, 300 shares	$30,000.00
First National Bank of Wellsburg, 188 shares...	18,800.00
Parkersburg National Bank, 150 shares	15,000.00
The Internal Improvement Fund of Virginia subscribed to the Stock of the Northwestern Bank of Virginia:	
1856—August—30,326 shares.	32,600.00
This stock was transferred at 50 cents on the dollar, 1866, July 1, to the First National Bank of Wellsburg (163 shares)	16,300.00
The President and Directors of the Literary Fund of Virginia subscribed to the stock of the Northwestern Bank of Virginia—1832—November 24—500 shares.	50,000.00
This stock was transferred at 50 cents on the dollar, 1866, July 1, to the Parkersburg National Bank, 250 shares.	25,000.00

SUMMARY.

The State now holds in the—

National Bank of West Virginia at Wheeling, 300 shares (in the name of the State)	$ 30,000.00
First National Bank of Wellsburg, 188 shares in name of the State	18,800.00
First National Bank of Wellsburg, 163 shares in Internal Improvement Fund	16,300.00
Parkersburg National Bank, 150 shares in Internal Improvement Fund	15,000
Parkersburg National Bank, 250 shares in Literary Fund	25,000.00
	$105,100.00

1867—July 9—The Northwestern Bank of Virginia paid a dividend of 5 per cent. on 326 shares Internal Improvement Fund	$1,630.00	
On 1,276 shares Commonwealth of Virginia stock	6,380.00	
On 500 shares Literary Fund	2,500.00	
		$10,510.00
1868—August 1—A like dividend of 5 per cent. on the same stocks		$ 10,510.00

February 21, 1871.

I, J. S. Darst, Auditor of the State of West Virginia, and ex officio Secretary of the Board of the School Fund of said State, hereby certify that the foregoing is a true and correct copy from the record of the minutes of the proceedings of said Board, pages 37 to 41 of Record Book No. 1 of said Board.

Given under my hand and official seal, this 26th day of February, 1910.

J. S. DARST,
Auditor.

THE MASTER: Have you any examination in relation to that, Mr. Harrison?

MR. HARRISON: No, sir.

THE MASTER: I want to ask Mr. Hillman a question about an item here on page 113. Attention ought to be called to the significance of this exhibit, because this purports to be an official, sworn report, stating the amount of the stock in this Jeffersonville Branch. If there is anything that should go into the record that counsel for Virginia think impeaches that, of course this is the time to do it. But this seems to be of the same general official character as the other ofcial reports are, as I understand it. Am I right about that?

MR. LILLY: Yes, and we never knew that was alive until about a week ago.

THE MASTER: Well, that undoubtedly comes from an official publication of the State of Virginia.

MR. LILLY: Yes, sir.

CONWAY W. HILLMAN, recalled for further examination, testified as follows:

By The Master:

Q. Mr. Hillman, won't you take the new print, please, on page 1193, and look at the item, interest on bonds and notes, under the column of 1860, $39,067.43, and followed out under 1861, $14,356.45, under 1862, $11,449.25, under 1863, $13,-981.30. What I wanted to inquire is whether you are familiar enough with the statement to be able to state whether those are bonds and notes other than bonds and notes held by the State; and if not, can you ascertain that?

A. I am not familiar enough to do it offhand, but I think I can find out.

ARTHUR G. POTTER, recalled for further examination, testified as follows:

By The Master:

Q. Do you know about that, Mr. Potter, interest on bonds and notes, $39,067.42, in the column of 1860? Does that represent bonds and notes, other than bonds and notes held by the State, or is it to be included with the aggregate of the bonds and notes held by the State?

A. I cannot tell you offhand.

Q. Won't you and Mr. Hillman look that over between yourselves and see if you can find anything to show that, for each of those years?

A. Yes, sir.

Q. I would like to have you and Mr. Hillman look that over and report to me what the fact is, if you can find out.

A. All right, sir.

THE MASTER: You have no further examination in relation to this last exhibit, Mr. Holt?

MR. HOLT: No, sir.

MR. HARRISON: Mr. Littlefield, we have no cross-examination in regard to the exhibit put in in relation to the Jeffersonville Branch.

THE MASTER: Are you through with Mr. Hillman on the direct-examination?

MR. LILLY: There may be one other schedule that we may want to offer.

THE MASTER: What is the other schedule, Mr. Lilly?

MR. LILLY: It is about the banks, about the bad and doubtful debts. I do not know whether they have that worked up or not; but I think so.

THE MASTER: That is an additional schedule tending to answer the suggestion that there were bad and doubtful debts that ought to be deducted from the assets, on the ground that they appeared afterwards to be bad in whole or in part, is that it?

MR. LILLY: Yes, sir, paid or charged off.

THE MASTER: Have we got anything else? Let us see how far along we are. Is there anything else that either side wants to put in? Do you want to put in anything in relation to this Jeffersonville Branch?

MR. HARRISON: No, sir. I think the exhibit speaks for itself.

MR. ANDERSON: The exhibit does not show how much the State owned.

THE MASTER: It shows $164,000, capital of the Jeffersonville Branch.

MR. ANDERSON: Virginia did not own it.

THE MASTER: This schedule shows—in the first place we start out with the Northwestern Bank all owned by Virginia. Now the question is—just have this right in mind, so we won't have any misunderstanding about it—now the question is how much of that Northwestern Bank should be charged to the State of West Virginia. In the original record the counsel for West Virginia conceded that the whole of it should be charged. Now, then, since that time it has been discovered that there was a branch at Jeffersonville, which is in the territory of Virginia, and West

Virginia contends that whatever was properly attributable to that Branch in Virginia, of course, was not taken by West Virginia, and that they ought not to be charged with it. Now they put in an official report which shows that the amount of the stock that was represented by the Jeffersonville Bank was $164,000. And if that stands unimpeached, that comes pretty near showing that that is the amount of the capital stock that should be deducted from the total stock of the Northwestern Bank. Now that is the way the record stands as a matter of proof.

MR. HARRISON: From the total stock?

THE MASTER: In other words, instead of charging the total capitalization of the Northwestern Bank to West Virginia, the amount, less the stock that appears by this exhibit to have been in the Bank in Virginia, should be deducted. Do I make that clear?

MR. LILLY: Yes.

MR. ANDERSON: I would like to call your attention to the Defendant's Exhibit at pages 160 and 161, showing the number of shares.

THE MASTER: But since then they have produced this original record.

MR. ANDERSON: Your Honor is mistaken in supposing that the State owned all the stock in that bank.

THE MASTER: You misunderstood me; I did not mean at all that the State of Virginia held the whole capital; but the State of Virginia held a certain number of shares, which I valued before at $427,000; and that was its interest.

MR. ANDERSON: I misunderstood you. There is nothing to show that they owned all the stock in this bank.

THE MASTER: Your point was that here was a total capital, and the State owned of that capital a certain sum. The question is how much of that $164,000 was owned by the State.

MR. HOLT: That is ascertainable from another exhibit. It shows the number of shares upon which Virginia was at that time receiving dividends.

MR. ANDERSON: That is the Grazier's Bank, is it not?

MR. HOLT: It is the same thing. That shows the difference between $164,000 and $146,000 was privately owned.

THE MASTER: Up to today we have not had any definite information as to what the capital stock of that Grazier's Bank was. It is $164,000. Now the question is how much of that $164,000 did the State of Virginia own?

MR. HARRISON: It is on that single point that I would like to have an opportunity to confer with Mr. Potter before we close.

THE MASTER: Yes. Now West Virginia claims that these entries that they have put in in part, that is put the substance of in, show that Virginia, in 1860 and 1861 or 1862, or somewhere along there, was receiving dividends from the Grazier's Bank on $146,000. The general exhibit is in, but the exact transcript of the books is to be put in. Mr. Hillman's idea is that that transcript will show practically in terms that they were receiving dividends on that amount of stock. So that the way this case stands now is, $164,000 par, total stock of the Branch, and evidenced by the receipt of dividends, $146,000 owned by the State of Virginia.

MR. ANDERSON: That would assume that the Grazier Bank took over the stock and had no more stock. I think your Honor will find that the stock was largely increased.

MR. HOLT: Turn to page 174 and you will see they are paying dividends on a certain number of shares in the Jeffersonville Branch and on a certain number of shares in the Grazier's Bank.

MR. HARRISON: If you will get your exhibits in I will ask Mr. Potter a question about it.

THE MASTER: Here would be the situation. Here is $164,000 of capital, apparently established by this last exhibit. Now if the original entries, when they come in here, show that Virginia was receiving from this Grazier's Bank, which under these acts was the successor of the branch of the Northwestern, dividends on $146,000 capital, why, it raises a very strong inference that she was the owner at that time of $146,000 of the capital stock. Their exhibit here shows that, but Mr. Hillman thinks that the entries themselves go farther and more specifically state that fact. Well, if the books of Virginia show a receipt of dividends on a certain amount of capitalization, and there is not anything else in this case, I should have to come pretty near holding that that was their holding in the bank.

MR. ANDERSON: It would certainly be very persuasive evidence of that fact.

THE MASTER: It is open to both of you to put in all the facts you can get. I have been trying to get the facts in relation to this particular branch ever since the last hearing, and West Virginia has succeeded in producing this of course important piece of evidence.

MR. HOLT: Who has been charged now with the duty of showing what that record shows?

THE MASTER: I will put it this way. I shall hold on this exhibit that the capital stock of the Grazier's Bank was $164,000. And if, when these entries come here, they show that the State of Virginia, by its own books, was receiving dividends on $146,000 of that capital and there is not anything else in this case, I shall hold on that showing that the State of Virginia was the owner of $146,000 of the capital stock of that bank, and that West Virginia is to have that deducted from the total capitalization of the Northwestern Bank. If the case stops there, that is what I shall hold.

MR. LILLY: That would be all right so far, but it makes West Virginia pay for $18,000 that she never got. In other words, Virginia by her act of legislation took $164,000 of the capital stock, whether she owned it or not, and that $164,000 was deducted from the $374,000, and the stockholders in West Virginia did not lose any. But West Virginia got the rest that Virginia had. And that whole $164,000 was charged off from West Virginia's stock, leaving her $210,000. Virginia not only got her $146,000, but by her act of legislation cut all of that stock off.

THE MASTER: Does that necessarily follow? I want to get your idea about it. If Virginia held the whole of the stock of the Northwestern Bank, that all might be true; but she did not.

MR. ANDERSON: A lot of people in Tazewell held it.

THE MASTER: Virginia did not hold the whole stock. Now what was done in the other case, West Virginia was charged with all the stock that Virginia held in the Northwestern Bank, but we did not charge her with the whole capital stock of the Northwestern Bank, because there were other stockholders.

MR. LILLY: Over 8,000 shares.

THE MASTER: Now, the Tazewell Branch, when that came to be organized, it had $164,000 of capital, but it does not follow from that that Virginia had the whole of that, because there were other stockholders.

MR. LILLY: Suppose she destroyed it. The stockholders in the Northwestern Bank of West Virginia did not lose any, but Virginia lost the $164,000—that is, West Virginia did. Out of the $374,000 there was $164,000 cut off.

THE MASTER: Where does that appear?

MR. LILLY: Well, that will appear from the record right here, I think.

THE MASTER: Let us look that up so I can get it in my mind right now.

MR. LILLY: Suppose West Virginia only owned $10,000 in the Jeffersonville Branch, if she had cut off $164,000 and West Virginia lost that——

THE MASTER: Suppose the total capital was $100,000, and Virginia held $75,000, and when they come to go off West Virginia took $70,000 with her and left $5,000, or took $60,000 and left $15,000, and then the Tazewell Branch represented—no matter how much—but if Virginia's part was represented in the Tazewell Branch, how was West Virginia harmed, assuming that she got the proportion of the stock that Virginia held in the Northwestern Bank?

MR. LILLY: Suppose we use the figures in the record. $374,000 was Virginia's stock in the Northwestern Bank. There was $164,000, by Act of 1862, cut off into the Grazier's Bank from the Jeffersonville Branch.

THE MASTER: That does not come out of the $374,000.

MR. LILLY: Follow me just a minute.

THE MASTER: I want to get your point.

MR. LILLY: Well, when West Virginia came to get her part from Virginia, the residue, there was deducted out of Virginia's part the whole $164,000, leaving West Virginia the $210,000.

MR. ANDERSON: Who did that? Virginia was powerless out there.

MR. LILLY: But she was not powerless when she cut off.

THE MASTER: Look up the record and see what it says.

MR. LILLY: West Virginia not only lost the stock that Virginia had, but the stock that the private people had in the Grazier's Bank. It was deducted out of the $374,000. Of course it is only a small item, about $18,000.

THE MASTER: Let us look at the record and see what it says.

MR. LILLY: You see Virginia cut off $164,000, and she had $374,000, and West Virginia got the residue. And she did not get but $210,000, because Virginia had cut the $164,000 off. The private stockholders did not happen to be in West Virginia, but West Virginia lost it.

MR. ANDERSON: What became of the private stockholders in West Virginia?

MR. LILLY: That is not material.

THE MASTER: Let us have Mr. Lilly point out in the record just exactly what he thinks shows this.

MR. LILLY: The bank charged the Commonwealth of Virginia with all the stock of the Jeffersonville, on the plea that the State had taken possession of that bank, $164,200; and this $164,200 came out of the $374,000, notwithstanding the fact that part of that may have been private stock.

THE MASTER: What is there in Hubbard's letter that shows that?

MR. LILLY: You add here what we get, and here what we get.

THE MASTER: Here is your total here.

MR. LILLY: West Virginia was charged not only with what Virginia had in the Grazier's Bank, but with what the private people had, because the Northwestern Bank had been depleted $164,000; and when they settled with the stockholders, Virginia having done it, her stock suffered and not the stock of the private owners.

THE MASTER: You mean West Virgina suffered that.

MR. LILLY: Yes, West Virginia suffered that.

MR. ANDERSON: It was not done by Virginia.

MR. LILLY: Virginia cut off the $164,000.

MR. ANDERSON: She had that much stock.

MR. LILLY: No, she had $146,000.

THE MASTER: Have we got anything here that shows just exactly how much capital West Virginia received?

MR. LILLY: This report shows it there. There is $32,000 in one fund, and $50,000 in another; that makes $82,600, and that makes $374,400; then you deduct $164,200, and that leaves $210,200, that our pleadings claim.

THE MASTER: Why can't Mr. Potter and Mr. Hillman sit down and cipher this out, with the suggestions of Mr. Lilly, and see what this shows the way they figure it out as to the number of shares of stock that West Virginia had. It is a matter of very little consequence of course what was left in Virginia's hands, if we ascertain in the first instance what West Virginia received. One way of ascertaining of course what West Virginia received is to find out what the total capital held by Virginia was, and then deduct from that the amount retained by Virginia. But that might not be the only way. They might be able to ascertain independently of that computation. I would like to have Mr. Potter and Mr. Hillman look that over and see if they can cipher that out. You get my point, don't you?

MR. LILLY: Yes, sir.

MR. HARRISON: Mr. Lilly's point is that the whole capital stock, irrespective of whether the State of Virginia owned all of it or not, of the Jeffersonville Branch, should be deducted from the portion of the stock which the State of West Virginia owned in the Northwestern Bank. You cannot deduct somebody else's stock from what somebody else owned, and that is not sound.

MR. LILLY: The $164,000 of the Northwestern Bank stock had been reduced that much. When the loss had to be sustained, it was not the private stockholders in West Virginia that sustained it, but West Virginia had to sustain it.

THE MASTER: Can we get at this in another way? Are there exhibits enough in this case that show the assets of the Northwestern Bank in 1861 or 1862 or 1863, or whatever it may be, and then can we take this exhibit and deduct these assets from those assets? Of course, the real value of the stock is predicated upon the assets, and if we can ascertain how many assets West Virginia had——

MR. LILLY: We cannot do that, we could not get it after the other bank was formed. The Grazier's Bank is worth about 20 cents and the Northwestern Bank was worth $1.11. There is $33 surplus and profits in the Grazier's Bank, that is from this report that we filed this morning.

THE MASTER: What is the latest schedule on the Northwestern Bank?

MR. LILLY: That is 1861.

MR. ANDERSON: That was before the Grazier's Bank was formed. That was chartered during the War and was a Confederate institution.

MR. HARRISON: I would like to have Mr. Potter make a statement.

THE MASTER: We will suspend on this, and if they have any further statement from Mr. Hillman, they may put it in, in answer to this statement of Mr. Potter.

MR. LILLY: At page 984 of the record you will find the Statute incorporating the Grazier's Bank.

THE MASTER: Have we not got a schedule in here showing the condition of the Northwestern Bank?

MR. LILLY: Yes, in 1861.

THE MASTER: Let me look at that, please. Why cannot we do this—here are the assets as of January 1, 1861, and here is the first of October, 1861, in the exhibit put in this morning—why can't they take these assets and get the proportion of the assets that the Jeffersonville Branch held, and then apportion the stock on that basis?

MR. LILLY: Well, you might do that. Here are the two features I thought, the profit and loss——

THE MASTER: Let us see if this is not a fair proposition. Here, on January 1st, 1861, are the assets of the Northwestern Bank, and on October 1st, 1861, are the assets of that Branch. Now Virginia held a certain percentage of the capital stock of the whole Bank. Deduct the amount of the assets of the Jeffersonville Branch from the total assets, and then take the percentage that Virginia held, why would not that reach reasonably an approximation of the value of the amount taken by West Virginia? Do you get my point?

MR. LILLY: Yes.

THE MASTER: Why not let the two accountants work it out on that basis?

MR. LILLY: That might do it; only it seems the amount of the stock and the book value——

THE MASTER: Of course Virginia only held about half of this stock, a little less than half; if you sliced the branches off, she would have half of the Jeffersonville Branch, and West Virginia would have the other half.

MR. LILLY: But each branch had capital stock.

THE MASTER: But suppose they did. Here is the whole bank, that includes all the branches; there is

one branch in Virginia; now take the assets of the Virginia branch and deduct them from the total assets, and then the percentage that Virginia held in the total assets would be the percentage that West Virginia took of the remaining assets. Why is not that as near as we can reach it?

MR. LILLY: That possibly would be all right.

THE MASTER: Well, let us see if the two accountants cannot work it out on that basis. Now, Judge, the sugestion is this; we have some factors that are evidently fixed, for instance the total capital in the Grazier's Bank, and then we have got the percentage that Virginia held in the Northwestern Bank; now deduct the assets of the Jeffersonville Branch from the total assets of the Northwestern Bank, and then take the percentage that Virginia held in the total bank, and take that out of that balance, for the purpose of ascertaining the value of the assets that West Virginia held in the Northwestern Bank. I do not know how that would work out.

MR. ANDERSON: After we saw it stated we could understand it.

THE MASTER: Suppose we have the accountants work that out and see what the result is.

MR. HOLT: I had worked that all out to my satisfaction the other night, but I cannot seem to get anybody to agree with me.

THE MASTER: I have not made up my mind about it at all.

MR. LILLY: I agree with the Judge about it, only as to $18,000. We agree that Virginia got $146,000, because she owned that much and got dividends on it.

THE MASTER: It seems to me that this would be a fact in connection with the case. Let us assume, for the purpose of illustration, that Virginia held one-half of the stock—it was not quite one-half, but very nearly; well, if she held one-half of that stock, she held one-half of the stock wherever it was located. If the Jeffersonville Branch had $164,000 capital, why she would hold one-half there and she would hold one-half everywhere. She would be entitled to one-half of the assets, wherever they were located. Now deduct the assets of the Jeffersonville Branch from the total assets. That leaves the branches in West Virginia; and Virginia's interest in those branches would be one-half. And that would be, on that basis, the sum with which West Virginia would be charged.

MR. LILLY: That would do all right in theory, except for the fact that we show here conclusively that Virginia was getting dividends on $146,000 in the Jeffersonville Branch.

MR. ANDERSON: No, in the Grazier Bank, not the Jeffersonville Branch.

MR. LILLY: I am speaking about the record.

MR. ANDERSON: The record does not show.

THE MASTER: About all the record shows is that here was an Act of the Legislature practically changing the name of the Jeffersonville Branch to the Grazier Bank. The presumption is that they took it just as they found it.

MR. ANDERSON: That Act simply severed the connection between the branch bank at Jeffersonville and the parent bank, and transferred to the ownership of the Jeffersonville Branch all the stock it held.

THE MASTER: It if held the assets it held corresponding capital stock. You cannot get any more than the

value of the assets of course. West Virginia ought to be charged with her share of the value of these assets in the Northwestern Bank, no matter what the capital stock was; whatever that value fairly was, of course West Virginia ought to be charged with it. Is there any better way of getting at it than by deducting the assets of one from the other?

MR. LILLY: Yes.

MR. ANDERSON: There is evidence here that Virginia had $50,000 of stock in the Jeffersonville Branch. In addition to that she had her holding in the Northwestern Bank, in the parent company, probably. I do not know, but Mr. Potter informs me that there is a certificate down there, which he has seen, for $50,000 of stock held in the Literary Fund.

THE MASTER: Of course their answer to that is that Virginia was receiving dividends on so much stock in that Grazier's Bank.

MR. ANDERSON: She would be entitled, in addition, to dividends on $50,000, and she would be entitled to her share of the dividends in the parent bank.

THE MASTER: That leaves her responsibility just the same.

MR. ANDERSON: I know, but I just want to get at the truth about it.

THE MASTER: Suppose we let the accountants figure up the assets and see what it comes to, and then take that up in the argument. Is Mr. Hillman ready with the additional material in relation to the doubtful and bad debts of the banks, tending to show—what I suggested the other day was that the doubtful and bad debts I should deduct from the assets, and the suggestion was that they could show by the records what the facts were.

MR. HOLT: In other words, there have been some discoveries made since they were at Richmond. I did not know whether it was that, or what you asked Mr. Potter and Mr. Hillman to look up, those interest items on bonds and notes. As I understand they do not want to cross-examine Mr. Hillman on anything that has occurred heretofore, but if we put him on now with respect to these bad and doubtful debts they may want to cross-examine him.

THE MASTER: If you can, I think you had better finish up with that. Does Mr. Leeds have to go?

MR. HOLT: No, sir.

THE MASTER: Because Mr. Leeds might perhaps work out some of these computations with Mr. Potter. I would like to have them figure out this matter between these two banks and see how it works out. Now let us make progress with Mr. Hillman.

CONWAY W. HILLMAN, recalled for further examination, testified as follows:

Direct examination By Mr. Holt:

Q. Mr. Hillman, since you made your original bank schedules that are now in the printed record, Volume 2, the exhibits, have you made a further examination of the condition of the banks therein described, upon the subject of bad and doubtful debts?

A. Yes, sir.

Q. Where do you find any additional record evidence that you did not have before?

A. Document No. 14, published by the State of Virginia in January, 1860, on page 22, whereon it is shown that the sum total——

Q. I will ask you about the details of it in a moment. What is the first bank mentioned there that involves the subject of bad or doubtful debts?

A. The Farmer's Bank of Virginia.

Q. What year did that relate to ?

A. This relates to the year ending January 1st, 1860.

Q. What amount of bad or doubtful debts, if any at all, was embraced in the report of the bank's assets of that year?

A. $70,619.66.

Q. Were they doubtful or were they bad?

A. They were marked as bad debts.

By the Master:

Q. What is the amount you get?

A. $70,619.66, one year prior to the date we have.

By Mr. Holt:

Q. Do you find any note taken in the assets of the bank for the year 1861?

A. No, sir, the record is silent on those debts in 1861. But in 1860 they are included in the total assets of the bank.

By the Master:

Q. What do you mean by that, in the trial balance?

A. Yes, sir.

Q. Under what heading?

A. Under debt outstanding.

By Mr. Holt:

Q. Can you tell from the record whether or not they were included in its assets for the year 1861?

A. I should say they were included in its assets for the year 1861.

MR. HARRISON: You were asked if you could tell from the record. He states that he concludes that they were. Is he stating that as a matter of inference?

MR. HOLT: He is stating it as a matter of inference, as I understand it.

Q. Why would you say, Mr. Hillman, that they are embraced in the bank's assets for the year 1861?

A. For the reason that they were embraced in the bank's assets in 1860, and that the total of 1860, which is compared with the same total in 1861, fits in with the general trial balance of the bank, and that therefore, since the debts are mentioned as being bad in both cases, that if they were treated in one way in 1860 they would be treated in the same way in 1861; it is inferential.

Q. That is a mere inference then?

A. Yes, sir.

Q. The record does not show that to be the fact, beyond what you have said?

A. No, sir.

Q. Not what effect, if any, will the fact that that $70,000 was embraced in the bank's assets have upon your schedule of book values of that bank's stock?

THE MASTER: Do you have a schedule for 1860?

THE WITNESS: No, sir.

MR. HOLT: He is treating it now as being in for 1861, inferentially he says, because he found that they were there in 1860.

THE WITNESS: It would reduce the assets of the Farmer's Bank of Virginia in 1861, and which we have in our Exhibit No. 5, on page 48——

Q. You have stated generally that it would reduce the assets of the bank. That is a sufficient answer to that question. Now the next one I will ask you is this; how will it affect, to what extent will it affect the book value of that bank's stock? Have you made that calculation?

A. No, sir.

Q. Will you please make it right away?

A. I will do so.

THE MASTER: Why don't you let him put nis details in, and then have his computations go in afterwards, instead of taking time for him to do it now?

MR. HOLT: The reason he examined the assets and liabilities before was for the purpose of ascertaining the book value of the stock. Now he finds a difference in his assets, and I want to know to what extent it will affect the book value.

THE MASTER: How much it will reduce the percentage?

MR. HOLT: Yes, how much it will reduce the percentage. And if he can give me that in brief, it will change his schedule according to the newly discovered facts. In other words I thought I could complete each bank as I went along, right away.

THE WITNESS: It will reduce the book value of the stock of the Farmers' Bank of Virginia to 112.83.

By the Master:

Q. As against what?

A. As against 115.07. After reducing it further by the dividend paid on January 1st, of 3½ per cent., it will leave the net value 109.33, instead of 111.57.

MR. HOLT: What do you find about bad or doubtful debts in the assets of the Bank of Virginia for the year 1861?

THE MASTER: He did not give the doubtful debts.

MR. HOLT: Doubtful debts are all in the assets; we would not throw them away.

By Mr. Holt:

Q. Do you find, in other words, any bad debts included in the assets of the Bank of Virginia for the year 1861?

A. Yes, sir, $6,412.

Q. To what extent, if any, would that affect the book value of that Bank's stock? I do not want you to stop now to make the calculation.

A. It would affect it by——

Q. The Master's idea is that you will calculate the new book value and insert it in your answer, on that basis.

A. All right, sir.

Q. Now we will come to the next bank. What is it?

A. There are no further banks which have bad debts listed on January 1st, 1861.

Q. What about the Exchange Bank?

A. The Exchange Bank of Virginia had no bad debts listed on January 1st, 1861. On April 1st, 1861, they had listed $8,224 bad debts; July 1st, 1861, they had no bad debts, and on October 1st, 1861, they had no bad debts. On January 1st, 1861, as I have said, there were no bad debts listed.

Q. I want you to give each bank, though, if I can get the names of them.

A. Oh, yes, sir.

Q. I have asked you now about the Farmer's Bank of Virginia, the Bank of Virginia and the Exchange Bank, have I not?

A. Yes, sir.

Q. What about the Fairmount Bank?

A. The Fairmount Bank had no bad debts listed.

Q. For the year 1861?

A. For the year January 1st, 1861.

Q. What about the Northwestern Bank?

A. It had no bad debts listed.

Q. Is that all of them?

A. There is the Bank of the Valley.

Q. What about the Bank of the Valley?

A. It had no bad debts listed.

Q. Then, as I understand you, Mr. Hillman, your further examination shows that the Farmers' Bank of Virginia and the Bank of Virginia, both had the bad debts you have mentioned embraced in their assets during the year 1861, but that none of the other four banks named had any bad debts listed for that year in their assets?

A. That is correct, yes, sir.

Q. And you will calculate the new book value of the stock of the Farmers' Bank of Virginia and of the Bank of Virginia, resulting from these bad debts being embraced in the assets, and insert it in your answer?

A. Yes, sir.

Q. What have you to say about bad debts in the assets of those banks, if you know, for the year 1863?

A. There is no record in that year of the banks, that I have been able to find, so that I could say nothing upon it.

MR. HOLT: You gentlemen may cross-examine him.

THE MASTER: I will ask him to put in this list he has of the bad and doubtful debts of these three banks, that he has right here.

By the Master:

Q. Mr. Hillman, will you please put into the record the list of bad and doubtful debts that you have, during 1860 and 1861, of the Farmers' Bank of Virginia, the Bank of Virginia and the Exchange Bank?

A. Yes, sir the statement is as follows:

BANK OF VIRGINIA.

		Bad Debts	Doubtful Debts
Page 10, Document 14,	Jan. 1, 1860	12,400	49,802.58
" 400, " "	July 1, 1860	None shown	37,535.82
" 562, " "	Oct. 1, 1860	6,412.00	36,485.82
" 8(Part 2)" "	Jan. 1, 1861	6,412.00	43,973.57
" 204, " "	Apl. 1, 1861	6,412.00	41,568.69
" 374, " "	July 1, 1861	18,830.00	29,616.69
" 524, " "	Oct. 1, 1861	None	22,512.69

The above bad debts will reduce the book value of the Bank of Virginia from $78.75 to $78.61, and after deducting the dividend of 3½% on the $70 per share, will reduce the net book value to $76.16 per share.

FARMERS' BANK OF VIRGINIA.

			Bad Debts	Doubtful Debts
Page 22,	Document 14,	Jan. 1, 1860	70,619.66	44,088.00
" 228,	" "	Apl. 1, 1860	70,695.81	44,620.00
" 412,	" "	July 1, 1860	67,738.81	41,195.31
" 570,	" "	Oct. 1, 1860	68,307.90	45,402.93
"16(Part 2)"	"	Jan. 1, 1861	70,773.96	45,437.34
" 212,	" "	Apl. 1, 1861	71,764.04	49,467.20
" 382,	" "	July 1, 1861	70,645.11	56,149.99
" 532,	" "	Oct. 1, 1861	70,645.11	55,467.58

The above bad debts will reduce the book value of the Farmers' Bank of Virginia from 115.07 to 112.83, and after deducting 3½% dividend from the above values we have net value 109.33.

EXCHANGE BANK OF VIRGINIA.

Document			Bad Debts	Doubtful Debts
Page 580 (Part 1),	14,	Oct. 1, 1860.....		600.00
" 24 (" 2),	14,	Jan. 1, 1861.....		4,800.00
" 220 (" 2),	14,	Apl. 1, 1861	8,224.78	4,800.00
" 390 (" 2),	14,	July 1, 1861.....	None	600.00
" 540 (" 2),	14,	Oct. 1, 1861	None	600.00

Cross examination By Mr. Harrison:

Q. Does not the tabular statement, following the balance sheet of the Farmers' Bank of Virginia, page 400 of the exhibits, for the year 1861, show bad debts?

A. Yes, sir, it does.

Q. To what amount?

A. $70,773.96.

Q. Well then, it is not a matter of conjecture or inference at all as to the bad debts for the year 1861, as your answer on your examination in chief would indicate?

A. You misunderstand my answer, Mr. Harrison. I do not say there were no bad debts. The answer was that the inference was if the bad debts had been included in the assets in 1860, that they were included in the assets in 1861; not that they did not exist.

Q. Then it is a positive fact, as shown by the record, that the bad debts did exist for the year 1861?

A. Yes, sir.

Q. In the amount just stated?

A. Yes, sir.

Q. That amount is a little larger than the statement you gave for 1860, bad debts, is it not?

A. Yes, sir, but not than the amount which I used in my calculation which was asked for.

Q. Now does not the same tabular statement of the Farmers' Bank that you are now referring to show doubtful debts, and if so in what amount?

A. $45,437.34.

Q. Now turn to page 404 of the exhibits, where you will find the tabular statement of the Bank of Virginia for the year 1861, which follows the balance sheet of that Bank. You

have testified that the bad debts for 1861 were $6,412, which is the amount shown on the tabular statement. Were you referring to that statement when you testified, or did you get that amount from somewhere else?

A. I got that amount from somewhere else, probably the same source from which this exhibit was derived.

By the Master:

Q. Well, you got it from Document No. 17?

A. No, sir, Document No. 14.

By Mr. Harrison:

Q. What doubtful debts of the Bank of Virginia are shown on the same statement?

A. $43,973.57.

Q. Now turn to page 410 of the exhibits, the tabular statement of the Exchange Bank of Virginia for the year 1861. Does not that show doubtful debts, and if so in what amount?

A. $4,800, doubtful debts.

By the Master:

Q. Your detail statement agrees with that, does it not?

A. Yes, sir.

By Mr. Holt:

Q. Mr. Hillman, do the papers or sheets just handed to the stenographer show these details?

A. Yes, sir, they do; they tally with that.

By Mr. Harrison:

Q. Now turn to pages 406 and 407 of the exhibits, which contain the condition of the Bank of the Valley, including its franchise, for January, 1861. Does not that statement

show, in the foot note, that there was a probable loss of $30,000, that the Bank was liable to sustain by reason of the transactions of its cashier, and also $13,522.12?

A. It shows that the cashier—excuse me, no, sir, I think not. It shows that the cashier—that there was a shortage, due to the cashier, or the teller rather, which had been reduced to $13,000, and which balance it was hoped would be finally settled the same way; and on the other side it says, "In addition to the amount of ascertained liabilities as stated above, it is proper to add, that there may probably be due to the mother bank, to banks and depositors, about $30,000."

Q. For what?

A. "Due to omissions on the part of the late teller to enter credits for remittances and deposits—the precise amount not yet accurately ascertained. No ultimate loss, however, to the Bank or his securities is apprehended."

Q. So then that statement does show, as I stated in my question, a possibilitiy of the loss of those two amounts?

A. Yes, sir, a possibility of loss.

MR. HARRISON: That is all I think I want to ask Mr. Hillman.

THE MASTER: Does that include everything from Mr. Hillman?

MR. HOLT: I think that includes all the bad debts.

By Mr. Holt:

Q. Is there anything in these records anywhere, Mr. Hillman, that you have been able to discover, that shows the reduction of the amount of these bad debts that you have described, by collection or otherwise?

A. Yes, sir, they show that bad debts were from time to time charged off or paid, ceased to be bad, by the fact of variations in the amount being less at subsequent dates than

they were at prior dates. With reference to the doubtful debts, these details that I have given will show that that account also varies, being sometimes more and sometimes less in the doubtful debts, showing that some of these debts were paid from time to time, and were not a total loss.

By the Master:

Q. These details are all reflected accurately in the details that you have given?

A. Yes, sir.

By Mr. Harrison:

Q. The reduction that you speak of in the bad or doubtful debts would indicate that they might have been charged off as well as collected, would it not, Mr. Hillman?

A. Yes, sir, that is a possibility.

MR. ANDERSON: Is there any evidence that they were collected?

MR. HARRISON: None at all except the fact that they varied in amount sometimes. That is all I care to ask.

THE MASTER: Is there anything further now from Mr. Hillman, except some computations he may make? And if he cannot stop to make them, Mr. Leeds can make them afterwards.

MR. HOLT: Is is expected that someone will get a transcript of the record on the item of dividends paid upon stock owned in the Grazier's Bank by Virginia.

THE MASTER: Mr. Page has agreed to have that sent to me. It has not arrived yet.

MR. LILLY: We would like to have this matter closed sometime, without any futher evidence.

THE MASTER: I think I have been reasonably liberal about keeping the matter open, and I do not think that we ought to shut down here now, and if I think I want anything more I will indicate what it is, but I think we ought to have a definite understanding now as to whether the matter is not closed; and if it is not closed, as to what items it is now held open for. That is what you want, is it not, Mr. Lilly?

MR. LILLY: Yes, we either want it closed, or else that we are going ahead, and if we are going ahead we want to get to work and go over it again.

THE MASTER: If we are through with Mr. Hillman, that leaves him where he is free to go if he wants to.

MR. HARRISON: That is satisfactory, as far as I am concerned.

THE MASTER: I was just getting back to this Northwestern Bank scheme. Here is $168,000, par value, and here is $164,000, par value, in the Grazier Bank. That is just about one-fifth. I find the aggregate assets of the Northwestern Bank in 1861, according to these schedules here, were $2,110,243.41, and the aggregate assets of the Bank here, according to this table you put in this morning, $414,000; that is just about one-fifth. So apparently they sliced off one-fifth of the stock and one-fifth of the assets, relatively speaking. The question is whether, under those circumstances, we do not get an equitable result if we take one-half of the four-fifths as chargeable to West Virginia.

MR. LILLY: It would be absolutely inequitable in my opinion. When the record shows that Virginia had $146,000 in the Grazier's Bank, why would you imagine or presume or infer that she only had one-half or one-fifth or any other amount? If you ignore the evidence on that feature, then of course you can take any percentage as a basis.

THE MASTER: Well, we have to assume of course that there was no change in the proportion that the State of Virginia held during the process of transferring the Jeffersonville Branch to the Grazier's——

MR. LILLY: That would be justified.

THE MASTER: And that this scheme of the loyal gentlemen did not interfere with the proportion. I do not see yet what that legislation was based on.

MR. LILLY: You will bear in mind that Virginia did not own so much in the Northwestern Bank. It is true that the aggregate was so much, but each branch bank had so much stock. And she might have so much stock in a branch bank in these different funds.

THE MASTER: There is nothing in the record to show that, except in your exhibits here.

MR. LILLY: Is not that sufficient? I think we have reasonably conclusive evidence to the contrary. You cannot imagine that Virginia only owned one-half in the Grazier's Bank, when she was getting dividends on $146,000 out of $164,000. Now, if she did not own it how did she get the dividends? If she did own it West Virginia ought not to be charged with it. West Virginia only got $210,000, by the report made there in 1871.

THE MASTER: Up to date I have not looked at it carefully enough to understand it fully. I do not see how that shows it.

MR. LILLY: I will refer to that if I argue the matter before your Honor.

THE MASTER: Of course your letter was pretty general, and this Hubbard report was not in the record at the time. I wish you would make a careful analysis of this so I will be able to pick it out.

"6. As soon as may be after the expiration of the said three months from the passage of this act, the governor of the state shall cause certificates of the stock held by the state in the said Northwestern Bank of Virginia, for an amount equal to the balance of the capital stock of said branch, not exchanged under the previous section, to be in like manner returned and assigned to said Grazier's Bank of Virginia, for a like number of shares of the stock thereof."

That indicates what Virginia was to receive. She was to have all the stock—Virginia was to have all the stock that was not taken up by private stockholders. The previous section provides:

"5. At any time within three months from the passage of this act, any loyal holder of stock in the Northwestern Bank of Virginia, whose stock in said bank was purchased through the said branch, or whose dividends have usually heretofore been credited to him at said branch, may return and assign to said Grazier's Bank of Virginia such stock, and demand and receive in lieu thereof a certificate for a like number of shares of stock in the said Grazier's Bank of Virginia."

Then the next section provides that the State shall have all of the stock not sold or transferred. So she may have had more stock in the Grazier's Bank than she had in the other bank.

THE MASTER: That is, the other stockholders may have been excluded by that limitation of three months. That is sort of a legislative transfer of the stock that should not be taken up in that way by the State of Virginia.

MR. HOGG: What is the date of that Act?

MR. ANDERSON: That is dated in March, 1862. The records down there ought to show something about it.

THE MASTER: But we are discussing it on the basis of the record as it is now.

MR. ANDERSON: Mr. Page may be able to find it.

MR. HOLT: What we would like would be for the testimony to come to an end, of course after both sides get what they want, and the Master feels that he has enough to act upon. Mr. Anderson suggests Mr. Page may have something more. As long as we keep this thing open at both ends, we will never get through with it.

THE MASTER: You will never get any report while it is open that way.

MR. HOLT: I think this time when we quit we ought to quit, whether we have got in everything or not.

THE MASTER: As far as I am concerned I think we can make that arrangement.

MR. HOLT: Otherwise we will never get done with it. Though there is something that I understand your Honor would like to have in connection with those tolls.

THE MASTER: I would like to have that contract.

MR. HOLT: That ought to be the business of someone, so that the Master may rely on someone to get it. If we go away without any arrangement, it being everybody's business, it will not be done.

THE MASTER: I suppose Mr. Hillman and Mr. Potter would take that up. I think the understanding was that Mr. Leeds was to get that.

MR. HOLT: Mr. Hillman, what is it you understand Mr. Leeds is to do in Virginia?

MR. HILLMAN: Mr. Leeds is to get the amount of tolls derived by the State from the Blue Ridge Road,

as far as he can tell, whether they were collected on direct tolls or under payments by the Virginia Central after the lease was made. And then to find out the actual terms, if it is possible, of the lease which was made by the Blue Ridge Road to the Virginia Central.

MR. ANDERSON: I would say leases, because there may be more than one.

THE MASTER: Mr. Hillman suggested that they might find some entry on some book down there undertaking to summarize it. If we cannot find anything better than a summary, we will take the summary. Now what else was there?

MR. ANDERSON: I do not know of anything, unless we can find some information about this Northwestern Bank and the Jeffersonville Branch.

THE MASTER: What do you say about that?

MR. ANDERSON: I would suggest that you ask Mr. Page to have a diligent search made for any evidence in regard to the transactions of Virginia with the Jeffersonville Branch and the Grazier's Bank in 1861, 1862 and 1863.

THE MASTER: Everything is cleaned up, as I understand it, except this question of the Blue Ridge Road and the Jeffersonville Branch. And the Blue Ridge Road will be taken care of by the fact that Mr. Leeds is going to get the amount paid in tolls during the whole existence of the road, and the contract, if he can find it, and if he cannot find the contract if there is any summarization of it, if it is not on the record anywhere, we will have that.

MR. HARRISON: Then he will have to go to Richmond. Of course Mr. Potter had better go along with him or follow him, so that we will have the thing ended once for all.

THE MASTER: Then let Mr. Potter and Mr. Leeds make a thorough investigation down there and dig out whatever there may be that tends to solve this Jeffersonville Branch matter; and whatever Mr. Leeds and Mr. Potter report to me I will take as the record.

MR. HOLT: That is all right.

MR. HARRISON: Or, if they do not agree, let them report their respective findings or ideas.

THE MASTER: If they do not agree I do not want to call the counsel together again on that. I think it had better be submitted, and let them submit their suggestions in writing on each side.

MR. ANDERSON: I do not see how there can be any disagreement; it will be extracts from the record.

THE MASTER: I do not suppose there will be; but suppose they do, would that be agreeable, Judge?

MR. HOLT: Yes, sir.

MR. HARRISON: As far as we are concerned, if there is any disagreement reported by Mr. Potter and Mr. Leeds, we will just leave that to the Master to settle. You have got all the light on the thing that can be gotten, and I do not see how the counsel can illuminate you or assist you.

MR. HOLT: Still you never can tell what is going to happen.

THE MASTER: I think if there is any fact in dispute here it is proper for me to submit that issue to the counsel on each side and give them an opportunity to be heard on it if they want to be. How do you feel about that, Judge?

MR. HOLT: I would be perfectly willing to leave it to the Master; but still, if I were in the Master's place, that is what I would do.

THE MASTER: I think that is what I did do and what I will do.

ARTHUR G. POTTER, recalled for further examination, testified as follows:

By the Master:

Q. With reference to the item of $39,067.42, found on page 1193 of the last print, interest on bonds and notes, for 1860—

A. That amount appears at page 238, Document No. 17, record of the Board of Public Works for 1860, under the heading of interest on bonds and notes. On page 828 of the reports of the James River and Kanawha Company, Volume 5, 1855 to 1860, the same item appears under the heading fourth division, interest. It therefore appears to be interest on some obligations in connection with the fourth divison of the construction of the canal. On pages 238 and 239 of the first volume just mentioned, Document No. 17, is a list of the notes due on account of the North River Navigation Company and of the guaranteed bonds of the Company. We can identify the interest appearing on page 238 with these two groups, leaving two items of interest not identified. But at the bottom of page 238 appears the heading, the amount of bills payable outstanding on the 30th of September was as follows, giving five items aggregating $153,561.85. It appears therefore that the item of $39,067.42, interest on bonds and notes, applies to the obligations.

By Mr. Holt:

Q. Mr. Potter, did you and Mr. Hillman agree on that statement that you have just made?

THE MASTER: The long and short of it is that it is impossible to tell from any records that we have whether this item of $39,067.42 is an item of interest on indebtedness other than indebtedness to the State. The significance of that of course is this; the schedules

that we have, and the statements, are predicated upon the assumption that when the indebtedness to the State was transferred into stock, that it practically extinguished the indebtedness and eliminated the element of interest. Now if there were other indebtedness, that might not follow as to the other indebtedness. What the fact about that is we do not seem to be able to ascertain. That is it.

MR. HOLT: I understand that. But I want to know whether Mr. Potter and Mr. Hillman agree.

THE WITNESS: I understand we agree on that.

MR. HILLMAN: Your honor, I do not quite agree with Mr. Potter on that $153,000, since the interest on that for a year would only be $9,000, and could not possibly make up the $39,000.

THE MASTER: That is the $39,000 could not be predicated upon that principal sum?

MR. HILLMAN: No.

MR. POTTER: I said that absolutely.

MR. HILLMAN: And for that reason I assumed that it must be an item that was finally absorbed by the State.

MR. HOLT: What year, Mr. Littlefield does this transaction relate to?

THE MASTER: 1860. I wanted to try and make this point certain if I could.

MR. HOLT: Is any month given there?

THE MASTER: No.

MR. HARRISON: The statement shows that the interest was paid up to September 30th, 1860, 1861 and 1862.

THE MASTER: Some interest was paid.

MR. LILLY: But it dropped to $14,000 in 1861.

MR. HOLT: To some extent interest was paid.

MR. LILLY: That may be interest that had accrued before the Act of March 23rd, 1860, and yet would be reflected in this report of 1860.

MR. HOLT: I have no doubt that that $200,000 of new stock that Virginia subscribed for at that time, and paid cash for, was intended to take care of some of these things. That of course is mere supposition on my part.

By Mr. Holt:

Q. Mr. Potter, will you put into the record that Confederate calculation I asked for yesterday?

A. Yes, sir. The indicated deficit of the James River and Kanawha Company, based on the cash account for the year ended September 30th, 1861, was $69,809.54. Reducing this at the Confederate scale of $1.10, for the month of September, 1861, the reduction to gold would be $63,463.21. For 1862, the deficit of $46,609.86, reduced at $2.50 would give $18,643.94 of gold. The deficit for 1863 of $129,036.25, reduced at $12.50, gives $10,322.90 gold.

MR. HARRISON: Nothing remains now to go into the record except whatever Mr. Potter and Mr. Leeds may report to you with reference to the Jeffersonville and Grazier's Banks, and the matter of tolls' collection from the Blue Ridge Railroad, and the contract, if they can find it.

MR. HOLT: As I understand it, that closes the testimony upon both sides.

MR. HARRISON: Yes, that is my understanding.

THE MASTER: What time would you like to go on this afternoon? I suppose you are both prepared to go on and argue.

MR. HARRISON: Oh, yes, sir, we want to make progress right along. I suppose you are ready to go on after lunch, Judge, are you not?

MR. HOLT: I suppose any discussion that is indulged in now will be confined to the James River and Kanawha Company, the Blue Ridge Railroad and market quotations, is that the idea?

MR. LILLY: And the Grazier's Bank.

THE MASTER: I won't limit any of you, if there is any phase of the case that you want to discuss.

MR. HOLT: How do you feel about those?

MR. HARRISON: Those I think will be the main subjects discussed.

MR. ANDERSON: And the question as to the book values and the par values.

MR. HARRISON: The incidental subjects.

THE MASTER: That has been pretty thoroughly gone over, but still, if either party wants to say anything about it, I will hear them.

MR. HOLT: I did not suppose that we would go into a general rehash of what we had been through before.

MR. HARRISON: We cited a Virginia case in our brief of the Virginia Court of Appeals, the old Court, seventy-five or eighty years ago, and no extracts were given from that decision, nor did I take it up and point out just what the facts were before the Court, and what the decision was, in the final argument of the

case. Now we think that case has an important bearing on the very point you have just discussed.

THE MASTER: Let us have that case right here this afternoon.

MR. ANDERSON: That is Bull. vs. Douglas, 4 Montfort, 303.

MR. HARRISON: I am not going to stop now to say what it is, but we will point out to you just the bearing it has upon the question.

THE MASTER: When would it be agreeable to you to come in, two or half past?

MR. HOLT: Any time would suit me. Say half past two.

THE MASTER: At my request Mr. Rosewell Page, Second Auditor of Virginia, has sent me the following extracts from the day book, 1861 to 1865, of the Auditor's office of Virginia:

DAY BOOK.

1861 to 1865.

Auditor's Office of Virginia.

I.

To DIVIDENDS:

Page 86, April 1, 1862. Received from Grazier Bank of Virginia on account of the dividend to be paid by said bank, under act of Assembly passed March 13th, 1862, ... $14,000.00

II.

To DIVIDENDS:

Page 98, July 22, 1862. From the Grazier Bank of Virginia on account of 10% dividend due the Commonwealth under the 9th section of an act passed 13th March, 1862, ... $640.00

Page 98, July 22, 1862. From ditto on account of the dividend declared by said bank, the 30th day of June, 1862, ... $7,320.00

III.

To DIVIDENDS:

Page 145, Jan. 20, 1863. From the Grazier Bank of Virginia on account of dividends due State on capital stock of said bank, declared to first December, 1862, ... $7,320.00

IV.

To DIVIDENDS:

Page 196, July 28, 1863. The Grazier Bank of Virginia on account of the dividend declared by said bank to First of July, 1863, upon the stock held in said bank by the State of Virginia, ... $6,820.00

I, Rosewell Page, Second Auditor of Virginia do certify that the foregoing is a true copy from the Day Book in the Office of the Auditor of Public Accounts, Richmond, Virginia. The Treasurer's name heads each page.

December 10th, 1914.

ROSEWELL PAGE,
Second Auditor of Virginia.

At this point a recess was taken until 2:30 P. M.

OFFICE OF THE GRAZIER'S BANK OF VIRGINIA.

Jeffersonville, July 23rd, 1863.

H. W. Thomas ,Esq., Cas. 2nd Auditor.

Dear Sir:

Yr. fvr. of the 6" is received & an answer would sooner have been given, but for the presence of the public enemy.

The number of shares not exchanged by private stockholders in this Bank is 1364 of $100 each, making the sum of $136,400.00.

Col. F. M. Mullen has an application before the Governor for the transfer of 5 shares. If the Governor directs the transfer, then the number of shares to be transfered by the state will be 1359; or $135,900 of Capital Stock.

You say the state holds 826 shares. This is not sufficient to absorb all the capital of the late Branch Bank and will render the act of incorporation impracticable. I was under the impression that the state owned or held nearly $200,000 in the N. W. Bk. In 1857 the N. W. Bk. bought 1-3 of the State's Stock and the proportion of that purchase which fell to this Branch was 250 shares, or $25,-000.00. On this basis the state's interest is nearer $200,000.00.

Very truly yours,

Jno. A. Kelly, Cas.

2,918
852

3,770

A Copy—Teste:
Dec. 17, 1914.

ROSEWELL PAGE,
Second Auditor of Virginia.

Executive Department.

July 2nd, 1863.

The Act of the General Assembly of the 13th of March, 1863, makes it the duty of the Governor to cause certificates of the stock held by the State in the North Western Bank of Virginia for an amount equal to the balance of the Capital Stock of said bank, not exchanged, by private stockholders, to be returned and assigned to the Grazier's Bank of Virginia for a like number of shares of the stock of that bank: therefore,

Ordered, that the Second Auditor cause the stock so held by the state in the North Western Bank of Virginia to be returned to said Grazier's Bank, and assigned to it, and that he moreover require said last bank to issue to the state, a like number of shares of its stock, in lieu of the amount so returned and assigned, & that the same be done in accordance with the said act of 13" of March, 1863.

By order of the Governor,

George W. Munford,

Sec'y. of the Com'th.

John A. Kelly,
Cash.

A true copy,

Teste:

Dec. 17, 1914.

ROSEWELL PAGE,

Second Auditor of Virginia.

The Comwlth. proper became the owner of 4000 shares of Capital Stock of the North Western Bank of Virginia, in the following manner.

1837. July 7. Warrant on the Treasurer for		200.000
" Octr. 3	Ditto	82,809.33
1839 June 29	Ditto	92,282.00
Dec'r. 1837 June & Dec'r. 1838		
Dividends.	33,000.00	
Less interest	8,091.33	
		24,908.67
		$400,000.00

For which scrip dated July, 1837, is in the possession of the Treasurer.

On the 27. of Feby., 1837, there was paid into the Treasury	$37,500.00	
		37,500.00
		38,671.42
		$113,671.42

In payment of 1082 shares at $105,05676 sold to said bank.

4000—
1082
2908 shares

J. J.
30 July, 1863.

A true copy.

Teste:
ROSEWELL PAGE,
Second Auditor of Virginia

Dec. 17, 1914.

OFFICE OF THE GRAZIER'S BANK OF VIRGINIA.

Jeffersonville, Augt. 26, 1863.

H. M. Thomas, Esq., 2nd. Aud't.

Dear Sir:

Yr. favor of the 30 ulto. is recd. & I enclose certificate of Grazier's Bank Stock as indicated in yr. letter, as follows:

Cert. No. 16, Com'r. for use of Literary Fund.....500 shares.

Do " 17, Do for Board of Pub. Works .....300 shares.

Do " 18, To the Commonwealth .....564 shares

making in all .....1,364 shares.

Being the whole number to which the state is entitled under the acts of 13 March, 1862, and 11 March, 1863. A strict compliance with the law would require the return of N. W. Bk. stock to this office, before the issue of this scrip, but as you request, I enclose the certificate and you will please return me with proper assignment, dated prior to date of these certificates, 1364 shares of stock N. W. Bk., held by the state.

Very truly yours,

Jno. A. Kelly, Cas.

A copy,

Teste:

Dec 17, 1914.

ROSEWELL PAGE,
Second Auditor of Virginia.

Richmond, Va., December 16, 1914.

Hon. Chas. E. Littlefield,
61 Broadway,
New York City.

Dear Mr. Littlefield:

I am enclosing herewith a statement covering the information you asked for in connection with the Blue Ridge Railroad. The data is very meager, but it is all that I was able to ascertain. I have noted the acts under which the road was authorized, and if you care to consult them I suppose you can find them in the library in New York.

With reference to the Northwestern Bank, I was unable to find anything except what is already incorporated in the Record. I am mailing these to you for the reason that I think you require them as soon as possible.

Mr. Potter has not arrived here as yet, and I suppose he will send you a separate statement. I wired Mr. Potter's office today, asking if he was coming up, but up to this time I have not received a reply.

Very truly yours,

EDWARD P. LEEDS.

Dec. 17th. Mr. Potter arrived yesterday and is sending additional information.

EPL/H
Inc.

Richmond, Va.
December 17, 1914.

Hon. Chas. E. Littlefield,
61 Broadway, New York.

Dear Mr. Littlefield:—

Since writing you yesterday, I desire to add that there will be forwarded to you (or probably brought by Mr. Potter), a copy of the Acts mentioned in my letter, a copy of the agreement between the Board of Public Works and the Va. Central Railroad, and acceptance of same by the latter company, and a copy of some correspondence touching upon the North Western Bank.

I have sent a copy of this and my preceding letter and all reports to Attorney General Lilly at Charleston.

Very truly yours,

EDWARD P. LEEDS.

James Park, C.P.A.
Arthur G. Potter, C.P.A.
W. A. Campbell, C.P.A.
Chas. Griswold Bourne
Fellow Amer. Ass'n. Pub. Acc.

Telephone
Cortlandt 3915

Cable Address
"Parkpotter" New York

PARK, POTTER & CO.
Certified Public Accountants
New York, Chicago, Cincinnati
and London, England
149 Broadway, New York

December 18th, 1914.

Chas. E. Littlefield, Esq.,
61 Broadway,
New York, N. Y.

Dear Sir:—

I reached Richmond on Tuesday and checked up a statement consisting of two pages of matter pertaining to the Blue Ridge Railroad prepared by Mr. Leeds of which he sent you a copy. The two acts referred to at the top of the page are very important and I had copies made of them which I send you herewith.

I also enclose the following with reference to stock in the Grazier's Bank held by the state of Virginia, all of which have been certified by Mr. Page:

Letter—July 23rd, 1863, John A. Kelly, Cashier Grazier's Bank, to H. W. Thomas, Second Auditor.

Letter—Aug. 26th, 1863, John Kelly, Cashier Grazier's Bank, to H. M. Thomas, Second Auditor.

Copy of Executive Department Paper, July 2nd, 1863, relating to the issue of stock of Grazier's Bank to the state.

Copy of a statement evidently prepared by some clerk in the Second Auditor's Office at July 30th, 1863.

Two documents will follow, viz. a copy of the Board of Public Works, Minutes of April 28th, 1853, stating the conditions on which the Blue Ridge Railroad will be transferred to the Virginia, Cent. and a copy of an original document, being a certified copy of the minutes of the Virginia Central Railroad, accepting the Blue Ridge on the conditions laid down in the minutes above mentioned.

Owing to the press of other duties in the Corporation Commissions Office I could not get copies of these yesterday, but they promised to mail them to me today and you will no doubt have them tomorrow.

I would like to call your attention to the letter of July 23rd in which the cashier of the Grazier Bank states as follows:

"In 1857 the North Western Bank bought ⅓ of the State's Stock and the proportion of that purchase which fell to this Branch was 250 shares."

The statement shows that the number of shares actually sold by the state was 1082 shares and if 250 of this 1082 was the number of shares apportionable to the Jeffersonville Branch, then 832 shares was apportionable to the Wheeling Bank with the two branches in the new state. The percentage therefore is as follows:

250 Shares = 23.105%
832 " = 76.895%

Yours very truly,

A. G. POTTER.

Dic. AGP/BP.

HISTORY OF THE BLUE RIDGE RAILROAD.

Incorporated by Chapter 147, Acts of Assembly of the State of Virginia, 1849, and passed March 5, 1849. (Page 99, Acts of Virginia, 1849).

Act of Incorporation amended by Chapter 156, Acts of Assembly of Virginia, 1852, passed March 3, 1852. (Page 125, Acts of Virginia, 1852).

PAYMENTS MADE BY THE STATE OF VIRGINIA FOR THE CONSTRUCTION OF THE BLUE RIDGE RAILROAD.

Entries taken from page 137, Ledger A, Internal Improvement Fund on file in Second Auditor's Office, State of Virginia.

Date.			Amount.
1850	Sept. 30	To Robert Butler, Treasurer.....	$25,063.17
1850	Sept. 30	To Robert Butler, Treasurer.....	4,204.87
1851	Mar. 31	To Robert Butler, Treasurer.....	59,069.06
1851	Sept. 30	To Robert Butler, Treasurer.....	95,651.64
1851	Sept. 30	To Sundries.....	33,400.00
1852	Mar. 31	To Robert Butler, Treasurer.....	133,137.08
1852	June 30	To Robert Butler, Treasurer.....	99,430.80
1852	June 30	To Robert Butler, Treasurer.....	1,680.00
1852	Sept. 30	To Robert Butler, Treasurer.....	83,007.39
1852	Dec. 31	To Robert Butler, Treasurer.....	82,903.63
1853	June 30	To Robert Butler, Treasurer.....	178,381.94
1853	July 21	To Robert Butler, Treasurer.....	12,736.67
1853	Sept. 30	To J. B. Stovall, Treasurer.....	48,245.17

From Page 187, Ledger B, same fund, on file as above.

1854	Mar. 31	To J. B. Stovall, Treasurer	144,333.23
1854	Sept. 30	To J. B. Stovall, Treasurer	90,627.77
1854	Sept. 30	To J. B. Stovall, Treasurer	780.80
1855	June 30	To J. B. Stovall, Treasurer	109,002.98
1855	Sept. 30	To J. B. Stovall, Treasurer	35,695.63
1856	Sept. 30	To J. B. Stovall, Treasurer	128,964.25
1856	Sept. 30	To J. B. Stovall, Treasurer	522.50
1856	Dec. 31	To J. B. Stovall, Treasurer	86,265.23
1857	Sept. 30	To John S. Calvert, Treasurer	28,495.49
1857	Sept. 30	To John S. Calvert, Treasurer	750.00
1858	Sept. 30	To John S. Calvert, Treasurer	44,811.12
1859	Mar. 31	To John S. Calvert, Treasurer	79,009.77
1859	June 30	To John S. Calvert, Treasurer	1,837.57
1860	Mar. 31	To John S. Calvert, Treasurer	662.00
1860	Dec. 31	To John S. Calvert, Treasurer	36.10
1862	Sept. 30	To Va. Central Railroad Co	70,000.00
1870	June 29	To Va. Central Railroad Co	20,147.62

The last two entries were amounts tolls retained by the Virginia Central Rwy. and used for contsruction purposes on the Blue Ridge Railroad as sanctioned by the State of Virginia. See pages 136 and 171, Journal D, Internal Improvement Fund, on file in Office of Second Auditor, State of Virginia.

Total of above entries	$1,698,853.48
Total credits for material sold	3,982.63
Total cost of road	$1,694,870.85

TOLLS RECEIVED BY THE STATE OF VIRGINIA FROM THE VIRGINIA CENTRAL RAILROAD FOR THE USE OF THE BLUE RIDGE RAILROAD.

Accounts taken from Ledger B, page 187, Internal Improvement Fund on file in Second Auditor's Office, State of Virginia.

Date.		Period covered.	Amount.
1858	Sept. 30	By settlement 1st July, 1858.....	$ 2,127.08
1859	Mar. 31	By tolls to 1st Jany., 1859.....	4,559.85
1859	June 30	By tolls to 1st April, 1859.....	1,263.86
1859	Sept. 30	By tolls to 1st July, 1859.....	1,789.43
1860	June 30	By tolls to 1st April, 1860.....	2,827.87
1860	Sept. 30	By tolls to 1st July, 1860.....	1,761.75
1860	Dec. 31	By tolls to 1st Oct., 1860.....	2,884.61
1861	Mar. 31	By tolls to 1st Jany., 1861.....	1,534.69
1861	June 30	By tolls to 1st April, 1861.....	704.19
1861	Sept. 30	By tolls to 1st July, 1861.....	1,082.64
1862*	Sept. 30	To Virginia Central R. R. Co.....	70,000.00
1863	Mar. 31	Tolls 1st Jany., 1863.....	8,078.05
1864	Sept. 30	Tolls 1st Jany., 1863.....	64,984.49
1870	June 29	Revenue.....	7,712.19
1870*	June 29	To Blue Ridge Railroad.....	20,147.62
			$191,458.32

*Tolls retained by the Virginia Central and used for construction purposes.

I certify that the foregoing entries are correct copies from the books of the State of Virginia.

EDWARD P. LEEDS,
Assistant Accountant for W. Virginia.

From the foregoing reports it will be seen that the road was commenced around September 30, 1850, and revenue was first received thereupon around September 30, 1858.

SUMMARY.

The road cost to construct..... $1,694,870.85

Tolls received, less amount of tolls retained by the Va. Central R. R. and used for construction purposes.. 101,310.70

I have examined the foregoing and found it to be correct.

A. G. POTTER,
Accountant for Virginia.

Va. Acts 1848-49, p. 99.

Chap. 147.—AN ACT TO INCORPORATE THE BLUE RIDGE RAILROAD COMPANY, AND FOR OTHER PURPOSES.

(Passed March 5, 1849.)

1. *Be it enacted by the general assembly*, That for the purpose of constructing a railroad from some point at or near Blair Park in the county of Albemarle, (being the eastern base of the Blue Ridge), to some point at or near Waynesborough in the county of Augusta, being the western base of the Blue Ridge, including the necessary tunnel for a railroad through the Blue Ridge, the Board of Public works be, and they are hereby incorporated and made a body politic and corporate, under the name and style of *"The Blue Ridge Railroad Company,"* and shall be subject to all the provisions of the act "prescribing certain general regulations for the incorporation of railroad companies," passed March eleventh, eighteen hundred and thirty-seven.

2. *Be it further enacted*, That the president and directors of said company shall employ a competent engineer to locate said railroad, so as to connect with the Louisa railroad at or near Blair Park, and to extend thence, including the tunnel aforesaid, to some point at or near Waynesborough; and upon the location of said route and the record of the plats and maps thereof in the clerks' offices of the respective counties through which said road and tunnel shall pass, the title thereto shall become *ipso facto* vested in the commonwealth for the use of said road, according to the provisions of the act last aforesaid.

3. *Be it further enacted*, That so soon as said location shall have been completed, the said company shall, after due advertisement in the public prints, proceed to let the contracts for the construction of said tunnel and of said railroad, with a heavy rail, requiring bonds with approved security, for the faithful execution of said contracts: *Provided*, That said company shall not contract to pay in any one year more than one hundred thousand dollars.

4. *Be it further enacted,* That for the purposes aforesaid, the president and directors of said company shall have power to borrow, on the credit of the commonwealth, a sum or sums of money not exceeding in any one year, one hundred thousand dollars, agreeably to the provisions of the act passed April eighth, eighteen hundred and thirty-nine, "authorizing loans for the payment of certain subscriptions and appropriations."

5. *Be it further enacted,* That in case the Louisa railroad company shall, within twelve months from the passage of this act, accept the provisions thereof, the said Louisa railroad company shall have the exclusive use of said road from Blair Park to Waynesborough, when completed; and in consideration thereof, shall, at their own expense, ever thereafter keep in good repair said railroad and tunnel, and shall annually pay into the treasury of the commonwealth, fifty cents for each passenger, and ten cents for each barrel of flour carried through said tunnel, and ten per cent. on the said Louisa railroad company's charge for transportation of each ton of produce and merchandise, (except gypsum, on which no toll shall be paid,) from any point east of said tunnel to Waynesborough, or from Waynesborough to any point east of said tunnel; a true statement from its books of the number of passengers, barrels of flour and tons of produce and merchandise carried through said tunnel, and of its charges on the produce and merchandise so carried, the said Louisa railroad company shall annually report to the Board of public works: *Provided,* That it shall not be lawful for the Louisa railroad company to charge for the transportation of passengers, flour, produce or merchandise, over said road and through said tunnel, at a greater rate than for the same distance on other portions of its road.

6. *Be it further enacted,* That whenever the cost of the construction of said railroad and tunnel shall have been refunded to the commonwealth by the tolls aforesaid; or whenever the Louisa railroad company shall secure the repayment of such cost in such instalments as may be agreed upon by the said company and said Blue Ridge company, the title to said railroad and tunnel, quit and dis-

charged from the payment of any toll to the commonwealth, shall be absolutely in said Louisa company.

7. *Be it further enacted,* That for the purpose of extending its road from the western terminus of the railroad and tunnel, hereinbefore authorized to be constructed, to the town of Staunton, and with a view to its extension in the direction of the town of Covington, the capital stock of the Louisa railroad company be increased one hundred and fifty thousand dollars.

8. *Be it further enacted,* That the Board of public works shall subscribe, on the part of the commonwealth, to the additional stock of said Louisa railroad company, in the same proportion and upon the terms set forth in the act passed March eighth, eighteen hundred and forty-seven, providing for the extension of the Louisa railroad to the eastern base of the Blue Ridge.

9. *Be it further enacted,* That in case the Louisa railroad company shall decline to accept the provisions of this act as aforesaid, the said Blue Ridge railroad company shall cause books to be opened at such places, and under the direction of such commissioners as may be deemed proper, to receive subscriptions of stock, in shares of fifty dollars each, to an amount not exceeding sixty thousand dollars, for the purpose of constructing a railroad to the town of Staunton, and with a view to its extension in the direction of the town of Covington, and for providing everything necessary for trasportation between Blair Park and Staunton.

10. *Be it further enacted,* That when six hundred shares shall have been subscribed by individuals and corporations, other than the commonwealth, solvent and able to pay the same, the Board of public works shall subscribe for nine hundred shares; and thereupon the said Blue Ridge railroad company shall commence the construction of said railroad; and afterwards, whenever one hundred shares are subscribed by individuals and corporations as aforesaid, the Board of public works shall in like manner subscribe one hundred and fifty shares, until the aggregate sum thus subscribed shall amount to one hundred and fifty thousand dollars, which shall be regarded as the capital stock of said Blue Ridge company.

11. *Be it further enacted,* That in order to pay the subscriptions authorized in the preceding section, the Board of public works shall have power to borrow, on the credit of the commonwealth, the money necessary, agreeably to the provisions of the act aforesaid, passed April ninth, eighteen hundred and thirty-nine.

12. *Be it further enacted,* That in case of the construction of said railroad to the town of Staunton, by the Blue Ridge company, the said company shall, in all respects be entitled to the privileges, and subject to the obligations and restrictions hereinbefore set forth, as imposed upon and granted to said Louisa company, in the event of its acceptance of the provisions of this act.

13. *And be it further enacted,* That if the Louisa railroad company shall accept the provisions of this act, the said company shall, in case of such acceptance, be bound to transport passengers and commodities from any point on its line of road, to its point of intersection with any other railroad, or from such point of intersection, to any other point on its said line, at no higher charge per mile for the said passengers and commodities than would be charged by the said company upon the same passengers or commodities transported for the like distances on any other part of its road.

14. This act shall be in force from its passage.

All passages underscored are in italics in original print. Compared with original and found correct.

L. M. RICHARDS,
A. G. POTTER.

Dec. 17, 1914.

Va. Acts 1852, p. 125.

Chap. 156.—An ACT to amend the act, entitled "an act to incorporate the Blue Ridge railroad company, and for other purposes," passed March 5, 1849, and repealing so much of said act as restricts said company from borrowing and contracting to pay in any one year more than one hundred thousand dollars.

(Passed March 3, 1852.)

1. *Be it enacted by the general assembly,* That the third section of the act passed March fifth, eighteen hundred and forty-nine, entitled "an act to incorporate the Blue Ridge railroad company, and for other purposes," be re-enacted and so amended, as to read as follows, to wit: That so soon as said location shall have been completed, the said company shall, after due advertisements in the public prints, proceed to let the contracts for the construction of said tunnel and of said railroad with a heavy rail, requiring bonds with approved security for the faithful execution of said contracts.

2. That the fourth section of said act be re-enacted and so amended, as to read as follows, to wit: That for the purposes aforesaid, the president and directors of said company shall have power to borrow on the credit of the commonwealth the money necessary to meet the payments for work already done or hereafter to be done in constructing said tunnel and railroad, as they may be called for by the estimates and drafts of the engineer of said company. But such money shall be borrowed so that there shall be added to the public debt on this account not more than one hundred and fifty thousand dollars on the first day July, eighteen hundred and fifty-two, one hundred and fifty thousand dollars on the first day of January, eighteen hundred and fifty-three, one hundred thousand dollars on the first day of July, eighteen hundred and fifty-three, and one hundred thousand dollars on the first day of January, eighteen hundred and fifty-four.

3. *Provided,* That the Board of public works shall require of the Virginia Central railroad company to pay an adequate compensation, to be agreed upon by said board and said company, for using

such portions of the Blue Ridge railroad as may be finished prior to the completion of the tunnel. But this provision shall not affect the rate of toll required to be paid by said Virginia Central railroad company for using the Blue Ridge railroad and the tunnel after the completion thereof, under the provisions of the aforesaid act, entitled "an act to incorporate the Blue Ridge railroad company, and for other purposes."

4. This act shall be in force from its passage.

Compared with original and found correct.

L. M. RICHARDS,
A. G. POTTER.

Dec. 17, 1914.

James Park, C.P.A.
Arthur G. Potter, C.P.A.
W. A. Campbell, C.P.A.
Chas. Griswold Bourne
Fellow Amer. Ass'n. Pub. Acc.

Telephone
Cortlandt 3915

Cable Address
"Parkpotter" New York

PARK, POTTER & CO.
Certified Public Accountants
New York, Chicago, Cincinnati
and London, England
149 Broadway, New York

December 19th, 1914.

Chas. E. Littlefield, Esq.,
61 Broadway,
New York, N. Y.

Dear Sir:—

I enclose herewith a certified copy of the minutes of the Board of Public Works under date Thursday, the 27th April, 1858, relating to the Blue Ridge Railroad. Attached to the last sheet of this is a copy of an original document which I found in the Blue Ridge Railroad box in the office of the Corporation Commission and you will notice that it is signed by myself and Mr. Leeds. These documents appear to give all of the information you require at the recent period.

Yours very truly,

A. G. POTTER.

Dic. AGP/BP.

DEPARTMENT OF THE STATE CORPORATION COMMISSION.

Received Dec. 21, 1914 (C. E. L.)

Tuesday 27 April, 1858.

Present all the members.

The following communication was submitted to the Board from Mr. Fisk, Chief Engineer.

Richmond, Va., 31 March, 1858. To the Board of Public Works, Gent.

At your request I examined the line of the Blue Ridge railroad some weeks ago so far as I thought it necessary to enable me to express an opinion upon certain matters of difference between the Blue Ridge and Virginia Central railroad companies. My report upon that examination dated the 20th ult. was made the basis of a proposition by you to the Virginia Central Railroad Co. for the settlement of the differences between the two companies—and that company having declared to accept it, for the reason in part, that I had not in their view, taken into consideration all the matters of difference. I was requested by you to make such further examination into the condition of the road as would be necessary to enable me to give an opinion that would cover the whole case.

I desire to say in regard to the examination made some weeks ago that I undertook it not as an umpire between the parties, but as an Engineer called upon by one of the parties to report upon certain matters of difference, and which I understood were those to which by attention had been and would be directed by the other party.

The last annual report of the Va. Central railroad Co.—which I have only recently examined, would seem to show that with the ex-

ception of the subject of arching in the Blue ridge tunnel, which I did not take into consideration for the reason stated in the note to my report of the 20th ult.—and certain small cross ties, which I was informed had been taken out and replaced by larger ones I did in fact report upon all the matters to which attention is therein particularly directed. I will quote sufficient to show this:

The Chief Engineer under date 21st September 1857 (see pages 19-20-21) says:

"I have made an examination of that part of the Blue Ridge railroad between Kelly's cut and the western end of mountain track and respectfully submit a brief report of the state of that work before it is finally received by you.

"The laborers are still engaged in completing the ballasting and ditching and will probably finish during the present week; the track will be finished at the same time—It gives me pleasure to state so far as skill can render it so, the road is in excellent order, reflecting credit upon those entrusted with its construction. There are some points however to which I would call your attention—where in spite of the care shown in the construction of the work, very considerable expense must be incurred in the future on account of slides. This should be taken notice of in the settlement between you & the Board of Public Works, one of these points is at Kelly's cut. The next point is at the embankment over Robinson's hollow &c—another point to which I would call your attention is the embankment immediately east of the main tunnel &. "It would be manifestly unfair to charge the expense to be incurred at these points to repairs of road. It is construction, and as such belongs properly to the cost of the Blue Ridge railroad. This I presume will be paid for by the Board of Public Works, at all events some provision should be made for this work before it is received by you. I have not thoroughly examined the main tunnel. I am however satisfied from such observation of the work as I have able to make that it is perfectly safe for the present. It may be necessary to arch a portion of the tunnel now unprotected, to provide against disintegration, and if so it should be done at once. I presume that the distinguished gentleman now in charge, and who is perfectly familiar with the roof will in-

dicate any portions of which there is any doubt, I think we may run through the tunnel in about two weeks."

After this report was made by the Chief Engineer some little additional arching was done in the tunnel. Upon undertaking the further and recent examination of the road I requested of Messrs. Ellet & Whitcomb representing the Virginia Central R. R. Co. that I should be furnished with a detailed statement of what that company thought necessary to the completion of the road, and an estimate of the amount of work done that in their opinion should be done in thus completing it, and of its probable cost. Mr. Ellet handed me when on the line of the road a statement (see copy of it appended) of the points at which he thought more work should be done (but not the desired estimate in detail of quantities and probable cost) and he, the Chief. Engr. of the Virginia Central R.R.Co. and myself passed over the line together and examined these points. A considerable amount of the work that is claimed should be done, outside of the Blue ridge tunnel, would I find, be excluded from consideration by me if I am to be governed by your resolution of the 9th February 1854.

I find also that much other work claimed as above would be excluded from consideration by me if I am to be governed by what has been heretofore been claimed on the part of the Blue Ridge railroad company, to be all that can be required of them in regard to the width to be given and arching to be done at the Blue ridge tunnel—and which was, as I understand that that tunnel is to be considered as in fact completed in these respects as between the two companies so soon as the cars of the Va. Cen. R.R.Co. could be safely run through it—with proper care on the part of the Company notwithstanding ultimately and perhaps at an early day it would be very desirable, if not necessary to widen out and enlarge the unarched portions of it to the width and area of its arched portions—and to arch such further portions of it, as time may shew to be necessary. There is a part of the work, however that it is claimed should be done by the Blue Ridge railroad Co. that that company is bound to do, even if the resolution of the 9th Feb. 1854 and the above views as to what is to be considered as a completion of certain

parts of the road should be rigidly adhered to and govern the settlement between the two companies.

Having thus far prepared this report I thought it proper to call the attention of the Board informally to the resolution of the 9th February 1854—and the above views as to the completion of certain parts of the road—for the purpose of ascertaining whether it is their desire that said resolution shall be rigidly applied by me in all cases—and that would seem to have been the action of the Blue ridge railroad company in regard to the completion of these parts of the road, shall be regarded by me as a final action on that subject by that company. I thought it my duty to call the attention of the Board as above—for I am still acting not as an umpire between the parties;—but as an Engineer called upon by and acting for but one of the parties. And having obtained from the Board informally their views in regard to the above matters I have embodied, as understood by me in the form of a preamble and expressed my opinion—under those views upon the matters submitted to me, in the form of a resolution, in the hope that if the preamble correctly states your views, and the resolution meets with your approval that you will place both and particularly the former, or what would be equivalent to it on your journal, to show upon what grounds and for what reasons the present report differs so materially from my report of the 20th ult. and which is mainly that the Board do not adhere rigidly to their resolution of the 9th February 1854, and are willing to provide for giving to the Blue ridge tunnel the area of cross section originally intended to be given to it.

Form of preamble and resolution referred to above.

Charles B. Fisk, Civil Engineer having been requested by this Bd. since his examination of and report upon the Blue ridge railroad last month—to make a further examination of and report upon said road—and said Fisk having been informed by this Board.

1st. That the examination and report desired should only extend over and apply to that portion of the road which lies west

of Greenwood depot as the portion which lies east of that depot was long since delivered to and received by the Virginia Central railroad Co.

2nd. That it was the desire of the Board that he should in his report give an estimate of what would probably be the cost of such work, as in his opinion is necessary to complete the above portion of the road west of Greenwood depot, upon a fair and just interpretation of the law authorizing and directing the Board of Public works to construct the Blue Ridge railroad.

3rd. That in forming his opinion as to whether the above portion of the road has in all respects been completed in the manner contemplated by the law, this Board is willing that the specifications as to the dimensions and plans of the various works and structures upon the road originally adopted by the B. P. Works—except so far as a deviation therefrom may have been made by the order of said board or rendered necessary or advisable for good and sufficient reasons—in an engineering point of view—shall be his guide.

4th. That he should take into consideration in forming his opinion as to the amount of work to be done by this Board in completing the road, the resolution adopted by them on the 9th February 1854 by which it was declared "That after the track has been laid upon any part of the location of the Blue ridge railroad, and the cars of the Virginia Central railroad are running upon the same the B. P. Works will consider that the work has been received by said company, and will not hold themselves bound to do any further work upon it except the ballasting as per resolution of 10 December 1853." but with the understanding that this Board is willing that said resolution shall not be rigidly adhered to in the case of any considerable expenditures that ought now or very soon to be made at points for work properly chargeable to construction—such as securing the embankment at Robinson's Hollow, against sliding, the lengthening if necessary of the culverts at Goodloes hollow, Robinsons hollow and Dove Spring hollow. And said Fisk having presented to the Board his report and estimate, and the same having been considered—the following resolution was moved and adopted.

Resolved that this Board in its character as the Blue Ridge railroad company, will deliver the entire line of the Blue ridge railroad to the Virginia Central railroad Co. upon the following terms and conditions—so soon as the same shall have been assented to by the Company.

1. That the Virginia Central railroad Co. shall from the time that they commence running their cars through the Blue ridge railroad tunnel pay the tolls for the use of the Blue ridge railroad specified in Section No. 5 of Chapter 147 which passed 5 Mar. 1849 said time to be not later than the 1st May 1858.

2. That the Virginia Central railroad Co. shall undertake to do all the work required to complete the construction of the Blue ridge railroad, and in consideration thereof shall be paid by the Blue ridge railroad Company as follows, viz:

For widening and enlarging the cross section of the long unarched portion of the Blue ridge tunnel, at the eastern end thereof to an area that shall not exceed further than is necessary in blasting the area of the arched portions of said tunnel, the actual cost of such widening and enlargement, but with the understanding that no expenditures for those purposes after the 1st day of May 1860, shall be paid for by the Blue ridge railroad co. & that the total amount thus expended by the Virginia Central railroad Co. before that day to be paid for by the Blue ridge railroad Co. shall not exceed $19,358.

For arching and lining those portions of the Blue Ridge tunnel now unarched between the eastern and western arched portions thereof (say 692 feet in length) to such extent and for such length as may be found necessary—and the excavation and all other work necessary for and consequent upon the said arching, the actual cost of such arching and work, but with the understanding that no expenditures for these purposes after the first day of May 1863 shall be paid for by the Blue Ridge railroad Co. and that the total amount thus expended by the Virginia Central railroad Co. to be paid for by the Blue Ridge railroad Co. to the extent and for such

length as above provided—shall not exceed $38½ per foot linear lengthwise of the tunnel of the arching actually done.

For completing the ballasting, completing the track through Kelly's cut, cleaning outside ditches, lengthening the culverts at Goodloe's hollow, Robinson's hollow and Dove Spring hollow and three square drains between Goodloe's hollow and Blue Ridge tunnel, putting in where needed cattle stops, securing the high embankments near and east of the Blue Ridge tunnel and at Robinson's hollow against sliding, clearing out cuts and removing material in danger of sliding into them, widening the little tunnel near Robinson's hollow and obtaining the grade through said tunnel, and all other work necessary to the completion of the road West of Greenwood depot so far as the same is properly chargeable to construction and to the Blue Ridge railroad Co., the actual cost of such work, but with the understanding that no expenditures for the above puropses after the 1st day of May, 1860—shall be paid for by the Blue Ridge Railroad Co.—and that the total amount thus expended by the Virginia Central road Co. shall not exceed $24,465.

3. That the Virginia Central railroad Co. shall not arch any more of the portions of the Blue Ridge tunnel referred to as provided above, than is absolutely necessary with a view to the safe use of said tunnel,—and that if either in whole or in part any part of the said portions—can be rendered safe by adopting iron in place of brick and stone and at less cost, that they shall do so.

4. That the Virginia Central railroad Co. shall while doing the work contemplated in this resolution make a report to this Board at its regular monthly meetings—of the actual cost of the work done by them thereunder during the months respectively immediately preceding and ending on the last days of said months and in making such reports said Co. shall sustain the same by such vouchers as in the opinion of this Board are proper & reliable.

5. That all accounts heretofore presented for work done on the line of the road and which were rejected by its engineer for the reason that they could not be allowed under the resolution of the

Board of 9 February 1854 and which have not been allowed by this Board shall be considered as rejected by this Board and that the arrangements now proposed under this resolution shall be considered as covering all matters of account of the Virginia Central railroad co. against the Blue Ridge railroad except those for transportation and freight and iron not heretofore allowed—and

6. That the payments for work done under this resolution to the Virginia Central railroad Co. shall be made from time to time when presented to and approved by the Board or as soon thereafter as there are funds in hand applicable thereto.

Respectfully submitted, C. B. Fisk, Engineer. & Copy of the memorandum by Mr. Ellet referred to above.

Mountain Top, March 25, 1858.

Memorandum of work to be done to complete the Blue Ridge road west of Greenwood.

1. The road bed to be neatly graded and finished on top everywhere.

2. The ballast to be brought level with the top of the ties, of good stone and properly broken and to be made as wide as the lengths of the ties (8 feet) at top with slopes of 1 to 1.

3. The long embankment at Waynesboro to be raised & widened.

4. The first rock cut east of Waynesboro to be sloped on the north side chiefly, but also to some extent on the south side.

5. The next cut east of ——— ditto.

6. The third cut do.

7. The cut at turntable. do.

8. The small bridge west of tunnel should be protected by tin.

9. Tunnel—west end—remove threatening rock.

10. East end, remove threatening rock, & turn off the water which falls on the track.

11. Tunnel to be arched between the present arches 672+20= 692 feet—Excavation to be widened so as to admit the arch.

12. Unarched tunnel to be widened say 1200 cubic yards to be removed to give the specified dimensions.

13. Leakage of tunnel.

14. Embankment east of tunnel now sliding to be completed by the State's force.

15. First cut east of tunnel, by turnout to be sloped, ditches to be opened.

16. Wommeldorf's cut say 700 feet long to be sloped—Cattle guards to be made here.

17. Culvert (first bank east of Wommeldorf's) now filled up and buried to be opened & lengthened on the north side.

18. Fourth cut from Wommeldorf's to be sloped &c.

19. The parapet and wings of the culvert under the first bank west of Goodloe's to be raised.

20. The lower end of culvert under the 3d bank west of Goodloe's to be uncovered and lengthened.

21. Two road crossings wanted—one for Hansboro, & one for Hansboro & Goodloe.

22. Second cut west of Goodloe's hollow to be ?

23. First cut west of Goodloe's to be widened & sloped on both sides.

24. Goodloe's hollow—Culvert too short, needs to be lengthened or to have good and high parapets (say 9 feet high) & supported by buttresses culvert to be cleaned out.

25. Little tunnel to be sunk deeper at bottom through the tunnel & approaches. The tunnel to be widened.

26. Threatening rock at both approaches of the little tunnel of which there is a great deal on both sides of the east approach to be removed.

27. Robinson's hollow bank to be sustained.

28. Culvert under Robinson's hollow to be lengthened at both ends say 20 feet.

29. Road crossing wanted east of Robinson's hollow.

30. McElroys cut some portions of the slopes need to be removed, on both sides.

31. Brookville tunnel—west end 500 yards earth and rock to be removed from slide and spread over top of arch.

32. Brookville tunnel west end to be sloped off.

33. Dove Spring hollow—culvert to be lengthened—say 20 feet at each end.

34. Kelly's cut, rock now dangerous, or threatening soon to become so to be removed.

After consideration the following preamble & resolution were adopted, viz:

Charles B. Fisk, Civil Engineer, having at the request of this Board submitted a report dated the 31st ult. upon the cost of completing the Blue Ridge railroad in accordance with the views of this Board, in respect to the manner in which the said railroad should be completed, which views are correctly stated in said report, viz: that the whole Blue Ridge railroad including the tunnel should be completed in a substantial manner before the Virginia Central railroad company could by law be required to receive and use it and pay the prescribed tolls—and said report having been communicated to a committee of the Board of Directors of the Virginia Central Railroad Co. & they having expressed a desire that the amounts to be expended in completing the said road and tunnel by the Virginia Central Railroad Co. in case they should undertake to complete the said Blue Ridge railroad and tunnel should be fixed and definite in so far as regards the estimated amount of tolls designed to cover that expenditure, and also that the mode of payment proposed in said report should be somewhat changed, thus releasing the Board of Public Works from all responsibility for the completion of said road and tunnel which responsibility is fully assumed by said Virginia Central railroad company—

Be it therefore

Resolved, that this Board in its character as the Blue Ridge railroad company will allow the Virginia Central Railroad Company to use with their trains the entire line of the Blue Ridge railroad including the main tunnel upon the following terms and conditions.

1. The Vrginia Central Railroad Co. shall from the date when their use of the said railroad begins keep a correct account of the full tolls for the use of the said road and tunnel upon travel & tonnage as specified in the Act passed March 5, 1849, ch. 147, Sec. 5, commencing from the time of their cars beginning to run through the Blue Ridge tunnel less such portion thereof as the said company are under obligation to pay into the Treasury of the Commonwealth for running over certain parts of said railroad as per award of Charles B. Fisk made on the 21 August, 1856, and the said Virginia Central Railroad Co. shall thus keep the account of full tolls until they amount with the deduction aforesaid in the aggregate to the sum of Seventy thousand dollars, which sum is regarded and considered as sufficient for the completion of said road and tunnel, and when the said tolls with such deduction shall amount to that sum then and thereafter the full tolls shall be paid by the said company into the Treasury of the Commonwealth — and the Virginia Central Railroad Co. undertakes to complete the Blue Ridge railroad and tunnel in consideration of having the use of the same in its present unfinished condition the value of that use being fixed at the above sum of 70,000 dollars.

2. From the time the full tolls become payable into the Treasury as aforesaid the Blue Ridge railroad and tunnel shall be considered as completed as required by the Act of 1849 as aforesaid and the Blue Ridge Railroad Co. shall be forever exonerated from any other expense on said work.

3. That the above terms and conditions are made with the understanding that the Virginia Central Railroad Co. will prosecute with proper diligence the completion of the Blue Ridge railroad and tunnel, they having by this arrangement assumed the responsibility to the public for making the work secure and substantial and such as the law requires.

4. The Virginia Central railroad Co. are to furnish quarterly statements on the first days of October, January, April & July respectively of each year of the amounts of tonnage and passengers, and tolls as above thereon, until the time when full tolls shall be paid into the Treasury as aforesaid when the statements are to be made annually thereafter as contemplated in the Act of 1849 aforesaid.

5. That a copy of these proceedings be furnished the Virginia Central railroad Co. and that they be requested to inform this Board of their agreement to the same.

At a meeting of the Board of Directors of the Virginia Central Railroad Company held in Staunton, May 5th, 1858.

The following communication from the Board of Public Works in regard to transferring the Blue Ridge Railroad & Tunnel to the Virginia Central Railroad Company, was submitted by the President as follows, viz:

See communication of the Board of Public Works dated Apr. 27, 1858.

On consideration whereof

Resolved, that the Blue Ridge Railroad is accepted by this Company on the terms & conditions contained in the foregoing paper.

True copy from the minutes.

J. GARRETT, Sec'y.

True Copy,
A. G. POTTER,
E. P. LEEDS.

BRIEFED

Acceptance by the Va. Cent. Railroad Co. of the terms adopted by the B. P. W. on the 27 Apr., 1858.

Received May 8, 1858.

COMMONWEALTH OF VIRGINIA.

Department of the State Corporation Commission.

I, R. T. Wilson, Clerk of the State Corporation Commission, do hereby certify that the foregoing is a full, true and correct copy of an extract from the record of the proceedings of the Board of Public Works Tuesday, April 27th, 1858, relative to Blue Ridge Railroad, copied from Journal M of the records of the Board of Public Works, pages 269 to 278, both inclusive, which original record is now on file in this office.

In testimony whereof I hereunto set my hand at Richmond, this 18th day of December, A. D. 1914.

R. T. WILSON,
Clerk to the Commission.

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IN THE SUPREME COURT OF THE UNITED STATES.

ORIGINAL, No. ——.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

1 To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Commonwealth of Virginia, by William A. Anderson, her attorney-general, brings this, her bill, against the State of West Virginia, and shows to the Court that:

I.

On the first day of January, 1861, your Oratrix was indebted in about the sum of $33,000,000.00 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose; but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

2 ## II.

That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted

mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio river, that the Commonwealth of Virginia, in the first quarter of the Nineteenth century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State, and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia; and the completion of some of the main lines of improvement beyond the said range and through to the Ohio river, since the first day of January, 1861, has increased to a very
3 great and material extent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvements. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1st, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to taxation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

III.

The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvement, in a very large measure for the purpose of developing the aforesaid resources of the Western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been

undertaken. In corroboration of this view it will appear from
4 an inspection of the legislative records of the State, where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been the fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

IV.

The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early
5 as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

V.

On the 17th of April, 1861, the people of Virginia, in general convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the "Restored State of Virginia," and will be hereafter referred to in this bill as the "Restored State."

VI.

On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to "provide for the formation of a new State out of the portion of the territory of this State;" Section 9 of which ordinance was as follows, to-wit:

6 "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

VII.

On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein; and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the

7 fact that such change had been made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

VIII.

Pending the admission of the State of West Virginia to the Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

"That all property, real, personal and mixed, owned by, or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or

transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest
8 of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government."

Your oratrix is informed, believes, and so charges, that the property which was by the operation of this Act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted, in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property
9 so received by West Virginia had been obtained by Virginia since April, 1861.

IX.

And by a further Act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

"1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been

paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State."

And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

X.

The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union, contained the following provisions:

By Section 5 of Article VIII. of said Constitution it was provided:

"5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of War."

And by section 7 of Article VIII. it was provided:

"7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by section 8 of Article VIII. it was provided:

"8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed, any "public debt" or "previous liability," except for her just, contributive proportion of the public debt of the original State of Virginia, and for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of January, 1861. By Section 5 of the same Article VIII., above set forth, her Constitution forbade the creation of any debt "except to meet casual deficits in the revenue, to redeem a previous liability of the State," &c., and there was not and could not have been any such "previous liability," except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized a sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the

public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her pro-
12 portion of that of the original State of Virginia, and her liability for the money and property of the original State which had been transferred to her.

XI.

After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settlement of any kind was ever had between the two States in regard to this debt.

XII.

The efforts looking to a settlement by the concurrent action of the two States having proved abortive, and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

The first of these was made by the General Assembly which was chosen at the close of the period of "destruction and reconstruction," which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

The purpose of the representatives of the Commonwealth, then just emerging from conditions which had impoverished her people and paralyzed their productive energies, to assume and pay
13 to the utmost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871.

By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her

General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

XIII.

As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy
14 One Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and herein after referred to as Exhibit Number 7.

It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

It would seem from the above statement that Virginia has already done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

15 XIV.

By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty

to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

XV.

All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph I of this bill, except a comparatively insignificant sum, not amounting to one per cent of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master, who shall take the accounts hereinafter prayed for.

XVI.

Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right,
17 a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

XVII.

In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however,

and the questions involved in connection therewith can be stated and settled in the account hereinafter prayed for to be taken between the two states; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

XVIII.

Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of
18 Virginia, as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:

First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia, forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is imbedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

Third. The State of West Virginia has further, by the repeated enactments and joint resolution of her legislature, recognized her liability for a just proportion of this debt.

Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should
19 duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia.

Fifth. While the transfer of this property, real and personal, and also of certain moneys of the Commonwealth of Virginia, purport to

have been made to the State of West Virginia by the Act of "The Restored Government of Virginia," there were in fact represented in said "Restored Government" and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.

XIX.

The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: *"A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,"* approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled *"An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,"* the purpose of which Act is sufficiently set forth in its title, and a copy of the Act will also be hereinafter shown as one of the exhibits herewith filed.

XX.

The Commission acting under said last mentioned Act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia, this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906, made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, *are* referred to therein, will be exhibited as a part of this Bill.

XXI.

In order that the matters hereinbefore referred to may be more fully shown to the Court, your Oratrix files herewith certain exhibits (*seven* in number) which she pray may be read a- part of this bill, to-wit:

21 Exhibit Number 1. A copy of the said Act of the General Assembly of Virginia, of March 30, 1871, entitled an Act to provide for the funding and payment of the public debt.

Exhibit Number 2. A copy of the Act of the same General Assembly of March 28, 1879, entitled an Act to provide a plan of settlement of the public debt.

Exhibit Number 3. A copy of the Act of February 14, 1882, of the same General Assembly, entitled an Act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular payment of the interest thereon.

Exhibit Number 4. A copy of the said Act of the same General Assembly, approved February 20, 1892, entitled an Act to provide for the settlement of the public debt of Virginia not funded under the provisions of an Act entitled, etc.

Exhibit Number 5. A copy of the said Joint Resolution of the said General Assembly of March 6, 1894, providing for the appointment of a Commission.

Exhibit Number 6. A copy of the said Act of March 6, 1900, under which the powers of the said Commission were enlarged and the institution of this suit authorized.

Exhibit Number 7. Showing amounts paid off since January 1, 1861, or assumed and now carried by Virginia on account of the old debt of the undivided State.

Exhibit Number 8. A copy of the report of the said Virginia Commission made to the General Assembly of that State, dated January 6, 1906, together with the accompanying papers.

22 XXII.

Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce

before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet.

And your Oratrix will ever pray, &c.

WILLIAM A. ANDERSON,
Attorney General of Virginia.
HOLMES CONRAD.

23 EXHIBITS WITH BILL.

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA
vs.
STATE OF WEST VIRGINIA.

24 EXHIBIT NUMBER 1.

CHAP. 282—An Act to Provide for the Funding and Payment of the Public Debt.

Approved March 30, 1871.

(Acts G. A. of Va. 1870-1, p. 378.)

Whereas in the formation of the state of West Virginia, there were included within its boundaries about one-third of the territory and population of the state of Virginia; and whereas, in the ordinance authorizing the organization of said state, it was provided that the said state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state, and will continue to be made as long as may be necessary; and whereas the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof and not to this state, as the constitution of this state provides; now, therefore,

to enable the state of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness, shall be issued for any portion of the debt of this state; nor shall any interest be paid upon any part or portion of said debt, except as hereinafter provided.

25 2. The owners of any of the bonds, stocks or interest certificates heretofore issued by this state, which are recognized by its constitution and laws as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the old James river company, and the bonds of the James river and Kanawha company guaranteed by this state, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred seventy-one, in six per centum coupon or registered bonds of this state of the denominations of one hundred, and multiples thereof, dated that day, and to become due and payable in thirty-four years after date, but redeemable at the pleasure of the state, after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order or bearer, and the coupons to bearer, at the treasury of the state and bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts, dues, and demands due the state, which shall be so expressed on their face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by the law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars or any multiple thereof, shall be exchangeable for bonds of the character

26 herein authorized to be issued; and new certificates of like character may be issued for any fractional sums less than one hundred dollars which may remain in making such exchange.

3. Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date

as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the states of Virginia and West Virginia in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and that the state of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved or lithographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared, shall commence the issuance of the same as herein provided.

27

The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a fac simile of his signature shall be stamped or engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and the bonds of each series shall be numbered from one upwards, as they are issued; and the coupons in addition to the number of the bond to which they are attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate, to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amounts for which certificates shall be issued, under the second and third sections of this act; which calculations shall be endorsed, dated and signed by him on the back of such bond, certificate of stock, or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock, or interest certificate, to be made and kept in his office. After such endorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate, to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for the several amounts,

respectively, according to said endorsement. The second auditor, after making a proper registry of said bond or bonds, and certificates to be kept in his office, shall deliver the same to the person entitled to them. The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest cer-
28 tificate so surendered and delivered to him, cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserved in his office a proper registry of every bond and certificate delivered by him to the second auditor, and whenever a coupon bond shall be issued payable to the order of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable.

5. Whatever sum may be realized from the claims of this state against Selden, Withers and Company, and the Chesapeake and Ohio Canal company, and from the sale or disposition of the stocks and bonds, and debts owned by the state in and against any and all railway and other improvement companies, and all sums which may be realized from the claims of this state against the United States, and from any sales of any real estate now belonging to the commonwealth, shall be paid into the treasury of the state to the credit of the sinking fund hereby authorized and created. In the year eighteen hundred and eighty, and annually thereafter, until all the bonds issued under and by authority of this act shall have been paid, there shall be levied and collected, the same as other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund, to the purchase and redemption of bonds issued by authority of this act.

6. All necessary expenses incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same, signed by the
29 treasurer and second auditor, and approved by the governor.

7. This act shall be in force from and after its passage.

30 EXHIBIT NUMBER 2.

CHAP. 24—An Act to Provide a Plan of Settlement of the Public Debt.

Approved March 28, 1879.

(Acts G. A. of Va. 1878-9, p. 264.)

Whereas it is believed by the general assembly that the rate of interest heretofore agreed to be paid by the state on the public debt is greater than can be borne without destroying the industrial inter-

ests of the state; and whereas the council of foreign bondholders of London, England, and the funding association of the United States of America, limited, have, in view of this belief, expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest; and whereas it is highly expedient, in the best interest of the state, to secure an amicable settlement with the creditors by which the credit of the state may be restored and enhanced, and the aggregate amount of interest payable by the state reduced within limits which will not be too onerous to the population; therefore,

1. Be it enacted by the general assembly of Virginia, That to provide for funding the debt of the state, the governor is hereby authorized to create bonds of the state, registered and coupon, dated the first day of January, eighteen hundred and seventy-nine, the principal payable forty years thereafter, bearing interest at the rate of three per centum per annum for ten years, and at the rate of four per centum per annum for twenty years, and at the rate of five per centum per annum for ten years, payable in the cities of Richmond, New York or London, as hereinafter provided, on the first days of July and January of each year, until the principal is redeemed. The state shall have the option of redeeming any or all of said bonds by the payment of principal and accrued interest at any time after the expiration of ten years from the first day of January, eighteen hundred and seventy-nine, on public notice to the holders of its purpose to make such redemption. The coupons on said bonds shall
31 be receivable at and after maturity for all taxes, debts, dues and demands due the state, and this shall be expressed on their face. The holder of any registered bond shall be entitled to receive from the treasurer of the state a certificate for any interest thereon, due and unpaid, and such certificate shall be receivable for all taxes, dues and demands due the state, and this shall be expressed on the face of the registered bonds and on the face of such certificate. All obligations created under this act shall be forever exempt from all taxation, direct or indirect, by the state, or by any county or corporation therein, and this shall be expressed on the face of the bonds. The said bonds shall be of the denominations of one hundred dollars, five hundred dollars, and one thousand dollars, at the option of the creditors respectively, and the bonds as well as their coupons shall be payable at Richmond and New York, or if desired, may be made payable in sterling at London, at the fixed rate of exchange of one pound sterling for five dollars. The bonds hereby authorized shall be issued only in exchange for the outstanding debt of the state, as hereinafter provided.

2. For purposes of designation, the outstanding indebtedness of the state is divided into two classes, as follows, to wit:

Class I, which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.

Class II, which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one,

as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds.

3. The outstanding indebtedness of the state shall be
32 funded in the new bonds, to be issued under this act, as follows: Bonds shall be presented for exchange with all coupons attached maturing after the date of presentation, and shall be exchanged at the face value of said bonds, dollar for dollar, for the new bonds, with all coupons attached maturing after the date of such presentation: Provided that the proportion of Class II, refunded, shall never exceed in amount one-third (⅓) of the total amount refunded, until eighteen million dollars of Class I have been retired. The new bonds to be issued may be coupon or registered, at the option of the holders, and at the like option coupon bonds may at any time be converted into registered bonds.

4. All due and unpaid interest may be funded under the provisions of this act at the rate of fifty cents on the dollar, and shall be fundable at that rate under the third section of this act, and taken, under the provisions of said section, in lieu of bonds of Class II.

5. If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the governor their assent to and acceptance of the terms of this act, the same shall be taken to be a contract between the state and the said corporations, and the governor shall forthwith provide for the preparation of the bonds provided for by this act. The said corporations may present for funding, and in the proportions hereinbefore provided, at least eight million of dollars of the outstanding obligations of the state prior to the first day of January, eighteen hundred and eighty; and during each period of six months, from and after the thirty-first — December, eighteen hundred and seventy-nine, they may present an additional amount of at least five millions of dollars, until the whole debt is funded; but any excess over said amounts, which may be presented during any of said periods may be estimated in requirement for the succeeding six months. So long as the said
corporations shall present for funding the obligations afore-
33 said, in the amounts and in the periods aforesaid, they shall have the exclusive privilege of funding the outstanding debt under the provisions of this act: Provided that the said corporations shall arrange to receive the outstanding bonds at the city of Richmond, when the holders thereof shall so desire. But if the said corporations shall fail to file with the governor their assent and agreement as aforesaid by the first day of May, eighteen hundred and seventy-nine, or shall fail to present for funding the outstanding bonds in the proportions and amounts and during the periods hereinbefore specified, then the governor may, in his discretion, make a like contract with responsible parties for the funding of the debt of the state under this act.

6. The rules prescribed under the act approved March thirtieth,

eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act, except so far as the same be modified by the provisions of this act: Provided that all bonds and certificates which may be necessary to be printed, shall be printed from a plate which shall be the property of the commonwealth, and shall remain in the keeping or under the control of the second auditor. Whenever an obligation of the state shall be presented to the second auditor to be funded under this act, he shall note the fact and date on the proper register in his office, shall punch a hole through the name of the second auditor, signed or countersigned thereto, and shall issue his warrant upon the treasurer for the new obligations required. There shall be endorsed upon the said warrant a description of the old obligations, and the calculation of principal and interest for which the new obligations are to be issued. The said old obligations and warrant shall be carried by the second auditor to the treasurer, who shall note the fact and date of funding on the proper register in his office, and if he shall find the warrant correctly drawn, shall sign the proper obligations to be issued, register the same in his office, clip therefrom the past-due coupons and punch the same, and deliver the said obligations to the second auditor, taking his receipt therefor upon his warrant. The second auditor shall countersign the obligations so delivered to him, register the same in his office, and deliver the same to the proper person, taking his receipt therefor. The treasurer shall jacket and file in his office the warrant upon which the new obligations were issued, with the surrendered obligations attached to said warrant, and shall number and date the jacket so as to make it easy for reference. But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so cancelled shall be filed for reference.

34

7. The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the state of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the state of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the state of Virginia from all liability on account of the said certificates.

8. The general assembly will, by necessary and appropriate legislation, provide for the prompt payment of the interest on the bonds issued under this act.

9. In the year eighteen hundred and eighty-five, and annually thereafter until all the bonds issued under and by authority of
35 this act are paid, there shall be levied and collected the same as, and together with other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued under this act. All the certificates of debt which shall be funded, redeemed or purchased under this act shall be cancelled by the second auditor, and delivered by him to the treasurer of the commonwealth at the time of payment therefor, who shall carefully preserve the same in his office. All certificates of debt acquired under the operation of the sinking fund, created by the act of March thirty, eighteen hundred and seventy-one, shall also be cancelled and delivered.

10. Executors, administrators, and others acting as fiduciaries, may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

11. The treasurer shall, upon the first days of July, eighteen hundred and seventy-nine, and January, eighteen hundred and eighty, and upon the same days in each year, pay or cause to be paid to the holders thereof the half-yearly interest then due upon each of the bonds of the commonwealth issued under this act.

12. Whenever there shall not be a sufficient amount of money in the treasury of the state to meet the accruing interest on the said bonds promptly, the auditor is hereby authorized and directed, by and with the advice of the governor of Virginia, to raise by temporary loan, to be returned out of the accruing revenues of the state, a sum sufficient to enable him to meet promptly the said interest as
36 it accrues. And in case the auditor shall not be able to raise a sufficient sum for the said purpose by loans, he is hereby authorized and directed to issue non-interest-bearing certificates of indebtedness of this state, to be signed by himself and countersigned by the treasurer, and properly registered in the offices of the auditor and treasurer, for the sum of one dollar and multiples thereof, the same to be printed from plates, which shall be the property of the state, and to sell the same at not less than a minimum price to be fixed by the commissioners of the sinking fund, which shall not be less than seventy-five cents upon the dollar. The said certificates shall be receivable for all taxes, debts, dues and demands due the state, and this shall be expressed on their face. The amount of such certificates which may be issued at any one time shall be fixed by the commissioners of the sinking fund, and the proceeds of the sale thereof shall be devoted exclusively to the payment of interest as aforesaid. The auditor shall report regularly to the general assembly the amount and character of certificates issued under this act, and the net proceeds thereof. In case the auditor shall not be able to

borrow the sums needed as aforesaid without security, he shall be and is hereby authorized to hypothecate such amounts of the said certificates as may be fixed on by the commissioners of the sinking fund, at a value to be fixed as aforesaid, but in no case to be at a less value than seventy-five cents upon the dollar; and in case of a sale of said certificates, whether they may have been so hypothecated or not, they shall be offered for sale in suitable and proportionate amounts in the different counties, towns and cities of this state, so far as practicable, under regulations to be fixed by the commissioners of the sinking fund. The said certificates shall be received by the treasurer of the state, and be cancelled on receipt thereof, under the same regulations and prohibitions now existing in relation to coupons for interest on the public debt, except that no tax shall be deducted therefrom, and the fact of their cancellation shall be noted on the said registers.

13. The act approved March fourteenth, eighteen hundred
37 and seventy-eight, and all acts inconsistent with the provisions of this act, are hereby repealed.

14. This act shall be in force from its passage.

38 EXHIBIT NUMBER 3.

CHAP. 84.—An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon.

Approved February 14, 1882.

Preamble.—Whereas to the end which this act comprehends, a full statement of the debt is essential; and whereas the following has been carefully made up from the records of the second auditor's office of the State, it is confidently submitted as presenting a true state of the account between the State and her creditors—the account is as follows:

		Interest.	Principal.
	Principal outstanding at this date:		
1831, January 1st.	Sterling debt bearing 5 per cent. interest	$1,973,000 00	
	Dollar debt bearing 6 per cent. interest	29,533,582 90	
	Debt guaranteed bearing 6 per cent. interest	294,130 00	
	Total principal		$31,800,712 90
	Interest:		
	Past due and uncalled for at this date	101,023 63	
	Maturing at this date, January 1st, 1861	944,156 38	
	Total interest	$1,045,183 01	
1863. July 1st.	The State of West Virginia was formally admitted into the Union June 20th, 1863. The property and resources of Virginia, upon which the above debt has been founded, were, by this partition of the old State, reduced, one-third of her territory and one-fifth of her population going to form West Virginia. This and the consequences of war to her and her people made a loss of full $500,000,000 of property, and her taxable values were reduced from $723,000,000 to $336,000,000, and her annual revenues from over $4,000,000 to $2,500,000.		
39	*Principal July 1st, 1863:*		
	Sterling debt bearing 5 per cent. interest	1,973,000 00	
	Dollar debt bearing 6 per cent. interest	29,827,712 90	
	Bonds issued since January 1st, 1861, in discharge of debts contracted, and appropriations made prior to that date	1,340,500 02	
	Total principal July 1st, 1863		33,141,212 92
	Interest July 1st, 1863:		
	Past due January 1st, 1861, and uncalled for	1,045,183 01	
	Accrued between January 1st, 1861, and July 1st, 1863, inclusive	4,909,533 07	
	Total interest to July 1st, 1863, inclusive	5,954,716 08	

1863, July 1st.	Two-thirds of the above debt, principal and interest, to this date is assumed as Virginia's equitable portion, in consideration of the partition of her territory, population, and resources, upon the well established principle that debt in such cases follows territory. Upon that basis, Virginia's portion of the debt of the entire State is—			
	Principal:			
	Two-thirds of $1,973,000 sterling debt		1,315,333 34	
	Two-thirds of $31,168,212 92 dollar debt		20,778,808 62	
	Total principal, two-thirds, to July, 1863, inclusive			22,094,141 96
	Interest:			
	Two-thirds of $5,954,716 08, amount in arrears at that date, inclusive		3,969,810 72	
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto		3,662,434 55	
	Balance of interest due and unpaid July 1st, 1863, inclusive			307,376 17
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above		1,315,333 34	
	Principal July 1st, 1863, in dollar bonds as above	20,778,808 62		
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date	3,710,449 67		
	Total dollar bonds		17,068,358 95	
	Total principal			18,383,692 29
	Interest from July 1st, 1863, to July 1st, 1871, inclusive:			
	On $1,315,333 34 sterling bonds at 5 per cent		526,133 28	
	On $20,778,808 62 dollar bonds at 6 per cent		9,973,828 14	
			10,499,961 42	
	Less amount covering average time of the redemption of the $3,710,449 67 dollar bonds redeemed	445,257 58		
	Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive	3,594,289 11		
			4,039,546 69	
				6,460,414 73

40

	Interest:			
	Two-thirds of $5,954,716 08, amount in arrears at that date, inclusive....		3,969,810 72	
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto.....		3,662,434 55	
	Balance of interest due and unpaid July 1st, 1863, inclusive			307,376 17
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above.....		1,315,333 34	
	Principal July 1st, 1863, in dollar bonds as above	20,778,808 62		
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date.....	3,710,449 67		
	Total dollar bonds.		17,068,358 95	
	Total principal.....			18,383,692 29
	Interest from July 1st, 1863, to July 1st, 1871, inclusive:			
	On $1,315,333 34 sterling bonds at 5 per cent.....		526,133 28	
	On $20,778,808 62 dollar bonds at 6 per cent.....		9,973,828 14	
			10,499,961 42	
	Less amount covering average time of the redemption of the $3,710,449 67 dollar bonds redeemed.....	445,257 58		
	Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive	3,594,289 11		
			4,039,546 69	
	Add interest accrued to July 1st, 1871, as above.....		6,767,790 90	6,460,414 73
	Total.....		18,041,288 93	
	Less amount paid between July 1st, 1871, and October 1st, 1881—in money.....	2,415,973 56		
	In coupons.....	8,707,615 50		
	Less amount covering average time of the redemption of the $1,540,658 12 bonds redeemed.....	331,800 00		

Less tax-receivable coupons outstanding October 1st, 1881, and to be paid as part of the floating debt	895,722 00		
Less tax receivable coupons maturing in January and July, 1882	1,117,724 87		
Amount of interest (special):			
Redeemed and cancelled	380,110 02		
Total deductions		13,848,945 95	
Balance of interest to July 1st, 1882			4,192,342 98
Total debt to July 1st, 1882:			
Principal, as above			16,843,034 17
Interest, as above			4,192,342 98
Total			21,035,377 15
Including bonds held by the literary fund to the amount of $1,428,245 25, and interest on the same—in arrears July 1st, 1881, $516,322 19—and interest added from that date to July 1st, 1882, $85,694 71, making $602,016 90 included in the above sum of $4,192,342 98.			
Total debt			21,035,377 15

41 And whereas by this account it appears that Virginia owes her creditors, as of the first — July, eighteen hundred and eighty-two, including the bonds held by the Literary fund and arrears of interest thereon cast to such date, twenty-one million, thirty-five thousand, three hundred and seventy seven dollars and fifteen cents; and that she may cause to be issued her own bonds for the same, and provide for the certain payment of interest thereon; that is for her equitable share of the bonds known as consols, and here designated as class A, and whereof there are outstanding fourteen million three hundred and sixty-nine thousand nine hundred and seventy-four dollars and eighty-one cents; and for her equitable share of the bonds known as ten-forties, and here designated as class B, and whereof there are outstanding eight million five hundred and seventeen thousand six hundred dollars; and for her equitable share of the bonds known as peeler, and here designated as class C, and whereof there are outstanding two million three hundred and ninety-four thousand three hundred and five dollars and twelve cents; and for her equitable share of the interest thereon, designated as class D, and whereof there is now in arrears nine hundred and twenty-eight thousand eight hundred and eighty-seven dollars and forty-five cents, and counted to the first of July, eighteen hundred and eighty-two, makes the amount of such interest then to be in arrears, one million, seventy-two thousand five hundred and forty-five dollars and seventy-five cents; and for her equitable share of the bonds known as unfunded bonds—dollar and sterling—here designated as class E, and whereof there are now outstanding, computed at two-thirds, three million seven hundred and seventy-three thousand four hundred and ninety-three dollars and sixty-eight cents; and for her equitable share of the interest thereon now in arrears, two million six hundred and thirty-six thousand four hundred and forty-four dollars and thirty-four cents, and counted to the first of July, eighteen hundred and eighty-two, making as of that date (two hundred and twenty-six thousand four hundred and nine dollars and sixty-two cents more) the sum of two million eight hundred and sixty-two thousand eight hundred and fifty-three dollars and ninety-six cents, and here designated as class F; and for her equitable share of the bonds held by the commissioners of the Literary fund, whereof there are one million four hundred and twenty-eight thousand two hundred and forty-five dollars and twenty-five cents; and whereas the rate of interest which any people can safely undertake to pay must be determined by the measure of their productive resources; and whereas these have long been burdened by a rate of taxation which is conceded to be as high as can be endured; and whereas the means of prompt and certain payment should be apparent to the creditor, while the people have assurance for the support of government and the maintenance of their schools, as required by the constitution; and whereas the net revenues of the state, remaining and so derived, after providing for the proper and gradual liquidation of the balance of the
42 moneys heretofore diverted from the public free school fund, after liquidating gradually the arrearages to the Literary fund, and leaving some small margin for the immediate and subse-

quent exigencies, which are, and are likely to be demanded by the public welfare—notably in respect of the humane institutions now inadequate to the proper accommodation of that unfortunate class of every population—do not warrant the assumption of a larger rate of interest than three per centum upon the full amount of Virginia's equitable share of the debt of the old and entire state, as the same is ascertained and now formally declared by the foregoing account; therefore,

1. Be it enacted by the general assembly of Virginia, That the board of commissioners of the sinking fund of the state, be, and they are hereby empowered and directed to create bonds, registered and coupon, to such extent as may be necessary to comply with the provisions of this act.

2. The said bonds shall be dated July first, eighteen hundred and eighty-two, and be payable at the office of the treasurer of the state on the first day of July, nineteen hundred and thirty-two; provided that the state may, at any time and from time to time, after July first, nineteen hundred, redeem any part of the same, principal and interest, at par. In case of such redemption before maturity, the bonds to be paid, shall be determined by lot by said board of commissioners, and notice of the bonds so selected to be paid, shall be given in a newspaper published at Richmond, New York, and London, England, when interest from and after ninety days from the date of such publication in London, shall cease upon the bonds so designated to be paid.

3. The form of the bond shall be as follows, to-wit:

The commonwealth of Virginia acknowledges herself indebted to —— —— (in the case of a coupon bond to the bearer, and in the case of a registered bond, inserting the name of the person or corporation) in the sum of —— dollars, which she promises to pay in lawful money of the United States at the office of the treasurer of the state, Richmond, Virginia, on the first day of July, nineteen hundred and thirty-two, with the option of payment at par, principal, and interest, before maturity, at any time after July first, nineteen hundred; and interest at the office of the treasurer of the state, in such lawful money, on the first days of January and July, at the rate of three per centum per annum until paid (according to the tenor of the annexed coupons, in the case of coupon bonds).

In testimony whereof, witness the signature of the treasurer and the counter-signature of the second auditor, hereto affixed according to law.

—— ——, *Treasurer.*
—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be as follows, to-wit:

43 No. —— (of bond).

The commonwealth of Virginia will pay to bearer —— dollars, in lawful money of the United States, at the office of the treasurer, Richmond, Virginia, on the first day of January and July, alternately—

the first coupon to be payable January first eighteen hundred and eighty-three.

—— ——, *Treasurer.*

$——.

Each coupon to be impressed on the back with its number, in the order of maturity, from one forward.

5. The said board of commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of different tint: Provided that registered bonds may be issued of any denomination, multiple of one hundred; all registered bonds to be of the same tint; and they are authorized and directed to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore enumerated, including the bonds held by the literary fund, as follows, that is to say:

(*a*) For her equitable share of class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act, (principal and accrued interest, at par, from the preceding period of maturity to the date of exchange,) are to be given for every one hundred dollars, face, principal and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest which may be past due and unpaid upon the same, funded bonds issued under this act may be given dollar for dollar.

(*b*) For her equitable share of class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of class A.

(*c*) For her equitable share of class C, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A and B, and accounting for the same as provided in class D.

(*d*) For her equitable share of class D, at the rate of eighty per centum.

(*e*) For her equitable share of class E, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A, B, and C, and accounting for the same as provided in class F.

(*f*) For her equitable share of class F, at the rate of sixty-three per centum.

(*g*) For her equitable share of the bonds of the Literary fund, as in the case of class C; her equitable share of the arrearages of interest—three hundred and seventy-nine thousand two hundred seventy dollars—to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate, as follows:

44 No. ——.

The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for —— dollars, held by ——, dated the —— day of ——, and numbered ——, leaving a balance of —— dollars, with interest from ——, to be accounted for by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this ——day of ——, eighteen ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

7. The said board of commissioners are empowered to issue for any fractional part of one hundred dollars of the indebtedness funded under this act, the following certificate:

Fractional Certificate.

Register No. —. Transaction No. —.

This certificate entitles the holder hereof to the sum of —— dollars, fundable at its face in the bonds of the commonwealth of Virginia, authorized by an act approved —— day of ——, eighteen hundred and eighty-two, when presented with certificates of like tenor or in conjunction with other evidences of debt fundable under said act in amounts of one hundred dollars and multiples thereof.

Done at the capitol of Virginia, this —— day of ——, eighteen hundred and eighty ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued, shall be registered by the second auditor in a register kept for that specific purpose, giving the date and number of the transaction to which it relates, the amount of the same, and the name of the person or corporation to whom it was issued; and as such certificates are refunded, the same shall be canceled and preserved as herein provided in respect to the evidences of debt refunded.

8. All the bonds and certificates of debt and evidences of past-due and unpaid interest taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are required, and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled, from time to time, shall be certified by said board and filed with the treasurer for preservation.

9. All the coupons and registered bonds and fractional certificates issued under this act, shall be separately registered by the second auditor in books kept for the specific purpose; and in each case giving the date, number and amount of the obligations issued, and the name

of the person or corporation to whom issued, and the date, number, amount and description of the bond, bonds or indebtedness
45 surrendered.

10. The plates from which the bonds and fractional certificates authorized by this act, are printed, shall be the property of the commonwealth, and shall remain in the keeping of the said board of commissioners of the sinking fund.

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the state each year, two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the sinking fund; and the commissioners of the said sinking fund shall, annually or oftener, apply the same to the redemption or purchase (at a rate not above par) of the bonds issued under this act, and the bonds so redeemed shall be canceled by the said board, and the same registered by the second auditor in a book to be kept for the purpose, giving the number, the date of issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and canceled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot as provided in section two of this act.

12. Executors, administrators and others acting as fiduciaries, may exchange any state bonds held by them as provided, for bonds issued under this act, when so authorized by the court having jurisdiction in the premises, and the same, when so made, shall be considered a lawful investment.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act, as the same shall become due and payable, out of any money in the treasury not otherwise appropriated.

14. All necessary expenses incurred in the execution of this act, shall be paid out of any money in the treasury not otherwise appropriated, on the warrants of the auditor of public accounts drawn upon the treasurer, on the order of the board of sinking fund commissioners.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this state, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

16. This act shall be in force from its passage.

46 EXHIBIT NUMBER 4.

CHAP. 325. An act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882.

Approved February 20, 1892.

(Acts G. A. of Va. 1891-92, p. 533.)

Whereas by a joint resolution of the general assembly of the state of Virginia, adopted on the third day of March, eighteen hundred and ninety, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the state not funded under the act known as the "Riddleberger bill," approved February fourteenth, eighteen hundred and eighty-two, from a properly constituted representative of her creditors; and

Whereas said Virginia debt commission has submitted a report to the general assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central trust company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, junior, Hugh R. Garden, and John Gill, constituting a committee for certain of the creditors of Virginia, called the "Bondholders' committee," have proposed to said commission to surrender to the state in bulk not less than twenty-three million of dollars of the public debt, unfunded under said act approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves ap-
47 pointed; and that, in pursuance of said proposal an agreement has been entered into unanimously between the said commission and the said bondholders' committee, subject to approval by the general assembly, whereby in exchange for the said unsettled obligations of the state held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the commonwealth pursuant to law and by the United States,) together with the interest thereon to July first, eighteen hundred and ninety-one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety-one, and maturing one hundred years from said date, with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually; of which aggregate debt of about twenty-eight million of dollars the said bondholders' committee represent that they now

hold and agree to surrender not less than twenty-three million of dollars; and

Whereas said report and agreement contemplate the surrender of the obligations held by the bondholders' committee as an entirety, and do not contemplate an apportionment by the general assembly between the various classes of creditors so represented by said bondholders' committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the state (except those issued under the act of February fourteenth, eighteen hundred and eighty-two, the evidences of debt held by the public institutions of the state in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act; therefore,

1. Be it enacted by the general assembly of Virginia, That
48 the commissioners of the sinking fund, a majority of whom may act, be, and they are hereby, empowered and directed to create "listable" engraved bonds, registered and coupon, to such an extent as may be necessary to issue nineteen million of dollars of bonds in lieu of the twenty-eight million dollars of outstanding obligations, not funded under the act approved February fourteenth, eighteen hundred and eighty-two, hereinbefore recited.

2. The said bonds shall be dated July first, eighteen hundred and ninety-one, and be payable at the office of the treasurer of the state, or at such agency in the city of New York, as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, and shall bear interest from date, payable semi-annually on the first days of January and July in each year, at the rate of two per centum per annum for the first ten years and three per centum per annum for the remaining ninety years; the said interest may be payable in Richmond, New York and London, or at either place, as may be designated by the state; provided that the state may at any time, and from time to time, after July first, nineteen hundred and six, redeem at par any part of the principal with accrued interest. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said commissioners of the sinking fund, and notice of the bonds so selected to be paid shall be given by publication beginning at least ninety days prior to an interest-due date, in a newspaper published in Richmond, Virginia, one in New York city, and one in London, England; and the interest from and after the next succeeding interest-due date shall cease upon the bonds so designated to be paid: provided that no registered bonds shall be so redeemed while there are any coupon bonds outstanding.

3. The form of the bonds shall be substantially as follows, to-wit:

Issued under act of assembly, approved — day of ——, eighteen hundred and ninety-two.

The commonwealth of Virginia acknowledges herself to be
49 indebted to —— —— (in case of a coupon bond to the bearer, an in case of a registered bond inserting the name of a person

or corporation, or assigns), in the sum of —— dollars, which she promises to pay in lawful money of the United States, at the office of the treasurer of the state, or at such agency in the city of New York as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, with the option of payment at par with accrued interest, before maturity at any time after July first, nineteen hundred and six, and interest, at the office of the treasurer of the state, or at the agencies of the state in New York city and London, England, or at either place, as may from time to time be designated by the state, in such lawful money aforesaid, at the rate of two per centum per annum for ten years from the first day of July, eighteen hundred and ninety-one, and at the rate of three per centum per annum thereafter until paid, payable semi-annually on January first and July first in each year (according to the tenor of the annexed coupon bearing the engraved signature of the treasurer of the commonwealth in case of coupon bonds.) And this obligation is hereby made exempt from any taxation by the said commonwealth of Virginia, or any county or municipal corporation thereof.

In testimony whereof, witness the signature of the treasurer and the countersignature of the second auditor of the commonwealth of Virginia, hereto affixed according to law.

[SEAL.] —— ——, *Treasurer.*
—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be substantially as follows, to-wit:

Coupon No. —.

On the first day of —— the commonwealth of Virginia will pay to bearer —— dollars in lawful money of the United States, at the office of the treasurer of the state, or at the agencies of the state in New York city or London, England, or at either place, as may be designated by the state; the same being six months' interest on bond number —. —— dollars.

—— ——, *Treasurer.*

Each coupon to be impressed on the back with its number, in order of maturity, from number one consecutively.

5. Said commissioners of the sinking fund are authorized to issue coupon bonds in denominations of five hundred and one thousand dollars each, as may be necessary to carry out the provisions of this act: provided that registered bonds may be issued of the denominations of one hundred dollars, five hundred dollars, one thousand dollars, five thousand dollars, ten thousand dollars; and they are authorized and directed to issue said bonds, registered or coupon, in exchange for the said outstanding obligations up to and including July first, eighteen hundred and ninety-one (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States) as follows:

A. Said bondholders' committee may at any time on or before the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification bonds and other evidences of debt, and coupons or other evidences of interest thereon, obligations of the state of Virginia, held by said committee, for exchange as aforesaid; and said commissioners shall determine whether the obligations so presented are genuine obligations of the state and whether the coupons or other evidences of interest represent interest accrued on such obligations (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States).

B. Such of the obligations so presented for verification as may be determined by said commissioners to conform to the requirements of paragraph A hereof, shall be sealed in convenient packages as the examination proceeds. Each of the packages shall be num-
51 bered, and upon each package shall be endorsed the amount and character of the obligations therein contained. Such endorsement on each package shall be signed by said commissioners or a majority thereof, and the package shall then be delivered to said committee or its agent. Said commissioners shall keep in a book to be provided for the purpose a record of the numbers of all such packages and of the amount and character of the obligations contained in each. Such obligations presented by said bondholders' committee as do not conform to the requirements of paragraph A hereof shall be returned to said committee; but said commissioners shall keep a record thereof in the book aforesaid.

C. After said bondholders' committee shall have presented to said commissioners for verification bonds and other evidences of debt and coupons, or other evidence of interest thereon accrued on or before July first, eighteen hundred and ninety-one, obligations of the state of Virginia, all conforming to the requirements of paragraph A hereof, as determined by said commissioners, and amounting in the aggregate to not less than twenty-three million of dollars, after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided. All coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, shall be surrendered with such bonds, the said cash to be returned if proper coupons are subsequently tendered. And when the paid bondholders' committee shall have presented for exchange the obligations aforesaid to an amount of twenty-
52 three million of dollars or more, if the engraved bonds hereinbefore authorized are not ready for exchange, the said commissioners shall, upon application of said bondholders' committee,

issue to said bondholders' committee a manuscript registered bond of the state of Virginia, substantially of the form of the bond hereinbefore specified, for the aggregate amount to which the said committee may be entitled for the obligations so presented under this act, the said bond to be exchangeable for the engraved bonds aforesaid of character and amount required by said committee, as prescribed in this act, and interest in the meantime on said manuscript bond shall be paid as herein provided for on the engraved bonds.

D. The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph C of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered: provided that no certificates issued on account of the proportion of West Virginia of the obligations of the state shall be funded under this act. When said bondholders' committee shall have surrendered and exchanged such obligations as aforesaid to the amount of at least twenty-three million dollars, said committee may at any time thereafter up to and including the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification, surrender, and exchange additional obligations, principal and interest, as aforesaid; all coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof
53 in cash, to be presented with such bonds, the cash, if paid, to be returned if proper coupons are subsequently tendered. After said commissioners shall have determined that said obligations conform to the requirements of paragraph A hereof, said commissioners shall accept the obligations so presented for surrender and exchange by said committee, and shall deliver to said committee in exchange therefor new bonds issued under the provisions of this act in the same proportion as is set out in this paragraph of this section, after making the deductions provided for in paragraph C of this section.

E. If on making the exchange provided for in this act said committee shall be found entitled to a fractional amount or amounts less than one hundred dollars in addition to the new bonds delivered to it, said commissioners of the sinking fund shall issue to the committee a certificate or certificates for such amount or amounts. Such fractional certificates shall be exchangeable for the bonds authorized by this act to be issued in sums of one hundred dollars, or any multiple thereof, and certificates of like character shall be issued for any fractional amount which may remain in making the exchange.

6. For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by

the commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:

No. —. The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond for —— dollars, dated — day of ——, and No. —, leaving a balance of —— dollars, with interest from ——, to be accounted for to the holder of this certificate by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this — day
54 of ——, eighteen hundred and ninety-two.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued under sections five and six of this act shall be recorded by the second auditor in a book kept for that purpose, giving the date and number of the transaction to which it refers, the amount of certificates, and the name of the person or corporation to whom issued and delivered; and as such certificates, authorized by paragraph E, section five of this act, are exchanged, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the state as may be presented to said commissioners; provided, that said commissioners shall not receive on deposit for the purposes aforesaid any outstanding obligations of the state which have been once deposited with the bondholders' committee, or may be hereafter deposited with them; the said verification and exchange for the new bonds of the obligations so deposited to be conducted in the same manner as hereinbefore provided with respect to the obligations deposited with the said bondholders' committee, and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act, in exchange for the obligations so deposited, bonds authorized by this act as follows, namely: to each of the several classes of said depositing creditors the same proportion, as nearly as may be found in their judgment practicable by the commissioners of the sinking fund, as the same class shall receive under the distribution which shall be made by the commission for the creditors represented by the bondholders' committee: provided that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-
55 two, nor shall any coupon bonds be received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one; but for any such coupons as may be missing, coupons of like class and amount, or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subsequently tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by

him, or a commission equal in amount to that which may at any time hereafter be fixed by the said committee of bondholders upon any bonds deposited with them, not, however, in any case to exceed three and one-half per centum; and said sinking fund commissioners shall cover the fund thus received into the treasury of the commonwealth.

8. All the coupon and registered bonds issued under this act shall be separately recorded by the second auditor in books provided for the specific purpose, in each case giving the date, number, amount of obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the obligations surrendered.

9. All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the general assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasurer for preservation.

10. In the year nineteen hundred and ten, and annually thereafter, there shall be set apart of the revenue collected from the property of the state each year up to and including the year nine-
56 teen hundred and twenty-nine, one-half of one per cent. upon the bonds issued under this act, as well as upon the outstanding bonds issued under act approved February fourteenth, eighteen hundred and eighty-two; and in the year nineteen hundred and thirty, and annually thereafter until all the bonds issued under this act and the said act approved February fourteenth, eighteen hundred and eighty-two, are paid, there shall be set apart of the revenue collected from the property of the state each year one per cent. upon the outstanding bonds issued under the aforesaid acts, which shall be paid into the treasury to the credit of the sinking fund, and the commissioners of the sinking fund shall annually, or oftener, apply the same to the redemption or purchase (at a rate not above par and accrued interest) of the bonds issued under the aforesaid acts, and the bonds so redeemed shall be cancelled by the said commissioners and the same registered by the second auditor in a book to be kept for that purpose, giving the number and date of issue, the character, the amount, and the owner at the time of purchase, of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act. All bonds of the state issued under the provisions of the act aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund, shall, as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be cancelled by said commissioners and preserved in the office of the treasurer of the commonwealth.

11. Executors, administrators and others acting as fiduciaries may participate in the settlement of the debt herein specified in the man-

ner hereinbefore provided, and such action shall be deemed a lawful investment of their trust fund. Executors; administrators and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

57 12. All coupons heretofore tendered for taxes and held by said tax-payers in pursuance of such tender, shall be received in payment of the taxes for which they were tendered, and upon their delivery to the proper collector or the amount thereof in money, the judgments obtained against the said tax-payers for such taxes shall be marked satisfied: Provided the said tax payers shall have paid in money and not in coupons the costs of said judgments. All coupons heretofore tendered for taxes and held by the officers of the commonwealth for verification, in pursuance of the statute in such case made and provided, shall be received in payment of the taxes for which they were tendered, and the money collected for such taxes returned to the parties from whom it was received: Provided the said tax-payers shall have paid in money, and not in coupons, all costs incurred in legal proceedings to verify said coupons.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act as the same shall become due and payable out of any money in the treasury not otherwise appropriated.

14. The plates from which the bonds and fractional certificates authorized by this act are printed shall be the property of the commonwealth.

15. All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated on the warrants of the auditor of public accounts, drawn upon the treasury on the order of the commissioners of the sinking fund.

16. The act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, and the amendments

58 thereto, to-wit: an act entitled "an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts eighteen hundred and eighty-one and eighteen hundred eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved August twenty-seventh, eighteen hundred and eighty-four; and the act entitled "an act to amend and re-enact an act approved August twenty-seventh, eighteen hundred and eighty-four, entitled an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts of eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved November twenty-ninth, eighteen hundred and eighty-four, are hereby repealed.

17. The commissioners of the sinking fund are authorized, if it shall seem to them for the best interest of the commonwealth, to make one extension of the time for the funding of the said twenty-

eight million of dollars of outstanding evidences of debt for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-two.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds issued under this act into registered bonds in the denominations hereinbefore provided, and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by, and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund; and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

19. This act shall be in force from its passage.

59 EXHIBIT NUMBER 5.

CHAP. 747. A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same.

Approved March 6, 1894.

(Acts G. A. of Va., 1893-4, p. 867.)

Whereas the general assembly of Virginia is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia; and

Whereas the general assembly has heretofore passed four several acts in relation to the funding and settlement of her public debt, as follows, to wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt. approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance

of bonds covering the same and the regular and prompt pay-
60 ment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit; one third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the present state of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state: now, therefore,

Be it resolved by the senate of Virginia (the house of delegates concurring), That a commission of seven members is hereby created and provided for, of whom the present chairman of the committee on finance and banks of the senate shall be one, and the present chairman of the committee on finance of the house of delegates shall be another; of the other five, two shall be chosen by the senate from among the persons now members of that body; two by the house of delegates from among the persons now members of that body, and one, to be a resident of this state, shall be appointed by the governor. No member of said commission shall cease to be a member thereof by reason of ceasing to be a member of the general assembly.

Said commission shall choose its own chairman and secretary; vacancies therein occurring or existing during recess of the legislature shall be filled by the governor on notification thereof by the chairman; and a majority of said commission shall be competent to act.

Said commission is hereby authorized and directed to negotiate with the state of West Virginia a settlement and adjustment of the proportion of the public debt of the original state of Virginia
61 proper to be borne by West Virginia.

But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the state through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the state of West Virginia in full settlement of the one-third of the debt of the original state of Virginia which has not been assumed by the present state of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof.

All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof,

shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account.

And their action shall be subject to the approval or disapproval of the general assembly, and shall not be binding on the state until approved by the general assembly. The governor is requested to communicate this joint resolution to the governor and legislature of West Virginia.

This joint resolution shall be in force from its passage.

62 EXHIBIT NUMBER 6.

CHAP. 825. An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

Approved March 6, 1900.

(Acts G. A. of Va., 1899-1900, p. 902.)

Whereas the general assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept
63 the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to wit:

one-third of the amount of said obligations, of which certificate this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund, and

Whereas the general assembly is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the debt of the original state of Virginia proper to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the general assembly of Virginia, That the commission created and appointed under a joint resolution of this general assembly entitled a joint resolution to provide for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia
64 on said certificate as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

5 EXHIBIT NUMBER 7.

howing Amounts Paid Off Since January 1, 1861, or Assumed and Now Carried by Virginia on Account of the Old Debt of the Undivided State.

* * * * * * *

mount of interest paid, as shown by the records of the Second Auditor's Office, from January 1st, 1861, to February 1st, 1906.....	$35,551,642.82
onds heretofore paid off, taken up, and retired by Virginia to Sept. 30, 1905. See 2nd Auditor's Report for 1905, P. 21 and now held by Virginia	10,771,791.49 (*)
ew Bonds of Virginia issued for the portion of the unpaid debt funded and assumed by her — See Second Auditor's Report for 1905, p. 9....	25,537,820.00
	$71,861,253.31

(*) NOTE.—This sum of $10,771,791.49 probably does not include ome considerable amounts of ante bellum bonds of Virginia paid er by some of the Railroad Companies of the State, and by the Dismal Swamp Canal Company in payment for the share and interest f the State in such Companies or for property sold them by the State: or does it include considerable amounts of said bonds received by he State from the sureties of certain Sheriffs—Nor does the Statement include amounts paid by Virginia since 1861 in settlement of pen accounts or unfounded ante bellum debts of the undivided State. These amounts can be ascertained from the records of the Board of Public Works, the First and Second Auditor's offices and the Acts of Assembly.

66 Report of the Commission appointed and acting under the joint resolution of the General Assembly of Virginia, approved March 6th, 1894, and the act of the said General Assembly, approved March 6th, 1900, with respect to certain certificates issued by the State in connection with the debt of the original State of Virginia and known as Virginia Deferred Certificates.

RICHMOND, VA., *January 9th*, 1906.

To the General Assembly of Virginia:

Your Commission appointed and acting under the joint resolution of the General Assembly entitled "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the debt or the original State of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found entitled to the same," approved March March 6th, 1894, and an Act of the General Assembly entitled "An

Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises," approved March 6th, 1900, beg leave to make a further report of their proceedings, as follows:

It will be noted that it appears from the first report of your Commission, dated January 28th, 1896, and printed as Senate Document No. 10 in the Senate Journal and Documents of 1896, and as House Document No. 4 in the House Journal and Documents of that session, that the conditions required by said joint resolution having been complied with, your Commission was ready and desirous to open negotiations with West Virginia for a settlement as provided for in said joint resolution, and this fact was communicated to the Governor of West Virginia by the Governor of this State
67 with the request that such negotiations might accordingly be opened, which communication was laid before the Legislature of West Virginia, but that body, by a joint resolution, declined to enter into negotiations on the subject.

By a subsequent report of your Commission to this General Assembly, dated February 7th, 1900, and to be found printed as Senate Document No. 6 in Senate Journal and Documents for the session of 1899–90, it was further shown that the control and disposal of a majority of said certificates had been again tendered your Commission by a Committee, of which John Crosby Brown of New York was chairman, acting under a depositing agreement of July 28th, 1898, and the said Committee offering to accept whatever might be realized from West Virginia on the certificates in full settlement of their claims. A copy of said depositing agreement of July 28th, 1898, under which said Committee was constituted, was filed with said last report, and the same is also now herewith filed, showing who constituted said Depositing Committee and what their powers and functions were, and also that Brown Brothers & Company, Bankers of New York, N. Y., were the depository of the said Committee in whose hands the said certificates had been placed.

Upon the coming in of this last report, the Act of March 6th, 1900, was passed by the General Assembly, by which the powers and duties of your Commission were very materially enlarged, and it was provided that if at least two thirds of the certificates of 1871 outstanding in the hands of the public, and a majority of all the other certificates so outstanding, were deposited and placed subject to the control of your Commission upon the agreement that the creditors would accept whatever might be realized thereon from West Virginia in full settlement of their claims, then your commission was authorized, by and with the advice and approval of the Attorney General of the State, to take such action and institute such
68 proceedings on behalf of the State as might, in the judgment of your Commission and the Attorney General, be needful and proper to protect the interests of the State and bring about and carry into effect a settlement in the premises, but all the expenses in connection with any of the matters involved were to be borne by the

certificate holders. A copy of this Act is for convenience of reference herewith filed.

At the time of the passage of this Act the Depositing Committee did not hold the two-thirds in amount of the certificates of 1871, required by the Act as a basis for negotiations or action by your Commission, but having acquired them later, the Committee, on the 18th of September, 1902, submitted to your Commission a proposition in writing, bearing date on that day, by which they tendered and placed subject to the control of your Commission, in accordance with the terms of said Act, $8,565,095.70 of the certificates of 1871, being more than the requisite two-thirds of these certificates outstanding, and $1,782,475.13 of the other certificates outstanding, being a majority thereof, upon the agreement and arrangement on the part of your Commission acting for the State of Virginia that they would enter into negotiations with the State of West Virginia, or the constituted authorities thereof, for the purpose of effecting a settlement with that State with respect to said certificates, and that your commission would, by and with the advice and approval of the Attorney General, take such action as they might deem needful in the premises, any amount realized on such settlement to be accepted in full of all claims on said certificates as in said Act provided.

This proposition was accompanied by the statement of Brown Bros. & Co., the depository, showing that the certificates referred to were held by them, and it was stated in the proposition that upon its acceptance by your Commission it should constitute a contract between the parties to continue in force for three years, but
69 subject to renewal or extension by the parties, and to such amendment or modification as might be agreed on. It was on the day of its date accepted in writing by the unanimous action of your Commission, and the acceptance thereof duly endorsed thereon, and the same was approved by the Attorney General on September 29th, 1902; and a copy of the same showing its acceptance and the endorsements thereon is herewith filed and is referred to as showing in detail the action taken by your Commission. This agreement constitutes an arrangement with Virginia under said Act of March 6th, 1900, for obtaining a settlement with West Virginia and thus precluded the right which any certificate holder might, under the terms of the depositing agreement, otherwise have had to withdraw his certificate after October 1st, 1902.

On December 3rd, 1902, a plan of settlement as provided in the said depositing agreement of July 28th, 1898, was formulated, approved and recommended by the Depositing Committee and Advisory Board created under said agreement, by which the provisions of the foregoing contract of September 18th, 1902, were adopted as included in their plan of settlement, with the right to the Depositing Committee to make such further contracts with the Virginia Commission as might be deemed needful to bring about a settlement with West Virginia under said joint resolution and Act of the Virginia Assembly.

This plan of settlement provided for a full compliance on the part of the Depositing Committee with the terms of said joint resolution

and Act, and clothed the Committee with ample powers to act in the premises, and notice of it was duly published in New York and London, as required in the agreement of July 28th, 1898, so as to afford opportunity to any dissenting depositor of certificates to give notice of his unwillingness to accept the proposed settlement,
70 which notice the agreement provided was to be given within thirty days from the completion of the publication, but no such notice appears to have been given at any time by any depositor. The depositing agreement also provided that in the absence of such notification from a majority of the depositors, the proposed plan should become effective and final, and that the declaration in writing of this fact by the Committee to the depository should be conclusive on this point; and such declaration in writing by the depositing Committee to Messrs. Brown Bros. & Co., the depository, was accordingly so made in writing on December 13th, 1904. A copy of this plan of settlement and the certificates of the publication thereof, together with the said declaration in writing of the Committee, are all herewith filed and are referred to as parts hereof.

On December 14th, 1904, the amount of said certificates deposited with Brown Brothers and Company, as aforesaid, had increased to $11,607,298.64 of which $9,360,062.96 were those of 1871, and your Commission proposing to again attempt to open negotiations for a settlement with the legislature of West Virginia (which was then about to convene) it was thought advisable to enter into a contract by way of amendment to that of September 18th, 1902, by which the complete control of all these certificates should be placed in the hands of your Commission, and such additional agreement, bearing date December 14th, 1904, was accordingly entered into between the said Depositing Committee and your Commission, and approved by the Attorney General; and cotemporaneously therewith by a receipt or certificate bearing date on the same day, the said Brown Brothers and Company acknowledged and certified that they held all the certificates last aforesaid to the amount of $11,607,298.64 on deposit for and subject to the control and disposition of your Commission without reservation or condition of any kind. A copy of this agreement and receipt of December
71 14th, 1904, together with the Attorney General's approval, will be found filed herewith. By a subsequent communication of January 23rd, 1905, from Brown Bros. & Company to your Commission, it was shown that said deposits, so placed under the control of your Commission, had increased to $12,910,555.89, of which $10,639,776.42 were those of 1871, and a copy of this communication will also be found herewith filed.

Desiring, as above stated, to open communication with West Virginia, your Commission, on December 14th, 1904, appointed a subcommittee consisting of Messrs. Randolph Harrison, Chairman, H. D. Flood, H. H. Downing and John B. Moon, who, together with the Attorney General, should be authorized to open negotiations with the proper authorities of West Virginia looking to a settlement of the matters at issue. This sub-committee endeavored to do this by the presentation of a memorial to His Excellency, A. B. White,

Governor of the State of West Virginia, signed by the sub-committee and approved by the Attorney General, bearing date January 25th, 1905, a copy of which is herewith filed. This memorial was presented to the Governor of West Virginia at Charleston, W. Va., by the Attorney General and the Chairman of the sub-committee, and was by him, on the 27th day of January, 1905, transmitted to the Senate of West Virginia by a special message to that body, but without any recommendation on his part, a copy of which message is also herewith filed.

It was arranged, however, by the Senate and House Committees on Finance of the West Virginia Legislature to give to the sub-committee a hearing upon the subject at Charleston on February 1st, 1905, at which hearing the Attorney General of Virginia, the Chairman of the sub-committee and the chairman of your Commission attended, and the memorial of your Commission above referred to was read, and a full presentation was made by Mr. Harrison, Chairman of the sub-committee, of the reasons why West Virginia should, at least, enter into nagotiations in regard to a settlement in an address made by him to the Senate and House Finance
72 Committees aforesaid. It was considered by your Commission that Mr. Harrison's address dealt with the questions involved in so clear and able a manner and showed so conclusively that is was both the right and duty of Virginia to ask for a settlement, that they caused it to be printed, and a copy of it is herewith filed.

The Legislature of West Virginia, however, failed and declined to enter into any negotiations or to empower any committee or other official to do so, but on the contrary passed the following resolutions: "Resolved by the Legislature of West Virginia: That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so called debt of Virginia, and that this Legislature is opposed to any negotiations whatsoever on that subject." Indeed your Commission are advised that resolutions of a similar import have been passed by all, or nearly all, of the Legislatures of West Virginia which have met since your Commission first communicated with them on the subject in 1896, thus showing a persistent and determined refusal on the part of West Virginia to pay any portion of what they are bound for on account of the debt of the original State, or to enter into any accounting or negotiations whatsoever on the subject.

The deferred certificates of 1871 issued by the State of Virginia are in the following form:

"*Copy of Certificate under Act of March* 30, 1871.

"COMMONWEALTH OF VIRGINIA.

"No. —.

"TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs, executors, administrators or assigns $—, being one-third of bond sur-

rendered under the provisions of an Act approved March 30th, 1871, entitled, 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest, amounting
73 to $—, Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

——— ———,

"Treasurer of the Commonwealth of Virginia.

"——— ———,

"Second Auditor of Virginia."

So it would appear that if the contention of West Virginia is correct, the responsibility that attaches to the issuing of these certificates must rest with Virginia alone and West Virginia be responsible for nothing in connection with the debt of the original State.

By a recent enactment of the State of South Dakota suit was authorized against any state whose over-due bonds might be donated or deposited in her treasury, and under this law a suit was brought by the South Dakota and judgment given against North Carolina in the Supreme Court of the United States upon some past due bonds of the latter state as see the case of South Dakota *vs.* North Carolina, 192 U. S. Reports, 286,—and a like statute has lately been enacted by the State of New York authorizing similar suits. Your Commission are informed that such suits have lately been proposed against the State of Virginia under these statutes upon the certificates of 1871 and have only been restrained and prevented by the
74 prospect of some definite action on the part of Virginia.

So your commission were confronted with the alternative of either a suit by Virginia as plaintiff on these certificates with indemnity to her against liability as proposed by the Depositing Committee, or a suit against her without any such indemnity, and your Commission had no doubt as to the safe and proper course to pursue, especially as Virginia herself holds through the agency of her Sinking and Literary funds $2,578,518.68 of the certificates of 1871 and $166,943.33 of the certificates of other classes which would be entitled to their distribution share in whatever may be realized from West Virginia.

The contract of December 14th, 1904, would have expired by limitation on September 18th, 1905, but in order to allow time for the drawing of a final contract, the same was by an agreement endorsed thereon on September 9th, 1905, extended to December 1st, 1905; and on the 24th day of November, 1905, a final contract was drawn up and entered into between your Commission and the Depositing Committee. This last contract was annexed to that of Decem-

ber 14th, 1905, as an extension and enlargement thereof, it having been provided in all of said contracts that they might be extended, modified and changed by the act of the parties.

A copy of said last contract of November 24th, 1905, annexed to that of December 14th, 1904, together with the extensions aforesaid and the approval of the Attorney General thereon endorsed, are herewith filed. It will be seen from said last contract that the reasons are therein set forth which led the Commission to the conclusion that no alternative remained in the premises except a suit against West Virginia; and they accordingly by and with the advice and approval of the Attorney General undertook to bring such suit and the Depositing Committee agreed as provided in said Act
75 of March 6th, 1900, to accept the amount recovered in such suit or the adjudication therein or any amount realized by your Commission on a compromise with West Virginia in full of all claims on the certificates deposited.

This contract also further provides that all certificates thereafter deposited with Brown Brothers and Company should be included thereunder, and that your Commission should have complete control of all certificates so deposited; and a further and additional receipt or statement was accordingly given your Commission by Brown Brothers and Company bearing date January 4th, 1906, showing that since their statement and receipt of December 4th, 1904, additional certificates to the amount of $1,566,136.77 of wnich $1,491,231.13 were those of 1871 had been deposited with them and were subject to the control and disposal of your Commission, making total deposits to that date $13,173,435.31, of which $10,851,294.09 were those of 1871. This last statement was verified by the oath of William Gerard Vermilye, Cashier of Brown Brothers and Company, attached thereto; and on January 5th, 1906, your Commission caused all of these certificates to be removed from the custody of Brown Brothers and Company and placed on deposit for your Commission and subject to their order with the Central Trust Company of New York, N. Y., whose acknowledgment of the receipt thereof stated that the certificates were held on deposit for and subject to the order, control and disposal of your Commission, and the keys to the boxes containing said certificates were delivered to the Secretary of your Commission—Copies of this last named statement of Brown Brothers and Company, with the affidavit of the said Vermilye attached, and of the receipt and acknowledgment of the Central Trust Company are herewith returned.

Your Commission caused these certificates to be removed from Brown Brothers and Company, not from any want of confidence in them, because your Commission have every reason to believe
76 them to be entirely responsible, but because it was deemed best to place the certificates in the hands of some custodian who never had any connection with the Depositing Committee, and who would be responsible to your Commission alone in connection therewith.

To recapitulate, your Commission will say that the whole amount of the deferred certificates outstanding is $18,227,153.60, as shown in

the statement of the Second Auditor, John G. Dew, dated September 17, 1902, and herewith returned, which statement shows also the different classes of certificates.

Of the certificates of 1871, there are in all $15,281,970.47, of which $2,578,518.68, are held by the State through the Sinking and Literary funds, leaving outstanding in the hands of the public $12,703,451.79; and of this last amount there have been deposited with your Commission $10,851,294.09, as above stated.

Of the other certificates there are in all $2,845,183.13, of which the Literary Fund holds $166,943.33, leaving in the hands of the public $2,778,239.80, and of this last amount there have been deposited with your Commission $2,322,141.32 as above stated.

It thus appears that your Commission hold more than five-sixths of all the certificates of 1871 outstanding, and about six-sevenths of all the others outstanding.

It will be noted that since the first agreement of Sept. 18, 1902, was entered into the certificates deposited with Brown Brothers and Company have increased from $10,347,570.83 to $13,173,435.41, which are now in the hands of your Commission; and there is reason to believe that this amount will be still further increased upon the institution of the proposed suits.

Respectfully submitted,

JOHN B. MOON.
J. THOMPSON BROWN.
77 H. T. WICKHAM.
H. D. FLOOD.
H. H. DOWNING.
RANDOLPH HARRISON.
W. F. RHEA.

Attest: JOS. BUTTON, *Secretary.*

78 This agreement between John Crosby Brown, George Coppell, J. Kennedy Tod and Clarence Cary, herein styled "The Committee," parties of the first part, and such holders of the certificates herein mentioned as deposit hereunder, parties of the second part.

Whereas, the present State of Virginia enacted laws providing for issuing certificates for one-third of the debt of the original State, and more than $12,000,000 of such certificates recite:

"That payment will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of Virginia existing at the time of its dismemberment."

And Whereas, it is believed that West Virginia's proportion of said debt, if ascertained as provided by the Ordinance under which Virginia was divided, is less than the amount of the certificates which have been issued by Virginia; and it is considered that, under such circumstances, neither State should, or will, incur any obligations respecting said debt unless its legislature has an undoubted guarantee that substantially all of the certificates will be promptly

surrendered in exchange for whatever amount West Virginia agrees to pay and the creditors of West Virginia may agree to accept.

Witnesseth:

1st. The following gentlemen shall constitute an Advisory Board in this behalf, to wit: Thomas F. Bayard, W. Pinkney Whyte, Edward J. Phelps and George G. Williams.

The function of said Board is to examine such plan of settlement as may be proposed by the Committee, representing the holders of the certificates, and submitted to them in accordance with this agreement, and to state their recommendation thereof of the contrary.

79 Said board may add to their number, and any vacancy may be filled by the remaining members.

2d. The function of the Committee is:

(*a.*) To bring about the deposit, under this agreement, as far as may be practicable, of said certificates, or of the trust receipts heretofore issued to represent them.

(*b.*) To formulate a plan of settlement, and after it has been recommended by the Advisory Board, cause the same to be published and submitted to depositing creditors for their acceptance as herein provided.

(*c.*) To act as agent of the depositing creditors in carrying out the purposes of this agreement.

(*d.*) The Committee shall appoint one or more depositories to receive said certificates or trust receipts, and issue therefor its proper receipt.

Subject to the restrictions herein, the Committee shall have power to perform any act to accomplish a settlement, and this includes power to make arrangements with either Virginia or West Virginia to insure the prompt surrender of all or any of the certificates in exchange for such amount as West Virginia may pay and her creditors agree to accept, and also includes power to execute, in behalf of the depositing creditors, any release or acquittance which will exclude any demand on Virginia beyond the amount she may receive from West Virginia; provided that no settlement shall be concluded until it has been recommended by the Advisory Board, and has also been submitted to creditors and accepted as follows, to wit:

(1.) As soon as a plan of settlement has been recommended by the Advisory Board, the Committee shall, before proposing it to the State, advertise for at least twice a week for three weeks in

80 two of the newspapers published in New York City and London, that a plan of settlement has been formulated, and notifying parties in interest where said plan may be obtained in said cities without cost.

(2.) If within thirty days after the first publication of said advertisement holders of a majority of the face value of the deposited certificates notify the Committee, in writing, either directly or through any depository, of their unwillingness to accept the proposed settlement, then said settlement shall not be consummated. If the Committee is not so notified within said thirty days, then it shall be assumed that the proposed plan, being satisfactory to a

majority, is accepted by all the depositing creditors, and it shall be offered to said States or either of them to be carried into effect by appropriate legislation.

3d. After a plan of settlement has become effective (of which fact the declaration in writing of the Committee to the several depositories shall be conclusive), each depository shall, in the manner directed by the Committee, surrender to either State, as may be necessary, any or all of the certificates deposited with it, and receive in exchange therefor the amount or kinds of securities called for by the plan of settlement.

The amount so received in settlement shall be immediately delivered to depositing creditors, in accordance with the terms of settlement.

The Committee may arrange for the purchase and sale of such fractional interests as may be necessary to equalize distribution.

4th. Each depositor shall, when he receives his new bonds in settlement, pay to the depository, for account of the Committee, such a commission as the Committee may assess for the charges
81 and expenses of settlement, including the compensation of the Committee, Counsel and Advisory Board, but such assessment shall in no event exceed five per cent. in cash on the par of any certificate deposited under this agreement.

If the Committee decide at any time that a settlement satisfactory to holders cannot be promptly effected, they may publish a notice requiring holders to pay so much of twenty cents per $100 of certificates as may be necessary to reimburse the expenses actually incurred by the Committee. Any certificate, assessment on which is not paid within six months after such notice has been published twice a week for three consecutive weeks in two of the newspapers in New York and London, may be sold by the Depository and the proceeds, after paying its assessment, held for the holder of its corresponding receipt.

Any certificate may be withdrawn from deposit at any time after October 1, 1902, upon payment of its pro rata of expenses, not to exceed twenty cents per $100 of certificates, unless a settlement has been previously arranged, or unless an arrangement has been made with Virginia for obtaining a settlement with West Virginia.

5th. The Committee may add to their number, and any vacancy may be filled by the remaining members. By unanimous consent of the members of the Committee any member may act by proxy.

In testimony whereof, the Committee have hereto set their hands this 28th. day of July, 1898.

82 An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia properly to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

Approved March 6th, 1900.

Whereas the General Assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows—to wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept
83 the new bonds provided for by said several acts, certificates for such proportion of the obligation- surrendered by them as was deemed proper to be borne by the State of West Virginia—to wit: one-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the General Assembly is required by the constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia properly to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the General Assembly of Virginia That the commission created and appointed under a joint resolution of this General Assembly entitled a joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia properly to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby, is authorized to receive and take

upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates
84 that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interests of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

85 *Proposal.*

To the Virginia Commission as constituted under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and the act of the said General Assembly approved March 6, 1900:

Whereas your Commission was constituted as set forth in said joint resolution and act of Assembly for the purpose of negotiating and bringing about a settlement with the State of West Virginia with respect to the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia and in connection with which the present State of Virginia has issued certain certificates under four acts of its General Assembly, approved, respectively March 30th, 1871, March 28th, 1879, February 14th, 1882 and February 20th, 1892.

And whereas your commission was, under the said act of March 6, 1900, further authorized to receive and take upon deposit the certificates aforesaid, or to have the same otherwise placed or held on deposit subject to your control, upon the agreement and contract on the part of the holders of said certificates that if your commission would secure a settlement with West Virginia with respect to said certificates, the said holders of said certificates, so deposited, would accept the amount realized on such settlement from West Virginia as a full settlement of all their claims thereunder; and said act further provided that if at least two-thirds of the amount of the said

certificates issued under said act of 1871, (exclusive of those held by the State through the agency of the Board of Education and the sinking fund commissioners) and at least a majority in amount of all the other certificates should be so deposited or placed subject to the control of your commission upon the agreement and
86 contract aforesaid, then your commission should be authorized, by and with the approval of the Attorney-General of Virginia, to take action in the premises as might be needful to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

And whereas by a certain agreement of July 28th, 1898, a committee on behalf of the holders of the said certificates was constituted to bring about the deposit, as far as practicable, of said certificates in such depository as the committee should appoint with powers in the committee to act as agent of the certificate holders so depositing in bringing about a settlement of their claims upon such plan, as might be recommended by the Advisory Board named in said agreement and as should become effective thereunder; it being further stated in said agreement that all the said certificates so deposited would be promptly surrendered in exchange for whatever amount West Virginia might agree to pay and the creditors of West Virginia might agree to accept as aforesaid.

And whereas more than two-thirds in amount of all the said certificates of 1871, outstanding as aforesaid, to wit, $8,565,095.70 and a majority of all the other certificates aforesaid, to wit, $1,782,475.13, have been duly deposited with said committee and are in custody of Brown Brothers & Company, Bankers of New York City, N. Y., the depository named by said Committee, and are held subject to the control of the said committee under the said agreement, so that the same can be duly placed and held subject to the control of your commission in accordance with the said agreement and in pursuance of such plan of settlement as is now proposed or as may hereafter become effective.

In view of the premises the undersigned, the committee aforesaid, do now hereby tender and place subject to the control of your commission all the aforesaid certificates, so held on deposit, upon the agreement and arrangement on the part of your commission,
87 acting for the State of Virginia under the said joint resolution and act of Assembly aforesaid, that your commission will enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting a settlement with West Virginia with respect — the said certificates in accordance with the said agreement of July 28th, 1898, and in accordance with such plan of settlement as is now proposed or as may hereafter become effective; and that your commission will by and with the advice and approval of the said Attorney-General take such action as they may deem needful in the premises; and in event such a settlement is so made, then it is hereby agreed that the amount realized thereon shall be accepted in full satisfaction of all the claims of the certificate holders thereunder and the undersigned Committee will surrender to

your commission, in exchange for such amount the certificates aforesaid so deposited.

If this proposal be accepted by your commission, the same shall constitute an arrangement and contract with the State of Virginia for obtaining a settlement with West Virginia and the same shall continue binding upon the undersigned committee and upon the holders of said certificates so deposited for the period of three years next ensuing from the date hereof for the purpose of allowing time for a settlement aforesaid; and the same shall be subject to renewal and extension for such further time as may be agreed upon and to such modification and amendment as may be agreed upon, and shall apply to and include any and all such certificates as aforesaid as may hereafter be deposited with and held by the said Committee under said agreement of July 28th, 1898.

Respectfully submitted,

JOHN CROSBY BROWN, *Chairman.*

ROBT. L. HARRISON, *Secretary.*

Richmond, Va., September 18th, 1902.

88 The undersigned, Brown Brothers & Company, Bankers, of New York City, N. Y., the depository referred to in the foregoing proposal, do hereby certify that they now hold as such depository and subject to the control of the Committee therein referred to, the certificates which are referred to in the foregoing proposal as being deposited with them, to wit:

$8,565,095.70	certificates of	1871
1,782,475.13	"	" 1879
		1882
		1892

September 18th, 1902.

BROWN BROTHERS & CO.

In pursuance of a resolution of the Virginia Commission this day unanimously adopted, the foregoing proposition of the Certificate holders Committee is hereby accepted by the said Commission and becomes an agreement between the said Committee and the said Commission.

JOHN B. MOON,
Chairman of the Virginia Commission.

Attest:
JOS. BUTTON, *Secretary.*

Richmond, Va., Sept. 18th, 1902.

The above action of the Virginia Debt Commission is approved Sept. 29th, 1902.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

89 *Plan for the Settlement of the West Virginia Debt.*

Under an agreement of July, 1898, a Committee was constituted for the purpose of assembling the Virginia deferred certificates, with certain powers and functions as in the agreement specified, and by the same agreement an Advisory Board was constituted whose functions were also specified in the agreement.

In pursuance of this agreement, a certain plan of settlement was, on the 21st day of June, 1899, formulated and recommended by the Committee and Advisory Board, which among other things, contained the following provision:

"The Committee may surrender to either State (Virginia or West Virginia) any of the deposited certificates and receive in full satisfaction therefor their pro rata of such an amount in State Bonds, or cash as may be agreed upon between the Committee and the representatives of Virginia or West Virginia, as the maximum amount which West Virginia will assume an account of her proportion of the debt of the original State."

Since the date last named the General Assembly of Virginia, on the 6th day of March, 1900, passed an Act authorizing a commission which had been appointed and constituted on her behalf in the premises, by and with the advice and approval of her Attorney General, to take such action and institute such proceedings as might, in the judgment of the Commission and Attorney-General, be needful and proper to bring about and carry into effect a settlement of said certificates; but it was further provided in this Act that such action should be taken only in the event that at least two-thirds of all the certificates of 1871 (exclusive of those held by the State) and a majority of all the other certificates, should be deposited with or placed subject to the control of the Commission upon an agreement on the part of the holders of such certificates that if the Commission would secure a settlement with West Virginia with respect to said certificates, they would accept the amount realized from West Virginia on such settlement in full of all their claims thereunder.

90 On the 18th of September, 1902, the Committee held on deposit $8,565,095.70 of the certificates of 1871, being more than two-thirds thereof, (*) as above stated, and $1,782,457.13 of all the other certificates, being a majority thereof; and the Committee accordingly on that day entered into a contract with the Virginia Commission, by which it was stipulated that the said certificates should, for the period of three years, be held subject to the control of the Commission upon the agreement and arrangement on the part of the Commission that they would enter into negotiations with the state of West Virginia for the purpose of effecting a settlement with respect to said certificates, and would by and with the advice and approval of said Attorney-General, take such action as they might deem needful in the premises; the amount realized on such settle-

(*) On March 2nd the figures were $9,231,602.13 of the certificates of 1871 and $2,239,451.62 of all the other certificates.

ment to be accepted in full of said certificates as above stated, which contract was duly approved by the Attorney-General of Virginia on September 29th, 1902.

In view of this Act of the Virginia Assembly, and of the recent action taken thereunder, it is deemed desirable to make the plan of settlement heretofore recommended more definite with respect to the matters now involved; and to this end the following is hereby formulated, approved and recommended by the Committee and the Advisory Board by way of supplement and addition to the original plan:

I. The above named Committee shall pledge or deposit the certifiates now or hereafter received under the agreement of July 28, 1898, with the Virginia Commission, in conformity with the Act of March 6, 1900, for the purpose of taking such action and instituting such proceedings, by and with the advice and approval of the Attorney-General of Virginia as may be deemed needful to bring about and carry into effect a settlement as in said Act provided; such pledge or deposit to be for such length of time as may be agreed on; and the said agreement of September 18, 1902 shall continue in force for the period therein specified; and the Committee may enter into such further agreements with the said Commission as may be deemed needful to bring about a settlement in the premises.

II. In the event that no settlement shall be effected by the
91 Virginia Commission either under the agreement of September 18, 1902, within the period therein specified, or under any other agreement which may be entered into between the Committee and the said Commission within such time as may be limited therein, the Committee may, after any and all such agreements with the said Commission shall have expired, take such other and further proceedings and make such other and further agreements and settlement in the premises as the Committee may deem judicious.

III. The Committee shall be authorized to make such disposition by pledge, sale or otherwise, of the certificates, now or hereafter deposited, under the agreement of July 28, 1898, as may be necessary to carry into effect any proceedings taken and any agreements or settlements made by them as above stated, with or through the said Commission or otherwise, or for the payment of expenses now or hereafter to be incurred, whether a settlement is effected or not, not to exceed, however, the limit fixed by said agreement, and may give such release and acquittance as may be necessary to that end.

IV. The amount realized on or the proceeds of any such settlement, after deducting proper charges under the agreement of July 28, 1898, shall be apportioned and distributed among the different certificate holders in such manner and according to such percentages as may be ascertained and established for the different classes of certificates by a tribunal to be constituted as follows *as follows;* one member thereof to be appointed by the Committee, one member by the Advisory Board, and the third by the two so appointed; and if it be impracticable in the judgment of such tribunal to distribute in kind any bonds or securities which may be received in any such settlement, then the same may be sold and converted into money for

the purposes of such distribution. If a vacancy occur in such tribunal the same shall be filled by the remaining members.

New York, December 3d, 1902.

G. G. WILLIAMS,
WM. PINKNEY WHYTE,
WAYNE MacVEAGH,
LYMAN J. GAGE,
Advisory Board.

JOHN CROSBY BROWN,
Chairman Committee.

92 The following are the affidavits showing publication in two newspapers in London and New York on the notice given under Article 2 of the Agreement of July 28, 1898:

STATE OF NEW YORK, *City and County of New York, ss:*

Thomas Mulhearn, being duly sworn, says he is Principal Clerk of the Publisher of the Mail and Express, a daily newspaper published in the city of New York; and that the notice, of which the annexed is a printed copy, has been regularly published in the said Mail and Express six times to wit: January 13th, 16th, 20th, 23d, 27th and 30th, 1903.

THOMAS MULHEARN.

Sworn before me this 25th day of February, 1903.
R. E. A. DON, JR.,
Notary Public, City and County of New York.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph *d*, Section 1 of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost in the city of New York, at the office of Messrs. Brown Brothers & Company, 59 Wall Street, and in the city of London, England, at the office of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C. and 123 Pall Mall, W.

Dated New York, January 13th, 1903.

JOHN CROSBY BROWN, *Chairman,*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

93 STATE OF NEW YORK, *City and County of New York, ss:*

Theodore L. Peverelly, being duly sworn saith that he is the Principal Clerk of the Publisher of the New York Times, a daily newspaper printed and published in the city of and County of New York; that the advertisement hereto annexed has been regularly published in the said New York Times six times, to wit: on January 14, 17, 21, 24, 28, 31st 1903.

THEODORE L. PEVERELLY.

Sworn to before me this Feb. 25th, 1903.

[SEAL.] EUGENE C. MAUBORGNE,
Notary Public, New York County.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph d, Section 1 of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board, appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost in the City of New York, at the offices of Messrs Brown Brothers and Company 59 Wall Street, and in the City of London, England, at the office of Messrs Brown, Shipley and Company, Founders Court, Lothbury E. C. and 123 Pall Mall, W.

Dated New York January 13th, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

94 (Copy.)

KINGDOM OF GREAT BRITAIN AND IRELAND,
City of London, England, ss:

I, Rowland Lee, Assistant Manager of the Advertisement Department of the Daily Telegraph newspaper, published in the City of London, England, make oath and say that the advertisement "To Depositors of West Virginia Deferred Stock Certificates" attached hereto, was ordered for, and duly appeared in the Daily Telegraph

on the following dates: January 15, 19, 22, 26, 29, February 2, 5, 9, 12, 16, 19, 23—all of 1903.

(Signed) ROWLAND LEE.

Sworn before me

FRANCIS W. FRGOUT,
Deputy Consul-General of the United States of America at London, England, at 12 St. Helens Place, London, England.

March 18, 1903.

Copy of Advertisement Referred to Above.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th, July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formualted and has been approved by the Advisory Board appointed under the said agreement, and all partied in interest are notified that the plan may be obtained, without cost, in the City of New York, at the offices of Mess. Brown Brothers & Company, 59 Wall Street, and in the City *City* of London, England at the Offices of Messrs. Brown, Shipley & Company, Founders-court, Lothbury, E. C., and 123 Pall Mall, W.

95 Dated New York, January 13, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

96 (Copy.)

I, Gilbert Plumbridge, Chief Clerk, in the employment of the proprietors of the Times newspaper, published in the City of London, England, make oath and say that the attached advertisement, "To Depositors of West Virginia Deferred Certificates," was orcered for, and duly appeared in the said newspaper on the following dates: Jan. 14, 17, 21, 24, 28, 31; February 4, 7, 11, 18, 21, all of 1903.

(Signed) GILBERT PLUMBRIDGE.

Sworn before me, Richard Westcott, Vice and Deputy United States Consul-General, at 12 St. Helens Place, London, England, on the 4th, March 1903.

(Signed) RICHARD WESTCOTT,
Vice and Deputy Consul-General of the United States of America at London, England.

This is the advertisement referred to in the above declaration.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th of July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost, in the City of New York, at the offices of Messrs. Brown Brothers & Company, 59 Wall Street, and in the City of London, England, at the offices of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C., and 123 Pall Mall W.

97 Dated New York, January 13, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

98 *West Virginia Debt Settlement.*

Committee.		Advisory Board.
John Crosby Brown, Chairman.	George F. Baker,	W. Pinkney Whyte.
J. Kennedy Tod,	Barlett S. Johnston,	Wayne MacVeigh.
Clarence Cary,	Wm. C. Legendre,	Lyman J. Gage.
R. P. Chew, of West Virginia.		

Robert L. Harrison, Secretary.

Depository

Brown Brothers & Company.

Copy

NEW YORK, *Dec. 13th,* 1904.

Messrs. Brown Brothers & Company, Depository:

We, the undersigned Committee, heretofore appointed and constituted under the certain agreement of July 28, 1898, between ourselves and the holders of deposited certificates of indebt-ness or securities known as the Virginia Deferred Certificates, hereby declare that the certain plan of settlement made and approved by the undersigned Committee and the Advisory Board, under date of December 3, 1902, became effective by such approval and by the due publication of such plan under the terms of the said agreement and further by reason

of the absence of any notification in writing, or otherwise, from or on the part of the holders of any of the deposited certificates, for more than thirty days after the said publication, of any unwillingness to accept such proposed settlement.

(Signed) JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*

The above was received in due form this 13th. day of December, 1904.

(Signed) BROWN BROTHERS & CO.

99 EXECUTIVE DEPARTMENT,
CHARLESTON, WEST VIRGINIA, *January* 27, 1905.

To the Honorable President and Members of the State Senate:

GENTLEMEN: The accompanying papers after oral statements had been made to me by a Committee representing the State of Virginia, consisting of Hon. Randolph Harrison, Chairman, Col. Joseph Button, Secretary, and Hon. William A. Anderson, Attorney General of that State, were duly presented to me for transmission to the Legislature of West Virginia.

The papers consist of an address or statement of the Committee, representing the Commission appointed by the State of Virginia "to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia," and of a copy of the Act of March 6th, 1900, of the State of Virginia, enlarging the powers and duties of said Commission.

I deem it my duty to transmit these papers for your information.

Respectfully yours, ALBERT B. WHITE, *Governor.*

The papers accompanying the communication of the Governor are as follows:

To His Excellency A. B. White, Governor of the State of West Virginia:

SIR: Under and by virtue of a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, a commission consisting of Hons. Taylor Berry, H. T. Wickham, H. D. Flood, John B. Moon, Randolph Harrison, H. H. Downing and William F. Rhea was continued for the purpose of opening
100 negotiations with the State of West Virginia looking to the adjustment of the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, and by a communication bearing date on the 7th day of January, 1895, from the Hon. Chas. T. O'Ferral, then Governor of Virginia, the Honorable William A. MacCorkle, then Governor of West Virginia, was informed of this fact.

Since the date last named the Honorable Taylor Berry has departed this life, and Honorable J. Thompson Brown has been made

a member of the Commission in his stead. And by an act of the General Assembly of Virginia, approved March 6th, 1900, the powers and functions of the Commission have been materially changed and enlarged, as will be seen by an inspection of said act, a copy of which is herewith submitted.

It will be observed that under the provisions of this act the Commission acting by and with the advice and approval of the Attorney General of Virginia, is authorized to make a final settlement and adjustment with West Virginia with respect to the debt of the original State, provided at least two-thirds in amount of the securities known as Virginia Deferred Certificates issued under the Virginia Act of 1871, and a majority of all the other certificates issued by Virginia with reference to said settlement, exclusive of those held by the Literary Fund and Sinking Fund of Virginia, were deposited with or placed subject to the control of the Commission.

On the 14th day of December, 1904, there were so placed on deposit in the name of the Commission, and subject to the control and disposal, $12,910,555.89 of such certificates, embracing much more than two-thirds of those of 1871, as aforesaid, and a very large majority of all the others, so that the Commission is now authorized, and empowered by and with the advice and approval of the
101 Attorney General, to make a settlement and adjustment with West Virginia as provided in said act of March 6th, 1900. The evidence of the deposit of the said certificates with the Commission as above stated is of course subject to inspection by Your Excellency and the proper authorities of West Virginia on request.

Looking to opening negotiations with West Virginia, the commission at a meeting thereof, held in Richmond, Virginia, December 14th, 1904, authorized the appointment of a sub-committee, consisting of the undersigned Randolph Harrison, Chairman, H. D. Flood, H. H. Downing and John B. Moon, who together with the Attorney General of Virginia should invite the attention of Your Excellency to the unsettled matters between the two States and endeavor to negotiate a settlement of the same on some equitable basis to be agreed upon by the authorities of the two States.

The undersigned, the sub-committee so constituted, acting by and with the advice of the undersigned Attorney General of Virginia, therefore beg leave to call to the attention of Your Excellency the unsettled matters between the two States above referred to, growing out of the debt of the original State, and so respectfully request that they may be laid before the legislature of your State, now in session for their consideration; and that some action may be taken by the Legislature of your State for the purpose of entering into negotiations with the undersigned for a settlement between the two States of the matters aforesaid on some equitable basis either by the appointment of a committee to conduct such negotiations on behalf of your State, or by such other action as the legislature of your State may deem appropriate.

And the undersigned further beg in this connection to call attention to the following facts:

1. That when the State of West Virginia was formed, the orig-

inal State of Virginia was deprived of more than one-third of
102 its white population and about one-third of its territory, embracing that portion of its territory which by reason of its mineral wealth has since proven to be the most valuable and productive part of the original State.

2. The ordinance of the convention which met at Wheeling in 1861, in providing for the formation of the State of West Virginia, further provided that: "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties within said new State during the same period." The obligation to assume an equitable proportion of the said debt was again recognized in the first constitution of West Virginia, which was ratified by a vote of her people in 1863, and in which article eight, section eight provided as follows: "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1961, shall be assumed by this state; and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a Sinking Fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." The Constitution of West Virginia of 1872, contains these provisions, article ten, section four: "No debt shall be contracted by this State except to meet casual deficits in the revenue to redeem a previous liability of the State," etc., etc., and section five specifies that "The power of taxation of the Legislature shall extend to provisions for the payment of the State debt and interest thereon," etc.

3. The public debt of the original State of Virginia, at the time of the dismemberment, amounted to something more than
103 $30,000,000 no part of which has ever been borne by West Virginia, nor has any settlement or adjustment been made by West Virginia, either with the present State of West Virginia, or with the creditors of the original State, to ascertain what her liability might be with respect to said debt, but the whole of it has been left for adjustment to the people of the present State of Virginia.

4. It has been understood that West Virginia was not willing to negotiate directly with the creditors of the original State, and for that reason, and also in order to comply with the requirements of said act of March 6th, 1900, the deposit of said certificates of December 14th, 1904, was made with the Virginia Commission; so that the Commission with the Attorney General of Virginia are now authorized both on behalf of the State of Virginia, and also on behalf of a large majority of all certificate holders interested, to make a final settlement and adjustment of the matters above referred to, and thus finally conclude and dispose of questions which have been long left unsettled to the detriment, it is believed, of both States.

The undersigned only seek to present these matters to your Excellency and through you to the Legislature of your State, because

they believe it to be their duty to their own State to do so; and while no accounting or adjustment in the premises has ever been had by West Virginia, either with Virginia or the creditors of the original State, yet inasmuch as the matters involved are now presented by the undersigned, with new and enlarged powers on their part to make and carry into effect a complete and final settlemnet between the States, it is hoped that the suggestions herein containd will receive favorable consideration and action on the part of your Excellency and the Legislature of your State.

Respectfully submitted.

(Signed) RANDOLPH HARRISON
H. H. DOWNING
H. D. FLOOD
JOHN B. MOON
Committee.

Approved:
WILLIAM A. ANDERSON,
Attorney General of Va.

January 25, 1905.

Here follows copy of act of March 6, 1900.

104 ADDRESS

On Behalf of the Virginia Debt Commission

BEFORE

THE JOINT COMMITTEES ON FINANCE OF THE WEST VIRGINIA LEGISLATURE.

In Relation to West Virginia's Contributive Share of the Debt of Virginia.

By RANDOLPH HARRISON.

Charleston, West Virginia, February 1, 1905.

Mr. Chairman, and Gentlemen of the Finance Committees of the two Houses of the Legislature of West Virginia:

We had the honor a few days ago to present to His Excellency, the governor of West Virginia, a communication in behalf of the state of Virginia in relation to the unsettled matters between the two states, growing out of the debt created before the dismemberment of Virginia. We were officially advised that that communication had been transmitted to the legislature, and by it referred to the appropriate committees for further consideration.

We appear before you tonight in response to an invitation from the two finance committees of this body for the purpose of more fully stating the reasons which impel Virginia to invite your attention to this subject.

It gives us pleasure to avail ourselves of this opportunity to make known to you the object of our mission here.

In considering the question as to West Virginia's obligation to bear a just proportion of the public debt of Virginia, it will be necessary for us to review the origin of that debt, the manner in which and the purposes for which it was created, and West Virginia's relation to the subject.

Beginning with the year 1825 Virginia entered upon an extensive system of internal improvements. She had in mind the development of her western territory. Her statesmen had known for many years prior to that time that the territory now composing
105 the state of West Virginia contained immense resources of wealth, but there had been no definite ascertainment of that fact. They realized that it was essential, in order to ameliorate the condition of her people, who resided in that territory, and in the interest of all the people of Virginia, to develop that section, and establish communication between it and the Virginia seaboard. It was for this purpose that Virginia assumed the burden of a public debt. The development of this system of public improvements was progressive. During the first twenty-five years the debt had grown to about ten millions of dollars; between 1850 and 1861 it was increased by twenty millions of dollars. It is a matter of interest in passing to refer to the fact that the members of the Virginia legislature representing the counties that now compose this State unanimously voted to increase the debt. It is a notable fact that on several occasions it would not have been increased but for the united support of the delegates representing this section of the state, for the eastern and tidewater counties generally opposed the system of internal improvements which Virginia had undertaken. I do not mention this in any critical spirit; it was natural that the residents of this part of the state should want to develop their territory, and I am sure that any one similarly situated at that time would have been governed by the same considerations. The great argument advanced for the increase of the public debt was that, by the development of this section of the state by the construction of turnpikes, canals, bridges, railroads, etc., the wealth of Virginia would be so materially increased that she could bear the burden of the debt without feeling it. And so it came to pass that on the 1st of January, 1861, the public debt of Virginia amounted to about thirty millions of dollars, every dollar of which had been expended in works of internal improvements, the primary object of which was the development of this section of Virginia's territory.

On the 17th of April, 1861, the state of Virginia passed the ordinance of secession, withdrawing from the Union. Shortly thereafter, in the month of May, a number of citizens residing in
106 the town of Clarksburg, met together and called a convention to meet in Wheeling on the 11th of June following. That convention assembled in Wheeling, and organized what was known as the "Restored Government of Virginia." They ignored the government at Richmond, denounced it as revolutionary, and declared that it did not represent the state of Virginia. On June the 20th this convention elected Francis H. Pierpont governor of Virginia, and called a legislature together at Wheeling on July the 1st, 1861,

which it declared to be the only true and lawful legislature of the state. This legislature, on July the 9th, elected two United States senators, and provision was made for the election of three congressmen. Both Houses of Congress admitted these members as from the State of Virginia.

A second convention assembled at Wheeling on the 20th of August, 1861. The "Restored Government of Virginia," having been previously organized, this convention, claiming to represent the state of Virginia, met for the purpose of "creating a new state," and on the 20th of August, 1861, it adopted an ordinance declaring it to be the sense of that convention that a new state should be formed "out of a portion of the territory of Virginia," and to embrace the counties specified in the ordinance.

This ordinance contained the following provision as the condition upon which the new state should be created:

"The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the expenses of the state government since any part of said debt was contracted, and deducing therefrom the moneys paid into the treasury of the Commonwealth from the counties within said new state during the same period."

This was the first step towards the formation of the state of West Virginia, and in taking this step it was expressly stipulated
107 that the old state would consent to her dismemberment only on condition that the State should assume a just proportion of her public debt.

This convention authorized delegates to be elected to another convention to assemble in Wheeling on the 26th day of November, 1961, for the purpose of forming a constitution for the new state in accordance with the terms of the ordinance of August the 20th. Accordingly a third convention, claiming to represent Virginia, assembled in Wheeling on November 26th, 1861, and prepared a constitution for the State of West Virginia, the eighth section of the eight article thereof providing as follows:

"An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accrued interest and redeem the principal within thirty-four years."

This provision was adopted in pursuance of the binding ordinance of the organic convention of August the 20th, 1861; it not only pledged the new State to bear a just proportion of the public debt of Virginia, but required her Legislature to ascertain the same and provide for its payment. Does not that seem fair to you? It seems so to me. West Virginia had helped to create the debt, and reaped a share of its benefit. Do you not think in fairness and justice she ought to bear a just proportion of it, as she agreed to do?

On the 3rd of May, 1862, this constitution was submitted to the

people of the counties composing the new State of West Virginia for ratification, and it was duly reported as ratified by a majority of the voters at the polls.

108 On the 13th of May 1862 the legislature of the "Restored Government of Virginia" passed an act giving Virginia's consent to the formation of the new state, "under the provisions set forth in the constitution for the state of West Virginia." By that act Virginia expressly stipulated that her consent was given "under the terms stated in the constitution of the state of West Virginia," and this constitution, as we have seen, expressly provided that the new state would bear "its just proportion of the debt of the old state."

The "Restored Government of Virginia" instructed her representatives and senators in Congress to use their influence in furtherance of the passage of an act to create the state of West Virginia.

On the 31st day of December 1862 the act was passed creating the state of West Virginia. The debates in Congress show that West Virginia would not have been admitted as a state but for her promise to bear a just proportion of the debt of the old state. A brief extract from the debates, when the bill providing for the admission of West Virginia was under consideration, will serve my purpose tonight:

Mr. OLIN: "I desire to ask what will become of the bonds and other obligations which Virginia has issued or incurred by the recognition of a new state?"

Mr. HUTCHINS: "I will answer my friend from New York. Here is the provision of the Constitution of West Virginia in reference to that matter: 'An equitable portion of the debt of Virginia prior to January the first, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable.'"

Mr. CRITTENDEN: "* * * There is another question; the state of Virginia owes a large debt. How is this debt to be divided?"

Mr. BLAIR: "The constitution framed by the convention of the people of the proposed new state binds the new state to pay its just proportion of the debt owed by Virginia prior to the ordinance of secession."

Mr. CRITTENDEN: "I only knew that in this bill there was
109 no provision made for a division of the said debt. The gentleman tells us there is provision made for it in the constitution, and I am satisfied with that. As it has been attended to, I have no more to say about it." (Extract from Congressional Globe, 37th Congress, quoted by Hon. J. M. Mason in pamphlet published by him on the subject of the Virginia debt.)

No one can doubt, therefore, that West Virginia owes her existence to her promise to bear a just proportion of the debt of the old state.

The act admitting West Virginia into the Union was signed, as I have stated, on the 31st day of December, 1862, and on June 20, 1863, in pursuance of the proclamation of the president, she took her place in the family of states.

I have given this sketch of the origin of the state of West Virginia in order to show that she is solemnly pledged to bear a just proportion of the debt of Virginia.

The constitution of West Virginia adopted in 1872 contains the following provisions relating to the public debt.

Article X, Sec. 4, provides that no debt shall be contracted except * * * to redeem a previous liability of the state; and sec. 5 provides that the power of taxation shall extend to provisions for the payment of the state debt and interest thereon. There was no public debt for West Virginia to provide for except her obligation to bear her just proportion of the debt of the state of Virginia.

The legislature of the "Restored Government of Virginia" on the 4th of February, 1863 passed an act transferring to the state of West Virginia all the property of the state of Virginia in the territory of the proposed new state, but on condition that West Virginia "should account for it in the settlement to be had with Virginia."

It is hardly necessary for me at this time to refer to the value of the property so transferred. Suffice it to say that by that act several millions of dollars worth of property was transferred to West Virginia; but the transfer was made on condition that West
110 Virginia should account for it in the settlement to be had with Virginia.

The stock owned by Virginia in banks alone situated within the territory of West Virginia amounted to several hundred thousand dollars, and in respect to this stock West Virginia, in her Constitution of 1863, authorized the legislature to dispose of the same, but expressly provided that the proceeds of such sale should be applied to the liquidation of the public debt; thereby again recognizing in her fundamental law her obligation to share with Virginia the burden of her public debt.

So, gentlemen, I think you must agree with me that West Virginia's obligation to pay a just proportion of the debt of Virginia is the foundation of her political existence. It is an essential part of the very Constitution under which Congress admitted her into the Union. West Virginia has not always been unmindful of her obligation and duty in this respect. After the war an effort was made by the two states to ascertain by negotiation the fair proportion of the old debt which each should bear. In February 1870 Virginia sent delegates to Wheeling, West Virginia, then the capital of this state, for the purpose of inviting the governor and legislature of West Virginia to unite with her in making a statement and settlement of this account. But the governor of West Virginia did not think the time opportune to deal with the subject because the suit between the two states involving the two counties of Jefferson and Berkeley had not then been decided. Soon thereafter the governor of West Virginia sent commissioners to Virginia with authority to state the account, but at that time Governor Walker of Virginia did not feel that he had authority to appoint commissioners, because the legislature of Virginia had in the meantime passed an act to submit the question to arbitration, and so nothing came of this effort to settle the controversy.

I am aware of the fact that at that time some feeling existed on the part of the commissioners of West Virginia as to the man-
111 ner in which they had been received by the authorities in Virginia; but it is, of course, difficult to determine at this

distance the cause for any misunderstanding between those commissioners and Governor Walker. The records only show that the Governor of Virginia felt constrained to decline to appoint commissioners for the reason stated, and renewed his invitation to the State of West Virginia to submit the question to arbitration.

Again in recognition of West Virginia's obligation to Virginia in this matter, the Governor of West Virginia had this to say in a letter dated May 16, 1881:

"The people of this State are willing and anxious to adjust with the mother State the amount of their liability on account of the public debt. The liability can be readily ascertained when the mother state is willing to state the account with us. The convention of the State of Virginia held in Wheeling on the 20th of August, 1861, in giving its consent to the formation of this state out of the territory of the mother state, provided by Section IX of the ordinance passed that day as follows:

"The new State shall take upon itself a just proportion of the debt of Virginia prior to January 1, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the ordinary expenses of the state government since any part of said debt was contracted and deducting therefrom the moneys paid into the treasury from the counties included within the new state during the same period."

"The validity of this ordinance and the convention which passed the same has received the sanction of every department of the national government.

The Supreme Court of the United States, in a suit in that court instituted by the state of Virginia against West Virginia to
112 recover jurisdiction over the counties of Jefferson and Berkley, now a part of this state, adjudged said ordinance valid and binding. This state was admitted in pursuance of this ordinance. We admit it is binding authority, and hold ourselves ready at all times to settle with our mother state on that basis. Our obligation is to the mother state, and not to creditors of that state." (Extract from letter published by Hon. J. M. Mason in a pamphlet by him on the subject of the Virginia debt.

So, gentlemen, you perceive that the public authorities of West Virginia in the past fully acknowledged the binding obligation resting on your state to bear a just proportion of the debt. That obligation is none the less binding now than it was then.

Nothing having resulted from the efforts of the two states to ascertain and adjust their respective liabilities, Virginia felt obliged to make some arrangement for the funding of her debt. The war had intervened and left her prostrate and impoverished, but still she recognized her duty to make a fair adjustment with her creditors who had purchased her bonds when her credit was higher than that of any other state, and to that end, on the 30th of March, 1871, her Legislature enacted what is known as the Funding Bill.

By the terms of this act Virginia assumed responsibility for two-thirds of the Debt. The act provided that a new bond should be issued for two-thirds of each old bond, and that a certificate should

be given to represent the other one-third, to bear interest at six per cent., and await payment until Virginia and West Virginia had come to a settlement; and Virginia agreed to hold the old bond, so far as unfunded, in trust for the holder of said certificate.

The debt of Virginia at that time, with interest added, amounted to about forty-five millions of dollars, of which Virginia assumed as her just proportion, two-thirds, or about thirty millions of dollars. The form of the certificate issued, as provided by the Funding Bill, was as follows:

Copy of Certificate under Act of March 30, 1871.

113 "COMMONWEALTH OF VIRGINIA.

No. ——. $——.

TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs, executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an act approved March 30th, 1871, entitled 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest amounting to $—. Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the state of Va. and W. Va. in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and the State of Va. holds said bond so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"——— ———,
Treasurer of the Commonwealth of Virginia.

"——— ———,
"Second Auditor of Virginia."

Under the foregoing act about fifteen million dollars of these certificates were issued, and the old bonds were delivered up and are now held by Va., so far as unfunded, in trust to secure the payment of said certificates. Those certificates do not in terms release Va. from liability for their payment; they clearly import that there would be a settlement between Va. and W. Va., and that they would be paid when such settlement was had. Va. undoubtedly intended that when a settlement was had the certificate holders must accept W. Va.'s share in full payment of the unsettled one-third of the debt; but under the form of the certificate in might be contended that Va. was liable for the difference between the face of the certificates and the amount ascertained to be due by W. Va. Hence you will observe that it is of the greatest importance to Virginia to bring about, if possible, a settlement of this controversy, not only because it
114 is a duty she owes the creditor, but especially for her own protection.

In 1879 the legislature of Virginia passed another act for the funding of her debt by which provision was made the issuance of new bonds to take the place of those outstanding. With the bonds so issued certificates were issued for the unsettled one-third of the debt similar in form to the certificates of 1871, with this important difference, namely, that it was expressly stipulated in the certificate that its acceptance should be a full and absolute release of Virginia from all liability on account of said certificates. While the certificates issued under the act of 1879 imposed no liability, therefore, on Virginia they nevertheless provided that Virginia would aid the creditors holding such certificates, or certificates issued under previous acts, in negotiating with West Virginia for a friendly settlement of the claims of such creditors against the State of West Virginia.

In 1882 a third act for the funding of Virginia's debt was passed and under that act the certificates issued to represent the unpaid one-third of the debt expressly provided that they should be accepted without recourse on Virginia for their payment. These certificates, therefore, like those issued under the act of 1879, impose no liability on Virginia.

By act approved on the 20th of February 1892 Virginia made a full and final settlement with her creditors and the certificates issued under this act, like those issued under acts of 1879 and 1882, expressly provided that they should be accepted without recourse on Virginia and hence they impose no liability on Virginia.

In as much as the unsettled one-third of the debt of the original state of Virginia is represented by the foregoing four classes of certificates, it becomes important to know the amount of those certificates outstanding.

The office of the second auditor of Virginia shows as fol-
115 lows in respect to these certificates:

Under the act of March 30, 1871, there were issued of these certificates	$15,281,970.47
Of these certificates Virginia holds in her sinking fund and in her literary fund	2,578,518.68
Leaving outstanding in the hands of the public of the certificates of March 30, 1871	$12,703,451.79

The foregoing certificates do not in terms release Virginia from liability for their payment.

Under the act of March 28, 1879, there were issued, and are outstanding in the hands of the public, certificates amounting to	$564,258.87
Under the act of February 14, 1882, there were issued of these certificates	1,775,603.48
Of these certificates Virginia holds in her sinking fund	166,943.33
Leaving outstanding in the hands of the public	$1,609,660.15
Under the act of February 20, 1892, there were issued certificates outstanding in the hands of the public	$605,320.78

The three last mentioned classes of certificates were issued and accepted without recourse on Virginia.

The total issue of certificates, therefore, representing the unpaid one-third of the debt of the original state of Virginia is	$18,227,153.60
Of that amount Virginia holds in her sinking fund and in her literary fund	2,745,465.01
Leaving outstanding in the hands of the public of all classes of certificates	$15,481,691.59

A debt or claim of that magnitude cannot be disposed of by ignoring it, or attempting to waive it aside. The only way to dispose finally of it is to settle it.

Realizing the importance to her own interests of bringing about a friendly settlement of the matter, and in fulfillment of her promise to the creditors to aid in bringing it about Virginia, by
116 resolution of March 6, 1894, appointed commissioner- for the purpose of negotiating with West Va. for an adjustment of the proportion of the debt proper to be borne by her.

In January 1895 Governor O'Ferrell of Virginia communicated a copy of that resolution to Governor McKorkle of W. Va. No response was ever made by W. Va., but we learned through the press that your legislature declined to negotiate with Va. on the basis stated in the resolution creating her commission. We think the purpose and intent of that resolution was misunderstood, but at all events, nothing was done.

Subsequently, by an act of the General Assembly of Va., approved March 6, 1900, the powers of this commission were materially enlarged and the commission was authorized under the terms stated in the act to conclude a settlement with W. Va. or to take such action to that end as might be approved by the attorney general of Va. Under the provisions of this act the commission, acting by and with the advice and approval of the attorney general of Va., is fully empowered to make final settlement with W. Va., provided at least two-thirds of the certificates of 1871 and a majority of all the other certificates outstanding in the hands of the public were deposited with or placed subject to the control of the commission. The requirements of that act have been complied with in a manner which far exceeded our most sanguine expectations, for there have been deposited, subject to the control of the commission, more than five-sixths of the entire issue of the certificates. This unexpected and desirable result has been brought about through the instrumentality of Brown Brothers & Co., bankers of New York, the agents of the certificate holders' committee. The standing of this house is doubtless known to you, or certainly to many of you; it does not engage in "frenzied finance," but on the contrary it is known as one of the most reliable and responsible firms in the financial world.

Through the agency of Brown Bros. Co. more than five-sixths of all the certificates outstanding in the hands of the public have been

assembled and are held on deposit subject to the control of
117 the Virginia commission under an agreement with the owners of those certificates to accept whatever may be received from West Virginia in full discharge of the unsettled one-third of the debt of Virginia.

Of the certificates of 1871 outstanding in the hands of the public (amounting to $12,703,451.79) Brown Bros. & Company now hold $10,639,776.42.

Of the certificates of 1879 outstanding in the hands of the public (amounting to $564,258.87) Brown Bros. & Company now hold $440,642.61.

Of the certificates of February 14, 1882, outstanding in the hands of the public (amounting to $1,608,660.15) Brown Bros. & Company now hold $1,285,680.55.

Of the certificates of February 20, 1892, outstanding in the hands of the public (amounting to $605,320.78) Brown Bros. & Company now hold $544,456.31.

The aggregate amount of all certificates held by Brown Bros. & Company is, therefore, $12,910,555.89.

The Virginia commission has full power and authority to deliver up those certificates as an entirety to be cancelled upon payment by West Virginia of whatever may be ascertained to be her just proportion of the debt of Virginia—be it much or little. We stand ready, of course, to exhibit the evidence of the deposit of those certificates with us to the proper authorities of West Virginia.

The contract under which these certificates are deposited subject to the control of the Virginia Commission, will expire in September 1905 unless, in the meantime, negotiations for a settlement, or some action looking to that end, have been undertaken.

At a meeting of the Virginia commission held in Richmond on December 14, 1904, a sub-committee was appointed who, together with the attorney general of Virginia, were requested to communicate
these facts to the governor and legislature of West Virginia,
118 and invite their co-operation in a friendly adjustment and settlement of the account between the two states. Our visit here is in discharge of the duty assigned us. Do not imagine that Virginia has the slightest intention of meddling with the affairs of West Virginia, or of volunteering advice. She has ventured to bring the subject to your attention in compliance with her undertaking to the creditors, and especially because her own interests are involved. Virginia felt that she would be derelict in her duty to herself and in her duty to your state if she failed to bring to your notice the exceptional opportunity now presented to dispose finally of this vexatious question.

Is these any reason why West Virginia should not join Virginia in stating this account? I am sure, gentlemen, you can not dissent from the proposition that your state is liable for some part of the debt, whatever the amount may be. As far as it is possible for a state to be committed by the solemn provisions of its organic law and by the repeated declarations of its public authorities, West Virginia is bound—bound in equity and good conscience—to bear whatever

may be ascertained to be her fair proportion of the debt of Virginia. No account has ever been stated between the two states. How, then, can West Virginia declare that she owes no part of this debt until the account is stated? She is solemnly pledged to state this account. Ought she not to redeem this pledge? No state can refuse to do what is fair and right in respect to her public obligations and not suffer for it. We do not ask that West Virginia shall commit herself as liable in any specific amount. We make no claim against her for any definite sum. We do not know what a statement of the account will show; if it shows that West Virginia is not liable for any amount, that will end the matter. We only ask that your state will, through the proper authorities, unite with Virginia in stating the account between the two states in order that the question of her
119 liability, if any, may be authoritatively ascertained. The work of your commission will, of course, be subject to such action as West Virginia might deem proper in the premises.

Would any one of you, if a man thought he had an honest claim against you, be afraid to meet him and consider it with him? Then why should you hesitate to commit your state to the same course in this respect which you as an individual would not hesitate to take?

West Virginia has always taken the position that her li-bility on account of this debt was to Virginia and not to the creditors, and that her liability must be ascertained on the basis of the Wheeling ordinance. This ordinance not only committed West Virginia to bear her just proportion of the debt of Virginia, but states how the account shall be stated in order to ascertain the amount of the debt for which West Virginia is liable. We are ready to unite with you in stating the account on the basis of the Wheeling ordinance, or West Virginia may choose any other just and equitable basis, if she prefers, on which the account shall be stated, and we will abide by her choice. We have no interest whatever in this matter except to discharge our duty to our state by bringing about, if possible, a fair and final settlement of this controversy. Unless the two states can dispose of it we may confidently expect it to be referred to the courts for settlement, and in that event the decision of the court has already been plainly foreshadowed. In the case of Hartman *v.* Greenhow (decided October term, 1880), 102 U. S., page 672, the Supreme Court reviewed the legislation of Virginia in relation to her public debt, and in referring to West Virginia's liability for a portion of it the court, through Justice Field, had this to say:

"It appears from the statutes to which we are referred—and we know the fact as a matter of public history—that prior to the late civil war Virginia had become largely indebted for moneys borrowed to construct public works in the state. The moneys were ob-
tained upon her bonds, which were issued to an amount
120 exceeding $30,000,000. Being the obligation of a state of large wealth, which never allowed its fidelity to its promises to be questioned anywhere, the bonds found a ready sale in the markets of the country. Until the civil war the interest on them was regularly and promptly paid. Afterwards the payments ceased, and until 1871, with the exception of a few small sums remitted in

coin during the war to London for foreign bondholders, or paid in Virginia in Confederate money, and a small amount paid in 1866 and 1867, no part of the interest or principal was paid. During the war a portion of her territory was separated from her, and by its people a new state, named West Virginia, was formed, and by the Congress of the United States was admitted into the Union. Nearly one-third of her territory and people were thus taken from her jurisdiction. But, as the whole state had created the indebtedness for which the bonds were issued, and participated in the benefits obtained by the moneys raised, it was but just that a portion of the indebtedness should be assumed by that part which was taken from her and made a new state. Writers on public law speak of the principle as well established that where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On this subject Kent says: "If a state should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, their rights are to be enjoyed and their obligations fulfilled by all the parts in common." (I Com., 26.) And Halleck, speaking of a state divided into two or more distinct and independent sovereignties, says: In that case the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of the courts, and the practice of nations." (Internat. L., ch. 3, sec. 27.)

"In conformity with the doctrine thus stated by Halleck, both states—Virginia and West Virginia—have recognized in their constitutions their respective liability for an equitable proportion of the old debt of the state, and have provided that measures should be taken for its settlement * * *

"The Constitution of West Virginia, which went into effect in 1863, declared that "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January 1861," should "be assumed" by the state, and that the legislature should "ascertain the same as soon as practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." (Art 8, sec. 8.)"

Virginia lost by the formation of the state of West Virginia one-third of her territory and more than one-third of her white population. To that extent she was deprived of possessions which belonged to her when the debt was contracted. Suppose fifty of the remaining counties of Virginia should decide to organize themselves into a new state to be called "Eastern Virginia;" would you say it was fair and right for them to do so and take the public property within their borders, and leave the remaining counties constituting the state of Virginia to bear the burden of a debt created for the benefit
121 of the whole? The Supreme Court of the United States has, as we have just seen, answered that question in the negative, and I am sure your sense of justice would impel you also to answer

"No." In that event you could not justify West Virginia in declining to bear a just proportion of the debt of the mother state.

Another decision of the Supreme Court of the United States has an important bearing on the liability of the two states on account of this debt. I refer to the recent decision of South Dakota against North Carolina (decided February 1, 1904), 192 U. S., page 286. North Carolina had issued certain bonds which were outstanding in the hands of purchasers. She declined to make provision for their payment, feeling that she was justified in that course. In order to test the liability of North Carolina a holder of a large amount of those bonds donated ten of them of the face value of $10,000.00 principal to the state of South Dakota, with the understanding that South Dakota, would institute suit against North Carolina to enforce payment. An individual cannot sue a state, but the right of one state to sue another is expressly preserved by the Constitution of the United States. South Dakota accepted the gift and instituted suit in the Supreme Court of the United States against North Carolina, and the court gave judgment against North Carolina for the amount of the bonds with accrued interest.

If when the contract under which we hold control of the certificates expires nothing has been done looking to a settlement, and those certificates should be released and restored to the owners, it may prove to be the opening of a veritable Pandora's box. Under the authority of the South Dakota–North Carolina case, the attempt might be made to enforce collection of this debt by donating some of the certificates of the issue of 1871 to a state on condition that a suit should be instituted against Virginia and West Virginia to compel the statement of the account between them, and the payment of the liability apportioned to each one. We are reliably
122 informed that the governor of one of the states has already been approached with an offer to donate to his state $100,000.00 of those certificates on condition that he would cause such a suit to be instituted. He declined, but some other governor might not be influenced by as delicate sense of propriety.

We feel that these considerations should appeal strongly to you to unite with Virginia in the effort to make a friendly settlement of this matter. Surely the two states can make a far better settlement than the courts can make for them. If we do not take the matter in our own hands the only alternative is a settlement by compulsion. Resolutions that we do not owe anything will not avail. The holders of a debt amounting to about fifty millions of dollars will not be satisfied with your statement or with ours that we do not owe it. Unless your state will join Virginia in the effort to dispose finally of this question, you may rest assured that, like Cæsar's ghost, it will meet you at Philippi. The unsettled one-third of this debt now amounts to about fifty millions of dollars. No one can say what the extent of West Virginia's liability will be if the controversy is settled in court, but I will venture the assertion that in a friendly adjustment, it is entirely probable that we can effect a settlement within one-tenth of that sum. In this connection I cannot forbear a reference to what Virginia has done towards bearing the burden of

this debt. The records of the office of the second auditor of Virginia show the following amounts paid by Virginia on account of the public debt of the old state since January 1, 1861:

123	Amount of interest paid from January 1, 1861, to January, 1905.....		$34,551,642 85
	Bonds now held in sinking fund..	$1,111,500 00	
	Bonds paid off and cancelled.....	8,863,994 49	
			9,975,441 49
	Total of interest and bonds paid off.....		$45,527,134 34
	New bonds of Virginia issued for portion of debt funded and assumed by her.....		26,850,820 00
	Total sum of principal and interest paid off and assumed and now carried by Virginia on account of the old debt.....		$72,377,954 34

From the foregoing you will observe that the public debt of Virginia is now $26,850,820.00, and on this sum she pays an annual interest charge of $877,862.27. (Report of the second auditor of Virginia for 1904 in relation to the public debt.)

Do you not think that Virginia has borne here share of this common burden, especially in view of the trials and adversity through which she has passed? During four long years she withstood the shock of battle, and came out of that trying ordeal crushed, impoverished and dismembered. Then followed the night of reconstruction, when for five years she endured the bitterness and humiliation of military rule. But so soon as she regained control of her own affairs she met her creditors and, in spite of her poverty, endeavored to do her duty by them.

In adjusting her liability with her creditors and providing for its payment she has done all that she could do, and no more could be expected of her. The trials and sacrifices through which she has passed have left no trace of bitterness—least of all does she cherish any resentment against her youngest daughter. On the contrary, she rejoices in the wealth and power with which a benignant Providence has blessed you. She only appeals to you not to let pass the present golden opportunity to finally dispose of the only remaining question in connection with her public debt. She earnestly hopes that her suggestion will commend itself to your good judgment, and that your legislature will authorize the appointment of commissioners, with power to co-operate with us in stating the account between the two states. If, however, your action shall be unfavorable, Virginia will feel that she has done her duty, and that responsibility for the consequences will not lie at her door.

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In taking leave of you, gentlemen, I cannot refrain, on behalf of myself and associates, including the attorney general, an eminent citizen of my state, from expressing to you our sincere appreciation of the cordial reception accorded us here not only by His Excellency, your governor, but by your committees to-night. I can

assure you that whatever may be the result of our mission, we will recall with pleasure the considerate attention you have shown us.

125 Memorandum of agreement, made this 14th. day of December, 1904, between the Depositing Committee of the securities known as the Virginia Deferred Certificates as constituted under the contract of July 28th, 1898, and of which John Crosby Brown is Chairman, and Robert L. Harrison, Secretary, acting under the plan of settlement approved on December 3rd. 1902, by the Advisory Board referred to in the said contract, hereinafter referred to as the Depositing Committee, party of the first part, and the Commission constituted on behalf of the State of Virginia for the purpose of bringing about a settlement with the State of West Virginia with respect to said certificates as constituted and acting under the joint resolution of the General Assembly of the State of Virginia, approved March 6, 1894, and the act of said General Assembly, approved March 6, 1900 and of which John B. Moon is Chairman, and Joseph Button is Secretary hereinafter referred to as the Virginia Commission, party of the second part:

Whereas, by an agreement entered into between the above parties on the 18th day of September, 1902, certain of the certificates aforesaid amounting in the aggregate to $10,347,570.85 were tendered by the Depositing Committee Aforesaid to the said Virginia Commission, and were placed subject to the control of the said Commission upon the agreement and arrangement on the part of the said Commission acting for the State of Virginia under the said joint resolution and Act of Assembly aforesaid, that the said Commission should enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting with West Virginia a settlement with respect to the said certificates, in accordance with the said contract of July 28th. 1898, and in accordance with such plan of settlement as was then proposed or might thereafter become effective, and that the said Commission would, by and with the advice and approval of the Attorney General of Virginia, take such action as they might deem needful in the premises; and that in the event such a settlement was so made, then it
126 was agreed that the amount realized thereon should be accepted in full satisfaction of all the claims of the certificate-holders thereunder, and that the said Committee would surrender to the said Commission, in exchange for such amount, the certificates so placed subject to the control of said Commission. And it was further specified in the said agreement of September 18, 1902, that the same should apply to and include all such certificates as might thereafter be deposited with and held by the said Committee under the said contract of July 28, 1898, and that the said agreement should constitute an arrangement and contract between the said Committee acting for the said certificate-holders with the State of Virginia for obtaining a settlement with West Virginia, and that the same should continue binding upon the parties and upon the

holders of the certificates so deposited for the three years next ensuing from the date of the said agreement; that is to say, until the 18th. day of September 1905. And the said agreement further provided that the same should be subject to renewal and extension for such further time as might be agreed upon between the parties and to such modification and amendment as might thereafter be agreed upon; and

Whereas, the said agreement of September 18, 1902, was approved by the Hon. William A. Anderson, Attorney General of Virginia, by his endorsement at the foot thereof on the 29th. day of September 1902; and

Whereas, the provisions of the said agreement last named were fully approved and recommended on the 3rd. day of December, 1902, by the Advisory Board referred to in the said contract of July 28, 1898 as appears by the plan of settlement made and approved by the said Committee and the Advisory Board and bearing date December 3rd. 1902, of which plan of settlement publication was duly made as provided in the said contract of July 28, 1898, and no notification whatsoever was given to the said Committee, either directly or through any depository, by any of the holders of the deposited certificates, of their unwillingness to accept the proposed set-
127 tlement as set forth in the said plan so published and more than thirty days having elapsed after the said publication was completed, and the said plan of settlement having therefore become complete; and of this fact the declaration in writing of the Committee having been duly made to the only depository under the said contract, to wit Messrs. Brown Brothers & Company, of 59, Wall Street, New York, the said plan of settlement thereupon became effective and final; and

Whereas, it is now proposed under the terms of the said agreement of September 18, 1902, and by way of modification thereof as therein provided, to place more fully and completely under the control of the said Virginia Commission all the certificates aforesaid which had up to that date been deposited, and also all thereafter deposited so that the said Virginia Commission may be given full and complete control of all the said certificates in their proposed negotiations with the State of West Virginia, and also in any action and proceeding which may be taken or instituted by the said Virginia Commission by and with the advice and approval of the said Attorney General under the said Act of the General Assembly of Virginia March 6, 1900:

Now therefore this agreement witnesseth: that the aforesaid Depositing Committee does hereby authorize and direct their said Depository Messrs. Brown Brothers & Company to issue to the Virginia Debt Commission a certificate that all the aforesaid Virginia Deferred Certificates which have up to this time been deposited with the said Brown Brothers and Company under the said depositing agreement of July 28, 1898, and all which may hereafter and before the 18th. day of September, 1905, be so deposited with the said depository are held by the said depository on deposit for and subject in all respects to the control and disposition of the said Virginia Commission in

pursuance on the said joint resolution and Act of the General Assembly of Virginia; and to this end the said Messrs. Brown Brothers & Company are authorized and instructed to issue such cer-
128 tificate to the said Virginia Commission in such form as to show that all of the certificates aforesaid have been received and are held by them on deposit for the said Virginia Commission and subject to the control and disposal of the said Commission:

But this agreement shall continue in force only until the said 18. day of September 1905, when the said certificate issued by the said Brown Brothers and Company to the said Virginia Commission for the purpose of making a settlement with West Virginia as aforesaid shall be returned to the said Depositing Committee, unless a settlement shall have been before that time negotiated with West Virginia is pursuance of said contract of September 18th. 1902, or unless negotiations be then pending with the properly constituted authorities of West Virginia for such settlement upon some equitable basis which has been agreed to by said Commission and the authorities of West Virginia aforesaid. Provided, however, that it is fully understood and agreed that the time for continuing in force this agreement may be extended by the consent and agreement of the parties hereto indorsed hereon or at the foot hereof, for such length of time and upon such conditions as the parties may hereafter specify; and this agreement may be changed, modified and amended with respect to the action and proceedings to be taken or instituted by the said Commission in the premises, as may hereafter be agreed upon by the parties and the indorsed as aforesaid, or as may be specified in a further and supplemental agreement between the parties.

In testimony whereof the signatures of the Chairman of the said Depositing Committee and of the Virginia Commission, attested by the respective Secretaries thereof, are hereunto affixed on the day and year first above written.

JOHN CROSBY BROWN, *Chairman.*

ROBERT L. HARRISON, *Secretary.*

JOHN B. MOON,
Chairman of Virginia Commission.

JOSEPH BUTTON, *Secretary.*

129 The foregoing agreement is hereby approved as having been entered into by my advice and approval.

Dated December 14, 1904.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

130 The foregoing agreement of December 14th, 1904, together with the contract of September 18th, 1902, therein referred to, are hereby extended in all their provisions until December 1st 1905, and they shall remain in full force until that date just as if December 1st 1905 instead of Sept. 18th, 1905, had been the date originally named therein for their limitation, with the right of extension, en-

largement and modification on or before Dec. 1st, 1905, in all respects as therein specified.

Given under our hands this 9th day of September, 1905.

JOHN CROSBY BROWN,
Chairman Depositing Committee.

ROBT. L. HARRISON, *Secretary.*

JOHN B. MOON,
Chairman Virginia Commission.

JOS. BUTTON, *Secretary.*

The above extension of the contracts above referred to is hereby approved, this 9th day of September, 1905.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

131 Upon the execution of the foregoing contract of December 14, 1904, hereto annexed, Messrs. Brown Bros. & Co., Bankers of New York, N. Y., the depository referred to in said contract, issued to the Virginia Commission therein named the certificate provided for in said contract, which was also in the form of a receipt and showed that Virginia deferred certificates of 1871 to the amount of $10,639,776.42 and certificates of other dates to the amount of $2,270,779.47 were held by said Brown Bros. & Co. on deposit for and subject to the control and disposal of said Commission; thus placing subject to the complete control and disposal of the Commission considerably more than two-thirds of the total of $12,703,451.79 of the certificates of 1871 outstanding and in the hands of the public, and a large majority of the total of $2,778,239.80 of the other certificates so outstanding.

Thereafter, in January and February, 1905, the Virginia Commission, through its properly constituted sub-committee acting with the Attorney General of Virginia, made to the Governor and Attorney General of West Virginia, and to the Finance Committees of the Legislature of that State, which was then in session, a full statement and presentation of the matters outstanding and unsettled between the two States in connection with the deferred certificates aforesaid, accompanied by an urgent plea on behalf of the State of Virginia that the Legislature of West Virginia would, at least, appoint a Committee or other public functionery with authority to take up the questions involved for the purposes of discussion and negotiation, but the Commission was again met, as it had been in a previous attempt to open negotiations on the subject, by an absolute refusal on the part of the authorities of West Virginia to treat on the subject at all; thus leaving to the Virginia Commission and Attorney
132 General of that State no possible means of bringing about the settlement, which they are charged with the responsibility of making, except by a resort to the Court having jurisdiction of controversies between States.

Now, therefore, it is hereby stipulated and agreed by and between the Depositing Committee, named as the party of the first part in

the said foregoing contract of December 14th, 1904, and the Virginia Commission therein named as the party of the second part, the said Commission acting in this behalf by and with the advice and approval of the Attorney General of Virginia, that in accordance with the provisions contained in the said foregoing contract and addendum thereto of September 9th, 1905, the same is hereby amended, modified and extended as follows, to wit:

1st. Neither the said foregoing contract of December 14th, 1904, nor the contract therein referred to between the same parties, bearing date September 18th, 1902, shall expire on the 1st. day of December, 1905, but the same shall continue in force in all respects just as if no time limit had been named in either of said contracts, and this agreement shall be taken as a continuation, modification and extension of said contracts.

2nd. The certificate or certificates heretofore given by Brown Bros. & Co., the depository of the said Committee, to the said Virginia Commission, covering the deferred certificates aforesaid, shall be retained by the said Commission and shall remain in full force and effect without regard to time limit; and the said Brown Bros. & Co. shall issue and give to the said Commission such other and further certificates and receipts in the premises, by way of amendment or in lieu of those already given or otherwise, as may be deemed needful or desirable in order to place said deferred certificates more completely and finally under the control and at the disposal of
133 the said Commission for the purpose of carrying out this agreement; and especially shall they give such certificates or receipts to cover all such Virginia deferred certificates as have been or may be deposited with them and not covered by certificates or receipts previously given to the Commission; and the said Virginia Commission are hereby given and invested with the full and complete control and right to dispose of all deferred certificates now or hereafter covered by or embraced in the receipts and certificates of Brown Bros. & Co., as aforesaid.

3rd. The said Virginia Commission hereby stipulate and agree, by and with the advice and approval of the Attorney General of Virginia, that, in their judgment, it is needful and proper, in order to protect the interest of the State and bring about and carry into effect a settlement in the premises, that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States asking for an adjudication and settlement by that Court of the matters aforesaid unsettled and undetermined between the two States, arising or growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the Act of the General Assembly of Virginia, of March 6th, 1900, referred to in said con-

tract of December 14th, 1904; and the said Virginia Commission, acting by and with the advice and approval of the Attorney General of that State, do hereby undertake and agree that such a suit shall be brought against the State of West Virginia for the purpose of obtaining a settlement as aforesaid, as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said Court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said Act of the General Assembly of Virginia and the Joint Resolution of the said General Assembly of March 6th, 1894, also referred to in said contract of December 14th, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia as to the deferred certificates placed subject to the control of the Commission as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said Commission, notwithstanding the institution and pendency of such suit.

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4th. And the Virginia Commission do further undertake and agree that, in accordance with the terms and conditions of the said Joint Resolution and Act of the General Assembly of Virginia, they will account for, pay over and deliver such amount, either in cash or securities, as may be realized from West Virginia through any settlement made by the said Commission with that State, either by means of an adjudication or recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, to the said Depositing Committee in full settlement and satisfaction of all claims under said certificates; and the said Depositing Committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said Commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

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5th. It is further understood and agreed that if from any cause the said Commission shall fail or be unable to bring about such adjustment or settlement or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said Commission to restore to the control of the said Depositing Committee all such deferred certificates

as may have been placed subject to the control and disposal of said Commission as aforesaid.

Richmond, Va., November 24th, 1905.

JOHN CROSBY BROWN, *Chairman.*
R. P. CHEW,
WM. C. LEGENDRE,
CLARENCE CARY,
J. KENNEDY TOD,
GEO. F. BAKER,
BARLETT S. JOHNSTON,
Depositing Committee.

JOHN B. MOON,
WM. F. RHEA,
H. D. FLOOD,
H. H. DOWNING,
H. T. WICKHAM,
RANDOLPH HARRISON,
J. THOMPSON BROWN,
Virginia Commission.

Attest:
JOS. BUTTON,
Sec'ty Va. Commission.
RO. L. HARRISON,
Secretary Committee.

136 The foregoing contract of this date was entered into by and with the advice and approval of the undersigned, William A. Anderson, Attorney General of Virginia, as in said contract stated and set forth; and the same is concurred in by him as such Attorney General.

Richmond, Va., November 24th, 1905.

(Signed) WILLIAM A. ANDERSON,
Attorney General of Virginia.

137 This is to certify that we, the undersigned, Brown Brothers & Company (Bankers), of 59 Wall Street, New York City, N. Y., have received of the Commission of the State of Virginia, constituted and authorized to act with respect to the securities known as the Virginia Deferred Certificates under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and an act of the said General Assembly approved March 6, 1900, and of which John B. Moon, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is secretary, the following Virginia Deferred Certificates, which we hold on deposit for and subject to the control and disposition of said Commission, to wit:

Certificates of 1871:			
Principal.....	.....	$9,317,009.30	
Sterling scrip.....	$10,666.66		
Dollar scrip.....	32,387.00	43,053.66	
			$9,360,062.96
Certificates of 1879:			
Principal.....	.....	$403,362.62	
Dollar scrip.....	$33,890.83		
Sterling scrip.....	3,389.16	37,279.99	
			440,642.61
Certificates of 1882:			
Principal.....	.....	$716,416.07	
Scrip.....	.....	545,787.36	
			1,262,203.43
Certificates of 1892:			
Principal.....	.....	$259,825.71	
		284,563.93	
			544,389.64
			$11,607,298.64

And we further agree to hold on deposit for and subject to the control of said Commission as aforesaid such further certificates as may be deposited with us through or for the said Commission, between this and the 18th day of September, 1905.

Given under our hands this 14th day of December, 1904.

BROWN BROTHERS & CO.

138 Brown Brothers & Co., 59 Wall Street.

West Virginia Debt Settlement. (C)

NEW YORK, *January 23rd*, 1905.

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR: Since we gave you the receipt and certificate of Deposit of December 14th, 1904, there have been deposited with us, and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under act of	1871,	to amount of	.....	$1,279,713.46
do.	1882,	do.	....	23,477.12
do.	1892,	do.	.....	66.67
Total additional certificates.....				$1,303,257.25

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal		$10,596,402.76	
Sterling scrip	$10,666.66		
Dollar scrip	32,707.00	43,373.66	
			$10,639,776.42
Issue of 1879:			
Principal		$403,362.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Issue of 1882:			
Principal		$738,819.72	
Scrip		546,860.83	
			1,285,680.55
Issue of 1892:			
Principal		$259,825.71	
Scrip		284,630.60	
			544,456.31
Total deposit to January 23rd, 1905			$12,910,555.89

B. B. & CO.

139 Brown Brothers & Co., 59 Wall Street.

West Virginia Debt Settlement. (T.)

NEW YORK, *January 4th*, 1906.

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR: Since we gave you the receipt and Certificate of Deposit of December 14th, 1904, there have been deposited with us, and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under the act of	1871,	to amount of	.....	$1,491,231.13
do.	1879,	do.	.....	23,250.00
do.	1882,	do.	.....	51,588.97
do.	1892,	do.	.....	66.67
Total additional certificates			.....	$1,566,136.77

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and Certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal		$10,806,785.43	
Sterling scrip	$10,666.66		
Dollar scrip	33,842.00	44,508.66	
			$10,851,294.09
Issue of 1879:			
Principal		$426,612.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			463,892.61
Issue of 1882:			
Principal		$757,653.05	
Scrip		556,139.35	
			1,313,792.40
Issue of 1892:			
Principal		$259,825.71	
Scrip		284,630.60	
			544,456.31
Total deposit to January 4th, 1906			13,173,435.41

BROWN BROTHERS & CO.

140 STATE OF NEW YORK, *County of New York,* } *To-wit:*

I, Wm. Gerard Vermilye, being first duly sworn, do depose and say that I am one of the Cashiers of Brown Brothers & Co., bankers of New York, N. Y., and have charge of their vaults and of the securities therein deposited, including the securities known as Virginia Deferred Certificates, and that I have had charge of the filing of said certificates deposited with said Brown Brothers & Co. and of the keeping of a record thereof as filed; and that the statement or certificate of the said Brown Brothers & Co. hereunto annexed made to John B. Moon, Chairman of the Virginia Debt Commission, bearing date January 4th, 1906, correctly sets forth the said Virginia Deferred Certificates so deposited and placed in the vaults of said Brown Brothers & Co. which said certificates to the amount set forth in said statement of Brown Brothers & Co. have been by order of the said Virginia Commission this day placed in sealed boxes and transferred to the Central Trust Company of New York, N. Y.

WM. GERARD VERMILYE.

The foregoing affidavit was this day subscribed and sworn to by Wm. Gerard Vermilye before me, a Notary Public in and for the State and County of New York.

Given under my hand and Notarial Seal this 5th day of January, 1906.

LEGRAND VAN VALKENBURGH,
[NOTARIAL SEAL.] *Notary Public, Kings County.*

Certificate filed in New York County.

141 Central Trust Company of New York.

54 WALL STREET, *January 5th*, 1906.

The undersigned, the Central Trust Company of New York, N. Y., hereby certifies and acknowledges that it has this day received from Brown Brothers & Co. three boxes under seal said to contain the Virginia Deferred Certificates to the amount of $13,173,435.41 referred to in the communication of said Brown Brothers & Company to John B. Moon, Chairman of the Virginia Commission, bearing date January 4th, 1906, which said sealed boxes and their contents are held by the undersigned Trust Company on deposit for and subject to the order and control of the Virginia Commission, constituted and authorized to act with respect to said Deferred Certificates under a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, and an act of the said General Assembly approved March 6th, 1900, of which John B. Moon, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is Secretary, the said certificates having been turned over to the undersigned Trust Company by said Brown Brothers & Company to be held by the undersigned on deposit for and subject to the control and disposal of said Virginia Commission as above stated.

CENTRAL TRUST CO., OF N. Y.,
(Signed) F. L. GRANT, *Sec'y.*

142 Virginia, Second Auditor's Office.

(Statement Made Sept. 17, 1902.)

West Virginia Certificates Issued by Virginia in Funding Her Debt.

			In hands of the public.
Act March 30, 1871	$15,281,970.47		
" " " " held by Com.			
" " " " sinking fund	2,026,439.39		
" " " " literary fund	552,079.29		
		$2,578,518.68	
			$12,703,451.79
Act March 28, 1879			564,258.87
Act Feb. 14, 1882		1,775,603.48	
Held by literary fund		166,943.33	
			1,608,660.15
Act Feb. 20, 1892			605,320.78
Total amount in the hands of the public			15,481,691.59
Total amount held by the Com. S. fund			2,026,439.39
Total amount held by the literary fund			719,022.62
Total amount of W. Va. script issued			18,227,153.60
In hands of public	$15,481,691.59		
Held by State of Virginia	2,745,462.01		
Total issue of W. Va. script	$18,227,153.60		

I hereby certify that the above statement correctly sets forth the amount of West Virginia certificates, issued by Virginia in funding her oid obligations, as shown by the books of this office.

(Signed) JNO. G. DEW,
Second Auditor of Virginia.

Supreme Court of the United States

OCTOBER TERM, 1907.

Original, No. 12

VIRGINIA

vs.

WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN. FILED AS AN EXHIBIT FOR THE COMPLAINANT.

Supreme Court of the United States

OCTOBER TERM, 1907.

Original, No. 4.

VIRGINIA

vs.

WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN. FILED AS AN EXHIBIT FOR THE COMPLAINANT.

The fact that Virginia in 1811-12 called upon Chief Justice Marshall and others of her leading citizens to devote some weeks or months of their time to a reconnaissance of the region lying between the Blue Ridge Mountains and the Ohio, for the purpose of learning the most desirable line of communication between the waters of the Eastern Seaboard and the Western waters, and that the Great Chief Justice and the eminent men who served with him on that Commission responded to that call and devoted themselves to the arduous service which its acceptance involved, is evidence of the profound interest which in the early part of the last century the people of Virginia and her leading citizens took in that subject, and the importance which they attached to it.

The report of this historic Commission is therefore re-

printed and filed as an exhibit for the complainant in this cause.

Col. Claudius Crozet, an eminent civil engineer, who, after having served as an engineer under Napoleon, and afterwards as Professor of Mathematics or Engineering in the U. S. Military Academy at West Point, was for a number of years State Engineer of Virginia, and some of the most important of her works of internal improvement were begun under his direction.

In one of his reports he refers to the service rendered by this Commission in the following language:

"The first notice of the connection of the eastern and western waters is found in a report, made at the close of 1812, by the commissioners appointed by an act of the preceding session, 'for the purpose of viewing certain rivers within this Commonwealth.' The commissioners, John Marshall, James Breckenridge, William Lewis, James M'Dowell, William Caruthers, Andrew Alexander, examined the James river, from Lynchburg up, crossed the mountains, and descended with much difficulty, and indeed personal danger, the hitherto unexplored New river. They went through this arduous task with a zeal and perseverance worthy of such men.

"A plain sluice improvement of the James and Jackson's river, up to Dunlap's creek; thence a turnpike road, across the Alleghany mountain, which has been made since, and finally a sluice navigation of the Greenbriar, New, and Kanawha rivers were, at that early day, all they thought proper to recommend.

"A remarkable, and in our day, curious passage, occurs in their report. 'Your commissioners submit with diffidence the following propositions: First, that boats impelled by steam may

be employed successfully on New River * * *. But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified as to be applied in new and different situations, &c.' These remarks, at the very dawn of steam navigation, show, on their part, much sagacity and forethought."

See Report of Colonel Claudius Crozet, late State Engineer, to the General Assembly of Virginia, 1848.

WILLIAM A. ANDERSON,
Counsel for Virginia.

March, 1908.

Besides the Great Chief Justice, the gentlemen who served upon this Commission were James Breckenridge, distinguished as a soldier, and statesman, and esteemed by contemporaries as the equal in ability, though not in oratory, of his brother, John Breckenridge, of Kentucky; William Lewis, a patriotic citizen, of the highest character, a near relative of Col. Charles, and General Andrew Lewis, of Point Pleasant fame, and a worthy scion of such illustrious lineage; James M'Dowell, one of the gifted men of his generation, who afterwards rendered eminent service as a member of Congress, and as Governor of the Commonwealth; William Caruthers, a leading citizen of the Valley of Virginia, and a farmer and business man of very high character and standing; and Andrew Alexander, surveyor, engineer, representative citizen, a man of skill in his profession, and remarkable for his public spirit.

REPORT

OF THE

COMMISSIONERS

APPOINTED TO VIEW CERTAIN RIVERS

WITHIN THE

COMMONWEALTH OF VIRGINIA,

CONFORMABLE TO AN ACT OF SAID COMMONWEALTH, PASSED THE FOURTEENTH DAY OF FEBRUARY, 1814.

PRINTED ACCORDING TO A JOINT RESOLUTION OF BOTH HOUSES OF THE GENERAL ASSEMBLY,

AND

ACCOMPANIED BY A MAP,

EXECUTED UNDER THE DIRECTION OF THE EXECUTIVE.

IN CONFORMITY WITH THAT RESOLUTION.

PRINTED....1816.

STATE OF VIRGINIA.

INLAND NAVIGATION AND IMPROVEMENTS.

PREAMBLE AND RESOLUTION,

For re-printing the Report of the Commissioners on the Navigation of the Great Kanhawa, &c.

[AGREED TO BY BOTH HOUSES OF ASSEMBLY, FEBRUARY 14, 1814.]

WHEREAS, it would greatly promote the welfare of this Commonwealth, and the prosperity of our sister States, to form a more intimate connexion between the Eastern and Western Waters of the United States; and, with a view to that object, the General Assembly of Virginia, at a former session, appointed Commissioners to survey the head waters of James-River and the Great Kanhawa, with instructions to ascertain the practicability of extending their navigation to the base of the chain of mountains which divides them, and at the shortest and easiest portage across it; a trust which was accepted and fulfilled, by the Commissioners who acted therein, in a manner that entitles them to the thanks of their country: And, as the result of their labors has never been presented to the Legislature of

the Union, nor to the governments of the several States, who cannot but feel an interest in the accomplishment of an enterprise so important to the arts, manufactures, and commerce of the United States—

Resolved, therefore, That the executive of this commonwealth be, and they are hereby empowered and requested, to cause the Report of the Commissioners to be re-printed, and the Map and References accompanying it to be reduced to a convenient scale, engraved, printed, and annexed to the Report; and, reserving two hundred and fifty copies thereof for the use of the General Assembly, to forward a copy to each of the Commissioners whose names are subscribed to the Report, to each Member of the Congress of the United States, and to the Executives of the several States and Territories.

PROCEEDINGS

OF THE

COMMISSIONERS.

LETTER OF MR. MARSHALL, ONE OF THE COMMISSIONERS.

A COMMUNICATION from the Governor, enclosing a Letter from the Honorable JOHN MARSHALL, and a report from the Commissioners who executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth," was laid before the house.

The said Letter and Report were read as follows:

Richmond, December 26, 1812.

SIR—I hasten to submit to your Excellency, for the purpose of being laid before the General Assembly, the Report of the Commissioners who executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth."

To their distance from each other, and the consequent difficulties attending the interchange of sentiment, and the attainment of their respective signatures, is to be ascribed the delay which has taken place in the performance of this part of their duty.

The more detailed report, to which the enclosed refers, is not yet received, but it is expected in a few days, and will then be transmitted to your Excel-

lency. It was not thought advisable longer to withhold the general report, for the purpose of accompanying it with that more in detail, to which it refers.

I have the honor to be,
Sir, with great respect,
Your obedient servant,

J. MARSHALL.

His Excellency Governor BARBOUR.

INLAND NAVIGATION.

REPORT.

To the Honorable the Speaker and Members of the General Assembly, the undersigned Commissioners, named, with others, in the act entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth,"

RESPECTFULLY REPORT—

That, supposing the autumn to be the season which afforded the fairest prospects for giving effect to the views of the Legislature, as expressed in their act, your Commissioners agreed that a meeting should be called on the first of September, at Lynchburg. The number required by law, for the execution of the service they were directed to perform, having assembled, and the necessary preparations having been made, your Commissioners began at the Bridge at Lynchburg, to view James-river, and to take its level by sections to the mouth of Dunlop's-creek. Mr. Andrew Alexander, the surveyor of Rockbridge county, had been engaged to execute this duty under their direction. To his report, which your Commissioners believe to be accurate,

they beg leave to refer, as exhibiting, in minute detail, the information required by the law.

As an actual measurement of the whole river would have employed so much time as to defer the completion of the work, until high waters might defeat the object of the Legislature, and was rendered the less necessary by previous surveys; distances were in general conjectured. The eye, aided by a time-piece, and occasionally corrected by actual measurement, furnished information, which, though not perfectly exact, was believed not to vary much from the truth, and to be substantially sufficient. Those places which present serious obstacles were measured by the chain, and the elevation was taken throughout by a spirit level.

On that part of the river which is comprised within the charter already granted, your Commissioners presume that little, if any, information is expected from them, other than will be found in the annexed report of Mr. Alexander.

From Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, no difficulty presents itself, which may not be with certainty surmounted. The falls are no where formidable; there are long stretches of smooth water, and the shallows may be so deepened as to afford water for boats bringing down from six to eight tons, and carrying up from four to six tons, if not throughout the year, through all but a very inconsiderable portion of it. Your Commissioners give the opinion, unanimously, and with great confidence, that the navigation from Crow's Ferry to the mouth of the Cow-Pasture, may, with improvements by no means expensive, be ren-

dered as certain, as useful, and as permanent, as the navigation from the same place to Lynchburg; and that it may be used at all times when the navigation to Lynchburg can be used, with boats carrying an equal burthen—indeed, that it may be rendered more safe and less laborious, than that from the mouth of the North Fork to Lynchburg now is.

From the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, the difficulties become more considerable, and their removal will require greater expenditures of money. The mass of water diminishes, and the elevation increases.—The shoals become longer and shallower, and the intervals of smooth water shorter. Yet, this rugged navigation, though totally unimproved, is now used during high water. Boats, laden with the produce of the country, pass every year from the mouth of Dunlop's-creek to Richmond. It is, therefore, proved to be, even at this time, practicable for some portion of the year. This portion varies with the seasons. Most commonly, it commences in November, and terminates late in May, or early in June.

That, by the removal of rocks, now lying promiscuously and irregularly through the bed of the river, which it will be necessary in only a few instances to blow, and by the judicious application of labor, to the collection of water in narrower spaces than it now covers, this navigation may be rendered much more secure and beneficial, and the time during which it can be used may be considerably extended, will not admit of doubt.—Whether this portion of the river may be rendered at all times boatable,

depends on the depth of water to be collected in particular channels by such means as are applicable to the object.

Some of your Commissioners have been personally engaged in opening the navigation of the North Fork of James-river, through Rockbridge. They are decidedly of opinion, that the river denominated "Jackson's," contains as far as Dunlops-creek, more water and less formidable obstructions than were found in the North Fork. Yet the North Fork, though its improvement is far from being complete, is now actually used to great advantage, and is not much inferior to the river below.—Some experienced and judicious boatmen, who were employed on the expedition, who are well acquainted with the river and its navigation, unite in the declaration, that, if the means be taken which ought to be employed, that part of James-river which is between the Cow-Pasture and Dunlop's-creek, may be used by any boats which will be capable of continuing their voyage to Lynchburg.

Your Commissioners concur in this opinion; and they take occasion now to remark, that should it be deemed advisable still to adhere to the system of improvement heretofore used in the upper part of the river, the difficulties of this navigation would, they think, be much diminished by several facilities which might be given to it. They would particularly suggest chains, with buoys fastened in rocks or otherwise, or walls on which men may walk, of which boatmen might avail themselves to lessen the labor of ascending places of peculiar difficulty; and thus either to increase the load which may be carried up the river, or to diminish the number of persons necessary for carrying up a given load. They will

also mention a fact deemed favorable to the object contemplated by the Legislature. It is this: although the cold may be more intense in the bosom of the mountains than below, this part of the river freezes over.

It will perhaps save the honorable the members of the Legislature some calculation, to observe, that the distance from Lynchburg to the commencement of the Blue Ridge is stated, in the report of Mr. Alexander, to be twenty-five miles one-fourth and thirty poles; the elevation to be one hundred and eleven feet eight inches; shewing an average elevation of four and an half feet to the mile.—The distance through the mountain, that is from Racoon Island to the mouth of the North Fork, is eight miles one-fourth and forty-nine poles, and the elevation one hundred and one feet six inches, giving an average elevation of upwards of twelve feet to the mile. The distance from the mouth of the North Fork to Crow's Ferry, or Beall's Bridge, the highest point to which navigation is to be carried by the James-River Company, is stated at twenty-six miles and thirty-eight poles, and the elevation is one hundred and thirty-one feet four inches: making the average elevation five feet to a mile.

The distance from Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, is stated at thirty-six miles fifty-nine poles, and the elevation is one hundred and ninety feet three inches, making the average elevation five and an half feet nearly to a mile. The distance from the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, is stated at twenty-three miles three-fourths and twenty poles, and the elevation is two hundred and twenty-eight feet three inches, making the average elevation nine and an half feet to the mile.

Having reached Dunlop's-creek, your Commissioners proceeded to view and mark out what appeared to them to be the best and most direct way for a turnpike road from the mouth of that creek to the most convenient navigable point on Greenbrier river.

With some inconsiderable deviations, which will appear in the report of Mr. Alexander, already referred to, and some others which will be suggested, the road now leading from the mouth of Dunlop's-creek, by Bowyer's Sulphur Spring, to Anderson's Ford, over Greenbrier, at the mouth of Howard's-creek, is believed to be the most eligible which can be made. To that part of the road which passes from the mouth of Dunlop's-creek to the old Iron Works, a distance of about five miles, there are considerable objections, which your Commissioners are inclined to believe may be diminished. The road crosses the creek eight times, and the ground, during the winter and spring would, if much used and not well covered with stone or gravel, be much cut and be very deep. The creek too is frequently so high as not to be fordable.

Should it be found practicable, which your Commissioners believe to be the fact, to render Dunlop's-creek navigable up to its falls, some distance below the old Iron Works, these inconveniences would be in a great measure removed.

Should it be deemed unadvisable to carry navigation up Dunlop's-creek, a direction, as is understood from some of the inhabitants of that neighborhood, may be given to the road, so as to avoid five crossings of the creek, and at the same time shorten the distance. No attempt to view this way was made, because guides could not readily be procured, and your

Commissioners feared that, by devoting too much time to a minor object, on which complete information is attainable with ease and certainty through various channels, they might hazard the failure of others which were believed to be of much importance.

The road from the Sulphur Spring to Greenbrier crosses Howard's-creek, which is often not fordable, six times, and is in a few places attended with some difficulty. A small improvement may be made in it, and the steepest part avoided, by returning it, near the river, to the ground over which it formerly passed, and from which it has been lately taken.

The road over the mountain has been attentively viewed, and the deviations recommended, from that now in use, carefully and plainly marked. Your Commissioners feel much satisfaction in stating, that the elevation of this part of the road may, in the most unfavorable places, be reduced to an angle of five degrees with the horison. By occasionally removing the earth, for small distances, this angle may be still further diminished. It is believed to be susceptible of improvement on as easy terms as any other road, since the materials for a turnpike are every where convenient, and not more levelling will be necessary than must be expected in passing through a mountainous country.

Your commissioners proceeded down the Greenbrier river in the boat in which they ascended the James. The season had been remarkably dry, and the water was declared by the inhabitants to be as low as at any period within their recollection. It frequently spreads over a wide bed covered with large stone, and is, in its present unimproved state, and at the season when it was viewed, so very shal-

low for the greater part of its course, as not to swim an empty boat. The labor of removing stone, and of dragging the boat over those which could not be removed without implements provided for the purpose, was so great, that your Commissioners at one time were enabled to advance only three miles in two days, even with the assistance of a horse and of many additional laborers. In part of the river the shoals are frequent and long, and the falls, as the report of Mr. Alexander will shew, considerable. At the great falls, which is the most important of them, the descent is twelve feet in forty-eight poles. There is no perpendicular fall at this place, but one continued rapid, with large rocks, irregularly interspersed through the bed of the river. Near the mouth of the river there is a flat rock, which continues for about two hundred and forty poles, with many irregular apertures or fissures through which the water passes. Although, in the usual state of the river, this rock is covered with water of sufficient depth for navigation; yet, such was the drought of the last autumn, it was necessary to drag the boat over its whole extent.

These difficulties present obstacles to navigation during a season when the waters are remarkably low, which can be surmounted only at a considerable expense.

But, from the best information your Commissioners can obtain, and they believe it to be correct, the Greenbrier is seldom so low at any season as it was during the last autumn: and it seldom if ever fails, for eight or nine months in the year, to be at least two feet higher than when viewed by your Commissioners; a depth of water unquestionably sufficient for the purpose of navigation. The testi-

mony given by the inhabitants to this fact, was corroborated by appearances on the river. The indications of a recent considerable diminution of water were not to be mistaken.

On an attentive consideration of the obstacles which were found by your Commissioners to be great, while the river remains in the state in which they viewed it, they are unanimously and decidely of opinion, that its navigation may be rendered as safe, as certain, and as easy as that of the James, at all times, except when the water is unusually low. The rocks are in general loose, and may be removed without extraordinary difficulty, so as to afford a tolerably smooth passage to boats; and, by collecting the water into narrow channels, a sufficient depth may be obtained, with the exception of a short period in a very dry year, to swim any boat which can be brought at the same time down James-river. But so scanty is the supply of water in a time of uncommon drought, that doubts are entertained whether there may not be a short season of the year during which, unless a considerable expense be incurred, the navigation must be suspended. Though aided by men and horses, ten days of unremitting labor were consumed in passing from the mouth of Howard's-creek to the mouth of Greenbrier river, a distance not much exceeding forty-eight miles. In the month of June, the same voyage, if not retarded by measuring the river, might have been performed in a single day. Some of your Commissioners, however, are of opinion, that the Greenbrier may, without great additional expense, be rendered at all times passable for boats carrying half a load.

In addition to the shallowness of the water, (an inconvenience which is common to all rivers as you approach their sources, and which disappears for

eight or nine months in the year) and to the rocks which have been mentioned, the obstructions to the navigation of the Greenbrier consists in its falls, and in the general rapidity of its current.

The great falls alone are of sufficient magnitude to merit particular attention. These unquestionably admit of being rendered navigable, either by opening a sluice judiciously through them, or by locks. The latter would be most expensive, but would leave the navigation less laborious.

The rapidity of the current may be estimated by observing that the descent in forty-eight miles and eighty-four poles, is three hundred and sixty-two feet ten inches, between seven and eight feet to the mile.

This current will present no difficulty to a boat descending the river. To one ascending it, the labor will be considerable, but not so considerable as in some parts of James-river.

The night of the 28th of September, was passed among the islands in the mouth of Greenbrier; and on the morning of the 29th, your Commissioners entered New-river.

The New-river, or that part of the Great Kanhawa which is above the mouth of Gauley, having to search its intricate way, and force a passage through a long chain of lofty and rugged mountains, whose feet it washes, exhibits an almost continued succession of shoals and falls, from which the navigator is sometimes, though rarely, relieved by a fine sheet of deep placid water.

The difficulties encountered in descending this river were of a character essentially different from those which were experienced in the Greenbrier. Uncommon as had been the drought, the supply of

water was abundant. The boat sometimes, though rarely, rubbed upon a shoal; but in every such case it was apparent that a sufficient passage might be opened without much labor or expense. The velocity of the current and the enormous rocks which often interrupt it, the number and magnitude of the rapids and falls, the steepness, cragginess and abruptness of the banks, constitute the great impediments which at present exist to navigation between the mouth of the Greenbrier and the Great Falls of Kanhawa.

The distance from the mouth of Greenbrier to Bowyer's Ferry, is forty miles one quarter and forty-six poles, and the descent is four hundred and sixty-six feet seven inches; that is, eleven feet six inches in each mile. In general, there is much sameness in the appearance of this part of the river. Long rapids, frequently terminated by a fall of from five to ten feet, in a distance of ten, twenty, thirty, and sometimes a greater number of poles; an intervening space, sometimes more, sometimes less considerable, of swift or smooth water; rocks, sometimes above the surface, sometimes near it, so as to require great caution to save a boat from dashing on them; a copious stream, with a current commonly impetuous, constitute its leading characteristics.

Falls too great to come within this general description, will be particularly noticed.

Brook's Falls are about four miles and one-fourth below the mouth of Greenbrier. The water descends thirteen feet seven inches in fifty poles. In its most rapid part the descent is five feet ten inches in fourteen poles. The boat was navigated through this place.

A much more formidable obstruction is the falls

at Richmond's Mill. These are designated in the neighborhood by the name of the "Great Falls of New-river," but are generally called at a distance, "Lick-Creek Falls."

At this place the water may with propriety be said to fall perpendicularly twenty-three feet. For this distance, the sheet which dashes over the summit is intercepted only by huge fragments of broken rock, which, having been successively disjointed from the brink of the precipice, have fallen into the foaming basin below, where, piled on each other, they form one or two benches that break the cataract. A small distance lower down is another fall of three or four feet.

Here, for the first time, the boat was taken out of the water and let down by skids.

The ground along which a canal may be carried around these falls, pursuing the course of Richmond's mill-race, was measured, and the elevation taken. The descent was found to be twenty-two feet nine inches, in one hundred and eighty-one poles.

This estimate excludes a part of the falls, between five and six feet of which are just above the head of Richmond's mill-race.

The bottom of the river for some distance above these falls, is a hard rock, often appearing above the surface, and much covered with moveable stones, some of which are very large. The bottom of the mill-race appears to be of the same description.

From Bowyer's Ferry to the Falls of the Great Kanhawa, was estimated at nineteen miles and fifty-eight poles, in which distance the river falls three hundred and thirty-one feet; that is, seventeen feet to a mile. The honorable the legislature will perceive, that below the ferry the descent, in the same

distance, is greater than above. For a part of this space, the scene is awful and discouraging. The vast volume of water which rolls down New-river, and which, far above the ferry, often spreads, without becoming shallow, over a bed three or four hundred yards wide; is seldom more than one hundred or one hundred and fifty yards wide. In some places, for a mile or more in continuation, it is compressed by the mountains on each side, into a channel of from twenty to sixty yards wide; and even these narrow limits are still more narrowed by enormous rocks which lie promiscuously in the bed of the river, through which it is often difficult to find a passage wide enough for the admission of a boat. In some places the bank is formed of rugged and perpendicular cliffs of entire rock, which appear to be twenty, thirty, and forty feet high; in others, enormous, but unconnected, rocks dip into the water.

There are unequivocal indications of the river's having risen, in these narrows, from thirty to forty feet perpendicularly.

Immediately above the mouth of Gauley, the river opens and presents a beautiful sheet of deep smooth water, which is succeeded by the rocks over which it dashes, and forms the Great Falls of Kanhawa. The height of these falls is twenty feet four inches. With its name, the river looses its wild and savage aspect. It is no longer confined by rugged cliff, by mountains barely separated from each other, nor interrupted by enormous masses of rocks which are scarcely to be avoided.

Within a short distance above the falls, the current is not unmanageably swift, nor the rocks over which it passes uneven. Below, quite to the rocks which have fallen from the brink over which the

cataract rushes, is a deep smooth and beautiful basin. The river is so wide as to rise, in the greatest freshes, only six or seven feet. The falls themselves constitute the impediment, and the only impediment at this place.

Your Commissioners have deemed it proper to state in their full strength, the difficulties which are to be surmounted in opening the intercourse between this part of the state of Virginia and the western country; and to put the legislature, as far as is possible, in possession of the testimony on which their opinion is formed, as well as of their opinion. If, misguided by their conviction of the importance of the object, they are too sanguine in their hopes of its accomplishment, the facts now communicated will enable the General Assembly to correct the mistaken conclusions which have been drawn, and to determine on the course which will best promote the interets of the public.

The practicability of rendering the Greenbrier navigable has already been stated. The system which may be found best adapted for the improvement of James-river, will be equally applicable to the Greenbrier, and will be equally successful.—The one river and the other will be rendered more or less valuable as more or less labor and skill may be employed on them; but there can be no mistake in saying that, without incurring an expense which any would pronounce extravagant they are both capable of being brought into extensive use. Not only in descending, but in ascending also, these rivers may be navigated to great advantage.

With respect to New-river, a judgment cannot be formed quite so decisively, nor pronounced quite so

confidently. The difficulties are great, and deserve to be seriously considered.

The boat which conveyed your Commissioners, passed from the mouth of Greenbrier, to the place where their expedition terminated, without being taken out of the water, except at the Great Falls of New-river, and at the Great Falls of the Kanhawa. It was navigated in the usual way through all the other difficult places which abound in New-river, except two—both below Bowyer's Ferry. Through these it was conducted by ropes.

The boat was not laden, nor was it empty. In addition to the number of hands usually employed in navigation, it carried between two and three thousand weight. The greater part of this burthen was taken out in the most difficult places; but in many of considerable magnitude, it remained in the boat. Where the vessel was guided by ropes, the necessity of resorting to this expedient was occasioned solely by the intervention of rocks, which can be removed.

It is also worthy of notice, that this voyage was performed by boatmen, who, having never before seen the river, were reduced to the necessity of selecting their way at the moment, without the aid of previous information.

The only impediments to the descent of the boat, except at the two great falls already mentioned, were rocks lying so near the surface of the water as to strike the bottom while shooting over them. At the usual height of the river, these rocks would be entirely covered, and all danger from them be removed; but others would be placed in a situation to expose a boat to equal hazard. It is therefore necessary, even for the descending navigation, to open a plain and broad sluice through all the rapids and falls, so as to relieve boats navigating the river from all dan-

ger of being dashed against the rocks. This may be effected by removing some and blowing others.—This sluice may be so conducted as to graduate the falls where they are most sudden, and thereby, in some degree, to diminish the impetuosity of the current.

Brook's Falls, the Great Falls of New-river, and the Great Falls of Kanhawa, will probably require and admit of a different course.

The first of these, which is the least formidable of the three, will present three alternatives to the election of those who may be engaged in improving the navigation.

First—One or more locks, which may unquestionably be constructed at this place.

Second—A canal, which is already almost formed, on the north side of the river. Its completion would require that it be opened for a short distance, both where it would receive the water at the head of the falls and where it would empty itself below them.

To the eligibility of this canal, there can be but one objection. There may be impracticable rock, now hidden by the earth, so near the surface as to render this plan unadvisable.

Third—To open a sluice in the river, along its northern bank, and graduate the fall as far as may be compatible with that system of operation.

The Great Falls of New-river must be turned, by using a canal to be cut on the southern side, pursing nearly the tract of Richmond's mill-race. Should locks be employed, it will most probably be found advisable to place them in this canal. Should locks be dispensed with, there will be no difficulty in descending through this channel; but the toil of ascending, must, at this place, be considerable.

At the Great Falls of Kanhawa, there is, near

Morris's mill, a very eligible place for locks. If a canal be preferred, there is every reason to believe that the ground will admit of one, which may be so extended, and the fall thereby so graduated, as to afford a safe passage to loaded boats.

These observations are formed on the state of the river when viewed by your Commissioners.—It will readily occur, that they cannot judge with certainty of the changes which may be brought about by a great rise of water.

It would seem most probable, that by such rise the falls would be diminished, because the water at their feet would pass off less rapidly than at their head. But the apprehension cannot be entirely discarded, that in the narrows, which have been mentioned, the torrent would, in a flood, be too impetuous to be trusted. It is probable, that a moderate elevation of the water would rather facilitate the passage of the boats; at least of those descending the river; but that great floods would suspend the navigation.

Having stated their view of this subject, your Commissioners will only add their opinion, that the New-river may be relied on with certainty, for the transportation of articles from east to west.

On the practicability of using this channel of conveyance for the transportation of articles from the western country, towards the rivers which empty into the Atlantic, at least so much of it as lies between Bowyer's Ferry and the Great Falls of Kanhawa, they must speak with less confidence. The great difficulty consists in the velocity of the current. For several miles, between Bowyer's Ferry and the Falls, it is believed that a canal would be impracticable. The river is susceptible of no other improvement than may be made in its channel, or on

its banks. The current is often too rapid to be stemmed by a boat impelled by oars; and the water too deep to admit the use of poles. If a channel, sufficient for the safe passage of vessels, be opened, still some other means than oars or poles must be devised for impelling them up the stream.

Your Commissioners submit with diffidence the following proposition:

First—That boats impelled by steam may be employed successfully on New-river.

With the capacities of this powerful agent they are too little acquainted to speak with confidence of the use which may be made of it in the waters of Virginia. Elsewhere, it has certainly been applied with great advantage to the purposes of navigation. Neither have they that intimate knowledge of the velocity of the currents, against which vessels have been propelled by it, to compare them with that of New-river, and to hazard any decided opinion on the comparison.—But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified in its modifications, as to be applied in new and different situations, as their exigencies may require. It is believed, that a sufficient depth of water is certainly obtainable, but whether sufficient employment may be found, to justify the use of a vessel which must, in any state of things, be constructed at considerable expense, is a question your Commissioners cannot attempt to solve.

Second—Should it be found impracticable to apply steam with advantage to the navigation of New-river, it is respectfully suggested, that between the

Great Falls of Kanhawa and Bowyer's Ferry, resort may be had to horse labor.

To give this facility to the navigation, it will be necessary to construct a horse-way along the bank of the river at different heights, or at the most common height of the water. The objection that such way cannot be used at all times, will lose much of its force, when it shall be recollected that the navigation up the river will admit of being suspended for considerable intervals, with less injury to those who use it, than that which conveys to the western country articles imported for general consumption. The construction of this way, however, will require the blowing of a great quantity of rock, and will, consequently, be expensive.

Third—Should neither of these expedients be deemed eligible, it is respectfully suggested, that boats may be forced up the current, where it is too rapid for oars and too deep for poles, by the aid of chains fastened in the rocks on the bank.

Whatever doubts may be entertained respecting the navigation for boats ascending the river between the Great Falls of Kanhawa and Bowyer's Ferry; your Commissioners are entirely persuaded of the practicability of using it advantageously between the ferry and the mouth of Greenbrier.

In obedience to the law under which they have acted, your Commissioners will now proceed to state their ideas of the sums of money which will probably be necessary to open the river and make the road they have viewed.

No part of their duty has been performed with less confidence than this.

It will readily occur to the legislature, that no estimate of expense of executing so great a work as that which is to afford to the western parts of

Virginia the means of conveying the produce of their lands to market, and probably to connect Virginia commercially with her sister states in the west, can have just pretensions to exactness.—Were the system of improvement, and the extent to which that system is to be carried, accurately defined; any calculations which could now be made, even by professional men, of the sum necessary for its execution, might be found to vary widely from that which would be actually expended. Still less precision can be looked for in the calculations of your Commissioners.

But it must be apparent that the expense of improvement will essentially depend on the object for which the improvement shall be made.

If the views of the legislature shall be limited to the conveyance of articles, the growth of the upper country, down James-river, the cheapness of that conveyance will certainly depend much on the degree of perfection to which the improvement may be carried; but the river, being the only channel of conveyance, will, if merely practicable, be used to some extent.

If the views of the legislature shall extend to a free commercial intercourse with the western states, or any of them, the channel selected for that intercourse will come into competition with others which now exist or may be opened, and must recommend itself to a preference by the advantages it offers. With a view to the latter object, no improvement ought to be undertaken but with a determination to make it complete and effectual.

The estimates of expense were more particularly made by Mr. Caruthers, who has been personally engaged in opening the North Fork through Rock-

bridge. This gentleman made his calculations on the plan which has been adopted by the James-River Company, with such improvements as would better adapt that plan to steam navigation. According to his estimate, one hundred and ninety thousand dollars will be sufficient to accomplish the work from Beall's Bridge, or Crow's Ferry, to the Falls of the Great Kanhawa, including the road.—This estimate is formed on a comparison of the impediments to be removed, with those he had himself encountered in opening the North Fork of James-river. Some others of your Commissioners, who have too little knowledge of the labor necessary for the accomplishment of objects of this description, to confide themselves, in their own judgment, much less to recommend it to the confidence of others, are so impressed with the magnitude of the difficulties they have seen, as to be unable to persuade themselves that the work can be completed for the sum at which it has been estimated. That estimate does not appear to them to be extravagant, if the descending navigation alone be contemplated. To make the ascending navigation such as will entitle it to extensive use, and give this a preference over other routes, they submit, though with much diffidence, the opinion that at least a half a million, perhaps six hundred thousand dollars, will be requisite.

From the mouth of Dunlop's-creek to the mouth of Howard's creek, is twenty-eight miles and forty-four poles. From the first mentioned place to the summit of Alleghany mountain, is sixteen miles and thirty-six poles, and the elevation is nine hundred and forty-eight feet, which makes an angle with the horison of less than three-quarters of a degree. From the summit of the mountain to the mouth

of Howard's-creek, the distance is twelve miles and eight poles, and the descent is eight hundred and thirty-eight feet seven inches, making with the horison an angle of about three-quarters of a degree. There are no peculiarities attending this route, which will render any plan the legislature may prefer for turnpiking it, more costly in its application to this road, than to others which have been constructed in various parts of the United States. It is now at least equal to, perhaps better, than any other of equal distance in the same part of the country.

In presenting to the honorable the legislature the advantages which, in the opinion of your Commissioners, will probably accrue to this state from executing the work to which their report relates, it will be necessary to divide this subject, and to consider, separately—first, those which may reasonably be expected to result from executing it in part; next, those which are to be looked for from executing it in the whole.

Should the navigation of James-river be carried up to the mouth of Dunlop's-creek, and a turnpike road be made over the Alleghany mountain, although nothing further should be done, a considerable impulse will be given to the agriculture, and a valuable effect produced on the wealth and population of a considerable tract of country. It cannot reasonably be doubted, that Bath, a part of Botetourt, and a great part of Greenbrier, Monroe, and perhaps even Giles, would find a real interest in searching for a market on James-river, for the produce of their soil, if such safe and cheap conveyance were afforded them as might be given by the improvements which have been stated.—Agriculture

would mingle more than heretofore with grazing; and industry would flourish when the reward of industry should be attainable. Those more western countries, whose distance might forbid the attempt to transport grain manufactured into flour, or distilled into spirits, to the markets on James-river, might still be encouraged to bring to those markets, salt, salted provisions, and various manufactures of hemp. An increase of population would result, not only from the check which this state of things would give to emigration, but also from its operation on the inhabitants, in other respects.

Other parts of the state would derive corresponding advantages from their intercourse with a section of the country which would have more to sell and more to purchase than at present. By the augmentation of the wealth and population of a part, not only would those belonging to that part be improved in their circumstances, but the whole would be more powerful, and the public burdens being more divided, might press less heavily on each individual.

These advantages would probably be extended by improving the navigation of the Greenbrier also.

Should New-river be rendered a safe and easy channel of communication, between the Ohio and the commercial towns on James-river, the subject will assume a more important aspect, and the advantages may be estimated on a larger scale. Not only will that part of our own state which lies on the Kanawa and on the Ohio, receive their supplies and send much of their produce to market through James-river, but an immense tract of fertile country, a great part of the states of Kentucky and Ohio, will most probably give their commerce

the same direction. All that part of the state of Kentucky which lies above Louisville, and all that part of the state of Ohio whose trade would pass through the river of that name, might reasonably be expected to maintain a large portion of their commercial intercourse with the Atlantic states, through the James or the Potowmac. Certainly in a contest for this interesting prize, the states through which those rivers run have geographical advantages, the benefit of which they can lose only by supineness in themselves, or by extraordinary exertions in others. It is far from being impossible, that even the south-western parts of Pennsylvania may look down one of these rivers for their supplies of goods manufactured in Europe.

Let the importance attached by men best acquainted with the subject to the commerce of the west attest its value. The exertions which other states appear to be making to secure it, will probably awaken the attention of Virginia to that part of it which should naturally belong to her.

There is still another aspect in which this subject deserves to be viewed.

That intimate connection which generally attends free commercial intercourse, the strong ties which are formed by mutual interest, and the interchange of good offices, bind together individuals of different counties, and are well calculated to cherish those friendly sentiments, those amicable dispositions, which at present unite Virginia to a considerable portion of the western people. At all times the cultivation of these dispositions must be desirable but, in the vicissitude of human affairs, in that mysterious future, which is in reserve, and is yet hidden from us, events may occur to render their pre-

servation too valuable to be estimated in dollars and cents.

The advantages which may result to Virginia, from opening this communication with the western country, will be shared in common with her by the states of Kentucky and Ohio.

Considering it as a medium for the introduction of foreign articles into those states, it has claims to their serious attention.

The proposition that a nation finds its true interest in multiplying its channels of importation, admitting them to be equally convenient, is believed to be incontrovertible. In addition to those arguments in support of this proposition which belong to every case, the situation of the western states suggests some which are peculiar to themselves, and which well deserve their consideration.

The whole of that extensive and fertile country, a country increasing in wealth and population with a rapidity which baffles calculation, must make its importations up the Mississippi alone, or through the Atlantic states. When we take into view the certain growth of the country, we can scarcely suppose it possible that any commercial city on the banks of that river can keep pace with that growth, and furnish a supply equal to the demand. The unfriendliness of the climate to human life, will agricultural capital still more sensible. It will tend render this disparity between the commercial and still more to retard a population of that sound mercantile character, which would render some great city on that majestic river, a safe emporium for the western world.

In times of profound peace, then, the states on the Ohio would make sacrifices of no inconsidera-

ble magnitude, by restricting their importations to a single river. But, in time of war, their whole trade might be annihilated. When it is recollected that the Mississippi empties itself into the Gulph of Florida, which is surrounded by foreign territory; that the island of Cuba and the coast of East Florida completely guard the passage from its mouth to the ocean; that the immense commerce flowing down its stream, holds forth irresistible allurements to cruizers, the opinion seems well founded, that scarcely a vessel making for that place could reach its port of destination.

But the length of the voyage up the Mississippi and Ohio, must be attended with delay so inconvenient to persons engaged in commerce, as to render a shorter route, though not less expensive, more eligible. For importation of many articles, there is much reason to believe that a decided preference would always be given to the transportation through the United States, were that transportation rendered as easy as it is capable of being made.

The export trade during peace, so far as the articles exported were designed for a foreign market, would, more probably, pass exclusively down the Mississippi. But those articles which are consumed in the United States, as manufactures of hemp, would find their way to market through interior and shorter channels.

If the direct route through the Atlantic states would, for many purposes, be more eligible than that through the Gulph of Florida, which must be often connected with a coasting voyage to or from an Atlantic port, then the multiplication of those routes, if in themselves equal, by presenting a greater choice, and by accommodating more territory, must be desirable.

But your Commissioners are sanguine in the opinion, that the communication through the rivers they have viewed, if properly made, will possess advantages over every other, which cannot fail to recommend it to a large portion of the states of Kentucky and Ohio. All that part of the western country which draws its supplies and transports its produce through the river Ohio, and which lies east of Louisville and west of the Pennsylvania line, perhaps a part of the state of Pennsylvania itself, could probably use this route more advantageously than any other; unless, indeed, that through the Potowmac, connected with Monongehela, Cheat, or Yohaghena, should come into competition with it, for the eastern part of the country just mentioned.

That it would, for the importation of articles from Europe, and from the east, (with a few exceptions) and for the exportation of those which are consumed in the United States, be preferred to the voyage through the Mississippi, unless the introduction of steam boats should essentially vary the present state of things, may safely be assumed from the fact, that a land carriage between Pittsburg and Philadelphia or Baltimore, and a carriage up or down the Ohio, are now used for the purposes described, in preference to the route by New Orleans.

The present price for the transportation of goods from Philadelphia or Baltimore to Pittsburg, is understood to be from seven to ten dollars per hundred weight.

The price of transportation from Richmond, up James-river to the mouth of Dunlop's-creek, thence across the Alleghany to Greenbrier, and down to the mouth of the Great Kanhawa, will certainly depend on the goodness of the road and the degree of perfection to which the navigation may be carried. Your

Commissioners believe that a sound national economy would dictate such improvements as would reduce the price of freight, although the labor employed in making them might be procured by an augmentation of toll, and some expenditure of public money.

Should the navigation of James-river be rendered as safe and as easy as may be reasonably expected, and the Greenbrier and New-river be improved, in such manner as the object will justify, your Commissioners believe they hazard nothing in saying, that the expense of transporting one hundred weight from Richmond to the mouth of the Great Kanhawa, will not exceed half the price of transporting the same weight from Baltimore or Philadelphia, to the same place.

The immense works meditated in New York, will certainly, if executed, give to that state great advantages in a competition for the trade of the lakes. But if other convenient and more direct channels be opened, it is not probable that the commerce of the Ohio will take the circuitous route by the lakes.

The expense of transportation from New York through the canal contemplated, can only be conjectured. The character of the rivers which would be used, is not well understood, but they must possess many advantages to give them a preference over the direct way through Virginia to the Ohio.

Your Commissioners, however, take the liberty to repeat, that the success of any attempt to obtain that share of the commerce of the west, to which this state, from her geographical situation and her rivers, would seem to be entitled, must depend entirely on the safety and cheapness of her navigation. A mode of transportation by water in itself insecure, or so

laborious as to be little less expensive than carriage by land, will never change the channels in which this trade already flows.

The advantages to accrue to the United States, from opening this new channel of intercourse between the eastern and the western states, are those which necessarily result to the whole body from whatever benefits its members, and those which must result to the United States, particularly from every measure which tends to cement more closely the union of the eastern with the western states.

In those operations, too, which the exigencies of government may often require, this central channel of communication by water may be of great value. For the want of it, in the course of the last autumn, government was reduced to the necessity of transporting arms in waggons from Richmond to the falls of the great Kanhawa. A similar necessity may often recur.

All which is respectfully submitted to the General Assembly, by

JOHN MARSHALL,
JAMES BRECKENRIDGE,
WILLIAM LEWIS,
JAMES M'DOWELL,
WILLIAM CARUTHERS,
ANDREW ALEXANDER.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 2, Original.

VIRGINIA

vs.

WEST VIRGINIA.

COPIES AND EXTRACTS FROM CERTAIN STATUTES OF WEST VIRGINIA IN REFERENCE TO PROPERTY TRANSFERRED BY VIRGINIA TO WEST VIRGINIA.

Copy of act of Legislature of West Virginia, passed February 26, 1864, entitled "An act to provide for the recovery of certain claims transferred to this State by the State of Virginia."

"*Be it enacted by the Legislature of West Virginia:* Where any person who has heretofore acted as sheriff or collector of the revenue under the laws of the State of Virginia, within the territory which is now included in this State, has failed to account for and pay over the taxes and money, or any part thereof, with which he was chargeable, and the claim of the State of Virginia to the amount so in arrear has become the property of or been transferred to this State, it shall be the duty of the auditor to audit and state the account of such delinquent; and for that purpose the books of the commissioner of the revenue, lists of licenses, and delinquent lists,

now in the possession of any clerk of a circuit court or recorder, shall be delivered to the auditor, if he so require, and he shall carefully ascertain and state therefrom the amount with which the said delinquent is chargeable, and cause proper proceedings to be instituted and prosecuted for the recovery thereof from the said delinquent and his sureties, or any of them. The account so rendered and stated by the auditor shall be *prima facie* evidence of the amount due; and no judgment or pretended judgment obtained against the said delinquent or his sureties, or any of them, shall be a bar or defense to any proceedings under this act, except so far as such judgment or pretended judgment may have been actually collected or paid."

Passed February 26, 1864 (Acts 1864, p. 13).

"Joint resolution requiring certain duties of the auditor and Board of Public Works.

"*Resolved by the Legislature of West Virginia:* "1. That the auditor be and he is hereby directed to communicate with the auditor of the State of Virginia, and respectfully request from him a statement of the stock held by the State of Virginia in any of the banks of the State on the first day of January, 1861, then doing business within the boundaries of this State, showing the amount of stock, and in what banks.

"2. That the auditor be and he is hereby authorized to demand from any of the banks of this State, who were doing business within its boundaries on the first day of January, 1861, a full and detailed statement of the interest of the State of Virginia in each of said banks at that time, and what was the amount thereof; whether the same has been altered or changed in any wise, and whether any dividends have been paid on the same, and when, and how much.

"3. That the auditor do forthwith institute an inquiry into the matter of winding up the affairs of the Northwestern Bank of Virginia, as provided for by the act of the twenty-fifth February, 1867, what was done under the same by the commissioners appointed by virtue thereof, and whether any report was ever made by said commissioner; if so, when, and to whom?

"4. In case of the refusal of any of said banks to make any disclosures required of them touching the interest of this State therein, or to furnish the information herein desired,

the Board of Public Works are hereby directed to take all necessary legal steps in the premises."

Adopted February 20, 1871 (Acts 1871, p. 280, No. 25).

The following are extracts from the Code of West Virginia:

CHAPTER CXVII..

"SECTION 2. The auditor, under the direction of the Governor, and at the expense of the State, shall adopt proper measures to obtain accurate and authentic returns (where he is not already in possession of such returns) of all real estate in this State which, since the tenth day of March, eighteen hundred and thirty-two, has been returned delinquent for the non-payment of taxes to the State of Virginia, or to this State; except real estate, which, before the twentieth day of June, eighteen hundred and sixty-three, was returned delinquent for the non-payment of taxes to the State of Virginia, where the taxes, exclusive of interest or damages, do not exceed twenty dollars.

"3. Of the real estate mentioned in the preceding section, except therein excepted, and of all real estate hereafter returned delinquent for non-payment of taxes, a record shall be kept by the auditor in his office. And until sale thereof as hereinafter directed, any person having a right to redeem the same may pay into the treasury the taxes on any such real estate as hereinafter provided."

Acts 1872-3, p. 309.

Same chapter, section 41:

"All lands in this State, waste and unappropriated, or heretofore or hereafter for any cause forfeited or escheated to the State of Virginia, or this State, or purchased by either and become irredeemable, not redeemed, released, transferred or otherwise disposed of, the title thereto shall remain in this State till such sale as is hereinafter mentioned be made shall, by proceedings in the circuit court of the county in which the lands, or a part thereof, are situated, be sold to the highest bidder.

"The former owners of any such land shall be entitled to receive the excess of the sum for which the land may be sold over the taxes charged or chargeable thereon, or which if the land had not been forfeited, would have been charged or

chargeable thereon, since the formation of this State with interest at the rate of twelve per centum per annum, and the cost of the proceedings, if his claim be filed in the circuit court that decrees the sale within two years thereafter."

Same, p. 333.

Same chapter, section 43:

"The proceeds of the real estate sold by a sheriff or collector under this chapter shall be paid into the treasury within the time prescribed in the eighth section of this chapter."

Same, p. 334.

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VIRGINIA VS. WEST VIRGINIA

VOL. 5

NAMES OF RESIDENTS OF WEST VIRGINIA AND OTHERS HOLDING OR OWNING . . . . . .

BONDS, REGISTERED STOCK,

OR

DEFERRED CERTIFICATES

OF THE

COMMONWEALTH OF VIRGINIA

PRINTED BY ORDER OF

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NAMES OF OWNERS, ETC.

On the 19th day of July, 1911, the Board of Public Works of the State of West Virginia, adopted the following order:

> "WHEREAS, There has been much demand in connection with the Virginia Debt Suit for the names of the persons who are holders of the so-called 'West Virginia Deferred Certificates,' issued by the State of Virginia with respect to the one-third of Virginia's debt prior to January 1, 1861, which that State arbitrarily set aside as the portion of such debt that the State of West Virginia should assume; and,
>
> "WHEREAS, A list of the persons owning such certificates has been procured from Messrs. Brown Brothers & Company, of New York City, the depositary of such certificates, and from the Second Auditor of Virginia, so far as the names of such owners are known and can be procured; therefore, it is
>
> "*Ordered*, That the list of the names and the addresses of the owners of such certificates, so procured, and also the names and the addresses of the owners of the Virginia coupon bonds and certificates of registered stock held by citizens of West Virginia as appears in the Journal of the Constitutional Convention of 1872, be printed in pamphlet form, for free distribution among the people of this State, and that six thousand (6,000) copies of such pamphlet be published." (Record Board of Public Works, No. 6.)

Present interest in this matter arises largely from the suit of the Commonwealth of Virginia against the State of West Virginia, instituted in the Supreme Court of the United States in the year 1906, to recover from West Virginia her "equitable proportion" of the public debt of Virginia existing on the first day of January, 1861, and amounting then to the sum of $33,897,073.82.

Under the Funding Acts of the General Assembly of Virginia, passed in 1871, 1879, 1882 and 1892, Virginia undertook to fund said debt and accrued interest. The owners of the old bonds were required to surrender the same for cancellation, and accept for such old bonds new bonds for two-thirds of the amount of the old

bonds and interest and a certificate for the other one-third, which one-third Virginia arbitrarily declared was the portion of the debt for which West Virginia was liable. These certificates are known as "Virginia Deferred Certificates," and often are called "West Virginia deferred Certificates."

After several years of effort these certificates were gathered together, and finally placed in the hands of Brown Brothers & Company, of New York City, as depositary, who, previous to the bringing of said suit, turned the same over to the Virginia Debt Commission. When the holder of any of these certificates turned the same over to the depositary, he received a receipt in the form of an engraved certificate, of which the following is a copy:

VIRGINIA DEBT CERTIFICATES.

No..... $.....

Receipt of

BROWN BROTHERS AND COMPANY.

This Certifies that Brown Brothers and Company have received the following certificate issued by the State of Virginia on account of that part of her Funded Debt assumed to be the proportion of the State of West Virginia, namely:

Certificate No.....

issued to .....

for ..... Dollars

....

....

Messrs. Brown Brothers and Company agree to hold said certificate in accordance with the terms of a certain agreement, dated July 15th, 1898, between John Crosby Brown, George Coppell, J. Kennedy Tod, and Clarence Cary, parties of the first part, and such persons as deposit their securities thereunder, parties of the second part. This receipt is negotiable, and all the interest of the owner of said certificate passes by the delivery hereof.

N. B. The deposited securities have been carefully examined, but no responsibility for their genuineness is undertaken by the issue of this certificate.

New York .....19..

It is understood that it is the above certificates of the depositary, which are negotiable and pass by delivery, that are listed and sold in the New York markets.

In connection with the above depositary's certificate, Brown

Brothers & Company, in a letter of March 15, 1911, to the Attorney General of West Virginia, says:

> "We regret to say that our records do not show the names or post office addresses of the certificate holders, either as of the first day of October, 1906, or of the first day of January, 1911, as you request. Our records show the names of the persons to whom Virginia issued the certificates, together with Virginia's number and the amount of each certificate respectively.
>
> "For your information we enclose cancelled copy of one of our receipts. These receipts are transferable by bearer and pass by delivery like any bearer bond.
>
> "The only method we have of communicating with holders of certificates is by advertising in the daily press of New York and London, as provided in the Depositing Contract.
>
> "We have had an estimate made of what it will cost to have the list of the holders of Virginia Certificates, as noted above, copied from our records for you, and are advised that the cost will be not to exceed $250. If you desire to have this information, and will advise us accordingly, we shall be pleased to have the work begun at once."

In a letter of March 24, 1911, Brown Brothers & Company say:

> "We can furnish you with the names (but not the addresses) of the persons to whom the State of Virginia issued the West Virginia Deferred Debt Certificates in so far as they have been deposited with us. Our Receipts are 'bearer' receipts, and our only means of communicating with the holders is by advertising.
>
> "Replying to your further question, our records do not show those persons residing in West Virginia who hold bonds and have not deposited them to receive certificates, and we have no means of ascertaining this information."

Again, in a letter of April 13, 1911, Brown Brothers & Company say:

> "As far as we are informed, a large part of the certificates deposited with us are held by the original holders of the old Virginia bonds, and have not been acquired by subsequent purchasers. These original holders will be shown by our list, but what transfers have been made will not be shown, for the reason stated in our previous letter."

The aid of the Virginia Debt Commission was invoked to obtain the names and addresses of the owners of the Virginia Deferred Certificates, but without success. Under date of January 18, and March 18, 1911, the Hon. John B. Moon, Chairman of that Commission, writes:

> "I beg to say that the exhibits show that certificates to the amount of $13,173,435.41, as of January 6th, 1906, had been deposited with the New York Depositing Committee, consisting of John Crosby Brown, chairman, R. P. Chew, Wm. C. Legendre, Clarence Carey, J. Kennedy Todd, George F. Baker and Bartlett S. Johnson; and of which committee Brown Brothers & Company were the depository; which certificates were on the date last named transferred to and placed at the disposal of the Virginia Commission, as shown in said exhibits.
>
> "Since the date last above named the said Depositing Committee have placed under the control and disposition of the Virginia Debt Commission $333,426.36 more of said certificates, upon the conditions above named, making the whole amount now under control of the Virginia Commission $13,506,861.77.
>
> "There were, as I understand it, a large number of receipts given by the above-named Depository of the Depositing Committee for these certificates, which were in large part for fractional amounts, and many of these receipts have doubtless been transferred since they were issued, so that a list of the original depositors would not be any certain guide as to the present claimants."
>
> "I do not believe that over $5000 or $7500 of these certificates appeared to come from any one in West Virginia, but this, of course, is only a matter of impression and belief on my part."

In response to a resolution of the West Virginia State Senate, adopted on February 4, 1911, the Attorney General of West Virginia stated:

> "The pleadings in the case do not disclose the names nor the residences of the holders of the Virginia, or so-called 'West Virginia certificates;' it was not a subject of inquiry referred to the Master in the order of reference entered by the court, and for that reason no evidence could be taken before the Master on that subject; after the completion of the Master's report counsel for West Virginia petitioned the Supreme Court of the United States on the 18th day of April, 1910, for

the right to take testimony on matters not referred to said Special Master, the primary object of which was for the purpose of ascertaining the information asked for in section six of said Senate resolution, and after consideration of the petition the court refused to direct the taking of such testimony; subsequently the Attorney General endeavored to ascertain this information by letter and by personal application from the depositaries of such certificates in New York City, and from the Honorable John B. Moon, Chairman of the Virginia Debt Commission, and that such efforts have not been successful. The Attorney General, therefore, does not have such information and he is unable to furnish the same to your honorable body."

The Board of Public Works now exhibits to the public all the information it has in its possession respecting the ownership of said bonds, stocks and certificates, which is all it has been enabled to obtain; and begins with the list reported by the Hon. Arthur I. Boreman, the first Governor of the State, to the Constitutional Convention of 1872, (see pp. 78-85 of the Journal of the Constitutional Convention of 1872,) as follows:

GOVERNOR BOREMAN'S LIST.

STATE OF WEST VIRGINIA,
EXECUTIVE DEPARTMENT,
WHEELING, February 22, 1869.

To the Senate and House of Delegates:

On the twenty-third day of January, 1868, the Legislature adopted the following resolution:

"*Resolved by the Legislature of West Virginia:*

"That the Governor of this State be requested to adopt such steps as he may deem proper and expedient to ascertain the amount of registered and coupon bonds of the State of Virginia, held and owned by citizens of the State of West Virginia, on the twentieth day of June, eighteen hundred and sixty-three, and still so held by citizens of this State, together with the names of the persons holding the same, and the several amounts held by them."

And on the sixth day of November, 1868, I sent a notice to, and had it published in, the newspapers in the different sections of the State, setting forth that on the first day of December, 1868, and

thereafter until the first day of February, 1869, I should proceed to perform the duty devolved on the Governor by said resolution. A copy of which notice is hereto attached. I herewith transmit an account of the bonds presented to me, in pursuance of said resolution and notice, and which, in my judgment, are comprehended by the terms of the resolution. There were others presented, some of which were issued by Virginia during the rebellion, and others since, and others again, owned by persons who were not citizens of the state at the dates mentioned in the resolution, of which I have taken a description, but have not included them in the accompanying account because, in my opinion, they did not come within the terms of the said resolution.

A. I. BOREMAN.

(*Copy of Notice to Bondholders.*)

STATE OF WEST VIRGINIA,
EXECUTIVE DEPARTMENT,
WHEELING, Nov. 6, 1868.

The undersigned will proceed, on the first day of December next, and thereafter until the first day of February, 1869, to perform the duty required of him by a resolution adopted by the Legislature of West Virginia, on the twenty-third day of January, 1868, which resolution is as follows:

> "*Resolved by the Legislature of West Virginia:*
> "That the Governor of this State be requested to adopt such steps as he may deem proper and expedient to ascertain the amount of registered and coupon bonds of the State of Virginia, held and owned by citizens of the State of West Virginia, on the twentieth day of June, eighteen hundred and sixty-three, and still so held by citizens of this State, together with the names of the persons holding the same, and the several amounts held by them."

The undersigned deems it his duty to inspect each bond before he can report its existence, and, therefore, the persons who hold bonds which they wish reported, under the above resolution, are required to produce the same, before the undersigned, in order that such inspection may be had.

An affidavit of the claimant, or some one else, will also be required that the bonds were "held by such claimant on the twentieth day of June, 1863," and "were still so held" by him or her

on the day the above resolution was adopted, to-wit: On the twenty-third day of January, 1868, and that such claimant was a citizen of West Virginia on both of the days mentioned.

A. I. BOREMAN, *Governor.*

LIST OF VIRGINIA COUPON BONDS AND CERTIFICATES OF REGISTERED STOCK HELD BY CITIZENS OF WEST VIRGINIA, AND WHICH HAVE BEEN PRESENTED AND INSPECTED BY THE GOVERNOR UNDER JOINT RESOLUTION NO. 2 OF THE LEGISLATURE, ADOPTED JANUARY 23, 1868.

Held and Owned by Hon. Charles J. Faulkner, of Martinsburg:

Sixteen coupon bonds of $1,000 each, dated July 1, 1857, issued under act of General Assembly of May 25, 1852; interest at 6 per cent; payable semi-annually at New York, and paid up to and including July 1, 1868; redeemable after January 1, 1891; Nos. 10,412, 10,413, 10,416 to 10,429, both inclusive	$16,000.00
One coupon bond of $1,000, No. 9,185, dated July 1, 1854, redeemable after July 1, 1888; one coupon bond of $1,000, No. 12,401, dated January 2, 1860, redeemable after January 1, 1894; two coupon bonds of $1,000 each, Nos. 3,495 and 4,114, dated January 3, 1853, redeemable after January 1, 1887, and one coupon bond of $1,000, No. 8,077, dated January 2, 1854, redeemable after July 1, 1887, all issued under act of General Assembly of May 25, 1852; interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868,.....	5,000.00
One coupon bond of $1,000, No. 2,635, and one coupon bond of $500, No. 1,090, both dated July 1, 1851, and issued under act of General Assembly of March 29, 1851, redeemable after July 1, 1886; interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868, ...	1,500.00
One certificate of registered stock for $5,000, No. 1,453, dated January 26, 1847, interest at 6 per cent, payable semi-annually at the Treasury of Virginia, issued under act of General Assembly of March 21, 1837, providing for payment of subscription of State to James River and Kanawha Company; irredeemable for 20 years from November 20, 1838. Date to which interest was last paid unknown.....	5,000.00
One certificate of registered stock for $100, No. 540, dated January 13, 1859, interest at 6 per cent, payable semi-annually at the Treasury of Virginia; issued under act of General Assembly of March 18, 1858, "for the relief of certain internal improvement companies and holders of debts on account of construction of State works, &c." Irredeemable for 34 years from January 1, 1858. Date to which interest was last paid unknown.....	100.00

Twenty-two coupons of $10 each ($220), payable at New York July 1, 1867; twenty-two coupons of $10 each ($220), payable at New York July 1, 1868; twenty-two coupons of $10 each ($220), payable at New York July 1, 1868; one coupon of $5, payable at New York July 1, 1867; one coupon of $5, payable at New York January 1, 1868, and one coupon of $5 payable at New York July 1, 1858, all detached from bonds 675.00

$28,275.00

Held by Robert Crangle, Esq., of Wheeling, as Trustee for Hite Opie, infant son of Julia C. Opie (late Julia C. Paull), wife of Hiram Opie:

One coupon bond of $1,000, No. 10,467, dated May 1, 1858, redeemable after January 1, 1891; and two coupon bonds of $1,000 each, Nos. 5,105 and 5,216, dated January 3, 1853; redeemable after January 1, 1887; all issued under act of General Assembly of May 25, 1852; interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1863, ... $3,000.00

One coupon bond of $4,000, No. 133, dated July 1, 1851, redeemable after July 1, 1886, issued under act of General Assembly of March 29, 1851; interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1863, ... 1,000.00

$4,000.00

Held and Owned by Mrs. Mary A. Jamison, of Wheeling:

Two coupon bonds for $500 each, and one coupon bond for $1,000, dated July 1, 1851, redeemable after July 1, 1886, issued under act of General Assembly of March 29, 1851; interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868, ... $2,000.00

One coupon bond for $1,000, dated January 2, 1860, redeemable after January 1, 1894, issued under act of General Assembly of May 25, 1852; interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868, ... 1,000.00

$3,000.00

Held by Mrs. Mary A. Jamison, of Wheeling, as Guardian for Antonia C., Jennie, Regina, Irene, Clara and Alphosus Jamison:

One coupon bond for $1,000, dated May 4, 1858, redeemable after January 1, 1891, issued under act of General Assembly of May 25, 1852; interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1865, also July, 1867, and January 1868, coupons paid..... $1,000.00

One coupon bond for $500, dated July 1, 1851, redeemable after July 1, 1888, issued under act of General Assembly of March 30, 1851; interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868,..... 500.00

$1,500.00

Held by Bishop R. V. Whelan, Alonzo Loring and Henry Moore, as Executors of the Estate of Philip Reilly, deceased, late of Ohio County:

One coupon bond for $1,000, No. 6,867, dated August 4, 1853, redeemable after January 1, 1887; one coupon bond for $1,000, No. 11,033, dated January 1, 1859, redeemable after January 1, 1893; two coupon bonds for $1,000 each, Nos. 4,753 and 3,372, dated January 3, 1853, redeemable after January 1, 1887; two coupon bonds for $1,000 each, Nos. 13,633 and 13,628, dated January, 1861; two coupon bonds for $1,000 each, Nos. 6,866 and 7,072, dated August 4, 1853; all issued under act of General Assembly of May 25, 1852; interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1861; coupons for July, 1867, and January, 1868, also paid..... $8,000.00

Three coupon bonds for $1,000 each, Nos. 314, 1,647 and 3,026, dated July 1, 1851, redeemable after July 1, 1886; all issued under act of General Assembly of March 29, 1851, interest at 6 per cent, payable semi-annually at New York, paid up to and including January 1, 1861. Coupons of July, 1867, and January, 1863, also paid..... 3,000.00

$11,000.00

Held and Owned by Samuel A. McMechen, of Hardy County:

One registered bond for $1,500, No. 4,347, dated April 16, 1863, bearing 6 per cent interest per annum from January 1, 1863. Date to which interest was last paid unknown..... $1,500.00

Held by the Regents of the West Virginia University:

One registered bond for $1,358, dated April 2, 1841, issued to trustees of Monongalia Academy and transferred to Agricultural College, now West Virginia University, irredeemable for 20 years from December 16, 1840, interest at 6 per cent, payable semi-annually, and from January 1, 1841, paid to January 1, 1861, issued under act of General Assembly of March 30, 1837, entitled "An act to provide for the construction of a road from Ice's Ferry on Cheat River to the Pennsylvania line"..... $1,358.00

One registered bond for $1,644, dated April 24, 1849, issued to trustees of Monongalia Academy and transferred to Agricultural College, now West Virginia University; irredeem-

able for 20 years from November 3, 1848, interest at 6 per cent, payable semi-annually, from April 24, 1849, and paid to January 1, 1861; issued under act of General Assembly of January 17, 1848, entitled "An act to provide for the completion of the Southwestern Turnpike Road"..... 1,644.00

$3,002.00

Held by George W. Jackson, of Lewis County:

One coupon bond for $1,000, dated January 2, 1854, No. 8,389, with interest at 6 per cent, payable semi-annually and paid up to and including January 1, 1861,..... $1,000.00

One coupon bond for $1,000, dated July 1, 1854, No. 8,733, with interest at 6 per cent, payable semi-annually and paid up to and including January 1, 1861,..... 1,000.00

$2,000.00

Held by Richard P. Camden, of Lewis County:

One certificate of registered stock, No. 3,441, dated May 26, 1858, for $2,300, issued to Richard P. Camden, with interest from January 1, 1858; one certificate of registered stock No, 556, dated January 18, 1859, for $700, issued to Richard P. Camden, with interest from January 1, 1859, and one certificate of registered stock, No. 2,011, dated June 6, 1859, for $1,300, issued to Richard P. Camden, with interest from January 1, 1859. Date to which interest was last paid unknown $4,300.00

Held by Richard Marstiller, of Randolph County:

One registered bond for $100, dated August 19, 1850,..... 100.00

Held by George H. Lee, of Harrison County:

One registered bond for $4,000, No. 834, dated July 29, 1851, due 25 years from January 1, 1851; interest at 6 per cent, payable semi-annually, and paid to July 1, 1861, also 4 per cent of interest paid for the year 1867..... $4,000.00

One registered bond for $1,500, No. 427, dated May 23, 1856, due 34 years from January 1, 1856; interest at 6 per cent, payable semi-annually, and paid to July 1, 1861,..... 1,500.00

One registered bond for $500, No. 1,254, dated February 2, 1858, due 20 years from April 17, 1847; interest at 6 per cent, payable semi-annually, and paid to July 1, 1861,..... 500.00

Ten registered bonds for $1,000 each, Nos. 145 to 154, both inclusive, dated July 11, 1860, due 24 years from January 1, 1860; interest at 6 per cent, payable semi-annually, and paid to July 1, 1861, ... 10,000.00

$16,000.00

Held by John Cowan, of Ohio County:

One coupon bond for $1,000, No. 10,295, dated July 1, 1854, redeemable after July 1, 1888; issued under act of General Assembly of May 25, 1852, with interest at 6 per cent. payable semi-annually at New York, and paid up to and including January 1, 1861, ... $1,000.00

Held by William G. Brown, of Preston County:

Two coupon bonds for $1,000 each, Nos. 10,539 and 10,540, dated May 20, 1858, with interest at 6 per cent, payable semi-annually and paid up to and including January 1, 1861; also 2 per cent of interest paid on July 1, 1867, and January 1, 1868, ...

One registered bond for $300, dated February 15, 1861; one registered bond for $1,400, dated February 14, 1860; one registered bond for $700, dated February 14, 1860; one registered bond for $1,000, dated March 23, 1858; and one registered bond for $200, dated March 23, 1858; all bearing interest at 6 per cent, payable semi-annually and paid up to and including January 1, 1861, also 2 per cent of interest paid on July 1, 1867, and January 1, 1868,..... $2,000.00

3,600.00

$5,600.00

Held and Owned by Thomas Maslin, of Hardy County:

Four coupon bonds for $1,000 each, Nos. 9,879, 9,932, 9,882 and 9,314, dated July 1, 1854, redeemable after July 1, 1888; issued under act of General Assembly of May 25, 1852, interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1868,..... $4,000.00

Two coupon bonds for $1,000 each, Nos. 750 and 2,413, and two coupon bonds for $500 each, Nos. 777 and 1,106, dated July 1, 1851, redeemable after July 1, 1886; issued under act of March 29, 1851; interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868, ... 3,000.00

Two coupon bonds for $1,000 each, Nos. 7,209 and 7,636, dated August 4, 1853, redeemable after January 1, 1887; one coupon bond for $1,000, No. 4,963, dated January 3, 1853, redeemable after January 1, 1887; and one coupon bond for $1,000, No. 8,053, dated January 2, 1854, redeemable after July 1, 1887; all issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868,..... 4,000.00

One coupon bond for $1,000, No. 4,982, dated January 3, 1853, redeemable after January 1, 1887; issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually, and paid up to and including January 1, 1868,..... 1,000.00

$12,000.00

Held by Thomas Maslin, as Trustee of Mrs. Rachel F. McNeil, of Hardy County:

Two coupon bonds for $500 each, Nos. 942 and 944, dated July 1, 1851; redeemable after July 1, 1886; issued under act of March 29, 1851, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868, ... $1,000.00

Held by J. M. Hopewell, as Executor of the Estate of John Hopewell, deceased, of Hardy County:

Two coupon bonds for $500 each, Nos. 1,030 and 1,190, dated July 1, 1851, redeemable after July 1, 1886; issued under act of March 29, 1851, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1866, ... $1,000.00

Held by Miss Ann Seymour, of Hardy County:

One coupon bond for $1,000, No. 5,561, dated August 4, 1853, redeemable after January 1, 1887; issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868,.. $1,000.00

Held by Mrs. Sidney Seymour, of Hardy County:

One coupon bond for $1,000, No. 6,567, dated August 4, 1853, redeemable after January 1, 1887, issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1868,.. $1,000.00

Held by Isaac Chrisman, of Hardy County:

One coupon bond for $1,000, No. 1,667, dated July 1, 1851, redeemable after July 1, 1886; issued under act of March 29, 1851, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1868,.. $1,000.00

One coupon bond for $1,000, No. 4,079, dated January 3, 1853, redeemable after January 1, 1887; issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1868, ... 1,000.00

$2,000.00

Held by Hezekiah Clegget, of Hardy County:

One coupon bond for $1,000, No. 6,931, dated August 4, 1853, redeemable after January 1, 1887; issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1867,.. $1,000.00

One coupon bond for $500, No. 260, dated July 1, 1851, redeemable after July 1, 1886; issued under act of March 29,

1851, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including July 1, 1867..... 500.00

$1,500.00

Held by Mrs. Mary Ann Branson, of Hardy County:

One coupon bond for $1,000, No. 966, dated July 1, 1851, redeemable after July 1, 1886; issued under act of March 29, 1851, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1868,..... $1,000.00

Two coupon bonds for $1,000 each, Nos. 8,690 and 9,432, dated July 1, 1854, redeemable after July 1, 1888; issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1868, ... 2,000.00

$3,000.00

Held by Mrs. Sarah M. Inskeep, of Hardy County:

One coupon bond for $1,000, No. 5,174, dated January 3, 1853, redeemable after January 1, 1887; issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1868, ... $1,000.00

One coupon bond for $1,000, No. 8,089, dated January 2, 1854, redeemable after July 1, 1887, issued under act of May 25, 1852, redeemable after July 1, 1887, issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1868, ... 1,000.00

Two coupon bonds for $1,000 each, Nos. 9,313 and 9,929, dated July 1, 1854, redeemable after July 1, 1888; issued under act of May 25, 1852, with interest at 6 per cent, payable semi-annually at New York, and paid up to and including January 1, 1868, ... 2,000.00

$4,000.00

Held by Lloyd Lowndes, of Clarksburg:

One coupon bond for $1,000, No. 1,505, dated July 1, 1851, redeemable after July 1, 1886, interest paid to July 1, 1867,..... $1,000.00

Registered bond No. 1,292, dated September 19, 1856, for $300; registered bond No. 2,003, dated January 26, 1857, for $400; registered bond No. 2,042, dated February 2, 1857, for $500; registered bond No. 265, dated October 27, 1858, for $500; registered bond No. 1,433, dated November 25, 1858, for $100, irredeemable for 20 years, and interest paid to January 1, 1861, ... 1,800.00

Bond of James River & Kanawha Co., No. 495, dated December

11, 1848, guaranteed by State of Virginia, interest paid to January, 1861, ... 1,000.00

$3,800.00

Held by Nathan Goff, Sen., of Clarksburg:

One registered bond, No. 517, for $200, dated May 29, 1856, irredeemable for 34 years; interest at 6 per cent, payable semi-annually from May 1, 1856, and paid to January 1, 1861; issued under act of March 17, 1856,..... $200.00

$200.00

Held by John A. Truslow, of Kanawha County, as Commissioner for the Infant heirs of Ezra Walker, deceased:

One registered bond for $150, No. 247, dated January 8, 1856, issued to John A. Truslow, as commissioner for infant heirs of Ezra Walker, deceased, under act of January 11, 1837, authorizing subscription by State to Richmond & Petersburg Railroad Co., irredeemable for 20 years from June 11, 1838, and bearing interest at 6 per cent from January 1, 1856, interest paid up to January 1, 1862,..... $150.00

One registered bond for $330, No. 2,014, dated January 8, 1856, issued to same under act of March 22, 1850, providing for the negotiation of loans for purposes of internal improvement, irredeemable for 25 years from January 1, 1851, and bearing interest from January 1, 1856, the same paid up to January 1, 1862, ... 330.00

One registered bond for $200, No. 3,018, dated January 8, 1856, issued to same under act of March 21, 1837, providing for payment of subscription of State to James River & Kanawha Company, irredeemable for 20 years from May 22, 1868, bearing interest from January 1, 1856, the same paid up to January 1, 1862, ... 200.00

One registered bond for $1,000, No. 1,189, dated January 11, 1856, issued to same, under act of March 1, 1847, "authorizing Board of Public Works to purchase 2-5 of the stock of Alexandria Canal Company," irredeemable for 20 years from April 17, 1847, bearing interest from January 1, 1856, the same paid up to January 1, 1862,..... 1,000.00

One registered bond for $1,200, No. 3,316, dated March 13, 1857, issued to same under act of March 21, 1837, "providing for payment of subscription of State to James River & Kanawha Company," irredeemable for 20 years from March 27, 1839, bearing interest from July 1, 1856, the same paid to January 1, 1862, ... 1,200.00

One registered bond for $1,800, No. 2,099, dated April 23, 1856, issued to same under act of March 22, 1850, "providing for negotiation of loans for purposes of internal improve-

ment,'' irredeemable for 25 years from January 1, 1851, bearing interest from January 1, 1856, the same paid up to January 1, 1862, ... 1,800.00

$4,680.00

Held by Joshua Bodley, of Wheeling:

One certificate of registered stock, for $700, dated January 15, 1858, issued to himself, bearing interest at 6 per cent, payable semi-annually at the Treasury of Virginia, from January 1, 1858, irredeemable for 34 years from January 1, 1856; date to which interest was last paid unknown..... $700.00

Held by Lewis Summers, of Kanawha County, as Administrator de bonus non of Lewis Summers, deceased, late of Kanawha County:

One bond of the James River & Kanawha Company, for $5,000, issued to George W. Summers, as executor of Lewis Summers, deceased, and guaranteed by the State of Virginia, No. 182, dated June 13, 1848, and bearing interest at 6 per cent, payable semi-annually at the office of the company, and paid up to January 1, 1861, redeemable after 30 years from January 1, 1840, ... $5,000.00

Held by W. E. G. Gillison, of Kanawha County, as Administrator of Mary Jane Cox, deceased, late of Kanawha County:

One registered bond No. 1,968, for $1,100, issued to Mary Jane Cox on the 16th of May, 1859; one registered bond No. 2,062, for $500, issued to same on July 5, 1859; one certificate of registered stock No. 418, for $1,000, issued to same July 5, 1859; and one certificate of registered stock No. 608, for $400, issued to same May 16, 1859; all bearing interest at 6 per cent, payable semi-annually. Date to which interest was last paid unknown..... $3,000.00

Held by Edward B. Older, of Kanawha County:

One registered bond No. 1,525, for $1,000, dated November 3, 1853, with interest at 6 per cent, payable semi-annually. Date to which interest was last paid unknown..... $1,000.00

Held by Hon. James C. McGrew, in trust for William J. Stone of Preston County:

One registered bond for $500, No. 3,543, dated April 17, 1861, issued to James C. McGraw, trustee for William J. Stone, with interest at 6 per cent, payable semi-annually; 2 per cent of interest paid July 1, 1867, and January 1, 1868,.... $500.00

Held by William Adamson, of Pendleton County:

Bond issued to Franklin & Circleville Turnpike Company, dated November 20, 1860; interest from July 1, 1860, and redeemable January 1, 1894, for $100. Nothing known as to what time interest was last paid.....	$100.00

Held by Hon. James H. Brown, of Kanawha County:

One bond for $800, dated January 22, 1859, issued to James H. Brown, with interest from January 1, 1859; redeemable January 1, 1893. Date to which interest was last paid unknown	$800.00
One bond for $700, dated October 25, 1860, issued to same, with interest from July 1, 1860, redeemable January 1, 1890. Date to which interest was last paid unknown.....	700.00
	$1,500.00

Effort was made to ascertain which of the foregoing bonds in Governor Boreman's list had been funded under the said Funding Acts of 1871, 1879, 1882 and 1892. For this purpose Governor Boreman's list was furnished to the Second Auditor of Virginia at Richmond. Under date of June 22, 1911, that office furnished the list following, headed "Second Auditor's List," accompanied by a letter, in which it was stated:

> "I traced the record of the bonds specified in the lists on pages 80 to 85 of the Journal of the Constitutional Convention, and have entered opposite each its history so far as it can be obtained. Several of the certificates I failed to locate for lack of sufficient data in your volume, to either start or guide me in tracing them. You will observe, however, that but few of them have not been funded since the publication of your list. I think it but reasonable to assume that those which I did not trace have, as others, been exchanged.
>
> "No State record contains the addresses of the former holders of bonds as specified, and, therefore, I am unable to furnish them, but as almost the entire number of these securities have changed both hands and form, perhaps several times since the publication of your list, I suppose the names and localities of the 1861 holders would avail you nothing now."

SECOND AUDITOR'S LIST.

"List of Virginia Coupon Bonds and certificates of Registered stock held by citizens of West Virginia and which have been presented and inspected by the Governor under Joint Resolution No. 2 of the Legislature, adopted January 23, 1868."

(From Journal Constitutional Convention of West Virginia, 1872.)

Date	No.				Act.
		Coupon Bonds.			
July 1 1858	10412 10413 10416 10429	16 at $1000	$16000	May 25, 1852	Funded Aug. 17, 1883. Tr. No. 309
July 1 1854	9185	1000			
Jan. 2 1860	12401	1000			
Jan. 3 1853	3495	1000	Ditto		Ditto
Jan. 3 1853	4104	1000			
Jan. 2 1854	8079	1000			
July 1 1853	2635	1000			
July 1 1853	1090	1000	Mar. 29, 851		Ditto
May 1 1858	10467	500	Mar. 29, 1851		Ditto
		1000	May 25, 1852		Funded Jan. 4, 1883. Tr. No. 117
Jan. 3 1853	5105	1000	May 25, 1852		Funded April 22, 1884. Tr. No. 576
Jan. 3 1853	5216	1000	May 25, 1852		Funded Mar. 17, 1883. Tr. No. 165
July 1 1851	132	1000	Mar. 29, 1881		Cannot locate.
		$26,500			
		Registered Bonds.			
Jan. 26 1847	1043	$5000	Mar. 21, 1837		Seems to be for $1500, Book A., p. 131.
Jan. 13 1859	540	100	Mar, 18, 1858		In name of C. J. Faulkner. Stock lost and funded on Certificate Aug. 25, 1873, Book C. p. 213.
		$5,100			

($31,500—Total on p. 80 of volume mentioned above.)

		Coupon Bonds.		
July 1 1851		$500	Mar. 29, 1851	
July 1 1851		500	Mar. 29, 1851	
July 1 1851		1000	Mar. 29, 1851	
Jan. 2 1860		1000	May 25, 1852	No numbers given and therefore cannot be traced.
May 4 1858		1000	May 25, 1852	
July 1 1851		500	Mar. 30, 1851	
Aug. 4 1853	6867	1000	May 25, 1852	
Jan. 1 1859	11033	1000	May 25, 1852	
Jan. 3 1853	4753	1000	May 25, 1852	
Jan. 3 1853	3372	1000	May 25, 1852	
Jan. 1 1861	13633	1000	May 25, 1852	
Jan. 3 1861	13628	1000	May 25, 1852	
Aug. 4 1853	6866	1000	May 25, 1852	Funded Nov. 9, 1885. Transaction No. 1187.
Aug. 4 1853	7072	1000	May 25, 1852	
July 6 1851	314	1000	May 25, 1852	
July 6 1851	1647	1000	Mar. 29, 1851	
July 6 1851	3026	1000	Mar. 29, 1851	
		1000	Mar. 29, 1851	
		$15,500		
April 16 1863	4347	$1500	No Act given.	
April 2 1841	2	1358	Mar. 30, 1837	Funded Jan. 23, 1872. B. 8, p. 254; A. p. 248.

April	21 1849	34		*1642	Jan. 17, 1848	Funded Jan. 23, 1872. B. 8, p. 254; A. p. 436
			$45,00			

*If number 1642.

(Total of page 81 of printed volume, $20,000.)

Coupon Bonds.

Jan.	2 1854	8389	$1000		Funded Nov. 1, 1873. B. No. 6, p. 295
July	1 1854	8733	1000		Funded Nov. 1, 1873. B. No. 6, p. 295
July	1 1854	10295	1000	May 25, 1852	Funded Mar. 9, 1877. B. No. 11, p. 41
May	20 1858	10539	1000		Funded July 18, 1871. B. No. 2, p. 128
May	20 1858	10540	1000		Funded July 18, 1871. B. No. 2, p. 128
Jan.	1 1854	9879	1000		Funded Jan. 5, 1872. B. No. 8, p. 172
Jan.	1 1854	9932	1000		Funded Jan. 5, 1872. B. No. 8, p. 172
Jan.	1 1854	9882	1000		Funded Jan. 5, 1872. B. No. 8, p. 172
Jan.	1 1854	9314	1000		Funded Jan. 5, 1872. B. No. 8, p. 172
			$9,000		

Registered Bonds.

May	26 1858	3441	$2300		Funded June 26, 1883.
Jan.	18 1859	556	700		
Jan.	6 1859	2011	1300		Transaction No. 270.
Aug.	19 1859		100		Funded June 12, 1874. B. No. 6, p. 482
July	29 1851	834	4000		
May	23 1856	427	1500		
Feb.	2 1858	1254	500		
July	11 1860	145	1000		
July	11 1860	146	1000		
July	11 1860	147	1000		
July	11 1860	148	1000		Funded Sept. 5, 1871.
July	11 1860	149	1000		
July	11 1860	150	1000		Book I, p. 458.
July	11 1860	151	1000		
July	11 1860	152	1000		
July	11 1860	153	1000		
July	11 1860	154	1000		
Feb.	15 1861	----	300	Held by Wm. G. Brown	
Feb.	14 1860	----	1400		
Feb.	14 1860	----	700		Neither Acts nor name given, and therefore cannot be traced.
Mar.	23 1858	----	1000		
Mar.	23 1858	----	200		
			$24,000		

(Total of page 82 of printed volume $33,000.)

Coupon Bonds.

July	1 1851	750	$1000	Act Mar. 29, 1851	Funded Jan. 5, 1872. B. No. 8, p. 175
July	1 1851	2413	1000		Funded Sept. 25, 1872. B. No. 4, p. 285
July	1 1851	777	500		Funded Act Feb. 26, 1877.
July	1 1851	1106	500		Funded Act Feb. 26, 1877.
Aug.	4 1853	7209	1000	May 25, 1852	Funded Nov. 10, 1871. B. No. 5, p. 275
Jan.	3 1853	7636	1000		Funded Act Feb. 26, 1879.
Jan.	3 1853	4963	1000		Funded Nov. 23, 1871. B. No. 5, p. 275
Jan.	2 1854	8053	1000		Funded Nov. 23, 1871. B. No. 5, p. 293
Jan.	3 1853	4982	1000		Funded Nov. 23, 1871. B. No. 5, p. 293
July	1 1851	942	500	Mar. 29, 1851	Funded Nov. 11, 1871. B. No. 5, p. 275

July 1 1851	944	500			Funded Nov. 11, 1871. B. No. 5, p. 275
July 1 1851	1030	500			Funded April 27, 1886. Tr. No. 1493.
July 1 1851	1190	500			Funded April 13, 1883. Tr. No. 196.
Aug. 4 1853	5561	1000	Mar. 25, 1852		Funded Jan. 8, 1872. B. No. 8, p. 187
Aug. 4 1853	6567	1000			Funded Act Feb. 26, 1877.
July 1 1851	1667	1000	Mar. 29, 1851		Funded April 23, 1884. Tr. No. 577.
Jan. 3 1853	4079	1000	May 25, 1852		Funded June 16, 1872. B. No 8, p. 217.
Aug. 4 1853	6931	1000			Funded July 27, 1872. B. No. 10, p. 288
July 1 1851	260	500	Mar. 29, 1851		Funded July 27, 1872. B. No. 10, p. 288
		$15,500			

(Total of page 83 of printed volume, $15,500.)

Coupon Bonds.

July 1 1851	966	$1000	Act Mar. 29, 1851		Funded Jan. 12, 1872. B. No. 8, p. 192
July 1 1854	8690	1000	May 25, 1852		Funded Jan. 19, 1872. B. No. 8, p. 240
July 1 1854	9432	1000	"		Cancelled Act Feb. 26, 1877.
Jan. 3 1853	5174	1000	"		Funded Act Jan. 19, 1872. B. No. 8, p. 240
Jan. 2 1854	8098	1000	"		Funded Act Jan. 18, 1872. B. No. 8, p. 240
July 1 1854	9313	1000	"		Funded Act Jan. 19, 1872. B. No. 8, p. 240
July 1 1854	9929	1000	"		Funded Act Jan. 19. 1872. B. No. 8, p. 240
July 1 1851	1505	1000			Funded Nov. 7, 1871. B. No. 9, p. 311
		$8,000			

Registered Bonds.

Sept. 19 1856	1292	$300			
Jan. 26 1857	2003	400			
Feb. 2 1857	2042	500			
Oct. 27 1858	265	500			
Nov. 25 1858	1433	100			
Dec. 11 1848	495	1000			
May 29 1856	517	200			
Jan. 8 1856	247	150	Act Jan. 17, 1837		Funded July 27, 1882. Trs. No. 2.
Jan. 8 1856	2014	330	Act Mar. 22, 1850		Funded July 27, 1882. Trs. No. 2.
Jan. 8 1856	3018	200	Act Mar, 21. 1837		Funded July 27, 1882. Trs. No. 2.
		$3,680			

(Total of page 84 of printed volume $11,680.)

Registered Bonds.

Jan. 11 1856	1189	$1000	Act Mar. 1, 1847		Funded Aug. 5, 1882. Tr. 26, p. 109.
Mar. 13 1857	3316	1200	Mar. 21, 1837		Funded July 27, 1882. Tr. No. 2.
April 23 1856	2099	1800	Mar. 22, 1850		Funded July 27, 1882. Tr. No. 2.
Jan. 15 1856	----	700			Held by Joshua Bodly, but no number or date of Act given.
June 13 1848	182	5000			
May 16 1859	1968	1100			
May 5 1859	2062	500			
May 5 1859	418	1000	No Act specified and therefore these bonds cannot, with certainty, be traced.		
May 16 1859	608	400			
Nov. 3 1853	1525	1000			
April 17 1861	3543	500			
Nov. 20 1860	----	100			
Jan. 22 1859	----	800			
Jan. 22 1859	----	700			
		$15,800			

(Total of page 85 of printed volume $15,800.)

LIST OF PERSONS HOLDING VIRGINIA REGISTERED BONDS, AND RESIDING IN THE STATE OF WEST VIRGINIA.

Riddleberger Bonds.

Issued under Act of February 14, 1882.

Name	*Address*	*Amount*
Jno. N. Bell, Treas., Winchester Presbytery. Interest now payable to R. A. White, Treasurer,	Gerrardstown, W. Va.	$1,200.00
John W. Bosworth,	Philippi, W. Va.,	2,000.00
M. E. Bosworth,	Philippi, W. Va.,	2,000.00
Mary S. Kellog, now Mrs. Mary S. K. Hunt, formerly of Sistersville, W. Va., but now of	Roanoke, Va., One Account	4,000.00
	" "	9,000.00
	" "	2,000.00
		$15,000.00
Mrs. Anna I. Ryon,	Charleston, W. Va.,	1,200.00

Century Bonds.

Issued under Act of February 20, 1892.

J. W. Bosworth,	Philipp , W. Va.,	1,000.00
Mattie E. Bosworth,	Phillippi, W. Va.,	2,000.00
Mrs. Mary S. K. Hunt, formerly of Sistersville, W. Va., but now of	Roanoke, Va., One Account	3,000.00
	" "	500.00
	" "	9,000.00
		$12,500.00
A. J. Willis,	Kearneyville, W. Va.,	200.00
Mrs. Lavinia Webb, formerly of Ona, W. Va., but now of	Bridgewater, Va.,	100.00
Colonial Casualty Co., of W. Va.,	Huntington, W. Va.,	5,000.00
Riddleberger Bonds,		$21,400.00
Century Bonds,		20,000.00
Total Riddleberger and Century Bonds,		$42,200.00

Following is the list furnished by Brown Brothers & Company, the depositary, of May 2, 1911, referred to in the foregoing extracts from their letters:

BROWN BROTHERS & COMPANY'S LIST.

COPYIST'S CERTIFICATE.

STATE OF NEW YORK,
City and County of New York, ss:

ALBERT F. DAWSON, being duly sworn, deposes and says: That he is engaged in the business of a public stenographer, and has an office for the transaction of such business at No. 59 Wall Street, New York City. That he personally made comparison of the following 133 pages with the books of Messrs. Brown Brothers & Co., of No. 59 Wall Street, New York City, depository of the Virginia Deferred Certificates, so-called, kept by them in connection with the deposit of said certificates, and that the following said 133 pages are a true and correct transcript from said books showing the names in which said Virginia Deferred Certificates were issued, the number and amount of each certificate, the date of deposit with said depository and the number of the said depository receipt issued therefor respectively of all deposits of certificates down to and including April 18th, 1911, as the same appear upon said books.

A. F. DAWSON.

Sworn to before me this 2nd day of May, 1911.

(seal.)

ROBERT W. B. ELLIOTT,
Notary Public, New York County.

DEPOSITS OF VIRGINIA DEFERRED CERTIFICATES ISSUED UNDER ACTS OF 1871, (MARCH 30), (PRINCIPAL AND INTEREST), RECEIVED.

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Aug. 22	$2,500.07	243	1538	Baltimore Equitable Society
			(Signature of)	
(page 1)			(2nd Auditor)	
			(missing)	
12	10,000.00	1	10521	J. S. Wells
15	1,950.00	2	2197	H. F. Atkinson
24	10,000.00	6	5641	McKim & Co.
24	5,550.67	7	332	John I. Lloyd, Exr.
24	3,526.67	8	3158	John Lindsley
25	5,000.00	36	9434	Davenport & Co.
25	200.00	37	5558	C. C. Muller
			(Not endorsed)	
26	63.33	203	5992	Orphans Home of the City of Brooklyn
			(Not endorsed)	
26	152.40	44	6005	Orphans Home of Brooklyn
			(Not endorsed)	
27	3,333.33	45	9377	Wm. P. Harvey
31	6,650.00	47	1309	G. T. Bonner & Co.
	4,233.33	48	1311	do
	1,000.00	49	3673	Chas. Hirst Huddersfield
	1,000.00	50	3672	do
	1,000.00	51	3671	do
	1,000.00	52	10407	W. F. Sebert
	1,000.00	53	10158	R. H. Maury & Co.
	1,000.00	54	10220	Jerome N. Bonaparte
	3,433.33	55	1968	James B. Brown
	2,182.93	56	5968	Isabella Higgins
	239.12	57	6090	J. & J. Benedict
	225.13	58	676	Louis Straller
	28.48	59	10705	J. B. Manning
	400.00	60	3479	A. Goettel & Co.
	5,000.00	61	5448	Whitehouse & Co.
	1,000.00	192	8242	Joseph H. Rieman
	2,000.00	63	5266	Tutien Nolthenius & DeHaan of Amsterdam
	1,000.00	64	11032	Wilson Colston Co.
	1,000.00	65	10185	J. B. Manning

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Aug. 31	$ 1,000.00	66	6097	E. W. Skelton
	100.00	67	11023	John B. Manning
	100.00	68	1675	Vermilye & Co.
	100.00	69	10654	J. B. Manning
	100.00	70	1672	Vermilye & Co.
	100.00	71	10656	J. B. Manning
	1,000.00	72	1062	Stern Bros. of London
	1,000.00	73	1063	do
	1,000.00	74	1064	Stern Bros. of London
	1,000.00	75	1065	do
	1,000.00	76	1066	do
	1,000.00	77	1067	Stern Bros. of London
(page 2)				
	10,000.00	3317	8885	Robt. Garrett & Sons
	10.000,00	79	10132	R. H. Maury & Co.
	9,750.00	80	870	Lambert Suydam Jr.
	200.00	81	3087	do
	10,000.00	82	10795	Vermilye & Co.
	3,000.00	83	8438	Robt. Garrett & Sons
	7,017.12	84	3323	de Rothschild Bros. of Paris
	3,833.33	85	7521	Wm. Henry, 6 Foster Place, Dublin
	5,000.000	86	10125	Wilson Colston & Co.
	5,000.00	87	11002	I. & S. Wormser
	396.67	88	7424	De Rham & Co.
	396.67	89	7223	do
	396.67	90	7422	do
	400.00	91	9642	Wilson Colston & Co.
	383.33	92	4601	James Robb King & Co.
	10.000,00	93	10459	J. S. Wells
	5,000.00	94	8350	G. T. Bonner & Co.
	5,000.00	95	9651	G. T. Bonner & Co.
	419.99	96	11131	D. Fahnestock & Co.
	500.00	97	10446	J. B. Manning
	1,000.00	98	9267	Robt. Garrett & Sons
	450.48	99	10547	John B. Manning
	328.88	100	10423	Wm. H. Fisher
	9,373.33	101	8792	Robt. H. Garrett & Sons
	211.67	102	1187	Weisenfield & Co.
	1,916.67	103	3768	James Robb King & Co.
	5,000.00	104	8253	Frank W. Cassard
	5,000.00	105	7255	Chase & Higgonson
	5,850.00	106	2867	Maitland Phelps & Co.
	10,000.00	2210	8620	Robt. Garrett & Sons
	549.67	2207	2040	Geo. M. Potts of Friederick, Md.
	766.66	2208	4152	Geo. Harrison

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Aug. 31	$ 5,000.00	2209	10585	J. Harmanas Fisher
	1,005.00	2215	3779	Maitland Phelps & Co. in trust
	8,720.00	2206	4718	Margaret E. Cuyler
	10,000.00	113	10719	J. B. Manning
	5.000,00	114	1205	E. D. Randolph & Co.
	3,103,33	115	2361	H. A. Cowison
	1,000.00	116	6649	J. B. Manning
	1,000.00	117	6688	J. B. Manning
	342.11	118	6632	John B. Manning
	1,200.00	119	2732	J. M. Weith & Arents
	1,916.66	120	8704	J. S. Kennedy & Co.
	3,710.00	121	1364	Thos. Nelson, Edinburg, Scotland
	36,800.00	122	1177	do
	3,337.00	123	8475	Henry E. Johnson
	1,000.00	124	7860	do
	1,000.00	125	7894	Louis McLane
	1,000.00	126	7893	do
	1,000.00	127	7892	do
	3,333.34	128	9375	J. G. Harvey
	1,500.00	129	8147	do
(page 3)				
	10,000.00	130	10475	J. S. Wells
	782.40	131	10557	Wilson Colston & Co.
	218.99	132	10947	J. B. Manning
	265.17	133	11056	Wm. Colston & Co.
	8,640.03	134	3007	Robert Read
	100.00	135	6211	Joseph H. Rieman
	1,000.00	136	5974	John B. Manning
	183.21	137	7090	Chas. P. Krauth
	1,000.00	138	2741	S. Stein
	4,096.67	139	2065	J. S. Morgan & Co., of London
	1,000.00	140	10219	Jerome N. Bonaparte
	1,000.00	141	10561	J. S. Wells
	5,000.00	200	9837	John Bloodgood & Co.
	10,000.00	143	8809	Robt. Garrett & Sons
	640.00	144	8340	Robt. Read of Cumberland, Md.
	85.00	145	3023	Robt. B. White
	1,000.00	146	3634	James Coates, Stockbroker, London
	1,000.00	147	10186	J. B. Manning
	1,000.00	148	10382	L. H. Niles
	5,000.00	149	10069	R. H. Maury & Co.
	1,000.00	150	10334	W. F. Sebert

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Aug. 31	$ 1,000.00	151	3697	Charles Hirst, Huddersfield, Yorkshire, England
	1,000.00	152	3699	do
Sept. 2	1,000.00	153	10907	J. B. Manning
	5,000.00	154	10327	Vermilye & Co.
	5,000.00	155	10535	L. H. Niles
	5,000.00	156	11133	DeJonge & Co.
	5,000.00	3548	9871	John Bloodgood & Co.
	10,000.00	158	5337	J. B. Manning
	5,000.00	159	11138	DeJonge & Co.
	5,000.00	160	8060	Robt. Garrett & Sons
	5,000.00	161	7919	do
6	396.67	170	3621	R. C. L. Moncure & W. P. Conway, Exrs. of Mary James
	5,000.00	171	11136	DeJonge & Co.
8	352.45	172	6062	August Belmont & Co.
9	1,059.40	173	2368	D. H. Miller, Trustee
	9,200.00	174	2345	do
	11,212.30	175	1640	R. S. Chew, Agent of Sir John F. Crampton of Great Britain
	10,453.53	176	2354	Wm. Graham
	5,000.00	177	3526	Edwd. H. Gillilan, Chiltenham, England
	5,000.00	178	3527	do
	1,000.00	179	1804	Edwd. H. Gillilan
	1,000.00	180	1805	do
	1,000.00	181	1806	do
	1,000.00	182	1807	do
	100.00	183	1796	do
	100.00	184	1797	do
	100.00	185	1798	do
	100.00	186	1799	do
	26.67	187	1795	do
	1,000.00	188	1800	do
(page 4)				
	1,000.00	189	1801	Edwd. H. Gillilan
	1,000.00	190	1802	do
	1,000.00	191	1803	do
12	1,953.33	194	1928	Wm. H. Emory, Brevet Major Genl, U. S. A.
	5,000.00	201	6133	Robt. Garrett & Sons
	10,000.00	202	8808	do
13	5,829.66	206	2329	Lewis M. Motter
	3,433.33	2694	1682	Henry R. Rathbone
	555.56	208	10828	Anna Wilhemine Jaliany Diecke

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 13	$ 555.56	209	10435	Sophie Fredericke Freyl
	555.56	210	10822	do
	13,300.00	2585	6859	Man. Life Ins. Co. of N. Y.
14	10.000.00	223	11063	W. F. Sebert
	3,833.33	224	4895	R. Raphael & Sons of London
	766.67	225	3767	James Robb King & Co.
	277.23	226	1876	August Wiggin
	3,900.00	227	139	John W. Hall
	133.33	228	7757	Edwd. Bromgoole Gdn of F. B. Harrison
	500.00	229	2605	Eliz. Jennings Exr. of Wm. Jennings, decd.
	600.00	230	4148	A. LeRossignol of Jersey C. J.
	1,000.00	231	9971	Bearer
	1,000.00	232	10245	Hamilton Blydenburgh
	1,000.00	233	10246	do
	1,000.00	234	10248	do
	1,000.00	235	10564	J. S. Wells
	1,000.00	236	10612	Arents & Young
	1,000.00	237	10946	J. B. Manning
	1,000.00	238	10247	Hamilton Blydenburgh
	10,000.00	239	10484	J. S. Wells
	10,000.00	240	8810	J. B. Manning
	10,000.00	241	8139	Wilson Colston & Co.
	10,000.00	242	10989	Lucien H. Niles
	5,000.00	244	5462	Whitehouse & Co.
	5,000.00	245	5463	do
	5,000.00	246	5970	John B. Manning
	5,000.00	247	5420	J. T. Wilson
	9,583.33	248	3589	Louisa Maria Marshall, Rectory Grove, Clipham, Eng.
16	516.67	249	1015	Carl Wolde of Bremen
	2,745.33	250	1955	Mrs. Averie S. Heineken of Bremen, Germany
	100.00	253	10645	J. B. Manning
	6.34	254	10661	do
	2,835.33	255	10601	I. M. Booker
	1,000.00	256	10413	Hamilton Blydenburgh
	666.66	257	9248	Knoblauch & Lichtenstein
	1,666.67	258	9570	Levy & Borg
	712.41	259	7905	C. H. Poor, Jr.
	56.67	260	7102	H. Amy & Co.
	823.33	261	5724	Madame Anna Bonnetain femme Saulnier
	1,419.69	262	5924	Mrs. M. S. Brooks
	1,446.67	263	2757	James G. King's Sons
(page 5)	1,621.50	264	1908	Mrs. Lucy Deaton

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 16	$ 1,593.33	265	920	Jan Vander Hoop & Toon
	1,058.33	266	241	Geo. K. Sistare
	5,000.00	267	10961	DeJonge & Co.
	5,000.00	268	6125	Robt. Garrett & Sons
	5,000.00	269	6709	Ward & Co.
	55.85	270	4205	Fireman's Ins. Co. of Balto.
	500.00	3552	4206	do
	1,000.00	3551	4207	do
	5,000.00	3318	4208	do
	5,000.00	3319	4209	do
	5,000.00	3323	4210	do
	5,000.00	3321	4211	do
	3,290.60	277	4420	Henry Coles, Palisades, N. Y.
	5,000.00	278	2143	Foster & Co., of Cambridge in England
	10,000.00	279	9250	Robt. Garrett & Sons
	10,000.00	280	9149	do
	2,083.33	2686	3312	David M. Penne, Trustee u-w Roger B. Taney, decd.
19	1,000.00	285	10722	J. B. Manning
	1,000.00	286	3760	Wilson Colston & Co.
	5,000.00	287	11137	DeJonge & Co.
	10,000.00	288	10494	J. S. Wells
	5,000.00	289	10427	J. B. Manning
20	616.67	2695	2852	Mrs. H. M. Etting
	80.00	2696	2983	do
	3,666.67	2697	2853	Frank M. Etting, Trustee Mrs. H. M. Etting
	1,503.00	2698	2644	Mrs. H. M. Etting
	560.00	2699	2645	Frank M. Etting
	353.33	2700	2803	Alice C. Etting
21	920.33	296	2653	R. W. Hunter
	28,255.00	297	2582	The Eutaw Sav'gs Bk. of Bates
	3,000.00	298	5286	H. F. Pickins
	1,413,33	2657	1583	B. H. Williams
	1,000.00	300	10631	S. S. Prince
	1,000.00	301	10630	do
	1,000.00	302	8879	Wilson Colston & Co.
	1,000.00	303	10633	S. S. Prince
	1,000.00	304	6138	Robert Garrett & Sons
	335.00	305	2494	Fredk Victor and Achelis
	133.33	306	2336	do
	390.00	307	2335	do
22	2,012.67	312	4157†	Fannie L. Wellford
23	1,516.66	313	8595	Mary E. Farnandid
26	10,000.00	315	10467	J. S. Wells

† issued non neg. receipt.

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 26	$10,000.00	316	9134	William G. Harrison.
	193.33	317	21	M. Alice Lugenbeel of Alexandria, Va.
	5,000.00	318	3581	American Fire Ins. Co. of Baltimore
27	2,166.66	2710	6447	Juliet Shackleford, Extx. of Lyne Shackleford
	671.63	2711	1239	Thomas R. Shackleford
(page 6)				
	1,000.00	321	5975	John B. Manning
	100.00	322	5976	do
	5,000.00	323	6178	Lancaster & Co.
	1,000.00	324	6181	Isaacs Taylor & Williams
	1,000.00	325	6202	J. B. Manning
	1,000.00	326	6203	do
	5,000.00	327	6204	do
	209.84	328	6265	John B. Manning
	2,000.00	2706	7784	I. S. Inloes of Baltimore
	4,000.00	330	4022	Geo. W. Riggs, Trustee of Jennie B. Davenport
29	574.40	331	5682	Miss E. Woodbridge
30	2,176.67	338	3159	D. Frelinghuysen
	1,000.00	339	442	John B. Manning
Oct. 3	3,900.00	2688	2342	Dr. Andrew Annan
	1,560.00	341	2343	Robert L. Annan
	396.66	3285	1774	Alexr. J. Bondurant Exr. Saml Ford
4	559.66	343	7357	Clarence Gresham
	135.00	344	4752	Mrs. Mary E. Penn
	4,000.00	360	4405	Joseph Clement Juglar ofParis
	163.00	361	4404	do
	5,000.00	362	11000	I. & S. Wormser
	3,000.00	3484	10760	Ridgly Duvall Jr.
	10,000.00	364	10460	J. S. Wells
	10,000.00	365	10456	do
	5,000.00	366	10345	John Malcolm of Belfast, Ireland
	5,000.00	367	10104	R. H. Maury & Co.
	5,000.00	368	9794	James S. Swan
	10,000.00	369	9340	Robert Garrett & Sons
	6,000.00	370	9118	Alfred Jenkins Jr., & Robt. H. Jenkins, Trustee
	10,000.00	371	8673	Robt. Garrett & Sons
	300.00	3483	8607	T. Scott & Son
	9,714.03	3485	8805	Robt. Garrett & Sons
	309.82	374	8685	do
	453.34	375	5325	Mrs. Ellen Catharine Holbeck

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 4	$ 6,584.24	376	4589	Alexander H. Brown
	2,666.67	377	4520	Ellen Catharine Holbeck
	7,000.00	3484	3353	William H. Fogg
	1,000.00	379	1098	Stern Bros. of London
	1,000.00	380	1097	do
	1,000.00	381	1096	do
	5,000.00	382	8445	Richard Gwann
	5,000.00	383	11027	J. Harmanus Fisher & Sons
5	100.00	386	1831	Geo. Elliott of New York City
	100.00	"	1832	do
	100.00	"	1833	do
	100.00	"	1834	do
	100.00	"	1835	do
	500.00	"	1853	do
	500.00	"	1852	do
(page 7)				
	500.00	386	1851	George Elliott of New York City
	500.00	386	1850	do
	500.00	"	1849	do
	1,000.00	"	1848	do
	1,000.00	"	1847	do
	1,000.00	"	1846	do
	1,000.00	"	1845	do
	1,000.00	"	1844	do
	1,000.00	"	1843	do
	1,000.00	"	1842	do
	20,000.00	387	3898	Home Insurance Company of New York
	1,001.50	388	4596	J. B. Manning
	4,000.00	389	5001	Isaacs Taylor & Williams
	5,000.00	390	1931	John Cordner of Montreal, Canada
	1,000.00	391	271	John Elliott of New York
	1,000.00	"	272	do
	1,000.00	"	273	do
	1,000.00	"	275	do
	1,000.00	"	274	do
	1,000.00	"	276	do
	1,000.00	"	279	do
	1,000.00	"	277	do
	1,000.00	"	278	do
	1,000.00	"	280	do
6	2,100.00	2708	6033	Austin Jenkins
	3,900.00	2709	1312	do
7	5,000.00	394	10900	J. D. Probst & Co.
	1,000.00	395	10868	Clarke, Dodge & Co.

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 8	$ 625.00	3341	2015	Babet Fleischer, Gdn. of Marie Fleischer
	483.17	3342	2016	Babit Fleischer
	356.84	3343	2021	E. Fleischer
10	453.33	399	5324	Chandoe Wren Haskins
	1,078.26	400	10826	Florence Currie
11	3,000.00	406	3497	Thomas H. Dudley
	3,000.00	407	3498	do
	3,000.00	408	3499	do
	3,000.00	409	3500	do
	180.00	405	3496	do
	691.13	410	6959	Jno. W. Bell, Commis., etc.
	380.00	"	166	F. M. Baker and Andrew Johnston, Exrs. of Samuel P. Mitchell, decd.
	2,000.00	"	174	do
	500.00	"	890	William Bradshaw
	443.33	"	4514	Robert H. Corbett
	113.33	"	4049	Chas. M. Blackford, Adm. de bonis non with the will annexed of Edwin Matthews decd.
	1,333.33	"	4048	do
	333.33	"	4050	do
	9,418.88	"	381	James M. Cobb, President
(page 8)	2,703.33	"	4229	James Falshow of Edinburg
	5,000.00	"	3551	Lancaster Brown & Co.
	5,000.00	"	3552	do
	581.12	"	5059	J. B. Manning
	1,346.20	"	1007	John B. Oliver, of Nottoway Co., Va.
	793.33	"	940	do
	1,983.33	"	941	do
	1,586.66	"	942	do
	1,983.33	"	944	do
	396.67	"	945	do
	793.33	"	999	do
	396.67	"	1000	do
	1,190.00	"	1005	do
	2,819.60	"	1006	do
	1,190.00	"	997	do
	396.67	"	1003	do
	1,983.33	"	1004	do
	396.67	"	1001	do
	1,121.80	"	991	Lucy Jane Tuggle, Exr. R. B. Tuggle
	1,190.00	"	939	do

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 11	$ 1,000.00	410	993	Lucy Jane Tuggle, Exr. R. B. Tuggle.
	396.66	"	995	do
	1,156.66	"	996	do
	314.40	"	994	do
	1,000.00	"	989	do
	1,000.00	"	990	do
	1,000.00	"	992	do
	1,355.04	"	4390	Mrs. Guinetta W. Tyler
	140.60	"	7272	Lewis B. Williams
	740.00	"	7403	do
	74.33	"	251	John D. Waugh
	463.00	"	1568	Margaret Wright, Exs. of Jessie Wright, decd.
	243.60	"	805	do
	1,342.67	"	1570	do
	224.00	"	1569	do
12	1,000.00	2589	8216	Rev. Alexander E. Gibson
	1,000.00	415	2237	J. & J. Higgin
	10.000,00	416	10969	L. H. Niles
13	3,766.67	2720	3860	Moses Cohen
	50.00	2721	3859	Moses Cohen & Sons
	4,166.67	2701	4204	F. W. Bennett
17	2,763.34	433	2790	James G. King's Sons
	13,416.66	434	2457	Widow W. Borski, of Amsterdam,
	28,750.00	435	2456	do
	1,006.66	436	1433	Phillip Speyer & Co.
18	5,000.00	437	11110	Wm. H. Fisher
	5,000.00	438	11059	J. B. Manning
	198.33	1888	68	H. Amy & Co.
	353.33	1889	54	do
	250.93	1890	3949	A. Goettel & Co.
	1,116.80	1891	5054	do
(page 9)	2,940.00	1892	5182	Thos. H. Carroll
	832.60	1893	6508	Kessler & Co.
	615.00	1894	6612	J. S. Kennedy & Co.
	282.27	1895	10595	H. Amy & Co.
	3.14	1896	10965	John B. Manning
	996.86	1897	10952	Charles Hazard
	871.52	1898	10636	S. S. Prince
	485.56	1899	4150	H. Lovingston Rogers
	500.00	1900	10651	J. B. Manning
	25.40	1901	4280	H. Amy & Co.
	529.67	1902	1920	do
	1,000.00	1903	9998	Jno. B. Manning
	1,000.00	1904	1679	Vermilye & Co.

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 18	$ 1,000.00	1905	7181	Chase & Higginson
	1,000.00	1906	10905	J. B. Manning
	1,000.00	1907	7180	Chase & Higginson
	1,000.00	1908	9622	F. T. Redwood
	5,000.00	1909	10291	W. F. Sebert
	10.000,00	1910	8576	Robert Garrett & Sons
	8,000.00	1911	3212	Knickerbocker Life Insurance Company
	6,000.00	1912	9117	Alfred Jenkins, Jr. and Robert H. Jenkins, Trustees.
	4,982.67	440	6847	Elizabeth Allan, otherwise Miller, widow Elizabeth Galt Miller, wife of John Elphinston Livingstone, Margaret Miller, spinster, Mary Allan Miller, wife of James Douglass, all of Perth, N. B. and Robert Miller of 190 Avenue C in the City of New York, with benefit of survivorship.
	5,626.48	442	8897	Robert Garrett & Sons
	2,081.67	443	8864	do
	2,298.67	444	11120	Wilson Coltson & Co.
	500.00	445	10695	H. A. Orrick
	1,000.00	"	10567	J. S. Wells
	5,000.00	"	10607	William Howe
	5,000.00	"	10606	do
	5,000.00	"	9696	Harry A. Orrick
	4,000.00	"	8091	G. T. Bonner & Co.
	6,000.00	"	7992	G. T. Bonner
	2,000.00	"	5395	Brown Lancaster & Co.
	5,000.00	"	3923	do
	500.00	"	3571	A. Iselin & Co.
	1,000.00	"	10851	W. F. Sebert
	1,000 00	"	2927	Stern Bros. of London
	1,000.00	"	2743	S. Stein
	1,000.00	"	2015	A. M. Proudfit
	3,633.33	"	375	Lewisohn Brothers
	39,000.00	446	4180	The Peabody Institute of the City of Baltimore.
(page 10)	258.33	447	3935	Thomas O. Walton
	20,590.00	2727	1657	John Gustav Kulenkampff of Bremen
	3,294.40	2728	1964	Dr. H. W. Kulenkampff
	6,428.07	2729	5932	Mrs. M. H. Louise Von Lingen
	6,428.08	2730	5933	Miss Emilie G. Schumacher
	6,428.08	2731	5931	Senator Dr. George Schumacher

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 18	$ 1,666.65	2732	10436	Anna Wilhelmine Juliana Denke
	1,098.13	454	1016	Bus, and de Critter of Rotterdam
	2,000.00	455	10682	Oelrichs & Co.
	8,000.00	456	10681	do
	2,000.00	457	10683	do
	750.00	458	10685	do
	250.00	459	10686	do
	3,000.00	460	10680	do
	1.91	461	4564	do
20	1,120.00	462	4273	D. M. Penne, George S. Brown, Wm. H. Graham, John A. Brown and James Brown, Trustees of the estate of George S. Brown
	1,010.40	463	1537	James Mackubin
	1,733.33	"	1536	do
	700.33	"	1535	do
	150.00	"	1534	do
	1,386.66	"	1533	do
24	5,000.00	3028	11145	W. H. Lucke
	10.000.00	2431	9834	John B. Manning
	1,000.00	3024	9920	do
	1,000.00	3025	10411	do
	1,000.00	3026	3776	H. Amy & Co.
	2,000.00	3027	5840	Arents & Young
	1,030.64	2432	7317	Charles M. Clark
	2,645.72	2432	6729	Chas. J. Faulkner
	553.33	2432	3741	Lloyd Loundes
	333.33	2432	8489	Gilmore Dunlap & Co., of Cincinnati, Ohio
	1,333.33	2432	6820	Lewis Johnson & Co.
	186.26	2432	6801	Thomas Weaver
	333.33	2432	10249	J. B. Manning
	566.67	2432	3524	Thos. R. Dew, survg. exr. of Wm. Dew, decd. The interest to be paid to Susan F. Dew, during her life.
	801.80	2432	3553	Ellen C. Fitzhugh
	2,216.66	2432	1427	Sylvester M. Amy
	5,000.00	1878	6855	John Elliott
	5,000.00	1879	6854	do
	5,000.00	1880	7005	do
(page 11)	10,000.00	1881	7974	Robert Garrett & Sons
	1,000.00	1882	10205	J. B. Manning
	1,000.00	1883	10204	do

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 24	$ 1,000.00	1884	9819	John B. Manning
	1,000.00	1876	10608	J. B. Manning
	1,000.00	1877	6498	Johh B. Manning
	8,326.00	1885	8161	L. A. Brunnigk of Dorpat
	5,000.00	1886	9714	Jno. B. Manning
	10,000.00	1887	2529	David Barcky Chapman of London
	383.33	470	8872	G. W. Russell
	10,000.00	2753	3330	J. J. Van Nostrand
	8,111.54	2752	2120	do
	5,000.00	2753	5376	Wilson Colston & Co.
	250.19	2751	3331	J. J. Van Nostrand
	5,000.00	2753	6055	Isaacs Taylor & Williams
	5,000.00	2753	5382	McKim & Co.
	5,285.00	2752	2173	Dulman & Scharff
	5,000.00	2753	1761	Isaacs Taylor & Williams
	500.00	2752	4681	Wilson Colston & Co.
	5,000.00	2753	5008	Lancaster & Co.
	4,500.00	2751	5007	do
	5,000.00	2753	1203	E. D. Randolph & Co.
	5,000.00	2753	1204	do
	10.000,00	2751	3940	James T. Soutter
	1,000.00	2751	5973	John B. Manning
	1,000.00	2753	5833	do
	1,725.00	2752	1713	N. Margons Sons
	2,989.60	2753	6136	Ward Campbell & Co.
	5,000.00	2753	2225	Isaacs Taylor & Williams
	.44	2753	6046	J. B. Manning
	5,000.00	2753	6334	A. J. Nicholson
	5,000.00	2753	2226	Isaacs Taylor & Williams
	10.000,00	2753	6534	do
	5,000.00	2753	4881	Wilson Colston & Co.
	5,000.00	2753	6422	J. H. R. Nicholson
	5,000.00	2753	3077	Cammann & Co.
	5,000.00	2753	3076	do
28	1,950.00	646	3161	J. C. Lindsley
29	1,000.00	472	10196	F. T. Redwood
	10,000.00	473	10757	Chase & Higginson
	20,000.00	474	9726	Robert Garrett & Sons
31	3,333.33	475	9376	Mrs. H. C. Miller
	1,916.67	3353	5225	Henry Clews & Co.
	1,916.67	479	7520	Joseph Cuthbert
	5,000.00	480	6710	Ward & Co.
	383.33	481	3270	M. Morgan Sons
	235.00	652	2989	John Clough & Sons
	1,000.00	"	2994	do
	1,000.00	"	2995	do

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 31	$1,000.00	652	2996	John Clough & Sons
	1,000.00	"	2997	do
	1,000.00	"	2998	do
	1,000.00	"	2999	do
	1,000.00	"	3000	do
(page 12)	1,000.00	"	3001	do
	1,000.00	"	3002	do
	1,000.00	"	3003	do
	1,000.00	"	3004	do
	1,000.00	"	3005	do
	1,000.00	"	3006	do
	1,250.00	"	4805	do
	2,668.33	849	3229	Rev. Charles Boileau Elliott
	5,750.00	484	4142	Col. F. West, Union Club, Pall Mall.
Nov. 1	383.33	485	4136	M. Morgans Sons
	766.66	"	4137	do
	1,011.67	486	3237	Henry Clews & Co.
	3,450.00	487	4972	Bruce & Symes of 37 Dame St. Dublin
	383.33	487	5547	do
	316.67	3072	9243	Julianna Smith
	1,666.67	3073	9231	do
	792.00	3074	5188	do
	666.66	631	7956	Lilliberry Riley Committee of Lucy Ann Roberts.
	180.00	"	7955	do
4	31,680.00	2527	1608	Treasurer of the Soldiers Home Washington, D. C.
	79,333.33	2528	1609	do
	5,000.00	503	10587	J. B. Manning
	5,000.00	504	10977	DeJonge & Co.
	13,590.00	3409	8564	Trustees of Phillips Academy, Andover, Mass.
	277.53	706	1874	Augustus Wiggin
	2,578.33	705	3302	Katherine Gordon, 5 Wilton Crescent, Belgrave Sq., London, Spinster.
	2,066.66	698	1899	Major the Hon. Wm. de Pois Trench, 32 Hyde Park Gardens in the Co. of Middlesex.
	408.00	698	8100	do
	2,300.00	3378	3602	Wm. Duncan, 83 Gloucester Terrace, Hyde Park, London
	1,150.00	3379	4987	do
	2,300.00	3378	7536	Wm. Duncan
	1,000.00	3379	1060	Stern Bros. of London

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 4	$ 1,000.00	3379	1053	Stern Bros. of London
	1,000.00	3379	10335	W. F. Sebert
	1,000.00	3379	10174	Jno. C. Williams, Cashr.
	2,000.00	3379	10192	do
	5,000.00	3379	10060	R. H. Maury & Co.
	10,000.00	3379	8602	Robert Garrett & Sons
	3,000.00	3379	10940	Thos. Branch & Co.
	1,000.00	510	1884	Geo. L. Henser
	1,000.00	"	10187	J. B. Manning
	2,000.00	"	9664	Wilson Colston & Co.
	5,000.00	"	9848	John Bloodgood & Co.
(page 13)	5,000.00	511	10154	R. H. Maury & Co.
	3,000.00	"	10362	Roche Coulter
	1,000.00	"	10310	R. S. Chamberlaine
	1,000.00	"	10309	do
	2,500.00	512	3232	John Thornley, Barrister at law, of London, 68 Chancery Lane, London.
	1,000.00	513	1165	Henry Edwards
	1,000.00	514	2203	John Hargraves
	1,000.00	"	2204	do
	1,000.00	"	2205	do
	1,000.00	"	2206	do
	1,000.00	"	2207	do
	100.00	"	2208	do
	100.00	"	2209	do
	100.00	"	2210	do
	100.00	"	2211	do
	10,000.00	515	9251	Robert Garrett & Sons
	10,000.00	"	11091	Pearl & Co.
	5,000.00	"	3340	Robert B. Bowling
	9,360.00	"	1936	Jas. G. King's Sons
	10,000.00	"	8038	John B. Manning
	10,000.00	"	8785	Robert Garrett & Sons
	5,000.00	"	9954	R. H. Maury & Co.
	5,000.00	"	9881	John Bloodgood & Co.
	20,000.00	"	9725	Robert Garrett & Sons
	666.66	"	9797	James S. Swann
	10,000.00	"	9729	Robert Garrett & Sons
	25,000.00	"	9595	do
	50,000.00	"	9593	do
	168.83	"	5426	Austin Seay
	5,000.00	516	5568	Whitehouse & Co.
	13,300.00	"	4306	The New Jersey Mutual Life Insurance Co.
	5,000.00	"	4082	John Hanson Thomas, Trustee for Annie C. Thomas and her children

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 4	$ 250.00	516	2084	Johannes Roth
	200.00	"	2682	A. Goettel & Co.
	1,533.33	"	2486	James Robb King & Co.
	21,029.00	"	2892	Dr. Thomas F. Andrews
	258.34	"	144	Moses Hecht
	4,000.00	"	11076	W. F. Sebert
	255.07	"	10913	W. S. Robinson & Newett, Belfast, Ireland
	5,000.00	"	10999	I. & S. Wormser
	5,000.00	"	10852	W. S. Sebert
	5,000.00	"	10394	Wilson Colston & Co.
	468.70	"	10660	J. B. Manning
	5,000.00	"	10550	L. Von Hoffman & Co.
	5,000.00	"	10380	L. H. Niles
	5,000.00	"	10086	R. H. Maury & Co.
	1,557.39	"	3742†	Lloyd Loundes
	5,000.00	"	3872	D. H. Gordon
	1,000.00	"	3679	Chas. Hirst, Huddersfield, Yorkshire, England
(page 14)	333.33	517	3892	Richard Sanders
	1,000.00	"	1082	Stern Bros. of London
	1,000.00	"	1081	do
	1,000.00	"	1058	do
	1,000.00	"	1084	do
	1,000.00	"	1083	do
	500.00	"	6458	George J. Appold
	500.00	"	6457	do
	500.00	"	6456	do
	500.00	"	6455	do
	1,000.00	"	6454	do
	1,000.00	"	6453	do
	1,000.00	"	6452	do
	5,000.00	"	6416	do
	5,000.00	"	6302	do
	5,000.00	"	6665	Helen Virginia Groome
	5,000.00	"	6128	Robert Garrett & Sons
	5,000.00	"	6325	do
	5,000.00	"	6415	George J. Appold
	5,000.00	518	10333	W. F. Sebert
	1,000.00	"	10023	Marx & Co.
	5,000.00	"	10211	Charles J. Bonaparte
	5,000.00	"	10210	do
	5,000.00	"	10080	R. H. Maury & Co.
	1,000.00	"	10022	Marx & Co.
	1,000.00	"	3333	Robt. B. Bolling
	1,000.00	"	1086	Stern Bros of London

† Out of order, not reassigned.

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 4	$ 1,000.00	518	1087	Stern Bros. of London
	1,000.00	"	1088	do
	1,000.00	"	1089	do
	1,000.00	"	1090	do
	1,000.00	"	1114	do
	1,000.00	"	1115	do
	5,000.00	519	9873	John Bloodgood & Co.
	5,000.00	"	10169	Francis White
	10,000.00	8273	3456	Robert Garrett & Sons
	10,000.00	8619	3457	do
	10,000.00	8801	3458	do
	5,000.00	10065	3459	R. H. Maury & Co.
	5,000.00	10066	3460	do
	1,000.00	9275	3461	John B. Manning
	5,000.00	9284	3462	Robert Garrett & Sons
	1,000.00	2738	3463	S. Stein
	10,000.00	10457	3464	J. S. Wells
	5,000.00	10290	3465	W. F. Sebert
	1,000.00	10354	3466	John Malcolm of Belfast, Ireland
	1,000.00	10356	3467	do
	3,000.00	10365	3468	F. T. Redwood
	10,000.00	10461	3469	J. S. Wells
	10,000.00	10495	3470	do
	10,000.00	10501	3471	do
	10,000.00	10525	3472	do
	10,000.00	10526	3473	do
	5,000.00	10536	3474	L. H. Niles
(page 14)	5,000.00	3475	10687	Wilson Colston & Co.
	5,000.00	3476	10838	L. H. Niles
	1,000.00	3477	10126	Wilson Colston & Co.
	5,000.00	3478	10336	W. F. Sebert
	5,000.00	3479	10910	W. A. Robinson & Newett, Belfast, Ireland
	116.67	3480	2176	W. N. Baldwin, Jr.
	1,346.00	3481	2810	D. R. Hagner
	10,000.00	2500	2531	David Barclay Chapman of London
	550.73	2499	5057	Director Cramer
	5,000.00	2501	5971	John B. Manning
	10,000.00	2502	9429	Davenport & Co.
	5,000.00	2501	9789	Wilson Colston & Co.
	5,000.00	2503	9757	R. A. Lancaster & Co.
	1,000.00	2499	9796	James S. Swan
	5,000.00	2503	9838	John Bloodgood & Co.
	5,000.00	2504	9874	do
	5,000.00	2504	9878	do

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 4	$ 5,000.00	2505	9884	John Bloodgood & Co.
	5,000.00	2505	9849	do
	5,000.00	2506	9948	R. H. Maury & Co.
	5,000.00	2506	8871	Robt. Garrett & Sons
	6,000.00	2507	8461	Joseph H. Reiman
	10,000.00	2508	8868	Ro. Garrett & Sons
	10,000.00	2509	8577	do
	10,000.00	2510	8437	do
	3,000.00	2511	8326	do
	10,000.00	2512	8612	do
	3,000.00	2513	8366	do
	5,000.00	3487	4182	George A. Washington
	1,000.00	3488	3974	John Elliott of New York
	2,000.00	3489	1651	Edward Fearney
	5,000.00	3490	10087	R. H. Maury & Co.
	5,000.00	3491	6663	Helen Virginia Groome
	2,000.00	3492	3037	Edward Fearney
	4,000.00	3493	6719	Wilson Colston & Co.
	1,000.00	3494	7847	D. Fahnestock & Co.
	5,000.00	3495	10085	R. H. Maury & Co.
	5,000.00	3496	5566	Whitehouse & Co.
	1,000.00	3497	6303	George J. Appold
	1,000.00	3498	6304	do
	1,000.00	3499	6305	do
	1,000.00	3500	6306	do
	1,000.00	3501	6307	do
	1,000.00	3502	1885	Geo. L. Heuser
	1,000.00	3503	1886	do
	1,000.00	3504	1887	do
	1,000.00	3358	1888	do
	1,000.00	3359	10408	W. F. Sebert
	5,000.00	"	10602	William Howe
	4,000.00	"	5377	Tutein Nolthenius and de Haan of Amsterdam
	766.67	523	3415	Wm. Mitchener, 2 Buckingham Villas, Crescent Road, Kingston Hill.
(page 16)	5,000.00	524	5567	Whitehouse & Co.
	130.43	525	5540	Ira P. Pope
	1,000.00	526	3426	J. B. Manning
	1,400.00	"	3733	John B. Manning
	1,050.00	"	4982	A. Vanables & Co., London
	1,000.00	527	3639	James Coates, Stockbroker, London
	1,000.00	"	3638	do
	1,000.00	"	3637	do
	1,000.00	"	3636	do
	1,000.00	"	3635	do

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 4	$ 5,000.00	527	9897	John Bloodgood & Co.
	5,000.00	"	10739	L. H. Niles
	5,415.00	528	6958	A. Keyser & Co., of London
	383.33	529	3271	M. Morgans Sons
	1,916.66	"	2658	do
	7,666.67	3552	7481	Philip Woolley, London
	1,916.67	531	4892	R. Raphael & Sons, of London
	12,705.80	532	2059	George Warde Norman of Bromley Common, Kent, England
	10,000.00	3132	8246	Bobbert Garrett & Sons
	10,000.00	3123	8867	Robert Garrett & Sons
	10,000.00	3134	8869	Robert Garrett & Sons
	10,000.00	3125	9774	John B. Manning
	10,000.00	3126	9754	R. A. Lancaster & Co.
	5,000.00	534	10349	John Malcolm of Belfast, Ireland
	5,000.00	"	10351	do
	5,000.00	"	10350	do
	1,990.00	535	625	Ellinger & Co.
	1,000.00	"	5135	John A. Hambleton & Co.
	5,000.00	"	5304	J. Wilcox Brown, Trustee.
	2,000.00	"	5842	John B. Manning
	1,951.25	536	5818 (Non Neg Rects)	Jean Baptiste Mauricede Coetlosquet of Paris
	2,933.33	"	6137 (Non Neg Rep)	do
	1,985.00	645	6559	O. D. Grosvenor, Rochester, N. Y.
	1,000.00	651	3708	" Chas. Hirst, Huddersfield Yorkshire, England.
	1,000.00	"	3709	" do
	1,000.00	"	3710	do
	1,000.00	"	3711	" do
	1,000.00	"	3712	" do
	1,000.00	"	3713	" do
	1,170.00	678	1223	Wm. H. Stokes
	13,000.00	655	8746	Robert Garrett & Sons
	500.00	2433	10885	Boully & Thompson, London
	500.00	2433	10884	do
	10,000.00	2434	8451	Robert Garrett & Sons
	10,000.00	2435	10458	J. S. Wells
	10,000.00	2436	10499	do
	1,000.00	2433	9709	John B. Manning
	5,000.00	2437	7920	Robert Garrett & Sons
	383.33	2438	4253	James Robb King & Co.
(page 17)	320.00	2439	6513	Elizabeth Clarkson Jay
	363.33	2440	8134	Lucy C. Crittenden

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 4	$ 6,000.00	2441	2901	Frederick Somers, etc. (see Ctf)
	800.00	2766	3392	Vane Vlie Wins & Van Limmik
	4,600.00	2767	3867	R. Raphael & Sons
	5,000.00	2433	3338	Robert B. Bolling
	2,765.33	2443	1866	Augustus Wiggin
	1,000.00	2433	1109	Stern Bros. of London
	1,000.00	2433	1080	do
	1,000.00	2433	1079	do
	510.33	1848	10765	Oelrichs & Co.
	383.33	1849	6776	J. S. Kennedy & Co.
	832.32	1850	11124	J. B. Manninfg
	426.67	1851	10943	Wm. Fisher & Sons, Baltimore
	1,000.00	1836	10804	J. B. Manning
	500.00	1837	10912	W. A. Robinson & Newett, Belfast, Ireland
	500.00	1838	10541	L. H. Niles
	500.00	1852	10540	do
	3,000.00	1839	10358	R. L. Ross
	5,000.00	1840	10151	Augustus I. Albet
	5,000.00	1841	10078	R. H. Maury & Co.
	5,000.00	1842	9806	Thomas C. Jenkins
	1,306.66	1853	9600	Robert Garrett & Sons
	10,000.00	1843	8663	do
	396.66	1854	8361	Wm. Gunn & Co. of Springfield, Mass.
	10,000.00	1844	7582	G. T. Bonner & Co.
	1,456.66	1855	7220	Thomas French Wallace of 87 St. James, London, Wine Merchant
	5,000.00	1845	5434	H. Amy & Co.
	2,254.63	1856	5229	Wm. Hoffman & Co.
	5,000.00	1846	5616	Wm. & John O'Brien
	133.33	1857	5789	J. R. Schuyler
	3,833.34	1858	5867	J. S. Kennedy & Co.
	7,666.67	1859	3739	James Robb King & Co.
	650.00	1860	3855	do
	766.67	1861	4976	Wm. E. Pratt of Bellgrave Square, Monks Tower, Co. Dublin
	3,450.00	1862	4314	Widow Tjienk & Co. Amsterdam
	575.00	1863	3858	James Robb King & Co.
	1,170.00	1864	3022	Richard Irvin & Co.
	383.33	1865	3824	H. T. Morgan & Co.
	3,737.93	1866	2565	Thomas W. L. Fauntleroy
	1,005.00	1867	2043	W. Stobart

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 4	$ 1,000.00	1847	464	Stern Bros. London
	1,000.00	1868	465	do
	1,000.00	1869	466	do
	448.66	1870	85	Mary E. Crenshaw
	134.60	1871	87	Jane E. Crenshaw
	500.00	1872	888	D. H. Flack
	3,021.67	1873	1937	James G. King's Sons
	766.67	1874	4044	Francis O. Farrell of Thomas St., Dublin
21	5,000.00	664	11068	W. F. Sebert
(page 18)	10,000.00	"	8672	Robert Garrett & Sons
	5,000.00	"	5981	do
	3,000.00	665	5555	Thomas Crane
28	2,312.61	666	9521	Annie V. Hoffman
	2,220.00	667	2221	Mrs. Catharine E. Bouldin
		(Non Neg Rect)		
	1,000.00	668	1071	Stern Bros of London
	1,000.00	"	1072	do
	1,000.00	"	1073	do
	1,621.90	669	6050	Peter V. Hagner for Aztec Club
	11,600.00	670	452	Rev. J. Turnbull Backus D. D.
Dec. 6	25.00	2498	11077	W. F. Sebert
	1,000.00	2494	11039	L. H. Niles
	893.34	2961	10993	W. F. Sebert
	1,000.00	2494	10975	L. H. Niles
	1,000.00	2494	10809	do
	1,000.00	2494	10667	Edward Cohen
	1,000.00	2494	10668	do
	3,000.00	2494	9630	R. H. Maury & Co.
	200.00	2960	9138	W. T. & Jas. Scott Committee of Sarah E. Read
	10,000.00	2495	8862	Ro. Garrett & Sons
	1,000.00	2494	8154	Johnston Brothers & Co.
	2,753.33	2960	6668	Helen Virginia Groome
	607.60	2498	5580	Baltzar & Taaks
	2,233.60	2498	5055	Theophile Garnot
	131.33	2496	3781	Mrs. Mary A. Craig
	221.67	2496	3488	Sebastian de Neufville of Paris
	140.00	2960	2893	Rev. C. W. Peterbridge
	1,000.00	2494	2821	Stern Bros. of London
	1,000.00	2826	1076	do
	1,000.00	2825	1092	do
	1,000.00	2825	1093	do
	1,000.00	2825	1094	do
	837.67	2498	2446	Sebastian de Neufville of Paris
	520.80	2498	1191	Hallgarten & Co.
	2,000.00	2825	1163	Joseph K. Roberts

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 6	$ 443.33	2498	4721	Margaret E. Cuyler
	7,056.67	2496	35	James Robb King & Co.
	5,103.33	2498	32	do
	233.33	2498	4342	R. R. Houston
	933.33	2496	3629	do
	1.666.67	2496	5159	Dr. John C. Wilson, Trustee for J. Vaden
	2,130.00	672	3428	Amos Birdsall of Tomis River, N. J.
7	600.00	676	3508	D. B. Chapman
	10,000.00	"	2532	David Barclay Chapman of London
	1,000.00	"	2934	Stern Bros. of London
(page 19)	6,449.08	676	1210	Lawrence Morrissey
	1,031.48	"	659	John A. Hamilton
	1,000.00	"	11083	J. B. Manning
	56.67	810	5834	Phillip Haxall
	10,000.00	809	8738	Robert Garrett & Sons
	439.00	"	7452	Edward Urhlaub
	1,916.67	"	3603	Colonel Michie Forbes Gordon of Falkirk, North Britain.
	1,341.67	"	4986	do
	2,668.33	"	4131	Samuel Kemp, Oriel House, Widcombe, Bath.
	4,982.67	"	3266	Ludlow Lawrence
	1,240.00	"	3102	D. C. List
	3,980.00	"	3100	do
	3,967.67	"	3101	do
	396.67	"	364	L. Von Hoffman & Co.
	10,000.00	809	2527	David Barclay Chapman, of London
	1,289.80	810	1870	James Robb King & Co.
	433.49	"	11046	R. H. Maury & Co.
	3,333.33	"	9402	Joseph Haslam, Stratham Hill, London
	3,500.00	"	325	John B. Manning
	338.33	"	2395	Mary A. Jameson
	125.00	"	6737	do
9	731.66	717	8296	Martha Elizabeth Gore, of 26 Brunswick Sq., Brighton, Sussex, Spinster, the sole executrix of the Right Hon. Lady Grace Gore, late of the same place, deceased, the widow of the late Sir Ralph Gore, Baronet.
	1,000.00	"	8297	do

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 9	$ 1,000.00	717	8298	Martha Elizabeth Gore, of 26 Brunswick Sq.,, Brighton, Sussex, Spinster, the sole executrix of the Right Hon. Lady Grace Gore, late of the same place, deceased, the widow of the late Sir Ralph Gore, Baronet.
	1,000.00	"	8299	do
	1,000.00	"	8300	do
	1,000.00	"	8301	do
	1,000.00	"	8302	do
	1,000.00	"	8303	do
	5,000.00	"	8304	do
	5,000.00	"	8305	do
	643.56	"	8306	do
	1,000.00	"	8307	do
	1,000.00	"	8308	do
	1,000.00	"	8309	do
	1,000.00	734	4190	James Duncan
	1,000.00	"	4191	do
	1,000.00	735	9274	John B. Manning
	2,000.00	736	10414	Wm. H. Fisher
	7,517.33	829	2087	T. Spencer Nolan
10	5,000.00	737	10296	W. F. Sebert
	5,000.00	738	10877	Boully & Thompson, London
13	10,000.00	739	10481	J. S. Wells
(page 20)	5,000.00	740	10428	J. B. Manning
	5,000.00	741	10690	L. H. Niles
	266.67	742	1738	W. H. Baldwin, Jr.
	760.00	"	1721	E. H. Webster
	3,963.13	"	10322	Mrs. Amanda Billup
	5,000.00	744	10990	W. F. Sebert
	1,000.00	745	11082	J. B. Manning
	4,000.00	746	10179	F. T. Redwood
	5,000.00	743	10398	W. F. Sebert
	2,830.00	2687	1485	J. L. Billingslea
	1,729.53	748	654	Richard Norris
	5,000.00	749	11109	Wm. H. Fisher
	5,000.66	750	1507	Ezra Houck
16	3,000.00	792	2896	Gottfried Bachmann
	3,083.34	797	2	Edward Brandon
	4,334.13	794	92	Sarah L. Waters
	605.00	797	926	Jan Van der Hoop and Toon
	1,000.00	796	2430	Francis Leaver of Longnor Hall Parkridge, London
	1,000.00	"	2429	do

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 16	$ 1,000.00	796	2431	Francis Leaver of Longnor Hall Parkridge, London.
	51.67	"	2433	do
	250.00	793	2961	Townsend Whelan & Co.
	5,273.13	797	9300	Robert Garrett & Sons
	6,000.00	795	8752	do
	287.13	793	9917	H. C. Hardy & Son
	923.93	"	3258	Martha S. Russell
	1,000.00	792	3681	Chas. Hirst, Huddersfield, Yorkshire, England
	1,000.00	"	3682	do
	1,000.00	796	3694	do
	1,000.00	"	3695	do
	1,000.00	792	3706	do
	1,041.67	797	3826	Alexander B. Haynes, Admt. C. T. A.
	500.10	793	4500	J. B. Manning
	443.33	"	5698	Rev. R. S. Moran. D. D.
	1,000.00	795	6248	Robert Garrett & Sons
	3,000.00	"	6830	Amelia J. Engle, of Germantown, Phila., Pa.
	2,683.33	794	7462	John K. Gillat & Co.
	1,916.67	"	7513	J. S. Kennedy & Co.
	3,949.60	796	7857	Robert Garrett & Sons
	2,000.00	792	8184	Joseph H. Rieman
	10,000.00	755	8584	Robert Garrett & Sons
	5,000.00	756	10163	J. L. Johnston
	2,000.00	792	10232	Wilson Colston & Co.
	5,000.00	756	10364	F. T. Redwood
	1,000.00	796	10402	W. F. Sebert
	10,000.00	758	10487	J. S. Wells
	100.00	793	10657	J. B. Manning
	500.00	"	10684	Oelrichs & Co.
	5,000.00	"	10861	Satterthwaite & Co.
	1,000.00	"	10889	Wilson Colston & Co.
(page 21)	9.806,94	759	10896	J. H. Fisher
	193.06	759	10898	J. H. Fisher
	388.54	794	10823	Arents & Young
	62.27	"	10949	Wm. H. Fisher
	1,000.00	793	11034	Wilson Colston & Co.
	396.66	794	11127	Mrs. Francis B. Johnson
	220.49	"	11036	Wilson Colston & Co.
	10,000.00	761	8104	Robert Garrett & Sons
17	2,000.00	3641	6214	Isaacs Taylor & Williams
	5,000.00	3642	3749	do
	8,000.00	3643	6209	J. J. Nicholson & Sons

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 19	$ 2,200.00	3529	5406	The Imperial Insurance Company of London
	6,666.67	3530	4690	do
20	5,000.00	766	9875	John Bloodgood & Co.
	1,000.00	"	10830	W. F. Sebert
	1,000.00	"	6371	Robt. Garrett & Sons
	1,000.00	"	3667	John Kaye Clayton, West Yorkshire, England
	1,000.00	"	3666	do
	1,000.00	"	3393	Vant Vlie Wins & Van Limmik
	11,626.00	767	2234	The Penna Company for Insurance on Lives, and Granting Annuiities, Trustees for B. L. and G. R. de Potestad, his wife, under deed of 9th November, 1859.
21	10,000.00	768	8247	Robert Garrett & Sons
	5,000.00	769	9439	Davenport & Co.
	5,000.00	"	10859	Satterthwaite & Co.
	5,000.00	770	6164	Robert Barrett & Sons
	5,000.00	771	10063	R. H. Maury & Co.
	1,000.00	856	7072	Adolphus Keppelman
	1,000.00	"	11117	J. Harmanus Fisher & Son
	5,000.00	"	10773	Wilson Colston & Co.
	5,000.00	"	4068	Lancaster Brown & Co.
	1,000.00	"	10791	Alice L. Watson of Bridgeport, Conn.
	2,000.00	"	9599	Robert Garrett & Sons
	2,000.00	"	8563	do
	10,000.00	"	8610	do
	1,000.00	"	1057	Stern Bros. of London
	1,000.00	"	1056	do
	1,000.00	"	1055	do
	1,000.00	857	1054	do
22	4,733.33	773	4238	D. H. Miller & J. M. Brooks, Executors of Gene Hare, deced.
	842.33	"	4321	D. H. Miller & J. M. Brooks, Trustees for Wm. H. Hare.
24	10,000.00	774	10452	J. S. Wells
	5,000.00	934	10794	Vermilye & Co.
	10,000.00	935	10718	J. B. Manning
	5,000.00	934	10216	Jerome N. Bonaparte
(page 22)	5,000.00	776	10098	R. H. Maury & Co.
	5,000.00	"	8103	Robert Garrett & Sons
27	5,000.00	777	11010	Lucien H. Niles
	5,000.00	"	3079	Cammann & Co.

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898				
Dec. 27	$ 1,000.00	777	10546	John B. Manning
	1,000.00	"	10545	do
	1,000.00	"	5247	Julius S. Hitchcock
	1,000.00	"	9277	John B. Manning
	3,000.00	"	8146	Phillip Wolff
	1,000.00	"	2925	Stern Bros. of London
	1,000.00	"	3716	Chas. Hirst, Huddersfield, Yorkshire, England
	1,000.00	"	10404	W. F. Sebert
28	2,261.66	785 (Non Neg Ctf)	6547	J. C. Farrar, C. D. Farrar, and S. Owens, Exts. in trust for Mrs. Sarah S. Nicholson, u-w of Sam'l S. Farrar, deceased
	4,392.53	786	3105	Thomas W. Eliason
	1,000.00	787	4577	James P. Thomas & Sons
	100.00	"	2223	Isaac Taylor & Williams
	100.00	"	535	Taussig Fisher & Co.
	100.00	"	530	do
	500.00	"	4682	Wilson Colston & Co.
	1,600.00	"	4905	J. B. Manning
	3,833.33	"	4350	William James Elger
	100.00	"	3036	Charles R. Hooff
	250.00	"	2895	Jacob Fussell
	166.67	"	1736	Samuel Hamilton
	600.00	"	1520	James Robb
	50.00	"	5137	J. B. Manning
	1,600.00	"	5193	do
30	5,000.00	788	10359	R. L. Ross
	173.67	923	221	P. S. Marsh
	1,000.00	924	222	do
	1,000.00	925	223	do
	1,000.00	926	224	do
	1,000.00	927	225	do
	1,000.00	928	226	do
	1,000.00	929	227	do
	1,000.00	930	228	do
	1,000.00	931	229	do
	1,000.00	932	230	do
	5,000.00	933	2227	Isaacs Taylor & Williams
1899				
Jan. 5	1,000.00	790	4271	Charles Schroder
	1,000.00	"	1350	Charles B. Curtis
	2,000.00	"	4999	Wilson Colston & Co..
	1,000.00	"	1349	Charles B. Curtis
	5,000.00	"	4996	Wilson Colston & Co.
	5,000.00	"	4997	do

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Jan. 7	$ 1,079.40	791	7027	Andrew J. Steinman of Lancaster
9	1,000.00	798	10551	L. Von Hoffman & Co.
	1,000.00	799	10570	J. S. Wells
12	1,214.16	2722	5548	Miss Louisa Emmerson
	1,916.37	2723	5545	John Emmerson, Exr. of Arthur Emmerson, decd.
(page 23)	5,000.00	3636	10925	Asiel & Co.
	5,000.00	3637	10836	Hatch & Peters
	10,000.00	3638	6012	Robert Garrett & Sons
18	10,000.00	804	8615	Robert Garrett & Sons
	96.67	805	2452	A. Goettel & Co.
	300.00	805	2437	do
27	10,000.00	811	10517	J. S. Wells
31	1,956.67	814	849	E. J. Hawley & Co.
Feb. 2	10,000.00	817	9811	R. A. Lancaster & Co.
	10,000.00	818	10591	H. Amy & Co.
" 6	1,000.00	833	9907	Jno. B. Manning
	1,000.00	"	6476	James Coates
	1,000.00	834	5480	John B. Manning
	1,000.00	"	2048	do
	1,000.00	"	5481	do
	2,000.00	"	5020	Lancaster & Company
" 7	4,681.35	2776	923	Sarah M. Hitchcock
	55.00	2777	5154	H. Augustus Taylor
	4,300.36	2778	7549	Thomas Hitchcock, New York
	5,000.00	2779	9742	R. H. Maury & Co.
	5,000.00	2780	9895	John Bloodgood & Co.
	5,000.00	2781	10075	R. H. Maury & Co.
	10,000.00	2782	10479	J. S. Wells
	10,000.00	2783	10559	do
	1,000.00	2784	10639	A. Keyser & Co., of London
	1,000.00	2785	11028	J. Harmanus Fisher & Son
	4,000.00	2786	10679	Oelrichs & Co.
	1,000.00	836	11043	R. H. Maury & Co.
	10,000.00	2820	10324	R. L. Chamberlaine
	1,000.00	2821	10810	L. H. Niles
	1,000.00	"	10811	do
	1,000.00	"	10812	do
	1,000.00	"	10813	do
	1,000.00	"	10814	do
	1,000.00	2821	10815	do
	1,000.00	"	10816	do
	1,000.00	"	10817	do
	1,000.00	"	10818	do
	1,000.00	"	10819	do
	7,800.00	3088	6611	Rufus Story of New York

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Feb. 7	2,216.33	3089	9241	Edward A. Abbott
	2,800.00	2823	2281	P. C. Harris, U. S. A.
	514.80	2824	10325	R. L. Chamberlaine
	500.00	"	2351	P. C. Harris, U. S. Army
9	3,109.68	838	3495	William Kevan of New York
	2,655.00	1875	1269	George W. Gibson
	1,000.00	3204	2236	J. and J. Higgins
	7,143.06	841	323	Mrs. Louisa L. Loundes of Cumberland
10	2,497.80	842	5947	Mr. Charles Leon Ernest Le Clere Marquis de Juigne
	2,048.57	843	303	R. C. W. Radford
	3,236.47	"	3040	Alfred T. Harris
(page 24)	333.33	843	7103	H. Amy & Co.
	4,398.33	"	6529	Rutten & Bonn
15	3,833.33	845	4649	George Scholes
16	10,000.00	846	8819	Robert Garrett & Sons
	10,000.00	"	8807	do
	5,000.00	"	10070	R. H. Maury & Co.
	2,163.70	"	10982	Ridgely Duvall, Jr.
	1,516.67	"	8596	Alvedia Griffith
	5,000.00	"	6170	Alexander Rieman
	10,000.00	"	5271	Leland Brothers & Company
	6,333.33	"	6539	Thomas Butler of Walwick Hall Northumberland, Esquire, etc.
17	1,597.11	850	4331	Chas. Carter, Adminintrator etc.
	800.00	"	6039	John Lyle, Adm. of Adeline Selden
	1,000.00	"	10577	J. S. Wells
	1,000.00	"	10576	do
	5,000.00	"	10077	R. H. Maury & Co.
	5,000.00	"	9783	John B. Manning
	1,000.00	"	1099	Stern Brothers of London
	1,647.20	"	1973	Jane T. Dorsey
	66.67	"	987	James Dunlop, Treasurer Male Orphan Society of Richmond
	2,896.00	"	1929	Richmond Male Orphan Society
	3,833.33	847	2497	Charles Lings
	2,300.00	"	3173	J. Ritchie
	3,913.33	"	3172	F. Ritchie
	1,000.00	"	10281	W. F. Sebert
	1,000.00	"	10808	L. H. Niles
	358.33	"	10983	N. Thouron & Co.

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Feb. 17	$ 5,000.00	847	10998	I. & S. Wormser
	5,000.00	"	10894	C. L. Beard
	5,000.00	"	10853	Satterthwaite & Co., of London, England
	10,000.00	"	10513	J. S. Wells
	10,000.00	"	10472	do
	5,000.00	"	9879	John Bloodgood & Co.
	1,000.00	"	9196	Levy & Borg
	5,000.00	"	9925	John B. Manning
	10,000.00	848	9772	do
	1,000.00	"	8195	Johnston Brothers & Co.
	5,000.00	"	7945	Robert Benson & Co.
	15,333.33	"	6726	James G. King's Sons
	5,000.00	"	5938	J. B. Manning
	1,598.00	"	5727	Wm. Stewart, Trustee for S. Dunkee
	14,463.33	"	3597	Richard Sanders, Esq., of 73 Lancaster Gate, Hyde Park
	958.33	"	3298	Henry Clews & Co.
	1,000.00	"	2438	A. Goettel & Co.
	2,700.00	"	2781	Brown Bros. & Co.
(page 25)	232.11	848	878	Winslow Lanier & Co.
	1,725.00	"	689	Mrs. Caroline Herring
	2,800.00	"	542	James Robb King & Co
	4,641.67	"	20	do
	10,000.00	851	9753	R. A. Lancaster & Co.
	10,000.00	"	10482	J. S. Wells
	10,000.00	"	5194	J. B. Manning
	10,000.00	852	10509	J. S. Wells
	10,000.00	"	10449	do
28	716.67	853	191	Elizabeth Chamberlain
Mar. 2	780.00	854	4417	Catherine A. Kinger
7	1,916.66	860	5928	Mistress Widow Tjienk & Co., Amsterdam
	1,150.00	861	4625	Frederick Schuchardt & Sons
	1,583.33	862	4626	do
	5,000.00	882	1948	John K. Gilliatt & Co.
	2,000.00	"	3396	Wm. Fisher & Sons
	5,000.00	"	3750	Isaacs Taylor & Williams
	19,100.00	"	5012	J. S. Morgan & Co., 22 Old Broad St., London
	1,921.74	"	7077	Meldnoir Von der Fann of Munich
	2,666.66	"	8836	Abraham Morrell
	1,000.00	"	9443	J. B. Manning
	147.00	"	9444	do
	110.00	"	9460	do
	1,239.23	"	9474	do

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Mar. 7	$14,060.00	882	9626	William Fisher & Sons
	5,080.33	"	9628	H. A. Orrick
	11.733.34	937 Non Neg Rf.	4	Thomas Foulke
	266.66	" "	1763	do
10	1,269.80	863	507	Ella W. Dimmock
11	27,453.33	864	2023	W. L. Winans
14	10,000.00	865	7224	Philip Speyer & Co.
	10,000.00	866	5338	J. B. Manning
	10,000.00	867	10473	J. S. Wells
16	1,000.00	877	11033	Wilson Colston & Co.
17	10,000.00	879	6507	George J. Appold
18	5,000.00	3389	10092	R. H. Maury & Co.
	5,000.00	3390	10091	do
20	2,216.67	881	862	A. H. Grant
	1,000.00	"	1291	Hallgarten & Co.
	1,000.00	"	1293	do
	1,000.00	"	1290	do
	100.00	"	5152	Richard Irvin & Co.
	2,683.33	"	8313	S. G. & G. C. Ward
	337.99	"	7023	Lavinia Cornick
	387.20	"	9623	Lancaster & Lucke
	385.00	"	9994	Charles H. Pearce
	484.65	"	11143	John H. Kahrs
	406.15	"	858	Sarah M. Hall
	762.74	2961	367	L. Von Hoffman & Co., in trust for J. B. Gross
(page 26)	542.40	2961	1974	Ellen Crowley
	4,249.10	2958	2123	W. H. F. Lee
	516.67	2960	2334	Fred'k Vietor & Achelis
	575.00	2960	4046	Thomas Aggs
	3,833.33	2960	5614	J. T. Mounsey, Esquire, of London
	600.00	2959	10644	J. B. Manning
	2,236.30	2961	11058	do
	1,000.00	2827	10647	H. Knickerbacker & Co.
	1,000.00	2737	11007	I. & S. Wormser
	1,940.00	990	8257	Isaac S. Twyman, James W. Tyman and Lewis B. Williams, Trustees for Jenny, Amanda and Francis Ann who are emancipated by the last will and testament of James Twyman, deceased, the interest to be paid to Isaac S. Twyman during his life.

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Mar. 20	$ 792.00	2958	3784	Sebastian de Neufville of Paris
	1,983.33	2960	3264	Count Ladislas Evariste Plater of Paris
(page 27)				
31	353.35	887	11126	J. B. Manning
	300.00	888	10902	D. Fahnestock & Co.
	10.87	889	10863	Satterthwaite & Co.
	10,000.00	890	10503	J. S. Wells
	10,000.00	891	10500	do
	10,000.00	892	10492	do
	2,000.00	893	6276	J. B. Manning
	1,000.00	894	9195	Levy & Borg
	333.33	895	2606	Elizabeth Jennings of Henrico
	406.66	896	1176	Wiesenfield & Co.
	567.75	897	7094	Fanny Lockett
	1,000.00	898	6856	John Elloitt
	29.26	899	5017	Bolling, Selden
	6,133.33	900	3199	James Robb King & Co.
	5,000.00	901	7006	John Elliott
	1,000.00	902	299	John Elliott of New York
	1,000.00	903	298	do
	1,000.00	904	297	do
	1,000.00	905	296	do
	1,000.00	906	294	do
	1,000.00	907	293	do
	1,000.00	908	292	do
	1,000.00	909	291	do
	1,000.00	910	290	do
	1,000.00	911	289	do
	1,000.00	3553	288	do
	1,000.00	3300	287	do
	1,000.00	914	286	do
	1,000.00	916	284	do
	1,000.00	917	283	do
	1,000.00	918	282	do
	1,000.00	919	281	do
	1,916.67	920 Doc att.	4975	Francis O'Farrell of Thomas St. Dublin, Merchant.
	1,000.00	921	295	John Elliott of New York
	1,983.33	922 Doc. att.	2515	Miss Ellen Chapman of Wansteed, Essex, England
Apr. 5	10,000.00	936	11097	Pearl & Co.
13	5,490.66	2656	1629	John Little, of Washington, D. C.
24	7,733.33	939	1418	James Robb King & Co.
27	1,000.00	940	7377	Theodore Hart, of Montreal, Canada.
	1,000.00	941	7378	do

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Apr. 27	$ 1,000.00	942	7379	Theodore Hart, of Montreal, Canada
	1,000.00	943	7380	do
	1,000.00	944	7381	do
	1,000.00	945	7382	do
	1,000.00	946	7383	do
	1,000.00	947	7384	do
	1,000.00	948	7385	do
	1,000.00	949	7386	do
	1,000.00	950	7387	do
(page 28)	1,000.00	951	7388	do
	50.00	952	7391	do
	413.33	953	7390	do
	583.33	954	7389	do
28	7,000.00	978	7714	Edward K. Rogers, Trustee, for the estate of John L. Rogers, decd., of Chicago, Illinois.
	1,467.56		7715	do
May 1	5,000.00	980	4225	International Insurance Company of New York
	5,000.00		3738	Isaacs Taylor & Williams
8	817.46	981	6876	Wm. P .Cole
22	3,250.60	982	86	J. M. Smith
25	1,860.03	988	4319	Georgiana Featherton Haugh.
	3,421.33	989	9956	Georgiana Featherton Haugh, Extrc.
Sept. 21	5,000.00	993	6335	J. H. R. Nicholson
Oct. 3	7,300.00	996	3811	Edward Harriss, of 12 Cambridge Place, Bath, Esquire
	5,000.00	3301	7250	Chase & Higginson
	5,000.00	3302	9257	Wilson Colston & Co.
	1,000.00	3303	9820	John B. Manning
	1,000.00	3304	9821	do
	5,000.00	3305	9885	John Bloodgood & Co.
	5,000.00	3306	10093	R. H. Maury & Co.
	5,000.00	2997	10337	William F. Sebert
	4,000.00	2298	10421	Vermilye & Co.
	6,000.00	3307	10424	Wm. H. Fisher
	10,000.00	3308	10486	J. S. Wells
	10,000.00	3309	10507	J. S. Wells
	10,000.00	3310	10558	J. S. Wells
	1,000.00	3311	10613	Arents & Young
	1,000.00	3312	10614	do
	1,000.00	1722	10615	do
	1,000.00	2484	11050	J. J. Nicholson & Sons

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 3	$ 833.33	2484	2373	H. Amy & Co.
	4,000.00	2484	9356	Wilson, Colston & Co.
	4,166.67	2484	670	A. B. Sulzbacker
	10,000.00	3322	10448	J. S. Wells
	8,000.00	999	6798	Duncan Sherman & Co.
	1,200.00	1001	6799	do
9	17,898.67	1002	4499	Samuel Hairston, of Pittsylvania.
10	666.67		4691	The North British Mercantile Insurance Company of London and Edinburgh.
	1,000.00		4692	do
	1,000.00		4693	do
	1,000.00	1003	4694	do
	5,000.00		4695	do
	5,000.00		4696	do
	5,000.00		4697	do
12	762.00	1004	365	L. Von Hoffman & Co., in trust for A. H. Heyman & Co
(page 29)				
	18,668.27	1005	1780	Edris Berkley
	5,499.66	3486	2155	Howland & Aspinwall
	11,500.00	1007	3459	James Robb King & Co.
	11,691.67	1008	4094	James Mercy, Esq., M. P. Gemmaster, Glasgow.
	1,983.33	1009	4833	L. Von Hoffman & Co. Trustees.
	1,150.00	1010	4912	James Robb King & Co.
	12,456.67	1011	6808	Reinhardt & Castendieck, Sewell of 29 Rood Lane, London, Esquire.
	38,548.33	1012	7897	David Clarke, of Park House, Masclesfield, England.
	160.87	1013	7898	do
	3,655.00	3482	8626	Charles Flower, of Theydon, Bois, Epping, Essex.
	500.00	1015	9400	Joseph Haslam, Streathome Hill, London.
	16,666.67	1016	9658	Hugh Lindsay, Antrobus, Esq., The Hon. Henry Dudley, Ryder and Robert Ruthven, Pym. Esq., all of 49 Strand, London, with receipt of survivorship.
	1,000.00	1017	10376	J. B. Manning
	1,000.00	1018	10539	L. H. Niles
	1,000.00	1019	10572	J. S. Wells

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 12	$1,443.17	1020	7315	Madl. Louise Pauline de Malet de Coupigny, femme de Mr. Julius Oudard Duquesne de Clochville de Paris.
	100.00	1021	4115	Mrs. Elizabeth F. Beadles.
	331.31	1022	4114	do
17	1,000.00		269	John Elliott of New York
	4,500.00	1023	5543	J. B. Manning
	750.00		5683	do
	3,750.00		4400	Catherine Brown
(12)	548.68	1028(Non)	398	Ann H. Haislip
28	164.58	(Neg)	6998	Nannie D. B. Washington, Admx. with the will annexed of Geo. F. Washington, decd.
		1031		
	499.58		5649	do
30	2,000.00	1032	6268	J. J. Alexander
	4,666.66	1033	6858	Baltzer & Taaks
	5,000.00	1034	9845	John Bloodgood & Co.
	5,000.00	1035	9846	do
	5,000.00	1036	10707	Wilson Colston & Co.
	1,533.33	3354	10726	A. Thouron & Co.
	3,466.67	3354	10733	Wilson Colston & Co.
Nov. 8	1,000.00	1039	471	Stern Brothers, London
2	1,200.00	1072	2497	H. Amy & Co.
	10,000.00	1040	2026	John K. Gilliat & Co. of London
(page 30)				
	6,000.00	1041	9119	Alfred Jenkins, Jr., and Robert H. Jenkins, Trustee
	2,000.00	1042	3398	Jas. S. Thomas & Son
	1,000.00	1043	3383	Abraham Morrell
	1,000.00	1044	3761	Wilson Colston & Co.
	5,000.00	1045	3873	D. H. Gordon
	433.33	1046	4189	James Duncan
	1,000.00	1047	4275	Brown, Lancaster & Co.
	5,000.00	1048	4347	Charles K. Hamilton
	2,363.57	1049	4593	John Hargraves, Jr.
	5,000.00	1050	5277	Leland Brothers & Co.
	5,000.00	1051	5386	Tutien Nolthenius and de Haan of Amsterdam
	208.33	1052	5589	H. B. Ferue
	4,340.23	1053	6557	Charles W. Reynolds
	5,000.00	1054	6596	Isaacs Taylor & Williams
	353.33	1055	3360	Washington Blythe
	148.80	1056	7353	Clarence Gusham
	44.00	1058	7758	Edward Dromgoole, Gdn. of F. B. Harrison

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 3,000.00	1059	8210	Alexander Rieman
	2,000.00	1060	8754	G. T. Bonner & Co.
	10,000.00	1061	9508	Arents & Young
	5,000.00	1062	9641	Wilson Colston & Co.
	5,000.00	1063	9850	John Bloodgood & Co.
	1,111.26	1064	10136	R. H. Maury & Co.
	5,000.00	1065	10157	do
	5,000.00	1066	10231	R. A. Lindsay
	2,000.00	1067	10314	F. T. Redwood
	620.41	1068	10385	L. H. Niles
	1,000.00	1069	10936	John B. Manning
	5,000.00	1070	11053	Medwin & Clarke
Nov. 15	5,000.00	1073	8530	J. C. Nicodemus
	5,000.00	1074	9842	John Bloodgood & Co.
17	5,000.00	3235	6124	Robert Garrett & Sons
	5,000.00	3236	6666	Helen Virginia Groome
	10,000.00	3237	9405	Robert Garrett & Sons
	5,000.00	3238	10772	Wilson Colston & Co.
21	379.59	1076	10387	L. H. Niles
	1,000.00	1077	10579	J. S. Wells
	1,000.00	1078	11115	J. Harmanus Fisher & Son
	5,000.00	1079	11086	Satterthwaite & Co., of London
	1,000.00	1080	1059	Stern Brothers of London
	350.00	1081	2370	H. Amy & Co.
	170.00	3551	2425	do
	123.33	1083	3959	Morton Bliss & Co.
	5,000.00	1084	6369	Robert Garrett & Sons
	5,000.00	1085	8578	do
28	6,666.67	3428	2089	Harrison, Robertson, Specl. Commr. Ct. Ct. etc.
	1,955.00	3429	2090	Helen V. Robertson
	86.99	3430	2092	H. Robertson, of Danville, Va.
(page 31)	5,000.00	3430	4412	H. Robertson
	238.00	3432	4477	Harrison Robertson
Dec. 1	2,956.57	1088	1820	Mrs. Maria C. French
	798.00	1089	2064	Miss Susan B. French
Nov. 27	5,000.00	1093	10971	L. H. Niles
	5,000.00	"	9868	John Bloodgood & Co.
	4,000.00		10619	Judah P. Currie
	1,000.00	1094	10632	S. S. Prince
	5,000.00		10972	L. H. Niles
29	10,000.00	1095	11067	W. F. Sebert
27	5,000.00	1222	7882	Sumner R. Stone
	5,000.00	1223	7881	do
	5,000.00	1224	7880	do
	5,000.00	1225	5362	do

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 27	$ 5,000.00	1226	5361	Sumner R. Stone
	18.35	1227	5363	do
	4,233.33	1228	4476	do
	5,000.00	1229	7883	do
	4,716.67	1097	3029	W. T. Hatch & Son
	1,153.56	1099	6834	Francis A. Provost, of Germantown, Phila., Pa.
	1,153.55	1100	6833	Amelia J. Engle, of do
	7,666.67	1101	6544	J. S. Kennedy & Co.
	1,916.67	1102	7285	do
	2,834.23	1103	10144	L. H. Niles
Dec. 4	383.33	3635	4311	John D'Arcy
	1,586.67	2164	1149	Mrs. Helena Uhrland
	1,467.67	2172	720	James Gregory
	383.33	2173	4310	"The National Bank", London
5	11,101.33	1105	1370	D. James
6	5,000.00	1106	8811	J. B. Manning
	17,572.33	1107	3378	Mess. de Rothchild Bros. of Paris
	14,962.00	1108	3049	The Associated Firemens' Insurance Company of Baltimore
	22,202.67	1109	2167	De Rham & Co.
	50,000.00	1110	9594	Robert Garrett & Sons
	10,000.00	1111	8794	do
	10,000.00	1112	8797	do
	10,000.00	1113	8798	do
	10,000.00	1114	8796	do
	10,000.00	1115	9005	do
	10,000.00	1151	8572	do
	5,000.00	1152	6664	Helen Virginia Groome
	5,000.00	"	10862	Satterthwaite & Co.
	10,000.00	1153	8894	Robert Garrett & Sons
	10,000.00	1154	9432	Davenport & Co.
	1,000.00	1155	10629	S. S. Prince
	10,000.00	1156	5799	McKim & Co.
	1,000.00	1155	11040	L. H. Niles
	1,000.00	1155	10640	A. Keyser, of London
	10,000.00	1157	9712	John B. Manning
	1,000.00	1155	1074	Stern Brothers of London
	1,000.00	1155	1075	do
(page 32)				
	5,000.00	1155	6300	George J. Appold
	5,000.66	1158	11114	F. T. Redwood
	5,000.00	"	11119	Wilson Colston & Co.
	1,000.00	"	9179	do
	4,069.34	"	8108	Robert Garrett & Sons

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 6	$ 549.06	1158	368	L. Von Hoffman & Co., in trust for John W. Finke.
	373.33	"	4432	James Robb King & Co.
	906.20	"	10892	C. L. Beard
	88.90	"	2812	L. Von Hoffman & Co., in trust for Albert Erhard.
	1,005.00	"	11140	Knouth, Nachard & Kuhne
	555.07	"	3452	A. Iselin & Co.
	517.23	"	8417	Robert Garrett & Sons
	758.33	"	8599	Charles H. G. Hungerford
	186.66	"	1872	Josiah Vaughan
	1,533.33	1118	4673	Thomas Harger
	5,000.00	1119	9305	Thos. C. Jenkins
	5,000.00	1120	9926	John B. Manning
	5,000.00	1121	10348	John Malcolm of Belfast, Scotland
	10,000.00	1122	10489	J. S. Wells
	1,000.00	1123	10807	L. H. Niles
	1,000.00	1124	10287	W. F. Sebert
	1,000.00	1125	10288	do
	1,000.00	1126	10289	do
	1,666.67	1127	696	Edward Brandon
	1,000.00	1128	1061	Stern Brothers of London
	1,000.00	1129	1110	do
	1,000.00	1130	2817	do
	1,000.00	1131	2818	do
	1,000.00	1132	2819	do
	3,900.00	1133	2992	A. R. Van Ness
	1,000.00	1134	3674	Chas. Hirst, Huddersfield, Yorkshire, England
	1,000.00	1135	3675	do
	1,000.00	1136	3676	do
	1,000.00	1137	3677	do
	1,000.00	1138	3678	do
	9,970.00	Part of 2965	3818	Richd. Irvin & Co.
	5,770.00	1140	4836	Edward Roberts
	4,433.33	1141	5161	Turner Brothers
	1,000.00	1142	6460	James Coates
	1,000.00	1143	6461	do
	1,000.00	1144	6462	do
	1,000.00	1145	6463	do
	1,000.00	1146	6464	do
	50.00	Part of 2965	6579	J. S. Kennedy & Co.
	10,000.00	1148	7983	Robert Garrett & Son
	5,000.00	1149	8435	do
	5,000.00	1150	8764	Wilson Colston & Co.

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 6	70.00	1160	1252 (Non. Neg.)	John Turpin
	476.00	1161	9	Julia E. Turpin, of Richmond
(page 33)	5,177.66	2526	4857	Jno. A. Murdith. etc.
	333.67	1162	3370 (Non. Neg.)	Miss C. C. Harrison
	952.20	2526	4445	B. P. Noland
	2,816.67	"	3744	James M. Rawlings
	6,307.80	"	6407	do
	1,000.00	"	3687	Chas. Hirst, Huddersfield, Yorkshire, England
	1,000.00	"	3686	do
	823.00	"	1871	Agustus Wiggin
	1,000.00	"	9802	John B. Manning
	1,000.00	"	9800	do
	5,000.00	"	10858	Satterthwaite & Co.
	1,000.00	"	10195	F. T. Redwood
	1,000.00	"	10020	Marx & Co.
	1,000.00	"	3669	Chas. Hirst, Huddersfield, Yorkshire, Eng.
	1,000.00	"	3685	do
	500.00	"	8393	James Lyon, Commr. for the Devisees of Ann Ladd, deceased, for the benefit of B. P. Ladd.
	5,000.00	2524	5978	Tutein Nolthenius and de Haan of Amsterdam
	178.66	"	6881	Ellen F. Boyd, Extr'. of A. H. H. Boyd.
	316.67	"	7231	John A. Meredith, etc.
	5,000.00	"	10860	Satterthwaite & Co.
	10,000.00	1568	10782	John C. Williams, Cashr.
	10,000.00	"	10454	J. S. Wells
	5,000.00	"	10223	R. A. Lindsay
	5,000.00	"	10187	F. T. Redwood
	5,000.00	"	9866	John Bloodgood
	5,000.00	"	9775	John B. Manning
	10,000.00	1569	8889	Robert Garrett & Sons
	10,000.00	"	8793	do
	10,000.00	"	8277	do
	396.67	1568	8157	C. Von Berg of Oldenberg.
	83.33	"	7485	Chas. Page, U. S. Army
	1,500.00	"	7404	Lewis B. Williams, for parties out of the State.
	86.66	"	1020	John S. Gittings
	1,362.44	"	3863	do
	1,091.46	"	1473	J. W. Williams

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 6	$ 198.33	1568	2062	Martha E. Leitch
	5,000.00	1165	3925	Nolling Selden
	1,150.00	"	4594	Martin Mass & Co.
	466.67	"	5816	J. J. Barrill
	6,590.00	"	4973	Jane Catherine Gamble of 27 Russell Square, London, Spinster.
	958.33	"	7301	F. H. Clemow, of London
	3,371.67	"	4325	John Murdock, Trustee
	706.67	1159	421	Thomas Hinds
11	4,566.67	1179	1438	Joseph M. Barton, Trustee for Mrs. Caroline M. Barton.
(page 34)	4,106.33	1180	573	Edward Brandon & Company
	3,468.33	1181	1041	Tutein Nolthenius & de Haan
	710.86	1182	1043	Weisenfield & Co.
	1,000.00	1183	1106	Stern Brothers of London
	1,000.00	1184	1107	do
	1,000.00	1185	1108	do
	353.33	1186	1593	John A. Stuart
	198.33	1187	1591	do
	1,000.00	1188	2620	Stern Brothers of London
	1,000.00	1189	2621	do
	1,000.00	1190	2622	do
	396.67	1191	3265	Margaret G. H. Moffet
	5,000.00	1192	3337	Robt. B. Bolling
	1,000.00	1193	3357	H. Blydenburgh
	2,108.33	1194	3493	Tutein Nolhenius & de Haan
	16,446.67	1195	3752	Maitland Phelps & Co., in trust
	5,993.35	1196	4592	James Clifton Brown
	1,916.67	1197	4991	James Robb King & Co.
	5,000.00	1198	5031	Tutein Nolthentius & de Haan
	5,000.00	1199	5437	H. Amy & Co.
	766.67	1200	5792	J. S. Kennedy & Co.
	5,000.00	1201	6347	Robert Garrett & Sons
	5,000.00	1202	6603	Tutein Nolthenius & de Haan of Amsterdam
	5,000.00	1203	6667	Helen Virginia Groome
	500.00	1204	7654	J. B. Manning
	376.66	1205	9139	W. T. & James Scott, Committee of Sarah E. Reade
	10,000.00	1206	9596	Robert Garrett & Sons
	5,000.00	1207	10297	W. F. Sebert
	5,000.00	1208	9692	Thomas Branch & Co.
	5,000.00	1209	9945	R. H. Maury & Co.
	5,000.00	1210	10107	do
	5,000.00	1211	10331	W. F. Sebert

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 11	$ 5,000.00	1212	10544	John B. Manning
	1,000.00	1213	10568	J. S. Wells
	500.00	1214	10788	J. B. Manning
	1,000.00	1215	10880	Boully & Thompson, of London
	1,000.00	1216	10881	do
	1,000.00	1217	10882	do
	1,000.00	1218	10883	do
	5,000.00	1219	10901	J. D. Probst & Co.
	500.00	1220	10959	L. H. Niles
	5,000.00	1221	11129	Hilmers McGowan & Co.
	5,000.00	1171	9847	John Bloodgood & Co.
	10,896.67	1172	2170	Robert Kirby
	10,000.00	1173	10542	John B. Manning
	5,000.00	1174	10222	R. A. Lindsay
	5,000.00	1175	10992	W. F. Sebert
	5,000.00	1176	11111	Ridgeley Duvall, Jr.
	5,000.00	1177	10603	William Howe
	2,430.00	1964	306	John S. Gittings
	779.75	1964	578	Ellen H. Smith
	1,000.00	1963	1091	Stern Brothers of London
(page 35)	686.93	1964	2445	J. M. Smith
	2,000.00	1962	4451	John S. Gittings & Co.
	5,558.33	1964	5050	Maitland Phelps & Co.
	5,000.00	1964	7932	Robert Garrett & Sons
	5,000.00	"	10067	R. H. Maury & Co.
	5,000.00	"	10071	R. H. Maury & Co.
	741.66	"	10221	Jerome N. Bonaparte
	1,000.00	1961	10906	J. B. Manning
	1,000.00	1960	11080	do
13	5,000.00	1230	5940	do
	5,000.00	1231	5980	Robert Garrett & Sons
	5,000.00	1232	9886	John Bloodgood & Co.
	2,856.67	1233	808	John W. Rowland
	216.67	1234	1599	Soutter & Co.
	1,299.41	1235	11078	D. Fahnestock & Co.
	3,570.00	1236	7935	S. G. & G. C. Ward
	76.67	1237	1669	Vermilye & Co.
	4,885.66	1238	1966	Edward Wood
	515.74	1239	3411	Jessie Slingoff, Trustee
	1,000.00	1240	3693	Charles Hirst, Huddersfield, Yorkshire, England
	123.00	1241	3778	H. Amy & Co.
	1,333.33	1242	7720	Middleton & Co.
	1,916.66	1243	8086	S. G. & G. C. Ward
	1,000.00	1244	8252	Richard Swan
	10,000.00	1245	9253	Robert Garrett & Sons
	6,114.07	1246	9765	do

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 13	$ 10,000.00	1247	10514	J. S. Wells
	3,000.00	1248	10799	R. H. Maury & Co.
	5,000.00	1249	10802	Vermilye & Co.
	5,000.00	1250	10981	Lawson, Crane & Douglas
	10,000.00	1251	11026	J. Harmanus Fisher & Son
	327.07	1252	11031	do
	5,000.00	1253	11071	W. F. Sebert
	10,000.00	1254	11090	Pearl & Co.
	3,066.67	1262	2962	Revd. William Naston
			Non. Neg.) (We agree to deliver ctf. at option of holder.)	
20	3,093.33	1277	1633	R. J. Haden, Jr., and W. J. Watkins, in trust for Florence E. Hood (wife of John M. Hood) for her life, and at her death to her children.
22	500.00	1278	475	Stern Brothers, London
	500.00	9	476	do
	500.00	1280	477	do
	500.00	1	1122	do
	500.00	2	1123	do
	1,000.00	3	1116	do
	1,000.00	4	1117	do
	1,000.00	5	1118	do
	1,000.00	6	1119	do
	1,000.00	7	1120	do
	1,000.00	8	1242	do
	1,000.00	9	1275	do
(page 36)				
	1,000.00	1290	1276	do
	1,000.00	91	1277	do
	1,000.00	2	1278	do
	1,000.00	3	1279	do
	1,000.00	4	1280	do
	1,000.00	5	1281	do
	500.00	6	1282	do
	1,000.00	7	2623	do
	1,000.00	8	2822	do
	1,000.00	9	2823	do
	1,000.00	1300	2834	do
	1,000.00	1	2835	do
	1,000.00	2	2836	do
	1,000.00	3	2837	do
	1,000.00	4	3113	do
	1,000.00	5	3114	do

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 22	$ 1,000.00	6	3115	Stern Brothers of London
	1,000.00	7	3116	do
	1,000.00	8	3117	do
	1,000.00	9	3118	do
	1,000.00	10	3119	do
	1,000.00	11	3120	do
	1,000.00	12	3121	do
	1,000.00	13	3122	do
	1,000.00	14	3123	do
	1,000.00	15	3124	do
	1,000.00	16	3125	do
	1,000.00	17	3126	do
	1,000.00	18	3127	do
	1,000.00	19	3128	do
	1,000.00	1320	3129	do
	1,000.00	1	3130	do
	1,000.00	2	3131	do
	1,000.00	3	3132	do
	1,000.00	4	3133	do
	1,000.00	5	3134	do
	1,000.00	6	3135	do
	1,000.00	7	4943	do
	1,000.00	8	4944	do
	1,000.00	9	4945	do
	1,000.00	1330	4946	do
	1,000.00	1	4947	do
	1,000.00	2	4948	do
	1,000.00	3	4949	do
	1,000.00	4	4950	do
	1,000.00	5	4951	do
	1,000.00	6	4952	do
	1,000.00	7	4953	do
	1,000.00	8	4954	do
	1,000.00	9	4955	do
	1,000.00	1340	4956	do
	1,000.00	1	4957	do
	1,000.00	2	4958	do
	1,000.00	3	4959	do
	1,000.00	4	4960	do
(page 37)	1,000.00	1345	4961	do
	1,000.00	6	4962	do
	1,000.00	7	4963	do
	1,000.00	8	6674	do
	1,000.00	9	6675	do
	1,000.00	1350	6676	do
	1,000.00	1	6677	do
	1,000.00	2	6678	do

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 22	$ 1,000.00	1353	6679	Stern Brothers of London
	1,000.00	1354	6680	do
	1,000.00	1355	6681	do
	10,000.00	1356	8434	Robert Garrett & Sons
	34.10	1358	3885	A. T. Lovett
	384.85	1359	1017	Arthur Kimber
	5,000.00	2984	7570	G. T. Bonner & Co.
	10,000.00	2985	8051	Robert Garrett & Sons
	10,000.00	2986	10968	L. H. Niles
26	1,570.33	1361	2436	Sally M. Hobson
	89.03	1362	483	Stern Brothers of London
	69.17	1363	1127	do
	90.00	1364	1287	do
	33.33	1365	2642	do
	71.67	1366	2842	do
	28.29	1367	3137	do
	75.00	3485	6686	do
	239.33	1369	6767	do
	100.00	1370	478	do
	100.00	1371	479	do
	100.00	1372	480	do
	100.00	1373	481	do
	100.00	1374	482	do
	100.00	1375	1124	do
	100.00	1376	1125	do
	100.00	1377	1126	do
	100.00	1378	1283	do
	100.00	1379	1284	do
	100.00	1380	1285	do
	100.00	1381	1286	do
	100.00	1382	3136	do
	100.00	1383	6682	do
	100.00	1384	6683	do
	100.00	1385	6684	do
	100.00	1386	6685	do
	100.00	1387	2639	do
	100.00	1388	2640	do
	100.00	1389	2641	do
	500.00	1390	1121	do
	1,000.00	1391	2562	do
	1,000.00	1392	2607	do
	1,000.00	1393	2608	do
	1.000,00	1394	2609	do
	1,000.00	1395	2610	do
	1,000.00	1396	2611	do
	1,000.00	1397	2612	do
(page 38)	1,000.00	1399	2613	do

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1899				
Dec. 26	$ 1,000.00	1400	2614	Stern Brothers of London
	1,000.00	1401	2615	do
	1,000.00	1402	2616	do
	1,000.00	1403	2617	do
	1,000.00	1404	2618	do
	1,000.00	1405	2619	do
	1,000.00	1406	2624	do
	1,000.00	1407	2625	do
	1,000.00	1408	2626	do
	1,000.00	1409	2627	do
	1,000.00	1410	2628	do
	1,000.00	1411	2629	do
	1,000.00	1412	2630	do
	1,000.00	1413	2631	do
	1.000,00	1414	2632	do
	1,000.00	1415	2633	do
	1,000.00	1416	2634	do
	1,000.00	1417	2635	do
	1,000.00	1418	2636	do
	1,000.00	1419	2637	do
	1,000.00	1420	2638	do
28	5,000.00	1430	3736	Isaacs Taylor & Williams
	5,000.00	1429	11037	L. H. Niles
1900				
Jan. 4	300.00	1431	1772	L. P. Stevens
22	1,033.33	1432	3011	James Robb King & Co.
30	5,000.00	1437	9911	John B. Manning
	5,000.00	1437	9912	do
	10,000.00	1438	9328	Robert Garrett & Sons
	10,000.00	1439	10465	J. S. Wells
	10,000.00	1440	10785	Wilson Colston & Co.
	10,000.00	3438	10518	J. S. Wells
	5,000.00	3439	10745	William Alexander Smith & Co.
	5,000.00	3440	10746	do
	5,000.00	3441	10747	do
	5,000.00	3442	10748	do
	5,000.00	3436	10749	do
	5,000.00	3437	10750	do
	5,000.00	3143	10751	do
	5,000.00	3143	10752	do
	5.000,00	3144	10753	do
	4,886.66	1443	10754	do
Feb. 6	8,133.33	1445	8659	Robert Garrett & Sons
	888.53	1446	9597	do
	1,000.00	1447	8658	do
	1,886.68	1448	9770	do

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Feb. 6	$ 2,220.26	1449	7419	De Rham & Co.
	103.27	1450	11118	J. Harmanus Fisher & Son
	224.68	1451	8101	Robert Garrett & Son
	2,000.00	1452	7991	do
	1,000.00	1453	6015	do
	1,000.00	1454	9823	John B. Manning
	1,000.00	1455	9919	do
	1,000.00	1456	11116	J. Harmanus Fisher & Son
	5,000.00	1457	10774	Wilson Colston & Co.
(page 39)	1,000.00	1458	10580	J. S. Wells
	1,000.00	1459	10569	J. S. Wells
	1,000.00	1460	10399	W. F. Sebert
	1,000.00	1461	10375	J. B. Manning
	1,000.00	1462	10374	do
	1,000.00	1463	10371	do
	6.000.00	1464	10361	J. J. Nicholson & Sons
	571.03	1465	10033	Elizabeth G. Whipple
	1,000.00	1466	9863	John B. Manning
	916.67	1467	9162	August Belmont & Co.
	5,666.66	1468	8823	Robert Garrett & Sons
	10,000.00	1469	8575	do
	10,000.00	1501	8322	Richard Swann
	396.67	1502	8269	Joel Garnett
	3,000.00	1503	8183	Alexander Rieman
	1,091.47	1504	4858	Messrs. N. M. Rothschild & Sons
	191.66	1505	4100	James Robb King & Co.
	1,000.00	1506	3680	Chas. Hirst, Huddersfield, Yorkshire, Eng.
	1,000.00	1507	2924	Stern Bros.. of London
	100.00	3552	2841	do
	100.00	1509	2840	do
	100.00	1510	2839	do
	3,833.33	3551	2698	James G. King's Sons
	4,333.33	1512	1944	Hallgarten & Co.
	919.76	1513	1705	George Hamilton
	1,055.00	1514	1026	Henry Parnell Moore Despard, of London
	1,000.00	1515	463	Stern Brothers of London
	1,000.00	1516	462	do
	1,000.00	1517	461	do
	1,000.00	1518	460	do
	1,000.00	1519	459	do
7	59.33	1520	2684	Sebastian de Nuefville of Paris
	320.00	1521	2663	do
	500.00	1522	2683	do
	500.00	1523	2800	do

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Feb. 16	$7,000.00	1532	4970	William Marshall of 19 Rectory Grove, Clapham
	5,000.00	Non-	9102	John K. Gilliat & Co.
	3,790.00	Neg.	8231	do
	750.00	Rect	9101	do
	166.66		8232	do
Feb. 19	799.33	1533	1615	Isabella Johnston
	84.66	1534	8892	do
	73.33	1535	1734	Peter Johnston
	5,000.00	1536	3339	Robt. B. Bolling
	5,000.00	1537	6120	Robert Garrett & Sons
	5,000.00	1538	6301	George J. Appold
	5,000.00	1539	9795	James S. Swan
	5,000.00	1540	10113	Wilson Colston & Co.
Mar. 1	5,000.00	1543	10625	R. F. Tysen & Co.
3	2,347.50	2595	3586	Victor Clement
8	1,000.00	3572	3972	John Elliott of New York
(page 40)	10,000.00	3573	4184	George A. Washington
	1,000.00	3574	7165	Chase & Higginson
	1,000.00	3575	9720	John B. Manning
	1,000.00	3576	10277	W. F. Seibert
	1,000.00	3577	7845	D. Fahnestock & Co..
	1,000.00	3578	10556	Wilson Colston & Co.
	1,000.00	3579	10669	Edward Cohen
	1,000.00	3580	10671	F. T. Redwood
	1,000.00	3581	10672	do
	4,000.00	3582	10698	do
	4,000.00	3583	10761	Wilson Colston & Co.
	1,000.00	3584	10914	Morton Rose & Co., of London
	1,000.00	3585	10571	J. S. Wells
	100.00	3586	10964	John B. Manning
	300.00	3587	10938	do
	600.00	3588	10735	Wilson Colston & Co.
	1,413.33	1545	3301	James Robb King & Co.
9	1,138.33	1549	30	James Robb King & Co.
	4,000.00	1550	1158	W. R. Nofsinger
	1,000.00	1551	1159	do
	3,066.67	1552	3766	James Robb King & Co.
	5,000.00	1553	8053	John B. Manning
	5,000.00	1554	8323	Richard Swann
	839.81	1555	8384	Richard Swann of Annapolis Md.
	10,00.000	1556	8327	Robert Garrett & Sons
	5,000.00	1557	8799	do
	10,000.00	1558	10593	H. Amy & Co.
	5,000.00	1559	10742	L. H. Niles
	10,000.00	1560	11107	Wm. H. Fisher

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Mar. 9	$10,000.00	2039	8870	Ro. Garrett & Sons
	2,618.34	2169	8158	Gladnitski & Van Henkelom of Amsterdam
	300.00	2170	874	John B. Manning
	1,000.00	2041	3969	John Elliott of New York
	50.00	2140	7031	H. Amy & Co.
	9,966.66	2041	7769	J. Davis
	10,000.00	2042	8613	Robert Garrett Sons
	1,000.00	2043	5385	Tutien Nolthenius and de Haan, of Amsterdam
	4,000.00	2037	8812	J. B. Manning
	10,000.00	2035	10102	McKim & Co.
	5,000.00	2027	10171	Francis White
	5,000.00	2030	10326	Vermilye & Co.
	5,000.00	2036	10330	W. F. Seibert
	100.00	2170	2266	J. & J. Higgin
	1,000.00	2037	10573	J. S. Wells
	5,000.00	2038	10738	L. H. Niles
	5,000.00	2044	10741	L. H. Niles
	10,000.00	2045	10796	Vermilye & Co.
	10,000.00	2046	11065	W. F. Seibert
15	5,000.00	2047	9758	R. A. Lancaster & Co.
9	5,000.00	1562	10543	John B. Manning
	5,000.00	1562	9955	R. H. Maury & Co.
Mar. 16	5,000.00	1563	1950	John K. Gillat & Co.
(page 41)	5,000.00	"	10798	R. H. Maury & Co.
	8,100.00	"	10109	T. Scott & Son
	1,900.00	"	10029	do
	5,000.00	"	8787	Joseph James Taylor
	1,000.00	1564	1051	Stern Brothers of London
	1,000.00	"	2820	do
	1,000.00	"	3721	Chas. Hirst, Huddersfield, Yorkshire, England
	5,000.00	1565	10164	J. L. Johnston
	5,000.00	1566	10146	J. L. Johnston
23	738.33	3589	2524	Jennie B. Somerville
	6,609.22	3590	2762	Thomas Mailin
	1,916.67	3591	4130	William Clifford Tate, of Sligo, Ireland, Merchant.
	198.33	3592	6521	Julian Bucford
	600.00	3593	6844	Thos. H. Oliver
	10,000.00	3594	10123	Wilson Colston & Co.
	10,000.00	1647	10464	J. S. Wells
29	1,245.06	1570	6757	Mrs. Sarah Otterback
			(Non. Neg.)	
30	5,000.00	1571	5972	John B. Manning

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Mar. 30	$3,000.00	1572	8674	Robert Garrett & Sons
	1,000.00	"	9406	do
	1,000.00	"	10915	Morton Rose & Co. of London
	5,000.00	1573	10691	Wilson Colston & Co.
April 6	1,300.00	2165	1030	John Hunter
	2,000.00	2169	1033	John Hunter
	2,000.00	2174	1023	do
	2,000.00	2165	1032	do
	2,000.00	2164	1022	do
	83.33	2164	6364	John Hunter, Jr., Committee of Sarah L. Harris.
	333.33	2167	6357	do
	1,916.66	2164	1024	John Hunter
4	1,000.00	1575	8198	Johnston Brothers & Co.
	6,000.00	"	8347	Robert Garrett & Sons
	3,000.00	"	9150	Robt. Garrett Sons
	1,098.13	1576	7766	Moran Brothers
9	191.66	1580	2986	Rev. J. Boyle
	5,000.00	1581	9743	R. H. Maury & Co.
	4,500.00	1582	6673	Colonial Company, Limited, of London
	990.66	1582	5579	do
	5,480.93	1583	3503	Charlotte Lee and Edward Lee, with benefit of survivorship.
	5,000.00	1584	3852	Citizens Fire Insurance Company of New York.
	10,000.00	1585	1940	John S. and Algernon Gilliat, with benefit of survivorship.
	3.000.00	1586	2408	A. Goettel & Co.
	10,000.00	1587	9060	G. P. Bonner & Co.
	5,000.00	1588	9961	R. H. Maury & Co.
	5,000.00	"	10096	do
16	5,000.00	1592	10072	R. H. Maury & Co.
(page 42)	5,000.00	1593	10124	Wilson Colston & Co.
	1,000.00	1594	3723	Chas. Hirst, Huddersfield, Yorkshire, England
	5,000.00	1595	5435	H. Amy & Co.
	5,000.00	1596	9535	Davenport & Co.
	5,000.00	1597	10604	William Howe
	249.40	1634	257 (Non. Neg.)	Wm. S. Burt
	1,978.67	1635	214 (Non. Neg.)	Victoria H. Wilson
	628.46	1636	1921	Rev. Andrew Hart
	100.00	1637	2426	H. Amy & Co.
	396.67	1638	3103	Olivia McRae

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
April 16	$6.666.67	1639	4413	Samuel Watts, Exr. of E. W. Alford, decd.
	1,533.33	1599	5119	Lieutenant Colonel Andrew Aytoun, of Edinburg, Scotland.
	55.00	1600	538	Mrs. L. L. Loundes
	2,098.67	1601	1592	John S. Nicholas, Jr.
	7,221.67	1602	1154	Jane E. Harper
	294.40	1603	2407	A. Goettel & Co.
	5,000.00	1604	5319	Leland Brothers & Company
	5,000.00	1605	5570	Whitehouse & Co.
	5,000.00	1606	5569	do
	10,000.00	1607	6566	George J. Appold
	327.93	1608	9699	Jno. B. Manning
	5,000.00	1609	10184	J. B. Manning
	5,000.00	1610	10183	J. B. Manning
	5,000.00	1611	10182	J. B. Manning
	10,000.00	1612	10453	J. S. Wells
	10,000.00	1613	10466	J. S. Wells
	10,000.00	1614	10451	J. S. Wells
	10,000.00	1615	10450	J. S. Wells
	10,000.00	1616	10455	J. S. Wells
	10,000.00	1617	10471	J. S. Wells
	10,000.00	1618	10474	J. S. Wells
	10,000.00	1619	10505	J. S. Wells
	1,400.00	3029	4279	H. Amy & Co.
	1,600.00	3030	7759	M. M. Harrison
	7,000.00	3031	8385	Richard Swann of Am.
	5,000.00	2691	10058	R. H. Maury & Co.
23	5,000.00	1621	10379	L. H. Niles
	1,000.00	1622	10283	W. F. Sebert
	1,000.00	1623	10284	do
	1,000.00	1624	10285	do
	1,000.00	1625	10286	do
	1,000.00	1626	3715	Chas, Hirst, Huddersfield, Yorkshire, England
	4,000.00	1627	9365	Wilson Colston & Co.
	1,000.00	1628	10282	W. F. Sebert
	5,000.00	1629	9901	John Bloodgood & Co.
	1,000.00	1630	8790	C. L. Beard
30	1,000.00	1633	10338	W. F. Sebert
(page 43)	3,833.33	1640	680	Mutual Insurance Co., Frederick, Md.
	1,694.00	1641	1505	Mutual Insurance Co., Frede'k Co., Md.
May 7	1,000.00	1642	3724	Chas Hirst, Huddersfield, Yorkshire, England

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
May 7	$5,000.00	1643	9944	R. H. Maury & Co.
	4,000.00	1644	10911	W. A. Robinson & Newitt, Belfast, Ireland.
June 5	821.66	1646	7469	Elles & Co., London
13	180.00	1651	4603	Maria B. Horton
	95.00	1652	4605	Tyler, Wrenn & Co.
18	5,000.00	1657	6119	Robert Garrett Sons
	5,000.00	1658	9880	John Bloodgood & Co.
20	5,000.00	1659	6323	Robert Garrett Sons
	5,000.00	1660	9835	John Bloodgood & Co.
	5,000.00	1661	8324	Richard Swann
	5,000.00	1662	7253	Chase & Higginson
21	5,000.00	1723	1956	Francis Henry Mitchell of England (O. K. In order now. Ctf. not endorsed. P-atty filed with No. 1957.)
	605.00	3352	919	Jan Van der Hoop & Took
	2,803.33	"	1039	Tutien Nolthenius & de Haan
	1,216.66	"	1732	do
	605.00	"	4528	V. Nellesteyn & Co.
	5,000.00	1668	5460	Whitehouse & Co.
	4,273.29	3352	9724	Robert Garrett Sons
	5,000.00	1670	9740	R. H. Maury & Co.
	5,000.00	1671	9943	do
	5,000.00	1672	10149	Augustus J. Albert
	1,000.00	1673	10203	J. B. Manning
	10,000.00	1674	10510	J. S. Wells
	1,000.00	1675	10581	J. S. Wells
	500.00	3352	10652	J. B. Manning
	5,000.00	1677	11075	W. F. Sebert
	1,000.00	1678	11081	J. B. Manning
	1,000.00	1679	3701	Chas. Hirst, Huddersfield, Yorkshire, England
25	10,000.00	1680	10477	J. S. Wells
	5,000.00	1681	10638	A. Keyser & Co., of London
27	8,881.07	1682	9967	W. Luttgen
	276.30	1683	9857	Wm. Fisher & Sons
	5,000.00	1684	9809	G. P. Bonner & Co.
	5,000.00	1685	9782	John B. Manning
	5,000.00	1686	9756	R. A. Lancaster & Co.
	5,000.00	1688	9704	John B. Manning
	5,000.00	1689	5879	Thomas C. Jenkins
	5,000.00	1690	9915	H. C. Hardy & Son
	4,000.00	1691	9171	Thomas C. Jenkins
	1,000.00	1692	9978	Bearer

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
June 27	$1,000.00	1693	9977	Bearer
	1,000.00	1694	9976	do
	1,000.00	1695	9975	do
(page 44)	1,000.00	1696	9974	do
	1,000.00	1697	9973	do
	1,000.00	1698	9803	John B. Manning
	177.80	1699	9268	Ann L. P. Wilson
	300.00	1700	10942	N. Thouron & Co., of Philadelphia.
	5,000.00	1701	8290	Dr. W. G. Ridder
	5,000.00	1702	6451	George J. Appold
	5,000.00	1703	9640	Wilson Colston & Co.
	5,000.00	1704	8880	do
	1,000.00	1705	10562	J. S. Wells
	1,000.00	1706	11030	J. Harmanus Fisher & Son
	1,000.00	1707	11029	do
	5,000.00	1708	10235	Jno. C. Williams, Cashr.
	5,000.00	1709	10236	do
	10,000.00	1710	10303	do
July 3	793.33	1711	1564	J. C. Engelbrecht
	526.33	1712	1526	Mary W. Buckingham
	383.33	1713	4969	G. F. Curgemorn
	717.86	1714	1986	John A. Elliott, Exr. of Wm. Elliott, decd.
	524.20	1715	5041	Lester H. Davis
	6,516.67	1716	7497	John T. Mounsey
	5,000.00	1717	9815	Broun & Lounds
	5,000.00	1718	10073	R. H. Maury & Co.
	541.73	1719	10430	Robert L. Chamberlaine
23	5,000.00	1724	2144	Foster & Company of Cambridge in England
	5,000.00	1725	10624	R. F. Tyson & Co.
26	2,233.78	1726	697 (Non. Neg.)	Mrs. Elizabeth S. Pinchbeck
	274.00	1727	3168 (Non. Neg.)	William G. Spencer, Guardian of Whitfield Clary
	941.50	1728	11142	Edward Cohen
	5,000.00	1729	10293	W. F. Sebert
	14,950.00	1730	7537	James Spicer
	666.66	1731	7401	Robinson Chase & Co.
	16,000.00	1732	6392	Norfolk & Petersburg Railroad Co.
31	3,383.77	1733	10004	Ellen Swann
	571.03	1734	10035	do
30	373.33	1735	4813	Thomas Charles March, of St. James Palace, London, Esquire.

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Aug. 1	$ 500.00	1736	11024	John B. Manning
	31.33	1737	11022	do
	593.33	1738	4024	Hallgarten & Co.
	13,876.67	1740	3460	John Marbury
	253.33	1741	7269	Jacob W. Keeling, Gdn. of Jno. Keeling
	100.00	1742	1670	Vermilye & Co.
	10,728.33	1743	3051	Richard Swann, Annapolis, Md
	500.00	1744	3572	A. Iselin & Co.
(page 45)	2,243.33	1745	4727	The Roanoke Navigation Co.
	1,179.37	1746	7437	F. Bridault
20	5,000.00	1747	9947	R. H. Maury & Co.
24	383.33	1748	1196	Ferdinand Latrobe
27	5,000.00	3550	10329	W. F. Sebert
28	1,000.00	1750	11025	John B. Manning
29	10,000.00	1754	10491	J. S. Wells
Sept. 7	1,500.00	2305	2569	J. B. Manning
	1,000.00	2306	2558	do
	1,000.00	1767	3707	Chas. Hirst, Huddersfield, Yorkshire, England
	1,000.00	1767	3720	do
	1,000.00	1767	3725	do
	1,000.00	1767	9861	Thomas C. Jenkins
	1,000.00	1767	9937	Campbell & Schoolcraft
	1,000.00	1769	10025	Marx & Co.
	1,000.00	1769	10026	Marx & Co.
	1,000.00	1769	10027	do
	2,000.00	1769	10084	R. H. Maury & Co.
	5,000.00	1768	10148	J. L. Johnston
14	640.01	1770	8339	Sarah A. C. Welsh of Georgetown, D. C.
26	5,000.00	1775	10714	L. H. Niles
Oct. 9	2,279.16	1780	4590	Thomas Hargreaves
	3,850.00	1781	2673	Charles Lings
	383.33	1782	3024	Richard Irvin & Co.
	5,000.00	1783	3422	Hugh Sisson
	5,000.00	1784	7140	G. T. Bonner & Co.
	5,000.00	1785	9883	John Bloodgood & Co.
	5,000.00	1786	10105	R. H. Maury & Co.
	3,500.00	1787	10110	G. T. Redwood
	5,000.00	1788	10332	W. F. Sebert
	10,000.00	1789	10516	J. S. Wells
	5,000.00	1790	10974	L. H. Niles
10	2,762.00	2164	2381	Henry Clews & Co.

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 11	$ 3,500.00	1792	2474	Wm. L. Cole
	1,000.00	1793	3783	Mrs. Mary A. Craig
	5,000.00	1794	5380	Brown, Lancaster & Co.
	500.00	1795	10869	L. H. Niles
24	2,221.67	1796	4336	A. F. Muller
Nov. 1	12,662.00	1797	857	Georgia Home Ins. Co., of Columbus, Ga.
Oct. 30	50.00	1798	2082	John Mills
Nov. 17	9,633.33	1812	2009	James Murray
	9,000.00	1813	3862	do
28	4,105.73	1814	7833	Charles Ludlam
	1,000.00	1815	3963	Morton Bliss & Co.
	500.00	1816	3960	do
	1,891.47	1817	3255	W. S. Goodwyn
	1,000.00	1818	3961	Morton Bliss & Co.
	1,000.00	1819	3962	do
30	1,659.90	1820	1753	Insinger & Co., Amsterdam
Dec. 6	2,216.67	1823	1182	Wm. G. Chittick
	100.00	1824	16	do
	3,433.33	1822	2889	Eliz. A. Andrews
(page 46)	3,433.33	1821	2891	Catharine L. Andrews
5	1,000.00	1825	10790	Mrs. Alice L. Watson of Bridgeport, Conn.
	1,000.00	1826	10789	do
	1,000.00	1827	10792	do
	2,000.00	1828	8028	Robert Garrett & Sons
	5,000.00	1829	9760	R. A. Lancaster & Co.
11	10,000.00	1830	8895	Robert Garrett & Sons
12	10,000.00	1831	10522	J. S. Wells
15	388.89	1832	5781	Mrs. Lucy E. Dobyns
13	5,000.00	1833	9893	John Bloodgood & Co.
	5,000.00	1834	10397	W. F. Sebert
18	5,000.00	1835	10554	Wilson Colston & Co.
	5,000.00	1913	9963	R. H. Maury & Co.
	10,000.00	1914	10497	J. S. Wells
24	4,433.33	1915	8	Wm. G. Chittick
	5,000.00	1916	10342	W. F. Sebert
	551.82	1917	7793	J. H. Fisher
	33.32	1918	11042	L. H. Niles
	200.00	1919	314	J. D. Waugh
	14,772.33	1921	749	Phoenix Fire Insurance Co., of New York
26	10,000.00	1922	11096	Pearl & Co.
	79.67	1923	10966	John B. Manning
	10,000.00	1924	10717	J. B. Manning
	1,000.00	1925	10702	Marx & Co.
	1,000.00	1926	9163	August Belmont & Co.

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1900				
Dec. 26	$ 1,000.00	1927	5210	Tutien Nolthenius & de Haan of Amsterdam
	2,000.00	1928	8483	Alexander Reiman
	10,000.00	1929	9787	Wilson Colston & Co.
	24.62	1930	9763	do
	5,000.00	1931	11134	DeJonge & Co.
	5,000.00	1932	9303	Robert Garrett & Sons
	8,000.00	1933	8554	do
	2,000.00	1934	8579	do
	10,003.34	1935	8272	do
	1,000.00	1936	8194	Johnston Brothers & Co.
	1,000.00	1937	8153	do
	7,061.98	1938	801	James Cormick
	370.62	1939	8131	do
	127.00	1940	820	do
	66.67	1941	984	Frederick Hotchkiss
	178.23	1942	2412	Isaac Witz of Staunton
	160.00	1943	3365	S. Stein
	8,300.00	1944	1455	W. A. Hadden
	1,533.33	1945	4908	Lancaster, Brown & Co.
	100.00	1946	536	Taussig Fisher & Co.
	5,000.00	1947	5982	Robert Garrett & Sons
	10,000.00	1948	7985	do
1901				
Jan. 11	10,000.00	1949	8275	do
	5,000.00	1950	9499	Davenport & Co.
	10,000.00	1951	9650	G. T. Bonner & Co.
	10,000.00	1952	10527	J. S. Wells
17	634.67	1954	672	Eliza Adams
Jan. 21 (page 47)	1,362.00	1955	122	Louis C. Fischer, Trustee for Caroline Fischer
16	1,000.00	1956	6250	Hamilton Blydenburgh of New York
	1,000.00	1957	10928	Pearl & Co.
30	1,413.33	2705	6380	Nichols Stone & Co.
	5,000.00	1965	9840	John Bloodgood & Co.
	5,000.00	1966	9962	R. H. Maury & Co.
	2,000.00	1967	8482	Joseph H. Reiman
	2,000.00	1968	8209	do
	1,000.00	1969	10280	W. F. Sebert
	5,000.00	1970	10839	L. H. Niles
	5,000.00	1971	10347	John Malcolm of Belfast, Ireland
29	10,000.00	1972	872	James G. Batterson, President
	10,000.00	1973	8382	Robert Garrett & Sons
	10,000.00	1974	9833	John B. Manning
	5,000.00	1975	10181	Jno. B. Manning

DATE 1901	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Jan. 29	$ 5,000.00	1976	10924	Asiel & Co.
Feb. 1	2,240.00	1979	4268	D. M. Perine, George S. Brown Wm. H. Graham, John A. Brown and James Brown, Trustees of the Estate of Alexander D. Brown
7	2,602.50	3635	7511	R. N. Herndon
	867.50	"	7512	D. C. Herndon
8	595.00	3632	6721	James G. King's Sons
13	7,640.00	1983	3236	E. Tabenstedt & Co.
15	836.60	1984	3467	Walker & Lumsden of London
18	10,000.00	1987	8248	Robert Garrett & Sons
Mar. 4	29.37	2011	69	H. Amy & Co.
	126.66	2011	5809	R. Irvin & Co.
	1,216.67	2010	3016	James Robb King & Co.
	120.00	2011	1295	Hallgarten & Co.
	100.00	2012	1674	Vermilye & Co.
	100.00	2011	1880	George L. Henser
	1,000.00	2011	470	Stern Brothers, London
	500.00	2011	3782	Mrs. Mary A. Craig
	1,000.00	2011	3970	John Elliott of New York
	1,000.00	2011	3973	do
	1,000.00	2011	4192	James Duncan
	1,000.00	1989	9621	F. T. Redwood
	1,000.00	1989	9970	Bearer
	819.73	2010	6904	Mary E. Lindsay
	1,000.00	1989	10893	C. L. Beard
	3,165.50	2010	3620	Judge R. C. L. Moncure
	786.66	2009	9378	Joseph Fisher
	3,483.66	2009	379	John J. Ryan of Phila.
	588.92	2009	11100	Thos. Branch & Co.
	5,000.00	1990	9799	John B. Manning
	5,000.00	1991	11108	Wm. H. Fisher
	5,000.00	1992	8528	George L. Krebs
	5,000.00	2001	10840	L. H. Niles
	5,000.00	2002	10878	Boully & Thompson, London
	5,000.00	2003	6135	Robert Garrett & Sons
	5,000.00	2004	6132	do
	6,000.00	2005	338	Jas. H. Chamblin
(page 48)	7,700.00	2006	2099	Moses Solomons
	9,586.00	2007	4540	Louis Nathan
	10,000.00	2008	11132	I. & S. Wormser
	383.33	2010	4859	James Robb King & Co.
	1,000.00	1989	10372	J. B. Manning
	1,000.00	1989	10373	do
	1,000.00	2009	10202	do
	404.83	2010	10447	do

DATE 1901	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Mar. 6	$ 5,000.00	2013	1947	John K. Gilliat & Co.
	5,000.00	2014	10588	J. B. Manning
	2,683.34	2170	846	Ellinger & Co.
	1,916.67	2179	6645	do of Manchaster Eng.
14	3,000.00	2018	5287	Richard Swann
	5,000.00	2019	11070	W. F. Sebert
	5,000.00	2020	11073	do
	10,000.00	2021	10462	J. S. Wells
	10,000.00	2022	1942	John S. Algernon Gilliat with benefit of survivorship
	10,000.00	2023	6013	Robert Garrett & Sons
19	846.53	2024	3591	Wm. F. Gardner
30	500.00	2028	2357	William Graham
	500.00	2028	2358	Wm. Graham
	500.00	2029	2359	do
	500.00	2029	2360	do
Apr. 1	10,000.00	2031	10470	J. S. Wells
	311.33	3634	5027	Samuel D. Davis
	5,500.00	2167	3046	do
2	5,000.00	2049	9870	John Bloodgood & Co.
	5,000.00	2049	9872	do
	4,000.00	2051	9533	Henry Rieman & Sons
	4,000.00	2052	9791	Wilson Colston & Co.
	10,000.00	2048	8843	Richard Swann
8	33,261.67	3633	1698	Hope & Co., in Amsterdam
	3,505.20	3628	3060	Thomas French Wallace
	766.67	3629	2371	James Robb King & Co.
	383.33	2169	4433	do
	50.00	2164	5138	H. J. M. Despard
	575.00	2165	7268	James D. King Sons
	5,553.33	2165	8292	S. G. & G. C. Ward
	4,166.67	2167	10255	Mrs. Phoebe H. Bailey
11	500.00	2057	10723	J. B. Manning
	1,000.00	2057	3866	H. Amy & Co.
	1,000.00	2057	10635	S. S. Prince
	100.00	2057	10653	J. B. Manning
	400.00	2057	4145	O. T. Terry
	1,000.00	2057	10565	J. S. Wells
	1,000.00	2057	7855	J. B. Manning
	5,000.00	2057	11135	DeJonge & Co.
15	5,000.00	2058	11055	W. R. Nofsinger
	19,166.67	2166	3286	Wentworth, Blackett, Beaumont, etc.
	5,000.00	2059	2823-27	Stern Brothers
	5,000.00	2060	2828-32	do
23	846.67	2064	3020	W. S. Hatch & Son
24	100.00	2065	701	Miss Eloise Loundes

DATE 1901	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Apr. 24	$ 1,000.00	2066	467	Stern Brothers, Ldn.
(page 49)	1,000.00	2067	468	do
	1,000.00	2068	469	do
	1,000.00	2069	1676	Vermilye & Co.
	1,000.00	2070	3578	A. Iselin & Co.
	3,900.00	2071	4301	John L. Atlee
	10,000.00	2072	7982	Robt. Garrett & Sons
	1,000.00	2073	8156	Johnston Brothers & Co.
	5,000.00	2074	9741	R. H. Maury & Co.
	5,000.00	2075	9876	John Bloodgood & Co.
	5,000.00	3549	9957	R. H. Maury & Co.
	5,000.00	2077	9958	do
	5,000.00	2078	10017	Marx & Co.
	5,000.00	2079	10771	Wilson Colston & Co.
	10,000.00	2080	10988	Lucien H. Niles
May 17	1,000.00	2086	4760	J. & J. Higgin
	1,000.00	2087	4766	do
	1,000.00	2088	4767	do
	1,000.00	2089	4768	do
	1,000.00	2090	4769	do
	1,000.00	2091	4770	do
	1,000.00	2092	4771	do
	1,000.00	2093	4772	do
	1,000.00	2094	4773	do
	1,000.00	2095	4774	do
	1,000.00	2096	4775	do
	1,000.00	2097	4776	do
	1,000.00	2098	4777	do
	1,000.00	2099	4778	do
	1,000.00	2100	4779	do
	1,000.00	2101	4780	do
	1,000.00	2102	4781	do
	1,000.00	2103	4782	do
	1,000.00	2104	4783	do
	1,000.00	2105	4784	do
June 3	1,932.63	2106	9353	Daniel Getty. Trustee for Edmonia B. Getty
22	1,000.00	2107	3633	Geo. Henry Greenwood, England
	9,000.00	2107	509	Geo. Evans
	1,000.00	2978	3670	Chas. Hirst
	3,000.00	2978	5165	Isaac Taylor & Williams
	1,000.00	2978	8192	Johnston Bros. & Co.
	5,000.00	2979	10396	W. F. Sebert
	10,000.00	2109	8622	Robert Garrett & Sons
28	1,100.00	2119	506	Edward Mayo, Exr. of Sam'l Marx and as such Trustee, Virginia McBlair

DATE 1901	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
June 28	$ 413.49	2119	3085	Exrs. C. C. Smoot
	5,000.00	2122	10973	L. H. Niles
	5,000.00	2122	10996	I. & S. Wormser
	5,000.00	2121	10062	R. H. Maury & Co.
	5,000.00	2121	5617	William & John O'Brien
	1,582.39	2119	7069	George N. Musgrave, Exr. Newit Harris, decd.
	1,005.00	2119	8043	Frances R. Reid
	1,005.00	2119	9211	do
	5,000.00	2120	6118	Robert Garrett & Sons
(page 50)	333.33	2119	5783	Pim Forwood & Co.
	939.73	2119	4153	L. B. Thomas
	5,000.00	2120	3336	Robt. B. Bolling
	2,532.40	2119	1575	John A. Thompson of Balto
	1,100.00	2119	1332	D. Van Horne Floyd
July 26	2,000.00	3104	8861	Ro. Garrett & Sons
	1,000.00	3105	10916	Morton Rose & Co.
	1,000.00	3106	4181	George A. Washington
	1,000.00	3107	9822	John B. Manning
	836.91	2164	11061	Wilson Colston & Co.
	5,000.00	3108	9816	Brown & Lowndes
	1,949.03	2171	9731	Oelrichs & Co.
	1,000.00	3630	7886	Charles George Wilson
	766.67	2164	4986	James Robb King & Co.
	333.33	2166	9598	Robert Garrett & Sons
	182.66	3685	2981	Charles E. Peterson
Aug. 22	1,000.00	2111	1677	Vermilye & Co.
	1,000.00	2111	1678	do
	1,000.00	2111	3726	Chas. Hirst
	1,000.00	2111	3727	do
	1,000.00	2111	3728	do
	1,000.00	2111	3771	Wilson Colston & Co.
	1,000.00	2111	4173	Adolphus Keppelmann
	10,000.00	2112	8800	Robert Garrett & Sons
	1,000.00	2111	9459	J. B. Manning
	5,000.00	2113	9790	Wilson Colston & Co.
	1,000.00	2111	9860	Thomas C. Jenkins
	1,000.00	2111	10272	W. F. Sebert
	2,000.00	2113	10315	L. H. Niles
	1,000.00	2113	10384	do
	1,000.00	2113	10353	John Malcolm
	1,000.00	2113	10530	J. S. Wells
	1,000.00	2114	10574	do
	2,500.00	2114	10596	Wm. H. Fisher
	1,500.00	2114	10617	Ridgeley Du Val Jr.
	1,000.00	2114	10917	Morton Rose & Co.
	4,000.00	2114	10922	Medwin & Clark

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1901				
Sept. 11	$ 5,000.00	2118	10393	Nicholson & Co.
17	66.66	2134	7776	Wm. T. Harrison of Norfolk
24	3,066.66	2135	4974	Wm. Cabell Rives
1902				
Feb. 3	10,000.00	2143	9469	Davenport & Co.
	10,000.00	3547	6010–14	Robert Garrett & Sons
	10,000.00	2144	8433	do
	10,000.00	2145	8618	do
	10,000.00	2146	5603	McKim & Co.
	10,000.00	2147	7281–10260	5000 Thos Branch & Co. (7281) 5000 Robt. A. Chamberlain (10260)
	10,000.00	2148	11146–9653	5000 W. H. Lucke (11146) 5000 G. T. Bonner & Co., (9653)
4	508.32	3203	4007	James W. Allison
	316.67	3200	3929	J. W. Allison Jr., Dollie E. Vidder
	1,643.71	3203	3917	J. W. & W. H. Allison, Trustees for Victoria E. Carson
	80.66	3353	7013	Ann Allison
(page 51)	17.04	3485	7010	Ann Allison
	3,751.00	3203	7012	Ann Allison, devisee and Trustee W. Allison
	792.66	3203	7011	do
	1,666.67	3203	3931	J. W. Allison, Trustee for Dollie E. Vidder (formerly Waters) u-will Benj. Waters, decd.
Mch. 10	858.33	2154	551	Henry S. Sanford
20	500.00	2166	889	W. A. Flack
May 21	428.32	2157	1691	Chauncey Brooks
	1,000.00	2158	4822	Chauncey Brooks of Baltimore
	2,000.00	2158	4823	do
	2,000.00	2158	4824	do
	5,000.00	2158	4934	do
	5,000.00	2159	8701	do
	5,000.00	2159	9126	do
	5,000.00	2160	9127	do
	5,000.00	2160	9143	do
	5,000.00	2161	9144	do
	5,000.00	2161	9145	do
	5,000.00	2162	9219	do
	5,000.00	2162	9220	do
26	598.21	2165	1647	John S. Wiltse
27	5,000.00	2175	8325	Richard Swann
June 4	2,618.33	2181	2545	Louis Gruning of L'pool.

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
June 4	$14,300.00	2180	3349	Louis Gruning, Merchant, 22 Chapel St., Liverpool, and Henry Huth, Merchant, 10 Morgate St., London
19	846.66	2182	6989	Edward P. Pitts
	226.06	2183	6990	do
July 11	1,060.00	2191	6546	Benjamin Hart
15	571.03	2184	10032	Jane B. Ferguson
	3,383.77	2185	10001	do
31	3,000.00	2189	2466	Otto Goldschmidt of London
29	3,900.00	3554	2857	Alexander Duncan
	1,000.00	3555	10700	Marx & Co.
	4,000.00	"	5384	Tutien Nolthenius and de Haan of Amsterdam
Aug. 7	5,000.00	2195	9951	R. H. Maury & Co.
	5,000.00	2195	9950	do
	2,500.00	2196	6962	William Renshaw
	1,000.00	2266	2923	Stern Bros. of London
	1,000.00	2267	8646	C. L. Beard
	1,000.00	2268	9082	Brown & Lowndes
	5,000.00	2264	10241	Drexel, Morgan & Co.
	5,000.00	2265	11087	Satterthwaite & Co., of London
	5,000.00	2197	9887	John Bloodgood & Co.
	5,000.00	2198	5436	H. Amy & Co.
	1,000.00	2199	2240	J. & J. Higgin
	1,000.00	2200	2241	do
12	2,240.00	2212	4266	D. M. Perine, et al, Trustees Est. Grace Ann Greenway
	3,555.00	2211	5594	Horace Johnson
	10,000.00	2216	9853	Wilson Colston & Co.
Aug. 13	10,000.00	2221	8806	Robert Garrett & Sons
(page 52)	10,000.00	2222	8436	do
	1,000.00	2220	3683	Charles Hirst
14	3,833.33	2223	7274	Moses Bruhl of N. Y. City
	7,066.67	2224	4228	Henry Clews & Co.
15	3,383.77	2354	10005	Ferdinand C. LaTrobe
	571.03	2355	10036	do
	104.00		5918	Virginia Military Institute
18	1,000.00	2225	8201	Johnston Bros. & Co.
	1,000.00	2225	8196	do
19	1,000.00	2226	3684	Chas. Hirst
	5,000.00	2227	10217	Jerome N. Bonaparte
	5,000.00	2227	10395	W. F. Sebert
21	5,000.00	2228–5250–10378		
		1680– 8155		Julius S. Hitchcock 5250 Vermilye & Co., 1680 Wm. H. Fisher 10378 Johnston Bros. & Co., 8155

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Aug. 21	$ 4,000.00	2229	5190	Richard Swann
	5,000.00	2238	10712	L. H. Niles
	5,000.00	2237	10166	R. H. Maury & Co.
	3,000.00	2236	9679	Wilson Colston & Co.
	5,000.00	2235	9890	John Bloodgood & Co.
	3,000.00	2234	10934	Medwin & Clarke
	5,000.00	2233	6346	Robert Garrett & Sons
	5,000.00	2232	10628	R. F. Tysen & Co.
	5,000.00	2231	10775	Wilson Colston & Co.
	5,000.00	2230	5449	Whitehouse & Co.
	300.00	2239	3160	George Tarry, Sr.
	250.00	2240	704	A. Goettel & Co., in trust
	1,150.00	1	5908	Newcomb & Cook
	3,300.00	2	2674	Gust. Krauss
	500.00	3	3565	A. Iselin & Co.
	500.00	4	3566	do
	500.00	5	3567	do
	5,000.00	6	9844	John Bloodgood & Co.
	5,000.00	7	11128	Helmers McGovern & Co.
	5,000.00	8	5280	Wilson Colston & Co.
	5,000.00	9	4684	do
	5,000.00	50	9730	Robert Garrett & Sons
	10,000.00	1	8795	do
	10,000.00	2	10590	H. Amy & Co.
	10.000,00	3	8616	Robert Garrett & Sons
	10,000.00	4	10478	J. S. Wells
	3,000.00	5	7888	Charles George Wilson
	7,000.00	6	6496	John B. Manning
	10,000.00	7	10476	J. S. Wells
	10,000.00	8	8623	Robert Garrett & Sons
	10,000.00	9	1943	John S. & Algernon Gilliat, with benefit of surviviorshp
	10,000.00	60	8898	Wilson Colston & Co.
	10.50	2261	10850	W. F. Sebert
	733.33	2	11141	D. Fahnestock & Co.
	8.21	3	11080	Satterthwaite & Co., of London
25	4,895.00	2269	7735	Johns Hopkins University
	4,140.48	2272	4299	Gn'.l A. S. Howe, U. S. A.
	850.00	2273	4185	Mrs. E. M. Semmes
(page 53)	2,000.00	2273	4276	E. N. Semmes
	1,705.67	2274	5916	Mrs. Ann S. Rutherford, Exr. of John C. Rutherford, decd.
	674.33	2274	1324	Mrs. Ann S. Rutherford
	12,000.00	2278	8546	Robert Garrett & Sons
	1,150.00	3482	5048	George Richardson, 26 Sunderland Terrace, London
	436.67	2280	4606	James Robb King & Co.
	958.33	3482	3900	Henry Clews & Co.

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Aug. 25	$ 635.00	2282	3093	Richd. Irvin & Co.
	1,533.33	2283	3018	J. Fraud
	766.67	3486	2460	Widow W. Boiski of Amsterdam
	5,000.00	2285	1932	John Cordner of Montreal, Canada
26	1,000.00	2286	10872	L. H. Niles
	1,000.00	2286	10575	J. S. Wells
	1,000.00	2286	10874	L. H. Niles
	2,000.00	2286	10736	Ridgeley Duval, Jr.
Sept. 9	75.52	2312	11051	Jno. C. Brady
	1,000.00	3550	11006	I. & S. Wormser
	1,000.00	3550	11005	do
	5,000.00	3549	11003	do
	5,000.00	2314	10991	W. F. Sebert
	5,000.00	2314	10857	Satterthwaite & Co.
	5,000.00	3559	10856	do
	5,000.00	3558	10855	do
	5,000.00	2316	10854	do
	5,000.00	2316	10755	Charles Higginson
	1,000.00	2317	10583	J. S. Wells
	4,000.00	2317	6987	Thomas Hall of London
	1,000.00	2317	10634	S. S. Prince
	1,000.00	2317	10533	J. S. Wells
	1,000.00	2317	10531	do
	1,000.00	2317	10529	do
	5,000.00	2318	10368	L. C. DeGrove & Co.
	5,000.00	2318	10302	L. H. Niles
	1,000.00	3553	10275	W. F. Sebert
	1,000.00	3553	10274	do
	1,000.00	3553	10273	do
	5,000.00	3003	10147	J. L. Johnston
	5,000.00	3004	9899	John Bloodgood & Co.
	5,000.00	3001	9898	do
	5,000.00	3002	9869	do
	5,000.00	2321	9859	Thomas C. Jenkins
	5,000.00	2321	8677	Robert Garrett & Sons
	780.00	2322	6986	Thomas Hall of London
	500.00	2323	6478	James Coates
	5,000.00	2324	6326	Robert Garrett & Sons
	480.00	2325	6130	Norfolk & Petersburg R. R. Co
(page 54)	5,000.00	3567	5985	Robert Garrett & Sons
	5,000.00	3568	5984	do
	555.59	2310	5722	William Mahone, President Norfolk & Petersburg R. R. Co.
	477.07	2309	3934	Miss E. H. Oliver

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept.	$ 6 1,071.31	2308	2273	John S. Nicholas, Jr.
	2,648.13	2307	550	James Robb King & Co.
17	261.53	2326	9113	Martha E. Rowland of Norfolk, Va.
	939.72	2327	1644	Mary S. Crichton
	166.66	2328	1681	George Chewring
	224.00	"	5755	R. B. Willcox
	4,000.00	2329	1429	Augustus Wiggin
	1,000.00	2330	2813	Stern Brothers of London
	666.67	2332	3310	Maria K. Allison
	1,000.00	2333	3703	Chas. Hirst, Huddersfield, Yorkshire, Eng.
	1,150.00	2334	4335	James Robb King & Co.
	383.33	2335	6601	J. S. Kennedy & Co.
	922.00	2336	9769	Robert Garrett & Sons
	420.58	2337	11113	Ridgeley Duval, Jr.
	500.00	2338	3865 (Non. Neg.)	H. Amy & Co.
18	968.32	2339	622	William J. Watson
22	370.00	2342	602	William Skinner
	1,030.00	"	1748	J. H. Loundes, Agent
	1,030.00	"	1749	do
	4,170.67	"	1577	Miller and Franklin
	3,433.33	2342	1724	Mercer and Johnston
	20,000.00	2343	9727	Robert Garrett & Sons
	1,000.00	2344	9927	John B. Manning
	1,000.00	2345	9908	Jno. B. Manning
	5,000.00	2346	9311	Thomas C. Jenkins
	5,000.00	"	9888	John Bloodgood & Co.
	3,166.66	2347	9659	Miss Jane Catharine Gamble, of 67 Portland Place, London Spinster.
	1,000.00	"	4193	James Duncan
	2, 000.00	"	9830	John Bloodgood & Co.
	2,000.00	"	9817	Brown & Loundes
	10,000.00	2348	4183	George A. Washington
	5,000.00	2745	10224	R. A. Lindsay
	5,000.00	2746	10623	R. F. Tyson & Co.
	1,000.00	3280	9204	Levy & Borg
	4,000.00	"	10440	J. H. Fisher
	5,000.00	3281	5565	Whitehouse & Co.
	3,865.33	2351	2533	David Barclay Chapman of London
	1,000.00	"	6474	James Coates
	1,000.00	"	6473	do
	1,000.00	"	6475	do
	1,000.00	2352	3704	Chas. Hirst, Huddersfield, Yorkshire, England

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 22	$ 1,000.00	2353	3705	Chas. Hirst, Huddersfield, Yorkshire, Eng.
24	10,000.00	2373	8614	Robert Garrett & Sons
(page 55)	10,000.00	2374	11103	J .Harmanus Fisher & Son
	390.00	2375	408	Sarah W. Bower, Brooklyn, N. Y.
	1,000.00	2376	10401	W. F. Sebert
	1,000.00	"	10400	do
	5,000.00	"	10627	R. F. Tyson & Co.
	1,000.00	"	1070	Stern Brothers of London
	1,000.00	"	1069	do
	1,000.00	"	1068	do
25	266.67	2385	1229	Leon Frank
	1,666.66	"	155	do
	10,000.00	2377	10515	J. S. Wells
	19,166.67	2386	4121	Andrew Gregg & Co.
	6,458.66	2573	498	Wm. H. Mosby, Trustee for his wife, Elizabeth F. Mosby
	5,000.00	2389	8826	J. B. Manning
	100.00	2388	1836	George Elliott of New York City
	100.00	"	1840	do
	100.00	"	1841	do
	100.00	"	1839	do
	100.00	"	1837	do
	100.00	"	1838	do
	773.33	"	1221	M. Kahn
	262.66	2426	8583	Mary W. Buchanan
	90.00	2427	4118	do
	5,000.00	2387	11049	J. J. Nicholson & Sons
	793.33	2390	4281	H. Amy & Co.
	999.98	2391	136	John B. Manning
	182.63	2392	2122	Josiah Ryland
	699.09	2393	10825	Mary Willis Currie
	1,000.00	2394	10019	Marx & Co.
	10.000,00	2382	10611	Arents & Young
	1,000.00	2383	10308	R. L. Chamberlaine
	1,000.00	2383	10276	W. F. Sebert
	500.00	2927	10313	F. T. Redwood
	1,000.00	2383	10307	R. L. Chamberlaine
	1,000.00	2387	10243	Drexel, Morgan & Co.
	1,000.00	"	10028	Marx & Co.
	1,000.00	"	9703	Jno. B. Manning
	1,000.00	"	9702	do
	1,000.00	"	9654	E. T. Bonner & Co.
	1,900.00	"	9395	Robert Garrett & Sons
	14,000.00	2395	8791	Dr. Sidney Sappington

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 25	$ 2,116.66	2396	8400	S. G. & G. C. Ward
	3,000.00	2930	6831	Francis A. Provost of Germantown, Phila., Pa.
	1,000.00	2397	1869	James Robb King & Co.
	500.00	2931	6631	J. B. Manning
	500.00	2932	6607	do
	500.00	2928	6530	John B. Manning
	290.89	2398	6633	do
	1,625.30	2399	6626	A. Goettel & Co.
	300.00	2400	6499	John B. Manning
(page 56)	283.81	2401	6491	John B. Manning
	7,666.67	2402	4891	R. Raphael & Sons of London
	1,150.00	2403	4252	James Robb King & Co.
	2,300.00	2404	4099	do
	1,000.00	2405	2740	S. Stein
	100.00	2383	528	Taussig Fisher & Co.
	2,196.27	2406	308	L. Von Hoffman & Co.
	5,000.00	2929	10018	Marx & Co.
	10,000.00	2408	7975	Robert Garrett & Sons
	10,000.00	2420	6572	W. W. Corcoran
	10,000.00	2409	10727	J. B. Manning
	5,000.00	2410	10592	H. Amy & Co.
	10,000.00	2411	10483	J. S. Wells
	5,000.00	2412	9894	John Bloodgood & Co.
	567.75	2413	7093	Eliza Madison Lockett
	4,440.79	2414	7954	Robert Garrett & Sons
	5,000.00	2415	8555	do
	1,000.00	2416	7182	Chase & Higginson
	1,000.00	2417	7178	do
	3,000.00	2418	6832	Margaret C. Provost of Germantown, Phila., Pa.
	5,000.00	2419	5370	Robert Garrett & Sons
26	7,924.33	2421	4146	P. W. Brown
	329.33	2422	4214	De Rham & Co.
	1,747.20	2423	8069	Robert Garrett & Sons
Oct. 1	780.00	2425	2341	Joshua Motter
	1,551.66	2424	2283	Lucy B. Griswold
7	150.00	2445	9347	Anna J. Ryan, Gdn. of Jesse T. Ryan, Nettie W. Ryan
	1,000.00	"	9346	do
	20,586.62	"	157	Hillbarter, Trustee, etc.
	1,866.67	"	671	Jane McGowan
	988.33	"	918	Jan Van der Hoop & Toon
	1,816.66	"	2149	Caroline E. Miles
	1,000.00	"	2739	S. Stein
	4,500.00	"	2900	R. Singleton Peabody
	7,153.33	"	3008	Nelson C. Reed

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 7	$ 1,000.00	2445	3665	John Kaye Clayton of West Yorkshire, Eng.
	353.33	"	4436	Henry F. Teohuven & Co.
	1,150.00	"	5988	J. S. Kennedy & Co.
	688.00	"	6177	George Hamilton
	2,300.00	"	7697	Robert Benson & Co.
	1,000.00	"	7846	D. Fahnestock & Co.
	1,000.00	"	8839	G. T. Bonner & Co.
	10,000.00	"	9342	Robert Garrett & Sons
	5,000.00	"	9711	John B. Manning
	1,000.00	"	9864	do
	1,000.00	"	10024	Marx & Co.
	6,110.77	"	10138	Lucien H. Niles
	5,000.00	"	10390	J. B. Manning
	93.95	"	10429	do
	346.80	"	10609	do
	5,000.00	"	11001	I. & S. Wormser
	500.00	"	11041	L. H. Niles
8	5,000.00	2481	8603	Robert Garrett & Sons
(page 57)	10,000.00	2482	10842	J. B. Manning
	5,000.00	2481	10980	Lawson Crane & Douglas
	5,000.00	2483	6056	Isaacs Taylor & Williams
	5,000.00	"	4025	Thomas Wilson
10	5,878.87	2529	2561	Samuel Montagn, London
	2,725.33	"	4795	Samuel Montagn
	2,300.00	"	6173	do
	211.66	"	6985	Samuel Montagn of London
	2,221.66	2517	8714	Allgemeine Deutsche Credit Anstall of Liepzig, Germany
	8.34	"	8717	do
	7,666.67	2530	2699	James G. King's Sons
	500.00	"	8586	do
	575.00	"	2754	do
	206.67	"	2731	do
	413.33	"	2729	do
	1,150.00	"	2737	do
	1,916.67	"	2745	do
	826.67	"	2730	do
	1,725.00	"	2756	do
	383.33	"	2752	do
	383.33	2531	3272	M. Morgans Sons
	383.33	"	3273	do
	10,000.00	2574	8574	Robert Garrett & Sons
	10,000.00	2575	9618	F. T. Redwood
	5,000.00	2576	10076	R. H. Maury & Co.
13	5,000.00	2533	9843	John Bloodgood & Co.
	5,000.00	"	7408	Thomas Branch & Co.

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 13	$ 1,000.00	2516	6465	James Coates
	1,000.00	"	6466	do
	1,000.00	"	6467	do
	1,000.00	"	6468	do
	1,000.00	"	6469	do
15	10,000.00	2522	8276	Robert Garrett & Sons
	310.65	2523	709	Nannie E. Caskie
22	795.00	2525	1450	H. R. Hazlehurst
23	2,745.33	2551	2991	Wm, S. Wilson
	985.00	2552	3180	Richd. Irvin & Co.
	1,200.33	2553	3874	Jno. B. Manning
	1,916.66	2554	4925	D. M. McAndrew
	5,791.20	2555	4096	L. Von Hoffman & Co.
	5,273.33	2556	4936	D. Henry Beaumont
	10,000.00	2557	9752	R. A. Lancaster & Co.
	5,000.00	2558	9858	Thomas C. Jenkins
	5,000.00	2559	9891	John Bloodgood & Co.
Nov. 5	2,000.00	2560	3281	Drexel Morgan & Co.
	2,000.00	"	3282	do
	2,000.00	"	3283	do
	2,000.00	"	3284	do
	2,000.00	"	3285	do
	2,000.00	2561	3286	do
	2,000.00	"	3287	do
12	500.00	2572	1895	M. Miller
25	436.66	2578	732	Addison T. Coates
Dec. 8	5,000.00	2582	8181	Joseph H. Rieman
19	10,000.00	2588	11130	Hilmers McGowan Co.
24	2,168.33	2600	4298	Rev. T. G. Goodwin
26	10,000.00	2597	8737	Robert Garrett & Sons
(page 58)	10,000.00	2598	9430	Davenport & Co.
	1,083.53	2599	1828	Helen Marye
1903	7,666.67	2601	2139	Philip Speyer & Co.
Jan. 7	1,776.80	2605	6575	W. Benton Boggs
19	10,000.00	2607	10835	H. L. Gaw & Co.
21	5,000.00	2608	10715	L. H. Niles
	5,000.00	2608	3924	Brown, Lancaster & Co.
	4,500.00	2609	390	Edward Fuchs of Hamburg, Germany
	1,586.67	2610	553	Jas. Robb King & Co.
	1,570.69	2611	715	Mary J. Baldwin
	7,786.70	2612	845	Fisk & Hatch
	1,000.00	2613	1085	Stern Brothers of London
	4,531.30	2614	1432	George K. Sistare
	5,448.33	2615	1899	James Robb King & Co.
	5,505.66	2616	2100	Wm. Robinson
	945.33	2617	2157	M. A. Howell

DATE 1903	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Jan. 21	$ 1,371.66	2618	2297	Joseph Stern
	4,541.83	2619	2317	Mess de Rothschild Brothers, of Paris
	714.00	2620	2807	Archibald A. Hodge
	600.00	2621	3391	Vant Vlie Wing & Van Limmik
	160.72	2622	3544	John J. Osborn
	1,916.67	2623	3590	James Robb King & Co.
	766.67	2624	3653	Alfred Hirst, England
	383.33	2625	3857	James Robb King & Co.
	6,133.33	2626	3947	Arnitsted & Co.
	3,330.40	2627	4215	D. E. Rham & Co.
	1,222.99	2628	9766	Robert Garrett & Sons
	766.67	2629	4337	C. Ashworth
	5,908.93	2630	4591	Sir William R. Brown, Bart.
	4,600.00	2631	4607	James Robb King & Co.
	383.33	2632	4753	S. E. Calder
	230.17	2633	5142	James Robb King & Co.
	1,916.67	2634	6640	J. S. Kennedy & Co.
	383.33	2635	6955	James G. King & Sons
	366.07	2636	7271	Lewis B. Williams, for parties out of the State.
	1,030.64	2637	7318	Thomas J. Clark
	1,073.33	2638	7921	Robert Garrett & Sons
	396.66	2639	8270	A. G. Garrett
	3,929.13	2640	8863	Ro. Garrett & Sons
	1,088.66	2641	8887	Robert Garrett & Sons
	2,666.67	2642	9361	William Dashwood Fane, of Milbourne Hall, Derby, Esquire and Dashwood Watts Rigscotts.
29	383.33	2644	3478	J. Robb King & Co.
Feb. 4	5,000.00	2648	3851	Citizens Fire Ins. Co., of New York
10	10,000.00	2650	10112	Wilson Colston & Co.
(page 59)	10,733.33	2651	3861	J. T. Pearson, Leeds, Yorkshire, England.
	1,938.43	2649	2383	Henry S. Fink
11	10,000.00	2652	1941	John S. and Algernon Gilliat, with benefit of survivorship
	10,000.00	2653	10488	J. S. Wells
21	1,601.00	2654	7978	George Peabody Russell, R, Singleton Peabody and Charles W. Chandler
	1,000.00	"	7979	do
	1,000.00	"	7980	do
	1,000.00	"	7981	do
	1,890.78	2655	1826	Margaret Tucker, Jr.

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1903				
Feb. 25	$1,000.00	2658	7887	Charles George Wilson
	1,150.00	2659	5235	Alfred Marriott of Wakefield, Yorkshire, Eng.
27	534.67	2660	5357	Elizabeth T. Marshall
	2,300.00	2667	8093	Miller & Kruger of New York
	748.93	2669	3451	A. Iselin & Co.
	916.66	2668	5097	M. Morgans Sons
	1,539.40	2670	6822	Charles Oliver O'Donnell
	500.00	2671	3569	A. Iselin & Co.
	500.00	"	3570	do
	500.00	"	3579	do
	500.00	"	3574	do
	500.00	2672	3453	do
	500.00	"	3454	do
	500.00	2673	3455	do
	500.00	2674	3456	do
	500.00	2675	3457	do
	500.00	2676	3458	do
	500.00	2677	3568	do
	10,618.33	2678	3469	James Robb King & Co.
Mar. 13	5,750.00	2685	3810	Henry Durlacher, of 134 Harley Street, Cavendish Sq., London, Eng.
20	2,666.67	2693	2765	Herries Co.
April 6	145.67	2707	2414	Frank Gutman
27	5,000.00	2712	3399	Jas. P. Thomas & Son
May 7	10,000.00	2715	10490	J. S. Wells
	10,000.00	2716	10523	do
	5,000.00	2717	10710	L. H. Niles
Sept. 4	93.13	2741	4792	Susan B. Stevens
	1,005.60	"	3306	Thomas Jessup Miller
Nov. 24	866.67	2744	646	H. A. Ovington
Dec. 22	3,433.33	2747	2890	Oliveira Andrews
	1,150.00	2748	3014	James Robb King & Co.
	445.88	2749	912	Samuel P. Moore, admr. Lucy Moore, decd.
1904				
Jan. 13	10,000.00	2750	10502	J. S. Wells
28	208.43	2754	3065	Mary H. Forrest
	333.33	2755	3062	Mary H. Forrest, admx. of James Keith of Adjt. Genl's Office, Manchester, England
29	2,284.33	2756	6661	Lt. Col. John Williams Reynolds
(page 60)				
Feb. 15	551.50	2757	8716	Allgemeine Deutsche Credit Anstalt of Leipzig, Germany
	8,627.33	"	695	Nannie P. Marshall
	4,983.33	"	7496	John T. Mounsey, Executor of H. W. Maccaughy

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1904				
Feb. 15	$ 200.00	2757	1047	John Weeber
	3,095.00	"	11	Creed Thomas
	4,105.73	"	7834	Henry Ludlam, Trustee for Albert Ludlam
	3,603.33	"	4453	Lucy Garrett Spencer and Harriet Muse Spencer, infant children of Robert H. Spencer, the interest to be paid to Harriet Spencer during her life.
April 20	5,000.00	2761	5839	Arents & Young
May 9	100.00	2762	1878	Geo. L. Henser
	100.00	2763	1879	do
	1,000.00	2764	1883	do
13	766.67	2765	4518	D. M. Childs
		(Non. Neg.)		
June 3	10,000.00	2769	9341	Robert Garrett & Sons
Aug. 22	78.67	2772	2771	Grace E. Clark
Sept. 16	1,900.00	3552	651	J. Howard Walters
29	517.00	2774	8715	Allgemeine Deutsche Credit Anstalt of Leipic, Germany
Oct. 19	6,133.33	2775	4967	Major Charles Henry Pierre, of York, England
Nov. 4	4,111.50	2787	406	Alexander Donnan, adm. f. w. of Thomas A. Oliver, decd.
	274.00	2788	3169	Wm. G. Spencer, guardian of Sally Ann Clerry
23	111.87	2791	4161	Mrs. E. F. Hough, exx. of Mrs. C. B. Gassoway, decd.
	6.00	2792	10953	J. B. Manning
	1,000.00	"	11125	do
	1,000.00	"	11079	do
	871.66	"	10197	F. T. Redwood
	1,000.00	"	10674	do
	1,000.00	"	10673	do
	100.00	"	10552	L. Von Hoffman & Co.
	22.34	"	10553	do
		(CERTS. NOW HELD) "WEST VIRGINIA DEBT COMMISSION," JOHN B. MOON, CHAIRMAN.		
Dec. 20	696.66	2793	7702	Susamna Forgey
	20,000.00	2795	8553	Robert Garrett & Sons
	5,000.00	2796	10890	Wilson Colston & Co.
	5,000.00	2797	10444	J. B. Manning
	5,000.00	2798	11072	W. F. Sebert
	5,000.00	2799	11139	De Jonge & Co.

DATE 1904	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 20	$ 100.00	2800	531	Taussig & Fisher
	100.00	"	534	do
(page 61)	800.00	2800	4815	Charles A Macy
	5,000.00	2801	7212	Robert H. Jenkins
	1,000.00	2802	1113	Stern Brothers of London
	1,000.00	2803	1112	do
	1,000.00	2804	1111	do
	1,000.00	2807	473	do
	1,000.00	2806	472	do
29	10,000.00	2812	10343	Jno. C. Williams, Cashier
	1,000.00	"	1292	Hallgarten & Co.
	2,000.00	"	2868	Cammann & Co.
	2,000.00	"	2869	do
	1,000.00	"	4757	do
	10,000.00	"	5310	Leland Bros. & Co.
	5,000.00	5447		Whitehouse & Co.
	10,000.00	"	5648	Wm. Parsons
	5,000.00	"	5983	Robt. Garrett & Sons
	5,000.00	"	6121	do
	5,000.00	"	6165	do
	5,000.00	"	6167	do
	5,000.00	"	6168	do
	5,000.00	"	6171	Alex Rieman
	5,000.00	"	6224	Robt. Garrett & Sons
	10,000.00	"	6909	Wm. Parsons
	2,000.00	"	7213	Robt. H. Jenkins
	1,000.00	"	7843	D. Fahnestock & Co.
	10,000.00	"	8274	Robt. Garrett & Sons
	3,000.00	"	8439	do
	10,000.00	"	8661	do
	10,000.00	"	8617	do
	10,000.00	"	8621	do
	10,000.00	"	8670	do
	5,000.00	"	9302	do
	2,500.00	"	9335	do
	1,990.00	"	9345	do
	1,700.00	"	9388	do
	3,900.00	"	9392	do
	10,000.00	"	9344	do
	5,000.00	"	9387	do
	10,000.00	"	9433	Davenport & Co.
	3,000.00	"	9777	Jno. B. Manning
	10,000.00	"	9852	Wilson Colston & Co.
	5,000.00	"	9882	John Bloodgood & Co.
	5,000.00	2813	9952	R. H. Maury & Co.
	1,000.00	"	9972	Bearer
	7,000.00	2812	10129	Wm. Fisher & Sons

DATE 1904	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 29	$ 5,000.00	2813	10135	R. H. Maury & Co.
	5,000.00	"	10226	R. A. Lindsey
	5,000.00	"	10229	do
	5,000.00	"	10230	do
	5,000.00	"	10239	Drexel Morgan & Co.
	5,000.00	"	10230	Drexel Morgan & Co.
	5,000.00	"	10253	L. H. Niles
	5,000.00	"	10294	W. F. Sebert
	5,000.00	"	10341	do
	5,000.00	"	10346	John Malcolm
	10,000.00	"	10463	J. S. Wells
(page 62)	10,000.00	2813	10480	J. S. Wells
	10,000.00	"	10485	do
	10,000.00	"	10496	do
	10,000.00	"	10498	do
	10,000.00	"	10504	do
	1,000.00	"	10538	L. H. Niles
	5,000.00	"	10605	Wm. Howe
	1,000.00	"	10908	J. B. Manning
	1,000.00	"	10873	L. H. Niles
	1,000.00	"	10871	do
	1,000.00	"	10648	H. Knickerbocker & Co.
	10,000.00	"	10649	J. B. Manning
	5,000.00	"	10650	do
	10,000.00	"	10758	Chase & Higginson
	5,000.00	"	10801	Vermilye & Co.
	5,000.00	"	10945	J. B. Manning
	5,000.00	"	10948	H. A. Orrick
	5,000.00	"	10950	L. H. Niles
	10,000.00	"	10970	do
	1,000.00	"	11044	R. H. Maury & Co.
	10,000.00	"	11062	W. F. Sebert
	10,000.00	"	11064	do
	10,000.00	2815	11066	do
	5,000.00	2813	11069	do
	10,000.00	2815	11098	Pearl & Co.
	158.66	"	7256	Francis C. Phillips
	371.98	"	6158	Kidder, Peabody & Co., Trs.
	334.00	"	1958	Francis Henry Mitchell, Not endorsed. P-A filed with No. 1957.
	1,183.87	"	7349	Joseph Lehmeyer
	463.33	"	7457	do
	1,229.45	"	5015	Wm. E. Hatcher
	3,730.00	"	1628	E. C. Haden, Exr.
	173.33	"	1769	Wm. D. Heim
	3,495.96	"	1131	David S. Read

DATE 1904	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 29	$ 1,600.00	2815	7805	Freitas Leal Brothers
	3,333.33	"	6541	Lord Lisgar, etc.
	2,575.00	"	4382	Wm. Vannort
	1,170.00	"	1347	Thomas W. Levering, Trustee
	5,248.70	"	1359	Josiah F. Smith
	4,375.17	"	544	Edward Mayo, Exr.
	371.67	"	345	John R. Taylor
	837.13	"	4791	R. M. Kent, Trustee
	500.00	"	8394	James Lyons, Commr.
	833.33	"	3976	Machurg Wickham
	612.56	"	1918	G. J. Bechtel & Son
	3,833.33	"	4588	George Arlingstall
	332.50	"	3153	A. B. Hagner, Admr.
	263.84	"	6040	John Lyle, Admr. Adeline Golden
	702.66	"	8042	J. A. Wingfield, Shff. & Admr.
	148.46	"	8047	do
	1,361.67	"	123	Louis C. Fischer, Trustee
	273.78	"	6978	B. Hancock
(page 63)	3,533.33	"	4462	Edward Mayo, Commr.
	133.00	"	2468	R. M. Kent, Trustee
	100.00	"	6707	Charles C. Trahne, Trustee
	62.83	"	5549	P. M. Thompson
	488.90	"	5897	Isaac Fanke
	70.00	"	7569	Lewis Booker, Admr.
	386.66	"	7568	do
	3,273.33	"	7567	do
	6,711.08	"	9116	Robert H. Jenkins
	70.00	"	4353	John N. Bell
	2,145.46	"	8212	John Dean
	200.00	"	10903	Wilson Colston & Co.
	200.00	"	2882	Rev. C. W. Petherbridge
	500.00	"	10870	L. H. Niles
	958.32	"	5212	Tutien Nolthenius & de Haan
	766.66	"	3829	Baltzer & Taaks
	766.67	"	6641	J. S. Kennedy & Co.
	5,080.00	"	3880	Rich'd Irvin & Co.
	1,533.33	"	3868	do
	1,000.00	"	3764	Wilson Colston & Co.
	1,000.00	"	9997	Jno. B. Manning
	5,000.00	"	10295	W. F. Sebert
	3,833.33	"	6627	H. Gibbon
	11.98	"	10642	A. Keyser
	100.00	"	7402	Robinson, Chase & Co.
	9,722.93	"	4553	Madame Anne Marie Bonnetain, etc.
	383.33	"	898	Jan Van der Hoop & Toon

DATE 1904	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 29	$ 1,662.46	2815	2709	J. & M. Rosenbaum
	1,600.00	"	7804	Tarquiroo Torquaida Canara Lomilius
	385.78	"	8835	First National Bk., Pitts.
	2,216.67	"	1192	Wiesenfeld & Co.
	2,801.33	"	1186	do
	5,000.00	"	6166	Robert Garrett & Sons
	5,000.00	"	8070	do
	500.00	"	10762	Wilson Colston & Co.
	500.00	"	11045	R. H. Maury & Co.
	10,000.00	"	11093	Pearl & Co.
	522.79	"	3028	Mary J. Ellis
	833.33	"	3668	John Kaye
	81.67	"	3448	H. Amy & Co.
	2,478.68	"	3322	De Rothschild Bros.
	2,102.06	"	8245	Robert Garrett & Sons
	7,020.04	"	9008	do
	2,125.00	"	2002	James Spicer
	2,600.00	"	1971	Willis & Co.
	66.67	"	4834	L. Von Hoffman & Co., Trustee
	977.13	"	1909	Sarah E. Barr
	2,591.67	"	10128	C. E. Matthews
	1,000.00	"	6327	Robert Garrett & Sons
	851.13	"	1783	Wm. Seldon, Exr.
	8.300,00	"	9403	Robt. Garrett & Sons
	700.00	"	10937	John B. Manning
	383.33	"	924	Jan Van der Hoop & Toon
	608.33	"	626	do
(page 64)	3,833.33	"	8264	Johnston, Perry & Co.
	616.33	"	11123	J. B. Manning
	1,980.66	"	7420	De Rham & Co.
	3,033.01	"	11144	John H. Kahke
	4,393.33	"	3444	Geo. Thompson Mitchell
	51.67	"	3356	H. Plydenburgh
	1,916.67	"	6720	James G. King's Son
	601.66	"	5037	Tutien Nolthenius & de Haan
	317.33	"	2219	Charless Cottrell
	236.66	"	5725	E. Wortham & Co.
	19.69	"	10986	J. B. Manning
	1,153.55	"	6835	Margaret C. Provest
	1,110.14	"	4282	H. Amy & Co.
	100.00	"	1671	Vermilye & Co.
	100.00	"	1673	do
	438.00	"	6479	James Coates
	83.33	"	2152	Chas. Mason
	80.00	"	5168	Baltzer & Taaks
	4,556.85	"	8661	Robt. Garrett & Sons

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1904				
Dec. 29	$ 3,662.27	2815	145	Geyer & Wilkins
	2,746.67	"	1188	Weisenfeld
	158.33	"	2601	Elizabeth Jennings
	447.47	"	2789	John N. Ryland
	63.70	"	11057	J. B. Manning
	3,344.56	"	9768	Brown Loundes
	555.07	"	2121	De Rham & Co.
	571.67	"	2744	S. Stein
	702.66	"	1776	A. J. Bendurant
	221.66	"	1376	Benjamin Haas
	3,000.00	"	9831	R. A. Lancaster & Co.
	766.66	"	8354	Thomas McComas & Co.
	33.34	"	1325	Van Schaick & Co.
	150.00	"	376	Lockwood & Co.
	1,015.00	"	56	H. Amy & Co.
	333.33	"	9561	Levy & Borg
	383.33	"	4332	James Robb King & Co.
	1,545.00	"	453	D. S. Stein
	7,659.92	"	2314	Baron Alphons Mayer de Rothschild
	2,750.00	"	8713	G. W. C. Lee
	10,000.00	"	10519	J. S. Wells
	10,000.00	"	8609	Robt. Garrett & Sons
	6,500.00	"	8820	do
	1,570.72	"	3038	Benjamin Sheppard
	127.00	"	6901	Wm. H. Twyman
	1,110.13	"	7417	De Rham & Co.
	1,500.00	"	11047	R. H. Maury & Co.
	132.98	"	6760	Ella R. Jarvis
	420.00	"	6857	Baltzer & Taaks
	2,000.00	3364	2356	William Graham
	2,500.00	3365	2353	do
	5,000.00	3366	10927	Asiel & Co.
	555.07	3367	2985	Huffer, Toel & Co.
	10,000.00	2817	11094	Pearl & Co.
	5,000.00	2818	6134	Robert Garrett & Sons
(page 65)	8,000.00	2819	212	B. G. Arnold
1905				
Jan. 5	1,000.00	2834	1052	Stern Bros. of London
	1,000.00	"	1100	do
	1,000.00	"	1101	do
	1,000.00	"	1102	do
	1,000.00	"	1103	do
	1,000.00	3609	1104	do
	1,000.00	3610	1105	do
	1,000.00	3611	3688	Chas. Hirst, Huddersfield. Yorkshire, England.

DATE 1905	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Jan. 5	$ 1,000.00	3612	3689	Chas. Hirst, Huddersfield; Yorkshire, England.
	1,000.00	3613	3689	do
	1,000.00	2836	3714	do
	1,000.00	2836	3717	do
	5,000.00	2837	9814	E dlgarten & Co.
	5,000.00	2838	10443	J. B. Manning
	5,000.00	2839	11004	I. & S. Wormser
	1,900.00	3840	8256	Isaac S. Twymann, et al, Trustees
	1,960.00	"	7405	do
	1,533.33	"	9904	C. F. Wrenn
	435.34	2841	9903	do
	5,026.83	2844	2013	Remus G. Dorsey
	3,383.77	2841	10002	Elizabeth G. Whipple
	191.67	"	6956	James G. King's Sons
	1,105.27	"	326	Henry Parnell Moore Jeopard of London
	24,275.00	2845	1655	Hope & Co., in Amsterdam
	266.67	2843	3501	John James Kerr of Scotland
	2,683.33	"	2508	do
	56,534.67	2846	2411	do
	198.33	2843	3472	Alice B. Robinson
	84.66	"	6900	Isaac S. Twyman
	1,656.07	"	2555	Virginia Fire & Marine Insurance Company.
	341.67	2843	3632	Geo. Henry Greenwood, England.
	5,000.00	2448	1957	Francis Henry Mitchell
	1,000.00	2847	3380	Abraham Morrell
	1,000.00	"	3379	do
	1,000.00	"	3381	do
	1,000.00	"	3384	do
	5,000.00	2849	6006	Robt. Garrett & Sons
	5,000.00	"	5986	do
	1,000.00	2847	7168	Chase & Higginson
	1,000.00	"	7169	do
	1,000.00	"	7170	do
	1,000.00	"	7171	do
	1,000.00	"	7172	do
	1,000.00	"	7179	do
	5,000.00	2850	7248	do
	5,000.00	"	7889	Charles George Wilson
	10,000.00	2851	8052	Robt. Garrett & Sons
	2,000.00	3403	9161	do
(page 66)	1,000.00	3405	8199	Johnston Brothers & Co.
	1,000.00	"	10381	L. H. Niles
	1,000.00	"	10537	do

DATE 1905	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Jan. 5	$ 10,000.00	2853	8573	Robt. Garrett & Sons
	10,000.00	2854	9548	Rail & Kraxton
	10,000.00	2863	9713	John B. Manning
	1,000.00	3104	9916	H. C. Hardy & Son
	1,000.00	3405	9929	John B. Manning
	1,000.00	3406	10278	W. F. Sebert
	1,000.00	3407	10279	do
	1,000.00	3408	10405	do
	1,000.00	3648	10641	A. Keyser & Co., of London
	5,000.00	3649	9867	John Bloodgood & Co.
	1,000.00	3650	10194	F. F. Redwood
	1,000.00	3651	10355	John Malcolm of Belfast, Ireland
	10,000.00	2857	10389	J. B. Manning
	10,000.00	2858	10834	H. L. Gun
	1,000.00	3652	10916	Morton Rose & Co. of London
	5,000.00	2859	11074	W. F. Sebert
	10,000.00	2860	11089	Pearl & Co.
	5,000.00	2859	11105	J. Harmanus Fisher & Sons
	500.00	3653	11035	Wilson Colston & Co.
	500.00	3654	9764	do
	5,000.00	2861	10678	Oelrick & Co.
	1,555.46	2862	4057	Lucy T. G. Williams
	6,133.33	"	5103	Hugh Ross of Edinburg
	2,312.61	"	9523	Thomas J. Flack, et al.
10	10,000.00	2864	10493	J. S. Wells
	5,000.00	2865	3106	R. L. Anderson, Jr.
	5,000.00	"	10756	Chase & Higginson
	5,000.00	2866	11052	Medwin & Clarke
	5,000.00	"	11054	do
	4,000.00	2867	1631	John G. McMurray
	1,000.00	"	10875	A. Fletcher
	200.00	2869	2432	Francis Leaver, of Longner Hall, Pankridge, Eng.
	4,500.50	2868	8593	Mrs. Sarah A. Griffith
	2,216.67	2869	3104	Thomas K. Mills
	2,033.33	"	4063	Henry Clews & Company
	191.66	"	2388	M. Morgan Sons
	556.20	"	3436	C. H. H. Brown
	1,150.00	"	3505	do
	133.33	"	6809	Asa Rogus, Jr.
	353.00	"	9808	Thomas C. Jenkins
	493.33	"	8488	Gilmore Dunlap & Co., of Cincinnati
	1,604.91	"	7308	Seth Caldwell, Jr., and John T. Heard, Exrs.
	201.14	"	7064	M. M. Lyons, Extrx. of Wm. H. Lyons

DATE 1905	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Jan. 10	$ 446.56	2869	4636	Mary S. Hatcher
	422.07	2868	3558	Susaan M. Fitzhugh
	398.75	2869	2717	Mary J. Hightower
	10,000.00	2870	11092	Pearl & Co.
(page 67)	10,000.00	2871	9694	J. Harmanus Fisher
	10,000.00	2872	10720	J. B. Manning
	5,000.00	2874	10228	R. A. Lindsay
	5,000.00	"	6497	John B. Manning
	5,000.00	2875	5880	Thomas C. Jenkins
	3,000.00	"	11112	Ridgely Duvall, Jr.
	2,000.00	"	10555	Wilson Colston & Co.
	1,000.00	2876	5249	Julius S. Hitchcock
	1,000.00	"	3775	H. Amy & Co.
	1,000.00	"	6086	Louis Struller
	1,000.00	2876	11084	Thomas Branch & Co.
	1,000.00	"	8197	Johnston Brothers & Co.
	8,092.87	3645	1617	Jane E. Harper
	762.00	3646	11147	W. H. Lucke
	1,872.43	2981	8061	Robert Garrett & Sons
	1,996.67	"	7783	J. G. & G. C. Ward
	1,150.00	3647	4539	R. Raphael & Sons, London
	83.33	2981	3307	Richard T. Allison
	4,334.13	"	93	Frances Cornelia Taliaferro
	1,725.00	"	7533	J. S. Kennedy & Co.
12	1,000.00	3011	10271	W. F. Sebert
	1,000.00	3012	10270	do
	1,000.00	3013	9719	Jno. B. Manning
	1,000.00	3014	9718	do
	1,000.00	9717		do
	1,000.00	3015	9717	do
	1,000.00	3016	10566	J. S. Wells
	1,000.00	3017	3690	Chas. Hirst, Huddersfield, Yorkshire, England
	1,000.00	3018	3691	do
	1,000.00	3019	3692	do
	357.96	3020	10662	J. B. Manning
	132.37	3021	10704	do
	509.67	3022	10534	J. S. Wells
16	4,105.73	2882	7837	Henry Ludlam
	1,826.26	2883	5331	Sarah C. Booton
	1,826.26	"	5332	Mary E. Boton
	761.53	"	4151	Dabney C. Wirt
	500.00	2882	2292	Helen Welmer
	400.00	"	2293	do
	2,000.00	2884	8841	Alexander Rieman
	4,000.00	2885	8485	do
	5,000.00	2886	10926	Asiel & Co.

DATE 1905	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Jan. 16	$ 5,000.00	2887	10189	Julius S. Hitchcock
	5,000.00	2888	10841	L. H. Niles
	5,000.00	2889	10626	R. F. Tyson & Co.
	5,000.00	3548	10306	R. S. Chamberlaine
	5,000.00	2891	10227	R. A. Lindsay
	5,000.00	2892	10225	do
	5,000.00	2893	7953	Robert Garrett & Sons
	5,000.00	2894	8660	do
	1,000.00	2895	10962	J. B. Manning
	4,000.00	"	10951	Charles Hazard
	10,000.00	2896	10780	John C. Williams, Cash.
	10,000.00	2897	8896	Robt. Garrett & Sons
	10,000.00	2899	3216	Knickerbocker Life Insurance Company.
(page 68)	1,776.21	2900	6279	Phillipp Belien of Callean, Pyrenees, Orientales.
17	1,993.06	2901	571	Capt. William Rollins
18	1,000.00	2902	2742	S. Stein
	1,000.00	"	10703	Marx & Co.
	1,000.00	"	10432	Vermilye & Co.
	1,000.00	"	10582	J. S. Wells
	333.33	"	928	J. H. Foster
	4,000.00	"	6778	Tho. H. Oliver
	1,150.00	"	3878	William Meyer of New York
	127.00	"	5750	Tucker & Leighbowne
	396.66	"	5726	do
	228.60	2903	8351	John C. Maben
	595.00	"	2832	Robert Wright of London, England
24	1,000.00	2909	789	Clark Dodge & Co.
	744.00	2911	788	do
27	1,693.34	2913	240	Daniel Low
Feb. 3	2,000.00	2914	10114	Wilson Colston & Co.
	1,000.00	3550	9199	Levy & Borg
	1,000.00	"	3971	John Elliott of New York
	1,000.00	"	9813	R. A. Lancaster & Co.
14	5,000.00	2918	1949	John K. Gilliat & Co.
	5,000.00	2919	3341	Robt. B. Bolling
	5,000.00	2920	4917	W. W. Lucke
	5,000.00	2921	5241	Julius S. Hitchcock
	10,000.00	2922	8185	John Smith
	5,000.00	2923	9761	R. A. Lancaster & Co.
	5,000.00	2924	10119	Jno. C. Williams, Cash.
	10,000.00	2925	10511	J. S. Wells
	5,000.00	2926	10770	W. F. Sebert
24	439.00	2933	7453	Bellise Urhlaub
Mar. 6	56.90	2942	7351	Brown Lancaster & Co.

DATE 1905	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
April 24	$ 5,000.00	2943	6328	Richard Irvin & Co.
	5,000.00	2944	5329	do
	5,000.00	2945	6330	do
	5,000.00	2946	6331	do
	886.66	2947	6332	do
May 10	1,916.66	2948	5224	Henry Clews & Co.
23	951.24	3353	5893	Catherine Lacy, Admx.
June 26	5,000.00	2950	1157	W. R. Nofsinger
July 3	439.00	2954	7450	Otto Urhlaub
	439.00	"	7449	Leo Urhlaub
8	1,163.33	2955	1543	Lewis A. Brengle
28	1,900.00	2962	6316	Maria F. Anderson, Wm. McCouch and Horatio Gates, Exrs. of Thos. F. Hill, decd.
	200.00	"	6317	Geo. W. Anderson
Aug. 18	773.33	2963	7211	Wm. & John O'Brien
	4,443.33	2964	2482	Horace Waters
Sept. 14	317.07	2966	5016	William Brown
Oct. 4	150.00	2976	8697	James McChesney, M. D.
	705.00	"	8705	do
6	2,307.50	2977	9123	Lawrence Mendenhall, Trustee for Elizabeth S. Mendenhall u-w of Margaret Maule.
Oct. 24	2,242.20	2982	6654	John Arbuthnot and Robert Chure, with benefit of survivorship.
(page 69)				
	2,491.33	2983	4929	Robert Von Glenn
30	1,069.45	2987	8234	G. L. Summers
	1,069.45	"	8235	A. E. Summers, Exr.
Nov. 8	846.66	2988	850	Daniel Low
	832.89	2989	4475	Lancaster Brown & Co.
	92.98	2990	5098	do
	250.00	2991	4741	E. W. Skelton
	978.33	2992	5894	C. M. Welstead
15	5,735.00	2993	1140	Patrick Quinn
	1,000.00	2994	7529	J. B. Manning
	5,000.00	2995	10426	do
	1,000.00	2996	3358	H. Blydenburgh
27	5,000.00	2999	10957	L. H. Niles
Dec. 4	3,765.00	3006	6294	Edward Lee Childs
7	1,000.00	3008	1078	Stern Brothers
9	353.33	3010	3547	Chas. W. Slagle
12	70.00	3032	6363	Chas. U. Cotting, Exr.
	9,000.00	3033	6149	Isaacs Taylor & Williams
	1,348.50	3034	3977	Marx & Co.
14	1,000.00	3037	2527	A. Goettel & Co.
	551.73	3038	2589	do

DATE 1905	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Dec. 14	$ 353.33	3039	5767	H. Amy & Co.
22	958.66	3046	6274	David Henry Small
	76.67	3197	794	Henry French
	1,000.00	3198	795	do
	1,000.00	3199	796	do
	1,000.00	3203	797	do
	500.00	3203	798	do
	100.00	"	799	do
	100.00	"	800	do
	1,000.00	3049	9197	Levy & Borg
	1,000.00	3050	9198	do
	1,000.00	3061	10434	Max Meyer
	1,000.00	3052	5246	Julius S. Hitchcock
	1,000.00	3053	7844	D. Fahnestock
	5,000.00	3054	10740	L. H. Niles (Our ctf. issued as 10744.)
	5,000.00	3055	10666	Edward Cohen
	5,000.00	3056	10099	R. H. Maury & Co.
	5,000.00	3057	10097	do
	5,000.00	3058	10153	do
	5,000.00	3059	10094	do
	7,366.67	3060	1423	J. C. Bell
1906				
Jan. 3	496.46	3064	6983	Hopkins & Brothers
4	5,000.00	3065	9620	F. T. Redwood
	2,775.33	3066	784	Henry Linde
	3,333.34	3067	8491	Joseph W. Taylor
	1,100.00	"	8492	do
6	825.18	3068	744	Elizabeth McCauley
10	1,435.73	3069	4308	Mrs. Harriet P. Nash
16	786.67	3070	3342	Chas. P. Smith and Rev. Francis F. Reasley
	5,415.00	3071	2688	James Robb King & Co.
24	5,000.00	3075	10549	L. Von Hoffman & Co.
29	1,615.00	3353	2362	J. R. Corbett
(page 70)	958.33	3077	5236	Alfred Marshall
	5,000.00	3078	10061	R. H. Maury & Co.
	3,833.33	3079	7361	Cammann & Co.
	499.16	3080	4141	Ward & Co.
	499.17	3081	4140	do
	5,286.67	3082	1729	James G. King's Sons
31	100.00	3090	6706	Charles G. Trabue
Feb. 8	3,138.40	3091	3536	Ann Eliza Watts
9	4,000.00	3094	1197	Joseph O'Brien
14	1,150.00	3095	4218	Morris Prevost & Co.
	383.33	"	4220	do
	5,000.00	3096	10292	W. F. Sebert

DATE 1906	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Feb. 14	$ 5,000.00	3097	10713	L. H. Niles
	1,905.00	3098	6610	J. S. Kennedy & Co.
26	30.00	3099	1658	J. R. Corbett
	5,000.00	3100	10637	A. Keyser & Co.
28	5,000.00	3101	9964	R. H. Maury & Co.
Mar. 2	636.13	3102	1178	Mrs. B. Wiesenfeld
	2,270.00	3103	1353	do
9	5,000.00	3109	9572	Rail & Kearton
12	9.00	3110	4494	W. H. Savidge
	100.00	3111	4496	do
	100.00	3112	4495	do
	100.00	3113	4497	do
13	913.33	3114	7073	The County School Board of Chesterfield Co.
14	110.63	3115	10620	R. A. Lancaster & Co.
	1,000.00	3116	10622	do
	1,000.00	3117	10621	do
	465.67	3118	4381	A. Warwick, Jr.
20	1,866.67	3482	188	Geo. W. Phillips
April 2	6,972.76	3121	6291	Mildred Ann Cutter
16	2,750.00	3128	8710	Mary C. Lee
	2,750.00	3129	8709	do
	2,750.00	3130	8712	W. H. F. Lee
18	1,000.00	3131	10867	Clarke Dodge & Co.
	1,000.00	3132	10866	do
19	5,000.00	3133	9571	Rail & Kearton
	75.00	3134	9244	do
	1,533.33	3135	4812	Samuel Benjamin
21	3,333.33	3136	9601	Henry S. and John W. Garrett, Ers.
28	5,000.00	3137	11106	J. Harmanus Fisher
30	4,503.53	3138	735	Rev. S. S. Roszell
	1,785.00	3353	3830	Julia S. Smith
May 2	6,598.13	3140	4832	Hugh Blair Grigsley
12	5,000.00	3141	9836	John Bloodgood & Co.
17	1,000.00	3146	2931	Stern Brothers
	1,000.00	3147	2930	do
	1,000.00	3148	2929	do
	1,000.00	3149	2932	Stern Brothers
	1,000.00	3150	2933	do
	5,000.00	3151	9097	G. T. Bonner & Co.
May 17	5,000.00	3152	9739	R. H. Maury & Co.
(page 71)	5,000.00	3153	9788	Wilson Colston & Co.
	5,000.00	3154	6691	do
	5,000.00	3155	9538	Rail & Kearton
	1,176.66	3156	4870	Henry Clews & Co.

DATE 1906	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
May 18	$1,000.00	3157	9708	John B. Manning
22	488.00	3158	2779	George Sirian and Eleanor E. his wife.
June 19	1,150.00	3160	4090	Clement Geitner
	1,388.33	3161	4505	John M. Forbes, Francis F. Forbes and Alfred T. Forbes, Exrs. of Murray Forbes, decd.
22	1,000.00	3166	3640	James Coates
	1,000.00	3167	3641	do
	1,000.00	3168	3642	do
	1,000.00	3169	3643	do
	1,000.00	3170	3644	do
	1,000.00	3171	3645	do
	1,000.00	3172	3646	do
	1,000.00	3173	3647	do
July 7	357.00	3174	1464	Maria A. McDowell, Extx. Est. of Edwd. McDowell.
17	5,000.00	3177	6618	W. W. Corcoran
	5,000.00	3178	9026	J. Harmanus Fisher
	5,000.00	3179	5281	Wilson Colston
	5,000.00	3180	9900	John Bloodgood & Co.
	2,000.00	3181	9992	James P. Thomas
	1,000.00	"	1077	Stern Bros.
	1,000.00	"	2238	J. & J. Higgin
	1,000.00	"	3702	Chas. Hirst, Huddersfield.
	1,000.00	3182	10403	W. F. Sebert
	1,000.00	3183	9655	G. T. Bonner & Co.
	1,000.00	3184	10383	L. H. Niles
	1,000.00	3185	5248	Julius S. Hitchcock
	1,000.00	3186	10406	W. F. Sebert
	1,000.00	3187	10864	Jno. C. Williams
	1,000.00	3188	10445	J. B. Manning
	1,000.00	3189	10958	L. H. Niles
	193.67	3339	2375	H. Amy & Co.
	2,196.27	3338	2670	W. C. Crawfoot
	790.00	3338	9315	James Brown
	806.66	3339	3367	Richd. Irvin & Co.
	1,003.73	3338	2604	Henry Bowen
	3,613.33	3338	3015	James Robb King & Co.
	867.48	3339	4733	Saml. M. Pleasants
	2,706.67	3339	6823	Baltzer & Taaks
	396.67	3338	7425	De Rham & Co.
	180.00	3339	4256	H. Amy & Co.
	671.33	"	876	Mrs. James Brooks
	79.33	"	1606	S. G. Peyton
	76.66	"	7798	A. M. Fleming

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1906				
Jnly 17	$ 166.66	3339	7799	A. M. Fleming
	3,328.33	"	2958	R. K. Harvey
	280.67	3353	2800	J. C. Engelbrecht
July 31	8,803.57	3192	3404	J. Cary Weston
(page 72)	2,281.50	3193	6102	do
Aug. 7	114.30	3194	6337	Solomon Dyrenforth
	1,191.66	3195	5756	do
9	455.07	3196	4213	Lycurgus Baker
21	333.33	3205	8706	Wm. A. Williams
	50.00	"	8707	do
	1,821.83	3353	4373	Robert Currie
27	1,099.33	3209	443	Saco & Biddeford Sav. Inst.
Sept. 6	4,991.67	3213	4523	Nellestyne & Co.
27	211.50	3224	636	Charles Y. Morriss, Exr. of R. G. M.
	129.00	3225	2526	Charles Y. Morris, Exr. of R. G. Morris, Trustee U-W of C. S. Morris.
	107.67	3226	635	Richard G. Morris, Gdn. of A. L. M.
	1,526.33	3227	634	Richard G. Morris, Tr. U-W of C. S. Morris.
	3.333.33	2328	9228	John Howard, Special Commr. of the Chancery Court of the City of Richmond.
	403.32	3229	9583	do
	3,333.33	3230	9401	do
	5,043.62	3231	9582	do
Oct. 4	249.13	3232	3896	Sally A. F. Hodges
	1,374.17	3233	4614	Wm. H. Wilson, Jr.
18	793.33	3234	631	J. D. Blackwell
Nov. 1	1,000.00	3239	3631	Revd. de Courcey Meade
	533.33	3240	3630	do
13	5,160.00	3241	3012	Hiram Miller
	147.14	3242	6815	Emily Funston
	366.66	3243	6098	Wm. A. Davis, Tr. for Lucretia Hopkins and Lucy Ann Hyde.
22	291.33	3244	4178	Mathew Harrison, Admr. of Alice B. Harrison
Dec. 6	2,307.49	3245	9122	John H. Tyler, Tr. for Caroline Ege, U-W Margaret Maul.
1907				
Jan. 10	10,000.00	3248	7972	Robert Garrett & Sons
	5,000.00	3249	10997	I. & S. Wormser
	5,000.00	3250	10879	Boully & Thompson

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1907				
Jan. 21	$1,803.08	3251	5	Mrs. Sarah M. Clutter
Feb. 7	202.47	3258	7338	John P. Montgomery
Mar. 5	766.67	3353	4985	Northern & Durham
7	1,000.00	3266	10219	Jerome N. Bonaparte
April 5	1,433.33	3267	4239	D. H. Miller and J. M. Brooker Trustees M. J. Read.
	265.27	3268	4240	Mary J. Read
8	97.33	3485	6935	Mary A. Coleman, Extr.
	97.33	"	6934	do etc.
	687.45	3270	1603	Miss M. E. Cason
16	816.18	3271	1590	Isaac G. Cason
(page 73)				
April 29	5,000.00	3272	9905	Jno. B. Manning
July 22	350.00	3283	3845	August Rolker & Sons
30	133.00	3284	2104	Sigmund Haas
Sept. 19	8,095.00	3287	2410	Mrs. S. Saville
	3,338.00	3288	3406	Peter D. Posey
Oct. 3	845.24	3289	4369	James K. Davney and Sarah E. Davney, his wife.
21	5,000.00	3298	1951	John K. Gillat & Co.
Dec. 26	5,000.00	3315	3735	Isaacs Taylor & Williams
	5,000.00	3316	9877	John Bloodgood & Co.
27	1,099.33	3324	762	Henrietta Clowes
	529.67	3325	766	Mary Ann Mason
30	5,000.00	3326	9946	R. H. Maury & Co.
	5,000.00	3327	10059	do
	5,000.00	3328	10170	Frances White
	5,000.00	3329	9889	John Bloodgood & Co.
	5,000.00	3330	9776	John B. Manning
	5,000.00	3331	9748	Harry A. Orrick
1908				
Jan. 4	456.57	3332	180	Catherine Keppler
20	699.09	3333	10827	Genevieve Currie
21	1,983.33	3334	3893	Penna. Co. for Ins. etc.
27	5,000.00	3335	9892	John Bloodgood & Co.
	5,000.00	3336	9896	do
	5,000.00	3337	4165	W. H. McFarland, Jr.
Feb. 17	2,300.00	3340	6920	James G. Kings Sons
Mar. 5	200.00	3344	3616	Henry Clews & Co.
7	5,167.93	3345	2056	Chas. H. Carter
16	54.13	3346	3352	John Rangeley
	427.67	3347	3351	do
April 20	833.33	3482	3945	John W. Wright, Administrator of John McPherson for benefit of Jane Lacy.
21	460.20	"	2509	Joseph T. Priddy of Hanover
29	876.00	3360	3186	Elizabeth O. Dance.

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1908				
April 29	$ 506.00	3360	4843	Elizabeth O. Dance.
May 27	2,020.53	3375	4831	Thos. Chambers
28	345.00	3482	3371	Miss Anna Maria Harrison
June 18	91.39	3483	9147	Maria Champ Bell
	100.00	"	9771	do
July 1	659.97	3380	3815	Jno. H. D. Wingfield
18	175.56	9438	3383	Miss E. A. Carson
	928.54	1211	3384	Elizabeth A. Carson
21	5,000.00	10106	3385	R. H. Maury & Co.
	5,000.00	10155	3385	do
	5,000.00	10298	3385	W. F. Sebert
	5,000.00	10299	3385	do
Aug. 26	569.06	2464	3388	John McKenna
Sept. 25	3,336.66	3483	374	N. Y. Life Ins. Co.
	684.85	3392	2273	Leroy D. Terrell
	766.66	3482	430	George S. Nace
Oct. 27	5,000.00	3397	8529	John Black
	1,000.00	3398	3485	Thomas B. Nalle
	1,000.00	"	3483	do
	1,000.00	"	3484	do
(page 74)				
	5,000.00	3398	3486	Thomas B. Nalle
	908.32	"	3480	do
Nov. 20	1,100.00	3401	1985	Pauline M. Price
Dec. 2	134.80	3402	6732	W. D. Gibson, Tr. A. H. Gibson
30	380.00	3410	4367	Kitty Lloyls
	133.00	3411	5554	do
1909				
Jan. 18	2,220.27	3412	726	W. Raymond Sanderson
Feb. 6	66.67	3413	7828	Geo. Peabody Russell, Robt. Singleton Peabody and Chas. W. C. Landler
10	966.55	3416	4443	Cordelia G. Cosby
19	10,000.00	3419	8544	William G. Harrison
	314.67	3420	2060	W. G. Harrison in trust.
Mar. 4	5,000.00	3421	11104	J. Harmanus Fisher & Son
5	4,600.00	3422	4896	R. Rafael & Son, London
13	453.70	3423	8243	A. G. Brown, M. W. Bennett, Trustees for the Hall Fund.
	2,110.33	3424	580	Wm. M. Radford, Committee for Nathaniel Burwell, Jr.
May 11	1,533.33	3427	3361	Ward M. Gazlay
27	890.53	3433	4498	George T. Jackson
June 5	515.75	3435	4730	Miss Sarah H. Michie
July 9	2,312.60	3445	9522	James W. Flack
12	555.33	3446	6600	W. L. Weston, Trustees

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1909				
July 19	$5,000.00	3447	8761	Wilson Colston & Co.
	50.00	3448	3897	Robert T. Haws
31	191.67	3449	4984	Edwin John Heropath of Kidbrook Park, Blackheath.
	201.67	"	4863	James Robb King & Co.
	19.95	"	6825	Messrs. DeRothschild Brothers of Paris
	19.95	"	6826	do
	19.95	"	6827	do
	19.95	"	6824	do
	786.67	"	4793	Messrs. DeRothschild Brothers
28	1,000.00	3451	10316	L. H. Niles
	1,000.00	"	10242	Drexel, Morgan & Co.
	1,000.00	"	10213	Charles G. Bonaparte
	1,000.00	"	10159	R. H. Maury & Co.
	1,000.00	"	2926	Stern Brothers
	5,000.00	3452	5242	Julius S. Hitchcock
Sept. 13	863.47	3453	4723	Jos. W. Morris, Trustee for Sarah H. Michie u-will of Nancy Morris
Oct. 8	1,625.67	3454	2166	Robert W. Haws of London
18	1,824.66	3455	7040	Michael Towers
Dec. 20	1,598.33	3505	4295	Thos. Cheatham
22	475.62	3506	2904	Ann Nash
1910				
Jan. 4	2,206.66	3507	5265	Turner Brothers
Feb. 2	2,618.33	3508	6727	James G. King's Sons
28	16.34	3509	359	Wm. H. Mosby, Trustee for his wife, Eliz. F. Mosby
Mar. 4	667.00	3515	948	See stub of
4	2,036.67	3516	3190	Va. Dfd. Ctf. Book
7	5,000.00		7254	Chase & Higginson
19	500.00	3518	3865	H. Amy & Co.
			(Non. Neg.)	
(page 75)				
22	443.33	3520	3562	Louis D. Jones
	1,055.00	3519	1215	L. D. Jones
	50.00	"	6932	L. D. Jones
	300.00	3523	1216	Louis D. Jones, Adm. of S. C. Legrand
	239.40	"	3563	Legrand
April 6	165.33	3524	6774	Rebecca B. Tunis
	3,127.00	3531	649	Rebecca B. Tunis, during her widowhood with remainder to her children, Lewis Tunis, Franklin W. Tunis and Robert Tunis.
	2,937.95	3532	658	Mrs. Rebecca B. Tunis

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1910				
April 12	$ 5,602.89	3526	1725	Wm. Selden, Extr. of Charlotte Selden
	11,894.24	3527	1719	Wm. Selden of Norfolk
May 4	575.00	3528	6091	J. S. Kennedy & Co.
24	384.35	3535	160	E. B. Hooff
June 7	3,657.60	3536	6714	Madame Felix Ricketts
Sept. 24	2,613.33	3542	759	J. V. Knight
Dec. 21	201.71	3556	1373	Amanda Lumpkin
31	176.15	3557	791	City of Williamsburgh
1911				
Feb. 1	1,000.00	3560	10594	H. Amy & Co.
20	261.53	3566	4676	Mary E. Brooks, wife of Wm. Brooks
Mar. 10	100.00	3569	5291	Charles W. Purcell
14	117.00	3570	540	Maria Blair
21	2,775.33	3598	3975	James Dunlop, Exr. Miss Elizabeth Dick
	383.34	3599	1232	John Carle, Jr. New York
22	213.33	3600	6828	Daniel Annan Cash
24	29,862.59	3606	3979	James Dunlop, Georgetown, D. C.
April 1	5,000.00	3614	2913	James Tinker
	10,000.00	3615	6234	James P. Thomas & Son
3	3,533.33	3618	4396	Louisa B. Wilkins of Brunswick. Not transferable except by order of the Circuit Court of Brunswick
11	1,000.00	3644	1654	Rutten & Bonn
15	566.66	3657	5962	D. R. Stokes, Gdn. of Sarah G. and Lucy A. Stokes

((page 76) DEPOSITS OF VIRGINIA DEFERRED CTFS. ISSUED UNDER ACT 1879.

(Principal and Interest.)

1898			RECEIVED.	
Aug. 25	333.33	40	39	Bearer
31	6,346.67	46	112	do
Sept. 16	1,916.66	251	263	do
	3,066.67	252	262	do
26	1,733.33	314	240	do
Oct. 4	383.33	345	352	do
	333.33	346	290	do
14	166.67	420	159	do
18	5,833.33	441	223	do
31	20.00	537	314	do

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 31	$ 18,333.33	2956	94	Bearer
	11,000.00	2957	166	do
	833.33	539	167	do
	104.17	"	165	do
Nov. 1	125.00	540	278	do
	1,000.00	540	297	do
	1,430.00	682	309	do
	4,666.67	682	304	do
	2,000.00	682	294	do
	41.66	683	279	do
	6,666.67	"	288	do
	2,000.00	542	95	do
	5,833.33	543	284	do
	35.47	630	229	do
	1,080.00	506	70	do
	1,666.67	544	27	do
	1,666.67	"	28	do
	250.00	"	29	do
	3,666.67	"	115	do
	1,900.00	"	191	do
	283.34	"	277	do
	104.17	"	282	do
	1,333.33	"	292	do
	833.33	545	65	do
	371.66	"	119	do
	160.87	"	214	do
	650.00	697	161	do
	169.33	"	140	do
5	166.67	697	135	do
	1,500.00	"	126	
	1,450.00	704	64	
	23.33	699	82	
	42.33	"	213	
	596.67	"	215	
	9,666.66	704	61	
	1,862.50	713	164	
	12,500.00	"	168	
	1,500.00	547	180	
(page 77)				
5	3,000.00	547	176	Bearer
	2,166.67	"	149	
	2,166.67	"	150	
	2,333.33	"	179	
	6,666.67	"	178	
	666.67	"	43	
	333.33	"	47	
	333.34	548	298	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898				
Nov. 5	$ 1,050.00	548	283	Bearer
	10.00	"	55	
	25.40	"	204	
	875.00	"	305	
	9,500.00	549	88	
	333.33	727	245	
	1,333.33	"	184	
	2,000.00	"	50	
	34.66	812	118	
	276.67	"	137	
	858 66	"	69	
	1,000.00	"	274	
	1,225.00	816	7	Thomas Branch & Co.
1899				
Mar. 16	373.34	878	45	Bearer
	333.33	"	316	do
Oct. 17	19,333.33	1024	92	do
	39.17	"	107	
	83.33	"	108	
	358.33	"	251	
	21.67	"	254	
	1,145.83	"	256	
Nov. 27	510.00	1091	58	
	5,000.00	2176–7	286	
	127.00	"	171	
Dec. 7	352.90	1166	158	
	247.87	"	186	
	243.33	"	133	
	333.33	"	293	
13	500.00	1255	63	
	666.67	1256	124	
	273.33	1257	144	
	1,833.33	1258	183	
	160.86	1259	218	
	1,304.17	1260	220	
	1,020.83	1261	276	
26	13,000.00	1421	17	
	541.67	1422	19	
	3,000.00	1423	41	
	5,950.00	1424	125	
	1,905.00	1425	127	
	2,500.00	1426	131	
	2,166.67	1427	209	
	7,500.00	1428	211	
1900				
April 9	2,500.00	1589	129	
Sept. 5	93.33	2606	4	First Natl. Bank of N. Y.

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1900				
Sept. 5	$ 2,470.00	1757	73	Bearer
	220.83	1758	154	
(page 78)				
Sept. 5	458.33	1759	155	Bearer
	426.00	1760	189	
	257.67	1761	190	
	612.50	1762	192	
	913.33	1763	195	
	443.34	1764	196	
	2,725.00	1765	199	
	600.00	1766	272	
Nov. 17	833.33	1809	302	
	2,000.00	1810	96	
	204.17	1811	281	
1901				
Jan. 25	816.67	1958	147	
Sept. 13	900.00	2131	242	
	100.00	2132	250	
	333.33	2133	249	
1902				
July 31	9,750.00	2187	185	
Aug. 25	5,000.00	2287	97	
	5,000.00	2288	172	
	5,000.00	2289	244	
	666.67	2290	219	
	333.33	2291	56	
	641.67	2292	239	
	58.33	2293	134	
	17.73	2294	174	
	41.67	2295	175	
	44.33	2296	157	
	166.67	2297	162	
	38.00	2298	120	
	1,333.33	2299	231	
	2,333.33	2300	90	
	3,166.67	2301	198	
	5,000.00	2302	113	
	3,666.67	2303	103	
	5,000.00	2304	275	
Sept. 23	183.33	2493	93	
	833.34	2492	300	
	333.33	2490	151	
	666.67	2490	128	
	1,000.00	2490	89	
24	205.00	2488	280	
	1,333.33	2487	299	
	2,000.00	2489	156	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1902				
Sept. 24	$ 1,666.67	2489	273	
	50.00	2493	34	
	100.00	2488	202	
	555.83	2491	238	
	666.67	2488	188	
	3,666.67	2491	246	
	333.33	2491	35	
	7,333.33	2490	291	
	404.17	2491	257	
	635.00	2493	9	
	3,333.34	2493	287	
(page 79)	150.00	2492	312	
1900				
Sept. 24	50.00	2493	138	Bearer
	1,543.33	2493	313	
	500.00	2492	308	
	200.00	2493	77	
	40.00	2491	258	
	833.33	2491	303	
	4,166.67	2491	15	
	5,193.33	2488	13	
	666.67	2490	32	
	100.00	2493	33	
	7,333.33	2486	101	
	6,166.67	2487	182	
	166.67	2486	187	
	106.68	2488	193	
	8.00	2488	230	
	23.14	2488	270	
	350.00	2492	310	
	500.00	2492	66	
	241.66	2493	67	
	160.86	2493	68	
	7,666.66	2493	266	
	2,333.33	2493	289	
1902				
Oct. 10	86.67	2534	260	
	666.67	2535	301	
	1,333.34	2536	285	
	200.00	"	307	
	5,653.33	2537	11	
	312.50	"	12	
	3,500.00	"	14	
	333.33	"	20	
	12.50	"	21	
	30.00	"	24	
	500.00	"	25	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1902				
Oct. 10	$ 6,000.00	2537	54	Bearer
	9,000.00	"	57	
	333.33	"	59	
	1,000.00	"	60	
	3,666.66	"	62	
	500.00	"	74	
	4,000.00	"	75	
	87.50	"	81	
	20.00	"	217	
11	1,500.00	2538	255	
Dec. 8	110.00	2584	71	
	2,666.67	2584	100	
	1,000.00	2583	102	
	333.33	2584	104	
	333.33	"	141	
	270.00	"	181	
	166.67	"	225	
	1,040.00	"	265	
	1,166.66	"	210	
	1,000.00	"	132	
	45.00	"	216	
(page 80)	2,321.00	"	148	Bearer
	145.00	"	320	
	85.00	"	203	
	165.73	"	194	
	156.66	"	80	
1898				
Sept. 19	443.33	193	271	By mistake originally placed under 1871. See p. 4, Ledger 1.
1902				
Dec. 29	420.00	2603	259	Bearer
	130.00	2604	268	

(NOW HELD) "WEST VIRGINIA DEBT COMMISSION," JOHN B. MOON, CHAIRMAN.

1905				
Dec. 22	13,000.00	3045	207	Bearer
26	750.00	3062	136	
	9,500.00	3063	105	
1906				
Jan. 29	500.00	3084	22	
	3,333.34	"	23	
une 22	8,660.83	3165	106	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1907				
Feb. 4	$ 225.00	3255	72	Bearer
	225.00	3256	79	
	166.67	3257	121	
July 18	3,833.33	3282	40	
1908				
Mar. 24	4,333.33	3348	116	
May 23	63.50	3374	212	
	121.67	"	153	
1909				
Aug. [illegible]	1,166.67	3450	36	
	528.33	"	37	
1911				
Mar. 21	150.00	3595	200	
	1,000.00	"	91	
April 14	1,000.00	3655	26	
	3,500.00	3656	169	

(page 81)

DEPOSITS OF VIRGINIA DEFERRED CTFS. UNDER ACT OF 1892.

(Principal Only.)

		RECEIVED.		
1898				
Aug. 22	1,000.00	4	65	No
25	680.00	39	102	No
Sept. 3	1,333.33	168	55	No
13	6.66	205	118	No
Oct. 4	6.67	352	103	No
	200.00	353	105	No
	40.00	354	106	No
	220.00	355	89	No
5	333.33	385	120	No
11	12,356.67	412	52	No
31	1,166.66	649	29	No
	565.00	495	21	No
	39,120.83	496	35	No
Nov. 1	41.66	497	19	No
	1,500.00	498	28	No
	2,166.67	608	13	No
	1,333.33	500	5	No
	1,500.00	550	17	No
	187.50	551	43	No
	2,787.50	552	36	No
	1,000.00	687	26	No
	695.83	688	24	No
	500.00	"	25	No
	666.66	689	23	No

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME	
1898					
Nov. 1	$ 75.830.83	554	38	No	
	2,487.50	555	20	No	
	11,866.66	691	42	No	
	11,866.66	692	32	No	
	3,265.00	701	41	No	
	2,166.66	711	30	No	
	666.66	557	6	No	
	333.33	"	7	No	
	333.33	"	14	No	
	2,250.00	558	10	No	
	1,366.66	715	27	No	
	1,666.66	559	47	No	
3	320.83	632	90	No	
	4.666,66	"	9	No	
	666.66	560	8	No	
21	1,666.66	660	70	No.	Int. from July 1-1891.
Dec. 9	1,141.66	718	11	No	do
12	2,720.00	731	72	No	do
	187.50	"	76	No	dò
	166.67	"	85	No	do
	500.00	"	80	No	do
	1,875.00	"	15	No	do
	333.33	"	59	No	do
27	333.33	783	113	No	do
(page 82)					
1899					
Oct. 20	453.33	1025	58	Bearer	
25	166.67	1029	75		
Dec. 6	1,333.33	1117	69		
19	333.33	1275	16		
1900					
June 13	333.33	1650	123		
14	333.33	1655	57		
1901					
Jan. 14	333.33	1953	124		
Feb. 6	166.66	1977	71		
21	1,000.08	1985	121		
Mar. 25	333.33	2026	54		
April 22	9,973.33	2062	31		
Aug. 30	1,000.00	2117	125		
Sept. 13	166.66	2127	37		
	3,641.66	2128	39		
1902					
Aug. 6	1,000.00	2194	60		
Sept. 24	3,333.33	2451	18		
	666.66	2452	46		

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1902				
Sept. 25	$ 3,333.33	2366	61	
Oct. 13	11,841.65	2548	40	
Nov. 19	195.00	2577	3	
1898				
Aug. 25	26.66	10	114	Bearer. Entered by mistake under '82 Int. Scrip on Ledger 1, p. 55.
1902				
Aug. 25	4,500.00	2276	81	Bearer. Entered by mistake under '82 Prin.; on p. 29.
1899				
Dec. 7	3,333.33	2726	112	Bearer. Placed by mistake under 1882 Prin. see p. 27.
1903				
Jan. 29	7,333.33	2645	33	Bearer
Mar. 5	3,333.33	2681	34	
May 6	333.34	2713	100	
18	120.00	2719	115	
1904				
Mar. 25	333.33	2759	4	
July 8	2,487.50	2771	44	
(CERTS. NOW HELD) "WEST VIRGINIA DEBT COMMISSION, J. B. MOON, CHAIRMAN				
1906				
July 10	120.00	3176	126	Bearer
Dec. 20	166.67	3247	86	
1907				
Feb. 4	1,333.34	3253	67	
May 29	453.33	3278	68	
1908				
May 23	100.00	3373	98	
Oct. 12	50.00	3396	128	
1910				
May 20	1,000.00	3533	122	
Oct. 1	110.00	3543	129	
Feb. 18-11	266.67	3565	130	
Mar. 21	3,000.00	3596	53	
(page 84)				
1911				
April 1	3,333.32	3616	82	$1,166.66 Bearer
			45	166.67
			22	1,666.66
			87	333.33

(page 84)

DEPOSITS OF VIRGINIA DEFERRED CTFS. UNDER ACT 1879.

Dollar Interest Scrip

RECEIVED.

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898				
Oct. 4	$ 41.67	357	1531	No.
	20.00	"	1413	"
	10.00	"	1412	"
	600.00	"	1537	"
	66.66	"	1546	"
15	30.00	432	1416	"
31	25.00	566	1401	"
	41.66	567	1475	"
Nov. 1	158.34	568	1250	"
	158.34	"	1253	"
	29.17	"	1433	"
	29.17	"	1501	"
	3,000.00	569	1540	"
	2,625.00	"	1534	"
	10.00	570	1256	"
	10.00	"	1257	"
	80.00	"	1533	"
	1,500.00	"	1538	"
	35.00	695	1444	"
	20.84	714	1476	"
	270.83	"	1448	"
	270.83	"	1447	"
	62.50	"	1446	"
	1,710.00	627	1404	"
	575.00	"	1511	"
	758.35	"	1527	"
	1,350.00	"	1508	"
	1,725.00	"	1509	"
5	54.16	572	1431	"
	54.17	"	1432	"
	15.00	"	1272	"
	10.00	"	1282	"
	10.00	"	1289	"
	10.00	"	1284	"
	5.00	"	1293	"
	5.00	"	1294	"
	5.00	"	1296	"
	30.00	"	1437	
12	75.00	728	1452	Bearer
	5.00	"	1300	
	120.00	"	1385	
1899				
Mar. 29	116.67	886	1270	Bearer

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Mar. 29	$ 116.67	866	1269	Bearer
	230.00	"	1267	"
	158.33	"	1248	"
	237.50	"	1436	"
	279.16	"	1435	"
	230.00	"	1260	"
	141.67	"	1549	"
(page 85)				
May 19	1,555.00	986	1469	Bearer
	200.00	"	1400	
	70.00	"	1402	
	70.00	"	1403	
	360.00	"	1535	
	25.00	"	1464	
	50.00	"	1528	
	50.00	"	1375	
	50.00	"	1382	
	5.00	"	1370	
	10.00	"	1292	
	10.00	"	1290	
	50.00	"	1378	
	50.00	"	1379	
	50.00	"	1376	
	4.17	"	1374	
	4.17	"	1373	
	8.33	"	1470	
	4.16	"	1372	
	16.68	"	1465	
	12.50	"	1352	
	12.50	"	1353	
	12.50	"	1354	
	8.33	"	1355	
	8.33	"	1356	
	12.50	"	1257	
	12.50	"	1358	
	12.50	"	1359	
	8.34	"	1360	
	116.66	"	1515	
	158.33	"	1252	
	300.00	"	1555	
	1,354.16	"	1510	
	1,000.00	"	1479	
Dec. 19	270.83	1263	1280	
	270.83	1265	1279	
	270.84	1266	1278	
	270.83	1267	1277	
	270.84	1268	1276	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1899				
Dec. 19	$ 270.83	1269	1275	
	270.84	1270	1274	
	270.83	1271	1273	
	270.83	1272	1281	
1900				
Jan. 30	91.67	1542	1484	
	125.00	"	1488	
Nov. 17	158.33	1807	1246	
	158.33	1808	1245	
1901				
Sept. 13	133.33	2129	1513	
1902				
Sept. 24	300.00	2130	1490	
	100.00	2371	1525	
	233.33	"	1530	
	75.00	2372	1547	
	75.00	"	1542	
	50.00	"	1529	
	10.00	"	1391	
(page 86)				
Oct. 10	360.00	2544	1536	Bearer
	250.00	2545	1524	
	50.00	2546	1271	
	10.00	"	1289	
	5.00	"	1298	
	5.00	"	1299	
	41.66	"	1301	
	41.66	"	1302	
	41.67	"	1303	
	41.67	"	1304	
	41.67	"	1305	
	41.67	"	1306	
	258.33	"	1307	
	258.33	"	1308	
	358.33	"	1309	
	258.33	"	1310	
	258.33	"	1311	
	258.33	"	1312	
	258.34	"	1313	
	258.34	"	1314	
	258.34	"	1315	
	80.00	"	1333	
	20.83	"	1334	
	20.83	"	1335	
	20.84	"	1336	
	25.00	"	1337	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1902				
Oct. 10	$ 25.00	2546	1338	Bearer
	25.00	"	1339	
	20.83	"	1340	
	20.83	"	1341	
	20.84	"	1342	
	137.50	"	1361	
	137.50	"	1362	
	137.50	"	1363	
	137.50	"	1364	
	137.50	"	1365	
	137.50	"	1366	
	137.50	"	1367	
	137.50	"	1368	
	137.50	"	1369	
	30.00	"	1390	
	10.00	"	1396	
	125.00	"	1395	
	100.00	"	1483	
	108.33	"	1516	
	87.50	"	1517	
	154.16	"	1518	
	154.17	"	1519	
	25.01	"	1522	
	4.16	"	1523	
	387.50	"	1556	
11	437.50	2547	1500	
	304.16	"	1502	
Dec. 29	450.00	2602	1520	
(page 87)	(Certs. Now Held.)			"WEST VIRGINIA DEBT COMMISSION." JOHN B. MOON, CHAIRMAN.
1906				
Jan. 29	10.00	3086	1287	Bearer
	10.00	"	1288	
	50.00	"	1377	
	50.00	"	1380	
	50.00	"	1381	
	70.00	"	1384	
	4,350.00	"	1406	
	1,316.66	"	1463	
	140.00	"	1507	
	100.00	"	1514	
1907				
Feb. 4	145.83	3254	1392	
Mar. 24	340.00	3349	1407	
	340.00	"	1408	
	10.00	"	1386	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1907				
Mar. 24	$ 630.00	3349	1389	
	1,350.00	"	1468	
	510.00	"	1409	
1908				
May 23	15.00	3370	1477	
	5.00	"	1440	
	10.00	"	1438	
	10.00	"	1411	
	20.00	"	1414	
1911				
Mar. 21	330.00	3597	1466	
April 6	50.00	3619	1482	
	10.00	"	1286	

(page 88) DEPOSITS OF VIRGINIA DEFERRED CTFS. ISSUED UNDER ACT 1892.

Dollar Interest Scrip.

1898			RECEIVED.	
Aug. 22	1,173.33	5	133	No
24	43.65	9	203	No
25	954.60	38	181	No
Sept. 3	90.00	2381	7	No
	160.00	"	8	No
	2,014.12	169	121	No
13	88.07	204	207	No
Oct. 4	538.33	359	192	No
	294.00	"	186	"
	643.33	"	193	"
	433.33	"	195	"
	9.80	"	182	"
	198.34	"	194	"
	58.80	"	187	"
	475.00	"	4	"
5	482.48	384	209	"
11	17,592.03	413	117	"
31	1,546.86	578	82	"
	105.00	"	34	"
	50.85	579	26	"
	481.07	"	73	"
	3,520.87	647	40	"
	33,466.40	"	93	"
Nov. 1	31.57	581	84	"
	1,010.19	582	70	"
	3.74	583	24	"
	47.35	"	71	"
	63.13	584	102	"

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 1	$ 135.00	585	33	No
	1,315.36	"	80	"
	195.00	586	18	"
	1,830.30	"	64	"
	120.00	587	10	"
	1,515.30	"	52	"
	135.00	588	22	"
	1,262.74	"	68	"
	16.87	648	48	"
	193.67	"	100	"
	2,391.00	590	92	"
	250.87	"	41	"
	90.00	684	31	"
	844.73	"	78	"
	62.62	685	29	"
	45.00	"	30	"
	608.96	"	76	"
	422.37	"	77	"
	60.00	686	28	"
	563.15	"	75	"
	1,339.91	592	58	"
(page 89)	64.632,50	593	91	"
	6,824.77	"	43	"
	223.87	594	25	"
	2,056.72	"	72	"
	1,067.99	690	47	"
	10,113.89	"	99	"
	1,067.99	693	37	"
	10,113.93	"	87	"
	15.78	694	86	"
	2,783.29	702	98	"
	293.85	"	46	"
	2,262.42	708	83	"
	194.99	709	35	"
	12,002.97	710	85	"
	441.06	596	65	"
	441.96	"	54	"
	883.92	"	53	"
	30.00	"	19	"
	29.99	"	12	"
	60.00	"	11	"
	202.50	597	15	"
	1,915.27	"	61	"
	102.30	598	81	"
	1,222.79	599	60	"
	122.99	716	32	"
	1,570.52	"	79	"

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898				
Nov. 1	$ 150.00	600	109	No
	1,407.90	"	111	"
2	545.83	601	167	"
	5,303.54	"	57	"
	420.00	"	14	"
3	59.99	602	13	"
	883.92	"	56	"
	66.66	603	210	"
21	1,839.51	661	140	"
Dec. 9	102.75	719	16	"
	1,016.54	719	62	"
	233.84	720	106	"
12	3,198.53	733	142	"
	45.00	"	152	"
	40.45	"	95	"
	1,547.37	"	66	"
	168.75	"	20	"
	3.33	"	3	"
	187.50	"	147	"
	60.00	"	151	"
	305.00	"	161	"
	482.25	"	153	"
	514.05	"	127	"
27	650.85	784	201	"
1899				
Jan. 14	50.00	803	134	"
31	42.09	815	104	"
(page 90)				
Oct. 20	679.74	1026	126	Bearer
25	305.00	1030	146	
Dec. 6	1,972.03	1116	138	
19	484.05	1273	67	
	30.00	1274	21	
20	299.99	1276	23	
	4,051.31	"	69	
	680.00	"	164	
1900				
June 13	400.00	1649	214	
14	610.32	1653	124	
	30.00	1654	123	
1901				
Feb. 6	320.16	1978	122	
21	1,479.02	1986	215	
Mar. 6	3,246.41	2017	199	
25	528.08	2025	120	
April 1	35.08	2034	202	
22	897.60	2063	36	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1901				
May 17	$ 293.33	2085	219	Bearer
Sept. 13	327.75	2123	44	
	3,104.12	2124	94	
	14.99	2125	42	
	140.80	2126	90	
Oct. 21	31.67	2136	221	
1902				
Feb. 4	373.40	2150	166	
May 6	1,770.00	2156	220	
Aug. 6	973.92	2193	130	
25	405.00	2277	155	
	6,254.10	"	156	
Sept. 24	931.27	2356	110	
	60.00	"	108	
	13.33	"	145	
	73.66	"	101	
25	6,255.96	2357	129	
Oct. 13	1,065.75	2549	45	
	10,101.30	"	96	
1903				
Jan. 26	298.35	2643	6	
29	6,555,29	2646	88	
29	660.00	2647	58	
Mar. 5	300.00	2679	39	
	6,103.26	2680	89	
May 6	610.00	2714	179	
18	10.80	2718	204	
Sept. 18	330.00	2742	224	
1904				
Mar. 25	105.22	2758	51	
	30.00	"	9	
1904				
July 8	223.87	2770	49	
	2,120.00	"	103	
(page 91)	"WEST VIRGINIA DEBT COMMISSION." J. B. MOON, CHAIRMAN.			
1905				
Jan. 12	66.67	2881	223	Bearer
1906				
June 22	442.77	3163	139	
	147.32	"	118	
	43.85	"	125	
	195.00	"	227	
Dec. 20	13.33	3246	163	
	251.67	"	162	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1907				
Feb. 4	$1,495.00	3252	136	
May 29	664.02	3279	137	
Dec. 23	53.33	3313	229	
1908				
May 23	135.55	3368	116	
	149.00	"	177	
Oct. 12	140.17	3395	233	
1910				
May 20	1,261.55	3534	211	
Oct. 1	167.10	3544	235	
1911				
Feb. 18	208.00	3562	236	
April 1	3,702.78	3617	50	$ 15.00
			158	1,404.80
			157	104.99
			74	1,358.50
			97	278.61
			105	227.98
			107	192.91
			27	119.99

(page 92) DEPOSITS OF VIRGINIA DEFERRED CTFS. ISSUED UNDER ACT 1882.

(*Principal.*)

1898			RECEIVED.	
Aug. 25	$1,000.00	11	673	No
	1,000.00	12	672	do
	1,000.00	13	671	do
	1,000.00	14	670	do
	1,000.00	15	669	do
	1,000.00	16	668	do
	1,000.00	17	667	do
	1,000.00	18	666	do
	1,000.00	19	665	do
	1,000.00	20	664	do
Sept. 3	3,000.00	2378	587	do
	333.33	2379	589	do
14	1,000.00	212	367	Bearer
	300.00	213	368	do
	33.34	214	369	do
16	500.00	2809	49	do
	1,000.00	2808	342	do
	1,000.00	"	343	do
	1,000.00	"	344	do
	1,000.00	"	345	do
	666.67	2809	366	do

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME	
Sept. 16	$1,333.33	2809	384	Bearer	
	166.67	"	422	do	
	1,000.00	2808	434	do	
	1,000.00	"	435	do	
	1,000.00	"	436	do	
	1,000.00	"	438	do	
	1,000.00	"	439	do	
	1,000.00	"	440	do	
	1,000.00	"	441	do	
	1,000.00	"	442	do	
	1,000.00	"	457	do	
	1,000.00	"	652	do	
	1,333.33	2809	619	do	
	1,333.33	"	624	do	
	2,833.33	"	650	do	
	1,000.00	2808	653	do	
	1,000.00	"	654	do	
	1,000.00	"	655	do	
	1,000.00	"	656	do	
	1,000.00	"	657	do	
	1,000.00	"	658	do	
	1,000.00	2809	659	do	
	1,333.33	"	660	do	
	4,500.00	"	11	do	
21	1,833.33	310	28	do	
	233.33	311	36	do	(Ctf. not endorsed)
29	1,500.00	336	732	do	
	500.00	337	939	do	
Oct. 4	40.00	347	993	do	
(page 93)	1,666.67	348	24	do	
	500.00	349	784	do	
	58.33	350	785	do	
	1,000.00	411	783	do	
	1,000.00	"	263	do	
	5,000.00	"	113	do	
	5,000.00	"	112	do	
	16.67	"	115	do	
	1,333.33	"	264	do	
	1,333.33	"	710	do	
	333.33	"	631	do	
	1,666.67	"	638	do	
	333.33	"	224	do	
	333.33	"	183	do	
	466.67	"	120	do	
	206.67	"	220	do	
	166.67	"	158	do	
	333.33	"	455	do	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Oct. 4	$1,333.33	411	463	Bearer
	333.33	"	348	do
	333.33	"	542	do
	500.00	"	55	do
	5,000.00	"	121	do
14	70.67	421	867	do
	70.67	422	892	do
	1,000.00	464	160	do
22	666.67	466	552	do
	1,000.00	"	551	do
	1,000.00	"	550	do
	1,000.00	"	549	do
	1,000.00	"	548	do
	1,000.00	"	547	do
	1,000.00	"	546	do
31	166.67	488	992	do
	10,000.00	650	713	do
	10,000.00	"	714	do
	1,000.00	490	237	do
	1,000.00	"	238	do
	1,000.00	"	239	do
	3,750.00	491	26	do
	2,872.50	"	45	do
Nov. 1	1,000.00	492	791	do
	1,000.00	493	44	do
	3,689.17	493	110	do
	333.33	"	152	do
	66.67	612	942	
	100.00	"	941	
	453.33	"	458	
	1,000.00	"	906	
	1,000.00	"	914	
	1,000.00	"	915	
	1,000.00	"	916	
	1,000.00	"	917	
	1,000.00	"	918	
	1,000.00	"	919	
(page 94)				
	1,000.00	"	961	Bearer
	166.67	"	962	
	141.67	"	963	
	12.00	"	964	
	1,643.33	"	966	
	1,000.00	"	752	
2	166.67	"	648	
	500.00	"	952	
	404.17	"	929	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 300.00	612	346	
	1,000.00	"	772	
	75.00	"	924	
	100.00	"	923	
	1,000.00	"	796	
	74.17	"	792	
	1,000.00	"	875	
	100.00	"	921	
	86.67	"	800	
	1,000.00	"	794	
	33.33	"	347	
	1,633.33	"	760	
	333.33	"	927	
	333.33	"	943	
	1,000.00	"	909	
	1,511.73	613	708	
	5,000.00	"	176	
	833.33	"	178	
	333.33	"	996	
	1,405.33	"	991	
	500.00	"	951	
	300.00	"	954	
	1,000.00	"	911	
	1,000.00	"	910	
	1,000.00	"	908	
	100.00	"	922	
	5,950.00	"	707	
	666.66	"	25	
	100.00	"	781	
	100.00	"	798	
	100.00	"	779	
	100.00	"	780	
	193.33	"	709	
	200.00	"	832	
	66.67	"	843	
	500.00	614	845	
	30.00	"	853	
	1,000.00	"	856	
	1,000.00	"	857	
	333.33	"	858	
	66.67	"	865	
	533.33	"	358	
	1,000.00	"	447	
	1,000.00	"	468	
	1,000.00	"	470	
	100.00	"	508	
	1,000.00	"	526	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898				
Nov. 2	$1,000.00	614	528	Bearer
(page 95)	1,000.00	"	529	
	2,000.00	"	12	
	500.00	"	252	
	33.33	"	782	
	1,000.00	"	795	
	66.67	"	799	
	33.33	"	815	
	700.00	"	820	
	33.33	"	823	
	1,000.00	"	824	
	200.00	"	825	
	100.00	"	834	
	133.33	"	836	
	33.33	615	840	
	166.67	"	846	
	666.67	"	5	
	333.33	"	777	
	1,000.00	"	889	
	500.00	"	933	
	1,000.00	"	934	
	1,000.00	"	935	
	500.00	"	936	
	1,000.00	"	937	
	1,000.00	"	938	
	33.34	"	151	
	1,000.00	"	411	
	1,000100	"	416	
	1,000.00	"	415	
	2,000.00	"	881	
	1,000.00	"	404	
	1,000.00	"	406	
	1,000.00	"	405	
	1,000.00	"	407	
	1,000.00	"	408	
	1,000.00	"	410	
	1,000.00	"	409	
	1,000.00	"	412	
	1,000.00	"	413	
	1,000.00	"	414	
	1,000.00	"	417	
	1,000.00	"	418	
	1,000.00	"	419	
	1,000.00	"	423	
	1,000.00	"	427	
	1,000.00	"	428	
	1,000.00	"	844	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 50.00	615	770	
	16.67	"	771	
	666.7	"	775	
	1,000.00	"	956	
	1,000.00	"	882	
	1,000.00	"	692	
	1,000.00	"	473	
	1,000.00	"	525	
	1,000.00	"	527	
(page 96)	1,000.00	616	475	Bearer
	1,000.00	"	443	
	1,000.00	"	472	
	1,000.00	"	437	
	1,000.00	"	453	
	1,000.00	"	267	
	1,000.00	"	261	
	1,000.00	"	262	
	1,000.00	"	421	
	1,000.00	"	420	
	1,000.00	"	885	
	1,000.00	"	886	
	1,000.00	"	887	
	1,000.00	"	884	
	1,000.00	"	888	
	1,000.00	"	883	
	500.00	"	51	
	500.00	"	269	
	500.00	"	444	
	500.00	"	50	
	500.00	"	58	
	100.00	"	769	
	1,000.00	"	912	
	1,000.00	"	913	
	362.50	"	920	
	595.83	"	930	
	6.67	"	986	
	1,000.00	"	947	
	1,000.00	"	948	
	1,000.00	"	949	
	500.00	"	950	
	166.67	"	953	
	33.33	617	955	
	153.33	"	957	
	1,000.00	"	946	
	1,000.00	"	945	
	1,000.00	"	979	
	875.00	"	980	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 166.67	617	981	
	1,000.00	"	982	
	1,000.00	"	983	
	500.00	"	984	
	33.33	"	932	
	30.00	"	958	
	33.33	"	967	
	56.00	"	968	
	333.33	"	969	
	1,000.00	"	970	
	1,000.00	"	971	
	1,000.00	"	972	
	1,000.00	"	973	
	1,000.00	"	974	
	1,000.00	"	975	
	1,000.00	"	976	
(page 97)	1,000.00	"	977	Bearer
	166.67	"	978	
	1,000.00	"	561	
	1,000.00	"	562	
	1,000.00	"	563	
	1,000.00	"	564	
	500.00	"	773	
	100.00	"	774	
	70.00	"	748	
	333.33	"	715	
	500.00	"	718	
	333.33	"	723	
	700.00	"	711	
	500.00	"	926	
	300.00	"	822	
	8.34	"	821	
	5,000.00	"	880	
	5,000.00	"	879	
	20.83	"	804	
	300.00	"	814	
	400.00	"	803	
	500.00	618	797	
	620.00	"	877	
	1,000.67	"	868	
	166.67	"	651	
	333.33	"	693	
	783.33	"	702	
	36.00	"	893	
	166.67	"	620	
	62.50	"	826	
	100.00	"	835	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 300.00	618	839	
	1,000.00	"	870	
	1,000.00	"	871	
	1,000.00	"	872	
	1,000.00	"	876	
	1,000.00	"	878	
	133.33	"	591	
	163.33	"	544	
	541.67	"	531	
	66.67	"	509	
	766.67	619	523	
	333.33	"	530	
	207.08	"	498	
	375.00	"	501	
	8.33	"	505	
	233.33	"	477	
	14.33	"	478	
	166.67	"	480	
	500.00	"	476	
	26.67	"	462	
	166.67	"	272	
	166.67	"	298	
	333.33	"	357	
	358.33	"	376	
(page 98)	266.67	"	268	Bearer
	396.67	"	266	
	500.00	"	265	
	400.00	"	243	
	333.33	"	103	
	500.00	2662	69	Sam'l P. Watkins and others
	500.00	"	68	do
	88.67	2663	7	Miss Rose L. Donnely
	84.10	2662	13	Sam'l P. Watkins and others
	500.00	"	67	do
	500.00	"	64	do
	500.00	"	65	do
	500.00	"	62	do
	500.00	"	61	do
	500.00	"	66	do
	500.00	"	57	do
	666.67	2664	429	D. M. M. Harrison
	66.67	2665	378	Felix Rolleiner
	66.67	2666	524	Dabney Morgan & Co.
	1,333.33	625	150	Bearer
	66.67	"	275	"
	66.67	"	185	"
	133.33	"	184	"

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 500.00	625	56	Bearer
	2,333.33	633	724	"
	356.25	"	742	"
	5,000.00	"	30	"
	5,000.00	"	177	"
	50.00	"	159	"
	5,166.67	"	27	"
	500.00	"	1013	"
	166.67	"	1014	"
	1,000.00	"	997	"
	1,000.00	"	998	"
	1,000.00	"	999	"
	1,000.00	"	1000	"
	1,000.00	"	1001	"
	1,000.00	"	1002	"
	1,000.00	"	1003	"
	1,000.00	"	1004	"
	1,000.00	"	1005	"
	1,000.00	"	1006	"
	1,000.00	"	1007	"
	1,000.00	"	1008	"
	1,000.00	"	1009	"
	1,000.00	"	1010	"
	1,000.00	"	1011	"
	1,000.00	"	1012	"
	1,491.67	3624	22	"
	1,666.67	3623	74	"
	10,666.67	3620	20	"
	2,333.33	3621	15	"
	620.84	3624	78	"
	620.83	"	77	"
	404.16	"	129	"
(page 99)	333.33	3624	182	Bearer
	333.33	3623	105	"
	300.00	3622	95	"
	166.67	3624	132	"
	116.66	"	99	"
	66.67	"	194	"
	66.67	"	191	"
	66.67	"	200	"
	45.83	"	85	"
	500.00	3622	94	"
	100.00	"	192	"
	100.00	"	193	"
	1,000.00	639	894	"
	1,000.00	"	896	"
	666.67	"	895	Francis H. Pierpont, etc.

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 33.33	663	162	Bearer
	666.67	"	161	"
	1,000.00	721	209	"
	1,000.00	"	236	"
Dec. 12	1,666.67	991	19	" Int. from July 1-82
	1,000.01	"	380	"
	333.33	"	381	" Int. from July 1-82
	166.67	"	154	" "
	166.67	"	253	" "
	123.33	"	271	" "
	1,000.00	"	247	" "
	1,000.00	"	246	" "
	1,000.00	"	245	" "
	500.00	"	258	" "
	1,333.33	992	778	" Int from Jan. 1-85
	1,000.00	726	829	" "
	550.00	"	830	" "
	166.67	"	831	" "
27	666.67	780	802	" "
	1,000.00	"	801	" "
	100.00	781	674	" "
	500.00	"	157	" Int from July 1-82
	500.00	"	219	" "
	500.00	"	54	" Int. from July 1-83
	1,000.00	"	276	" Int. from July 1-82
	1,000.00	"	288	" "
	1,000.00	"	286	" "
	1,000.00	"	285	" "
	1,000.00	"	284	" "
	1,000.00	"	283	" "
	1,000.00	"	279	" "
	1,000.00	"	282	" "
	1,000.00	"	278	" "
	1,000.00	"	280	" "
	1,000.00	"	277	" "
	1,000.00	"	281	" "
	1,000.00	"	691	" Int. from Jan. 1-85
	1,000.00	"	541	" Int. from July 1-84
	1,000.00	"	540	" "
	1,000.00	"	287	" Int. from July 1-82
	1,000.00	"	117	" Int. from July 1-82
(page 100)	1,000.00	781	119	Bearer Int. from July 1-82
	1,000.00	"	118	" "
	1,500.00	"	625	" Int. from Jan. 1-85
	5,000.00	"	116	" Int. from July 1-82

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME	
Jan. 21	$ 333.33	806	38	Bearer	Int. from July 1-82
Feb. 2	1,333.33	823	23	"	"
	3,833.33	"	768	"	Int. from Jan. 1-85
	5,000.00	"	767	"	"
	5,000.00	824	766	"	"
	1,000.00	"	360	"	Int. from July 1-82
	1,000.00	"	361	"	"
	1,000.00	"	362	"	"
	1,000.00	"	363	"	"
	1,000.00	"	364	"	"
	1,000.00	825	365	"	"
	1,000.00	"	385	"	"
	1,000.00	"	386	"	"
	1,000.00	"	387	"	"
	1,000.00	"	388	"	"
	1,000.00	"	389	"	"
	1,000.00	"	390	"	"
	1,000.00	"	391	"	"
	1,000.00	"	392	"	"
	1,000.00	"	393	"	"
	1,000.00	826	394	"	"
	1,000.00	"	395	"	"
	1,000.00	"	396	"	"
	1,000.00	"	397	"	"
	1,000.00	"	398	"	"
	1,000.00	"	399	"	"
	1,000.00	"	400	"	"
	1,000.00	"	401	"	"
	1,000.00	"	402	"	"
	1,000.00	"	403	"	"
Mar. 14	1,000.00	868	632	"	Int. from Jan. 1-85
	1,000.00	869	633	"	"
	1,000.00	870	635	"	"
	666.67	871	634	"	"
April 28	1,000.00	955	373	"	
	1,000.00	956	370	"	
	1,000.00	957	371	"	
	1,000.00	958	372	"	
	1,000.00	959	374	"	
	333.33	960	122	"	
	666.66	961	375	"	
Oct. 2	2,000.00	995	994	"	
Dec. 7	1,666.67	2725	849	"	
	16.00	"	847	"	
	1,000.00	"	699	"	
	1,000.00	"	506	"	
	166.67	"	905	"	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1899				
Dec. 7	$ 333.33	2725	874	Bearer
	453.33	"	862	"
	66.67	"	873	"
(page 101)	1,666.67	"	965	"
	333.33	"	852	
	1,333.33	"	850	
	30.00	"	818	
	608.33	"	2	
	333.33	1168	747	
	333.33	"	764	
	66.67	"	816	
	288.33	"	817	
	847.33	"	629	
	886.67	"	3	
	1,766.66	"	4	
	353.34	"	377	
	100.00	"	274	
	1,250.00	"	621	
	1,666.67	"	630	
	60.00	"	763	
	60.00	"	761	
	133.33	"	753	
	466.67	"	745	
	38.33	"	725	
	666.67	1170	776	
	100.00	"	743	
	1,000.00	"	510	
	1,000.00	"	812	
	1,500.00	"	704	
	500.00	"	809	
	1,000.00	"	806	
	1,000.00	"	807	
	1,000.00	"	810	
	1,000.00	"	808	
	1,666.67	"	84	
	1,000.00	"	811	
	333.33	"	813	
	500.00	"	479	
1900				
Mar. 15	666.67	1547	1015	
April 4	1,666.66	1577	642	
9	3,333.33	1590	48	
	1,000.00	"	73	
	1,000.00	"	86	
	1,000.00	"	87	
	1,000.00	"	88	
	1,000.00	"	89	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1900				
April 9	$ 500.00	1590	106	
	1,000.00	"	123	
	1,000.00	"	124	
	1,000.00	"	125	
	1,000.00	"	126	
	1,000.00	"	127	
	500.00	"	128	
	1,000.00	"	137	
	1,000.00	"	144	
	1,000.00	"	164	
	333.33	"	171	
	1,000.00	"	173	
(page 102)	500.00	"	198	Bearer
	100.00	"	199	
	350.00	"	204	
	300.00	"	240	
	33.33	"	241	
13	666.67	1631	202	
	1,000.00	"	211	
	1,000.00	"	212	
	1,000.00	"	213	
	1,000.00	"	214	
	1,000.00	"	215	
	1,000.00	"	216	
	1,000.00	"	217	
	500.00	"	218	
Aug. 29	333.33	1752	842	
Sept. 26	200.00	1774	751	
Nov. 10	1,000.00	1799	79	
	1,000.00	1800	80	
	1,000.00	1801	81	
	1,000.00	1802	82	
	500.00	1803	83	
1901				
April 29	2,000.00	2081	960	
1902				
Jan. 31	413.33	2140	988	
Feb. 11	166.67	2152	716	
Aug. 12	50.00	2214	539	Frances G. Hodgson
	1,666.67	2219	898	Bearer
	1,000.00	"	899	
	1,000.00	"	900	
	1,000.00	"	901	
	1,000.00	"	902	
	1,000.00	"	903	
	333.33	"	904	
Sept. 24	333.33	2362	749	

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 24	$ 333.33	2362	626	
	666.67	"	675	
	333.33	"	676	
	2,000.00	"	628	
	666.67	"	866	
	392.50	"	467	
	833.33	"	495	
	1,000.00	"	494	
	1,000.00	"	493	
	166.67	"	466	
	500.00	"	465	
	1,000.00	"	464	
	166.67	"	170	
	69.17	"	260	
	200.00	"	259	
	33.33	"	249	
	300.00	"	248	
	1,000.00	"	197	
	1,000.00	"	232	
	1,000.00	"	231	
	1,000.00	"	230	
(page 103)	1,000.00	"	229	Bearer
	1,000.00	"	228	
	1,000.00	"	227	
	1,000.00	"	226	
	66.67	"	109	
	66.67	"	76	
	362.50	"	149	
	200.00	"	16	
	66.67	"	222	
	449.33	"	175	
	100.00	"	221	
	1,033.33	"	172	
	333.33	"	233	
	666.67	"	433	
	1,000.00	"	432	
	33.34	"	356	
	300.00	"	355	
	500.00	"	354	
	500.00	"	174	
	10,000.00	2453	786	
	10,000.00	2454	787	
	10,000.00	2455	788	
	5,000.00	2456	606	
	5,000.00	"	608	
	5,000.00	2457	609	
	5,000.00	"	610	

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 24	$ 5,000.00	2458	612	
	5,000.00	"	613	
	3,000.00	2459	146	
	2,000.00	"	145	
	1,000.00	2459	518	
	1,000.00	"	520	
	1,000.00	"	337	
	1,000.00	"	338	
	1,000.00	"	289	
	1,000.00	2460	290	
	1,000.00	"	481	
	1,000.00	"	592	
	1,000.00	"	593	
	1,000.00	"	594	
	1,000.00	"	595	
	1,000.00	"	596	
	1,000.00	"	597	
	1,000.00	"	598	
	1,000.00	"	599	
	1,000.00	2461	600	
	1,000.00	"	601	
	1,000.00	"	602	
	1,000.00	"	603	
	1,000.00	"	133	
	1,000.00	"	134	
	1,000.00	"	135	
	1,000.00	"	139	
	1,000.00	"	140	
	1,000.00	"	141	
	1,000.00	2462	142	
(page 104)	1,000.00	"	143	Bearer
	1,000.00	"	649	
	1,000.00	"	678	
	1,000.00	"	679	
	1,000.00	"	680	
	1,000.00	"	681	
	1,000.00	"	682	
	1,000.00	"	683	
	1,000.00	"	684	
	1,000.00	2463	685	
	1,000.00	"	686	
	1,000.00	"	687	
	1,000.00	"	688	
	1,000.00	"	689	
	1,000.00	"	790	
	4,833.33	2464	789	
	2,820.83	2465	705	

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 24	$ 2,666.67	2466	805	
	1,587.50	2467	690	
	1,520.83	2468	731	
	833.33	2469	819	
	833.33	2470	841	
	666.67	2463	697	
	500.00	"	897	
	500.00	"	722	
	333.33	"	759	
	166.67	"	677	
	166.67	2470	827	
	5,183.33	2471	614	
	833.33	2472	521	
	1,029.17	2473	604	
	500.00	2463	517	
	437.50	2474	516	
	300.00	2475	291	
	33.33	2476	273	
	33.33	2477	292	
	666.67	2463	555	
	333.33	2463	618	
	333.33	"	136	
	333.33	2478	543	
	333.33	2479	617	
25	66.66	2428	696	
Oct. 10	500.00	2538	147	
	500.00	"	148	
	1,000.00	"	225	
	1,000.00	"	351	
	1,000.00	"	352	
	1,000.00	"	353	
	2,000.00	2540	14	
	1,166.67	"	72	
	1,000.00	"	195	
	1,000.00	"	196	
	166.67	"	210	
	100.00	2541	339	
	25.00	"	340	
	1,000.00	"	482	
	1,000.00	"	483	
(page 105)	1,000.00	"	484	Bearer
	1,000.00	"	485	
	1,000.00	"	486	
	166.67	"	487	
	130.00	"	519	
	100.00	"	586	
	1,000.00	"	588	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1902				
Oct. 13	$ 740.00	2514	746	George Ashton
Dec. 8	333.33	2579	793	Bearer
Sept. 24	5,000.00	2446	1027	" (Originally entered as 1892. See Ledger 2, P. 35).
	5,000.00	2447	1025	do do
	5,000.00	2448	1026	do do
	433.33	2449	1028	do do
	333.33	2450	1024	do do
Dec. 18	333.33	2586	20	Bearer
1903				
July 25	333.33	2733	622	
1904				
Nov. 4	166.67	2790	695	
Dec. 20	1,000.00	2794	523	Susanna Forgey
	1,000.00	2794	533	"
1905				
Jan. 5	333.33	2832	448	Bearer
	500.00	"	60	Sam'l. P. Watkins and others
	2,410.34	"	297	Bearer
	1,000.00	2829	474	"
	1,000.00	"	251	Wm. T. & James Scott, Comtee etc.
	1,000.00	"	445	Bearer
	1,000.00	"	451	
	1,000.00	"	471	
	1,000.00	2830	452	
	1,000.00	"	424	
	1,000.00	"	449	
	1,000.00	"	426	
	1,000.00	"	469	
	1,000.00	2831	446	
	1,000.00	"	450	
	1,000.00	"	425	
	433.33	2832	717	Treas. of Commonwealth in Tr. for Bk. of Richmond
	33.33	"	987	Bearer
	333.33	"	890	
	333.33	"	928	
	333.33	"	854	
	2,000.00	2831	855	
12	693.33	2879	627	M. M. Harrison and Edw. Dromgoolo, Guardians
24	1,000.00	2907	859	Bearer
	666.67	2908	860	
Feb. 27	1,000.00	2934	90	
	1,000.00	2935	91	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1905				
Feb. 27	$ 1,000.00	2936	92	
	1,000.00	2938	93	
(page 106)	1,000.00	2939	96	Bearer
	1,000.00	2940	168	
	1,000.00	2941	169	
June 30	1,000.00	"	556	
	1,000.00	"	557	
	1,000.00	"	558	
	833.33	3005	559	
Dec. 1	1,333.33	3005	130	
13	666.67	3035	755	
19	1,000.00	3040	574	
	3,333.33	3041	762	
1906				
Jan. 29	1,000.00	3083	186	
	1,000.00	"	187	
	1,000.00	"	188	
	1,000.00	"	189	
	1,000.00	"	190	
Feb. 5	5,000.00	3092	111	
	1,000.00	3093	114	
Aug. 23	120.00	3207	1023	Chas. F. Chase & Co.
31	1,000.00	3210	179	Bearer
	1,000.00	3211	180	
	1,000.00	3212	181	
1907				
May 2	1,000.00	3273	203	
	1,000.00	3274	208	
	1,000.00	3275	207	
	1,000.00	3276	206	
	1,000.00	3277	205	
Oct. 3	214.65	3291	1017	
14	333.33	3296	35	
	2,833.33	3295	33	
	66.67	3294	39	
	340.33	3293	46	
	660.00	3292	75	
16	6.67	3297	861	
1908				
May. 7	2,482.17	3362	750	
23	1,666.67	3372	661	
July 17	700.00	3382	379	
Nov. 20	500.00	3400	383	
1909				
Feb. 15	303.33	3415	341	
	833.33	3418	646	
Mar. 23	333.33	3436	959	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1909				
June 18	$1,333.33	3444	47	
1910				
Feb. 28	40.33	3512	931	
Mar. 22	3,333.33	3527	250	
	1,200.00	"	989	
June 27	1,666.67	3537	641	
Aug. 4	5,000.00	3539	611	
	5,000.00	3540	607	
Oct. 6	166.67	3546	698	
1911				
Feb. 18	266.67	3564	615	Walter R. Hill, Exr. and Tr. of Hetty A. Hill, decd.
(page 107)	3,333.33	3563	1021	The Trustees of the Genl. Assembly of the Pres. Ch. in the U. S.
Mar. 22	480.00	3601	765	Bearer
23	1,666.67	3604	461	
24	66.67	3608	848	
April 10	333.33	3640	37	C. T. Mason

(page 108) DEPOSITS OF VIRGINIA DEFERRED CTFS. ISSUED UNDER ACT 1882.

Dollar Interest Scrip.

1898		RECEIVED.	
Aug. 25	1,000.00	21	554
	1,000.00	22	555
	1,000.00	23	556
	1,000.00	24	557
	1,000.00	25	558
	1,000.00	26	559
	1,000.00	27	560
	1,000.00	28	561
	1,000.00	29	562
	1,000.00	30	563
	700.00	31	565
Sept. 3	1,080.00	2380	467
	1,020.00	2380	470
12	226.67	142	404
14	500.00	220	281
	200.00	221	282
	60.00	222	283
17	1,000.00	2967	319
	1,000.00	"	320
	1,000.00	"	321
	1,000.00	"	332

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 17	$ 1,000.00	2967	333	
	1,000.00	2968	334	
	1,000.00	"	360	
	500.00	2969	373	
	1,000.00	2968	408	
	1,000.00	"	118	
	1,000.00	"	119	
	1,000.00	2969	120	
	500.00	"	121	
	1 00.00	2970	179	
	500.00	2969	369	
	1,000.00	"	610	
	1,000.00	"	609	
	1,800.00	2970	592	
	800.00	"	383	
	500.00	2969	205	
	1,000.00	2970	204	
	1,000.00	"	203	
	100.00	2970	187	
	100.00	"	186	
	100.00	"	616	
	225.00	2811	615	
	2.33	"	613	
	621.50	"	611	
	33.33	"	590	
	186.67	"	573	
	150.00	"	572	
(page 109)	201.17	2811	569	
	162.67	"	568	
	75.00	"	541	
	860.45	"	513	
	126.67	"	510	
	237.50	"	500	
	129.33	"	471	
	20.00	2971	465	
	58.33	2811	463	
	190.00	"	438	
	33.33	"	426	
	171.50	"	425	
	133.34	"	412	
	339.80	"	411	
	150.00	"	402	
	800.00	"	393	
	45.00	"	392	
	7.75	"	390	
	75.00	"	371	
	13.63	"	368	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 17	$ 358.13	2811	352	
	17.00	"	295	
	160.00	2971	247	
	85.00	2811	229	
	76.67	"	207	
	28.33	"	188	
	60.00	"	19	
	132.00	"	146	
	98.21	"	141	
	1,600.00	2971	140	
	496.00	2811	139	
	399.37	"	122	
	170.00	"	612	
	840.00	2971	586	
	420.00	"	567	
	1,997.50	2811	537	
	170.00	"	504	
	10.00	"	418	
	367.33	"	367	
	880.00	2971	353	
	1,000.00	2974	342	
	413.33	2811	340	
	566.67	"	324	
	130.00	"	322	
	266.67	"	318	
	1,000.00	2972	317	
	1,000.00	"	316	
	1,000.00	"	315	
	1,000.00	"	313	
	1,000.00	"	312	
	1,000.00	2973	309	
	533.33	2811	302	
	394.75	"	289	
	500.00	2973	279	
	500.00	"	278	
	500.00	"	277	
(page 110)	500.00	2973	276	
	500.00	"	275	
	500.00	"	266	
	500.00	"	268	
	500.00	"	267	
	500.00	2974	270	
	500.00	"	271	
	500.00	"	272	
	500.00	"	273	
	500.00	2971	274	
	210.00	2811	262	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 17	$ 1,672.22	2811	246	
	128.00	"	224	
	141.80	"	223	
	500.00	2971	221	
	1,000.00	2974	219	
	1,000.00	"	218	
	192.00	2811	209	
	80.00	2971	132	
	8.33	2811	68	
	848.00	"	39	
21	419.27	308	43	Bearer
	935.00	309	32	
29	2,160.00	334	681	
	390.00	335	953	
Oct. 4	51.88	358	774	
	500.00	"	769	
	1,150.00	"	27	
	100.00	"	772	
	100.00	"	770	
	100.00	"	771	
	138.32	"	1048	
	1,000.00	"	1045	
	1,000.00	"	1047	
	1,000.00	"	1046	
	100.00	"	773	
	45.60	"	1015	
	70.99	429	902	
	70.99	430	860	
	660.00	465	130	
22	200.00	467	432	
	1,000.00	"	431	
	1,000.00	"	427	
	1,000.00	"	428	Bearer
	1,000.00	"	429	
	1,000.00	"	430	
31	5,600.00	573	645	
	10,000.00	"	644	
	2,079.17	574	29	
	1,204.87	"	48	
Nov. 1	1,440.00	575	778	
	205.00	576	1038	
	2,029.04	577	97	
	500.00	"	58	
	1,000.00	"	56	
	33.33	"	53	
	50.00	"	46	
(page 111)	830.00	635	65	Bearer

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 1	$ 600.00	635	125	
	62.00	"	407	
	20.00	"	462	
	1,065.00	"	498	
	20.00	"	505	
	130.00	"	508	
	166.67	"	534	
	169.47	"	971	
	35.00	"	969	
	160.00	"	968	
	175.00	"	967	
	300.00	"	966	
	500.00	"	965	
	500.00	"	964	
	1,000.00	"	963	
	1,000.00	"	962	
	1,000.00	"	961	
	1,000.00	"	960	
	26.67	"	974	
	48.00	"	987	
	63.83	"	988	
	310.00	"	990	
	773.89	"	991	
2	1,000.00	"	993	Bearer
	1,000.00	"	994	
	1,000.00	"	995	
	50.00	"	992	
	1,000.00	"	996	
	1,000.00	"	997	
	1,000.00	"	998	
	1,000.00	"	999	
	350.00	"	1000	
	1,000.00	"	1001	
	265.62	"	1002	
	105.00	"	1003	
	1,000.00	"	1004	
	492.98	"	1005	
	7.60	"	1006	
	30.00	"	1010	
	34.20	"	973	
	420.00	"	847	
	2,000.00	"	848	
	635.00	"	874	
	200.00	"	938	
	602.13	"	69	
	400.00	"	135	
	800.00	"	214	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$1,000.00	636	241	
	190.00	"	254	
	1,000.00	"	242	
	1,000.00	"	376	
	1,000.00	"	377	
	50.00	"	461	
	125.00	"	482	
(page 112)	5,000.00	"	483	Bearer
	5,000.00	"	485	
	50.00	"	491	
	350.00	"	604	
	183.33	"	624	
	500.00	"	650	
	5.00	"	668	(Recorded as $500.)
	40.00	"	248	
	334.93	"	346	
	1,000.00	"	916	
	1,000.00	"	919	
	1,000.00	"	920	
	1,000.00	"	921	
	1,000.00	"	922	
	1,000.00	"	923	
	500.00	"	978	
	170.83	"	979	
	500.00	"	980	
	78.97	"	981	
	13.68	"	982	
	1,863.10	"	986	
	20.00	"	1009	
	5,375.00	"	142	
	160.00	"	1011	
	210.00	"	1017	
	63.00	"	147	
	275.00	"	225	
	3.33	637	249	
	1,000.00	"	310	
	1,000.00	"	311	
	200.00	"	335	
	86.67	"	150	
	400.00	"	344	
	1,133.33	"	409	
	1,511.72	"	621	
	1,200.00	"	721	
	20.00	"	323	
	660.00	"	970	
	547.81	"	939	(This was recorded as $547.)
	500.00	"	872	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 60.00	637	873	
	500.00	"	875	
	5,000.00	"	879	
	4,000.00	"	880	
	100.00	"	876	
	100.00	"	877	
	80.00	"	878	
	100.00	"	881	
	10.00	"	1012	
	1,453.69	"	1013	
	100.00	"	153	
	2,000.00	"	117	
	2,000.00	"	116	
	20.00	"	70	
	31.00	"	228	
	20.00	"	243	
(page 113)	98.75	"	252	Bearer
	735.00	"	380	
	471.50	"	401	(Recorded as $471.)
	733.33	640	403	
	353.33	"	424	
	350.00	"	434	
	160.00	"	460	
	394.67	"	466	
	930.00	"	462	
	1,000.00	"	476	
	1,000.00	"	477	
	1,000.00	"	478	
	661.36	"	481	
	6,232.08	"	487	
	946.67	"	536	
	860.00	"	552	
	87.50	"	571	
	108.33	"	603	
	146.67	"	614	
	1,654.06	"	617	
	156.60	"	623	
	330.00	"	625	
	567.00	"	631	
	466.67	"	647	
	353.33	"	648	
	175.00	"	651	
	277.50	"	663	
	951.56	641	680	
	1,000.00	"	688	
	00.00	"	716	
	230.00	"	720	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 133.33	641	742	
	670.00	"	743	
	1,000.00	"	753	
	1,000.00	"	754	
	100.00	"	756	
	70.00	"	757	
	8.34	"	761	
	290.00	"	763	
	100.00	"	767	
	33.34	"	768	
	54.23	"	779	
	16.67	"	780	
	1,000.00	"	782	
	100.00	"	784	
	100.00	"	785	
	100.00	"	786	
	100.00	"	787	
	25.00	"	788	
	500.00	"	794	
	500.00	"	783	
	91.83	"	789	
	200.00	"	795	
	79.89	"	796	
	200.00	"	804	
	50.00	"	811	
(page 114)	61.45	"	815	Bearer
	56.36	"	819	
	20.00	"	817	
	500.00	642	827	
	70.00	"	828	
	283.33	"	831	
	75.00	"	835	
	1,000.00	"	862	
	88.76	"	863	
	1,000.00	"	865	
	1,000.00	"	866	
	1,000.00	"	871	
	61.67	"	181	
	5.00	"	338	
	1,000.00	"	378	
	1,000.00	"	472	
	1,000.00	"	473	
	1,000.00	"	479	
	1,000.00	"	480	
	5,000.00	"	484	
	190.00	"	496	
	333.33	"	570	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 170.83	642	635	
	90.00	"	687	
	400.00	"	714	
	5.60	"	715	
	63.33	"	727	
	30.00	"	824	
	1,000.00	643	887	
	1,000.00	"	888	
	1,000.00	"	889	
	1,000.00	"	890	
	1,000.00	"	891	
	1,000.00	"	892	
	1,000.00	"	893	
	1,000.00	"	894	
	500.00	"	944	
	200.00	"	945	
	87.50	"	946	
	310.00	"	947	
	1,000.00	"	948	
	245.83	"	949	
	1,000.00	"	950	
	1,000.00	"	951	
	1,287.49	"	453	
	1,105.83	"	741	
	1,000.00	"	755	
	40.00	"	868	
	1,000.00	"	917	
	398.05	"	925	
	1,000.00	"	926	
	100.00	"	927	
	100.00	"	928	
	96.63	"	929	
	100.00	"	930	
	100.00	"	931	
(page 115)	28.13	"	933	Bearer
	452.19	"	940	
	54.17	"	664	
	189.26	"	723	
	20.00	"	853	
	102.00	"	857	
	5.00	"	932	
	200.00	"	952	
	100.00	"	956	
	35.00	"	957	
	5.00	"	958	
	100.00	"	897	
	100.00	"	898	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 2	$ 100.00	643	899	
	100.00	"	896	
	60.00	"	885	
	100.00	"	883	
	100.00	"	882	
	20.84	644	936	
	38.92	"	903	
	500.00	"	937	
	70.00	"	943	
	500.00	"	895	
	300.00	"	867	
	800.00	"	834	
	175.00	"	829	
	1,000.00	"	818	
	300.00	"	816	
	400.00	"	813	
	25.00	"	805	
	300.00	"	790	
	1,000.00	"	759	
	100.00	"	766	
	100.00	"	760	
	1,000.00	"	440	
	1,000.00	"	441	
	1,000.00	"	442	
	180.00	"	886	
	36.00	"	942	
	140.00	634	972	
	1,000.00	"	1033	
	1,000.00	"	1032	
	1,000.00	"	1031	
	1,000.00	"	1030	
	1,000.00	"	1029	
	1,000.00	"	1028	
	1,000.00	"	1027	
	1,000.00	"	1026	
	1,000.00	"	1025	
	1,000.00	"	1024	
	1,000.00	"	1023	
	1,000.00	"	1022	
	1,000.00	"	1021	
	1,000.00	"	1020	
	1,000.00	"	1019	
	1,000.00	"	1018	
(page 116)	500.00	"	1034	Bearer
	390.00	"	42	
	2,045.00	"	30	
	2,550.00	"	36	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898				
Nov. 2	$ 460.00	634	1035	
	1,000.00	638	905	
	1,000.00	"	906	
	640.00	"	907	
	4,356.66	662	133	
	320.00	"	131	
Dec. 12	30.00	723	90	
	100.00	"	152	
	100.00	"	151	
	114.70	"	227	
	530.00	"	22	
	696.67	"	293	
	80.00	"	294	
	46.33	"	1007	
	514.33	"	649	
	1,484.00	"	764	
	1,000.00	724	822	
	450.00	"	823	
27	600.00	778	792	
	1,000.00	"	791	
	470.00	779	222	
	181.11	"	189	
	60.00	"	245	
	270.00	"	255	
	79.79	"	8	
	853.99	"	105	
	1,000.00	"	57	
	1,000.00	"	231	
	1,000.00	"	102	
	1,000.00	"	220	
	1,000.00	"	421	
	1,170.00	"	506	
	520.00	"	124	
	192.50	"	145	
	126.66	"	149	
	660.00	"	5	
	403.25	"	12	
1899				
Jan. 21	110.00	808	45	
Feb. 2	5,834.00	822	620	
	2,262.50	"	752	
	40.00	"	507	
	923.33	"	26	
	290.00	"	35	
	700.00	"	115	
	1,000.00	"	305	
	1,000.00	"	304	

DATE 1899	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Feb. 2	$1,000.00	821	306	
	1,000.00	"	113	
	1,000.00	"	114	
	1,000.00	"	548	
	1,000.00	"	549	
(page 117)	1,000.00	"	307	Bearer
	1,000.00	"	547	
	1,000.00	"	546	
	1.000.00	"	545	
	1,000.00	"	544	
	1,000.00	"	542	
	1,000.00	"	361	
	1,000.00	"	362	
	1,000.00	"	363	
	1,000.00	"	364	
	1,000.00	"	359	
	1,000.00	"	341	
	1,000.00	"	339	
	1,000.00	"	336	
	1,000.00	"	337	
	1,000.00	819	331	
	1,000.00	"	308	
	1,000.00	"	314	
	5,000.00	"	751	
	1,000.00	"	550	
	1,000.00	"	551	
	200.67	828	600	
	4,015.00	844	414	
Mar. 14	986.67	872	520	
	1,000.00	873	519	
	1,000.00	874	518	
	1,000.00	875	517	
	1,000.00	876	516	
April 28	1,000.00	962	284	
	1,000.00	963	287	
	1,000.00	964	286	
	1,000.00	965	285	
	1,283.33	966	671	
	240.47	967	701	
	263.33	968	646	
	58.33	969	674	
	876.67	970	288	
	1,548.34	971	4	
	86.00	972	96	
	128.33	973	78	
	86.00	974	74	
	360.00	975	41	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1899				
April 28	$1,925.00	976	34	
	276.00	977	17	
May 19	5,000.00	983	9	
	4,000.00	"	11	
	191.67	"	959	
	290.00	"	28	
	140.00	"	88	
	10.00	"	148	
	43.33	"	240	
	20.00	"	263	
	720.00	"	264	
	175.00	"	269	
	360.00	"	280	
	62.00	"	291	
(page 118)	295.84	"	345	Bearer
	41.67	"	349	
	140.00	"	357	
	200.00	"	374	
	60.00	"	382	
	151.49	"	387	
	299.25	"	388	
	421.67	"	406	
	828.75	"	410	
	83.33	"	452	
	158.33	"	493	
	100.00	"	495	
	66.67	"	825	
	17.28	"	836	
	1,325.00	"	839	
1900				
Jan. 30	33.33	1525	977	
	1,600.00	"	985	
	240.00	"	328	
	1,000.00	"	303	
	16.67	"	129	
	333.33	"	193	
	1,000.00	"	192	
	1,000.00	"	191	
	300.00	"	206	
	850.00	"	77	
	103.87	"	178	
	1,000.00	"	190	
	25.00	"	239	
	1,000.00	"	104	
	5,000.00	1526	99	
	500.00	1525	177	
	1,000.00	"	234	

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Jan. 30	$1,000.00	1526	232	
	1,000.00	"	101	
	1,000.00	"	235	
	1,000.00	"	100	
	1,000.00	"	238	
	1,000.00	1527	233	
	5,000.00	"	98	
	1,000.00	"	103	
	1,000.00	"	236	
	1,000.00	"	237	
	580.92	1528	2	
	3,089.83	"	3	
	1,355.00	"	15	
	380.00	"	515	
	210.00	"	1039	
	33.33	"	540	
	1,650.00	"	521	
	190.00	"	749	
	200.00	"	710	
	340.00	"	713	
	64.80	"	745	
	133.33	"	758	
(page 119)	240.00	1528	619	Bearer
	64.80	"	748	
	83.33	"	744	
	11.11	"	737	
	124.17	"	690	
	38.91	"	672	
	60.00	"	712	
	630.00	"	587	
	60.00	"	602	
	141 33	"	722	
	437.49	"	709	
	159.00	1529	666	
	104.00	"	706	
	50.00	"	735	
	22.00	"	630	
	100.00	"	689	
	39.86	"	641	
	12.17	"	696	
	3.33	"	705	
	11.11	"	707	
	1,920.00	"	626	
	540.00	"	762	
	108.00	"	566	
	16.67	"	736	
	129.50	"	765	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1900				
Jan. 30	$ 600.00	1528	803	
	205.00	"	800	
	1,000.00	1527	802	
	1,000.00	1529	801	
	1,000.00	"	799	
	80.00	"	806	
	34.20	"	808	
	313.20	"	807	
	1,000.00	"	798	
	4.00	"	793	
	40.00	"	840	
	1,050.00	"	842	
	480.00	"	844	
	1,000.00	"	809	
	400.00	1530	810	
	180.00	"	914	
	6.67	"	904	
	270.00	"	870	
	82.00	"	869	
	469.60	"	852	
	90.00	"	423	
	1,000.00	"	420	
	1,566.67	"	514	
Mar. 15	640.00	1548	1036	
April 4	90.00	1578	989	
	1,500.00	1579	522	
13	75.00	1632	176	
	1,000.00	"	169	
	1,000.00	"	170	
	1,000.00	"	162	
(page 120)	850.00	1632	163	Bearer
	1,000.00	"	171	
	1,000.00	"	172	
	1,000.00	"	173	
	1,000.00	"	174	
June 5	1,920.00	1645	955	
16	407.55	1656	638	
Aug. 29	470.00	1751	832	
Sept. 26	200.00	1773	719	
Nov. 10	4.17	1804	60	
	100.00	1085	59	
	2,400.00	1806	54	
1901				
April 29	1,580.00	2082	976	
Nov. 26	736.67	2137	657	
1902				
Jan. 31	386.40	2138	1008	

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Feb. 11	$ 163.33	2153	531	
July 25	170.67	2186	855	
Aug. 12	52.50	2213	419	(Entered originally as $52.)
	360.00	2218	913	
	1,000.00	"	912	
	1,000.00	"	911	
	1,000.00	"	910	
	1,050.00	"	909	
25	925.86	2275	711	
Sept. 22	248.33	2341	608	
24	4,000.00	2518	1058	
	5,000.00	"	1057	
	641.67	2519	112	
	2,030.00	2518	16	
	333.33	2519	93	
	489.16	2519	85	
	4,266.67	"	33	
	1,035.00	"	64	
	3,060.42	2518	25	
	1,860.00	2519	13	
	397.29	"	110	
	90.00	2518	161	
	333.33	2519	144	
	350.00	"	330	
	356.67	"	138	
	341.46	"	75	
	341.46	2518	76	
	33.34	2518	261	
	20.00	2519	215	
	23.04	"	217	
	380.00	"	509	
	691.67	"	859	
	215.88	"	358	
	166.67	"	355	
	173.33	"	385	
	265.21	2518	84	
	242.50	2519	165	
	33.33	"	200	
	500.00	"	354	
(page 121)	1,380.00	2519	512	Bearer
	320.00	"	717	
	500.00	"	83	
	1,000.00	2518	384	
	1,000.00	2519	196	
	500.00	"	197	
	300.00	"	216	
	100.00	"	213	

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 24	$1,000.00	2519	158	
	1,000.00	"	159	
	1,000.00	"	160	
	1,000.00	"	108	
	1,000.00	"	109	
	1,000.00	"	167	
	1,000.00	"	166	
	1,000.00	"	154	
	1,000.00	"	155	
	1,000.00	"	80	
	1,000.00	"	79	
	1,000.00	"	82	
	1,000.00	"	81	
	1,000.00	"	329	
	1,000.00	"	136	
	1,000.00	"	137	
	1,000.00	"	258	
	1,000.00	"	212	
	1,000.00	"	211	
	100.00	"	156	
	100.00	"	198	
	100.00	2518	199	
	500.00	2519	164	
	500.00	2518	259	
	1,100.00	"	66	
	91.67	2519	168	
	380.00	"	1055	
	88.33	"	1056	
	10,450.00	2520	775	
	2,560.00	2562	797	
	1,440.00	2563	776	
	800.00	2564	812	
	175.00	2566	740	
	50.00	2567	820	
	846.67	2568	830	
	480.00	2569	908	
	455.00	2570	854	
	130.00	2571	1014	
25	54.00	2429	599	
Oct. 3	110.00	2444	703	
10	1,100.00	2542	67	
	1,000.00	"	143	
	60.00	"	157	
	1,000.00	2543	250	
	300.00	"	251	
	1,000.00	"	375	
	1,000.00	"	379	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1902				
Oct. 10	$ 207.29	2543	399	
	308.33	"	400	
(page 122)				
Oct. 14	147.33	2515	654	Bearer
Dec. 8	824.50	2580	698	
18	430.00	2587	24	
1903				
July 25	350.00	2734	501	
1904				
Nov. 4	230.00	2789	596	
(CERTS. NOW HELD) "WEST VIRGINIA DEBT COMMISSION" JOHN B. MOON, CHAIRMAN.				
1905				
Jan. 5	378.00	2833	838	Bearer
12	695.47	2880	511	
24	1,000.00	2905	849	
	350.00	2906	850	
June 30	1,000.00	2951	435	
	1,000.00	"	436	
	645.00	"	437	
Dec. 4	216.67	3007	607	
8	190.00	3009	597	
13	960.00	3036	729	
19	583.52	3042	451	
	3,333.33	3043	747	
1906				
April 16	39.06	3127	395	
May 17	10.00	3145	107	
July 9	750.00	3175	636	
	250.00	"	637	
Aug. 23	142.93	3208	1052	
Sept. 17	1,000.00	3214	576	
	1,000.00	3215	577	
	1,000.00	3216	578	
	1,000.00	3217	379	
	1,000.00	3218	580	
	1,000.00	3219	581	
	1,000.00	3220	582	
	1,000.00	3221	583	
	1,234.06	3223	584	
1907				
Sept. 19	150.00	3286	413	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1907				
Oct. 3	$ 217.62	3290	1041	
Dec. 23	86.00	3314	47	
	510.00	"	38	
	60.00	"	697	
	1,326.67	"	7	
	376.67	"	72	
	210.00	"	106	
	216.81	"	49	
1908				
May 7	2,539.35	3363	718	
23	2,016.67	3371	553	
July 17	763.00	3381	292	
31	840.00	3386	503	
Nov. 20	449.00	3399	301	
1909				
Feb. 15	1,123.00	3417	532	
(page 123)				
Mar. 23	320.00	3425	975	Bearer
June 3	93.33	3434	543	
18	1,186.66	3443	50	
1910				
Feb. 28	42.22	3511	941	
Mar. 22	396.00	3522	777	
	2,176.00	"	127	
June 25	1,500.00	3538	523	
Aug. 24	642.00	3541	594	
Oct. 6	212.00	3545	606	
1911				
Feb. 18	432.00	3561	489	
Mar. 22	558.40	3603	750	
23	1,630.00	3605	350	
24	100.00	3607	837	

(page 124) DEPOSITS OF VIRGINIA DEFERRED CTFS. ISSUED UNDER ACT 1871.

Dollar Interest Scrip

1898			RECEIVED.	
Aug. 25	$ 12.00	32	94	No
	40.00	33	490	
	40.00	34	36	
	40.00	35	1162	
26	10.00	41	292	
	10.00	42	291	
Sept. 12	20.00	195	699	
	20.00	196	700	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 12	$ 20.00	197	701	
	20.00	198	702	
	20.00	199	703	
14	50.00	215	59	
	20.00	216	60	
	20.00	217	211	
	50.00	218	221	
	70.00	219	691	
Oct 4	10.00	356	316	
	80.00	do	38	
	10.00	do	317	
	340.00	do	1070	
	260.00	do	37	
	340.00	do	519	
	90.00	423	1111	
	60.00	424	1221	
	65.00	425	1058	
	65.00	426	520	
	100.00	427	857	
	110.00	428	1006	
Nov. 1	600.00	561	10	
	600.00	"	132	
	590.00	"	138	
	590.00	"	139	
	150.00	696	683	
	150.00	"	653	
	150.00	"	619	
	150.00	"	589	
	150.00	"	559	
	200.00	"	1101	
	50.00	"	850	
	50.00	"	830	
	50.00	"	814	
	50.00	"	790	
	50.00	"	770	
	225.00	700	1098	
	225.00	"	674	
	225.00	"	644	
	225.00	"	610	
	225.00	"	580	
	225.00	"	550	
(page 125)	80.00	"	1113	No
	80.00	"	843	
	80.00	"	823	
	80.00	"	807	
	80.00	"	783	
	80.00	"	763	

DATE 1898	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Nov. 1	$ 160.00	703	1102	
	160.00	"	680	
	160.00	"	650	
	160.00	"	616	
	160.00	"	586	
	160.00	"	556	
	100.00	707	552	
	100.00	"	582	
	100.00	"	612	
	100.00	"	646	
	100.00	"	676	
	115.00	"	1106	
	15.00	"	757	
	15.00	"	788	
	15.00	"	801	
	15.00	"	817	
	15.00	"	837	
	75.00	712	766	
	75.00	"	786	
	75.00	"	810	
	75.00	"	819	
	75.00	"	846	
	220.00	"	564	
	220.00	"	594	
	220.00	"	624	
	220.00	"	658	
	220.00	"	688	
	295.00	"	1099	
	80.00	565	562	
	80.00	"	592	
	80.00	"	622	
	80.00	"	656	
	80.00	"	686	
	25.00	"	821	
	25.00	"	841	
	25.00	"	855	
	25.00	"	781	
	105.00	"	1108	
	25.00	"	805	
	100.00	626	1001	
	100.00	"	1002	
	100.00	"	1003	
	100.00	"	1004	
	100.00	"	1005	
	500.00	628	172	
	500.00	"	46	
	500.00	"	517	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898				
Nov. 1	$ 500.00	628	1150	
	80.00	629	474	
	80.00	"	473	
	80.00	"	498	
(page 126)				
Nov. 21	50.00	659	515	No Int. from 1 Jan. 1874
	50.00	"	239	1 July 73
	50.00	"	21	28 April 73
Dec. 12	80.00	729	512	
	20.00	"	145	
	60.00	"	147	
	60.00	"	219	
	20.00	"	156	
	100.00	"	5	
	80.00	"	1075	
	50.00	730	514	
	50.00	"	220	
	50.00	"	534	
27	350.00	782	2	
	30.00	"	734	
	160.00	"	357	
	20.00	"	354	
	20.00	"	355	
	20.00	"	356	
	210.00	"	353	
	355.00	807	209	
	355.00	"	210	
	355.00	"	742	
1899				
Feb. 2	150.00	827	1169	
	200.00	"	868	
	50.00	"	1170	
	200.00	"	867	
	200.00	"	866	
	200.00	"	865	
Mar. 6	15.00	859	3	
	15.00	"	7	
	30.00	"	118	
	30.00	"	493	
	30.00	"	1061	
April 28	210.00	979	215	Bearer
	210.00	"	216	
	210.00	"	217	
	210.00	"	218	
May 19	230.00	984	1019	
	230.00	"	1020	
	230.00	"	1021	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1899				
May 19	$ 20.00	984	334	
	20.00	"	335	
	20.00	"	336	
	20.00	"	337	
	5.00	"	527	
	5.00	"	528	
	5.00	"	529	
	5.00	"	530	
	5.00	"	531	
	25.00	"	747	
	25.00	"	748	
	25.00	"	749	
	25.00	"	750	
(page 127)	25.00	"	751	Bearer
	25.00	"	429	
	25.00	"	431	
	10.00	"	378	
	5.00	"	341	
	30.00	"	142	
	80.00	"	30	
	10.00	"	64	
	10.00	"	135	
	10.00	"	136	
	10.00	"	87	
	5.00	"	342	
	10.00	"	364	
	25.00	"	432	
	25.00	"	430	
	25.00	"	741	
	25.00	"	739	
	25.00	"	740	
	230.00	"	1022	
	230.00	"	1023	
	110.00	"	141	
	110.00	"	1036	
	25.00	"	1059	
	230.00	"	1095	
Sept. 27	240.00	994	203	
	240.00	"	29	
	240.00	"	427	
	240.00	"	428	
1900				
Jan. 30	30.00	1524	1033	
	10.00	"	169	
	10.00	"	168	
	10.00	"	182	
	30.00	"	18	

DATE 1900	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Jan. 30	$ 30.00	1524	735	
	20.00	"	704	
	20.00	"	705	
	20.00	"	72	
	50.00	"	47	
	50.00	"	437	
	80.00	"	525	
	80.00	"	167	
	80.00	"	73	
	40.00	"	856	
	50.00	"	889	
	30.00	"	478	
	30.00	"	477	
	30.00	"	476	
	30.00	"	475	
	30.00	"	1050	
	30.00	"	501	
	60.00	"	885	
	60.00	"	886	
	50.00	"	888	
	100.00	"	937	
	100.00	"	935	
(page 128)	100.00	1524	934	Bearer
	100.00	"	933	
	110.00	"	710	
	100.00	"	936	
	110.00	"	709	
	200.00	"	1055	
	30.00	"	887	
	25.00	"	1082	
	5.00	"	706	
	25.00	"	499	
	25.00	"	1011	
	25.00	"	1013	
	25.00	"	1015	
	20.00	"	882	
	20.00	"	883	
	20.00	"	884	
	30.00	"	733	
	30.00	"	150	
	30.00	"	151	
	30.00	"	152	
	90.00	"	153	
	90.00	"	154	
	90.00	"	155	
April 9	135.00	1591	695	
	35.00	"	16	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1900				
April 9	$ 100.00	1591	15	
	135.00	"	696	
Oct. 8	50.00	1776	161	
	50.00	"	160	
	50.00	"	159	
	50.00	"	158	
11	80.00	1791	923	
	80.00	"	924	
	80.00	"	925	
	80.00	"	926	
	80.00	"	927	
1901				
Mar. 6	50.00	2105	201	
	100.00	"	526	
	50.00	"	68	
	100.00	"	1126	
	50.00	"	67	
	50.00	"	202	
April 29	40.00	2083	49	
	40.00	"	259	
1902				
Jan. 31	105.00	2139	1071	
	105.00	"	720	
	105.00	"	721	
	30.00	"	962	
	30.00	2188	311	
	30.00	"	310	
	30.00	"	308	
	30.00	"	309	
Aug. 12	210.00	2217	943	
	210.00	"	944	
	210.00	"	945	
(page 129)	210.00	"	946	Bearer
	210.00	"	947	
	210.00	"	1060	
Sept. 22	5.00	2340	52	
	5.00	"	235	
	5.00	"	250	
	135.00	"	1014	
	135.00	"	1016	
	140.00	"	1224	
	135.00	"	1226	
24	10.00	2367	1066	
	10.00	"	664	
	10.00	"	540	
	10.00	"	598	
	10.00	"	570	
	10.00	"	634	

DATE 1902	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
Sept. 24	$ 15.00	2367	281	
	15.00	"	325	
	15.00	"	326	
	15.00	"	280	
	40.00	"	791	
	40.00	"	815	
	40.00	"	771	
	40.00	"	851	
	45.00	"	276	
	45.00	"	277	
	45.00	"	278	
	45.00	"	279	
	100.00	"	541	
	100.00	"	601	
	100.00	"	635	
	100.00	"	571	
	100.00	"	665	
	100.00	"	1064	
	120.00	"	662	
	120.00	"	538	
	120.00	"	632	
	120.00	"	600	
	120.00	"	568	
	160.00	"	1063	
	45.00	2368	251	
	45.00	"	252	
	80.00	"	557	
	80.00	"	587	
	50.00	"	544	
	50.00	"	574	
	25.00	"	758	
	25.00	"	774	
	20.00	"	572	
	20.00	"	542	
	15.00	"	768	
	15.00	"	785	
	15.00	"	812	
	15.00	"	828	
	20.00	"	636	
	20.00	"	602	
(page 130)	25.00	2368	794	Bearer
	25.00	"	818	
	30.00	"	340	
	50.00	"	638	
	50.00	"	604	
	80.00	"	651	
	80.00	"	617	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1902				
Sept. 24	$ 45.00	2368	254	
	45.00	"	253	
	15.00	"	845	
	25.00	"	834	
	20.00	"	666	
	105.00	"	1109	
	40.00	"	1130	
	25.00	"	1127	
	25.00	"	1129	
	80.00	"	681	
	65.00	"	1154	
	50.00	"	668	
Oct. 8	40.00	2480	831	
Dec. 8	25.00	2581	754	
	25.00	"	778	
	25.00	"	798	
	25.00	"	802	
	25.00	"	838	
	105.00	"	1107	
	80.00	"	546	
	80.00	"	576	
	80.00	"	606	
	80.00	"	640	
	80.00	"	670	
1904				
Mar. 25	50.00	2760	1144	
	50.00	"	1145	
	50.00	"	1146	
	50.00	"	1147	
	50.00	"	1148	
	50.00	"	1149	
	"WEST VIRGINIA DEBT COMMISSION," J. B. MOON, CHAIRMAN.			
1905				
Jan. 18	80.00	2904	166	
	80.00	"	352	
	80.00	"	75	
	80.00	"	351	
June 30	15.00	2952	462	
	15.00	"	463	
	15.00	"	464	
	15.00	"	465	
	100.00	"	466	
	100.00	"	467	
	100.00	"	468	
	100.00	"	469	
Oct. 4	10.00	2975	50	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1905				
Oct. 4	$ 165.00	2975	51	
	75.00	"	261	
	75.00	"	262	
	75.00	"	263	
(page 131)	100.00	2975	264	Bearer
	175.00	"	518	
1906				
June 22	10.00	3164	67	
	10.00	"	366	
	5.00	"	44	
1907				
Mar. 7	500.00	3260	871	
	500.00	"	422	
	500.00	3261	421	
	500.00	"	420	
	200.00	3262	895	
	200.00	"	896	
	200.00	"	897	
	200.00	"	898	
	200.00	"	899	
	200.00	3263	1083	
	200.00	"	1084	
	200.00	"	1086	
	200.00	"	1087	
	200.00	"	1088	
	410.00	3264	918	
	410.00	"	919	
	410.00	"	920	
	410.00	"	921	
	410.00	"	922	
	250.00	"	1038	
	70.00	"	900	
	70.00	"	901	
	70.00	"	902	
	70.00	"	903	
	70.00	"	904	
	70.00	"	1098	
	70.00	"	1091	
	70.00	"	1090	
	70.00	"	1092	
	70.00	"	1093	
	30.00	3265	1037	
	5.00	"	1160	
	5.00	"	1161	
1908				
Mar. 24	70.00	3350	373	
	70.00	"	372	

DATE	AMOUNT	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898				
Mar. 24	$ 65.00	3350	370	
	65.00	"	371	
May 23	15.00	3369	14	
	50.00	"	17	
	65.00	"	333	
July 31	160.00	3387	243	
1909				
Feb. 8	50.00	3414	1045	
	30.00	"	960	
	20.00	"	959	
	50.00	"	222	
	50.00	"	523	
1911				
Mar. 22	160.00	3602	241	

(page 132) DEPOSITS OF VIRGINIA DEFERRED CTFS. ISSUED UNDER ACT 1871

Stg. Interest Scrip.

				RECEIVED.		
1898	£	s	d			
Oct. 31	12	10		604	28	No
	12	10		"	29	No
	12	10		"	30	No
	12	10		"	31	No
	12	10		"	32	No
	12	10		"	33	No
Nov. 1	2	10		605	44	No
	2	10		"	55	No
	2	10		"	46	No
	2	10		"	48	No
	2	10		"	56	No
	2	10		"	54	No
	8	6	8	"	42	No
	8	6	8	"	43	No
	8	6	8	"	47	No
	8	6	8	"	49	No
	8	6	8	"	52	No
	8	6	8	"	53	No
	209	3	4	606	4	No
	209	3	4	"	5	No
	209	3	4	"	26	No
	209	3	4	"	27	No
	58	6	8	607	24	No
	58	6	8	"	25	No
	40			"	64	No
	40			"	63	No

DATE	AMOUNT			Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898	£	s	d			
Nov. 1	58	6	8	607	9	No
	58	6	8	"	8	No
1899						
May 19	184	3	4	987	129	Bearer
	184	3	4	"	130	do
	184	3	4	"	131	do
	184	3	4	"	132	do
1900						
Jan. 30	20	16	8	1531	133	Bearer
	20	16	8	"	134	do
	20	16	8	"	135	do
	20	16	8	"	136	do
	1	13	4	"	140	do
	1	13	4	"	141	do
	1	13	4	"	142	do
	1	13	4	"	143	do
	4	3	4	"	144	do
	4	3	4	"	145	do
	4	3	4	"	146	do
	4	3	4	"	147	do

(page 133) "WEST VIRGINIA DEBT COMMISSION." J. B. MOON CHAIRMAN.

1906	£	s	d			
Jan. 29		16	8	3085	57	Bearer
		16	8	"	58	"
		16	8	"	59	"
		16	8	"	60	"
		16	8	"	61	"
		16	8	"	62	"
June 22	5	0	0	3162	50	"

(page 134) 1879 STG. INT. SCRIP.

					RECEIVED.	
1898	£	s	d			
Oct. 31	4	3	4	609	73	No
	23	6	8	"	74	"
	23	6	8	"	75	"
	23	6	8	"	76	"
	12			"	86	"
	6	13	4	"	122	"
	8			"	124	"
	6	13	4	"	125	"
	6	13	4	"	126	"
	16	3	4	"	127	"
		16	8	610	123	"

DATE	AMOUNT £	s	d	Our Ctf. Number	NUMBERS	REGISTERED IN NAME
1898						
Oct. 31	29	3	4	610	89	No
	62	10		611	110	"
	62	10		"	109	"
	62	10		"	108	
	62	10		"	107	
	50			607	120	B. B. & Co. 1871 sterling int. ctf. issued by mistake.
1899						
May 19	1	13	4	985	114	Bearer
	1	13	4	"	115	do
1902						
Oct. 10	52	10		2550	77	Bearer
	52	10		"	78	do
	52	10		"	79	do
	52	10		"	80	do
	4	3	4	"	81	do

"WEST VIRGINIA DEBT COMMISSION." J. B. MOON, CHAIRMAN.

1906	£	s	d			
Jan. 29	92	10		3087	90	Bearer
	92	10		3087	91	"
	92	10		"	92	"
	92	10		"	93	"

(FINIS)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

THE STATE OF WEST VIRGINIA

In Equity.

BEFORE

HON. CHARLES E. LITTLEFIELD,

MASTER.

At Richmond, Virginia,

August 17-19 and September 2-12, 1914.

VOLUME II.

DEFENDANT'S AND PLAINTIFF'S EXHIBITS.

NOTE.—A pink sheet sheet separates the index from "Defendant's Exhibits, 1901"; a blue sheet separates "Defendant's Exhibits, 1901" from "Defendant's Exhibits, 1905"; a green sheet separates "Defendant's Exhibits, 1905" from "Defendant's Exhibits, (Miscellaneous) 1901-1905"; a yellow sheet separates all of the Defendant's exhibits from those of the Plaintiff.

ERRATA.

On Page 83, Sheet 7 of Defendant's Exhibit No. 12, January 1, 1861, make from the fourth to the eleventh items inclusive, under column "Amount," read "$26,320.50" instead of "$26,350.50."

Omit the last four items on the same page, being two payments from Bank of Virginia and two payments from Exchange Bank, they having been previously entered on same exhibit.

Change total on same page from "$2,485,116.41" to "$2,484,876.41," to accord with above corrections.

IN THE

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DEFENDANT'S EXHIBIT No. 1.

STATE OF WEST VIRGINIA.

Class A. (Exhibit, Hillman No. 1.)

Statement Showing Cash in Hands of the Treasurer of the Commonwealth of Virginia to the Credit of Various Funds January 1, 1861.

Literary Fund—			
(As shown page 69 Lit. Fund Ledger, Sept. 30, 1860)	$59,459 98		
Receipts, quarterly, ending 12-31-60, as follows:			
(Journal, page 60-2)	10,912 72		
(Journal, page 65)	6,064 82	$ 76,437 47	
Payments, quarterly, ending 12-31-60, as follows:			
(Journal, page 65)	$ 717 50		
(Journal, page 66)	46,053 48		
(Journal, page 69)	2,790 41	49,561 39	
Balance January 1, 1861			26,876 08
Less Dawson Fund Cash			2,890 90
Balance State Funds			23,985 18
Board of Public Works—			
Page 247, Ledger "B," on file Second Auditor's Office)			5,958 28
Commonwealth Fund—			
(Page 67, First Auditor's Ledger, in Account headed J. S. Calbert, Treas.)			252,842 67
Sinking Fund—			
(Sinking Fund Ledger, No. 1 [1853-65], page 2 account headed J. S. Calvert, Treas)			819,250 03
Total cash			$1,102,036 16

DEFENDANT'S EXHIBIT No. 2.

Class B. (Exhibit, Hillman No. 2.)

STATE OF WEST VIRGINIA.

Statement showing holdings of the State of Virginia in the Richmond, Fredericksburg & Potomac R. R., January 1, 1861 *and their book values on the dates mentioned, no figures being obtainable for the exact date of January* 1, 1861.

Richmond, Fredericksburg and Potomac Stock—	Par $100	Value 1-1-61 Per Share	Value.
(Page 184, Ledger "B," 2d Auditor's Of.) 2752 shares...	$275,200 00	$150	$412,800 00

Following figures taken from official printed reports of the Railroad Company on file in the Treasurer's Office, Richmond, Va.:

Page of said record.	Date.	Outstanding Stock.	Surplus.	Book Value.
481	Mar. 31, 1859	$1,043,700 00	$461,134 54	144.2
495	Mar. 31, 1860	1,043,700 00	505,403 22	148.4
507	Mar. 31, 1861	1,116,100 00	562,819 05	150.4
521	Mar. 31, 1862	1,142,900 00	656,577 85	157.4

N. B.—Increase for year ending Mar. 31, 1861, was from 148.4 to 150.4, or 2%. Nine months to Jan. 1, 1861, would be ¾ of 2%, or 1.5%, which, added to 148.4, would give 149.9, or 150, as we have called it.

Dividends declared on R., F. & P. stock from 1850 to 1864 inclusive:

Year.	Amt. of Stock.	Paid in Cash.	Paid in Bonds.
1850	$1,000,000 00	7%	
1851	1,000,000 00	7%	
1852	1,000,000 00	7%	
1853	1,000,000 00	7%	
1854	1,000,000 00	3½%	3½%
1855	1,000,000 00		7%
1858	1,033,600 00		
1859	1,043,700 00		7%
1860	1,043,700 00		7%
1861	1,116,100 00	3½%	(Not paid until 1873)
1862	1,142,900 00	5½%	
1863	1,142,900 00	26½%	
1864	1,142,900 00	13%	

N. B.—All stock above $1,000,000 was guaranteed stock and paid 7% guarantee and participated in anything above that that the other stock earned.

Total dividends paid in 15 years as above 104½, or almost 7% per year.

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)

Subsheet 1. (Hillman, Exhibit 2.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31, 1859.

Copied from Annual Report of R., F. & P. R. R. Co., 1852 to 1873, pp. 480-481.

Assets.		
Cost of road and property:		
From Richmond to Acquia Creek	$1,531,238 40	
Net cost of new superstructure	471,093 01	$2,002,331 41
Engineering Expenses:		
Survey to Manassas and Quantico		2,321 87
Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	62,763 77	
From sundries on open account	58,494 23	123,078 00
Investments:		
Stocks of this Company	1,000 00	
Potomac Steamboat Company's stock	27,800 00	
Potomac Steamboat Company's bonds	25,000 00	53,800 00

Liabilities.		
Capital Stock:		
Subscribed by the State, 2,752 shares old stock.	$ 275,200 00	
Subscribed by individuals, 4,248 shares old stock.	424,800 00	
Subscribed by individuals, 3,000 shares new stock.	300,000 00	
Guaranteed stock	43,700 00	$1,043,700 00
Debts due the Company (of a permanent nature):		
Bonds due in London in 1860, 67,000 pounds sterling	324,005 61	
Bonds due in 1875 and convertible	23,000 00	
Certificates of debt issued for dividends and due 1857	29,486 32	
Certificates of debt issued for dividends and due 1869	265,784 40	642,276 33
Debts due on open account and notes:		
Debts due in open account	38,576 85	

CLASS B—1861.

DEFENDANT'S EXHIBIT No. 2—Sheet 2—Sub-sheet 1—(*Continued*)

Cash:		Unpaid dividends and interest on certificates of debt	26,551 35	
On hand 31st March, 1859.	45,120 24	Bills payable	14,412 45	
				79,540 65
Totals	$2,226,651 52	Profit and Loss:		
		Receipts from transportation, since commencement of the work to 31st March, 1859	4,628,520 13	
		Rents of real estate since commencement of the work to 31st March, 1859	5,885 62	
			$4,634,405 75	
		Expenses of transportation since commencement of the work to 31st March, 1859, including loss of bridges and depot by fire, interest, interest on new stock and certificates of debt and allowance to Washington & Fredericksburg Steamboat Company	3,216,654 77	
			$1,417,750 98	
		Dividends paid since the commencement of the work to 31st March, 1859	956,616 44	
				461,134 54
		Totals		$2,226,651 52

CLASS B—1861.

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)

Subsheet 2. (Hillman, Exhibit 2.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31st, 1860.

Copied from Annual Report of R., F. & P. R. R. Co., 1852 to 1873, pp. 494 and 495.

Assets.

Cost of Road and Property:		
From Richmond to Acquia Creek	$1,531,238 40	
Net cost of new superstructure	496,365 21	
		$2,027,603 61
Engineering Expenses:		
Survey to Manassas and Quantico		2,321 87
Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	63,877 40	
From sundries on open account	84,863 20	
		150,560 60
Investments:		
Stock of this Company	1,000 00	

Liabilities.

Capital Stock:		
Subscribed by State, 2,752 shares old stock	$ 275,200 00	
Subscribed by individuals, 4,248 shares old stock.	424,800 00	
Subscribed by individuals, 3,000 shares new stock.	300,000 00	
Guaranteed stock	43,700 00	
		$1,043 700 00
Debts due by the Company (of a permanent nature):		
Bonds due in London in 1860	41,447 74	
Bonds due in London in 1875	52,000 00	
Bonds due in U. S. in 1875 and convertible	21,000 00	
Bonds due in U. S. in 1875 and convertible	172,800 00	
Certificates for debt issued for dividends and due in 1857, 1869 and 1879.	364,253 32	
		651,501 06

DEFENDANT'S EXHIBIT No. 2—Sheet 2—Sub-sheet 2—(*Continued*)

Potomac Steamboat stock..	27,800 00		Debts due by open account and notes:		
Potomac Steamboat Company's bonds	25,000 00		Debts due in open account	57,376 05	
		53,800 00	Unpaid dividends and interest on certificates of debt	7,132 45	
Cash:			Bills payable	14,950 53	
On hand 31st March, 1860..		45,777 23			79,459 03
Total		$2,280,063 31	Profit and Loss:		
			Receipts from transportation since the commencement of work to 31st March, 1860.....	4,916,470 07	
			Rents of real estate since commencement of work to March 31st, 1860	5,885 62	
					4,922,355 69
			Expense of transportation since commencement of work to 31st March, 1860, including loss of bridge and depot by fire, interest, interest on certificates of debt and new stock, and allowance to the Washington & Fredericksburg Steamboat Company	3,389,003 93	
				$1,533,351 76	
			Dividends paid since the commencement of work to 31st March, 1860..	1,027,948 54	
					505,403 22
					$2,280,063 31.

CLASS B—1861. [7]

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)

Subsheet 3. (Hillman, Exhibit 2.)

CLASS B—1861.

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31st, 1861.

Assets.			Liabilities.		
Cost of Road and Property:			Capital Stock:		
From Richmond to Acquia Creek	$1,531,238 40		Subscribed by the State, 2,752 shares old stock.	$ 275,200 00	
Cost of superstructure, heavy iron, etc.	530,583 13		Subscribed by individuals:		
Engineering expenses to Manassas and Quantico	2,321 87		4,248 shares old stock.	424,800 00	
Property conveyed to E. Robinson	147,046 50		3,000 shares new stock	300,000 00	
		$2,211,189 90	1,161 shares gtd. stock	116,100 00	
					$1,116,100 00
Debts due to the Company:			Bonds, etc., due by the Company of a permanent nature:		
From individuals on new stock	1,820 00		Coupon bonds due in London in 1875	57,333 33	
From bills receivable	135,849 31		Coupon bonds due in U. S. in 1875	21,000 00	
From sundries in open account	27,695 59		Convertible bonds due in U. S. in 1875	172,800 00	
		165,364 90	Certificates of debt due in U. S. in 1857	29,126 32	
Investments:			Certificates of debt due in U. S. in 1869	265,217 40	
Stock of this Company	4,009 00		Certificates of debt due in U. S. in 1879	139,605 20	
Potomac Steamboat Co. stock	38,900 00				685,082 25
City of Richmond stock	2,304 98		Debts due by the Company by open accounts and notes:		
		45,213 98	Debts due in open account	45,023 66	
Cash:			Unpaid interest, dividends, etc.	3,323 43	
On hand Mar. 31, 1861		19,875 09	Bills payable	29,295 48	
		$2,441,643 87			77,642 57
			Profit and Loss:		

Copied from Annual Reports, 1852 to 1873, pp. 506 and 507.

DEFENDANT'S EXHIBIT No. 2—Sheet 2—Sub-sheet 3—(*Continued*)

Receipts from transportion from the commencement of the work to March 31, 1861...	5,199,678 34	
Rents of real estate since the commencement of work to Mar. 31, 1861.	6,060 62	
Petersburg Omnibus Account to Mar. 31, 1861.	5,435 83	
Dividends from the Potomac Steamboat Co. for the last six months..	33,360 00	
	$5,244,534 79	
Expenses of transportation since the commencement of work to Mar. 31, 1861, including loss of bridges and depot, interest, interest on certificates of debt and new stock, allowances to Washington and Fredericksburg Steamboat Co. and difference of exchange in settlement of bonds due in London in 1860.	3,582,435 10	
	$1,662,099 69	
Dividends paid since the commencement of the work to Mar. 31, 1861.	1,099,280 64	
		562,819 05
		$2,441,643 87

CLASS B—1861.

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)

Subsheet 4. (Hillman, Exhibit 2.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31st, 1862.

Copied from Annual Reports, 1852 to 1873, pp. 520 and 521.

Assets.

Cost of Road and Property:		
From Richmond to Acquia Creek	$1,531,238 40	
Cost of superstructure, heavy iron, &c.	547,354 28	
Engineering expenses to Manassas and Quantico	2,321 87	
Property conveyed to E. Robinson	147,708 13	
		$2,228,622 68
Debts due to the Company:		
From individuals on stock.	1,820 00	

Capital Stock:		
Subscribed by the State, 2,752 shares old stock.	$ 275,200 00	
Subscribed by individuals, 4,248 shares old stock.	424,800 00	
Subscribed by individuals: 3,000 shares new stock	300,000 00	
Subscribed by individuals, 1,429 shares guaranteed stock	142,900 00	
		$1,142,900 00
Bonds, etc., due by the Railroad Company of a permanent nature:		
Coupon bonds due in London in 1875	57,333 33	
Coupon bonds due in Confederate States in 1875	21,000 00	
Convertible bonds due in Confederate States in 1875	172,800 00	

DEFENDANT'S EXHIBIT No. 2—Sheet 2—Sub-sheet 4—(*Continued*)

From sundries in open account	140,613 42	
From bills receivable	42,186 68	
		184,620 10
Investments:		
Seaboard and Roanoke Railroad stock ($25,000)	24,616 94	
Stock of this Company ($5,000 cost)	4,009 00	
City of Richmond stock ($2,300 cost)	2,304 98	
Potomac Steamboat stock	38,900 00	
Confederate States bonds	34,950 00	
Virginia Treasury Notes	25,000 00	
		129,780 92
Cash:		
On hand 31st March, 1862		23,308 01
		$2,566,331 71

Certificates of debt due in Confederate States in 1875	29,126 32	
Certificate of debt due in Confederate States in 1869	264,979 40	
Certificate of debt due in Confederate States in 1879	138,653 20	
		683,892 25
Debts due by the Company by open account and notes:		
Debts due in open account	35,101 00	
Unpaid dividends, interest, etc.	44,925 05	
Bills payable	2,935 56	
		82,961 61
Profit and Loss:		
Receipts from transportion from commencement of the work to 31st March, 1862	5,499,765 25	
Receipts of real estate from commencement of the work to 31st March 1862	6,135 62	
Petersburg omnibus account to 31st March, 1862	4,272 52	
Dividends from Potomac Steamboat Company	83,385 00	
Carried forward	$5,593,558 39	$1,909,753 86

CLASS B—1861.

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)
Subsheet 4. (Hillman, Exhibit 2.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31st, 1862.

Copied from Annual Reports 1852 to 1873, pp. 520 and 521.

CLASS B—1861.

(Continued) Liabilities.

Brought Forward—		
Profit and Loss—Continued..	$5,593,558 39	$1,909,753 86
Expense of transportation since commencement of the work to 31st March, 1862, including loss of bridge and depot by fire, interest, interest on certificates of of debt and new stock, allowance to Washington and Fredericksburg Steamboat Company and difference of exchange in settlement of bonds due in London in 1860	3,768,385 20	
	$1,825,173 19	
Dividends paid since commencement of the work to 31st March, 1862.	1,168,595 34	656,577 85
Totals		$2,566,331 71

*DEFENDANT'S EXHIBIT No. 3.

Class C.—1861.

Hillman Exhibit 3-A.

STATE OF WEST VIRGINIA.

Statement of Par and Value on opening of business January 1, 1861, on stock and loans as per Schedule "C."

		Par.	Book Value.	Value Jan. 1, 1861.	Disposed of For.
1. Orange & Alexandria R. R.	Stock	$ 874,500 00	$106 64	$ 932,566 80	$ 874,500 00
	Loan	398,670 60		398,670 60	398,670 60
2. Richmond & Danville R. R.	Stock	1,188,598 50	137 37	1,632,777 76	1,085,636 57
	Loan	565,803 34		565,803 34	438,900 00
3. Richmond & Petersburg R. R.	Stock	385,600 00	121 86	469,892 16	578,404 13
	Dividend Bonds	33,408 00		33,408 00	33,408 00
4. Virginia Central R. R.	Stock	1,891,670 68	131 16	2,481,115 26	231,458 58
		(Book $1,927,382 57)			
	Loan	90,032 82		90,032 82	90,032 82
	(Par plus int.)				
	Dividend Bonds	143,508 00		143,508 00	143,508 00
		1,604,723 23		1,604,723 23	625,348 08
5. Blue Ridge R. R.—Built by the State	Stock	993,248 00		993,248 00	49,662 05
6. Alexandria, Loudoun & Hampshire R. R.	Loan	83,333 33		83,333 33	83,333 33
7. Winchester & Potomac R. R.	Loan	1,000,000 00		1,000,000 00	886,685 00
8. Virginia & Tennessee R. R.	Loan	800,000 00		800,000 00	Turned over to A. M. & O.
9. South Side R. R.					
10. Norfolk & Petersburg R. R.	Loan	300,000 00		300,000 00	Turned over to A. M. & O. 137,000 00
11. Roanoke Navigation Co.	Stock	80,000 00		80,000 00	3,832 00

CLASS C—1861.

[12-a]

DEFENDANT'S EXHIBIT No. 3.
(Continued)

12. Alexandria Canal Co.	Stock	272,000 00	272,000 00	764 47
13. Upper Appomattox Co.	Stock	56,500 00	56,500 00	16,144 26
14. Dismal Swamp Canal Co.	Stock	190,000 00	190,000 00	9,935 99
15. Loan to Washington College		2,000 00	2,000 00	2,000 00
16. Richmond Academy Bonds		400 00	400 00	400 00
17. Claim against U. S. Government		298,369 74	298,369 74	298,369 74
18. Claim against Selden, Withers & Co.			132,842 74	132,842 74
19. Rich'd, Fred'b'g & Potomac R. R.	Loan	149,984 00	149,984 00	149,984 00
20. Manassas Gap R. R.		2,105,000 00	2,105,000 00	
			$14,816,175 78	$13,270,820 36

*Corrected copy, superseding page 13 following.

DEFENDANT'S EXHIBIT No. 3.

Class C. (Hillman, Exhibit 3-A.)

STATE OF WEST VIRGINIA.

Statement of Par and Value on opening of Business January 1, 1861, on stock and loans as per Schedule "C."

		Par.	Book Value.	Value Jan. 1, 1861.
1.	Orange & Alexandria R. R. Stock—17490 shares @ $50....$	874,500 00	$106 64 (53.32)	$ 932,566 80
	Loan	398,670 60		*398,670 60
2.	Richmond & Dan. R. R. Stock—12000 shares @ $100 cost..	1,188,598 50	137 37	1,632,777 76
	Loan	565,803 34		*565,803 34
3.	Rich. & Petersb'g R. R. Stock—3856 shares @ $100 each..	385,600 00	121 86	469,892 16
	Dividend Bonds	33,408 00		*33,408 00
4.	Virginia Central R. R. Stock.....	1,891,670 68	Book— 131 16	2,481,115 26
	Loan (par plus interest)	90,032 82	(1,927,382 57)	90,032 82
	Dividend Bonds	143,508 00		143,508 00
5.	Blue Ridge R. R.—Built by the State.....	1,604,723 23		**625,348 08
6.	Alexandria, Loudoun & Hampshire R. R. Stock.....	993,248 00		**49,662 05
7.	Winchester & Potomac R. R. Loan.....	83,333 33		*83,333 33
8.	Virginia & Tennessee R. R. Loan.....	1,000,000 00		**886,685 00
9.	Southside Railroad Co. Loan.....	800,000 00		
10.	Norfolk and Petersburg R. R. Loan.....	300,000 00		***137,000 00
11.	Roanoke Navigation Co. Stock.....	80,000 00		**3,832 00
12.	Alexandria Canal Co. Stock.....	272,000 00		**764 47
13.	Upper Appomattox Co. Stock.....	56,500 00		**16,144 26
14.	Dismal Swamp Canal Co. Stock.....	190,000 00		**9,935 99
15.	Loan to Washington College	2,000 00		*2,000 00
16.	Richmond Academy Bonds	400 00		*400 00
17.	Claim against U. S. Government	298,369 74		*298,369 74
18.	Claim against Selden Withers Company.....			*132,842 74
19.	Richmond, Fredericksburg & Potomac R. R. Loan.....	149,984 00		*149,984 00
				$9,163,256 70

*Actual Value Jan. 1, 1861.
**Sales Value—Dates shown on 3-B and 4-B.
***Total Received—Dates shown on 3-B and 4-B.

DEFENDANT'S EXHIBIT No. 3—Asset 1.

Class C.

(Hillman, Exhibit 3-A.)

STATE OF WEST VIRGINIA.

Statement showing Profit and Loss of the Orange & Alexandria Railroad Company to determine the value of said stock on opening of business January 1, 1861.

	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
1. Orange & Alexandria R. R. Co. Stock, September 30, 1856	$1,457,000 00	$ 7,571 28	Pages 946-7, Document 17, Report to State, 1856-7.	Trial-balance.	$100 45
After 1856 no trial balances are shown. Profits as shown on Document 17 are added to previous surplus to arrive at value. All information taken from Document 17 of the current year of the Auditor's report being the figures reported by the various roads. Document 17, 1857-8, does not show general balance sheet, so it has been necessary to add the profit of one year (as near as could be determined) to the profits of the preceding year. Book Value $100.34.					
1857—Stock	1,830,303 89				
Profits this year		$ 61,441 15			
Less Dividends on Preferred Stock		5,954 63			
			$ 55,486 52	$ 63,057 80	$103 44
1858—Stock	1,925,274 31				
Profits this year		34,016 74			
Less Dividends on Preferred Stock		2,138 71			
			31,878 03	94,895 83	104 93

DEFENDANT'S EXHIBIT No. 3. Asset 1.

(Continued)

1859—Stock	2,025,227 20				
Profits this year		19,035 67			
Less Dividends		6,658 35			
			12,377 32	107,272 15	105 30
1860—Stock	2,039,603 73				
Profits this year		23,242 34	28,242 34	135,515 49	106 64
1861—Stock	2,058,007 07				
Profits this year		263,909 85			

(As reported by the superintendent, all records were in Alexandria, and as the war was on, he could only guess at the operating expenses; therefore, above statement is valueless. Earnings had increased 33% and his operating expenses $220,000. We therefore take the value of Sept. 30, 1860, as the measure of its value.)

CLASS C—1861.

DEFENDANT'S EXHIBIT No. 3. (Asset 1.)

STATE OF WEST VIRGINIA.

(Hillman Exhibits 3 & 4.)

Class C. Sheet 1.
Class D. Asset 1.

Settlement of the Orange & Alexandria R. R. Stock and Bonds.

		Cost.	Par as Per Settlement.	Disposed of For.
A.	Stock—P. 183, Ledger "B," Internal Im'pt.	$872,802 83	$874,500 00	$874,500 00
	Dividend, 1854, paid in 1864 (P. 157, Journal "D," Dept. Pub. Wks.) March 26, 1864. (P. 157, Journal "D," Dept. Pub. Wks.)—$34,912 doubtful. Sept. 8, 1864.			31,604 09
B.	Loan—P. 241, Ledger "B," Internal Im'pt.	$400,000 00	$400,000 00	
	Following details from pages 389-392, Journal "N," Pub. Wks.: (Internal Im'pt., now known as Pub. Wks.)			
	Interest to Feb. 23/59..	$ 6,075 31		
	Paid Feb. 11/59	5,250 00	825 31	
			$400,825 31	
	Paid Feb. 23/59.....		2,154 71	
			$398,670 60	
	Interest to Sept. 15, 1859.	$ 10,415 94		
	Paid to Sept. 15, 1859...	9,086 61		
	Unpaid interest...	1,329 33	1,329 33	
	Interest to Apr. 17, 1860..	14,019 00		
	Paid to Apr. 17, 1860....	9,840 47		
	Unpaid interest		4,178 53	
	Interest to July 1, 1860..	5,035 18		
	Cash to July 1st.....	4,159 53		
			875 65	
	Loan and over interest to July 1, 1860		$405,054 11	$405,054 11
	Add int. on $398,670.60 for 6 months @ 7% per annun.—3½			13,953 47
	Total due on loan int. 1/1/61			$419,007 58

Above three lines inserted to show amount due from Jan. 1, 1861, on loan.

DEFENDANT'S EXHIBIT No. 3. Asset 1.

(Hillman, Exhibit 3 & 4.)

Class C. Sheet 2.
Class D. Asset 1.

STATE OF WEST VIRGINIA,

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

	Payments.	Charges.
Brought forward from Sheet 1		$405,054 11
Interest to October 20, 1862		$ 54,934 61
Paid October 20, 1862	$ 10,071 00	
Interest to October 25, 1862		327 67
Paid October 25, 1862	20,000 00	
Interest to November 15, 1862		1,376 23
Paid November 15, 1862	23,000	
Interest to December 29, 1862		2,321 02
Paid December 29, 1862	16,929 00	
Interest to January 28, 1863		2,474 51
Paid January 28, 1863	14,000 00	
Interest to June 23, 1863		9,284 50
Paid June 23, 1863	14,000 00	
Interest to January 16, 1864		12,823 56
Paid January 16, 1864	14,000 00	
Interest to September 8, 1864		14,604 90
Paid September 8, 1864	14,000 00	
Interest to December 31, 1864		7,072 78
Paid December 31, 1864	14,000 00	
Interest to January 1, 1865		60 86
Paid in State Bonds and Int.	150,037 73	
Interest to August 26, 1868		48,269 22
Paid August 26, 1868	20,000 00	
Interest to Nov. 1, 1868		2,420 23
Paid November 1, 1868, in State Bonds and Int.	38,141 53	
	$348,179 26	$561,024 20
Deduct payments		348,179 26
Balance of loan		$212,844 94

DEFENDANT'S EXHIBIT No. 3. Asset 1. (Sheet 3.)

(Hillman, Exhibit 3 & 4.)

Class C. Sheet 3.
Class D. Asset 1.

STATE OF WEST VIRGINIA.

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

	Payments.	Charges.
Final Settlement of Loan and Stock, Pages 407-10, Journal N.:		
Balance of Loan		$ 212,844 94
Interest to March 29, 1872		43,510 92
Interest to October 17, 1872		7,050 11
Total loan to October 17, 1872		$263,405 97
No. 6	39,991 68	
October 28, 1872, State Bonds	834,398 88	
Interest on bonds	186,548 49	
Par of stock		874,500 00
Total outstanding loan and stock		$1,137,905 97
Paid as follows:		
Mar. 28, 1872, as 1/6 of above to Mar. 28, $1,130,855.86; bonds	$ 188,478 29*	
October 17, 1872, discount for anticipation of installments, page 180, Journal D:		
No. 2	$ 4,956 11	
No. 3	15,165 67	
No. 4	24,306 94	
No. 5	32,539 22	
	$1,137,906 99	

N. B.—$1.02 over, being 5c in discounts and an overpayment of 97c.
*Included in bonds turned in below.

DEFENDANT'S EXHIBIT No. 3. Asset 2.

(Hillman, Exhibit 3.)

Class C. Asset 2.

STATE OF WEST VIRGINIA.

Statement showing Profit and Loss of the Richmond & Danville Railroad Company to determine the value of said stock on opening of business January 1, 1861.

	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
2. Richmond & Danville R. R. Co. Stock—					
1856	$1,975,040 00	$197,518 90			$110.00
1857—Stock	1,977,399 00				
Profits this year		139,489 12	$139,489 12	*$337,008 02	117.04
1858—Stock	1,980,997 50				
Profits this year		154,305 76	154,305 76	491,313 78	124 80
1859—Stock	1,980,997 50				
Profits this year		182,527 84			
Less Dividends		79,239 90			
			103,287 94	594,601 72	1°0 02
1860—Stock	1,981,197 50				
Profits this year		225,068 98			
Less Dividends		79,247 90			
			145,821 08	740,422 80	137 37

* Pages 622-23, Document 17, Report to State, 1856-7. Trial-balance. See remarks in reference to trial-balance, under Orange & Alexandria Railroad.

CLASS C—1861.

DEFENDANT'S EXHIBIT No. 3. Asset 2. (Sheet 1.)

Class C. Asset C. 2.
Class D. Asset D. 2.

STATE OF WEST VIRGINIA.

Richmond and Danville Railroad.

A. STOCK—	Cost Price.	Disposed of For.
Ledger "B," Internal Improvement Fund, Folio 183, shows that on Jan. 1, 1861, the State owned stock in this company to the value of	$1,188,598 50	
This stock was disposed of as follows:		
Journal "N," Board of Public Works, on file in Corporation Commission Office, Folio 311:		
Dec. 13, 1870, first payment Old Registered Bonds		$ 58,200 00
Interest Funded Debt, Jan., 1866		13,377 41
Interest Funded Debt, Jan., 1867		18,583 00
Interest on above		9,915 37
Journal "N," Folio 348, Aug. 31, 1871:		
Coupon Bonds		38,500 00
Interest		12,705 00
Registered Stock		460,017 98
Interest		13,800 53
Registered Bonds, 1866		187,474 51
Interest		61,866 58
Registered Bonds, 1867		126,424 95
Interest		34,134 74
FINAL PAYMENT—		
On decision of Circuit Court of Richmond, this company made final settlement for stock as follows:		
REFERENCE:		
Decree of Circuit Court of Richmond, April 13, 1877, to pay balance, amounting to $26,571.46, with interest from Aug. 31, 1871.		
Journal "O," Board Public Works, June 30, 1886:		
State Bonds		38,100 00
Coupons		691 50
Journal "O," Board Public Works, Dec. 20, 1886:		
State Bonds		11,500 00
Coupons		345 00
The same being $26,571.46 principal and $24,065.04 interest as per above decree.		
The principal and interest due on the preceding payment amounted to $11,771.42, and the excess, $73.58, was paid in order that the R. & D. could make the payment in bonds.		
		$1,085,636 57

DEFENDANT'S EXHIBIT No. 3. Asset 2. (Sheet 2.)

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 2.
Class D. Asset D. 2.

STATE OF WEST VIRGINIA.

Richmond and Danville Railroad.

B. LOAN—		Value Jan. 1, 1861.
Ledger "B," Folio 240, Internal Improvement Fund, shows the value of this loan as of Jan. 1, 1861, to be.....	$ 600,000 00	
Due to the Partial Payment Plan by which this loan was computed, as shown by page 12 Senate Document and Journal No. 12, 1881 and 1882, its value on Sept. 30, 1860, was.....	567,786 54	
Following this plan, we arrive at a balance on Jan. 1, 1861, as follows:		
Interest from Sept. 30, 1860, to Jan. 1, 1861	8,516 80	
	$ 576,303 34	
Less one-fourth of annuity of $42,000.00.	10,500 00	
The value of this loan Jan. 1, 1861, was..		$ 565,803 34
Interest on same accrued Sept. 1st to Jan. 1st, 1861		10,500 00
This was paid Feb. 21st, 1861 (July to Jan., 6 mos.)		$ 576,303 34
Loan was finally disposed of as follows, having been reduced by the Partial Payment Plan used above, and including interest, to $438,900.00:		
Journal "N," Board Public Works, Folio 631, July 1, 1882—1st Payment—		
Coupon Bonds	$ 282,000 00	
Fractional Certificates	10,436 41	
Record Book, Sinking Fund, 2nd Auditor, Folio 285, July 8, 1884—		
Bonds	15,700 00	
Fractional Certificates	166 37	
Cash	55	
Journal "N," Board Public Works, Folio 632, Sept. 28, 1882—		
State Bonds	38,500 00	
Fractional Certificates	13 76	
Folio 635—		
Bonds	91,996 00	
Fractional Certificates	86 91	
	$ 438,900 00	

DEFENDANT'S EXHIBIT No. 3. Asset 3.

Class C. (Hillman, Exhibit 3-A.)

STATE OF WEST VIRGINIA.

Statement showing Profit and Loss of the Richmond & Petersburg Railroad Company to determine the value of said stock on opening of business January 1, 1861.

	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
3. Richmond & Petersburg R. R. Co. Stock—					
1856	$ 786,100 00	$162,881 32	**		$127 20
1857—Stock	834,250 00				
Profits this year		28,601 86			
Less Dividends		48,205 00			
			*$ 19,603 14	$143,278 18	117 17
1858—Stock	835,750 00				
Profits this year		52,312 61			
Less Dividends		48,730 00			
			3,582 61	146,860 79	117 58
1859—Stock	835,750 00				
Profits this year		64,508 33			
Less Dividends		48,880 00			
			15,628 33	162,489 12	119 44
1860—Stock	835,750 00				
Profits this year		69,087 87			
Less Dividends		48,880 00			
			20,207 87	182,696 99	121 86

*Loss.

**Pages 746-7, Document 17, Report to State, 1856-7. Trial-balance.

(Hillman, Exhibit 3 & 4.)

Class C.
Class D.

STATE OF WEST VIRGINIA.

Asset 3.
Sheet 1.

Richmond & Petersburg Railroad—Disposal of Securities of that Company owned by the Commonwealth of Virginia.

	Cost.	Par.	Settlement.	Payment.
A. Dividend Bond, page 24, Ledger "A," "Internal Improvement Fund"	$ 33,408 00	$ 33,408 00		
Paid Nov. 7, 1861, page 117, Journal "D," Internal Improvement Fund			$ 33,408 00	
B. Dividend on Stock—				
Dividend due Jan. 1, 1861, paid Feb. 28, 1861, page 82, Journal "D," Internal Improvement Fund			9,640 00	$ 43,048 00
C. Stock—Ledger "B," Int. Imp., Folio 184, Jan. 1, 1861	385,600 00			
C. Stock—			$ 578,400 00	
Sold @ $150 and paid for as follows: (Pages 351-2, Journal "N," Internal Improvement Fund.)				
Pa'd March 8, 1871				$ 100,000 00
Paid July 12, 1871				3,057 50
Interest on same to July 1, 1871				525 93
Paid July 13, 1871				384,172 20
Interest on same to July 1, 1871				46,165 65
Paid July 20, 1871				7,150 00
Paid August 4, 1871				21,278 00
Interest to July 1, 1871				449 45
Paid September 6, 1871				12,625 40
Paid September 6, 1871				*3,000 00
				$ 578,424 13
Total Bonds, Dividend & Stock				$ 621,472 13

*Balance due September 6, 1871, $2,995.87, was secured by State Bonds for $3,000.00, which were forfeited to the State, thus creating excess of $4.13—See Journal "N," page 351 and 352, Internal Improvement Fund.

CLASS C—1861.

DEFENDANT'S EXHIBIT No. 3. Asset 4.

Class C. (Hillman, Exhibit 3.)

STATE OF WEST VIRGINIA.

Statement showing Profit and Loss of the Virginia Central Railroad Company to determine the value of said stock on opening of business January 1, 1861.

	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
4. Virginia Central R. R. Co.—Stock—1856....	$3,000,988 15	$381,176 68	*		$112 70
1857—Stock	3,041,338 97				
Profits this year		178,632 72	178,632 72	559 809 40	118.40
1858—Stock	3,122,967 92				
Profits this year		158,030 15	158,030 15	717,839 55	122 99
1859—Stock	3,132,445 69				
Profits this year		280,591 86			
Less Dividends		127,246 07			
			153,345 79	871,185 34	127 81
1860—Stock	3,152,854 23				
Profits this year		267,681 51			
Less Dividends		153,304 46			
			114,377 05	985,562 39	131 16

*Pages 844-5, Document 17, Report to State, 1856-7. Trial-balance.

DEFENDANT'S EXHIBIT No. 3. Asset 4.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 4.

STATE OF WEST VIRGINIA.

Virginia Central Railroad—Stock.

A. STOCK—	Cost Price.	Disposed Of For:
Folio 185, Ledger "B," Internal Impv't. Fund, shows that on Jan. 1, 1861, the value of this Stock was	$1,927,382 57—95.7%	
Invested after Jan. 1, 1861, as follows:		
Journal "D" Internal Impv't.—		
Folio 91—Jan. 25, 1861	7,000 00	
Folio 91—Feb. 21, 1861	7,000 00	
Folio 91—Mar. 22, 1861	8,000 00	
Folio 102—Apr. 19, 1861	11,000 00	
Folio 141—Nov. 6, 1862	53,604 95	
	$2,013,987 52	
This stock was disposed of on various dates, and in quantities and prices shown below:		
Journal "O" Board of Public Works—		
Folio 129—Aug. 15, 1888—17,622 39/100 shares		$ 25,500 00
Folio 157—Jan. 7, 1890—100 shares @ $26.75		2,675 00
Folio 157—Jan. 9, 1890—1,200 shares @ $26.75		32,100 00
Folio 157—Jan. 10, 1890—200 shares @ $26.75		5,350 00
Folio 157—Jan. 27, 1890—800 shares @ $26.75		21,400 00
Folio 158—Feb. 10, 1890—200 shares @ $25.00		5,000 00
Folio 158—Feb. 10, 1890—400 shares @ $24.75		9,900 00
Folio 158—Feb. 10, 1890—100 shares @ $24.50		2,450 00
Folio 158—Feb. 10, 1890—200 shares @ $24.37½		4,875 00
Folio 158—Feb. 10, 1890—300 shares @ $23.87½		7,162 50
Folio 158—Feb. 10, 1890—1,000 shares @ $23.75		23,750 00
Folio 158—Feb. 10, 1890—1,200 shares @ $23.50		28,200 00
Folio 158—Feb. 10, 1890—1,200 shares @ $23.75		28,500 00
Folio 158—Feb. 11, 1890—800 shares @ $23.75		19,000 00
Folio 158—Feb. 11, 1890—100 shares @ $23.62½		2,362 50
Folio 158—Feb. 11, 1890—411 shares @ $23.50		9,658 50
Folio 158—Feb. 11, 1890—200 shares @ $23.37½		4,675 00
Folio 158—Feb. 11, 1890—400 shares @ $23.25		9,300 00
Total.....26,433 39/100 shares		$ 241,858 50
	95.7% equals	$ 231,458 58

The total amount received for the stock was received into the Treasury as per	
Cash Book, 2d Auditor, Aug. 20, 1888	$ 25,500 00
Cash Book, 2d Auditor, Feb. 12, 1890	216,358 50
	$ 241,858 50

DEFENDANT'S EXHIBIT No. 3. Asset 4.
(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 4.
Asset D. 4.

STATE OF WEST VIRGINIA.
Virginia Central Railroad—Loan.

			Disposed of For.
B.	LOAN.		
	Folio 141, Ledger "B," Internal Improvement Fund, shows that on Jan. 1, 1861, the amount loaned this company was	$ 90,000 00	
	Subsequent to Jan. 1, 1861, the State loaned this company $120,000.00, as follows:		
	Folio 241, Ledger "B," Internal Improvement Fund—March 31, 1861	90,000 00	
	Folio, 241, Ledger "B," Internal Improvement Fund—June 30, 1861	30,000 00	
	Total amount of this loan	$210,000 00	
	Interest which had accrued on above loan prior to Jan. 1, 1861, was received by the State of Virginia as set forth below:		
	Cash Book No. 10, Board of Public Works, Second Auditor's Office—Jan. 2, 1861, semi-annual interest due 1/1/61 on 7% loan		$ 1,159 34
	The above loan was bought by the Chesapeake & Ohio R. R. as shown by statement on file in File Room of Corporation Commission, who paid in bonds and interest		210,076 60
	Confirmation of sale and receipt of money is shown in the report of the Second Auditor for the year 1871.		
			$211,235 94
C.	DIVIDEND BONDS.		
	Folio 280, Ledger "B," Internal Improvement Fund, shows that on Jan. 1, 1861, the State owned dividend bonds of the Virginia Central R. R. to the value of	$143,508 00	
	which were disposed of as follows:		
	Sold to Chesapeake & Ohio R. R.:		
	Cash Book, Sinking Fund (not paged), Jan. 17, 1863		$ 40,680 00
	For redemption of Dividend Bond, dated Oct. 1, 1851		44,178 00
	For redemption of Dividend Bond, dated July 1, 1855		58,650 00
	File Box, Corporation Commission, Aug. 25, 1870.		
	Before disposing of these bonds, the State received interest, which had accrued prior to Jan. 1, 1861, as follows:		
	Cash Book No. 10, Board Public Works (not paged)—		
	Jan. 19, 1861, interest on Dividend Bonds due Jan. 1, 1861		5,959 80
			$149,467 80

DEFENDANT'S EXHIBIT No. 3. (Asset 5.)

STATE OF WEST VIRGINIA.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C.5
Asset D.20

Blue Ridge Railroad.

(Built by the State of Virginia and sold April 1, 1870 to the Chesapeake & Ohio R. R. Co.

Cost of construction Jan. 1, 1861—			
(Page 187 Ledger "B" Internal Im'pt. Fund)			$1,604,723 23

Amount invested in road after Jan. 1, 1861, was $90,147.62, all of which was allowed to the Va. Central R. R., which was to do the work, as a credit on their toll account, and which amount was in addition to the tolls mentioned below.

Price obtained for the road—			
(Journal "D" Internal Im'pt. Fund, P. 171)			
Apl. 1, 1870			$ 625,348 08
Paid as follows:			
Bonds	$ 574,921 48		
Int. on same	8 96		
Check	8 96		
	$ 625,348 08		
Tolls were received as follows:			
(Cash Book 9 Bd. Pub. Wks., Jan. 26, 1861)			
From Va. Central for quarter ending 1/1/61			1,534 69
			$ 626,882 77

Subsequently there were received the following tolls from the Va. Central, which may or may not be considered as part of the purchase price. My judgment is may not.

May 29, 1861—Cash Book 9—B. P. W.—	
Qr. ending 1/31/61	704 19
July 25, 1861—Cash Book 9—B. P. W.—	
Qr. ending 6/30/61	1,082 64
Dec. 21, 1861—Cash Book 9—B. P. W.—	
Qr. ending 9/30/61	1,266 78
Mar. 4, 1862—Cash Book 9—B. P. W.—	
Qr. ending 1/1/62	1,584 06
July 23, 1862—Cash Book 9—B. P. W.—	
Qr. ending 3/31/62	1,245 98
Aug. 22, 1862—Cash Book 9—B. P. W.—	
Qr. ending 6/30/62	986 55
Nov. 6, 1862—Cash Book 9—B. P. W.—	
Qr. ending ———	1,501 55
Mar. 2, 1863—Cash Book 10—B. P. W.—	
Qr. ending 7/1/63	6,576 50
Mar. 31, 1864—Cash Book 10—B. P. W.—	
Year ending 12/31/63	64,984 49
	$ 79,932 74

DEFENDANT'S EXHIBIT No. 3. (Asset 6.)

STATE OF WEST VIRGINIA.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 6

Alexandria, Loudoun & Hampshire Railroad—Stock.

Stock—Jan. 1st, 1861 .....$	993,248.00=97.64%		
Ledger "B," P. 181 Internal Im'pt. Fund).			
Invested after Jan. 1st, 1861—			
Jan. 17, 1861—Journal "D," P. 90, Internal Im'pt. Fund.....	15,000 00		
Mar. 1, 1861—Journal "D," P. 90, Internal Im'pt. Fund.....	7,500 00		
Apl. 16, 1862—Journal "D," P. 131, Internal Im'pt. Fund....	1,500 00		
	$1,017,248 00		
Sold to road @ $5 per share, $50,862.40, paid in 3 notes of $16,954.13 each, dated Nov. 25, 1867, for 5, 7 and 10 years.....97.64% of	50,862 40		$ 49,662 05
Page 245, Board Pub. Wks. minutes—which notes were paid with interest as follows:			
May 17, 1872—P. 397, Journal "N"—B. P. W. .....$	1,500 00	1st Payment	
Mar. 19, 1873—P. 435, Journal "N"—B. P. W.	3,000 00	2nd Payment	
June 5, 1883—P. 641, Journal "N"—B. P. W.	65,188 71	3rd Payment	
	$ 69,688 71		

DEFENDANT'S EXHIBIT No. 3. Asset 7.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 7.
Class D. Asset D. 5.

STATE OF WEST VIRGINIA.

Winchester & Potomac R. R.—Loan and Interest on Same.

			Disposed of For.
A.	Loan—		
	(Page 241, Ledger "B," Internal Im'pt. Fund)	$ 83,333 33	
B.	Interest on Loan—		
	Cash Book Board Pub. Wks. No. 9 (not paged) shows payment of "annuity" (interest) year ending Nov. 1, 1861, of $5,000. Two months of this year, accruing in 1860, equals	833 33	
	Total	$ 84,166 66	
	This loan was disposed of as follows:		
	Folio 175, Journal "D," Board Public Works, under Sept. 30, 1873, shows that the Treasurer of the Commonwealth received in full settlement of this loan		$ 83,333 33

DEFENDANT'S EXHIBIT No. 3. Asset 8. (Sheet 1.)

Hillman, Exhibit 3 & 4.

Class C. Asset C. 8.
Class D. Asset D. 7.

STATE OF WEST VIRGINIA.

Virginia & Tennessee R. R. Co. Statement of Loan and Interest on same which was unpaid Jan. 1, 1861, and subsequent payments thereon.

			Amount Due.
A.	Interest on loan of $1,000,000 (see settlement below), page 255, Ledger "B," Internal Im'pt. Fund, shows on Sept. 30, 1860 (N. B.—Postings are quarterly and the journal date of this entry is July 1, 1860.)		
	Debits to this Interest Account.....	$472,534 12	
	Add 6 mos. interest to Jan. 1, 1861.....	35,000 00	
	Total interest accrued to Jan. 1, 1861..	$507,534 12	
	Same page shows payments on acct. of above interest, credits to interest acct.....	227,534 12	
		$280,000 00	$280,000 00
	Same page of ledger has on Sept. 30/63 this acct. in balance $682,584.12 debts & credits showing that all arrearages of interest were paid. Evidenced also by the following payments of back interest:		
	Cash Book No. 9, Bd. Pub. Wks., Second Auditor's Office—		
	May 21, 1861.....	$ 6,000 00	
	May 23, 1861	10,000 00	
	June 3, 1861	10,000 00	
	June 26, 1861	7,952 00	
	July 9, 1861	1,653 57	
	Jan. 11, 1862	14,394 43	
	Cash Book No. 10, Bd. Pub. Wks., Second Auditor's Office—		
	Feb. 7, 1863	90,000 00	
	Mar. 5, 1863	50,000 00	
	May 14, 1863	55,000 00	
	Aug. 15, 1863	35,000 00	
			$280,000 00

DEFENDANT'S EXHIBIT No. 3. Asset 8. (Sheet 2.)

Hillman, Exhibit 3 & 4.

Class C. Asset C. 8.
Class D. Asset D. 7.

STATE OF WEST VIRGINIA.

Virginia & Tennessee R. R. Co.

		Disposed of for
B. Loan—Face Value.	$1,000,000 00	
(Page 240, Ledger "B," Internal Im'pt. Fund)		
Payments on above loan made as follows:		
Cash Book No. 10, Bd. Pub. Wks., June 19, 1863	200,000 00	
Cash Book, Sinking Fund (not paged)—		
June 30, 1863	300,000 00	
Aug. 6, 1863	100,000 00	
Aug. 7, 1863	100,000 00	
Sept. 11, 1863	186,685 00	$886,685 00

This loan was never paid in full, but the unpaid balance was turned over to the A. M. & O., together with the other items of the South Side R. R., Virginia & Kentucky R. R., and the Norfolk & Petersburg R. R. for $4,000,000. (See Hillman Exhibit 6, Class F.)

If this loan had been worked out on the "partial payment" plan, as loans that were eventually settled in full, West Virginia would be entitled to take into consideration $37,237.14 more. (See Assets, C. 8 and D. 7, Supplemental Answer.)

DEFENDANT'S EXHIBIT No. 3. Asset 8. (Class D.)

(Hillman, Exhibit 3 & 4.)

Class C.
Class D. Asset D. 8.

STATE OF WEST VIRGINIA.

South Side Railroad.

Interest on Loan due 1-1-61 *and paid subsequently.*

Folio 234, Ledger "B," Dept. Public Works, shows interest due on loan of $800,000 up to July 1, 1861		$ 441,487 69
Less six mos. interest, Jany. to July 1, 1861		28,000 00
Reducing interest to Jany 1, 1861		$ 413,487 69
Paid up to Sept., 1859 (last payment before Jany. 1, 1861) on acct.		148,987 69
Amt. Int. due Jan. 1, 1861		$ 264,500 00

All of which was subsequently paid as same page, same ledger, shows Sept. 30, 1863, the account balanced.

Cash Book No. 9, Board Public Works (not paged) shows payment of the above as follows:

Nov. 10, 1862	$ 12,500 00
Oct. 2, 1862	56,000 00

Cash Book No. 10, Board Public Works (not paged) shows payment of the above as follows:

July 29, 1863	56,000 00
Aug. 1, 1863	63,000 00
Aug. 8, 1863	28,000 00
Aug. 17, 1863	21,000 00
Sept. 16, 1863	28,000 00
	$ 264,500 00

The loan itself, Asset C 9, was never paid. It was turned over with the stock to the A. M. & O. R. R., with other roads for $4,000,000. See Hillman Exhibit 6, Class F, for the

Virginia & Tennessee R. R.
South Side R. R.
Virginia & Kentucky R. R.
Norfolk & Petersburg R. R.

If this loan had been figured on the "partial payment" plan that was used on loans that were eventually paid, W. Va. would be entitled to take $32,000 more into consideration. (See figures on Assets D-9 and C-8, in Supplemental answer.)

DEFENDANT'S EXHIBIT No. 3. Asset 10.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 10.

Class D. Asset D. 9.

STATE OF WEST VIRGINIA.

Norfolk & Petersburg Railroad—Stock and Loan.

		Amt. Rec'v'd
A. STOCK	$1,439,970 00	
(Page 182, Ledger "B," Internal Im'pt. Fund.) On Dec. 22, 1870, page 178 Journal "D," Im'pt. Fund, it was discovered that $300,000 of this amount was in shape of bonds or loans	300,000 00	
Leaving book value of stock	$1,139,970 00	
Consisting of the following shares, as shown on page 178, Journal "D," Internal Im'pt. Fund:		
8175 shares ordinary stock—par $100	817,500 00	
825 shares guaranteed 6% stock—par $100 ..	82,500 00	
3000 shares preferred 7% stock—par $100 ...	300,000 00	
12000 shares TOTAL STOCK	$1,200,000 00	
Dividends paid on above guaranteed stock, $82,500; 3 years at 6 per cent., Jan. 1, 1859, to Jan. 1, 1862, page 117, Journal "D," Internal Im'pt. Fund; 2 years accrued up to Jan. 1, 1861, is		$ 9,900 00
Stock was included in sale of four roads already mentioned to the A. M. & O. R. R. (See Exhibit Hillman 6, to follow.)		
Interest on above-named Loan of $300,000, 4½ years, Jany. 1, 1859, to July 1, 1863, at 6%, Folio 158, Journal "D," Internal Im'pt. Fund, Paid Jan. 11, 1864, $94,500. Proportion to Jan. 1, 1861		36,000 00
B. LOAN.		
Page 179, Journal "D," Internal Im'pt. Fund shows in the settlement Dec. 22, 1870, when stocks and loans were turned over to the A. M. & O. that $163,000 of the $300,000 loan was yet outstanding, hence there must have been paid		137,000 00
		$ 182,900 00

DEFENDANT'S EXHIBIT No. 3. Asset 10.

(Continued)

N. B.—In a report to the Senate, Doc. 2, page 19-20, 1874-5, by John O. Stegar, and transmitted to Senate as an appendix to the Governor's message, there is shown to have been paid on this loan, $151,524.49, and the report further says that the book entries were missing and that he counted the bonds in many instances, and that report can be relied upon as very nearly, if not absolutely, accurate. I, also, am unable to locate any entries on this subject.

DEFENDANT'S EXHIBIT No. 3. Asset 11.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 11.

STATE OF WEST VIRGINIA.

Roanoke Navigation Company—Stock.

		Disposed of for
STOCK—		
(Ledger "B," page 193, Internal Imp'vt Fund..	$ 30,000 00	
Sept. 30, 1882, Day Book First Auditor, page 476. "Received from Roanoke Navigation Company on decree of court"		$ 2,332 00

DEFENDANT'S EXHIBIT No. 3. Asset 12.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 12.

STATE OF WEST VIRGINIA.

Alexandria Canal.

		Disposed of for
STOCK—		
Ledger "B," Internal Improvements, Folio 191, shows that on Jan. 1, 1861, the State owned stock in this canal to the value of—for 2720 shares	$ 272,000 00	
The stock was disposed of July 1, 1887, as shown below:		
Record Book, Sinking Fund, Folio 394, July 1, 1887—2720 shares sold as follows at 30 cts. per share:		
To City Council of Alexandria, 1220 shares....		$ 366 00
To George Mulbach, 100 shares		30 00
To Frank Hume, 600 shares		180 00
To H. H. Wells, 500 shares		150 00
To A. A. Berney, 100 shares		30 00
To Frank Agnew, 200 shares		60 00
Total, 2720 shares		$ 816 00
Less expense of sale for advertising, etc., as shown by same record		51 53
		$ 764 47
The Treasurer's Blotter for 1887-1888, Folio 5, shows the receipt July 1, 1887, on a/c this sale, of $816.00.		

DEFENDANT'S EXHIBIT No. 3. Asset 13.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 13.

STATE OF WEST VIRGINIA.

Upper Appomattox Company—Stock.

		Disposed of for
STOCK—	$ 56,500 00	
(Ledger "B," page 191, Internal Impv't Fund.)		
Cash Book Sinking Fund, p. 31, Feb. 24, 1875..		$ 3,000 00
Cash Book Sinking Fund, p. 48, Jan., 1881....		2,280 00
Record Book Sinking Fund, p. 286, July 8, 1884.		
Coupon Bonds		10,500 00
Registered Bonds		300.00
Fractional Certificates		64 26
		$ 16,144 26

DEFENDANT'S EXHIBIT No. 3. Asset 14.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 14.

STATE OF WEST VIRGINIA.

Dismal Swamp Canal.

Amounts collected after January 1, 1861.

STOCK— (Ledger "B," p. 191, Internal Im'pt. Fund.)		$ 190,000 00
Sold 760 shares, $250 each — $190,000.00 (Journal "N," Dept. Public Works, p. 238 and 241)		$ 9,935 99
N. B.—The $9,935.99 was invested in Virginia bonds as follows:		
Principal	$ 24,839 98	
Interest	5,961 59	
Total	$ 30,801 57	

which amount was turned over to the Sinking Fund July 31, 1874. (Page 207, Record Book of Sinking Fund.)

DEFENDANT'S EXHIBIT No. 3. Asset 15.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 15.
Class D. Asset D. 11.

STATE OF WEST VIRGINIA.

Loan to Washington College.

	Face Value.	Disposed of for
LOAN—		
On Jan. 1, 1861, the Ledger of the Literary Fund for that period, Folio 8, shows that there was a balance due the State of an original loan of $4,000.00 of	$ 2,000 00	
Interest on this loan which had accrued prior to Jan. 1, 1861, was paid and received by the State as follows:		
Cash Book No. 5, Literary Fund (not paged), March 29, 1861, on a/c Interest due Jan. 1, 1861		$ 60 00
This loan was redeemed Jan. 1, 1896, as set forth below:		
Cash Book No. 1, New Series, Literary Fund, Folio 238—Received of the President and Directors of Washington & Lee University (formerly Washington College), the balance of a loan of $4,000.00, made July 16, 1822, by the Board of the Literary Fund.....		2,000 00
	$ 2,000 00	$ 2,060 00

DEFENDANT'S EXHIBIT No. 3. Asset 16.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 16.
Class D. Asset D. 12.

STATE OF WEST VIRGINIA.

Richmond Academy.

	Face Value.	Disposed of for
BONDS—		
On Jan. 1, 1861, the Ledger of the Literary Fund for that period, Folio 11, shows that the State owned bonds to the value of....	$ 400 00	
Interest on these bonds, which had accrued prior to Jan. 1, 1861, was paid and received by the State as follows:		
Cash Book, No. 5, Literary Fund (not paged), July 9, 1861, on account 12 months' interest to July 1, 1861, $24.00, of which West Virginia is entitled to a proportion of one-half		$ 12 00
This bond was redeemed as set forth below:		
Cash Book, No. 1, New Series, Literary Fund, Folio 240, Feb. 5, 1896, received on account redemption 6% bond.....		400 00
		$ 412 00

DEFENDANT'S EXHIBIT No. 3. Asset 17.

(Hillman, Exhibit 3 & 4.)

Class C. Asset D. 13.
Class D. Asset C. 17.

STATE OF WEST VIRGINIA.

All figures in claim taken from file in vault of the Second Auditor's Office containing the original settlement papers, and confirmed by certified copy of record on file, Treasury Department U. S., Washington.

Principal of Loan by Va. to U. S. Government July 1st, 1814	$ 298,369 74
Interest on same to Feb. 11th, 1894 (being 79 years, 7 months, 10 days @ 6%)	1,425,212 79
	$1,723,582 53
Payment was effected in 1903 as of date of Feb. 11th, 1894, as follows:	
Virginia bonds owned by the U. S., returned—Principal	$ 581,800 00
Chesapeake & Ohio Guaranteed Bonds—Principal	13,000 00
Interest on $594,800 from Jan. 1st, 1861, to Feb. 11th, 1894	1,181,669 33
	$1,776,469 33
Less interest paid 1867-70, 4% on $581,800	69,816 00
	$1,706,653 33
Paid to the Restored State of Virginia (no date)	16,923 70
	$1,723,577 03
Cash paid Va. by the U. S., 1903, Bal. of Settlement	5 50
	$1,723,582 53
Value of Claim Jan. 1st, 1861—Principal	$ 298,369 74
Interest @ 6% July 1st, 1814, to Jan. 1st, 1861	832,451 57
Total	$1,130,821 31

DEFENDANT'S EXHIBIT No. 3. Asset 18.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 18.

STATE OF WEST VIRGINIA.

Claim *vs.* Selden, Withers and Company.

Collections Made Subsequent to January 1, 1861.

Date.	Received from:	Reference.			Page.	Cash.
Apl. 26, 1866	—James Neeson	Treas.	Cash	Book	126	$ 500 00
June 23, "	— " "	"	"	"	166	4,674 60
July 11, "	— " " Atty., &c.	"	"	"	182	1,189 48
Dec. 7, "	— " "	"	"	"	26	2,212 00
Nov. 5, 1868	— " "	"	"	"	14	5,522 00
July 17, 1869	— " "	"	"	"	125	5,150 00
Apl. 27, 1871	— " "	"	"	"	195	5,000 00
June 3, "	—Sale Marietta & Cinn. R. R. Stock	3. P. W. Journal "N"			330	*8,036 49
July 6, "	—James Neeson	Treas. Cash Book			250	4,395 19
Sep. 13, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W. Journal "N"			355	*11,871 30
Nov. 9, "	—a/c Sale Real Estate, St. Louis	Snkg. Fd. Cash Book			2	5,089 29
Nov. 18, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W. Journal "N"			362	*8,211 91
Dec. 23, "	—a/c Sale Real Estate, St. Louis	Snkg. Fd. Cash Book			3	10,000 00
Mar. 6, 1872	—Sale Marietta & Cinn. R. R. Stock	"	"	"	5	13,692 98
May 4, 1872	—James Neeson	"	"	"	7	3,000 00
June 10, "	—a/c Sale Real Estate, St. Louis	"	"	"	8	10,000 00
Dec. 4, "	—L. Turner	"	"	"	13	1,600 00
Dec. 21, "	—A. Wyle, Trustee for Withers	"	"	"	13	10,000 00
June 23, 1873	—James Neeson, Agent B. P. W.	"	"	"	17	9,500 00
Sep. 24, "	— " " " State of Va.	"	"	"	19	7,500 00

DEFENDANT'S EXHIBIT No. 3. Asset 18.

(Continued)

Feb. 20, 1875— " " " " " "	"	"	"	"	31	1,600 00	
May 13, 1887—Cash	"	"	"	"	58	1,286 00	
Nov. 26, 1889—Board Pub. Wks.	"	"	"	"	60	2,504 00	
Aug. 20, 1891— " " "	"	"	"	"	61	307 50	
							$ 132,842 74

*Note:

Cash received		132,842 74	
Less cash received from proceeds of sale of Marietta & Cincinnati R. R. Co. Stock, viz.:	$ 8,036 49		
	11,871 30		
	8,211 91	28,119 70	
		$ 104,723 04	
Add par value Virginia State Bonds purchased with proceeds from sale of Marietta & Cinn. R. R. Co. Stock		47,300 00	
Total as per Asset "C 18"		$ 152,023 04	

Same report—Doc. 6, page No. 8—states: "The stock of the Marietta & Cincinnati R. R. Co. was obtained by the State from Selden, Withers & Company.

DEFENDANT'S EXHIBIT No. 3. (Asset 19.)

Hillman Exhibit 3 & 4

STATE OF WEST VIRGINIA.

Class C. Asset C. 19.
Class D. Asset D. 6.

Richmond, Fredericksburg & Potomac Railroad

Dividends, Interest and Loans due or on hand January 1. 1861,.
Paid Subsequently.

A. Dividend Certificates of Debt—

	Face Value.	
Page 280, Ledger "B," Internal Improvement Fund.....	$ 149,984 00	
Paid as follows:		
March 13, 1863—Sinking Fund Cash Bk. 5 (not paged).....		$ 27,520 00
July 1, 1863—Sinking Fund Cash Bk. 5 (not paged).....		122,464 00
	$ 149,984 00	$ 149,984 00
B. Jan. 16, 1861. Interest due Jan. 1, 1861, on Dividend certificate of debt—		
Page 82, Journal D, "Int. Improvement Fund," 3% on $111,456.00	3,343 68	
Page 82, same Journal D, 6 months' interest on $28,896.00 @ 7%	1,011 36	
Same, 6 months' interest @ 7% on $9,632	112 37	4,467 41
Value of claim Jan. 1st, 1861		$ 154,451 41
Memo. Total as above	$ 154,451 41	
Add 1/3-2 months for a dividend of $9,632.00 due Jan. 1, 1861. not paid until Dec. 30, 1872, page 415, Journal N, Internal Improvement Fund. Included in payment of $17,806.68	3,210 66	
Making the total shown on "D"	$ 157,662 07	

DEFENDANT'S EXHIBIT No. 3. Asset 19.

(*Continued*)

If this is considered at all, there should be added to it on acct. of the following:		
Premium on $9,632 to equal gold	$ 481 60	
Int. on same, July 1/66 to Jan. 1/ 73	3,944 30	
	4,425 90	
Less costs of $250 (entire cost)	250 00	
1/3 of	$ 4,175 90	1,391 96
(As per judgment Circuit Court)		$ 159,054 03

N. B.—Since Exhibit 2 shows the value of the R., F. & P. Stock March 31, 1861, and the above "memo." items are included in that value, they are omitted from consideration in this exhibit.

DEFENDANT'S EXHIBIT No. 4.

Class D. (Hillman, Exhibit 4.)

STATE OF WEST VIRGINIA.

Recapitulation of Schedule "D" Assets.

Results of Revision of Schedule "D" by Hillman.

	Schedule "D." Details.	Total.
1. Orange & Alexandria R. R. Co. Stock.....$	31,604 09	
Orange & Alexandria R. R. Co. Loan....	20,336 98	
Orange & Alexandria R. R. Co. Overpaid..	1 02	$ 51,942 09
2. Richmond & Danville R. R. Stock.....		
Richmond & Danville R. R. Co. Loan....	10,500 00	10,500 00
3. Richmond & Petersburg R. R. Co. Stock...	*9,640 00	9,640 00
4. Virginia Central R. R. Co Stock.....		
Virginia Central R. R. Co. Loan.....	1,159 34	
Virginia Central R. R. Co. Dividend Bonds.	*5,959 80	7,119 14
5. Winchester & Potomac R. R. Co.	833 33	833 33
6. Richmond, Fredericksburg & Potomac R. R. (Dividend Certificate)	*4,467 41	4,467 41
7. Virginia & Tennessee R. R. Co. Loan.....	280,000 00	280,000 00
8. South Side Railroad Co. Loan	264,500 00	264,500 00
9. Norfolk & Petersburg R. R. Co. Stock.....	9,900 00	
Norfolk & Petersburg R. R. Co. Loan....	36,000 00	45,900 00
*Part of the amount mentioned as due in Class "D" was in form of dividend notes, which had been issued by the Company, and, therefore, appears in Class "C."		
10. James River & Kanawha Co.....	250 00	250 00
11. Loan to Washington College	60 00	60 00
12. Richmond Academy Bonds,.....	12 00	12 00
13. Claim against U. S. Government	832,451 57	832,451 57
14. The Farmers' Bank of Virginia	33,691 00	33,691 00
15. Bank of Virginia	33,726 70	33,726 70
16. Bank of the Valley	16,936 50	16,936 50
17. Exchange Bank	30,642 50	30,642 50
18. Northwestern Bank	13,104 00	13,104 00
19. Fairmount Bank	1,500 00	1,500 00
20. Blue Ridge R. R., Tolls for use of	1,534 69	1,534 69
		$1,638,810 93

DEFENDANT'S EXHIBIT No. 4. Assets 14 to 19.

Class C. (Hillman, Exhibit 3 & 4.)
Class D. Assets D 14 to 19.

STATE OF WEST VIRGINIA.

Bank Dividends due January 1, 1861, on Stock owned by the Commonwealth of Virginia and received subsequent to that date.

1861—			
Jan.	7	Exchange Bank of Va., page 48, Treasurer's Cash Book KK	$ 29,708 00
Jan.	16	Bank of Virginia, page 52, Treasurer's Cash Book KK.	7,962 50
Jan.	18	Bank of the Valley, page 53, Treasurer's Cash Book KK	12,950 00
Feb.	4	Northwestern Bank of Va., page 73, Treasurer's Cash Book KK	10,213 00
Feb.	9	Farmers' Bank of Va., page 74, Treasurer's Cash Book KK	17,675 00
Jan.	7	Exchange Bank of Va., page 82, Journal D, Fund Internal Improvement	934 50
Jan.	10	Farmers' Bank of Va., page 82, Journal D, Fund Internal Improvement	12,327 00
Jan.	10	Bank of Virginia, page 82, Journal D, Fund Internal Improvement	20,567 75
Jan.	18	Bank of the Valley, page 82, Journal D, Fund Internal Improvement	3,664 50
Feb.	4	Northwestern Bank of Va., page 82, Journal D, Fund Internal Improvement	1,141 00
Jan.	10	Farmers' Bank of Va., Cash Book 5, Lit. Fund (not paged)	3,689 00
Jan.	10	Bank of Virginia, Cash Book 5, Lit. Fund (not paged)	5,196 45
Jan.	18	Bank of the Valley, Cash Book 5, Lit. Fund (not paged)	322 00
Jan.	5	Fairmount Bank, Cash Book 5, Lit. Fund (not paged)	1,500 00
Jan.	4	Northwestern Bank of Va., Cash Book 5, Lit. Fund (not paged)	1,750 00
			$129,600.70

DEFENDANT'S EXHIBIT No. 5. (Sheet 1.)

Class E. (Exhibit, Hillman No. 5.)

Statement showing ownership of stocks in various banks by the Commonwealth of Virginia January 1, 1861, and the value of the same as shown by Bank's Statements.

FARMERS' BANK OF VIRGINIA—Par, $100 per share	Par.	Value. Jan. 1st, 1861.	Less Div'd. Declared Jan. 1st, 1861.	Net Value.
Literary Fund, 1,054 shares (page 13, Lit. Fund Ledger)	$ 105,400 00			
Board Public Works, 3,522 shares (Page 320, Ledger "B," Second Auditor's office)	352,200 00	@ 115 07%	3-1/2%	111.57%
Commonwealthl Fund, 5,050 shares (page 50, Ledger 1861-4, Auditor's Office)	505,000 00			
Total—9,626 shares @ 100	$ 962,600 00	$1,107,663 82	$ 33,691 00	$1,073,972 82

Statement of Farmers Bank of Virginia, Jan. 1, 1861. Taken from printed report of officers (under oath) to State. Document 14, Annual report of Auditor for 1861—pages 14-15, Second Auditor.

Assets.		Liabilities.	
Debt outstanding	$5,764,680 74	Capital Stock	$3,150,900 00
Sterling Bills	5,375 84	Notes in circulation	1,532,578 06
Stocks	41,728 51	Deposits	1,931,138 51
Specie	416,120 40	Due other Banks	240,885 56
Notes other Va. Banks	583,276 20		
Notes outside Va. Banks	9,987 00		
Due from other banks	308,730 62		
Real Estate	193,696 46	Profit & Loss	337,067 05
In transitu	7,074 53	Profit of the institution	138,101 18
	$7,330,670 30		$7,330,670 30

Profits, $475,168.23, show Book Value of 115.07 Jan. 1st, 1861.

Dividends declared		
1856	per share (par)	8%
1857	"	8%
1858	"	7½%
1859	"	7½%
1860	"	7¼%
1861	"	7¼%
1862	"	7%
1863	"	7½%

Correction: Page 320 should be page 282.

DEFENDANT'S EXHIBIT No. 5. (Sheet 2.)

Class E.

(Hillman, Exhibit No. 5.)

STATE OF WEST VIRGINIA.

BANK OF VIRGINIA—Par $70 per share.	Par	Value per share Jan. 1st, 1861 (Dec. 31st, 1860)	Less Div'd. Declared Jan. 1st, 1861 per share.	Net Value per share.
Literary Fund, 2,121 shares (page 13, Lit. Fd. Ledger)	$ 148,470 00			
Board Public Works, 8,395 shares (page 319, Ledger "B," Second Auditor's Office)	587,650 00	$ 78 75	$ 2 45	$ 76 30
Commonwealth Fund, 3,250 shares (page 57, Journal KK, Treasr., shows payment of dividends, 3-1/2 declared, 1-1-61 on $227,500. The amount on Ledger covering this date has been erased, but it shows in both prior and subsequent ledgers.)	227,500 00			
Total—13,766 shares @ $70	$ 963,620 00	$1,084,072 50	$ 33,726 70	$1,050,345 80
Correction: Page 319 should be page 282.				

CLASS E—1861.

DEFENDANT'S EXHIBIT No. 5. (Sheet 2.)

(Continued)

Statement of Bank of Virginia, January 1, 1861. *Taken from printed report of officers (under oath). Page* 6, *Document* 14, *Annual Report of Auditor of State for* 1861. *On file Second Auditor's Office, Vol.* 2.

Total Outstanding Stock, 37,875 shares.

Assets.		Liabilities.	
Debt outstanding	$4,513,439 93	Capital Stock	$2,651,250 00
Stocks	64,721 30	Notes in circulation	1,058,228 83
Real Estate	178,555 33	Deposits	1,545,968 64
Specie	376,355 54	Due other Banks	188,296 51
Notes other Va. Banks	365,574 05		
Notes outside Va. Banks	9,217 00		
Due from other Banks	235,562 53		
Unredeemable—Stolen Notes	18,900 00	Profit & Loss	322,549 39
In transitu	13,653 62	Profits since Dec. 1st	9,685 93
	$5,775,979 30		$5,775,979 30

Profits, $332,235.32, show Book Value of Stock $1.125 on he dollar, $78.75 per share.

Dividends declared	1856	—on par	8%	per share	$5.60
	1857	"	7½%	" "	5.25
	1858	"	7¼%	" "	5.075
	1859	"	7¼%	" "	5.075
	1860	"	7¼%	" "	5.075
	1861	"	7%	" "	4.90
	1862	"	7%	" "	4.90
	1863	"	5½%	" "	3.675

Class E.

(Exhibit, Hillman No. 5.)

BANK OF THE VALLEY—Par, $100 per share.	Par.	Value Jan. 1st, 1861. @	Less Div'd Declared Jan. 1st, 1861	Net Value.
Literary Fund, 92 shares (page 14, Lit. Fd. Ledger)	$ 9,200 00			
Board Public Works, 1,047 shares (page 318, Ledger "B," Second Auditor's Office)	104,700 00	114.7%	3-1/2%	111.2
Commonwealth Fund, 3,700 shares (page 50, Ledger 1861-4, Auditor's Office)	370,000 00			
Total—4,839 shares @ $100	$ 483,900 00	$ 555,033 30	$ 16,936 50	$ 538,096 80

Statement of Bank of the Valley, January 1, 1861. *Taken from printed report of officers (under oath) to State. Document fourteen pages* 34-35, *Annual Report of Auditor,* 1861-2.

Assets.		Liabilities.	
Specie	$ 313,180 63	Capital Stock	$1,215,000 00
Notes—State Banks	33,161 92	Notes in circulation	1,176,990 50
Notes outside Banks	41,461 39	Due to other Banks	120,409 81
Due from other Banks	296,000 71	Discount	7,298 33
Notes Discounted	1,692,805 66	Deposits	210,988 13
Inland Bills Discounted	408,124 81		
Va. Treasury Notes	5,400 00		
Bond Accounts	29,212 06		
Real Estate	76,337 57		
Claim vs. Deceased Teller	13,522 12	Profit & Surplus	178,520 10
	$2,909,206 87		$2,909,206 87

Profits & Surplus, $178,520.10 show Book Value of 114.7, Jan. 1st, 1861.

Dividends declared 1856— 10%
1857 9%
1858 8%
1859 8%
1860 7½%
1861 6¾%
1862 4%
1863 4%

Correction: Page 318 should be page 282.

DEFENDANT'S EXHIBIT No. 5. (Sheet 4.)

Class E.

(Exhibit, Hillman No. 5.)

EXCHANGE BANK—Par, $100 per share.	Par.	Value Jan. 1st, 1861.	Less Div'd Declared Jan. 1st, 1861	Net Value.
Board of Public Works, 267 shares (Page 316, Ledger "B," Second Auditor's Office)....	$ 26,700 00	@ 110.9%	3.5%	107.4
Commonwealth Fund, 8,488 shares (page 50, Ledger 1861-4, Auditor's Office	848,800 00			
Total—8,755 shares @ $100	$ 875,500 00	$ 979,929 50	$ 30,642 50	$ 940,287 00
	Assets.		Liabilities.	

Statement of Exchange Bank, December 31, 1860. Taken from printed report of officers (under oath) to State. Document 14, page 22, Annual Report of Auditor, 1861-2.

Loans	$5,257,662 94	Capital Stock	$3,137,100 00
Va. & other State Sec.	90,936 56	Circulation	1,235,633 50
Foreign Bills of Exchange	21,999 08	Due other Banks	122,638 38
Due from Va. Banks	431,758 89	Deposits	1,689,635 46
Due from outside Banks	13,402 21	In transitu	9,137 36
Notes of other Banks	168,662 23		
Real Estate	179,381 12	Contingent Fund	191,584 24
Specie	372,511 96	Profits	150,586 05
	$6,536,314 99		$6,536,314 99

Contingent Fund (Reserve) and Profits, $342,170.29, show Book Value of 110.9 Jan. 1st, 1861 (close of business Dec. 31st. 1860).

Dividends declared 1856— 9%
1857 10%
1858 8%
1859 9%
1860 7½%
1861 7¼%
1862 7%
1863 8%

Correction: Page 316 should be page 282.

DEFENDANT'S EXHIBIT No. 5. (Sheet 5.)

Class E.

(Exhibit, Hillman No. 5.)

NORTH WESTERN BANK—Par $100 per share:	Par	Value Jan. 1, 1861.	Less Div'd. Declared Jan. 1, 1861.	Net Value.
Literary Fund, 500 shares.....(Page 14, Lit. Fund Ledger)	$ 50,000 00			
Board Public Works, 326 shares.....(Page 317, Ledger "B," 2d Audr's Of.)..	32,600 00	@ 111.9%	3½%	108.4%
Commonwealth Fund—2918 shares.....(Page 46, Ledger 1856-61, Auditor's Office, shows $400,000. No subsequent entries, item being left blank on next trial balance. Sinking Fund Journal, Feb. 27/57, shows sale of 1082 shares, and subsequent payment of dividends confirms.)	291,800 00			
Total—3744 shares @ $100.....	$374,400 00	$418,953 60	$ 13,104 00	$405,849 60

CLASS E—1861.

Statement of Northwestern Bank, January 1, 1861. *Taken from printed report of officers (under oath) to State. Document* 14, *page* 40, *Auditor's Report* 1861-2. (*Copy of book on file Second Auditor's Office.*)

Assets.		Liabilities.	
Domestic Debt	$ 823,130 86	Capital Stock	$ 868,100 00
Bills of Exchange	728,243 37	Circulation	834,972 00
Stock of this Bank	29,000 00	Deposits	228,023 46
Other Stocks	27,012 53	Due other Banks	54,513 12
Banking House and Other Real Estate..	145,869 92	In transitu	20,784 46

Correction.—Page 317 should be page 282.

DEFENDANT'S EXHIBIT No. 5. (Sheet 5.)

(Continued)

Due from other Banks and Branches....	102,321 21		
Notes of Virginia Banks	60,510 00		
Notes of other Banks, Checks and Ctfs..	31,939 43	Contingent Fund	63,732 96
Coin	162,216 09	Profits	40,116 41
	$2,110,243 41		$2,110,243 41

Contingent Fund and Profits, $103,849.37, show Book Value of 111.9 January 1, 1861.

Dividends declared—1856	10%
1857	5%
1858	7½%
1859	8%
1860	7½%
1861	
1862	
1863	

DEFENDANT'S EXHIBIT No. 5. (Sheet 6.)

Class E. (Hillman, Exhibit No. 5.)

	Par	Value Jan. 1, 1861. @ 106.87%	Less Div'd. Declared Jan. 1, 1861. 3%	Net Value. 103.87%
FAIRMOUNT BANK—Par $100 per share:				
Literary Fund—500 shares (Page 42, Lit. Fund Ledger)	$ 50,000 00	$ 53,435 00	$ 1,500 00	$ 51,935 00
Total—500 shares @ $100				

Statement of Fairmount Bank, January 1, 1861. *Taken from printed report of officers (under oath) to State. Document* 14, *page* 156, *Auditor's Report,* 1860-61. *(Copy of book on file Second Auditor's Office.*

Assets.		Liabilities.	
Stocks	$ 61,750 00	Capital Stock	$107,950 00
Real Estate	4,027 84	Circulation	123,350 00
Notes and Bills Discounted	153,327 02	Unclaimed Dividends	706 00
Due from Bank	977 79	Due to Banks	5,960 81
Specie	27,491 38	Due Depositors	7,198 76
Notes of Virginia Banks	3,490 00		
Notes and Checks outside Banks	1,520 00	Surplus Fund	7,418 46
	$252,584 03		$252,584 03

Profits, $7,418.46, show Book Value of 106.87 January 1, 1861.
Dividends declared—1860 4½%

CLASS E—1861.

DEFENDANT'S EXHIBIT No. 6.

Class F. (Hillman, Exhibit 6.)

STATE OF WEST VIRGINIA.

Sale of various Stocks and Loans to the Atlantic, Mississippi & Ohio R. R.

Pages 178-179, Journal "D," Internal Improvement Fund, show this sale in the following detail of the stocks and loans transferred to this road for the $4,000,000 Second Mortgage on the A. M. & O. R. R.:

	Stocks—	
I.	8,175 shares Norfolk & Petersburg R. R. Stock	$ 817,500 00
II.	825 shares Norfolk & Petersburg Gt'd. Stock	82,500 00
III.	3,000 shares Norfolk & Petersburg Pf'd. Stock	300,000 00
IV.	8,035 shares South Side R. R. Stock	803,500 00
V.	17,168 shares Virginia & Tennessee R. R. Stock	1,716,800 00
VI.	832 shares Virginia & Tennessee Gt'd. Stock	83,200 00
VII.	5,000 shares Virginia & Tennessee Pf'd. Stock	500,000 00
VIII.	1,034 shares Virginia & Kentucky R. R. Stock	103,400 00
	Bonds & Notes as follows:	
I.	Note of the Norfolk & Petersburg R. R. for interest due and unpaid on loan of $300,000	13,271 41
II.	Note of the N. & P. R. R. for interest accrued and unpaid on July 1, 1870, on 825 shares guaranteed stock	27,225 00
III.	Unpaid balance of principal of the $300,000 loan	163,000 00
IV.	All claim the State may have vs. The South Side R. R. on account of the principal and interest due upon the loan of $800,000	
V.	Registered Certificate of the Va. & Tenn. R. R. Company, being for interest unpaid on 832 shares of Va. & Tenn. Ct'd. Stock up to July 1, 1870	79,040 00
VI.	All claims, rights and privileges which belong to the State of Virginia on account of loan of $1,000,000	
	For all of the above is charged against the Atlantic, Mississippi & Ohio R. R.	$4,000,000 00

That the above was a second mortgage for this amount and not a charge against the road is evidenced by the above pages in the preamble to entry, and by the first general balance sheet of the A. M. & O. R. R. Company, Sept. 30, 1871, on file in comptroller's office of the Norfolk & Western R. R. Company at Roanoke, Va., and examined by Mr. Parsons of Mr. Hillman's force, wherein the item "Second Mortgage to the State of Virginia," $4,000,000.00, is shown in liabilities.

DEFENDANT'S EXHIBIT No. 6-A.

(Hillman, Exhibit 6-A.)

STATE OF WEST VIRGINIA.

Statement showing the book value of securities listed under Class "F" at nearest determinable date to January 1, 1861.

CLASS F—1861.

	Par.	Profits.	Book Value.	Date.
Virginia & Tennessee R. R. Co. Stock	$3,452,813 32			
Profit		*$ 3,285 30	$ 99 90	6/30-60
Southside Railroad Co. Stock	1,362,900 00			
Profit		81,471 88	105 98	9/30-61
Virginia & Kentucky Railroad Co. Stock	82,000 61		Par 100 00	
Profit				
Norfolk & Petersburg R. R. Co. Stock	1,810,800 00			
Profit		*189,942 12	89 52	3/31-61

*Loss

	Par.	Book Value.	Value. Jan. 1, 1861.
Virginia & Tennessee R. R. Co. Stock	$2,270,525 00	$ 99 90	$2,268,254 48
Southside Railroad Co. Stock	803,500 00	105 98	851,549 30
Loan	800,000 00		No claim—too indeterminate
Virginia & Kentucky R. R. Co. Stock	82,000 61	100 00	82,000 61 Par
Norfolk & Petersburg R. R. Co. Stock	1,200,000 00	89 52	1,074,240 00
Loan	300,000 00		No claim—too indeterminate
			$4,276,044 39

DEFENDANT'S EXHIBIT No. 7. (Sheet 1.)

(Hillman, Exhibit 7.)

Class G. Asset 1.

STATE OF WEST VIRGINIA.

James River & Kanawha Canal Company.

Statement of value of this property as it was absorbed and and capitalized by the Richmond & Alleghany Railroad.

1. First general balance sheet of the Richmond & Alleghany R. R., on file in the office of the Vice President of the Chesapeake & Ohio R. R., in the city of Richmond, shows, on page 11, amongst the assets of the Company the following entries, which, for convenience in this sheet, have been numbered—

1. J. R. & K. Co. & Buchanan & Clifton Forge R. R. Co. Liens with Trustee First Mortgage	$1,393,637 66
2. Franchises and right of way	5,588,609 76
3. Richmond Docks	1,000,000 00
Total	$7,982,247 42

Notes:

1. The liens on the James River & Kanawha assumed by the R. & A. amount to $1,394,026.00, as shown on detail of deed by which the property is transferred to the R. & A. It is, therefore, probable that that amount was all on account of the James River & Kanawha $1,393,637 66

2. Franchises and right of way—The distance from Richmond to Clifton Forge was 230.5 miles. I am informed at the C. & O. office that the distance has not been appreciably changed since that date, also that the distance from Buchanan to Clifton Forge is about 33 miles. Allowing that the Richmond dock property cut off the distance, say, 5 miles, we would have on a mileage basis approximately 85%. The report above referred to says, on page 5, "Acquired the property of the James River & Kanawha and the Buchanan and Clifton Forge R. R. at a cost in stock and bonds of $6,389,511.93, thus securing legal right of way for its railway lines, basin and docks in Richmond, and other property, including liens of

DEFENDANT'S EXHIBIT No. 7. Sheet 1.

(*Continued*)

$1,53",381.42. The Company, same page, same report, says it also expended $199,097.83 for "further right of way," making total right of way $6,588,609.76, $1,000,000 of which has been arbitrarily assigned to Richmond Docks and Basin, leaving the charge to Right of Way $5,588,609.76, as above. We proportion on the 85% the $5,389,511.93, giving us as the James River & Kanawha Canal proportion	4,581,085 14
3. Richmond Docks and Basin must be acquired in entirety from the James River & Kanawha	1,000,000 00
	$6,974,722 80
Deducting liabilities assumed on account of liens	1,537,381 42
	$5,437,341 38

This report, on page 11, says "From Buchanan to Williamson Road was built on the unfinished work of the Buchanan & Clifton Forge R. R.," and "Experience with the Maintenance of Track on the towpath has fully sustained the expectations of those who asserted its advantages as a road bed."

DEFENDANT'S EXHIBIT No. 7. Sheet 2.

(Hillman, Exhibit 7.)

Class G. Asset 1.

STATE OF WEST VIRGINIA.

James River & Kanawha Canal Company.

(Continued)

16. Second annual balance sheet of the Richmond & Alleghany R. R., 1882, shows September 30th that the "Right of Way," etc., was	$5,446,662 00	
If from this we deduct the amount expended as above	199,097 83	
We have left for the James River & Kanawha property	$5,247,564 17	
85% of which is		$4,410,429 54
Add the Richmond Docks		1,000,000 00
and we have a value of the James River & Kanawha property on the R. & A. Second Annual Report of		$5,410,429 54

The Richmond & Alleghany has in this balance sheet set up the "Manchester Water Power" for $197,277.00, which possibly may account for the smaller amount assigned directly to the Right of Way as above.

DEFENDANT'S EXHIBIT No. 7-A.

Class G. (Hillman, Exhibit 8.)

STATE OF WEST VIRGINIA.

Manassas Gap Railroad Company.

Total cost of Road, Equipment, etc., according to Board of Public Works' Report, Document 17, Folio 218, was in 1860 ..... $3,322,164 67

Stock paid up to that date was $3,188,312 97

The Road was not operated at that time and no other value than the above is obtainable. In 1869 the State gave its stock in this Road to the Orange & Alexandria Road, forming the Orange, Alexandria & Manassas Railroad, condition being that share of new stock should be issued to all outside holders of old.

Folio 184, Ledger "B," Internal Improvement Fund, shows that on June 1, 1861, the State of Virginia held stock of this road to the value of $2,105,000.

DEFENDANT'S EXHIBIT No. 7-B.

Class G. (Hillman, Exhibit 9.)
(excepting Assets No. 51-52.)

STATE OF WEST VIRGINIA.

Statement of Stocks in and Claims against Internal Improvement Companies held by the Commonwealth on August 17, 1914.

Asset No.	Name of Co.	How disposed of.	Par value or cost to Jan. 1, 1861.			
3.	Roanoke Valley R. R.	Given away	$ 177,402 00		Act of Genl. Assembly, Feb. 18, 1866—Pages 333-334.	
	Roanoke Valley R. R.	Given away	*130,000 00			
4.	Fredericksburg & Gordonsville R. R.	On hand	132,399 00	$132,399 00	B. P. W. Ledger "B," page 181	$ 163,299 00
5.	Richmond & York River R. R.	Sold	290,999 52	179,500 00	B. P. W. Ledger "B," page 192	179,500 00
	Richmond & York River R. R.	Sold	*200,000 00		Decree of Ch. Ct. Dec. 16/72 Decree of Ch. Ct. Dec. 16/72	
6.	Rappahannock Co	On hand	179,500 00	179,500 00	B. P. W. Ledger "B," page 192	179,500 00
7.	Rivanna River Navigation Co.	On hand	227,133 00	227,133 00	B. P. W. Ledger "B," page 193 Journal "D," page 176	269,133 14
8.	Smith's River Navigation Co.	Abandoned	4,083 12		Journal "D," B. P. W., page 176	

DEFENDANT'S EXHIBIT No. 7-B.

(Continued)

				Journal "D," B. P. W., page 176	
9 Slate River Co.	Abandoned	21,000 00			
10. Kempsville Canal Co.	On hand	13,650 00	13,650 00	B. P. W. Ledger "B," page 193	13,650 00
11. Hazel River Navigation Co.	On hand	63,079 58	63,079 58	B. P. W. Ledger "B," page 192	63,079 58
12. Goose Creek & Little River Navigation Co.	On hand	58,255 35	58,255 35	B. P. W. Ledger "B," page 191	58,255 35
13. Dragon Swamp Navigation Co.	Abandoned	1,464 00		B. P. W. Journal "D," page 176	
14. Chesapeake & Ohio Canal Co.	On hand	250,000 00	250,000 00	B. P. W. Journal "D," page 176	250,000 00
Potomac Co.	On hand	31,111 11	31,111 11	B. P. W. Ledger "B," page 191	31,111 11
		$1,780,076 68	$955,128 04	(See note below)	$1,028,028 18

None of the securities representing the total $1,028,028.18 have been inspected by us.
*Preferred stock.

DEFENDANT'S EXHIBIT No. 4—Asset D-10.

Hillman Exhibit 3 & 4.

Class D. Asset D. 10.

STATE OF WEST VIRGINIA.

Kanawha Board of the James River and Kanawha Company.

	Book Value.	Amount Due.
The Treasurer's Blotter, Jan. 4, 1861 (not paged), shows the receipt of an interest item of $250.00 from the Kanawha Board of the J. R. & K. Co.....	$250 00	
This is a partial payment of interest on a loan of $100,000.00 to the above company made by the State of Virginia, and which was due Jan. 1, 1861..		$250 00

DEFENDANT'S EXHIBIT No. 10.

Hillman Exhibit No. 10.

STATE OF WEST VIRGINIA.

Amount of Taxes, Fines, &c., Paid by West Virginia Counties to the State of Virginia after June 20, 1863.

	Period June 20,1863, to April 1. 1865.
General taxes assessed after January 1, 1861	$189,643 31
Law processes assessed after January 1, 1861	936 19
Law processes assessed prior to January 1, 1861	1,158 13
General taxes assessed prior to January 1, 1861	22,715 93
License taxes of May, 1861	1,231 33
Lands redeemed	552 49
Delinquent taxes	351 95
Delinquent taxes and forfeited lands	8,210 30
	$224,799 63

Note.—The amount of taxes, period after June 20, 1863, was entered as $225,078.06 in supplemental answer filed in this cause.

*DEFENDANT'S EXHIBIT No. 11.

STATE OF WEST VIRGINIA.

Summary of Claims of West Virginia for consideration in settlement of Debt as set up in Hillman Exhibits, January 1, 1861.

	Value as shown by West Va.	
Class A—Exhibit 1	$ 1,102,036 16	
Class B—Exhibit 2	412,800 00	
Class C—Exhibit 3	12,711,175 78	
Class D—Exhibit 4	1,638,810 93	
Class E—Exhibit 5	4,060,487 82	
Class F—Exhibit 6	4,276,044 39	
Class G—Exhibit 7	5,410,429 54	
Class G—Exhibit 8	2,105,000 00	
Class G—Exhibit 9		
Total	$31,716,784 62	
23½% of above being West Virginia's proportion		$7,453,444 39
Taxes paid by West Virginia as per Exhibit No. 10		224,799 63
Total West Virginia claim		$7,678,244 02

*Corrected copy, superseding page 66-a, following.

SUMMARY OF CLAIMS.

DEFENDANT'S EXHIBIT No. 11.

STATE OF WEST VIRGINIA.

Summary of Claims of West Virginia for consideration in settlement of Debt as set up in Hillman Exhibits, Jan. 1, 1861.

Class A—Exhibit 1	$ 1,102,036 16	
Class B—Exhibit 2	412,800 00	
Class C—Exhibit 3-A	9,163,256 70	
Class D—Exhibit 4-B	1,638,810 93	
Class E—Exhibit 5	4,160,487 82	
Class F—Exhibit 6	4,276,044 39	—Only partial—Indeterminate left out.
Class G—Exhibit 7	5,410,429 54	
West Virginia's proportion, based on 23.5%	$26,063,865 54	=$ 6,125,008 40
Taxes paid by West Va. as per Exhibit No. 10		224,799 63
Total claim		$ 6,349,808 03

DEFENDANT'S EXHIBIT No. 12

STATE OF WEST VIRGINIA.

James River and Kanawha Company.

CHAP. 21.—An Act to amend the Charter of the James River and Kanawha Company.

Passed March 23, 1860.

1. Be it enacted by the general assembly, that the capital stock of the James river and Kanawha company be, and the same is hereby, increased to twelve million four hundred thousand dollars, in shares of one hundred dollars each.

2. That in addition to the shares now owned by the state in said company, the Board of public works be, and is hereby, directed to subscribe, on behalf of the commonwealth, for seventy-four thousand shares of said capital stock, which shall be declared by said company a six per cent. preferred stock, on which six dollars per share shall be paid to the holders thereof before any dividends shall be paid on other stock of said company; whereof seventy-two thousand shares shall be taken in full satisfaction of the debt now due from the said company to the state, and for the assumption by the state of the debt for which the state is bound as the surety for said company, and the annuity to the old James river company; and for the residue of two thousand shares, the bonds of the state for the aggregate amount of two hundred thousand dollars are to be delivered to the company, to be applied to the extinguishment of the floating debt of the company: provided, that an amount of said debt equal to the amount of said bonds, shall be extinguished thereby.

3. Upon the receipt of the certificates for the said seventy-two thousand shares of stock, the Board of public works shall give to the James river and Kanawha company a receipt in full for the said several debts due to the state, and for any claims against the company on account of the debts for which the state is responsible as security of the company, or on account of the annuity to the old James river company; and shall, by proper deeds, release to said company all liens, whether by deeds of trust, mortgages or otherwise, held by the state upon the works and property of the company, to secure any debt due to the state, or which may be guaranteed by the state.

4. Upon the receipt of the certificates for the said seventy-two thousand shares of the stock, the Board of public works is hereby directed, upon the surrender by the holders thereof, of any of the bonds of the James river and Kanawha company, for the payment of which the state is responsible, to issue to said holders a corresponding amount of the bonds of the state, made in the manner prescribed by law, payable thirty-four years after their date, and bearing interest at the rate of six per centum per annum, payable semi-annually. And the board shall thereupon cancel and file the bonds so sur-

rendered, and deliver to the James river and Kanawha company a statement thereof, with the number, amount and date of each bond.

5. And upon the receipt of the certificates of the residue of two thousand shares of said stock, the Board of public works is directed to issue and deliver to the company the bonds of the state for the aggregate amount of two hundred thousand dollars, to be applied to the extinguishment of the floating debt of the company.

6. The James river and Kanawha company shall have authority to borrow money, at a rate of interest not exceeding seven per centum per annum, payable semi-annually, and not exceeding two million five hundred thousand dollars, for the purpose of completing the canal to Covington, carrying on their other works and paying the residue of their floating debt, and to execute bonds for the amount borrowed, and deeds of trust or mortgages, pledging their works, property and net revenues for the payment of the same: provided, that they shall not borrow in any one year a greater amount than five hundred thousand dollars. The said interest shall be paid semi-annually into the treasury of the commonwealth, for the benefit of the holders of said bonds, on or before the first day of January and July in each year; and the same shall be paid to the holders thereof, upon the warrant of the second auditor, out of said funds so paid into the treasury by said company.

7. The said company, after they may have issued such bonds, shall set apart, on the first day of January and July in each year, a fund not less than the rate of one per centum per annum for a sinking fund for the payment of the principal of such bonds, or such larger rate as may be necessary to provide a fund sufficient for such redemption, at the maturity of such bonds. And the amount to be set apart annually as a sinking fund, shall be paid by the company, one-half thereof on or before the first day of January and July in each year, to the commissioners of the Sinking fund, and invested by them in stocks, as required by the general law regulating the action of said commissioners, and the said commissioners shall keep an account of, and hold and apply the same to the redemption of said bonds, in pursuance of this act: and shall make report to the general assembly, at each session, of their proceedings under this act.

8. Nothing in this act contained shall be so construed as to render the state liable, in any manner whatever, otherwise than as a stockholder of the company, to the holders of any bonds executed for money borrowed under this act.

9. Be it further enacted, that there shall be issued to, and placed under the exclusive control of the Kanawha board of directors of said company, or their successors, as constituted under the act of the general assembly entitled an act providing more effectual means for the improvement of the navigation of the Kanawha river, passed fifteenth of February one thousand eight hundred and fifty-eight, three hundred thousand dollars of the six per cent. registered stock of the commonwealth, to be issued in the mode now provided by law, and the said stock so issued shall be used by said Kanawha board of directors for the improvement of the navigation of said river, from the mouth thereof to Loup creek shoals: provided, however, said Kanawha board shall not dispose of said registered stock at less than par. And said registered stock shall not be issued for an amount exceeding one hundred and fifty thousand dollars

in any one year, nor exceeding twenty thousand dollars in any one month: But before any of said stock shall be issued, the said James river and Kanawha company, by the president thereof, shall execute a deed of trust or mortgage upon the works, property and net revenue of said Kanawha line of improvement, from the mouth thereof to said Loup creek shoals, to the commonwealth, for the payment of the principal and interest of said three hundred thousand dollars: or upon the failure or refusal of said company to execute such deed of trust or mortgage, when required by the Kanawha board, then the said Kanawha board, by their president pro tempore, or other agent, may execute such deed of trust or mortgage; and the same shall be deemed to have the same effect as though it had been executed by said company: and such lien shall take precedence over any lien created by said company, to secure their bonds authorized to be issued by this act. The said Kanawha board shall pay into the treasury of the commonwealth three and one half per centum on or before the fifteenth day of June and December of each year, on such amount of said registered stock as may be issued under this section, for interest, and to provide a sinking fund. The said Kanawha board are hereby authorized and directed to prosecute the construction of said Kanawha line of improvement, free from the control or direction of the president and directors of said James river and Kanawha company, and which is known as the "Eastern board," and shall have the entire control and management of the same, free from such control and direction.

10. The debts of said company, which may not be paid as authorized by this act, or if the holders thereof shall refuse to receive in payment thereof the seven per centum bonds of said company, authorized to be issued by this act, shall not, by reason of the passage of this act, be in any better condition for enforcing the payment thereof; but the liens of the commonwealth existing before the passage of this act, on the works, property and revenue of said improvement, shall, as to them, be deemed to be in full force.

11. The Board of public works shall appoint three proxies to represent the state at the meetings of the stockholders; and the proxies so appointed shall have power to cast three-fifths of all the votes cast in the appointment of the president and other officers elected by the company, except directors of said company, and in fixing the salaries of officers, and in all other questions arising in a meeting of stockholders, and shall allow to said proxies a reasonable compensation for their services. And authority is hereby given to the Board of public works to revise and alter the rates of toll charged by said company, and are directed so to do, so as to adapt them to a remunerative standard. If the location proposed for the line of the canal between the present terminus of the Virginia Central rail road at Jackson's river and the town of Covington, will interfere at any point with any proposed location of the extension of said rail road, and the engineers representing respectively the canal and the rail road cannot agree upon an independent location for each work at such points, then the Board of public works shall determine such location, having due regard to the interest of the commonwealth as a stockholder in each company; and their decision shall be binding.
having due regard to the interest of the commonwealth as a stockholder in each company; and their decision shall be binding.

12. In addition to the rights and powers heretofore granted to and conferred upon the James river company and the James river and Kanawha company, for the collection of tolls on the Kanawha river, the said James river and Kanawha company, their collectors and agents, are hereby authorized and empowered to sue out an attachment before any justice of the peace, against boats and cargoes upon the Kanawha river, for tolls due and unpaid by said boats and cargoes, their owners, masters or shippers.

13. That in case the said James river and Kanawha canal company shall not complete the canal to Covington, or the western terminus of the Virginia Central rail road, within six years from the passage of this act, without any further application to the general assembly for aid, either by loan from the state, subscription, or otherwise, all the property, rights, franchises, and privileges of every kind and description of the said company, shall be transferred to and become the property of the state: and provided further, that the said company shall have no authority to contract any greater amount of debts, or in any other manner than is authorized by the provisions of this bill without the consent of the general assembly; and before this act shall take effect or the Board of public works shall make the subscription to the stock of said company, authorized by it, or release or discharge the liens which the commonwealth holds on the property of the said company, the private stockholders of said company shall, in general meeting assembled, accept the provisions of this act, and duly certify their acceptance thereof to the Board of public works.

14 Be it further enacted, that before the provisions of this act shall take effect, the said James river and Kanawha company shall, in general meeting of the stockholders, accept the same, and such acceptance shall be deemed an acceptance of all the provisions of this act, and as a complete acquiescence in and recognition of all the authority and independent and other powers conferred upon the said Kanawha board by this act.

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DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 1.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to Jan. 1, 1861.

Name.	Date Paid	Amount.	Reference.	On acct. of
Richmond & Danville R. R. Stock	Mch. 31, 1862	$ 35,657 95	Folio 117 Journal D. Int. Imp. Fd.	Dividend 3%
" " " "	Aug. 1, 1862	35,657 95	" 128 " " " " "	" 3%
" " " "	Mch. 25, 1863	47,543 94	" 139 " " " " "	" 4%
Rich. & Petersburg R. R. "	Feb. 14, 1861	9,640 00	" 82 " " " " "	" 2½%
" " " "	July 3, 1861	9,640 00	" 108 " " " " "	" 2½%
" " " "	Jan. 3, 1862	13,496 00	" 117 " " " " "	" 3½%
" " " "	May 5, 1862	15,424 00	" 128 " " " " "	" 4%
" " " "	Sep. 1, 1862	19,280 00	" 128 " " " " "	" 5%
" " " "	Jan. 3, 1863	23,136 00	" 139 " " " " "	" 6%
" " " "	Apl. 20, 1863	30,848 60	" 148 " " " " "	" 8%
Virginia Central R. R. "	Jan. 23, 1862	58,811 48	Treasurer's Blotter this date	" 3%
" " " "	Mch. 28, 1862	88,217 21	" " " "	" 4½%
" " " "	Sep. 30, 1862	49,009 56	" " " "	" 2½%
Rich., Fred. & Po. R. R. "	Aug. 30, 1862	6,880 00	" " " "	" 2½%
" " " " "	Nov. 8, 1862	8,256 00	Folio 139 Journal D. Int. Imp. Fd.	" 3%
" " " " "	May 13, 1863	22,016 00	" 148 " " " " "	" 8%
" " " " "	Mch. 13, 1863	27,520 00	Treasurer's Blotter this date	Redemption of Div. Bonds prior to 1854.
Norfolk & P't'rsburg R. R. "	Jan. 21, 1862	4,950 00	" " " "	Dividend 6%
" " " "	Feb. 6, 1863	4,950 00	" " " "	" 6%
Roanoke Navigation Co. "	Nov. 5, 1861	800 00	" " " "	" 1%

DIVIDENDS FROM STOCKS.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 1.—(*Continued*)

Farmers' Bank of Va.	"	Jan. 10, 1861	12,327 00	"	"	"	"	"	1%
" " "	"	July 19, 1861	13,207 50	"	"	"	"	"	3½%
" " "	"	Jan. 20, 1862	12,327 00	"	"	"	"	"	3¾%
" " "	"	June 19, 1862	10,566 00	"	"	"	"	"	3½%
" " "	"	Dec. 16, 1862	14,088 00	"	"	"	"	"	3%
" " "	"	June 11, 1863	17,610 00	"	"	"	"	"	4%
" " "	"	Feb. 9, 1861	17,675 00	"	"	"	"	"	5%
" " "	"	July 19, 1861	18,937 50	"	"	"	"	"	3½%
" " "	"	Jan. 20, 1862	17,675 00	"	"	"	"	"	3¾%
" " "	"	June 19, 1862	15,150 00	"	"	"	"	"	3½%
" " "	"	Dec. 16, 1862	20,200 00	"	"	"	"	"	3%
" " "	"	June 11, 1863	25,250 00	"	"	"	"	"	4%
" " "	"	Jan. 10, 1861	3,689 00	"	"	"	"	"	5%
" " "	"	July 19, 1861	3,952 50	"	"	"	"	"	3½%
" " "	"	Jan. 20, 1862	3,689 00	"	"	"	"	"	3¾%
" " "	"	June 19, 1862	3,162 00	"	"	"	"	"	3½%
" " "	"	Dec. 16, 1862	4,216 00	"	"	"	"	"	3%
" " "	"	June 11, 1863	5,270 00	"	"	"	"	"	4%
Bank of Virginia	"	Jan. 10, 1861	20,567 75	"	"	"	"	"	5%
" "	"	July 16, 1861	20,567 75	"	"	"	"	"	3½%
" "	"	Jan. 16, 1861	20,567 75	"	"	"	"	"	3½%
" "	"	Jan. 16, 1861	20,567 75	"	"	"	"	"	3½%
" "	"	June 26, 1861	17,629 50	"	"	"	"	"	3%
" "	"	Jan. 3, 1863	23,506 00	"	"	"	"	"	4%
" "	"	June 25, 1863	29,382 50	"	"	"	"	"	5%
" "	"	Jan. 16, 1861	7,962 50	"	"	"	"	"	3½%
" "	"	July 16, 1861	7,962 50	"	"	"	"	"	3½%

Total $378,871 84

*$127,350.00 of these dividends paid in Confederate Bonds, from which there was realized $16,032.34 less than their face value.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 2.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

Name.		Date Paid.		Amount.	Reference.	On Account Of	
Bank of Virginia	Stock	Jan.	16, 1862	$ 7,962 50	Treasurer's Blotter this date	Dividends	3½ %
" "	"	June	26 1862	6,825 00	" " " "	"	3 %
" "	"	Jan.	3, 1863	9,100 00	" " " "	"	4 %
" "	"	Jan.	10, 1861	5,196 45	" " " "	"	3½ %
" "	"	July	16, 1861	5,196 45	" " " "	"	3½ %
	"	Jan.	16, 1862	5,196 45	" " " "	"	3½ %
" "	"	June	26, 1862	4,454 10	" " " "	"	3 %
" "	"	Jan.	3, 1863	5,938 80	" " " "	"	4 %
" "	"	June	25, 1863	7,423 50	" " " "	"	5 %
Bank of the Valley	Stock	Jan.	18, 1861	3,664 50	" " " "	"	3½ %
" " "	"	Sep.	21, 1861	3,664 50	" " " "	"	3½ %
" " "	"	Jan.	9, 1862	3,141 00	" " " "	"	3 %
" " "	"	Jan.	23, 1863	4,188 90	" " " "	"	4 %
" " "	"	Jan.	18 1861	12,950 00	" " " "	"	3½ %
" " "	"	July	9, 1861	12,950 00	" " " "	"	3½ %
" " "	"	Jan.	9, 1862	11,100 00	" " " "	"	3 %
" " "	"	Jan.	23, 1863	14,800 00	" " " "	"	4 %
" " "	"	Jan.	18 1861	322 00	" " " "	"	3½ %
" " "	"	July	9, 1861	322 00	" " " "	"	3½ %
" " "	"	Jan.	9, 1862	276 00	" " " "	"	3 %
" " "	"	Jan.	23. 1863	368 00	" " "	"	4 %

DIVIDENDS FROM STOCKS.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 2. (*Continued*)

DIVIDENDS FROM STOCKS.

Exchange Bank	"	Jan.	7, 1861	934 50	"	"	"	"	"	3½ %
" "	"	July	5, 1861	1,001 25	"	"	"	"	"	3¾ %
" "	"	Jan.	13 1862	934 50	"	"	"	"	"	3½ %
" "	"	Oct.	15, 1862	801 00	"	"	"	"	"	3 %
" "	"	Mch.	12, 1863	1,068 00	"	"	"	"	"	4 %
" "	"	July	10, 1863	1,335 00	"	"	"	"	"	5 %
" "	"	Jan.	7, 1861	29,708 00	"	"	"	"	"	3½ %
" "	"	July	5, 1861	31,830 00	"	"	"	"	"	3¾ %
" "	"	Jan.	13, 1862	29,708 00	"	"	"	"	"	3½ %
" "	"	Oct.	15, 1862	25,464 00	"	"	"	"	"	3 %
" "	"	Mch.	12, 1863	33,952 00	"	"	"	"	"	4 %
" "	"	July	10, 1863	42,440 00	"	"	"	"	"	5 %
Northwestern Bank	"	Feb.	4, 1861	1,141 00	"	"	"	"	"	3½ %
" "	"	Feb.	4, 1861	10,213 00	"	"	"	"	"	3½ %
" "	"	Feb.	4, 1861	1,750 00	"	"	"	"	"	3½ %
Graziers Bank	"	Apl.	1, 1862	14,000 00	"	"	"	"	"	10 %
" "	"	July	22, 1862	640 00	"	"	"	"	"	10 %
" "	"	July	22, 1862	7,320 00	"	"	"	"	"	5 %
" "	"	Jan.	20, 1863	7,320 00	"	"	"	"	"	5 %
Fairmount Bank	"	Feb.	5, 1861	1,500 00	"	"	"	"	"	3 %
Total				$368,099 50						

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 3.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Loans, &c., held by said State subsequent to Jan. 1, 1861.

		Date Paid	Amount	Reference.			On Account Of.
Orange & Alexandria R. R.	Loan	Oct 25, 1862	$ 11,926 71	Treas.'s Blotter	this date		Int. on Loan
"	"	Nov. 15, 1862	23,000 00	"	"		"
"	"	Dec. 20, 1862	12,272 04	"	"		"
"	"	Jan. 28, 1863	2,474 51	"	"		"
Richmond & Danville R. R.	"	Aug. 31, 1861	25,550 39	Folio 107	Journal D	Inter. Im'pt Fund	"
"	"	Aug. 1, 1862	33,591 22	" 128	"	"	"
Richmond & Petersburg R. R.	"	Nov. 7, 1861	1,703 81	" 117	"	"	"
Virginia Central R. R.	Div. Bonds	July 25, 1861	1,325 34	" 107	"	"	Int. on Div. Bonds
"	" "	Nov. 26, 1861	4,616 48	" 117	"	"	"
"	" "	July 23, 1862	2,650 63	" 129	"	"	"
"	" "	Nov. 6, 1862	5,959 80	" 139	"	"	"
"	" "	Jan. 17, 1863	722 20	" 139	"	"	"
"	" "	Jan. 17, 1863	1,441 53	" 139	"	"	"
"	Loan	July 25, 1861	7,350 00	" 107	"	"	Int. on Loan
"	"	Jan. 3, 1862	7,350 00	" 126	"	"	"
"	"	July 18, 1862	7,350 00	" 128	"	"	"
"	"	Jan. 7, 1863	7,350 00	" 138	"	"	"
Winchester & Potomac R. R.	Annuity	July 27, 1861	4,166 67	" 107	"	"	On % of Annuity
Virginia & Tennessee R. R	Loan	July 22, 1861	20,000 00	" 107	"	"	Int. on Loan
"	"	Jan. 4, 1862	35,000 00	" 126	"	"	"
"	"	Jan. 11, 1862	14,394 43	" 116	"	"	"
"	"	Aug. 13, 1862	35,000 00	" 128	"	"	"
"	"	Feb. 20, 1863	33,368 43	" 138	"	"	"

INTEREST FROM LOANS.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 3. (*Continued*)

South Side Railroad.	"	July 26, 1862	28,000 00	"	128	"	"	"
"	"	Sep 23, 1862	56,000 00	"	128	"	"	"
"	"	Jan 16, 1863	28,000 00	"	138	"	"	"
Washington College.	"	Sep 12, 1861	60 00	Literary Fund Cash Bk. No. 5 (not paged)				"
"	"	Mch. 31, 1862	60 00	"		"	"	"
"	"	Aug. 5, 1862	60 00	"		"	"	"
"	"	Feb 4, 1862	60 00	"		"	"	"
Richmond Academy Bonds.		Aug. 9, 1861	12 00	"		"		Int. on Bonds
"		Mch. 31, 1862	12 00	"		"	"	"
"		Aug. 5, 1862	12 00	"		"	"	"
"		Feb. 4, 1863	12 00	"		"	"	"
R. F. & P. R. R.	Div. Bond	Apl. 18, 1862	6,687 36	Folio 129	Journal D	Inter. Im'pt Fund		"
" "	"	Aug. 30, 1862	1,348 48	"	129	"	"	"
" "	"	Aug. 30, 1862	3,343 68	"	129	"	"	"
" "	"	Jan. 22, 1863	4,692 16	"	139	"	"	"
" "	"	Mch. 13, 1863	325 69	"	139	"	"	"
			$427,249 61					

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

DIVIDENDS FROM STOCKS.

Name of Stock.		Date Paid.	Amount	Reference.				On Account Of.		
O. & A. R. R. Co.	Stock	Sept. 8, 1864	$ 34,912 00	Folio 157	Jou'l D	Int. Im'pt Fund		4%	Div. on	$ 872,802 83
Rich. & Dan. R. R. Co.	"	Sept. 9, 1863	71,315 91	" 148	"	"		6%	" "	1,188,598 50
" " "	"	Mar. 26, 1864	59,429 92	" 157	"	"		5%	" "	1,188,598 50
Rich & Pet. R. R Co.	"	*July 31, 1863	1,278 20	" 148	"	"		6%	" "	385,600 00
" " "	"	Nov. 3, 1863	38,560 00	" 157	"	"		10%	" "	385,600 00
" " "	"	Jan. 15, 1884	15,424 00	" 157	"	"		4%	" "	385,600 00
Va. Cen. R. R. Co.	"	Sept. 20, 1864	38,560 00	" 157	"	"		10%	" "	385,600 00
" " "	"	Sept. 19, 1864	60,419 62	" 157	"	"		3%	" "	2,013,987 52
" " "	"	Nov. 3, 1863	80,559 50	" 157	"	"		4%	" "	2,013,987 52
Rh. & York River Co.	"	Sept. 19, 1864	60,419 62	" 157	"	"		3%	" "	2,013,987 52
" " "	"	Aug. 15, 1863	29,459 97	" 148	"	"		8%	" "	490,999 52
Va. & Tenn. R. R. Co	"	Jan 28, 1864	24,549 97	" 157	"	"		5%	" "	490,999 52
" " "	"	Mar. 26, 1864	100,000 00	" 157	"	"		6%	" "	2,300,000 00
		Apl. 1, 1864	38,000 00	" 157	"	"				(Part payment)
Nor. & Pet. R. R. Co.	"							6%	" "	2,300,000 00
" " "	"	**Sept. 7, 1853	150 48	" 149	"	"				(Balance.)
" " "	"	Mar. 23, 1864	2,475 00	" 158	"	"		3%	" "	82,500 00
Roanoke Nav. Co.	"	Feb. 22, 1865	4,950 00	" 166	"	"		3%	" "	82,500 00
" " "		Apr. 30, 1868	320 00					6%	" "	82,500 00
" " "		Mar. 5, 1869	480 00		Treas.'s Blot.		this date	4/10%	" "	80,000 00
		Nov 1, 1871	400 00		"	"		6/10%	" "	80,000 00
					"	"		1/2 %	" "	80,000 00

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 4. (*Continued*)

DIVIDENDS FROM STOCKS.

"	"	"		Dec. 13, 1872	400 00	"	"	1/2 %	" "	80,000 00
"	"	"		Sept 10, 1874	400 00	"	"	1/2 %	" "	80,000 00
Upper Appomat. Co.			"	Apl. 19, 1867	625 00	"	"	5%	" "	12,500 00
"	"	"	"	Aug. 17, 1867	500 00	"	"	4%	" "	"
"	"	"	"	Nov. 29, 1867	500 00	"	"	4%	" "	"
"	"	"	"	Feb. 22, 1868	375 00	"	"	3%	" "	"
"	"	"	"	May 27, 1868	375 00	"	"	3%	" "	"
"	"	"	"	Sept. 1, 1868	312 50	"	"	2½ %	" "	"
"	"	"	"	Nov. 25, 1868	312 50	"	"	2½ %	" "	"
"	"	"	"	Mch. 2, 1869	375 00	"	"	3%	" "	"
"	"	"	"	June 2, 1869	375 00	"	"	3%	" "	"
"	"	"	"	Dec. 3, 1869	375 00	"	"	3%	" "	"
"	"	"	"	Mch. 29, 1870	375 00	"	"	3%	" "	"
"	"	"	"	July 1, 1870	312 50	"	"	2½ %	" "	"
"	"	"	"	May 18, 1871	375 00	"	"	3%	" "	"
"	"	"	"	Aug. 2, 1871	375 00	"	"	3%	" "	"
"	"	"	"	Mch. 7, 1872	375 00	"	"	1- 3%	" "	"
"	"	"	"	Apl. 8, 1872	212 50	"	"	1-1/10%	" "	"

*Total payment $23,136.00—balance already claimed.
**Total payment $2,475.00—balance already claimed

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DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

Name of Stock.		Date Paid.	Amount.	Reference.	On Account of
Farmers Bank of Va.	Stock	Dec. 19, 1863	$26,415 00	Folio 156 Jour. D Int. Imp. Fund	7½ % Div. on 3522 shares
" " "	"	June 24, 1864	14,088 00	Folio 157 Jour. D Int. Imp. Fund	4 % Div. on 3522 shares
" " "	"	Dec. 20, 1864	28,176 00	Folio 166 Jour. D Int. Imp. Fund	8 % Div. on 3522 shares
" " "	"	‡Dec. 1, 1863	33,942 57	Treasurer's B. this date	7½ % Div. on 5050 shares
" " "	"	June 1, 1864	20,200 00	" "	4 % Div. on 5050 shares
" " "	"	Dec. 1, 1864	40,400 00	" "	8 % Div. on 5050 shares
" " "	"	*June 1, 1863	7,075 27	" "	7½ % Div. on 1054 shares
" " "	"	June 1, 1864	4,216 00	" "	4 % Div. on 1054 shares
		Dec. 1, 1864	8,432 00	" "	8 % Div. on 1054 shares
Bank of Virginia	Stock	Dec. 29, 1863	44,073 75	Folio 156 Jour. D Int. Imp. Fund	7½ % Div. on 8395 shares
" "	"	June 1, 1864	23,506 00	Folio 157 Jour. D Int. Imp. Fund	4 % Div. on 8395 shares
" "	"	Dec. 1, 1864	47,012 00	Folio 166 Jour. D Int. Imp. Fund	8 % Div. on 8395 shares
" "	"	June 25, 1863	11,375 00	Treasurer's B. this date	5 % Div. on 3250 shares
" "	"	Dec. 29, 1863	17,062 50	" "	7½ % Div. on 3250 shares
" "	"	June 29, 1864	9,100 00	" "	4 % Div. on 3250 shares
" "	"	Dec. 29, 1864	18,200 00	" "	8 % Div. on 3250 shares
" "	"	†Dec. 29, 1863	9,966 37	" "	7½ % Div. on 2121 shares
" "	"	June 29, 1864	5,938 80	" "	4 % Div. on 2121 shares
		Dec. 29, 1864	11,877 60	" "	8 % Div. on 2121 shares

DIVIDENDS FROM STOCKS.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 5. (*Continued*)

Bank of the Valley	"	Mar.	25, 1864	4,188 00	Folio 157	Jour. D Int. Imp. Fund	4	%	Div. on 1047	shares
" "	"	Mar.	25, 1864	14,800 00		Treasurer's B. this date	4	%	Div. on 1047	shares
" "	"	Mar.	25, 1864	368 00		" "	4	%	Div. on 1047	shares
Exchange Bank	"	Jan.	13, 1864	2,136 00	Folio 156	Jour. D Int. Imp. Fund	8	%	Div. on 268	shares
" "	"	Jan.	13, 1865	2,136 00	Folio 166	Jour. D Int. Imp. Fund	8	%	Div. on 267	shares
" "	"	‡Jan.	13, 1864	60,853 86		Treasurer's B. this date	8	%	Div. on 8488	shares
" "	"	July	2, 1864	35,020 00		" "	4½	%	Div. on 8488	shares
" "	"	Jan.	13, 1865	67,904 00		" "	8	%	Div. on 8488	shares
Grazier's Bank, formerly branch N. W. Bank at Jeffersonville	"	July	28, 1863	6,820 00		" "	5	%	Div. on 1346	shares
N. W. Bank at Jeffersonville	"	Feb.	1, 1864	6,820 00		"	5	%	Div. on 1346	shares
Richmond, Fredericksburg & Potomac R. R. Co.	"	Dec.	30, 1863	50,912 00	Folio 157	Jour. D Int. Imp. Fund	18½	%		$275,200 00
" "	"	Nov.	24, 1864	35,776 00	Folio 166	Jour. D Int. Imp. Fund	13	%		275,200 00
" "	"	Feb.	4, 1874	9,632 00		Treasurer B. this date	3½	%		275,200 00
" "	"	Feb.	7, 1883	9,356 00		" "	3	%		275,200 00
" "	"	Dec.	14, 1882	9,356 00		" "	3	%		275,200 00

‡Total payment $37,875.00. Balance already claimed.
•Total $11,135.25. Balance already claimed.
†Total $11,135.25. Balance already claimed.
§Total $67,904.00. Balance already claimed.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

DIVIDENDS FROM STOCKS.

Name of Stock.		Date Paid.	Amt.	Reference.			On Account Of.			
Richmond, Fredericksburg & Potomac R. R. Co.	Stock	Jan. 19, 1884	$ 30,407 00	Treasurer's Blotter	this date	6½%	$467,800.00	Stock &	Div.	Bonds.
"	"	Jan. 27, 1887	28,068 00	"	"	6%	"	"	"	
"	"	July 28, 1887	14,034 00	"	"	3%	"	"	"	
"	"	Jan. 19, 1888	16,373 00	"	"	3½%	"	"	"	
"	"	Aug. 3, 1888	16,373 00	"	"	3½%	"	"	"	
"	"	Jan. 28, 1889	16,373 00	"	"	3½%	"	"	"	
"	"	July 18, 1889	16,373 00	"	"	3½%	"	"	"	
"	"	Jan. 17, 1890	14,034 00	"	"	3%	"	"	"	
		July 19, 1890	16,373 00	"	"	3½%	"	"	"	
"	"	Jan. 22, 1891	16,373 00	"	"	3½%	"	"	"	
"	"	July 20, 1891	16,373 00	"	"	3½%	"	"	"	
"	"	Jan. 21, 1892	16,373 00	"	"	3½%	"	"	"	
"	"	July 21, 1892	16,373 00	"	"	3½%	"	"	"	
"	"	Jan. 11, 1893	16,373 00	"	"	3½%	"	"	"	
"	"	July 3, 1893	16,373 00	"	"	3½%	"	"	"	
"	"	Jan. 10, 1894	16,373 00	"	"	3½%	"	"	"	
"	"	July 5, 1894	14,034 00	"	"	3%	"	"	"	
"	"	Jan. 8, 1895	16,373 00	"	"	3½%	"	"	"	
"	"	July 8, 1895	16,373 00	"	"	3½%	"	"	"	
"	"	Jan. 16, 1896	16,373 00	"	"	3½%	"	"	"	
"	"	July 16, 1896	16,373 00	"	"	3½%	"	"	"	
"	"	Jan. 8, 1897	16,373 00	"	"	3½%	"	"	"	

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 6. (*Continued*)

"	"	July	13, 1897	14,034 00	"	"	3%	"	"	"
"	"	Jan.	10, 1898	16,373 00	"	"	3½%	"	"	"
"	"	July	6, 1898	16,373 00	"	"	3½%	"	"	"
"	"	Jan.	9, 1899	16,373 00	"	"	3½%	"	"	"
"	"	July	3, 1899	16,376 50	"	"	3½%	467,900.00 Plus Div. Bond.		
"	"	Jan.	2, 1900	18,716 00	"	"	4%	"	"	"
"	"	July	9, 1900	18,716 00	"	"	4%	"	"	"
"	"	Jan.	4, 1901	18,716 00	"	"	4%	"	"	"
"	"	July	5, 1901	18,716 00	"	"	4%	"	"	"
"	"	Jan.	3, 1902	18,716 00	"	"	4%	"	"	"
"	"	July	1, 1902	18,716 00	"	"	4%	"	"	"
"	"	Feb.	4, 1903	18,716 00	"	"	4%	"	"	"
"	"	July	2, 1903	18,716 00	"	"	4%	"	"	"
"	"	Jan.	4, 1904	18,716 00	"	"	4%	"	"	"
"	"	July	1, 1904	18,716 00	"	"	4%	"	"	"
"	"	Jan.	3, 1905	21,055 50	"	"	4½%	"	"	"
"	"	July	1, 1905	21,055 50	"	"	4½%	"	"	"
"	"	Jan.	2, 1906	21,055 50	"	"	4½%	"	"	"
"	"	July	5, 1906	21,055 50	"	"	4½%	"	"	"
"	"	Jan.	3, 1907	21,055 50	"	"	4½%	"	"	"
"	"	July	1, 1907	26,316 00	"	"	4½%	584,800 00		
"	"	Jan.	3, 1908	26,320 50	"	"	4½%	584,900 00		
"	"	July	1, 1908	26,320 50	"	"	4½%	"	"	"

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 7.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

Name of Stock.	Date Paid.	Amt.	Reference.	On Account Of.
Richmond, Fredericksburg & Potomac R. R. Co.	Stock Jan. 2, 1909	$ 26,320 50	Treasurer's Blotter this date	4½ % $584,900.00 Plus Div. Bond.
"	" July 1, 1909	26,320 50	" "	4½ % " "
"	" Jan. 4, 1910	26,320 50	" "	4½ % " "
"	" July 2, 1910	26,350 50	" "	4½ % " "
"	" Jan. 3, 1911	26,350 50	" "	4½ % " "
"	" July 1, 1911	26,350 50	" "	4½ % " "
"	" Jan. 2, 1912	26,350 50	" "	4½ % " "
"	" July 1, 1912	26,350 50	" "	4½ % " "
"	" Jan. 2, 1913	26,350 50	" "	4½ % " "
"	" July 1, 1913	26,350 50	" "	4½ % " "
"	" Jan. 2, 1914	26,350 50	" "	4½ % " "
		$2,485,116 41		
Bank of Virginia	" June 25, 1863	7,423 50	" "	Dividend on Stock.
"	" June 25, 1863	29,382 50	" "	" "
Exchange Bank	" July 10, 1863	1,335 00	" "	" "
"	" July 10, 1863	42,440 00	" "	" "
Grand Total Dividends		$3,812,668 75		

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 8.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Loans, &c., held by said State subsequent to Jan. 1, 1861.

Name.				Date Paid.			Amount.		Reference.	On Account Of.	Note.
Orange & Alexandria	R.	R.	Co.	Loan	June	23, 1863	$ 9,284	50	Treasr's Blotter this date	Int. on Loan	
"	"	"		"	Jan.	16, 1864	2,823	56	" " " "	" " "	
"	"	"		"	Sept.	8, 1864	14,000	00	" " " "	" " "	
"	"	"		"	Dec.	31, 1864	7,677	68	" " " "	" " "	
"	"	"		"	Jan.	1, 1865	60	86	Snkg. Fund Rec'd, p. 191	" " "	
"	"	"		"	Aug.	26, 1868	20,000	00	Treasr's. Blotter this date	" " "	
"	"	"		"	Nov.	1, 1868	30,689	45	Jr. "N," B. of P. W., p. 389	" " "	
"	"	"		"	Mch.	28, 1872	43,510	92	" " " "	" " "	
"	"	"		"	Oct.	17, 1872	7,050	11	" " " 407	" " "	
Richmond & Danville	R.	R.	Co.	Loan	Sept.	9, 1863	33,086	70	Treasr's. Blotter this date	" " "	
"	"	"		"	Aug.	29, 1864	32,551	90	" " " "	" " "	
"	"	"		"	Sept.	5, 1868	35,470	56	Stm't. in File Box C. Com.	" " "	
"	"	"		"	Sept.	12, 1868	11,885	40	" " " "	" " "	
"	"	"		"	Sept.	15, 1868	10,000	00	" " " "	" " "	
"	"	"		"	Sept.	24, 1868	11,900	25	" " " "	" " "	
"	"	"		"	Oct.	2, 1868	2,805	00	" " " "	" " "	
"	"	"		"	Oct.	6, 1868	11,774	14	" " " "	" " "	
"	"	"		"	Oct.	6, 1868	1,290	00	" " " "	" " "	
"	"	"		"	Dec.	31, 1868	2,917	62	" " " "	" " "	
"	"	"		"	Sept.	3, 1868	42,000	00	Treasr's. Blotter this date	" " "	
"	"	"		"	Sept.	15, 1869	21,000	00	" " " "	" " "	
"	"	"		"	Dec.	15, 1869	8,912	07	" " " "	" " "	

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 8. (*Continued*)

"	"	"	"	May	7, 1870							
"	"	"	"	Sept.	10, 1870	31,259 74	"	"	"	"	"	"
"	"	"	"	June	9, 1871	21,000 00	"	"	"	"	"	"
"	"	"	"	Feb.	15, 1872							
"	"	"	"	Mch.	15, 1872	40,230 64	"	"	"	"	"	"
"	"	"	"	Sept.	30, 1874	44,485 00	"	"	"	"	"	"
"	"	"	"	Oct.	13, 1874	12,915 00	"	"	"	"	"	"
"	"	"	"	Nov.	27, 1875	6,000 00	"	"	"	"	"	"
"	"	"	"	Dec.	1, 1875	5,724 00	"	"	"	"	"	"
"	"	"	"	Oct.	2, 1876	31,130 00	Min. of Snkg. Fd.,		p.	214	"	"
"	"	"	"	June	27, 1877	20,777 88	"	"	"	218	"	"
"	"	"	"	Jan.	7, 1879	30,462 85	"	"	"	223	"	"
"	"	"	"	Sept.	30, 1869	62,067 70	"	"	"	227	"	"
"	"	"	"	Sept.	30, 1879	1 69	"	"	"	227	"	"
"	"	"	"	Dec.	5, 1879	4,152 62	"	"	"	228	"	"
"	"	"	"	Dec.	5, 1879						"	"
"	"	"	"	Nov.	26, 1880	22,289 31					"	"
"	"	"	"	Sept.	30, 1881						"	"
"	"	"	"	Nov.	26, 1881	25,718 31	"	"	"	230	"	"
"	"	"	"	Nov.	23, 1886	18,900 00	"	"	"	285	"	"
Virginia	Central	R. R.	Div.	Bonds	Nov.	3, 1863	3,519 00	Treasr's. Blotter this date			Int. on	Div. Bonds
"	"	"	"	"	Aug.	25, 1870	23,601 00	Stm't in File Box C. Com.			"	"

Bonds deposited B.P.W. 8/25/70 See report 2d Auditor for 1871.

INTEREST FROM LOANS.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 9.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Assets held by said State subsequent to Jan. 1, 1861.

Name.	Date Paid.	Amount.	Reference.	On Account of
* Virginia Central R. R. Loan	July 21, 1863	$ 446 67	Jour. D. Int. Imp. Fd. p. 155	Int. on Loan
" " " " "	Jan. 8, 1864	7,350 00	" " " " " " 165	" " "
" " " " "	Sep. 19, 1864	7,350 00	" " " " " " "	" " "
" " " " "	July 30, 1868	7,350 00	Treasr's. Blotter this date	" " "
" " " " "	Sep. 17, 1868	7,350 00	" " " "	" " "
" " " " "	Aug. 25, 1870	48,573 40	" " " "	" " "
Winchest'r & Pot'm'c R. R. An'ty.	Sep. 30, 1873	35,184 79	Jour. D. Int. Imp. Fd. p. 175	Ar. of Annuity
** Southside R. R. Co. Loan	July 6, 1863	15,624 31	" " " " " " 155	Int. on Loan
" " " " "	Aug. 8, 1863	10,897 66	Treasr's. Blotter this date	" " "
" " " " "	Aug. 17, 1863	21,000 00	" " " "	" " "
" " " " "	Sep. 16, 1863	20,102 34	" " " "	" " "
Norfolk & Petersburg R. R. Loan	Jan. 11, 1864	45,000 00	" " " "	" " "
" " " " "	Oct. 5, 1868	15,000 00	" " " "	" " "
" " " " "	Sep. 28, 1869	9,561 41	" " " "	" " "
*** Washington College Loan	Aug. 26, 1863	3 65	Lit. Fd. Cash Bk. 5, not paged	" " "
" " "	Mch. 24, 1864	60 00	" " " "	" " "
" " "	Sep. 2, 1864	60 00	" " " "	" " "
" " "	Dec. 2, 1871	780 00	" " 1, page 18	" " "
" " "	Aug. 22, 1872	60 00	" " " " 22	" " "
" " "	Aug. 22, 1872	60 00	" " " "	" " "
" " "	Nov. 21, 1873	120 00	" " " " 36	" " "
" " "	July 21, 1874	120 00	" " " " 44	" " "

INTEREST FROM ASSETS.

Sheet 9. (*Continued*)

"	"	"	July 23, 1875	120 00	"	"	"	"	52	"	"	"
"	"	"	July 17, 1876	120 00	"	"	"	"	62	"	"	"
"	"	"	Aug. 23, 1877	120 00	"	"	"	"	70	"	"	"
"	"	"	Aug. 26, 1878	120 00	"	"	"	"	78	"	"	"
"	"	"	July 16, 1879	120 00	"	"	"	"	86	"	"	"
"	"	"	July 6, 1880	60 00	"	"	"	"	96	"	"	"
"	"	"	Sep. 18, 1880	60 00	"	"	"	"	98	"	"	"
"	"	"	July 23, 1881	120 00	"	"	"	"	104	"	"	"
"	"	"	July 20, 1882	120 00	"	"	"	"	114	"	"	"
"	"	"	July 27, 1883	122 00	"	"	"	"	122	"	"	"
"	"	"	July 14, 1884	120 00	"	"	"	"	130	"	"	"
"	"	"	July 14, 1885	120 00	"	"	"	"	140	"	"	"
"	"	"	July 14, 1886	120 00	"	"	"	"	150	"	"	"
"	"	"	July 25, 1887	120 00	"	"	"	"	160	"	"	"
"	"	"	July 19, 1888	120 00	"	"	"	"	170	"	"	"
"	"	"	July 9, 1889	120 00	"	"	"	"	180	"	"	"
"	"	"	July 18, 1890	120 00	"	"	"	"	190	"	"	"
"	"	"	July 11, 1891	120 00	"	"	"	"	198	"	"	"
"	"	"	July 12, 1892	120 00	"	"	"	"	208	"	"	"
"	"	"	Jan. 6 1893	60 00	"	"	"	"	212	"	"	"
"	"	"	Oct. 7, 1893	60 00	"	"	"	"	218	"	"	"
"	"	"	Jan. 13, 1894	60 00	"	"	"	"	220	"	"	"
"	"	"	July 5, 1894	60 00	"	"	"	"	224	"	"	"

*Total payment, $7,350.00. Balance already claimed.

** Total, $28,000.00. Balance already claimed.

*** Total, $60.00. Balance already claimed.

Bonds deposited with B. P. W. See report Second Auditor for 1871.

INTEREST FROM ASSETS

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 10.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Assets held by said State subsequent to Jan. 1, 1861.

INTEREST FROM ASSETS.

	Date Paid.	Amount.	Reference.	On Account of
Washington College Loan	July 2, 1895	$ 120 00	Lit. Fd. Cash Book No. 1 Page 234	Interest on Loan
" " "	Jan. 9, 1896	60 00	" " " " " " " 238	" " "
Richmond Academy Bonds	Aug. 26, 1863	74	" " " " " 5 Not Paged	Int. on Bonds
" " "	Mch. 24, 1864	12 00	" " " " " " " "	" " "
" " "	Sep. 2, 1864	12 00	" " " " " " " "	" " "
" " "	Jan. 31, 1872	180 00	" " " " " " " 18	" " "
" " "	July 23, 1872	12 00	" " " " " " " 24	" " "
" " "	July 21, 1873	12 00	" " " " " " " 34	" " "
" " "	July 21, 1873	12 00	" " " " " " " 34	" " "
" " "	July 21, 1874	24 00	" " " " " " " 44	" " "
" " "	July 19, 1875	24 00	" " " " " " " 52	" " "
" " "	July 17, 1876	24 00	" " " " " " " 62	" " "
" " "	July 3, 1877	24 00	" " " " " " " 70	" " "
" " "	July 3, 1879	24 00	" " " " " " " 78	" " "
" " "	July 10, 1879	24 00	" " " " " " " 86	" " "
" " "	July 23, 1880	24 00	" " " " " " " 96	" " "
" " "	July 21, 1881	24 00	" " " " " " " 104	" " "
" " "	July 20, 1882	24 00	" " " " " " " 114	" " "
" " "	July 27, 1883	24 00	" " " " " " " 122	" " "
" " "	Dec. 17, 1884	24 00	" " " " " " " 134	" " "
" " "	July 17, 1885	24 00	" " " " " " " 140	" " "
" " "	Mch. 8, 1886	12 00	" " " " " " " 146	" " "

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 10. (*Continued*)

	"	"	"	July	28,	1886	12	00	"	"	"	"	"	"	"	150	"	"	"
	"	"	"	Nov.	22,	1887	24	00	"	"	"	"	"	"	"	164	"	"	"
	"	"	"	July	24,	1888	24	00	"	"	"	"	"	"	"	170	"	"	"
	"	"	"	July	8,	1889	24	00	"	"	"	"	"	"	"	178	"	"	"
	"	"	"	July	18,	1890	24	00	"	"	"	"	"	"	"	190	"	"	"
	"	"	"	July	20,	1891	24	00	"	"	"	"	"	"	"	198	"	"	"
	"	"	"	July	8,	1892	24	00	"	"	"	"	"	"	"	206	"	"	"
	"	"	"	Oct.	7,	1893	12	00	"	"	"	"	"	"	"	218	"	"	"
	"	"	"	Feb.	5,	1896	48	00	"	"	"	"	"	"	"	240	"	"	"
**	Rich., Fred. & Pot'm'c, Div. Bonds			June	30,	1863	234	87	Board of Public Works Cash Book								"	"	"
	"	"	"	"	"		Jan.	3,	1873	2,696	96	Sinking Fund Cash Book					"	"	"
	"	"	"	"	"		Jan.	3,	1873	1,051	82	"	"	"	"		"	"	"
	U. S. Government Claim, Exhibit 3									592,761	22								
	Interest Grand Total									$2,809,236	41								

* Total, $12.00. Balance already claimed.

** Total, $3,866.56. Balance already claimed.

Dividend Grand Total	$3,812,668 75
Aggregate	$6,621,905 16

DEFENDANT'S EXHIBIT No. 1—1863.

Page No. 1.

Class A.
Sheet 1.

Hillman Exhibit 1.
(Corresponds with Hillman Exhibit 1, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing Cash in hands of the Treasurer of the Commonwealth of Virginia to the credit of various funds, June 20, 1863.

LITERARY FUND:			
(As shown page 69, Lit. Fund Ledger, March 31, 1863...	$ 10,961 46		
Receipts March 31, 1863, to June 20, 1863, as follows:			
Journal, page 90	6,056 40		
Journal, page 91	4,733 22		
		$ 21,751 08	
Payments March 31, 1863, to June 20, 1863, as follows:			
Journal, pages 91-92 ...	819 79		
Journal, page 92	15 00		
		834 79	
Balance June 20, 1863		$ 20,916 29	
Less Dawson Fund Cash....		8,600 00	
Balance State Funds..			$ 12,316 29
BOARD OF PUBLIC WORKS:			
(As shown page 247, Ledger "B," on file 2d Audr's. Office)	224,761 04		
Receipts March 31, 1863, to June 20, 1863, as follows:			
Journal, page 147	63,910 50		
Journal, page 148	109,995 64		
Journal, page 149	200,275 00		
		598,942 18	
Payments March 31, 1863, to June 20, 1863, as follows:			
Journal, page 151	30,823 28		
Journal, pages 152-3 ...	1,137 82		
Journal, page 153	3,005 09		
Journal, page 154	45 00	35,011 19	
			563,930 99

DEFENDANT'S EXHIBIT No. 1—1863.

(*Continued*) Page No. 1.

COMMONWEALTH FUND:			
(Page 180, First Auditor's Ledger, in account headed J. S. Calvert, Treas., May 31, 1863)	2,314,577 24		
Journal, page 185	149,545 07		
Journal, page 186	114,173 75		
Journal, page 187	75,000 57		
Journal, page 188	50,989 55		
Journal, page 189	188,611 19		
Journal, page 190	14,199 00		
Journal, page 191	55,912 55		
		2,963,008 92	
Payments March 31, 1863, to June 20, 1863, as follows:			
Day Book Audr's. Office, page 194, April.....	382,775 37		
Day Book, Audr's. Office, page 194, May.....	130,501 77		
Cash Book M. M. Treasr's. Office, June 1, 1863, to June 20, 1863, pages 100 to 105	709,958 67	1,223,235 81	
			1,739,773 11

DEFENDANT'S EXHIBIT No. 1—1863.

Page No. 2.

STATE OF WEST VIRGINIA.

Class A.
Sheet 2.

Hillman Exhibit 1.
(Corresponds with Hillman Exhibit 1, Jan. 1, 1861.)

SINKING FUND:			
(Sinking Fund, Ledger No. 1, 1853-1865)			
Page 2, acct. headed J. S. Calvert, Treas., Oct. 1, 1862.	$ 104,167 20		
Pages 58-59, Journal, Sinking Fund	664,093 44		
		$ 768,260 64	
Payments—Pages 60-61, Journal, Sinking Fund		625,064 74	
			$ 143,195 90
Total cash			$2,459,216 29

DEFENDANT'S EXHIBIT No. 2—1863.

Class B.

Hillman Exhibit 2.
Defendant Exhibit 2.
(Corresponds with Exhibit 2, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing holdings of the State of Virginia in the Richmond, Fredericksburg & Potomac R. R., June 20, 1863, and their book values on the dates mentioned, no figures being obtainable for the exact date of June 20, 1863.

	Par $100.	Value 6/20/63 Per Share.	Book Value.
Richmond, Fredericksburg & Potomac Stock (page 184, Ledger "B," Internal Improvement Fund), 2,752 shares	$ 275,200 00	$ 184 50	$ 507,744 00

Following figures taken from official reports of the R. R. Co. on file in the Treasurer's Office, Richmond, Va.

Page of said record.	Date.	Outstanding Stock.	Surplus.	Book Value Plus Stock in Treasury.	Book Value Minus Stock in Treasury.
Pen & Ink. Bound in	March 31, 1863	$1,142,900 00	$ 952,160 86	183 31	183 60
Pen & Ink. Bound in	March 31, 1864	1,142,900 00	998,736 92	187 39	187 69
11	Sept. 30, 1864	1,142,900 00	1,160,988 43	201 58	203 54

N. B.—Increase of March 31, 1864, over March 31, 1863, was 187.69 over 183.60 or 4.09; 80 days to June 20, 1863, would be 80/365 of 4.09 or .90, which added to 183.60 would give us 184.50.

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DEFENDANT'S EXHIBIT No. 2—1863.
(Continued)

Dividends declared on R., F. & P. Stock from 1850 to 1864, inclusive:

Year.	Amt. of Stock.	Paid in Cash.	Paid in Bonds.
1850	$1,000,000 00	7%	
1851	1,000,000 00	7%	
1852	1,000,000 00	7%	
1853	1,000,000 00	7%	
1854	1,000,000 00	3½%	3½%
1855	1,000,000 00		7%
1858	1,033,600 00		
1859	1,043,700 00		7%
1860	1,043,700 00		7%
1861	1,116,100 00	3½% (not paid until 1873)	
1862	1,142,900 00	5½%	
1863	1,142,900 00	26½%	
1864	1,142,900 00	13%	

N. B.—All stock above $1,000,000 was guaranteed stock and paid 7% guarantee and participated in anything above that that the other stock earned.

Total dividends paid in 15 years as above, 104½%, or almost 7% per year.

DEFENDANT'S EXHIBIT No. 2—1863.
Sub-Sheet 1

Class B.

Hillman Exhibit 2.
Defendant Exhibit 2.
Subsheet 1.
(Corresponds with Exhibit 2,
Subsheet 1, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement of the affairs of the Richmond, Fredericksburg & Potomac R. R. Company from the commencement of the work to the 31st of March, 1863.

Assets.

Cost of Road & Property:		
From Richmond to Acquia Creek	$1,534,147 44	
Cost of new superstructure, heavy iron, etc.	563,649 47	
Engineering expenses to Manassas & Quantico	2,321 87	

Liabilities.

Capital Stock:		
Subscribed by the State, 2,752 shares old stock	$ 275,200 00	
Subscribed by individuals		
4,248 shares old stock	424,800 00	
3,000 shares new stock	300,000 00	
1,429 shares gtd. stock	142,900 00	$1,142,900 00

DEFENDANT'S EXHIBIT No. 2—1863.

(Sub-Sheet 1—Continued.)

Property conveyed to E. Robinson	147,858 13	$2,247,976 91	Debts due by the Company of a permanent nature:		
Debts due to the Company:			Coupon & Conv't'le. Bonds due in U. S. '75	21,000 00	
From individuals on new stock	1,820 00		Coupon Bonds due in London in 1875	57,333 33	
From bills receivable	19,068 13		Convertible Bonds due in U. S. in 1875	172,800 00	
From sundries in open account	97,181 69		Certificates of debt due in U. S. in 1857	1,606 32	
From Confederate States for transportation of freight & passengers	193,312 98		Certificates of debt due in U. S. in 1869	264,979 40	
From Confederate States for expense of reconstructing bridges destroyed	22,422 67	333,805 47	Certificates of debt due in U. S. in 1879	138,653 20	$ 656,372 25
Investments:			Debts due by the Company by notes and open accounts:		
Seaboard & Roanoke R. R. Stock	24,616 94		Debts due in open account.	70,042 60	
Stock of this Company	4,009 00		Unpaid dividends and interest on certifs. of Debt.	67,699 33	
Potomac Steamboat Co. Stock.	38,900 00		Bills payable	914 22	$ 142,656 15
Confederate States Bonds (8%)	240,050 00	307,575 94			
Cash:			Profit & Loss:		
On hand March 31, 1863	4,730 94	4,730 94	Receipts from transportation since commencement of work to March 31, 1863		$6,030,769 87
Total		$2,894,089 26			

CLASS B—1863.

DEFENDANT'S EXHIBIT No. 2—1863.

(Sub-Sheet 1—Continued.)

From Thirtieth Annual Meeting of the Stockholders of the R., F. & P. R. R. Company—held May 27, 1863—on file in office of the Paymaster R., F. & P. R. R. Company, Richmond, Va., in book marked "Annual Reports R., F. & P. R. R. Co., 1852-1873" (pages 536 and 537).

Rents of real estate since commencement of work to March 31, 1863	6,340 62	
Petersburg Omnibus Account	4272 52	
Dividends from Potomac Steamboat Co.	83,385 00	
	$6,124,768 01	
Expenses of transportation from commencement of the work to March 31, 1863, including loss of bridges and depot by fire, interest, interest on certificates of debt and new stock, allowance to Washington & Fredericksburg Steamboat Co., and difference of exchange in settlement of bonds due in London in 1862	$3,939,383 91	
	$2,185,384 10	
Dividends paid since the commencement of the work to March 31, 1863.	$1,233,223 24	$ 952,160 86
		$2,894,089 26

DEFENDANT'S EXHIBIT No. 2—1863

Sub-Sheet 2.

Class B.

Hillman Exhibit 2.
Defendant Exhibit 2.
Subsheet 2.
(Corresponds with Exhibit 2, Subsheet 2, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement of the affairs of the Richmond, Fredericksburg & Potomac R. R. Company from the commencement of the work to the 31st of March, 1864.

Assets.		
Cost of Road & Property:		
From Richmond to Acquia Creek	$1,533,662 44	
Cost of new superstructure, heavy iron, etc.	563,649 47	
Engineering expenses to Manassas & Quantico	2,321 87	

Liabilities.		
Capital Stock:		
Subscribed by the State, 2,752 shares old stock	$ 275,200 00	
Subscribed by individuals		
4,248 shares old stock	424,800 00	
3,000 shares new stock	300,000 00	
1,429 shares gtd. stock	142,900 00	$1,142,900 00

DEFENDANT'S EXHIBIT No. 2—1863.

(Sub-Sheet 2—Continued.)

Property conveyed by E. Robinson	148,308 13	$2,247,941 91
Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	10,118 13	
From C. S. for transportation.	69,991 61	
From C. S. for reconstruction of bridges destroyed	22,422 67	
From sundries in open account	130,040 81	$ 234,393 22
Investments:		
Stock of this Company	4,009 00	
Cotton	6,958 00	
Postage Stamps	2,390 00	
Five Dollar Notes	10,750 00	
Specie bought to purchase supplies with		
$500 (?) in Gold at $30 for $1 (1) $15,000 00		
$5.02 in Silver at $22 for 1$ (?) 110 14	15,110 14	
Potomac Steamboat Co. Stock	38,900 00	
Seaboard & Roanoke R. R. Stock	24,616 94	
Confederate State Bonds (4%)	500 00	
Debts due by the Company of a permanent nature:		
Coupon Bonds Conv't'le. due in C. S. '75	21,000 00	
Coupon Bonds due in London in 1875	57,333 33	
Convertible Bonds due in C. S. in 1875	172,800 00	
Certificates of Debt due in C. S. in 1857	1,564 32	....
Certificates of Debt due in C. S. in 1869	181,011 90	
Certificates of Debt due in C. S. in 1879	98,599 20	$ 532,308 75
Debts due by the Company by notes and open account:		
Debts due in open account.	72,802 47	
Unpaid Dividends and interest on Certificates of Debt	170,658 22	
Bills payable	914 22	$ 244,374 91
Profit and Loss:		
Receipts from transportation since commencement of work to March 31, 1864	$6,737,205 25	

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DEFENDANT'S EXHIBIT No. 2—1863.

(Sub-Sheet 2—Continued.)

Confederate States Bonds (8%)	60,000 00	
Confederate States Bonds (Cotton Int.)	272,500 00	435,734 38
Cash:		
On hand March 31, 1864	251 07	251 07
Total	$2,918,320 58	

Taken from Report of 31st Annual Meeting of the Stockholders of the R., F. & P. R. R. Company—held June 1, 1864—on file in office of the Paymaster R., F. & P. R. R. Company, Richmond, Va., in book marked "Annual Reports, R., F. & P. R. R. Co., 1852-1873." (Not paged and written by hand.)

Rents of real estate since commencement of work to March 31, 1864		6,380 62
Petersburg Omnibus Account		4,272 52
Dividends from Potomac Steamboat Co.		83,385 00
Profit on Confederate States Bonds		24,653 86
Received of Va. Cent'l. R. R. on a/c decree of Circuit Ct. of City of Richmond v. that Co. & O. & A. R. R. Co.		68,069 63
Rec'd of Orange & Alexandria R. R. on a/c decree of Circuit Ct. of City of Richmond v. that Co. & Va. Central	79,015 00	
	$147,084 73	
Less fees paid counsel	11,450 00	135,634 73
		$6,991,531 98

DEFENDANT'S EXHIBIT No. 2—1863.

(*Sub-Sheet 2—Continued.*)

Page No. 5.

[102]

Off expenses of Transp. since Com. to Mar. 31/64, including, &c.	4,474,944 12	
	$2,516,587 86	
Dividends paid since the Com. to March 31/64 ..	1,517,850 94	998,736 92
		$2,918,320 58

CLASS B—1863

DEFENDANT'S EXHIBIT No. 2—1863.
Sub-Sheet 3.

Class B.

Page No. 6.

Hillman Exhibit 2.
Defendant Exhibit 2.
Subsheet 3.
(Corresponds with Exhibit 2, Subsheet 3, Jan. 1, 1861.)

CLASS B—1863

STATE OF WEST VIRGINIA.

Statement of the affairs of the Richmond, Fredericksburg & Potomac R. R. Company from the commencement of the work to the 30th of September, 1864.

Assets.		
Cost of Road & Property:		
From Richmond to Acquia Creek	$1,533,662 44	
Cost of new superstructure, heavy iron, etc.	563,649 47	
Engineering expenses to Manassas & Quantico	2,321 87	
Cost of Negro Man	3,005 00	
Property conveyed by E. Robinson	148,308 13	$2,250,946 91

Liabilities.		
Capital Stock:		
Subscribed by the State, 2,752 shares old stock	$ 275,200 00	
Subscribed by individuals, 4,248 shares old stock	424,800 00	
3,000 shares new stock	300,000 00	
1,429 shares gtd. stock	142,900 00	$1,142,900 00
Debts due by the Company of a permanent nature:		
Coupon Bonds Conv't'le., due in C. S. '75	21,000 00	

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DEFENDANT'S EXHIBIT No. 2—1863—Page No. 6.

(*Sub-Sheet 3—Continued*)

CLASS B—1863

Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	10,118 13	
From Confederate States for transportation	166,153 12	
From Confederate States for reconstruction of bridges destroyed in 1862	22,422 67	
From sundries in open account	65,728 81	266,242 73
Investments:		
Stock of this Company, 291 shares	21,602 00	
C. S. 8% Bonds (Registered)	47,000 00	
C. S. Cotton Int. Bonds (Coupon)	272,500 00	
C. S. Cotton Int. Coupons	40,725 00	
C. S. Call Certificates 4%	35,500 00	
Potomac Steamboat Co. Stock	38,900 00	
Seaboard & Roanoke R. R. Stock	42,209 94	
Specie	110 44	
Supplies Imported	41,755 53	540,302 91
Cash:		
On hand Sept. 30, 1864	37,061 41	37,061 41
		$3,094,553 96

Coupon Bonds due in London in 1875	57,333 33	
Convertible Bonds due in C. S. in 1875	172,800 00	
Certificates of Debt due in C. S. in 1857	1,564 32	
Certificates of Debt due in C .S. in 1869	181,011 90	
Certificates of Debt due in C. S. in 1879	98,599 20	532,308 75
Debts due by the Company by notes and open accounts:		
Unpaid dividends & interest on Certificates of Debt	170,931 83	
Debts due on open accounts	86,510 73	
Bills payable	914 22	258,356 78
Profit & Loss:		
Receipts from transportation since commencement of work to Sept. 30, 1864	7,229,885 40	
Rents of real estate since commencement of work to Sept. 30, 1864	6,405 62	
Dividends from Potomac Steamboat Co.	83,385 06	
Petersburg Omnibus Account	4,272 52	

(*Sub-Sheet 3—Continued*)

From 32nd Annual Meeting of the Stockholders of the R. F. & P. R. R. Company—held Nov. 16, 1864—on file in office of the Paymaster R., F. & P. R. R. Company, Richmond, Va., in book marked "Annual Reports, R., F. & P. R. R. Co., 1852-1873" (not paged—written by hand).

Received from Va. Central and Orange & Alexandria R. R. Companies on a/c decree, &c.	135,634 73	
Profit on C. S. Bonds sold..	24,609 31	
	7,484,192 58	
Expenses of transportation since commencement of work to Sept. 30, 1864, including loss of bridges and depot by fire, interest, interest on certificates of debt and new stock, allowance to Washington & Fredericksburg Steamboat Co., and difference of exchange in settlement of bonds due in London in 1862	4,770,556 31	
	2,713,636 27	
Dividends paid since the commencement of the work to Sept. 30, 1864...	1,552,647 84	1,160,988 43
		$3,094,553 96

CLASS B—1863

DEFENDANT'S EXHIBIT No. 3—1863.

Class C.

Hillman Exhibit 3-A.
Defendant Exhibit 3-A.
(Corresponds with Exhibit 3-A, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Recapitulation of Schedule "C" Assets. Results of Revision of Schedule "C" by Hillman.

	Par.	Face Value.	Book Value.		Value June 20, 1863.	Disposed of For.
1. Orange & Alexandria R. R. Stock	$ 874,500 00		$134 25		$1,140,566 62	$ 874,500 00
Loan		$ 377,772 65		June 23/63	377,772 65	377,772 65
2. Richmond & Danville R. R. Co. Stock	1,188,598 50		162 27		1,928,738 79	1,085,636 57
Loan		544,861 46			544,861 46	438,900 00
3. Richmond & Petersburg R. R. Co. Stock	385,600 00		141 24		544,621 44	578,404 13 (Incl. Interest)
4. Virginia Central R. R. Co. Stock	2,013,987 52		164 61		3,315,224 86	241,858 50
Loan		210,000 00			210,000 00	210,076 60
Dividend Bonds		58,650 00			58,650 00	58,650 00
5. Blue Ridge R. R. (built by State of Va.)	1,674,723 23				1,674,723 23	625,348 08
6. Alexandria, Loudoun & Hampshire R. R. Co. Stock	1,017,248 00				1,017,248 00	50,862 40

(Continued)

7. Winchester & Potomac R. R. Co. Loan		83,333 33	83,333 33	83,333 33
8. Virginia & Tennessee R. R. Co. Loan		800,000 00	800,000 00	686,685 00
9. South Side R. R. Co. Loan		800,000 00	800,000 00	(Turned over to A. M. & O.)
10. Norfolk & Petersburg R. R. Co. Loan		300,000 00	137,000 00	137,000 00
Stock	1,199,970 00			(Turned over to A. M. & O.)
11. Roanoke Navigation Co. Stock	80,000 00		80,000 00	3,832 00
12 Alexandria Canal Co. Stock	272,000 00		272,000 00	764 47
13 Upper Appomattox Co. Stock	56,500 00		56,500 00	16,144 26
14. Dismal Swamp Canal Co. Stock	190,000 00		190,000 00	9,935 99
15. Loan to Washington College		2,000 00	2,000 00	2,000 00
16. Richmond Academy Bonds	400 00		400 00	400 00
17. Claim against U. S. Government		298,369 74	298,369 74	298,369 74
18. Claim against Selden, Withers & Company		?	132,842 74	132,842 74
19. Richmond, Fredericksburg & Potomac R. R. Co. Dividend Bonds		122,464 00	122,464 00	122,464 00
20. Manassas Gap R. R. Co.		2,280,000 00	2,280,000 00	
			$16,067,316 86	$6,035,780 46

CLASS C—1863

DEFENDANT'S EXHIBIT No. 3—1863—Asset 1.

Class C.

Hillman Exhibit 3-A.
Defendant Exhibit 3-A. Asset 1.
(Corresponds with Exhibit 3 A-1.
Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing Profit & Loss of the Orange & Alexandria Railroad Company to determine the value of said stock on opening of business Sept. 30, 1863.

1. Orange & Alexandria R. R. Co.	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
1860 Stock	$2,039,603 73	$ 28,242 34	$ 28,242 34	$135,515 49	$106 64
1861 Stock	2,058,007 07	263,909 85	As reported by the Supt. all records were in Alexandria and as the war was on he could only guess at the operating expenses; therefore, the above statement is valueless. Earnings had increased 33% and his operating expenses $220,000.00. The value of Sept. 30, 1860, is, therefore, taken as the measure of its worth.		
1862 Stock	2,057,813 01	333,680 49	333,680 49	469,195 98	122 80
1863 Stock	2,058,794 30	236,538 57	236,538 57	705,296 40	134 25

This road did not declare any dividends during the years 1862 and 1863, hence the accumulations of profits.

Profits for the year 1862 have been added to total profits which had accumulated up to 1860, the profits for 1861 have not been considered, else the value of this stock would be greater than shown for 1863.

In 1863 the debt is in bills payable to a great extent, all of which have matured. Also coupons on different issues of bonds, interest on preferred stock and dividend script. The company now has means to liquidate all its indebtedness of this nature, but the parties holding the debt cannot be reached.

This statement is compiled from a report to the Board of Public Works of the State of Virginia, Document 15, pages 7 to 24, for 1862, and 25 to 39 for 1863, in a book labeled Documents, 1863-1864, on file in Washington, D. C., and sworn to by J. H. Reed, Treasurer, and H. W. Vandegrift, General Superintendent.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-1, D-1. 3 Sheets.

Class C
Class D.
Sheet 1.

Defendant Exhibit 3 & 4.
Hillman Exhibit 3 & 4.
Asset C-1.
Asset D-1.
(Corresponds with Exhibit 3 & 4.
Asset C-1 & D-1, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

	Cost.	Par as Per Settlement.	
A. STOCK—Ledger "B," Internal Improvement Fund, Folio 183, shows that the State of Virginia owned on June 20, 1863, stock of the O. & A. R. Co. to the value of	$ 872,802 83	$ 874,500 00	
Dividend 1854, paid in 1864			
Page 157, Journal "D," Department Public Works,			$ 31,604 09
Page 157, Journal "D," Department Public Works, ($24,912 00 doubtful).			
B. LOAN—Ledger "B," Folio 241, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia owned the face value of a loan to the Orange & Alexandria R. R. Co. of	400,000 00	400,000 00	

(Continued)

Following details from pages 389-392, Journal "N," Public Works (Internal Improvement, now known as Public Works):			
Interest to Feb. 23, 1859	6,075 31		
Paid Feb. 11, 1859	5,250 00	825 31	
		400,825 31	
Paid Feb. 23, 1859		2,154 71	
		$398,670 60	
Interest to Sept. 15, 1859	10,415 94		
Paid Sept. 15, 1859	9,086 61		
Unpaid interest	1,329 33	1,329 33	
Interest to April 17, 1860	14,019 00		
Paid April 17, 1860	9,840 47		
Unpaid interest		4,178 53	
Interest to July 1, 1860	5,035 18		
Cash to July 1	4,159 53		
		875 65	
Loan and over interest to July 1, 1860		$ 405,054 11	$ 405,054 11
Add interest on $398,670.60 for six months at 7% per annum—3½			13,953 47
Total due on loan interest 1/1/61			$419,007 58

Above three lines inserted to show amount due from January 1, 1861 on loan.

CLASSES C & D—1863

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-1, D-1. 3 Sheets.

(*Continued*)

Class C.
Class D.
Sheet 2.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C. 1.
Asset D. 1.
(Corresponds with Exhibit 3 & 4, Asset C. 1. & D. 1. Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

	Payments.	Charges.	Amt. Due June 23/63.
Brought forward from Sheet 1		$ 405,054 11	
Interest to Oct. 20, 1862		$ 54,934 61	
Paid Oct. 20, 1862	$ 10,071 00		
Interest to Oct. 25, 1862		327 67	
Paid Oct. 25, 1862	20,000 00		
Interest to Nov. 15, 1862		1,376 23	
Paid Nov. 15, 1862	23,000 00		
Interest to Dec. 29, 1862		2,321 02	
Paid Dec. 29, 1862	16,929 00		
Interest to Jan. 28, 1863		2,474 51	
Paid Jan. 28, 1863	14,000 00		
Interest to June 23, 1863		9,284 50	$ 377,772 65

THIS PAGE IS BOU

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-1, D-1. 3 Sheets.

(Concluded.)

Paid June 23, 1863	14,000 00	
Interest to Jan. 16, 1864		12,823 56
Paid Jan. 16, 1864	14,000 00	
Interest to Sept. 8, 1864		14,604 90
Paid Sept. 8, 1864	14,000 00	
Interest to Dec. 31, 1864		7,072 78
Paid Dec. 31, 1864	14,000 00	
Interest to Jan. 1, 1865		60 86
Paid in State Bonds & Int.	150,037 73	
Interest to Aug. 20, 1868		48,269 22
Paid Aug. 26, 1868	20,000 06	
Interest to Nov. 1, 1868		2,420 23
Paid Nov. 1, 1868, in State Bonds & Int.	38,141 53	
	$ 348,179 26	$ 561,024 20
Deduct payments		348,179 26
Balance of Loan		$ 212,844 94

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-1, D-1. 3 Sheets.

Class C.
Class D.
Sheet 3.

Page No. 11.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C. 1.
Asset D. 1.
(Corresponds with Exhibit 3 & 4, Asset C. 1. & D. 1. Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

	Payments.	Charges.	
Final Settlement of Loan & Stock, pages 407-10, Journal "N."			
Balance of Loan		$ 212,844 94	
Int. to March 29, 1872		43,510 92	
Int. to Oct. 17, 1872		7,050 11	
Total Loan to Oct. 17, 1872		$ 263,405 97	
Par of Stock		874,500 00	
Total Outstanding Loan & Stock		$1,137,905 97	
Paid as follows:			
Mar. 28, 1872 as 1/6 of above to Mar. 28, $1,130,855 86—			
Bonds	$ 188,478 29		included in bonds turned in below.
Oct. 17, 1872, Discount for anticipation of intallments—			
Page 180, Journal "D"			
No. 2	$ 4,956 11		
No. 3	15,165 67		

(Continued)

No. 4	24,306 94
No. 5	32,539 22
No. 6	39,991 68
Oct. 28, 1872, State Bonds	834,398 88
Int. on Bonds	186,548 49
	$1,137,906 99

B.—$1.02 over, being 5c in discounts and an overpayment of 97c.

DEFENDANT'S EXHIBIT No. 3—1863—Asset No. 2.

Page No. 12.

Class C.

Hillman Exhibit 3-A.
Defendant's Exhibit 3-A.
Asset 2.
(Corresponds with Exhibit 3-A-2.
Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing Profit & Loss of the Richmond & Danville Railroad Company to determine the value of said stock on opening of business Sept. 30, 1863.

Richmond & Danville R. R. Co. Stock.	Par of Stocks	Profit.	Add Profits.	Profits to date.	Book Value.
1861 Stock	$1,981,297 50	$ 156,688 24	$ 77,436 34	$ 817,859 14	$141 28
Less Dividends		79,251 90			
1862 Stock	1,981,297 50	321,492 62	182,801 80	1,000,660 94	150 55
Less Dividends		138,690 82			
*1863 Stock	1,981,297 50	451,110 34	233,167 62	1,233,828 56	162 27
Less Dividends		217,942 72			

*No Floating debt in this year:

Statement taken from report to Board of Public Works, 1863-1864, Document 15, pages 127-144, for 1862, State of Virginia, sworn to by J. D. Blair, Auditor, and Charles E. Talcott, Supt., Feb. 7, 1863, on file in Washington, D. C., for 1863, pages 145-161.

THIS PAGE IS BOU

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-2, D-2.

Page No. 13.

Class C.
Class D.
Sheet 1.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.

Asset C. 2.
Asset D. 2.
(Corresponds with Exhibit 3 & 4, Asset C. 2 & D. 2, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Richmond and Danville Railroad.

	Cost Price.	Disposed of For
A. STOCK.		
Ledger B, Folio 183, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia owned stock in this company to the value of	$1,188,598 50	
This stock was disposed of as follows:		
Journal "N," Board Public Works, on file in Corporation Commission Office, Folio 311—		
Dec. 13, 1870—First payment:		
Old Registered Bonds		$ 58,200 00
Interest Funded Debt, Jan., 1866		13,377 41
Interest Funded Debt., Jan., 1867		18,583 00
Interest on above		9,915 37
Journal "N," Folio 348, Aug. 31, 1871:		
Coupon Bonds		38,500 00
Interest		12,705 00
Registered Stock		460,017 98
Interest		13,800 53
Registered Bonds, 1866		187,474 51
Interest		61,866 53
Registered Bonds, 1867		126,424 95
Interest		34,134 74
FINAL PAYMENT.		
On decision of Circuit Court of Richmond, this company made final settlement for stock as follows:		
Reference:		
Decree of Circuit Court of Richmond, April 13, 1877, to pay balance amounting to $26,571.46, with interest from August 31, 1871.		

ND VERTICAL IN BOOK

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-2, D-2.

(Continued.)

Journal "O," Board Public Works, June 30, 1886:	
State Bonds	38,100 00
Coupons	691 50
Journal "O," Board Public Works, Dec. 20, 1886:	
State Bonds	11,500 00
Coupons	345 00
	$1,085,636 57

The same being $26,571.46, principal, and $24,065.04, interest, as per above decree.

The principal and interest due on the preceding payment amounted to $11,771.42, and the excess, $73.58, was paid in order that the R. & D. could make the payment in bonds.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-2, D-2.

Page No. 14.

Class C.
Class D.
Sheet 2.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C. 2.
Asset D. 2.
(Corresponds with Exhibit 3 & 4, Asset C. 2 & D. 2., Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Richmond and Danville Railroad.

			Value June 20, 1863.
B.	LOAN.		
	Ledger "B," Folio 240, Internal Improvement Fund, shows the value of this loan to the State of Virginia, as of June 20, 1863, to be	$ 600,000 00	
	Due to the partial payment plan, by which this loan was computed, as shown by page 12, Senate Document, and Journal No. 12, 1881 and 1882, its value on Sept. 30, 1862, was	551,444 95	
	Following this plan, we arrive at a balance on June 20, 1863, as follows:		
	Interest from Sept. 30, to June 20, 1863	23,749 84	
		575,194 97	
	Less 8 months and 20 days of an annual annuity of $42,000.00	30,333 33	
	The value of this loan, June 20, 1863, was		$ 544,861 46
	Loan was finally disposed of as follows, having been reduced by the partial payment plan used above, and including interest, to $438,900.00.		
	Journal "N," Board Public Works, Folio 631, July 1, 1882:		
	First payment—		
	Coupon Bond	$ 282,000 00	
	Fractional Certificates	10,436 41	

Page No. 14.

(*Continued*)

Record Book, Sinking Fund, Second Auditor, Folio, 285, July 8, 1884:		
Bonds	15,700	00
Fractional Certificates	166	37
Cash		55
Journal "N," Board Public Works, Folio 632, Sept. 28, 1882:		
State Bonds	38,500	00
Fractional Certificates	13	76
Folio 635:		
Bonds	91,996	00
Fractional Certificates	86	91
	$ 438,900	00

DEFENDANT'S EXHIBIT No. 3—1863—Asset 3-C, Asset D-3.

Class C.

Hillman Exhibit 3-A.
Defendant's Exhibit 3-A.
Asset 3.
(Corresponds with Exhibit 3-A3.)

STATE OF WEST VIRGINIA.

Statement showing Profit & Loss of the Richmond & Petersburg Railroad Company to determine the value of said stock on opening of business Sept. 30, 1863.

Richmond & Petersburg R. R. Co.	Par of Stock.	Profit.	Add Profits.	Profits to date.	Book Value.
1861 Stock	$ 835,750 00	$ 55,616 33	$ 6,736 33	$ 189,433 32	$122 66
Less Dividends		48,880 00			

1862 No report could be found for this date and it is believed that no report was rendered for this year. In making computation for the year 1863, interest on floating debt and funded debt of 1861 and dividends declared in 1862, have been deducted from profits for 1863, in addition to the same deduction applicable in 1863, although profits (not ascertainable) have not been considered. It would appear, therefore, that these stocks are of greater value than that set forth herein.

1863 Stock	$ 837,750 00	$ 353,480 00	$ 156,090 35	$ 345,523 67	$141 24
Less Dividends		197,389 78			

This statement is compiled from figures contained in a report to the Board of Public Works of Virginia, Document 15, pages 193 to 208, on file in Washington, D. C., in a book labeled Documents, 1863-1864, and is sworn to by J. H. Reed, Treasurer, and E. H. Gill, Superintendent.

CLASS C 1863.

DEFENDANT'S EXHIBIT No. 3—1863—Asset No. 3.

Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset 3 C.
Asset 3 D.
(Corresponds with Exhibit 3 & 4, Asset 3 C. & 3 D. Jan. 1, 1861)

STATE OF WEST VIRGINIA.

Richmond & Petersburg Railroad.
Disposal of Securities of that Company owned by the Commonwealth of Virginia.

	Cost.	Settlement.	Payment.
D. Dividend on Stock—			
Semi-annual Dividends due June 30, 1863, paid July 31, 1863, as per folio 148, Journal "D," Internal Im'pt. Fund, to the amount of $23,136.00.		$ 21,857 80	
This sum, proportioned to June 20, 1863, amounts to..			
C. Stock—			
Folio 184, Ledger "B," Int. Imp. Fund, shows that in June 20, 1863, the State of Virginia held stock in this Railroad to the extent of	$ 385,600 00		
C. Stock—			
Sold @ 150 and paid for as follows:			
Pages 351-2 Journal "N," Internal Im'pt. Fund.....		$ 578,400 00	
Paid Mar. 8, 1871			$ 100,000 00
Paid July 13, 1871			3,037 50
Interest on same to July 1, 1871			525 93

(*Continued*)

Paid July 13, 1871	384,172 20
Interest on same to July 1, 1871	46,165 65
Paid July 20, 1871	7,150 00
Paid Aug. 4, 1871	21,278 09
Interest to July 1, 1871	449 45
Paid Sept. 6, 1871	12,625 40
Paid Sept. 6, 1871	*3,000 00
	$ 578,404 13
Total Bonds, Dividend and Stock	$ 621,472 13

*Balance due Sept. 6, 1871, $2,995.87, was secured by State Bonds for $3,000.00, which were forfeited to the State, thus creating excess of $4.13—See Journal "N," pages 351 and 352, Internal Im'pt. Fund.

DEFENDANT'S EXHIBIT No. 3—1863—Asset 4.

Class C.

Hillman Exhibit 3-A.
Defendant Exhibit 3-A.
Asset 4.
(Corresponds with Exhibit 3 A-4, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing Profit & Loss of the Virginia Central Railroad Company to determine the value of said stock on opening of business Sept. 30, 1863.

Virginia Central R. R. Co.	Par of Stock.	Profit.	Add Profits.	Profits to date.	Book Value.
1861 Stock	$3,292,444 73	$ 276,319 91	$ 263,646 41	$1,249,208 86	$137 94
Less Dividends		12,673 50			
1862 Stock	3,303,193 98	585,979 41	493,399 56	1,742,608 42	152 75
Less Dividends		92,579 85			
1863 Stock	3,356,735 99	661,204 44	426,232 93	2,168,841 35	164 61
Less Dividends		234,971 51			

This report is compiled from figures obtained from a report to the Board of Public Works, State of Virginia, Document 15, pages (41 to 64 for 1862 and '65 to 85 for 1863), and sworn to by J. Garrett, Treasurer, and H. D. Whitcomb, General Supt. The report is in file in Washington, D. C.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-4.

Page No. 18.

Sheet 1.
Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C. 4.
(Corresponds with Exhibit 3 & 4, Asset C. 4, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Virginia Central Railroad Company—Stock.

A. STOCK.	Book Value.	Disposed of For.
Folio 185, Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held stock of the Virginia Central Railroad Co. to the value of	$2,013,987 52	
This stock was disposed of on various dates and in quantities and prices shown below:		
Journal "O," Board of Public Works:		
Folio 129, Aug. 15, 1888, 17,622 39/100 shares		$ 25,500 00
Folio 157, Jan. 7, 1890, 100 shares at $26.75		2,675 00
Folio 157, Jan. 9, 1890, 1,200 shares at $26.75		32,100 00
Folio 157, Jan. 10, 1890, 200 shares at $26.75		5,350 00
Folio 157, Jan. 27, 1890, 800 shares at $26.75		21,400 00
Folio 158, Feb. 10, 1890, 200 shares at $25.00		5,000 00
Folio 158, Feb. 10, 1890, 400 shares at $24.75		9,900 00
Folio 158, Feb. 10, 1890, 100 shares at $24.50		2,450 00
Folio 158, Feb. 10, 1890, 200 shares at $24.37½		4,875 00
Folio 158, Feb. 10, 1890, 300 shares at $23.87½		7,162 50
Folio 158, Feb. 10, 1890, 1,000 shares at $23.75		23,750 00
Folio 158, Feb. 10, 1890, 1,200 shares at $23.50		28,200 00
Folio 158, Feb. 10, 1890, 1,200 shares at $23.75		28,500 00
Folio 158, Feb. 11, 1890, 800 shares at $23.75		19,000 00

Folio 158, Feb. 11, 1890, 100 shares at $23.62½	2,362 50
Folio 158, Feb. 11, 1890, 411 shares at $23.50	9,658 50
Folio 158, Feb. 11, 1890, 200 shares at $23.37½	4,675 00
Folio 158, Feb. 11, 1890, 400 shares at $23.25	9,300 00
Total—26,433 39/100 shares...	$241,858 50

The total amount received for the stock was received into the Treasury as per Cash Book Second Auditor, Aug. 20, 1888	$ 25,500 00
Cash Book Second Auditor, Feb. 12, 1890	216,358 50
	$241,858 50

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-4, Asset D-4.

Sheet 2.
Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C. 4.
Asset D. 4.
(Corresponds with Exhibit 3 & 4, Asset 4-C & 4-D, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Virginia Central Railroad Co.

B—LOAN—		Amount due.	Disposed of for
Folio 241, Ledger B, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held a loan issued to the Virginia Central R. R. Co., whose face value was.....	$ 210,000 00		
Interest which accrued on this loan from January 1, 1863, to July 1, 1863, amounting to $7,350.00, was paid subsequent to July 1, 1863, as per cash book 10, B. P. W., Second Auditor's Office, July 21, 1863. Proportioning same on time basis to June 20, 1863....		$ 6,903 32	
The above loan was bought by the Chesapeake & Ohio R. R. Co, as shown by, statement on file, in file room of the Corporation Commission, dated July 1, 1870, who paid in bonds and interest..			$ 210,076 60
Confirmation of sale and receipt of money is shown in the report of the Second Auditor in the year 1871.			

(Continued)

C—DIVIDEND BONDS—			
Folio 280, Ledger B, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia owned dividend bonds of the Virginia Central R. R. to the value of ..... which was disposed of as follows:	58,650 00		58,650 00
File box, Corporation Commission, Aug. 25, 1870.			
Interest which accrued on this loan from Oct. 15, 1862, to Oct. 15, 1863, amounting to $3,519.00, was paid subsequent to Oct. 15, 1863, as per cash book 10, B. P. W., Second Auditor's Office, Nov. 3, 1863. Proportioning same on time basis to June 20, 1863..		2,390 99	2,390 99
			$ 61,040 99

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-5, Asset D-20.

Page No. 20.

Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-5.
Asset D-20.
(Corresponds with Exhibit 3 & 4, Asset C-5 & D-20, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Blue Ridge Railroad.
(*Built by the State of Virginia and sold April* 1, 1870, *to the Chesapeake & Ohio R. R. Co.*)

	Cost.	Disposed of For.
Cost of Construction, June 20, 1863 (Folio 187, Ledger "B," Internal Impt. Fund.)	$1,674,733 23	
Amount invested in road after June 20, 1863, was $20,147.62, all of which was allowed to the Virginia Central R. R., which was to do the work, as a credit on their toll account, and which amount was in addition to the tolls mentioned below		
This road was sold by the State of Virginia April 1, 1870, as shown by Folio 171, Journal "D," Internal Improvement Fund, and was paid for as follows:		
Bonds		$ 574,921 48
Interest on same		50,417 64
Check		8 96
		$ 625,348 08
Tolls which had accrued prior to July 1, 1863 (for the quarter ended that date), were received subsequent to that date, and the portion of these tolls to June 20, 1863, is a proper claim.		
March 2, 1864, Cash Book No. 10, Board of Public Works, shows a receipt of $6,576.50 for the period mentioned.		
This sum proportioned to June 20, 1863, is.....		5,853 81
Total received		$ 631,201 89

Subsequently there was received the following tolls from the Virginia Central, which may or may not be considered as part of the purchase price. My judgment is may not.

March 31, 1864, Cash Book No. 10, B. P. W., $64,984.49.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-6.

Page No. 21.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-6.
(Corresponds with Exhibit 3 & 4, Asset C-6, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Alexandria, Loudoun & Hampshire Railroad.

		Amount Received.
STOCK.		
Ledger "B," Folio 181, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held stock in the Alexandria, Loudoun & Hampshire R. R. to the value of	$1,017,248 00	
This stock was disposed of at $5 per share for a total of $50,862.40, which was paid for with three notes of $16,954.13 each, dated Nov. 25, 1867, for 5, 7 and 10 years, respectively		$ 50,862 40
These notes were paid, with interest, as per the following references:		
May 17, 1872, page 397, Journal "N," B. P. W.— First payment	$ 1,500 00	
March 19, 1873, page 435, Journal "N," B. P. W.— Second payment	3,000 00	
June 5, 1883, page 641, Journal "N," B. P. W.— Third payment	65,188 71	
	$69,688 71	

The difference between the amount actually paid and the face of the notes ($18,826.31) represents the interest on notes.

THIS PAGE IS

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-7.

Page No. 22.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-7.
(Corresponds with Exhibit 3 & 4, Asset C-7 & D-5, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Winchester & Potomac Railroad.

A. LOAN.		Disposed of For.
Folio 241, Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held the face value of a loan to the Winchester & Potomac R. R. Co., amounting to.....	$ 83,333 33	
This loan was disposed of as follows:		
Folio 175, Journal "D," Internal Improvement Fund, under date of Sept. 30, 1873, shows that the Treasurer of the Commonwealth of Virginia received in full settlement of this loan.....		$ 83,333 33

OUND VERTICAL IN BOOK

Class C.
Class D.
Sheet 1.

Hillman Exhibit 3 & 4.
Asset C-8.
Asset D-7.
(Corresponds with Exhibit 3 & 4, Asset C-8 & D-9, Jan. 1, 1861.

STATE OF WEST VIRGINIA.

Virginia & Tennessee Railroad Co.

Statement of Loans and Interest on Same which was Unpaid June 20, 1863, and subsequent payments thereon.

		Amount Due.	Due Subsequent to June 20, 1863.
Interest on loan of $1,000,000.00, Folio 255, Ledger "B," Internal Improvement Fund shows on March 31, 1863 (N. B. Postings are quarterly, but the Journal date of this entry is also March 31, 1863), debits to this interest account of	$ 647,584 12		
Add interest to June 20, 1863	15,469 61		
Total interest accrued to June 20, 1863	$ 663,053 73		
Same page shows payments on account of above interest, credits to interest account	647,584 12		
Leaving a balance due on June 20, 1863, of		$ 15,469 61	
And Sept. 30, 1863, of			$ 19,530 39
Same page of ledger has on Sept. 30, 1863, this account in balance, $682,584.12, Debit and Credit, showing that all arrearages of interest were paid.			
Evidenced also by the following payments of back interest:			
Cash Book, No. 10, Board of Public Works, Second Auditor's Office, Aug. 15, 1863, shows a payment of	35,000 00		

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-8, D-7.

Page No. 24.

Class C. Hillman Exhibit 3 & 4.
Class D. Asset C. 8.
Sheet 2. Asset D. 7.
(Corresponds with Exhibit 3 & 4, Asset C. 8 & D. 7, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Virginia & Tennessee Railroad Co.

B. LOAN.	Face Value.	Disposed of For.
Folio 240, Ledger B, Internal Improvement Fund, shows that on Jan. 1, 1861, the State of Virginia held the face value of a loan to the Virginia & Tennessee R. R. Co. of	$1,000,000 00	
On June 19, 1863, there was paid to the State of Virginia by the V. & T. R. R. Co. on account of the redemption of this loan, as shown on Cash Book of Board of Public Works, No. 10, not paged	200,000 00	
Leaving the face value of this loan on June 20, 1863, of	800,000 00	
Subsequent to this date, the loan was further redeemed as follows:		
Cash Book, Sinking Fund (not paged), June 20, 1863		$ 300,000 00
August 6, 1863		100,000 00
August 7, 1863		100,000 00
September 11, 1863		186,685 00
		$ 686,685 00

This loan was never paid in full, but the unpaid balance was turned over to the A. M. & O., together with the other items of the South Side R. R., Virginia & Kentucky R. R. and the Norfolk & Petersburg R. R. for $4,000,000.00. (See Hillman Exhibit 6, Class F.)

If this loan had been worked out on the "partial payment" plan, as loans that were eventually settled in full, West Virginia would be entitled to take into consideration $37,237.14 more. (See Asset C. 8 and D. 7, Supplemental Answer.)

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-9, D-8.

Page No. 25.

Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset D-8.
Asset C-9.
(Corresponds with Exhibit 3 & 4, Asset D-8, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

South Side Railroad.

Interest on Loans due June 20, 1863, and paid subsequently.

	Face Value.	Amount Due.	Disposed Of For.
A—Loan—			
Folio 240, Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held the face value of a loan of $800,000.00 to the South Side Railroad Co.	$ 800,000 00		
B—Interest on Loan—			
Folio 254, Ledger "B," Internal Improvement Fund, shows interest due on above loan to March 31, 1863	$ 525,487 69		
Add interest to June 20, 1863	12,375 69		
Total due June 20, 1863	$ 537,863 38		
Same page of ledger shows that up to March 31, 1863 (last payment before June 20, 1863), the South Side Railroad Co. had paid on account of interest on this loan	329,487 69		

Leaving the amount due June 20, 1863		$ 208,375 69	
All of which was subsequently paid as same page, same ledger shows the account balanced as of Sept. 30, 1863.			
Cash Book, No. 10, not paged, Board of Public Works, shows payment of the above as follows:			
July 29, 1863			$ 56,000 00
Aug. 1, 1863			63,000 00
" 8, 1863			28,000 00
" 17, 1863			21,000 00
Sept. 16, 1863			28,000 00
Proportion of interest to June 20, 1863, of payment of $28,000.00, July 6, 1863, as per Cash Book No. 10, Board of Public Works			12,375 69
			$ 208,375 69
Note—Ledger B Folio 254, Internal Improvement Fund, shows that since March 31, 1863, the interest had increased $112,000.00, making a total of $637,487.69, due as of March, 31, 1865. Same page shows a credit of	$ 329,487 69		
And further credits as follows:			
Sept. 30, 1863	$ 224,000 00		
" " 1864	56,000 00		
Mch. 31, 1865	28,000 00		
Total Credits	$ 637,487 69		

The loan itself, Asset C. 9, was never paid. It was turned over with the Stock to the A. M. & O. Railroad with other roads for $4,000,000.00. See Hillman Exhibit 6, Class F, for the Va. & Tenn. R. R., South Side R. R., Va. & Kentucky R. R. and Norfolk & Petersburg R. R. If this loan had been figured on the "partial payment plan" that was used on loans which were eventually paid, West Va. would be entitled to take $32,000.00 more into consideration. (See figures in Assets D. 9 & C. 8, in Supplemental Answer.)

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-10, D-9.

Page No. 26.

Class C. Hillman Exhibit 3 & 4.
Class D. Defendant Exhibit 3 & 4.
Asset C-10.
Asset D-9.

(Corresponds with Hillman Exhibit 3 & 4, Assets C. 10 & D. 9., Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Norfolk & Petersburg Railroad—Stock and Loan.

			Amount Received.
A.	STOCK.		
	(Page 182, Ledger "B," Internal Improvement Fund)	$1,499,970 00	
	On Dec. 22, 1870, page 178, Journal "D," Improvement Fund, it was discovered that $300,000.00 of this amount was in shape of bonds or loans	300,000 00	
	Leaving book value of stock..... consisting of the following shares, as shown on page 178, Journal "D," Internal Improvement Fund:	1,199,970 00	
	8,175 shares ordinary stock, par $100.	817,500 00	
	825 shares guaranteed 6% stock, par $100	382,500 00	
	3,000 shares preferred 7% stock, par $100	300,000 00	
	12,000 shares—total stock	$1,200,000 00	
	Dividends paid on above guaranteed stock	$82,500 00	
	Six months at 6%, Jan. 1, 1863, to July 1, 1863	2,475 00	
	(Page 149, Journal "D," Internal Improvement Fund)		
	Which proportioned to June 20, 1863....		$ 2,324 52
	Stock was included in sale of four roads already mentioned to the A. M. & O. R. R. (See Hillman Ex. 6.		
	Interest on above named loan of $300,000.00. 4½ years, Jan. 1, 1859, to July 1, 1863, at 6%. Folio 158, Journal "D," Internal Improvement Fund. Paid Jan. 11, 1864, $94,500.00. Proportioned to June 20, 1863		93,866 57

Page No. 26. (*Continued*)

B. LOAN.

Page 179, Journal "D," Internal Improvement Fund, shows in the settlement, Dec. 22, 1870, when stocks and loans were turned over to the A. M. & O., that $163,000 of the $300,000 loan was yet outstanding, hence there must have been paid	137,000 00
	$ 233,191 09

N. B.—In a report to the Senate, Doc. 2, pages 19-20, 1874-5, by John O. Steger, and transmitted to Senate as an appendix to the governor's message, there is shown to have been paid on this loan $151,524.49, and the report further says that the book entries were missing and that he counted the bonds in many instances, and that report can be relied upon as very nearly, if not absolutely, accurate. I also am unable to locate any entries on this subject.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-11.

Page No. 27.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-11.
(Corresponds with Exhibit 3 & 4, Asset C-11, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Roanoke Navigation Company—Stock.

STOCK.	Cost Price.	Disposed of For.
Folio 193, Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held stock in the Roanoke Navigation Company to the value of	$ 80,000 00	
This stock was disposed of, as evidenced on page 476 of the First Auditor's Day Book, Sept. 30, 1882, on a decree of court for		$ 3,832 00

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-12.

Page No. 28.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-12.
(Corresponds with Exhibit 3 & 4, Asset C-12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Alexandria Canal.

STOCK.	Cost Price.	Disposed of For.
Ledger "B," Internal Improvement Fund, Folio 191, shows that on June 20, 1863, the State of Virginia owned 2,720 shares of Alexandria Canal Co. stock, valued at..	$ 272,000 00	
This stock was disposed of July 1, 1887, as shown below.		
Record Book, Sinking Fund, Folio 394, July 1, 1887, 2,720 shares sold as follows at 30c per share:		
To City Council of Alex'ria 1,220 shares		$366 00
To George Mulbach..... 100 shares		30 00
To Frank Hume..... 600 shares		180 00
To H. H. Wells..... 500 shares		150 00
To A. A. Berney ..... 100 shares		30 00
To Frank Agnen..... 200 shares		60 00
Total .....2,720 shares		$816 00
Less expenses of sale for advertising, etc., as shown by same record.....		51 53
		$764 47

The Treasurer's Blotter for 1887-1888, Folio 5, shows the receipts July 1, 1887, on account this sale of $816.00.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-13.

Page No. 29.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-13.
(Corresponds with Exhibit 3 & 4, Asset C-13, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Upper Appomattox Company—Stock.

STOCK.	Cost Price.	Disposed of For.
Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held stock in this company to the value of	$ 56,500 00	
This stock was disposed of and amounts received for same by the State of Virginia as follows:		
Cash Book, Sinking Fund, page 31, Feb. 24, 1875		$ 3,000 00
Cash Book, Sinking Fund, page 48, Jan. 1881		2,280 00
Record Book, Sinking Fund, page 286, July 8, 1884:		
Coupon Bonds		10,500 00
Registered Bonds		300 00
Fractional Certificates		64 26
		$16,144 26

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-14.

Page No. 30.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-14.
(Corresponds with Exhibit 3 & 4, Asset C-14, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Dismal Swamp Canal.

STOCK.—		Disposed of For.
Ledger "B," Internal Improvement Fund, Folio 191, shows that on June 20, 1863, the State of Virginia held stock in the Dismal Swamp Canal to the value of....	$ 190,000 00	
The State of Virginia sold the entire holding of stock (760 shares) as per Journal "N," Board of Public Works, pages 238 and 241, in 1868, for.....		$ 9,935 99

Note.—The amount received by the State of Virginia for this stock was subsequently invested in Virginia Bonds, as follows:

Principal	$24,839 98
Interest	5,961 59
Total	$30,801 57

which amount was turned over to the Sinking Fund July 31, 1874 (page 207, Record Book, Sinking Fund).

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-15, D-11.

Page No. 31.

Class C.
Class D.

Hillman Exhibit 3 & 4.
Asset C. 15.
Asset D-11.
(Corresponds with Exhibit 3 & 4, Asset C. 15, D. 11., Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Loan to Washington College.

LOAN.	Face Value.	Disposed of For.
On Jan. 1, 1861, the Ledger of the Literary Fund for that period, Folio 8, shows that the State of Virginia held the balance of an original loan of $4,000.00 to Washington College, amounting to....	2,000 00	
Interest on this loan, which had accrued prior to June 20, 1863, was paid and received by the State of Virginia as follows:		
Cash Book 5, Literary Fund, not paged, August 26, 1863.		
For interest due July 1, 1863, $60.00.		
This sum being proportioned to June 20, 1863, amounts to		$ 56 35
This loan was redeemed Jan. 1, 1896, as set forth below:		
Cash Book No. 1, New Series, Literary Fund, Folio 238—"Received of the President and Directors of Washington and Lee University (formerly Washington College) the balance of a loan of $4,000.00 made July 16, 1882, by the Board of the Literary Fund"..		2,000 00
		$2,056 35

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-16, D-12.

Page No. 32.

Class C. Hillman Exhibit 3 & 4.
Class D. Defendant Exhibit 3 & 4.
Asset C-16.
Asset D-12.
(Corresponds with Exhibit 3 & 4, Asset C-16 & D-12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Richmond Academy.

BONDS.	Face Value.	Disposed of For.
On June 20, 1863, the Ledger of the Literary Fund for that period, Folio 11, shows that the State of Virginia owned bonds of the Richmond Academy to the value of	$400 00	
Interest on these bonds, which had accrued prior to June 20, 1863, was paid subsequent to that date and received by the State of Virginia as follows: Cash Book No. 5 (not paged), Literary Fund, August 26, 1863, for interest due July 1, 1863, $12.00. This sum being proportioned to June 20, 1863, amounts to.....		$ 11 26
This bond was redeemed as set forth below: Cash Book No. 1, New Series, Literary Fund, Folio 240, Feb. 5, 1896—"Received on account of redemption of 6% Bond of Richmond Academy."		400 00
		$411 26

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-17, D-13.

Page No. 33.

Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset D-13.
Asset C-17.
(Corresponds with Exhibit 3 & 4, Asset D. 13, C. 17, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

All figures in claim taken from file in vault of the Second Auditor's Office, containing the original settlement papers and confirmed by certified copy of record on file Treasury Department U. S., Washington.

Principal of loan by Virginia to U. S. Government July 1, 1814	$ 298,369 74
Interest on same to February 11, 1894 (Being 79 years 7 mos. 10 days @ 6%)	1,425,212 79
	$1,723,582 53

Payment was effected in 1903 as of date of Feb. 11, 1894, as follows:

Virginia bonds owned by the U. S., returned—Principal	$ 581,800 00
Chesapeake & Ohio Guaranteed Bonds—Principal	13,000 00
Interest on $594,800 from Jan. 1, 1861, to Feb. 11, 1894	1,181,669 33
	$1,776,469 33
Less interest paid 1867-70, 4% on $581,800	69,816 00
	$1,706,653 33
Paid to the restored State of Virginia (no date)	16,923 70
	$1,723,577 03
Cash paid Virginia by the U. S., 1903, balance of settlement	5 50
	$1,723,582 53

Value of claim June 20, 1863—Principal	$ 298,369 74
Interest at 6% July 1, 1814, to June 20, 1863	872,260 07
Total	$1,170,629 81

DEFENDANT'S EXHIBIT 3—1863—Asset C-18.

Page No. 34.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4. Asset C-18.
(Corresponds with Exhibit 3 & 4,
Asset C-18, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Claim vs. Selden, Withers and Company.

Collections made subsequent to June 20th, 1863.

Date.	Received from.	Reference.	Page.	Cash.
April 26, 1866—	James Neeson	Treas. Cash Book	126	$ 500 00
June 23, " — "	"	" " "	166	4,674 60
July 11, " — "	" Atty., &c.	" " "	182	1,189 48
Dec. 7, " — "	"	" " "	26	2,212 00
Nov. 5, 1868—	" "	" " "	14	5,522 00
July 17, 1869—	" "	" " "	125	5,150 00
April 27, 1871—	" "	" " "	195	5,000 00
June 3, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W., Journal "N"	330	*8,036 49
July 6, "	—James Neeson	Treas. Cash Book	250	4,395 19
Sep. 13, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W., Journal "N"	355	*11,871 30
Nov. 9, "	—a/c Sale Real Estate St. Louis	Snkg. Fd. Cash Book	2	5,089 29
Nov. 18, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W., Journal "N"	362	*8,211 91
Dec. 23, "	—a/c Sale Real Estate St. Louis	Snkg. Fd. Cash Book	3	10,000 00
Mar. 6, 1872—	Sale Marietta & Cinn. R. R. Stock	" " " "	5	13,692 98
May 4, 1872—	James Neeson	" " " "	7	3,000 00
June 10, "	a/c Sale Real Estate St. Louis	" " " "	8	10,000 00

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-18.

Page No. 34. (*Continued*)

Dec. 4, " —L. Turner	"	"	"	"	13	1,600 00	
Dec. 21, " —A. Wyle, Trustee for Withers	"	"	"	"	13	10,000 00	
June 23, 1873—James Neeson, Agent B. P. W.	"	"	"	"	17	9,500 00	
Sep. 24, " — " " " State of Va.	"	"	"	"	19	7,500 00	
Feb. 20, 1875— " " " " " "	"	"	"	"	31	1,600 00	
May 13, 1887—Cash	"	"	"	"	58	1,286 00	
Nov. 26, 1889—Board Pub. Wks.	"	"	"	"	60	2,504 00	
Aug. 20, 1891— ". " "	"	"	"	"	61	307 50	
							$132,842 74

*Note:

Cash received		132,842 74
Less cash received from proceeds of sale of Marietta & Cincinnati R. R. Co. Stock, viz.:		
	$ 8,036 49	
	11,871 30	
	8,211 91	
		28,119 70
		$104,723 04
Add par value Virginia State Bonds purchased with proceeds from sale of Marietta & Cinn. R. R. Co. Stock..		47,300 00
Total as per Asset "C 18".....		$152,023 04

Same report, Doc. 6, page No. 8, states: "The stock of the Marietta & Cincinnati R. R. Co. was obtained by the State from Selden, Withers & Company."

DEFENDANT'S EXHIBIT No. 3—1863—Asset D-6, C-19.

Page No. 35.

Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset D-6.
Asset C-19.
(Corresponds with Exhibit 3 & 4, Asset D-6 & C-19, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg & Potomac Railroad.

	Face Value.	Amount Due.
Dividend Certificates of Debt—		
Folio 280, Ledger "B," Internal Im'pt. Fund, shows that on June 20, 1863, the State of Virginia held a dividend certificate of debt of the Richmond, Fredericksburg & Potomac R. R. Company to the value of	$ 122,464 00	
This certificate was subsequently paid and the money received by the State of Virginia as follows:		
Cash Book, No. 5, Sinking Fund (not paged), July 1/63.....		$ 122,464 00
Interest due July 1, 1863, on these bonds was paid as follows on June 30, 1863, as per folio 149, Journal "D," Internal Improvement Fund:		
3% on $ 83,936 00 — $2,518 08		
3½% on 28,896 00 — 1,011 36		
3½% on 9,632 00 — 337 12		
$122,464 00 $3,866 56		

DEFENDANT'S EXHIBIT No. 3—1863—Asset D-6, C-19.

Page No. 35. (*Continued*)

Which sum being proportioned to June 20, 1863, amounts to		3,631 69
		$ 126,095 69
On Dec. 30, 1872, as per Journal "N," Folio 416, Board of Public Works, the State of Virginia received on a judgment of the Circuit Court, for interest due on dividend bonds, in 1861 and 1862 the sum of	17,806 68	
Less attorney's fees	250 00	17,556 68
		$ 143,652 37

Note: The above named sum ($17,556.68) was received by the Treasurer of the State of Virginia and turned over to the Sinking Fund, as shown by page 12, Treasurer's Report of Sinking Fund Cash, Sept. 30, 1873, in Annual Report of 1873.

Hillman Exhibit 4-B.

Class D.

Corresponds with Exhibit 4-B, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Recapitulation of Schedule "D" Assets.

Results of Revision of Schedule "D" Assets by Hillman.

	Schedule D. Details.	Totals.
1. Orange & Alexandria R. R. Co. Stock	$ 31,604 09	
Overpaid	1 02	$ 31,605 11
2. Richmond & Danville R. R. Co. Stock	00	
Loan	00	00
3. Richmond & Petersburg R. R. Co. Stock	21,857 80	21,857 80
4. Virginia Central R. R. Co. Stock	00	
Loan	6,903 33	
Dividend Bond	2,390 99	9,294 32
5. Winchester & Potomac R. R. Co.	00	00
6. Richmond, Fredericksburg & Potomac R. R. Co. Dividend Certificate	3,631 69	
Decree of Court, Dividend Bonds	17,556 68	21,188 37
7. Virginia & Tennessee R. R. Co. Loan	15,469 61	15,469 61
8. South Side R. R. Co. Loan	208,375 69	208,375 69
9. Norfolk & Petersburg R. R. Co. Stock	2,324 52	
Loan	93,866 57	96,191 09
10. James River & Kanawha Co.	00	00

Page No. 36. (*Continued*)

11. Loan to Washington College	56 35	56 35
12. Richmond Academy Bonds	11 26	11 26
13. Claim against U. S. Government	872,260 07	872,260 07
14. The Farmers' Bank of Virginia	4,762 16	4,762 16
15. Bank of Virginia	37,974 88	37,974 88
16. Bank of the Valley	24,199 00	24,195 00
17. Exchange Bank	8,385 14	8,385 14
18. Northwestern Bank	00	00
19. Fairmount Bank	00	00
20. Blue Ridge R. R. Tolls for use of	5,853 81	5,853 81
		$1,357,480 66

Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Assets D-14 to 19.
(Corresponds with Exhibit 3 & 4, Asset D-14-19, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Bank dividends due June 20, 1863, on Stock owned by the Commonwealth of Virginia and received subsequent to that date.

	Total Paid.	Proportion to June 20, 1863.
1863.		
Aug. 1—Dividend due June 1, 1863, Folio 129, Journal M. M., Treasurer, Office, Bank of the Valley..	$18,500 00	$18,500 00
Dec. 19—Dividend due Dec. 1, 1863, Folio 174, Journal M. M., Treasr's. Office, Farmers Bank of Va.	37,875 00	3,932 43
1864.		
Jan. 13—Dividend due Dec. 1, 1863, Folio 188, Journal M. M., Treasr's. Office, Exchange Bank of Va.	67,904 00	7,050 14
1863.		
July 25—Dividend due June 1, 1863, Folio 148, Journal D, Internal Imp. Fund., Bank of Va.....	29,382 50	29,382 50
July 10—Dividend due June 1, 1863, Folio 148, Journal D, Internal Imp. Fund, Ex. Bank of Va....	1,335 00	1,335 00
Aug. 1—Dividend due June 1, 1863, Folio 148, Journal D, Internal Imp. Fund., Bank of the Valley	5,235 00	5,235 00
June 25—Dividend due June 1, 1863 (not paged), Cash Book No. 5, Literary Fund, Bank of Va...	7,423 50	7,423 50
Aug. 1—Dividend due June 1, 1863 (not paged), Cash Book No. 5, Lit. Fund, Bank of the Valley	460 00	460 00
Dec. 19—Dividend due Dec. 1, 1863 (not paged), Cash Book No. 5, Lit. Fund, Farmers Bank of Va.	7,905 00	829 73
Dec. 29—Dividend due Dec. 1, 1863 (not paged), Cash Book No. 5, Literary Fund, Bank of Va..	11,135 25	1,168 88
		$75,317 18

Hillman Exhibit No. 5—1.
Defendant Exhibit No. 5—1.
(Corresponds with Exhibit No. 5—1, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing ownership of stocks in various banks by the Commonwealth of Virginia, June 20, 1863, and the value of the same as shown by Banks' Statements as of Jan. 1, 1861.

	Par.	Value Per Share Jan. 1, 1861.	Less Div. Declared Jan. 1, 1861, Per Share.	Net Value Per Share.
FARMERS' BANK OF VA.—Par $100 per share:				
Literary Fund—1,054 shares (Page 13, Lit. Fund Ledger)	$105,400 00	@ 115.07%	3½%	111.57½
Board Public Works—3,522 shares (Page 282, Ledger "B," 2d Audr's. Of.)	352,200 00			
Commonwealth Fund—5,050 shares (Page 50, Ledger 1861-4, Audr's. Of.)	505,000 00			
Total—9,626 shares @ $100	$962,600 00	$1,107,663 82	$ 33,691 00	$1,073,972 82

Statement of Farmers Bank of Virginia, January 1, 1861. Taken from printed report of officers (under oath) to State. Document 14, Annual report of Auditor for 1861, pages 14-15 2d Auditor.

Assets.		Liabilities.	
Debt Outstanding	$5,764,680 74	Capital Stock	$3,150,900 00
Sterling Bills	5,375 84	Notes in Circulation	1,532,578 00
Stocks	41,728 51	Deposits	1,931,138 51
Specie	416,120 40	Due other Banks	240,885 56
Notes other Virginia Banks	583,276 20		
Notes outside Virginia Banks	9,987 00		
Due from other Banks	308,730 62		

Page No. 38. (*Continued*)

Real Estate	193,696 46	Profit and Loss	337,067 05
In transitu	7,074 53	Profits of the Institution	138,101 18
	$7,330,670 30		$7,330,670 30

Profits, $475,168.23, show Book Value of 115.07 Jan. 1, 1861.

Dividends declared—	1856	per	share	(par)	8	%
"	1857	"	"	"	8	%
"	1858	"	"	"	7½	%
"	1859	"	"	"	7½	%
"	1860	"	"	"	7¼	%
"	1861	"	"	"	7¼	%
"	1862	"	"	"	7	%
"	1863	"	"	"	7½	%

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. The fact that this bank declared dividends in 1863 even greater than in 1861 would tend to indicate that this bank stock was at least of equal value in 1863 as in 1861.

Hillman Exhibit No. 5-2.
Defendant Exhibit No. 5-2.
(Corresponds with Hillman Exhibit No. 5-2, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

BANK OF VIRGINIA—Par $70 per share.	Par.	Value Per Share Jan. 1, 1861. (Dec. 31, 1860)	Less Div. Declared Jan. 1, 1861, Per Share	Net Value. Per Share.
Literary Fund, 2,121 shares (Page 13, Lit. Fund Ledger)	$148,470 00			
Board Public Works, 8,395 shares. (Page 282, Ledger "B," Int. Imp. Fund)	587,650 00	$78 75	$2 45	$76 30
Commonwealth Fund, 3,250 shares.	227,500 00			
(Page 57, Journal kk., Treasr., shows payment of dividends 3½ declared Jan. 1, 1861, on $227,500. The amount on Ledger covering this date has been erased, but it shows in both prior and subsequent Ledgers.)				
Total—13,766 shares @ $70.	$963,620 00	$1,084,072 50	$ 33,726 70	$1,050,345 80

Statement of Bank of Virginia, Jan. 1, 1861. *Taken from printed report of officers (under oath). Page* 6, *Document* 14, *Annual Report of Auditors of State of Virginia for* 1861. *On file Second Auditor's office, Vol.* 2.

Assets.		Liabilities.	
Debt Outstanding	$4,513,439 93	Capital Stock	$2,651,250 00
Stocks	64,721 30	Notes in Circulation	1,058,228 83
Real Estate	178,555 33	Deposits	1,545,968 64
Specie	376,355 54	Due other Banks	188,296 51
Notes other Virginia Banks	365.574 05		
Notes outside Virginia Banks	9,217 00		
Due from other Banks	235,562 53		

Unredeemable—Stolen Notes	18,900 00	Profit and Loss	322,549 39
In transitu	13,653 62	Profits since Dec. 1st	9,685 93
	$5,775,979 30		$5,775,979 30

Profit, $332,235.32, shows Book Value of stock $1.125 on the dollar, $78.75 per share.

Dividends declared—	1856,	on par	8 %	per	share	$5.60
" "	1857,	"	7½%	"	"	5.25
" "	1858,	"	7¼%	"	"	5.075
" "	1859,	"	7¼%	"	"	5.075
" "	1860,	"	7¼%	"	"	5.075
" "	1861,	"	7 %	"	"	4.90
" "	1862,	"	7 %	"	"	4.90
" "	1863,	"	5½%	"	"	3.675

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and in the Congressional Library in Washington, D. C., and in the records of the State of Virginia without results. This bank declared a dividend of 7% in 1862 and 5½% in 1863, which would indicate that the bank was still solvent and the stocks were of value in 1863 in proportion to the amount of dividend declared.

DEFENDANT'S EXHIBIT No. 5—1863.

Class E.

Page No. 40.

Hillman Exhibit No. 5—3.
Defendant Exhibit No. 5—3.
(Corresponds with Exhibit No. 5—3, Jan. 1, 1861.)

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CLASS E—1863.

STATE OF WEST VIRGINIA.

	Par.	Value. Jan. 1, 1861.	Less Div. Declared Jan. 1, 1861,	Net Value.
BANK OF THE VALLEY—Par $100 per share:				
Literary Fund—92 shares (Page 14, Lit. Fund Ledger) The State of Va. paid for these 92 shares $10,134.00.	$ 9,200 00			
Board of Public Works—1,047 shares. (Page 282, Ledger "B," Inter. Imp. Fund)	104,700 00	@ 114.7%	3½%	111.2%
Commonwealth Fund—3,700 shares. (Page 50, Ledger 1861-4, Audr's. Of.)	370,000 00			
Total—4,839 shares @ $100	$483,900 00	$555,033 30	$ 16,936 50	$538,096 80

Statement of Bank of the Valley, Jan. 1, 1861. *Taken from printed report of officers (under oath) to State of Virginia. Document* 14, *pages* 34-35 *Annual Report of Auditor*, 1861-2.

Assets.		Liabilities.	
Specie	$ 313,180 63	Capital Stock	$1,215,000 00
Notes—State Banks	33,161 92	Notes in Circulation	1,176,990 50
Notes Outside Banks	41,461 39	Due Other Banks	120,409 81
Due from other Banks	296,000 71	Discount	7,298 33
Notes Discounted	1,692,805 66	Deposits	210,988 13
Inland Bills Discounted	408,124 81		
Va. Treasury Notes	5,400 00		
Bond Account	29,212 06		
Real Estate	76,337 57		
Claim vs. Deceased Teller	13,522 12		
		Profit and Surplus	178,520 10
	$2,909,206 87		$2,909,206 87

Profits and Surplus, $178,520.10, show Book Value of 114.7 Jan. 1, 1861.

Dividends declared—1856, 10 %
" " 1857, 9 %
" " 1858, 8 %
" " 1859, 8 %
" " 1860, 7½ %
" " 1861, 6¾ %
" " 1862, 4 %
" " 1863, 4 %

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. This bank declared a dividend of 4% both in 1862 and in 1863, which would indicate that the bank was still solvent and that the stocks were of value in 1863 in proportion to the amount of dividend declared.

Class E.

Hillman Exhibit No. 5—4.
Defendant Exhibit No. 5—4.
(Corresponds with Exhibit No. 5—4., Jan. 1, 1861.)

CLASS E—1863.

STATE OF WEST VIRGINIA.

EXCHANGE BANK—Par $100 per share:	Par.	Value. Jan. 1, 1861.	Less Div. Declared Jan. 1, 1861.	Net Value.
Board of Public Works—267 shares..... (Page 282, Internal Improvement Fund, Second Auditor's Office)	$ 26,700 00	@ 110.9%	3.5%	107.4%
Commonwealth Fund—8,488 shares ..... (Page 50, Ledger 1861-4, Audr's. Of.)	848,800 00			
Total—8,755 shares @ $100.....	$875,500 00	$979,929 50	$ 30,642 50	$940,287 00

Statement of Exchange Bank, Dec. 31, 1860. *Taken from printed report of officers (under oath) to State of Virginia. Document* 14, *page* 22, *Annual Report of Auditor,* 1861-2.

Assets.		Liabilities.	
Loans	$5,257,662 94	Capital Stock	$3,137,100 00
Virginia and other State Sec.	90,936 56	Circulation	1,235,633 50
Foreign Bills of Exchange	21,999 08	Due Other Banks	122,638 38
Due from Virginia Banks	431,758 89	Deposits	1,689,335 46
Due from Outside Banks	13,402 21	In transitu	9,137 36
Notes of Other Banks	168,662 23		
Real Estate	179,381 12	Contingent Fund	191,584 24
Specie	373,511 96	Profits	150,586 05
	$6,536,314 99		$6,536,314 99

Contingent Fund (Reserve) and Profits, $342,170.29, show Book Value of 110.9 Jan. 1, 1861 (close of business Dec. 31, 1860).

Dividends declared—1856, 9 %
" " 1857, 10 %
" " 1858, 8 %
" " 1859, 9 %
" " 1860, 7½ %
" " 1861, 7¼ %
" " 1862, 7 %
" " 1863, 8 %

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. The fact that this bank declared dividends in 1863 even greater than in 1861 would tend to indicate that this bank stock was at least of equal value in 1863 as in 1861.

DEFENDANT'S EXHIBIT No. 5—1863.

Class E.

Hillman Exhibit No. 5—5.
Defendant Exhibit No. 5—5.
(Corresponds with Exhibit No. 5—5, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

	Par.	Value. Jan. 1, 1861.	Less Div. Declared Jan. 1, 1861,	Net Value.
NORTHWESTERN BANK—Par $100 per share.				
Literary Fund—500 shares ..... (Page 14, Lit. Fd. Ledger)	$ 50,000 00	111.9%	3⅛%	108.4%
Board Public Works—326 shares..... (Page 282, Ledger "B," Internal Improvement Fund)	32,600 00			
Commonwealth Fund—2,918 shares ..... (Page 46, Ledger, First Auditor's, 1856-61, shows $400,000. No subsequent entries, item being left blank on next trial balance. Sinking Fund Journal, Feb. 27/57 shows sale of 1,082 shares and subsequent payment of dividends confirms.)	291,800 00			
Total—3,744 shares @ $100.....	$374,400 00	$418,953 60	$ 13,104 00	$405,849 60

Statement of Northwestern Bank, Jan. 1, 1861. *Taken from printed report of officers (under oath) to State of Virginia. Document* 14, *page* 40, *Second Auditor's Report,* 1861-2. (*Copy of book on file Second Auditor's Office.*)

Assets.		Liabilities.	
Domestic Debt	$ 823,130 86	Capital Stock	$ 868,100 00
Bills of Exchange	728,243 37	Circulation	834,973 00
Stock of this Bank	29,000 00	Deposits	228,023 46
Other Stocks	27,012 53	Due other Banks	54,513 12
Banking House and Other Real Estate	145,869 92	In transitu	20,784 46
Due from other Banks and Branches	102,321 21		
Notes of Virginia Banks	60,510 00		
Notes of other Banks, Checks and Ctfs.	31,939 43	Contingent Fund	63,732 96
Coin	162,216 05	Profits	40,116 41
	$2,110,243 41		$2,110,243 41

Contingent Fund (Reserve) and Profits, $103,849.37, show Book Value of 111.9% Jan. 1, 1861.

Dividends declared—1856, 10 %
" " 1857, 5 %
" " 1858, 7½ %
" " 1859, 8 %
" " 1860, 7½ %
" " 1861,
" " 1862,
" " 1863,

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. No dividends were received by the State of Virginia from this bank in 1862 or 1863. Stock of this bank, par value, $374,400, was still held by the State of Virginia June 20, 1863.

DEFENDANT'S EXHIBIT No. 5—1863.

Hillman Exhibit No. 5—6.
Defendant Exhibit No. 5—6.
(Corresponds with Exhibit No. 5—6, Jan. 1, 1861.)

Class E.

STATE OF WEST VIRGINIA.

	Par.	Value. Jan. 1, 1861. @ 106.87%	Less Div. Declared Jan. 1, 1861, 3%	Net Value. 103.87%
FAIRMOUNT BANK—Par $100 per share:				
Literary Fund—500 shares	$ 50,000 00	$ 53,435 00	$ 1,500 00	$ 51,935 00

Statement of Fairmount Bank, Jan. 1, 1861. *Taken from printed report of officers (under oath) to State of Virginia. Document* 14, *page* 156, *Auditor's Report,* 1860-1. (*Copy of book on file Second Auditor's Office.*)

Assets.		Liabilities.	
Stocks	$ 61,750 00	Capital Stock	$107,950 00
Real Estate	4,027 84	Circulation	123,350 00
Notes and Bills Discounted	153,327 02	Unclaimed Dividends	706 00
Due from Banks	977 79	Due to Banks	5,960 81
Specie	27,491 38	Due to Depositors	7,198 76
Notes of Virginia Banks	3,490 00		
Notes and Checks, Outside Banks	1,520 00	Surplus Fund	7,418 46
	$252,584 03		$252,584 03

Profits, $7,418.46, show Book Value of 106.87 Jan. 1, 1861.
Dividends declared—1860, 4½%

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. This bank did not declare any dividends in 1861, 1862 or 1863. The State of Virginia held stock in this bank on June 20, 1863, to the par value of $50,000.

DEFENDANT'S EXHIBIT No. 6—1863.

Page No. 44.

Class F.

Hillman Exhibit 6
Defendant Exhibit 6.
(Corresponds with Exhibit 6, January 1, 1861)

STATE OF WEST VIRGINIA.

Sale of Various Stocks & Loans to the Atlantic, Mississippi & Ohio R. R.

Pages 178-179, Journal "D," Internal Im'pt. Fund, shows this sale in the following detail of the stocks and loans transferred to this road for the $4,000,000 Second Mortgage on the A. M. & O. R. R.:

	STOCKS—	
I.	8,175 shares Norfolk & Petersburg R. R. Stock	$ 817,500 00
II.	825 shares Norfolk & Petersburg Gt'd. Stock	82,500 00
III.	3,000 shares Norfolk & Petersburg Pf'd. Stock	300,000 00
IV.	8,035 shares South Side R. R. Stock	803,500 00
V.	17,168 shares Virginia & Tennessee R. R. Stock	1,716,800 00
VI.	832 shares Virginia & Tennessee Gt'd Stock	83,200 00
VII.	5,000 shares Virginia & Tennessee Pf'd Stock	500,000 00
VIII.	1,034 shares Virginia & Kentucky R. R. Stock	103,400 00
	Bonds and Notes as follows:	
II.	Note of the Norfolk & Petersburg R. R. for interest due and unpaid on loan of $300,000	13,271 41
I	Note of the N. & P. R. R. for interest accrued and unpaid on July 1, 1870, on 825 shares guaranteed stock	27,225 00
III.	Unpaid balance of principal of the $300,000 loan	163,000 00
IV.	All claim the State may have vs. the South Side R. R. on acct. of the principal and interest due upon the loan of $800,000	
V.	Registered Certificate of the Va. & Tenn. R. R. Company being for interest unpaid on 832 shares of Va. & Tenn. Gt'd. Stock up to July 1, 1870	79,040 00
VI.	All claims, rights and privileges which belong to the State of Virginia on acct. of loan of $1,000,000.	
	For all of the above is charged against the Atlantic, Mississippi & Ohio R. R.	$4,000,000

That the above was a second mortgage for this amount and not a charge against the road is evidenced by the above pages in the preamble to entry and by the first general balance sheet of the A. M. & O. R. R. Company, Sept. 30, 1871, on file in comptroller's office of the Norfolk & Western R. R. Company at Roanoke, Va., and examined by Mr. Parsons. of Mr. Hillman's force, wherein the item "Second Mortgage to the State of Virginia," $4,000,000.00, is shown in liabilities.

SUPPLEMENT TO DEFENDANT'S EXHIBIT No. 6, 1863.

Acts of General Assembly of Virginia, 1881-82.

On pages 76-78 will be found the following Act approved February 9, 1882, pertaining to the State's interest in the Atlantic, Mississippi and Ohio Railroad, to-wit:

Chap. 77—An Act ratifying the sale by the Board of Public Works of the claim of the State against the Atlantic, Mississippi and Ohio Railroad.

Approved February 9, 1882.

Whereas the Board of Public Works of the State of Virginia, acting for said State, did, by agreement dated tenth February, anno domini eighteen hundred and eighty-one, grant, bargain, sell and assign to U. J. Boyce and F. J. Kimball, acting for themselves and their associates, in consideration of the sum of five hundred thousand dollars, to be paid as therein provided, all the right, title and interest of the State of Virginia in, or to, or against, the Atlantic, Mississippi and Ohio Railroad Company by virtue of the covenant or mortgage dated twenty-second December, eighteen hundred and seventy, made and executed by said company in accordance with the terms of the tenth section of an act of the general assembly of the State of Virginia, approved June seventeenth, anno domini, eighteen hundred and seventy, authorizing the formation of the Atlantic, Mississippi and Ohio Railroad Company; and whereas the said sale was by said agreement made subject to the condition that the said Boyce and Kimball, and their associates, should become the purchasers of the said railroad under the decree of sale entered by the Circuit Court for the Fourth Judicial Circuit and Eastern District of Virginia in the cause therein pending of William Butler Duncan and Samuel L. M. Barlow, surviving trustees, plaintiffs, against the said Atlantic, Mississippi and Ohio Railroad Company and other defendants, and upon the terms agreed upon between themselves and the president and board of directors of said company, and with the proviso that unless the said Boyce and Kimball and their associates should within ninety days from the date of said agreement, or as soon thereafter as said Circuit Court of the United States should confirm this purchase of said railroad, deposit with the Board of Public Works the sum of one hundred thousand dollars, in money or in public securities, satisfactory to said board, of the market value of one hundred thousand dollars, and should, on the ratification of said sale by the General Assembly of Virginia, pay over to said board, in cash, the further sum of four hundred thousand dollars, the balance of said purchase money, then the said

agreement should be void, else to remain in full force and virtue; and whereas the said Boyce and Kimball and their associates, did become the purchasers of said Atlantic, Mississippi and Ohio Railroad and of the franchises and property of said railroad company at the foreclosure sale hereinbefore referred to, and have complied with the terms agreed upon between them and the president and board of directors of the Atlantic, Mississippi and Ohio Railroad Company, as by said contract with the Board of Public Works it was stipulated they should do in the event of their becoming such purchasers, which sale was ratified and confirmed by said United States Circuit Court, by virtue of which sale, and of the conveyance made pursuant thereto, the said Boyce and Kimball and their associates (of whom Clarence H. Clark was the one in whose name the purchase of said railroad was made), and become and are a corporation, by the name of The Norfolk and Western Railroad Company, which corporation has thus become entitled to the benefit of, and is bound by the agreement made as aforesaid with the Board of Public Works; and whereas the said sale of all the right, title and interest of the State of Virginia in, or to, or against the Atlantic, Mississippi and Ohio Railroad Company, made by the said Board of Public Works, to the said Boyce and Kimball and their associates, as hereinbefore recited, was made subject to the ratification of the General Assembly of Virginia, with a proviso that if the General Assembly of Virginia should fail to ratify and confirm the same at its then next session, the Board of Public Works should redeliver to the said Boyce and Kimball and their associates all the securities or money which should have been delivered or paid to said Board of Public Works by the said Boyce and Kimball and their associates under the terms of said agreement, together with the accrued interest thereon; and whereas the said Boyce and Kimball and their associates, by their corporate name and style of the Norfolk and Western Railroad Company, have fully complied with all the terms and conditions of said agreement, and did, on the tenth day of May, anno domini, eighteen hundred and eighty-one, in conformity therewith, deposit with the Board of Public Works of the State of Virginia, the sum of one hundred thousand dollars in lawful money of the United States, and are now ready and willing to pay the further sum of four hundred thousand dollars to the Board of Public Works, upon the ratification and confirmation by this General Assembly of said sale, made to them by the Board of Public Works, as hereinbefore recited and set forth; therefore,

1. Be it enacted by the General Assembly of Virginia, That the action of the Board of Public Works in making and executing on behalf of the State of Virginia the said agreement of February tenth, anno domini, eighteen hundred and eighty-one, with the said U. L. Boyce and F. J. Kimball, acting for themselves and their associates, and the sale and transfer thereby to the said Boyce and Kimball and their associates, of all the claim and demand, right and title, and interest of the State of Virginia in or to or against the Atlantic, Mississippi and Ohio Railroad Company, under or by virtue of the covenant or mortgage executed by said company,

and in said agreement referred to, be, and the same is hereby fully approved, ratified and confirmed.

2. And be it further enacted, That upon the payment by the said Norfolk and Western Railroad Company to the Board of Public Works of the State of Virginia, of the balance of the said five hundred thousand dollars purchase money, after crediting said purchase with the one hundred thousand dollars deposited with the Board of Public Works, and with whatever interest shall have accrued upon said one hundred thousand dollars up to the date of the approval of this act, the said Norfolk and Western Railroad Company shall become and be the full and absolute owner of all rights, title and interest of the State of Virginia in or to, or against the Atlantic, Mississippi and Ohio Railroad Company, under or by virtue of the covenant or mortgage dated the twenty-second day of December, anno domini, eighteen hundred and seventy, and executed by and between said company and the Board of Public Works, in accordance with the terms of the tenth section of the act approved June seventeenth, anno domini, eighteen hundred and seventy, authorizing the formation of the Atlantic, Mississippi and Ohio Railroad Company, and of all the rights, title and interest of the State of Virginia, under and by virtue of the proceedings and decrees of the Circuit Court of the United States for the Fourth Judicial Circuit and Eastern District of Virginia, in the equity suit in the names of Duncan and Barlow, surviving trustees, and so forth, plaintiffs, against the Atlantic, Mississippi and Ohio Railroad Company and others, pending in said court, and also in the Supreme Court of the United States, and the Board of Public Works is directed to cause the appeal which has been taken on behalf of the State of Virginia to the Supreme Court of the United States from a decree rendered in said cause by said United States Circuit Court to be dismissed, or it shall, otherwise dispose of the same as the said Norfolk and Western Railroad Company may desire and request; and shall execute all such transfers, assignments and releases as may be necessary or proper to vest in and confirm to the said Norfolk and Western Railroad Company, all the rights and interests which it is the purpose of this act to assure to it; provided that the payment of the said balance of the five hundred thousand dollars shall be made on or before the first day of March, anno domini, eighteen hundred and eighty-two.

3. This act shall be in force from its passage.

DEFENDANT'S EXHIBIT No. 6-A.—1863.

Page No. 45.

Defendant Exhibit 6-A.
(Corresponds with Exhibit 6-A., Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing the book value of securities listed under Class "F" at nearest accurately determinable date to June 20, 1863.

		Par.	Profits.	Book Value.	Date.
Virginia & Tennessee R. R. Co.	Stock	$3,452,313 32			
	Profits		x$ 3,285 30	$ 99 90	Jan. 30, 1860
Southside R. R. Co.	Stock	1,362,900 00			
	Profits		81,471 88	105 98	Sept. 30, 1861
Virginia & Kentucky R. R.	Stock	82,000 61		Par 100 00	
Norfolk & Petersburg R. R. Co.	Stock	1,810,800 00			
	Profits		x 189,942 12	89 52	March 31, 1861

*Loss

		Par of State of Va. Holdings June 20, 1863.	as of 1861. Book Value	June 20, 1863. Value
Virginia & Tennessee R. R. Co.	Stock	$2,270,525 00	$ 99 90	$2,268,254 48
Southside R. R. Co.	Stock	803,500 00	105 98	851,549 30
Southside R. R. Co.	Loan	800,000 00		
Virginia & Kentucky R. R. Co.	Stock	103,438 69	100 00	103,438 69
Norfolk & Petersburg R. R. Co.	Stock	1,499,970 00	89 52	1,342,773 14
Norfolk & Petersburg R. R. Co.	Loan	300,000 00		
				$4,566,015 61

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Page No. 45. (*Continued*)

Reliable data could not be obtained to work up the book value of the stocks of these railroads as of 1862 and 1863, and it became necessary to quote the book value as of 1861.

It will be observed that the State of Virginia increased its holdings in the Virginia & Kentucky Railroad from Jan. 1, 1861 to June 20, 1863 to the extent of $21,438.08 and in the Norfolk & Petersburg R. R. $60,000. (Error in schedule 6 A for Jan. 1, 1861, should read par value of Norfolk & Petersburg R. R. Co. Stock, held by the State of Virginia $1,439,970.00, instead of $1,200,000.00.)

All of these roads and the loans made by the State of Virginia to them, were eventually turned over to the Atlantic, Mississippi & Ohio R. R. Co. in consideration of the purchase price $4,000,000.00, secured by a second mortgage.

This statement is therefore designed to show the value of the State of Virginia's holdings previous to the disposal of same.

DEFENDANT'S EXHIBIT No. 6—1863—B.

Journal "D" Page (176) Internal Improvement Fund:

241 Loan to Norfolk & Petersburg Railroad.
182 To Norfolk & Petersburg Railroad Company Stock.

For this amount improperly charged to latter $300,000

DEFENDANT'S EXHIBIT No. 6—1863—C.

Journal "D," page 178, Internal Improvement Fund:

December 22, 1870.

284 Atlantic, Mississippi & Ohio Railroad Co.:
175 To Stocks & Loans & made to Int. Imp. Co. (that have been sold, &c.).

(Whereas, by the terms of an act June 17, 1870, entitled 'An Act to authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company, the B. P. W. is empowered and directed to sell and transfer to the A. M. & O. R. R. Co. all of the stock held by the State in the Norfolk and Petersburg, in the South Side, in the Virginia and Tennessee, and in the Virginia and Kentucky Railroad Companies, for and in consideration that the Commonwealth of Virginia is absolved from all and whatever liability by reason of her unsatisfied subscription to the Va. & Ky. R. R. Co. It is expressly by the terms of said Act that the payment of $4,000,000 shall be secured by a second mortgage upon the property of the said Atlantic, Mississippi and Ohio Railroad Co. In accordance therewith the Board of Public Works have this day sold and delivered over to the said A. M. & O. R. R. the following property:

I.	Stock certificate No. 39, Norfolk & Petersburg Railroad Company, for 8,175 shares of ordinary stock.....$	817,500	
II.	Stock Certif. No. 40 of same, for 825 shares of stock guaranteed to pay 6 per cent. annually.....	82,500	
III.	Stock Certif. No. 41, of ditto, for 3,000 shares of stock preferred to pay (7 per cent.) annually	300,000	1,200,000
IV.	Stock Certif. No. 881, of the South Side Railroad Co. for 8,035 shares of ordinary stock		803,500
V.	Stock Certif. No. 1770 of Va. & Tenn. R. R. Co. for 17,168 shares of ordinary stock	1,716,800	
VI.	Stock Certif. No. 1771 of the Va. & Tenn. R. R. Co. for 832 shares of guaranteed stock	83,200	
VII.	Stock Certif. No. 1772 of same for 5,000 shares of preferred stock	500,000	2,300,000
VIII.	Stock Certif. No. 1, Va. & Ky. R. R. Co. for 1,034 shares		103,400
	Also the following claims against the aforesaid companies:		
II.	The note of the Norfolk and Petersburg Railroad Co., the same being for interest due and remaining unpaid as of the first July, 1870, upon the loan of 300,000 dollars		18,271 41
I.	The note of the same, being for interest accrued and remaining unpaid as of first of July, 1870, on the 825 shares of guaranteed stock		27,225

III.	The amount remaining to be due of the $300,000 loan to Norfolk & Petersburg Railroad and unredeemed		163,000 00
IV.	All the claim which the State may have against the South Side Railroad Co. on account of principal and interest due upon the loan of $800,000 made in 1853 to said company		
V.	Registered certificate of the Virginia and Tennessee Railroad Co., the same being for interest accrued upon the 832 shares of guaranteed stock as of July 1, 1870, held by the State in said company	79,040	
VI.	All claims, rights and privileges which belong to the State of Virginia on account of the loan of 1,000,000 dollars made to said company under an Act February 9, 1853, &c.		
For the above consideration the former account is chargeable to the latter account			$4,000,000

See Proceedings, B. P. Works, Journal M, Dec. 22, 1870.

DEFENDANT'S EXHIBIT No. 7—1863—Sheet 1.

Class G.
Sheet 1.

Page No. 46.

Hillman Exhibit 7.
Defendant Exhibit 7.
(Corresponds with Exhibit 7, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

James River & Kanawha Canal Co.

Statement of value of this property as it was absorbed and capitalized by the Richmond & Alleghany Railroad Co., 1881.

1. First general balance sheet of the Richmond & Alleghany R. R., on file in the office of the Vice President of the Chesapeake & Ohio R. R. in the city of Richmond, shows on Page 11 amongst the assets of the Company the following entries, which for convenience in this sheet have been numbered—

1.	James River & Kanawha Co. and Buchanan & Clifton Forge R. R. Co. Liens with Trustee 1st Mortgage	$1,393,637 66
2.	Franchises and right of way	5,588,609 76
3.	Richmond Docks	1,000,000 00
	TOTAL	$7,982,247 42

Notes:

1. The lien on the James River & Kanawha assumed by the Richmond & Alleghany amount to $1,394,026.00, as shown on detail of deed by which the property is transferred to the Richmond & Alleghany. It is therefore probable that that amount was all on account of the James River & Kanawha.
2. Franchises and Right of Way—The distance from Richmond to Clifton Forge was 230.5 miles. I am informed at the Chesapeake & Ohio Office that the distance has not been appreciably changed since that date, also that the distance from Buchanan to Clifton Forge is about 33 miles. Allowing that the Richmond dock

$1,393,637 66

CLASS G—1863.

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DEFENDANT'S EXHIBIT No. 7—1863—Sheet 1.

Page 46. (*Continued*)

property cut off the distance, say 5 miles we would have on a mileage basis approximately 85%. The report above referred to says, on page 5, "Acquired the property of the James River & Kanawha and the Buchanan and Clifton Forge R. R. at a cost in stock and bonds of $6,389,511.93. Thus securing legal right of way for its railway lines, basin and docks in Richmond, and other property including liens of $1,537,381.42." The Company same page same report, says it also expended $199,097.83 for "further right of way," making total right of way $6,588,609.76. $1,000,000 of which has been arbitrarily assigned to Richmond Docks and Basin leaving the charge to Right of Way $5,588,609.76, as above." We proportion on the 85% the $5,389,511.93, giving us as the James River & Kanawha Canal proportion

	4,581,085 14

3. Richmond Docks and Basin must be acquired in entirety from the James River & Kanawha

	1,000,000 00
	$6,974,722 80
Deducting Liabilities assumed on account of liens	1,537,381 42
	$5,437,341 38

This report on page 11, says "From Buchanan to Williamson Road was built on the unfinished work of the Buchanan & Clifton Forge R. R" and "Experience with the Maintenance of Track on the towpath has fully sustained the expectations of those who asserted its advantages as a road bed."

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DEFENDANT'S EXHIBIT No. 7—1863—Sheet 2.

Class G.
Sheet 2.

Page No. 47.
Hillman Exhibit 7.
Defendant Exhibit 7.
(Corresponds with Exhibit 7, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

James River & Kanawha Canal Co.

11. Second annual balance sheet of the Richmond & Alleghany R. R.—1882 shows September 30th that the "Right of Way," etc., was	$5,446,662 00	
If from this we deduct the amount expended as above	199,097 83	
	$5,247,564 17	
We have left for the James River & Kanawha Property 85% of which is		$4,410,429 54
Add the Richmond Docks		1,000,000 00
And we have a value of the James River & Kanawha property on the Richmond & Alleghany 2d Annual Report of		$5,410,429 54

The Richmond & Alleghany has in this balance sheet set up the "Manchester Water Power" for $197,277.00, which possibly may account for the smaller amount assigned directly to the Right of Way as above.

CLASS G—1863.

CLASS G.

DEFENDANT'S EXHIBIT No. 7, 1863—A.

Acts of General Assembly 1861. Pages 70 to 82.

Chap. 56.—An Act to incorporate the Virginia Canal Company, and to transfer the Rights and Franchises of the James River and Kanawha Company thereto.

Passed March 29, 1861.

1.—Of the Incorporation of the Company.

Whereas the James River and Kanawha Company, at their called meeting in the month of August, eighteen hundred and sixty, authorized an agreement to be entered into, and which was executed by the president of said company in pursuance of such authority, between himself and Ernest de Bellot des Minieres, and his associates, under the firm and style of Bellot des Minieres, Brothers & Co. of France, and to which the Board of Public Works of this State gave its assent, as evidenced by the signature of its president thereto; which agreement is in the following words:

"An Executory Agreement, entered into this first day of September, in the year eighteen hundred and sixty, between Ernest de Bellow des Minieres, for himself and his associates, under the firm and style of Bellot des Minieres, Brothers and Company, of France, of the one part, and Thomas H. Ellis, president of the James River and Kanawha Company, for and on behalf of the said company, in pursuance of a resolution adopted by the stockholders of said company, in general meeting, on the thirtieth day of August, eighteen hundred and sixty, of the other part, witnesseth:

"Whereas it is a matter of the highest importance to the State of Virginia, that the water line between the Chesapeake Bay and the Ohio River, which will open the great west and southwest and its immense trade to the markets of the world by the shortest, cheapest, safest and most certain route, and lead to an incalculable increase of the direct foreign trade of Virginia, should be promptly completed, the parties of the first part desiring not only to secure to themselves and their associates the profits of the line when completed, but to France the primary advantages of the direct trade with her, which the line must establish, have proposed to purchase the line from Richmond to the Ohio River, with the right and

obligation to complete the same, and the president of the James River and Kanawha Company, and the Board of Public Works of Virginia, concurring in these views, and sympathizing strongly with the parties of the first part, in their desire to establish direct trade with France, the ancient ally of the United States, the said president and directors of the James River and Kanawha Company, have entered into negotiation with the parties of the first part, and have, with the approbation of the Board of Public Works, entered into a provisional agreement with them, as herein set forth. And since it is necessary to procure the approval of the General Assembly to the said agreement, therefore, subject to said approval, the said James River and Kanawha Company do contract and agree with the said parties of the first part as follows—that is to say:

"1. A new company shall be formed by the name and style of 'The Virginia Canal Company,' with a capital stock of not less than twenty, nor more than thirty-five millions of dollars, in shares of one hundred dollars each; to which shall be transferred all the property and franchises of the James River and Kanawha Company—the stockholders in the James River and Kanawha Company, other than the Commonwealth of Virginia to have one share of stock in the said Virginia Canal Company for every two shares of stock they now hold; and the State to transfer to the said Virginia Canal Company all her rights as a stockholder in the said James River and Kanawha Company, upon condition that the new company perform and fulfill the terms and conditions hereinafter imposed.

"2. The Virginia Canal Company shall be organized with a charter similar to the original charter of the James River and Kanawha Company, with such modifications and additions as may be necessary and proper for adapting it to the purposes of the new organization.

"3. The Virginia Canal Company shall clear out the deposits in the present line from Richmond to Buchanan, and repair all the present works, that is, the embankments, aqueducts, bridges, culverts, waste weirs, locks, dams, houses and structures of every kind, repairing those wanting repairs only, and building anew the works requiring to be rebuilt, so that the whole line from Richmond to Buchanan shall be of a depth of not less than five feet at any point, and in all respects in a perfect state of repair.

"4. They shall keep on all the line a sufficient number of dredge boats to keep the water way continually free from deposit and obstructions of every kind, and a sufficient number of extra lock gates and wickets ready to be inserted in case of accident. They shall likewise have weigh locks at not less than three points on the line.

"5. They shall complete the water line of improvement from Buchanan to the Kanawha River, and the improvement of the Kanawha River, so as to make a continuous water line from tidewater at Richmond to the Ohio River; constructing the works on the general plan of the part of the improvement that has already been made, but with the following modifications, to-wit:

"The locks from Buchanan to the Greenbrier River shall be not less than one hundred and twenty feet long between the gates, by twenty feet

wide in the clear, and on the Greenbrier and New Rivers, and on the Kanawha River at and above Lykens' shoals, not less than two hundred feet long between the gates, by forty feet wide in the clear, and the works from Buchanan to the foot of Lykens' shoals on the Kanawha River shall be so constructed as to give a depth of water of not less than seven feet at any point.

"The Kanawha River to be improved from Lykens' shoals to its mouth in such a manner as to secure a depth of water of not less than six feet at all seasons of the year; the channel through the shoals to be eighty feet wide at the bottom, and one hundred and four feet at the top.

"The capacity of the improvement from Richmond to Buchanan shall be enlarged by increasing the depth of the water to not less than seven feet at any point, and by increasing the dimensions of all the present locks to not less than one hundred and twenty feet long between the gates, by twenty feet wide in the clear, or by doubling the locks, and making the new locks of the dimensions aforesaid. But the increase in the dimensions or the doubling of the locks, need not be made, until the locks require reconstruction or the trade of the canal shall demand it.

"The capacity of the Tidewater connection and Richmond dock shall be enlarged, so as to afford adequate accommodation to the trade of the line, by opening a second communication with tidewater by the route of the Haxall Canal, or other suitable route; or instead of that, enlarging or doubling the present locks between the basin and the dock, as well as the present ship lock, in such manner as may be necessary to obtain a proper result; and by constructing all such other works as may be necessary for enlarging the capacity of the dock and tidewater connection for the purpose aforesaid.

"6. The said Virginia Canal Company shall issue to the respective stockholders in the James River and Kanawha Company, other than the State, certificates of stock at the rate of one share in the new company for every two shares held by them in the James River and Kanawha Company, which shall be full satisfaction of all their interest in the last mentioned company; and they shall pay annually to the holders of such certificates, five per centum per annum on the amounts thereof, from the date of the organization of the new company, until the line shall be completed to the Ohio River in the manner before mentioned, and thereafter in lieu of the said five per cent. shall pay them their ratable share of the profits of the company.

"7. The stockholders in the Virginia Canal Company shall enjoy equal rights, except as provided in the next preceding section.

"8. The tolls on the line shall be regulated by the Board of Public Works, or such other authority as the General Assembly may substitute for the control and superintendence of the public works of Virginia: provided, that during the construction of the work the tolls shall not exceed two and a half cents per ton per mile, nor be less than one cent per ton per mile on merchandise and manufactures; shall not exceed one and a half cents per ton per mile, nor be less than five mills per ton per mile on agri-

cultural products; shall not exceed one cent per ton per mile, nor be less than two and a half mills per ton per mile on products of mines and forests; and after the completion of the improvement to the Ohio River, shall not exceed two cents per ton per mile, nor be less than five mills per ton per mile on merchandise and manufactures; shall not exceed one cent per ton per mile, nor be less than two and a half mills per ton per mile on agricultural products; and shall not exceed five mills per ton per mile, nor be less than two and a half mills per ton per mile on products of mines and forests: provided, that these rates shall apply to the through rates, but the tolls on the way trade may be increased one-third: and provided, further, that the toll may be brought below the minimum rate on any article, by the said board or other authority, with the consent of the Virginia Canal Company.

"9. The board for the management of the company shall consist of a president and seven directors, with the privilege to the company to increase the number of directors to twelve; two of the directors shall be appointed by the State of Virginia in such manner as she may by law provide; the other directors shall be appointed by the stockholders, and the president shall also be appointed by the stockholders, but his appointment shall be subject to the approval of the State in such manner as she may by law provide.

"10. The office of the new company shall be at Richmond, Virginia, but a branch may be located at Paris; the dividends and other dues to the American stockholders shall be paid at the office in Richmond. But the dividends and dues of the other stockholders may be paid in Paris or elsewhere, at the pleasure of the new company.

"11. A majority of the directors shall always be present to constitute a board. The proceedings of the board shall be recorded in the English language, at the office in Richmond, and be at all times open to the inspection of the stockholders, and the State, by such officer as she may appoint.

"12. The said Virginia Canal Company shall be organized within six months from the passage of the act of the Legislature incorporating it, and within the same time shall commence bona fide the work of construction at Buchanan and on the Kanawha River, and shall also within the same time commence bona fide the repairs of the line between Richmond and Buchanan; and shall complete the construction of the line to Covington and the repairs of the line from Richmond to Buchanan, within three years from the time of commencement aforesaid, and complete the Kanawha improvement from Loup Creek shoals to the mouth of the river within four years from the time of commencement aforesaid; and shall complete the entire line from Richmond to the mouth of the Kanawha River, in all respects, except the enlargement of the capacity of the canal from Richmond to Buchanan, within eight years from the time of commencement aforesaid; and shall complete the enlargement of the capacity of the Richmond dock and tidewater connection, as well as the enlargement of the capacity of the canal from Richmond to Buchanan, by deepening the canal, as herein above provided, within ten years from the said time of commencement.

"13. The said company shall not have the power by mortgage, deed of trust, or other contract, to create a lien upon its works and property, except that hereinafter created in favor of the Commonwealth of Virginia, and shall not be competent to sell the same without the assent of the General Assembly of Virginia.

"14. The said company shall, in consideration of the transfer aforesaid by the State of Virginia of all her rights as a stockholder in the James River and Kanawha Company, pay into the treasury of the State, semi-annually forever, the sum of sixty-seven thousand five hundred dollars; and as a guarantee for the faithful compliance with the stipulations of this agreement, they shall deposit with the treasurer of Virginia the sum of one million of dollars in the six per cent. registered stock of the Commonwealth of Virginia, to be held by him upon the following terms and conditions, that is to say: The interest upon the said stock, while on deposit, shall be paid to the said company. When the canal shall have been completed to the town of Covington, and the Kanawha improvement completed from Loup Creek shoal to the mouth of the river, if within the times prescribed, one-half of the said sum shall be returned to the said company: provided, the annuity to the State of Virginia, and the five per centum interest to the private stockholders, hereinbefore provided for, shall have been punctually paid; and if the same shall not have been punctually paid, then so much of the said sum of one million of dollars as may be necessary shall be appropriated to the payment of the same, and the residue returned to the said M. de Bellot des Minieres and his associates, or to the Virginia Canal Company, as may be proper; but if the said company shall fail to complete the construction of the line to Covington, and the repairs of the line from Richmond to Buchanan, within three years from the time of the commencement herein prescribed, or shall fail to complete the Kanawha improvement from Loup Creek shoals to the mouth of the river within four years from the time of commencement herein prescribed, or shall fail to complete the entire line from Richmond to the mouth of Kanawha River, in all respects, except the enlargement of the capacity of the canal from Richmond to Buchanan, within eight years from the time of commencement herein prescribed, or shall fail to complete the enlargement of the Richmond dock and tidewater connection, as well as the deepening of the canal to Buchanan, within ten years from the time of commencement herein prescribed, the sum of one million of dollars shall be retained and paid to the Commonwealth of Virginia as stipulated damages in money for such failure; and all the work which may have been done in repair and construction, as well as all the rights which the said Virginia Canal Company shall have acquired in the property and franchises of the James River and Kanawha Company, shall be forfeited, and revert to the latter company as at present organized, which company shall be thereupon reinstated in all its rights, as if this arrangement had never been made, and shall have full right and authority to re-enter upon and resume the control of the whole line of improvement; and for that purpose, the present organization of the James River and Kanawha Company shall be continued: provided,

however, that if the said Virginia Canal Company shall be unable to complete the said water line improvement from Richmond to the Ohio River within eight years as aforesaid, or to complete the enlargement of the Richmond dock and tidewater connection, and deepening of the canal from Richmond to Buchanan, within ten years as aforesaid, they may have two years' extension of time in each case, by paying into the treasury of the Commonwealth of Virginia, for the said Commonwealth, before the expiration of the said period of eight years, a half million of dollars, if they require the extension of time for the completion of the water line as well as for the said enlargement; or by so paying one hundred thousand dollars before the expiration of ten years, if they require the extension of time only as to the enlargement aforesaid; which said sums are agreed upon as liquidated damages to be paid to the said Commonwealth in the contingencies aforesaid, for the loss sustained by such delay or delays in the completion of the said works as herein required; provided, however, that if the said Virginia Canal Company shall have proceeded in good faith to execute the said works, then the General Assembly may suspend the said forfeiture, and allow to the said company such further time as to it may seem just and proper, to complete the said works.

"15. The said Bellot des Minieres, Brothers and Company shall pay to the Commonwealth of Virginia so much of the three hundred thousand dollars of State bonds appropriated by the act of the General Assembly of Virginia, passed March twenty-third, eighteen hundred and sixty, for the improvement of the Kanawha River, as shall have been issued and sold, and expended bona fide on the improvement when they shall become entitled to the property and revenues of the James River and Kanawha Company; and upon payment thereof, the said Commonwealth shall release the mortgage given by the said James River and Kanawha Company on the said Kanawha improvement to secure the payment of the said bonds.

"16. As soon as the said M. de Bellot des Minieres and his associates shall have been regularly incorporated according to the laws of France and Virginia, and satisfactory authentication of that fact communicated to the president of the James River and Kanawha Company and the Board of Public Works, and shall have deposited with the treasurer of Virginia one million of dollars in the six per cent. registered stock of the Commonwealth, and shall have deposited in one or more of the banks of the city of Richmond, to the credit of the president and directors of the James River and Kanawha Company for the purpose of paying the floating debt of the company, the sum of four hundred thousand dollars, to be applied to the payment of the said floating debt as far as necessary, and the balance, if any, to be returned to them; and shall also pay into the treasury of Virginia the amount agreed to be paid by them under the next preceding section—then the James River and Kanawha Company shall by proper deeds convey its entire property of every kind, to the said Virginia Canal Company, subject to the charges before mentioned in favor of the present private stockholders and the Commonwealth of Virginia, and subject to any present subsisting contracts for the use of the water of the canal, and subject to all the provisions of this agreement: And until this conveyance shall be

made, the James River and Kanawha Company shall manage the said property, effects and revenues under the existing laws, the said M. de Bellot des Minieres and his associates furnishing all the means and money that may be necessary to carry on the business of the company, complete Bosher's dam, the Joshua Falls dam, the dam at Lynchburg, and the North River improvement, and keeping the canal in proper repair—they receiving credit for all the revenues of the company. But the president and directors of the present company shall have no power or authority to charge the property of the company with any debt, except for the purpose of keeping the line in proper repair and working condition, and completing the dams and North River improvement, as hereinbefore mentioned.

"17. The said Virginia Canal Company may at any time discharge itself from the annuity to the State of Virginia, by the payment into the treasury of Virginia of the sum of two million two hundred and fifty thousand dollars in specie, but until the same shall be paid, the annuity of one hundred and thirty-five thousand dollars to the Commonwealth shall be forever a charge upon the whole property of the company, and the Legislature may provide by law in what manner the payment of the said annuity shall be enforced.

"18. The European parties and stockholders may, as between themselves, determine what the relative rights and obligations shall be.

"19. The stockholders in the Virginia Canal Company shall be required by their charter to hold at least one general meeting every year in the city of Richmond.

"20. When this agreement shall be approved by the General Assembly and a charter shall be granted as provided in the first and second sections thereof, the said agreement shall be binding upon all the parties thereto, without any further action on the part of the stockholders or directors of the James River and Kanawha Company; and the said James River and Kanawha Company binds itself to use its best efforts to obtain at the earliest day possible, the approval of this agreement and of the charter as provided for, by the General Assembly; and in the meantime the said agreement shall be obligatory upon the said James River and Kanawha company to the full extent that the said company has the legal authority to act without the approval of the General Assembly.

"And to prevent delay in the commencement of the works hereinbefore contracted to be executed, the said parties of the first part shall be authorized to proceed forthwith in their said undertaking; and if the General Assembly shall fail to approve the said agreement, and to grant said charter, then the James River and Kanawha Company binds itself to issue bonds under the act of the twenty-third day of March, eighteen hundred and sixty, to the said parties of the first part for an amount equal to the principal sum which may have been expended upon its works as contemplated in this agreement, and the interest thereon from the time when the same shall have been expended until the repayment in bonds as aforesaid; and the said James River and Kanawha Company shall thereupon be restored

to all the rights conferred by its charter, as if this contract had not been made, and the said contract shall thereafter be null and void.

"In testimony whereof, the said Ernest de Bellot des Minieres, acting for himself and the firm of Bellot des Minieres, Brothers and Company, hath hereto subscribed his name and annexed his seal, and the said Thomas H. Ellis, president of the James River and Kanawha Company, acting under authority as aforesaid, hath subscribed his name and caused the seal of the company to be affixed, the day and year first above written, at Richmond, Virginia.

E. DE BELLOT DES MINIERES. (Seal)
THOMAS H. ELLIS, Pres. J. R. & K. Co.

(Corporate Seal)

And whereas the General Assembly of the Commonwealth of Virginia approved the object and views of the contracting parties, and are disposed to give to their contract validity and effect, except so far as it may be modified by this act: Therefore,

COMPANY INCORPORATED; GENERAL POWERS; RESTRICTIONS THEREON.

1. Be it enacted, that when the Board of Public Works shall be satisfied that the minimum capital of twenty millions of dollars has been raised as provided for in the next chapter, then, in compliance with the first article of said agreement, the persons constituting the firm and style of Bellot des Minieres, Brothers & Co. and such persons as they may admit into association with them, together with the corporate and individual stockholders of the present James River and Kanawha Company (other than the Commonwealth of Virginia), and such persons as may become subscribers to the capital stock hereafter authorized, and their successors and assigns, shall be and are hereby incorporated into a company by the name and style of "The Virginia Canal Company;" and by that name shall have perpetual succession and a common seal, may sue and be sued, plead and be impleaded, purchase and hold, sell and convey real and personal property; and shall be, to every intent and purpose in law, the successors of the present James River and Kanawha Company: provided, that the corporate powers shall not take effect until the minimum stock shall be taken: provided, however, that they shall hold no real estate, except that which by this Company, subject to the charges before mentioned in favor of the present act, or some other act of the General Assembly, may be vested in them, or they may be authorized to acquire for the purpose of the improvements which they are required to make; and that they shall in no wise deal as bankers or merchants or in buying and selling any produce or commodities whatsoever, except such as is obviously convenient and proper for them to purchase and sell in the regular performance of the duties required of them by this act; and that they shall not be engaged in the establishment or conduct of manufactures, further than for the supply of their own consumption

and that of the persons in their service, and in letting to farm or lease sites for mills and other machinery, and water for their use.

2. The stockholders in general meeting shall have power to make all such by-laws, rules and regulations, not inconsistent with the constitution or laws of the land, as they may deem proper, for the well ordering of the affairs of the company; for the protection and preservation of their property, and for the maintenance of good order and good police among officers, agents, servants and laborers, and among the boatmen and others who use their canal and other works.

3. The said company shall not subscribe to the stock of any other company, unless it be specially allowed by law; but this prohibition shall not prevent it from receiving stocks or other property in satisfaction of any judgment, order or decree, or as collateral security for or in payment of any debt, or from purchasing stock or other property at any sale made for its benefit. If it so receives shares of its own stock, it may either extinguish the same or sell and transfer such shares to a purchaser. While, however, it holds such shares of its own stock, no vote shall be given thereon.

WORKS AND PROPERTY NOT TO BE ENCUMBERED OR SOLD.

4. The said company shall not have the power, by mortgage, deed of trust or other contracts, to create a lien upon its works and property, except that hereinafter created in favor of the Commonwealth of Virginia, and shall not be competent to sell the same without the assent of the General Assembly of Virginia.

PROVISION FOR REPAYMENT OF MONEY EXPENDED ON KANAWHA IMPROVEMENT.

5. The Kanawha River shall remain subject to all the existing laws in relation thereto, and unaffected by this act, until the completion of the work now under contract and in progress upon said river; provided, such work shall be completed before the first day of January, eighteen hundred and sixty-three; but when the said Virginia Canal Company shall be fully organized and vested with the control of the residue of the line other than the Kanawha River, the term of office of the present members of the Kanawha board shall expire, and members of said board shall be appointed, two by the Virginia Canal Company, and three by the Board of Public Works, whose term of office shall be the same as now prescribed by law, all of whom shall be citizens of the State, and residents of the Kanawha Valley; and the present members of the Kanawha board may be reappointed as members of the new board, and such new Kanawha board shall have control of the Kanawha River until the payment by the Virginia Canal Company of the money hereinafter provided to be paid on account of the Kanawha River. Immediately after the completion of the work now in progress on the Kanawha River, or on the first day of January, eighteen

hundred and sixty-three, if such work shall not be completed before that time, the said Virginia Canal Company shall pay to the Commonwealth of Virginia so much of the appropriation of March twenty-third, eighteen hundred and sixty, for the improvement of the Kanawha River, as may have been bona fide expended in the construction of said improvement; and upon payment of said amount, the said Virginia Canal Company, by the operation of this act and the conveyance hereinafter authorized, shall be invested with all the rights, powers, franchises and privileges of the James River and Kanawha Company, in and to said Kanawha River; and upon such payment, the said Commonwealth shall release the mortgage given by the said James River and Kanawha Company on the said Kanawha improvement, to secure the payment of the said bonds. Such release shall be executed by the Board of Public Works as soon as satisfactory evidence is submitted to them of the payment aforesaid.

TRANSFER OF WORKS BY JAMES RIVER AND KANAWHA COMPANY; PRECEDENT CONDITIONS.

6. When the Board of Public Works shall be satisfied that the minimum capital as provided in the next chapter, has been raised as therein required, and the said M. de Bellot des Minieres and his associates shall have deposited with the State of Virginia, in the manner prescribed by law, one million of dollars in the six per cent. registered stock of the Commonwealth, and shall have deposited in one or more of the banks of the city of Richmond, to the credit of the president and directors of the James River and Kanawha Company, for the purpose of paying the floating debt of that company, the sum of four hundred thousand dollars, to be applied to the payment of the said floating debt as far as necessary, and the balance, if any, to be returned to the said M. de Bellot des Minieres and his associates, and satisfactory evidence of the performance of said conditions shall have been furnished the Board of Public Works, then the said James River and Kanawha Company shall, by proper deeds, convey its entire property, privileges and franchises of every kind to the said Virginia Canal Company, subject to the provisions and requirements of the fifth section of this chapter, and to the conditions hereafter required in this act, and also to any present subsisting contracts for the use of the water of the canal, or for any other purpose.

SUITS DEPENDING; HOW PROCEEDED WITH.

7. All causes and matters which shall be depending and undetermined in any court in this Commonwealth, in which the James River and Kanawha Company are or may be parties, plaintiff or defendant, on the day when the said transfer is made, shall be proceeded in, tried and determined as if the same had been commenced by or against the said Virginia Canal Company.

TRANSFER OF RIGHTS OF STATE OF VIRGINIA AND RELEASE OF ITS SECURITIES: CONDITIONS.

8. When the Board of Public Works shall be satisfied that the conditions prescribed in the sixth section have been fully complied with, and that the minimum capital, as provided for in the next chapter, shall have been raised as therein required, they shall transfer in like manner to the said Virginia Canal Company, all the rights which the State of Virginia has as a stockholder in the James River and Kanawha Company; and shall furthermore release all mortgages, deeds of trust or other contracts, except the mortgage relative to the Kanawha River, by which any lien has been created to the Commonwealth upon the works and property of the said James River and Kanawa Company, subject only to the encumbrances, limitations and restrictions by this act imposed.

RIGHTS OF NEW COMPANY AFTER TRANSFER.

9. The company hereby incorporated, thenceforward shall be entitled to all the tolls, rents and others emoluments, rights, franchises, privileges and immunities, which are now enjoyed by the said James River and Kanawha Company, subject to the provisions and limitations of the fifth section of this chapter. And the president and directors of the new company, their officers and agents, shall take possession of the property and works transferred as aforesaid, for the benefit of the Virginia Canal Company.

ANNUITY TO THE STATE.

10. The said Virginia Canal Company shall, in consideration of the transfer aforesaid, by the State of Virginia, pay into the treasury of the State, in the mode prescribed by law, semi-annually forever, the sum of sixty-seven thousand five hundred dollars. But the said company may at any time discharge itself from the said annuity by the payment into the said treasury of the sum of two million two hundred and fifty thousand dollars in specie; but until the same shall be paid, the said annuity shall be forever a charge upon the whole property and franchises of the company; and the Legislature may provide by law in what manner the payment of the said annuity shall be enforced.

SUM TO BE PAID TO OTHER STOCKHOLDERS.

11. The Virginia Canal Company shall furthermore take the said property so to be transferred to them, subject to the payment, to the corporate and individual stockholders mentioned in the second chapter, of five per centum per annum on the amounts of the certificates of stock held by each respectively, to be computed from the date of the organization of the said Virginia Canal Company, until the water line hereinafter mentioned shall be completed to the Ohio River, as herein prescribed; and thereafter, in lieu of the said five per cent., shall pay to the said stockholders their ratable

share of the profits of the company. And for failure to perform this provision, the company may be proceeded against as provided hereafter in the seventh chapter.

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This act shall be in force from its passage.

CLASS G.

DEFENDANT'S EXHIBIT No. 7, 1863, B.

Acts of Assembly of Virginia 1865-66 and 1866-67.

The following is found on page 93 of said Acts, pertaining to the Virginia Canal Company, etc.:

Chap. 29.—An Act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River and Kanawha Company thereto, passed March 29, 1861.*

Passed February 3, 1866.

Be it enacted by the General Assembly, That the act entitled an act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River and Kanawha Company thereto, passed March 29, 1861, be amended and re-enacted so as to read as follows:

Chapter 1—OF THE INCORPORATION OF THE COMPANY.

Whereas the James River and Kanawha Company, at their called meeting in the month of August, eighteen hundred and sixty, authorized an agreement to be entered into, and which was executed by the president of said company, in pursuance of such authority, between himself and Ernest de Bellot des Minieres and his associates, under the firm and style of Bellot des Minieres, Brothers and Company, of France, and to which the Board of Public Works of this State gave its assent, as evidenced by the signature of its president thereto; which agreement is in the following words:

"An executory agreement, entered into this first day of September, in the year eighteen hundred and sixty, between Ernest de Bellot des Minieres, for himself and his associates, under the firm and style of Bellot des

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*The word "chapter" as used in this act, applies to divisions of the same.

Minieres, Brothers and Company, of France, of the one part, and Thomas H. Ellis, president of the James River and Kanawha Company, for and on behalf of the said company in pursuance of a resolution adopted by the stockholders of said company, in general meeting, on the thirtieth day of August, eighteen hundred and sixty, of the other part, witnesseth:

"Whereas it is a matter of the highest importance to the State of Virginia, that the water line between the Chesapeake Bay and Ohio River, which will open the great West and Southwest and its immense trade to the markets of the world, by the shortest, cheapest, safest and most certain route, and lead to an incalculable increase of the direct foreign trade of Virginia, should be promptly completed, the parties of the first part desiring not only to secure to themselves and their associates the profits of the line when completed, but to France the primary advantage of the direct trade with her, which the line must establish, have proposed to purchase the line from Richmond to the Ohio River, with the right and obligation to complete the same; and the president and directors of the James River and Kanawha Company and the Board of Public Works of Virginia concurring in these views, and sympathizing strongly with the parties of the first part, in their desire to establish direct trade with France, the ancient ally of the United States, the said president and directors of the James River and Kanawha Company have entered into negotiations with the parties of the first part, and have, with the approbation of the Board of Public Works, entered into a provisional agreement with them as herein set forth. And since it is necessary to procure the approval of the General Assembly to the said agreement, therefore, subject to said approval, the said James River and Kanawha Company do contract and agree with the said parties of the first part as follows; that is to say:

"1. A new company shall be formed, by the name and style of The Virginia Canal Company, with a capital stock of not less than twenty nor more than thirty-five millions of dollars, in shares of one hundred dollars each; to which shall be transferred all the property and franchises of the James River and Kanawha Company: the stockholders in the James River and Kanawha Company, other than the Commonwealth of Virginia, to have one share of stock in the said Virginia Canal Company for every two shares of stock they now hold; and the State to transfer to the said Virginia Canal Company all her rights as a stockholder in the James River and Kanawha Company upon condition that the new company perform and fulfill the terms and conditions hereinafter imposed.

"2. The Virginia Canal Company shall be organized with a charter similar to the original charter of the James River and Kanawha Company, with such modifications and additions as may be necessary and proper for adapting it to the purpose of the new organization.

"3. The Virginia Canal Company shall clear out the deposits in the present line from Richmond to Buchanan, and repair all the present works: that is, the embankment, aqueducts, bridges, culverts, waste weirs, locks,

dams, houses and structures of every kind, repairing those wanting repairs only, and building anew the works requiring to be rebuilt, so that the whole line from Richmond to Buchanan shall be of a depth of not less than five feet at any point, and in all respects in a perfect state of repair.

"4. They shall keep on all the line a sufficient number of dredge boats to keep the water way continually free from deposits and obstructions of every kind, and a sufficient number of extra lock gates and wickets ready to be inserted in case of accident. They shall likewise have weigh locks at not less than three points on the line.

"5. They shall complete the water line of improvement from Buchanan to the Kanawha River, and the improvement of the Kanawha River, so as to make a continuous water line from tidewater at Richmond to the Ohio River, constructing the works on the general plan of the part of the improvement that has already been made, but with the following modifications, to-wit:

"The locks from the Buchanan to the Greenbrier River shall be not less than one hundred and twenty feet long between the gates, by twenty feet wide in the clear, and on the Greenbrier and New Rivers, and on the Kanawha River at and above Lykens' shoals, not less than two hundred feet long between the gates, by forty feet wide in the clear, and the works from Buchanan to the foot of Lykens' shoals on the Kanawha River shall be so constructed as to give a depth of water of not less than seven feet at any point.

"The Kanawha River to be improved from Lykens' shoals to its mouth, in such manner as to secure a depth of water of not less than six feet at all seasons of the year; the channel through the shoals to be eighty feet wide at the bottom and one hundred and four feet wide at the top.

"The capacity of the improvement from Richmond to Buchanan shall be enlarged by increasing the depth of the water to not less than seven feet at any point, and by increasing the dimensions of all the present locks to not less than one hundred and twenty feet long between the gates, by twenty feet wide in the clear, or by doubling the locks, and making the new locks of the dimensions aforesaid. But the increase in the dimensions or the doubling of the locks need not be made until the locks require reconstruction or the trade of the canal shall demand it.

"The capacity of the tidewater connection and the Richmond dock shall be enlarged so as to afford adequate accommodation to the trade of the line, by opening a second communication with the tidewater by the route of the Haxall Canal, or other suitable route; or instead of that, enlarging or doubling the present locks between the basin and the dock, as well as the present shiplock, in such manner as may be necessary to obtain a proper result; and by constructing all such other works as may be necessary for enlarging the capacity of the docks and tidewater connection for the purpose aforesaid."

"6. The said Virginia Canal Company shall issue to the respective stockholders in the James River and Kanawha Company, other than the State, certificates of stock at the rate of one share in the new company

for every two shares held by them in the James River and Kanawha Company, which shall be full satisfaction of all their interests in the last mentioned company; and they shall pay annually to the holders of such certificates five per centum per annum on the amounts thereof, from the date of the organization of the new company until the line shall be completed to the Ohio River in the manner before mentioned; and thereafter, in lieu of the said five per centum, shall pay them their ratable share of the profits of the company.

"7. The stockholders in the Virginia Canal Company shall enjoy equal rights, except as provided in the next preceding section.

"8. The tolls on the line shall be regulated by the Board of Public Works, or such other authority as the General Assembly may substitute for the control and superintendence of the public works of Virginia, provided, that during the construction of the work the tolls shall not exceed two and one-half cents per ton per mile, nor be less than one cent per ton per mile on merchandise and manufactures; shall not exceed one and a half cents per ton per mile, nor be less than five mills per ton per mile on agricultural products; shall not exceed one cent per ton per mile, nor be less than two and a half mills per ton per mile on products of mines and forests; and after the completion of the improvement to the Ohio River, shall not exceed two cents per ton per mile, nor be less than five mills per ton per mile on merchandise and manufactures, shall not exceed one cent per ton per mile, nor be less than two and a half mills per ton per mile on agricultural products; and shall not exceed five mills per ton per mile, nor be less than two and a half mills per ton per mile on products of mines and forests: provided, that these rates shall apply to the through rates, but the tolls on the way trade may be increased one-third; and provided, further, that the tolls may be brought below the minimum rate on any article, by the said board or authority, with the consent of the Virginia Canal Company.

"9. The board for the management of the company shall consist of a president and seven directors, with the privilege to the company to increase the number of directors to twelve; two of the directors shall be appointed by the State of Virginia in such manner as she may by law provide; the other directors shall be appointed by the stockholders, and the president shall also be appointed by the stockholders; but his appointment shall be subject to the approval of the State, in such manner as she may by law provide.

"10. The office of the new company shall be at Richmond, Virginia, but a branch may be located at Paris. The dividends and other dues to the American stockholders shall be paid at the office in Richmond; but the dividends and dues of the other stockholders may be paid in Paris, or elsewhere, at the pleasure of the new company.

"11. A majority of the directors shall always be present to constitute a board. The proceedings of the board shall be recorded in the English language, at the office in Richmond, and be at all times open to the inspec-

"12. The said Virginia Canal Company shall be organized within six

months from the passage of the act of the Legislature incorporating it, and within the same time shall commence bona fide the work of construction at Buchanan and on the Kanawha River; and shall also, within the same time, commence bona fide the repairs of the line between Richmond and Buchanan; and shall complete the construction of the line to Covington and the repairs of the line from Richmond to Buchanan, within three years from the time of commencement aforesaid, and to complete the Kanawha improvement from Loup Creek shoals to the mouth of the river within four years from the time of commencement aforesaid; and shall complete the entire line from Richmond to the mouth of the Kanawha River, in all respects, except the enlargement of the capacity of the canal from Richmond to Buchanan, within eight years from the time of commencement aforesaid; and shall complete the enlargement of the capacity of the Richmond dock and tidewater connection, as well as the enlargement of the capacity of the canal from Richmond to Buchanan, by deepening the canal, as hereinabove provided, within ten years from the said time of commencement.

"13. The said company shall not have the power, by mortgage, deed of trust or other contract, to create a lien upon its works and property, except that hereinafter created in favor of the Commonwealth of Virginia, and shall not be competent to sell the same without the assent of the General Assembly of Virginia.

"14. The said company shall, in consideration of the transfer aforesaid by the State of Virginia of all her rights as a stockholder in the James River and Kanawha Company, pay into the treasury of the State, semi-annually forever, the sum of sixty-seven thousand five hundred dollars: and as a guarantee for the faithful compliance with the stipulation of this agreement, they shall deposit with the treasurer of Virginia the sum of one million of dollars in the six per centum registered stock of the Commonwealth of Virginia, to be held by him upon the following terms and conditions; that is to say: the interest upon the said stock, while on deposit, shall be paid to the said company. When the canal shall have been completed to the town of Covington, and the Kanawha improvement completed from Loup Creek shoals to the mouth of the river, if within the time prescribed, one-half of the said sum shall be returned to the said company: and when the entire line shall have been completed in the manner before mentioned, to the Ohio River, if within the prescribed time, the other half shall be returned to the said company; provided the annuity to the State of Virginia, and the five per centum interest to the private stockholders, hereinbefore provided for, shall have been punctually paid; and if the same shall not have been punctually paid, then so much of the said sum of one million of dollars as may be necessary shall be appropriated to the payment of the same, and the residue returned to the said M. de Bellot des Menieres and his associates, or to the Virginia Canal Company, as may be proper; but if the said company shall fail to complete the construction of the line to Covington, and the repairs of the line from Richmond to Buchanan, within three years from the time of the commencement herein

prescribed, or shall fail to complete the Kanawha improvement from Loup Creek shoals to the mouth of the river within four years from the time of commencement herein prescribed, or shall fail to complete the entire line from Richmond to the mouth of Kanawha River, in all respects, except the enlargement of the capacity of the canal from Richmond to Buchanan, within eight years from the commencement herein prescribed, or shall fail to complete the enlargement of the Richmond dock and tidewater connection, as well as the deepening of the canal to Buchanan, within ten years from the time of commencement herein prescribed, the said sum of one million of dollars shall be retained and paid to the Commonwealth of Virginia as stipulated damages in money for such failure; and all the work which may have been done in repair and construction, as well as all the rights which the said Virginia Canal Company shall have acquired in the property and franchises of the James River and Kanawha Company, shall be forfeited and revert to the latter company as at present organized; which company shall be thereupon reinstated in all its rights as if this arrangement had never been made, and shall have full right and authority to re-enter upon and resume the control of the whole line of improvement; and for that purpose the present organization of the James River and Kanawha Company shall be continued: provided, however, that if the said Virginia Canal Company shall be unable to complete the said water line improvement from Richmond to the Ohio River within eight years as aforesaid, or to complete the enlargement of the Richmond dock and Tidewater connection, and deepening of the canal from Richmond to Buchanan, within ten years as aforesaid, they may have two years' extension of time in each case, by paying into the treasury of the Commonwealth of Virginia, for the said Commonwealth, before the expiration of the said period of eight years, a half million of dollars, if they require the extension of time for the completion of the water line as well as for the said enlargement; or by so paying one hundred thousand dollars before the expiration of ten years, if they require the extension of time only as to the enlargement aforesaid; which said sums are agreed upon as liquidated damages to be paid to the said Commonwealth in the contingencies aforesaid, for the loss sustained by such a delay or delays in the completion of the said works as herein required: provided, however, that if the said Virginia Canal Company shall have proceeded in good faith to execute the said works, then the General Assembly may suspend the said forfeiture, and allow to the said company such further time as to it may seem just and proper, to complete the said works.

"15. The said Bellot des Minieres, Brothers and Company shall pay to the Commonwealth of Virginia so much of the three hundred thousand dollars of State bonds appropriated by the act of the General Assembly of Virginia, passed March twenty-third, eighteen hundred and sixty, for the improvement of the Kanawha River, as shall have been issued and sold, and expended bona fide on the improvement, when they shall become entitled to the property and revenues of the James River and Kanawha Company; and upon a payment thereof, the said Commonwealth shall release the mort-

gages given by the said James River and Kanawha Company on the said Kanawha improvement to secure the payment of the said bonds.

"16. As soon as the said M. de Bellot des Minieres and his associates shall have been regularly incorporated according to the laws of France and Virginia, and satisfactory authentication of that fact communicated to the president of the James River and Kanawha Company and the Board of Public Works, and shall have deposited with the treasurer of Virginia one million of dollars in the six per centum registered stock of the Commonwealth, and shall have deposited in one or more of the banks of the city of Richmond, to the credit of the president and directors of the James River and Kanawha Company, for the purpose of paying the floating debt of the company, the sum of four hundred thousand dollars, to be applied to the payment of the said floating debt as far as necessary, and the balance, if any, to be returned to them; and shall also pay into the treasury of Virginia the amount agreed to be paid by them under the next preceding section—then the James River and Kanawha Company shall, by proper deeds, convey its entire property of every kind to the said Virginia Canal Company subject to the charges before mentioned in favor of the present private stockholders and the Commonwealth of Virginia, and subject to any present subsisting contracts for the use of the water of the canal, and subject to all the provisions of this agreement. And until this conveyance shall be made, the James River and Kanawha Company shall manage said property, effects and revenues under the existing laws, the said M. de Bellot des Minieres and his associates furnishing all the means and money that may be necessary to carry on the business of the company, complete Bosher's dam, the Joshua Falls dam, the dam at Lynchburg, and the North River improvements, and keeping the canal in proper repair—they receiving credit for all the revenues of the company. But the president and directors of the present company shall have no power or authority to charge the property of the company with any debt, except for the purpose of keeping the line in proper repair and working condition, and completing the dams at North River improvement as hereinbefore mentioned.

"17. The said Virginia Canal Company may at any time discharge itself from the annuity to the State of Virginia by the payment into the treasury of Virginia of the sum of two million two hundred and fifty thousand dollars in specie; but until the same shall be paid, the annuity of one hundred and thirty-five thousand dollars to the Commonwealth shall be forever a charge upon the whole property of the company, and the Legislature may provide by law in what manner the payment of the said annuity shall be enforced.

"18. The European parties and stockholders may, as between themselves, determine what their relative rights and obligations shall be.

"19. The stockholders in the Virginia Canal Company shall be required by their charter to hold at least one general meeting every year in the city of Richmond.

"20. When this agreement shall be approved by the General Assembly, and a charter shall be granted as provided in the first and second sections

thereof, the said agreement shall be binding upon all the parties thereto, without any further action on the part of the stockholders or directors of the James River and Kanawha Company; and the said James River and Kanawha Company binds itself to use its best efforts to obtain, at the earliest day possible, the approval of this agreement and of the charter as provided for, by the General Assembly; and, in the meantime, the said agreement shall be obligatory upon the said James River and Kanawha Company, to the full extent of the said company has the legal authority to act without the approval of the General Assembly.

"And to prevent delay in the commencement of the works hereinbefore contracted to be executed, the said parties of the first part shall be authorized to proceed forthwith in their said undertakings; and if the General Assembly shall fail to approve the said agreement, and to grant said charter, then the James River and Kanawha Company binds itself to issue bonds, under the act of the twenty-third day of March, eighteen hundred and sixty, to the parties of the first part, for an amount equal to the principal sum, which may have been expended upon its works as contemplated in this agreement, and the interest thereon from the time when the same shall have been expended until the repayment in bonds as aforesaid; and the said James River and Kanawha Company shall thereupon be restored to all the rights conferred by its charter, as if this contract had not been made, and the said contract shall thereafter be null and void.

"In testimony whereof, the said Ernest de Bellot des Minieres, acting for himself and the firm of Bellot des Minieres, Bróthers and Company, hath hereto subscribed his name and annexed his seal, and the said Thomas H. Ellis, president of the James River and Kanawha Company, acting under authority as aforesaid, hath subscribed his name and caused the seal of the company to be affixed, the day and year first above written, at Richmond, Virginia.

E. DE BELLOT DES MINIERES. (Seal)
THOMAS H. ELLIS, Pres. J. R. & K. Co."

(Corporate Seal)

And whereas the General Assembly of the Commonwealth of Virginia approve the objects and views of the contracting parties, and are disposed to give to their contract validity and effect, except so far as it may be modified by this act: Therefore,

COMPANY INCORPORATED: GENERAL POWERS; RESTRICTIONS THEREON.

1. Be it enacted, That when the Board of Public Works shall be satisfied that the minimum capital of twenty millions of dollars has been raised as provided for in the next chapter, then, in compliance with the first article of said agreement, the persons constituting the firm and style of Bellot des Minieres, Brothers and Company, and such persons as they may admit into association with them, together with the corporate and individual stock-

holders of the present James River and Kanawha Company (other than the Commonwealth of Virginia), and such persons as may become subscribers to the capital stock hereafter authorized, and their successors and assigns, shall be and are hereby incorporated into a company, by the name and style of the Virginia Canal Company; and by that name shall have perpetual succession and a common seal; may sue and be sued, plead and be impleaded, purchase and hold, sell and convey real and personal property; and shall be, to every intent and purpose, in law, the successors of the present James River and Kanawha Company; provided, that the corporate powers shall not take effect until the minimum stock shall be taken: provided, however, that they shall hold no real estate, except that which by this act, or some other act of the General Assembly, may be vested in them, or they may be authorized to acquire for the purpose of the improvements which they are required to make; and that they shall in no wise deal as bankers or merchants, or in buying and selling any produce or commodities whatsoever, except such as it is obviously convenient and proper for them to purchase and sell in the regular performance of the duties required of them by this act; and that they shall not be engaged in the establishment or conduct of manufactures, further than for the supply of their own consumption and that of the persons in their service, and in letting to farm or lease sites for mills and other machinery, and water for their use.

2. The stockholders in general meeting shall have power to make all such by-laws, rules and regulations not inconsistent with the constitution or laws of the land, as they may deem proper, for the well ordering of the affairs of the company, for the protection and preservation of their property, and for the maintenance of good order and good police among their officers, agents, servants and laborers, and among the boatmen and others who use their canals and other works.

3. The said company shall not subscribe to the stock of any other company, unless it be specially allowed by law; but this prohibition shall not prevent it from receiving stocks or other property in satisfaction of any judgment, order or decree, or as collateral security for or in payment of any debt, or from purchasing stock or other property at any sale made for its benefit. If it so receive shares of its own stock, it may either extinguish the same, or sell and transfer such shares to a purchaser. While, however, it holds such shares of its own stock, no vote shall be given thereon.

WORKS AND PROPERTY NOT TO BE ENCUMBERED OR SOLD.

4. The said company shall not have the power by mortgage, deed of trust or other contract, to create a lien upon its works and property, except that hereinafter created in favor of the Commonwealth of Virginia, and shall not be competent to sell the same without the assent of the General Assembly of Virginia.

PROVISION FOR REPAYMENT OF MONEY EXPENDED ON KANAWHA IMPROVEMENT.

5. The Kanawha River shall remain subject to all the existing laws in relation thereto, and unaffected by this act, until the completion of the work now under contract and in progress upon said river: provided, such work shall be completed before the first day of January, eighteen hundred and sixty-eight, but when the said Virginia Canal Company shall be fully organized and vested with the control of the residue of the line other than the Kanawha River, the term of office of the present members of the Kanawha board shall expire, and members of said board shall be appointed, two by the Virginia Canal Company, and three by the Board of Public Works, whose term of office shall be the same as now prescribed by law, all of whom shall be citizens of the State, and residents of the Kanawha valley; and the present members of the Kanawha board may be reappointed as members of the new board, and such new Kanawha board shall have control of the Kanawha River until the payment by the Virginia Canal Company of the money hereinafter provided to be paid on account of the Kanawha River. Immediately after the completion of the work now in progress on the Kanawha River, or on the first day of January, eighteen hundred and sixty-eight, if such work shall not be completed before that time, the said Virginia Canal Company shall pay to the Commonwealth of Virginia so much of the appropriation of March twenty-third, eighteen hundred and sixty, for the improvement of the Kanawha river, as may have been bona fide expended in the construction of said improvement; and upon payment of said amount the said Virginia Canal Company, by the operation of this act and the conveyance hereinafter authorized, shall be invested with all the rights, powers, franchises and privileges of the James River and Kanawha Company, in and to said Kanawha River; and upon such payment, the said Commonwealth shall release the mortgage given by the James River and Kanawha Company on the said Kanawha improvement, to secure the payment of the said bonds. Such release shall be executed by the Board of Public Works as soon as satisfactory evidence is submitted to them of the payment aforesaid.

TRANSFER OF WORKS BY JAMES RIVER AND KANAWHA COMPANY; PRECEDENT CONDITIONS.

6. When the board of public works shall be satisfied that the minimum capital, as provided in the next chapter, has been raised as therein required, and the said M. de Bellot des Minieres and his associates shall have deposited with the treasurer of the State of Virginia, in the manner prescribed by law, one million of dollars in the six per centum registered stock of the Commonwealth, and shall have deposited in one or more of the banks of the City of Richmond, to the credit of the president and directors of the James River and Kanawha Company, for the purpose of paying the floating debt of that company, the sum of four hundred thou-

sand dollars, to be applied to the payment of the said floating debt as far as necessary, and the balance, if any, to be returned to the said M. de Bellot des Minieres and his associates, and satisfactory evidence of the performance of said conditions shall have been furnished the board of public works, then the said James River and Kanawha Company shall, by proper deeds, convey its entire property, privileges and franchises of every kind to the said Virginia Canal Company, subject to the provisions and requirements of the fifth section of this chapter, and to the conditions hereafter required in this act, and also to any present subsisting contracts for the use of the water of the canal, or for any other purpose.

SUITS DEPENDING; HOW PROCEEDED WITH.

7. All causes and matters which shall be depending and undetermined in any court in this Commonwealth, in which the James River and Kanawha Company are or may be parties, plaintiff or defendant, on the day when the said transfer is made, shall be proceeded in, tried and determined as if the same had been commenced by or against the said Virginia Canal Company.

TRANSFER OF RIGHTS OF STATE OF VIRGINIA, AND RELEASE OF ITS SECURITIES; CONDITIONS.

8. When the board of public works shall be satisfied that the conditions prescribed in the sixth section have been fully complied with, and that the minimum capital, as provided for in the next chapter, shall have been raised as therein required, they shall transfer in like manner to the said Virginia Canal Company all the rights which the State of Virginia has as a stockholder in the James River and Kanawha Company; and shall furthermore release all mortgages, deeds of trust or other contracts, except the mortgage relative to the Kanawha River, by which any lien has been created to the Commonwealth upon the works and property of the said James River and Kanawha Company, subject only to the incumbrances, limitations and restrictions by this act imposed.

RIGHTS OF NEW COMPANY AFTER TRANSFER.

9. The company hereby incorporated thenceforward shall be entitled to all tolls, rents and other emoluments, rights, franchises, privileges and immunities which are now enjoyed by the said James River and Kanawha Company, subject to the provisions and limitations of the fifth section of this chapter; and the president and directors of the new company, their officers and agents, shall take possession of the property and works transferred as aforesaid, for the benefit of the Virginia Canal Company.

ANNUITY TO THE STATE.

10. The said Virginia Canal Company shall, in consideration of the transfer aforesaid, by the State of Virginia, pay into the treasury of the State, in the mode prescribed by law, semi-annually forever, the sum of sixty-seven thousand five hundred dollars. But the said company may at any time discharge itself from the said annuity by the payment into the said treasury of the sum of two millions two hundred and fifty thousand dollars in specie; but until the same shall be paid, the said annuity shall be forever a charge upon the whole property and franchises of the company; and the legislature may provide by law in what manner the payment of the said annuity shall be enforced.

SUM TO BE PAID TO OTHER STOCKHOLDERS.

11. The Virginia Canal Company shall furthermore take the said property so to be transferred to them, subject to the payment, to the corporate and individual stockholders mentioned in the second chapter, of five per centum per annum on the amounts of the certificates of stock held by each respectively, to be computed from the date of the organization of the said Virginia Canal Company, until the water line hereinafter mentioned shall be completed to the Ohio River, as herein prescribed; and thereafter, in lieu of the five per centum, shall pay to the said stockholders their ratable share of the profits of the company; and for failure to perform this provision, the company may be proceeded against as provided hereafter in the seventh chapter.

DEFENDANT'S EXHIBIT No. 7, 1863, C.

Acts of Assembly of Virginia, 1865-66.

The following is found on page 458 of said acts, pertaining to the Virginia Canal Company, etc.:

No. 19. Joint resolution in relation to an act entitled an act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, etc., passed February 3, 1866.

Adopted February 9, 1866.

Whereas, this General Assembly at its present session, hath passed an act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River and Kanawha Company thereto, passed March twenty-ninth, eighteen hundred and sixty-one, whereby it is provided that certain amounts shall be paid into the treasury of Virginia, in consideration of

the transfer of the State's interest in the James River and Kanawha Company, and as a security for the faithful performance of the provisions of the said act; therefore,

1. Be it resolved by the General Assembly of Virginia, That the amounts required by the said act to be paid to the State of Virginia shall be held by the State, in trust, subject to an adjustment of the debt of the State and a division of the public property between the States of Virginia and West Virginia, in case the two States shall not be reunited as one State; provided, West Virginia shall by law ratify the said act.

2. Resolved, That the General Assembly of West Virginia is hereby respectfully invited to pass a concurring statute, at its present session, giving its assent to the above-mentioned act.

DEFENDANT'S EXHIBIT No. 7, 1863, D.

JAMES RIVER AND KANAWHA COMPANY.

Chap. 139.—AN ACT to authorize the James River and Kanawha Company to make sale and transfer of all its works, property and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the Board of Public Works in respect thereto.

Approved February 27, 1879.

Whereas, in the act incorporating the Richmond and Alleghany Railroad Company the Legislature authorized said company to purchase any of the property and franchises of any work of internal improvement within the limits of its charter, and the said company has made certain propositions to the James River and Kanawha Company, looking to the purchase of its property and franchises; therefore,

1. Be it enacted by the General Assembly of Virginia, That the James River and Kanawha Company is hereby authorized to sell and convey all its works, property and franchises to the Richmond and Alleghany Railroad Company, and that the proxies of the State of Virginia representing its stock in the James River and Kanawha Company are hereby authorized to vote for such sale and conveyance; provided, that the contract of sale and the conveyance aforesaid shall contain the following provisions and conditions, and shall not contain any conditions or provisions inconsistent therewith; provided, that before any contract shall be assented to by the State proxies, it shall be submitted to the Attorney-General of the State for his advice as to whether the terms of this act have been complied with:

First. The consideration to be paid and rendered by the Richmond and Alleghany Railroad Company, and the conditions of the sale and conveyance shall be the maintenance of the canal as a line of commerce,

subject, however, to the interruptions and abandonment contemplated by the ninth clause of this first section, and the construction and equipment of the railroad hereinafter described, which shall be a first-class railroad, with steel rails, the same gauge of the Chesapeake and Ohio Railway, and equipped with ample accommodation for all passenger travel and freight transportation, within the time hereinafter limited, and the performance of the duties prescribed by the sixth clause of this first section; and also the assumption and payment of all the debts and obligations of the said James River and Kanawha Company, which could be asserted against the James River and Kanawha Company, without meaning thereby to acknowledge or give in any manner any validity to any such debt or obligation, which it would not have if the same were asserted against the James River and Kanawha Company, and reserving to the Richmond and Alleghany Railroad Company the right to make any and all defenses in law or in fact, which the said James River and Kanawha Company would have the right to make if this contract had never been executed. A schedule of such debts and obligations, including the bond or bonds which may have been given, or which are to be given to the State of Virginia for the maintenance, clothing and guarding of the convicts, which shall be a preferred debt, shall be made part of the contract, and such bonds to the State of Virginia for the maintenance of convicts shall be a lien on all the property, rights and franchises transferred by the James River and Kanawha Company to the Richmond and Alleghany Railroad Company, subordinate only to the mortgages now existing on the same, and shall be the first and preferred lien upon all other property, rights and franchises of the Richmond and Alleghany Railroad Company now owned, or that may be hereafter acquired by it. The lien on the property, rights and franchises transferred, shall be reserved in the conveyance to be made, and a mortgage shall be executed by the Richmond and Alleghany Railroad Company on its property, rights and franchises existing, or to be acquired by it, to secure such debt to the State.

Second. A sum of money to be agreed upon, not less than thirty thousand dollars, nor more than fifty thousand dollars, shall be paid in cash by the Richmond and Alleghany Railroad Company to the James River and Kanawha Company, and said sum shall be expended and paid out by the president and directors of the James River and Kanawha Company in payment of salaries and wages due officers and employes up to the time of the transfer, which may be made as hereinafter provided, and in the payment of such debts, charges, costs and expenses as may have been incurred in the administration of the company since the first day of May, eighteen hundred and sixty-seven; and should such sum be insufficient to pay all of such claims, the said president and board of directors shall have full discretion and liberty in paying such as they may select. But if there should be a surplus remaining of said sum after discharging the claims hereinbefore described, such surplus shall be paid to the Richmond and Alleghany Railroad Company. But the bonds which

may have been given, or which are to be given, to the State of Virginia for the maintenance, clothing and guarding of convicts, and which said bonds are, by the terms of the contract with the State, to be payable five years after their date, shall not be included in the charges and expenses of administration payable under this clause, though fully included in the debts and obligations assumed by the Richmond and Alleghany Railroad Company.

Third. The Richmond and Alleghany Railroad Company being willing to make this contemplated purchase only on the condition that it can negotiate an equitable settlement with the creditors of the said James River and Kanawha Company, other than those specially paid under the second clause of this section, said company reserves the right, on failure in such negotiation, to give notice in writing to the president of the James River and Kanawha Company, or to its secretary, or to any officer found in charge of its principal office in Richmond, within sixty days from the passage of this act, of the failure of such negotiation, and of the consequent annulment of this contract. But if said notice is not given within said sixty days, the right to give the same shall cease, unless the time be extended by the board of directors of the James River and Kanawha Company, but such extension shall not exceed sixty days. But the Richmond and Alleghany Railroad Company shall never claim or demand from the State of Virginia, on account of the payment, purchase or compromise of the outstanding bonds of the James River and Kanawha Company, which were guaranteed, and afterwards assumed by the State of Virginia, a larger sum than that which said Richmond and Alleghany Railroad Company may expend in payment, purchase or compromise of said bonds. But the State shall not be liable for any bonds that the Supreme Court of Appeals have decided or may decide the State is not liable for.

Fourth. The Richmond and Alleghany Railroad Company shall deposit with the Board of Public Works the sum of five hundred thousand dollars, in market value, in United States bonds, or that amount, in market value, in other public securities, to be approved by said board, as a pledge for the completion of its railroad from Richmond up the valley of the James River, on the north side of said river from the city of Richmond to a point at or near the Joshua dam, on or near the present location of the tow-path, to Clifton Forge, with a branch of like gauge to Lexington from the mouth of North River, within twenty months from the date of such sale and conveyance. When the said board shall be satisfied that twenty-five miles of said railroad are fully completed, it shall surrender to said company fifty thousand dollars in value of said bonds; and for each successive section of twenty-five miles, which may be completed, an additional amount of fifty thousand dollars in value shall be surrendered; and on the completion of the whole work, the whole of the bonds remaining with said board shall be surrendered. But on failure of the Richmond and Alleghany Railroad Company to complete said railroad within the time prescribed as aforesaid, the said bonds, so to be deposited by it as security, shall be forfeited, and the same, or so many thereof as may remain with the Board of Public Works at the time of such forfeiture, shall be for-

feited and delivered by said board to the Commonwealth of Virginia. But if from any unforeseen casualties it should be found impracticable to complete the line within the time prescribed, the Board of Public Works shall have power to extend the time for a period not exceeding six months. The first one hundred and six miles of said railroad shall be constructed in ten months from the date of said contract and conveyance, and of said one hundred and six miles, fifty miles shall be below Lynchburg, and fifty-six miles above Lynchburg, and any railroad constructed between Buchanan and Clifton Forge shall be counted part of said fifty-six miles above Lynchburg. The surrender of bonds above provided for shall, so far as said one hundred and six miles are concerned, be limited so that no withdrawal for more than fifty miles shall be made of construction above Lynchburg, until at least fifty miles below Lynchburg are constructed. If the canal from Columbia, in Fluvanna County, to the first locks above Stillman's mills, on the Rivanna River, shall be discontinued at any time, said railroad company shall, within ninety days after said discontinuance, build a branch of their road along the line of said Rivanna River from Columbia to the locks aforesaid.

Fifth. After a final and absolute contract of sale shall have been concluded between the James River and Kanawha Company, and the Richmond and Alleghany Railroad Company, and within ten days after the James River and Kanawha Company shall have in writing notified the Richmond and Alleghany Railroad Company of its readiness to convey all its property and franchises in pursuance of such contract, the Richmond and Alleghany Railroad Company shall make the cash payment and deposit hereinbefore required on tender of such conveyance; and if such cash payment and deposit shall not then be made, the contract of purchase shall be and become absolutely null and void. But the said contract must be made within one hundred and twenty days after the passage of this act.

Sixth. It is hereby provided that the rate of dockage at Richmond shall not exceed the rate at present established by the James River and Kanawha Company, and all existing contracts for water privileges along the entire line shall be respected and maintained at rates not exceeding the present rates, except in those cases in which they may be cancelled or altered by agreement, or extinguished by condemnation. It shall be the duty of the Richmond and Alleghany Railroad Company to maintain the present water supply of the docks, and of the canal, along its line, between Bosher's dam and tidewater, and along the Lynchburg level between the water works' dam (which shall be preserved) above Lynchburg, and the first lock below Lynchburg, and in the construction of its railroad it shall not so destroy or obstruct the present canal between Bosher's dam and tidewater, or between the water works' dam above Lynchburg and the first lock below Lynchburg, as to lessen the present water supply.

Seventh. The maintenance of the canal by the Richmond and Alleghany Railroad Company, so far as required by the first and ninth clauses of this first section, and the construction and equipment by said company of the railroad hereinbefore described, within the time herein limited, and the performance by said company of the duties prescribed by the sixth

clause of this first section, shall be a sufficient compliance with all the conditions on which the franchises of the James River and Kanawha Company were heretofore granted to it by the State of Virginia: provided that nothing contained in this act shall release the Richmond and Alleghany Railroad Company from the obligation imposed on the James River and Kanawha Company by its charter to maintain farm bridges over any portion of the canal not filled up, and to keep open necessary ditches near the same; and when the canal is filled up, to permit the privilege of crossing where bridges formerly stood. A failure to build said railroad within two years from the date of the expiration of the time above prescribed for the completion of its works, shall work a forfeiture of said works, property and franchises, and also of the works, property and franchises of said railroad company to said James River and Kanawha Company; provided, however, that such forfeiture shall not prejudice the rights of any creditor of said railroad company, and upon such forfeiture, said James River and Kanawha Company shall thereupon be revived and restored as a corporation, with all of its rights, privileges and franchises, just as they existed at the date of the passage of this act. And the Board of Public Works are hereby authorized and required, whenever in their opinion such forfeiture shall have occurred, to take the proper steps in the Circuit Court of the City of Richmond, by such proceedings as to them shall seem best, to have said forfeiture established and declared, and the said Board of Public Works shall, upon the adjudication of such forfeiture, take possession of said works, property and franchises, and hold the same until the James River and Kanawha Company shall be reorganized, and thereupon turn the same over to said company, and the said Board of Public Works shall, without delay, cause said company to be reorganized in conformity with laws now in force in regard thereto. But nothing herein contained shall be construed as releasing the Richmond and Alleghany Railroad Company from any obligations now resting on the James keep the same in repair where the said canal crosses the streets of any River and Kanawha Company to erect bridges or make earth fillings, and city, if such obligation exists; provided, the city of Richmond shall not make any bridge or filling which shall obstruct or injure the power or right of said Richmond and Alleghany Railroad Company to furnish the water power of said canal to parties desiring to use the same, as required by the provisions of this act.

Eighth. The said railroad company may, in approaching and passing through Lynchburg, arrange for the temporary use of any tracks already constructed for a period not exceeding three years.

Ninth. The substitution of a railroad for the canal, as a line of commerce, shall be so managed as not to interrupt the business of the canal during the progress of railroad construction on such parts of the canal as are not necessarily occupied by the railroad company at the time of construction.

Tenth. All the property acquired or constructed by the Richmond and Alleghany Railroad Company, under this act or otherwise, shall be subject to taxation in the State of Virginia to the same extent and in like

manner as that of other railroads or canals which are subject to taxation, notwithstanding any provision to the contrary in the charter of the James River and Kanawha Company, or in the charter of any other company to whose rights, privileges, or franchises the James River and Kanawha Company has succeeded.

Eleventh. In any mortgage or deed of trust, which may hereafter be executed by said Richmond and Alleghany Railroad Company on its works and property, at least one of the trustees shall at all times be a resident of the State of Virginia.

Twelfth. The Richmond and Alleghany Railroad Company shall have no rights hereunder to build any dams in James River not already located; nor shall it have any right, after the completion of its railroad, to charge tolls upon the navigation of any part of said river, but may charge rents for the use of water derived from its works, as is now provided by law.

Thirteenth. The Richmond and Alleghany Railroad Company shall not charge for tolls on boats, passengers and freights upon the canal, so long as the same or any part thereof shall be operated by said railroad company, higher rates than the maximum rates charged by the James River and Kanawha Company since the fifteenth day of May, eighteen hundred and seventy-seven.

Fourteenth. When the railroad shall have been substituted for the canal as a line of commerce, as contemplated by this act, the Richmond and Alleghany Railroad Company shall pay to the owners of all boats then engaged in or fit for regular business operations on said canal, the fair cash value of such boats at that time; said value to be ascertained by commissioners, to be appointed on the motion of any boat owner, after ten days' notice to said Richmond and Alleghany Railroad Company, or on the motion of the said Richmond and Alleghany Railroad Company, by the Circuit Court of the city of Richmond, for the purpose of assessing and fixing such value. And upon the confirmation by said court of the report of said commissioners, the said railroad company shall pay into said court the aggregate amount of the values so ascertained; provided, the aggregate amount so required to be paid by said railroad company shall not exceed twenty-five thousand dollars. And in the distribution of said aggregate sum, if it be not sufficient to pay all the amounts so ascertained, the said court shall give a preference to the owners of such of said boats as shall have been engaged in or fit for regular business operations on said canal at the time of the execution of the contract herein contemplated; and the residue, if any, shall be by said court distributed to the owners of such of said boats as shall have been put in operation upon the canal subsequent to the execution of said contract, the distribution in each class to be pro rata. And upon the acceptance of said ascertained value, or of said distributive share, in every case the owners of the boat or boats thus, in whole or in part, compensated for, shall deliver the same to said railroad company, and thereupon the right of property in such boat or boats shall vest in said railroad company; but in every case in which said ascertained value, or said distributive share, shall not be accepted by boat owner, the said court shall refund to said Richmond and Alleghany

Railroad Company a corresponding sum of money out of the aggregate amount so to be paid into court as aforesaid.

Fifteenth. The said Richmond and Alleghany Railroad Company shall furnish to the people on the south side of the James River, for the transportation of persons and produce across James River to the line of their railroad, facilities the same, or at least equal to, those now afforded by the James River and Kanawha Company.

Sixteenth. The Richmond and Alleghany Company shall, within two years from the passage of this act, be required to provide all dams across James River from Richmond to the terminus of the line of the James River and Kanawha Canal with suitable sluices, slopes, or fish-ladders, so that fish may have free passage up or down said river during the month of March, April, May and June of each year, unless the water during said months be so low as not to run over such dams. Said sluices, slopes or fish-ladders shall be kept in good repair, and be restored in case of destruction, and be of such plan and construction as shall be approved by the fish commissioner of the State. Upon the completion, within the time specified of the said sluices, slopes or fish-ladders, the Richmond and Alleghany Railroad Company shall be released from any and all liabilities imposed by law upon the James River and Kanawha Company for failure to construct the same. With the approbation of said fish commissioner, the time herein specified may be extended to not exceeding twelve months.

2. Before the execution of the contract herein contemplated between the Richmond and Alleghany Railroad Company and the James River and Kanawha Company there shall be a satisfactory agreement and contract made between the Richmond and Alleghany Railroad Company and the Buchanan and Clifton Forge Railway Company, and said agreement and contract shall be made within one hundred and twenty days after the passage of this act.

3. Said Board of Public Works is further invested with full authority to institute all suits which may be necessary for the enforcement of said contract, and to defend all suits which may be brought against the said board in respect thereto.

4. The Circuit Court of the city of Richmond shall have exclusive jurisdiction of all suits in respect to said contract, whether brought by the Board of Public Works or by others, and the Board of Public Works shall be a necessary party to all such suits.

5. Upon the final conveyance of the property of the James River and Kanawha Company to the Richmond and Alleghany Railroad Company, herein contemplated, the contract between the State and the James River and Kanawha Company for the use of convict labor shall cease and determine, and the convicts then in the employ of the said company shall be returned to and delivered to the superintendent of the penitentiary.

6. The said Richmond and Alleghany Railroad Company shall be subject to the exercise of the police power of the city of Richmond, notwithstanding any rights claimed under the charter of the James River

and Kanawha Company, as though it were a corporation now for the first time chartered.

7. The said Richmond and Alleghany Railroad Company shall, as fast as they abandon the said canal, so drain the same as not to leave stagnant water, by which the health of the citizens along the line of said canal might be injuriously affected.

8. The General Assembly shall at all times have the right to so regulate the charges for local and way travel and freight over the route of said Richmond and Alleghany Railroad, as to prevent unjust discrimination against such local and way travel and freight.

9. This act shall be in force from its passage.

DEFENDANT'S EXHIBIT No. 7—1863—E.

JAMES RIVER AND KANAWHA COMPANY.

Chap. 128.—AN ACT to authorize the James River and Kanawha Company to make sale and transfer of all its works, property and franchises, and to invest the purchaser or purchasers with certain corporate rights, powers and franchises.

Approved April 2, 1879.

Whereas the General Assembly of Virginia has passed an act approved the twenty-seventh day of February, eighteen hundred and seventy-nine, entitled an act to authorize the James River and Kanawha Company to make sale and transfer of all its works, property and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the Board of Public Works in respect thereto; and whereas it is desired to provide for the contingency, that the Richmond and Alleghany Railroad Company may not make the purchase of the works, property and franchises of the James River and Kanawha Company as contemplated in said act; now, therefore,

1. Be it enacted by the General Assembly, That in the event that the Richmond and Alleghany Railroad Company shall not purchase the works, property and franchises of the James River and Kanawha Company within the term prescribed by said act, then the James River and Kanawha Company is hereby authorized to sell and convey all of its works, property and franchises to any other corporation, person or persons, and the proxies of the State of Virginia, representing its stock in the James River and Kanawha Company, are hereby authorized to vote for such sale and conveyance: provided, that the contract of sale and conveyance shall contain all the provisions and conditions set forth and prescribed in the act aforesaid, approved the twenty-seventh day of February, eighteen hundred and seventy-nine, and shall not contain any provisions or conditions inconsistent therewith, except that any contract made under the provisions of this act by and with the James River and Kanawha

Company, or by and with the Buchanan and Clifton Forge Railway Company, may be made at any time after the failure of negotiations with the Richmond and Alleghany Railroad Company under the said act, approved February twenty-seventh, eighteen hundred and seventy-nine.

2. Any sale and conveyance made in pursuance of the provisions of this act shall pass to the purchaser all the works, property and franchises of the James River and Kanawha Company as they exist at the time of the sale, except so far as the same may be inconsistent with the contract of sale, and the purchaser shall henceforth be a corporation by any name which may be set forth in said conveyance, or in any writing signed by said purchaser and recorded in the court in which the conveyance shall be recorded. And the corporation thus created shall be liable to perform all the duties and obligations of the James River and Kanawha Company, except so far as the same may be inconsistent with the contract of sale. The interest of the purchaser in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding together the amount of stock held in the James River and Kanawha Company at the time of sale, and assign the same in a book to be kept for that purpose. The said shares shall thenceforth be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper published in the city of Richmond.

3. In addition to such rights, powers, privileges and franchises as are indicated by the preceding sections, the said purchaser shall be invested with all the corporate powers and franchises necessary for constructing, equipping, maintaining and operating the railroad contemplated in the act aforesaid, approved the twenty-seventh day of Ferbuary, eighteen hundred and seventy-nine, and by contract with the Buchanan and Clifton Forge Railway Company to acquire its rights, property and franchises.

4. It shall be lawful for the corporation thus created to borrow money to aid in the construction and equipment of its railroad, and for that purpose to mortgage its works, property and franchises.

5. This act shall be in force from its passage.

DEFENDANT'S EXHIBIT No. 7—1863—F.

JAMES RIVER AND KANAWHA COMPANY.

Chap. 181.—AN ACT authorizing the Board of Public Works to adjust the claims of the James River and Kanawha Company, and appropriating the proceeds, and providing for the safe-keeping of certain deposits, and authorizing the said James River and Kanawha Company to sell and convey its works and franchises to the Richmond and Alleghany Railroad Company.

Approved March 4, 1880.

1. Be it enacted by the General Assembly, That the Board of Public Works shall be authorized to adjust the claims of Virginia against the James River and Kanawha Company for the hire of convicts upon such terms as shall seem to them just and to the interest of the State: provided, however, that whatever sum of money shall be realized to the State for said settlement shall be paid into the treasury of the State for the use of the penitentiary.

2. The Board of Public Works shall have authority to select a depository for the safekeeping of five hundred thousand dollars of bonds, to be deposited by the purchaser of the works, property and franchises of the James River and Kanawha Company, and shall require the purchaser to pay the charges for such safekeeping.

3. That it shall be lawful for the James River and Kanawha Company to sell and convey, and for the proxies representing the State of Virginia in any stockholders' meeting of said company to vote for the sale and conveyance of its works, property and franchises to the Richmond and Alleghany Railroad Company, upon terms and conditions of an act approved February twenty-seventh, eighteenth hundred and seventy-nine, entitled an act, and so forth, notwithstanding the limitations of said act; provided, the said sale and conveyance shall be made within five days from the passage of this act.

4. This act shall be in force from its passage.

DEFENDANT'S EXHIBIT No. 7—1863—G.

This deed, made this fourth day of March, A. D. 1880, by and between the James River and Kanawha Company, a corporation under the laws of the State of Virginia, party of the first part, and the Richmond and Alleghany Railroad Company, also a corporation of the State of Virginia, party of the second part:

Whereas, the General Assembly of the State of Virginia heretofore passed an act approved February 27, 1879, entitled "An act to authorize the James River and Kanawha Company to make sale and transfer of all its works, property and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the Board of Public Works in respect thereto," which act is in the words and figures following, to-wit:

"Whereas, in the act incorporating the Richmond and Alleghany Railroad Company the Legislature authorized said company to purchase any of the property and franchises of any work of internal improvement within the limits of its charter, and the said company has made certain propositions to the James River and Kanawha Company looking to the purchase of its property and franchises; therefore,

1. Be it enacted by the General Assembly of Virginia, That the James River and Kanawha Company is hereby authorized to sell and convey all its works, property and franchises to the Richmond and Alleghany Railroad Company, and that the proxies of the State of Virginia, repre-

senting its stock in the James River and Kanawha Company, are hereby authorized to vote for such sale and conveyance; provided, that the contract of sale and the conveyance aforesaid shall contain the following provisions and conditions, and shall not contain any conditions or provisions inconsistent therewith; provided, that before any contract shall be assented to by the State proxies, it shall be submitted to the Attorney-General of the State for his advice as to whether the terms of this act shall have been complied with.

First. The consideration to be paid and rendered by the Richmond and Alleghany Railroad Company and the conditions of the sale and conveyance shall be the maintenance of the canal as a line of commerce, subject, however, to the interruptions and abandonment contemplated by the ninth clause of the first section; and the construction and equipment of the railroad hereinafter described, which shall be a first-class railroad, with steel rails, the same gauge of the Chesapeake and Ohio Railway, and equipped with ample accommodations for all passenger travel and freight transportation, within the time hereinafter limited, and the performance of the duties prescribed by the sixth clause of this first section; and also the assumption and payment of all the debts and obligations of the said James River and Kanawha Company, which could be asserted against the James River and Kanawha Company, without meaning thereby to acknowledge or give in any manner any validity to any such debt or obligation which it would not have if the same were asserted against the James River and Kanawha Company, and reserving to the Richmond and Alleghany Railroad Company the right to make any and all defenses in law or in fact which the said James River and Kanawha Company would have the right to make if this contract had never been executed, a schedule of such debts and obligations, including the bond or bonds which may have been given or which are to be given to the State of Virginia for the maintenance, clothing and guarding of convicts, which shall be a preferred debt, shall be made part of the contract, and such bonds to the State of Virginia for the maintenance of convicts, shall be a lien on all the property, rights and franchises transferred by the James River and Kanawha Company to the Richmond and Alleghany Railroad Company, subordinate only to the mortgages now existing on the same, and shall be the first and preferred lien upon all other property, rights and franchises of the Richmond and Alleghany Railroad Company, now owned or that may be hereafter acquired by it. The lien on the property, rights and franchises transferred shall be reserved in the conveyance to be made, and a mortgage shall be executed by the Richmond and Alleghany Railroad Company on its property, rights and franchises, existing or to be acquired by it to secure such debt to the State.

Second. A sum of money to be agreed upon, not less than thirty thousand dollars nor more than fifty thousand dollars, shall be paid in cash by the Richmond and Alleghany Railroad Company to the James River and Kanawha Company, and said sum shall be expended and paid out by the president and directors of the James River and Kanawha Company in payment of salaries and wages due officers and employes up

to the time of the transfer, which may be made as hereinafter provided, and in the payment of such debts, charges, costs and expenses as may have been incurred in the administration of the company since the first day of May, eighteen hundred and sixty-seven; and should such sum be insufficient to pay all such claims, the said president and board of directors shall have full discretion and liberty in paying such as they may select. But if there should be a surplus remaining of said sum after discharging the claims hereinbefore described, such surplus shall be paid to the Richmond and Alleghany Railroad Company, but the bonds which may have been given, or which are to be given to the State of Virginia for the maintenance, clothing and guarding of convicts, and which said bonds are, by the terms of the contract with the State, to be payable five years after their date, shall not be included in the charges and expenses of administration payable under this clause, though fully included in the debts and obligations assumed by the Richmond and Alleghany Railroad Company.

Third. The Richmond and Alleghany Railroad Company being willing to make this contemplated purchase only on the condition that it can negotiate an equitable settlement with the creditors of the said James River and Kanawha Company, other than those specially paid under the second clause of this section, said company reserves the right, on failure in such negotiation, to give notice in writing to the president of the James River and Kanawha Company, or to its secretary, or to any officer found in charge of its principal office in Richmond, within sixty days from the passage of this act, of the failure of such negotiation and of the consequent annulment of this contract; but if said notice is not given within the said sixty days the right to give the same shall cease, unless the time be extended by the board of directors of the James River and Kanawha Company, but such extension shall not exceed sixty days; but the Richmond and Alleghany Railroad Company shall never claim or demand from the State of Virginia on account of the payment, purchase or compromise of the outstanding bonds of the James River and Kanawha Company which were guaranteed and afterwards assumed by the State of Virginia, a larger sum than that which said Richmond and Alleghany Railroad Company may expend in payment, purchase or compromise of said bonds. But the State shall not be liable for any bonds that the Supreme Court of Appeals have decided or may decide the State is not liable for.

Fourth. The Richmond and Alleghany Railroad Company shall deposit with the Board of Public Works the sum of five hundred thousand dollars, in market value in United States bonds or that amount in market value in other public securities, to be approved by said board, as a pledge for the completion of its railroad from Richmond, up the valley of the James River, on the north side of said river from the city of Richmond to a point at or near the Joshua dam, on or near the present location of the tow-path to Clifton Forge, with a branch of like gauge to Lexington from the mouth of North River, within twenty months from the date of such sale and conveyance. When the said board shall be satisfied that

twenty-five miles of said railroad are fully completed, it shall surrender to said company fifty thousand dollars in value of said bonds; and for each successive section of twenty-five miles which may be completed an additional amount of fifty thousand dollars in value shall be surrendered, and on the completion of the whole work the whole of the bonds remaining with said board shall be surrendered. But on the failure of the Richmond and Alleghany Railroad Company to complete said railroad within the time prescribed as aforesaid, the said bonds so to be deposited by it as security shall be forfeited, and the same or so many thereof as may remain with the Board of Public Works at the time of such forfeiture, shall be forfeited and delivered by said board to the Commonwealth of Virginia. But if from any unforeseen casualties it should be found impracticable to complete the line within the time prescribed, the Board of Public Works shall have power to extend the time for a period not exceeding six months. The first one hundred and six miles of said railroad shall be constructed in ten months from the date of said contract and conveyance, and of said one hundred and six miles fifty miles shall be below Lynchburg, and fifty-six miles above Lynchburg, and any railroad constructed between Buchanan and Clifton Forge shall be counted part of said fifty-six miles above Lynchburg. The surrender of bonds above provided for shall so far as said one hundred and six miles are concerned, be limited so that no withdrawal for more than fifty miles shall be made for construction above Lynchburg until at least fifty miles below Lynchburg are constructed. If the canal from Columbia in Fluvanna County, to the first locks above Stillman's mills on the Rivanna River, shall be discontinued at any time, said railroad company shall, within ninety days after said discontinuance, build a branch of their road along the line of said Rivanna River from Columbia to the locks aforesaid.

Fifth. After a final and absolute contract of sale shall have been concluded between the James River and Kanawha Company and the Richmond and Alleghany Railroad Company, and within ten days after the James River and Kanawha Company shall have in writing notified the Richmond and Alleghany Railroad Company of its readiness to convey all its property and franchises in pursuance of such contract, the Richmond and Alleghany Railroad Company shall make the cash payment and deposit hereinbefore required on tender of such conveyance; and if such cash payment and deposit shall not then be made, the contract of purchase shall be and become absolutely null and void; but the said contract must be made within one hundred and twenty days after the passage of this act.

Sixth. It is hereby provided that the rate of dockage at Richmond shall not exceed the rate at present established by the James River and Kanawha Company, and all existing contracts for water privileges along the entire line shall be respected and maintained at rates not exceeding the present rates, except in those cases in which they may be cancelled or altered by agreement or extinguished by condemnation. It shall be the duty of the Richmond and Alleghany Railroad Company to maintain the present water supply of the docks and of the canal along its line between

Bosher's dam and tidewater, and along the Lynchburg level between the water works' dam (which shall be preserved) above Lynchburg, and the first lock below Lynchburg, and in the construction of its railroad it shall not so destroy or obstruct the present canal between Bosher's dam and tidewater or between the water works dam above Lynchburg and the first lock below Lynchburg, as to lessen the present water supply.

Seventh. The maintenance of the canal by the Richmond and Alleghany Railroad Company so far as required by the first and ninth clauses of this first section, and the construction and equipment by said company of the railroad hereinbefore described, within the time herein limited, and the performance by said company of the duties prescribed by the sixth clause of this first section, shall be a sufficient compliance with all the conditions on which the franchises of the James River and Kanawha Company were heretofore granted to it by the State of Virginia, provided that nothing contained in this act shall release the Richmond and Alleghany Railroad Company from the obligation imposed on the James River and Kanawha Company by its charter to maintain farm bridges over any portion of the canal not filled up, and to keep open necessary ditches near the same; and where the canal is filled up to permit the privilege of crossing where bridges formerly stood. A failure to build said railroad within two years from the date of the expiration of the time above prescribed for the completion of its works, shall work a forfeiture of said works, property and franchises, and also of the works, property and franchises of said railroad company to said James River and Kanawha Company; provided, however, that such forfeiture shall not prejudice the rights of any creditor of said railroad company, and upon such forfeiture said James River and Kanawha Company shall thereupon be revived and restored as a corporation, with all of its rights, privileges and franchises, just as they existed at the date of the passage of this act.

And the Board of Public Works are hereby authorized and required, whenever in their opinion such forfeiture shall have occurred, to take the proper steps in the Circuit Court of the City of Richmond, by such proceedings as to them shall seem best, to have said forfeiture established and declared, and the said Board of Public Works shall upon the adjudication of such forfeiture take possession of said works, property and franchises, and hold the same until the James River and Kanawha Company shall be reorganized and thereupon turn the same over to said company and the said Board of Public Works shall without delay, cause said company to be reorganized in conformity with laws now in force in regard thereto.

But nothing herein contained shall be construed as releasing the Richmond and Alleghany Railroad Company from any obligation now resting on the James River and Kanawha Company to erect bridges or make earth fillings, and keep the same in repair where the said canal crosses the streets of any city, if such obligation exists, provided the city of Richmond shall not make any bridge or filling which shall obstruct or injure the power or right of said Richmond and Alleghany Company to furnish the water power of said canal to parties desiring to use the same as required by the provisions of this act.

Eighth. The said railroad company may, in approaching and passing through Lynchburg, arrange for the temporary use of any tracks already constructed, for a period not exceeding three years.

Ninth. The substitution of a railroad for a canal as a line of commerce, shall be so managed as not to interrupt the business of the canal during the progress of railroad construction on such parts of the canal as are not necessarily occupied by the railroad company at the time of construction.

Tenth. All the property acquired or constructed by the Richmond and Alleghany Railroad Company, under this act or otherwise, shall be subject to taxation in the State of Virginia, to the same extent and in like manner as that of other railroads or canals which are subject to taxation, notwithstanding any provision to the contrary in the charter of the James River and Kanawha Company, or in the charter of any other company to whose rights, privileges or franchises the James River and Kanawha Company has succeeded.

Eleventh. In any mortgage or deed of trust which may hereafter be executed by said Richmond and Alleghany Railroad Company on its works and property, at least one of the trustees shall at all times be a resident of the State of Virginia.

Twelfth. The Richmond and Alleghany Railroad Company shall have no rights hereunder to build any dams in James River not already located nor shall it have any right after the completion of its railroad to charge tolls upon the navigation of any part of said river, but may charge rents for the use of water derived from its works, as is now provided by law.

Thirteenth. The Richmond and Alleghany Railroad Company shall not charge for tolls on boats, passengers and freights upon the canal, so long as the same or any part thereof shall be operated by said railroad company, higher rates than the maximum rates charged by the James River and Kanawha Company, since the fifteenth day of May, eighteen hundred and seventy-seven.

Fourteenth. When the railroad shall have been substituted for the canal as a line of commerce as contemplated by this act, the Richmond and Alleghany Railroad Company shall pay to the owners of all boats then enagged in or fit for regular business operations on said canal the fair cash value of such boats at that time, said value to be ascertained by commissioners, to be appointed on the motion of any boat owner after ten days' notice to said Richmond and Alleghany Railroad Company, or on the motion of the said Richmond and Alleghany Railroad Company, by the Circuit Court of the city of Richmond, for the purpose of assessing and fixing such value; and upon the confirmation by said court of the report of said commissioners the said railroad company shall pay into said court the aggregate amount of the values so ascertained; provided the aggregate amount so required to be paid by said railroad company shall not exceed twenty-five thousand dollars. And in the distribution of said aggregate sum, if it be not sufficient to pay all the amounts so ascertained, the said court shall give a preference to the owners of such of said boats as shall have been engaged in or fit for regular business operations on said canal at the time of the execution of the contract herein contemplated and the

residue, if any, shall be by said court distributed to the owners of such of said boats as shall have been put in operation upon the canal subsequent to the execution of said contract, the distribution in each class to be pro rata. And upon the acceptance of said ascertained value or of said distributive share, in every case the owners of the boat or boats, thus in whole or in part compensated for, shall deliver the same to the said railroad company, and thereupon the right of property in such boat, or boats shall vest in said railroad company, but in every case in which said ascertained value or said distributive share shall not be accepted by boat owners, the said court shall refund to said Richmond and Alleghany Railroad Company a corresponding sum of money out of the aggregate amount so to be paid into court as aforesaid.

Fifteenth. The said Richmond and Alleghany Railroad Company shall furnish to the people on the south side of the James River for the transportation of persons and produce across James River to the line of their railroad facilities, the same or at least equal to those now afforded by the James River and Kanawha Company.

Sixteenth. The Richmond and Alleghany Railroad Company shall, within two years from the passage of this act, be required to provide all dams across James River from Richmond to the terminus of the line of the James River and Kanawha Canal with suitable sluices, slopes or fish ladders, so that fish may have free passage up or down said river the water during said months be so low as not to run over such dams. Said sluices, slopes or fish ladders shall be kept in good repair, and be restored in case of destruction, and be of such plan and construction as shall be approved by the fish commissioner of the State. Upon the completion within the time specified, of the said sluices, slopes or fish ladders, the Richmond and Alleghany Railroad Company shall be released from any and all liabilities imposed by law upon the James River and Kanawha Company for failure to construct the same. With the approbation of said fish commissioner, the time herein specified may be extended to not exceeding twelve months.

2. Before the execution of the contract herein contemplated between the Richmond and Alleghany Railroad Company and the James River and Kanawha Company, there shall be a satisfactory agreement and contract made between the Richmond and Alleghany Railroad Company and the Buchanan and Clifton Forge Railway Company and said agreement and contract shall be made within one hundred and twenty days after the passage of this act.

3. The Board of Public Works is further invested with full authority to institute all suits which may be necessary for the enforcement of said contract and to defend all suits which may be brought against the said board in respect thereto.

4. The Circuit Court of the City of Richmond shall have exclusive jurisdiction of all suits in respect to said contract, whether brought by the Board of Public Works or by others, and the Board of Public Works shall be a necessary party to all such suits.

5. Upon the final conveyance of the property of the James River and

Kanawha Company to the Richmond and Alleghany Railroad Company herein contemplated, the contract between the State and the James River and Kanawha Company for the use of convict labor shall cease and determine, and the convicts then in the employ of the said company shall be returned to and delivered to the superintendent of the penitentiary.

6. The said Richmond and Alleghany Railroad Company shall be subject to the exercise of the police power of the city of Richmond, notwithstanding any rights claimed under the charter of the James River and Kanawha Company, as though it were a corporation now for the first time chartered.

7. The said Richmond and Alleghany Railroad Company shall, as fast as they abandon the said canal, so drain the same as not to leave stagnant water, by which the health of the citizens along the line of said canal might be injuriously affected.

8. The General Assembly shall at all times have the right to so regulate the charges for local and way travel and freight over the route of said Richmond and Alleghany Railroad as to prevent unjust discrimination against such local and way travel and freight.

9. This act shall be in force from its passage.

And whereas, the said General Assembly passed another act approved the fourth day of March, A. D., 1880, entitled "An act defining the conditions of conveyance and recordation under any sale the James River and Kanawha Company may make of its works and franchises," Which act is in the words and figures, following, to-wit:

1. Be it enacted by the General Assembly of Virginia, That in any contract the James River and Kanawha Company may make for the sale of its works and franchises it may consent, with the approval of the Board of Public Works, that iron rails may be temporarily laid instead of steel rails, and that twelve months additional time for construction may be given for all sections to be laid with steel rails made in Virginia.

2. Any purchaser of such works and franchises may sell the same to the Richmond and Alleghany Railroad Company, or to any other corporation authorized by law to purchase.

3. The tax upon the recordation of the deed conveying said works and franchises, shall be one thousand two hundred and fifty dollars, and if the purchaser shall immediately convey the same to a corporation no additional tax shall be required for recordation.

4. This act shall be in force from its passage.

And whereas, the said General Assembly also passed another act approved the fourth day of March, A. D., 1880, entitled, "An Act authorizing the James River and Kanawha Company to sell and convey its works and franchises to the Richmond and Alleghany Railroad Company," which act is in the words and figures following, to-wit:

1. Be it enacted by the General Assembly, That it shall be lawful for the James River and Kanawha Company to sell and convey, and for the

proxies representing the State of Virginia, in any stockholders meeting of said company to vote for the sale and conveyance of its works, property and franchises to the Richmond and Alleghany Railroad Company, upon terms and conditions of an act approved February twenty-seventh, eighteen hundred and seventy-nine, entitled an act, and so forth, notwithstanding the limitations of said act, provided the said sale and conveyance shall be made within five days from the passage of this act.

2. This act shall be in force from its passage.

And whereas, the party of the second part has contracted to make such purchase under the provisions and authority of the said acts aforesaid, and on the terms, conditions, provisions and limitations therein set forth;

And whereas, the party hereto of the second part has paid to the party hereto of the first part, the sum of thirty thousand dollars in cash, required to be paid by the second clause of the first section of the act recited;

And whereas, the party hereto of the second part has deposited with the Board of Public Works the sum of five hundred thousand dollars in market value in United States bonds as required by the fourth clause of the first section of the act hereinbefore recited:

And whereas before the execution of this conveyance a satisfactory agreement and contract has been made between the party of the second part and the Buchanan and Clifton Forge Railway Company, and the sum of four thousand dollars as required by said contract has been paid by the party hereto of the second part to the said Buchanan and Clifton Forge Railway Company. Now this deed, Witnesseth, that for and in consideration of the premises and in pursuance of the Acts of Assembly aforesaid, and in consideration thereof, and of the terms, conditions, provisions and limitations therein contained, the James River and Kanawha Company doth hereby grant and convey unto the said the Richmond and Alleghany Railroad Company, all the works, property and franchises of the said James River and Kanawha Company, including all the lands, buildings, canals, basins, tow-paths, embankments, bridges, dams, locks, turnpikes, estates and interests in turnpikes, roads, toll houses, docks, wharves, ferries, ferry houses, ferry boats, the North River and Rivanna improvements, canal boats, materials, tools, machinery, horses, mules, dredging machines, and all the rights, water power, water rights, privileges and franchises of the said James River and Kanawha Company, and all its other property, real, personal or mixed, belonging or appertaining to the said canals, wharves and docks, or connected with the proper equipment, operation or conduct thereof; and all tolls, income issues and profits to be had or derived from the property, works, rights, privileges and franchises hereby conveyed or any of them and all right to receive or recover the same, to have and to hold the property, works, rights, privileges and franchises hereby conveyed, with all and singular the said appurtenances, tolls, rents, issues and profits unto the said party hereto of the second part, its successors and asign forever.

Each of the partie to this deed hereby binds itself, its successors and

assigns to the full and faithful performance and fulfillment on its part of all the requirements imposed on said parties respectively by the acts hereinbefore recited. A schedule of the debts and obligations of the James River and Kanawha Company which is required by the first clause of the first section of the act first herein recited, is hereto appended, and is made a part of this deed.

The party of the first part doth warrant generally the property hereby conveyed.

In testimony whereof, the parties hereto have caused their respective corporate seals to be hereto affixed, and these presents to be signed by their respective presidents, the day and year first herein written.

(Seal) THE JAMES RIVER AND KANAWHA COMPANY,

By JNO W. JOHNSTON, President.

(Seal) THE RICHMOND AND ALLEGHANY RAILROAD CO.,

By GEO. M. BARTHOLOMEW, President.

Attorney General's Office,
Richmond, March 4th, 1880.

The foregoing contract of sale and conveyance between the James River and Kanawha Company and the Richmond and Alleghany Railroad Company, has been submitted to me, and upon an examination of said proposed contract, I find that the acts of the General Assembly under which it is made are inserted into the contract and made a part thereof, and that said contract is in all respects in compliance with the terms of said acts.

Given under my hand this day and year above written.

JAS. G. FIELD, Attorney General.

State of Virginia,
City of Richmond, to-wit:

I, Solomon Cutchings, a notary public in and for the city aforesaid, in the State of Virginia, do certify that John W. Johnston, president, and George M. Bartholomew, president, whose names are signed to the writing above bearing date on the 4th day of March, 1880, having severally acknowledged the same before me in my city aforesaid.

(Seal) Given under my hand this 4th day of March, 1880.

SOLOMON CUTCHINS, N. P

SCHEDULE

Of the debts and obligations of the James River and Kanawha Company appended to the foregoing deed, and to be taken as a part thereof.

1st. Old floating debt, all due prior to May, 1867, with interest calculated to March 1st, 1879:

(a) Bonds of the North River Navigation Company	$ 1,000 00
Interest on same to 1st March, 1879	1,400 00
(b) Bills payable	3,643 00
Interest on same to 1st March, 1879	5,263 65
(c) Pay rolls and open accounts	3,500 00
Interest on same to 1st March, 1879	2,897 50
(d) Hire of hands, not on pay rolls	2,900 00
Interest on same to 1st March, 1879	2,718 50
Total of this class	$23,322 65

No claim has been made on the company for any of the above debts so far as known by the present officers of the company, since the year 1867, year 1867, or for some time before that date.

2nd. Balance of 8 per cent bonds issued in 1856:		
Principal		$12,500 00
Interest on same to 1st March, 1880		3,043 66
Total of this class		$15,543 66
3rd. First mortgage bonds, dated May, 1867:		
Principal	$750,000 00	
Unpaid coupons, up to and including Nov., 1879 (approx.)	125,736 00	
		$875,736 00
Second mortgage bonds, dated Nov. 9th, 1870:		
Principal	$227,400	
Unpaid coupons, up to and including Nov., 1879 (approximate)	35,450 00	
		$262,850 00
Third mortgage bonds, dated Sept. 1st, 1877:		
Principal (all held by Buchanan and Clifton Forge R. W. Co.)	$248,000 00	
Unpaid coupons, up to and including March, 1880	7,440 00	
		255,440 00
Total of the three mortgage debts		$1,394,026 00

4th. Thirty thousand dollars of the second mortgage bonds of the company have been pledged to the State of Virginia, as security for the return of the convicts, and as security for the payment of the penalty for the escape of convicts.

Ten thousand dollars of the second mortgage bonds are pledged as collateral for the debt of $5,000 to the supervisors of the County of Rockbridge, mentioned in the 7th class of this schedule, three thousand dollars of second mortgage bonds, belonging to Jordan Ballard & Co., contractors, are retained by this company as security for their compliance with their contract for the return of convicts hired to them by the company, and for compliance with the other provisions of said contract in reference to said convicts.

5th. The Guaranteed Debt.—This debt consists of bonds of the company guaranteed by the State of Virginia, under the provisions of the Act of Assembly of March, 1860, the payment of these debts was assumed by the State, in consideration of the issue to the State of preferred stock of the company:

Principal of bonds outstanding	$122,580 00
Interest matured to 1st Jan., 1880, per statement of auditor of State of Virginia	93,576 78
Total of this class	$216,156 78

6th. Debt to the State of Virginia for maintenance of convicts:

Bond December 15, 1878, at 5 years, bearing interest from date	$47,729 46
Bond December 15, 1879, at 5 years, bearing interest from date	33,877 94
Amount since accrued, estimated	5,800 00
Total of this class	$87,407 40
7th. (a) Bond to the city of Lynchburg for loan secured by pledge of water rents on the Lynchburg level	$ 35,000 00

On 30th September, 1879, it was claimed by the city of Lynchburg that a balance of $796.53 of interest on this bond was due, but the account is unsettled.

(b) Bond to the County of Rockbridge for loan, subject to written contract under which the company claims that this debt is payable only and solely from the net revenues of the North River Canal, which claim is disputed by the county	50,000 00
Interest to date, approximate	37,000 00
Total of this class	$122,000 00

A contract has been entered into between the James River and Kanawha Company and the Board of Supervisors of the County of Rockbridge by which the debt above stated of $50,000 and its interest is released, subject to the condition that a railroad is completed to the town of Lexington, as set forth in said contract.

8th. Salaries and wages of officers and employees, and debts, charges, costs, and expenses incurred in the administration of the company since 1st May, 1867, other than those included in the foregoing clauses:

(a) Pay rolls and salaries (estimated)	$ 8,500 00
(b) Outstanding due bills for first mortgage bonds	1,205 00
Interest on same to 1st March, 1880	517 30
(c) Supervisors of Rockbridge County, ten bonds of $500 each for a loan	5,000 00
Interest on same to March 1st, 1880	450 00
(d) Open account for supplies, counsel fees, printing, &c. (estimated)	14,000 00
Total of this class	$29,672 30

9th. The company claims the right to add any debt omitted by inadvertence, and to correct any inaccuracy in this schedule inadvertently made.

10th. Among the debts of the James River and Kanawha Company, provided for by the 9th section of foregoing schedule of debts, omitted by inadvertence, are to be included compensation for boats designed for use on the canal, the construction of which has been commenced or completed, in pursuance of resolutions approved by the stockholders of the James River and Kanawha Company, in general meeting on the 1st day of July, 1879, such compensation to be equivalent to the equitable value of all such boats as have been so commenced or completed, under the express written sanction of the president of the said James River and Kanawha Company, prior to the conveyance from the James River and Kanawha Company to the Richmond and Alleghany Railroad Company.

City of Richmond, to-wit:

In the office of the Court of Chancery for the said city, the 5th day of March, 1880.

This deed was presented, and with the certificates and schedule annexed, admitted to record at half past five o'clock P. M.

Teste:

BENJ. H. BERRY, Clerk.

A Copy—Teste:

CHARLES O. SCOVILLE, Clerk.

DEFENDANT'S EXHIBIT No. 8—1863.

Page No. 48.

Class G.

Hillman Exhibit 8.
Defendant Exhibit 8.
(Corresponds with Exhibit 8, Jan. 1, 1861.)

CLASS G—1863.

STATE OF WEST VIRGINIA.

Manassas Gap Railroad Company.

Total cost of Road, Equipment, etc., according to Board of Public Works' Report, Document 17, Folio 218, was in 1860. $3,322,164 67

Stock paid up to that date was $3,188,312 97

The Road was not operated at that time (June 20, 1863), and no other value than the above is obtainable. In 1869 the State gave its stock in this Road to the Orange & Alexandria Road, forming the Orange, Alexandria & Manassas Railroad, condition being that share of new stock should be issued to all outside holders of old.

Folio 184, Ledger "B," Internal Improvement Fund shows that on June 20, 1863, the State of Virginia held stock of this road to the value of $2,280,000.00.

DEFENDANT'S EXHIBIT No. 9—1863.

Class G.
(excepting Assets No. 51-52.)

Page No. 49.
Hillman Exhibit 9.
Defendant 9.
(Corresponds with Exhibit 9, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement of Stocks in and Claims against Internal Improvement Companies held by the Commonwealth on August 22, 1914.

Asset No.	Name of Co.	How disposed of.	Par value or cost to June 20, 1863.	Par June 20, 1863, of securities not yet disposed of.	By what authority disposed of.	Ledger value of undisposed securities on Aug. 22, 1914.
3.	Roanoke Valley R. R.	Given away	$ 177,402 00		Act of Genl. Assembly, Feb. 18, 1866—Pages 333-334.	
	Roanoke Valley R. R.	Given away	*130,000 00			
4.	Fredericksburg & Gordonsville R. R.	On hand	163,299 00	$163,299 00	B. P. W. Ledger "B," page 181	$ 163,299 00
5.	Richmond & York River R. R.	Sold	290,999 52	179,500 00	B. P. W. Ledger "B," page 192	179,500 00
	Richmond & York River R. R.	Sold	*200,000 00		Decree of Ch. Ct. Dec. 16/72 Decree of Ch. Ct. Dec. 16/72	
6.	Rappahannock Co	On hand	179,500 00	179,500 00	B. P. W. Ledger "B," page 192	179,500 00
7.	Rivanna River Navigation Co.	On hand	269,133 14	269,133 14	B. P. W. Ledger "B," page 193	269,133 14
8.	Smith's River Navigation Co.	Abandoned	4,083 12		Journal "D," B. P. W. page 176	

DEFENDANT'S EXHIBIT No. 9—1863.
(Continued)

9. Slate River Co.	Abandoned	21,000 00		Journal "D," B. P. W., page 176	
10. Kempsville Canal Co.	On hand	13,650 00	13,650 00	B. P. W. Ledger "B," page 193	13,650 00
11. Hazel River Navigation Co.	On hand	63,079 58	63,079 58	B. P. W. Ledger "B," page 192	63,079 58
12. Goose Creek & Little River Navigation Co.	On hand	58,255 35	58,255 35	B. P. W. Ledger "B," page 191	58,255 35
13. Dragon Swamp Navigation Co.	Abandoned	1,464 00		B. P. W. Journal "D," page 176	
14. Chesapeake & Ohio Canal Co.	On hand	250,000 00	250,000 00	B. P. W. Journal "D," page 176	250,000 00
Potomac Co.	On hand	31,111 11	31,111 11	B. P. W. Ledger "B," page 191	31,111 11
		$1,852,976 82	$1,028,028 18		$1,028,028 18

Note.—None of the securities representing the total of $1,028,028.18 have been inspected by us.
*Preferred stock.

CLASS 9—1863.

DEFENDANT'S EXHIBIT No. 10—1863.

Page No. 50.

STATE OF WEST VIRGINIA.

Defendant Exhibit 10.
Hillman Exhibit 10.
(Corresponds with Exhibit 10, January 1, 1861.)

Amount of taxes, fines, etc., paid by West Virginia Counties to the State of Virginia after June 20, 1863.

	PERIOD June 20, 1863, to April 1, 1865.
General taxes assessed after Jan. 1, 1861	$ 189,643 31
Law processes assessed after Jan. 1, 1861	926 19
Law processes assessed prior to Jan. 1, 1861	1,158 13
General taxes assessed prior to Jan. 1, 1861	22,715 93
License taxes of May, 1861	1,231 33
Lands redeemed	552 49
Delinquent taxes	351 95
Delinquent and forfeited lands	8,210 30
	$ 224,799 63

Note: The amount of taxes, period after June 20, 1863, was entered as $225,073.06 in Supplemental Answer.

*DEFENDANT'S EXHIBIT No. 11—1863.

Page No. 51.

STATE OF WEST VIRGINIA.

Summary of Claims of West Virginia for Consideration in Settlement of Debt as set up by Hillman Exhibits.

June 20, 1863.

(Corresponds with similar report for Jan. 1, 1861.)

Class A—Exhibit 1	$ 2,459,216 29	
Class B—Exhibit 2	507,744 00	
Class C—Exhibit 3	13,787,316 86	
Class D—Exhibit 4	1,381,793 65	
Class E—Exhibit 5	4,060,487 82	
Class F—Exhibit 6	4,566,015 61	
Class G—Exhibit 7	5,410,429 54	
Class G—Exhibit 8	2,280,000 00	
Class G—Exhibit 9		
23.5% being West Virginia's proportion of	$34,453,003 77	$ 8,096,455 89
West Va. paid in taxes assessed after Jan. 1, 1861		224,799 63
Total Claim		$ 8,321,255 52

*Correction of next following page, which is superseded by this exhibit.

DEFENDANT'S EXHIBIT No. 11—1863.

Page 51.

STATE OF WEST VIRGINIA.

Summary of claims of West Virginia for consideration in settlement of debt as set up by Hillman Exhibits, June 20, 1863.

(Corresponds with similar report for Jan. 1, 1861.)

	Value as Shown By West Virginia.	
Class A—Exhibit 1	$ 2,459,216 29	
Class B—Exhibit 2	507,744 00	
Class C—Exhibit 3-A	13,787,316 86	
Class D—Exhibit 4-B	1,357,480 66	
Class E—Exhibit 5	4,060,487 82	
Class F—Exhibit 6	*4,506,015 61	
Class G—Exhibit 7	5,410,429 54	
Class G—Exhibit 8		
Class G—Exhibit 9		
23.5%—West Virginia's proportion	$31,348,690 78	$ 7,366,942 33
West Virginia paid in taxes assessed after Jan. 1, 1861		224,799 63
Total claim		$7,591,741 96

*Only partial—indeterminate left out.

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 1.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to June 20, 1863.

Name of Stock.		Date Paid.	Amount	Reference.				On Account Of.
O. & A. R. R. Co.	Stock	Sept. 8, 1864	$ 34,912 00	Folio 157	Jou'l D	Int.	Im'pt Fund	4% Div. on $ 872,802 83
Rich. & Dan. R. R. Co.	"	Sept. 9, 1863	71,315 91	" 148	"	"		6% " " 1,186,598 50
" " "	"	Mar. 26, 1864	59,429 92	" 157	"	"		5% " " 1,188,598 50
Rich & Pet. R. R Co.	"	*July 31, 1863	1,278 20	" 148	"	"		6% " " 285,600 00
" " "	"	Nov. 3, 1863	38,560 00	" 157	"	"		10% " " 285,600 00
" " "	"	Jan. 15, 1884	15,424 00	" 157	"	"		4% " " 285,600 00
" " "	"	Sept. 20, 1864	38,560 00	" 157	"	"		10% " " 285,600 00
Va. Cen. R. R. Co.	"	Sept. 19, 1864	60,419 62	" 157	"	"		3% " " 2,013,987 53
" " "	"	Nov. 3, 1863	80,559 50	" 157	"	"		4% " " 2,013,987 53
" " "	"	Sept. 19, 1864	60,419 62	" 157	"	"		3% " " 2,013,987 53
Rh. & York River Co.	"	Aug. 15, 1863	29,459 97	" 148	"	"		8% " " 490,999 53
" " "	"	Jan. 28, 1864	24,549 97	" 157	"	"		5% " " 490,999 53
Va. & Tenn. R. R. Co	"	Mar. 26, 1864	100,000 00	" 157	"	"		6% " " 2,300,000 00 (Part payment)
" " "	"	Apl. 1, 1864	38,000 00	" 157	"	"		6% " " 2,300,000 00 (Balance.)
Nor. & Pet. R. R. Co.	"	**Sept. 7, 1863	150 48	" 149	"	"		3% " " 82,500 00
" " "	"	Mar. 23, 1864	2,475 00	" 158	"	"		3% " " 82,500 00
" " "	"	Feb. 22, 1865	4,950 00	" 166	"	"		6% " " 82,500 00

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 1.—(*Continued*)

Roanoke Nav. Co.			"	Apr.	30, 1868	320 00	Treas.'s Blot.	this date	4/10%	" "	$0,000 00
"	"	"		Mar.	5, 1869	480 00	"	"	6/10%	" "	$0,000 00
"	"	"		Nov	1, 1871	400 00	"	"	1/2 %	" "	$0,000 00
"	"	"		Dec.	13, 1872	400 00	"	"	1/2 %	" "	$0,000 00
"	"	"		Sept	10, 1874	400 00	"	"	1/2 %	" "	$0,000 00
Upper Appomat. Co.			"	Apl.	19, 1867	625 00	"	"	5%	" "	12,500 00
"	"	"	"	Aug.	17, 1867	500 00	"	"	4%	" "	"
"	"	"	"	Nov.	29, 1867	500 00	"	"	4%	" "	"
"	"	"	"	Feb	22, 1868	375 00	"	"	3%	" "	"
"	"	"	"	May	27, 1868	375 00	"	"	3%	" "	"
"	"	"	"	Sept.	1, 1868	312 50	"	"	2½ %	" "	"
"	"	"	"	Nov.	25, 1868	312 50	"	"	2½ %	" "	"
"	"	"	"	Mch.	3, 1869	375 00	"	"	3%	" "	"
"	"	"	"	June	2, 1869	375 00	"	"	3%	" "	"
"	"	"	"	Dec.	3, 1869	375 00	"	"	3%	" "	"
"	"	"	"	Mch.	29, 1870	375 00	"	"	3%	" "	"
"	"	"	"	July	1, 1870	312 50	"	"	2½ %	" "	"
"	"	"	"	May	18, 1871	375 00	"	"	3%	" "	"
"	"	"	"	Aug.	2, 1871	375 00	"	"	3%	" "	"
"	"	"	"	Mch.	7, 1872	375 00	"	"	3%	" "	"
"	"	"	"	Apl.	8, 1872	212 50	"	"	1-1/10%	" "	"

*Total payment $22,136.00—balance already claimed.
**Total payment $2,475.00—balance already claimed

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DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 2.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to June 20, 1863.

Name of Stock.		Date Paid.	Amount.	Reference.	On Account of
Farmers Bank of Va.	Stock	Dec. 19, 1863	$26,415 00	Folio 156 Jour. D Int. Imp. Fund	7½ % Div. on 3522 shares
" " "	"	June 24, 1864	14,088 00	Folio 157 Jour. D Int. Imp. Fund	4 % Div. on 3522 shares
" " "	"	Dec. 20, 1864	28,176 00	Folio 166 Jour. D Int. Imp. Fund	8 % Div. on 3522 shares
" " "	"	‡Dec. 1, 1863	33,942 57	Treasurer's B. this date	7½ % Div. on 5050 shares
" " "	"	*June 1, 1864	20,200 00	" "	4 % Div. on 5050 shares
" " "	"	Dec. 1, 1864	40,400 00	" "	8 % Div. on 5050 shares
" " "	"	*June 1, 1863	7,075 27	" "	7½ % Div. on 1054 shares
" " "	"	June 1, 1864	4,216 00	" "	4 % Div. on 1054 shares
" " "	"	Dec. 1, 1864	8,432 00	" "	8 % Div. on 1054 shares
Bank of Virginia	"	Dec. 29, 1863	44,073 75	Folio 156 Jour. D Int. Imp. Fund	7½ % Div. on 8395 shares
" "	"	June 1, 1864	23,506 00	Folio 157 Jour. D Int. Imp. Fund	4 % Div. on 8395 shares
" "	"	Dec. 1, 1864	47,012 00	Folio 166 Jour. D Int. Imp. Fund	8 % Div. on 8395 shares
" "	"	June 25, 1863	11,375 00	Treasurer's B. this date	5 % Div. on 3250 shares
" "	"	Dec. 29, 1863	17,062 50	" "	7½ % Div. on 3250 shares
" "	"	June 29, 1864	9,100 00	" "	4 % Div. on 3250 shares
" "	"	Dec. 29, 1864	18,200 00	" "	8 % Div. on 3250 shares

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 2. (*Continued*)

" " "	†Dec.	29, 1863	9,966 37			" "	7½ %	Div. on 2121 shares	
" " "	June	29, 1864	5,938 80			" "	4 %	Div. on 2121 shares	
" " "	Dec.	29, 1864	11,877 60			" "	8 %	Div. on 2121 shares	
Bank of the Valley "	Mar.	25, 1864	4,188 00	Folio 157	Jour. D	Int. Imp. Fund	4 %	Div. on 1047 shares	
" " "	Mar.	25, 1864	14,800 00			Treasurer's B. this date	4 %	Div. on 1047 shares	
" " "	Mar.	25, 1864	368 00			" "	4 %	Div. on 1047 shares	
Exchange Bank "	Jan.	13, 1864	2,136 00	Folio 156	Jour. D	Int. Imp. Fund	8 %	Div. on 268 shares	
" " "	Jan.	13, 1865	2,136 00	Folio 166	Jour. D	Int. Imp. Fund	8 %	Div. on 267 shares	
" " "	§Jan.	13, 1864	60,853 86			Treasurer's B. this date	8 %	Div. on 8488 shares	
" " "	July	2, 1864	35,020 00			" "	4½ %	Div. on 8488 shares	
" " "	Jan.	13, 1865	67,904 00			" "	8 %	Div. on 8488 shares	
Grazier's Bank, formerly branch N. W. Bank at Jeffersonville "	July	28, 1863	6,820 00			" "	5 %	Div. on 1346 shares	
" " "	Feb.	1, 1864	6,820 00			" "	5 %	Div. on 1346 shares	
Richmond, Fredericksburg & Potomac R. R. Co. "	Dec.	30, 1863	50,912 00	Folio 157	Jour. D	Int. Imp. Fund	18½ %		$275,200 00
" " "	Nov.	24, 1864	35,776 00	Folio 166	Jour. D	Int. Imp. Fund	13 %		275,200 00
" " "	Feb.	4, 1874	9,632 00			Treasurer B. this date	3½ %		275,200 00
" " "	Feb.	7, 1883	9,356 00			" "	3 %		275,200 00
" " "	Dec.	14, 1882	9,356 00			" "	3 %		275,200 00

‡Total payment $37,875.00. Balance already claimed.
*Total $7,905.00 Balance already claimed.
†Total $11,135.25. Balance already claimed.
§Total $67,904.00. Balance already claimed.

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Sheet 3.

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to June 20, 1863.

Name of Stock.		Date Paid.	Amt.	Reference.			On Account Of.		
Richmond, Fredericksburg & Potomac R. R. Co.	Stock	Jan. 19, 1884	$ 20,407 00	Treasurer's Blotter this date		6½ %	$467,800.00	Stock &	Div. Bonds.
"	"	Jan. 27, 1887	28,068 00	"	"	6%	"	"	"
"	"	July 28, 1887	14,034 00	"	"	3%	"	"	"
"	"	Jan. 19, 1888	16,373 00	"	"	3½ %	"	"	"
"	"	Aug. 3, 1888	16,373 00	"	"	3½ %	"	"	"
"	"	Jan. 28, 1889	16,373 00	"	"	3½ %	"	"	"
"	"	July 18, 1889	16,373 00	"	"	3½ %	"	"	"
"	"	Jan. 17, 1890	14,034 00	"	"	3%	"	"	"
"	"	July 19, 1890	16,373 00	"	"	3½ %	"	"	"
"	"	Jan. 22, 1891	16,373 00	"	"	3½ %	"	"	"
"	"	July 20, 1891	16,373 00	"	"	3½ %	"	"	"
"	"	Jan. 21, 1892	16,373 00	"	"	3½ %	"	"	"
"	"	July 21, 1892	16,373 00	"	"	3½ %	"	"	"
"	"	Jan. 11, 1893	16,373 00	"	"	3½ %	"	"	"
"	"	July 3, 1893	16,373 00	"	"	3½ %	"	"	"
"	"	Jan. 10, 1894	16,373 00	"	"	3½ %	"	"	"
"	"	July 5, 1894	14,034 00	"	"	3%	"	"	"
"	"	Jan. 8, 1895	16,373 00	"	"	3½ %	"	"	"
"	"	July 8, 1895	16,373 00	"	"	3½ %	"	"	"

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 3. (*Continued*)

"	"	Jan.	16, 1896	16,872 00	"	"	3½ %	"	"	"
"	"	July	16, 1896	16,872 00	"	"	3½ %	"	"	"
"	"	Jan.	8, 1897	16,872 00	"	"	3½ %	"	"	"
"	"	July	13, 1897	14,024 00	"	"	3%	"	"	"
"	"	Jan.	10, 1898	16,872 00	"	"	3½ %	"	"	"
"	"	July	6, 1898	16,872 00	"	"	3½ %	"	"	"
"	"	Jan.	9, 1899	16,872 00	"	"	3½ %	"	"	"
"	"	July	3, 1899	16,876 50	"	"	3½ %	467,900.00	Plus Div. Bond.	
"	"	Jan.	2, 1900	18,716 00	"	"	4%	"	"	"
"	"	July	9, 1900	18,716 00	"	"	4%	"	"	"
"	"	Jan.	4, 1901	18,716 00	"	"	4%	"	"	"
"	"	July	5, 1901	18,716 00	"	"	4%	"	"	"
"	"	Jan.	3, 1902	18,716 00	"	"	4%	"	"	"
"	"	July	1, 1902	18,716 00	"	"	4%	"	"	"
"	"	Feb.	4, 1903	18,716 00	"	"	4%	"	"	"
"	"	July	2, 1903	18,716 00	"	"	4%	"	"	"
"	"	Jan.	4, 1904	18,716 00	"	"	4%	"	"	"
"	"	July	1, 1904	18,716 00	"	"	4%	"	"	"
"	"	Jan.	3, 1905	21,055 50	"	"	4½ %	"	"	"
"	"	July	1, 1905	21,055 50	"	"	4½ %	"	"	"
"	"	Jan.	2, 1906	21,055 50	"	"	4½ %	"	"	"
"	"	July	5, 1906	21,055 50	"	"	4½ %	"	"	"
"	"	Jan.	3, 1907	21,055 50	"	"	4½ %	584,800 00		
"	"	July	1, 1907	26,316 00	"	"	4½ %	584,900 00		
"	"	Jan.	3, 1908	26,320 50	"	"	4½ %	"	"	"
	"	July	1, 1908	26,320 50	"					

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 4.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to June 20, 1863.

Name of Stock.	Date Paid.	Amt.	Reference.	On Account Of.
Richmond, Fredericksburg & Potomac R. R. Co.	Stock Jan. 2, 1909	$ 26,320 50	Treasurer's Blotter this date	4½ % $584,000.00 Plus Div. Bond.
"	" July 1, 1909	26,320 50	" "	4½ % " "
"	" Jan. 4, 1910	26,320 50	" "	4½ % " "
"	" July 2, 1910	26,350 50	" "	4½ % " "
"	" Jan. 3, 1911	26,350 50	" "	4½ % " "
"	" July 1, 1911	26,350 50	" "	4½ % " "
"	" Jan. 2, 1912	26,350 50	" "	4½ % " "
"	" July 1, 1912	26,350 50	" "	4½ % " "
"	" Jan. 2, 1913	26,350 50	" "	4½ % " "
"	" July 1, 1913	26,350 50	" "	4½ % " "
"	" Jan. 2, 1914	26,350 50	" "	4½ % " "
		$2,485,116 41		

DEFENDANT'S EXHIBIT No. 12—1863.—4 Sheets.

Sheet 4. (*Continued*)

Bank of Virginia	" June 25, 1863	7,423 50	"	"	Dividend on Stock.
"	" June 25, 1863	29,382 50	"	"	" "
Exchange Bank	" July 10, 1863	1,335 00	"	"	" "
"	" July 10, 1863	42,440 00	"	"	" "
Grand Total Dividends		$2,565,697 41			

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 5.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Loans, etc., held by said State subsequent to June 20, 1863.

Name.				Date Paid.			Amount.	Reference.	On Account Of.	Note.
Orange & Alexandria	R.	R.	Co.	Loan	June	23, 1863	$ 9,284 50	Treasr's Blotter this date	Int. on Loan	
"	"	"		"	Jan.	16, 1864	2,323 56	" " " "	" " "	
"	"	"		"	Sept.	8, 1864	14,000 00	" " " "	" " "	
"	"	"		"	Dec.	31, 1864	7,677 68	" " " "	" " "	
"	"	"		"	Jan.	1, 1865	60 86	Snkg. Fund Rec'd, p. 191	" " "	
"	"	"		"	Aug.	26, 1868	20,000 00	Treasr's. Blotter this date	" " "	
"	"	"		"	Nov.	1, 1868	30,689 45	Jr. "N," B. of P. W., p. 389	" " "	
"	"	"		"	Mch.	28, 1872	43,510 92	" " " "	" " "	
"	"	"		"	Oct.	17, 1872	7,050 11	" " " 407	" " "	
Richmond & Danville	R.	R.	Co.	Loan	Sept.	9, 1863	33,086 70	Treasr's. Blotter this date	" " "	
"	"	"		"	Aug.	29, 1864	32,551 90	" " " "	" " "	
"	"	"		"	Sept.	5, 1868	35,470 56	Stm't. in File Box C. Com.	" " "	
"	"	"		"	Sept.	12, 1868	11,885 40	" " " "	" " "	
"	"	"		"	Sept.	15, 1868	10,000 00	" " " "	" " "	
"	"	"		"	Sept.	24, 1868	11,900 25	" " " "	" " "	
"	"	"		"	Oct.	2, 1868	2,805 00	" " " "	" " "	
"	"	"		"	Oct.	6, 1868	11,774 14	" " " "	" " "	
"	"	"		"	Oct.	6, 1868	1,290 00	" " " "	" " "	
"	"	"		"	Dec.	31, 1868	2,917 68	" " " "	" " "	

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 5. (*Continued*)

"	"	"	"	Sept.	3, 1868	42,000	00	Treasr's. Blotter this date		"	"	"
"	"	"	"	Sept.	15, 1869	21,000	00	"	"	"	"	"
"	"	"	"	Dec.	15, 1869	8,912	07	"	"	"	"	"
"	"	"	"	May	7, 1870							
"	"	"	"	Sept.	10, 1870	31,259	74	"	"	"	"	"
"	"	"	"	June	9, 1871	21,000	00	"	"	"	"	"
"	"	"	"	Feb.	15, 1872							
"	"	"	"	Mch.	15, 1872	40,230	64	"	"	"	"	"
"	"	"	"	Sept.	30, 1874	44,485	00	"	"	"	"	"
"	"	"	"	Oct.	13, 1874	12,915	00	"	"	"	"	"
"	"	"	"	Nov.	27, 1875	6,000	00	"	"	"	"	"
"	"	"	"	Dec.	1, 1875	5,724	00	"	"	"	"	"
"	"	"	"	Oct.	2, 1876	31,130	00	Min.of Snkg. Fd.,	p.	214	"	"
"	"	"	"	June	27, 1877	20,777	88	"	"	218	"	"
"	"	"	"	Jan.	7, 1879	30,462	85	"	"	223	"	"
"	"	"	"	Sept.	30, 1879	62,067	70	"	"	227	"	"
"	"	"	"	Sept.	30, 1879	1	69	"	"	227	"	"
"	"	"	"	Dec.	5, 1879	4,152	63	"	"	228	"	"
"	"	"	"	Dec.	5, 1879						"	"
"	"	"	"	Nov.	26, 1880	22,289	31				"	"
"	"	"	"	Sept.	30, 1881						"	"
"	"	"	"	Nov.	26, 1881	25,718	31	"	"	230	"	"
"	"	"	"	Nov.	23, 1886	18,900	00	"	"	285	"	"
Virginia	Central	R. R.	Div.	Bonds	Nov.	3, 1863	3,519	00	Treasr's. Blotter this date		Int. on	Div. Bonds
"	"	"	"	"	Aug.	25, 1870	23,601	00	Stm't in File Box C. Com.		"	" " "

Bonds deposited B.P. W. 8/25/70 See report 2d Auditor for 1871.

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 6.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Assets held by said State subsequent to June 20, 1863.

Name.	Date Paid.	Amount.	Reference.	On Account of
* Virginia Central R. R. Loan	July 31, 1863	$ 446 67	Jour. D. Int. Imp. Fd. p. 155	Int. on Loan
" " " " "	Jan. 8, 1864	7,350 00	" " " " " " 165	" " "
" " " " "	Sep. 19, 1864	7,350 00	" " " " " " "	" " "
" " " " "	July 30, 1863	7,350 00	Treasr's. Blotter this date	" " "
" " " " "	Sep. 17, 1863	7,350 00	" " " "	" " "
" " " " "	Aug. 25, 1870	48,573 40	" " " "	" " "
Winchest'r & Pot'm'c R. R. An'ty.	Sep. 30, 1873	35,134 79	Jour. D. Int. Imp. Fd. p. 175	Ar. of Annuity *
** Southside R. R. Co. Loan	July 6, 1863	15,624 31	" " " " " " 155	Int. on Loan
" " " " "	Aug. 8, 1863	10,897 66	Treasr's. Blotter this date	" " "
" " " " "	Aug. 17, 1863	31,000 00	" " " "	" " "
" " " " "	Sep. 16, 1863	20,102 34	" " " "	" " "
Norfolk & Petersburg R. R. Loan	Jan. 11, 1864	45,000 00	" " " "	" " "
" " " " "	Oct. 5, 1863	15,000 00	" " " "	" " "
" " " " "	Sep. 28, 1869	9,561 41	" " " "	" " "
*** Washington College Loan	Aug. 26, 1863	3 65	Lit. Fd. Cash Bk. 5, not paged	" " "
" " "	Mch. 24, 1864	60 00	" " " "	" " "
" " "	Sep. 2, 1864	60 00	" " " "	" " "
" " "	Dec. 2, 1871	780 00	" " 1, page 18	" " "
" " "	Aug. 22, 1872	60 00	" " " " 22	" " "
" " "	Aug. 22, 1872	60 00	" " " "	" " "
" " "	Nov. 21, 1873	120 00	" " " " 36	" " "
" " "	July 21, 1874	120 00	" " " " 44	" " "

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 6. (*Continued*)

"	"	"	July	28, 1875	120 00	"	"	"	"	52	"	"	"
"	"	"	July	17, 1876	120 00	"	"	"	"	62	"	"	"
"	"	"	Aug.	23, 1877	120 00	"	"	"	"	70	"	"	"
"	"	"	Aug.	26, 1878	120 00	"	"	"	"	78	"	"	"
"	"	"	July	16, 1879	120 00	"	"	"	"	86	"	"	"
"	"	"	July	6, 1880	60 00	"	"	"	"	96	"	"	"
"	"	"	Sep.	18, 1880	60 00	"	"	"	"	98	"	"	"
"	"	"	July	23, 1881	120 00	"	"	"	"	104	"	"	"
"	"	"	July	20, 1882	120 00	"	"	"	"	114	"	"	"
"	"	"	July	27, 1883	120 00	"	"	"	"	122	"	"	"
"	"	"	July	14, 1884	120 00	"	"	"	"	130	"	"	"
"	"	"	July	14, 1885	120 00	"	"	"	"	140	"	"	"
"	"	"	July	14, 1886	120 00	"	"	"	"	150	"	"	"
"	"	"	July	25, 1887	120 00	"	"	"	"	160	"	"	"
"	"	"	July	19, 1888	120 00	"	"	"	"	170	"	"	"
"	"	"	July	9, 1889	120 00	"	"	"	"	180	"	"	"
"	"	"	July	18, 1890	120 00	"	"	"	"	190	"	"	"
"	"	"	July	11, 1891	120 00	"	"	"	"	198	"	"	"
"	"	"	July	12, 1892	120 00	"	"	"	"	208	"	"	"
"	"	"	Jan.	6 1893	60 00	"	"	"	"	212	"	"	"
"	"	"	Oct.	7, 1893	60 00	"	"	"	"	218	"	"	"
"	"	"	Jan.	13, 1894	60 00	"	"	"	"	220	"	"	"
"	"	"	July	5, 1894	60 00	"	"	"	"	224	"	"	"

*Total payment, $7,350.00. Balance already claimed.

** Total, $28,000.00. Balance already claimed.

*** Total, $60.00. Balance already claimed.

*Bonds deposited with B. P. W. See report Second Auditor for 1871.

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 7.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Assets held by said State subsequent to June 20, 1863.

	Date Paid.	Amount.	Reference.	On Account of
Washington College Loan	July 2, 1895	$ 120 00	Lit. Fd. Cash Book No. 1 Page 234	Interest on Loan
" " "	Jan. 9, 1896	60 00	" " " " " " " 238	" " "
* Richmond Academy Bonds	Aug. 26, 1863	74	" " " " " 5 Not Paged	Int. on Bonds
" " "	Mch. 24, 1864	12 00	" " " " " " " "	" " "
" " "	Sep. 2, 1864	12 00	" " " " " " " "	" " "
" " "	Jan. 31, 1872	180 00	" " " " " " " 18	" " "
" " "	July 23, 1872	12 00	" " " " " " " 24	" " "
" " "	July 21, 1873	12 00	" " " " " " " 34	" " "
" " "	July 21, 1873	12 00	" " " " " " " 34	" " "
" " "	July 21, 1874	24 00	" " " " " " " 44	" " "
" " "	July 19, 1875	24 00	" " " " " " " 52	" " "
" " "	July 17, 1876	24 00	" " " " " " " 62	" " "
" " "	July 2, 1877	24 00	" " " " " " " 70	" " "
" " "	July 3, 1878	24 00	" " " " " " " 78	" " "
" " "	July 10, 1879	24 00	" " " " " " " 86	" " "
" " "	July 23, 1880	24 00	" " " " " " " 96	" " "
" " "	July 21, 1881	24 00	" " " " " " " 104	" " "
" " "	July 20, 1882	24 00	" " " " " " " 114	" " "
" " "	July 27, 1883	24 00	" " " " " " " 122	" " "

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 7. (*Continued*)

"	"	"	Dec. 17, 1884	24 00	"	"	"	"	"	"	134	"	"
"	"	"	July 17, 1885	24 00	"	"	"	"	"	"	140	"	"
"	"	"	Mch. 8, 1886	12 00	"	"	"	"	"	"	146	"	"
"	"	"	July 28, 1886	12 00	"	"	"	"	"	"	150	"	"
"	"	"	Nov. 22, 1887	24 00	"	"	"	"	"	"	164	"	"
"	"	"	July 24, 1886	24 00	"	"	"	"	"	"	170	"	"
"	"	"	July 8, 1889	24 00	"	"	"	"	"	"	178	"	"
"	"	"	July 18, 1890	24 00	"	"	"	"	"	"	190	"	"
"	"	"	July 20, 1891	24 00	"	"	"	"	"	"	198	"	"
"	"	"	July 8, 1892	24 00	"	"	"	"	"	"	206	"	"
"	"	"	Oct. 7, 1893	12 00	"	"	"	"	"	"	218	"	"
"	"	"	Feb. 5, 1896	48 00	"	"	"	"	"	"	240	"	"
** Rich., Fred. & Pot'm'c, Div. Bonds			June 30, 1863	234 87	Board of Public Works Cash Book							"	"
"	"	"	Jan. 3, 1873	2,696 96	Sinking Fund Cash Book							"	"
"	"	"	Jan. 2, 1873	1,051 82	"	"	"	"				"	"
U. S. Government Claim, Exhibit 3				552,952 72									
Interest Grand Total				$2,342,178 30									

* Total, $12.00. Balance already claimed.

** Total, $3,866.56. Balance already claimed.

Dividend Grand Total	$2,565,697 41
Aggregate	$4,907,875 71

DEFENDANT'S EXHIBIT No. 10—Sub-Sheet.

Amounts of Taxes Assessed by the State of Virginia and Paid by West Virginia Counties to the State of Virginia from June 20, 1863, to April, 1865.

Law Processes.

1863 and Subsequent.

Counties.	Amounts.	
Pendleton	$ 34 20	
Greenbrier	350 15	
McDowell	13 34	
Mercer	38 83	
Jefferson	46 71	
Monroe	114 00	
Pocahontas	57 00	
	$654 23	

Redemption of Lands.

1863 and Subsequent.

Monroe	73 26	
Greenbrier	42 53	
McDowell	7 79	
	123 58	

GENERAL TAXES, 1863, AND SUBSEQUENT.

Mercer	31,206 46	
Monroe	45,488 57	
Greenbrier	74,664 07	
McDowell	1,200 00	
Pendleton	15,400 00	
Gilmer	3,317 24	
	171,276 34	$172,054 15

Del'nquent Taxes and Forfeited Lands.
NO DATES. Being judgments on bond of Commissioner's of delinqeut and forfeited lands.

Gilmer county	3,936 13	
Kanawha county	699 17	
Lewis county	3,575 00	
	8,210 30	8,210 30
Total		$ 180,264 45

DEFENDANT'S EXHIBIT No. 13.

FARMERS BANK OF VIRGINIA.

January 1, 1859. Page 24, Document 14.

Had surplus and contingent fund of	$	343,477 53
And profits of the institution		166,695 72
Total available for dividends		510,173 25
In 1859 dividends were declared for		236,317 50
being 7½ per cent. on $3,150,900.00 Capital, which, if taken out of the above would leave a balance of	$	273,855 75
Instead of this the bank showed on January 1, 1860, page 24, Document 14		
Surplus and Contingent	$	331,040 09
Profits of the Institution		145,813 47
	$	476,853 56

Which proves conclusively that the amount of $166,695.72 WAS NOT the entire earnings.

Advance now to the next year, January 1, 1860, page 24, Document 14.

Surplus and Contingent Fund was	$	331,040 09
Profits of the Institution		145,813 47
	$	476,853 56
Dividends for 1860, 7¼ per cent. on $3,150,900.00	$	228,440 25
Which would leave a balance of		248,413 31
Instead of this the bank showed January 1, 1861, pages 14 and 15, Document 14		
Surplus and Contingent	$	337,067 05
Profits of the Institution		138,101 18
Or	$	475,168 23

Which proves conclusively that $145,813.47 WAS NOT the entire earnings. Therefore, we can confidently state that $138,101.18 was not the total earnings for year ending January 1, 1861.

EXCHANGE BANK OF VIRGINIA.

December 31, 1858, page 46, Document 14, shows in this bank..		
"Excess of Surplus and Assets" Dec. 31, 1858	$	391,955 50
"Excess of Surplus and Assets" Dec. 31, 1859	$	359,632 71
This latter item is on page 28, 1861, statement, divided as follows:		
Contingent Fund	$	205,047 67
Profits of the Institution		154,585 04
	$	359,632 71

Thus surely indicating the "identity" of Contingent Funds with surplus and profits as contended for by Mr. Hillman. It also indicated the correctness of the following:

Exchange Bank of Virginia and Branches, December 31, 1859, pages 46 and 47, Document 14.

EXCESS OF ASSETS, OR SURPLUS—		
Contingent Fund	$	205,047 67
Profits of the Institution	$	154,585 04
Total	$	359,532 71
Then was declared a dividend in 1859 of 9 per cent. on $3,048,600.00 Capital Stock or	$	274,374 00
Leaving a balance of	$	285,158 71
Instead of this, the bank showed on December 31, 1860—		
Contingent Fund	$	191,584 24
Profits of the Institution	$	150,586 05
Total	$	342,170 29

Proving conclusively that $154,585.04 was NOT the entire earnings.

DEFENDANT'S EXHIBIT No. 15.

In matter of the Potomac Steamboat Company stock, included in the assets of the Richmond, Fredericksburg and Potomac Railroad, March 31, 1861, $38,900.00.

Page 350, R., F. & P. Report of 1853, referring to the Washington and Fredericksburg Steamship Company (the original company of the Potomac Company, says: "In consequence of the low price paid for the steamboat company stock, the railroad company have since received 12 to 14 per cent. annual dividends," but states that this year (1853) the steamboat company lost money because they had to make connection with two trains per day. This loss was made the basis of a more liberal allowance by the R., F. & P. to the steamboat company in the division of rates, and then the steamboat company seems to have just paid its expenses.

Page 502, March 31, 1861, Report shows that the four boats of this company were seized by the United States Government for transports and war vessels. On the same report a dividend is shown on this stock and carried in surplus, of $32,360.00.

In April, 1862, page 507, they had credited this account $83,385.00, which increase of $50,025.00 was explained in the report of November, 1861 (written and not paged), when it was stated that Captain J. M. Robinson had turned over to the State the $50,025.00, their share of the amount paid by the United States Government for the four boats. This establishes that January 1, 1861, this asset was at least worth par.

In the matter of bills receivable:

This account varies from year to year, sometimes greater and sometimes less than the amount March 31, 1861. There is also shown in the disbursements from year to year purchases of bills receivable, hence it is inferrable that the account was good and collectible.

In the matter of value of cost of road and equipment:

The cost is carried forward carefully year to year, generally under classified headings, such as "Engineering," "Grading," "Bridges," etc., and contains no items that are not legitimate.

They had a yearly report by directors as to general conditions of road, and in almost every instance they report on roadway and rolling stock, and the report is always in excellent condition, showing that the repairs and renewals had taken care to keep the road in good condition.

In addition to this, we have the following items of "extraordinary" expenses charged to operating expenses, which extra expenses were additional items of cost of road and equipment.

Page 295, R., F. & P. Report, September 30, 1848, shows expenditures from earnings in capital accounts not charged to cost of road and equipment	$ 11,266 46
Page 10, R., F. & P. Report, 1849, shows extraordinary expenses	27,875 92

Page 263, 1852 report, says that the revenue has been sufficient not only to pay current expenses and the usual dividend, but to lay down heavier rail and carry 9 to 10,000 to surplus, no specific amount mentioned, but not charged to cost of road and equipment.

DEFENDANT'S EXHIBIT No. 15—*Continued.*

Page 346, 1853 report, says that the "expenses included cost of two locomotives, two additional coaches and new depot and passenger office at Fredericksburg," not charged to cost of road.		
Page 379, May, 1854, shows paid out of earnings for one new engine, four coaches and improvements to road and structures (in detail on report)..... No charge to cost of road for these.		20,986 55
Page 420, September 30, 1855, shows extraordinary expenses of		17,470 09
Consisting of rolling stock.....	$13,970 00	
Improvements to way and structure...	3,500 00	
Page 452, same book of reports, shows extraordinary expenses		20,700 00
Being rolling stock.....	$16,200 00	
Improvements	4,500 00	
Not charged to cost of road.....		98,298 83
Page 468, March 31, 1858, shows $17,810.00 extraordinary expenses, of which rolling stock is $7,810.00 and $6,000 may be classed as renewals and balance seems doubtful, we take.....		7,810 00
Page 483, March, 1859, shows extraordinary expenses, all rolling stock, not added to cost of road and equipment		11,085 00
Page 496, March, 1860, shows extraordinary expenses	$17,096 58	
of which	7,846 58	
may be considered renewals.....	$ 9,250 00	
(viz: taking care of repreciation) and balance is new rolling stock not charged to cost of road.....		9,250 00
Page 508, of report of March 31, 1861, shows $24,549.45 extraordinary expenses, of which only $6,400.00 is entitled to consideration as a capital expenditure.....		6,400 00
Total improvements determinable.....		$182,843 93

DEFENDANT'S EXHIBIT "Y."

True copies
J. L. BAITY,
Auditor.

WS-310

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT.

August 13, 1914.

PURSUANT to Section 882 of the Revised Statutes I hereby certify that the annexed pages numbered 1 to 5, both are copies of papers on file in the claim of the State of Virginia against the United States, No. 215,264, in the office of the Auditor for the War Department, in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed on the day and year first above written.

(Seal)

WILLIAM P. MALBURN.
Assistant Secretary of the Treasury.

J.

(COPY)

TREASURY DEPARTMENT
WASHINGTON
June 1, 1908.

Office of
AUDITOR FOR WAR DEPARTMENT
In replying quote initials

Hon. John Lamb,
House of Representatives,
Washington, D. C.

My Dear Mr. Lamb:

In reply to letter of John B. Lightfoot, Jr., Atty., Richmond, Va., referred by you to the Comptroller of the Treasury, May 22, 1908, and by him forwarded to this office, May 23, 1908, in reference to charge of $16,933.70 made against the State of Virginia, in settlement No. 7554 of the year of 1889, I have the honor to inform you that the amount charged against the State was deposited to the credit of Francis H. Pierpont as Governor of Virginia for the use of said State, in supplying arms and munitions of war to loyal citizens in revolted States, under Act of Congress of July 31, 1861 (12 Stat. 283) by Daniel Lamb, Disbursing Agent of the United States as follows:

In Merchants and Mechanics Bank of Wheeling,

Nov. 18, 1861	$7,500 00
In Northwest Bank of Virginia,	
Wheeling, Nov. 18, 1861	7,500 00
In Northwest Bank of Virginia,	
Wheeling, May 1, 1863	1,923 70
Total	$16,923 70

The money thus deposited was all applied in payment of Governor Pierpont's checks.

When the State of Virginia presented her claim for reimbursement of expenses incurred in aiding the United States in suppressing the rebellion, the accounting officers of the Treasury allowed amounts as follows:

July 4, 1862	$14,319 24
Feb 11, 1868	6,128 62
Dec. 5, 1868	8,779 32
Dec. 18, 1868	16,022 11
Total	$45,249 29

From the amount thus allowed the amount of $16,923.70 deposited to the credit of the Governor should have been deducted as an advance payment on such account, and it appears that one advance of $12,000.00 made directly from the United States Treasury was deducted, but the advance made through Mr. Lamb was not known to the accounting officers of the Treasury at the time of the settlement of Virginia's claim, Mr. Lamb's account not having been settled until a later date.

The net allowance to the State on said claim appears therefore to have been greater by $16,923.70 than was the amount really due.

In a subsequent claim of the State of Virginia under the provisions of the Act of May 27, 1902, however, there was found due the State the sum of $16,929.50, from which was deducted $16,923.70, the amount not heretofore deducted, leaving a balance of $5.50, which was paid the State in settlement No. 20,159, dated September 22, 1902.

Respectfully,

Auditor.

(COPY)

E. G. November 13, 1913.

The Honorable,

The Secretary of the Treasury:

Sir:

Referring to your indorsement of the 10th instant on the letter of the Hon. W. E. Chilton, U. S. Senate, requesting a copy of the settlement

made with the State of Virginia, concerning certain bonds of the State of Virginia which were held by the United States in trust for certain Indian tribes. I have the honor to inform you that, under the provisions of the Omnibus Claims Act of May 27, 1902 (32 Stat., 235), a settlement was made by this office under date of September 22, 1902, in which the mutual accounts between the State of Virginia and the United States were brought down to the period where they most nearly balanced, as provided in said act.

The statement of the account was as follows:

Principal due the State		$ 298,369 74
6% interest from July 1, 1814, to Feb. 11, 1894		1,425,212 79
		$1,723,582 53
From which deduct as follows:		
Principal of bonds held by United States	$ 594,800 00	
Interest from Jan. 1, 1861, to Feb. 11, 1894	1,181,669 33	
	$1,776,469 33	
Less interest at 4% for 3 years on $531,800.00	69,816 00	
	$1,706,653 33	
Add as offset amount charged the State on Treasury Settlement No. 7554, of 1889	16,923 70	
		$1,723,577 03
		$5.50

In explanation of this statement it is proper to add that the principal given above was the amount due July 14, 1829, after crediting all payments by the United States on the basis of partial payments and the interest includes $61,949.87 due at that date. The balance of the interest is that computed on the given principal from July 14, 1829.

The bonds on which interest was charged the State of Virginia in the above settlement consists of Virginia State stock, which had been purchased by the United States, as Trustee for certain Indian tribes, amounting to $531,800.00, and the balance of $13,000.00 was bonds of the Chesapeake and Ohio Canal Company, which were guaranteed by the State of Virginia, likewise acquired by the United States, as Trustee for certain Indian tribes.

Respectfully,

J. L. BAITY, Auditor.

M310

VIRGINIA STATE STOCK BELONGING TO

Number.	Date of issue.	Date of Maturity.	Amount.	Registered or Coupon.	Rate of Interest
17	Mar. 1, 1853	Nov. 27, 1853	$ 2,000	Registered	6%
117	July 9, 1860	Jan. 1, 1894	28,200	Registered	6%
860	Feb. 14, 1852	May 29, 1859	1,300	Registered	6%
861	Mar. 1, 1852	May 29, 1859	200	Registered	6%
1115	Feb. 14, 1852	Apr. 10, 1875	10,000	Registered	6%
1141	Mar. 1, 1852	Jan. 1, 1877	100	Registered	6%
115	July 9, 1860	Jan. 1, 1894	90,000	Registered	6%
116	July 9, 1860	Jan. 1, 1894	450,000	Registered	6%
			$581,800		

Date of default in interest on above registered bonds unknown in this

THE UNITED STATES.

Amount of interest.	Purpose for which used.
See note below.	Subscription to stock Roanoke Navigation Co.
	James River and Kanawha Co.
	Exchange and Northwestern Bank of Virginia.
	Exchange and Northwestern Bank of Virginia.
	Loans for internal improvement.
	Loans for internal improvement.
	James River and Kanawha Co.
	James River and Kanawha Co.

office. For information on this point consult Department of Interior.

CHEASAPEAKE AND OHIO CANAL COMPANY BONDS.

Number.	Date of Issue.	Date of Maturity.	Amount.	Rate of Interest.	Coupon Number.
10	Nov. 13, 1847	Nov. 13, 1882	$ 1,000	6%	42
872	May 1, 1849	May 1, 1884	500	6%	46
873	May 1, 1849	May 1, 1884	500	6%	46
488	Nov. 1, 1848	Nov. 1, 1883	1,000	6%	50
1492	Nov. 1, 1849	Nov. 1, 1884	1,000	6%	46
1490	Nov. 1, 1849	Nov. 1, 1884	1,000	6%	46
1419	Oct. 1, 1849	Oct. 1, 1884	1,000	6%	46
1420	Oct. 1, 1849	Oct. 1, 1884	1,000	6%	46
1140	Aug. 1, 1849	Aug. 1, 1884	1,000	6%	46
1048	Feb. 2, 1849	Feb. 2, 1884	1,000	6%	46
487	Nov. 1, 1848	Nov. 1, 1883	1,000	6%	46
482	Nov. 1, 1848	Nov. 1, 1883	1,000	6%	46
857	May 1, 1849	May 1, 1884	1,000	6%	46
1493	Nov. 1, 1849	Nov. 1, 1884	1,000	6%	46
			$13,000		

Office of Treasurer U. S.,
February 9, 1900.

GUARANTEED BY STATE OF VIRGINIA

Amount.	Purpose for Which Issued.
$ 1,260	Chesapeake and Ohio Canal Construction.
690	Chesapeake and Ohio Canal Construction.
690	Chesapeake and Ohio Canal Construction.
1,500	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
$17,940	

DEFENDANT'S EXHIBIT "Z."

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT,

August 14, 1914.

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed copy of letter, dated April 4, 1903, of Acting Secretary of the Treasury M. E. Ailes, to the Treasurer, U. S., is a true copy of the original on file in this department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

B. R. NEWTON.
Assistant Secretary of the Treasury.

(Seal.)

Office of
The Secretary.

TREASURY DEPARTMENT
WASHINGTON
April 4, 1903.

(COPY)

The Treasurer U. S.

Sir:

Provision having been made by Congress in the act of May 27, 1902 (32 Stat., p. 235), for adjustment of the claims of the State of Virginia for and on account of advances and expenditures made in the War of 1812-1815 with Great Britain, and settlement having been made with the State under the act referred to by the payment of the sum of $5.50 (see War Warrant No. 7002 of April 4, 1903), you are hereby authorized to cancel the bonds of the State of Virginia amounting to $594,800 and coupons attached now held as a debt of the State to the United States, and forward the same by registered mail to the Governor of Virginia, at Richmond, Virginia.

Respectfully,

(Signed) M. E. AILES,
Acting Secretary.

DEFENDANT'S EXHIBIT AA—Sheet 1.

16 TREASURY DEPARTMENT.

TABLE No. 2.

Treasury Department,

Report of Treasurer for the Norfolk & Petersburg Division, from

LIABILITIES.			
For Capital Stock.			
Amount authorized by Charter	1,800,000 00		
Less Amount cancelled	1,200 00	1,798,800 00	
I. ORDINARY.			
1. By A., M. & O. R. R. Co. purchased of State of Va..	817,500 00		
2. By City of Norfolk..	500,000 00		
3. By Individuals	43,800 00		
	1,361,300 00		
II. PREFERRED.			
1. By A., M. & O. R. R. Co., purchased of State of Virginia.....	300,000 00		
III. GUARANTEED.			
1. By A., M. & O. R. R. Co., purchased of State of Va.	82,500 00		
2. By City of Norfolk..	55,000 00	137,500 00	1,798,800 00
For Funded Debt.			
I. FIRST MORTGAGE BONDS.			
1. Eight per cents, maturing Jan. 1, 1887	306,000 00		
2. Seven per cents, maturing Jan. 1, 1877	157,000 00	463,000 00	
II. SECOND MORTGAGE BONDS.			
1. Eight per cents, maturing July 1, 1893	.....	458,000 00	921,000 00
For Special Debt.			
A., M. & O. R. R. CO.			
1. By loan formerly due State of Virginia, payable annually by Redemption Fund, purchased under the Act of General Assembly forming the A., M. & O. R. R. Co., approved June 17, 1870	136,591 64		
2. By open account (balance of interest due State), acquired under same Act of Assembly as above	40,496 41	177,088 05	

DEFENDANT'S EXHIBIT AA—Sheet 1.

TREASURY DEPARTMENT. 17

TABLE No. 2.

A., M. & O. R. R. Company.

Organization to termination of Fiscal Year, ending Sept. 30, 1873

RESOURCES.

By Property Account.

COST OF PROPERTY. Road and Equipment, absorbing all accounts relating to construction, rolling stock, etc., to September 30, 1872		2,777,888 52	
ENHANCED VALUE OF PROPERTY, to be absorbed eventually by Property Account— Outlay from October 1, 1872, to September 30, 1873			
1. Right of Way	3,600 00		
2. Graduation	13,066 13		
3. Masonry and Trestle Work	15,022 46		
4. Bridge Superstructure	6,690 95		
5. Railway Track	32,034 33		
6. Depot Grounds	5,412 29		
7. Station Buildings and Machine Shops	17,268 17		
8. Rolling Stock	9,415 67		
9. Machinery, Tools and Fixtures.	722 59		
10. Ballasting	15,126 28	118,358 87	2,896,247 39

By Current Expenses.

EXPENDITURES FOR FISCAL YEAR 1872-73, audited in conformity with the system adopted distributing accounts in Co-ordinate Departments:			
I. Road	30,663 56		
II. Machinery	37,212 96		
III. Transportation	112,487 48		
IV. Treasury	35,023 38		215,387 38

By Assets.

I. BILLS RECEIVABLE.			
1. Notes and Acceptances	1,916 67		
2. Open Accounts (A., M. & O. R. R. Co.)	141,033 88	142,950 55	

DEFENDANT'S EXHIBIT AA—Sheet 1.

Continued.

INTEREST FUNDED DEBT.		
By balance to the credit of this account	1,221 75	178,309 80
For Income.		
REVENUE.		
For fiscal year 1872-73		433,119 33
For Auxiliary Acct.		
PROFIT AND LOSS.		
Balance to the credit of account		84,493 48
Total ..... Dollars....		3,415,722 61

DEFENDANT'S EXHIBIT AA—Sheet 1.

Continued.

II. Va. State Bonds, Registered and Consols		51,095 59	
III. Southside First Preferred Bonds		15,858 24	
IV. City of Norfolk Scrip		7,130 00	
V. Real Estate at Ivor		12,807 95	229,842 33
By Auxiliary Account.			
I. INTEREST. Coupon, and Guaranteed, absorbed by Interest on Funded Debt in this fiscal year	72,607 41		
II. EXECUTIVE EXPENSES. Balance to debit of this Account	1,638 10		74,245 51
Total		Dollars	3,415,722 61

DEFENDANT'S EXHIBIT AA—Sheet 2.

18 TREASURY DEPARTMENT.

TABLE No. 3.

Treasury Department,

Report of Treasurer for the South Side Division, from its

LIABILITIES.

For Capital Stock.

Amount authorized by Charter		1,400,000 00	
1. Less amount not taken	28,200 00		
2. Less amount purchased by Company to make witnesses in suits vs. the same	6,200 00	34,400 00	
		1,365,600 00	
ORDINARY.			
By A. M. & O. R. R. Co., purchased of State of Virginia	803,500 00		
2. By the City of Petersburg	300,000 00		
3. By the Town of Farmville	20,200 00		
4. By Individuals	241,900 00	.....	1,365,600 00

For Funded Debt.

1. CONSOLIDATED MORTGAGE BONDS			
1. First Preferred, 8 per cent. maturing January 1, 1884 to 1890..	675,000 00		
2. Second Preferred, 6 per cent. maturing January 1, 1884 to 1890..	621,000 00		
3. Third Preferred, 6 per cent. maturing January 1, 1886 to 1900..	452,000 00	1,748,800 00	
II. OLD THIRD MORTGAGE 6 per cent. Bonds, unexchanged		3,400 00	1,752,200 00

For Special Debt.

I. ATLANTIC, MISSISSIPPI & OHIO CO.			
By Loan formerly due State of Virginia, payable annually by Redemption Fund purchased under the Act of the General Assembly forming the A., M. & O. R. R. Co., approved June 17th, 1870.....		708,102 34	
II. INTEREST ON FUNDED DEBT.			
Balance to the credit of this Account.....		21,777 25	729,879 59

DEFENDANT'S EXHIBIT AA—Sheet 2.

TREASURY DEPARTMENT. 19

TABLE No. 3.

A., M. & O. R. R. Company.

Organization to termination of Fiscal Year ending Sept. 30, 1873.

RESOURCES.			
By Property Account.			
COST OF PROPERTY.			
Road and Equipment, absorbing all accounts relating to construction, purchase of Rolling Stock, etc., to September 30th, 1872	.....	5,309,048 86	
1. Engineering	105 12		
2. Right of Way	170 75		
3. Graduation	29,037 46		
4. Masonry and Trestle Work ...	8,116 94		
5. Bridge Superstructure	18,893 89		
6. Railway Track	232,362 30		
7. Depot Grounds	5,001 85		
8. Station Buildings and Machine Shops	20,450 93		
9. Rolling Stock	59,040 57		
10. Machinery, Tools and Fixtures	16,609 06		
11. Ballasting	46,760 58	431,549 45	5,740,598 31
By Auxiliary Accounts.			
INTEREST.			
Coupon last semi-annual, etc, absorbed by interest on Funded Debt account, etc., in this fiscal year	.....	119,415 16	
EXECUTIVE EXPENSES.			
Balance to debit of this account.	.....	2,457 15	121,872 31
By Current Expenses.			
EXPENDITURES FOR FISCAL YEAR 1872-73.			
Audited in conformity with the system adopted, distributing account in Co-ordinate Departments.			
I. Road	64,672 89		
II. Machinery	60,864 66		
III. Transportation	152,204 48		
IV. Treasury	46,950 78	.....	324,692 81

DEFENDANT'S EXHIBIT AA—Sheet 2.

Continued.

For Auxiliary Acct.	
PROFIT AND LOSS.	
Balance to the credit of this Account.....	525,791 86
For Income.	
REVENUE.	
For Fiscal Year 1872-73.....	611,065 09
For Floating Debt.	
BILLS PAYABLE.	
Open Accounts (A., M. & O.).....	1,207,129 89
Total.....Dollars....	6,191,663 43

DEFENDANT'S EXHIBIT AA—Sheet 2.

Continued.

By Assets.

BILLS RECEIVABLE.	
Notes and Acceptances	4,500 00
Total.....Dollars.....	6,191,663 43

DEFENDANT'S EXHIBIT AA—Sheet 3

20 TREASURY DEPARTMENT.

TABLE No. 4.

Treasury Department,

Report of Treasurer for the Virginia &Tennessee Division, from its

LIABILITIES.

For Capital Stock.

Amount authorized by Charter.....			3,500,000 00	
I. ORDINARY.				
1. By A., M. & O. R. R. Co., purchased of the State of Virginia.....	1,716,800			
2. By individuals (of which there remains unpaid $9,009 30)	1,150,800	2,897,600 00		
II. PREFERRED.				
1. By A., M. & O. R. R. Co., purchased of the State of Virginia..		500,000 00		
III. GUARANTEED.				
1. By A., M. & O. R. R. Co., purchased of the State of Virginia.....	83,200			
2. By Individuals	55,000	138,700 00	.....	3,506,300 00

For Funded Debt.

I. FIRST MORTGAGE 6 per cent. Bonds due Jan. 1, 1873		42,000 00	
II. THIRD MORTGAGE 6 per cent. Bonds, due July 1, 1884		990,000 00	
III. INCOME MORTGAGE 6 per cent. Bonds, due January 1, 1866....		*93,500 00	
IV. FOURTH MORTGAGE 8 per cent. Bonds, due March 1, 1890		870,000 00	
V. REGISTERED CERTIFICATES, 8 per cent. due January 1, 1871 and 1880		118,295 04	
VI. INTEREST FUNDING 8 per cent. Bonds due January 1, 1880		226,300 00	2,340,095 04

For Special Debt.

I. A., M. & O. R. R. Co.	
1. Loan formerly due State of Va., purchased by the A., M. & O. R. R. Co., under the Act of General Assembly, forming said Company, approved June 17, 1870..	1,000,000 00

DEFENDANT'S EXHIBIT AA—Sheet 3.

TREASURY DEPARTMENT. 21

TABLE No. 4.

A., M. & O. R. R. Company.

Organization to termination of Fiscal Year ending Sept. 30, 1873.

RESOURCES.

By Property Account.

COST OF PROPERTY.			
Road and Equipment, absorbing all accounts relating to construction, rolling stock, etc., to September 30, 1873		9,527,999 68	
ENHANCED VALUE OF PROPERTY—			
To be absorbed eventually by Property Account—Outlay from October 1, 1872, to Sept. 30, 1873:			
1. Engineering	376 69		
2. Graduation	33,833 64		
3. Masonry and Trestle Work	23,037 89		
4. Bridge and Superstructure	4,800 11		
5. Railway Track	399,360 32		
6. Depot Grounds	4,000 00		
7. Station buildings and Machine Shops	51,361 75		
8. Rolling Stock	100,221 27		
9. Machinery, Tools and Fixtures	13,338 14		
10. Ballasting	76,388 11	706,717 92	10,234,717 60

By Auxiliary Account.

I. INTEREST.			
Coupon, Registered Certificates, etc., paid and funded in fiscal year, absorbed by Interest on Funded Debt Account	177,931 16		
II. EXECUTIVE EXPENSES.			
Balance to debit of this Account	4,095 25		182,026 41

By Current Expenses.

EXPENDITURES FOR FISCAL YEAR 1872-'73, audited in conformity with the system adopted, distributing accounts in Co-ordinate Departments:			
I. Road	147,783 97		

DEFENDANT'S EXHIBIT AA—Sheet 3.

(*Continued*)

II. REGISTERED CERTIFICATE No. 200, formerly due the State of Virginia, purchased by the A., M. & O. R. R. Co., under same Act of General Assembly of Va., approved June 17, 1870	79,040 00	1,079,040 00	
III. INTEREST ON FUNDED DEBT Balance to the credit of this Account		827 02	1,079,867 02
For Auxiliary Account.			
PROFIT AND LOSS. Balance to the credit of this Account.			797,644 78
For Income.			
REVENUE. For Fiscal Year 1872-'73			1,118,671 79
For Floating Debt.			
BILLS PAYABLE. Open Accounts—(A., M. & O. Co.)			2,313,804 41
Total.....Dollars. ...			11,156,383 04

*93,000 of this issue has been exchanged for the Bonds of the Atlantic, Mississippi & Ohio 1st Mortgage Gold Seven per cent. issue.

DEFENDANT'S EXHIBIT AA—Sheet 3.

Continued.

II. Machinery	151,810 69		
III. Transportation	321,441 06		
IV. Treasury	112,603 31	.....	739,639 03

Total.....Dollars.... 11,156,383 04

DEFENDANT'S EXHIBIT AA—Sheet 4.

22 TREASURY DEPARTMENT.

TABLE No. 5.

Treasury Department,

Report of Treasurer, for the Virginia & Kentucky Division, from its

LIABILITIES.

For Capital Stock.

Amount subscribed under the Charter		251,200 00	
ORDINARY.			
1. By A., M. & O. R. R. Co., purchased of State of Va.	103,400 00		
3. By County of Scott, County of Lee and Individuals	147,800 00		251,200 00
Total.....Dollars....			251,200 00

DEFENDANT'S EXHIBIT AA—Sheet 4.

TREASURY DEPARTMENT. 23

TABLE No. 5.

A., M. & O. R. R. Company.

Organization to termination of Fiscal Year, ending Sept. 30, 1873.

RESOURCES.

By Property Account.

COST OF PROPERTY.			
Road expenses, absorbing all accounts relating to Graduation etc., to September 30th, 1871		150,976 82	
ENHANCED VALUE OF PROPERTY—			
To be absorbed eventually by property account, Outlay from October 1st, 1872, to September 30th, 1873.			
1. Engineering	15,885 93		
2. Right of Way	479 35	16,365 28	167,342 10
For Auxiliary Account.			
PROFIT AND LOSS.			
Balance to the debit of this account	24,333 96		
2. EXECUTIVE EXPENSES.			
Balance to the debit of this account	1,205 72		25,539 68
By Assets.			
BILLS RECEIVABLE.			
1. Notes and Acceptances.	5,950 00		
2. Open Accounts, A., M. & O. R. R. Co.,	52,368 22		58,318 22
Total.....Dollars....			251,200 00

DEFENDANT'S EXHIBIT BB—Sheet 1.

22

B

Auditor's Annual Statement of Receipts, Disbursements and Liabilities of the 1847, to Sept. 30 1865.

RECEIPTS.

To capital stock			2,000,000 00
To loan from State of Virginia, redeemable in about 34 years, from April 8, 1853, to September 17, 1854			600,000 00
To bonds guaranteed by the State of Virginia, redeemable in 1875			200,000 00
To 4th mortgage registered bonds, redeemable in 1873	504,000 00		
To premium on above	438,395 66		
		942,395 66	
To 4th mortgage coupon bonds, redeemable in 1875	322,000 00		
To premium on above	435,651 85		
		757,651 85	
			1,700,047 51
To transportation to September 30, 1864		8,138,306 77	
To transportation October 1, 1864, to March 31, 1865, in Confederate currency	4,516,732 19		
To transportation June 17, 1865, to September 30, 1865, in National currency	183,136 31		
		4,699,868 50	
			12,838,175 27
To extended bonds due in 1863			30,500 00

DEFENDANT'S EXHIBIT BB—Sheet 1.

23

Richmond and Danville Railroad Company, from organization, November 20,

DISBURSEMENTS.

	Confed. Currency	Nat. Currency	
By cost of road and property to September 30, 1864			5,906,566 93
By cost of transportation to September 30, 1864			3,281,644 45
By cost of Road and Property this year, viz:			
New buildings	15,105 03	1,873 09	
New wells and water stations	1,884 93		
New bridges and culverts	4,672 50		
New passenger, mail and baggage-cars	12,508 75		
New freight cars	8,627 50		
New engines	401,245 30		
New machinery for shops	27,185 50		
Depot improvements	9,529 92		
Relaying track	6,410 00	49 80	
	484,169 43	1,922 89	486,092 32
By cost of Transportation this year, viz:			
Repairs road	500,029 22	38,352 03	
Repairs bridges and culverts	8,481 91	2,761 15	
Repairs depots and water stations	12,492 45	782 41	
Repairs buildings	23,570 72	403 93	
Repairs engines	142,265 33	8,337 64	
Repairs passenger, mail and baggage cars	82,071 13	5,175 08	
Repairs freight cars	198,356 61	7,458 33	
Incline plane at Coalfield	17,137 00		
Shop expenses	168,397 96	810 89	
Train expenses	315,809 18	10,299 32	
Depot expenses	203,117 18	7,717 41	
Office expenses	39,509 56	507 35	
Miscellaneous expenses	20,000 00	398 21	
Telegraph expenses	28,156 07	1,405 04	
Contingent expenses	8,904 54	1,968 45	
Oil and tallow	230,144 25	1,281 34	
Cotton waste	12,468 60	206 62	
Wood	475,255 13	7,666 83	
Printing and advertising	1,912 75	1,104 75	
Car rent	203,816 34		
Stock killed	9,357 50		
Lost freight	57,085 44		
Salaries	29,080 14	2,684 23	

DEFENDANT'S EXHIBIT BB—Sheet 1.

Continued.

Liabilities:

Interest due on bonds	85,958 89	
Interest due Board of Public Works on loan of $600,000	42,000 00	
		127,958 89
To bills payable outstanding		600 00
To sundry accounts, per ledger		50,881 21
To Farmers Bank, due in Confederate currency		542,282 64
		$18,090,445 52

DEFENDANT'S EXHIBIT BB—Sheet 1.

Continued.

Premium on specie	$15,653 09		
Negro clothing	33,362 50		
Provisions	8,226 88		
Supplies	240,298 57		
Interest	107,816 80		
	$3,992,776 85	$99,321 01	4,092,097 86
By delinquent stockholders, whose stock, 84 shares, is now owned by the Company			7,301 00
By State of Virginia, due on subscription to stock, and payment withheld because of non-payment by delinquent stockholders			11,401 50
By fund for redemption of loan of $600,000 from the State			68,908 65
By dividends to January 1, 1864			495,046 61
By stock in Piedmont Railroad Company			1,484,000 00
By Confederate States accounts due for transportation	121,864 33		
By Confederate States bonds received for transportation	1,062,075 00		
			1,183,939 33
By purchasing agent's accounts unsettled (but value received)			215,801 77
By sundry accounts, per ledger			85,999 87
By Piedmont Railroad Company, balance due			646,552 01
By accounts due from United States for transportation	29,069 52		
By accounts due from United States post office	1,752 92		
			30,822 44
By specie			8,269 38
By cash in Confederate currency	46,735 71		
By cash in national currency in bank	39,265 69		
			86,001 40
			$18,090,445 52

E. E.

J. D. BLAIR, auditor.

DEFENDANT'S EXHIBIT BB—Sheet 2.

Auditor's Annual Statement of Receipts, Disbursements and Liabilities of 20, 1847, to Sept. 30, 1866.

RECEIPTS.

To Capital Stock			2,000,000 00
To Loan from State of Virginia, redeemable in about 34 years, from April 8, 1853, to September 30, 1854, by payment of annuity of 7 per cent.			600,000 00
To Bonds guaranteed by State of Virginia, redeemable in 1875 and 1876,			200,000 00
To Bonds extended, due in 1863			30,500 00
To Bonds of 4th mortgage, Registered, redeemable in 1873			504,000 00
To Bonds of 4th mortgage, Coupons, redeemable in 1875			322,000 00
To Bonds for funding interest, redeemable in 1869 to 1876			61,000 00
To Transportation to September 30, 1865	12,838,175 27		
Less, Confederate currency, reduced	6,311,756 84	6,526,418 43	
To Transportation October 1, 1865, to September 30, 1866		672,714 00	7,199,132 43

DEFENDANT'S EXHIBIT BB—Sheet 2.

the Richmond and Danville Railroad Company, from its organization, Nov.

DISBURSEMENTS.

By Cost of Road and Property to September 30, 1865	6,392,659 25		
Less Confederate currency, reduced	2,138.529 80	4,254,129 45	
By Cost for Oct. 1, 1865, to Sept. 30, 1866, viz:			
New buildings	9,056 56		
New Wells and Water Stations	46 13		
New Bridges and Culverts	81,058 23		
New Passenger, Mail and Baggage Cars	24,788 96		
New Freight Cars	26,104 00		
New Engines	96,691 40		
New Machinery for Shops	226 43		
New Depot Lots	83,124 27		
Depot Improvements	7,198 91		
Relaying Track	334,780 00		
Land Damages	295 66	663,370 55	4,917,500 00
By Cost of Transportation to Sept. 30, 1865,	7,373,742 31		
Less, Confederate currency, reduced	3,458,422 41	3,915,319 90	
By Cost of Transportation Oct. 1 1865, to Sept 30, 1866, viz:			
Repairs Road	143,367 48		
Repairs Bridges and Culverts	11,561 76		
Repairs Depots and Water Stations	6,922 97		
Repairs Buildings	4,313 71		
Repairs Engines	44,592 03		
Repairs Passenger, Mail and Baggage Cars	39,512 44		
Repairs Freight Cars	19,402 14		
Shop Expenses	1,566 94		
Train Expenses	70,061 54		
Depot Expenses	54,520 01		
Office Expenses	587 30		
Miscellaneous Expenses	2,550 74		
Telegraph Expenses	10,065 46		
Contingent Expenses	6,515 27		
Oil and Tallow	8,328 16		
Cotton Waste	1,164 98		
Wood	39,122 90		
Printing and Advertising	8,058 26		
Car Rent	5,603 60		

DEFENDANT'S EXHIBIT BB—Sheet 2.

Continued.

LIABILITIES.

To Interest due on Bonds.....	79,547 40		
To Interest due the Board of Public Works on $600,000 ..,.....	84,000 00	163,547 40	
To Dividends		7,983 99	
To Loans		30,000 00	
To Bills Payable		699,307 59	900,838 98
To Sundry Accounts, per ledger.....			54,084 40
			$11,871,555 81

DEFENDANT'S EXHIBIT BB—Sheet 2.

Continued.

Stock Killed	1,065 14		
Lost Freight	3,889 15		
Salary	13,829 77		
Interest	110,703 44		
Internal Revenue Tax	16,739 11		
Casualities	208 57		
Lease of Piedmont Road to June 30, '66,	30,000 00	654,252 87	4,569,572 77
By Delinquent Stockholders, 84 shares, now held by the Co.		7,301 00	
By Subscription, due from State of Virginia		11,401 50	18,702 50
By Fund for redemption of State Loan of $600,000			74,908 65
By Dividend, $495,046 61, C. S. currency, reduced for balances due			490,123 10
By Stock in Piedmont Railroad Company			1,488,500 00
By Piedmont Railroad Company, balance due			202,575 70
By Sundry Accounts, per ledger			67,665 69
By Cash in Banks			52,007 40
			$11,871,555 81

E. E. J. D. BLAIR, Auditor

EXTRACT FROM REPORT RICHMOND & DANVILLE RAILROAD COMPANY

C.

Statement of Bills Payable of the Richmond and Danville Railroad Company for the year ending September 30, 1865.

Notes outstanding September 30, 1864	$185,814 50	
Notes issued since September 30, 1864	266,437 87	
		$452,252 37
Notes paid this year	$451,652 37	
Notes now outstanding, due at the North before the war	600 00	
		$452,252 37

E. E.

J. D. BLAIR, Auditor.

D.

Resources of the Richmond and Danville Railroad Company, September 30, 1865.

Due by State of Virginia on subscription to stock	$ 11,401 50	
Due from eighty-four shares of stock owned by the company	8,400 00	
Due from the United States for transportation.	29,069 52	
Due from United States Postoffice Department.	1,752 92	
Due from Piedmont Railroad Company	646,552 01	
Due from stock in Piedmont Railroad Company.	1,484,000 00	
Due from accounts on the ledger	85,999 87	
Cash in bank	39,265 69	
Specie, $8,269.38, at 45 per cent. premium	11,990 60	
		$2,318,432 11
Less due by the company, per ledger	$ 50,881 21	
Due the Farmers' Bank in Confederate currency	542,282 64	
Extended bonds due	30,500 00	
Interest on bonds and loans due	127,953 89	
Dividends due	22,919 50	
Bonds guaranteed by the State	200,000 00	
Bills payable, outstanding	600 00	
Loan from the State—$600,000—about one-third paid	400,000 00	
Bonds for construction of Piedmont Railroad	826,000 00	
		$2,201,142 24
		$117,289 07

E. E.

J. D. BLAIR, Auditor.

(Taken from page 24, Reports R. & D. R. R., 1865 to 1871.)

C.

Abstract of Liabilities and Resources of the Richmond and Danville Railroad Company, September 30, 1866.

To loan of State of Virginia....$ 600,000 00			
About one-third of which has been paid 200,000 00		$ 400,000 00	
To bonds guaranteed by State of Virginia, due 1875 and 1876		200,000 00	
To bonds extended, due 1863.....		30,500 00	
To bonds of fourth mortgage, registered, due 1873		504,000 00	
To bonds of fourth mortgage, coupons, due 1875		333,000 00	
To bonds for funding interest, due 1869 to 1876		61,000 00	
To interest due on bonds.....$ 79,547 40			
To interest due Board of Public Works on $600,000..... 84,000 00			
To dividends 7,983 99			
To loans 30,000 00			
To bills payable..... 699,307 59			
		900,838 98	
To sundry accounts, per ledger.....		54,084 40	
			$2,472,423 38
By cost of road and property to September 30, 1866		$4,917,500 00	
By cost of 84 shares stock of the company..		7,301 00	
By subscription due from State of Virginia.		11,401 50	
By stock in Piedmont Railroad Company....		1,488,500 00	
By Piedmont Railroad Company, balance due		202,575 70	
By sundry accounts, per ledger.....		67,665 69	
By cash in banks.....		52,007 40	
			6,746,951 29
By surplus as to creditors of company.....			4,274,527 91
To capital stock			2,000,000 00
By surplus after paying back capital.....			$2,274,527 91

E. E.

J. D. BLAIR, Auditor.

D.

Statement of Bills Payable of the Richmond and Danville Railroad Company for the year ending September 30, 1866.

Notes outstanding September 30, 1865	$ 600 00	
Notes issued since	1,132,475 57	
		$1,133,075 57
Notes paid this year		433,769 98
Notes outstanding September 30, 1866		$ 699,305 59

E. E.

J. D. BLAIR, Auditor.

CERTIFICATE.

RICHMOND AND DANVILLE RAILROAD COMPANY,

Richmond, December 5, 1866.

We, the committee of accounts, have examined the books and accounts of the company to September 30, 1866, and find the same correct, and all the entries on the books supported by proper vouchers, and herewith present a list of balances from the ledger, showing the affairs of the company to that date.

A. Y. STOKES,
A. F. HARVEY,

(Taken from pages 96 and 97, Reports R. & D. R. R., 1865 to 1871.)

DEFENDANT'S EXHIBIT DOVER No. 1.

STATE OF WEST VIRGINIA.

Market Quotations for Stock of Richmond, Fredericksburg & Potomac R. R. Reported by Caskie G. Burch & Company, Richmond, Virginia, as shown by The Times-Dispatch, Richmond, Virginia, filed in the Virginia State Library.

Jan. 1, 1914 to Sept. 1, 1914.

Richmond Stock Market.

Date Quoted.	Par $100.	Bid.	Asked.
Jan. 24	Dividend obligations	305	335
Jan. 31	Common	305	
Jan. 31	7 per cent. guaranteed	320	340
Jan. 31	Dividend obligations	305	
May 15	Dividend obligations	300	
May 16	Dividend obligations	300	
May 19	Dividend obligations	300	310
May 20	Dividend obligations	300	307½
May 21	Dividend obligations	300	305
May 22	Dividend obligations	302½	305
May 23	Dividend obligations	305	
May 26	Dividend obligations	302½	
May 27	Dividend obligations	302½	305
June 11	Dividend obligations	302	
June 12	Dividend obligations	302	
June 13	Dividend obligations	302	
June 16	Dividend obligations	302	
June 17	Dividend obligations	302	
June 18	Dividend obligations	302	
June 19	Dividend obligations	302	
June 20	Dividend obligations	302	
June 23	Dividend obligations	302	
June 24	Dividend obligations	302	
June 25	Dividend obligations	302	
June 26	Dividend obligations	302	
June 27	Dividend obligations	302	

(Continued)

May 28—Dividend obligations			304	June 30—Dividend obligations		302	
June 3—Dividend obligations		300	306	July 1—Dividend obligations		302	
June 4—Common		300		July 2—Dividend obligations		300	320
June 5—Dividend obligations		302	320	July 3—Dividend obligations		300	320
June 6—Dividend obligations		302	320	July 11—Dividend obligations		300	
June 10—Dividend obligations		302		July 25—Dividend obligations		290	302

MAP

TOO

LARGE

FOR

FILMING

Plaintiff's Exhibits

1861-1863.

Prepared by
PARK, POTTER & CO.
Certified Public Accountants
New York, Chicago, Cincinnati and London
No. 149 Broadway, NEW YORK

PLAINTIFF'S EXHIBIT No. 1.

VIRGINIA *vs.* WEST VIRGINIA.

Sinking Fund Receipts and Disbursements and Bonds Issued for Interest.

Sinking Fund Receipts, January 1, 1861 *to December* 31, 1871.

	Dividend R. F. & P.	Bonds Va. Cent.	Interest Refunds	Commonwealth of Virginia.	Virginia & Tennessee R. R. % Mtg. $1,000,000.	Total.
Balance Jan. 1, 1861						$ 819,250 03
Between Jan. 1, 1860, and June 20, 1863	$275,520 00	$84,858 00	$ 3,400 50	$2,855,392 52		2,971,171 02
	$275,520 00	$84,858 00	$ 3,400 50	$2,855,392 52		$3,790,421 05
Balance June 20, 1863						$ 142,195 90
Between June 20, 1863, and April 1, 1865	$122,464 00		$ 4,620 00	$2,199,331 20	$886,685 00*	$3,213,100 20
No cash records from Apr. 1, 1865, to May 1, 1867.						
May 1, to Dec. 31, 1867	.....	.....	3,659 06	768,420 64		772,079 70
Year 1868	.....	.....	1,452 74	529,000 00		520,452 74
Year 1869	.....	.....	1,060 52	927,000 00		928,060 52
Year 1870	.....	.....	217 50	296,000 00		
For interest on bonds held by U. S. Govt.	.....	.....	.....	23,272 00		319,489 50
Year 1871	.....	.....	750 00	67,858 00		68,608 00
	$122,464 00		$11,759 82	$4,810,881 84	$886,685 00	$5,974,986 56

*This amount was afterward declared an illegal payment by the Virginia and Tennessee Railroad Co. and made void. $443,300.00 was returned as below and the balance is included in the $1,405,257.22 dropped out of the accounts of the Sinking Fund in 1865.

PLAINTIFF'S EXHIBIT No. 1.

VIRGINIA *vs.* WEST VIRGINIA.

Sinking Fund Receipts and Disbursements and Bonds Issued for Interest.

Sinking Fund Disbursements, January 1, 1861, *to December* 31, 1871.

	State Bonds. Purchased.	State Bonds. Redeemed.	Interest on State Debt.	Virginia & Tenn. R. R. % $1,000,000 Mtg. Payment Refunded.	Taxes on Interest Repaid to Commonwealth.	Balance Dropped & Unaccounted for	Total.
Between Jan. 1, 1861, and June 20, 1863..	$354,784 11	$269,313 38	$3,023,127 66				$3,647,225 15
Balance June 20, 1863							143,195 90
	$354,784 11	$269,313 38	$3,023,127 66				$3,790,421 05
Between June 20, 1863, and Apr. 1, 1865	$3,781 00		$1,503,957 88	$443,300 00*		$1,405,257 22	$3,356,296 10
No cash records from Apr. 1, 1865, to May 1, 1867.							
May 1 to Dec. 31, 1867	.....	.....	616,990 16		10,929 85		621,920 01
Year 1868	.....	.....	680,567 43				680,567 43
Year 1869	.....	.....	882,179 73		25,419 54		907,599 27
Year 1870	.....	.....	314,869 47				
Int. to U. S. Gov't. % Indian Land Fund..	.....	.....	23,272 00				338,141 47

PLAINTIFF'S EXHIBIT No. 1.

(*Disbursements Continued*)

Year 1871						
Balance Dec. 31, 1871			70,299 60			70,299 60
						$ 162 68
	$3,781 00	$4,086,136 27	$443,300 00	$36,349 39	$1,405,257 22	$5,974,986 56

Act of March 21, 1867 provides for payment of 2% Int. on debt excluding bonds given for interest by act of March 2nd, 1866. Act of Apr. 29, 1867, affirms this, stating "All bonds issued prior to Apr. 27, 1861."

Act of Mar. 30, 1871, provides for scaling the debt, so Sinking Fund cash operations are taken only through 1871.

Total Interest paid by Virginia, from Jan. 1, 1861, to Dec. 31, 1871	$7,109,263 93
less interest refunds and adjustments	15,160 32
Net Interest paid	$7,094,103 61

PLAINTIFF'S EXHIBIT No. 1.

VIRGINIA *vs.* WEST VIRGINIA.

SINKING FUND RECEIPTS AND DISBURSEMENTS AND BONDS ISSUED FOR INTEREST.

BONDS ISSUED UNDER ACT OF MARCH 2, 1866—FOR INTEREST.

Copied from Second Auditor's Report of December 1, 1871.

Table B. Page 9.

Statement of the Public Debt issued under Act of March 2, 1866, authorizing the Interest to be funded.

Coupon bonds, dated 1st January, 1866	$1,504,500 00
Registered bonds, dated 1st anuary, 1866	1,646,810 37
Coupon bonds, dated 1st January, 1867	1,758,500 00
Registered bonds, dated 1st January, 1867	1,200,853 23
Sterling bonds, dated 1st January, 1867	466,250 00
	$6,576,913 60
Unfunded interest due 1st January, 1867, fundable in bonds under act approved March 30, 1871	582,761 79
Amount of same	$7,159,675 39

December 1, 1871.

ASA ROGERS,
Second Auditor.

Interest on undivided debt, paid in cash, from January 1, 1861, to December 31, 1871	$ 7,094,103 61
Interest on undivided debt, paid in bonds as above	6,576,913 60
	$13,671,017 21

VIRGINIA vs. WEST VIRGINIA.

PLAINTIFF'S EXHIBIT NO. 1, SUB-SCHEDULE SHOWING INTEREST PAID BY THE SINKING FUND BETWEEN JANUARY 1, 1861, AND APRIL 1, 1865, REDUCED TO GOLD BASIS.

	Paid.	Confederate rate.	Gold Value.
1861.			
Jan.	$518,054.41	.....	$518,054.41
Feb	33,733.16	.....	33,733.16
Mar.	8,426.75	.....	8,426.75
Apr.	4,129.20	.....	4,129.20
May	53,186.85	$1.10	
June	1,914.45	1.10	
July	483,140.06	1.10	563,417.99
Aug.	54,688.59	1.10	
Sept	26,829 84	1.10	
Oct.	6,389.88	1.15	
Nov.	59,130.97	1.15	56,974.65
Dec	5,364.00	1.29	4,470.00
1862.			
Jan	487,121.17	1.25	
Feb.	74,064.71	1.25	448,948 70
Mar.	25,757.48	1.30	19,813.45
Apr	5,833.33	1.40	4,166.67
May	10,315.50	1.50	
June	.....		
July	287,990.32	1.50	243,400.36
Aug	66,794.72	1.50	
Sept	187,625.85	2 50	
Oct.	41,184.24	2.50	91,524.04
Nov.	10,900.97	3.00	
Dec.	16,257.34	3.00	150,491.56
1863.			
Jan	424,316.36	3.00	
Feb.	69,311.15	4.00	17,327.79
Mar.	20,651.05	5.00	4,330.21
Apr	26,854.53	5.50	4,882.64
May.	7,445.46	5.75	1,294.86
June 1–19	5,715.32	7.50	762.04
Pl. Ex. No. 1 (P. 286)	$3,023,127.66		$2,176,148.48
Interest refunds (P. 285)	3,400.50		3,400 50
	$3,019,727.16		$2,172,747.98

INTEREST PAID BY THE SINKING FUND REDUCED TO GOLD BASIS—(continued).

1863.	Paid.	Confederate rate.	Gold Value.
June 20–30	$6,159.04	7.50	$821.21
July	359,928.11	9.00	39,992.02
Aug.	47,454.86	12.50	3,796.39
Sept.	30,845.47	12.50	2,467.63
Oct.	16,952.44	14.00	1,210.88
Nov.	7,698.12	16.00	481.13
Dec.	5,421.86	19.00	285 36
1864.			
Jan.	293,060.72	20.25	14,472.13
Feb.	71,442.57	23.25	3,072 79
Mar.	28,756.65	23.75	1,210.80
Apr.	9,459.70	22.50	420.43
May.	5,623.30	19.50	288.37
June	2,491 50	18.00	138.42
July.	237,919.35	21 50	11,066.01
Aug	51,236.75	23.75	2,157.34
Sept	32,004.76	25.00	1,280.19
Oct.	14,620.77	26.50	551.73
Nov	11,952.07	30.50	391.87
Dec.	5,691.42	41.50	137.14
1865.			
Jan.	215,340.47	52.50	4,101.72
Feb.	41,364.43	55.00	752.08
Mar.	8,533.52	65.00	131.29
Pl. Ex. No. 1 (P. 286)	$1,503,957.88		$89,226 93
Interest refunds (P. 285)	4,620 00	7.50	616.00
	$1,499,337.88		$88,610.93

SUMMARY.

Jan. 1—1861 to June 20–1863	$3,019.727.16	$2,172,747.98
June 20–1863 to Apr. 1–1865	1,499,337.88	88,610.93
	$4,519,065.04	$2,261,358.91

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

Showing all bonds issued between January 7, 1861 and March 31, 1865. Also payments on account of pre-esixting liabilities during the same period.

Loan No. 90—Board of Public Works Ledger, page 252—		
Registered	$ 457,580 02	
Coupons	625,000 00	
		$1,082,580 02
Loan No. 91—Board of Public Works Ledger, page 252		2,900 00
Loan No. 93—Board of Public Works Ledger, page 252	293,670 00	
Loan No. 93—Board of Public Works Ledger, page 254	130,000 00	
		423,670 00
		$1,509,150 02
Payments on account of Internal Improvements, as per Sub. Schedule I.		$1,008,160 38
State Bonds exchanged for old James River and Kanawha Company Bonds, guaranteed by the State, Journal D, page 112	$140,570 00	
Journal D, page 167	130,000 00	
		$ 270,570 00
Payments on account of Interest on guaranteed Bonds, January 1, 1861, to 1865—		
of James River and Kanawha Co. (Sub. Schedule II.)		77,691 62
of Chesapeake & Ohio Canal Co. (Sub. Schedule II.)		46,335 00
Payments on account of Interest to the Literary Fund and Dawson Fund on State Bonds held by those funds, and not paid by the Sinking Fund, January, 1861, to 1865 (Sub. Schedule III.)		184,989 20
Payments on account of Dividends on Old James River Company Stock (Sub. Schedule IV.)		48,735 00
		$1,636,481 21

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(Continued.)

Sub-schedule 1.

PAYMENTS ON ACCOUNT OF INTERNAL IMPROVEMENTS.

Internal Improvement Ledger B.

Name of Company.	Page.	Amount.
Alexandria, Loudon & Hampshire Railroad Co.—Stock..	181	$ 24,000 00
Back Creek Valley Turnpike Company—Stock.....	269	24,000 00
Covington & Ohio Railroad Company—Construction....	188	419,333 50
Danville & Wytheville Turnpike Company—Stock.....	201	2,350 50
Elk River Turnpike Company—Surveying.....	229	116 00
Franklin & Monterey Turnpike Company—Construction.	231	305 91
Fredericksburg & Gordonsville Railroad Co.—Stock....	181	30,900 00
Fredericksburg & Valley Turnpike Co.—Stock.....	195	315 00
Hedgesville & Potomac Turnpike Co.—Stock.....	204	600 00
Jacksonville & Christiansburg Turnpike Co.—Stock...	205	980 50
Letart Falls & West Columbia Turnpike Co.—Stock....	225	600 00
Kingwood & West Union Turnpike Co.—Macadamizing..	222	7,173 04
Manassas Gap Railroad Co.—Stock.....	182	175,000 00
Middlefork Road—Bridge Construction.....	237	600 00
Norfolk & Petersburg Railroad Co.—Stock.....	182	60,000 00
Raleigh & Wythe Line Turnpike Co.—Stock.....	269	2,400 00
Rivanna Navigation Co.—Stock.....	193	42,000 00
Russell Old Courthouse & Abingdon Turnpike Co.—Stock	223	600 00
Slavins Cabin & Summerville Turnpike Co.—Construction	236	49 75
Southwestern Turnpike Road—Construction.....	236	5,201 42
Staunton & Parkersburg Road—Macadamizing.....	235	17 50
Virginia Central Railroad Company—Stock.....	185	86,604 95
Virginia Central Railroad Company—Loans.....	241	120,000 00
Virginia & Kentucky Railroad Co.—Stock.....	186	21,438 08
Walker's Creek & Holston Turnpike Co.—Stock.....	220	2,109 23
Wilson's Creek and South Fork Turnpike Co.—Stock...	221	4,325 00
		$1,008,160 38

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(Continued.)

Sub-schedule II.

PAYMENTS ON ACCOUNT OF INTEREST ON GUARANTEED BONDS.

Internal Improvement Journal D.

Page.	Due.	James River & Kanawha Company.	Chesapeake & Ohio Canal Co.
96	Quarter ended March 31, 1861	$	$14,820 00
96	Quarter ended March 31, 1861	16,354 65	
104	Quarter ended June 30, 1861		120 00
104	Quarter ended June 30, 1861	170 70	
112	Quarter ended September 30, 1861	9,210 90	
125	Six months ended March 31, 1862	9,973 68	
134	Six months ended September 30, 1862	6,893 40	
134	Six months ended September 30, 1862		14,985 00
144	Six months ended March 31, 1863	7,977 54	
145	Six months ended March 31, 1863		9,945 00
154	Six months ended September 30, 1863	9,635 04	
154	Six months ended September 30, 1863		4,455 00
164	Year ended September 30, 1864	12,989 22	
164	Year ended September 30, 1864		2,010 00
169	Six months ended March 31, 1865	4,486 50	
		$77,691 63	$46,335 00

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(Continued.)

Sub-schedule III.

PAYMENTS ON INTEREST ON PUBLIC DEBT TO LITERARY FUND.

Internal Improvement Fund, Journal D.

March 29, 1861—Page 94—On $634,367.33 of 6%, $155,200.00 of 5%, six months ended Jan. 1, 1861	$	22,911 02
March 29, 1861—Page 94—On Dawson Fund o f$6,350.00; six months ended Jan. 1, 1861		190 50
March 29, 1861—Page 94—On Nelson County of $737.61; six months ended Jan. 1, 1861		22 13
September 11, 1861—Page 111—On $634,367.33 and $155,200.00; six months ended July 1, 1861		22,911 02
September 11, 1861—Page 111—On Dawson Fund in trust, $6,350.00; six months ended July 1, 1861		190 50
September 11, 1861—Page 111—On Nelson County in trust, $737.81; six months ended July 1, 1861		22 13
March 31, 1862—Page 123—Same; six months ended July 1, 1862		22,911 02
March 31, 1862—Page 123—Dawson Fund; six months ended Jan. 1, 1862		190 50
March 31, 1862—Page 123—Nelson County; six months ended Jan. 1, 1862		22 13
August 5, 1862—Page 132—Same; six months ended July 1, 1862		22,911 02
August 5, 1862—Page 132—Dawson Fund; six months ended July 1, 1862		190 50
August 5, 1862—Page 132—Nelson County; six months ended July 1, 1862		22 13
Feb. 4, 1863—Page 141—Same; six months ended Jan. 1, 1863		22,911 02
Feb. 4, 1863—Page 141—Dawson Fund; six months ended Jan. 1, 1863		190 50
Feb. 4, 1863—Page 141—Nelson County; six months ended Jan. 1, 1863		22 13
August 26, 1863—Page 152—Same; stix months ended July 1, 1863		22,911 02
August 26, 1863—Page 152..Dawson Fund;, six months ended July 1, 1863		190 50
August 26, 1863—Page 152—Nelson County; six months ended July 1, 1863		22 13
March 24, 1864—Page 160—Same; six months ended Jan. 1, 1864		22,911 02
March 24, 1864—Page 160—Dawson Fund; six months ended Jan. 1, 1864		190 50

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(*Continued.*)

Sub-schedule III.

PAYMENTS OF INTEREST ON PUBLIC DEBT TO LITERARY FUND.

Internal Improvement Fund, Journal D.

March 24, 1864—Page 160—Nelson County; six months ended Jan. 1, 1864	22 13
September 2, 1864—Page 161—Same; six months ended July 1, 1864	22,911 02
September 2, 1864—Page 161—Nelson County; six months ended July 1, 1864	22 13
September 2, 1864—Page 161—Dawson Fund; six months ended July 1, 1864	190 50
	$184,989 20

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(Continued.)

Sub-schedule IV.

PAYMENTS ON ACCOUNT OF DIVIDENDS ON OLD JAMES RIVER COMPANY STOCK.

Internal Improvement Fund, Journal D.

Page.		
94	Washington College, January 3, 1861	$ 1,440 00
94	Sundries, January 1, 1861	1,380 00
94	Washington College, March 29, 1861	60 00
94	Literary Fund, March 29, 1861	3,375 00
94	Sundries, March, 1861	30 00
110	Washington College, July 2, 1861	1,440 00
111	Washington College, September 11, 1861	60 00
110 & 111	Sundries—July, 1861	900 00
111	Sundries, August, 1861	135 00
111	Literary Fund, September 11, 1861	3,375 00
123	Washington College, January 6, 1862	1,440 00
123	Washington College, March 31, 1862	60 00
123	Literary Fund, March 31, 1862	3,375 00
123	Sundries, January, 1862	900 00
122 & 123	Sundries, February, 1862	60 00
131	Washington College, July 26, 1862	1,440 00
131	Washington College, August 5, 1862	60 00
131	Literary Fund, August 5, 1862	3,375 00
130 & 131	Sundries, July and August, 1862	630 00
142	William & Mary College, October 15, 1862	330 00
142	Washington College, January 7, 1863	1,440 00
142	Washington College, February 4, 1863	60 00
142	Literary Fund, February 4, 1863	3,375 00
142	Sundries, October, 1862; January and February, 1863	1,230 00
151	Washington College, July 2, 1863	1,440 00
151	Washington College, August 26, 1863	60 00
151	Literary Fund, August 26, 1863	3,375 00
151	Sundries, Quarter ended August, 1863	840 00
154	Sundries, April 29, 1863	45 00
160	Washington College, January 7, 1864	1,440 00
160	Washington College, March 24, 1864	60 00
160	Literary Fund, March 24, 1864	3,375 00

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

Continued.

Sub-schedule IV.

PAYMENTS ON ACCOUNT OF DIVIDENDS ON OLD JAMES RIVER COMPANY STOCK.

Internal Improvement Fund, Journal D.

160—Sundries, Nov., 1863; Jan., Mar., July, Aug. & Sept., 1864.	1,500 00
160—Washington College, July 12, 1864	1,440 00
160—Washington College September 2, 1864	60 00
160—Literary Fund, September 2, 1864	3,375 00
163—Sundries, October 26, 1863	30 00
168—Sundries, Dec., 1864; Jan., 1865	285 00
168—Washington College, January 12, 1865	1,440 00
	$48,735 00

PLAINTIFF'S SUPPLEMENTAL EXHIBIT No. 1 A.

(To be attached to and printed with Plaintiff's Exhibit No. 1.

Showing the Total Cost to Virginia of the Bands issued for Interest under the Act of March 2, 1866, under various funding acts.

Bonds issued by Virginia under the act of March 2, 1866, as shown in her Second Auditor's report of December 1, 1871, Table B ,page 9			$ 6,576,913 60
Of which there appears to be—			
of 5% bonds	$ 16,753 50	.0025%	
and of 6% bonds	6,560,160 10	.9975%	
Interest thereon from January 1, 1866, to July 1, 1871:			
5½ years at 5% on	16,753 50	4,607 21	
5½ years at 6% on	6,560,160 10	2,164,852 83	
			2,169,460 04
			$ 8,746,373 64
Two-thirds of which is (Consols, per act March 30, 1871			$ 5,830,915 76
Interest from July 1, 1871, to January 1, 1879:			
.0025% of $5,830,915.76—		$ 14,577 29	
.9975% of $5,830,915.76—		5,816,338 47	
$14,577.29 at 5% for 7½ years		$ 5,466 48	
$5,816,338.47 at 6% for 7½ years		2,617,352 31	
			2,622,818 79
			$ 8,453,734 55

PLAINTIFF'S SUPPLEMENTAL EXHIBIT No. 1 A.

(Continued)

Showing the Total Cost to Virginia of the Bonds issued for Interest under the Act of March 2, 1866, under various funding acts.

Under act of March 28, 1879, these bonds and interest were fundable, as follows:

100% of principal of bonds in new bonds bearing interest at 3% for 10 years, 4% for 20 years, 5% for 10 years....	$ 5,830,915 76	
50% of interest (due and unpaid) in new bonds bearing interest the same as above.....	1,311,409 40	
(10-40's)		$ 7,142,325 16
Interest on $7,142,325.16 at 3% from January 1, 1879, to July 1, 1882 (3½ years).....		749,944 14
		$ 7,892,269 30

Under act of February 14, 1882, these bonds fall in Class B, fundable in new 3% bands at 60%..... $ 4,285,295 10

Interest at 100%..... 749,944 14

$ 5,035,239 24

Interest on same, July 1, 1882, to October 1, 1914, 32¼ years at 3%—96¾%..... 4,871,690 71

$ 9,907,029 95

PLAINTIFF'S SUPPLEMENTAL EXHIBIT No. 1 A.

(Continued.)

Showing the Total Cost to Virginia of the Bonds issued for Interest under the Act of March 2, 1866, under various funding acts.

The foregoing computation is made on the assumption that the bonds of 1866 were scaled by the acts of 1871 and 1879 and 1882, which were the most drastic of the Virginia scaling acts. If the bonds were scaled under the acts of 1871, 1879 and 1892, the result would be as follows:

Principal as above at January 1, 1879		$ 7,142,325 16
Interest from January 1, 1879, to July 1, 1891, 12½ years:		
at 3% for 10 years	30%	
at 4% for 2½ years	10%	
	40%	2,856,930 06
		$ 9,999,255 22
19-28ths of which is (per act of February 20, 1892), (century)		6,785,209 14
Interest from July 1, 1891, to October 1, 1914:		
10 years at 2%	20%	
13¼ years at 3%	39¾%	
	59¾%	4,054,162 46
		$10,839,371 60

If, on the other hand, the bonds were not scaled under the act of 1879, which was a refunding act of comparatively minor importance, on the basis of the 1881-2 settlement, the result would be as follows:

Principal, as above, in 1871		$ 5,830,915 76
Interest from July 1, 1871, to July 1, 1882:		
$ 14,577.29 at 5% for 11 years	$ 8,017 51	
$5,816,338.47 at 6% for 11 years	3,838,783 39	
		3,846,800 90
		$ 9,677,716 66

PLAINTIFF'S SUPPLEMENTAL EXHIBIT No. 1 A.

(*Continued.*)

Showing the Total Cost to Virginia of the Bonds issued for Interest under the Act of March 2, 1866, under various funding acts.

Scaled under act of 1882:		
Principal at 53%.....	$3,090,385 35	
Interest at 100%.....	3,846,800 90	
		$ 6,937,186 25
Interest from July 1, 1882, to October 1, 1914:		
3% for 32¼ years, or 96¾%.....		6,711,727 70
		$13,648,913 95
On the basis of the 1871 and 1892 settlements the result would be as follows:		
Principal as above in 1871.....		$ 5,830,915 76
Interest from July 1, 1871, to July 1, 1891:		
$ 14,577.29 at 5% for 20 years.....	$ 14,577 29	
$5,816,338.47 at 6% for 20 years.....	6,979,606 16	
		6,994,183 45
		$12,825,099 21
19-28ths of which is (per act of February 20, 1892).....		$ 8,702,745 89
Interest from July 1, 1891, to October 1 1914—23¼ years:		
10 years at 2%.....	20 %	
13¼ years at 3%.....	39¾%	
	59¾%	5,199,890 67
		$13,902,636 56

The foregoing computations are on the basis that no interest was paid upon the bonds issued under the acts of 1866, 1871 and 1879, except in refunding.

If such interest had in fact been paid when due, it would increase the amounts given above, because the act of 1879 scaled interest 50% and the act of 1892 scaled both interest and principal by 9-28ths of their sum total. If interest had actually been paid, it would have been paid according to the bonds, and not according to the subsequent scale.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1866	Dec. 11. Va. 6's Reg.	240	247 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 11. Va. 6's Reg., past due	215		Richmond Dispatch, Richmond Exchange.
	Dec. 12. Va. 6's	54		New York Times, New York Exchange.
	Dec. 18. Va. 6's Reg., long dates	235	250	Richmond Dispatch, Richmond Exchange.
	Dec. 18. Va. 6's Reg., past due	203		Richmond Dispatch, Richmond Exchange.
	Dec. 19. Va. 6's	49		New York Times, New York Exchange.
	Dec. 24. Va. 6's	49		New York Times, New York Exchange.
	Dec. 25. Va. 6's Reg., long dates	235	250	Richmond Dispatch, Richmond Exchange.
1867	Nov. 5. Va. 6's Reg., old	38¾	39	Baltimore Gazette, Baltimore Exchange.
	Nov. 18. Va. 6's Coupons, new	44¾		Baltimore Gazette, Baltimore Exchange.
	Oct. 18 Va. 6's, New	45	45½	Baltimore Gazette, Baltimore Exchange.
	July 24. Va. 6's, new	51		Richmond Dispatch, New York Exchange.
	July 24. Va. 6's, new	41⅞	42	Baltimore Gazette, Baltimore Exchange.
	Sept. 6. Va. 6's, Ex. Coupons	49		Richmond Dispatch, New York Exchange.
	Sept. 6. Va. 6's, Ex. Coupons, New.	48		Richmond Dispatch, New York Exchange.
	Nov. 28. Va. 6's, New	40	43	Baltimore Gazette, Baltimore Exchange.
	Dec. 23. Va. 6's	37½	37¾	Baltimore Gazette, Baltimore Exchange.
1868	June 29. Va. 6's, Coupons	53¼		Richmond Dispatch, New York Exchange.
	June 29. Va. 6's, New	53		Richmond Dispatch, New York Exchange.
	July 25. Va. 6's, New	53		Richmond Dispatch, Baltimore Exchange.
	July 27. Va. 6's, old inscribed	45	45½	Richmond Dispatch, Baltimore Exchange.
	July 27. Va. 6's, old coupons	55¼		Richmond Dispatch, Baltimore Exchange.
	Aug. 29. Va. 6's, Coupons	53¼		Richmond Dispatch, New York Exchange, Aug. 29.
	Aug. 29. Va. 6's, New	53		Richmond Dispatch, New York Exchange.
	Aug. 29. Va. 6's, Old inscribed	47	48	Richmond Dispatch, Baltimore Exchange.
	Aug. 29. Va. 66's	47	50	Richmond Dispatch, Baltimore Exchange.

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1869 Jan.	2. Va. 6's, Ex. Coupons.....	55		Richmond Dispatch, New York Exchange.
1870 Mar.	30. Va. 6's, Old.....	70		
Mar.	30. Va. 6's, New.....	70¼		Richmond Dispatch, New York Exchange, Mar. 29.
Mar.	30. Va. 6's, Old.....	70½		Richmond Dispatch, New York Exchange, Mar. 29.
Mar.	30. Va. 6's, New.....	70½		Richmond Dispatch, New York Exchange, Mar. 29.
Mar.	30. Va. 6's, Old.....	56½	57	Richmond Dispatch, New York Exchange, Mar. 29.
Mar.	30. Va. 66's.....	62	67	Richmond Dispatch, Baltimore Exchange, Mar. 29.
Mar.	30. Va. 67's.....		60	Richmond Dispatch, Baltimore Exchange, Mar. 29.
Mar.	31. Va. 6's, Ex. Coupons.....	71⅛		Richmond Dispatch, Baltimore Exchange, Mar. 29.
Mar.	31. Va. 6's, New.....	68		Richmond Dispatch, New York Exchange, Mar. 30.
Mar.	31. Va. 6's, Old.....	71		Richmond Dispatch, New York Exchange, Mar. 30.
Mar.	31. Va. 6's, New.....	71		Richmond Dispatch, New York Exchange, Mar. 30.
Mar.	31. Va. 6's, Old.....	58	59	Richmond Dispatch, Baltimore Exchange, Mar. 30.
Mar.	31. Va. 66's.....	66		Richmond Dispatch, Baltimore Exchange, Mar. 30.
Mar.	31. Va. 67's.....	60½	60¾	Richmond Dispatch, Baltimore Exchange, Mar. 30.
Apr.	1. Va. 6's, Old.....	70		Richmond Dispatch, New York Exchange, Mar. 31.
Apr.	1. Va. 6's, New.....	70		Richmond Dispatch, New York Exchange, Mar. 31.
Apr.	1. Va. 6's, Old.....	58¼		Richmond Dispatch, Baltimore Exchange, Mar. 31.
Apr.	2. Va. 6's, Ex. Coupons.....	70		Richmond Dispatch, New York Exchange, Apr. 1.
Apr.	2. Va. 6's, New.....	70½		Richmond Dispatch, New York Exchange, Apr. 1.
Apr.	2. Va. 6's, Old.....	70¼	70½	Richmond Dispatch, New York Exchange, Apr. 1.
Apr.	2. Va. 6's New.....	69½	70¾	Richmond Dispatch, New York Exchange, Apr. 1.
June	28. Va. 6's, Ex. Coupons.....	70		Richmond Dispatch, New York Exchange.
June	28. Va. 6's, New.....	68		Richmond Dispatch, New York Exchange.
June	29. Va. 6's, Ex. Coupons.....		70	Richmond Dispatch, New York Exchange.
June	29. Va. 6's. New.....		69¾	Richmond Dispatch, New York Exchange.
June	30. Va. 6's, in old.....	54¾	55¼	Baltimore Gazette, Baltimore Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1870 June 30.	Va. 1866	65	65½	Baltimore Gazette, Baltimore Exchange.
June 30.	Va. 1867	62	62¾	Baltimore Gazette, Baltimore Exchange.
June 30.	Va. Coupon, old	...	...	Baltimore Gazette, Baltimore Exchange.
June 30.	Va. Coupon, New	...	...	Baltimore Gazette, Baltimore Exchange.
Dec. 16.	Va. 6's, New	63		Richmond Dispatch, New York Exchange.
Dec. 16.	Va. 6's, Old	65½		Richmond Dispatch, New York Exchange.
Dec. 13.	Va. 6's, Old	65		Richmond Dispatch, New York Exchange, Dec. 12.
Dec. 13.	Va. 6's, New	63½		Richmond Dispatch, New York Exchange, Dec. 12.
Dec. 13.	Va. 6's, Old	51⅝	52½	Richmond Dispatch, Baltimore Exchange, Dec. 12.
Dec. 13.	Va. 1866		64	Richmond Dispatch, Baltimore Exchange, Dec. 12.
Dec. 13.	Va. 1867		60	Richmond Dispatch, Baltimore Exchange, Dec. 12.
Dec. 13.	Va. 6's, Coupons, Old		59	Richmond Dispatch, Baltimore Exchange, Dec. 12.
Dec. 14.	Va. 6's, Old	65½		Richmond Dispatch, New York Exchange, Dec. 13.
Dec. 14.	Va. 6's, New	63		Richmond Dispatch, New York Exchange, Dec. 13.
Dec. 14.	Va. 6's, Old	51¼	51⅞	Richmond Dispatch, Baltimore Exchange, Dec. 13.
Dec. 14.	Va. 1867	57	58	Richmond Dispatch, Baltimore Exchange, Dec. 13.
Dec. 15.	Va. 6's, Old	65		Richmond Dispatch, New York Exchange, Dec. 14.
Dec. 15.	Va. 6's, New	62½		Richmond Dispatch, New York Exchange, Dec. 14.
Dec. 15.	Va. 6's, Old	56½	51⅞	Richmond Dispatch, Baltimore Exchange, Dec. 14.
Dec. 15.	Va. 6's, 1867	56½	57	Richmond Dispatch, Baltimore Exchange, Dec. 14.
Dec. 15.	Va. Coupons		70	Richmond Dispatch, Baltimore Exchange, Dec. 14.
Dec. 16.	Va. 6's, Old	50		Richmond Dispatch, Baltimore Exchange, Dec. 14.
1871 Feb. 4.	Va. 6's, Old	64		Richmond Dispatch, New York Exchange.
Feb. 4.	Va. 6's, New	60		Richmond Dispatch, New York Exchange.
Mar. 18.	Va. 6's, Old	67		Richmond Dispatch, New York Exchange.
Mar. 18.	Va. 6's, New	67		Richmond Dispatch, New York Exchange,
Mar. 30.	Va. 6's, Old	67¾		Richmond Dispatch, New York Exchange, Mar. 29.

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PLAINTIFF'S EXHIBIT No. 2.

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Unless otherwise indicated, all quotations on this page from the Richmond Dispatch are Richmond Stock Exchange and those from the New York Times are New York Exchange.

Date.		Bid.	Asked.	
1860 Nov.	2. Va. 6's Reg.	89		Richmond Dispatch.
Nov.	9. Va. 6's Reg.	88		Richmond Dispatch.
Nov.	16. Va. 6's Reg.	88		Richmond Dispatch.
Nov.	23. Va. 6's Reg.	80		Richmond Dispatch.
Nov.	30. Va. 6's Reg.	86		Richmond Dispatch.
Dec.	7. Va. 6's Reg.	84		Richmond Dispatch.
Dec.	14. Va. 6's Reg.	82½	84	Richmond Dispatch.
1861 Jan.	4. Va. 6's Reg.	80		Richmond Dispatch.
Jan.	11. Va. 6's Reg.	78	80	Richmond Dispatch.
Jan.	18. Va. 6's Reg.	78½	80	Richmond Dispatch.
Jan.	25. Va. 6's Reg.	81		Richmond Dispatch.
Feb.	1. Va. 6's Reg.	81		Richmond Dispatch.
Feb.	8. Va. 6's Reg.	79		Richmond Dispatch.
Feb.	15. Va. 6's Reg.	81		Richmond Dispatch.
Feb.	22. Va. 6's Reg.	81		Richmond Dispatch.
Mar.	1. Va. 6's Reg.	82		Richmond Dispatch.
1862 Jan.	3. Va. 6's Reg.	110		Richmond Dispatch.
Jan.	4. Va. 6's Reg.	62		New York Times.
Jan.	5. Va. 6's Reg.	62		New York Times.
Jan.	6. Va. 6's Reg.	62½		New York Times.
Jan.	7. Va. 6's	110		Richmond Dispatch.
Jan.	20. Va. 6's	65		New York Times.
Jan.	21. Va. 6's	110		Richmond Dispatch.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.				Bid.	Asked.	
1863	Jan. 22.	Va. 6's	Reg.	68		New York Times.
	Jan. 29.	Va. 6's	Reg.	110		Richmond Dispatch.
	Feb. 7.	Va. 6's	Reg.	108		Richmond Dispatch.
	Feb. 14.	Va. 6's		108		Richmond Dispatch.
	Feb. 18.	Va. 6's		106½		Richmond Dispatch.
	Feb. 21.	Va. 6's	Reg.	106		Richmond Dispatch.
	Feb. 25.	Va. 6's	Reg.	106		Richmond Dispatch.
	Mar. 14.	Va. 6's	Reg.	106		Richmond Dispatch.
	Mar. 12.	Va. 6's		67		New York Times.
	Mar. 16.	Va. 6's		66		New York Times.
	Mar. 17.	Va. 6's		108		Richmond Dispatch.
	Mar. 25.	Va. 6's	Reg.	112		Richmond Dispatch.
1863	Apr. 9.	Va. 6's	Reg.	63		New York Times, New York Exchange.
	Apr. 20.	Va. 6's		64		New York Times, New York Exchange.
	Apr. 22.	Va. 6's		112		Richmond Dispatch, Richmond Exchange.
	Apr. 29.	Va. 6's	Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
	May 2.	Va. 6's	Reg.	111¼	111½	Richmond Dispatch, Richmond Exchange.
	May 16.	Va. 6's		112		Richmond Dispatch, Richmond Exchange.
	May 20.	Va. 6's	Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
	May 20.	Va. 6's		68		New York Times, New York Exchange.
	May 26.	Va. 6's		66		New York Times, New York Exchange.
	May 22.	Va. 6's	Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
	May 27.	Va. 6's	Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
	May 28.	Va. 6's	Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
	June 5.	Va. 6's	Reg.	113 & Int.		Richmond Dispatch, Richmond Exchange.
	June 5.	Va. 6's		66½		New York Times, New York Exchange.

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1863 June 10.	Va. 6's Reg.	115	& Int.	Richmond Dispatch, Richmond Exchange.
June 12.	Va. 6's Reg.	115	& Int.	Richmond Dispatch, Richmond Exchange.
June 16.	Va. 6's Reg., long dates	130½		Richmond Dispatch, Richmond Exchange.
June 25.	Va. 6's Reg.	66½		New York Times, New York Exchange.
June 27.	Va. 6's Reg.	131	& Int.	Richmond Dispatch, Richmond Exchange.
June 30.	Va. 6's Reg.	131		Richmond Dispatch, Richmond Exchange.
July 15.	Va. 6's Reg.	61		New York Times, New York Exchange.
July 17.	Va. 6's Reg.	135		Richmond Dispatch, Richmond Exchange.
July 22.	Va. Coupons—4 coup. on	325		Richmond Dispatch, Richmond Exchange.
July 22.	Va. 6's Reg.	160		Richmond Dispatch, Richmond Exchange.
July 24.	Va. 6's	61		New York Times, New York Exchange.
July 24.	Va. 6's Reg.	175		Richmond Dispatch, Richmond Exchange.
July 24.	Va. Interest paying	285		Richmond Dispatch, Richmond Exchange.
July 27.	Va. 6's	61		New York Times, New York Exchange.
July 28.	Va. 6's	61½		New York Times, New York Exchange.
July 29.	Va. 6's Reg.	176		Richmond Dispatch, Richmond Exchange.
July 30.	Va. 6's	61½		New York Times, New York Exchange.
Aug. 11.	Va. 6's	61		New York Times, New York Exchange.
Aug. 12.	Va. 6's Reg.	209½		Richmond Dispatch, Richmond Exchange.
Aug. 27.	Va. 6's Reg.	210		Richmond Dispatch, Richmond Exchange.
Aug. 27.	Va. 6's	62		New York Times, New York Exchange.
Sept. 1.	Va. 6's Reg.	210		Richmond Dispatch, Richmond Exchange.
Sept. 1.	Va. 6's	60		New York Times, New York Exchange.
Sept. 3.	Va. 6's, 1868	180		Richmond Dispatch, Richmond Exchange.
Sept. 3.	Va. 6's, 1896	186		Richmond Dispatch, Richmond Exchange.
Sept. 17.	Va. 6's Reg., long dates	180		Richmond Dispatch, Richmond Exchange.
Sept. 17.	Va. Coupon Bonds	425		Richmond Dispatch, Richmond Exchange.
Sept. 23.	Va. 6's	58½		New York Times, New York Exchange.
Sept. 28.	Va. 6's	60½		New York Times, New York Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1863 Oct.	1. Va. 6's Reg., long dates....	185	187½	Richmond Dispatch, Richmond Exchange.
Oct.	1. Va. Coupon Bonds.....	425		Richmond Dispatch, Richmond Exchange.
Oct.	6. Va. 6's.....	65⅛		New York Times, New York Exchange.
Oct.	21. Va. 6's.....	59¾		New York Times, New York Exchange.
Oct.	23. Va. 6's.....	57		New York Times, New York Exchange.
Oct.	23. Va. 6's Reg., long dates....	200		Richmond Dispatch, Richmond Exchange.
Oct.	23. Va. 6's Reg., overdue.....	172		Richmond Dispatch, Richmond Exchange.
Oct.	23. Va. 6's Coupon Bonds.....	420	425	Richmond Dispatch, Richmond Exchange.
1863 Oct.	30. Va. 6's.....	206		Richmond Dispatch, Richmond Exchange.
Nov.	6. Va. 6's.....	206		Richmond Dispatch, Richmond Exchange.
Nov.	6. Va. 6's.....	55		New York Times, New York Exchange.
Nov.	13. Va. 6's Reg., long dates....	239		Richmond Dispatch, Richmond Exchange.
Nov.	13. Va. 6's.....	54		New York Times, New York Exchange.
Nov.	13. Va. 6's Reg., overdue.....	205		Richmond Dispatch, Richmond Exchange.
Nov.	13. Va. 6's Coupons with interest	430		Richmond Dispatch, Richmond Exchange.
Nov.	13. Va. 6's Cous., without int..	410		Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's Reg., 1891-94.....	253		Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's Reg., 1890.....	255		Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's Reg.....	257		Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's Reg., past due.....	197	198	Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's.....	53		New York Times, New York Exchange.
Nov.	27. Va. Coupon Bonds.....	446	448	Richmond Dispatch, Richmond Exchange.
Nov.	27. Va. 6's Reg.....	250	257	Richmond Dispatch, Richmond Exchange.
Nov.	30. Va. 6's.....	55		New York Times, New York Exchange.
Dec.	3. Va. 6's.....	55		New York Times, New York Exchange.
Dec.	4. Va. 6's Reg.....	225 & Int.		Richmond Dispatch, Richmond Exchange.
Dec.	4. Va. Coupon Bonds.....	475		Richmond Dispatch, Richmond Exchange.

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1871	Mar. 30. Va. 6's, New	72½		Richmond Dispatch, New York Exchange, Mar. 29.
	Mar. 30. Va. 6's, Old	53⅞	55	Richmond Dispatch, Baltimore Exchange, Mar. 29.
	Mar. 30. Va. 66's	70	72	Richmond Dispatch, Baltimore Exchange, Mar. 29.
	Mar. 30. Va. 67's	65	66½	Richmond Dispatch, Baltimore Exchange, Mar. 29.
	Mar. 31. Va. 6's, Old	70½		Richmond Dispatch, New York Exchange, Mar. 30.
	Mar. 31. Va. 6's, New	71		Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Mar. 31. Va. 6's, Old	55½	55⅞	Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Mar. 31. Va. 66's	70	70⅝	Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Mar. 31. Va. 67's	65		Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Mar. 31. Va. Coupons, Old	69	70	Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Mar. 31. Va. Coupons, New	70	71	Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Apr. 1. Va. 6's, Old	73½		Richmond Dispatch, New York Exchange, Mar. 31.
	Apr. 1. Va. 6's, New	71¼		Richmond Dispatch, New York Exchange.
	Apr. 3. Va. 6's, Old	73		Richmond Dispatch, New York Exchange, Apr. 1.
	Apr. 3. Va. 6's, New	73		Richmond Dispatch, New York Exchange, Apr. 1.
	Apr. 14. Va. 6's, Old	70		Richmond Dispatch, New York Exchange.
	Apr. 14. Va. 6's, New	72		Richmond Dispatch, New York Exchange.
	May 18. Va. 6's, Old	68		Richmond Dispatch, New York Exchange.
	May 18. Va. 6's, New	72		Richmond Dispatch, New York Exchange.
	June 22. Va. 6's, Old	67		Richmond Dispatch, New York Exchange.
	June 22. Va. 6's, New	72½		Richmond Dispatch, New York Exchange.
	Aug. 31. Va. 6's, Old	62		Richmond Dispatch, New York Exchange.
	Aug. 31. Va. 6's, New	70		Richmond Dispatch, New York Exchange.
	Sept. 7. Va. 6's, Old	60¼		Richmond Dispatch, New York Exchange.
	Sept. 7. Va. 6's, New	70		Richmond Dispatch, New York Exchange.
	Oct. 6. Va. 6's, Old	61½		Richmond Dispatch, New York Exchange.
	Oct. 6. Va. 6's, New	68		Richmond Dispatch, New York Exchange.
	Dec. 29. Va. 6's, Old	56		Richmond Dispatch, New York Exchange.
	Dec. 29. Va. 6's, New	55½		Richmond Dispatch, New York Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1872 Mar. 27.	Va. 6's, Old	54⅛		Richmond Dispatch, New York Exchange.
Mar. 27.	Va. 6's, New	55		Richmond Dispatch, New York Exchange.
Mar. 28.	Va. 6's, Old	55		Richmond Dispatch, New York Exchange.
Mar. 28.	Va. 6's, New	55		Richmond Dispatch, New York Exchange.
June 28.	Va. 6's, Old	43		Richmond Dispatch, New York Exchange.
June 28.	Va. 6's, New	48		Richmond Dispatch, New York Exchange.
Nov. 30.	Va. 6's, Old	48		Richmond Dispatch, New York Exchange.
Nov. 30.	Va. 6's, New	52		Richmond Dispatch, New York Exchange.
Nov. 30.	Va. 6's, Consols	55		Richmond Dispatch, New York Exchange.
1874 Jan. 11.	Va. Consols	51¾		Richmond Dispatch, Richmond Exchange.
Jan. 11.	Va. Consols, New	35¾		Richmond Dispatch, Richmond Exchange.
Jan. 11.	Va. Deferred	11	11½	Richmond Dispatch, Richmond Exchange.
Jan. 11.	Interest Certificates	15	20	Richmond Dispatch, Richmond Exchange.
Jan. 11.	Va. Tax Rec. Coup	84	84½	Richmond Dispatch, Richmond Exchange.
Jan. 11.	Va. 6's, Old	30		Richmond Dispatch, Baltimore Exchange.
Jan. 11.	Va. Consolidated	54¾		Richmond Dispatch, Baltimore Exchange.
Jan. 11.	Ex. Coupons	49		Richmond Dispatch, Baltimore Exchange.
Jan. 30.	Va. Consols	53		Richmond Dispatch, Richmond Exchange.
Jan. 30.	Va. Deferred	10¾		Richmond Dispatch, Richmond Exchange.
Jan. 30.	Va. Coupons	76¼		Richmond Dispatch, Richmond Exchange.
Jan. 30.	Va. 6's, Old	40		Richmond Dispatch, Richmond Exchange.
Jan. 30.	Va. Consols	52¾		Richmond Dispatch, Baltimore Exchange.
July 29.	Va. Consols, New		34	Richmond Dispatch, Richmond Exchange.
July 29.	Interest Cert. (Black Scrip)	30	34	Richmond Dispatch, Richmond Exchange.
July 30.	Va. Consols	52	53	Richmond Dispatch, Richmond Exchange.
July 30.	Va. Deferred	9¾	10¼	Richmond Dispatch, Richmond Exchange.
July 30.	Va. Tax Rec. Coup	30	30½	Richmond Dispatch, Richmond Exchange.
Dec. 4.	Va. Consols	54		Richmond Dispatch, Richmond Exchange.

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1874 Dec.	4. Va. Consols, New.....	41	43	Richmond Dispatch, Richmond Exchange.
Dec.	4. Va. Deferred.....	10	11	Richmond Dispatch, Richmond Exchange.
Dec.	4. Va. Tax Rec. Coup.....	91	92	Richmond Dispatch, Richmond Exchange.
Dec.	4. Va. Consols.....	54⅝		Richmond Dispatch, Baltimore Exchange.
Dec.	11. Va. 6's, Peelers.....	42		Richmond Dispatch, Baltimore Exchange.
Dec.	11. Va. 6's, Peelers, Old.....	38		Richmond Dispatch, Baltimore Exchange.
1884 Jan.	11. Va. 6's.....	40		Richmond Dispatch, New York Exchange.
Jan.	11. Va. 6's, Consols.....	40		Richmond Dispatch, New York Exchange.
Jan.	11. Va. Deferred.....	8		Richmond Dispatch, New York Exchange.
Jan.	11. Va. 10-40's, J. & J.....	35		Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. Peelers, J. & J.....	42		Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. 3's, New.....	57	57 1-2	Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. Consol tax, rec. coup., 1882	61	61½	Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. tax rec. coup., 1883...	50	55	Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. 10-40 coup., 1882.....	61	62	Richmond Dispatch, Richmond Exchange.
Jan.	11. 10-40s coup., 1883.....	47½	55	Richmond Dispatch, Richmond Exchange.
July	7. Va. 6's.....	30		Richmond Dispatch, New York Exchange.
July	8. Va. 10-40's, 1879.....	33		Richmond Dispatch, Richmond Exchange.
July	8. Va. Consols, 1871.....	33	35	Richmond Dispatch, Richmond Exchange.
July	8. Va. Peelers, 1872.....	37		Richmond Dispatch, Richmond Exchange.
July	8. New 3's, Riddleberger.....	52	52½	Richmond Dispatch, Richmond Exchange.
1884 July	9. Va. 6's.....	30		Richmond Dispatch, New York Exchange.
July	9. Va. Consols.....	32½		Richmond Dispatch, New York Exchange.
Dec.	4. Va. 6's.....	40		Richmond Dispatch, New York Exchange.
Dec.	4. Va. Consols.....	35¼		Richmond Dispatch, New York Exchange.
Dec.	4. Va. 10-40's.....	32½		Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1884 Dec. 4.	Va. Consols	38		Richmond Dispatch, Richmond Exchange.
Dec. 4.	Va. Peelers	39		Richmond Dispatch, Richmond Exchange.
Dec. 4.	Va. New 3's	52¾	53	Richmond Dispatch, Richmond Exchange.
Dec. 4.	Va. Consol tax rec. coup., 1882	53		Richmond Dispatch, Richmond Exchange.
Dec. 4.	Va. Consols, 1883	33½	35	Richmond Dispatch, Richmond Exchange.
Dec. 4.	Va. 10-40's, 1883	52¼		Richmond Dispatch, Richmond Exchange.
87 June 4.	Va. 6's	48		Richmond Dispatch, New York Exchange, June 3.
June 4.	Va. Consols		55	Richmond Dispatch, New York Exchange, June 3.
June 4.	Va. 6's, Consols	50		Richmond Dispatch, Richmond Exchange, June 3.
June 4.	Va. 6's, Peelers	42		Richmond Dispatch, Richmond Exchange, June 3.
June 4.	Va. 3-4-5-10-40's	40		Richmond Dispatch, Richmond Exchange, June 3.
June 4.	Va. 3's, New	65	65¼	Richmond Dispatch, Richmond Exchange, June 3.
June 4.	Va. Consol Coup., Old	65		Richmond Dispatch, Richmond Exchange, June 3.
June 4.	Va. Consol Coup., 7-83			Richmond Dispatch, Richmond Exchange, June 3.
June 4.	Va. Consol Coup., 1-85	30		Richmond Dispatch, Richmond Exchange, June 5.
June 5.	Va. 6's, Consols	50		Richmond Dispatch, Richmond Exchange, June 4.
June 5.	Va. 6's, Peelers	42		Richmond Dispatch, Richmond Exchange, June 4.
June 5.	Va. 3-4-5-10-40's	40		Richmond Dispatch, Richmond Exchange, June 4.
June 5.	Va. 3's, New	64¾	65¼	Richmond Dispatch, Richmond Exchange, June 4.
June 5.	Va. Consols coup., Old	65		Richmond Dispatch, Richmond Exchange, June 4.
June 5.	Va. 3's, New	65		Richmond Dispatch, Baltimore Exchange, June 5.
June 7.	Va. 6's	48		Richmond Dispatch, New York Exchange, June 5.
June 7.	Va. Consols	55		Richmond Dispatch, New York Exchange, June 5.
June 7.	Va. 6's, Consols with coup.	56		Richmond Dispatch, Baltimore Exchange, June 5.
June 7.	Va. 6's, 10-40's with coups.	40		Richmond Dispatch, Baltimore Exchange, June 5.
June 7.	Va. 6's, past due coupons	64		Richmond Dispatch, Baltimore Exchange, June 5.
June 7.	Va. 6's, Consols	50		Richmond Dispatch, Baltimore Exchange, June 5.
June 7.	Va. 6's, Peelers	42		Richmond Dispatch, Richmond Exchange, June 5.
June 7.	Va. 3-4-5 10-40's	40		Richmond Dispatch, Richmond Exchange, June 5.
June 7.	Va. 3's, New	65	65¼	Richmond Dispatch, Richmond Exchange, June 5.
June 7.	Va. Consol. coup., Old	65		Richmond Dispatch, Richmond Exchange, June 5.

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

		Farmers' Bank of Va.	Exchange Bank.	Bank of Virginia.
1860	Nov. 2	102	105½	70
	Nov. 9	102	104½	70
	Nov. 16	100	104½	70
	Nov. 23	100	100	70
	Nov. 30	99		70
	Dec. 7	99	101	70
	Dec. 14	100		70
1861	Jan. 4	100	101	70
	Jan. 18	99	100	68
	Jan. 25	99	100	68
	Feb. 1	99	100	70
	Feb. 8	99	99½	70
	Feb. 15	98½	99½	68
	Feb. 22	98	100	68
	Mar. 1	97	100	68
1863	Jan. 7	102	102	72
	Jan. 21	105	102	72
	Jan. 29	105	102	72
	Feb. 7	107½	125	78
	Feb. 14	107½	125	80½
	Feb. 18	107½		87
	Mar. 14	111		87½
				90

*All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

Farmers' Bank of Va.

1863	Mar.	17	111
	Apr.	8	131
	Apr.	18	128
	Apr.	22	122
	May	20	125
	May	27	125
	July	29	150
	Aug.	12	152
	Aug.	27	150
	Sept.	1	150
	Sept.	3	150
	Sept.	18	150
	Oct.	1	150

Exchange Bank.

Bank of Virginia.

1863	Aug.	27	105
	Sept.	1	105
	Sept.	3	105
	Sept.	18	111
	Oct.	1	111
	Nov.	27	122-128
	Dec.	4	122
	Dec.	18	129
	Dec.	25	130

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations and pubtations and published in the Richmond Dispatch.

ORANGE & ALEXANDRIA RAILROAD COMPANY

Bonds

			6% Bonds.		8% Bonds.		
1860	Nov.	2	81	& Int.	92	& Int.	Richmond Dispatch, Richmond Exchange.
	Nov.	9	81	& Int.	92	& Int.	Richmond Dispatch, Richmond Exchange.
	Nov.	16	90	& Int.	81	& Int.	Richmond Dispatch, Richmond Exchange.
	Nov.	23			81	& Int.	Richmond Dispatch, Richmond Exchange.
	Nov.	30			90		Richmond Dispatch, Richmond Exchange.
	Dec.	14			90		Richmond Dispatch Richmond Exchange.

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

ORANGE AND ALEXANDRIA RAILROAD COMPANY—(Continued)

		6% Bonds.	8% Bonds.	
1861	Jan. 4		90	Richmond Dispatch, Richmond Exchange.
	Jan. 25 75		87½	Richmond Dispatch, Richmond Exchange.
	Feb. 1 75		87½	Richmond Dispatch, Richmond Exchange
	Feb. 8 75		87½	Richmond Dispatch, Richmond Exchange.
	Feb. 15 75		87½	Richmond Dispatch, Richmond Exchange.
	Feb. 22 75		87½	Richmond Dispatch, Richmond Exchange.
	Mar. 1 75		87½	Richmond Dispatch, Richmond Exchange.
	Mar. 17 102	& Int.	102 & Int.	Richmond Dispatch, Richmond Exchange.
1863	Apr. 8 102			Richmond Dispatch, Richmond Exchange.
	May 22		110 & Int.	Richmond Dispatch, Richmond Exchange.
	May 27 110	& Int.	110 & Int.	Richmond Dispatch, Richmond Exchange
	June 5 105	& Int.	110 & Int.	Richmond Dispatch, Richmond Exchange.
	June 10 105	& Int.	110 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov. 20 230			Richmond Dispatch, Richmond Exchange.
	Nov. 27 235			Richmond Dispatch, Richmond Exchange.
	Dec. 4 245			Richmond Dispatch, Richmond Exchange.
	Dec. 11 264			Richmond Dispatch, Richmond Exchange.
	Dec. 18 250			Richmond Dispatch, Richmond Exchange.
	Dec. 25 250			Richmond Dispatch, Richmond Exchange.

Stocks

1863	Apr. 18 ..... 27½	Richmond Dispatch, Richmond Exchange.
	Aug. 12 ..... 27½	Richmond Dispatch, Richmond Exchange.
	Nov. 20 56	Richmond Dispatch, Richmond Exchange

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

CHESAPEAKE & OHIO CANAL COMPANY

Bonds

				Bid.	
1863	July 22.	Guaranteed	Bonds.....	150	Richmond Dispatch, Richmond Exchange.
	Dec. 11.	Guaranteed	Bonds.....	246 & Int.	Richmond Dispatch, Richmond Exchange.

MANASSAS GAP RAILROAD COMPANY

Bonds

				Bid.	Asked.	
1860	Nov. 2.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
	Nov. 9.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
	Nov. 16.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
	Nov. 23.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
	Nov. 30.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
1862	Apr. 3.	6%	Bonds.....	58		Richmond Dispatch, Richmond Exchange.
	Nov. 20.	6%	Bonds.....	150		Richmond Dispatch, Richmond Exchange.
	Nov. 27.	6%	Bonds.....	142		Richmond Dispatch, Richmond Exchange.

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

RICHMOND & DANVILLE RAILROAD COMPANY

Bonds

		Bid.	Asked.	
1863	June 16.	133	137½	Richmond Dispatch, Richmond Exchange.
	July 22.	171		Richmond Dispatch, Richmond Exchange.
	July 29.	189	191	Richmond Dispatch, Richmond Exchange.
	Aug. 13.	210½		Richmond Dispatch, Richmond Exchange.
	Aug. 27.	225		Richmond Dispatch, Richmond Exchange.
	Nov. 13.	233	235	Richmond Dispatch, Richmond Exchange.
	Dec. 4.	243		Richmond Dispatch, Richmond Exchange.
	Dec. 18.	250		Richmond Dispatch, Richmond Exchange.
	Dec. 25.	250		Richmond Dispatch, Richmond Exchange.

Stocks

1860	Nov. 2.	60
	Nov. 9.	60
	Nov. 16.	60
	Dec. 14.	58
1861	Jan. 18.	57
	Jan. 25.	57
	Feb. 1.	57
	Feb. 8.	57
	Feb. 15.	57
	Feb. 22.	57
	Mar. 1.	55

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations and published in the Richmond Dispatch.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

RICHMOND AND DANVILLE RAILROAD COMPANY, BONDS—Continued.

		Bid.	Asked.
1863	Feb. 14.	105½	
	Apr. 22.	120	
	May 16.	121	
	May 27.	125	
	June 5.	125	
	June 10.	125	

All th eforegoing quotations on this and preceding page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

RICHMOND & YORK RIVER RAILROAD COMPANY

Bonds

		8% Bonds.	
1860	Nov. 2.	90	Richmond Dispatch, Richmond Exchange.
	Nov. 9.	90 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov. 23.	90	Richmond Dispatch, Richmond Exchange.
1863	May 22.	110 & Int.	Richmond Dispatch, Richmond Exchange.
	May 27.	110 & Int.	Richmond Dispatch, Richmond Exchange.
	July 24.	130 & Int.	Richmond Dispatch, Richmond Exchange.
	Aug. 12.	161 & Int.	Richmond Dispatch, Richmond Exchange.
	Aug. 27.	160 & Int.	Richmond Dispatch, Richmond Exchange
	Nov. 27.	174 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 4.	220 & Int.	Richmond Dispatch, Richmond Exchange.

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

RICHMOND AND YORK RIVER RAILROAD COMPANY—(Continued)

Stocks

1863	Mar. 14	50
	Apr. 22	48
	May 16	50
	June 12	50
	Aug. 27	77
	Sept. 1	77

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

SOUTHSIDE RAILROAD COMPANY

Bonds

1860	Nov. 9	60	Guaranteed	90	Richmond Dispatch,	Richmond Exchange.
	Nov. 16	60	Guaranteed	88	Richmond Dispatch,	Richmond Exchange.
	Dec. 14		Guaranteed	88	Richmond Dispatch,	Richmond Exchange.
1861	Jan. 4		Guaranteed	88	Richmond Dispatch,	Richmond Exchange.
	Jan. 29		Guaranteed	125	Richmond Dispatch,	Richmond Exchange.

VIRGINIA CENTRAL RAILROAD COMPANY

Bonds

		1st Mortgage.	2nd Mortgage.		
1860	Nov. 2	85 & Int.	82½ & Int.	Richmond Dispatch,	Richmond Exchange.
	Nov. 9	85 & Int.	82½ & Int.	Richmond Dispatch,	Richmond Exchange.
	Nov. 16	85 & Int.	82½ & Int.	Richmond Dispatch,	Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

VIRGINIA CENTRAL RAILROAD COMPANY, BONDS—(Continued)

		1st Mortgage.	2nd Mortgage.	
1861	Jan. 4	84		Richmond Dispatch, Richmond Exchange.
	Jan. 25	84		Richmond Dispatch, Richmond Exchange.
	Feb. 1	85	78	Richmond Dispatch, Richmond Exchange.
	Feb. 8	85	78	Richmond Dispatch, Richmond Exchange.
	Feb. 22	85	78	Richmond Dispatch, Richmond Exchange.
	Mar. 1	85		Richmond Dispatch, Richmond Exchange.
1862	Feb. 14	112 & Int.	112 & Int.	Richmond Dispatch, Richmond Exchange.
	Feb. 18	112 & Int.	112 & Int.	Richmond Dispatch, Richmond Exchange.
	May 16	125		Richmond Dispatch, Richmond Exchange.
	May 20	130		Richmond Dispatch, Richmond Exchange.
	May 27	130		Richmond Dispatch, Richmond Exchange.
	June 27		132 & Int.	Richmond Dispatch, Richmond Exchange.
	Sept. 1	231 & Int.		Richmond Dispatch, Richmond Exchange.
	Aug. 27	231 & Int.		Richmond Dispatch, Richmond Exchange.
	Nov. 20	245		Richmond Dispatch, Richmond Exchange.
	Nov. 20	210 (6% Dividend Bonds)		Richmond Dispatch, Richmond Exchange.
	Dec. 4		270 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 11		264 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 18		262 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 15		262 & Int.	Richmond Dispatch, Richmond Exchange.

Stocks

1860	Nov. 2	50	1861	Jan. 4	50	1863	Jan. 21 75
	Nov. 9	50		Jan. 11	47½		Jan. 29 75
	Nov. 16	50		Jan. 18	47½		Apr. 18 100½-101½
	Dec. 14	50		Jan. 25	47½		May 2 94

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

VIRGINIA CENTRAL RAILROAD COMPANY, STOCKS—(Continued)

Feb.	8	47½	June	5	100
Feb.	15	47½	July	22	116
Feb.	22	47½	July	24	107
Mar.	1	45	Aug.	27	119
			Sept.	1	119
			Nov.	27	156

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

VIRGINIA & TENNESSEE RAILROAD COMPANY

Bonds

		1st M'g.	2d Mtg	3d Mtg	
1860	Nov. 9	85 & Int.	81 & Int.	85 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov. 16	85 & Int.	81 & Int.	85 & Int.	Richmond Dispatch, Richmond Exchange.
1863	Mar. 14		111 & Int.		Richmond Dispatch, Richmond Exchange.
	Apr. 22		120		Richmond Dispatch, Richmond Exchange.
	May 2		121-123½		Richmond Dispatch, Richmond Exchange.
	May 22			110 & Int.	Richmond Dispatch, Richmond Exchange.
	May 27			110 & Int.	Richmond Dispatch, Richmond Exchange.
	July 24		156 & Int.	131 & Int.	Richmond Dispatch, Richmond Exchange.
	Sept. 17		231 & Int.	170 & Int.	Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

VIRGINIA AND TENNESSEE RAILROAD COMPANY, BONDS—(Continued)

	1st Mtg.	2d Mtg.	3d Mtg.	
Oct. 1	.....	231 & Int.	170 & Int.	Richmond Dispatch, Richmond Exchange.
Nov. 20	.....	242		Richmond Dispatch, Richmond Exchange.
Dec. 4	.....	242 & Int.		Richmond Dispatch, Richmond Exchange.

Stocks

1863 July 24. 115
Sept. 3.....135

James River & Kanawha Co.

1860	Nov. 2	18½
	Nov. 9	18½
	Nov. 16	18½
	Dec. 14	18½
1861	Mar. 1	18

Richmond & Petersburg R. R. Co.

1860	Nov. 2	64
	Nov. 9	64
	Nov. 16	64
	Dec. 14	64
1861	Jan. 4	64
	Jan. 25	60
	Feb. 1	60
	Feb. 8	60
	Feb. 15	60
	Feb. 22	60
	Mar. 1	57½

Richmond, Fredericksburg & Potomac R. R. Co.

1860	Nov. 2	80
	Nov. 9	80
	Dec. 14	76½
1861	Jan. 4	76½
	Jan. 11	77
	Jan. 18	77
	Jan. 25	77
	Feb. 1	77
	Feb. 8	77
	Feb. 15	77
	Mar. 1	78

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

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PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

STOCKS—(Continued)

James River & Kanawha Co.

1863	Apr. 8	19
	Apr. 18	20½
	Apr. 22	19
	May 2	20
	June 16	22
	June 27	22
	June 30	22
	July 24	22
	Aug. 27	20
	Sept. 1	20
	Sept. 3	20

Richmond & Petersburg R. R. Co.

1863	June 5	140
	June 10	140

Richmond, Fredericksburg & Potomac R. R. Co.

1863	Apr. 22	105
	May 27	110
	Aug. 12	155

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

PLAINTIFF'S REVISED EXHIBIT No. 2.

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between November 2, 1860, and March 2, 1861

Date of Newspaper. 1860		Bid.	Asked.	Sales.	At	Date.
Nov.	2—Virginia 6's	86	86⅛	1,000	86	Nov. 1, 1860
	2—Virginia 6's	82	84	5,000	86¼	1, 1860
	3—Virginia 6's	80	82	3,000	86¼	2, 1860
	3—Virginia 6's	86⅛	87	4,000	86⅛	2, 1860
	3—Virginia 6's	80	82	16,000	90	3, 1860
	9—Virginia 6's	88	89½	4,000	88½	9, 1860
	10—Virginia 6's	88¼	88⅛	4,000	88	9, 1860
	16—Virginia 6's	85	86	5,000	86	15, 1860
	16—Virginia 6's	7		2,000	85	15, 1860
	16—Virginia 6's	1		1,000	85	15, 1860
	17—Virginia 6's	84½	85	10,000	85	16, 1860
	17—Virginia 6's			500	86	16, 1860
	18—Virginia 6's	76		10,500	80	17, 1860
	18—Virginia 6's			500	80	17, 1860
	18—Virginia 6's			2,000	77	17, 1860
	24—Virginia 6's	80	80½	1,000	81	23, 1860
	24—Virginia 6's			6,000	80	23, 1860
	23—Virginia 6's	82	82½	1,000	82	22, 1860
	25—Virginia 6's	81	81¼	3,000	81	24, 1860
Dec.	1—Virginia 6's	79	79¼	1,000	78½	30, 1860
	1—Virginia 6's			4,000	79	30, 1860
	1—Virginia 6's			4,000	79¼	30, 1860
	1—Virginia 6's			10,000	79	30, 1860

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between November 2, 1860, and March 2, 1861.

Date of Newspaper.		Bid.	Asked.	Sales.	At	Date.
1860						
Dec.	2—Virginia 6's			1,000	80½	Dec. 1, 1860
	2—Virginia 6's			8,000	80⅛	1, 1860
	7—Virginia 6's			8,000	76	6, 1860
	8—Virginia 6's			3,000	74	7, 1860
	8—Virginia 6's			15,000	74	7, 1860
	9—Virginia 6's			1,000	75	8, 1860
	14—Virginia 6's			No sales reported.		8, 1860
	15—Virginia 6's			1,000	79⅛	14, 1860
	15—Virginia 6's			4,000	78⅛	14, 1860
	16—Virginia 6's			1,000	74⅛	15, 1860
	16—Virginia 6's			2,000	74¼	15, 1860
	16—Virginia 6's			5,000	74	15, 1860
1861						
Jan.	5—Virginia 6's	76	77	1,000	76½	Jan. 3, 1861
	5—Virginia 6's			5,000	77	3, 1861
	12—Virginia 6's	75	75¼	3,000	75⅛	11, 1861
	19—Virginia 6's	75½	76	1,000	76	18, 1861
	26—Virginia 6's	76	77	2,000	76½	25, 1861
	26—Virginia 6's			3,000	76	25, 1861
Feb.	2—Virginia 6's	72	74¼	10,000	75	Feb. 1, 1861
	9—Virginia 6's	74	74½	5,000	74	8, 1861
	16—Virginia 6's	76	76½	3,000	75¼	15, 1861
	16—Virginia 6's			2,000	76¼	15, 1861
	23—Virginia 6's	75½	76	1,000	75⅛	22, 1861

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between November 2, 1860, and March 2, 1861.

Date of Newspaper. 1861	Bid.	Asked.	Sales.	At	Date.
Feb. 23—Virginia 6's			2,000	75¼	Feb. 22, 1861
Mar. 2—Virginia 6's	78	79½	23,500	81	Mar. 1, 1861
2—Virginia 6's			1,000	80½	1, 1861
BETWEEN JANUARY 4, 1862, AND OCTOBER 31, 1862.					
1862					
Jan. 4—Virginia 6's			2,000	62	Jan. 3, 1862
6—Virginia 6's			2,000	62	5, 1862
7—Virginia 6's	62½	63	2,000	62½	6, 1862
8—Virginia 6's	62	63½	No sales.		6, 1862
21—Virginia 6's			1,000	65½	20, 1862
22—Virginia 6's	65¾	66	No sales.		21, 1862
23—Virginia 6's			6,000	68	22, 1862
25—Virginia 6's	69	70	4,000	70	24, 1862
30—Virginia 6's			2,000	72	29, 1862
31—Virginia 6's			4,000	72½	30, 1862
Feb. 1—Virginia 6's			2,500	71	31, 1862
8—Virginia 6's	73	74	3,000	73	Feb. 7, 1862
14—Virginia 6's			No sales reported, but weekly average	73	
20—Virginia 6's			2,000	71½	Feb. 19, 1862
21—Virginia 6's			No sales reported, but weekly average	73	

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between March 1, 1863, and December 31, 1863.

MARCH AND APRIL FILE MISSING.
(See New York Times quotations and sales for these two months.)

Date of Newspaper. 1863	Bid.	Asked.	Sales.	At	Date.
May 3—Virginia 6's			4,000	65	May 2, 1863
20—Virginia 6's	67	69	3,000	68	19, 1863
21—Virginia 6's			5,000	66	20, 1863
22—Virginia 6's			1,500	66	20, 1863
22—Virginia 6's			14,000	65	21, 1863
27—Virginia 6's	66		4,000	66	26, 1863
June 2—Virginia 6's			1,000	66½	June 1, 1863
6—Virginia 6's			2,000	68½	5, 1863
12—Virginia 6's	53		No sales reported.		
17—Virginia 6's			5,000	66½	June 16, 1863
26—Virginia 6's			7,000	66½	25, 1863
July 16—Virginia 6's			5,000	61	July 15, 1863
22—Virginia 6's	61		No sales reported.		
25—Virginia 6's			1,000	61	July 24, 1863
28—Virginia 6's			10,000	61	27, 1863
29—Virginia 6's			4,000	61¼	28, 1863
31—Virginia 6's			15,000	61¼	30, 1863
Aug. 8—Virginia 6's	61	64	No sales reported.		
12—Virginia 6's			5,000	61	Aug. 11, 1863
18—Virginia 6's			500	61	17, 1863
28—Virginia 6's			6,000	62	27, 1863

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between March 1, 1863, and December 31, 1863.

Date of Newspaper. 1863	Bid.	Asked.	Sales.	At	Date.
Aug. 29—Virginia 6's			2,000	62	Aug. 28, 1863
29—Virginia 6's			5,000	60	28, 1863
Sept. 19—Virginia 6's	58	60	No sales reported.		
21—Virginia 6's			Sales aveage for week 9-19-63	59	
24—Virginia 6's			1,000	58½	Sept. 23, 1863
29—Virginia 6's			3,000	60½	28, 1863
Oct. 3—Virginia 6's	60	62	No sales reported.		
7—Virginia 6's	58	62	5,000	68½	Oct. 6, 1863
22—Virginia 6's			1,000	59¾	21, 1868
23—Virginia 6's			4,000	58	22, 1863
24—Virginia 6's	56	57	3,000	55	23, 1863
31—Virginia 6's	55	55½	1,000	55	30, 1863

NOVEMBER AND DECEMBER FILES MISSING.
(See New York Times quotations and sales for these two months.)

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES BY THE NEW YORK TIMES,

As New York Stock Exchange Quotations and Sales during March and April, 1863, and November and December, 1863.

Date of Newspaper. 1863		Bid.	Asked.	Sales.	At	Date.
Mar.	2—Virginia 6's.	No quotations.		2,000	69½	Feb. 28, 1863
	2—Virginia 6's.	No quotations.		500	68	28, 1863
	3—Virginia 6's.	No quotations.		2,000	69	Mar. 2, 1863
	3—Virginia 6's.	No quotations.		3,000	69¼	2, 1863
	5—Virginia 6's.	No quotations.		1,000	69¼	4, 1863
	11—Virginia 6's.	No quotations.		1,000	68	10, 1863
	13—Virginia 6's.	No quotations.		5,500	67	12, 1863
	14—Virginia 6's.	No quotations.		5,000	65½	13, 1863
	17—Virginia 6's.	No quotations.		2,000	66	16, 1863
	23—Virginia 6's.	No quotations.		21,000	65	22, 1863
	23—Virginia 6's.	No quotations.		2,000	65	22, 1863
	26—Virginia 6's.	No quotations.		7,000	63	25, 1863
	27—Virginia 6's.	No quotations.		7,000	63	26, 1863
Apr.	1—Virginia 6's.	No quotations.		5,000	62½	31, 1863
	1—Virginia 6's.	No quotations.		500	62	31, 1863
	6—Virginia 6's.	No quotations.		2,000	66	Apr. 5, 1863
	7—Virginia 6's.	No quotations.		2,000	66	6, 1863
	10—Virginia 6's.	No quotations.		2,000	63	9, 1863
	11—Virginia 6's.	No quotations.		2,000	63	10, 1863
	15—Virginia 6's.	No quotations.		1,000	65	14, 1863
	18—Virginia 6's.	No quotations.		4,000	62	17, 1863
	21—Virginia 6's.	No quotations.		4,000	64	20, 1863
Nov.	1—Virginia 6's.	No quotations.		1,000	55½	Oct. 31, 1863

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES BY THE NEW YORK TIMES,

As New York Stock Exchange Quotations and Sales during March and April, 1863, and November and December, 1863.

Date. 1863	Bonds.	Reported by	Quantity. Sales.	Bid.	Asked.	Quoted.
Nov. 7	Virginia ½'s.	No quotations.	1,000		55	Nov. 6, 1863
8	Virginia 6's.	No quotations.	2,000		55	7, 1863
12	Virginia 6's.	No quotations.	2,500		52	11, 1863
14	Virginia 6's.	No quotations.	500		54	12, 1863
21	Virginia 6's.	No quotations.	3,000		53	20, 1863
Dec. 1	Virginia 6's.	No quotations.	7,000		55	30, 1863
2	Virginia 6's.	No quotations.	5,000		55	Dec. 1, 1863
2	Virginia 6's.	No quotations.	5,000		54	1, 1863
3	Virginia 6's.	No quotations.	2,000		55	2, 1863
4	Virginia 6's.	No quotations.	1,000		55	3, 1863
9	Virginia 6's.	No quotations.	2,000		55	8, 1863
14	Virginia 6's.	No quotations.	2,000		54	12, 1863
21	Virginia 6's.	No quotations.	10,500		49	19, 1863
25	Virginia 6's.	No quotations.	1,000		49	24, 1863

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch from November 2, 1860 *to March* 1, 1861, *and from January* 3, 1863, *to December* 25, 1863.

Date.	Bonds.	Reported by.	Quantity.	Sales.	B'd.	Asked.	Quoted.
1860							
Nov. 2	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	89			
9	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	88			
16	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	88			
23	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	80			
30	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	86			
Dec. 7	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	84			
14	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	82½			
14	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	84			
1861							
Jan. 4	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	80			
11	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	78			
11	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	80			
18	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	78½			
18	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	80			
25	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	81			
Feb. 1	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	81			
8	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	79			
15	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	81			
22	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	81			
Mar. 1	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	82			
1863							
Jan. 2	Va. 6's Reg.	Unknown.					110
7	Va. 6's Reg.	Unknown.					110
21	Va. 6's Reg.	Unknown.					110
29	Va. 6's Reg.	Unknown.					110

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch from November 2, 1860 *to March* 1, 1861, *and from January* 3, 1863, *to December* 25, 1863.

Date. 1863	Bonds.	Reported by.	Quantity.	Sales.	Bid.	Asked.	Quoted.
Feb.	7—Va. 6's Reg.	Unknown.					108
	14—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	108			
	18—Va. 6's Reg.	Unknown.	Not given.	106½			
	21—Va. 6's Reg.	Unknown.	Not given.	106			
	25—Va. 6's Reg.	Unknown.					106
Mar.	14—Va. 6's Reg.	Unknown.					106
	17—Va. 6's Reg.	Unknown.					108
	28—Va. 6's Reg.	Unknown.					112
Apr.	8—Va. 6's Reg.	Davenport & Co.			112	114	
	13—Va. 6's Reg.	Lancaster & Co.			112	113	
	22—Va. 6's Reg.	Unknown.					112
	29—Va. 6's Reg.	Unknown.					112 & Int.
May	2—Va. 6's Reg.	Davenport & Co.			111¼	111½	
	16—Va. 6's Reg.	Davenport & Co.			112		
	20—Va. 6's Reg.	Unknown.			112 & Int.		
	23—Va. 6's Reg.	Unknown.					112 & Int.
	27—Va. 6's Reg.	Lancaster & Co.	Not given.	112			
	28—Va. 6's Reg.	Unknown.					112 & Int.
June	5—Va. 6's Reg.	Unknown.					113
	10—Va. 6's Reg.	Unknown.					115
	12—Va. 6's Reg.	Unknown.	Not given.	115			
	16—Va. 6's Reg.	Davenport & Co.	Not given.	130½			
	27—Va. 6's Reg.	Unknown.					131
	30—Va. 6's Reg.	Unknown.					131

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS.

Reported in the Richmond Dispatch from November 2, 1860 to March 1, 1861, and from January 3, 1863 to December 25, 1863.

Date.	Bonds.	Reported by.	Quantity.	Sales.	Bid.	Asked.	Quoted.
1863							
July 17—	Va. 6's Reg.	Unknown.					135
22—	Va. 6's Reg.	Davenport & Co.	Not given.	160			
22—	Va. Coupons.	Davenport & Co.	Not Given.				
	4 coupons on.			325			
24—	Va. 6's Reg.	Lancaster & Co.	Not given.	175			
24—	Va. Interest paying.	Lancaster & Co.	Not given.	285			
29—	Va. 6's Reg.	Unknown.	Not given.	175			
Aug. 12—	Va. 6's Reg.	Unknown.	Not given.	209½			
27—	Va. 6's Reg.	Unknown.					210
Sep. 1—	Va. 6's Reg.	Unknown.					210
3—	Va. 6's, 1868.	Lancaster & Co.	Not given.	180			
3—	Va. 6's, 1896.	Lancaster & Co.	Not given.	186			
17—	Va. 6's Reg.	Long dates. Unknown.					180
17—	Va. Coupon Bonds.	Unknown.					425
Oct. 1—	Va. 6's Reg.	Long dates. Unknown.					185
1—	Va. Coupon Bonds.	Unknown.					425
23—	Va. 6's Reg.	Long dates. Unknown.					200
23—	Va. 6's Reg.	Overdue. Unknown.					172
23—	Va. Coupon Bonds.	Unknown.					420
30—	Va. 6's	Unknown.					206
Nov. 6—	Va. 6's	Unknown.					206
13—	Va. 6's Reg.	Long dates. Unknown.					239
13—	Va. 6's Reg.	Overdue. Unknown.					205

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS.

Reported in the Richmond Dispatch from November 2, 1860 to March 1, 1861, and from January 3, 1863 to December 25, 1863.

Date.	Bonds.	Reported by	Quantity Sales.		Bid.	Asked.	Quoted.	
1863.								
	18—Va. Coupons, with Interest.	Unknown.					430	
	18—Va. Coupons, without Interest.	Unknown.					410	
	20—Va. 6's Reg, 1891.	Lancaster & Co.	Not given.	252				
Nov.	20—Va. 6's Reg., 1890.	Lancaster & Co.	Not given.	255				
	20—Va. 6's Reg.	Lancaster & Co.	Not given.	257				
	20—Va. 6's. Past due.	Lancaster & Co.	Not given.	197				
	27—Va. Coupon Bonds.	Lancaster & Co.	Not given.	448				
	27—Va. 6's Reg.	Lancaster & Co.	Not given.	257				
Dec.	4—Va. 6's Reg.	Unknown.	Not given.				225	& I.it.
	4—Va. Coupon Bonds.	Unknown.					475	
	11—Va. 6's Reg.	Lancaster & Co.	Not given.	247	& Int.			
	11—Va. 6's Reg. Past due.	Lancaster & Co.	Not given.	215				
	18—Va. 6's Reg. Long dates.	Unknown.					235	
	18—Va. 6's Reg. Past due.	Unknown.					203	
	25—Va. 6's Reg. Long dates.	Unknown.					235	

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA RAILROADS, VIRGINIA STATE BANKS, AND OTHER STOCKS,

From January 1, 1861 *to December* 31, 1863.

The New York Heralds in the State Library for the above period do not show quotations or sales of any of the above stocks.

No other New York newspapers are obtainable in the Virginia State Library for this period.

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, *to December* 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860.							
Nov.	2—John A. Lancaster & Son.	Not given.	80				
	9—John A. Lancaster & Son.	Not given.	80				
Dec.	14—John A. Lancaster & Son.	Not given.				76½	Last sales.
1861.							
Jan.	4—John A. Lancaster & Son.	Not given.				76½	Last sales.
	11—John A. Lancaster & Son.	Not given.				77	Last sales.
	18—John A. Lancaster & Son.	Not given.				77	Last sales.
	25—John A. Lancaster & Son.	Not given.				77	Last sales.
Feb.	1—John A. Lancaster & Son.	Not given.				77	Last sales.
	8—John A. Lancaster & Son.	Not given.				77	Last sales.
	15—John A. Lancaster & Son.	Not given.				77	Last sales.
	22—John A. Lancaster & Son.	Not given.				77	Last sales.
Mar.	1—John A. Lancaster & Son.	Not given.				76	Last sales.
1863							
Apr.	22—Source not known.	Not given.				105	
May	27—Lancaster & Co.	Not given.	110				
Aug.	12—Vendor not known.	Not given.	155				

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

VIRGINIA AND TENNESSEE RAILROAD COMPANY.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1863							
July 24	—Lancaster & Co.	Not given.	115				
Sep. 2	—Lancaster & Co.	Not given.	135				

JAMES RIVER AND KANAWHA COMPANY.

1860							
Nov. 2	—John A. Lancaster & Son.	Not given.				18½	Last sales.
9	—John A. Lancaster & Son.	Not given.				18½	Last sales.
16	—John A. Lancaster & Son.	Not given.				18½	No recent sales.
Dec. 14	—John A. Lancaster & Son.	Not given.				18½	Last sales.
1861							
Mar. 1	—John A. Lancaster & Son.	Not given.				18	Last sales.
1863							
Apr. 8	—Davenport & Co.	Not given.	19				
18	—Lancaster & Co.	Not given.	20½				
22	—Source not known.	Not given.				19	
May 2	—Davenport & Co.	Not given.	20				
June 16	—Davenport & Co.	Not given.	22				
27	—Source not known.	Not given.				22	
30	—Source not known.	Not given.				22	

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, *to December* 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

JAMES RIVER AND KANAWHA COMPANY—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.
1863						
July	24—Lancaster & Co.	Not given.	22			
Aug.	27—Source not known.	Not given.				20
Sep.	1—Source not known.	Not given.				20
	2—Lancaster & Co.	Not given.				20

VIRGINIA CENTRAL RAILROAD COMPANY.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860							
Nov.	2—John A. Lancaster & Son.	Not given.	50				
	9—John A. Laster & Son.	Not given.	50				
	16—John A. Lancaster & Son.	Not given.				50	Last sales.
Dec.	14—John A. Lancaster & Son.	Not given.				50	Last sales.
1861							
Jan.	4—John A. Lancaster & Son.	Not given.				50	Last sales.
	11—John A. Lancaster & Son.	Not given.				47½	Last sales.
	18—John A. Lancaster & Son.	Not given.				47½	Last sales.
	25—John A. Lancaster & Son.	Not given.				47½	Last sales.
Feb.	8—John A. Lancaster & Son.	Not given.				47½	Last sales.
	15—John A. Lancaster & Son.	Not given.				47½	Last sales.
	22—John A. Lancaster & Son.	Not given.				47½	Last sales.
Mar.	1—John A. Lancaster & Son.	Not given.					

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

VIRGINIA CENTRAL RAILROAD COMPANY—(Continued)

1863 Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.
Jan. 21—	Sources not known.	Not given.				75
29—	Sources not known.	Not given.				75
Apr. 18—	Lancaster & Co.	Not given.	100⅛			
May 2—	Davenport & Co.	Not given.	94			
June 5—	Source not known.	Not given.				100
July 22—	Davenport & Co.	Not given.	116			
24—	Lancaster & Co.	Not given.	107			
Aug. 27—	Source not known.	Not given.				119
Sep. 1—	Source not known.	Not given.				119
Nov. 27—	Lancaster & Co.	Not given.	156			

RICHMOND AND PETERSBURG RAILROAD COMPANY.

1860						
Nov. 2—	John A. Lancaster & Son.	Not given.			64	Last sales.
9—	John A. Lancaster & Son.	Not given.			64	Last sales.
16—	John A. Lancaster & Son.	Not given.			64	Last sales.
Dec. 14—	John A. Lancaster & Son.	Not given.			64	Last sales.

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

RICHMOND AND PETERSBURG RAILROAD COMPANY—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1861							
Jan. 4	John A. Lancaster & Son.	Not given.				64	Last sales.
25	John A. Lancaster & Son.	Not given.				60	Last sales.
Feb. 1	John A. Lancaster & Son.	Not given.				60	Last sales.
8	John A. Lancaster & Son.	Not given.				60	Last sales.
15	John A. Lancaster & Son.	Not given.				60	Last sales.
22	John A. Lancaster & Son.	Not given.				60	Last sales.
Mar. 1	John A. Lancaster & Son.	Not given.				57½	Last sales.
1863							
June 5	Source not known.	Not given.				140	
10	Source not known.	Not given.				140	

ORANGE AND ALEXANDRIA RAILROAD COMPANY.

1863							
Apr. 18	Lancaster & Co.	Not given.	27½				
Aug. 12	Vendor not known.	Not given.	27½				
Nov. 20	Lancaster & Co.	Not given.	56				

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

RICHMOND AND DANVILLE RAILROAD COMPANY.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860							
Nov. 2	John A. Lancaster & Son.	Not given.	60				
9	John A. Lancaster & Son.	Not given.				60	Last sales.
16	John A. Lancaster & Son.	Not given.				60	Last sales.
Dec. 14	John A. Lancaster & Son.	Not given.				58	Last sales.
1861			57				
Jan. 18	John A. Lancaster & Son.	Not given.					
25	John A. Lancaster & Son.	Not given.				57	Last sales.
Feb. 1	John A. Lancaster & Son.	Not given.				57	Last sales.
8	John A. Lancaster & Son.	Not given.				57	Last sales.
15	John A. Lancaster & Son.	Not given.				57	Last sales.
22	John A. Lancaster & Son.	Not given.				57	Last sales.
Mar. 1	John A. Lancaster & Son.	Not given.				55	Last sales.
1863							
Feb. 14	John A. Lancaster & Son.	Not given.	105½				
Apr. 22	Source not known.	Not given.				120	
May 16	Davenport & Co.	Not given.	131				
27	Lancaster & Co.	Not given.	125				
June 5	Source not known.	Not given.				125	
10	Source not known.	Not given.				125	

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and Other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

FARMERS' BANK OF VIRGINIA.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860							
Nov. 2	John A. Lancaster & Son.	Not given.				102	No recent sales.
9	John A. Lancaster & Son.	Not given.			102		
16	John A. Lancaster & Son.	Not given.				100	Last sales
23	John A. Lancaster & Son.	Not given.			100		held at
30	John A. Lancaster & Son.	Not given.	99				
Dec. 7	John A. Lancaster & Son.	Not given.	99				
14	John A. Lancaster & Son.	Not given.				100	Last sales.
1861							
Jan. 4	John A. Lancaster & Son.	Not given.				100	Last sales.
18	John A. Lancaster & Son.	Not given.	99				
25	John A. Lancaster & Son.	Not given.	99				
Feb. 1	John A. Lancaster & Son.	Not given.				99	Last sales.
8	John A. Lancaster & Son.	Not given.				99	Last sales.
15	John A. Lancaster & Son.	Not given.	98½				
22	John A. Lancaster & Son.	Not given.				98	Last sales.
Mar. 1	John A. Lancaster & Son.	Not given.	97				
1862							
Jan. 7	Source not known.	Not given.	103				
31	Source not known.	Not given.				105	

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and Other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

FARMERS BANK OF VIRGINIA—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.
1863						
Jan. 29	—Source not known.	Not given.				105
Feb. 7	—Source not known.	Not given.				107½
14	—John A. Lancaster & Son.	Not given.	107½			
18	—Source not known.	Not given.				107½
Mar. 14	—Source not known.	Not given.				111
17	—Source not known.	Not given.				111
Apr. 8	—Davenport & Co.	Not given.	131			
18	—Lancaster & Co.	Not given.	128			
22	—Source not known.	Not given.				122
May 20	—Source not known.	Not given.				125
27	—Lancaster & Co.	Not given.	125			
July 29	—Vendor not known.	Not given.	150			
Aug. 12	—Vendor not known.	Not given.	152			
27	—Source not known.	Not given.				150
Sep. 1	—Source not known.	Not given.				150
3	—Lancaster & Co.	Not given.				150
1863						
Sep. 18	—Source not known.					150
Oct. 1	—Source not known.					150

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and Other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

BANK OF VIRGINIA.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860.							
Nov. 2	—John A. Lancaster & Son.	Not given.			72		
9	—John A. Lancaster & Son.	Not given.				70	Last sales.
16	—John A. Lancaster & Son.	Not given.	70				
23	—John A. Lancaster & Son.	Not given.			70		
30	—John A. Lancaster & Son.	Not given.	70				
Dec. 7	—John A. Lancaster & Son	Not given.	70				
14	—John A. Lancaster & Son.	Not given.	70				
1861							
Jan. 4	—John A. Lancaster & Son.	Not given.				70	Last sales.
18	—John A. Lancaster & Son.	Not given.			68		
25	—John A. Lancaster & Son.	Not given.				68	Last sales.
Feb. 1	—John A. Lancaster & Son.	Not given.			70		
8	—John A. Lancaster & Son.	Not given.			70		
15	—John A. Lancaster & Son.	Not given.	68				
22	—John A. Lancaster & Son.	Not given.				68	Last sales.
Mar. 1	—John A. Lancaster & Son.	Not given.	68				

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and Other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

BANK OF VIRGINIA—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.
1863						
Jan. 7	—Source unknown.	Not given.	72			
21	—Source unknown.	Not given.			73	
29	—Source unknown.	Not given.			73	
Mar. 17	—Source unknown.	Not given.			73	
Apr. 18	—Lancaster & Co.	Not given.	80½			
22	—Source not known.	Not given.			87	
May 27	—Lancaster & Co.	Not given.	87½			
July 17	—Vendor not known.	Not given.	90			
Aug. 27	—Source not known.	Not given.			105	
Sep. 1	—Source not known.	Not given.			105	
3	—Lancaster & Co.	Not given.			105	
18	—Source not known.	Not given.			111	
Oct. 1	—Source not known.	Not given.			111	
Nov. 27	—Lancaster & Co.	Not given.	123			
Dec. 4	—Source not known.	Not given.			122	
18	—Source not known.	Not given.			119	
25	—Source not known.	Not given.			120	

EXCHANGE BANK.

1860						
Nov. 2	—John A. Lancaster & Son.	Not given.	105⅛			
9	—John A. Lancaster.	Not given.	104⅛			

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

EXCHANGE BANK—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860							
Nov. 16	—John A. Lancaster.	Not given.				104½	Last sales.
	23—John A. Lancaster.	Not given.			100		
Dec. 14	—John A. Lancaster.	Not given.		101			
1861							
Jan. 4	—John A. Lancaster.	Not given.		101			
	11—John A. Lancaster.	Not given.	100				
	18—John A. Lancaster.	Not given.	100				
	25—John A. Lancaster.	Not given.	100				
Feb. 1	—John A. Lancaster.	Not given.				100	Last sales.
	8—John A. Lancaster.	Not given.	99½				
	15—John A. Lancaster.	Not given.	99½				
	22—John A. Lancaster.	Not given.	100				
Mar. 1	—John A. Lancaster.	Not given.	100				
1862							
Jan. 29	—Sources not known.	Not given.				108	
Feb. 7	—Source not known.	Not given.				108	
Mar. 17	—Source not given.	Not known.				108	
	25—Source not known.	Not given.				108	
May 20	—Source not known.	Not given.				125	
	27—Lancaster & Co.		125				

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper.		Bid.	Asked.	Sales.	At	Date.
1870						
Mar. 29—Va. 6's.	Old	71	71⅛	1,000	69	Mar. 28, 1870
29—Va. 6's.	Old.			1,000	69⅛	28, 1870
29—Va. 6's.	Old.			2,000	70	28, 1870
29—Va. 6's.	New.	70½	70⅞	1,500	70	28, 1870
29—Va. 6's.	New.			3,500	70½	28, 1870
31—Va. 6's.	Old.			500	71	30, 1870
31—Va. 6's.	Old.			8,000	72	30, 1870
31—Va. 6's.	Reg. Old.			10,000	58	30, 1870
Dec. 2—Va. 6's.	Old.			3,000	64	Dec. 1, 1870
14—Va. 6's.	Old.	66	67	2,000	66	13, 1870
21—Va. 6's.	Old.	67	68			20, 1870
21—Va. 6's.	New.	63	65			20, 1870
21—Va. 6's.	Reg. Old.	50¼	50¾			20, 1870
14—Va. 6's.	Old.	64	65			13, 1870
1871						
Jan. 1—Va. 6's.	Old.	67	68			Dec. 31, 1870
1—Va. 6's.	New.	63	65			31, 1870
1—Va. 6's.	Reg. Old.	50¼	50¾			31, 1870
Feb. 2—Va. 6's.	Old.	64	65			31, 1870
2—Va. 6's.	New.	61	62			31, 1870
2—Va. 6's.	Reg. Old.	49½	50	5,000	49¾	Feb. 1, 1871
Mar. 2—Va. 6's.	Old.	66	66¾			Mar. 1, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper.				Bid.	Asked.	Sales.	At	Date.
1871								
Mar. 2	Va. 6's.	New.		61	62			Mar. 1, 1871
2	Va. 6's.	Reg.	Old.	53	53½	15,000	53	1, 1871
3	Va. 6's.	Old.		65½	66			7, 1871
3	Va. 6's.	New.		65	65½			7, 1871
3	Va. 6's.	Reg.	Old.	52	52¼	5,000	52¼	7, 1871
17	Va. 6's.	New.				1,000	67	16, 1871
22	Va. 6's.	Old.		68	69			21, 1871
22	Va. 6's.	New.		69½	70½	1,000	70	21, 1871
22	Va. 6's.	Reg.	Old.	54	54½	11,000	54⅛	21, 1871
30	Va. 6's.	New.				1,000	71	29, 1871
30	Va. 6's.	New.				4,000	71¼	29, 1871
Apr. 1	Va. 6's.	Old.		73½	75	2,000	73½	31, 1871
1	Va. 6's.	New.		71½	73			31, 1871
1	Va. 6's.	Reg.	Old.	56¼	56½	10,000	55⅝	31, 1871
5	Va. 6's.	Old.		70	72	1,000	72½	Apr. 4, 1871
5	Va. 6's.	New.		71	71½	5,000	71	4, 1871
5	Va. 6's.	Reg.	Old.	55¼	55⅝	15,000	70½	4, 1871
1871								
Apr. 5	Va. 6's.	Reg.	Old.			5,000	57	Apr. 4, 1871
22	Va. 6's.	New.		72	72½	5,000	72¼	27, 1871
23	Va. 6's.	Old.		56½	56¼	10,000	56½	27, 1871
23	Va. 6's.	Old.		70	71			27, 1871
May 11	Va. 6's.	New.		71	72	2,000	71½	May 10, 1871

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS.

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper. 1871		Bid.	Asked.	Sales.	At	Date.
May 11	Va. 6's. Old.	69	70			May 10, 1871
11	Va. 6's. Reg. Old.	56½	57			10, 1871
25	Va. 6's. Old.	68¾	69			24, 1871
25	Va. 6's. New.	74	75	5,000	74¾	24, 1871
25	Va. 6's. Reg. Old.			1,000	57	24, 1871
June 11	Va. 6's. Old.	68½	70			June 10, 1871
11	Va. 6's. New.	73	74			10, 1871
11	Va. 6's. Reg. Old.	55	56			10, 1871
14	Va. 6's. Old.	68.....69		5,000	68¼	13, 1871
14	Va. 6's. New.	73½	74	6,000	73⅛	13, 1871
14	Va. 6's. Reg. Old.	54	55			13, 1871
July 12	Va. 6's. Old.	66¼	66½	500	66½	July 11, 1871
12	Va. 6's. New.	73	73½			11, 1871
12	Va. 6's. Reg. Old.	55	55½			11, 1871
30	Va. 6's. Old.	64¼	65	15,000	65	29, 1871
30	Va. 6's. New.	72½	73			29, 1871
30	Va. 6's. Reg. Old.	54	55			29, 1871
Aug. 13	Va. 6's. Old.	64¼	64¾	3,000	64¾	Aug. 14, 1871
13	Va. 6's. New.	71½	72			14, 1871
13	Va. 6's. Reg. Old.	54	55			14, 1871
Sep. 1	Va. 6's. New.	70	71	2,500	70	31, 1871
1	Va. 6's. Old.	63	64	3,500	63	31, 1871
1	Va. 6's. Reg. Old.	54¾	53			31, 1871
6	Va. 6's. Old.	63¼	64	1,000	63¼	Sept. 5, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper.		Bid.	Asked.	Sales.	At	Date.
1871						
Sept. 6—Va. 6's.	Deferred.			5,000	30	Sept. 5, 1871
6—Va. 6's.	New.	70	72			5, 1871
6—Va. 6's.	Reg. Old.	52	53			5, 1871
6—Va. 6's.	Consols.	65½	66			5, 1871
24—Va. 6's.	Old.			15,000	62¾	23, 1871
24—Va. 6's.	Consolds.	64½	64¾	5,000	64½	23, 1871
24—Va. 6's.	New.	64½	64¾	5,000	64½	23, 1871
24—Va. 6's.	Old.	61½	62½			23, 1871
24—Va. 6's.	New.	68	70			23, 1871
24—Va. 6's.	Reg. Old.	52	53			23, 1871
Oct. 7—Va. 6's.	Old.	61½	62			Oct. 6, 1871
7—Va. 6's.	New.	68	70	5,000	64	6, 1871
7—Va. 6's.	New.			7,000	64½	6, 1871
7—Va. 6's.	Reg. Old.	52	54			6, 1871
17—Va. 6's.	Deferred.			1,000	25½	16, 1871
17—Va. 6's.	Old.	59½	60	2,000	59½	16, 1871
17—Va. 6's.	New.	68	70			16, 1871
17—Va. 6's.	Reg. Old.	50	52			16, 1871
17—Va. 6's.	Consols.	60¾	62			16, 1871
28—Va. 6's.	Old.	59½	60	5,000	59½	27, 1871
28—Va. 6's.	Reg. Old.	49	53			27, 1871
1871						
Oct. 28—Va. 6's.	Consols.	60¼	60¾	2,000	60¼	Oct. 27, 1871
28—Va. 6's.	Deferred.	24	25½			27, 1871

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PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper.		Bid.	Asked.	Sales.	At	Date.
1871						
Nov. 7	Va. 6's. Consols.	64⅛	64¾	5,000	64⅛	Nov. 6, 1871
7	Va. 6's. Old.	59	60			6, 1871
7	Va. 6's. Reg. Old.	49	51			6, 1871
7	Va. 6's. Deferred.	25⅛	27			6, 1871
Dec. 8	Va. 6's. Consols.	65	65⅛	15,000	65¼	Dec. 7, 1871
8	Va. 6's. New.			5,000	65	7, 1871
8	Va. 6's. Old.	62	64			7, 1871
8	Va. 6's. Reg. Old.	51	53			7, 1871
8	Va. 6's. Deferred	27⅛	28			7, 1871
19	Va. 6's. Consols.	60	60⅛	15,000	64	18, 1871
19	Va. 6's. Consols.			13,000	64⅛	18, 1871
19	Va. 6's. Old.	60	62			18, 1871
19	Va. 6's. Reg. Old.	49	53			18, 1871
19	Va. 6's. Deferred.	25	26			18, 1871
1872						
Oct. 17	Va. 6's. Old.	44	50			Oct. 16, 1872
17	Va. 6's. Reg. Old.	36	40			16, 1872
17	Va. 6's. Consols.	54¼	54¾	5,000	54¼	16, 1872
17	Va. 6's. Consols.			5,000	54⅛	16, 1872
17	Va. 6's. Deferred scrip.	15	16	10,000	15⅛	16, 1872
18	Va. 6's. Old.	44	48			17, 1872
18	Va. 6's. Reg. Old.	37	40			17, 1872
18	Va. 6's. Consols.	54	55			17, 1872
18	Va. 6's. Deferred.	15⅛	16			17, 1872

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper. 1877		Bid.	Asked.	Sales.	At	Date.
Apr. 12—Va. 6's.	New.			5,000	71¼	Apr. 11, 1877
Feb. 28—Va. 6's.	Ex. Mat. Coupons.			3,200	62¾	Feb. 27, 1877
Mar. 3—Va. 6's.	Coupons.			6,000	67	Mar. 2, 1877
Apr. 23—Va. 6's.	Coupons		82			Apr. 6, 1877
23—Va. 6's.	Consols.		83			13, 1877
23—Va. 6's.	Consols.		82½			20, 1877
23—Va. 6's.	Consols, Md.		45½			6, 1877
23—Va. 6's.	Consols, Md.		45			13, 1877
23—Va. 6's.	Consols. Md.		44			20, 1877

No. New York Heralds for the year 1867 can be found in the Virginia State Library. In the year 1868 the New York Heralds appear for only three months in the library (October, November and December).

No quotations or sales are shown in the New York Herald for the month of July, 1884.

No other New York newspapers are obtainable in the Virginia State Library.

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1867					
July 25	Va. 6's. New.		51	New York	July 24, 1867
Sep. 6	Va. Ex. Coupons.		49	No Exchange	
6	Va. Ex. Coupons. New.		48	mentioned	
18	Va. 6's. New.		50	New York	Sept. 5, 1867
18	Va. 6's. New.	49	50	New York	Sept. 17, 1867
25	Va. 6's. New.		48	New York	Sept. 17, 1867
Oct. 18	Va. 6's. New.		45⅛	New York	Sept. 24, 1867
19	Va. 6's. New.		45⅛	New York	Oct. 17, 1867
Nov. 14	Va. 6's.		45	New York	18, 1867
Dec. 11	Va. 6's.		46½	New York	Nov. 13, 1867
1868					Dec. 10, 1867
July 2	Va. 6's. Coupons.		58¼	New York	July 1, 1868
2	Va. 6's. New.		57	New York	1, 1868
6	Va. 6's. New.		57¾	New York	5, 1868
6	Va. Ex. Coupons.		59	New York	5, 1868
8	Va. 6's Coupons.		58½	New York	7, 1868
8	Va. 6's. New.		57¼	New York	7, 1868
8	Va. Old. Inscribed.	47	49¼	Baltimore	7, 1868
14	Va. Old. Inscribed.	47	49	Baltimore	7, 1868
14	Va. 1867.	45	46	Baltimore	13, 1868
14	Va. Coupons. New.	56½	57	Baltimore	13, 1868
20	Va. 6's. New.		56	New York	13, 1868
21	Va. 6's. New.		54	New York	19, 1868
					20, 1868

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1868					
July 21	Va. Old. Inscribed.		45	Baltimore	July 20, 1868
21	Va. Coupons. Old.		55	Baltimore	20, 1868
21	Va. 6's. New.		54	Baltimore	20, 1868
26	Va. 6's. New.		53	New York	25, 1868
26	Va. Old. Inscribed.		45¼	Baltimore	25, 1868
26	Va. Coupons. Old.		54	Baltimore	25, 1868
26	Va. 6's. New.		53	Baltimore	25, 1868
31	Va. 6's. New.		54	New York	30, 1868
31	Va. 6's. New.		54¾	New York	30, 1868
31	Va. Old. Inscribed.	45	46	Baltimore	30, 1868
31	Va. Coupons. Old.	55¼		Baltimore	30, 1868
31	Va. Coupons. New.	54		Baltimore	30, 1868
Aug. 29	Va. 6's. Coupons.		53¼	New York	Aug. 28, 1868
29	Va. 6's. New.		53	New York	28, 1868
1868					
Aug. 29	Va. 6's. Old. Inscribed.	47	48	Baltimore	Aug. 28, 1868
29	Va. 1866.	47	50	Baltimore	28, 1868
31	Va. Coupons.		53¼	New York	30, 1868
31	Va. 6's. New.		53	New York	30, 1868
31	Va. 6's. Old. Inscribed.	47¼	47¾	Baltimore	30, 1868
1870					
Apr. 2	Va. 6's. Ex. Coupons.		70	New York	Apr. 1, 1870
2	Va. 6's. New.		70½	New York	1, 1870
2	Va. 6's. Old.	70¼	70½	New York	1, 1870
2	Va. 6's. New.	69½	70¾	New York	1, 1870

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1870					
Apr. 3	—Va. Ex. Coupons.	70	70	New York	Apr. 2, 1870
3	—Va. 6's. New.		68	New York	2, 1870
3	—Va. 6's. Old.	57⅛	58¼	Baltimore	2, 1870
3	—Va. 1866	65¼		Baltimore	2, 1870
3	—Va. 1861.	60	61	Baltimore	2, 1870
3	—Va. 1861. Old Coupons.	69	71	Baltimore	2, 1870
3	—Va. 6's. New.	69¼	71⅝	Baltimore	2, 1870
Dec. 13	—Va. 6's. Old.		65	New York	Dec. 12, 1870
13	—Va. 6's. New.		63½	New York	12, 1870
13	—Va. 6's. Old.	51⅝	52½	Baltimore	12, 1870
13	—Va. 1866.		64	Baltimore	12, 1870
13	—Va. 1867.		60	Baltimore	12, 1870
13	—Va. Coupons. Old.		59	Baltimore	12, 1870
14	—Va. 6's. Old.		65½	New York	13, 1870
14	—Va. 6's. New		63	New York	13, 1870
14	—Va. 6's. Old.	51¼	51⅞	Baltimore	13, 1870
14	—Va. 1867.	57	58	Baltimore	13, 1870
15	—Va. 6's. Old.		65	New York	14, 1870
15	—Va. 6's. New.		62½	New York	14, 1870
15	—Va. 6's. Old.	50½	51⅞	Baltimore	14, 1870
15	—Va. 1867.	56½	57	Baltimore	14, 1870
15	—Va. Coupons. Old.		70	Baltimore	14, 1870
1871					
Jan. 4	—Va. 1867.		56½	Baltimore	Jan. 3, 1871
4	—Va. 6's.	50	50½	Baltimore	3, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1871					
Jan. 14	Va. 6's.	51¼	51⅜	Baltimore	Jan. 13, 1871
14	Va. 1866.		61	Baltimore	13, 1871
Feb. 4	Va. 6's. Old.		64	New York	Feb. 4, 1871
4	Va. 6's. New.		60½	New York	4, 1871
4	Va. 6's. Old.	49¼	50	Baltimore	4, 1871
4	Va. 1866.	59¾	61	Baltimore	4, 1871
4	Va. 1867.	50	56½	Baltimore	4, 1871
Mar. 19	Va. 6's. Old.		67	New York	Mar. 18, 1871
19	Va. 6's. New.		69	New York	18, 1871
19	Va. 6's. Old.	53½	57¾	Baltimore	18, 1871
1871					
Mar. 19	Va. 1866.		66	Baltimore	Mar. 18, 1871
19	Va. 1867.	62½	65	Baltimore	18, 1871
31	Va. 6's. Old.		70½	New York	30, 1871
31	Va. 6's. New.		71	New York	30, 1871
31	Va. 6's. Old.	55½	55⅞	Baltimore	30, 1871
31	Va. 1866.	70	70⅝	Baltimore	30, 1871
31	Va. 1867.	65		Baltimore	30, 1871
Apr. 1	Va. 6's. Old.		73½	New York	31, 1871
1	Va. 6's. New.		71¼	New York	31, 1871
3	Va. 6's. Old.		73	New York	Apr. 1, 1871
3	Va. 6's. New.		73	New York	1, 1871
4	Va. 6's. Old.	72	72¼	New York	3, 1871
4	Va. 6's. New.		73	New York	3, 1871
4	Va. 6's. Old.	57⅝	58	Baltimore	3, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper. 1871	Bonds.	Bid.	Asked.	Exchange	Date Quoted.
Apr. 4	Va. 1866.	70	74	Baltimore	Apr. 3, 1871
4	Va. 1867.		69	Baltimore	3, 1871
4	Va. Coupons. Old.		75	Baltimore	3, 1871
May 19	Va. 6's. Old.		69	New York	May 18, 1871
19	Va. 6's. New.		71½	New York	18, 1871
June 22	Va. 6's. Old.		67	New York	June 21, 1871
22	Va. 6's. New.		72½	New York	21, 1871
22	Va. 6's. Old.	54½	55	Baltimore	21, 1871
22	Va. 1867.	72	75½	Baltimore	21, 1871
22	Va. Coupons. Old.	67	67½	Baltimore	21, 1871
23	Va. 6's. Old.		67	New York	22, 1871
23	Va. 6's. New.		72½	New York	22, 1871
Sep. 1	Va. 6's. Old.		62	New York	Aug. 31, 1871
1	Va. 6's. New.		70	New York	31, 1871
8	Va. 6's. Old.		63	New York	Sept. 7, 1871
8	Va. 6's. New.		70	New York	7, 1871
14	Va. 6's. Old.		63	New York	13, 1871
14	Va. 6's. New.		69½	New York	13, 1871
25	Va. 6's. Old.		62½	New York	23, 1871
25	Va. 6's. New.		63	New York	23, 1871
Oct. 7	Va. 6's. Old.		61	New York	Oct. 6, 1871
7	Va. 6's. New.		68	New York	6, 1871
7	Va. 6's. Old.	52¼	53	Baltimore	.... 6, 1871
7	Va. 1866.	67		Baltimore	6, 1871
7	Va. 1867.	66		Baltimore	6, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
Dec. 30	—Va. 6's. Old.		56	New York	Dec. 29, 1871
30	—Va. 6's. New.		55	New York	29, 1871
1872					
Sep. 19	—Va. 6's. Old.		44½	New York	Sept. 18, 1872
19	—Va. 6's. New.		50	New York	18, 1872
20	—Va. 6's. Old.		44½	New York	28, 1872
20	—Va. 6's. New.		48	New York	28, 1872
Oct. 4	—Va. 6's. Old.		44½	New York	Oct. 3, 1872
4	—Va. 6's. New.		47½	New York	3, 1872
1872					
Oct. 10	—Va. 6's. Old.		44	New York	Oct. 9, 1872
10	—Va. 6's. New.		47	New York	9, 1872
10	—Va. Consols.		50⅛	New York	9, 1872
10	—Va. Deferred.		16	New York	9, 1872
18	—Va. 6's. Old.		44	New York	17, 1872
18	—Va. 6's. New.		57	New York	17, 1872
18	—Va. Consols.		53½	New York	17, 1872
18	—Va. Deferred.		15	New York	17, 1872
18	—Va. 6's. Old.		38½	Baltimore	17, 1872
18	—Va. Consols.		51½	Baltimore	17, 1872
18	—Va. 6's. Reg.		46	Baltimore	17, 1872
18	—Va. 6's. New.		45	Baltimore	17, 1872
20	—Va. 6's. Old.		44	New York	19, 1872
20	—Va. 6's. New.		50	New York	19, 1872
20	—Va. Consols.		53½	New York	19, 1872

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1872					
Oct. 20	—Va. Deferred.		15	New York	Oct. 19, 1872
20	—Va. 6's. Old.		38	Baltimore	19, 1872
20	—Va. Consols.		54	Baltimore	19, 1872
1877					
Apr. 12	—Va. Consols.	70¾	71¾	Richmond	Apr. 12, 1877
13	—Va. Consols. New.	42½	46½	Richmond	12, 1877
13	—Va. Fundable.	30		Richmond	12, 1877
13	—Va. Deferred.	5	5¾	Richmond	12, 1877
13	—Va. Tax. Receivable Coupons.	84	84½	Richmond	12, 1877
13	—Va. Deferred.		5	Baltimore	12, 1877
13	—Va. Second Series.		42	Baltimore	12, 1877
14	—Va. Consols.	71	71¾	Richmond	13, 1877
14	—Va. Consols. New.	42	46	Richmond	13, 1877
14	—Va. Deferred.	5		Richmond	13, 1877
14	—Va. Interest Certificate.		20	Richmond	13, 1877
14	—Tax Receivable Coupons.		84¾	Richmond	13, 1877
14	—Va. Deferred.		4	Baltimore	13, 1877
14	—Va. Consols.		7½	Baltimore	13, 1877
14	—Va. Second Series.		42	Baltimore	13, 1877

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1884					
July 9	Va. 6's.	30		New York	July 8, 1884
9	Va. Consols.	32½		New York	8, 1884
9	Va. Consols.	33½		Baltimore	8, 1884
9	Va. Past Due Coupons.	27		Baltimore	8, 1884
9	Va. 10-40's.	31½		Baltimore	8, 1884
9	Va. New 3's.	52		Baltimore	8, 1884

PLAINTIFF'S EXHIBIT No. 3.

Statement Showing Market Value of the Bonds and Cash on a Gold Basis Received by Virginia in Exchange for Securities as Per Class "C" in Defendant's Supplemental Answer.

	Claimed by West Virginia as Value. Jan. 1, 1861.	Value of Bonds Issued Prior to January 1, 1861. Par.		Market.
1. Orange and Alexandria Railroad Co.:				
Stock	$ 932,566 80			
Loan	398,670 60	$ 745,341 48	@ 44	$ 327,950 26
2. Richmond and Danville Railroad Co.:				
Stock	1,632,777 76	58,200 00	@ 65½	38,121 00
		460,017 98	@ 62	285,211 15
		16,000 00	@ 40	6,400 00
Loan	565,803 34			
3. Richmond and Petersburg Railroad Co.:				
Stock	469,892 16	369,486 67	@ 66	243,861 20
Dividend bonds	33,408 00			
4. Virginia Central Railroad Co.:				
Stock	2,481,115 26			———
(Par plus interest):				
Loan	90,032 82			
Dividend bonds	143,508 00	339,400 00	@ 73	247,762 00
5. Blue Ridge Railroad Co. (built by Virginia):				
	1,604,723 23	398,718 71	@ 70¼	280,099 89
6. Alexandria, Loudoun and Hampshire Railroad Co.:				
Stock	993,248 00			
7. Winchester and Potomac Railroad Co.:				
Loan	83,333 33	45,000 00	@ 53¼	23,962 50
8. Virginia and Tennessee Railroad Co.:				
Loan	1,000,000 00			
9. Southside Railroad Co.:				
Loan	800,000 00			
10. Norfolk and Petersburg Railroad Co.:				
Loan	300,000 00	86,134 00	@ 40	34,453 60
11. Roanoke Navigation Co.:				
Stock	80,000 00			
12. Alexandria Canal Co.:				
Stock	272,000 00			
13. Upper Appomattox Co.:				
Stock	$ 56,500 00			

PLAINTIFF'S EXHIBIT No. 3.

	Value of Bonds Issued Under the Act of 1866. Par		Market.	Cash Received. Face.	Cash Received, reduced to Gold.	Total.
	$ 129,365 83	@ 57	$ 73,738 53	$125,556 48	$ 39,974 19	$ 441,662 98
	31,960 41	@ 63	20,135 06			
	352,399 46	@ 70	246,679 62			
A.	33,600 00	@ 40	13,440 00	.....	.....	609,986 83
B.	126,903 34	@ 81½	103,426 22			
C.	438,900 00	@ 50	219,450 00	.....	.....	322,876 22
	161,771 03	@ 70	113,329 72	.....	.....	357,100 92
				33,408 00	33,408 00	33,408 00
	.....		.....	241,858 50	241,858 50	
				In 1888.		
	.....		.....	84,858 00		
				Jan. 1, 1863, @ 3 to 1		
	.....		.....		28,286 00	517,906 50
	176,202 77	@ 69½	122,460 92	8 96	8 96	402,569 77
	.....		.....	50,862 40	50,862 40	50,862 40
	66,130 90	@ 53	35,049 38	.....	.....	59,011 88
	.....		.....	.....	.....	nothing.
	.....		.....	.....	.....	nothing.
	65,390 49	@ 50	32,695 24	.....	.....	67,148 84
	.....		.....	3,832 00	3,832 00	3,832 00
	.....		.....	764 47	764 47	764 47
	$ 10,864 26	@ 52	$ 5,649 42	5,280 00	5,280 00	$ 10,929 42

PLAINTIFF'S EXHIBIT No. 3—(*Continued*)

	Claimed by West Virginia as Value. Jan. 1, 1861.	Value of Bonds Issued Prior to January 1, 1861. Par.	Market.
14. Dismal Swamp Co.:			
Stock	190,000 00	.....	.....
15. Washington College:			
Loan	2,000 00	.....	.....
16. Richmond Academy:			
Bond	400 00	.....	.....
17. United States Government:			
Claim	298,369 74	581,800 00	151,268 00
18. Selden, Withers Co.:			
Claim	132,842 74	.....	.....
19. Richmond, Fredericksburg and Potomac Railroad Co.:			
Dividend bond	149,984 00	.....	.....
	$12,711,175 78	$3,100,098 84	$1,639,089 60

A.—This amount included: Bonds under Act 1866, $3,500.00, and 10-40's under Act 1879, $30,100.00.

B.—This amount represents past due coupons which were resold by the Sinking Fund at 81 and 81½, and is part of the net settlement for the balance of the loan of $600,000.00

PLAINTIFF'S EXHIBIT No. 3—(*Continued*)

Value of Bonds Issued Under the Act of 1866. Par	Market.	Cash Received. Face.	Cash Received, reduced to Gold.	Total.
.....	.....	9,935 99	9,935 99	9,935 99
.....	.....	2,000 00	2,000 00	2,000 00
.....	.....	400 00	400 00	400 00
.....	.....	5 50	5 50	151,273 50
.....	.....	132,842 74	132,842 74	132,842 74
.....	.....	149,984 00	19,111 11	19,111 11
$1,593,488 49	$ 985,964 11	$841,597 04	$568,569 46	$3,193,623 57

C.—This amount represents State bonds received by the Sinking Fund and cancelled. We have been unable to find a description of them, so take an average of fifty in reducing them as a liberal rate, as on July 8, 1884, Riddlebergers were quoted at 52 and other issues at from 30 to 37.

PLAINTIFF'S EXHIBIT No. 3—(*Continued*)

NOTE.

A.—These bonds were received by the sinking fund and cancelled. We have been unable to find a description of them, so take an average of 50 in reducing them as a liberal rate, as on July 8, 1884, Riddleberger bonds were quoted at 52, and other issues from 30 to 37.

B.—We have used an average of the market quotations between March and September, 1871, old bonds quoted from 70 in April to 60¾ in September, and new bonds from 67 in March to 70 in September.

C.—These bonds are quoted in the Richmond newspapers in the year 1871 at 73.

D.—We have used an average from quotations in July, November and December, 1867, and July, 1868, as some of the bonds appear to have been received during those months.

PLAINTIFF'S EXHIBIT No. 3—(*Continued.*)

BONDS.

	Par.	Market.
1. Orange and Alexandria Railroad Co.:		
Bonds of issues prior to January 1, 1861..	$ 745,341 43	
Bonds issued under act 1866.....	129,365 88	
	$ 874,707 31	
Market value at October 17, 1872:		
Old bonds at 44.....		$ 327,950 36
New bonds at 57.....		73,738 53
		$ 401,688 79
2. Richmond and Danville Railroad Co.:		
Bonds of issues prior to January 1, 1861...$	518,217 98	
Bonds of issues prior to January 1, 1861..	16,000 00	
Bonds issued under act 1866.....	384,359 87	
Bonds issued under act 1866.....	33,600 00	
	$ 952,177 85	
Market value at December 13, 1870:		
$58,200.00 old bonds at 65½.....		$ 38,121 00
$31,960.41 new bonds at 63.....		20,135 06
		$ 58,256 06
Market value at August 31, 1871:		
$460,017.98 old bonds at 62.....		$ 285,211 15
$352,399.46 new bonds at 70.....		246,679 62
		$ 531,890 77
Market value at April 13, 1877:		
$16,000.00 old bonds at 40.....		$ 6,400 00
$3,500.00 new bonds at 40.....		1,400 00
$30,100.00 10-40's of 1879 at 40.....		12,040 00
		$ 19,840 00

PLAINTIFF'S EXHIBIT No. 3—(*Continued.*)

Bonds (Continued.)

	Par.	Market.
2. Richmond and Danville Railroad Co. (loan):		
Past due coupons	$ 126,903 34	
State bonds	438,900 00	
	$ 565,803 34	
Market value at (see Note A):		
Past due coupons resold at 82½		$ 103,426 22
State bonds at 50 (estimated)		219,450 00
		$ 322,876 22
3. Richmond and Petersburg Railroad Co.:		
Bonds of issues prior to January 1, 1861	$ 369,486 67	
Bonds issued under act 1866	161,771 03	
	$ 531,257 70	
Market value at (see Note B):		
Old bonds at 66		$ 243,861 20
New bonds at 70		113,239 72
		$ 357,100 92
4. Virginia Central Railroad Co.:		
Bonds of issues prior to January 1, 1861	$ 339,400 00	
Market value at (see Note C):		
Old bonds at 73		$ 247,762 00
5. Blue Ridge Railroad Co.:		
Bonds of issues prior to January 1, 1861	$ 398,718 71	
Bonds issued under act of 1866	176,202 77	
	$ 574,921 48	
Market value at April 1, 1870:		
Old bonds at 70¼		$ 280,099 89
New bonds at 69¼		122,460 92
		$ 402,560 81

PLAINTIFF'S EXHIBIT No. 3—(*Continued.*)

Bonds (Continued.)

	Par.	Market.
7. Winchester and Potomac Railroad Co.:		
Bonds of issues prior to January 1, 1861..	$ 45,000 00	
Bonds issued under act of 1866.....	66,130 90	
	$ 111,130 90	
Market value at August 28, 1868:		
Old bonds at 53¼.....		$ 23,962 50
New bonds at 53.....		35,049 38
		$ 59,011 88
10. Norfolk and Petersburg Railroad Co.:		
Bonds of issues prior to January 1, 1861..	$ 86,134 00	
Bonds issued under act of 1866.....	65,390 49	
	$ 151,524 49	
Market value at (see Note D):		
Old bonds at 40.....		$ 34,453 60
New bonds at 50.....		32,695 24
		$ 67,148 84
13. Upper Appomattox Company:		
Bonds issued under act of 1866.....$	10,864 26	
Market value at July 8, 1884:		
New bonds at 52.....		$ 5,649 42

PLAINTIFF'S EXHIBIT No. 3—(*Continued*)

CASH.

	Cash received Face.	Cash received reduced to gold.	Total.
1. Orange and Alexandria Railroad Company	**$125,556 48	$ 39,974 19	$ 39,974 19
3. Richmond and Petersburg Railroad Company Nov. 7, 1861	33,408 00	33,408 00	33,408 00
4. Virginia Central Railroad Company, January, 1863, at	84,858 00	28,286 00	
(3 Confed. to 1 gold, 1888)	241,858 50	241,858 50	
			270,144 50
5. Blue Ridge Railroad Company, check reported by Steger in his report of 1874 as uncollected	8 96	8 96	8 96
6. Alexandria, Loudoun and Hampshire Railroad Company, stock May 17, 1872	1,500 00		
March 19, 1873	3,000 00		
June 5, 1883	46,362 40		
		50,862 40	50,862 40

8. Virginia and Tennessee Railroad Company, loan (*included in $4,000,000.00 second mortgage given by Atlantic, Mississippi, & Ohio Railroad Company), nothing.

9. Southside Railroad Company (*included in $4,000,000.00 second mortgage given by Atlantic, Mississippi, & Ohio Railroad Company.) nothing.

**November 15, 1862	$ 18,627 48	@	$ 3 00	$ 6,209 16
December 29, 1862	16,929 00	@	3 00	5,643 00
January 28, 1863	14,000 00	@	3 00	4,666 67
June 23, 1863	14,000 00	@	7 50	1,866 66
January 16, 1864	14,000 00	@	20 25	691 35
September 8, 1864	14,000 00	@	25 00	560 00
December 31, 1864	14,000 00	@	41 50	337 35
August 26, 1868	20,000 00	@	face	20,000 00
	$125,556 48			$ 39,974 19

PLAINTIFF'S EXHIBIT No. 3—(*Continued.*)

Cash (Continued.)

	Cash received Face.	Cash received reduced to gold.	Total.
11. Roanoke Navigation Company, September 30, 1882	$ 3,832 00	$ 3,832 00	$ 3,832 00
12. Alexandria Canal Company, July 1, 1887	764 47	764 47	764 47
13. Upper Appomattox Company, February 4, 1875	3,000 00		
March 29, 1881	2,280 00		
		5,280 00	5,280 00
14. Dismal Swamp Canal Company, September 30, 1868	9,935 99	9,935 99	9,935 99
15. Loan to Washington College, January 1, 1896	2,000 00	2,000 00	2,000 00
16. Richmond Academy bonds, February 5, 1896	400 00	400 00	400 00
17. Claim against United States government, April 4, 1903	5 50	5 50	5 50
18. Claim against Selden-Withers Co., sundry dates from April 26, 1866, to August 20, 1891, both dates included	132,842 74	132,842 74	132,842 74
19. Richmond, Fredericksburg and Potomac Railroad Company, March 13, 1863, at $5.00	27,520 00		
Confederate to $1.00 gold		5,504 00	
July 1, 1863	122,464 00		
At $9.00 Confederate to $1 gold		13,607 11	19,111 11

*Nos. 8 and 9 are included in sale to the Atlantic, Mississippi and Ohio Railroad Company, defendant's answer, page 57, Class "F."

PLAINTIFF'S EXHIBIT No. 4.

Summary of Defendant's Class "D"—1861—

(Exhibit No. 4, page 46 in record of August and September 1914 hearing) reduced to actual values as per page 647 of the original record.

All payments in 1861 taken at face.

---

1. Orange and Alexandria Railroad Co.:				
Dividend bonds, paid to State March 26, 1864, $31,604.09, at 23¾ Confederate to $1.00 gold.		$ 1,330 70		
Interest on loan paid to State, October 20 and 25, 1862, $20,336.00, at $2.50 Confederate, to $1.00 gold		8,134 80		
Overpayment		1 02		
				$ 9,466 52
2. Richmond and Danville Railroad Co.:				
Interest on loan paid to State, February 28, 1861				10,500 00
3. Richmond and Petersburg Railroad Co.:				
Dividend paid to State February 28, 1861				9,640 00
4. Virginia Central Railroad Co.:				
Interest on loan paid to State January 2 1861		1,159 34		
Interest on dividend bond paid to State January 19, 1861		5,959 80		
				7,119 14
5. Winchester and Potomac Railroad Co.:				
Annuity payment to State in November, 1861				833 33
6. Richmond, Fredericksburg and Potomac R. R. Co.:				
Interest on dividend bonds paid to State January 16, 1861				4,467 41
7. Virginia and Tennessee Railroad Co.:				
Seven per cent. payments on account of loan, $1,000,000.00, $280,000.00 as under—				
1861	$ 35,605 57 at	face	$35,605 57	
1862, January	14,394 43 at	$ 1.25	11,515 54	
1863, February	90,000 00 at	4.00	22,500 00	
1863, March	50,000 00 at	5.00	10,000 00	
1863, May	55,000 00 at	5.75	9,565 22	
1863, August	35,000 00 at	12.50	4,375 00	
	$280,000 00			93,561 33

PLAINTIFF'S EXHIBIT No. 4—*Continued.*

8. Southside Railroad Co.:
Seven per cent. payments on account of loan $800,000.00, $264,500.00 as under—

1862, July	$ 28,000 00	at	$1.50	$18,666 67	
1862, September	56,000 00	at	2.50	22,400 00	
1862, October	56,000 00	at	2.50	22,400 00	
1862, November	12,500 00	at	3.00	4,166 67	
1863, January	28,000 00	at	3.00	9,333 33	
1863, July	28,000 00	at	9.00	3,111 11	
1863, July	56,000 00	at	9.00	6,222 22	
	$264,500 00				$86,300 00

9. Norfolk and Petersburg Railroad Co.:

Six per cent. payments of interest on $82,500.00 of stock, for two years, $9,900.00 as under		
1862, January, $9,900.00, at $1.25	7,920 00	
Six per cent. payments of interest on $300,000.00 loan for two years, $36,000.00 as under		
1864, January, $36,000.00, at $20.00	1,800 00	
		9,720 00

10. James River and Kanawha Co.:

On account of the semi-annual 3½ per cent. due December 15, 1860, on the amount of the registered stock issued under act March 23, 1860 (section 9)	250 00

11. Washington College (loan):

Interest on loan $2,000.00	60 00

12. Richmond Academy Bonds:

Interest on bonds, $400.00	12 00
13. United States Government	(nothing)

14. The Farmers' Bank of Virginia:

Dividend due January 1, 1861; paid January 10, 1861	$12,327 00	
Dividend due January 1, 1861; paid January 10, 1861	3,689 00	
Dividend due January 1, 1861; paid February 9, 1861	17,675 00	
		33,691 00

15. Bank of Virginia:

Dividend due January 1, 1861; paid January 10, 1861	$20,567 75	
Dividend due January 1, 1861; paid January 10, 1861	5,196 45	
Dividend due January 1, 1861; paid January 16, 1861	7,962 50	
		33,726 70

PLAINTIFF'S EXHIBIT No. 4—*Continued.*

16. Bank of the Valley:		
Dividend due January 1, 1861; paid January 18, 1861	$12,950 00	
Dividend due January 1, 1861; paid January 18, 1861	3,664 50	
Dividend due January 1, 1861; paid January 18, 1861	322 00	
		16,936 50
17. Exchange Bank:		
Dividend due January 1, 1861; paid January 7, 1861	$29,708 00	
Dividend due January 1, 1861; paid January 7, 1861	934 50	
		30,642 50
18. Northwestern Bank:		
Dividend due January 1, 1861; paid January 4, 1861	$ 1,750 00	
Dividend due January 1, 1861; paid January 4, 1861	10,213 00	
Dividend due January 1, 1861; paid February 4, 1861	1,141 00	
		13,104 00
19. Fairmont Bank:		
Dividend due January 1, 1861; paid January 5, 1861		1,500 00
20. Blue Ridge Railroad Co.:		
Tolls for use of; Due and unpaid at January 1, 1861, and paid in cash January 19, 1861		1,534 69
		$363,065 13

PLAINTIFF'S EXHIBIT No. 4-A.

Summary of Defendant's Class "D"—1863.

Reduced to actual values as per page 647 of the Original Record.

1. Orange & Alexandria Railroad Co.				
March 26th, 1864—Received.....	$ 31,604 09			
at $23.75 Conf. to $1.00 gold.....				$ 1,330 70
3. Richmond & Petersburg Railroad Co.				
July 31, 1863—Received	21,857 80			
at $9.00 Conf. to $1.00 gold.....				2,428 65
4. Virginia Central Railroad Co.				
July 21, 1863—Received	6,903 33			
at $9.00 Conf. to $1.00 gold			767 02	
November 3, 1863—Received	2,390 99			
at $16.00 Conf. to $1.00 gold.....			149 44	
				916 47
6. Richmond, Fredericksburg & Potomac Railroad Co.				
June 30, 1863—Received	3,631 69			
at $8.00 Conf. to $1.00 gold.....			453 96	
December 30, 1872—Received at face			17,556 68	
				18,010 64
7. Virginia & Tennessee Railroad Co.				
May 14, 1863—Received	15,469 61			
at $5.75 Conf. to $1.00 gold.....				2,690 37
8. Southside Railroad Company.				
Cash received as follows:				
July 6 and 29, 1863... 84,000 00	at 9 to 1 ..		9,333 33	
Aug. 1, 8 and 17, 1863. 112,000 00	at 12.50 to 1—			
Sept. 16, 1863 ..... 12,375 69	at 12.50 to 1..		9,950 05	
$208,375 69				19,283 38
9. Norfolk & Petersburg Railroad Co.				
Sept. 7, 1863—Received dividend	2,324 52			
at $12.50 to $1.00 gold.....			185 96	
Jan. 11, 1864—Received interest.	93,866 57			
at $20.25 to $1.00 gold			4,635 39	
	$96,191 09			4,821 35
11. Washington College.				
August 26, 1863—Received.....	56 35			
at $12.50 to $1.00 gold				4 51

PLAINTIFF'S EXHIBIT No. 4-A.

(Continue

12. Richmond Academy Bonds.				
August 26, 1863—Received		11 26		
at $12.50 to $1.00 gold				90
13. United States Government	.....	.....	.....	.....
14. Farmers Bank of Virginia.				
Dividends received:				
December 19, 1863..	4,762 16	at 19 to 1..		250 64
15. Bank of Virginia.				
Dividends received:				
July 25, 1863.....	36,806 00	at 9 to 1...	4,089 55	
December 29, 1863..	1,168 88	at 19 to 1..	61 52	4,151 07
	$37,974 88			
16. Bank of the Valley.				
Dividends received:				
August 1, 1863.....	24,195 00	at $12.50 to 1		1,935 60
17. Exchange Bank.				
Dividends received:				
July 10, 1863.....	1,335 00	at 9 to 1...	148 34	
January 13, 1864...	7,050 14	at 20.25 to 1	348 15	496 49
	$ 8,385 14			
20. Blue Ridge Railroad Co.				
Tolls received:				
March 31, 1864		$30,266 80		
at $23.75 to $1. gold				1,274 40
				$ 57,595 17

PLAINTIFF'S EXHIBIT No. 5.

Acts of the Assembly 1865-1866; p. 79, chapter 9.

An Act to Provide for Funding the Interest Upon the Public Debt.

Passed March 2, 1866.

1. Be it enacted by the General Assembly, That the holders of the registered bonds of the State of Virginia, issued before the 17th day of April, eighteen hundred and sixty-one, be and they are hereby authorized to invest the interest due upon said bonds in registered bonds of the State bearing the same rate of interest as the principal of the bonds bears, and payable at any time the holder may elect, not less than ten nor more than thirty-four years from the date. Such bonds shall bear date on the first day of January, eighteen hundred and sixty-six, and may be issued for sums of one hundred dollars, or any multiple thereof, and shall be in the form and executed in the mode prescribed by law for the issue of certificates of registered debt of the State. But the interest upon the bonds so issued shall not be payable before the first day of July, eighteen hundred and sixty-seven.

2. The holders of the coupon bonds issued by the State before the seventeenth day of April, eighteen hundred and sixty-one, are hereby authorized to invest the interest due upon said bonds in either coupon or registered bonds of the State, bearing the same rate of interest as the principal of the bond bears; and the interest thereon, if the bond is a coupon, shall be payable at the place where the interest on the principal bond is provided to be paid; and such bond may be payable at any time the holder may elect, not less than ten nor more than thirty-four years from its date. Such bonds shall bear date on the first day of January, eighteen hundred and sixty-six; and if coupon, may be issued for sums of five hundred dollars, or any multiple thereof; or if registered, in sums of one hundred dollars, or any multiple thereof; and shall be in the form and executed in the mode prescribed by law for the issue of the certificates of registered or coupon bonds of the State. But the interest upon the bonds so issued shall not be payable before the first day of July, eighteen hundred and sixty-seven.

3. For any fractional sums of interest which cannot be invested under the two preceding sections of this act, certificates shall be issued in the form prescribed by law for the issue of certificates of the registered debt of the State, payable in two, three or four years, with such interest thereon as is provided in the case of the bonds hereinbefore authorized to be issued.

4. The holders of any of the bonds of the State issued before the seventeenth day of April, eighteen hundred and sixty-one, may, after the first day of January, eighteen hundred and sixty-seven, invest the interest which shall be then due thereon, and not invested under the first and second sections of this act; and may also invest the certificates of debt, mentioned in the preceding section, in bonds of the State, bearing date of the first of January, eighteen hundred and sixty-seven, in all respects similar to the

PLAINTIFF'S EXHIBIT No. 5.

Continued.

bonds provided for in the said first and second sections; and for any fractional sum of interest which cannot be so invested, certificates shall be issued as is provided in the preceding sections.

5. The holders of bonds of the State issued by the restored government of Virginia since the creation of the State of West Virginia, are hereby authorized to invest the interest now due thereon, which may become due up to the first of January, eighteen hundred and sixty-seven, in the same manner as is hereinbefore provided for the interest due or to become due upon the debt of the State of Virginia, incurred before the seventeenth of April, A. D. eighteen hundred and sixty-one.

6. The Auditor of Public Accounts shall have the bonds which shall be required, prepared, and shall perform all the duties under this act which are required by law to be performed by the Second Auditor in the issue of certificates of debt of the State.

7. This act shall be in force from its passage.

PLAINTIFF'S EXHIBIT No. 6.

DEED OF TRUST.

Given by the Atlantic, Mississippi & Ohio Railroad Company to the Board of Public Works of Virginia.

Mms. document on file in the office of the Corporation Commission.

Whereas, by the terms of an Act of the General Assembly of Virginia, approved June 17, 1870, entitled, "An act to authorize the formation of the Atlantic, Mississippi & Ohio Railroad Company." The Board of Public Works of Virginia is empowered and directed to sell and transfer unto the President and Board of Directors of the said proposed Atlantic, Mississippi & Ohio Railroad Company, all the stock held by the Commonwealth of the said State in the Norfolk & Petersburg, in the South Side, in the Virginia & Tennessee, and in the Virginia & Kentucky Railroad Campanies, and

Whereas, the said Board of Public Works is further empowered and directed by the terms of the said act to sell and assign or convey unto the President and Board of Directors of the Atlantic, Mississippi & Ohio Railroad Company, all and whatever claims the State may hold or have against the aforesaid Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky Railroad Companies for and in consideration that the Commonwealth is absolved from all and whatever liability by the reason of her unsatisfied subscription to the Virginia & Kentucky Railroad Company and of four millions of Virginia State bonds or at the option of the said company of money, to be paid by installments, as provided by the terms of the said act, and

Whereas, it is expressly provided by the terms of the said act that the payment of the consideration of the four millions aforesaid, and in the manner prescribed shall be secured by a second mortgage upon the property of the said Atlantic, Mississippi & Ohio Railroad Company, to be executed to the Board of Public Works of the State, such mortgage to be in all respects subordinate to such first mortgage or deed as the said Atlantic, Mississippi & Ohio Railroad Company may have made or may thereafter issue, provided the amount of such first mortgage or deed shall not exceed the sum of fifteen millions of dollars ($15,000,000.00); and

Whereas, the organization of the said proposed Atlantic, Mississippi & Ohio Railroad Company, on conformity with the provisions of the aforesaid act, has been duly certified; and

Whereas, the said Board of Public Works have this day sold, transferred and delivered over to the President and Board of Directors of the said Atlantic, Mississippi & Ohio Railroad Company the following: property—certificates of stock—held by the Commonwealth in the several aforesaid railroad companies; that is to say:

I. Stock certificate No. 39, of the Norfolk & Petersburg Railroad Company, for 8,175 shares of ordinary stock.

PLAINTIFF'S EXHIBIT No. 6.

Continued.

II. Stock certificate No. 40 of the Norfolk & Petersburg Railroad Company for 825 shares of stock, guaranteed to pay six per cent. (6%) annually.

III. Stock certificate No. 41 of the Norfolk & Petersburg Railroad Company, for 3,000 shares of stock, preferred, to pay seven per cent. (7%) annually.

IV. Stock certificate No. 881 of the South Side Railroad Company, for 8,035 shares of ordinary stock.

V. Stock certificate No. 1770 of the Virginia & Tennessee Railroad Company, for 17,168 shares of ordinary stock.

VI. Stock certificate No. 1771 of the Virginia & Tennessee Railroad Company, for 882 shares of stock, guaranteed to pay six per cent. (6%) annually.

VII. Stock certificate No. 1772 of the Virginia & Tennessee Railroad Company, for 5,000 shares of stock, preferred, to pay six per cent. (6%) annually.

VIII. Stock certificate No. 1 of the Virginia & Kentucky Railroad Company, for 1,034 shares of ordinary stock; and

Whereas, the said Board of Public Works have this day sold and by by these presents do hereby assign, convey and deliver over to the President and Board of Directors of the Atlantic, Mississippi & Ohio Railroad Company, all and whatever claims are held by the Commonwealth of Virginia against the several aforesaid Railroad Companies, as follows:

I. The note of the Norfolk & Petersburg Railroad Company, payable on demand for twenty-seven thousand two hundred and twenty-five dollars ($27,225.00), the same being for the amount of interest accrued and remaining unpaid as of July 1, 1870, on the 825 shares of guaranteed stock.

II. The note of the Norfolk & Petersburg Railroad Company, payable on demand for thirteen thousand two hundred and seventy-one and 41-100 dollars ($13,271.41), the same being for the amount of interest due and remaining unpaid as of the 1st day of July, 1870, upon the three hundred thousand dollars ($300,000.00) loan, so-called, made the said company under an act of Assembly, passed March 25, 1858.

III. The first mortgage bonds of the Norfolk & Petersburg Railroad Company bearing seven per cent. (7%) interest and numbered as follows, 881, 320, 988, 385, 60, 333, 66, and 384. And, the first mortgage bonds of the said railroad companies bearing eight per cent. interest and numbered as follows: 296. Amounting in the aggregate, principal the sum of four thousand five hundred dollars—such bonds being held by the Commonwealth as by the terms of the said Act of Assembly, passed March 25, 1858, and forming a part of the three hundred thousand dollars ($300,000.00) of bonds delivered to the State under the act aforesaid: one hundred and

PLAINTIFF'S EXHIBIT No. 6.

Continued.

sixty-three thousand dollars ($163,000.00) of such bonds having heretofore been redeemed by the said Norfolk & Petersburg Railroad Company, leaving, as will appear, a balance of one hundred and thirty-two thousand and five hundred dollars ($89,000.00 of seven per cent (7%) and $43,500.00 of eight per cent. (8%) yet to be accounted for by the Commonwealth, from which said bonds are alleged to have been stolen, and against recovery of which balance from the said Norfolk & Petersburg Railroad Company, except by the Atlantic, Mississippi & Ohio Railroad Company, the Commonwealth is liable to protect and indemnify the said company and the Atlantic, Mississippi & Ohio Railroad Company, and secure to the latter the amount thereof).

IV. All and whatever claims, rights and privileges which are secured to the State of Virginia under and by reason of a deed executed by the South Side Railroad Company to the Board of Public Works to secure the payment of principal and interest of a loan of eight hundred thousand dollars ($800,000.00) made by the Commonwealth to the said railroad company under an Act of Assembly, passed February 5, 1853, and modified by an Act of Assembly, passed the 18th day of January, 1866.

V. The registered certificate of the Virginia & Tennessee Railroad Company No. 200 for seventy-nine thousand and forty dollars ($79,040.00), the same being the amount of interest accrued upon the 832 shares of guaranteed stock, as of July 1, 1870, held by the State in said company.

VI. All and whatever claims, rights and privileges which belong to the State of Virginia by virtue of a loan of one million of dollars ($1,000,000.00), made by the Commonwealth to the Virginia & Tennessee Railroad Company as by Act of Assembly passed February 9, 1853, and which are secured to the State under and by reason of a deed executed by the said Railroad Company to the Board of Public Works, to secure the payment of principal and interest of the same, and everything else which the Board of Public Works is directed to sell and transfer to the said Atlantic, Mississippi & Ohio Railroad Company by the aforesaid act of June 17, 1870, with the requirements of which the said Atlantic, Mississippi & Ohio Railroad Company has complied.

Now therefore, the indenture witnesseth that for and in consideration of the premises and of the assignment, transfer and delivery of the said stocks and claims, which is hereby acknowledged, the said Atlantic, Mississippi & Ohio Railroad Company do hereby covenant with the Board of Public Works of Virginia to stand siezed of all their property in trust—First, for the security of a loan not exceeding fifteen millions of dollars ($15,000,000.00), to be made in conformity with the provisions of the Act of General Assembly of Virginia, approved June 17, 1870, hereinbefore referred to, and after the said debt, not exceeding fifteen millions of dollars ($15,000,-

PLAINTIFF'S EXHIBIT No. 6.

Continued.

000.00) is fully secured, then in trust to secure the payment to the Commonwealth of Virginia of four millions of State bonds, rating the same at par, or in money, at the option of the Atlantic, Mississippi & Ohio Railroad Company in the times and manner prescribed by the terms of the Act of Assembly, approved the 17th of June, 1870, the intention being to make the lien of the deed or mortgage which shall remain for the security of the said loan not exceeding fifteen millions of dollars ($15,000,000.00) prior to the lien of the mortgage to the State for the said four millions of dollars, payable as aforesaid in State bonds or in money, out of which sum of four millions, so payable to the State of Virginia, there is to be deducted whatever amount is lost to the said Atlantic, Mississippi & Ohio Railroad Company, or to the Norfolk & Petersburg Railroad Company by the failure of the State to deliver to the Atlantic, Mississippi & Ohio Railroad Company the lost bonds of the Norfolk & Petersburg Railroad Company hereinbefore referred to.

In testimony whereof the corporate name of the Atlantic, Mississippi & Ohio Railroad Company has been hereunto subscribed and the seal of the said corporation has been hereunto affixed by its president, and these presents subscribed and the seal of the Commonwealth of Virginia hereunto affixed by its Board of Public Works.

All on this 22nd day of December, 1870.

(Seal) A. M. & O. R. R. Co.
THE ATLANTIC, MISSISSIPPI & OHIO RAILROAD COMPANY,
By WILLIAM MAHONE, President.

(Seal) B. P. W.
WILLIAM F. TAYLOR, Auditor Public Accounts.
GEORGE RYE, Treasurer.
C. C. WALKER, Governor.

Attest:
THOS. H. DeWITT,
Secretary Board of Public Works.

(Seal) Lynchburg, Va.
JOHN T. MORRELL, Notary Public.

(Seal) Richmond, Va.
JOHN S. RADY, Notary Public.

PLAINTIFF'S EXHIBIT No. 7.

Summary of West Virginia's Claim Under Classes B, E, and G, as of January 1, 1861, on the Basis of the Market Value of the Securities, with the Exception of the Manassas Gap Railroad Company Under Class "G" for Which No Quotation Has Been Found.

Class "B"—Richmond, Fredericksburg and Potomac Railroad Company @ Market Quotation on January 4, 1861, ... 76½	$ 210,528 00
Class "E"—Banks, as per Sub-Schedule XX	3,294,375 00
Class "G"—James River and Kanawha Company, @ Market Quotation on December 14, 1860 .....18½	1,924,000 00
Class "G"—Manassas Gap Railroad Company, No Quotation Found . .	
	$ 5,428,903 00

Total Amount of West Virginia's Claim as of January 1, 1861, Taking Cash at Face, Securities Under Class "C" as Per Plaintiff's Exhibit No. 3, Income as Per Plaintiff's Exhibit No. 4, Securities Under Class "F" at $500,000.00, and Classes "B," "E," and "G," at Market as Per Preceding Page.

Class "A"—Cash	$ 1,102,036 16
Class "C"—As per Plaintiff's Exhibit, No. 3	3,193,623 57
Class "D"—As per Plaintiff's Exhibit, No. 4	363,065 12
Class "F"— . .	500,000 00
Classes "B," "E," and "G" . . . As per preceding page.	5,428,903 09
	$ 10,587,627 85

PLAINTIFF'S EXHIBIT No. 7.

Sub-Schedule XX.

CLASS "C."

BANKS.

	Par of Stock Owned by Virginia at Jan. 1, 1861.	Market Quotations.	
Farmers Bank of Virginia	$ 962,600 00	January 4, 1861—Par	$ 962,600 00
Bank of Virginia	963,620 00	January 4, 1861—Par	963,620 00
Bank of the Valley	483,900 00	No quotation, taken at—Par	483,900 00
Exchange Bank	875,500 00	January 4, 1861—@ 101	884,255 00
Northwestern Bank	374,400 00		
Fairmont Bank	50,000 00		
	$3,710,020 00		$3,294,375 00

PLAINTIFF'S EXHIBIT No. 8.

Summary of West Virginia's Claim Under Classes "B," "E," and "G," as of June 20, 1863, on the Basis of the Market Value of the Securities, with the Exception of the Manassas Gap Railroad Company, Under Class "G," for Which No Quotation Has Been Found.

Class "B"—Richmond, Fredericksburg and Potomac Railroad Company, $275,200.00 @ 110, May 27, 1863, @ $7.50 to $1.00—gold	$	40,362 67
Class "E"—Banks, as per Sub-Schedule XXX	$	483,292 32
Class "G"—James River and Kanawha Company, $10,400,000.00 @ 22, Market Value June 16, 1863, reduced @ $7.50 to $1.00 gold	$	305,066 67
Class "G"—Manassas Gap Railroad Company, No Quotation Found		
	$	828,721 66

PLAINTIFF'S EXHIBIT No. 8.

Total Amount of West Virginia's Claim as of June 20, 1863, Taking Cash at $7.50 Confederate to $1.00 Gold, Income Under Class D as per Defendant's Exhibit 4-A, Securities Under Classes C and F at Confederate Market Quotations Reduced to Gold at $7.50 Confederate to $1.00 Gold, and Classes B, E and G at Market, as per preceding page.

No quotations were found for securities except

Orange & Alexandria Railroad Company	Class C
Richmond & Danville Railroad Company	Class C
Richmond & Petersburg Railroad Company	Class C
Virginia Central Railroad Company	Class C
Virginia & Tennessee Railroad Company	Class F

Class A—Cash	$2,459,216 29	at $7.50 Confederate to $1.00 Gold	$ 327,895 51
Classes C & F, as per Schedule XXXX			918,822 24
Class D, as per Defendant's Exhibit 4-A			57,595 17
Classes B, E, and G, as per preceding sheet			828,721 66
			$2,133,034 58

PLAINTIFF'S EXHIBIT No. 8.

Sub. Schedule XXX.

CLASS "E."

BANKS—1863.

	Par of stock owned by Virginia at June 20, 1863.	Market Quotations.	
Bank of the Valley	$ 483,900 00	No quotations. Taken at par and reduced at $7.50 Conf. to $1.00 gold	$ 64,520 00
Bank of Virginia	963,620 00	May 27, 1863 at 87½ reduced at $7.50 Conf. to $1.00 gold	112,422 33
Farmers Bank of Virginia.	962,600 00	May 27, 1863, at 125, reduced at $7.50 Conf. to $1.00 gold	160,433 33
Exchange Bank	875,500 00	May 27, 1863, at 125, reduced at $7.50 Conf. to $1.00 gold	145,916 66
Northwestern Bank	374,400 00		.....
Fairmont Bank	50,000 00		.....
			$ 483,292 32

PLAINTIFF'S EXHIBIT No. 8.

Sub-Schedule XXXX.

CLASSES "C" AND "F."

Stock. 1863.

		Market Quotations.	
1. Orange and Alexandria Railroad Company ..	$ 874,500 00	April 18, 1863 @ 27½ @ $7.50 to $1.00 Gold ...	$ 32,065 00
2. Richmond and Danville Railroad Company ..	1,188,598 50	June 10, 1863 @ 125 @ $7.50 to $1.00 Gold ..	198,099 75
3. Richmond and Petersburg Railroad Company	385,600 00	June 10, 1863 @ 140 @ $7.50 to $1.00 Gold ..	71,978 66
4. Virginia Central Railroad Company	2,013,987 52	June 5, 1863 @ 100 @ $7.50 to $1.00 Gold ..	268,531 67
8. Virginia and Tennessee Railroad Company ..	2,270,525 00	July 24, 1863 @ 115 @ $7.50 to $1.00 Gold ..	348,147 16
			$ 918,822 24

PLAINTIFF'S EXHIBIT No. 9.

Statement of Interest Due October 1, 1914

upon

West Virginia's Share of the Debt

of the

Undivided State of Virginia

Unpaid and Outstanding January 1, 1861

Computed from January 1, 1861, *according to the terms written in the bonds.*

To this is added in the summary at the end, West Virginia's share of the principal of the bonds outstanding January 1, 1861, and her share of the interest accrued thereon.

Interest on the bonds redeemable at the pleasure of the General Assembly is calculated to October 1, 1914.

Interest on bonds having a definite maturity date is calculated up to, but not beyond, date of maturity.

Aggregate debt, at January 1, 1861, as per Joint Exhibit A-1, page 215 of the Record			$35,480,988 46
Less amount held by Sinking Fund	$1,329,557 20		
Board of Public Works	146,500 00		
Literary Fund	1,085,067 33		
			2,561,124 53
			$32,919,863 93
Accrued interest at January 1, 1861, as per Joint Exhibit A-1, page 215 of the Record	$1,053,067 63		
Less interest on holdings of Sinking Fund	$39,686 72		
Board of Public Works	4,395 00		
Literary Fund	31,776 02		
		75,857 74	
			977,209 89
Debt due to individuals, firms, corporations and others			$33,897,073 82
Amount decreed by the Supreme Court of the United States as payable by West Virginia			$ 7,182,507 46
Percentage of whole debt payable by West Virginia			21.2%

PLAINTIFF'S EXHIBIT No. 9—*Continued.*

Issues of Bonds Outstanding on January 1, 1861 as heretofore determined by the Court in this case

Grouped with respect to their Maturity dates and rate of Interest.

GROUP 1.

Six Per Cent. Registered Bonds Redeemable at the Pleasure of the General Assembly.

Alleghany and Huntersville Road	$ 2,700 00
Alexandria Canal Company	232,400 00
Berryville and Charlestown Turnpike Company	6,400 00
Beverly and Fairmount Road	16,600 00
Blue Ridge Railroad Company	32,200 00
City Point Railroad Company	49,600 00
Charlestown and Point Pleasant Turnpike Company	20,800 00
Charlestown and Point Pleasant Turnpike Company	5,800 00
Cacapon and North Branch Turnpike Company	11,000 00
Cumberland Gap Road	61,600 00
Clarksburg and Buckhannon Turnpike Company	8,000 00
Coal River Navigation Company	4,000 00
Dismal Swamp Canal Company	16,500 00
Dragon Swamp Navigation Company	1,464 00
Exchange Bank of Virginia and Northwestern Bank of Virginia	440,257 00
Giles, Fayette and Kanawha Turnpike Company	9,000 00
Goose Creek and Little River Navigation Company	7,000 00
Holliday Cove Turnpike Company	4,700 00
Hardy and Winchester Turnpike Company	15,500 00
Howardsville and Rockfish Turnpike Company	5,000 00
Hampshire and Morgan Turnpike Company	4,600 00
Ice's Ferry Road	1,358 00
Bank of Virginia	97,800 00
James River and Kanawha Company	1,773,431 59
James River and Kanawha Company	229,034 00
James River and Kanawha Company	1,205,100 00
James River and Kanawha Company	106,350 00
Louisa Railroad Company	166,150 00
Louisa Railroad Company	126,987 00
Louisa Railroad Company	12,900 00
Lewisburg and Blue Sulphur Springs Turnpike Company	1,000 00
Lafayette and English Ferry Turnpike Company	2,550 00
Lynchburg and Buffalo Springs Turnpike Company	8,500 00
Little Stone Gap Road	3,000 00
Marshall and Ohio Turnpike Company	9,000 00
Moorefield and North Branch Turnpike Company	10,700 00
Morgantown and Bridgeport Turnpike Company	1,040 00
Moorefield and Alleghany Turnpike Company	3,600 00
Natural Bridge Turnpike Company	6,100 00
North Carolina and Wytheville Road	100 00
Northwestern Turnpike Road	53 850 00
Northwestern Turnpike Road	6,800 00

PLAINTIFF'S EXHIBIT No. 9—*Continued.*

Northwestern Turnpike Road	2,000 00
Northwestern Turnpike Road	5,904 73
Northwestern Turnpike Road	2,100 00
Newmarket and Sperryville Turnpike Company	9,100 00
Ohio River and Maryland Line Road	12,000 00
Ohio River and Maryland Line Road	6,600 00
Orange and Alexandria Railroad Company	108,200 00
Petersburg Railroad Company	147,580 00
Portsmouth and Roanoke Railroad Company	64,950 00
Portsmouth and Roanoke Railroad Company	50,000 00
Pittsylvania, Franklin and Botetourt Turnpike Company	9,090 10
Richmond and Petersburg Railroad Company	175,900 00
Richmond and Petersburg Railroad Company	49,700 00
Rappahannock Company	12,900 00
Rappahannock Company	95,000 00
Red and Blue Sulphur Springs Turnpike Company	4,900 00
Rivanna Navigation Company	6,000 00
Richmond and Danville Railroad Company	378,090 00
Richlands to Kentucky Line Road	3,520 00
Rocky Mount Turnpike Company	9,800 00
Rich Patch Turnpike Company	1,100 00
Staunton and Parkersburg Road	1,900 00
Staunton and Parkersburg Road	16,510 00
Salem and Pepper's Ferry Turnpike Company	4,900 00
Salem and Newcastle Turnpike Company	3,275 00
Southwestern Turnpike Road	71,970 00
Southwestern Turnpike Road	123,162 00
Smith's River Navigation Company	2,600 00
Tazewell Courthouse and Fancy Gap Road	3,420 00
Upper Appomattox Company	37,900 00
Valley Turnpike Company	232,413 00
Valley Turnpike Company	22,664 00
Virginia and Maryland Bridge Company	8,200 00
Virginia-Tennessee Railroad Company	66,800 00
Winchester and Potomac Railroad Company	133,935 00
Wheeling, West Liberty and Bethany Turnpike Company	8,467 61
Weston and Fairmount Turnpike Company	4,000 00
Weston and Gauley Bridge Turnpike Company	5,000 00
Wellsburg and Bethany Turnpike Company	1,700 00
Williamsport Turnpike Company	800 00
Registered bonds	2,272,348 00
	$8,957,271 03

Elapsed time from January 1, 1861, to October 1, 1914, 53 years 9 months.

West Virginia's share, computed at 21.2% of the above	$1,398,941 45
Interest on West Virginia's share	6,124,086 21

PLAINTIFF S EXHIBIT No. 9—*Continued.*

GROUP 2.

Five Per Cent. Registered Bonds Redeemable at the Pleasure of the General Assembly.

Portsmouth and Roanoke Railroad Company	$104,000 00
Portsmouth and Roanoke Railroad Company	100,000 00
Richmond, Fredericksburg and Potomac Railroad Company	50,000 00
Winchester and Potomac Railroad Company	8,000 00
	$262,000 00

Elapsed time from January 1, 1861, to October 1, 1914, 53 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$ 55,544 00
Interest on West Virginia's share	149,829 94

GROUP 3.

James River Annuity Six Per Cent.

James River Company	$95,560 00

Elapsed time from January 1, 1861, to October 1, 1914, 53 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$20,246 00
Interest on West Virginia's share	65,293 35

GROUP 4.

Six Per Cent. Registered Bonds Redeemable in Twenty Years.

Staunton and Parkersburg, Loan No. 16, act of March 16, 1838—$106,713 25	
No interest charged to West Virginia on this loan.	
West Virginia's share, computed at 21.2% of the above	22,623 21

GROUP 5.

Six Per Cent. Registered Bonds Redeemable in Thirty-four Years.

James River and Kanawha Co., act March 23, 1860	$2,492,400 00	
West Virginia's proportion at 21.2%	$ 528,388 80	
Interest on West Virginia's share from January 1, 1861 to March 23, 1894		$1,053,332 51

Being thirty-four years after March 23, 1860. Elapsed time, thirty-three years, eighty-two days.

PLAINTIFF'S EXHIBIT No. 9—*Continued.*

(Loan No. 91.)

Registered bonds issued for redemption of warrants, act March 17, 1856	$2,698,700 00		
West Virginia's proportion at 21.2%.		$ 572,124 40	
Interest on West Virginia's share from January 1, 1861, to March 17, 1890			$1,002,644 11

Being thirty-four years after March 17, 1856. Elapsed time, twenty-nine years, seventy-six days.

(Loan No. 93.)

Registered bonds, act March 18, 1858	$ 398,900 00		
West Virginia's proportion at 21.2%.		$ 84,566 80	
Interest on West Virginia's share from January 1, 1861, to March 18, 1892			$ 158,364 86

Being thirty-four years after March 18, 1858. Elapsed time, thirty-one years, seventy-seven days.

(Loan No. 90.)

Registered bonds (coupons attached), acts March 29, 1851, May 25, 1852	$2,498,175 15		
West Virginia's proportion at 21.2%		$ 529,613 13	
Interest on West Virginia's share from January 1, 1861, to March 29, 1885			$ 770,304 15

Being thirty-four years after March 29, 1851. Elapsed time, twenty-four years, eighty-eight days.

Totals	$8,088,175 15	$1,714,698 13	$2,934,645 63

GROUP 6.

Six Per cent. Registered Bonds Redeemable in Thirty-five Years.

Coupon bonds, act of March 29, 1851	$13,082,500 00
West Virginia's share, computed at 21.2% of the above	2,773,490 00
Interest on West Virginia's share from January 1, 1861, to March 29, 1886	4,200,355 61

Being thirty-five years after March 29, 1851. Elapsed time, twenty-five years, eighty-eight days.

PLAINTIFF'S EXHIBIT No. 9—*Continued.*

GROUP 7.

Six Per Cent, Registered Bonds Redeemable in Thirtyfive Years.

(Loan No. 92.)

Registered bonds issued under act of March 18, 1856, in exchange for coupon bonds, theretofore issued under act of March 29, 1851	$ 512,500 00
West Virginia's share computed at 21.2% per of the above	108,650 00
Interest on West Virginia's share from January 1, 1861, to March 29, 1886	164,546 70

Being thirty-five years after March 29, 1851. Elapsed time, twenty-five years, eighty-eight days.

GROUP 8.

Five Per Cent, Sterling Coupon Bonds Redeemable in Thirty-five Years

Sterling coupon bonds, act of March 29, 1851	$1,815,204 50
West Virginia's share computed at 21.2% of the above	384,823 35
Interest on West Virginia's share from January 1, 1861, to March 29, 1886	485,668 20

Being thirty-five years after March 29, 1851. Elapsed time twenty-five years, eighty-eight days.

SUMMARY.

	Net total amount of bonds outstanding Jan. 1, 1861	Amount chargeable to West Virginia at 21.2%	Interest on West Virginia's share accrued since Jan. 1, 1861
Group 1	$ 8,957,271 03	$1,898,941 46	$ 6,124,086 21
Group 2	262,000 00	55,544 00	149,829 94
Group 3	95,500 00	20,246 00	65,293 35
Group 4	106,713 25	22,623 21	
Group 5	8,088,175 15	1,714,693 13	2,984,645 63
Group 6	13,082,500 00	2,773,490 00	4,200,355 61
Group 7	512,500 00	108,650 00	164,546 70
Group 8	1,815,204 50	384,823 35	485,668 20
	$32,919,868 93	$6,979,011 15	$14,174,425 64
Accrued interest January 1, 1861	977,209 89	203,496 31	
	$33,897,078 82	$7,182,507 46	

PLAINTIFF'S EXHIBIT No. 9.

Continued.

West Virginia's share of bonds outstanding January 1, 1861	$ 6,979 011 15
West Virginia's share of accrued interest since January 1, 1861	14,174,425 64
West Virginia's share of interest accrued January 1, 1861	203,496 31
	$21,356,933 10

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9

To be attached to and printed with Plaintiff's Exhibit No. 9.

Computation showing the amount West Virginia would pay on her portion of the old debt of the Undivided State of Virginia, if calculated on the basis shown in the "Brief for the Bondholding Creditors," submitted at the October, 1913, term of the Supreme Court of the United States.

(See Schedule 5 in this Brief, page 125)

The Principal Sum Basis used in the following calculation (1), is the aggregate amount of Virginia's settlements to October 1, 1913, as shown in Plaintiff's Exhibit No. 22 (September, 1914).

Interest paid by Virginia, January 1, 1861, to October 1, 1913	$41,071,219 02
Bonds taken up by Virginia	12,141,591 49
New bonds issued and outstanding	24,645,075 23
	$77,857,885 74

The Supreme Court found West Virginia's share to be 23½%
The Supreme Court found Virginia's share to be 76½%

$$\text{Ratio } \frac{235}{765} \text{ - - } .30\ 7189$$

1. If West Virginia had treated her share in the same manner in which Virginia has, since January 1, 186[illegible], her total payment in relation to Virginia's would be 30.7189% of $77,857,885.74, which is equivalent to 23.5% of the unscaled debt, or $23,917,086 06

2. If West Virginia had treated her portion of the debt, viz.: $7,182,507.46, as provided by her Constitution, the result would be as follows:

January 1, 1861	5% (6.28118%)		6% (93.71882%)	Total (100%)
West Va.'s portion*	$ 451,146 22		$ 6,731,361 24	$ 7,182,507 46
34 years interest (170%) not compounded	766,948 57	(204%)	13,731,976 93	14,498,925 50
	$1,218,094 79		$20,463,338 17	
Total amount at October 1, 1914				$21,681,432 96

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9

(Continued)

*January 1, 1861			
Total 5%	$ 2,129,134 61	—.9628118	
Total 6%	31,767,939 21	—.9371882	
Exhibit No. 9	$33,897,073.82	100%	

3. If West Virginia scaled her share on a basis of the 1871 and 1892 Funding Act of Virginia:

Principal at January 1, 1861			$ 7,182,507 46
Interest to July 1, 1871:			
$ 451,146 22 at 5% for 10½ years.	$ 236,851 77		
6,731,361 24 at 6% for 10½ years.	4,240,757 58		
			$4,477,609 35
			$11,660,116 81
Interest to July 1, 1891:			
$ 687,997 99 at 5% for 20 years..	$ 687,997 99		
10,972,118 82 at 6% for 20 years..	13,166,542 58		
			$13,854,540 57
			$25,514,657 38
By the act of February 20, 1892, Virginia offered 19-28 of principal and interest in new Century Bonds; 19-28 of $25,514,657.38			$17,313,517 51
on which interest would be:			
2% for 10 years to July 1, 1901	$3,462,703 50		
3% for 13¼ years to October 1, 1914.	6,882,123 21		
			$10,344,826 71
Total amount at October 1, 1914			$27,658,344 22

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9

(*Continued*)

4. If West Virginia scaled her share on a basis of the 1871, 1879 and 1892 Funding Acts of Virginia:			
Total amount of principal and interest at July 1, 1871, as in the preceding statement, $11,660,116.81, under the Act of March 28, 1879, new bonds (10-40's) were issued at 100% for principal			$11,660,116 81
and 50% for accrued interest July 1, 1871 to January 1, 1879:			
$ 687,997 99 at 5% for 7½ years.	$ 257,999 25		
10,972,118 82 at 6% for 7½ years.	4,937,453 47		
	$11,660,116 81	$5,195,452 72	
50% of this accrued interest			2,597,726 36
Principal of New 10-40 Bonds			$14,257,843 17
Interest from January 1, 1879, to July 1, 1891:			
10 years at 3%	$4,277,352 95		
2½ years at 4%	1,425,784 32		
			$5,703,137 27
			$19,960,980 44
Under Act of February 20, 1892, principal and interest was reduced to 19-28ths, or			$13,544,951 04
Interest thereon, July 1, 1891, to October 1, 1914:			
10 years at 2%	$2,708,990 21		
13¼ years at 3%	5,384,117 83		
			$8,093,108 04
Total amount at October 1, 1914			$21,638,059 08

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9

(Continued)

5. If West Virginia scaled her share on a basis of the 1892 Funding Act of Virginia:		
Principal at January 1, 1861:		
5%	$ 451,146 22	
6%	6,731,361 24	
		$7,182,507 46
Interest fro mJanuary 1, 1861, to July 1, 1891:		
$ 451,146 22 at 5% for 30½ years.	$ 687,997 98	
$6,731,361 24 at 6% for 30½ years.	12,318,391 07	
		$13,006,389 05
$7,182,507 46		
		$20,188,896 51
Under the Act of February 20, 1892, principal and interest were reduced to 19-28ths, or		$13,699,608 38
Interest thereon from July 1, 1891, to October 1, 1914:		
10 years at 2%	$2,739,921 68	
13¼ years at 3%	5,445,594 33	
		$8,185,516 01
Total amount at October 1, 1914		$21,885,124 39
6. If West Virginia scaled her share on a basis of the 1871 and 1882 Funding Acts of Virginia:		
Total amount of principal at July 1, 1871, as in calculation No. 3 and No. 4 (ante):		
5% Bonds	$ 687,997 99	
6% Bonds	10,972,118 82	
		$11,660,116 81
Interest from July 1, 1871, to July 1, 1882:		
$ 687,997 99 at 5% for 11 years.	$ 378,398 89	
10,972,118 82 at 6% for 11 years.	7,241,598 42	
		$ 7,619,997 31

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9.

(*Continued*)

Under Act of February 14, 1882, new bonds were authorized for 53% of principal and 100% of accrued interest (Class A):		
53% of $11,660,116.81	$6,179,861 91	
100% of interest	7,619,997 31	
		$13,799,859 22
Interest from July 1, 1882 to October 1, 1914:		
32¼ years at 3%		$13,351,363 80
Total amount at October 1, 1914		$27,151,223 02
7. If West Virginia scaled her share on a basis of the 1871 and 1879 and 1882 Funding Acts of Virginia:		
Amount of principal at January 1, 1879, as in calculation No. 4 (ante)		$14 257,843 17
Interest from January 1, 1879, to July 1, 1882:		
3½ years at 3%		1,497,073 53
		$15,754,916 70
Under the Act of February 14, 1882, the bonds of 1879 (Class B) were fundable as follows:		
60% of Principal.		
100% of Interest.		
Principal —$14 257,843 17 at 60%	$8,554,705 90	
Interest — 1,497,073 53 at 100%	1,497,073 53	
		$10,051,779 43
Interest from July 1, 1882, to October 1, 1914:		
32¼ years at 3%		9,725,096 64
Total amount at October 1, 1914		$19,776,876 07

PLAINTIFF'S EXHIBIT No. 10.

14 Doc. No. 14.

Comparative State of the Farmers Bank of Virginia, including

	1860.	1861.
Debt outstanding	$6,027,315 59	$5,764,680 74
Sterling bills	4,349 66	5,375 84
Stocks	41,426 76	41,728 51
Specie	548,812 90	416,120 40
Notes of other banks in Virginia	395,462 54	583,276 20
Notes of banks out of the State.	21,518 96	9,987 00
Due by other banks	542,494 72	308,730 62
Real estate	120,312 79	193,696 46
Loan to Commonwealth		
In transitu between bank and branches		7,074 53
	$7,771,693 92	$7,330,670 30

PLAINTIFF'S EXHIBIT No. 10.

Doc. No. 14. 15

the Branches, on the first day of January 1860 *and the first day of January,* 1861.

	1860.	1861.
Capital stock	$3,150,900 00	$3,150,900 00
Circulation	1,769,872 00	1,532,578 00
Deposits	2,227,543 28	1,931,138 51
Due to other banks	130,358 17	240,885 56
Surplus and contingent fund	331,040 09	337,067 05
Profits of the institution	145,813 47	138,101 18
In transitu between bank and branches	16,166 91	
	$7,771,693 92	$7,330,670 30

PLAINTIFF'S EXHIBIT No. 10—(*Continued.*)

Tabular Statement of the Farmers Bank of Virginia, January, 1861.

	Capital.	Stocks used as Capital.	Bills Discounted. Payable at Bank and Branches.	Bills Discounted. Foreign Bills of Exchange payable out of the State.*	Bills Discounted. Domestic Bills of Exchange payable in the State.*	Bad Debts.	Doubtful Debts.	Specie.*	Circulation.*
1860—Nov. 1	.....	.....	.....	1,156,609 74	238,484 85	.....	.....	384,501 72	1,379,994
Dec. 1	.....	.....	.....	990,075 40	262,467 30	.....	.....	349,534 27	1,454,006
1861—Jan. 1	$3,150,900	41,728 51	4,618,091 40	896,354 55	249,734 79	70,773 96	45,437 34	416,120 40	1,532,578

	Notes on other banks. In the State.	Notes on other banks. Out of the State.	Value of Real Estate.	Contingent Fund.	Deposits.*	Loans to Directors.*	Aggregate Debt due by the Bank.*	Aggregate of Outstanding Debts due to the Bank.*
1861—Nov. 1	.....	.....	.....	.....	1,590,922 16	115,792 91	3,302,756 48	5,937,510 52
Dec. 1	.....	.....	.....	.....	1,421,722 22	116,214 93	3,217,225 40	5,870,859 33
Jan. 1	$583,276 20	9,987 00	193,696 46	337,067 05	1,931,138 51	130,066 93	3,831,843 53	6,273,670 44

*The acts of the legislature passed in 1856 (March 17th), extending the charters of most of the banks in the State, require that each quarterly statement shall give the amounts on the first day of each month in the quarter, under the heads marked (*).

PLAINTIFF'S EXHIBIT No. 11.

6 Doc. No. 14.

Comparative State of the Bank of Virginia, including the

	1861	1860
Debt outstanding	$4,513,439 93	$4,749,351 29
Sterling bills		58 54
Stocks	64,721 30	102,371 30
Specie	376,355 54	518,545 58
Notes of other banks in Virginia	365,574 05	245,326 96
Notes of banks out of the State.	9,217 00	11,995 84
Due by other banks	235,562 53	575,781 82
Real estate	178,555 33	179,054 55
Treasurer's special deposit in bank notes, $297,121.10...		
In transitu between bank and branches	13,653 62	
Lost by robbery at Portsmouth in $100 notes	18,900 00	18,900 00
	$5,775,979 30	$6,401,385 88

PLAINTIFF'S EXHIBIT No. 11.

Doc. No. 14. 7

Branches, on the first day of January 1861 *and the first day of January* 1860.

	1861.	1860.
Capital stock	$2,651,250 00	$2,651,250 00
Circulation	1,058,228 83	1,232,204 83
Deposits	1,545,968 64	1,974,148 95
Surplus and contingent fund.	322,549 39	337,455 84
Profits of the institution since 1st December, at branches.	9,685 93	13,758 02
Due to other banks	188,296 51	190,299 70
In transitu between bank and branches		3,268 54
Treasurer's special deposit in bank notes, $297,121.10....		
	$5,775,979 30	$6,401,385 88

PLAINTIFF'S EXHIBIT No. 11—(*Continued.*)

8 Doc. 14.

Tabular Statement of the Bank of Virginia, January, 1861.

Quarter ending January	Capital.	Bills Discounted.			Bad Debts.	Doubtful Debts.	Specie.	Circulation.
		Payable at Bank and Branches.*	Foreign Bills of Exch'ge, payable out of State.*	Domestic Bills of Exc'ge, payable in State.*				
1861	$2,651,250 00	.....	.....	.....	$6,412 00	$42,978 67	$	$ 989,639 88
1860—November 1	.....	.....	$1,031,491 26	.....	.....		413,023 25	981,689 88
December 1.	.....	.....	915,007 94	.....	.....		402,072 16	981,689 88
1861—January 1...	.....	.....	851,395 00	.....	.....		276,855 54	1,058,228 63

Quarter ending January	Notes of Other Banks.		Value of Real Estate.	Contingent Fund.	Deposits.*	Loans to Directors.*	Aggregate Debt due by the Bank.*	Aggregate of Outstanding Debt due to the Bank.*
	In the State.	Out of the State.						
1861	$365,574 05	9,217 00	178,555 33	119,189 72	1,332,566 61	94,630 60	2,560,551 23	4,667,291 12
1860—November 1					1,443,151 72	101,607 90	2,586,747 85	4,6[illegible]9,062 22
December 1					1,545,968 64	103,886 42	2,792,493 98	4,749,002 46

*The acts of the legislature, passed in 1856 (March 17 th), extending the charters of most of the banks in the State, require that each quarterly statement shall give the amounts on the first day of each month in the quarter, under the heads marked (*).

PLAINTIFF'S EXHIBIT, No. 12

Doc. 14, pp. 32 and 33

Condition of the Bank of the Valley in Virginia, including its branches January 1, 1860.

Specie	$ 397,101	41
Notes of banks incorporated by the State	64,598	57
Notes of banks incorporated elsewhere	11,544	30
Due from other banks	479,989	62
Notes discounted	1,622,071	72
Inland bills discounted	477,067	53
Virginia Treasury notes	5,400	00
Bond account	30,112	06
Stock purchased to secure a debt	5,000	00
Real estate	74,647	57
Apparent deficiency in the cash account of the late teller of the mother bank, arising from overdrafts, &c., permitted by him	19,343	91
	$3,191,377	18

Capital Stock	$1,215,000	00
Notes in circulation	1,228,089	50
Due to other banks	296,222	38
Discount	7,925	42
Profit and loss and surplus fund	183,039	70
Deposits	259,040	12
	$3,191,377	18

In addition to the amount of ascertained liabilities as above, it is proper to add, that there may probably be due at the mother bank, to banks and depositors, about $20,000.00 for omissions on the part of the late teller to enter credits for remittances and deposits—the amount not yet ascertained.

PLAINTIFF'S EXHIBIT No. 12.

34 Doc. No. 14.

Condition of the Bank of the Valley in Virginia, including its

Specie	$ 313,180 63
Notes of banks incorporated by the State	33,161 92
Notes of banks incorporated elsewhere	41,461 39
Due from other banks	296,000 71
Notes discounted	1,692,805 66
Inland bills discounted	408,124 81
Bond account	29,212 06
Virginia State stock	5,400 00
Real estate	76,337 57
Apparent deficiency in the cash account of the late teller of the mother bank, arising from overdrafts, etc., permitted by him	13,522 12
	$2,909,206 87

	Nov. 1, 1860.	Dec. 1, 1860.	Jan. 1, 1861
Indebtedness of directors	$55,842 67	$38,387 35	$52,383 59

At the death of the late teller, which occurred on the 21st day of August, 1859, there were found among his papers various checks, drafts, etc., which he had improperly paid, and held up, there being no funds to the credit of the drawers at the time—many of which have since been paid; and the apparent deficiency on the 1st of October, 1859 has been thus reduced to $13,522.12; which balance, it is hoped, will be fully settled in the same way.

PLAINTIFF'S EXHIBIT No. 12.

Doc. No. 14. 35

branches, January 1, 1861.

Capital stock	$1,215,000 00
Notes in circulation	1,176,990 50
Due to other banks	120,409 81
Discount	7,298 33
Profit and loss and surplus fund	178,520 10
Deposits	210,988 13
	$2,909,206 87

In addition to the amount of ascertained liabilities, as stated above, it is proper to add, that there may probably be due at the mother bank, to banks and depositors, about $30,000, for omissions on the part of the late teller to enter credits for remittances and deposits—the precise amount not yet accurately ascertained. No ultimate loss, however, to the bank or his securities is apprehended.

PLAINTIFF'S EXHIBIT No. 13.

22 Doc. No. 14.

Comparative State of the Exchange Bank of Virginia, including

	1859.	1860.
Local loans, &c., outstanding	$5,377,242 47	$5,257,662 94
Sterling bills	7,242 77	21,999 08
Stocks, &c.	76,811 56	90,936 56
Specie	412,740 21	372,511 96
Notes of other banks in Virginia	166,819 78	431,758 89
Notes of banks out of the State.	17,092 38	13,402 21
Due by other banks	422,039 84	168,662 23
Real estate	174,278 21	179,381 12
	$6,654,273 22	$6,536,314 99

PLAINTIFF'S EXHIBIT No. 13.

Doc. No. 14. 23

the Branches, on the 31st December, 1859 and 31st December, 1860.

	1859	1860
Capital stock	$3,088,600 00	$3,127,100 00
Circulation	1,435,757 50	1,235,633 50
Deposits	1,618,232 49	1,689,685 46
Due to other banks	159,729 00	122,638 38
Contingent fund	205,047 67	191,554 24
Profits of the institution	154,585 04	150,586 05
In transitu, bank and branches	2,221 52	9,127 36
	$6,854,273 22	$6,536,314 99

PLAINTIFF'S EXHIBIT No. 13.
Doc. No. 14.

Tabular Statement of the Exchange Bank of Virginia, January, 1861.

	Capital.	Stocks used as Capital.	Bills Discounted.		Doubtful Debts.	Specie.	Circulation.
			Payable at Bank and Branches.	Inland and Foreign Bills of Exchange			
Quarter ending 31st December, 1860	$2,137,100 00	90,936 56	3,768,488 57	1,507,903 90*	4,800 00	372,511 96	1,235,633 50

*This includes bills payable at distant points in and out of the State, also sterling bills.

	Notes of Other Banks.		Value of Real Estate.	Contingent Fund.	Deposits.	Loans to Directors.	Aggregate Debt due by the Bank.	Aggregate of Debts due to the Bank.
	In the State.	Out of the State.						
Quarter ending 31st December, 1860	$431,758 89	13,402 21	179,381 12	191,584 24	1,689,635 46	96,836 54	3,047,907 34	5,984,421 91

PLAINTIFF'S EXHIBIT No. 14.

40 Doc. No. 14.

Statement of the Condition of the Northwestern Bank of and Jeffersonville, on the first day of January, 1861, *corresponding period*

	Jan. 1, 1861.	Jan. 1, 1860.
Domestic debt	$ 823,130 86	$ 825,264 42
Bills of exchange	728,243 37	658,519 52
Stock of this bank	29,000 00	27,700 00
Other stocks	27,012 52	28,994 58
Banking houses and other real estate	145,869 92	128,735 42
Notes of Virginia banks	60,510 00	29,407 00
Notes of other banks, checks, &c.	31,939 43	38,350 82
Due by other banks and bankers.	103,321 21	84,571 22
Coin	162,216 09	142,819 30
	$2,110,243 41	$1,965,362 28

PLAINTIFF'S EXHIBIT No. 14.

Doc. No. 14. 41

Virginia, including its Branches at Wellsburg, Parkersburg with a Comparative Statement of the same for the of the preceding year.

	Jan. 1, 1861.	Jan. 1, 1860.
Capital	$ 868,100 00	$ 868,100 00
Circulation	834,973 00	679,523 00
Deposits	225,023 46	237,488 72
Due to other banks and bankers	54,513 12	50,330 99
Contingent fund	63,732 96	87,816 02
Profits	40,116 41	28,273 96
In transit	20,784 46	13,779 59
	$2,110,243 41	$1,965,862 28

PLAINTIFF'S EXHIBIT No. 15.

156 Doc. No. 14.

Comparative Statement of the Fairmont

	1860.	1861.
Capital stock	$ 57,950 00	$ 107,950 00
Circulation	46,565 00	123,350 00
Deposits	10,051 01	7,198 76
Due to other banks	2,760 55	5,960 81
Contingent fund	4,130 44	7,418 46
Dividend unclaimed	2,655 50	706 00
Bonus and tax	299 40	
	$ 124,461 90	$ 252,584 03

PLAINTIFF'S EXHIBIT No. 15.

Doc. No. 14. 157

Bank—January 1860 *and* 1861.

	1860.	1861.
Debt outstanding	$ 40,381 39	$ 153,327 02
Stocks	61,750 00	61,750 00
Specie	10,020 87	27,491 38
Notes of banks in the State	3,409 00	3,490 00
Notes of banks out of the State	1,346 00	1,520 00
Real estate and personal property	4,027 84	4,027 84
Due from other banks	1,726 80	977 79
Interest due from State	1,800 00	
	$ 124,461 90	$ 252,584 03

PLAINTIFF'S EXHIBIT NO 15.

158

Doc. No. 14.

Condition of the Fairmont Bank.

	Oct., 1860.	Nov., 1860.	Dec., 1860.
Capital stock	$ 107,950 00	$ 107,950 00	$ 107,950 00
Stocks	61,750 00	61,750 00	61,750 00
Aggregate debt due by this bank	135,861 33	160,355 81	146,789 10
Outstanding debt due this bank	142,300 47	169,538 85	152,897 83
Circulation outstanding	106,580 00	128,905 00	130,950 00
Bills discounted: Foreign bills of exchange payable out of State	58,953 85	84,374 64	75,564 54
Domestic bills payable in the State	79,934 50	83,546 73	76,344 57
Bad debts	60 00	60 00	60 00
Doubtful debts	2,988 32	2,988 32	2,988 32
Specie	35,199 66	33,779 21	29,604 68
Exchange made	60 73	272 20	218 65
Notes of banks in this State	1,245 00	2,525 00	7,872 00
Notes of banks out of the State	3,418 00	1,850 00	3,790 00
Real estate and personal property	4,027 84	4,027 84	4,027 84
Contingent fund	3,040 67	3,040 67	3,040 67
Due to depositors	15,351 61	12,983 98	10,383 41
Loans to directors	6,165 13	6,915 13	6,460 13

PLAINTIFF'S EXHIBIT NO 15.

Continued.

Doc. No. 14. 159.

The undersigned directors of the Fairmont Bank, at Fairmont, Virginia, certify that the foregoing statements have been examined, and are believed to be correct.

T. G. WATSON,
E. P. STRAIGHT,
WM. HOOD.
AUSTIN MERRILL,
ISAAC HOLMAN,
E. CONAWAY.

Virginia—Marion County, to-wit:

This day Thomas F. Conaway, cashier of the Fairmont Bank, personally appeared before me, the undersigned, a notary public of said county, and made oath that the foregoing statements are correct, to the best of his knowledge and belief.

Given under my hand this 14th day of January, 1861.

A. S. HAYDEN, N. P.

PLAINTIFF'S EXHIBIT No. 16.

Statement of Old Unfunded Bonds of Virginia for which one-third as West Virginia's share.

Details taken from Second Auditor's Manuscript Record of School and College Bonds.

	Group No. 1	Group No. 3
Protestant Episcopal Theological Seminary & High School, in Virginia	$ 25,500 00	.....
Washington & Lee University	168.858 23	$ 50,000 00
Richmond College	17,026 19	.....
Emory and Henry College	600 00	.....
Lessburg Academy	1,000 00	.....
School Commissioners of Prince William Co.	200 00	.....
Hall's Free School	800 00	.....
University of Virginia	23,200 00	.....
Virginia Military Institute	600 00	.....
Randolph Macon College	2,400 00	.....
The Dawson Fund	9,287 61	.....
New London Academy	3,500 00	.....
College of William and Mary	18.900 00	11,000 00
Union Theological Seminary	45,395 00	.....
Hampden-Sidney College	59,400 00	.....
Virginia Agricultural & Mechanical College and Hampton Normal & Agricultural College	38,158 00	.....
	$ 414,825 03	$ 61,000 00
Interest from January 1,1872 to October 1, 1914, 42 years, 9 months	$1,064,026 20	$ 156,465 00

PLAINTIFF'S EXHIBIT No. 16.

Virginia issued her new bonds in full without setting off

Old bonds surrendered are grouped the same as shown in Plaintiff's Exhibit No. 9.

Group No. 5	Group No. 6	Group No. 7	Total
$ 29,700 00	$ 2,800 00	$ 1,900 00	$ 59,900 00
16,900 00	.....	1,000 00	236,758 23
21,247 00	3,600 00	2,000 00	43,873 19
.....	.....	.....	600 00
.....	1,500 00	.....	2,500 00
.....	1,200 00	.....	1,400 00
3,900 00	.....	100 00	4,800 00
7,000 00	11,400 00	7,000 00	48,600 00
8,100 00	7,400 00	.....	16,100 00
6,100 00	4,000 00	2,000 00	14,500 00
15,800 00	9,100 00	.....	34,187 61
3,000 00	.....	.....	6,500 00
6,000 00	.....	.....	35,900 00
38,200 00	10,900 00	22,500 00	116,995.00
11,150 00	.....	.....	70,550 00
8,150 00	119,370 00	6,000 00	171,678 00
$ 175,247 00	$ 171,270 00	$ 42,500 00	$ 864,842.03
$ 449,508 56	$ 439,307 55	$ 109,012 50	$2,218,319.81

PLAINTIFF'S EXHIBIT No. 17.

(Sections 9 and 10, of Chapter 143. An Act to authorize the formation of the Atlantic, Mississippi & Ohio Railroad Company. Approved June 17, 1870.)

9. That upon the formation of the said Atlantic, Mississippi & Ohio Railroad Company, as provided by the terms of this act, the Board of Public Works shall be and they are hereby empowered and directed to sell and transfer, for the consideration hereinafter mentioned, to the President and Board of Directors of the said Atlantic, Mississippi & Ohio Railroad Company, all the stock held by the Commonwealth in the said Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky Railroads, to be cancelled or distributed among the stockholders of the said Atlantic, Mississippi & Ohio Railroad Company, in the discretion of the stockholders of the said company, as the stock of other stockholders than the State shall, as to each of the aforesaid companies, become absorbed in that of the said Atlantic, Mississippi & Ohio Railroad Company; and the said company shall be authorized to appoint such number of directors in the said Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky Railroad Companies, so long as there shall remain any such distinctive organizations, as the State now appoints; and upon all such stock so sold and transferred by the State, the said Atlantic, Mississippi & Ohio Railroad Company, by such agent or agents as its President and Board of Directors may appoint, shall be entitled to vote at all meetings of the stockholders of the said Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky Railroad Companies, which may be thereafter held, casting the same number of votes as the State of Virginia would be entitled to cast by law, if such sale and transfer had not been made; and the Board of Public Works are further empowered and directed to sell and assign or convey unto the President and Board of Directors of the said Atlantic, Mississippi & Ohio Railroad Company, all and whatever claims the State may hold or have against the said Norfolk & Petersburg, South Side, Virginia and Tennessee, and Virginia & Kentucky Railroad Companies, and in and with the said Atlantic, Mississippi & Ohio Railroad Company, every claim, right and privilege shall as firmly vest, as to all such claims, as were vested in and with the Commonwealth on account of the same.

10. That in consideration of the sales and transfers of claims and stocks herein authorized and directed to be made, the Commonwealth of Virginia shall thereafter be absolved from all and whatever liability for and by reason of her unsatisfied subscriptions to the Virginia & Kentucky Railroad Company, which it is conditioned shall be completed within six years after the organization of the said Atlantic, Mississippi & Ohio Railroad Company; and, in addition, the Commonwealth of Virginia shall be entitled to receive four millions of Virginia bonds, or, at the option of the said company, of money, payable by annual installments of five hundred thousand dollars each, the first payment to be made during the year eighteen hundred

PLAINTIFF'S EXHIBIT No. 17

Continued.

and eighty-five; and such payment of the four millions of bonds as aforesaid to be secured by a second mortgage upon the property of the said Atlantic, Mississippi & Ohio Railroad Company, to be duly executed to the Board of Public Works of the State, immediately upon the surrender of all the aforesaid claims and stocks authorized to be sold. The said mortgage to be, in all respects, subordinate to such first mortgage or deed as the said Atlantic, Mississippi & Ohio Railroad Company may have made or may thereafter execute; provided, the amount of such first mortgage or deed shall not exceed the sum of fifteen millions of dollars; and provided further, that a part of such sum equal to the amount of all existing liens upon the roads to be consolidated, shall be set aside for and employed in the discharge of the same, and the remainder employed in the construction of the road to Cumberland Gap and the repairs and improvement of the whole line, so that at no time shall the obligations of the line, prior in dignity to such second mortgage to the State, exceed the said amount of fifteen millions of dollars; and provided further, that the said four millions of State bonds shall bear interest at six per cent. from the first day of July, eighteen hundred and eighty; the interest accruing thereon to be paid in lawful money of the United States, or, at the option of the Atlantic, Mississippi & Ohio Railroad Company, in State bonds, dollar for dollar; and provided further, that the said Atlantic, Mississippi and Ohio Railroad Company may, at their option, begin the annual payments in liquidation of said four millions of State bonds in the said year eighteen hundred and eighty; in which event the deferred payments shall carry interest from July first, eighteen hundred and eighty.

PLAINTIFF'S EXHIBIT No. 18.

EXTRACTS FROM ANNUAL REPORTS OF 1866.

Annual Report of Auditor of Public Accounts, September 30, 1866.

Page 12.

"In 1860 there were sixty-six banks and branches in the State, with a capital of $15,520,550.00 and a circulation of $12,000,000.00. Of these, twenty were located in West Virginia, with a capital of $3,468,800.00; the residue, forty-six, were in this State, with a capital of $11,631,900.00. The amount of dividends and bonus paid into the treasury by these banks in 1860 was $368,853.43. Such of them as are located in this State have been ruined by circumstances over which they had no control. Their stocks are worthless, and their circulation selling in your streets at from ten to thirty cents on the dollar. The State owned of the stock of these banks, estimating the value per share at par, $3,760,020.00."

"State securities were selling in 1860 at par, or at a price very nearly approximating it. They are selling now at only forty cents on the dollar. Thus sixty per cent of the value of your stock and bonds held principally by your own citizens, has been destroyed by the fortunes of war."

Page 172.

COPY OF JOURNAL ENTRY.

(*Internal Improvement Journal D.*)

September 30, 1872.

175	Stocks, &c., sold, abandoned & To Sundries		
282	To Exchange Bank of Virginia Stock, to balance latter account, the same having been lost at the close of the war in April 1865.....	$ 26,700 00	
282	To Northwestern Bank of Virginia Stock to balance latter account, ditto	32,600 00	
282	To Bank of Valley Stock, to balance latter account, ditto	104,700 00	
282	To Bank of Virginia Stock, to balance latter account, ditto	587,650 00	
282	To Farmers Bank of Virginia Stock, to balance latter account, ditto	352,200 00	
			$1,103,850 00

PLAINTIFF'S EXHIBIT No. 19.

Copy of the Minutes of the Proceedings of the Board of Public Works.

Tuesday, February 4, 1868.

VIRGINIA & TENNESSEE RAILROAD.

Present: All the members.

Whereas, by Act of the General Assembly of Virginia, passed on the 9th day of February, 1853, entitled "An act authorizing a loan to the Virginia & Tennessee Railroad Company," a loan of one million of dollars to said company was authorized by the Board of Public Works for or on behalf of the Commonwealth, on the terms prescribed in said act, and in pursuance thereof, said loan was made and the said company, in order to secure the payment of the interest and principal thereof, did, on the 26th day of March 1853 execute to the said board a mortgage of that date which was duly recorded in the office of the Hustings Court of Lynchburg, and whereas, the semi-annual interest and principal of said debt due and payable to the Board of Public Works of Virginia on the 1st day of January, and of July in each year, being the sum of $35,000, on the first day of said months has not been paid in whole or in part since the first day of July, 1863, but remain wholly due and unpaid to the said board, so that at this time there remains due and unpaid thereon the sum of $315,000, exclusive of interest on such arrearages; and whereas, during the late war, and while the authorities of the State Government at Richmond City, adhering to the Confederate States, and while and when the said Railroad Company had no right to pay, and no officer of said State government had any right to receive payment of the principal or interest or any part thereof, or specified in the mortgage aforesaid, according to the terms thereof, or according to law, under and as recognized by the said State government or otherwise, in whatever currency or money it might be tendered, yet the Second Auditor of said State Government received from the president of the said railroad company in pretended satisfaction of the debt and interest, then not due but secured by said mortgage, certain sums in Confederate treasury notes at par, though grossly depreciated and almost worthless, to wit: On the 26th June, 1863, $200,000; on the 30th June, 1863, $300,000; on the 6th August, 1863, $100,000; on the 7th August, 1863, $100,000 and on the 11th September, 1863, $186,685—in all, $886,685, which act of the Second Auditor was unauthorized and illegal and void; and whereas, the Commissioners of the Sinking Fund, at a meeting on the 5th December, 1864, as appears by their records reciting that said act of said Second Auditor was unauthorized and that they had no control over said Confederate treasury notes other than to return it, ordered that said Second Auditor return said notes to said com-

PLAINTIFF'S EXHIBIT No. 19.

Continued.

pany by his warant on the Treasury "on account of the money paid into the Treasury without authority"; and whereas, in pursuance of said order, the said Second Auditor made and presented to the president of said railroad company, his warrant on the Treasury, and the said president refused to receive the same, by reason whereof, the said Confederate Treasury notes unlawfully received remained in the Treasury until they perished; and whereas, it is represented to this Board that the funds of the said Virginia & Tennessee Railroad Company have been attached at Knoxville, Tennessee, whereby the rights and interests of the Board and Commonwealth are jeoparded and may be injured, and it seems to the board necessary and proper that prompt measures should be adopted to protect the rights and interests aforesaid; it is therefore

Resolved, that the principal and interest on the said loan of $1,000,000 to the Virginia & Tennessee Railroad Company, falling due after the first day of July 1863, according to the terms of the mortgage of said company above mentioned, remain wholly unpaid and due to the Board of Public Works of Virginia, for the Commonwealth of Virginia, as also the interest on the several arrearages.

Resolved, that the receipt of the Confederate currency by the Second Auditor from the said Virginia & Tennessee Railroad Company or an officer thereof, above mentioned, was wholly unauthorized and illegal and void, and constitutes no payment of discharge of the indebtedness of the said company described in, and secured by the aforesaid mortgage.

Resolved, that the Governor be and is hereby authorized and requested to adopt such measures as he may deem proper for the protection of the rights and interests of the Board and the Commonwealth secured by the mortgage aforesaid, now jeoparded by the said attachments at Knoxville, and that he adopt such other measures as he may deem necessary and proper for securing the payment of the principal and interest due under said mortgage.

And then the board adjourned.

(Signed) F. H. PIERPONT.

EXTRACT FROM RECORD BOOK—SINKING FUND—PAGE 188.

December 5, 1864.

Present: All the Commissioners.

Whereas, it appears that the Virginia & Tennessee Railroad Company has paid into the Treasury of the State of Virginia to the credit of the Commissioners of the Sinking Fund, the sum of $886,685.47 in Confederate

PLAINTIFF'S EXHIBIT No. 19.

Continued.

States Treasury notes, on account of a debt of the company for money loaned to the same by the State; and whereas, it further appears that such payment into the Treasury was made without authority of the Board of said Commissioners of the Sinking Fund, and after a decision by this board, that they had no authority to receive it; and that this board has no further or other control over said money than to return it; it is, therefore,

Ordered, that the Second Auditor do issue his warrant on the Treasury in favor of said Virginia & Tennessee Railroad Company for eight hundred and eighty-six thousand six hundred and eighty-five dollars forty-seven cents in Confederate States Treasury notes on account of the money so paid into the Treasury without authority.

And then the Commissioners adjourned.

PLAINTIFF'S EXHIBIT No. 20.

Extract from

REPORT OF THE SECOND AUDITOR OF VIRGINIA.

For the

Fiscal Year Ended September 30, 1904.

Relating to the settlement of the claim of the Commonwealth of Virginia *vs.* the United States.

In my last annual report I referred to the auspicious fact that a settlement of the long standing counter claims between Virginia and the United States, and involving more than two million dollars, was rendered susceptible by an act of Congress authorizing the adjustment of such claims. I now make the gratifying announcement that this account has been settled finally, and in a manner which not only protects Virginia's interest as it then appeared, but has also removed the last possibility of any future litigation on the subject, which might affect and disturb most seriously the present satisfactory condition of our public debt, and the welfare of the State in other respects as well.

The settlement included in its terms not only the surrender by the United States Government of the entire amount of Virginia bonds which it held, amounting to $594,000,000, and its claim for past due interest at 6 per cent. from January 1, 1861, aggregating more than $2,000,000.00, but also, and which may be taken as evidence of finality—the payment to the State of the nominal balance of five dollars and fifty cents, which was established in the settlement to be due to Virginia.

The act which rendered the settlement of this account possible was approved on May 27, 1902, and is known as the "Omnibus Claims Act"; and as result of the vigilance, energy and persistent effort on the part of our senators in Congress, it was so framed as to include in its equitable provisions a settlement of the account between the United States and Virginia.

The impression has quite generally prevailed—and my opinion coincided therewith, before I had occasion to investigate the facts in the case—viz.: that Virginia had a definite and ascertained right of demand against the United States for advances made in aid of the war of 1812 with Great Britain. But the facts developed that she only had an equitable claim, based upon the asumption that by a different mode of calculation at the

PLAINTIFF'S EXHIBIT No. 20.

Continued.

time the amounts advanced were refunded, there would remain a large balance due the State. As a matter of fact, all the direct advancements were refunded during and at the close of the war of 1812. And in 1825 interest was allowed and paid to the extent of $178,500.00, which settlement was then and afterwards, regarded by the United States Government as a finality. Yet the State of Virginia never abandoned her claim for a resettlement of the account on a different basis, and sought at the hands of Congress a proper recognition of her demands. In the year 1857 the principle was recognized in the settlement of a similar claim with the State of Maryland, and thereby established a precedent. The Civil War, however, came on soon thereafter, and its results tended greatly to hinder the recognition of any such claim on the part of Virginia.

It will thus be perceived that Virginia's claim had no real legal existence till recognized by act of Congress—that was never done until the Omnibus Claims Act of May 27, 1902 was enacted, and even then its terms and provisions were such as to require strict legal proof of the items of our account. As it was, there is grave doubt if the claim would ever have been recognized but for the fact that the government held the bonds of the Commonwealth, and it would be an easy mode of adjustment of the counter-liabilities by allowing the one to offset the other.

PLAINTIFF'S EXHIBIT No. 21.

Condition of the Orange and Alexandria R. R. Co., for the year 1861.

PRESIDENT'S, ENGINEER'S AND SUPERINTENDENT'S REPORT.

This exhibit was written in the record, pages 955 to 962, inclusive.

PLAINTIFF'S EXHIBIT No. 22.

Schedule Showing Sums Paid by Virginia as Indicated Below, From January 1, 1861, *to September* 30, 1913, *on Account of the Old Debt of the Undivided State of Virginia, as It Existed January* 1, 1861.

I.	Amount of interest paid, as shown by the records in the office of the Second Auditor of Virginia, from January 1, 1861, to September 30, 1913—		
	A.—Payments from January 1, 1861, to December 31, 1871, as shown in Plaintiff's Exhibit No. 1	$ 7,094,103 61	
	B.—Payments from January 1, 1872, to September 30, 1872, as shown by Public Debt Cash Book B (not paged), Second Auditor's office. Sub. Schedule BB	562,648 30	
	C.—Payments from October 1, 1872, to September 30, 1913, as shown by printed Annual Reports, Sub. Schedule CC	33,414,467 11	
II.	Bonds heretofore paid off, taken up and retired by Virginia to September 30, 1913, as shown by the Second Auditor's report of September 30, 1913, page 23	12,141,591 49	
III.	New bonds of Virginia issued for the portion of the debt as it existed January 1st, 1861, funded and assumed by her and still outstanding in the hands of outside holders as shown by the report of the Second Auditor of Virginia, dated October 1st, 1913, pages 13 and 50 (also Second Auditor's General Ledger, page 250)	24,645,075 23	
	Total		$77,857,885 74

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule BB.

Cash Transactions of the Sinking Fund between December 31, 1871, *and September* 30, 1872.

Balance on hand in Sinking Fund at December 31, 1871, as shown by Public Debt Cash Book B (not paged), January, 1856—July, 1894		$ 162 68
Receipts as per same:		
January, 1872, to September 30, 1872—		
From Commonwealth	$581,082 00	
From Refunds	449 09	
		$581,531 09
		$581,693 77
Disbursed as per same:		
January, 1872, to September 30, 1872—		
Interest on Public Debt	$562,648 30	
Taxes retained on interest	16,351 94	
		$579,000 24
		$ 2,693 53
Add outstanding warrants as under		$ 5,807 74
		$ 8,501 27
Balance at September 30, 1872, as per Public Debt Cash Book B	$2,693 53	
Balance at September 30, 1872, as per Treasurer's Printed Statement of Payments of Interest on Public Debt, found on page 8 of the Report of the Treasurer for year ended September 30, 1872 (In annual reports of 1872)	8,501 27	
Outstanding warrants	$5,807 74	

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule CC.

The receipts below are found in the Annual Reports of the Treasurer of Virginia, under the following heading:

"The Treasurer of Virginia, in account with the Interest on the Public Debt."

Page.		
11	Receipts for Fiscal Year Ended September 30, 1873...	$ 965,650 99
8	Receipts for Fiscal Year Ended September 30, 1874...	1,673,494 98
9	Receipts for Fiscal Year Ended September 30, 1875...	1,378,749 46
9	Receipts for Fiscal Year Ended September 30, 1876...	1,103,254 62
9	Receipts for Fiscal Year Ended September 30, 1877...	1,060,064 54
9	Receipts for Fiscal Year Ended September 30, 1878...	1,303,490 25
9	Receipts for Fiscal Year Ended September 30, 1879...	1,412,901 42
9	Receipts for Fiscal Year Ended September 30, 1880...	1,250,684 29
9	Receipts for Fiscal Year Ended September 30, 1881...	1,002,643 78
9	Receipts for Fiscal Year Ended September 30, 1882...	825,698 97
9	Receipts for Fiscal Year Ended September 30, 1883...	331,390 27
9	Receipts for Fiscal Year Ended September 30, 1884...	565,065 77
12	Receipts for Fiscal Year Ended September 30, 1885...	419,337 08
14	Receipts for Fiscal Year Ended September 30, 1886...	417,466 34
12	Receipts for Fiscal Year Ended September 30, 1887...	382,469 34
12	Receipts for Fiscal Year Ended September 30, 1888...	533,269 34
12	Receipts for Fiscal Year Ended September 30, 1889...	534,276 24
10	Receipts for Fiscal Year Ended September 30, 1890...	442,926 14
10	Receipts for Fiscal Year Ended September 30, 1891. .	373,141 32
10	Receipts for Fiscal Year Ended September 30, 1892...	394,598 82
10	Receipts for Fiscal Year Ended September 30, 1893...	1,220,050 72
10	Receipts for Fiscal Year Ended September 30, 1894...	726,234 32
10	Receipts for Fiscal Year Ended September 30, 1895...	722,401 32
10	Receipts for Fiscal Year Ended September 30, 1896...	714,290 16
10	Receipts for Fiscal Year Ended September 30, 1897...	712,928 82
10	Receipts for Fiscal Year Ended September 30, 1898...	696,331 32
10	Receipts for Fiscal Year Ended September 30, 1899...	706,396 35
10	Receipts for Fiscal Year Ended September 30, 1900...	696,388 32
10	Receipts for Fiscal Year Ended September 30, 1901...	706,775 82
10	Receipts for Fiscal Year Ended September 30, 1902...	855,098 50
10	Receipts for Fiscal Year Ended September 30, 1903...	855,514 00
10	Receipts for Fiscal Year Ended September 30, 1904...	865,010 00
12	Receipts for Fiscal Year Ended September 30, 1905...	855,265 84

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule CC. (*Continued.*)

The Disbursements below are found in the Annual Reports of the Treasurer of Virginia, under the following heading:

"The Treasurer of Virginia in account with the Interest on the Public Debt."

Page.		
11	Disbursements for Fiscal Year Ended Sept. 30, 1873...	$ 936,863 85
8	Disbursements for Fiscal Year Ended Sept. 30, 1874...	1,672,053 09
9	Disbursements for Fiscal Year Ended Sept. 30, 1875...	1,417,389 50
9	Disbursements for Fiscal Year Ended Sept. 30, 1876...	1,102,005 36
9	Disbursements for Fiscal Year Ended Sept. 30, 1877...	1,061,059 79
9	Disbursements for Fiscal Year Ended Sept. 30, 1878...	1,303,212 80
9	Disbursements for Fiscal Year Ended Sept. 30, 1879...	1,413,440 98
9	Disbursements for Fiscal Year Ended Sept. 30, 1880...	1,250,678 56
9	Disbursements for Fiscal Year Ended Sept. 30, 1881...	1,000,829 31
9	Disbursements for Fiscal Year Ended Sept. 30, 1882...	827,471 16
9	Disbursements for Fiscal Year Ended Sept. 30, 1883...	313,925 17
9	Disbursements for Fiscal Year Ended Sept. 30, 1884...	573,656 23
12	Disbursements for Fiscal Year Ended Sept. 30, 1885...	415,977 39
14	Disbursements for Fiscal Year Ended Sept. 30, 1886...	415,295 05
13	Disbursements for Fiscal Year Ended Sept. 30, 1887...	389,540 66
13	Disbursements for Fiscal Year Ended Sept. 30, 1888...	538,720 23
13	Disbursements for Fiscal Year Ended Sept. 30, 1889...	535,473 46
11	Disbursements for Fiscal Year Ended Sept. 30, 1890...	440,449 73
11	Disbursements for Fiscal Year Ended Sept. 30, 1891...	369,240 55
11	Disbursements for Fiscal Year Ended Sept. 30, 1892...	387,774 56
11	Disbursements for Fiscal Year Ended Sept. 30, 1893...	1,205,542 07
11	Disbursements for Fiscal Year Ended Sept. 30, 1894...	750,598 21
11	Disbursements for Fiscal Year Ended Sept. 30, 1895...	726,660 44
11	Disbursements for Fiscal Year Ended Sept. 30, 1896...	713,194 42
11	Disbursements for Fiscal Year Ended Sept. 30, 1897...	705,898 48
11	Disbursements for Fiscal Year Ended Sept. 30, 1898...	699,485 77
11	Disbursements for Fiscal Year Ended Sept. 30, 1899...	707,568 03
11	Disbursements for Fiscal Year Ended Sept. 30, 1900...	683,509 73
11	Disbursements for Fiscal Year Ended Sept. 30, 1901...	708,930 86
11	Disbursements for Fiscal Year Ended Sept. 30, 1902...	843,896 37
11	Disbursements for Fiscal Year Ended Sept. 30, 1903...	841,972 75
11	Disbursements for Fiscal Year Ended Sept. 30, 1904...	844,938 42
13	Disbursements for Fiscal Year Ended Sept. 30, 1905...	906,807 52

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule CC. (*Continued.*)

The receipts below are found in the Annual Reports of the Treasurer of Virginia, under the following heading:

"The Treasurer of Virginia, in account with the Interest on the Public Debt."

Page		
14	—Receipts for Fiscal Year Ended September 30, 1906...	$45,000 00
14	—Receipts for Fiscal Year Ended September 30, 1907...	845,000 00
14	—Receipts for Fiscal Year Ended September 30, 1908...	840,565 75
12	—Receipts for Fiscal Year Ended September 30, 1909...	815,000 00
12	—Receipts for Fiscal Year Ended September 30, 1910...	845,008 00
12	—Receipts for Fiscal Year Ended September 30, 1911...	840,000 00
12	—Receipts for Fiscal Year Ended September 30, 1912...	844,508 00
12	—Receipts for Fiscal Year Ended September 30, 1913...	840,033 00
		$33,418,369 20
	Add error in carrying September 30, 1883, balance forward...	9 00
	Add error in footing receipts of report of 1885-6.....	3 00
	Amount received from October 1, 1872, to September 30, 1913.	$33,418,381 20
	Balance on hand October 1, 1872.....	8,501 27
		$33,426,882 47

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule CC (*Continued.*)

The Disbursements below are found in the Annual Reports of the Treasurer of Virginia, under the following heading:

"*The Treasurer of Virginia in account with the Interest on the Public Debt.*"

Page		
15	Disbursements for Fiscal Year Ended Sept. 30, 1906...	$34,117 85
15	Disbursements for Fiscal Year Ended Sept. 30, 1907...	836,362 07
15	Disbursements for Fiscal Year Ended Sept. 30, 1908...	842,315 09
13	Disbursements for Fiscal Year Ended Sept. 30, 1909...	838,460 94
13	Disbursements for Fiscal Year Ended Sept. 30, 1910...	838,702 65
13	Disbursements for Fiscal Year Ended Sept. 30, 1911...	846,169 77
13	Disbursements for Fiscal Year Ended Sept. 30, 1912...	840,104 23
13	Disbursements for Fiscal Year Ended Sept. 30, 1913...	834 413 96
	Amount disbursed from October 1, 1872, to September 30, 1913	$33,414,467 11
	Balance as per Treasurer's Report, September 30, 1913....	12,415 36
		$33,426,882 47

PLAINTIFF'S EXHIBIT No. 23.

(pp. 198-199 of Record of suit of Terrell & Bocock, Trustees, vs. Richmond & Alleghany Railroad Company.)

No. 247.

SALE OF RICHMOND & ALLEGHANY RAILROAD CONFIRMED.

Report of E. R. LELAND, Special Commissioner.

In the Circuit Court of the City of Richmond.

Terrell & Bocock, Trustees,
vs.
Richmond & Alleghany R. R. Co., Defendants,

and

Alexander & Ellyson, Trustees,
vs.
Richmond & Alleghany R. R. Co., Defendants.

To the Honorable Beverly R. Wellford, Jr.,

Judge of the Circuit Court of the City of Richmond:

The undersigned Special Commissioner appointed by a decree of the Circuit Court of the City of Richmond, Virginia, entered on the 19th day of December, 1888, in the above entitled causes, which are therein depending, respectfully reports:

That pursuant to the requirements of the aforesaid decree, he caused to be published notice of the time, place and terms of the sale in the manner provided and required by said decree, and also served a notice of said sale, and the time, place and terms thereof, upon the Board of Public Works of the State of Virginia ninety days before the day of sale, as required by said decree.

The undersigned further reports that on the 16th day of April, 1889, at 12 o'clock M., at the front door of the courthouse of the Hustings court, in the City of Richmond, Virginia, pursuant to the said decree and notice, he, in the presence of a large assembly of persons, offered for sale at public auction to the highest bidder, upon the terms and conditions mentioned in the said decree, the entire property in said decree ordered to be sold. Before offering the property for sale, the undersigned, at the time and place appointed for the sale, caused the notice of advertisement of sale to be publicly read, and the property was then offered for sale to the highest bidder. The first bid received therefor was the sum of five million dollars ($5,000,000), and this was the only bid made. The property was cried for some time and due warning given that unless some one increased the bid

PLAINTIFF'S EXHIBIT No. 23.

Continued.

the property would be knocked off at that price. No one bidding more, the undersigned knocked off and sold the said property at the price of five million dollars ($5,000,000) to Messrs. Erwin Davis, Charles F. Cox and J. Kennedy Tod, committee of purchase, for themselves and others. The purchasers on the day of sale paid to the undersigned the sum of fifty thousand dollars ($50,000) in cash, which has been by him deposited in the First National Bank of Richmond, Virginia, to the credit of this court in these causes, a certificate of which deposit is herewith returned.

Respectfully submitted,

EUGENE R. LELAND,
Special Commissioner.

Richmond, Va., April 16, 1889.

(pp. 202-203 of suit of Terrell & Bocock, Trustees, vs. The Richmond & Alleghany Railroad Company.)

No. 247-c.

In the Circuit Court of the City of Richmond.

April 17, 1889.

Terrell & Bocock, Trustees,
vs.
The Richmond & Alleghany R. R. Co. & Als.,

and

Alexander & Ellyson, Trustees,
vs.
The Same.

These causes came on this day to be again heard on the papers formerly read, the proceedings and orders formerly had and entered herein, and the report of E. R. Leland, special commissioner, this day filed herein, showing that on the 16th day of April, 1889, the said commissioner sold at public auction, at the price of $5,000,000 that being the highest bid, to Erwin Davis, Charles F. Cox and J. Kennedy Tod, committee of purchase, for themselves and others, the entire premises and property, rights, privileges and franchises of the Richmond & Alleghany Railroad Company, in due conformity with and as required by the decree heretofore entered herein on the 19th day of December, 1888, and upon the terms and

PLAINTIFF'S EXHIBIT No. 23.

Continued.

conditions set forth in the said decree and on the certificate of deposit filed with said report, to which report there is no exception, and were argued by counsel: On consideration whereof the court doth adjudge, order and decree that the said report be and the same is hereby approved and confirmed. And the court doth ratify and approve the sale made by the said E. R. Leland, special commissioner, to the said Erwin Davis, Charles F. Cox and J. Kennedy Tod, committee of purchase, for themselves and others, upon the terms and conditions prescribed and set forth in the said decree of the 19th day of December, 1888, and doth adjudge, order and decree that the said sale as reported, and as hereby approved, do stand confirmed.

(pp. 229-235 of Record of suit of Terrell & Bocock, Trustees vs. Richmond & Alleghany Railroad Company.)

No. 253-a.

DEED OF CONVEYANCE FROM E. R. LELAND, SPECIAL COMMISSIONER, TO PURCHASING COMMITTEE.

AN INDENTURE made the twentieth day of May, 1889, by and between E. R. Leland, a special commissioner of the Circuit Court of the City of Richmond, in the State of Virginia, duly appointed in the suits in chancery hereinafter mentioned, party of the first part, and Erwin Davis, Charles F. Cox and J. Kennedy Tod, parties of the second part.

Whereas, on or about the twenty-third day of June, 1883, Ashbel Green and Thomas S. Bocock, as trustees, did commence a suit in chancery in said Circuit Court of the City of Richmond, against the Richmond & Alleghany Railroad Company and others for the foreclosure of a certain deed of trust or mortgage, executed and delivered by the said Richmond & Alleghany Railroad Company to the said Ashbel Green and Thomas S. Bocock, as trustees, under date of the twenty-seventh day of April, 1881; and a supplementary deed of trust or mortgage, also executed and delivered by the said company to the same trustees under date of the twenty-fourth day of May, 1881, which said deeds of trust or mortgages are fully set forth and copies thereof filed in the said suit; and

Whereas, after the institution of said suit the said Ashbel Green resigned his office as trustee and Herbert L. Terrell was duly appointed as trustee in his stead, and the said suit was duly revived in the name of

PLAINTIFF'S EXHIBIT No. 23.

Continued.

the said Herbert L. Terrell as complainant in the place of said Ashbel Green, and thereafter proceeded with his name; and

Whereas, on or about the ... day of October, 1883, Henry M. Alexander and Henry K. Ellyson, as trustees, did commence a suit in chancery in the said Circuit Court of the City of Richmond against the said Richmond & Alleghany Railroad Company and others, for the foreclosure of a certain deed of trust or mortgage, executed and delivered by the said Richmond & Alleghany Railroad Company to the said Henry M. Alexander and Henry K. Ellyson, as trustees, under date of the fifth day of March, 1880; which said deed of trust or mortgage is fully set forth and a copy thereof filed in said suit; and

Whereas, the said suits were, by a decree entered therein by the said Circuit Court, on the twentieth day of June, 1884, ordered to be thereafter heard together; and

Whereas, such proceedings were had in the said suits from time to time, that on the nineteenth day of December, 1888, a decree of foreclosure and sale was entered in the said suits by the said Circuit Court of the City of Richmond; and

Whereas, in and by the said decree, the said E. R. Leland was appointed a special commissioner to make the sale provided for and directed by said decree, and in pursuance of such appointment, did afterwards—to-wit, on the sixteenth day of April, 1889, after the advertisement and notice prescribed in the said decree, sell at public auction, at the place named in said decree, in the City of Richmond, all and singular the property, premises, rights, privileges and franchises, which the said special commissioner was directed by the said decree to sell, upon the terms and conditions in said decree fully and at large set forth, to which decree reference is hereby specially and expressly made; and

Whereas, at such sale the said Erwin Davis, Charles F. Cox and J. Kennedy Tod, styling themselves a committee of purchase for themselves and others, became the purchasers thereof for the sum of five million dollars ($5,000,000); and

Whereas, afterwards the said special commissioner did duly make his report of said sale to the said court, and the said sale was duly approved and confirmed by the said court; and

Whereas, an order was made by the said court in the said suits on the 20th day of May, 1889, authorizing and directing the said E. R. Leland, commissioner, the party of the first, as special commissioner; upon the terms and conditions set out in the said order, to execute and deliver a conveyance of all and singular the property, premises, rights, privileges and franchises so sold to the said purchasers thereof, subject to the liens

PLAINTIFF'S EXHIBIT No. 23.

Continued.

specified in the fifth, eighth, ninth, tenth and eleventh paragraphs of the said decree of the nineteenth of December, 1888, so far as the liens mentioned in the said fifth, eighth, ninth, tenth and eleventh paragraphs affect the particular property and premises mentioned in the said paragraphs, and subject to all lawful and binding contracts, obligations and liabilities of every kind of the receivers or receiver in the said causes, as well as those made, entered into or incurred by them or him in their or his own name, as those made, entered into or incurred by them or him in the name of the Richmond & Alleghany Railroad Company; subject also to the various contracts, agreements, leases and deeds entered into by the receivers or receiver, under the authority of decrees in the said causes, with persons or corporations, referred to into the thirteenth paragraph of the said decree of the nineteenth of December, 1888, the purchasers to take the premises, subject to and with the obligation to abide, keep and perform all the terms and stipulations of said contracts, agreements, leases and deeds in all respects; and subject also to the payment of the bond of two hundred thousand dollars ($200,000) executed by the parties of the second part, as provided in the nineteenth paragraph of the said decree of the nineteenth of December, 1888, and of the bond for a like amount to be substituted in its place by the corporation resulting from the sale and this conveyance; and subject also to the payment of the bond for one hundred thousand dollars ,executed by the said parties of the second part, payable to Lawrence Myers and Decatur Axtell, for the further indemnity of the receivers or receiver in these causes; and subject to the bond for a like amount to be substituted in the place of the last named bond by the corporation resulting from the sale and this conveyance; and

Whereas, the said purchasers have complied with and fulfilled the terms and conditions of the said order; and

Whereas, the said purchasers will, upon the due execution and delivery of these presents by force of the statute in such case made and provided, forthwith be and become a corporation by any name which may be herein set forth; and

Whereas, under and in pursuance of the said statute, the said purchasers, parties hereto of the second part, have declared, and do herein and hereby declare, that the said name by which they shall, by force of the said statute become a corporation, is and shall be the Richmond & Alleghany Railway Company; and

Whereas, it is the true intent and meaning of these presents that this conveyance shall enure to the use, benefit and advantage of the said corporation so designated and described:

Now, therefore, this indenture witnesseth: That the said E. R. Leland, special commissioner as aforesaid, party hereto of the first part,

PLAINTIFF'S EXHIBIT No. 23.

Continued.

in consideration of the premises and of five million dollars ($5,000,000) in hand paid, or secured to be paid, hath granted, bargained, sold, aliened, assigned, released and confirmed, and by these presents doth grant, bargain, sell, alien, assign, release and confirm with special warranty unto the said Erwin Davis, Charles F. Cox and J. Kennedy Tod, for the use, benefit and advantage of the said corporation, which is hereby created under the name and style of the Richmond & Alleghany Railway Company, all and singular, the rights, privileges, interests, franchises, lands, tenements, hereditaments, appurtenances and property of every description, whether real, personal or mixed, embraced or included, in the said decree of sale, and the sale pursuant thereto, that is to say, the entire railroad of the said Richmond & Alleghany Railroad Company, extending from the City of Richmond, in the county of Henrico, and State of Virginia, by way of Lynchburg, in the county of Campbell, to Buchanan, in the county of Botetourt, and thence to Clifton Forge, in the county of Alleghany; and all branches and extensions of the said railroad, including its North River, or Lexington branch, and its Rivanna River branch, and including also the railroad acquired by the Richmond & Alleghany Railroad Company from the Buchanan and Clifton Forge Railway Company; and all lands, tenements and hereditaments belonging to, or acquired by the said Richmond & Alleghany Railroad Company; and all easements and appurtenances thereunto belonging, or in any wise appertaining, and all railways, ways and rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, station houses, engine houses, car houses, freight houses, wood houses, ware houses, machine shops, superstructures, buildings, erections, fixtures of every kind and nature whatsoever; leaseholds, leases, rights under leases, or under contracts, covenants or agreements; terms or parts of terms, acquired, owned, held or used for the use or purpose of the said Richmond & Alleghany Railroad Company, or its branches or any of them, or in connection therewith, or the business thereof; and all locomotives, engines, tenders, cars and other rolling stock and equipments; and all rails, ties, machinery, tools, implements, fuel and material, whatsoever; and all other property, real, personal or mixed, acquired, held, or used for and in connection with the construction, operation, maintenance, reparation or replacement of the said railroad, or any part thereof; and all the rights, privileges, franchises and immunities of every kind and nature of the said Richmond & Alleghany Railroad Company; and also all the property, works and franchises which were acquired from the James River and Kanawha Company, together with all the rights, water power, water rights, privileges and franchises conveyed to the said Richmond & Alleghany Railroad Company by the said James River and Kanawha Company; also all the property and premises lying

PLAINTIFF'S EXHIBIT No. 23.

Continued.

and being in the City of Manchester, in the county of Chesterfield, in the State of Virginia, on the south side of the James River, and between the said river and the track of the Richmond & Danville Railroad Company, extending from the head wall or gate of the Manchester Canal to Walkers Creek; and also the said Manchester Canal, with all rights, easements and appurtenances belonging to said premises, or in anywise thereunto appertaining; and also the bridge across James River at New Canton, Buckingham county, State of Virginia, and certain lands and premises adjacent thereto, more particularly described in a deed of the nineteenth of June, 1883, executed by Virginius Newton; a more full and particular description of the property hereby intended to be conveyed being contained in the said decree of the nineteenth of December, 1888, to which reference is hereby made; it being intended to convey all and singular the premises, rights, privileges and franchises embraced in the mortgage, or deed of trust, to the said Henry M. Alexander and Henry K. Ellyson, trustees, executed by the Richmond & Alleghany Railroad Company, bearing date on the fifth day of March, 1880; and all and singular the premises, rights, privileges and franchises embraced in the mortgages or deeds of trust to Ashbel Green and Thomas S. Bocock, executed by the said Richmond & Alleghany Railroad Company, bearing date on the twenty-seventh day of April, 1881, and the twenty-fourth of May, 1881; and all and singular the premises, rights, privileges and franchises embraced in the deed from Charles C. Deming to the said Richmond & Alleghany Railroad Company, bearing date on the 12th day of July, 1883; and all the premises, rights, privileges and franchises embraced in a certain deed poll, executed by Virginius Newton, bearing date on the nineteenth of June, 1883; and all other property of every kind and description, if any, of which said Richmond & Alleghany Railroad Company was possessed, or to which it was entitled at the time of the said sale in accordance with the statute in such case made and provided, and the terms of the mortgages or deeds of trusts executed by said company. To have and hold, all and singular, the above mentioned premises, rights, privileges, interests, franchises, lands, tenements hereditaments, appurtenances and property of every description, whether real, personal or mixed, herein conveyed, or intended to be conveyed, unto the said Erwin Davis, Charles F. Cox and J. Kennedy Tod, for the use, benefit and advantage of the said Richmond & Alleghany Railway Company, subject, however, to the liens specified in the fifth, eighth, ninth, tenth, and eleventh paragraphs of the said decree of the nineteenth of December 1888, so far as the liens mentioned in the said fifth, eighth, ninth, tenth and eleventh paragraphs affect the particular property and premises mentioned in said paragraphs and subject to all lawful and binding contracts, obligations and liabilities of every kind of the receivers or

PLAINTIFF'S EXHIBIT No. 23.

Continued.

receiver, in the said causes, as well those made, entered into or incurred by them or him, in their or his own name, as those made, entered into or incurred by them or him in the name of the Richmond & Alleghany Railroad Company; subject also to the various contracts, agreements, leases and deeds entered into by the receivers or receiver, under the authority of decrees in the said causes with persons or corporations referred to in the thirteenth paragraph of the said decree, it being understood that the purchasers shall take the premises hereby conveyed and every part thereof, subject to and with the obligation to abide, keep and perform all the terms and stipulations of such contracts, leases, agreements and deeds in all respects; and subject to the payment of the bond for two hundred thousand dollars ($200,000) executed by the parties of the second part, as provided in the nineteenth paragraph of the said decree; and to the payment of the bond for a like amount to be substituted in its place by the corporation resulting from the sale and this conveyance; and subject to the payment of the bond for one hundred thousand dollars ($100,000), executed by said parties of the second part, and payable to Lawrence Myers and Decatur Axtell, for the further indemnity of the receivers or receiver in the said causes and to the payment of the bond for a like amount to be substituted in its place by the corporation resulting from the sale and this conveyance. And the premises hereby conveyed, and every part of the same, are hereby expressly charged with a lien to secure the performance and payment of all lawful contracts and liabilities made or incurred by the receivers or receiver in these causes, and to secure the payment of the bond for two hundred thousand dollars ($200,000), executed by the parties of the second part, pursuant to the nineteenth paragraph of the said decree of the nineteenth of December, 1888, and of the bond of like amount to be substituted in its place by the said Richmond & Alleghany Railway Company, and of the bond for one hundred thousand dollars ($100,000) executed by the said parties of the second part for the further indemnity of the receivers or receiver in these causes and of the bond of like amount to be substituted in its place by the said Richmond & Alleghany Railway Company, and to indemnify and save harmless the receivers or receiver in these causes from all loss or damage in respect to any contract or liability whatsoever made or incurred by them or him, it being expressly understood and agreed that the said purchasers have assumed, and do hereby assume, all the outstanding lawful liabilities and contracts of the said receivers or receiver.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT A-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXEY
Certified Public Accountant
30 Church Street, New York
For the Defendant

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT A-1.

The Amount of the Public Debt of the Commonwealth of Virginia on the first day of January, 1861, including the Holdings by the Literary Fund, the Sinking Fund and the Board of Public Works.

Defendant denies that said Holdings by said Funds and by the Board of Public Works constitute any Part of said Public Debt.

PARAGRAPH I OF DECREE.

	5%	6%	Total.
Aggregate amount of the Public Debt of Virginia, January 1st, 1861, as per Plaintiff	$ 2,272,404.50	$33,208,583.96	$35,480,988.46
Accrued interest from July 1st 1860, to December 31st, 1860	56,810.11	996,257.52	1,053,067.63
	$ 2,329,214.61	$34,204,841.48	$36,534,056.09
Aggregate amount of the Public Debt of Virginia, January 1st, 1861, as per Defendant	$ 2.077,204.50	$30,842,659.43	$32,919,863.93
Difference	$ 252,010.11	$ 3,362,182.05	$ 3,614,192.16

The difference is composed of the following items:	5%	6%	Total.
Accrued interest from July 1st, 1860, to December 31st, 1860, on Public Debt as claimed by Defendant.	$ 51,930.11	$ 925,279.78	$ 977,209.89
Holdings by the Sinking Fund	$ 40,000.00	$1,289,557.20	$1,329,557.20
Accrued interest from July 1st, 1860, to December 31st, 1860	1,000.00	38.686.72	39,686.72
	$ 41,000.00	$1,328,243.92	$1,369.243.92
Holdings by the Board of Public Works	.....	$ 146,500.00	$ 146,500.00
Accrued interest from July 1st, 1860, to December 31st, 1860	.....	4,395.00	4,395.00
	.....	$ 150,895.00	$ 150,895.00
Holdings by the Literary Fund	$ 155,200.00	$ 929,867.33	$1,085,067.33
Accrued interest from July 1st, 1860, to Decembe 31st, 1860	3,880.00	27,896.02	31,776.02
	$159,080.00	$ 957,763.35	$1,116,843.35
Total	$252,010.11	$3,362,182.05	$3,614,192.16

The above is a summary of pages numbered 2 to 4 following, which constitutes a correct statement of the outstanding funded obligations of the Commonwealth of Virginia, as shown by her Bond Registers and other Records as at January 1st, 1861, showing how the same was distributed between Sinking Fund, Board of Public Works, Literary Fund, and Individuals, Firms, Corporations and others, including the Bonds held by the United States, and any Bonds paid off by Virginia since that date, with the interest accrued and payable thereon for the six months prior to January 1st, 1861.

Certified Correct:

The above is a summary of pages numbered 2 to 4 following, and is a correct statement of the outstanding funded obligations of the Commonwealth of Virginia, as of January 1st, 1861, as shown by her Bond Registers and other Records, and in addition thereto the holdings by the Sinking Fund, the Literary Fund, and the Board of Public Works as of the same date, which holdings the Defendant denies constitute any part of said Public Debt.

Certified Correct:

TRUE, WATERHOUSE & CO.,
For the Plaintiff.

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PLAINTIFF'S EXHIBIT A-2

[The forms of Bonds which follow, 101 in number, Constitute the one Exhibit.]

Following are copies of the forms of the various bonds covered by this Exhibit arranged numerically with the following exceptions:

Loan Nos. 18, 20, 31, 32, 39, 53, 57, 58, 68, 70, 73, 78, 80, 82, 87, 90, 91, and J. R. 5, 6, 7, 8, 9, 10, 11.

No cancelled bonds for these issues were found filed with the Treasurer of Virginia.

LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes; another Act passed on the 10th day of March, 1834, entitled, An Act to amend the charter of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX

per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of March 1839, entitled, "An Act to authorize a further increase of the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of January 1834, entitled "An Act to increase the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

and to authorize a subscription thereunto on behalf of the State, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1837, entitled "An Act to authorize the Board of Public Works to subscribe to two-fifths of the increased Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day above written.

$

LOAN No. 4.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd day of January, 1835, entitled, An Act authorizing the Board of Public Works to subscribe on behalf of the Commonwealth to the stock of the

RICHMOND FREDERICKSBURG AND POTOMAC RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 5.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1837, entitled, An Act to authorize a subscription on behalf of the State to the Stock of the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

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LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, of the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 25th day of February 1837, entitled, "An Act to authorize a subscription on behalf of the State of the stock of the

LOUISA RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th March 1838, entitled, An Act to authorize the

LOUISA RAILROAD COMPANY

to construct a railroad from some point on the line of their railroad to Charlottesville, and for other purposes, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 7.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of February 1837, entitled "An Act to authorize the

DISMAL SWAMP CANAL CO.

to increase their Capital Stock and to authorize the loans of the State to said Company to be converted into Stock", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 21st day of March 1837, entitled "An Act to amend the Act entitled an Act to provide for the construction of a road from

PRICES TURNPIKE TO CUMBERLAND GAP

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly, passed on the 2nd day of April 1839, entitled An Act to provide for the completion of that part of the road from

PRICES TURNPIKE TO CUMBERLAND GAP

which passes through the County of Lee" and a supplementary Act of 28th February 1842—the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of any Act of the General Assembly of the Commonwealth of Virginia passed on the 8th day of March 1842, entitled "An Act to amend the Act passed January 22nd 1838, entitled, an Act to authorize the county courts of the counties of

BOTETOURT, TAZEWELL, GILES, RUSSELL, MERCER, SCOTT & LEE

to borrow money for certain purposes." The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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DARK PAGE BLEED THRU

LOAN No. 9.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

UPPER APPOMATTOX COMPANY.

The principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 11.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the twenty-first day of March eighteen hundred and thirty-seven, entitled "An Act providing for the payment of the Subscription of the State to

THE JAMES RIVER and KANAWHA COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th day of March 1836, entitled "An Act concerning

THE RAPPAHANNOCK COMPANY"

and of an Act concerning the States subscription to

THE RAPPAHANNOCK COMPANY"

passed the first day of March 1838 the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person, or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th March 1836 entitled, An Act concerning the

RAPPAHANNOCK COMPANY" and Act passed March 1st 1838

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 13.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1838, entitled An Act to repeal in part the fourth section, the Act entitled An Act to amend the several Acts concerning the

DARK PA

PETERSBURG RAIL ROAD COMPANY"

and for other purposes", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 14.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 31st day of March 1838, entitled, "An Act authorizing a loan on behalf of the state, to the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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E BLEED THRU

LOAN No. 15.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 13th February 1838

"WINCHESTER AND POTOMAC RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th March, 1838, entitled "An Act to provide for the Construction of a

TURNPIKE ROAD FROM STAUNTON TO PARKERSBURG"

and the third section of "An Act to provide for raising loans heretofore made to certain

RAILROAD COMPANIES

and for other purposes," passed 21st March 1839, the said loan to be redeemable at the expiration of twenty years from the day of , and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th February 1845, entitled, An Act for completing the

STAUNTON AND PARKERSBURG ROAD,"

and of An Act passed on the 8th April 1839 authorizing Loans for the payment of certain subscriptions and appropriations"; the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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E BLEED THRU

LOAN No. 17.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th day of March 1838, entitled "An Act to provide for the payment of the States subscription to the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY"

and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 19.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th day of March 1837, entitled, "An Act to au-

DARK PA

thorize a further subscription on behalf of the State to the Stock of the

RIVANNA NAVIGATION COMPANY"

as amended by an Act passed the 4th day of April 1838. The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 21.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1838, entitled, An Act concerning the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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E BLEED THRU

LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations",

VALLEY TURNPIKE COMPANY

Act 14th February 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth of Virginia aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of

DARK PAGE

Virginia passed on the 24th March 1838, entitled, An Act to provide for the construction of a road from

WINCHESTER TO STAUNTON

nd for other purposes and subsequent Acts, the principal whereof is rredeemable for twenty years from the day of and fterwards to be redeemed at the pleasure of the General Assembly. This Certificate is transferable on the books of the Second uditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above ritten.

LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

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BE IT KNOWN, That there is due from the Commonwealth of irginia, unto heirs, executors, administrators, or signs, the sum of Dollars, bearing interest at SIX er centum per annum, from the day of payable at the reasury of the Commonwealth aforesaid, on the first day of Jan- ary and July in each year; being STOCK, created in pursuance f an Act of the General Assembly of the Commonwealth of Vir- nia, passed on the 14th February 1839, entitled, "An Act Concern- g the

VALLEY TURNPIKE COMPANY"

d "An Act authorizing Loans for the payment of certain sub- riptions and appropriations" passed 8th day of April 1839, the incipal whereof is irredeemable for twenty years from the y of and afterwards to be redeemed at the pleasure of e General Assembly.

This Certificate is transferable on the books of the Second ditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above ritten.

BLEED THRU

LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 28th day of March, 1838, entitled, "An Act incorporating the

INDIAN DRAFT TURNPIKE COMPANY

(for the Red and Blue Sulphur Springs Turnpike Company) the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No,

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing loans for the payment of Certain Subscriptions, and Appropriations"

DARK PA

and An Act passed 23rd day of March 1839, entitled, An Act authorizing subscriptions on behalf of the Commonwealth to the original and additional Capital Stock of the

RED AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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Loan No. 24.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of April, 1839, entitled, an ACT authorizing a loan on behalf of the STATE to the

CITY POINT RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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E BLEED THRU

LOAN No. 25.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the second day of April 1839, entitled "An Act providing for the State's subscription to the Stock of the

PITTSYLVANIA, FRANKLIN & BOTETOURT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of 18 and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 26.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an ACT of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled "AN ACT authoriz-

ing loans for the payment of certain subscriptions and appropriations."

"NATURAL BRIDGE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 27.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the First of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839.

"DRAGON SWAMP NAVIGATION CO."

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

BLEED THRU

LOAN No. 28.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "AN ACT" authorizing Loans for the payment of Certain Subscriptions and Appropriations.

HOLLIDAYS COVE TURNPIKE COMPANY

The principal whereof is irredeemable Twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 29.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 8th day of April 1839, entitled AN ACT authorizing Loans for the payment of certain subscriptions and appropriations

CACAPON AND NORTH BRANCH TURNPIKE COMPANY

he principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the leasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above ritten.

LOAN No. 30.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

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BE IT KNOWN, That there is due from the Commonwealth of irginia, unto heirs, executors, administrators, or signs, the sum of Dollars, bearing interest at SIX er centum per annum, from the day of payable at the reasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of n Act of the General Assembly of the Commonwealth of Virginia, assed on the 8th of April 1839, entitled An Act authorizing Loans r the payment of certain subscriptions and appropriations"

SALEM AND PEPPERS FERRY TURNPIKE COMPANY

e principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the easure of the General Assembly.

This Certificate is transferable on the books of the Second uditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above itten.

LOAN No. 33.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839.

"LEWISBURG AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 34.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, executors, administrators or assigns, the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839 entitled "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

DARK PAG

LAFAYETTE AND ENGLISH FERRY TURNPIKE COMPANY

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 35.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 12th day of February 1841, entitled, An Act authorizing the increase of the Capital Stock of the

VALLEY TURNPIKE COMPANY

and for other purposes; the principal whereof is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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BLEED THRU

LOAN NO. 36.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, semi-annually, on the first day of January and July, in specie or its equivalent; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of March, 1842, entitled, "An Act authorizing a loan to the

JAMES RIVER AND KANAWHA COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN NO. 37.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the eighth day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appro-

DARK PAGE

priations, "and An Act entitled, "An Act to increase the CAPITAL STOCK of the

LYNCHBURG AND BUFFALOE SPRINGS TURNPIKE COMPANY

etc., for other purposes, passed the 14th day of March 1839. the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate, is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 38.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, administrators, executors or assigns, the sum of Dollars, *being* interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations."

THE SALEM AND NEWCASTLE TURNPIKE COMPANY

The principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

BLEED THRU

LOAN NO. 41.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March, 1847, entitled An Act to authorize the Board of Public Works to purchase two-fifths of the Stock of

THE ALEXANDRIA CANAL COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 42.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing

DARK PAGE

LOANS for the payment of certain Subscriptions and Appropriations,

GILES, FAYETTE AND KANAWHA TURNPIKE COMPANY.

Act 1st February 1847, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 43.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March 1847, entitled "An Act to provide for the Completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes, the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the Pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

BLEED THRU

LOAN No. 44.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions and Appropriations and An Act passed 8th March 1847, entitled, "An Act to provide for the Construction of a Turnpike Road from the Richlands in Tazewell to the Kentucky Line, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 45.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of March 1847, entitled, "An Act providing for the extension of

LOUISA RAILROAD TO THE EASTERN BASE OF BLUE RIDGE"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 46.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th day of March 1847, entitled, "An Act incorporating the

RICHMOND AND DANVILLE RAILROAD COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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BLEED THRU

LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of January, 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMOUNT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions, and Appropria-

tions," and an Act passed 14th January 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMONT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN NO. 48.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of . Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the third day of February 1848, entitled, "An Act authorizing a loan by the Commonwealth to the

RAPPAHANNOCK COMPANY"

the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 49.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th day of January 1848, entitled, "an Act to provide for the extension of the

SOUTH-WESTERN ROAD FROM ITS EASTERN TERMINUS TO THE TOWN OF BUCHANAN"

and also of an Act passed 29th March 1848, "entitled an Act prescribing the mode of raising funds for appropriations from the

PUBLIC TREASURY FOR INTERNAL IMPROVEMENTS",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations" also an Act passed 8th March 1847, entitled an Act to amend the Act passed 5th March 1846 incorporating the

HARDY AND WINCHESTER TURNPIKE COMPANY.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22nd day of February 1848, entitled, "An Act to provide for the completion of the

HARDY AND WINCHESTER TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled An Act to increase the State subscription to the Capital Stock of the

HARDY AND WINCHESTER TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

ssigns, the sum of dollars, bearing interest at SIX er centum per annum, from the day of payable at ie Treasury of the Commonwealth aforesaid, on the first day of anuary and July in each year; being STOCK created in pursuance f an Act of the General Assembly of the Commonwealth of Virinia, passed on the 17th March 1849.

NORTH WESTERN TURNPIKE ROAD

ie principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the leasure of the General Assembly.

This Certificate is transferable on the books of the Second uditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above ritten.

LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

o.

BE IT KNOWN, That there is due from the Commonwealth of irginia, unto heirs, executors, administrators or ssigns, the sum of Dollars, bearing interest at SIX er centum per annum, from the day of payable at ie Treasury of the Commonwealth aforesaid, on the first day of anuary and July in each year, being STOCK created in pursuance f an Act of the General Assembly of the Commonwealth of Virinia passed on the 29th February 1848. Entitled, An Act to proide for Macadamizing the

NORTH WESTERN TURNPIKE ROAD

ie principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the leasure of the General Assembly.

This Certificate is transferable on the books of the Second uditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above ritten.

LOAN No. 52.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act to amend the Act incorporating the

WHEELING WEST LIBRARY AND BETHANY TURNPIKE COMPANY

passed the 20th day of March 1847," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 54.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

DARK PAG

passed on the 2nd February 1848, entitled, An Act making an appropriation for bridges on the

STAUNTON AND PARKERSBURG ROAD"

and also of an "Act passed 29th March 1848," entitled An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvements," the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 55.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1848, entitled "An Act to provide for the completion of the

SOUTHWESTERN TURNPIKE ROAD,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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BLEED THRU

LOAN No. 56.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

LITTLE STONE GAP ROAD

Act 7th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 59.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

HOWARDSVILLE AND ROCKFISH TURNPIKE ROAD

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

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LOAN No. 60.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations"

ROCKY MOUNT TURNPIKE COMPANY

Act 19th February 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 61.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements"

CLARKSBURG AND BUCHANAN TURNPIKE COMPANY

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 62.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Vir-

ginia, passed on the 15th March 1849, entitled, directing an additional subscription on behalf of the Commonwealth to the Capital Stock of the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 63.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of March 1849, entitled, "An Act to authorize a subscription to the Capital Stock of the

VIRGINIA AND MARYLAND BRIDGE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 64.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849, entitled, "An Act to amend the Act

'INCORPORATING THE ORANGE AND ALEXANDRIA RAILROAD COMPANY,'

passed March 27th 1848," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 65.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

DARK PAGE

passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations"

MARSHALL AND OHIO TURNPIKE COMPANY. ACT 11TH FEB'Y 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 66.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum, per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th March 1848, entitled, An Act to provide for the construction of the

WESTON AND FAIRMONT TURNPIKE ROAD

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LEED THRU

LOAN No. 67.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations

MOOREFIELD AND NORTH BRANCH TURNPIKE COMPANY, ACT 10TH MARCH 1848,

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

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LOAN No. 71.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 12th day of March, 1849, entitled, "An Act to provide for macadamizing certain parts of the

STAUNTON AND PARKERSBURG ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 72.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain Subscriptions and Appropriations

COAL RIVER NAVIGATION COMPANY ACT 17th MARCH 1849

the principle whereof is irredeemable for twenty years from day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 74.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements

WESTON AND GAULEY BRIDGE TURNPIKE COMPANY, ACT 25th MARCH 1848.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the the Treasury of the Commonwealth aforesaid, on the first day of Jan-

uary and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March, 1849, entitled "An Act to amend the Act passed April 3rd, 1848 ch. 75, concerning the

"NEWMARKET AND SPERRYVILLE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March 1849,

"NEWMARKET AND SPERRYVILLE TURNPIKE CO."

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 76.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled An Act authorizing loans for the payment of certain Subscriptions and Appropriations.

BERRYVILLE AND CHARLESTON TURNPIKE CO., ACT 12TH MARCH 1849.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 77.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th March 1849

"WILLIAMSPORT TURNPIKE COMPANY"

he principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the leasure of the General Assembly.

This certificate is transferable on the books of the Second uditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above ritten.

LOAN No. 79.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, day 18

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BE IT KNOWN, That there is due from the Commonwealth of irginia, unto heirs, executors, administrators or signs, the sum of Dollars, bearing interest at SIX r centum per annum, from the day of payable at the easury of the Commonwealth aforesaid, on the first day of Jan- ry and July in each year; being STOCK, created in pursuance of Act of the General Assembly of the Commonwealth of Virginia, ssed on the 5th day of March, 1849, entitled, "An Act to in- rporate the

BLUE RIDGE RAILROAD COMPANY

l for other purposes", the principal whereof is irredeemable for enty years from the day of , and afterwards be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second ditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above tten.

LOAN No. 81.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849 entitled, "An Act authorizing a subscription for the Commonwealth to the Stock of the

VIRGINIA AND TENNESSEE RAILROAD COMPANY",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 83.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th March 1849, entitled, An Act to incorporate the

MOOREFIELD AND ALLEGHANY TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 84.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of . Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of March 1849, entitled "An Act amending An Act to incorporate the

SMITH RIVER NAVIGATION COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 85.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled "An Act to incorporate the

MORGANTOWN AND BRIDGEPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvement"

OHIO RIVER AND MARYLAND ROAD, ACT 13TH JANUARY 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 86.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the public Treasury for internal improvement,

FISHING CREEK AND MORGANTOWN ROAD, ACT 13TH JANUARY 1848.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 88.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22d day of March, 1850, entitled "An Act providing for the

NEGOTIATION OF LOANS FOR THE PURPOSE OF INTERNAL IMPROVEMENT,

the principal whereof is irredeemable for twenty-five years from the , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 89.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of January 1850, entitled "An Act to provide for the completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes", the principal whereof is irredeemable for twenty-five years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 92.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND,

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on first January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 18th March 1856 entitled "An Act providing for and regulating the issue of Certificates of

REGISTERED STOCK

in lieu of Coupon Bonds, the principal whereof is redeemable after the day of (in lieu of Coupon Bond Number issued day of ,returned and cancelled.)

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 93.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1858, entitled, An Act for the relief of certain Internal Improvement Companies and Holders of Debts on account of the

CONSTRUCTION OF STATE WORKS

by an issue of Certificates of State Stock, the principal whereof is irredeemable for thirty-four years from the day of and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. LOAN No. 1—REISSUE.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1840, entitled "An Act providing

DARK PAGE

for the re-issue of certificates of State Stock due the Bank of Virginia"

J. R. Co.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

J. R. LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

In pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th February 1823 entitled "An Act making more effectual provision to carry into effect the Act, entitled, an Act to amend the Act, entitled, an Act for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western waters, by the James and Kanawha Rivers, and for other purposes;" I, Treasurer of the Commonwealth of Virginia, do hereby certify, that the said Commonwealth is indebted to executors, administrators or assigns, in the sum of Dollars, with interest thereon from the date hereof at the rate of per centum per annum, payable semi-annually at the Treasury of Commonwealth aforesaid; the principal whereof is irredeemable for 20 years and afterwards to be redeemed at pleasure of General Assembly.

This Certificate is transferable on the books of the Second Auditor, by proprietor or proprietors, his, her, or their Attorney.

Witness my hand this day of 182

Countersigned.

J. L. Loan No. 4.

TREASURY OFFICE OF VIRGINIA

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an "Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of February 1825, entitled ,"An Act making further provision to carry into effect the Act, entitled, "An Act, for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western Waters, by the James River and Kanawha Rivers, and for other purposes;" the principal whereof is irredeemable for twenty years, and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

Loan No. 1—N. W.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

DARK PAC

passed on the 19th day of March 1831, entitled, "An Act to provide for the construction of a turnpike road, from

WINCHESTER TO SOME POINT ON THE OHIO RIVER"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly within a period not exceeding fifteen years.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February 1834, entitled "An Act further to provide for the construction of the

NORTH WESTERN ROAD"

as amended by an Act passed on the 7th February 1838"; the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

E BLEED THRU

N. W. Loan No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators o assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 30th day of March 1837, entitled, An Act further to provide for the construction of the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. Loan No. 5.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators o assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 26th day of January 1839, entitled, An Act to amend the Act, entitled, an Act to provide for the construction of the

"NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

No. W. Loan No. 6.

TREASURY OFFICE OF VIRGINIA.

No. Richmond, 18

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of January 1840, entitled an Act concerning loans heretofore authorized for the

"NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

N. W. LOAN No. 7.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1840, entitled, An Act to amend the several Acts concerning the

NORTH WESTERN TURNPIKE ROAD"

and an Act farther to amend the same passed 19th March 1840, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

BANK LOAN.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 19th day of March 1839, entitled, "An Act to provide for further subscriptions on the part of the State to

THE EXCHANGE BANK
and
NORTHWESTERN BANK OF VIRGINIA

the principal whereof is irredeemable for twenty years from the day of *in whole or in part, at the pleasure of the Commonwealth.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

*This language is vague. Possibly words "And then to be redeemed" just before "in whole or in part at pleasure of General Assembly" were intended to be inserted.

J. R. & K. LOAN (SEPARATE REGISTER).

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of 18 , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July of each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd March 1860, entitled, "An Act to amend the Charter of the

JAMES RIVER AND KANAWHA COMPANY"

the principal whereof is irredeemable for thirty-four years from the first day of January 1860, and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S SUPPLEMENTARY EXHIBIT A-1.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York.

For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S SUPPLEMENTARY EXHIBIT A.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
56 William Street, New York.

For the Plaintiff.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

THE AMOUNT OF THE PUBLIC DEBT OF VIRGINIA.

PARAGRAPH I OF DECREE.

Supplementary Statement of Bonds Guaranteed by Virginia Outstanding January 1, 1861.

Undetermined contingent liability of the Commonwealth of Virginia with respect to the Bonds of the Chesapeake & Ohio Canal Co., as follows:

187 6% Bonds of $1,000 } in broken series of numbers
226 6% Bonds of $ 500 } from No. 1 to No. 1,495 . . $300,000.00

bearing dates from Nov. 13, 1847 to Nov. 9, 1849.

Of this issue of Bonds the following were redeemed by the Commonwealth of Virginia, April 11, 1903, (Transfer No. 2888) in her settlement with the United States for Virginia Bonds held by the Secretary of the Interior for the benefit of certain Indian Tribes:

No.	10	$1,000.00
	482	1,000.00
	487	1,000.00
	488	1,000.00
	857	1,000.00
	872	500.00
	873	500.00
	1048	1,000.00
	1140	1,000.00
	1419	1,000.00
	1420	1,000.00
	1490	1,000.00
	1492	1,000.00
	1493	1,000.00
		$13,000.00

These Bonds are guaranteed by the Commonwealth of Virginia under Act of March 8, 1847, Chapter 107.

Paragraph 1 (after preamble) recites the terms of the Guarantee as follows:

"I, A. B., Treasurer of the Commonwealth of Virginia, in conformity to an Act of the General Assembly, passed on the day of in the year eighteen hundred and forty-seven, do hereby pledge the faith of the state for the punctual payment of the interest, and the ultimate re-

demption of the principal sum of money appearing due by the within (or above) bond, according to the terms therein specified.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Richmond, Virginia, this ... of ... Eighteen ...

A. B., Treasurer."

Payable 35 years after date of issue or in 1882, 1883 and 1884.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant agrees that the amounts shown above are correct, but denies that these bonds formed any part of the outstanding debt of the Commonwealth of Virginia on January 1st, 1861, or that they have since become such a debt; and claims that even if these bonds should be paid in full by the Commonwealth of Virginia, her remedy would lie against the Chesapeake & Ohio Canal Co., and not in any case against the State of West Virginia.

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BYRD DIXCY,
For the Defendant.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXEY
Certified Public Accountant
30 Church Street, New York
For the Defendant

denomination of the principal sum of money appearing due by the within ... above, Penn. according to the terms therein specified.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Richmond, Virginia, this ... of ... Eighteen ...

... A. M. Treasurer.

Payable 35 years after date of bonds as in 1882, 1883 and 1884.

Certified Correct,

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant admits that the amounts shown above are correct, but denies that these bonds formed any part of the outstanding debt of the Commonwealth of Virginia on January 1st, 1871, or that they have ever become the property of the plaintiff, and denies that even if these bonds should be paid to [illegible] the Commonwealth of Virginia has remedy upon the contract the Chesapeake & Ohio Canal Co., and not to any one against the State of West Virginia.

Certified Correct,

CLIFFORD P. MACKLEY,
Solicitor.

THOMAS BIRD DIXEY,
For the Defendant.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
64 William Street, New York
For the Plaintiff

THOMAS BIRD DIXEY
Certified Public Accountant
30 Church Street, New York
For the Defendant

B-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT B-1.

The Extent and Assessed Valuation of the Territory of Virginia and of West Virginia June 20th, 1863, and the Population Thereof, with and without Slaves, Separately.

PARAGRAPH II OF DECREE.

1. EXTENT:

Land Area:			
Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
Total	64,284	do. =	100%
Total Area:			
Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
Total	66,797	do. =	100%

2. ASSESSED VALUATION:

Real Estate:		
Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
Total	$378,534,712.35 =	100%

3. POPULATION:

Estimated—With Slaves:		
Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
Total	1,617,952 =	100%
Estimated—Without Slaves:		
Virginia	748,171 =	66.4769%
West Virginia	377,289 =	33.5231%
Total	1,125,460 =	100%

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT C-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

JOINT EXHIBIT C-1

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COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

SUMMARY OF PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

PARAGRAPH III OF DECREE.

Details of which are shown on pages numbered 2 to 6, inclusive, following

Total Claimed by Plaintiff:

Group I Pages 2 & 3	Bridges	$ 3,000.00	
	Railroads	1,316,992.42	
	Turnpikes	1,579,341.81	
	Miscellaneous	1,253,200.10	
			$4,152,534.33
Group II Pages 4, 5 & 6	Bridge Co's	$ 78,412.50	
	Navigation Co's	210,500.00	
	Turnpike Co's	803,555.83	
	Banks	391,800.00	
	Town of Bath	2,500.00	
			1,486,768.33
			$5,639,302.66

Total Conceded by Defendant:

Group I	Bridges	$ 3,000.00	
	Turnpikes	1,149,088.92	
	Miscellaneous	99,200.00	
			1,251,288.92
	Difference		$4,388,013.74

This Difference is Composed of the Following:

Group I	Railroads	$1,316,992.42	
	Turnpikes	430,252.89	
	Miscellaneous	1,154,000.10	
			$2,901,245.41
	and all of Group II		1,486,768.33
			$4,388,013.74

Certified Correct as to Summary and Details.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

All Expenditures Made by the Commonwealth of Virginia Within the Territory now Constituting West Virginia, other than Subscriptions to Capital Stock (Shown in Group II), from March 19th, 1822, to December 31st, 1860, Inclusive.

All Figures and Calculations in this Exhibit Agreed to as Correct in Amount by Plaintiff and Defendant.

PARAGRAPH III OF DECREE.

Group I.

	Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree. (See Note below.)	
			Basis.	Amount.	Basis.	Amount.	Basis	Amount.
	Bridges:							
1	Coal River Bridge	$ 3,000.00		$ 3,000.00		$ 3,000.00		
	Railroads:							
2	Covington & Ohio Railroad	$2,787,128.33	Direct Construction	$1,146,460.42			Direct Construction	$1,146,460.42
3	Winchester & Potomac Railroad Company	270,000.00	Mileage 63.16%	170,532.00			Mileage 63.16%	170,532.00
	Total	3,057,128.33		$1,316,992.42				$1,316,992.42
	Turnpikes and Roads:							
4	Abbs Valley and Tug Road	$ 4,450.00	Mileage 90.1%	$ 4,009.45	Mileage 90.1%	$ 4,009.45		
5	Alleghany Mountain Turnpike	1,074.00	" 55.55%	596.66	" 55.55%	596.66		
6	Berryville and Charlestown Turnpike Company	20,455.74	" 58-1/3%	11,932.52			Mileage 58-1/3%	$ 11,932.52
7	do. Purchase of the Road in 1858	7,236.97	" 58-1/3%	4,221.57	Mileage 58-1/3%	4,221.57		
8	Franklin and Monterey Turnpike	13,694.09	" 55.1%	7,545.44	" 55.1%	7,545.44		
9	Harrisonburg to Hardy and Pendleton Co. Road	1,000.00	" 50%	500.00	" 50%	500.00		
10	Kanawha Turnpike	177,054.34	Direct Construction and 82% Mileage	152,130.54			Direct Construction and 82% Mileage	152,130.54
11	do. Extraordinary Repairs (Eastern Section)	6,050.66	Mileage 42.87%	2,593.92			Mileage 42.87%	2,593.92
12	do. do. (Western Section)	7,189.65	Direct Construction	7,189.65			Direct Construction	7,189.65
13	do. Extension	80,955.28	do.	80,955.28			do.	80,955.28
14	Kanawha River Improvements	59,572.36	do.	59,572.36			do.	59,572.36
15	Kanawha Board—Bonds	60,000.00		60,000.00				60,000.00
16	North Western Turnpike	620,271.38	Direct Construction	(1) 469,148.53	Direct Construction	469,148.53		
17	do. (Maryland Section)	7,882.92	do.	7,882.92			Direct Construction	7,882.92
18	Prices Turnpike and Cumberland Gap Road	72,780.67	do.	9,212.20	Direct Construction	9,212.20		
19	Raleigh and Grayson Turnpike	38,400.00	Mileage and Percentage	11,394.22	Mileage and Percentage	11,394.22		
20	Staunton and Parkersburg Turnpike	388,936.97	do.	(2) 264,043.07	do.	264,043.07		
21	South Branch of Potomac to Brocks Gap Road	1,400.00	Mileage 29.41%	411.80	Mileage 29.41%	411.80		
22	Skidmore Fork to South Fork of South Branch of Potomac Road	1,000.00	" 58.33%	583.33	" 58.33%	583.33		
23	Beverly and Fairmont Road	75,384.65		75,384.65		75,384.65		
24	Beverly and Clarksburg Road and Road from Monongalia Co. to Beverly and Clarksburg Road	2,724.00 / 9,276.00		12,000.00		12,000.00		
	Carried forward	1,656,789.68		$1,241,308.11		$859,050.92		$ 382,257.19

NOTE. Items 10 to 14 inclusive, are included by the Defendant under Paragraph VII of the Decree.

(1) Not including repairs, etc. $109,587.74
(2) Not including repairs, etc. 21,700.74

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	Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree.	
			Basis.	Amount.	Basis.	Amount.	Basis.	Amount.
	Brought forward	1,656,789.68		$1,241,308.11		$ 859,050.92		$ 382,257.19
	Turnpikes and Roads (Continued):							
25	Brandonville, Kingwood and Evansville Road	$ 10,595.73		10,595.73				10,595.73
26	Charleston and Weston State Road	4,456.71		4,456.71		4,456.71		
27	Clarksburg and Point Pleasant State Road	249.00		249.00		249.00		
28	Clarksburg and Buckhannon Turnpike (Macadamizing)	19,259.36		19,259.36				19,259.36
29	Cheat Mountain Turnpike	7,697.88		7,697.88		7,697.88		
30	Fairmont and Wheeling Road	31,848.85		31,848.85		31,848.85		
31	Huntersville and Lewisburg Turnpike (from Martin's Bottom to Huntersville)	19,976.47		19,976.47		19,976.47		
32	Huntersville and Parkersburg Road	4,000.00		4,000.00		4,000.00		
33	Huttonsville and Huntersville Turnpike (to Martin's Bottom)	23,168.72		23,168.72		23,168.72		
34	Ice's Ferry Road	1,358.00		1,358.00		1,358.00		
35	Kingwood and West Union Turnpike	18,140.61		18,140.61				18,140.61
36	Kanawha and Logan Road $5,000.00 Logan Court House and Kanawha State Road 2,407.50 Guyandotte to Kanawha State Road 601.50	8,009.00		8,009.00		8,009.00		
37	Marlins Bottom and Lewisburg Road	12,615.09		12,615.09		12,615.09		
38	Middle Fork Road	13,867.34		13,867.34		13,867.34		
39	Middlebourn to Pennsylvania Road $5,653.00 and Tyler to Green County Road 1,000.00	6,653.00		6,653.00		6,653.00		
40	Monroe County to Kentucky Line Road	5,000.00		5,000.00		5,000.00		
41	Moorefield and Alleghany Turnpike Co. (Building stem to Petersburg)	4,500.00		4,500.00		4,500.00		
42	Morgantown and Beverly Road	2,999.97		2,999.97		2,999.97		
43	Nicholas Court House and Gauley Bridge Turnpike	1,500.00		1,500.00		1,500.00		
44	Ohio River and Maryland Road	95,934.37		95,934.37		95,934.37		
45	South Fork of South Branch of Potomac River to Petersburg Road	900.00		900.00		900.00		
46	Princeton and Red Sulphur Springs Turnpike	4,200.00		4,200.00		4,200.00		
47	Sandy River (Wayne Co.) to Kanawha Turnpike (see Wilsons Creek to Kanawha Turnpike)	3,500.00		3,500.00		3,500.00		
48	Slavin's Cabin and Summerville Road	16,322.30		16,322.30		16,322.30		
49	Sistersville and Salem Turnpike	11,326.64		11,326.64		11,326.64		
50	Wilsons Creek to Kanawha Turnpike (see Sandy River to Kanawha Turnpike)	4,000.00		4,000.00		4,000.00		
51	Wyoming Court House to Bluffs Road	5,954.66		5,954.66		5,954.66		
	Total	1,994,823.38		$1,579,341.81		$1,149,088.92		$ 430,252.89
	Miscellaneous:							
52	Twelve Pole River Improvement	$ 1,200.00		$ 1,200.00		$ 1,200.00		
53	Harpers Ferry Raid $255,745.77 Deduct—Transportation of Troops, and Ordnance and Ordnance Stores, and Sundry Credits 66,027.18	189,718.59		189,718.59				$ 189,718.59
54	School Commissioners	830,865.37	Direct Expenditure	830,865.37				830,865.37
55	Surveys	250,206.56		106,416.14			Direct Expenditure, Mileage and Percentage	106,416.14
56	Trans-Alleghany Lunatic Asylum	125,000.00		125,000.00		98,000.00		27,000.00
	Total	1,396,990.52		$1,253,200.10		$ 99,200.00		$1,154,000.10

(Group II.) Disbursements made by the Commonwealth of Virginia in payment of subscriptions to the capital stock of joint stock companies and corporations, including banks, created by her, the property or works whereof were situated in whole or in part in the territory now constituting the State of West Virginia, and a loan to the Town of Bath in said territory; all claimed by Virginia under Paragraph III of the decree. The plaintiff and defendant agree to the correctness of the amounts of said disbursements and to the portion of the property situated in West Virginia, as set forth in this table; but the defendant denies that they are a proper charge against her under this paragraph, and denies that some of the items are a proper charge against her in any event, and claims that, so far as she is liable at all, she is liable under Paragraph VII of the decree.

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Bridge Companies:			
57	Buckhannon Bridge Company	$ 1,800.00	.....	$ 1,800.00
58	Cheat River Toll Bridge Company	4,612.50	.....	4,612.50
59	Elk River Bridge Company	6,000.00	.....	6,000.00
60	Fairmont and Palatine Bridge Company	12,000.00	.....	12,000.00
61	Guyandotte Bridge Company	12,000.00	.....	12,000.00
62	Morgantown Bridge Company	24,800.00	.....	24,800.00
63	North Branch Bridge Company	3,000.00	.....	3,000.00
64	South Branch Bridge Company	4,200.00	.....	4,200.00
65	Virginia and Maryland Bridge Company	10,000.00	.....	10,000.00
	Total	$ 78,412.50	.....	$ 78,412.50
	Navigation Companies:			
66	Coal River Navigation Company	$ 96,000.00	.....	$ 96,000.00
67	Guyandotte Navigation Company	106,800.00	.....	106,800.00
68	Monongalia Navigation Company	2,660.00	.....	2,660.00
69	Tug Fork Navigation Company	5,040.00	.....	5,040.00
	Total	$210,500.00	.....	$210,500.00
	Turnpike Companies:			
			Mileage.	
70	Berkeley and Hampshire Turnpike Company	$ 16,572.00	92.46%	$ 15,322.47
71	Cross Roads and Summit Point Turnpike Company	6,000.00	46.38%	2,782.80
72	Giles, Fayette and Kanawha Turnpike Company	44,991.60	97.62%	43,920.80
73	Hardy and Winchester Turnpike Company	23,400.00	67.21%	15,727.14
74	Huntersville and Warm Springs Turnpike Company	6,159.24	21.36%	1,315.61
75	Hillsboro and Harpers Ferry Turnpike Company	6,000.00	2.38%	142.80
76	Martinsburg and Winchester Turnpike Company	27,000.00	59.09%	15,954.30
77	Morgan and Frederick Turnpike Company	8,005.00	73 1-3%	5,870.33
78	Mountain Lake and Salt Sulphur Springs Turnpike Co.	4,800.00	16.2-3%	800.00
79	North Frederick Turnpike Company	11,325.00	11.68%	1,322.76
80	Raleigh and Wythe Line Turnpike Company	400.00	73 1-3%	293.33
81	Brandonville, Kingwood and Evansville Road Company	3,193.46	.....	3,193.46
82	Buckhannon and Little Kanawha Turnpike Company	7,773.00	.....	7,773.00
83	Charleston and Point Pleasant Turnpike Company	31,260.00	.....	31,260.00
84	Charleston, Ripley and Ravenswood Turnpike Company	27,519.41	.....	27,519.41
85	Clarksburg and Philippi Turnpike Company	5,446.25	.....	5,446.25
86	Clarksburg and Wheeling Turnpike Company	4,195.35	.....	4,195.35
87	Clarksburg and Buckhannon Turnpike Co.	9,255.13	.....	9,255.13
88	Cacapon and North Branch Turnpike Company	12,000.00	.....	12,000.00
89	Clear Fork Road Company	600.00	.....	600.00
	Carried forward,	$255,895.44	.....	$204,694.94

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward,	$255,895.44		$204,694.94
	Turnpike Companies (Continued):			
90	Cranberry Summit and Brandonville Turnpike Company.	4,120.11	.....	4,120.11
91	Dunkard Creek Turnpike Company.....	6,000.00	.....	6,000.00
92	East River and Princeton Turnpike Company.....	4,800.00	.....	4,800.00
93	Fish Creek Turnpike Company.....	6,000.00	.....	6,000.00
94	Franklin and Circleville Turnpike Company.....	2,175.00	.....	2,175.00
95	Gilmer and Braxton Turnpike Company.....	6,699.80	.....	6,699.80
96	Gilmer, Ripley and Ohio Turnpike Company.....	29,974.80	.....	29,974.80
97	Gnatty Creek and West Union Turnpike Company.....	5,700.55	.....	5,700.55
98	Grave Creek and Pennsylvania Line Turnpike Company.	1,800.00	.....	1,800.00
99	Hampshire and Morgan Turnpike Company.....	6,510.00	.....	6,510.00
100	Hardy and Randolph Turnpike Company.....	7,134.78	.....	7,134.78
101	Harrisville Turnpike Company.....	6,000.00	.....	6,000.00
102	Hedgesville and Potomac Turnpike Company.....	5,400.00	.....	5,400.00
103	Holliday Cove Turnpike Company.....	4,733.33	.....	4,733.33
103A	Holliday Cove and Wellsburg Turnpike Company.....	5,916.67	.....	5,916.67
104	Holliday Cove and New Cumberland Turnpike Company.	2,400.00	.....	2,400.00
105	Kingwood and West Union Turnpike Company.....	8,769.48	.....	8,769.48
106	Leading Creek and Buffalo Creek Turnpike Company....	5,847.84	.....	5,847.84
107	Letart Falls and West Columbia Turnpike Company....	2,350.00	.....	2,350.00
108	Lewisburg and Blue Sulphur Springs Turnpike Company.	4,950.00	.....	4,950.00
109	Logan, Raleigh and Monroe Turnpike Company.....	7,321.24	.....	7,321.24
110	Marshall and Ohio Turnpike Company.....	11,943.75	.....	11,943.75
111	Martinsburg and Potomac Turnpike Company.....	15,290.00	.....	15,290.00
112	Middleway and Gerardstown Turnpike Company.....	11,943.75	.....	11,943.75
113	Moorefield and North Branch Turnpike Company.....	28,137.75	.....	28,137.75
114	Moorefield and Alleghany Turnpike Company.....	8,779.78	.....	8,779.78
115	Morgantown and Bridgeport Turnpike Company.....	10,687.40	.....	10,687.40
116	New Creek and Hardy Turnpike Company.....	5,431.24	.....	5,431.24
117	New Manchester Turnpike Company.....	2,000.00	.....	2,000.00
118	Newark Turnpike Company.....	3,000.00	.....	3,000.00
119	North River Turnpike Company.....	5,400.00	.....	5,400.00
120	Pattersons Creek Valley Turnpike Company	9,900.00	.....	9,900.00
121	Parkersburg and Elizabethtown Turnpike Company.....	4,800.00	.....	4,800.00
122	Pleasant Valley and Tunnelton Turnpike Company.....	4,078.45	.....	4,078.45
123	Potomac Turnpike Company.....	2,489.70	.....	2,489.70
124	Raleigh and Boone Graded Road Company.....	1,800.00	.....	1,800.00
125	Ravenswood and Reedy Creek Turnpike Company.....	8,999.99	.....	8,999.99
126	Red and Blue Sulphur Springs Turnpike Company.....	8,856.66	.....	8,856.66
	Carried forward,	$534,037.51	.....	$482,837.01

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward.	$534,037.51	.....	$482,837.01
	Turnpike Companies (Continued):			
127	Reedy and Harrisville Turnpike Company	1,751.87	.....	1,751.87
128	Ritchie and Gilmer Turnpike Company	8,891.18	.....	8,891.18
129	Sandy River Turnpike Company	3,000.00	.....	3,000.00
130	Salem and Harrisville Turnpike Company	3,817.92	.....	3,817.92
131	Sheperdstown and Smithfield Turnpike Company	18,575.00	.....	18,575.00
132	Shinston Turnpike Company	13,302.26	.....	13,302.26
133	Smithfield, Charlestown and Harpers Ferry Turnpike Co.	14,000.00	.....	14,000.00
134	Sistersville and Salem Turnpike Company	9,000.00	.....	9,000.00
135	St. Mary's Turnpike Company	6,000.00	.....	6,000.00
136	Sweet and Salt Sulphur Springs Turnpike Company	10,104.00	.....	10,104.00
137	Walnut Gap Road Company	1,305.37	.....	1,305.37
138	Wellsburg and Washington Turnpike Company	7,071.01	.....	7,071.01
139	Wellsburg and Bethany Turnpike Company	12,590.22	.....	12,590.22
140	Weston and Gauley Bridge Turnpike Company	64,098.31	.....	64,098.31
141	Weston and Fairmont Turnpike Company	97,962.50	.....	97,962.50
142	Weston and West Union Turnpike Company	5,538.21	.....	5,538.21
143	West Union Turnpike Company	3,054.00	.....	3,054.00
144	West Milford and New Salem Turnpike Company	10,526.32	.....	10,526.32
145	White and Salt Sulphur Springs Turnpike Company	4,000.00	.....	4,000.00
146	Wheeling, West Liberty and Bethany Turnpike Company	21,000.00	.....	21,000.00
147	Williamsport Turnpike Company	5,130.65	.....	5,130.65
	Total	$854,756.33	.....	$803,555.83
	Banks:			
148	Fairmont Bank	$ 50,000.00	.....	$ 50,000.00
149	Northwestern Bank of Virginia at Wheeling	341,800.00	.....	341,800.00
	Total	$391,800.00	.....	$391,800.00
	Town of Bath:			
150	Loan to Town of Bath for road to St. John's River	$ 2,500.00	.....	$ 2,500.00

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT D-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXEY
Certified Public Accountant
30 Church Street, New York
For the Defendant

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT D-1.

Such Proportion of the Ordinary Expenses of the Government of Virginia since any of said Debt was Contracted as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Average Total Population of Virginia With and Without Slaves, as shown by the Census of the United States.

PARAGRAPH IV OF DECREE.

Ordinary Expenses of the Government from March 19th, 1823, to December 31st, 1860, Inclusive.

Plaintiff	$37,794,211.18
Defendant	18,207,684.29
Difference	$19,586,526.89

This difference is composed of the following items, all of which are agreed to by the parties to be correct as to amount, but nothing contained herein shall be construed as an admission as to the propriety of including or excluding any disputed items:

No. 1	Tobacco Receipts (1)			$ 353,123.96
2	Constitutional Conventions			258,906.28
3	Slaves transported and executed			311,168.35
4	Boundary Lines			16,704.78
5	Maps (Commonwealth)	$16,628.04		
	Maps (Board of Public Works)	11,446.48		
				28,074.52
6	Deaf, Dumb and Blind Institution 1845-1860, New Buildings, etc. (See pages 5-7 for details)			80,661.94
7	International Exchanges			2,836.19
8	Overpayment of Treasury Notes			50.00
9	Printing Treasury Notes			375.74
10	Loss account of Counterfeit Money			190.00
11	Virginia Military Institute, New Buildings, etc. (See pages 8-9 for details)			151,000.00
12	University of Virginia, Repairs and Improvements to Buildings and Water Supply (See page 10 for details)			25,000.00
13	Improvements, Public Square (See page 11 for details)			1,456.91
	Improvements, Capitol Square (See page 12 for details)			12,278.47
14	Fugitive Slave Expense	$ 701.00		
	Reward, Additional	1,500.00		
				2,201.00
	Carried forward			$ 1,244,028.14

(1) Deducted from ordinary expenses by defendant.

	Brought forward			$ 1,244,028.14
No. 15	Penitentiary Lot, New Hospital Building, etc. (See page 13 for details)			13,947.48
16	Calling out Militia at Wheeling in 1836			1,099.00
17	Medical College of Virginia, Additions and Improvements to Buildings, etc. (See page 14 for details)			25,000.00
18	Attorney General's Fees, prosecuting Selden, Withers & Company			500.00
19	Eastern and Western Asylums (See pages 15-22 for details):			
	New Buildings, etc.	$336,845.56		
	Support	7,450.01		
				344,295.57
20	Gun House at Alexandria			900.00
21	Cannon House, Surry County			110.00
22	Gun House for Richmond Artillery			1,079.09
23	Sundry B. P. W. Expenses			36,728.50
24	Interest:			
	Interest on Public Debt	$18,324,044.50		
	Interest on Treasury Notes	133,527.34		
	Interest on Temporary Loans	107,844.57		
	Interest on Old Military Debt of 1814 and prior	9,331.43		
				18,574,747.84
				$20,242,435.62
	Less—Amount of payments to School Commissioners admitted by Defendant in Exhibit D-1, under Paragraph IV for			655,908.73
	But charged by Plaintiff as $830,865.37 (being payments into West Virginia Counties) in Exhibit C-1, under Paragraph III.			
	Net Difference			$19,586,526.89

Certified Correct:

ARTHUR G. POTTER.

CLIFFORD E. SCOVILLE.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

THOMAS BIRD DIXCY,
For the Defendant.

THE DIVISION OF THE ORDINARY EXPENSES OF GOVERNMENT IS MADE BY THE PARTIES TO THIS CAUSE AS FOLLOWS:

PLAINTIFF:

"The Average Total Population" *including slaves* is construed to mean the average for each decade determined by averaging the census at the beginning and at the end of that decade. The average total population so found determines the proportion in which the Total Ordinary Expense for that decade is to be charged to the two States. (See page 3 for details.)

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	996,340	85.9789%	West Virginia	162,479	14.0211%
1830 and 1840	"	1,024,871	83.6218%	" "	200,731	16.3782%
1840 and 1850	"	1,067,304	80.2045%	" "	263,425	19.7955%
1850 and 1860	"	1,169,489	77.5014%	" "	339,501	22.4986%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830, Total	$ 3,367,513.89	Virginia,	$ 2,895,351.40	85.9789%	West Virginia,	$ 472,162.49	14.0211%
October 1st, 1830-September 30th, 1840, Total	5,344,600.21	Virginia,	4,469,250.90	83.6218%	West Virginia,	875,349.31	16.3782%
October 1st, 1840-September 30th, 1850, Total	8,700,443.93	Virginia,	6,978,147.55	80.2045%	West Virginia,	1,722,296.38	19.7955%
October 1st, 1850-December 31st, 1860, Total	20,381,653.15	Virginia,	15,796,066.53	77.5014%	West Virginia,	4,585,586.62	22.4986%
Total	$37,794,211.18		$30,138,816.38			$ 7,655,394.80	

"The Average Total Population" *excluding slaves* is treated in the same manner as above, producing the following:

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	559,399	79.3334%	West Virginia,	145,725	20.6666%
1830 and 1840	"	583,579	76.1625%	" "	182,650	23.8375%
1840 and 1850	"	626,041	71.9611%	" "	243,931	28.0389%
1850 and 1860	"	707,228	68.8438%	" "	320,065	31.1562%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830, Total	$ 3,367,513.89	Virginia,	$ 2,671,563.26	79.3334%	West Virginia,	$ 695,950.63	20.6666%
October 1st, 1830-September 30th, 1840, Total	5,344,600.21	Virginia,	4,070,581.13	76.1625%	West Virginia,	1,274,019.08	23.8375%
October 1st, 1840-September 30th, 1850, Total	8,700,443.93	Virginia,	6,260,935.16	71.9611%	West Virginia,	2,439,508.77	28.0389%
October 1st, 1850-December 31st, 1860, Total	20,381,653.15	Virginia,	14,031,504.53	68.8438%	West Virginia,	6,350,148.62	31.1562%
Total	$37,794,211.18		$27,034,584.08			$10,759,627.10	

Total charge to West Virginia on basis of Average Total Population *including slaves* ..... $ 7,655,394.80

Total charge to West Virginia on basis of Average Total Population *excluding slaves* $10,759,627.10

Certified correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the above calculations are correctly made but objects both to the method adopted and to the division so arrived at as well as the amount to be divided.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXOY,
For the Defendant.

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PLAINTIFF'S METHOD OF ARRIVING AT PERCENTAGES TO DIVIDE ORDINARY EXPENSES OF GOVERNMENT.

TOTAL POPULATION INCLUDING SLAVES.

	Virginia.		*West Virginia.*	
1820	928,558		136,808	
1830	1,034,481		176,924	
10 years' Increase	105,923		40,116	
1022/3652 of Increase	29,642		11,226	
Add—1820	928,558		136,808	
1823	958,200		148,034	
1830	1,034,481		176,924	
	2)1,992.681		2)324,958	
	996,340	85.9789%	162,479	14.0211%
1830	1,034,481		176,924	
1840	1,015,260		224,537	
	2)2,049,741		2)401,461	
	1,024,871	83.6218%	200,731	16.3782%
1840	1,015,260		224,537	
1850	1,119,348		302,313	
	2)2,134.608		2)526,850	
	1,067,304	80.2045%	263.425	19.7955%
1850	1,119,348		302,313	
1860	1,219,630		376,688	
	2)2,338,978		2)679,001	
	1,169,489	77.5014%	339,501	22.4986%

TOTAL POPULATION EXCLUDING SLAVES.

	Virginia.		*West Virginia.*	
1820	518,529		121,689	
1830	582,397		159,251	
10 years' Increase	63,868		37,562	
1022/3652 of Increase	17,873		10,511	
Add—1820	518,529		121,689	
1823	536,402		132,200	
1830	582,397		159,251	
	2)1,118,799		2)291,451	
	559,399	79.3334%	145,725	20.6666%
1830	582,397		159,251	
1840	584,761		206,049	
	2)1,167,158		2)365,300	
	583,579	76.1625%	182,650	23.8375%
1840	584,761		206,049	
1850	667,320		281,813	
	2)1,252,081		2)487.862	
	626,041	71.9611%	243,931	28.0389%
1850	667,320		281,813	
1860	747,136		358,317	
	2)1,414,456		2)640,130	
	707,228	68.8438%	320,065	31.1562%

DEFENDANT:

"The Average Total Population of Virginia, with and without Slaves, as shown by the census of the United States" is construed to mean the average of the five censuses from 1820 to 1860 both inclusive; and the proportion of the total ordinary expenses of Virginia for the period from March 19th, 1823, to December 31st, 1860, chargeable to West Virginia on the above basis, is determined by dividing the said total Ordinary Expenses on the ratio which the average total population of Virginia with and without slaves bears to the average total population with and without slaves of those counties which were created into the State of West Virginia:

Virginia:						
Census of 1820	Population with Slaves	928,558		Population without Slaves	518,529	
" " 1830		1,034,481			582,397	
" " 1840		1,015,260			584,761	
" " 1850		1,119,348			667,320	
" " 1860		1,219,630			747,136	
Total 5 censuses		5,317,277			3,100,143	
Average 5 censuses		1,063,455	81.3718%		620,029	73 3369%
West Virginia:						
Census of 1820	Population with Slaves	136,808		Population without Slaves	121,689	
" " 1830		176,924			159,251	
" " 1840		224,537			206,049	
" " 1850		302,313			281,813	
" " 1860		376,688			358,317	
Total 5 censuses		1,217,270			1,127,119	
Average 5 censuses		243,454	18.6282%		225,424	26.6631%

The proportion of the Ordinary Expenses of the government of Virginia assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia as shown by the census of the United States:

With Slaves.....18.6282% of $18,207,684.29 = $3,391,763.84

Without Slaves.....26.6631% of $18,207,684.29 = $4,854,733.07

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above calculations are correctly made, but objects both to the method adopted, and the division so arrived at, as well as the amount to be divided.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

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No. 6.

DEAF, DUMB AND BLIND INSTITUTE.

This Institute was established under an Act of March 31st, 1838, page 32, Chapter 19, authorizing an appropriation out of the revenue of the Literary Fund, for an amount not exceeding $20,000, for purpose of procuring a site or sites and erecting necessary buildings, etc.

Payments were made as follows:

Year	1839	$10,000.00	
"	1841	5,000.00	
"	1842	2,500.00	
"	1843	2,500.00	
			$20,000.00

An Act of March 20th, 1841, page 37, Chapter 14, authorized the payment of $6,250 for purchase of furniture, musical instruments, books, etc., apparatus, and other articles, required for the outfit of the Institution. Payment was made in 1841 in two amounts—viz: $1,562.50 and $4,687.50. Total..... 6,250.00

An Act of January 23rd, 1845, page 13, Chapter 9, authorized an appropriation of $25,000 for completion of the buildings of the Institution, provided that the aforesaid appropriation should be so expended as to fully complete the said buildings in such mode and style as such appropriations would warrant.

Payments were made as follows:

Year	1845	$ 4,166.66	
"	1846	4,166.66	
"	1846	4,166.66	
"	1847	4,166.66	
"	1847	4,166.66	
"	1848	488.66	
			21,321.96

An Act of March 20th, 1847, page 230, Chapter 272, authorized a payment of $5,998.98 to William C. Adams, or his legal representative, being an allowance on account of work done, materials furnished, etc., in erection of buildings.

Payment was made in 1847..... 5,998.98

An Act of February 24th, 1846, page 20, Chapter 18, authorized a payment of $5,000 for necessary furniture and fixtures.

Payments were made as follows:

Year	1846	$ 2,500.00	
"	1847	2,500.00	
			5,000.00

Carried forward $53,570.94

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Brought forward		$58,570.94
An Act of March 16th, 1847, page 16, Chapter 15, provided among other things for the following—viz: $2,000 for the purchase of 20 acres of land adjoining and lying south of the present Institution lot; $1,000 for the purchase of raised and common types, moulds, and other printing apparatus as may be required; $2,300 for the purchase of materials, machines and tools for the various workshops of said Institution, and for the completion of said workshops. Payments were made in 1848		5,300.00
An Act of January 25th, 1849, page 14, Chapter 12, authorized payment of an amount not to exceed $4,000 for the erection of a plain, substantial brick building of sufficient size to contain a laundry and bakehouse, and accommodations for servants. Payment was made in 1849		4,000.00
An Act of March 7th, 1851, page 5, Chapter 2, authorthorized payment of $2,500 for completing the buildings of the Institution. Payment was made in 1851		2,500.00
An Act of March 14th, 1850, page 4, Chapter 1, authorized payment of $6,000 for furniture for increased number of pupils in the Institution under Act of March 16th, 1847, and for arrears in support of Institution. Payment was made in 1850.....		6,000.00
An Act of June 5th, 1852, page 29, Chapter 35, authorized the payment of $2,000 for purchase of a library, philosophical apparatus and an organ.		
Payments were made as follows:		
Year 1852	$ 1,000.00	
" 1853	1,000.00	
		2,000.00
An Act of February 24, 1853, page 126, Chapter 145, authorized the following payments: $7,000 for construction of fixtures for warming buildings; $5,000 for construction of apparatus for lighting buildings with gas; $8,000 for the erection of an additional building.		
Payments were made as follows:		
Year 1853	$ 5,000.00	
" 1853	2,500.00	
" 1854	10,000.00	
" 1855	2,500.00	
		20,000.00
An Act of March 4th, 1854, page 30, Chapter 41, authorized payment of $10,000 for permanent water supply. Payment was made in 1854.....		10,000.00
Carried forward		$108,370.94

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Brought forward		$108,370.94
An Act of March 13th, 1856, page 80, Chapter 93, authorized the following payments: $3,000 for additional boiler, and erection of suitable boiler house to complete the heating of the buildings by steam; $1,000.00 for purchase of fire engine and erection of engine house; $1,500 for purchase of an organ, in addition to amount appropriated by former Act; $1,000 for fencing grounds, and $2,841 for deficiency of Chapel Steam and Gas Fund.		
Payments were made as follows:		
Year 1856	$ 8,341.00	
" 1857	1,000.00	
		9,341.00
An Act of January 10th, 1860, page 106, Chapter 12, authorized an appropriation of $7,000 for the erection of a shop building and to warm and light same with steam and gas. Payment was made in 1860.....		7,000.00
		$124,711.94
Less		
Amounts included by defendant in ordinary expenses of government:		
Under Act of March 20th, 1841.....	$ 6,250.00	
do Feb. 24th, 1846	5,000.00	
do March 16th, 1847	3,800.00	
do March 14th, 1850	6,000.00	
do June 4th, 1852	2,000.00	
do March 13th, 1856 (purchase of organ), ...	1,500.00	
	$24,050.00	
Original buildings under Act of March 31st, 1828....	20,000.00	
		44,050.00
Net amount plaintiff claims as an addition to defendant's ordinary expenses on this account		$ 80,661.94

No. 11.

VIRGINIA MILITARY INSTITUTE.

This Institute was established under an Act of March 29th, 1839, entitled:

"An Act amending and reducing into one the several Acts concerning the reorganization of the Lexington Arsenal and the establishment therewith of a Military School at Washington College."

An Act of March 6th, 1840, page 26, Chapter 15, authorized an appropriation of $4,500 for the erection of a steward's house and for furnishing a supply of water for the Institute, to be paid as follows: $1,500 in the year 1840, $1,500 in 1841 and $1,500 in 1842. Payments were made accordingly ..... $ 4,500.00

An Act of February 14th, 1844, page 22, Chapter 27, authorized appropriation of an amount not exceeding $1,000 for the erection of a magazine and shelter for artillery at the Institute. Payment was made in 1845 ..... 1,000.00

An Act of March 7th, 1848, page 18, Chapter 17, authorized an appropriation of $4,500 for erecting a house for an additional Professor; also a hospital, at the Institute. Payment was made in 1848..... 4,500.00

An Act of March 8th, 1850, page 16, Chapter 19, authorized an appropriation of $46,000—viz: $11,500 a year for four years, for construction of suitable buildings for cadets' quarters, and for other purposes, as specified in the report of the Board of Visitors of September 15th, 1849.

Payments were made as follows:

Year 1850	$11,500.00	
" 1851	29,500.00	
		41,000.00

An Act of June 5th, 1852, page 21, Chapter 20, appropriating the public revenue for fiscal year 1851-1852 authorizes payment of the balance of $5,000 for erection of new barracks, etc., under Act of March 8th, 1850 (above). Payment was made in 1852..... 5,000.00

An Act of May 29th, 1852, page 29, Chapter 34, makes provision for additional accommodation for the cadets of the Institute, the new barracks erected under Act of March 8th, 1850, being insufficient to accommodate the additional cadets. This Act also mentions that an addition of funds is needed for the purpose of improved heating and lighting arrangements. An amount of $30,000 was appropriated for these purposes. Payment was made in 1852..... 30,000.00

Carried forward ..... $ 86,000.00

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Brought forward		$ 85,000.00
An Act of March 1st, 1854, page 31, Chapter 42, provided for the completion of the barracks, and the erection of a mess hall at the Institute. An amount of $20,000 was appropriated for these purposes to be paid in four installments of $5,000 each.		
Payments were made as follows:		
Year 1854	$15,000.00	
" 1855	5,000.00	
		20,000.00
An Act of March 31st, 1855, page 115, Chapter 162, provides for the completion of Institute buildings, enclosing its grounds, and procuring a supply of water for said Institute. An appropriation of $25,000 was made as follows: $16,000 to meet the deficiency in Building Fund and complete the barracks and mess hall; $6,000 for procuring a supply of water, and $3,000 for enclosing the grounds.		
Payments were made as follows:		
Year 1858	$10,000.00	
" 1859	9,000.00	
" 1860	6,000.00	
		25,000.00
An Act of March 28th, 1860, page 103, Chapter 7, makes an appropriation of $20,000 for additional buildings. Payment was made in 1860		20,000.00
Total		$151,000.00

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UNIVERSITY OF VIRGINIA, $25,000.00.

This payment was authorized by the Act of February 28th, 1854, Chapter 36, page 26, as follows:

"Appropriated to the University of Virginia the sum of $25,000.00 for the purpose of repairing and improving the buildings thereof and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the said institution."

No. 13.

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IMPROVEMENTS PUBLIC SQUARE, $1,455.91.

This amount covers sundry expenditures for the improvement of the Square, for work done at the Capitol, for laying water pipes, and for items of $75, being quarterly allowance to the superintendent of the Capitol Square in 1826 and 1827. While the books do not show the exact nature of the improvements, they were charged to "Public Improvements" account on the books of the Commonwealth.

No. 13.

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IMPROVEMENTS CAPITOL SQUARE, $12,278.47.

The items making up this total are as follows:

From General Appropriation:	
1825—For guard house	$ 2,700.00
1834—For "graduation" of the grounds about the Capitol, etc.	4,127.69
1838—For water system in Capitol and Governor's house	2,285.70
1851—New gas system	1,024.14
1851— do	880.94
1855—Purchase of lot adjoining Square—Act of April 3rd, 1848	1,260.00
Total	$12,278.47

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No. 15.

PENITENTIARY.

An Act of March 9th, 1833, page 18, Chapter 19, authorized an appropriation, not to exceed $7,000.00, for the erection of a hospital, buildings and sheds for the preservation of timber and manufactured articles, and if necessary to enlarge a part of the outer walls to take them within the enclosure.

An Act of March 11th, 1834, page 6, Chapter 2, authorized an appropriation of $2,500.00 for completing the improvements at the Penitentiary.

Payments were made as follows:

Year	1833	$ 797.44	
"	1834	8,169.43	
"	"	150.00	
"	1835	37.80	
"	"	150.73	
"	"	41.58	
			$ 9,346.98

An Act of March 12th, 1835, page 5, Chapter 2, authorized payment of $3,000.00 to Charles L. Winfield for lots condemned to obtain supply of water for use of the Penitentiary. Payment was made in 1837 ..... 3,000.00

A general appropriation Act of March 5th, 1835, authorized payment of $1,600.50 for iron pipes for conducting water to the Penitentiary. Payment was made in 1840 ..... 1,600.50

Total $13,947.48

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MEDICAL COLLEGE OF VIRGINIA, $35,000.00

This amount was paid under an Act of March 1st, 1880, page 104, Chapter 8, as follows:

"Act appropriating $30,000.00 to the Medical College of Virginia for enlarging the hospital or infirmary, for extending the College buildings, and for improvement and extension of the College museum."

The Medical College of Virginia succeeded the old Richmond Medical College, and was incorporated in 1860 under the above style.

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No. 19.

LUNATIC HOSPITALS.

EASTERN ASYLUM, WILLIAMSBURG.....$133,280.19
WESTERN ASYLUM, STAUNTON..... 211,015.38

$344,295.57

EASTERN ASYLUM AT WILLIAMSBURG, ESTABLISHED UNDER ACT OF JANUARY 1st, 1787:

An Act of March 5th, 1824, page 93, Chapter 90, authorized the Directors of the Hospital to contract for the erection of an additional brick building, containing convalescent apartment for females, not to exceed $5,000.

Payments were made as follows:

Year	1824	$ 2,500.00
"	1825	2,500.00
		$5,000.00

An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $6,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1833 ..... 6,000.00

An Act of March 12th, 1834, page 27 Chapter 19, authorized the Directors of the Hospital to draw upon the Treasury for money to finish their buildings authorized by the Act of March 1st, 1833, the amount not to exceed $9,000. Payment was made in 1834..... 9,000.00

An Act of March 12th, 1835, page 17, Chapter 17, appropriated $2,660.00 necessary for completion of buildings. Payment was made in 1835 ..... 2,660.00

An Act of March 31st, 1837, page 18, Chapter 19, appropriated $1,000 for purchase of land near hospital, a neat 2-horse carriage and a pair of horses, and such other articles as recommended. Payment was made in 1837 ..... 1,000.00

An Act covering general appropriations for the year 1837 authorized payment of an amount of $658.88 for buildings. Payment was made in 1837..... 658.88

An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1839.... 12,000.00

An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of amount not to exceed $5,000 for enclosures and buildings. Payment was made in 1839 ..... 5,000.00

Carried forward $41,318.88

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Brought forward		$41,318.88
An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not to exceed $12,000 for an addition to the asylum, to be paid in the following manner—viz: $6,000 when the contract is ratified and the bond duly executed, remaining $6,000 on completion of building, provided same shall not be less than twelve months after first payment is drawn.		
Payments were made as follows:		
Year 1842	$ 6,000.00	
" 1844	4,000.00	
		10,000.00
An Act of February 12th, 1844, page 17, Chapter 12, authorized payment of $2,000 for the erection of an additional building. Payment was made in 1844....		2,000.00
An Act of February 14th, 1844, page 16, Chapter 11, authorized payment of $5,000.00 for remodeling and repairing the body of the old building. Payment was made in 1844		5,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount not exceeding $25,000 for additional buildings, to be paid in the following manner—viz: $5,000 on ratification of contract; $5,000 on July 1st, 1848; $5,000 on January 1st, 1849; $5,000 on July 1st, 1849, and $5,000 on January 1st, 1850. Payments were made accordingly		25,000.00
An Act of January 13th, 1849, page 15, Chapter 13, authorized payment of $6,266 for furniture for the additional building, and for such clothing as might be necessary for the additional number of patients to be admitted, and to pay the excess of the price of the buildings contracted for over the appropriation. Payment was made in 1849.....		6,266.00
An Act of January 22nd, 1850, page 16, Chapter 17, authorized payment of an amount of $11,500 for arrears on buildings, and furnishing water and additional accommodation for free colored persons at the Asylum, also to purchase furniture for the new building. Payment was made in 1850.....		11,500.00
An Act of January 21st, 1853, page 126, Chapter 144, authorized payment of an amount of $7,000 for repairing and rebuilding buildings, etc., as follows: $661 for purchase of the "Six Chimney" lot; $1,839 on ratification of contract and execution of bond required; $2,500 after the work shall have been half completed, and $2,000 on completion of the contract hereby authorized.		
Payments were made as follows:		
Year 1853	$ 2,500.00	
" 1854	4,500.00	
		7,000.00
Carried forward		$108,084.88

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Brought forward	$103,034.88

An Act of March 1st, 1854, page 29, Chapter 29, authorized payment of an amount of $17,750 for erecting and repairing buildings and enclosures, for purchasing a lot of land, for the use of the Asylum, for improving its grounds, for providing furniture and other conveniences for the same, $11,750.00, and for lighting the institution with gas, $6,000.00.

Payments were made as follows:

Year	1854	$ 3,750.00
"	1855	6,000.00
"	1856	8,000.00
		17,750.00

An Act of March 18th, 1856, page 24, Chapter 17, authorized payment of $7,500 for purchase of certain sections of streets penetrating the lands adjacent thereto for the use of the Asylum. Payment was made in 1856 ..... 7,500.00

	$133,284.88
Less—Credit—Building Account	54.69
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account	$133,280.19

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WESTERN ASYLUM AT STAUNTON, ESTABLISHED UNDER ACT OF JANUARY 22nd, 1825.

This Asylum was established under an Act of January 22nd, 1825, page 30, Chapter 35, authorizing directors to purchase a piece or parcel of land, not exceeding four acres, and contract for the erection thereon of a commodious house or houses, for the accommodation of persons of unsound mind. Provided that the whole expense shall not exceed $10,000.00.

Payments were made as follows:

Year	1825	$ 5,000.00	
"	1826	5,000.00	
			$10,000.00

An Act of February 24th, 1827, page 9, Chapter 4, authorized payment of $12,000.00 toward the completion of the Asylum, to be paid by installments as the work progressed.

Payments were made as follows:

Year	1827	$6,000.00	
"	1827	6,000.00	
			12,000.00

An Act of February 17th, 1830, page 9, Chapter 6, authorized payment of $5,000.00 for enclosing buildings of the Asylum and the lot with a suitable wall of stone or brick. Payment was made in 1830..... 5,000.00

Cost of buildings not claimed by Plaintiff as Ordinary Expenses. (See page 22)..... $ 27,000.00

An Act of March 1st, 1833, page 22, Chapter 29, authorizing payment of an amount not to exceed $6,000.00 for the extension of the buildings of the institution so as to make same fit for the reception and accommodation of an additional number of lunatics. That the plan and dimensions of said building shall be agreed upon and prescribed by the directors and shall contain no more than forty cells, or apartments. Payment was made in 1833..... 6,000.00

Carried forward $33,000.00

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	$
Brought forward	$ 33,000.00
An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $1,000.00 to contract for conducting an ample supply of good spring water to the Asylum in iron pipes without the use of forcing pump or other machinery. Payment was made in 1833	1,000.00
An Act of March 12th, 1834, page 27, Chapter 19, authorized appropriations as might be necessary to defray expenses of the additional buildings authorized by an Act of March 1st, 1833. Provided the whole expense shall not exceed $9,000.00 for each hospital over and above the amount already appropriated to these objects by said Act of March 1st, 1833. Payment was made in 1834	9,000.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a sum of money in addition to the sum appropriated by Act of March 1st, 1833, for conducting an ample supply of good spring water to the said Asylum in iron pipes, the additional sum not to exceed $1,200.00. Payment was made in 1835	1,200.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a further sum not to exceed $1,500.00 in addition to amounts heretofore appropriated by Acts of March 1st, 1833, and March 12th, 1834, necessary for the completion of the additional buildings. Payment was made in 1835	1,500.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of an amount of $1,500.00 for completing the graduation and building partition walls for the male and female wards. Payment was made in 1835	1,500.00
An Act of March 22nd, 1836, page 9, Chapter 8, authorized payment of an amount not to exceed $6,000.00, in addition to amounts heretofore appropriated, for the completion of the additional buildings heretofore authorized to be erected, and also for the completion of the partition walls authorized to be erected by the Act of March 12th, 1835. Payment was made in 1836	6,000.00
Carried forward	$ 53,200.00

Brought forward	$ 53,200.00
An Act of March 31st, 1837, page 18, Chapter 19, authorized payment of an amount not to exceed $1,000.00 for the purchase of land near hospital, a neat two-horse carriage and a pair of horses, and such other articles as are recommended in the report of the physician of the Western Asylum, and calculated to aid in the restoration of patients confined in a lunatic hospital. Payment was made in 1837	1,000.00
An Act of April 3rd, 1839, page 34, Chapter 21, authorized payment of an amount not to exceed $5,000.00 for the purchase of land near said hospital, the erection of workshops, the purchase of tools and materials for manufacture, and such other articles as were recommended by the report of the physician or directors. Payment was made in 1839	5,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000.00 for the extension of buildings so as to make them fit for the accommodation of an additional number of lunatics. Payment was made in 1838.....	12,000.00
An Act of April 10th, 1839, page 14, Chapter 17, authorized payment of an amount not to exceed $5,000.00, in addition to sums heretofore appropriated, for an ample supply of water. Payment was made in 1839	5,000.00
An Act of March 8th, 1842, page 16, Chapter 15, authorized that an amount of $3,060.44 be appropriated to discharge in full, including any claim for interest, the debt due from the Commonwealth to the workmen for completing the additional building to the Asylum. Payment was made in 1842.....	3,060.44
An Act of March 25th, 1842, page 14, Chapter 19, authorized payment of an amount not exceeding $24,000.00 out of the Treasury of the Commonwealth for entire completion of the additional buildings thereby authorized, as follows: $3,000 on the ratification of the contract and execution of the bond required; $8,000 in twelve months thereafter, and remaining $8,000 on the completion of the buildings, provided the same shall not be in less than twelve months from the last payment.	
Payments were made as follows:	
Year 1842 ..... $ 8,000.00	
" 1843 ..... 8,000.00	
" 1844 ..... 8,000.00	
	24,000.00
Carried forward	109,260.44

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Brought forward		$109,260.44
An Act of February 12th, 1844, page 16, Chapter 10, authorized payment of $6,000.00 for furnishing the new addition to the Asylum, and to the support and maintenance of said Asylum. Payment of $3,000.00 was made in 1844		3,000.00
An Act of March 4th, 1846, page 19, Chapter 17, authorized payment of $4,000.00 for additional purchase of land. Payment was made in 1846		4,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount of $36,000.00 for the completion of additional buildings, as follows: $7,000.00 on the ratification of contract and execution of bond required; $7,000.00 on July 1st, 1848; $7,000.00 on January 1st, 1849; $7,000.00 on July 1st, 1849, and $8,000.00 on January 1st, 1850; provided said buildings shall be completed on the day last aforesaid; if not then, upon the completion thereof.		
Payments were made as follows:		
Year 1848	$ 7,000.00	
" 1849	21,000.00	
" 1850	8,000.00	
		36,000.00
An Act of January 13th, 1849, page 14, Chapter 13, authorized payment of an amount not exceeding $8,500.00 for the puurchase of furniture for the two additional buildings heretofore directed to be built by the directors of the Asylum, and for such clothing as may be necessary for the additonal number of patients to be admitted into said Asylum.		
Payments were made as follows:		
Year 1849	$ 5,000.00	
" 1850	3,500.00	
		8,500.00
An Act of January 19th, 1850, page 15, Chapter 16, authorized payment of $14,500.00 for the purpose of erecting a plain and substantial building, to contain a kitchen, bakery, pantry, store rooms, dining room, chapel, clothes rooms, medicine and library rooms, and other rooms rendered necessary by the great enlargement of said Asylum by previous Acts of the General Assembly.		
Payments to be made as follows: $7,250.00 July 1st, 1850, and $7,250.00 January 1st, 1851, same being sufficient to complete entirely, in the opinion of the directors, the necessary out-buildings in conformity with the present enlarged plan of said Asylum.		
Payments were made as follows:		
Year 1850	$ 7,250.00	
" 1851	7,250.00	
		14,500.00
An Act of February 25th, 1852, page 30, Chapter 36, authorized payment of $5,000.00 for constructing fixtures and apparatus for lighting with gas. Payment was made in 1852		5,000.00
Carried forward		$180,260.44

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Brought forward		**$180,260.44**
An Act of March 1st, 1854, page 29, Chapter 40, authorized payment of an amount of $34,188.00 to heat the buildings by steam, to erect covered connections and verandas, and to enclose the grounds of the said Asylum, as follows: $15,000.00 for heating by steam, $9,150.00 for erection of covered connections and verandas, $10,038.00 for enclosing the grounds; one-half to be paid during the present fiscal year and the remaining half the next succeeding fiscal year.		
Payments were made as follows:		
Year 1854	**$ 7,500.00**	
" 1855	**7,500.00**	
" "	**5,000.00**	
" 1856	**1,800.00**	
" "	**2,000.00**	
" "	**5,038.00**	
" 1857	**5,350.00**	
		34,188.00
An Act of March 18th, 1856, page 23, Chapter 17, authorized appropriation of $4,185.82 to pay deficit on steam account of said Asylum. Payment of $1,000.00 was made in 1857		**1,000.00**
An Act of April 7th, 1858, page 12, Chapter 14, authorized appropriation of $3,685.82 to pay balance of deficit on steam account. Payment of $3,685.00 was made in 1858		**3,685.00**
An Act of March 19th, 1858, page 116, Chapter 166, authorized appropriation of $10,000.00 to procure a supply of water for the Asylum.		
Payments were made as follows:		
Year 1858	**$ 2,500.00**	
" 1859	**7,500.00**	
		10,000.00
An Act of March 17th, 1860, page 81, Chapter 5, authorized appropriation of $13,000.00 for erection of laundry. Payment was made in 1860		**12,931.92**
Amount for support in 1835		**7,450.01**
		$249,515.38
Less:		
Buildings. (See page 18.)	**$27,000.00**	
Amounts for furniture already included by defendant:		
Under Act of February 12th, 1844.	**$ 3,000.00**	
Under Act of January 15th, 1849.	**8,500.00**	**11,500.00**
		38,500.00
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account		**$211,015.38**

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA

LITERARY FUND

DEFENDANT'S EXHIBIT D-2

Prepared by
EDWARD HOLT DOTY
Certified Public Accountant
30 Church Street
New York

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

LITERARY FUND

DEFENDANT'S EXHIBIT D-2

Prepared by

THOMAS BIRD DIXCY

Certified Public Accountant,

30 Church Street,

New York.

DEFENDANT'S EXHIBIT D-2

COMMONWEALTH OF VIRGINIA—LITERARY FUND.

TOTAL AMOUNT OF THE FUND SHOWING CASH ON HAND AND INVESTMENTS, AT COST.

	Mch. 19, 1823	Jan. 1, 1861.
Cash,	$ 94,021.42	$ 23,985.18
Bank of Virginia stock,	192,013.45	146,832.57
Farmers' Bank of Virginia stock,	109,492.75	102,305.75
Northwestern Bank of Virginia stock,	.....	50,000.00
Bank of the Valley stock,	.....	10,134.00
Fairmont Bank stock,	.....	50,000 00
United States Bank stock,	96,400.00	.....
Richmond Academy stock,	.....	400.00
James River Company stock, the annuity on which was assumed by the Commonwealth in accordance with act passed March 23, 1860, ...	52,095.00	96,950.00
(1) University of Virginia, loan No. 1, ...	40,000.00	40,000.00
(1) " " " 2, ...	20,000.00	20,000.00
(1) " " " 3, ...	29,100.00	29,100.00
(1) " " " 4, ...	30,900.00	30,900.00
(1) " " " 5, ...	.....	40,000.00
(1) " " " 6, ...	.....	5,000.00
(1) " " " 7, ...	.....	15,000.00
(1) Emory and Henry College loan, ...	.....	18,000.00
Washington College loan, ...	4,000.00	2,000.00
Loans to individuals, ...	80,000.00	.....
(1) The Faculty of the Medical Department of the Hampden-Sidney College at Richmond. Amount invested in land and buildings, ...	.....	25,000.00
(2) Medical College in the Valley of Virginia: Amount invested in property (at Winchester), ..	.....	6,400.00
(2) Davis's book on criminal law, copyright purchased, ...	.....	12,000.00
(3) John Preston, State Treasurer, balance due,	58,441.07	58,392.48
(3) Preston Smith, ...	649.45	649.45
United States 6% stock, ...	13,000.00	.....
James River Company bonds, ...	50,000.00	65,960.00
Virginia 6% military bonds, ...	20,964.40	24,039.17
" 7% " "	349,000.00	319,000.00
Virginia 5% internal improvement bonds, ...	.....	155,750.00
Virginia 6% internal improvement bonds, ...	.....	803,395.33
Bond of the Auditor of Public Accounts for amount paid into Commonwealth fund in accordance with act passed March 18, 1856, ...	.....	50,562.50
Total, ...	$1,240,077.54	$2,201,756.48

(1) Suspended debts.
(2) Unproductive.
(3) Considered lost.

STATEMENT "A"

COMMONWEALTH OF VIRGINIA.

TRANSACTIONS OF THE LITERARY FUND, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

TOTAL FUND, MARCH 19, 1823, PER STATEMENT "A,"		$1,240,077.54
ADDITIONS TO THE FUND:—		
CASH:—		
FROM THE COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA—Schedule No. 1,	$ 114,395.46	
FROM THE COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA—Schedule No. 2,	401,972.14	
DIVIDENDS AND INTEREST ON INVESTMENTS OF THE FUND—Schedule No. 3,	1,059,695.03	
FROM OTHER FUNDS OF THE COMMONWEALTH OF VIRGINIA—Schedule No. 4,	3,109,839.88	
UNITED STATES WAR CLAIMS, LESS COMMISSIONS PAID,	182,441.48	
PROFIT ON UNITED STATES STOCK	818.18	
TOTAL ADDITIONS,		$4,869,162.17
		$6,109,239.71
DEDUCTIONS FROM THE FUND:—		
CASH:—		
FOR ACCOUNT OF THE PRIMARY SCHOOLS:—		
Paid from income from investments,	$2,400,331.11	
Paid from Capitation Tax,	655,908.73	$3,056,239.84
UNIVERSITY OF VIRGINIA, (at Charlottesville),	613,000.00	
INSTITUTE FOR THE DEAF, DUMB AND BLIND, (at Staunton),	40,821.02	
VIRGINIA MILITARY INSTITUTE—support,	28,500.00	
MARGARET ACADEMY, (Accomac County),	1,500.00	
SALARIES AND EXPENSES OF THE BOARD Schedule No. 5,	85,322.45	
PREMIUM PAID ON CITY OF RICHMOND STOCK	420.00	
TOTAL CASH DISBURSEMENTS,		$3,825,803.31
LOSSES:—		
AMOUNT WRITTEN OFF FOR THE REDUCTION IN PAR VALUE OF THE BANK OF VIRGINIA STOCK FROM $100. to $70. PER SHARE. 2121 SHARES,	$63,630.00	
LOSS ON UNITED STATES BANK STOCK:—COST—$96,400. SOLD FOR $78,350,	18,050.00	
TOTAL LOSSES,	$81,680.00	
TOTAL DEDUCTIONS,		$3,907,483.31
TOTAL FUND, JANUARY 1, 1861, PER STATEMENT "A,"		$2,201,756.40

STATEMENT "B."

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc	$ 58,059.46
Escheats, less refunds and expenses, ...	4,603.57
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	49,726.61
Sales of runaway slaves and free negroes, less refunds, ...	2,005.82
Total, ...	$114,395.46

STATEMENT "B".

Schedule No. 1.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc., ...	$306,856.98
Escheats, less refunds and expenses, ...	51,400.55
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	3,996.98
Sales of runaway slaves and free negroes, less refunds, ...	14,514.40
(1) Bristoe Estate:—	
Sale of lots in Prince William County, ...	17,289.18
Net income, ...	7,914.05
Total, ...	$401,973.14

(1) The books of original entry and published reports do not record the origin of the Bristoe estate. It is presumed to have been the property of Robert Bristoe, a British subject, which escheated to the Commonwealth.

STATEMENT "B".

Schedule No. 2.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

INCOME FROM INVESTMENTS AND LOANS, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Dividends on bank stock:—		
Bank of Virginia,		$ 424,209.83
Bank of the Valley,		12,373.00
Farmers' Bank of Virginia,		272,681.75
Northwestern Bank of Virginia,		89,500.00
Fairmont Bank,		2,000.00
Total,		$ 800,764.58
Dividends on James River Company stock, subsequent to dividend of January 1, 1835, received from the James River and Kanawha Company,		155,291.08
Dividends on Richmond Academy stock,		440.88
Dividends on United States Bank stock,		11,350.00
Interest on loans to and dividends on stock of City of Richmond,		16,531.71
Interest on United States 6% stock,		3,200.40
Interest on bonds of the Valley Turnpike Company, guaranteed by the State,		2,090.00
Interest on loans:—		
Emory and Henry College,	$ 3,240.00	
Loans to individuals,	34,241.48	
Library fund,	8,477.76	
Medical College at Winchester,	1,974.93	
Richmond Medical College,	6,552.21	
University of Virginia,	7,200.00	
Washington College,	8,340.00	
Total,		$ 70,026.38
Total,		$1,059,695.03

STATEMENT "B".

Schedule No. 3.

Def. Ex. D-2.
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COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

RECEIPTS FROM OTHER FUNDS OF THE COMMONWEALTH, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

COMMONWEALTH FUND:—

Capitation Tax,	$ 751,481.63	
United States war claims,	77,216.28	
Interest,	926,919.28	
Total,		$1,755,617.19

INTERNAL IMPROVEMENT FUND:—

Interest,	$1,303,535.77	
Dividends on James River Company stock, to and including dividend of January 1, 1835, and the July 1, 1860 dividend,	50,686.92	
Total,		$1,354,222.69
Total receipts from other funds,		$3,109,839.88

STATEMENT "B".

Schedule No. 4

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

SALARIES AND EXPENSES OF THE BOARD, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

SALARIES:—		
Second Auditor,	$33,342.84	
Clerks,	35,504.51	
Special Accountant,	100.00	
President,	2,326.81	
Directors,	4,556.50	
Messenger,	1,748.27	
Tax on above salaries	251.31	
Total,		$77,830.24
EXPENSES:—		
Advertising,	$ 123.13	
Legal expenses,	189.55	
Printing,	4,348.89	
General,	2,830.64	
Total,		$ 7,492.21
Total salaries and Expenses,		$85,322.45

STATEMENT "B".

Schedule No. 5.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Cash in Fund, March 19, 1823, per Statement "A",			$ 94,021.42
RECEIPTS:—			
From the counties now constituting the State of West Virginia—Statement "B", Schedule No. 1..		$ 114,395.46	
From counties now constituting the Commonwealth of Virginia—Statement "B", Schedule No. 2,		401,972.14	
Dividends and interest on investments of the fund—Statement "B", Schedule No. 3,		1,059,695.03	
From other funds of the Commonwealth of Virginia:—			
Statement "B", Schedule No. 4,	$3,109,839.88		
Commonwealth Fund—Redemption of 7% Military Debt,	30,000.00		
Internal Improvement Fund. On account of balance due from J. Preston, State treasurer,	48.67	3,139,888.55	
United States war claims, less commissions paid		182,441.48	
Profit on United States stock		818.13	
Investments converted into cash:—			
United States 6% stock redeemed,	$ 13,000.00		
Farmers' Bank of Virginia stock sold,	9,762.00		
United States Bank stock,	78,350.00		
Loans to individuals, repaid to Literary Fund	80,000.00		
Loans to Washington College, repaid to Literary Fund	2,000.00	183,112.00	
Total Cash Receipts,			5,082,822.84
			$5,176,844.26

STATEMENT "C".

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

DISBURSEMENTS:—

For account of the primary schools:—		
Paid from income from investments,	$2,400,331.11	
Paid from Capitation Tax,	655,908.73	$3,056,239.84
University of Virginia, (at Charlottesville),		613,000.00
Institute for the Deaf, Dumb and Blind, (at Staunton),		40,821.02
Virginia Military Institute—support,		28,500.00
Margaret Academy, (Accomac County),		1,500.00
Salaries and Expenses of the Board—Statement "B," Schedule No. 5,		35,322.45
Premium paid on City of Richmond stock,		420.00
Investments in stocks, bonds, etc., at cost:—		
Farmers' Bank of Virginia stock,	$ 2,575.00	
Virginia revolutionary 6% bonds,	3,074.77	
James River Company stock,	44,855.00	
Bank of Virginia stock,	18,449.12	
University of Virginia, loan No. 5,	40,000.00	
" " " loans No. 6 and No. 7,	30,000.00	
Virginia Internal Improvement 5% bonds,	155,750.00	
" " 6% bonds,	803,395.53	
James River Company bonds, issued under act passed February 17, 1820,	15,960.00	
Richmond Academy stock,	400.00	
Northwestern Bank of Virginia stock,	50,000.00	
Bank of Valley stock,	10,134.00	
Loan to Emory and Henry College,	18,000.00	
The Faculty of the medical department of the Hampden-Sidney College, at Richmond; amount invested in land and buildings,	25,000.00	
Paid into the Commonwealth Fund in accordance with act passed March 18, 1856,	50,562.55	
Davis's Book on Criminal Law, copyright purchased,	12,000.00	
Fairmont Bank stock,	50,000.00	
Medical College in the Valley of Virginia; investment in property at Winchester,	6,400.00	1,326,555.77
Total Cash Disbursements,		$5,152,359.06
Cash in Fund, January 1, 1861, per Statement "A",		23,985.19
		$5,176,344.25

The foregoing Statements and Schedules on pages 1 to 7, inclusive, certified correct:

CLIFFORD E. SCOVILLE. THOMAS BIRD DIXCY, For the Defendant.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 7 inclusive, and find them correct, but that all items contained herein affecting this accounting are included in other Exhibits.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO., For the Plaintiff.

STATEMENT "C".

(Concluded.)

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT E-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXEY
Certified Public Accountant
30 Church Street, New York
For the Defendant

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA

JOINT EXHIBIT E-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
56 William Street, New York
Per H. Peabody

THOMAS EISH, ESQ.
Certified Public Accountant
30 Church Street, New York
Per the Defendant

E-1
Page 1

COMMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT E-1.

SUMMARY.

	Virginia.	West Virginia.
Assessed Valuation of Real Property as per latest obtainable Assessment Rolls, prior to June 20th, 1863	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863, (estimated in part)	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863	152,844,637.59	24,739,894.21
Total Amount of Income on which tax was levied as per latest obtainable Assessment Rolls, prior to June 20th, 1863	11,108,300.13	299.257.45
	$710,889,989.03	$113,142,996.70

The assessed valuation of Slaves for 1860 and 1861, not appearing on the original Assessment Rolls, it is agreed by the parties to this cause that in those counties for which no returns are found for 1862 and 1863, the number of slaves reported for 1860 and 1861 shall be taken and their value estimated on the basis of the average value of all Slaves in counties for which both number and value is reported in 1862 and 1863, making a separate calculation for each State.

Where number of slaves but no assessed valuation is reported in 1862 and 1863 the same average value as above is used.

We hereby certify that the within tables, consisting of pages 5 to 8 following, of which the above is a Summary, are taken from the original Assessment Rolls of the Commonwealth of Virginia, so far as available and from Auditors reports in other cases; that the said Summary is composed of items taken from the latest obtainable authentic sources of information prior to June 20th, 1863, and that the method adopted as above, of valuing the Slaves in those counties for which no value is shown in 1860 and 1861 is fair to both parties.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,460.31	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed Summary	152,844,637.59	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

Summary.

Plaintiff's Fair Estimated Valuation of Property, Real and Personal—		
In Virginia Counties, as above	$186,253,889.55	68.8636%
In West Virginia Counties, per contra	84,213,900.15	31.1364%
Total	$270,467,789.70	100 %

Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1	$37,794,211.18
Of which Plaintiff claims there is chargeable to West Virginia 31.1364% as above	$11,767,756.77

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above named counties.	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these counties is 25% of this assessed valuation..		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		13,803,732.21	
(As per agreed summary....	$24,739,894.21)		16,537,772.71
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, in West Virginia Counties			$84,213,900.15

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Plaintiff's Alternative Method of Determining
Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Fair Estimated Valuation of the Property, Real and Personal, by Counties of the State of Virginia

At June 20th, 1863.

Alternative Estimate of the Valuation of Real and Personal Property, Applying to the Assessed Valuation of Personal Property in Counties Dominated by the Wheeling Government, which it is Alleged is on a Greenback Basis, the Gold Value as at Date of Assessment, viz., February 1st, 1863, as Reported in Report of United States Treasury, Office of Government Actuary, Form II—Ed. 5-17-'95.

FAIR ESTIMATED VALUATION—VIRGINIA.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary	$296,085,460.31	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed summary	152,844,637.59	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

SUMMARY

Plaintiff's Fair Estimated Valuation of Property, Real and Personal:		
In Virginia Counties, as above	$186,253,889.55	70.2146%
In West Virginia Counties, per contra	79,009,893.11	29.7854%
Total	$265,263,782.66	100 %

Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1	$ 37,794,211.18
Of which Plaintiff claims there is chargeable to West Virginia 29.7854% as above	$ 11,257,156.98

Certified Correct:

ARTHUR G. POTTER,

PRICE, WATERHOUSE & CO.,

For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations :

CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY.
For the Defendant.

FAIR ESTIMATED VALUATION—WEST VIRGINIA.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces ..... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimate valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these Counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above-named counties	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these Counties is 25% of this assessed valuation		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17	
(As per agreed summary	$24,739,894.21)		11,333,765.67
Plaintiff's Fair Estimated Valuation of Property, Real and Personal in West Virginia Counties applying greenback value to Personal Property assessments			$79,009,893.11

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S ALTERNATIVE METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are included as Personal Property, notwithstanding the fact that they had been emancipated by President Lincoln's Proclamation.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.		
Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,460.31	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.....		$148,042,730.15
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary.	403,696,228.59	
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15
		$248,966,787.30
Summary.		
Plaintiff's Fair Estimated Valuation of Property Real and Personal, with exceptions noted above:		
In Virginia, as above	$248,966,787.30	74.4085%
In West Virginia, per contra.....	85,627,548.40	25.5915%
	$334,594,335.70	100 %
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$37,794,211.18
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 25.5915% as above..... ..		$ 9,672,105.55

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.			
Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that the assessed valuation is a fair estimated valuation		13,803,732.21	
Total Valuation of Slaves at latest obtainable assessment in all other West Virginia counties..	1,805,796.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		451,449.00	
(As per agreed summary..	$30,394,487.21)		17,951,420.96
Plaintiff's fair estimated valuation of property, real and personal, in West Virginia counties with exception noted above.			$85,627,548.40

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Plaintiff's Alternative Method of Determining
Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Fair Estimated Valuation of the Property, Real and Personal, by Counties of the State of Virginia.

At June 20th, 1863.
Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are Included as Personal Property, Notwithstanding the Fact That They Had Been Emancipated by President Lincoln's Proclamation; and also if Personal Property Assessment is Reduced From the Alleged Greenback Basis to Gold Basis at Rate Applying on February 1st, 1863, viz., 62.3% (as on Page 2a of This Exhibit.)

FAIR ESTIMATED VALUATION—VIRGINIA			FAIR ESTIMATED VALUATION—WEST VIRGINIA.		
Total Valuation of Real Property at latest obtainable assessment as per agreed Summary	$296,085,460.31		Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces	$29,546,249.20	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$148,042,730.15			
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary	403,696,228.59		Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15			
		$248,966,787.30	Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.		$14,773,124.60
SUMMARY					
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, with exceptions noted above:			Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
In Virginia, as above	$248,966,787.30	75.5841%			
In West Virginia, per contra	80,423,541.36	24.4159%			
	$329,390,328.66	100 %	**Plaintiff claims assessed valuation in these counties is a fair estimated valuation.**		52,903,002.84
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$ 37,794,211.18	(As per agreed summary	$82,449,252.04)	$67,676,127.44
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 24.4159% as above		$ 9,227,796.81	**Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties**	$14,784,959.00	
Certified Correct:			**Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation**		$ 3,696,239.75
ARTHUR G. POTTER.			**Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties**	13,803,732.21	
PRICE, WATERHOUSE & CO., For the Plaintiff					
Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.			**Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold**		
Certified Correct as to figures and calculations:					
CLIFFORD E. SCOVILLE,					
THOMAS BIRD DIXCY, For the Defendant.					

...25% of this assessed valuation		100,924,067.15	and Pocahontas.		
		$248,966,787.30	Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.		$14,773,124.60
SUMMARY			Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, with exceptions noted above:			Plaintiff claims assessed valuation in these counties is a fair estimated valuation.		52,903,002.84
In Virginia, as above	$248,966,787.30	75.5841%	(As per agreed summary	$82,449,252.04)	$67,676,127.44
In West Virginia, per contra	80,423,541.36	24.4159%			
	$329,390,328.66	100 %			
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$ 37,794,211.18			
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 24.4159% as above.....		$ 9,227,796.81	Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00	
Certified Correct:			Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75
ARTHUR G. POTTER.			Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
PRICE, WATERHOUSE & CO., For the Plaintiff			Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis, a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17
Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.			Total Valuation of Slaves at latest obtainable assessment in all other West Virginia Counties.....	1,805,796.00	
Certified Correct as to figures and calculations:			Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		451,449.00
CLIFFORD E. SCOVILLE,			(As per agreed summary	$30,394,487.21)	12,747,413.92
THOMAS BIRD DIXCY, For the Defendant.			Plaintiff's fair estimated valation of property, real and personal, in West Virginia counties with exceptions noted above		$80,423,541.36

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Page 4

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

DEFENDANT'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia, on the basis of the Fair Estimated valuations of the Property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

	Virginia.	West Virginia.
Assessed Valuation of Real Property at latest obtainable assessment, as per agreed Summary	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves at latest obtainable assessment, as per agreed Summary	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves, at latest obtainable assessment, as per agreed Summary	152,844,637.59	24,739,894.21
Total amount of Income on which tax was levied, at latest obtainable assessment, as per agreed Summary	11,108,300.13	299,257.45
Total	$710,889,989.03	$113,142,996.70

Defendant claims that the assessed valuation here shown is a Fair Estimated Valuation to be used as the basis for the division of the Ordinary Expenses of Government, viz.:

Virginia	$710,889,989.03	86.2696%
West Virginia	113,142,996.70	13.7304%
	$824,032,985.73	100 %

Defendant further claims that the Ordinary Expenses of Government from March 19th, 1823, to December 31st, 1860, amount to $18,207,684.29

as shown in Joint Exhibit D-1, and that the amount to be charged to West Virginia is 13.7304% as above..... $ 2,499,987.88

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of Real and Personal Property being used as a FAIR ESTIMATE of the valuation; objects to the inclusion of income, on which tax is levied, as Personal Property; objects to Slaves being considered Personal Property; objects to the use of the percentages so obtained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.

Certified correct as to figures and calculations.
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

PARAGRAPH V OF DECREE.

County.	1860				1861				1862			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	
	Number.	Value.			Number.	Value.			Number.	Value.		
VIRGINIA:												
Accomac	2,645	.....	$ 1,353,505.00	$ 7,693.00	2,739	.....	$ 1,354,953.60	$ 3,822.00	2,643	.....	$ 1,008,285.00	
Albemarle	.....	.....	.....	.....	7,449	.....	2,626,742.00	116,956.00	12,681	$ 3,906,845.00	3,073,022.00	
Alexandria	709	.....	816,186.00	161,521.45	709	.....	816,186.00	160,900.45	149	.....	429,121.45	
Alleghany	589	.....	355,465.00	27,510.00	522	.....	380,427.00	16,986.00	659	259,580.00	371,595.00	
Amelia	4,269	.....	979,016.00	35,738.00	4,195	.....	1,017,215.00	14,840.00	7,172	2,453,900.00	1,000,325.00	
Amherst	3,211	.....	761,320.00	9,539.00	3,405	.....	882,485.00	7,080.00	5,860	2,004,545.00	980,975.00	
Appomattox	2,444	.....	661,245.00	14,315.00	2,526	.....	711,061.00	6,340.00	4,276	1,707,240.00	785,959.00	
Augusta	2,545	.....	3,052,439.00	12,310.00	2,587	.....	3,133,015.00	10,015.00	4,430	1,760,685.00	3,433,132.00	
Staunton	.....	.....	.....	.....	441	.....	435,404.08	43,366.00	734	339,400.00	486,229.00	
Bath	475	.....	425,836.00	2,875.00	517	.....	384,645.00	.....	781	298,375.00	405,285.00	
Bedford	5,303	.....	2,115,884.00	9,592.00	5,660	.....	2,011,160.00	8,422.00	9,135	2,836,934.00	1,952,789.00	
Bland	.....	.....	.....	.....	113	.....	154,400.00	.....	273	92,370.00	254,156.00	
Botetourt	1,728	.....	1,044,030.00	20,093.43	1,671	.....	1,001,191.00	13,313.12	1,852	909,756.00	1,104,465.00	
Brunswick	5,209	.....	1,412,920.00	15,283.00	5,381	.....	1,442,560.00	7,754.00	9,212	3,564,725.00	1,477,460.00	
Buchanan	14	.....	81,548.00	.....	13	.....	84,904.00	.....	29	10,300.00	94,645.00	
Buckinghan	4,827	.....	933,423.00	21,310.00	4,866	.....	838,847.00	12,114.00	8,104	2,457,025.00	882,716.00	
Campbell	4,932	.....	1,452,167.00	150,927.00	4,981	.....	1,571,830.00	115,157.00	8,175	2,961,200.00	1,594,054.00	
Lynchburg	1,822	.....	984,599.00	242,409.00	1,611	.....	1,078,978.00	148,148.00	1,502	546,100.00	1,334,867.50	
Caroline	6,029	.....	1,460,978.00	19,540.00	6,074	.....	1,490,234.00	1,744.00	10,389	3,510,767.00	1,579,549.00	
Carroll	65	.....	156,233.87	.....	104	.....	290,028.93	300.00	258	91,420.00	336,919.00	
Charles City	1,783	.....	405,592.00	13,858.00	1,877	.....	434,720.00	7,301.00	3,643	1,104,370.00	477,720.00	
Charlotte	5,489	.....	1,562,782.00	39,456.00	5,560	.....	1,509,757.00	17,080.00	9,245	3,102,447.00	1,474,850.00	
Chesterfield	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Clarke	1,834	.....	748,762.00	4,018.00	1,798	.....	720,928.00	2,190.00	2,623	916,545.00	744,163.00	
Craig	215	.....	262,376.00	.....	225	.....	253,431.00	.....	390	139,705.00	277,120.00	
Culpeper	3,245	.....	928,245.00	18,561.00	3,259	.....	1,046,014.00	7,923.00	4,587	2,044,436.00	1,079,756.00	
Cumberland	3,899	.....	937,357.00	37,125.00	3,834	.....	808,050.00	6,254.00	6,331	1,917,150.00	869,315.00	
Dinwiddie	3,918	.....	814,161.00	13,665.00	4,010	.....	810,776.00	6,100.00	6,486	2,362,630.00	868,333.00	
Petersburg	3,538	.....	2,520,019.00	626,747.00	3,453	.....	2,754,673.00	199,288.00	4,024	1,893,595.00	2,956,881.00	
Elizabeth City	.....	.....	.....	.....	1,196	.....	334,069.00	2,680.00	.....	.....	.....	
Essex	3,921	.....	1,062,457.62	44,483.85	3,873	.....	1,005,861.30	14,278.00	6,472	1,958,465.00	945,763.98	
Fairfax	1,607	.....	804,195.00	30,343.00	1,611	.....	899,020.00	13,656.00	.....	.....	.....	
Fauquier	5,025	.....	2,578,876.00	7,621.00	5,016	.....	1,544,018.00	6,335.00	.....	.....	.....	
Floyd	224	.....	305,154.00	3,721.00	244	.....	271,282.00	.....	374	152,050.00	363,880.00	
Fluvanna	2,877	.....	801,182.00	12,121.00	2,883	.....	753,155.00	5,200.00	4,781	1,737,141.00	831,593.00	
Franklin	3,330	.....	1,237,755.00	2,327.00	3,394	.....	1,137,392.00	44.00	5,987	1,934,000.00	1,161,237.00	
Frederick	844	.....	1,096,876.00	8,092.00	824	.....	1,666,656.00	1,036.00	715	281,300.00	525,825.00	
Winchester	330	.....	669,739.00	40,754.80	342	.....	1,060,637.00	23,972.80	428	180,900.00	1,045,582.00	
Giles	444	.....	390,735.00	1,925.00	438	.....	373,820.00	2,000.00	708	246,200.00	356,005.00	
Gloucester	3,038	.....	723,846.00	5,675.00	3,053	.....	653,340.00	3,319.00	.....	.....	.....	
Carried forward	92,377	.....	$35,896,904.49	$1,661,149.53	102,454	.....	$40,143,865.31	$1,006,414.37	145,103	$49,682,101.00	$36,563,172.03	

1862			1863				Total of Latest Assessment.					County.
ves. Value.	Other Personal Property.	Income.	Slaves. Number.	Slaves. Value.	Other Personal Property.	Income.	Slaves. Number.	Slaves. Value.	Other Personal Property.	Income.	Real Estate.	
.....	$ 1,008,285.00	$ 850.00	2,263	.....	$ 971,261.00	$ 1,020.00	2,263	$ *1,135,121.00	$ 971,261.00	$ 1,020.00	$ 3,006,019.01	Accomac
3,906,845.00	3,073,022.00	109,016.00	12,916	$ 7,647,305.00	4,212,185.00	201,569.00	12,916	7,647,305.00	4,212,185.00	201,569.00	7,521,011.47	Albemarle
.....	429,121.45	23,201.24	.....	.....	371,202.45	5,250.00	.....	.....	371,202.45	5,250.00	4,246,781.48	Alexandria
259,580.00	371,595.00	4,682.00	677	484,935.00	617,220.00	3,190.00	677	484,935.00	617,220.00	3,190.00	886,218.89	Alleghany
2,453,900.00	1,000,325.00	12,980.00	7,538	5,840,450.00	1,524,152.00	17,997.00	7,538	5,840,450.00	1,524,152.00	17,997.00	2,227,607.77	Amelia
2,004,545.00	980,975.00	9,546.00	6,368	4,839,000.00	1,798,230.00	6,091.19	6,368	4,839,000.00	1,798,230.00	6,091.19	2,285,852.00	Amherst
1,707,240.00	785,959.00	4,588.00	4,446	3,350,375.00	1,216,929.00	13,334.00	4,446	3,350,375.00	1,216,929.00	13,334.00	1,517,274.47	Appomattox
1,760,685.00	3,433,132.00	7,201.00	4,515	3,930,430.00	6,078,024.00	73,864.50	4,515	3,930,430.00	6,078,024.00	73,864.50	{ 10,447,385.19	Augusta
339,400.00	486,229.00	34,552.00	749	630,890.00	831,077.00	130,348.00	749	630,890.00	831,077.00	130,348.00	{	Staunton
298,375.00	405,285.00	.....	740	521,407.00	641,091.00	200.00	740	521,407.00	641,091.00	200.00	1,022,626.72	Bath
2,836,934.00	1,952,789.00	4,557.92	9,623	4,825,805.00	2,886,851.00	54,269.00	9,623	4,825,805.00	2,886,851.00	54,269.00	4,915,374.34	Bedford
92,370.00	254,156.00	.....	252	163,850.00	435,115.00	.....	252	163,850.00	435,115.00	.....	677,408.17	Bland
909,756.00	1,104,465.00	8,650.00	2,671	1,966,055.00	1,681,013.00	8,327.00	2,671	1,966,055.00	1,681,013.00	8,327.00	3,093,896.88	Botetourt
3,564,725.00	1,477,460.00	7,311.00	9,479	6,819,700.00	1,847,050.00	11,849.00	9,479	6,819,700.00	1,847,050.00	11,849.00	1,571,475.99	Brunswick
10,300.00	94,645.00	.....	33	17,500.00	142,252.00	.....	33	17,500.00	142,252.00	.....	145,260.55	Buchanan
2,457,025.00	882,716.00	10,649.00	7,096	5,062,000.00	1,346,710.00	13,585.00	7,096	5,062,000.00	1,346,710.00	13,585.00	2,419,172.74	Buckingham
2,961,200.00	1,594,054.00	100,684.00	8,524	6,336,915.00	3,022,783.00	89,508.00	8,524	6,336,915.00	3,022,783.00	89,508.00	{ 6,072,524.78	Campbell
546,100.00	1,334,867.50	92,911.60	1,722	1,482,500.00	5,156,421.00	819,025.00	1,722	1,482,500.00	5,156,421.00	819,025.00	{	Lynchburg
3,510,767.00	1,579,549.00	6,712.00	8,554	5,974,572.00	2,490,952.00	9,238.36	8,554	5,974,572.00	2,490,952.00	9,238.36	3,451,136.32	Caroline
91,420.00	336,919.00	.....	280	143,990.00	426,303.00	.....	280	143,990.00	426,303.00	.....	827,284.23	Carroll
1,104,370.00	477,720.00	7,641.90	1,784	596,895.00	486,689.00	7,564.80	1,784	596,895.00	486,689.00	7,564.80	1,033,531.77	Charles City
3,102,447.00	1,474,850.00	16,385.00	9,589	6,596,820.00	2,020,267.00	21,019.00	9,589	6,596,820.00	2,020,267.00	21,019.00	3,393,480.56	Charlotte
.....	.....	.....	7,671	5,722,220.00	1,760,777.00	27,337.00	7,671	5,722,220.00	1,760,777.00	27,337.00	3,944,786.00	Chesterfield
916,545.00	744,163.00	700.00	.....	.....	.....	.....	2,623	916,545.00	744,163.00	700.00	3,865,795.11	Clarke
139,705.00	277,120.00	.....	447	275,775.00	429,280.00	2,000.00	447	275,775.00	429,280.00	2,000.00	870,973.94	Craig
2,044,436.00	1,079,756.00	4,724.00	3,253	1,902,550.00	1,476,177.50	34,919.00	3,253	1,902,550.00	1,476,177.50	34,919.00	3,271,412.76	Culpeper
1,917,150.00	869,315.00	.....	6,537	4,605,600.00	1,184,638.00	.....	6,537	4,605,600.00	1,184,638.00	.....	2,127,944.91	Cumberland
2,362,630.00	868,333.00	2,000.00	6,515	4,400,087.00	1,011,982.00	4,800.00	6,515	4,400,087.00	1,011,982.00	4,800.00	2,427,991.10	Dinwiddie
1,893,595.00	2,956,881.00	175,707.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	6,604,014.00	Petersburg
.....	.....	.....	.....	.....	.....	.....	1,196	* 599,914.00	334,069.00	2,680.00	1,032,933.00	Elizabeth City
1,958,465.00	945,763.98	14,172.00	6,265	1,904,900.00	1,291,389.03	14,526.00	6,265	1,904,900.00	1,291,389.03	14,526.00	2,095,105.24	Essex
.....	.....	.....	.....	.....	.....	.....	1,611	* 808,078.00	899,020.00	13,656.00	5,028,362.73	Fairfax
.....	.....	.....	.....	.....	.....	.....	5,016	*2,516,026.00	2,544,018.00	6,335.00	9,250,346.87	Fauquier
152,050.00	363,880.00	.....	493	372,300.00	744,784.00	6,478.00	493	372,300.00	744,784.00	6,478.00	871,642.70	Floyd
1,737,141.00	831,593.00	2,800.00	5,107	3,910,900.00	1,393,673.00	15,168.00	5,107	3,910,900.00	1,393,673.00	15,168.00	2,160,783.87	Fluvanna
1,934,000.00	1,161,237.00	.....	6,262	4,230,100.00	1,754,029.00	500.00	6,262	4,230,100.00	1,754,029.00	500.00	2,506,642.31	Franklin
281,300.00	525,825.00	2,300.00	.....	.....	.....	.....	715	281,300.00	525,825.00	2,300.00	{ 5,681,169.61	Frederick
180,900.00	1,045,582.00	16,848.00	.....	.....	.....	.....	428	180,900.00	1,045,582.00	16,848.00	{	Winchester
246,200.00	356,005.00	950.00	651	290,025.00	511,210.00	700.00	651	290,025.00	511,210.00	700.00	1,030,201.85	Giles
.....	.....	.....	.....	.....	.....	.....	3,053	*1,531,385.00	653,340.00	3,819.00	1,936,241.88	Gloucester
$49,682,101.00	$36,563,172.33	$682,319.66	147,223	$99,065,801.00	$57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$64,685,463.98	$3,816,295.85	$115,467,671.21	

* This value is based on the average value of the total number of slaves in counties for which both number and value is shown in 1862 and 1863.

County.	1860				1861				1862			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	
	Number.	Value.			Number.	Value.			Number.	Value.		
Brought forward.....	92,377	.....	$35,896,904.49	$1,661,149.53	102,454	.....	$40,143,865.31	$1,006,414.37	145,108	$ 49,682,101.00	$36,563,472.93	
Goochland	3,507	.....	882,985.00	25,975.00	.....	.....	.....	.....	5,768	2,165,145.00	815,925.00	
Grayson	280	.....	279,337.00	1,200.00	294	.....	320,568.00	200.00	551	187,550.00	396,525.00	
Greene	981	.....	371,965.00	1,535.00	997	.....	359,706.00	768.00	1,838	545,525.00	374,200.00	
Greensville	2,213	.....	438,850.00	450.00	2,280	.....	466,020.00	750.00	3,963	1,274,234.00	440,404.00	
Halifax	8,696	.....	2,636,968.00	77,631.00	8,818	.....	2,602,945.00	33,507.00	14,770	5,338,625.00	2,638,665.00	
Hanover	4,984	.....	1,408,020.00	30,737.00	5,115	.....	1,328,990.00	17,762.00	8,621	3,017,450.00	1,355,520.00	
Henrico	3,860	.....	1,425,038.00	144,932.00	4,494	.....	1,386,853.00	68,944.68	6,557	2,534,345.00	1,841,535.00	
Richmond	7,639	.....	4,073,365.00	605,795.43	6,474	.....	4,274,884.00	459,347.00	7,917	3,350,340.00	6,864,734.00	
Henry	2,678	.....	845,159.00	6,827.00	2,779	.....	813,485.00	2,860.00	4,978	1,633,430.00	862,235.00	
Highland	208	.....	314,790.00	1,200.00	219	.....	312,288.00	150.00	341	102,680.00	365,655.00	
Isle of Wight	1,040	.....	447,528.00	8,620.00	2,148	.....	867,977.00	11,968.00	1,643	601,750.00	466,225.00	
James City	1,141	.....	267,597.00	8,619.00	1,162	.....	287,899.00	2,712.00	.....	.....	.....	
Williamsburg	405	.....	276,220.00	25,743.00	410	.....	269,541.00	9,997.00	.....	.....	.....	
King and Queen	3,288	.....	912,999.00	4,532.00	3,406	.....	937,602.00	7,216.00	5,882	1,592,590.00	941,985.00	
King George	2,066	.....	478,874.00	9,022.00	1,984	.....	513,311.00	7,280.00	2,999	1,123,260.00	560,735.00	
King William	2,916	.....	423,670.00	6,970.00	3,248	.....	441,115.00	1,220.00	5,029	1,526,300.00	487,950.00	
Lancaster	1,605	.....	313,610.00	4,350.00	1,583	.....	306,475.00	3,055.00	2,340	710,670.00	297,175.00	
Lee	486	.....	699,153.00	2,320.00	481	.....	742,706.00	342.00	958	468,976.00	895,991.00	
Loudoun	3,063	.....	2,590,444.00	34,478.40	3,000	.....	3,207,617.00	21,171.40	.....	.....	.....	
Louisa	5,429	.....	1,618,875.00	34,093.00	5,366	.....	1,663,795.00	17,013.00	9,169	3,217,660.00	1,790,134.00	
Lunenburg	4,163	.....	926,401.00	3,147.00	4,212	.....	861,074.00	3,904.00	7,219	2,636,663.00	959,409.00	
Madison	2,408	.....	1,156,079.00	9,462.56	2,373	.....	1,121,577.00	1,608.00	4,235	1,322,375.00	1,199,813.00	
Matthews	1,507	.....	327,884.00	2,650.00	1,479	.....	343,250.00	800.00	2,110	599,090.00	318,030.00	
Mecklenburg	7,392	.....	1,553,038.00	31,894.00	7,506	.....	1,642,462.00	28,225.00	12,481	3,818,238.00	1,552,399.00	
Middlesex	1,526	.....	324,513.00	7,812.00	1,550	.....	347,625.00	3,657.00	2,546	652,119.00	338,778.00	
Montgomery	1,141	.....	753,910.00	9,460.00	1,173	.....	780,915.00	3,890.00	2,132	879,400.00	888,875.00	
Nansemond	2,571	.....	1,005,005.00	17,804.00	2,677	.....	1,036,998.00	12,228.00	.....	.....	.....	
Nelson	3,215	.....	569,377.00	3,160.00	3,158	.....	531,572.00	1,377.00	5,356	1,306,830.00	520,321.00	
New Kent	1,780	.....	320,945.00	5,706.20	1,808	.....	316,990.00	5,771.00	2,958	892,670.00	405,200.00	
Norfolk	2,887	.....	654,166.00	14,305.00	2,751	.....	619,528.00	8,441.28	1,390	501,225.00	230,875.00	
Norfolk City	1,997	.....	1,298,477.50	271,297.00	1,951	.....	1,258,780.00	164,856.00	2,327	860,820.00	1,086,205.00	
Portsmouth	736	.....	232,765.00	51,508.00	689	.....	248,455.00	57,939.00	941	276,960.00	215,605.00	
Northampton	.....	.....	.....	.....	2,250	.....	642,880.00	2,494.00	2,123	.....	532,199.00	
Northumberland	1,733	.....	426,450.00	650.00	1,823	.....	417,340.00	.....	2,884	818,975.00	375,054.00	
Nottoway	3,856	.....	854,726.00	19,564.00	3,953	.....	859,740.00	14,602.00	6,342	2,373,533.00	860,331.00	
Orange	3,309	.....	779,770.00	10,469.00	3,486	.....	819,151.00	7,440.00	5,873	1,767,080.00	932,497.00	
Page	495	.....	867,587.00	6,224.00	483	.....	860,453.00	1,569.00	944	355,960.00	932,654.00	
Patrick	1,026	.....	527,418.00	4,659.00	1,024	.....	530,975.00	1,050.00	1,872	663,395.00	578,840.00	
Pittsylvania	7,417	.....	2,104,281.00	21,541.00	7,171	.....	1,990,008.00	7,840.00	12,362	4,377,479.00	2,103,801.00	
Danville	763	.....	268,746.00	31,451.00	573	.....	238,404.00	14,578.00	1,023	418,550.00	278,954.00	
Carried forward.....	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73	305,550	$103,593,993.00	$72,318,905.93	

1862			1863				Total of Latest Assessment.					County
			Slaves.				Slaves.					
Value.	Other Personal Property.	Income.	Number.	Value.	Other Personal Property.	Income.	Number.	Value.	Other Personal Property.	Income.	Real Estate.	
9,682,101.00	$36,563,472.93	$ 682,319.66	147,223	$ 99,065,801.00	$ 57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$ 64,685,463.98	$3,816,295.85	$115,467,671.21	
2,165,145.00	815,925.00	15,192.00	5,664	3,513,700.00	1,255,630.00	10,656.00	5,664	3,513,700.00	1,255,630.00	10,656.00	2,698,185.52	Goochland
187,550.00	396,525.00	1,200.00	579	417,525.00	789,990.00	300.00	579	417,525.00	789,990.00	300.00	939,744.26	Grayson
545,525.00	374,200.00	.....	1,785	845,785.00	539,725.00	2,000.00	1,785	845,785.00	539,725.00	2,000.00	961,860.60	Greene
1,274,234.00	440,404.00	300.00	4,029	2,936,075.00	753,273.00	.....	4,029	2,936,075.00	753,273.00	.....	768,704.12	Greensville
5,338,625.00	2,638,665.00	22,397.00	15,198	11,735,360.00	3,304,526.00	137,833.00	15,198	11,735,360.00	3,304,526.00	137,833.00	5,245,749.29	Halifax
3,017,450.00	1,355,520.00	13,876.00	7,893	5,185,600.00	1,977,545.00	16,994.00	7,893	5,185,600.00	1,977,545.00	16,994.00	3,243,892.30	Hanover
2,534,345.00	1,841,535.00	58,235.77	7,167	5,542,380.00	2,651,135.00	409,964.00	7,167	5,542,380.00	2,651,135.00	409,964.00	8,271,529.00	Henrico
3,350,340.00	6,864,734.00	452,495.00	6,648	7,154,365.00	7,336,275.00	3,803,636.64	6,648	7,154,365.00	7,336,275.00	3,803,636.64	19,662,313.00	Richmond
1,633,430.00	862,235.00	2,300.00	5,385	3,527,843.00	1,411,336.00	63,321.83	5,385	3,527,843.00	1,411,336.00	63,321.83	1,811,520.71	Henry
102,680.00	365,655.00	.....	279	77,450.00	405,433.00	40.00	279	77,450.00	405,433.00	40.00	1,296,097.42	Highland
601,750.00	466,225.00	7,626.00	.....	.....	.....	.....	1,643	601,750.00	466,225.00	7,626.00	1,407,738.36	Isle of Wight
.....	.....	.....	.....	.....	.....	.....	1,162	* 582,859.00	287,899.00	2,712.00	1,102,552.98	James City
.....	.....	.....	.....	.....	.....	.....	410	* 205,656.00	269,541.00	9,997.00	.....	Williamsburg
1,592,590.00	941,985.00	8,765.00	5,746	2,616,895.00	1,242,571.00	11,936.00	5,746	2,616,895.00	1,242,571.00	11,936.00	1,764,398.74	King and Queen
1,123,260.00	560,735.00	5,849.00	.....	.....	.....	.....	2,999	1,123,260.00	560,735.00	5,849.00	1,544,464.85	King George
1,526,300.00	487,950.00	1,050.00	4,569	2,283,550.00	731,665.00	3,700.00	4,569	2,283,550.00	731,665.00	3,700.00	1,729,586.10	King William
710,670.00	297,175.00	.....	2,306	772,475.00	405,854.00	457.00	2,306	772,475.00	405,854.00	457.00	981,961.00	Lancaster
468,976.00	895,991.00	400.00	1,121	784,712.00	1,140,423.00	.....	1,121	784,712.00	1,140,423.00	.....	1,633,215 73	Lee
.....	.....	.....	.....	.....	.....	.....	3,000	*1,504,800.00	3,207,617.00	21,171.40	11,684,915 00	Loudoun
3,217,660.00	1,790,134.00	22,388.00	8,963	5,838,915.00	2,397,065.00	24,707.00	8,963	5,838,915.00	2,397,065.00	24,707.00	3,544,387 57	Louisa
2,636,663.00	959,409.00	1,945.00	7,366	5,234,275.00	1,210,225.00	2,782.00	7,366	5,234,275.00	1,210,225.00	2,782.00	1,598,421 72	Lunenburg
1,322,375.00	1,199,813.00	1,608.00	3,620	1,970,505.00	1,601,701.00	10,107.33	3,620	1,970,505.00	1,601,701.00	10,107.33	2,150,811 93	Madison
599,090.00	318,030.00	800.00	.....	.....	.....	.....	2,110	599,090.00	318,030.00	800.00	777,059 78	Matthews
3,818,238.00	1,552,399.00	12,672.00	13,399	7,824,030.00	2,748,784.00	100,206.50	13,399	7,824,030.00	2,748,784.00	100,206.50	3,530,539 87	Mecklenburg
652,119.00	338,778.00	618.00	2,450	644,320.00	425,137.00	288.00	2,450	644,320.00	425,137.00	288.00	870,729.64	Middlesex
879,400.00	888,875.00	4,400.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,729,449.75	Montgomery
.....	.....	.....	.....	.....	.....	.....	2,677	*1,342,783.00	1,036,998.00	12,228.00	1,770,113.08	Nansemond
1,306,830.00	520,321.00	1,662.00	5,549	3,460,892.00	978,717.00	19,426.00	5,549	3,460,892.00	978,717.00	19,426.00	2,694,440.00	Nelson
392,670.00	405,200.00	.....	1,852	1,115,725.00	519,072.00	.....	1,852	1,115,725.00	519,072.00	.....	926,208.29	New Kent
501,225.00	230,875.00	3,028.00	.....	.....	.....	.....	1,390	501,225.00	230,875.00	3,028.00	2,918,682.83	Norfolk
860,820.00	1,086,205.00	115,972.00	.....	.....	.....	.....	2,327	860,820.00	1,086,205.00	115,972.00	5,749,810.86	Norfolk City
276,960.00	215,605.00	62,909.00	.....	.....	.....	.....	941	276,960.00	215,605.00	62,909.00	2,090,080.00	Portsmouth
.....	582,199.00	1,920.00	1,870	.....	519,841.00	1,500.00	1,870	* 937,992.00	519,841.00	1,500.00	1,397,328.00	Northampton
818,975.00	375,054.00	.....	2,731	780,393.00	438,316.00	2,160.00	2,731	780,393.00	438,316.00	2,160.00	1,219,354.00	Northumberland
2,373,533.00	860,331.00	12,210.00	6,337	3,592,725.00	1,136,136.00	11,880.00	6,337	3,592,725.00	1,136,136.00	11,880.00	1,964,321.92	Nottoway.
1,767,080.00	932,497.00	9,236.00	5,483	3,043,025.00	1,557,107.00	41,813.00	5,483	3,043,025.00	1,557,107.00	41,813.00	2,805,006.00	Orange
355,960.00	932,654.00	695.00	725	280,435.00	1,275,110.00	8,240.00	725	280,435.00	1,275,110.00	8,240.00	2,140,857.54	Page
663,395.00	578,840.00	.....	2,007	1,707,065.00	1,034,030.00	1,800.00	2,007	1,707,065.00	1,034,030.00	1,800.00	1,201,441.00	Patrick
4,377,479.00	2,103,801.00	14,210.00	13,818	8,757,754.00	3,097,599.00	171,200.00	13,818	8,757,754.00	3,097,599.00	171,200.00	4,782,153.21	Pittsylvania
418,550.00	278,954.00	15,241.00	1,162	977,000.00	867,949.50	1,007,359.28	1,162	977,000.00	867,949.50	1,007,359.28	770,158.00	Danville
03,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$9,657,545.43	328,375	$209,884,569.00	$117,643,741.43	$9,946,175.83	229,853,755.18	

County.	1860				1861				1862			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	In
	Number.	Value.			Number.	Value.			Number.	Value.		
Brought forward.....	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73	305,550	$103,593,993.00	$72,318,905.93	$1,5
Powhatan	3,177	.....	789,892.00	11,487.00	3,156	.....	781,924.00	4,593.00	5,266	1,965,820.00	728,410.00	
Prince Edward	4,362	.....	1,035,329.00	41,213.00	4,279	.....	963,827.00	18,096.00	6,998	2,673,880.00	1,027,941.00	
Prince George	2,894	.....	787,372.00	18,209.00	2,926	.....	895,394.00	10,121.00	4,536	1,810,132.00	892,677.00	
Prince William	1,269	.....	615,710.00	14,734.80	1,243	.....	578,707.00	8,514.80	.....	.....	.....	...
Princess Anne	1,818	.....	562,412.00	12,825.00	224	.....	563,823.00	.....	....	.....	.....	...
Pulaski	918	.....	765,562.00	5,250.00	928	.....	754,557.00	950.00	1,636	611,015.00	834,437.00	
Rappahannock	1,721	.....	566,869.00	802.00	1,748	.....	643,857.00	1,150.00	3,316	1,122,450.00	801,219.00	
Richmond	1,373	.....	361,865.61	3,175.00	1,384	.....	336,457.92	1,759.00	2,054	672,335.00	472,179.22	...
Roanoke	1,603	.....	879,608.00	18,778.00	1,580	.....	977,989.00	16,606.00	2,763	896,650.00	997,282.00	
Rockbridge	2,328	.....	1,991,203.00	54,634.71	2,273	.....	1,924,718.81	28,630.21	4,024	1,457,367.00	2,253,946.00	
Rockingham	1,268	.....	2,855,817.00	32,082.00	1,241	.....	2,793,172.50	14,407.00	2,164	768,405.00	3,019,088.00	
Russell	516	.....	628,823.00	700.00	573	.....	660,922.00	.....	1,061	357,490.00	690,654.00	...
Scott	324	.....	668,486.00	2,591.00	331	.....	661,765.00	2,017.00	465	186,175.00	726,728.00	
Shenandoah	484	.....	1,408,887.00	4,755.00	457	.....	1,487,641.00	780.00	549	220,600.00	1,531,642.00	
Smyth	508	.....	502,340.00	6,835.00	500	.....	500,160.00	5,570.00	1,044	424,570.00	621,355.00	..
Southampton	3,174	.....	1,287,193.00	11,157.00	3,141	.....	1,326,697.00	7,108.00	5,081	1,812,250.00	1,419,703.00	
Spottsylvania	2,382	.....	1,066,307.00	17,451.90	3,409	.....	976,683.00	18,590.00	3,220	1,292,815.00	637,604.00	
Fredericksburg	724	.....	698,492.00	75,965.00	685	.....	612,077.00	61,804.00	1,217	441,675.00	654,447.00	
Stafford	1,575	.....	478,025.50	22,461.00	1,545	.....	441,672.50	22,209.00	.....	.....	.....	..
Surry	1,552	.....	348,872.99	8,265.06	1,544	.....	349,580.40	4,725.00	2,280	688,603.00	361,492.72	
Sussex	3,604	.....	801,725.00	4,398.82	3,598	.....	810,060.00	400.00	6,043	2,372,325.00	941,440.00	
Tazewell	676	.....	566,828.00	6,911.00	670	.....	566,078.00	4,470.00	1,124	378,318.00	595,882.00	
Warren	804	.....	548,143.00	5,640.00	822	.....	520,794.00	1,250.00	1,348	429,775.00	536,819.00	
Warwick	602	.....	80,085.00	1,120.00	616	.....	90,080.00	1,120.00	.....	.....	.....	..
Washington	1,319	.....	1,290,488.00	26,152.00	1,375	.....	1,455,589.00	16,135.00	2,507	864,335.00	1,466,021.00	
Westmoreland	2,088	.....	347,612.00	9,470.00	2,153	.....	350,571.00	9,668.00	3,328	1,086,393.00	404,323.00	
Wise	34	.....	148,505.00	1,475.00	38	.....	165,646.00	1,725.00	51	24,000.00	175,155.00	..
Wythe	1,116	.....	1,143,261.00	25,095.00	1,120	.....	1,100,401.00	19,620.00	1,941	638,540.00	1,223,559.00	
York	999	.....	215,671.00	2,500.00	990	.....	195,190.00	.....	.....	.....	.....	..
Total	243,986	.....	$94,995,274.09	$3,665,076.41	253,351	.....	$100,201,850.44	$2,296,964.74	369,466	$126,789,911.00	$95,332,909.87	$1,
WEST VIRGINIA:												
Barbour	68	.....	$ 516,950.00	$ 4,508.00	.....	.....	.....	.....	.....	.....	.....	.
Berkeley	911	.....	797,998.00	3,080.00	926	.....	$ 862,022.00	$4,826.00	.....	.....	.....	.
Boone	86	.....	187,680.00	2,815.00	.....	.....	.....	.....	.....	.....	.....	.
Braxton	54	.....	289,435.00	825.00	57	.....	311,153.00	.....	.....	.....	.....	.
Brooke	5	.....	407,487.00	7,650.00	.....	.....	.....	.....	.....	.....	.....	.
Cabell	216	.....	605,462.00	4,800.00	.....	.....	.....	.....	.....	.....	.....	.
Calhoun	6	.....	55,955.00	400.00	.....	.....	.....	.....	.....	.....	.....	.
Clay	25	.....	105,320.00	510.00	9	.....	57,527.00	847.00	.....	.....	.....	.
Doddridge	17	.....	165,220.00	2,362.00	.....	.....	.....	.....	.....	.....	.....	.
Fayette	127	.....	219,158.00	1,020.00	124	.....	242,411.00	.....	.....	.....	.....	.
Carried forward	1,515	.....	$3,350,665.00	$27,970.00	1,116	.....	$1,473,113.00	$5,673.00	.....	.....	.....	.

1862			1863				Total of Latest Assessment.						County.
Value.	Other Personal Property.	Income.	Slaves. Number.	Slaves. Value.	Other Personal Property.	Income.	Slaves. Number.	Slaves. Value.	Other Personal Property.	Income.	Real Estate.		
$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$ 9,657,545.43	328,375	$209,884,569.00	$117,643,741.48	$ 9,946,175.83	$229,853,755.18		
1,965,820.00	728,410.00	10,144.00	5,344	4,332,910.00	1,124,730.00	5,590.00	5,344	4,332,910.00	1,124,730.00	5,590.00	1,942,646.93		Powhatan.
2,673,880.00	1,027,941.00	17,638.00	7,081	5,141,651.00	1,690,959.00	68,592.00	7,081	5,141,651.00	1,690,959.00	68,592.00	2,299,360.30		Prince Edward.
1,810,132.00	892,677.00	11,576.00	.....	.....	.....	.....	4,536	1,810,132.00	892,677.00	11,576.00	1,887,005.40		Prince George.
.....	.....	.....	.....	.....	.....	.....	1,243	*623,489.00	578,707.00	8,514.80	2,629,411.00		Prince William.
.....	.....	.....	.....	.....	.....	.....	224	*112,358.00	563,823.00	.....	1,531,299.27		Princess Anne.
611,015.00	834,437.00	535.00	1,766	1,181,545.00	1,470,895.00	2,750.00	1,766	1,181,545.00	1,470,895.00	2,750.00	1,781,920.36		Pulaski.
1,122,450.00	801,219.00	600.00	2,281	1,663,150.00	1,046,446.00	.....	2,281	1,663,150.00	1,046,446.00	.....	2,698,529.86		Rappahannock.
672,335.00	472,179.22	.....	2,112	725,870.00	561,667.81	.....	2,112	725,870.00	561,667.81	.....	1,069,219.04		Richmond.
896,650.00	997,282.00	4,100.00	2,766	2,157,455.00	1,558,317.00	128,727.00	2,766	2,157,455.00	1,558,317.00	128,727.00	3,014,050.66		Roanoke.
1,457,367.00	2,253,946.00	22,325.00	4,145	3,097,825.00	3,533,582.00	57,370.00	4,145	3,097,825.00	3,533,582.00	57,370.00	5,333,247.55		Rockbridge.
768,405.00	3,019,088.00	4,933.00	2,039	1,564,820.00	4,726,373.00	57,522.50	2,039	1,564,820.00	4,726,373.00	57,522.50	8,424,219.96		Rockingham.
357,490.00	690,654.00	.....	1,081	909,880.00	1,187,672.00	.....	1,081	909,880.00	1,187,672.00	.....	1,576,304.75		Russell.
186,175.00	726,728.00	300.00	517	327,500.00	998,689.00	300.00	517	327,500.00	998,689.00	300.00	1,248,493.57		Scott.
220,600.00	1,531,642.00	800.00	255	163,750.00	1,159,671.00	476.00	255	163,750.00	1,159,671.00	476.00	4,499,679.62		Shenandoah.
424,570.00	621,355.00	.....	1,624	1,701,190.00	1,621,730.00	414,460.00	1,624	1,701,190.00	1,621,730.00	414,460.00	2,518,350.84		Smyth.
1,812,250.00	1,419,703.00	5,290.00	4,783	2,464,255.00	1,841,724.80	1,955.00	4,783	2,464,255.00	1,841,724.80	1,955.00	1,549,447.12		Southampton.
1,292,815.00	637,604.00	9,577.00	.....	.....	.....	.....	3,220	1,292,815.00	637,604.00	9,577.00	2,413,479.86		Spottsylvania.
441,675.00	654,447.00	57,016.00	.....	.....	.....	.....	1,117	441,675.00	654,447.00	57,016.00	1,388,430.00		Fredericksburg.
.....	.....	.....	.....	.....	.....	.....	1,545	*774,972.00	441,672.50	22,209.00	1,711,582.00		Stafford.
688,603.00	361,492.72	2,654.00	1,835	921,995.00	466,413.00	37,562.00	1,835	921,995.00	466,413.00	37,562.00	881,874.16		Surry.
2,372,325.00	941,440.00	1,382.00	5,921	3,209,560.00	1,273,032.00	1,852.00	5,921	3,209,560.00	1,273,032.00	1,852.00	1,065,446.22		Sussex.
378,318.00	595,882.00	2,250.00	1,186	820,420.00	1,059,241.00	2,000.00	1,186	820,420.00	1,059,241.00	2,000.00	1,860,424.00		Tazewell.
429,775.00	536,819.00	340.00	.....	.....	.....	.....	1,348	429,775.00	536,819.00	340.00	2,080,567.84		Warren.
.....	.....	.....	.....	.....	.....	.....	616	*308,986.00	90,080.00	1,120.00	453,501.21		Warwick.
864,335.00	1,466,021.00	4,250.00	2,771	1,754,750.00	2,216,805.00	86,554.00	2,771	1,754,750.00	2,216,805.00	86,554.00	4,490,523.00		Washington.
1,086,393.00	404,323.00	1,333.00	2,127	850,150.00	598,204.00	670.00	2,127	850,150.00	598,204.00	670.00	1,674,143.00		Westmoreland.
24,000.00	175,155.00	.....	67	55,920.00	274,984.00	.....	67	55,920.00	274,984.00	.....	277,640.83		Wise.
638,540.00	1,223,559.00	8,750.00	2,190	1,631,640.00	2,198,741.00	185,391.00	2,190	1,631,640.00	2,198,741.00	185,391.00	3,033,517.92		Wythe.
.....	.....	.....	.....	.....	.....	.....	990	*496,584.00	195,190.00	.....	897,388.86		York.
$126,789,911.00	$95,332,909.87	$1,719,312.43	346,965	$228,054,341.00	$133,827,871.09	$10,709,316.93	395,105	$250,851,591.00	$152,844,637.59	$11,108,300.13	$296,085,460.31		
.....	.....	.....	.....	.....	.....	.....	68	*$ 33,201.00	$ 516,950.00	$ 4,508.00	$ 1,435,327.12		Barbour.
.....	.....	.....	.....	.....	.....	.....	926	*452,119.00	862,022.00	4,826.00	*5,298,640.00		Berkeley.
.....	.....	.....	.....	.....	.....	.....	86	*41,989.00	187,680.00	2,815.00	501,364.79		Boone.
.....	.....	.....	.....	.....	.....	.....	57	*27,830.00	311,153.00	.....	779,557.90		Braxton.
.....	.....	.....	.....	.....	.....	.....	5	*2,441.00	407,487.00	7,650.00	1,166,793.00		Brooke.
.....	.....	.....	.....	.....	.....	.....	216	*105,462.00	605,462.00	4,800.00	2,032,209.92		Cabell.
.....	.....	.....	.....	.....	.....	.....	6	*2,929.00	55,955.00	400.00	323,404.70		Calhoun.
.....	.....	.....	.....	.....	.....	.....	9	*4,394.00	57,527.00	847.00	227,043.32		Clay.
.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	165,220.00	2,362.00	791,411.00		Doddridge.
.....	.....	.....	.....	.....	.....	.....	124	*60,543.00	242,411.00	.....	910,550.25		Fayette.
.....	.....	.....	.....	.....	.....	.....	1,514	$739,208.00	$3,411,867.00	$28,208.00	$13,466,302.00		

PARAGRAPH V OF DECREE.

County.	1860				1861				1862			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Inc
	Number.	Value.			Number.	Value.			Number.	Value.		
Brought forward	1,515	.....	$ 3,350,665.00	$ 27,970.00	1,116	.....	$ 1,473,113.00	$ 5,673.00	.....	.....	.....	...
Gilmer	21	.....	161,522.00	1,601.00	28	.....	175,772.00	935.00	.....	.....	.....	...
Greenbrier	996	.....	1,808,705.00	33,240.32	984	.....	1,902,530.00	18,250,26	1,419	$ 599,761.00	$1,883,100.00	$1
Hampshire	729	.....	1,082,218.00	14,207.50	.....	.....	.....	.....	.....	.....	.....	...
Hancock	1	.....	262,146.00	450.00	.....	.....	.....	.....	.....	.....	.....	...
Hardy	645	.....	942,419.00	5,679.00	641	.....	1,014,392.00	7,710.00	.....	.....	.....	...
Harrison	292	.....	1,083,482.00	5,751.00	.....	.....	.....	.....	.....	.....	.....	...
Jackson	42	.....	294,986.00	4,217.00	41	.....	303,932.00	600.00	.....	.....	.....	...
Jefferson	2,256	.....	1,910,687.00	24,365.00	2,256	.....	1,888,233.00	13,190.20	.....	.....	.....	...
Kanawha	1,238	.....	720,969.00	30,271.00	1,237	.....	749,570.00	28,542.00	.....	.....	.....	...
Lewis	103	.....	432,826.00	5,246.00	.....	.....	.....	.....	.....	.....	.....	...
Logan	30	.....	120,156.00	.....	.....	.....	.....	.....	.....	.....	.....	...
McDowell	.....	.....	31,138.00	.....	.....	.....	35,595.00	.....	.....	.....	.....	...
Marion	46	.....	717,028.00	10,600.00	.....	.....	.....	.....	.....	.....	33,995.00	...
Marshall	20	.....	340,471.00	3,758.00	.....	.....	.....	.....	.....	.....	.....	...
Mason	200	.....	548,385.00	2,500.00	.....	.....	.....	.....	.....	.....	.....	...
Mercer	192	.....	279,050.00	1,500.00	191	.....	300,545.00	.....	.....	.....	.....	...
Monongalia	69	.....	1,071,376.00	4,700.00	.....	.....	.....	.....	301	95,370.00	308,960.00	...
Monroe	611	.....	1,408,522.00	12,588.00	627	.....	1,416,431.00	5,663.00	1,136	401,830.00	1,541,052.00	...
Morgan	60	.....	186,232.00	150.00	59	.....	202,144.00	400.00	.....	.....	.....	...
Nicholas	85	.....	264,084.00	1,636.00	76	.....	237,162.00	50.00	.....	.....	.....	...
Ohio	21	.....	347,555.00	1,600.00	.....	.....	.....	.....	.....	.....	.....	...
Wheeling	2	.....	470,005.00	95,748.00	.....	.....	.....	.....	.....	.....	.....	...
Pendleton	138	.....	523,324.00	1,805.00	139	.....	520,629.00	15.00	201	61,450.00	555,093.00	...
Pleasants	7	.....	129,035.00	800.00	.....	.....	.....	.....	.....	.....	.....	...
Pocahontas	.....	.....	.....	.....	139	.....	470,156.00	.....	.....	.....	.....	...
Preston	41	.....	679,170.00	2,500.00	.....	.....	.....	.....	.....	.....	.....	...
Putnam	353	.....	299,725.00	930.00	345	.....	332,887.00	540.00	.....	.....	.....	...
Raleigh	28	.....	125,355.00	1,000.00	35	.....	134,835.00	.....	.....	.....	.....	...
Randolph	107	.....	306,617.00	1,561.00	20	.....	126,805.00	.....	.....	.....	.....	...
Ritchie	12	.....	261,832.00	2,726.00	.....	.....	.....	.....	.....	.....	.....	...
Roane	35	.....	158,731.00	2,130.00	97	.....	185,404.00	1,440.00	.....	.....	.....	...
Taylor	68	.....	361,874.00	800.00	.....	.....	.....	.....	.....	.....	.....	...
Tucker	17	.....	77,679.00	698.00	.....	.....	.....	.....	.....	.....	.....	...
Tyler	7	.....	308,536.00	948.00	.....	.....	.....	.....	.....	.....	.....	...
Upshur	97	.....	401,914.00	2,202.00	.....	.....	.....	.....	.....	.....	.....	...
Wayne	74	.....	363,127.00	1,045.00	77	.....	380,000.00	265.00	.....	.....	.....	...
Webster	.....	.....	21,554.00	.....	.....	.....	59,546.21	.....	.....	.....	.....	...
Wetzel	8	.....	19,060.00	420.00	.....	.....	.....	.....	.....	.....	.....	...
Wirt	17	.....	110,893.00	1,470.00	.....	.....	.....	.....	.....	.....	.....	...
Wood	82	.....	683,030.00	29,758.50	.....	.....	.....	.....	.....	.....	.....	...
Wyoming	36	.....	121,083.00	506.00	35	.....	112,066.00	.....	.....	.....	.....	...
Total	10,301	.....	$22,787,166.00	$339,087.32	8,983	.....	$12,021,747.21	$83,273.46	3,057	$1,158,411.00	$4,322,200.00	$

1862			1863				Total of Latest Assessment.						County.
s. Value.	Other Personal Property.	Income.	Slaves Number.	Slaves Value.	Other Personal Property.	Income.	Slaves Number.	Slaves Value.	Other Personal Property.	Income.	Real Estate.		
.....	.....	.....	.....	.....	.....	.....	1,514	$ 739,208.00	$ 3,411,867.00	$ 28,208.00	$13,466,302.00		
.....	.....	.....	.....	.....	.....	.....	28	*13,671.00	175,772.00	935.00	769,507.31		Gilmer.
$ 599,761.00	$1,883,100.00	$10,295.00	923	$ 745,220.00	$2,252,197.00	$17,630.75	923	745,220.00	2,252,197.00	17,630.75	3,466,378.52		Greenbrier.
.....	.....	.....	.....	.....	.....	.....	729	*355,934.00	1,082,218.00	14,207.50	3,958,442.86		Hampshire.
.....	.....	.....	.....	.....	.....	.....	1	*488.00	262,146.00	450.00	909,007.51		Hancock.
.....	.....	.....	.....	.....	.....	.....	641	*312,968.00	1,014,392.00	7,710.00	2,911,771.10		Hardy.
.....	.....	.....	.....	.....	.....	.....	292	*142,569.00	1,083,482.00	5,751.00	3,797,604.16		Harrison.
.....	.....	.....	.....	.....	.....	.....	41	*20,018.00	303,932.00	600.00	1,648,682.47		Jackson.
.....	.....	.....	.....	.....	.....	.....	2,256	*1,101,492.00	1,888,233.00	13,190.20	6,802,928.00		Jefferson.
.....	.....	.....	.....	.....	.....	.....	1,237	*603,965.00	749,570.00	28,542.00	3,287,882.51		Kanawha.
.....	.....	.....	.....	.....	.....	.....	103	*50,290.00	432,826.00	5,246.00	1,278,235.39		Lewis.
.....	.....	.....	.....	.....	.....	.....	30	*14,647.00	120,156.00	.....	388,650.94		Logan.
.....	33,995.00	.....	177	19,295.00	29,455.00	.....	177	19,295.00	29,455.00	.....	173,698.05		McDowell.
.....	.....	.....	.....	.....	.....	.....	46	*22,459.00	717,028.00	10,600.00	2,721,068.13		Marion.
.....	.....	.....	.....	.....	.....	.....	20	*9,765.00	340,471.00	3,758.00	2,371,997.95		Marshall.
.....	.....	.....	.....	.....	.....	.....	200	*97,650.00	548,385.00	2,500.00	2,814,941.08		Mason.
95,370.00	308,960.00	30.00	176	123,615.00	368,388.00	.....	176	123,615.00	368,388.00	.....	679,564.35		Mercer.
.....	.....	.....	.....	.....	.....	.....	69	*33,689.00	1,071,376.00	4,700.00	2,954,126.46		Monongalia.
401,830.00	1,541,052.00	1,687.00	1,052	569,325.00	2,010,111.00	12,853.50	1,052	569,325.00	2,010,111.00	12,853.50	3,399,399.99		Monroe.
.....	.....	.....	.....	.....	.....	.....	59	*28,807.00	202,144.00	400.00	740,758.44		Morgan.
.....	.....	.....	.....	.....	.....	.....	76	*37,107.00	237,162.00	50.00	778,012.33		Nicholas.
.....	.....	.....	.....	.....	.....	.....	21	*10,253.00	347,555.00	1,600.00	5,074,553.00		Ohio.
.....	.....	.....	....	.....	.....	.....	2	*976.00	470,005.00	95,748.00	.....		Wheeling.
61,450.00	555,093.00	80.00	155	91,450.00	786,301.00	.....	155	91,450.00	786,301.00	.....	1,098,709.70		Pendleton.
.....	.....	.....	.....	.....	.....	.....	7	*3,418.00	129,035.00	800.00	577,606.79		Pleasants.
.....	.....	.....	.....	.....	.....	.....	139	*67,867.00	470,156.00	.....	1,189,733.24		Pocahontas.
.....	.....	.....	.....	.....	.....	.....	41	*20,018.00	679,170.00	2,500.00	1,679,082.61		Preston.
.....	.....	.....	.....	.....	.....	.....	345	*168,446.00	332,887.00	540.00	982,826.02		Putnam.
.....	.....	.....	.....	.....	.....	.....	35	*17,089.00	134,835.00	.....	498,330.90		Raleigh.
.....	.....	.....	.....	.....	.....	.....	20	*9,765.00	126,805.00	.....	1,136,745.77		Randolph.
.....	.....	.....	.....	.....	.....	.....	12	*5,859.00	261,832.00	2,726.00	1,166,737.79		Ritchie.
.....	.....	.....	.....	.....	.....	.....	37	*18,065.00	185,404.00	1,440.00	468,005.20		Roane.
.....	.....	.....	.....	.....	.....	.....	68	*33,201.00	361,971.00	800.00	1,241,003.36		Taylor.
.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	77,679.00	698.00	288,520.66		Tucker.
.....	.....	.....	.....	.....	.....	.....	7	*3,418.00	308,536.00	948.00	878,326.00		Tyler.
.....	.....	.....	.....	.....	.....	.....	97	*47,360.00	401,914.00	2,202.00	1,329,680.83		Upshur.
.....	.....	.....	.....	.....	.....	.....	77	*37,595.00	380,000.00	265.00	1,135,038.58		Wayne.
.....	.....	.....	.....	.....	.....	.....	.....	....	59,546.21	.....	216,085.00		Webster.
.....	.....	.....	.....	.....	.....	.....	9	*3,906.00	19,060.00	430.00	789,068.00		Wetzel.
.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	110,893.00	1,470.00	508,578.48		Wirt.
.....	.....	.....	.....	.....	.....	.....	82	*40,036.00	683,930.00	29,758.50	2,600,610.50		Wood.
.....	.....	.....	.....	.....	.....	.....	35	*17,089.00	112,066.00	.....	271,127.06		Wyoming.
$1,158,411.00	$4,322,200.00	$12,092.00	2,488	$1,548,905.00	$5,446,452.00	$30,484.25	10,897	$5,654,593.00	$24,739,894.21	$299,257.45	$82,449,252.04		

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA *vs* STATE OF WEST VIRGINIA.

COMPARISON OF ASSESSED VALUATION OF ALL PROPERTY FROM 1867 TO 1908 INCLUSIVE.

{ Virginia and West Virginia }

PLAINTIFF'S EXHIBIT E-3.

VIRGINIA FIGURES TAKEN FROM VIRGINIA AUDITORS REPORT FOR RESPECTIVE YEARS.

WEST VIRGINIA FIGURES TAKEN FROM "BIENNIAL REPORT OF THE AUDITOR" OF WEST VIRGINIA FOR 1907-8. PAGE 126 STATEMENT LXVIII.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff.

DEFENDANT'S EXHIBIT G-1.

SUMMARY OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED IN ANY PRECEDING EXHIBIT, BUT NOT INCLUDING ANY PROPERTY, STOCKS, OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGANIZATION OF THE RESTORED GOVERNMENT OF VIRGINIA;

TOGETHER WITH THE NATURE AND DESCRIPTION THEREOF, SHOWING WHETHER SUCH PROPERTY WAS LOCATED WHOLLY IN WEST VIRGINIA OR PARTLY IN WEST VIRGINIA; AND THE AMOUNT PAID BY THE COMMONWEALTH IN SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE COMPANIES OWNING SUCH PROPERTY. ALSO SHOWING WHICH OF SAID COMPANIES AND BANKS PAID DIVIDENDS AND THE DATES AND AMOUNTS OF SUCH PAYMENTS.

PARAGRAPH VII OF DECREE.

NOTE:—In the following statements and schedules, no value is shown as chargeable to West Virginia except in the cases of the Fairmont Bank in Marion County and the Northwestern Bank of Virginia at Wheeling, for the reason that no evidence has been produced to determine the value of the stock of any of the said companies other than the two above mentioned.

	Total amount paid by Virginia.	Dividends.	Value chargeable to West Virginia.
Total, turnpikes and roads lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock	$ 700,103.49	$ 12,600.54	
Total, navigation companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	210,500.00		
Total, bridge companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	78,412.50	6,028.51	
Total, turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia, in which the Commonwealth held stock,	154,652.84	1,901.27	
Northwestern Bank of Virginia (at Wheeling)	341,800.00	534,815.16	$341,800.00
Fairmont Bank, (Marion County),	50,000.00	2,000.00	50,000.00
James River and Kanawha Company,	9,547,582.21	10,092.00	
Total,	$11,083,051.04		

MISSING PAGES

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Brandonville, Kingwood and Evansville Road,	March 13, 1837	$ 45,000.00	$ 25.00	$ 8,000.00	$ 3,193.46			
Buckhannon and Little Kanawha Turnpike Company,	March 15, 1849	13,800.00	25.00	8,280.00	7,773.00			
Charleston and Point Pleasant Turnpike Company,	January 23, 1835	67,460.00	50.00	31,260.00	31,260.00			
Charleston, Ripley and Ravenswood Turnpike Company,	March 25, 1853	50,000.00	50.00	30,000.00	27,519.41			
Cacapon and North Branch Turnpike Company,	April 3, 1838	32,500.00	15.00	13,000.00	12,000.00			
Clarksburg and Buchanan Turnpike Company,	March 9, 1848	20,000.00	25.00	12,000.00	9,255.13			
Cranberry Summit and Brandonville Turnpike Company,	February 10, 1853	8,025.00	25.00	4,815.00	4,120.11			
Clarksburg and Philippi Turnpike Company,	March 13, 1849	10,000.00	25.00	6,000.00	5,446.25			
Clarksburg and Wheeling Turnpike Company,	February 2, 1850	17,000.00	25.00	10,200.00	4,195.35			
Clear Fork Road Company,	March 27, 1858	5,000.00	25.00	3,000.00	600.00			
Dunkard Creek Turnpike Company,	February 1, 1839	10,000.00	20.00	6,000.00	6,000.00			
East River and Princeton Turnpike Company,	March 31, 1858	7,000.00	25.00	4,800.00	4,800.00			
Fish Creek Road Company,	" 30, 1853	10,000.00	20.00	6,000.00	6,000.00			
Franklin and Circleville Turnpike Company,	" 10, 1853	4,000.00	25.00	2,400.00	2,175.00			
Gilmer, Ripley and Ohio Turnpike Company,	" 19, 1850	62,000.00	25.00	37,200.00	29,974.80			
Gnatty Creek and West Union Turnpike Company,	February 16, 1853	18,000.00	25.00	10,800.00	5,700.55			
Gilmer and Braxton Turnpike Company,	March 29, 1853	12,000.00	25.00	7,200.00	6,699.80			
Grave Creek and Pennsylvania Line Turnpike Company,	" 21, 1850	8,000.00	25.00	4,800.00	1,800.00	1860	$ 412.50	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in which the Commonwealth of Virginia Held Stock

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value Chargeable to West Virginia.
						1848	$ 69.60	
						1849	35.50	
						1850	47.20	
						1851	83.00	
						1852	94.66	
						1853	59.26	
Holliday's Cove Turnpike Company,	March 2, 1838	$ 25,000.00	$ 50.00	$ 15,000.00	$ 4,733.33	1854	71.00	
						1856	23.66	
						1857	88.75	
						1858	66.27	
						1859	20.69	
						1860	55.91	
						Total,	$ 715.50	
Holliday's Cove and Wellsburg Turnpike Company,	April 5, 1855	Included in above.	25.00	Included in above.	5,916.67			
Hampshire and Morgan Turnpike Company,	March 15, 1849	11,000.00	25.00	6,600.00	6,510.00			
Harrisville Turnpike Company,	" 28, 1848	13,500.00	50.00	8,100.00	6,000.00			
Hedgesville and Potomac Turnpike Company,	February 18, 1850	16,000.00	25.00	6,000.00	5,400.00			
Hardy and Randolph Turnpike Company,	March 24, 1851	30,000.00	25.00	18,000.00	7,134.78			
Holliday's Cove and New Cumberland Turnpike Company,	" 29, 1851	4,000.00	25.00	2,400.00	2,400.00			
Kingwood and West Union Turnpike Company,	" 25, 1848	20,000.00	25.00	12,000.00	8,769.48			
Lewisburg and Blue Sulphur Springs Turnpike Company,	" 12, 1834	12,500.00	50.00	5,000.00	4,950.00			
Leading Creek and Buffalo Creek Turnpike Company,	" 31, 1851	16,000.00	25.00	9,600.00	5,847.84			
Letart Falls and West Columbia Turnpike Company,	February 15, 1854	3,500.00	20.00	2,100.00	2,350.00			
Logan, Raleigh and Monroe Turnpike Company,	March 17, 1849	46,000.00	25.00	27,600.00	7,321.24			
Marshall and Ohio Turnpike Company,	February 11, 1848	20,000.00	25.00	12,000.00	11,943.75			
						1853	$ 146.00	
						1854	306.00	
Martinsburg and Potomac Turnpike Company,	March 17, 1849	30,000.00	100.00	18,000.00	15,290.00	1859	459.00	
						1860	765.00	
						Total,	$1,676.00	
Middleway and Gerardstown Turnpike Company,	February 18, 1854	20,000.00	25.00	12,000.00	11,943.75			
Morgantown and Bridgeport Turnpike Company,	March 15, 1849	34,000.00	25.00	20,400.00	10,687.40			
Moorfield and Alleghany Turnpike Company,	" 7, 1849	17,000.00	50.00	10,200.00	8,779.78			
Moorfield and North Branch Turnpike Company,	" 22, 1847	65,500.00	50.00	39,300.00	28,137.75			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1828, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Newark Turnpike Company,	March 28, 1851	$ 6,000.00	$ 25.00	$ 3,600.00	$ 3,000.00			
North River Turnpike Company,	February 17, 1851	9,000.00	20.00	5,400.00	5,400.00			
New Manchester Turnpike Company,	April 4, 1848	5,000.00	25.00	2,000.00	2,000.00			
New Creek and Hardy Turnpike Company,	February 25, 1850	10,000.00	25.00	6,000.00	5,431.24	1857	$ 271.25	
Patterson's Creek Valley Turnpike Company,	March 17, 1849	20,500.00	25.00	12,300.00	9,900.00			
Parkersburg and Elizabethtown Turnpike Company,	" 11, 1850	8,000.00	25.00	4,800.00	4,800.00			
Pleasant Valley and Tunnelton Turnpike Company,	" 30, 1853	10,000.00	20.00	6,000.00	4,078.45			
Potomac Turnpike Company,	" 4, 1851	4,500.00	20.00	2,700.00	2,489.70			
Red and Blue Sulphur Springs Turnpike Company,	January 18, 1836	22,000.00	50.00	10,200.00	8,856.66			
Ravenswood and Reedy Creek Turnpike Company,	February 18, 1850	15,000.00	25.00	9,000.00	8,999.99			
Ritchie and Gilmer Turnpike Company,	March 12, 1851	15,000.00	25.00	9,000.00	8,891.18			
Reedy and Harrisville Turnpike Company,	" 24, 1851	12,000.00	25.00	7,200.00	1,751.87			
Raleigh and Boone Graded Road Company,	January 28, 1854	5,000.00	25.00	3,000.00	1,800.00			
Smithfield, Charlestown and Harper's Ferry Turnpike Company,	February 18, 1830	45,000.00	50.00	18,000.00	14,000.00			
Salem and Harrisville Turnpike Company,	March 10, 1851	12,000.00	25.00	7,200.00	3,817.92			
						1832	$ 399.38	
						1833	309.64	
						1834	354.82	
Sheperdstown and Smithfield Turnpike Company,	January 31, 1816	(?)	50.00	18,575.00	18,575.00	1835	269.37	
						1836	126.00	
						1837	98.00	
						1838	58.20	
						1839	40.00	
						Total,	$1,655.41	
Sistersville and Salem Turnpike Company,	March 27, 1851	15,000.00	25.00	9,000.00	9,000.00			
Shinston Turnpike Company,	February 7, 1850	28,000.00	25.00	13,200.00	13,302.26			
Sandy River Turnpike Company,	March 31, 1851	5,000.00	25.00	3,000.00	3,000.00			
						1855	$ 400.12	
						1856	654.75	
Sweet and Salt Sulphur Springs Turnpike Company,	" 15, 1849	17,000.00	25.00	10,200.00	10,104.00	1857	582.00	
						1858	363.75	
						1859	459.00	
						Total,	$2,459.62	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
St. Mary's Turnpike Company,	February 24, 1851	$ 10,000.00	$ 25.00	$ 6,000.00	$ 6,000.00			
Weston and Gauley Bridge Turnpike Company,	March 25, 1848	90,000.00	25.00	66,000.00	64,098.31			
Weston and West Union Turnpike Company,	February 17, 1851	14,000.00	25.00	8,400.00	5,538.21			
Weston and Fairmont Turnpike Company,	March 9, 1848	106,000.00	25.00	98,000.00	97,962.50			
Wheeling, West Liberty and Bethany Turnpike Company,	" 20, 1847	35,000.00	50.00	21,000.00	21,000.00			
						1838	$ 140.00	
						1839	280.00	
						1840	340.00	
						1841	320.00	
						1842	160.00	
						1844	220.00	
						1845	140.00	
						1846	200.00	
						1847	200.00	
						1848	240.00	
White and Salt Sulphur Springs Turnpike Company,	January 8, 1834	10,000.00	50.00	4,000.00	4,000.00	1849	220.00	
						1850	220.00	
						1851	300.00	
						1852	300.00	
						1853	240.00	
						1854	260.00	
						1856	160.00	
						1857	240.00	
						1858	260.00	
						1859	180.00	
						1860	400.00	
						Total,	$5,020.00	
Wellsburg and Bethany Turnpike Company,	March 15, 1849	27,000.00	50.00	16,200.00	12,590.22			
Wellsburg and Washington Turnpike Company,	January 18, 1808	17,833.32	50.00	7,133.32	7,071.01	1837	$ 178.13	
						1838	212.13	
						Total,	$ 390.26	
Williamsport Turnpike Company,	March 15, 1849	10,000.00	25.00	6,000.00	5,130.65			
West Milford and New Salem Turnpike Company,	" 7, 1850	23,000.00	25.00	13,800.00	10,526.32			
West Union Turnpike Company,	February 24, 1851	13,000.00	25.00	7,200.00	3,054.00			
Walnut Gap Road Company,	" 15, 1854	5,000.00	20.00	3,000.00	1,305.37			
Total, Turnpikes and Roads,		$1,407,618.32		$847,163.32	$700,103.48		$12,600.54	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Navigation companies, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Coal River Navigation Company,	March 17, 1849	$210,000.00	$ 25.00	$ 96,000.00	$ 96,000.00			
Guyandotte Navigation Company,	" 16, 1849	200,000.00	50.00	120,000.00	106,800.00			
Monongalia Navigation Company,	January 29, 1817	35,000.00	(?)	14,000.00	2,660.00			
Tug Fork Navigation Company,	March 15, 1853	15,000.00	50.00	9,000.00	5,040.00			
Total, Navigation Companies,		$460,000.00		$239,000.00	$210,500.00			
Bridge companies, From March 19, 1823, to January 1, 1861.								
Buckhannon Bridge Company,	December 15, 1853	$ 3,000.00	$ 25.00	$ 1,800.00	$ 1,800.00			
Cheat River Toll Bridge Company,	January 15, 1848	10,000.00	25.00	6,000.00	4,612.50	1853	$ 374.00	
						1854	166.51	
						Total,	$ 540.51	
Elk River Bridge Company,	March 27, 1848	20,000.00	50.00	6,000.00	6,000.00	1857	$ 420.00	
						1858	210.00	
						1859	210.00	
						1860	320.00	
						Total,	$1,160.00	
Fairmont and Palatine Bridge Company,	" 12, 1850	20,000.00	25.00	12,000.00	12,000.00			
Guyandotte Bridge Company,	" 27, 1848	20,000.00	20.00	12,000.00	12,000.00			
Morgantown Bridge Company,	" 11, 1850	36,000.00	25.00	24,800.00	24,800.00			
North Branch Bridge Company,	January 14, 1848	5,000.00	20.00	3,000.00	3,000.00			
South Branch Bridge Company,	February 15, 1851	7,000.00	25.00	4,200.00	4,200.00	1860	$ 378.00	
Virginia and Maryland Bridge Company,	January 17, 1848	60,000.00	50.00	10,000.00	10,000.00	1852	$ 600.00	
						1853	600.00	
						1854	250.00	
						1855	300.00	
						1856	600.00	
						1857	300.00	
						1858	550.00	
						1859	450.00	
						1860	400.00	
						Total,	$3,950.00	
Total, Bridge Companies,		$181,000.00		$79,800.00	$ 78,412.50		$6,028.51	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Berkeley and Hampshire Turnpike Company, ... From Martinsburg, Berkeley County, by way of Boyd's Gap and Bloomery Gap in Hampshire County, to some point on Northwestern road at or near French's Tavern in same County. Road estimated to be 49¾ miles in length, 3¾ miles of which run through Frederick County, Va., making 92.46% in West Virginia and 7.54% in Virginia.	March 1, 1851	$ 36,000.00	$ 25.00	$ 21,600.00	$ 16,572.00			
Cross Roads and Summit Point Turnpike Company, ... From a point of intersection on the Charlestown and Berryville Turnpike at the cross road leading to Summit Point, to Summit Point depot, on the Winchester and Potomac railroad, in Jefferson County. The length of this road was reported as 5 miles, 690 yds. or 5.39 miles, of which 2½ miles, or 46.38% are estimated to be in Jefferson County, West Virginia.	March 29, 1851	10,000.00	25.00	6,000.00	6,000.00			
Giles, Fayette and Kanawha Turnpike Company, ... From Fauer's Furnace, (above Kanawha Salt Works) by Falls of Kanawha and Vandal's in the Loop, to Giles Court House. The total length of this road was reported in 1841 as 134 miles, 17.5 chains, from which is deducted 7 miles, 54.8 chains which run over the Fincastle and Cumberland Gap Road, leaving 126 miles, 42.7 chains constructed by the Giles, Fayette and Kanawha Company, practically 126½ miles. Of this number of miles, 3 miles are estimated to be in Giles County, Va., (allowing for change in boundary) making West Virginia's proportion 97.62%. The reports of this company show total capital stock of $76,850.00 paid and unpaid, which is apparently $6,850.00 more than authorized.	March 1, 1837	70,000.00	25.00	45,000.00	44,991.60			
Huntersville and Warm Springs Turnpike Company,..... From the Warm Springs in Bath County, to Huntersville in Pocahontas County. The length of this road was reported in 1834 as 26¼ miles. The first half mile ran over a turnpike already built which left 25¾ miles to be built. This is notwithstanding the fact that the distance by direct line was only 16½ miles. 5½ miles, or 21.36% is estimated as West Virginia's proportion. The road was destroyed in 1842 and 1843. In 1860 a new company was formed to which the State subscribed, but nothing was paid.	March 20, 1832	16,000.00	50.00	6,400.00	6,159.24			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Hardy and Winchester Turnpike Company, ... From Moorfield by way of Wardensville to within four miles of Winchester, with branch to Capon Springs. From reports this road, including the branch, is ascertained to be 61 miles in length, 41 miles of which, or 67.21% are estimated to lie in West Virginia.	March 5, 1846	$ 39,000.00	$ 50.00	$ 23,400.00	$ 23,400.00			
Hillsborough and Harper's Ferry Turnpike Company, ... From Hillsborough, Loudoun County, to some point near the bridge across the Shenandoah river at Harper's Ferry, Jefferson County. The length of this road is reported as 10½ miles, of which ¼ mile, or 2.38% is ascertained to be in West Virginia.	March 9, 1849	10,000.00	25.00	6,000.00	6,000.00	1856	$ 240.00	
Martinsburg and Winchester Turnpike Company, ... From Martinsburg, Berkeley County, to Winchester, Frederick County. This road is ascertained to be 22 miles in length, of which 13 miles, or 59.09% are found to be in West Virginia. Letters on file show that as late as in 1874 there was $1,300.00 on deposit at Winchester to the credit of this company. This was after West Virginia had released her part of the road to the County of Berkeley.	March 24, 1838	46,550.00	25.00	27,000.00	27,000.00	1859 1860	803.27 405.00	
						Total,	$1,208.27	
Morgan and Frederick Turnpike Company, ... From Potomac River, opposite Hancock, to the North Frederick Grade in Frederick County. From reports the road is ascertained to be about 30 miles in length, of which 22 miles, or 73⅓% are estimated to be in Morgan County, West Virginia.	February 25, 1851	15,000.00	50.00	9,000.00	8,005.00			
Mountain Lake and Salt Sulphur Springs Turnpike Company, ... From Salt Sulphur Springs, Monroe County, by way of Mountain Lake, Giles County, to Christiansburg, Montgomery County. Length of road 48 miles, 8 miles, or 16⅔% of which is in Monroe County, West Virginia.	March 3, 1856	20,000.00	25.00	4,800.00	4,800.00			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
North Frederick Turnpike Company, ... From a point at or near the house of Frederick B. Jenkins in Hampshire County, through Gainesborough to Winchester. The road was reported as 19¼ miles in length of which we estimate, exact location not being clear, 2¼ miles, or 11.68%, to be in West Virginia.	February 24, 1851	$ 19,000.00	$ 25.00	$ 11,400.00	$ 11,325.00	1857	$ 453.00	
Raleigh and Wythe Line Turnpike Company, ... That portion of the Raleigh and North Carolina turnpike lying between the Giles, Fayette and Kanawha turnpike in Raleigh County and the county line of Wythe and Tazewell counties. This road is estimated to be 60 miles in length, 44 miles of which, or 73⅓%, are estimated to be in West Virginia.	March 3, 1860	8,000.00	20.00	4,800.00	400.00			
Total, turnpikes and roads, ...		$289,550.00		$165,400.00	$154,652.84		$1,901.27	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Banks Located Within the Territory Now Constituting the State of West Virginia in Which the Commonwealth of Virginia Held Stock.

(From March 19, 1823, to January 1, 1861.)	Number of shares.	Par value of shares.	Dividends received by Commonwealth. Date.	Amount.	Value chargeable to West Virginia.
Northwestern Bank of Virginia, at Wheeling.					
Held by Commonwealth Fund,	2,918	$291,800.00	Regularly 1838-1860 on 2,918 shares,	$445,315.16	
The Commonwealth Fund originally held 4,000 shares which were paid for as follows:					
Cash, $375,091.33					
Net dividends and interest 24,908.67					
4,000 shares at $100.00 per share, $400,000.00					
In 1857 the Commonwealth sold 1,082 shares for $113,671.42 and turned this amount over to the Sinking Fund.					
Held by Literary Fund,	500	$ 50,000.00	Regularly 1835-1860 both inclusive except 1843,	$ 89,500.00	
Purchased in 1832.					
Total, Northwestern Bank stock, January 1, 1861,	3,418	$341,800.00	Total,	$534,815.16	
Fairmont Bank, (Marion County)					
Held by Literary Fund,	1,000	$ 50,000.00	1860	$ 2,000.00	
Purchased in 1860.					

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

	Number of shares.	Par value of shares.	COST: Expended through the Commonwealth Fund.	COST: Expended through the Internal Improvement Fund.	COST: Expended through the Sinking Fund.	COST: Total cost.	Dividend received by Commonwealth. Date	Dividend received by Commonwealth. Amount.
Expenditures by the Commonwealth, ... For construction work and improvements on the James River Canal, Blue Ridge Canal and Kanawha road and river which were turned over to the James River and Kanawha Company for 10,000 shares of capital stock of that company in accordance with act passed March 16, 1832. (P. 73.)	10,000	$1,000,000.00		$1,216,666.30		$1,216,666.30	1836	$10,093.00
Capital Stock of James River and Kanawha Company, ... Received in part payment of cost of Blue Ridge Canal Turnpike in accordance with act passed February 25, 1833, (P. 57). The balance of the cost of this turnpike, viz: $58.80, was paid to the State in cash by the James River and Kanawha Company.	92	9,200.00		9,200.00		9,200.00		
Expenditures by the Commonwealth, ... On account of subscriptions to capital stock.	19,908	1,990,800.00		1,990,800.00		1,990,800.00		
State bonds issued in accordance with the act passed March 23, 1860, .. (P. 113). In exchange for a similar amount of capital stock.	2,000	200,000.00		200,000.00		200,000.00		
	32,000	$3,200,000.00		$3,416,666.30		$3,416,666.30		$10,093.00
Capital stock issued to the Commonwealth on account of the items below,	72,000	$7,200,000.00						
Expenditures on account of interest on guaranteed bonds and annuity to stockholders of the James River Company; deducting from the latter, the amount of the annuity repaid to the Commonwealth by the James River and Kanawha Company, ...			$695,542.66	$145,670.45	$181,202.80	$1,022,415.91		
Cash loans, ...				890,000.00		890,000.00		
Principal amount required to produce annually, at six per cent, the sum of $21,000.00, guaranteed forever to the stockholders of the James River Company, by the act of March 23, 1860, ...				350,000.00		350,000.00		
Cash loans to the Richmond Dock Company by the Board of Public Works, transferred to the Commonwealth Fund; being a part of the debt amounting to $94,128.96, so transferred, ...			12,500.00			12,500.00		

The said debt became a liability of the James River and Kanawha Company through its purchase of the Richmond Dock Company, and is as below:—

Loan of Bank of Virginia stock, ...	$ 37,590.00
Cash, ...	12,500.00
Total, ...	$ 50,090.00
Premium on the above stock, ...	4,078.12
Total, ...	$ 54,078.12
Interest on $54,078.12, ...	33,714.69
Total amount of decree obtained by the Board of Public Works in February 1845, ...	$ 87,792.81
Interest on $87,792.81 to February 1845, ...	6,336.15
Total transferred to the Commonwealth Fund in exchange for a certificate of state stock for $100,000.00; the difference being paid in cash, ...	94,128.96

The total amount of $94,128.96 was received by the Commonwealth, in stock of the James River and Kanawha Company; but this account is charged only with that part thereof, which was expended in cash from March 19, 1823, to January 1, 1861, viz:—$12,500.00.

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

			COST					
	Number of shares.	Par value of shares.	Expended through the Commonwealth Fund.	Expended through the Internal Improvement Fund	Expended through the Sinking Fund.	Total cost.	Dividends received by Commonwealth Date	Amount.
Capital Stock issued to the Commonwealth, (Continued.)								
Bonds of the State loaned to the James River and Kanawha Company:								
As per act passed March 25, 1842,	$ 250,000.00							
" " " " " 1, 1847,	1,236,000.00					$1,596,000.00		
" " " " January 25, 1850,	110,000.00			$1,596,000.00				
Bonds of the James River and Kanawha Company: Guaranteed by the State and assumed in accordance with the act of March 23, 1860:								
As per act passed March 23, 1839,	$1,400,000.00							
" " " " " 9, 1849	350,000.00							
" " " " " 12, 1849,	150,000.00							
" " " " " 15, 1850,	360,000.00			$2,260,000.00		$2,260,000.00		
Total amount due the Commonwealth and capital stock issued therefor, in accordance with the act passed March 23, 1860,	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181,202.80	$6,130,915.91		$10,092.00

RECAPITULATION OF THE ACCOUNT OF THE JAMES RIVER AND KANAWHA COMPANY.

Account of construction and subscription to capital stock,	32,000	$ 3,200,000.00		$3,416,666.30		$3,416,666.30		
Amount of debt due the Commonwealth, guaranteed bonds and annuity assumed,	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181.202.80	$6,130,915.91		
Total,	104,000	$10,400,000.00	$708,042.66	$8,658,336.75	$181,202.80	$9,547,582.21		

Par value of the stock of the James River and Kanawha Company owned by the Commonwealth on January 1, 1861, and the cost thereof in cash from March 19, 1823, to January 1, 1861, excluding the Bank of Virginia stock, referred to above, and all interest due the Commonwealth at March 23, 1860.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 12 inclusive, and find them to be correct as to the amount and that they represent expenditures by the Commonwealth of Virginia for the purposes indicated.

Certified Correct:
ARTHUR G. POTTER.

PRICE WATERHOUSE & CO.,
For the Plaintiff.

Of the total capital investment of the James River and Kanawha Company as reported by that Company at September 30, 1860, 3.49% was located in West Virginia.

Certified Correct:
CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY,
For the Defendant.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

DEFENDANT'S EXHIBIT

Summary of

CASH RECEIPTS AND DISBURSEMENTS

of the

COMMONWEALTH OF VIRGINIA

From March 19, 1823, to January 1, 1861

Prepared by

THOMAS BIRD DIXCY

Certified Public Accountant,

30 Church Street,

New York.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

DEFENDANT'S EXHIBIT

Summary of

CASH RECEIPTS AND DISBURSEMENTS

of the

COMMONWEALTH OF VIRGINIA

From March 19, 1863, to January 1, 1871

Prepared by

THOMAS HUD DICEY

Certified Public Accountant,

30 Church Street,

New York.

COMMONWEALTH OF VIRGINIA.

Summary of Cash Receipts and Disbursements from March 19, 1823 to January 1, 1861.

Balances, March 19, 1823:		
Commonwealth Fund	$ 180,019.23	
Internal Improvement Fund	21,022.19	
Literary Fund	94,021.42	$ 295,062.84
Net profit on State bonds and certificates of indebtedness purchased, below par, from March 19, 1823 to January 1, 1861, Schedule No. 1		90,788.35
Value of shares of stock of James River Company, at $500.00 per share, purchased by the Commonwealth prior to March 19, 1823, deducted from principal of annuity to stockholders of the James River Company included in the Public Debt, per Joint Exhibit "A-1":		
	Shares	
Held by the Board of Public Works	284	
Held by the Literary Fund	138	
Total	422	
422 shares at $500.00 per share		211,000.00

RECEIPTS.

Amount of the public debt on the first day of January, 1861, per Joint Exhibit "A-1"	$32,919,863.93	
All moneys paid into the Treasury of the Commonwealth from the counties included within the present State of West Virginia during the period from March 19, 1823 to January 1, 1861; admitted to this account by counsel for West Virginia, per Joint Exhibit "F-1"	7,051,215.56	
Moneys received from counties within the territory now constituting the Commonwealth of Virginia, per Schedule No. 2	38,482,170.14	
Obligations of the Commonwealth of Virginia, other than the debt for public internal improvements, outstanding on the first day of January, 1861, per Schedule No. 3	2,204,898.19	
Other receipts, per Schedule No. 4	3,702,135.98	
Total receipts		84,360,283.80
Total		$84,957,134.99

DISBURSEMENTS.

Expenditures on account of appropriations made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, from March 19, 1823 to January 1, 1861; not including subscriptions to capital stock of internal improvement companies, nor such other expenditures as have been rejected from this account by counsel for West Virginia, per Joint Exhibit "C-1"		$ 1,251,288.92
Expenses of the government of Virginia from March 19, 1823 to January 1, 1861, admitted as "ordinary expenses" by agreement between counsel for Virginia and for West Virginia, per Joint Exhibit "D-1"		18,207,684.29
Expenditures on account of subscriptions to capital stock of joint stock companies, including banks, wholly or partly within the territory now constituting the State of West Virginia, in which the value of the equity of West Virginia, therein, is to be ascertained, except in banks, where the value of such equity is shown in the exhibit, per Defendant's Exhibit "G-1"		11,083,051.04
Expenditures on account of banks and public internal improvements charged, by the Defendant, to the present Commonwealth of Virginia, per Schedule No. 5		27,586,527.60
Expenditures on account of items not charged, by the Defendant, to the State of West Virginia, per Schedule No. 6		24,356,330.05
Investments in bonds other than State bonds (for public improvements) and other investments not charged to the State of West Virginia, per Schedule No. 7		305,376.64
Total disbursements		$82,790,287.54
Balances due from State agents on account of State bonds delivered for sale; and loss thereon and discount on bonds sold; at January 1, 1861, per Schedule No. 8		1,063,502.97
Balances, January 1, 1861:		
Commonwealth Fund	255,180.99	
Internal Improvement Fund	5,958.28	
Literary Fund	23,985.18	
Sinking Fund	$819,250.03	1,104,374.48
Total		$84,957,134.99

Net Profit on State Bonds and Certificates of Indebtedness Purchased, Below Par, from March 19, 1823 to January 1, 1861.

On State bonds issued under act of February 16, 1825, account of James River Company, par value of $7,400.00, purchased for $6,290.00, through the Internal Improvement Fund	$ 1,110.00	
On State bonds and bonds of the James River and Kanawha Company guaranteed by the State, purchased by the sinking Fund, established by act of March 10, 1835	872.39	
On State bonds purchased and canceled by the Sinking Fund, established by act of March 26, 1853, less interest accrued at time of purchase, where not separated from principal on books	12,091.04	
On State bonds purchased by the Sinking Fund, established under act of March 26, 1853, and held uncanceled, less interest accrued at time of purchase, not separated from principal on books	65,905.42	
On State bonds purchased by the Literary Fund, and held uncanceled	13,422.00	
Total		$93,400.85
Less:		
Premium on a bond of the James River and Kanawha Company guaranteed by the State, par value $500.00, purchased, through the Internal Improvement Fund, for $507.50	$ 7.50	
Premium on $50,000 of State bonds issued under act of Feb. 24, 1823, account of James River Co., purchased through the Internal Improvement Fund	1,250.00	
Difference between value at $500.00 per share, at which amount the shares are included in the principal of the annuity to the stockholders of the James River Company, assumed by the State in accordance with act passed March 23, 1860, of 87 shares, viz: $43,500.00, and cost of these shares, viz: $44,855.00, purchased by the Literary Fund	1,355.00	
		2,612.50
Net profit		$90,788.35

SCHEDULE NO. 1.

Moneys Received from Counties Within the Territory Now Constituting the Commonwealth of Virginia.

Bonus, received in cash, from banks within the present State of Virginia		$ 1,036,932.93
Bristoe estate (presumed to be an escheat):		
Sale of lots in Prince William County	$17,289.18	
Net income from the estate	7,914.05	25,203.23
Buckingham Furnace Lands	5,671.77	
Less charges applicable thereto	973.66	4,698.11
Clerks of County and Corporation Courts		571,053.84
Clerks of Superior Courts		308,238.45
Clerks of District Courts		2,890.90
Clerks of Superior Courts of Chancery		12,427.29
Costs, Civil and Criminal Prosecutions		6,273.00
Dividends on bank stocks		5,936,628.70
Dividends and interest received from turnpikes and roads lying wholly within the present State of Virginia		118,115.18
Dividends and Interest received from railroad companies, wholly within the Present State of Virginia		1,748,570.23
Dividends and interest received from canal and navigation companies, wholly within the present State of Virginia		321,467.78
Dividends received from turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia; Virginia's proportion on mileage basis		1,545.35
Escheats, less refunds and expenses		51,400.55
Fines, forfeitures and penalties, less refunds, etc.		307,004.68
James River and Kanawha Company		9,739.79
Virginia's proportion of dividend, amounting to $10,092.00 on stock of above company, on the basis of amount of capital invested within the territory now constituting the two present States.		
Lands, sale of unappropriated		46,873.48
Lands, redemption of		26,050.07
Lands, sales of delinquent and forfeited		18,804.75
Lands, redemption of and sales of delinquent and forfeited, less refunds and expenses		5,024.29
Militia fines, net		360,268.92
Northwestern Turnpike Road		38,788.51
Tolls collected at gates located within the present State of Virginia.		
Staunton and Parkersburg Road		8,740.68
Tolls collected at gates located within the present State of Virginia.		

Southwestern Turnpike Road, tolls		28,117.91
Taxes, general, net		26,407,649.32
Taxes, capitation, net		307,362.97
Taxes, free negroes, net		79,720.29
Tax on dividends, net		363,659.18
Tax on railroad travel		123,613.34
Tax on notarial seals		177,994.21
Taxes, collateral inheritance:		
Virginia	3,330.24	
County not recorded	348.85	3,679.09
Voluntary enslavement		4,695.79
Miscellaneous:		
Virginia	10,069.73	
Undivided (not claimed for West Virginia.)	9,867.60	19,937.33
Total		$38,482,170.14

SCHEDULE NO. 2.

Obligations of the Commonwealth of Virginia, Other Than the Debt for Public Internal Improvements, Outstanding on the First Day of January, 1861.

Temporary loans, in anticipation of taxes, as per the act of March 7, 1851	$ 2,000.00
United States; amount of surplus revenue received by Virginia, which was distributed by act of Congress, approved June 23, 1836, and accepted by the State in accordance with act passed December 20, 1836	2,198,427.99
Unclaimed dividends of incorporated companies	4,470.20
Total	$2,204,898.19

SCHEDULE NO. 3.

Other Receipts.

Bank of the United States:		
Dividends	$ 45,750.00	
Sale of 500 shares	50,351.00	
		$ 96,101.00
Chesapeake and Ohio Canal Company:		
Interest on debt to state for interest paid on guaranteed bonds		6,372.00
Dismal Swamp Canal Company:		
Repayment of loan made prior to March 19, 1823		37,500.00
Dividends on capital stock of the James River Company owned by the Board of Public Works, being dividends on and after July 1, 1835, received from the James River and Kanawha Company		166,140.00
Interest:		
On shortage of Jerman Baker, State Treasurer, in Commonwealth Fund	$ 1,258.65	
On surplus revenue of the United States, deposited with Virginia, loaned to banks, etc	111,419.37	
On loan to Richmond and Petersburg Railroad Company	2,695.88	
On debt of the James River and Kanawha Company, due the State	142,181.74	
On guaranteed bonds of the James River and Kanawha Company, less amount of interest accrued at time of purchase of the bonds	2,713.83	
On United States five per cent. stock of 1821	388.67	
On loans to the James River and Kanawha Company	603,965.37	
On loans to Kanawha Board, of James River and Kanawha Company in accordance with act of March 23, 1860	1,500.00	
		866,123.51
James River Company (on State account):		
Tolls and other income, net	$567,677.38	
Re-sale of James River Company bonds, purchased prior to March 19, 1823	30,300.00	
		587,977.38
Literary Fund, amounts received on account of principal of investments made prior to March 19, 1823:		
United States six per cent. stock redeemed	$ 13,000.00	
Farmers Bank of Virginia stock sold for $9,762.00, less $2,575.00, paid for stock purchased after March 19, 1823	7,187.00	
United States Bank stock	78,350.00	
Loans to individuals	80,000.00	
Washington College loan	2,000.00	
Profit on United States stock redeemed $818.18, less premium of $420.00 on City of Richmond stock purchased after March 19, 1823	398.18	
		180,935.18
Net income from sundry investments of the Literary Fund not including interest on State bonds, so held, dividends on James River Company stock paid by the State nor dividends from banks in the present State of West Virginia		968,195.03

Northwestern Turnpike Road:		
Profit on Investment in United States stock...	$ 805.43	
Profit on investment in Bank of the Valley stock..	378.00	
		1,183.43
Preston, John, State Treasurer, on account of shortage prior to the year 1820		53,884.40
Premium on State bonds sold		354,176.75
Rentals, net		49,158.99
Staunton and Parkersburg Road:		
Interest on sundry accounts		451.16
United States, Revolutionary Claims:		
Through the Commonwealth Fund	$ 474,475.46	
Less payments on account of half pay claims and fees	410,703.50	
	$ 63,771.96	
Through the Literary Fund, less commissions	182,441.48	
		246,213.44
Upper Appomatox Company:		
Repayment of loan made prior to March 19, 1823 and interest thereon		11,791.74
Winchester and Potomac Railroad Company:		
Annuity	$ 65,075.00	
Interest on loans	10,856.97	
		75,931.97
Total		$3,702,135.98

SCHEDULE NO. 4.

Expenditures on Account of Banks and Public Internal Improvements, Charged, by the Defendant, to the Present Commonwealth of Virginia.

On account of subscriptions to capital stock of banks within the territory now constituting the Commonwealth of Virginia	$ 2,108,591.00
On account of subscriptions to capital stock of turnpike and road joint stock companies, wholly within the territory now constituting the Commonwealth of Virginia	1,897,747.22
On account of subscriptions to capital stock of bridge companies, wholly within the territory now constituting the Commonwealth of Virginia	49,622.16
On account of subscriptions to capital stock of Navigation companies, wholly within the territory now constituting the Commonwealth of Virginia	908,173.17
On account of subscriptions to capital stock of railroad companies, wholly within the territory now constituting the Commonwealth of Virginia	13,713,256.55
On account of appropriations to turnpikes and roads wholly within the territory now constituting the Commonwealth of Virginia	791,888.04
On account of the construction of the Blue Ridge	

railroad		1,604,824.73
On account of appropriation for bridge at Covington		6,007.07
On account of appropriations to turnpikes and roads extending into and between the territory now constituting the two present States; Virginia's proportion on an actual cost and mileage basis		247,289.33
Alexandria Canal Company stock subscription		272,000.00
Amount of loans to railroad companies, wholly within the territory now constituting the Commonwealth of Virginia, which were unpaid on January 1, 1861		2,930,000.00
On account of the construction of the Covington and Ohio Railroad, lying partly in the present Commonwealth of Virginia and partly in the present State of West Virginia, no part of the cost of which has been charged to West Virginia by the Defendant, under instruction of her counsel		2,787,128.33
Winchester and Potomac Railroad Company:		
Subscription to capital stock	$120,000.00	
Money loaned by the State	150,000.00	270,000.00
The above railroad lay, partly, within the territory now constituting the State of West Virginia. The stock and debt as above was surrendered, by Virginia, in the year 1846, for an annuity of $5,000.00. Under authority of an act passed by the Commonwealth of Virginia, February 22, 1866, the Winchester and Potomac Railroad Company was relieved from payment of the annuity by paying into the treasury of Virginia, bonds of the State amounting to $83,333.33, to cover the principal of the annuity, and a further sum to cover the amount of annuity in arrears. In view of the above no part of the original expenditure amounting to $270,000.00 is charged to West Virginia.		
Total		$27,586,527.6

SCHEDULE NO. 5.

Expenditures on Account of Items Not Charged by the Defendant to the State of West Virginia.

Brandonville, Kingwood & Evansville Road		$ 10,595.73
Bath, Town of, Loan to		2,500.00
Berryville & Charlestown Turnpike Co.		20,455.74
On account of subscription to the capital stock of the Berryville and Charlestown Turnpike Company, which turnpike extended into and between the territory now constituting the Commonwealth of Virginia and State of West Virginia. Omitted from Defendant's Exhibit "G-1" (the seventh inquiry of the decree of reference), because the road was purchased by the State, the stock interests, thereafter becoming valueless. A proportion of the purchase price paid for the physical property is included in Joint Exhibit "C-1."		
Birthplace of Washington, Land		139.21
Boundary Lines		16,704.78
Connollee, Thornton, Refund		186.70
Conventions, Expenses of		258,906.28
Chief Justice Marshall, Portrait of		500.00
Commission to South Carolina regarding Federal Relations		2,500.00
Contingent Fund (gun houses in Virginia)		1,000.00
Counterfeit Money, charged off		190.00
Cannon-house, 71st Regiment		110.00
Clarksburg & Buckhannon Turnpike Co.		19,259.36
Chesapeake & Ohio Canal Company stock subscription (in Maryland)		250,000.00
Calling out Militia at Wheeling in 1836		1,099.00
Damages remitted		93.96
Deaf, Dumb and Blind, Institute for:		
For site and buildings	$ 68,320.94	
Land, fencing, boiler-house, etc.	7,000.00	
Heating, lighting, etc., plant	25,341.00	
		100,661.94
Experimental Railway		10,000.00
Entertaining		3,602.33
Eastern Lunatic Asylum (Williamsburg):		
Buildings	$ 72,318.88	
Less receipts	4,054.69	
		68,264.19
Gas installation		6,000.00
Enclosure walls, etc.		13,161.00
Additional charges on buildings, etc.		38,589.00
Furniture, buildings, land, etc.		7,266.00
Exchange, expense of in paying interest on bonds		17,071.57
Expenses of the Board of Public Works	$ 203,379.38	
Less amount included in Joint Exhibit "D-1," as ordinary, amount excluded being extraordinary	164,917.76	
		38,461.62

Free persons of color—transportation to Liberia		26,103.50
Fugitive slave expense		2,201.00
Gun-house at Alexandria		900.00
Gun-house at Richmond, Fayette Artillery		1,079.09
Harper's Ferry raid	$ 255,745.77	
Less receipts	3,982.12	
		251,763.65
Insurrection of slaves in year 1831		18,969.41
International exchanges		2,836.19
Improvement of Public Square		1,456.91
Interest:		
On Public Debt	$18,324,044.50	
On Treasury Notes	133,527.34	
On Temporary Loans	107,844.57	
On old Military Debt of 1814 and prior	9,331.43	
		18,574,747.84
Interest on payment made to penitentiary before due		12,897.96
Interest on payments by the State for subscription to stock of Northwestern Bank of Virginia		8,091.33
Interest paid on bonds of the Chesapeake and Ohio Canal Company, guaranteed by the State		250,709.66
Interest on sundry current accounts, net		40,373.13
James River Company dividends, etc., accruing while property of that company was owned by State, paid afterward		3,619.09
James River Company:		
Dividends paid by the State to stockholders of, not including dividends on stock owned by the State	$ 81,415.28	
On account of annuity to stockholders assumed in accordance with act passed March 23, 1860	2,820.00	
		84,235.28
Jefferson, Statue		9,950.00
Kingwood & West Union Turnpike Co.		18,140.61
Lafayette Reception		11,998.17
Lyle, amount received in 1780, refunded		125.38
Lemmon Slave Case—expense of prosecution		1,648.85
Lot on Governor street	$ 3,827.25	
Less, for lot on Franklin street, sold	2,843.33	
		983.92
Museum property		6,958.50
Maps (Commonwealth Fund)	$ 16,628.04	
Maps (through Internal Improvement Fund)	11,446.48	
		28,074.52
Medical College of Virginia (Richmond): Construction		25,000.00
Mexican War expense	$ 32,101.16	
Less receipts	27,943.66	
		4,157.50

Monroe Monument and Burial	$ 4,280.54	
Less receipts	393.00	
		3,887.54
Margaret Academy (Accomac county, Va.):		
For support	$ 500.00	
For improvement and repairs	1,000.00	
		1,500.00
Northwestern Turnpike Road, repairs, etc. (West Virginia's proportion)		109,587.74
Northwestern Turnpike Company of Alleghany, a Maryland corporation, formed for the purpose of constructing that part of the Northwestern Turnpike Road which ran through formerly Alleghany county, now Garrett county, Maryland, on account of subscription to the capital stock		7,882.92
Pensioners, Cincinnati Society		696.87
Pensioners		65,997.02
Penitentiary, erecting Hospital		9,346.98
Penitentiary, lot for		3,000.00
Penitentiary, pipe for water supply		1,600.50
Pauley, L. A. (Augusta county), claims dating from 1782		434.15
Powder, arms and armory, year 1860		79,471.59
Primary Schools, out of income		2,400,331.11
Slaves executed, condemned and transported	$ 575,450.03	
Less receipts from sales	247,761.46	
	$ 327,688.57	
Less net amount received through the Literary Fund for sales of runaway slaves and free negroes	16,520.22	
		311,168.35
Swords and medals voted by Assembly		11,681.35
Surveying: Paid to James River and Kanawha Company for surveying Potts and Second Creeks		852.37
Surveying		250,206.56
State bonds loaned to the James River and Kanawha Company, Kanawha Board, for improvements in accordance with act passed March 23, 1860, omitted from charges against West Virginia by the Defendant under instructions of her counsel		60,000.00

Staunton & Parkersburg Road, repairs, etc. (West Virginia's proportion)		21,700.74
State Courthouse		22,387.54
Square, Capitol, Governor's Mansion, etc.: Guard-house, grading, etc., installing water and gas, and purchase of lot		12,278.47
Treasury Notes, overpayment of		50.00
Treasury Notes, expense of printing, etc.		375.74
Tucker, J. Randolph, Attorney General, amount paid to, in the year 1859, on account of prosecution, etc., of Selden, Withers & Company		500.00
Trans-Alleghany Lunatic Asylum		27,000.00
University of Virginia, buildings and water system		25,000.00
Virginia Military Institute, buildings		151,000.00
Virginia Military Institute, Statue of Washington		10,000.00
Washington College, unexplained payment in 1848		8,114.64
Warehouses purchased in present State of Virginia		37,550.15
Washington Monument (at Richmond)	$ 262,249.22	
Less receipts	92,542.41	
		169,706.81
Wheeling, City of, for interest on guaranteed bonds	$ 30,627.45	
Less receipts	14,940.00	
		15,687.45
War, arms and munitions of		3,346.13
Wars, expenses of old		20,132.35
Weighmaster of Live Stock, land at Richmond		1,500.00
Western Lunatic Asylum (Staunton): Buildings	$ 164,642.37	
Less receipts	4,000.00	
		160,642.37
Water, gas and heating plant		40,685.00
Land, enclosure walls, etc.		25,988.01
Support, land, etc.		10,700.00
Total		$24,356,330.05

SCHEDULE NO. 6.

Investment in Bonds Other Than State Bonds (for Public Improvements), and Other Investments Not Charged to the State of West Virginia.

Through the Internal Improvement Fund:			
Bonds of the James River Company, issued under act passed February 17, 1820		$31,300.00	
State bonds issued for bonds of the James River Company, under act of March 18, 1840	$40,000.00		
under act of March 16, 1847	25,300.00	65,300.00	
			$ 96,600.00
Through the Literary Fund:			
Virginia Revolutionary 6% bonds		$ 3,074.77	
Bank of Virginia, stock		18,449.12	
University of Virginia, loan No. 5		40,000.00	
University of Virginia, loans No. 6 and No. 7		20,000.00	

Bonds of the James River Company, issued under act passed February 17, 1820, par value of $15,000.00 purchased for	15,960.00	
Richmond Academy stock	400.00	
Bank of the Valley, stock	10,134.00	
Loan to Emory and Henry College	18,000.00	
The Faculty of the Medical Department of the Hampden Sidney College, at Richmond: Amount invested in land and buildings	25,000.00	
Medical College in the valley of Virginia; invested in property (at Winchester)	6,400.00	
Davis's book on Criminal Law, copyright purchased	12,000.00	
		169,417.89
Through the Commonwealth Fund: Virginia Revolutionary 6% bonds		39,357.75
Total		$305,375.64

SCHEDULE NO. 7.

Balances Due from State Agents on Account of State Bonds Delivered for Sale; and Loss Thereon and Discount on Bonds Sold, At January 1, 1861.

From Selden, Withers Company:		
Account of coupon bonds	$548,173.98	
Account of sterling coupon bonds	265,447.83	
Total	$813,621.81	
Less amount received through the Sinking Fund, applied on above	22,800.00	
		$ 790,821.81
From James F. Soutter:		
Account of coupon bonds	$100,000.00	
Account of sterling coupon bonds	86,650.00	
Total	$186,650.00	
Less amount received through the Sinking Fund, in full settlement	17,333.59	
Loss		169,316.41
Discount on sterling coupon bonds sold by Selden, Withers and Company		102,364.75
Total		$1,062,502.97

SCHEDULE NO. 8.

MINNESOTA
STATE
LIBRARY

APR 18 1910
JAMES H. MCKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 2, Original.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA.

...TION OF DEFENDANT FOR LEAVE TO TAKE FURTHER TESTIMONY.

WM. G. CONLEY,
Attorney General of West Virginia.

JNO. G. CARLISLE,
JNO. C. SPOONER,
WESLEY MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
CHARLES E. HOGG,
W. M. O. DAWSON,
Of Counsel.

MINNESOTA STATE LIBRARY

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

Original, No. 3.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, The State of West Virginia, by William G. Conley, Attorney General, in pursuance of the notice duly given to the plaintiff and filed herein, humbly prays leave to be permitted in some proper way under the order of this court to take and file herein testimony, oral and documentary, for the purpose of proving that the plaintiff, The Commonwealth of Virginia, has no interest or ownership in the subject-matter of this bill.

Your petitioner further shows and avers that no opportunity has been given to the petitioner to take this testimony; that it is testimony pertinent to the issues in this cause as made in the bill and answer filed herein.

That this testimony was not pertinent to any matter referred to the special master, and no testimony could properly

have been admitted by him in relation thereto under the terms of the decree of reference.

Your petitioner further avers that this petition is not filed and motion made for the purpose of delay, but alone for the purpose of properly presenting this cause to the court.

And as in duty bound your petitioner will ever pray.

STATE OF WEST VIRGINIA,
By WILLIAM G. CONLEY,
Attorney General.

JOHN G. CARLISLE,
JOHN C. SPOONER,
WESLEY MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
CHAS. E. HOGG,
W. M. O. DAWSON,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

Original, No. 3.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

Now comes the State of West Virginia, defendant herein, by William G. Conley, her attorney general, and respectfully moves this honorable court to postpone the hearing of this cause until the same can be argued before and considered by a full bench, for the following reasons:

FIRST. Because the controversy herein is between two sovereign States.

SECOND. Because most of the basic questions involved herein are of great and far-reaching importance. They involve all the measures and acts resulting in the creation of the State of West Virginia. The matters in controversy have been long pending and have aroused deep interest and created widely differing convictions between the citizens of the two States. They have been the subject of legislation and public discussion to such degree that the hearing and

determination of this cause before and by all the justices of this honorable court is in the highest sense proper and desirable.

THIRD. Because, in the present posture of this suit, all questions in respect of law and merits, are still open and stand for argument and judgment, except the question of the jurisdiction of this honorable court to hear and determine the cause which has been heretofore decided "without prejudice to any question."

206 U. S., pp. 290, 322.
209 U. S., p. 514.

STATE OF WEST VIRGINIA,
By WILLIAM G. CONLEY,
Attorney General.

JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

Original, No. 3.

COMMONWEALTH OF VIRGINIA
vs.
STATE OF WEST VIRGINIA.

NOTICE.

To the Commonwealth of Virginia and Samuel W. Williams, Attorney General:

You are hereby notified that the defendant, the State of West Virginia, will, on Tuesday, the 11th day of October, 1910, or as soon thereafter as the motion can be made, ask the court to postpone the hearing of this cause until the same can be argued before and considered by a full bench. A copy of the motion is annexed hereto.

OCTOBER 3, 1910.

STATE OF WEST VIRGINIA,

By

Attorney General.

Office Supreme Court U. S.
FILED
SEP 27 1911
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States

Number —, Original.

October Term, 1911.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

MOTION OF THE COMPLAINANT.

RICHMOND, VIRGINIA, September 26th, 1911.

TO THE HONORABLE W. G. CONLEY,
Attorney General of West Virginia,
Charleston, West Virginia.

Please take notice that in the suit of the *Commonwealth of Virginia* v. *the State of West Virginia*, Original No. ——, pending in the Supreme Court of the United States at Washington, D. C., I shall, on Monday the 9th day of October, 1911, move the said court to proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the sixth day of March, 1911, and will base said motion on the record of the case and the facts stated in the foregoing statement in writing, and exhibits filed therewith.

Respectfully,

COMMONWEALTH OF VIRGINIA,

By Samuel W. Williams

Attorney General of Virginia.

In the Supreme Court of the United States

Number ——, Original.

October Term, 1911.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

MOTION OF THE COMPLAINANT.

The Commonwealth of Virginia, through Samuel W. Williams, her Attorney General, shows to the court:

1. That upon the publication of the decision of the court made in the above entitled cause on the 6th day of March, 1911, the Virginia Debt Commission, which by law was "authorized and empowered by and with the advice and approval of the Attorney General of Virginia, to take such action and institute such proceedings on behalf of the State, as may, in the judgment of said Commission and Attorney General, be needful and proper to protect the interest of the State, and bring about and carry into effect a settlement as aforesaid" (see Record p. 49), held a session in Richmond, Virginia, on the 20th of April, 1911, and proceeded with the approval of the Attorney General to take such action on the part of Virginia, as in their judgment was proper to carry into effect the suggestion of this court, contained in the opinion delivered by Mr. Justice Holmes, in the following words:

> "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court in reliance upon the honor and constitutional obligations of the States concerned, rather than upon ordinary remedies, we think it best at this stage, to go no further, but to await the effect of a conference between the parties which, whatever the outcome, must take place."

2. That this court having determined the share of the principal of the public debt of the Commonwealth of Virginia for which West Virginia is liable, in manner and form as set forth in its decision, but left the question of the interest on said debt to be adjusted by a conference between the two States, the Virginia Debt Commission, by and with the approval of the Attorney General, the official body of the Commonwealth fully empowered to deal with this subject, in obedience to the recommendation of the court, took the following action:

3. It addressed a communication to the Governor of West Virginia in the words and figures following:

RICHMOND, VA., April 20, 1911.

To His Excellency,

The Governor of West Virginia.

Sir:—The "Virginia Debt Commission," constituted and acting on behalf of Virginia under the joint resolution of the General Assembly of that State, approved March 6th, 1894, and the act of said General Assembly approved March 6th, 1900, was "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia, proper to be borne by West Virginia," as shown by copies of said Resolution and Act hereto attached.

In the opinion of the Supreme Court of the United States delivered on the 6th of March, 1911, by Mr. Justice Holmes, in the case of the *Commonwealth of Virginia* v. *State of West Virginia*, there was announced a "decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed."

With respect to the amount of *interest* on such principal, the court made no decision, but in referring thereto said: "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court, in reliance upon the honor and constitutional obligations of the States concerned rather than upon ordinary remedies, we think it best, at this stage, to go no further, but to await the effect of a conference between the parties, which, whatever the outcome, must take place." A copy of said opinion is also hereto attached.

At a meeting of the Virginia Debt Commission, held in Richmond, Va., on the 20th day of April, 1911, the subject of the "conference between the parties," suggested by the court,

received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.

The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States.

Very respectfully,

(Signed) JOHN B. MOON,
Chairman Virginia Debt Commission.

Attest:

(Signed) JOSEPH BUTTON,
Secretary.

Resolved Further, That the said letter be transmitted with all convenient despatch to the Governor of West Virginia by a Special Committee consisting of Messrs. Flood, Rhea and Downing, any two members to have power to act, who shall report such reply as they may receive to the Chairman of this Commission.

The above action of the Virginia Debt Commission is approved as is provided by Act approved March 6, 1900.

(Signed) SAMUEL W. WILLIAMS,
Attorney General of Virginia.

A copy: Teste

(Signed) JOSEPH BUTTON,
Secretary.

And this communication the said Commission caused to be transmitted to the Governor of West Virginia by a committee composed of three members of the Commission, any two of whom were empowered to act, which committee delivered the same into the hands of the Honorable William E. Glasscock, Governor of West Virginia, at Charleston, on the second day of May, 1911, as will appear from the following letter of the Governor of West Virginia to the Governor of Virginia:

STATE OF WEST VIRGINIA,
Governor's Office,
Charleston, May 9, 1911.

HON. WM. HODGES MANN,
Governor of Virginia,
Richmond, Va.

Dear Governor Mann:—Late in the evening of the 2d instant I received a call from Messrs. Wm. F. Rhea and H. H. Downing, bearing letters of recommendation from you and representing the Virginia Debt Commission. They made the following request:

"At a meeting of the Virginia Debt Commission, held in Richmond, Virginia, on the 20th day of April, 1911, the subject of the 'conference between the parties,' suggested by the court, received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.

"The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States."

Their request relates to my message to the Legislature at the extraordinary session which is to convene on May 16th. Mr. Rhea, of the Commission, particularly seemed to think that early, if not immediate, response should be made. You, of course, will appreciate the fact that it would be wholly improper to advise anyone of the contents of my communication to the Legislature or even in general of my purpose relative thereto in advance of the submission of the message to the Legislature itself.

With greatest respect, I remain,

Very truly yours,
(Signed) WM. E. GLASSCOCK,
Governor.

4. To this communication the Governor of West Virginia has made no response, either to said committee, or to the Virginia State Debt Commission which it represented; nor has the State of West

Virginia, through any of its constituted authorities, or in any other manner, taken any action with reference to the overtures so made by the State of Virginia for a conference between the States to effect an amicable settlement of the matters referred to in the suggestion of this court in its decision above referred to.

5. That on a day prior to the 20th of April, 1911, the Governor of West Virginia had issued a proclamation convening the Legislature of West Virginia in extraordinary session for the consideration of two matters of business specified in said proclamation, but that said Legislature did not assemble in extra session until the 16th day of May, 1911, and on that day there was sent to the Legislature the "Message of Governor Glasscock to the Legislature of 1911. Extra Session, May 16, 1911," a copy of which will be filed herewith.

6. The attention of the court is respectfully called to so much of said message as relates to the Virginia Debt case, and particularly to the paragraph of said message, next to the last, which is in the following words:

> "The Constitution provides that the Governor may convene the Legislature whenever in his opinion the public safety or welfare shall require it; and that he shall convene it on application in writing of three-fifths of the members elected to each House. If, however, without such formal action by three-fifths of the members of each House, a majority of the members of your honorable body should in any manner express to me the opinion that the Legislature should be called into extraordinary session to consider the conditions presented by the opinion of the Supreme Court of the United States, I should deem it sufficient evidence that a proper condition existed for the convening of the Legislature for that purpose. I shall be glad to be advised from time to time of the views of the members of the Legislature on this subject."

The Constitution of West Virginia provides (Art. 7, Sec. 7):

> "The Governor may on extraordinary occasions convene, at his own instance, the Legislature, but when so convened, it shall enter upon no business except that stated in the proclamation by which it is convened."

7. The proclamation of the Governor convening the Legislature in extra session had been issued before the Virginia Debt Commission met in Richmond on the 20th of April, 1911, but the Legislature did not assemble in session until the 16th day of May, 1911, so that twenty-six days intervened between the date of the communication from the Commission to the Governor, and the assembling of the Legislature in extra session.

The Virginia Debt Case was not one of the subjects of business mentioned in the proclamation convening the Legislature, but the intervening time was sufficient to have allowed the Governor to include this subject in a further proclamation, before the Legislature assembled, or to have made it the subject of another proclamation, after the Legislature had assembled, and before it had adjourned and dispersed from the Capitol.

The Constitution of the State laid the responsibility upon the Governor, of convening the Legislature, for the consideration of such business as he might state in his proclamation convening that body, but it here appears that the Governor deemed it wisest to cast this responsibility upon the members of the Legislature, or upon a majority of that body, by referring to them the question as to "whether a proper condition existed for the convening of the Legislature for that purpose."

8. Complainant shows your Honors, that under the Constitution of West Virginia, the Legislature of that State (unless specifically convened by the Governor in extraordinary session) can meet bienially only, its regular sessions beginning on the second Wednesday in January in each alternate year—and that the last regular session of that body was held under that Constitution beginning on the second Wednesday in January of the present year.

See Section 18, Article VI, of Constitution of West Virginia, which is in the words and figures following:

> "The Legislature shall assemble at the seat of government biennially, and not oftener, unless convened by the Governor. The first session of the Legislature, after the adoption of this Constitution, shall commence on the third Tuesday of November, 1872; and the regular biennial session of the Legislature shall commence on the second Wednesday of January, 1875, and every two years thereafter, on the same day."

There will accordingly be no regular session of the Legislature of that State until the session commencing in due course on the second Wednesday in January, 1913.

9. Complainant farther respectfully shows your honors that the Commonwealth of Virginia, and her duly constituted representatives, have been ready and anxious to meet the authorized representatives of West Virginia for the purpose of an amicable adjustment of the important question left undecided by the decision of this court, in an effort to reach some just and equitable conclusion as to what interest under all of the circumstances of the case, West Virginia should assume and pay on her equitable share of the common indebtedness, provided there was any hope held out that such a conference would result in any equitable and prompt adjustment of that question; but from the manner in which the proposal made by the Commonwealth of Virginia in that behalf has been received, and from other facts and circumstances shown by the record, she has been reluctantly constrained to the conclusion that there is no likelihood whatever that any satisfactory result would be attained by a renewal of, or by farther pressing the overture already made, and which has been so completely ignored.

10. The foregoing recitals as to the action of the Virginia Debt Commission and the Attorney General, the overtures they made to the Governor of West Virginia, and through him to the Legislature of that State, and the comments of the Governor of West Virginia thereon, are supported by the report of the committee appointed by the Virginia Debt Commission to wait upon Governor Glasscock, and the documents filed therewith, especially Governor Glasscock's message to the Legislature of West Virginia on the 16th of April last and documents printed in the appendix thereto, a copy of which will be attached hereunto as part hereof.

11. The Commonwealth of Virginia having thus exhausted the means within her control for bringing about a conference between the two States as recommended by the court, can, under the circumstances, derive no hope or expectation that West Virginia will make any agreement with Virginia for a settlement in the manner indicated by this Court, and is convinced that the time has come for this court in its own way to determine the questions left open

by its decision already rendered, and to grant the complainant complete relief.

To this end she therefore respectfully urges that the court will, in accordance with the alternative suggestion made in its decision, recommit the cause to the Special Master with instructions to ascertain and report forthwith to the court the amount of interest which the State of West Virginia should be required to pay on the principal sum already indicated by the court, or that the court will proceed otherwise, as it may determine, to adjudicate that question.

The Commonwealth of Virginia respectfully urges and moves the court that the cause be speeded so that a final decree may be made therein and this controversy brought to a close.

COMMONWEALTH OF VIRGINIA,

By Saml. W. Williams

Attorney General of Virginia.

APPENDIX.

RICHMOND, VA., September 20th, 1911.

To the Virginia Debt Commission
in Session at Richmond.

GENTLEMEN:—On the 20th day of April, 1911, the Virginia Debt Commission, in session at Richmond, adopted a resolution authorizing and directing John B. Moon, Chairman of said Commission, to sign on behalf of the Commission, a letter in the following form, the same to be attested by the Secretary of the Commission, addressed to His Excellency, the Governor of West Virginia:

To His Excellency,
The Governor of West Virginia.

Sir:—The "Virginia Debt Commission," constituted and acting on behalf of Virginia under the joint resolution of the General Assembly of that State, approved March 6th, 1894, and the act of said General Assembly approved March 6th, 1900, was "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia, proper to be borne by West Virginia," as shown by copies of said Resolution and Act hereto attached.

In the opinion of the Supreme Court of the United States delivered on the 6th of March, 1911, by Mr. Justice Holmes, in the case of the *Commonwealth of Virginia* v. *State of West Virginia*, there was announced a "decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed."

With respect to the amount of *interest* on such principal, the court made no decision, but in referring thereto said: "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court, in reliance upon the honor and constitutional obligations of the States concerned rather than upon ordinary remedies, we think it best, at this stage, to go no further, but to await the effect of a conference between the parties, which, whatever the outcome, must take place." A copy of said opinion also is hereto attached.

At a meeting of the Virginia Debt Commission, held in Richmond, Va., on the 20th day of April, 1911, the subject of the "conference between the parties," suggested by the court,

received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.

The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States.

Very respectfully,

(Signed) JOHN B. MOON,
Chairman Virginia Debt Commission.

Attest:

(Signed) JOSEPH BUTTON,
Secretary.

The said Virginia Debt Commission, at the same meeting, adopted a resolution appointing Mr. Flood and the undersigned, as a special committee, to transmit with all convenient dispatch to the Governor of West Virginia, the letter addressed to him as shown above. Mr. Flood not being able to accompany the undersigned at the time arranged for carrying out the resolution last mentioned, the undersigned proceeded to Charleston, West Virginia, on the 2nd day of May last, and in the evening of that day called on His Excellency, William E. Glasscock, Governor of West Virginia, and was very cordially received. The undersigned presented to him letters of introduction from Governor William Hodges Mann, of Virginia, and at the same time the undersigned delivered to him the communication above mentioned, together with the opinion of the Supreme Court of the United States in the case of *Commonwealth of Virginia* v. *State of West Virginia*, and with the act of the General Assembly of Virginia of 1894, entitled "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment

of those found to be entitled to the same," approved March 6, 1894, and with an act of the General Assembly of Virginia of 1900, entitled "As act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises," approved March 6th, 1900, attached thereto. The undersigned advised Governor Glasscock that they had been sent to West Virginia by the Virginia Debt Commission in pursuance of the intimation expressed in the decision of the West Virginia debt question by the Supreme Court of the United States to the effect that the representatives of the Commonwealths of Virginia and West Virginia should undertake to negotiate a settlement of the interest on that part of the debt due by West Virginia to the State of Virginia, and that they hoped that he, the Governor of West Virginia, would cause to be appointed a representative or representatives of the State of West Virginia with full authority to treat with the Virginia Debt Commission on the subject of interest to be paid by the State of West Virginia; that they believed that representatives of the two States could make an amicable adjustment of the matter in controversy. The Governor of West Virginia expressed his intention of giving the matter very thorough investigation and consideration, after which he would make such reply to said communication as he deemed necessary and proper. Up to this time neither of the undersigned has received any reply from the Governor of West Virginia to the communication delivered to him as above mentioned.

Your Committee herewith attaches to this report the message of the Governor of West Virginia to the Legislature of that State, being in extra session, May 16th, 1911, so far as it relates to the Virginia debt case. Beginning on page 15 of the message aforesaid, under the heading "Virginia Debt Case," will be seen what the Governor of West Virginia has to say to the Legislature in regard to the West Virginia Debt matter. It will be noticed that the Governor attaches to his message an appendix containing the decision of the Supreme Court of the United States in *Commonwealth of Virginia* v. *State of West Virginia*, and also the Act of

the General Assembly of Virginia of March 6th, 1894, above alluded to, and also the Act of the General Assembly of Virginia of March 6th, 1900, above alluded to, and also the communication signed by John B. Moon, Chairman of Virginia Debt Commission, and addressed to His Excellency, Governor of West Virginia, which communication has been above set forth in this report, and also the resolution of the Virginia Debt Commission appointing Mr. Flood and the undersigned, giving power to any two members to act to transmit with all convenient dispatch to the Governor of West Virginia the communication aforesaid. The action of the Virginia Debt Commission in communicating as aforesaid with the Governor of West Virginia, and appointing a special committee to transmit said communication to the Governor of West Virginia was approved by Samuel W. Williams, Attorney General of Virginia, attested by Joseph Button, Secretary of said Virginia Debt Commission, as the record will show.

In said appendix, on page 26, will also be seen the letter of the Governor of West Virginia, dated May 9th, 1911, addressed to Hon. William Hodges Mann, Governor of Virginia, Richmond, Va., relative to the visit of the undersigned to the Governor of West Virginia, and the purpose of same, the said letter being in answer to the letters of Governor Mann introducing the undersigned to the Governor of West Virginia, which letters are hereto attached.

Respectfully submitted,

WM. F. RHEA,
H. H. DOWNING,

The foregoing is a true copy of the report of the Committee appointed by the Virginia Debt Commission to wait upon the Governor of West Virginia in pursuance of the resolutions adopted by said Commission on the 20th day of April, 1911.

JOS. BUTTON,
Secretary of the Virginia Debt Commission.

April 25th, 1911.

Hon. William E. Glasscock,
Charleston, West Virginia.

Dear Governor:—This will be handed you by my personal

friend, Hon. Wm. F. Rhea, who is a member of our State Corporation Commission, and also of the State Debt Commission of Virginia. The high character and standing of Judge Rhea, official and personal, makes it unnecessary for me to say anything in his behalf. I will, however, very highly appreciate any courtesy you can show him while in your State.

With assurance of high regard, I am,

Very truly yours,

(Signed) WM. HODGES MANN,

Governor.

April 25th, 1911.

HON. WILLIAM E. GLASSCOCK,

Charleston, West Virginia.

DEAR GOVERNOR:—Mr. H. H. Downing, of Front Royal, a gentleman of high character, a lawyer of distinction, and a member of our State Debt Commission, will, in a short time, with the other members of a committee, visit your State for conference in reference to the matters of difference between the two States which I trust can be satisfactorily adjusted. I am sure he will so commend himself to your consideration as to receive every courtesy at your hands.

I will appreciate any kindness shown him as a personal kindness to me.

With kind regards, I am,

Very truly yours,

(Signed) WM. HODGES MANN,

Governor.

WEST VIRGINIA

MESSAGE OF GOVERNOR GLASSCOCK TO THE LEGISLATURE OF 1911, EXTRA SESSION, MAY 16, 1911.

GOVERNOR'S MESSAGE.

To the Members of the Senate and House of Delegates:

* * * * * * * *

VIRGINIA DEBT CASE.

I deem it my duty to call your attention to the opinion filed on the 6th day of March, 1911, by the Supreme Court of the

United States in the suit in equity brought and now pending in that court by the Commonwealth of Virginia against the State of West Virginia.

Late in the evening of the 2d instant, I was visited here in Charleston by two members of the Virginia Debt Commission claiming to act under the authority of Acts of the General Assembly of Virginia, approved respectively, March 6th, 1894, and March 6th, 1900. That commission has made the following request in writing:

> "At a meeting of the Virginia Debt Commission held in Richmond, Virginia, on the 20th day of April, 1911, the subject of the 'conference between the parties,' suggested by the court, received consideration and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.
>
> "The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States."

You will observe that my proclamation convoking you in extraordinary session was issued prior to the time of the meeting of the Virginia Debt Commission above referred to. Reference to this question was omitted therefrom, because it was thought that the initiative should come from Virginia; because I was advised that the attorneys for West Virginia were considering further proceedings in the case; and because I was not sufficiently advised of the full effect of the opinion of the court to justify me at that time in including it among the subjects of your action; nor am I yet disposed to force upon you consideration of this matter, nor to recommend to you what steps, if any, should now be taken therein.

I am not disposed to be hurried by influences in this State or elsewhere into action, without ample time for consideration, upon a matter which so very greatly affects the interests and honor of

West Virginia. Many persons, aware how seriously the people of Virginia have many times been divided upon the Virginia Debt question, and how many and how bitter have been the criminations and the recriminations aroused by the consideration of this question from time to time in the General Assembly of that Commonwealth, had hoped that through the decision of the court we might, whatever the money outcome might be, escape the other and different perils which the people of Virginia have not been able to avoid.

Questions to be Considered.

Whether you will be of opinion that it is your duty to take action in this matter before the General Assembly of Virginia has acted, or will deem that the former action of the latter body in appointing the Virginia Debt Commission makes it incumbent now upon this State to take the initiative; whether you will be of opinion that a commission should be appointed to meet that commission or some other, are some of the questions which deserve to receive, and I have no doubt are receiving, the most earnest consideration of every one of you.

I append to this message a copy of the decision of the Supreme Court of the United States, of the two Acts of the Virginia Assembly above referred to, the written communication of the Virginia Debt Commission to me, and a copy of my letter to Governor Mann with respect thereto.

The Constitution provides that the Governor may convene the Legislature whenever in his opinion the public safety or welfare shall require it, and that he shall convene it on application in writing of three-fifths of the members elected to each House. If, however, without such formal action by three-fifths of the members of each House, a majority of the members of your Honorable Body should in any manner express to me the opinion that the Legislature should be called into extraordinary session to consider the condition presented by the opinion of the Supreme Court of the United States I should deem it sufficient evidence that a proper occasion existed for the convening of the Legislature for that purpose. I shall be glad to be advised from time to time of the views of the members of the Legislature on this subject.

It shall be my pleasure to contribute in any possible way to the success of the work before you and I shall hold myself in readiness to render you any service within my power.

WM. E. GLASSCOCK,
Governor.

Charleston, West Virginia,
May 16, 1911.

APPENDIX

(Opinion of court already in record and not here printed.)

ACT OF VIRGINIA ASSEMBLY OF 1894.

A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same.

(Approved March 6, 1894.)

WHEREAS the general assembly of Virginia is required by the Constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be bourne by West Virginia; and

WHEREAS the general assembly has heretofore passed four several acts in relation to the funding and settlement of her public debt, as follows, to-wit:

FIRST. An act entitled an act to provide for the funding any payment of the public debt, approved March twenty-eighth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created and actually existing at the time of the

partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas, in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia, to-wit, one-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the present State of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original State; now, therefore,

Be it Resolved by the Senate of Virginia (The house of delegates concurring), That a commission of seven members is hereby created and provided for, of whom the present chairman of the committee on finance and banks of the senate shall be one, and the present chairman of the committee on finance of the house of delegates shall be another; of the other five, two shall be chosen by the senate from among the persons now members of that body; two by the house of delegates from among the persons now members of that body, and one, to be a resident of this State, shall be appointed by the Governor. No member of said commission shall cease to be a member thereof by reason of ceasing to be a member of the general assembly.

Said commission shall choose its own chairman and secretary; vacancies therein occurring or existing during recess of the Legislature shall be filled by the Governor on ratification thereof by the chairman; and a majority of said commission shall be competent to act.

Said commission is hereby authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia.

But said commission shall not proceed with said negotiations until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the State through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State of Virginia which has not been assumed by the present State of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original State which she has already provided for as her equitable proportion thereof.

All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof, shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the State to any expense on this account.

And their action shall be subject to the approval or disapproval of the general assembly, and shall not be binding on the State until approved by the general assembly. The Governor is requested to communicate this joint resolution to the Governor and Legislature of West Virginia.

This joint resolution shall be in force from its psasage.

A true copy.

(Signed) JNO. W. WILLIAMS,
Clerk House of Delegates and
Keeper of the Rolls of Virginia.

ACT OF VIRGINIA ASSEMBLY OF 1900.

An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

(Approved March 6th, 1900.)

WHEREAS the General Assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows—to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

WHEREAS in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia—to-wit: One-third of the amount of said obligations, of which certificate this

State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

WHEREAS the Generaly Assembly is required by the Constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, but no such adjustment has ever been had; and

WHEREAS it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the General Assembly of Virginia, that the commission created and appointed under a joint resolution of this General Assembly entitled a joint resolution to provide for adjusting with the State of West Virgisia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the State through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount, of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon

the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedisgs on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

A true copy.

(Signed) JNO. W. WILLIAMS,
Clerk House of Delegates and
Keeper of the Rolls of Virginia.

COMMUNICATION FROM VIRGINIA DEBT COMMISSION.

RICHMOND, VA., April 20, 1911.

To His Excellency,
The Governor of West Virginia.

Sir:—The "Virginia Debt Commission," constituted and acting on behalf of Virginia under the joint resolution of the General Assembly of that State, approved March 6th, 1894, and the act of said General Assembly approved March 6th, 1900, was "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia, proper to be borne by West Virginia," as shown by copies of said Resolution and Act hereto attached.

In the opinion of the Supreme Court of the United States delivered on the 6th of March, 1911, by Mr. Justice Holmes, in the case of the *Commonwealth of Virginia* v. *State of West Virginia*, there was announced a "decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed."

With respect to the amount of *interest* on such principal, the court made no decision, but in referring thereto said: "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court, in reliance upon the honor and constitutional obligations of the States

concerned rather than upon ordinary remedies, we think it best, at this stage, to go no further, but to await the effect of a conference between the parties, which, whatever the outcome, must take place." A copy of said opinion also is hereto attached.

At a meeting of the Virginia Debt Commission, held in Richmond, Va., on the 20th day of April, 1911, the subject of the "conference between the parties," suggested by the court, received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two States, in order to bring about a final and complete conclusion of the cause.

The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States.

Very respectfully,

(Signed) JOHN B. MOON,
Chairman Virginia Debt Commission.

Attest:

(Signed) JOSEPH BUTTON,
Secretary.

LETTER OF GOVERNOR OF WEST VIRGINIA TO GOVERNOR OF VIRGINIA.

STATE OF WEST VIRGINIA
GOVERNOR'S OFFICE.

Charleston, May 9, 1911.

HON. WM. HODGES MANN,
Governor of Virginia,
Fichmond; Va.

DEAR GOVERNOR MANN:—Late in the evening of the 2nd instant I received a call from Messrs. Wm. F. Rhea and H. H. Downing, bearing letters of recommendation from you, and representing the Virginia Debt Commission. They made the following request in writing:

"At a meeting of the Virginia Debt Commission, held in Richmond, Virginia, on the 20th day of April, 1911, the subject of the 'conference between the parties,' suggested by the court, received consideration, and it was resolved that the Commission, through its Chairman, should bring the matter to your attention, and request that you will, at the earliest convenient moment, lay it before the Legislature of West Virginia, now soon to assemble, or take such other and more appropriate course as will lead to that conference between the two states, in order to bring about a final and complete conclusion of the cause.

"The Virginia Debt Commission ventures to indulge the hope that you are in accord with it in desiring a speedy termination of this litigation, and that you will do whatever lies in your power to bring about an early conference between the representatives of the two States."

Their request relates to my message to the Legislature at the extraordinary session which is to convene on May 16th. Mr. Rhea, of the Commission, particularly, seemed to think that early, if not immediate, response should be made. You, of course, will appreciate the fact that it would be wholly improper to advise anyone of the contents of my communication to the Legislature or even in general of my purpose relative thereto in advance of the submission of the message to the Legislature itself.

With greatest respect, I remain,

Very truly yours,

(Signed) WM. E. GLASSCOCK,
Governor.

Office Supreme Court, U. S.
FILED.
OCT 10 1911
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 2 Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

RESPONSE OF THE DEFENDANT TO THE MOTION OF THE COMPLAINANT SUBMITTED IN THE ABOVE-ENTITLED CAUSE.

STATE OF WEST VIRGINIA,
By WILLIAM G. CONLEY,
Attorney General.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 3, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

RESPONSE OF THE DEFENDANT TO THE MOTION OF THE COMPLAINANT SUBMITTED IN THE ABOVE-ENTITLED CAUSE.

And now on this, the tenth day of October, 1911, comes the respondent, the State of West Virginia, by William G. Conley, Esquire, her Attorney General, and for response to the motion submitted in the above cause to

> "recommit the cause to the Special Master with instructions to ascertain and report forthwith to the court the amount of interest which the State of West Virginia should be required to pay on the principal sum

> already indicated by the court, or that the court will proceed otherwise as it may determine to adjudicate that question,"

says that she is advised that the court will not upon motion make such an order as that contemplated by this proceeding, which requires a determination of one of the principal points involved in the controversy in this cause, without the consent of this respondent, expressed by her counsel in court, because the grounds of said motion are based upon matters not appearing of record in the said cause; and further, there must be a hearing and consideration of the question whether or not any liability for interest exists on the part of this respondent before the court will again refer this cause to a Master.

This application should therefore be for leave to file a petition setting forth the facts fully upon which the complainant asks the relief sought by this motion. If no substantial objections were offered to the granting of such leave, then the filing of the petition would follow and the defendant could make answer thereto, and the rights of the parties as shown by the petition and answer thereto would be argued and heard by the court and such disposition be made thereof as would be proper and just.

If the proceeding were one by petition, it would become a pleading and its sufficiency could be tested by demurrer and its facts controverted by answer, evidence heard in support of and against

the petition applicable to the rights of the parties arising upon it, and the proceeding heard and determined as any other matter in the cause.

It seems, therefore, that this motion ought to be dismissed and that any proceeding had for this purpose can only be properly instituted by petition duly verified, thus affording the defendant opportunity to answer the petition and controvert the facts, or introduce by way of answer any other matter proper for the consideration of the court at this stage of the case.

And the respondent not waiving its motion going to the irregularity of the procedure on the part of the complainant seeking relief as stated in said motion, but adhering to and insisting upon the same, now submits to the court the further grounds why the relief sought by said motion should not be granted.

(1) The motion is premature, as the opinion of the court was handed down on the sixth day of March, 1911, after the adjournment of the regular session of the legislature, and when the special session of the legislature called for a specific purpose could not have constitutionally considered the matter.

(2) At the time the members of the legislature which convened in special session in May, 1911, were elected, the above cause had not been finally argued, and the impression obtained generally throughout the State that Virginia would not suc-

ceed with her bill asking for relief against the State as set forth therein, as Virginia was only suing on behalf of the holders of the certificates, who were to receive the proceeds of any decree that might be entered in the cause, and upon this ground it was generally understood and believed that Virginia would not obtain any decree in her favor against West Virginia. This opinion obtained so generally that the members of the legislature were not advised as to the wishes of their constituents relating to the matters in controversy in said suit, and hence it was not expected that they would ever be called upon in their legislative capacity to act thereon.

(3) It was assumed on the part of West Virginia that the State of Virginia would not act with undue haste in reference to a conference between the two States as suggested by this court in its opinion on final hearing until the Debt Commission of Virginia, by its representatives, called upon the Governor of West Virginia, after his proclamation had been made convening the legislature in special session to assemble in the month of May, 1911, and requested the said Governor to amend his proclamation by inserting therein a provision authorizing the legislature to enter upon a consideration of the Virginia debt matter. The Governor, under the authority vested in him by the Constitution of West Virginia, being of opinion that he could not amend his proclamation so as to

embody in the said call the consideration of the matter of the said debt, the same was not therefore included therein, as to have done so would have invalidated any acts performed by the legislature at such special session, and the failure of the Governor to include said matter in his proclamation was not for the purpose of evading the request or suggestion of this court in its opinion that the two States confer together touching the final settlement and adjustment of the controversy between them left undetermined by this court. The people of West Virginia are not unmindful of their obligation to meet the situation with reference to said debt as presented to them by the opinion of this court rendered in the above cause, but have it ever in mind and the subject will be considered at the next general election when the members of the next legislature will be chosen; and in one year and three months from this day the new legislature will convene in regular session, when that body can properly take up, consider, and dispose of the Virginia debt question.

(4) This respondent further avers that there is no one in West Virginia with any authority to negotiate or confer with Virginia, or any commission appointed by Virginia, in reference to the matters in controversy herein except the legislature; neither the Governor nor any other officer of the State of West Virginia nor the counsel in this cause having any power so to do.

(5) This is not an ordinary case like that obtaining between individual suitors, but is one arising between *quasi* sovereignties referred to this court in reliance upon the honor and constitutional obligations of the States concerned, rather than upon ordinary remedies, and in such controversies the rules which govern courts of equity call for more time and greater delay for the consideration of the questions arising between the parties than under ordinary circumstances, inasmuch as States are incapable of acting with that promptness with which individuals may act.

Rhode Island *vs.* Massachusetts, 13 Pet., 23; 10 Law Ed., 41.

(6) The respondent most respectfully calls the attention of this court to the fact that the Virginia Debt Commission was created by a joint resolution passed by the Virginia Assembly in 1894 and approved March 6 of that year, and the act of 1900, approved March 6 of that year, and suggests that this commission is not authorized to institute the proceeding which it is now seeking to prosecute, as such a matter was not within the purview of the joint resolution of 1894 or the act of 1900; that is, such a proceeding was not contemplated at the time this commission was created and empowered to act. The joint resolution was simply one providing that the commission be

> "authorized and directed to negotiate with the State of West Virginia an adjustment

> of the proportion of the public debt of the original State of Virginia, proper to be borne by West Virginia."

From this it will be perceived that the resolution did not contemplate the bringing of any suit, but only amicable negotiations to be conducted by this commission on the part of Virginia with West Virginia to ascertain what proportion of the public debt should be borne by West Virginia.

The act of 1900 authorized the commission,

> "by and with the advice and approval of the Attorney General of Virginia to take such action and institute such proceedings on behalf of the State as may in the judgment of said commission, and the Attorney General, be needful and proper to protect the interests of the State, and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the State shall not be subjected to any expense on that account."

The settlement referred to above was to be made with West Virginia with respect to the certificates issued for that part of the debt not assumed by Virginia, and only upon the basis that

> "said commission shall in no event enter into any negotiations hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original

> State, which she has already provided for as her equitable proportion thereof."

In pursuance of this authority the commission sent to the legislature of West Virginia that assembled in 1905 its representatives, and sought to obtain a settlement of the matter in controversy upon said basis. After this attempted negotiation on the part of the commission through its representatives, the Debt Commission reported the results thereof to the General Assembly of Virginia on January 9, 1906. Afterwards, with the approval of the Attorney General of Virginia, and the consent of the certificate holders, a suit was instituted in the name of Virginia to ascertain the proportion of the debt to be borne by West Virginia. After the various steps taken in the case and the cause submitted to the court for final determination of the matters in controversy, the court ascertained and fixed the proportion of the public debt to be borne by West Virginia at the sum specified in its decree, leaving the matter of interest undetermined, but upon a different basis than that upon which the commission was empowered to act.

This act of the court presented a new phase of the case and not one contemplated by either of the parties at any time before the institution of this suit or during its progress, and not contemplated by the commission or the legislature of Virginia when the commission was created and em-

powered to act. If this matter were brought to the attention of the legislature of Virginia in the present light of the situation, being now fully advised as to the effect of the opinion of the court with reference to the interests of Virginia, the General Assembly of that State would probably not insist upon further contending with West Virginia for interest, and would be satisfied with West Virginia's assumption of such amount as might be agreed upon between the two States acting in joint conference through a disinterested commission composed wholly of the citizens of the two States.

In view of these considerations it is respectfully submitted that the motion of the complainant ought not to prevail, and that no further action should be taken by this court until the legislature of West Virginia has had an opportunity in regular session to consider this case along the lines and in the spirit indicated by this court in its opinion announced on the 6th of March, 1911.

All of which is respectfully submitted.

STATE OF WEST VIRGINIA,
By WILLIAM G. CONLEY,
Attorney General.

5

IN THE

SUPREME COURT OF THE UNITED STATES.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

The Commonwealth of Virginia, by William A. Anderson, her Attorney General, comes and moves the court for leave to file the accompanying bill of complaint of the said Commonwealth against the State of West Virginia, and that due process of subpœna issue thereon in accordance with the rules of practice of the court.

Attorney General of Virginia.

[20241]

In the Supreme Court of the United States

No. 3 Original. October Term, 1913.

COMMONWEALTH OF VIRGINIA,

v.

STATE OF WEST VIRGINIA.

NOTICE OF MOTION.

In the Supreme Court of the United States

No. 2 Original. October Term, 1913.

COMMONWEALTH OF VIRGINIA,

v.

STATE OF WEST VIRGINIA.

NOTICE OF MOTION.

Richmond, Virginia, February 2nd, 1915.

To the Honorable A. A. Lilly,
Attorney General of West Virginia,
Charleston, West Virginia.

Please take notice that in the suit of the Commonwealth of Virginia against the State of West Virginia, No. 2 Original, pending in the Supreme Court of the United States at Washington, D. C., the Commonwealth of Virginia will, on Monday, March 1st, 1915, move the said Court to set the said case down for hearing upon the report of the Special Master filed January 21st, 1915, and on such exceptions as may be filed thereto by either party.

Respectfully,

COMMONWEALTH OF VIRGINIA,

By JOHN GARLAND POLLARD,
Attorney General of Virginia.

Legal service of the within notice is hereby accepted, this February 8, 1915.

A. A. LILLY,
Attorney General.

In the Supreme Court of the United States

No. 2, Original. October Term, 1915.

COMMONWEALTH OF VIRGINIA,

v.

STATE OF WEST VIRGINIA.

(In Equity.)

Motion of the Commonwealth

RICHMOND, VA., September 22, 1913.

To the Honorable A. A. Lilly,
Attorney General of West Virginia,
Charleston, West Virginia.

Please take notice that in the suit of the *Commonwealth of Virginia* v. *The State of West Virginia*, No. 2 Original, pending in the Supreme Court of the United States at Washington, D. C., I shall on Monday, the 13th day of October, 1913, move the said court to proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the 6th day of March, 1911, and will base said motion on the record of the case and the facts stated in the within statement in writing, and exhibits filed therewith.

Respectfully,
COMMONWEALTH OF VIRGINIA,
By SAMUEL W. WILLIAMS,
Attorney General of Virginia.

"CONFERENCE COMMITTEE'S SUBSTITUTE FOR HOUSE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 5.

(Adopted February 21, 1913)."

"Creating a commission, known as the Virginia debt commission, provide for arranging and settling with the Commonwealth of Virginia the proper proportion of the public debt of the original Commonwealth of Virginia, if any should be borne by West Virginia, to take into consideration all matters arising between the Commonwealth of Virginia and the State of West Virginia in reference to said original public debt, and to report its proceedings to the governor of the State.

"Whereas, the Commonwealth of Virginia instituted a suit in the Supreme Court of the United States against the State of West Virginia, to have the State of West Virginia's proportion of the public debt of Virginia as it stood before one thousand eight hundred and sixty-one, ascertained and satisfied; and,

"Whereas, at the October term, one thousand nine hundred and ten, the Supreme Court of the United States made a finding that the share of the principal debt of the original Commonwealth of Virginia to be borne by the State of West Virginia, was seven million one hundred and eighty-two thousand six hundred and seven dollars and forty-six cents; and,

"Whereas, said court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the States upon all the questions involved in said litigation, as might lead to a settlement of the same; therefore, be it

Resolved by the Senate of West Virginia, the House of Delegates concurring therein:

"That a commission of eleven members, known as the Virginia debt commission is hereby created. The members of said commission shall be appointed by the governor, two

of whom shall be chosen from each congressional district of the State, and one at large, not more than six of whom shall belong to any one political party, and all resignations or vacancies in the said commission as they occur shall be filled by the appointment of the governor.

"Said commission is authorized and directed to negotiate with the Commonwealth of Virginia, or with any person or committee owning or holding any part of the said indebtedness for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia.

"The commission is hereby directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit instituted against the State of West Virginia by the Commonwealth of Virginia and to ascertain and report upon and give like publicity of all of the facts and conditions under which the West Virginia certificates are held or owned, together with the names and residences of the persons having the legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon.

"To ascertain and report as to any part of the Virginia debt claimed against the State of West Virginia, which is owned or held or claimed to be due, at law or in equity, by the Commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia.

"A majority of said commission shall have authority to act. The commission shall choose its chairman and appoint its secretary and other necessary officers.

"The expense properly incurred by the commission and its individual members, including compensation of said members at the rate of ten dollars per day for the time actually

employed, shall be paid by the State out of the moneys appropriated for said purpose.

"The commission shall make a report to the governor as soon as practicable, and upon receipt of said report the governor shall convene the legislature for the consideration of the same.

"The commission is hereby authorized to sit within or without the State and to send for papers and records and to examine witnesses under oath."

3. That pursuant to said joint resolution, the governor of West Virginia did appoint the eleven members of the debt commission therein provided for, and that on a later day the Honorable John W. Mason, of Fairmont, West Virginia, was chosen as the chairman of such commission. That after correspondence between Governor Hatfield, of West Virginia, and Governor Mann, of Virginia, filed herewith as "Exhibit A," the chairmen of the commissions of the two States arranged that the proposed joint conference between the States through their respective commissions, should be held at the New Willard Hotel, in the city of Washington, on the 25th day of July, 1913.

4. That on the day appointed the two commissions did meet in joint conference, and the proceedings of said joint conference, stenographically reported, were as shown in "Exhibit B" herewith filed as a part hereof, for the information of the court.

That said joint conference, after the foregoing proceedings were had, adjourned to meet at the same place on the 12th day of August, 1913. That on the 8th day of August the Honorable John W. Mason, chairman of the West Virginia Commission, notified the Honorable John B. Moon, chairman of the Virginia Debt Commission, by telegraph as follows, viz.:

"Fairmont, W. Va., August 8, 1913.

John B. Moon,

Charlottesville, Virginia.

Certain of our debt commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet at Charleston next Monday and would have to ask that time be extended to a day in the near future. Under these circumstances I suggest Washington meeting be now recalled.

(Signed) John W. Mason.

The notice and agreement for the meeting to be held on the 12th of August was accordingly recalled.

The Commonwealth of Virginia, in view of the recitals and facts herein stated and contained, respectfully moves the court that the cause be speeded so that a final decree may be made therein and this controversy brought to a close.

COMMONWEALTH OF VIRGINIA,

By SAMUEL W. WILLIAMS,

Attorney General of Virginia.

EXHIBIT A.

STATE OF WEST VIRGINIA,
EXECUTIVE DEPARTMENT,
CHARLESTON.

June 10, 1913.

Honorable William Hodges Mann,
Governor of Virginia,
Richmond, Virginia.

Dear Sir: I have the honor to report to you that the regular session of the West Virginia Legislature of 1913 passed House Joint Bill No. 5, raising a commission of citizens of our State to be appointed by the governor, to meet a like commission upon the part of the State of Virginia, to discuss and, if possible, arrive at some mutual agreement looking to the amicable settlement of the Virginia debt dispute now pending in the Supreme Court of the United States, said suit being styled and known on the docket as the *Commonwealth of Virginia* v. *The State of West Virginia*.

A copy of the resolution adopted by the West Virginia Legislature I herewith attach.

The resolution requires the commission to report their findings to a subsequent session of the legislature.

The commission is composed of the following citizens of our State:

Hon. Henry Zilliken, of Wellsburg, county of Brooke.

Hon. John W. Mason, of Fairmont, county of Marion.

Hon. J. A. Lenhart, of Kingwood, county of Preston.

Hon. William T. Ice, of Philippi, county of Barbour.

Hon. U. G. Young, of Buckhannon, county of Upshur.

Hon. Joseph E. Chilton, of Charleston, county of Kanawha.

Hon. R. J. A. Boreman, of Parkersburg, county of Wood.

Hon. John M. Hamilton, of Grantsville, county of Calhoun.

Hon. William D. Ord, of Landgraff, county of MacDowell.

Hon. Joseph S. Miller, of Kenova, county of Wayne.

Hon. W. E. Wells, of Newell, county of Hancock.

The commission met in the governor's reception room on June 10, 1913, and organized by electing the Hon. John W. Mason, of the city of Fairmont, chairman, and the Hon. John T. Harris, of the city of Parkersburg, secretary.

I beg to advise that said commission now awaits the pleasure of the Virginia Commission.

The next regular meeting of the West Virginia Debt Commission will be held in the governor's office on July 22, 1913.

The commission directs me to say to you, and through you to the proper representatives of the Virginia Commission, that they will be pleased to meet the Virginia Commission at any time after July 22, 1913, that the said Virginia Commission may indicate where it would be agreeable to hold a joint meeting of the commissions.

Any communications sent to this office, or to the president or secretary of the West Virginia Commission will receive prompt consideration.

Respectfully yours,

(Signed) H. D. Hatfield,

Governor.

HDH:MP

COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE,
RICHMOND.

June 20, 1913.

Hon. John B. Moon, Chairman,
Virginia State Debt Commission,
Charlottesville, Virginia.

Dear Colonel: I enclose a communication from the Governor of West Virginia, and a copy of the act of assembly of

that State, adopted on the 21st of February, 1913, which explain themselves. I trust it will be the pleasure of your commission to have an early meeting and to communicate with the commission of West Virginia, to the end that every possible effort may be made on our part to settle the matters in dispute between the two States.

Very truly yours,

(Signed) Wm. Hodges Mann,

Governor.

Encs.

EXHIBIT "B"

Proceedings of a Joint Conference

BETWEEN THE

VIRGINIA DEBT COMMISSIONS

OF THE

STATES OF VIRGINIA AND WEST VIRGINIA

HELD AT

THE NEW WILLARD HOTEL

WASHINGTON, D. C.

July 25 and 26 1913

EXHIBIT B.

PROCEEDINGS OF A JOINT CONFERENCE BETWEEN THE VIRGINIA DEBT COMMISSIONS OF THE STATES OF VIRGINIA AND WEST VIRGINIA.

Washington, D. C., July 25, 1913,
New Willard Hotel.

The commissions of Virginia and West Virginia met at 11:30 o'clock A. M., pursuant to notice, Chairman Moon, of Virginia, and Chairman Mason, of West Virginia, presiding.

Chairman Moon: I have been instructed, gentlemen, to present to you, for your consideration, the following resolutions:

Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt.

2. This commission desiring to carry out in good faith the suggestions made by the Supreme court as to securing an amicable adjustment of the amount of interest which should be paid by West Virginia upon the principal of the debt as ascertained and decided by the court, and realizing that it is not the desire of Virginia nor was it the intention of the Supreme court that Virginia should ask or demand the full or legal amount of interest upon the principal debt as ascertained in the decision of the court, but that there should be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States; and

Whereas, the joint conference to be held to-day between the commissions of Virginia and West Virginia was invited by the authorities of West Virginia, presumably for the purpose of carrying out in good faith the decision and suggestion of the Supreme Court of the United States.

Therefore, be it resolved, That this resolution, together with all other resolutions adopted by this commission at its present session, which may be pertinent, be presented by the chairman of this commission, to the commission of West Virginia at the joint conference to be held to-day, and that the commission of West Virginia be respectfully requested to communicate to this commission, what, in their judgment, would be a fair and just settlement of the interest to be paid by West Virginia upon the principal amount as ascertained in the opinion and decision of the Supreme Court of the United States.

Chairman Mason, of West Virginia: Referring to the resolutions which have just been presented to us on behalf of the commission of Virginia, I would say for the commission of West Virginia that it was not our expectation that this conference was to be confined to the consideration of only the question of interest. Our idea had been that the scope of the conference would be wider, and that we would confer together and take up the whole case, principal and interest. We thought that was what we were to meet here for.

It is my understanding that we, as commissioners, representing the two States, have the power to ascertain what is West Virginia's equitable proportion of the debt, if anything. I thought that was one of the things we were to get at, and try to reach a basis of settlement.

I do not feel that we should be confined solely to the consideration of the one question, namely, the question of interest.

Chairman Moon, of Virginia: I would say, gentlemen,

that Mr. Randolph Harrison has been selected as spokesman for the Virginia commission, to present the matter to you as we view it, and I will now call on Mr. Harrison.

REMARKS OF MR. RANDOLPH HARRISON OF THE VIRGINIA COMMISSION.

Mr. Harrison: Mr. Chairman and gentlemen: The resolutions which have been presented to you for consideration by the chairman of the Virginia commission, contain a statement of what the Virginia commission conceives to be the question to be considered by the two commissions, and an expression of the spirit in which the Virginia commission enters upon this joint conference.

The first resolution declares it to be the sense of the Virginia commission that the subject before the two commissions for consideration and adjustment is, as indicated by the court in its decision, the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of the debt.

The second resolution assumes that the West Virginia commission has invited this conference for the purpose, and with the expectation, if possible, of carrying out in good faith the suggestion of the court in respect to an adjustment of the question of interest, and at the same time states that it is not the purpose of Virginia to exact, nor does this commission believe it to be the intent of the court that Virginia should exact the full amount of interest shown by the record to be due on the share of the principal of the debt ascertained by the court to be West Virginia's.

The Virginia commission enters upon this conference with you in a spirit of absolute frankness, and with the earnest desire to reach an adjustment of this unsettled question. To accomplish this result we recognize that there must be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States. With that end in view we ask the West Virginia commission to advise what,

in their opinion, would be a fair amount for West Virginia to pay in compromise and settlement of the amount of interest due on her share of the principal of the debt.

The chairman of the West Virginia commission has indicated that his commission did not expect this conference to be confined to the consideration of the question of interest alone; that a wider field of inquiry was in contemplation by that commission—a field which would involve a review of the merits of the case, and a determination of the amount of principal, as well as interest which, in the judgment of the West Virginia commission, should be paid by West Virginia.

I will, as briefly as I can, state what we conceive to be the object that the court had in view in suggesting this conference.

In its decision the court used this language: "We have given our decision with respect to the basis of liability, and the share of the principal of the debt of Virginia that West Virginia assumed."

It will be seen, therefore, that the basis of West Virginia's liability, and the share of the principal of the debt for which she is liable, are questions which have been removed from the realm of controversy, or of debate, or of further investigation; they have been judicially settled at the end of several years of litigation.

In this connection it is a pleasure for me to say that West Virginia has had the benefit in this case of able, industrious and zealous counsel, who have not lost an opportunity to present her side of it in the strongest aspect possible. One of these gentlemen I see here to-day, Mr. McClintic. I will venture to say that there is no man connected with this litigation more familiar with its details, and none of West Virginia's counsel has rendered more faithful or efficient service, than he.

You must bear in mind, gentlemen, that when the ground has been covered, as it has been, by able counsel, and the case heard by the highest court in the land, the questions settled

by the decision of that court no longer remain open for dispute or investigation.

Continuing, the court said: "In any event, before we could put our judgment in the form of a final decree, there would be figures to be agreed upon, or to be ascertained by reference to a Master. Among other things there still remains the question of interest."

We have seen that "the basis of liability and the share of the principal of the debt that West Virginia assumed," are decided questions, but there were "other things" to be considered and settled by the court before it could put its judgment "in the form of a final decree," and among these other things is the question of interest, which question the court referred to the two States for adjustment, if an adjustment could be reached, the court stating that if the matter was pressed contentiously it would be referred to the Master, to make such calculations as might be necessary.

It has never been suggested to us before that West Virginia entertained the idea that it would be competent or proper for us to ignore the decision of the court and take jurisdiction of the entire subject matter and enter upon an investigation of the merits of the case.

Two years ago, in advance of the meeting of the West Virginia legislature in extra session, the Virginia commission laid before the governor of West Virginia the decision of the court, and requested that he would ask the legislature to appoint representatives to confer with us in regard to the question of interest, which had been referred to the two States by the court. The matter, however, was not dealt with by the legislature, and at the ensuing term of the court, in October, 1911, Virginia moved the court to speed the cause, on the ground that West Virginia had not indicated any purpose, or intention, to carry out the suggestion of the court. West Virginia, through her counsel, filed an answer to this petition, in which it was not once suggested that there was any misapprehension on the part of Virginia in respect to the ques-

tion to be considered by the two States. But the contention of West Virginia, through her counsel, was that no action should be taken by the court until the legislature of West Virginia had an opportunity in regular session to consider the matter. Therefore, this is the first time, as I have already stated, that the suggestion has been made to any one representing Virginia, that West Virginia contemplated a reopening of the case and a consideration of the whole matter upon its merits. For the reasons that I have stated, gentlemen, the Virginia commission could not consent to this course. We cannot consent to go behind the decision of the court and take up and consider any question which has been decided by the court.

The resolutions which have been presented to you on the part of the Virginia commission embody its views in respect to the scope of this conference, and invite you to communicate to us what, in your opinion, would be a fair basis of settlement of the question of interest. I trust it will be the pleasure of the West Virginia commission to consider the matter in this aspect.

We also recognize the fact that it is competent for the two commissions to consider the question of settlement of the entire controversy, precisely as we might do if there were no other question pending before us, and, if it is the pleasure of the West Virginia commission to take up that question and communicate to the Virginia commission at this conference a proposition looking to a compromise settlement of the whole controversy, we will be glad to receive it, and will give it respectful and fair consideration.

Your chairman has indicated that the West Virginia commission, perhaps a majority of them, are not familiar with the details of this litigation, or the grounds upon which it has proceeded. It may be well enough for me, therefore, to say something in regard to the general subject, inasmuch as you may be viewing it from an angle that you would not view it from, if you were more fully advised.

The questions of West Virginia's liability for a just proportion of this debt, and the amount of that just proportion, were the questions considered by the court. West Virginia denied all liability, and denied the court's right to take jurisdiction of the case, but the court, after elaborate argument, overruled all of her objections. I know it is customary for West Virginians in referring to this case to say that the judgment of the court will amount to nothing, as there is no way of enforcing it. That question was urged before the court by West Virginia's counsel in the argument upon the demurrer, but the court, in referring to this subject in its opinion overruling the demurrer, said: "It is not to be presumed that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted, we can then consider by what means the decree may be enforced."

I think we may safely assume that the court will consider the means of enforcing its decree, if it should ever reach that question, but the court evidently does not consider that result a possibility, as is clearly indicated by the language of the opinion, to the effect that the court will not "presume that West Virginia will refuse to carry out the decree of this court."

It is proper for me to say that no man connected with this litigation on Virginia's side, anticipates that any such stage of the proceedings will ever be reached. There is a power oftentimes more effective than courts to constrain, not only communities, but individuals, to do what is right, namely, the power of public opinion. Speaking for myself I can say that I have never entertained the thought that the State of West Virginia would deliberately repudiate a finding of the Supreme Court of the United States, because I do not believe the sentiment of her people would countenance any such course. Therefore, gentlemen, considerations which involve the repudiation by West Virginia of her liability in this case, have not influenced, and should not influence us in performing the duty now imposed upon us.

I do not think the people of West Virginia understand the nature of the obligation which rests upon them in respect to the liability of their State for a just proportion of this debt. They do not realize that this obligation was assumed in the first step taken towards the formation of the State of West Virginia, and was again assumed in her Constitution, adopted on the 26th of November, 1861, which not only bound the new State to bear a just proportion of the public debt of Virginia, but required her legislature to ascertain the same and provide for its payment. The State of Virginia (the restored State of Virginia) gave its consent by legislative enactment to the creation of the new State of West Virginia "under the provisions set forth in the constitution for the State of West Virginia." Those two instruments were laid before Congress, and on the faith of them Congress gave its consent to the admission of the new State into the Union. The court rests its decision in this case on the ground that West Virginia is bound by a solemn contract to bear a just proportion of this debt—a contract contained in her fundamental law, and to which Virginia and the Congress of the United States assented. The court, in considering that question, and basing her liability upon her solemn constitutional promise, made as a condition to her Statehood, said: "West Virginia must therefore be taken to have *promised* to pay to Virginia her share."

You must understand, gentlemen, that no State can be carved out of an existing State without the consent of the parent State, and in this case the consent of Virginia was given to the division of her territory on condition that West Virginia would bear a just proportion of her debt; and the consent of Congress was based upon the same condition. An eminent citizen of your State, who has wielded there the sceptre of power, made an argument in this case before the Master, in the course of which he took the ground that West Virginia made this promise because she knew she could not be admitted into the Union without it, and that it was made

for the sole purpose of inducing Congress to admit her. In other words, that her promise was made to gain her political existence. The record in this case fully attests the accuracy of the statement that but for West Virginia's promise to assume a just proportion of the debt of Virginia, Congress would never have admitted her into the Union. Senator Sherman so stated in his correspondence with Senator Willey, and Senator Willey, who was an actor in those scenes and participated in the steps which led up to the formation of the State of West Virginia, made the following statement in his correspondence with Senator Sherman (all of which appears in the record): "I say to you now what I have said to the people of West Virginia, that but for that clause in her Constitution the State would never have been admitted. I say further, that in my opinion, no honest man or honest party in West Virginia, or out of it, will deny the obligation of West Virginia to pay an equitable part of the debt of Virginia."

You will hear it said in your State, because it has so often been said to me, gentlemen, "We do not owe any part of the debt because we did not get any of its benefits; none of the money was expended in West Virginia." That question is beside the mark. I will not stop now to consider it. It was settled by the court, and disposed of in the opinion of the court. But when the assertion is made that West Virginia derived no benefit from her promise to pay a just proportion of this debt, it should be remembered that at least she gained her political existence by it; that it was the price paid for Statehood.

Immediately after the war Virginia communicated to West Virginia a resolution, appealing to her to forget the past and to come back and be again a re-united Commonwealth. West Virginia lost no time in replying; she promptly answered that appeal with an emphatic "No." She preferred to remain an independent State, and was satisfied with the price she had paid for that privilege.

Do you think that the people of your State would continue in the belief that they do not owe any part of this debt if they understood these facts? Would they not take a different view of it if they were informed in respect to the basis of the liability of their State? If they understood that West Virginia had passed her word to bear a just proportion of this debt; that Virginia had given her consent to the separation on the faith of that promise, and that Congress, in reliance upon it, had admitted her into the Union, and that she was so well satisfied with the bargain that she refused the mother State's invitation after the war to re-unite with her, can there be any doubt that they would realize the obligation resting upon them, and feel that it was not creditable to keep it in the air, but that it was their duty to meet it like men, and settle it?

I firmly believe, gentlemen, that if men of courage and patriotism would inform the people of West Virginia of the real status of this issue, and of the ground upon which the liability of their State rests, that the majority of them, to say the least of it, would no longer seek to evade, or ignore it as something that did not concern them, but on the contrary they would insist on its being disposed of fairly and honestly. I really believe that their present attitude to the subject is due to the fact that they do not understand that there is a binding obligation upon the conscience of the people of West Virginia to perform her promise.

The court has said that "The liability of West Virginia is a deep-seated equity." Can you go back to your people and encourage in their minds the idea that they are under no obligation to respond to this liability which the court has said is founded in a deep-seated equity? The founders of West Virginia knew it was only just and right that, in dividing the territory of the mother Commonwealth, they should assume a part of the burden of this debt; they knew that they could not, in good conscience, deprive Virginia of a third of her territory and a third of her population and leave

her to carry the burden of debt which they had helped to create. We have the authority of Senator Willey for the statement that the promise made by himself and his associates on behalf of West Virginia, to bear her share of that burden, was made in absolute good faith, and with the full intention of carrying it out. Can it be possible that your people, if they understood these facts, would tolerate any action that would ignore that liability, or temporize with it? Would they not meet the issue like honest men? I believe they would. I am a firm believer in the Jeffersonian faith in the people. I believe that when the people are rightly directed they will do what is right. I believe a majority of them are moved by correct impulses, and that when they go wrong it is because they are ignorant, or misinformed.

I have expressed these general views about this case in the hope that your commission, composed, as it is, of representative men of your State, will be the medium of influencing the people of West Virginia to do what is right in respect to this matter.

The position of West Virginia heretofore, as indicated by her public men, has been that she would not recognize any liability to Virginia for a share of this debt unless that liability was established by the court. Several years ago I had the pleasure of addressing the legislature of West Virginia on this question, with a view to bringing about a friendly adjustment and to avoid the necessity of taking the controversy into court. I urged upon your representatives at that time the propriety of taking action, and the importance of a friendly adjustment of the question. Numbers of your public men said to me at that time that while they recognized that it was important to settle the question, there was no use in talking to the people about it; that they had been educated to believe they did not owe anything, and that the only way to convince them was to let the court say what they owed. That has now been done. The highest court in the land has spoken, and in the light of the opinion of the court it is

not open for any man to say that there is no obligation resting upon West Virginia; nor, in the light of that decision, is it open to any man to question the amount of the principal sum which she is obligated to pay.

The question of interest has been referred to us by the court for adjustment, if possible. We trust it will be your pleasure to take up that question with us and let us see whether it is possible to reach some conclusion that will be honorable to both States. We meet you in a hopeful spirit. No man can have any doubt about our earnest desire to reach a friendly adjustment of this controversy, and we are hopeful that such a body of men as we meet here to-day, will be the efficient instruments of bringing the people of their State to a just appreciation and recognition of her liability in this case.

We can not consent to open up the whole controversy, gentlemen, but we are ready to consider the question of interest. At least we can make an effort to adjust it. If the West Virginia commission desires to communicate to us a proposition to settle the whole controversy we will be glad to take up that question and consider it.

Chairman Mason, of West Virginia: What is the use of doing that, if you will not consider it?

Mr. Harrison: I say we will be glad to consider it.

Chairman Mason: But you say there is no authority to consider any question except that of interest. What is the use then of doing a vain thing?

Mr. Harrison: I hope it would not be a vain thing.

Chairman Mason: According to your statement it would, would it not?

Mr. Harrison: I cannot tell you in advance of a proposition. I say we will be glad to consider a proposition. If you see fit to submit a proposition as to a settlement of the whole controversy we will be glad to receive it. I stated that in the beginning.

I hope the West Virginia commission do not understand

me as indicating it to be the sense of the Virginia commission, that we would not treat with you upon a settlement of the whole debt. We will be glad to do it. If the West Virginia commission has in mind negotiations along that line we will be glad to receive them, and will deal with them in the utmost spirit of frankness.

If that cannot be done; if West Virginia is not prepared to take up that question, then the only question open for us to consider is the question of interest. That is the only question referred to us by the court, as preliminary to further action by the court.

So many years have elapsed since this controversy has been pending that I hope, at least, we will come to some conclusion to-day; that we will either blaze the way to reach some result ourselves, or else make it apparent and clear that can not be done, so that the case may take its due course.

The Master's report contains in detail all of the data relating to the obligations put out by the original State of Virginia, upon which West Virginia is bound, and these are shown in detail, with the interest calculated thereon, in a green-covered pamphlet which is filed as an exhibit before the court. This pamphlet contains a list of all of the bonds taken from the Master's report, with the interest computed thereon, according to their tenor, upon the various bases of settlement that were then under consideration. The record furnishes complete data for the computation of the interest to be borne by West Virginia upon her share of the principal, as fixed by the court. It is not necessary, however, to go into any details about that at this time. The question before the West Virginia commission is the consideration of the two resolutions that we have communicated to them.

REMARKS OF MR. JOHN W. MASON, CHAIRMAN, WEST VIRGINIA COMMISSION.

Mr. Mason: Gentlemen, I want to say just a single word. I regret that the distinguished gentleman has seen fit to discuss the question, which he has, as to what West Virginia would do in case of judgment against us which we thought was a judgment from a court of competent jurisdiction. As to that we may say, as the Supreme Court said, if that contingency ever arises we will meet it, in a spirit that comports with the dignity of a great, loyal and law abiding State. We are not to be forced by any remarks in advance as to what is the equitable proportion, into giving an opinion of what we would do in case there is an adjustment.

Let me say a word as to another matter, if you will indulge a personal allusion. I am one of the men who voted for that constitution. I am one of the men who made that promise. It was my first vote. We made that promise. I, for one, have never had any inclination to, nor never thought of retracting it. But, for fifty years we have been asking, clamoring and demanding, trying in every way we knew how, to get at the question of what is our equitable proportion of that debt. Heretofore it has been newspaper correspondence and ex parte resolutions of legislatures, Virginia enacting such legislation as she saw proper, and West Virginia such legislation as she saw proper. After a while it got into the Supreme Court of the United States.

Now, gentlemen, I understood, and still understand, that it is to some extent at least before the commissioners representing the two States, who have the right and the power to ascertain and to answer the questions which I have been asking for fifty years, namely, what is West Virginia's equitable proportion of that debt, if anything?

I hope, gentlemen, you will not send us back to our constituents, saying we met a body with competent jurisdiction, authorized to answer that question, and you would not do it.

Instead you simply said that you would not discuss a compromise or talk with us but along one line. And we would go back home still with nothing except the finding of a court which, is my judgment, is not conclusive at all upon any subject except possibly the question as to the basis of settlement.

Congressman Flood: I think you entirely misunderstood Mr. Harrison. He distinctly stated at the beginning that the Virginia commission would be glad to receive a communication from you.

Mr. Mason: Yes, but that is as to the resolution, and the only question is the question of interest.

Mr. Harrison: As indicated by the court.

Congressman Flood: Mr. Harrison indicated that the Virginia commission was prepared, in response to some resolution that you might adopt, to go further.

Mr. Mason: Let me say this. If you mean by that, that the West Virginia commission, organized as it is, with only limited advisory power, recently appointed, without having opportunity to go over the question, is to formulate a proposition, not upon the principal, but upon the amounts, as to how the account stands between the two parties, whether we owe you anything or you owe us, and if so how much, of course we would not be prepared to do that at this time.

Chairman Moon, of Virginia: When would you be prepared to render a statement of that kind?

Mr. Mason: My idea, gentlemen, is that this is, to a very large extent, a matter of compromise between the two commissions. We want to meet in that light. We do not want to meet as if still carrying on a lawsuit. We can carry that on any time we want to. But we are here representing the litigants on the two sides, and we can agree, if we can agree at all, on a basis of settlement. And, further, after we know what that is, we may agree upon amounts.

Simply to say now that we will not talk about or discuss anything except the question of interest, why gentlemen, you place us in a very embarrassing position. I am sure you do not want to do that.

Mr. Moon: That is our view of the situation, but we would be glad to receive your counter suggestions, and have you state your views.

Mr. Mason: If you mean by that, gentlemen, to get down to the concrete and say, "West Virginia will pay you so much money," or, "Virginia owes us so much money," as to that we already have had two statements of that account in West Virginia. One statement brings West Virginia out a little in debt. The gentleman who made that statement, the principal man who made that report, was the old auditor of Virginia for eight years. Since that report there is another statement which says you owe us. So if you want to go into the concrete and say how the amount stands, gentlemen, we would ask you for further conference upon the matter. But if you want to insist simply that you are not going to talk about anything else, and consider nothing else but interest, the probabilities are that we could settle that question in a very short time. I hope that will not be the view of this commission.

Mr. Moon: Do you suppose that in thirty days you could formulate a suggestion?

Mr. Wells, (of West Virginia): I was about to make this suggestion, that we adjourn until 2 o'clock, for luncheon; that at that hour the West Virginia commission to meet to formulate its reply to the resolutions offered by the Virginia commission, and that the Virginia commission remain subject to our call, until we are ready to submit our reply.

Mr. Mason: Maybe I ought not to do this; if I ought not, pardon me. Suppose you withdraw this resolution, gentlemen, and let us meet as friends; and see whether or not we can settle this question, whether or not, Mr. Harrison, you can answer the questions that I have been propounding, as you and some other people know, in the last forty years, as to what is West Virginia's equitable proportion of the debt.

Mr. Moon: Our view is that the court has answered that question as to principal.

Mr. Mason: I do not want to take up the technical ques-

tion, that has been settled, especially in view of what the court said upon that subject.

Mr. Harrison: Our view is that the court has answered that vexed question as to the principal.

Mr. Mason: As to the principal?

Mr. Harrison: Yes, as to the principal.

Mr. Mason: The basis, you mean?

Mr. Harrison: Yes, and as to the amount, subject perhaps to any revision of figures that may be necessary. The very tribunal has answered the question which the public men of your State desired should answer it, rather than to have that responsibility upon them.

Mr. Mason: We do not understand the Supreme Court decision or opinion in that light. We do not consider at all that the Supreme Court has settled the amount. It has indicated a basis. It took a different one from yours or ours, either one. You suggested it upon the basis of population, and ours was upon taking the Wheeling ordinance. They said both were wrong, and in their report took the taxable values.

Mr. Harrison: Of course alternative bases were presented to the court.

Mr. Mason: Yes.

Mr. Harrison: But they adopted a basis by which they thought the fairest results would be attained, and on that basis have expressed an opinion as to the amount.

Mr. Mason: Yes, I say that, too.

Mr. Harrison: Now do not misunderstand me, if you please, Mr. Chairman, to indicate that it is the sense of the Virginia commission not to meet you gentlemen in the utmost spirit of frankness and consider the question of settling the whole controversy.

Mr. Mason: Suppose we just simply answer your first resolution no; there probably would be no answer to the second one, because nobody is going to say we want to put ourselves in opposition to the Supreme Court of the United States or any other court.

Mr. Moon: Which do you mean by the first one?

Mr. Mason: The one which says the only question is the matter of interest. That would be easily answered. As to the other, of course, gentlemen, you do not want to put us in that position and have us say we would place ourselves in opposition to the judgment or decree of the Supreme Court of the United States.

Mr. Harrison: Let me make this suggestion. I hope in the response your commission will make to the resolution, that if you think other questions than interest have been referred by the court to the two commissions for consideration, you gentlemen will kindly indicate what they are, in order that we may understand each other.

Mr. Mason: But, Mr. Harrison, we probably would not be ready now to go over and indicate the items which have been omitted. In order to make a settlement upon the basis suggested by the Supreme Court of course there are two things to be considered. One is the taxable value of the property of the two States. And they have omitted the slave property. The other is the actual amount of the debt.

Mr. Harrison: I suggest you put that in the form of a reply.

Mr. Mason: That may not be the only question, gentlemen.

Mr. Moon: I believe the suggestion has been made by Mr. Wells, which I think a wise suggestion, that we take an adjournment now until 2 o'clock and await the pleasure of the West Virginia commission, so far as we are concerned. You can notify us when you are ready to continue the conference.

(Thereupon, at 12:30 o'clock P. M., the joint conference was adjourned, subject to the call of the West Virginia commission.)

Conference Room of the Virginia Commission,
New Willard Hotel, Washington, D. C.,
5 o'clock, P. M.

At 5 o'clock, P. M., Chairman Mason, of the West Virginia commission, appeared before the Virginia commission and presented the following resolutions, which had been adopted by the West Virginia commission in reply to the resolutions presented to it in joint conference:

1. The debt commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the debt commission on the part of the State of Virginia:

"Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: that in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the joint commission, now in session, should consider.

2. Whereas, the view of the Virginia debt commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore, be it

Resolved, That the Virginia and West Virginia commissions shall each appoint a sub-committee, respectively, of

three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party.

After consideration of the above resolutions by the Virginia commission, Chairman Moon and the members of the Virginia commission proceeded to the conference room of the West Virginia commission.

Conference Room, West Virginia Commission,
New Willard Hotel, Washington, D. C.,
8 o'clock, P. M.

Chairman Moon, of Virginia: Gentlemen of the West Virginia commission, the Virginia commission has adopted the following resolutions in response to your resolutions of this afternoon:

The Virginia commission, having received the following communications from the West Virginia commission, numbered for convenience 1 and 2:

(1) The debt commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the debt commission on the part of the State of Virginia:

Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon

the sum ascertained by the court to be West Virginia's share of the principal of said debt.

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the joint commission, now in session, should consider.

(2) Whereas, the view of the Virginia debt commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore, be it

Resolved, That the Virginia and West Virginia commissions shall each appoint a sub-committee, respectively, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party.

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question" which the joint conference should consider.

The court said: "Among other things there still remains the question of interest." The Virginia commission understands this language to mean that there were "other things" to be considered by the court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia commission, being of opinion that there is no ambiguity in the opinion of the court, and that no conference as to any other matter than the question of interest is called for between the two commissions, respectfully adheres to the interpretation of the opinion and decision of the court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two commissions.

It regrets, however, that the West Virginia commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia commission further regrets that the West Virginia commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia commission that a sub-committee of three should be formed from each commission, with instructions to consider all matters involved, and so forth, the Virginia commission respectfully says that it is agreeable to the appointment of such sub-committees, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ..... day of ....., 1913, and report to an adjourned meeting of this joint conference to be held on the ..... day of ....., 1913.

Chairman Moon, of Virginia: I presume it is intended that the meeting of the sub-committees referred to, be held at this place; I do not know.

Chairman Mason, of West Virginia: I take it, gentlemen, that is only a qualified acceptance of the proposition made by us, and that we would want to discuss it further. Whether or not we would want to eliminate from the report to be made by the sub-committees, all questions except the payment of interest, and further, that the proposal of a basis for payment shall come from West Virginia, are questions that we would wish to consider.

I had hoped, gentlemen, you would feel free simply to leave the question open, and that the sub-committee when it met might discuss matters and make such report as it thought proper, insisting, of course, upon your notion about it.

Whether or not we would want to appoint a committee under those restrictions is a matter we would have to think about. I regret very much that you limit it in that way.

Chairman Moon, of Virginia: Would you suggest a separate session of your commission to consider that point?

Chairman Mason, of West Virginia: Yes. I think it will take but a few moments' time.

Chairman Moon, of Virginia: So we will leave you in executive session until you determine what position you will take upon that point.

Chairman Mason, of West Virginia: Yes. I am sorry, gentlemen, you put it in that way.

Conference Room of the Virginia Commission,
New Willard Hotel, Washington, D. C.,
9:30 o'clock, P. M.

Chairman Mason, of the West Virginia commission, appeared before the Virginia commission, and the following occurred:

Chairman Mason, of West Virginia: Gentlemen, the West Virginia commission elects me to report the following:

The West Virginia commission has received the following statement from the Virginia debt commission:

The Virginia commission, having received the following communications from the West Virginia commission, numbered for convenience 1 and 2:

(1) The debt commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the debt commission on the part of the State of Virginia:

"Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the joint commission, now in session, should consider.

(2) Whereas, the view of the Virginia debt commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and

for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore, be it

Resolved, That the Virginia and West Virginia commissions shall each appoint a sub-committee, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party.

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question," which the joint conference should consider.

The court said: "Among other things there still remains the question of interest." The Virginia commission understands this language to mean that there were "other things" to be considered by the court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia commission, being of opinion that there is no ambiguity in the opinion of the court, and that no conference as to any other matter than the question of interest is called for between the two commissions, respectfully adheres to the interpretation of the opinion and decision of the court, as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two commissions.

It regrets, however, that the West Virginia commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia commission further regrets that the West Virginia commission has not seen fit to indicate or suggest an amount the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia commission that a sub-committee of three should be formed from each commission, with instructions to consider all matters involved, and so forth, the Virginia commission respectfully says that it is agreeable to the appointment of such sub-committees, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ..... days of ....., 1913, and report to an adjourned meeting of this joint conference to be held on the ..... day of ....., 1913.

And in reply to the last communication of the Virginia debt commission, the West Virginia debt commission says that it is anxious to proceed with the negotiations but cannot consent to agree in advance that only the question of interest shall be considered, or that the West Virginia sub-committee shall be required to first submit a proposition looking to a settlement. This commission is willing and anxious to ap-

proach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committees.

This committee did not understand the remarks made by Mr. Harrison to-day as a proposition. We considered only the written resolutions presented to us.

In reply to the remarks made by Mr. Harrison at the joint meeting to-day, and referred to in your communication, we would say that this commission does not feel sufficiently acquainted with the questions involved—for reasons heretofore stated—to submit a proposition at this time, and asks that the whole subject matter be submitted to the sub-committees hereinbefore referred to, with the understanding that the said sub-committees be required to report their action for approval to their respective commissions at a time in the near future to be now agreed upon.

Chairman Moon, of Virginia: What do we understand by "the whole matter"?

Chairman Mason, of West Virginia: Interest and all; everything to go to the sub-committee; and let it thresh it out, and let it make its report:

Mr. Harrison, of Virginia: You mean to reopen the whole case and consider the questions *de novo?* That is what you mean by "the whole matter," I suppose.

Chairman Mason, of West Virginia: That is our view. That is, we do not mean to go back to the courts, or to the commissioners; but we would consider among ourselves, that is, the sub-committee, and discuss the whole matter.

Mr. Flood, of Virginia: All other matters, as well as interest?

Chairman Mason, of West Virginia: All other matters, as well as interest; yes, sir. I do not mean, of course, to have this go back to the courts, or the commissioners, necessarily; but so far as we are concerned, in discussing and settling the matter, we want the whole question considered. We are not willing to say in advance that there is no question involved but interest.

Chairman Moon, of Virginia: Do not you misquote us in stating that we ask the proposition in advance? We do not ask it in advance, do we?

Chairman Mason, of West Virginia: No; I say it is not of very much interest who makes the first proposition of settlement, but you say that the sub-committee shall first make the proposition of settlement. Our idea is to leave that question of procedure to the sub-committees. It makes no difference which has the first say or which has the last say. We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure.

Chairman Moon, of Virginia: The impression made on my mind on hearing the resolution read, was that you intended to convey the idea that we required you first to make a proposition for compromise in settlement of the whole matter, to us. Is that what you intend to convey?

Chairman Mason, of West Virginia: Yes; that is the way we understood your second proposition.

Chairman Moon, of Virginia: The second proposition, not the first one.

Chairman Mason, of West Virginia: I say, your number two, in the last proposition.

Mr. Flood, of Virginia: Your objection to our second proposition is that we require first a suggestion of compromise to come from your sub-committee?

Chairman Mason, of West Virginia: Yes. We suggest now that that is a question of procedure and should be left open to the sub-committee; to leave it as a question of procedure.

Chairman Moon, of Virginia: To be entirely frank with you, it seems to me this morning this was made plain, that the court gave the principals, and that we presented the details upon which the interest might be computed, according to rules of interstate or international law, by which an accurate statement could be made up of the interest. That subject we do not expect to be considered, except as a whole.

And we invited some proposition from you gentlemen as to a settlement of the matter, inasmuch as the Supreme Court has discussed the matter and left it open, to a certain extent.

Chairman Mason, of West Virginia: I understand your view is that the Supreme Court has settled the question of amount. We do not look at it alike.

Chairman Moon, of Virginia. No, the amount of the principal.

Chairman Mason, of West Virginia: I say, the amount of the principal. We do not look at it that way. We want the whole matter to be taken up by the sub-committees, to see just what we ought to pay, if anything. Then it will come back to us in that shape. Our committee would not be willing to concede the fact that the only thing to be agreed upon was the question of interest.

Mr. Harrison, of Virginia: You mean, by "the whole subject matter," to reopen the whole case and consider the matters *de novo?*

Chairman Mason, of West Virginia: Yes, sir; that is as far as the commissions are concerned.

(After careful consideration of the above resolutions, a resolution in reply was adopted, and Chairman Moon proceeded to the conference room of the West Virginia commission, where the following occurred:

Conference Room of the West Virginia Commission,
New Willard Hotel, Washington, D. C.,
11:15 o'clock, P. M.

Chairman Moon, of Virginia: The Virginia commission has instructed me to give you the following communication:

The Virginia commission has given careful consideration to the last communication from the West Virginia commission stating in effect that the conference between the two

commssions must embrace a consideration *de novo* of the entire case, both as to principal and interest involved.

The Virginia commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia commission as the basis upon which the conference must proceed.

Chairman Mason, of West Virginia: That being true, are we through?

Chairman Moon, of Virginia: I do not know. You gentlemen can consider that matter. I have no authority to speak for the Virginia commission except to deliver that message. We give that to you for your consideration.

Chairman Mason: We made you a proposition.

Chairman Moon, of Virginia: Yes, I know; but I have no authority beyond that paper.

Chairman Mason, of West Virginia: If you have reached that conclusion, it is not necessary for us to continue our negotiations for the present.

Chairman Moon, of Virginia: That is for you to say.

Chairman Mason, of West Virginia: No, that is not for us. We have said we could not do the other; you say you can not do this.

Chairman Moon, of Virginia: We say that we feel constrained to decline to continue negotiations upon the basis which you propose.

Chairman Mason, of West Virginia: Yes.

Chairman Moon, of Virginia: Now, the question is, what the basis is.

Chairman Mason, of West Virginia: The basis is, as I understand it, that you will insist upon your contention that the only question to be considered is the question of interest.

Chairman Moon, of Virginia: Oh, no. It is all set forth at length in our communications. I am not undertaking to speak for the Virginia commission in this respect.

Chairman Mason, of West Virginia: I do not understand just what shape that leaves us in. If it is simply to stop any further negotiations about it, we might as well do it at one time as another.

Chairman Moon, of Virginia: I did not write that resolution. It was drawn by the members of the Virginia commission, and they have passed it. I have no authority except to deliver it to you for your consideration. We regret very much that negotiations can not proceed on a different basis; that is all.

Chairman Mason, of West Virginia: So do we. But let us remain in session for a few minutes, and we will see whether we will quit, or not.

Chairman Moon, of Virginia: Certainly.

Conference Room of the Virginia Commission,
New Willard Hotel, Washington, D. C.,
12:05 o'clock, Midnight.

Chairman Mason, of the West Virginia commission appeared before the Virginia commission, and presented the following resolution:

The following communication was received from the Virginia commission after 11 o'clock P. M.

The Virginia commission has given careful consideration to the last communication from the West Virginia commission, stating, in effect, that the conference between the two commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia commission as the basis upon which the conference must proceed.

Pending a consideration of the communication Mr. Miller moved that owing to the lateness of the hour at which the communication was received, the further consideration of the same be postponed until to-morrow morning, July 26, 1913, at 10 o'clock and that the West Virginia commission adjourn until that hour.

Which motion was put by the chair and carried by the unanimous vote of the commission, at 12 o'clock midnight.

(In pursuance of the above resolution, further proceedings were adjourned until to-morrow, Saturday, July 26, 1913, at 10 o'clock A. M.)

Saturday, July 26, 1913.
Conference Room of the Virginia Commission,
11:40 o'clock A. M.

Chairman Mason, of West Virginia, appeared before the Virginia commission and presented the following resolution:

The Virginia debt commission on the part of the State of West Virginia received at 11:15 last night the following communication from the Virginia commission:

The Virginia commission has given careful consideration to the last communication from the West Virginia commission, stating, in effect, that the conference between the two commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia commission as the basis upon which the conference must proceed.

In reply to the foregoing communication the West Virginia commission regrets that the Virginia commission has declined to submit the matters in question to a sub-committee.

as heretofore proposed by the West Virginia commission, and the West Virginia commission now suggests that the two commissions have a joint meeting on the ..... day of ....., at ....., for the purpose of further considering a settlement of West Virginia's proportion, if any, of the Virginia debt proper to be borne by the State of West Virginia and to arrive, if possible, at some adjustment thereof.

(The above resolutions were considered by the Virginia commission, a reply adopted, and Chairman Moon proceeded to the conference room of the West Virginia commission to present the same.)

Conference Room of the West Virginia Commission.
New Willard Hotel,
12:30 o'clock, P. M.

Chairman Moon, of Virginia: I am instructed by the Virginia commission to present to you the following communication:

The Virginia commission have considered the suggestion of the West Virginia commission for an adjournment of the conference between the two commissions.

If it is the purpose of the West Virginia commission to insist that the joint conference shall embrace a consideration *de novo* of the entire case, both as to principal and interest involved, then the Virginia commission can perceive no advantage to result from further negotiations. The Virginia commission cannot recede from their views as heretofore announced to the West Virginia commission in respect to the matters to be embraced in the conference between the two commissions.

With this understanding it consents to the adjournment of the conference to Tuesday, August 12, 1913, at 10 o'clock A. M., at the New Willard Hotel, Washington.

Conference Room of the Virginia Commission,
New Willard Hotel,
3:00 o'clock, P. M.

Chairman Mason, of the West Virginia Commission, appeared before the Virginia commission and presented the following resolution:

The West Virginia commission acknowledge receipt of the communication from the Virginia commission concurring in the suggested adjournment upon certain terms and conditions, which terms and conditions the West Virginia commission declines to be bound by. We, however, agree to the time and place of adjournment suggested by you and insist that this adjournment shall be, and is, without terms or conditions and without prejudice to the rights of either party.

(After an informal discussion, the conference at 3:30 o'clock P. M., adjourned to meet on Tuesday, August 12, 1913, at 10 o'clock A. M., at the New Willard Hotel, Washington, D. C.)

Correct:

JOHN B. MOON,
Chairman Virginia Commission.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA,
COMPLAINANT,

vs.

STATE OF WEST VIRGINIA, DEFENDANT.

IN EQUITY.

NOTE OF ARGUMENT IN RESISTANCE OF COMPLAINANT'S MOTION THAT THE COURT PROCEED TO ADJUDICATE ALL UNDECIDED QUESTIONS IN THE CAUSE.

It is respectfully submitted that there are but two questions for consideration in the determination and decision of this motion. They are:

I. Is the West Virginia Commission making a present effort in good faith to negotiate a settle-

ment of West Virginia's equitable portion of the Virginia debt in accordance with the suggestion of this court? And,

II. If there be a present and sincere effort to that end on the part of the West Virginia Commission, does the fact that it is under the necessity of reporting back to the governor and legislature of the State of West Virginia the result of its negotiations emasculate the Commission and render its negotiations a mere idle and empty form?

The first question must be answered yes and the second no, and we shall undertake to briefly give the reasons therefor.

I.

ACTIVITY AND GOOD FAITH OF WEST VIRGINIA COMMISSION.

The response filed to the motion herein, together with the exhibits therewith, shows that the West Virginia Commission has not ceased its activities from the time of its organization, on the tenth day of June, 1913, to the present time, and that it is still active along the line of negotiation, notwithstanding the pendency of the present motion. Indeed, upon the very day that this motion bears date and before notice thereof had been served upon the State of West Virginia, the chairman of the West Virginia Commission, in consequence of

a resolution adopted by a sub-committee thereof, mailed a letter to the chairman of the Virginia Commission, informing him, and requesting him to so inform the Virginia Commission, "that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment." The full text of this letter is as follows:

"FAIRMONT, WEST VIRGINIA,
September 22, 1913.

"Honorable J. B. MOON,
"*Chairman Virginia Debt Commission, Charlottesville, Virginia.*

"MY DEAR SIR: I am instructed by a sub-committee of the West Virginia Commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia Commission, that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment; but that it will yet require some three or four months' time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee, and hope it will be agreeable to your Commission to consider the same favorably.

"In the meantime, if your Commission should desire to submit any suggestions or

propositions to this Commission, looking to the same end, we would gladly, and without unnecessary delay, consider the same.

"With great respect, I remain,

"Yours, etc.,

"JOHN W. MASON,

"Chairman West Virginia Commission."

It likewise appears from the response to the motion that—

> "While its Commission" (the West Virginia Commission) "and the sub-committee thereof, together with the Governor and Attorney General of the State, were diligently and conscientiously using every effort which they reasonably could use, and while they were exercising due diligence and were proceeding with all deliberate speed to carry into execution the requirements imposed upon them by the joint resolution of the Legislature of the State of West Virginia of February 21, 1913, and while they were formulating a proposition to be made to the Virginia Commission, as requested by said Commission at the Washington conference hereinbefore referred to, to the end that the matters in controversy between the two States might be settled in accordance with the suggestion of this honorable court, made in its opinion rendered March 6, 1911, as interpreted by its opinion rendered October 30, 1911, the Commonwealth of Virginia served notice of the present motion." Par. 12 of Response.

These are the words of the State, spoken through its chief law officer, its Attorney General, and the

sincerity and truth thereof, we presume, will be conceded.

Nor is this all: The West Virginia Commission has not only been active and earnest, but the exhibits filed with the response show progress in the negotiations. At the joint conference of the Commissions of the two States, held at Washington on the 25th and 26th days of July, 1913, the State of Virginia had no proposition to make, and made none. At first, it contented itself with presenting to the West Virginia Commission a resolution declaring that the negotiations must be confined to the single question of interest; but, upon the demurrer of the West Virginia Commission, finally invited a proposition from that Commission looking to a settlement of the entire matter. This, we presume, meant a lump sum; but the West Virginia Commission, feeling that it was not sufficiently informed at that time to take such a step, declined to make any proposition. Thereupon, the joint session adjourned. Subsequently, however, the West Virginia Commission, after the appointment of a sub-committee, and after some consideration by that committee of the question, began the preparation of a proposition to be submitted to the Virginia Commission. This is evidenced by the letter of its chairman of the 22d of September, 1913, hereinbefore set forth; and it is submitted that this shows progress. It may not be as rapid as the Virginia Commission would like, but it must be borne in mind that the latter Com-

mission occupies a very different position from the former. The Virginia Commission has nothing to do but to receive, while the West Virginia Commission may be required to provide and to pay.

II.

EFFECT OF REFERRING RESULT OF NEGOTIATIONS BACK TO THE LEGISLATURE OF WEST VIRGINIA.

The fact that the West Virginia Commission is required by the resolution of its appointment to report, without further action, the result of its negotiations to the governor of that State does not destroy the utility of the Commission; because it would have been necessary to make this report in any event, whatever might have been the form of the resolution. Even if the two Commissions should agree upon a fixed sum in settlement, the West Virginia Commission would have no power to pay the same under the West Virginia Constitution, whatever the terms of the resolution appointing it. It could not draw its warrant upon the treasury of the State, nor could that power be delegated to it; and, even if it should, a probable lack of funds would render its draft worthless. Neither could it, nor any of the officials of the State, in the absence of legislative sanction, issue bonds for the purpose of raising money for the discharge of the decree agreed; and for it, or them, to do so would simply result in putting worthless securities upon the market.

Section 3 of article 10 of the present Constitution of West Virginia (1872) reads as follows:

> "3. No money shall be drawn from the treasury but in pursuance of an appropriation made by law, and on a warrant issued thereon by the auditor; nor shall any money or fund be taken for any other purpose than that for which it has been or may be appropriated, or provided. A complete and detailed statement of the receipts and expenditures of the public moneys shall be published annually."

And section 4 of the same article reads:

> "4. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion or defend the State in time of war; but the payment of any liability other than that for the ordinary expenses of the State shall be equally distributed over a period of at least twenty years."

See also section 5 of the same article:

> "The power of taxation of the legislature shall extend to provisions for the payment of the State debt and interest thereon, the support of free schools, and the payment of the annual estimated expenses of the State; but, whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year sufficient with the other sources of income to meet such deficiency, as well as the estimated expenses of such year."

But if it should be contended that the provisions of the present Constitution are not to govern, but that section 8 of article 8 of the Constitution of 1861, as being a part of the contract between the two States, should be looked to, then we find it reading as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

In any event, and under either Constitution, moneys can be drawn from the State treasury in only one way; and, wherever a debt is to be created (as by a bond issue) under section 4 of article 10 of the present Constitution, the payment thereof "shall be equally distributed over a period of at least twenty years," and under section 8 of article 8 of the Constitution of 1861 could be met only by providing "a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

It may be suggested, however, that these very difficulties only tend to show the inefficient character of the present West Virginia Commission, but not so. If the two Commissions should reach an

amicable and satisfactory adjustment of the controversy and the West Virginia Commission should report the result of such negotiations to the governor of that State and he should convene the legislature of his State, and transmit to it such report, with his recommendation added thereto, it would only be reasonable and proper to presume that the West Virginia legislature would confirm the report and take the necessary steps to carry it into execution.

It would be incorrect to say, as suggested by the representatives of the Commonwealth of Virginia, that this course would leave the whole matter at large and open up every question *de novo* for discussion upon the hustings and in the legislature, for it will be observed that the West Virginia resolution provides that—

> "The Commission shall make a report to the governor as soon as practicable, and, upon receipt of said report, the governor shall convene the legislature for the consideration of the same."

This means (unless unnecessary time should be consumed by the negotiation) that the members of the present legislature would be convened in extraordinary session by the governor, and that too before the election of the members of that body to convene in regular biennial session in the month of January, 1915. No election, therefore, would

intervene, and, being none, a discussion upon the "hustings" would not take place.

It is true that the West Virginia legislature, when convened to consider the report of the Commission, would have the power to disappoint us; but we can scarcely believe, and the court will not presume, that it would repudiate an equitable adjustment of this controversy.

OBSERVATIONS.

This court has proceeded with great caution in this case, that no injustice may be done to either of the high parties litigant. And when reference is made to the fact that this case has been pending for some years, it is not improper to say that there have been no unnecessary delays in the prosecution of this suit, but it has gone forward with that degree of speed consistent with the nature of the case and the requirements of justice. The court has been careful to avoid doing injustice to either of the parties, but desires that time for deliberation may be afforded and a conclusion reached without undue haste.

Should the Virginia Debt Commission reject the proposition for settlement, when made by the West Virginia Commission, then it will be time for the complainant to report this fact to this court, and move to expedite this cause. Until West Virginia has had a reasonable time, and has been afforded opportunity to respond to the suggestions of this court, in an intelligent, orderly manner, and has

had time and opportunity to comply with the requirements of the resolutions of the West Virginia Legislature, West Virginia will not be in default, and until such reasonable time elapses, a motion to speed this cause is premature, and to sustain this motion at this time, it is most respectfully submitted, would deprive this State of the right and privilege which this court has afforded her, of a peaceable adjustment of a quasi-international dispute.

It is therefore most respectfully submitted that this motion should, at this time, be overruled, or, it should be continued for a sufficient time to enable the West Virginia Commission to complete its labors, and to perform its duties, and it is suggested that not less than six months be given for that purpose.

Respectfully submitted,

A. A. LILLY,
Attorney General of West Virginia.

V. B. ARCHER,
CHARLES E. HOGG,
JOHN H. HOLT,
Of Counsel for West Virginia.

OCTOBER 13, 1913.

OCT 8 1976

In the Supreme Court of the United States

NO. 3, ORIGINAL

COMMONWEALTH OF VIRGINIA, Complainant,

v.

STATE OF WEST VIRGINIA, Defendant.

In Equity.

Note of Argument in Support of Complainant's Motion that the Court Shall Proceed to Adjudicate All Outstanding Questions in the Cause.

In the Supreme Court of the United States

NO. 2, ORIGINAL.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

v.

STATE OF WEST VIRGINIA, DEFENDANT.

IN EQUITY.

NOTE OF ARGUMENT IN SUPPORT OF COMPLAINANT'S MOTION THAT THE COURT SHALL PROCEED TO ADJUDICATE ALL UNDECIDED QUESTIONS IN THE CAUSE.

The exhibits printed with this motion will inform the Court of the failure of all efforts so far made looking to any adjustment by agreement between the two states of the matters not determined by the decision pronounced on the 6th of March, 1911 (220 U. S., p. 1).

It is pertinent to the present motion to recall that this cause had been already pending in this Court for more than five years when that decision was rendered, and had then been repeatedly and exhaustively argued by counsel, and considered by the Court upon the material issues presented in the pleadings, or evolved in the various stages of the litigation as it progressed; that the defendant was represented all through the litigation by some of the most learned and most resourceful lawyers in America, who made every defense which could be suggested by trained and alert minds fully informed as to the facts of the

case; that the case had been referred to a learned and able Special Master, who, aided by expert accountants, and after months of intelligent and unremitting labor, and after hearing and considering all that counsel for the parties could bring to his attention, had made the findings upon which the Court in large measure based its decision.

The decision thus made settled that West Virginia had assumed and owes an equitable portion of the common debt of undivided Virginia; and it settled the basis and principles upon which the amount of the principal of that debt should be ascertained.

It went further and applying those principles to the figures as computed by the Court ascertained the share of the principal sum due by West Virginia to be $7,182,507.46. *Virginia* v. *West Virginia,* 220 U. S. 1-35.

The Court forbore to decide what was the extent or measure of West Virginia's liability to pay interest upon her equitable share of the common interest-bearing debt of the unsevered Commonwealth.

That question alone was distinctly referred back to the two states for friendly compromise and adjustment between them, if possible.

That question was unquestionably reserved for future consideration and decision by the Court after a reference to the Special Master, in the event that the two litigants should fail or be unable to agree upon terms for its adjustment.

No other question was expressly or distinctly referred back to these litigants by the Court, though there was a reservation, in the opinion of the Court, as to the finality and precise accuracy of the computation by which the Court, applying the principles it approved to the figures it adopted, had reached the mathematical result stated.

Besides the foregoing, it does not appear that there were any controverted questions reserved by the terms of the Court's decision, and the only one of these which was distinctly referred to the two states for adjustment, was that as to West Virginia's liability for interest.

The Commonwealth of Virginia, in obedience to the recommendation of this Court, transmitted a copy of this decision to the Governor of West Virginia on May 2d, 1911, with the request that he would lay it before the Legislature of West Virginia, then soon to assemble, to the end that provision might be made for the conference between the two states as recommended by the Court. No response having been made to this communication, and no action having been taken by any of the constituted authorities of West Virginia with reference to the overtures so made by the Commonwealth of Virginia for the conference above referred to, the Commonwealth of Virginia moved this Court at the October Term, 1911, in accordance with the alternative suggestion made in its decision, to speed the cause by referring it to the Master to make and report such calculations as might be necessary for a final decree. On the 30th of October, 1911, the Court rendered its decision (222 U. S., page 17) on the motion of the complainant to speed the cause, overruling said motion on the ground that "the time had not come for granting it," the Court being of opinion that the authorities of West Virginia should be allowed, if they saw fit, to await the regular session of the Legislature to take action on the Court's recommendation for a joint conference between the two states. But the Court, in extending this indulgence to West Virginia, nevertheless, declared that "a question like the present should be disposed of without undue delay."

The Legislature of West Virginia met in regular session on the ..... day of January, 1913, and on the 21st of February adopted a joint resolution in words and figures following:

CONFERENCE COMMITTEE'S SUBSTITUTE FOR HOUSE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 5.

(Adopted February 21, 1913.)

Creating a commission, known as the Virginia debt commission, to provide for arranging and settling with the commonwealth

of Virginia the proper proportion of the public debt of the original commonwealth of Virginia, if any should be borne by West Virginia, to take into consideration all matters arising between the commonwealth of Virginia and the state of West Virginia in reference to said original public debt, and to report its proceedings to the governor of the state.

WHEREAS, The commonwealth of Virginia instituted a suit in the supreme court of the United States against the state of West Virginia, to have the state of West Virginia's proportion of the public debt of Virginia as it stood before one thousand eight hundred and sixty-one, ascertained and satisfied; and,

WHEREAS, At the October term, one thousand nine hundred and ten, the supreme court of the United States made a finding that the share of the principal debt of the original commonwealth of Virginia to be borne by the state of West Virginia, was seven million one hundred and eighty-two thousand six hundred and seven dollars and forty-six cents; and,

WHEREAS, Said court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the states upon all the questions involved in said litigation, as might lead to a settlement of the same; therefore, be it

Resolved by the Senate of West Virginia, the House of Delegates concurring therein:

That a commission of eleven members, known as the Virginia debt commission, is hereby created. The members of said commission shall be appointed by the governor, two of whom shall be chosen from each congressional district of the state, and one at large, not more than six of whom shall belong to any one political party, and all resignations or vacancies in the said commission as they occur shall be filled by the appointment of the governor.

Said commission is authorized and directed to negotiate with the commonwealth of Virginia, or with any person or committee owning or holding any part of the said indebtedness for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper, to be borne by the state of West Virginia.

The commission is hereby directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit instituted against the state of West Virginia

by the commonwealth of Virginia, and to ascertain and report upon and give like publicity to all the facts and conditions under which the West Virginia certificates are held or owned, together with the names and residences of the persons having the legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon.

To ascertain and report as to any part of the Virginia debt claimed against the state of West Virginia, which is owned or held or claimed to be due, at law or in equity, by the commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper, to be borne by the state of West Virginia.

A majority of said commission shall have authority to act. The commission shall choose its chairman and appoint its secretary and other necessary officers.

The expenses properly incurred by the commission and its individual members, including compensation of said members at the rate of ten dollars per day for the time actually employed, shall be paid by the state out of the moneys appropriated for said purpose.

The commission shall make a report to the governor as soon as practicable, and upon receipt of said report the governor shall convene the legislature for the consideration of the same.

The commission is hereby authorized to sit within or without the state and to send for papers and records, and to examine witnesses under oath.

Pursuant to this resolution the Governor of West Virginia appointed the eleven members of the West Virginia Commission therein provided for, and on the 25th of July the commissions of the two states met in joint conference, and the proceedings of said joint conference, stenographically reported, are filed as Exhibit B with the printed motion of the complainant.

With profound regret we have to show the Court that West Virginia has failed to accede to the suggestions of the Court and the invitations of Virginia, repeatedly made and urged by her representatives, in obedience to the views and suggestions of the Court.

As will be seen from the stenographic report of the conferences and communications between the commissioners of the two states, the West Virginia Commission would agree to no negotiations with Virginia unless, ignoring the decision of this Court and all the vast expenditure of time, labor, and money, which it cost the parties to reach that result, the Virginia Commission would agree that, surrendering the just rights under that decision of Virginia and her creditors represented by her, the whole case, and all the questions which had been, or could be, raised in the case, should be opened up and considered *de novo* just as though no decision had been made by the Court.

The Court will see from the frank and explicit statements made by the Chairman of the West Virginia Commission, speaking for and by authority of that Commission, that the only basis upon which that Commission was willing to negotiate, was that the whole subject matter of the controversy between the two states should be opened up and gone into, by the two commissions *de novo; and that even that should be done without any purpose or power on the part of the West Virginia Commission to settle anything, to determine anything, or bind West Virginia to pay one dollar of either principal or interest.*

This abundantly appears from the record of the joint conferences between the two commissions printed with this motion. (See pages 14, 26, 27, 31, 32, 39, 41, 43, 44, 45, and 46, of motion.)

The Virginia Commission was prepared, and was empowered, with the approval of the Attorney-General of the Commonwealth, to negotiate and to make a compromise settlement with West Virginia, both of the rate and amount of interest to be paid by West Virginia, and of the time and mode of payment of both principal and interest, or to agree a lump sum which West Virginia might pay, in discharge of her entire liability, including principal and interest as of the date of such agreement; and to agree that the terms of any such final

adjustment should be embodied in a consent decree to be entered by this Court in this cause; but they could not with fidelity to the trust devolved upon them, or with due respect for the Court, agree to ignore the decisions of this Court, and all the work done in this case, and embark upon an inquiry which meant nothing but hopeless and indefinite delay. They could not consent to take the case out of the hands of the Court, and refer all questions *de novo* to the decision of the two commissions.

If there were no other insuperable objections to such a course the inevitable delay which such a procedure would involve would be sufficient.

It must be remembered, however, that the West Virginia Commission was not only unwilling to agree to conduct any negotiation which was limited to the question actually referred by this Court back to the two states for adjustment, but was *powerless to make any agreement* which would bind West Virginia in any particular; that they were clothed, in the language of their Chairman, with "only limited advisory power," or powers of inquiry, and could do nothing which would settle anything. Even if the West Virginia Commission should reach a conclusion, and it should be such a result as the Virginia Commission could accept, it would not bind West Virginia. It would settle nothing, but would leave the whole matter to be fought over in the West Virginia Legislature, and before the people of that state on the hustings and at the polls. Nor can we, in this connection, overlook the fact that the people of West Virginia have, for a generation, been taught to believe that West Virginia does not owe, and, whether she owes or not, can not be compelled to pay one dollar of this debt.

If, therefore, the Virginia Commission entered into negotiation with the West Virginia Commission, it must be upon unequal terms, for, while the Virginia Commission could with the concurrence of her Attorney-General commit Virginia, the West Virginia Commission could not bind West Virginia to any proposal, or any terms whatever.

Although any negotiation under such conditions would be unfair to Virginia, yet such was the desire of her representatives to do all in their power to bring about a settlement of this controversy that the Virginia Commission was willing to enter upon a conference with the West Virginia Commission for the purpose of adjusting, if possible, the question of interest, which, under the facts and circumstances of this case, because of West Virginia's delay in making any settlement, constitutes the largest item of Virginia's equitable claim against West Virginia; but the West Virginia Commission declined to enter into any negotiation upon any such basis, and insisted upon the condition that any negotiation should embrace *de novo* the whole question of West Virginia's liability, "if any," principal and interest.

It must be apparent from what transpired between the two commissions that no satisfactory result could have been reached by negotiation, whether it was unlimited in its scope, or limited to the question of interest, and that any efforts along either line would only lead to delay, as anything which the West Virginia Commission might conclude would be merely "advisory," and would have to go back to the Legislature and people of West Virginia.

The West Virginia commissioners were undoubtedly constrained by the terms of the Act from which they derived their existence and their powers.

The terms of that Act are such as:

(1) To give the Commission created under it no powers to even negotiate with the Virginia Commission until there had been compliance with certain remarkable conditions, which could serve no purpose except delay.

(2) To so limit the powers of the Commission, which it created, as to make them merely inquisitorial and to a "limited" extent "advisory," so as to discourage any hope that any adjustment or settlement would ever result from any negotiation

between it and the Virginia Commission, if the latter should be willing to enter into a negotiation upon such unequal terms.

(3) To require that such negotiation should embrace the entire subject matter of the whole original controversy between the two states; namely, in the language of the Resolution of the West Virginia Legislature, the "Settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by West Virginia."

A careful reading of that Act is all that will be needed to show the justice of the foregoing criticism.

The preamble declares that it is the purpose of the Act to create a Commission and provide for arranging and settling the "proper proportion" of the public debt of the original Commonwealth of Virginia, *"if any,* which should be borne by West Virginia," and "to take into consideration *all* matters arising between the Commonwealth of Virginia and the state of West Virginia in reference to said original public debt."

The following paragraphs of said Joint Resolution define the powers of the Commission to be created pursuant to its terms:

> "Said commission is authorized and directed to negotiate with the Commonwealth of Virginia, *or with any person or committee owning or holding any part of the said indebtedness* for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia.
>
> "The commission is hereby directed to ascertain and report upon and give the utmost publicity to all facts in relation to the pending suit instituted against the State of West Virginia by the Commonwealth of Virginia, and to ascertain and report upon and give like publicity to all of the facts and conditions under which the West Virginia certificates are held or owned, together with the names and residences of the persons having the legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon.
>
> "To ascertain and report as to any part of the Virginia debt claimed against the State of West Virginia, which is

owned or held or claimed to be due, at law or in equity, by the Commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia.

"A majority of said commission shall have authority to act. The commission shall choose its chairman and appoint its secretary and other necessary officers.

. . . . . .

"The commission shall make a report to the governor as soon as practicable, and upon the receipt of said report the governor shall convene the legislature for the consideration of the same."

It is manifest that the Commission is given merely inquisitorial and ministerial powers; powers which its distinguished Chairman described, as stated in a former part of this brief, as "advisory," though that definition is hardly justified by the extraordinary language of the Resolution.

It is true the Commission is empowered to "negotiate," but that is as far as they can go. Any proposition for a settlement which might result from such negotiation would not bind anybody (unless, indeed, Virginia, should be bound).

So far as West Virginia is concerned, it would not even have the force or dignity of a *proposal.* It would be merely a suggestion or recommendation from her commission, as to which the only function of the Commission would be to report it to the Governor of West Virginia, who would lay it before the West Virginia Legislature, which he would thereupon convene. It would have neither force not effect unless, and until, it should be approved and adopted by that legislature.

That body, made up of many men of many minds, might approve the Commission's Report *possibly;* or they might make material amendements in it and adopt it as thus modified; or they might repudiate it entirely and appoint another com-

mission to "negotiate"; or, what is not improbable, they might submit it by a referendum to a popular vote.

The Court has said, "the conference suggested by the Court is a conference in the cause—not for an independent compromise out of Court, but an attempt to settle a decree." (*Va.* v. *W. Va.*, 222 U. S. 17.) The Resolution of the Legislature of West Virginia fails to respond in any particular to this declared purpose of the Court in suggesting this conference. The terms of the Resolution not only prohibit the Commission from consenting to a decree, but from consenting to anything else, and absolutely preclude the hope that any progress can be made towards a settlement of this controversy through the means suggested by the Court.

But perhaps an equally fatal vice in this West Virginia enactment is that by its express terms the Commission it creates is powerless even to "negotiate," until it has done certain other things and ascertained certain facts, some of which it may require months or years to ascertain, if, indeed, they can ever be determined.

It makes no difference that these facts, or their ascertainment, are absolutely irrelevant to any question as to the nature and extent of West Virginia's liability to pay an equitable portion of the principal and interest of the debt. This Resolution is the only power of attorney under which said Commission can act at all, and its functions and powers are absolutely limited by the terms of that Resolution, even though those terms and conditions should be unreasonable and absurd.

If the language of the Resolution means anything, it requires said Commission:

> "(1) To ascertain and report upon and give the utmost publicity to *all facts in relation to the pending suit* instituted against the State of West Virginia by the Commonwealth of Virginia, and to report upon and give like publicity to *all of the facts and conditions* under which the West Virginia certificates *are held and owned,* together with the *names and residences of the persons having a*

legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon;" and,

"(2) To ascertain and report as to any part of the Virginia debt claimed against the State of West Virginia, *which is owned by the Commonwealth of Virginia in her own right."*

And then follows this extraordinary provision:

" . . . and *having made the investigation required hereby,* said Commission is authorized and directed to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia."

It is manifest from this language of the Resolution that the West Virginia Commission is powerless even to negotiate with Virginia, until it has made and completed the investigation directed by the Resolution to be made.

Any negotiation between that Commission and the Virginia Commission was, and will be, *ultra vires* as to the West Virginia Commission, until it has completed said investigation.

It matters not that said investigation can throw no possible light upon the question of West Virginia's liability; or that it is entirely foreign to the purpose of the Court in suggesting this conference; or that it will lead to indefinite delay. *Ita scripta est lex,* which defines the Commission's power to "negotiate," and that requirement must be, to say the least, substantially complied with before the West Virginia Commission could enter upon any negotiation with Virginia for any settlement of West Virginia's share of the debt.

The branch of the investigation, requiring the ascertainment of all the facts in relation to the pending suit, is so vaguely defined in the Resolution, that it is difficult to understand what is meant by it. But *all the facts in regard to that suit,* whatever that may mean and however irrelevant and valueless, must be investigated by the Commission before it can begin to negotiate with Virginia.

The bill and exhibits in the cause show the facts, "under which the West Virginia certificates are held," but the ownership of these certificates is constantly changing, and, in the nature of things, it would be difficult, expensive, and, indeed, impossible to ascertain the "names and residences" of the owners at any given date. This is, therefore, not only an irrelevant, but an impracticable condition precedent, which the West Virginia Resolution requires to be performed before her Commission is authorized to begin negotiations.

The portion of the debt "claimed against the State of West Virginia, which is owned by the Commonwealth of Virginia in her own right," can be ascertained from the records, but that is a matter of no interest to West Virginia, and would be absolutely valueless in determining her liability in this cause. Nevertheless, the West Virginia Resolution makes the investigation of the facts as to Virginia's interest in her own right a condition precedent to any negotiations with Virginia.

These provisions of the Resolution are but added proof of the impossibility of any settlement with West Virginia ever being reached under that enactment.

On behalf of the Virginia Debt Commission, of the counsel for Virginia in this cause and of the Commonwealth whom they represent, we beg to express deep regret that the efforts of Virginia to bring about a settlement with West Virginia, in accordance with the suggestions of the Court, have met with no success. Candor also requires us to say that there is nothing in the situation which justifies the hope that any adjustment will, or can ever, be made between the parties litigant—a condition for which Virginia is in no degree responsible.

In these circumstances, the complainant, the Commonwealth of Virginia, submits that there is no rational ground to hope for any advantage to result from further negotiations, and we respectfully submit that the time has come for the cause to be speeded, and, to that end, we earnestly ask that it may be referred to the Master, with instructions to ascertain and

report forthwith to the Court the amount of interest which the State of West Virginia should be required to pay on the principal sum already ascertained by the Court, and to make such other calculations as may be necessary to a final decree.

Respectfully submitted,

SAMUEL W. WILLIAMS,

Attorney-General of Virginia.

WILLIAM A. ANDERSON,
JOHN B. MOON,
RANDOLPH HARRISON,

Of Counsel for Virginia.

October 6, 1913.

Office Supreme Court, U. S.
FILED
MAR 23 1914
JAMES D. MAHER
CLERK

In the Supreme Court of the United States.

No. 2 Original—October Term, 1913.

COMMONWEALTH OF VIRGINIA,

v.

STATE OF WEST VIRGINIA.

In Equity.

RESPONSE OF THE COMPLAINANT TO THE MOTION OF THE DEFENDANT SUBMITTED IN THE ABOVE ENTITLED CAUSE.

Appeal Press, 21 S. 12th St., Richmond, Va.

In the Supreme Court of the United States.

No. 2 ORIGINAL—OCTOBER TERM, 1913.

COMMONWEALTH OF VIRGINIA,

v.

STATE OF WEST VIRGINIA.

IN EQUITY.

RESPONSE OF THE COMPLAINANT TO THE MOTION OF THE DEFENDANT SUBMITTED IN THE ABOVE ENTITLED CAUSE.

And now comes the respondent, the Commonwealth of Virginia, by Jno. Garland Pollard, her Attorney-General, and contests and objects to the granting of leave to the State of West Virginia to file a supplemental answer to the bill of complaint, as set forth in the motion submitted in the above cause, with which motion in writing the proposed supplemental answer is exhibited, and for answer to the said motion says:

Seven grounds are assigned upon which this motion is based, the first of which is:

1. That the "value and disposition of the assets set up in the supplemental answer were discovered by the defendant since the last continuance"—that is to say, since November 13, 1913.

In response thereto, this respondent says: That she denies that she received the credits set forth in the statements filed as a basis for this motion; that while said credits are represented to have existed, they are in fact mere estimates as of January 1, 1861, based upon unwarranted assumptions.

Further answering, the respondent says: That more than eight years ago, after years of discussion and fruitless negotiation, as a last resort, this suit was instituted to bring about a settlement of the question of West Virginia's liability for a just proportion of the debt of Virginia, created before her dismemberment. After demurrer—argued and overruled—a maturely considered and carefully prepared answer was filed in October, 1907, by which the defendant, with the utmost distinctness and emphasis, set up her defense against the demands asserted by the complainant. Upon the lines of complaint and defense thus presented by the bill and answer issue was joined, and at an enormous expenditure of time, labor and money, the litigation was conducted until a decision was rendered by this court on the 6th day of March, 1911, settling the principles of the cause and fixing "the share of the principal of the debt of Virginia which West Virginia had assumed."

From the inception of this suit, and throughout its entire progress, up to and including the decision of the court

upon the merits of the case, the defendant has had the benefit of the services of two attorneys-general and seven able and distinguished lawyers associated with them and a corps of expert accountants, the latter of whom were engaged continuously under the direction of counsel for more than twelve months in investigating the records of your respondent relating to the subject matter of this suit contained in the Capitol, at Richmond, in the progress of which work every possible facility was afforded by the officers of your respondent having custody of these records.

The defense thus prepared was presented to the Master and the court upon elaborate oral and printed arguments, and all facts and circumstances which might be used in the interest of the defendant were marshalled and urged upon their attention with extraordinary ability. The Special Master, after an inquiry and examination on his part extending through a period of eighteen months, made a report to the court, covering many hundreds of pages of testimony, tabulated statements made by expert accountants, and copies from the records of all documents bearing upon or having any relation to the subject of Virginia's debt, and from this report of the Master and the evidence therein set forth, and after the cause had been submitted for final hearing, the court ascertained and decided that the amount of $7,182,507.46 was due by West Virginia as representing her share of the principal of said debt, leaving open only the question of what interest, if any, and the rate thereof should be paid by West Virginia upon that ascertained liability, and the correction of any possible errors of computation which may have been made in the calculations by which that result was reached.

Now, after the cause has been litigated for more than eight years upon lines of the defendant's own selection

and upon those presented by the record made up with infinite pains and labor with the assistance of trained and expert accountants employed by the defendant, and after every defense which the skill and resourceful ingenuity of her chosen counsel could bring forward from these records and the facts they disclosed, and the cause fought to a finish upon those deliberately chosen lines of defense and a decision rendered upon the main question involved, which decision has been reiterated and affirmed by the decision of the court rendered on the 30th of October, 1911, and again by its decision rendered on the 13th of November, 1913, the defendant comes into court in the beginning of this the ninth year of the litigation and asks to be permitted to assert a new line of defense, which has been all along open to her for her adoption, and to litigate the case over again upon these alleged new grounds.

If the grounds upon which this motion is based were meritorious, they should be so clear and explicit as to negative notice to the defendant of the material facts upon which her alleged defences are founded and also of any facts which would have reasonably put her upon inquiry; or which would, to say the least, by the use of ordinary diligence have informed her as to their existence.

But the truth as to these matters renders any reliance upon constructive notice or any refinements of reasoning unnecessary.

This respondent says that the defendant had full and complete notice and full knowledge of the facts upon which this motion is founded both before and during the pendency of this suit, and before and at the time of the filing of her answer to the bill in this cause, and before and at the time of the argument and submission of the same for final decision, all of which appears from the record.

In February, 1871, the legislature of West Virginia

adopted a joint resolution under which Messrs. John J. Jackson, A. W. Campbell and J. M. Bennett were appointed commissioners on the part of West Virginia to take up with Virginia the question of an adjustment of the public debt of Virginia prior to the 1st day of January, 1861. These commissioners made an independent investigation and submitted a report to the Governor of West Virginia, embodied in which were eight tabulated statements or schedules designated by the letters from "A" to "H," inclusive. Commissioner Bennett had been, before and during the war, the auditor of public accounts of the State of Virginia, and was thoroughly familiar with all facts in relation to her public debt, and was supposed to have been the author of that report; at all events, it has been since referred to as "Bennett's Report." This report, with its accompanying statements, was introduced into the record by the defendant; it is referred to in Exhibit No. 3 filed with the defendant's answer (see vol. 2, W. Va. Compilation, p. 28), and is printed in full in vol. 1 of W. Va. compilation beginning at page 457. The material facts as to all of the stocks, bonds and other property of the Commonwealth of Virginia, with one or two immaterial exceptions, as of the 1st day of January, 1861, will be found to be shown by the schedules marked "Statements" "B," "G," and "H," filed with this report. These statements furnish in great detail the facts as to the assets and public property of the Commonwealth which are now set forth as a basis for this motion.

Furthermore, the defendant's accountants prepared under the direction of her counsel a "balance sheet" called "Summary of cash receipts and disbursements of the Commonwealth of Virginia from March 17, 1823, to January 1, 1861," which the defendant filed with the record as "defendant's exhibit" (printed record, beginning at page 1053).

"Schedule No. 4" of this exhibit contains a list of "expenditures on account of banks and public internal improvements charged by the defendant to the present Commonwealth of Virginia" amounting to $27,586,527.60 (printed record, p. 1059); and under the caption "disbursements" are shown the several items consisting of "balances January 1, 1861," which it is now claimed to have been discovered "since the last continuance" (printed record, page 1054).

These two statements show conclusively that the State of West Virginia and her former counsel who prepared and conducted the defense of this suit were fully informed in respect to the data and material which are now set up as "newly discovered" and are relied upon as the basis for re-opening this case.

It thus appears that although the defendant had every opportunity to assert these purported claims, now relied upon as new defences, and to have the same passed on by the court, as she was in duty bound to do if she had intended to rely upon them, they are not mentioned in the original answer filed by the defendant in this cause at the October term, 1907, nor is any intimation given therein of the purpose to assert or rely upon them.

Your respondent is advised, and so states, that even if it had ever been pertinent to inquire into the alleged value of these assets, the period at which such valuation should be made was not January 1, 1861, as is assumed by the defendant, but June 20, 1863, the date of the creation of the new state, and the date as of which this court ascertained the values of property in the two states as the basis for the apportionment of the debt; and your respondent states that there is now no means of showing, even by way of reasonable approximation, the value of said assets in June, 1863.

It is part of the history of those troublous times, confirmed by the testimony taken before the special master in this cause, that all values of property in Confederate Virginia were enormously depreciated in 1863. This was necessarily especially true of railroads and canals, which inevitably shared most largely in the destruction and dilapidation of exhausting and disastrous war.

With no market for their purchase because of the wretched condition of the country, and the darkening outlook for the future, it is not strange that such stocks and bonds as the defendant now seeks to charge against Virginia were on the 20th of June, 1863, so valueless that it would be a vain and unjust thing to seek now to make them a basis for fixing a liability upon Virginia.

The same is true of the banks in Confederate Virginia. Their assets, which in 1861 rested firmly upon a gold or gold and silver basis, had [as was the case throughout the seceded States] been rapidly depreciating, and had shifted from a gold basis to a Confederate basis, and were steadily and rapidly descending towards the worthlessness which characterized them at the close of the war.

Why then should this court at this late day be asked to enter upon a fruitless inquiry into the value of Virginia's securities at a time when she was in the throes of war,—when there was no market value for her securities, and, therefore, no just standard of values? There were in those days no "market quotations" because there was no market. How then shall the values be proven? By the uncertain estimates or "guesses" of aged men as to the probable values of more than fifty years ago? If so, then West Virginia has done Virginia an injustice in having failed through the years of this litigation to set up this defense upon which she now relies, for each passing year leaves fewer and fewer of those whose memory of such facts

reaches back to 1863. For this court now to attempt to ascertain the values of these securities as of June, 1863, would be to enter the futile field of conjecture.

The defendant, in speaking of this period, through her former counsel, said:

> "True Virginia has suffered; she was through four years a battle ground; her people were largely withdrawn from their vocations of business; her agriculture languished, and much of her property was destroyed by contending armies." (Brief of Counsel for West Virginia, vol. 2 W. Va. Compilation, page 115).

Hence the defendant in referring in her answer to her liability for the value of stocks, bonds and credits transferred to her by the "restored government of Virginia" by the act of February 3, 1863, said:

> "And she avers that at the time when such stocks and credits were transferred they were greatly depreciated and were of but little value." (Vol. 2, W. Va. Compilation, page 8).

If the stocks and credits transferred to the defendant by Virginia in 1863 were of "but little value," the same would be true of those retained by Virginia, as the cause which operated to destroy the value of the one would so operate upon the other—with this difference: that the destruction would have been more complete in Virginia, as her soil was a "battle ground."

Among the former counsel for the defendant, and the draftsman of her answer (as your respondent is informed), was the late Wesley Mollohan, a gentleman who stood in

the front rank of the West Virginia Bar and whose brethren of that State have since his death paid generous and glowing tribute to his character and attainments. He was a native of Virginia, and a resident of West Virginia from the time of her formation until his death. No man in Virginia was better informed than he in respect to her history, her resources, investments and the value of such investments during the period of the war or the disposition of them, and the fact that he considered them of "but little value" may be accepted as proof of that fact and as conclusively showing that the delay and expense involved in an inquiry into that subject would not, in his opinion, have been justified from the standpoint of the defendant.

2. The second ground in support of this motion is, that "the evidence of the existence, value and disposition of said assets was in the possession of the State of Virginia, and she did not volunteer the disclosure thereof."

In reply thereto this respondent says, that, as already shown, the knowledge of the existence of said assets had been in possession of the defendant since the report of her commission in 1871, and were further fully and completely disclosed by the "balance sheet" of Virginia, prepared by the defendant's accountants and put in the record by her counsel; in other words, your respondent wishes to emphasize the statement that while the existence of these alleged assets may have been recently "discovered" by the defendant's present attorneys, Virginia possessed no knowledge in respect to said assets that was not also in the possession of or readily accessible to the defendant's former attorneys who conducted this case for and on her behalf.

The proposed amended answer of the defendant appears

to call for an apportionment of alleged assets of the original state as of January 1, 1861, but, as already mentioned, West Virginia was not formed until June 20, 1863, and, of course, could not claim an interest in any such assets until that date, and there could be no charge against Virginia with respect to them, except in accordance with their value as of that date.

The "disposition" of said alleged assets therefore after June 20, 1863, has no relevancy to or bearing upon the issue raised by this motion, as already pointed out. Your respondent repeats that she has no information as to the value of said assets as of June, 1863, which is not equally accessible to West Virginia, nor does there exist, so far as she or her counsel are informed, any proofs or any evidence anywhere which would determine, even approximately, the value of these alleged assets or show that they had any appreciable or ascertainable value in June, 1863, except in the well nigh worthless paper currency of the Confederate States, in which Governor Letcher estimated their value in his message in September, 1863, quoted by the defendant in its proposed supplemental answer.

This respondent, therefore, says, that the statement that she withheld any information touching these matters from the defendant is as gratuitous as it is unwarranted.

3. In response to the third ground assigned, the respondent denies the proposition that diligence cannot be required of a state to "ascertain the evidence governing its rights when in controversy." If this were true, there could never be an end to a controversy to which a State is a party.

To say that because the state may have frequently changed its officers she thereby becomes not affected by

notice duly given to her or knowledge acquired by her through her preceding officers or agents in charge of the matters involved, would result in preventing the state becoming bound by any notice or knowledge which might have been given to or acquired by any officer or agent of the state whose term of authority had expired—a result so manifestly unfair to parties having dealings with the state as not to be tolerated by a court of justice.

4. In response to the fourth ground assigned respondent says, that if it were true that the decree of reference did not call for a "discovery" of these alleged assets, such omission would furnish no ground for the defendant's motion to reopen this case. But it is not true, as alleged, that the decree of reference did not call for or authorize such discovery. Under the decree of reference the master was directed to ascertain and report upon certain matters referred to him, and was also "at liberty to state any special circumstances he considered of importance, and to state such alternative accounts as may be desired by either of the parties subject to the direction of the court." (W. Va. Compilation, vol. 2, p. 49.)

As already pointed out, the defendant's counsel were fully informed of the existence of these alleged assets, and under this authority it was, of course, not only competent for her counsel, but the duty of her counsel, to have an "alternative account" stated in respect to these assets, if they "desired."

5. In response to the fifth ground assigned, the respondent denies that any such equity exists as therein claimed and asserted.

6. In response to the sixth ground assigned, the respondent says, that if the provisions of her Constitution of 1851 therein referred to had any bearing on the issue now raised, which is denied, they were known to or readily accessible to the defendant's counsel to whom she had intrusted her interests in this suit.

7. In response to the seventh ground assigned, the respondent denies that she collected or received the sum stated therein, or any sum approximating that amount, as dividends upon investments; and further denies that the alleged facts therein referred to, if true, would affect the defendant's liability to pay interest on the principal sum found against her by the decisions of this court. The respondent further answering, at the risk of repetition, says, that any alleged new facts which have any relation to or bearing upon the issue raised by this motion were fully known to the former counsel of the defendant.

It may be noted that the defendant now appears to assert a claim to a share of the public buildings, libraries, etc., remaining in the present State of Virginia—a claim which was denied by her former counsel, who insisted that all public property, such as state institutions, public buildings, charitable and other endowments, state banks, railroads and internal improvements "local to the two states" belonged to said states, respectively, upon the separation. (See Vol. 1, W. Va. Compilation, pages 137-8-9, and Vol. 2, p. 270.)

Your respondent begs leave further, in reply to said motion, to say: That at the meeting between the commissions representing the respective states held July 25, 1913, the Virginia Commission declined the demand of the West Virginia Commission to reopen this case and enter upon a consideration *de novo* of all questions involved, for the reason, as then pointed out, that the court by its decision

of March 3, 1911 (reaffirmed by its decision of October 30, 1911,) had fixed the amount of the defendant's share of the principal of said debt, except for clerical errors, and had referred to the two states for adjustment any mere clerical errors which might be shown in the principal sum so fixed, and what, if any, interest and the rate thereof said sum so fixed should bear. This decision was again reaffirmed by the court in its decision rendered on November 13, 1913, wherein the court said:

> "In March, 1911, (*Virginia* v. *West Virginia*, 220 U. S. 1) our decision was given 'with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed.' In view, however, of the nature of the controversy, of the consideration due the respective states, and the hope that by agreement between them further judicial action might be unnecessary we postponed proceeding to a final decree and left open the question of what, if any interest was due and the rate thereof, as well as the right to suggest any mere clerical error which it was deemed might have been committed in fixing the sum found to be due upon the basis of liability which was settled."

These decisions of the court, while not so in form, nevertheless virtually constitute a decree of the court. They fixed in plain language the "share of the principal of the debt of Virginia that West Virginia assumed." If West Virginia was dissatisfied with this decision on any ground, your respondent is advised that her remedy was to apply immediately for a rehearing. This the defendant did not do; and now, after the case has been before the court for eight years, and three years have elapsed since the decision

was rendered fixing her liability for her "share of the principal of the debt of Virginia," she appears and moves the court to be allowed to contest that decision on new grounds set up in a supplemental answer—and that notwithstanding these alleged new facts were well known to and considered by her accountants and counsel, as shown by the record.

To grant this motion, your respondent respectfully submits, would involve a heavy burden of expense, and indefinitely postpone a final determination of this controversy, and subject your respondent to great injury. No injustice has been done the defendant. Every possible consideration and indulgence has been shown her, and her defense has been industriously and thoroughly prepared and fully and ably presented many times before the master and the court, in the light of and with full knowledge of the facts now alleged to have been "just discovered." To grant this motion at this late day and under the circumstances stated would, it is respectfully submitted, defeat and not subserve the ends of justice.

Your respondent has paid and assumed to pay, as shown by the record, more than seventy million dollars on account of her share of the debt created before her dismemberment, and she ventures respectfully to assert that West Virginia's proposal to fix her own share of the debt at $2,300,000, without interest, after this court had fixed her share of the principal at $7,183,507.46, could not have been submitted with the expectation that it would receive consideration or furnish the basis for an adjustment of this controversy.

All the data is before the court which will enable it to determine the question of interest and the rate thereof, as well as the views of your respondent's counsel on that subject.

In view, therefore, of the foregoing considerations, it is

respectfully submitted that the motion of the defendant should be denied and that the cause be finally heard on the 13th of April next, as provided in the order of this court entered November 10, 1913.

And it is further submitted that in the light of all the circumstances, and in order to bring this litigation to a close, the court will allow such rate of interest on the principal sum fixed and for such period of time as in its judgment will meet the ends of justice.

All of which is respectfully submitted.

COMMONWEALTH OF VIRGINIA,
By JNO. GARLAND POLLARD,
Attorney-General.

JOHN B. MOON,
W. A. ANDERSON,
RANDOLPH HARRISON,
Of Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1913.

No 2. Original.

COMMONWEALTH OF VIRGINIA

VS.

STATE OF WEST VIRGINIA.

IN EQUITY.

RESPONSE OF THE DEFENDANT TO THE MOTION OF THE COMPLAINANT SUBMITTED IN THE ABOVE ENTITLED CAUSE.

And now, on this, the 13th day of October, 1913, comes the respondent, the State of West Virginia, by A. A. Lilly, Esq., the Attorney General of said State, and, for answer to the motion submitted in the above cause to

> "Proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the sixth day of March, 1911,"

says that—

1. This Honorable Court, in its opinion in this cause

rendered on the 6th day of March, 1911, after having established the basis for determining the equitable proportion of the public debt of the original State of Virginia which was assumed by the State of West Virginia at the time of its creation as a State, suggested a conference between the two litigating States, to the end that a final decree might be entered by agreement without further contention.

2. The State of West Virginia, in a sincere effort to follow this suggestion, at the first possible moment after it had been made, under its Constitution and laws, undertook, through its Legislature, to establish a Commission competent to deal with the question without further contention, and in the spirit and temper that this Court indicated should characterize the situation.

Under the West Virginia Constitution, the sessions of the Legislature of that State are held biennially, and not annually. The provision of the State Constitution governing this question reads as follows:

> "The legislature shall assemble at the seat of government biennially, and not oftener, unless convened by the Governor."
> W. Va. Constitution of 1872, Art. VI., Sec. 18.

And the regular biennial session thereof in the year 1911 had come to an end prior to the delivery of the opinion of this Court in this cause on the 6th day of March, 1911, wherein the suggestion of a conference between the two States was made; so that a Commission looking to the execution of this Court's suggestion could not have been established by a joint resolution of the two Legislative Houses of the State during that session, and this was the only means, in the judgment of the officials of the State, by which the Court's suggestion could be effectuated.

It is true that the Honorable William E. Glasscock, then Governor of the State of West Virginia, did, by proclamation of the 13th day of April, 1911, convene the Legislature of said State in extraordinary session on the 16th day of May, 1911; but such proclamation did not embrace the con-

sideration, or authorize the appointment, of a Virginia Debt Commission, and, in consequence, under the Constitution of the State, the Legislature, when so convened, could not enter upon the business of appointing such Commission. The constitutional provision referred to reads as follows:

> "The Governor may, on extraordinary occasions, convene at his own instance the legislature; but, when so convened, it shall enter upon no business except that stated in the proclamation by which it was called together."
> W. Va. Constitution of 1872, Art. VII., Sec. 7.

The facts and circumstances surrounding this extraordinary session of the Legislature of West Virginia, and the reasons why the proclamation of the Governor convening it did not call for the appointment of a Virginia Debt Commission, were fully set forth and given in the response of the State of West Virginia to the like motion of the State of Virginia made and submitted in this cause on the 10th day of October, 1911, and were considered by this Honorable Court a sufficient justification for the State of West Virginia to postpone the appointment of a Virginia Debt Commission until the next regular session of the Legislature of that State, to be held in January, 1913.

3. At the time appointed by the Constitution of the State of West Virginia, its Legislature next met in regular session on the 8th day of January, 1913, and, during that session, that is to say, on the 21st day of February, 1913, a joint resolution was passed creating a Virginia Debt Commission, to be composed of eleven members, to be appointed by the Governor, and with authority and direction, among other things, "to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper to be borne by the State of West Virginia." This joint resolution is correctly set forth in the second paragraph of the motion of the complainant filed herein, and

a copy thereof was transmitted by the Governor of West Virginia to the Governor of Virginia on the 12th day of March, 1913, with the accompanying promise that the Commission therein provided for would be appointed without unnecessary delay.

4. Within eleven days after the passage of the foregoing resolution, that is to say, upon the 4th day of March, 1913, the newly elected Governor of the State of West Virginia, the Honorable H. D. Hatfield, was inaugurated; and, notwithstanding the fact that he found martial law declared, and in existence, in a large mining district in the State, requiring the services of nearly the entire National Guard of the State, and calling for the devotion of almost his entire time, to the end that blood and bankruptcy might be avoided, which trouble was speedily contributed to during the latter part of the month of March by disastrous floods in the Ohio Valley, necessitating State aid and State protection, he was not unmindful of the necessity for the settlement of the Virginia debt question, and, after due reflection, in an effort to find suitable men for the consummation of this Honorable Court's suggestion, on the 19th day of April, 1913, appointed the eleven Commissioners required by the legislative resolution. Several of the Commissioners so appointed, after some hesitation and delay, declined, and it became necessary to seek other competent and suitable men. This was done without unnecessary delay, and the Commission was finally completed by the filling of vacancies on the 10th day of June, 1913, and, upon the same day, it was organized by the election of the Honorable John W. Mason as Chairman, and of the Honorable John T. Harris as Secretary.

Without the loss of any time, that is to say, upon the same day (June 10, 1913), the Governor of the State of West Virginia communicated by letter with the Governor of the State of Virginia, notifying him of the passage by the West Virginia Legislature of the foregoing resolution establishing the Virginia Debt Commission; that said Com-

mission had been organized, and would meet again on the 22d day of July, 1913, and would be pleased to meet the Virginia Commission at any time after that date, also requesting the Virginia Commission to state where it would be agreeable to hold a joint meeting of the two Commissions. Said letter enclosed not only a copy of the joint resolution, but also a list of the names of the members of said Commission. Said letter is truly set forth as "Exhibit A" to the motion of the complainant herein.

5. Pursuant to the adjournment of June 10, 1913, the West Virginia Commission again met at the City of Charleston, in the State of West Virginia, on the 22d day of July, 1913, and, on the 23d day of that month, adjourned to meet in the City of Washington, D. C., on the 24th day of July, 1913. Pursuant to this last adjournment, it met at Washington on the 24th day of July, and adjourned until the next day, at which time it met in joint session with the Virginia Commission.

6. At the joint conference of the two Commissions held at Washington on the 25th day of July, 1913, as aforesaid, the Virginia Commission took the position that, under the decision of this Court, the sole matter left open and remaining for consideration and adjustment by the two Commissions was "the amount of interest which West Virginia should pay upon the sum ascertained by the Court to be West Virginia's share of the principal" of Virginia's debt. This position is evidenced by the first paragraph of a resolution adopted by the Virginia Commission, and presented through its Chairman to the West Virginia Commission. In response to this resolution, the West Virginia Commission, through its Chairman, among other things, made the following statement:

> "From our standpoint and our reading of the opinion of the Supreme Court, other things are to be considered besides the question of interest."

Following this response of the Chairman of the West Virginia Commission, Mr. Randolph Harrison, selected as

spokesman for the Virginia Commission, made a lengthy statement, wherein he elaborated the Virginia position that nothing but interest should be considered, giving his reasons therefor, and embracing therein the construction placed by the Virginia Commission upon the opinion of this Court delivered upon the 6th day of March, 1911, in this cause; but, proceeding, he further said:

> "We also recognize the fact that it is competent for the two Commissions to consider the question of settlement of the entire controversy, precisely as we might do if there were no other question pending before us, and, if it is the pleasure of the West Virginia Commission to take up that question, and communicate to the Virginia Commission at this conference a proposition looking to a compromise settlement of the whole controversy, we will be glad to receive it, and will give it respectful and fair consideration."

In further response to the Virginia position, the West Virginia Commission adopted and presented to the Virginia Commission a resolution, wherein, among other things, it was set forth that, in the view of the West Virginia Commission, the then conference had for its object "a preliminary discussion and exchange of views, and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working program"; and it was proposed that each Commission should appoint a sub-committee consisting, respectively, of three of its own members, "with instructions to confer at the earliest convenient time and place, and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that should be submitted back to the two respective Commissions for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees."

To the foregoing resolution the Virginia Commission, by like resolution, replied by agreeing to the appointment of a

sub-committee of three formed from each Commission, provided the consideration of said Committees should be confined to the following matters and things:

> "(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.
> (2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia."

To this the West Virginia Commission, through its Chairman, replied that it was anxious to proceed with the negotiations, but could not consent to agree in advance that only the question of interest should be considered, or that the West Virginia sub-committee should be required to first submit a proposition looking to a settlement, adding that it was willing "and anxious to approach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committees." It further answered that it did not feel sufficiently acquainted with the questions involved—for reasons theretofore stated—to submit a proposition at that time, and asked that the whole subject-matter be submitted to the sub-committees, "with the understanding that the sub-committees be required to report their action for approval to their respective commissions at a time in the near future to be now agreed upon."

The Virginia Commission replied that it felt "constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

As a consequence, the sub-committees were not appointed, and, after expressing regret, the West Virginia Commission suggested a future meeting of the joint Commissions, to which the Virginia Commission, after reiterating its former position, and stating that it could not recede

therefrom, agreed, and suggested an adjournment until August 12, 1913, at the New Willard Hotel, Washington, provided the future conference should not embrace a consideration *de novo* of the entire case, and the West Virginia Commission agreed to the time and place of adjournment, but insisted that the adjournment should be "without terms and conditions, and without prejudice to the rights of either party." Thereupon, the conference was adjourned to meet on Tuesday, August 12, 1913, at ten o'clock, A. M., at the New Willard Hotel, Washington, D. C.

The matters and things hereinbefore in this paragraph alleged are set forth in detail in the record of the "Proceedings of a Joint Conference between the Virginia Debt Commissions of the States of Virginia and West Virginia," printed herewith as a part hereof, and marked "Exhibit A."

7. After the West Virginia Commission returned home, the Chairman thereof, through correspondence with its various members, discovered that it would not be prepared, on account of shortness of time, for the adjourned joint conference of the two Commissions to be held on August 12th, and, thereupon, on the 9th of August, he telegraphed to the Chairman of the Virginia Commission as follows:

> "HON. JOHN B. MOON,
> *Charlottesville,* Va.
> Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday, and will have to ask that time be extended to a day in near future. Under these circumstances, I suggest Washington meeting be now recalled.
>
> JOHN W. MASON."

8. The West Virginia Commission convened again at Charleston, West Virginia, on the 11th day of August, 1913, and the Chairman reported his telegram to Mr. Moon, and, having received no reply thereto, was directed by the Commission to at once communicate with Mr. Moon by tele-

phone. This he did, and Mr. Moon then informed him that he had notified the members of the Virginia Commission that the August 12th meeting had been recalled, and Mr. Mason suggested that a time be fixed for another meeting in the near future, to be arranged by the Chairmen of the two Commissions, to which Mr. Moon assented.

At this same meeting, the West Virginia Commission adopted the following resolution:

> "*Resolved*, That a sub-committee, consisting of Messrs. Ord, Young and Ice, is hereby appointed to co-operate with the Attorney General and the associate counsel in this case in drawing up the necessary data and statistics as a basis for propositions to be made to the Virginia Commission, and that either one, two or all of said sub-committee at their convenience, are authorized to perform the work assigned them in connection with this matter."

In pursuance of the foregoing resolution the said sub-committee entered upon its duties, and, after making careful investigation, met in the City of Charleston on the 18th day of September, 1913, and adopted the following resolution:

> "WHEREAS, The sub-committee of the West Virginia Commission of the Virginia Debt Commission appointed to formulate a proposition of settlement to be submitted to the Virginia Commission find it necessary to ascertain certain facts and figures not in the record, and not available from the record, which will take some time, therefore, be it
>
> *Resolved*, That the Honorable John W. Mason, Chairman of the West Virginia Commission, be requested to inform the Virginia Commission, by a letter directed to its Chairman, Mr. Moon, that we are diligently at work on a proposition to be submitted to the Virginia Commission, but that further time will be needed to complete it."

In obedience to the foregoing resolution, the Chairman

of the West Virginia Debt Commission, on the 22d day of September, 1913, addressed and mailed the following letter to the Hon. John B. Moon, Chairman of the Virginia Debt Commission:

"FAIRMONT, WEST VIRGINIA, September 22, 1913.

HONORABLE J. B. MOON,

Chairman Virginia Debt Commission,

Charlottesville, Virginia.

MY DEAR SIR:

I am instructed by a sub-committee of the West Virginia Commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia, relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia Commission, that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment; but that it will yet require some three or four months time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee, and hope it will be agreeable to your Committee to consider the same favorably.

In the meantime, if your Commission should desire to submit any suggestions or propositions to this Commission looking to the same end, we would gladly, and without unnecessary delay, consider the same.

With great respect I remain yours, etc.,

JOHN W. MASON,

Chairman Virginia Debt Commission."

To the foregoing letter, Chairman Moon, under date of the 24th of September, 1913, made reply, and, among other things, said:

"I am sure you will pardon my adverting to the fact that more than two years and a half ago (March 6th, 1911), the Court referred the interest

question and any other matter of detailed computation to the two States for their possible agreement, and we sent a sub-committee to your State, who returned without being able to accomplish any results.

Our Commission, therefore, felt constrained to ask for some conclusion of the question of interest involved in the controversy, and requested our Attorney General to act accordingly, though I do not know that this would preclude an agreement, if one could be arrived at in the premises."

9. It appears, therefore, from the foregoing facts and from the motion filed herein by the complainant, which is dated the 22d day of September, 1913, that, upon the very day that the Chairman of the West Virginia Commission was mailing his letter aforesaid to the Chairman of the Virginia Commission, wherein he stated "that the West Virginia Commission has in course of preparation a proposition looking to a settlement to be presented to your Commission at the earliest moment," but requesting a little more time, the Attorney General of Virginia was preparing the present motion to be presented to this Honorable Court, for the purpose, presumably, of ending the negotiations, and renewing the controversy in Court, contrary to the spirit of the suggestion of this Honorable Court as the same is construed and interpreted by this respondent. The motion was served herein upon the 26th day of September, 1913.

The respondent prints herewith a true copy of the proceedings of the West Virginia Commission referred to in the foregoing paragraphs eight and nine as a part hereof, and marks the same "Exhibit B."

10. This respondent, further answering the motion, says that, at the time the letter aforesaid of the 22d of September, 1913, was written by the Chairman of the West Virginia Commission to the Chairman of the Virginia Commission, requesting further time, and stating that a proposition looking to a settlement was in course of preparation by the West Virginia Commission, the sub-committee of the

West Virginia Commission was diligently and faithfully at work gathering data upon which to base its proposition of settlement to the Virginia Commission, and is still at work thereon, notwithstanding the service of the notice of the motion herein.

It further says that said letter of the 22d of September, 1913, was prepared and sent to the Chairman of the Virginia Commission in the utmost good faith, and did not seek unnecessary delay, in the judgment of the West Virginia Commission.

11. It is further respectfully submitted that the West Virginia Commission, as it now stands, was not appointed until the 10th day of June, 1913, a period of only four months ago; that it was not prior to its appointment connected in any way with the management or conduct of the litigation in this case, and was, and still is, to a certain extent, unfamiliar with the history and details of the controversy, including the litigation springing thereout; that it should not, in a matter of this importance, proceed with undue haste; that its full membership did not even receive printed copies of the opinions of this Honorable Court delivered in this cause upon the 6th day of March, 1911, and the 30th day of October, 1911, respectively, until about the 1st day of August, 1913, at which time this respondent printed, for the benefit and information of its Commission, a volume, consisting, among other things, of the opinions of this Honorable Court, and the report of the Master in this cause; that, upon the other hand, the present Virginia Commission has been in existence for many years, and has been, as this respondent is informed, identified with and in charge of the present litigation between the two States, and naturally requires less time to properly prepare for the settlement of this controversy in accordance with the suggestion of this Honorable Court than does the Commission of this respondent.

It is also true that the present Attorney General of the State of West Virginia, who, under the Constitution and laws of that State, is its chief law officer, was not inducted

into office until the 4th day of March in the present year, and during the early months of the present State administration was largely occupied on behalf of the State with the strike and flood difficulties set forth in the fourth paragraph hereof, thereby abbreviating the time that he might otherwise have devoted to assisting and advising the Commission herein. He was never before his recent election to his present office connected in any way with the Virginia debt question or litigation, and, like the Commission and other officers of this respondent, was under the necessity of informing himself in respect thereto. He has been, and is now, diligently at work with the Commission of this respondent and has but one object in view, and that is the consummation of the suggestion of this Honorable Court made to the parties in its opinion of March 6, 1911.

12. This respondent further says that, while its Commission and the sub-committee thereof, together with the Governor and Attorney General of the State, were diligently and conscientiously using every effort which they reasonably could use, and while they were exercising due diligence and were proceeding with all deliberate speed to carry into execution the requirements imposed upon them by the joint resolution of the Legislature of the State of West Virginia of February 21, 1913, and while they were formulating a proposition to be made to the Virginia Commission, as requested by said Commission at the Washington conference hereinbefore referred to, to the end that the matters in controversy between the two States might be settled in accordance with the suggestion of this Honorable Court, made in its opinion rendered March 6, 1911, as interpreted by its opinion rendered October 30, 1911, the Commonwealth of Virginia served notice of the present motion.

13. Your respondent further says that unless the said controversy is amicably adjusted and settled through the agency of its Commission, by negotiations with the Virginia Debt Commission, it will be powerless to do anything towards such adjustment and settlement, as its Legislature is not now in session and there is no officer, agent or repre-

sentative of West Virginia empowered to adjust and settle said controversy or to conduct negotiations to that end, except said Commission provided for and appointed under and by virtue of said joint resolution; and it further represents that since the appointment of its said Commission, it has been relying upon it so to conduct negotiations with the Commonwealth of Virginia as to consummate such an adjustment and settlement of said controversy as to commend the result of its negotiations to the favorable consideration of the Governor and the legislative branch of its government, and thus terminate said controversy to the satisfaction of her people and the Commonwealth of Virginia, and upon the principles of honor and justice to both States, and in fairness to the holders of the debt for whose benefit this controversy is still pending.

14. In view, therefore, of the foregoing considerations, it is respectfully submitted that the motion of the complainant is premature, and ought not to prevail; that no further action should be taken by this Court until the West Virginia Commission has had a reasonable opportunity to present its intended proposition of settlement to the Virginia Commission.

All of which is respectfully submitted.

STATE OF WEST VIRGINIA,

By A. A. LILLY,

Attorney General.

DEFENDANT'S EXHIBIT "A"

Proceedings of a Joint Conference

BETWEEN THE

VIRGINIA DEBT COMMISSIONS

OF THE

STATES OF VIRGINIA AND WEST VIRGINIA

HELD AT

THE NEW WILLARD HOTEL

WASHINGTON, D. C.,

July 25th and 26th, 1913

Proceedings of a Joint Conference of the Virginia and West Virginia Debt Commissions.

The Virginia and West Virginia Debt Commissions met in joint conference in the "Gridiron Room" of the New Willard Hotel at 11 o'clock a. m., July 25th, 1913, pursuant to call of their respective Chairmen and there were present:

On the part of Virginia:—Messrs. Moon, (Chairman) Harrison, Rhea, Wickham, Flood, Brown, Downing, and Joseph Button, Secretary.

On the part of West Virginia:—Messrs. Mason, (Chairman) Wells, Zilliken, Lenhart, Ice, Young, Chilton, Boreman, Hamilton, Ord, Miller, and John T. Harris, Secretary.

The Chairmen of the two Commissions presided jointly over the conference meeting.

CHAIRMAN MOON: On behalf of the Virginia Commission we have prepared some preliminary resolutions to see if we can get at an adjustment of this matter and try to reach an agreement. The first resolution we passed is this:

"*Resolved*, That it is the sense of this Commission that in the Conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the Court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

CHAIRMAN MOON: The second resolution adopted by our Commission is as follows:

"This Commission desiring to carry out in good faith the suggestions made by the Supreme Court as to securing an amicable adjustment of the amount of interest which should be paid by West Virginia upon the principal of the debt as ascertained and decided by the court, and realizing that it is not the desire of Virginia nor was it the intention of the Supreme Court that Virginia should ask or demand the full or legal amount of interest upon the principal debt as ascertained in the decision of the Court, but that there should be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States; and

WHEREAS, The joint conference to be held today between the Commissions of Virginia and West Virginia was invited by the authorities of West Virginia, presumably for the purpose of carrying out in good faith the decision and suggestion of the Supreme Court of the United States.

Therefore, be it resolved, That this resolution, together with all

other resolutions adopted by this Commission at its present session, which may be pertinent, be presented by the Chairman of this Commission, to the Commission of West Virginia at the joint conference to be held today, and that the Commission of West Virginia be respectfully requested to communicate to this Commission, what, in their judgment, would be a fair and just settlement of the interest to be paid by West Virginia upon the principal amount as ascertained in the opinion and decision of the Supreme Court of the United States."

CHAIRMAN MOON: These two resolutions we lay before you, gentlemen, and ask your consideration of them. I will state that our Commission has designated Hon. Randolph Harrison, one of our members, to be spokesman for us and to give such advice as may be desirable to present to you. He has a great deal of information on the subject, and has had a great deal of experience in connection with the case, and is well qualified to submit it.

CHAIRMAN MASON: Under these resolutions you have presented, gentlemen, the only question for the West Virginia Commission to consider would be the question of interest. From our standpoint, and our reading of the opinion of the Supreme Court, other things are to be considered besides that question of interest.

This Commission has only been in existence about sixty days—or not quite that long; it was appointed on the 10th day of June—and we haven't had time on our part to go over this matter as fully as you gentlemen have who have been familiar with the case for many, many years. We have a general idea of the subject matter but have not studied it as we should study it and as we are endeavoring to study it.

We meet you with a great deal of pleasure, gentlemen, and with the sincere idea and desire that this long unsettled, vexed question between the two states may be settled. We think it ought to be settled in some way; but we have had the idea, and have it now, that the opinion of the Supreme Court leaves open more than the question of interest, or whether we should pay any interest whatever.

In the first place, it is not a final judgment; and in the second place the court indicates very clearly in its opinion that there may be adjustments to be made by the different parties; so that if you limit the discussion and the investigation simply to the question of interest, gentlemen, we will probably have some trouble right at the start,

if more than that is not to be discussed and considered in attempting to make a settlement of this matter.

CHAIRMAN MOON: Mr. Chairman, do you think you will be ready to make any reply to these resolutions any time to-day, or would you want more time to consider them?

CHAIRMAN MASON: I think I can say for our Commission now, that we would want to consider, in this attempted settlement, more than the question of interest, or whether there is to be any interest, and, if so, the amount of it.

At their own request certain persons representing the certificate holders and bondholders were here admitted and were present at the meeting.

MR. FLOOD: As Mr. Harrison has been selected by our Commission as its spokesman, I think it would be well to hear from him.

Mr. Harrison then addressed the joint conference at considerable length upon the text of the resolutions adopted by the Virginia Commission as heretofore read by Chairman Moon and submitted to the West Virginia Commission.

After which the joint conference took a recess to reconvene at the call of the respective Chairmen, and the West Virginia Commission took time to consider the resolutions submitted by the Virginia Commission and recessed until 2 o'clock p. m.

AFTERNOON SESSION—WEST VIRGINIA COMMISSION.

The West Virginia Commission re-assembled in the "Cabinet Room" of the New Hotel Willard at 2 o'clock p. m., and after a full and free discussion of the resolutions submitted this morning by the Virginia Commission adopted the following:

REPLY OF THE WEST VIRGINIA COMMISSION TO THE VIRGINIA COMMISSION'S RESOLUTION NO. 1.

"The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:

'*Resolved*, That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the

court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt.'

In reply thereto says: that in its judgment the interst, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider."

REPLY OF THE WEST VIRGINIA COMMISSION TO THE VIRGINIA COMMISSION'S RESOLUTION NO. 2.

"WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party."

Mr. Young offered the following, which was adopted:

Resolved, That the Chairman of this Commission be directed to communicate these two resolutions to the Chairman of the Virginia Commission with the request that the Virginia Commission indicate, at as early an hour as possible, their acceptance or rejection of the second resolution we have adopted.

Subsequently, the Chairman reported to the Commission that he had performed the duty assigned him.

At the hour of 5:30 p. m. Mr. Moon, Chairman of the Virginia Commission, appeared and made the following statement:

"I am directed by the Virginia Commission to acknowledge the receipt of your communication, through the Chairman, and to say that we are now engaged in formulating a reply to it. We make the suggestion that we assemble in joint session at a quarter to 8 o'clock, if agreeable to your Commission."

Whereupon,

On motion of Mr. Chilton the Commission then took a recess until 7:45 o'clock p. m. to again go into joint session with the Virginia Commission.

Joint Conference—Evening Session.

The two Commissions re-convened in joint session in the "Cabinet Room" of the New Willard Hotel at 7:45 o'clock p. m., all the members being present and the Chairmen of the two Commissions jointly presiding.

CHAIRMAN MOON: Gentlemen of the West Virginia Commission: Our Commission has made the following reply to your resolutions, in writing, received by us this afternoon:

"The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

> '(1) The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:
>
> "*Resolved,* That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider.

(2) WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective Commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party.'

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that 'the interest, if any, is not the only question,' which the joint conference should consider.

The Court said: 'Among other things there still remains the question of interest.' The Virginia Commission understands this language to mean that there were 'other things' to be considered by the Court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no abmbiguity in the opinion of the Court, and that no conference as to any other matter than the question of interest is called for between the two Commissions, respectfully adheres to the interpretation of the opinion and decision of the Court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two Commissions.

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Vir-

ginia, as the Virginia Commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed from each Commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committees provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ———— day of ————, 1913, and report to an adjourned meeting of this joint conference to be held on the ———— day of ————, 1913."

CHAIRMAN MASON: I take it, gentlemen, that that is only a qualified acceptance of the proposition made and that we would want to discuss it further as to whether or not we will want to eliminate from the report to be made by the sub-committee all questions except the payment of interest; and, further, that the proposition to pay a part shall come from West Virginia. That, I say, we will want to consider.

I hope, gentlemen, you will feel free to simply leave the question open so that the sub-committee when it meets may discuss it, and make such report as it shall deem proper, without your insisting upon your notion about it; but whether we want to appoint a sub-committee under those restrictions as you have them there, I will say that we shall have to have time to think about it. I regret very much that you limit it in that way.

CHAIRMAN MOON: We would suggest a separate session of the Commissions to give you an opportunity to consider that question.

CHAIRMAN MASON: Yes; it will take a few moments.

CHAIRMAN MOON: We will give you an opportunity to go into

executive session to determine upon that point. Our Commission is up in Room 601, if you should want us.

Whereupon,

The Virginia Commission then retired, and after some time spent in discussion the West Virginia Commission formulated the following in response to the last foregoing communication:

"The West Virginia Commission has received the following statement from the Virginia Debt Commission:

'The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

"(1) The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:

'Resolved, That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider.

(2) WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters in-

volved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party."

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question," which the joint conference should consider.

The Court said: "Among other things there still remains the question of interest." The Virginia Commission understands this language to mean that there were "other things" to be considered by the Court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no ambiguity in the opinion of the Court, and that no conference as to any other matter than the question of interest is called for between the two Commissions, respectfully adheres to the interpretation of the opinion and decision of the Court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two Commissions.

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia Commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed from each Commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committee, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ——— day of ———, 1913, and report to an adjourned meeting of this joint conference to be held on the ——— day of ———, 1913.'

And in reply to the last communication of the Virginia Debt Commission the West Virginia Debt Commission says that it is anxious to proceed with the negotiations but cannot consent to agree in advance that only the question of interest shall be considered, or that the West Virginia sub-committee shall be required to first submit a proposition looking to a settlement. This Commission is willing and anxious to approach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committees.

This Committee did not understand the remarks made by Mr. Harrison today as a proposition. We considered only the written resolutions presented to us.

In reply to the remarks made by Mr. Harrison at the joint meeting today, and referred to in your communication, we would say that this Commission does not feel sufficiently acquainted with the questions involved—for reasons heretofore stated—to submit a proposition at this time, and asks that the whole subject matter be submitted to the sub-committees hereinbefore referred to, with the understanding that the said sub-committees be required to report their action for approval to their respective Commissions at a time in the near future to be now agreed upon."

On motion of Mr. Chilton the foregoing reply was made and the Chairman was directed to communicate it to the Virginia Debt Commission.

Subsequently, the Chairman reported that he had performed the mission assigned him.

Within a reasonable time after the delivery of the communication to the Virginia Commission the following reply was received through its Chairman, Mr. Moon:

"The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated, feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

On receipt of this reply the West Virginia Commission took the following action:

"Washington, D. C., July 25, 1913.

"The following communication was received from the Virginia Commission after 11 o'clock p. m.:

'The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed.'

Pending a consideration of the communication Mr. Miller moved that owing to the lateness of the hour at which the communication was received, the further consideration of the same be postponed until tomorrow morning, July 26th, 1913, at 10 o'clock, and that the West Virginia Commission adjourn until that hour.

Which motion was put by the Chair and carried by unanimous vote of the Commission at 12 o'clock midnight, and the Chairman of the Virginia Commission was notified of the adjournment by the Chairman of the West Virginia Commission.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Washington, D. C., July 26, 1913.

The West Virginia Commission met at 10 o'clock a. m., in the

"Cabinet Room" of the New Willard Hotel, pursuant to adjournment, and the Chairman and all the members of the Commission were present.

The following reply was made, through the Chairman, to the last communication received from the Virginia Commission last night:

"Washington, D. C., July 26, 1913.

"The Virginia Debt Commission on the part of the State of West Virginia received at 11:15 last night the following communication from the Virginia Commission:

'The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed.'

In reply to the foregoing communication the West Virginia Commission regrets that the Virginia Commission has declined to submit the matters in question to a sub-committee, as heretofore proposed by the West Virginia Commission, and the West Virginia Commission now suggests that the two Commissions have a joint meeting on the ——— day of ——— at ——— for the purpose of further considering a settlement of West Virginia's proportion, if any, of the Virginia debt, proper to be borne by the State of West Virginia, and to arrive if possible at some adjustment thereof."

To which communication the following reply was received from the Virginia Commission, through Chairman Moon:

"The Virginia Commission have considered the suggestion of the West Virginia Commission for an adjournment of the conference between the two Commissions.

If it is the purpose of the West Virginia Commission to insist that the joint conference shall embrace a consideration *de novo* of the entire case, both as to principal and interest involved, then the Virginia Commission can perceive no advantage to result from further negotiations. The Virginia Commission cannot recede from their

views as heretofore announced to the West Virginia Commission in respect to the matters to be embraced in the conference between the two Commissions.

With this understanding it consents to the adjournment of the conference to Tuesday, August 12, 1913, at 10 o'clock a. m., at the New Willard Hotel, Washington."

The West Virginia Commission made the following reply to the above communication:

"Washington, D. C., July 26, 1913.

"The West Virginia Commission acknowledge receipt of the communication from the Virginia Commission concurring in the suggested adjournment upon certain terms and conditions, which terms and conditions the West Virginia Commission declines to be bound by. We, however, agree to the time and place of adjournment suggested by you and insist that this adjournment shall be and is without terms or conditions and without prejudice to the rights of either party."

The Chairman was directed to deliver the foregoing communication to the Chairman of the Virginia Commission, and subsequently reported to this Commission that he had performed the duty assigned to him by delivering the same to the Hon. John B. Moon, Chairman of the Virginia Commission, the Virginia Commission not being in session, they having separated before that time, as Chairman Mason was informed.

No reply being received, after waiting a reasonable time, on motion the Commission adjourned to meet at the New Willard Hotel, in the city of Washington, on the 12th day of August, 1913, at 10 o'clock a. m.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

DEFENDANT'S EXHIBIT "B"

Record of the Proceedings

OF THE

VIRGINIA DEBT COMMISSION

ON THE PART OF

WEST VIRGINIA, AND OF ITS

SUB-COMMITTEE

RECORD OF PROCEEDINGS

On the 21st day of February, 1913, the Legislature of West Virginia adopted the following, as Conference Committee's Substitute for House Substitute for Senate Joint Resolution No. 5:

"Creating a commission known as the Virginia Debt Commission, to provide for arranging and settling with the commonwealth of Virginia the proper proportion of the public debt of the original commonwealth of Virginia, if any should be borne by West Virginia, to take into consideration all matters arising between the commonwealth of Virginia and the State of West Virginia in reference to said original public debt, and to report its proceedings to the Governor of the State.

"WHEREAS, The commonwealth of Virginia instituted a suit in the Supreme Court of the United States against the State of West Virginia, to have the State of West Virginia's proportion of the public debt of Virginia as it stood before one thousand eight hundred and sixty-one, ascertained and satisfied; and

"WHEREAS, At the October term, one thousand nine hundred and ten, the Supreme Court of the United States made a finding that the share of the principal debt of the original commonwealth of Virginia to be borne by the State of West Virginia, as seven million one hundred and eighty-two thousand, six hundred and seven dollars and forty-six cents; and

"WHEREAS, Said court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the states upon all the questions involved in said litigation, as might lead to a settlement of the same; therefore, be it

"*Resolved by the Senate of West Virginia, the House of Delegates concurring therein:*

"That a commission of eleven members, known as the Virginia Debt Commission, is hereby created. The members of said commission shall be appointed by the Governor, two of whom shall be chosen from each congressional district of the State, and one at large, not more than six of whom shall belong to any one political party, and all resignations or vacancies in the said commission as they occur shall be filled by the appointment of the Governor.

"Said Commission is authorized and directed to negotiate with the commonwealth of Virginia, or with any person or committee owning or holding any part of the said indebtedness for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper to be borne by the State of West Virginia.

"The Commission is hereby directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit instituted against the State of West Virginia, which is owned or held or claimed to be due, at law or in equity, by the commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper to be borne by the State of West Virginia.

"A majority of said Commission shall have authority to act. The Commission shall choose its chairman and appoint its secretary and other necessary officers.

"The expenses properly incurred by the Commission and its individual members, including compensation of said members at the rate of ten dollars per day for the time actually employed, shall be paid by the State out of the moneys appropriated for said purpose.

"The Commission shall make a report to the Governor as soon as practicable, and upon receipt of said report the Governor shall convene the Legislature for the consideration of the same.

"The Commission is hereby authorized to sit within or without the State and to send for papers and records and to examine witnesses under oath."

In pursuance of the authority vested in him by the foregoing resolution His Excellency, H. D. Hatfield, Governor, made the following appointments of members of the Virginia Debt Commission:

First Congressional District—John W. Mason, of Fairmont; Henry Zilliken, Wellsburg.

Second Congressional District—J. A. Lenhart, Kingwood; W. T. Ice, Philippi.

Third Congressional District—U. G. Young, Buckhannon; Joseph E. Chilton, Charleston.

Fourth Congressional District—R. J. A. Boreman, Parkersburg; John M. Hamilton, Grantsville.

Fifth Congressional District—W. D. Ord, Landgraff; Joseph S. Miller, Kenova.

At Large—W. E. Wells, Newell.

In obedience to a call of the Governor the Commission met in the capitol at the city of Charleston on Tuesday, the 10th day of June, 1913, and there were present: Mr. W. E. Wells, member-at-large; and Messrs. Mason, Zilliken, Lenhart, Ice, Young, Chilton, Boreman, Hamilton, and Miller, representing their respective districts as above noted.

Absent: Mr. W. D. Ord.

On motion of Mr. Hamilton, Hon. John W. Mason was elected Chairman of the Commission, by acclamation.

On motion of Mr. Boreman, Mr. John T. Harris was appointed Secretary.

The oath of office was administered to all the members present, and to the Secretary, by John C. Bond, a Notary Public within and for the county of Kanawha.

His Excellency, Governor Hatfield, and Attorney General Lilly, upon invitation addressed the Commission briefly as to matters it would be called upon to consider, and each gave assurances that he was ready to render all the assistance he could to further the work of the Commission. The Governor also stated that he would communicate with the Governor of Virginia and notify him of the meeting and organization of this Commission.

On motion of Mr. Young the Secretary was directed to extend an invitation to Ex-Governor W. M. O. Dawson and to Mr. George McClintic, of counsel on behalf of the defendant in the case of Virginia vs. West Virginia, pending in the Supreme Court of the United States, to meet the Commission in executive session at 2 o'clock this afternoon and give such information as they may have in relation to the status of the Virginia debt case, and answer any questions that the Commission may desire to propound.

Upon the further motion of the same gentleman a recess was then taken until 2 o'clock p. m.

AFTERNOON SESSION.

The Commission reconvened at 2 o'clock p. m., all the members being present but Mr. Ord.

In response to the invitation extended under the resolution proposed by Mr. Young this morning, Ex-Governor Dawson spoke briefly of his connection with the case of Virginia vs. West Virginia, and suggested that if the members of the Commission would read the briefs of counsel on final hearing, they would no doubt be better able to familiarize themselves with the case than in any other way.

Mr. McClintic spoke at length, giving a history of the case in its various stages from his earliest connection with it down to the time of the final hearing. He also quoted extensively from the record and answered many questions propounded to him by members of the Commission.

Mr. Young offered the following:

Resolved, That a sub-committee of three be appointed to ascertain and report at the next meeting of the Commission:

First—The status of the accounts between Virginia and West Virginia based upon the several theories of settlement which have been suggested as the proper basis of adjustment.

Second—The status of the accounts as shown by the Debt Commission of 1871.

Third—The status of the account as shown by the Senate Finance Committee of West Virginia of 1873.

Fourth—Which account, in their opinion, is the nearest correct and equitable, and their reasons therefor, and if none meets their views, to make up and report one of their own, with their reasons in support thereof.

Fifth—An outline of further procedure on the part of the Commission.

Sixth—Such other matters as they deem pertinent and proper.

The question being upon the adoption of the resolution, the same was propounded by the Chair and did not prevail, the vote being Ayes 4, Noes 5.

On motion it was

Ordered, That the Secretary be authorized and directed to have printed all necessary stationery for the use of the Commission and to provide a book in which the minutes of the meetings of the Commission shall be kept; also a book of blank warrants for the per diem and expenses of the members and any employes. It was further

Ordered, That all warrants shall be signed by the Chairman and Secretary.

On motion of Mr. Wells, the Commission then adjourned to meet at Charleston on Tuesday, July 22, 1913, at 10 o'clock a. m.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., July 22, 1913.

The Commission met pursuant to the adjournment of June 10th, and there were present

Messrs. Mason, (Chairman) Wells, Zilliken, Lenhart, Young, Chilton, Boreman, Hamilton, Ord and Miller.

Absent: Mr. Ice.

The oath of office was administered to Mr. Ord, (who was not present at the organization meeting) by John C. Bond, Notary Public.

The minutes of the last meeting were read and approved.

On motion of Mr. Zilliken the following was adopted:

Resolved, That a sub-committee of three be appointed by the Chair, whose duty it shall be to discover, if possible, the ownership of the Virginia Debt Certificates, and report the same to this Commission at a subsequent meeting.

Whereupon, the Chair appointed as members of the sub-committee Messrs. Zilliken, Wells and Young.

On motion the Commission then took a recess until 2 o'clock this p. m.

AFTERNOON SESSION.

The Commission re-convened at 2 o'clock, all the members being present but Mr. Ice.

The Chair submitted to the Commission a proposition to meet the Virginia Debt Commission, in conference, at the New Willard Hotel, in the city of Washington, on Friday, the 25th instant.

Pending a discussion of which Mr. Ord offered the following:

Resolved, That we ask the Virginia Commission to give us more

time in which to acquaint ourselves with the facts of the case of the State of Virginia against West Virginia.

The question being upon the adoption of the resolution the same was propounded by the Chair and the resolution was lost.

Messrs. Ord and Boreman requested that the record show that they voted in favor of the resolution.

Those who voted against it explained their votes by saying that as the time of the Washington conference had already been fixed by the Chairmen of the two Commissions, they did not deem it either wise or expedient to attempt a cancellation of the engagement, and that if the meeting resulted in nothing else, it would give the members of this Commission an opportunity to meet the members of the Virginia Commission and to become personally acquainted with them.

The question recurring upon the proposition to meet the Virginia Debt Commission, in conference, in the city of Washington on the 25th, after a further discussion of the matter it was decided that this Commission would attend the meeting and would leave the city of Charleston at 6:45 p. m. of the 23rd.

The question of counsel for the Commission coming up for consideration, Governor Hatfield being present explained that the Board of Public Works had made arrangements with Mr. Charles Edgar Hogg—in view of his previous connection with the debt case as counsel on behalf of the State, and of the fees that he had received—to contribute his legal services to this Commission without expense to it; which tender was accepted by the Commission.

On motion of Mr. Miller, Mr. George McClintic, one of counsel previously employed by the State in the case, was extended an invitation to accompany the Commission on its trip to Washington, on the basis of his actual expenses, to be paid out of the funds of the Commission, but no additional compensation to be paid him.

Subsequently, Mr. McClintic appeared before the Commission and after the resolution had been explained to him, stated that while he had been employed in the case, and had received compensation from the State, he felt that he had rendered services to cover the full amount of all money paid him, but that under the circumstances he would be willing to accompany the Commission on its trip to Washington on the basis of his actual expenses as proposed, but that he did not wish his action to be considered a precedent if any further services were required of him.

On motion, the Commission then adjourned until to-morrow morning at 10 o'clock.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Charleston, West. Va., July 23, 1913.

The Commission met pursuant to adjournment of yesterday.

Present: Messrs. Mason, (Chairman) Wells, Zilliken, Lenhart, Young, Chilton, Boreman, Hamilton, Ord and Miller.

Absent: Mr. Ice.

The minutes of the meeting of yesterday were read and approved.

(A paragraph here omitted refers to an account rendered by the Secretary for services and expenses, and the allowance of the same by the Commission.)

Mr. Hogg appeared before the Commission and in an informal way gave his views of certain matters involved in the debt suit, and stated that he would prepare and submit to the Commission at a later date a paper that might be of benefit to it in its future deliberations.

On motion the Commission then adjourned to meet in Washington to-morrow, July 24th, upon the call of the Chairman.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Washington, D. C., July 24, 1913.

The Commission left Charleston at 6:45 last evening and arrived at Washington at 7:30 this morning. Headquarters were established at the New Willard Hotel.

Upon the call of the Chairman a meeting was held in the "Gridiron Room" at 11 o'clock a. m., at which all the members were present with the exception of Mr. Ice.

United States Senator William E. Chilton appeared before the Commission in response to an invitation of the Chairman, and spoke briefly of the work it had in hand.

At the noon hour a recess was taken until 3 o'clock p. m., to meet in

the Census Committee Room of the United States Senate, at the capitol, upon the invitation of Senator Chilton, Chairman of that Committee.

AFTERNOON SESSION.

The Commission met, pursuant to the recess motion, at 3 o'clock, all the members being present but Mr. Ice.

Hon. William E. Chilton, United States Senator, Congressmen John W. Davis of the First Congressional District of West Virginia, William G. Brown of the Second Congressional District, and Hunter H. Moss of the Fourth Congressional District met with the Commission. Word was received from Senator Goff that he regretted his inability to attend, but that he would meet the Commission at 10 o'clock to-morrow morning at the New Willard Hotel. After an extended informal discussion of various questions involved in the debt case, an adjournment was had until 10 o'clock to-morrow morning at the New Willard Hotel.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Washington, D. C., July 25, 1913.

The Commission met pursuant to the adjournment of yesterday, all the members being present. Complying with an invitation heretofore extended him, United States Senator Nathan Goff met with the Commission, discussing the status of the case of Virginia vs. West Virginia and giving his views upon many questions involved in and arising out of the same. At the hour of 10:55 a. m., the Chairman announced that at 11 o'clock the Commissions from the two states would meet in conference.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., August 11, 1913.

Pursuant to a call of the Chairman the Commission met in the Governor's Reception Room, at the capitol, in the city of Charleston, on this day, at 10 o'clock a. m.

Present: Messrs. Mason, (Chairman,) Boreman, Zilliken, Hamilton, Young, Lenhart, Ord, Ice, Chilton, Wells and Miller, being all the members of the Commission. Also, Attorney General Lilly, Associate Counsel Hogg and the Secretary.

The minutes of the Washington meetings were read and approved.

CHAIRMAN MASON: After our meeting at Washington I learned through letters received from various members of the Commission, and otherwise, that this Commission would not be ready to meet with the Virginia Commission, at Washington, on the 12th day of August, pursuant to the adjournment of July 26th; and not desiring to put the members of the Virginia Commission to the inconvenience of going to Washington unless they desired to go, I sent the following telegram to the Hon. John B. Moon, Chairman of the Virginia Commission:

"Fairmont, West Va., Aug. 9, 1913.

"Hon. John B. Moon,
Charlottesville, Va.

Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday and will have to ask that time be extended to a day in near future. Under these circumstances I suggest Washington meeting be now re-called. (Signed)

JOHN W. MASON."

On the same day that telegram was sent, I also wrote and mailed to Mr. Moon a letter of which this is a copy:

"August 9, 1913.

Hon. John B. Moon,
Charlottesville, Va.

Dear Sir:

Since returning from Washington the members of the West Virginia Debt Commission have been diligently investigating the problem submitted to them by the Legislature. They find that there are many things to be considered before we can have an intelligent settlement. You must bear in mind this Commission is composed of men who knew comparatively little of the subject and none of the members had ever studied the question in detail. Hence, we find that it will be utterly impossible to resume negotiations on the 12th of August as

intended when we separated at Washington. Therefore, I today sent you the following day letter telegram:

'Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday and will have to ask that time be extended to a day in near future. Under these circumstances I suggest Washington meeting be now recalled.'

You will readily understand, I think, the magnitude of work before this Commission. In the first place you are no doubt aware that the people of West Virginia never considered that they owe anything, or, if anything, a very small amount. As indicating the sentiment of West Virginia I here quote a resolution adopted by the Constitutional Convention in 1872, offered by its Ex-Judge Samuel Woods, of Barbour County, as follows:

'*Resolved*, That there exists no just, legal or equitable claim against the State of West Virginia for the payment of any portion of the public debt of Virginia and that the existing provision on that subject in our present constitution ought no longer to exist.'

Judge Woods was a very prominent man at the time and had been a member of the Virginia Convention of 1861, and sympathized with the South and remained at or near Richmond during the entire war. He cannot be accused of having any prejudice against the old State. He was a man of large means, took great interest in public matters and served a long time as one of the judges of our Supreme Court.

In pursuance of this resolution that Convention did eliminate from the Constitution of 1863 Section 8, Article 8, which was the article authorizing the payment of our part of the Virginia debt, and the present Constitution, adopted in 1872, less than ten years after the organization of the State, not only ignores the payment of this debt, but by references to this history inferentially declares against it. I refer to these things to indicate the trouble there will be in convincing the people of West Virginia that they owe anything on account of this debt. This Committee having been appointed by the Legislature to inquire into and negotiate upon this subject, are exceedingly anxious to do so as intelligently as possible and without any references to preconceived notions except so far as the opinions formed at the time of the formation of the State, by men familiar with all the facts, may be regarded as correct. You, together with the members of your Commission, have gone over these questions fully and have had years of experience in acquiring the facts. We have had less than 60 days. We take it that before a satisfactory conclusion can be reached that we shall have to verify many statements, accounts and facts upon which the correct conclusion rests. This being a public matter and our duties being only advisory, we would not feel that we have done our duty to the public, should we make a proposition, accept or reject one, without

giving a reason therefor at least satisfactory to ourselves. I beg to assure you that we will pursue our investigations as rapidly as possible and as soon as we feel that we are prepared to talk the matter over with you intelligently, we will ask you to call your Commission together for that purpose. I hope this will be in the near future.

Very respectfully ours,

JOHN W. MASON.

(Signed)

JWM/S

To which telegram and letter no replies were received. Thereupon, The Commission directed Chairman Mason to call Mr. Moon by long distance telephone and inquire whether or not he had received the telegram, and what was the pleasure of the Virginia Commission.

Mr. Moon was called and replied to Chairman Mason that immediately upon receipt of the telegram of August 9th he had notified the members of the Virginia Commission that there would be no meeting at Washington on the 12th of August, and Chairman Mason suggested to Chairman Moon that a time be fixed for another meeting in the near future, and that the time be arranged by the Chairmen of the two Commissions, which was assented to by Mr. Moon.

On motion the Commission then took a recess until 1:30 p. m.

AFTERNOON SESSION

The Commission re-assembled at 1:30 o'clock p. m., all the members being present, together with Attorney General Lilly and Associate Counsel Hon. Charles Edgar Hogg.

Mr. Lilly read a paper prepared by Mr. Hogg and himself, supplementary to a former statement submitted by them for the use of the Commission, "On the Debt Case, together with Conclusions Deducible from the Opinion of the Court, rendered on what is Denominated a Final Hearing of the Case," also, another paper giving "Reasons why the Proportion of the Debt of Virginia to be assumed by West Virginia should be ascertained by the method prescribed by Section 9 of the Ordinance adopted in August, 1861."

Following the reading of the papers there was a discussion of the same by Messrs. Wells, Hamilton, Young, Lenhart and other members of the Commission, after which Mr. Wells offered the following resolution, which was adopted:

Resolved, That a sub-committee consisting of Messrs. Ord, Young

and Ice is hereby appointed to co-operate with the Attorney General and the associate counsel in this case, in drawing up the necessary data and statistics as a basis for propositions to be made to the Virginia Commission, and that either one, two or all of said sub-committee, at their convenience, are authorized to perform the work assigned them in connection with this matter.

On motion of Mr. Wells the Commission then adjourned to meet at the call of the Chairman.

.....

Chairman.

.....

Secretary.

Proceedings of the Sub-Committee

Charleston, West Va., August 11, 1913.

The sub-committee created by the resolution adopted by the Virginia Debt Commission at its meeting this day, met at 7 o'clock p. m., at the office of the Attorney General, in the capitol building, in the city of Charleston, to consider the duties imposed upon it by virtue of said resolution.

All the members of the sub-committee were present; also, Attorney General Lilly and Associate Counsel Hogg.

Thereupon, Mr. W. D. Ord was elected Chairman of said sub-committee.

After a general discussion of the duties of the sub-committee, on motion an adjournment was had until to-morrow morning, August 12, at 9 o'clock.

WILLIAM D. ORD,
Chairman Sub-Committee.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., August 12, 1913.

The sub-committee met pursuant to adjournment of last night, all the members and the Attorney General and Associate Counsel being present. Further discussion was had as to matters and things that should be considered by this sub-committee, the members of the sub-

committee agreeing upon the respective investigations to be made, after which an adjournment was had to meet in the near future, at the call of the Chairman.

WILLIAM D. ORD,
Chairman Sub-Committee.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., Sept. 18, 1913.

The sub-committee appointed under the resolution adopted August 11th, 1913, met in the city of Charleston, pursuant to call, on the 18th day of September, 1913, and there were present: Messrs. Ord, (Chairman) Young and Ice; also, Attorney General Lilly and the Secretary of the Commission.

Considerable time was spent in a discussion of the methods to be pursued in securing the necessary data and statistics upon which to base propositions to be made to the Virginia Commission.

The Chairman stated that he had been in conference with the Governor, the Board of Public Works and counsel representing West Virginia, and that it was unanimously agreed by them that in order to make an intelligent and proper offer to the Virginia Commission with reference to a settlement of West Virginia's proportion, if any, of the public debt proper to be borne, as based upon the suggestions contained in the opinion of the Supreme Court of the United States of the 6th day of March, 1911, that it would be necessary to obtain certain data, facts and information not disclosed in the present record, and that it would probably require further investigation by accountants; and it being represented to this sub-committee by the Board of Public Works that it is willing to secure such data and information upon which to predicate propositions of settleement as aforesaid, and that it will secure such data and information and furnish the same at the earliest practicable date, which will probably be within two or three months, the sub-committee expressed its desire to receive any and all information upon which an adjustment can be properly predicated.

The following preamble and resolution were offered by Mr. Young and adopted:

> WHEREAS, The sub-committee of the West Virginia Commission of the Virginia Debt Commission appointed to formulate a proposition of settlement to be submitted to the Virginia Commission, find it necessary to ascertain certain facts

and figures not in the record and not available from the record, which will take some time; therefore be it

Resolved, That the Hon. John W. Mason, Chairman of the West Virginia Commission, be requested to inform the Virginia Commission, by a letter directed to its Chairman, Mr. Moon, that we are diligently at work on a proposition to be submitted to the Virginia Commission, but that further time will be needed to complete it.

Whereupon, the Chairman of this sub-committee addressed the following communication to the Chairman of the Commission:

"Charleston, West Va., Sept. 18, 1913.

Hon. John W. Mason,
Chairman,
Fairmont, West Virginia.

Dear Sir:

I enclose copy of a resolution adopted by our sub-committee today. Also, draft of a letter to Mr. Moon, which you can sign and mail to him if it meets with your approval.

Yours truly,

(Signed) W. D. ORD.
Chairman Sub-Committee."

The draft of the letter to Mr. Moon above referred to is as follows:

"Fairmont, West Virginia, September 22, 1913.

Hon. J. B. Moon,
Chairman Virginia Debt Commission,
Charlottesville, Virginia.

My Dear Sir:

I am instructed by a sub-committee of the West Virginia Commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia Commission, that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment; but that it will yet require some three or four months time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee and hope it will be agreeable to your committee to consider the same favorably.

In the meantime, if your Commission should desire to sub-

mit any suggestions or propositions to this Commission, looking to the same end, we would gladly and without unnecessary delay consider the same.

With great respect, I remain,

Yours, etc.,

Chairman West Virginia Commission.

Secretary.

The sub-committee then adjourned to meet at the call of the Chairman, with the understanding that each member should diligently continue his investigations under the resolution raising this sub-committee.

Chairman Sub-Committee.

Secretary.

Teste:

JOHN T. HARRIS,
Secretary.

In the Supreme Court of the United States

OCTOBER TERM, 1906.

ORIGINAL NO. ———.

Commonwealth of Virginia

vs.)

State of West Virginia.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of West Virginia, one of the United State of America, by William M. O. Dawson, Governor, and Clark W. May, Attorney General, humbly prays leave to file the sworn demurrer herewith presented, to the bill of complaint in the above entitled cause.

It is humbly submitted that, by an examination of the bill of complaint in this cause, it will be observed that there is nothing in said bill contained showing a controversy between said Commonwealth of Virginia and said State of West Virginia justiciable in this court.

Wherefore, your petitioner humbly prays leave to file her said demurrer, and that a day may be fixed by your Honors for the hearing of the same.

And as in duty bound your petitioner will ever pray.

———————————

Governor of West Virginia.

———————————

Attorney General of West Virginia.

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———————————*Counsel.*

In the Supreme Court of the United States

OCTOBER TERM, 1906.

ORIGINAL NO. ——.

COMMONWEALTH OF VIRGINIA

vs.)

STATE OF WEST VIRGINIA.

The demurrer of the State of West Virginia, defendant above named, by William M. O. Dawson, Governor, and Clark W. May, Attorney General of said State of West Virginia, to the bill of complaint of the Commonwealth of Virginia, complainant, by William A. Anderson, Attorney General of said Commonwealth of Virginia.

The defendant, the State of West Virginia, above named, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are set forth and alleged, or in any way or manner, demurs thereto, and for the cause of demurrer shows:

First: The jurisdiction of this Court does not extend to the character of demands, alleged in the bill in this cause, being in substance simple demands for money, and this Court could not enforce a judgment for money against one of the sovereign states of the Union of the United States in any way or manner.

Second: The bill on its face shows that the said Commonwealth of Virginia has no suable interest in the demands for money set out therein which would entitle her to the relief prayed for therein, and that the said demands if recovered would be only for the benefit of certain individuals, who are the holders of the alleged evidences of debt mentioned in said bill.

Third: The bill on its face shows that so far as said Commonwealth of Virginia may have any ownership of any of such alleged evidences of debt, the acts of the Legislature of said Commonwealth, claimed by the said Attorney General thereof as authority to institute this cause, do not in fact authorize any suit therefor to be instituted, but only authorize, if any authority at all is given, action on the part

of the Commission in said bill mentioned and said Attorney General for the benefit and at the expense of the individuals in the bill and exhibits called "Certificate holders," which is in effect giving the use of the name of said Commonwealth to such "Certificate holders" for the purpose of attempting to collect their alleged private money demands against said State of West Virginia.

Fourth: The said bill does not sufficiently and definitely set out therein the alleged demands for money claimed therein, so that a complete and proper answer can be made thereto.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

Governor of West Virginia.

Attorney General of West Virginia.

State of West Virginia,
County of Kanawha, ss.

This day there personally appeared before me, the undersigned Clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clark W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing demurrer, and being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as Clerk of said Court and the official seal thereof ——— day of October, 1906.

Clerk of the Supreme Court of Appeals of the State of West Virginia.

I, Clark W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Attorney General of West Virginia

Supreme Court of the United States,

OCTOBER TERM, 1906.

COMMONWEALTH OF VIRGINIA *vs.* STATE OF WEST VIRGINIA.	ORIGINAL NO. 7.

SUPPLEMENTAL BRIEF ON THE DEMURRER.

The evident purpose of the Virginia funding act of March 30, 1871, was to settle with the creditors for the full amount which the State had decided was her just share of the old public debt, and every creditor who surrendered his original bond for cancellation under the provisions of that act understood that he was being paid in the new bond all that the State recognized her obligation to pay. By presenting his bond for cancellation as required by the statute, and by accepting the certificate representing the remaining one-third, he necessarily released the State from any further pecuniary liability to him; for all the State agreed to do—if the language of the certificate constitutes an agreement—was, that the unfunded one-third "will be provided for in accordance "with such settlement as shall hereafter be had between "the States of Virginia and West Virginia in regard to "the public debt of the State of Virginia at the time of "its dismemberment." Both the act and the certificate issued under it provided that the State should hold the cancelled bonds in trust for the owners of the certificate (Record, pp. 15; 47-48).

The settlement referred to was to be made between the two States alone, and the essence of the agreement was that if anything should be received from West Virginia the holders of the certificates should have the benefit of it to the extent of their ratable shares. If Virginia had been suable, no action could have been thereafter maintained against her on this agreement unless she had actually received money in a settlement with West Virgina. Money so received would have been held in trust by the State for the certificate holders; and she now sues in that capacity for their exclusive benefit.

Unless Virginia has a valid claim in her own right against West Virginia for contribution independently of her transactions with the creditors, she cannot maintain this action. It certainly cannot be said that the issue of certificates to which West Virginia was not a party could confer upon Virginia a greater or more perfect right with respect to the unfunded one-third than she would have otherwise possessed; and, in fact, it is conceded by counsel that the liability of West Virginia is in no way affected by the issuance of the certificates. Although counsel insist that Virginia was not released from pecuniary liability under the act of 1871, yet the Attorney General, in his reply brief, says:

> "While the creditor, as the result of this arrange-
> "ment, took the risk of such a settlement ever being
> "made, it was none the less the duty of Virginia to
> "do all that she could, or all that could be reasonable
> "and fairly expected of her, to bring about and effect
> "such a settlement; and, her repeated efforts to that
> "end having proved abortive by reason of the failure
> "of West Virginia to meet her overtures, this suit
> "has become necessary."

The next funding act was passed March 28, 1879. It provided for the surrender and cancellation of the outstanding bonds and for the issue of certificates, and ex-

pressly declared that "The acceptance of said certificates "for West Virginia's one-third issued under this act shall "be taken and held as a *full and absolute release* of the "State of Virginia for all liability on account of said "certificates" (Record, p. 19). Notwithstanding this plain provision of the act, it is contended in one of the reply briefs that Virginia was not released from liability for the sums represented by the certificates issued under it. Of course, it was not necessary to provide that the State should be released from any part of the old bonds, because they had all been surrendered to her and cancelled, and no longer constituted, even apparently, an obligation upon her part.

The next act, which was passed February 14, 1882, also provided for the surrender and cancellation of the outstanding bonds, and for the issue of certificates for the unfunded one-third, "to be accounted for by the State of "West Virginia without recourse upon this commonwealth" (Record, pp. 28-29).

The next and last funding act was passed February 20, 1892, and it also required the surrender and cancellation of the outstanding bonds and the issue of certificates for the unfunded portion "to be accounted for to the holder "of this certificate by the State of West Virginia without "recourse upon this commonwealth" (Record, p. 30).

The foregoing references to the statutes show the relation which the State of Virginia bore to the unfunded part of the debt when the joint resolution of March 6, 1894, was passed constituting a commission to negotiate with West Virginia, upon the express condition, however, that it should "in no event enter into any negotiations "thereunder except upon the basis that Virginia is bound "only for two-thirds of the debt of the original State, "which she has already provided for as her equitable pro-"portion thereof" (Record, p. 40).

This was followed by the act of March 6, 1900, which

authorized the commission to take the certificates on deposit "upon an agreement and contract on the part of the "holders of said certificates that if the said commission "would secure a settlement with West Virginia with respect to said certificates, the holders of said certificates "so deposited will accept the amount realized on such "settlement from West Virginia on said certificates as a "full settlement of all their claims thereunder" (Record, p. 42). And it was further provided that the commission, with the advice and approval of the Attorney General, might take such action and institute such proceedings "on behalf of the State" as might in their judgment be needful and proper to "bring about and carry into effect a settlement as aforesaid;" but it was expressly provided that the owners of the certificates should defray all the expenses involved in connection with the proceedings "and the State shall not be subject to any expense on that account" (Record, .pp. 42).

The contracts exhibited with the bill, which are set forth in full in our original brief, show that the holders of the certificates which were deposited with the commission agreed to all the terms and conditions of the acts last referred to; and the record shows that before the institution of this suit certificates to the amount of $13,-173,435.41 had been deposited with the commission. Of this amount $10,851,294.09 were issued under the act of 1871 (Record, p. 89). Certificates held by the State of Virginia or by the commissioners of the sinking fund and literary fund amounting to $2,745,462.01 have not been deposited, of which $2,578,518.68 were issued under the act of 1871 (Record, p. 90). If Virginia owes any part of the debt represented by these certificates, she owes it to herself on acount of obligations created for her own exclusive benefit, and West Virginia could in no event be responsible for any part of it.

The dissenting opinion of Judge Staples in the case of

Antoni vs. *Wright*, 22 Grattan (62 Va.), p. 838, and the cases of *Higginbotham* vs. *Commonwealth*, 25 Grattan (66 Va.), p. 628, and *Greenhow* vs. *Vashon*, 81 Va., 341 are cited by counsel in support of their contention that Virginia was not released by the act of 1871 from the obligation to pay the unfunded one-third of the debt. But an examination of the cases shows that no such question was involved, or could have been involved, in either of them.

In *Antoni* vs. *Wright*, decided in 1872, the question was as to the constitutionality of the Virginia act of 1872, repealing the provision of the act of March 30, 1871, which made the coupons receivable for taxes. The court, in a very able opinion, held that the repealing act was unconstitutional. Anderson, *J.*, in delivering a concurring opinion, said:

> "It matters not whether the State is released from "the one-third of the debt or not; if a new bond had "been given for the whole of the debt, it would have "been a valid obligation for a valuable consideration. "Whether the State is released or not for one-third "of the debt, it is very clear that in this transaction "she has only assumed to pay two-thirds of it. And "I could not say that she is bound for any more. "That question, though one of great interest to the "State, is not involved in this case" (p. 873).

We call the attention of the court also to what was said by the court on page 840 of the report.

In *Higginbotham* vs. *Commonwealth*, decided in 1874, the question was whether the State was bound under certain acts of the legislature to pay dividends on the stock of the James River & Kanawha Company. It was contended by the Attorney General for the State that the two States were bound ratably to the stockholders for the dividends agreed to be paid, and that Virginia was, therefore, released from one-third of it by the dismemberment. The court expressed the opinion that they were bound

ratably, but that Virginia was not released, and, speaking of the State's attitude, said:

> "By the payment of the whole debt, an equity at "once arises in her favor to demand contribution "from the other State which she may enforce in the "United States Courts; a right secured to States but "denied to individuals. She cannot suffer, there- "fore, by doing right. Virginia has not lost her "identity by the loss of forty-eight counties and the "inhabitants thereof."

In the course of its opinion, the court further said:

> "It is scarcely necessary to add that in what has "been said above it had not been my purpose to ex- "press or intimate any opinion as to the respective "rights and liabilities of the State and those of her "creditors who have accepted the provisions of the "act of March 30, 1871, commonly called the funding "act. That question is not before us, even inci- "dentally, and no opinion is expressed thereon." (p. 636.)

There had been no adjustment between the State and the stockholders who sued in that action, as there had been with the holders of the old public debt, and therefore there was no foundation for the claim that the State had been released from any part of the liability for dividends. The position assumed by the court that West Virginia was liable directly to the creditors for her just proportion of the debt is not insisted upon by counsel in this case. On the contrary, it is conceded that if West Virginia is liable for contribution, it is to Virginia alone.

In 1886, when the case of *Greenhow vs. Vashon* was decided, the entire personnel of the court had been changed as a result of the controversy over the readjustment of the public debt. It was a proceeding to compel the treasurer of the State to receive coupons in payment of taxes, and the court held that he could not be compelled

to do so because the funding act of March 30, 1871, was unconstitutional and void!

We think it is clear that Virginia has been released by the provisions contained in the various funding acts, by the surrender and cancellation of the bonds, by the acceptance of certificates under the acts, and by the contracts entered into between the creditors and the commissions; but, even if there had been no formal or voluntary release, the State has repeatedly declared in the funding acts and in the joint resolution of March 6, 1894, and the act of March 6, 1900, under which this action is brought, that she is not liable for the unfunded one-third of the debt. These declarations amount to a positive refusal to pay, or to fund, that part of the debt, and are therefore equivalent to a direct repudiation of the State's obligation to that extent.

Under these circumstances, what possible pecuniary interest can the State have in the claims alleged against West Virginia? But, no matter whether Virginia has been released or not, and no matter whether she has repudiated the one-third or not, she sues in this action for contribution, and no such suit can be maintained until she has actually paid, or in some way settled, more than her share of what her counsel call the "common indebtedness." She has decided for herself, with the consent of her creditors, what her just share was, and she has neither paid nor extended anything in addition. No authority has been cited, and we are not aware that any exists, showing that one co-obligor—and the States are not co-obligors—can maintain an action against another, either at law or in equity, for contribution, before he has paid more than his own just proportion of the joint indebtedness. The only authority relied upon by counsel on the other side in support of their contention on this point is *1 Spence, Equity Jurisprudence, p. 662;* but that citation has no bearing upon the question.

Speaking of the right to sue for contribution, the author says:

> "If one of several sureties paid the whole or more "than his proportion of the debt, he might compel "his co-surety to contribute proportionately to the "amount so paid. So if the original debtor, or one "of the parties liable, becomes insolvent, each of the "solvent parties was made to contribute to the obli- "gation thrown upon them."

He then states what the Roman law was upon the subject of contribution, and, still speaking of that law, he makes the following statement, which is the only quotation made by counsel on their brief:

> "It *was* not necessary to wait till some one was "damnified by having paid or having claim made "against him for the whole; a bill might be filed to "settle the amount due from each individual of a "body liable to a common burden, and to compel the "payment by each, of his share." (*Original brief*, p. 18.)

We have said that there are no co-obligors in this case, and that is conceded by counsel on the other side. The bill is not framed upon the theory that West Virginia was ever bound to the holders of the old bonds, or that she is now bound to the holders of the certificates issued by the State of Virginia, either as a co-obligor or otherwise. The claim is made against her by Virginia alone, and it has been argued throughout the case that the indebtedness is to her. If the old bonds had been secured by a lien upon the public property situated in the new State, or by a pledge of the revenues to be derived from the people or territory embraced in the new State, it might have been contended that there was a direct liability to the creditors upon the part of West Virginia; but such was not the case. The bonds of a State, as this court has often said, are secured only by a pledge of its honor and

good faith; and Virginia is still the same State that issued and sold the bonds. It cannot be necessary to make an argument to show that neither this court nor any other has power to exonerate her from any part of her liability. Even if such a power existed in any court, the creditors whose claims would be extinguished by the exoneration would be indispensable parties.

It is now contended by counsel for the plaintiff that there never was a compact between the two States with reference to the old public debt, and that no consent to the formation of the new State was ever given by the legislature of Virginia; and it is said that the question as to the existence of the compact cannot be relied upon by the defendant State in this argument because it is not specifically stated as one of the grounds of demurrer. The compact is set forth in the bill (pp. 4–6), and one of the separate grounds of demurrer is that the court has no jurisdiction to hear and determine the cause, which necessarily requires it to ascertain the foundation and character of the claim asserted and the nature and extent of the remedy sought by the plaintiff. The office of a demurrer is to present to the court the legal and equitable questions arising upon the face of the pleading—not to argue them—and one of the questions presented by the demurrer in this case is whether, if the compact is valid, the court has power to enforce it according to its terms.

We do not propose to reargue the question as to the existence of the compact or to discuss the validity of the Virginia act of May 13, 1862, consenting to the formation of the new State and asking its admission into the union under the constitution which had then been framed. The compact itself was entered into by the sovereignty conventions of the two States and consented to by Congress in accordance with the provisions of Clause 3 of Section 10 of Art. 1 of the constitution of the United States, and all that was required of the legislature of Virginia by Clause 1

of Section 3 of Art. 10 of the constitution was that it should give its consent, not to the compact, but to the formation of the new State out of a part of the territory of the old State.

Counsel claim in the reply briefs that the ordinance of the Wheeling Convention requiring West Virginia to assume a just proportion of the debt and prescribing the method of ascertaining it is binding upon that State, but deny that the conditions upon which the proposition was accepted are binding upon Virginia (Mr. Conrad's brief, pp. 22–23). We insist that the compact is binding as a whole or it is not binding at all, and that the act of the Virginia legislature, passed May 13, 1862, while it was not necessary to the validity of the compact, constituted a ratification of it by that body. Without this act the State of West Virginia could not have been constitutionally formed or admitted into the union, whether there was a compact or not.

Congress never passed but one act providing for the admission of the State into the union, and when it was afterwards actually admitted by the proclamation of the President, the constitution which Congress had already approved had not been altered in the slightest respect so far as it related to the compact between the two States. The only change that had been made, or that was required to be made, by Congress, was in relation to the institution of slavery.

But it is now argued that the compact between the two States has been abrogated by the omission of the State of West Virginia to include in the constitution of 1872 the same provision in regard to the old public debt that was contained in the constitution of 1862 under which the State was admitted into the union; but, notwithstanding this contention, it is still insisted by counsel that West Virginia became liable and is now liable for a just proportion of the debt as provided in the Wheeling ordinance,

and which it is claimed constituted a part of the compact. The entire compact was that the new State should take upon itself a just proportion of the public debt, to be ascertained by charging to it all the State expenditures within its limits, and a just proportion of the ordinary expenses of the State Government since any part of the debt was contracted, and deducting therefrom the moneys paid into the treasury of Virginia from the counties included within the new State during that period, and that the legislature of West Virginia should ascertain the same as soon as practicable and provide for its liquidation by a sinking fund sufficient to pay the accruing interest and to redeem the principal within thirty-four years.

This compact was entered into by the sovereignty conventions of the two States. In one the proposition was made in the form of an ordinance, and in the other it was accepted in the form of a constitutional provision; and then it was consented to by Congress, and thus became an absolute and permanent obligation of the two States, which neither of them could thereafter abrogate or alter. It was not necessary for West Virginia to repeat in a subsequent constitution the terms upon which she had accepted Virginia's proposition, and upon which the compact had been concluded with the consent of Congress. The compact itself provides that the new State shall assume a just and equitable proportion of the debt, and that the Legislature of that State shall ascertain what that proportion is, and establish a sinking fund sufficient to pay the interest and redeem the principal in thirty-four years. The latter part of the compact is as binding upon the two States now as it ever was. The legislature of West Virginia has not been abolished; it still exists and possesses full power to provide for the ascertainment and payment of the State's just proportion of the debt in accordance with the stipulations of the compact between the parties. The State of Viriginia has not

heretofore supposed that West Virginia had extinguished her obligation to assume and pay a just property of the debt, or that she could do so; but if the argument now made is sound, she has done so by merely omitting a part of the compact from her constitution.

The act of Congress admitting the State into the union and thereby, as this court has held, giving the consent of that body to the compact, is a law of the United States enacted in pursuance of the constitution, and is therefore the supreme law of the land; and the compact itself constitutes a part of that law. *Penna.* vs. *Wheeling Bridge Co., 13 How. 185.* No State can abolish it or change it, even by an affirmative act, much less by a mere omission to repeat it in her constitution or statutes.

It is true, as stated in one of the reply briefs, that nearly forty-four years have passed since the compact was made, but it is also true that Virginia has repudiated it ever since 1871; and, although she has in her own exclusive possession all the accounts and vouchers necessary to effect a settlement, she has never presented to West Virginia any account, or even part of an account, which would enable the Legislature of that State to take any action in accordance with the Wheeling ordinance. It will be time enough for Virginia to make complaint against West Virginia when she has furnished that State with such an account or statement as will enable her Legislature, or a commission appointed by it, to ascertain the amount claimed, in the manner prescribed by the Wheeling ordinance, which was Virginia's own chosen method of adjustment.

The reference to the fact that this court entertains jurisdiction of appeals from the Court of Claims involving demands for money, and renders judgments in such cases, is of no consequence in this discussion, because Congress has by statute not only consented that the United States might be sued on such claims, but has expressly author-

ized judgments to be rendered and directed their payment by the Secretary of the Treasury out of the general appropriations.

Act of March 3, 1863, Ch. 92, sec. 7; 12th, Stat. 766; Act of September 30, 1890, Ch. 1126, sec. 1.

The case of *Carter* vs. *State, 42 La. Ann., 930*, quoted from in the original brief of counsel for plaintiff, is not at all in conflict with our contention in the case at bar. That was a proceeding to subject money belonging to the State to the satisfaction of a judgment previously obtained, and the court decided that it had no power to do so, although the legislative had authorized the institution of the action in which the judgment was rendered. In the course of its opinion, the court said:

> "The incidents and appurtenances of ordinary ju-
> " risdiction have no application to a case like this.
> " Undoubtedly jurisdiction granted to render judg-
> " ments between parties subject to judicial power
> " and control implies power to execute such judg-
> " ment. But the sovereign is not subject to judicial
> " power and control except just so far as is consented
> " thereto; the moment the limit of that consent is
> " reached, the judiciary must instantly halt."

But it is said by counsel that this court can afford adequate relief because it can ascertain and declare West Virginia's proportion of the debt, and that this will operate to exonerate Virginia from any further liability on account of the indebtedness. The adjudication would have no such effect; on the contrary, if Virginia is now liable, as her counsel contend, the effect of such adjudication would be simply to fix the amount of her liability, but with no judgment or decree for its payment. How that could afford any relief to Virginia in any respect, or to her creditors, we are unable to see.

While we do not consider it necessary to add anything to the argument heretofore made on that part of the

demurrer which raises the question of multifariousness, it is proper to say that we do not controvert any of the propositious stated in Hogg's Eq. Proc., which is relied upon by counsel for plaintiff. They are in accord with the authorities cited by us.

Counsel quote from Mitford's Pl., p. 399, to show that there can be no misjoinder unless the parties have, or may have, conflicting interests in the suit, or unless some of them have no interest in the suit. What the author says, is:

> "If the plaintiffs actually have, or may have, con-
> "flicting interests in regard to the object of the suit,
> "or if any or either of them have no interest in the
> "subject-matter of the suit, there is a misjoinder.
> "But to be free from the objection of misjoinder it
> "is not necessary that a co-plaintiff should have an
> "identity of interest."

They also refer to Daniels' Chancery, pp. 301–2, to show that an auctioneer may be joined with the vendor in a suit against the purchaser, but they omit to state, or quote, the reason given by the author, which is—

> "because the auctioneer has an interest in the con-
> "tract, and may bring an action upon it; he is also
> "interested in being protected against the legal lia-
> "bility he has incurred in an action by the purchaser
> "to recover the deposit" (pp. 301–2).

He then says:

> "Upon a similar principle in cases where all the
> "plaintiffs have an interest in the subject of the suit
> "but their interests are distinct and several, they
> "will not be allowed to sue together as co-plaintiffs"
> (p. 302).

It is not usual to embody the speech of an advocate in a bill in chancery, and thus require the defendant to admit on demurrer the truth of the statements contained in it; yet that course has been pursued in the present case,

and counsel on the other side quote from the speech of Mr. Harrison to show that the ultimatum contained in the joint resolution of March 6, 1894, had been abandoned by Virginia in 1900. All that we can say in response to this is that the gentleman who made the speech had no authority from the State of Virginia to propose or agree to any settlement except upon the basis that the share of the State was only-two thirds of the debt. An examination of the act of March 6, 1900, will show that its preamble reaffirms the position which the State of Virginia had previously taken with respect to the extent of West Virginia's obligation for one-third of the debt, and that it does not repeal or modify any part of the joint resolution of March 4, 1894, but merely authorizes the commission to receive the certificates on deposit and to "take such action and institute such proceedings on behalf of the State as may in the judgment of the Commission and the Attorney General be needful and proper to protect the interests of the State and bring about and carry into effect a settlement as aforesaid." Under this act the commission had no power to settle by negotiation except upon the basis that Virginia had paid her full share—two-thirds—but it was authorized to sue for a settlement for the benefit of the certificate holders, and, of course, if less than one-third should be recovered from West Virginia in the suit, they had the power to receive it for distribution among the beneficiaries under the contract made with them.

J. G. CARLISLE,
For West Virginia.

Counsel:

C. W. MAY.
MOLLOHAN, MCCLINTIC & MATHEWS.
CHAS. E. HOGG.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 142

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

BRIEF OF COUNSEL FOR VIRGINIA UPON THE QUESTIONS RAISED BY THE DEMURRERS.

WILLIAM A. ANDERSON,
Attorney-General of Virginia.

HOLMES CONRAD,
Of Counsel for Virginia.

JOHN F. DONOHOE (INC.), PRINTERS, WASHINGTON, D. C.

22 Wall. 1864, 5.
Grenhow v. 81 Va. 342, 343

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF OF COUNSEL FOR VIRGINIA UPON THE QUESTIONS RAISED BY THE DEMURRERS.

Statement of Facts as Shown by the Bill.

I.

On the 20th of June, 1863, West Virginia became a State of the American Union pursuant to an act of the United States Congress approved December 31, 1862, and in accordance with a proclamation of President Lincoln made April 20, 1863, under that act of Congress, upon the terms and conditions prescribed by the Commonwealth of Virginia in an ordinance adopted in convention and in the acts passed by the General Assembly of the restored government of the Commonwealth giving her consent to the formation of the new State out of her territory, with the constitution adopted for the new State by the people thereof, and which was sanctioned by Congress.

II.

Prior to the formation of the new State, the Commonwealth of Virginia had contracted an indebtedness approximating, as of the first day of January, 1861, the sum of $33,000,000, evidenced by the contracts and obligations of the undivided State.

This large indebtedness had been created in constructing a system of public highways, turnpikes, canals, railways, and other public internal improvements, begun in the first quarter of the nineteenth century and designed to fairly develop every part of her territory, and to afford means of communication between the different sections of the Commonwealth and the seashore, and to give to the people in all the various portions of the State access to the best available markets.

The "vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for years prior to the date named (1861), and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation." Accordingly the costly system of highways, canals, and railways thus projected were designed, begun, and in very great measure constructed, *for the purpose of developing the resources of the region afterwards embraced in the State of West Virginia*, and of giving to its people adequate facilities of communication with other portions of the Commonwealth and access to the seashore and to the markets of the country.

This system of internal improvement and the large indebtedness contracted in carrying it into execution received the sanction of the people of the counties subsequently constituting West Virginia, through their representatives in the General Assembly of the undivided State, and a very large proportion of that indebtedness would not have been created

but for the votes of the members of the General Assembly representing those counties; and little or none of that indebtedness would have been contracted had the representatives from the counties subsequently forming the State of West Virginia voted against its creation. Several millions of dollars of said indebtedness were contracted on account of works of internal improvement constructed in the territory now constituting West Virginia.

III.

The 9th section of the ordinance adopted by the people of the restored State of Virginia, in convention assembled in the city of Wheeling, Virginia, on the 20th day of August, 1861, entitled "An ordinance to provide for the formation of a new State out of the portion of the territory of this State," provided as follows:

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all of the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

Upon this stipulation and condition, afterwards accepted and acted upon by the people of West Virginia, the consent of the Commonwealth of Virginia was given to the formation of the new State.

IV.

Before the creation of the State of West Virginia, and while the territory and the people afterwards constituting that State still formed a part of the Commonwealth of Virginia and were subject to its jurisdiction and laws, the General Assembly of the restored State of Virginia, on the 3d day of February, 1863, enacted the following law:

> "That all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this State, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of the State, to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this State, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this State.
>
> 5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property, stocks and credits shall have been obtained since the reorganization of the State government."

And by another act of the General Assembly of the restored State of Virginia, passed February 4, 1863, it was enacted as follows:

> "1. That the sum of one hundred and fifty thousand dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.
>
> 2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States: provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State."

These two statutes of the restored government of Virginia validly prescribed the terms and conditions upon which the property and money therein mentioned should be transferred to the new State, when it should be formed; and, pursuant to their provisions, money and property amounting to and of the value of several millions of dollars were, after the formation of the new State, paid over and transferred to and accepted by West Virginia.

V.

The constitution of the State of West Virginia, which became effective when she was admitted into the Union pursuant to the said act of Congress and proclamation of President Lincoln, contained the following provisions:

By section 5 of article VIII of said Constitution it was provided:

> "5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

And by section 7 of article VIII it was provided:

> "7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by section 8 of article VIII it was provided:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

At the time the constitution containing these provisions was adopted by West Virginia that State did not owe, and could not have owed, any "public debt" or "previous liability," except for her just contributive portion of the public debt of the original State of Virginia, and for the money and

property of the original State which had been transferred to and received by her under the acts of the General Assembly of the restored State of Virginia above set forth, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia.

The provisions of sections 7 and 8 of article VII of said constitution were embodied therein by the people of West Virginia, or their representatives, for the purpose of complying with and carrying out in good faith the stipulations and conditions upon which the consent of Virginia was given to the formation of the State of West Virginia, and to the transfer of the money and property aforesaid to said new State.

VI.

After the formation of the State of West Virginia and after the restored government of Virginia had become the only government of the Commonwealth and its authority recognized and established throughout her limits, at intervals after the year 1865 down to and including the year 1905, various efforts were made by the Commonwealth of Virginia, through its constituted authorities, to bring about and effect an adjustment and settlement with West Virginia of the equitable proportion of the public debt of the undivided State proper to be borne and paid by the State of West Virginia. All of these efforts proved unavailing and abortive; and for years West Virginia has refused or failed to take any action or do anything for the purpose of bringing about any adjustment or settlement with this State.

Only after exhausting every means of amicable negotiation and having her overtures to that end repeatedly refused, and as a last resort, has Virginia been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to her and to all of her people.

VII.

Without waiting for a settlement with West Virginia, the Commonwealth proceeded, fully recognizing her liability for an indebtedness, all of which stood in her name, soon after the establishment of its restored government at Richmond, to make provision for the settlement and payment of the portion of the common debt of the undivided State which she could be fairly expected to assume and pay, under the circumstances then existing and the conditions which confronted her.

Several efforts were made to effect such an adjustment and settlement, the most important of which was that embodied in the act of March 30, 1871, mentioned at page 7 and copied at pages 13 to 16 of the bill.

By reason of the then impoverished condition of her people, occasioned by disasters which had destroyed their resources and paralyzed their productive energies, it was soon apparent that Virginia, in assuming and capitalizing, and again recapitalizing, the accrued interest upon the debt of the original State, and undertaking to pay, with 6 per cent. interest, two-thirds of the aggregate sum thus ascertained, had assumed a heavier burden than she was able to bear. Accordingly other plans for the settlement of the State debt were adopted, and a final adjustment made under the act of February 20, 1892, set forth in the bill.

As a result of this, it will be seen that Virginia has assumed and already actually paid off and retired, exclusive of the large amounts she has paid on account of interest, *a principal sum* aggregating as much as, or more than, the entire principal sum of the debt of the undivided State as of January 1, 1861.

The facts in regard to these various transactions and the adjustment made by Virginia with the common creditors of the old State are recited in the bill merely for the purpose

of showing the present status of the public debt of the original State and the precise relation of this Commonwealth at the present time in respect thereto.

Of course, the rights of West Virginia cannot be affected by any of these transactions between Virginia and the common creditors of the undivided State, except to the extent that Virginia's rights and action therein may entitle her to contribution from West Virginia.

VIII.

As indicating the character of the efforts and sacrifices which Virginia, notwithstanding the disasters and losses which her people have endured, has made, in order to bear and to discharge her just obligations on account of the common debt of the undivided State, and as showing something of the strength of her equitable claim against West Virginia, it must be remembered that she has actually paid off, retired, and discharged and satisfied, so far as West Virginia is concerned, as of the date of the institution of this suit, over $71,000,000, including principal and interest, on account of said common indebtedness.

While Virginia has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof.

IX.

Since January 1, 1861, the arbitrary date fixed by the Wheeling ordinance as of which the adjustment and settlement between the two States shall be made, Virginia has actually paid off or retired, and now holds in her own hands and for her own benefit, exclusive of the sums represented by the certificates issued under the funding acts aforesaid, obligations of the undivided State amounting in the aggregate, including the interest to be fairly computed thereon to date, to a sum in excess of $25,000,000. For all of the obligations

and indebtedness of the original State, so taken up and retired or paid off by her, Virginia has a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

X.

As a part of the adjustment which Virginia from time to time has made with the holders of the bonds and obligations of the undivided State and as a proper stipulation in connection with the partial settlements thereof made by her, it was agreed between them and Virginia that upon giving to them respectively her obligations for the respective portions of each of the old bonds of the undivided State agreed to be assumed and paid by Virginia, these old original bonds should be deposited with Virginia, and so far as not thus funded by her in her own obligations should be held by her as trustee for the holder or his assigns; and to each of these parties thus entitled she has given her certificate to this effect.

By the terms of the settlements authorized by the acts of 1879, 1882, and 1892, set forth in the bill, no liability rests upon Virginia on account of the certificates given by her pursuant to the terms of those acts, for the bonds deposited with her, and to be held by her, to await a settlement with West Virginia, as to the portion thereof not assumed or paid by Virginia. But it has been suggested that, although there is no liability assumed by Virginia by reason of issuing said certificates or upon said certificates, that there may still be a liability upon her *as to the unfunded portion of the bonds deposited with her under the acts of 1879, 1882, and 1892.* This, however, is a matter of minor importance, because a comparatively small proportion of the old debt of the State was funded under the acts of 1879, 1882, and 1892, as will appear from the circumstance that there are in all only $1,609,600.15 of the certificates issued under the last-men-

tioned three acts outstanding in the hands of the public, as is shown by the exhibit at page 73 of the bill.

The great bulk of the debt of the old State was funded under the act of 1871, and the unfunded portion of the bonds deposited with Virginia by the public creditors under the terms of that act, amounted to $12,703,451.79, upon the principal interest-bearing sum of which there is interest due from July 1, 1871. (See Exhibit No. 1, page 13 of the bill, and statement of Second Auditor of Virginia, embodied in the address of Mr. Randolph Harrison, found at page 73 of the bill.)

The arrangement under the funding act of 1871 was very different from that provided for by the subsequent acts of 1879, 1882, and 1892.

By the acts of 1871 Virginia undertook to be the custodian of the bonds of the undivided State deposited with her, so far as they were unfunded; and that payment should "be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment."

Whatever may have been the purpose of the General Assembly of Virginia in the enactment of this law and in authorizing such contracts to be made, it would seem that Virginia's legal liability on account of said unfunded portion of said bonds is not released or affected by the transaction, but still exists.

However, under all the circumstances of the case and in view of the underlying equities suggested by the facts stated in the bill, it would seem that Virginia has already unquestionably done as much as she could be fairly expected to do towards paying off the common public debt of the old State. The great mass of the holders of the certificates issued by her under the act of 1871, and under the other acts above recited, who are the persons entitled to the said unfunded bonds deposited with her and now held by her, recognizing

the justice of this view, have, through their authorized representatives, entered into the agreement printed at pages 83 to 86 of the bill.

XI.

By joint resolution of the General Assembly of Virginia, printed as Exhibit No. 5, beginning at page 39 of the bill, entitled—

> "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same,"

approved March 6, 1894, a commission was created for the purposes set forth in the title to the resolution.

The Virginia Debt Commission mentioned in the bill was created pursuant to that resolution, and made earnest efforts to bring about a settlement with West Virginia, without any satisfactory result.

Accordingly the General Assembly of Virginia afterwards passed the act approved March 6, 1900, printed as Exhibit No. 6 of the bill, beginning at page 41 thereof, the object of which is stated in its title as follows:

> "An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises."

By this act, as plainly appears from its terms, additional powers and authority were conferred upon this commission, and it was made its duty, and power was conferred upon it, by and with the advice and approval of the Attorney-General of the State, to take such action and institute such proceed-

ings on behalf of the State as may, in the judgment of said commission and Attorney-General, be needful and proper to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

After again making an earnest effort to bring about an amicable settlement with West Virginia, by which the proportion of the debt of the original State of Virginia proper to be borne by West Virginia should be ascertained, and after having had their overtures to that end rejected by West Virginia, the said commission deemed it to be its duty, with the advice and approval of the Attorney-General of Virginia, to cause this suit to be brought in strict conformity with the powers conferred upon them by the acts aforesaid, the commission and the Attorney-General considering such action to be needful and proper to protect the interest of the State and bring about and carry into effect such a settlement.

Accordingly, and in strict conformity with the authority conferred by the act of March 6, 1900, this suit was instituted.

BRIEF OF ARGUMENT UPON THE QUESTIONS OF LAW PRESENTED BY THE DEMURRERS.

(1.)

As to the first ground alleged in the amended demurrer, namely, that there is a misjoinder of parties plaintiff and a misjoinder of causes of action, we cannot see that this objection is well taken.

The definitions of misjoinder under English chancery practice, as well as the practice in this country, show that there is no such vice in the bill:

(*a*) As to the misjoinder of parties: This does not arise unless—

> "Coplaintiffs actually have or may have conflicting interests in regard to the object of the suit, or if any or either of them have no interest in the subject-matter of the suit."
>
> Mitf. Pl., p. 399, note.

The rule as to misjoinder of plaintiffs, as laid down by Mr. Daniell, is that—

> "persons who have no interest in the litigation cannot be joined as coplaintiffs in a suit with those who have."
>
> Ist Daniell Chy. (5th Am. ed.), m. p. 301.

Example given by Mr. Daniell of what is not misjoinder; Auctioneer can be joined as coplaintiff with the vender in a bill against the purchaser.

Id., m. p. 302.

Again: Want of interest by a coplaintiff in the subject-matter is ground of demurrer.

Story's Eq. Pl., sections 231, 232, 508, and 509.

Mitf. Pl., 160, 161.

Again: Plaintiffs who have no common interest, but assert distinct and several claims against one and the same defendant, cannot be joined.

Story's Eq. Pl., section 279.

On the other hand, where there is a community of interests among coplaintiffs desiring the same relief against a common defendant, they may be joined.

It was held in Ware *vs.* Duke of Northumberland, 2 Anstruther's Rep., p. 469, that:

> "Unconnected parties might be joined in one suit *where there was a common interest among them all, centering in the point in issue in the cause.*"

This doctrine is strongly approved by Chancellor Kent in Brickenhoff *et als. vs.* Browns, where different judgment creditors united in one bill for discovery and account to set aside impediments to their remedies at law caused by the fraudulent acts of their common debtor.

6 Johnson Chy., 139, 151, 152.

Chancellor Kent says at page 151:

> "It is an ordinary case in this court, for creditors to unite, or for one or more, on behalf of themselves and the rest, to sue the representative of their debtor in possession of the assets, and to seek an account of the estate.
>
> "This is done to prevent a multiplicity of suits, a very favorite object with this court; and this principle so far controls the other rule, which preserves, in some degree, an analogy between pleadings in chancery, and the simplicity of declarations at common law. *There is no sound reason for requiring the judgment creditors to separate their suits, when they have one common object in view, which, in fact, governs the whole case.*" (Italics here and elsewhere ours).
>
> Story's Eq. Pl., section 286; see also 2d Story's Eq. Jur., sections 853, 854.

(*b*) Nor is there any foundation whatever for the objection that there is a misjoinder of causes of action.

Considering together the two grounds of objection which are jointly presented in the first assignment of grounds of demurrer made in the amended demurrer in the light of the established doctrines and definitions, we beg leave to say that they are both founded upon an utter misapprehension of the meaning, scope, and purpose of the bill.

It is impossible that there can be any misjoinder of parties plaintiff, because there is only one party plaintiff. Virginia, in her corporate capacity, is the only plaintiff in the suit. She does not sue in any representative capacity, though the bill discloses the fact that, by reason of the arrangements which she has made with the great mass of the holders of the bonds of the old State, she does hold in her possession nearly all of those bonds as a depository, and *quoad* the custody thereof that she holds them in a fiduciary capacity; but she does not sue as trustee, but sues in her own name, for the purpose of obtaining the equitable relief to which the bill shows that she is fairly entitled.

In so far as said bonds have been funded in her own obligations and discharged by her, she holds those bonds as vouchers and evidence of her satisfaction of the same against the State of West Virginia, who is, as a proposition of public law and of equity, bound jointly with her to the public creditors to pay the same, and, as between her and West Virginia, is bound by contract to pay West Virginia's equitable proportion thereof.

If Virginia had no personal interest in respect to the bonds so deposited and held by her in a fiduciary capacity, we would cheerfully concede that she would have no standing to maintain this suit in respect *to these bonds;* but Virginia not only has an interest, but a very great interest, in respect to the unfunded and unsatisfied bonds of the old State, which, confiding in her fair dealing, the public creditors have entrusted to her custody, and in the settlement by

West Virginia of her fair equitable proportion of the indebtedness of the undivided State represented by these bonds; *and that interest is that she shall be exonerated, at least to the extent of West Virginia's liability therefor, from any obligation to pay the same.*

To obtain such just exoneration she has invoked the equitable jurisdiction of this court.

Not only is she entitled to maintain and prosecute this suit, in order to obtain the exoneration which, according to the general principles of equity she is entitled to be decreed, but, by the special contract between her and the parties entitled to these bonds, she has, without any prejudice to the rights of West Virginia or any violation of any duty she owes to West Virginia, and without doing anything of which West Virginia has any ground whatever for complaint, acquired a still greater interest and right, namely, to be entirely exonerated from any liability on account of the unfunded portion of the common debt represented by the bonds so deposited with her and by the certificates which she has issued therefor.

This interest is given to her by the express terms of the contract which she has made with these certificate-holders, who are the owners of the bonds of which she is the custodian, and who, recognizing the enormous contributions which she has made from her limited means to the satisfaction of the common debt, have cheerfully agreed to accept whatever amount this court shall ascertain to be the just and equitable proportion of the common debt of the old State to be borne by West Virginia, in full discharge and satisfaction of any claim they may have against Virginia and in full acquittance of all demands against her. (See 4th clause of contract, p. 85 of bill.)

It will be observed that, as has been already suggested, this stipulation, though it enures to the protection and to the interest of Virginia, in no sense and by no possibility is or can be prejudicial to any right of West Virginia; for under

no circumstances could or will this agreement operate to add one cent to the liability of West Virginia.

We respectfully submit that her equitable right to exoneration from liability as to these unsatisfied and unfunded bonds, of which she is the custodian, alone gives her a standing to maintain this suit to have West Virginia's liability, not only for the whole indebtedness of the undivided State, but for the bonds so deposited with her, ascertained, determined, and adjudicated; and that her contractual right to exoneration under her agreement with the parties equitably entitled to those bonds increases her interest and confirms her right to have such exoneration decreed.

An authority of respectability and of proven merit has said:

> "It was not necessary to wait till some one was damnified by having paid, or having claim made against him for the whole; a bill might be filed to settle the amount due from each individual of a body liable to a common burden, and to compel the payment by each, of his share."
>
> 1 Spence Equitable Juris., marginal p. 662.

The suit is brought, as appears plainly from the bill, for the purpose of obtaining a *complete settlement* with West Virginia and an adjustment of a controversy which has vexed both States for a generation past; and as a part of this settlement and as a necessary incident to it, and in accordance with the manifest equitable rights of Virginia to have that settlement decreed—

First, in respect to some $25,000,000, including principal and interest, of the obligations of the original State, which have been paid off or retired by the Commonwealth of Virginia since her dismemberment and the vouchers for which transaction she now holds in her treasury; and as to this she invokes the equitable jurisdiction of this court for *contribution* from West Virginia to the extent of West Virginia's

liability on account of the common obligations which Virginia has thus paid off and retired; and,

Second, to obtain the *exoneration* to which she is entitled in respect to the unsettled and unfunded one-third of the debt of the undivided State, the obligations evidencing which have been deposited with her.

There is no possible conflict between or inconsistency in the two kindred and associated rights of contribution and of exoneration thus possessed by Virginia, or in the assertion of the same in one common suit. Indeed, it is proper and right that they should be asserted and united in one suit, and it would be ground of objection not to include them in one suit.

This would be true, even if there were more than one party, who had such rights, plaintiff to the bill; but, in the nature of things, there is and can be but one party plaintiff here, because there is only one Commonwealth of Virginia; and, as to her, "there is a common interest centering in the point of issue in the cause," and, in every phase and aspect of the cause, a common right in her capacity as a creditor of West Virginia in respect to so much of the common debt as Virginia has settled and paid off in full, and in her capacity of co-obligor of West Virginia as to so much of the common debt as remains unsatisfied, to have a settlement and ascertainment and adjudication of the equitable proportion of the debt of the undivided States which West Virginia should pay.

The effect and logical consequence of such an ascertainment and adjudication will necessarily be to obtain contribution to Virginia by West Virginia to the extent of West Virginia's equitable liability to make such contribution, and to obtain the exoneration of Virginia from any farther liability on account of the common debt of the old State; and this is the ultimate relief to which Virginia is justly and equitably entitled, upon the showing made by her bill.

Again, the two causes of complaint united in this bill, and on which relief is prayed, are:

1. The liability of West Virginia to Virginia for her reasonable and just contributive share of the public debt of Virginia as of the 1st of January, 1861.

This liability rests upon several distinct and evident grounds:

(*a*) On the principle of public law, that "where a State is divided into two or more States, in the adjustment of liabilities between each other the debts of the parent State should be ratably apportioned among them" (Hartman *vs.* Greenhow, 102 U. S., 677.

(*b*) On the ordinance of the convention of Virginia of August 20, 1861, "to provide for the formation of a new State out of the portion of the territory of this State," by section 9 of which ordinance it was provided that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," &c.

(*c*) On the constitution formed by the State of West Virginia and submitted to Congress, and on which West Virginia was admitted into the Union (Virginia *vs.* West Virginia, 11 Wall, 43).

By section 8 of article 8 of said constitution it was provided that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

2. Under and by virtue of the act of the General Assembly of the restored government of Virginia, passed February 3, 1863, property of the Commonwealth of Virginia, to the amount in value of several millions of dollars, was transferred from Virginia, and was delivered to and received by West Virginia, on the express condition that "the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property stocks and credits shall have been obtained since the organization of the State government."

And by act of the same General Assembly, passed February 4, 1863, the sum of one hundred and fifty thousand dollars ($150,000) was appropriated and subsequently paid over to West Virginia, and by the same act all moneys and balances in the treasury of Virginia not otherwise appropriated were appropriated to the said State of West Virginia.

It is too plain and obvious to be questioned, that both of the two above-recited grounds of complaint grew out of and formed material parts of the same transaction, viz., the generation of the new State of West Virginia and its necessary sustenance and support while in her infancy. By her very birth, West Virginia incurred the liability for her just proportion of the public debt of Virginia. It was in fact and in law her debt as much as it was the debt of Virginia. She inherited it. It was congenital. Then, at her birth, West Virginia was wholly without resources or means for maintaining herself and continuing her political existence twenty-four hours save by the money and property of Virginia which fell into her hands. The appropriation of this money and property to the uses of West Virginia created a debt of so high an obligation that, even without the express condition on which it was given and received, she would be compelled to account for it.

Can there be doubt, then, for one moment that these two grounds of complaint are so intimately and essentially connected as that, had this complainant brought her separate

bill on each ground, this court would, to avoid so useless multiplicity of actions, have consolidated or caused them to be heard together? The people who appeared as the citizens of the restored government of Virginia and who formed the conventions and General Assemblys by which ordinances were framed for the creation of the new State of West Virginia—and consent was given in the name of Virginia for the creation of such new State—and who appropriated millions of dollars in value of the property of Virginia for the use of West Virginia were, it may be, in legal contemplation, citizens of Virginia up to the 20th day of June, 1863; but on that day these same people became citizens of West Virginia and thenceforth sat in conventions of her people and in her halls of legislation. But before this transformation took place, and in contemplation of its assured coming, they, as citizens of Virginia, appropriated all her property within their reach and gave it to the embryo State.

So it appears by the allegations of this bill, which must be taken here to be true, that West Virginia is justly liable on many grounds for a just proportion of the public debt of her parent State, Virginia; that West Virginia has not only repudiated and openly disavowed all such liability, but that she has appropriated to her own use a large amount in value of the public property of Virginia, which Virginia might properly have applied, as part of her public assets, to the payment of her public debt; and now, when by this bill in equity Virginia calls on West Virginia to account for the property which she has appropriated and applied to her own uses, and to come in before this court and have her proportion of the public debt ascertained, West Virginia, by her demurrer, protests that the part of the public debt which she owes and the part of the public assets which she has appropriated to her own use are two subjects of complaint so distinct and unconnected as should relieve her from making answer to the bill.

Counsel for the defendant rely upon the decision of this

court in the cases of New York *vs.* Louisiana and New Hampshire *vs.* Louisiana, 108 U. S., 78; but, as has already been made apparent, this case is entirely different in fact and in principle from those cases; indeed, there is no analogy between them.

Neither the State of New York or New Hampshire had any direct or personal interest in the bonds of Louisiana or in the subject-matters of controversy in those suits, but were mere volunteers, self-constituted trustees, without sustaining any relation, or interest, or obligation, or liability in regard to the bonds, or to any question presented in those causes.

While it may be true that, as to the custody of some of these unsatisfied bonds, Virginia sustains the relation of trustee, she has an enormous interest as to those bonds—an interest as substantial and as real, if not in fact as great, as if she had actually paid these bonds in full.

(2.)

The next ground of demurrer assigned by the defendant is:

> "That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon."

This ground of objection is based upon two postulates, each of which, we respectfully submit, is fallacious as applied to this case.

The first is, as we understand the position of defendant's counsel, that the judicial power of the United States and the jurisdiction conferred by section 2 of article III of the Con-

stitution of the United States upon the Supreme Court over "controversies between two or more States" does not embrace a controversy such as is presented here, or any other controversy which, like the one here, is based upon any pecuniary obligation or liability of a State; that while it does confer jurisdiction upon the Supreme Court of the United States over certain controversies between States, the word "controversy" as used in that section of the Constitution, does not embrace any controversy in regard to any pecuniary matter.

The second postulate which defendant's counsel must maintain to support the above objection is necessarily that the language of the Constitution referred to does not confer jurisdiction in any case in which the court has no power to render or enforce and make effective its final judgment thereon, and that this court cannot render or enforce its final judgment or decree making effective the relief sought by the plaintiff.

We will now consider this two fold ground of objection:

(*a*) Can it be true that the word "controversy" as thus used in section 2 of article III of the Constitution can be fairly given any such narrow construction and confined by any such forced and restricted limitations?

It will be observed that precisely the same word defines the jurisdiction of this court as to "controversies between citizens of different States."

Judge St. George Tucker, in discussing the judiciary clauses of the United States Constitution, says, in his appendix to Tucker's Blackstone, vol. 1, p. 120, edition of 1802:

> "The word 'controversies,' as here used, must be understood as relating to such as are of civil nature. It is probably unknown in any other sense, as I do not recollect ever to have heard the expression 'criminal controversy.' As here applied, it seems particularly appropriated to such disputes as might arise between the United States and any one or more States, respecting territorial *or fiscal* matters; or between the United States and their debtors, contractors

> and agents. This construction is confirmed by the application of the word in the ensuing clauses, where it evidently refers to disputes of a civil nature only, such, for example, as may arise between two or more States, or between citizens of different States, or between a State and the citizen of another State, none of which could possibly be supposed to relate to such as are of a criminal nature."

It is to be presumed that the framers of the Constitution did not design by the use of the same identical expression to confer one jurisdiction upon the federal courts as to matters of dispute between States and another jurisdiction as to matters of dispute between citizens of different States. In other words, if the words "controversies between two or more States" do not embrace, under any circumstances, in the one case controversies growing out of contracts or liabilities for the payment of money, the words "controversies between citizens of different States" cannot be fairly construed to embrace any controversies of a pecuniary character; and yet we are surely within limits when we say that a large majority of the "controversies between citizens of different States" of which the federal courts have from their foundation taken jurisdiction have been controversies arising out of contracts for the payment of money.

But it is urged that it is derogatory to the dignity of a State to have it impleaded in any court upon any contract, or obligation or promise which a State may have made.

Whether this be true or not is immaterial, if it be true (and as to this there can be no question) that the States, by coming into the Union and accepting the Constitution of the United States as their supreme law, have agreed to submit their controversies to the supreme tribunal created by that Constitution and clothed by it with jurisdiction of just such controversies.

And is it any more derogatory to the dignity of a State for it to be impleaded in this impartial tribunal in a contro-

versy involving such important and far-reaching questions of public obligation and of public right as are presented in this cause than it would be to be impleaded in this court upon the question as to whether one State had encroached upon the territorial limits of another State; or as to whether it was improperly allowing its citizens to pollute the waters flowing through its territory and by the territory of another State, or that it was in violation of the rights of a neighboring State, diverting, dissipating, and absorbing streams of water rising in one State and preventing their natural flow into the territory of another State; or that it was doing any one of the things for which States have been impleaded under jurisdiction recognized and approved by this Court?

We are unable to see that there is any surrender of the dignity of a State in that it submits, or, if recalcitrant, is compelled to submit, its controversies to the adjudication of a tribunal of its own creation and selection for the settlement of any question of controversy involving property rights, or any other direct interests of a State in its corporate capacity, or of the people of a State represented by the government of the State.

It is urged that a State cannot be sued without her consent; but, as has been repeatedly decided by this court, all of the States have, in most solemn form, given their consent to the jurisdiction of this court over all civil controversies which may arise between them.

A careful review of all of the decisions of this court which throw light upon this subject, we think, justifies us in the view that this is no longer a debatable question.

The word "controversy" as used in this section of the Constitution has been repeatedly passed upon and interpreted by this court. Not only has its meaning been fixed by this court in approving the jurisdiction taken by the circuit courts of the United States of hundreds of controversies of a pecuniary character "between citizens of different States, but it has been repeatedly given a similar significance and inter-

pretation, and the jurisdiction of this court sustained in respect to controversies to which States were parties and in respect to controversies to which the United States has been a party, as to which the definition and limitation of the jurisdiction conferred by the Constitution is defined by precisely the same word, "*controversies.*" And so we say that, if this court has no jurisdiction of any controversies arising out of demands for money, or obligations for the payment of money, between States, then neither this court nor any other federal court could have jurisdiction of any such pecuniary "controversy between citizens of different States," or of controversies to which a State is a party, or of a controversy to which the United States is a party, for in each case the jurisdiction is conferred by precisely the same language.

And such we understand to be the doctrine established by the decisions of this court.

The first case in which this question arose was that of Chisholm, ex'r, *vs.* Georgia, 2 Dal., p. 419, in which this court held that the judicial power of the United States and the original jurisdiction of the Supreme Court, as conferred by section 2, article III of the Constitution, embraced a demand for money asserted against a State by a citizen of another State in an ordinary action of assumpsit, and that such a case presented a "controversy" within the meaning of that section of the Constitution.

Mr. Justice Iredell alone dissented, not as to the construction given by the majority of the court to the word "controversy," but as to the decision of the majority of the court in construing section 2 of article III so as to extend the jurisdiction of the federal courts to a pecuniary demand asserted by a citizen of one State *against* another State. He held and argued that the language used in the Constitution, taken as a whole and construed in the light of the historical facts which he mentioned, was not designed to give the federal courts jurisdiction of a suit by any *individual* against a sovereign State upon any merely pecuniary demand; but

it is an exceedingly significant circumstance that Mr. Justice Iredell was constrained to hold, and he did declare, that—

> "The Supreme Court hath, therefore, first, *exclusive jurisdiction in every controversy of a civil nature: 1st. Between two or more States.* 2d. Between a State and a foreign State. 3d. Where a suit or proceeding is depending against ambassadors, other public ministers, or their domestics, or domestic servants. Second. Original, but not exclusive jurisdiction, 1st, between a State and citizens of other States. 2d. Between a State and foreign citizens or subjects. 3d. Where a suit is brought by ambassadors, or other public ministers. 4th. Where a consul or vice-consul, is a party."
>
> *Id.*, p. 431.

Had that suit, like this, been a suit between two States; had that been a suit by South Carolina *vs.* Georgia, upon a demand for money, there cannot be a doubt but that this court, as then constituted, would have unanimously maintained its jurisdiction. And such is the meaning and effect of the decision of all the Judges.

It may be fairly claimed that the ruling of the majority of the court in Chisholm, ex'r, *vs.* Georgia has been questioned, if not overruled, as to the suability of a State by any private citizen independently of the eleventh amendment, and the opinion of Mr. Justice Iredell in that case affirmed by the opinion of this court, as formulated by Mr. Justice Bradley in Hans *vs.* Louisiana, 134 U. S., p. 1; but it will be seen that Mr. Justice Bradley, in the interesting opinion referred to, affirms and approves the opinion and the views of Mr. Justice Iredell in the Chisholm case; and Mr. Justice Iredell, in his opinion so unqualifiedly affirmed, as we have seen, held that this court had jurisdiction *"in every controversy of a civil nature between two or more States,"* though he held that jurisdiction was not conferred upon it of a controversy between an individual plaintiff suing a State upon a pecuniary demand.

There can be no doubt that the decision and reasoning of all the judges in the case of Chisholm, ex'r, *vs.* Georgia confirms every contention made for the plaintiff in this case as to the rightful and necessary jurisdiction of this court over a controversy of the kind presented here between the Commonwealth of Virginia and the State of West Virginia.

The question of the nature and extent of the jurisdiction conferred upon this court by article III of the Constitution in respect to controversies to which a State is a party, and also as to controversies between two or more States, was exhaustively discussed by Chief Justice Marshall in Cohens *vs.* Virginia, 6 Wheat., pp. 364, 375-440.

In considering the effect of the adoption of the 11th amendment upon that jurisdiction the Chief Justice, at pages 405-6, says:

> "This leads to a consideration of the 11th amendment.
>
> "It is in these words: 'The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.'
>
> "It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of the amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases; and in these a state

> may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment, were persons who might probably be its creditors. *There was not much reason to fear that foreign or sister states would be creditors to any considerable amount, and there was reason to retain the jurisdiction of the court in those cases,* because it might be essential to the preservation of peace. *The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by States.*"

And at page 378, in defining the jurisdiction of this court in the class of cases in which its jurisdiction by the terms of the Constitution is determined by the character of the parties, the Chief Justice uses this language, which would seem to be conclusive as applied to this case:

> "In the second class, the jurisdiction depends *entirely* on the character of the *parties.* In this are comprehended 'controversies *between two or more States,* between a State and citizens of another State, and between a State and foreign States, citizens or subjects.' *If these be the parties, it is entirely unimportant what may be the subject of controversy.* Be it what it may, these parties have a constitutional right to come into the courts of the Union."

It has been argued that these rulings of the Chief Justice were *obiter dicta.* They were entirely pertinent to the great question which he was considering and had a direct bearing upon it. The question which the court had to review was what was the character of the controversies over which it had jurisdiction under article III of the Constitution, after the adoption of the 11th amendment; and it was necessary in that connection for the court to construe the word "controversy" as used in that article.

The opinion was one of the most lucid and ablest which ever came from the mind of the great Chief Justice. It was evidently well and carefully considered.

Under such circumstances a conclusion which he so deliberately reached and so clearly expressed ought to have the greatest weight.

It may also be justly claimed that the expressions in opinions in two or three later cases, which are claimed to be inconsistent with the views of Chief Justice Marshall, are all of them far more emphatically *obiter* than were his conclusions as above quoted.

It is to be presumed, of course, that the controversies to which the Chief Justice referred were controversies in a juridical sense; that is to say, justiciable controversies; but where has it ever been held by any court anywhere that a controversy arising out of a contract for the payment of money was not *justiciable?*

Since money supplanted barter in the dealings and contracts of mankind, and since courts for the adjudication of civil controversies have been established, a great part of the disputes which have grown out of the contracts of mankind have been controversies about the payment of money. They have not only been "solvable" by the courts, but they are generally more really "solvable," for principles of justice and right and more adequate relief can usually be administered in respect to them than in respect to some other descriptions of controversy which have been held to be justiciable by this court. For instance, the prevention of the flow of polluted water from the State under whose authority it has been contaminated, along the borders of another State, the health of whose inhabitants is prejudiced by the flow of such polluted water by their shores, as in Missouri *vs.* Illinois, 180 U. S., p. 208; or the prevention of the undue retarding and diminution of the natural flow of rivers by the State in which they have their source into the State through which they have their natural exit, as in

Kansas *vs.* Colorado, 185 U. S., p. 125; or, indeed, the establishment of a disputed boundary line between coterminous States, as in Rhode Island *vs.* Massachusetts, and a number of later cases where this court has taken jurisdiction of such controversies.

In Missouri *vs.* Illinois, 180 U. S., 240, Mr. Justice Shiras, after reviewing at great length the cases decided under the constitutional provision giving this court original jurisdiction in controversies between two States says:

> "The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases *directly affecting the property, rights and interests of a State.* But such cases manifestly do not cover the entire field in which such controversies may arise, and for which the Constitution has provided a remedy; and it would be objectionable, and indeed, impossible, for the court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this court."

This question has been directly passed upon by this court and its jurisdiction over controversies arising upon pecuniary demands has been sustained in—

Georgia *vs.* Brailsford, 2 Del., p. 402;
Texas *vs.* White, 7 Wal., p. 700;
Florida *vs.* Anderson, 91 U. S., p. 667;
Alabama *vs.* Burr *et als.,* 115 U. S., p. 413;

and even more emphatically and conclusively in—

United States *vs.* North Carolina, 136 U. S., p. 211;
United States *vs.* Texas, 143 U. S., p. 621; and
United States *vs.* Michigan, 190 U. S., pp. 379, 396, 406.

The three last cases would seem to be entirely decisive of the question.

The very language under which this court took jurisdic-

tion of these cases, all involving pecuniary demands of the United States against the several defendant States, is used in the Constitution to confer jurisdiction upon this court of controversies between States; and if that language in the one case gave this court jurisdiction of a controversy arising out of, or asserted upon, a pecuniary demand, by a logical and inevitable consequence it gives this court jurisdiction of a similar controversy between States.

It may possibly be contended that the question of jurisdiction was not raised in United States *vs.* North Carolina, 136 U. S., p. 211, but such a contention would be idle, because this court, and no other federal court, according to the uniform decisions of this court, can, even by consent of parties, exercise jurisdiction in any case in which such jurisdiction has not been conferred upon it by the Constitution or by valid act of Congress.

This question arose in United States *vs.* Texas, 143 U. S., p. 621, *supra*, where, at page 642, this court, through Mr. Justice Harlan delivering its opinion, said:

> "The cases in this court show that the framers of the Constitution did provide, by that instrument, for the judicial determination *of all cases in law and equity between two or more States*, including those involving questions of boundary. Did they omit to provide for the judicial determination of controversies arising between the United States and one or more of the States of the Union? This question is in effect answered by United States *v.* North Carolina, 136 U. S., 211. That was an action of debt brought in this court by the United States against the State of North Carolina, upon certain bonds issued by that State. The State appeared, the case was determined here upon its merits, and judgment was rendered for the State. *It is true that no question was made as to the jurisdiction of this court, and nothing was therefore said in the opinion upon that subject. But it did not escape the attention of the court, and the judgment would not have been rendered except upon the theory that this court has original jurisdiction of a suit by the United States against a State.*"

And it unquestionably arose and was passed upon in United States *vs.* Michigan, 190 U. S., pp. 379, 396, 406, which was a suit for the recovery of money, in which this court, Mr. Justice Peckham delivering its unanimous opinion, at page 396 held:

> "By its bill the United States invokes the original jurisdiction of this court for the purpose of determining a controversy existing between it and the State of Michigan. This court has jurisdiction of such a controversy, although it is not literally between two States, the United States being a party on the one side and a State on the other. This was decided in United States *v.* Texas, 143 U. S., 621, 642; 36 L. Ed., 285, 292; 12 Sup. Ct. Rep., 488."

Such was also the effect of the decision of the majority of the court in South Dakota *vs.* North Carolina, 192 U. S., p. 286; and there is nothing in the dissenting opinion of the minority of the court in that case inconsistent with the views for which we contend.

Again, we say that it seems to us the question is no longer a debatable one in this court.

(*b*) Is there anything in the contention that this court cannot hear and determine the questions presented in this case because it has, as is alleged, no power to render or enforce any final judgment or decree therein?

Let us see, first, what is the precise character of this suit and what is the relief sought, a total misconception of which must have occasioned the assignment of the ground of demurrer now being considered.

The main and real object of the suit is a settlement with West Virginia, and to this end a determination and adjudication by this court of the amount due by that State to Virginia, upon the state of facts set forth in the bill.

West Virginia having refused to have any accounting, or even to negotiate with Virginia upon the subject, it became

necessary to invoke the equitable jurisdiction of this court in order that it might ascertain, determine, and adjudge the proportion of the debt of the original State which it would be equitable for West Virginia to pay.

The Commonwealth of Virginia would be loath to believe that any State of the American Union would disregard or disobey any decree of this, the tribunal selected and empowered by all of the States as the final arbiter of all civil controversies which may arise between them, and did not consider it necessary in any such case, or proper under the circumstances of this case, to insert in her bill a special prayer asking this court to summarily enforce its decree against West Virginia.

She cherishes the hope that there would never be any occasion to ask the court to award any execution or take any action for the purpose of enforcing such judgment as it shall render.

If such occasion should ever arise, it will be for the court to then decide by what process or further action it would proceed to execute its decree.

It will be time enough when the proper accounts have been taken, and the balance ascertained, and the sovereign State against whom such balance may be found has repudiated the liability and refused to pay such balance, to consider and decide whether the power resides in this court and the means are at its hand to enforce the payment of the amount so found to be due.

It is enough for present purposes to know that all the States in the Union have, by the Constitution of their general Government, covenanted and agreed in the most solemn form that "the judicial power shall extend to controversies between two or more States," and that "in all those cases in which a State shall be a party the Supreme Court shall have original jurisdiction."

> "The Constitution of the United States, with all the powers conferred by it on the General Govern-

ment and surrendered by the States, was the voluntary act of the people of the several States, deliberately done, for their own protection and safety against injustice from one another."

Ableman *vs.* Booth, 21 How., p. 521.

"Some tribunal exercising such authority, is essential to prevent an appeal to the sword and a dissolution of the Government."

2 Story on Constitution, sec. 1681.

The Supreme Court hath exclusive jurisdiction in every controversy of a civil nature between two or more States.

Chisholm *vs.* Georgia, 2 Dall., 2d ed., p. 430.

These cases hold that questions of boundary, territorial right, and property rights of all kinds are proper for this jurisdiction.

2 Tucker's Constitution, p. 784.

Indeed it may be needless to consider at all the question of whether, when a decree shall be made ascertaining the amount due by West Virginia, on a full adjustment and accounting between the two States, how such amount can be obtained from the debtor State. We may accept as sound and true the statement made by Mr. Webster in his letter to Baring Brothers (Webster's Works, vol. 6, p. 539), that "the security for State loans is the plighted faith of the State as a political community, resting on the same basis as other contracts with established governments; that is to say, the good faith of the government making the loan, and its ability to fulfill engagements." We may admit that this is the only sanction and security on which an individual who is a public creditor may rely; that this arises on the creation of the debt and continues so long as the debt exists. We recognize that no sovereign State, of whatever form of government, can clothe an individual or another State with power to seize by force upon its treasury and appropriate its

resources without regard to the needs, policies, or will of the debtor State.

Every day judgments are rendered by this court against the United States for money demands on appeals from the Court of Claims; but nowhere is power given to this court to award execution of *fiere facias* against the United States. Awards are made by high tribunals and commissions to whose arbitrament claims for money against empires, kingdoms, and republics have been submitted, but never has power been given to these courts to enforce by judicial process or physical force the payment or satisfaction of the amounts which they may ascertain to be due.

Only by appropriation, regularly made by the legislative branch of the Government, is provision ever made for the payment of claims, whether ascertained by judgment, award, or other legal form. To that branch of the Government alone may we look for the fulfillment of "the good faith of the Government."

We here invoke the exercise of a long-established ground of equitable jurisdiction when, on the case stated in the bill, we ask that an accounting be had, and that such other and further relief be granted as the nature of the case may require and in equity may be meet.

It is true that in the case of Gordon *vs.* United States the Supreme Court declined to take jurisdiction of the case on appeal from the final action of the Court of Claims, on the ground that no power had been conferred upon the court to enforce its judgment, Chief Justice Taney in the opinion saying:

> "nor can Congress authorize or require this court to express an opinion on a case where its judicial power could not be exercised and where its judgment would not be final and conclusive on the rights of the parties, and process of execution awarded to carry it into effect.
>
> "The award of execution is a part, and an essential part, of every judgment passed by a court exercising

judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy," &c.

Gordon *vs.* United States (Appendix), 117 U. S., p. 697.

(Although a grave doubt exists as to the authenticity and accuracy of this alleged opinion.)

This language was used in considering and deciding a question of jurisdiction of the Court of Claims where the judicial power of the United States had not been conferred on it by Congress. It is not applicable to the question presented here, which is not as to the jurisdiction of the court, but as to its power to enforce its writ of execution against a State. The question here is not as to the power of the arm to strike, but as to the immunity of the object from wounds.

Whether property or funds of West Virginia within the jurisdiction of this court, other than property used distinctly for governmental purposes, would be liable to seizure, levy, garnishment, or sale in execution of or for the purpose of coercing compliance with any such decree is a question which we trust will never arise; for we are persuaded that any decree which this court shall render will be accepted by both parties as final and binding and will be respected and obeyed. But if a decree shall be rendered against West Virginia, and that State shall fail or refuse to respect it and to comply with its terms, it will be time enough then for this court to decide what farther action shall be taken in the enforcement of its decree.

The supreme court of Louisiana, in the case of *Carter vs. State*, 42 La. Annual, 930, in an opinion delivered by Judge Fenner, has shown why, from the character of the party, a writ of *fieri facias* should not be awarded, and cannot be enforced against a State.

"Legislative acts authorizing individuals to sue the State upon claims which the Legislature, for any cause, does not see fit to recognize and pay, have been of common occurrence in this and in other States. Their purpose and effect, as commonly understood, are undoubtedly nothing more than to refer to the judiciary the settlement of the questions of law and fact involved in the claims, and the determination, in the form of a judgment, of the rights of the parties. It is implied, as a matter of course, that the legislative power, after making such a reference, will accept and abide by the judicial determination, will recognize the judgment rendered as final and conclusive, and will, in due and ordinary course, make provision for the satisfaction thereof.

"That such was the interpretation of his remedy, adopted by the plaintiff himself, is evinced by his applications to successive General Assemblies for an appropriation to satisfy his judgment.

"But to assume that, by consenting to be sued, the Legislature intended to abdicate its constitutional function of controlling and administering the public funds and property and of appropriating them to such lawful purposes as it may deem best, and to delegate to the judicial department the power of seizing such property and applying it to the payment of a particular debt, would be, beyond measure, rash and unjustifiable. No such intention is expressed in the act or can be fairly implied from its terms; and we consider it beyond question that no such ever entered into the mind of any member of the legislative body. The incidents and appurtenances of ordinary jurisdiction have no application to a case like this. Undoubtedly jurisdiction granted to render judgments between parties subject to judicial power and control implies power to execute such judgments. But the sovereign is not subject to judicial power and control, except just so far as it has consented thereto; the moment the limit of that consent is reached the judiciary must instantly halt. Satisfied as we are that the Legislature has not consented and did not intend to consent to the execution of this judgment by writ of *fieri facias*, we are bound to deny such remedy.

"Counsel asks, of what use is the power to render judgment against the State, if the court is powerless to execute the judgment? That question was anticipated by Mr. Hamilton in the discussion of the Constitution of the United States before its final adoption. 'To what purpose,' he asked, 'would it be to authorize suits against sovereign States for the debts they owe? How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State.' Federalist, No. 81. He never dreamed that authorizing suit against a State would imply the right to issue *fieri facias* on the judgment.

"Puffendorff says: 'And if the prince gives the subject leave to enter an action against him in his own courts, the action itself proceeds rather upon natural equity than on municipal laws. For the end of the action is not to *compel* the prince to observe the contract, but to *persuade* him.'

"In England claims against the Crown might be prosecuted before certain courts, in the form of petitions of right, with the consent of the King, but it was held by Lord Mansfield that 'if there were a recovery against the Crown, application must be made to Parliament, and it would come under the head of supplies for the year.'"

Macbeth *vs.* Haldimand, 1 Durn. & East., 172.

We have examined all the authorities quoted by counsel, and find none of them to support his contention. We are quite certain that no precedent exists sustaining the issuance of a *fieri facias* on a judgment against a sovereign State in her own courts, though rendered with her own consent.

The only recourse for satisfaction is by application to the Legislature, with whom the judgment should surely have great *persuasive* force, but none *compulsive*.

In United States *vs.* North Carolina, 136 U. S., p. 211, *supra*, this court took jurisdiction of a suit brought by the United States against that State for money due upon bonds held by the United States.

In United States *vs.* Michigan, 190 U. S., pp. 377-406, already referred to, this court again took jurisdiction of a

suit against Michigan for the recovery of money. At the conclusion of its opinion, at page 406, this court unanimously decided that—

> "There must be a judgment overruling the demurrer, but as the defendant may desire to set up facts which it might claim would be a defense to the complainant's bill, we grant leave to the defendant to answer up to the first day of the next term of this court. *In case it refuses to plead further, the judgment will be in favor of the United States for an accounting, and for the payment of the sum found due thereon.*"

Every writ, process, and remedy which would be available for the enforcement of such a judgment, or for the decree prayed for by the plaintiff in United States *vs.* North Carolina, 136 U. S., p. 211, *supra,* would be available for the enforcement of a decree in this case adjudicating the amount of West Virginia's equitable contributive share of the ante-bellum debt of Virginia.

If such decree in United States *vs.* North Carolina, or the judgment directed in United States *vs.* Michigan, could not be summarily or effectively enforced, then it may be that a final decree in this case cannot be so enforced.

But it is equally true, and it is a truth which should conclusively dispose of this ground relied upon in the demurrer, that if the inability of this court to award any execution or frame any writ which would enable the United States to enforce any such decree or judgment against North Carolina or against Michigan did not defeat the jurisdiction of this court in the suits against those States, a similar inability to summarily enforce a decree in this case against West Virginia by execution, levy and sale cannot defeat the jurisdiction of this court in this suit against that State for a settlement, ascertainment, and adjudication of the state of the accounts between the two States.

It is impossible by any conceivable process of right rea-

soning to apply any principle to the case at bar which would defeat the jurisdiction of this court, upon the ground here discussed, which would not have deprived this court of its jurisdiction in each of the cases just considered.

And so upon this alleged ground of demurrer we conclude that the bill presents a controversy between the plaintiff and defendant States justiciable and solvable in this court, and that the jurisdiction of the court will not be defeated because it may be that the plaintiff may not be able to collect from the defendant, or this court may be unable to compel the defendant to actually pay such sum as the court may adjudge and decree to be due by the defendant.

(3.)

To the third ground assigned in defendant's demurrer, namely,

> "That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described,"

our reply is that this assignment is founded upon mistake. It is not true that Virginia sues as trustee for the individuals mentioned or for any other persons. She sues in her own name and for her own benefit, in vindication of her own rights and for her own protection.

It is true that if the relief which she seeks is accorded her it will not only enure to her benefit, but necessarily to the benefit of all of the creditors of the undivided State, as well those who have deposited their unsatisfied bonds in her keeping as those who have never funded the bonds of the original State held by them; as well also those whose bonds and certificates are represented by the "depositing committee," who made the contract which is copied in the bill, as those whose bonds and certificates have not been so deposited. It is true that

the amount of the unfunded bonds and of said certificates which are not represented by said "depositing committee" is comparatively small, but they aggregate over a million dollars. Whether their holdings are large or small, this suit must necessarily enure to their benefit, as it must also to the benefit of all of the unsatisfied creditors of Virginia, for the reason that Virginia cannot obtain the exoneration to which she is entitled unless West Virginia's equitable share of liability upon every bond and obligation of the undivided State shall be ascertained and adjudicated.

Indeed, a little reflection will show it to be true, that the amount and extent of West Virginia's liability in respect to any one of the original bonds representing Virginia's ante-bellum debt could not be ascertained without at the same time by the same token ascertaining her aliquot liability as to all of the others of those bonds.

It will be seen at once that this is true, for under the Wheeling ordinance and the first constitution of West Virginia, framed and adopted in pursuance and effectuation of that ordinance, and under the contract thereby created between Virginia and West Virginia, it would be impossible to determine what part of any particular bond West Virginia is legally and equitably bound to pay without first ascertaining what is the equitable proportion of the entire ante-bellum indebtedness of the undivided State.

And so no suit could be brought by Virginia against West Virginia; and, indeed, if an individual could legally institute and prosecute such a suit, no suit could be brought by any individual holder of a single one or any larger number of the bonds of the original State against West Virginia for a settlement and be prosecuted to a finality without an ascertainment of West Virginia's share of the entire indebtedness.

But Virginia's status in reference to this suit and her relation to the bonds deposited with her and the relief she seeks, and to which the bill shows her to be entitled in respect to

those bonds and to the whole case, have been already fully discussed in the foregoing part of this brief and they need not be further treated here.

It is true that in the prayer for general relief Virginia asks that—

> "all proper accounts be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix in her own right and as trustee as aforesaid."

But this, we submit, does not convert the suit which she has brought in her own name and right into a suit by her *as trustee;* for, in the settlement of the accounts which this court may hereafter direct to be taken between Virginia and West Virginia it will be convenient, if not necessary, in the ascertainment of West Virginia's contributive proportion of the original public debt of the Commonwealth of Virginia to show the amounts due to Virginia in her own right and also as trustee. Indeed, the prayer of the bill for the ascertainment of the amount due by West Virginia upon the bonds held by Virginia as trustee might be omitted without impairing the character and effect of the bill.

The paramount and controlling equity which Virginia asserts and relies on, is her right to have a settlement and accounting between West Virginia and herself of all the matters growing out of the partition of her territory and the adjustment and determination of the respective rights and liabilities of the two States. This, we submit, is Virginia's right, and it is not affected by any questions that may be suggested as to the disposition she may make of whatever amount may be decreed by this court to be due to her.

It may be true that she has pledged in advance the full amount of any such recovery to the payment ratably of certain of her old debts, or even that she has made a declaration of trust as to such amount in favor of those creditors; but those are matters which cannot be considered on this

demurrer. They are in nowise involved in the ground of equitable jurisdiction invoked by this bill. Virginia's right to compel contributions from West Virginia to the satisfaction of a common liability cannot be impaired or at all affected by the fact that Virginia has declared her purpose to apply the amount recovered to the payment of her debts.

They are matters which may, and doubtless will, be laid before the master to whom the settlement and statement of the account is intrusted, or they may have to be considered and passed on by this court, in the directions it may give to the master for his guidance in the execution of the order of reference; but they form no proper subject for consideration or action by the court at this stage of the case. The only question presented for decision now is, Has Virginia shown by her bill a proper case for the relief asked, of an accounting and for contribution from West Virginia?

(4.)

The fourth assignment of grounds of demurrer is so general in its terms that it is difficult to make to it a specific reply. It is as follows:

> "That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described."

This contention rests largely upon the same grounds upon which the second assignment is based, and the reply to it is very much the same, which is a conclusive answer to that assignment, and the importance of the case will justify some iteration in stating this reply.

The case stated in the bill must on this demurrer be taken to be true as to the facts charged. Among the facts charged are the following, viz:

1. That the restored State of Virginia, in convention assembled, did, on the 20th day of August, 1861, adopt an ordinance:

> "To provide for the formation of a new State out of the portion of the territory of this State."

That section 9 of that ordinance was as follows, viz:

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, &c., as above quoted."

2. That on the 31st of December, 1862, the Congress of the United States, by act, provided that the new State, thus formed in pursuance of said ordinance, should be admitted into the Union by the name of West Virginia.

3. That on the 20th of June, 1863, the State of West Virginia was accordingly admitted.

4. That by act of the General Assembly of the restored State of Virginia, passed February 3, 1863, all property—real, personal, and mixed—owned by Virginia, but situated within the proposed boundaries of West Virginia, was granted and transferred to West Virginia upon the condition, viz, that—

> "The State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State," &c.

5. That under and by virtue of said act there was actually received and enjoyed by the State of West Virginia property of the Commonwealth of Virginia amounting in value to several millions of dollars.

6. That by act of the General Assembly of the restored State of Virginia, passed February 4, 1863, there was appro-

priated to the State of West Virginia from the public moneys of Virginia the sum of $150,000; and there was further appropriated *"all moneys* not otherwise appropriated then" and that may come into the treasury up to the time when the State of West Virginia shall become one of the United States.

7. That by section 8 of article 8 of the constitution framed and adopted by the State of West Virginia, and under and in accordance with and by reason of which she was admitted into the Union of States, it was provided:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and the legislature shall ascertain the same as soon as may be practicable—and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

8. That the legislature of West Virginia never ascertained the amount of West Virginia's "equitable proportion" of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861; that the State of West Virginia has never accounted for the property of the Commonwealth of Virginia which was turned over to and received by her, amounting in value to several millions of dollars; that the State of West Virginia has failed and refused through a period of forty years, and in the face of repeated solicitations on the part of Virginia, to enter upon any settlement of the accounts between herself and Virginia, but has oftentimes and but recently, through one or the other of the two houses of her legislature, declared that she would not recognize any liability whatever as resting upon her to the Commonwealth of Virginia.

Wherefore, and by reason of the matters of fact aptly charged in the bill, it is manifest that a controversy is pre-

sented between the Commonwealth of Virginia and the State of West Virginia to which the judicial power of the United States extends and as to which this court has original jurisdiction.

West Virginia obtained the consent of the restored State of Virginia to the erection upon the territory of Virginia of this new State, and she procured the aid of the Senators and Representatives of Virginia in Congress in having her invested with sovereignty and admitted into the Union upon the express terms of the "Wheeling ordinance," which bound her to *"take upon herself a just proportion* of the public debt of the Commonwealth of Virginia."

West Virginia obtained admission into the Union of States on an express undertaking in her constitution that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State."

West Virginia received and applied to her own uses property belonging to the Commonwealth of Virginia to the amount in value of several millions of dollars, on the express condition that she would *"duly account for the same in the settlement hereafter to be made with this State."*

Hence it is evident that the "demand" referred to in this branch of the first ground of demurrer is not, as there assumed, "a simple demand for money," but it is a prayer that the *accounting,* so solemnly promised, may now be had, under the direction of this court.

The bill presents a state of facts from which it appears that the case is one for the exercise of the equitable jurisdiction of account upon some of the most important grounds upon which that jurisdiction can be invoked, according to the authorities and precedents.

(*a*) There have been in the first place complicated transactions running back to the creation of this new State, and

back of that for about thirty years, embracing numerous loans made by the original State of Virginia and a large number of expenditures of the money thus borrowed in the construction of internal improvements outside and inside the territory now constituting West Virginia.

Any such settlement would necessitate, first, an ascertainment of the amount of the public debt of Virginia as of January 1, 1861, a matter which in itself would require the services of a skillful and painstaking accountant.

There would also have to be an ascertainment of a great multitude of items of expenditure made by the old State within the limits of what is now West Virginia, and of a vast number of payments made in the shape of taxes by the people living in that territory towards the support of the State government, in each case, from the date of the inception of the State debt down to the 1st of January, 1861.

There would have to be, moreover, a determination of what was the proportion of the general expenses of the State government equitably chargeable against the counties and cities now constituting West Virginia during the same period. All of this, and more than is indicated here, would have to be ascertained in order to furnish the data upon which to ascertain the just proportion of the debt of the Commonwealth which West Virginia can be required or expected to pay upon the basis prescribed in the Wheeling ordinance.

These complicated statements, and the accounting necessary to evolve from them accurately, fairly, and justly the share of the common indebtedness which can be equitably assigned to West Virginia, alone would furnish an amply sufficient justification for a resort to a court of equity for an account.

But, in addition to this ground, there are others which even more emphatically call for the equitable relief to which the bill shows the plaintiff to be entitled.

(*a*) Prominent among these is the plaintiff's right to contribution. The basis of this right has been already fully stated in this brief, and in the bill. (See paragraph XVI, p. 16 of the bill.)

As to the right to invoke the aid of a court of equity to establish the right to contribution, see

1 Madd Chy., 233, star page 234.
Ex parte Gifford, 6 Ves., p. 808.
Lawson *vs.* Wright, 1 Cox, p. 276.
Collyer on Partnership, secs. 2-3, ch. 8.
1 Story's Eq., sec. 504.
Wright *vs.* Hunter, 5 Ves., p. 792.
Wills *vs.* Hubbell's Adm'r, 2 Johns. Chy. R., 401.

(*b*) Another ground for equitable jurisdiction recognized by all of the authorities upon equitable jurisprudence and practice is the plaintiff's right to exoneration upon the facts stated in the bill and already fully stated in the former part of this brief.

(*c*) Another ground for equitable relief shown by the bill is the accounting necessary to ascertain what money and property, stocks, and other assets of Virginia were transferred to and received by West Virginia under the acts of the General Assembly of Virginia of February 3 and 4, 1863. (See pp. 4, 5, and 6, paragraphs VIII and IX of the bill.)

(*d*) Another ground for the exercise of equitable jurisdiction shown by the bill is the avoidance of a multiplicity of suits. Virginia sustains, as appears from the bill, various associated relations in respect to West Virginia, all affecting the property and pecuniary rights of the two States, all growing out of the formation of the new State, closely related to the partition of the territory and property and the apportionment of the common indebtedness of the undivided

State, and all necessarily factors to be considered in making any satisfactory or final settlement between the two States.

First. Virginia holds obligations and evidences of indebtedness of the undivided State great in number and large in aggregate amount, paid off or retired by her, doubtless, at different times and under variant circumstances, but each of them giving her a claim against West Virginia to be reimbursed to the extent of West Virginia's liability therefor.

Second. She is entitled to have West Virginia make proper remuneration to her or give her proper credit for the money and property of Virginia which West Virginia received under the acts of February 3 and 4, 1863.

Third. She is entitled to exoneration to the extent of West Virginia's equitable liability upon the various transactions set forth in the bill, hereinbefore fully stated.

It is not only proper, but it is alike West Virginia's and Virginia's right and to their interest, to have the settlement of all of these associated claims and transactions made in one suit, instead of the parties being harassed by a number of suits for the equitable adjustment of matters which can be far more satisfactorily, intelligently, and fairly considered and adjudicated in one suit.

(5.)

The fifth ground assigned in the amended demurrer—

> "That it does not appear by said bill that the Attorney-General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6,

> 1900, which is referred to and made part of said bill,"

is refuted by the bill. In support of this statement it is only necessary to refer to the following parts of the bill.

The act of the General Assembly of Virginia approved March 6, 1900, printed at pages 41-42 of the bill, entitled

> "An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth in the premises,"

in the second section thereof authorized the Virginia Debt Commission, appointed under the joint resolution of March 6, 1894, upon certain conditions mentioned in that section,

> "by and with the advice and approval of the Attorney-General of Virginia to take such action and institute such proceedings on behalf of the State as may in the judgment of the commission and the Attorney-General be needful and proper *to protect the interest of the State, and bring about and carry into effect a settlement as aforesaid.*"

The bill avers (paragraph xx, p. 11) that—

> "This suit has been instituted at the request and direction of said commission, and in strict conformity with the provisions of said act of March 6, 1900."

The exhibits filed with and as part of the bill, and particularly the report made by said commission to the General Assembly of Virginia on the 9th of January, 1906, Exhibit No. 8, pages 43-50 of the bill, prove the truth of this allegation, though its truth, of course, cannot be questioned by the demurrant.

(6.)

The sixth ground of demurrer assigned in the amended demurrer is:

> "That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinitely (*sic*) and uncertain that no proper answer can be made thereto."

The bill, with as much exactness and particularity as is possible under the circumstances, sets forth with much detail the facts upon which the plaintiff claims to be entitled to relief.

It is as full and precise in asserting the demands which it asserts against the defendant as it is reasonably practicable to make those allegations without first having had the accounting with the defendant which is the primary relief for which the bill prays.

If Virginia could, without such an accounting with West Virginia, state with definiteness just what is the sum West Virginia should pay to Virginia, an action of assumpsit might have sufficed; but no remedy at law could give her the relief to which she is entitled by way of exoneration, nor is there any adequate remedy at law by which the complicated and more or less intricate accounts can be so digested and stated upon equitable principles as to reach a result which will be just to the parties.

(7.)

The seventh assignment made by defendant's amended demurrer is:

> "That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant."

This has been already answered in the answers made to other alleged objections to the bill. The plaintiff's right to an account is unquestionable upon any one of the several grounds already discussed; and a plaintiff is entitled to discovery in any case in which any right to equitable relief exists, and the defendant is in possession of any information, documents, or records which may throw any light upon the questions at issue or facilitate a just solution of those questions.

(8.)

The eighth and last ground of demurrer assigned is:

> "That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant."

This objection is possibly even more technical than some of the others presented in the demurrers.

It was not necessary under the English chancery practice, adopted by this court in 1792 for the guidance and direction of suitors and practitioners therein, to have any prayer at all for special relief.

Under the prayer for general relief the plaintiff could obtain all such relief as he was found by the chancellor to be entitled to upon the state of facts alleged in his bill and established by his proofs.

> "The old bills in chancery did not contain any special statement of relief, but only what is called the prayer for general relief." * * *
>
> Adams' Eq., m. p. 309.
> Mitford's Pleading, m. p. 39.
> Cook *vs.* Martin, 2 Atk., p. 141.

Under later practice in England, the prayer for general relief was still held to be sufficient, though it became the uniform practice to insert a special prayer, and to conclude with the prayer for general relief.

Adams' Eq., m. p. 309.

But there are prayers in the bill for special relief, namely,

> "that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this court by such auditor or master as may by the court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this court; that the State of West Virginia may be required to produce before such auditor or master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this court will adjudicate and determine the amount due to your oratrix by the State of West Virginia in the premises;'

These prayers not only ask for the specific relief stated, but that "the court will adjudicate and determine the amount due to your oratrix by the State of West Virginia."

An adjudication is a solemn judgment of a court. The word "adjudicate" is defined to mean:

> "To determine in the exercise of judicial power; to pronounce judgment in a case" (Anderson's Dict. of Law).
>
> "Synonymous with adjudge in its strictest sense" (Abbott's L. Dict.).
>
> "To determine judicially; try and decide; adjudge" (Standard Dictionary).

So a prayer for an adjudication by the court is a prayer for a judgment.

But such a prayer is unnecessary in a bill invoking the chancery jurisdiction of account.

The judgment or decree upon the account when taken and confirmed by the court is a necessary incident to the relief sought:

> "for it is implied if not expressed in the decree to account that the balance shall be paid to the party entitled."
>
> 1 Madd Chy. Pr.; title, Account, p. 86.

But where there is a prayer for special relief which does not adequately define *or even inaccurately state* the relief to which the plaintiff is shown upon the case presented to be equitably entitled, such relief as is adequate and appropriate to the case can and should be granted by the court.

1 Daniell's Chy. Pr., ed. 1846, p. 434.

The modern English practice is

> "to pray particular relief, though if the particular relief prayed for in the bill cannot be given exactly as prayed, the court will assist the particular prayer under the general prayer; but relief inconsistent with the specific relief prayed, cannot be given under the general prayer."
>
> 2 Madd Chy., m. p. 172.
> Beaumont *vs.* Beaumont, 5 Ves., p. 495.
> Muckleston and Brown, 6 Ves., p. 52.

The proposition asserted in this eighth assignment is negatived by repeated decisions of this court.

It will be noted that the bill contains prayers for special relief and also a prayer for "all such other, further and general relief as the nature of the case may require and to equity may seem meet."

In English *vs.* Foxhall, 2 Peters, p. 612, this court declared that—

> "There is no doubt but that, under the general prayer, other relief may be granted than that which is particularly prayed. But such relief must be agreeable to the case made by the bill."

And in Watts and others *vs.* Waddle and others, 6 Peters, pp. 389-403, this court said:

> "Although there is no specific prayer in the bill to be paid the rents and profits, yet the court think that under the general prayer this relief can be granted. *Under this prayer any relief may be given for which the basis is laid in the bill.*"

And in Walden, &c., *vs.* Boley and others, 14 Peters, pp. 164-5, this court decided that—

> "A court of equity cannot act upon a case which is not fairly made by the bill and answer. *But it is not necessary that these should point out in detail the means which the court shall adopt in giving relief.* Under the general prayer of relief, the court will often extend relief beyond the specific prayer, and not exactly in accordance with it."
>
> See also, to same effect—
> Boone *vs.* Chiles, 10 Peters, p. 177.
> Stevens *vs.* Gladding, 17 How., p. 455.
> Georgia *vs.* Stanton, 6 Wall., p. 50.
> Texas *vs.* Hardenburg, 10 Wall., p. 86.
> Jones *vs.* Van Doren, 130 U. S., p. 692.
> Hayward *vs.* Eliot Nat. Bank, 96 U. S., p. 611.
> Lockhart *vs.* Leeds, 195 U. S., pp. 427-437.

In the case cited this court decided that—

> "There is nothing in the intricacy of equity pleading that prevents the plaintiff from obtaining the relief under the general prayer, to which he may be entitled upon the facts plainly stated in the bill. There is no reason for denying his right to relief, if

> the plaintiff is otherwise entitled to it, simply because it is asked under the prayer for general relief, and upon a somewhat different theory from that which is advanced under one of the special prayers."

These authorities would seem to unquestionably establish the sufficiency of the prayers for relief in the bill, and to effectively dispose of the eighth ground of objection laid in the amended demurrer.

The grounds of objection to the bill alleged in the original demurrer have not been noticed, for the reason that they are all merged in or covered by the amended demurrer.

Upon the whole case presented, it is respectfully submitted that the demurrers should be overruled, and the defendant required to answer the plaintiff's bill.

MARCH, 1907.

WILLIAM A. ANDERSON,
Attorney-General of Virginia.
HOLMES CONRAD,
Of Counsel for Virginia.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original. No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

NOTICE.

TO THE COMMONWEALTH OF VIRGINIA AND WILLIAM A. ANDERSON, *Attorney General:*

You are hereby, notified that the defendant, The State of West Virginia, will, on Monday, February 25, 1907, or as soon thereafter as the motion can be made, ask leave of the court to file an amended demurrer in the above-entitled cause. A copy of said proposed amended demurrer is hereto attached.

FEBRUARY 16, 1907.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, The State of West Virginia, one of the United States of America, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, humbly prays leave to file the sworn amended demurrer herewith presented to the bill of complaint in the above-entitled cause, and asks that a day may be fixed by your Honors for the hearing of the same.

And, as in duty bound, your petitioner will ever pray.

——— ———,
Governor of West Virginia.

——— ———,
Attorney General of West Virginia.

——— ———,
——— ———,
——— ———,
Counsel.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1906.

ORIGINAL, No. 7.

COMMONWEALTH OF VIRGINIA
vs.
STATE OF WEST VIRGINIA.

AMENDED DEMURRER.

The defendant, The State of West Virginia, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, of said State, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in manner and form as the same are set forth and alleged, or in any way or manner, presents this amended demurrer thereto, and for cause of demurrer shows:

First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not

constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described.

Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinitely and uncertain that no proper answer can be made thereto.

Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant.

Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and prays to be henec dismissed with her costs and charges in the matter most wrongfully sustained.

——— ———,
Governor of West Virginia.

——— ———,
Attorney General of West Virginia.

STATE OF WEST VIRGINIA,
County of Kanawha, ss:

This day there personally appeared before me, the undersigned, clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clark W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above-entitled cause, and whose names as such are signed to the foregoing amended demurrer, and, being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that the foregoing amended demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as clerk of said court and the official seal thereof — day of October, 1906.

——— ———,
Clerk of the Supreme Court of Appeals of the State of West Virginia.

I, Clarke W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing amended demurrer is well founded in point of law.

——— ———,
Attorney General of West Virginia.

MEMORANDUM.—Because the time allowed them was scant, the counsel for the Commonwealth agreed to apportion certain portions of this reply brief between themselves. Hence it appears as one brief, though in two parts.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

REPLY BRIEF OF COUNSEL FOR VIRGINIA UPON THE DEMURRERS TO THE BILL.

I.

The bill is not demurrable on the ground of multifariousness, either because of uniting any two or more distinct and separate matters or grounds for equitable jurisdiction, or upon the alleged ground that it blends in the same bill two causes of action, one of which is of equitable and the other of legal cognizance.

(1) None of the grounds for equitable relief shown by the bill are distinct and separate and independent of the other grounds assigned in the bill for the relief prayed. All of the demands for relief shown by the bill are intimately

connected with each other and are properly to be considered in stating any account and making any settlement between the two States.

It cannot be fairly contended that any item of charge against West Virginia suggested by the bill is not a proper item to be brought into any statement which shall fairly ascertain the true state of accounts between the parties and the amount which the plaintiff is equitably entitled to recover from the defendant.

It is manifest that the equity for contribution and the equity for exoneration, to which the bill plainly shows that the plaintiff is entitled, are, for the purposes and with reference to all the legitimate objects of this suit, so associated together and so connected with each other that it would be impossible for the court to give complete relief, and to ascertain the amount for which the plaintiff has a just claim against West Virginia without bringing all of these matters into the account.

It would be impossible fairly and justly to state the account between these parties without bringing into it the sums with which West Virginia is justly chargeable on account of the moneys and property constituting integral parts of the assets of the undivided State which West Virginia has received under the acts of the restored government of Virginia passed in 1863.

(2) But if, applying rigidly an extreme technical rule of pleading, it could be claimed that the demand which Virginia has a right, as shown by paragraph VIII of her bill, to make of the defendant imports a legal cause of action, and could not for any reason be properly cognizable by a court of chancery in making a final settlement between the parties to this cause, then, according to the rule of common sense and common justice, well settled by the authorities, the averment of such a cause of action in the bill will not be fatal to the maintenance of the suit, but will

be treated as surplusage by a court of equity, and either ignored in its consideration of the case or will be by amendment stricken from the bill without prejudice.

We are saved any necessity for any further discussion of this phase of the argument of defendant's counsel by the admirable statement of the law governing this subject, accurately expressed in the work upon "Equity Procedure" of which the learned counsel, Mr. Charles E. Hogg, who opened the oral argument for West Virginia and is upon her brief, is the author.

The principles governing this subject, as stated in Hogg's Equity Procedure, edition of 1903, vol. 1, sec. 136, furnish a conclusive answer to the elaborate argument of the counsel for the defendant upon this branch of the case and are as follows:

> "SEC. 136. Courts of equity have declined to announce a general rule applicable to all cases of multifariousness, *being guided by considerations of convenience in each particular case rather than by any absolute rule.*. But there are certain cardinal principles which have been established by repeated and numberless decisions in the court of equity, and if borne in mind it will seldom if ever be found difficult to determine whether multifariousness exists in the particular case.
>
> "As to what these particulars are, all the adjudged cases agree.
>
> "From the numerous decisions relating to this matter, a few of which are cited in the foot-notes, the following principles may be safely declared to govern in questions of this character:
>
> "1. A bill will always be deemed multifarious where several matters joined in the bill against one defendant are so entirely distinct and independent of each other that the defendant will be compelled to unite in his answer and defense different matters wholly unconnected with each other, and as a consequence the proofs applicable to each would be apt to be confounded with each other, and great delay

might be occasioned respecting matters ripe for hearing by waiting for proofs as to some other matters ready for hearing.

"2. It will be treated as multifarious where there is a demand of several matters of a wholly distinct and independent nature, in the same bill, rendering the proceedings oppressive because it would tend to load each defendant with an unnecessary burden of costs by swelling the pleadings with the statement of the several claims of the other defendant or defendants with which he has no connection.

"3. A bill against two or more defendants will be regarded as multifarious which also embodies a separate and distinct claim against one of the defendants only.

"4. A bill will not usually be regarded as multifarious when the matters joined in the bill, though distinct, are not absolutely independent of each other, and it will be more convenient to dispose of them in one suit.

"5. A blending of two causes of action in the same bill, one of which is of equitable cognizance and the other legal, will not render a bill multifarious, *as the latter will be treated as mere surplusage and stricken from the bill and the cause retained as to the equitable ground of the suit.*" (Italics, here and elsewhere, ours.)

These propositions are amply supported by the authorities cited by the learned author and by the following:

Story's Eq. Pl., secs. 271-278, 280, 284, 531, 532.

Mitf., Eq. Pl., by Jeremy, 181, 182, notes *a* and *b*.

Atty. Gen. *vs.* Merchant Tailors Company (1883), 1 Milne and Keene's Chy. R., 189, 191, 194.

Campbell *vs.* Mackey, 1 Mylne & Craig Chy. R., 622

II.

The next ground of objection to the bill urged by defendant's counsel, which I will notice, is that the plaintiff has, as they allege, no interest in the subject-matter of the controversy and asks no substantive relief for herself.

This position of opposing counsel is based upon an extraordinary misapprehension of the bill.

(*a*) The bill shows that the plaintiff has a very large direct claim against the defendant because of the fact that the plaintiff has paid off and satisfied in full obligations and evidences of indebtedness of the undivided State, including interest from the dates of payment of the several items constituting said demand, considerably in excess of $25,000,000, and that for this Virginia has a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

See paragraph XVI, page 9 of the bill.

(*b*) *The bill shows that it is not true in fact,* as counsel argued, that Virginia has been released in respect to the unfunded portion of the bonds of the original State deposited with her under the act of 1871 and amounting, as appears from the exhibits printed at pages 73 and 90 of the bill, to $12,703,451.79, with interest on the principal sum thereof from July 1, 1871. As to this portion of the old debt of the State, Virginia has never been released, and her own highest court, in Greenhow *vs.* Vashon, 81 Va., 342-343, has so declared. In that case Judge Richardson, delivering the opinion of the court, quoting with approval the dictum of Judge Staples in Antoni *vs.* Wright, 22 Gratt., 864-5, says:

> "It is said that the creditor has released one-third of his debt. I do not so understand it, and I will hazard the assertion the creditor does not so construe the law. If this was the intention of the framers

> of the act they have adopted an obscure and equivocal mode of expressing a plain and simple agreement. The creditor surrenders his bond and obtains a new one for two-thirds of his debt, and coupons for the interest. For the remaining one-third the bond is held in trust by the State, and a certificate is given him stating that payment will be provided for in accordance with such settlement as may be made with West Virginia. If that State is faithful to the obligations resting upon her the creditor will receive the other two-thirds also. On the other hand, if she repudiates these obligations there is no agreement or understanding absolving the State from the payment of such third. It is as much bound for the payment of the whole debt as before the passage of the funding bill."

And the Supreme Court of Appeals of Virginia, in Higginbotham *vs.* The Commonwealth, 25 Gratt., 627, expressed substantially the same opinion. This ought to be conclusive of this particular question for the purposes of this demurrer.

But, independently of said decisions, we assert with absolute confidence in the unquestionable correctness of the proposition, that it is impossible to read the act of March 30, 1871, and particularly section 3 of said act, found at pages 14 and 15 of the bill, without seeing not only that Virginia is not released, but that she has solemnly contracted that payment of said unfunded one-third, with the interest due thereon, "will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment."

* * * * * * *

The manifest effect of the transaction was to continue in full force the liability upon the unfunded third of each of the bonds so deposited, both as against Virginia and against West Virginia, the only concession that the creditor

made being that payment could not be expected or required of Virginia until a settlement should be had between the two States.

While the creditor, as the result of this arrangement, took the risk of such a settlement ever being made, it was none the less the duty of Virginia to do all that could be reasonably and fairly expected of her to bring about and effect such a settlement; and, her repeated efforts to that end having proved abortive by reason of the failure of West Virginia to meet her overtures, this suit has become necessary.

Her equity to maintain this suit in respect to the $12,700,000 of unfunded bonds deposited with her under the act of 1871 is based upon her right to exoneration to the extent of West Virginia's liability upon the indebtedness represented by those bonds.

By reason of the contract which her creditors have made with her, she has a further interest in maintaining this suit, viz., to obtain COMPLETE exoneration in respect to those unfunded bonds as to which she has been in no sense *released*, but can only be released by an adjudication of this court against West Virginia ascertaining West Virginia's aliquot liability on account of the said indebtedness.

(*c*) Nor is it true in any sense that Virginia has in any degree impaired her right to maintain this suit because she has agreed to turn over to her creditors entitled thereto the ratable proportion of any amount which she may obtain from West Virginia assignable to the holders of the unsatisfied obligations of the undivided State.

It cannot in any court of conscience impair a plaintiff's right to equity because her bill shows that it is her purpose to do equity.

Any recovery from West Virginia will, by the terms of Virginia's contract with the representatives of the creditors of the undivided State be ratably apportioned among all of

the holders of the ante-bellum obligations of the original State, including Virginia as now constituted. The creditors other than Virginia will receive their *pro rata* share of such recovery in entire exoneration of Virginia, and Virginia will receive or retain the *pro rata* share of such recovery assignable to the obligations and evidences of indebtedness of the original State which she has paid in full, by way of equitable contribution to her.

It will be apparent from an examination of the contract between Virginia and the committee representing the certificates which she has issued, and which in turn represent the unsatisfied obligations of the undivided State, that, while the arrangements which Virginia has made with the common creditors or their representatives for her protection, and for their protection, with a view to their payment, and to her payment, and to her exoneration, enure alike to her benefit and to the benefit of the common creditors, West Virginia is not in the slightest degree prejudiced, nor are her interests or rights to any extent impaired by reason of any of these arrangements.

There were different stipulations in the certificates issued under the act of 1879, 1882, and 1892, in reference to the settlement of the public debt of Virginia, but they do not impair Virginia's right to maintain this suit.

III.

With strange persistency counsel for West Virginia insist that jurisdiction has not been conferred upon this court by the judiciary clauses of the Federal Constitution over controversies between two or more States involving directly or indirectly a demand for the payment of money.

Their contention is that—

Jurisdiction imports power not only to decide, but to grant adequate relief, and—

That this court is powerless to give adequate relief to the plaintiff upon the case stated by her, and—

That therefore this court can have no jurisdiction of this cause.

We have shown in our brief, already filed, for the plaintiff that this question has been repeatedly adjudicated in this court, against defendant's contention, in cases so analogous to the case at bar that it is impossible to distinguish them upon any ground of principle as to this particular question.

But we have a further sufficient reply to make to this contention.

The proposition of opposing counsel rests upon the assumption that this court cannot give adequate relief.

That is not true. The court can give all the relief that is in the nature of things appropriate to the case and all that is prayed for by the bill.

It can cause the account between the two States to be stated and an ascertainment and an adjudication of the equitable proportion of the public ante-bellum debt of Virginia to be borne by West Virginia to be had, and upon confirming the report made by its master in chancery can, and will, adjudge and decree the amount which West Virginia is equitably bound to pay on account of the common indebtedness of the original State.

This, as is shown by the bill and pointed out in our former brief, not only will give Virginia adequate, but will accord her complete, relief, because it will operate to exonerate her from any further liability on account of that indebtedness to the extent already plainly shown.

In further reply to this branch of argument of defendant's counsel, I beg leave to add to what has already been said upon that subject, that it has never been held by this court that no execution or process could under any circumstances be issued upon any judgment against a State upon any pecuniary demand.

Whether strictly private property of West Virginia, property owned for profit and charged with no public trusts or

uses, property owned for some commercial purpose, or owned just as an individual might own such property, would be liable to levy, attachment, or sale under an execution issued under a decree of this court, is a question which we hope will never arise and can never arise unless West Virginia shall fail or refuse to respect a decree of this court and to comply with its terms.

It will be time enough then for this court to decide what further action, if any, shall be taken in enforcement of its decree.

We frankly say that we at present know of no property of defendant which would be liable to levy or sale under any execution issued by this court, but it is not very difficult to conceive of a condition of things in which West Virginia might own property within the jurisdiction of this court which would be liable to be subjected for the satisfaction of a decree in this case. I fully concede that only such property as was not held by that State for governmental purposes and not charged with any public trust could be subjected for the satisfaction of a decree of this court; but there may be circumstances under which property charged with a special trust for the satisfaction of the very debt claimed here, or property not charged with any public trust, belonging to the State of West Virginia and held by her, just as a private individual might hold such property, might be liable to be attached for the satisfaction of a decree of this court in this cause.

Tried by the same principles which have controlled this court and the State courts in respect to judgments entered against municipal corporations, there can be no question that the fact that an effective execution cannot be issued upon the judgment does not invalidate the judgment.

2 Dill., Munic. Corp., 4 ed., sec. 576.

2 Dill., Munic. Corp., sec. 856.

Tiedman, Munic. Corp., sec. 212.

The execution is in no sense and under no circumstances an essential part of the judgment.

Freeman on Judgments, sec. 2, and cases cited.

Whether a defendant has or has not any property on which a lawful execution could be validly levied does not at all affect the validity, though it may affect the value, of a judgment against him.

III.

I come now to consider the ground upon which Mr. Carlisle, the distinguished counsel for West Virginia who closed the oral argument of the case, seems in his brief and in his oral argument to mainly rely in his advocacy of the demurrers, though it is a ground not mentioned or suggested in either of the demurrers.

His contention is that by reason of the provisions of the alleged act of the General Assembly of Virginia, passed May 13, 1862, which were as follows:

> "That the consent of the legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, according to the boundaries and along the provisions set forth in the constitution for the said State of West Virginia, and the schedule thereto annexed proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one."

and of the provisions of section 8 of article VIII of the constitution of West Virginia, which is in the following words:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquida-

> tion thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

a compact was created by which the legislature of West Virginia was constituted the sole tribunal to ascertain, adjudicate, and finally decide what was the equitable proportion of the public debt of the undivided State which West Virginia should assume and pay.

Upon this extraordinary contention counsel for the defendant seem now mainly to rest their case.

(*a*) We deny that the fact of such an alleged compact, not mentioned or suggested in the bill, can be relied on as ground of demurrer.

(*b*) We challenge the averment that any such act as the alleged act of May 13, 1862, was ever passed by any legislature of the Commonwealth of Virginia, and we crave oyer of the act, if it is to be relied on.

(*c*) If the meaning and effect contended for by the counsel for the defendant could be fairly given to the terms of section 1 of the said alleged act of May 13, 1862, then Virginia has a right to insist, and does insist, that said act shall be at least reasonably, if not strictly, construed.

Under no fair construction of that act can it possibly have any such legal effect, even upon the violent hypothesis of counsel for the defendant, for the reason that the alleged consent and agreement of the Commonwealth of Virginia, as therein expressed, was predicated upon the admission of West Virginia into the Union under the provisions of the constitution for the State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, eighteen hundred and sixty-one, while the fact is that West

Virginia never was admitted into the Union under that constitution, but was admitted under an amended constitution submitted to the people of West Virginia by an ordinance adopted by a convention thereof on the sixteenth of February, eighteen hundred and sixty-three, and pursuant to a further ordinance adopted by the said convention, entitled "An ordinance to provide for the organization of the State of West Virginia," passed February nineteenth, eighteen hundred and sixty-three, as will appear from the said constitution and ordinances of the State of West Virginia, published in the volume entitled "Constitution and Statutes of Virginia and West Virginia," printed pursuant to the act of the legislature of West Virginia passed February, twenty-sixth, eighteen hundred and sixty-six.

Non constat but that the consent of the legislature of Virginia would never have been given in manner and form as expressed in the alleged act of February thirteenth, eighteen hundred and sixty-two, if predicated upon the amended constitution, which was subsequently submitted to the people of West Virginia and received their sanction at the polls. This is by no means so strained a construction as that which counsel for the defendant would feign give to this act.

(*d*) But we deny utterly that by any fair or reasonable construction of the language of the first section of said act of May thirteenth, eighteen hundred and sixty-two, taken in connection with the provisions of the constitution proposed for the State of West Virginia by the convention which met in the city of Wheeling on the 26th of November, eighteen hundred and sixty-one, the language of that section was ever by any possibility intended by the legislature of Virginia or understood by the convention or by the people of West Virginia, or by any rational human being, to be, or to operate as, a SUBMISSION to the legislature of West Virginia of the question of the amount and pro-

portion of the common debt of the original State which it was equitable and just for West Virginia to assume and pay; or that that enactment was ever intended by Virginia, or understood by West Virginia, or by any one, to bind Virginia to accept and abide by such determination of that matter as might be made by the legislature of West Virginia, however capricious or unjust its judgment might be; or was ever intended or understood by either of the parties, or by anybody, to constitute the legislature of one of the parties to the present controversy a tribunal with plenary power and exclusive jurisdiction to determine and decide anything in respect to the common *ante-bellum* debt of Virginia which would be binding upon Virginia; and yet such is the contention of the learned counsel, unless we misapprehend the language of their briefs.

All that could be reasonably inferred from the language used in said act of May thirteenth, eighteen hundred and sixty-two, taken in connection with the proposed constitution of West Virgina, was that Virginia gave her consent to the creation of the State of West Virginia out of her territory under that constitution and that section 8 of article VIII of the proposed constitution was designed not to create any new contractual relation or obligation between Virginia and West Virginia, but to be, and operate as, a mandate from the people of West Virginia to the legislature of West Virginia, requiring that legislature to assume an equitable proportion of the public debt of the original State, and as soon as practicable to ascertain the same and to provide for its liquidation by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years, and that Virginia was willing that West Virginia should become a State of the Union under a constitution which contained those provisions and the other provisions expressed in the constitution as formulated and proposed prior to May thirteenth, eighteen hundred and sixty-two.

Reasonably construed, the purpose and effect of section 8 of article VIII was to place upon the new State an equitable

proportion of the public debt of the old State and to require, and make it the duty of, the legislature of the new State to provide for the payment of West Virginia's equitable proportion of that debt, so that the entire amount, interest and principal, should be extinguished and paid off within the period of thirty-four years.

Nearly forty-four years have elapsed, and yet West Virginia has done nothing; has paid not one cent of the interest or the principal of the debt; but, on the contrary, has repudiated every obligation imposed upon her by the stipulations of the Wheeling ordinance which constituted the essential condition of her political existence.

(*e*) But the entire conception and theory of opposing counsel upon this subject have been demolished by the fact that West Virginia has repealed and abrogated the constitution under which she was admitted into the Union, by the adoption of a new constitution in eighteen hundred and seventy-two, which new constitution contains no provision whatever requiring that State to assume an equitable proportion, or any other proportion, of the *ante-bellum* debt of Virginia, or requiring the legislature of that State to provide for the payment of any portion of that debt.

See West Virginia Constitution, adopted in 1872; Code of West Virginia, 1887.

By her present constitution West Virginia ignores her obligation to pay any part of the debt, and if it had ever been true that anybody had ever attempted to constitute, or dreamed of constituting, the legislature of that State the supreme and ultimate arbiter between the two States as to the amount of the common debt which West Virginia should bear, West Virginia has not only failed and refused to discharge the duty as arbitrator, but she has actually abdicated any such function, duty, or power by repealing the constitution which counsel claim conferred such exclusive, supreme, and irreviewable jurisdiction upon her legislature.

IV.

The other points discussed in the briefs of defendant's counsel have been already anticipated and sufficiently met by the brief of counsel for Virginia already filed. A singular misapprehension of the language of the bill, and of the exhibits which constitute important parts thereof, has led counsel for the defendant into several errors of fact, two of which I deem it proper to notice. One is their contention that Virginia has ever made it a condition of any settlement or negotiation with West Virginia that that State should assume one-third of the *ante-bellum* debt of Virginia.

It was a condition of the negotiation and settlement authorized to be made by the resolution adopted by the General Assembly of Virginia on the 6th of March, eighteen hundred and ninety-four (pp. 39-40 of the bill), that Virginia was not to be charged with or assume more than two-thirds of the debt of the original State already assumed and provided for by her as her equitable proportion thereof.

But even under that resolution there was no condition whatever as to what West Virginia was to pay. That was left wide open as a matter for negotiation and adjustment.

And by the act of March sixth, nineteen hundred, pages 41 and 42 of bill, beyond the shadow of a doubt, plenary power was conferred upon that commission, with the approval of the Attorney General, to make any settlement and adjustment with the State of West Virginia which it might be practicable to make, and which the commission and the Attorney General might approve, provided the creditors, as defined in the act, agreed to accept such amount as might be recovered from West Virginia as a full settlement of all their claims against the State of Virginia.

Another inaccuracy of statement by opposing counsel, founded upon a like misapprehension, is that Virginia has submitted *any ultimatum* to West Virginia, or has made as a condition of an amicable adjustment with West Virginia, or of a negotiation or accounting with West Virginia looking

to such amicable adjustment, any condition that West Virginia should assume and undertake to pay any particular proportion of the common debt or any sum whatever; and particularly are the counsel for the defendant in error upon this point as to the last effort made by Virginia to bring about an amicable settlement, as will be seen from an examination of the address of Mr. Randolph Harrison, made on behalf of the Virginia Debt Commission before the joint committees on finance of the West Virginia legislature on the first of February, nineteen hundred and five, and printed on pages 66-80 of the bill.

Among other things of interest to this cause and to the questions now submitted to the court which will be found in that admirable address, Mr. Harrison, on page 76 of the bill, said:

> "We do not ask that West Virginia shall commit herself as liable in any specific amount. We make no claim against her for any definite sum. We do not know what a statement of the account will show; if it shows that West Virginia is not liable for any amount, that will end the matter. We only ask that your State will, through the proper authorities, unite with Virginia in stating the account between the two States in order that the question of her liability, if any, may be authoritatively ascertained. The work of your commission will, of course, be subject to such action as West Virginia might deem proper in the premises."

I beg leave to commend the statement of Virginia's case, as made in that address, to the attention and consideration of the court. Its perusal will most conclusively demonstrate to this court the rightfulness and righteousness of the cause of action stated in the bill.

Respectfully submitted,

WILLIAM A. ANDERSON,
Attorney General of Virginia.

MARCH 14, 1907.

THE COMMONWEALTH OF VIRGINIA

vs.

THE STATE OF WEST VIRGINIA.

REPLY BRIEF TO THE BRIEFS OF DEFENDANTS ON THE DEMURRER.

In the brief of Mr. Carlisle there appears, for the first time, the suggestion that this court cannot take jurisdiction of this case, because of a COMPACT alleged to have been entered into between the two States of Virginia and West Virginia, by which the question of the liability of West Virginia to Virginia on account of the public debt of the parent Commonwealth of Virginia was submitted to the arbitrament and award of the legislature of West Virginia.

The facts which it is claimed constitute such compact are as follows, viz.:

(1) That the constitution under which the State of West Virginia was admitted into the Union on June 20, 1863, contained the following provision:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and *the legislature shall ascertain the same as soon as may be practicable* and provide for the liquidation thereof by a sinking fund to pay the accruing interest and redeem the principal within thirty-four years."

(2) That on May 13, 1862, the legislature of (restored) Virginia passed an act entitled "An act giving the consent

of the legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State;" that by said act the consent of the legislature was given to the erection of the proposed new State "according to the boundaries *and under the provisions set forth in the constitution for the said State of West Virginia*, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861."

(3) That the State of West Virginia was admitted into the Union on the 20th day of June, 1863, under the constitution framed by its convention, approved by the State of Virginia and the Congress of the United States. "And thus the consent of that body was given to all the provisions of the agreement and it became a legal and constitutional compact between the two States."

(Mr. Carlisle's Brief, page 36.)

To this suggestion of a "compact" between the two States we have to say in reply:

1. That this is not among the grounds assigned in the formal demurrer heretofore filed in this cause, but is set up for the first time in the brief of Mr. Carlisle, and is again relied on in the brief of the Attorney General of West Virginia, subsequently filed.

2. That it is not a ground proper to be considered on demurrer, because it involves alleged facts which do not form any part of the case stated in the bill, viz., the fact that on May 13, 1862, the legislature of Virginia, by an act regularly passed, by a legislature duly assembled, consented to the erection of the new State of West Virginia "within the jurisdiction of this State." Not only is this alleged act not stated or admitted in the allegations of the bill, but it nowhere appears in the record of the case, nor is it set forth even in the briefs of counsel.

3. That the Commonwealth does not admit, but is prepared to deny, when opportunity is afforded it, that any such valid, constitutional act was ever passed by the legislature of Virginia, but that a demurrer affords no such opportunity to complainant to traverse the allegation of the existence of such act or of showing its non-existence.

4. That the existence and consequent effect of such an act should be asserted by a plea, to which replication might be made, or by answer, to which denial might be opposed, and thus an issue presented to which proper proof might be directed.

5. That from the official publications of the acts of assembly of the (restored) State of Virginia it distinctly appears that the regular session of that body adjourned *sine die* on February 13, 1863; that the constitution of the (restored) State of Virginia provides that extra sessions of the legislature may be convened only upon a proclamation of the governor of the Commonwealth calling the same; that while it does appear that the members of the General Assembly did assemble and were in session on the 13th of May, 1863, it does not appear from the proceedings of that body in the officially published journals of its proceedings that it had been called to meet by the proclamation of the governor.

6. That the constitution adopted by the convention of West Virginia, which assembled at Wheeling on the 26th of November, 1861, was not the constitution which was approved by Congress and under which the State of West Virginia was admitted into the Union, but that that Congress did refuse to admit the State into the Union under that constitution until the same was amended in certain indicated particulars, and the said constitution was accordingly so amended.

7. That even assuming all the facts relied on as constituting such a compact to be established, yet the conclusion deduced therefrom is fallacious and unsound, in this, viz., that the provision of the constitution of West Virginia that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, *shall be assumed* by this State, *and the legislature shall ascertain the same* as soon as practicable, and provide for the liquidation thereof," &c., does not import or mean that there was conferred upon the legislature power to adjudicate the fact or the amount of such "equitable proportion," or that there was lodged in the legislature any discretion whatever in the matter of such ascertainment.

In construing this provision of a constitution we must have regard to the subject-matter and the policy and purpose of the framers as disclosed by the instrument in all its parts. Here was a new State, about to be formed within the jurisdiction of an old State. That old State had, on August 20, 1861, just three months before, by an ordinance, provided "for the formation of a new State out of the portion of the territory of this State," and it had by the same ordinance declared that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of this debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the new State during said period."

It is impossible to suppose that the new State should not have had this in mind when it framed its own constitution, and that when it provided that its legislature "shall ascertain the same as soon as practicable" it referred to the method of ascertainment prescribed by the Virginia convention in the

very ordinance which provided for the creation of the new State. It seems to be at least reasonable to recognize that the ordinance of the Virginia convention and the provision of the West Virginia constitution should be taken as being *in pari materia* and construed together. It would then follow that what was meant by the expression the legislature "shall ascertain" was that the legislature should learn as soon as practicable the result of the method prescribed by the Wheeling ordinance, and then provide for the liquidation of the amount so ascertained.

It is simply preposterous to suppose that Virginia ever agreed to submit the matter of West Virginia's indebtedness to the arbitrament and award of West Virginia herself.

It should be enough to utterly repel this suggestion of a "compact" to inquire why, if such "compact" ever existed, in all the forty-three years that have elapsed since it was entered into, West Virginia has never, through her succession of governors, legislatures, and attorneys general, indicated and announced that it was upon such "compact" that she stood, and that to its terms and provisions she would hold Virginia, and why, through that long period, no step has ever been taken by West Virginia, through her legislature, to enter upon the performance of the duty which such "compact" imposed, or to notify Virginia that she stood ready and willing to enter upon such duty.

The suggestion that the case of Virginia *vs.* West Virginia, decided by this court thirty-six years ago, had restrained her from so doing is scarcely creditable to the intelligence of the inventor of that excuse.

Again, it is suggested in the briefs of demurrants, and was urged in oral argument, that Virginia had been released from all liability on account of the public debt of the old Commonwealth, evidenced by her bonds outstanding on January 1, 1861.

The grounds relied on to support this suggestion were indicated as follows, viz:

(1) That by the terms and provisions of the act of the General Assembly of Virginia of March 30, 1871, entitled "An act to provide for the funding and payment of the public debt" (Record, p. 13), and the acceptance thereof by the holders of the bonds of the Commonwealth, such holders released Virginia from all liability to them on account of the original public debt existing on January 1, 1861, and for which West Virginia was bound with Virginia, and they created with Virginia a new debt, evidenced by the new bonds of Virginia, for two-thirds of the amount of the old bonds, and accepted from Virginia a certificate showing that for the remaining one-third of such amount they would look for their payment only to such funds as might thereafter be obtained from West Virginia in satisfaction of her contributive share of the old public debt.

For reply to this ground we refer to the act itself. Its preamble fully recites its purpose. Its terms and provisions are contrived to strictly carry that purpose into effect. The third section of the act (Record, p. 14) shows that the bonds surrendered by the holders were not surrendered for cancellation and extinguishment of the obligations, save as to two-thirds of the amount of each bond so surrendered, and that as to the remaining one-third, which was estimated to be the amount of West Virginia's just and equitable proportion of the common debt, "the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees." The bonds, as to such one-third, could not be "canceled" and at the same time "held in trust for the holder or his assignees." Virginia, by giving her new bond to take the place of the old bond, cannot be held to have paid her debt, but only to have substituted one security or evidence for another. A creditor, by surrendering an old bond and accepting a new one for the same debt from the debtor, has not received payment or satisfaction of the debt, unless such was the plain intention of the parties. The act itself as well as the certificate issued under it (Record, p. 72) show that such was not the intention.

(2) That by the act of the General Assembly of Virginia of March 28, 1879 (Record, p. 16), it was expressly provided, in the seventh section (Record, p. 19), "The acceptance of the said certificates for West Virginia's one-third, *issued under this act,* shall be taken and held as a full and absolute release of the State of Virginia from all liability *on account of the said certificates.*"

Observe, the release of Virginia is not from her liability on account of the old bonds surrendered by the holder. These old bonds still are to remain, so far as the unfunded one-third of their amount, held in trust for the holder, but the release here provided for is expressly "on account of these certificates," by which was plainly meant that Virginia would not recognize these certificates as creating any distinct and substantive evidence of indebtedness on her part. They should not be construed to be causes of action against her. The holder, by surrendering his bond to be held in trust for him by Virginia, did thereby agree to await the result of Virginia's efforts to obtain from West Virginia the amount of her "just and equitable proportion of the public debt," which amount Virginia solemnly dedicated to the satisfaction *pro rata* of the one-third for which the bonds were held in trust by her. This provision in the seventh section of the act was designed to preclude the idea that these certificates created a new and distinct liability of Virginia. The previous language of the seventh section is—

> "The owners of all classes of bonds mentioned in this act, and who shall not yet have received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, *shall receive certificates of a like character to those issued under the act of March 30, 1871, when they make such exchange,*" &c.

We have seen that the certificates issued under the act of March 30, 1871, declared on their face (Record, p. 72)

that "the State of Virginia holds said bond so far as unfunded in trust for the holder thereof or his assignees, and these certificates, issued under this act of 1879, were to be of "like character." It is manifest, then, that under the act of 1879 there was no release by the bondholders of the liability of Virginia on the bonds surrendered to Virginia and held by her in trust for the holder as to the one-third.

(3) That under the act of February 14, 1882, entitled "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon" (Record, p. 21 *et seq.*), Virginia obtained a release of liability from the bondholders.

This was the act passed by the repudiating legislature, under the malign influence of the Mahone-Riddleburger reactionaries. This act was the fruitful source of all the litigation that so long disturbed the patience of this court, from Hartman *vs.* Greenhow, 102 U. S., 877, down through many years. By section 6 of this act (Record, p. 28) the form of a certificate was prescribed, which recites that "Virginia has this day discharged her equitable share of the — bond, * * * leaving a balance of — dollars * * * to be accounted for by the State of West Virginia, without recourse upon this Commonwealth."

Now this certificate does not even purport to be a contract on the part of the bondholder, nor does the act itself purport to alter, amend, or repeal the former acts. It was a mischievous attempt, conceived in wicked folly and wrought out in ignorance, to repudiate the public debt. It could operate only prospectively, and but few of the bonds remained at the date of its enactment on which it could operate. Whatever its purpose and intent were, it could have no sort of

effect on the relations then existing between Virginia and West Virginia nor between Virginia and those of her creditors who had already surrendered their bonds and received the certificates.

That by the act of February 20, 1892, entitled "An act to provide for the settlement of the public debt of Virginia not funded under the provisions of" [the preceding act], (Record, p. 31), Virginia was released. This was the first of a series of acts looking to the employment of a commission or committee as an instrumentality through which an arrangement might be made with all the holders of the bonds of every description issued by Virginia, whether funded or unfunded, under which all such bonds and the certificates issued in connection therewith might be assembled and united action taken by them with and through Virginia to obtain a final settlement of West Virginia's liability for her share of the public debt, the recovery of the amount of such liability, and the payment thereof to Virginia and the distribution by Virginia of such amount among the persons entitled thereto.

This was followed by the act of March 6, 1894 (Record, p. 39), and the act of March 6, 1900 (Record, p. 41).

On page 43 of the record appears the "Report of the commission appointed and acting under the joint resolution of the General Assembly of Virginia approved March 6, 1894, and the act of the said General Assembly approved March 6, 1900, with respect to certain certificates issued by the State in connection with the debt of the original State of Virginia, and known as Virginia deferred certificates."

This report is contained between pages 42 and 82 of the record. It shows all that was done by the Virginia Debt Commission and the bondholders' committee in obtaining concurrent action on the part of the creditors; it shows the scrupulous and intelligent care taken by the General Assembly of Virginia in requiring that a large majority of such creditors should unite in their demands before the

Commonwealth would take decided action; it required that an open, public, formal, and earnest request should be made upon West Virginia to come into a friendly settlement of these matters before any resort should be had to the courts for redress; it shows the extreme care taken by the Attorney General of Virginia to see that he was invested with full authority, and that all the conditions precedent to its exercise had been fully performed before he would institute the proceedings provided for in the acts; it shows, too, the address made by the Virginia Debt Commission to the legislature through their spokesman, Mr. Randolph Harrison (Record, p. 66), in which are the full history of the debt, the legislation had thereon, the repeated efforts made by Virginia to induce West Virginia to come into a friendly settlement, the sanction of law on which Virginia relied to support her demand, and the unpleasant consequences that must ensue in the event of West Virginia's persistent refusal to make a settlement.

The address was received with respectful silence, and it is of consequence to note that although it was heard by the assembled body of the legislative committees of West Virginia's intelligent legislature, that not then, or at any time since, as at no time in the long period that had passed, was any intimation given, or ground of refusal to the invitation urged, that West Virginia would not enter upon the proposed settlement because a COMPACT had been entered into between the two States, and which still subsisted, by which that very legislature had been chosen as the final arbitrator of the very matter as to which Virginia was asking a settlement.

HOLMES CONRAD,
Of Counsel for Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Original. No. 4.

IN EQUITY.

COMMONWEALTH OF VIRGINIA, ...COMPLAINANT.

VS.

STATE OF WEST VIRGINIA, ...DEFENDANT.

BRIEF FOR VIRGINIA, UPON MOTION TO ENTER DECREE REFERRING THE CAUSE TO A MASTER.

Drafts of a decree referring the cause to a Master have been submitted on behalf of the complainant, and the defendant, respectively.

[I]

There are some differences going rather to matters of procedure than to any question of principle, between the provisions of paragraphs III. and IV. of complainant's draft, as compared with paragraph VII. of defendant's draft, which will be apparent upon reading the two papers.

We respectfully ask that the provisions expressed in paragraphs III., IV. and V. of complainant's draft be embodied in the decree which the court shall enter, for reasons which will be apparent on reading those paragraphs.

[II]

Our serious objections to the defendant's draft of decree are particularly to paragraph II., but also to paragraphs III., IV. and V. thereof.

The draft submitted on behalf of the complainant directs the master to take an account ascertaining:

I.

"The amount of the public debt of the Commonwealth of Virginia as of the first day of January, 1861, stating specifically, how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness."

The defendant's draft adopts this paragraph.

Paragraph II. of plaintiff's draft directs the master to take the following accounts:

II.

"What amount and proportion of said indebtedness and of the interest accrued thereon, should in equity be apportioned to and be now paid by the State of West Virginia."

Paragraph II. of [redacted] draft directs the master to take the following accounts:

II.

(*a*) "The amount of State expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20th, 1861.

(*b*) "The aggregate ordinary expenses of the State government of the Commonwealth of Virginia,

prior to January 1st, 1861, and since any part of said indebtedness was contracted.

(*c*) "All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period."

Paragraph III. of plaintiff's draft directs that the master,

III.

"will make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the court."

We respectfully object to paragraph II. of defendant's draft, on the ground that it seems to lend the sanction of the court in advance to a basis or scheme for the statement of the account, which is not shown by anything as yet in the cause to be either equitable or just.

Before any such question can be fairly adjudicated, it is necessary to the ends of justice, that there shall be a mass of evidence in the case, not yet introduced, which evidence the court should have the aid of its master in collating and thoroughly digesting.

There is by no means enough in the record to enable the court to come to any just or definite conclusion as to the precise scheme which it would be equitable to adopt in stating the account.

To do so at this stage of the litigation, would be to decide an important question in the case before the evidence necessary for a full understanding and just decision of that question is before the court. It would be largely to take a step in the dark, which might, and in all probability would, do injustice to one party or the other.

Our main objection to paragraph II. of defendant's draft is that its effect manifestly is to have the court prejudge the case as to the basis on which the account shall be stated.

On the other hand, in the draft of decree tendered by counsel for Virginia, we have not asked the court to prejudge the case upon any controverted question of law or fact.

The case is not now being submitted for a decision upon its merits.

It is submitted for a decree referring it to a master, to state and report to the court the data necessary to enable the court to justly decide it upon its merits—and all the complainant desires is an opportunity to show the court and its master what is the fair and equitable basis upon which the account between the two States should be stated, under all of the circumstances of the case, as they shall appear when the evidence is all in.

If it should then appear that the basis prescribed by the Wheeling ordinance is binding upon the parties, and must be followed as the basis upon which the account shall be made up, that basis would be adopted. But if it should be then manifest that that arbitrary basis of settlement is not the one on which the account should be stated, because it would, if applied to the facts of the case as they shall appear in the evidence, lead to absolutely unconscionable results and operate to impair the obligation of the contracts by which the common debt was created, contracts which were and are alike obligatory upon Virginia and upon West Virginia, or for any other valid reason, then the scheme of settlement indicated in the Wheeling ordinance would have to be discarded, and an equitable basis and scheme of settlement adopted.

It is due to frankness to say, that, while the Wheeling ordinance upon its face, prescribes an absolutely arbitrary basis of settlement, the representatives of Virginia are satisfied that upon a fair, reasonable and just construction of the language of that ordinance, and of the subsequent supplemental enactments, the scheme of settlement therein defined will, when applied to the facts as stated in the bill, and as it is believed they can be established by proofs, result in fixing the proportion of the debt of Virginia which West Virginia should assume and pay, inclusive of interest, at a very large sum, though not so large a sum as it would be equitable for West Virginia to pay.

The debt, a portion of which she was to pay, was an interest-bearing debt. It would be manifestly "just" and "equitable" that West Virginia should be required to pay interest as well as principal. Indeed, any settlement which does not require that State to pay interest during the long period of her default and refusal to pay anything, would be not only unjust, and inequitable, but iniquitous.

The ninth section of said ordinance required the new State "to take upon itself a *just* proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861."

And section 8 of Article VIII., of the first Constitution of West Virginia, under the provisions of which she became a State, required that:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State;" and that "the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund *sufficient to pay the accruing interest* and redeem the principal within thirty-four years."

So, West Virginia came into the Union upon the distinct condition expressed in her Constitution, that she would assume an equitable proportion of the common debt of the undivided State, as it existed prior to January 1, 1861, and would provide for the payment of the accruing interest and the redemption of the principal thereof.

While it is believed that, upon the facts stated in the Bill and accompanying exhibits, and upon the proofs hereafter to be adduced in support thereof, West Virginia will owe a very large sum, even under the arbitrary scheme of the Wheeling ordinance, we submit that we should not, in the present status of the litigation, be tied down to the terms of that ordinance.

Indeed, its provisions were modified by the terms of the eighth section of Article VIII of the Constitution under which West Virginia was made a State, which provided that West Virginia should assume an equitable proportion of the com-

mon debt of the Commonwealth, principal and interest: And yet the defendant's draft excludes any item of interest from the account.

[III]

Another palpable objection to the defendant's draft is, that it excludes from the account the value of the property, assets, and money which West Virginia has received from the Commonwealth.

Upon any basis of just accounting, these items should be brought into the account.

If the account should be stated on the basis of the Wheeling ordinance, these items would manifestly be proper charges against West Virginia.

By the terms of that ordinance, Virginia's title to, and ownership of, all of the property and assets theretofore belonging to the Commonwealth remain intact.

By it, West Virginia would acquire no title to any of those assets or of that property. Framed as that ordinance was, by western Virginians, and arbitrary, and on its face unjust, as were the criteria by which it undertook to provide that West Virginia's proportion of the common debt should be computed, its authors were not so conscienceless as to also propose that the new State, after making such an inadequate contribution to its share of a debt which had been chiefly contracted by the votes of the representatives of its people and for their benefit, should also have a share of the property and assets of the Commonwealth, free of charge.

All that was, by the terms of that ordinance, to be ceded by the Commonwealth to the new State, was political dominion, and jurisdiction over the people and territory embraced in the new State.

The meaning and effect of the ordinance was to leave the title to, and ownership of, the assets and property of the Commonwealth in the Commonwealth.

If nothing more had been done or said by Virginia as to that property and those assets, than was said in the Wheeling ordinance, none of it ever would have become the property of West Virginia.

The Virginians who were the creators of West Virginia, who sat in the Wheeling Convention on the 20th of August, 1861, who constituted the convention which framed the first Constitution of West Virginia, and who constituted the Legislature of the restored government of Virginia which sat in Wheeling in 1862, and in 1863, fully recognized this to be true, for, pending the formation of the new State, and before the Legislature of Virginia had in any form given its consent to its creation out of the territory of Virginia, the Legislature of the restored State of Virginia, whose authority was supreme over the territory and people afterwards constituting West Virginia, and binding upon them, on the 3rd and 4th of February, 1863, passed the acts copied in the appendix to this brief.

These statutes constituted a part of the enactments out of which the State of West Virginia had its birth. It is particularly true of the act of February 3, 1863, that it was fundamental, so far as West Virginia was concerned: for it constitutes her title deed to a vast quantity of property, the title to which, by law and under the Wheeling ordinance, was vested in Virginia.

These statutes, together with the Wheeling ordinance, the first Constitution of West Virginia, the act of the United States Congress approved December 31, 1862, under which the new State was afterwards admitted into the Union, and the act of the Wheeling Legislature of May 13, 1862, constitute the constating instruments and acts by which her political existence was created, and her governmental powers and duties determined.

As was indicated by this court in its decision overruling the defendant's demurrer, the Wheeling ordinance, and Section 8 of Article *VIII* of the first Constitution of West Virginia, must be taken and read together: So also these constating acts of February 3rd and 4th, 1863, and particularly of February 3rd, 1863, must be taken and read together with Section 9 of the Wheeling ordinance, and with Section 8 of Article *VIII* of the first West Virginia Constitution, as together prescribing the terms and conditions on which the consent of the Commonwealth was given to the formation of the new State out of her territory, and the transfer to that

new State when formed of any portion of the assets and property of the parent State.

Property and money large in quantity and value were thereupon transferred by Virginia to West Virginia, for all of which West Virginia must account, not only as an equitable obligation resting upon her, under the circumstances, but as a legal obligation put upon her by positive and binding enactment.

All of these just items of charge against West Virginia, are excluded from the account to be directed by the court by the terms of defendant's draft.

For convenience of reference, the "Wheeling Ordinance," and the acts of the Legislature of Virginia at Wheeling, passed February 3rd and 4th, 1863, are printed as an appendix to this brief.

[IV.]

Another objection to the account called for by defendant's draft, is that it does not direct *any account to be taken ascertaining the amount and proportion of the debt of Virginia on and prior to January 1, 1861, which West Virginia should assume and pay,* but contents itself with merely directing the arbitrary and inconsequential accounts defined in paragraph *II* of defendant's draft.

But our principal insistance is that defendant's draft of a decree prejudges the case in advance of a hearing upon the merits, while that tendered for the plaintiff cannot operate to the prejudice of either party, upon any material question in the cause; by this draft the adjudication of these questions being left to await a hearing after the Master's report shall be filed, upon the evidence then fully in the cause.

[V.]

The precise accounts called for by paragraph *II* of defendant's draft will be taken by the Master if he shall find it necessary and proper to take them in order to ascertain the amount and proportion of the Virginia debt which West Virginia should pay; and if the Master shall for any reason deem it un-

necessary to take those accounts, the defendant can, under paragraph *III* of complainant's draft, have them stated as special accounts, if she shall be so advised.

Paragraph *III* of complainant's draft is designed to enable each party, or the Master, to have alternative, or special statements of the accounts made up on any basis on which either party or the Master may deem it proper or desirable that the same shall be stated.

By having the respective views and contentions of the complainant and the defendant thus presented in contrast in such concrete form, the court, with the assistance of the findings of the Master, will be enabled more readily and intelligently to reach a just conclusion.

[VI.]

If the inquiries defined in paragraphs III., IV., V. and VI. of defendant's draft have any pertinency to any question in the case, it must be because of something not yet in the record.

We object to them as being unnecessary and irrelevant.

(*a*) There is nothing in the cause, or so far as we know out of it, to show that there is any foundation in fact for the inquiry mentioned in paragraph III. of defendant's draft, as to whether Virginia has made any other contracts or arrangements with the public creditors, since January 1, 1861, in reference to the public debt. So that inquiry, though harmless, is useless.

(*b*) The accounts provided for in paragraphs IV. and V. of defendant's draft, are not pertinent to any issue in the cause.

Both relate to the certificates or receipts given by Virginia to the holders of the bonds issued by the Commonwealth before her dismemberment, who have deposited these bonds with her.

Those certificates are in the nature of a declaration of trust by Virginia, that she holds said bonds (so far as they have not been funded in the new securities which the Commonwealth has given for about two-thirds of the aggregate amount thereof, principal and interest), for the benefit of the owners of the bonds deposited with her.

It is impossible to see how those transactions could in any way affect any question which will arise in this cause.

The only function of those certificates is to show who are now entitled to the bonds which were so deposited with Virginia, and which she holds in her treasury for the benefit of these certificate holders, awaiting a settlement with West Virginia.

As is true of the inquiries mentioned in paragraph III., of defendant's draft, the objection to those provided for by paragraphs IV. and V. are that they are unnecessary and useless.

(*c*) The same objection applies to paragraph VI. of defendant's draft. That relates to the obligations which were issued by Virginia, as now constituted, in settlement of the two-thirds of the old bonds funded, and payment of which was assumed by her.

That is a matter with which West Virginia has nothing to do, and which does not affect the rights or obligations of either party in respect to the claims asserted in complainant's Bill.

Those new bonds given by Virginia for the two-thirds of the old bonds assumed by her, and accepted by the owners of the old bonds so deposited with Virginia, operated as a payment and discharge of the old bonds to the extent of the two-thirds thereof so funded.

West Virginia is not sued here to pay any part of that two-thirds so settled by Virginia. She is sued to have her assume and pay so much of the remaining unfunded third of the common debt of the undivided State, as may be West Virginia's equitable portion of the whole of the debt represented by the bonds of the original State. It has never been claimed or suggested that there was any liability on West Virginia beyond said unfunded third of the bonds of the original State which have been funded; or that West Virginia should pay more than one-third of the bonds issued by Virginia prior to the formation of West Virginia, which have not been funded.

The liability of West Virginia on account of the common public debt, has sometimes been estimated by Virginia or her representatives at one-third thereof, but never at more than one-third, and Virginia has undertaken to take care of the other two-thirds with which West Virginia has nothing to do.

It is true, that there are some millions of the debt of the undivided State, which Virginia has paid in full, and holds the

obligations so taken up by her as a claim against the new State, to the extent of West Virginia's equitable liability for contribution therefor; and the extent of that liability can be ascertained and stated in the account directed by paragraph II. of complainant's draft.

There is no occasion for any of the accounts directed by paragraphs III., IV., V. and VI. of defendant's draft. If West Virginia wants any of them to be stated, she can have that done as a special statement under paragraph III. of complainaint's draft.

[VII.]

We object generally to the defendant's draft, that it does not direct the accounts which are necessary to be taken in order to intelligently, definitely, and fairly determine the amount and proportion of the debt of the undivided State, which West Virginia is equitably and justly bound to pay.

Respectfully submitted,

WILLIAM A. ANDERSON,

COUNSEL FOR VIRGINIA.

APPENDIX.

Copy of the ordinance adopted by "the Wheeling Convention," providing for the formation of the new State afterwards called West Virginia.

AN ORDINANCE.

To provide for the formation of a new State out of a portion of the territory of this State.

(Passed August 20, 1861.)

Whereas, it is represented to be the desire of the people inhabiting the counties hereinafter mentioned, to be separated from this Commonwealth, and to be erected into a separate State, and admitted into the Union of States, and become a member of the government of the United States:

1. The people of Virginia, by their delegates assembled in convention at Wheeling, do ordain that a new State, to be called the State of Kanawha, be formed and erected out of the territory included within the following described boundary: beginning on the Tug Fork of Sandy river, on the Kentucky line where the counties of Buchanan and Logan join the same; and running thence with the dividing lines of said counties and the dividing line of the counties of Wyoming and McDowell to the Mercer county line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh county line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton, to the southwest corner of Hardy county; thence with the dividing line of the counties of Hardy and Tucker, to the Fairfax Stone; thence with the line dividing the States

of Maryland and Virginia, to the Pennsylvania line; thence with the line dividing the States of Pennsylvania and Virginia, to the Ohio river; thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning; including within the boundaries of the proposed new State the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke, and Hancock.

2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties, on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new State, as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a Constitution for the government of the proposed State.

3. The convention hereinbefore provided for may change the boundaries described in the first section of this ordinance, so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section; if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed State, and shall elect delegates to the said convention, at elections to be held at the time and in the manner herein provided for.

4. Poll books shall be prepared under the direction of the governor for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed "For the New State," the other "Against the New State."

And it shall be the duty of the commissioners who superintended, and the officers who conducted the election in May last, or such other persons as the governor may appoint, to attend at their respective places of holding elections, and superintend and conduct the election herein provided for. And if the said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending the said election, and to appoint officers to conduct the same. It shall be the duty of the persons superintending and conducting said election, to employ clerks to record the votes, and to endorse on the respective poll books the expenses of the same.

If on the day herein provided for holding said election, there shall be in any of the said counties any military force, or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of the commissioners superintending, and officers conducting said election, and the clerks employed to record the votes, each before entering upon the duties of his office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll books, and ascertain the number of votes recorded in each, and make a return thereof to the Secretary of the Commonwealth, in the city of Wheeling, which return shall be in the following form, or to the following effect:

We, ... commissioners, and ..... conducting officer, do certify, that we caused an election to be held at ....., in the county of ....., at which we permited all persons to vote that were entitled to do so under existing laws, and that offered to vote, and that we have carefully added up each column of our poll books, and find the following results:

For a new State, ... votes; Against a new State, ... votes.

Given under my hand, this ..... day of ....., 1861.

Under which certificate there shall be added the following affidavit:

..... County, to-Wit:

I, ..., a justice of the peace, (or any officer now authorized by law to administer oaths,) in and for said county, do certify that the above named commissioners and conducting officer severally made oath before me, that the certificate by them above signed is true.

Given under our hand, this ..... day of ....., 1861.

The original poll books shall be carefully kept by the conducting officers for ninety days after the day of election and upon the demand of the executive shall be delivered to such person as he may authorize to demand and receive them.

5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new State, who has been elected from their county to the convention, hereinbefore provided for, and shall certify to the Secretary of the Commonwealth the name or names of the person or persons elected to the said convention.

6. It shall be the duty of the governor, on or before the fifteenth day of November next, to ascertain and by proclamation make known the result of the said vote; and if a majority of the votes given within the boundaries mentioned in the first section of this ordinance, shall be in favor of the formation of a new State, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling, on the 26th day of November next, and organize themselves into a convention; and the said convention shall submit, for ratification or rejection, the Constitution that may be agreed upon by it, to the qualified voters within the proposed State, to be voted upon by the said voters on the fourth Thursday in December next.

7. The county of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monon-

galia, Preston, and Wood shall each elect two; and the other counties named in the first section of this ordinance shall each elect one delegate to the said convention. And such other counties as are described in the third section of this ordinance, shall, for every thousand of their population according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred; but each of said counties shall be entitled to at least one delegate. The said delegate shall receive the same per diem as is now allowed to members of the general assembly; but no person shall receive pay as a member of the general assembly and of the convention at the same time.

8. It shall be the duty of the governor to lay before the general assembly, at its next meeting, for their consent according to the constitution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new State, and also in favor of the constitution proposed to said voters for their adoption.

9. The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.

The lands within the proposed State, of non-resident proprietors shall not in any case be taxed higher than the lands of residents therein. No grants of lands or land warrants issued by the proposed State, shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last, which shall be located on lands within the proposed State now liable thereto.

10. When the general assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the union of States.

11. The government of the State of Virginia as re-organized by this convention at its session in June last, shall retain, within the territory of the proposed State, undiminished and unimpaired, all the powers and authority with which its has been vested, until the proposed State shall be admitted into the Union by the Congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said re-organized State government in any county which shall not be included within the proposed State.

(SIGNED) A. I. BOREMAN, *President.*

(SIGNED) G. L. CRANMER, *Secretary.*

Copies of acts passed by the Legislature of Virginia, at Wheeling, February 3rd, and February 4th, 1863.

CHAPTER 68.—*An ACT transferring to the proposed State of West Virginia, when the same shall become one of the United States, all this State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, in counties embraced within the boundaries of the proposed State aforesaid.*

Passed February 3, 1863.

1. Be it enacted by the General Assembly of Virginia, That all property, real, personal and mixed, owned by or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the State of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein con-

tained; and shall include among other things not herein specified, all lands, buildings, roads, and other internal improvements, or parts thereof situated within the said boundaries, and now vested in this State, or in the president and directors of the board of the literary fund, or the board of public works thereof, or in any person or persons, for the use of this State to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries standing in the name of this State or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this State.

2. Be it further enacted, That all unpaid and uncollected arrearages of taxes on lands, town lots, property tax, capitation tax, license tax, militia fines, fines imposed by courts, forfeitures and penalties, belonging to the State in the hands of sheriffs, collectors or individuals, in any or all of the counties embraced within the boundaries of the proposed State of West Virginia, as also all bonuses on the capital stock of any bank, taxes on the dividends declared by any bank, savings institution or insurance company; dividends on stock owned by the State, or by the board of public works, or the president and directors of the board of the literary fund, in any bank, bridge or other corporation in any one of the counties aforesaid; also taxes on seals, deeds, wills, writs and other legal processes due from the clerks of the courts, notaries public or the secretary of the commonwealth; taxes on passengers and tonnage due from railroad companies, taxes on bank notes or other property transported by express companies within the counties aforesaid; also all fines, forfeitures and penalties incurred by railroad, express companies or other parties or persons within the counties aforesaid; also all judgments, decrees or penalties incurred by officers of the State, railroad or express companies, or other persons before or since the reorganization of the State government at the city of Wheeling; also all suits and their

results now pending in the name of the board of public works, or of the president and directors of the board of the literary fund in any court of any of the counties aforesaid; also all taxes on lands, town lots, property tax, capitation tax, assessed in the counties aforesaid, and due the State for the year eighteen hundred and sixty-three, in the hands of officers of the State or individuals, together with all the rights of the State, or of the board of public works, or of the president and directors of the board of the literary fund to any and all moneys and claims in the counties aforesaid that may not be specifically mentioned in this act, but that rightfully belong to the State or corporations for the use of the State, shall be the property of the State of West Virginia, when the same shall become one of the United States.

3. It shall be the duty of all sheriffs or collectors of the public revenue, also of the presidents or other officers of railroad, express, bridge or internal improvement companies, presidents and other officers of banks, savings banks and insurance companies, clerks of courts, notaries public, the secretary of the commonwealth, and of individuals owing or having money in their hands due the State, or the board of public works, or the president and directors of the board of the literary fund, in any of the counties aforesaid, to pay the same into the treasury of the State of West Virginia, when the same shall become one of the United States.

4. Be it further enacted, For the purpose of carrying this act into effect, that suits may be brought in the name of the commonwealth for the use of the State of West Virginia, when it becomes one of the United States, on any bond or claim which shall pass to or become the property of the State of West Virginia by virtue of this act.

5. Be it further enacted, That if the appropriations and transfers of property, stocks and credits provided for by this act take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State: provided that no such property, stocks and credits shall have been obtained since the reorganization of the State government.

6. It shall be the duty of the auditor of public accounts, the secretary of State, the treasurer and the adjutant-general of this commonwealth to procure fit and proper blank books for the purpose, and cause to be transcribed therein true copies of all such records, official acts, orders, minutes and memoranda, and like copies of original papers upon which any such official action was based, which from its locality or general state interest appertains to and will be useful and advantageous to the State of West Virginia; and the officers aforesaid shall severally certify to the governor of this commonwealth the correctness of their respective copies; and it shall be the duty of the governor to certify to all whom it may concern, the official character of such officers so certifying under the great seal of this commonwealth, and deliver all such copies to the governor of West Virginia, when his election is officially declared, for the use of said State of West Virginia.

7. This act shall take effect when the proposed State of West Virginia shall become one of the United States.

CHAPTER 72.—*An ACT making an appropriation to the proposed new State of West Virginia when the same shall become one of the United States.*

Passed February 4, 1863.

1. Be it enacted by the General Assembly of Virginia, That the sum of one hundred and fifty thousand dollars be, and is, hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

2. Be it further enacted, That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Vir-

ginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State.

3. Be it further enacted, That the act passed May fourteenth, eighteen hundred and sixty-two, making an appropriation of one hundred thousand dollars to the State of West Virginia be, and the same is hereby repealed.

4. This act shall be in force from passage.

Office Supreme Court, U. S.
FILED.
APR 6 1908
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, NO. #2

COMMONWEALTH OF VIRGINIA, Complainant

vs.

STATE OF WEST VIRGINIA, Defendant.

REPLY BRIEF FOR VIRGINIA UPON MOTION TO REFER THE CAUSE TO A MASTER.

WILLIAM A. ANDERSON,
Attorney-General,
and as such Counsel for Virginia.

Supreme Court of the United States

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA, Complainant

vs.

STATE OF WEST VIRGINIA, Defendant.

REPLY BRIEF FOR VIRGINIA UPON MOTION TO REFER THE CAUSE TO A MASTER.

The propositions contended for by the counsel for West Virginia in their elaborate brief upon the above motion will be here reviewed, though not in the order in which they are presented.

AS TO ORDER OF PROCEDURE.

While this court in *Rhode Island* v. *Massachusetts*, 14 Peters, 210, 257, considered it proper that the proceedings in that case should "be regulated by the rules and uses" of the English Court of Chancery, it declared that:

> "in a controversy where two sovereign States are contesting the boundary between them, it will be the duty of the court to mould the rules of chancery practice and pleading in such a manner as to bring this case to a final hearing *on its real merits. It is too important in its character, and the interests concerned are too great, to be decided upon the mere technical principles of chancery pleading.*" 14 Peters, 257.

It will not be gainsaid that this language applies with added force to this case.

The only rule of chancery practice adopted by this court, is in accordance with this just conception of its powers and duties, and is as follows:

> "Rule 3. This court considers the former practice of the courts of King's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary."

Neither the technical rules of practice obtaining in the circuit courts of the United States; nor those approved by Mr. Bates and other learned text-writers; nor those sanctioned by any other tribunal whatever will *control* this court in the matter of the procedure and processes which it may deem necessary and proper to adopt, in order to attain the ends of justice.

This results from the very nature of its powers and duties in a case like this, as to which its jurisdiction is not only exclusive, but final, plenary and absolute.

In this its only rule upon the subject, the court has indicated the former practice of the courts of chancery in England as

"affording outlines" for the practice of this court in chancery causes.

If we look to the practice of the English courts in chancery, and to the chancery practice sanctioned by the courts and jurists of this country, precedents and authorities will be examined in vain to find any sanction for the proposition that each of the six rules laid down by Mr. Bates in the section quoted in the brief for West Virginia, must be complied with before there can be a decree for an account in a case like this; nor are we willing to believe that the learned counsel for the defendant would carry their contention to any such extremity.

2 Daniel's Chy. Pl. & Pr. (5th Ed.) p. 1004 and note 7;
Adam's Equity (8th Ed.) Book III, Chapter 1, M. pp. 220 to 222-226;
Story's Eq. Pl., Sec. 218 & note (b);
1 Story's Eq. Jurisprudence (13th Ed.) Chapter VIII. Titles, Account, Apportionment, and Partnership, Sections 450, 469 to 477-483-488-671.

The general rule is that a decree for accounts, or order of reference is from its nature interlocutory, because it directs an inquiry and contemplates the bringing of new and additional facts into the record. It would be practically impossible to state in advance all the principles of law which might apply to the facts as they might thereafter be developed. As if an account of debts were ordered against a partnership, corporation, or estate, it would be impracticable to state in advance what rules of law should obtain in regard to the establishment of such debts; as for instance, what might be valid defences, such as failure, or want of consideration, the statute of limitations, payment, set-off, &c., any of which might be interposed

against the different debts as presented, and no one could say in advance to what extent they might be applicable or valid.

"A decree is understood to be interlocutory whenever an inquiry as to a matter of law or fact is directed preparatory to a final decision." *Bebee* v. *Russel,* 19th How., 285, and in the same case we find the following citation from the 2nd volume of Perkin's Daniel's Chancery Practice 1193, "that the most usual ground for not making a perfect decree in the first instance, is the necessity which frequently exists for a reference to a master of the court, to make inquiries, or take accounts, or sell estates and adjust other matters which are necessary to be disposed of, before a complete decision can be come to upon the subject matter of the suit," p. 285.

The primary purpose of this suit is to invoke the equitable jurisdiction of "Account"; to have the account between the parties, involving more or less complicated transactions, made up of a vast number of items running through a period of more than seventy years, stated, in order to obtain from the defendant the amount for which she shall be thus ascertained to be equitably liable.

The principal facts upon which the complainant's claim depends, namely; the formation of the new State out of the territory of the Commonwealth of Virginia; the existence of a public debt of the undivided State of some $33,000,000.00 at and before that event, a large part of which remains an unsatisfied and binding obligation upon both States; the ordinances, public acts, and fundamental stipulations and enactments by which West Virginia assumed, and became liable for an equitable proportion of that common indebtedness,—all of these and other material facts are alleged in the bill, and are, either not controverted by the defendant's answer, or are established by the documents and public records filed with the

bill, or are a part of the history of the two States, and of the times, and of the country.

The facts which justify the complainant in instituting her suit for an accounting, and for a decree thereupon, are thus sufficiently established to entitle her to a decree to that end. Indeed, we had supposed that the decree of this court overruling the defendant's demurrer, had pretty well settled this.

If precise proof of Virginia's claim should be required to be made, before a decree for an accounting would be entered, it would be necessary for the court to devote months of its time to the examination of the books, accounts, documents, and transactions of the Commonwealth, in connection with the creation of the debt, the expenditures made in the counties now constituting West Virginia, and the payments made from those counties into the treasury of Virginia, during a period of forty years or more, and also to the examination of the records of both States in reference to the lands and other property which West Virginia received from Virginia.

It is difficult to conceive how a stronger case could be presented for the exercise of the equitable jurisdiction of "Account," "in order to bring the case to a final hearing upon the merits."

But while the case is not in a condition for the court to intelligently and fairly "pass upon all the issues made in the pleadings," it is in condition for a decree of reference, in which decree the principles upon which the account shall be stated should be settled, so far as it is practicable to do that from the data now in the record, and without doing injustice to either party.

In the draft of decree tendered on the 7th of last December by counsel for the complainant, some important questions were left open which we are prepared now on further consideration

to say, it would be as well, or better, to have settled in advance.

To this extent we concur, upon this point, in the views presented by the learned counsel for West Virginia.

While the basis of settlement prescribed by the Wheeling Ordinance is, as we have always considered it, arbitrary and inequitable, we have never taken the position that that Ordinance, *reasonably and fairly construed,* and taken and applied together with the Act of the Restored Government of Virginia of February 3, 1863, and section 8 of Article VIII of the Constitution under which West Virginia became a State, was not binding on both States.

While thus construed and applied, the amount and proportion of the public debt assignable to West Virginia will doubtless be much less than it would have been equitable for her to have assumed and paid, we are constrained to the opinion that the plan of settlement prescribed and sanctioned by the foregoing enactments is binding upon Virginia.

It is due to candor also, to say that, although it is true that the Convention which enacted the Wheeling Ordinance, was not called, constituted, or organized in accordance with the requirements of the Constitution and laws of Virginia, and was a revolutionary body; although it could then have been shown that that Convention and its acts were invalid, and may now be contended that the Convention and the Wheeling Ordinance which it adopted, were fictions, nevertheless, they and their offspring, the Restored Government of Virginia, and the State of West Virginia, have since received such recognition and sanction from every department of the United States Government, and from the Government of Virginia also, that, what, in its inception, was a fiction, has become a *legal* fiction, and now has all of the force, if not all of the virtue, of a legal verity.

We are constrained to recognize the following propositions as true:

(a) That the State of West Virginia could have no legal birth or existence without the consent of the Legislature of Virginia.

(b) That the only Legislature of Virginia which ever gave its consent to the formation of West Virginia, was the Legislature of the Restored Government which, sitting at Wheeling on the 13th of May, 1862, gave its consent to the formation of the new State, "according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th of November, 1861."*

(c) That the Act giving such consent and the Legislature which passed it, depended for their validity upon the validity of the Wheeling Ordinance under which the Restored Government of Virginia was organized.

(d) That said Convention, and its acts, and the Government which it established, have been legitimated, by recognition by every department of the Government,--by the President of the United States in his official intercourse and dealings with the Governor and officials of said Restored Government, by approving the bill for the admission of West Virginia, and by his proclamation announcing the admission of the new State into the Union; by the Congress of the United States in the admission of Senators Willey and Carlisle elected by the Legislature of the Restored Government, by the passage of the Act approved December 31, 1862, admitting West Virginia into

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*At the time of the argument upon the demurrer, counsel for complainant were under the impression that this Legislature had not been convened pursuant to the proclamation of the Governor, without which proclamation the meeting of the Legislature would have been, under the then Constitution of Virginia, invalid; but subsequently the Executive Journal of the Governor of Virginia at Wheeling, for 1862, was found, and it appears from it that Governor Pierpont issued a proclamation under which the special session of the Legislature in May, 1862, was held.

the Union, and by other acts; and by the United States Supreme Court, by its decision in *Virginia* v. *West Virginia*, 11 Wallace, p. 39, in which the Wheeling Convention and this very Wheeling Ordinance and the Wheeling Legislature of Virginia, are recognized as being a Convention, an Ordinance, and a Legislature of the Commonwealth of Virginia.

We are forced by these considerations to conclude that it too late now to question the binding effect of the Wheeling Ordinance.

Still, it cannot be forgotten that there was not a man in the Virginia, and West Virginia, Wheeling Conventions of 1861-2, and 3, from any of the counties or cities which now constitute Virginia, except the four men admitted to seats in the Virginia Convention at Wheeling, of August, 1861, two of them from Alexandria and two from Fairfax county, both parts of the present State of Virginia; that there was no pretence that there was any representation whatever in said Conventions, or in the Legislature of the Restored Government of Virginia, from more than two-thirds of the territory and people of Virginia; and that, in a number of instances, the very same men acted as the representatives both of the people of Virginia, and of the people of West Virginia, in said Conventions and Legislatures.

The indisputable facts are, that it was the people of the counties and cities now constituting West Virginia, or their representatives, who were dealing with the people of the same counties and cities, or their representatives, and undertaking to make covenants and stipulations with themselves which would bind all the people, and the entire Commonwealth of Virginia, in matters of the utmost importance to them.

Among other instances of manifest injustice in the plan prescribed in the Ordinance, is, that it operates to exclude from the

account all items of expenditure in the early years of the last century.

If the principle adopted by that Ordinance was just, why should its application be stopped in 1820?

For a number of years before that date there had been large expenditures made by Virginia in what is now West Virginia, towards which the people of that section had contributed little or nothing. For a long period after the settlement of Western Virginia, the rest of the State had practically to carry that section of the Commonwealth.

Many times as much was expended there on public account, as it contributed to the Treasury of the Commonwealth.

All that was well enough, for it was reasonably hoped that in time, with the development of the bountiful resources of that trans-mountain region and the consequent increase of its wealth, the accounts would be squared.

From the very dawn of the internal improvement policy of Virginia the dream of her leading men was the construction of some efficient line of communication between her Eastern and her Western waters.

This was earnestly advocated by Washington, and others of her representative citizens, and among these Chief Justice Marshall applied the great powers of his mind and unerring judgment in aid of a wise solution of the problem.

In 1812, at the request of the General Assembly, he devoted much of his time to arduous service as Chairman of a Commission which was created for the purpose of examining the intervening region, and ascertaining and reporting as to the best route and mode of communication between the Eastern and Western waters.

Together with other members of the Commission, the Chief Justice spent some time among the mountains and wild woods of Western Virginia, much of it then almost a trackless wilder-

ness, in the patriotic discharge of this voluntarily accepted duty.

The report of this Commission which was evidently written by the Great Chief Justice, will be filed as an exhibit in the cause, not only as indicating the purpose and desire of Virginia at that early day to open up a highway through West Virginia, but as an interesting fact in connection with the history of the internal improvement policy of Virginia.

From 1812 down to the breaking out of the war which resulted in her dismemberment, the means and energies of the Commonwealth were largely devoted to the construction of roads, turnpikes, water-ways, and railroads, and especially to lines which were designed to develop Western Virginia.

This policy generally received the earnest support of the people of what now constitutes West Virginia, and their representatives, and very little indeed of the debt would have been contracted if they had opposed it; for there was a powerful opposition to that policy and to contracting the debt in large portions of the Eastern part of the State.

As giving some notion of the views of leading and representative citizens of Western Virginia, extracts from the message to the General Assembly, of Governor Joseph Johnson, of Harrison county, West Virginia, in January, 1852, will be printed in the appendix to this brief.

These are incontrovertible facts, to which we cannot shut our eyes, unless we would ignore the truth.

We therefore respectfully submit that these ordinances and public acts, adopted under such circumstances, should not be construed strictly against Virginia, who, without the actual consent of her people, or their representatives, was to be bound by them.

On the contrary, they should be strictly construed against West Virginia, in whose interest they were manifestly conceived and made.

That the rule embodied in the Wheeling Ordinance was not only arbitrary, and inequitable, but contrary to the usages of nations, and the principles of natural equity and public law, as enunciated by the great publicists and jurists of the world, and also as expressed by learned American authors, will be manifest from an examination of the extracts from the works and opinions of a number of these authorities which will be found in an appendix to this brief.

It will be seen that the authorities there quoted, with a single exception, all substantially agree that the rule of equity applicable to such a case is, that the common debt and common assets shall be apportioned between the two States ratably.

The only exception to this practically unbroken line of authority, is to be found in Mr. Hall's treatise on International Law. With entire deference for his ability, we respectfully submit, that the views of this learned author upon this subject are unsupported by reason or authority, and are repugnant to those principles of justice and right, from which the rules of International and Public Law derive their highest sanction.

If Mr. Hall is correct, then three-fourths, or four-fifths, of a State, could, by splitting off from the original State, escape liability for the common public debt of the unsevered Commonwealth, and leave that burden to rest exclusively upon the remaining parcel thereof.

The flagrant injustice of such a rule would be the same if it should be applied to this case, the only difference here being one, not in principle, but in degree; for, here the new St embraced perhaps one-third of the actual, and one-half of the prospective and potential resources and wealth of the original State, instead of three-fourths, or four-fifths thereof, as in the case just assumed.

The debt was created by the whole State, bound the whole State, and should be paid by the whole State.

Its obligations rested equally upon the whole State, and upon every part of it, and should have been, and should now be, borne by every part of the undivided Commonwealth, whether each part has received its ratable share of the expenditures made out of the money for which the debt was contracted, or not. It would be exceedingly difficult, indeed impossible, to apportion the debt upon any basis which would require each county, or each section, or each grand division, to contribute to its payment in proportion to the benefits actually received by such county, section, or grand division—and no sanction for any such principle will be found in the writings of the publicists and jurists who have considered and discussed these questions.

But, if it be true, as is indicated in the Bill, and as it can and will be demonstrated to be true, that the public debt of the Commonwealth was created largely for the constuction of works of internal improvement which would develop the vast resources of Western Virginia then known to be lying there in boundless but almost useless affluence; that some of the most important and most expensive of these works would not have been undertaken, if it had not been believed that their construction would have that effect; that the policy under which and the acts by which that debt was contracted received the warm and active support of the people of the counties which now constitute the new State; *that a large part of that debt was contracted by the votes of a majority of the representatives from those counties, and against the wishes and the votes of a majority of the representatives in the General Assembly from the counties constituting the present State of Virginia; and that a very small part of the debt was or could have been created had the people from the counties now forming West Virginia, and their representatives in the General Assembly opposed its creation,*—if these facts which are a part of the history of the

Commonwealth, be true, how could the amount of money which was expended in West Virginia be, by possibility, any just or equitable measure of the share of that debt which, in good conscience, she should assume and pay?

Yet, by the Wheeling Ordinance, that is made the chief measure for determining the proportion of the common debt which the younger Virginia should assume and pay.

Tried by every test of authority, and every standard of principle and right, the basis of settlement prescribed by the Wheeling Ordinance, was, upon its face, arbitrary, illogical, and inequitable, and yet the learned counsel for West Virginia, would, by construction, give it a meaning which would make it work even greater hardship and injustice upon Virginia, than its language fairly interpreted would justify.

Here, then, we have an Ordinance which prescribes a plan of settlement, palpably unjust and inequitable, and in contravention of both common right, and of the common public law of the civilized world.

Such an enactment clearly comes within the time-honored rule, that a statute in derogation of common right or of common law must be strictly construed—and so construed as to conform it in its operation and effect, to the principles of right and justice and of the common law, so far as this can be done without violating the manifest *expressed* purpose of the statute.

See this Rule as applied to Acts in derogation of the common law.

> Enlich on Interpretation of Statutes, §127, citing *Brown* v. *Barry* 3 Dall., 365, 367; *Shaw* v. *R. R. Co.*, 101 U. S., 557; *Newell* v. *Wheeler*, 48 N. Y., 476; and a number of other cases.

This salutary rule, especially as to statutes in contravention

of common right, but also as to those in derogation of the common law, is embodied in the jurisprudence of both Virginia and West Virginia.

Commonwealth v. *Gaines,* 2 Va. Cases, 172-175.
Richmond City v. *Daniel,* 14 Gratt., 485, 487.
Delaplain v. *Crenshaw,* 15 Gratt., 457, 470.
Virginia & S. W. R. R. Co. v. *Clower,* 102 Va., 867, 871.
Wheelright v. *Commonwealth,* 103 Va., 512, 519.
Davis v. *Commonwealth,* 17 Gratt., 617.
Alexandria & Fredericksburg R. R. Co. v. *Alexandria & Washington R. R. Co.,* 75 Va., 780, 788.
Harrison v. *Leach,* 4 W. Va., 383.
Harrison v. *Smith,* 4 W. Va., 97.
Pendleton v. *Barton,* 4 W. Va., 496.
McGugin v. *O. R. R. R. Co.,* 33 W. Va., 63, 68.
Richardson v. *N. & W. R R. Co,* 37 W. Va., 641.

To the same effect are a large number of decisions of other States, a few of which are:

Webb v. *Baird,* 6 Ind., 13.
Sewall v. *Jones,* 9 Pick., 412.
Mayor of Savanah v. *Hartridge,* 8 Ga., 23.
Chapin v. *Persse & Brooks Paper Works,* 30 Conn., 461.
Phillips v. *Dunkirk R. Co.,* 78 Pa. St., 177.

By the express terms of the 9th Section of the Wheeling Ordinance, it was provided that:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained," &c.

That is the paramount and controlling mandate and stipulation of the clause which prescribes the portion of the debt which the new State shall assume and pay.

Our insistence is, that the residue of the clause should be so construed as to give effect to the righteous principle thus expressly made the rule by which West Virginia's liability under it shall be determined.

The enactment should be interpreted and applied so as to to defeat that purpose, *ut res magis valeat quam pereat.*

And so, whenever in stating the account between the two States under the provisions of the Ordinance, a question shall arise as to whether a particular item of charge against West Virginia shall be included in the account, such construction should be given to the Ordinance as will tend to place upon the new State a just proportion of the common indebtedness, rather than a construction which will tend to exonerate West Virginia from her just and equitable share thereof.

In other words, in the application of the arbitrary basis prescribed by the Ordinance, Virginia should, according to the equitable rules of construction which are especially applicable to this case, be given the benefit of every reasonable doubt.

If the construction and effect, which, as we understand their position, opposing council advocate, be given to that Ordinance, the Act of February 3, 1863, and to Section 8 of Article VIII of the first Constitution of West Virginia, the result will be one of palpable wrong and injustice to Virginia.

The whole Wheeling Ordinance will be found printed in full in the appendix to the opening brief of counsel for Virginia, upon this motion.

Its provisions and the language in which they were formulated, were manifestly the work of intelligent and able lawyers.

It fully specifies the terms upon which Virginia authorized

the formation of the new State,—terms which having been recognized as being in the nature of things fundamental, and upon the acceptance of them, and the formation of a new State under them with the sanction of Congress, they became contractual, and operated as a covenant binding both States.

As a necessary corrollary to this, there results this now self-evident truth, namely, that no additional or new term could be added to that Ordinance, without the consent of Virginia.

While it is true that the opening brief of counsel for Virginia, upon this motion, did not accept the basis prescribed by the Wheeling Ordinance as having been *irrevocably* fixed, as the one by which the settlement must be made, and intimated that in the event that it should turn out upon the application of that scheme of accounting to the facts of the case, that it would "lead to absolutely unconscionable results, and operate to impair the obligation of the contracts by which the common debt was created, contracts which were obligatory alike upon Virginia and West Virginia, or for any other valid reason, then the scheme of settlement indicated by the Wheeling Ordinance would have to be discarded, and an equitable basis and scheme of settlement adopted."

In other words, if the basis prescribed by the Ordinance should, when applied, produce results which would shock the moral sense of mankind, and operate a fraud upon Virginia and the common creditors of both States, then it would be right for the court to adopt some other basis.

But the statement above quoted is immediately followed by this qualifying paragraph:

> "It is due to frankness to say, that, while the Wheeling Ordinance upon its face, prescribes an absolutely arbitrary basis of settlement, the representatives of Virginia are

satisfied, that upon a fair, reasonable, and just construction of the language of that ordinance, and of the subsequent supplemental enactments, the scheme of settlement therein defined will, when applied to the facts as stated in the bill, and as it is believed they can be established by proofs, result in fixing the proportion of the debt of Virginia which West Virginia should assume and pay, inclusive of interest, at a very large sum, though not so large a sum as it would be equitable for West Virginia to pay."

Farther investigation and consideration convince the representatives of Virginia and her counsel that fairly construed and applied, as we believe they must be construed and applied by a court of equity, the Ordinance and the constating Acts which constitute as much a part of the plan of settlement adopted by the two States, as does the Ordinance itself, will not lead to any such unconscionable results, as would appear to be inevitable particularly if the Ordinance be taken by itself.

It may be that the framers of those instruments built fairer than they intended. It is pretty certain that they built fairer than they knew.

Clause III, pp. 6 to 8 of the opening brief upon this motion, succinctly and frankly states the position of the complainant in reference to the scheme of settlement which we seem to be shut up to.

The following quotation from that clause (p. 7 of opening brief):

"As was indicated by this court in its decision overruling the defendant's demurrer, the Wheeling Ordinance, and Section 8 of Article VIII of the first Constitution of

West Virginia, must be taken and read together: So also these constating acts of February 3, and 4, 1863, and particularly of February 3, 1863, must be taken and read together with Section 9 of the Wheeling Ordinance, and with Section 8 of Article VIII of the first West Virginia Constitution, *as together prescribing the terms and conditions on which the consent of the Commonwealth was given to the formation of the new State out of her territory, and the transfer to that new State when formed of any portion of the assets and property of the parent State.*"

correctly expresses the views of complainant and her counsel upon this question, as the same are stated in the Bill, in the oral arguments and printed briefs of counsel for complainant upon the questions arising upon the demurrer, and as now stated in this brief, and as, in principle at least, sanctioned by the opinion of the court upon the questions raised by the demurrer.

Various questions are suggested by the brief of the distinguished counsel for West Virginia, in respect to the meaning and effect of that Ordinance, and the basis, and principles upon which the accounts between the two States should be stated, and the settlement between them made, which questions we agree should be now determined by the court, and directions given to its Master accordingly, so far as it is practicable to do so without working injustice.

These questions will be now considered:

I.

The first of them which we ask the court now to decide is: Whether West Virginia is not justly and ~~largely~~ legally chargeable with interest?

In this connection, we must remember that the contract which we are considering was a Virginia contract.

Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation,—and whenever a debt is due, the debtor is bound to pay interest unless relieved from this obligation by agreement. This is, and has been the law of the Commonwealth for more than one hundred years.

In *Jones* v. *Williams,* 2 Call, 106, decided in 1799, Edmund Pendleton, who was one of the great Judges of our country, delivering the opinion of the court said:

> "Interest is allowed because it is natural justice that he who has the use of anothers money should pay interest for it."

Cited with approval in *Baker* v. *Morris,* 10 Leigh, 284, *McVeigh* v. *Howard,* 87 Va., 599, and *Stuart* v. *Hurt,* 88 Va., 343.

In *Hatcher* v. *Lewis,* 4 Randolph, 152, 157, the court laid down the rule in the following expressive language:

> *"The interest follows the principal as the shadow does the substance."*

In *Chapman* v. *Shepherd,* the court said:

"In contracts for the payment of money, interest is not given as damages at the discretion of the court, or jury, but as an incident to the debt, which the court has no discretion to refuse."

Chapman v. *Shepherd,* 24 Gratt., 377, 384.
Roberts v. *Cocke,* 28 Gratt., 207.
Tidball v. *Shenandoah National Bank,* 100 Va., 741.

"Interest is favored both by the legislative and judicial bodies of the State."

Tazewell v. *Saunders,* 13 Gratt., 354, 370.

In *McVeigh* v. *Howard,* the Supreme Court of Appeals of Virginia said: 87 Va. 699

"It is the settled rule that when no day is named in the bond or note given for the payment of a precedent debt, it is due and payable on the day of its date, and bears interest from that date, though no interest be reserved. Such an instrument like a bond or note payable, in Virginia, on demand, is payable presently, and bears interest from date. This doctrine is founded in good conscience and correct morals." * * *

Citing *Jones* v. *Williams* and *Hatcher* v. *Lewis,* quoted above.

Such is the law of Virginia as to interest.

The law of West Virginia in regard thereto is the same.

In *Shipman* v. *Bailey,* Judge Snyder, announcing the unanimous opinion of the Supreme Court of Appeals of that

State, after citing a number of authorities upon the question, stated the rule as follows:

> "Other authorities of the same character might be cited, but, we think, we have given sufficient to establish the rule, which seems to be, that in contracts for the payment of money interest on the principal sum is a legal incident of the debt and a part of the contract, and wherever there is a contract for the payment of a specified legal rate of interest, whether such rate is fixed by the contract itself or by the law of the place where the contract is made, the obligation of the contract extends to the payment of such interest as fully as it does to the principal sum, and courts have no more power to change the rate of interest thus fixed, than they have to dispense with the enforcement of the contract either in whole or in part."

Shipman v. *Bailey*, 20 W. Va., 140, 146.

That decision reaffirms another proposition, applicable to this case, already a part of the jurisprudence of West Virginia, by the adjudications of the Supreme Court of Virginia rendered before the birth of the new State, namely, that the *lex loci contractus* controls in the matter of the interest chargeable against a debtor.

In *Pickens* v. *McCoy*, the court affirms *Shipman* v. *Bailey*, and adopts the language just quoted from that decision. 24 West Va., 344-352.

Independently of these West Virginia decisions, such parts of the common law, and of the laws of the State of Virginia as were in force on the 20th of June, 1863, when the first Constitution of West Virginia went into operation, and as are not repugnant to said Constitution, were continued and declared to

be the law of West Virginia. Section 8 of Article XI of the first West Virginia Constitution.

The effect of this provision was to adopt for the new State the body of the common and statute laws of the Commonwealth, so far as the same were in force within the boundaries of the new State on the 20th of June, 1863.

As part of this body of laws, the law of Virginia as to interest became, and has continued to be, a part of the laws of West Virginia.

Such, then, was the law of Virginia before, at the time of and since the formation of West Virginia, as to the legal and equitable liability of a debtor or contractor to pay interest. Such has been the law of West Virginia since the hour of her birth. And such was, and is, the law of the contract evidenced by the public Acts of Virginia and West Virginia set forth in complainant's Bill.

The framers of the Wheeling Ordinance must be presumed to have drawn that instrument with reference to the principle of equity and justice which had then and long before that time been embodied in the laws of Virginia by the repeated decisions of her highest court.

To Virginia lawyers of that day, as since that time, Judge Coalter's apt formula of the doctrine that, "the interest follows the principal as the shadow does the substance," was as familiar as any other accepted rule of equity or of law.

Under the law of Virginia in force at the time of these transactions, interest upon the portion of the debt which West Virginia was to take upon herself, was an essential incident of the debt, and its payment as much a part of the obligation as was the payment of the principal.

But, even if the *lex loci contractus* had not brought us to this conclusion, the language of the ordinance itself, fairly construed, leads to the same result.

That language is that:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," &c.

Now, that debt was an interest bearing debt. It was represented by obligations of the undivided State, some of them payable at a future day, some of them at a future day and thereafter at the pleasure of the Commonwealth, but all of them interest bearing obligations, obligations in which the payment of the stipulated interest was made as much a part of the debt as was the payment of the principal.

The interest was as much a part of the debt as was the principal, and as many of the bonds were payable thirty-four years after date, and some of them at the pleasure of Virginia with interest from date, the interest as to much of the debt constituted much the greater part of it.

It was the manifest intention of the enactors of that Ordinance, unless we are to ascribe to them the sinister purpose of perpetrating flagrant wrong and injustice upon Virginia, that the new State should take upon itself, and relieve what remained of the old State of a part of the burden of debt which rested upon both States. They knew that that burden consisted as well of interest, as principal, and as much, or more, of interest than of principal.

It was not proposed that the new State should, as soon as she became a State, pay in cash a sum to be ascertained in the manner indicated in the Ordinance. The framers of the Ordinance understood too well that, under the conditions then existing, it would be impossible for the new State to raise and pay any considerable sum in cash.

Why, the new State was dependent upon the old State for

the money necessary to enable her to begin business, and she did not have, and in the nature of things could not command, a sufficient amount in cash to pay off one-fifth or even one-tenth of the then Virginia debt.

The stipulation was not that the new State should pay a sum in cash on account of its share of the common indebtedness; but that it should take upon itself a just proportion of that debt, to be ascertained as in the Ordinance prescribed.

Are we to understand that a court of conscience is to be asked to construe that stipulation to mean that the new State shall take upon itself only a proportion of a part of that debt? That it shall assume a share of the principal only of the debt, but shall be exonerated from any part of the interest which was, and is, as integral a part of the Virginia debt, and of the obligations which represent it, as the branches are a part of the tree from whose trunk they spring?

In their very elaborate reply brief upon this motion, opposing counsel devote very little attention to this important question, although it was plainly in their minds when they prepared their draft of decree, and although their attention was challenged to it by the opening brief for Virginia. There is some discussion of the question at pp. 35 to 37 of their brief, but that discussion ignores the facts and the principles upon which West Virginia's legal, "equitable," and "just" obligation to assume and pay the interest as well as the principal of her share of the debt, rests.

But West Virginia's equitable and legal liability to pay interest upon her share of the debt of Virginia does not depend alone upon the Wheeling Ordinance, or upon the law of Virginia and of West Virginia which makes the interest an essential part of a debt; but it rests also upon the express terms of the Constitution under which West Virginia became a State.

Now, by the Act of the Virginia Legislature at Wheeling,

of May 13, 1862, the validity of which we no longer question, for reasons hereinbefore stated, Virginia gave her consent to the formation of the new State out of her territory, "under the provisions set forth in the Constitution for said State of West Virginia and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th da November, 1861."

It is true that this consent was predicated upon West Virginia's being erected into a State under the provisions of that identical Constitution, without the performance of which condition that consent was abortive and ineffectual.

The fact is, that at the behest of Congress, that Constitution was subsequently amended in a material particular, which change, unless objection thereto had been waived, or the change assented to by the Legislature of Virginia, would have rendered the previous conditional consent null and void.

But since the opening brief upon this motion was filed the counsel for Virginia who writes this brief, has discovered the following joint resolution, which it seems was adopted by the Legislature of Virginia at Wheeling, on the 9th of December, 1862:

> "No. 2. Joint Resolution requesting the House of Representatives of the United States to take up and pass without amendment, the bill for the admission of the State of West Virginia, passed by the United States Senate on the 10th of July last.
>
> Passed December 9, 1862.
>
> *Resolved,* That feeling the greatest anxiety and interest in the successful issue of the movement for a new State in West Virginia, we earnestly request the House of Repre-

sentatives of the United States to take up and pass, without alteration or amendments, the bill which passed the Senate of the United States on the 10th of July last."

See "Constitution and Statutes Va. & West Va., 1861-66."

This resolution was telegraphed to Washington on the evening of the day on which it was passed. History of West Virginia by Lewis, p. 389.

The Senate Bill referred to in the resolution was taken up in the House of Representatives, and passed on the 10th of December, and was approved by President Lincoln and became a law on the 31st of December, 1862, in the very form in which the Legislature of Virginia had by its Joint Resolution of the 9th of December, 1862, requested and urged that it should be passed.

This Act of Congress to which the Legislature of Virginia had thus given its assent, made it a condition of the admission of the new State into the Union, that its proposed Constitution should be amended in the particular in which it was afterwards amended by the Convention and people of West Virginia, in regard to the emancipation of slaves.

The effect of said Joint Resolution, was, under these circumstances, to waive any objection by the Legislature of Virginia to the amendment made to the Constitution of West Virginia at the instance of Congress, and to make the consent given by the Act of May 13, 1862, effective, notwithstanding that amendment.

What, then, was the effect of the admission of West Virginia to the Union under the consent thus given, and the Constitution upon which that consent was predicated?

It will not be denied that the condition upon which the consent of the Legislature of Virginia was given to the formation

of West Virginia and her admission into the Union as a State, was, that she should become a State under the provisions of the Constitution under which her statehood was sanctioned by Congress.

Among the most important of those provisions, so far as Virginia was concerned, were those expressed in Article VIII of that Constitution in reference to the public debt.

Section 8 of that Article reads as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

We have a right to assert that, unless West Virginia had been required to assume and pay an equitable proportion of the Virginia debt in manner and form as was expressly prescribed in this Section, the consent of the Legislature of Virginia would never have been given to the creation of the new State.

These were, therefore, fundamental conditions of West Virginia's existence.

By accepting these conditions, the new State became bound in equity and in law to perform them in good faith.

Upon grounds which have been already indicated, as sufficient and controlling we are constrained to concede that Section 8 of Article VIII of the first West Virginia Constitution, and Section 9 of the Wheeling Ordinance being *in pari materia*, must be read together, and that the proportion of the debt which the new State was required by this provision of her Con-

stitution to assume, was to be ascertained in the manner prescribed by the Ordinance.

But the Constitution goes farther, and expressly provides as to the equitable proportion of the debt which West Virginia should assume, that her Legislature should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This was precisely in accordance with the plan which had long theretofore been adopted by the Commonwealth for the payment of her debt.

This plan was embodied not only in the statutes, but also in the Constitution of Virginia in force when West Virginia, became a State.

It was embodied in that Constitution in the following terms:

> "29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this Commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the Commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid

thereon at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The General Assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion."

Section 29 of the Constitution of Virginia, in force from January 1, 1852, Code of Virginia for 1860, p. 47.

It was expressed in a concrete form and given further effect by the second Section of the following Act passed by the General Assembly of Virginia:

"Chap. 17.—An Act establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.

Passed March 26, 1853.

* * * * * * * * * * * * * * * * * *

"2. Whenever after the said first day of January, eighteen hundred and fifty-two, a debt shall be contracted by the Commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed."

* * * * * * * * * * * * * * * * * *

Acts of General Assembly of Virginia, Session of 1852-3, p. 29.

Its effect was, therefore, well understood to be to conform the undertaking of West Virginia in regard to the time and manner of the payment of her share of the debt to the plan and scheme of payment which had been adopted by the Commonwealth, and which experience had approved.

That scheme was the creation from the annual revenues of the State, of a fund equivalent to seven per centum of the principal of the debt. Of this, six per centum went to pay the annually accruing interest, and one per centum was invested and set apart to retire the principal sum due, within thirty-four years, and this arrangement was defined as a sinking fund.

It was found, and if the calculation is made it will be shown to be true, that one *per centum* of any sum invested and compounded at six *per centum* interest per annum, will in thirty-four years produce an amount equal to such sum.

This was the theory and the plan which Virginia had adopted for the liquidation of her debt.

It was a plan with which Messrs. Willey, Van Winkle, Hall, Brown, Haymond, and other members of the first West Virginia Convention, who had been previously members and some of them able members of the General Assembly of Virginia, were doubtless entirely familiar: And it is the same plan which we find incorporated in the scheme of settlement which constitutes a part of the foundation upon which West Virginia's existence as a State rests.

By this clause of West Virginia's Constitution, therefore, it was required, not that the new State should pay a lump sum in cash, to be ascertained in the manner prescribed, but that she should *assume* "an equitable proportion of the public debt of the Commonwealth" existing on the 31st of December, 1860, and should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

The framers of the West Virginia Constitution thus manifestly adopted, and engrafted upon that instrument, the plan which for nine years or more had been a part of the organic and statutory law of Virginia for the extinguishment of her public debt, and the Legislature of Virginia accepted and approved that plan.

That plan included, (as the West Virginia Constitution also expressly included), an undertaking on the part of the Commonwealth to pay the accruing interest, and to liquidate or redeem the principal of each bond representing the debt, within thirty-four years.

(This statement is subject to this qualification, that as to a considerable portion of the debt, particularly that contracted prior to 1852, like English consols, the principal was redeemable at the pleasure of Virginia).

In simple language, the stipulation of West Virginia expressed in her Constitution, and accepted and acted upon by Virginia, was, that West Virginia would pay the accruing interest on her share of the debt, as it should accrue, and the principal thereof within thirty-four years.

That such was her express undertaking, appears from the language of her first Constitution, interpreted according to the reasonable and natural meaning of that language.

That such was the purpose, meaning, and effect of that language, is conclusively shown when we read it in the light of the plan established by the Constitution and statute of Virginia, then in force, for the establishment of a sinking fund for the liquidation of her public debt, which plan was adopted by the new State as to its share of that debt.

And so, we find that both by the express terms of the Wheeling Ordinance fairly construed, and by the express terms of the Constitution under which Virginia and the National Congress consented that West Virginia should become a State, this

new State has become expressly obligated to pay interest upon the share of the principal of the common public debt for which she is liable. U. S. v North Carolina, 136 U.S. 211

Another question which arises in connection with the consideration of this subject, is, from what time is West Virginia justly and equitably bound to pay that interest?

Answer to this is furnished by the Wheeling Ordinance and by the Section of the first West Virginia Constitution above quoted.

The settlement by the terms of both instruments was to be made as of the arbitrary date of January 1, 1861, or to be precisely accurate, as of December 31, 1860. That, accordingly, is the date from which fairly, equitably, and legally, (because it accords with the express terms of both the Ordinance and the Constitution) the interest should be computed.

As already shown, the debt, a proportion of which as of that date, West Virginia was to assume and pay, was an interest bearing debt, and the interest was as integral a part of it as was the principal.

A farther kindred inquiry to the last is: To what time should West Virginia be required to pay such interest?

Our response to this is, that she is justly, equitably, and legally bound to pay this interest,

(1) By the terms of the Wheeling Ordinance, certainly, for the period during which the debt of the Commonwealth existing on the 31st of December, 1860, would continue to be an interest bearing debt: And we have seen that that was not only until the obligations representing the debt became due, but under the just rule of the law of Virginia as to interest, in force during the whole period of the creation of the debt, until that principal should be fully paid.

(2) By the terms of the Section of her Constitution above quoted, West Virginia undertook that her Legislature should

assume and pay the accruing interest and the principal of her share of that debt in thirty-four years.

Her Legislature has failed either to assume, or to pay that [illegible], or any part of it.

The interest accruing thereon from December 31, 1860, has ontinued to accrue, as to her, until it now amounts to vastly more than the principal. It was that interest which West Virginia agreed to pay, and it was that principal for the payment of which West Virginia's Legislature was to make provision, so that the same should be paid within thirty-four years.

We are unwilling to anticipate that the learned and fair-minded counsel for the defendant will argue that West Virginia, by the language of that provision of her Constitution, is only bound to pay interest for thirty-four years from December 31, 1860, or from June 20, 1863, because we are unwilling to assume that our distinguished opponents would contend that a State, any more than an individual, should be allowed to take advantage of her own wrong, or profit by her own procrastination, and neglect of duty.

Here, West Virginia has not only not taken upon herself a just, or any other proportion of the common public debt, nor provided for the payment of the accruing interest thereon, and for the payment of the principal, but she has persistently failed and refused to do either of these things, and has by the votes of her Legislature, repeatedly repudiated any and all liability whatever for any part of that indebtedness.

(See Resolutions of Legislature of West Virginia in Appendix).

With all deference for the distinguished counsel for the defendant, we venture to believe that a court of equity will not allow any defendant, and particularly a State, which should be

an exemplar of fair and honorable dealing in all of its transactions, to make gain out of its own palpable dereliction of duty.

And so, our response to such contention, if it shall be urged is, that equity will not suffer any party to take advantage of his own wrong.

Here, fortunately for West Virginia, it will, by reason of her increased wealth and prosperity, be far easier for her to pay the principal and the accumulated interest now, than it would have been to have paid the interest annually as it accrued, and the principal thirty-four years from 1861, or 1863. West Virginia could pay thirty million of dollars now, with as little inconvenience as she could have paid three or four millions thirty-five or forty years ago.

If there ever was a case to which the benign doctrine of Virginia law, that "interest follows the principal as the shadow does the substance," should be applied; we seem to have such a case here.

Nor is there any extravagance in the language of our opening brief upon this motion, when we say that,

> "any settlement which does not require that State to pay interest during the long period of her default and refusal to pay anything, would be not only unjust and inequitable, but iniquitous."

II.

The Wheeling Ordinance provides; that in ascertaining the just proportion of the debt which the new State shall take upon itself, it shall be charged with;

> "all the State expenditures within the limits thereof,

and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included in said new State during said period."

There cannot well be any question as to what will be included in the first item of the debit charge against the new State under this language. It includes all expenditures of whatever kind made by Virginia in any part of the territory embraced in the new State, since any part of the debt was contracted. There will be no controversy as to the earliest date when any part of the debt existing on the 31st of December, 1860, was contracted.

Part of the debt, then unpaid, was created as far back as 1820. So, the period covered by the account will be from, say, January 1, 1820.

There is likely to be some question as to what shall be regarded as under the circumstances, a just proportion of the ordinary expenses to be charged to West Virginia.

As to the criterion on which the apportionment of the expenses of government should be made, if that is to be the population, we respectfully submit that in this case it should be the free populations—the citizenship—and not the total of the free and the slave population. The care and policing of the slaves cost the State little or nothing. Those matters were regulated by their masters on the plantations. Of course, none of them could vote; but upon the "mixed basis" of representation which was partially adopted in Virginia, they counted to some extent in fixing the basis of representation in the General Assembly; that is, five negroes counted as much as three white men, where the mixed basis prevailed.

The debt was contracted solely by the votes of the white popu-

lation or their representatives. It was expended by them or under laws of their enactment. The taxes were levied exclusively upon the property of the free population; and the revenues were appropriated and expended as they directed, and exclusively for their benefit.

The negroes did not constitute a part of the citizenship of the State during any part of the period when the debt was contracted, or the money realized from it was expended; nor were they any part of the body politic.

Under these circumstances we would submit as a just criterion for such apportionment the white population of the territory embraced in West Virginia, and of the territory still remaining to the Commonwealth, at the times when the expenditures to be apportioned were made.

However, there is not probably, as yet, enough in the record to enable the court to decide this question intelligently; or satisfactorily.

III.

Another and quite an important question which can probably be fairly considered and decided, upon what is now in the record, and which should be decided now, if a just conclusion about it can be reached at this time; is, whether West Virginia shall be charged, in the settlement to be made, with the property or assets which she has received from the Commonwealth?

The Act of the Virginia Legislature at Wheeling, of February 3, 1863, which is printed in the appendix to the opening brief for Virginia on this motion, expressly provides that "the new State shall duly account for the same in the settlement hereafter to be made with this State." See Section 5 of the Act of February 3, 1863.

Counsel for West Virginia deny that these important items

shall be brought into the account; and in order to have any ground on which to base their objection, they contend that the Acts of February 3 and 4, 1863, were not binding upon West Virginia; that her rights were determined by the Wheeling Ordinance, and by the provisions of her first Constitution, and by the Act of May 13, 1862, of the Virginia Legislature at Wheeling, and the Act of Congress approved December 31, 1862, giving the consent of the Congress to the formation of the new State and her admission to the Union; that these Acts were all effective, and the rights of the new State definitely determined by them before the Acts of February, 1863, were passed; and that those Acts of the Virginia Legislature of February 3 and 4, 1863, were not binding upon West Virginia, and imposed no obligation upon her, because she had already, by reason of the consent given by Virginia to her statehood, been absolutely vested with the very rights which the Act of February 3rd, undertook to confer upon her upon conditions.

The answer to this argument, vigorously and ably as it is presented, is complete.

The position of the counsel for the defendant upon this point would find support in the doctrine laid down by Mr. Hall, *if there had been no agreement between Virginia and West Virginia as to the terms upon which the partition of the old State should be made, and the debt thereafter apportioned between the two States;* but neither Mr. Hall, nor any other authority will be found to sanction the proposition, that, where a new State has been erected out of the territory of the old State by treaty or by a convention between the mother State and the new State any such doctrine applies.

The rule in that case logically, and necessarily is, and must be, that where the two States have undertaken to define and prescribe the terms upon which the new State shall be created, the rights and obligations of the two States will thereafter be

determined absolutely by the stipulations and provisions of such treaty or convention.

The elementary rule of universal application, that a party will not be allowed to add to, or to take from, the terms of a valid written instrument applies with intensified force to a compact between two sovereign States.

The Wheeling Ordinance, which taken together with the first Constitution of the State of West Virginia; the Act of the Virginia Legislature at Wheeling, of May 13, 1862, giving the consent of the Legislature of Virginia to the formation of the new State under the provisions of that Constitution, and the Act of Congress approved December 31, 1862, giving the consent of Congress to the creation of the new State and to her admission into the Union, constitute a compact; and to this compact no new term can be added, and no term prescribed therein can be taken away.

Now, the Wheeling Ordinance, and the article of the Constitution of West Virginia referred to, are absolutely silent upon the subject of the property and assets of the Commonwealth of Virginia. While the Wheeling Ordinance, with the greatest particularity, undertakes to prescribe and define minutely the terms upon which the new State shall be created, its boundaries, and the rights of property of individuals residing therein, it makes no provision whatever in respect to property held by Virginia in her corporate capacity, whether it be personal or real. As a necessary effect of the terms of that Ordinance, the title and ownership to that property remained, after its enactment, and after the formation of the new State of West Virginia, just where they were vested before the Ordinance was enacted; and that is, in the Commonwealth of Virginia.

As already indicated no new term can be incorporated in, or added to, that Ordinance, without the consent of Virginia;

and yet, the learned counsel for the defendant would have the court, by a forced construction to interpolate a new term into this Ordinance which was, as we have a right to assume, intentionally excluded from it by the parties who framed it.

If there is any contract or covenant to which the doctrine of *expressio unius est exclusio alterius* ought to apply, it is to a compact like this between States, affecting the rights of the people of those States for all coming time.

The men who framed the Wheeling Ordinance and the Constitution of West Virginia among whom were evidently lawyers of a higher order of ability, intelligence, and learning, must have fully realized the meaning and effect of the Wheeling Ordinance, and must have known that it did not transfer to the new State any title or ownership in respect to any of the property and assets which Virginia owned in her corporate capacity; for we find that they, or some of them, were instrumental in the enactment of the Act of February 3, 1863, which undertook to cure this omission, which was doubtless an intentional omission, and to vest in the new State the property and assets of Virginia, the situs of which was within the limits of the new State, upon the just and equitable terms that the new State should account in that settlement for the value of all such property, in the settlement to be made between the two States.

The only settlement to be made between the two States, was the settlement in regard to the public debt; and the purpose of the Act of February 3, 1863, was to provide that the new State should account in that settlement for the value of the assets and property which she should acquire from Virginia under that Act.

The Legislature of Virginia at Wheeling had the right to exercise supreme dominion over the territory and people of West Virginia at the time that the Act of February 3, 1863, was passed; subject only to the limitations of the Constitutions

of Virginia, and of the United States; so that the Act of February 3, 1863, was clearly within the competency of the Legislature of Virginia to enact; nor can we be blind to the fact that the portion of the territory of Virginia which was represented by Senators and Delegates in the Legislature at Wheeling, was practically coincident with the territory of the proposed new State of West Virginia; so that it was in fact the representatives of the people who were about to form themselves into the State of West Virginia, who enacted the Act of February 3, 1863.

Upon these grounds, we can fairly claim that the Act of February 3, 1863, was a valid law, and binding upon the people who afterwards constituted the State of West Virginia.

But that Act has still farther sanctions which make it absolutely binding upon the people of West Virginia.

The 8th Section of Article XI of the first Constitution of West Virginia is as follows:

> "8. Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia, when this Constitution goes into operation; and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature." * * *
>
> Article XI, Section 8, 1st West Virginia Constitution; effective June 20, 1863.

We respectfully insist that the effect of this provision of the Constitution was to sanction and continue in force the Acts of February 3 and 4, 1863, both of which were in force within the boundaries of the State of West Virginia at the time that that Constitution went into operation.

But this Act of February 3, 1863, has received still farther and express sanction and acceptance by a positive enactment of the Legislature of West Virginia. Section 8 of the Act of the Legislature of West Virginia, approved December 20, 1875, Acts of the Legislature of West Virginia, Session of 1875, p. 126, is as follows:

> "8. The Auditor shall institute all the necessary and appropriate measures for the collection of all claims for taxes and other demands transferred by the Commonwealth of Virginia to this State by an act of the General Assembly of said Commonwealth entitled 'an act transferring to the proposed State of West Virginia, when the same shall become one of the United States, all the State's interest in property; unpaid and uncollected taxes, fines; forfeitures, penalties and judgments in counties embraced within the boundaries of the proposed State aforesaid;' passed on the third day of February, 1863."

And therefore, we respectfully, but earnestly, claim that West Virginia is equitably, legally, and justly, bound to account for all property and assets, whether real or personal, which she has received from the Commonwealth of Virginia; in the settlement which it is the object of this suit to bring about.

There is, we think; enough in the record to show that no equitable settlement can be made between the two States upon the basis of the Wheeling Ordinance and the constating Acts referred to, unless there shall be brought into the account with West Virginia a fair charge against her for such assets, money, or property as she has received under the Acts of February 3 and 4, 1863, and upon the fullest examination and consideration which we have been able to give to the subject.

we are satisfied that even then the amount with which West Virginia will be chargeable on account of the public debt of the undivided State, will be far less than she ought to have assumed and paid if we have reference to all of the facts, and all of the equities of the case.

It is proper to state here that in so far as any property or money which West Virginia acquired from Virginia, either under the Acts of February 3 and 4, 1863, or otherwise, was property which was acquired by Virginia by the expenditure of money within the limits of the State of West Virginia, or money paid by Virginia, after 1819, the new State will, of course, be chargeable with the amount so expended or paid by the Commonwealth, under the Wheeling Ordinance, and not under the Act of February 3, 1863, in the settlement to be made between the two States, for the Wheeling Ordinance provides that the new State shall be charged with all expenditures made within its limits by the Commonwealth of Virginia, since any part of the debt was contracted.

Counsel for Virginia will file a modified draft of decree in conformity with the views presented in this brief; which we will respectfully ask the court to consider, and to enter, if they shall approve the same.

Respectfully submitted

WILLIAM A. ANDERSON,

Attorney General and as such Counsel for Virginia.

APPENDIX No. 1.

To Reply Brief for Complainant on motion for order of reference in *Virginia* v. *West Virginia*.

The doctrine of the apportionment of the public debt of a State, which is divided into two or more States.

Grotius states the principle as follows:

> "On the other hand it may happen that what has been one State, is divided, either by mutual consent or by hostile force, as the body of the Persian Empire was divided among the successors of Alexander.. When this transpires, several sovereignties exist instead of one, each with its own rights; *but if anything had been in common; that ought either to be administered in common, or divided in portions pro rata.*"
>
> Grotius' Book II; Chapter 9; Section 8.

And Puffendorf says:

> "Where a kingdom divides by common consent into two or more distinct Commonwealths, the public patrimony with all the debts and incumbrances upon them, ought to be equally shared among them. Tho' indeed when such separations are made by mutual agreement, there is commonly express provision made for such cases."
>
> Puffendorf's Law of Nature & Nations, Book VIII, Chapter 12; Section 5.

Chancellor Kent thus concisely states the doctrine:

> "If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement, those rights are to be enjoyed; and those obligations fulfilled, by all the parts in common."
>
> 1 Kent's Comm. pp. 25-26.

Phillimore thus clearly states the rule:

> "If a nation be divided into various distinct societies, the obligations which had accrued to the whole before division, are, unless they have been the subject of a special agreement, ratably binding upon the different parts."
>
> 1 Phillimore International Law, Part II, Chapter 137, M. p. 158.

Pomeroy expresses the rule in the identical language of Mr. Phillimore.

Pomeroy's International Law, Section 74.

Mr. Dana expresses himself as to one phase of the doctrine as follows:

> "In the separations and re-arrangments of nations in Europe, special provisions are usually made for the payment of public debts; and the principle seems admitted; that, in case of a division of a State, each new State is bound for the whole debt contracted by the former; and; in the case of a union of States; it seems equally clear that, as the whole must defend the part in war which is

the international process of attachment it must practically pay the debt, although the foreign power may look only to the people and land of the State which made the contract. The formation of the new State so alters the nature of all the securities the creditor looked to; that the new State has a general obligation to see that he does not suffer by the change.

See Article 13 of treaty of 1839 for the separation of Belgium; and the treaty of Zurich, ceding Lombardy to Sardinia."

Wheaton's Int. L.—Edited, with notes, by Richard Henry Dana, Section 30, Note 18.

Mr. Halleck, after stating the effect of the dismemberment of a State by the loss of a portion of its territory by foreign conquest, or by the revolt and separation of a province, says:

"§27. The case is slightly different where one state is divided into two or more distinct and independent sovereignties. In that case, the obligations which had accrued to the whole, before the division are, (unless they have been the subject of a special agreement), ratably binding upon the different parts. This principle is established by the concurrent opinions of text-writers; the decisions of courts, and the practice of nations. It was incorporated into the treaty by which the modern kingdom of Belgium was established."

Halleck's International Law & Laws of War; Section 27.

Mr. John Bassett Moore thus states the doctrine:

> "In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division are ratably binding on the different parts; for as Story says, 'the division of an Empire creates no forfeiture of previous vested rights of property.'"
>
> 1 Moore's Digest Int. L. p. 334, citing
> Abdy's Kent, p. 96, and
> Lawrence's Wheaton, 52 (m) 20.

A number of precedents are cited by Mr. Moore in Vol. I, Section 97, pp. 339-365, of his Digest of International Law, giving the terms upon which public debts of States have been divided and apportioned, by conventions, or treaties, between the States affected, in cases where there has been a division of territory by war, conquest; or treaty.

No sanction for the rule prescribed in the Wheeling Ordinance will be found in any of the adjustments of public debts, there recorded by the learned author.

Judge Story declared the following fundamental truth:

> "It has been asserted as a principle of the common law, that the division of an empire creates no forfeiture of previously vested rights of property.
>
> And this principle is equally consonant with the common sense of mankind and the maxims of eternal justice."
>
> Mr. Justice Story in *Terrett and others* v. *Taylor and others*, 9 Cranch, 43; 50, citing *Kelly* v. *Harrison*, 2 Johnson, c. 29, *Jackson* v. *Lunn;* 3 Johnson, c. 109.

In *Hartman* v. *Greenhow*, 102 U. S. 672-677, Mr. Justice Field states the rule of international law in the following language:

> "Writers on public law speak of the principle as well established, that where a State is divided into two or more States, in the adjustment of liabilities between each other, the debts of the parent State should be ratably apportioned among them. On this subject Kent says: 'If a State should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, their rights are to be enjoyed and their obligations fulfilled by all the parts in common.' 1 Com., 26. And Halleck, speaking of a State divided into two or more distinct and independent sovereignties says: 'In that case, the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers; the decisions of courts, and the practice of nations.'" Interna. L., ch. 3, section 27."

And this language was again approved by Mr. Justice Field in his dissenting opinion in *Antoni* v. *Greenhow*, (in which opinion Mr. Justice Harlan concurred), 107 U. S. 769-7, where the following language is used:

> "It is a well settled doctrine of public law, that, upon a division of a State into two or more States, her debts shall be ratably apportioned among them. See authorities upon this subject in *Hartman* v. *Greenhow*, 102 U. S., 677."

The only dissent from the principles thus enunciated by this long line of authorities by any author whose opinions would carry any weight upon such a subject, which we have been able to discover, is to be found in the dogma of Mr. Hall; in his work on International Law, where that learned author says:

> "§27. When a new State splits off from one already existing, it necessarily steps into the enjoyment of all rights which are conferred upon it by international law in virtue of its existence as an international person, and it becomes subject to all obligations which are imposed upon it in the same way. No question therefore presents itself with respect to the general rights and duties of a new State. What, however, is its relation to the contract obligations of the State from which it has been separated; to property belonging to and privileges enjoyed by the latter, and to property belonging in common, before the occurrence of the separation, to subjects of the original state in virtue of their status as such, when some of them after the separation become subjects of the new State?
>
> The fact of the personality of a state is the key to the answer. With rights which have been acquired, and obligations which have been contracted, by the old State as personal rights and obligations the new State has nothing to do. The old State is not extinct, it is still there to ful- The new State, on the other hand, is an entirely fresh be- fill its contract duties, and to enjoy its contract rights. ing. It neither is, nor does it represent, the person with whom other States have contracted, they may have no reason for giving it the advantages which have been accorded to the person with whom the contract was made; and it would be unjust to saddle it with liabilities which

it would not have accepted on its own account. What is true as between the new State and foreign powers, is true also as between it and the old State. From the moment of independence all trace of the joint life is gone. Apart from special agreement no survival of it is possible, and the two States are merely two beings possessing no other claims on one another than those which are conferred by the bare provisions of international law. And as the old State continues its life uninterruptedly, it possesses everything belonging to it as a person, which it has not expressly lost, so that property, and advantages secured to it by treaty, which are enjoyed by it as a personal whole, or by its subjects in virtue of their being members of that whole, continue to belong to it. On the other hand, rights possessed in respect of the lost territory, including rights under treaties relating to cessions of territory and demarcations of boundary, obligations contracted with reference to it alone, and property which is within it, and which has therefore a local character, or which, though not within it, belongs to State institutions localized there, transfer themselves to the new State person. Conversely, of course, the old State person remains in sole enjoyment of its separate territory, and of all local rights connected with it.

* * * * * * * * * * * * *

Property which becomes transferred by the fact of separation consists in domains, public buildings, museums and art collections, communal lands, charitable and other endowments connected with the State, and the like. When a portion of the lands belonging to a commune or to an endowment lies without the boundary of the new State it is only considered that a right to the value of the property is transferred. Convenience may dictate expropriation

from the property itself; and it is only then necessary to pay its full value by way of compensation."

Hall's International Law, Sec. 27.

The fallacy of the positions taken by this learned author will be manifest when we reflect, that, if the Wheeling Conventions and Legislatures had chosen to annex, and had annexed fifty or sixty other counties to the new State, so that it would have embraced more than two thirds of the population and territory and actual and potential wealth, public properties, assets and resources of the undivided Commonwealth, the new State would have taken a good title to all of those assets, properties, and resources, free and discharged from any liability whatever for any part of the antecedent public debt of the Commonwealth, if the ordinances and other public acts of the Wheeling Conventions and Legislatures had omitted to impose any obligation upon the new State to assume and pay any part of that public debt.

Such a result would shock the moral sense of mankind; and yet, it would be no more unjust and inequitable than that which would confront us here, if the views of this eminent author are correct, had the Wheeling Conventions and Legislatures failed to prescribe any stipulations, provisions, or conditions as to the apportionment of the antecedent common public debt between the two States.

APPENDIX No. 2.

TO REPLY BRIEF FOR COMPLAINANT ON MOTION FOR ORDER OF REFERENCE IN VIRGINIA V. WEST VIRGINIA.

Extracts from message of Joseph Johnson, of Harrison, Governor of Virginia, to the General Assembly of Virginia,

January 12, 1852. See Journal, House of Delegates, 1852, pp. 18-19.

"The subject of internal improvement, which for many years has engaged the anxious attention of our people, is rapidly increasing in interest and importance, and will require your most serious and careful consideration. Whether we look to the vast amount of capital already invested by the State in the enterprise, or the appropriations yet required to carry out successfully the schemes already begun, and thereby make them available for revenue and State purposes—or consider the magnitude of the objects sought to be obtained, and the importance of the results anticipated from their completion in the aid they will give in developing the mineral and agricultural resources and the manufacturing and commercial advantages of our State—all will see and be forced to acknowledge the importance of the subject, and the great and growing necessity for energetic and yet judicious action on your part in relation to it. Indeed the works of internal improvement already commenced and in course of construction, and upon which large sums of both public and private means have been expended, are so intimately connected with all the leading interests of the Commonwealth, that every year's delay in their completion will necessarily postpone, at a common loss to the whole people, great and incalculable blessings, and for an equal period of time defer to the State treasury that repletion which the heavy appropriations heretofore made for internal improvement purposes so earnestly demand, and which their final completion cannot fail to effect. Many of our sister States, with less capacity for such enterprises, and possessing natural resources and advantages far inferior to our own,

have, under circumstances of great embarrassment, executed works of internal improvement which would do honor to the enterprise of independent nations. Nor have they been disappointed in the individual or State benefit which their works were expected to impart. The citizens of those States feel the superiority of this improved condition of their country, and duly appreciate the increased comforts derived from it.

"If our generous and noble old Commonwealth has been tardy in the execution of those improvements most clearly indicated by the geological structure of the country, and in a proper development of her great physical resources, it is gratifying to consider, that profiting by the example of others, she may gain much of the loss in time, by wise, prompt and energetic measures hereafter."

Then, after recommending the completion of the James River & Kanawha Canal to Clifton Forge, Governor Johnson says:

"From this point I most earnestly recommend the construction of a railroad, on State account, to some point on the Ohio river deemed most eligible upon a full reconnoissance of the several routes heretofore contemplated, having in view the valuable trade of that river and ultimately a railroad connection with the cities of Cincinnati and Louisville. In connection with this line, I recommend that every proper aid should be given for the speedy completion of the central railroad from Richmond to the point proposed at the present terminus of the canal, and that from Alexandria to Gordonsville. The railroad from the canal to Loup creek shoals would not exceed 150 miles, (to which point steamboats are now accessible), and from which to Guayandotte, should that point be se-

lected as the terminus, it would be about 82 miles, making 232 miles of railroad. The water line by the Kanawha would be about 80, and strike the Ohio 40 miles above Guyandotte—thus giving the section of road between Loup creek shoals and Clifton Forge the double importance of being connected at both ends with water and railroad lines. The best energy of the State should therefore be turned to the speedy completion of this division of the work. There is little doubt that the Alexandria and Orange railroad and the Blue Ridge tunnel may be completed, and the Central railroad and the canal be carried to Clifton Forge by the time the railroad from the latter place to the Ohio river can be finished."

Journal House of Delegates, 1852, p. 21.

APPENDIX NO. 3.

TO REPLY BRIEF FOR COMPLAINANT ON MOTION FOR ORDER OF REFERENCE IN VIRGINIA V. WEST VIRGINIA.

House Joint Resolution No. 10, Concerning the Virginia Debt.

(Adopted February 7th, 1895).

Resolved by the Legislature of West Virginia:

That this Legislature hereby declines to enter into any negotiation with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution.

HOUSE JOINT RESOLUTION NO. 3.

(Adopted January 21, 1897.)

A resolution relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that West Virginia does not owe one cent of the so called "Virginia debt," and that this Legislature is opposed to any negotiations on that subject.

(H. J. R. No. 6.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1899.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this Legislature declines and refuses to take any action in regard to what is known as the Virginia debt, or Virginia deferred certificates, either by considering any propositions of adjustment or settlement, so called, or by authorizing the appointment of any committee or committees having for their purposes the consideration of the same; and that it is the sense of this Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt or certificates.

(S. J. R. No. 2.)

JOINT RESOLUTION NO. 21.

(Adopted January 16, 1901.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this Legislature declines and refuses to take any action in regard to what is known as the Virginia Debt, or Virginia Deferred Certificates, either by considering any proposition of adjustment for settlement so called, or by authorizing the appointment of any committee, or committees, having for their purpose the consideration of the same.

And, That it is the sense of the Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt, or certificates.

(H. J. R. No. 3.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1903.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this Legislature is opposed to any negotiations whatsoever on that subject. And, *further*, that this Legislature declines, and most emphatically refuses, to take any action in re-

gard to what is known as the Old Virginia debt, or Virginia deferred certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee or committees having for their object or purpose the consideration of same; and that it is the sense of this Legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt or certificates. Nor do we owe any other State or Territory in this Union.

(H. J. R. No. 7.)

JOINT RESOLUTION NO. 3.

(Adopted January 20, 1905.)

Relating to the Virginia debt.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this Legislature is opposed to any negotiations whatsoever on that subject.

APPENDIX NO. 4.

TO REPLY BRIEF FOR COMPLAINANT ON MOTION FOR ORDER OF REFERENCE IN VIRGINIA V. WEST VIRGINIA.

"Chap. 78.—An Act giving consent to the admission of

certain counties into the new State of West Virginia, upon certain conditions. Passed February 4, 1863.

"1. Be it enacted by the General Assembly of Virginia, That at the general election on the fourth Thursday of May, one thousand, eight hundred and sixty-three, it shall be lawful for the voters of the district composed of the counties of Tazewell, Bland, Giles and Craig, to declare by their votes whether said counties shall be annexed to and become a part of the new State of West Virginia; also, at the same time, the district composed of the counties of Buchanan, Wise, Russell, Scott and Lee, to declare by their votes whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Alleghany, Bath and Highland, to declare by their votes, whether the counties of such last named districts shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Frederick and Jefferson, or either of them, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Clarke, Loudoun, Fairfax, Alexandria and Prince William, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Shenandoah, Warren, Page and Rockingham, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; and for that purpose there shall be a poll opened at each place of voting in each of said

districts, headed 'For Annexation,' and 'Against Annexation.' And the consent of this general assembly is hereby given for the annexation to the said State of West Virginia of such of said districts or either of them, as a majority of the votes so polled in each district may determine: provided, that the Legislature of the State of West Virginia shall also consent and agree to the said annexation, after which all jurisdiction of the State of Virginia over the districts so annexed shall cease.

2. It shall be the duty of the governor of the Commonwealth to ascertain and certify the result as other elections are certified.

3. In the event the state of the country will not permit, or from any cause, said election for annexation cannot be fairly held on the day aforesaid, it shall be the duty of the governor of this Commonwealth, as soon as such election can be safely and fairly held and a full and free expression of the opinion of the people had thereon, to issue his proclamation ordering such election for the purpose aforesaid, and certify the result as aforesaid.

4. This act shall be in force from its passage."

Act of the General Assembly of Virginia, approved February 4, 1863, Acts of 1863, pp. 65-66.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

against

WEST VIRGINIA, DEFENDANT.

MOTION TO MODIFY DECREE OF REFERENCE.

To the Honorable the Supreme Court of the United States:

Now comes the State of West Virginia, the defendant herein, and availing itself of the leave granted by the interlocutory decree heretofore entered in this cause, respectfully moves the court to modify the said decree to the end that the same may be more definite and certain in the particulars hereinafter set forth:

First. By amending paragraph two to read as follows:

> "The territorial area and assessed valuation of the States of Virginia and West Virginia June 20, 1863, and the population thereof, with and without slaves, separately stated, including in the latter State the counties of Berkeley and Jefferson."

Second. By adding at the end of paragraph three thereof the words:

> "Prior to January 1, 1861."

Third. By amending paragraph four so as to read as follows:

> "The ordinary expenses of the government of Virginia since any of said debt was contracted and prior

to January 1, 1861, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

Fourth. By amending paragraph five by striking out the words "fair estimated" where they occur in the first line, and inserting in lieu thereof the word "assessed" and by adding at the end thereof the words "during the same period," so that the same will read:

"5. And also on the basis of the assessed valuation of the property, real and personal, by counties, of the State of Virginia during the same period."

Fifth. By amending paragraph six by inserting before the word "period" in the second line thereof the word "said" and before the word "prior" in the third line thereof the word "and," and by striking out the words "the admission of the latter State into the Union" and inserting in lieu thereof the words "January 1, 1861," so that it will read:

"6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the said period and prior to January 1, 1861."

W. G. Conley

Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

[Endorsed:] Supreme Court of the United States. October term, 1907. In equity. Original No. 4. Commonwealth of Virginia, complainant, against West Virginia, defendant. Motion to modify interlocutory decree referring cause to master.

Office Supreme Court, U. S.
FILED.
APR 11 1908
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 2, Original.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA.

MEMORANDUM FOR DEFENDANT.

It will be observed that in paragraph II of this draft of a decree the master is not only directed to ascertain the amount and proportion of said indebtedness, but "of the interest accrued thereon."

Counsel for the defendant object further to this paragraph because there is no legal ground for directing the ascertainment of interest. The State of West Virginia has not obligated herself in any manner for the payment of interest. The principle is well settled that a State is not liable to pay interest unless it has expressly contracted to do so.

In support of this proposition this court, in United States *v.* North Carolina, 136 U. S., 211, said:

"A state is not liable to pay interest on its debts, unless its consent to do so has been manifested by an act of its legislature, or by lawful contract of its executive officers."

Following the principle thus announced by this court, many of the State courts have laid down in distinct terms the same proposition. Among the decisions of these courts are the following:

Sawyer *v.* Colgan, 102 Cal., 293; 36 Pac., 583.
Hawkins *v.* Mitchell, 34 Fla., 421, 422; 16 So., 316.
Molineux *v.* State, 109 Cal., 380; 50 Am. St. Rep., 50; 42 Pac., 34.
Flint, etc., R. R. *v.* Board of State Auditors, 102 Mich., 502; 60 N. W., 971.
Carr *v.* State, 127 Ind., 204; 22 Am. St. Rep., 624.

In Carr *v.* Sate, 127 Ind., 204; 22 Am. St. Rep., 624, this principle is announced as one of the points decided:

"A sovereign State is not bound to pay interest unless it has contracted to do so."

The court, in the course of its opinion in this case, says:

"In the case of State *ex rel. v.* Board, etc., 36 Ohio St., 409, it was held that in the absence of a promise to pay interest none can be recovered against a State, and that a State is not within the provisions of a general statute providing for the payment of interest in cases where money is wrongfully withheld from a creditor. The court put its decision upon the familiar rule that a sovereign is not bound by the words of a statute unless it is expressly named, and in support of its conclusion cited these cases: Trustee, etc., *v.* Campbell, 16 Ohio St., 11; Joselyn *v.* Stone, 28 Miss., 753; State *v.* Kinne, 41 N. H., 238; Attorney-General *v.* Cape Fear, etc., Co., 2 Ired. Eq., 444; Auditorial Board *v.* Arles, 15 Tex., 72; State *v.* Thompson, 10 Ark., 61. In Wightman *v.* United States, 23 Ct. of Cl., 144, the general rule was stated, and it was said: 'Hence there is no law fixing a rate of interest for all classes of the public debt, and a long-established public policy has been to pay interest only where it is a subject of express agreement or of positive enactment.' It was held in the case of Tillson *v.* United States, 100 U. S., 43, that a statute referring a claim did not authorize a recovery of interest, in the absence of words expressly providing for

the payment of interest. It is impossible to escape the effect of these authorities, and considerations may be readily suggested which increase their force. One is, that there is no right to coerce the payment of a debt due from a sovereign, and, of course, a sovereign may impose limitations upon its liability."

In a note appended to this case as reported in 22 American State Reports, at page 448, we find the following:

"With respect to the obligation of the State to pay interest upon its indebtedness, the principal case is well established by other authorities upon the same subject. In nearly and perhaps all of the States there are statutory provisions providing that moneys, after they become due, shall, in the absence of express contract to the contrary, bear the rate of interest specified in such statutes; but, acting under the old common-law rule that the king or sovereign is not bound by a statute unless expressly named therein, it has been uniformly held that these statutory provisions respecting interest did not apply to any obligation either of the State or of the national government, and therefore that interest is never allowed upon such obligations, in the absence of some special statute clearly manifesting the intention of the sovereign to be bound for the payment of interest upon the particular obligation or class of obligations under consideration (United States *v.* North Carolina, 136 U. S., 211; State *v.* Thompson, 10 Ark., 61; State *v.* Board of Public Works, 36 Ohio St., 409; State *v.* Bank of Washington, 18 Ark., 554; United States *v.* Sherman, 98 U. S., 565; United States *v.* Bayard, 127 U. S., 251; Tillson *v.* United States, 100 U. S., 43; *In re* Gosman, 17 Ch. Div., 771; Attorney-General *v.* Cape Fear N. Co., 2 Ired. Eq., 444; Bledsoe v. State, 64 N. C., 392; Trustee *v.* Campbell, 16 Ohio St., 11; Joselyn *v.* Stone, 28 Miss., 753; Wightman *v.* United States, 23 Ct. of Cls., 144)".

Supreme Court, U. S.
FILED.
MAY 27 1908
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 32

THE COMMONWEALTH OF VIRGINIA

v.

WEST VIRGINIA.

BRIEF IN SUPPORT OF MOTION TO MODIFY DECREE OF REFERENCE.

W. G. CONLEY,
Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 4.

THE COMMONWEALTH OF VIRGINIA

v.

WEST VIRGINIA.

BRIEF IN SUPPORT OF MOTION TO MODIFY DECREE OF REFERENCE.

Paragraph 2 of the decree of reference entered herein on the 4th day of May, 1908, directed the special master to ascertain—

> "2. The extent and value of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves, separately."

As a substitute for this the defendant proposes the following:

> "2. The *territorial area* and *assessed valuation* of the States of Virginia and West Virginia June 20, 1863, and the population thereof, with and without slaves, separately *stated, including in the latter State the counties of Berkeley and Jefferson.*"

We respectfully submit that unless the official assessments of the territory and slaves in both sections of the State are

made the basis of the valuation by the master, it will be impossible for him to comply with this part of the decree in a manner satisfactory to the court or the parties. Forty-five years have elapsed since the date fixed in the decree for the valuations, and it is scarcely possible that witnesses can now be produced whose testimony upon the subject will be conclusive or satisfactory. Moreover, the introduction of parol evidence to prove values as they existed forty-five years ago, in a State consisting of more than 60,000 square miles of territory and containing many thousands of slaves, would necessarily prolong the investigation to an unreasonable extent and subject the litigants to a very large and, we think, useless expense. At best, the witnesses could only state their opinions, and upon such a subject they would differ so widely that it would not be possible to reconcile them so as to reach a satisfactory conclusion. The decree provides:

> "All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency."

The authentic official evidence thus provided for in the decree would seem to be sufficient to secure a reasonable degree of accuracy in the valuations ordered to be ascertained by the master without encumbering the record and protracting the investigation by the introduction of unreliable opinions, which must, under the circumstances, be mere guesses.

The assessments are parts of the public records of the State and constituted the basis of taxation in both sections, and their accuracy ought not to be impeached at this late day by the mere opinions of witnesses based upon their recollections of the situation as it then existed. These opinions as to the value of the territory of West Virginia would be largely influenced by the developments of her mineral and other resources and the internal improvements made in that State since 1863, and the testimony would be quite different from what it would have been if it had been taken at that time. It was then known, as is alleged in the bill, and was known when Virginia began to create the debt, that these resources existed, and it is to be presumed that the officials in assessing the value of the land took them into consideration. Most of the land was not arable and was valuable mainly, if not entirely, because of the forests and minerals. It would be manifestly unfair to West Virginia to receive as evidence, for the purpose of increasing the valuations, the mere opinions of witnesses as to the values of gas, coal, iron, and timber separately from the land in which the minerals were deposited or on which the timber was grown, and then add that value to the assessment which already included them. It is stated in the brief filed for Virginia on this motion that these minerals and other resources were not included in the assessments "as distinct subjects of valuation;" but it is said "their presence was considered in estimating the value of land in transactions between vendor and vendee," and that the property was assessed at two-thirds its value. That would be, we suppose, at two-thirds of its market value, including, of course, the minerals and other resources. The same rule of assessment prevailed in both sections of the State, and therefore the relative proportions which the value of property in one section bore to the value in the other would be precisely the same as if it had been assessed at its full market value.

If the assessments are not to govern, what is to be the test of value? It would be impracticable to prove the market

value of the land and slaves in 1863, but if assessed values are to be ignored or contradicted, we know of no other test except market value that could be properly applied.

For two years prior to June, 1863, a large part of the territory which now constitutes the State of Virginia was occupied by the two armies, and not only was much valuable property destroyed or carried away, but all values, and especially the values of slave property, were greatly depreciated. The people of West Virginia were not responsible for this condition and they ought not to be prejudiced by it in ascertaining the relative values of the property in the two States at that date.

Paragraphs 3, 4, 5, and 6 read as follows:

> "3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.
>
> "4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.
>
> "5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia.
>
> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The defendant asks that these paragraphs be so modified as to read as follows:

> "3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of said debt was contracted, *and prior to January 1, 1861.*
>
> "4. The ordinary expenses of the government of Virginia since any of said debt was contracted *and*

prior to January 1, 1861, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.

"5. And also on the basis of the *assessed* valuation of the property, real and personal, by counties, of the State of Virginia during the same period.

"6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia, during the said period, *and prior to January 1, 1861.*"

Unless some date is fixed by the court at which the investigation shall stop, the master will be required to decide what seems to us some very difficult questions. On the 17th of April, 1861, Virginia passed an ordinance of secession from the Union, and from that time on until long after West Virginia was admitted as a State the two sections were substantially as separate and distinct as they are now. Not long after the passage of the ordinance of secession the restored government of Virginia was organized, composed almost entirely of the counties now constituting the State of West Virginia. These counties paid nearly the whole of the revenue of the restored State until the admission of the new State into the Union. Is West Virginia to be charged in this proceeding with money expended in what is now her territory during that time, and with her just proportion of the ordinary expenses of the government up to June 30, 1863? That was the only recognized government existing in Virginia during that period. We do not suppose it will be claimed that West Virginia is liable for any part of the ordinary expenses of the government at Richmond after the passage of the secession ordinance. To make such a charge against her would be to compel her to contribute to the support of a government in rebellion against the United States. Under the Wheeling ordinance she ought to be charged with money expended in her counties and with her share of the ordinary expenses and credited with money paid into the State treasury during *the same period,* whatever that period may be; and it should be prescribed by the court, not left to the master.

Most of what we have said concerning paragraph 2 of the decree is also applicable to paragraph 5. It does not appear to us at all practicable to ascertain, by the testimony of witnesses, what was "the fair estimated valuation of the property, real and personal, by counties" forty-five years ago. According to the position taken by counsel for Virginia, the valuation is to be ascertained by considering the oil, gas, iron, coal, and timber separately from the land in or on which they were situated, and then, of course, it would be necessary to ascertain the value of the land separately, without the minerals or timber, in order to secure the entire valuation. This tedious process would have to be adopted in both States, if it was adopted in one, and the investigation would consequently be almost interminable. It is well known that Virginia had vast and valuable deposits of coal and iron and large forests of timber, as well as many other natural resources and advantages which West Virginia did not possess, such as navigable waters, access to tide water, with large bays and fine harbors. Are all these assets to be valued separately also, or did they, like the minerals and timber in West Virginia, affect the value of land and other property of the State and thereby increase the valuation in the official assessments?

The fact that assessments were not made annually, but only once in ten years, is not very material when they are introduced as evidence of values in any intermediate year. The United States census is taken only at the end of each decade, but each decennial census and each decennial assessment shows a certain rate of increase or decrease, as the case may be, since the last one was taken, and it is not difficult, therefore, to calculate with reasonable accuracy what the values are in any particular year. Such evidence is certainly far more reliable than the memories and opinions of witnesses who are called to testify after the lapse of nearly half a century.

In plaintiff's brief on this motion it is said:

"The expenses of the government of the restored State government from June or July, 1861, to June 20, 1863, when the State of West Virginia was created, were all furnished from the funds of the Commonwealth of Virginia, as appears from the acts of the legislature referred to in the progress of this cause. So that the latter date would be the proper one, if any amendment at all is to be made."

On the 19th day of June, 1861, the convention which had assembled at Wheeling on the 8th of June, 1861, adopted an ordinance for the reorganization of the State government, and the restored State government was organized immediately thereafter by the election (by the convention) of a governor and other State officials. Senators were elected to the Congress of the United States on the 9th day of July, 1861, and they were admitted to seats in the Senate on the 13th day of the same month. This government continued until 1867, and it defrayed all its own expenses as long as it existed. As already stated, nearly the whole of its revenue was paid by the counties now composing the State of West Virginia until the admission of that State into the Union; the old Commonwealth of Virginia paid no part of the expenses. It had not only withdrawn protection from the persons and property of the people in West Virginia, but was waging war against them, having, as early as April 24, 1861, seven days after the passage of the ordinance of secession, entered into an agreement with the Confederate States transferring the control of the State to the Confederacy. We are not aware of the existence of any acts of the legislature showing that any part of the expenses of the restored State government was paid "from the funds of the Commonwealth of Virginia," unless the restored government is meant; and if this is the meaning of the statement, the people of West Virginia have paid once for the support of their government and for the protection of their territory and property, without any assistance from the old State, and that State ought not now to have any credit on account of these ordinary expenses.

We respectfully submit that, whatever date may be fixed with respect to the closing of the other accounts in controversy, it is clear that West Virginia should not be charged with any part of the ordinary expenses of the State government after the actual separation and the withdrawal of protection by Virginia in this respect.

W. G. CONLEY,
Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

In Equity. Original, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

v.

STATE OF WEST VIRGINIA, DEFENDANT.

ON THE MOTION OF DEFENDANT TO MODIFY THE ORDER OF REFERENCE.

The complainant, by her counsel, respectfully objects to the modifications proposed by the defendant to the order of reference, and for grounds of objection indicates the following, viz:

(1) The order of reference directs the master to ascertain and report:

> "2. The extent and value of the territory of Virginia and of West Virginia June 20, 1863," &c.

The proposed modification of this section is as follows, viz:

> "The territorial area and *assessed* valuation of the States of Virginia and West Virginia June 20, 1863."

The inquiry should not be restricted to the *assessed* value of the territory, but should be allowed to embrace every reasonable and proper means of ascertaining the actual value of all of the elements of wealth that together made up the value of the State. When one State is spoken of as wealthier than another, reference is not had to the *assessed* valuation of the lands, but to all of the resources of the State which are available for producing revenue.

The elements of wealth of West Virginia, even between January, 1861, and June, 1863, were the *coal*, the *oil*, the *gas*, and the *hardwoods*, which then as now abound throughout its eastern half. These elements of wealth have no place in the assessments for taxation which existed at the dates named. The assessments of land were made in Virginia every ten years. The assessment next preceding January, 1861, and June, 1863, was made in 1856, and manifestly affords no just ground for ascertaining the relative values of the two States as a basis on which the common public debt may justly or equitably be apportioned between these States.

In this connection we may say that there is now before us a copy of the official Report of the Auditor of Virginia, giving in tabulated form exact and full statements of the area and *assessed* value of each of the counties in the old State, of the lots in each of the cities and towns, and the value of all the personal property within the limits of the State. These tables of statistics, occupying nearly seven hundred pages of closely printed matter, give all the information that can be desired as to the *assessed valuation* of the real and personal property within the State in the years 1860 and 1861. But this apportionment of the common liability of the two States for the public debt should not and cannot equitably be made on the basis of the *assessed* values of the property of the States, because the assessed value was not in any case intended to express the actual value. Indeed, it was not intended to be more than two-thirds of the actual value of the property.

The assessment of 1856 did not embrace any of the elements of wealth which since 1861 have formed the principal basis of the wealth of the counties forming the State of West Virginia.

(2) It is proposed to modify the third paragraph of the order of reference by adding to it, at the end, the words "prior to January 1, 1861," the effect of which would be to direct that, even although the Commonwealth of Virginia had expended money within the territory now constituting West Virginia since the first of January, 1861, and prior to June 20, 1863, she should not be credited therewith in this account. Why not?

The "restored State of Virginia" had no existence prior to July, 1861, and then only to a limited extent and for certain purposes; but even that phantasm of a State, although "what seemed its head the likeness of a kingly crown had on," yet in time, when it had served its purpose, it faded back into the name and body of the present Commonwealth of Virginia. So it would seem to be but just that if Virginia had at any time prior to the creation of West Virginia expended money within these western counties, and West Virginia reaped the benefit of it, she should be made to account for it.

(3) The fourth paragraph of the order of reference provides as follows, viz:

> "4. Such proportion of the ordinary expenses of the government of Virginia, since any of the debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia, on the basis of the average to the population of Virginia, with and without slaves, as shown by the census of the United States."

Defendant proposes to modify this as follows, viz:

> "The ordinary expenses of the government of Virginia, since any of said debt was contracted, *and*

> *prior to January 1, 1861*, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

As stated, the proposed modification, standing alone, is unintelligible. The object of the inquiry is to ascertain what proportion of the ordinary expenses of the State government should be charged to the counties now forming West Virginia.

The expenses of the government of the restored State government from June or July, 1861, to June 20, 1863, when the State of West Virginia was created, were all furnished from the funds of the Commonwealth of Virginia, as appears from the acts of the legislature referred to in the progress of this cause. So that the latter date would be the proper one, if any amendment at all is to be made.

(4) Paragraph 5 of the order of reference is as follows, viz:

> "5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia."

Defendant asks to modify as follows, viz:

> "5. And also on the basis of the *assessed valuation* of the property, real and personal, by counties, of the State of Virginia during the same period."

We have already called attention to this attempt to restrict the inquiry to the assessed valuation, in commenting upon the proposed modification to paragraph No. 2. The assessed value of real property never exceeded two-thirds of its market value, and, as appears from the Auditor's Report of 1860 and 1861, the assessments of all lands in Virginia were made in 1856, and none later than that date. This assessment did not embrace, as distinct subjects of valuation, coal, or gas, or oil, or hardwoods, which constitute the basis of the large wealth of West Virginia. These all existed in 1861, and

their presence was considered in estimating the value of land in transactions between vendor and vendee. Oil was produced in immense quantities in 1862, and was prepared for market at the town of Elizabeth, in West Virginia, in that year. These elements of wealth and value would have been taken into account in any proceeding for partition between joint owners, but were not considered in assessment for taxation.

From 1861 to 1865 West Virginia was the seat of war; few, if any, actual transactions of sale of lands took place, and no normal standard of valuation existed. The difficulties are great enough in the way of reaching the actual values of land in that State during that period without adding the inequitable standard of assessment for taxation.

(5) Paragraph 6 of the order of reference provides as follows, viz:

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The defendant proposes to modify this section as follows, viz:

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the said period and prior to January 1, 1861."

That is, the defendant wishes to limit the period within which the Commonwealth should be charged with moneys received from the western counties to the 1st of January, 1861, while the court would extend that period to June 20, 1863. As we do not think that either date will make any difference in the account, we leave this matter to the court.

Defendant, in proposing the names of gentlemen from which a selection may be made by the court of a special master to state the account in this cause, has found it needful to advise the court that it has deemed it right not to consider any citizen of centers where "West Virginia certificates" are owned, or sold, or traded in, and then it proceeds to nominate Mr. Charles E. Littlefield, of Maine.

We state for the information of the court that one of the largest certificate-holders who has made himself known to us during this litigation is a good citizen of the State of Maine. The two gentlemen named by defendant are altogether unimpeachable personally. We would not have nominated them because Mr. Littlefield lives so far away from the counsel and from the records from which all the information required is to be had, and because Mr. John W. Yerkes is at present a member of the firm of Hamilton, Yerkes & Colbert, who are the counsel for the Baltimore and Ohio Railroad Co., which is the largest taxpayer in West Virginia, contributing, as we are advised, one-eleventh of the taxes paid into the treasury. It has, therefore, a large interest in reducing the burdens which may rest upon that State and thereby lead to an increase of taxation.

On behalf of the Commonwealth of Virginia, we announced to counsel for West Virginia our purpose to present to the court the name of Mr. John Prentiss Poe, of the city of Baltimore, but were informed by them that Mr. Poe was counsel in a chancery cause of Maryland *v.* West Virginia, pending in this court, and was on that account ineligible. In this we concurred at the moment, but have since learned from unquestionable sources that Mr. Poe did file such a bill in his official character of Attorney General of Maryland, but that since the expiration of his term of office, now many years ago, he has been in nowise concerned in the cause. We therefore add his name to those already presented, and say that Mr. Poe is a graduate of Princeton, some time a bank clerk, and since 1858 a lawyer of recognized standing

in the courts of Maryland and its neighboring States, and for many years a counsellor on the rolls of this court. He is the author of the standard works of Law and Equity Practice in Maryland and was some time the Attorney General of that State.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

I concur in the above.

HOLMES CONRAD,
Of Counsel.

MAY 19, 1908.

Office Supreme Court, U. S.
FILED.
MAY 18 1908
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 3 Original.

VIRGINIA, COMPLAINANT,

v.

WEST VIRGINIA, DEFENDANT.

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

On behalf of the Commonwealth of Virginia, the undersigned beg to nominate as suitable persons from whom a selection may be made by the court of one to be appointed "special master" to ascertain and report on the several subjects indicated in the order of the court of the day of May, 1908, the following named gentlemen, viz:

Mr. J. J. DARLINGTON, of the District of Columbia;

Mr. GEORGE WHARTON PEPPER, of the city of Philadelphia.

Apart from the qualification of personal fitness, the residence of the master is regarded as a feature entitled to great consideration. He should be in a locality easily accessible to the counsel in the cause, and especially should he be where he could have easy and frequent access to the public records of Virginia, in the city of Richmond, from which nearly all the facts on which the inquiries he will be charged with conducting are to be found.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

I cordially concur in the above nominations.

HOLMES CONRAD,
Of Counsel.

MAY 14, 1908.

Supreme Court, U. S.
FILED
DEC 19 1907
JAMES H. McKENNEY,
Clerk

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Original, No. 12

IN EQUITY.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA, DEFENDANT.

DECREE REFERRING THE CAUSE TO A MASTER.

WILLIAM A. ANDERSON,
HOLMES CONRAD,
Counsel for the Complainant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Original, No. 4.

IN EQUITY.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA, DEFENDANT.

Complainant's draft

DECREE REFERRING THE CAUSE TO A MASTER.

This cause coming on this day to be heard upon the complainant's bill and the exhibits filed therewith, the answer of the defendant, with the exhibits filed therewith, and the general replication filed by the complainant thereto, was argued by counsel. On consideration whereof it is adjudged, ordered, and decreed that this cause be referred to

, who is hereby appointed a special master herein, who, after giving not less than ten days' notice to the parties of the times and places fixed by him, from time to time, for executing this decree, will without delay ascertain and report to the court:

...

I.

The amount of the public debt of the Commonwealth of Virginia as of the first day of January, 1861, stating specifically, how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness.

II.

What amount and proportion of said indebtedness and of the interest accrued thereon should in equity be apportioned to and be now paid by the State of West Virginia.

III.

He will make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the court.

It is further adjudged, ordered, and decreed as follows:

(1) To the end that full and complete information may be afforded the master as to all matters involved in the inquiries with which he is charged by this decree, the Commonwealth of Virginia and the State of West Virginia shall each of them respectively produce before the master, or give him access to, all such records, books, papers, and public documents as may be in their possession or under their control and which may, in his judgment, be pertinent to the said inquiries and accounts or any of them.

And the master is authorized to visit the capitals of Virginia and West Virginia, and to make or cause to be made

(Substitute for paragraph II of the decree asked for by the complainant.)

II.

What is the just amount and proportion of said debt, including the interest thereon, which should now be apportioned to, and paid by, the State of West Virginia? Such amount and porportion of said debt the master will ascertain by charging against West Virginia:

(1) All expenditures made by the State of Virginia within the territory which now constitutes the State of West Virginia since any part of said debt was contracted.

(2) Such proportion of the ordinary expenses of the government of Virginia since any part of said debt was contracted as was fairly assignable to the counties which were erected into the State of West Virginia.

In ascertaining this, the master will take as the basis or criterion upon which the apportionment of said expenses shall be made the average total population of Virginia, excluding slaves, as nearly as the same can be determined from the United States Census for each of the decades in which such expenses were incurred and paid.

(3) The amount and value of all money, property, stocks, and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and not including any property, stocks, or credits which were obtained or acquired by said Commonwealth after the 19th day of June, 1861, the date of the organization of the restored government of Virginia.

(5) From the aggregate of the amounts thus ascertained, the master will deduct all moneys paid into the treasury of said Commonwealth from the counties included within the the State of West Virginia during said period.

(6) The balance thus ascertained, with interest thereon from the 1st day of January, 1861, until the same shall be paid, will be the amount and proportion of the debt of the Commonwealth of Virginia existing before that date, assignable to West Virginia and which that State should pay.

such examinations as he may deem desirable of the books of account, documents, and public records of either State relating to the inquiries he is directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All published records published by authority of the Commonwealth of Virginia prior to the creation of the State of West Virginia and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the partition of her territory which, in the judgment of the master, may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master. The public acts and records of the two States since the creation of the State of West Virginia shall be evidence if pertinent and duly authenticated; but all such testimony tendered by either party shall be subject to proper legal exception as to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

(2) The master is authorized and empowered to employ such accountants, stenographers, or other clerical assistance as he may find it desirable to employ, and to secure such rooms or offices as he may require, in order to the prompt and efficient execution of this order of reference, and to agree with such accountants and stenographers, typewriters, and the owner of such room or rooms for such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

(3) The complainant will cause the sum of three thousand dollars to be deposited with the marshal of this court to the

credit of this cause, on account of the costs and expenses of executing this decree and of this suit, and the complainant will cause such farther sums as may be necessary to defray the costs and expenses of executing this decree to be from time to time in like manner deposited with said marshal. In the event that the defendant shall desire any special statement or accounts to be made, she shall in like manner, before the taking of any such account or the making of such special statement, cause the sum of dollars to be deposited with the marshal.

And the master is authorized from time to time to draw upon the funds so deposited by Virginia for the compensation of the accountants and other clerical assistants whom he may employ, and for any other costs or expenses, including stationery, printing, and room rent, which it may in his judgment be necessary to be incurred in promptly and efficiently executing this order of reference or making up any special statement or accounts asked for by the plaintiff, and the same will be charged up as part of the complainant's costs; and he will draw upon the fund deposited by the defendant for any costs which may be incurred in making up any special statement or accounts which may be desired by the defendant to be specially stated, which drafts, accompanied by proper vouchers, the marshal of this court will pay, and the same will be charged up as part of the defendant's costs in the cause.

And the said marshal is allowed to have and retain a commission of five per centum for his services in receiving and disbursing the funds so deposited with him, and he will make a report of his transactions, receipts, and disbursements in the premises to the court.

IV.

The first notice of the time and place fixed by the master for beginning the taking of the accounts directed by this

decree shall be given at least thirty days before the date fixed by him therefor, provided that the date so fixed by the master for beginning the taking of said accounts shall not be a day earlier than February 20, 1907. The master may adjourn his sittings from time to time and place to place without notice to the parties. He will cause to be kept, in a minute book to be provided for the purpose, a journal or minutes of his sittings in the execution of this decree, showing the counsel present, if any, any adjournments which may be taken by him from time to time or place to place, and any other matters which the master may deem it proper to mention therein, which minute book or journal he will return with his report.

V.

Any notices to be given in connection with the execution of this decree may be given to the Attorneys-General of the respective States.

RICHMOND, VIRGINIA, *December* 7, 1907.

To Hon. CLARKE W. MAY,
Attorney-General of West Virginia:

Please take notice that on the meeting of the court on Tuesday, the seventeenth instant, we will move the Supreme Court of the United States to enter in the above-entitled cause the decree of which the above is a copy.

WILLIAM A. ANDERSON,
HOLMES CONRAD,
Counsel for the Complainant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

No. 4, Original.

COMMONWEALTH OF VIRGINIA,
Complainant,

v.

STATE OF WEST VIRGINIA.

I, CHARLES E. LITTLEFIELD, SPECIAL MASTER APPOINTED UNDER AN ORDER MADE IN THE FOREGOING CASE, RESPECTFULLY SUBMIT THE FOLLOWING REPORT:

PARAGRAPH 1 OF DECREE.

1. THE AMOUNT OF THE PUBLIC DEBT OF THE COMMONWEALTH OF VIRGINIA ON THE FIRST DAY OF JANUARY, 1861, STATING SPECIFICALLY HOW AND IN WHAT FORM THE SAME WAS EVIDENCED, BY WHAT AUTHORITY OF LAW AND FOR WHAT PURPOSES THE SAME WAS CREATED, AND THE DATES AND NATURE OF THE BONDS OR OTHER EVIDENCE OF SAID INDEBTEDNESS.

The parties agree to the extent of $32,919,863.93 upon the amount of the public debt of the Com-

monwealth of Virginia on the 1st day of January, 1861 (Rec., p. 215). The plaintiff claimed at the time of making the joint schedule A-1, p. 1, that there should be added to this aggregate:

First—		
Unpaid and accrued interest from July 1st, 1860, to December 31, 1860, on the public debt.....		$ 977,209.89
Second—		
Bonds of the Commonwealth of Virginia, held by the Sinking Fund $1,329,557.20		
Unpaid and accrued interest as above..	39,686.72	
Total		1,369,243.92
Bonds of the Commonwealth held by the Board of Public Works .....$ 146,500.00		
Unpaid and accrued interest as above..	4,395.00	
Total		150,895.00
Bonds of the Commonwealth held by the Literary Fund.. 1,085,067.33		
Unpaid and accrued interest as above..	31,776.02	
Total		1,116,843.35

(Rec., p. 215.)

These items were all in the first instance contested by the defendant. The item of $977,209.89, unpaid and accrued interest, is conceded by the defendant and I treat it as a part of the public debt.

It is conceded that the bonds held by the Board of Public Works were bonds of the Commonwealth placed in its hands for sale in connection with the prosecution of the works under its charge, but that the bonds referred to were never issued, and therefore never became a part of the public debt. For this reason this item has been withdrawn by the plaintiff.

There remains in controversy the bonds in the Sinking Fund and the Literary Fund. Whether the bonds of the State held by these two funds are within the meaning of the Decree, a part of "the public debt of the Commonwealth of Virginia" is the question. This involves a review of the constitutional and statutory provisions creating them.

Sinking Fund.

The Constitution of Virginia required the maintenance of a Sinking Fund to

> "be applied to the payment of the interest of the State debt and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the Sinking Fund, after the payment of such interest, shall be *invested in the bonds or certificates of debt* of this Commonwealth or of the United States or of some of the states of this Union, and applied to the payment of the state debt as it shall become redeemable."
>
> (Con. Va. Art. 4, Sec. 29, p. 47.)

The sum necessary was to "be set apart annually from the accruing revenues." (Con. Va., Art. IV., Sec. 29; Code Va. 1860, p. 47.) Proceeds of the "sale of the stocks held by the Commonwealth for internal improvement and other companies, if made before the payment of the public debt" were to "constitute a part of the Sinking Fund" (do. Sec. 30). The "Auditor of Public Accounts, Register and Secretary of the Commonwealth for the time being" were constituted a "corporate body under the style of 'The Commissioners of the Sinking Fund.' * * * For the purpose of managing, preserving and applying the Sinking Fund created by this Act." (Code of Va. 1860, Chap. 44, sec. 6, p. 261.) The Auditor of Public Accounts was required, "to pay into the Treasury of the Commonwealth [not the Treasury of the Commissioners of the Sinking Fund] annually thereafter out of the accruing revenues" the specified "portion of the sum set apart for the Sinking Fund". He was also required to "pay into the Treasury to the credit of said Fund" the amount of the semi-annual interest. (do. Chap. 44, sec. 4, p. 260). To provide for subsequent debts, he was also required to "pay in like manner into the Treasury", that is, of the Commonwealth, "to the credit of the Sinking Fund, one per centum, &c." and also "in like manner into the Treasury to the credit of the said fund * * * the amount of the semi-annual interest", and in case of coupon bonds, the "amount of the interest" was to be "set apart and paid into the Treasury to the credit of said fund" thirty days in advance of their becoming due. (do. Chap. 44, sec. 5, p. 261.) It was "their duty to apply the moneys appropriated out of the said Fund to the payment

of the interest and redemption of the principal of the State debt," &c., and to "invest any part of the appropriations * * * which cannot be so applied to the purchase of public stock" (do. Sec. 7, p. 261). Instalments of interest and sums for the redemption of any part of the principal of the debt were to be paid by special order of the Commissioners entered on their minutes authorizing "the second auditor to issue his warrants on the treasury". (do. Sec. 10, p. 261.) The second auditor was required to "keep the accounts of the Sinking Fund with the Treasury in such manner as to show distinctly at all times the amount of the transactions on account of each appropriate head of receipts and expenditures," (do. Sec. 13, p. 262).

> "All moneys belonging to the Sinking Fund shall be paid into the Treasury on the warrant of the second auditor and shall be paid out in like manner when authorized by the Commissioners of said Fund" (do. sec. 14, p. 262).
>
> "The Treasurer [State Treasurer], shall receive and pay the moneys belonging to the Sinking Fund as herein required. He shall keep a distinct account of the same and report to each session of the Legislature the aggregate receipts and disbursements on account thereof * * *" (do. sec. 15, p. 262).

The Treasurer of the Commonwealth was required to

> "keep separate accounts of the money *belonging to the Literary Fund*, to the Fund for Internal Improvement, *to the Sinking Fund* and to the Washington Monument Fund, showing the receipts and disbursements on account of each" (Chap. 45, Sec. 31, p. 270).

Semi-annual interest on the debt of 1839 was to "be paid out of the Public Treasury" but no part of it "out of the Sinking Fund," thus recognizing the Sinking Fund as being in the Public Treasury (Chap. 44, Sec. 19, p. 263).

LITERARY FUND.

By an Act passed March 3, 1819 (Rev. Code of Va., 1819, Vol. 1, page 82), certain public officials were

> "constituted a body corporate and politic under the denomination of the President and Directors of the Literary Fund, with power to sue and be sued, plead and be impleaded, and to hold lands and tenements, goods and chattels, and the same to sell, dispose of or improve for the purposes hereafter mentioned" (Chap. 33, Sec. 6).

and

> "All sums of money which have accrued or may hereafter accrue to the Literary Fund in consequence of the appropriations thereto already, now or hereafter to be made,"

were vested in said persons (do., Sec. 6).

Actions were authorized to be brought "in the name of the said President and Directors" (do. sec. 7), and in an Act consisting of 22 sections an elaborate plan for the management of the Literary Fund was prescribed.

March 2, 1821, "An Act concerning the Literary Fund" was passed (Acts of Va., 1820-1821, p. 12). It repealed "all acts and parts of acts coming within the purview of this Act," (Sec. 13, p. 14). It changed the personnel of the Board (Sec. 1). It

did not vest in them the money which was vested in the original board. It provided "that all moneys accruing for the benefit of the Literary Fund" should "be paid into the public treasury and shall be kept by the Treasurer of the Commonwealth *ex officio* in the same manner that *other public moneys* are kept by him except only that there shall be a separate account raised therefor in the name and for the benefit of the Literary Fund" and that it should only "be checked or drawn for in his official capacity as such Treasurer" (Sec. 3, p. 13). The State Treasurer was to "be accountable for the moneys so paid into the Treasury" (Sec. 4). Dividends and interest upon stock belonging to the Fund and interest on moneys loaned were to be "paid into the Treasury" (Sec. 5). Sheriffs collecting executions were "to pay the same into the Treasury" (Sec. 6). "Money belonging to the Literary Fund" could "be paid out of the treasury" only on a "warrant from the auditor drawn in pursuance of an order of the president and directors" (Sec. 7). An accountant was provided for who was required,

> "to keep distinct accounts of all the stock and other property belonging to the Literary Fund and distinct accounts of all monies authorized to be paid into the Treasury and to be drawn therefrom on account of said Fund."

And he was to be furnished by the auditor with

> "statements of all warrants for the payment of money into the Treasury for the benefit of the Literary Fund" (Sec. 11, p. 14).

"An Act to amend the several Acts concerning the Literary Fund" passed February 25, 1829 Acts of Va. 1828-9, page 13), provided for a detailed plan for the supervision of the Fund, and Section 13, vested in the second auditor, "The Superintendent of the Literary Fund, all the power heretofore vested in the president and directors of the Literary Fund," with certain exceptions not material, and created a board with certain supervising powers "to perpetuate the corporation heretofore established."

Referring to this corporation the Code of 1860, page 414, provides:

> "The Governor, Treasurer, two auditors and register of the land office shall be a corporation under the style of 'The Board of the Literary Fund'"

and be vested with all the rights and powers here tofore vested in the President and Directors of the Literary Fund (Chap. 78, sec. 1). There is no provision in the Code vesting this "corporation" with any title to the funds or property of the Literary Fund. "Any money which ought to be paid into the public Treasury to the credit of the Literary Fund" is to be recovered not by the Board but by the second auditor of the Treasury (do. Chap. 78, sec. 7—Chap. 72, sec. 1). The Board is authorized to

> "*invest* all the unappropriated capital and income of the Literary Fund in certificates of debt of the United States *or certificates of debt* of or guaranteed by this State or in stocks of banks incorporated by it" (do. sec. 8, p. 414).

It is provided that

> "All money belonging to the Literary Fund shall be received into and paid out of the *Public Treasury* upon the warrant of the second auditor."

The only control that the Board has over this fund is by virtue of a provision that,

> "no warrant for paying out such money shall be issued without the special authority of the Board" (do., sec. 13, p. 415).

The second auditor adjusts, settles and balances all accounts of persons "having accounts with the Literary Fund" (do. Sec. 14, p. 415). The board does not have the right to the possession of "securities for money belonging to the Literary Fund," as all such securities are to be deposited "with the second auditor for safe keeping" (do. sec. 15, p. 415).

"Money, stocks or other property" are all referred to as belonging "to the Literary Fund" undoubtedly for convenience and identification. (Code Va. 1860, Chap. 79, sec. 1, p. 416.) As the money belonging to this Fund is in the Treasury of the Commonwealth as a part of its common assets kept in "a separate and distinct account," "the money, stocks or other property" would seem for the same reason to be the property of the State in the "Literary Fund."

The Courts of Virginia in a recent case have authoritatively construed legislation of a similar character relating to the Eastern State Hospital, which in its character is more indicative of constituting the Board in question a separate legal entity or a corporation independent of the State

than is the legislation relating to the Sinking Fund or the Literary Fund.

By an Act passed March 6, 1841 (Acts of Va. 1840-1841, Chap. 15, page 38), the

> "present Directors of the Hospital in the City of Williamsburg"

were constituted

> "a body politic and corporate to have perpetual succession by the name of the 'Directors of the Eastern Asylum for the maintenance and cure of insane persons' and by that name may sue and be sued and may and shall have and use a common seal and are enabled to take and hold any estate real or personal given or to be given to the said Asylum or to themselves for the use thereof" (do. sec. 1).

By the Code of Virginia, 1860, Chap. 85, sec. 2, page 435, it is provided that

> "The directors for the Asylums at Williamsburg and Staunton shall respectively continue to be corporations,"

the first being known as the "Eastern Lunatic Asylum."

The name of the hospital at Williamsburg was changed to the "Eastern State Hospital" and it was provided that its directors should continue to be a corporation (Va. Code, annotated, Sec. 1661). Neither of the Codes appear to have changed the powers vested in the corporation. The directors of this hospital are provided for by the Constitution (Art. XI, Sec. 149-150, p. 248). The Board has the "management of the Hospital for

which it is appointed" (sec. 1662). Its funds are to be deposited in a "solvent bank" designated by the Board and Commissioners (sec. 1665). Unlike the Sinking and Literary Fund its funds are not to be deposited in the State Treasury. They are "disbursed by checks drawn by the Superintendent of the Hospital and approved and countersigned by the Chairman of said special board" (sec. 1666). This separates the fund of the Hospital from the general fund of the State and the Treasury of the State. The directors have power to release claims for the "removal, maintenance or care of an insane person" (sec. 1708). In addition to the general corporate right to sue originally granted to the board, it has the right to sue "in the name of the hospital or of the Commonwealth" (sec. 1709).

While in this Code the State Treasurer is required to keep separate accounts of the money belonging to the Literary Fund, Interest on the Public Debt and the Sinking Fund, and the Miller Fund, the Hospital Fund is not recognized as being in his hands and he is not required to keep any account thereof (sec. 781).

Eastern State Hospital v. *Graves,* 105 Va. 151, was a suit brought by the hospital to recover sums due for board and medical services and the question was whether the Statute of Limitations could be pleaded in the suit, it being contended on the part of the plaintiff that the hospital was in effect the State and the Statute of Limitations did not run against the State, and therefore it could not be pleaded; and in holding that the Statute of Limitations could not be pleaded, the Court said that the

> "hospital was created and exists for purely Governmental purposes—is a public corpora-

> tion, governed and controlled by the State and acts exclusively as an agency of the State * * * that it has no stockholders, no members even except directors having no interest in it or its affairs, who are appointed by the Governor and with the consent of the Senate and are in fact public, rather than corporate officials endued with corporate being for a more convenient administration of the duties imposed upon them by law * * * if not collected the loss falls wholly upon the State, and if there is a recovery it will be for the benefit of the State and the State alone—not for the benefit of the directors nor for the benefit of any subordinate division of the State but for the whole people—the State at large" (p. 153).

The same doctrine in substance had been previously announced in *Maia* v. *Eastern State Hospital*, 97 Va., 507. The case of *Eastern State Hospital* v. *Graves*, expressly overrules the case of *McClanahan* v. *Western Lunatic Asylum*, 88 Va., 466, which holds that a plea of the Statute of Limitations was good on the ground that the asylum

> "is a corporation—an authorized legal entity —a personality in law with power to sue and be sued" (p. 468),

The McClanahan case seemed to turn almost wholly upon the fact that the Asylum had the power to sue and be sued. It is not only expressly overruled on that point by *Eastern State Hospital* v. *Graves*, but inasmuch as neither the Commissioners of the "Sinking Fund" or the "Literary Fund" have the power to sue and be sued, it would not be in point as to those funds in establishing that the respective boards were organized legal entities and personalities in law as distin-

guished from mere public agencies. This construction given to a state statute by the Supreme Court of Virginia having now become the well settled law of Virginia, will be held to be the authoritative construction of that statute by the Federal Courts as no Federal question is involved.

> Soper *v.* Lawrence Bros., 201 U. S., 359-370.
> N. Y. Cent. R. R. Co. *v.* Miller, 202 U. S., 584, 595.

On the authority of that case and by reason of the fact that they have neither stockholders or assets or control over assets and its officers are public, rather than corporate officials, invested with corporate capacity for convenient administration, and the funds are kept in the State Treasury subject to the control of its Treasurer, he being responsible therefor, in separate and distinct accounts for the purpose of convenience in maintaining the identity of and keeping the accounts of its Treasurer with each, I find that these funds are the property of the State.

Bonds purchased by and for either of these funds were bonds purchased by and for and on account of and with the funds of and became the property of the Commonwealth of Virginia, kept for convenience in the accounts to which they respectively belonged.

The remaining question is what was the legal effect upon the "public debt" of Virginia of the purchase of its bonds for each of these funds by the Commonwealth itself.

The plaintiff contends that they have remained after such purchase in the respective funds a part of the "public debt" of the State.

My attention has been called to the case of *State ex rel. Heller* v. *Young,* 18 Wash., 21, as sustaining the contention of the plaintiff. In that case the Court held that under an Act authorizing the State Treasurer "to invest all money now in his hands * * * belonging to the Tide Land Fund * * * in the general fund warrants of the state" (p. 23) that the authority conferred was "to *purchase* and not to pay" (p. 25) the general fund warrants. In the majority opinion the case turned upon the question as to whether the act contemplated "the payment and extinguishment of the warrants" or only authorized "the purchase for the benefit of the tide land fund of such warrants" (p. 24). Three of the Court held that the act contemplated a purchase and that the State could not compel the holder of a warrant to sell it to the State, the case seeming to turn largely upon the question of the power to compel the holder of a warrant to sell it to the State. While inferentially the reasoning indicates the continued existence of the warrant as a part of the debt of the State, its character in that respect is not discussed in the opinion. Two of the Court dissent and Chief Justice Scott in his dissenting opinion says:

> "It is immaterial whether the transaction contemplated an investment, a payment or a purchase. By it the State would become the holder of its own paper to a considerable amount. The original holder would be paid for it would undoubtedly be a payment to him. It might still be an investment upon the part of the State for the benefit of a particular fund. This could make no difference with the prior holder. The warrants would be *in effect discharged,* for they could not be reissued without express legislative

> authority reviving them and directing it. The State might preserve them as *evidence of the amounts* due a particular fund, which it might at some time desire to replace. * * * The word 'invest' was probably used through a desire to preserve the particular fund as a distinctive one, but these questions are not in this case and do not concern the relator in any way" (p. 32).

thus indicating clearly that the legal effect of the transaction as to whether it did or did not affect the character of the warrant as a continuing indebtedness was not involved in the case, and also clearly indicating that in the opinion of the Chief Justice the purchase of a warrant under such circumstances extinguished it as an indebtedness of the State.

The case of *State ex rel. Stull Bros.* vs. *Bartley*, 41 Nebr., 277, is cited by the majority in *State* v. *Young*. In that case the Court held that the Constitution had created a trust fund known as the Permanent School Fund, and that an Act providing for the payment of a warrant drawn on the general fund by the Treasurer and also that the Treasurer "shall hold said warrant as an investment of said permanent school fund" was void, as "said Act provides in substance for a transfer to the general fund of the permanent school fund" (p. 283). In the opinion the Court said:

> "We shall not argue to prove that an Act which provides for the defraying of current expenses of the State, and the enforced payment of outstanding general fund warrants from the permanent school fund is a transfer of that fund. The fact that such a transaction is by the legislature denominated an investment is wholly immaterial" (p. 284).

In defining "investment" they said:

> "It implies the contractural relation of purchaser and seller or borrower and lender, and in that sense it is employed in the Constitution" (p. 284),

undoubtedly having in mind the relation between the State and the holder of the warrant proposed to be credited by the Act rather than the specific relation of the State itself to its own warrant thus purchased, as they immediately proceed to say:

> "It follows that the State in its relation as Trustee can no more require the holder of State warrants to part with them than it can enforce the sale by a citizen of any other species of property" (p. 284).

While the case is not put upon that ground, it seems to involve the necessary conclusion that the warrants as "State securities" ceased to exist after such payment and although denominated an "investment," by the Act they were not after such purchase a debt or liability of the State, as if they were the "permanent school fund" would still have existed untransferred but invested in the warrants.

In *In re State Warrants,* 25 Nebr., 659, the Court held that "State warrants drawing interest" were "State securities" within the meaning of the Constitutional provision, authorizing the investment of the school funds in "United States or State Securities" but did not discuss the question as to what the effect of such a purchase would be upon such warrants as a continuing indebtedness of the State.

In *State* v. *Stuefer,* 66 Nebr., 381, the opinion of the Commissioner, who was appointed by the Court, seems to treat the proceeding contemplated by the Statute being construed by the Court in *In re State Warrants* (*supra*), as a guarantee by the State of the integrity and security of the "permanent school fund," and did not discuss the question as to the effect upon a State security, as a continuing indebtedness after its purchase by the State.

These cases, while in some respects analogous, are not in point upon the contention of the plaintiff.

In *Commissioners* v. *Walker,* 7 Miss. (6. How), 143, upon the ground that "There was a legal conveyance of the Sinking Fund to persons capable of holding it for the use and benefit of the State in the extinguishment of a certain debt" (p. 187); the Court held that the Commissioners were Trustees of the Sinking Fund; and as such could maintain the suit to recover money loaned by them from the Sinking Fund "for the use of the party beneficially interested" (p. 188); and did not discuss the question involved here.

The case of *Elser* v. *City of Fort Worth,* 27 S. W., 739, is closely in point for the plaintiff. In that case the Court said:

> "The next contention of appellant is that if the City can invest these funds otherwise than in paying off and canceling the bonds themselves it cannot invest them in the purchase of its own outstanding bonds of another series because a purchase by a debtor of a debt against himself *ipso facto* works a cancellation thereof. It must be conceded that this is a correct statement of the law in its application to ordinary cases in which the

purchase is made by the debtor in the same capacity in which he owes the debt; * * *

But, be this as it may, it will hardly be contended that if the purchase be made in a different capacity than that in which the debt is owed (for instance, if A as Trustee should with a trust fund purchase a debt which he owes as an individual), the rule would apply; and we are of opinion that as to those funds set apart for special purposes both by the law and the ordinances passed by the City Council as in this case, the City must be regarded as a Trustee purchasing with the trust fund a debt which it owes as an individual and that the debt so purchased is not canceled but is kept alive for all purposes and becomes the property of the *cestui que trust*—the special fund—just as the house and lot taken from a defaulting collector was said by our Supreme Court in the case of *City of Sherman* v. *Williams,* 84 Tex., 421, 19 S. W. 606, to become the property of such a fund. We think this view receives striking illustration in numerous provisions of our constitution and laws authorizing the investment of special funds such as the university and public school funds held by the State in its own bonds and by the different counties in their own obligations. We believe it has never been contended that a purchase of this kind cancelled the bonds thus acquired" (p. 740).

The Court distinguishes 102 N. Y., 313, and 102 N. Y., 410, upon the ground that they turn upon statutes "quite dissimilar to the provisions contained in the Charter of this City." The Charter provided:

"The City Council shall have power to invest the sinking fund * * * in bonds of the City of Fort Worth" (p. 741).

An examination of the essential and substantial features of the legislation construed in the New York cases will, I think, show their substantial identity with this provision in the Charter of the City of Fort Worth. The opinion of the Court seems to be mainly predicated upon the analogy of the collector's house and proceeds upon an apparent misconception of the legal situation. The house had physical existence and could be impressed with a trust in connection with the fund without any reference to its ownership or any contractual relations to or interests therein. There is no parallel between such a piece of physical property and the bonds in question. A bond is merely the evidence of an indebtedness and entitles the holder to recover of the maker the amount evidenced by its terms. Independent of establishing the right of such recovery the bond has no value. To assume that it is in all respects parallel to a piece of physical property for the purpose of demonstrating that it still has valid existence as an evidence of indebtedness after its purchase by the maker, is to beg the question and assume its continued existence as a debt. The bond is a promise to pay and the real question is whether the obligation which the City assumed to pay, the sum stipulated in the bond, to the payee, still remains an obligation when the City makes the purchase itself and becomes by virtue thereof the other party to the contract. On the theory of a trust relied on by the Court the debt may well have been extinguished, as a debt, and the proceeds in the hands of the City be impressed with a trust in favor of the fund in which the debt had merged.

This was a decision of an intermediate Court. It does not appear to have gone to the Supreme Court, and I do not find that it has ever been cited with approval.

There are a number of authorities which clearly sustain the contention of the defendants, some of which are directly in point.

In *Young* v. *Hughes,* 20 Miss. (12 S. & M.), 93, the State subscribed for stock in the Planter's Bank and paid for the subscription in bonds and provided that the surplus of the dividends on the stock after the payment of the interest of the bonds was to "constitute a Sinking Fund * * * for the redemption of the said bonds" (p. 96) and a State Commissioner was afterwards provided for with power to "manage, collect and receive the Sinking Fund" (p. 98) and authorized to coerce by suit or otherwise payments of all debts due that fund. The fund was held to be the property of the State.

In *Miss.* v. *Dickinson,* 20 Miss. (12 S. & M.), 579, the State Treasurer was required to set off the indebtedness of the State to the defendant against the amount the defendant owed the Sinking Fund, notwithstanding the fact that the Sinking Fund was in a sense a trust fund because "an indebtedness to the sinking fund is therefore, an indebtedness to the State of Mississippi, the latter being the sole owner of that fund" (p. 583).

In *Comr. of Baltimore Co.* vs. *Board of Managers of the Maryland Hospital for the Insane,* 62 Md. 127, the Board of Managers of the Hospital held the title by deed of "all the real estate and other property belonging to said trust" (p. 130). They were "a body politic and corporate" might "sue and be sued" (p. 131). They

had no "power to mortgage or pledge any of the property real or personal of said hospital" (p. 130). The hospital was "declared to have been built and established on its said site by the authority and direction of this State" and the hospital was "to be a public agency of this State for the administration of one of the charities thereof" (p. 131). The Court held that the hospital was the property of the State and not subject to an assessment for the construction of a public roadway and that the "corporate form was adopted by the State only more conveniently and efficiently to administer the affairs of the Institution" (p. 132).

In *New England Life Ins Co.* v. *Phillips,* 141 Mass., 535, the Court was deciding the effect of a purchase by trustees of a Sinking Fund, of railroad bonds, which the fund was created to buy, and under the provisions of the Statute they held that it was the duty of the Trustees to cancel the certificates of the road's indebtedness when purchased by them with the Sinking Fund. They said,

> "Now if it were a plain misuse of the term to say 'invested' when preservation for the purpose of collecting income is not intended, there would be some force in the argument. But the word 'invest' has no such absolute and universal meaning. It is not uncommon to hear it said that the best investment of money is in the payment of one's debts" (p. 540).
>
> "but as has already been seen the word 'invest' does not necessarily imply a permanent keeping for income (p. 543). * * * But in the view which we take of the proper construction of the Statute it might reasonably be anticipated that the Trustees though having the liberty to invest in other securities

would give the preference to the certificates of indebtedness if these could be obtained at a fair price as compared with the other authorized securites for the purpose of reducing the debt as fast as possible" (p. 544).

While the point is not emphasized, this last remark of the Court indicates that it understood the purchase of securities under such circumstances to result in a reduction of the debt.

In *Brooke et al.* v. *Phila.* 162 Pa. St., 123, 24 L. R. A., 781, in considering the debt limit fixed by the Constitution and the relation thereto of the bonds of the city held in its Sinking Fund, the Court said:

"When used in the purchase of the debt, there is a release of the pledge and a discharge of the obligation to the amount of the purchase.

It is not important in determining the actual debt that the Commissioners have not authority immediately on purchase to cancel or destroy the city certificate; it is paid for by the money of the obligor; put into the fund for that very purpose; *as an outstanding unpaid obligation, it can as to the obligor have no real effective existence after it is purchased and paid for with the city's* money" (p. 131). * * * It "ceases to be longer a part of the actual debt of the city. That much of the debt the City is no longer bound to pay because practically it is paid. We are speaking now of the actual obligation of the city as affected by these certificates in the fund but not yet canceled" (p. 131) * * * "The City owes now just what it is bound to pay; not one cent more. If it has through the Sinking Fund purchased its own certificates, placed them uncancelled in the fund and *even pays interest on them annually it can-*

not pay them again. The payment of annual interest is only a method or device for the annual appropriation to the fund" (p. 132).

The Sinking Fund Act provided for the "extinguishment of the bonds and funded debt" and that "said bonds when purchased shall be conspicuously stamped to show that they were purchased for the Sinking Fund of said City and the *interest on said bonds* shall be collected and used in like manner with the taxes collected for said Sinking Fund" (Laws Pa., 1874, page 234, Chap. 452, sec. 11), clearly treating the bonds as an existing investment with interest accruing thereon. This case is followed on this point in *Bruce et al.* v. *Pittsburg et al.,* 166 Pa. St., 152, and in *Houston* v. *Lancaster,* 191 Pa. St., 143.

In *Kelly* v. *Minneapolis,* 63 Minn., 125, the Court said:

> "This Board [Sinking Fund Commissioners] with the consent of the council may invest the fund in the bonds of the city or in certain other designated bonds. If it is *invested in the bonds of the city* they are not to be *canceled* but the *interest thereon is to be collected* and added to the fund; and when the principal of any city bonds becomes due, such of the bonds in the Sinking Fund as may be necessary are to be sold with the consent of the council and the matured bonds paid" (p. 134).
>
> "It appears from the record in this case that all of the bonds held by the Sinking Fund are the bonds of the City, hence the amount of the bonds and the money in the fund necessarily represent an equal amount of the out-

> standing and uncanceled bonds and indebtedness of the city which has already been realized from taxation to pay the bonds, and to ascertain the further amount to be raised by taxation in order to extinguish the entire indebtedness of the city it necessarily follows that the amount of the Sinking Fund is to be deducted from the entire amount of the apparent indebtedness of the City. *The balance is its actual debt.* The debt limit of the statute has reference to an actual indebtedness for the payment of which a tax must be levied, not to an *uncanceled apparent liability*" (p. 135).

In *Stone* v. *Chicago*, 207 Ill., 492, it was held that the sum reported as due the Sinking Fund was

> "not a debt of the city but the amount in the hands of the City Treasurer belonging to the Sinking Fund should be deducted from the amount of the city's bonded indebtedness * * * *" (p. 510).

Citing with approval *Kelly* v. *Minneapolis* (*supra*). It does not appear from this case whether or not the Sinking Fund was invested in whole or in part in the City bonds.

In *Savings Bank* v. *Grace*, 102 N. Y., 313, the Court said:

> "Re-purchase of notes or other evidences of debt by the issuer from the holder is redemption, and is equivalent to and has the force of payment" (p. 319).

Under the law being construed the Commissioners of the Sinking Fund were required to

> " 'invest the moneys which shall constitute the Sinking Fund for the redemption of the

> city debt * * * in the purchase of stocks created by the corporation of the City of New York' " (p. 321).

The stock was not to be cancelled by them until the final redemption of the stock and all interest accruing thereon was to be regularly carried to the said Sinking Fund for the redemption of the debt, and provision was made for its sale. The Court said:

> "From the time of its inception then to its final redemption it is the subject of sale; at all times the basis of interest, and, in the hands of all owners save the Commissioners, a part of the apparent indebtedness of the city" (p. 323).

Commenting upon a Statute authorizing the Commissioners to cancel the stock they said:

> "Its actual cancellation deprived it of no efficacy, for by redemption it was already for all practical purposes extinguished" (p. 324).

> "But the object of every Sinking Fund is to diminish the debt whose existence warranted its foundation" (p. 325).

In holding that stock thus invested in was not a debt, they said:

> "It satisfies also the intent of the Constitutional prohibition. That is aimed at an actual, not a theoretical indebtedness—at a substantial liability which can be discharged only by the enforcement of a tax or an assessment which when levied will be a charge upon the tax payer and a burden for him to remove—not a formal obligation which may remain as evidence of a *once existing debt,*

but which can in no way be regarded as a *present debt to be enforced*, and which, if not before cancelled in the discretion of the Commissioners, becomes waste paper by the mere efflux of time" (pp. 325, 326).

"It is *by force of the ordinance* that interest is to be credited, *not by reason of the contract* or the terms upon which the stock was issued. Nor could that interest or other money be applied in payment of the stock held by the commissioners. That was paid by the purchase, yet if the argument of the respondent should prevail, it must be paid again before its extinguishment" (p. 326).

In applying similar principles to a railroad bond, the Court in *Wilds* v. *St. Louis, A. & T. H. R. R. Co.*, 102 N. Y., 410, held that conceding the bonds themselves immediately upon their purchase ceased to constitute any part of the corporate debt and were practically extinguished, and "that the provision for interest payments was only a mode for measuring and determining the amount of prescribed contributions to the Sinking Fund; those contributions at least are directed to be made so long as interest accrues upon the bonds treated as valid obligations" (p. 413).

The case of *Savings Bank* v. *Grace* (*supra*) was expressly approved in the recent and thoroughly considered case of *Levy* v. *McClellan*, 196 N. Y., 178, where the Court of Appeals of New York, said:

"City stocks or bonds so held are not debts which it can be called upon to pay within the meaning of the Constitutional prohibition. * * * 'The object of every sinking fund, it was said, is to diminish the debt whose ex-

istence warrants its foundation,' and the amount 'required to pay off the city debt if it all came presently to maturity' would be a sum 'equal to its bonds or stock not including that held by the Sinking Fund' " (p. 197).

The amount of the "public debt" is to be ascertained for the purpose of determining the proportion to be paid by West Virginia. The Sinking Fund by which the bonds in that fund were purchased came from the current revenues raised by taxation in Virginia, while West Virginia was a part thereof, and to those current revenues she contributed her proportion. If the bonds thus purchased by the Fund to which she contributed are to be treated as a part of the existing debt, she will be required to contribute again her proportion in payment thereof and will therefore in effect pay that proportion twice. The bonds in the Literary Fund were purchased by assets that were the common property of the whole State in which West Virginia owned her proportion. The common assets having been used for the purchase of the bonds now in the Fund, if the bonds are still treated as a part of the public debt and in the final adjustment made a charge upon West Virginia, West Virginia will be compelled to pay her proportion of the bonds and lose entirely the benefit of her share of the assets thus used in making the investment therein.

Inasmuch as both the Sinking Fund and the Literary Fund under the provisions of the Statute regulating their conduct and management are very clearly the property of the State and only kept in separate and distinct accounts for the convenience of the State, it is difficult to see how a

purchase by the State for either of these funds of its own obligation, does not extinguish the bond as a debt of the State. The State can hardly be debtor and creditor at the same time.

I am satisfied that the great weight of reason and authority is against the contention of the plaintiff, and I therefore find that the Sinking Fund with interest and the Literary Fund with interest, within the meaning of the decree, were not a part of the "public debt" of the Commonwealth of Virginia on the first day of January, 1861, and that the amount of the public debt was the sum of Thirty-two million, nine hundred and nineteen thousand, eight hundred and sixty-three 93/100 dollars ($32,919,863.93) plus the unpaid and accrued interest thereon amounting to Nine hundred and seventy-seven thousand two hundred and nine 89/100 dollars ($977,209.89) in all $33,-897,073.82.

I state as a "special circumstance" that I consider of importance that on the first day of January, 1861, there was held by the Commonwealth of Virginia in its Sinking Fund, bonds of the Commonwealth of Virginia that had been purchased by its funds and were its property in the amount of One million, three hundred and twenty-nine thousand five hundred and fifty-seven 20/100 dollars ($1,329,557.20), and that the unpaid and accrued interest thereon up to December 31, 1860 was Thirty-nine thousand six hundred and eighty-six 72/100 dollars ($39,686.72), aggregating one million three hundred and sixty-nine thousand two hundred and forty-three and 92/100 dollars ($1,-369,243.92), and that the Commonwealth of Virginia held in its Literary Fund bonds of the Commonwealth of Virginia that had been purchased by

its funds and were its property, one million eighty-five thousand and sixty-seven 33/100 dollars ($1,085,067.33) with unpaid and accrued interest thereon up to December 31, 1860 of Thirty-one thousand seven hundred and seventy-six 2/100 dollars ($31,776.02) total One million, one hundred and sixteen thousand eight hundred and forty-three 35/100 dollars ($1,116,843.35).

I further state that the Commonwealth of Virginia was liable under a guaranty made in 1847 upon the bonds of the Chesapeake & Ohio Canal Co. for the "punctual payment of the interest and ultimate redemption of the principal sum of money appearing due" in the sum of Three hundred thousand dollars. That of this sum, bonds aggregating Thirteen thousand dollars ($13,000) were redeemed by the Commonwealth of Virginia April 11, 1903, in her settlement with the United States for Virginia bonds held by the Secretary of the Interior for the benefit of certain Indian tribes, and that the State now holds the same as a claim against the Chesapeake & Ohio Canal Company. The sum of Thirteen thousand dollars ($13,000) does not enter in any way into the aggregate of the indebtedenss as above stated (Rec., p. 289).

The schedules hereto annexed and marked Paragraph 1, Ex. 1, Paragraph 1, Ex. 2 and Paragraph 1, Ex. 3, show by what authority of law, and for what purposes the same was created, and the dates and nature of the bonds being the evidence of said indebtedness.

SUMMARY.

Amount of the Public Debt of the Commonwealth of Virginia January 1, 1861, $33,897,073.82.

Stated as a Special Circumstance:

Amount of bonds of Commonwealth held by Sinking Fund, $1,369,243.92.

Amount of bonds of Commonwealth held by Literary Fund $1,116,843.35.

Amount of Bonds Chesapeake & Ohio Canal Co. guaranteed by Virginia in 1847 $300,000.

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PARAGRAPH II OF DECREE.

2. "THE EXTENT AND ASSESSED VALUATION OF THE TERRITORY OF VIRGINIA AND OF WEST VIRGINIA JUNE 20, 1863, AND THE POPULATION THEREOF, WITH AND WITHOUT SLAVES, SEPARATELY."

"The extent and assessed valuation of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof with and without slaves, separately," is as follows (Rec., p. 347):

1. EXTENT:			
Land Area:			
Virginia	40,262	Square Miles	= 62.6314%
West Virginia	24,022	do.	= 37.3686%
Total	64,284	do.	= 100%
Total Area:			
Virginia	42,627	Square Miles	= 63.8157%
West Virginia	24,170	do.	= 36.1843%
Total	66,797	do.	= 100%
2. ASSESSED VALUATION:			
Real Estate:			
Virginia	$296,085,460.31		= 78.2188%
West Virginia	82,449,252.04		= 21.7812%
Total	$378,534,712.35		= 100%
3. POPULATION:			
With Slaves:			
Virginia	1,221,319		= 75.4855%
West Virginia	396,633		= 24.5145%
Total	1,617,952		= 100%
Without Slaves:			
Virginia	748,171		= 66.4769%
West Virginia	377,289		= 33.5231%
Total	1,125,460		= 100%

ALTERNATIVE FINDING.

At the request of defendants, I make an alternative finding that the population of the counties now forming the State of Virginia, as shown by

the census of the United States for 1860, is as follows:

Without slaves,	747,136=67.5864%
With slaves,	1,219,630=76.4027%

And for the counties now forming the State of West Virginia:

Without slaves,	358,317=32.4136%
With slaves,	376,688=23.5973%

The assessed valuation of the territory of Virginia for 1860 was: $293,105,895.55

The assessed valuation of the territory of West Virginia for 1860 was: $83,814,355.61

"Supplemental Ex. 7."

PARAGRAPH III OF DECREE.

3. "ALL EXPENDITURES MADE BY THE COMMONWEALTH OF VIRGINIA WITHIN THE TERRITORY NOW CONSTITUTING THE STATE OF WEST VIRGINIA SINCE ANY PART OF THE DEBT WAS CONTRACTED."

This paragraph is clearly based upon the Wheeling Ordinance, which so far as material, reads as follows:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof and a just proportion of the ordinary expenses of the State Government since any part of said debt was contracted and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during the same period" (Appendix to Rec., p. 122).

The Wheeling Ordinance is not predicated upon the *amount* of the public debt. Upon the assumption that West Virginia would be liable for "a just proportion of the public debt" in case of separation, the Ordinance prescribes an arbitrary method by which that "just proportion" shall be ascertained. It treats the question as an equation involving three factors: first "by charging to it all State expenditures within the limits thereof"; second, "and a just proportion of the ordinary expenses of the State Government since any part of said debt was contracted"; and third, "and deducting therefrom all moneys paid into the Treasury of the Commonwealth from the

counties included within the said new State during the same period."

The result of this equation was to be a "just proportion" without any reference to the amount of the debt itself. The assumed liability was the occasion of the arbitrary equation, and whether, standing alone, it would result in a "just proportion of the public debt" is so far as the ordinance is concerned entirely immaterial. The ordinance declares that the result thus "ascertained" is "a just proportion." If the ordinance is contractural in its character, it is the agreed method between the States of ascertaining "a just proportion of the public debt." In such case the States would be bound thereby as in case of any other contract.

Next in the order of events comes the Constitution of West Virginia, which upon this point provides:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State" (App., p. 125).

The Court has held that this section is to be read *in pari materia* with the ordinance. The rules of construction seem to be well settled by the following authorities:

> "The rule is familiar and well settled that in case of obscure and doubtful words or phraseology, the intention of the law makers is to be resorted to if discoverable from the context, in order to fix and control their meaning so as to reconcile it if possible with the general policy of the law" (p. 677).
>
> *Wilson* v. *Rousseau*, 4 How. U. S., 646.

"It seems all sufficiently plain, and in such case there is a well-settled rule which we must observe. The object of construction applied to a Constitution is to give effect to the intent of its framers and of the people in adopting it. This intent is to be found in the instrument itself, and when the text of a constitutional provision is not ambiguous, the Courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument. * * *.

So also where a law is expressed in plain and unambiguous terms whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction" (pp. 670, 671).

Lake Co. Com. v. *Rollins,* 130 U. S., 662.

"The general rule is perfectly well settled that where a statute is of doubtful meaning and susceptible upon its face of two constructions, the Court may look into prior and contemporaneous acts, the reasons which induce the act in question, the mischiefs intended to be remedied, the extraneous circumstances and the purpose intended to be accomplished by it, to determine its proper construction. But where the act is clear upon its face and when standing alone it is fairly susceptible of but one construction, that construction must be given to it" (p. 419).

Hamilton v. *Rathbone,* 175 U. S., 414.

"Consequently if a subsequent act on the same subject affords complete demonstration of the legislative sense of its own language, the rule which has been stated requiring that the subsequent should be incor-

porated into the foregoing act is a direction to Courts in expounding the provisions of the law" (p. 8).

Alexander v. *Mayor*, 5 Cranch., 1.

"And if it can be gathered from a subsequent statute *in pari materia* what meaning the legislature attached to the words of a former statute they will amount to a legislative declaration of its meaning and will govern the construction of the first statute" (p. 565).

U. S. v. *Freeman*, 3 How., 556.

"In cases of *doubt or uncertainty* acts *in pari materia* passed either before or after, and whether repealed or still in force may be referred to in order to discern the intent of the legislature in the use of particular terms, or in the enactment of particular provisions" (p. 235).

Vane v. *Newcomb*, 132 U. S., 220.

The only question that can arise here is as to the application of these rules to the Ordinance and the Constitutional provision read together. I understand a proper application of these rules, at bar, to be that where there is any doubtful uncertain or ambiguous word, phrase or sentence, which is susceptible of two constructions, one of which would operate equitably and one inequitably, that the "equitable" purpose declared by the Constitutional provision requires a construction that would produce the equitable result. Where, on the other hand, the language is clear and unambiguous there is no room for construction, and the clear and obvious meaning is to be adopted. If it is to be held that by reason of the Constitu-

tional provision equitable results should be reached in every instance, notwithstanding the plain provisions of the Ordinance may operate inequitably, the Constitutional provision would in such case in effect eliminate each or every factor in the equation stated in the Ordinance. This would substitute the Constitutional provision for, rather than read it with, the Ordinance. They are to stand and to be read together, the Constitutional provision being invoked only when it is needed for the purpose of interpreting and making certain what is uncertain and ambiguous.

Bearing upon the equitable construction, it is to be observed that both the Ordinance and the Constitutional provision proceed upon the assumption that by the act of separation, West Virginia became liable for a portion of the "public debt of Virginia," which if liquidated before the separation, would have been borne by the citizens of the whole State upon some equal basis. So far as the liability of the State can be predicated upon the citizens constituting the State as distinguished from the State itself, it can be predicated upon either population, territory or property or upon a combination of two or more or all of them. In either case the same proportional liability would rest upon population, territory or property wherever it might be situated. The unit of liability ascertained, each unit would be liable for its *pro rata* share of the whole debt wherever the unit might be. It would be so liable no matter how the debt might have been incurred or in what section its proceeds might have been expended, or what particular benefit or advantage any particular unit or set of units might have received therefrom. The relation of the

units to each other would be joint and indivisible, the debt a common debt and its proceeds expended from a common fund. Each unit was bound by the action of the lawful majority in incurring the debt and expending the proceeds. Any construction that tends to relieve any of these units from their *pro rata* share of such common liability for the whole public debt would to that extent be inequitable as it must necessarily result in increasing the liability of the remaining units.

The amount claimed under this paragraph by Virginia is $5,639,302.66

(Rec., p. 371, c. 1, p. 1.)

The amount conceded by West West Virginia is..... $1,251,288.92

(Rec., p. 371, c. 1, p. 1.)

The items in controversy are as follows:

Item 2 (Rec., p. 373, c. 1, p. 2)—Covington & Ohio Railroad, $1,146,460.42.

By an Act passed February 15, 1853, the Board of Public Works were made "a body politic under the name of the Covington and Ohio Railroad Company" (App., p. 33). This Company had no capital stock or stockholders or officers except as the Board of Public Works acted as its officers.

By Section 3 it was provided that

> "The Board of Public Works shall commence and continue the construction of said road," etc.

By Section 4, the same Board was

> "authorized to borrow on the credit of the Commonwealth * * * the money necessary to construct and equip said road."

March 13, 1856, the same Board were

> "authorized and directed to borrow from time to time * * * the sum of Five hundred thousand dollars, to be appropriated to the construction of the Covington and Ohio Railroad" (App., p. 34).

A specific provision was made for the manner in which the money was to be expended. March 20, 1858, they were again authorized to borrow for the same purpose under the same restrictions, Eight hundred thousand dollars. (App., p. 34), and on February 29, 1860, the sum of Two and one-half millions. Under these various Acts, it is conceded that prior to January 1, 1861, the sum above mentioned had been expended within the limits of West Virginia.

I find that the sum thus expended was an expenditure by the Commonwealth of Virginia within the territory now constituting the State of West Virginia prior to January 1, 1861.

Alternative Finding.

At the request of the defendant I find in the alternative that it appears that on February 26, 1866, the Commonwealth of Virginia passed an Act incorporating the "Covington and Ohio Railroad Company" (App., p. 35) and on March 1, 1866, West Virginia (App., p. 37) passed an Act incorporating the same Company. By these Acts

upon the performance of the conditions therein specified, the Company was to

> "have all the rights, interests and privileges of whatsoever kind in and to the Covington and Ohio Railroad and appurtenances thereto belonging, now the property"

of either state (Sec. 2, of each Act).

On February 26, 1867 (App., p. 40) additional legislation to enable the completion of the road and authorizing its consolidation with four other railroads was passed by West Virginia. An Act for the same purpose and with substantially the same provisions, with some immaterial variations, was passed by Virginia March 1, 1867 (App., p. 43). The name of the road was changed by both Acts to the Chesapeake & Ohio Railroad Company. By section 14, of the latter Act, the Railroad was given the

> "right * * * to purchase the stock held by the State in said company * * * to pay any debt which it may owe the State * * * by surrendering * * * bonds for an amount equal to the debt proposed to be paid, and may also purchase the right of the State in and to the Blue Ridge Railroad by the surrender of State bonds to an amount equal to the value of said road, etc." (App., p. 45).

Nothing appears in the Record to show whether any such purchase of stock of the State by the Road was made, nor does anything appear to show whether any debt of the Road to the State was paid. It does appear and I find as a fact that the State of Virginia received in 1870 for the

Blue Ridge Railroad from said Chesapeake and Ohio R. R. Co., $625,348.08 (Rec., p. 487).

I find as a fact that the State of Virginia was relieved by the Chesapeake & Ohio Railroad Company of a guarantee of the bonds of the Virginia Central Railroad, amounting to One hundred thousand dollars (Rec., p. 487).

Item 3.—Winchester & Potomac Railroad, $170,-532.00.

This item results from an item of $270,000 which consists of $120,000 paid for stock subscribed, and paid for by the State, and $150,000 loaned by the State to the Railroad Company (Rec., p. 489).

It raises the question as to whether the subscribing and paying for stock in an internal improvement company, whose improvements were located within the limits of West Virginia was "an expenditure made by the Commonwealth of Virginia within the territory now constituting the state of West Virginia," etc.

It is contended upon the part of the plaintiff that the various improvement companies were merely the method or machinery adopted by the State for the purpose of creating internal improvements, and that as declared by its Board of Public Works,

> "It was not the original purpose of the legislature in creating the fund for internal improvement that the aid to be extended to joint stock companies should be afforded upon the principle of mere money making" (Rep. Bd. of Public Works, Vol. 6, p. 10).

and

> "It must be remembered that these improvements were not fostered by the legislature through contributions in subscriptions and loans merely as investments of so much money in profitable stocks but that they were actuated by a higher consideration, that of promoting the prosperity of the State at large by contracting to build up the local prosperity of its different sections" (Same Vol. 12, p. 8).

and that this being the dominating and controlling purpose these were, within a proper construction of the decree, "expenditures made by the Commonwealth of Virginia," &c., &c.

I have no doubt that the purpose thus declared by the Board of Public Works was the controlling purpose that led the State to engage in these public improvements through the method adopted of organizing joint stock companies and the State becoming a stockholder therein. It is at the same time clear that the element of investment and an expected return therefrom and a belief in the value of the investment was an important element from the beginning. In giving the reasons for adopting this method, the same Board said:

> "Private wealth will of itself take the direction which personal interest prompts."
> * * *
> "But it can never be to its [the State] interest, for many reasons, to become the sole proprietor of all the public works within its territory.
> Experience testifies that they will be more economically improved and better repaired if the management be left to the individuals who subscribe to their stock, with a view to

> private gain, than if confined to public officers or agents. The Commonwealth should subscribe to so much of their stock and upon such terms as will suffice to elicit individual wealth for public improvement" * * * (Rep. Bd. Pub. Works Vol. I, p. 48).

For the purpose of inducing subscriptions they suggest,

> "By yielding to the individual subscribers the profit of the State on its shares of the stock of any company where required to secure such individuals against temporary loss, a much smaller subscription of the public money will suffice to draw forth private enterprise."

On page 81, they say, after having discussed the failure of the stock of some of the companies to yield an immediate income, that the foundation had been laid that would

> "assure to the Commonwealth a speedy return for such sums as the General Assembly may authorize the Board of Public Works to subscribe out of the funds for internal improvement."

and referred to the method adopted to

> "arouse the enterprise and patriotism of their fellow citizens in general to embark their private fortunes in the career of internal improvement."

A report of this Board for 1818 shows that returns were expected from the James River project of Thirty-five thousand dollars per year, and the report for 1819 shows that the stock of the Dismal

Swamp Company and Roanoke Navigation Company were above par, and the Swift Run Gap Turnpike Company had paid from five to ten per cent dividends for several years. In the report for 1831, referring to the completion of the James River Improvement they say that

> "A revenue not only sufficient to pay the interest upon the amount of the expenditure but that a surplus greatly beyond it will be realized."

It was the expectation of these profits that justified the Act of 1820 (App., p. 50) under which the State practically took over the property of the James River Company and guaranteed its stockholders 12 per cent. dividend for twelve years and 15 per cent. "forever thereafter."

Substantially all of the Acts, both general and special in their character, authorizing the Board of Public Works to subscribe for stock of the various improvement companies, comtemplated the receipt of dividends on the stock of the State and made specific provision for its disposal and use, recognizing the value of the stock.

Under the Act of 1817, Sec. 32 (App., p. 16) a general provision was made giving the state the prior right to purchase the stock of other stockholders and prohibiting its offer to others until it was offered to the State. In order to induce the investment of private capital in the stock of the companies it suspended its right to dividends upon its own stock until the stock of other subscribers had "netted to them six per cent. per annum" (App., p. 6). Under a Statute passed in 1816 private subscription to 3/5 of the stock was required before the subscriptions were made on

behalf of the Commonwealth (App., p. 5). The privilege as to suspending dividends for the benefit of the other stockholders was repealed in 1828 (App., p. 10). While the proportion of stock taken by the Commonwealth was at first 2/5 of the capital, this proportion was changed in 1848, so that in most, if not all of the instances thereafter, the State was authorized to subscribe 3/5 of the capital. (See Acts of 1848, Chap. 196, sec. 3, p. 220.)

The Act of April 9, 1838 (Acts of Va., 1838, Chap. 12, Sec. 3, p. 24), provided for the payment of the interest and final redemption of the principal sum borrowed for the payment of stock subscriptions. It also provided that

> "the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other net income which may accrue therefrom to the Commonwealth or to the fund for internal improvement, shall be and the same are hereby appropriated and pledged," &c.,

for the payment of such loans, thus holding out the stock of the Commonwealth with its expected dividends as a security of value as an inducement to investors.

The Constitution of Virginia of 1851 recognized these stocks as the property of the Commonwealth by the following provisions:

> "The General Assembly may at any time direct the sale of the stocks held by the Commonwealth in internal improvement and other companies, but the proceeds of such sale, if made before the payment of the public

The Act authorizing the subscription to the stock of the Shepherdstown and Smithfield Turnpike Company by the Board of Public Works, passed February 20, 1826 (Acts of Va. 1825-26, p. 66), contains this proviso:

> "Provided that the money hereby authorized to be advanced to said company by taking part of the stock thereof shall be applied exclusively to the completion of said road should any part of it be unfinished when the aforesaid sums of money shall respectively become payable."

A similar act relating to the Petersburg Railroad Company, passed March 22, 1831 (Acts of Va. 1830-31, p. 205), contains a similar proviso:

> "Provided that no part of the stock herein authorized to be subscribed shall be payable until said three-fifth shall have been fully paid and expended by the said company in the construction of the road aforesaid unless at the option of the said Board."

The General Act of February 11, 1832, contains this provision:

> "When the Board of Public Works having made any subscription to the stock of any company shall have good cause to believe * * * that the funds of the company are misapplied or will probably be misapplied, it shall be the duty of the said Board to withhold payment of their subscriptions until proper legal measures can be taken to secure * * * the faithful application of the funds of the company" (App., Sec. 4, p. 18).

The conditions thus imposed by the Commonwealth to enable it to thus indirectly control or dispose of the funds of the corporation is clearly inconsistent with the idea that it had any right to control the assets other than that of an ordinary stockholder, as, if they were within its control, such legislation would have been unnecessary.

The act to amend the Charter of the James River and Kanawha Company, passed March, 1860, clearly recognized the distinction between the rights of the State as a stockholder and a creditor of the Company (App., p. 108).

Code of Virginia, 1860, Chapter 67, Sec. 28, p. 391, authorized the Board of Public Works to purchase

> "any work of any internal improvement in which the State is a stockholder, or otherwise interested,"

at a sale

> "by virtue of mortgage, judgment or other lien, * * * on the part and for the use of the Commonwealth" (p. 391).

That the state fully recognized these stocks as investments of value and that its rights were those of a stockholder only, seems clear.

The case of U. S. *v.* Stanford, 161 U. S., 412, is relied upon as sustaining the contention of the plaintiff. The only question involved in that case was whether a stockholder of the Central Pacific Railroad Company, the California Company, was personally liable as such stockholder for the bonds of the United States "loaned to railroad companies for the purposes indicated in the Act of

1862" (p. 428). The Statutes of California made such stockholders liable for all of the road's "debts and liabilities" (p. 414) the Union Pacific Railroad chartered by Congress and enjoying on the same terms with the Central Pacific Railroad Company the benefit of the bonds, not being so liable. It is true that in the opinion, the Court said:

> "These ends were to be attained through the agency of a corporation created by Congress and of certain corporations organized under State laws which Congress selected as instruments to be employed in accomplishing the public objects specified in its legislation" (p. 427).

I do not understand that by the use of this language the Court intended to be understood as holding that the relation of principal and agent existed between the United States and the corporations in question, or that their property or assets and the right to control the same was in any way changed or affected by reason of their having been selected as such "agency" or "instrument," or that by reason of their having been so selected the United States acquired any control of or interest in the assets of such companies. They were agencies and instrumentalities in the same sense that all public service corporations are instrumentalities and agencies of the State, and only in that sense did Congress extend its aid to these particular corporations to accomplish the objects desired. The opinion in effect so states:

> "The Supreme end sought to be attained was by means of private capital and Governmental aid to secure the construction of the

> whole line, for the benefit primarily of the United States and for the use of all the people" (p. 430).

The companies "private capital" was building the road and the Government was simply rendering aid to an "agency" selected by it for that purpose and in that sense only was the road in question the agent of, or instrumentality of, the Government. That the assets of these companies were their own and not the property of the United States was expressly held in the *Sinking Fund cases*, 99 U. S., 700, where the Court said:

> "It is a matter of no consequence that the Secretary of the Treasury is made the Sinking Fund agent and the Treasury of the United States the depository or that the investment is to be made in the public funds of the United States. This does not make the deposit a payment of the debt due the United States (p. 725),"

because as the Court said:

> "While the money is retained it is only that it may be put into the fund which, although kept in the Treasury, is owned by the Company" (p. 726),

and

> "Under the circumstances the retaining of the money in the Treasury as a part of the Sinking Fund is in law a payment to the company" (p. 726).

There is no intimation in the opinion that there was any financial relation existing between the United States and the companies other than that

of creditor and debtor or that the money that the companies expended in constructing the road was in any sense, either directly or indirectly, money of the United States or an expenditure by the United States.

I find nothing in the case that justifies the inference that these corporations were agents to apply money put into their hands by the Government to construct the road and were therefore expending the money of the Government therefor.

In *Liverpool Ins. Co.* v. *Massachusetts*, 10 Wall., 566, the Court stated the conditions under which joint stock associations will be held to be a corporation within the scope of a Statute which "permits it to exercise its corporate function in that State on the condition of payment of a specific tax," and for the purpose of suits and in some other particulars, such associations have been recognized by the Courts as corporations.

See also

Fargo v. *L. N. & Chic. R. R.*, 6 F. R., 787.
Edgeworth v. *Wood*, 58 N. J. L., 463.

The following well considered authorities seem to establish clearly the distinction between the State as a stockholder and the corporation as a legal entity.

In *Bank of U. S.* v. *Planters Bank of Ga.*, 9 Wheat., 904 the State of Georgia was a stockholder in the Planters Bank. The point was raised that the State was a "party defendant." In overrul-

ing this contention Mr. Chief Justice Marshall said:

> "A suit against the Planters Bank of Georgia is no more a suit against the State of Georgia than against any other individual corporator (p. 906). * * *
>
> The state does not by becoming a corporator identify itself with the corporation. The Planters Bank of Georgia is not the State of Georgia although the State holds an interest in it.
>
> It is, we think, a sound principle that when a government becomes a partner in any trading company, it devests itself so far as concerns the transactions of that company of its sovereign character and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself and takes the character which belongs to its associates, and to the business which is to be transacted (p. 907). * * * As a member of a corporation a Government never exercises its sovereignty. It acts merely as a corporator and exercises no other power in the management of the affairs of the corporation than are expressly given by the incorporating act * * * and exercises no power or privilege which is not derived from the Charter" (p. 908).

This case has been frequently approved on this point. (See Rose's Notes.)

In *Bank of Kentucky* v. *Wister*, 2 Peters, 318, where the State owned the whole of the stock of the Bank, a case much stronger than the case presented at bar, the Court said:

> "it was insisted that the suit was virtually against a sovereign state," (p. 322).

In affirming 9 Wheat., 904, and holding against the contention, the Court said:

> "But this Court is of the opinion that the question is no longer open here" (p. 322).

In *Briscoe* v. *Bank of Kentucky,* 11 Pet., 257, the question was whether the notes of the Bank were bills of credit issued by the State. The State was the sole owner of the stock of the Bank and all private interest was expressly excluded. Its officers were chosen by the Legislature. It was contended that the Bank was the "mere agent of the State." In holding the contrary, the Court said, answering the following question in the negative:

> "The State of Kentucky is the exclusive stockholder in the Bank of the Commonwealth, but does this fact change the character of the corporation? Does it make the Bank identical with the State? And are the operations of the Bank the operations of the State? Is the Bank the mere instrument of the sovereignty to effectuate its designs and is the State responsible for its acts?" (p. 323).

and again:

> "If the Bank of the Commonwealth is not the State nor the agent of the State, if it possesses no more power than is given to it in the act of incorporation and precisely the same as if the stock were owned by private individuals, how can it be contended that the notes of the Bank can be called bills of credit in contradistinction from the notes of other banks?" (p. 326).

See Rose's Notes for approving citations and also *Curran* v. *Arkansas,* 15 How., 304.

This question seems to have been clearly settled by the Courts of Virginia.

The case of *James River & Kanawha Co.* v. *Early,* 13 Gratt., 541, was an action to recover for the negligence of the corporation. In discussing the question of the liability of the Company, the Court said:

> "It is not a *public corporation* representing the *public* and *administering public funds* for the benefit of *the public,* but it is a joint stock company which has undertaken the construction of a work, useful to the public certainly, but *intended for the private emolument* of the stockholders in dividends of the profits" (p. 552).

> "That the State owned a large interest in the stock of the company will not vary the case * * * a mere interest taken by the Commonwealth in the stock would not be sufficient to bring an action against the company for neglect of its corporate duty within the influence of the decision in the case of *Sayre* v. *The Northwestern Turnpike Road,* 10 Leigh, 454 * * *" (p. 553).

This case is clearly in line with the decisions of the United States Supreme Court upon the relation of the State to a corporation. These corporations were not "*administering public funds* for the benefit of the public."

It seems to me clear that the relation of principal and agent did not exist between the State and these corporations in which it was a stockholder. While in a popular general sense they may be termed the machinery, instrumentality or agency through which the State operated in making the particular disbursement, they were such agency, machinery and instrumentality in

the same sense that they were the agency, machinery or instrumentality of the other stockholders, or perhaps, in the added sense in which every public service corporation is the agency, machinery or instrumentality of the State. The State held two-fifths or three-fifths of the stock, but had no more control over the funds of the company, or any more title to the assets of the company, than any other stockholder holding a like amount of the stock. Like other stockholders it was an investor with the same rights and privileges. It may be said that as a matter of public policy, in a general way, the State was in this manner, indirectly, at least, making an expenditure, and no investment can be made without an expenditure. This case must be determined, however, by well-recognized legal rules. The language of the decree is plain and unambiguous. To hold these subscriptions thus made for investment to be expenditures by the State "within the territory" it would be necessary to read into the decree the words "either directly or indirectly" which I do not feel at liberty to do.

I find therefore that the sums in question in case of the joint stock companies in which the State was a stockholder were expenditures made by the respective companies from their own funds and not by the State. I therefore disallow the sum of $120,000, subscribed and paid for stock in the Winchester & Potomac Railroad Company by virtue of the Acts of 1832 and 1833 (App., pp. 28 and 29).

By an Act passed February 13, 1838 (App., p. 29), the Board of Public Works were

> "directed to loan on behalf of the Commonwealth * * * to the Winchester & Poto-

> mac Railroad Company * * * upon the condition that the salaries of the officers and servants of the said company shall not be directly or indirectly increased during the existence of this debt",

and upon

> " a mortgage upon the whole property, real and personal, and upon the net income of all their tolls and receipts"

the sum of $150,000. Specific provision as to security was made. Acceptance of the loan gave the Legislature " a right to tax the stock, property and profits" of said Company, and the Company was required to pay off all prior liens so as to make the mortgage of the State a first lien (App., p. 30).

This is clearly a loan with specific and careful provision made to secure its repayment, and was so intended by each party thereto. I therefore disallow the item.

ALTERNATIVE FINDING.

At the request of the plaintiff under this item, I make the alternative finding:

First.—That $120,000 was subscribed and paid by the Commonwealth for stock in the Winchester and Potomac Railroad under the Act of 1832, and

Second.—That the sum of One hundred and fifty thousand dollars, with specific provision to secure its repayment with interest thereon was loaned by the Commonwealth to said Railroad

under the Act of 1838, and that the portion of the road in West Virginia was 63.16%.

As a special circumstance that I consider of importance, I also find that an Act was passed February 24, 1846 (App., p. 30), providing for an annuity of $5,000 in lieu of interest upon the debt due by said Company to the Commonwealth, and all dividends upon the stock of the Commonwealth in said company. So long as the annuity was paid, "the payment of the principal of said debt shall be so long postponed" (App., Sec. 2, p. 31). If default were made in payment "the whole of said debt and interest due" are to be collected (Sec. 3) and the lien for the whole debt and interest was fully retained (Sec. 4).

February 22, 1866, the Company was authorized "to pay into the Treasury of the Commonwealth" $83,333.33 (Sec. 1, App., p. 31). Payment could be made in State bonds at their par value, and when made the "claim of the State against said Company shall be lifted and discharged." Under this Act there was paid into the Treasury of the State in bonds and interest in 1866, $118,518.12 (Rec., p. 462).

Item 6.—Berryville & Charlestown Turnpike Company, $11,932.52.

This sum was paid upon a stock subscription and is therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth subscribed and paid for stock in said road under Acts of 1849

and 1850 $20,455.74, and that 58 1/3% of the road was in West Virginia.

Items 10, 11, 12, 13 and 14 all relate to the Kanawha Turnpike and the Kanawha River Improvements.

An Act was passed February 17, 1820, relating to the James River Company (App., p. 50). In its preamble it declared that that company was willing to consent to such modification of its charter as would enable the company

> "as an *agent* acting and holding *in trust* for the benefit of this Commonwealth to undertake and carry the said improvements into effect in such manner as the General Assembly shall from time to time direct and require, and under the direction and superintendence of such agent or agents as may from time to time be appointed for that purpose by appropriating to these objects such sums of money as they may borrow," &c.,

upon the condition that the company would consent to applying its surplus tolls and income

> "to the payment of the interest on the money which they may so borrow,"

except so much as might be necessary to pay a dividend on the present stock of the company of twelve per cent. for twelve years and fifteen per cent. forever thereafter. It was stipulated

> "that the General Assembly shall provide for making good any deficiency in the payment of the interest on any money so borrowed which may remain to be provided for

> after applying the surplus tolls and other income of the said company with the exceptions aforesaid to the payment of interest as aforesaid" (App., p. 51).

It was provided that upon its acceptance by the Company, the Act should be

> "considered a compact between this Commonwealth and the said company"

and while subject to change and modification, no such change and modification should be made

> "as will take from the James River Company their right to the dividends or any part of the dividends upon their stock allowed to them by this Act" (App., p. 51).

The improvements contemplated were to be "prescribed by the Legislature" and should from time to time be made under the superintendence of the Commissioner or Commissioners, agent or agents as the General Assembly should from time to time appoint. It was provided that the works of the Company

> "shall forever thereafter be esteemed and taken as public highways for the transportation of all goods, commodities and produce whatsoever * * * and the road, canals, locks dams and other works when perfected with all tolls, and other profits and emoluments arising therefrom shall be and the same are hereby vested in the said company as *agents in trust* for this Commonwealth" (App., p. 53);

and in Section 10 the company was referred to as, after giving their assent,

"holding as an *agent in trust* for the benefit of the Commonwealth."

Repairs were to be

"contracted for and made by the Company from time to time under the control, direction and superintendence of the Commissioners on the part of the Commonwealth" (App. p. 56).

Commissioners were provided for, and no contracts were to be made by the Company for the improvement of the Kanawha River and Road until the same should be submitted to and approved in writing by the Commissioners, named to superintend the works on such River and Road (do. p. 56). All contracts for making any improvements on the James and Jackson River were to be

"submitted to and approved in writing by the Commissioners" (do. p. 56).

The Treasurer of the State was made *ex officio* the Treasurer of the Company. Money was to be borrowed "as the General Assembly shall hereafter direct" (do. p. 57). Certificates issued for money borrowed were

"to be redeemed only at the pleasure of the General Assembly."

The surplus of such tolls and other incomes after the

"payment of the expenses, dividends and interest as aforesaid shall from time to time be paid into the Treasury of this Comonwealth to the credit of the fund for Internal Im-

> provement, to be disposed of as may from time to time be directed by law" (do. p. 58).

By an Act passed February 24, 1823 (App., p. 64), a much more pronounced change in the character of the legal relation was made. All of the powers and duties of the existing President and Directors were "superseded and annulled." Certain officials of the State were made *ex officio* the President and Directors of the Company and they succeeded to and possessed

> "all the rights, powers, duties and privileges of the existing President and Directors" (do., p. 64),

except so far as may be otherwise directed by the provisions of the act. All of the moneys were to be

> "kept in the public treasury separate from other public moneys" (do., p. 65).

The funds raised and used were to be paid into and disbursed from the Public Treasury (do., pp. 65, 66 and 67). Commissioners were created with powers to carry into effect the provisions of the Act (do., pp. 67 and 68). They were to appoint such "engineers, managers or agents" as they might think necessary and remove them at their pleasure. Provision was made for carrying out the contracts made by the Company "as if the powers of the said company had continued" (do., p. 69). Its superintendents and officers were to continue until

> "superseded by appointments under this Act or their offices annulled by the provisions thereof" (do., p. 69).

These and numerous provisions show that the State by virtue of these two acts had in effect acquired title to all the property of the company. The Acts were so construed in the case of *Higginbotham Exr.* v. *The Commonwealth,* 25 Grattan, 627, where the Court said, in describing the relation of the State to the Company:

> "Here then we have a solemn 'compact' between the State and the Company. * * * Such was the solemn obligation assumed by the State as the price of the stockholders' property" (p. 628),

and referring to the Act of March 16, 1832:

> "On that day, however, a new company with greatly extended powers was chartered called the James River and Kanawha Company, to which all the interest of the State in the old James River Company was transferred" (p. 628).

The record does not disclose when, and what for, or how, these items were paid. In order to supply the deficiency of proof in this regard, I have had recourse to the notes of the accountants and report as a part of the case so much of their notes, agreed to by them, as relates to these items as "Supplemental Exhibit I."

I find by these notes that of Item 10, $152,130.54, the sum of $149,491.90 was expended by the State "within the Territory" after March 19, 1823, and before March 16, 1832, on the Kanawha Turnpike Road. There is nothing in the record to show when the actual transfer by the State was made under the provisions of the Act of March 16, 1832. I find that the sum of $2,638.64 was expended by

the Commonwealth after March 16, 1832, but was an actual expenditure, not an investment or a loan, and I therefore allow the whole sum of $152,130.54 as an expenditure.

I find that Item 11, $2,593.92 was expended by the Commonwealth "within the territory" upon the Kanawha after December 31, 1834, and that it was an actual expenditure by the State and not an investment or a loan, and I therefore allow it as an expenditure.

I find that Item 12, $7,189.65 was also expended by the Commonwealth "within the territory" upon the Kanawha Turnpike after December 31, 1834, and was an expenditure and not an investment or a loan and I therefore allow the item.

I find that under Item 13, the Commonwealth expended after March 13, 1823, and prior to March 16, 1832, "within the territory" upon the Kanawha Turnpike, $3,202.53 and that the State expended "within the Territory" upon the same turnpike, the sum of $77,752.75, after March 16, 1832 ($49,935 of which was on account of contracts made and services rendered prior to March 16, 1832); that the whole sum was an expenditure by the State and not an investment or a loan and I therefore allow the whole sum.

As to Item 14, I find that the amount of $59,572.36 was all expended by the Commonwealth within the territory after March 19, 1823, and prior to March 19, 1832, and I therefore allow the same.

Alternative Finding.

As an alternative finding at the request of the defendant I find that the State was to transfer

> "her whole interest in the works and property of the present James River Company to the James River and Kanawha Company in payment for its subscription for 10,000 shares of stock" (App. p. 87).

There is nothing in the record to show whether this transfer was actually made. It does not appear whether there was a general meeting of the stockholders upon which the transfer was to be made.

Item 15—Kanawha Board bonds, $60,000.

I find that this was a loan of $60,000 in bonds to the James River and Kanawha Company under the provisions of the Act of March 23, 1860, sec. 9 (App. p. 110) which authorized a loan for $300,000 to the James River and Kanawha Company upon a "deed of trust or mortgage upon the works, property and net revenue to the Commonwealth for the payment of the principal and interest of said $300,000." It was also provided that such lien

> "shall take precedence over any lien created by said company to secure their bonds authorized to be issued by this Act."

Under this Act, $60,000 was loaned (Rec., p. 490).

There is nothing in the record to show whether it has or not been repaid, although counsel for West Virginia stated at the argument that he did not think it had been repaid.

This was a clear loan with careful provisions made to secure and a reasonable expectation of

its repayment, and I therefore disallow it as an expenditure.

ATERNATIVE FINDING.

I find, as an alternative finding at the request of the plaintiff that the sum of $60,000 was loaned to the James River and Kanawha Company by virtue of the provisions of the Act of March 23, 1860, sec. 9 (App., p. 110), and that the loan has not been paid.

Item 17, $7,882.92 was withdrawn by the plaintiff upon the ground that the portion of the road charged for was wholly in the State of Maryland.

Item 25,—Brandonville, Kingwood and Evansville Road—$10,595.73

Item 28, Clarksburg & Buchanan Turnpike, $19,259.36.

Item 35, Kingwood and West Union Turnpike, $18,140.61,

are all for macadamizing (Rec., p. 451).

In the case of the Brandonville, Kingwood and Evansville Road, the State although a small stockholder therein, paid out the sum independent of its interest as a stockholder (Rec., p. 480).

By an Act passed March 18, 1853, the Board of Public Works were directed

> "to have such parts of the Clarksburg and Buchannon Turnpike Road macadamized or planked as they may think stand in need of such improvement" (App., p. 140).

By an Act passed February 28, 1853, $28,000 was appropriated for the purpose of macadamizing the Kingwood and West Union Turnpike and the Board of Public Works was authorized

> "to pay the said appropriation as is provided by law" (App. p. 143).

These were not investments or loans. They were sums directly expended by the State upon the public improvements owned by these companies to be sure, and while the expenditure no doubt increased the value of the properties the expenditure was in my judgment made by the State, for the sole purpose of promoting the public convenience, and were not intended, so far as anything disclosed in the record shows, as gratuities to the companies involved. I therefore think they come fairly within the scope of an expenditure and allow them as such.

Item 53—Harpers Ferry Raid—$189,718.59—

I think that "an expenditure within the territory" in question means expenditures that are local in their character; that are localized by the subjects upon, or for, which they are expended, and the benefits which enure from such expenditures are benefits that the territory in question received the benefit of, it remaining therein, as distinguished from the rest of the State outside of that territory, the result of which in case of physical property remained within the territory after the expenditure had been made, not expenditures the benefit of which were common to all of the people of the State irrespective of the localities in which

they resided. These expenses do not appear to me to come within the scope of such an expenditure. The only benefit the "territory" derived therefrom was the same benefit that it derived in common with the rest of the State. It was not an expenditure made for the benefit of that particular "territory." The money was appropriated and paid "for the Defense of the Commonwealth" (App., p. 149) not for any particular part of the Commonwealth. I therefore disallow this item as a direct expenditure.

ALTERNATIVE FINDING.

At the request of the plaintiff I find that the Commonwealth paid on account of the Harpers Ferry Raid that occurred "within the territory" of West Virginia, the sum of $189,718.59.

Item 54—School Commissioners—$830,865.37.

This amount is claimed by the plaintiff as an expenditure "within the territory" out of a total of expenditure for like purpose in the whole Commonwealth of $3,056,239.84 (Rec., p. 538-H).

The Constitution of Virginia directed that

> "One equal moiety of the capitation tax upon white persons shall be applied to the purposes of education in primary and free schools" (Con. Va. Art. VI. Sec. 24—Code Va. 1860, p. 46).

February 21, 1818, an annual appropriation of $45,000 for the education of poor children was made.

This was increased to $70,000; and in 1851 to $75,000 and to $80,000 in 1853-4 (Code Va. 1860,

p. 417, note). The sum expended by Virginia for primary schools was a regular, current, annual and permanent charge upon the State by virtue of Constitutional and Statutory provisions. Being thus a permanent requirement of its fundamental law it was an expenditure that the State was bound to make annually and was a part of "ordinary expenses of the Government." It was an expenditure general in its character, not confined to or appropriated to any particular district and as much a general charge as the expense of the Judicial or Executive branches or the Board of Public Works which are treated by both parties as ordinary expenses; I therefore disallow the item as an expenditure.

ALTERNATIVE FINDING.

At the request of the plaintiff I find that the sum paid the School Commissioners "within the territory of West Virginia" was $830,865.37.

Item 55, Surveys—$106,416.14.

This item comes from an aggregate of $250,-206.56. An analysis of this sum shows by a statement agreed to by the accountants, which is reported as a part of the case and marked "Supplemental Ex. 2," that the sum of $106,983.67 was for expenditures that were general in their character (such as a salary paid by the State to the Chief Engineer $30,809.73, &c.), and the proportion charged to West Virginia of that sum was reached by a percentage based upon the sum that was actually charged upon the books in the different sections, so that the general charge would be in pro-

portion thereto. This left $143,222.89 that was actually charged upon the books of the State and could be traced into each section; the sum that was thus charged and was thus traceable that was expended in the territory of West Virginia was $60,873.19. While it is a narrow and close question, I think the general charge should be deducted from this item and charged under ordinary expenses as they were regular, ordinary and current expenses of a branch of the State Government and general in their character, not allocated to, or apportioned to, any particular territory. It is suggested that many of these surveys were not productive of result, no roads being built. It might also be said that the roads, if built, proving worthless, might have been abandoned. None the less the money would have been expended. No road could be built without the preliminary survey, and if the initial expense, disclosed the unwisdom of proceeding further, it seems to me it was no less an expense properly incurred whether the survey was or not followed by construction and does not affect the fact that the money was expended in that locality for a legitimate purpose. A direct expenditure for the work is treated by both parties as an "expenditure" and for the same reason the survey preliminary to and, if constructed, a necessary part of, the work is also an expenditure. The sum which this branch of the Government actually expended "within the limits of the territory of West Virginia," $60,873.19 I allow as an "expenditure."

Item 56, Trans-Allegheny Lunatic Asylum, $27,000.

It was conceded that on January 1, 1861, this sum was in the hands of the Treasurer of the Asylum unexpended. The record, p. 452, should read "and had not been expended." It was to be used in completing its building. (Rec., p. 471) It was on deposit with the Weston Branch of the Exchange Bank of Virginia and was taken therefrom by the so-called Pierpoint or Restored Government. (Wheeling Acts, Extra Session, July 1, 1861) (App., p. 135) On that date $5,316.98 was "placed at the disposal of the Board of Directors of the Lunatic Asylum" and by an Act passed January 14 , 1862, the sum of $21,684 (making with the previous sum $.98 more than the $27,000) was appropriated to the Lunatic Asylum to be expended in

> "completing the South wing of said building being the balance of the amount taken from the branch of the Exchange Bank of Virginia at Weston" (App., p. 136).

Under the authority of Eastern State Hospital *v.* Graves (*supra*), this money thus in the hands of the Treasurer of the Asylum, prior to its being taken by the Restored Government, was the property of the Commonweatlh, and while it was intended to be used in the completion of the buildings, it had not been so used, and had not therefore been expended on January 1, 1861. I therefore disallow this item.

Alternative Finding.

I find in the alternative at the request of the plaintiff that $27,000 was in the hands of the Treasurer of the Asylum the property of the

Commonwealth on or before January 1st, 1861, for the purpose of being expended in the completion of its buildings and that it was afterwards taken therefrom by the Restored State of Virginia, and returned to the Asylum—$5,316.98 July 1, 1866, and $21,684 January 14, 1862.

Items 57 to 65 inclusive.

These are all for sums paid by the Commonwealth on account of stock subscriptions in Bridge Companies, aggregating $78,412.50, and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $78,412.50 was actually paid by the Commonwealth on account of its subscriptions to the stock of the various Bridge Companies mentioned in said items, and that all of the bridges were located "within the territory now constituting the State of West Virginia."

Items 66 to 69 inclusive.

These are all for sums paid by the Commonwealth on account of stock subscriptions in navigation companies aggregating $210,500. and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $210,500 was actually paid by the Commonwealth on account of its subscriptions to

the stock of the various navigation companies mentioned therein and that the property of all of the companies was located within the territory now constituting the State of West Virginia.

Items 70 to 147 inclusive.

These are all for sums paid by the Commonwealth on account of its stock subscriptions to the various turnpike companies mentioned therein, aggregating $803,555.83, and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $803,555.83 was actually paid by the Commonwealth on account of its subscription to the stock of the various turnpike companies mentioned therein.

The property of all of these companies except those mentioned in items 70 to 80 inclusive is "within the territory now constituting West Virginia" and aggregates $700,103.49. A portion of the property of the companies mentioned in items 70 to 80 inclusive is in part within those limits. Apportioning the total amount paid to the amount within those limits would give the sum of $103,-452.34.

Items 148 and 149, $391,800.

These are for sums paid by the Commonwealth on account of its stock subscriptions to the banks mentioned therein, and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $391,800 was actually paid by the Commonwealth on account of its subscription to the stock of the banks therein mentioned, and that they were located "within the limits of the territory now constituting West Virginia."

Item 150—Loan to the Town of Bath $2,500.

March 8, 1847, an Act was passed,

> "to provide for the construction of a road from Bath in Morgan County to the mouth of the St. John's run on the Potomac."

The Board of Public Works was authorized

> "to pay from time to time out of the fund for Internal improvement a sum or sums of money not exceeding $2,500 to the Treasurer of the Trustees of the Town of Bath * * * for the purpose of constructing a road from the town of Bath to the mouth of St. John's run on the Potomac."

The Treasurer was to

> "pay or deliver such sums as may be required from time to time"

and he was to be liable for any defaults therein "as for other defaults upon his official bond," anticipating the question that might be raised that in the relation thus created the money received by him would not be the town's money and he be liable therefor as its Treasurer (App., p. 155, Sec. 1). The Act provided that the Trustees were to

have "the disposition of the money" and to exercise the same powers as the "president and directors of turnpike companies." The Board of Public Works were to prescribe the tolls "such tolls to be applied to the necessary expenses and repairs of the road" (do., Sec. 2). The surplus after the payment of the

> "necessary expenses and repairs of the road"

was

> "to be applied in payment of the interest on the sum paid on the part of the Commonwealth for the construction of said road"

and

> "Any deficiency of the net surplus of tolls to pay said interest may be paid from the receipts on account of bathing at the medicinal springs belonging to the Commonwealth in said Town of Bath" (do., sec. 2).

In Section 3, it was provided that no part of the appropriation should be advanced

> "until the said Trustees shall have given bond with good security payable to the said Board [not to the Town of Bath] and approved by them for the punctual payment of interest annually on the sum advanced by the Commonwealth for the construction of said Road."

Except for the provisions of Section 3, it is not perceived how the Town of Bath or its trustees would have assumed any responsibility or liability of any kind in connection with the sums used for the construction of the road, except their

faithful disbursement. It had no power to fix the tolls. The trustees were not responsible to the city for the expenditure of the money. It was not the money of the city. There is no intimation in the Act that the Town of Bath or its trustees was to return the amount the State expended or any part or it, or that indicates that the State ever expected it to be returned. In every instance where the State made a loan to which my attention has been called, specific and detailed provisions for security and repayment have been made. The Act must be read as a whole, and so reading it, the only liability assumed by the Town of Bath was to make good any deficit in interest that might exist, after exhausing for each payment, first the surplus of tolls after the payment of the "necessary expenses and repairs of the road" and second, "the receipts on account of bathing at the medicinal springs belonging to the commonwealth in the Town of Bath." That this has not been a very great burden appears from the fact that while nearly 13 years had elapsed the town had paid during that time for that deficit the sum of $750, less than 3% per annum.

It is earnestly insisted that the fact that the auditor of Virginia described this as a loan in his report, that both accountants so described it in their joint schedules and that the act is printed in the appendix under the heading "Loan to the Trustees of the Town of Bath," should be given determining weight in establishing its character as a loan. It is believed that the Act itself and not the manner in which some one has characterized, or described it, must control. It is difficult to conceive of a loan in which the sum loaned is not under some contingency to be returned, an

essential element wanting in this instance. It is also difficult to conceive of the beneficial ownership of a public work the use of which the owner has no right to control. This was not an investment or a loan and comes fairly within the scope of an expenditure "within the territory now constituting the State of West Virginia" and is allowed as such.

SUMMARY.

I find that the expenditures made by the Commonwealth of Virginia within the territory now constituting West Virginia are as follows:

1. Amount agreed upon by both parties	$1,251,288.92
2. Covington & Ohio R. R.	$1,146,460.42
10. Kanawha Turnpike	$ 152,130.54
11. " "	$ 2,593.92
12. " "	$ 7,189.65
13. " "	$ 80,955.28
14. Kanawha River Improvements.	$ 59,572.36
25. Brandonville, Kingwood & Evansville Road	$ 10,595.73
28. Clarksburg & Buchannon Turnpike (Macadamizing)	$ 19,259.36
35. Kingwood & West Union Turnpike	$ 18,140.61
55. Surveys—expended directly within the territory	$ 60,873.19
150. Road from Bath to St. Johns River	$ 2,500.00
Total	$2,811,559.98

ALTERNATIVE FINDINGS:

At the request of defendant.

The Commonwealth received on account of the Blue Ridge Railroad in bonds and interest.... $625,348.08

and was relieved from a contingent liability upon a guarantee of... $100,000.00

3. At the request of the plaintiff, the Commonwealth subscribed and paid for capital stock of the Winchester & Potomac Railroad Company, to the extent of. $120,000.00

The Commonwealth loaned to the said company $150,000.00

Upon the basis of mileage, the proportion of these sums that would be chargeable to West Virginia, is $170,532.00

I state as a special circumstance important to be taken into account that as a result of legislation predicated upon both the stock and loan that the Commonwealth had in this Road, there was paid into the Commonwealth in 1886, the sum of.. $118,518.12

6. At the request of the plaintiff, that the Commonwealth subscribed and paid for stock in the Berryville and Charlestown Turnpike Co. and upon the mileage basis of 58 1/3 per cent. the amount chargeable to West Virginia would be..... $11,932.52

15. At the request of the plaintiff, that the Commonwealth loaned to the Kanawha Board of its bonds ..... $60,000.

56. At the request of the plaintiff, that $27,000
was in the hands of the Treasurer of the Trans-Allegheny Lunatic Asylum, deposited in the Weston Branch of the Exchange Bank of Virginia, unexpended, January 1, 1861, which was afterwards taken from the Bank by the Restored Government of Virginia and subsequently returned to the Asylum.

At the request of the plaintiff, that in the various bridge companies, located in West Virginia. Items 57 to 65, inclusive, the Commonwealth subscribed and paid for stock $78,412.50

That in the various navigation companies located in West Virginia Items 66 to 69, inclusive, the Commonwealth subscribed and paid for stock..... $210,500.00

That in the various Turnpike companies, Items 70 to 147, inclusive, all of which were in the territory now constituting West Virginia, the Commonwealth subscribed and paid for stock..... $803,555.83

700,103.49 of which was wholly in Virginia and $103,452.34 was West Virginia's portion in case of companies partly within her limits.

That in the two banks mentioned in Items 148 and 149, within the territory now constituting the State of West Virginia the State subscribed and paid for stock $391,800.00

At the request of the defendant, I find that the sum of $2,500 was invested under circumstances where the trustees of the Town of Bath assumed a contingent liability, only, of paying the interest upon the sum expended by the State, after the tolls remaining from the operation of the road after the payment of 'necessary expenses and repairs" and profits received from the operation of a spring, were applied thereto, and that this was the only liability that the trustees of the Town of Bath assumed in connection with this expenditure of..... $2,500.

PARAGRAPH IV OF DECREE.

4. "SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA SINCE ANY OF SAID DEBT WAS CONTRACTED, AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA ON THE BASIS OF THE AVERAGE TOTAL POPULATION OF VIRGINIA, WITH AND WITHOUT SLAVES, AS SHOWN BY THE CENSUS OF THE UNITED STATES."

This paragraph involves the determination of the question as to what expenses are to be included within the term "ordinary expenses of the Government of Virginia.

The defendant contends that the language should receive a construction that would make "ordinary" synonymous with "necessary" or "essential" used in the sense of indispensable expenses,—expenses which if not paid the wheels of Government will cease to revolve, without the payment of which the State Government cannot be administered.

Whenever I use the term "essential" in the discussion, I shall use it in the sense of being indispensable. I have made an exhaustive examination of the cases where state or municipal expenditures have been under consideration or in which reference has been made to them. I find there are very few cases that attempt to define the term "ordinary expenses." The term does not appear to have been used with much precision unless it is to be held to be in fact synonymous with "current" or "necessary." There are many cases that use the terms "ordinary" and "current" interchangeably as though they were synonymous and

attention does not appear to have been called to the question as to whether or not there is any distinction between them. They are here cited:

State ex rel. v. Mayor Kansas City, 58 Mo. App., 124-129.

Com. v. Commissioners, 1 Wharton (Pa.), 1-3.

Ward v. Piper, 69 Kan. 773-775.

Iowa R. R. Land Co. v. Co. of Sac, 39 Iowa, 124, 134-135.

Grant v. Davenport, 36 Iowa, 396, 401.

French v. Burlington, 42 Iowa, 614, 618.

Council Bluffs v. Stewart, 51 Iowa, 385, 396.

Windsor v. DesMoines, 110 Iowa, 175, 190.

Cedar Rapids v. Betchel, 110 Iowa, 196-198.

Swanson v. Ottumwa, 118 Ia., 161-172-179.

Kent v. U. S., 113 F. R., 232, 238-9.

Dawson v. Water Works Co., 106 Ga., 696, 717.

Walla Walla v. Walla Walla Water Co., 172 U. S., 1-20-21.

Smith v. Dedham, 144 Mass., 177-180.

Watkins v. Macon County Court, 68 Mo., 29-42.

Security Co. v. Baker, 33 Ore., 338, 350.

Sherman v. Smith, 12 Texas Civil App. 580-583.

State v. Sheldon, 53 Neb., 365-6.

Valpariso v. Gardiner, 97 Ind., 1-12.
Corpus Christi v. Woessner, 58 Texas, 462-7.
Wichita Falls v. Skeen, et al., 18 Tex. Civ. App., 632-3.
McNeill v. Waco, 33 S. W. R., 322-3.
Luther v. Wheeler, 4 L. R. A., N. S., 746-749.
Arnold v. *Hawkins,* 95 Mo., 569-571.
Cyc, Vol. 28, p. 688.
In re State Warrants, 6 S. D., 518-521.
Lumber Co. v. Munising, 123 Mich., 138-141-2.
Book v. Earl, 87 Mo., 246-255.

The term "ordinary" has frequently been used in the discussion of expenses of this character, as synonymous with "necessary."

The cases that use these terms interchangeably are as follows:

Coffin v. Davenport, 26 Iowa, 515-20.
South Bend v. Reynolds, 155 Ind., 70-73.
Voss v. Waterloo Water Co., 163 Ind., 69-84.
Laycock v. Baton Rouge, 35 La. Ann., 475-480.
Lumber Co. v. Munising, 123 Mich., 138-141.
In re Lim. Taxation, 3 S. D., 456-8.

There are a number of cases that use the term "ordinary expenses" alone, such as the following:

Williamsport v. *Com.* 90 Pa. St., 498-503.
Polk v. *Winett,* 37 Iowa, 34-5.
Cleveland v. *U. S.,* 111 F. R., 341-346.
Law v. *People,* 87 Ill., 385-409.
Water Works v. *Carterville,* 153 Mo., 128-134.
California v. *McCauley,* 15 Cal., 429-455.
Livingston v. *Pippin,* 31 Ala., 542-550.
Scott v. *Peterborough,* 19 U. C., Q. B., 469-472.
Cross v. *Ottawa,* 23 U. C., Q. B., 288-291.
Com. v. *Gregg & ano.,* 161 Pa. St., 582-7-8.
Brown v. *Corry,* 175 Pa. St., 528-31-32.
Nougues v. *Douglas,* 7 Cal., 65-7-8.
Lehigh Coal Nav. Co. Appeal, 112 Pa. St., 360-9.
Stetson v. *Kempton,* 13 Mass., 271-8.
Mills v. *Richland,* 72 Mich., 100.
Marathon v. *Oregon,* 8 Mich,, 372-382.
Quincy v. *Jackson,* 113 U. S., 332-6.
Clark v. *Davenport,* 14 Iowa, 494-501.
Sherman v. *Carr,* 8 R. I., 431.

There are other cases that refer to such expenses as "current expenses" like the following:

White v. *Mayor & Council of Decatur,* 119 Ala., 476-80.

Pettibone v. *West Chicago Park Comrs.*, 215 Ill., 304, 322.
Anniston v. *Hurt*, 140 Ala., 394-9.
E. St. Louis v. *U. S.*, 110 U. S., 321-4.
Sibley v. *Mobile*, 3 Woods (U. S. C. C.), 535-41.
Foland v. *Frankton*, 142 Ind., 546-50.
Spilman v. *Parkersburg*, 35 W. Va., 605-618.
Valpariso v. *Gardiner*, 97 Ind., 1-13.
Humphrey v. *Mercantile Association*, 50 Iowa, 607-611.
Comrs. Leake Co. v. *Keene Savings Bank*, 108 F. R., 505-514.
Brashear v. *Madison*, 142 Ind., 685-690.
Laporte v. *Gamewell and Fire Alarm Tel. Co.*, 146 Ind., 466-470.
State v. *City of Helena*, 24 Mont., 521-30.
E. St. Louis v. *Flannigan*, 26 Ill. App., 449, 463.
E. St. Louis v. *People*, 6 Ill., App., 76-9.
Fowler v. *Austin Mfg. Co.*, 5 Ind. App., 489-490.
Amer. & Eng. Ency. of Law, Vol. 20, p. 1176.
Denison v. *Foster*, 37 S. W., 167.
Weinstein v. *Newbern*, 71 N. C., 535-6.
State ex rel. v. *Graham*, 23 La., 402-407.
City of Erie, 91 Pa. St., 398-402.
C. & A. R. R. v. *People*, 77 Ill., 91-3.

Under the authorities heretofore cited it would seem to be clear that the courts treat the terms

"ordinary" and "current" when applied to the expenditures of a state or a municipality, as synonymous.

The great question in this case is whether interest on the public debt is an "ordinary expense."

The defendant relies upon the line of cases where judgment creditors seeking to recover payments from the revenues of the municipality have been postponed to ordinary, current or necessary expenses, which are made a primary charge upon revenues. The cases clearly establish the general doctrine. From some of them it might perhaps be inferred that interest was not a primary charge or an ordinary, current or necessary expense. I find none of them however where the specific question as to whether interest is or not an "ordinary expense" is discussed. It is very clear that all essential expenses are also "ordinary expenses," but it does not by any means follow that all "ordinary expenses" are essential expenses, that there may not be "ordinary expenses" which are not essential expenses. If it were true that judgment creditors were postponed only to essential or indispensable expenses, the cases might be entitled to considerable significance. On the contrary, however, the postponing of judgment creditors is not confined to essential or indispensable expenses, as expenses which do not come within that class, are often held to be primary in their character and to precede judgment creditors as a charge upon the current revenues.

The following cases show that such current or ordinary expenses as light, water and fire protection, none of which are essential to the revolution of the wheels of government, have been held to be

ordinary or current expenses that will be made a charge upon the revenues prior to the claims of judgment creditors thus demonstrating that the essential character of the expenditure is not the test of an "ordinary expense."

Foland v. *Frankton,* 142 Ind. 546, 550.
Valpariso v. *Gardiner,* 97 Ind. 1.
Cleveland v. *U. S.,* 111 F. R. 341-346.
White v. Mayor and Council of Decatur, 119 Ala., 476,

where the Court thinks that while

> "the support and maintenance of public schools is not an essential municipal function" (p. 482),

they would treat it as a "current expense of administering the municipal government" (p. 482).

Leporte v. *Gamewell,* 146 Ind. 466-70.
Sherman v. *Smith,* 12 Tex. Civ. App. 580-582-3.
Laycock v. *Baton Rouge,* 35 La. 475-81.

In *Sherman* v. *Smith* (*supra*) the Court recognized the fact that expenses for fire, water and lights were not essential but held that they were a part of the current expenses and preferred to judgment creditors.

> "we may consider that they could be dispensed with and an efficient City Government conducted without them" (p. 583).

Expenses for fire, water, lights and repairs and construction of bridges, are held in the following cases to be ordinary or current expenses:

Valpariso v. *Gardner,* 97 Ind. 1.
Brown v. *Corry,* 175 Pa. St. 528-32.
Voss v. *Waterloo Water Co.,* 163 Ind. 69-88.
Brodnax v. Groom, 64 N. C. 244-9.
Satterthwaite v. *Beaufort,* 76 N. C. 153.
Evans v. *Com.,* 89 N. C. 154-9.
McKethan v. *Com. Cumberland,* 92 N. C. 243.
Livngston v. Pippin, 31 Ala. 542-50.

It would seem that the term "necessary town charges" was at least as exclusive and restrictive as "ordinary expenses," and yet it has been frequently held that under that designation, many expenses can be properly incurred, that cannot be held to be essential, or indispensable, to the operations of the government.

The Statutes of Maine authorize, after specifying a variety of purposes for which funds can be raised, the raising of taxes for "other necessary town charges."

In *Gale* v. *South Berwick,* 51 Maine, 174-6-7 in defining that provision the Court said:

> "They embrace all incidental expenses arising directly or indirectly in the due and legitimate exercise of the powers conferred upon towns. Accordingly they have ever received liberal construction."

Clocks, repair of fire engines, construction of reservoirs to supply water, building a market

house and town halls were cited as illustrations of the proper exercise of the power. In answering an inquiry from the Governor and Council the Court defined this clause as follows:

> "The words 'other necessary town charges' * * * embrace all incidental expenses arising directly or indirectly in the due and legitimate exercise of the various powers conferred by statute."
>
> Opinion of Justices, 52 Me. 598.

In Massachusetts, under a Statute authorizing a tax for "other necessary charges," the Court held that

> "towns might raise such sums as should be necessary to meet the ordinary expenses of the year"

and that the

> "erection of public buildings for the accommodation of the inhabitants, such as town houses to assemble in, and market houses for the sale of provisions may also be a proper town charge and may come within the fair meaning of the term necessary; for these may be essential to the *comfort and convenience of the citizens.*"
>
> *Stetson* v. *Kempton,* 13 Mass. 271-8.

Under this clause towns can indemnify officers in the *bona fide* discharge of their duties.

> *Bancroft* v. *Lynnfield,* 18 Pick. 566.

Make repairs on clocks,

> *Willard* v. *Newberryport,* 12 Pick. 227.

Invest in fire engines,

Allen v. *Taunton*, 19 Pick. 485.

Build a market house,

Spaulding v. *Corcall*, 23 Pick. 71.

A town house,

Friend v. *Gilbert*, 108 Mass. 408.

"Make contracts necessary and convenient for the exercise of their corporate powers,"

Agawam Nat. Bank v. *South Hadley*, 128 Mass. 503-5,

and build a public hall—

Wheelock v. *Lowell*, 196 Mass. 220.

These cases clearly extend the scope of necessary town charges beyond those which are absolutely essential or indispensable to the orperations of government. Great stress was laid in the argument upon the part of the defendant upon the particular language of the decree which requires a finding of the "ordinary expenses of the Government". The Ordinance upon which the decree is predicated reads in this particular: "the ordinary expenses of the state government". The language of the decree so far as there is any distinction is less emphatic if regard is had to the technical language used, the word "state" being omitted, but it is improbable that any significance is to be attached to the omission, and very doubtful if the Court had in mind in making the decree the distinction con-

tended for. The argument is that the ordinary expenses are confined to the expenses of *"the state government"* or of *"the government"* as contradistinguished from what might be termed in a broader sense state or municipal expenses. The contention being that there are expenses which are proper expenses, on the part of the state that the not essential, or indispensable, to the operations of the Government, and that the language of the ordinance and the decree mean that the ordinary expenses "of the government" or "of the state government", are essential expenses, and thus limit the ordinary expenses, to such expenses, as are indispensable to the operations "of the state government."

I find that similar language has been frequently used in the opinions, without attributing to it the technical and restrictive meaning contended for by the defendant. It has quite clearly been used as synonymous with state or municipal expenses generally rather than as restricting the term to essential expenses.

In *White* v. *Mayor & Council of Decatur,* 119 Ala., 476, the court referred to current, legitimate municipal expenses and in the same paragraph referred to the same expenses as *"governmental expenditures"* (480) and "current expense of administering the municipal government" (p. 482) evidently meaning the same thing. The Court expressly held in that case that while the support and maintenance of public schools are not an essential, municipal function, they would treat is as a necessary *"governmental expenditure"* as that function was "vested in the Mayor and Council of Decatur" by statute and the "power and duty" were "in and upon them".

In *Anniston* v. *Hurt,* 140 Ala. 394, 400, the Court referred to "necessary expenses of *administrating the municipal government*" and "the object of corporation expenditures" and "expenses for *governmental purposes*" and "expenditure for *administration of governmental purposes*" and "necessary current expenditures" as apparently meaning one and the same thing. The question of what was or was not an "ordinary expense" did not arise in that case, and the Court discussed the question as to whether interest was or not a necessary current expenditure as a question depending upon the construction of the particular statutes being discussed.

In *City of Erie,* 91 Pa. St. 398, the Court referred to "ordinary expenses of *the City Government*" (p. 403) without indicating that they were confined to expenses indispensable to the operations of the government.

In *Corpus Christi* v. *Woessner* 58 Tex. 462-7, the Court referred to ordinary, "current expenses of *her local government*" in the same connection in which they speak of current and ordinary expenses, and without a suggestion of any distinction between governmental and current or ordinary expenses.

In *Nougues* v. *Douglas,* 7 Cal. 65-7-8, the Court referred to "ordinary expenses of *the state government*" and "ordinary expenses *of the state*" and "the expenses *of the state government*" and the necessary and "ordinary expenses *of the state*" and the "ordinary expenses of government", evidently meaning the same thing in each instance.

In *Weinstein* v. *Newburn,* 71 N. Y., 535, 536, the Court speak of "current expenses of the city *government*" and "the necessary current expenses" clearly meaning the same thing.

In *Sherman* v. *Smith,* 12 Tex. Civ. App., 580, 583, the court likewise referred to "her current and ordinary expenses" and then "for the payment of expenses of government," and "proper current expenses" (p. 584) all meaning the same thing. In Wilson *v.* Charlotte, 74 N. C., 748, 749, the Court referred to "the necessary expenses *of the government of a city*" (p. 759) clearly meaning "necessary expenses of the year," and with the same meaning the Court in Mills *v.* Richland, 72 Mich., 100, 107, said "necessary expenses incurred in administering *the government* of the township." So in Herman *v.* Oconto, 110 Wis., 666-678, the Court said "such as are necessary to carry on *the city government.*"

The frequency with which this language has been used by the Court with its general signification would seem to indicate that the language of the decree is hardly entitled to the technical construction relied upon by the defendants.

Did the framers of the ordinance have in mind any distinction between "ordinary expenses of the state government" and ordinary expenses of the Commonwealth? What distinction is there between them in their relation to a "just proportion of the public debt"? Are they not each equally a common burden paid from a common fund for the common benefit? What reason is there that would require the inclusion of one that would justify the exclusion of the other?

Moreover, the defendants concede as ordinary expenses items which do not appear to be essential to the revolution of the wheels of government.

Board of Public Works, Salaries and Expenses	$134,108.03
Deaf, Dumb and Blind Institute	$384,161.09
Geological Survey	$42,480.61
Lunatic Hospitals	$1,635,583.36
Military Establishment	$1,030,694.11
Primary Schools	$655,908.73
University of Va	$613,287.00
Virginia Military Institute	$207,084.87

(Defts.' original Ex. D 1.)

There are very few cases undertaking to give anything like a definition of what "ordinary expenses" are, and perhaps with but one exception none of those are very closely in point on the question of interest, though a number of them give definitions broad enough to include interest.

In *East St. Louis* v. *U. S.*, 110 U. S. 321, the Court in discussing the general question of municipal expenses said:

> "That fund by the terms of the Charter of the City under which the bonds were issued is authorized for the purpose of paying the necessary, current expenses of administration *not including payments on account of the bonds of the municipal corporation*" (p. 324).

The fact that the Court found it necessary to exclude specifically from the scope of "necessary current expenses" bonds of the municipal corporation gives rise to some inference at least that they understood that without such exception such bonds would be fairly included within the

term "necessary current expenses." If payment on account of bonds was included interest on the bonds would also be included.

In *Wilson* v. *Charlotte*, 74 N. C., 748, the Court said:

> "It would be difficult or impossible to draw a precise line between what are and what are not the necessary expenses *of the government* of a city. The analogy of the law of necessaries for infants is the only one that occurs to us. It is held, that if, considering the means and station in life of the infant. the articles sold to him *may* be necessaries under any circumstances, they come within a class for which the infant may be liable, and upon his refusal to pay, it is for a jury to determine whether under the actual circumstances they were necessary. If, however, the articles are merely ornamental, and such as cannot, under any circumstances be necessary to one of the means and station of the infant, a Court may, as matter of law, declare that the infant is not liable. We do not undertake to say that this analogy will furnish a rule which will admit of a close application, but if treated merely as an analogy in the absence of other guides, it may be of some general use (p. 759).

In *Brown* v. *Corry*, 175 Pa. St., 528, the Court said:

> "The ordinary expenses, at least many of the ordinary expenses, must be incurred and paid or the city cannot exist. * * * And any expense that recurs with regularity and certainty and is necessary for the existence of the municipality, or for the health, comfort and perhaps convenience of the inhabitants may well be called an ordinary expense" (p. 531).

In *Mills* v. *Richland*, 72 Mich., 100, the Court said:

> "What shall be deemed as the ordinary expenses of a township is a question which has never received any very satisfactory answer, and it would be difficult to glean one from what has been said in this Court. I think, however, it may well be said the answer can *never include less than the necessary expenses incurred in administering the Government* of the Township under the Statutes creating it and relating thereto, in such manner as will best promote the convenience, peace, health, prosperity and happiness of the people residing therein. This would, as has been held by this Court in *Marathon* v. *Oregon*, 8 Mich., 382, include the payment of the indebtedness to the Township of Mills" (pp. 106-7).

It seems that the Town of Richland had been set off from Mills and this was an action to recover a portion of the debt due from Richland to Mills. The opinion in *Marathon* v. *Oregon* above cited, proceeds upon the peculiar language of the statute being construed. It authorized the Township

> "to vote such sums as they may deem necessary for defraying *all proper charges and expenses arising in the Township*" (p. 381).

and the Court held that both charges and expenses were included in the term ordinary township expenses, saying

> "It is certainly no violation of terms to class the payment of debts ascertained among ordinary expenses" (p. 382).

In *Smith* v. *Dedham,* 144 Mass., 177, 180 the Court seemed to make annual payment the criterion as they held that an annual payment for water for a period of five years was "for a sum of money to be paid annually, among the *other* current expenses of the town."

In *Livingston* v. *Pippin,* 31 Ala., 542-50, the Court gave this definition, "Ordinary expenses are the expenses which are necessary to carry into effect the ordinary powers of the corporation. * * * Under the rule above laid down, the implied and incidental powers of corporations must be classed as ordinary powers"

In Herman *v.* Oconto, 110 Wis., 660, the Court said:

> "It cannot be said with any show of right that the building of a sewer system is a current expense. While it is not easy to accurately define what may be included under that head still it is plain that it must be limited to such as are necessary to carry on the city government—such as are usual and ordinary from year to year" (p. 678).

The case of *State* v. *Leaphart,* 11 S. C., 458, is very closely in point. All three of the judges wrote opinions, and all concurred in holding that interest was an ordinary expense. *C. J. Willard,* in his opinion, said:

> "Ordinary expenses include the current expenses of the government and debts to mature during the current fiscal year" (p. 469).

> "* * * to such purposes as properly fall within the description of 'ordinary expenses of the government,' that is to current expenses and debts maturing during the fiscal year" (p. 471).

He held that the Act being construed could only be regarded as a general annual tax levied for ordinary expenses, and ordered a mandamus to issue for the payment of the interest on the public debt out of the tax as an "ordinary expense." *Haskell, J.,* said:

> "When bonds have been issued to raise money to meet an 'extraordinary expenditure' they become a standing liability of the State, and the interest as it falls due becomes an 'ordinary expense' to be included within the 'estimated expenses,' to make up the amount to be levied annually and appropriated annually" (p. 477).

and again

> "The only difference between the interest on such bonds and any other annual expense is, that the interest is made by the Constitution, an obligatory expense, while many other expenses may be at the option of the legislature" (p. 477).
>
> "The tax is levied for the expenses of the current fiscal year. The objects to which the tax *must* be applied are the items contained in those estimated expenses. Expenses include the payment of recognized indebtedness as well as any outlay that the Legislature may deem proper to make during the year" (p. 478).

The case showed that

> "The Act of 1876-7 provides for the payment of the current expenses of the govern-

> ment and certain indebtedness matured or to mature. It is therefore clearly a general tax levied as such, entirely subject to the control of the legislature *provided* the purposes to which it is appropriated fall within the general class of 'ordinary expenses' " (p. 471).

The mandamus was prayed for among other things to secure the payment of interest falling due Jan. 1, 1879. McIver, Judge, who dissented upon one point held that the relator was entitled to a mandamus for the interest for that year.

This case was cited with approval in *State* v. *Derham*, 61 S. C. 258, 262. The plaintiff relies upon *In re Limitation Taxation*, 3 S. D. 456 where the Court said:

> "The 'ordinary expenses' of the state are practically defined in Section 2, Art. 12 of the Constitution and are the 'ordinary expenses of the executive, legislative and judicial departments of the state, the current expenses of the state institutions, interest on the public debt and for common schools' " (p. 460).

An examination of the Constitutional provision thus referred to discloses the fact that it does not purport to define "ordinary expenses" but simply provides that

> "The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative and judicial departments of the State, the current expenses of the state institutions, interest on the public debt, and for common schools" (Con. Art. 12, Sec. 2).

So far as this case has any weight, it tends to negative the contention of the plaintiff. Properly

considered it gives no definition and incorrectly states the effect of the constitutional provision. It is contended upon the part of the plaintiff that the term "ordinary expense" is flexible in its character and is to receive a construction in harmony with the circumstances and conditions under which it is used. It was urged in argument upon the part of the defendant that it was in a sense analogous to the term "necessaries," the analogy used by the Court in the case of *Wilson* v. *Charlotte* (*supra*). If it be true that the analogy exists, it would clearly establish the flexible or varying character of the meaning of the term, as it is too clear for the citation of authorities that necessaries may include articles in connection with one individual that would be clearly excluded when applied to another individual. Ordinary expenses involves the payment of at least current indebtedness. There may be some parallel between an expense and a debt. It has been frequently held that the word debt "has no fixed legal signification, as has the word 'contract,' but is used in different statutes and constitutions in senses varying from a very restricted to a very general one."

McNeill v. Waco, 33 S. W. R., 323 (*supra*).
Swanson v. Ottumwa, 118 Ia., 161-171 (*supra*).

The case of *Union Pac. R. R. v. U. S.,* 99 U. S., 402, was relied upon by the defendant, so far as applicable. The Court were there discussing the question as to what would be the net earnings as distinguished from the gross earnings of a railroad company, and they said:

"As a general proposition net earnings are the excess of the gross earnings over the expenditures defrayed in producing them, aside from, and exclusive of, the expenditure of capital laid out in constructing and equipping the works themselves. It may often be difficult to draw a precise line between expenditures for construction, and the ordinary expenses incident to operating and maintaining the road and works of a railroad company. Theoretically, the expenses chargeable to earnings include the general expenses in keeping up the organization of the company, and all expenses incurred in operating the works and keeping them in good condition and repair; whilst expenses chargeable to capital include those which are incurred in the original construction of the works, and in the subsequent *enlargement and improvement* thereof. With regard to the last mentioned class of expenditures, however, namely, those which are incurred in enlarging and improving the works, a difference of practice prevails amongst railroad companies. Some charge to construction account every item of expense, and every part and portion of every item, which goes to make the road, or any of its appurtenances or equipments better than they were before; whilst others charge to ordinary expense account, and against earnings, whatever is taken for these purposes from the earnings, and is not raised upon bonds or issues of stock. The latter method is deemed the most conservative and beneficial for the company, and operates as a restraint against injudicious dividends and the accumulation of a heavy indebtedness" (pp. 420-1).

So far as this case has any significance it seems to establish the proposition that the term ordinary expense has no fixed and arbitrary significa-

tion; that it may include at one time what would be excluded at another time. The Court in that case adopted the broad construction, on the ground that it was the "wisest and most prudent method," and was what they called "a liberal application of the earnings to the improvement of the works."

If the case of *City* v. *Leaphart* (*supra*) is to be treated as an authority, the interest would clearly be an ordinary expense.

If current or ordinary expenses are the converse of current or ordinary revenue, then interest in this case would be an ordinary expense, as it was expressly provided for in the current or ordinary revenues, and made mandatory by the constitution.

In the classification adopted by the United States Treasury Department (Rep. Sec. Treas., 1874, pp. IV and V, do. 1904, House Doc., 58th Cong., Vol. 31, p. 5), and by the United States Census Office (11th Census, Vol. 50, pt. II, pp. 418-19, 464-77, 516-553, 556-7), and the State of Ohio, Rep. Bureau Insp. and Sup. of Pub. Off. of 1906, pp. 72-79, interest is classified as an "ordinary expense." It is so held by Bastable on Public Expenditures, pp. 130-3.

There are several important considerations to be taken into account in determining this question:

First.—The cases of judgment creditors seeking to secure payment out of the ordinary or current revenues of a municipality are certainly not directly in point. This is not a controversy between a judgment creditor and a municipality. It does not involve the question as to whether, if

a claim against the municipality were allowed, there would still remain sufficient current revenues for the payment of either the indispensable or the ordinary and current expenses of the state. It is a question between two parties who were jointly interested in the incurring of a joint liability and the question to be determined is what proportion of this joint liability is to be assumed by each. This is the question whether it be reached under the Wheeling Ordinance or under the general principles of International Law. There is therefore no warrant for applying the strict construction that would be applicable in the case of an action by a judgment creditor.

Second.—The Constitution of Virginia makes the interest upon the public debt a specific annual charge upon the revenues:

> "There shall be set apart annually from the accruing revenues a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The sum thus set apart shall be called the Sinking Fund and shall be applied to the payment of the interest of said debt and the principal of such part as may be redeemable."
>
> (Con. of Va., Art. IV, Sec. 29, Code Va., 1860, p. 47.)

With this specific Constitutional provision requiring "the interest of said debt" to "be set apart annually from the accruing revenues," it may well be doubted whether if this were an action by a judgment creditor against the state, the Courts would not be required by the constitu-

tion to postpone such creditor to the payment of interest on the ground that it was not only an ordinary expense, but was a specific constitutional security, annually to be set apart for the benefit of the state's creditors, which would be preserved inviolate for the benefit of the holders of the interest on its public debt.

Third.—Under the provisions of the Ordinance, the defendants are to be charged with the amounts expended within the limits of West Virginia. In order to make these expenditures Virginia hired the money and has paid the interest thereon. If interest is not an ordinary expense, West Virginia would be charged with the principal sum thus hired and expended, but would not be charged with the sums thus paid by Virginia for the use of the money thus hired and expended. If the money thus hired and expended is a proper charge it is upon the theory that Virginia should be reimbursed therefor, and no reason is perceived why she is not on general principles, as much entitled to be reimbursed the sums, that she has paid for the use of the principal sum, as she is to be reimbursed for the principal sum itself. No good reason has been suggested why, as a matter of equity, if liable for the principal sum, West Virginia is not also liable for interest thereon. Unless allowed as an ordinary expense, she will not pay any part of the interest, and the whole burden of the payment of interest, will be assumed by the State of Virginia, a result which would be clearly inequitable.

It is not an adequate answer to say that the Commonwealth has had the use of the improvements, because these improvements are local in

their character, and so far as the public use of them is concerned, that use has been confined to the limits of West Virginia. If allowed as an ordinary expense, the portion of the Commonwealth that has derived the local benefit from the use, would also assume the burden of paying its proportion, for the use of the money thus expended, otherwise, the remainder of the Commonwealth which has had no benefit from the use, would be paying for the use of all the money thus expended. If tolls were received by the Commonwealth from any of the public improvements, on account of which expenditures are charged, each portion of the Commonwealth has received its pro rata benefit therefrom. The disbursements made by the Commonwealth during this period came from three sources, loans, income and taxation. As the income increased or decreased, the sums raised by taxation necessarily decreased or increased, each section receiving in accordance with the proportion of the burden it was assuming, its proportional benefit of the income, thus received. Just how a "just proportion" of the ordinary expenses is to be ascertained does not appear, but in reaching the conclusion as to what an ordinary expense is, I must assume that it will be ascertained upon a proper basis, and that every legitimate consideration tending to determine the "just proportion" will be given due weight.

That the term "ordinary expense" is not fixed and definite, but is more or less flexible and varying in its meaning, is, I think, reasonably well settled by the authorities.

If, as used in the decree, it is of doubtful meaning, and is open to two constructions, one of

which would produce an equitable result, the reading, with the decree, of the constitutional provision requiring the assumption by the State of an equitable proportion of the debt, would require the doubt to be resolved in favor of the equitable result.

It seems to me upon reason and authority that the interest upon the public debt of the State of Virginia is "one of the ordinary expenses of the Government of Virginia" within the meaning of the language of the Wheeling ordinance and the decree predicated thereon.

Extraordinary Expenses.

The question as to what is an "extraordinary expense" seems to be well settled.

In *Supervisors* v. *U. S.*, 18 Wall, 71, 79, the Court referred to aid in the erection of buildings as "an extraordinary expenditure."

In *Union Pac. R. R.* v. *U. S.*, 99 U. S., 402, the Court referred to expenses for the "enlargement and improvement" as capital expenses.

In *South Bend* v. *Reynolds*, 155 Ind., 70, 73, the Court held that

> "While the rent for suitable offices for city officers is an ordinary and necessary expense, the erection of a city hall or a building for the use of the city officers is not in any sense an ordinary expense, but is an extraordinary one."

In *Voss* v. *Waterloo Water Co.*, 163 Ind., 69, 85, the Court held that the construction of water works or an electric light plant

> "is not in any sense an ordinary and necessary expense, but an extraordinary one."

because such an expense involved

> "municipal ownership of the water and light plant, the means of furnishing said water and light, and is an extraordinary expense."

In *Brown* v. *Corry*, 175 Pa. St., 528, 532, the Court said:

> "I can see a very clear distinction between 'a contract for the supply of water and one for the means of furnishing the supply.' The one may pertain to an ordinary expense, and the other, if it involves municipal purchase and ownership of the means of furnishing the supply, can only pertain to an extraordinary expense."

See also *Grant* v. *Davenport*, 36 *Ia.*, 396, 403.

In *Book* v. *Earl*, 87 Mo., 246, 256,

> "Remodelling and building three new additions to the Court House"

was held not to be an ordinary expense but an extraordinary expenditure.

In *Mills* v. *Richland*, 72 Mich., 100-6-7, the expenses of "establishing lost section corners" and "building a town hall" were held not to be included within the term "ordinary expenses."

In *Helena Water Co.* v. *Helena*, 31 Mont., 243, the Court held that the installation of a water plant was not a "current expense" as it was an expense that partakes of the nature of an investment, or such as are to be incurred in a substantial or permanent improvement.

It seems to be well established that the construction, "enlargement and improvement" of a plant are a capital investment, an extraordinary expense, and that its maintenance and operation is an ordinary expense. It is not perceived that there is any substantial distinction between the increase of the size of the plant and amount of the investment and the original construction or the original investment. If it is construction, addition to plant, "enlargement and improvement;" an investment, and not maintenance or operation, then it is an extraordinary expense.

The parties agree upon items making up an aggregate of the ordinary expense of government of $18,207,684.29 (Rec., p. 515). They reach this amount by deducting from an aggregate of receipts, of $18,761,154.51, the sum of $553,470.22. This sum is the result of eight items. Deft. original Ex. D-1 p. 4.

Inspectors of Tobacco.....		$389,694.91
Less Expense of Commissioners	$33,698.36	
Refunds	203.46	
Paid for burnt Tobacco....	2,669.13	
		36,570.95
Leaving a balance of..		$353,123.96
Inspection of vessels		2,621.26
Land office Registration fees.....		177,115.05
Tax on private seal		2,090.60
Tax on Express Companies		2,199.71
Tax on Insurance Companies.....		6,533.99
Weighmaster of Live Stock	$8,493.32	
Less cost of scales.....	3,019.78	
		5,473.54

Miscellaneous	4,312.11
	$553,470.22

No. 1. Tobacco Receipts.

The seven items following the tobacco item are evidently of the same character and should be treated in the same manner, but for an admission of the plaintiff. The plaintiff admits them as credits, not because they are proper items of credit, but only for the purpose of reaching an agreement as to the amount of that schedule, and the propriety of treating the tobacco item as a credit, is not to be affected by that admission. If the tobacco item is not a proper credit, it is to be added as an ordinary expense to the sum of $18,207,684.29, agreed upon, as in reaching that sum it has already been deducted, and the charge will offset the credit. Virginia made elaborate provision for the inspection of tobacco. It contemplated first adequate protection to its great industry, and second, revenue. The law specifically provides that the salaries of the inspectors "are to be paid out of the receipts for inspection at such warehouse, and in no case is the state to be charged therewith, or with any other expense of such warehouse" (App. 157). The state in fact paid nothing on this account. The whole amount collected, $389,694.91, was reduced by the sum of $36,570.95 for expense of commissioners, refund, and paid for burnt tobacco and the balance, $353,123.96, was paid into the treasury. This sum was not an expense of any kind. It was a receipt, and was not predicated upon an expense. I have authority to state disbursements only, not

receipts. For the reasons above given I treat it as an ordinary expense, and add to the agreed sum, $353,123.96.

ALTERNATIVE FINDING.

At the request of the defendant, I find that the Commonwealth received during the period prescribed from tobacco receipts the sum of $353,123.96.

Item 2—Constitutional Conventions, $258,906.28.

The fact that the decree requires a finding of the "ordinary expenses of the Government of Virginia" raises the necessary inference that there are expenses other than ordinary. Such expenses are both legitimate and proper but do not come within the definition of ordinary. Ordinary is defined by the Century Dictionary as "of the usual order, usual, customary, common", and by Webster as "2. Common, customary, usual." Anderson's Law Dict.: "common, usual, reasonable." These definitions come fairly within such definitions as the Courts have given and to them may be added such as recur with regularity and certainty. The only question to be determined is whether the various items claimed by the plaintiff are usual, customary, common, recurrent, annual or regular in their character.

There have been two Constitutional Conventions during the period covered—one in 1829 and one in 1850 (App., pp. 159-160). That these conventions were a legitimate and proper exercise of a governmental function and that the expenses at-

tendant thereon are both legitimate and proper is unquestionably true. It certainly cannot be considered as a usual, customary, regular or common expense. It does not come within the scope of an ordinary expense within the meaning of the decree and the item is disallowed.

ALTERNATIVE FINDING.

I make an alternative finding at the request of the plaintiff that there was actually expended by the Commonwealth for expenses attendant upon two Constitutional Conventions, held in 1829 and in 1850, the sum of $258,906.28.

Item 3.—Slaves transported and executed, $311,168.35.

This item is admitted by the defendant.

Item 4—Boundary lines $16,704.78.

These boundary lines were run under the authority of specific acts of the legislature passed in 1822, 1833, 1847, 1858 and 1860 (App., pp. 166-171). Nothing appears in the record to indicate that this expenditure was one that could be called usual, customary, common, regular, or annual. On general principles the expense incurred in settling a boundary line could hardly be expected to recur so as to be in any proper sense, usual or customary. I disallow the item.

ALTERNATIVE FINDING.

I make an alternative finding at the request of the plaintiff that under the acts of the legislature

above referred to, the Commonwealth actually expended in running boundary lines, $16,704.78 within the time prescribed.

Item 5—Maps (Commonwealth)....$16,628.04
" (Board of Public Works) 11,446.48

$28,074.52

The maps of the Commonwealth appear to have been made by virtue of the provisions of the statutes enacted in 1825, 1828, 1836, 1848 and 1853 (App. pp. 172-175). These acts all relate to specific maps for specific purposes, and none of them indicate that the work is to be one of a continuing character, usual, customary or common. The maps provided for once prepared, the office of the legislation was apparently accomplished.

I disallow the item.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiffs that the Commonwealth expended under and by virtue of the various acts of the legislature above referred to for maps, within the time prescribed, the sum of $16,628.04.

As to the item of $11,446.48, for maps for the Board of Public Works, I think a different rule applies.

It is conceded that the salaries and expenses of the Board of Public Works are an ordinary expense. It was a great and important branch of the government exercising control over its expenditures and discharging responsible duties involv-

ing a great many details. It is hardly to be expected that each item of expense incurred by this Board in the discharge of its duties would be duplicated or repeated so as to become as to that item usual, customary or continuing in its character.

Yet all the expense incurred by the Board in the proper discharge of its duty would be properly incurred and within the contemplation of the legislation creating the Board as a continuing body and investing it with its duties and responsibilities. Its expenses should be treated as a whole. All expenses that were reasonably necessary to the proper discharge of its duty are proper expenses, and should be included as a part of its aggregate of expenses and are, I think, fairly within the scope of the ordinary expenses of the Board. Maps for their use in the development of public improvements were such an expense, and I therefore allow the sum of $11,446.48 as a part of the ordinary expenses of the Board of Public Works, and therefore a part of the "ordinary expenses."

ALTERNATIVE FINDING.

I find at the request of the defendant that the sum of $11,446.48 was expended by the Board of Public Works within the time prescribed for maps for its use.

Item 6—Deaf, Dumb and Blind Institution, $80,661.94.

The details making up this item are found on pages 521-522, 523, Joint Ex. D-1, pp. 5, 6 and 7.

All of these items were expended either for original construction or "enlargement and improvement" of plant, each of them increasing the investment of the Commonwealth in the Institution. None of them were involved in its maintenance and operation, and under the authorities they were all extraordinary expenses and are therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the aggregate sum of $80,661.94 was expended within the time prescribed by the Commonwealth in original construction and additions and "enlargement and improvement" of the plant of the Deaf, Dumb and Blind Institution, the details of which are specifically mentioned on pages 5, 6 and 7 of Joint Exhibit D. 1 (Rec., pp. 521-2-3).

Item 7—International Exchanges, $2,836.19.

This money was expended under the provisions of a statute of 1848 (App., pp. 185-6), which authorized an exchange between the United States and the French Government of various public documents. The act contemplates a continuation of such exchanges. It requires "a report annually to the joint committee of Library" indicating that a permanent annual exchange was contemplated by the Legislature.

I allow it as an ordinary expense, $2,836.19.

Item 8—Overpayment of Treasury notes, $50.

Nothing appears to show that this was a usual or customary expense or that it occurred more than once, or as to the circumstances under which it did occur. I infer that it was paid on the error of some officer, and it could hardly be assumed that such errors would become usual and customary.

I disallow the item.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth overpaid on Treasury notes within the time prescribed the sum of Fifty Dollars ($50).

Item 9—Printing Treasury Notes, $375.74.

This expense was incurred under the provisions of an Act passed in 1856 authorizing the issue of Treasury notes (App., pp. 186-187). The Act contemplated a permanent method of borrowing money by Treasury notes "issued from time to time." While an appropriation is made for only three years, there is nothing in the Act that indicates that its operation was to be confined to any limited period of time. It contemplates an indefinite continuation of the work provided for.

I allow the item as an ordinary expense, $375.74.

ALTERNATIVE FINDING.

I find at the request of the defendant that the Commonwealth paid within the time prescribed for printing Treasury notes under an Act passed in 1856, $375.74.

Item 10—Loss on account of counterfeit money, $190.

There is nothing in the record that discloses the circumstances under which the loss occurred, and I can only infer that it was one of the sporadic instances that might or might not occur in connection with a currency issued by the State. I cannot assume that such loss would be continuing, usual, or customary.

I disallow the item.

ALTERNATIVE FINDING.

I find at the request of the plaintiff that the Commonwealth lost within the time prescribed on account of counterfeit money $190.00.

Item 11—Virginia Military Institute, new buildings, etc., $151,000.00

The items making up this aggregate (found on pp. 524 and 525 Joint Ex. D-1, pp. 8 and 9) are all for the erection of and additions to, enlargements and improvements of, buildings connected with the Institute, and installing of heating and lighting plants and are within the rules laid down extraordinary expenses, and therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiffs that the Commonwealth expended in the erection of buildings and additions thereto and enlargements and improvements, and in-

stallation of heating and lighting plants, connected with the Virginia Military Institute the sum of $151,000, the details of which appear on Joint Ex. D 1, pp. 8 and 9 within the time prescribed.

Item 12—University of Virginia, Repairs and Improvements to Buildings and Water Supply, $25,000.00.

This sum was expended for "repairing and improving the buildings thereof and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the said Institution" (p. 526 Joint Ex. D-1, p. 10).

Repairing the buildings would undoubtedly be an ordinary expense. The burden is upon the plaintiff to establish the ordinary expenses. Nothing is contained in the record that will enable me to ascertain what part of the $25,000 was expended for repairs, and in the absence of that information, no other course is open than to disallow the item, inasmuch as a portion of it at least is for an extraordinary expense. The analogy is very close between an item of this character and a case where a non-lien and a lien claim have been joined, in which case it is well settled that the introduction of the non-lien claim, reduces the whole claim to the character of a non-lien claim.

I therefore disallow the item.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended $25,-

000 in "repairing and improving the buildings and furnishing a supply of water for the protection and preservation of said buildings and other valuable property of the University of Virginia" within the time prescribed.

Item 13—Improvements Public Square, $1,456.91.

This item is admitted by the defendant.

Improvements Capitol Square, $12,278.47 (Rec. 528 Joint Ex. D-1, p. 12).

All of the items making up this aggregate appear to have been either for construction of additions to buildings, "enlargements or improvements," or installation of water and light plants, and the item is therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended, within the time prescribed for additions to buildings, "enlargements or improvements" and installation of water and light plants, $12,278.47, the items of which appear on page 528 Joint Ex. D-1, p. 12.

Item 14—Fugitive Slave Expense and reward additional, $2,201.00.

This item is agreed to.

Item 15—Penitentiary Lot, New Hospital Building, etc., $13,947.48.

This item is made up of items for the erection of buildings, completing improvements, "enlargements and improvements," and installation of a water supply, and is disallowed.

ALTERNATIVE FINDING.

I find in the alternative, at the request of the plaintiff, that the Commonwealth expended, within the time prescribed, the sum of $13,947.48 for the erection of buildings, completing improvements, and installation of water supply, the items of which appear on Rec. 529 Joint Ex. D-1, p. 13.

Item 16—Calling out militia at Wheeling in 1836, $1,099.

The militia appear to have been called out under the provisions of the Militia Law, and an Act was passed in 1838 (App., p. 222) giving them the "usual pay of the militia when in actual service." For the reasons hereafter given in connection with the Harpers Ferry Item, this item is allowed as an ordinary expense.

Item 17—Medical College of Virginia, additions and improvements to buildings, $25,000.

This was expended for enlarging the hospital and infirmary and extending the college buildings and for improvement and extension of the college museum, and was an "enlargement and improvement" (Rec., p. 530, Joint Ex. D-1, p. 14), and is an extraordinary expense and is therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended $25,000 for "enlarging the hospital or infirmary, for extending the college buildings and for improvement and extension of the college museum" within the time prescribed.

Item 18—Attorney General's fees, prosecuting Selden Withers & Company, $500.

This item stands with an item "Selden Withers & Co. from Miscellaneous, $9,351.45," which with other items make the aggregate of item "23 Sundry B. P. W. expenses $36,728.50" (Sup. Ex. 10). It is conceded that the Selden Withers & Co. $9,351.45 was "a part of the expense of selling the bonds of the state." This item of $500 being of the same character, an advance fee for collecting the Selden Withers & Co. item, for the reasons given under item 5 as to maps for the Board of Public Works, is allowed.

Item 19—Eastern & Western Asylums, $344,295.57.

All of the items making up this aggregate (found on pp. 531, 532, 533, 534, 535, 536, 537 and 538 of Rec. Joint Ex. D-1, pp. 15, 16, 17, 18, 19, 20, 21 and 22) are for additional buildings and completing buildings and installing water plants with the exception of an item of $5,000 (Rec., p. 532; Ex. D-1, p. 16), and $7,450.01 (Rec., p. 538, Ex. D-1, p. 22) and are therefore in the nature of construction, additions to plant and increase of the investment of the state in the plants

and are extraordinary expenses and therefore disallowed.

The item of $5,000 was expended under the Act of Feb. 14, 1844 (page 16, Chap. 11) which authorized an expenditure of $5,000 "for the purpose of remodelling and repairing the body of the old building."

Repairing is clearly an ordinary expense. Whether remodelling would be or not would depend upon the character of the work contemplated The second section of the Act provides:

> "that before the repairs mentioned in the preceding section shall be contracted for, &c."

apparently treating "remodelling and repairing" as repairs. As to this item, I think it is reasonable to conclude that the remodelling was in the nature of repairs and that the item is an ordinary expense, and I therefore allow it as such $5,000.00
The item "support" is admitted 7,450.01

With these exceptions the aggregate is disallowed.

The items of $7,000 on page 532, and $17,750 on page 533, include repairing among other items. It is impossible to separate the items of repair from the other items and they are disallowed for that reason.

Alternative Finding.

I find in the alternative at the request of the plaintiff under this item, that the Commonwealth expended within the time prescribed the aggregate of $331,845.56, for additional buildings, completing buildings and installing water plants.

Item 20—Gun House at Alexandria.... $900.00

Item 21—Cannon House, Surrey Co.... 110.00

Item 22—Cannon House for Richmond Artillery 1,079.09

These items are all for construction of buildings, the last two by virtue of special acts therefor (App., p. 246) are extraordinary expenses and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended within the time prescribed for the purposes above indicated in the items 20, 21 and 22, the sum of $900, $110 and $1,079.09, respectively.

Item 23—Sundry Board of Public Works expenses $36,728.50

"Supplemental Ex. 10."

All of the items making up this sum appear to have been legitimate expenses of the Board of Public Works, reasonably and necessarily involved in the discharge of their duties and are therefore, for the reasons above given under Item 5 as to maps for the Board of Public Works, reasonably within the scope of the ordinary expenses of the Board of Public Works, and are to be treated as an ordinary expense of the State and are allowed.

Item 24—Aggregate, $18,574,747.84.

For the reasons heretofore given this item is allowed as an ordinary expense.

ALTERNATIVE FINDING.

I find in the alternative at the request of the defendant that the Commonwealth expended within the time prescribed for interest on its public debt the sum of $18,574,747.84.

HARPERS FERRY RAID.

The full amount of the expenditure for the Harpers Ferry Raid by the State of Virginia was the sum of $255,745.77. $3,982.12 should be credited to the expenditure for sundry returns, leaving the actual expenditure, $251,763.65. The question now to be determined is whether that is fairly within the scope of the term "ordinary expenses," as that term is used in the decree.

The Constitution of the United States recognizes the essential character of the militia (Con. Art. 1, sec. 8, part 15 and 16, Code of Va., 1860, p. 17). The Virginia Bill of Rights declares that a "well regulated militia * * * is the proper natural and safe defense of a free state." (Code Va., 1860, p. 34, sec. 13.) Virginia has had an active and expensive militia establishment since 1705 (do. 134 note). The Governor is authorized to "call forth the militia" when any

> "combination whether for dismembering the State or establishing in any part of it a separate government, or for any other purpose shall become so powerful as to obstruct in any part of this state the due execution of the laws thereof."
>
> (Code Va., 1860, page 118, sec. 2.)

Under the title head of "Public Defense" is found most extensive, detailed, and comprehensive statutory provisions providing for its organization, maintenance and control, occupying 45 pages of the statutes. (Code Va., 1860, page 134).

It provides for salaried officers (do. 142, sec. 27). For pay of certain officers (do. 148, sec. 8). For annual muster (do. 147, sec. 4); two trainings annually for "the officers of each County" (do. 147, sec. 4). For cavalry and artillery (do. page 151, sec. 11). "In case of any invasion or insurrection within the limits of any division * * * the commandant of such division" has power "to order out for the defense of the State the militia or any part thereof" (do. 161, sec. 1). "The officers and soldiers when called into the actual service of the State shall be entitled to the same camp equipage, pay, subsistence, forage and other emoluments to which similar officers and soldiers are entitled in the service of the United States." (do. page 164, sec. 14.)

The expense of this establishment was large, and the amount $1,030,594.11 is admitted to be an "ordinary expense."

It is clear that the militia is organized and maintained not for continuous active service but only that from time to time as occasion may require it may be called into "actual service." It is maintained for the express purpose of meeting exigencies the nature of which cannot be specifically foreseen. The possibility of the occurrence of the exigency is all that can justify the existence of the militia establishment. If the expense of maintaining the militia in order that a State may be prepared to meet the exigency when the occasion arises is an "ordinary expense," it is diffi-

cult to see why the expense involved in meeting the exigency itself, thus provided for, the accomplishing of the sole purpose of the militia, is not also within the fair scope of an "ordinary expense." It is a legitimate part of the whole expense of the militia establishment. Its expenses should be treated as a whole. That the appropriations were made "for the defense of the Commonwealth" has no significance as showing that they were unusual or extraordinary. This language was no doubt used, not for the purpose of indicating that the Harpers Ferry Raid was unusual or extraordinary and beyond the scope of the militia's duties, but for the purpose of referring the appropriation to that branch of the public service which the legislature had technically designated the "Public Defense." That the Harpers Ferry Raid was signalized by important and far reaching consequences without precedent in the history of the State, and impossible of duplication, does not differentiate it from other, and less significant exigencies, that may have occurred or that might be expected to occur. It is not the cause, but the result of the exigency, which obstructs "in any part of this State the due execution of the laws thereof," and that "renders it necessary to invoke the militia." The Harpers Ferry Raid, was then, an exigency which might ordinarily occur, which was clearly within the contemplation of the legislature when it created and maintained the militia, one of the specific things for which the annual expenditures were made, and I think it is for these reasons, within the fair meaning of the decree an "ordinary expense," and the sum of $251,763.65 is therefore allowed as such.

PRIMARY SCHOOLS.

The amount expended on account of primary schools was $3,056,239.84 (Rec. p. 538-H). Of this amount thus expended, the defendant admits that the sum of $655,908.73 stated by them as "paid from capitation tax" is an ordinary expense and should be so charged. They deny that the balance of $2,400,331.11 is so chargeable for the reason that it was derived from other sources than the capitation tax or "on account of the source from which it was derived" (Rec. p. 515-D-1, p. 1; 538 H. Deft.'s Ex. D-2, p. 7).

The "Literary Fund" from which these expenditures were made came from three sources; First,

> "all money, stocks or other property which now or hereafter may belong to the Literary Fund" (App., p. 207);

Second,

> "Whatever shall accrue to the State from escheats, forfeitures or fines (except militia fines) from the estate of a decedent of which there is no other distributee or from any other property as derelict and having no other owner" (Code Va. 1849—App., p. 207).

Third, The auditor of public accounts was required by law to

> "set apart and pay into the Treasury to the credit of the Literary Fund for the purposes of education in primary and free schools, the *amount* of the capitation tax for the preceding year" (Act, March 25, 1853, App., p. 208).

From the fund thus created there was expended, $45,000.; $70,000., $75,000 and $80,000 annually (Code Va. 1860, pp. 416-7 note).

I have already held, under a preceding paragraph, that an expenditure for this purpose was an ordinary expense, and not an "expenditure." It is conceded that as to $655,908.73, that conclusion is correct, because it was "paid from the capitation tax."

I find nothing in the legislation or in the decree that sustains this distinction. The sum of $655,908.73 was not "paid from the capitation tax." Under the express provision of the Statute, the capitation tax was paid "into the Treasury to the credit of the Literary Fund", and when it arrived in the Treasury it was mingled with all the other funds that were the property of the "Literary Fund." It is only the *amount* of the capitation tax that is paid out of the Treasury for the purposes of education. There are no earmarks upon the capitation tax by which it can be traced into the Treasury, and then out of the Treasury, as a disbursement for educational purposes. The provision as to the capitation tax is not an appropriation of the tax *per se*, but is simply a provision on the part of the state determining the minimum amount that shall be contributed annually from the revenues raised by taxation to the Literary Fund, to supplement the first and second sources of income. The amount to be spent "for the purpose of education" was by no means limited to the "amount of the capitation tax." It exceeded it by the amount of $2,400,331.11. These three sources of income when they reached the Treasury constituted a common fund known as the "Literary Fund." Out of

that common fund all of the disbursements were made for the purposes of education. The decree does not authorize me to inquire into the source from which the money reached the Treasury, and determine the amount of the ordinary expenses expended from this fund, by the amount of any particular source from which the fund derived its revenue. If one dollar expended for primary schools from the "Literary Fund" made up from these various contributions, is an ordinary expense, I can see no reason why every dollar coming from the same fund, and expended for the same purpose, is not also an "ordinary expense."

I therefore find that the sum of $3,056,239.84 is an ordinary expense. Inasmuch as the sum of $655,908.73 has already been included among the items which make up $18,207,684.29, there is to be added to it in order to charge $3,056,239.84 as an ordinary expense the difference between that sum and $655,908.73 or $2,400,331.11.

Alternative Finding.

I find, at the request of the defendant, as an alternative finding, that the amount of the capitation tax during the period in which the sum of $3,056,239.84 was expended for schools was $655,908.73.

Surveys.

I have already held under Paragraph III, that the sum of $106,983.67 expended for surveys by the Board of Public Works was general in its character, and should be charged as an ordinary expense and the item is here so charged $106,983.67.

SUMMARY ORDINARY EXPENSES.

	The amount agreed upon between the parties, is.....	$18,207,684.29
1.	Tobacco receipts.....	$353,123.96
3.	Slaves transported and executed.....	$311,168.35
5.	Maps, Board of Public Works	$11,446.48
7.	International Exchanges....	$2,836.19
9.	Printing Treasury Notes....	$375.74
13.	Improvements in public square	$1,456.91
14.	Fugitive slave expense; reward additional.....	$2,201.00
16.	Calling out militia at Wheeling, in 1836.....	$1,099.00
18.	Atty.-Genl.'s fees prosecuting Selden, Withers & Co. claim	$500.00
19.	Remodelling and repairing old building of Eastern Asylum.....	$5,000.00
	Support Western Asylum..	$7,450.01
23.	Sundry Board of Public Works expenses.....	$36,728.50
24.	Interest on public debt.....	$18,574,747.84
	Expenses of Harper's Ferry Raid.....	$251,763.65
	Expended for primary schools.....	$2,400,331.11
	General expenses connected with surveys	$106,983.67
		$40,274,896.70

SUMMARY ALTERNATIVE FINDINGS.

1. At the request of the defendant, that the Commonwealth received from Tobacco Receipts.....	$353,123.96
2. At the request of the plaintiff, that the Commonwealth expended for two Constitutional Conventions, held in 1829 and 1850	$258,906.28
4. At the request of the plaintiff, that under the acts of the legislature above referred to, the Commonwealth expended in running boundary lines.....	$16,704.78
5. At the request of the plaintiff, that the Commonwealth expended under acts of the legislature for maps	$16,628.04
6. At the request of the plaintiff, that the Commonwealth expended in original construction and other additions to or increase of the plant of the Deaf, Dumb and Blind Institution, the details of which are on pp. 5, 6 and 7 of Joint Ex. D-1....	$80,661.94
8. At the request of the plaintiff, that the Commonwealth overpaid on Treasury notes.....	$50.00
At the request of the plaintiff that the Commonwealth lost on account of counterfeit money.	$190.00

11. At the request of the plaintiff, that the Commonwealth expended in the erection of buildings and additions thereto and installation of heating and lighting plants connected with the Va. Military Institute..... $151,000.00

12. At the request of the plaintiff, that the Commonwealth expended in "repairing and improving the buildings and furnishing a supply of water for the protection and preservation" of buildings &c. of the University of Virginia..... $25,000.00

13. At the request of the plaintiff, that the Commonwealth expended for Improvements to Capitol Square, the sum of..... $12,278.47

15. At the request of the plaintiff that the Commonwealth expended on additions to Penitentiary lot, New Hospital, Buildings etc. $13,947.48

17. At the request of the plaintiff, that the Commonwealth expended for "enlarging the hospital and infirmary and extending the college buildings, and for improvement and extension of the College museum" of the Medical College of Virginia... $25,000.

19. At the request of the plaintiff, that the Commonwealth expended on the Eastern & Western Asylums for items appearing on pages 531 to 538 incl.—Joint Ex. D-1, pp. 15 to 22 incl..... $331,845.56

20. At the request of the plaintiff, that the Commonwealth expended for Gun House at Alexandria $900.00

21. At the request of the plaintiff, that the Commonwealth expended for Cannon House, Surrey County $110.00

22. At the request of the plaintiff, that the Commonwealth expended for Cannon House for Richmond Artillery $1,079.09

23. At the request of defendant, that the Commonwealth expended for expenses of the B. P. W. $36,728.50

24. At the request of the defendant, that the Commonwealth expended for interest on its public debt $18,574,747.84

I find in the alternative at the request of the plaintiff, that the amount of the ordinary expenses and the apportionment thereof, according to the claims of the plaintiff, are correctly stated on pages 515 and 516 of the Record.

Division of Ordinary Expenses of Government by Decades.

	Total.	1st decade ending Sept. 30th, 1830.	2d decade ending Sept. 30th, 1840.	3d decade ending Sept. 30th, 1850.	4th decade ending Dec. 31st, 1860.
Agreed Amount	$18,207,684.29	$2,902,808.21	$3,975,260.33	$4,514,861.97	$6,158,845.05 655,908.73
Schools	2,400,331.11	330,054.08	568,328.36	715,190.24	786,758.43
Tobacco Receipts	353,123.96	71,950.84	50,246.78	62,703.07	168,223.27
Slaves Transported and Executed	311,168.35	41,491.54	53,488.95	49,497.28	166,690.58
Maps (Board of Public Works)	11,446.48	4,428.79	.....	1,500.	5,517.69
International Exchanges	2,836.19	.....	.....	550.	2,286.19
Printing Treasury Notes	375.74	.....	.....	.....	375.74
Improvements to Public Square	1,456.91	1,456.91	.....	.....	.....
Fugitive Slave Expense	2,201.	.....	.....	.....	2,201.
Militia—Wheeling, 1838	1,099.	.....	1,099.	.....	.....
Attorney General's Fees	500.	.....	.....	.....	500.
Eastern Lunatic Asylum—Repairs	5,000.	.....	.....	5,000.	.....
Western Lunatic Asylum—Support	7,450.01	.....	7,450.01	.....	.....
Board of Public Works—Expense	36,728.50	64.50	1,579.87	1,698.92	33,385.21
Interest on the Public Debt	18,574,747.84	274,278.17	1,146,146.43	3,682,978.86	13,471,344.38
Harpers Ferry Raid	251,763.65	.....	.....	.....	251,763.65
Surveys	106,983.67	42,046.76	49,450.09	14,818.09	668.73
	$40,274,896.70	$3,668,579.80	$5,853,049.82	$9,048,798.43	$21,704,468.65

Division of Ordinary Expenses of Government by Plaintiff's Method as Shown in Joint Exhibit D-1, Pages 2-3.

ORDINARY EXPENSES DIVIDED BY DECADES.

Mar. 19, 1823, to Sept. 30, 1830	$3,668,579.80
Oct. 1, 1830, to Sept. 30, 1840	5,853,049.82
Oct. 1, 1840, to Sept. 30, 1850	9,048,798.43
Oct. 1, 1850, to Dec. 31, 1860	21,704,468.65
	$40,274,896.70

DIVIDED ON BASIS OF AVERAGE TOTAL POPULATION *INCLUDING* SLAVES.

1st Decade—Virginia	85.9789%	$3,154,204.56		
West Virginia	14.0211%		$514,375.24	
2d Decade—Virginia	83.6218%	4,894,425.61		
West Virginia	16.3782%		958,624.21	
3d Decade—Virginia	80.2045%	7,257,543.54		
West Virginia	19.7955%		1,791,254.89	
4th Decade—Virginia	77.5014%	16,821,267.07		
West Virginia	22.4986%		4,883,201.58	
Total Virginia		$32,127,440.78		
Total West Virginia			8,147,455.92	
Grand Total as above				$40,274,896.70

DIVIDED ON BASIS OF AVERAGE TOTAL POPULATION *EXCLUDING* SLAVES.

1st Decade—Virginia	79.3334%	$2,910,409.09		
West Virginia	20.6666%		758,170.71	
2d Decade—Virginia	76.1625%	4,457,829.07		
West Virginia	23.8375%		1,395,220.75	
3d Decade—Virginia	71.9611%	6,511,614.89		
West Virginia	28.0389%		2,537,183.54	
4th Decade—Virginia	68.8438%	14,942,180.99		
West Virginia	31.1562%		6,762,287.66	
Total Virginia		28,822,034.04		
Total West Virginia			11,452,862.66	
Grand Total as above				$40,274,896.70

Division of Ordinary Expenses of Government by Defendant's Method as Shown in Joint Exhibit D-1, Page 4.

Total Ordinary Expenses to be divided	$40,274,896.70

DIVIDED ON BASIS OF TOTAL AVERAGE POPULATION *WITH* SLAVES.

Virginia	81.3718%	$32,772,408.39
West Virginia.....	18.6282%	7,502,488.31

DIVIDED ON BASIS OF TOTAL AVERAGE POPULATION *WITHOUT* SLAVES

Virginia	73.3369%	$29,536,360.72
West Virginia.....	26.6631%	10,738,535.98

I find that the method adopted by the plaintiff of, ascertainin "the average total population", is the closest and most accurat approximation upon which the ordinary expenses can be apportione to "the average total population", as the object to be ascertained is the population in existence, at the time the ordinary expenses t be apportioned, were paid, and I therefore adopt the plaintiff' method.

PARAGRAPH V OF DECREE.

5. "AND ALSO ON THE BASIS OF THE FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES, OF THE STATE OF VIRGINIA."

This paragraph is clearly in the alternative with the last clause of Paragraph IV. That paragraph requires "such proportion of the ordinary expenses * * * on the basis of the total average population," and Paragraph V. "*also* on the basis of the fair estimated valuation," two alternatives, each predicated upon the same "ordinary expenses." How any proportion of the ordinary expenses can be predicated upon a valuation that is not coterminous with the "ordinary expenses", but taken two and a half years later under a profound change in conditions, affecting the amount of that valuation, can serve any useful purpose in apportioning such "ordinary expenses" it is difficult to see. If an ordinary expense is a charge upon valuation, it can only be a charge upon the valuation in existence at the time the "ordinary expense" is incurred, and not upon another and entirely different valuation at a later period. The case has, however, been tried upon the hypothesis that the "fair estimated valuation," is as of June 20, 1863, and while I think January 1, 1861 is the true date, I will first find the fair estimated valuation on June 20, 1863. Both parties start with the assessed valuation of real estate made in 1856, and which it was provided by Acts passed March 27, 1862 and March 28, 1863 "shall be permanent and not be changed" for those years respectively (App. p. 133). The taxes were assessed as of February 1

(Code of Va. 1860, p. 197, sec. 48) (Acts Genl. Assembly, 1863, Chap. 1, p. 1). The rate of assessment in '61 (See Plff. Ex. H-1) was at the rate of forty cents on a hundred. The Act of 1863 increased the rate of taxation to 100 cents on a hundred and generally, one hundred and fifty per cent. The Act of 1862 contained no provisions as to changing the assessment of real estate. The Act of 1863, sec. 91, provided that

> "as many tracts of land and lots with improvements thereon situate in counties invaded by the public enemy have been permanently diminished in value by said invasion and despoiled and reduced in value by military occupation and by the waste and violence incident to war, it shall be the duty of the Commissioners of the Revenue for such counties upon the requisition of the owner of any real property situate in such counties or of his agent to make a new assessment of such real property upon the following basis and mode of valuation, viz.: The commissioner shall deduct from the amount at which such property stands assessed at its last assessment such sum as is equal to a fair estimate of the permanent diminution in the value thereof caused by the invasion of such county and of the permanent injury and damage inflicted upon such property by military occupation thereof and the waste and violence incident to war" (App. pp. 133-4).

and then follows a provision that the

> "permanent diminution, injury and damage"

should be measured by the "standard and rate of valuation" as if it had "been estimated during the year 1856," the remainder to be the valua-

tion to be assessed. The change of valuation could be made only "upon the requisition of the owner." The defendant claims that it is to be presumed that the owner made the application where there was any diminution in value for that cause and that as to the counties actually subjected to "military occupation" the presumption is that the assessors valuation for 1863 represents the actual value after these proceedings had been had. The law provided also for adding to or taking from the assessment on the addition or loss of buildings (Code of Va. 1860, chap. 35, secs. 31, 32, 33 & 34, pp. 193-4). Nothing appeared in the case to indicate that any requsitions had been made by owners for a reduction in value under the provisions of Sec. 91. If there is a presumption that the requisitions were made and the values were correspondingly reduced under the provisions of this section, that presumption is overcome by the fact that the valuation of real estate for 1863, was $378,534,712.35 (Rec. p. 639—Ex. E-1, p. 1) as against a valuation for 1861 $317,330,219.26 (Plffs. Ex. H-1, p. 647), and valuation for 1860 of, $377,947,112 (do.).

It will be seen that the valuations for 1863 and 1860 are substantially the same. While the valuation for '63 exceeds that given for 1861, it should be noted that quite a number of counties were omitted in 1861 which were valued in 1863 at about $36,000,000, which added to $317,330,229.26 would make an aggregate of $353,330,229.36, so that the valuation of real estate in 1863 instead of being reduced as it inevitably would have been if there had been any diminution on the requisition of the owners, shows substantially the same value as in 1860 and an increase over 1861.

The assessments as stated in the schedules for Virginia and West Virginia stand therefore unaffected by any of the considerations growing out of the war conditions on June 20, 1863, and are practically the assessments of 1856.

The plaintiff claims that because of the fact that the real estate was within the limits of the Confederacy, whose territory was to a large extent the theatre of active war, occupied by contending armies, had been ravaged and in part destroyed, with agriculture and manufactures practically paralyzed, there was a depreciation of its value by at least fifty per cent in all of Virginia and the same in the counties of Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas in West Virginia (Rec., p. 640, Ex. E-1, p. 2).

If this contention is sustained the "fair estimated valuation of the real property of Virginia" would be $148,042,730.15; and in West Virginia, $67,676,127.44. To establish this, they rely upon the general presumption that a marked decrease in value would result from the war conditions, the opinions of witnesses and the sale of different parcels of real estate.

My attention has been called to cases tending to show that the assessments are admissible as tending to show the value of real and personal property at the time of the assessment. Inasmuch as each party relies upon the assessment as the basis of their respective valuations, and there is no other evidence in the case, and no other is probably obtainable, that tends to show the value of the real and personal property as a whole at the time in question, I shall treat the assessments

as one of the competent elements for the purpose of determining the fair estimated valuation.

The defendant contends that Virginia is estopped from denying that the assessed valuation in 1863 is the "fair estimated valuation" and rely upon *State* v. *Turpike Co.*, 22 Tenn. (3 Humphrey), 305, and *State* v. *Hamilton,* 30 Tenn. (11 Humphrey), 47, which hold that the analogy between the agent of the state employed to "transact its ordinary business and operations" is complete between that of an agent of an individual person, acting through his agent, and the state is equally bound thereby. *State* v. *Crutcher,* 32 Tenn., 504, 515, is to the same effect except as an additional reason for holding that the settlement involved in that case bound the state, it appeared that it had "received the approval of the legislature."

As to these cases it is to be said that the assessors assessing property are not acting as agents of that character. As is said in *Stanley* v. *Board of Supervisors,* 121 U. S., 535, also cited by the defendant, "their action is judicial in its character."

11 Amer. & Eng. Ency. of Law, 2nd Ed., 396, and cases cited, is relied upon as establishing the doctrine that a state may be estopped by its covenants in a deed.

The cases all proceed upon the theory that as to the deed or grant, the state acts in its private capacity, and is therefore governed by the same rules that apply under the same circumstances to private individuals, a state of facts that does not obtain at bar, as there is no deed or grant here, and there is no action by the

state in its private character and no ground for an estoppel. Cases like *Stanley* v. *Board of Supervisors,* 121 U. S. 535, are cited for the purpose of showing that the assessment cannot be attacked collaterally by a tax payer, but this is not a case of a tax payer contesting either the validity or the amount of the tax assessed, and those cases proceed upon the ground that remedies are provided by statute for the tax payers. Moreover, in that case the Court held that the valuation fixed, was not conclusive even as against the tax payer, as while they hold that the tax could not be attacked collaterally, they also hold that

> "when the over-valuation of property has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory direction and operates unequally not merely on a single individual but on a large class of individuals or corporations, a party aggrieved may resort to a Court of equity to restrain the exaction of the excess, upon payment or tender of what is admitted to be due" (pp. 550-1).

While insisting upon the position that the assessed valuation is conclusive upon Virginia, defendant calls my attention to cases, which it is contended, require me to take judicial notice that these valuations "are far below the market value of the property assessed".

In *State* v. *Savage,* 91 N. W. 716, 720, acting upon an assessment, the Court took judicial notice that it was "notorious" that the assessment was at only twenty to ten per cent of the value of the property.

In *Railroad & Tel. Cos.* v. *Board of Equalizers,* 85 F. R. 302, the Court said, if it "may judicially know an established custom" real property was assessed "at a rate not exceeding 75 per cent. of actual value" (p. 310). And the Court also said:

> "It is a matter of familiar and common knowledge with every citizen of the State [Tennessee] that ordinary real property is assessed for general taxation at a percentage ranging from 50 to 75 per cent. of actual value" (p. 308).

The Court cited *Railway* v. *Guenther,* 19 F. R. 395 where in speaking on the same subject, the Court said:

> "But from the other proof in the cause and from what the Court may judicially know"

the assessments were

> "one-fourth below their real value " (p. 399).

The Court in that case also cited *Board of Supervisors of Bureau County* v. *Chicago B. & Q. R. Co.,* 44 Ill. 229 where the Court said:

> "It is an admitted fact on both sides of this controversy that the property of no one owner in the County of Bureau has been taxed on its real value" (p. 239).

In that case it appeared that

> "property of individuals ranged from one-fifth to one-third of its cash value" (p. 237).

These facts appeared by proof and were not a matter of judicial notice.

In *Cummings* v. *National Bank*, 101 U. S. 153, also cited in the opinion, the Court said:

> "But it is a matter of common observation that in the valuation of real estate this rule is habitually disregarded" (p. 162).

The Court had already decided the case and it appeared "by the testimony of four or five assessors" that they had established a rule by which real and personal property was assessed at one-third of its actual value. The remark made by the Court was unnecessary to the decision, general in its character and expressly declared to be in "extenuation" of the practice thus disclosed to obtain in Ohio. The Court further said for the same purpose,

> "it is believed that the valuation of real estate for the purposes of taxation rarely exceeds half of its current salable value" (p. 163).

It is not believed that the Court in using this general language by way of illustration, as a dictum, were laying down a legal rule for determining the value of real estate, and authorizing the Court by judicial notice to make a reduction from its assessed value.

These cases may perhaps be sustained upon the theory that

> "Courts may properly take judicial notice of facts that may be regarded as forming part of the common knowledge of every person of ordinary understanding and intelligence" (Cyc., Vol. 16, p. 852),

and the fact that the judicial notice is confined to the particular states under discussion.

I am not advised whether it is ten, twenty, thirty-three and a third, fifty or seventy-five per cent. of the valuation that I am expected to assume as a matter of judicial knowledge. If I am asked to hold that there is a universal custom, prevailing everywhere, to undervalue real estate for the purpose of taxation, I should not feel at liberty to so hold, for I know the contrary to be true. I know localities where the full value is intended to be assessed. There is no evidence in this case by which it could be inferred that any custom to undervalue prevailed in Virginia in 1856 or in 1863. If an undervaluation was a part of the common knowledge of every person of ordinary understanding at that time, nothing appeared in the record to indicate it, and I do not feel at liberty to assume it. The Act under which the assessment was made required the assessors to "examine all the lands and the lots with the improvements thereon * * * ascertain and assess the actual value thereof" (Sec. 4, Act Mar. 10, 1856, p. 17). By Section 5, the Courts had the power to

> "reduce the same to what is in their opinion the true value of such lands or lots,"

and if too low, "they shall increase it in like manner".

The defendant contends in connection with these assessments that

> "It is a well settled principle that the law contemplates or presumes that all public officers in the discharge of their duties have acted according to the requirements of the law and have done all things which the law requires they shall do,"

and cites authorities which amply sustain that proposition. Such being the rule, when applied to this assessment it follows that in fixing the value of the real estate in 1856 the assessors fixed the "cash value thereof".

The defendants were requested to submit authorities upon the competency of the opinions of witnesses and actual sales upon the question of values on June 20, 1863. Having submitted none, I assume that they do not contend that upon the authorities evidence of that character is inadmissible. The evidence is objected to on the ground that its effect is to impeach the judgment of the revenue officers, and it is claimed that their judgment is thus being collaterally attacked. No question of taxation is involved here. The only question is what is a "fair valuation", and an assessment made in 1856 is the starting point in ascertaining that valuation on June 20, 1863.

The theory of the plaintiff involves the assumption that the assessment in 1856 was the true value at that time. It is their basis. That pronounced changes in value, especially in view of war conditions, may have occurred up to June 20, 1863, is too obvious for discussion.

The opinions of witnesses, sales, and conditions in 1863, and the use sought to be made of such evidence on the part of the plaintiff does not only fail to contradict, impeach or collaterally attack, but proceeds upon the assumption, that the action of the assessors is to stand, as the basis of the valuation.

It seems inevitable, that the existence of the war and its continuance from 1861 to June 20, 1863, the presence of the contending armies and the condi-

tion of destruction and devastation necessarily incident thereto, produced a marked diminution in the value of the real estate within the limits of the Confederacy.

The difficult question is, how much was the depreciation. Upon this point the evidence is very fragmentary, indefinite and unsatisfactory, but it is all there is in the case from which that can be ascertained. The plaintiff shows thirty sales of real estate in the territory in question during the months of April, June, July and August, 1863 (Rec. 654-5-6-7-8). These sales were all undoubtedly in Confederate money, as it does not appear to be seriously controverted that all transactions in the Confederacy at that time were in Confederate money. Reduced to a gold basis they show an average depreciation from the assessed value of 62.90 per cent.

J. M. McWhorter, a witness for the defendant says that "there was depreciation. People were ready to dispose of their property and turn it into money" (Rec., p. 715). It was on account of the raids of Confederate armies (Rec., pp. 715-716). He testifies only as to Roane and Jackson Counties (Rec., p. 717) and makes no estimate as to the amount of the depreciation in those Counties.

Ex-Governor Atkinson, also a witness for defendant, was in Kanawha, Fayette, Nicholas, Greenbrier, Jackson, Roane, Putnam and Mason counties, more or less of which, were overrun at times by both armies (Rec., p. 787). He says

> "It necessarily materially reduced the values of all kinds of property all through this region of the country" (Rec., p. 788).

From shortly after September, 1862, until the close of the war the Federal forces occupied the great Kanawha valley (Rec., pp. 787 and 790). The counties above referred to were largely situated in this valley. He had no doubt but that

> "property values did increase in the upper part of the State to some extent during the period of the War, which part was not burdened by soldiers of either side; but for the Southern portion of the State, I cannot believe, taking the whole period of the War, that the valuation of personal property and real estate increased at all" (Rec., pp. 794-5).

He says "that in the whole Southern tier of counties" real estate "did materially depreciate" (Rec., p. 795). He expresses no opinion as to the percentage of increase on the one hand or decrease on the other.

The counties that plaintiff concedes should have their values reduced are the whole Southern tier of Counties (Rec., p. 640, Ex. E-1, p. 2) and the counties as to which Mr. McWhorter and Mr. Atkinson testify are such as were substantially in the great Kanawha Valley that was under Federal control shortly after September, 1862, until the close of the War.

This is in substance the evidence upon the part of the defendant bearing directly upon the question of value.

The plaintiff relies upon a number of witnesses who appear to have had some opportunity to know of the conditions in a great deal of the territory in Virginia that was the subject of military occupation. They all agree that great damage was done and that there was great deterioration in value. (Hunter, 741; Scott, 748; Branch, 754;

Wellford, 761; Taylor, 769; Hawes, 772; Williams, 778; McCabe, 783-4).

Hunter says that it:

> "is almost entirely a matter of conjecture, but I should suppose it would be fair —of course I just hazard this—to state that the values were destroyed one-half at least, taking the whole State at large" (Rec., p. 742).

He says it was "impossible to base any satisfactory judgment as to values" (Rec., p. 742). In answer to the question as to whether real estate was worth "less than one-half," Scott says, "Undoubtedly in gold values" (Rec., p. 748).

Branch says:

> "I don't consider that I know enough to express an opinion in regard to real estate. It was very much depreciated * * * I am satisfied (though I am not speaking of any sale I now remember) that it depreciated fully one-half" (Rec., pp. 756-7).

Wellford—reducing Confederate money to gold, says the value was not "over one-half" as before the War (Rec., p. 763).

Taylor—Fifty to Sixty per cent. depreciation (Rec., p. 770).

Hawes—Depreciation, fifty per cent. (Rec., p. p. 779).

Williams—Average lands in Virginia were not worth 25 per cent. in 1863 in good money (Rec., 779).

McCabe expresses no opinion as to the amount of depreciation.

Indefinite, uncertain and unsatisfactory as these statements are, the defendants though examining its witnesses upon the same general subject after this testimony was taken, made no effort to contradict their statements or opinions. This, with the sales, is all the evidence there is, and it is perhaps true that at this late day, nothing more satisfactory could be obtained. Taking it with the presumption of the great decrease in value resulting from the War conditions, I think the estimate made by the plaintiff is as close and approximate as can be reasonably made of the fair estimated value of the real estate on the 20th day of June, 1863, and I therefore find that the fair estimated valuation of the real estate in the counties in Virginia on that day was, $148,042,730.15. The plaintiff concedes that the same reduction should be made in the Southern tier of ten counties of West Virginia. I find the value of the real estate in said counties to be $14,773,124.60.

There is no evidence that taking West Virginia as a whole there was any decrease in its value. While Ex-Governor Atkinson says, that in the upper part of the State "values had increased to some extent," and that

> "but for the Southern portion of the State, I cannot believe, taking the whole period of the War, that the valuation of personal property and real estate increased at all. On the contrary, I am quite confident that it did not do so" (Rec., p. 795),

he afterwards said that in the southern tier of counties it materially depreciated. He expresses no opinion upon the question of depreciation of the state as a whole. His statement as to the in-

crease of value of the upper part of the State has some corroboration in the fact that agriculture was carried on in that section at a handsome profit in 1863 and 1864 (Rec., p. 798).

The same reduction having been made in the Southern tier of ten counties on account of the War conditions that has been made upon the real estate in Virginia, I think it reasonable to take the assessed valuation in West Virginia for the remaining counties without making any addition for any increase in value "in the upper part of the State" as the fair estimated value of the real estate in those counties on June 20, 1863.

And I therefore find that the fair estimated value of that portion of West Virginia was $52,-903,002.84, which added to the valuations fixed upon the Southern tier of counties makes the aggregate of the fair estimated value of the real estate in the Counties of West Virginia the sum of, $67,676,127.44.

Alternative Finding.

I find in the alternative at the request of the defendant that the assessed valuation of the real estate in the counties constituting the State of Virginia on June 20, 1863, was $296,085,460.31 and that the assessed valuation of the real estate in the counties constituting West Virginia was $82,449,252.04.

Personal Property.

The total valuation of personal property including slaves and not including income in the counties of Virginia, was, according to the last obtainable assessment prior to June 20, 1863

(Rec., p. 639, Ex. E-1, p. 1), $403,696,228.59. The same valuation for the counties in West Virginia was $30,394,487.21 (do.).

The witnesses all agree that there was a great diminution in quantity of stock of all kinds and provisions as compared with 1860 and 1861.

Hunter says: "Very largely; very largely" (Rec., p. 743).

> Scott says: "Personal property of all sorts had become so scarce that by reason of its scarcity it had a fictitious value, almost in Confederate money. There were not any horses to spare left, very few cows, very little furniture, very few farming utensils and very little live stock."
>
> "There was ten times as much personal property in 1861 as there was in 1863" (Rec., p. 749).

The value of horses was much more in 1863 (Rec., p. 750).

Branch says: other personal property had depreciated fifty per cent. (Rec., p. 757).

Wellford: "Immense diminution in the quantity" of personal property (Rec., p. 763). Hogs made into bacon, and horses, were worth more. He says that Lincoln's Proclamation had "very little effect" upon the value of slaves "until the surrender of Vicksburg and Gettysburg. It was laughed at and ridiculed by most people" (do., p. 763). Leaving out cotton and tobacco, personal property depreciated 75 per cent. Carriages and wagons and farming utensils were pretty well worn out (do., p. 764). Nearly one-half of the horses and cattle were gone (do., p. 765).

Taylor—Depreciation 50 to 75 per cent. (do., p. 769) "except such things as were absolutely in

demand like horses, provisions and things that you would have to have'' (do., p. 769).

Hawes—Live stock and poultry were swept off. (do., p. 772). Amount carried off large (do., p. 774).

Williams—Depreciation was less than fifty per cent. (do., p. 779).

McCabe—Live stock was swept away (do., p. 785).

While these statements as to the amount of personal property destroyed are probably somewhat exaggerated I have no doubt there was a marked reduction in quantity, and an abnormal increase in demand, caused by the presence of the contending armies in large numbers for such personal property as horses, cattle, sheep and hogs which would necessarily tend to largely increase their value. All fowl and animals of every description (except horses, mules, asses, cattle, sheep and hogs), all farming implements actually used for farming purposes and all mechanics' tools used on any farm or by any person actually engaged in any other occupation or profession were exempt from taxation, and are not included in the aggregate of personal property above given.

The plaintiff claims that the assessment upon which the valuation of personal property is based was made in Confederate money on February 1, 1863, which at that date was at the rate of 4 to 1, and that therefore in order to get the valuation in gold the assessment should be reduced seventy-

five per cent. An analysis and comparison of the assessments of 1861 and 1863 does not sustain this contention. For the purpose of making this analysis and comparison I have had prepared an abstract of the personal property assessment for 1863, so far as obtainable from the records, marked "Supplemental Ex. 4", and a comparison of average assessed valuations marked "Supplemental Ex. 5." If the assessment of 1863 was made upon the same basis as the assessment of 1861 and there was an increase in the value of horses &c., cattle, sheep and hogs, we should expect to find in the assessment of 1863, a larger average sum assessed on account of such property than was assessed in 1861. If a basis of valuation four times as great as that of 1863 was adopted, we should expect to find a general increase in the value as to all the items included in the assessments, approximating at least, the basis used. In the case of pleasure carriages and other vehicles, the assessment of 1863 compared with 1861 in six instances at least is less than the assessment of 1861. In case of watches, it was less in two counties, and in case of clocks in ten counties. In the case of pianos and harps, in 19 counties.

In making these comparisons it is to be noted that the valuations in 1861 as a rule are somewhat less than the valuations in 1860. I have not made computations in connection with all of the items in all of the counties, but I have made computations enough to satisfy me that there has been no horizontal increase of the rate of assessment on the basis of four to one.

The largest increase was in connection with the items as to which the greater increase in value was to be expected. In the case of sheep, the

greatest increase that I find is 450 per cent. and I find that in only twenty-four counties was there an increase of 300 per cent. or over. In cattle, the largest increase I find is 321 per cent, and I find only three counties in which there was an increase of 300 per cent. or over. The largest increase in the case of hogs was 461 per cent. and I find only nine counties in which there was an increase of 300 per cent. or over. I find that in one county there was an increase in the valuation of clocks of 332 per cent.

The assessment of the various articles of personal property in a number of counties will show that nothing approximating a horizontal increase could have been made in 1863. I have selected for comparison the following counties, as they show some of the largest increases in valuation and are more favorable to the plaintiff's contention. In Amherst County the increase on horses &c. was 136 per cent.; pleasure carriages, 46 per cent.; cattle, 221 per cent.; sheep 400 per cent.; hogs, 347 per cent.; watches, 99 per cent.; clocks, 16 per cent.; pianos and harps, 43 per cent. Fluvanna County, horses 122 per cent.; pleasure carriages, 54 per cent. cattle 257 per cent. sheep 300 per cent. hogs, 300 per cent. watches 55 per cent. clocks 29 per cent. pianos and harps 55 per cent.

Henrico County—Horses, 79 per cent.; pleasure carriages, 51 per cent.; cattle, 316 per cent.; sheep, 358 per cent.; hogs, 479 per cent.; watches, 58 per cent.; clocks, 63 per cent.; pianos and harps, 40 per cent.;

Goochland County—Horses, etc., 105 per cent.; pleasure carriages, 7 per cent.; cattle, 266 per cent.; sheep, 335 per cent.; hogs, 304 per cent.;

watches, 56 per cent.; clocks, 7 per cent.; pianos and harps, 10 per cent.;

Powhatan County—Horses, etc., 83 per cent.; pleasure carriages, 28 per cent.; cattle, 257 per cent.; sheep, 440 per cent.; hogs, 338 per cent.; watches, 37 per cent.; clocks, 86 per cent.; pianos and harps, 17 per cent.

The average increase per head of these various items of personal property in 1863, compared with 1861, is: Horses, 93 per cent.; pleasure carriages, 30 per cent.; cattle, 140 per cent.; sheep, 228 per cent.; hogs, 164 per cent.; watches, 58 per cent.; clocks, 34 per cent.; pianos and harps, 25 per cent.

Plaintiff says that the counties of Accomac, Alexandria, Northampton, Norfolk City, Norfolk, and Portsmouth "are included in the comparison" and that the assessment in those counties was made "at its full value in lawful money of the United States, and not in Confederate currency." Inasmuch as the schedule shows no assessment in Alexandia in 1861, none in Norfolk for 1863, none in Norfolk City for 1861 and 1863, and none in Portsmouth for 1863, those counties, standing alone, would not appear to have much value. Alexandria comes nearest to the other counties in amounts assessed and a comparison with its values will show that there could have been no general increase of assessments on the basis of 4 to 1. There are sixteen counties where the value of horses was less than $100 and three less than $81.01, the value in Alexandria; viz., Carroll, $72.43; Highland, $45.62, and Northumberland, $79.82. Horses—Alexandria, $81.01; average for State, $125.25; Amherst, $152.49; Fluvanna, $155.67; Goochland, $171.69; Henrico, $146; Powhatan, $139.06. Carriages—Alexandria, $103.28;

average in State, $90.28; Amherst, $116.68; Fluvanna, $110.31; Goochland, $91.60; Henrico, $114.12; Powhatan, $88.93. Cattle—Alexandria, $29.50; average in State, $24.28; Amherst, $34.89; Fluvanna, $41.72; Goochland, $44.16; Henrico, $71.67; Powhatan, $33.03. Hogs—Alexandria, $5.00; average in State, $5.26; Amherst, $8.77; Fluvanna, $8.47; Goochland, $9.62; Henrico, $23.16. Watches—Alexandria, $27.85; average in State, 51.41; Amherst, $85.07; Fluvanna, $53.67; Goochland, $59.08; Henrico, $62.81. Clocks—Alexandria, $3.87; average in State, $5.64; Amherst, $6.97; Fluvanna, $5.76; Goochland, $6.59; Henrico, $6.35. Pianos—Alexandria, $111.41; average in State, $182.46; Amherst, $215.59; Fluvanna, $237.20; Goochland, $205.96; Henrico, $181.05.

The marked increases that appear are clearly in connection with the articles that must have necessarily increased in value and very few of those show an increase of 300 per cent.

It is a fair inference from all the testimony that there was an actual increase in value upon the gold basis of horses, etc., cattle, sheep and hogs. The differences in value are what would naturally be expected from the difference in location and the fact that the values were fixed by different Commissioners. The analysis of the assessments distinctly negatives the idea that there was any change in basis of valuation. If Hawes, who says (Rec., p. 774) that horses would sell for $400, $1,000 and $1,500, and Williams: "A mighty poor horse you could get for $500" (do., p. 781) are correct, inasmuch as the average assessed value in 1863 for horses was $125.25, it is impossible that the assessment could have been made in Con-

federate money on the basis of their actual value. No one having any personal knowledge testified to the assessment having been made in Confederate money.

Plaintiff claims that Taylor and Williams testified that taxes "were assessed in Confederate money." Taylor testified:

> "Q. 11. In what kind of money were taxes assessed and paid at that time—in 1863? A. Confederate money" (Rec., p. 768).

Williams testified:

> "Q. 1. In 1863 what was the currency of the country here, the currency in which taxes were assessed and paid and transaction of all kinds had? A. The only currency in use was Confederate Treasury notes and State Bank notes."

and the rest of the answer makes no reference to the assessment.

> "Q. 2. What currency was the measure of value in 1863? A. Confederate currency. The bank notes were for a long time at a premium but they became finally as worthless as Confederate money" (Rec., p. 781).

He does not state when they were at a premium or when they became worthless. Neither of these witnesses were assessors and it does not appear that they had any personal knowledge, or how they derived such information as they have. It is not contended that real estate was assessed in Confederate money. The testimony of these witnesses covers all taxes and must be incorrect as to real estate. It may be it was intended to ask them as to personal property, but the question

was not so asked or answered. Is it true that all taxes were "paid" in Confederate money when the law in force shortly after the time of the assessment, Feb. 1, 1863 did not authorize the payment of taxes of less than five dollars in Confederate money?

I do not question the honesty or sincerity of the witnesses, but the judicial action of the assessors at the time would seem to be the better criterion of value.

The inference of assessment in Confederate money is sought to be drawn from the fact that the taxes were payable in Confederate money, and that business transactions were in Confederate money.

The Act of March 22, 1862 (Acts 1862, p. 32: App. p. 132), made Confederate notes receivable for taxes without any limit. The Act of March 28, 1863 (Acts of 1863, Chap. 1, Sec. 109: App. p. 132), made Confederate notes of the denomination of or over five dollars receivable for taxes, and the Act of Sept. 14, 1863 (Acts of 1863, Chap. 1, Sec. 1), made them receivable generally. An assessment in Confederate money (Feb. 1, 1863) as to those whose tax was less than $5.00 and could not be discharged in Confederate money would operate somewhat oppressively.

The act of March 28, 1863 raised the rate of taxation as compared with 1861 on the average, approximately, 150 per cent. The purposes for which the public expenditures were made were not increased; if anything, the purposes for which revenue was expended were less in 1863, than in 1861, as it is conceded that the discharge of many of the public functions which involved

expenditure by the Government at that time, were to quite a degree suspended. 150 per cent. more money was collected and disbursed to accomplish the same results that were accomplished in 1861.

The war expenses of Virginia it is conceded were met by loan. In the matter of taxation and the money collected therefor, the element of Confederate money was apparently reflected in the increase of 150 per cent. in the rate of taxation, rather than in the assessment.

The fact that personal property throughout the country generally very largely appreciated in value between 1861 and 1863 is of some significance. It seems clear that the basis of assessment was not Confederate money. Horses as an illustration were apparently assessed upon the same basis as in 1861 and at their fair value. If one item was assessed uon that basis, and upon its cash value, no reason is perceived why all of the other items of personal property, involved in the same assessment, were not made upon the same basis, and I see no reason why the rule does not apply to slaves, as well as to other personal property. While there are inconsistencies and incongruities in connection with these assessments which it is difficult to explain, I have to take this branch of the case upon the elements that I find, and I do not think the plaintiffs have sustained the burden of showing the horizontal decrease from the assessed value of 75 per cent. The only other alternative is the value fixed by the assessors on the basis of the assessment in 1861, and I therefore find that the assessed value of the personal property is the fair estimated valuation of the personal property on the 20th day of June, 1863, namely:

In Virginia	$403,696,228.59
In West Virginia	30,394,487.21

(Rec., 639, Ex. E-1, p. 1.)

It appears that the amount of income upon which an income tax was assessed in Virginia, as per the latest obtainable assessment rolls, prior to June 20, 1863, was in Virginia. $11,108,300.13
and in West Virginia 299,257.45

The defendant claims that these sums are a part of the personal property and should be so returned. These sums represent "the value of his income during the next year preceding" the date upon which the assessment was made (Code Va. 1860, Sec. 151, p. 198), where it exceeds $250. It is gross, not net income. The fact that that amount was received in income during the preceding year, by no means indicates that it was on hand at the end of the year, especially where the tax was upon incomes as small as $250 a year. The inference is that it was not so on hand. So far as it was on hand unspent, it would necessarily be represented by "money on hand or securities or other personal property," which items have already been included in the aggregate of personal property above given. If the gross income was to be treated as personal property on hand, it would result in duplicating it in the aggregate of value so far as it was on hand. I disallow the "income" as part of the personal property June 20, 1863.

ALTERNATIVE FINDING.

I find at the request of the defendant that the amount of the income assessed for the year 1863 was for Virginia counties $11,108,300.13
West Virginia counties..... 299,257.45

A fair estimated valuation of the property, real and personal, in Virginia counties, on January 1, 1861, I find to be as follows:
The parties agree that on that date, the fair estimated valuation of the slaves within the territory of the present Commonwealth of Virginia was at that time $162,537,936
The fair estimated value of the other personal property in Virginia counties was..... $102,114,863.

This sum is reached by taking the amount of the assessment for 1861 (Rec., p. 645), $100,201,850, and adding thereto the assessment for Chesterfield for 1861 (Plff. Ex. H1., p. 355), $1,077,368, and Goochland (Plff. Ex. H1., p. 395), $835,645, these two counties not being included in the Schedule (Rec., p. 645), as no original books were found showing those assessments.

Real estate in Virginia $293,018,031.30

Total real and personal in counties in Virginia including slaves $557,670,830.30

And that the fair estimated valuation of such slaves at that time in the counties now constituting the State of West Virginia was	$6,319,624
Other personal property in West Virginia (Supplemental Ex. 6)	$23,469,172.
Real estate in West Virginia.....	$83,600,730.55
Total real and personal in counties in West Virginia including slaves	$113,389,526.55

SUMMARY.

June 20, 1863.	
Fair estimated value of real estate in Virginia counties....	$148,042,730.15
Fair estimated valuation of personal property including slaves in Virginia counties...	$403,696,228.59
Total real and personal in counties in Virginia including slaves..	$551,738,958.74
Fair estimated value of real estate in West Virginia counties	$67,676,127.44
Fair estimated valuation of personal property including slaves in West Virginia counties	$30,394,487.21
Total real and personal in counties in West Virginia, including slaves	$98,070,614.65

Fair estimated valuation of real estate in counties in Virginia	$148,042,730.15
Fair estimated valuation personal property in counties in Virginia without slaves	$152,844,637.59
Total real and personal in counties in Virginia without slaves	$300,887,367.74
Fair estimated valuation of real estate in counties in West Virginia	$67,676,127.44
Fair estimated valuation personal property in counties in West Virginia without slaves	$24,739,894.21
Total real and personal in counties in West Virginia without slaves	$92,416,021.65

ALTERNATIVE FINDING.

AT THE REQUEST OF DEFENDANT.

The assessed valuation of real estate in the counties of Virginia June 20, 1863 was	$296,085,460.31
The assessed valuation of real estate in the counties of West Virginia June 20, 1863 was . .	$82,449,252.04
Amount of income assessed in Virginia counties, 1863	$11,108,300.13
In West Virginia counties in 1863 .	299,257.45

Jan. 1, 1861.	
The fair estimated valuation of the slaves within the territory of the present Commonwealth of Virginia	$162,537,936.
Of the other personal property in Virginia counties was.....	$102,114,863.
Real estate in Virginia	$293,018,031.30
Total real and personal in counties in Virginia including slaves	$557,670,830.30
The fair estimated valuation of slaves in the counties now constituting the State of West Virginia was	$6,319,624.
Other personal property in West Virginia (Supplemental Exh. 6)	$23,469,172.
Real estate in West Virginia.....	$83,600,730.55
Total real and personal in counties in West Virginia including slaves	$113,389,526.55

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses as found by me on the basis of values as claimed by plaintiff as shown in Joint Exhibit E-1, p. 2-a, excluding slaves is

Virginia, ...	$28,278,857.62
West Virginia, ...	$11,996,039.08

and on the same basis as shown in Joint Exhibit E-1, p. 3-a, including slaves,

Virginia, ...	$30,441,418.20
West Virginia, ...	$ 9,833,478.50

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses of the government as claimed by the plaintiff, on the basis of the values as claimed by the plaintiff, excluding slaves is as appears upon Joint Exhibit E-1, p. 2-a, and including slaves as appears upon Joint Exh. E-1, p. 3-a.

Fair Estimated Valuation—Virginia, June 20, 1863:		
Personal Property, *Including* Slaves	$403,696,228.59	
Real Estate	148,042,730.15	
Total	$551,738,958.74	=84.9078%
Fair Estimated Valuation—West Virginia, June 20, 1863:		
Personal Property, *Including* Slaves	$30,394,487.21	
Real Estate	67,676,127.44	
Total	$98,070,614.65	=15.0922%
Ordinary Expenses of Government		$40,274,896.70
Divided on above basis:		
Virginia	84.9078%	=$34,196,528.74
West Virginia	15.0922%	= 6,078,367.96
Fair Estimated Valuation—Virginia, June 20, 1863:		
Personal Property, *without* Slaves	$152,844,637.59	
Real Estate	148,042,730.15	
Total	$300,887,367.74	=76.5026%
Fair Estimated Valuation—West Virginia, June 20, 1863:		
Personal Property, *without* Slaves	$24,739,894.21	
Real Estate	67,676,127.44	
Total	$92,416,021.65	=23.4974%
Ordinary Expenses of Government		$40,274,896.70
Divided on above basis:		
Virginia	76.5026%	=$30,811,343.12
West Virginia	23.4974%	= 9,463,553.58

Fair Estimated Valuation—Virginia,
Jan. 1, 1861:

Slaves	$162,537,936.	
Other Personal Property	102,114,463.	
Real Estate	293,018,031.30	
Total	$557,670,430.30	=83.1029%

Fair Estimated Valuation—West Virginia,
Jan. 1, 1861:

Slaves	$6,319,624.	
Other Personal Property	23,469,172.	
Real Estate	83,600,730.55	
Total	$113,389,526.55	=16.8971%

Ordinary Expenses of Government.. $40,274,896.70

Divided on above basis:

Virginia	83.1029%	=$33,469,607.13
West Virginia	16.8971%	= 6,805,289.57

Fair Estimated Valuation—Virginia,
Jan. 1, 1861:

Personal Property, *without* Slaves.	$102,114,463.	
Real Estate	293,018,031.30	
	$395,132,494.30	=78.6799%

Fair Estimated Valuation—West Virginia,
Jan. 1, 1861:

Personal Property *without* Slaves.	$23,469,172.	
Real Estate	83,600,730.55	
	$107,069,902.55	=21.3201%

Ordinary Expenses of Government.. $40,274,896.70

Divided on above basis:

Virginia	78.6799%	=$31,688,248.45
West Virginia	21.3201%	= 8,586,648.25

PARAGRAPH VI OF DECREE.

"6. ALL MONEYS PAID INTO THE TREASURY OF THE COMMONWEALTH FROM THE COUNTIES INCLUDED WITHIN THE STATE OF WEST VIRGINIA DURING THE PERIOD PRIOR TO THE ADMISSION OF THE LATTER STATE INTO THE UNION."

I think the moneys paid into the Treasury of the Commonwealth from the Counties included within the State of West Virginia are intended to be the converse or complement of the expenditures made by the Commonwealth of Virginia in the same territory. These were public expenditures for public purposes. The amounts paid in are also to be public payments in discharge of some tax or public burden, or sums paid by the public, for the use of a public utility owned by the state.

The parties agree upon the sum of $5,954,395.66 (Rec., p. 805; Ex. F-1, p. 1).

The following items are in controversy:

1. Bonus received from Banks.....$96,253.62
The details which are essential to the determination of this item do not appear in the Record. They are in "Supplemental Ex. 3," certified by both accountants. The first payment of $5,000 was paid in 1838. The Act of 1837, Chap. 82, p. 66, relative to Banks, provided as follows:

> "Sec. 7. That in consideration of the privileges hereby granted, there shall be paid to the Commonwealth, by every bank hereafter chartered, out of each semi-annual dividend, a sum equal to one fourth of one per centum upon the then capital stock, which shall be paid by creating additional stock to that

amount in the name of the Commonwealth, for the benefit of the fund for internal improvement."

This Act provided for a payment of a franchise or excise tax in stock. The item of $5,000 paid in 1838 appears to be in cash. There is nothing in the Record to indicate that it was stock paid under this statute. It is entered upon the books as a cash payment by the Bank. As no other explanation is given of the item, I will assume as a fair inference from the entry, that it was a tax paid in stock, and afterwards converted into cash to the amount of $5,000 and allow it upon that assumption as a payment.....$5,000

All of the other payments were made under an Act passed March 25, 1842 (Acts of Va., 1841-2, p. 61, Chap. 105, Sec. 14) which provided that in consideration of the privileges hereby granted that a sum equal to one-fourth of one per centum upon the capital stock "shall be paid semi-annually by the said banks into the Treasury of this commonwealth."

This was a general statute and the tax imposed was a franchise or excise tax of the same kind as those referred to in the Code of Virginia, Chap. 40, Sec. 41, p. 249, the chapter defining the "Amount or rate of tax." It is included among other subjects of taxation and is clearly treated in the general statutes as a tax and I hold that it is a franchise, or excise tax, and therefore properly to be credited under that paragraph $96,253.62

Alternative Finding.

At the request of the plaintiff, I find that the banks located in West Virginia paid into the

Treasury of the Commonwealth for the privilege of exercising their franchises during the period above mentioned and in the manner above indicated ..... $ 96,253.62

7. Dividends from Banks in West Virginia counties $786,666.98

These are not in any sense public payments. They are dividends which the State received on its own stock held in its private capacity, and are of the same character as the dividends paid to other stockholders. They are no more a public payment, or the discharge of a public burden, than are the dividends that are paid to the other stockholders. West Virginia is not charged with the investment, and no reason is perceived why she should receive a return upon a private investment which she refuses to assume.

The item is disallowed.

8. Dividends and interest from Turnpike Companies in West Virginia counties $13,595.48
9. Dividends from Bridge Companies in West Virginia $6,028.51
10. Dividends from Interstate Turnpike Companies (proportion).... $1,355.92

are of the same character and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the defendant that the aggregate of the last four mentioned items was all paid in dividends into the Treasury of the Commonwealth upon stock held by the Commonwealth, in said companies, whose

banks and roads were located in West Virginia, with the exception of the dividends from Interstate Turnpike Companies (in which case the amount paid was in proportion to the portion of the road located in West Virginia), namely: $807,646.89.

11. Dividends from James River and Kanawha Company $352.21
14. Interest from the City of Wheeling $571.81

These items have both been withdrawn.

20. Merchants & Mechanics Bank Stock sold (bonus stock)..... $43,103.35

The Act incorporating the Merchants and Mechanics Bank (Acts of Virginia, 1833-4, Chap. 72, p. 84, Sec. 20), provided:

> "20. *And be it further enacted,* That in consideration of the privileges hereby granted to the said bank, there shall be paid to the commonwealth by the said bank, the sum of twenty-five thousand dollars, to be paid in twenty semi-annual instalments; which instalments when paid in shall be converted into stock, and a dividend thereon shall be declared from time to time, in the same manner as on shares held by individuals; the first instalment shall be paid one year after the first dividend be declared; *Provided,* That should the capital stock of said bank, at any time hereafter, be increased beyond the sum of three hundred thousand dollars, a similar bonus shall be paid on such increase, proportioned to the time for which this charter shall remain in force" (do. p. 92).

The Commonwealth received, under this section, from this bank 400 shares of stock which were

sold for $43,103.35 (Rec. p. 809). This was clearly a franchise or excise tax payable in stock instead of cash and is allowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth received from the Merchants and Mechanics' Bank "in consideration of the privileges" granted to it as a franchise tax 400 shares of stock which was sold for $43,103.35.

21. Northwestern Bank—Profit on 1,082 shares sold, $5,471.42.

This item has been withdrawn by the defendant.

22. Northwestern Turnpike Road tolls, $126,339.89.

The defendant is charged with the expenditure on this road, which was a public work, and the money that was paid into the Treasury in tolls by the public for the use of the road is the converse of the public expenditure made by the State and comes fairly within the meaning of the decree and is allowed so far as it exceeds the amount of tolls expended for repairs.

23. Staunton & Parkersburg Road tolls, $17,080.71 is also allowed for the same reason.

These tolls were used for making repairs on the respective roads, $109,587.74 in the case of the Northwestern Turnpike and $21,700.74 in the case of the Staunton and Parkersburg Turnpike, in all repairs, $131,288.48. (Rec., 373, Ex. C. 1, p. 2.) The aggregate of tolls received on both roads is $143,420.60, making, taking both roads together, a

net receipt of tolls, $12,132.12. The excess of tolls all occurs in the case of the Northwestern Turnpike and strictly speaking, the account should be stated, showing the excess of receipts in connection with that item, with an excess of charge for repairs in connection with the Staunton and Parkersburg Turnpike. Both roads in the discussion, however, have been taken together and the net result is precisely the same, and I therefore take the two items together and allow as a credit the net excess as above stated.....$12,132.12

ALTERNATIVE FINDING.

At the request of the plaintiff, I find that in the case of the last two items, the aggregate of $143,420.60 was paid into the Treasury of the Commonwealth as tolls upon roads owned wholly by the Commonwealth as the result of public expenditure the roads being public in their character and the tolls being paid by the public for the use thereof.

SUMMARY.

Money paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia:

	Amount agreed upon	$5,954,395.66
1.	Bonus received from Banks....	$96,253.62
20.	Merchants & Mechanics Bank Stock sold (bonus stock).....	$43,103.35
22. 23.	Northwestern Turnpike Road, Staunton & Parkersburg Road net tolls	$12,132.12
		$6,105,884.75

ALTERNATIVE FINDINGS.

1. At the request of the plaintiff; that the banks located in West Virginia paid into the Treasury of the Commonwealth of Virginia "in consideration of the privileges" granted ..... $ 96,253.62

Under items 7, 8, 9 and 10:

At the request of the defendant, that the aggregate of these items was all paid in dividends into the Treasury of the Commonwealth upon stock held by the Commonwealth in said companies $807,646.89

20. At the request of the plaintiff, that the State received from the Merchants and Mechanics Bank, as a franchise tax 400 shares of stock which was sold for..... $43,103.35

Under items 22 and 23:

At the request of the plaintiff, that the aggregate of these two items was paid into the Treasury of the Commonwealth by the public as tolls upon roads owned wholly by the State $143,420.60

PARAGRAPH VII OF DECREE.

"7. THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED IN ANY OF THE PRECEDING ITEMS AND NOT INCLUDING ANY PROPERTY, STOCKS OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGANIZATION OF THE RESTORED GOVERNMENT OF VIRGINIA, TOGETHER WITH THE NATURE AND DESCRIPTION THEREOF."

Under this Paragraph I find that the State of West Virginia received nothing in money from the Commonwealth of Virginia prior to the date of the organization of the Restored Government of Virginia or subsequent thereto.

ALTERNATIVE FINDING.

I find as an alternative finding, at the request of the plaintiff, that the State of West Virginia received from the Restored Government of Virginia sums of money as follows:

July 2, 1863.....	$92,866.17	
July 2, 1863.....	$47,734.03	$140,600.20
July 9, 1863.....		$9,399.80
Feb. 1, 1864.....		$20,771.46
		$170,771.46

Under the provisions of the Act passed February 3, 1863 (App. p. 128), there was transferred

to the State of West Virginia, among other things,

> "the interest of this state or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries, standing in the name of this state or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state" (do. p. 129).

While there is nothing in the record to show where the principal offices or places of business of the various turnpike companies, navigation companies and bridge companies are (Rec., 820 B, C, D, E, F, G, J, K), it is conceded upon the part of the defendants that the companies mentioned in said schedules had their "principal office or place of business" "located within the said boundaries," that is, the State of West Virginia, and such stock was transferred to West Virginia by the operation of said Act of February 3, 1863.

And it is conceded upon the part of West Virginia under Paragraph VII, that the stock in the various corporations above referred to, except the interstate companies, is included within the provisions of this Paragraph of the decree.

The only evidence in the Record bearing on the value of these various stocks are the facts that appear by these schedules showing the amounts paid by the State for its subscription to the stock of the various companies, and so far as dividends have been paid by said companies, the

amount of the dividends that have been paid, certain admissions relating thereto, and the testimony of a number of witnesses as to the physical condition of the property of some of the companies, and the statement of the condition of the banks. In the case of many of the turnpike companies, no dividends were paid and the only fact that I have is the amount that the State paid upon its subscription. In such cases the evidence does not seem to me sufficiently definite to enable me to find that the stock at the time of its transfer to West Virginia had any value, as the inference to be drawn from the fact that no dividends have been paid is, that the property was not able to earn any return upon the investment, and an investment that can pay no return could hardly be considered to have any market value. In the cases where dividends have been paid during a number of years, I have the amount of the investment made by the State with the rate of the dividends, and in such cases I have capitalized the dividend upon the basis of the stock being worth par with a six per cent. dividend, and have determined the value accordingly, except in cases where it appears that the property of the company may have been destroyed prior to June 20, 1863. The method that I have adopted is, I appreciate, arbitrary but it is the only method that seems to be feasible on the facts presented.

As to the Turnpike Companies intended to be covered by the stipulation (Rec., p. 864) the stipulation is too indefinite and uncertain to be of any assistance in determining the value of any particular road. The defendant contends that it covers some sixty-five roads and the plaintiff concedes only four. Only three of the roads claimed

by the defendant were paying dividends in 1860, viz.: Grave Creek and Pennsylvania Line Co.; Holiday Cove Co. and the Martinsburg & Potomac. As to these in order to eliminate any controversy, as to the construction and effect of the stipulation, the plaintiff concedes that for the purposes of this report, the interest of the Commonwealth in the stock of those companies was of no value, June 20, 1863.

As to the 18 Turnpike Companies mentioned on page 820-B Rec., only the last—Grave Creek and Pennsylvania Line Co., admitted to be of no value—appears to have ever paid any dividend. The earliest was incorporated in 1837; the latest in 1853. Under these circumstances, I find that the stock that the Commonwealth owned in those companies had no value.

None of the sixteen turnpike companies mentioned on Page 820-C, Rec., (eliminating Holiday Cove and Martinsburg & Potomac as of no value) declared any dividends, they having been organized between the dates of 1847 and 1854 and there is nothing to indicate that the stock had any market value on June 20, 1863 and I therefore find that these stocks were of no value.

The first fifteen turnpike companies mentioned on page 820-D, Rec., with the exception of the New Creek and Hardy Turnpike Company do not appear to have paid any dividends from the date of their incorporation up to 1860, the earliest being incorporated in 1830. The New Creek and Hardy Turnpike Company appears to have paid one dividend of $271.25 upon an investment on the part of the Commonwealth of $5,431.24 in 1850.

Under these circumstances, it does not appear that there are sufficient facts in the record to jus-

tify me in finding that there was any market value to the stock the Commonwealth held in any of these companies on the 20th day of June, 1863, and I therefore find that the stocks had no market value.

The Sheperdstown and Smithfield Turnpike Company, incorporated in 1816, in which the Commonwealth had invested in the stock $18,575, appears to have paid eight dividends during the period of 23 years ending in 1839 with no dividends since that date. The first dividend was paid in 1832, $399.38, and the last in 1839 of $40, showing a marked decrease in the dividend during the dividend paying period, with no dividends for the 22 years intervening between 1839 and 1861, and upon this state of facts I find that the stock in that company had no value on June 20, 1863.

Of the four remaining companies on page 820-D, Rec., only one appears to have paid any dividends. As to the other three, I find that their stock had no value on June 20, 1863.

The Sweet and Salt Sulphur Springs Turnpike Company, organized in 1849, in the stock of which the Commonwealth had an investment of $10,104. (820-D, Rec.) began to pay dividends in 1855 and paid continuously until 1859, the dividend in 1859 being $459. The average dividend paid during the five years of the dividend paying period was $491.-92. No dividend appears to have been paid in 1860, but the inference from the payment of dividends of a substantial amount, for the preceding five years, makes it reasonably certain that the property was of value and had a dividend paying capacity. Why a dividend in 1860 was not paid, does not appear, but in the absence of any evidence showing any injury to the physical value of the prop-

erty, or any unusual loss or the occurrence of any fact tending to destroy its value, I think it is a reasonable inference that the failure to pay the dividend must have been for a cause other than one affecting the real value of the stock, and on the basis of the last dividend of 4½ per cent. the investment of the Commonwealth would be worth $7,578. on the 20th day of June, 1863, and I value it at $7,578.

The first five turnpike companies mentioned on page 820-E, Rec., organized from 1847 to 1851 do not appear to have paid any dividends, and I therefore find that the stock that the Commonwealth held therein was of no value on June 20, 1863.

The White and Salt Sulphur Springs Turnpike Company, organized in 1834, in the stock of which the Commonwealth had invested $4,000, paid dividends continuously with the exception of two years from 1838 to 1860, the last dividend being $400, with an average dividend of $240 a year or 6%, I therefore value the interest that the Commonwealth held in the stock of this company at par, $4,000.

The other six turnpike companies mentioned on page 820-E, Rec., with the exception of Wellsburg and Washington Turnpike Company do not appear to have paid any dividends, and I therefore find that the interest that the Commonwealth held in the stock of these companies was of no value on June 20, 1863.

The Wellsburg and Washington Turnpike Company organized in 1808, in which the Commonwealth had an investment of $7,071.01, paid two dividends in 1837 and 1838, the last being $212.13, and has declared no dividends since, and

I find that under those circumstances the stock of that company on June 20, 1863 had no value.

The four navigation companies mentioned on page 820-F, Rec., organized between 1817 and 1853 do not appear to have ever declared any dividends and I find that the stock of the Commonwealth in these companies had no value June 20, 1863.

It is admitted that the bridge of the Buchannon Bridge Company was destroyed April 1863, and that the bridge of the Cheat River Toll Bridge Company, was destroyed in the same month, and that the bridge of the Elk River Bridge Company, was destroyed in 1862. The bridge of the North Branch Bridge Company was destroyed in 1862, and the bridge of South Branch Bridge Company was destroyed in 1862, and that the bridge of the Virginia and Maryland Bridge Company was destroyed in 1861 (Rec., p. 863).

I find that the stock in these companies was of no value on June 20, 1863.

The Fairmont and Palatine Bridge Company, in the stock of which the Commonwealth had invested $12,000 it is admitted paid a six per cent. "dividend for several years after the end of the war on the par value of the stock of $12,000 assigned to the State of West Virginia therein," and for that reason I find that that stock was of the value on June 20, 1863 of $12,000 (Rec., p. 863).

The Guyandotte Bridge Company and the Morgantown Bridge Company, incorporated respectively in 1848 and 1850, have never paid any dividends and for the reasons given above, I find that the stock that the Commonwealth held in those companies was of no value on June 20, 1863.

The four turnpike companies referred to on page 820-G, Rec., organized respectively in 1832,

1837 and 1851 do not appear to have ever paid any dividends and for that reason, I hold that the stock in those companies on June 20, 1863 was of no value.

The five turnpike companies referred to on page 820-H, Rec., with the exception of the Hillsborough and Harpers Ferry Turnpike Company and the Martinsburg and Winchester Turnpike company, while organized in 1846, 1851 and 1856, respectively, do not appear to have ever paid any dividends, and for that reason I hold that the stock was of no value on June 20, 1863.

The Hillsborough and Harper's Ferry Turnpike Company, incorporated in 1849, in the stock of which the Commonwealth invested $6,000 declared only one dividend of $240 in 1856, and upon that state of facts I am not able to find that the stock had any value on the 20th day of June, 1863.

The Martinsburg and Winchester Turnpike Company, organized in 1838, in the stock of which the Commonwealth had invested $27,000 declared two dividends one in 1859 and one in 1860 of $803.27 and $405 respectively. Taking the last dividend as the basis of valuation which was at the rate of one and ½ per cent. or ¼ of 6 per cent., I find that the stock in that company was on June 20, 1863 of the value of $6,750.

There is nothing in the record to show where "the principal office or place of business" of this road is located and I do not understand that the admission of the defendant applies to interstate roads. I am not able to find that this stock was ever transferred to West Virginia. This is an interstate road 59.09% being within the counties included within the State of West Virginia.

Of the two corporations mentioned on page 820-J, Rec., one the North Frederick Turnpike

Company in which the Commonwealth invested in its stock $11,325 in 1851, paid only one dividend and that in 1857, and upon these facts I do not feel authorized to find that the stock had any value on the 20th of June, 1863.

The Raleigh and Wythe Line Turnpike Company, organized in 1860, in which the Commonwealth paid on an authorized stock subscription of $4,800, $400 only, does not appear to have paid any dividend that year and apparently could hardly have been fully constructed. There is not sufficient data in the record to enable me to form any opinion as to its value, and therefore, I do not find that the stock had any value on June 20, 1863.

On the 20th of June, 1863, the Commonwealth held 3,418 shares of the capital stock of the Northwestern Bank of Virginia of a par value of $100, which if worth par would be worth $341,800. This par value was at first conceded by the defendant to be chargeable to West Virginia (Rec., p. 280-A, Deft.'s Ex. G-1, p. 1). Since filing the schedule making this admission, West Virginia withdrew the admission and changed it to $136,630., and that sum was reached as follows:

It appears from the testimony of Mr. Dering (Rec., p. 892) and the certificate of J. S. Darst, the auditor of West Virginia (do., p. 851) and supplemental brief filed by defendant, that West Virginia received on account of the original stock in the Northwestern Bank of Virginia at Wheeling, 300 shares of stock in the National Bank of West Virginia in the City of Wheeling, 400 shares of stock in the Parkersburg National Bank of Parkersburg, West Virginia, and 351 shares of stock, in the first National Bank of Wellsburg,

at Wellsburg, West Virginia, these being the banks that were the successors of the Northwestern Bank of Virginia, known as the parent bank and of its branches at Parkersburg and Wellsburg, respectively. The par value of the shares was $100. At their par value they would be worth $105,100. The record contains nothing as to the assets of these banks, upon which an estimate of the value of this stock can be made. It further appears that dividends from the remaining assets of the Northwestern Bank of Virginia were received by West Virginia as follows:

July 9, 1867	$10,510.00
August 12, 1868	$10,510.00
Sept. 1, 1871 (in deft.'s brief)	$10,510.00
	$31,530.00

which added to the $105,100 makes the total amount now admitted by West Virginia as the value of the 3,418 shares of the stock of the Northwestern Bank. There is nothing in the record to show when this bank was reorganized or the circumstances under which the reorganization took place. The auditor's report of West Virginia shows the stock was delivered July 1, 1866. The reorganization and the distribution of the stock in the various banks, and of the cash dividends, appear to have taken place three years and more after June 20, 1863. Upon the other hand, as indicating the value of the stock, there is a joint "Supplemental Ex. 8" certified by the accountants for both parties, showing that the dividend for 1860 upon the stock of the Northwestern Bank was eight per cent. and the average dividend from

1844 to 1860 inclusive was 7½%, or 1-4 more than 6%. The statement of the condition of the Bank in a return made February 27, 1861, showing the condition on Jan. 1, 1861, and one of the Fairmont bank dated Apr. 27, 1861, showing its condition Apr. 1, 1861, are marked "Supplemental Ex. 9."

The defendant concedes that the Fairmont bank that was paying only a 4% dividend was worth par June 20, 1863 (Rec., p. 820-A).

There is nothing to indicate any change of any kind in the condition of the Northwestern Bank, either by way of assets or business or capacity to declare dividends between Jan. 1, 1861 and June 20, 1863. That it met with some serious financial difficulties between January 1, 1861, and July 1, 1866, would seem to be a necessary conclusion from the condition of the bank at the time of its reorganization, but as to what they were, or when they occurred, the record is silent.

A comparison between the Fairmont Bank and the Northwestern will be instructive on the question of value. The notes due from other banks in Virginia to the Northwestern increased from 1860 to 1861 approximately 100%, and there was substantially the same percentage of increase of similar notes due to the Fairmont Bank. The surplus and profits of the Northwestern decreased from 1860 to 1861, 10%. In the Fairmont Bank there was an increase of 11%. If the Fairmont Bank had paid a dividend of 6% instead of 4% the decrease would have been substantially the same. The surplus of the Northwestern was nearly 12% of its capital, of the Fairmont about 5¾%. In the Northwestern the deposits decreased 4% and in the Fairmont 20%. The Fairmont Bank appears to have paid but one dividend

of 4%. The Northwestern had an established business and had been paying dividends regularly since 1843 at an average rate of 7½% (for four years 10%), and was paying 8% in 1860. If under these circumstances the Fairmont Bank stock was worth par, it seems that the Northwestern stock should be worth at least ¼ more than par, and I would be justified in applying the same rule as to value, that I have applied to the public service corporations, and I therefore add ¼ to the par value and find the value of the stock June 20, 1863, to be $427,250.00.

I think it clear that this is a conservative value Jan. 1st, 1861, two years and five months prior to the time when the valuation is made. There is a presumption of continuance. There was great expectation of success in the Confederacy, until Gettysburg in July, 1863, which had some tendency to maintain credit conditions, and while my conclusion is largely arbitrary, taking everything into account, I think the valuation reached reasonable.

Alternative Finding.

I find in the alternative at the request of the defendant that West Virginia received on account of the reorganization of the Northwestern Bank in stock and cash $136,630. between July 1, 1866, and Sept. 1, 1871, and it does not appear that at that time the Northwestern had any other assets.

I find pursuant to the admission of the defendant (Rec. 820 A) that the stock of the Fairmont bank was of the value of $50,000.

A detailed statement of the investment of the Commonwealth in the capital stock of the James

River and Kanawha Company appears on pages 820-L and 820-M, Rec. By this it appears that 3.49 per cent. of the improvement was located in West Virginia (p. 820-M). The only dividend that the company appears to have ever paid is $10,092. in 1836 (p. 820-L).

Under these circumstances I find that the stock of this Company had no value on June 20, 1863.

Summary.

I find the values set against the respective companies as follows:

Sweet & Salt Sulphur Spring Co. stock	$7,578.
White & Salt Sulphur Spring Co. stock	$4,000.
Fairmont & Palatine Bridge Co. stock	$12,000.
Northwestern Bank of Va. stock	$427,250.
Fairmont Bank stock	$50,000.
Total	$500,828.

Alternative Findings.

Received by West Virginia from the Restored Government	$170,771.46
Received by West Virginia between July 1, 1866 and Sept. 1, 1871, from the reorganization of the Northwestern Bank in stock and cash	$136,630.

GENERAL SUMMARY.

PARAGRAPH I.

Amount of the Public Debt of the Commonwealth of Virginia January 1, 1861, $33,897,073.82.

Stated as a Special Circumstance:

Amount of bonds of Commonwealth held by Sinking Fund, $1,369,243.92.

Amount of bonds of Commonwealth held by Literary Fund $1,116,843.35.

Amount of Bonds Chesapeake & Ohio Canal Co. guaranteed by Virginia in 1847 $300,000.

PARAGRAPH II.

1. EXTENT:

Land Area:			
Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
Total	64,284	do. =	100%
Total Area:			
Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
Total	66,797	do. =	100%

2. ASSESSED VALUATION:

Real Estate:		
Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
Total	$378,534,712.35 =	100%

3. POPULATION:

With Slaves:		
Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
Total	1,617,952 =	100%
Without Slaves:		
Virginia	748,171 =	66.4769%
West Virginia	377,289 =	33.5231%
Total	1,125,460 =	100%

ALTERNATIVE FINDING.

At the request of defendants, I make an alternative finding that the population of the counties now forming the State of Virginia, as shown by the census of the United States for 1860, is as follows:

Without slaves,	747,136=67.5864%
With slaves,	1,219,630=76.4027%

And for the counties now forming the State of West Virginia:

Without slaves,	358,317=32.4136%
With slaves,	376,688=23.5973%

The assessed valuation of the territory of Virginia for 1860 was: $293,105,895.55

The assessed valuation of the territory of West Virginia for 1860 was: $83,814,355.61

PARAGRAPH III.

Expenditures made by the Commonwealth of Virginia within the territory now constituting West Virginia are as follows:

1.	Amount agreed upon by both parties	$1,251,288.92
2.	Covington & Ohio R. R.....	$1,146,460.42
10.	Kanawha Turnpike	$ 152,130.54
11.	" "	$ 2,593.92
12.	" "	$ 7,189.65
13.	" "	$ 80,955.28
14.	Kanawha River Improvements.	$ 59,572.36

25. Brandonville, Kingwood & Evansville Road	$	10,595.73
28. Clarksburg & Buchannon Turnpike (Macadamizing)	$	19,259.36
35. Kingwood & West Union Turnpike	$	18,140.61
55. Surveys—expended directly within the territory	$	60,873.19
150. Road from Bath to St. Johns River	$	2,500.00
Total		$2,811,559.98

ALTERNATIVE FINDINGS:

At the request of defendant.

The Commonwealth received on account of the Blue Ridge Railroad in bonds and interest....	$625,348.08
and was relieved from a contingent liability upon a guarantee of...	$100,000.00

3. At the request of the plaintiff, the Commonwealth subscribed and paid for capital stock of the Winchester & Potomac Railroad Company, to the extent of. $120,000.00

The Commonwealth loaned to the said company $150,000.00

Upon the basis of mileage, the proportion of these sums that would be chargeable to West Virginia, is $170,532.00

I state as a special circumstance important to be taken into account that as a result of legislation predicated upon both the

stock and loan that the Commonwealth had in this Road, there was paid into the Commonwealth in 1886, the sum of.. $118,518.12

6. At the request of the plaintiff, that the Commonwealth subscribed and paid for stock in the Berryville and Charlestown Turnpike Co. and upon the mileage basis of 58 1/3 per cent. the amount chargeable to West Virginia would be..... $11,932.52

15. At the request of the plaintiff, that the Commonwealth loaned to the Kanawha Board of its bonds ..... $60,000.

56. At the request of the plaintiff, that ..... $27,000 was in the hands of the Treasurer of the Trans-Allegheny Lunatic Asylum, deposited in the Weston Branch of the Exchange Bank of Virginia, unexpended, January 1, 1861, which was afterwards taken from the Bank by the Restored Government of Virginia and subsequently returned to the Asylum.

At the request of the plaintiff, that in the various bridge companies, located in West Virginia. Items 57 to 65, inclusive, the Commonwealth subscribed and paid for stock $78,412.50

That in the various navigation companies located in West Virginia Items 66 to 69, inclusive, the Commonwealth subscribed and paid for stock..... $210,500.00

That in the various Turnpike companies, Items 70 to 147, inclusive, all of which were in the territory now constituting West Virginia, the Commonwealth subscribed and paid for stock..... $803,555.83
700,103.49 of which was wholly in Virginia and $103,452.34 was West Virginia's portion in case of companies partly within her limits.

That in the two banks mentioned in Items 148 and 149, within the territory now constituting the State of West Virginia the State subscribed and paid for stock $391,800.00

At the request of the defendant, I find that the sum of $2,500 was invested under circumstances where the trustees of the Town of Bath assumed a contingent liability, only, of paying the interest upon the sum expended by the State, after the tolls remaining from the operation of the road after the payment of 'necessary expenses and repairs" and profits received from the operation of a spring,

were applied thereto, and that this was the only liability that the trustees of the Town of Bath assumed in connection with this expenditure of..... $2,500.

PARAGRAPH IV.

SUMMARY ORDINARY EXPENSES.

	The amount agreed upon between the parties, is.....	$18,207,684.29
1.	Tobacco receipts	$353,123.96
3.	Slaves transported and executed	$311,168.35
5.	Maps, Board of Public Works	$11,446.48
7.	International Exchanges....	$2,836.19
9.	Printing Treasury Notes....	$375.74
13.	Improvement in public squares	$1,456.91
14.	Fugitive slave expense; reward additional	$2,201.00
16.	Calling out militia at Wheeling, in 1836.....	$1,099.00
18.	Atty.-Gen.'l fees prosecuting Selden, Withers & Co. claim	$500.00
19.	Remodelling and repairing old building of Eastern Asylum	$5,000.00
	Support Western Asylum...	$7,450.01
23.	Sundry Board of Public Works expenses.....	$36,728.50
24.	Interest on public debt.....	$18,574,747.84
	Expenses of Harper's Ferry Raid	$251,763.65
	Expended for primary schools	$2,400,331.11

General expenses connected with surveys	$106,983.67
	$40,274,896.70

SUMMARY ALTERNATIVE FINDINGS.

1. At the request of the defendant, that the Commonwealth received from Tobacco Receipts.....	$353,123.96
2. At the request of the plaintiff, that the Commonwealth expended for two Constitutional Conventions, held in 1829 and 1850	$258,906.28
4. At the request of the plaintiff, that under the acts of the legislature above referred to, the Commonwealth expended in running boundary lines.....	$16,704.78
5. At the request of the plaintiff, that the Commonwealth expended under acts of the legislature for maps	$16,628.04
6. At the request of the plaintiff, that The Commonwealth expended in original construction and other additions to or increase of the plant of the Deaf, Dumb and Blind Institution, the details of which are on pp. 5, 6 and 7 of Joint Ex. D-1.....	$80,661.94

8. At the request of the plaintiff, that the Commonwealth overpaid on Treasury notes.....	$50.00
10. At the request of the plaintiff, that the Commonwealth lost on account of counterfeit money	$190.00
11. At the request of the plaintiff, that the Commonwealth expended in the erection of buildings and additions thereto and installation of heating and lighting plants connected with the Va. Military Institute....	$151,000.00
12. At the request of the plaintiff, that the Commonwealth expended in "repairing and improving the buildings and furnishing a supply of water for the protection and preservation" of buildings &c. of the University of Virginia.....	$25,000.00
13. At the request of the plaintiff, that the Commonwealth expended for Improvements to Capitol Square the sum of....	$12,278.47
15. That the Commonwealth expended on additions to Penitentiary lot, New Hospital, Buildings, etc.....	$13,947.48
17. At the request of the plaintiff, that the Commonwealth ex-	

pended for "enlarging the hospital and infirmary and extending the college buildings, and for improvement and extension of the college museum" of the Medical College of Virginia..... $25,000.00

19. At the request of the plaintiff, that the Commonwealth expended on the Eastern & Western Asylums for items appearing on pages 531 to 538 incl. —Joint Ex. D-1, pp. 15 to 22 incl. $331,845.56

20. At the request of the plaintiff, that the Commonwealth expended for Gun House at Alexandria $900.00

21. At the request of the plaintiff, that the Commonwealth expended for Cannon House, Surrey County $110.00

22. At the request of the plaintiff, that the Commonwealth expended for Cannon House for Richmond Artillery..... $1,079.09

23. At the request of defendant, that the Commonwealth expended for expenses of the B. P. W... $36,728.00

24. At the request of the defendant, that the Commonwealth ex-

pended for interest on its public debt $18,574,747.84

I find in the alternative at the request of the plaintiff, that the amount of the ordinary expenses and the apportionment thereof, according to the claims of the plaintiff, are correctly stated on pages 515 and 516 of the Record.

PARAGRAPH V.

June 20, 1863.	
Fair estimated value of real estate in Virginia counties....	$148,042,730.15
Fair estimated valuation of personal property including slaves in Virginia counties...	$403,696,228.59
Total real and personal in counties in Virginia including slaves..	$551,738,958.74
Fair estimated value of real estate in West Virginia counties	$67,676,127.44
Fair estimated valuation of personal property including slaves in West Virginia counties	$30,394,487.21
Total real and personal in counties in West Virginia, including slaves.....	$98,070,614.65
Fair estimated valuation of real estate in counties in Virginia	$148,042,730.15

Fair estimated valuation personal property in counties in Virginia without slaves.....	$152,844,637.59
Total real and personal in counties in Virginia without slaves	$300,887,367.74
Fair estimated valuation of real estate in counties in West Virginia	$67,676,127.44
Fair estimated valuation personal property in counties in West Virginia without slaves.....	$24,739,894.21
Total real and personal in counties in West Virginia without slaves	$92,416,021.65

ALTERNATIVE FINDING.

AT THE REQUEST OF DEFENDANT.

The assessed valuation of real estate in the counties of Virginia June 20, 1863 was.....	296,085,460.31
The assessed valuation of real estate in the counties of West Virginia June 20, 1863 was..	$82,449,252.04
Amount of income assessed in Virginia counties, 1863.....	$11,108,300.13
In West Virginia counties in 1863	299,257,45

Jan. 1, 1861.

A fair estimated valuation of the property, real and personal, in Virginia counties, on January 1, 1861, I find to be as follows:

The parties agree that on that date, the fair estimated valuation of the slaves within the territory of the present Commonwealth of Virginia was at that time	$162,537,936
The assessed value of the other personal property in Virginia counties was	$102,114,863

This sum is reached by taking the amount of the assessment for 1861 (Rec., p. 645), 100,201,-850, and adding thereto the assessment for Chesterfield for 1861 (Plff. Ex. H1., p. 355), 1,077,368, and Goochland (Plff. Ex. H1., p. 395), 835,645, these two counties not being included in the Schedule (Rec., p. 645), as no original books were found showing those assessments.

Real estate in Virginia	$293,018,031.30
Total real and personal in counties in Virginia including slaves	$557,670,830.30
And that the fair estimated valuation of such slaves at that time in the counties now constituting the State of West Virginia was	$6,319,624

Other personal property in West Virginia (Supplemental Exh. 6)	$23,469,172
Real estate in West Virginia	$83,600,730.55
Total real and personal in counties in West Virginia including slaves	$113,389,526.55

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses as found by me on the basis of values as claimed by plaintiff as shown in Joint Exhibit E-1, p. 2-a, excluding slaves is

Virginia, ...	$28,278,857.62
West Virginia, ...	$11,996,039.08

and on the same basis as shown in Joint Exhibit E-1, p. 3-a, including slaves,

Virginia, ...	$30,441,418.20
West Virginia, ...	$9,833,478.50

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses of the government as claimed by the plaintiff, on the basis of the values as claimed by the plaintiff, excluding slaves is as appears upon Joint Exhibit E-1, p. 2-a, and including slaves as appears upon Joint Ex. E-1, p. 3-a.

PARAGRAPH VI.

Money paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia:

Amount agreed upon.....	$5,954,395.66
1. Bonus received from Banks.....	$96,253.62
20. Merchants & Mechanics Bank Stock sold (bonus stock).....	$43,103.35
22. Northwestern Turnpike Road 23. Staunton & Parkersburg Road net tolls	$12,132.12
	$6,105,884.75

ALTERNATIVE FINDINGS.

1. At the request of the plaintiff, that the banks located in West Virginia paid into the Treasury of the Commonwealth of Virginia "in consideration of the privileges" granted	$ 96,253.62
Under items 7, 8, 9 and 10: At the request of the defendant, that the aggregate of these items was all paid in dividends into the Treasury of the Commonwealth upon stock held by the Commonwealth in said companies	$807,646.89
20. At the request of the plaintiff, that the State received from the Merchants and Mechanics Bank, as a franchise tax 400 shares of stock which was sold for.....	$43,103.35
Under items 22 and 23: At the request of the plaintiff, that the aggregate of these two items was paid into the Treasury of the State	

by the public as tolls upon public roads owned wholly by the State...	$143,420.60

PARAGRAPH VII.

I find the values set against the respective companies as follows:

Sweet & Salt Sulphur Spring Co. stock	$7.578.
White & Salt Sulphur Spring Co. stock	$4,000.
Fairmont & Palatine Bridge Co. stock	$12,000.
Northwestern Bank of Va. stock..	$427,250.
Fairmont Bank stock	$50,000.
Total	$500,828.

ALTERNATIVE FINDINGS.

Received by West Virginia from the Restored Government....	$170,771.46
Received by West Virginia between July 1, 1866 and Sept. 1, 1871, from the reorganization of the Northwestern Bank in stock and cash.....	$136,630.

Dated, New York, March 17th, 1910.

CHARLES E. LITTLEFIELD,
Special Master.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 2 Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

MEMORANDUM FOR SPECIAL MASTER.

C. E. LITTLEFIELD,
Special Master.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 3, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

MEMORANDUM FOR THE SPECIAL MASTER.

I.

The Rule Under Which the Fees of the Special Master are Payable.

There does not appear to be any rule of the Supreme Court itself relating to this subject-matter.

The only rule that we find is Rule 82 of Rules of Practice in Equity in the courts of equity of the United States, which appears to relate to circuit courts only, and it is as follows:

> "82. The circuit courts may appoint standing masters in chancery in their respective districts (a majority of all the judges thereof, including the justice of the Supreme Court, the circuit judges, and the district judge for the district, concurring in the appointment), and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case shall be fixed by the circuit court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if upon notice thereof he does not pay it within the time prescribed by the court."

This rule seems to vary the general common-law rule which entitled the master to hold his report until his fees are paid, and while this rule in terms applies to circuit courts only, under the authority of *Pennsylvania vs. Wheeling Bridge Co.*, 18 Howard, 461, where the court said:

> "We perceive nothing that should lead us to distinguish, on the question of costs, between this court and the circuit courts. And, as we have already said, the grounds for the exercise of the power—namely, the repeated recognition by acts of Congress of

> the right of the prevailing party to costs—is as applicable to the one court as the other,"

it would seem that Rule 82 was applicable to a proceeding in the Supreme Court of the United States in equity. If this be true, the "compensation" of the special master is to "be charged upon and borne by such of the parties in the cause as the court shall direct."

I submit that there is nothing in the facts in this case that would either justify or require the court to make an order otherwise than in accordance with what in the absence of the rule would be the legal rights of the parties.

II.

In the absence of the rule the plaintiff in this case is legally liable to pay the fees of the special master.

There is not much authority upon this question. Such as there is we quote to the court:

> "An arbitrator may recover compensation for his services without proving an express promise to pay. The defendant cannot object that the other parties to the submission should have been joined. This could only have been availed of by plea in abatement."
>
> *Hinman vs. Hapgood,* 1 Denio, 188.

In *Nealis vs. Meyer,* 47 N. Y. S., 156, an action was brought by a referee against the plaintiff in the case, and in determining the question of liability the court said:

> "A referee or arbitrator may by a common-law action recover compensation for his services without proving an express promise to pay, for the obligation to compensate is implied from the beneficial nature of the services aided by the attendance of the parties from which their consent sufficiently appears."

In *Little vs. Lynch,* 99 N. Y., 112, the court also said:

> "Upon filing the report the referee may doubtless maintain an action for his fees. The acceptance of a reference is a voluntary act, and the referee may decline the reference, but if he accepts it must rely for the payment of his fees upon the interest of the prevailing party to take up the report, and if he omits to do this upon his common-law action to recover them after putting himself in a position to maintain it by filing the report."

Upon these authorities I submit that it is clear that the moving party who utilizes the report made by the master becomes by necessary implication of law legally liable to pay the master his fees therefor.

In this case very clearly the moving party is the plaintiff, and the plaintiff by utilizing the re-

port made by the master has succeeded in getting a decree from the court showing a liability for the principal sum upon the part of the defendant of the amount of $7,182,507.46.

The plaintiff has received the benefit of the services and has utilized them with the knowledge of the responsibilities connected therewith. I submit that there is nothing in the case that would justify the court in making an order other than one that would follow and carry out the legal rights of the parties which would exist independent of the rule.

III.

Nothing appears in this case to justify applying any different rule to the fees of the master than have been heretofore applied by the court with the consent of all parties concerned to other items which are of the same degree and of the same character and equally make up the total of costs of the case.

In a requisition made by the special master, April 7, 1910, for the payment of costs and expenses in the execution of the rule, among other items there were:

Printing	$2,369.10
Accountants' services	1,040.83
Stenographers' services	8,652.33
Expenses of the special master	335.25

I submit with great confidence that there is no reason why these items should have received

preferential treatment by requiring the plaintiff to deposit in court the sums of money necessary to pay them and receive prompt payment, as distinguished from the fees due the special master. The printing bill, the accountants' charges and the stenographers' bill would have been of no use to the parties to the case except for the work performed by the master, for which his fees have already been fixed. No good reason appears in the brief submitted by the plaintiff why these items should be paid by the plaintiff and paid promptly, and the payment of the fees of the special master postponed and discriminated against and ordered to be paid at some time within its discretion by the defendant. It is also submitted that the expenses of the special master, $335.25, are entitled to no more preferential treatment in the matter of promptness of payment than are the services rendered by the master.

IV.

The special master is an officer of the court and in the order for the payment of his fees should not be subjected to any further delay, which would necessarily result if the fees are ordered to be paid by the defendant.

It is submitted that the fee allowed by the court was due the master at the time his report was filed. This was March 17, 1910. By its non-payment at that time the special master has already lost in interest something like $2,400. Nearly a year of the

delay in the fixing of the fee of the special master was caused by the objections filed by the Attorney-General for West Virginia on May 4, 1911, in which he suggested, in substance, that if West Virginia was not to pay any part of the master's fee they would have no interest in the amount that might be allowed, but did desire to be heard in case any portion of the fee would be ultimately paid by them. This resulted in a delay of nearly a year at an expense to the special master of nearly $1,200. When the matter was finally determined the Attorney-General of West Virginia withdrew these suggestions by submitting the matter to the discretion of the court without making any suggestions in relation to the amount. He did call the attention of the court to the fact that no money could be paid by West Virginia under its Constitution except by virtue of an appropriation having been previously made therefor, and that no sum was available for the payment of the special master's fee. The result of this is that if the court should direct the defendant to pay its portion of the total bill of costs represented by the fee of the special master, it would delay the payment until some time in 1913, when the legislature of West Virginia next meets, and would then be contingent upon whether or not the legislature thought fit to appropriate a sum necessary therefor. This would penalize the special master to the extent of nearly $1,200 more in delay, by loss of interest during that period of time, and the special master

begs leave to submit that there is nothing in the case that requires the court to thus penalize the special master in connection with the payment of his fee.

It is also submitted that the remedy of the special master, under the rule above referred to, in case an order is made requiring West Virginia to pay, may prove to be entirely inadequate. The only remedy provided under the rule, if the compensation was not paid by the defendant, in case the court so ordered, is the provision that—

> "he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if upon notice thereof, he does not pay it within the time prescribed by the court."

The special master begs leave to submit that it is extremely doubtful as to the efficacy of an attachment against a State for the failure to comply with such an order.

V.

No precedent or justification exists for determining at this time that a portion of the costs should be paid either in full or in part by the defendant.

As to how the matter of costs may be finally adjusted between the plaintiff and the defendant is a matter in which the special master has no concern and his rights and interests should not be involved in any controversy between the plaintiff

and the defendant upon a matter of that character. The only suggestion he has to make upon this branch of the case is that it seems to him to be entirely unprecedented to take up one item making up a total bill of costs and pass upon that one in determining whether or not as between the plaintiff and the defendant it is to be paid by one or the other, and remitting the special master for his remedy to the particular party to the suit that the court may thus determine it ultimately, as a part of the costs as between the plaintiff and the defendant, to pay the same.

C. E. LITTLEFIELD,
Special Master.

[16638]

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Office Supreme Court, U. S.
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CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 2 Original.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA.

COMPLAINANT'S EXCEPTIONS TO REPORT OF THE SPECIAL MASTER, DATED MARCH 17, 1910.

SAMUEL W. WILLIAMS,
Attorney General of Virginia.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of Counsel for Complainant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 3, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

Complainant's Exceptions to Report of the Special Master, Dated March 17, 1910.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of Virginia, by Samuel W. Williams, Attorney General, humbly prays leave to file the annexed exceptions to the report of the Honorable Charles E. Littlefield, Special Master, in the above cause, which report was filed in this court on the 17th day of March, 1910.

And as in duty bound your petitioner will ever pray.

STATE OF VIRGINIA,
By SAMUEL W. WILLIAMS,
Attorney General.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 3, Original.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA, *Defendant.*

Complainant's Exceptions to Report of the Special Master Dated March 17, 1910.

I. *Complainant's First Exception.*

For errors of law apparent in the record, complainant respectfully excepts to the statements contained in the master's report in regard to the literary fund, save and except so far as they show the creation, existence, and amount of such fund, and especially does complainant except to the master's conclusions that the Board of the Literary Fund (a corporation) had no right to sue and be sued and that the fund was the unconditional property of the State and subject to its control and ownership, while the said fund was under the law held and controlled by the board and the State in trust for educational purposes alone. See Master's Report, pp. 6 to 30, and acts in Appendix to Record, pp. 205-208.

II. *Complainant's Second Exception.*

Complainant respectfully excepts to the report and findings of the special master under paragraph III of the decree of reference, for not allowing to Virginia, and charging against West Virginia, "*all* expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted"; but on the contrary excluding from those charges against West Virginia, a large number of items of expenditure which were made by Virginia in that territory during that period, on the ground that, having been made through the medium of joint stock companies, they were expenditures made by those companies out of their own funds and not by the State, and were "indirect," and not "direct" expenditures (Report of Special Master, pp. 39, 62, and 85).

The items, the disallowance of which by the special master is here respectfully excepted to, are the following expenditures, all of which were made by Virginia for the construction of "works of internal improvement" and were actually made in West Virginia territory, namely:

(1) For Bridges: Expenditures made by Virginia upon bridges in West Virginia territory, built by joint stock companies owned partly by the Commonwealth—Items 57 to 65, inclusive, of Joint Exhibit C-1, p. 4, R., 375; Special Master's Report, p. 85—aggregating	$78,412.50
(2) Expenditures made by Virginia in the improvement of the navigation of West Virginia rivers by joint stock companies—Items 66 to 69, inclusive, of Joint Exhibit C-1, p. 4; R., 375; Special Master's Report, p. 85—aggregating.....	210,500.00

(3) Expenditures made by Virginia upon turnpikes wholly in West Virginia territory, built by joint stock companies:		
(*a*) On Charleston and Berryville turnpike, in West Virginia—Item No. 6 of Joint Exhibit C-1, p. 2; R., p. 373; Special Master's Report, pp. 64 and 84.....	$11,932.52	
(*b*) On turnpikes and roads mentioned in items 70 to 147, inclusive, of Joint Exhibit C-1, pp. 4, 5, and 6; R., 375, 376, and 377; Special Master's Report, pp. 78, 79, and 85..	803,555.83	
Total expenditures by Virginia, through joint stock companies, on turnpikes and roads in West Virginia territory.....	815,488.35	$815,488.35
Total aggregate of items, the disallowance of which is here excepted to.....		$1,104,400.85

Paragraph III of the decree, closely following the terms of the Wheeling ordinance, directs the special master to ascertain and report *"all expenditures* made by the Commonwealth of Virginia within the territory now constituting West Virginia," &c.

This required that *all* such expenditures, *however made*, should be included in this account.

The special master has, as we respectfully submit, erred in including in this account only such expenditures as were made "directly," and excluding such as were, as is alleged, made "indirectly" by the Comonwealth.

Joint Exhibit C-1 is an agreed schedule as to the figures stated therein, but not as to the classification or allotment of

the charges therein made. There is, therefore, no question of fact whatever that these expenditures were all made, and were made upon the soil of West Virginia. Nor can there be any question that the amounts of money making up these aggregates were all paid out of the treasury of the Commonwealth to joint stock companies for the express purpose of constructing the several internal improvements in West Virginia counties, which such companies were respectively distinctly formed to construct. The State received certificates of stock for the money so expended, but the expenditures, though they were made on West Virginia territory *immediately* by joint stock companies, the agencies or media selected by the State (of which West Virginia then formed an integral part) for that purpose, were none the less, in fact, made *mediately* by the State.

Whether they were *mediate* or *immediate*, "direct" or "indirect" expenditures made no difference, as neither the Wheeling ordinance nor the decree make or justify any distinction between direct and indirect expenditures; for both the decree and the ordinance require *"all* the State expenditures" to be charged.

While there is no question of fact involved in this exception, we refer the court to Joint Exhibit C-1, pp. 4, 5 and 6; R., pp. 375, 376, and 377; to the acts of the General Assembly of Virginia, Appendix, pp. 3 to 10, 12 to 19, 20 to 23, and 136 to 145; and to the Master's Report, pp. 39 to 43, and p. 83, and last three paragraphs of page 85. See also report of the finance committee of the Senate of West Virginia, filed as Exhibit 3 with defendant's answer, which confirms this view. R., 168-9.

III. *Complainant's Third Exception.*

Complainant respectfully excepts to the finding of the special master, under paragraph V of the decree, of the fair estimated value of the real and personal property in the counties of Virginia as of January 1, 1861 (Special Master's

Report, pp. 167, 168, and 173), as not being responsive to that paragraph or any other paragraph of the decree.

IV. *Complainant's Fourth Exception.*

Complainant respectfully excepts to the findings of the special master under paragraph V of the decree:

(1) For including slaves in his statement of the fair estimated value of the personal property in Virginia on the 20th of June, 1863, notwithstanding the fact that all of them had been then emancipated by the proclamation of the President which became effective January 1, 1863.

(2) For adopting the assessed value of slaves in June, 1863 ($250,851,591, or $634.89 apiece), as their fair estimated value at that time, and the assessed value of personal property other than slaves ($152,844,637.59) as its fair estimated value at that time, instead of finding the fair estimated value of all personal property then in Virginia (including slaves, which we insist should be excluded) to have been not exceeding 50 per cent of the assessed value as reported by the master. The evidence establishes the fact that there was an enormous destruction and depreciation of personal property in Virginia in June, 1863, in consequence of the violence and waste of the war then raging, and that the ratio of value which gold at that time bore to Confederate currency, the only medium of exchange in Virginia, was from 7 to 8 for 1. Special Master's Report, pp. 168, 169, 170, and Exhibit "E–1," pp. 5, 6, and 7; R., 643, 644, and 645. See also Plaintiff's Exhibit "E–2," R., p. 647, and deposition of Charles U. Williams, p. 780.

(*a*) Slaves, as above stated, should not have been included in the account at all. The President's emancipation proclamation had then become effective, and the tenure by which slaves may have been then nominally held as property was

so precarious and worthless that they constituted no basis upon which to hypothecate any State liability whatever.

(*b*) If they could have been fairly treated as property for any purpose in this litigation, then the special master's statement of their value is greatly excessive. This will be manifest from the following facts:

The master finds all of the personal property in the present State of Virginia, *including slaves*, to have been of the fair estimated value of $403,696,228.59 on the 20th of June, 1863—page 172 of his report.

He finds the fair estimated value of the personal property in Virginia, *without slaves*, on the same day to have been $152,844,637.59. *Idem.*

His estimate of the fair value of the slaves in that territory at that date was, therefore, the difference between $403,696,228.59 and $152,844,637.59, or $250,851,591. This is the amount which the slaves in the present State of Virginia are computed to have been worth in 1863 by said exhibit printed at pages 643, 644, and 645 of the record returned with the master's report, and this computation the master has adopted.

That computation is grossly inaccurate in two particulars: First, it takes the number of slaves in the Commonwealth to have then been 395,105. To do this it assumes, without any proof, that there were in June, 1863, the same number of slaves in the counties and cities occupied or dominated by the military forces of the United States that there were at the time the slaves in those counties were last assessed for taxation. The thousands of slaves in the territory so occupied or dominated were not only then free under the terms of the emancipation proclamation, but they were then actually free, and no longer worth anything as property. There is no evidence anywhere in the record that there were 395,105 slaves in Virginia on the 20th of June, 1863. That number

manifestly includes thousands of former slaves who were then practically free.

The special master places an excessive value upon this excessive number of slaves.

He counts the 395,105 slaves as then worth $250,851,591, or $634.89 apiece.

The *agreed* fair estimated value of the 490,865 slaves in Virginia on the 31st of December, 1860, was $344 apiece, or $162,537,936. Master's Report, p. 167; Stenographic Report of the Hearings before the Master, vol. 20, p. 3153.

The special master's finding is that 395,105 slaves were worth in June, 1863, $98,313,655 more than 490,865 slaves were worth in December, 1860, and that each slave in Virginia was worth in June, 1863, $290.89 more than the sum which the parties have agreed was the fair estimated average value of each in December, 1860.

There is no evidence in the record which shows or tends to show that slaves were more valuable in Virginia in June, 1863, than they were in December, 1860. All the evidence which relates to this subject tends to show that they were vastly less valuable at the latter date. See evidence of Col. John P. Branch, R., 756; of Major P. A. Wellford, R., 763, answer to Q. 35, and the evidence hereinafter referred to as to the general depreciation of all personal property in Virginia in June, 1863, and as to the taxation and assessment of such property, including slaves, at its value in Confederate currency.

(*c*) The uncontradicted testimony in the cause shows that personal property throughout Confederate Virginia had depreciated fifty per cent (50%) *as a minimum* in June, 1863, as compared with the period in 1861 and 1860 before the war. See depositions of R. W. Hunter, W. W. Scott, John P. Branch, Philip A. Wellford, William G. Taylor, S. H. Hawes, Charles U. Williams, and W. Gordon McCabe (R., 739 to 786).

These witnesses prove that there was an enormous de-

terioration, destruction and depreciation in the value of personal property in Virginia between those dates. Major P. A. Wellford says (R., pp. 763, 764, and 765):

> "Q. 37. Taking all the movable personal property, live stock, farming utensils, vehicles of every kind, household and kitchen furniture, the stores of tobacco and corn, what would you say, as a minimum, was the depreciated (depreciation) of all personal property in Virginia in June, 1863, as compared with January, 1861.
>
> "A. Leaving out cotton and tobacco, I would say that it was nearly 75 per cent. Carriages and wagons were all worn out. All farming utensils were almost worn out. There was very little demand for them. Men did not cultivate more than one-half or two-thirds of the acreage that he had done before. They had no new implements, and all the carriages and farming implements were almost worn out.
>
> * * * * * * *
>
> "Q. 40. What would you say, as a minimum, was the depreciation of all personal property in Virginia in June, 1863, upon the basis of any sort of sound money? What was the per cent of depreciation in June, 1863, as compared with January, 1861?
>
> "A. Not less than 50 per cent. There had been no repairs made to furniture. All the mechanics were in the army. If a bed broke down, a man had to fix it the best way he could. The same way with all farming utensils and everything else.
>
> * * * * * * *
>
> "Q. 50. From your observation and knowledge at that time, what was the condition of the people of Virginia in the territory now constituting the Commonwealth?
>
> "A. A large proportion was abject poverty."

See the testimony of the other witnesses above named to the same effect.

(*d*) The above-mentioned witnesses prove, what is so a part of the history of the country and the times as to require

no proof, that in Confederate Virginia in June, 1863, the paper money of the Confederate States was the currency of the people, in which, and with reference to which their contracts were made and their business transacted; that it was practically the only medium of exchange and standard of value, the currency in which all State taxes were levied and were payable, and as a necessary consequence from these uncontroverted and incontrovertible facts, that it was the currency in which or with reference to which as a measure of value, the annual assessments of personal property for taxation were generally made in the portions of the State dominated by the Richmond governments. As to these points see the testimony of R. W. Hunter, R., 744, answers to Q.'s 36, 37, and 38; W. W. Scott, R., 749, answers to Q.'s 14 to 20; of Col. John P. Branch, R., 754, answers to Q.'s 14, 15, and 17, and page 758 and answers to Q.'s 43 to 50; of Major Wellford, R., 765, answers to Q.'s 46 to 50; of Mr. William G. Taylor, R., 768, answers to Q.'s 6 to 12; of Mr. S. H. Hawes, R., 773, answer to Q. 24; of Mr. C. U. Williams, R., 781, answers to Q.'s 1 to 5 on redirect examination. Messrs. Taylor (R., 768-9) and Williams (R., 781) both state in effect that taxes were then assessed in Confederate money.

(*e*) The fact that the assessments of personal property made as of February 1, 1863, were generally made in Confederate Virginia with reference to Confederate values and in Confederate money, and that those assessments were excessive valuations of personal property, if they be treated as valuations in good money, appears from a comparison of the assessments in the counties of Confederate Virginia for 1863 with the assessments of personal property generally in the same counties in 1861, incomplete copies of which assessments are returned by the master with his report.

See also Acts of General Assembly of Virginia at Richmond, of March 22, 1862, and March 28, 1863, making State taxes payable in Confederate money (Appendix to the Record, page 132).

(*f*) Under the foregoing state of facts, and upon the evidence in the cause, the scale of depreciation of Confederate money as compared with specie, which was 4 for 1 on the 1st of February, 1863, should have been applied to all of the assessments of personal property in 1863 in the Virginia counties which were then occupied and dominated by the military and civil forces of the Richmond governments, State and Confederate.

Particularly should this have been done as to the slaves everywhere in Virginia.

(*g*) Upon the above-mentioned proofs the valuation of all personal property in Virginia on the 20th of June, 1863, cannot be fairly estimated at more than one-half of its assessed value for that year.

V. *Complainant's Fifth Exception.*

Complainant respectfully excepts to the finding of the special master under the seventh paragraph of the decree, that "the State of West Virginia received nothing in money from the Commonwealth of Virginia," subsequent to the organization of the Restored Government of Virginia, and for omitting to charge West Virginia with the sums aggregating $170,771.46, paid by Virginia to West Virginia as shown by Plaintiff's Exhibit G-1 (R., p. 819), and the evidence in support thereof (Special Master's Report, pp. 181 and 193).

It will be observed that the master was required by paragraph VII to ascertain and report *all* money which West Virginia received from Virginia, however or whenever received.

The facts as to the receipt by West Virginia from the Commonwealth of the amounts aggregating $170,771.46 stated in Plaintiff's Exhibit G-1 (R., 819), are assented to and certified by the accountants for both parties, and are reported by the master at page 181 of his report.

Note to the Fifth Exception.

It is proper here to call attention to the fact that the special master has included in the charges against West Virginia, under the seventh paragraph of the decree, the value of the stock which represented the amounts expended by the Commonwealth on the turnpikes and bridges built by the following companies:

Sweet and Salt Sulphur Springs Turnpike Co...	$7,578.00
White and Salt Sulphur Springs Turnpike Co...	4,000.00
Fairmount and Palatine Bridge Co.....	12,000.00
	$23,578.00

The complainant has insisted that the expenditures made by the Commonweath in the construction of these internal improvements should be charged against West Virginia under paragraph III of the decree, and by her first exception above has objected to the master's report for not charging West Virginia with items 60, 136, and 145 of joint Exhibit C-1 (R., pp. 375 and 377), which items cover the expenditures made by Virginia on said Fairmount and Palatine Bridge and on the Sweet and Salt Sulphur and White and Salt Sulphur Turnpikes.

If complainant's first exception is sustained as to those items, the corresponding items charged by the master under paragraph VII of the decree, aggregating $23,578.00, should be deducted from the aggregate charged against West Virginia under said seventh paragraph.

VI. *Complainant's Sixth Exception.*

In addition to the five exceptions above set forth, complainant respectfully asks that all of the alternative statements contained in the master's report, made at the request

of and pursuant to objections interposed before the master by the complainant, and not covered by any of the foregoing exceptions, may be taken and treated as exceptions made by the complainant to said report because of and with respect to the errors of law appearing on the face of said report and of the record returned therewith, in the particulars to which said alternative statements respectively refer.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA,
By SAM'L W. WILLIAMS,
Attorney General.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of Counsel for Complainant.

[Endorsed:] Supreme Court of the U. S. October Term, 1909. No. 3, Original. Commonwealth of Virginia *vs.* State of West Virginia. Complainant's Exceptions to Report of the Special Master, dated March 17, 1910. Office of Attorney-General of Virginia, Richmond.

[Endorsed:] Supreme Court U. S. October Term, 1909. Term No. 3, Original. Commonwealth of Virginia, Complainant, *vs.* State of West Virginia. Complainant's exceptions to report of the Special Master, dated March 17, 1910. Filed April 16, 1910.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

ORIGINAL No. 4.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of West Virginia, by William G. Conley, Attorney General, humbly prays leave to file the annexed exceptions to the Report of the Honorable Charles E. Littlefield, Special Master, in the above cause, which report was filed in this Court on the 17th day of March, 1910.

And as in duty bound your petitioner will ever pray.

STATE OF WEST VIRGINIA,
By WILLIAM G. CONLEY,
Attorney General.

JOHN G. CARLISLE,
JOHN C. SPOONER,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
CHAS. E. HOGG,
WM. M. O. DAWSON,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

ORIGINAL No. 4.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

EXCEPTIONS OF THE STATE OF WEST VIRGINIA TO THE REPORT OF CHARLES E. LITTLEFIELD, SPECIAL MASTER, FILED IN THE ABOVE CAUSE ON THE 17th DAY OF MARCH, 1910.

Now comes the State of West Virginia, by William G. Conley, her Attorney General, and excepts to the said report as to the following findings set out therein.

In specifying these exceptions this Defendant will set them out by paragraph as numbered in said decree of reference and in said report, and will refer to the item number and page in said report wherever it is possible to do so.

PARAGRAPH III. OF DECREE.

"3. All Expenditures made by the Commonwealth of Virginia within the Territory now constituting the State of West Virginia since any part of the Debt was contracted."

The Defendant, the State of West Virginia, excepts to the finding of the Special Master in reporting as expenditures made by the

Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted the following items:

Page 44. Item 2. Covington & Ohio Railroad, $1,146,460.42.

Page 44. Item 10. Kanawha Turnpike, $152,130.54.

Page 44. Item 11. Kanawha Turnpike, $2,593.92.

Page 44. Item 12. Kanawha Turnpike, $7,189.65.

Page 44. Item 13. Kanawha Turnpike, $80,955.28.

Pages 65-71. Item 14. Kanawha River Improvements, $59,572.36.

Page 72. Item 25. Brandonville, Kingwood & Evansville Road, $10,595.73.

Page 72. Item 28. Clarksburg & Buckhannon Turnpike, $19,259.36.

Page 72. Item 35. Kingwood & West Union Turnpike, $18,140.61.

Pages 75-6. Item 55. Surveys, $106,416.14. The Master finds and allows the sum of $60,873.19, and the exception is to this last amount found by the Master as an expenditure.

Page 80. Item 150. Loan to the Town of Bath, $2,500.00.

Said Defendant also excepts to said report for that said Master has found, under said Paragraph III, at page 83 of his said report, that the total of the expenditures made by the Commonwealth of Virginia within the territory of West Virginia amounts to $2,811,599.98, instead of the sum of $1,251,288.92.

PARAGRAPH IV. OF DECREE.

"4. Such Proportion of the Ordinary Expenses of the Government of Virginia since any of said debt was contracted, as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

The Defendant, the State of West Virginia, excepts to said report of the Special Master in that he finds that the following item is not a just credit against the total of what he finds to be the ordinary expenses of the State Government of Virginia, to wit:

Pages 114-16. Item No. 1. Tobacco Receipts, $353,123.96.

The said Defendant further excepts to said report in that he finds that the following items are part of the ordinary expenses of the State Government of Virginia during the period, from March 19, 1823, to December 31, 1860, inclusive, to wit:

Pages 118-19. Item 5. Maps, Board of Public Works, $11,446.48

Page 120. Item 7. International Exchanges, $2,836.19.

Page 121. Item 9. Printing Treasury Notes, $375.74.

Page 125. Item 16. Calling out Militia at Wheeling in 1836, $1,099.00.

Page 126. Item 18. Attorney General's fees for prosecuting Seldon, Withers & Company, $500.00.

Page 127. Part of Item 19. The item of $5,000.00 expended under the Act of February 14, 1844.

Page 128. Item 23. Sundry Board of Public Works Expenses, $36,728.50.

Pages 128-9. Item 24. Interest on public debt, aggregate, $18,574,747.84.

The next three items, found on pages 129 to 134, inclusive, of the report, are not numbered therein, but for convenience in designation we will call them herein by the serial numbers following item 24, to each of which three items the Defendant excepts, to wit:

Pages 129-31. Item 25. Harper's Ferry Raid, $251,763.65.

Pages 132-4. Item 26. Expended for Primary Schools, $2,400,331.11.

Page 134. Item 27. General expenses connected with surveys, $106,983.67.

The said Defendant further excepts to said report in that the Special Master, at page 135 of his said report, finds that the aggre-

gate amount of the ordinary expenses of the Commonwealth of Virginia for the period, March 19, 1823, to December 31, 1860, inclusive, was $40,274,896.70, instead of the sum of $18,529,960.56.

The said Defendant further excepts to the finding of the Special Master found on a page of his report not numbered, but which is shown by the context should be numbered 141, and which is in the following words:

> "I find that the method adopted by the plaintiff of ascertaining 'the average total population,' is the closest and most accurate approximation upon which the ordinary expenses can be apportioned to 'the average total population,' as the object to be ascertained, is the population in existence, at the time the ordinary expenses to be apportioned, were paid, and I therefore adopt the plaintiff's method."

And also excepts to the assignment of the ordinary expenses to West Virginia upon the said method, as set forth on pages 139 and 140 of said report.

PARAGRAPH V. OF DECREE.

> **"5. And also on the basis of the fair estimated valuation of the property, Real and Personal, by Counties, of the State of Virginia."**

The Defendant, the State of West Virginia, excepts to the finding of the Special Master as found on page 155 of his report, in that he finds that the fair estimated valuation of the real estate in the counties in Virgina on the 20th of June, 1863, was only $148,042,730.15.

The said Defendant also excepts to the ruling of the Special Master (page 152), admitting as competent evidence the testimony of J. B. Lightfoot and the schedules accompanying the same, concerning certain private sales and unofficial appraisements of various parcels of real estate in particular localities in the State of Virginia in the year 1863.

The said Defendant also excepts to the ruling of the Special Master (pages 153-5), admitting the opinions of the witnesses, Hunter, Scott, Branch, Wellford, Taylor, Hawes, Williams and McCabe, to show the alleged depreciation of real estate in the State of Virginia in the year 1863.

The said Defendant also excepts to the finding of the Special Master (page 156), wherein he finds that the fair estimated value of the real estate in the counties of West Virginia was on June 20th, 1863, the sum of $67,676,127.44.

The said Defendant also excepts to the finding of the Special Master on page 166 of his said report, that the sum of $11,108,-300.13, assessed by the State of Virginia as income, was not part of her personal property.

PARAGRAPH VI. OF DECREE.

"6. All moneys paid into the treasury of the Commonwealth from the Counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The Defendant, the State of West Virginia, excepts to the report of the Special Master in that he refuses to allow as a credit to the State of West Virginia as moneys paid into the Treasury of the Commonwealth of Virginia from the counties now forming West Virginia the following items, to wit:

Page 176. Item 7. Dividends from Banks in West Virginia counties, $786,666.98.

Page 176. Item 8. Dividends and interest from Turnpike Companies in West Virginia counties, $13,595.48.

Page 176. Item 9. Dividends from Bridge Companies in West Virginia, $6,028.51.

Page 176. Item 10. Dividends from Interstate Turnpike Companies (proportion), $1,355.92.

Said Defendant also excepts to said report because the Special Master finds, at page 179 of his report, that only the sum of $6,105,-

884.75 was paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during the period from March 19, 1823, to December 31, 1860, both inclusive, instead of the larger sum, to wit, $7,051,215.56, as shown by Joint Exhibit F-1, pages 805-6 of printed record.

PARAGRAPH VII. OF DECREE.

> **"7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items, and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the Restored Government of Virginia, together with the nature and description thereof."**

The Defendant, the State of West Virginia, excepts to the finding of the Special Master on pages 189-193 of his report, that the value of the stock held by the State of Virginia in the Northwestern Bank of Virginia on the 20th day of June, 1863, was the sum of $427,250.00, and further excepts to said report in that he did not find the same was only $136,630.00.

The said Defendant further excepts to many other errors apparent upon the face of said report, and prays that said exceptions, and each of them, heretofore set out may be considered and sustained.

All of which is respectfully submitted.

WILLIAM G. CONLEY,
Attorney General.

JOHN G. CARLISLE,
JOHN C. SPOONER,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
WM. M. O. DAWSON,
For West Virginia.

IN THE

Supreme Court of the United States.

October Term, 1913.

No. 2 Original.

COMMONWEALTH OF VIRGINIA

VS.

STATE OF WEST VIRGINIA.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The State of West Virginia, by A. A. Lilly, Attorney General, prays leave to file the annexed exceptions to the report of the Honorable Charles E. Littlefield, Special Master in the above entitled cause, which report was filed in this Honorable Court on the twenty-second day of January, 1915.

STATE OF WEST VIRGINIA,
By A. A. Lilly, Atty. General.

CHARLES E. HOGG,
JOHN H. HOLT,
Of Counsel.

IN THE

Supreme Court of the United States.

October Term, 1913.

No. 2 Original.

COMMONWEALTH OF VIRGINIA

VS.

STATE OF WEST VIRGINIA.

EXCEPTIONS BY WEST VIRGINIA TO THE REPORT OF SPECIAL MASTER CHARLES E. LITTLEFIELD, FILED IN THE ABOVE ENTITLED CAUSE ON JANUARY 22, 1915.

Now comes the State of West Virginia, by A. A. Lilly, her Attorney General, and excepts to the following findings in said report:

I.

DEFENDANT'S FIRST EXCEPTION. (INTEREST)

Although not a finding of fact, but a mere expression of opinion upon a question of law involved in the cause, and to the end that silence may not be treated as a waiver of the opposite view, the State of West Virginia respectfully excepts to the following conclusion and statement of the Master upon the subject of interest, found at the bottom of page ten and the top of page eleven of his report, to-wit:

> "It is my conclusion, therefore * * * that the liability of West Virginia for interest begins on that date" (January 1, 1861), "by virtue of the contract between her and Virginia, and runs at the rate provided for in the bonds that evidence the debt, and make the interest an inseparable part thereof."

II.

DEFENDANT'S SECOND EXCEPTION. (Richmond, Fredericksburg & Potomac R. R. Stock)

The defendant excepts to that portion of the report of the Special Master wherein he values the stock held by the State of Virginia in the Richmond, Fredericksburg & Potomac Railroad Company, because he averages the book value and the dividend value of said stock, instead of taking the book value

alone, and reduces thereby the actual value of the total stock held by Virginia on January 1, 1861, from $412,800 to $323,167.36, thereby diminishing West Virginia's 23½% of the actual value of this stock from $97,008 to $75,944.32, causing a loss to her of $21,063.68; and for other reasons.

Said valuation and the reasons therefor are found upon pages 32-4 of the Master's report.

III.

DEFENDANT'S THIRD EXCEPTION.
(Orange & Alexandria R. R. Stock)

The defendant excepts to the valuation placed by the Special Master upon the stock held by the State of Virginia in the Orange & Alexandria Railroad Company, because he ascertains the same by averaging its book and dividend values, instead of taking its book value alone, thereby reducing the value of said stock as of January 1, 1861, from $932,566.80 to $573,672, and diminishing West Virginia's 23½% of the actual value thereof from $219,153.19 to $134,812.92, with a consequent loss to her of $84,340.27; and for other reasons.

Said valuation and the reasons therefor are found on pages 36-8 of his said report.

IV.

DEFENDANT'S FOURTH EXCEPTION.
(Richmond & Danville R. R. Stock)

The defendant excepts to the finding of the Master with reference to the stock owned by the

State of Virginia in the Richmond & Danville R. R. Co., because he subtracts from the book value thereof of $137.37 per share 5% of its par for alleged liquidation purposes, which reduction (Virginia owning 12,000 shares) places the total value of the stock held by Virginia on January 1, 1861, at $1,588,440, instead of $1,648,440, and reduces West Virginia's 23½% interest therein from $387,383.40 to $373,283.40, with a consequent loss to her of $14,100. Said finding is otherwise erroneous and prejudicial to West Virginia.

Said valuation and finding, with the reasons therefor, are found upon pages 39-41 of the Master's report.

V.

DEFENDANT'S FIFTH EXCEPTION.

(Richmond & Petersburg R. R. Stock)

The defendant excepts to the finding of the Special Master in the case of the value of the stock as of January 1, 1861, held by the State of Virginia in the Richmond & Petersburg Railroad Company, because he combines the book value with the dividend value, instead of taking the book value alone, thereby reducing the total value of the stock as of that date from $469,892.16 to $441,126.40, and West Virginia's 23½% thereof from $110,424.65 to $103,664.70, with a consequent loss to her of $6,759.95; and for other reasons.

Said valuation and the reasons therefor are found upon pages 42-4 of the Master's report.

VI.

DEFENDANT'S SIXTH EXCEPTION.

(Virginia Central R. R. Stock)

The defendant excepts to the report of the Special Master wherein he places a value upon the stock owned by the State of Virginia in the Virginia Central Railroad Company of $2,390,918.08, instead of $2,481,115.26, a difference of $90,197.18, with a consequent loss to West Virginia on account of her 23½% interest therein of $21,196.34.

Said valuation is made by a combination of book and dividend values, instead of taking the book value alone, and is otherwise erroneous.

The finding and reasons therefor are set out on pages 45-6 of said report.

VII.

DEFENDANT'S SEVENTH EXCEPTION.

(Alexandria, Loudoun & Hampshire Stock)

The defendant excepts to the finding of the Master wherein he places a value as of January 1, 1861, upon the stock owned by the State of Virginia in the Alexandria, Loudoun & Hampshire Railroad Company of $35,096.85, instead of a value of $993,248.00, as evidenced by the par and cost of the stock, thereby reducing West Virginia's 23½% interest in this stock from $223,413.28 to $8,247.74, with a consequent loss to her of $215,165.54.

Said valuation is otherwise erroneous, and is

found, together with the reasons therefor, upon pages 48-9 of the Master's report.

VIII.

DEFENDANT'S EIGHTH EXCEPTION.
(Virginia & Tennessee R. R. Loan)

The defendant excepts to the finding of the Special Master wherein he places a value of only $84,799.90, instead of $886,685, upon a loan of $1,000,000 made by the State of Virginia to the Virginia & Tennessee Railroad Company, by which finding he reduces the 23½% interest of West Virginia therein from $208,370.97 to $19,927.97, with a consequent loss to her of $188,443.00.

Said finding and the reasons therefor are set out upon pages 51-2 of said report.

IX.

DEFENDANT'S NINTH EXCEPTION.
(Norfolk & Petersburg R. R. Loan)

The defendant excepts to the report of the Master wherein he reduces the value of the loan made by the State of Virginia to the Norfolk & Petersburg Railroad Company from $300,000 to $108,415.45, thereby reducing West Virginia's 23½% interest therein from $70,500 to $25,477.63, with a consequent loss to her of $45,022.37.

Said finding, with the reasons therefor, appear upon pages 55-8 of said report.

VI.

DEFENDANT'S SIXTH EXCEPTION.

(Virginia Central R. R. Stock)

The defendant excepts to the report of the Special Master wherein he places a value upon the stock owned by the State of Virginia in the Virginia Central Railroad Company of $2,390,918.08, instead of $2,481,115.26, a difference of $90,197.18, with a consequent loss to West Virginia on account of her 23½% interest therein of $21,196.34.

Said valuation is made by a combination of book and dividend values, instead of taking the book value alone, and is otherwise erroneous.

The finding and reasons therefor are set out on pages 45-6 of said report.

VII.

DEFENDANT'S SEVENTH EXCEPTION.

(Alexandria, Loudoun & Hampshire Stock)

The defendant excepts to the finding of the Master wherein he places a value as of January 1, 1861, upon the stock owned by the State of Virginia in the Alexandria, Loudoun & Hampshire Railroad Company of $35,096.85, instead of a value of $993,248.00, as evidenced by the par and cost of the stock, thereby reducing West Virginia's 23½% interest in this stock from $223,413.28 to $8,247.74, with a consequent loss to her of $215,165.54.

Said valuation is otherwise erroneous, and is

found, together with the reasons therefor, upon pages 48-9 of the Master's report.

VIII.

DEFENDANT'S EIGHTH EXCEPTION.
(Virginia & Tennessee R. R. Loan)

The defendant excepts to the finding of the Special Master wherein he places a value of only $84,799.90, instead of $886,685, upon a loan of $1,000,000 made by the State of Virginia to the Virginia & Tennessee Railroad Company, by which finding he reduces the 23½% interest of West Virginia therein from $208,370.97 to $19,927.97, with a consequent loss to her of $188,443.00.

Said finding and the reasons therefor are set out upon pages 51-2 of said report.

IX.

DEFENDANT'S NINTH EXCEPTION.
(Norfolk & Petersburg R. R. Loan)

The defendant excepts to the report of the Master wherein he reduces the value of the loan made by the State of Virginia to the Norfolk & Petersburg Railroad Company from $300,000 to $108,415.45, thereby reducing West Virginia's 23½% interest therein from $70,500 to $25,477.63, with a consequent loss to her of $45,022.37.

Said finding, with the reasons therefor, appear upon pages 55-8 of said report.

X.

DEFENDANT'S TENTH EXCEPTION.
(U. S. Government Loan)

The defendant excepts to that portion of the report of the Master wherein he places a value of only $164,584.30 as of January 1, 1861, upon the claim of Virginia against the Government of the United States, instead of a value as of that date of $1,130,821.31, thereby diminishing West Virginia's 23½% interest therein from $265,743.00 to $38,677.31, with a consequent loss to her of $227,065.69.

Said valuation and finding, with the reasons therefor, are found upon pages 67-70 of the Master's report.

XI.

DEFENDANT'S ELEVENTH EXCEPTION.
(Farmer's Bank of Virginia Stock)

The defendant excepts to that portion of the Master's report wherein he ascertains the value as of January 1, 1861, of the stock held by the State of Virginia in the Farmer's Bank of Virginia by deducting from the book value per share of said stock of $107.89 five per cent. of its par value to meet the supposed cost of liquidation, thereby reducing the actual value of the stock to $102.89 per share, which reduction (Virginia owning 9626 shares) places the total value of the stock at $990,419.14, instead of

$1,038,549.14, and reduces West Virginia's 23½% interest therein from $244,059.04 to $232,748.49, with a consequent loss to her of $11,310.55.

Said valuation and finding, with the reasons therefor, are found on pages 85-6 of the Master's report.

XII.

DEFENDANT'S TWELFTH EXCEPTION.
(Bank of Virginia Stock)

The defendant excepts to that portion of the Master's report wherein he ascertains the value as of January 1, 1861, of the stock held by the State of Virginia in the Bank of Virginia by deducting from the book value of $74.99 per share of said stock 5% of its par value to meet the supposed cost of liquidation, thereby reducing the actual value of the stock to $71.49 per share, which reduction (Virginia owning 13,766 shares) places the total value of the stock at $984,131.34, instead of $1,091,312.34, and reduces West Virginia's 23½% interest therein from $256,458.39 to $231,270.86, with a consequent loss to her of $25,187.53.

Said valuation and finding, with the reasons therefor, are found upon pages 86-8 of the Master's report.

XIII.

DEFENDANT'S THIRTEENTH EXCEPTION.
(Bank of the Valley Stock)

The defendant excepts to that portion of the Master's report wherein he ascertains the value as

of January 1, 1861, of the stock held by the State of Virginia in the Bank of the Valley by deducting from the book value of $107.60 per share of said stock five per cent. of its par value to meet the supposed cost of liquidation, thereby reducing the actual value of the stock to $102.60 per share, which reduction (Virginia owning 4839 shares) places the total value of the stock at $496,481.40, instead of $520,676.40, and reduces West Virginia's 23½% interest therein from $122,358.95 to $116,673.12, with a consequent loss to her of $5,685.83.

Said valuation and finding, with the reasons therefor, are found on pages 88-9 of the Master's report.

XIV.

DEFENDANT'S FOURTEENTH EXCEPTION.

(Exchange Bank Stock)

The defendant excepts to that portion of the Master's report wherein he ascertains the value as of January 1, 1861, of the stock held by the State of Virginia in the Exchange Bank by deducting from the book value of $107.20 per share five per cent. of its par value to meet the supposed cost of liquidation, thereby reducing the actual value of the stock to $102.20 per share, which reduction (Virginia owning 8755 shares) places the total value of the stock at $894,761, instead of $938,536, and reduces West Virginia's 23½% interest therein from $220,555.96

to $210,268.83, with a consequent loss to her of $10,287.13.

Said valuation and finding, with the reasons therefor, are found on pages 89-90 of said report.

XV.

DEFENDANT'S FIFTEENTH EXCEPTION.
(Atlantic, Mississippi & Ohio R. R. Co.)

The defendant excepts to that portion of the Master's report wherein he finds that the entire value as of January 1, 1861, of the properties sold by the State of Virginia to the Atlantic, Mississippi & Ohio Railroad Company on December 20, 1870, at the price of $4,000,000, and described in Class F of the supplemental answer, was only $204,688.42, instead of the sum of $4,276,044.39, thereby reducing West Virginia's 23½% interest therein from $1,004,870.43 to $48,101.77, with a consequent loss to her of $956,768.66.

Said finding and the reasons therefor are found on pages 95-8 of the Master's report.

XVI.

DEFENDANT'S SIXTEENTH EXCEPTION.
(Manassas Gap R. R. Stock)

The defendant excepts to that portion of the Master's report wherein he ascertains that the stock owned and held by the State of Virginia in the Manassas Gap Railroad Company on the first day of January, 1861, and of the par value of

$2,105,000, was of no value, instead of finding that it was worth at least par as of that date, thereby denying West Virginia a credit of $494,675.00, being 23½% of said sum.

Said finding, with the reasons therefor, is found upon pages 107-10 of the Master's report.

XVII.

DEFENDANT'S SEVENTEENTH EXCEPTION.
(General Exception)

The said defendant further excepts to many other errors apparent upon the face of said report, and prays that said exceptions, and each of them, may be considered and sustained.

All of which is respectfully submitted.

A. A. LILLY,
Attorney General.

CHARLES E. HOGG,
JOHN H. HOLT,
Of Counsel for West Virginia.

SUPREME COURT, U. S.
FILED
APR 5 1912
JAMES H. McKENNEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1911

No. [illegible] Original

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

ness of which is not questioned, should not be paid, and that if, in the opinion of the court, with all the facts before it, it is proper that the complainant should now advance and pay said compensation allowed to the Master, she will arrange to comply with the order of the court at the earliest practicable moment.

Respectfully,

COMMONWEALTH OF VIRGINIA,
By SAMUEL W. WILLIAMS,
Attorney General of Virginia.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON, and
JOHN B. MOON,
Counsel for Virginia.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1914.

No. 2 Original.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

v.

STATE OF WEST VIRGINIA, DEFENDANT.

COMPLAINANT'S EXCEPTIONS TO REPORT OF THE SPECIAL MASTER, DATED JANUARY 21, 1915.

COMPLAINANT'S EXCEPTION NO. 1.

Complainant respectfully excepts to the finding and conclusion of the special master that the items embraced in the supplemental answer are to be valued as of January 1, 1861, as set out in his report at page 10, as follows:

> "The only right that West Virginia acquired as to these assets or investments, as against Virginia, was the right to require Virginia, on the date agreed upon, to apply the assets or investments, at their fair value at the time agreed upon, towards the

liquidation of her own debt, so that West Virginia could know, when the assets were so applied, the amount of the real debt remaining to which she would be obliged to contribute. It was perfectly competent for the two states to agree upon any date upon which the debt and the value of the assets and the investments, and the difference between the two, could be ascertained. West Virginia's rights do not depend upon any title that she acquired to assets solely owned by Virginia, as to which she did not and could not acquire any title, but they do depend upon the agreement of Virginia to account for these assets or investments, at their fair value upon the date when the amount of the debt is to be ascertained. This is an absolute protection to West Virginia, as Virginia cannot recover any portion of the debt of West Virginia until those assets are thus accounted for and applied. This construction is in my judgment plain, clear, simple, equitable, just, and completely and adequately protects every legal and equitable right of both of the parties thereto.

It is my conclusion, therefore, that the assets are to be valued as of January 1, 1861."

Because:

(1) There was no such agreement as the master has assumed;

(2) There is no warrant for such a construction found in the terms of the contract of separation between the two states; and

(3) The finding and conclusion of the master are in conflict with the decision of this court rendered March 6, 1911, whereby the court adopted as the mode of arriving at the equitable proportion of the principal of the debt to be paid

by the defendant the comparative value of the real and personal property of the two states *at the date of separation, June 20, 1863.*

COMPLAINANT'S EXCEPTION No. 2.

Complainant respectfully excepts to said report for the failure of the master to find and conclude that the items embraced in the supplemental answer are to be valued as of the date of the separation of the two states, June 20, 1863—the date as of which the court, by its decision of March 6, 1911, determined the estimated valuation of the real and personal property of the two states as a basis upon which to apportion the debt between the two states.

COMPLAINANT'S EXCEPTION, No. 3.

Complainant respectfully excepts to the master's report and the findings and conclusions thereof, for this, to-wit: that, in ascertaining and computing the value on January 1, 1861, of the shares of the capital stock of railroad companies the master erred, in that, disregarding other and competent evidence as to said values, he took and considered, solely, the "book values," and the alleged paper earnings of said companies for the periods more or less arbitrarily selected by him, as the same were inaccurately deduced from the book accounts of said companies, as evidence of the true value of said shares, as of said date.

Said "book values" did not constitute any valid or reliable evidence as to the true value of said properties inasmuch as they represented merely the original cost thereof; and both the said "book values" and the said "paper earnings" are unreliable and misleading as evidence of the true values of said properties because, in their computation no account whatever was taken of the depreciation and necessary cost of renewal of the physical properties of said companies.

This exception is respectfully taken and is asked to be considered as taken (as though the same were in each instance reiterated), to the findings and conclusions of the master, as expressed, and to the method by which the same were reached, as said method and findings are set forth: as to the holdings of Virginia in the Richmond, Fredericksburg & Potomac R. R. Co. at pages 32, 33 and 34 of the master's report; as to the Orange and Alexandria R. R. Co. at pages 36, 37 and 38; as to the Richmond and Danville R. R. Co. at pages 39, 40 and 41; as to the Richmond and Petersburg R. R. Co. at pages 42, 43 and 44; and as to the Virginia Central R. R. Co. at pages 45 and 46 of said report.

COMPLAINANT'S EXCEPTION, No. 4.

Complainant respectfully excepts to the finding and conclusion of the master in allowing $149,984.00 as the basis for an item of charge against Virginia and of credit to West Virginia, being the value of a "dividend bond" of the Richmond, Fredericksburg and Potomac R. R. Co. held by Virginia, for which obligation Virginia realized only the equivalent of $19,111.11 in lawful money, that being the value of the Confederate currency in which said obligation was paid off by said company, which was all that the complainant ever realized or can ever realize from said dividend bond. (See plaintiff's exhibit, No. 3, 363 E.)

COMPLAINANT'S EXCEPTION, No. 5.

Complainant further excepts to the findings and conclusions of the master as to the value as of January 1, 1861, of the holdings of Virginia in the James River and Kanawha Company, as set forth at pages 100 to 106 of his report, for the reason that said findings and conclusions and the grounds upon which they are based, are in conflict with the master's former finding, and with the

evidence in the cause, which demonstrates that after making the necessary, reasonable and moderate allowance for depreciation of its physical property. Said company was to all practical intents and purposes insolvent on and after January 1, 1861; and, at any rate, the holdings of Virginia therein, possessed no dividend earning capacity, and no appreciable value, whatever, on or after that date.

All of which are respectfully submitted.

COMMONWEALTH OF VIRGINIA,
By JNO. GARLAND POLLARD,
Attorney General of Virginia.

RANDOLPH HARRISON,
WILLIAM A. ANDERSON,
Of Counsel for Virginia.

FILED
MAR 1 1915
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1914—No. 1, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

Brief and Argument of the Bondholding Creditors of the Commonwealth of Virginia in Support of the Special Master's Report Dated January 21, 1915.

HOLMES CONRAD,
Attorney for the Bondholding Creditors of the Commonwealth of Virginia.

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Supreme Court of the United States

October Term, 1914.

No. 2 Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

Exceptions of the Bondholding Creditors of the Commonwealth of Virginia to Report of the Special Master, Dated January 21, 1915.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioners, the Bondholding Creditors of the Commonwealth of Virginia, by Holmes Conrad, their attorney, humbly pray leave to file the annexed exceptions to the report of the Honorable Charles E. Littlefield, Special Master, in the above cause, which report was filed in this court on the 22nd day of January, 1915.

And as in duty bound your petitioner will ever pray.

BONDHOLDING CREDITORS OF VIRGINIA,
By Holmes Conrad,
Their Attorney.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1914.

No. 2 Original.

COMMONWEALTH OF VIRGINIA,
Complainant,
vs.
STATE OF WEST VIRGINIA,
Defendant.

Exceptions of the Bondholding Creditors of the Commonwealth of Virginia to Report of the Special Master, Dated January 21, 1915.

For errors of law apparent in the record, the Bondholding Creditors of Virginia respectfully except to the conclusions, findings and allowances contained in the Master's Report, as hereinafter set out and specified.

I. FIRST EXCEPTION.

The Bondholding Creditors of Virginia respectfully except to the conclusion that the assets are to be valued as of January 1, 1861, as contained in paragraph SECOND, at page 10 of the Master's Report, as follows:

> "The only right that West Virginia acquired as to these assets or investments, as against Virginia, was the right to require Virginia, on the date agreed upon, to apply the assets or in-

vestments, at their fair value at the time agreed upon, towards the liquidation of her own debt; so that West Virginia could know, when the assets were so applied, the amount of the real debt remaining to which she would be obliged to contribute. It was perfectly competent for the two States to agree upon any date upon which the debt and the value of the assets and the investments, and the difference between the two, could be ascertained. West Virginia's rights do not depend upon any title that she acquired to assets solely owned by Virginia, as to which she did not and could not acquire any title, but they do depend upon the agreement of Virginia to account for these assets or investments, at their fair value upon the date when the amount of the debt is to be ascertained. This is an absolute protection to West Virginia, as Virginia cannot recover any portion of the debt of West Virginia until those assets are thus accounted for and applied. This construction is in my judgment plain, clear, simple, equitable, just and completely and adequately protects every legal and equitable right of both of the parties thereto.

It is my conclusion, therefore, that the assets are to be valued as of January 1, 1861."

II. Second Exception.

The Bondholding Creditors of Virginia respectfully except to the failure of the Master to conclude or hold that the assets are to be valued as of June 20, 1863.

III. Third Exception.

The Bondholding Creditors of Virginia respectfully except to the failure of the Master to conclude or hold that the assets are not to be valued in excess of the price or amount that Virginia received therefor.

IV. Fourth Exception.

The Bondholding Creditors of Virginia respectfully except to the failure of the Master to conclude or hold that Virginia should not be charged with a value for the assets in excess of the price of amount that Virginia received therefor.

V. Fifth Exception.

The Bondholding Creditors of Virginia respectfully except to the allowance as the value of the Richmond, Fredericksburg & Potomac Railroad Company Stock as of January 1, 1861, and the basis upon this said allowance is reached as contained at pages 33 and 34 of the Master's Report as follows:

> "The dividend for 1860 was 7 per cent. No dividends were paid upon this stock in 1856, 1857 and 1858, and one-half of the dividend in 1854 and the whole of the dividend in 1855 were paid in bonds. Estimated at 7 per cent, this would increase the surplus $315,000, and would result in a corresponding increase in the book value. I do not think the stock quotations as reliable an indication of value as the actual 'conditions.' The book value and the earning value are so far apart that I do not take the (mathematical) book value as the standard, but combine the two, 150.04 plus 84.83 equals 234.87, one-half of which is 117.43. 2,572 shares at 117.43 is $323,167.36.
>
> I do not deduct 5 per cent to reach the 'cash market value,' as I do not use the book value as the standard of value.
>
> I allow ..... $323,167.36,"

because the Master disregarded other competent evidence of value and considered solely the alleged "book value" and a capitalization of dividends for the next

preceding eleven years. The alleged "book value" is not competent or proper evidence and should not have been considered, and the Master should have capitalized the dividends for the next preceding five years as in case of the other securities, instead of the next preceding eleven years.

VI. Sixth Exception.

The Bondholding Creditors of Virginia respectfully except to the allowance as the value of the Orange & Alexander Railroad Company Stock and Loan as of January 1, 1861, and the basis upon which said allowance for the stock and loan is reached as contained at page 38 of the Master's Report as follows:

> "The average profits for five years ending and including 1860 were $30,061.45. It does not appear that anything is allowed for depreciation in any of the railroad stock estimates. This capitalized at 6 per cent would show a value of $501,024.16, or 24.57 per cent of $2,039,603.73, the total capital stock in 1860.
>
> There is such a wide difference between the mathematical book value and the value on an earning basis, that I do not feel justified in taking the book value as the standard of value, and I reach the value by combining the book and the earning value of 24.57 per cent of $50 a share, which is $12.28. Add to this the book value of $53.32, we have $65.60, one-half of which is $32.80, 17,490 shares at $32.80 is $573,672.
>
> I allow ..... $573,672.
>
> I do not deduct 5 per cent from the book value in this computation to get the actual cash market value, as I do not use the book value as the standard of value.
>
> If there is any basis for the contention vigorously insisted upon by the plaintiff that the value of all of these corporations was practically destroyed by the end of the war in 1865,

> their subsequent financial history can give no aid in determining their value January 1, 1861. The road was being operated at a profit. Its loan must have been good.
>
> I allow ..... $398,670.60,"

because the Master disregarded other competent evidence of value and considered solely the alleged "book value" and in capitalizing the profits the Master made no allowance for maintenance and depreciation. The alleged "book value" is not competent or proper evidence and should not have been considered, and the Master should have made a deduction for maintenance and depreciation in capitalizing the profits, the proper allowance for which would have entirely consumed the paper profits.

VII. Seventh Exception.

The Bondholding Creditors of Virginia respectfully except to the allowance as the value of the Richmond & Danville Railroad Company Stock and Loan as of January 1, 1861, and the basis upon which said allowance for the stock and loan is reached as contained at pages 40 and 41 of the Master's Report as follows:

> "The average profit of this road for the five years ending and including 1860 was $179,782.12. This capitalized would give $2,996,368.67. The profits increased from 1856 to 1860, $27,550.08, and the profit for 1860 was $45,286.86 in excess of the average, showing a marked increase in the earning value, and that the road was prosperous.
>
> For a stock which on the average for six years earned 9 per cent profit, a profit of about 11 per cent in 1860, and increased its profits from $139,489.12 in 1857 to $225,068.98 in 1860, or $85,579.86, it seems that a quotation of 57 or 60 is 'exceedingly' low.

> I do not think the stock quotations furnish as reliable an indication of value as the financial condition of the Company disclosed by the record.
>
> I think the 'cash market value' 137.37, minus 5, 132.37, is the best estimate I can make of the value of this stock.
>
> I allow ..... $1,588,440.
>
> This road was being operated at a profit. Its loan must have been good.
>
> I allow ..... $565,803.34,"

because the Master disregarded other competent evidence of value and considered solely the alleged "book value" and paper profits, and because the Master capitalized said book or paper profits without any allowance for maintenance or depreciation, instead of capitalizing the dividends. The alleged "book value" is not competent or proper evidence of value and should not have been considered. The book or paper profits without any proof of how they were arrived at and without any proof of deduction for maintenance and depreciation are not competent evidence of actual earnings and should not have been so considered and capitalized by the Master. The alleged "book value" only purports to represent original cost.

VIII. Eighth Exception.

The Bondholding Creditors of Virginia respectfully except to the allowance as the value of the Richmond & Petersburg Railroad Company Stock as of January 1, 1861, and the basis upon which said allowance is reached as contained at page 44 of the Master's Report as follows:

> "The profit for 1860 was $69,087.87, on a capital of $835,750, or more than 8 per cent $53,627.66, capitalized, is $893,794, or 106.95 per cent of the capital for 1860. All of the

> quotations for this stock are 'Last sales,' without any information as to when the 'Last sales,' took place, and at from 64 to 57 1/2. I do not feel at liberty to take these 'Last sales,' as against the condition disclosed in the record. As the value as shown by the earnings is less than the book value, I have combined the two, and the result is a value of $114.40.
>
> I allow ..... $441,126.40,"

because the Master disregarded other competent evidence of value and considered solely the alleged "book value" and paper profits, and because the Master capitalized said book or paper profits without any allowance for maintenance or depreciation, instead of capitalizing the dividends. The alleged "book value" is not competent or proper evidence of value and should not have been considered. The book or paper profits without any proof of how they were arrived at and without any proof of deduction for maintenance and depreciation are not competent evidence of actual earnings and should not have been so considered and capitalized by the Master. The alleged "book value" only purports to represent original cost.

IX. Ninth Exception.

The Bondholding Creditors of Virginia respectfully except to the allowance as the value of the Virginia Central Railroad Company Stock, as of January 1, 1861, and the basis upon which said allowance is reached as contained at page 46 of the Master's Report as follows:

> "The average net earnings of the road, annually, for four years, to and including 1860, were $221,234.06. I have excluded the net earning for 1856 of $381,176.68, or over 12 per cent on the then capital, as that appears to have been unusual. The net earnings for 1860

were nearly 9 per cent of the then capital; $221,234.06, capitalized, is $3,687,234, or 116.-95 per cent of the capital for 1860. I disregard the stock quotation and the financial history subsequent to 1860, for the reasons already given. The value on the net earning basis is less than the book value. I do not deduct 5 per cent from the book value of this stock for its 'cash market value,' as I do not use the book value as the only standard of value. I reach the value by combining the book value and the earning value. 131.16 plus 116.95 equals 248.11; one-half is 124.05. $1,-927,382.57 at 124.05 is $2,390,918.08.

I allow ..... $2,390,918.08,"

because the Master disregarded other competent evidence of value and considered solely the alleged "book value" and paper profits, and because the Master capitalized said book or paper profits without any allowance for maintenance or depreciation, instead of capitalizing the dividends. The alleged "book value" is not competent or proper evidence of value and should not have been considered. The book or paper profits without any proof of how they were arrived at and without any proof of deduction for maintenance and depreciation are not competent evidence of actual earnings and should not have been so considered and capitalized by the Master. The alleged "book value" only purports to represent original cost.

X. Tenth Exception.

The Bondholding Creditors of Virginia respectfully except to the allowance as the value of the Richmond, Fredericksburg & Potomac Railroad Company Dividend Bond as of January 1, 1861, and the basis upon which said allowance is reached as contained at page 73 of the Master's Report as follows:

"The Richmond, Fredericksburg & Potomac Railroad Company was operated at a profit, and was able to pay on January 1, 1861.

I allow ..... $149,984,"

because the Master disregarded competent evidence that the loan was paid in Confederate money of a total value in gold of $19,111.11, and other competent evidence which conclusively established that the Master should not have allowed in excess of said sum of $19,-111.11.

XI. Eleventh Exception.

The Bondholding Creditors of Virginia respectfully except to the allowance as the value of the James River and Kanawha Company Stock as of January 1, 1861, and the basis upon which said allowance is reached as contained at pages 105 and 106 of the Master's Report as follows:

> "The average net returns for 25 years, $111,800, less the interest on $199,000, $11,-940, is $99,860. I think it reasonable to assume that, if it had not been for the disturbing conditions caused by the war, this average might have been realized from the operations of the Company. This sum makes no allowance for depreciation; and there is nothing in the record, and I have not been able to find any data, which enables me to determine what allowance should be made therefor. I feel certain, however, that this property would require a substantial sum to take care of depreciation. In the absence of information, I do not feel at liberty to conjecture; and while I capitalize $99,860, as the only basis upon which I can predicate a conclusion, in doing so I feel that I reach an excessive valuation, particularly in view of its subsequent history. Capitalized at 6 per cent, we have a value of $1,664,333.

> As the amount of the net earnings would not equal the 6 per cent dividend on the $7,400,000 preferred stock of the State, the whole capitalization properly applies to the State's stock.
> I allow ..... $1,664,333,"

because the Master disregarded other competent evidence that the stock had no value as well as his previous finding to the same effect, and because the Master capitalized the assumed book or paper profits without making any allowance for maintenance or depreciation.

XII. Twelfth Exception.

The Bondholding Creditors of Virginia respectfully except to the failure of the Master to conclude or hold that Virginia had the right to use or apply the assets set out in Defendant's Supplemental Answer and the value or the proceeds thereof to the payment of $1,451,492.01 of the debt of the undivided Commonwealth of Virginia owing on January 1, 1861, and subsequently paid by Virginia at like cost to her, which debt was not included in the bonded debt of the undivided Commonwealth of Virginia as heretofore proved in this suit (Plaintiff's Supplemental Exhibit No. 1; New Record, Vol. Exhibits, pp. 289-295); and to the payment of $12,693,807.32 of interest on the bonded debt of the undivided Commonwealth of Virginia accrued since January 1, 1861, and paid by Virginia at a cost to her on a gold basis of $10,436,101.19 (Plaintiff's Exhibit No. 1, New Record, Vol. Exhibits, pp. 286-288; Plaintiff's Exhibit No. 5, New Record, Vol. Exhibits, p. 375; Plaintiff's Supplemental Exhibit No. 1A, New Record, Vol. Exhibits, pp. 296-299), and to the payment of a further sum of $2,218,319.81 for interest after January 1, 1872, on bonds issued by the present State of Virginia in exchange for the old unfunded bonds of the undivided State for

which Virginia issued her bonds in full (New Record, Vol. Exhibits, p. 419). This makes a total of $14,-105,913.01, representing payments of common debts for which West Virginia and Virginia are each liable in the proportion of their respective shares, and no part of which is included in the common debt as heretofore determined. And Complainant respectfully excepts to the failure of the Master to conclude and hold that as Virginia has discharged common obligations, separate and distinct from and in addition to the common debt as heretofore determined, Virginia should not account to West Virginia for West Virginia's share of the fair value of the assets unless the fair value of the assets exceeds the amount of her expenditures for common obligations and then only to the extent of that excess.

Respectfully submitted,

(

BONDHOLDING CREDITORS OF VIRGINIA,
By Holmes Conrad,
Their Attorney.

FILED
APR 12 1915
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1914.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

Brief for the Bondholding Creditors upon the Exceptions to the Report of the Special Master, Dated January 21, 1915, upon the Issues Raised in the Supplemental Answer of West Virginia Claiming a Set Off Because of Certain Alleged Assets.

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The following pages contain an examination and criticism of the cases cited in the briefs of West Virginia presented to the Master to sustain the contention that "par value" and "book value" are evidence of actual value.

These cases may be urged before this Court by West Virginia. They do not establish the principles contended for but they do conclusively establish the direct opposite. They show that neither "par value" or "book value" are competent evidence to establish actual value.

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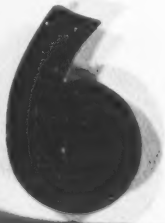

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 2 Original.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.	In Equity.

Brief for the Bondholding creditors upon the exceptions to the report of the special master, dated January 21, 1915, upon the issues raised in the supplemental answer of West Virginia, claiming a set off because of certain alleged assets.

Statement of the Case.

The prayer of West Virginia's supplemental answer is as follows:

> "And now, having fully answered, this defendant prays that the amount and value of the assets as of January 1, 1861, and as of June 20, 1863, hereinbefore set out, that were acquired prior to said first named date by the Commonwealth of Virginia with the common funds of the two states, and were owned by her

on said date, and subsequently appropriated to her own use in kind, or sold, and the proceeds of such sales so appropriated, or were given away by her, and for which the State of Virginia has not accounted unto the State of West Virginia, in whole or in part, may be ascertained; that twenty-three and one-half per cent (23 1/2%) of the value of said assets as of the one date or of the other, be likewise ascertained, and that the same be applied as a credit upon that portion of the principal of the Virginia debt assumed by this defendant, as heretofore determined by this Honorable Court, and that the balance thus found due and payable by this defendant, if any, be decreed without interest."

These assets are arranged in the answer and were presented at the hearing under seven groups as follows:

"Class A" relates to the money on hand in the treasury of Virginia.

"Class B" relates to the Richmond, Fredericksburg & Potomac Railroad Company stock. Virginia had 2,752 shares of the capital stock of this company which she still holds and owns. This is the only investment of all of those set up in the supplemental answer which Virginia has retained to the present time. All the others have perished or have been disposed of as hereinafter indicated.

"Class C" relates to various stocks and loans which were disposed of for old bonds of the undivided Commonwealth of Virginia and cash amounting to something over $6,000,000 (Exhibits, p. 12b; p. 107). This sum is arrived at by taking old bonds and accrued interest at par and payments made in Confederate money at face and not reduced to gold.

"Class D" relates to income from dividends and interest upon loans accrued prior to January 1, 1861,

and June 20, 1863, and subsequently collected by Virginia.

"Class E" represents bank stocks all of which except the stock received by West Virginia utterly perished with the Confederacy, and for which Virginia never received one cent.

"Class F" comprises certain securities subsequently sold by Virginia for $500,000.

"Class G" represents securities for which Virginia never received anything whatsoever.

There is no dispute about the figures. All that Virginia ever received in exchange for all of her investments was less than $7,000,000 and of this over $5,000,000 represented old bonds of the undivided Commonwealth of Virginia and accrued interest thereon and bonds Virginia issued to pay such interest; then worth in the market about $2,500.00 (Exhibits, pp. 360-363). The only stock Virginia retains today is the Richmond, Fredericksburg & Potomac Railroad Company stock.

And yet the Master reaches a result by which he charges Virginia with over $14,500,000 (Master's Report, p. 115). This is something over twice the amount that Virginia actually received for all her investments even if the old bonds of the undivided State and accrued interest thereon and bonds issued to pay such interest are taken at par and accrued interest.

The policy of Virginia with reference to her investment was declared in an Act passed March 26, 1853 (Record, Vol. 1, p. 652), and which contained a provision as follows:

> "3. If at any time the legislature shall direct a sale of the stocks held by the Commonwealth in internal improvement and other companies, the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be ap-

> plied in like manner. The sinking fund, and its accruing interest, shall not be otherwise appropriated than is herein directed, except in time of war, insurrection and invasion."

The policy declared in this statute was in accordance with the earlier policy of the State as declared in a statute passed April 9, 1838 (Record, Vol. 1, p. 662), which contained a provision as follows:

> "3. For the payment of the interest and the final redemption of the principal of any sum to be borrowed in conformity to this act, the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other net income which may accrue therefrom to the Commonwealth, or to the fund for internal improvement, shall be, and the same are hereby appropriated and pledged. * * *"

These provisions did not make it incumbent upon Virginia to sell the investments at any time but they did provide that if Virginia should sell her investments that so long as any of the debt was outstanding the proceeds of the investments should go to liquidate the debt. Virginia has always scrupulously complied with this provision.

In February 1866 almost as soon as the war was over Virginia passed a statute to provide for settlement with West Virginia of the debt of the old State but West Virginia refused to treat with the Commissioners appointed by Virginia. Again in 1870 Virginia endeavored to get West Virginia to settle the debt question and again West Virginia failed to respond (West Va.'s Appendix to West Va.'s Comp., Vol. 1, pp. 444-454) Virginia being unwilling to delay settlement with her creditors longer in 1871 passed a statute authorizing the settlement of West Virginia's share of the debt by arbitration and herself

settled with the bondholding creditors to their satisfaction, by paying with her new bonds at like rate of interest, two-thirds of the old bonds and all accrued interest thereon to date; and two-thirds of all bonds previously issued to pay interest on the original debt with interest on such bonds (Original Record, pp. 17-21).

It was not until after Virginia had passed the statute authorizing arbitration that West Virginia was ever willing to treat with Virginia and then she was only willing to discuss, not to settle or arbitrate. The West Virginia Commission then appointed made a report known as the Bennett Report of 1871 in which they found West Virginia's share of the debt to be about $950,000. The Senate Finance Committee of West Virginia repudiated this finding and reported that West Virginia owed nothing (West Va.'s Appendix to West Va.'s Comp., Vol. 1, pp. 454-493).

It has been already stated that of approximately $7,000,000 received by Virginia for her investments, over $5,000,000 was exchanged for the old bonds of the undivided State and accrued interest and that less than $2,000,000 some of which was paid in Confederate money was received in money. Virginia since January 1, 1861 has paid off common obligations, seprate from and in addition to the common debt heretofore determined in this case in sums aggregating over $14,000,000 (Exhibits, pp. 285-299).

Under the statute of 1853 referred to above, old Virginia, if she disposed of any of her investments, was bound to apply the proceeds thereof to the extinguishment of the debt. It is proved on this hearing that Virginia paid off about one million and a half of principal debt in addition to the debt heretofore proved in this case (Exhibits, p. 289), and up-

wards of $12,000,000 of interest on the old debt of the undivided State (Exhibits, pp. 285-299).

West Virginia and Virginia were one in 1853 and the statute referred to and quoted from above, is as binding upon West Virginia as upon Virginia. Virginia having applied the proceeds of the investments to the discharge of common obligations as she was bound to do cannot now be charged by West Virginia with the value of such investments.

Virginia, while insisting that West Virginia has no right whatever to any of these investments or the proceeds thereof contends that the value of the investments should be determined as of June 20, 1863, and not as of January 1, 1861, and that in no event should she be charged with more than she actually received therefor. West Virginia claims that Virginia should be charged with the value of the investments as of January 1, 1861, claiming that Virginia is in the position of a thief or one who has wrongfully taken possession of property. Virginia denies this. The Master placed his decision upon a new ground, not supported by any evidence in the case either in this record or the original record. His reason for valuing the assets as of January 1, 1861, was that Virginia made an agreement "to account for these assets or investments at their fair value upon the date when the amount of the debt is to be ascertained." The agreement contained in Article VIII, Section 8 of West Virginia's Constitution will not bear any such construction.

In addition to this error as to the date as of which the investments are to be valued, the Master fell into serious error in determining their value. He found it unnecessary to determine the value as of June 20, 1863, and reported values only as of January 1, 1861. In the stocks which are the subject of our fifth, sixth, seventh, eighth and ninth exceptions, the Master

relied upon the so-called book values of the securities. In the case of the Richmond, Fredericksburg & Potomac Railroad Company there was a trial balance although the accountant for West Virginia admitted for reasons which we shall point out later that the so-called book value based upon it was of doubtful value in arriving at the value of the stock. In the case of the other four railroad stocks the alleged book value is not book value at all, but merely the par value as of the year 1856 to which were added annual paper profits without knowing or showing in any way how the profits were made up, or what charges were made for maintenance or depreciation, or to what extent the capital had been impaired.

The Master refused to consider public quotations of actual current sales for these securities published in the Richmond papers of the time and relied upon by the community as representing the correct market values of the securities. His reason for this is not entirely clear but apparently the fact that there was not an established stock exchange and that the sales of the securities, judged by modern standards were few, seemed to him to require that the quotations should be disregarded. These quotations were being continuously and continually published in the Richmond Despatch, a paper of the highest reputation in Richmond, from quotations furnished by brokers of the highest reputation, based upon actual sales made by the brokers, and the quotations were relied upon by the community. It seemed to Virginia that the market so established was in every sense an open and true market and represented market values just as much as if the quotations were quotations made upon a stock exchange.

Certainly, at this late day, over fifty years after the period in question the quotations furnish a much bet-

ter guide for the Master to the value of the securities than these alleged book values which, as regards the railroads, with one exception, were nothing but the par value as of 1856, plus alleged paper profits, without any knowledge whatever of how they were made up; without any knowledge of the maintenance, depreciation or other operating charges; and without any knowledge of the actual value of the corporate assets.

No one of these companies ever paid a dividend after 1864 except the Richmond, Fredericksburg & Potomac Railroad Company which paid one dividend in 1874 and finally resumed dividends in 1882, and the Exchange Bank, which in 1865, paid dividends on a gold basis of 3/200 of one per cent.

In discussing the different securities later we shall show that the values found by the Master to which we except are not justified by the dividend records of the companies nor by any of the other circumstances bearing upon the value of the assets or the business of the various corporations; nor the conditions prevailing in Virginia at the time.

Finally we shall show that West Virginia has no right, title or claim to these investments or the proceeds or the value thereof, on any basis.

West Virginia was admitted into the Union under a Constitution defining her rights and liabilities. The Constitution made no reference whatever to these investments. West Virginia could have made no claim against Virginia on account thereof and having no claim against Virginia, because of the investments or their value, she cannot offset their value in this suit.

We will discuss these points under the following heads.

FIRST: *The value of the assets should be determined as of June 20, 1863, and not as of January 1, 1861.*

*There is no evidence in the new or the original record to sustain the finding of the Master that "West Virginia's rights * * * depend upon the agreement of Virginia to account for these assets or investments at their fair value upon the date when the amount of the debt is to be ascertained." There is no duty resting upon Virginia to charge her as of any date prior to June 20, 1863.*

SECOND: *In no event should Virginia be charged with more than she actually received for the investments.*

THIRD: *The proof discloses that the value on January 1, 1861, of the investments held by Virginia did not exceed $8,661,462.70.*

FOURTH: *The proof discloses that the value on June 20, 1863, of the investments held by Virginia, did not exceed $1,389,313.56.*

FIFTH: *The proof discloses that the proceeds of all the investments received by Virginia did not exceed $3,630,006.10.*

SIXTH: *Even if West Virginia should be found entitled to twenty-three and one-half per cent (23½%) of the value of the assets claimed by West Virginia in no event would this reduce the amount of West Virginia's share of the principal sum heretofore determined because Virginia subsequent to January 1, 1861, from her separate and individual resources or from the proceeds of the assets in question paid off obligations of the old undivided State for which West Virginia was liable as to her share to an amount far in excess of the value of the assets received*

by Virginia. Virginia is entitled to use and apply the investments held by her and the value or the proceeds thereof to the payment of the obligations of the undivided Commonwealth of Virginia.

SEVENTH: *West Virginia's claim if proved will not reduce the amount, owing by West Virginia for either principal or interest in any degree. West Virginia's equitable proportion was determined on the basis of the ratio of the total wealth of the two States. It is immaterial what proportion of the wealth of either State was held in common by the State or in separate ownership by individuals, or what proportion of the wealth of either State was created by the proceeds of the common debt.*

EIGHTH: *The terms upon which West Virginia was admitted into the Union are all set out in the contract evidenced by the three documents (220 U. S., 28), viz., The Constitution framed for West Virginia, the Act of Virginia consenting to the creation of the new State and the Act of Congress admitting the new State. Neither this court or the Congress can add one term or condition now to that contract.*

NINTH: Interest.

POINT ONE.

The value of the assets should be determined as of June 20, 1863, and not as of January 1, 1861. There is no evidence in the new or the original record to sustain the finding of the master that "West Virginia's rights, * * * * depend upon the agreement of Virginia to account for these assets or investments at their fair value upon the date when the amount of the debt is to be ascertained." There is no duty resting upon Virginia to charge her as of any date prior to June 20, 1863.

A. *There is error in holding as is held in paragraph Second, page 10 of the Master's Report, "that the assets are to be valued as of January 1, 1861."*

The "assets" here referred to are specifically set out in the supplemental answer filed on June 8, 1914, under leave of the Court granted in the opinion of the Court delivered on that day. It is stated in the answer, page 12:

> "FIRST: That, prior to the establishment of the State of West Virginia out of the territory of the Commonwealth of Virginia on the twentieth day of June, 1863, and prior to the first day of January, 1861 (West Virginia, by her Constitution, having assumed an equitable proportion of the public debt of the Commonwealth of Virginia existing prior to the latter date), the Commonwealth of Virginia purchased with the bonds that evidenced her public debt existing prior to the first day of January, 1861, or out of the proceeds of the sale thereof certain stocks, bonds, securities and other properties, and made loans to various persons and companies, and was the owner and holder of said stocks, bonds, securities and other properties on the first day of January, 1861, as well as upon the twentieth day of June, 1863, and, after said last named date, has continued until the present time to hold, own and enjoy the fruits of a portion of said securities and properties; has sold certain other portions thereof for many millions of dollars; collected said loans, and given away the residue of said securities, without the knowledge or consent of this defendant, except as hereinafter stated."

The claim asserted in said answer is that West Virginia is entitled to have twenty-three and one-half per cent of the amount in value of said assets credited to her, and applied as a set off to the principal of the debt as ascertained by the Court in 220 U. S., 1.

If the claim so asserted has any elements of merit whatever wherein is the propriety or the lawfulness of ascertaining the value of such assets as of January 1, 1861? A bare recital of the historical facts should suffice to repel such contention.

On November 28, 1861, the people of that portion of the Territory of Virginia which now forms the State of West Virginia assembled in convention and

framed a constitution for the proposed new state. By Section 8 of Article VIII, of that Constitution it was provided as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

On June 20, 1863, Congress passed the Act for the admission of the new State of West Virginia into the Union. Up to the 20th day of June, 1863, all the territory now forming West Virginia and all the people residing in that territory were part and parcel of the Commonwealth of Virginia; were subject to her jurisdiction and derived their civil and political rights and liabiilties under her Constitution and laws. Prior to the 20th day of June, 1863, the State of West Virginia could have no civil or political rights, or be subject to any liabilities for the reason that she had no civil or political existence. The Constitution although framed in November, 1861, had no effect or operation and indeed had no existence as the Constitution of a State of this Union, until June 20, 1863. The provision contained in Section 8 of Article VIII of that Constitution as to the assumption by West Virginia of a proportion of the public debt of Virginia "prior to the first day of January, 1861" took effect only from the 20th day of June, 1863.

It is indeed true, that there existed from June, 1861, until June 20, 1863, two States of Virginia. One, the ancient Commonwealth of Virginia, was, after April 17th, 1861, at war with the Government of the United States; the other, the "Restored State of

Virginia" was created in June, 1861, and was recognized by the Government of the United States, as the real and only State of Virginia. It was this "Restored State of Virginia" composed almost entirely of the people of the present State of West Virginia—that gave the consent of Virginia to the erection of a new State within her territory and framed the Constitution for the proposed new State. It cannot be doubted for a moment, that the "Restored State" would have consented to any terms that might have been suggested, for the equalization of the burden of the public debt between the Commonwealth of Virginia and the new (proposed) State of West Virginia, in such proportion as might seem to it to be equitable. It would have consented that Virginia should be charged with the value of all the public property of every kind that remained within her borders. It would have consented to a provision for "owelty of partition."

It might and doubtless would have consented to all these things had it been asked or had it been suggested that it would be prudent for it to do so. But it did consent to but one thing and that was the erection of the new State, under the provisions of the Constitution that had been framed for it. The Master, in his report on page 10 says:

> "West Virginia's rights do not depend upon any title that she acquired to assets solely owned by Virginia, as to which she did not and could not acquire any title, but they do depend *upon the agreement of Virginia to account for these assets or investments, at their fair value upon the date when the amount of the debt is to be ascertained.*"

The thousand of pages of this record afford no colour of ground for this assumption. No such agreement on the part of Virginia—even of the "Restored

State" was ever made or implied from the facts here shown.

Mr. Justice Holmes, speaking for the Court in Virginia vs. West Virginia, 220 U. S., page 28, refers to the Constitution of West Virginia and to the Act of Congress admitting West Virginia and says:

> "These three documents would establish a contract without more. We may add, with reference to an argument to which we attach little weight, that they establish a contract of West Virginia with Virginia. There is no reference to the form of the debt or to its holders, and it is obvious that Virginia had an interest that it was most important that she should be able to protect. Therefore West Virginia must be taken to have promised to Virginia to pay her share, whoever might be the persons to whom ultimately the payment was to be made."

Nowhere in these three documents or elsewhere can be found any agreement on the part of Virginia "to account for these assets or investments at their fair value, upon the date when the amount of the debt is to be ascertained."

And if such was the agreement between the parties that the assets should be valued *"upon the date when the amount of the debt is to be ascertained"* how can the Master justify himself in fixing the first day of January, 1861, as the date for such valuation?

The only agreement that is shown here, between Virginia and West Virginia, is the agreement evidenced by the three documents, viz: That Virginia consented to the erection of the new State, within her territory, upon the terms and provisions of the Constitution framed for the new State.

B. *The assets should not be valued as of any day earlier than the 20th day of June, 1863.*

1. For the reasons already assigned why they should not be valued as of January 1, 1861.

The Master in his report at page 10 seeks to overcome these reasons, as follows, viz:

> "It may be said that this conclusion results in an incongruity, as West Virginia did not become a State until June 20, 1863, and could not therefore acquire any title to the assets or investments on January 1st, 1861, as she was then non-existent."

The reply to that position is that it is without any foundation in fact. Nowhere in this record has it been claimed or suggested on the part of Virginia or of her bondholding creditors that West Virginia's claim to have twenty-three and one-half per cent of the value of these assets applied as a set off to the amount ascertained and determined as Virginia's claim (220 U. S., 35) rested upon any claim of title by West Virginia to such assets. Our objection is that by this report there is recognized and allowed to West Virginia as a credit an amount equal to twenty-three and one-half per cent of the therein reported value of these assets as of January 1, 1861.

It will be argued later on that the values reported are artificial and excessive; that West Virginia had no interest whatever in these assets and no valid claim to any part of the value thereof; and further that if she had any such interest or claim she had no right to have the amount of the value of such interest applied in this suit, as a counterclaim or set off to the amount of the principal debt heretofore ascertained to be due by her to Virginia.

But if Virginia is to be charged in this suit with the value of twenty-three and one-half per cent of the assets which consisted of the debris of the unfinished works of internal improvement which were constructed with the money borrowed by Virginia and

evidenced by the interest bearing bonds that "represented the public debt of the Commonwealth prior to January 1, 1861," which debris remained within the limits of Virginia after the secession from the Commonwealth of the State of West Virginia—then we insist that such assets should be valued not earlier than the 20th day of June, 1863, the date of the creation of the State of West Virginia. So much indeed we think this Court has already decided. In Virginia vs. West Virginia, 220 U. S., 34, this Court said:

> "We are of opinion that the nearest approach to justice that we can make, is to adopt a ratio determined by the Master's (report of March 17, 1910) estimated valuation of the real and personal property of the two States on the date of the separation, June 20th, 1863."

This was to be sure in estimating the basis of West Virginia's liability to Virginia of her proportion of the principal of the debt, but if Virginia's claim against West Virginia was properly ascertained as of that date, what reason can be suggested for departing from that date in estimating the amount of West Virginia's claim for her proportion of the assets or investments which West Virginia now seeks to apply as a set off?

POINT TWO.

In no event should Virginia be charged with more than she actually received for the investments.

This and the previous point present our first four exceptions. It has been shown that there is no evidence in the record to warrant the Master's finding that Virginia made an agreement "to account for these assets or investments at their fair value upon the date when the amount of the debt is to be ascertained." Section 8 of Article VIII of the West Virginia Constitution contains no such provision. Nor is there any evidence in the record to warrant the contention of West Virginia that the conduct of Virginia created a duty upon her to account for the investments at their fair value on January 1, 1861. On the argument before the Master, West Virginia's attorneys were repeatedly asked what Virginia had done that she ought not to have done or had failed to do that she ought to have done to impose this liability upon her. In reply counsel for West Virginia compared Virginia to a thief; or to one who had gone into a jewelry shop, taking a jewel without permission, intending to return it, but who had lost the jewel; or to an heir who, after he had received a valuable inheritance, declined to open the testator's strong box and apply the assets therein contained to the payment of the testator's debts and in the meantime the assets had become worthless.

There is no evidence in the record to sustain these contentions of West Virginia. Until June 20, 1863, West Virginia was a part of the old State of Virginia and it could not be certainly said that she would be admitted as a State. Until the events occurred it could

not be said that Congress would give its consent or that West Virginia would comply with the conditions Congress imposed.

Even if the admission of West Virginia as a State had been definitely known in advance, this did not impose upon the undivided State of Virginia or the present State of Virginia then non-existent, the duty of disposing of the assets at an impossible price or guarteeing their value. Certainly on January 1, 1861, no duty rested upon Virginia to account for these assets and no duty could possibly arise before the dismemberment of the old State, June 20, 1863. In the meantime there was war between the States and on June 20, 1863, the value of these assets was rapidly reaching the vanishing point to which it arrived with the collapse of the Confederacy. It cannot be doubted that if Virginia had attempted to sell these assets on January 1, 1861, they would have realized far less than the sum which the Master finds as their value on that date, and with the war they started to decline in value. During the war there was no market for these investments in any large amounts either within or without Virginia. When the war ended the investments were worthless. It was only by holding them for many years and exchanging them for the unfunded bonds of the old State which with some accrued interest were then selling at approximately fifty per cent (50%) of par that Virginia was able to realize anything whatever on her investments. There is no evidence that Virginia might have received more than she did get, and there is no question but that the sums realized were far in excess of anything that could have been secured by any other or different disposal.

The Act of the General Assembly of the Restored State of Virginia, passed February 3, 1863, referred to in Paragraph VIII of the Bill and printed in full in West Virginia's Compilation, Vol. 1, Appendix, pp.

POINT THREE.

The proof discloses that the value on January 1, 1861, of the investments held by Virginia did not exceed $8,661,462.70.

The value of Virginia's investments will be presented in this point by groups under the same headings that they are classed in the answer and were considered at the hearing.

CLASS A.

Cash.

The Master finds that the cash in the Sinking Fund of the Commonwealth of Virginia on January 1, 1861, was $819,250.03, and no exception is taken to this finding.

Virginia used this cash and much more to pay interest on the common debt (Exhibits, pp. 285-288, including insert pages 287a-287b). Furthermore, West Virginia received $170,771.46 from the Restored Government of Virginia at the time of her creation (Original Master's Report, p. 181).

CLASS B.

Richmond, Fredericksburg & Potomac Railroad Company.

2,752 shares of the capital stock of the Richmond, Fredericksburg & Potomac Railroad Company. (The bondholding creditors' fifth exception and West Virginia's second exception.)

The defendant claims a value of $150 a share amounting to $412,800 (Exhibits, pp. 2, 66), based

upon an alleged book value. Virginia claims the value of the stock at $210,528.00 based upon market quotations (Exhibits, pp. 334, 381). The Master disregarded the quotations entirely and determined the value of this stock by averaging the alleged book value with a sum secured by capitalizing average dividends over a period eleven years next preceding. He treated dividends paid in bonds afterwards discharged in Confederate money as if paid in gold. The Master allowed $323,167.36.

Market Quotations.

The market quotations upon which Virginia relies are contained in Plaintiff's Revised Exhibit No. 2 (Exhibits, pp. 322-358; also New Record, pp. 1197-1297). It appears from the depositions of Mr. John L. Williams and others printed in the record at pages 1197-1297, that the quotations upon which the plaintiff relies were printed in the Richmond Despatch, a newspaper of the highest reputation in Richmond; that the quotations were furnished by John Lancaster & Son, Lancaster & Co., and by Davenport & Co., brokers of the highest standing based upon actual sales, and that these market reports were recognized and accepted by the community and relied upon accordingly. Judged by the standards of today the transactions were not many and they were not made upon the floor of an authorized stock exchange. It is difficult to see however how such added facts could have added to the reliability of the quotations. The quotations seem to us to meet all the technical requirements of the cases cited by the Master. Under the circumstances of this case where values of over fifty years ago are seeking to be established the quotations furnish a much better guide than anything else the Master could secure to act upon. It is true there were not quotations for all the securities. Some of the se-

curities apparently were not dealt in, but the fact that some of the securities were not traded in is no reason for rejecting the quotations of those securities which had a market value. At page 23 of the Master's report a criticism by the plaintiff of the quotation found for the James River and Kanawha Company's stock is treated by the Master as a recognition by the plaintiff of the infirmity of the quotations for all of the securities. This is not so, as will be fully explained when that stock is reached. Virginia's holdings of this stock were not traded in. The quotation was for the stock in the hands of the public and this had a special value not belonging to Virginia's stock which accounted for the quotation. The quotation is not criticised. Its application to Virginia's stock only is disputed. Quotations based on last sales of the stock of the Richmond Fredericksburg & Potomac Roilroad Company were reported on December 14, 1860, and again on January 4, 1861, at $76.50 per share (Plaintiff's Revised Exhibit No. 2, Exhibits, p. 334). While it is unquestionably true that an attempt to sell 2752 shares of this stock in the market at that time would have depressed the market price far below $76.50, the quotation here given is undoubtedly the best measure of the fair value of the stock on January 1, 1861, to be had at this time. On the basis of this quotation the total value of Virginia's shares amount to $210,528.00 (Exhibits, p. 381).

Book Values.

The plaintiff feels that these quotations where they exist are by far the most reliable evidence of the value of the securities to be had today, over fifty years after the time as of which the values are sought to be established and at all events they are far more reliable than the artificial book values relied upon by the defendant. In the case of the Richmond, Fredericks-

burg & Potomac Railroad Company there was a balance sheet, but Mr. Hillman, the accountant for West Virginia admits that the figures he presents for determining the value of the assets received by West Virginia are of doubtful value (Record, pp. 452-455). All that Mr. Hillman did so far as his examination of this stock is concerned was to confine his examination to the liability side of the company's balance sheet from which he took the amount of the outstanding capital stock and the paper surplus, without paying any consideration to or taking any account of the actual value of the assets or whether the road and its intangible assets had an equal or any value whatsoever at that period (New Record, pp. 333-334). This on West Virginia's own cases cited in West Virginia's briefs before the Master and reviewed in Schedule 2 hereof is entirely incompetent evidence for the purpose of showing in this case either the value of the railroad's assets or its stock.

Dividends.

Until dividends were paid in Confederate money in 1862, all dividends paid after 1854 were paid not in cash but in bonds, except the dividend for 1861 and that was not paid until 1873 (Defendant's Exhibit No. 2; Exhibits, p. 2; Defendant's Exhibit No. 12, Exhibits, pp. 230-231). Dividends paid in 1859 and 1860 in bonds were finally paid in Confederate money in March and July of 1863, when Confederate money was at the rate of 7 2/5 to 1 for gold (Original Record, p. 647), and each dividend in gold amounts to 9/10ths of 1 per cent per year. The dividend in 1861 of 3 1/2 per cent was not paid until 1873. The subsequent dividends paid up to the time when dividends ceased in 1864 reduced to a gold basis are shown in Schedule 1 at the end of this brief.

Summary.

This railroad did not reach its present prominence until in recent years when together with the Washington Southern Railway Company running south from Washington, it formed the Washington Richmond Line connecting the trunk lines of the north and those of the south. It was unable to pay a cash dividend after 1854 until 1862, when payments were made in Confederate money. Considering that the road was unable to pay a cash dividend after 1854 until the inflated currency of the Confederacy made this possible after 1862, and considering the dividends stopped for almost twenty years after 1864, the price of $76.50 per share, as established by plaintiff's quotations, is certainly a top-notch figure if it is not entirely too high. The par value on the cases cited in West Virginia's briefs before the Master is no evidence of value and Mr. Hillman, according to his own testimony, took no account of the actual value of the assets or whether the road had any value whatsoever at that time. Furthermore, the method pursued by Mr. Hillman in determining book value discredits itself because it purports to show a much larger value for the stock of this railroad on June 20, 1863, than on January 1, 1861. According to the defendant's testimony, value of this stock on September 30, 1864, exceeds its value on March 31, 1864, and this in turn exceeds the value on March 31, 1863. A method which reached such absurd results is not entitled to any credit in determining the value on any of the dates.

CLASS C.

Securities Exchanged or Otherwise Disposed of by Virginia.

1. Orange & Alexandria Railroad Company.

17,490 shares, at $50 par value, $874,500.
Loan $398,670.60.

(Bondholding creditors' sixth exception and West Virginia's third exception.)

West Virginia claims an alleged book value for this stock of $53.32 per share, aggregating $932,566.80 and that the loan was worth par. There was no market quotation for the stock in 1861 and Virginia claims that the maximum with which she can be charged for the stock and loan are their sales value of $441,662.98 (Exhibits, pp. 360-361). The Master disregarded all other evidence and based his finding upon an average of the alleged book value and a capitalization of the alleged profits. These profits show no allowance for depreciation or maintenance. The injustice of the Master's method of determining all of these values is very well illustrated by this item. It appears from the Master's report that no dividends were declared in 1860 or 1861, and that all the dividends Virginia had ever received during the entire period of the company's life up to 1861 was less than $32,000.00. This is approximately 5 per cent on the par value of her stock. These dividends were paid not in money but in bonds. The bonds were afterwards paid off in Confederate money at a value in gold of about $1,300 (Master's Report, p. 37; Exhibits, p. 370).

The average earnings of the company according to its books for five years preceding 1860 was about 1 ½% of its capital without showing any deduction for

deprecitation or maintenance (Master's Report, p. 38). Ten cents on the dollar would be a high value for a railroad stock on such a showing. Nevertheless the Master reaches a value of $32.80 per $50 share, or over 65 per cent of par amounting to $573,672.00.

West Virginia's answer at page 27 undertakes to establish a value for the securities and property listed under Class C as January 1, 1861, from the sales or exchanges thereof, made in most instances long after the termination of the war. Although certain sums of money passed as part consideration to Virginia for the surrender of these assets, the principal consideration to Virginia was the surrender of her bonds. A part of these bonds were the old unfunded bonds of the undivided State upon which West Virginia was equally liable with Virginia, and the balance were bonds issued by Virginia under the Act of March 2, 1866. It is necessary to bear in mind that all of the bonds issued under the Act of March 2, 1866, were issued to pay accrued interest on the old bonds of the undivided State. West Virginia is seeking here to reduce by setoff her share of liability for the principal sum already determined and not to reduce the total debt outstanding for principal and interest. If sales value is to be taken as evidence of actual value as of January 1, 1861, then the consideration received by Virginia must be reduced to a cash basis. The bonds received must be reduced to cash on the basis of their market value and the cash if paid, in Confederate money must be reduced to gold on the basis of the ratio for Confederate money at the time of the exchange as shown at page 647 of the old Record. West Virginia cannot blow hot and cold. On the theory of this contention the bonds became Virginia's absolutely upon the separation, and she was not a trustee for West Virginia in regard thereto. At the time of the exchange in question Virginia could have bought

her bonds in the open market of the New York Stock Exchange at the then prevailing quotations upon the New York Stock Exchange as the same appear in Plaintiff's Revised Exhibit No. 2 (Exhibits, pp. 345-358). Furthermore that is all the holders could have secured for these bonds if they had undertaken to sell them. In fact that was all the bonds were worth to anyone at that time and if this exchange is to be taken as a measure of the value of the securities surrendered by Virginia the medium of exchange must be reduced to a cash value (Plaintiff's Exhibit No. 3, Exhibits, pp. 360-361). Item No. 1 gives the total sales value of the Orange and Alexandria Railroad Company's stock and loan at $441,662.69. The supporting figures for the bonds and cash are found in the same exhibit (Exhibits, pp. 365-368).

Market Quotations.

No quotations for this stock appear in the Record as of January 1, 1861.

Book Value.

The purported book value as shown in Defendant's Exhibit No. 3, Asset No. 1 (Exhibits, pp. 14-15) is no evidence at all. It does not even purport to be book value. All the statement purports to do is to take the par value of the stock based upon a balance sheet as of September 30, 1856, not in evidence, and add the paper profits for subsequent years (New Record, p. 100; Exhibit, p. 14). The statement is not based upon the assets of the road in any sense. It is based solely upon the par value of the stock and the paper profits as shown upon the books of the company. The profits are not verified. It does not appear that anything was allowed for maintenance or depreciation.

Dividends.

The only other evidence bearing upon the value of these securities are dividends and the only dividends shown are a small amount of dividends upon preferred stock, rate not given; and one dividend in 1864 of 4 per cent in Confederate money amounting in gold at 25 to 1 to 16/100 of 1 per cent (Defendant's Exhibit No. 3, Exhibits, pp. 14-15; Defendant's Exhibit No. 12, Exhibits, p. 227).

Summary.

As the stock was not paying dividends, and the only evidence of value as introduced by the defendant is the par value of the stock with the paper profits for the years 1856 to 1860, it would seem that the sales value allowed $441,662.98 for the stock and loan in Plaintiff's Exhibit No. 3, Exhibits, pages 360-363 is a generous amount. The paper profits for the year 1860 only purported to be a little over 1 per cent of the stock and for the year 1859 are less than that. Without conceding the correctness of the figures we say that a stock which is only earning about 1 per cent (and this makes no allowance for the preferred stock) cannot be said to be worth more than 10 per cent of par and a loan of a company operating on such a narrow margin would sell much below par. A bond of a company only earning 1 per cent upon its capitalization cannot be said to be worth over 60 per cent of its face, but allowing 75 per cent this would make $300,000 for the loan. Taking the stock at 10 per cent would make $87,450 for the stock. This gives a total of $387,450 as a top notch figure for the value of the Orange & Alexandria Railroad Company's stock and loan upon the basis of West Virginia's figures (Exhibits, pp. 14-15). It should be noted that the first column of Plaintiff's Exhibit No. 3 states West Virginia's claim. The par amount of

the securities under Class C is to be found in Defendant's Exhibit No. 3 (Exhibits, pp. 12a-12b).

2. Richmond & Danville Railroad Company.

12,000 shares, par value $100, cost $1,188,598.50. Loan $565,803.34.

(The Bondholding Creditors' seventh exception and West Virginia's fourth exception.)

West Virginia claims an alleged book value for this stock of $137.37 per share, aggregating $1,632,777.76 and that the loan was worth par. The market quotations for the stock in January, 1861, was $57.00 per share and Virginia claims that the maximum with which she can be charged for the stock and loan are their sales value of $609,986.83 for the stock and $322,876.22 for the loan (Exhibits, pp. 360-361). The master accepted West Virginia's alleged book values but deducted $5.00 per share for expenses and shrinkage in liquidation and allowed $132.37 per share as the value for the stock (Master's Report, p. 41). He allowed $1,588,440.00 for the stock and par for the loan. Here was a stock, quoted in the Virginia market at $57.00 per share which paid no dividends in 1856, 1857 and 1858, and which declared a dividend in 1859 of 4 per cent which was paid in 1860, and declared no dividend in 1861 (see below) and the master finds that it is worth $132.37 per share based upon West Virginia's alleged book values.

In the first place the allowance for shrinkage and expenses in liquidation is absurdly low, and the master concedes as much at page twenty-nine of his report. The master should have taken judicial notice that the expenses and shrinkage due to liquidation would be much nearer fifty per cent than five per cent.

Thayer's Preliminary Treatise on Evidence at the Common Law, pp. 278, 301, 302.

Furthermore these book values on which West Virginia relied were simply the par value of the stock as of the year 1856 (New Record, p. 116; Exhibits, p. 191), plus alleged paper profits since then; without considering what allowances were made for maintenance or depreciation of the railway's property; without considering how the operating expenses were determined and without any reference as to whether the assets had decreased in value since 1856. To be sure the master feels his value is fortified by the reported profits of the railroad for nine years prior to 1860 which he finds to average about 11 per cent, but these paper profits are subject to the same infirmity as the book values which they are cited to fortify. It does not appear how they were made up; what charges were made to maintenance or depreciation; whether they represented cash profits or were merely bookkeeping entries to capital account. If the earnings had really been as large as the railroad report would indicate, it is extraordinary that the dividend record should have been so poor. There is no question about the dividends and the dividend record does not tune with these paper profits. If the stock was worth $132.37 per share as the master finds, it is extraordinary that its market prices as shown from the quotations for 1860 and 1861 should never have been above $60.00 per share.

The market value of the bonds exchanged for the Richmond & Danville Railroad Co.'s stock was $609,986.83 and the market value of the bonds exchanged for the loan was $322,876.22 (Item No. 2, Plaintiff's Exhibit No. 3, Exhibits, pp. 360-361). The supporting figures are given on Exhibits, pages 365-366. It is to be noted that in this item as well as in the preceding and every other item under Class C the market

value of all bonds is computed whether they are bonds for principal issued prior to January 1, 1861, or bonds for interest issued under the Act of 1866. What was said under Item No. 1 about reducing the bonds to cash value in accordance with their then market value is not repeated here but equally applies.

Book Value.

The criticism about the defendant's method of computing book value under Item No. 1, applies equally to this item. Par value of the stock as of 1856 is taken to which is added the paper profits for subsequent years (Exhibits, p. 19; New Record, p. 116). There is no evidence of value.

Dividends.

The dividend appearing for the years 1859 and 1860, (Defendant's Exhibit No. 3, Exhibits, p. 19), was shown to be a repetition (New Record, p. 380). We have a dividend of 4 per cent declared in 1859 and paid in 1860; two dividends of 3 per cent each paid in Confederate money in 1862 and one dividend of 4 per cent paid in Confederate money on March 25, 1863 (Defendant's Exhibit No. 12, Exhibits, p. 71); and one dividend of 6 per cent paid on September 9, 1863, and a dividend of 5 per cent paid on March 26, 1864. Then dividends stopped forever (Defendant's Exhibit No. 12, Exhibits, p. 227). Until 1862 in the Confederate period the only dividend shown is one dividend of 4 per cent declared in 1859 and paid in 1860. On the record this is the only dividend the company ever paid except the dividends paid in Confederate money.

Market Quotations.

Plaintiff's Revised Exhibit No. 2 (Exhibits, p. 339, gives the quotation for this stock at $57.00 which

would amount to about $680,000 as the value of this stock.

Summary.

In the light of the Company's dividend record this figure is undoubtedly too high. A stock which paid no dividends in 1856, 1857 and 1858 and which declared a dividend in 1859 of 4 per cent which was paid in 1860 and declared no dividend in 1861 certainly could not be worth $57.00 per share on the first day of January, 1861. Considering the stock and loan together the figures stated in Plaintiff's Exhibit No. 3 under the column headed "Total" (Exhibits, p. 361) are a fair allowance for Item No. 2. It cannot be said that the loan was worth its face because the loan was not due on January 1, 1861, and before the loan became due and before Virginia could collect it the company became unable to pay without any fault on Virginia's part. The value of this stock and loan is a difficult matter to determine but considering all the evidence the Record affords it does not seem fair to charge Virginia with more than she received.

3. Richmond & Petersburg Railroad Company.

3,856 shares at $100, $385,600.

Dividend bonds $33,408.

(The bondholding creditors' eighth exception and West Virginia's fifth exception.)

There is no question about the dividend bonds.

West Virginia claims an alleged book value of $121.86 per share, aggregating $469,892.16.

The market quotation in January, 1861, was $64.00 per share on which basis the stock was worth $246,784.00. The master reaches his value of $441,126.40 by averaging the so-called book values and the paper profits as already explained. As in the other cases

book value is determined by taking the par value as of the year 1856 and subsequent paper profits (Exhibits, p. 22; New Record, p. 126). The method adopted by the Master reaches a result nearly twice as big as any published public quotation for the stock in Richmond for the years 1860 and 1861.

The cash value of the bonds received by Virginia for this stock is $357,100.92 and the dividend bonds amounting to $33,408.00 were paid off in money equal to gold (Exhibits, p. 361). The supporting figures are found at Exhibits, pages 366-368.

Book Value.

The purported book value of this company like Items Nos. 1 and 2 is reached by taking the par value of the stock in 1856 and adding the subsequent paper profits (Exhibits, p. 22). As repeated above this is no evidence of value and is not even book value.

Dividends.

The dividends paid by the Company are shown at Exhibits, pages 22 and 227 and those paid after 1861 are collected in schedule I at the end of this brief. For the years 1857 to 1860 inclusive they are approximately 6 per cent. No dividends were paid in 1861 and 1862.

Market Quotations.

The market quotations for the stock are $64.00 (Plaintiff's Exhibit No. 2, Exhibits, p. 338), on which basis the stock held by Virginia is valued at about $246,784.00. This is less than the exchange value computed in Plaintiff's Exhibit No. 3 (Exhibits, p. 361).

4. Virginia Central Railroad Company.

Stock, $1,891,670.68
Loan, $90,032.82
Dividend Bonds, $143,508.00.

(The bondholding creditors' ninth exception and West Virginia's sixth exception.)

West Virginia claims in her answer $321,458.17 for all of these securities but on the hearing claimed a value $2,481,115.26 based upon an alleged book value of $131.16 per share.

The quotation for the stock in January, 1861, was $50.00. The dividends (see below) are approximately 4 per cent in 1859, 5 per cent in 1860 and nothing in 1861 or 1862. Virginia concedes a total value of $517,906.50. The Master by combining the alleged book value with capitalized paper profits finds the stock had a value of $124.05 per share. He allowed $2,390,918.08 for the stock and par for the loan, and bonds. This result for the stock is two and a half times as great as any published public quotation for this stock in Virginia in 1860 and 1861 and is reached as in the preceding cases by taking par value as of the year 1856 and subsequent paper profits without any knowledge whatever of the company's assets or how its earnings were determined.

The securities under this item were exchanged by Virginia for bonds and cash of the value of $517,906.50 (Exhibits, p. 361). The supporting figures are found at Exhibits pages 366-368.

Book Value.

The purported book value of the stock of this item like the three preceding items is reached by taking the par value of 1856 and adding subsequent paper profits (Exhibits, p. 24). As has been repeatedly stated this is no evidence of value.

Dividends.

The dividends paid as shown at Exhibits, pages 24 and 227 and collected in Schedule I are approximately 4 per cent in 1859 and 5 per cent in 1860 and nothing in 1861 and 1862.

Market Quotations.

Quotations for the stock at $50.00 per share are found in Plaintiffs' Revised Exhibit No. 2 (Exhibits pp. 336-337). The quotation based upon the dividend record is too high. The value of Virginia's holdings on the basis of the quotation is about $963,691.00 and considerably larger than the amount Virginia received in exchange for the stock and loan as shown at page 361.

Summary.

As to these four items it appears that the purported book value is merely the par value as of 1856 plus alleged paper profits of subsequent years without paying any consideration whatever to the value of the assets or the reality of the profits. Such figures are no evidence of value whatever. As to all the subsequent items in Class C even such purported book value is missing and par value is relied upon by the defendant. The so-called exchange value relied upon in the answer and in the Defendant's Original Summary Exhibit (Exhibits, p. 13) is discarded for a claim based solely upon par. The cases cited in West Virginia's briefs before the Master overthrow this contention and if any value is to be found for the remaining property and securities grouped in Class C it must be based solely upon the price received by Virginia therefor years afterwards.

cause the allowance of five per cent is grossly inadequate to cover the expenses and shrinkage in liquidation. They have not excepted his findings for any of the items under Class E. His allowance for these items as of January 1, 1861, aggregate $3,802,357.48 (Master's Report, p. 94).

The quotations for bank stock are found in Plaintiff's Revised Exhibit No. 2 (Exhibits, pp. 340-344). No quotations were found for the Northwestern Bank or the Fairmont bank in West Virginia or for the Bank of the Valley in Virginia.

Farmers' Bank of Virginia.

The market quotation on January 4, 1861, is par, and on this basis the plaintiff allows $962,600.00 (Plaintiff's Exhibit No. 7, Exhibits, p. 382), as the value of this stock which agrees with the amount of the claim in West Virginia's answer.

Bank of Virginia.

The market quotation on January 4, 1861, is par which gives a value of the stock of $963,620.00. This also agrees with the claim as stated in West Virginia's answer.

Bank of the Valley.

No quotation was found for this stock, but was taken at par because this is the average of the other Virginia Banks at the time, and gives a value for Virginia's holdings of $483,900.00, which agrees with the amount claimed in West Virginia's answer.

Exchange Bank.

The market quotation on January 4, 1861, is $101, and gives a value for Virginia's holdings of $884,255, which exceeds the amount claimed in West Virginia's answer by nearly $9,000. The cross-examination de-

veloped the fact that Mr. Hillman made certain changes in the titles of accounts in his alleged book values of these banks, for instance, designating surplus and contingent funds as profit and loss (New Record, pp. 473, 486; Plaintiff's Exhibit Nos. 10-15, inclusive; Exhibits, pp. 398-417, as compared with Defendant's Exhibit No. 5; Exhibits, pp. 48-55). The exhibits also disclose the failure of Mr. Hillman to allow for certain bad and doubtful debts (New Record, pp. 475, 489, 503, 504), which would substantially reduce the book values computed by him.

THE PAPER VALUE OF THE BANKS IN VIRGINIA AS OF JANURY 1, 1861.

In regard to the Farmers' Bank of Virginia the bad debts are $70,773.96 and the doubtful debts are $45,-437.34 (Exhibits, p. 400). The account also shows a contingent fund of $337,067.05. Aside from any question as to whether these book entries unsupported by extrinsic evidence are proof of value these three accounts must be deducted. The burden is upon West Virginia and until proof that doubtful debts can be collected or that the contingency will not arise these accounts must be omitted. The earnings of this bank for the year ending January 1, 1861 are $138,101.18 (Exhibits, p. 399). The dividend was $228,440.25 (Exhibits, p. 48), so that the bank failed to earn its dividend this year by $90,339.07.

The Bank of Virginia had bad debts of $6,412.00, and doubtful debts of $43,973.57, and a contingent fund of $219,189.72 (Exhibits, p. 404), all of which should be deducted in determining paper value.

The Bank of the Valley had a defalcation ascertained to amount to $13,522.12, with an unascertained liability estimated at $30,000.00 (Exhibits, pp. 406-407). The dividend for this bank for the year 1860,

amounted to $91,125.00 to pay which the surplus fund for that year was reduced $4,519.60, without making any deduction for the ascertained and unascertained loss on account of the defalcation amounting to $43,-522.12. If these items are deducted from net earnings for the year ending January 1, 1861, as they should be and the amount is added to the amount by which the surplus for the year was reduced in order to pay the dividend it appears that this bank did not earn one-half the amount of its dividend for the year 1860 (see New Record, pp. 502-505).

The exchange Bank of Virginia had a contingent fund amounting to $191,584.24 (Exhibits, pp. 409, 410). Its earnings for the year 1860 were $150,586.-05 (Exhibits, p. 409). Its dividend was $235,282.50 (Exhibits, p. 52). The Company failed to earn its dividend in that year by $84,695.45 (see New Record, p. 506).

The Master's allowances for each of these banks exceed the amount claimed by West Virginia in her supplemental answer.

CLASS F.

(West Virginia's Fifteenth Exception.)

The reasons for the Master's findings are fully explained in his report. He allowed $204,688.42 (Master's Report, p. 98).

CLASS G.

James River and Kanawha Company.

(Bondholding Creditors' Eleventh Exception.)

The bondholding creditors contend that the state's holding in the stock of this company were worthless.

This was the result of an exhaustive inquiry on the previous hearing (Original Master's Report, Paragraph Seventh, p. 193). The extracts referring to the company taken from Document No. 17, and Mr. Potter's schedules based thereon, showing a deficit in the operation of the company of not less than $1,320,955.-75, without any allowance for depreciation; and Mr. Potter's extracts from the annual reports of the company in the possession of the Chesapeake & Ohio Railroad Company, for the years ending September 30, 1860, 1861, 1862 and 1863, showing a deficit for each year (New Record, pp. 1077-1194), abundantly confirm the Master's original finding that the stock of this company had no value. Defendant's Exhibit No. 7 (Exhibits, pp. 176-198) discloses the fact that stockholders in this company, other than Virginia were to receive one share of new five per cent stock for each two shares of the old James River & Kanawha stock held. This agreement was authorized at a meeting of the company held in August, 1860, and must have been known, talked about and agitated for a very long period prior thereto. None of Virginia's stock was ever sold in the market; it was all retained by Virginia. The old James River Company was originally a branch of the Board of Public Works. The prospective exchange for this new five per cent stock is sufficient to account for the market value of the stock held by others than Virginia. With the exception of one dividend paid in 1836, no dividends were ever paid on the stock. Virginia never received anything for her stock. The financial results of the operation of the company was a net loss. The company was always a liability to Virginia, never an asset. The evidence conclusively establishes the fact that the stock was worthless.

GENERAL SUMMARY OF THE VALUE OF ALL INVESTMENTS.

JANUARY 1, 1861.

Class A (Master's figures accepted)	$819,250.03
Class B	210,528.00
Class C (Master's figures accepted for Items Nos. 5-18 inclusive)	3,279,083.97
Class D (Master's figures accepted)	345,554.80
Class E (Master's figures accepted)	3,802,357.48
Class F (Master's figures accepted)	204,688.42
Class G	00.
Total value of investments of undivided Virginia on January 1, 1861	8,661,462.70
23 1/2 per cent of above total	2,035,443.73
Value of investments received by West Virginia (Master's Report, p. 116)	541,467.76
23 1/2 per cent of the total value of the investments of the old Commonwealth of Virginia on January 1, 1861, less the value of the investments received by West Virginia	1,493,975.97

POINT FOUR.

The proof discloses that the value on June 20, 1863, of the investments held by Virginia, did not exceed $1,389,313.56.

An abnormal anomalous condition of affairs, existed. "Dollars," in Virginia, in 1861 and 1863, meant a very different thing from "dollars" in New York and Boston. A bushel basket could hardly contain the amount of Confederate money the housekeeper in Richmond had to take to market in order to buy enough meat for breakfast. The quotations of the stock market published in the Richmond papers and stipulated to by the counsel to be correct are to be found in the pages above given. These also show the prevailing market quotations. The Master has proceeded on the assumption that markets, and sales and business transactions moved in Richmond as they did in New York, and he has judged accordingly. Only very old men, or wounded men, or men under permanent physical disabilities were to be found in the market place.

CLASS A.

CASH.

Defendant's Exhibit No. 1, 1863 (Exhibits, pp. 91-93) correctly states the amount of cash in Virginia's Treasury on June 20, 1863, except that the dollars are Confederate dollars and not gold dollars. Reduced to gold on the basis of seven and one-half Confederate to $1.00 in gold makes the amount $327,895.51 (Exhibits, p. 383). This sum and much more, whether treated as Confederate or gold was used by Virginia

to pay interest on the common debt (Plaintiff's Exhibit No. 1; Exhibits, pp. 285-288, including insert pages 287a and 287b). When the state was divided, West Virginia got $170,771.46 (Original Master's Report, paragraph Sventh, p. 181).

The Master in finding values for 1861 allowed under Class A, only the money in the sinking fund of Virginia, and declined to allow for the money in the other funds. West Virginia has accepted this finding. The cash in the sinking fund of Virginia, on June 20, 1863, only amounted to $143,195.90. The balance was contained in the Literary Fund, Board of Public Works and Commonwealth Fund. Virginia is only to be charged with the money in the sinkfund. $143,195.90 in Confederate money, reduced to gold, on a basis of seven and one-half Confederate to $1.00 in gold (Original Record, p. 647) gives $19,092.79, as the value in gold, of the money in the sinking fund of Virginia, on June 20, 1863.

CLASS B.

Richmond, Fredericksburg & Potomac Railroad Company stock was sold on May 27, 1863, for $110.00 per share (Plaintiff's Revised Exhibit No. 2, Exhibits, p. 334). Confederate currency reduced to gold, on the basis of seven and one-half to one gold, gives a total of $40,362.67 for Virginia's holdings in this company, as of June 20, 1863.

The extracts from the Richmond Despatch, forming a part of the depositions recently taken at Richmond discloses the prohibitive figures which commodities had reached at this time. Real estate in Virginia was depreciated one-half at this time, according to the finding of the Master on the original hearing. Plaintiff's depositions in regard to values and condi-

tions generally in Virginia, and in regard to the condition of the railroads and banks in Virginia, at this time, are set out in the original record, pages 737-786. Defendant's depositions taken to prove that the James River Company's stock was worthless, found in the original record at pages 867-899, also throw some light upon conditions in Virginia at this time. It must be apparent in addition to the very great destruction of the real and personal property of the railroads of Virginia, that commerce had practically disappeared, owing to the fact among other things that all available men were fighting in the war; money and currency in Virginia already had depreciated to seven and one-half to one; commodities had reached a prohibitive price and real estate was reduced one-half. A railroad right of way is worthless for any other purpose than a railroad, owing to its shape and the cuts, fills and ballast which are necessary to make a roadbed, destroy its value for farming or building purposes. It would be more expensive to repair an abandoned right of way for purposes other than a railway than it would be to purchase an equal amount of contiguous land. The railroad's private business had ended. The possibilities of profitable railroad operation, except the carrying of soldiers, had ended in Virginia, in 1863, and the Government contracts were only payable in Confederate values. Dividends on the Richmond, Fredericksburg & Potomac Railroad Company, on a gold basis, amount to about two per cent in 1863 and less than one-half of one per cent in 1864, and then ceased entirely until 1882, with the exception of one dividend paid in 1874 (Exhibits, pp. 2, 80). The cases cited in West Virginia's briefs state the permanency of the business is one of the things to be considered in determining value. There was no permanency to this railroad or any other bank,

or canal company in Virginia at this time. In the light of all the surrounding circumstances, which is what West Virginia's cases say, must be considered in determining the value of the stock, the amount here conceded, as the market value at the time, is a fair value of Virginia's holdings in this stock.

Defendant's book values of $183.60 for 1863; $187.-69 for March and $203.54 for September 30, 1864, are absurd (Exhibits, p. 94). Among the assets is $500.-00 in gold carried at 30 to 1 at $15,000.00 (Exhibits, p. 100) and a slave carried at $3,005.00 nearly two years after the Emancipation Proclamation (Exhibits, p. 103). Many Confederate obligations and securities are carried at face value (Exhibits, pp. 100, 104). It has been remarked that the quotations are missing in a great many of the securities listed in defendant's supplemental answer and it is important to note here that the Richmond, Fredericksburg & Potomac Railroad Company is the only railroad security, in fact is the only security outside of the banks where a book value is even pretended. In all the other cases it is merely par value, plus alleged paper profits. In the case of the banks some accounts have been changed in name as to indicate a contingent fund as a profit and that bad and doubtful debts have been included as assets. This is sufficient to impeach these accounts even if they were evidence. It has also been pointed out that on the cases cited in West Virginia's briefs, book accounts and book entries unsupported by extrinsic evidence of actual value of existing assets are no evidence either of the value of the assets of the corporation or its stock.

CLASS C.

1. ORANGE & ALEXANDRIA RAILROAD CO. STOCK AND LOAN.

This stock was sold in Richmond on April 18, 1863, and again on August 12, 1863, at $27.50 per share (Exhibits, p. 338), which reduced to gold on the basis of 7 1/2 to 1 gives a value for this stock of $32,065.00 (Exhibits, p. 385). The condition of the Orange & Alexandria Railroad Company after the beginning of the war in 1861 is stated in its president's and superintendent's reports (New Record, pp. 955-962). Aside from the very small dividends on the preferred stock as shown above under 1861 values the only dividend was paid in 1864 which amounted in gold at 25 to 1 to 16/100 of 1 per cent (Defendant's Exhibit No. 3, Exhibits, p. 227). West Virginia admits in her schedule of this stock that the statement is valueless (Exhibits, p. 108), and therefore takes the alleged book value as of September 30, 1860. The fact of the war would render the statement of 1860 valueless for determining the value in 1863 even if the statement of 1860 had any value as evidence. It appears on referring to the statement of 1861 however that it is based upon par value as of 1856 plus alleged paper profits and the profits then were only about one per cent (Exhibits, p. 14). The fair inference under all the circumstances is that neither this company or any of the other companies listed in Class C could have paid their loans if called upon to do so and the value of this item above stated to amount to $32,065.00 is taken as the value of the stock and loan.

2. RICHMOND & DANVILLE RAILROAD CO. STOCK AND LOAN.

This stock was sold on May 27, 1863, at $125.00 per share and is quoted at that price on June 5, and June 10 (Exhibits, p. 339), which reduced to gold on the basis of 7 1/2 to 1 makes the total holdings of Virginia in the stock of this company amount to $198,099.75. The dividends of this company are one dividend of four per cent declared in 1859 and paid in 1860 (*supra*); one dividend in 1863 amounting in gold to less than one-half of one per cent, and one in 1864 amounting in gold to less than one-quarter of one per cent (Exhibits, pp. 19, 227). A schedule of all dividends is annexed where references and ratios for gold are stated. The alleged book value given in Defendant's Exhibit No. 3 (Exhibits, p. 116), is merely the par value of the stock and alleged paper profits. There is nothing in the record to indicate that this company could have paid its loan in 1863 or in any subsequent period during the war and the above amount allowed as the value of this item fairly represents the value of this asset, both stock and loan at the time.

3. Richmond & Petersburg Railroad Co. Stock.

This stock was quoted in Richmond on January 5, and again on January 10, at $140 per share (Exhibits, p. 338) which reduced to gold on the basis of 7 1/2 to 1 gives a total of $71,987.66 as the value of Virginia's holdings in this stock (Exhibits, p. 385). Again the book value relied upon by West Virginia is not book value but par value and alleged paper profits (Exhibits, p. 121). The dividends paid on the stock when reduced to a gold basis are about 1 1/3 per cent for 1863 and 3/5 of 1 per cent for 1864 when they ceased entirely.

4. Virginia Central Railroad Co. Stock and Loan.

The stock was sold in Richmond on May 2, 1863, at $94 per share and was quoted on June 5 at $100 per share (Exhibits, p. 337). This reduced to gold on the basis of 7 1/2 to 1 gives $268,531.67 as the value of Virginia's holdings in the stock of this company (Exhibits, p. 385). The alleged book value stated (Exhibits, p. 124) is not book value but par value plus alleged paper profits and is no evidence of value. The dividend record of this company is zero in 1861 and zero in 1862 and on a gold basis 1/4 of 1 per cent in 1863 and 12/100 of 1 per cent in 1864.

The fair inference from the known conditions in Virginia at this time is that the company could not have paid its loan and the value herein given for this item is a fair value for Virginia's holdings in this company for both stock and loan.

19. Richmond, Fredericksburg & Potomac Railroad Company's loan of $149,984 was paid in part on March 13, 1863, and in part on July 1, 1863. The portion paid on July 1, 1863, in Confederate money reduced to gold at the then prevailing ratio (original record, p. 647) amounts to $13,607.11 and this must be taken as the value on June 20, 1863.

Other Securities and Property Listed in Class C.

There is no evidence in the case of the value of the remaining properties and securities listed under Class C except the absence of dividends and earning power and the general conditions prevailing in Virginia at the time as stated above under Class B. The Blue

Ridge Railroad Company earned a small amount of tolls paid in Confederate money (Exhibits, p. 27). No remaining stock or loan paid any dividend or interest until it was disposed of by Virginia. The subsequent sale or exchange value made long after the termination of the war is no evidence of value on June 20, 1863, and it is submitted that on the depositions in the original record cited above and the facts that the Master should have judicially noticed and the Court will notice the general conditions prevailing in Virginia were such that the remaining securities and claims in Class C were of little or no value whatever. At all events the defendant has failed to show any value for any of the securities listed under Class C as of this date. Considering the plaintiff's quotations in the light of the dividend records of these companies, the permanency of their business, and the general conditions in Virginia all the securities listed under Class C taken together cannot be said to have a value in excess of the total value herein allowed for items Nos. 1, 2, 3, 4, and 19.

The claim against the United States Government certainly had no value at this time and the same may be said in regard to the claim against Selden-Withers Company.

The size of the profits reported in items Nos. 1, 2, 3 and 4 when we consider the destruction of property discredit the books for 1863 and 1861 as well. The bookkeeping must have been very loose not to note the destruction we know occurred. Furthermore like the Richmond, Fredericksburg & Potomac Railroad Company the business must have come from the Confederate States and the payments must have been in Confederate securities or obligations.

SUMMARY—CLASS C.

June 20, 1863.

1. Orange & Alexandria Railroad Company	$ 32,065.00
2. Richmond & Danville Railroad Company	198,099.75
3. Richmond & Petersburg Railroad Company	71,978.66
4. Virginia Central Railroad Company	268,531.67
19. Richmond, Fredericksburg & Potomac Railroad Company	13,607.11
	$584,282.19

CLASS D.

Plaintiff's Exhibit No. 4a (Exhibits, pp. 373, 375), has taken the gross amount of income in Defendant's Exhibit No. 4-1863 (Exhibits, pp. 149, 150) but reduces the payments made in Confederate money to gold on the basis of the then existing ratio as shown in the exhibits. The gross amount stated in Plaintiff's Exhibit No. 4a agrees with the amounts set out in Defendant's Exhibit No. 4-1863 except in the case of the claim against the United States Government where there was no income. Each item of income is separately stated in the exhibits with an indication of how the computation is arrived at. The table shows this more clearly and concisely than a narrative could indicate.

CLASS E.

The record in regard to quotations and sales of Virginia Bank stock is found in Plaintiff's Revised

Exhibit No. 2 (Exhibits, pp. 340-344). The quotations are reduced to gold on the basis of 7 1/2 to 1 and the computations upon Virginia's holdings are set out in Plaintiff's Exhibit No. 8, Subschedule XXX (Exhibits, p. 384). No quotations are found for the Bank of the Valley and the finding of $64,520.00 allowed as the value of its stock is determined by other factors. This is on a basis of $13 to $14 per share. The dividends of the Bank of the Valley amount in gold to approximately 1 1/3 per cent in 1863 paid in January of that year and 17/100 of 1 per cent in 1864 paid in March of that year (Exhibits, p. 51). The Bank expired with the Confederacy, hopelessly insolvent. The stock received nothing and was a total loss to all holders. On the principles for establishing value as set out in the cases cited at page 41 of the brief of Judge Holt and Attorney General Lilly before the Master this stock was worthless. Its assets were in the process of evaporation; its liabilities were daily increasing; gold was already at a premium of 7 1/2 to 1; the prices of commodities were so high as to be almost prohibitive (extracts from the Richmond Dispatch returned with depositions taken at Richmond, New Record, pp. 1251-1255; 1279); the value of real estate had depreciated one-half; the country was in the midst of a war for its existence; dividends were only nominal and about to stop forever. The condition of this bank was so bad it could not make a statement after 1861 (Exhibits, p. 156). A statement for 1861 is no evidence of where this bank stood in 1863. We contend that the conditions prevailing in Virginia and the condition of this bank (the fact that the dividends were dwindling towards nothing and soon to stop forever; that its assets were diminishing; its liabilities increasing and that it went out of business hopelessly insolvent in 1865) require a finding that the stock of the Bank of the Valley on June

20, 1863, was worthless. The same is true of the Farmer's Bank of Virginia; Bank of Virginia and the Exchange Bank. There are no reports or book values for any of them after 1861 (Defendant's Exhibit No. 5, Exhibits, pp. 152-159). Their dividend records are found at pages 48, 50, 52, 79 and 80 of the exhibits and are collected in the schedule at the end of the brief. In regard to the Northwestern Bank and the Fairmont Bank both located in West Virginia the values found in the report of the Special Master (pp. 92, 93) control. West Virginia's banks were not wiped out by the war. Their currency was the United States currency and the finding of the Master in paragraph Seventh of his original report exceeds these allowances and are for June 20, 1863 (p. 193).

Northwestern Bank of Virginia stock held by West Virginia is valued at $297,683.30. Fairmont Bank stock is valued at $49,435 (Special Master's Report, pp. 92, 93).

CLASS F.

The Master's allowance for 1861 is adopted—$204,688.42.

CLASS G.

For the reasons stated above in the discussion under the period of 1861 we submit that the stock held by Virginia in the James River & Kanawha Company and the Manassas Gap Railroad Company is worthless and of no value on June 20, 1863.

GENERAL SUMMARY OF THE VALUE OF ALL INVESTMENTS.

JUNE 20, 1863.

Class A	$19,092.79
Class B	40,362.67
Class C	584,282.19

Class D		57,595.17
Class E	(Banks in present Virginia, Exhibits, p. 384)	483,292.32
Class F		204,688.42
Class G		00.
Total		1,389,313.56
Value of investments received by West Virginia	+	541,467.76
Total value of investment received by Virginia and West Virginia		1,930,781.32
Twenty-three and one-half per cent of above total		453,733.61
Value of investments received by West Virginia	—	541,467.76
Twenty-three and one-half per cent of the total value of the investments of the old Commonwealth of Virginia on June 20, 1863, less the value of the investments received by West Virginia		00.

POINT FIVE.

The proof discloses that the proceeds of all the investments received by Virginia did not exceed $3,630,006.10.

CLASS A.

CASH.

The money in the Sinking Fund of Virginia on June 20, 1863, reduced to a gold basis was $19,092.79 and this is all the cash with which Virginia can be charged (see Class A, Point Four, *supra*).

CLASS B.

RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY.

The defendant, introduced in evidence market quotations from January 1, 1914, to September 1, 1914, to show the present value of the Richmond, Fredericksburg & Potomac Railroad Stock held by the State of Virginia (Exhibits, pp. 281, 282).

These market quotations are merely bid and asked prices. They do not purport to represent actual sales. They are not as reliable as the market quotations introduced by the plaintiff which were based upon actual sales and they should not be considered unless the market quotations introduced by the plaintiff are accepted. We assume however that the Court will feel that these published public prices introduced by both the defendant and the plaintiff will be accepted as the best measure of the value of the different stocks and bonds obtainable in this case and will accept them. These quotations show a value of the Richmond, Fredericksburg & Potomac Railroad Company's stock now held by Virginia of $300 per share, at which

price the value of Virginia 2,752 shares today would aggregate $825,600.

West Virginia is seeking to offset her alleged share of these investments against the principal amount of her share of the bonded indebtedness of old Virginia. The bonds are interest bearing bonds and in order to determine the correct amount to be offset against principal, the value of today must be discounted back to the time when interest on the principal begins to accrue. Applying the same principles to this item as the Master used in regard to items Nos. 5-18 inclusive, in Class C gives a value of a little less than $200,000, for this stock. The result is very fair to West Virginia. We have shown that on June 20, 1863, its then real value was only $40,362.67 (see Class B, Point Four, *supra*). If West Virginia should be credited with the present value undiscounted, such value would have to be offset not only against West Virginia's share of the principal; but the accrued interest thereon as well. In determining the sum to be offset against principal, the proceeds of all investments as of date received must be discounted back to the time when interest begins to accrue.

CLASS C.

The Master has adopted this principle in regard to Items Nos. 5-18 inclusive and we accept his figures. For these items the Master's figures amount to $977,031.41.

Applying the same principles we reach a total of $2,179,991.20 as the proceeds received by Virginia for her investments in items Nos. 1-4 in Class C.

It must be borne in mind in this connection that the proceeds of the investments received by Virginia were almost exclusively bonds of the old undivided State with some accrued interest thereon and bonds

which Virginia issued to pay interest on the bonds of the old State (Exhibits, pp. 360-363). The par value of the bonds of old Virginia taken in exchange was only $3,100,098.84 (Exhibits, p. 362). The balance was accrued interest and bonds given to pay interest (Exhibits, p. 362). The market value of all bonds; the old bonds and the new bonds was only $2,625,-053.71 (Exhibits, pp. 362, 363). Any remaining interest the present State of Virginia had already paid (Exhibits, p. 285-299).

For these reasons as well as those just stated in Class B it is necessary to determine the present value as of January 1, 1861, of the proceeds of investments received by Virginia in order to reach the setoff to be allowed to West Virginia upon principal if the court shall decide that such a setoff is proper and to be allowed.

A table showing present values as of January 1, 1861, of items Nos. 1, 2, 3 and 4 in Class C computed on the same basis as the Master has treated the other items in this class follows:

Present Value at Jan. 1, 1861, of Items 1, 2, 3 and 4 in Class C, page 12a E. Record, page 74, Master's Report.

1. ORANGE & ALEXANDRIA RAILROAD CO.			
Stock disposed of Oct. 28, 1872 (12a E.) for		$ 874,500.00	
Loan (Balance) " " " " " "		398,670.60	
Present Value at Jan. 1, 1861 of		$1,273,170.60	$ 744,544.21
2. RICHMOND & DANVILLE RAILROAD CO.			
Stock disposed of as under (20 E.)		$1,085,636.57	
Dec. 13, 1870	$100,075.78	Present value at Jan. 1, 1861	$ 62,547.35
Aug. 31, 1871	934,924.29	" " " " " "	570,075.72

June 30, 1886	38,791.50	" " " " " "		15,332.61
Dec. 20, 1886	11,845.00	" " " " " "		4,626.95
	$1,085,636.57			$ 652,582.63
Loan paid as under (21 E.)			$ 438,900.00	
July 1, 1882	$292,436.41	Present value at Jan. 1, 1861		$ 127,701.49
Sep. 28, 1882	130,596.67	" " " " " "		56,658.00
July 8, 1884	15,866.92	" " " " " "		6,583.78
	$438,900.00			$ 190,943.27

3. RICHMOND & PETERSBURG RAILROAD CO.

Stock disposed of July 1, 1871 (23 E.)	$ 578,404.13	
Present value at Jan. 1, 1861		$ 354,849.16
Dividend Bond paid Nov. 7, 1861	$ 33,408.00	
Reduced to Gold @ $1.15	$ 29,050.43	
Present value at Jan. 1, 1861		$ 27,667.08

4. VIRGINIA CENTRAL RAILROAD CO.

Stock disposed of as under (25 E.)			$ 241,858.50	
Aug. 20, 1888	$ 25,500.00	Present value at Jan. 1, 1861		$ 9,604.52
Feb. 12, 1890	216,358.50	" " " " " "		78,819.12
	$241,858.50			$ 88,423.64

Note: Defendant's Exhibit No. 3, shows "Disposed of for" $231,458.58 which is 95.7% of the actual amount realized (see 25 E.)

Loan paid in 1871 (say Jan. 1) (26 E.)		$ 90,032.82	
Present value at Jan. 1, 1861			$ 56,270.51
Dividend bonds paid Jan. 17, 1863		$ 143,508.00	
Reduced to Gold @ $3.00		$ 47,836.00	
Present value at Jan. 1, 1861			$ 42,710.70

SUMMARY.		As Above.	Master's Report.
Orange & Alexandria Railroad Co.		$ 744,544.21	$ 972,342.60
Richmond & Danville Railroad Co.	$652,582.63		
	190,943.27	843,525.90	2,154,243.34
Richmond & Petersburg Railroad Co.	$354,849.16		
	27,667.08	382,516.24	474,534.40
Virginia Central Railroad Co.	$ 88,423.64		
	56,270.51		
	42,710.70	187,404.85	2,624,458.90
		$2,157,991.20	$6,225,579.24

SUMMARY—CLASS C.

PROCEEDS OF INVESTMENTS RECEIVED BY VIRGINIA.

Items Nos. 1-4 (from preceding table)	$2,157,991.20
Items Nos. 5-18 (from Master's Report)	977,031.41
Item No. 19 (see No. 19, Class C, Point Four, *supra;* Exhibits, p. 369)	13,607.11
Total	$3,148,629.72

CLASS D.

The amount of income collected by Virginia after June 20, 1863, which had accrued prior thereto, reducing Confederate payments to gold at the ratios set out in page 647 of the Original Record is $57,595.17 (Plaintiff's Exhibit No. 4A; Exhibits, pp. 373-374; see Point Four, Class D, *supra*).

CLASS E.

The present State of Virginia never received anything on account of her bank stocks. They perished with the Confederacy, hopelessly insolvent, utterly unable to pay creditors. The bank stocks received by West Virginia are grouped with the cash and other assets received by West Virginia and will be treated separately.

CLASS F.

The present value as of January 1, 1861, of the proceeds of investments listed in Class F is $204,688.42 (Master's Report, p. 98).

CLASS G.

Virginia never received anything for the investments grouped in Class G.

SUMMARY OF PROCEEDS OF ALL INVESTMENTS RECEIVED BY VIRGINIA.

Class A	$ 19,092.79
Class B	200,000.00
Class C	3,148,629.72
Class D	57,595.17
Class E	00.
Class F	204,688.42
Class G	00.
Total present value as of January 1, 1861, of all investments of undivided Virginia, received by present State of Virginia	3,630,006.10
Value of the investments received by West Virginia (Master's Report, p. 116)	541,467.76
Total of investments received by Virginia and West Virginia	4,171,473.86
Twenty-three and one-half per cent of the present value as of January 1, 1861, of the proceeds of all investments of the undivided State of Virginia, received by the present State of Virginia and West Virginia	980,296.36
Total of investments received by West Virginia	541,467.76
Twenty-three and one-half per cent of the proceeds of all investments of undivided Virginia less the value of the investments received by West Virginia	438,828.60

If the Court should hold that West Virginia is entitled to set off against the principal amount of her share of the debt of the old Commonwealth of Virginia, her claimed share of the investments of the old state the above amount of $438,828.60 represents the maximum to which she is entitled on account of such set off. It allows to West Virginia the full amount which Virginia received for the investments disposed of and the full value today of the Richmond, Fredericksburg & Potomac Railroad Company's stock now on hand. The set off is claimed against principal and the proceeds realized must therefore be discounted back to the time when interest begins to accrue.

INCOME RECEIVED BY VIRGINIA.

It is necessary to mention in this connection Defendant's Exhibit No. 12, 1861 (Exhibits, pp. 71-89), and Defendant's Exhibit No. 12, 1863 (Exhibits, pp. 227-240). The 1863 exhibit, if correctly made up would be an exact copy of pages 77-89 of the 1861 exhibit and its inclusion in the record like many other duplications of defendant's exhibits, only serves to multiply pages and increase expense. These exhibits purporting to show the amount of dividends and interest received by the State of Virginia, from January 1, 1861, to date were introduced by the defendant to relieve West Virginia from liability for interest. They have no materiality for this or any other purpose and are now referred to only to explain that Virginia did not receive over $6,000,000 of income as tabled at page 89 or approximately $5,000,000 as tabled at page 240. Both tables include an item of $764,925.48, repeated twice. In the total on page 89, the amounts listed at pages 84 and 85 aggregating the said sum of $764,925.48, are repeated twice. In the table at page 240 the items contained in pages 235-236, aggregating

said sum of $764,925.48, are repeated twice. There is also a double charge on pages 72, 73, 74 and 83 of dividends of banks aggregating $80,581.00 in the 1861 period, but this double charge does not appear in the 1863 table.

The 1861 schedule contains an item of income from the claim against the United States amounting to $592,761.22 (page 89), and the 1863 schedule gives this item at $552,952.72 (page 240). As explained by the Master in his report (Master's Report, pp. 67-70), Virginia never received any interest whatever on account of this claim.

The elimination of these errors reduces the total stated on page 89 to $5,183,637.46, and the total stated at page 240, to $4,142,850.23, as appears from the following table.

Corrections in Defendant's Exhibit No. 12.

Defendant's Exhibit No. 12 (pp. 71-89E).

1861.

1.	Total of pages 71-72 = (1861-2-3)	$ 878,871.84	
2.	" " " 73-74 = (1861-2-3)	368,099.50	
3.	" " " 75-76 = (1861-2-3)	427,249.61	
	Total prior to June 20, 1863, *included in following*	$1,674,220.95	
4.	Total of pages 77-83 Dividends 1863 onward	$3,812,668.75	
5.	" " " 84-89 Interest 1863 onward	2,809,236.41	
	Total of Defendant's claim		$6,621,905.16

RECONCILIATION.

Interest & Dividends received by Virginia:	$1,593,639.95	
Jan. 1, 1861, to June 20, 1863,	1,640,994.35	
June 20, 1863, to End of Confederacy	1,949,003.16	
After the Confederacy		$5,183,637.46
Difference		$1,438,267.70

composed of:

Double charge p. 72 & 83 Bank of Virginia	29,382.50
73 & 83 " " "	7,423.50
74 & 83 Exchange Bank	1,335.00
74 & 83 " "	42,440.00
Pages 84 & 85 included total on Page 89 twice	764,925.48
	$ 845,506.48
Interest on U. S. Government Claim Page 89	592,761.22
	$1,438,267.70

Defendant's Exhibits No. 12 and 13 (pp. 227-240E).

1863.

1.	No parallel in this Exhibit			
2.	" " " " "			
3.	" " " " "			
4.	Total of pages 227-234	Dividends 1863 onward	2,565,697.41	
5.	" " " 235-240	Interest 1863 onward	2,342,178.30	
	Total of Defendant's claim			4,907,875.71
	Dividends actually foot		$2,565,697.41	
	Interest actually foots		1,577,252.82	
				4,142,950.23
	DIFFERENCE, Pages 235 & 236 footed in twice			$ 764,925.48
	Interest on U. S. Government Claim Page 240			552,952.72
				$1,317,878.20

This total on page 89 in Defendant's Schedule No. 12 includes $1,593,639.95 of income collected by the old State of Virginia between January 1, 1861, and June 20, 1863, which is no more a charge against the present State of Virginia than it is a charge against West Virginia. If it were a charge payments made in Confederate money would have to be reduced to gold and so reduced would aggregate only $974,-782.55 and the present value of this sum as of January 1, 1861, is $917,293.32.

The interest and dividends received after June 20, 1863, until the end of the Confederacy April 1, 1865, aggregate $1,640,994.35. These payments were all received in Confederate money and reduced to gold have a value of only $89,354.85 and their present value as of January 1, 1861, is only $75,582.75.

The interest and dividends received after April 1, 1865, amount to $1,949,003.16 and their present value as of January 1, 1863 is only $818,795.94.

(A)	Interest and dividends received by Virginia Jan. 1, 1861 to June 20th	$1,593,639.95
	Reduced to gold	974,782.55
	Present value at Jan. 1, 1861	917,293.32
(B)	Interest and dividends received after June 20th to end of confederate period (April 1, 1865)	$1,640,994.35
	Reduced to gold	89,354.85
	Present value at Jan. 1, 1861	75,582.85
(C)	Interest and dividends, received after the Confederate period (April 1, 1865)	$1,949,003.16
	Present value at Jan. 1, 1861	818,795.94

Total present value:	
B	75,582.85
C	818,795.94
	$894,378.79

The total present value as of January 1, 1861 (reducing Confederate money payments to gold) of all the income received by the present State of Virginia from the time of the dismemberment of old Virginia until the present time, aggregate $894,378.79. Twenty-three and one-half per cent is $210,179.01.

We have already stated that these schedules of West Virginia are not material for the purpose of relieving her in any decree from liability for interest. If they were material the foregoing figures show that they would relieve her from interest upon $210,179.01 only of her share of the principal debt and not upon her whole share of principal as West Virginia contends.

POINT SIX.

Even if West Virginia should be found entitled to 23 1/2 per cent of the value of the assets claimed by West Virginia, in no event would this reduce the amount of West Virginia's share of the principal sum heretofore determined because Virginia subsequent to January 1, 1861, from her separate and individual resources or from the proceeds of the assets in question paid off obligations of the undivided state for which West Virginia was liable as to her share to an amount far in excess of the value of the assets received by Virginia. Virginia is entitled to use and apply the investments held by her and the value or the proceeds thereof to the payment of the obligations of the undivided Commonwealth of Virginia.

(The bondholding Creditors' twelfth exception.)

From plaintiff's Exhibit 1 (Exhibits, pp. 286-8) it appears that between January 1, 1861, and December 31, 1871, Virginia paid out $7,094,103.61 on account of interest on the common debt and that prior to 1871 she issued her bonds in the sum of $6,576,913.60 in payment of interest due upon the bonds of the undivided State upon which West Virginia is jointly

liable with Virginia (Plaintiff's Exhibit No. 1, Exhibits, p. 288 and Plaintiff's Exhibit No. 5, Exhibits, p. 375). The total of these payments in cash and bonds for interest upon the undivided debt amounts to $13,671,017.21. The common debt as heretofore admitted and determined in this case included $977,209.89 of accrued interest from July 1, 1860, to December 31, 1860. To avoid a possibility of duplication of charge this amount is deducted from the said total subsequent payments by Virginia, leaving $12,693,807.32 of interest upon the joint debt accrued since January 1, 1861, and since paid by Virginia alone and no part of which is included in the debt as to which West Virginia's share has been fixed. West Virginia asserts that Virginia scaled these bonds under her various Funding Acts. It appears from Plaintiff's Supplemental Exhibit No. 1a (Exhibits, pp. 296-299), that if Virginia had taken advantage of all of her Funding Acts as to all of these bonds issued for interest, she would have paid out by the smallest possible calculation $9,907,029.95 on account thereof. It cannot be denied that the payments for interest made in Virginia during the war were in Confederate money. Payments for interest for bonds held abroad were made in gold, but there is no way at this time of separating such payments for interest from those made in Virginia, and all payments for interest between January 1, 1861, and April 1, 1865, have been reduced to gold on the basis of the table for Confederate money as contained in the original record at page 647. This reduces the gold value of the cash payments for interest on the common debt made by Virginia from $7,094,103.61 to $4,836,397.48, and the total payments for such interest in cash and bonds to $10,436,101.19; after also deducting the $977,209.89 of accrued interest to December 31, 1860.

In addition to these payments for interest it appears

from Plaintiff's Supplemental Exhibit No. 1 (Exhibits, pp. 289-295) that Virginia issued her bonds in the sum of $1,509,150.02 on account of debts of the undivided State existing prior to January 1, 1861. The same exhibits shows that $1,008,160.38 of these bonds were issued to pay for internal improvements contracted for by the old State of Virginia prior to January 1, 1861, and $270,570 thereof were exchanged for James River and Kanawha Company's bonds guaranteed by the undivided State and for which the undivided State was liable. Other bonds went to pay interest on the bonds of the James River and Kanawha Company and the Chesapeake & Ohio Canal Company guaranteed by the old State and dividends on the old James River and Kanawha Company's stock for which the undivided State was liable. These payments aggregate $1,451,492.01. The remaining $57,658.01 represents payments on account of interest to the Literary Fund. It has heretofore been determined in this case that the Literary Fund is not a separate corporation, but a part of the State of Virginia and the payments to it therefore are not a proper charge against West Virginia. Disregarding these payments it appears that subsequent to January 1, 1861, Virginia issued her bonds under loans Nos. 90, 91 and 93 (described in original record, Joint Exhibit A1), in the amount of $1,451,492.01 in payment of obligations of the undivided State for the same amount outstanding on January 1, 1861. These unfunded debts were a part of the outstanding debt of the undivided State as of January 1, 1861, and should have been included therein. Even if it should be determined that West Virginia is otherwise entitled to her share of the fair value of the assets, she cannot receive any credit against Virginia on account thereof until the fair value of the assets exceeds the amount expended by Virginia on account of the obligations of

the old State for which West Virginia is jointly liable with her.

We have shown these joint debts owing on January 1, 1861, paid by Virginia at a like cost to her to amount to $1,451,492.01 and that interest on the common debt accrued since January 1, 1861, amounting to $12,693,807.32 was paid by Virginia at a cost to her on a gold basis of $10,436,101.19, making a total of $11,887,593.20. To this is to be added $2,218,-319.81 for interest after January 1, 1872, on bonds issued by the present State of Virginia in exchange for the old unfunded bonds of the undivided State for which Virginia issued her bonds in full (Exhibits, p. 419). It is true that these bonds are held by educational institutions within the bounds of Virginia, but they are separate corporations, and the bonds originally held were a part of the admitted debt for which West Virginia is legally bound to pay her share. West Virginia will not be heard to say that Virginia might in the case of these institutions have issued her certificate for one-third as in the case of other holders. Virginia like any other surety has the legal right to discharge the obligation when due, and look to West Virginia therefor. Adding this amount to the previous total gives a sum of $14,105,913.01, representing payments of common debts for which West Virginia and Virginia are each liable in the proportion of their respective shares, and no part of which is included in the common debt as heretofore determined. As Virginia has discharged common obligations separate and distinct from and in addition to the common debt as heretofore determined she will not account to West Virginia for West Virginia's share of the fair value of the assets unless the fair value of the assets exceeds the amount of her expenditures for common obligations and then only to the extent of that excess.

POINT SEVEN.

West Virginia's claim if proved will not reduce the amount owing by West Virginia for either principal or interest in any degree. West Virginia's equitable proportion was determined on the basis of the ratio of the total wealth of the two states. It is immaterial what proportion of the wealth of either state was held in common by the state or in separate ownership by individuals, or what proportion of the wealth of either state was created by the proceeds of the common debt.

This principle has already been decided in this case in its application to West Virginia. The bill alleged and the proof on the previous hearing showed that West Virginia received a part of the common assets at the time of her creation as a separate State for which she promised to account in the settlement thereafter to be made. The Court said:

> "As West Virginia gets the benefit of this property without an accounting, on the principles of this decision it needs not to be mention in more detail" (220 U. S., 1).

If West Virginia gets the benefit of the property she received without an accounting on the principles of the decision it follows that Virginia is entitled to the same benefits with relation to the property she retained. This determination of the court is in ac-

cord with sound reasoning. States cannot be divided according to the principles which govern the dissolution of a private partnership. Large questions of public policy are involved. The creditors loan their money on the faith and credit of the character of all the people and all the wealth of the undivided State. It is not just to them to say that they shall look for the satisfaction of their claims to the wealth of the people that received the proceeds of the debt.

Even the principles governing the dissolution of a private partnership would not support West Virginia's claim. Assume a partnership between A and B with equal shares, and an indebtedness of $1,000. A receives assets valued at $1,000 purchased with the proceeds of this indebtedness, and B receives assets valued at $1,000 purchased with other partnership assets. The debts of the partnership would be apportioned equally between A and B according to their share in the partnership, and would not fall exclusively upon A, who has received all the assets purchased with the proceeds of the indebtedness. It is impossible to determine the separate value accruing to either West Virginia or Virginia because of the creation of these assets or because of other State expenditures made within the present bounds of each. The assets were created by the votes of all the people of the undivided State, and the record on the previous hearing discloses that a very large sum had been spent on public improvements within the bounds of West Virginia (original Master's Report, paragraph III, pp. 83-86, and references cited therein). At all events West Virginia with the aid of these public improvements in Virginia and in West Virginia has been able to grow and develop until in 1908 the total assessed value of her property was nearly a billion dollars while the total assessed value of Virginia as of the same date was only two-thirds of that sum.

Upon the basis of the contention made by West Virginia if the figures presented by West Virginia at the recent hearing in Richmond represented actual values instead of merely "Claims of West Virginia for consideration in settlement of debt as set up in Hillman Exhibits" the entire burden of this debt would fall upon Virginia, and the creditors would receive nothing from West Virginia, although at the time of the creation of West Virginia as a separate State, she had a third of the white population, over a third of the territory and twenty-three and one-half per cent of the total wealth of the undivided State, and has grown in wealth and prosperity in the meantime until in 1908 her total assessed wealth exceeded that of Virginia by nearly fifty per cent. Such a contention is so unfair, unjust and unequitable that it discredits the method by which the result is attained.

It will not be disputed that West Virginia is not entitled to offset the value of these assets against her share of the common debt unless West Virginia could now successfully assert a claim against Virginia to recover a sum representing such value.

Assume that there was no common debt and that West Virginia was now suing Virginia to establish the claim asserted here. It would be a complete answer upon Virginia's part to say that upon the division of the State the fixed physical property formerly owned by the undivided State is owned by the new State in which it is located. The fact that the property right of the old State was represented by shares would make no difference in this regard. The property right in the shares follows the right to the fixed physical property. This is the purport of the statute passed by the General Assembly of the Restored State of Virginia, February 3, 1863, as set out in paragraph VIII of the bill. Such a statute if passed

by West Virginia alone would have been constitutional. The ownership of the fixed physical property in West Virginia formerly owned by the undivided State vested by the division in the State of West Virginia. Such a statute would not have been constitutional if the new Virginia's rights therein still remained. The same is true of the assets remaining in Virginia. After the separation West Virginia is as powerless to assert property rights or claims on account of the public property remaining within the bounds of the present State of Virginia, as Virginia was powerless to assert a claim on account of the public property which West Virginia received. There is no rule of public law that where a State divides into two States the public property should be apportioned according to the wealth of the respective States. The public property belongs to the new State in which it is located. This rule is not changed because the public property may have been created by the proceeds of the public debt instead of from funds raised by taxation or otherwise. West Virginia could not have asserted an independent claim against Virginia on account of these assets. Her claim for set off rests upon the same principle and fails for the same reason.

POINT EIGHT.

The terms upon which West Virginia was admitted into the union are all set out in the contract evidenced by the three documents (220 U. S., 28) viz; the Constitution framed for West Virginia, the act of Virginia consenting to the creation of the new state and the act of Congress admitting the new state. Neither this Court or the Congress can add one term or condition now to that contract.

The material terms of the contract are all expressed in the Constitution framed for West Virginia. The eighth section of the VIII article is the vital feature. The only question asked in Congress during the debate on the admission of the State was "Has provision been made for the payment of the public debt of Virginia?" This was answered in the affirmative and the 8th Section of the VIII article referred to.

The only provision made in the contract between Virginia and West Virginia as evidenced by the three documents was that West Virginia should assume an equitable proportion of the public debt prior to January, 1861. Nothing was said or intimated as to Virginia's being held accountable for any part of the public improvements that remained within her borders.

The Master in his report, page 10 of his report, has said, however:

> "West Virginia's rights do not depend upon any title that she acquired to assets solely

> owned by Virginia, as to which she did not and could not acquire any title, but they do depend upon the agreement of Virginia to account for these assets or investments at their fair value upon the date when the amount of the debt is to be ascertained."

We have elsewhere commented upon this statement and have challenged the production or reference to one word in this record that gives countenance or support to it. We now deny that any such agreement on the part of Virginia exists or ever did exist. The eighth section of the VIII article of the Constitution of West Virginia contains all that was ever agreed to by Virginia or ever proposed on behalf of Virginia.

Yet it is on this false assumption that the conclusion reached by the Master, that Virginia is liable to account to West Virginia for any proportion of the value of the property that remained within her borders rests. It is only on the assumption that Virginia had agreed to become responsible for these assets that she can be held liable for their value now.

The partition of Virginia by the creation of this new State within her territory was an act of the Federal Congress alone. Congress might have provided such terms as it saw fit.

> Pollard v. Hagan, 3 Howard, 229.
> Strader v. Graham, 10 Howard, 82.

But even as to such conditions as Congress might impose, if the State was admitted by Congress into the Union, under a Constitution which disregarded or violated such conditions it would then be too late for Congress to undo the Act of admission, or seek to enforce the prescribed conditions. The Ordinance of 1787 prescribed that the territory granted by Virginia to the United States, should not be divided into more than five states and should not allow slavery to

exist within those states. It was held repeatedly by this Court that these conditions were without effect in any State formed out of the Northwestern territory unless re-enacted by such State.

Permoli v. First Municipality, 3 Howard, 610.

This Court is without the power to add anything to the agreement of Virginia. It is without the power to make Virginia responsible for the debris of the work of internal improvements that were left within her borders when West Virginia was created, and separated herself from Virginia. It is without the power to diminish the amount already ascertained and determined of West Virginia's liability for her proportion of the principal debt by deducting therefrom any amount on account of West Virginia's share of the alleged "assets."

When West Virginia was created and admitted into the Union, Virginia consented to it upon the terms stated in the Constitution then framed for West Virginia, and upon no other terms. The tripartite contract was entered into and the final act was done upon the status that then existed. Certain parts of the internal improvements that then existed—unfinished and incomplete remained in West Virginia and certain other parts remained in Virginia. West Virginia knew of this and tacitly agreed that the status then existing should remain. The debates in the Virginia Convention of November, 1861, and the debates in Congress on the question of the admission of the new State are all extant and have been repeatedly referred to during the pendancy of this cause. In none of these debates nor in the contemporaneous discussions was it at any time ever hinted or claimed that Virginia should be held responsible as trustee or as bailee for any part of these works that remained within her limits.

It appears that this Court, in the opinion delivered in Virginia vs. West Virginia, 220 U. S., on pages 29-30, used the expression "The whole State would have got the gain and the whole State must bear the loss, as it does not appear that there are any stocks of value on hand."

This expression was seized upon by West Virginia as justifying the filing of the supplemental answer in which for the first time in fifty years are set up and asserted the claims made in that answer in which it is charged that there were "stock of value on hand" amounting to many millions of dollars. It was objected that the filing of this supplemental answer should not be allowed because it appeared that all of the items constituting the new claim had been already shown in evidence and that they might have been used by West Virginia for the purposes of set off when the case stood on the pleadings or when it was before the master in 1910. The master in his report says as to this:

> "The issue of these assets, or 'investments' as they are called in the opinion of the Court, *and their value as elements of setoff in favor of West Virginia*, was not submitted in any of the proposed findings. * * * Such investigation is therefore now prosecuted for the first time. So far as the various items were referred to they were referred to for an entirely different purpose in the main."

The items however were referred to for some purpose and might have been referred to for the present purpose had West Virginia then seen it was for her interest to do so.

They are referred to now for the purpose of presenting a new and entirely different case from that on which the Court was then called on to act. Had the partition of Virginia been effected by a Court of

Equity in a suit for partition such Court by its decree might have provided for an *owelty of partition* by requiring one joint tenant who had allotted to him a share greater in value than the share allotted to his co-tenant, to pay to his co-tenant an amount in money to equalize their shares. But this was not the work of a Court of Equity. The partition here was effected by a political department of the government. It may be true that Congress was guided and controlled in some measure by the contract of the parties.

That contract made no provision for anything more than the partition of the State on the terms stated in the Constitution framed for the new State. That contract in none of its parts, made any provision for requiring Virginia to account for the value of any public property left by the partition within her borders. It did not provide for and hence it did not contemplate that the interests of the two partners should be equalized or harmonized by contributions from either to the other in the nature of owelty of partition.

It defined the geographical boundaries of the new State by indicating the counties which should compose such State. In the Congress that enacted the law for the admission of the new State, the only question asked was "Has provision been made for requiring the new State to bear a proportion of the public debt." Nothing was said in the Constitution framed for the new State as to requiring Virginia to account for the property of the old State left within her borders.

West Virginia from all that appears in contemporary utterances by her or her people, or in the debates in Congress was satisfied and well content to obtain her separate existence with such of the public property as she then had in her possession without having any regard to the debris of the work of public improvement that remained within the limits of Virginia.

And this notion of treating Virginia as a Trustee or a Bailee of such property and holding her to an accounting therefor was never suggested or dreamed of until the year 1914, fifty-one years after the State of West Virginia was created, and more than eight years after the pleadings in this cause had been completed and after the proof had been taken when it found birth in the supplemental answer filed in 1914.

There was good reason why the people of West Virginia did not in 1863 assert any such contention. It is charged in the bill, Section 111, Original Record, page 5, that

> "it will appear from an inspection of the legislative records of the State, where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the Legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia."

This strong charge is not denied in the answer of West Virginia but indeed is there admitted (Record, p. 145).

This Court in this case under the present pleadings is without power to treat this as a proceeding for partition and compel contribution from Virginia to satisfy a demand against her for property in which West Virginia claims to have an interest.

POINT NINE.

Interest.

It has now been admitted, found by the master and adjudged by the Court that the public debt of the Commonwealth of Virginia prior to January 1, 1861 was $33,897,073.82. Of that public debt West Virginia assumed an equitable proportion by her Constitution under which she was admitted into the Union. It has been decided that that Constitution and the Act of Virginia giving her consent and the Act of Congress admitting the state, these three documents, form a contract, the terms of which are expressed in these three documents. It has been declared by this Court (the contrary could not be affirmed) that this public debt was "represented mainly by interest bearing bonds" (220 U. S., 27).

It was that public debt so represented of which West Virginia assumed an equitable proportion. She would now insist, if she could that it was only of the principal and not of the interest that she assumed a proportion. She will not be heard however willing she may be to so affirm.

These "interest bearing bonds" existed in January 1861, and continued to exist in June, 1863, when West Virginia came into actual being and they exist today. The interest except so far as it has been satisfied or redeemed or become extinct by the maturity of the bonds still continues to run. This Court has said (220 U. S., 36), and West Virginia has been invigorated by the utterance:

> "Wherever the responsibility for the delay might ultimately be placed, or however it might be shared, it would be a severe result to capitalize charges for half a century—such a thing hardly could happen in a private case an-

> alogous to this. Statutes of limitation, if nothing else, would be likely to interpose a bar."

We do not ask so much.

Something is sought to be made of the word "equitable." It has been argued with seeming gravity that the word involves the exercise of the duties of a chancellor—a weighing of equities, etc. The gravity should relax when it appears that the chancellor on whom the delicate duty was placed was the legislature of West Virginia. Further explanation is needless.

In Tilson vs. United States (100 U. S., 43-46), an Act of Congress directed the Court of Claims "to ascertain, determine and adjudge the amount *equitably* due said firm, if any, for such loss and damage." The Court, however, said:

> "To our minds the word 'equitably' as here used means no more than that the rule of law applicable to the case shall be construed liberally in favor of the claimant."

So in McClure v. United States, 116 U. S., 149.

(a) *West Virginia is liable for interest.*

The Court has held this is a suit on a contract.

It is in fact a suit for the specific performance of a contract made for the benefit of a third party. The contract is set forth in Section 8, Article VIII, of the West Virginia Constitution, upon which West Virginia was admitted in the Union. It is as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing in-

terest and redeem the principal within thirty-four years."

West Virginia is liable for interest by the express terms of this paragraph. As West Virginia is speaking, the clause will be construed most strictly against that State. The public debt of the Commonwealth of Virginia prior to the first day of January, 1861, consisted almost wholly of interest-bearing bonds and the balance of the debt was accrued interest on those same bonds. If the accrued interest prior to the first day of January, 1861, was a portion of the public debt, how is it possible to say that the accruing interest was not.

The Court has made plain that this promise of West Virginia is only the expressed recognition of a deep-seated equity for which she was already liable. The Court in its decision of March 6, 1911 (220 U. S., 1), said as follows:

> "The liability of West Virginia is a deep-seated equity, not discharged by changes in the form of the debt, nor split up by the unilateral attempt of Virginia to apportion specific parts to the two States."

If there had been no contract in West Virginia's Constitution, West Virginia would have been equally liable for her equitable proportion of the debt. It will not bear the light of reason to say that, as to Virginia's share, after the dismemberment of the old State, the bondholding creditors of the old State would be entitled to receive interest upon the bonds according to their tenor; but upon West Virginia's proportion thereof, the same creditors holding the same bonds would not be entitled to receive their interest. The equitable obligation falling upon each State to pay its share of the undivided debt is contractual and not tortious. West Virginia is just as liable for her share of these bonds according to the tenor of the bonds as Vir-

ginia is liable for her proportion. The fact that West Virginia acknowledged her liability in her constitution, and promised to Virginia to discharge that liability, while it adds another form to West Virginia's obligation does not change its substance. It certainly does not change the substance of that obligation to diminish it. Suppose West Virginia, for a sufficient consideration, had assumed the whole debt, would she be heard to say that, while she was liable for the principal of the bonds, the interest upon them, according to their tenor, was not for her to pay. She proposed, in Section 8, Article VIII, to provide a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years. This shows that both West Virginia and Virginia had in mind, and that Congress had in mind, her liability for the interest as well as for principal.

West Virginia concedes that she is liable for the accrued interest. There is no term which determines the liability for interest which had accrued, different or additional to the terms which fix the interest to accrue after January 1, 1861. Suppose we give our promissory note to X for $1,000, payable in one year, with interest at 6 per cent; in six months from now Y comes along and assumes our obligation. Does not Y by that act contract to pay the accruing interest just as much as he contracts to pay the interest which has accrued? In this respect West Virginia is no different from any individual. This was an obligation for interest as well as for principal. The question of whether a State is liable for interest except where she expressly promises to pay it does not arise because West Virginia promised. Only *ex contractu* obligations of a State are enforced in this Court.

United States vs. North Carolina, 136 U. S., 211.

South Dakota vs. North Carolina, 192 U. S., 286.

In this case our right to interest is based upon West Virginia's promise to pay it.

In the brief filed on behalf of Virginia upon the argument on the merits after the master's report, West Virginia's liability for interest was very fully discussed (Va.'s Brief, pp. 94-97), and it was there shown to be the law of Virginia that interest is incident to the obligation and, even though not expressed in the contract, is an inherent part of it.

> "Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation, and whenever a debt is due, the debtor is bound to pay interest unless relieved from this obligation by agreement. This is, and has been the law of the Commonwealth for more than one hundred years.
>
> "In Jones vs. Williams, 2 Call., 106, decided in 1799, Edmund Pendleton, who was one of the great judges of our country, delivering the opinion of the Court said:
>
> "Interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it."
>
> "Cited with approval in Baker vs. Morris, 10 Lehigh, 284; McVeigh vs. Howard, 87 Va., 599, and Stuart vs. Hurt, 88 Va., 343.
>
> "In Hatcher vs. Lewis, 4 Randolph, 152, 147, the Court laid down the rules in the following expressive language:
>
> " *'The interest follows the principal as the shadow does the substance.'*
>
> "In Chapman vs. Shepherd, the Court said:
>
> " 'In contracts for the payment of money, interest is not given as damages at the discretion of the Court, or jury, but as an incident to

the debt, which the Court has no discretion to refuse.'

Chapman vs. Shepherd, 24 Gratt., 377, 384.
Roberts vs. Cocke, 28 Gratt., 207.
Tidball vs. Shenandoah National Bank, 100 Va., 741.

"Interest is favored both by the legislative and judicial bodies of the State."

"Tazewell vs. Saunders, 13 Gratt., 354, 370.

"In McVeigh vs. Howard, 87 Va., 599, the Supreme Court of Appeals of Virginia said:

" 'It is the settled rule that when no day is named in the bond or note given for the payment of a precedent debt, it is due and payable on the day of its date, and bears interest from that date, though no interest be reserved. Such an instrument like a bond or note payable, in Virginia, on demand, is payable presently, and bears interest from date. This doctrine is founded in good conscience and correct morals.' * * *

"Citing Jones vs. Williams and Hatcher vs. Lewis, quoted above.

"Such is the law of Virgina as to interest.

"*The law of West Virginia in regard thereto is the same.*

"In Shipman vs. Bailey, 20 W. Va., 140, 146, Judge Snyder, announcing the unanimous opinion of the Supreme Court of Appeals of that State, after citing a number of authorities upon the question, stated the rule as follows:

"Other authorities of the same character might be cited, but, we think, we have given sufficient to establish the rule which seems to be, that in contracts for the payment of money interest on the principal sum is a legal incident of the debt and a part of the contract, and wherever there is a contract for the payment

of a special legal rate of interest, whether such rate is fixed by the contract itself or by the law of the place where the contract is made, the obligation of the contract extends to the payment of such interest as fully as it does to the principal sum, and Courts have no more power to change the rate of interest thus fixed, than they have to dispense with the enforcement of the contract either in whole or in part.'

"That decision reaffirms another proposition, applicable to this case, already a part of the jurisprudence of West Virginia, by the adjudications of the Supreme Court of Virginia rendered before the birth of the new State, namely that the *lex loci contractus* controls in the matter of the interest chargeable against a debtor.

"In Pickins vs. McCoy, 24 West Va., 344-352, the Court affirms Shipman vs. Bailey, and adopts the language just quoted from that decision.

"Independently of these West Virginian decisions, such parts of the common law and of the laws of the State of Virginia as were in force on the 20th of June, 1863, when the first Constitution of West Virginia went into operation, and as are not repugnant to said Constitution, were continued and declared to be the law of West Virginia. Section 8 of Article XI of the first West Virginia Constitution. And see present West Virginia Constitution.

"The effect of this provision was to adopt for the new State the body of the common and statute laws of the Commonwealth, so far as the same were in force within the boundaries of the new State on the 20th of June, 1863.

"As a part of this body of laws, the law of Virginia as to interest became, and has continued to be, a part of the laws of West Virginia.

"Such, then, was the law of Virginia before, at the time of and since the formation of West Virginia, as to the legal and equitable liability

of a debtor or contractor to pay interest. Such has been the law of West Virginia since the hour of her birth. And such was, and is, the law of the contract evidence by the public acts of Virginia and West Virginia set forth in complainant's bill.

"This is the rule in Virginia as to debts due by the Commonwealth.

"The question was presented in the celebrated case of Higginbotham's Executrix vs. Commonwealth, 25 Gratt., 627.

"That was a suit against the Commonwealth to recover the amount due Higginbotham's executrix on certain past due dividends on stocks which had been guaranteed and assumed by Virginia by the acts cited in the opinion of the Court—26 Gratt., 630, 631.

"There was no express contract by the State to pay interest upon said dividends. The petitioner's claim was for the amount of the dividends 'with its accruing interest.'

"The unanimous decision of the Supreme Court of Virginia was that 'judgment should be entered for the petitioner for the amount of her demand with interest'" (*idem*, p. 641). (Va.'s Brief, pp. 94-97.)

North Carolina was not held liable for interest which she did not expressly promise to pay. In that State interest, unless expressly promised, is not an inherent term of the contract, but is imposed as damages for failure to keep the promise. If by the law of North Carolina the State was charged with interest, whether she expressly promised it or not, the decisions in the above cases would have been otherwise. Under the cases cited in brief of Virginia, West Virginia is liable for interest upon her share of the debt down to the present time even if she had not expressly promised to pay it. If West Virginia had made no express promise about her debt under the law as laid down in the cases in Virginia's brief West

Virginia would be liable for interest from January 1, 1861, up to the present time. *But we do not ask so much.*

West Virginia's liability for interest rests upon her promise in her Constitution; recognizing the deep-seated equity imposed by her action of separation: to pay her proportion of the debt, principal and interest, to the date of maturity of the various bonds according to their tenor.

(b) *The amount of interest which West Virginia legally owes is* $14,174,425.64.

This interest is computed upon West Virginia's share of the bonds outstanding January 1, 1861, according to their tenor (Exhibits, pp. 386-392).

An examination of Plaintiff's Exhibit No. 9 (Exhibits, pp. 386-392), shows that many of these bonds are redeemable at the pleasure of the General Assembly and draw interest until redeemed.

The six per cent registered bonds redeemable at the pleasure of the General Assembly, outstanding in the hands of the public, after deducting all bonds held by the Board of Public Works, the literary fund and the sinking fund amount to $8,957,271.03 and West Virginia's proportion thereof is $1,898,941.46.

The five per cent bonds redeemable at the pleasure of the General Assembly outstanding in the hands of the public, after deducting all bonds held by the Board of Public Works, the literary fund and the sinking fund of Virginia amount to $262,000.00 and West Virginia's proportion thereof amounts to $55,-544.00.

The James River stock annuity shown in the master's report to amount to $95,500.00, in the hands of the public, after deducting all bonds held by the Board of Public Works, and the literary fund and the sinking fund of Virginia, was not evidenced by any form

of certificate of debt, prior to January 1, 1861, but that figure is the principal amount required to produce annually at six per cent the sum guaranteed forever to the stockholders of the James River Company, and this treatment of the annuity was approved by West Virginia's accountant in joint Exhibit A1 and acquiesced in by West Virginia. West Virginia's proportion of this annuity is $20,246.00.

The bonds are collected in eight groups. The six per cent and five per cent registered bonds, redeemable at the pleasure of the General Assembly, and the James River stock annuity comprise groups 1, 2, and 3, respectively. West Virginia's share of the bonds in these three groups amounts to $1,974,731.46, being much less than one-third of the total principal for which she is liable. This Court has decided that no portion of the debt is extinguished, and there is no reason why on this proportion of West Virginia's share she should not pay interest to date. On any basis of computation she is legally bound to do so. This is offset by the fact that in the case of the remainder of her share she does not pay interest at all on some of the bonds and on the others pays interest to periods which end from 1886 to 1894.

The bonds in group 4 were created under an act of March 16, 1838, and were redeemable in twenty years, so no interest is charged upon West Virginia's share of this group.

The bonds in group 5 are 6 per cent registered bonds redeemable in 34 years. They were created under acts passed March 23, 1860; March 17, 1856; March 18, 1858, and March 29, 1851. The bonds issued under the act of March 23, 1860, would mature 34 years thereafter, to wit, March 23, 1894, and no interest on West Virginia's share of these bonds is figured subsequent to that date; the bonds issued under the act of March 17, 1856, would mature 34 years thereafter, to

wit, March 17, 1890, and no interest on West Virginia's share of these bonds is figured subsequent to that date; the bonds issued under the act of March 18, 1858, would mature 34 years thereafter, to wit, March 18, 1892, and no interest upon West Virginia's share of these bonds is figured subsequent to that date. The bonds issued under the act of March 29, 1851, would mature 34 years thereafter, to wit, March 29, 1885, and no interest upon West Virginia's share of these bonds is figured subsequent to that date.

No interest is computed prior to January 1, 1861, because the unpaid interest up to that time is found by the Master and accepted by West Virginia as a part of the debt existing upon that date.

The bonds in group 6 are 6 per cent coupon bonds redeemable in 35 years, issued under the act of March 29, 1851, and interest upon West Virginia's share of these bonds is figured to March 29, 1886, being 35 years after March 29, 1851, the date of the act under which they were authorized.

The bonds in group 7 are 6 per cent registered bonds redeemable in 35 years. These bonds were issued in exchange for coupon bonds under act of March 18, 1856, but as these coupon bonds, for which the registered bonds were exchanged, were issued under the act of March 29, 1851, as shown in group 6 we figure the maturity as 35 years after this prior date of March 29, 1851, being March 29, 1886.

The bonds in group 8 are 5 per cent Sterling coupon bonds redeemable in 35 years, issued under the act of March 29, 1851, and interest upon West Virginia's share of these bonds is figured to March 29, 1886, being 35 years after March 29, 1851, the date of the act authorizing the issue. Adding together the interest chargeable against West Virginia on the bonds in each of these 8 groups here listed the whole interest is

found to be $14,174,425.61. This sum is only about two-thirds of the interest for which she would be liable upon a strict enforcement of the full measure of her liability.

Adding to West Virginia's share of the interest as here computed her share of the principal, the total amount of West Virginia's liability is $21,356,933.10 (Exhibits, p. 392).

(c) *If West Virginia should pay principal and interest upon her proportion of the debt in the same pro rata amount which Virginia has paid upon her proportion, or if West Virginia should scale both principal and interest in the same way that the various funding acts of Virginia provided, or if West Virginia should pay interest for 34 years as provided in her constitution the amount would be more than the amount we ask for.*

The figures to substantiate these deductions are contained in Plaintiff's Supplementary Exhibit No. 9 (Exhibits, pp. 393-397).

Plaintiff's Exhibit No. 22 (Exhibits, pp. 429-430), shows that the amount paid off by Virginia between January 1, 1861, and September 30, 1913, or assumed or carried by her on account of the old debt of the undivided State amounts to $77,857,885.74. This schedule shows that Virginia's then existing interest-bearing debt on this account amounts to $24,645,-075.23.

If West Virginia does as well by the old bondholding creditors upon her share as Virginia has done with her share, West Virginia will pay $23,917,086.06.

If West Virginia paid interest for 34 years as her constitution bade her legislature to provide, West Virginia would pay $21,681,432.96.

If West Virginia settled her proportion of the debt on the basis of the 1871 and 1892 Funding Acts of Virginia, she would pay $27,658,334.22; if West Virginia settled her proportion of the debt on the basis of the 1871, 1879 and 1892 Funding Acts of Virginia she would pay $21,638,059.08; if West Virginia settled her proportion of the debt on the basis of the 1892 Funding Act of Virginia alone she would pay $21,-885,124.39. If West Virginia settled her proportion of the debt on the basis of the 1871, 1882 Refunding Acts of Virginia she would pay $27,151,223.02. If West Virginia settled her proportion of the debt on the basis of the 1871, 1879 and 1882 Refunding Acts of Virginia she would pay $19,776,876.07 (Plaintiff's Supplementary Exhibit No. 9; Exhibits, pp. 393-397).

These Refunding Acts of 1879 and 1882 of Virginia have sometimes been referred to as a partial repudiation, and still on the basis of these acts West Virginia would pay as her share nearly twenty million dollars if she should have the benefit of both the acts of 1879 and 1882, taken together, applied to all of her share of the debt.

(d) *The efforts of Virginia to settle the controversy and West Virginia's excuses for failure to meet Virginia.*

West Virginia's admission of the facts bearing upon this portion of our argument are contained in pages 444-472, inclusive, and 490-496, inclusive, of West Virginia's Appendix to the West Virginia's Compilation, Vol. I, and paragraph XI of her original answer, and pages 12-20, inclusive, of her brief upon the hearing after the original Master's report.

During a period of forty-five years, from January 20, 1867, down to May 2, 1911, repeated efforts were made by Virginia to induce West Virginia to enter upon a settlement, all of which were without avail.

Six conspicuous efforts on the part of Virginia to bring about a settlement may be more particularly referred to.

These six efforts were as follows:

Governor F. H. Pierpont, of Virginia, sent a communication to Governor Arthur I. Boreman, of West Virginia, dated January 20, 1867, together with a joint resolution adopted by the General Assembly of Virginia on February 28, 1866, in reference to the reunion of the States of Virginia and West Virginia and the adjustment of the public debt, and appointing Mr. A. H. H. Stewart, Mr. William Martin and Mr. John Janny as commissioners to proceed to the seat of government of West Virginia, and giving them authority to treat with the authorities of West Virginia on both subjects.

On February 28, 1867, the Legislature of West Virginia adopted a joint resolution declining to entertain any proposition looking to a reunion of the States, and refusing to treat with the Commissioners of Virginia upon the adjustment of the public debt of Virginia until the suit of Virginia against West Virginia to recover jurisdiction over the counties of Berkeley and Jefferson had been finally disposed of (W. Va. Comp., Vol. I, pp. 444-445).

Governor Gilbert C. Walker, of Virginia, sent another communication to Governor William E. Stephenson, of West Virginia, in February, 1870, endeavoring to adjust the Virginia public debt with the State of West Virginia, and about the same time Messrs. William J. Robertson, W. T. Sutherlin, and P. H. Aylett, commissioners, appointed on the part of Virginia, also sent a communication to Governor Stephenson. The first communication was transmitted by Governor Stephenson to the West Virginia Legislature on February 24, 1870, and the second communication was so transmitted on February 28, 1870.

It appears from the joint resolution adopted by the Legislature of West Virginia after the receipt of Governor Stephenson's communication that the Virginia commissioners were then present in the city of Wheeling for the purpose of adjusting the public debt. The West Virginia Legislature appointed a committee to confer with the Virginia commissioners and report to the legislature, but as far as the journals of the House and Senate of West Virginia of the session of 1870 show no report was made by this committee (W. Va. Comp., Vol. I, pp. 446-447).

The defendant's answer states that afterwards, on March 3, 1870, the Governor of West Virginia was authorized by the legislature to appoint three resident citizens of the State to treat with the authorities of Virginia upon the subject of the proper adjustment of public debt of that State, but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners, and the resolution authorizing their appointment was passed on the last day of the session of the legislature, the Governor of West Virginia stated in his message of 1871, that no appointment had been made owing to the lack of funds to pay the expenses of such commission (Original Record, pp. 151, 152).

On February 17, 1871, Governor Walker, of Virginia, sent another written communication to Governor Stephenson of West Virginia offering to adjust West Virginia's proportion of the public debt of Virginia by arbitration in accordance with a joint resolution of the General Assembly of Virginia approved on February 11, 1871 (W. Va. Comp., Vol. I, pp. 449-451), but West Virginia declined this offer (W. Va. Comp., pp. 452-454).

In February, 1895, Governor O'Farrell of Virginia, communicated to Governor McKorkle of West Virginia, a copy of the resolution adopted by Virginia

March 6, 1894, appointing commissioners for the purpose of negotiating with West Virginia for the payment of the proportion of the Virginia public debt to be borne by West Virginia, but no response was ever made by West Virginia, although her legislature declined to negotiate with Virginia (W. Va. Comp., pp. 76 and 494).

On February 1, 1905, Mr. Randolph Harrison on behalf of the Virginia Debt Commission, addressed the joint committees on finance of the West Virginia Legislature in relation to West Virginia's contributive share of the debt of Virginia (W. Va. Comp., pp. 68-82), and as West Virginia was still unwilling to treat with Virginia this suit was begun. The last attempt of Virginia to treat with West Virginia is set forth in the motion papers on the motion of October 9, 1911, herein to proceed with the determination of the suit.

The only effort made by West Virginia at any time to settle this debt was made through a committee consisting of Messrs. John J. Jackson, J. M. Bennett, and A. W. Campbell, appointed by Governor J. J. Jacob, of West Virginia, under resolutions adopted by the West Virginia Legislature on February 15 and February 24, 1871. These gentlemen sent a letter to Governor Walker of Virginia notifying him of their appointment and inquiring what channel of communication with Virginia was open to them. Governor Walker replied that the joint resolution of Virginia providing for arbitration had superceded the joint resolution of February 18, 1870, authorizing the Governor to appoint commissioners, and for that reason that he could not appoint commissioners to confer with West Virginia.

He said that the tender of arbitration had not been withdrawn and was still open (W. Va. Comp., pp. 457-459). These commissioners of West Virginia then proceeded to determine for themselves the bal-

ance due Virginia from West Virginia, and found the amount to be 953,360.23 (W. Va. Comp., p. 472); but this determination was not satisfactory to the State of West Virginia, and the Senate Finance Committee of the West Virginia Legislature, on December 22, 1873, made a report to the effect that the State of West Virginia was not liable for any part of the debt of the undivided Commonwealth of Virginia, but that the State of Virginia was indebted to the State of West Virginia in the sum of $525,000.00 (W. Va. Comp., pp. 490-493). Ever since that time, with the exception of the proceedings resulting in the filing of the supplemental answer, West Virginia has taken the position that she does not owe any portion of the debt of the undivided Commonwealth of Virginia and that she would not enter into any negotiations looking to the settlement of the Virginia debt question. West Virginia's Legislature has repeatedly adopted resolutions denying that West Virginia owed any part of the so-called Virginia debt, and that her legislature was opposed to any negotiation whatsoever on that subject (W. Va. Comp., pp. 494-496).

The last visit of the representatives of Virginia to West Virginia with reference to the settlement of the debt took place on May 2, 1911, and subsequent to the time of the filing of the defendant's answer, but the previous efforts of Virginia to settle this debt and the refusals of West Virginia to do anything with reference to a settlement, are virtually admitted in the defendant's original answer in paragraph XI thereof.

It appears from the foregoing that Virginia on five separate occasions, in the years 1867, 1870, 1871, 1895 and 1905, tried to amicably settle this controversy, and, these repeated efforts having failed, that Virginia brought this suit in February, 1906, and in accordance with the decision herein, dated March 6,

1911, that she again endeavor to meet West Virginia, and it also appears that the only time West Virginia was willing in any way to discuss with Virginia the settlement of the debt, with the exception of the proceedings at Washington in 1913, was in 1871, when West Virginia appointed commissioners to treat directly with Virginia at a time when the General Assembly of Virginia had adopted a resolution providing for the settlement of the controversy by arbitration. It also appears that the findings of this committee fixing West Virginia's share in even the small sum of about $1,000,000 were repudiated by the West Virginia Legislature of 1873, and that from that time down to the present West Virginia has continually refused to treat with Virginia in any way for the settlement of this controversy.

West Virginia's excuse for failure to meet Virginia in 1867 was the pendency of the suit in this court in regard to the counties of Berkeley and Jefferson. The Governor of West Virginia was authorized to appoint commissioners to meet Virginia's commissioners in 1870, but he made no appointment because the legislature had failed to appropriate money to pay the expenses of such commission. Virginia's tender of arbitration in 1871 was declined, so West Virginia said, because West Virginia soon afterward appointed commissioners to treat with Virginia directly. West Virginia made no response to Virginia's offer in 1895, but her legislature declined to negotiate with Virginia and passed the following resolution:

"House Joint Resolution No. 10, Concerning the Virginia Debt.

"(Adopted February 7th, 1895.)

"*Resolved by the Legislature of West Virginia,* That this legislature hereby declines to enter into any negotiations with the debt com-

missioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution."

West Virginia's answer to Virginia's offer in 1905 was the following resolution:

"(H. J. R. No. 7.)

"Joint Resolution No. 3.

"(Adopted January 20, 1905.)

"Relating to the Virginia Debt.

"*Resolved by the Legislature of West Virginia,* That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject."

Counsel for West Virginia have attempted to justify West Virginia's refusal to meet Virginia in 1895 and again in 1905 because the resolution of the Virginia Legislature creating the Virginia Commission provided that the commission should not enter into any negotiations thereunder except upon the basis that Virginia is bound only for two-thirds of the debt of the original State, which she has already provided for as her equitable proportion thereof. An argument was based upon this provision that any negotiations conducted by the Virginia Commission must necessarily assume West Virginia's proportion to be one-third and that of course she was unwilling to negotiate on this basis.

The provision in the act referred to above was an arrangement between Virginia and her creditors. In 1871 Virginia assumed two-thirds of the debt and at once compounded and capitalized all the past-due in-

terest on this portion. The load was more than she could bear and finally, in 1892, she made a final and satisfactory settlement with her creditors. Of course Virginia did not propose to reopen this question. She had, up to 1906, paid out various sums amounting to upwards of $70,000,000 in payment of her proportion of the debt. It was perfectly right that she should stipulate with her creditors that the amount of her liability was already fixed and determined, as in fact it was. There is no excuse for assuming that the act of 1894, creating the Virginia Commission, or the act of 1900, authorizing this suit, in the slightest degree attempted to fix West Virginia's liability in advance as one-third or to predetermine it to any extent. West Virginia's amount was left open to be determined by negotiation between the parties. This is especially true when read in the light of the resolution of West Virginia's Legislature of 1895 and of 1905.

Conclusion.

This bill was filed February, 1906.

The decision overruling the demurrer (220 U. S., 290) was delivered March, 1907.

The decree referring the cause to a Master (209 U. S., 514) was entered March 4, 1908.

Hon. Charles E. Littlefield was appointed Master June 1, 1908.

Testimony was taken at Richmond between November 16, 1908 and July 2, 1909.

The case was argued before the Master in New York November and December, 1909.

The Master's report was filed March 17, 1910.

The decision of the Court fixing West Virginia's share of the principal (220 U. S., 1) was delivered March 6, 1911.

Virginia moved to proceed with the cause October 9, 1911.

The Court denied the application (220 U. S., 17).

Virginia again moved to proceed with the cause October 13, 1913.

The motion was again denied (231 U. S., 89).

After argument the Court granted leave to West Virginia to file her supplemental answer June 8, 1914.

West Virginia comprises 37.37 per cent of the land area and 36.18 per cent of the total area of the undivided State and on June 20, 1863, had 33.52 per cent of the population without slaves of the undivided State. The wealth of West Virginia has increased so rapidly that the assessed value in 1908 of West Virginia amounted to over $937,000,000 while that of Virginia was under $662,000.00. West Virginia in 1908 had 58.62 per cent of the combined assessed wealth of the two States (Original Record, p. 651). Virginia has paid over $77,000,000 on account of her share of this debt (Exhibits, p. 393). These payments have been made continuously and many of them during periods of great financial depression in Virginia. West Virginia's assessed wealth now exceeds one billion dollars. The case is over nine years old. The time has come when West Virginia should settle her liability to the creditors.

March 27, 1915.

HOLMES CONRAD,
SANFORD ROBINSON,
Counsel for the Bondholding Creditors

Schedule 1.

A statement showing all dividends, reduced to a gold basis, paid after January 1, 1861, upon the stock of all the banks, railroads and other companies, except the Richmond, Fredericksburg & Potomac Railroad Company, for which West Virginia makes a claim in this proceeding; taken from Defendant's Exhibit No. 12—1861 and 1863 (Exhibits, pp. 71-89; 227-240). In the case of the Richmond, Fredericksburg & Potomac Railroad Company, the dividends paid in and after 1882 are not shown.

Class B—*Richmond, Fredericksburg & Potomac R. R. Co.*:—

				Confed.		Net.
P. 2	1859	7% in Bonds	Paid in March			
	1860	7% " "	and July 1863	@ 7-2/5	=	9/10%
	1861	3-1/2%	not paid till 1873.....		=	3-1/2%
	1862	5-1/2%	No date, say Jan.....	@ 1-1/4	=	4⅜
	1863	8%	May.....	@ 5-3/4	=	1⅜
		18-1/2%	Dec.....	@19	=	97/100%
P. 80	1864	13%	Nov	@30-1/2	=	43/100%
	1874	3-1/2%	Feby.....		=	3-1/2%

Class C—*Orange & Alexandria R. R. Co.*

	1857					
	1858	Dividends were paid on Preferred Stock but the Rate is not given in the records of the case— See P. 14-15.				
	1859					
P. 227	1864	4%	Sep	@25	=	16/100%

Richmond & Danville R. R. Co.

P. 19	1859	4%	(Paid in 1860).....			4%
P. 227	1863	6%	Sep.....	@12-1/2	=	48/100%
" "	1864	5%	Mar.....	@23-3/4	=	21/100%

Richmond & Petersburg.

P. 22	1857	Approx. 6%				6%
	1858					
	1859					
	1860					
P. 227	1861	0				
	1862	0				
	1863	6%	July.....	@ 9	=	2/3%
	"	10%	Nov.....	@16	=	625/1000%
	1864	4%	Jan.....	@20	=	1/5%
	"	10%	Sep.....	@25	=	2/5%

Virginia Central R. R. Co.

P. 24	1859	Approx. 4%	... .			4%
	1860	" 5%	....			5%
	1861	0%				
	1862	0%				
P. 22	1863	4%	Nov.....	@16	=	1/4%
	1864	3%	Sep.....	@25	=	12/100%

Dividend bonds paid in 1863, taken up in Def. Class C (P. 26) covered dividends declared in 1851 and 1855,—as to $84,858.00
Balance we do not know when issued, but were settled after 1870 in State Bonds along with the $210,000, loan..... ..... 58,650.00

Class F—*Virginia & Tennessee R. R. Co.*

					Confed.	Net.
P. 227	1864	6%	Mar.	@ 23.75	= Approx.	1/4%
	"	6%	Apr.....	@ 22.50	= "	1/4%

Norfolk & Petersburg R. R. Co.

P. 227	1863	3%	Sept.....	@ 12.50	= Approx.	1/4%
	1864	3%	Mar.....	@ 23.75	= "	1/8%
	1865	6%	Feb.....	@ 55.00	= "	1/9%

Class E—*Farmer's Bank of Virginia.*

P. 48	1861	3-1/2%	Jan.....	@ 1.00		3-1/2%
" "	"	3-3/4%	July...	@ 1.10		3-2/5%
" "	1862	3-1/2%	Jan	@ 1.25		2-4/5%
	1862	3%	June.....	@ 1.50		2%
	1862	4%	Dec	@ 3.00		1-1/3%
	1863	7-1/2%	Dec	@ 19.00	Approx.	2/5%
" "	1864	4%	June.....	@ 18.00	"	1/5%
P. 79	1864	8%	Dec....	@ 41.50	"	1/5%

Bank of Virginia.

P. 50	1861	3-1/2%	Jan.....	@ 1.00		3-1/2%
	"	3-1/2%	July.....	@ 1.10	Approx.	3-1/5%
	1862	3-1/2%	Jan.....	@ 1.25	"	3%
	1862	3%	June.....	@ 1.50		2%
	1863	4%	Jan.....	@ 3.00		1-1/3%
	1863	7-1/2%	Dec	@ 19.00	Approx.	2/5%
	1864	4%	June	@ 18.00	"	1/5%

Bank of the Valley.

P. 51	1861	3-1/2%	Jan.....	@ 1.00		3-1/2%
	"	3-1/2%	Sept	@ 1.10	Approx.	3-1/5%
	1862	3%	Jan.....	@ 1.25		2-2/5%
	1863	4%	Jan..... .	@ 3.00		1-1/3%
	1864	4%	Mar....	@ 23.75		17/100%

Exchange Bank.

P. 52	1861	3-1/2%	Jan.....	@ 1.00		3-1/2%
	"	3-3/4%	July	@ 1.10		3-2/5%
	1862	3-1/2%	Jan.....	@ 1.25	Approx.	3%
	1862	3%	Oct.....	@ 2.50		1-1/5%
	1863	4%	Mar.....	@ 5.00		4/5%
	1864	8%	Jan.....	@ 20.25		2/5%
P. 80	1865	8%	Jan.....	@ 52.50		3/200%

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Schedule 2.

The following pages contain an examination and criticism of the cases cited in the briefs of West Virginia, presented to the master to sustain the contention that "par value" and "book value" are evidence of actual value.

These cases may be urged before this Court by West Virginia. They do not establish the principles contended for, but they do conclusively establish the direct opposite. They show that neither "par value" or "book value" are competent evidence to establish actual value.

The cases cited to show that the value of stock is presumptively its par value.

The principal case relied upon to establish this contention is *Appeal of Harris* (Pa.), 12 Atl., 743, discussed in the brief of Judge Holt and Attorney General Lilly.

Syllabus and quotations from the opinion stated in the brief are correctly given; but the essential part of this case is the modification of the decree printed at the bottom of the opinion substantially as follows:

Modification of Decree.

Feb. 6, 1888.

(In the original decree 215 shares at the par value of $100 had been given a value of $21,500. The modified decree recites this and then proceeds): "We do not think however, the appellants should be charged with it at its par value. * * * We have but little evidence of the value of this stock. * * * It was conceded by the appellants however that it was worth

$30 per share, and in the modification to the decree which is now made it is placed at that figure with the proper allowance for interest" (p. 753).

Upon reargument it appeared that there was but little evidence of the value of the stock; but the amount fixed in the original decree as $100 per share, was reduced to $30 per share; this value being conceded by the appellants. The par value was rejected and the only value charged against the appellants was the amount which they specifically conceded. The Court on reargument reversed its ruling and rejected the rule of law for which the case has since, in some other cases, been relied on, as an authority.

The other case cited by Judge Holt, Henry v. North American Ry. Const. Co. (58 Fed. Rep., 79), involves the question of value of bonds and not stock. An examination of the case discloses that the dictum was not involved in the decision. The Court below had ruled that in the absence of market value the face value of the bonds must be taken as the measure of value. It appeared that the defendant had offered other evidence as to value which was rejected. Without passing on the question of whether defendant's other evidence was competent the court reversed the judgment and ordered a new trial. If there is any presumption that face value equals real value of bonds this illustrates how easily the presumption is overcome.

The cases in Prof. Hogg's brief.

In no one of these cases was the par value of stock taken as fixing its actual value.

1. *Moffin v. Hereford* (132 Mo., 513, 34 S. W., 252).

In this case the value was not found at part, but at $375. The stock had no market value. The corporate assets and the dividends earned were shown to

2. *Brown v. Ellis* (103 Fed., 834).

Suit by a receiver to recover against an executrix for seventy-five per cent assessment on corporate shares.

3. *Trainor v. German-American Savings L. & B. Ass'n* (204 Ill., 616; 68 N. E., 650).

The opinion states that elections, and other corporate acts, and proceedings may be shown from the corporate records and minutes. The case holds that in the foreclosure of a loan against a member the corporate books when unverified by extrinsic proof cannot be used.

4. *9 Am. & Eng. Enc. Law* (2nd Ed., 895) states the principles in regard to the use of corporate books and records as follows:

(a) As between members of the corporation, corporate books can be used to show the acts and transactions of the corporation.

(b) As between a member of the corporation and a stranger the corporate books and minutes can be used to show organization and corporate acts; but not to show the private business transactions of the corporation.

5. *Dolan v. Wilkerson* (57 Kan., 758; 48 Pac., 23).

The records and minutes of a corporation are not evidence in its favor against a stranger.

6. *Jefferson v. Stewart* (4 Har. [Del.], 83).

Suit by a corporation against a member for marsh taxes.

7. *Merchants' Bank v. Rowls* (21 Ga., 334).

As between a corporation and a shareholder the corporate books are evidence of the accounts between them.

8. *Macon & A. R. Co. v. Vason* (57 Ga., 314).

The stock ledger was admitted in a suit for an unpaid stock subscription.

9. *Protection Life Ins. Co. v. Dill* (91 Ill., 174).

On proof of loss of an insurance policy it was error to exclude the "policy register" of the insurance company which contained substantially the complete copy of the lost policy.

10. *Proprietors of Long Wharf v. Palmer* (37 Mo., 379).

(Not found.)

11. *Redding v. Goodwin* (44 Minn., 355, 46 N. W., 563).

The records of a corporation held not to be evidence against the defendants not members to show the company's property had been attached and that insolvency proceedings were necessary.

12. *Alemethy v. Society of the Church of the Puritans* (3 Daly [N. Y.], 1).

Books and minutes of a religious corporation were admitted to show the acts and proceedings of the church in an action to restrain the selling of a pew.

13. *Hubbell v. Meigs* (50 N. Y., 480).

The question was whether the *defendant knew* that the stock was worthless and the company bankrupt. The company's books were held to be evidence between the stockholders to show the company's acts. The books were not used to show the value of the assets.

14. *First Nat. Bank v. Tisdale*, 84 N. Y., 655).

The defendant, a stockholder, director and vice-president of a transportation company, sued upon a note given to the bank, defended on the ground that the note was given without consideration. The plain-

tiff claimed the note was connected with a loan of the transportation company and the entries in the books of the transportation company were admitted as evidence against the defendant to show this relation.

15. *Commonwealth v. Woelfer* (3 Serg. & R. [Pa.] 29, 8 Am. Dec., 628 and note 640).

Action in the nature of a *quo warranto* for usurping the offices in a church. The minutes were introduced to show the acts of the company.

16. *Diehl v. Adams County Mut. Ins. Co.* (58 Pa. St., 443).

This was a suit on an insurance policy and involves no question as to the value of the company's assets.

17. *Ledeier v. Morrow* (132 Mo. App., 438, III S. W., 902).

In a suit against the officers of the company for fraud and misrepresentation as to the value of the company's stock, the books of the company kept by proper agents of the company were admitted because the agents of the corporation were held to be the agents of the officers.

18. *Giboa v. Kimball* (R. I., 69 Atl., 765).

In a suit to recover the value of shares of stock it was held proper to prove the fact that the books of the corporation showed a surplus at or near the time of the transaction under consideration when this corroborated the testimony of the plaintiff and was in accord with the probabilities.

19. *Wesp v. Muckle* (120 N. Y. S., 976, 136 App. Div., N. Y. 241).

In an action against a director for the recovery of dividends paid out of capital the ledger of the company was used to show the fact that the capital was impaired.

20. *Sawyer v. Manchester, etc. R. R. Co.* (13 Am. State Rep. note at p. 551).

The note lays down the following principles. (a) The records and minutes of the corporation if properly kept are evidence of the acts of the corporation. (b) The books are not competent evidence of the private business transactions of the corporation except perhaps as between the members of the corporation. They are not admissible in evidence as to the private business transactions of the corporation as between a member and a stranger.

21 *Carey v. Williams* (79 Fed., 909).

This case is a direct authority against the principle contended for by the defendant. It holds that entries on the books of a corporation showing the purchase of stock by a person and payments made by him thereon are not *prima facie* evidence that he is a stockholder in a suit to charge him as such. The Court says at page 909, corporations are not exempt from the ordinary rules of evidence and that there is no stronger presumption of honesty, regularity or accuracy as to their records than in the case of actual persons; at page 911, the corporate books are evidence of the acts and proceedings of the corporate body; at page 912, that the business entries in the books of a corporation are no more evidence against its members than they are against strangers, citing *Rudd v. Robinson*, 216 N. Y., 113.

The opinion in *Rudd v. Robinson* is a very thorough examination of the subject. The Court states that after a careful consideration of the cases it can find no principle upon which the account books of a corporation are evidence against a member of the corporation as to the accounts and entries therein. The officers and bookkeepers of the corporation are not the agents of the members.

The other case cited in Prof. Hogg's brief on this point is *Curme, D. & Co. v. Rouh,* 100 Ind., 247.

This is a suit in replevin by the seller against a mortgagee of the buyer based on the contention that the buyer did not intend to pay. The balance sheet and tax list return of the buyer were held to be admissible as his admissions of his insolvency.

An examination of all these cases discloses that in no one of them was the value of the stock of the corporation or the actual value of the corporate assets determined from the entries in the books. There is not a suggestion in the language of any of them that the value of corporate stock or of corporate assets can be so determined.

The cases hold:

1. That the formal corporate acts of the corporate body can be shown from its minutes and records.

2. As between the members of a corporation some cases hold that the corporate books and records are evidence of the private transactions of the corporation.

This line of cases starting with *Hayden v. Williams, supra,* where the books of the corporation were used to show insolvency of the corporation rely upon *Hubbell v. Meigs, supra.* As stated above this was an action for deceit, and the material question was as to defendant's knowledge of the condition of the company and value of its stock. One of the defendants was held to know that the stock was worthless and the company bankrupt. As to him a reversal was ordered. As clearly appears from the syllabus of the case the company's books were used as evidence of the company's acts and not as evidence of the value of the company's assets. The authority on this point is not all one way. A later New York case, *Rudd v. Robinson,* 126 N. Y., 113, *supra,* after a very careful con-

sideration of all the cases holds that there is no principle on which the account books of a corporation can be used as evidence of the accounts and entries therein even against a member. This case is cited with approval and followed in *Carey v. Williams, supra,* relied on in Prof. Hogg's brief at page 57.

3. As between a member and a stranger the corporate books and records are not evidence of the private transactions of the corporation under any circumstances.

This is the purport of the cases cited in Prof. Hogg's brief and of the article 9 *Amer. & Eng. Enc. Law,* (2nd Ed.), 895, and the note to *Sawyer v. Manchester, supra.*

There is not a suggestion in any one of these cases that the books of the corporation are competent evidence either presumptive or conclusive of the actual value of the corporate assets or of the value of the corporation's stock even as between the members of a corporation.

The contrary is clearly established by the cases cited in the brief by Judge Holt and Attorney General Lilly. No one of them is authority for the proposition that the actual value of the stock can be established by considering "par value" or "book value." No case there cited holds that either "par value" or "book value" may be considered in determining actual value.

Cases cited in the brief by Judge Holt and Attorney General Lilly.

1. *Julia v. Critchfield* (147 Fed. Rep., 65).

The court said the real or intrinsic value of the stock if issued should be determined from the proved assets of the corporation.

2. *Nelson v. First Nat'l Bank* (69 Fed. Rep., 798). The court said the value of the stock could be determined from the testimony of competent witnesses as to the amount and value of the assets of the corporation.

3. *Henry v. North Am., etc., Co.* (158 Fed. Rep., 79).

This case involved bonds, not stock, and has already been discussed above.

4. *Butler v. Wright* (103 N. Y. App. Div., 463). The value of the stock was shown from the contracts the company had made, the nature of its business, the amount of dividends and other facts relating to the value of its property and income.

5. *Cabbel v. Cabbel* (111 N. Y. App. Div., 426-33). The value of the stock was proved by testimony of a person connected with and having personal knowledge of the affairs of the corporation. The court rejected an inventory of the corporate assets prepared by the corporation and citing.

People ex rel. Ins, Co. v. Coleman, 107 N. Y., 541. laid down the rule that the value of shares of stock should be determined by considering the business, property, value of the actual assets, amount and nature of liabilities, dividends, market value or any or all of these. In this case the Court also said that to get the book value of the corporate assets the value of the assets would have to be estimated instead of taken at what they were carried on the books.

6. *Vonau v. Magenheimer* (126 N. Y. App. Div., 257; 196 N. Y., 510).

The plaintiff represented stockholder suing the officers for fraud and deceit for depressing the value of the stock so that they might buy it up. Defend-

ants reduced the dividends from 14% to 3%; raised their own salaries from $2,500 to $7,500; and immediately after purchase declared a special dividend of 10% to meet the purchase price and reduced salaries to $4,000. The jury found the value of the stock at $171. The book value was $109. Other subsequent balance sheets of the corporation were introduced for the purposes of comparison with the balance sheet showing this book value of $109. The Court held that on all the evidence the stock was worth the full amount of $171, found by the jury.

7. *Leurey v. Bank of Baton Rouge* (58 So. Rep., 1022 [La.]).

The value of the stock may be determined from the net value of the corporate assets and its good will or earning capacity.

8. *Beaty v. Johnson* (66 Ark., 529).

The value of the stock may be determined from the value of the property and business of the corporation compared with the liabilities. The par value of stock is not *prima facie* evidence of actual value. *Appeal of Harris* was cited for this last proposition. The Court criticises the case and repudiates the rule.

9. *McDonald v. Danahy* (196 Ill., 133).

Makes no mention of book value.

10. *Greer v. Lafayette County Bank* (128 Mo., 559).

Considers dividend earning capacity.

11. *State v. Carpenter* (51 Ohio State, 83).

Decides that mandamus is not a proper remedy to secure the issuance of stock certificates from a corporation. The opinion states that the value of the stock may be determined from the value of the business, good will, and dividend earning capacity.

12. *White v. Jouett* (147 Ky., 197).

The value of the stock may be determined from the value of the property and business.

The foregoing cases seem to establish the rule that in the absence of market value the actual or intrinsic value of the stock of the corporation may be determined from the value of the property and assets owned by the corporation, the dividends paid, character and permanency of its business, control of the stock, management of the corporation, its markets, all other facts—over a broad range—any fact calculated to effect value.

No one of these cases cited on page 41 holds that either "par value" or "book value" can be considered in determining actual value of the stock of the corporation. One of the cases specifically repudiates par value as *prima facie* evidence of value and another rejects a corporation's inventory of its assets as evidence of the value of the assets. In only one case were the balance sheets of a corporation considered and in that case the balance sheets were only used for the purposes of comparison in an action for deceit against the officers of a corporation to discredit an earlier balance sheet showing a value of $109. The stock was held to be worth $171.

The Rule of Law Established by the Cases.

The purport of all the cases cited in both briefs is that neither "par value" or "book value" is competent evidence of the actual value of the stock. This must be determined from the market value. If there is no market value the actual value must be determined from a comparison of the actual value of the corporate assets and liabilities; from the corporate dividends; earning capacity and good will; from the nature and the permanency of the corporation's business; the management and all other facts calculated to effect value.

APR 19 1915
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

NO. 2 ORIGINAL.

COMMONWEALTH OF VIRGINIA
vs.) IN EQUITY.
STATE OF WEST VIRGINIA.

BRIEF FOR WEST VIRGINIA UPON EXCEPTIONS TO THE MASTER'S REPORT AND UPON THE SUBJECT OF INTEREST.

A. A. LILLY,
Attorney General,
CHAS. E. HOGG,
JOHN H. HOLT,
Associate Counsel for
West Virginia.

April 19, 1915.

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that being the date of West Virginia's admission into the Union as a State, while West Virginia insisted that these stocks, bonds and loans should be valued as of the first day of January, 1861, that being the date as of which the debt to the payment of which she was to contribute was to be ascertained.

The Master held with West Virginia, and valued the securities in question as of January 1, 1861 (Master's report, page 10), and he placed a total value thereon as of that date of $14,511,945.74 (Master's report, page 115). He then ascertained that 23½% of that total was $3,410,307.25, and that that amount should be "credited to West Virginia in reduction of her liability upon her proportion of the 'public debt' " (Master's report, page 116). But he further found that West Virginia has received stocks in various companies of the total value of $541,467.76, which amount he subtracted from the $3,410,307.25, leaving a net credit to West Virginia of $2,868,839.49 to be applied upon her proportion of the principal of the public debt of Virginia (Master's report, page 116).

Virginia has excepted to the finding of the Master that the securities set up in the supplemental answer of the defendant should be valued as of January 1, 1861, instead of June 20, 1863, and further excepted to his report upon the ground that his valuations, even as of that date, upon some of the securities involved, are too high. West Virginia, upon the other hand, has excepted upon the ground that he has placed a valuation too low upon many of these securities.

This cause comes on now finally to be heard upon the exceptations of the State of Virginia and of the

bondholders to the report of the Special Master filed in this cause on the 22nd day of January, 1915, as well as upon the exceptions of the State of West Virginia to said report, and upon the subject of interest, and these subjects will be briefly argued in their order.

We will first take the exceptions of the State of Virginia.

VIRGINIA'S EXCEPTION NO. 1.

The first exception of Virginia is her most important one, and is addressed to and complains of the finding of the Master wherein he values the assets in question as of January 1, 1861, instead of as of June 20, 1863, and it is asserted that such finding is erroneous for the following reasons:

> "Because:
>
> (1) There was no such agreement as the Master has assumed;
>
> (2) There is no warrant for such a construction found in the terms of the contract of separation between the two States, and,
>
> (3) The finding and conclusion of the Master are in conflict with the decision of this Court rendered March 6, 1911, whereby the Court adopted as the mode of arriving at the equitable proportion of the principal of the debt to be paid by the defendant the comparative value of the real and personal property of the two States *at the date of separation, June 20, 1863.*"

of the result could be taken and set down as West Virginia's equitable proportion of the principal of the debt; or, as is now being done, after the total indebtedness has been ascertained, regardless of credits, and 23½% thereof taken, the credits are ascertained and aggregated, and 23½% thereof taken and deducted from the already ascertained 23½% of the debt, again arriving at West Virginia's equitable proportion of the principal of the debt.

The last method is pursued for the reason that, at the time of the ascertainment by this Court of West Virginia's equitable proportion of the principal of the Virginia debt, there was no evidence before it of the existence of any credits in her behalf, or of the value of any assets on hand; and, upon the bringing to the attention of this Court by supplemental answer of the fact that credits in the form of securities of value were in reality in existence on January 1, 1861, and which had never been applied, this Court re-opened and re-referred the cause, in order that their actual value might be ascertained, and to the end that equity might be done.

With respect to the second ground of objection to the finding of the Master, that the assets should be valued as of January 1, 1861, instead of June 20, 1863, viz., that "there is no warrant for such a construction found in the terms of the contract of separation between the two States", it is enough to say that West Virginia's *equitable* proportion of the debt could not be ascertained in any other way. The debt existed January 1, 1861, and the credits applicable thereto were likewise then in existence; that is to say, Virginia then owned all the securities set up in the supplemental answer of the defendant, and consist-

ing of stocks, bonds and loans, and these assets, as shown by her unbroken line of legislation in relation thereto, had been intended for and devoted to the payment of her public debt. If they had been acquired subsequent to 1861, or if, having been acquired prior to that date, had been disposed of before that time, they would not and could not constitute credits as of that date; but, being then on hand, and being then of great value, how in equity could the debit side of the account be added and the credit side postponed until some later day, when the items constituting it had been either greatly depreciated or utterly destroyed in value? The bonds representing the debt were valued as of January 1, 1861,—why not the stocks and loans representing the credits applicable thereto as between Virginia and West Virginia? Suppose, instead of taking the bonds of Virginia representing her debt in existence January 1, 1861, at par, for the purpose of ascertaining the total of such indebtedness, their actual market value had been taken for that purpose on June 20, 1863, as Virginia would now have us take the securities representing credits, what would have been the total indebtedness to be apportioned between the two States? It would have been the par of the bonds measured in Confederate currency, which, when reduced to a gold basis, would have brought the debt to be apportioned to a mininum.

When West Virginia promised to assume an equitable proportion of the Virginia debt as it existed prior to the first day of January, 1861, the then living members of her Constitutional Convention may be supposed to have known that Virginia owned

at that very time assets applicable to its reduction or discharge of the then value of many millions of dollars, and she must have made her promise in the light of that fact, and could have meant nothing else by the use of the word **equitable** than a just proportion of the balance of the debt after the then value of the assets on hand had been deducted therefrom. This supposition may be indulged in the light of the testimony that has been taken before the Master upon the present reference, although the existence and value of these assets had since been lost sight of in the lapse of time, and in consequence of the fact that the records thereof were lodged with Virginia, and were not to be found in the archives of the State of West Virginia. If there had been no promise on the part of West Virginia, Virginia would have taken the benefit of all the assets and property, and would have paid the whole debt; and, when West Virginia assumed an equitable proportion of the debt, she could be assumed to have had nothing in mind except the application of those assets to the debt before the apportionment of the latter between her and the State of Virginia.

With respect to the third ground of objection to the finding in favor of January 1, 1861, it is contended that such a conclusion is "in conflict with the decision of this Court rendered March 6, 1911, whereby the Court adopted as the mode of arriving at the equitable proportion of the principal of the debt to be paid by the defendant the comparative value of the real and personal property of the two States *at the date of separation, June 20, 1863.*" But there is no conflict here. The two conclusions relate to

entirely different subject-matters. The one relates to the ascertainment of the debt to be apportioned, and the other fixes the ratio of apportionment after the debt has been ascertained. The finding of the Master relates simply to the ascertainment of the debt, while the ruling of this Court referred to establishes the equitable basis of apportionment between the two States of the debt so ascertained.

Virginia contended before the Master for June 20, 1863, for other reasons than those now embodied in her exceptions, and may repeat them in argument here; so it may not be amiss to notice them by way of anticipation. One of her main contentions was that the assets could not be valued as of January 1, 1861, because West Virginia had not become a State at that time; that she had not then been born, and that in this, the year of our Lord 1915, she could not get the benefit as credits of the prenatal values of 1861; but, in the very next breath, she complacently announced that West Virginia could be saddled with the prenatal debts of 1861; and it would seem to us that, if she were enough of an entity to be charged with a debt created prior to her admission into the Union, she was likewise enough of an entity to receive a credit thereon existing at the date of the creation of the debt, although that may have been prior to her admission as a State. Whoever has a capacity to be charged has a like capacity to be credited. Under the circumstances of this case, the admission of West Virginia into the Union has nothing in the world to do with the question; for, after she has become a State, she may be charged with any obligation imposed as a condition

to her admission into the Union, and may be credited with any amount necessary to make that obligation equitable in accordance with the terms of the condition. In other words, the obligation in the one case and the credit in the other spring out of circumstances existing prior to the creation of West Virginia, but the judgment charging her with the one and crediting her with the other is not entered until after she has become a State.

The reason why Virginia seeks to have the value of these assets moved forward from the first day of January, 1861, to the 20th day of June, 1863, is because the latter date would bring them within the influence of the ravages of war, and measure their value by the unspeakable standard of Confederate currency. To establish such a date would not only violate the rules of bookkeeping, which require that, in striking a balance, the credits and debits must be taken as of the same date, but would impair and practically destroy the equities of West Virginia, which constitute the basis of her promise, and would likewise enable the State of Virginia to take advantage of her own wrong, because it was largely through her efforts in conventions assembled, and upon the field of battle, that these securities were impaired.

VIRGINIA'S EXCEPTION No. 2.

Virginia's second exception is to the failure of the Master to fix June 20, 1863, as the date as of which the assets in question should be valued, as her first exception was addressed to the fact that he did find January 1, 1861, to be the proper date, and

what has been said in response to exception No. 1 is applicable by way of reply to exception No. 2, and need not be here repeated.

VIRGINIA'S EXCEPTION No. 3.

The third exception of Virginia relates to the values placed by the Master upon the stocks owned by the State of Virginia in the Richmond, Fredericksburg & Potomac Railroad Company, the Orange & Alexandria Railroad Company, the Richmond & Danville Railroad Company, the Richmond & Petersburg Railroad Company and the Virginia Central Railroad Company, and to the method by which he ascertained these values as of January 1, 1861.

The contention is that he relied solely upon book values, "disregarding other and competent evidence" and taking no account whatever "of the depreciation and necessary cost of renewal of the physical properties of said Companies".

It will be necessary to notice the findings of the Master with respect to the various companies separately.

RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD CO.

Contrary to the statement in the exception, the Master did not value the stock held by the State of Virginia in this Company upon the first day of January, 1861, "solely" by its book value, which he should have done under the circumstances of this case according to our contention, as will be seen when we come to discuss the exceptions filed by the State of

West Virginia to the Master's report. On the contrary, he averaged the book value and the alleged earning value of the stock. The book value on January 1, 1861, was $150.04 per share (the par being $100), and the earning value (based solely upon dividends declared) was $84.83 per share. These two values were added together, making $234.87, and the half thereof taken, placing the actual value per share as found by the Master at $117.43. The number of shares then owned by Virginia was 2,752, and the total value thereof at $117.43 per share was placed by the Master at $323,167.36. He did ignore the alleged market quotations on this stock, because they were not dependable (Master's report, pages 32-4).

The attack by Virginia upon this finding is in effect two-fold, first, because he relied upon book value, and, secondly, because he ignored market quotations, and, in order that the reliability of the one and the worthlessness of the other might be seen, it will be necessary to examine the evidence upon these two subjects, and, having done so in the case of this particular road, it will be unnecessary to again notice them thus in detail when we come to a discussion of the value of the stocks in the other railroad companies embraced in this exception.

BOOK VALUE.

The book value of this Company (Richmond, Fredericksburg & Potomac Railroad Company) was arrived at by taking its balance sheets, and thereby ascertaining the surplus of its assets over its liabilities, and calculating the consequent premium upon its stock. The schedule or exhibit in relation thereto

is Defendant's Exhibit No. 2, consisting of the main exhibit with four sub-sheets or supporting exhibits, and is found upon pages 2-12 of the printed exhibits. Sub-sheet one (printed exhibits, page 4) shows the trial balance of this road for the year ending March 31, 1859, and discloses a surplus of $461,134.54, and a consequent book value of its stock as of that date of $144.20 per share. Sub-sheet 2 (printed exhibits, page 6) shows its trial balance for the year ending March 31, 1860, and discloses a surplus of $505,403.22, and a consequent book value of its stock upon that date of $148.40 per share. Sub-sheet 3 (printed exhibits, page 8) gives the trial balance for the year ending March 31, 1861, and discloses a surplus of $562,819.05, and a consequent book value of its stock upon that date of $150.40 per share. Sub-sheet 4 (printed exhibits, page 10) covers the trial balance for the year ending March 31, 1862, showing a surplus of $656,577.85, and a consequent book value of the stock upon that date of $157.40 per share.

From these calculations it will be seen that the increase in the book value of the stock for the year ending March 31, 1861, over the year preceding was 2%, but this overruns January 1, 1861, by one-fourth of a year; so that, in order to get the book value for January 1, 1861, instead of March 31, 1861, three-fourths of said 2%, or 1½%, should be added to the book value of March 31, 1860, of $148.40, making a book value for the first day of January, 1861, of $149.90, or, as the schedule puts it, of $150 per share.

These exhibits were based upon the records in the second auditor's office of the State of Virginia, and upon the annual reports of the Richmond, Fred-

ericksburg & Potomac Railroad Company on file in the office of its treasurer in the City of Richmond, and both the main and the underlying exhibits were checked by Mr. Potter, accountant for the State of Virginia, and announced by him to be correct.

Under such circumstances, the book value was dependable, and, if it had been solely followed, as charged by Virginia, the resulting value of the stock would have been correct. The book value at least makes a *prima facie* case, and, in the absence of proof to the contrary, must establish the actual value of the stock. Where the books of a company are accurately and properly kept; that is to say, where its assets and liabilities are properly invoiced and set down, the book value of its stock must be its actual value; and it must be borne in mind in this case that not a single item contained in any balance sheet of this company was attacked by the State of Virginia, either upon the credit or the debit side; but she contented herself (outside of alleged market quotations) with trying to establish June 20, 1863, instead of January 1, 1861, as the date as of which the value of this stock should be ascertained.

The books and balance sheets of the Richmond, Fredericksburg & Potomac Railroad Company are *prima facie* correct.

L. & N. R. Co. v. Hart (Ky.), 75 S. W., 289.
Wilson v. Potter, 42 S. W., 836; 19 Ky. Law Rep., 988.
Lambert v. Griffith, 44 Mich., 65; 6 N. W., 106.
Budeke v. Ratterman, 2 Tenn. Chy., 459.
Stuart v. McKichan, 74 Ill., 122.

The actual value of stocks may be shown by a comparison of the assets and liabilities of the company issuing them.

Julia v. Critchfield, 147 Fed., 65.
Nelson v. First Nat'l Bank, 69 Fed., 798.
Henry v. North Am. etc. Co., 158 Fed., 79.
Butler v. Wright, 103 N. Y. App. Div., 463.
Cabbel v. Cabbel, 111 N. Y. App. Div., 426.
Vonau v. Magenheimer, 126 N. Y. App. Div., 257; 196 N. Y., 510.
Leurey v. Bank of Baton Rouge, 58 So. Rep., 1022 (La.).
Beaty v. Johnson, 66 Ark., 529.
McDonald v. Danahy, 196 Ill., 133.
Greer v. Lafayette County Bank, 128 Mo., 559.
State v. Carpenter, 51 Ohio State, 83.
White v. Jouett, 147 Ky., 197.
Moffitt v. Hereford, 132 Mo., 513; 34 S. W., 252.
Brinkerhoff-Farris Co. v. Lmbr. Co., 118 Mo., 461; 24 S. W., 129.
Tevis v. Ryan (Ariz.), 108 Pac., 461.
Felker v. Ryman (Tex. Civ. App.), 135 S. W., 1128.
Milwaukee Trust Co. v. City of Milwaukee (Wis.), 138 N. W., 707.

MARKET QUOTATIONS.

The alleged market quotations upon the stock of this company were properly ignored by the Master (Master's report, pages 32-4). They appear as plaintiff's revised exhibit No. 2 (New Record, Vol. 2, page 334), and are compiled from the Richmond Dispatch of various dates from November 2, 1860,

Bullard v. Stewart (Tex. Civ. App,), 102 S. W., 174.
Meriwether v. Quincy etc. R. Co., 128 Mo. App., 674; 107 S. W., 434 & 439.
Wilber v. Buckingham (Iowa), 132 N. W., 960.

With respect to the criticism of Virginia upon the use of book value as a standard for determining actual values, because it does not take into account "the depreciation and necessary cost of renewal of the physical properties" of the companies involved, it will be sufficient in the case of the Richmond, Fredericksburg & Potomac Railroad Company to call attention to defendant's Exhibit No. 15 (New Record, Vol. 1, page 753), which, at the request of the Master, was furnished by the defendant for the purpose of throwing light upon the character of the balance sheet of the Richmond, Fredericksburg & Potomac R. R. Company, wherein, among other things, it is said—

> "The cost is carried forward carefully year to year, generally under classified headings, such as 'Engineering', 'Grading', 'Bridges', etc., and contains no items that are not legitimate.
>
> They have a yearly report by directors as to general conditions of road, and, in almost every instance, they report on roadway and rolling stock, and the report is always in excellent condition, showing that the repairs and renewals had taken care to keep the road in good condition.
>
> In addition to this, we have the following items of 'extraordinary' expense charged to operating expenses, which ex-

tra expenses were additional items of cost of road and equipment."

These items then follow, continuing to the bottom of page 754, where an aggregate of $132,843.93 is shown to have been devoted to improvements and charged to operating expenses, thus showing, as stated by the Master at page 33 of his report, "a conservative policy as to depreciation".

The book value of this stock was, therefore, properly relied upon by the Master, and its alleged market quotations were properly ignored by him. How he improperly applied the earning power of the company as affecting the value of its stock we will undertake to show when we come to discuss the exceptions of West Virginia.

ORANGE & ALEXANDRIA R. R. CO.
RICHMOND & DANVILLE R. R. CO.
RICHMOND & PETERSBURG R. R. CO.
VIRGINIA CENTRAL RAILROAD COMPANY.

We find that the book value as of January 1, 1861, of the Orange & Alexandria Railroad Company, the Richmond & Danville, the Richmond & Petersburg and the Virginia Central Railroad Companies was ascertained by taking the last balance sheet of these roads obtainable, viz., September 30, 1856, and ascertaining therefrom the surplus on hand at that time, and, from the reports of said companies to the State of Virginia, the profits for the years 1857, 1858, 1859, 1860 and 1861, which were added to the surplus, and the book value of the stock was derived therefrom (New Record, Vol. 2, page 14,

defendant's exhibit No. 3, asset 1; asset 2, page 19; asset 3, page 22, and asset 4, page 24).

The book value of the stock of the Orange & Alexandria Railroad Company on January 1, 1861, was thus ascertained to be $53.32 per share (the par per share being $50), which was averaged with the earning value of $12.28 per share, and its supposed actual value thereby arrived at of $32.80 per share (Master's report, pages 36-8). There were no market quotations in the case of this stock, and the fallacy of averaging the book value with the supposed earning value will be discussed when we come to the exceptions of West Virginia.

The book value of the Richmond & Danville was ascertained to be $137.37 per share (the par being $100 per share), and this was taken by the Master as the actual value of the stock, less 5% of its par for liquidation purposes, or $132.37 per share. Market quotations he ignored for the reasons given in the case of the Richmond, Fredericksburg & Potomac Railroad Company. In this case he did, as charged by Virginia, rely "solely" upon the book value of the stock; but, as we shall contend upon the exceptions of West Virginia hereinafter noticed, he erroneously deducted from this book value 5% of the par of the stock for liquidation purposes, because no such liquidation, or the expense thereof, was called for or involved.

The par value of the Richmond & Petersburg Railroad Company was $100 per share, and its book value was ascertained for the year 1860 to be $121.86, which was averaged by the Master with the alleged earning value of $106.95 per share, making a value

per share of $114.40 (Master's report, pages 42-4). Market quotations were ignored for the reasons given in the case of the Richmond, Fredericksburg & Potomac Railroad Company.

The par value per share of the Virginia Central Railroad Company was $100, and the Master, as in the case of the Richmond & Petersburg Railroad Company, ascertained the value thereof by averaging its book value of $131.16 per share with its earning value of $116.95, making a value of $124.05 per share as of January 1, 1861 (Master's report, pages 45-6). Market quotations were ignored for the reasons hereinbefore given, and the fallacy of reducing the book value per share by averaging the same with its alleged earning value will be hereinafter considered.

VIRGINIA'S EXCEPTION No. 4.

This exception is taken to the finding of the Master upon an item of $149,984, being the value fixed by him as of January 1, 1861, of a dividend bond issued by the Richmond, Fredericksburg & Potomac Railroad Company, and owned by the State of Virginia. The ground of exception is that it was paid off in Confederate currency, which, when reduced to a gold basis, amounted to only $19,111.11, and that Virginia, having received only that amount for the bond in lawful money, should be charged upon that basis, and West Virginia credited with 23½% of that amount, instead of 23½% of the face of the bond (defendant's exhibit No. 3, asset 19, New Record, Vol. 2, page 44; also plaintiff's exhibit No. 3, New Record, Vol. 2, page 363).

The first of these exhibits shows that Virginia owned this bond on and prior to the first day of January, 1861, and that the principal thereof was paid, $27,520 on the 13th day of March, 1863, and $122,464 on the first day of July, 1863, making $149,984. This, of course, was in Confederate currency, and the second exhibit shows that the value of that currency at that time was $19,111.11; but the question is not what the bond was worth in 1863, but what its value was on the first day of January, 1861. Neither does the fact that Virginia accepted a depreciated currency in its settlement, or a less amount than its real value, affect the actual value of the bond, or the size of the credit that West Virginia should receive on account thereof.

In the first place, the presumption is that a bond, whatever the rule may be with respect to stock, is worth par.

Henry v. North Am. Construction Co., 158 Fed., 79 (C. C. A. 8 Cir., Nov. 29, 1907).
Appeal of Harris, 12 Atl. Rep., 743.
Brinkerhoff-Farris Co. v. Home Lmbr. Co., 118 Mo., 447.
2 Clark & Marshall on Corporations, page 1170.
3 Sutherland on Damages (3 ed.), page 1921.

In the next place, as we have seen, the book value of the stock of the Richmond, Fredericksburg & Potomac Railroad Company, the obligor in the bond, on January 1, 1861, was at a premium, being worth $150 per share, and it was at that time paying 7% annual dividends, and its dividend bond in question must at least have been worth par, the value put

upon it by the Master; and the Master gives a conclusive reason for this valuation. He says "the Richmond, Fredericksburg & Potomac Railroad Company was operated at a profit, and was able to pay on January 1, 1861. I allow $149,984" (Master's report, page 73).

Some effort was made before the Master, and may be repeated here, to show that the defendant, in its supplemental answer, only claimed a credit as to some of these stocks at least based not upon their actual value as of January 1, 1861, but upon the amount received by the State of Virginia on the subsequent sales thereof. It is true that at more places than one in the supplemental answer the prices received by Virginia for these various stocks were mentioned, but such mention was only made as a part of the history of the transaction, and not for the purpose of furnishing a standard for the measurement of their value, or the measurement of West Virginia's credits on account thereof. On the contrary, the real contention of the defendant, as set forth in its supplemental answer, is contained in the following allegation:

> "That this defendant was interested in said assets to the extent of her just proportion of the value thereof as of the first day of January, 1861, and was the equitable owner of and entitled to receive out of the proceeds thereof, according to the basis of liability fixed by this Honorable Court, 23½% of the sum of $20,810,357.98, and the whole of $225,078.06 collected by Virginia from West Virginia Counties, as aforesaid, making an aggregate of $5,115,512.19."
>
> (Supplemental Answer, page 15.)

VIRGINIA'S EXCEPTION No. 5.

This is addressed to the valuation placed by the Master upon the stock of the State of Virginia in the James River & Kanawha Company. Virginia owned $10,400,000 at par of the stock of this company, and the Master valued it as of January 1, 1861, at $1,664,333 (Master's report, pages 100-6). The ground of the exception is twofold: First, because the finding is in conflict with the Master's former report, and, secondly, because it is alleged that said company was, to all practical intents and purposes, insolvent on and after the first day of January, 1861.

The holdings of the State in this company ($10,400,000) constituted 91.77% of its entire capital stock (New Record, page 1467). The company was likewise indebted to the State in the sum of $7,560,214.44 (New Record, page 1147), and, during the year 1860, its net earnings, after deducting operating expenses, amounted to $151,000.14 (New Record, page 1436). This, however, was not sufficient to pay the interest on its indebtedness, and, in consequence, it ran behind. However, by an Act of the General Assembly of the State of Virginia passed on the 23rd day of March, 1860 (New Record, Vol. 2, page 67), the State exchanged the debts held by her against the company for 74,000 shares of its 6% preferred stock, and thereafter the preferred stock of the company was in a condition to receive, in the shape of dividends, the net earnings over and above operating expenses in lieu of interest on its debt. In other words, the whole of the $151,000 net income per annum would be applied to the 6% preferred stock of the State, and this $151,000, capitalized at

6%, would give a value to said preferred stock of $2,516,666. The fact that the State only owned 91.77% of the capital stock would make no difference under such circumstances, because its stock was preferred, and was in sufficient amount to consume all of the net earnings, so that the 91.77% of the preferred stock owned by the State in reality represented the whole stock, and would take the entire value of $2,516,666; but the Master has only valued this stock at $1,664,333, instead of $2,516,666; that is to say, he has underestimated it to the extent of $852,333; and West Virginia now excepts to his finding in this particular, and requests that his report be corrected so as to give this additional value.

The Master arrives at his result by taking the average net receipts above operating expenses for a period of twenty-five years, which he finds to be $111,800 per annum, from which he deducts $11,940, being the annual interest on an indebtedness owed by the Company of $199,000, leaving a balance of $99,860, which he captilizes at 6% giving him the valuation aforesaid of $1,664,333 (Master's report, page 105).

Why should the average annual net earnings from 1835 down to and including the year 1860 (a period of twenty-five years) be taken, instead of the actual net receipts of $151,000.14 accruing above operating expenses during the year 1860, for the purpose of ascertaining the value of the stock of the Company in 1860?

There seem to have been two companies, the James River Company, which owned and operated the canal east of the Alleghany Mountains, and the

James River & Kanawha Company, which represented a steamboat connection on the Kanawha River west of the Alleghany Mountains, and the two were merged in the year 1835 under the name of the latter, the property of the former being put into the merger or amalgamation at the price of $1,350,000. The part of the property west of the Alleghanies represented still less capital, and its property consisted of little more than winged dams at certain shoals in the Kanawha River. It will be seen, therefore, that the James River & Kanawha Company was a small affair, representing little capital and small property in the year 1835, the period when the Master's average net earnings begin. It did not at that time own the docks in the City of Richmond. These were acquired in 1855 (New Record, Vol. 1, page 744), and only a small portion of its canal was then completed and in operation. Afterwards, millions of capital were added by the State, and the canal was completed and put into operation to Buchanan, a distance of one hundred and ninety-five miles, with a branch or extention from Balcony Falls to Lexington, Virginia, a distance of twenty-two miles, making a total length of 217 miles (New Record, Vol. 1, page 727); and, when the averaging period was ended; that is to say, in 1860, and on January 1, 1861, it was a fully completed and equipped canal, with water-ways, locks, dams and towpath, two hundred and seventeen miles in length, and it owned, in addition to this, very valuable docks and water powers in the City of Richmond, and really the James River front from Seventh Street, in said City, to Twenty-eighth Street (New Record, Vol. 1, page 741). Be-

sides, its tonnage for the year 1842, and it was presumably greater then than in 1835, was only 112,707 tons, as compared with a tonnage in 1860 of 244,273 tons, the volume of business in the latter year being more than double that of the former (New Record, Vol. 3, page 50-a).

The fact that the Company, after its rehabilitation under the Act of March 23, 1860, by the exchange of the Company's bonds held by the State for its preferred stock, ran behind again, showing a deficit in the year 1861 of $69,809.54, in the year 1862 of $46,609.86, and in the year 1863 of $129,036.25, and that it had accumulated an indebtedness of $1,877,912.83 at the time the whole of its property was turned over to the Richmond & Alleghany Railroad Company on March 4, 1880, pursuant to an Act of the General Assembly of Virginia passed April 2, 1879 (New Record, Vol. 2, page 206, exhibit 7-e; page 208, exhibit 7-g), makes no difference, because this indebtedness accrued during a period of nineteen years subsequent to the date as of which the stock of the Company should be valued, and must be attributed in a large measure to the operation of the canal during the Civil War.

BONDHOLDERS' EXCEPTION NO. 1.

The first exception filed by the bondholding creditors of Virginia relates to the date as of which the assets presented in the supplemental answer of the defendant should be valued, and objects to the conclusion and finding of the Master wherein he fixes January 1, 1861, as the proper date for that purpose, instead of June 20, 1863. The exception is identical

with Virginia's first exception, and the reply in both cases would be the same, and need not be repeated here.

BONDHOLDERS' EXCEPTION NO. 2.

This exception is the same as No. 2 presented by the State of Virginia, and complains of the failure of the Master to find that June 20, 1863, was the proper date as of which the assets should have been valued. It is for all practical purpose the same as exception No. 1, and what has been heretofore said in reply to the first exception of Virginia is an answer to her second exception, as well as an answer to the first and second exceptions of the bondholding creditors.

BONDHOLDERS' EXCEPTION NO. 3.

This exception is brief, and it is in the following language:

> "The bondholding creditors of Virginia respectfully except to the failure of the Master to conclude or hold that the assets are not to be valued in excess of the price or amount that Virginia received therefor."

A sacrificial sale made by Virginia at a subsequent time would furnish no evidence of the value of these assets as of January 1, 1861. Neither would a subsequent sale at their then actual value, they having depreciated in the meantime through the instrumentalities of the War, furnish any such evi-

dence, and certainly, if given away by Virginia, as in the case of the property and stock of the James River & Kanawha Compay, twenty-one years after the date fixed by the West Virginia Constitution as the time for the valuation of these securities, could not weigh a feather's weight in ascertaining their value as of the time when they should have been valued. It may likewise be suggested that the squandering of a trust fund by a trustee, either through improvident sales of the subject matter of the trust or by unwarranted donations thereof, could not be permitted to influence the subject of actual values. If a trustee could be compelled to account only for that which he receives, the greater the misfeasance the less the liability would be, and a monumental premium would be placed upon fraud.

BONDHOLDERS' EXCEPTION NO. 4.

This exception, although somewhat different in verbiage from No. 3, is not distinguishable therefrom in principle. The one complains of the "failure of the Master to conclude or hold that the assets are not to be valued in excess of the price or amount that Virginia received therefor", and the other complains of the "failure of the Master to conclude or hold that Virginia should not be charged with a value for the assets in excess of the price or amount that Virginia received therefor", and may be treated as involving identically the same question, and the answer to the one is the answer to the other.

BONDHOLDERS' EXCEPTIONS Nos. 5, 6, 7, 8 & 9.

These exceptions are identical with the third exception of the State of Virginia, and relate to the findings of the Master of the value of the stocks of the Richmond, Fredericksburg & Potomac, the Orange & Alexandria, the Richmond & Danville, the Richmond & Petersburg and the Virginia Central Railroad Companies. Virginia embodied these findings in one exception (No. 3), while the bondholding creditors make a distinct exception in each case (Nos. 5, 6, 7, 8 & 9). The grounds of exception are the same, and the reply thereto need not be here gone over again.

BONDHOLDERS' EXCEPTION NO. 10.

This is the same as Virginia's exception No. 4, and excepts to the valuation of $149,984 placed by the Master as of January 1, 1861, upon a dividend bond issued by the Richmond, Fredericksburg & Potomac Railroad Company, and then owned by the State of Virginia.

The book value of the stock of this Railroad Company at that time was $150 per share (par $100). It was then declaring 7% dividends, was being operated, as found by the Master, at a profit, and was able to pay its bond; and the same was worth at least its par, if nothing more.

BONDHOLDERS' EXCEPTION NO. 11.

This is taken to the finding of the Master in the case of the James River & Kanawha Canal Company.

It is the same as Virginia's fifth exception, and need be discussed no further than to say that the record (Vol. 3, page 1436) shows that the Canal Company, for the fiscal year ending September 30, 1860, received net, above operating expenses, $151,000.14, which, capitalized at 6% would produce $2,516,666, or $852,333 more than the Master allowed; and his finding, instead of being diminished, should be increased by that amount; and West Virginia excepts to his finding for that reason and to that extent.

See defendant's supplemental exhibit 2, New Record, Vol. 3, pages 1434-7; also New Record, pages 1428-9. *

BONDHOLDERS' EXCEPTION NO. 12.

The exception criticizes the failure of the Master to find that Virginia had the right to apply the assets set down in the defendant's supplemental answer, first, "to the payment of $1,451,492.01 of the debt of the undivided Commonwealth of Virginia owing on January 1, 1861, and subsequently paid by Virginia at like cost to her, which debt was not included in the bonded debt of the undivided Commonwealth of Virginia"; secondly, "to the payment of $12,693,807.32 of interest on the bonded debt of the

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* NOTE: The new record consists of three volumes. The first is paged from 1 to 1076, inclusive; the second consists of the plaintiff's and defendant's exhibits, and is paged from 1 to 443, inclusive, while the third is a continuation of the paging of the first, beginning with page 1077, and continuing to page 1633, inclusive.

undivided Commonwealth of Virginia accrued since January 1, 1861, and paid by Virginia at a cost to her on a gold basis of $10,436,101.19", and, thirdly, "to the payment of the further sum of $2,218,319.81 for interest after January 1, 1872, on bonds issued by the present State of Virginia in exchange for the old unfunded bonds of the undivided State, for which Virginia issued her bonds in full", making a total claim of this character of $14,105,913.01.

With respect to the first amount ($1,451,492.01), it was excluded by the opinion and finding of this Court of March 6, 1911, from the indebtedness of Virginia as it was found to exist prior to January 1, 1861 (Virginia v. W. Va., 220 U. S., page 1). It was not a part of the public debt of the undivided Commonwealth of Virginia within the meaning of Section 8 of Article 8 of the West Virginia Constitution of 1861; and, even if it had been, nearly 11/12 of the items that go to make up the amount, as shown by the plaintiff's exhibits, were paid between the first day of January, 1861, and the 20th day of June, 1863, during which period West Virginia was still a part of the Commonwealth of Virginia, and presumably contributed her due proportion to such payments. The exhibit relied upon by the plaintiff is plaintiff's supplementary exhibit No. 1, with its four sub-schedules (New Record, Vol. 2, pages 289-95). The payments embraced in sub-schedules one (page 290) show no debt at all. The payments in sub-schedule two (page 291) bear no date, but, as they show the various quarters when the amounts represented by them fell due, may be presumed to have been made at maturity, and, if so, they were all made between January 1, 1861, and June 20, 1863, except

the last five, aggregating $33,575.76. In the same way the payments set down in sub-schedules three (pages 292-3) appear all to have been made between January 1, 1861, and June 20, 1863, except the last nine, aggregating $69,370.95. The same is true with respect to all the payments embraced in sub-schedule four (pages 294-5), except the last fifteen, aggregating $18,765, making a total of $121,711.71 paid after June 20, 1863, as against the claim of Virginia of $1,451,492.01. In other words, taking even the contention of Virginia, her claim is eleven times too great.

The second item ($12,693,807.32, or $10,436,101.19, when reduced to a gold basis) and the third item ($2,218,319.81) both represent alleged interest payments by Virginia, the one being of interest accruing since January 1, 1861, upon the bonded debt of the undivided Commonwealth, and the other of interest accruing after January 1, 1872, on bonds issued by the present State of Virginia in exchange for the old unfunded bonds of the undivided State. The question here involved, therefore, is in reality whether or not West Virginia should be charged with interest upon her equitable proportion of the principal of the public debt of Virginia, and, as that will be made the subject of separate discussion, the exception need not be further noticed here.

WEST VIRGINIA'S EXCEPTION NO. 1

This exception of the State of West Virginia is addressed to the expression of opinion by the Master, found at the bottom of page ten and the top of page eleven of his report, that West Virginia is liable for

interest beginning with the first day of January, 1861, and its discussion is reserved until that portion of the brief wherein the subject of interest is hereinafter exclusively dealt with.

WEST VIRGINIA'S EXCEPTION NO. 2.

(Richmond, Fredericksburg & Potomac R. R. Stock)

Virginia, on the first day of January, 1861, owned 2,752 shares of stock in the Richmond, Fredericksburg & Potomac R. R. Company, of the par value of $100 per share, making a total par value of $275,200. The book value of the stock per share at that time was $150, making a total actual value of $412,800 (New Record, Vol. 2, pages 2-12,, being defendant's exhibit No. 2, with its sub-sheets 1, 2, 3 & 4). The Master, however, instead of taking the undisputed and uncriticized book value as the actual value of the stock, averaged the book value per share ($150) with the alleged earning value per share of the stock ($84.83), and ascertained the actual value as of January 1, 1861, to be $117.43 per share.

This was erroneous, for the following reasons:

First: Because he improperly ascertained the so-called earning value of the stock. He averaged the dividends declared thereon for a period of eleven years, ending with the year 1860, and found that the average dividend per year during that period was 5.09%, which when capitalized at 6%, gave him his alleged earning value of $84.83 per share. If he had taken the average dividends for the fifteen years set forth in defendant's exhibit No. 2 (New Record, Vol.

2, pages 2 & 3), he would have found that the same were nearly 7% per year instead of 5.09%; and, if he had taken the dividend declared in the year in question, that is to say, in 1860, and in the year preceding, that is to say, in 1859, he would have found that it was actually 7% in each year, and this, capitalized at 6%, would have produced a value per share of $116.66 2/3, instead of $84.83, as declared by him to be the earning value of the stock, which, when averaged with the book value of $150 per share would have made quite a difference;

Second: Because such an average in either event would have been wrong, for the reason that the book value, as shown by defendant's exhibit No. 2 (New Record, Vol. 2, pages 2-12), was ascertained by the surplus of assets over liabilities left after all dividends had been declared. The surplus in the case of this Company after the declaration of dividends for the year ending March 31, 1859, as shown by its balance sheet for that year, was $461,134.54 (New Record, Vol. 2, pages 4 & 5); for the year ending March 31, 1860, $505,403.22 (New Record, Vol. 2, pages 6 & 7); for the year ending March 31 1861, $562,819.05 (New Record, Vol. 2, pages 8 & 9), and for the year ending March 31, 1862, $656,577.85 (New Record, Vol. 2, pages 10-12).

To average dividend values with book values under such circumstances would be practically to add the dividends in the liability column twice;

Third: Because some companies may be in a condition to declare large dividends, but they may, notwithstanding this fact, declare small ones, or none at all, choosing rather to put all their net earnings to surplus. In such case, the dividends would furnish

no or small evidence of the actual value of the stock, and,

Fourth: Because the book value of stock represents its actual value, where the books are correctly kept; and, in the case of this Company, not a single item, either in the asset or the liability column, in any of its balance sheets for 1859, 1860, 1861 or 1862, has been criticized or called in question by the State of Virginia, with the result that, presumtively, at least, its books have been correctly kept, and its stock values actually shown.

The Master should, therefore, under the circumstances of this case, have taken the book value of $150 per share alone, which would have given to the 2,752 shares owned by the State of Virginia on January 1, 1861, a total value of $412,800, instead of $323,167.36, making a difference in the valuation of this stock as of that date of $89,632.64, 23½% of which, or $21,063.68, represents the loss to West Virginia.

WEST VIRGINIA'S EXCEPTION NO. 3.

(Orange & Alexandria R. R. Stock)

Virginia owned of the stock of this Company on January 1, 1861, 17,490 shares, of the par value of $50 per share, making an aggregate par value of $874,500. The book value of this stock as of that date was $53.32 per share (New Record, Vol. 2, defendant's exhibit 3, page 13; defendant's exhibit 3, asset 1, page 14). This book value was ascertained by taking the last balance sheet of the Company, viz., September 30, 1856, and ascertaining therefrom the

surplus on hand at that time, and from the reports of said Company to the State of Virginia the profits for the years 1857, 1858, 1859 1860 and 1861, which were added to the surplus and the book value of the stock derived therefrom. All dividends paid upon this stock were subtracted before the surplus was ascertained, and the alleged earning power of the stock, under such circumstances, could not be taken as a standard for the measurement of its value. On the contrary, and for the reasons set forth in the next preceding exception (Richmond, Fredericksburg & Potomac R. R. Co.), its book value should have been taken alone, instead of averaging the book value, as the Master did, with the alleged earning value. The Master ascertained the earning value to be $12.28 per share (Master's report, page 38), which, when added to the book value of $53.32 per share, makes $65.60, one-half of which, or $32.80, he ascertained to be the actual value per share. This amount, multiplied by the number of shares (17,490), gave as the total value of the stock, according to the finding of the Master, $573,672.00. If the book value alone had been used, the result would have been $932,566.80, representing an increase of value over the Master's finding of $358,894.80, 23½% of which, or $84,340.27, represents the loss to West Virginia.

WEST VIRGINIA'S EXCEPTION NO. 4.

(Richmond & Danville R. R. Stock)

Virginia owned 12,000 shares, of the par value of $100 per share, of the stock of the Richmond & Danville Railroad Company, making a total at par

of $1,200,000. The book value, ascertained as in the case of the Orange & Alexandria Railroad Company, on the first day of January, 1861, was $137.37 per share (New Record, Vol. 2, defendant's exhibit 3, asset 2, page 19). Besides, this stock, for the six years preceding January 1, 1861, earned an average profit of 9%, and a profit of 11% for the year 1860; but this time the Master did not average the earning value of the stock with its book value, but took the book value alone, which we feel to be right; but it is respectfully submitted that he erred in deducting from the book value of $137.37 per share 5% of its par value for liquidation purposes, thereby reducing the value of a share to $132.37, which, when multiplied by the total number of shares (12,000) produced $1,588,440.00, or the amount of his allowance (Master's report, page 41).

This 5% reduction amounts to $60,000, and 23½% thereof represents a loss of $14,100 to West Virginia.

Why should 5% of the par of this stock be deducted from its actual value? It was not going through liquidation, and there were no liquidation expenses. Neither was it being transferred from or to Virginia, and there could be no transfer expenses. Virginia owned the stock on the first day of January, 1861, and continued to own it thereafter. The stock was simply being appraised as of that date, and its true value as of that time measured the credit upon the debt to which it was applicable, and it was not subject to any such deduction as if it were passing through a bankruptcy or chancery court.

WEST VIRGINIA'S EXCEPTION NO. 5.

(Richmond & Petersburg R. R. Stock)

The par of this stock was $100 per share, and Virginia owned upon the date in question 3,856 shares, of a total par value of $385,600. The book value, ascertained as in the case of the Orange & Alexandria and the Richmond & Danville R. R. Companies, was, on January 1, 1861, $121.86 per share (New Record, Vol. 2, defendant exhibit 3, asset 3, page 22). Again the Master averaged this with its alleged earning value, arriving at a value thereby per share of $114,40, which, when multiplied by the number of shares, gives his allowance of $441,126.40.

If the book value alone had been used, and it should have been for the reasons given in the case of the Richmond, Fredericksburg & Potomac R. R. Company (West Virginia's exception No. 2), the result would have been a total value for this stock as of January 1, 1861, of $469,892.16, making a difference of $28,765.76, 23½% of which, or $6,759.95, represents West Virginia's loss.

WEST VIRGINIA'S EXCEPTION NO. 6.

(Virginia Central R. R. Stock)

The holding of Virginia of this stock on January 1, 1861, was 18,916.70 shares, of the par value of $100 each, or a total of $1,891,670.68. Its book value, ascertained as in the case of the other rail-

roads, was $131.16 per share (New Record, Vol. 2, defendant's exhibit 3, page 13, and defendant's exhibit 3, asset 4, page 24). The earning value, based upon such dividends as were declared, was ascertained by the Master to be $116.95 per share (Master's report, page 46), and he bases his finding upon a combination of the two, the average being $124.05 per share, giving a total value for all the shares of $2,390,918.08, instead of a value of $2,481,115.26, had he relied upon the book value alone, as he should have done under the circumstances. This represents a loss of $90,197.18 on the entire valuation of the stock, 23½% of which, or $21,196.34, being the diminution of West Virginia's credit.

WEST VIRGINIA'S EXCEPTION NO. 7.

(Alexandria, Loudon & Hampshire R. R. Stock)

This road was incorporated in 1853 (Master's report, 48), and between that date and January 1, 1861, a period of seven years, Virginia had expended in the purchase of its stock in cash, $993,248, the whole of which she still owned on that date.

Between January 1, 1861, and April 16, 1862, she spent $24,000 more in the purchase of this stock, making a total as of the latter date of $1,017.248.

On November 25, 1867, she sold all of her holdings to the Road itself at $5.00 a share, or for the price of $50,862.40; but West Virginia was interested only in that part of the stock sold that was owned by Virginia on January 1, 1861. The amount so then owned seems to have been 97.64% of the whole stock sold, and, therefore, $49,662.05 of the sale price would

be attributed to that portion of the stock held January 1, 1861; provided the amount received by Virginia in 1867 for this stock could be taken as a standard for the measure of its value on January 1, 1861, or could be considered as an element in fixing such value.

The Master so valued the stock; that is to say, he measured its value as of January 1, 1861, by its sale price on November 25, 1867; or, worse than that, he took such sum as its value on January 1, 1861, ($35,096.85) as would produce $49,662.05 by November 25, 1867, the latter sum being the sale price on the latter date for that proportion of the stock that was owned by Virginia on January 1, 1861 (Master's report, 48-9).

Even under ordinary circumstances, the sale price would furnish no evidence of the value of a chattel or security, especially seven years after the date as of which it was to be valued; but, when we reflect that West Virginia's interest in this asset must be determined as of a date before the Civil War had begun, and that the Master has put a value upon it based upon a sale price after the country through which the road runs had been harried by a four years war, we begin to see the utter worthlessness of the standard adopted. It must be borne in mind that this road, beginning at Alexandria, Virginia, ran northwest through that State by way of Leesburg, practically parallel to the Potomac River, with Bull Run hard by upon the one side, and within sound of the Federal guns at Washington, upon the other; and, if we are to believe the history of the times, to which counsel for the State of Virginia ap-

pealed so persistently before the Master, the railroads of the South, at the close of the war, were in such a physical condition as to render them practically worthless. We are told that their embankments were gone, cuts filled, and that now and then even rails were removed and wrapped around trees.

What value, then, should be given to this stock as of January 1, 1861? It must be confessed that the evidence upon the subject is meager. We have no evidence of the declaration of dividends, and little knowledge of the physical condition of the road. All we know is that it was incorporated in 1853, and, during the seven years next following, was completed and put into operation from Alexandria, Virginia, to Leesburg, in that State (see map, New Record, Vol. 2, page 283); that the par of its stock was $100 per share, and that, between 1853 and the first day of January, 1861, it bought at par, and paid therefor in cash 9,932.48 of its shares (New Record, Vol. 2, defendant's exhibit 3, asset 6, page 28).

We have, then, the presumption (in the absence of evidence to the contrary) that its stock was worth par, strengthened by the fact that Virginia paid par therefor in cash. This, to say the least, furnishes much stronger evidence of its actual value than does a mere sale price at the end of a destructive war.

If, therefore, it should be valued in this way, instead of by the standard fixed by the Master, the result would be that the total stock was worth on the first day of January, 1861, the sum of $993,248, instead of the sum of $35,096.85, as found by the Master, and 23½% would give West Virginia a credit of $223,413.28, instead of $8,247.74.

The reason why the Master, as shown by his report (pages 48-9) found the value he did, instead of the one here contended for, was because the expert accountant for the State of West Virginia, in defendant's exhibit No. 3, asset 6 (New Record, Vol. 2, page 28), only placed a value upon this stock of $49,662.05, making the mistake of valuing it according to the subsequent purchase price received by Virginia, instead of according to our contention. His exhibits, however, gave all the facts, and his mistake was one of law, rather than of fact; and, almost in the same breath, attention was called to the fact by counsel for the State of West Virginia, and the proper claim based upon the exhibit was made (New Record, Vol. 1, page 416).

WEST VIRGINIA'S EXCEPTION No. 8.

(Virginia & Tennessee R. R. Loan)

On the first day of January, 1861, the Virginia & Tennessee Railroad was a completed line in operation from Lynchburg, in the State of Virginia, to Bristol, in the State of Tennessee, a distance of about two hundred miles (see map, New Record, Vol. 2, page 283).

The stock of this company was fully paid up (Master's report, 51).

Virginia owned therein stock of all classes amounting to $2,300,000 (New Record, Vol. 2, page 167).

No evidence was introduced to show that any dividends were paid on this stock prior to June 20, 1863; but a schedule was introduced for the purpose

of showing dividends paid to the State of Virginia thereon after the separation of the two States, and it appears therefrom that she received as dividends thereon on March 26, 1864, $100,000, and on April first of the same year $38,000, making an aggregate of $138,000, which would be 6% upon the par of her stock of $2,300,000 (New Record, Vol. 2, page 227); but the Master says of this fact that "one dividend of about one-half of one per cent. was paid in 1864, the only dividend for nearly thirty years" (Master's report, 51). By what warrant a dividend of 6% can be turned into one of one-half of one per cent. we are at a loss to understand.

The book value of this stock on June 30, 1860, was $99.90 per share, the par per share being $100.00 (New Record, Vol. 2, defendant's exhibit 6-a, page 57).

By virtue of an Act of the General Assembly of Virginia passed February 9, 1853, a loan of $1,000,000 was authorized to be made by the Board of Public Works to this road for and on behalf of the Commonwealth of Virginia, which loan was made during the same year, and secured by a mortgage upon the property of the company, executed on March 26, 1853 (New Record, Vol. 2, plaintiff's exhibit 19, page 423). This loan remained unpaid on the first day of January, 1861, and was still owned by the State of Virginia, at which time interest had accumulated thereon to the amount of $280,000, making a total of principal and interest of $1,280,000 (New Record, Vol. 2, defendant's exhibit 3, asset 8, sheet 1, page 30).

And, during the Civil War, there was paid into the treasury of the State of Virginia in Confederate

currency to the credit of this loan $886,685. These payments were made in the following amounts, and upon the following dates:

June 19, 1863	$200,000
June 30, 1863	300,000
Aug. 6, 1863	100,000
Aug. 7, 1863	100,000
Sep. 11, 1863	186,685
Making a total of	$886,685

(New Record, Vol. 2, defendant's exhibit 3, page 31.)

These payments the Board of Public Works for the State of Virginia undertook to repudiate by resolution passed on February 4, 1868, upon the ground, among others, that it was paid to the Second Auditor of Virginia, and that that officer had no right or power to receive the same (New Record, Vol. 1, pages 420-2); but it appears that the law of Virginia at that time was that a warrant for these payments could be obtained from the Second Auditor as well as from the Auditor of Public Accounts (Act of Virginia of 1860, Chap. 45, page 266, Sec. 2; Master's Report, 51).

Afterwards, that is to say, on December 22, 1870, Virginia sold whatever interest she had left remaining in this loan, together with her stock in this company and stock in certain other railways, and her interest in certain other loans, to the Atlantic, Mississippi & Ohio Railroad Company, at the price of $4,000,000, secured by a second mortgage upon the property of the purchasing company (New Record, Vol. 2, defendant's exhibit 6, page 56; Vol. 1, page 425).

West Virginia, in her schedules filed before the Master, should have claimed a value for this loan as of January 1, 1861, of $1,280,000, that being the principal with accumulated interest as of that date; but, instead, she only claimed $886,685, that being the amount paid thereon to Virginia, as hereinbefore set forth (New Record, Vol. 2, defendant's exhibit 3, page 13); and with this valuation she would have been satisfied, but the Master, taking her at her minimum claim, and because that amount was paid to Virginia thereon in Confederate currency during the war, reduced the same to a gold basis as of the dates upon which the payments were made, with the result that he places a total value upon this loan as of January 1, 1861, of only $84,799.90, instead of $886,685. 23½% of the latter amount would be $208,370.97, and of the former only $19,927.97, resulting in a loss of West Virginia of $188,443.

As a matter of fact, transactions in Confederate currency in 1863 can furnish no standard of value for this loan as of January 1, 1861, before the war began, and before Confederate currency was known. At the true date as of which it should be valued (1861), West Virginia was interested in the principal loan of $1,000,000, with accumulated interest to the extent of $280,000, the loan evidenced by bonds secured by a mortgage upon a growing railroad, the evidence further showing that the entire stock of the company had been paid up, and that its stock was worth almost par. Under such circumstances, a *prima facie* case of par value for the bonds evidencing the loan would be made, and, in the absence of evidence introduced by the State of Virginia to

the contrary, should prevail. At least a discount and reduction from $1,280,000 to $886,685 should not be disturbed because forsooth the loan was subsequently paid off in part in Confederate currency.

WEST VIRGINIA'S EXCEPTION No. 9.

(Norfolk & Petersburg R. R. Loan)

Prior to January 1, 1861, the State of Virginia loaned to the Norfolk & Petersburg Railroad Company $300,000, and this loan was still unpaid on that date (New Record, Vol. 2, page 12-a).

$68,500 of the principal of this loan was paid to Virginia in the year 1867, and, in the year 1868, $68,500, making a total payment upon the principal of $137,000. This was paid in Virginia bonds. Other payments were made, but presumably upon interest (Master's Report, 57; New Rec., Vol. 2, page 34). This left a balance of principal of $163,000, as shown by the books of Virginia; and this balance was subsequently sold by the State, along with other stocks and loans, on December 22, 1870, to the Atlantic, Mississippi & Ohio Railroad Company for the price of $4,000,000, secured by a second mortgage upon the property of the vendee company. The various stocks and loans in this sale were all listed, and the amount thereof in dollars and cents set down in the memorandum of sale made by Virginia to the Atlantic, Mississippi & Ohio Railroad Company (New Rec., Vol. 2, page 56), except the balance of the loan of $1,000,000 made to the Virginia & Tennessee Railroad Company, upon which the State had received $886,685, as seen in the discussion of our exception

WEST VIRGINIA'S EXCEPTIONS Nos. 11, 12, 13 & 14.

(Farmer's Bank of Virginia Stock)
(Bank of Virginia Stock)
(Bank of the Valley Stock)
(Exchange Bank Stock)

The exception to the valuation placed by the Master upon the stock in each of these Banks is the same, and they will be discussed together.

He took the book value of the stock in each Bank as of January 1, 1861, but, instead of multiplying that book value by the number of shares held and owned by the State of Virginia in the particular Bank, and thus arriving at its total actual value, he took the book value per share, and deducted therefrom 5% of the par value of a share for liquidation purposes.

The book value per share of the stock in the Farmer's Bank of Virginia was $107.89, and he reduced the same to $102.89 per share by deducting 5% of its par, thereby placing a total value upon the shares held by the State of Virginia in this Bank of $990,419.14, instead of $1,038,549.14 (Master's Rep., 85-6).

The book value of the stock per share in the Bank of Virginia was $74.99, and it was reduced in the same way to $71.49 per share, which resulted in a total value of Virginia's stock in this Bank of $984,131.34, instead of $1,091,312.34 (Master's Rep., 86-8).

The book value of the stock of the Bank of the Valley was $107.6 per share, but this the Master re-

duced in the same way to $102.6 per share, resulting in a total valuation of $496,481.40, instead of $520,676.40 (Master's Rep., 88-9).

The book value of the stock of the Exchange Bank per share was $107.2, which was reduced by the Master in the same way to $102.2 per share, resulting in a total valuation of $894,761, instead of $938,536 (Master's Rep., 89-90).

This stock was owned by Virginia on the first day of January, 1861, and she continued to own it. No transfer was necessary to put the title thereto in her; neither were these Banks, or any of them, going through a process of liquidation, and the $5.00 deducted from the book value of each share was purely an arbitrary discount that was required for no legitimate purpose, and performed no function, except to diminish the value of the stock below its real worth.

The balance sheets of these Banks will be found in New Record, Vol. 2, pages 48-52.

WEST VIRGINIA'S EXCEPTION NO. 15.

(Atlantic, Mississippi & Ohio R. R. Co.)

On the first day of January, 1861, the State of Virginia owned numerous shares of stock in the Norfolk & Petersburg, South Side, Virginia & Tennessee and Virginia & Kentucky Railroad Companies.

The book value per share at that time of the Norfolk & Petersburg was $89.52; the South Side $105.98; the Virginia & Tennessee $99.90, and the Virginia & Kentucky $100, and the total value of Virginia's holdings, measured by the book value,

etc. to the State of Virginia to the amount of $224,799.63 (New Rec., Vol. 2, defendant's exhibit 10, page 224). $44,535.18 of this amount seems to have been assessed prior to June 20, 1863, while the residue, $180,264.45, was assessed after that time (New Rec., Vol. 1, page 608).

The Master disallowed this item, for the following reason: He says "no part of this sum, $180,264.45, was paid by West Virginia, directly or indirectly. Payment of this sum in taxes by individual taxpayers creates no right in West Virginia to recover the amount of Virginia * * * * *" (Master's Rep., 113). We do not understand that these taxes were paid by individual taxpayers living in West Virginia Counties to sheriffs and collectors of adjoining Counties in Virginia, but that these taxes were collected by West Virginia officials and turned over by them to the State of Virginia; and, if this be true, the whole money, in consequence, was covered into the treasury of Virginia, although she had no interest therein or title to the same, or to any part of it, and should be compelled to account for the whole thereof unto the State of West Virginia.

B.

The Master likewise charges us with having received from the restored government of Virginia $170,771.46, with which he charges us (Master's Rep., 116). This consisted of money paid by Governor Pierpont, of the restored government of Virginia, to Governor Boreman, of West Virginia, but it had been collected, as appears from the record, from West Virginia territory, and she should not in equity

be charged with it as if it had been raised from Virginia territory.

WEST VIRGINIA'S EQUITY IN THE VIRGINIA ASSETS.

If the division of the old Commonwealth of Virginia into two States had taken place without any agreement upon the part of the State of West Virginia to assume an equitable proportion of the pre-existing debt, out of analogy to the rule that obtains in the division of municipalities, Virginia would have taken all the property originally owned by the old Commonwealth, excepting the physical property actually situated within the new State, and would have become responsible for the entire debt.

Dillon Mun. Corp., Vol. 1, Sec. 188, page 216 (3 ed.).
Mt. Pleasant v. Beckwith, 100 U. S., 514; 25 L. Ed., 699.
Comrs. of Laramie County v. Comrs. of Albany County, 92 U. S., 307; 23 L. Ed., 552.

The text of Dillon above cited is as follows:

"So it has been frequently held that, if a new corporation is created out of the territory of an old corporation, or if part of its territory or inhabitants is annexed to another corporation, unless some provision is made in the Act respecting the property and existing liabilities of the old corporation,

lows as a corollary that, if she is compelled to pay any part of a debt representing purchase money, she is entitled to receive a corresponding part of the value of the thing purchased.

Again the assets in question here were devoted by the Legislature of Virginia to the payment of her public debt, and the same have, in consequence, become trust funds.

Act of Gen. Assembly of Va. of 1838, new Rec., Vol. 1, p. 661-4.
Sections 28, 29 & 30, Art. 4, Constitution of Va. 1851, New Rec., Vol. 1, p. 651.
Act of Va. passed March 26, 1853, New Rec. Vol. 1, p. 652-6.
Act of Gen. Assembly of Va., approved March 31, 1875, New Rec., Vol. 1, p. 656-8.
Joint Resolution of Gen. Assembly of Va. of 1866, New Rec., Vol. 1, p. 705-6.
Resolution concerning Canal Co., New Rec., Vol. 2, p. 198-9.
Sec. 1 of an Act. of Gen. Assembly of Va., approved Feb. 18, 1870, New Rec., Vol. 1, p. 706.
Message of Gov. Letcher of Va., New Rec., Vol. 1, p. 665-6.
Message of Gov. Walker of Va., New Rec., Vol. 1, p. 667-73.

And, in the last place, the Supreme Court having held that West Virginia is compelled to pay 23½% of the debt, West Virginia should receive 23½% of the value of the assets.

Virginia v. West Virginia, 220 U. S., p. 1; 55 L. Ed., 358.

INTEREST.

EQUITABLE REASONS WHY WEST VIRGINIA SHOULD PAY NO INTEREST.

This is not a suit brought by the State of Virginia against the State of West Virginia upon interest-bearing securities. The suit is not upon bonds at all, —Virginia could not sue herself; but it is based upon a constitutional promise made by West Virginia to Virginia, and not to the bondholders. This promise was to assume an equitable proportion of the public debt of Virginia as it existed prior to January 1, 1861. That public debt was evidenced by interest-bearing bonds, and the question at once arises whether a promise to assume or pay an equitable proportion of an interest-bearing debt constitutes a promise to pay an equitable proportion of the interest accruing on that debt. Can there be an equitable apportionment of an interest-bearing debt without apportioning the interest upon the same basis as the principal? The answer to this question must depend upon the circumstances. What would have been equitable between the two States on January 1, 1861, in consequence of Virginia's subsequent conduct, may not be equitable today. If the State of Virginia, by neglect or arbitrary conduct, has prevented the settlement of this debt, or the ascertainment of its principal, until the interest on West Virginia's proportion thereof should be, if allowed to run from January 1, 1861, four times the principal, so that when a decree should be at last entered it would start with a new principal, composed of the original equitable proportion of the principal and fifty odd years of ac-

tlement then. In other words, there has never been an hour that West Virginia could have done a thing, either through negotiation or by appeal to the courts, and, upon the other hand, there has never been an hour during the whole time when Virginia could not have made her appeal to this Court, and have brought this controversy to a close. She neglected to do it; she postponed her rights; she allowed the matter to sleep, evidence to be lost and complications to set in, and it would not be equitable to permit her, by acts of default and neglect of this character, to multiply the principal of West Virginia's debt fourfold. If by the decree of this Court at this time seven millions, without abatement, should be taken as the part of the principal of this debt that West Virginia should contribute, and interest should be allowed thereon from 1861 until now, the interest, in round numbers, would amount to $23,000,000, which, when added to the seven, would give a new principal of thirty millions, upon which interest would run. In other words, Virginia, by her own delay and default, would be permitted to multiply West Virginia's debt by four.

LACHES.

It may be said that *laches* may not be attributed to the Crown, and that this doctrine cannot be invoked against a sovereign State. We take it, however, that that would depend altogether upon the language of the contract under which the Court was acting at the time, and we find here the word "equitable" used; and, if it would be inequitable to permit such a result in consequence of the helplessness of one

State and the delay of another, then, and in that event, would the principles of *laches* be invoked and applied.

There is another reason why an exception to the rule might be allowed, and it is this: Virginia is acting for the most part here as a trustee for these bondholders, and, while the doctrine of *laches* might not be applicable to a sovereign, if the sovereign were acting in a fiduciary capacity, there is no reason why the doctrine might notwithstanding reach the *cestui que trust.*

It might be suggested that West Virginia should have moved by way of the courts as well as Virginia, and that she would be equally chargeable with *laches* in consequence of her failure so to do; but the doctrine of *laches* is never employed except to defeat a claim, and, as West Virginia had and has no claim against Virginia to enforce, the doctrine could have no application to her, because, if so applied, it would have only one result, and that would be to enable her to entirely escape from the payment of any claim.

OTHER CIRCUMSTANCES SHOWING INTEREST CHARGE AGAINST WEST VIRGINIA TO BE INEQUITABLE.

There are other equitable reasons why West Virginia should not pay interest on her debt to Virginia, except from the time of its ascertainment, even if she should pay any interest from any date. Some of these will now be suggested and briefly outlined, rather than discussed in detail.

First: At the time West Virginia was cut off from Virginia and admitted into the Union as a sep-

arate and independent State, her territory was a wilderness. Almost trackless forests stretched from the Alleghanies to the Ohio. Her lands were uncleared, and in large part were uncultivated. Her minerals, for the most part, were undiscovered, and she had then no mining industries. Her population was sparse, and railroads she had none; neither had she canals. Mountain trails constituted almost her entire means of communication. She had no public buildings, and her State institutions had yet to be provided. She inherited none of these from Virginia, but was under the necessity of providing them one and all for herself, without assistance or contribution from the mother State.

Second: Virginia, upon the other hand, had left within her territory, constructed and equipped out of the common funds of the undivided State, a commodious capitol, with its grounds and libraries; a penitentiary at the City of Richmond; a State asylum at Staunton, and one at Williamsburg, with their respective equipments; and a State university at Charlottesville, established and equipped through the common contributions of the two sections extending over the period of a century, and with an established reputation that was not confined to the South, but extended throughout the Nation, and, in fact, was known throughout the world. All these things West Virginia left behind and Virginia inherited, without making contribution of any kind or character.

Third: In addition to the foregoing institutions, the territory left to Virginia was not only

traversed by public canals, built at the common expense, but was grid-ironed by railways that traversed, developed and enriched her counties, furnishing communication between her citizens, and adding taxable value to her property; and, independently of any stock ownership she may have had therein, the indirect benefit resulting to her remaining territory after the division outweighed by far any direct investment she may have had in these roads. And, when we turn to the map filed in this cause (New Rec., Vol 2, page 283), we find that all the rail and water-ways were left with the old State, and that West Virginia did not have a single foot of canal in operation, and less than twenty miles of railway. Directly and indirectly, Virginia received many millions of value in this way, while West Virginia received practically nothing. Her territory was blank and empty, and, if she were compelled to provide herself, as she was, single-handed and unaided, with public institutions, and make public improvements, and, at the same time, should be compelled to pay interest upon securities issued by Virginia in the establishment and construction of public works, buildings and institutions in which she has no interest at all, she would be paying rather dearly for her right of separation. She would be paying without consideration, and such payment would be inequitable.

Fourth: Virginia herself has not paid one dollar of interest upon one-third of her own debt which has accrued since January 1, 1861. She was relieved from this one-third, together with the interest thereon, by agreement with her creditors, the con-

sideration being that she should turn over to them whatever she might recover on her claim against West Virginia in this suit. Why should West Virginia pay Virginia interest on this third, or any part of it?

LEGAL REASONS WHY WEST VIRGINIA SHOULD PAY NO INTEREST.

I.

CLAIM OF VIRGINIA AGAINST WEST VIRGINIA UNLIQUIDATED.

By the very language of the contract upon which the present suit is based, Virginia's claim against West Virginia is uncertain, indefinite and unliquidated. There has never been an hour since the adoption of the West Virginia Constitution of 1861 that West Virginia knew what portion of the debt of Virginia she should pay. The language of her promise was an "equitable" proportion. The very term indicates the necessity of investigation, evidence, ascertainment and decision. There has never been a time, although her treasury might have been full, that West Virginia could have drawn thereout a definite sum to meet a definite purpose. Whether it was one million, or would be ascertained to be five, she knew not. All she knew was that Virginia had arbitrarily decided her own case, and fixed the amount at one-third. West Virginia knew, however, that this was wrong, and without authority, and could not bind her or relieve Virginia, and she was compelled to go along in this way without knowing on what sum, if interest should be charged, it would be calculated. She had no method or means

by which to stop this accumulation, if forsooth it can accumulate upon unascertained amounts. Had she known upon what principal she was to be charged, she could have negotiated her own bonds and paid Virginia off, leaving her own securities outstanding, and perhaps running only on a rate of interest one-half as great as the rate that is borne by the present bonds of Virginia.

Unliquidated amounts do not bear interest, and it cannot be said that interest follows the principal as the shadow does the substance; for, until the amount is ascertained, there is no principal, and there is no substance.

Redfield v. Ystalyfera Iron Co., 110 U. S., 174; 28 L. Ed., 109.
Stevens v. Phoenix Bridge Co., 139 Fed., 248.
I Sedgwick on Damages (9 ed.), 614.
Barrow v. Reab, 9 How. (U. S.), opinion, p. 371.
Wittenberg v. Mollyneaux, 59 Neb., 200; 80 N. W., 824.
Swanson v. Andrus, 83 Minn., 505; 86 N. W., 465.
Dady v. Condit, 209 Ill., 488; 70 N. E., 1089.
Brownell Imp. Co. v. Critchfield, 197 Ill., 61; 64 N. E., 332.
Excelsior, etc., Co. v. Harde, 181 N. Y., 11; 73 N. E., 494.
Macomber v. Bigelow (Cal.), 58 Pac., 312.
Bright v. James, 35 R. I., 492; 87 Atl., 316.
Bennett v. Fed. C. & C. Co. (W. Va.), 74 S. E., 318.
Courtney v. Stand. Box Co. (Cal. App.), 117 Pac., 778.
16 Am. & Eng. Enc. Law (2 ed.), 1016, citing many cases.

The Virginia authorities upon the subject are:

Auditor of Pub. Accts. v. Dugger & Foley, 3 Leigh (Va.), 241.
Phillips v. Williams, 5 Gratt. (Va.), 258.
M'Connico et al., Exrs. of Holloway, v. Curzen, 2 Call (Va.), 358.
Skipwith v. Clinch, 2 Call (Va.), 253.
Waggoner v. Gray's Admrs., 2 H. & M. (Va.), 603.
Stearns v. Mason, 24 Gratt. (Va.), 484.
Lynchburg v. Amherst County, 115 Va., 600-8.

II.

NO PROMISE ON THE PART OF WEST VIRGINIA TO PAY INTEREST.

It was urged in argument on behalf of West Virginia that, if the Legislature of this State must ascertain the equitable proportion of the debt assumed by the defendant, and this constituted a part of the contract between the two States, the Court was without jurisdiction, and that this part of the contract was binding upon both parties, and that the question of the amount of this debt assumed by West Virginia must be referred to her own Legislature as the sole body to ascertain the extent of West Virginia's liability.

The Court, in answer to this argument, used the following language:

> "But again, it was argued that, if this contract should be found to be what we

have said, then the determination of a just proportion was left by the Constitution to the Legislature of West Virginia, and that, irrespectively of the words of the instrument, it was only by legislation that a just proportion could be fixed. These arguments do not impress us. The provision in the Constitution of the State of West Virginia that the Legislature shall ascertain the proportion as soon as may be practicable was not intended to undo the contract in the preceding words by making the representative and mouthpiece of one of the parties the sole tribunal for its enforcement. It was simply an exhortation and command from supreme to subordinate authority to perform the promise as soon as might be, and an indication of the way."

220 U. S. 1.

It is now beyond discussion that the Court regards the first clause of section 8 of article VIII, Constitution W. Va., as constituting the terms of the contract between the parties to this controversy, and, as this clause makes no mention of interest, it is idle to contend that there is any promise upon the part of West Virginia to pay interest.

To hold a State to the payment of interest upon an obligation which she has contracted there must be an express promise to pay interest. In the absence of such express promise there is no liability for interest.

This is the settled law of this country as announced by the Federal and State Courts.

United States v. North Carolina, 136 U. S., 211, 216, 34 L. ed., 336.

This case was followed in South Dakota v. North Carolina, 192 U. S., 268, 48 L. ed. 448, the Court declining to allow interest on the decree rendered therein.

See also Molineaux v. State, 109 Cal., 378, 50 Am. St. Rep., 49.

Carr v. State, 127 Ind., 204, 22 Am. St. Rep., 624, 11 L. R. A., 370.

Seton v. Hoyt, 34 Or., 266, 75 Am. St. Rep., 641.

Board of Co. Com'rs v. Kaul (Kan.), 96 Pac., 45, 17 L. R. A. (N. S.), 552.

In *Seton v. Hoyt, supra,* quoting from the report thereof in 75 Am. St. Rep. at page 643, the Court said:

"There is some conflict in the authorities upon the question whether a sovereign State is required to pay interest unless self-imposed, but the weight thereof seems to support the contention that it is not. The Supreme Court of the United States has adopted the rule that interest is not allowable on claims against the government, whether they originate on contract or tort, or arise in the ordinary business of administration, or under private Acts for relief, passed by Congress on special application. But it recognizes the existence of two well established exceptions—one wherein the government has stipulated to pay interest, and the other where interest is given by Act of Congress, either expressly as such, or under the name of damages; United

States v. Bayard, 127 U. S., 251. In a subsequent case of United States v. North Carolina, 136 U. S., 211, Mr. Justice Gray says: 'Interest, when not stipulated for by contract or authorized by statute, is allowed by the Courts as damages for the detention of money, or of property, or of compensation, to which the plaintiff is entitled; and, as has been settled upon the grounds of public convenience, is not to be awarded against a sovereign government, unless its consent to pay interest has been manifested by an Act of the Legislature, or by a lawful contract of the executive officers'."

The authorities are nearly all to the effect that a State cannot be made liable for interest on its debt, in the absence of an express promise or undertaking to pay interest.

III.

WEST VIRGINIA NOT CHARGEABLE WITH INTEREST AS DAMAGES.

In the absence of a promise to pay interest, under certain circumstances, it is sometimes recoverable as damages.

This subject is considered in a work of recognized merit, where the authorities are examined and cited, and, after discussing the principles governing the subject and giving many illustrations of their application, the following conclusion is reached as to the requisites authorizing the recovery of interest by way of damages for the breach of a contract:

"In order to recover interest by way of damages for the breach of a contract to pay money, express or implied, it is necessary that both the amount to be paid and the time for payment be reasonably certain or susceptible of ascertainment. With these essentials established, the default of the debtor will render the right of recovery of interest complete.

It is obviously necessary that the amount **due** should **be certain,** or at least susceptible of ascertainment, because without this the debtor cannot be in default."

16 Am. & Eng. Enc. Law (2nd ed.), 1014.

In *Bright v. James*, 35 R. I., 492, 87 Atl., 316, the suit was in equity for specific performance, and involved a question of the allowance of interest on a decree for purchase money, and, in the course of the opinion, the Court, quoting with approval from 22 Cyc., 1496, said:

"Before interest, as damages, will be allowed for the breach of a contract to pay money, there must in general be a default in the payment of the principal debt; but interest is usually allowed from the time of such default. Obviously a party cannot be in default in the payment of a debt until the debt is ascertained; and hence default, so as to render a party liable for interest, cannot occur unless the sum due is certain. There must also be certainty as to the time of payment before there can be a default in payment for which interest as damages will be allowed."

IV.

UNEARNED INTEREST NO PART OF PUBLIC DEBT OF VIRGINIA EXISTING PRIOR TO JANUARY 1, 1861.

The promise of West Virginia upon which this suit is instituted is based upon the first part of Section 8 of Article 8 of her Constitution of 1861, which reads as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, in the year one thousand, eight hundred and sixty-one, shall be assumed by this State * * * * *."

This is the full measure of her promise and her obligation, and the equitable proportion assumed by her relates to a debt created prior to January 1, 1861, not to a debt and its interest thereon afterwards accruing. Interest can in no sense be treated as or called a debt until it has been earned. While the debt itself may be interest-bearing, the interest which the debt has not earned cannot be treated as a part of the obligation itself in the ordinary and usual acceptation of the word "debt". A judgment cannot be entered for unearned interest.

> Illinois Steel Co. v. O'Donnell, 156 Ill., 624; 47 Am. St. Rep., 245.

This Court, in fixing the basis for ascertaining the amount of the debt as of January 1, 1861, did not treat the interest as any part thereof, except

that which had accrued and remained unpaid. Although this debt was interest-bearing, the Master, the parties to the suit and their counsel, as well as the Court, treated the aggregate amount of the interest-bearing bonds, exclusive of the unearned interest, as the debt of which West Virginia assumed an equitable proportion.

It has never at any time been suggested by any person connected with this case that the unearned interest constituted any part of the debt of Virginia as of January 1, 1861, with reference to which West Virginia is liable for an equitable proportion.

> "In determining the total amount of a corporate liability for the purpose of ascertaining whether its constitutional limit has been reached, unearned interest coupons attached to legal and outstanding bonds are not considered a part of its indebtedness within the meaning of the constitutional limitation."

1 Abbott. Munic. Corp. pp. 354, 355, § 160.
See also Epping v. City of Columbus, 117 Ga., 263, 43 S. E., 803.
Herman v. City of Oconto, 110 Wis., 660, 86 N. W., 681.
Jones v. Hurlburt, 13 Neb. 125, 13 N. W., 5.
Finlayson v. Vaughn, 54 Minn., 331, 56, N. W., 49.
City of Ashland v. Culbertson, 103 Ky., 161, 44 S. W., 441.
Kelly v. Cole, 63 Kan., 385, 65 Pac., 672, 675.
Gibbons v. Mobile & G. N. R. Co., 36 Ala., 410.

In *Epping v. City of Columbus, supra*, the fifth

and sixth points of the syllabus, as the case is reported in 43 S. E., at page 803, is as follows:

> "5. The debt of an individual, corporation, State, etc., when the word is taken in the sense that it ordinarily conveys to the popular mind, is the principal and accrued interest on a given date. Unearned interest is not, in such a sense, a part of the debt.
>
> 6. The debt of a municipal corporation, within the meaning of that provision of the Constitution which prohibits such a corporation from incurring a debt which exceeds 7 per centum of the assessed valuation of all the taxable property within the municipality, is to be ascertained by adding to the principal of all outstanding indebtedness the amount of all accruing interest that may be past due and payable on the date the amount of the debt is to be fixed. In ascertaining the amount of such debt, future interest which is not due on the day it becomes necessary to fix the sum of indebtedness is not to be counted. Unearned interest is not, within the true intent and meaning of the Constitution, a part of the debt of the municipality."

In the course of the opinion in this case the Court says:

> "The question to be determined is, what is the meaning of the word 'debt' as used in this paragraph of the Constitution? Does it mean principal only, or principal and accrued interest, or principal and all interest that is to accrue between the date of the in-

curring of the debt and the date the principal matures?

The word is to be taken in its ordinary, natural, common sense, popular meaning, unless the context requires that it should be treated as used in a technical sense. Constitutions are the result of popular will, and their words are to be understood ordinarily as used in the sense that such words convey to the popular mind. 6 Am. & Eng. Enc. Law (2nd Ed.), pp. 924-5. There is nothing in the paragraph under consideration which indicates that the term 'debt' was used in any other way than in its ordinary and popular sense. If a person unversed in the technical niceties of the law is asked what is the amount of his debts, his answer to the question in every instance would be an amount which would represent the present liability that he was under at the moment the question was answered. A farmer who had been so unfortunate as to be compelled to place a long time loan upon his farm, if asked what was the amount of the debt upon his farm, would unhesitatingly answer by giving the amount which would represent the principal of the debt and any interest that was past due and payable at the time the inquiry was made. * * * * * * * The law deals at all points with the man of ordinary prudence and average capacity as the standard, for the simple reason that communities and commonwealths are made up of persons of this class. * * * * Generally the meaning given to words by the learned and technical is not to be given to words appearing in a constitution. * * * * It may be conceded that the terms 'debt', 'bonded debt', 'mortgage debt', 'floating debt', and all sim-

ilar phrases include, in a technical and strictly legal sense, both the principal and interest of the debt; but, when such terms are taken in their usual and popular sense, they never refer to anything but the principal and interest that may be past due at the time it becomes necessary to state the amount of the indebtedness."

And so the court held as the meaning of the word "debt" in this case, and as used in the Constitution of the State of Georgia, that it included only the principal and any interest that was past due at the time the debt of the State or county was to be ascertained.

In Herman v. City of Oconto, *supra*, the court in its opinion makes these pertinent observations.

"Another claim made is that, in ascertaining the State's indebtedness, interest should be computed on the State loan and outstanding bonds for the entire period they are to run, and added to the principal. This is upon the theory that, when interest is expressly reserved in a contract it becomes a part of the debt. * * * * But is it a debt before it is earned? If so, then the most cases in the books relating to the ascertainment of municipal indebtedness have been wrongly decided. * * * * * * Interest is not a debt, within the meaning of the constitution, until it is earned and becomes due. When the money was borrowed the State became indebted for the principal sum stated, and agreed to become indebted each year in the future to a sum equal to the interest thereon. * * * * There may exist an obligation to pay * * * under

> the constitution, the indebtedness as interest comes into existence each year as the obligation matures. It cannot be said to be present indebtedness, under any reasonable construction of the constitution."

In *City of Ashland v. Culbertson, supra*, the following appears in the opinion:

> "If this new indebtedness of $10,000 be deducted from the amount of increase permitted by the two per centum clause of the Constitution, it appears that there still remains a margin large enough to authorize the issual of these bonds; unless, as contended by appellee, we are to estimate the interest *to be earned* on the bonds as part of the indebtedness incurred by their issual. This, we think, cannot be done. The indebtedness created by the issue of bonds to the amount of $50,000.00 is the face of the bonds. The term, 'Indebtedness', as used in the Constitution, was not intended, as we think, to include future interest. The law makers were not looking at this *incident* of the indebtedness, but to the indebtedness proper."

In Kelly v. Cole, *supra*, there appears, in the course of the opinion, the following:

> "As interest earned upon a principal bond, represented by past due coupons, from its very nature inheres in and forms a part of the bond itself, by force of necessity such interest becomes a part of the 'actual existing bonded indebtedness'. But as to the unearned interest represented by coupons attached to the aid bonds sought

> to be refunded in this case, the holder of the principal bond has a present right neither to demand nor to receive the same. It is only by his forbearance of the use of the principal sum, evidenced by the face of the bond he holds, for a given length of time in future that the amount expressed in such coupons becomes the demandable property of the holder, or the 'actual bonded indebtedness of the county.' This is not only the natural and reasonable definition of the term 'bonded indebtedness', but it is the rule adopted by all courts in estimating the amount of indebtedness that may be lawfully incurred under constitutional and statutory limitations upon the power of municipal corporations to incur indebtedness. *The face value* of the obligation and the accrued interest thereon are alone considered as the debt. Interest to become due thereon in the future is not reckoned indebtedness."

The language of the Constitution of West Virginia is specific, definite and unmistakably clear in declaring that the State assumes an equitable proportion of the public debt existing prior to January 1, 1861, and the conclusion is irresistible that the equitable proportion of the debt assumed by West Virginia was the aggregate amount of the various interest-bearing bonds issued and negotiated by Virginia prior to January 1, 1861, not counting the unearned interest thereon.

The matter of the payment of interest in no wise enters into the obligation of the State in the first clause of Section 8 of Article 8 of the Constitution. If there be any such obligation upon West Vir-

ginia at all, it must be found in the second clause of the 8th Section of this Article; but, when we come to read this second clause, it becomes perfectly clear that the words "accruing interest" therein used in connection with the establishment of a sinking fund relate only to the new principal that has been declared by the ascertainment of West Virginia's equitable proportion, and for the payment of which, with the accruing interest thereon, the sinking fund was to be provided.

It is, therefore, respectfully submitted that the exceptions of West Virginia to the Master's report should be sustained; those of the State of Virginia and her bondholding creditors overruled; West Virginia given the credits allowed by the Master, increased by the exceptions interposed by her, and that upon the principal thus ascertained no interest should be charged or decreed.

A. A. LILLY,
Attorney General for West Virginia,

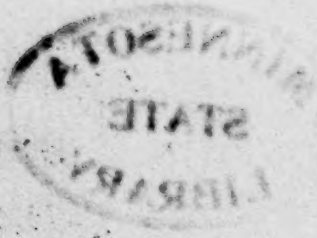
CHAS. E. HOGG,
JOHN H. HOLT,
Associate Counsel for West Virginia.

April 19, 1915.

ADDENDUM.

Table Showing Increase in Values Over Master's Report Contended for by West Virginia.

Richmond, Fredericksburg & Potomac Stock	$89,632.64
Orange & Alexandria R. R. Stock	358,894.80
Richmond & Danville R. R. Stock	60,000.00
Richmond & Petersburg R. R. Stock	28,765.76
Virginia Central R. R. Stock	90,197.18
Alexandria, Loudoun & Hampshire Stock	958,151.15
Virginia & Tennessee R. R. Loan	801,885.10
Norfolk & Petersburg R. R. Loan	191,584.55
U. S. Government Loan	966,237.01
Farmer's Bank of Virginia	48,130.00
Bank of Virginia Stock	107,181.00
Bank of the Valley Stock	24,195.00
Exchange Bank Stock	43,775.00
Atlantic, Miss. & Ohio R. R.	4,071,355.97
Manassas Gap R. R. Stock	2,105,000.00
James River & Kanawha Canal Co. Stock	852,333.00
Total	$10,797,318.16
West Virginia's 23½%	$2,537,369.76
Moneys paid to Virginia by W. Va. Counties after 1863	180,264.45
Moneys improperly charged to W. Va.	170,771.46
West Virginia's Increase	$2,888,405.67
Credits heretofore allowed by Master	2,868,839.49
West Virginia's Total Credits	$5,757,245.16


STATE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 12 Original.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

MINNESOTA STATE LIBRARY

BRIEF FOR THE DEFENDANT.

BY

C. W. MAY,
MOLDENHAUER, MCCLINTIC AND MATHEWS, AND
CHAS. E. HOGG.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

SUPREME COURT OF THE UNITED STATES.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR THE DEFENDANT.

STATEMENT OF THE CASE UPON DEMURRER.

On January first, 1861, Virginia was indebted on account of the issuance of bonds at various times prior thereto in the aggregate amount of $31,800,712.90, upon which past due interest including the interest maturing on that date amounted to $1,045,183.01.

On July first, 1863, a date ten days subsequently to the admission of West Virginia as a State into the Union, the bill shows a public indebtedness of the plaintiff, including principal of said bonds and the interest accrued and unpaid thereon, amounting in the aggregate to $39,098,922.00. Of this sum, $5,954,716.08 is interest, and the residue, $33,141,212.92, is principal, representing the entire indebtedness against the State of Virginia at the time of the formation and admission into the Union of West Virginia. This indebtedness was held by private owners of bonds which Virginia had issued and sold upon her own account.

In 1871 the Legislature of Virginia passed an act providing for the funding and payment of her public debt, in

which, among other things, there is recited that the people of Virginia being anxious for the prompt liquidation of her portion of the said debt, which was estimated by said act to be two-thirds of the entire indebtedness incurred by the State of Virginia, and also suggesting that the authorities of West Virginia might prefer to pay that State's portion of the said indebtedness to the holders thereof, and to enable the State of West Virginia to settle her portion of the said debt with the holders thereof, allotted to West Virginia by her own *ex parte* and *gratuitous* act the payment of the other third of said debt. The act provides for the surrender of the old and the acceptance of the new bonds of Virginia for two-thirds of the amount of said aggregate indebtedness, and the issuance to the owners or holders of the other one-third of the amount due upon the old bonds, certificates bearing the same date as the new bonds representing the funded debt of Virginia, setting forth the form of the bond which is not funded, and the payment thereof to be provided for in accordance with such settlement as might thereafter be had between the States of Virginia and West Virginia.

In 1879 a further act was passed by the Legislature of Virginia regarding her said debt, which provides, among other things, for the issuance of certificates on West Virginia to the holders of the old bonds who had not already received such certificates, and that the State of Virginia would aid the holders of certificates issued by Virginia, in negotiating with the State of West Virginia for an amicable settlement of all the claims of such creditors holding the certificates issued by Virginia against the State of West Virginia, and that the acceptance of such certificates for West Virginia's one-third issued under the acts of the Legislature of Virginia, should be taken and held as a full and absolute release of Virginia from all liability on account of said certificates.

In 1882 another act was passed by the Legislature for the express purpose of ascertaining and declaring Virginia's equitable share of the debt created before and actually exist-

ing at the time the State of West Virginia was formed, the design of which act was to make a full settlement of said debt, and thus present a true state of the account between Virginia and her creditors, which embodies a recital to that effect, and which provides for the issuance of certain certificates by the Commonwealth of Virginia, covering the one-third of her indebtedness claimed to be payable by the State of West Virginia, and there is recited in the form of said certificate that the Commonwealth of Virginia has discharged her equitable share of her debt evidenced by such certificate, leaving a balance with interest to be accounted for by the State of West Virginia, without recourse upon the Commonwealth of Virginia. These certificates were accordingly issued by Virginia and received and accepted by the holders of that part of the original debt represented by said certificates, all of the old bonds surrendered to the Commonwealth of Virginia and cancelled, and Virginia thereby relieved from all liability on her own account to the holders of the West Virginia deferred certificates.

The only obligation left upon Virginia after the issuance of these deferred certificates purporting to represent West Virginia's portion of the debt of Virginia gratuitously fixed *ex parte* by the State of Virginia, and accepted by the holders of that part of the original debt of Virginia in settlement thereof, was to use her offices and endeavors to effect payment thereof, or its adjustment in some way, by the State of West Virginia. By this arrangement, effected alone by the State of Virginia with her creditors, she was relieved from all substantial liability—in fact from any pecuniary liability—as to the one-third of her indebtedness created by her prior to the formation and admission into the Union of the State of West Virginia.

This suit was instituted in part for the recovery of that portion of the debt of Virginia created prior to and existing on June 20, 1863, the date of the admission of West Virginia into the Union and is the gravamen of the complainant's bill.

Another claim asserted by said bill is an alleged indebtedness evidenced by the bonds of Virginia and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of said State, as created under her laws, amounting, the former to $1,462,993.00, and the latter to $1,543,669.00, as of the date of January first, 1861.

This cannot be treated as a debt within the meaning of that term to be asserted against the State of West Virginia, because these Commissioners were simply agents for the management and control of a part of the internal fiscal affairs of the Commonwealth of Virginia, and the use of which was and is available only to the State of Virginia for the advancement of her own peculiar State interests.

Another and further claim made by the said bill is for the collection or payment for all property, real, personal and mixed, owned by or appertaining to the said State of Virginia, and being within the boundaries of the State of West Virginia, which passed to and became the property of the latter State, and was taken and appropriated to her own use by the State under the provisions of an act passed by the State of Virginia, in February, 1863, the bill alleging that the property passing to the State of West Virginia under and by virtue of the said act, consisted of a number of items alleged to amount in the aggregate to several millions of dollars, the exact amount of which complainant, it is alleged, is unable to definitely ascertain and state.

These three classes of claims made by the complainant in her bill constitute the sum total of the demand made by her against the defendant in this suit.

The first effort of Virginia to fund her said debt was the Act of the General Assembly approved March 30, 1871, in which she declared her portion thereof to be two-thirds, and provided a plan for its funding and payment, and as to the residue thereof this Act declares:

> "Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as

provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and that the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one, and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia."

(Plaintiff's Bill, pp. 14, 15.)

Under the terms of this statute Virginia still remained liable for the payment of her entire debt including the one-third, unfunded, for which deferred payment certificates were to be issued, payable upon final settlement between Virginia and West Virginia.

The next effort of Virginia to adjust her bonded indebtedness created prior to the formation of West Virginia as a State, was the Act of her General Assembly, approved March

28, 1879, whereby she provided an abatement of the rate of interest and divided her then outstanding indebtedness into two classes, as follows:

> "Class I, which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.
>
> "Class II, which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one, as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds."
>
> (Plaintiff's Bill, pp. 17, 18.)

This act also further declares as to the liability of West Virginia touching the said indebtedness of the complainant, as follows:

> "The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange, and the State of Virginia will negotiate or aid the creditors holding all of such certificates issued, under this act, or previous acts, in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability on account of said certificates."
>
> (Plaintiff's Bill, p. 19.)

Under these acts of the Legislature of Virginia, nearly if not quite all of her said indebtedness was funded on the basis prescribed by these enactments, thus relieving her of all liability upon the one-third part of her original ante-bellum obligations.

A third expression of Virginia touching her said debt, so far as the same relates to West Virginia, is that embraced in an Act of her Legislature approved February 14, 1882, which is entitled as follows:

> "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon."
>
> (Plaintiff's Bill, p. 21.)

This act contains an extended preamble setting forth what purports to be an account between the state and her creditors, showing the aggregate of principal and interest in two distinct totals in separate columns, declaring the assumption of two-thirds thereof as her equitable portion, fixing the total amount of this equitable portion as of July 1st, 1882, at $21,035,377.15, and then provides for the funding of this debt by the issuance of bonds drawing interest at the rate of three per cent.

This act also further provides as follows:

> "For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate, as follows:
>
> "No. .....
>
> "The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ..... dollars, held by ....., dated the .... day

of ....., and numbered ....., leaving a balance of ..... dollars, with interest from ....., to be accounted for by the State of West Virginia, without recourse upon this Commonwealth,

"Done at the capitol of the State of Virginia, this ..... day of ..... eighteen .....

"....., *Second Auditor.*

"....., *Treasurer.*"

(Plaintiff's Bill, pp. 28, 29.)

A further act of the General Assembly of Virginia was passed, approved February 20, 1892, which bears the following title:

> "An act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882."
>
> (Plaintiff's Bill, p. 31.)

This act provided for the issuance of nineteen millions of dollars in bonds in lieu of twenty-eight million dollars of outstanding obligations of Virginia, not funded under the act approved February 14, 1882, hereinbefore mentioned, and prescribed the form of the new bonds to be issued under this act and the coupons thereof.

This act also provides that in taking up these outstanding bonds before issuing new bonds in lieu thereof there shall be deducted "one third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as are issued under the act approved the thirtieth

day of March, eighteen hundred and seventy-one, as do include West Virginia's portion."

This act further provides as follows:

> "For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:
>
> "No. ..... The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for .....dollars, dated ..... day of ....., and No. ....., leaving a balance of ..... dollars with interest from ..... to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this Commonwealth.
>
> "Done at the capitol of the State of Virginia, this ..... day of ....., eighteen hundred and ninety-two.
>
> "....., *Second Auditor.*
>
> "....., *Treasurer.*
>
> (Plaintiff's Bill, pp. 35, 36.)

By virtue of this act of legislation Virginia made a further considerable reduction of the principal of her debt and received a more favorable rate of interest and better terms as to its payment.

After the lapse of about two years from the approval of the act last named a joint resolution was adopted by the legislature of Virginia, entitled as follows:

> "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same."
>
> (Plaintiff's Bill, p. 39.)

This resolution was approved March 6, 1894, and in its preamble refers to the acts by their titles, passed by the General Assembly of Virginia relating to her debt, concluding the preamble of this resolution as follows:

> "Whereas the present State of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state."
>
> (Plaintiff's Bill, p. 40.)

The resolution then creates a commission "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia."

> "But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the state through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State of Virginia which has not been assumed by the present State of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof.
>
> "All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof, shall be paid out of the proceeds of such settlement or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account."
>
> (Plaintiff's Bill, pp. 40, 41.)

A further act was passed by the Virginia legislature, approved March 6, 1900, reciting the previous acts of said legislature relating to the public debt of said state, and also reciting that,

> "Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia, to wit: One-third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund, and * * *
>
> "Whereas, it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt * * * and take upon deposit the certificates aforesaid, or have the same otherwise held or placed on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder. If at least two-thirds in amount of said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the State through the agency of the board of education and sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the

> advice and approval of the attorney general of Virginia, to take such action and institute such proceedings on behalf of the state as may, in the judgment of said commission and attorney general, be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subject to any expense on that account."
>
> (Plaintiff's Bill, pp. 41, 42.)

In accordance with the provisions and requirements of said act approved March 6, 1900, said commission entered into an arrangement with the duly authorized representatives of the holders of the deferred certificates issued by Virginia, without recourse upon her and received by her creditors in settlement of one-third of the original debt, whereby said commission reduced to its possession and control more than five-sixths of the entire amount of these certificates outstanding and the said commission now holds said certificates in trust for the present owners thereof, the amount of which certificates has, no doubt, largely increased since the institution of this suit, as indicated by a statement contained in the report of said commission submitted to the General Assembly of Virginia, thus placing in the possession of said commission nearly or quite all of said certificates.

The ownership of these certificates held by said commission is still in the original holders of the old debt of Virginia, and their possession by said commission is solely for the purpose of giving color to the institution of a suit in this court by the state to promote the collection of an alleged debt payable—not to the plaintiff—but to various private persons represented by the committee who assembled these certificates and turned them over to the said commission.

That this is the extent of the interest which the said commission created by the State of Virginia has in the said

certificates, a demand for the payment of which constitutes the gravamen of the bill filed in this suit, is clearly apparent from the agreement entered into between the said commission and the committee representing the holders of said certificates, and the parts of said agreement relating to this feature of the case are here copied and are as follows:

> "The said Virginia commission hereby stipulate and agree by and with the advice and approval of the attorney general of Virginia, that, in their judgment, it is needful and proper, in order to protect the interests of the state and bring about and carry into effect a settlement in the premises, that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States, asking for an adjudication and settlement by that court of the matters aforesaid unsettled and undetermined between the two states, arising and growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the act of the General Assembly of Virginia of March 6, 1900, referred to in the said contract of December 14, 1904; and the said Virginia commission acting by and with the advice and approval of the attorney general of that state, do hereby undertake and agree that such a suit shall be brought against the State of West Virginia for the purpose of obtaining a settlement as aforesaid, as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said act of the General Assembly of Virginia and the joint resolution of the General Assembly of March 6, 1894, also referred to in said contract of December 14, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia, as to the deferred certificates placed subject to the control of the commission

as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said commission, notwithstanding the institution and pendency of such suit.

"And the Virginia commission do further undertake and agree that, in accordance with the terms and conditions of the said joint resolution and Act of the General Assembly of Virginia, they will account for, pay over and deliver such amount, either in cash or securities, as may be realized from West Virginia through any settlement made by the said commission with that State, either by means of an adjudication or a recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, to the said Depositing Committee in full settlement and satisfaction of all claims under said certificates; and the said Depositing Committee agree on behalf of the depositors of said deferred certificates so placed to the control of the said commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates, and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

"It is further understood and agreed that if from any cause the said commission shall fail or be unable to bring about such adjustment or settlement, or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said commission to restore to the control of the said Depositing Committee all such deferred certificates as may have been

placed subject to the control and disposal of the said commission as aforesaid."

(Plaintiff's Bill, pp. 84-86.)

We have thus given in brief outlines the material facts appearing upon the face of the record of the bill and its exhibits, and which declare the true and legal status of this suit at its very threshold.

The Propositions Raised by the Demurrer.

The case as made by the bill and its exhibits presents several vital points for consideration arising upon the demurrer interposed by the defendant, which may be thus particularized:

I. Is this a controversy between two states within the meaning of section 2, art. 3 of the Constitution?

II. Does the complainant have such an interest in the subject matter of litigation or in the result thereof, so far as the deferred certificates are concerned, as to give her standing in a court of equity?

III. Have not the real owners of these certificates such a substantial interest and right of ownership therein as to make them indispensable parties, and whose presence would oust the court of jurisdiction in respect to this feature of the bill?

IV. Does the fact that the commissioners of the Sinking Fund and Literary Fund of Virginia have in their possession certain small portions of these certificates thus issued by the plaintiff to herself give her any cause of action against the defendant in respect thereto?

V. Does the claim for property transferred by the plaintiff to the defendant contained within the boundaries of the territory out of which West Virginia was erected into an independent state, create any right of action on the part of Virginia against her for the value of this property?

VI. If this does afford the plaintiff a cause of action must it not be asserted at law, and not in a court of equity?

VII. Does the bill disclose any authority from Virginia directing a suit for the recovery of the value of property transferred by her and used by the defendant?

Relation of Virginia to the Old Debt.

In determining whether the bill and its exhibits present a controversy between two states within the meaning of section 2, article 3, of the Constitution, the relation of Virginia to her old debt will not be overlooked. Before the formation of West Virginia it must be conceded that Virginia was morally and legally bound for the whole debt which she had created by the issuance and sale of her bonds. At that time her entire territory was intact and all her resources unimpaired, in so far as they were not affected by the ravages of war, for which, of course, her creditors were not responsible.

In 1862, of her own accord, she parted with a portion of her territory, and gave her free consent to the creation of a new and independent state out of the territory by her thus surrendered. This, however, did not impair her liability upon this debt, nor any part thereof, to her creditors holding the bonds which she had issued, or in any manner lessen her obligation for their payment.

This must be conceded upon the well recognized principles of international law.

Higginbotham *v.* The Commonwealth, 25 Gratt. (Va.) 627.
Taylor, Int. Pub. Law, pp. 203, 204, Sec. 166.
Halleck, Int. Law Vol. 1, p. 76.
Hall, Int. Law, Sec. 27.

Mr. Taylor in his recent and very able and clear treatment of the effect of a dismemberment of a state upon its obligations, presents the subject in two aspects: First, when a portion of its territory and population have been taken by conquest to form an integral part of another state; second,

when the severed territory is erected into a new and independent state. We are interested in the latter feature of the subject, upon which this distinguished author says:

> "A narrower and more technical rule prevails when the parent state is deprived of a portion of its territory which is erected into an entirely distinct political community. The cogent reason in such case is that as a man who loses an arm or leg in battle is not thereby relieved of any part of his obligations, so a state that is so dismembered as to suffer no loss of identity remains bound as before for its entire general indebtedness. 'Such a change,' says Hallock, 'no more affects its rights and duties than a change in its internal organization, or in the person of its rulers. This doctrine applies to debts due to as well as from the state, and to its rights of property and treaty obligations, except so far as such obligations may have particular reference to the revolted or dismembered territory or province.' In other words, as the old state continues its corporate life without interruption, it retains all general state property, and all general benefits resulting from treaties, with full liability for all general obligations with which the new creation taken from its side may disavow all legal connection."

The high moral obligation and legal duty on her part to meet her indebtedness still remained, with the right to treat, upon terms fair and just, with her creditors, for its adjustment and settlement. Accordingly, therefore, Virginia proposed to treat with her creditors with reference to the debt she had contracted, and submitted to them through her legislative department a proposition for its adjustment and ultimate liquidation. The terms of settlement were those which she herself proposed, and were met by her creditors in a broad spirit of liberality and compromise.

As the basis of settlement Virginia offered to pay two-thirds of her old or original debt by the issuance of new bonds by her, resting this proposition upon the consideration that one-third of her territory had passed to the new

state after the debt had been contracted, proposing to issue contemporaneously with such new bonds certificates payable by West Virginia, for the other third of the debt, which Virginia did not feel inclined to pay for the reason just stated, and these certificates were accepted by the creditors without recourse upon Virginia, in payment or settlement of this one-third of her debt, thereby releasing Virginia from the payment of the one-third of her old original debt.

Thus Virginia adjusted and settled her former indebtedness contracted prior to June 20, 1863, on the basis and upon the terms fixed by herself and by negotiations to which she and her creditors alone were parties.

As a part of the consideration of this settlement with her creditors, Virginia agreed to aid them in collecting these certificates from West Virginia, amicably if she could, but by an action if necessary.

By this composition with her creditors Virginia extinguished her old debt—the one for any part of which West Virginia was, or could have been made, liable to the owners or holders thereof—and created a new debt of her own, in the creation of which West Virginia had no part or agency.

This new debt Virginia herself recognizes as her own, for which she alone is liable, and does not by this suit, or in any other manner, seek to make West Virginia liable, or for any part thereof.

This new debt, founded upon the consideration of a liability attaching to the old one, constitutes a valid and subsisting obligation of Virginia, and her promise to aid the holders of the certificates issued by her against West Virginia is a mere collateral agreement, and does not add to or detract from the validity of the new debt.

Thus it will be perceived that Virginia has discharged her obligation to her creditors arising from the debt which she contracted before the division of her territory, and in that debt she is no longer interested pecuniarily, and that

the only persons who are so interested are the owners of the certificates representing the one-third of the original debt.

The only claim which the holders of these certificates have upon Virginia, so far as these certificates are concerned, rests upon her promise to aid in their collection, which is but collateral, and can only be construed to mean that she will exert her moral influence to constrain West Virginia to recognize so much of the old debt as may be represented by the aggregate of these certificates.

The Status of West Virginia with Reference to the Old Debt of Virginia.

Initiatory to the formation of the new state, on August 20th, 1861, Virginia, through the convention which had restored the government of the State of Virginia, promulgated an ordinance to provide for the formation of a new state out of a portion of that state, in which, among other things, is the following declaration as to the debt of Virginia:

"The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government since any part of the said debt was contracted and deducting therefrom all the moneys paid into the treasury of the commonwealth from the counties included within the said new state during said period."

This is Virginia's own declaration made as aforesaid as to how West Virginia's part or share of the old debt shall be ascertained and determined. And if the same were obligatory, the means of reaching a proper conclusion on this basis have always been within the possession and exclusive control of Virginia. They are to be found in her own

archives of state, which have at all times been in the custody of her own officers.

The Constitution of the new state at the time of her admission into the Union contained with reference to said debt, the following provision:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

The constitution containing this clause was framed and adopted subsequently to the adoption of the ordinance aforesaid by the State of Virginia.

The ordinance and legislation of Virginia looking to and providing for the erection of a new state out of a part of her own territory, were adopted and passed without the privity or consent of her creditors.

Then upon the division of the territory of Virginia, if the obligation of West Virginia, as claimed by some, to the creditors of Virginia became a joint liability as to which the two states were bound, and it appears to have been so regarded by Virginia, as the course she has pursued with reference thereto would seem to indicate, this suit as to said debt cannot be maintained.

Because, when the creditors of Virginia accepted new bonds in payment of the old bonds and surrendered the latter for cancellation and such cancellation was effected, all liability upon the part of West Virginia ceased and determined, and the issuance of certificates by the State of Virginia, mere *ex parte* memoranda, to be paid by West Virginia, was a mere gratuity which could not operate as a modus to give vitality to any part of the old debt which Virginia had fully discharged by her own composition with her creditors.

Here was an act of one claiming to be jointly liable with another whereby that one pays in new evidences of debt two-thirds of it, with an agreement of release as to the entire liability which must by the very act itself operate as a discharge of the other debtor. This must be the effect upon the well recognized principle of the law of contracts that the discharge of one joint obligor relieves the other from liability, in the absence of a valid stipulation to the contrary to which the parties in interest are privy.

It may be contended, however, that the principle here relied on does not apply to the transactions of sovereign states in matters of public concern. Nevertheless, when governments come into courts of justice for the determination of a controversy, they submit themselves to the ordinary rules of law which govern in such cases, and the same principles which would apply to private persons are also applicable to them. When they become suitors they no longer occupy the lofty attitude of sovereigns, so as to place themselves above and beyond the ordinary standards of right and wrong, but in the very nature and condition of things, these standards must be invoked or the courts themselves could not act as judicial tribunals.

If this were not so, the court's proceedings would necessarily be discretionary and capricious, without any established rules to govern their action. This is the principle which obtains and governs in cases of this character, even though the proceedings be by suit in equity.

United States *v.* Bank of the Metropolis, 15 Pet. 377; 10 L. ed. 774.

United States *v.* Flint, 4 Sawy. 42 Fed. Cas. No. 15,121.

United States *v.* Union Nat'l Bank, 10 Ben. 408, Fed. Cas. No. 16,597.

Rhode Island *v.* Massachusetts, 12 Pet. 657, 738, 743.

9 L. ed. 1233, 1266, 1267.

This is Not a Controversy Between Two States.

As already shown, Virginia has been released from the payment of one-third of her debt contracted before the formation of West Virginia, and has arranged for the payment of the two-thirds thereof by new bonds issued by her, and that she has no substantial interest in the third thereof for which she issued her own certificates without recourse upon herself, to be paid by West Virginia, the old bonds having been surrendered and canceled.

The record discloses that she has no interest in these certificates, as they impose no obligation upon her, and leave the creditors without any right of action or demand against her upon the failure or refusal of West Virginia to assume their payment. It also appears from the record of the bill and its exhibits that upon the failure of the commission into whose hands these certificates were placed to collect these certificates, that they are to be surrendered to the committee representing the owners thereof, and in the event that suit should be brought by Virginia against West Virginia, that the owners are to defray all expenses including the fees of counsel, and that no decree can be entered in this cause that will inure to the benefit of the plaintiff.

No one can examine the bill and its exhibits in this suit without being satisfied beyond all doubt that it is in legal effect commenced and now prosecuted, so far as said certificates representing the old debt are concerned, solely by the owners thereof and for their benefit and not for the State of Virginia. No decree as to these certificates can inure to the benefit of Virginia. Her only relation to them is her assurance to their holders that she will aid them by bringing suit in reference thereto at the expense of the owners. She is the merest nominal plaintiff carrying on the suit in her own name with an immunity from all costs of any character whatsoever.

This suit is governed, so far as the demand respecting the old debt of Virginia is concerned, by the well settled principles already laid down by this Honorable Court in the following cases:

> New Hampshire *v.* Louisiana, and New York *v.* Louisiana, 108 U. S. 76, 27 Law. ed. 656.
>
> See also in this connection *Re* Hartung, 98 Wis. 140, 73 N. W. 988; People *v.* General Electric Ry. Co., 172 Ill. 129, 50 N. E. 158.

To create a controversy between two states, it seems to us that there must be an assertion of a substantial right of one state as such which is denied or repudiated by the other, and which relates to the interests of each as states, and that the determination of the issue thus raised will promote or secure some substantial right of the one or the other of these states as states.

This may be illustrated by some of the decided cases, in each of which it was held that the contention involved a controversy between states.

> New Jersey *v.* New York, 5 Pet. 285, 8 L. ed. 127; Rhode Island *v.* Massachusetts, 12 Pet. 657, 9 L. ed. 1233; Florida *v.* Georgia, 11 Howard 293, 13 Law. ed. 702; Virginia *v.* West Virginia, 11 Wall. 39, 20 L. ed. 67, were cases in equity and all involved state boundaries; Pennsylvania *v.* Wheeling Bridge Company, 9 How., 657; 13 L. ed. 294; S. C. 11 How. 528, 13 Law. ed. 799; S. C. 13 How. 518, 14 Law. ed. 249; S. C., 18 How. 429, 15 Law. ed. 436, was a case in equity involving the free and unobstructed navigation of the Ohio river which caused a special damage to the plaintiff state for which there was no adequate remedy at law.

These cases just cited present an exercise of jurisdiction in cases directly affecting the property rights and interests

of a state and that over lands and their inhabitants claimed by the states themselves.

Missouri *v.* Illinois, 180 U. S. 206, 45 L. ed. 497, involved a case in which the health and comfort of the inhabitants of a state were threatened.

South Dakota *v.* North Carolina, 192 U. S. 289, 48 L. ed. 488, was a suit in which the plaintiff sought the enforcement of the payment of a debt belonging exclusively to the plaintiff and no one else had any interest therein, and the jurisdiction was sustained by a majority of the court.

In the suit now before the court what interest can Virginia claim against West Virginia in certificates that do not belong to her and in which she can assert no interest? She cannot maintain a suit to vindicate her integrity in the matter of the issuance of these certificates. This is entirely too flimsy to constitute the basis of a controversy, and besides this, the act or its motives has not been assailed or questioned by West Virginia.

The conclusion is irresistible that Virginia has no interest in this suit so far as it is designed to enforce payment of the debt represented by said certificates, that it is being prosecuted for their owners and that as to such matters there is no controversy between the two states, and that the bill as to this matter must be dismissed.

II.

THE COMPLAINANT HAS NOT SHOWN SUCH INTEREST IN THE DEFERRED CERTIFICATES AS GIVES HER ANY STANDING IN A COURT OF EQUITY.

Does the Commonwealth of Virginia have such an interest in the subject matter of litigation or in the result thereof, so far as the deferred certificates are concerned, as to give her any standing in a court of equity in relation thereto?

As we have already seen, the former owners of the old debt are the present owners of these certificates; that they were placed in the hands of a committee whose members these owners had chosen, and this committee delivered the certificates to a commission selected under a joint resolution of the General Assembly of Virginia, who were empowered to collect these certificates for the owners at the sole expense of such owners.

The right of Virginia to maintain a suit as sole plaintiff therein, must be determined by the well settled rules of equity practice as recognized and enforced by the English Court of Chancery, and as understood and applied by this Court.

Virginia has no interest in these certificates, nor can her interests be in any manner affected by a decree in relation to these certificates.

She is not a guarantor because their issuance is based upon the condition of her non-liability in any event, and as a consideration of her release from all liability upon these certificates, and the portion of the debts represented by them, she issued new bonds for her old debt, and was acquitted from all obligation as to these certificates. In what way can she be interested in this suit so far as it relates to these certificates? Does her interest at most exceed that of

a mere committee representing the holders thereof? Has she any connection with them except by her agreement to aid their holders in an effort to enforce their collection? Has she not constituted herself a mere medium for the institution of this suit in her own name for the use and benefit of the holders and owners of these certificates?

If she has any connection with this part of the suit it is as its mere promoter, by virtue of her promise to the holders of the certificates—an agent for them—only an instrumentality for the institution of this suit.

This is not such interest as to support a suit in equity. The plaintiff's interest must be as substantial and certain as that of the defendant.

A person having no interest, legal or equitable, in land, beyond a mere possession, cannot maintain a bill in respect thereto.

Smith *v.* Hollenbeck, 46 Ill. 252.
Smith *v.* Brittenham, 109 Ill. 540.

> "A complainant in chancery must have an interest in the subject matter of the controversy. Unless a complainant has some interest in the property in controversy his bill cannot be maintained."
> Smith *v.* Hollenbeck, *supra.*

In Smith *v.* Brittenham, *supra,* the court in its opinion, discussing the insufficiency or want of interest in the plaintiff to maintain the suit, says:

> "It is a well recognized rule that in equity the party having the beneficial interest in the subject matter of suit must sue in his own name for any invasion of his rights in respect thereto, although the legal title thereto may be in another. (Frye *v.* Bank of Illinois, 5 Gilm. 332; Elder *v.* Jones, 85 Ill. 384; Moore *v.* School Trustees, 19 *id.* 83.) It is also settled that no one, in the absence of statute authorizing it, can maintain a suit in chancery with respect to real estate to which he has neither the legal nor equitable

title. (Bowles *v.* McAllen, 17 Ill. 30; Horace *v.* Harris, 11 *id.* 24.) If such an interest in the plaintiff is indispensable to the commencement of this suit, as will be conceded, the conclusion would seem to follow that where a party having such interest commences a suit, and before any hearing or disposition of the cause upon the merits, voluntarily transfers his interests to another, and the same is made to appear of record, as is the case here, the whole proceeding will become so defective for want of proper parties, that no valid decree can be entered in the cause until the complainant's assignee, by supplemental bill or otherwise, makes himself a party complainant to the suit—and this, indeed, is the well recognized doctrine and practice in such cases. Mason *v.* York & Cumberland R. R. Co., 52 Me. 82."

"Where the wrong complained of is one in which the State has no direct interest, any more than it has in an ordinary controversy between individuals, the State is not a proper party plaintiff, and the suit should be instituted by the particular individual who will be injured."

10 Enc. Pl. & Pr. 903, 904, and the very numerous cases cited in Note 1.

"The rule is fundamental that no person can maintain a suit respecting a subject matter with reference to which he has no interest, right or duty, either personal or fiduciary."

Hogg's Equity Procedure, sec. 37, p. 40, citing Baxter *v.* Baxter, 43 N. J. Eq. 82, 10 Atl. Rep. 814; Ashby *v.* Ashby, 39 La. Ann 105, 1 So. Rep. 282.

In Ashby *v.* Ashby, *supra,* the syllabus of the case is as follows:

"An action can only be brought by one having a real and actual interest which he pursues. So, where one claiming to be a judgment creditor of another seeks to annul a mortgage executed by the latter in favor of his children on the ground of fraud, and the record shows that the judgment on which the suit is

> founded is not in favor of the plaintiff, but in favor of her minor children for whom she was tutrix, and who had attained their majority before the action of nullity was brought, and they did not join in the action, the suit must be dismissed."
>
> "Where a bill is filed for relief, it must be prosecuted in the name of the real party in interest."
>
> Oakley v. Bend 13th Edw. Ch. (N. Y.) 482.

The doctrine here cited is supported by numerous authorities, among which are the following:

> Field *v.* Maghee, 5 Paige (N. Y.) 539; Rogers *v.* Traders' Ins. Co., 6 *id.* 583; Sedgwick *v.* Cleveland, 7 *id.* 267.

It can not be contended that because the State of Virginia has constituted herself an agent or representative of the holders of the certificates mentioned in the plaintiff's bill that this gives her any right to maintain the suit in her own name.

From the opinion delivered in Oakley *v.* Bend, *supra,* we take the following:

> "A person who is a mere agent to sue for and collect money under a power of attorney, can not be a party to a bill for an accounting in his own name, nor be joined as a co-plaintiff with his principal. King of Spain *v.* Machado, 4 Russ. 225, 240, recognized in Clarkson *v.* Depyester, 3 Paige, 337, as good ground of demurrer. As a general rule, if an agent institutes a suit under an authority from his principal, he must do so in the name of his principal. Lee *v.* Thomas 2 Ves. 313. And see Calvert, Parties, 229, 232, for the authorities on the subject."

The doctrine set forth in these authorities and cases is so firmly settled that further discussion or citation would seem superfluous, and an annoyance to, and tax upon the time and patience of the court required for their notice or examination.

III.

THE REAL OWNERS OF THE DEFERRED CERTIFICATES HAVE SUCH A SUBSTANTIAL INTEREST AND RIGHT OF OWNERSHIP THEREIN AS TO MAKE THEM INDISPENSABLE PARTIES, WHOSE PRESENCE WOULD OUST THE COURT OF ITS JURISDICTION.

The practice in this court in cases in equity is regulated by the former practice of the courts of chancery in England. And in cases of original jurisdiction it will frame its proceedings according to those which had been adopted in the English courts in analogous cases, and follows the general rules of that court in conducting a cause to a finality.

> California *v.* Southern Pacific Railroad, 157 U. S. 229, 249, 39, L. ed. 683, 690.

The only instance wherein the court will deviate from or refuse to follow this practice is when it impairs the case by unnecessary technicalities, or defeats the purpose of justice.

> California *v.* Southern Pacific Ry. Co., *supra;* citing Florida *v.* Georgia, 58 U. S., 17 How., 478, 15 L. ed. 181.

The general rule as to parties in equity as followed in English chancery practice, was well settled at the time the jurisdiction of the Supreme Court of the United States was created, and is thus laid down by Mr. Daniell:

> "It is the constant aim of a court of equity to do complete justice by deciding upon and settling the rights of all persons interested in the subject of the suit, so as to make the performance of the order of the court perfectly safe to those who are compelled to obey it, and to prevent further litigation. For this

> purpose all persons materially interested in the subject ought, generally, either as plaintiffs or defendants, to be made parties to the suit, or should have served upon them a copy of the bill, or notice of the decree, to have an opportunity afforded of making themselves active parties to the cause if they should think fit."
>
> 1 Daniell's Ch. Pl. & Pr. (4th Am. Ed.) 190.

This rule under some circumstances, not important to be considered here, may be dispensed with when its application becomes extremely difficult or inconvenient.

Equity Rule 48.

This court, in Caldwell *v.* Taggart, 4 Pet. 190, 7 L. ed. 828 says:

> "The general rule is that however numerous the persons interested in the subject of the suit, they must all be made parties plaintiff or defendant, in order that a complete decree may be made; it being the constant aim of a court of equity to do complete justice by embracing the whole subject, deciding upon and settling the rights of all persons interested in the subject of the suit; to make performance of the order perfectly safe to those who have to obey it, and to prevent future litigation."

In Barney *v.* Baltimore, 73 U. S., 6 Wall., 280, 18 L. ed. 825, speaking with reference to the subject of parties, the court decides as follows:

> "Courts of chancery will refuse to make a decree where, by reason of the absence of persons interested in the matter, the decree would be ineffectual, or would injuriously affect the interests of the absent parties."

In Shields *v.* Barrow, 58 U. S., 17 How., 130, 15 L. ed., 159, the subject of parties to suits in equity received a very thorough consideration at the hands of the court, whose opinion was delivered by Mr. Justice Curtis, and in which he

classifies parties to a bill in equity as follows: Formal parties; second, necessary parties; third, indispensable parties. Those under the second class include all persons having an interest in the controversy, and who ought to be made parties in order that the court may act upon that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice by adjusting all the rights involved in it. If the interests of this class of parties are separable from those of the parties before the court, so that the court can proceed to a decree and do complete and final justice without affecting other persons not before the court, then the latter are not indispensable parties.

Those coming under the third class are those persons who not only have an interest in the controversy, but an interest of such a nature that a final decree can not be made without either affecting the interest, or leaving the controversy in such condition that its final determination may be wholly inconsistent with equity and good conscience.

This well considered opinion, which has been followed in many subsequent cases, contains several illustrative cases of the rule here announced as to the classification of parties to a bill in equity.

One of the points in the syllabus of the last case cited states the rule as follows:

> "Persons having rights which must be affected by the decree cannot be dispensed with."

In the case before the court the holders of the deferred certificates, who own both the legal and equitable title thereto, are not made parties. The only plaintiff seeking relief is the State of Virginia, who has brought the suit in her own name without any title to this part of the subject matter of the suit, and without any direct or substantial interest in the result thereof. The purpose of this suit is to settle the liability of West Virginia on these deferred certificates to the owners and holders thereof, and any decree which is rendered in this case must relate solely to their rights. The court can

not enter any decree with reference to these certificates which must not necessarily affect the interests of these outstanding owners and holders, who are not before the Court either as plaintiffs or defendants.

The purpose of the bill is not only to fix a liability on the State of West Virginia for the payment of these certificates, but also for an accounting to determine the extent of this liability. So it is clearly and at once perceivable that the holders of these certificates are vitally interested as to both of these purposes of the suit.

Therefore, as these persons have no opportunity to be heard, and as the decree can not bind them, the court cannot, for that very reason, afford any relief to the nominal plaintiff, the Commonwealth of Virginia, in this suit.

Suppose it be contended that these bonds are now held by the Commission created by the State of Virginia, apparently possessing powers to act as a corporate body, to negotiate with reference to these certificates, and that this commission holds the bonds in trust, as it evidently does, for the bond holders. Would not the Commission at least, acting in its fiduciary capacity, be an indispensable party to this suit? Could the State of Virginia, divested of all interest in these certificates, sue in her own name both for this commission and the beneficiaries, who are the owners of these certificates? This Commission being a creature of the legislature of Virginia, endowed with corporate capacity to act in furtherance of the objects of its creation, is evidently interested in carrying into effect the steps which it has taken to secure the payment of these evidences of indebtedness.

But defect of parties may ordinarily be remedied by an amendment of the bill in such a manner as to cure this defect, and thus avoid the effect of a demurrer for want of parties. This is the general or ordinary rule—the one usually observed by the courts. Indeed, a court ought not to dismiss a bill and deny relief where the only obstacle to the granting of relief is the want of essential parties, when the bill may be relieved from this objection by amendment.

This case, however, constitutes an exception to this rule. It must be clearly apparent that the relationship of the owners or holders of the certificates, to the suit, if brought into the case, must be that of plaintiffs; and as they are numerous, a few could join, suing on behalf of themselves, and all others similarly situated, and thus avoid the inconvenience of large numbers appearing on the record as plaintiffs in the suit. They would be the real plaintiffs, with the State of Virginia as a mere nominal party, thus creating a suit by individuals against a state of the Union, which is prohibited by the Constitution.

If an amendment were thus permitted so as to bring the Commission as the Trustee into this case as a party plaintiff, or this Commission together with the owners as co-plaintiffs with the State of Virginia, there would be presented a case in which the real parties in interest as individuals are the plaintiffs, in which a state with no interest and as a mere nominal party would be joined, thus allowing an individual to do by indirection associated with the state as a nominal party what he would be prohibited from doing in his own name. An evasion of this sort will not be permitted by the court, and the bill in this regard is not amendable, and the court on this consideration alone has no jurisdiction of that part of the bill seeking to establish the liability of West Virginia on these deferred certificates, and the extent of such liability.

If, however, the State of Virginia should ask to amend her bill by making the Commission as Trustee and holder of these certificates a party defendant, in order to give these owners and holders representation in the suit, if this could be done in the absence of the real parties in interest, then the court would have no jurisdiction under the principles laid down by this court in numerous cases which are cited and reviewed in the opinion announced in California *v.* Southern Pacific Co., 157 U. S. 229, 39 L. ed. 683. So, we perceive that as to this feature of the bill now under consideration, the court has no jurisdiction in any aspect of the case, nor can any amendment be made so as to give this court jurisdiction.

IV.

THE FACT THAT THE COMMISSIONERS OF THE SINKING FUND AND LITERARY FUND OF VIRGINIA HAVE IN THEIR POSSESSION COMPARATIVELY SMALL PORTIONS OF THE SAID CERTIFICATES ISSUED BY THE PLAINTIFF DOES NOT GIVE THE PLAINTIFF ANY CAUSE OF ACTION AGAINST THE DEFENDANT.

The commissioners of these two funds are mere state agencies or instrumentalities created by the Commonwealth of Virginia, to care for and preserve certain of her own financial resources, available for specific purposes, and which belong exclusively to Virginia. A few of the old bonds of Virginia issued prior to 1861 were by her converted into immediately available money by being deposited with these commissioners, and were therefore never sold and the title transferred from her so as to create a liability against the State herself, and hence at no time was there ever any right of action or liability on account of these old bonds so deposited with the said commissioners which could properly be asserted against the old state. In other words, these few old bonds deposited with these commissioners did not create any debt against the State of Virginia. At no time or under any circumstances could these bonds have been made or become a legitimate subject matter of controversy or suit against the Commonwealth of Virginia. To make them such, would present the grotesque spectacle of a sovereign state suing herself, for an accounting and payment to herself of her own funds, already under her absolute control.

Again there can be no liability in favor of the State of

Virginia against the State of West Virginia on these bonds so held. The moneys in the sinking fund which purchased these bonds previous to the first day of January, 1861, were raised by the revenues of the entire State before the division, and they were therefore the property of such entire State, and being in the ownership of the State itself, the debtor, they were a dead asset both as to that portion of the State which passed into the new State and the State of Virginia as she remained, and Virginia claiming to be such owner has no more right to institute and prosecute a suit thereon against West Virginia than would West Virginia if a similar bond had fallen into her possession. If there is any liability in respect to said bonds it is a liability of the State of Virginia to the State of West Virginia for a portion thereof.

Then if this were the status of Virginia as to the old bonds held by the commissioners of her Sinking Fund and Literary Fund, prior to 1861, and which remained unchanged at the time of the formation of the State of West Virginia, could their refunding and the issuance of the deferred certificates as to the one-third of them alter this status with reference to her right of suit thereon, or any part of them? The very propounding of the question must evoke a negative answer.

The idea of debt necessarily implies an obligation payable by the debtor to some third party—a creditor existing independently of the debtor, and over whom, as to the obligation asserted, the debtor can have no control, and in the use or disposition of which the debtor has no right or interest whatever.

How then—upon what principle—upon what ground or reason—can Virginia claim that the old bonds placed by her with her Commissioners of the Sinking and Literary Funds, were or are now any part of her *ante bellum debt?* We are wholly unable to perceive any. In fact, there is none.

If it be contended that the commissioners of the Sinking and Literary Funds are distinct entities from the State, persons clothed with an existence distinct and separate from the Commonwealth, with the right to assert a liability against Virginia on account of these old bonds acquired by them prior to the erection of the territory contained within the boundaries of West Virginia into a state, then and in that event this court cannot entertain jurisdiction of this suit, because these commissioners are necessary parties thereto, and the commission having been created and existing under and by virtue of the laws of Virginia, must be a citizen of Virginia, and if a distinct entity, it must necessarily be a corporation having its domicile in Virginia, where it was created.

Thus, we perceive that in any aspect of the case, the court has no jurisdiction of this suit so far as the certificates belonging to these commissioners are concerned. In fact, this feature itself of this cause constitutes no ground of controversy between the parties to the bill.

V.

THE CLAIM FOR PROPERTY TRANSFERRED BY THE PLAINTIFF TO THE DEFENDANT CONTAINED WITHIN THE BOUNDARIES OF THE TERRITORY OUT OF WHICH WEST VIRGINIA WAS ERECTED INTO AN INDEPENDENT STATE CREATES NO RIGHT OF ACTION ON THE PART OF VIRGINIA FOR THE VALUE OF THIS PROPERTY.

In February, 1863, the General Assembly of the State of Virginia passed the following Act, declaring:

> "That all property, real, personal and mixed, owned by or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the President and Directors of the Literary Fund, or the Board of Public Works thereof, or any person or persons for the use of this state, to the extent of the interest and estate of this State therein; and shall also include the interest of this state, or of the president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries and all stocks of any other company or corporation, the principal office and place of business whereof is located within the said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any other person or persons for the use of this state.

> "That if the appropriations and transfers of property, stocks and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state provided that no such property, stocks and credits shall have been obtained since the organization of the state government."

The bill of complaint relating to this property makes the following allegation:

> "Your oratrix is informed, believes, and so charges that the property which was by the operation of this act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted, in the aggregate, to several millions of dollars, the exact amount your oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this act, the State of West Virginia realized and received into her treasury, from the sale thereof, about six hundred thousand dollars, and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

It will be observed that all the property mentioned in this act was located within the territory comprised within the boundaries of West Virginia, and was designed for the use of the latter in the formation of a state government and in promoting the purposes of its establishment. The parent state parted with certain of her own territory and resources to create a new state within her own boundaries and to exercise over a part of her own people the powers of government, to be thereafter created by them, and to assume all the burdens and responsibilities incident to a state, and to erect for themselves all public institutions necessary to conduct the operations of the government of the new state, thus proposed to be created. Virginia in this act proposed new duties and

obligations for a part of her own citizens, and at the same time declared in her own halls of legislation what should be done by the new state which then had no existence, but which she, by her own act and that of the general government, designed to bring into existence, by parting with the very property which she intended should be used by the new government and a part of the people of Virginia would share in the benefits and advantages thus afforded.

Now can Virginia by her own act create an obligation to be assumed by a state not then in existence and which she by her own acts aids in creating? Can she, in this act, declare that a creature not then in being, shall account to her for property which she herself really bestows upon a part of her own citizens, and who, in the true sense of the term, are the real owners thereof, and when she has thus freely bestowed her own bounty upon her own citizens, make a demand thereafter upon the new government when it has been established, and that too when this new government is to extend to a large part of the citizens of Virginia full protection in the enjoyment of all their absolute and social rights? If so, upon what legal or moral principles can such a claim be predicated? The parent thus transfers all the burdens of her own government to a new state, created in her own boundaries, divesting herself of all responsibility for the conduct and safety of a large part of her former population and imposes upon another sovereignty these very obligations which she herself had borne, and that, too, by her own act, and now seeks indemnity and compensation from this sovereignty for performing a duty of which she herself has been relieved by her own act and concession.

By this act Virginia simply declared to a part of her own citizens that they could organize themselves into a government in a part of her own territory and thus become an independent state. These citizens of Virginia were the promotors and she co-operated with them to the end that a new state might be formed.

It will not be overlooked that the territory of Virginia was divided in 1863 while she retained her own identity and institutions, and out of the territory which she surrendered, and within it, a new state arose.

This is not the case wherein one state is treating with another, whereby one state cedes a part of her territory to be added to the domain of the latter. In such case she could stipulate the terms of the cession, which would constitute a compact between the two states enforceable as a binding obligation. Their attitude towards each other would be that of two independent and competent contracting parties.

Here the attitude of Virginia is very different. She, on the one side, proposes that a new state may be organized if the National Government will assent to its admission into the Union. She cannot propose conditions in advance of the creation of the new state, and enforce them against it as the price of property within its own territorial limits. This would constitute a mere *nudum pactum*. It would be without consideration because whatever is within the boundaries of the new state belongs to it, both upon reason and authority.

> "The new State on its part carries with it only local obligations, and whether contracted for local objects or secured by a lien on local revenues, and such local duties as arise out of agreements to maintain the channel of a river or to levy no more than certain tolls along its course. As a compensation for such burdens the new state is entitled to property within it of a local character, or to such, not within it, as belongs to state institutions localized there, and to the privileges arising from treaties specially contracted for the benefit of its territory, such for instance as contain demarcations of its boundaries, and such as secure to its inhabitants, or a part of them, the right to navigate streams running through other countries from its frontiers." Taylor, International Public Law, p. 204, citing Hall's Treaties on International Law (4th Ed., Oxford.) Sec. 27.

So if the new state is entitled to property within it of a local character, or to such not within it, as belongs to state institutions localized there, upon what principle can Virginia base a claim for the value of property within the territory of the new state of West Virginia? She cannot found it upon the doctrine of public international law. Neither can she found it upon an act of her own legislature, nor can she do so upon any act or agreement upon the part of West Virginia, for West Virginia did nothing, nor has she done anything to authorize it, as the new state was not a party to the agreement. Virginia has no claim and can have no claim for property, real or personal, localized or pertaining to or belonging to institutions localized in the territory out of which West Virginia was formed. She cannot base this claim upon treaty or compact, because at the time she declared by her own act of assembly that this property was to be taken by the new state when it came into being, there was no representative to act on behalf of the proposed new state so as to accept a cession of property upon terms proposed by the owner. This act of assembly could not be construed as a treaty between the state of Virginia and the proposed new state, as this was a mere *ex parte* act emanating from Virginia alone, and a treaty in its humblest and narrowest aspect, "is a mere agreement between states for the settlement of their current interests or controversies, made either with a tacit admission of the existence of the common law of nations, or with the express stipulation that some principle of that law shall be changed or modified in a particular case." Taylor, International Law, p. 93.

Hence the making of a treaty necessarily presupposes and assumes the presence and participation in its negotiations of two sovereign powers capable of acting. Another reason why it could not be referable to treaty is that one state cannot enter into a treaty with another state without the consent of Congress. In February, 1863, when this act of assembly was passed, upon which Virginia rests her claim

as presented by this feature of the bill, West Virginia had not been fully created and organized. Now, then, shall Virginia passing the title of property by her own act and imposing terms both unfair and unfounded upon the principles of public law, assert a claim to the value of this property when conditions have changed and the new sovereignty finds herself in possession of this property which is within her own territory, and actually necessary for the legitimate purposes of the new government? But it may be said or contended that if West Virginia is liable for her equitable portion of Virginia's public debt, is she not also liable for the public property of Virginia localized in the territory of the new state, or belonging to any of the public institutions localized there? This admits of a plain and satisfactory answer in the negative.

West Virginia's attitude as to the public debt of Virginia was provided for by the ordinance of Virginia and the constitution of West Virginia, and in the absence of such provision, it can scarcely be contended that the State of Virginia could assert any liability against the State of West Virginia as to any part of said debt.

Furthermore, there is nothing in the record to show that Virginia, either by her Act of Assembly or by any act on the part of her governor, has authorized any demand upon the state of West Virginia for compensation for property situated in the territory now comprising the State of West Virginia.

The bill sets up a further claim for property predicated upon the Act of the General Assembly of Virginia passed on the 4th day of February, 1863, and which, according to the bill, is in the following language:

> "1. That the sum of One Hundred and Fifty Thousand Dollars be and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the United States.

"2. That there shall be, and hereby is, appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated that may come into the treasury, up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of the State to make a statement of all the moneys that up to that time have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this state."

After reciting this act the bill avers:

"And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid."

The same reasons and principles apply to this item demanded by Virginia from West Virginia, because of personal property located within the territory comprised within the State of West Virginia, that is applicable to the demand of a similar character made in the bill by reason of the Act already quoted passed by the General Assembly of Virginia on February 3, 1863.

It does seem to us that this claim of Virginia, which she rests upon the two acts passed by the General Assembly of February third and fourth respectively, in the year 1863, is not only without foundation upon any principles of law or equity, but is most unjust and unreasonable.

It is quite apparent that Virginia demands that West Virginia shall pay one-third of the old debt of Virginia upon

the sole ground that she parted with one-third of her territory, and therefore, on that ground alone, West Virginia should be made to bear that proportion of her *ante bellum* debt to the holders thereof, while Virginia should meet and discharge the other two-thirds of this obligation.

Has it occurred to the authorities of Virginia that when she parted voluntarily with one-third of her territory, she at the same time retained all of her institutions, or nearly so, intact, with the means in her own control of continuing the operations of her state government, while the territory she parted with had to be erected into a state government, all the institutions necessary to its operation to be constructed, and great expense incurred in order to bring the territory into the status of an independent state and put her machinery of government into operation? In this aspect of the case, Virginia cuts off about one-third of her domain, containing a large percentage of her citizenship, sets them adrift without the means of government, and now demands not only that the new government erected out of this territory shall bear the burden of one-third of her public debt, but also pay to her compensation for "all lands, buildings, roads, and other internal improvements, or part thereof, situated within said boundaries, and vested in this State (Virginia), or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this State (Virginia), to the extent of the interest and estate of this State (Virginia) therein," and all other property within the boundaries forming said new state, as well as all money properly belonging to the institutions of the state of Virginia localized in these boundaries.

On the other hand Virginia refuses to recognize any liability for the one-third of this debt on the very arbitrary basis assumed by her for its adjustment, still retains intact all property and institutions of every kind and character within her own domains, demanding compensation also for every article of property of any value with which she parted,

and that too by her own act of legislation. She cannot in equity and good conscience make this two-fold demand. She must forego her claim upon West Virginia for the liquidation of any part of her public debt, or she must concede to West Virginia the absolute ownership in all the property localized within her boundaries. But she cannot now deal with the one-third of her old debt, because she is practically released from any liability thereon by reason of the acts and course pursued by her with the creditors themselves. The only parties that are now asserting any demand against West Virginia as to the one-third of the old debt of Virginia are the creditors themselves—the true and legal owners and holders thereof. The right to look to West Virginia for the payment of this one-third, if the right exists anywhere, necessarily resides in the creditors, and not in the State of Virginia. She, therefore, has left the demand as to one-third of the debt against West Virginia, so far as she herself is concerned, in the hands of the creditors, and no act of hers can now affect their substantial rights. She cannot, therefore, do anything at this time to release West Virginia from any part of the demand which the creditors are asserting against her through the medium of this suit nominally instituted by Virginia.

She is therefore referred to the only alternative in *foro conscientiae aut legis*, and that is, a relinquishment of her own demand for compensation for property left by her within the boundaries of the territory out of which the state of West Virginia was created. She can only, therefore, stand upon that feature of her bill which relates to her old public debt, and as to this feature of the case, as we have already shown, she is without standing in a court of equity.

VI.

THE PLAINTIFF CANNOT ASSERT THE CLAIM WHICH SHE SETS FORTH IN HER BILL IN A COURT OF EQUITY.

In considering the proposition that the plaintiff cannot assert the demand contained in the bill in a court of equity, we must keep in mind the relation which Virginia bears to that part of her *ante bellum* public debt which is sought to be made the subject of controversy in this suit. She disclaims at this time all liability to her creditors on account of the so-called equitable proportion thereof which she insists shall be borne by the state of West Virginia, at the same time averring that she has adjusted and settled two-thirds of the original debt by agreement and contract between herself and its owners.

It is patent upon the face of the bill and its exhibits, as hereinbefore stated, that the prosecution of this suit by Virginia is solely in the interests of the owners and holders of the deferred certificates issued by Virginia herself without recourse upon her, and set apart as a liability of West Virginia to the holders of the old obligations, which have been surrendered to the state of Virginia and by her cancelled in accordance with her own acts of legislation.

She therefore cannot come into a court of equity to assert a right of contribution against West Virginia. There are two clear and cogent reasons for this:

(*a*) First, the decree which she seeks to obtain cannot inure to her benefit, but only to that of the holders of the deferred certificates.

(*b*) Second, she must have paid everything for which she and the new state were jointly liable so as to relieve the new state from all liability before she can seek contribution from her joint obligor.

That this is the principle upon which rests the equitable right of contribution is the recognized and well settled doctrine of the courts.

Springer *v.* Foster, 21 Ind. App. 15, 60 N. E. 720.
Kirkpatrick *v.* Murphy, 3 N. J. Law 506.
Grove *v.* O'Brien, 1 Md. 438.
Rooker *v.* Benson, 83 Ind. 250, 256.
Zook *v.* Clemmer, 44 Ind. 15.
Pegram *v.* Riley, 88 Ala. 399, 6 South. 753.
Screven *v.* Joiner, 1 Hill Ch. 252, 26 Am. Dec. 199.

The rule is universal that the party seeking contribution must have paid more than his share in order to maintain a suit for contribution.

9 Cyc. 699; 3 Am. & Eng. Dec. in Eq. 163.

The demand made by Virginia which she claims arises out of the acts of her General Assembly, passed February 3rd and 4th, respectively, in the year 1863, whereby she transferred certain real and personal property belonging to her to be used by the new state when created and organized, if it has any validity, which is not conceded here, is purely a legal demand and one which cannot be asserted under any circumstances in a court of equity.

If it be an equitable demand, upon what principle or doctrine of equity does it rest? It is not secured by any lien; it is not in the nature of a trust; it rests upon no equities to be asserted in order to enter a decree or to make the claim available. It is simply a money demand for the value of property which the plaintiff claims was used and appropriated by the defendant for which payment should be made.

This court has declared in Scott *v.* Neely, 140 U. S. 106, 117, 35 L. ed. 358, that,

> "All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for breach of a simple

> contract, or as damages for injury to person or property, are legal actions and can be brought in the federal courts only on their law side."

This principle is based upon the seventh amendment to the Constitution of the United States, which declares that,

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

In the federal courts this right cannot be dispensed with except by the assent of the parties entitled to it, nor can it be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action or during its pendency. Such aid in the federal courts must be sought in separate proceedings, to the end that the right to a trial by jury in a legal action may be preserved intact.

Scott *v.* Neely, *supra,* in the opinion of the court.

Pursuing this provision of the organic law of the United States, the sixteenth section of the judiciary act of 1789, enacted that such suits "shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law;" and this prohibition is carried into the revised statutes of the United States.

Section 723.

This provision of the revised statutes "is simply declaratory of the rule obtaining and controlling in equity proceedings from the earliest period in England, and always in this country. And so it has been often adjudged that whenever, respecting any rights violated, a court of law is competent to render a judgment affording a plain, adequate and complete remedy, the party aggrieved must seek his remedy in such court, not only because the defendant has a constitutional

right to a trial by jury, but because of the prohibition of the Act of Congress to pursue his remedy in such cases in a court of equity."

Scott *v.* Neely, *supra*, citing Hipp *v.* Babin, 60 U. S. 19 How., 271, 278, 15 L. ed. 633, 635; Lewis *v.* Cox, 90 U.S. 466, 470, 23 L. ed. 70, 71; Killian *v.* Ebinghaus, 110 U. S. 568, 573, 28 L. ed. 246, 248; Buzard *v.* Houston, 119 U. S. 347, 351, 30 L. ed. 451, 453.

As already stated, the demand asserted by Virginia for money and property localized within the boundaries of West Virginia is simply for a debt predicated upon the transfer of property by Virginia and appropriated by West Virginia after her creation and organization as a state.

The demand made by the bill in this respect is for the money mentioned in the Act of February 4th, 1863, and the value of the property designated in the Act of February 3rd of the same year.

On the common law side of the court this demand may be made the subject of an action of debt, or even of an action of assumpsit on the implied promise, if any legal liability exists, which is not here conceded, on the part of West Virginia to repay Virginia the money which she used and to compensate her for the property appropriated and used, the amount of which would depend upon its value.

Therefore, the demand in the case now before the court is the alleged debt due the complainant for this property which in no respect differs from any debt upon contract; it is the subject of a legal action only in which the defendant is entitled to a jury trial in this court.

But it may be contended that there is no precedent for the trial of an action at law in this court, in which a jury may be empaneled as in ordinary trials in actions at law instituted in the Federal Circuit Court. It may also be contended that this is an exceptional case to be tried in a court exercising

exceptional original jurisdiction, and that therefore the ordinary distinction between law and equity ought not to be observed and followed. If there were no precedent for this, there is no assignable reason why such a precedent should not now be made.

But this court has already declared that it will not entertain a suit in equity brought by a state where an adequate remedy at law exists.

In Georgia *v.* Brailsford, the fourth case entered upon "the original docket" of the Supreme Court, a definition was first given of the original jurisdiction of this court. During the pendency in the circuit court for the district of Georgia between Brailsford and others and Spalding, to which the State of Georgia was not allowed to be made a party, this state, in February, 1792, filed its bill in equity in this court seeking the aid of its original jurisdiction for an injunction, in behalf of the state, to stay the payment to others of a certain debt in controversy in the said circuit court, which the State of Georgia claimed had been vested in her by the Act of Confiscation passed May 4, 1782.

The judges of the Supreme Court were divided in their opinion on the question of granting an injunction upon the ground that Georgia had a complete and adequate remedy at law.

Therefore, in 1793, a motion was made to dissolve the injunction and dismiss the bill, and upon this motion the following order was indicated by the chief justice: "The bill, however, was founded in the highest equity; and the ground of equity for granting the injunction continues the same, that the money ought to be kept for the party to whom it belongs. We shall therefore continue the injunction until the next term, when, however, if Georgia has not instituted her action at common law it will be dissolved."

Acting upon this statement of the court Georgia brought an action on the common law side of the original jurisdiction, perfecting her pleadings therein during February, 1794, a jury was empaneled for the trial of the case, and the

court charged the jury in effect that the act of the state of Georgia did not vest the title to the debt in the state at the time of its passage, and that by the terms of the act the debt was not confiscated but only sequestered, and the right of the obligees to recover it revived on the treaty of peace.

The record then recites that "the jury retired for a few minutes, and, on their return to the bar, by their foreman, Reynold Keen, say they find a verdict for the defendant."

Taylor, Jurisdiction and Procedure of the United State Supreme Court, pp. 52, 53.

Mr. Taylor, in his very estimable work just cited, considering the matter now under discussion, says:

> "No more emphatic assertion could have been made of the immemorial distinction between law and equity, or of the fact that the equity side of the original jurisdiction cannot be invoked when there is a plain and adequate remedy at law."
>
> *Idem*, 53.

This same distinguished author, quoting from Carson's History of the Supreme Court, page 169, note 7, further says:

> "It has been asserted that this is the only instance of trial by jury in the Supreme Court. This is an error. The minutes of the court disclose that in the case of Oswald *v.* New York, a jury was sworn and witnesses called, and a verdict found for the plaintiff of $5,315.06. This was in February, 1795. Two years and a half later a writ of enquiry of damages in the case of Catlin *v.* South Carolina was executed at the bar of the Supreme Court, and a verdict was given for plaintiff for $55,002.84. Although judgments were entered there is no record of any steps to enforce them."

At the time of the formation of the Constitution of the United States the distinctions existing between law and equity were well defined, and these distinctions were familiar to the framers of this instrument, and they considered it a

wise policy to carry them into the federal tribunals, and they have ever since been observed and enforced.

Therefore, Virginia's claim for a judgment against West Virginia for money and property located within the boundaries of the latter must be asserted at law.

It may be contended, however, that equity does have jurisdiction of that part of the bill which relates to the public debt of Virginia created prior to the formation of West Virginia, and that the court having jurisdiction of this feature of the case on equitable ground, which however is not conceded by West Virginia for the reasons hereinbefore stated, and though the other part of the demand may be legal in its nature, the court will entertain jurisdiction of the entire bill and grant full relief if the bill can be sustained upon any equitable ground whatsoever.

Be this as it may in some of the state courts, no such rule is observed in the federal courts.

It has long been a settled doctrine of the federal courts that legal and equitable claims cannot be blended together in the same suit.

In Scott *v.* Armstrong, 146 U. S. 499, 36 L. ed. 1059, the court, speaking through Mr. Chief Justice Fuller, in the course of its opinion says:

> "Section 914 of the Revised Statutes, in providing that the practice, pleadings and forms, and modes of proceeding in civil causes in the circuit and district courts shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record in the state within which such circuit or district courts are held, in terms excludes equity causes therefrom, and the jurisprudence of the United States has always recognized the distinction between law and equity as, under the Constitution, matter of substance, as well as of form and procedure, and, accordingly, legal and equitable claims cannot be blended together in one suit in the circuit courts of the United States, nor are equitable defenses permitted."

In support of this doctrine thus so clearly announced, the learned Chief Justice cites a number of decisions of this court, together with some decisions of the circuit courts.

The same principle is announced in Scott *v.* Neely, 140 U. S. 106, 35 L. ed. 358, and from this case we here quote points five and six of the syllabus as follows:

> "5. Remedies in federal courts at law or in equity, are not according to the practice of State courts, but according to the principles of the common law and equity.
>
> "6. A federal court has no jurisdiction of a suit in equity in which a claim, only cognizable at law, is united with a claim for equitable relief."

These principles have been fully adhered to in all of the federal courts, and are always applied in strict conformity to the well marked distinctions here laid down.

Now what is the status of the case at bar from any standpoint of its consideration? If it be conceded that the bill states a claim in equity relating to the *ante bellum* debt of Virginia, it cannot admit of argument that the claim for compensation for property used by West Virginia within the territory constituting her own boundaries formerly belonging to Virginia, is a pure legal demand, which has been united in the bill, and therefore the court will not entertain jurisdiction of this suit.

But we earnestly insist, upon reason and authority, that the plaintiff has no standing, even in a court of equity, with reference to that part of the bill relating to her public debt created prior to the formation of West Virginia; that as to this feature of the cause there is no ground for the assertion of any claim by the plaintiff against the defendant either at law or in equity; that this part of the bill is without merit, and that upon no consideration can this part of the plaintiff's claim be entertained by this court. This then leaves the naked legal claim of the plaintiff undisposed of, and the court being without jurisdiction in equity will not hear the cause as to this feature of the bill. The entire bill is without equity, and the demurrer interposed by the defendant ought to be sustained.

VII.

THIS COURT HAS NO JURISDICTION TO SETTLE OR DETERMINE THE PRINCIPLE UPON WHICH WEST VIRGINIA SHALL BE MADE LIABLE FOR ANY PORTION OF THE OLD DEBT OF VIRGINIA, BECAUSE THIS WAS MATTER OF CONTRACT BETWEEN VIRGINIA AND WEST VIRGINIA UPON THE ADMISSION OF THE LATTER INTO THE UNION.

The constitution of the new state, as prepared and formulated, looking to its admission into the union, contained the following provision as to the old debt of Virginia:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

On May 13th, 1862, the Legislature of Virginia passed an act entitled "An Act giving the consent of the Legislature of Virginia to the formation and erection of a new state within the jurisdiction of this state."

The first clause of said act is as follows:

> "*Be it enacted by the General Assembly,* That the consent of the Legislature of Virginia be and the same is hereby given to the formation and erection of the State of West Virginia to include the counties of Hancock, Brooke, * * * according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and

> the schedule thereto annexed proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861."

The third clause of said Act is as follows:

> "*Be it further enacted* that this Act shall be transmitted by the executive to the senators and representatives of this Commonwealth in Congress, together with a certified original of the said Constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of Congress to the admission of the State of West Virginia into the Union."

It was thus provided by said Constitution that the Legislature should ascertain the same as soon as it was practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years; that is, it provided for the ascertainment of such equitable proportion by the Legislature of the State of West Virginia independently of the State of Virginia, and further made provision as to how the State of West Virginia should pay the same, and having provided that the Legislature of West Virginia itself should ascertain such equitable proportion, and Virginia having consented that it should ascertain such portion, it is respectfully submitted that neither Virginia nor any court can intervene and perform this legislative duty.

When West Virginia framed her constitution and inserted in it the provision concerning the public debt of Virginia created prior to 1861, and the State of Virginia through her Legislature accepted the Constitution of West Virginia as the basis of her consent, this created a compact between the two States and was absolutely binding both upon Virginia and West Virginia.

It is matter of history that the vote on the adoption of the Constitution of the new State was held on the first

Thursday in April, 1862; that this vote was taken and the Constitution ratified by the people; that the act of the Virginia Legislature was passed on the 13th of May, 1862, shortly after the vote on the adoption of the said Constitution was taken. This act was directed to be sent to the senators and representatives of Virginia in Congress, with instructions to obtain the consent of congress to the admission of the State of West Virginia into the Union. Accordingly on the 31st day of December, 1862, Congress acted on the matter, reciting the proceeding of the convention of West Virginia, and that of Virginia, and the act of the Legislature of the State of Virginia requesting that the new State should be admitted into the Union, and it then passed the act for the admission of said State.

These matters are fully recited in the opinion of this court delivered in the case of the Commonwealth of Virginia against the State of West Virginia, decided in 1870, and reported in 11 Wall. 39-65.

The action of the proposed new state in adopting her constitution by popular vote, the consent of Virginia through her Legislature given to the formation of the new State composed of the counties recited in the act giving her consent, and the deliberate consent of Congress, as required by the Constitution, consenting to the formation of the new State and admitting her into the Union, constitute a compact between Virginia and West Virginia, the terms of which, with reference to the said debt, form a part of this compact and are inviolable under the Constitution of the United States.

Biddle *v.* Green, 5 Wheat. 1, 5 Law. Ed. 547.

By this compact between Virginia and West Virginia, the former State referred to the Legislature of the latter the matter of ascertaining "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," and therefore this "proportion" cannot be otherwise ascertained or determined than by the consent

of the State of West Virginia; nor can its liquidation be otherwise provided for than by a sinking fund sufficient in amount to pay the accruing interest and redeem the principal of whatever sum may thus be ascertained as the equitable proportion that West Virginia agreed to assume. Virginia referred this matter absolutely to the judgment of the Legislature of West Virginia and tacitly agreed to abide by the action of this legislative body.

This stipulation or compact between Virginia and West Virginia, with reference to the public debt of the former, is a valid and binding contract, and Virginia can do nothing, either by legislation or otherwise, to impair its obligation. West Virginia has the undoubted moral and legal right to stand upon its terms; and if in the exercise of its judgment exercised upon a basis just and equitable, it should be ascertained by the Legislature of West Virginia that the State owes nothing to the bondholders of the old debt of Virginia, then there is no obligation whatever subsisting which can be enforced by the holders of any part of the old debt of Virginia, and especially has Virginia herself no cause of action against this State.

VIII.

THE EFFECT OF THE COMPACT BETWEEN VIRGINIA AND WEST VIRGINIA ARISING FROM THE ADMISSION OF THE LATTER INTO THE UNION AS A STATE UPON THE CLAIM OF VIRGINIA TO PROPERTY LOCALIZED OR PERTAINING TO INSTITUTIONS LOCALIZED WITHIN THE BOUNDARIES OF WEST VIRGINIA.

We have already presented to the court our considerations relating to this feature of the case upon grounds independently of that which is here presented, and have shown that Virginia cannot sustain this part of her claim in this suit. It seems to us, however, that there is a further and conclusive reason why this part of her demand is without foundation.

In the initiatory convention held by Virginia on the 20th of August, 1861, having as one of its objects the consideration of the matter of the formation of a new State out of a part of the territory within her then existing boundaries, the representatives in that convention did not consider any condition touching the formation of a new State other than the one that the new state should take upon itself the payment of "a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," and this was made the ultimate condition as expressed in the Constitution of West Virginia ratified by popular vote in April, 1862. This condition was, with some modification in the language employed to express it, inserted in the Constitution which West Virginia adopted. And Virginia, in May, 1862, signified her consent through her Legislature that the new state should be formed with the consti-

tution which she had theretofore in April, 1862, adopted as her organic law, and with no other or additional burdens or liabilities touching the new state soon to be brought into existence, and needing only therefor the consent of Congress which was given in December, 1862.

When Virginia had given her consent properly expressed, as was done in this case, she could not revoke it, and the only other body whose action was essential to the creation of a new state that could impose other or further conditions touching her admission into the Union, was the Congress of the United States. Congress did give her consent in December, 1862, and it only remained for West Virginia to provide against slavery within her boundaries, and when this measure was adopted in the manner provided by the act of admission, West Virginia then became an independent and sovereign State of the Union.

After Virginia gave her consent to the formation of West Virginia in May, 1862, and the act of Congress was passed in December of the same year, providing for her admission as a state, all property localized in West Virginia, or belonging or appertaining to institutions localized there, passed to and became absolutely the property of West Virginia.

Therefore the acts of the Legislature of Virginia subsequently passed on the 3rd and 4th days of February, 1863, respectively, seeking to create a liability against West Virginia by an *ex parte* act, are without any force or effect to create any debt against West Virginia because of the matters in any of them to which the acts respectively relate. All of the property formerly belonging to Virginia located within the boundaries of West Virginia became and constituted a part of her public domain, and over which her territorial sovereignty extended as fully and efficiently as if no part of this property had ever belonged to the old state.

This necessarily results from the relation of the states to each other and to the general government. If it were otherwise and the property and sovereign interests belonging to

West Virginia, after her admission as a state into the Union, could be made the subject of disposal through a legislative act of Virginia efficient for the purpose for which such act was passed, then it would be within the sole power of Virginia to annihilate, by her own acts, all the instrumentalities and means necessary to uphold the integrity of West Virginia as a state. It would defeat her own avowed purpose as well as that of the national government.

Furthermore, if force and effect be given to these acts of legislation passed by the General Assembly of Virginia in February, 1863, it would necessarily impair the obligation of a contract existing between Virginia and West Virginia growing out of the terms of admission of the latter as a State into the Union. Because the only liability which she in any wise agreed to assume, and thereby did assume, was an "equitable proportion" of the public debt of Virginia.

It is now respectfully submitted that the State of Virginia has no claim against West Virginia with reference to her public debt, nor any valid demand against her for property localized within the boundaries of West Virginia; that it clearly appears upon the face of the bill that it is without equities to support it; and therefore the demurrer filed by the State of West Virginia ought to be sustained, and the plaintiff's bill dismissed.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Original, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

v.

STATE OF WEST VIRGINIA, DEFENDANT.

BRIEF IN REPLY TO DEFENDANT.

On behalf of the complainant, an order is asked for referring this cause to a master to ascertain and report—

> "what amount and proportion of said indebtedness and of the interest accrued thereon should in equity be apportioned to, and be now paid by, the State of West Virginia."

The order further provides that the master shall—

> "make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state, or which he may deem desirable to present to the court."

The object of this latter provision is to have stated and presented to the court the several methods or plans which, in the view of the respective parties, properly expresses and illustrates the correct method of ascertaining the "just pro-

portion" of the public debt of the Commonwealth of Virginia which each party should bear.

The court, having before it the accounts, stated in accordance with the views of each side, may be better enabled to judge of their respective merits and elect between them, and so avoid the delay which would be occasioned by a recommitment of the report.

On behalf of the State of West Virginia it is proposed, in section 2 of the draft of the decree presented by counsel, that the master shall state in his report—

(*a*) The amount of State expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia, at Wheeling, August 20, 1861.

(*b*) The aggregate ordinary expenses of the State government of the Commonwealth of Virginia prior to January 1, 1861, and since any part of the said indebtedness was contracted.

(*c*) All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period.

Among the "ordinances and acts of the restored government of Virginia, prior to the formation of the State of West Virginia," passed in the convention which assembled at Wheeling on the 11th of June, 1861, there was one ordinance, passed August 20, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," the ninth section of which ordinance was as follows, viz:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of

> Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period," etc.

It will be seen at once that the provision of the proposed decree is a wide departure from the Wheeling ordinance, in that it does not even propose to ascertain by the method indicated West Virginia's "just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861." It was doubtless too apparent to the framers of the decree that the method proposed by the Wheeling ordinance had in fact, as we will show, no sort of connection with such public debt, and the account, stated as there suggested, might well have been taken, had no public debt of Virginia ever existed.

From the plan proposed by the Wheeling ordinance, as from that proposed in the decree offered by the defendant, there is altogether excluded any account of or reference to the public debt of the Commonwealth of Virginia, evidenced by bonds and other evidences of indebtedness outstanding on the first of January, 1861. The only settlement which this method could effect would be a mere accounting between two sections of Virginia, *inter sese*, of the amounts which had been paid into the treasury of Virginia from each section and the amounts which had by the appropriations of their common legislature been expended in each section during the period between 1822 and 1861.

If it should appear from such an accounting that the counties lying west of the mountains, and now constituting West Virginia, had during such period paid into the treasury of Virginia more money than had been expended by the State legislature within said counties, what possible connection could the result reached by that account have upon the

outstanding public debt of Virginia? Is there any provision or principle of law under which one county, or any number of counties, in a State can claim that the amounts paid to the State in the way of legal taxes shall not exceed the amounts which such counties receive from the State in the way of legislative appropriations? Can such counties claim that they should not be required to contribute their share of the public taxes toward the payment of the State indebtedness because, forsooth, they have through a period of sixty years paid into the State treasury more money than they have received from it? Coming to the case in hand, we have the request made to this court, in the decree offered by defendant, that the master, who may be directed to ascertain and report to the court what proportion and amount of the public debt of Virginia should justly and equitably be now borne by West Virginia, shall ascertain such amount and proportion by taking the aggregate amount of the taxes and ordinary State expenses collected from the counties constituting West Virginia and the amounts paid into said counties by legislative appropriation since 1822 and, deducting the smaller amount from the greater, report the balance so found to the court as West Virginia's just proportion of the public debt as of January, 1861.

The court has overruled the demurrer to the bill, and in doing so has stated in effect that the case stated in the bill entitles the complainant to the relief prayed, if such case is established by the proof. Is the case stated in the bill satisfied by the Wheeling ordinance?

The defendant was fully warranted in reiterating again and again in her answer that Virginia has always repudiated the Wheeling ordinance as binding on her, or as affording to any extent a satisfaction of Virginia's reasonable demand that West Virginia should contribute her just and reasonable share of that common indebtedness.

The Wheeling ordinance is impracticable, illusory, and altogether inadequate.

In suggesting here considerations which warrant us in insisting that the Commonwealth of Virginia cannot lawfully be bound by the ordinances of the Wheeling convention, which provided for the repudiation by the people of West Virginia of their liability to contribute toward the payment of the public debt of Virginia, we must not be understood as criticising in any manner the constitutional status of the State of West Virginia. It is as firmly entrenched and established as any State in the Union. What we do deny and repudiate is the claim asserted, that in matters relating to the pecuniary obligations—legal or equitable—of that State, the acts or ordinances of that convention which assembled in Wheeling in June, 1861, calling itself a convention of Virginia, and which professed to preserve, protect, and defend the interests of Virginia while actually engaged from its outset in providing for the dismemberment of Virginia—that such acts and ordinances, so far as they were designed to relieve West Virginia from her proper share of the public debt of Virginia, are of any legal, equitable, or moral binding effect on Virginia.

We object to West Virginia's proposed plan of settling the accounts, because—

(1) The Plan of the Wheeling Ordinance and of Defendant's Decree Is Impracticable.

It is charged in the bill and admitted in the answer of defendant that the public debt of Virginia, as of January, 1861, was about $33,000,000, and was evidenced by the bonds and other evidences of indebtedness of the Commonwealth of Virginia issued prior to that date. At the periods when said public debt was created the counties now constituting the State of West Virginia were each represented in the legislature of Virginia and in the executive councils of that State; that such representatives in the legislature advocated and voted for the creation of this debt and the appli-

caion of its proceeds to the construction of works of internal improvement, which were designed for the benefit and welfare of the entire Commonwealth; that the region now forming West Virginia was the portion of Virginia toward which the greater part of such public works tended, and it was for the development of that region they were primarily designed. Hence it is that we insist that not only on the principles of international law, but on the homelier and more intelligible rules of common honesty and morality, as well as upon legal and equitable doctrines, West Virginia is as much bound as Virginia for this public debt.

The Wheeling ordinance ignores these solemn evidences of the public indebtedness, and proposes to go back to the year 1824, through a period of nearly sixty years, and inquire into the consideration of all these evidences of a common indebtedness, and into the various objects to which were applied the moneys obtained for them as they were made and issued. It requires the production of the vouchers and evidences of every dollar paid into the public treasury of the money derived from the taxation of the counties now forming West Virginia, and of every dollar appropriated and expended by Virginia within that territory. How far such requirement can be complied with at this time, with fullness and accuracy, it is impossible to tell.

It should be enough to suggest the danger and uncertainty attending such attempt, to remind the court that the State court-house, in the city of Richmond—the repository of many of the most valuable of Virginia's archives—was destroyed by fire at the evacuation of that city, at the close of the Civil War; and further, that many of the most valuable of the State records and files were ravaged during the period of the military government of the State and during the baleful period of "Reconstruction," when hostile aliens had control and possession of the State government and property. To require now that, in order to correctly ascertain the amount which West Virginia should contribute toward the

payment of a public debt, evidenced by bonds to which that State was in effect a party, Virginia should make research through her files and records of nearly sixty years and produce the evidences of the items of receipt and expenditure, so far as the territory of West Virginia is concerned, is a peril and a hardship to which she should not be exposed.

It cannot be claimed that Virginia is in default in the performance of any duty resting upon her to West Virginia. The State officers at the capitol were the common agents of both the litigants here, and both are equally bound by their acts.

It is a fact which should not be forgotten, but to which due weight should be given in any equitable adjustment of the common burden, that it was the voluntary act of the people of West Virginia in withdrawing themselves from the body politic and corporate of Virginia and surrendering all right of participation in her councils and administration of her affairs that has contributed to the present conditions.

But another and more serious objection lies to the Wheeling ordinance as a plan of adjustment. Its evident purpose was to avoid and defeat the very liability to which this bill seeks to hold her. It proceeds on the theory that West Virginia cannot be held for any other amount than the difference between the amounts she—or her constituent counties—paid into the treasury of Virginia and the amount they received from that treasury during the sixty years preceding January, 1861; and also on the theory that those counties should not be held liable for any more of the public debt than was actually enjoyed by them by the extension of the works of internal improvement into or through their territory. It ignores the fact that the liability accrued when the bonds were issued and the money for them was obtained by the State, and not when the works for which that money was borrowed were actually constructed. The construction of the works was arrested by the war. They were not all completed within West Virginia. The war arrested, it did

not prevent, the completed construction; *that* was prevented by the secession of West Virginia.

At the close of the war the spirit of energetic activity which the war had quickened found employment in every field of material development. Never in its history had this country known such an era of successful enterprise and development. The vast resources of wealth in timber, coal, gas, and oil would speedily have secured the capital for the realization of the plans which had been discerned and provided for by the generations of Virginia people sixty years and more before. The works of internal improvement for which this public debt had been created would have been completed, and Virginia's taxable wealth would very soon have been applied to the entire extinction of her public debt; but all this was defeated by the withdrawal of the territory now forming the State of West Virginia; and now that State appears in the unenviable attitude of possessing all the sources of wealth which induced the creation of the public debt—that debt which her people had largely contributed to making—while denying all liability for the bonds by which the debt was evidenced. She is willing to enter upon a settlement as prescribed by the Wheeling ordinance. That ordinance, as we have shown, provides a plan of settlement which omits altogether the public debt.

(2) The Commonwealth of Virginia is Not Bound by the Wheeling Ordinance.

It is true that this court has in one case recognized the restored State of Virginia—the "Pierpont government," as it is called in that case—as the State of Virginia. *Virginia v. West Virginia*, 11 Wallace, 39, was on a bill brought by Virginia "to settle the boundary line between the States of Virginia and West Virginia." The real question presented was the validity and effect of the proceedings by which the counties of Jefferson and Berkeley were transferred in 1866

from the Commonwealth of Virginia to the State of West Virginia. We have endeavored, without success, to obtain a copy of the record of the case, to learn what exactly were the issues presented by the pleadings and the course of the proceedings had in the case in this court. It appears (page 51) to have been argued at December term, 1866, and again, after this court had been differently constituted, at December term, 1870. Justices Davis, Clifford, and Field dissented from the judgment. The case has been rarely referred to in the subsequent decisions of this court. Chief Justice Chase, who sat in the case, did, in *Cæsar Griffin's case* (Chase Decisions, p. 412), referring to the State government of Virginia, say:

> "Indeed, it is well proven historically that the State and the government thus organized were recognized by the National Government. Senators and Representatives from the State occupied seats in Congress, and when the insurgent force which held possession of the principal part of the territory was overcome, and the government recognized by the United States was transferred to Richmond, it became in fact, as it was before in law, the government of the whole State. As such, it was entitled under the constitution to the same recognition and respect, in national relations, as the government of any other State."

And yet, notwithstanding this solemn judicial declaration as to the validity of Virginia's right to "recognition and respect in her national relations," it appears that on March 2, 1867, Congress, in an "Act to provide for the more efficient government of the rebel States" (14 St. L., p. 428), declared that—

> "Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of VIRGINIA, etc.; * * * and
>
> "Whereas it is necessary that peace and good order should be enforced in said states, until loyal republican State governments can be legally established, &c."

By virtue of this act the entire State government of the restored State of Virginia was swept away—executive, legislative, and judicial—and Major General Godfrey Wetzel succeeded to all their functions.

So it seems that this restored State, on which had been poured the anointing balm of national recognition and acceptance, and which was "entitled under the Constitution to the same recognition and respect in national relations as the government of any other State," was now declared by the political branch of the National Government to have "no legal State government existing in it," and the government that did exist in it was totally abolished.

A natural inquiry is suggested: If the State government, which had been created in Wheeling in August, 1861, and removed to Alexandria in 1863, and transferred to Richmond in 1865, and continued in operation continuously until 1867, was then ascertained and declared to be "illegal," and so extinguished, when had it ceased to be a legal government, or when had it ever become a legal government? Surely, in its "national relations," it could not be both legal and illegal, or legal for some purposes and illegal for others.

Whether a State government exists, and whether it is a lawful and valid government, are political questions, and are to be determined by the political departments of the National Government and not by the judicial. The government of Virginia formed at Wheeling, and continued until after the close of the war, was recognized by the National Government as the true and lawful government of Virginia. In all of its political conduct and relations it must be assumed by the courts to be the true and lawful government of the State. But when it appears, as it does here, that the people of that part of the territory of Virginia which now forms the State of West Virginia were in fact the only people represented in the convention assembled at Wheeling on the 11th of June, 1861, and in the legislatures of Virginia held under the authority of that convention; that the leading object and pur-

pose of those people in assuming the insignia—the title, powers, and authority of the Commonwealth of Virginia—was only to enable them to erect within the territory of Virginia a new State, and to appropriate to its uses all the property of Virginia under their control, and at the same time to absolve themselves from all liability on those bonds which they had united in making, as the evidences of that public debt which they had insisted on creating, then other considerations must apply.

The fiction that the people west of the Allegheny mountains were "the people of Virginia;" that the government which they organized in that region was the government of Virginia; that it became invested with all the powers and authority of the ancient Commonwealth of Virginia, ceases to apply. That fiction has served its purpose; the National Government has recognized this government, for all political purposes, as the Commonwealth of Virginia, and has accepted as valid and efficient the consent given by it to the erection of a new State within the borders of Virginia. Such recognition was the exercise of a power which belonged to the political departments alone. As to the propriety of its exercise the judicial branch is without jurisdiction to inquire. But into the conduct of this government in relation to its civil rights and liabilities—its liability on bonds and contracts, or under the application of equitable doctrines—the judicial courts may inquire, may take jurisdiction, and afford relief. Such courts may inquire into the validity and the *bona fides* of State action. It may ascertain and declare such action to be an impairment of the obligation of contracts. Inquisition may not be made into the motives or the good faith of the law-makers, whether in convention or in legislature, but the actions of these bodies may be annulled or disregarded when they appear to have been procured by fraud, as the judgments of the courts may be without impeachment of the motives of the judge who presided.

In Graham *v.* Folsom, 200 U. S., 253, this court, speaking of an attempt by a county to rid itself of debt, said:

> "But courts cannot permit themselves to be deceived. They will not inquire too closely into the motives of a State, but they will not ignore the effect of its action."

The Wheeling ordinance was ordained by a body of citizens who proclaimed themselves to be citizens of Virginia, assembled in convention to reform and establish her organic law. Their religious duty was to preserve, protect, and ameliorate her material interests; and yet it is manifest that their paramount object was to despoil Virginia of one-third of her territory; to erect upon that portion so cut off a new State, and to endow it with all the money and other property of Virginia found within the limits of the proposed new State. This purpose was actually carried into effect. These things were not conceived and performed to promote the welfare of Virginia. The citizens of Virginia by whom they were done looked not to the welfare of the State whose citizens they were, but to the welfare of that new State, for whose erection they were then providing and the dawn of whose creation was already appearing. The ordinance is entitled "*An ordinance to provide for the formation of a new State out of the territory of this State*," and was passed August 20, 1861. It should be construed, then, in the light of its professed object. Its provisions, so far as they related to the public debt of the Commonwealth of Virginia, and to the ascertainment of the contributive share which the new State of West Virginia should bear, must be construed as designed to secure the interests of West Virginia as opposed to those of Virginia. But one body corporate and politic then existed, but this very ordinance, as its title and body shows, was to partition this existing body and create another body, with opposing and antagonistic interests. The framers of the ordinance were in a little while to become citizens of the new and opposing body. They legislated for their own

future interests and not for the interests of Virginia. Hence it was that in framing this section of the ordinance which prescribed a method of ascertaining the portion of the common burden to fall upon West Virginia they ignored the bonds which evidenced the common debt and provided for an adjustment which involves the items of receipts and expenditures between the two sections of Virginia through a period of nearly sixty years.

The fiction of the restored State of Virginia is again invoked to shield the actual truth. It cannot serve it. It has long ago fulfilled its only mission. It is now too thin and transparent to conceal the truth.

We have already shown, and the attention of the court cannot be too earnestly called to it, that the ordinance, in providing a plan for ascertaining the "just proportion" of the public debt which West Virginia should bear, makes no further reference to that public debt than the words contained in its opening sentence. The plan of ascertainment does not in any way involve the debt. It relates only to the amounts which the two sections of the Commonwealth had paid into the treasury of the Commonwealth and had received from that treasury since 1822. As a plan of ascertaining West Virginia's share of the public debt, it was illusory, disingenuous, and inadequate, and wholly in the interest of the people who framed and passed it.

It cannot be tolerated that one of the parties in interest should be the sole arbiter of the proportion or amount of the common burden which it will bear, or, as contended here, that a plan prescribed by one-third of the people of Virginia should be made the exclusive rule of measurement by which their share of the public debt of the whole people must be ascertained; and this although such one-third had separated themselves, and had met in convention, calling itself the convention of Virginia, which by an ordinance had provided for the erection of a new State within the territory occupied by them, and had by the same ordinance prescribed this rule for the ascertainment of its "just proportion" of said

public debt. It is true, as stated in the answer, that Virginia has always denied that the Wheeling ordinance was binding upon her.

We submit that the debt for which West Virginia is liable is evidenced by the bonds and other evidences of indebtedness of the Commonwealth of Virginia prior to January 1, 1861. We have assumed—and no reason had been shown against it—that, taking into the account the population, area, and values of West Virginia, a reasonable and just proportion of the common burden was two-thirds of the public debt as the proper share to be laid upon Virginia and one-third of it as the proper share of West Virginia.

Apportioning the common burden on this basis, it would yet be competent for West Virginia to show on the taking of the account any just grounds that she may have of abatement of the amount thus ascertained, whether by payments, set-offs, or otherwise. The amount of the public debt is admitted to be about $33,000,000. The exact amount can be readily ascertained. This should form the basis of any accounting between the two States. It is a fixed and certain factor. The liability of West Virginia for a just and reasonable proportion of this debt is not denied. The proportion in which it should be borne by the two States must be determined by some rule which the court may prescribe or which the master may adopt. The result is then readily ascertained.

If the court desire it, the master may be instructed as to the principles, rules, and methods which he must employ in stating and settling the account, or he may be authorized to return with his report such alternative statements of the account as to him may appear proper or as either party to the cause may require.

In the argument of counsel for West Virginia in support of the demurrer to the bill it was pointed out that by section 8 of article 8 of the Constitution of West Virginia it was provided that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years;"

and that by the act of May 13, 1862, of the legislature of Virginia it was provided—

> "That the consent of the legislature of Virginia be, and the same is hereby, given to the formation and erection of the State of West Virginia within the jurisdiction of this State, * * * according to the boundaries, and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

From these two provisions the conclusion was deduced that a compact had been entered into by the two States, by which the legislature of West Virginia was made the sole arbiter of the fact and the amount of West Virginia's liability.

The court in its opinion (206 U. S., 320) disposed of that contention by saying:

> "When Virginia, on August 20, 1861, by ordinance provided for the 'formation of a new State out of the territory of this State,' and declared therein that 'the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861,' to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its legislature should ascertain the same as soon as practicable, it referred to the method of ascertainment prescribed by the Virginia convention,"

the soundness of which reasoning cannot be questioned. The court was dealing with the question before it, which was the demurrer of West Virginia to the bill of Virginia. On the demurrer, all the allegations of the bill were taken for true. It was a fact that such ordinance had been adopted by the convention assembled at Wheeling. It was also a fact that the matters recited were in the acts and proceedings of the legislatures and conventions; but it was even more significantly the fact that the members of the Wheeling convention of August, 1861, and the members of the convention that framed the constitution for West Virginia knew what was in each other's minds, and what had been the acts of each body, for they were the same people, and it was all done in the same convention and at the same time, as appears by the official records (11 Wall., p. 41).

The court, in its opinion on the demurrer, did not decide or intimate any opinion as to the validity, or legal effect, or binding force of the Wheeling ordinance on the people of Virginia. It was manifest from the bill that the Wheeling ordinance was referred to there only as an additional expression by West Virginia people of their liability for the public debt. Virginia had never recognized for a moment that she was bound by an act which had so plainly for its object the casting upon her of the entire burden of the debt. The answer of defendant here complains that Virginia had persistently repudiated all responsibility for and liability under that ordinance.

The True Basis of Virginia's Right to an Accounting.

In paragraph VIII of the bill (Record, p. 10) five grounds are indicated on which the liability of West Virginia rests. The first of these grounds is that the mere partition of the territory created the liability. Writers on international law agree that—

"In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division are ratably binding on the different parts; for, as Story says, 'the division of the empire creates no forfeiture of previously vested rights of property.' And so *ex contracio,* where several separate States are incorporated into one sovereignty, the rights and obligations that belonged to each before the union are binding upon the new State; but, as General Halleck points out, of course the rule must be modified to suit the nature of the union framed and the characters of the act of incorporation in each particular case."

1 Wharton, International Law Digest, sec. 5, p. 19, citing authorities.

1 Oppenheim on International Law, p. 122.

Wheaton, International Law, 4th English ed., p. 46.

Hartman v. Greenhow, 102 U. S., 672.

In 5 Moore on International Arbitrations, pages 4618-19, the case of the "Tarquin" is reported. On page 4619 it is said:

"This claim was in the nature of a public debt, founded upon the King's decree, and by the rule of international law public debts are not extinguished upon the division of a State into distinct States, whether that division be by war or by mutual consent; but they must be discharged either jointly or severally, according to the principles of justice and equity," &c.

The partition of territory alone, without agreement and without consent, imports an equalization of the burdens which were incident to the territory between the partitioners. The only question is, by what rule shall such equalization be made?

It is charged in the bill, and indeed is matter of public history in Virginia, that the sole purpose had in view in the construction of the works of internal improvement for which

this debt was created was the development of the natural resources of the region to the west of the Alleghany mountains. The action of the delegates from that region in the General Assembly of Virginia confirms this.

The answer of the defendant denies this, and affirms that they were constructed for the development of the eastern part of the State. There were no natural resources in the eastern part that could be developed. The seacoast was there, and it was to bring to the coast the timber, coal, and other minerals of the west that the turnpikes, railroads, canals, and bridges were constructed. The reports of the Commissioners of Public Works through many years will attest this.

The enlightened sense of equity and justice throughout the civilized world has now become crystallized in the rule of international law which is stated above. That is the rule which Virginia asks may be applied here, and not the rule of the Wheeling ordinance, framed by the very people who then and now were guided and controlled by the single purpose of protecting West Virginia from this very liability.

It was not necessary that Virginia should have paid off the entire public debt before it could call on West Virginia for contribution. It was as much the debt of West Virginia as it was of Virginia. Virginia comes into court and invokes the application of those well-settled doctrines of equity of exoneration and of *quia timet,* and prays that the burden may be adjusted by the court in accordance with those doctrines and methods of procedure.

1 Spence, Equity Juris. (marginal), page 662.
3 Pomeroy, Equity Juris., section 117 and notes.

The act "to provide for the funding and payment of the public debt," approved March 30, 1871 (Record, p. 13), recites that—

> "Whereas in the formation of the State of West Virginia, there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas in the ordinance au-

thorizing the organization of said State, it was provided that the said State should take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this State, and will continue to be made as long as may be necessary; and whereas the people of this Commonwealth are anxious for the prompt liquidation of her proportion of said debt, *which is estimated to be two-thirds of the same.*"

The estimate here referred to, of the proportions in which the "public debt of the Commonwealth of Virginia" should be borne by the two States into which the territory of that ancient Commonwealth was now divided, was not recklessly or arbitrarily assumed, but was the result of a careful and intelligent reckoning. The territory and population of each State was considered, and the value of such territory taken into account, embracing therein all those constituent elements, natural and artificial, which enter into and make up the wealth of a State. The seacoast, the navigable rivers, the agricultural lands, with the works of internal improvements, in varying stages of completion, which formed the value of Virginia, and the vast mineral wealth of coal, gas, oil, and the forests of hardwoods of inestimable value that formed the wealth of West Virginia. These elements of wealth duly considered, it was thought that West Virginia should bear, at the very least, one-third of the common public debt. It is charged in the bill that "West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of mineral and timber which had been known for many years prior to the first of January, 1861, and their prospective values, if made accessible to the markets of the country were understood to be well nigh beyond computation." The answer of West Virginia admits the charge, but avers "that the same was inaccessible, and of very little value on the first of January, 1861." And yet on July 1, 1862,

when the restored State of Virginia, through her Senators and Representatives in Congress, was endeavoring to have the new State erected within the territory of Virginia, one of those Senators, Willey, employed as an argument in support of the creation of a new State, the existence of the vast resources of mineral wealth in that territory. He said:

> "Here is an opportunity presented to the Senate to erect northwestern Virginia into a free State, a condition for which she was designed by the God of nature—the richest portion of this broad land in mineral resources—with inexhaustible marble quarries equal to those of Egypt and very similar; rich in inexhaustible fountains of salt and oil, and forests exceeding any of those that ever waived upon Mount Lebanon itself, that have remained from the foundation of the government of the State of Virginia, undeveloped, useless, valueless, simply because we have not been able to organize improvements within and under the control of the western section."
>
> Congressional Globe, second session of Thirty-seventh Congress, 1861-'2, p. 3037.

And on the 14th day of the same month, in the same debate, he said:

> "This new proposed State contains within its towering hills and mountains treasures richer perhaps than can be found within the limits of any other State within this Confederacy, and there they have lain ever since the establishment of this Government, undeveloped, unworked, valueless, and they must continue to remain so unless a different policy is pursued."
>
> *Ibid.*, p. 3317.

It was this potentiality of wealth that those railroads, turnpikes, canals, and bridges were being constructed by Virginia to develop and realize for which this public debt of the Commonwealth was created. It was this vast wealth which was in the view of Senator Willey, in 1862, when in the Senate of the United States he urged it as a strong ground

why the new State should be laid off in the limits and from the territory of Virginia; that such new State would be a free State, and all this wealth of which Virginia would be thus despoiled would become the exclusive property of the new State, and that the provision made by the Wheeling ordinance for ascertaining the just proportion of the public debt of Virginia to be borne by the new State would not embrace or take into account any portion of this public wealth. It was this vast wealth which, in the estimation of Virginia in 1871, imparted so great value to the hilly and mountainous territory of West Virginia that, in computing the just proportion of the public debt which West Virginia in equity and good conscience should bear, she reckoned with extreme moderation that the territory of West Virginia was equal at least to one-third of that of Virginia, and so did she apportion their respective contributive shares of this common liability.

But it is suggested that an account is necessary to ascertain the amount which West Virginia should contribute, and, further, that such account should be taken on the principles of a partnership account.

We cannot perceive in the relations existing between Virginia and West Virginia any of the features which distinguish a partnership. A partnership has been defined by this court to be—

> "a voluntary contract between two or more competent persons to place their money, effects, labor and skill, or some one or all of them, in lawful commerce or business, with the understanding that there shall be a communion of profits thereof between them."

What was the contract and who were the parties and what were the terms of any partnership when the common debt, here sought to be apportioned, was created? The Commonwealth of Virginia was a political body, a sovereign corporation, a member of the Federal Union when she created this debt, and issued her bonds therefor. The counties of Vir-

ginia, which now form the State of West Virginia, were in no sense partners with the other counties of Virginia. They were all members of one body. The welfare of one member was the welfare of the entire body. These counties, by their own voluntary act, seeking their own exclusive selfish interests, procured their separation from the body corporate and politic of Virginia, and, after they had done so, they sought and obtained the political recognition and support of the National Government to gain for themselves separate political existence and autonomy. On the principles of international law, they remained liable for a just proportion of the public debt of Virginia. What doctrine or maxim of equity can be invoked to entitle these counties to demand a marshaling of the assets of Virginia? What indeed would be counted as constituting those assets? If a partnership existed, then all the partnership fund constituted the assets and not any particular part of such fund. The debt which is here sought to be apportioned was not created on the security of any particular asset of Virginia. It was created on the faith and credit which the lenders of money extended to the Commonwealth of Virginia. The bonds which the Commonwealth issued were the obligations of the whole State and for which the entire State was liable. They were not the bonds of the counties of Virginia *jointly*. They were the several obligations of one body politic. The debt evidenced by them was the debt of the State, sanctioned and imposed by the people of Virginia, through their General Assembly, acting within constitutional limits. *How* the money derived from these bonds was expended by legislative appropriations, or *where* it was expended, are considerations which should not even be inquired into in this proceeding, for it matters not in the present inquiry whether the entire debt of $33,000,000 was expended within the limits of Virginia or of West Virginia, so that it was expended by a legislature in which all parts of the State were fully represented. The expenditure must be conclusively presumed to have been made in good faith and for the welfare of the whole body

politic. Two thousand five hundred years ago Æsop illustrated this in the fable of the "Belly and the Members." The liability, or the measure of the liability, of the two States into which the territory has since been divided can in nowise depend upon the amount of the proceeds of the loan which may have been expended in each. If any valid, actual, legal agreement was entered into between the two States, by which the proportion in which they should contribute to the common burden was fixed, or if any means were agreed on by which such proportion should be ascertained, then such agreement must control. But if no such agreement can be shown, then on principles of international law each State remains liable for the whole debt, and the apportionment of the burden between them is a juridical matter to be settled by the courts.

How shall the proportions of this debt to be borne by the two States, respectively, be ascertained? Virginia, in 1871, estimated that it should be borne in the proportion of two-thirds by Virginia and one-third by West Virginia. She formed this estimate by computing the vast undeveloped mineral wealth of West Virginia—her "unsunned gold"—as making her equal to one-third of the entire value of old Virginia, including therein all the works of internal improvement, completed and uncompleted, that remained within the limits of the present Virginia. But suppose this estimate of Virginia should not be adopted, how should the court ascertain the just proportion? It is suggested that West Virginia should be charged with only so much of the public debt as was actually expended within her borders, and Virginia should be charged with so much of said debt as was actually expended within her borders. But we have shown that wherever or however the amount of money represented by the debt was expended within the limits of old Virginia, it was all expended for the benefit of the whole body of the State. That the counties constituting West Virginia seceded from the old State before the improvements were completed, and thus prevented their completion, and

that she sought by such secession and has now succeeded in monopolizing for her own exclusive use all those stores of natural wealth which would have afforded to the old State the basis of taxation by which the public debt could be easily and speedily discharged, surely affords her no equitable ground for an apportionment of liability on such a basis. If an accounting is to be had on the basis of the wealth of the respective States, then in estimating such wealth it will be impossible to ignore or disregard the mineral wealth of West Virginia. Her coal and oil and gas and marble and timber must be taken into the account, not according to their taxable values in 1861, but according to the values which would have been given to them by such an appraisement as would have been made of them in a suit for partition. The present material condition of West Virginia is but the fulfillment of the expectations that were entertained by the people of Virginia a hundred years ago. It was foreseen when the scheme of internal improvements was entered upon in 1820. It was foreseen and appreciated by Senator Willey in 1862. It was distinctly appreciated and estimated by the legislature of Virginia in 1871, when it reckoned the just proportion of the public debt of Virginia as of 1861 which should be borne by West Virginia at one-third of the aggregate amount of that public debt.

The "Special Agreement" Theory.

It is claimed on the part of West Virginia (Brief for Defendant, p. 11) that a "special agreement" was entered into between the States of Virginia and West Virginia, by which the method prescribed by the Wheeling ordinance was adopted as the exclusive method of ascertaining the amount of that "just proportion" which it was declared West Virginia should bear.

The "special agreement" relied on by defendant appears to be that feature of the Wheeling ordinance which prescribes the method for ascertaining what is the "just propor-

tion" of the public debt to be borne by West Virginia. Section 9 of the Wheeling ordinance presents two distinct features, which must not be confounded with each other, viz: (1) A recognition of the liability of West Virginia for a just proportion of the public debt, expressed in these words:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861."

It was this feature that is referred to in paragraph XVIII of the bill, and which defendant, on page 7 of his brief, insists is a recognition by plaintiff of the terms of the ordinance. (2) The method by which such "just proportion" shall be ascertained, expressed in these words—

> "to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period."

In pointing to the Wheeling ordinance as a recognition of West Virginia's liability for a just proportion of the common debt, section XVIII of the bill cannot be construed as an admission of the validity of the method of ascertainment proposed in the second feature. That section refers only to the "liability" recognized, and it indicates the ordinance as the one "in which the method of ascertaining her liability on account of said debt is prescribed," without in any way assenting to or conceding the validity of such method.

Suppose the second feature of the ordinance had prescribed as the method of ascertaining the just proportion that West Virginia should pay one mill on every thousand dollars of the public debt, or that it should pay one mill on every thousand tons of coal shipped from the State, could it be truly contended that the Commonwealth of Virginia had

deliberately consented thereto? Yet, as I have endeavored to show, these supposed methods are not one whit more whimsical and fantastic than the method actually proposed, because the difference between the amount that a county has paid into the State treasury, in a given period, in taxes, and the amount that has been expended within that county by legislative appropriations during that period has no more connection with the public debt of the State than the number of tons of coal shipped from such county during such period can have.

There can be no question as to the power of two States, or of two sections of the same State, to enter into compacts within the conditions existing in the cases of Green *v.* Biddle, 8 Wheat., 1, and Wharton *v.* Wise, 153 U. S., 155, or as to the soundness of the rule stated in Wharton *v.* Wise, p. 173:

> "The consent of Congress to any agreement or compact between two or more States is sufficiently indicated—when not necessary to be made in advance—by the adoption or approval of proceedings taken under it."

But can it be said that Congress ever saw or considered the Wheeling ordinance or ever knowingly adopted any proceedings taken under it? Congress had before it the constitution which had been framed for the proposed new State, and the act of May 13, 1862, purporting to give the assent of Virginia to the erection of this new State. Nothing appears in the constitution as to this method of ascertaining West Virginia's share of the debt. The provision of the constitution appears in article 8, section 8, and is as follows:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

There it appeared to Congress that adequate provision had been made for the payment of West Virginia's "equitable proportion" by requiring the legislature to ascertain the same, and then provide a sinking fund for its payment.

Can it be supposed, in view of the debates that occurred in Congress on the bill for the admission of West Virginia into the Union, that such bill would have become a law if it had appeared in the constitution under which it sought admission that it proposed to ascertain its equitable proportion of the debt by deducting from the amount of taxes it had paid since the first debt was incurred the amount it had received in the way of legislative appropriations? It gained admission into the Union by the method indicated in its constitution. It now proposes to fall back on a method which would have defeated its effort to be admitted into the Union.

Sections 5 and 7 of Article 8 of the Constitution.

On pages 18 and 19 of their brief counsel for defendant insist that the words "previous liability" in the 5th section and the words "public debt" in the 7th section do not refer to West Virginia's liability to her equitable proportion of the public debt of the Commonwealth of Virginia.

What other *previous liability* of the new-born State existed besides the public debt of the old State? Many of the States of the Union now provide in their constitutions that no public debt of the State shall be created. But counsel for defendant insist that while the State may be thus prohibited from creating *a public debt*, it is not prohibited from creating *a public liability*, and that when a public liability is created then the legislatures may create a public debt to extinguish the previous liability. It is not to be supposed that the court can be favorably impressed by such linguistic jugglery. The liability of West Virginia for a just or equitable proportion of the public debt of Virginia existing previously to the formation of this constitution was recognized by the

constitution, and provision was made to meet it. This provision contemplated the issuance of bonds of the new State, but it was intended to leave no room for the creation of any other public debt, and hence it was that in this section 5 of article 8 it was provided that "no debt shall be created by this State except to meet * * * a previous liability of the State," &c. So in section 7 of article 8 it was provided that the legislature may sell all the stocks owned by the State in banks and other corporations, "but the proceeds of such sale shall be applied to the liquidation of *the public debt*," &c. What was *the* public debt?

Note, it is not *a*, or *any* public debt, but *the* public debt. There was and could be but one public debt, and that was the public debt which West Virginia had in common with Virginia, and as part of Virginia previously created.

Counsel argue on page 20 of their brief that because this same provision appears in the later constitution of West Virginia, adopted in 1872, that for that reason it could not have been intended to apply to the public debt of Virginia prior to 1861. It is true that this provision was repeated in several constitutions adopted by West Virginia, as was also section 8 of article 8; but it may be also true that when control of the State passed from the hands of the native-born citizens and into the hands of citizens from other States who had drifted into West Virginia and had filled all the high offices of the State, then these provisions disappeared from the later-formed constitutions. The reason for such disappearance is not far to seek. Doubtless the hope was indulged that a repudiation by omission of this declaration of liability might soon warrant a repudiation by express disavowal of liability, a stage which, it appears, has now been reached.

Both Virginia and West Virginia in their respective constitutions prohibit the creation of any more public debts. Virginia has learned from experience. West Virginia has taken warning from the example before her. But both States have recognized that it might become needful to issue new bonds in order to extinguish the existing debt which

rested upon both of them, and hence it was that each State provided that the prohibition should not extend to "previous liability," referring in each case to their respective liabilities for the existing public debt of the old State.

It is evident that West Virginia now rests her entire defense to the case stated in the bill on the recognition by this court of the Wheeling ordinance as a contract between the States of Virginia and West Virginia and now binding on the Commonwealth of Virginia. On the part of Virginia it is submitted that she had no part or lot in that matter. It surely lacked one essential element of a *contract;* the people who proposed the ordinance, and the people who accepted it were the same people. They did not coexist at the same time as parties to the contract. They contracted with themselves at successive stages of their continuing existence. When West Virginia was created Virginia ceased to be in that territory. True, the governor, who was a citizen of one of the counties of the new State, did not relinquish his titular office of governor of Virginia, but moved his seat of government to Alexandria and remained there within the Federal military lines. He assembled a handful of men, who masqueraded as the General Assembly of Virginia, and then on the 11th of April, 1864, organized a Constitutional Convention of Virginia, and adopted a new constitution for Virginia, the 27th section of which is quoted on page 22 of defendant's brief, by which the Wheeling ordinance was held to have no binding force upon Virginia. It was all a grim farce. But it cannot be denied that they had as much legal right to repudiate its binding force on Virginia as they had in August, 1861, to impart such binding force to it. The existing public debt of Virginia in January, 1861, was $33,000,000, as admitted in the answer to the bill. This was the debt of West Virginia, or of the counties constituting it, as much as it was of the other counties of Virginia. If the wealth of West Virginia was equal to one-third of the wealth of the whole Commonwealth of Virginia, then the

equitable proportion of that debt to be borne by West Virginia should be $11,000,000 as of January, 1861, and that amount should now be adjudged to be due by her.

Sections 3, 4, 5, and 6 of the Decree Proposed by Defendant.

These sections of the decree are also objected on behalf of the complainant on the ground that they seek inquiries into matters that have no apparent connection with the ascertainment of West Virginia's "just proportion" of the public debt of the Commonwealth of Virginia prior to January 1, 1861. The amount of that public debt as of the date named is admitted to be about $33,000,000. The exact amount is susceptible of ascertainment. The only other question is as to the just proportion to be borne by West Virginia. If the proportion heretofore fixed by Virginia, of one-third, is objected to, then it remains for the court to determine, through its master, or in such other way as it may adopt, what the just proportion is. It has been assumed on the part of Virginia that the evidence relevant to such inquiry, which is altogether documentary, consisting of the public records and files of the Commonwealth of Virginia, could not appropriately be laid before the court at this stage of the cause, but would be produced before the master at such times and in such manner as he might require.

Should it be found that one-third of the public debt is the just proportion to be borne by West Virginia, then any inquiry into the manner in which Virginia has settled with her creditors for the two-thirds of said public debt, assumed by her as her just proportion, can have no relevancy to the inquiry here.

The certificates issued by Virginia represent only the bonds which were surrendered by the creditors and are now held by Virginia in trust for the owners of them; as to the one-third set apart as West Virginia's just proportion of the

debt evidenced by such bonds, the bill sets forth with minuteness of detail the amount of such certificates, which has been assembled by the committee representing such bondholders, under the plan adopted for the settlement between Virginia and her creditors and under the acts of the General Assembly of Virginia, all of which appear in pages 39-66 of the bill and exhibits, no part of which appears to be denied by the answer of the defendant.

HOLMES CONRAD,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. , ORIGINAL.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF ON BEHALF OF THE BONDHOLDING CREDITORS OF THE COMMONWEALTH OF VIRGINIA.

The Case.

In the first quarter of the nineteenth century the Commonwealth of Virginia entered upon a system of public internal improvements which, it was contemplated, should include the entire territory of the State. This system embraced in its design the construction of graded roads, bridges, canals, and railways, extending through the State from tidewater toward the Ohio river, and adapted not to the needs of any one region of the State only, but of the State as a unit in interest. The construction of these works was interrupted by the outbreak of the civil war, and their completion was prevented by the separation of the territory now form-

ing the State of West Virginia and the erection thereon of that new State. The cost of the construction of these works, so far as that construction had progressed up to the first day of January, 1861, was defrayed by the proceeds of loans made in the United States and in Europe, and evidenced by the bonds of the Commonwealth of Virginia, which were issued from time to time, as the exigencies of the work required, under the authority of several acts of the General Assembly of Virginia.

The amount of the public debt of the Commonwealth of Virginia, evidenced by the bonds issued under these acts, was, on the first of January, 1861, $33,897,073.82.

On the 20th day of August, 1861, certain citizens of Virginia, residing in the western parts of the State, assembled in convention in the city of Wheeling, and there adopted an ordinance to "provide for the formation of a new State out of a portion of the territory of this State," and, prior thereto, there was organized a form of government known as the "Restored State of Virginia."

On the 31st day of December, 1862, an act was passed by the Congress of the United States, which provided that the new State formed in pursuance of the ordinance aforesaid should, upon certain conditions, be admitted into the Union by the name of "West Virginia," with a constitution which had theretofore been framed for it and adopted by the people of that territory.

On the 20th day of June, 1863, the new State of West Virginia was formally admitted into the Union as one of the coequal States thereof.

The constitution under which the new State was admitted into the Union contained, among other provisions, the following, viz:

> "No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.

"The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank.

"An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

Sections 5, 7, and 8 of Article 8 of the Constitution.

From the year 1865 down to a short time before the institution of this suit the Commonwealth of Virginia had sought in every practicable way to obtain from West Virginia a friendly settlement of the matter, looking to the ascertainment of the reasonable and proper proportion of the public debt of the Commonwealth of Virginia, which, by her constitution, that State had assumed to pay; but, after her liability for an "equitable proportion" had thus been recognized for many years, West Virginia, by a subsequent convention, withdrew such formal recognition from her constitution, and, by repeated acts of her legislature, expressly disclaimed any liability whatever for any part of such public debt.

Appendix to the Record, p. 247.

Virginia, deprived of one-third of her territory and population, divested of those vast mineral sources of wealth, by the development of which she had reasonably expected to redeem her obligations, acquire a fixed and certain source of revenue, and restore contentment and happiness to the inhabitants of her western parts, had yet retained her credit in the money markets of the world, and no cloud of doubt

had as yet been cast upon her willingness and her ability to discharge her obligations.

The attitude assumed by those in control of the political government of West Virginia made it necessary for Virginia to act promptly and decisively with reference to her outstanding obligations.

By act approved March 30, 1871, the General Assembly of Virginia provided that—

> "The owners of any of the bonds, stocks or interest certificates heretofore issued by this State, which are recognized by its constitution and laws, as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the James River Company, and the bonds of the James River and Kanawha Company guaranteed by this State, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due on the first day of July, 1871, in six per centum coupon or registered bonds of this State, of the denomination of one hundred and multiples thereof, dated that day, and to become payable and due in thirty-four years after date, but redeemable at the pleasure of the State, after ten years, the interest so to be payable semi-annually, on the first days of January and July of each year. * * * The holders of the five per centum dollar bonds, may, in like manner, fund the same in like bonds, bearing five per centum, instead of six per centum interest."
>
> "3. Upon the surrender of the old, and the acceptance of the new bonds for two-thirds of the amount due, as provided in the last preceding section, there shall be issued to the owner or owners for the other one-third of the amount due upon said old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded, as provided in the last preceding section, and that payment of said amount, with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall thereafter be had between the States of Virginia and West Virginia, in regard to

> the public debt of Virginia existing at the date of the dismemberment, and the State of Virginia holds said bonds, as far as unfunded, in trust for the holder or his assignees; and provided further that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on said bonds, after July first, 1871, and for the interest accrued to that date, certificates, dated on that day, shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both as to the bonds and the certificates shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as may be made with West Virginia."

Under this act of 1871 and under the subsequent acts of 1879, 1882, and 1892, bonds and other evidences of indebtedness to the amount of several millions of dollars were surrendered by the holders thereof, and new bonds of the Commonwealth of Virginia, for two-thirds of their several amounts, and certificates for the other one-third of such amounts—representing the estimated proper proportion of such indebtedness to be borne by the State of West Virginia—were issued by Virginia and accepted by the holders of the old bonds who had surrendered them.

Under a joint resolution of the General Assembly of Virginia, approved March 6, 1894, and an act of March 6, 1900, a commission was created and—

> "authorized and empowered, by and with the advice and approval of the attorney general of Virginia, to take such action and institute such proceedings on behalf of the State as may, in the judgment of said commission and attorney general, be needful and proper to protect the interest of the State, and bring about, and carry into effect a settlement as aforesaid" (1 May's Compend., pp. 40-44).

On January 15, 1905, the commission addressed a communication to the Governor of West Virginia, which was approved by the attorney general of Virginia, and on the first of February, 1905, Mr. Randolph Harrison, a member of the commission, and on behalf of the commission, made an address before the finance committee of the legislature of West Virginia, in which he set forth fully and clearly the grounds on which a friendly adjustment of the matter should be entered upon by the two States (1 May's Compend., pp. 68-82).

On January 20, 1905, the legislature of West Virginia had adopted the following joint resolution, viz.:

> "*Resolved by the legislature of West Virginia*, That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on the subject" (Appendix to Record, p. 248).

On the — day of ——, 1906, the Commonwealth exhibited her bill in equity in this court, in which are set forth fully and distinctly the grounds on which she asked the relief there prayed, and invoked the aid of this court to protect her from the intolerable burden of that proportion of the public debt incurred by the Commonwealth of Virginia during a period of forty years prior to the erection of the new State within her ancient borders, and created, as the bill charges, by the hearty concurrence and earnest efforts of the representatives in the legislature from that region of the old State which now forms the State of West Virginia, and which should be borne by West Virginia.

In February, 1907, the State of West Virginia appeared, by her attorney general, and tendered a demurrer to the bill on eight assigned grounds. On the argument before the court the defendant State, through her counsel, assigned a wholly distinct ground, on which the argument mainly proceeded. That ground was that a compact had been entered

into between the two States, by the terms of which the legislature of West Virginia had been made the sole arbiter of the fact and the amount of West Virginia's liability, and that this court was without jurisdiction to hear and determine that question.

The demurrer was overruled on all the grounds assigned and argued, and the defendant State was required to answer the bill.

In October, 1907, West Virginia filed her answer to the bill.

On May 4, 1908, a decree was made referring the cause to a special master, with directions to ascertain and report on seven designated subjects of inquiry. The special master heard the evidence offered on either side, and in March, 1910, he filed his report to this court, with certain documents referred to and more specifically indicated in a letter accompanying his report, and to be read and considered therewith.

(NOTE.—The attorney general of West Virginia has caused to be printed and has distributed a correct transcript of the pleadings in the cause, with all the proceedings had thereon, the oral and printed arguments of counsel, and the orders and decrees made in the cause, which by consent, with the approval of the court, will be used and cited in the further arguments offered, in lieu of or in connection with the original record.)

The Pleadings in the Case and the Issues Resulting therefrom.

In The State of Rhode Island *vs.* The State of Massachusetts, 14 Peters, 257, this court said:

> "The proceedings in this case will therefore be regulated by the rules and usages of the court of chancery. Yet, in a controversy where two States are contesting the boundary between them, it will be

> the duty of the court to mould the rules of chancery practice and pleading, in such manner as to bring this case to a final hearing on its real merits. It is too important in its character, and the interests concerned too great, to be decided upon the mere technical principles of chancery pleading. * * * And in a case like the present, the most liberal principles of practice and pleading ought unquestionably to be adopted, in order to enable both parties to present their respective claims in their full strength."

That was one of the earliest cases brought before this court presenting a controversy between two States, and the views expressed there have since been somewhat modified; but we do not object to their application here in their strictest form.

Attention is called to the case presented in the bill and the answer, as showing what facts alleged in the bill are admitted in the answer, and what denials made in the answer are responsive to any allegations made in the bill, and also to the affirmative averments made in the answer which the defendant State, under the rules of chancery practice, must support by proof, but has wholly failed to do.

The bill is arranged in twenty-two numbered paragraphs, the first twenty of which each contains a distinct charge of some material fact. The answer following this order takes notice of each of these distinct charges of fact and undertakes to reply to them.

(1.) The bill charges that on the first day of January, 1861, Virginia was indebted in the sum of about $33,000,000, evidenced by her obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory, and that in addition to the above liability there was a large indebtedness to the commissioners of the sinking fund and to the literary fund of the State.

The answer of the defendant admits the charge of the

amount of the debt of $33,000,000, but denies the charge of indebtedness to the two boards.

(2.) The bill charges that "the completion of some of the main lines of improvement beyond the said range, and through to the Ohio river, *since the first day of January, 1861,* has increased to a very great and material extent the values of real estate, including coal and timber, in the said territory, now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines east of said range been first constructed."

The answer of the defendant denies "that such increase was caused by the improvements made within her present territory *prior to 1861,* but nearly all of the improvements and developments of resources in said State have been made within the last twenty-five years, and are due to railroads and other public works constructed by her own people and by private capital brought within her territory, and by appropriations made by Congress and are *almost* entirely disconnected and independent of any expenditures made by Virginia prior to January 1, 1861, either by the proceeds of bonds issued and sold by her, or from any other means derived from the creation of any debt by her."

(3.) The bill charges that Virginia entered upon this scheme of internal improvements, in a very large measure, for the purpose of developing the resources of the western part of the State, now constituting West Virginia, and that it was with this view that she took upon herself the burden of debt for which her bonds were issued, and that in corroboration of this, as she further charges, the public records of the legislature show that the appropriations for the improvements, and the indebtedness incurred by the bonds issued therefor, were carried through the legislature by the votes of the members of the house and senate from the counties now forming the State of West Virginia, and against the votes of the members from the counties now forming Virginia.

The answer denies the charge of the motive and purpose, but admits the charge as to the votes of the members from the western counties.

(4.) The bill charges that the system of public improvements was incomplete in 1861, "though a very considerable portion of such improvements had, prior to that time, been constructed in the territory now constituting West Virginia in order to meet the needs of the people in that portion of the State for their local purposes."

The answer denies this charge in the very words in which it was made, and yet the report of the special master, under article 1, pages 31-36, shows hundreds of turnpikes, railways, and navigation companies constructed in the western parts of the State with the proceeds of these bonds long prior to 1861.

(5, 6, and 7.) These charges of the bill are not denied in the answer.

(8.) The bill charges, and sets out in exact terms, certain acts of the legislature of the restored State of Virginia, and states their legality and effect.

The answer does not deny the acts as recited, but denies the effect given to them in the bill.

This is matter of construction for the court.

(9.) The bill charges another act of that legislature.

The answer admits the act, but denies the effect given to it by the bill.

(10.) The bill recites certain provisions in the constitution of the State of West Virginia and states their effect.

The answer admits the provisions, but denies the effect as given in the bill, yet this court, in passing on the demurrer to the bill, has distinctly held that the effect charged by the bill was the true effect, and that the words "public debt" and "previous liability" referred to the public debt of Virginia and to nothing else.

(11.) The bill charges that after the year 1865 and prior to the year 1872 Virginia had made many attempts to have

the amount of West Virginia's liability on account of the public debt ascertained, but without effect.

The answer, through six of its pages, denies this charge, which is now established beyond dispute by the production of the official records of the two States.

(12.) The bill charges the efforts made by Virginia alone to effect a settlement with her bondholding creditors after her efforts to secure the co-operation of West Virginia had failed.

The answer makes no denial, but indulges in irrelevant comments on Virginia's course.

(13.) The bill charges that since the first day of January, 1861, Virginia has actually paid off, retired, and discharged, or has assumed and given her new obligations for the aggregate sum of over seventy-one million dollars on account of the common debt; that West Virginia, in the early years of her history, conceded that she should bear an equitable portion of this common debt, but that she has for a number of years refused to recognize that any liability whatever rested on her on that account.

The answer does not deny this charge, but contents itself with the remark that "this is a matter of which the Commonwealth of Virginia cannot complain."

(14.) The bill charges that by the acts for the settlement of her debt it was provided that the bonds of Virginia, so far as not funded in the new obligations issued by her, should be surrendered to and held by her, who would hold the same, so far as unfunded, in trust for the creditor who deposited the same, or his assigns, and certificates to this effect were given by her to each creditor who so surrendered.

The answer, not denying this charge, affirmatively avers that all the bonds so deposited were in fact "surrendered and cancelled," and that the Commonwealth of Virginia now holds said certificates in trust only for the owners thereof.

Which, with great respect for the State of West Virginia,

we venture to characterize as sheer nonsense and contradicted by the acts themselves.

The answer further denies, under this article, that "Virginia used any means for an amicable settlement of said debt with West Virginia, except as stated in paragraph XI of the answer."

(15.) The bill charges that as she has taken up and holds nearly all of the old bonds issued by her, she has now the right to call on West Virginia for a settlement, etc.

The answer, not denying the fact charged, denies that this fact gives Virginia a right to call on West Virginia for a settlement.

(16.) The bill charges that by reason of the facts charged she has a right and a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

The answer denies that Virginia has any claim against West Virginia on account of any payments made by Virginia; denies that West Virginia is liable for any part of the obligations mentioned in paragraphs 15 and 16 of the bill.

(17.) The bill charges the existence of certain obligations on which Virginia was bound prior to 1861 as guarantor, which should be included in the proposed settlement with West Virginia.

The answer denies the liability of West Virginia on account of such debts.

(18.) The bill charges as a recapitulation five grounds, on all or either of which West Virginia should be held liable for a proper proportion of the public debt of Virginia.

The answer denies that West Virginia is liable on any of these grounds except the second.

The second ground, as is manifest, is but a historical fact, which is recited, without any admission of its validity or force, in the same manner and to the same extent that a debtor who admits and agrees to pay a debt barred by limitations may be held liable on it, even though the deed in which such admission be made be held void and fraudulent.

(19, 20.) The bill charges that by a joint resolution, approved March 6, 1894, and by an act approved March 6, 1900, of the General Assembly of Virginia, a commission was created to bring about a settlement with West Virginia, and that such commission did "make most earnest efforts to bring about an amicable settlement of the matter."

The answer appears to deny the facts charged, and indulges in several pages of explanation.

This concludes all the charges of fact made in the bill and all the responses made to these charges by the answer of the defendant.

But the defendant did not stop in its answer with these responses, but proceeded to aver certain affirmative grounds of defense to the case presented by the bill, which were not responsive to any charge made in the bill, but rest upon the construction given to certain ordinances and acts of the legislature which are set out in the bill.

(1.) In paragraph XX of the answer (May's Comp., p. 22) it is averred as follows, viz.:

> "And so this respondent is advised and now avers, that when West Virginia framed her constitution and inserted in it the provision concerning the adjustment of the public debt of Virginia, and the Commonwealth of Virginia, through her legislature, by the act aforesaid approved the constitution of West Virginia, as the basis of her consent for the formation of that State and her admission into the Union, and upon the passage of the act of Congress admitting the said State into the Union, *a compact between the two States prescribing the manner in which this respondent's equitable proportion of the debt should be ascertained was concluded, and it became, and is binding upon the Commonwealth of Virginia and the State of West Virginia.*
>
> "The respondent avers that her equitable proportion of said debt cannot be otherwise ascertained or determined than by the action of the State of West Virginia, through her legislature, as provided by her constitution, nor can its liquidation be otherwise pro-

> vided for than by a sinking fund of sufficient amount to pay the accrued interest and redeem the principal of whatever sum may be thus ascertained within the period of thirty-four years as likewise therein provided. *Respondent therefore pleads and relies upon said compact in bar of plaintiff's right to prosecute and maintain this suit in this honorable court, and prays that the said bill may be dismissed.*"

(2.) The second ground of defense, nearly allied to the first, but so as with a difference, rests upon the ninth section of the ordinance passed by the convention of August, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State." It appears that the people who assembled in that August convention, with the purpose and intent of converting the territory of the "Restored State of Virginia" into the new State of West Virginia, recognized that some provision must be made for meeting and discharging such proportion of the public debt of the Commonwealth of Virginia as must reasonably be borne by that portion of the territory and population of the ancient Commonwealth which they proposed to erect into a new State, before the Congress of the United States would admit such new State into the Union, and accordingly they attempted to insinuate into the ordinance providing for such new State this ninth section, by which a fantastic device was contrived for relieving the new State of any liability whatever for any part of said public debt.

The XX paragraph of the answer avers as follows, viz.:

> "And when the constitution of West Virginia was framed and adopted in the year 1861, the said section nine was in full force, and both the Commonwealth of Virginia and the citizens residing in that portion thereof out of which the proposed new State was to be formed, were satisfied with the methods therein provided for ascertaining this respondent's equitable proportion of said public debt, and the constitution was framed and adopted *and West Vir-*

ginia's equitable proportion of said public debt was assumed on the basis of the said ordinance and not otherwise."

In these two grounds so set out in the answer of West Virginia there is presented the sole defense which she here sets up to the demand of the bill, that she should be required to contribute to the discharge of a reasonable and proper proportion of the public debt of Virginia, created prior to the erection of the new State. Much of these grounds of defense has already been disposed of by this court in the decrees heretofore made in the cause, and the disposition of the several members of the court is quite unmistakably indicated in the course of the oral arguments made at the bar on the demurrer and on the order of reference. These are more minutely pointed out in the subsequent parts of this brief.

The contention made on behalf of West Virginia, then, is that the ninth section of the Wheeling ordinance, providing a method or scheme for ascertaining the equitable proportion of the public debt of Virginia, was a proposition made by Virginia to the inchoate State of West Virginia, and subsequently accepted by that State, and thereby became and continues a constituent term in a compact entered into between these two States.

That such ninth section was a valid, constitutional, and operative feature in the ordinance to provide for the creation of a new State out of a portion of the territory of Virginia.

It does indeed appear that the attorney general of Virginia seems to have assented to much of this view. In his oral argument before the court, at the October term, 1896, after reciting the ninth section of the ordinance, he said:

> "This is the basis upon which the consent of the Commonwealth of Virginia was given to the formation of the new State. The stipulation imposed by Virginia upon West Virginia as a condition upon which her consent was given, and which afterwards,

> in forming the State of West Virginia, the people of that new Commonwealth accepted and assented to, was that the new State should assume and take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, *to be ascertained in the manner therein prescribed. That was a fundamental as well as a contractual provision, and it constitutes a primary obligation and lies at the very foundation of the right of West Virginia to be a State*" (1 May's Compend., p. 325).

And again, in his printed brief (2 May's Compend., p. 136), this learned attorney general says:

> "While the basis of settlement prescribed by the Wheeling ordinance, is, as we have always considered it, arbitrary and inequitable, we have never taken the position that that ordinance, reasonably and fairly construed, and taken and applied together with the Act of the Restored Government of Virginia of February 3, 1863, and section 8 of Article VIII, of the Constitution under which West Virginia became a State, was not binding on both States."

The writer of this brief, who, by the grace of this court, has been permitted to appear and argue this case on behalf of the bondholding creditors of the Commonwealth of Virginia (who are the sole beneficiaries under that trust which Virginia assumed, and in execution of which this suit was in large measure brought and prosecuted, and who must be the sole recipients of whatever amount may be here recovered), dissents in toto from the views expressed by the attorneys general of the two States respectively, and he has in the subsequent parts of this brief ventured to expose the fallacies which infect the views so presented. He will endeavor to show under subsequent headings in this brief:

> 1. That the ninth section of the ordinance was not "the basis upon which the consent of the Commonwealth of Virginia was given to the formation of the

new State." But that such ninth section was never, for one instant of time, recognized by any convention or legislature as having any binding force upon either State or person, and that as a proposition made by Virginia to West Virginia it was never accepted by the latter State.

2. That the ninth section was not "a stipulation imposed by Virginia upon West Virginia as a condition upon which her consent was given and which was afterwards accepted and assented to by the people of West Virginia."

3. That it was not "a contractual or a fundamental provision, and that it did not constitute a primary obligation, or lie at the foundation of the right of West Virginia to be a State."

West Virginia became a State by being admitted into the Union by the Congress of the United States, upon the consent, first obtained, of the Restored State of Virginia, and such consent, in its express terms, referred to the constitution framed for West Virginia, and did not by expression or implication refer to the ordinance or to any of its provisions.

4. The "basis of settlement prescribed by the Wheeling ordinance," whether taken alone or in connection with any legislation or constitutional provision, was never binding "on both States" or on either State.

It was not referred to in the case of Virginia *vs.* West Virginia, in 11th Wallace, and, as shown by Mr. Faulkner, the counsel for West Virginia in that case, had no relevancy or connection with the line of argument taken by either the counsel or the court in that case.

The bondholding creditors, whose interests this court has allowed to be represented here, are creditors of Virginia and of West Virginia alike. They are not formal parties to this

cause, but their interests are fully recognized and secured by the several acts of the General Assembly of Virginia, which form part of this record, and under which Virginia has received and holds the bonds deposited by them, as a trustee, as to the unfunded one-third of the amounts of such bonds. The Commonwealth of Virginia has by her bill exhibited here disclosed fully her relations to her bondholding creditors and to the State of West Virginia, who, as a constituent part of the original debtor State, is liable for an equitable proportion of such common debt. Her chief ground for the relief asked is that West Virginia has disclaimed and repudiated all liability for any part of such indebtedness, and Virginia fears that unless this codebtor be made to pay such equitable portion of the debt that the burden of paying it will fall upon her. She asks that this threatened danger be averted by a decree of this court requiring West Virginia to pay so much of such debt as may be ascertained to be her equitable proportion thereof.

These creditors insist that they should not be prejudiced in their rights by any contracts or agreements entered into between the two debtor States, or by any concessions or admissions that may be made as either the law or the facts by the counsel representing these States at this bar.

It will be observed that of the seven subjects for inquiry and report referred to the special master, five of them relate exclusively to the matters involved in the ninth section of the Wheeling ordinance. The master now reports, under the third paragraph of that order of reference, that the plan of ascertainment proposed by the ninth section of the ordinance bears no relation whatever *to the amount of the public debt.*

It may not unreasonably be inferred that such inquiry would not have been directed by the court but for the apparent concurrence of view of the attorneys general of the two States.

THE ARGUMENT.

The bill was filed by Virginia to have ascertained the proportion of the public debt of the Commonwealth of Virginia which should justly and equitably be borne by West Virginia, and to require her to pay such amount to the exoneration of Virginia from that portion of the common burden.

The first and controlling subject of inquiry is, What plan or method shall be adopted for ascertaining this proportion? But two have been proposed and urged by the parties to the cause.

It would seem to be obvious that the proper proportion of this public debt which should be borne by West Virginia should be ascertained by the proportion that her territory and population bore to the territory and population of the Commonwealth of Virginia on the first day of January, 1861, or on May 13, 1862, when Virginia consented to the erection of the new State, or on the 20th of June, 1863, when West Virginia was admitted into the Union.

On the part of Virginia and of her bondholding creditors, who are the beneficiaries of the trust which Virginia took upon herself, it is insisted that the only just and reasonable plan or method for ascertaining the proportion of the debt to be borne by West Virginia is that stated and approved by the writers on international or public law, and which was announced by Mr. Justice Field, in delivering the opinion of this court, in the case of Hartman *vs.* Greenhow, 102 U. S., 672. He said:

> "Duringthe war a portion of her territory was separated from her, and by its people a new State named West Virginia, was formed, and by the Congress of the United States was admitted into the Union. Nearly one-third of her territory and people were taken from her jurisdiction. But as the whole State had created the indebtedness for which the bonds

> were issued, and participated in the benefits obtained by the money raised, it was but just that a portion of the indebtedness should be assumed by that part which was taken from her and made a new State. Writers on public law speak of the principle as well established, that where a State is divided into two or more States, in the adjustment of liabilities between each other, the debts of the parent State should be ratably apportioned among them. On this subject, Kent says: 'If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement, their rights are to be enjoyed, and their obligations fulfilled by all the parts in common' (1 Comm., 25). And Halleck, speaking of a State divided into two or more distinct sovereignties, says: 'In that case the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratable binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of the courts and the practice of nations' " (International Law, c. 3, sec. 27).

Among the writers on public law, referred to by the learned justice, whose opinions concur in the view expressed by him, there may be mentioned the following:

Puffendorf, Law of Nature and Nations, Book VIII, chap. 12, sec. 5.

Phillimore, International Law, Part II, chap. 137.

Wheaton, Dana's ed., sec. 30.

Moore's Int. Law Digest, p. 334.

Wharton, Int. Law Digest, sec. 5, p. 19.

1 Openheim International Law, p. 122.

5 Moore on International Arbitration, pp. 4618-4619.

Mr. Hannis Taylor's International Law is cited with great approbation by the counsel for West Virginia and copious extracts from his chapter on this subject are quoted. Mr. Taylor, however, closes this chapter with a "summary" of

his views, which seems to have escaped the attention of counsel. It is as follows:

> "SEC. 168. After a careful review of all the authorities the general statement may be made, (1) That no matter whether a State is entirely extinguished by a division into two or more States, or (2) whether it loses its identity by being absorbed into another State, or (3) whether a State, without loss of its identity, has a portion of its territory taken from it to form an integral part of another State, or (4) whether such severed part is erected into an entirely new and independent State, all local charged and guaranteed debts to which certain domains and their revenues are dedicated survive as charges upon the localities to which they relate, with their equities unimpaired. In the case first named the general debt of the State would certainly be ratably binding, morally, if not legally, on its several parts. In the second, it passes as a whole to the absorbing State. In the third, the acquiring State should assume a ratable proportion of it, and in the fourth, every principle of equity and good conscience requires that it should be provided for out of the common State property, and the residue divided in the proportion to the resources of the two distinct Commonwealths. *In the notable case of West Virginia that obligation, though formally recognized, has never been discharged.*"

The public debt of the Commonwealth of Virginia is evidenced by her bonds issued by her, under the authority of several acts of the General Assembly, from the year 1823. These bonds are shown in the schedules annexed to the two first paragraphs of the report of Special Master Littlefield, as to which the master says (Report, p. 29):

> "The schedules hereto annexed and marked Par. I, Ex. 1, Par. I, Ex. 2; Par. I, Ex. 3, show by what authority of law, and for what purposes the same was created, and the dates and nature of the bonds being the evidence of said indebtedness."

From these schedules there has been compiled a series of tabulated statements showing that these bonds fall into eight distinct groups, distinguished by the purposes for which each series of bonds was issued, the rates of interest borne by each, and the proportion of each which should be borne by Virginia and West Virginia respectively. There is further shown the calculations made upon the established bases of territory, population, and valuation, by which is ascertained the exact proportion of the entire debt which West Virginia should bear on each of such bases.

West Virginia's Proportion of the Public Debt under Paragraphs I and II.

The amount of the public debt of Virginia as found by the master	$33,897,073.82

Annexed to the report, under paragraph I, are three tabulated schedules which, the master states, "show by what authority of law and for what purposes the same was created, and the dates and nature of the bonds being the evidence of said indebtedness" (page 29).

It appears from Schedule 3 that of the bonds evidencing this debt certain of them bore interest from their date to their maturity at the rate of six per cent per annum to the amount of	$30,842,659.43
and certain others bore interest at the rate of five per cent	2,077,204.50
Making the total of interest-bearing principal	$32,919,953.93
Which, with the interest accrued thereon to January 1, 1861	977,209.89
makes the aggregate debt as of January 1, 1861	$33,897,073.82

The master was directed to ascertain and report the extent and assessed value of the territory of Virginia and of West Virginia as of June 20, 1863, and the population thereof, with and without slaves.

He has responded to that direction in paragraph II, page 37, of his report, by a tabulated statement, which shows that—

West Virginia contains of the extent of the area of the old State	36.1843 per cent
and of the land area, exclusive of water	37.3686 per cent
and of the assessed valuation	21.7812 per cent
and of the population, with slaves	24.5125 per cent
and of the population, without slaves	33.5231 per cent

From the evidence taken before the master, and which appears in the printed volume accompanying his report (pages 341-379), I have had prepared a tabulated statement, which will be found in the printed pamphlet filed as part of this brief, which shows, on pages 16 and 17, West Virginia's proportion of the public debt, calculated on each of the foregoing bases, *including* therein the bonds held by the sinking fund, the literary fund, and the board of public works.

West Virginia's proportion on the basis of land area	$39,637,940.59
West Virginia's proportion on the basis of total area	38,381,719.81
West Virginia's proportion on the basis of assessed valuation	23,103,940.50
West Virginia's proportion on the basis of population, with slaves	26,003,229.86
West Virginia's proportion on the basis of population, without slaves	35,528,615.64

Since the master's report was returned, showing that he has rejected the claim of Virginia to have the bonds held by

these State boards, included in the total amount of the public debt, evidenced by the State bonds, I have had the calculation made on that basis (it appears in two printed pages filed in the pamphlet with brief):

Land area	$36,595,744.45
Total area	35,435,938.09
Assessed valuation	21,330,722.30
Population, with slaves	24,007,492.37
Population, without slaves	32,829,776.90

The pamphlet filed with this brief shows that the public debt of Virginia on the first of January, 1861, was evidenced by bonds issued under different acts of the legislature, maturing at different periods, and bearing different rates of interest. These bonds are classified in eight separate groups, an index of which appears on page 1 of the pamphlet, and each of said groups is presented as required by paragraph I of the decree.

If the liability of West Virginia is determined in accordance with the doctrine laid down by the writers on public or international law, which appears to have been approved by this court in Hartman *vs.* Greenhow, *supra,* such liability must be for an ascertained proportion of the public debt of Virginia evidenced by said bonds, such proportion to be ascertained on one or the other of the several bases above calculated. The public debt for which West Virginia is liable is the debt evidenced by the bonds, and must be, therefore, for the principal of said bonds and the interest that accrued thereon up to the maturity thereof. The interest has been accordingly calculated on each of the eight groups of bonds according to rate prescribed by the bond and up to the date of its maturity.

The constitution of West Virginia, under which she was admitted into the Union, provided that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by the State," &c.

An equitable proportion of the public debt as it stood on January 1, 1861, embraced both the principal and the interest of the debt as it was then evidenced, and if it was evidenced by bonds that bore interest until they were redeemed or paid, West Virginia's proportion of the debt so evidenced, embraced the principal and the interest thereon up to the redemption of the bond or to the expiration of the period through which, according to its terms, the bond bore interest.

Even against a sovereign government, when its consent to pay interest "has been manifested by an act of its legislature, or by a lawful contract of its executive officers, interest has been allowed" (United States *vs.* North Carolina, 136 U. S., 216). The United States has been required to pay interest in one case on an implied contract (United States *vs.* New York, 160 U. S., 598).

Both on the ground of public or international law and on the express provision of the constitution of the State, under which Congress admitted it into the Union, the liability of West Virginia for an equitable proportion of the public debt of Virginia appears to be unavoidable and, indeed, does not appear here to be questioned.

We have then "the amount of that public debt as of January 1, 1861, the form in which it was evidenced, the authority of law by which it was created, and the dates and nature of the bonds and other evidence of said indebtedness." We have the extent and assessed valuation of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves. We have then every factor necessary for a correct ascertainment of the actual amount of the equitable proportion of the public debt which West Virginia should contribute, and we have all the calculations accurately made on each of the several bases indicated by the court in its decree, and we show what that proportion is under each of said several bases.

Of the five several bases on which the ratable proportion of the debt to be borne by West Virginia may be ascertained, the least reliable is that of the "assessed valuation" of the real and personal property. The last assessment of real estate prior to January 1, 1861, was made in 1856, the assessments being at that time made every ten years, and the master has shown in his treatment of this subject, under paragraph V (pages 142 to 173), that the assessment of that year forms no safe or fair basis. He has pointed out that both real and personal property suffered great depreciation in quantity and in value during the early period of the war.

Paragraphs IV and V of the decree do not appear to have been intended by the court as the means of affording bases for the ascertainment of the proportion of the *public debt to be borne by West Virginia*, but only, as their language imports, for affording a basis for ascertaining "such proportion of the *ordinary expenses of the government of Virginia* since any of said debt was contracted as was properly assignable to the counties which were created into the State of West Virginia."

Paragraph II (page 37) directs the ascertainment of "the extent and assessed valuation of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves."

The decree gives no direction that warrants the distinction taken in the report between the land area and the water area of the two States. It only directs that the "extent of the territory" be ascertained. The difference is too small to justify a formal exception to the report on that ground, and we submit that as valuation is the object sought, and as land only, and not the water surface, was the subject of valuation, that the land area affords the only proper basis.

As to the matter of "slaves," they appear in both the States, but in far greater number in Virginia, in proportion to the entire population, than in West Virginia. How far they should be taken into any account in this case is ques-

tionable, because their status as persons was uncertain and their value as property was even more uncertain. The Emancipation Proclamation of President Lincoln certainly impaired the value of slaves as property in the border States of the South, while it did not tend to make them citizens. It made both their value and their status uncertain, and hence they cannot safely be accepted as fixed factors in any equation employed to ascertain the certain proportion of the public debt of Virginia which West Virginia should bear. They were without civil or political capacities in either State, and should not be reckoned as part of the population, on the basis of which the proper proportion of the debt due from West Virginia should be ascertained. The only fair, reasonable, and just bases on which such proportion can properly be established are total population of white citizens and total land area of the several States.

The amount of the public debt of Virginia as of January 1, 1861, is ascertained and is undisputed.

The evidences of that debt are shown to be bonds, issued by the Commonwealth, and which appear by the master's report to have been issued for different amounts and at different dates and with different periods of maturity. (See schedules annexed to paragraph I, "Joint Exhibit A-1," page 213, Record). The pamphlet filed with this brief shows the calculations by which the amount to be borne by West Virginia is ascertained on each of the several bases.

The bonds evidencing the public debt of Virginia prior to the first day of January, 1861, and surrendered by the holders thereof to the Commonwealth of Virginia, under the provisions of the several funding acts, were not canceled or extinguished as to the one-third of the amount thereof, estimated to be the equitable proportion of such debt to be borne by the State of West Virginia.

It has been repeatedly insisted by counsel for West Virginia, in their oral and printed arguments, that all of the

bonds that were surrendered by the holders under the funding acts were actually canceled and thus extinguished, and that both States were thereby released from liability by reason of those bonds.

By the act of March 30, 1871 (pages 14-17), it was provided in section 2:

> "The owners of any of the bonds * * * *may fund two-thirds of the amount of the same*, together with two-thirds of the interest due or to become due thereon * * * in coupon or registered bonds of this State."

And in section 3:

> "Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owners or owner, for the other one-third of the amount due upon the bond * * * so surrendered, a certificate bearing the same date as the new bond, setting forth *the amount of the bond which is not funded*, as provided in the last preceding section, and that payment of such amount * * * will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia, * * * and *that the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees.*"

And in section 4:

> "*Each bond* * * * *to be funded* as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amounts for which certificates shall be issued, under the second and third sections of this act, * * * The treasurer shall, by proper endorsement, written or stamped upon each bond * * * *so surrendered and delivered to him*, cancel the same and endorse thereon the date of such cancellation." * * *

So it appears that the cancellation was to be made only of the bonds that were to be funded, and not of so much of such bonds as were not to be funded, but were to be held by Virginia in trust for the holder or his assignee. By the act of March 28, 1879, section 6 (page 20), it was expressly provided:

> "The rules prescribed under the act approved March 30, 1871, in respect to preparing, signing, and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling, and registering the old bonds shall be observed by the officers of the treasury in the execution of this act, * * * Whenever an obligation of the State shall be presented to the second auditor to be funded under this act, he shall note the fact and date on the proper register in his office, shall punch a hole through the name of the second auditor, signed or countersigned thereto, and shall issue his warrant upon the treasurer for the new obligations required. * * * But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act, holes shall be punched in one or more places and in such manner *as to render a new funding of the same impossible*, and every bond or coupon so cancelled shall be filed for reference."

In the 7th section it was provided:

> "The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability *on account of said certificates.*"

By none of these acts were the bonds surrendered by the holders for funding directed or authorized t obe canceled, except to the extent that such bonds could be funded. They could not be funded as to the one-third of their amount estimated to be due from West Virginia.

In his oral argument before this court (page 351), Mr. Carlisle said:

> "Now what was the obligation assumed by Virginia by the issue of these certificates? Was it to pay money? None of the counsel has said to the court that if Virginia should fail to provide for this additional one-third by a settlement with West Virginia, that the holders of these certificates could come back upon the State of Virginia and demand their money. That has not been suggested. What the holder could do, perhaps, would be to demand his bond, but that would be of no value to him, because the bond has been cancelled, and I will also show before I get through that nearly all of the holders of these certificates issued under the act of 1871 have deposited their certificates with the commission under a contract which releases Virginia."

It is certainly true that no suggestion has been made by counsel for Virginia that the certificates issued by her were intended to, or that they did, create or evidence any indebtedness on her part to the holders of them. And hence it was that in the acts and on the face of the certificates was the admonition, distinctly given, that the "acceptance of the certificate for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability on *account of this certificate.*"

And on each certificate it was stated that it was issued "without recourse upon this Commonwealth."

It was to expressly declare that Virginia, being already liable on the bonds *held by her in trust for the owner*, would not be made liable for the same debt by virtue of these certificates, which were issued as mere memoranda of the trust on which Virginia held the bonds as to the unfunded one-third of their several amounts.

The bondholders did surrender their bonds to the State of Virginia, the debtor and obligor. Such surrender, unexplained or unqualified, would tend to prove the satisfaction

and extinguishment of the bonds as evidences of indebtedness. But Virginia was satisfying them only as to two-thirds of their amounts. The other one-third was not paid, satisfied, or discharged, but was kept alive as a still subsisting obligation. Hence the agreement, that all the bonds so surrendered should be held by Virginia as satisfied and extinguished as to the two-thirds paid by Virginia by the substitution of her new bonds, but as held in trust by her for the creditors to the extent of the remaining one-third, and *as to this one-third the bonds were not canceled*, and this the acts of the legislature and the certificates themselves fully attest.

The Commonwealth of Virginia has never been discharged from liability on the bonds issued by her prior to January 1, 1861, *except as to the extent of the two-thirds of the amount thereof, for which amount the holders of the old bonds surrendered them as to such two-thirds and received in lieu thereof new bonds of the Commonwealth.*

In the brief filed on behalf of West Virginia in support of the demurrer to the bill, and repeatedly thereafter, it has been insisted that—

> "these certificates were accepted by the creditors without recourse upon Virginia, in payment or settlement of this one-third of her debt, thereby releasing Virginia from the payment of the one-third of her old, original debt" (1st May's Comp., page 121).

Mr. Carlisle, in the brief signed by him alone (1st May's Comp., page 383), makes the same assertion, but with some qualification. He says:

> "We think it clear that Virginia has been released by the provisions contained in the various acts, by the surrender and cancellation of the bonds, by the acceptance of the certificates under the acts, and by the contracts entered into between the creditors and the commissions; but, even if there had been no for-

> mal or voluntary release, the State has repeatedly declared in the funding acts and in the joint resolution of March 6, 1894, and the act of March 6, 1900, under which this act is brought, that she is not liable for the unfunded one-third of the debt."

A brief notice of the several funding acts here relied on will serve to dispel the notion that they provided for, or even contemplated, release of Virginia from her obligation of the unfunded one-third of her bonded debt.

The act of March 30, 1871, is set out in full (May's Comp., pages 14-17), and it contains nothing to warrant the assertion. Indeed, counsel for West Virginia, in their first brief, expressly say:

> "Under the terms of this statute Virginia still remained liable for the payment of her entire debt, including the one-third unfunded, for which deferred certificates were to be issued, payable upon a final settlement between Virginia and West Virginia" (May's Comp., page 112).

The next act in course was that of March 28, 1879 (*Ibid.*, pages 17-22). It does provide in section 7, page 21:

> "The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia *from all liability on account of this certificate.*"

Not from all liability on account of her *bond,* which was held by Virginia, unfunded and uncanceled, in trust for the depositor as to the one-third thereof, but from liability on account of this *certificate.* The reason is plain. The State acknowledged her liability on her bond, but the bond had been surrendered into her hands by the holder of it, because she had paid two-thirds of the full amount of it. She had not paid the remaining one-third of it, because she looked to West Virginia to provide for that, but the holder

entrusted her with the bond on her assurance that she would hold it in trust for him. Being liable on the bond, she did not intend that she should be also liable on the certificate, which merely represented the bond. She was not willing to have outstanding two written, negotiable evidences of the same indebtedness. Hence the stipulation that she should not be held liable "on account of said certificate."

The third act was that of February 14, 1882 (*Ibid.*, pages 22-31). The form of the certificate prescribed by this act provided on its face (page 30) as follows:

> "The Commonwealth of Virginia has this day discharged her equitable share of the bond for —— dollars, held by —— ——, dated the — day of ——, and numbered —, leaving a balance of —— dollars, with interest from ——, to be accounted for by the State of West Virginia, *without recourse upon this Commonwealth.*"

Her "equitable share of the bond" she had estimated at two-thirds of its full amount. The remaining one-third she estimated to be the equitable share of West Virginia, but she knew that she was legally liable for the entire bond, and that this certificate was but an additional evidence of so much of that liability, and for that reason she provided that she should not be liable on the certificate.

The next act was that of February 20, 1892 (*Ibid.*, pages 32-40). The form of the certificate prescribed by this act appears on page 37, and it concludes, "without recourse upon this Commonwealth."

So it appears that by none of the acts of the Virginia legislature providing for the ascertainment of Virginia's share of the public debt was it stipulated or declared that Virginia should be released from her legal liability for the one-third of the debt evidenced by the West Virginia certificates.

West Virginia's Plan.

On the part of West Virginia, it is insisted that the two States have, by a special agreement or compact entered into between them, provided that the method for ascertaining West Virginia's proportion of the public debt, proposed in the ninth section of the ordinance passed on the 20th day of August, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," is the only method proper to be now employed.

That ninth section is as follows, viz.:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

In the answer filed by West Virginia in this case, it is averred in paragraph XX (May's Comp., page 21):

> "After the promulgation of the ordinance of the convention the people of Virginia, as well those residing in that part of the territory to be converted into a new State as those residing in the other parts of the Commonwealth of Virginia, which constitutes the present territory of that State, were fully advised as to the provisions of the said ordinance, defining the manner in which the equitable proportion of said debt was to be ascertained, and when the con-

stitution of West Virginia was framed and adopted in the year 1861, the said section nine was in full force, and both the Commonwealth of Virginia and the citizens residing in that portion thereof out of which the proposed new State was to be formed were satisfied with the methods therein provided for ascertaining respondent's equitable proportion of the said public debt, and the constitution was framed and adopted, and West Virginia's equitable proportion of said debt was assumed on the basis of said ordinance and not otherwise."

In his argument before this court, Mr. Carlisle said (May's Comp., page 290):

> "Our argument was that Virginia had made a proposition in the 9th section of the ordinance, and tendered it to West Virginia; that when West Virginia's convention assembled, which was the first time that State could speak on the subject, it accepted the proposition, with the addition to it, that the legislature of West Virginia should be the tribunal to ascertain her just proportion of the debt, and that Virginia, subsequently, by the passage of the act asking for the admission of West Virginia into the Union, under that constitution, had agreed to this additional clause which the West Virginia convention had inserted in it. So, we argued, that the compact consisted not only of the 9th section of the ordinance, but of the whole of the eighth section of the West Virginia constitution, including that part of it, of course, which provided that the legislature should ascertain her just proportion."

Here then is the alleged "compact" entered into between the two States of Virginia and West Virginia, and here are the grounds upon which it is claimed that such compact was actually entered into, and on which alone its existence is maintained.

Let these grounds be examined.

There was a convention in Wheeling, in June, 1861, of the people of that part of Virginia which at present consti-

tutes the State of West Virginia, and that convention did, in August of that year, adopt the ordinance entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," and the ninth section of that ordinance was as above recited, and that convention did adjourn *sine die*.

There was another convention called to frame a constitution for the proposed new State of West Virginia, and that convention did frame such constitution. But it is altogether inaccurate and misleading to speak of this second convention as though it were another and distinct people there assembled, to say, "When West Virginia's convention assembled, which was the first time that State could speak on the subject;" for the fact cannot be disguised that the second convention represented the same people as the first, and none other. The same counties were represented in both conventions, and these were the same counties that were represented in the legislature of the Restored State of Virginia, and then later of the State of West Virginia. The fallacy that pervades and infects the entire argument lies in the assumption that two distinct bodies of people were concerned here and were contracting with each other.

In the written opinion given by Attorney General Edward Bates to President Lincoln, as to the action he should take on the act of Congress admitting West Virginia into the Union, he said:

> "And the legislature which pretends to give the consent of Virginia to her own dismemberment is (I am credibly informed) composed chiefly, if not entirely, of men who represent the forty-eight counties which constitute the new State of West Virginia. The act of consent is less in the nature of a law than of a contract. It is a grant of power; an agreement to be divided. And who made the agreement? The representatives of the forty-eight counties with themselves. Is that fair dealing? Is that honest legislation? Is that a legitimate exercise of a constitutional power by the legislature of Virginia? It seems to

> me that it is a mere abuse, nothing less than an attempted secession, hardly valid under the flimsy forms of law."

The tenth section of the "ordinance to provide for the erection of a new State," &c., provided that—

> "when the General Assembly shall give its consent to the formation of the new State, it shall forward to the Congress of the United States such consent, together with an 'official copy' of such constitution, with the request that the new State may be admitted into the Union of States."

It did not provide that a copy of the "ordinance" should be forwarded to Congress, and there is nothing in this entire record to sustain the assertion that Congress ever saw or knew of that ordinance or of its provisions.

The constitution framed by the November convention for the new State of West Virginia provided, in the eighth section of its eighth article, as follows, viz.:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

On the 18th of May, 1862, the legislature of the Restored State of Virginia gave its consent to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of * * *; then follows the names of the forty-eight counties forming West Virginia,

> "according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia, and the schedule thereto annexed,

proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

Provision is further made in this act for the inclusion of the counties of Berkeley and Jefferson and Frederick whenever the voters of said counties shall ratify and assent to the constitution.

The Congress of the United States, by act approved December 31, 1862, in which the names of the forty-eight counties were recited, did admit the State of West Virginia into the Union.

These were the same counties, and none others, that constituted the Restored State of West Virginia.

The argument that the convention which framed the constitution for West Virginia was bound by the provisions of the ordinance adopted by the preceding convention, and that the requirement of the eighth article of the constitution, that "the legislature shall ascertain the same as soon as may be practicable," meant that the legislature should ascertain the equitable proportion of the public debt to be borne by West Virginia, according to the method prescribed by the ninth section of the ordinance, finds no support from anything disclosed in this record.

That ordinance, as shown by its title, was to provide for the formation of the new State. All of its sections, except the ninth, were directed toward that end. The State was formed when its constitution was framed and adopted by the people. The ordinance then became *functus officio*, and ceased to have any operation. The ninth section, as said by Mr. Carlisle in his argument, "was a proposition made by Virginia, and tendered to West Virginia." If this be true, then West Virginia's day of grace was when she was assembled in convention in November, 1861—three months after the proposition was tendered; then, and only then, while she was framing her constitution could she have signified her acceptance of the proposition by embodying it in her constitution. But she did not embody it. She embodied

something altogether different, and made no reference to the ninth section of the ordinance. But the view now urged on behalf of the defendant State is, that while her constitution does not expressly refer to the ordinance, yet when it directed that the legislature should ascertain the amount due from West Virginia it meant that the legislature should ascertain such proportion by the method proposed by the ninth section of the ordinance, which is merely assuming the very thing that West Virginia has undertaken to prove.

The entire defense here made by West Virginia to the bill rests upon the ninth section of the ordinance—that the fantastic plan there proposed for ascertaining the "equitable proportion of the public debt" which the constitution prescribed should be assumed by West Virginia—was, by solemn compact between the Commonwealth of Virginia of the one part and the State of West Virginia of the other part, adopted and agreed upon as the method to be employed.

Few men in the State of West Virginia had more intimate and thorough knowledge of the history of those times than the Hon. Charles James Faulkner, a lifelong resident of Berkeley county, a Representative in Congress from that district prior to the Civil War, and United States Minister at the Court of France at the breaking out of that war. Mr. Faulkner had been leading counsel for the State of West Virginia in the case of Virginia *vs.* West Virginia, reported in Eleventh of Wallace, which involved the question of the status of Berkeley and Jefferson counties, and to his ability and skill must be allowed the credit of that victory. Because of his familiarity with the whole history of the evolution of West Virginia, his opinion was asked as to the effect that should be allowed to the ninth section of the ordinance. His opinion was given in 1884, in the course of which he said:

> "After a careful examination of the case of Virginia *vs.* West Virginia, I cannot perceive that the court attaches any peculiar legal efficacy to the ordinance of August, 1861. It is true it referred to that

> ordinance historically, but only for the purpose of showing that even at that early period of our history the counties of Berkeley and Jefferson were contemplated as possible additions to the State of West Virginia. My reasons for supposing that the court might not regard the ordinance of 1861 as prescribing a binding rule for settlement of the debt are, that by the subsequent constitution, framed and adopted by the people of West Virginia, this basis of settlement is abandoned, and we are there made to assume an equitable proportion of the public debt of Virginia prior to January 1st, 1861, and the legislature is directed to ascertain the same as soon as may be practicable. Virginia, in giving her consent to the formation of a new State in May, 1862, expressly does so upon the provisions set forth in the constitution of West Virginia. Upon these terms we were admitted by Congress as a State of the Union, and the constitution of 1863, thus ratified by the two States and by Congress, would be more likely to be taken as the basis of the contract than the effete ordinance of August, 1861."

And the view here expressed by this great lawyer, that the constitution framed and adopted by the people of West Virginia altogether superseded and supplanted the propositions of the August convention, finds strong support in the decision of this court in the case of Strauder *vs.* Graham, reported in the 10th of Howard, where it was said:

> "The State comes in under the provisions of its own constitution; you cannot look outside of it; you cannot look behind it. This is the final, ultimate expression of its civil and political rights and powers."

It is denied on the part of Virginia that the method proposed by the ninth section of the ordinance adopted by the convention on the 20th of August, 1861, for ascertaining West Virginia's just proportion of the public debt of Virginia, formed part of any compact or agreement whatever between the two States, or of the consent given by Virginia

or that such method was proposed as a condition or as a measure upon the acceptance or rejection of which the formation of the new State in anywise depended.

It does not purport to have been proposed as a condition or term of an agreement between the two States. The form and structure of the section in which it appears precludes the belief that it was anything more than a suggestion or recommendation offered to the convention which was soon thereafter to assemble. It is wanting in all the characteristic features of a solemn condition or limitation prescribed by a State as a term upon the acceptance of which alone she will consent to a cession of a portion of her territory. Many compacts between States of this Union have been before this court, but all of these have appeared clothed in a form and expressed in language that left no room for doubt as to their significance and purpose.

The compact between Virginia and Maryland in 1785, entered into at Mt. Vernon, was clear, formal, and unambiguous, and stated in a series of distinct paragraphs, each embodying a distinct term of the agreement.

City of Georgetown *vs.* Alexandria Canal Co., 1 Peters, 94.

The compact between South Carolina and Georgia of April 12, 1787, was expressed in solemn, formal style in numbered articles.

South Carolina *vs.* Georgia, 93 U. S., 4.

And so in the compacts which received consideration by this court in the cases of—

Poole *vs.* Flegar, 3 Wheat., 212.
Burton, lessee, *vs.* Williams, 3 Wheat., 529.
Green *vs.* Biddle, 8 Wheat., 1.

The *subject-matter* of the ninth section of the ordinance—that is, the mere plan or method by which an amount should be ascertained—cannot be made the subject of a compact or

a condition upon which an existing State consents to a cession of part of her territory for the erection of a new State.

The subject-matter of such compacts cannot be allowed to embrace any other subjects than the extent of the territory so ceded and the usual and ordinary incidents appurtenant to such territory.

All other matters fall within the exclusive power and control of the new State so formed.

In none of the compacts made between States does it appear that the parent State has ever sought or been allowed to impose on the new State any such conditions, limitations, or burdens as were not immediately connected with the territory ceded for the new State.

In Virginia *vs.* Tennessee, 148 U. S., 520, and in Wharton *vs.* Wise, 159 U. S., 170, this court, referring to section 10 of article 1 of the constitution, prohibiting any State from entering into any agreement or compact with another State, quote from Story, Comm., section 2403, as follows:

> "Compacts and agreements might then very properly apply to such as regarded what might be deemed mere private rights of sovereignty, such as questions of boundary, interests in land situate in the territory of each other, and other internal regulations for the mutual comfort of States bordering on each other."

The territory ceded, its boundaries, the rights to and in water courses flowing through and by it, the rights, titles, and interests therein acquired from the parent State, these and other kindred matters may form the subject of a compact between States, but other matters affecting the domestic concerns of the new State, such as the basis and the rate of taxes to be laid therein, its police policy and regulations, its powers in the contracting and payment of its public debts, all these, and others like them, are beyond the power of the parent State to control or in anywise affect, and are exclusively within the control of the sovereign State so created.

The public debts of a State are burdens resting upon it,

for the discharge of which the revenues of the State arising from taxation laid upon its lands are justly applicable, and where a State burdened with a large public debt is divided into two or more States it may very well be deemed proper and provision may be made by conditions annexed to the cession or by compact between the parent State and each of the proposed new States that such new States should assume and bear their respective proportions of such public debt. The new States may thus be required to take their respective portion of the territory ceded, with the burdens resting upon such portions.

All other matters connected with the discharge of the liabilities thus assumed must be left to the new State so assuming them. Any other requirement would indeed be, what Mr. Justice Johnson, in Green *vs.* Biddle, 8 Wheat., 99, characterized as "cutting deep indeed into the sovereign powers of the State."

Virginia might with great propriety have imposed the condition to the erection of the new State within her territory that such new State should take upon herself a just proportion of the public debt. She knew that West Virginia would be liable—under the doctrine of public or international law—for her just proportion, but what concern was it of Virginia's how West Virginia should ascertain the amount of such liability, or whether she did so by her legislature or her Governor or her treasurer or by the method prescribed by the ninth section of the ordinance? Virginia knew, as any creditor would know, that if the amount so ascertained was not a "just proportion" it would not be accepted as such. Why should Virginia, in convention assembled, insist that the new State, for whose creation she was providing, should bear a just and reasonable part of a common debt, and then further insist that such part should be ascertained only by the new State, through her legislature, and by a method which is admitted by counsel and found by the master in this case to have no relation whatever

to the amount of that debt? This inquiry serves to bring to the light the grave fact, not adverted to heretofore, that the State of Virginia, which adopted this ordinance and gave its consent to the creation of the new State, consisted only of the same territory and the same people who were to constitute the State of West Virginia.

Less than one-third of the territory and less than one-third of the population of the Commonwealth of Virginia were participating or represented in the conventions and legislatures that were engaged in the creation of this new State.

To be sure, they were recognized by the political departments of the Federal Government as being the Commonwealth of Virginia, and it is beyond question that the political product of their labors—the new State of West Virginia—was invested with sovereignty and autonomy that are indestructible and must endure. But will that panoply serve, in this judicial investigation, to shield this defendant State from the scrutiny that must result in the discovery that the two alleged contracting parties—the one submitting a proposition and the other accepting it—were in truth and in fact but one person and the same person throughout? The counties that composed the Restored State of Virginia, and which were represented in these conventions and legislatures, were the same counties and none other that composed the State of West Virginia and were represented in her councils.

Here we find the explanation of the curious feature that the State of Virginia in giving her consent to the erection of West Virginia imposed it as a condition of that consent that West Vrginia should be the arbitrator to ascertain the amount of her "just proportion," and that she ascertain it by a method which Virginia then knew, and which we all know now, would bring Virginia in debt to West Virginia, or else would find a very small balance the other way.

The public debt was evidenced by the bonds of Virginia

to the amount of about $33,000,000. These were outstanding in the hands of holders for value. To the extent that West Virginia was released from her liability on these bonds would the liability of Virginia be increased. Why, then, should Virginia desire to release West Virginia from her just proportion of this liability? Because the Virginia that was thus seeking to release West Virginia would in a short time cease to exist; she would be merged into and become herself West Virginia, and so, when the bondholder presented himself and demanded payment of the bond of Virginia held by him, the only Virginia remaining to make response to his demand would be the present Commonwealth of Virginia, and when she should call on West Virginia to contribute her proper proportion of this common indebtedness she would be met by the reply that has greeted us here, "Virginia has entered into a compact with West Virginia by which West Virginia has been released from all liability on these bonds."

No Compact Was Ever Entered into Between Virginia and West Virginia.

The compact, as West Virginia contends, was formed by a proposition made by Virginia to West Virginia by and through the ninth section of the Wheeling ordinance. This proposition, as contended, was accepted by West Virginia by and through the eighth section of the eighth article of her constitution, "with the addition to it that the legislature of West Virginia should be the tribunal to ascertain her just proportion of the debt, and that Virginia subsequently, by the passage of the act asking for the admission of West Virginia into the Union under that constitution, had agreed to this additional clause which the West Virginia convention had inserted in it." (Carlisle's argument, 1 May's Comp., p. 290.)

Conceding, for the sake of the argument, that the plan for ascertaining West Virginia's just proportion of the public

debt was a proposition submitted by Virginia for West Virginia's acceptance, *did West Virginia ever accept it as it was offered?* It is admitted that she did not; but it is said that she did accept it *with an additional term added.* It is insisted that Virginia subsequently acceded to this additional term by the act of May 13, 1862.

In Minneapolis, &c., Railway Co. *vs.* Columbia Rolling Mill, 119 U. S., 149, this court said:

> "As no contract is complete without the mutual assent of both parties, an offer to sell imposes no obligation until it is accepted according to its terms. So long as the offer has been neither accepted nor rejected, the negotiation remains open, and imposes no obligation upon either party. The one may decline to accept, or the other may withdraw his offer; and either rejection or withdrawal leaves the matter as if no offer had ever been made. A proposal to accept, or an acceptance upon terms varying from those offered, is a rejection of the offer, and puts an end to the negotiation unless the party who made the original offer renews it or assents to the modification suggested. The other party, having once rejected the offer, cannot afterwards revive it by tendering an acceptance of it."

To the same effect is the case of Compania Bilbania *vs.* Spanish American Co., 149 U. S., 497, and Virginia Hot Springs Co. *vs.* Harrison, 93 Virginia, 569.

The text-writers concur in the doctrine thus announced. In 1 Chitty on Contracts (11 Amer. ed.), page 15:

> "Where an agreement is sought to be established by letters, such letters will not constitute an agreement unless the answer be a simple acceptance of the proposal without the introduction of any new term."

In Anson on Contracts (2 Amer. ed.), page 22, it is said:

> "Acceptance must be absolute; unless this is so the intention expressed by one of the parties is either doubtful in itself or different from the other. If A

> offers to X to do a definite thing, and X accepts conditionally, or introduces a new term into the acceptance, his answer is either a mere expression of willingness to treat, or it is, in effect, a counter-proposal."

The ninth section of the Wheeling ordinance proposed that

> "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof and a just proportion of the ordinary expenses of the State government, since any part of the debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the new State during the same period."

That was the proposal made by Virginia.

The eighth section of the eighth article of the constitution of West Virginia provided:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

That was West Virginia's acceptance of the proposal. Not only was it not an "absolute acceptance" of the proposal as made, but it was materially and essentially different in each of its terms.

It provided for an "equitable" instead of a "just" proportion of the debt. It ignores the plan of ascertainment by the deduction of payments from receipts. It provides that the legislature of West Virginia shall be the sole arbiter to ascertain and determine the amount that West Virginia

shall assume. It provides that the debt to be assumed by West Virginia shall not be liquidated for thirty-four years.

Was there an agreement of minds of the two parties as to the terms of the alleged compact? Manifestly not, as the matter stood upon the proposal and the alleged acceptance.

But it is said that subsequently Virginia, "by the act asking for the admission of Virginia into the Union under that constitution, had agreed to this additional clause which the West Virginia convention had inserted in it."

By "this additional clause" is meant the clause making the West Virginia legislature the sole arbiter in the matter. But even that does not meet the other additional terms inserted by the West Virginia convention.

Now look at the act referred to (1 May's Comp., p. 438). It gives the consent of Virginia to the erection of the new State within the jurisdiction of Virginia.

If the legislature had had before it the plan proposed by the ordinance and that prescribed by the constitution, and had intended to exclude the conclusion that it approved of and adopted the terms of the ordinance, it could not have employed more apt and adequate terms. It makes no reference whatever to the ordinance, nor does it in anywise refer to the public debt or to the proportion of it to be borne by West Virginia, but it gives the consent of Virginia to the erection of the new State "according to the boundaries and under the provisions set forth in the constitution for the State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

If the plan proposed by the Wheeling ordinance was but a proposition made by the June convention of Virginia to the State of West Virginia, then West Virginia, assembled in convention on the 26th of November, 1861, should have either accepted or rejected the proposition thus made. It did neither; it simply ignored it altogether. Indeed, from all that appears here, the convention of West Virginia had no notice or knowledge of the proposition so made, for it no-

where refers to it. It makes provision for the same subject-matter, but that provision, as we have seen, is altogether different from the proposition made in the ordinance.

By what rule of construction can it be contended that when the West Virginia convention provided in the constitution it was framing that "the legislature shall ascertain the same as soon as may be practicable" meant that the legislature should ascertain the same in accordance with the plan proposed by the ordinance framed by the Virginia convention? Even if it be true that an act or ordinance passed by one State may be construed *in pari materia* with an act or ordinance passed by another State, which we do not admit, construing the ordinance of the Virginia convention with the constitutional provision of the West Virginia convention must result only in the conviction that the latter body, after considering the provision proposed by the former, found it absurd, inequitable, and improper, and rejected it.

The method proposed by the ninth section of the Wheeling ordinance should not be accepted as the proper plan for ascertaining West Virginia's just proportion of the public debt of Virginia for which she is liable.

1. The method proposed has no relation whatever to the public debt, and it cannot be applied so as to ascertain any proportion of that debt.

In his response to the third paragraph of the decree of reference, the master, in his report, says (page 39):

> "The Wheeling ordinance is not predicated upon the *amount* of the public debt. Upon the assumption that West Virginia would be liable for 'a just proportion of the public debt' in case of separation, the ordinance prescribes an arbitrary method by which that 'just proportion' shall be ascertained, &c."

And this view of the master has strong support from the admissions of counsel for West Virginia at the bar of this court. Mr. Carlisle, in his argument, said:

> "I say that the method of settlement provided for in the ninth section of the ordinance has no relation to the amount of the public debt of Virginia existing on the first day of January, 1861. In other words, it is wholly unnecessary, in making a settlement under the terms of that ordinance, to ascertain what the amount of Virginia's public debt was on the first day of January, 1861."

Upon this declaration Mr. Justice White then said from the bench:

> "Then, if that provision for settlement has no relation, and does not concern itself at all with a just proportion of the public debt, which you say is the case, is there not an absolute incompatibility of the constitution with the provision of the ordinance?" (2 May's Compilation, p. 281).

Mr. Carlisle had elsewhere said:

> "An examination of the Wheeling ordinance shows that the amount of the Virginia debt, as it existed prior to January 1st, 1861, is not a factor to be taken into consideration in ascertainng West Virginia's just proportion" (1 May's Comp., p. 190).

And further (page 360) he said:

> "The amount of the debt and the purpose for which it was created have nothing whatever to do with the settlement under the terms of the ordinance. They are not factors in the problem submitted under that agreement."

And Senator Spooner said (2 May's Comp., page 253):

> "Counsel are very accurate when they say that this ordinance does not deal in terms with the debt; that is true; it is no assumption of any part of the debt, as such."

True, the ninth section of the ordinance does declare that "the new State *shall* take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," and it does purport to prescribe a method by which that "just proportion" shall be *ascertained*.

Yet here we have the iterated solemn declarations of the counsel for West Virginia that this ordinance "is no assumption of any part of the debt," and that the "amount of the debt and the purpose for which it was created are not factors in the problem submitted under that agreement." The amount, then, that might be ascertained by the method prescribed by the ordinance would be no *proportion of the public debt* at all. It would be only the difference between the amount expended by legislative appropriations and the amount paid into the treasury from the counties forming West Virginia through a period of about forty years.

But, assuming for the sake of argument, that the proposition had been made by Virginia, and had been accepted by West Virginia, that the method prescribed by the ninth section of the ordinance should be the method for ascertaining West Virginia's just proportion of the debt, what does an examination of that method disclose? We have seen that the master has reported, and that counsel for West Virginia have insisted, that by that method no proportion of the debt could be ascertained; that there was no relation between that method and the amount of the debt.

In the case of Hume *vs.* United States, 132 U. S., 406, a contract between the two parties was held to be "extortionate and unconscionable on its face," and Fuller, C. J., speaking for the court, referred to the opinion of Lord Hardwicke in Chesterfield *vs.* Janssen, in which he said:

> "Fraud may be apparent from the intrinsic nature and subject of the bargain itself; such as no man in his senses, and not under delusion would make on the one hand, and as no honest and fair man would accept on the other," &c.

I invite the application of this test to the ninth section of the Wheeling ordinance.

Would the Commonwealth of Virginia, knowing as she did that the State of West Virginia was liable for a just and reasonable proportion of her public debt, have agreed that such proportion should be ascertained by this method, and that the legislature of West Virginia should be the tribunal to ascertain it?

In the answer of West Virginia it is distinctly averred (page 20, sec. XX) that—

> "the finance committee of one branch of her legislative body had ascertained and reported that there was no liability upon her part to the Commonwealth of Virginia, on account of the said public debt under the ordinance of the Wheeling convention, and this respondent now denies that she owes, or will owe any sum whatever to the State of Virginia, upon a settlement made in the mode provided in said ordinance."

And this answer is sworn to by the Governor of West Virginia. The Governor could conscientiously swear to that averment, because he knew that the "mode provided" had been intelligently provided to produce that result, and, in the hands of the West Virginia legislature, it had produced the result originally contemplated.

The master in this case has succeeded by the application of certain fixed principles, which have resulted in the rejection of many items claimed by West Virginia, and the allowance of others to which that State objected, in obtaining a very different result from that reached by the West Virginia legislature, and in so doing he has disappointed the expectations of the framers of the method of the ordinance; but the result reached by the master has no relation to the public debt of Virginia, or to West Virginia's liability for a proper proportion thereof, because the method itself had no such relation, and the pretense that the two States had by

compact agreed upon that method as the mode of ascertainment is found to be wholly without support.

We have endeavored to show heretofore that the acts of the conventions and legislatures, relied on as constituting a "compact" between Virginia and West Virginia, do not, on any reasonable principles of construction, suffice to form such compact; that they are altogether inadequate in their forms and character to be construed as intended to constitute a solemn compact between sovereign States, and that the mere method to be employed in ascertaining the amount for which a State is liable cannot be made the subject-matter of such a compact.

We now ask that the transaction be considered in the light of the alleged compact itself, its terms and provisions, its efficiency for the object had in view, its reasonableness and its fairness, the parties to it, their known relation to each other, and their evident object in contriving the method proposed by the Wheeling ordinance.

1. It is found by the master, and is admitted by counsel for West Virginia, that the method proposed is not adapted to ascertain West Virginia's just proportion of the public debt. While the ordinance provides that West Virginia shall take upon herself a just proportion, "to be ascertained" by this method, that it is now admitted that this method cannot accomplish that result. It is immaterial to the present purpose how or why it was adopted as the method. It is enough to know that it is altogether inadequate, and hence cannot be employed to ascertain the result sought.

How, then, can this court be asked to accept as the proper plan for ascertaining the amount of West Virginia's just proportion of this debt a method now known to be improper and ineffectual?

2. The method proposed, even if agreed on by the two States, should not be accepted and applied by this court, because it discloses on its face not only its inefficiency, but

its unreasonableness and its unfairness. The professed object of the two States was to provide a method by which a just proportion of the amount of a known public debt could be ascertained. When that method is examined it is found to have no relation whatever to that amount, but to consist only of the difference between the amounts received and the amounts expended by certain counties within a certain period. But when that difference is ascertained by that method it affords no aid toward ascertaining the proportion of the public debt proper to be borne by West Virginia. It is not pretended that the two States ever agreed that the amount so ascertained should be accepted *in lieu* of a just proportion, or that it should be the measure of such just proportion. The only "compact" claimed to have been made is that West Virginia should take up herself a just proportion of the public debt, to be ascertained in the manner agreed. If the two States through error, mistake, or ignorance agreed upon a rule of measurement that is now found to be impracticable, they cannot ask this court to apply that impracticable rule. If, on the other hand, the two States agreed upon this rule, knowing at the time it was impracticable, that it could not ascertain the result sought, then their conduct is open to scrutiny and they must explain why they agreed on a rule known by them to be unfit. And this inquiry must lead to an investigation as to the parties to such agreement.

3. The parties to the agreement appear to be the State of Virginia and the State of West Virginia.

But the method of asceertainment appears to have been contrived and proposed by Virginia, and she was the obligor in the bonds that constituted the debt. In providing for the erection of a new State from a part of her territory, and thus diminishing her sources of revenue by the cession of nearly one-third of her territory and her population, a sane regard for her own interests and the interests of her bondholding creditors should have prompted Virginia to require

of the proposed new State some recognition of her liability for a just proportion of that public debt and some provision for the discharge thereafter of such liability. She did require that the new State should take upon itself a just proportion of the public debt, but she further proposed that such just proportion should be ascertained by the method indicated.

What fair and reasonable construction should be placed upon this conduct? Virginia must be held to have had intelligent regard to her own interests, yet she was not only ceding near one-third of her territory, but was also releasing West Virginia from her liability for her proportion of the debt. How can these be reconciled? Plainly enough. There were two Virginias. One had preceded the formation of the Union; the other was a reorganization of the government of the former, effected on June 13, 1861, in the city of Wheeling. It took upon itself the name and sought to perform the functions of the Commonwealth of Virginia, and it was recognized by the Federal Government as being the true and real Commonwealth of Virginia. It sent Senators and Representatives to the Congress of the United States, and received from the United States money that belonged to the Commonwealth of Virginia. The reason of the existence of this Restored State was the conversion of the territory occupied by it and that of the population of such territory into a new State, which was to be admitted into the Union as an independent sovereign State. Such new State could not be erected within the territory and jurisdiction of Virginia without the consent of Virginia, and the State of Virginia, whose capital was in the city of Richmond, it was reasonably feared would not give such consent. Hence the necessity of forming another Virginia whose consent could be obtained. So the Restored State of Virginia was formed of forty or more counties of the old Commonwealth, and two months later it provided by ordinance for the erection of the new State, which was composed of those same coun-

ties, and none other. The Restored State of Virginia became the State of West Virginia. Its territory and its population became the territory and population of West Virginia, and all that remained to that evanescent State was its name and its Governor. The Governor was, to be sure, a resident of the new State of West Virginia, but his sense of official duty required that he should retain his office and his government, although there remained to him nothing to govern. He removed the seat of his government to Alexandria, and later, after the evacuation of the city of Richmond, he removed to that city and held himself out as Governor.

On March 2, 1867, Congress, by an "act to provide for the more efficient government of the rebel States" (14 St., p. 428), declared that—

> "Whereas no legal governments or adequate protection for life and property now exist in the rebel States of Virginia, etc., * * * and
>
> "Whereas it is necessary that peace and good order should be enforced in said States until loyal, republican governments can be legally established, &c.,"

and the entire government of the Restored State of Virginia was swept out of existence, and a major-general of the U. S. Army reigned in its stead. So we can now perceive why it was that the two States of Virginia and West Virginia might very intelligently have entered into such a compact. The Restored State knew that her days were numbered and that the only function of her sovereign existence was to provide for the transformation of herself into the new State of West Virginia. She took care to provide a method for ascertaining West Virginia's proportion of the public debt, which would secure West Virginia from all but a nominal liability, and it concerned her not at all that the burden of the entire debt should fall upon the old Commonwealth of Virginia when she emerged from the horrors of war. Now we can all plainly see that while there appeared to be two parties enter-

ing into a solemn compact, these two were but one and the same party at different stages of its political existence.

The convention that framed the constitution for the proposed new State did not regard itself as bound by any suggestions or requirements made by the Wheeling ordinance, and it either ignored or repudiated the suggestions made as to the name of the proposed State, and as to the method of determining the proportion of the public debt of Virginia for which West Virginia should be held liable.

The Wheeling ordinance, as its title declared, was framed and passed only "to provide for the formation of a new State out of a portion of the territory of this State."

It was not intended and it did not purport to do anything more than make appropriate provision for the organization of such new State, by calling a convention which should be empowered to frame a constitution for the new State, and to do anything else that was within the power of a constitutional convention.

The convention had been called under the provisions of the ordinance, and that instrument had now performed all its functions and ceased to be any longer operative and binding.

The first section of the ordinance had provided that—

> "The people of Virginia, by their delegates in convention assembled, do ordain that a new State, *to be called the State of Kanawha*, be formed and erected out of the territory included within the following-described boundary," &c.

Article 1, section 1, of the constitution framed by the convention assembled under that ordinance, provided:

> "1. The State of *West Virginia* shall be and remain one of the United States of America."

In the very important feature of the name of the new State, the first act of the convention was to disregard altogether the requirement of the ordinance that the new State should be called "Kanawha," and to fix upon it the name of West Virginia.

So, as has been seen, in the matter of providing the method for ascertaining the proportion of the public debt to be borne by the new State, the convention disregarded the suggestion or requirement of the ordinance and made a wholly different provision.

The convention called to frame the constitution for the new State was elected, and it assembled and entered upon the discharge of its duties, in obedience and pursuant to the mandate of the ordinance, but when it assembled and had organized it recognized the fact that it represented the sovereign powers of the people who had called it together and had clothed it with full authority to exercise those powers. The people it represented had imposed no restrictions or limitations upon it, and the preceding convention, which had framed and passed the ordinance under which it had been called, was without authority to impose such restrictions or to prescribe to it the duties it was to perform. If that convention had the power to dictate to it the provisions of the constitution it was called to frame—even the single provision as to the method by which the amount of the public debt to be borne by the new State should be ascertained—then, plainly, it was not what it purported to be, representing the sovereign powers of the people who were thus "in convention assembled," but it was merely empowered to record the prescripts and mandates of the former convention.

It doubtless had before it the ordinance under which it had been called into being, and was fully advised of all that the ordinance contained, and was further advised as to its obligations and duties under the ordinance. It did not regard itself bound by those obligations and duties to adopt

the name of the State prescribed by the ordinance, and, doubtless, for the same reasons disregarded the suggestion made in the ordinance as to the method proposed for ascertaining the amount of the liability of the State for the public debt.

The argument urged on behalf of West Virginia in this case has been that when that State accepted the constitution framed for her by the people of Virginia, then within the territory of the proposed new State, she accepted it under the ordinance, and thereby assented to each and all of the provisions of that ordinance, and among these the provisions embraced in the ninth section, prescribing the method for ascertaining the amount of West Virginia's liability for the public debt of the Commonwealth of Virginia.

That argument, however, assumes as a postulate the very thing to be proven. Where and how does it appear that the people of West Virginia, when they ratified and adopted the constitution that had been framed for them, "assented to each and all of the provisions of the ordinance" under which the convention had been assembled?

They certainly did not assent to the provision as to the name by which the proposed State should be called, and they assented to the provision made by the convention, and not to that made by the ordinance, for the ascertainment of the amount of the liability of the new State.

But, it is insisted, the provision of the constitution referred to and adopted as an implied, although unexpressed term, the method proposed by the ordinance in this, that it directed that "the legislature shall ascertain the same as soon as may be practicable," and the legislature could ascertain it only by the method proposed by the ordinance.

But here, again, is a desperate assumption as a fact of what at most is but conjectural. Why was the legislature restricted as to the method of ascertainment to that fantastic device proposed by the ordinance?

We have shown, and may repeat, that by the method of

the ordinance it is now agreed and insisted by counsel for West Virginia no proportion whatever of the public debt of Virginia could possibly be ascertained. If by the method prescribed or proposed it is now agreed that no proportion—just or equitable or possible—could be ascertained, how can it be reasonably contended that the two States did solemnly agree that by that method only should West Virginia's liability be ascertained? If there was such an agreement or compact entered into between the two States, and they did know at the time that the method agreed on was impracticable, futile, and impossible, and with such knowledge did enter into such compact, then it was a fraud on the creditors whose rights they professed to be providing for and a deliberate fraud on the real Commonwealth of Virginia, upon which, at last, the entire burden of the public debt, as they well knew, inevitably falls. On the other hand, if the two States entered into this compact in ignorance of the fact that the method agreed on between them was impracticable and could not accomplish the result for which it was intended, then the compact, void as to this feature of it, because founded on mutual mistake.

But was the provision made by the constitution based upon the provision made by the ordinance and intended by its framers to be carried out by the method proposed by the ordinance?

Let the two provisions be contrasted with each other:

Ninth Section of the Ordinance.

The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in the lands within the proposed State derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed new State, and shall be governed by the laws now existing in the State of West Virginia.

Eighth Article of Constitution.

An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years.

The general purpose and avowed object of both provisions was to fix upon the new State to be formed out of a part of

the territory of Virginia a reasonably proper proportion of the public debt of the Commonwealth to the creation of which the people of both the old and the new State had, through their common legislature, contributed and in the benefits of which that people had equally participated. If, as insisted now by West Virginia, the framers of her constitution intended that her legislature should ascertain such proportion by the method proposed by the ordinance, and that method appears on its face and without the aid of external evidence to have been impracticable and impossible and leading inevitably to absurd and monstrous consequences, should any construction be given to the constitution that must involve such result?

Judge Cooley, in speaking of the rules for the construction of constitutions, and particularly of "unjust provisions," says (Constitutional Limitations, ed., p. 73):

> "We do not say, however, that if a clause should be found in a constitution which should appear at first blush to demand a construction leading to monstrous and absurd consequences, it might not be the duty of the court to question and cross-question such clause closely, with a view to discover in it, if possible, some other meaning more consistent with the general purposes and aims of the instrument."

The application of this rule of construction must relieve the constitutional convention of the charge made by West Virginia that it intended by the eighth section of the eighth article of the constitution framed by it to adopt the method proposed by the ordinance as the only method by which the legislature should ascertain the amount of West Virginia's liability. It is by construction only that the conclusion can be reached that the two States by solemn compact agreed, through the medium of this constitutional provision, that the method of the ordinance was the method that should be employed.

Passing from the matter of construction, let us proceed to contrast the two provisions. We observe, in the first place, that the constitutional provisions employ different words and phrases from those employed in the ordinance. On the theory that the provision of the constitution is but a continuation of that made by the ordinance—that they are to be construed *in pari materia*, and, if possible, made to stand together—the inquiry is at once suggested, why this change of words? This court has said that "a change in phraseology creates a presumption of a change in intent" (Crawford *vs.* Burke, 195 U. S., 190).

The ordinance said: "The new State shall take upon itself a just proportion."

The constitution said: "An equitable proportion, &c., shall be assumed."

Does this "change in phraseology create a presumption of change in intent?" Have the words employed in the one a different significance from those employed in the other?

In Anderson's Dictionary of Law (1889) these words are thus defined:

> "JUST.—Probable, adequate, equivalent.
>
> "EQUITABLE.—1. According to natural right and justice, just and right in a particular case, as distinguished from the strict rule of a general law.
>
> "2. That which can be sustained or made available or effective in a court of equity, or upon principles of equity jurisprudence."

"Just" characterizes the result sought to be reached by arbitration, while "equitable" characterizes the result sought to be reached by the chancellor in applying the rules and principles of equity jurisprudence.

The arbitrator is controlled by what he regards as the rules of common sense—fairness between man and man. The chancellor is controlled by ascertained and established rules and doctrines laid down in judicial decision and by text-writers of accepted authority.

The results to be reached by the application prescribed by the ninth section of the Wheeling ordinance were doubtless regarded by its framers as "just" under all the circumstances of their status, historical, economical, and political; but under the interpretation given to that method by the learned counsel for West Virginia and from its admitted inadequacy for the ascertainment of the proper proportion of this public debt to be borne by West Virginia, it cannot be accepted as "equitable."

Indeed, it is manifest that the counsel for West Virginia, in their contentions on the demurrer, have regarded the matter in dispute here as having been referred by both States to the arbitrament and award of the legislature of West Virginia. Mr. Carlisle, in his argument on the demurrer (1 May's Comp., p. 181), said:

> "Virginia referred this matter absolutely to the judgment of the legislature of West Virginia and tacitly agreed to abide by the action of this legislative body."

And again (page 190) he said:

> "An examination of the Wheeling ordinance shows that the amount of the Virginia debt, as it existed prior to January the first, 1861, *is not a factor to be taken into consideration in ascertaining West Virginia's just proportion.*"

That is, the just proportion of a thing may be ascertained without knowing what the thing is—the amount or the extent of the thing of which the just proportion is to be ascertained is not a factor to be taken into consideration in the calculation.

Now, when we find the convention with the ordinance before it rejecting the word "just" and employing the word "equitable," is it not a reasonable presumption that it perceived that the method proposed by the ordinance could not ascertain a "just proportion" or an equitable proportion, and

that it was unwilling to employ terms that might indicate that it approved of or countenanced that method, and for that reason it changed the word employed in the ordinance and substituted the word "equitable" to indicate that the proportion to be assumed by West Virginia was such as a court of equity might ascertain, but which could not be ascertained by the method proposed by the ordinance?

But we are told that this court has already decided this question, and has held that when the convention provided by the eighth section of the eighth article of the constitution that "the legislature should ascertain the same as soon as practicable," it referred to the method of ascertainment prescribed by the Virginia convention. Let us examine that contention.

West Virginia demurred to the bill on a ground not stated in either the formal demurrer filed or in the amended demurrer, but stated for the first time in Mr. Carlisle's brief (1 May's Comp., p. 186) as follows, viz.:

> "The two States have, therefore, by compact between themselves and with the consent of Congress, as required by the constitution, designated a tribunal to ascertain and settle West Virginia's share of the debt. This tribunal still exists, and is unquestionably competent to discharge the duties imposed upon it. And, moreover, but most important of all, *it is the only tribunal existing or that can be established possessing the power to provide for the payment of West Virginia's share of the debt when the same has been ascertained, in accordance with the terms of the compact.* It cannot be coerced by any judicial or other civil process known to the constitution or laws of the country. No court can compel it either to adjust the debt or to provide a sinking fund, or impose taxes, issue bonds, or appropriate money."

It was in meeting that ground of demurrer that the Chief Justice used the language which is now relied on as expressing a final judgment on the facts. He said:

> "It is, however, further insisted that this court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of Congress, by which the question of the liability of West Virginia to Virginia was submitted to the arbitrament and award of the legislature of West Virginia as the sole tribunal which could pass upon it."

And then, after referring to the provisions of the constitution and to the act of the Virginia legislature of May 13, 1862, the Chief Justice proceeded:

> "When Virginia, on August 20, 1861, by ordinance provided for the formation of a new State out of the territory of this State, and declared therein that 'the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861,' to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its legislature should 'ascertain the same as soon as practicable,' it referred to the method of ascertainment provided by the Virginia convention."

The court was not here deciding as a fact that the constitutional convention did refer to the method of ascertainment provided by the ordinance. It was meeting the objection urged in support of the demurrer, that this court could not exercise jurisdiction to "ascertain and settle West Virginia's share," because the two States had agreed to submit that matter to the arbitrament and award of the West Virginia legislature.

It said, in substance: Assuming that this alleged compact was entered into between the two States, yet enough appears on the face of the bill to show that the legislature was not vested with absolute, exclusive power to determine the matter by any method it saw fit to employ, because when the

convention referred the matter to the legislature to ascertain West Virginia's equitable proportion of the debt it is to be supposed that it referred to the method provided by the ordinance.

This merely suggests a theory, consistent with the case stated in the bill, which is sufficient to meet the theory advanced by the demurrant. It decides nothing more. The court decides nothing as to the merits of the method provided by the ordinance, nothing as to adequacy, efficiency, or its adaptability to meet the requirements of the professed object of the ordinance, and nothing as to the persons who contrived that method or as to their real object and purpose in contriving it as they did. If it now is made evident that the method provided by the ordinance is inappropriate, that no proportion whatever of the public debt can be ascertained by it, can this court be asked to apply it? If the two States agreed upon, knowing its inefficiency or not knowing it, can a compact founded in fraud or in ignorance be insisted on? If the convention that framed the constitution, having before it the ninth section of the ordinance and being persuaded that the method proposed by it would defeat the very object and purpose of the framers of the constitutions, which was to ascertain an equitable proportion of the debt, did reject that method and employed other and different terms from those employed in the ordinance, should it be presumed to have intended that some other method should be employed by the legislature?

Finally, from all the facts and considerations here indicated, can it be held or presumed that the framers of the constitution intended to adopt, approve, or recognize the method proposed by the ordinance as the method by which they contemplated that the legislature would ascertain the equitable proportion to be borne by West Virginia?

The act of Congress of 31st of December, 1862, admitting the State of West Virginia into the Union, did not affirm the Wheeling ordinance, expressly or by implication, nor did it affirm the alleged compact between Virginia and West Virginia.

Mr. Carlisle has stated the transaction as he contends for it as follows:

> "The compact was entered into by the sovereignty conventions of the two States. In one the proposition was made in the form of an ordinance and in the other it was accepted in the form of a constitutional provision; and then it was consented to by Congress, and thus became an absolute and permanent obligation of the two States, which neither of them could thereafter abrogate or alter" (1 May's Comp., p. 386).

We have seen that the convention of August 20, 1861, which framed the Wheeling ordinance, providing for the election of the constitutional convention, which assembled in November, 1861, directed, in the tenth section of that ordinance—

> "that when the General Assembly shall give its consent to the formation of the new State, it shall forward to the Congress of the United States such consent, together with *'an official copy of such constitution,'* with the request that the new State be admitted into the Union of States."

It did not direct that there should be forwarded to the Congress an official copy of the Wheeling ordinance, because between that convention and its function and its work and the Congress of the United States there was no sort of relation or connection. The function of that convention was merely to provide for the assembling of another convention in the future, to which should be entrusted the

more important work of framing a constitution for the new State.

The functions and powers of the August convention expired upon its adjournment *sine die*. It had provided for an election of delegates to the November convention and had laid certain duties upon the Governor of the State and certain other duties upon the legislature, all relating to the work of the approaching convention, and then it adjourned. It performed no act of which the Congress of the United States could take cognizance. It purported to be speaking for Virginia and not for West Virginia, and it was West Virginia alone that was to deal with Congress. Hence it was that the constitution framed by the people of the proposed new State of West Virginia, and not the ordinance framed by the people of Virginia, was the only instrument proper or needful to be forwarded to Congress upon the application of West Virginia for admission into the Union.

We have seen that the convention of November, 1861, when it framed the constitution for West Virginia, utterly ignored and disregarded the provision made by the Virginia convention of August, 1861, for the ascertainment of the just proportion of the public debt of Virginia to be taken upon itself by West Virginia.

The November convention doubtless regarded the provision proposed by Virginia as an attempted invasion of the sovereign rights of the new State an impertinent intrusion into a matter which was peculiarly one of domestic concern to her as to which Virginia could not decently dictate. There is nothing in this record to warrant the suggestion that the Wheeling ordinance was ever before Congress or known to that body when it passed the act admitting West Virginia into the Union. On looking to the act itself, we find that it refers to the constitution framed by the convention which assembled on the 26th of November, 1861, and to the act of the Virginia legislature of May 13, 1862, giving consent to the erection of the new State, but it nowhere

refers to the convention which assembled in August or to the ordinance passed by that convention.

We have seen that the consent of Virginia was given to the erection of the new State "according to the boundaries and under the provisions set forth in the constitution for the State of West Virginia * * * proposed by the convention which assembled in Wheeling on the 26th day of November, 1861."

We have seen that the convention which framed the constitution for West Virginia makes no reference whatever to the convention of August or to the ordinance framed by that convention, and although it deals with the matter of West Virginia's equitable proportion of the public debt of Virginia, it does not refer to the provision proposed for the same matter by the ninth section of the ordinance. Upon what ground, then, we ask, is it contended that the provisions of that ordinance ever came to the knowledge and received the consideration of Congress, and that Congress admitted West Virginia into the Union subject to a compact between Virginia and West Virginia, which compact embraced the provisions of the ordinance?

The act of Congress admitting West Virginia expressly declares that she is admitted "on an equal footing with the original States in all respects whatever."

The constitutions of the several original States defined their rights, powers, and duties. None of them came into being as members of the Union with any restriction imposed upon them as to their right to determine how and in what manner their domestic concerns should be managed. Yet the claim here asserted is that West Virginia was admitted into the Union shorn of any right or discretion to determine how her proportion of this congenital debt should be ascertained.

We believe that we have shown that the evidence relied on by West Virginia is altogether insufficient to establish any compact or agreement whatever formed between her and

Virginia at the period of her creation; that the Wheeling ordinance, and especially the ninth section thereof, was not recognized by the convention that framed the constitution for West Virginia in November, 1861, and did not enter in spirit or substance into that constitution; that it was not known to or considered by the Congress of the United States when it passed the act admitting West Virginia into the Union; that there was no special agreement or compact entered into between Virginia and West Virginia providing a method for ascertaining the contributive proportion to be borne by West Virginia of the public debt of Virginia, and that therefore that proper portion of this public debt to be borne by West Virginia rests alone upon the recognized doctrines of international law, and that no exception has been shown to have existed which takes her case out of the operation of that law.

The act of the Virginia legislature giving consent to the creation of the new State within its jurisdiction did not regard the Wheeling ordinance, and the consent was not given on the condition, expressed or implied, that the ordinance or any of its provisions should form a compact between the States.

The act was passed on the 10th of May, 1862, and is in part as follows:

> "*Be it enacted by the General Assembly*, That the consent of the legislature of Virginia be, and the same is hereby given, to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of * * * according to the boundaries *and under the provisions* set forth in the constitution for the said State of *West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November*, 1861," &c.

The consent, then, was given, not under the provisions of the ordinance adopted by the convention which assembled at Wheeling in August, 1861, but under the provisions of the constitution for the State of West Virginia proposed by the convention which assembled at Wheeling on the 26th day of November, 1861.

Why was this unusual precision of language used to describe the exact conditions under which that consent was given? Not content with stating that the consent was given to the erection of a State "under the provision of the *constitution*," they proceed further to identify that constitution as the one proposed by a convention which assembled in November, and not by a convention which had assembled in the same place in the previous August.

The object really appears to have been to exclude the notion, now insisted on, that the ordinance framed by the convention which assembled in August exercised any influence or control whatever on the action of the legislature in giving its consent.

It certainly tends to exclude that notion that the legislature expressly declared that the consent was given to the State which was to be under the provisions of a constitution which was before it, and not under the provisions of the Wheeling ordinance, which was not mentioned or referred to in the act.

How, then, can it be insisted, as it is insisted in behalf of West Virginia, that this act of the Virginia legislature was a ratification of the ordinance?

Mr. Carlisle (1 May's Comp., p. 386) says in his carefully prepared brief:

> "We insist that the compact is binding as a whole or it is not binding at all, and that the act of the Virginia legislature, passed May 13th, 1862, while it was not necessary to the validity of the compact, constituted a ratification of it by that body."

We utterly deny that there was any compact or agreement whatever between Virginia and West Virginia, and that the whole notion is a creation of the imagination of counsel—necessary, it may be, to the completeness of the kaleidoscopic dream which in its varying forms has been projected here as a defense to the bill.

Mr. Justice Story, in his Commentaries on the Constitution, section 1405, says:

> "Thus, where a State is admitted into the Union notoriously upon a compact made between it and the State of which it previously composed a part, there the act of Congress admitting such State into the Union is an implied consent to the terms of the compact. This was true as to the compact between Virginia and Kentucky upon the admission of the latter into the Union, and the like rule will apply to other States, such as Maine, more recently admitted into the Union."

The compact between Virginia and Kentucky was notorious because it was incorporated into the constitution of Kentucky, but the ninth section of the Wheeling ordinance was not incorporated into the constitution of West Virginia, but rather, as we have seen, was repudiated and rejected by the convention that framed that constitution. Where, then, shall we look to learn its terms and conditions? It is now insisted that the ninth section was a proposition submitted by Virginia to West Virginia as a condition in which alone Virginia would consent to the erection of the new State.

Mr. Carlisle's construction of the several transactions is thus stated:

> "The convention proposed that a new State might be formed, to be called the State of Kanawha, to include certain counties, and that the new State should assume a just proportion of the public debt of Virginia as it existed on the 1st day of January, 1861, to be ascertained, as stated in the ordinance, by charging to the new State all the money expended

within her limits—within the limits of that territory—since any part of the debt was contracted, and with her just proportion of the ordinary expenses during the same time, and crediting the new State with all money that has been paid in from that territory during the same period. That was Virginia's proposition to the new State. Of course, there was no State of Kanawha at that time, and therefore there was no second party to the proposed contract; but subsequently the people within that territory assembled in a sovereignty convention, and then, for the first time they had a right, and the power, to consent or dissent from the proposition that Virginia had made. It was still open; it had not been withdrawn; and the new State accepted it *with these additions;* that the amount of the debt should be ascertained by the legislature of the new State as soon as practicable, and that it should establish a sinking fund sufficient to provide for the payment of the interest, and the redemption of the principal within thirty-four years."

1 May's Comp., page 357.

This is a full, clear statement of the compact. But, pray, by what process of reasoning and by what rules of construction is the provision made in the eighth article of the constitution made *in addition* to the ninth section of the ordinance?

We have shown, we think, that the two provisions are repugnant to each other; that the provision made in the constitution was a distinct repudiation and rejection of the provision made in the ordinance; that it was a substitute for it, and was made final and conclusive by being embodied in the fundamental law of the State.

West Virginia at no time and in no form ever accepted the proposition made to it by Virginia through the Wheeling ordinance. The constitution of West Virginia was the final word spoken on the subject, and it nowhere speaks or refers to the proposition contained in the ordinance, but ignores it save in so far as it adopted a wholly different and

conflicting provision as to the subject-matter of the ordinance.

An act of legislature repealing a previous enactment may in a loose and very inaccurate sense be said to be an *addition* to the previous act. It refers in express terms to the previous act, or else in general terms by repealing "all acts inconsistent with this act." It recognizes that there are or may be acts having provisions inconsistent with this act. But here it is apparent, and indeed admitted, that while the ordinance proposes a method for ascertaining a "just proportion of the public debt," that the method proposed is unfit and inadequate for such ascertainment, because there is no relation between the amount of such debt and the method proposed for ascertaining a proportion of it, as counsel for West Virginia insist "that the amount of the debt is not a factor to be taken into consideration in ascertaining West Virginia's just proportion of it." So it is manifest that the method proposed is inconsistent with and repugnant to the expressed object and purpose of the ninth section of the ordinance.

The eighth article of the constitution of West Virginia contains no such vicious method of ascertainment. Its provisions are altogether inconsistent with it. How, then, can the ninth section of the ordinance and the eighth article of the constitution be read together, and how can the method proposed by the ordinance be "added" to the provision of the constitution? As already shown, the suggestion made by this court in its opinion on the demurrer to the bill was but the indication of a view that on a demurrer, where every presumption is to be taken against the demurrant which is warranted by the case stated in the bill, that for all that appeared on the face of the bill it was not impossible that the language used in the constitution had reference to the method proposed in the ordinance. But it cannot be seriously contended here on the final hearing that the opinion of the court on the demurrer was intended to adjudicate and

determine any matter of fact involved in the issue on the merits of the case.

The ordinance providing for the creation of the new State was not necessary or material to the creation of that State. The consent of Virginia and the act of Congress were all that was needed, and had there been no ordinance at all the validity of the act of Congress would be beyond question in the courts. When the State was created and admitted into the Union the ordinance became exhausted and at an end.

The point here is whether the ninth section of that ordinance, which assumed to prescribe to the new State the method by which its liabilities should be ascertained and provided for after the State was clothed with sovereignty, was not vain and futile because of an attempted limitation on the sovereignty of the State and an invasion of her domestic concerns.

Summary of the points herein made in support of the argument that the plan or method for ascertaining West Virginia's proper proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861, *indicated in the International Law doctrine, as recognized in the case of Hartman vs. Greenhow,* 102 *U. S.,* 672, *is the only plan that can be adopted, and that the plan proposed by the ninth section of the "Wheeling Ordinance" is now shown to be unjust and impracticable.*

(1.) The aggregate amount of the public debt as of January 1, 1861, is ascertained to be $33,897,073.82.

This is charged in the bill and admitted in the answer, and now found by the special master in paragraph of his report.

(2.) The government of the "Restored State of Virginia" was set up in June, 1861, and gave its consent to the erection of the new State of West Virginia out of part of the territory of Virginia. The Restored State of Virginia was

recognized by the political departments of the United States as the lawful State of Virginia, and as such was represented in the Congress of the United States.

(3.) Upon the partition of the territory of Virginia and the erection of the State of West Virginia upon one of those parts, that new State, under the doctrines of international law, became liable for an equitable and proper proportion of the debt of the parent State on the basis of territory and population, unless some other method of fixing such proportion was provided by *a special agreement between the two States.*

(4.) The burden of proof lies upon the State claiming under such *special agreement* to prove the same by adequate evidence, and such evidence must be the same that would be required in a like case between private parties.

(5.) If such special agreement consisted of a proposition made by Virginia to West Virginia, then, before such agreement could be formed, it must appear that West Virginia accepted the terms proposed, without addition thereto or subtraction therefrom, but absolutely and unconditionally. If one term of such proposal was omitted, or other terms added, that was a rejection and not an acceptance of the proposal.

(6.) If the ninth section of the "Wheeling Ordinance" is relied on as the proposal, and the eighth section of the eighth article of the constitution of West Virginia is relied on as the acceptance of the proposal, then it is manifest from a comparison of the two that West Virginia did not accept such proposal in the terms in which it was made, but rejected the same.

(7.) The averment by West Virginia that the language employed in the eighth article of the constitution—"and the legislature shall ascertain the same"—meant that the legislature should ascertain it by the method proposed by the ordinance, finds no support from anything that appears in this record, and is not warranted by the character of the transaction, the relation of the parties, or by the inherent

nature of the method proposed by the ordinance, because—

(8.) The method proposed by the ordinance is now admitted by counsel for West Virginia and is found as a fact by the special master to bear no relation whatever to the amount of the public debt, and is inadequate and incapable of employment in the ascertainment of any proportion whatever of such debt.

(9.) That the method proposed by the ninth section of the ordinance for ascertaining West Virginia's proportion of the public debt was not a term proposed by Virginia, upon the acceptance of which she would consent to the creation of the new State. It was not a condition precedent or subsequent to the creation of such new State, and, in both its *form* and its *subject-matter*, could not have been intended, or if intended could not have been allowed, as a reasonable and proper provision in an ordinance adopted by one State looking to the creation of a new State within its territory.

(10.) That the act of the legislature of Virginia of February 13, 1862, giving its consent to the erection of the new State, cannot be construed as basing such consent upon the ninth section of the ordinance, because, in express terms, it bases it upon the provision of the *constitution*, and does it in such terms as to exclude the notion that it contemplated the action of any other convention than the November convention that framed the constitution.

(11.) That the convention that framed the constitution did not regard the ninth section of the Wheeling ordinance as controlling its action to any extent appears from the fact that it changed the name of the State from that fixed by the prior convention and prescribed wholly different terms and methods for ascertaining West Virginia's proportion of the debt from that proposed by the ordinance.

(12.) That the Congress of the United States, before it admitted West Virginia into the Union, inquired, through certain of its members, in open session, as to what provision had been made for the payment of the public debt, and not

until the assurance had been given that such provision had been made by its *constitution* did it admit the State. It cannot be supposed that Congress would have admitted it had it appeared that the only provision for meeting West Virginia's proper proportion of the debt was made in the ninth section of the ordinance, which, it is now admitted, bears no relation whatever to the amount of that debt.

These considerations, I confidently submit, make it impossible for this court to hold that the method proposed by the ninth section of the ordinance can be employed to ascertain the proportion of the public debt proper to be borne by West Virginia. The only other method practicable for this purpose is that indicated by the well-established doctrine of international law.

HOLMES CONRAD,
Counsel for the Bondholding Creditors of Virginia.

SEPTEMBER 5, 1910.

In the Supreme Court of the United States.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

No. 3, Original. October Term, 1910.

NOTES OF ARGUMENT OF COUNSEL FOR COMPLAINANT.

PREFATORY NOTE.

EXPLANATORY OF ARRANGEMENT OF THE RECORD AND OF REFERENCES MADE IN THE ARGUMENT.

The principal references in the argument of the case will be to—

1. The large volume of exhibits and evidence, returned by the Master with his report, entitled "Record."

This will be referred to by pages, as follows, "R. 20," "R. 55," etc.

The tabulated statements or schedules which constitute a valuable part of that volume, and embody in a condensed form the most important data in the case, have been, for convenience, also printed and bound together in a separate volume, where they will be found arranged for ready reference according to the paging and order in which they appear in the larger volume, and can be readily examined accordingly.

These schedules are designated "Plaintiff's and Defendant's Exhibit" "A-1," "B-1," etc.; or "Defendant's Exhibit" "D-1;" or Plaintiff's Exhibit" "E-3," etc. The great advantage of the method which, under the direction of the Master, was adopted in making up all of the "Joint Exhibits," and some of the more important of "Plaintiff's Exhibits," and of "Defendant's Exhibits," comes from the fact that in those exhibits, so certified by the accountants for both parties, the *figures* stated are *agreed* figures,—the only question left open being as to the proper or legal application or use to be made of those agreed amounts in making up the respective accounts to which they relate.

These tabulated statements present in concrete form the claims of the opposing parties, and contain the very gist of the case.

It is important therefore to an intelligent understanding of the numerous questions presented, to clearly understand the method adopted by the Master for presenting the claims of the parties, respectively, and the evidence in support thereof. A clear appre-

hension of this method can be had from a preliminary examination of the "Record," and the exhibits and schedules referred to, together with the master's report.

2. The Statutes, and extracts from Ordinances, and Constitutions of the two States, most material to the questions in the cause, have been compiled under the direction of the master in a separate volume, designated as "Appendix to the Record." This will be referred to as "App. p. 12, 26," etc.

3. West Virginia has caused two volumes to be compiled, printed and filed in the clerk's office of the Court, containing most of the record of the case down to the appointment of the Special Master; including also the arguments of counsel on the general hearings in this Court, and some papers and documents not a part of the record. The first volume of this compilation was edited by the Hon. Clarke W. May, the late attorney general of West Virginia; the second volume by Hon. W. G. Conley, the present attorney general of that State.

When for convenience this compilation is referred to it will be designated, "West Virginia's Compilation, Vol. 1," etc.

In the Supreme Court of the United States.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

No. 3, Original. October Term, 1910.

NOTES OF ARGUMENT OF COUNSEL FOR COMPLAINANT.

PRELIMINARY STATEMENT.

This suit is a result of the dismemberment of the Commonwealth of Virginia and the formation of the State of West Virginia out of her territory.

It is instituted for the purpose of having an accounting with West Virginia, and determining her equitable share of the indebtedness of the undivided Commonwealth.

That indebtedness,—independently of the bonds belonging to the sinking fund and the literary fund, held by the corporations known as the Commissioners of the Sinking Fund and the President and Directors of the Literary fund,—amounted to $33,897,073.82 on the 31st of December, 1860; of which $32,919,863.93 were principal, and $977,209.89 were accrued interest. The correctness of these figures is conceded by West Virginia.—See Master's Report, pages 1, 2, 3 and 29.

The specific relief sought by Virginia is to have West Virginia's equitable proportion of this common indebtedness fairly ascertained, and to secure the payment of the same by that State.

This large indebtedness—an enormous liability, having reference to the resources of the Commonwealth at the time it was contracted—came upon her with added force after the close of a long and disastrous war; but notwithstanding her impoverishment Virginia has, down to the present time, paid more than thirty-eight millions of dollars in interest, and has retired a considerable amount of the principal of the original debt, in addition to large payments made upon the portion of the debt, payment of which she has assumed and for which she has given er obligations. And yet there are some twenty-five millions of dollars of obligations, issued by Virginia as she exists to-day, outstanding and unpaid, upon which the interest is regularly met by the Commonwealth. So that Virginia has paid off and retired, or assumed and issued her own bonds for, over seventy-four millions of dollars, principal and interest, down to the present year, including the bonds which she has redeemed since 1865.

While the Commonwealth has made this large contribution to the payment of the principal and interest of the common debt, since the formation of the new State,—much of it made during the decades following the Civil War, at a painful sacrifice, from the scant means of an impoverished people,—West Virginia has not paid one dollar upon that common indebtedness, but has refused to pay, and denied her liability to pay, any part of the same. See Resolutions of West Virginia Legislature denying any liability for, and refusing to negotiate in reference to, the Virginia Debt.—App. 247, 248.

There is another fact which it is proper to call to mind in this connection:

The bulk of this large common debt was contracted with the sanction and by the votes of the representatives in the General Assembly of Virginia from the counties now constituting the State of West Virginia,—a large part of it having been actually put upon Virginia by the votes of those representatives over the votes

of a majority of the representatives of the counties constituting the Virginia of to-day; and but a small part of that indebtedness would have been contracted had the representatives from West Virginia counties in the General Assembly of Virginia opposed and voted against the Acts by virtue of which the debt was created.

These pregnant facts are specifically alleged in the complainant's bill, and are not denied or questioned in the defendant's answer.—See Paragraph III of the Bill, R. 4; and Paragraph III of the Defendant's Answer, R. 144.

It is also true that more than seven-eighths of the indebtedness of Virginia at the time of the formation of West Virginia was represented by equivalent sums expended on works of internal improvement, which were either designed, begun, and built for the purpose of penetrating and developing West Virginia territory, or are to-day parts of railway systems and lines of communication which serve the territory and people of West Virginia, and afford large regions of that State their best access to the Atlantic seaboard and to the markets of the world.—See Appendix I to this Note of Argument.

The foregoing statement of facts is made here, because they have an important bearing upon the broad equities of the case, and entitle Virginia to fair and just consideration in the application of rules of construction to the statutes, ordinances and provisions of constitutions which are relied upon as determining the rights and obligations of the parties.

They are tremendous facts, and have a mighty bearing upon questions which go to the very right of the cause.

This suit is brought by Virginia for her own protection and relief; and yet, to the extent that it shall result in her exoneration, it will inure to the benefit of the common creditors who have deposited their bonds in her keeping.

She actually to-day holds every bond which was issued by the Commonwealth prior to the formation of West Virginia, which is known to be in existence, and she also holds more than nine-tenths of the certificates which she issued to the common creditors of the two States, who confided those bonds to her keeping.—R. 102.

So that Virginia, and Virginia alone, has, and represents here every substantial right and interest, adverse to the defendant, in any way connected with the unsettled debt of the undivided State, or directly or indirectly involved in this suit.

Such are some of the more important facts which underlie this suit, and such generally are the relations of Virginia to, and her vital interests in, the litigation.

ARGUMENT.

There can be no question, as a principle of public law, public justice and public right, that, on the 20th day of June, 1863, when West Virginia became one of the States of the American Union, the public debt of Virginia, then existing, constituted, independently of any stipulation between Virginia and the new State, an equitable and a moral claim against the people and the property, both of West Virginia and Virginia; and that, as has been decided by the Supreme Court of Virginia in more than one case, and has been held by this court, both States, and the people of both States, were bound for the payment of those obligations.

Higginbotham v. *The Commonwealth*, 25 Gratt., 627;
Greenhow v. *Vashon*, 81 Va., 336;
Hartman v. *Greenhow*, 136 U. S., 672.

Independently of any convention between the two States, according to recognized authorities, the debt should have been ratably apportioned between the two States.

The entire debt of the Commonwealth was created in carrying out what was known as her "Internal Improvement Policy."

The history of that policy of Virginia, from its inception nearly a century ago until 1861 when it was rudely interrupted by war and revolution, will show that the enormous debt incurred by Virginia in carrying it out, was incurred mainly upon the expectation of the return which would reasonably come to the State and her people from the *prospective* enhancement of the values of real estate which would follow the development of the regions which those works of internal improvement, built in whole or in part by the money represented by the State debt, would create and stimulate.

That these expectations have been largely realized, though not always precisely, perhaps, in the way anticipated, is impressively shown by the remarkable increase of the assessed values of the real and personal property in the two States, and particularly in West Virginia, down to 1908, the latest year for which those facts are established in the cause.

As will be seen from Plaintiff's Exhibit E-3, R. 651, which is made up from the official records of the two States, the aggregate of the assessed values of the real estate, personal, and railroad property in West Virginia were

For 1867 (the first year for which the official figures could be obtained).....$126,060,743.00
For 1908 ..... 937,232,718.54

An increase of $811,171,975.54,
Or 643 per cent!!!

The assessed values of taxable property in Virginia for the same period advanced from.....$354,848,482.69, in 1867,
To ..... 661,796,631.00, in 1908,

An increase of.....$306,948,148.31,
Or about 84 per cent.

While this enormous difference in the increment of the assessed values of taxable property may doubtless be, in part, accounted for by the different standards of valuation adopted in the two States, by no means all of it is ascribable to that circumstance; and the facts and figures shown by the exhibit just referred to have an influential bearing upon the essential equity of the plaintiff's claim that to determine fairly the portion of the burden of the common debt which, as a matter of justice, should be borne by West Virginia, account should be taken of the great enhancement of values which have come to the territory which the internal improvements referred to were designed to develope and have in large measure created. The debt was contracted far

more in reliance upon future and prospective values, than upon the values existing at the date of its creation.

There were certain enactments and certain conventional agreements of the restored government of Virginia, at Wheeling, and the new State of West Virginia, which have to be considered in determining what the respective rights and liabilities of the parties are in the premises.

The first of these, was the so-called "Wheeling Ordinance," an ordinance adopted on the 20th day of August, 1861, by what purported to be a convention of the people of Virginia, "to provide for the formation of a new State out of a portion of the territory of this State."—(Appendix to the Record, pp. 119 to 122, inclusive).

The ninth section of that ordinance dealt with the debt and provided—

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period."

That ordinance purported to be an enactment of Virginia alone. It prescribed, *upon its face*, an arbitrary and what would seem to be an inequitable basis of settlement.

In so far as it provided for the assumption by the new State of a "just proportion" of the debt of the Commonwealth, its language was free from objection. But when it came to indicate the manner in which that proportion should be ascertained, its terms were not only artificial, but *on their face*, inequitable.

And yet the dominant purpose of the enactment, expressed in the clearest terms, was to require the new State to assume a "just proportion" of the public debt of the Commonwealth prior to the first of January, 1861. Upon elementary principles of con-

struction this will be taken, certainly by a court of equity, to be its controlling purpose; and that intendment will not be suffered to be defeated by such a construction of the language of the ordinance as will lead to a result inconsistent with it, when that language can be sensibly, reasonably, and fairly construed and applied so as to operate in harmony with that expressed paramount purpose.

Fortunately, in the interest of justice, that was not the only enactment upon the subject.

There was a later, a more significant, and a more effective enactment by the legislature of the restored government of Virginia, accepting the provisions tendered by West Virginia, resulting in a compact between the two States, and creating a contractual relation governing both Commonwealths in reference to the settlement of their common debt.

These later enactments of the two States were—

First, that of West Virginia, embodied in the eighth section of the eighth article of the first Constitution of that State (Appendix to the Record, p. 125), which is as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

And, second, the act of the legislature of the restored government of Virginia, at Wheeling, passed May 13, 1862, giving the consent of the legislature of Virginia "to the formation and erection of the State of West Virginia within the jurisdiction of this State * * * * * under the provisions set forth in the constitution for the said State of West Virginia and schedule thereto annexed."—Appendix to the Record, p. 125.

Under section 3 of Article IV of the Constitution of the

United States the new State of West Virginia could not be formed without the consent of the legislature of Virginia.

That consent was given in this instance upon the terms, and in accordance with the provisions, set forth in the constitution adopted for the government of the new State, among the more important of which were the provisions and stipulations set forth in section 8 of Article VIII of that instrument, which required that the new State should assume "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first of January in the year one thousand eight hundred and sixty-one"; and that "the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and to redeem the principal within thirty-four years."

This proposal of the new Commonwealth, thus clearly expressed in its constitution, submitted to the legislature of Virginia and accepted by that legislature as one of the terms and conditions upon which it gave its consent to the partition of her territory and the erection of a new State out of that territory, and sanctioned by Congress, created a contractual relation between the old State and the new—a compact between them, which absolutely determined their rights, and which, whenever the provisions of the antecedent Wheeling ordinance shall come in conflict with the terms of such compact, shall prevail over the terms of that ordinance.

Now the insistence of Virginia has been, and is, that West Virginia should be charged with an equitable proportion of the debt, to be ascertained under the Wheeling Ordinance construed so as not to defeat the expressed controlling purpose of its enactment, and qualified and ruled by the provisions of Article VIII of the West Virginia Constitution, upon which the consent of the Legislature of Virginia and of the Congress of the United States to the formation of the new State, was predicated.

Agreeably to the decision of this court in its opinion, delivered by the late Chief Justice (R. 136), the view of Virginia is, and has been, that the Ordinance and the provisions of the West Virginia

Constitution should be read as being *in pari materia;* but that the constitutional provision, being the latest, must prevail, if, and whenever there is any conflict between them.

As a logical and inevitable consequence from this, the claim of Virginia was, and is, that, if the language of the Wheeling Ordinance is fairly and reasonably susceptible of such a construction as will, when fairly applied to the facts of the case, lead to an equitable result, and place upon West Virginia an equitable proportion of the debt, such construction should be given to that Ordinance; and that, if the language of the Ordinance is not reasonably and fairly susceptible of such a construction, then the Ordinance must be discarded, and the mandate of the West Virginia Constitution followed. And that, in any event, the provisions of that Constitution will govern in placing a contractual obligation upon West Virginia to pay an equitable portion of the common debt of the undivided State, and to pay interest upon the same from the date when that express contractual obligation accrued, until it shall have been discharged.

But the claim of Virginia was, and is, farther, that the provisions of the Wheeling Ordinance—fairly, justly and sensibly construed, and applied, according to its manifest purpose—places upon West Virginia a just and equitable proportion of the debt; *and that West Virginia cannot be heard to repudiate this result of her own express covenant and promise.*

On the other hand, West Virginia has insisted, and still contends, that there is no obligation upon that State to pay any part of the Virginia debt; but that, if there is any liability whatever upon West Virginia, it is a liability for a settlement and accounting which must be made under a construction of the language of the Ordinance, which would absolutely defeat its declared purpose, and, instead of placing a just proportion, or any proportion, of the debt upon West Virginia, would actually, as was contended for West Virginia, bring Virginia in debt to West Virginia.

With the issues thus made up, this court, in order to place in its possession the data necessary to enable it to intelligently and fairly decide the case, referred the cause to Special Master Charles

E. Littlefield, by its decree of reference, entered on the 4th of May, 1908, and directed the Master to take and report to the court seven separate accounts set forth in seven paragraphs of the decree.—R. 173, 174, 175 and 207.

After considering a great mass of testimony, statements, and accounts prepared by the accomplished expert accountants employed by the parties, respectively, and the elaborate arguments of counsel, and after a laborious and painstaking investigation and consideration of the case, the Master, on the 17th of March last, filed his report, in which he returns his findings upon each of the seven inquiries submitted to him, and with great fairness and great ability presents the grounds upon which those findings are based.

The cause is now submitted for final adjudication.

It comes before the court upon the pleadings and papers formerly considered by the court, upon the decisions and decrees heretofore rendered in the cause, and upon the Master's report, together with the evidence returned therewith and referred to therein, and upon the exceptions filed by the parties to that report.

Your Honors must have been already impressed with the fact that it is a cause of as much complexity as any which has ever come before you for decision, and with the novelty and difficulty of some of the problems which it presents.

Much of what appears at the threshold to be complex will disappear upon a careful examination of the bill and answer, the 9th section of the Wheeling Ordinance, the 8th section of Article VIII of West Virginia's Constitution of 1862-3, the decisions and decrees heretofore rendered in the cause, and the tabulated statements or accounts, the figures in which have, in almost every instance, been assented to by both parties.

Still a painstaking consideration of the Master's report, and of the exhibits and evidence referred to therein and in the arguments of counsel, will be necessary to any fair understanding of the issues in the cause, and to their decision according to the very right of the case.

We have, therefore, to crave the patient and indulgent attention of the court to a somewhat detailed and tedious discussion of the facts, figures, and principles upon which a righteous decision of the cause depends.

The chief points of difference are sharply presented by such of the exceptions to the Master's report as are specifically relied upon by the parties respectively, and by the "Joint Exhibits" or accounts which exhibit their opposing claims in contrast.

Upon the great majority of these the Master's findings are, and are shown by him to be, so plainly right that further discussion of them is rendered needless.

After full consideration, however, the counsel for Virginia deem it to be their duty, upon the case as it is presented, to earnestly urge objections to a few of the Master's conclusions, in reaching which we are persuaded that he is in manifest error. But it is our purpose to urge no objection to his report which rests upon a proposition which can be fairly regarded as debatable.

I.

The first paragraph of the decree directed the Master to ascertain and report to the court:

> "1. The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness."

In the view which we take of this branch of the case and for the principal purposes of our argument it will be only necessary to consider the amount of the public debt of the Commonwealth outstanding on the 31st of December, 1860, in the hands of the general public.

Fortunately there is no controversy as to the amount of that indebtedness then so outstanding.

As ascertained by the Master, the amount of that indebtedness is, as fixed by the records of the Commonwealth, as follows:

Aggregate amount of old Virginia debt in the hands of the general public January 1, 1861:

Amount bearing 6 per cent. interest	$30,842,659.43
Amount bearing 5 per cent. interest	2,077,204.50
Interest on 6 per cent. outstanding debt from July 1st to Dec. 31st, 1860	925,279.78
Interest on 5 per cent. outstanding debt from July 1st to Dec. 31st, 1860	51,930.11
Total outstanding indebtedness	$33,897,073.82

See "Plaintiff's and Defendant's Joint Exhibit A-1," R. 215, and Master's Report, pp. 1, 2 and 29.

The authority of law by which, the purposes for which, that indebtedness was contracted, and the dates and nature of the bonds or evidences thereof, are shown by the references and entries upon "Plaintiff's and Defendant's Joint Exhibit A-1;" by the copies of the bonds and certificates of indebtedness issued for much the greater part thereof—"Plaintiff's Exhibit A-2," R. 219 to 285; by the abstract of the statutes in reference to the State debt and the appropriation of the avails thereof to works of internal improvement—"Plaintiff's General Exhibit I," R. 900 to 988; and by other evidence in the case; none of which are any longer matters of controversy.

The only controverted questions which have arisen under this branch of the case have been in respect to the inclusion or exclusion of the sinking fund and the literary fund from the statement of the debt.

As to the sinking fund, frankness compels us to say that we are convinced that the finding of the Master in reference thereto is right.

As to the literary fund, we are content to rely upon the complainant's first exception to the Master's report.

II.

The second paragraph of the decree required the ascertainment of—

> "2. The extent and assessed valuation of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves, separately."

The figures as to the area and assessed valuation of the real estate embraced in the territory of the two States, respectively, and as to the population thereof, with and without slaves, having been taken from authentic public records of the United States and of Virginia, incorporated in "Plaintiff's and Defendant's Joint Exhibit B-1," the agreed statement prepared by the expert accountants of the parties,—those figures have been adopted by the Master and made the basis of his findings under this paragraph of the decree.

We are unable to conjecture how these figures, thus authoritatively established and adopted, or the results deducible therefrom, can now be brought in question. R. 366, 367.

The figures furnished for West Virginia in "Supplemental Exhibit 7," and now relied upon by that State would be more advantageous to Virginia than those adopted by the Master, for the reason that the assessed valuation of the real estate embraced in the State of West Virginia, as given by that exhibit, is larger and the assessed valuation of the territory of Virginia is less than that adopted by the Master, taken from the assessments of Virginia. The figures submitted by West Virginia would make her share of the debt, on the basis of assessed valuation of real estate in the two States, $154,166.09 more than she would owe under the master's findings. But we are content to accept the values adopted by the Master, because we are satisfied that they are correct.

The Master's findings under this head are as follows:

The Extent and Assessed Valuation of the Territory of Virginia and of West Virginia June 20th, 1863, and the Population Thereof, with and without Slaves, Separately.

PARAGRAPH II OF DECREE.

1. EXTENT:

Land Area

Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	Square Miles =	37.3686%
Total	64,284	Square Miles =	100%

Total Area:

Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	Square Miles =	36.1843%
Total	66,797	Square Miles =	100%

2. ASSESSED VALUATION:

Real Estate:

Virginia	$296,085,460.31	=	78.2188%
West Virginia	82,449,252.04	=	21.7812%
Total	$378,534,712.35	=	100%

3. POPULATION:

Estimated—With Slaves:

Virginia	1,221,319	=	75.4855%
West Virginia	396,633	=	24.5145%
Total	1,617,952	=	100%

Estimated—Without Slaves:

Virginia	748,171	=	66.4769%
West Virginia	377,289	=	33.5231%
Total	1,125,460	=	100%

III.

The third account directed by the decree is one ascertaining—

> "3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

This is one of the accounts which is called for under section 9 of the Wheeling Ordinance, which requires that in order to ascertain the proportion of the debt which the new State shall take upon itself, that State shall be charged with "all State expenditures within the limits thereof * * * * * since any part of said debt was contracted."

The divergent contentions of the parties are shown by the tabulated statements embodied in "Plaintiff's and Defendant's Joint Exhibit C-1," pp. 1 to 6, R. 371-377.

The total of said State expenditures in the territory constituting West Virginia, as shown by plaintiff's statements of this account (R. 371) was	$5,639,302.66
As shown by defendants' statements	1,251,288.92
Difference in the two results is	$4,388,013.74

In considering the questions which are presented by the controverted items in the schedules filed under this paragraph, it is important always to bear in mind the precise language of the decree, which, following the terms of the Wheeling Ordinance, directs the ascertainment of:

> "*ALL expenditures* made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, since any part of the debt was contracted."

It is manifest that that language in explicit and comprehensive terms, embraces, without exception or qualification, all expen-

ditures of whatever character or description, and on whatever account, or for whatever purpose, or in whatever manner made, which were made by the Commonwealth of Virginia in any part of the territory now constituting West Virginia, after March 19, 1863, the agreed time at which any part of the debt in question was contracted.

The only questions to be considered, therefore, in determining whether any particular expenditure made during that period should be charged against West Virginia, are: First, Was it made by the Commonwealth? and, Second, Was the money expended in West Virginia?

Now, governed by these plain requirements of the decree, the accountants engaged on behalf of Virginia have embraced in this account all such items of expenditure, and only such items of expenditure, as were made by the Commonwealth within the territory of the new State during the period stated.

To a number of these items of charge counsel for West Virginia make objection, not on the ground that the expenditures they challenge were not made, or were not made in West Virginia territory, but in some instances because of the manner in which the expenditures were made; in others because of the character of the particular expenditure, or the purpose for which it was made; and in other cases, as for instance the expenditures made in West Virginia on the Covington & Ohio Railroad, and upon the Berryville and Charlestown Turnpike, upon the ground that Virginia has, since these several expenditures were made, in some way, by acts or transactions in reference to these subjects, lost her right to embrace those items of expenditure in this account.

As appears from Joint Exhibit "C-1," R. 371, the charges upon this account allowed by the accountants for plaintiff, and excepted to by the defendant, are classified as follows:

Items of Plaintiff's Charges Excepted to by West Virginia:

Expenditures in W. Va. upon railroads.....	$1,316,992.42
Expenditures in W. Va. upon turnpikes.....	430,252.89
Miscellaneous expenditures in W. Va.....	1,154,000.10
*Expenditures in bridges, river improvements, banks owned by joint stock companies, and loan to Town of Bath.....	1,486,768.33
	$4,388,013.74

We will consider these in the order in which they are stated in Exhibit "C-1," and are considered by the Master.

1. The expenditures upon railroads which West Virginia questions, are—

Expenditures on the Covington & Ohio R. R.....	$1,146,460.42
Expenditures on the Winchester & Pot. R. R.....	170,532.00
	$1,316,992.42

(1) The expenditures upon the Covington & Ohio R. R. This item of $1,146,460.42, is allowed by the master.

The Master very clearly shows the propriety of this item of charge, and little if anything need be said in support of his conclusion.

There is no question that those expenditures were made by the Commonwealth "since any part of the debt was created;" nor that they were made "within the territory now constituting the State of West Virginia."

But opposing counsel claim that in some way Virginia has lost her right to have those expenditures charged against West Virginia by reason of the public acts and transactions of Virginia and West Virginia in reference to this railroad. This ob-

NOTE:—The charge under this paragraph for amounts invested in Bank Stocks is withdrawn, as those stocks should be accounted for under Paragraph VII. and have been allowed by the Master under that Paragraph.

jection has been stated so vaguely that we are at a loss to know upon what ground it is based.

The Covington & Ohio Railroad was owned and built by the Commonwealth under the Acts of February 15, 1853; March 13, 1856; March 20, 1858, and February 29, 1860. (Appendix 33, 34.) The work was unfinished at the time of the formation of the State of West Virginia, though over $2,787,000.00 had been then spent upon it.

How West Virginia should account for that property and the expenditures which it represented, was distinctly prescribed by section 9 of the Wheeling Ordinance (App. 119, 122), and was prescribed nowhere else.

After June 20, 1863, West Virginia owned the portion of the Covington & Ohio Railroad in that State as completely as Virginia owned the portion of that road within her limits.

As is shown by the subsequent legislation of the two States, both States were very anxious to secure the completion of that railroad from its intersection with what was then known as the Virginia Central Railroad at Covington, Virginia, to a point on the Ohio river, thus giving a through railroad connection from Richmond, Virginia, through the entire State of West Virginia to the Ohio river, at the mouth of the Big Sandy, or at the mouth of the Great Kanawha, with the right to build to both points.

Both States were, as is shown by that legislation, willing to give to the company which should complete that through line of railway, the right of way and property of each State, respectively, in the parts of the unfinished road located in each State, and the benefit of the large expenditures made in its partial construction. Virginia, though very little of the proposed new railway would be within her limits, made still more liberal concessions to the builders of the through road, in reference to the sale to the new company of the Blue Ridge Railroad wholly within Virginia, and to the sale of the stock of Virginia in the Central R. R. Co., and to the settlement of the indebtedness of the Central R. R. Co. to Virginia.

To effectuate the purposes of the two States, concurrent Acts

were enacted by their respective Legislatures for the incorporation of the Covington & Ohio Railroad Company, passed by Virginia February 26, 1866, (Appendix 35), and by West Virginia March 1, 1866, (Appendix 37), and to authorize the consolidation of the Covington & Ohio Railroad Company with the Virginia Central Railroad Company and other companies, and the formation of the Chesapeake & Ohio Railroad Company for the purpose of completing "a continuous line or lines of railroad from the waters of the Chesapeake to the Ohio river," passed by West Virginia February 26, 1867, (Appendix 40), and by Virginia March 1, 1867, (Appendix 43.)* See also section 9 of Act of Virginia Feb. 26, 1866 (App. 36), and section 9 of Act of West Virginia March 1, 1866 (App. 39.)

It will be seen that the interests which West Virginia had in the building of the proposed railroad were far greater and more vital than those of Virginia.

West Virginia at that time had no railroad within her limits, except the Pennsylvania across the Pan Handle, and the Baltimore & Ohio through the northern portion of that State.

The New river and Kanawha valleys, and the entire southern portion of West Virginia, were without a mile of railroad, and large parts of those sections were inaccessible to the outside world by any practicable line of communication.

The enterprising young State accordingly freely donated all the property rights which she had in the Covington & Ohio Railroad, situated within her limits, to the builders of that railroad, just as the older State, in larger degree, contributed even more generously to the same important object.

The legislation of the two States upon this subject, printed in the Appendix, pp. 35 to 49, will be read in vain to discover any provision which can be so wrested as to be construed to refer in any way to the liability of West Virginia to pay some part of the

*By Act of January 26, 1870, the Legislature of West Virginia amended the charter of the Chesapeake and Ohio R. R. Co., and confirmed the contract made by the commissioners on behalf of the two States with the Virginia Central R. R. Co., under authority already granted by Virginia, by the Act of February 26, 1866 (Appendix p. 35-36) and by West Virginia by Act of March 1, 1866 (App. 37-39 and 48.)

Virginia debt, or to release that State from any part of that liability.

Those concurrent enactments can be construed to do only what they did do, that is, to give the consent of the two States to the establishment of, and by their respective grants to secure, a through line of railway from the waters of the Chesapeake to the banks of the Ohio, and to grant the property rights of each State in and to the portion of the respective railroads situated in each State, to the consolidated company, for that purpose.

The Wheeling Ordinance prescribed the basis on which the proportion of the Virginia debt to be assumed by West Virginia was to be ascertained, and vested in the new State the ownership of the portion of the Covington & Ohio Railroad located in West Virginia, and there is not a line or a syllable of those concurrent Acts of the two States in reference to the Chesapeake & Ohio Railroad, which can be construed to repeal or to modify the provisions of that Ordinance.

It would require a far-off and capricious flight of the imagination to construe the language of those concurrent Acts so as to make them operate to prevent Virginia, when she comes to have a settlement with West Virginia as to the part of the common debt which West Virginia should pay, from insisting that West Virginia should, according to her own agreement, be charged in making up that account with the amount expended upon the Covington & Ohio Railroad within the limits of the new State, if the Wheeling Ordinance is to control to any extent in that accounting.

There is nothing in any of those concurrent Acts of the two States to suggest that either State was conceding anything to the other. Both were conceding a great deal to the Covington & Ohio and to the Chesapeake & Ohio Railroad Companies, and for obvious reasons.

The account of this matter, as claimed by the plaintiff and found by the Master, is distinctly responsive to the decree.

That claimed by the defendant would not satisfy the decree, and cannot be set up without going counter to both the decree and the Ordinance.

(2) The expenditures upon the Winchester & Potomac Railroad in West Virginia.....$170,532.00.

The Master rejected this item of charge—15/27th of it because it was a loan by Virginia to the railroad company, and 12/27ths of it because it was, in his view, an investment made by the State in the shares of the capital stock of this Company.—Master's Rep. 47; Joint Exhibit C-1, p. 2; R. 373.

We cannot be unmindful of the fact that there are circumstances connected with Virginia's dealings with the Winchester & Potomac Railroad Company, which sharply differentiate any charge on account of her expenditures in West Virginia upon that railroad from the other expenditures made by the Commonwealth in building works in West Virginia territory, which were built through internal improvement companies.

We are constrained to admit that the circumstance that Virginia commuted all of her claim against, and interest in, that company under the Act of February 24, 1846 (App. 30, 31), gives West Virginia a strong equity to have that charge eliminated from the account, even though it be true that the transaction was not consummated and Virginia was not paid the commuted price, until after the formation of the new State.

We, therefore, beg leave to withdraw our objection to the disallowance by the Master of this item of Virginia's claim.

We do not, however, at all assent to the reasons upon which, in part, the Master bases his rejection of so much of this item as was represented by the shares of stock which Virginia received therefor.

We will consider those grounds under the next head, when we come to discuss the question presented distinctly, as it is there, free from other complications, in connection with the large expenditures made by the Commonwealth through internal improvement companies, in building roads, turnpikes and bridges, etc., upon West Virginia soil.

(3) *Expenditures made by Virginia in West Virginia territory in the construction of works of internal improvement*

located in West Virginia but built through the agency of joint stock companies.

Passing over a number of items under this paragraph of the decree, as to which the findings of the Master, in so far as they are in favor of the contention of the plaintiff, afford no just ground of objection to the defendant, for the reasons clearly shown by the Master, the only items of charge against West Virginia under that paragraph of the decree, to the disallowance of which we deem it our duty to object, are the items specifically stated in complainant's second exception, as follows:

(1) For Bridges: Expenditures made by Virginia upon bridges in West Virginia territory, built by joint stock companies, owned partly by the Commonwealth—Items 57 to 65, inclusive, of Joint Exhibit C-1, p. 4; R. 375; Special Master's Report, p. 85—aggregating ..... $ 78,412.50

(2) Expenditures made by Virginia in the improvement of the navigation of West Virginia rivers by joint stock companies—Items 66 to 69, inclusive, of Joint Exhibit, C-1, p. 4; R. 375; Special Master's Report, p. 85—aggregating ..... $ 210,500.00

(3) Expenditures made by Virginia upon turnpikes wholly in West Virginia territory, built by joint stock companies:

(a) On Charlestown & Berryville turnpike, in West Virginia—Item No. 6 of Joint Exhibit, C-1, p. 2; R. 373; Special Master's Report, pp. 64, 84 ..... $ 11,932.52

(b) On turnpikes and roads mentioned in Items 70 to 147, inclusive, of Joint Exhibit,

C-1, pp. 4, 5 and 6; R. 375, 376 and 377; Special Master's Report, pp. 78, 79 and 85....	803,555.83	
Total expenditures made by Virginia, through joint stock companies, on turnpikes and roads in West Virginia territory.....	$815,488.35	815,488.35
Total aggregate of items, the disallowance of which is here excepted to		$1,104,400.85

This exception raises one of the most important questions in the case under the Wheeling Ordinance and the provisions of the first Constitution of West Virginia as it involves $1,104,400.85, principal sum, of the amount of the debt to be assigned to West Virginia.

With the utmost deference for the ability, learning, and fairness of the Master, we are convinced that he erred in his rejection of these items of the account against West Virginia.

We believe that there is no question as to the propriety of their being charged against West Virginia under Paragraph III of the Decree and under the language of the Wheeling Ordinance. If we fail to demonstrate this, it will be because of our inability to fairly present to the minds of the court the facts and considerations which should control in the decision of the question.

The principal grounds upon which this objection to the Master's finding is based are concisely stated in the formal exception taken thereto.—See Complainant's Exceptions, pp. 4 and 5.

The material facts as to all of these expenditures are, for the purpose of this inquiry, substantially the same, and the same principles should control in determining the proper disposition to be made of these items, in the accounting.

The money appropriated by the Commonwealth in each instance was unquestionably expended in West Virginia territory; for all of these improvements were physically located in West Virginia counties.

The chief ground relied on for excluding these items from the debit account against West Virginia is, *because of the manner in which the expenditures were made;* that is, because they were not made by the State directly through the hands of her own officers or immediate employees, but were made by the State indirectly through the medium of joint stock companies; that they were not made upon bridges, locks, dams and other improvements in rivers, and upon turnpikes, wholly owned by the State, but upon such works of internal improvement as were only partly owned by the State.

The works and highways upon which these expenditures were made in every instance had their situs in West Virginia, and the State money appropriated to them was expended in West Virginia.

The chief difference between these expenditures and those made directly by the State through its own officers and employees, which are conceded by the defendant to be proper charges under this head, was, that in the one case the State received a certificate of stock in a joint stock company (which stock usually proved valueless), as the representative of the expenditure, while in the other case the State would receive merely a receipt or voucher from her officers as an evidence of the outlay.

In either case the Commonwealth, and West Virginia as her successor, received the benefit of the bridge, improvement of navigation, or turnpike on which the State money had been expended; and it is manifest from the history of these public works that the benefits which it was hoped that the public would derive from their construction generally constituted the chief inducement and consideration both to the public and to private investors.

There can be no question that any expenditure made by Virginia, by her several and independent acts, upon any work of internal improvement, or other object, in West Virginia, during the defined period, is a proper and necessary charge against West Virginia under the terms of the 3rd paragraph of the decree, and under the Wheeling Ordinance.

This is conceded by the counsel for West Virginia.

Now, it is equally clear that any such expenditure made by Virginia in association, or in partnership, with other corporations or individuals, would be also a proper and necessary charge against West Virginia under the decree and Ordinance.

Here, in a number of cases, Virginia, instead of going into an ordinary partnership with her associates in the various enterprises in question, chose to form a limited liability company to do the same thing which could have been effected by an ordinary partnership: for a joint stock company is, in law, and in fact, nothing more than a limited liability company.

In the country from which we so largely derive our institutions and our laws, they are termed "limited liability companies."

How can it be even plausibly contended that, because Virginia, for obvious considerations of convenience and public interest, chose to expend her input in these public improvements and other enterprises in West Virginia territory, through the medium or agency of a limited liability company, such expenditure is any less an expenditure by the State than it would have been had it been made through an unlimited liability partnership?

There is no qualification of the expenditures which are to be charged, such as counsel for West Virginia have had to attempt to make, either in the decree or in the Ordinance. The words "direct" and "indirect" are not found in either decree or Ordinance. No such classification is justified by the language of either the decree or the Ordinance.

Opposing counsel are forced by the stress of their case to interpolate the word "direct" both in the decree, and in the Ordinance, an interpolation which, while deemed necessary for the purposes of their argument, is absolutely unwarranted by the decree or by the Ordinance.

But even if that word were in the decree and Ordinance, it would not justify their contention; for an expenditure such as the State made in the improvement of Coal river, or upon the Huntersville and Parkersburg Road, or upon any one of the turnpikes and roads built partly by State aid, was a *direct* expenditure by the State, though paid, for the purpose of building the road or

other internal improvement, to the treasurer of a corporation having its domicile and situs in West Virginia territory.

It is a conclusive answer to all of these objections to these items of expenditure that the account directed by paragraph 3 of the decree is not limited to such expenditures as were made directly by the State; nor to expenditures made upon bridges, locks, dams, and sluices, and upon turnpikes wholly owned by the State; nor to expenditures for which the State received no return, nominal or otherwise, in the shape of shares of stock. That account is required by the decree to include "*all expenditures* made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

The question considered by the Master, and which he has decided in the negative, is, as stated by him:

"Whether the subscribing and paying for stock in an internal improvement company, whose improvements were located within the limits of West Virginia, was 'an expenditure made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia' etc."? (See Master's Report, p. 47.)

With the utmost deference, that is not an accurate statement of the question presented here.

The exact question is:

Whether the expenditures made by Virginia in works of internal improvement physically located in West Virginia lost their character as State expenditures in that territory, because those works were built by joint stock companies formed by Virginia and individuals and corporations for the purpose of building those very turnpikes, roads, bridges, &c., and the Commonwealth received stock of such companies for the money so expended by her through them upon said works?

The history of the internal improvement system, and of the legislation of Virginia in regard thereto, as shown by the records and statutes of the Commonwealth, significant portions of which are referred to by the Master in his discussion of this subject at pages 47 to 55 of his report, will show, beyond controversy, that the paramount and controlling motive of the Commonwealth in all

these expenditures of money upon works of internal improvement was, not any direct or pecuniary return for the money expended in the shape of dividends or interest thereon, but was the advancement of the local and general interests of the people by the development of the resources of the Commonwealth, and of the facilities and lines of communication between the different sections of the State and the markets of the country.

It was the "public utility" which would be served by the construction of these works of internal improvement which the General Assembly had in mind, and not the return which might be expected in the shape of dividends upon the stock which was issued for these investments.

This will be apparent from reading the extracts from the public records of the Commonwealth, which show the purpose, policy, and motive of Virginia in expending her money on works of internal improvement, built by internal improvement companies, printed with this Note of Argument as Appendix II.

Noticing further one of the grounds chiefly relied upon for the exclusion of these items of expenditure, namely, that the expenditures were "investments" made by the State with a view to realizing some profit from them, we would say: That, while it was true that the hope of ultimate financial gain, or of some profitable return from the investment, was in some instances at least one of the inducements which led Virginia to make those expenditures in works built through the agency of joint stock companies, that was in no instance the dominant or controlling motive.

But, if the hope of ultimate financial gain constitutes any reason for excluding these public expenditures from the debit account against West Virginia, then there are few, if any, of the expenditures, which were made by Virginia in West Virginia counties which would not, by the same token, be excluded upon the same ground.

There were, and in the nature of things there would necessarily be, very few, if any, expenditures made by the State of the character indicated, which were not, or would not be, made in

whole or in part in the hope that they would not prove absolutely unprofitable.

The fact is that nearly the whole of the expenditures admitted by West Virginia to have been properly chargeable under this item, amounting to $1,251,288.92, were expenditures made in part with a view to the direct profits which it was hoped would be realized by the State from them in the shape of tolls or other income from the works thus constructed, as well as the anticipated indirect profits from the development of the territory which those works of internal improvement would serve.

For example, of the expenditures made by Virginia on turnpikes and roads in West Virginia, which are admitted by the defendant, there were expended—

On the Northwestern turnpike	$469,148.53,
And on the Staunton & Parkersburg turnpike	264,043.07,
Or	$733,191.60,

of the total admitted items of $859,050.92.—See Plaintiff's and Defendant's "Joint Exhibit C-1, p. 2," R. 373.

Now it will be found that Virginia actually derived in tolls from these two investments the following sums:

From the Northwestern turnpike	$126,339.89
From the Staunton & Parkersburg turnpike	17,080.71
Or a total of	$143,420.60

See Plaintiff's and Defendant's Joint Exhibit F-1, R. 805.

So we see that, of the two grounds of objection to the allowance of these charges against West Virginia:

(1) that the expenditure may be regarded as an investment made by the State, or,

(2) that anticipated profits or income may have been a motive for the expenditure, neither constitutes any just criterion or ground for either the allowance or rejection of such expenditures.

The fact is, undoubtedly, that every dollar expended by Virginia in works of internal improvement was an "*investment.*"

Another pregnant fact is also unquestionably established by the record in this case, that by far the greater part of the money thus expended was expended in the hope of some direct return from the investment; and that every dollar that was expended was expended with the expectation of some indirect, ulterior, or ultimate return through the improvement and development of the territory in which the several works of internal improvement were constructed.

It is also true beyond a doubt that nearly all of these investments made by the Commonwealth in West Virginia territory, whether made in works wholly owned by the State, or made in works owned by the State in conjunction with other stockholders, proved, so far as dividends or direct earnings were concerned absolutely unprofitable and unremunerative; and that some of the investments made by the State in works wholly owned by the State proved more remunerative than the expenditures made through the agency of joint stock companies in the construction of similar works of internal improement.*

It is a significant fact that the view which is here urged as to the expenditures of the Commonwealth in works of internal improvement constructed in West Virginia territory and as to the classification of such of those expenditures as were made through the media, or agency, of joint stock companies is the view heretofore consistently taken by the representatives of West Virginia most familiar with the subject.

The eminent citizens of that State who constituted the Debt Commission appointed by the Governor of West Virginia pursuant to the resolutions adopted by the Legislature of that State

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NOTE:—It is an important circumstance in this connection that every expenditure made by the State on internal improvements whether built by the State or by joint stock companies, was, by the terms of the Act of February 5, 1816, and he Acts amendatory thereof, made exclusively for the purpose of building such works. Any earning or profit received from any such investment went into the Internal Improvement Fund, to be there used for building other internal improvements. So that the only hope of gain or profit, which actuated Virginia in making all of these expenditures or investmens, was to provide money to build roads, bridges, turnpikes and railroads to which every dollar thus received was dedicated.

See Appendix II, to this note of argument.

February 15th and 20th, 1871, in the elaborate report made by them on the 7th of August, 1871, reviewing the entire subject of West Virginia's liability for a portion of the Virginia debt, found that the expenditures made by Virginia in the construction of turnpikes and bridges, and in the improvement of rivers, built or improved by joint stock companies, were properly chargeable against West Virginia under the Wheeling Ordinance in like manner as were expenditures on roads constructed wholly on the State account.

Accordingly we find that in their report they charge West Virginia with $3,343,929.29 "for amounts expended and invested in her territory," the items of which they state in detail in Statement "F," exhibited as part of their report, which sum and the items of which it consists include large amounts expended in West Virginia through the medium of joint stock companies, as will be seen by an examination of that exhibit.—See Report of West Virginia's Debt Commission, West Virginia's Compilation of the record of *Virginia* v. *West Virginia*, Vol. 1, pages 471, 472, and Statement "F," 479 to 486, filed by the defendant in the clerk's office of this court.

The gentlemen composing that Commission were J. J. Jackson, J. M. Bennett, and A. W. Campbell. Mr. Bennett had been the first auditor of Virginia from 1857 to 1865. Messrs. Campbell and Jackson were active participants in the movement for the formation of the new State of West Virginia. Gen. Jackson was a member of the Wheeling Convention, and Mr. Campbell was one of the leaders throughout the movement for the establishment of the new State. They were doubtless familiar with the inside as well as with the outside of that transaction, and with the true intent and meaning of the Wheeling Ordinance.

There are some very large errors of omission in Statement "F," and patent errors on the face of their report; but still it serves a valuable purpose in showing what was the construction placed upon the Wheeling Ordinance in this regard by these very intelligent representatives of West Virginia in the very earliest stage of

this controversy,—at a time when most of the framers of that Ordinance were still alive.

Two years later, in December, 1873, a Committee of the Senate of West Virginia, of which Mr. J. M. Bennett was the chairman, came to again review the question of West Virginia's liability for the debt of Virginia.

In a carefully considered report, dated December 22, 1873, that committee unanimously adopted the figures above given as to the amount expended by Virginia in West Virginia territory and which they conceded to have been "contributed to the development of the territory of West Virginia."

This last mentioned report is printed as Exhibit No. 3 with the Answer of the Defendant, R. 166, 167, 168, 169.

When, years afterwards, West Virginia was urging the payment of her claim against the United States for the refunding of the direct tax, which was being withheld because the United States held certain bonds of the old State for the payment of which it was claimed that West Virginia was liable, Messrs. Alfred Caldwell, formerly attorney general, and E. W. Wilson, former Governor of West Virginia, in their brief filed before the attorney general of the United States again adopted the construction of the Wheeling Ordinance previously approved by the West Virginia Debt Commission, and by the Finance Committee of the Senate of West Virginia.——See quotation from brief of Messrs. Caldwell and Wilson, printed as Appendix No. III to this Note of Argument.

This construction of the Wheeling Ordinance in respect to the expenditures made by the Commonwealth of Virginia through the agency of joint stock companies in the territory of West Virginia adopted by the representatives, public officials and eminent citizens of West Virginia most familiar with the subject remained unchallenged for more than a generation, until after this suit was instituted, when a new and strange light seems to have dawned upon the representatives of that resourceful State, and for the first time in all the long agitation and discussion of this subject a new, and we respectfully submit, a forced and unnatural, con-

struction is attempted to be placed upon the Wheeling Ordinance, so as to limit the amount for which West Virginia is to be charged on account of expenditures made by Virginia in West Virginia territory, so that the account shall not embrace "ALL EXPENDITURES," but so that it shall include only a portion, and much the smaller portion, of those expenditures.

The decree requires the Master to report ALL expenditures—but the Master distinguishes between expenditures, classifying them as "direct" and "indirect," and construes the decree and the Wheeling Ordinance as referring to expenditures made by the State through its officials, which he classifies as "direct" expenditures and as excluding expenditures made by the State through the agency of joint stock companies, which he classifies as "indirect" expenditures; and he states the following reasons for his finding:

> "To hold these subscriptions thus made for investment to be expenditures by the State 'within the territory' it would be necessary to read into the decree the words 'either directly or indirectly' which I do not feel at liberty to do." Master's R. 62.

The language of the decree and of the Ordinance is explicit, and we agree that the Master was not at liberty to read anything into either; but in order to support the conclusion he has reached he has been obliged to read into the decree the word "direct," and by construction to hold that the court and the Wheeling convention when they used the word "All" meant something less than all; that they meant by "all" expenditures only such as the Master has classified as "direct."

We submit that this construction is not warranted, and that there is no authority for the Master under the language of the decree, which requires a report of ALL expenditures, to classify expenditures as "direct" and "indirect" and allow only such as he classifies as "direct." The effect of the Master's construction is to read out of the decree the word "ALL" and substitute for it the word "direct:" and then to give to that substituted word a narrow meaning not justified by the facts and circumstances of the case.

SUMMARY.

The Master has allowed under this paragraph of the decree as proper charges against West Virginia, items amounting to $2,811,559.98

To this we are convinced that there should, beyond peradventure, be added, for expenditures made by Virginia in bridges, improvement of rivers, turnpikes and roads, through the agency of joint stock companies organized by Virginia for that purpose, the items mentioned in the tabulated statement on pages 28 and 29 of this Note of Argument, aggregating..... 1,104,400.85

Giving a total of State expenditures in West Virginia—the aggregate amount chargeable against West Virginia under Paragraph III of the Decree..... $3,915,960.83

See Master's Report, pp. 47 and 83; R. 399, 401, 433, 459, 478, 488 and 512.

The findings of the Master as to the other items passed upon by him in response to the third paragraph of the decree, and not here specifically objected to by counsel for the complainant, are, we think, in the main shown to be correct upon the face of his report, and by the evidence in the cause, and are accepted on behalf of the complainant.

IV.

The fourth paragraph of the decree directs the ascertainment of—

> "4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

The differences in the computation of the total ordinary expenses of the State government between March 19, 1823, and January 1, 1861, as stated by the Master, and as claimed by the defendant, arise entirely from the difference in the classification of the several items of State expenditures during the prescribed period.

The defendant has so classified the greater part of these expenditures as to exclude them from this account. The Master has treated most of the State expenditures during that period as being ordinary, and has included them.

This inquiry is manifestly predicated upon the language of the Wheeling Ordinance, which provides that the new State shall be charged with "a just proportion of the ordinary expense of the State government since any part of said debt was contracted."—R. 6.

The decision of the issue thus presented turns upon the meaning which those words carry in that connection; and their correct interpretation is necessary to enable us to determine the items of expenditure which go into this account.

The defendant has construed that language most narrowly, and so as to exclude many items, not only of usual and ordinary public expenditures, but also many that are appropriate and necessary for meeting important and usual, if not essential, wants of the people of the State under the conditions of civilization obtaining in this country for more than a century.

Nor are the ordinary expenses of a State government merely those which are necessary and regular in their occurrence, but quite as largely such as are usual, though not periodical, and such as are appropriate, though not essential, to the needs and aspirations of an enlightened and progressive people, and as are lawful.

In the constrained and narrow meaning ascribed to those words, and the consequent classification of State expenditures, made by the defendant, the contrast has been between some selected usual regularly recurring expenditures of what are claimed to be of a purely governmental character on the one hand, and all other expenditures of the State government, however proper, lawful, appropriate, regular, or indeed necessary in a free American State, on the other hand.

Now we respectfully submit that the contrast implied here is not between the word "ordinary" on the one hand, and the word "regular," or even the word "annual," or any combination of those words, on the other hand.

The contrast is, and was manifestly intended to be, between "ordinary" and "extraordinary,"—all ordinary expenses of the State government not already embraced in the account being intended to be included, and all extraordinary expenses to be excluded from the computation of the expenses, a just proportion of which should be charged against the new State.

Nor is the inquiry limited by its terms to such expenses as may be argued to be purely governmental,—as, for instance, the "civil list," and such as are usually incurred by a government acting in its political capacity. There is no such limitation expressed or suggested by the language of the decree or of the Ordinance.

The account is required to embrace "the ordinary expenses," and therefore *all* of the ordinary expenses of the State government, during the prescribed period, not embraced in the preceding account, of whatever character, must be included in it, so that it is not necessary for us to enter upon the field of conjecture and speculation, which opposing counsel would have us traverse, in order to determine what expenses were, and what expenses were not, distinctly governmental.

The fact is that under the uniform practice of enlightened States and communities such expenses as are usual, though not regularly periodical, and as are necessary, or appropriate, and are lawful—that is, *within the legitimate powers of the State government*—are ordinary expenses, and such as are unnecessary, or abnormal, are to be considered as extraordinary expenses of a State government.

In a modern State, and particularly in a State of the American Union, caring for, conserving and promoting the economic and material, as well as the social, sanitary, physical, intellectual and moral welfare of its people, many expenditures which may not be regarded as strictly governmental, and some which may not be absolutely necessary, are proper, lawful, usual and ordinary.

It will be found that the terms "ordinary expenses of government" have been carefully considered by learned, trained, and able experts upon the subject of State revenues, expenditures, and finance, by experienced statisticians and accountants, and by courts of high standing, and that these authorities sanction the reasonable and natural construction and application of those terms which we claim to be their true meaning and intendment.

The following are some of the precedents and authorities bearing directly upon this subject, to which we have had access. They will be found to clearly and absolutely confirm the views above expressed.

We give, first, the classification as adopted by the United States government.

The ordinary expenditures of that government are classified and stated as given below.

For this we take as an example the statements for the fiscal year ending June 30, 1874, from the Report of the Secretary of the Treasury of the United States, as follows:

"For Civil Expenses	$ 17,627,115.09
For Foreign Intercourse	1,508,064.27
For Indians	6,692,462.09
For Pensions	29,038,414.66

For Military Establishment, including Fortifications, River and Harbor Improvements and Arsenals	42,313,927.22
For Naval Establishment, Including Vessels and Machinery, and Improvements at Navy Yards	30,932,587.42
For Miscellaneous Civil, *Including Public Buildings, Light Houses,* and Collecting Revenue	50,506,414.25
For Interest on the Public Debt	107,119,815.21
Total *Net* Ordinary Expenditures, Exclusive of the Public Debt (that is payments on the Public Debt)	$285,738,800.21"

Report of the Secretary of the Treasury of date December 7, 1874, page iv.

At page v of the same report, Hon. B. H. Bristow, the then Secretary of the Treasury, gives a similar itemized summary and classification of the ordinary expenditures of the National government for the first quarter of the fiscal year ending June 30, 1875. And on page vii of same report he gives an estimate of the ordinary expenditures of the government for the fiscal year ending June 30, 1876, amounting to $272,778,000.00, made up of the items as stated and classified in the statements of actual expenditures for the two preceding years.

In this statement there is estimated for,

Interest on the public debt	$98,000,000.00
On the Pacific Railway bonds	3,878,000.00

as part of the ordinary expenses of the government.

The report of the Secretary of the Treasury for 1904 (House Documents, 58th Congress, Vol. 31, p. 5) gives the total *ordinary* expenditures, exclusive of Postal Service:

	For 1903 at $506,099,007.04	For 1904 at $582,402,321.31
including in these aggregates the following:		
For Indian Service..	$ 12,935,668.08	$ 10,438,350.09
For Pensions	138,425,646.07	142,559,266.36
For interest on Public Debt	28,556,348.82	24,646,489.81

The attention of the court is called to the items which make up the above aggregate of expenses for those years which are given on pp. 3, 4 and 5 of that report, which will be found to be very interesting as showing what expenditures of the government were classified as "ordinary."

The annual report of the Secretary of the Treasury for year ending June 30, 1908, gives the following statement of the ordinary expenses of the United States government:

"*Disbursements:*

Civil Establishments	$175,420,408.57
Military	175,840,452.99
Naval	118,037,097.15
Indian Service	14,579,755.75
Pensions	153,892,467.01
Interest on Public Debt	21,426,138.21
	$659,196,319.68
Postal Service	191,478,663.41
Total *ordinary* disbursements, including Postal	$850,674,983.09"

See also the classification of ordinary expenses of the National government tabulated for the ten years ending June 30, 1890, in the Eleventh Census. House Miscellaneous Documents, 1st Sess. 52d Cong., 1891-92, Vol. 50, Part II., "Wealth, Debt, and Taxa-

tion," pp. 418, 419. The more carefully these tables are examined the more confirmatory they will be found of the natural and reasonable construction of the words "ordinary expenses of the government of Virginia," adopted by the accountants for Virginia.

Examples to the same effect, as to the practice of the United States government in the classification of the expenditures which are ordinary expenses of government might be multiplied, but the above will suffice.

As to the expenses of State governments which are regarded and treated as "ordinary," we beg leave to refer to the volume of the 11th Census of the United States, just cited, where at pages 464 to 477 the annual and aggregate ordinary and other expenditures of each of the States of the American Union are stated for each year and for the decade ending with the fiscal year 1890.

It will be seen that in each instance the great mass of the expenditures of the State governments of a public character, including "charities and gratuities" (such as the maintenance of eleemosynary institutions and pensions), and including in every case "interest on State debt," are counted as ordinary expenditures of the State governments.

At pages 516 to 533 of the volume of the 11th Census just cited will be found a tabulated statement of the expenditures of 1,319 counties of the different States reporting in 1890, in which there is a compilation of such county expenses as are to be considered as "ordinary," which gives data very interesting and pertinent to our present inquiry. In every instance the "interest on county debt," as well as a number of other items of public expenditure of a more or less irregular occurrence, and not at all always politico-governmental in their character, such as expenditures coming under the heads of "Buildings, grounds, and *improvements*," "Roads, ditches, and *bridges*, charities and *gratuities*," and "*Miscellaneous*" are put in the category of ordinary expenses of government.

The same comments will be found to apply with emphasis to the returns and classification of the expenditures of cities having 50,000 or more inhabitants given at pages 556-557; and to the

tables giving the same statistics as to municipalities having 4,000 or more, but less than 50,000 inhabitants, at pages 580-590 of the same volume of the 11th Census.

Strongly confirming the reasonable classification for which we contend will be also found the practice of both the States and cities of our country on this subject.

In this connection we would call attention to the Report of the "Bureau of Inspection and Supervision of Public Offices" of the State of Ohio for 1906, which gives comparative statistics of cities of Ohio. This report give us a scientific and accurate classification of all public expenditures.

At pages 72-89 is printed a detailed schedule of ordinary expenditures of the cities of that State, each of which embraces the great mass of the expenditures of those cities for any public purpose, and in every instance counts interest upon the public debt as an "ordinary" expense.

A very valuable contribution to the law and literature upon this subject is the 46th Annual Report of the Comptroller of the City of Chicago, 1902. This particular report is of all the more significance because it is approved by Messrs. Haskins & Sells, Certified Public Accountants, of 30 Broad Street, New York, who were employed by the City of Chicago to supervise the preparation of all portions of the Comptroller's Annual Report relating to the receipt, accounting for, and disbursement of moneys for the year 1902. (See their certificate at page 43.) This is all the more interesting because Mr. Thomas Bird Dixcy, the accomplished chief accountant for West Virginia, testified that he was at one time the manager of Messrs. Haskins & Sells. At pages 90 to 97 of this report will be found tabulated statements giving in considerable detail the items of the ordinary expenses of the City of Chicago for the year 1902, and the extraordinary expenses of that city for the year 1902, at page 98.

It will be seen that all interest paid, whether on bonded debt or upon miscellaneous accounts, and all cost of exchanges is charged as an ordinary expense of the city, and so also a vast number of items for salaries, maintenance of charitable and other institutions,

maintenance, repair, and renewal of buildings, etc., are treated as ordinary expenses.

Some items are by these skilful accountans for Chicago rather arbitrarily classied as "extraordinary," which are among the usual, appropriate, and necessary expenditures of city governments, such as the purchase of new boilers for fire boat, the extension or the erection of new bridges, and the enlargement of various public works, expenditures which, however expert accounts may regard them, are, according to judicial interpretation, as well as according to the uniform practice of the Federal, State, municipal and county governments, properly to be classed as ordinary expenses of a municipality or other local government.

Still the classification and system of accounting sanctioned by the City of Chicago supports the correctness of more than 95 per cent. in amount of the items which have been embraced by Virginia in the account of ordinary expenses of the State government.

Very many more examples and precedents from the well-considered and enlightened experience and practice of the National, State, county and municipal governments, in America, can doubtless be cited, but it would be merely cumulative authority for propositions which are almost axiomatic, and the precedents and authorities in the support of which are as to all of the items claimed by Virginia overwhelmingly preponderating, and as to more than nineteen twentieths in amount of those items practically unanimous.

We desire now to invite attention to the views of Doctor Bastable, a writer of recognized ability and authority upon any such question.

In his work on "Public Finance," in discussing the subject of "Public Expenditures," that eminent political economist says:

> Sec. 1. "State outlay like that of an individual may be distinguished into normal or 'ordinary,' and abnormal or 'extraordinary.' These terms almost explain themselves, but may be thus contrasted: Normal expenditure is that which recurs at stated periods and in a regular manner; it is accordingly capable of being regularly estimated, and provided for. Extraordinary expenditure has to be made at indefinite times and

for uncertain amounts, and it cannot be reckoned for with any approach to accuracy."

But he adds:

"The distinction is not always applied in the same way, and indeed the boundary line is not sharply drawn." P. 130.

And again on page 132:

"There is also in modern States a greater facility for foreseeing, and so to say discounting the future. The refined financial mechanism by which public borrowing is carried out enables 'extraordinary' expenditure for a short period to be transformed into 'ordinary' expenditure for a long one."

And again at page 133:

"Abnormal expenditure also frequently occurs in a somewhat different way, as in the case of durable public works or other improvements. * * * Outlay of this kind is, in mercantile phraseology, 'chargeable to capital, not to revenue,' and is clearly abnormal. The method almost invariably adopted is to meet the abnormal outlay by an abnormal receipt, viz., borrowing, or to put it in another way, to turn the extraordinary expense of a given year into the ordinary one of interest on debt."

This distinguished author wrote with reference to British precedents. In the States of the American Union there are many subjects of public expenditure which are usual, appropriate, and often necessary, though not regularly recurring, which are doubtless unknown in Great Britain, but which are none the less ordinary.

The tendency of expert accountants seems recently to be to assimilate the accounts of expenditures of governments to those of public service and other like corporations; that is, to treat those which are "chargeable to capital" as "extraordinary," and those "chargeable to revenue" as "ordinary."

A little reflection will show that there are many expenditures of a State which are necessary, proper, and usual under the condi-

tions of modern civilization, and which therefore are "ordinary," but which add to the public, though not always to the fiscal, assets of the State.

As will be seen, the rule as sanctioned by judicial decision, and by the great majority of precedents, while affirming the main doctrine as laid down by Doctor Bastable, is in this particular somewhat different from that stated by him, and is in accordance with the reasonable and just contention of the plaintiff.

See also paper prepared by Professor T. S. Adams, of the Department of Economics in the University of Wisconsin, which contains an able, learned and non-partizan discussion of this subject, printed as Appendix IV of this Note or Argument.*

These conclusions are also supported by the decision of the Supreme Court of Alabama in the case of the *Intendant and Council of Livingston* v. *Pippin*, 31 Ala. 542, and by the decision in the case of *State, ex. rel. Branch* v. *Leapheart, State Treasurer*, 11 South Carolina, 458 and by a number of other authorities, which have been ably reviewed by the Master.—See Master's Report, pp. 87 to 113.

There were some items of expenditure which the Master has deemed it proper to reject on the ground that they were not ordinary expenses of the State government, which we think can and should be classified as ordinary expenses. Such is the item of $258,906.28, on account of constitutional conventions, a usual, regular and ordinary expenditure, though not one of periodical occurrence, in Virginia and other States of the American Union; also

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*NOTE.—This very instructive paper was obtained under the following circumstances:

Mr. Anderson, then Attorney General of Virginia, in 1909, wrote to Doctor Richard T. Ely, of the University of Wisconsin, (than whom there is no more learned and eminent master of the science of Economics in this country), for information as to the most trustworthy authorities upon the subject of public finance, particularly in reference to the proper definition and classification of such expenditures as are "the ordinary expenses of a State."

Doctor Ely referred Mr. Anderson's letter to Professor Adams, for whom he vouched, as being better situated to give the desired information.

Professor Adams, thereupon, prepared the able and elaborate paper which is printed as Appendix IV hereunto, a service which was generously rendered by him as a free contribution to the literature of this case.

expenditures for establishing boundary lines of the State, for making maps of its territory, and expenditures for the enlargement and improvement of the buildings and grounds of the deaf, dumb and blind institutions, and other charitable and educational institutions of the State, which we think the Master should have allowed as items of ordinary governmental expenditures, under the precedents and under the conditions of life prevailing in Virginia and the other States of the American Union, and in all other enlightened and civilized countries. If, as we are confident is true, the provisions of the Wheeling Ordinance should, under the circumstances under which it was enacted, be construed more strongly against West Virginia, whose citizens and representatives were its actual framers and enactors, then there can be no question but that all of these items of charge against her, rejected by the Master, should be allowed. We are content, however, to submit to the court the propriety of the Master's action in disallowing these several items, without further prolonging the discussion.

We are convinced that the conclusions reached by the Master under this paragraph of the decree, except as to the cost of constitutional conventions and the expenditures upon the instrumentalities and institutions of the State government rejected by him, are in general and in almost every particular, in substantial accordance with the legal and equitable rights of the parties and with the foregoing principles, and we therefore make no other exception to his findings under this head.

The reasoning of the Master and the authorities cited by him in support of his conclusions leave little, if anything, to be said in support of their correctness.

1. *As to the Ordinary Expenses of the State Government.*

The master finds the total aggregate ordinary expenditures of the Commonwealth during the agreed period, from March 19, 1823, to December 31, 1860, to have been.....	$40,274,896.70
Of this sum the defendant concedes the correctness of items aggregating	18,207,784.29
The defendant contests items aggregating.....	$22,067,212.41

The most important of these items of expenditure objected to by the defendant are the payments regularly made by the Commonwealth during all of that period on account of interest on the public debt, aggregating $18,574,747.84.—See Master's Report, pp. 87, 139.

The Master's findings on these different controverted items, and the reasons given by him in support thereof, are so clearly and fully stated by him, and so entirely supported by the record, and by reason and authority, that we are saved the necessity of any very elaborate argument in support of the correctness of those findings.

We will notice only two of the controverted items, the allowance of which by the Master, is objected to by the defendant.

(a)

The Master has allowed, as a proper item of ordinary expenditure of the State, the sum of $3,056,239.64 expended out of the State treasury, during that period, upon schools.—Master's Report, 132.

West Virginia certainly cannot justly object to this charge. There cannot be a shadow of a doubt that this sum was expended in the several counties of the Commonwealth during that period, and that they were annual ordinary expenses of the State government for the purpose stated—the most regular and the most ordinary of all the expenditures of the Commonwealth during that period, except the annual disbursements on account of interest.

The complainant had urged before the Master that so much of the expenditures made by the State on account of schools as were actually paid out in West Virginia counties, being distinctly allocated to those counties, should be charged against West Virginia under Paragraph III of the decree, as being "expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted," "all" of which expenditures were required by the decree and by the Wheeling Ordinance to be charged against West Virginia.—See Exhibit C-1, p. 3, R. 374.

There was no question but that expenditures, amounting to the identical sum of $830,865.37 as shown by that exhibit, had been made out of the State treasury distinctly in West Virginia counties on account of schools between March 19, 1823, and January 1, 1861.

The Master took a different view, his conclusion being that the expenditures made on account of schools should not be treated as distinctly expenditures made in West Virginia territory under Paragraph III of the decree, but as a part of the general, ordinary expenses of the State government; and that, instead of charging West Virginia with the sum of $830,865.37, shown by the record to have been actually spent in the counties of that State out of the treasury of Virginia on account of schools, he would ascertain the total amount expended in the State for schools as a part of the ordinary expenses of the State government, and assign to West Virginia her proportion of those aggregate ordinary expenses.

While we think the actual expenditures should have been charged against West Virginia, and not the computed expenditures, we are disposed to waive that point; particularly if the apportionment is made on the basis of the average population *without slaves*, which certainly ought to be the basis adopted, inasmuch as the slaves received no portion of that, or of any other items of the ordinary expenditures of the State government, but as a rule all of said expenditures were made on account of the white population; and, so far as expenditures on account of schools were concerned, they were absolutely confined to white schools and to the white population, and were under the law always actually apportioned upon the basis of free white population.—Appendix to Record, pp. 146 and 147.

Apportioning the total school expenditures on the basis of average white population, as the same is ascertained by the Master (Master's Rep., 141), we have 26.6631 per cent. of $3,056,239.84, or $814,793.53, as the amount assignable to West Virginia; or only $16,071.84—say, 2 per cent.—less than $830,865.37, the agreed proved amount which was actually expended by Virginia in West Virginia counties, on that account, between 1823 and 1861.—See Exhibit C-1, p. 3; R. p. 374.

This result is significant in two particulars of great interest in connection with the question of the rule by which ordinary expenses should be apportioned, which will be considered later on under this paragraph of the decree:

First, in strongly supporting the justice of our contention that the true basis for the apportionment of ordinary expenses is the average white population; and

Second, in showing that that average should be ascertained by decades in the manner approved by the Master.

Stronger confirmation of these two contentions could not be well given than this concrete illustration where the aggregate of proved actual expenditures in West Virginia counties is so nearly the same as the same expenditures in those counties ascertained by estimating them on the basis of total average white population computed by the method adopted by the Master.—Master's Rep., 139, 140 and 141.

We are now come to consider the largest item of this account, involving a question which, because of the amount which it involves, is one of the most important which has arisen in the case, and that is—

(b)

The interest paid by the Commonwealth upon the public debt between March 19, 1823, *and December* 31, 1860, *amounting to* $18,574,747.84.

There were no expenditures of the State government from 1823 to 1861, which were more regular, certain and ordinary than the annual interest on the public debt of the State.

If this was not an ordinary expense of that government, then there was no such expense.

As has been already shown all governments and all authorities, and all expert accountants and statisticians, so far as we have been able to ascertain, agree in classifying the interest on a public debt as among the ordinary expenses of government.

It is to be assumed that the framers of the Wheeling Ordi-

nance intended to do equity. At all events, a court of conscience will not put an unconscionable construction upon that enactment, particularly where a natural and reasonable construction can be given to it, and one which will tend to an equitable result.

Now, if the language of Paragraph IV of the decree, and the language of the Ordinance upon which that paragraph is predicated be so construed as not to require the new State to be charged with its just proportion of the regular and ordinary expenses of the State in the matter of the payment of interest on the common public debt, then West Virginia would be given credit in the account for all of her contributions to the treasury of the Commonwealth on account of said interest charges from 1823 to 1861, and yet she would not be charged with her aliquot just proportion of those same expenditures.

It is not to be presumed that such an unjust provision was intended to be made by the framers of the Wheeling Ordinance; nor will a court of equity give such a strained, unreasonable and unwarranted construction to the language used in that Ordinance, and used also in the decree of reference, as would lead to such inequitable and unconscionable results.

The decree, following the Wheeling Ordinance, requires West Virginia to be charged with a just proportion of the ordinary expenses of the government, and this requirement will not be satisfied, if the largest, the most important, and among the most regular, necessary, and ordinary of those items of expenditure are omitted from those accounts.

2. *As to the Basis of Apportionment of the Ordinary Expenses of the State Government:*

The decree directs that this shall be made on the average total population of Virginia, with and without slaves, as shown by the census of the United States.

In ascertaining the average population of Virginia during the period, the defendant argues that the average for the whole period should be ascertained, and the apportionment made accordingly.

The plaintiff has ascertained that average by decades.—(See Exhibit D-1, p. 2, R. 516).

The Master has adopted the method approved by the plaintiff's accountants.

The purpose of the court in requiring the average population to be struck was doubtless to get as nearly to the true population year by year, and for the very year in which the expenditures were made, as was possible.

It is manifest that this can be more nearly attained by taking the average for each decade, than by taking the average for the entire forty years in lump.

For instance, the average population for the decade from 1830 to 1840 could be fairly ascertained by taking the population as determined by the census year 1830 and in the census year 1840, and dividing the sum by two, so as to give approximately the average for each year from 1830 to 1840; and so as to each of the other decades. And this has been done accordingly in the account as stated and adopted by the Master.

In no other way can an approximation to the truth be reached, and it is the truth which the court, and which we all wish to attain.

Another important question in this connection is—

Whether the average population with slaves, or the average population without slaves, should be taken as the basis upon which to apportion the ordinary expenses of the State government between Virginia and West Virginia.

This is a question which was left open by the court in its decree of reference, which accordingly has not been passed on by the Master, but is necessary to be decided by the court.

We respectfully submit that the white population of the Commonwealth, and particularly of West Virginia, constituted the best and fairest basis for this apportionment. That is, the free population—the citizenship,—and not the total of the free and the slave population.

The care and policing of the slaves cost the State little or nothing. Those matters were regulated by the masters on the plantations.

The debt was contracted solely by the white population or their white representatives. It was expended by them or under laws of their enactment.

The taxes were levied exclusively upon the property of the free population, and the revenues were appropriated and expended as they directed.

The negroes owed no part of the debt, did not constitute a part of the citizenship of the State during any part of the period of time during which it was contracted, or the money realized from it was expended; nor did they constitute any part of the body politic.

As has been seen a large part of the ordinary expenses of the government, as classified by the Master, consisted of school expenditures, which were entirely confined to the white children.

Under these circumstances we would urge as a just criterion for the apportionment of the ordinary expenses of the State government between West Virginia and Virginia, the white population of the territory embraced in West Virginia, and of the territory still remaining to and constituting the present Commonwealth of Virginia at the period when the expenditures to be apportioned were made.

V.

The fifth inquiry directed is, that the special Master will ascertain—

> "5. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia."

As stated by the Master, "this paragraph is clearly in the alternative with the last clause of Paragraph IV."

A correct response to this inquiry may have an important bearing upon the equities of the case; but it is difficult to see how the valuation of property, real or personal, in the two States would furnish any just criterion for the apportionment of the ordinary expenses of government.

It will be noted that this paragraph fixes no date as of which the fair estimated value of the real and personal property in the counties constituting what is now Virginia and what is West Virginia shall be ascertained.

The second paragraph of the decree fixed the 20th of June, 1863, the date when the formation of the new State was consummated, as the date for ascertaining the assessed valuation of the lands embraced in the two States, and that date was presumably the one contemplated in the fifth paragraph.

It will be recognized as true that the accurate ascertainment of the value of the real and personal property in a State is an exceedingly difficult problem, at any time.

Because of the conditions of disaster, confusion, loss and destruction of values occasioned by the ravages of the then pending war, the difficulty of the solution of this problem is here greatly enhanced. And yet an approximation to a result fair and just under all the circumstances can, we trust, be reached as nearly as is

practicable, by proceeding along the lines of investigation and testimony which have been pursued on behalf of the plaintiff, and as to the real estate by the Master also. The only difference between the method adopted by the Master in this regard, and that pursued by the plaintiff is that the Master has applied that just method to the ascertainment of the value of the real estate in the two States, while the plaintiff has applied it to the ascertainment of the values of both personal and real property.

The land assessments afforded, if not a fair criterion, the only now accessible standard of value of the lands in the counties of undivided Virginia in 1860.

But those valuations were made in 1856, seven years before June, 1863, at which latter date at least four-fifths of the present territory of Virginia and one-fifth of the present territory of West Virginia had been ravaged and desolated by war, so that that valuation of 1856 afforded no just measure of values in 1863. It would suffice, however, to furnish a basis by which the depreciation occasioned by the war could be approximately determined.

The lands were assessed as of their cash specie value in 1856.

The personal property in Virginia counties was assessed annually, on the 1st of February of each year, as of its then cash value, in the currency which then constituted the medium of exchange and the standard of value.

After the war became flagrant, and particularly in February, 1863, that medium of exchange and standard of value, which was the only currency of the people, and the currency with reference to which as a standard of value all their transactions were conducted, was the depreciated currency of the Confederate States.

This was uniformly true in all the regions dominated by the Richmond governments.

There can be no question that the market values of all personal property, and indeed of all property, real and personal, in Confederate Virginia was, throughout 1863, fictitiously enhanced by reason of the depreciation of the currency in circulation in those regions, in which currency alone those values were measured.

This was true also as to West Virginia counties within the Confederate lines. where the assessments were made by officials under the Richmond government.

The personal property in West Virginia counties, outside the Confederate lines, where assessments were made by officers under the Wheeling government, was valued with reference to United States treasury notes (green backs) as a measure of value. The true value of this assesssed personal property in these West Virginia counties could be ascertained approximately, therefore, by applying the scale of gold to the assessment in each case.

It was impossible to get the assessed value of the personal property in a number of Virginia counties because they were so ravaged and so harried by war in 1863 that no assessments were made in them of the very small quantity of personal property which was then left there.

As to real estate, it was by no means an easy matter to get at its true value in 1863, and yet a way has been found by which, taking the assessed valuations of 1860 or 1861 as a basis, this has been reached as nearly as is now possible.

A number of witnesses of unusual intelligence, of the highest character, and most of whom had the best opportunities of ascertaining the facts as to the matters in respect to which they testified, were called on behalf of Virginia. Their testimony will be found at pages 739 to 786 of the record. By them the great destruction and deterioration in value of property, real and personal, in Virginia in June, 1863, is satisfactorily proved, and the fact that the lands had been diminished in value at least one-half, as compared with their value in 1860 or 1861, is established.

This general testimony is powerfully confirmed by the proof of a large number of facts and transactions, proof of actual sales of land in 1863 in Confederate money, and of the valuation by sworn and intelligent commissioners or appraisers of houses and lots in the city of Richmond in the spring, or in June, 1863.

For instance, Capt. Gordon McCabe testified (R. 784) that Westover, an historic estate on James river, for which the owner,

to his personal knowledge, had refused $75,000 in 1859, was sold in 1863 by the owner for $60,000 in Confederate money,—then worth not more than $15,000 or $20,000 in specie; and Major Wellford (R. 762) testified that he was offered the Moss Neck estate on the Rappahannock river, an estate worth at least $40,000 before the war, in the fall of 1863 for $100,000 in Confederate money, then worth about $7,000 in good money; and by Mr. John B. Lightfoot, Jr., a number of most informing and significant facts were proved, which are set forth in the tabulated statements at pages 653 to 664 of the record, which furnish the proof of a number of contemporary sales of lands in Richmond city, Henrico, Hanover and Chesterfield counties, in 1863, at prices showing a depreciation exceeding 50 per cent., as compared with the antebellum assessed values of the same properties.

These were not selected transactions, but Mr. Lightfoot took all of the transactions of the character indicated, which took place about that time, of which the records of those counties and of Richmond City furnished any evidence as to the lands then sold or valued in Confederate money, the assessed value of which in 1860 or 1861 could be ascertained.

The evidence of these concrete facts, taken together with the testimony of the eight witnesses, and the known facts of the history of those times, fully support the contention of the plaintiff that the real estate in Virginia, and in the ten or eleven counties of West Virginia which were usually dominated by the Confederate forces and were generally within the jurisdiction of the Richmond governments, had depreciated at least one-half, as compared with the assessed valuations of the same lands in 1860 or 1861.

The Master has accordingly adopted this valuation as to real estate, and in this he was clearly justified by the proofs, as well as by the history of those times, known and accepted of all men.

To our surprise, however, the Master did not apply the same rules of depreciation to the personal property in the two States.

While he properly finds that the value of the real estate in Virginia had been cut in half and reduced from $296,085,460.30 to $148,042,730.15, he finds that the fair estimated value of the per-

sonal property, including slaves, in Virginia counties had increased, notwithstanding the destruction of war, from $264,512,799 in 1861, to $403,696,228.59 in June, 1863. (See figures given in the Master's report, at pages 167 and 168).

In this finding of the Master he estimated the value of the personal property, other than slaves, in Virginia in June 1863, at $152,844,637.59, as compared with the estimated value of the same kind of property, as stated by him, in 1861, of $102,114,863,—finding that, notwithstanding the depreciation and destruction caused by the war, the personal property in Confederate Virginia was actually worth, in June, 1863, $50,729,774.59, (or nearly fifty per cent.), more than its fair estimated value in 1861.

An examination of the figures adopted by the Master, given on pages 167 to 169 of his report, will show that he gives, as the fair estimated valuation of all personal property, including slaves, in Virginia counties in June 1863.....$403,696,228.59;

Of all personal property, without slaves, in the same counties..... 152,844,637.59;

And that accordingly he computes the fair estimated value of the slaves in Virginia counties, in June, 1863 to have been.....$250,851,591.00;

While he finds that the fair estimated value of slaves in the same counties in 1861 was....$162,537,936.00, the *agreed* valuation of slaves in those counties in that year.

The master's findings, therefore, give us the astounding result, that a considerably smaller number of slaves in Virginia counties in June, 1863, (nearly six months after Mr. Lincoln's emancipation Proclamation had taken effect, by its terms, and had become actually effective in large portions of the territory embraced in those Virginia counties), were actually worth, in good money, $87,329,635 more than a considerably larger number of slaves were worth in 1861, prior to the beginning of the war, and when they had a specie market value.

These results are not only in conflict with the overwhelming proofs in the case, but they are contradicted by the recognized facts of the history of those times.

The slaves in Virginia counties, as well as in West Virginia counties, were all of them then more than three-fourths, if not more than nine-tenths free. As soon as any of that territory came within the Federal lines (and at least one-third of Virginia was at that time within those lines, or dominated by the guns of Federal gunboats), or as soon as the slaves went within the Federal lines, they became actually and absolutely free.

It is simply impossible that it can be true that the personal property, other than slaves, in Confederate Virginia, was worth anything like as much in June, 1863, as that personal property was worth in 1860 or 1861, before it had been subjected to the disastrous and destructive effects of the war which was then prevailing.

It is especially impossible that it can be true that the smaller number of slaves in Virginia in June, 1863, (395, 105. See Joint Exhibit, E-1, p. 7, R. 645), after Mr. Lincoln's Proclamation, were worth as much as, and still less that they could be worth more than the larger number of slaves (472,494, as per U. S. Census of 1860, and Report of First Auditor of Va., 1860-61, p. 75, and Exhibit West Va. 2, R. 823 and 824), in those counties prior to the beginning of the war, when the title of the master and the status of the slave were unquestioned.

The proof shows that slaves were such a precarious property at that time as to possess very little value. As an instance of this, Col. Branch testifies (R. 756), that he purchased a slave in July, 1863, for the equivalent of $225 in gold—"a servant who would certainly have brought $1,200 in 1860, previous to the election."

But no proof ought to be required to show that the slaves in Virginia counties were, in June, 1863, worth very much less than the slaves in the same counties were worth, in good money, in January, 1861, prior to the beginning of the war.

It will be remembered that Virginia at that time was the theatre of the war.

In 1861 large armies had encamped upon her soil.

In 1862 and 1863 armies numbering in the aggregate from 250,000 to 350,000 men had occupied her territory, and largely sub-

sisted upon what they could take from the limited resources of her people.

The Federal troops, in 1863, occupied the greater part of her tidewater counties and large portions of northern Virginia; and all of her coasts along the Atlantic ocean and Chesapeake bay, and the navigable waters of the Potomac, the Rappahannock, the York and the James were dominated by the gunboats of the United States, where not actually occupied by their troops. In all of these sections there were large numbers of slaves.

The *uncontradicted evidence* in the case shows that the depreciation in value extended not only to slaves but to all personal property, and was at least fifty per cent. as a *minimum*. There had been enormous consumption and destruction of every kind of personal property, and what remained had greatly depreciated in value.

Now, it may be that the Master is correct in holding that the plaintiff has failed to show definitely that the depreciation in value of personal property in Virginia counties was, in 1863, 75 per cent. of its value as compared with 1861.

But there can be no question, that the evidence in the cause (found at pages 739 to 786 of the record), corroborated as it is by the known and unquestioned and unquestionable facts of history, abundantly justifies the conclusion that that depreciation amounted to at least fifty per cent. in June, 1863, as compared with January, 1861.

We recognize that a similar depreciation existed in ten or eleven West Virginia counties which were generally held by the Confederate forces and controlled by the Richmond governments, during that period.

The chief importance of the question here discussed is in its bearing upon the question of an equitable proportion of the debt to be borne by West Virginia, and it is because of its bearing upon that aspect of the case that we have taken so much of the time of the court in its discussion.

VI.

By Paragraph VI of the decree the Master is directed to take an account ascertaining—

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The Master finds (see his report, pp. 174-179) that the total payments made into the treasury of Virginia from the counties of West Virginia, for which the latter State is entitled to a credit in the accounting under this paragraph of the decree, amounted to $6,105,884.75.

The plaintiff is satisfied that the findings of the Master under this paragraph do substantial justice between the parties, and therefore waives any objection thereto.

The defendant objects to the Master's findings under this head because he fails to give West Virginia credit for items aggregating $807,646.89.

These items are as follows:

Item 7.—Dividends from banks in West Virginia counties	$786,666.98
Item 8.—Dividends and interest from Turnpike Companies in West Virginia counties	13,595.48
Item 9.—Dividends from Bridge Companies in West Virginia	6,028.51
Item 10.—Dividends from Interstate Turnpike Companies (proportion)	1,355.92
	$807,646.89

See Joint Exhibit, F., p. 1, R. 805; Master's Report, pp. 176, 180.

The Master's finding upon these items is evidently justified by the facts, and is consistent with the language of the decree and of the Wheeling Ordinance.

The amounts received by Virginia upon the accounts and items objected to by the defendant, particularly the dividends upon bank stock, were in no sense money paid into the treasury of the Commonwealth from the counties included in the State of West Virginia.

They were the profits earned by Virginia's own money which she had invested in fiscal institutions; or the returns made to Virginia upon the investments mentioned, and not moneys paid to Virginia from West Virginia counties, within the meaning or within the reason of the sixth paragraph of the decree and of the ninth section of the Wheeling Ordinance, on which that paragraph of the decree is based.

None of them could be regarded as contributions from West Virginia counties, but they were the legitimate earnings from the State's own money invested in the banking business, and in the properties created by its companies.

As to the banks, while they had their principal places of business in West Virginia, their assets were transitory and of a movable character, having their situs not at all necessarily in West Virginia.

It will be seen that the Master had already held, under Paragraph III, that West Virginia was not properly chargeable under that paragraph with the money paid out by the Commonwealth on account of stock subscriptions to banks, located in West Virginia, and had excluded that item from the debit account against West Virginia under that paragraph.

We are convinced that the Master's ruling upon this point was correct, and by analogous reasoning the conclusions reached by the Master under the sixth paragraph, that these dividends were not in any sense public payments, or payments from West Virginia counties, was inevitable.

VII.

The seventh paragraph of the decree directs an account ascertaining—

> "7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items, and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof."

This direction of the decree was doubtless given in response to the provisions of sections 1, 2 and 5 of the act of the Wheeling Legislature passed February 3rd, 1863.—Appendix to the Record, pp. 128, 129, 130.

There was a large amount of property, chiefly unappropriated or abandoned, and delinquent or forfeited lands, to which the Commonwealth had title, which passed to the new State by the said act of the Wheeling Legislature, and with the value of which property West Virginia was chargeable by the terms of that act upon such settlement as should be made between the two States.

After the decree of reference was entered it was ascertained by the accountants and counsel for Virginia that West Virginia had recognized the land warrants issued by Virginia prior to June, 1863, and had allowed them to be used, without additional payment to that State, in the acquisition of vacant and unappropriated lands within its limits to the extent of many thousands of acres, and that the new State received nothing for those lands. This was done although the entries were made and the warrants located upon those entries since the formation of the new State.

Under these circumstances, as the new State recognized the warrants of the undivided State, it was considered by counsel for Virginia that it would be inequitable to make any charge against West Virginia on account of those transactions.

It was also found to be impracticable, if not impossible, to find any satisfactory records of the disposition which had been made by the new State of large quantities of lands, delinquent and forfeited to the Commonwealth prior to June, 1863, for the non-payment of taxes, or for failure to enter the same upon the land books for taxation, and that inquiry, therefore, has not been pressed.

So that the only charges made by Virginia under the seventh paragraph of the decree are for money and bank stocks actually received by West Virginia from Virginia after the formation of the new State in 1863 and in 1864.

The fact as to the receipt by West Virginia from the Commonwealth of amounts aggregating $170,771.46, stated in plaintiff's exhibit G-1, R. 819, is assented to and certified by the accountants for both parties, and is reported by the Master at page 181 of his report.

The requirement of Paragraph VII of the decree was that the master should ascertain and report "the amount * * * * * of all money * * * * * which West Virginia received from the Commonwealth of Virginia" * * * * *.

Under these circumstances it is difficult to understand upon what ground the Master excluded these items, amounting to $170,771.46, as to which the facts are unquestionable.

These sums of money were undoubtedly received by the new from the old State. At that time the officials of the restored government of Virginia consisted of West Virginians. That government was dominated by West Virginians, and the new State could appropriate and take out of the treasury of the State of Virginia, at Wheeling, whatever it chose; and it did undoubtedly receive from the "restored" government of Virginia $170,771.46, for which sum, we think, it is fairly chargeable.

It is proper here, however, to call attention to the fact that the Special Master has included in the charges against West Virginia, under Paragraph VII, the value of the stock which represented the amounts expended by the Commonwealth on turnpikes and bridges built by the following companies:

Sweet & Salt Sulphur Springs Co.	$ 7,578.00
White & Salt Sulphur Springs Co.	4,000.00
Fairmount & Palatine Bridge Co.	12,000.00
Making a total of	$23,578.00

The complainant has insisted, and still urges, that, under the terms of Paragraph III, of the decree, and under the language of the Wheeling Ordinance fairly construed, the expenditures made by the Commonwealth in the construction of these internal improvements should be charged against West Virginia under the third paragraph of the decree; and by her second exception she has objected to the Master's report for not charging West Virginia with items 60, 136 and 145, Joint Exhibit C-1, R. 375, 377,—which items cover the expenditures made by Virginia on said Sweet & Salt Sulphur and White & Salt Sulphur Turnpikes, and on said Fairmount & Palantine Bridge.

If the complainant's second exception is sustained as to those items, the corresponding items charged by the Master under Paragraph VII, of the decree, aggregating $23,578, covering the values of the expenditures in those works which were transferred to West Virginia, should be deducted from the aggregate charged against West Virginia under said seventh paragraph.

We submit herewith a statement showing the amount chargeable against West Virginia under this paragraph of the decree in accordance with the facts here stated, which are entirely sustained by the record.

Statement of Money, Property, and Stocks received by West Virginia from Virginia on and after June 20, 1863,—Paragraph VII:

(a) As found by the master (Master's Rep. 193).	$500,828.00
(b) Add for cash received by West Virginia from Virginia (Master's Rep. 181 and 193).....	170,771.46
Making a total of	671,599.46
Deduct for value of stock in the Sweet & Salt Sulphur Springs, and White & Salt Sulphur Springs Turnpike Companies, and the Fairmount & Palatine Bridge Company, the expenditures upon which are included in the total of $1,104,400.85 which complainant claims should be charged under Paragraph III (see Plaintiff's Exceptions, p. 12, and Joint Exhibit C-1, pp. 4, 5 and 6, R. 375, 376 and 377, and Master's Rep. 193).....	23,578.00
Balance chargeable to West Virginia.....	$648,021.46

VIII.

What is West Virginia's Share of the Debt?

Our rapid review of the master's report, brings us to the application of its findings—modified in the particulars covered by the few, but important exceptions, which we have taken to those findings—to the solution of the main question in the cause, namely:

What, upon the data thus ascertained, is the proportion of the Virginia debt for which West Virginia is liable?

(1)

It cannot be too strongly emphasized that it is the just and equitable liability of the new State which is to be determined: for the Wheeling Ordinance imposed a just proportion of the debt upon her, and by the compact created by the provisions of section 8 of Article VIII of the West Virginia Constitution and the Acts of Virginia and of Congress, by which she was granted statehood, it was stipulated that an equitable proportion of that debt should be assumed by the new State.

Upon elementary principles there can be no question but that these provisions of the first Constitution of West Virginia constituted an essential stipulation and condition upon which the consent of the Legislature of Virginia to the creation of the new State was predicated. We have a right to assume that the consent of Virginia to her dismemberment would never have been given but for the fair and reasonable stipulation clearly expressed in that Constitution, that the new State should assume an equitable proportion of the common debt, and would provide for the payment of the accruing interest of the principal in thirty-four years.

It is equally, though no more, certain that the United States Congress would never have given its consent to the partition of Virginia and the erection of the new State out of her domain, but for the fact that the new State had undertaken to assume an equitable proportion of the then existing public debt of the Commonwealth,

and to pay the same with the interest thereon. No evidence is needed to establish this; but if it were required it would be furnished by the records of Congress, and by the statements of honorable and distinguished actors in that momentous transaction.

On the 31st of December, 1862, the Act providing for the formation of the State of West Virginia was passed by Congress.

When the bill giving the consent of Congress to the erection of the new State was under consideration in the House of Representatives, the following discussion took place:

> Mr. Olin: * * * * "I desire to ask what will become of the bonds, and other obligations which Virginia has issued or incurred, by the recognition of a new State?" * * * *
>
> Congressional Globe, Pt. I, 3rd Session, 37th Congress, p. 45.

> Mr. Hutchins: "I will answer my friend from New York. Here is the provision of the Constitution of West Virginia in reference to that matter: 'An equitable proportion of the debt of Virginia prior to January the first, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as practicable.'" * * * *
>
> Idem, page 46.

And again, while the bill was still under discussion in the House, the following colloquy occurred:

> Mr. Crittenden: "Mr. Speaker, there is another question to which I invite your attention. The old State of Virginia, when she embraced east and west, owed a large debt. She owes it to this day. Who is to be bound for that debt? Is the new State? How is this debt to be divided?" * * * *
>
> "Mr. Blair, of Virginia: "In regard to the public debt, the Constitution framed by the convention of the people of the proposed new State of West Virginia, binds the new State to pay its just proportion of whatever public debt the State of Virginia owed prior to the Ordinance of Secession." * * * *
>
> Mr. Crittenden: "I only knew, Mr. Speaker, that in this bill there was no provision made for a division of the State

debt. The gentleman tells us there is provision made for it in the Constitution, and I am satisfied with that. That was only a question of mere expediency which I wished to suggest; but although a matter of expediency it was also a matter of justice. If it has been attended to, I have no more to say about it." * * * *

Idem, page 47.

Years afterwards when the subject of the Virginia debt was again under discussion in the United States Senate, statements of great significance and importance upon the very fact we are now considering, were given out by Senator John Sherman, and ex-Senator Waitman T. Willey. Senator Willey was one of the senators from (Restored) Virginia, was one of the makers of the new State, a member of the Wheeling convention, and was an active participant in all of the transactions which led to the formation of West Virginia. had been for years a very active, intelligent, leading and useful member of the Legislature of Virginia, and was as well acquainted with the facts as to the origin and history of the Virginia debt, and with West Virginia's relations to it as any citizen of either State. Under his leadership, and upon the views which he earnestly urged, the United States Senate passed the bill giving the consent of Congress to the creation of West Virginia. Even with his able advocacy of that measure it was only passed by a majority of six votes. Besides his intimate acquaintance with the essential facts upon which West Virginia's obligation for the payment of an equitable proportion of the debt rests, Senator Willey was a man of very high character.

Senator Sherman had been a member of Congress when the bill for the creation of West Virginia was passed. Being from Ohio, an adjoining State, he had taken a deep interest in its enactment and had actively supported it. No two men in the world knew more about the history of that transaction than those two eminent men.

We state here now upon the authority of these honorable senators that the bill admitting West Virginia would never have been

passed but for West Virginia's assumption of an equitable proportion of the debt of Virginia.

During the discussion of the subject in the 47th Congress, Senator Sherman read the following extract from a letter which he had received from Senator Willey:

> "I have a pretty distinct recollection that while the application for admission was pending before the United States Senate, you suggested to me this very matter, and that when I pointed out to you the clause in the Constitution which I have above quoted, you expressed your satisfaction and stated to me that it removed one of the difficulties which had been embarrassing you; and I say to you now, what I have said to the people of West Virginia, that but for that clause in her Constitution, the State would never have been admitted. I SAY FURTHER, THAT IN MY OPINION, NO HONEST MAN, OR HONEST PARTY, IN WEST VIRGINIA, OR OUT OF IT, WILL DENY THE OBLIGATION OF WEST VIRGINIA TO PAY AN EQUITABLE PART OF THE PUBLIC DEBT OF VIRGINIA." (Capitals ours.)

After quoting this extract, and after reading the 8th clause of Article VIII of West Virginia's Constitution, Senator Sherman said:

> "But for this stipulation in the Constitution of West Virginia, which was submitted to the Senate at the time of the passage of the bill to admit that State, it never would have been a State of this Union."—Congressional Record, Vol. 12, 47th Congress, p. 450.

No one can doubt, therefore, that West Virginia owes her existence to her promise to assume an equitable proportion of the debt of the old State, and to provide for the payment of the accruing interest thereon and of the principal of the same.

It is the corner-stone of her existence as a State.

The methods adopted for the purpose of ascertaining what West Virginia's share of the debt is, are merely means for reaching that end, and can be sanctioned only in so far as, fairly pursued, they shall lead to an equitable result.

It becomes important therefore to determine, what, independently of any conventional arrangement, would, under the circumstances which confront us here, be the equitable share of that debt to be borne by West Virginia?

The case presented is a peculiar one. It is *sui generis.*

History furnishes no counterpart, no precise parallel or precedent to guide us, by a clearly blazed path, to a correct conclusion.

Kingdoms, empires, and republics have been divided and subdivided, but never has a State been dismembered just as was Virginia in 1863.

And yet there are certain established rules of right and principles of equity which will enable us to reach a conclusion which will do substantial justice between these parties.

According to the authorities upon public, or international law, copious quotation from which will be found in the Appendix No. 1 to the reply brief for Virginia upon the motion to refer the cause to the master, printed in Vol. II of West Virginia's Compilation, pp. 163 to 167, the accepted doctrine seems to be. as the same is stated by Mr. John Bassett Moore in his Digest of International Law, as follows:

> "In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division are ratably binding on the different parts; for as Story says, 'the division of an empire creates no forfeiture of previous vested rights of property.'"
>
> 1 Moore's Digest Int. L., p. 334, citing
> Abdy's Kent, p. 96, and
>
> Lawrence's Wheaton, 52 (m) 20.

The debt should, therefore, be apportioned "ratably" between the old and the new State.

For reasons already abundantly appearing in this case it is exceedingly difficult, to determine accurately the true taxable values of the property in Virginia as at present constituted and in West Virginia, on the 20th of June, 1863. There is less difficulty in determining the relative values as to the real estate in the two

States, respectively, than as to the personal property in the two States.

The destructive and exhausting effects of the war then flagrant, the depreciation of the currency in general use in Confederate Virginia, were much more disastrous in their operation in what is now Virginia than they were in the greater portion of what is now West Virginia. The destruction of personal property was far more final and complete than of real property. When horses or cattle were carried off, or wagons or farming implements were worn out or destroyed, that was an end of them as property to their owners.

The lands might be, and were, greatly impaired in value by the destruction of fences and buildings, and by neglect, but these ravages of war could be, and in fact, in the forty-five years of peace, have been in great part remedied.

Moreover, land existed as property, and as a subject of taxation much more uniformly throughout the territory embraced in both States than did any other species of property.

It constituted therefore a more uniform, as well as a more permanent and stable measure of the wealth and taxable resources of the two States, at any time, and particularly at the date of the formation of West Virginia.

The court must have been influenced by these considerations in framing the second paragraph of the decree of reference, in directing the ascertainment of the "assessed valuation of the territory of Virginia and of West Virginia June 20, 1863," and in excluding from that account the value of the personal property therein.

Now taking up the Master's findings and applying them *seriatim*, as they should be applied, we will endeavor to ascertain what the result is, or should be, as to the part of the debt to be paid by West Virginia:

(1)

There need be no farther discussion under the first paragraph, by which the amount of the debt is ascertained.

(2)

Under the second paragraph it is ascertained that West Virginia had 36.1843 per cent. of the total area of the undivided State.

Apportioning the admitted $33,897,073.82 of the common debt on that basis would assign to West Virginia $12,265,418.88, of which $11,911,822.32 would be principal, and $353,596.56 would be interest.

West Virginia had 33.5231 per cent. of the total population, excluding slaves. On that basis West Virginia would owe $11,363,349.95, of which $11,035,758.90 would be principal, and $327,591.05 interest.

West Virginia had 24.5145 per cent. of the total population, including slaves. On that basis she would owe $8,309,698.16, of which $8,070,140.04 would be principal, and $239,558.12 interest.

West Virginia had 21.7812 per cent. of the total values of real estate upon the basis of the assessed valuation of 1863. Upon this basis she would be charged with $7,383,189.44, of which $7,170,341.40 would be principal, and $212,848.04 would be interest.

What part of the debt does West Virginia owe?

While taxable property seems, as a rule, to be the measure accepted by writers on public law for dividing a common debt between two states formed by the division of a State into two states, it may not be inequitable to bring population into the account here along with property; for population, such as that of these two States certainly constitutes an important factor of productive wealth.

Bringing the total population and the assessed valuation of the real estate into the account as factors, and combining the two and taking the average, we have $7,846,443.80 as West Virginia's portion of the debt, of which $7,620,240.73 would be principal, and $226,203.07 interest.

If, discarding the method defined in the Wheeling Ordinance, the apportionment should be made according to the fair value of the taxable property in the two States in June 1863, taking for those values the figures arrived at in our consideration of the

Master's findings and the evidence under paragraph V, we will have the following results:

Fair estimated value of the taxable property in Virginia and West Virginia Counties, June 20, 1863:

Fair estimated value of real estate in Virginia counties, as ascertained by the Master and accepted by the Plaintiff (Master's Report, p. 168)	$148,042,730 15
Fair estimated value of personal property, other than slaves, in Virginia counties—not exceeding one-half of $152,844,637.59, its Confederate inflated assessed valuation in 1863,	76,422,318.79
Fair esstimated valuation of slaves in Virginia counties, not exceeding in good money as a possible maximum, one-half of $162,537,936, the agreed value on January 1, 1861, of the slaves in Virginia*	81,268,968 00
Fair estimated value of all property, real and personal, in Virginia counties	$305,734,016 94

*Note.—(Explanatory of the item of $81,268,968.00).—Upon the hearing before the Master on the first of January, 1910, the following agreement was made between the counsel for the parties, and made a part of the record:

"*It is agreed*, between the counsel for Virginia and West Virginia that there were 490,865 slaves in the Commonwealth of Virginia on the 31st of December, 1860, and that the fair estimated valuation of such slaves was $344 apiece; that of them, 472,494 were within the territory of the present Commonwealth of Virginia, and that their fair estimated valuation at that time was $162,537,936; and that there were 18,371 of such slaves on the same date in the counties that now constitute the State of West Virginia, and that the fair estimated valuation of such slaves was at that time in the aggregate $6,319,624.

"(Upon request the foregoing agreement was read aloud by the stenographer, and there was no objection to it by counsel for either party).

"Mr. Anderson: The Commonwealth of Virginia does not admit that the facts here conceded to be true are either relevant, material, or responsive to any issue in this case or any direction of the decree. Counsel for Virginia further object to the consideration of these facts by the Master in this case for the reason that both parties have down to the present day construed Section 5 of the decree as referring to the fair estimated value

Fair estimated value of real estate in West Virginia counties as per Master's Report p. 168	$ 67,676,127 44
Fair estimated value of personal property, excluding slaves, in same counties (Master's Report, 168, 169)	24,739,894 21
Fair estimated value of slaves in West Virginia counties, as conceded by Defendant, (Master's Report 169-170)	6,319,624 00
Total fair estimated value of all property, real and personal, in West Virginia	$ 98,735,645 65
Fair estimated value of all taxable property in Virginia and West Virginia as of June 20, 1863,	$404,469,662 59
Of which there was in Virginia	$305,734,016 94
And in West Virginia	$ 98,735,645 65

or 24.4111 per cent. in the latter State.

Upon the basis of the fair estimated value of all property in the two States in June, 1863, according to the Plaintiff's statement of those values. West Virginia's share of the debt would be 24,4111

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of the real and personal property in Virginia as of the 20th day of June, 1863, and have taken their testimony, prepared their schedules and exhibits, and until to-day argued the case upon that basis; and they object to the introduction of this new issue into the case at this stage of the litigation."

* * * * * * * *

"The Special Master: Have you any objection to adding this to the agreement?

"*It is further agreed*, inasmuch as Paragraph 5 requires a report of the real and personal property by counties, it is agreed that the aggregate number of slaves stipulated for in the foregoing agreement was taken from the United States Census of 1860, and that in apportioning the number of slaves and the valuation thereof to the various counties, the same census, showing the slaves in the various counties as the basis for making that distribution, shall be used.

"Mr. Anderson: There is no objection to that. Let it be stated in the record that this agreement was made at the close of the argument, on the 1st day of January, 1910."

Stenographic Report of the Hearings before the Master, Vol. 20, pp. 3153-3154.

per cent. of $33,897,073.82, or $8,274,648,58; of which $8,036.100.90 would be principal and $238,547.68 accrued interest.

These estimates are more than liberal to West Virginia, for they include the slaves, both those still nominally in bondage, and those who were actually free, at a valuation equivalent to more than half what those slaves were individually or collectively worth in January, 1861.

We most earnestly and confidently insist that the slaves in Virginia and West Virginia in June, 1863, as a mass constituted no such description of property as to be any just basis upon which to rest any State indebtedness.

The tenure by which they were held was so precarious, both by reason of Mr. Lincoln's Emancipation Proclamation, and because of the facility with which they could secure actual freedom by escaping into the lines of Federal occupation, where they were not already within those lines, as very many of them were, that they constituted no fair basis for the ascertainment of the share of the common debt with which either State should be charged.

The above conservative figures seem clearly to demonstrate that, ascertaining West Virginia's share of the common debt, independently of the Wheeling Ordinance, her equitable share of that liability, computing it upon any basis which would be fair or just, would be $7,383,189.44, with interest on $7,170,339.47 from January 1, 1861,—*as a minimum*, if it be ascertained on the *assessed* values of real estate in the two States June 20, 1863; and that it would be $8,274,648.58, with interest on $8,036,100.90 from January 1, 1861, if the apportionment be made on the basis of fair *estimated* value of both real and personal property (including slaves) in the two States June 20, 1863, and estimating the slaves at a very large value considering all of the facts of the case.

These figures will be found not to vary very radically from the results which will be reached by applying the terms,—(and using the method prescribed by the Wheeling Ordinance, which West Virginia in her answer insists, determined the nature and extent of her liability), to the ascertainment of West Virginia's share of the debt, construing that Ordinance fairly with reference to the established facts and circumstances of the case.

(8.)

West Virginia's Just Share of the Debt Computed under the terms of the Wheeling Ordinance.

We ask the attention of the Court to the question of the amount of West Virginia's liability ascertained in accordance with the findings of the Master's report under paragraphs III, IV, VI and VII of the decree.

We beg leave to file at this point as part of this argument alternative statements prepared by Mr. A. G. Potter, the accomplished expert accountant under whose immediate direction the accounts for the plaintiff were made up in this case, showing the amounts due by West Virginia applying the figures as ascertained by the Master, under each of the paragraphs of the decree. (Appendix V to this Note of Argument).

Mr. Potter has also, at our request, prepared a statement showing what would be the result under the alternative directions of Paragraphs III, IV, V, VII and VI of the decree, if the Wheeling Ordinance is construed and applied in accordance with the contentions of West Virginia, which statement is filed as Appendix VI to this printed argument.

Examination of this statement will show that, if West Virginia's attempt, by *construction*, to defeat the expressed purpose of the Ordinance, and to repudiate the compact which was the condition of her statehood, should be successful, then, instead of West Virginia owing anything, the balance on the accounting would be in her favor, to the extent of from $769,073.57, as a minimum, to $3,123,618.76!!!

These astounding results are reached by ignoring or distorting the unmistakable requirements of the Wheeling Ordinance:

(1) By charging West Virginia with only *some* and a comparatively small part of the actual expenditures made by Virginia in West Virginia territory during the debt period, when the decree and the Ordinance requires the new State to be charged with ALL of those expenditures.

(2) By omitting to charge West Virginia with any share whatsoever of the largest items of the "ordinary expenses," and failing to charge her with a *just proportion* of such expenses as West Virginia concedes to have been "ordinary."

(3) By taking credit for large sums as having been paid into the treasury of Virginia from West Virginia counties, which were never in fact paid into the Virginia treasury, from those counties; and

(4) By omitting to charge West Virginia with money and the fair value of bank stocks which she received from Virginia on and after June 20, 1863.

These results are so unconscionable as to absolutely discredit the data upon which, and the methods by which they are reached.

We will submit alternative statements, showing the amount of West Virginia's liability upon the basis of the Master's report under paragraphs III, IV, VII and VI of the decree, modified as we consider it should be in respect to the so-called "indirect" expenditures made by Virginia in building roads, turnpikes, bridges, &c., in West Virginia territory, and by the addition of the money received by West Virginia from Virginia in 1863 and 1864.

These paragraphs, following the Wheeling Ordinance, direct West Virginia to be charged with three classes of debits:

(1) With all State expenditures in West Virginia counties;

(2) With a fair proportion of the ordinary expenses of the State Government during the specified period; and

(3) In addition to these items under the Ordinance, West Virginia is chargeable with the value of certain bank stocks and with the money which the new State received from Virginia on and after June 20, 1863.

West Virginia is to be credited under the Ordinance and Paragraph VI of the decree with all payments made into the treasury of Virginia from West Virginia counties during the same period.

As we have already seen, the chief points of difference aris in the determination of

(1) What expenditures were made by Virginia in West Vir ginia territory;

(2) What were the ordinary expenses of the State;

(3) What was West Virginia's fair proportion of those ordi nary expenses; and

(4) What payments were made into the State Treasury fro West Virginia counties?

These questions have been, already, fully discussed in a ge eral way.

The points of divergence between opposing views will b clearly presented by the following concise tabulated statement showing the results in dollars and cents:

STATEMENT I.

Stating West Virginia's liability, apportioning ordinary expenses on basis of total population, *including slaves*:

Debit Charges: ....

Paragraph III.—Actual expenditures made by Virginia in West Virginia counties:			
(a) Amount allowed by the Master ....$		2,811,559 98	
(b) Add amount actually expended by Virginia in West Virginia territory through public improvemnet companies		1,104,400 85	$3,915,960 83
Paragraph IV.—Proportion of ordinary expenses, on basis of total population including slaves, ascertained under this paragraph of the decree by the Master (Master's Report, p. 140)			8,147,455 92
Paragraph VII.—Money, property and stock received by West Virginia from Virginia:			
(a) As found by the Master..... (Master's Report p. 193)	$500,828 00		
(b) Add for cash received by West Virginia from Virginia (Master's Report, p. 181)	170,771 46		
	$671,599 46		
Deduct for value of stock, as charged by Master under Paragraph VII,			

of the Sweet & Salt Sulphur Springs and White & Salt Sulphur Springs Turnpike Companies, and the Fairmount & Palatine Bridge Co., the expenditures upon which are included in the above total of $1,104,400.85 (para. III)—See p. 12 Complainant's Exceptions, and Joint Exhibit C-1, pp. 4, 5, 6, R. 375, 376, 377	23,578 00	648.021 46
		$12,711,438 21
Credit West Virginia:		
Paragraph VI.—By receipts from West Virginia counties (Master's Report, p. 179)		6,105,884 75
On this basis West Virginia's share of the debt, as of January 1, 1861, would be....		$ 6,605,553 46

STATEMENT II.

Stating West Virginia's liability, apportioning ordinary expenses on basis of population, *excluding slaves*:

Debit Charges:	
Para: III.—Expenditures made by Virginia in West Virginia counties, as shown in Statement I	$ 3,915,960 83
Para: IV.—Proportion of ordinary expenses, on basis of population without slaves (Master's Rep. 140)	11,452,862 66
Para: VII.—Money and stocks received by West Virginia from Virginia on and after June 20, 1863,—as shown in Statement I	648,021 46
	$16,016,844 95
Credit West Virginia:	
Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179).....	6,105,884 75
On this basis West Virginia's share of the debt, as of January 1, 1861, would be	$ 9,910,960 20

For reasons already shown to the Court, we consider this a fair, just and equitable basis of adjustment—far fairer than it would be to include the slave population as a factor in making this apportionment. It is the amount assignable to West Virginia under the Wheeling Ordinance, reasonably, and fairly construed and applied.

But, following a suggestion made by Mr. Justice Harlan during one of the former hearings of the case (See West Virginia's Compilation, Vol. II, p. 227), we have had an alternative statement prepared, apportioning the ordinary expenses of the State Government on the Federal basis, by which *three-fifths* of the slaves would be counted, as follows:

STATEMENT III.

.. Ascertaining West Virginia's liability, apportioning ordinary expenses on the basis of total white and three-fifths of the slave population:

Debit Charges

Para: III.—Expenditures made by Virginia in West Virginia counties, as shown in our Statement I, supra		$ 3,915,960 83
Para: IV.—West Virginia's share of ordinary expenses, averaged by decades, on basis of total white and three-fifths of slave population, as follows:		
Mar. 19, 1823 to Sept. 30, 1830..	$ 584,731 27	
Oct. 1, 1830 to Sept. 30 1840..	1,087,063 53	
Oct. 1, 1840 to Sept. 30, 1850..	2,017,673 93	
Oct. 1, 1850 to Dec. 31, 1860.	5,472,521 32	9,161,990 05
Para: VII.—Money and stocks received by West Virginia from Virginia on and after June 20, 1863,—as shown in Statement I, *supra*, ...		648,021 46
		$13,725,972 34

Credit West Virginia

Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179)	6,105,884 75
On this basis West Virginia's share of the debt, as of January 1, 1861, would be	$7,620,087 59

It is a significant circumstance that the amount which West Virginia would have to pay upon this basis is so nearly the same as the sum which would be assigned to her, if, discarding the Wheeling Ordinance, the apportionment were made on the basis of the assessed value of the real estate in the two States as of June 20, 1863 which gives West Virginia's share of the debt as being $7,383,189.44, the difference being only $236,898.15, or only about 3 per cent.

Following the Master's report, we will now submit statements of the amount of West Virginia's liability, under the directions of paragraphs III, V, VII and VI of the decree:

STATEMENT IV.

Giving West Virginia's liability, apportioning the ordinary expenses of the State on fair estimated value June 20, 1863 of real and personal property, *with slaves*—estimated values of personal property and slaves being those adopted by the Master but excepted to by Plaintiff:

Debit Charges	
Para: III.—Expenditures by Virginia in West Virginia territory, as shown in our Statement I, above	$ 3,915,960 83
Para: V.—Proportion of ordinary expenses of State Government on basis of estimated value of real and personal property, *including slaves*, counted at the figures reported by the Master for said personal property and slaves on June 20, 1863,—excesssive as we believe, and as we think we have shown those valuations to be (Master's report, p. 172)	6,078,367 96
Para: VII.—Bank stocks and money received by West Virginia from Virginia, on and after June 20, 1863, as shown by Statement I, above	648,021 46
	$10,642,350 25
Credit West Virginia:	
Para: VI.—By receipts from West Virginia counties (Master's report, p. 179)	6,105,884 75
On this basis West Virginia's share of the debt as of January 1, 1861, would be	$ 4,536,465 50

STATEMENT V.

showing West Virginia's share of the debt on same basis as No. IV, except that the *slaves* are *excluded* from the computation of estimated values of real and personal property in June, 1863:

Debit Charges:	
Para: III.—Expenditures in West Virginia territory, as shown in our Statement I, above....	$ 3,915,960 83
Para: V.—Proportion of ordinary expenses, apportioned according to fair estimated value of real and personal property, *without slaves*, (Master's Report 172)	9,463,553 58
Para: VII.—Value of stocks and money received by West Virginia from Virginia on and after June 20, 1863, as shown in our Statement 1 (Master's Rep. 193)....	648,021 46
	$14,027,535 87
Credit West Virginia:	
Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179)	6,105,884 75
On this basis West Virginia's share of the debt as of January 1, 1861, would be	7,921,651 12

These Statements IV and V are given, *not* because we consider that property values constitute the fairest or a fair criterion for the apportionment of the ordinary expenses of a State, or because we consider the Master's large estimates of the value of the personal property and slaves in Virginia in June 1863, as at all justified by the proofs, but merely to indicate that even upon those excessive valuations the indebtedness of West Virginia would be $4,362,964.50, on January 1, 1861, if personal property and slaves be

counted as being worth in Virginia in June 1863, very much more than they were in January, 1861, and would be $7,921,651.12, if slaves is excluded from the calculations, as they ought to be as a matter of fair dealing, in apportioning the ordinary expenses of the State.

STATEMENT VI.

Showing West Virginia's share of the debt, apportioning ordinary expenses on basis of property values, as of January 1, 1861:

Debit Charges:		
Para: III.—Expenditures made by Virginia in West Virginia territory, as shown in our Statement I, above	$ 3,915,960 83	
Para: V.—Proportion of ordinary expenses on basis of fair estimated property values, *including slaves*, on January 1, 1861, (Master's Rep 173)	6,805,289 57	
Para: VII.—Value of money and Bank stocks received by West Virginia from Virginia on and and after June 20, 1863, as shown in Statement I, above	648,021 46	
		$11,369,271 86
Credit West Virginia:		
Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179)	6,105,884 75	
On this basis West Virginia's share of the debt, as of January 1, 1861, would be	$ 5,263,387 11	

STATEMENT VII.

Showing West Virgina's share of the debt, apportioning ordinary expenses on basis of property values, *excluding slaves*, as of January 1, 1861:

Debit Charges:	
Para: III.—Expenditures made by Virginia in West Virginia territory, as shown in Statement I, above	$ 3,915,960 83
Para: V|—Proportion of ordinary expenses on basis of fair estimated valuation of property, *excluding slaves*, as of January 1, 1861, (Master's Report 173)	8,586,648 25
Para: VII.—Value of stocks and money received by West Virginia from Virginia on and after June 20, 1863, as shown in our Statement I, above,	648,021 46
	$13,150,630 54
Credit West Virginia:	
Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179)	6,105,884 75
On this basis West Virginia's share of the debt, as of January 1, 1861, would be	$ 7,044.745 79

These last two tables are given not because we consider the principle on which they are stated a correct one, but merely to show that even upon the inaccurate basis upon which they rest, West Virginia will owe a very large sum.

The more we consider the problems presented in this case the stronger our conviction is that the amount of West Virginia's liability, ascertained under the terms of the Wheeling Ordinance—if that ordinance be sensibly, reasonably, and fairly construed—is

justly and equitably ascertained in Statement II, hereinabove submitted by us. That statement, which is supported by strong considerations of reason and justice, ascertains that indebtedness to be $9,910,960,20, as of January 1, 1861.

In any case and upon any amount for which West Virginia shall be decreed to be liable, we most respectfully and most earnestly insist that interest should be decreed against her according to her moral and legal obligation under the terms of her contract.

With entire deference for the sincerity of the divergent views of our honorable opponents upon these questions, we are persuaded that less than this would not do justice to the complainant, and to the common creditors of the complainant and the defendant here.

(4)

The Liability of West Virginia for Interest.

Is West Virginia justly, legally, equitably, and contractually chargeable with interest?

In this connection, we must remember that the contract which we are considering was a Virginia contract.

Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation, and whenever a debt is due, the debtor is bound to pay interest unless relieved from this obligation by agreement. This is, and has been the law of the Commonwealth for more than one hundred years.

In Jones v. *Williams*, 2 Call, 106, decided in 1799, Edmund Pendleton, who was one of the great Judges of our country, delivering the opinion of the court said:

"Interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it."

Cited with approval in *Baker* v. *Morris*, 10 Leigh 284, *McVeigh* v. *Howard*, 87 Va., 599, and *Stuart* v. *Hurt*, 88 Va., 343.

In *Hatcher* v. *Lewis*, 4 Randolph 152, 157, the court laid down the rule in the following expressive language:

"*The interest follows the principal as the shadow does the substance.*"

In *Chapman* v. *Shepherd*, the court said:

"In contracts for the payment of money, interest is not given as damages at the discretion of the court, or jury, but as an incident to the debt, which the court has no discretion to refuse."

Chapman v. *Shepherd*, 24 Grott, 377, 384
Roberts v. *Cocke*, 28 Gratt, 207.
Tidball v. *Shenandoah National Bank*, 100 Va. 741.

"Interest is favored both by the legislative and judicial bodies of the State."

Tazewell v. *Saunders*, 13 Gratt. 354, 370.

In *McVeigh* v. *Howard*, 87 Va. 599, the Supreme Court of Appeals of Virginia said:

"It is the settled rule that when no day is named in the bond or note given for the payment of a precedent debt, it is due and payable on the day of its date, and bears interest from that date, though no interest be reserved. Such an instrument like a bond or note payable, in Virginia, on demand, is payable presently, and bears interest from date. This doctrine is founded in good conscience and correct morals." * * *

Citing *Jones* v. *Williams* and *Hutcher* v. *Lewis*, quoted above.

Such is the law of Virginia as to interest.
The law of West Virginia in regard thereto is the same.

In *Shipman* v. *Bailey*, 20 W. Va. 140, 146, Judge Snyder, announcing the unanimous opinion of the Supreme Court of Appeals of that State, after citing a number of authorities upon the question, stated the rule as follows:

"Other authorities of the same character might be cited, but, we think, we have given sufficient to establish the rule which seems to be, that in contracts for the payment of money interest on the principal sum is a legal incident of the debt and a part of the contract, and wherever there is a contract for the payment of a specified legal rate of interest, whether such rate is fixed by the contract itself or by the law of the place where the contract is made, the obligation of the contract extends to the payment of such interest as fully as it does to the principal sum, and courts have no more power to change the rate of interest thus fixed, than they have to dispense with the enforcement of the contract either in whole or in part."

That decision reaffirms another proposition, applicable to this case, already a part of the jurisprudence of West Virginia, by the

adjudications of the Supreme Court of Virginia rendered before the birth of the new State, namely, that the *lex loci contractus* controls in the matter of the interest chargeable against a debtor.

In *Pickins* v. *McCoy*, 24 West Va. 344-352, the court affirms *Shipman* v. *Bailey*, and adopts the language just quoted from that decision.

Independently of these West Virginia decisions, such parts of the common law and of the laws of the State of Virginia as were in force on the 20th of June, 1863, when the first Constitution of West Virginia went into operation, and as are not repugnant to said Constitution, were continued and declared to be the law of West Virginia. Section 8 of Article XI, of the first West Virginia Constitution. And see present West Virginia Constitution.

The effect of this provision was to adopt for the new State the body of the common and statute laws of the Commonwealth, so far as the same were in force within the boundaries of the new State on the 20th of June, 1863.

As a part of this body of laws, the law of Virginia as to interest became, and has continued to be, a part of the laws of West Virginia.

Such, then, was the law of Virginia before, at the time of and since the formation of West Virginia, as to the legal and equitable liability of a debtor or contractor to pay interest. Such has been the law of West Virginia since the hour of her birth. And such was, and is, the law of the contract evidenced by the public Acts of Virginia and West Virginia set forth in complainant's Bill.

This is the rule in Virginia as to debts due by the Commonwealth.

The question was presented in the celebrated case of *Higginbotham's Executrix* v. *Commonwealth*, 25 Gratt. 627.

That was a suit against the Commonwealth to recover the amount due Higginbotham's Executrix on certain past due dividends on stocks which had been guaranteed and assumed by Vir-

ginia by the Acts cited in the opinion of the Court.—26 Gratt. 630, 631.

There was no express contract by the State to pay interest upon said dividends. The petitioner's claim was for the amount of the dividends "with its accruing interest."

The unanimous decision of the Supreme Court of Virginia was that "judgment should be entered for the petitioner for the amount of her demand with interest."—Idem, p. 641.

The framers of the Wheeling Ordinance must be presumed to have drawn that instrument with reference to the principle of equity and justice which had then and long before that time been embodied in the laws of Virginia by the repeated decisions of her highest court.

To Virginia and West Virginia lawyers of that day, as since that time, Judge Coalter's apt formula that, "the interest follows the principal as the shadow does the substance," was as familiar as any other accepted rule of equity or of law.

Under the law of Virginia in force at the time of these transactions, interest upon the portion of the debt which West Virginia was to take upon herself, was an esssential incident of the debt, and its payment as much a part of the obligation as was the payment of the principal.

But, even if the *lex loci contractus* had not brought us to this conclusion, the language of the ordinance itself, fairly construed, leads to the same result.

That language is that:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861," etc.

Now, that debt was an interest bearing debt. It was represented by obligations of the undivided State, some of them payable at a future day, some of them at a future day and thereafter at the pleasure of the Commonwealth, but all of them interest bearing obligations, obligations in which the payment of the stipu-

lated interest was made as much a part of the debt as was the payment of the principal.

The interest was an integral part of the debt, and as many of the bonds were payable thirty-four years after date, and over $10,000,000 of them at the pleasure of Virginia, with interest from date, the interest as to much of the debt constituted much the greater part of it.

It was the manifest intention of the enactors of that ordinance, unless we are to ascribe to them the sinister purpose of perpetrating flagrant wrong and injustice, that the new State should take upon itself, and relieve what remained of the old State of a part of the burden of debt which rested upon both States. They knew that that burden consisted as well of interest, as principal, and as much, of interest as of principal.

It was not proposed that the new State should, as soon as she became a State, pay in cash a sum to be ascertained in the manner indicated in the Ordinance. The framers of the ordinance understood too well that under the conditions then existing, it would be impossible for the new State to raise and pay any considerable sum in cash.

Why the new State was dependent upon the old State for the money necessary to enable her to begin business and she did not have and in the nature of things could not command a sufficient amount in cash to pay off one-tenth or even one-twentieth of the then Virginia debt.

The stipulation was not that the new State should pay a sum in cash on account of its share of a common indebtedness; but that it should take upon itself a just proportion of that debt, to be ascertained as in the Ordinance prescribed.

Are we to understand that a court of conscience is to be asked to construe that stipulation to mean that the new State shall take upon itself only a proportion of a part of that debt? That it shall assume a share of the principal only of the debt, but shall be exonerated from any part of the interest which was, and is, as integral a part of the Virginia debt, and of the obligations which

represent it, as the branches are a part of the tree from whose trunk they spring?

In their elaborate arguments in this case, opposing counsel have heretofore devoted very little attention to this important question, although it was plainly in their minds when they prepared their draft of decree, and although their attention was challenged to it by the argument for Virginia. In so far as they have discussed it, they have ignored the facts and principles upon which West Virginia's legal, "equitable," and "just" obligation to assume and pay the interest as well as the principal of her share of the debt, rests.

But West Virginia's equitable and legal liability to pay interest upon her share of the debt of Virginia does not at all depend alone upon the Wheeling Ordinance, or upon the law of Virginia and West Virginia, which makes the interest an essential part of the debt; but it rests still more and beyond the possibility of question upon the express terms of the Constitution under which West Virginia became a State.

The fact, the character and the legal effect of the compact created by that important transaction have already been fully discussed.

West Virginia's solemn covenant in regard to the equitable proportion of that debt which she assumed was that her Legislature should "provide for the liquidation thereof by a Sinking Fund, sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This was precisely in accordance with the plan which had long theretofore been adopted by the Commonwealth for the payment of her debt.

This plan was embodied not only in the statutes but also in the Constitution of Virginia, in force when West Virginia became a State.

It was embodied in that Constitution in the following terms:

"29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand

eight hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this Commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the first day of January, a debt shall be contracted by the Commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The General Assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion."

Section 29 of the Constitution of Virginia, in force from January 1, 1852, Code of Virginia for 1860, p. 47; Appendix to the Record, p. 200.

It was expressed and given further effect by the second section of the following Act passed by the General Assembly of Virginia:

"Chap. 17. An act establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.
Passed March 26, 1853.

"2. Whenever after the said first day of January, eighteen hundred and fifty-two, a debt shall be contracted by the Commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed."

Acts of General Assembly of Virginia, session of 1852-3, p. 29; Appendix to the Record, pp. 200, 201.

Its effect was, therefore, well understood to be to conform the undertaking of West Virginia in regard to the time and manner of the payment of her share of the debt to the plan and scheme of payment which had been adopted by the Commonwealth, and which experience had approved.

That scheme was, the creation from the annual revenues of the State, of a fund equivalent to seven per centum of the principal of the debt. Of this, six per centum went to pay the annually accruing interest, and one per centum was invested and set apart to retire the principal sum due, within thirty-four years, and this arrangement was defined as a sinking fund.

It was found, and if the calculation is made it will be shown to be true, that one *per centum* of any sum invested and compounded at six *per centum* interest per annum, will in thirty-four years produce an amount equal to such sum.

This was the theory and the plan which Virginia had adopted for the liquidation of her debt.

It was a plan with which Messrs. Willey, Van Winkle, Hall, Brown, Haymond, and other members of the first West Virginia Convention, who had been previously members and some of them able members of the General Assembly of Virginia, were doubtless entirely familiar: And it is the same plan which we find incorporated in the scheme of settlement which constitutes a part of the foundation upon which West Virginia's existence as a State rests.

By this clause of West Virginia's Constitution, therefore, it was required, not that the new State should pay a lump sum in cash, to be ascertained in the manner prescribed, but that she should *assume* "an equitable proportion of the public debt of the Commonwealth" existing on the 31st of December, 1860, and should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

The framers of the West Virginia Constitution thus manifestly adopted, and engrafted upon that instrument, the plan which for nine years or more had been a part of the organic and statutory

law of Virginia for the extinguishment of her public debt, and the Legislature of Virginia accepted and approved that plan.

That plan included, (as the West Virginia Constitution also expressly included), an undertaking on the part of the State to pay the accruing interest, and to liquidate or redeem the principal of each bond representing the debt, within thirty-four years.

In simple language, the stipulation of West Virginia expressed in her Constitution, and accepted and acted upon by Virginia, was, that West Virginia would pay the accruing interest on her share of the debt, as it should accrue, and the princippal thereof within thirty-four years.

That such was her express undertaking, appears from the language of her first Constitution, interpreted according to the reasonable and natural meaning of that language.

That such was the purpose, meaning, and effect of that language, is conclusively shown when we read it in the light of the plan established by the Constitution and statute of Virginia, then in force, for the establishment of a sinking fund for the liquidation of her public debt which plan was adopted by the new State as to its share of that debt.

And so, we find that both by the express terms of the Wheeling Ordinance fairly construed, and by the express terms of the Constitution under which Virginia and the National Congress consented that West Virginia should become a State, this new State has become expressly obligated to pay interest upon the share of the principal of the common public debt for which she is liable.

These positions are not at all in conflict with the general rule of American and of public law, as clearly defined by this court in *United States* v. *North Carolina*, 136 U. S., 211, as the law governing that case, that,

1. "Interest, when not stipulated by contract or authorized by statute, is allowed by the courts as damages for the detention of money or property;"

2. "Interest is not to be awarded against a sovereign unless its

consent has been manifested by an act of its legislature, or by a lawful contract between executive officers;"

3. "By decisions in North Carolina that State, unless by or pursuant to an explicit statute is not liable for interest, even on a sum certain which is over due and unpaid."

See also *South Dakota* v. *North Carolina*, 192 U. S., 286.

The question presented in the case at bar is taken out of the reason and the decision of this court in the North Carolina cases by the following circumstances:

(1) The obligation to pay interest is determined by the *lex loci contractus*, and under the settled law of Virginia which was the law of the contract between West Virginia and Virginia, and under the law of West Virginia also, interest is not and never has been allowed as damages for the detention of money, but in those jurisdictions interest is allowed as an essential incident of a contract, whether express or implied, for the payment of money, and as a matter of right and justice.

This court, in its opinion in *United States* v. *North Carolina*, expressly rested that decision upon the fact that under the law of North Carolina no interest was payable on such a contract.

(2) The payment of interest is here an obligation imposed by statute—first by the Wheeling Ordinance, and second by the Constitution under which West Virginia became a State.

(3) The express contract of West Virginia upon which her existence as a State was conditioned requires her to pay interest on the part of the debt which she assumd.

This is a very much stronger case for a decree for interest than *United States* v. *State of New York*, 160 U. S. 600,, righteous as was the allowance of interest there.

Paraphrasing the language of this court in that case, p. 621, "It would be a reflection upon the" honorable motives of the members of the Conventions which framed the Wheeling Ordinance

and the West Virginia Constitution "if we did not place a liberal interpretation upon those acts and give effect to what, we are not permitted to doubt, was intended by their passage."

Another question which arises in connection with the consideration of this subject, is, from what time is West Virginia justly and equitably bound to pay that interest?

Answer to this is furnished by the Wheeling Ordinance and by the section of the first West Virginia Constitution above quoted.

The settlement by the terms of both instruments was to be made as of the arbitrary date of January 1, 1861, or to be precisely accurate, as of December 31, 1860. That, accordingly, is the date from which fairly equitably, and legally, (because it accords with the express terms of both the ordinance and the Constitution), the interest should be computed.

As already shown, the debt, a proportion of which as of that date, West Virginia was to assume and pay, was an interest bearing debt, and the interest was as integral a part of it as was the principal.

A farther kindred inquiry to the last is: To what time should West Virginia be required to pay such interest?

Our response to this is, that she is justly, equitably and legally bound to pay this interest,

(1) *By the terms of the Wheeling Ordinance;* certainly, for the period during which the debt of the Commonwealth existing on the 31st of December, 1860, would continue to be an interest bearing debt: And we have seen that that was not only until the obligations representing the debt became due, but under the just rule of the law of Virginia as to interest, in force during the whole period of the creation of the debt, until that principal should be fully paid.

(2) By the terms of the section of her Constitution above quoted, accepted by Virginia and by the Congress, West Virginia undertook to pay all the accruing interest on, and the principal of, her share of that debt in thirty-four years.

She has failed and refused to pay that share, or any part of it.

The interest accruing thereon from December 31, 1860, has continued to accrue, as to her, until it now amounts to vastly more than the principal. It was that interest which West Virginia agreed to pay, and it was that principal for the payment of which West Virginia's Legislature was to make provision, so that the same should be paid within thirty-four years.

We are unwilling to anticipate that the learned counsel for the defendant will argue that West Virginia, by the language of that provision of her Constitution, is only bound to pay interest for thirty-four years from December 31, 1860, or from June 20, 1863, because we are unwilling to assume that our distinguished opponents would contend that a State, any more than an individual, should be allowed to take advantage of her own wrong, or profit by her own procrastination, and neglect of duty.

Here, West Virginia has not only not paid a just, or any other proportion of the common public debt, nor provided for the payment of the accruing interest thereon, and for the payment of the principal, but she has persistently failed and refused to do either of these things. and has by the votes of her Legislature, again and again repudiated any and all liability whatever for any part of that indebtedness.

(See Resolutions of Legislature of West Virginia, App. 247, 248.)

With all deference for the distinguished counsel for the defendant, we venture to believe that a court of equity will not allow any defendant, and particularly a State. which should be an exemplar of fair and honorable dealing in all of its transactions, to make gain out of its own palpable dereliction of duty.

And so, our response to such contention, if it shall be urged, is, that equity will not suffer any party to take advantage of his own wrong.

Conclusion

It is, true that the amount which West Virginia is thus equitably bound to pay, including the interest fairly and justly due thereon, will, as of this date, aggregates a very large sum; but

that constitutes no argument for her exoneration from the payment of the same.

Fortunately for West Virginia this indebtedness, even if the very largest sum which under any of the alternative statements in the case could by possibility be found to be due by her, should be decreed against her, would, in the affluence which the record shows she now enjoys, wealth largely resulting from the construction of the very improvements upon which the expenditures made by Virginia in roads, turnpikes, railroads and bridges, and in the improvements of the navigation of her rivers were made,—impose upon her a burden easy to be borne, and light, as compared with what Virginia, during the period of her greatest impoverishment, has assumed and borne.

Virginia not only assumed two-thirds of the original debt and two-thirds of the accumulated interest upon it down to January 1st, 1871, and in addition thereto the accumulated interest upon over $8,000,000 of bonds issued by her on account of unpaid and accumulated interest prior to January 1st, 1871, but she paid off in full large amounts of interest accruing after December 31st, 1860, and before January 1st, 1871; and she has paid off, also, in full very large amounts of the principal of the original debt; and has, also, paid off large amounts of the principal of the two-thirds of the debt assumed by her in 1871.

In addition to this Virginia has paid, as of this date, over $38,000,000 of interest.

It must be remembered that these payments, made by Virginia, have been distributed through a period of more than forty-five years.

Large portions of these payments were made by the people of Virginia out of limited resources, in the period of their greatest poverty and distress.

If interest were to be computed upon the payments thus made by Virginia during the last forty-eight years on account of this common debt,—which would have to be done in order to equalize West Virginia with Virginia in regard to these transactions,—the average period upon which interest should be so computed upon

the payments so made by Virginia in order to thus equalize her with West Virginia, would be considerably more than twenty years; and the amount assumed and paid by Virginia, including the upwards of $25,000,000 of her recognized and regularly met obligations still outstanding, and including the payments she has heretofore made on the whole debt, and on the two-thirds she has specifically assumed, would aggregate considerably over $100,000,000, as of this date.

Large portions of West Virginia would to-day be a wilderness, but for the building of the works of internal improvement whose construction was secured by the expenditures above referred to, and the building of other works of internal improvement which have resulted from the construction of the great lines upon which Virginia expended so many millions of dollars of her substance.

The people of West Virginia are to-day enjoying the fruits of the enterprise and liberality of the Commonwealth in those expenditures,—not only those expended within the limits of West Virginia, but also in the expenditure of millions of dollars on works outside of the territorial limits of West Virginia, but which were built in large part for the purpose of developing the resources of the territory now constituting that State.

Too much emphasis cannot be laid upon these facts and considerations.

Nor can it be forgotten that almost the entire indebtedness which is the subject matter of this investigation was created by the votes of the representatives of West Virginia, and that very little of it ever would have been created but for the support they gave to the Acts by which this large indebtedness was imposed upon the Commonwealth.

The complainant desires and asks only that a decree which is in accordance with the legal and equitable rights and obligations of the parties shall be entered.

Such a decree, she is satisfied, will impose upon the new State the duty of paying a very large sum on account of this long ignored obligation, but a sum, every dollar of which West Vir-

ginia justly owes and the complainant is righteously entitled to recover.

Her earnest plea is that West Virginia is bound both by the terms of the Wheeling Ordinance, and of her first Constitution to pay a just and equitable part of this debt with interest until the same shall be fully paid, and that she shall not be suffered to repudiate either obligation.

She respectfully asks that a decree may be entered for such sum as is thus equitably due, with interest thereon from the 1st day of January, 1861, until the obligation shall be fully discharged.

SAMUEL W. WILLIAMS,
Attorney General of Virginia.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of Counsel for Complainant.

APPENDIX NO. 1.

TO NOTES OF ARGUMENT FOR THE COMPLAINANT.

Statement showing the principal expenditures made by Virginia prior to June 20, 1863, on railroads, canals, and other internal improvements designed and built for the purpose of opening up and developing West Virginia territory, or which are to-day parts of railway systems and lines of communication which serve the territory and people of West Virginia and afford them outlets to the markets of the world:

I. On railroads which constitute parts of the Chesapeake and Ohio Railway:		
On the Virginia Central R. R.		$2,484,134.00
On the Blue Ridge R. R.		1,744,723.00
On the Covington & Ohio R. R.		3,206,461.83
Total on Chesapeake & Ohio R. R.		$7,435,318.83
II. On Railroads which now constitute parts of the Norfolk & Western Railway:		
On Norfolk & Petersburg R. R.	$1,341,341.00	
On Southside Railroad	1,833,500.00	
On Virginia and Tenn. R. R.	3,755,000.00	
		$ 6,929,841.00
On Winchester & Potomac R. R.		$ 270,000.00
On Alexandria, Hampshire & Loudoun R. R.		1,017,248.00
On Marietta & Cincinnati R. R.		202,611.00
Amount expended on Railroads		$15,855,018.83
III. Canals:		
On James River & Kanawha Canal	$10,400,000.00	
On Chesapeake & Ohio Canal	250,000.00	
		$10,650,000.00

IV.	Bridges in West Virginia	81,412.00
V.	On Turnpikes and Roads chiefly in W. Va...	2,849,579.71
VI.	On Navigation Companies in West Virginia..	210,500.00

Total on works built to develop or serving West Virginia $29,646,510.54

For above figures see message of Governor Walker to the General Assembly of Virginia March 8, 1870, Report of West Virginia Debt Commission, West Va.'s Compilation Vol. 1, page 474, and Joint Exhibit C-1, R. 374 to 377; Reports of Auditor of Public Accounts of Virginia 1861, of 2d Auditor, 1872, Journal of House of Delegates of Virginia 1871-2, Document VI.

The above amounts do not include considerable sums expended on roads and turnpikes wholly in what is now Virginia, but which connect with roads or turnpikes lying wholly in West Virginia and constitute lines of travel which serve West Virginia as well as Virginia.

APPENDIX NO. II.

containing extracts from the public records and statutes of the Commonwealth showing the nature, motive, and object of her expenditures through joint stock internal improvement companies:

Report of the Committee on Roads and Internal Navigation to the General Assembly, submitted December, 1815 (Board of Public Works Reports, Vol. 1, p. 43):

"Whatever difference of opinion may have at any time existed as to the expediency of controlling the voluntary direction of the wealth and the labor of individuals by the application of legal constraint, there never has existed a doubt but that it is the duty as well as the interest of every good government to facilitate the necessary communication between its citizens.

"Next to the enjoyment of civil liberty itself, it may be questioned whether the best organized government can assure to those for whose happiness all governments are instituted, a greater blessing than an open, free and easy intercourse with one another by good roads, navigable rivers, and canals. Their tendency, by extending commerce to promote the agriculture and manufacture of a nation and thereby to augment its wealth and population, is too obvious to require much illustration.

"The planter and farmer realize their share of this benefit, in the augmented value of their lands; the manufacturer and the merchant, in the increased and diversified demands for their industry and capital. Nor are the higher interests of society less indebted for their advancement to the multiplication and improvement of these channels of useful intercourse. They afford the means of exploring the natural resources of a country and invite the genius of speculation to fit them for the uses of man. Lands too remote from markets to tempt cultivation; forests, hitherto

regarded as inaccessible; beds of minerals and fossils unknown or neglected, are brought within the reach of ordinary enterprise and rendered subservient to the convenient comfort of the citizen or to the defense and safety of the State. They confer on an extended empire the promptitude and energy of action, which are considered peculiarly characteristic of one of narrow dimensions; since without contracting the limits of its territory they reduce the distance and expedite the communication between the seat of its government and its remotest extremities.

"Whether the public force is to be spread out for defence or combined for attack, they alike contribute to the rapidity and vigor of its operations.

"In a republic, especially, where public opinion exerts a controlling influence, and public virtue should be the spring of all public action, they may be considered an important auxiliary, if not a necessary ingredient of public liberty. They tend to difuse more equally the knowledge which experience acquires and the leisure which wealth alone can purchase; they strengthen the cords of social union and the quick and generous feeling of patriotism, which is ever ready to exclaim at the contemplation of an extended scene of public improvement. 'I love my country because she is worthy of my affection.'

"The duty, which is obligatory upon all governments, is peculiarly incumbent upon one, whose territory like that of Virginia, nature has done so much both to unite and separate—to whom she has presented so many advantages to improve and so many obstacles to overcome.

"No State of the Union is intersected by so many navigable rivers or divided by so many chains of lofty mountains; none perhaps abound with such happy varieties of climate and soil, so many resources for internal commerce. In her coal, iron, lead, tin and salt, she is unrivalled. Her tobacco and grain command the highest prices abroad. The fertile banks of her rivers and the moist valleys of her mountains yield abundant crops of flax and hemp. Her lowlands would supply her with cotton for her own consumption, and the fleeces of the flocks which pasture on her hills are not surpassed in quality.

"Notwithstanding these advantages, the principal part of her commerce and almost the whole of her navigation, pass out of her hands to enrich the coffers of her neighbors. There is scarcely a village to the west of the Blue Ridge and very few above tidewater, from the Roanoke to the Potomac, which derive any part of their supply of manufactured commodities, either foreign or domestic, from the seaports of Virginia.

"While many other States have been advancing in wealth and numbers with a rapidity which has astonished themselves, the ancient Dominion and elder sister of the Union has remained stationary.

"A very large proportion of her western territory is yet unimproved, while a considerable part of her eastern has receded from its former opulence.

"How many sad spectacles do her lowlands of wasted and deserted fields present? Of dwellings abandoned by their proprietors, of churches in ruins? The genius of her ancient hospitality benumbed by the cold touch of penury, spreads his scanty board in naked halls, or seeks a coarser but more plenteous repast in the lonely cabins of the West. The fathers of the land are gone, where the outlet to the ocean turns their thoughts from the place of their nativity and the affections from the haunts of their youth. Beyond the Alleghanies an unexpected revolution threatens the Atlantic States in general, the accomplishment of which will create new interests and views in that flourishing and important section of America, and probably, for them, the hope of reuniting it by commercial ties to the markets of the East.

"If it be true, as your committee confidently believe, that in a connection between the Roanoke, the James, and the Potomac, with the waters of the Kanawha or Ohio, this Commonwealth possesses the best means of arresting the progress of this revolution, it is a duty which she owes not only to her self, but to the Atlantic States and to the Union at large to call those means into action * * *

"Your committee are far from intimating that the General Assembly of Virginia has been totally unmindful of those natural advantages or wholly regardless of their improvement.

"The Commonwealth required time to recover from pecuniary losses which she sustained during the War of the Revolution. It found her citizens laboring under very heavy private debts, and left her government encumbered with a public debt of much greater magnitude. .. .. ..

"Yet in circumstances so inauspicious the statesmen of that day and especially the illustrious man to whom, under heaven this nation was indebted for the establishment of its freedom, did not disdain to enquire into the humblest means of giving to that freedom value. From his zealous exertions sprung the Potomac and James River canal companies. To the first of these the Commonwealth is indebted for a water communication 338 miles: and upon it and the contemplated works of the Shenandoah she relies for the further improvement of a navigation of 390 miles. She has shared with a sister State the benefits of the labor already performed on this river; in that which remains to be accomplished on the south branch of the Potomac and Cacapehon and the Shenandoah, she has an extensive interest.

"The James River Company have opened a navigation of 300 miles.

"The Appomattox and Dismal Swamp canal naturally followed into existence those which were indebted for their origin to the patriotism of General Washington. The former opened a navigation of 100 miles. The latter was designed merely to connect waters already navigable, but in its present use and remote consequences is not inferior in importance to any public work in the Commonwealth.

"The expense of the first of the preceding work does not exceed $1,500 per mile upon the navigation already opened; that of the second is about $1,200; the average expense will be annually diminished in the history of future improvements on the branches of those rivers as the principal obstructions to their navigation were removed before their waters could be brought into partial use.

"The actual cost of those public works does not exceed one-third of the expense usually attendant upon the structure of turnpike roads; which in the absence of navigation are the only substitute

for them. It is due to the latter, however, to remark that the addition recently made to them of parallel lines of rails, immovably set in the earth at proper intervals for the wheels of wagons, has more than equalized the advantages of such roads with the best ascending navigation which the resources of Virginia afford above their principal falls; and that the additional cost which this improvement gives to the structure of the turnpike, although great in itself, is inconsiderable when compared with its effect in reducing the expense of loads carried. The turnpike roads of the Commonwealth except a few short pieces of particularly mountainous, and a road recently begun from Fredericksburg towards the Blue Ridge, are confined principally to the county of Loudoun, the adjacent counties of Fairfax, Fauquier, Frederick, and to the vicinity of the seat of Government,

"There is but one to which the funds of the Commonwealth have contributed any aid.

"All of these public works are alike in one respect. They purpose to defray the expense of their first cost and of their subsequent repairs, out of the tolls collected upon them; and these are equitably levied upon those who use them in sums proportionate to the benefit which they respectively derive from such use. Where it is absolutely certain that such works can subsist upon this basis alone, the revenue of the Commonwealth, although it may expedite their progress, is not indispensably necessary to their creation."

"Private wealth will of itself take the direction which personal interest prompts. But there are many such works essential to the prosperity of the Commonwealth, the persons immediately interested in which have not capitals sufficient to commence their foundation, and there are many others of like utility which if completed would require the lapse of many years to make them profitable to the individual subscribers to their stock. The population and commerce which infallibly follow their direction, spread out upon their borders and swell their tolls, cannot be expected to precede their existence.

"Although almost all the turnpike roads within the Commonwealth of Virginia have been made without any other legislative

aid than their respective acts of incorporation, yet it is probable that neither the Potomac nor James River would have been rendered navigable above tidewater with such assistance alone. Maryland and Virginia subscribed more than one-half of the capital stock of the former, and Virginia alone more than one-third of the latter. The tolls hitherto collected on the one would not have justified a subscription to its stock with a view to mere profit; and though those of the latter have for some time realized the most sanguine expectations of its friends and its stock is 80 per cent. above par, yet the revenue of the company apart from the appreciation of its stock, would not net to its members 6 per cent. per annum upon the sums which they have actually expended upon that river from the commencement of their labors to the present period.

"Your committee, however, confidently believe there is not an individual within the Commonwealth alive to a sense of her true interests who would have desired for the sake of a higher profit to the treasury upon the stock of the public in either of these works, to withdraw the funds which were required for their completion and permit this noble resource to return to a state of nature.

"Those who reside near to their banks directly participated in the benefits thus afforded them of a cheaper mode of transporting the productions of their labor to market; and those even who accidentally possessed the superior advantages of tidewater, or who were compelled by their distance from both to resort to the common highways in order to reach the same markets, have greatly profited by those improvements of navigation which augment the extent and value of that market, could not fail proportionately to enhance the price for their produce. So true it is that whatever contributes to increase the population and wealth of the towns must contribute to the growth and improvement of the country. And this effect is wrought not solely on the vicinity of those towns, it is seen not merely in the wealth which collects in their suburbs; but is discovered in the augmentation of their means of consumption and the enlargement of their commercial capitals.

"In this necessary and reciprocal relation of commerce and agriculture, the country below tidewater in Virginia has an immed-

iate and even local interest in the progress and perfection of all those public works exclusive of its general interest in whatever advances the growth and prosperity of the Commonwealth. The inhabitants of the lowlands will therefore partake of the benefit of every application of public revenue to the improvement of the connection between their market towns and the country above them. It should be peculiarly their policy to turn the commerce to the west from its northern direction into the bosom of their own territory. In the efforts which are contemplated to improve the roads passing immediately through their own country they have an interest more sensible to the eye but less so to the understanding.

"Although much has been done for the improvement of the interior of Virginia, more yet remains to be accomplished."

"If nature has divided the territory of the Commonwealth by numerous chains of lofty mountains it is only to incite the genius of mankind to climb them, and the period is not unthinkable—nay, it rests with the legislature to determine whether it be remote, when the roads which cross those natural and formidable barriers shall not be surpassed by those which run along their base * * *

"Should the General Assembly determine to patronize by the application of the public revenue all such works as are likely to be of great public utility, it becomes important to decide whether an improvement may not be made in the mode heretofore pursued of extending to them patronage.

"Your committee are fully satisfied that much loss has been sustained by all the canal companies which have been incorporated hitherto for want of skill in their conduct. Their directors have served, it is true, without compensation. They have generally been public spirited private gentlemen, but neither professional engineers nor capable from experience and observation of guarding against the errors and frauds of agents who pretended to be so.

"No single company could afford to purchase or could fully employ in a country where a few public works were begun, the services of a distinguished engineer; and yet without the previous surveys, plans and estimates of such an officer, no very arduous public work could be confidently begun or successfully conducted. To

supply the defect of such an officer would be the obvious interest of the Commonwealth, and if he were not sufficiently compensated by the general utility of his labors, he might demand of each company such an interest in its stock as would be equivalent to the value of the service rendered to the company by such officer.

"Whatever funds the legislature may be inclined to appropriate for internal improvements, a difficulty must occur in settling the relative importance of its principal objects; and if the appropriation were also required to designate some particular object it would be often impracticable from the variety of opinion—always existing in an Assembly representing many local interests—to procure an union in the choice of any one.

"The first of these difficulties may be obviated by organizing a proper body to collect and prepare for the General Assembly the facts and information necessary to cast upon every application for a portion of the fund light enough to guide the sound discretion of the Legislature in the selection of subjects."

"And these facts will be entitled to the higher confidence if reported under the sanction of official responsibility."

"To allay such local jealousies as might obstruct an agreement in favor of any single object of internal improvement, a fund may be previously segregated and set apart for the accomplishment of all by one appropriation. If the term by future application to any, be at the same time prescribed, a like participation in the benefit of the fund would be assured to every interest which it is calculated to promote; and the speedy enjoyment of that benefit will be secured to each by apportioning the magnitude of the fund so set apart to the number and importance of the objects for which it is designed to provide.

"It may be sound policy for the Commonwealth, in order to accomplish some great commercial or political purpose, to throw open to general use, without the charge of toll, a particular canal or road; but it can never be to its interest, for many reasons, to become the sole proprietor of all the public works within its territory.

"Experience testifies that they will be more economically im-

proved and better repaired if their management be left to the individuals who subscribe to their stock, with a view to private gain, than if confined to public officers or agents.

"The Commonwealth should subscribe so much to their stock and on such terms as will suffice to elicit individual wealth for public improvement—and the control which she retains over the conduct of the individual subscribers should extend no further than to prevent or correct such abuses upon the community at large, as might be apprehended from the too eager incentive of gain.

"By yielding to the individual subscribers the profit of the State on its shares of the stock of any company where required to secure such individuals against temporary loss, a much smaller subscription of the public money will suffice to draw forth private enterprise.

"The Commonwealth can never be a loser if a public work judiciously begun be finally perfected—and the public security against such loss will be found in the discretion which the legislature retains over the choice of the object for which its patronage is sought.

"As the market rate of interest decreases in every commercial country with the growth of its capital, the maximum profit of the stock of each company may be reduced after the lapse of a limited period of time.

"The principles laid down in the preceding part of this report the committee has embodied in the resolutions which are subjoined to it; but they would not have performed their duty to the House if before they recommended the application to objects of internal improvement of all the public stock of the Commonwealth as well as the premium which may be hereafter received from the incorporation of new, the extension of the capitals or the duration of the charters of the existing banks, they had not enquired into the actual state of the debts and of the annual revenue and expenditure of the Commonwealth."—

"That inquiry resolves itself into the establishment of the following propositions:

"1st. That for fifteen years prior to the commencement of the

late war, the ordinary revenue of the Commonwealth has not only been adequate to meet the ordinary expenditures charged upon it, but to enable the Commonwealth to arm from time to time a large part of her militia—to lay the foundation of her literary fund, to erect several very costly public edifices, and to complete the purchase of the stock subscribed by the Commonwealth to the Bank of Virginia; objects which occasioned a disbursement from the ordinary revenue of a sum exceeding one million of dollars.

2ndly. That since the commencement of that war the revenue of the Commonwealth more than doubled by additional taxes and farther augmented by considerable loans from the bank, has not only sufficed for the ordinary possible expenditure, but enabled the legislature to assume the State's quota of the direct tax of 1814 and to apply to the defense of the United States a sum exceeding eighteen hundred thousand dollars, exclusive of the interest paid upon those loans.

"3rdly. That the Commonwealth has at present a claim upon the United States of unquestionable justice for more than seventeen hundred thousand dollars of the above amount, together with the interest on such portions of it at least as were obtained on loans, which claim when satisfied will furnish a sum competent to discharge all the debts of the Commonwealth, to provide for the expenditures of the current fiscal year and to leave at the end of that year a balance in the treasury of three hundred and fifty thousand dollars to be applied to any other object of internal interest.

"4thly. That the present taxes may be reduced to the amount levied before the late war, provided the United States shall reimburse the sums advanced for the defense of the Commonwealth; and even should the payment of those sums be withheld, which a just confidence in the good faith of the General Government forbids your committee to expect, a repeal may yet be effected of such proportions of the war taxes as are not absolutely pledged for the payment of the interest, and the redemption of the principal of the public debt.

"From all of which it evidently appears that the fund which it is proposed to apply to the purposes of internal improvement

may be spared from the revenue of the Commonwealth without any embarrassment of her finances, any violation of her engagements or pressure upon her citizens.

"Should the appropriation recommended by the committee receive the sanction of the legislature, the fund for internal improvement will consist of the following stock:

"5,547 shares of stock of the Bank of Virginia on which a dividend is now received, which computed at par is worth five hundred and fifty-four thousand, seven hundred dollars	$554,700.00
"2,400 shares of the stock of the Bank of Virginia whereupon no dividend will accrue until after the first day of May, 1818.	240,000.00
"3,344 shares of the stock of the Farmers' Bank of Virginia	333,400.00
"250 shares of the stock of the James River Company, also estimated at par	50,000.00
"125 shares of the stock of the Appomattox Company	12,500.00
"70 shares of the stock of the Dismal Swamp Canal Company	17,500.00
"70 shares of the stock of the Potomac Company.	31,111.11-1-9
"100 shares of the stock of the Little River Turnpike Company	10,000.00
"Making a total of	$1,249,211.11-1-9

"Of which, the sum of $938,100 is now productive of an annual revenue exceeding $98,000; and $240,000 will become alike productive after the first day of May, 1818.

"In the present state of the fund the progress of the public works to which it may be expected to give rise will be until the first day of May, 1818, at the rate of $245,000 per annum. After that period it will be further augmented by the addition of $60,000.

"So that the total value of the internal improvements of ten years will be $2,777,500, and this calculation is grounded on a sup-

position that a portion of the stock which is now unproductive will continue to be so; and that no augmentation of the fund will have been made by the creation of new banks. * * * * *

"Be it therefore resolved"

* * * * * * *

"8. That the president and directors of the Board of Public Works be authorized to subscribe in behalf of the Commonwealth to such public works as the General Assembly may from time to time agree to patronize such portions of the revenue from the fund for internal improvement as may be directed by law; but that no part of the fund shall be subscribed towards the stock of any canal or turnpike company until three-fifths at least of the whole stock necessary to complete such canal or turnpike shall have been otherwise subscribed; nor until of the stock so subscribed one-fifth shall have been paid in by the respective subscribers or the payment thereof effectually secured." (B. P. W. Reps., Vol. I, p. 55 and 59(11) .)

APPENDIX NO. II.

1st Annual Report Board of Public Works, for year 1816, Vol. 1, pt. 1 p. 81.

* * * * * * * * *

"The appeal which the board has thus made to the public spirit of the country has not been in vain. Great efforts have been made to fill the subscriptions for opening the navigation of the Roanoke."

* * * "There are several objects within the scope of the system devised by the General Assembly for the improvement of the interior of Virginia which in the present state of her wealth and population it is beyond the reach of her unassisted ability to ac-

complish; but which being equally interesting to her sister States and the Government of the United States, it may not be impossible to further by their co-operation."

"The failure of the stock of those companies which have already been incorporated to yield an immediate income to the subscribers is to be imputable to their tardy progress in building the works which they had begun; and delay which arose from their having commenced their labors with inadequate funds; and which discouraged new adventurers from uniting with them or hazarding their fortunes in similar enterprises.

"The foundation which the General Assembly have now laid for future works of this desscription is calculated to remove this impediment to their progress, and to assure to the Commonwealth a speedy return for such sums as the General Assembly may authorize the Board of Public Works to subscribe out of the funds for internal improvement.

"It is not in the power of the Board in the infancy of their institution to include in this report a detail of the report and condition of any public work commenced under the auspices of the act of their incorporation. With a view, however, of early arousing the enterprise and patriotism of their fellow citizens in general to embark their private fortunes in the career of internal improvement opened to them by the liberality of the General Assembly, the Board of Public Works adopted at their extraordinary session the accompanying resolution:

"'In a country so diversified as the territory of Virginia by rivers and mountains, possessing such a variety of staples and so many markets for their exploitation, the board could be expected to recommend to the General Assembly but a very small number of those public works which the future policy of Virginia may be inclined to patronize, and the fund for public internal improvements hereafter competent to aid:

"'To open the navigation of those rivers, penetrate deeply into the interior of the country; to unite by commercial and political ties the widely extended territory of the Commonwealth, are in the estimation of the board objects of the first

magnitude in the scale of improvements contemplated by the General Assembly.'"
Resolution "B" p. 87, idem.

* * * * * * * * *

"That the making of an artificial road from Staunton to some point on the Ohio River in the county of Wood or Tyler is an object of great importance to the interests of this Commonwealth."

"That the making of an artificial road from some point on Jackson's River to some other point on the navigable waters of the Kanawha River and the extension of the navigation of those rivers as high up the same as practicable, are objects of great importance to the interests of this Commonwealth."

"Resolved, That the making of an artificial road from Salem in the county of Botetourt, to Winchester, is an object of great importance to the interests of this Commonwealth."

"Resolved, That the improvement of the navigation of the Monongalia River is an object of great importance to the interests of this Commonwealth."

"Resolved, That the making of an artificial road from Winchester to a point near the eastern base of the Alleghany Mountain, on the road which the Government of the United States is extending from Fort Cumberland to Wheeling, is an object of great importance to the interest of this Commonwealth."

2d Annual Report Board of Public Works, Vol. I. pt. 2, p. 29, 1817 (In re improvements on Kanawha River.)

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"The report made pursuant to this instruction is now respectfully submitted marked 'N' and will enable the legislature to decide between the different modes of forming the connection;"—

"Much of the richest territory of the State is on the Kanawha and Ohio Rivers, a great proportion of which was granted in large tracts to individuals for military service, many of which tracts have been kept entire, and the greatest part of them remain unsettled to this day; this circumstance, combined with the sparse population of the counties through which the improvement was to be made, induces the belief that the usual contributions from individuals cannot be expected in that quarter of the country. It is therefore respectfully suggested that the salutary restriction that requires three-fifths of the stock to be taken by individuals be dispensed with or modified in this instance, or that the co-operation of capitalists may be drawn to the aid of this work by combining a more immediate and profitable employment of capital with its execution."

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3rd Annual Report Board of Public Works, Vol. 2, pt. 1, p. 13, 1818.

"The president and directors of the Board of Public Works beg leave to submit to the legislature whether it is not expedient to appropriate such a portion of the income of the fund for internal improvement not exceeding one-fourth of the annual income, to the aid of turnpike companies, as that, while it shall produce an immediate advantage to many considerable districts of country which cannot otherwise receive any direct benefit from the fund, shall not obstruct the execution of other more important and extensive works. This policy seems to be recommended by the consideration that extensive districts cannot otherwise participate directly in the benefits of the fund, and that all the advantages arising from works on a small scale will be speedily realized.

"If the legislature should adopt this policy, then the board recommends to the patronage of the legislature"—

"The latter of these companies" (referring to the Leesburg Turnpike Company) "has also completed a considerable portion of the road, and a subscription by the Board of Public Works of $33,600, payable in four annual instalments, equal to two-fifths of the stock of the company, of which three-fifths are already taken by individuals, would enable them to complete the road. A statement of the situation of this company is subjoined."

Report of Swift Run Gap Turnpike Co., to Board of Public Works. B. P. W. Reps, Vol. 2, pt. 1, p. 56, 1818.

* * * * * * * * *

"That experience has too fully and universally evidenced the great advantages resulting from good roads, for the transportation to market of the surplus products of a country, to render it necessary for them to enforce it by any remarks on their part, especially when addressing a body whose very name and the object of whose creation must satisfactorily indicate the growth and diffusion of liberal and enlarged views upon the propriety of internal improvement and the extinction of those prejudices which have but too long retarded a measure deeply involving the best interests of the Commonwealth. * * * *

Report of Leesburg Turnpike Co., to Board of Public Works. B. P. W., Reps. Vol. 2, pt. 1, p. 60, 1818.

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"It is further resolved that it be made known to the said president and directors that upwards of one-fifth part of said road is now completed, and that this board are of the opinion that unless the said president and directors of the Board of Public Works shall aid in the completion of said road by subscribing two-fifths of the stock aforesaid, every exertion to produce the desired object must prove abortive, and the public be deprived of a great and important internal improvement."

4th Annual Rep. Board Public Works. Vol. 2, pt. 1, p. 11, 1819.

* * * * * * * * *

"In reviewing the progress and condition of the various improvements now in process of execution under the patronage of the legislature, the Board of Public Works are inspired with a just confidence that the valuable and highly important objects for the attainment of which the fund for internal improvement was created, will be fully attained by a patient perseverance in the application of the daily increasing capital of the fund to those objects."

Supplement to same, idem p. 4, Statement of Thos. W. Randolph, pres. B. P. W.

* * * * * * * * *

"The subject is now mature for the decision of the legislature; and upon that depends what Virginia shall be twenty years hence; whether as now, or with a great and flourishing commerce, populous and wealthy cities, reoccupied plains on the east, and peopled mountains on the west, a connection founded on mutual interests with the great population of the Western States for the most part driven originally by want of profitable employment from her own territory; and the mighty influence such advantages cannot fail to create for the preservation of order, free principles and union in the confederacy."

5th Annual Rep. Board of Public Works, Vol. 2, pt. 5, p. 13, 1820.

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"A review of the state of the fund and of the report of the principal engineer, together with the other reports accompanying

this, affords gratifying proof that whilst the territory of the Commonwealth abounds with objects of valuable internal improvement in every district, the fund appropriated for that purpose is adequate, upon the principles upon which it is founded, to give effectual aid to such improvements to the full extent of the demands which can probably be made upon it; and that several public works of great importance to extensive districts of the State are under the patronage of the legislature rapidly advancing to completion which, without such patronage, might have languished for years, and perhaps have been wholly abandoned."

9th Annual Rep. Board Public Works Vol. 4, p. 168, 1824. (In re improvements on Kanawha River).

* * * * * * * *

"Your committee cannot close this report without calling the attention of the legislature to the growing importance of the salt trade upon the Kanawha River. At a very early period of this great undertaking, this subject engaged the attention of the legislature; and whilst the magnitude of those manufacturies, yielding at this time about one million bushels of salt per annum, promised a large revenue to the Commonwealth, a reciprocal advantage was expected to accrue to them in the increased facilities of their carriage to their markets upon the Ohio River.

"We cannot, if we would, disguise it from ourselves that Virginia, if not deteriorating, is certainly not advancing with the same rapidity as many of her sister States of this Union. Her population is passing to the West, contributing by their wealth and industry to raise up new and as yet unknown interests in that important part of the United States. It is in this point of view, as your committee conceive, that this subject becomes most deeply interesting, and regarding this great chain of improvement as a social link uniting the East and West, it deserves the highest consideration of Virginia."

10th Annual Rep. Board Public Works, Vol. 4, p. 190, 1825.

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"But few of the stocks of the canal and turnpike companies acquired by the application of the income of the fund, under the acts of the General Assembly and the resolutions of the board, as yet pay any dividend, and the revenue derived from that source is at present very inconsiderable. The appropriations made to companies with which this board has thus become connected, though unproductive of revenue, have not failed in producing a good effect."

" A spirit of improvement, it is believed, has been excited in some sections of our State where none existed before; and the assistance afforded in several instances has led to the undertaking of improvements which otherwise would not have been commenced and could not have been accomplished. The board, however, entertains the expectation that in addition to the benefit thus conferred, a revenue will in time be derived which will enable it to extend the sphere of its utility."

14th Annual Rep. Board Public Works, Vol. 6, p. 10, 1819.

* * * * * * * *

"Although it was not the original purpose of the legislature in creating the fund for internal improvement that the aid to be extended to joint stock companies should be afforded upon the principle of mere money making, yet its productiveness cannot fail to be gratifying not only as yielding income, and thus enlarging the capability of the fund for extended usefulness, but particularly as affording conclusive proof of the beneficial application of its income in the execution of important work."

"There are other companies with whom the fund for internal improvement stands connected whose prospects, though not so bright, are nevertheless encouraging. There are yet some others whose reports scarcely justify the faint expectations of even

deferred income from the capital expended, but whose work nevertheless affords important facilities to the trade of extensive and fertile districts of the State, and thus contributes to the general weal.

"This view of the condition and prospects of the companies who have been arduously engaged in making extensive and valuable improvements in our country, and to whom the aid of this fund is extended, is presented not only to excite attention to the certain and contingent advantages of such improvements, but also to repress, as fas as practicable, that spirit of impatience which so frequently manifests itself throughout the country by murmurs at the tardiness and the expense with which the works are prosecuted, and that the unprofitableness of the public investments. These murmurs seemed to indicate the idle expectation that these great public works ought to be conducted as rapidly as the ordinary operations of a farm, and a belief that the public investments are made upon the principles of common stock jobbing."

"This spirit of impatience opposes all its energies to that public spirit which should animate every community in its march to high prosperity. The latter ought to be cherished as being of inestimable value, while the former ought to be suppressed as tending to desolation only. Although it is far from being desirable that the stocks subscribed by the Board of Public Works, under the direction of the General Assembly, should be unproductive of income, yet if the enhancement of real and other property in the country be equal in amount to the investment made, the community has surely lost nothing, and if the enhancement be indefinitely greater, so also is the common benefit. That such enhancement does occur in every commmunity where the improvements of the country are vigorously prosecuted, is abundantly and irrefragibly demonstrated by the experience of Pennsylvania, New York, and New England, where lands naturally less valuable command a price from four to ten times greater than they do in Virginia; and although their public stocks should yield them no income, yet the communities are otherwise benefited by them in a ratio of arithmetical progression. Public spirit and due perception of common and mutual interest is the great desideratum in Virginia. Were it to awaken, it would readily find subjects of improvement munificently spread before them. Surely, no country possesses greater capabilities than Virginia."

15th Annual Rep. Board of Public Works, Vol. 6, p. 113, 1830

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"This prosperous state of the fund, combined with the increased solicitude of the public on the subject of internal improvements, a solicitude created by the real necessities that exist for the construction of various improvements throughout the State, and which has been heightened by the example of some of the neighboring States who have been guided by an enlightened and liberal policy on this subject, has urged on the Board of Public Works an inquiry into the capacity of the fund of internal improvement to complete the works already commenced and to construct such others as the interests of the public may render necessary. In administering the fund to the wants of so extensive a country, presenting great varieties of situation, soil, and products, with a population in some instances separated by mountains and forests, any uniform rule founded upon the principles of justice and equality seems to be impracticable.

"If the principle of only applying the funds in combination with individuals in the form of stock companies, according to the provisions of the eleventh section of the act creating the fund, should be adopted and adhered to, the consequence would be that the energies of the fund will be exhausted upon local objects of partial benefit and extent, to be found most generally in such parts of the State where the population has already acquired sufficient surplus wealth to enable them to embark in such enterprises, and where the end to be gained is the advancement of individual interest rather than the public good. On the other hand, if only the income that arises upon the capital stock or investments of the fund is to be applied as it annually accrues, the amount is totally insufficient to effect any extended scheme of improvement commensurate with the great interests of the State.

"The act creating the fund contemplated the 'rendering navigable and uniting by canals of the principal rivers, and of more intimately connecting, by public highways, different parts of the Commonwealth.' The objects embraced by it are so extensive and important in their nature as to be excluded from the reach of individual enterprise and capital; besides it may happen that improvements are required essential to the best in-

terests of the country, but from which no direct income will be realized, although the State would be abundantly remunerated by the stimulous it would give to industry by the development of new sources of wealth, by enhancing the value of lands, and by the increase of population, thereby adding to the moral and physical ability of the State to sustain itself in time of war and peace."

26th Annual Rep. Works, Vol. 12, p. 9.—1841.

* * * * * * *

"In connection with the subject of railroads, the board respectfully begs leave to submit the following remarks:

"It is well known that the capital of all our railroad companies proved to be entirely insufficient to complete the formation of the roadbeds and superstructure and to provide depots, work-shops, engines and all other necessary appendages for carrying on the business of the roads. It is equally well known that much of the capital was wasted in consequence of the necessarily imperfect knowledge of the subject which was possessed by engineers at the time of the introduction of railroads into the United States; and partly owing to neglect and want of economy, method and proper supervision in the transaction and management of their affairs at the outset and for some time after.

"The result has generally been that the companies have found the aid so liberally extended to them in the shape of loans very inadequate to their real necessity. They are mostly still involved in heavy debts, exclusive of those to the State, and the urgent demands upon them for the payment of principal and interest which they are compelled to meet promptly in order to keep their works in operation, absorb their profits to such an extent as to deprive them, in a great measure, of the ability to keep the roadbeds and the motive power, and so forth, upon them in the perfect order they should be to insure regularity, safety and expedition.

"*It must be remembered that these improvements were not fostered by the legislature through contributions in subscription and loans merely as investments of so much money in*

profitable stocks, but that they were actuated by a higher consideration, that of promoting the prosperity of the State at large by contracting to build up the local prosperity of its different sections." (Italics not in original.)

"That the most beneficial results have been experienced by every railroad that has been established is not a matter of conjecture. Industry has received from them a new impetus. The cultivation of the soil in every part of the country within the range of their influence has been greatly extended; arts, trades, and commerce flourish to a greater extent, and a greater reduction has been effected in the expense of transporting the produce of the farmer and the goods of the merchant to market, and a speedy and cheap transportation between the citizens of our own State with each other and with the citizens of other States has been established. * * * * *

EXTRACTS FROM ACTS OF ASSEMBLY OF VIRGINIA WITH REFERENCE TO EXPENDITURES FOR INTERNAL IMPROVEMENT, THROUGH JOINT STOCK COMPANIES.

CHAP. XVII.

An Act to create a fund for Internal Improvement.

[Passed February 5th, 1816.]

1. *Be it enacted by the General Assembly*, That a fund shall be, and the same is hereby created, to be denominated "The Fund for Internal Improvement," and to be applied, exclusively, to the purpose of rendering navigable, and uniting by canals, the principal rivers and of more intimately connecting by the public highways, the different parts of this Commonwealth.

* * * * * * * * *

3. *And be it further enacted*, That, for the purpose of preserving and improving this fund, and of disbursing such portions of it as the General Assembly may, from time to time, direct, to be ap-

plied to any object of internal improvement, it shall be and the same is hereby vested in a corporate body, to be styled, "The President and Directors of the Board of Public Works" in which name they shall have a common seal, and perpetual succession, subject to the limitation hereinafter provided, shall be capable of suing and being sued, pleading and being impleaded, and shall have and enjoy all the rights and privileges of a corporation.

4. *And be it further enacted*, That the Governor of the Commonwealth shall be ex officio President of the Board of Public Works; that the directors a majority of whom shall constitute a Board for the transaction of any business devolving on the corporation, shall consist of the Treasurer and the Attorney General of the Commonwealth, for the time being, and of ten citizens thereof; of whom three shall reside westward of the Alleghany mountain; two between the Alleghany and the Blue Ridge; three between the Blue Ridge and the great post road, which, passing through the territory of the Commonwealth, crosses the principal rivers thereof at, or about the head of tidewater, and the residue between that road and the sea coast.

* * * * * * * *

8. *And be it further enacted*, That the President and Directors of the Board of Public Works shall hold an annual meeting in the City of Richmond, or at such other place as may be designated by law, to begin on the first Monday in November of every year, and to continue until the business of the board is transacted—But, that the President of the Board may, at his own pleasure, or shall, at the request of any three Directors thereof, convene an extra meeting of the Board, for the transaction of any extraordinary business which may devolve on the corporation.

* * * * * * * *

10. *And be it further enacted*, That the fund for internal improvement, subject to the order of the President and Directors of the board, shall be deposited in the Treasury of the Commonwealth and kept distinct and apart from all other public money: It shall

be paid out or delivered by the Treasurer of the Commonwealth to the order of the board, certified and subscribed by the Secretary, and countersigned by the President; that the Treasurer shall keep a fair and regular account of all such disbursements, and carefully preserve the certificates upon which the same shall have been made, and shall render an account thereof, to the General Assembly, at the same time at which he renders his annual account of the disbursements of the ordinary revenue; that once in every year the Board of Public Works shall depute a committee of their body to examine the accounts of all disbursements made by order of the board, during the year next preceding the annual meeting of the board, and to compare these accounts with the Treasurer's books, and the certificates giving authority for the payment of the several sums of money, or stock, entered therein; that their reports shall certify to the board, that the same have been fully accounted for, or otherwise, as the case may be.

11. *And be it further enacted*, That the President and Directors of the Board of Public Works, shall be, and they are hereby authorized to subscribe in behalf of the Commonwealth, to such Public Works as the General Assembly may, from time to time, agree to patronize, such portions of the revenue of the fund for internal improvement, as may be directed by law but that no part of the said fund shall be subscribed towards the stock of any canal, turnpike, or other Company, until three-fifths at least of the whole stock, necessary to complete such canal, turnpike, or other public work, of such company, shall have been otherwise subscribed; nor until, of the stock subscribed, one-fifth thereof shall have been actually paid in by the respective subscribers, or the payment thereof effectually secured by bond with approved security, or a deed of trust upon the real estate of such subscriber, of twice the value of such fifth part; such bond to be taken payable to the President, Directors and Company authorized to complete such public work, and to be recoverable against the obligor or his securities, on motion after ten day's notice, in any court of record within the Commonwealth having jurisdiction thereof; and such deed of trust to be proceeded

upon whenever the trustee therein named shall be required to do so by such President, Directors and Company

* * * * * * * * *

13. *And be it further enacted*, That the President and Directors of the Board of Public Works shall vest in some productive fund the unappropriated dividends accruing upon any of the stock committed to their charge, until the same shall be specially applied by law to some object of internal improvement; and shall have power subject to the control of the General Assembly, to sell, from time to time, as may be ordained by law, the whole or any part of the shares held by the Commonwealth, in the stock of any canal, turnpike or other company subscribed for under the provisions of this Act, for the purpose of investing the proceeds of sale in the stock of some other similar company, subject to the like conditions as have been before expressed in this Act.

14. *Be it further enacted*, That the President and Directors of the Board of Public Works shall have power to appoint, in behalf of the Commonwealth, so many directors of every Public Work, as shall bear to the whole number of the directors of such work the proportion of the Commonwealth's shares of stock in such work, which may be subscribed in pursuance of this Act, to the whole number of shares subscribed thereto; *provided*, *however*, that whenever it shall be found expedient by the Legislature to authorize the subscription of any part of the fund hereby created to any company already incorporated, the provisions of this section shall not be construed as applying to such company unless it be otherwise directed by the Act authorizing the subscription.

15. *Be it further enacted*, That it shall be the duty of the President and Directors of the Board of Public Works, to keep a fair and accurate record of all their proceedings, which shall be at all times open to the inspection of the members of the General Assembly, and of the President, Directors and other officers of any company interested therein; that they shall report to the General Assembly, at or near the commencement of every annual session thereof, the exact state of the fund for internal improvement; the progress and

condition, noting especially the net income, of all the public works within the Commonwealth; the surveys, plans and estimated expense of such new works as they may recommend to the patronage of the General Assembly, together with such other important information as they may have it in their power to collect, in relation to the objects committed to their trust.

16. *And be it further enacted*, That the public faith shall be and the same is hereby solemnly pledged to fulfill the appropriation made by this Act; and that the said appropriation shall continue in force until the first day of January, of the year one thousand eight hundred and sixty-six, except at such times as the United States of America may be involved in war, or the safety of this Commonwealth may, in the opinion of the General Assembly require; when the General Assembly may withdraw (during the period of actual hostilities, or of such imminent danger), the whole or any part of the said fund for the purpose of defense; provided such withdrawal can be made without a violation of any engagement entered into under this Act.

17. This Act shall commence and be in force from and after the passage thereof.

APPENDIX III.

Extract from brief filed on behalf of West Virginia, with the Attorney General of the United States, by Hon. Alfred Caldwell, former Attorney General, and Hon. E. W. Wilson, former Governor of West Virginia, upon the question of the right of the United States to set off any claim against West Virginia on bonds of the Commonwealth of Virginia acquired by the United States before the formation of West Virginia, against the claim of West Virginia against the United States for a refund of the Direct War Tax.

* * * * * *

"Upon the adoption of the ordinance of secession, by the Virginia Convention, in April, 1861, the Wheeling Convention which, June 11, 1861, had assembled for the reorganization of the government of Virginia after adopting an ordinance for such reorganization, proceeded to, and did, August 20, 1861, adopt 'An ordinance to provide for the formation of a new State out of a portion of the territory of this State.'

Section 3 of said ordinance provided for changing the boundaries of the proposed new State, so as to include other counties therein named, among which were Jefferson and Berkeley, upon a favorable majority vote by the people of said counties, respectively.

Section 9 of said ordinance is as follows:

'The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period.'

From this proposition West Virginia has never receded. She proposed to be, was taken, received and admitted as a State of

the Union, by the Congress of the United States, with this provision as of the basis of settlement with the State of Virginia. The government of the United States is the creator of the new State, and is therefore precluded absolutely, and under any possible contingency from avoiding the provisions of this ordinance, in order to retain West Virginia's money. The Supreme Court of the United States has decided this ordinance to be binding as between Virginia, West Virginia and the United States. *Virginia* v. *West Virginia*, 11 Wall, 39.

* * * * * * * * *

The public debt of Virginia, January 1, 1861, was incurred almost exclusively in works of public improvement, railroads, turnpikes, canals, bridges, etc., and amounted to $31,779,067.32.

Of this sum there was incurred for public improvements in West Virginia, $2,784,329.29; for all other expenditures in West Virginia $559,600.00, making a total of $3,343,929.29.

The commission, summarizing from the various tabulated statements, strike the following account between the two States.

West Virginia to the State of Virginia,		Dr.
For the amounts expended and invested in her territory, as set forth in statement F..		$3,343,929 29
		Cr.
By one-fourth of the estimated value of the public buildings and other assets, as given in statement G	$968,750 00	
By three-thirteenths of the United States surplus fund, as per statement, ...	446,032 92	
By three-sevenths of the literary fund, as per same.....	647,079 92	
By the amount collected in West Virginia after January 1, 1861, as per statement E.....	328,706 22	2,390,569 06
Balance		$953,360 23

Under the resolutions creating and defining the duties of this commission, its report was made subject to the approval and ratification of the Legislatures of West Virginia and Virginia.

Under resolutions introduced into the Senate of West Virginia, the finance committee thereof made further examination of

the matter, in 1873, and reported to the Senate the result of its labors. Hon. J. M. Bennett, a member of the commission heretofore mentioned, was Chairman of this Senate Committee. Its report appears in the appendix. We quote the following:

> 'The report of the debt commissioners hereinbefore referred to, shows that all State expenditures within this State, prior to January, 1861, amounted to $3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which has been so contributed to the development of the territory of our State.
>
> 'The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions, as upon the receipts from Virginia.
>
> 'The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the debt commissioners aforesaid.
>
> 'From the amount of the foregoing expenditures must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia from the counties included in this State during the same period." * * * * * *

(Extracted from pamphlet presenting West Virginia's claim for the refund of the U. S. Direct War Tax, pp. 5 and 6.)

NOTE.—There were palpable errors in the *ex parte* statement of the account between the two States, contained in the reports referred to and approved in the above brief, in crediting West Virginia with items for which she could claim no credit under the Wheeling Ordinance under which those statements of that account were attempted to be made, and in failing to charge West Virginia with its "just proportion of the ordinary expenses of the State government" and other items of charge expressly required to be made by that Ordinance.

With these corrections made, the account would show as large a balance due from West Virginia as Virginia has now shown in this suit to be due by the new State.

APPENDIX IV.

Paper prepared by Professor T. S. Adams of the University of Wisconsin, defining what are the "ordinary expenses" of a State.

UNIVERSITY OF WISCONSIN.

MADISON.

DEPARTMENT OF POLITICAL ECONOMY.

T. S. ADAMS. Nov. 5, 1909.

Honorable Wm. A. Anderson,
Attorney General of Virginia,
Richmond, Virginia.

My dear Sir:

Some time ago Dr. Ely referred to me a letter from yourself concerning the question of ordinary and extraordinary expenditures. While I of course had some general knowledge of the distinction between these two terms, as used in the budget of various countries, my knowledge on the subject was not of that specific and certain character which your problem demands. It was necessary for me to do some reading and make some examinations of authorities before I could make the reply which I herewith enclose. It is very imperfect and I particularly regret that I have not had time to go through the material in our library containing the public accounts of the various States and cities of this country. I am doubtful also whether what I have written will be of any material assistance to you, but I enclose it, hoping that it may contain a suggestion or two.

Our collection of public documents in the University Library is particularly good; and if you can wait a month or so and will express the desire to have it, I will endeavor to get some student to run through this material with a view to collecting as large a

number as possible of illustrations bearing upon the use of the terms 'ordinary' and 'extraordinary' in American public accounting.

Very truly yours,

TSA/EB (Signed) T. S. ADAMS.

ORDINARY AND EXTRAORDINARY EXPENDITURES.

Ordinary expenditures are usual expenditures. What is usual in one country is not usual in another, and what is usual in a given country at one time may be unusual at another time. We should therefore except to find, and, as a matter of fact, we do find, all sorts of expenditures included in the extraordinary budgets of various countries. Precedent can be found for almost anything. In France, for example, since 1833, the substance of the extraordinary budget has consisted of expenditures for the establishment of great public works, but prior to 1789 the costs of establishing and improving public works were carried in the ordinary budget.

The best treatment of this general subject is found in Wagner's 'Finanzwissenschaft,' Vol. 1, p. 135-142. Great authority is to be accorded to this treatment, inasmuch as Wagner bases what he has to say not only upon economic theory and study of the law, but upon the experience of the greater European nations. According to Wagner, there is a three-fold distinction between ordinary and extraordinary expenditures:

1. The first distinction turns upon the time at which the expenditure becomes necessary. Extraordinary expenditures from this viewpoint arise out of unexpected demands. Wagner notes, however, that in a great state the great number of trivial or small items of expense which are unforseen assume, in the aggregate, a certain regularity which makes it possible to provide for them by a contingent or reserve fund. Although Wagner refers to these items as 'diese kleinen Posten ausserordenlicher Ausgeben,' he really suggests that they should, in the aggregate, be regarded as regular or ordinary expenses; while the individual items are not foreseeable, their aggregate is.

II. The second and most important distinction turns upon the durability or permanence of service for which the expenditure is made and rests upon a contract similar to that made in private economics between circulating and fixed capital.

Under ordinary expenses here, Wagner mentions interest on the public debt and his language suggests that payments on the principal of the public debt when made periodically or annually in accordance with the terms of the loan should also be included among the ordinary expenses (although he protests that there is no general economic principle which requires the regular payment of a public debt).

(It will be noted that under the first distinction which turns upon the certainty or accuracy with which an expense may be anticipated, interest payments are even more clearly and logically included among the ordinary expenses, because no expense is more certain or more specifically fixed with respect to time than that of interest payment).

The extraordinary expenditures under this head are those regular or intermittent expenditures for things whose use or service extends over far more than one fiscal year or period. Wagner distinguishes three special groups here:

1. Capital outlays giving rise to a lasting use, either for—

(a) quasi-private industries and undertakings capable of yielding profit to the State (e. g., forests, railroads, mines, postal and telegraph systems;

(b) or for the establishment and betterment of what may be called the 'immaterial capital of the state' (e. g., expenditures for the introduction and execution of great public reforms such as the land cadastre, reconstruction of judicial system, enfranchisement of serfs, etc.)

2. Irregular productive and remedial expenditures to correct conditions which threaten the life or property of the State, (e. g., war, famine, floods, insurrection, etc.)

"The fact that Wagner nowhere mentions expenditures for hospitals, insane asylums, prisons, etc., is significant and indicates a belief on his part that they are 'ordinary' expenses."

III. The third distinction is the purely legal one and corresponds for the most part to the well-known difference between standing and annual appropriations.

Wagner mentions here as the most characteristic items of ordinary or standing expenses, payments of interest on the public debt and the payments of such parts of the principal as are regularly retired in accordance with the terms of the loan. Legislative expenses (i. e., those necessary for the assembling and functioning of the legislature) furnish another characteristic item.

(It seems difficult to imagine how any claim can be made for the inclusion of interest payments among the extraordinary expenditures. Borrowing, with its necessary corrolary of regular interest payments, is the specific device by which irregular things are made regular, unbearably heavy burdens divided into those which may be borne with ease; and as surely as the principal of the loan is to be classed among extraordinary receipts, so surely must the interest payments be classed among the ordinary expenditures. Interest is the instrument by which extraordinary difficulties are converted into ordinary problems. (øSee foot note.)

øThe last point is well brought out in the article entitled Budget sur Resources Extraordinaires in Say's Dictionnaire des Finances, Vol. I, p. 723:

'Ce n'est que de notre temps qu'il a été institué une théorie pour la défense des Budgets Extraordinaires systématiques. Les budgets ordinaires sont, dit-on, les budgets de la vie normale et annuelle du pays, son compte industriel d'exploitation, et ont l'impôt et les revenus des biens de l'Etat pour fonds d'entretien; les budgets extraordinaires répondent à leur compte industriel de premier établissement, indefiniment continué comme se continue indefiniment l'expansion de l'activité d'un peuple qui vit de siécles et non d'annéss et son fonds de service est l'emprunt, dont le budget

ordinaire ne se ressent que par l'obligation ou il est d'en payer les intérêts pour la part de jouissance qui lui en revient.'

The country which has, perhaps, made the widest use of the extraordinary budget is France. The experience of France is discussed in a most illuminating way in Chapters 9 and 10 of René Stourm's 'Le Budget.' We find here a number of definitions of an official character. One of these definitions, made in 1862 and often quoted in French law and financial debate, is as follows:

'The credits of the ordinary budget ought to provide for the obligatory and permanent services of the State, assuring the payment of the debt, the execution of the laws, the administration of justice, collection of revenues, and the public defense,' p. 176.

The public debt included in the ordinary budget covers the consolidated, perpetual bonds and annuities, all kinds of terminable bonds and annuities, and 'la debt viagere' (Pensions, life annuities, etc.)'

The definition of 'extraordinary' expenditures made by the same author in 1862 is as follows:

(The extraordinary expenditures comprehend those for great public works, new constructions, abnormal military demands required for the protection of our exterior or foreign interests; in a word, all those expenditures corresponding to monetary needs and destined to disappear ought not to figure among the permanent charges.) Stourm, p. 196.

See foot note.ø

øThe comment of the then Minister of Finance, M. Magne, upon this definition is exceedingly illuminating, p. 196, Stourm.

'En général, on ne prend pas assez garde aux différents rôles de L'Etat. En même temps qu'il est tenu de solder, avec ses ressources ordinaires, ses dépenses courantes . . . . en même temps, il est propriétaire, il a un actif immobilier et mobilier, qu'il est tenu, non seulement d'entretenir, mais de perfectionner, dans l'intérét de tous et de chacun. Lorsque L'Etat se procure une ressource, par voie extraordinaire, par

voie d'emprunts, et que cette ressource, est appliqée à cette nature de dépenses, il ne fait qu'un placement, qu'une transformation de valeur, il augments la fortune immobiliére et mobiliére de chacun. Ainsi donc, on a raison de ne pas confondre ces deux natures de dépenses, les unes, qui sont fongibles, qui disparaissent, le laissent à l'avenir ni charges, ni résultats; celles, au contraire, qui se consolident, qui s'incorporent au sol, qui augmentent la fortune de l'Etat . . . .' Corps legislatif, 6 avril 1869.

Finally it may be interesting to summarize the great French minister de Freycinet's discussion of this subject.

M. de Freycinet's divided extraordinary expenditures into three classes, Necessary, Optional, and Illegitimate.

A. "The necessary expenses are those which result from events which it is not within the power of nations to prevent or at least the financial consequences of which it is impossible to avoid, as, for example, the war of 1870 and the enormous fiscal burdens which it has entailed upon the country."

B. "The optional expenses represent essentially expenses for public works. I characterize these expenses as optional because they do not inevitably impose themselves upon a country. The government is never forced absolutely to assume these expenses and especially is never obliged to assume them at any particular time."

C. "I call all those expenses illegitimate which ought to find no place at all in the extraordinary budget. When the extraordinary budget comes to be but a covert means of increasing the ordinary budget, I consider that the expenditure is badly placed and that the extraordinary budget ought to be abolished. The extraordinary budget should not serve as a revenue for those expenses that one does not wish or dare to classify in the ordinary budget but which by their nature belong there." Stourm, p. 204.

There have, for instance, been included in the extraordinary budget at times expenditures for books for the library, gratuities to the employees of the central administration, relief to widows,

expenditures for the celebration of July 14th, and for carpenter's work, subscriptions to telephone companies, provision of oil for light houses, etc.

The preceding paragraph merely emphasizes my opening statement to the effect that precedent may be found for almost anything in this connection. But, while this is true, the great weight of usage favors the inclusion among the extraordinary expenditures, of the costs of war and public calamity (which, because of their size, have to be defrayed by public loans) and also the costs of introducing or establishing great public works of an industrial character. Capital outlays for hospitals, asylums, prisons, educational institutions, and the like, are exceedingly doubtful. But it may be said with certainty that according to the prevailing usage, only such (i. e., for hospitals, asylums and the like) capital outlays as necessitate public loans can be placed among extraordinary expenditures. Interest payments on the public debt, regular payments on the principal prescribed in advance either by law or contract, and pensions, belong, by the overwhelming mass of precedent, among ordinary expenditures.

I append a few scattering illustrations which may be of interest.

(1) The budget of the German Empire is regularly divided into ordinary and extraordinary receipts and expenditures. The ordinary expenditures are divided into permanent and temporary. The regular expenditures for industrial undertakings, (post, telegraph, railroads, government printing offices, etc.) as well as most of the expenditures for the public debt and for pensions, appear under the permanent ordinary expenditures.

(2) The budget of Algeria regularly contains the following caption: Depenses extraordinaires, subdivided into the two following heads: (a) Emploi des fonds d'empreunt, (b) Emploi de L'excédent des fonds de reserve. Among the other and presumably the "ordinary" heads, we find debt, public works, agriculture, colonization, and diverse works of benevolence and public utility (poor relief, etc.)

(3) The budgets of Austria and Hungary regularly contain the item extraordinary expenditures. Just what this covers I do not know, but it has been reduced to very small compass in recent years, particularly in Austria. Expenditure for public debt, however, including regular payments on the principal of the debt, is included in the ordinary budget.

(4) Payments of interest and the regular payments on the principal of the public debt are classified in the ordinary expenditures in Belgium.

(5) In Egypt, according to a brief resume of the budget given in Fenn "On the Funds," edition of 1898, p. 323, the following expenditures appear in ordinary budget: Pensions, tribute, debt payment, expenses of the army of occupation, expenditures for the "suppression of the corvee," and "unforseen expenditures."

(6) According to the same authority, the Russian budget includes under ordinary expenditures, payments on the State debt—interest and capital—payments on the railway debt—interest and capital—and also "unforseen expenditures."

(7) Professor F. R. Clow, an exceedingly able and careful writer in the Quarterly Journal of Economics, Vol. 10, pages 461-4, cites as instances of extraordinary expenditures payments for the purchase of land, for the construction of permanent works, and the redemption of public debt. Under the ordinary expenditures, he includes interest payments on the public debt. According to Professor Clow, the accounts of the City of Cleveland, at the time he was writing, included under ordinary expenditures everything except repayment of loans, refunds, investments, and similar items."

APPENDIX V.

Claim against West Virginia computed from the Master's findings of March 17, 1910, *under Wheeling Ordinance.*

A.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" IV.	Proportion of Ordinary Expenses on Population Basis, with slaves, (p. 140)	8,147,455.92
" VII.	Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
		$11,459,843.90
" VI.	Receipts from West Virginia counties, (p. 179)	6,105,884.75
		$ 5,353,959.15

B.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" IV.	Proportion of Ordinary Expenses on Population Basis, *without* slaves, (p. 140)	11,452,862.66
" VII.	Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
		$14,765,250.64
" VI.	Receipts from West Virginia counties, (p. 179)	6,105,884.75
		$ 8,659,365.89

C.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" V.	Proportion of Ordinary Expenses on Fair Estimated Valuation Basis June 20, 1863, *with* slaves, (p. 172)	6,078,367.96
" VII.	Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
		$ 9,390,755.94
" VI.	Receipts from West Virginia counties, (p. 179)	6,105,884.75
		$ 3,284,871.19

D.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" V.	Proportion of Ordinary Expenses on Fair Estimated Valuation Basis June 20, 1863, *without* slaves, (page 172)	9,463,553.58
" VII.	Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
		$12,775,941.56
" VI.	Receipts from West Virginia counties, (p. 179)	6,105,884.75
		$ 6,670,056.81

E.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" V.	Proportion of Ordinary Expenses on Fair Estimated Valuation Basis Jan. 1, 1861, *with* slaves, (page 173)	6,805,289.57

" VII. Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
	$10,117,677.55
" VI. Receipts from West Virginia counties, (p. 179).....	6,105,884.75
	$4,011,792.80

F.

Par. III. Expenditures in West Virginia counties, (page 83).....	$ 2,811,559.98
" V. Proportion of Ordinary Expenses on Fair Estimated Valuation Basis Jan. 1, 1861, *without* slaves, (page 173)	8,586,648.25
" VII. Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
	$11,899,036.23
" VI. Receipts from West Virginia counties, p. 179).....	6,105,884.75
	$ 5,793,151.48

Note: See A. By using Proportion of Ordinary Expenses on Defendant's method of arriving at *Average Population with* slaves, the amount of claim as in A. is reduced by $644,967.61. (See page 141).

Note: See B. Same *without* slaves the amount of claim as in B. is reduced by $714,326.68. (See page 141).

The Master has adopted the plaintiff's method, so these figures are of comparative interest only.

APPENDIX VI.

Showing Results Under West Virginia's Construction and Application of Wheeling Ordinance.

VIRGINIA vs. WEST VIRGINIA.

RESULT OF WEST VIRGINIA'S ACCOUNTING UNDER THE WHEELING ORDINANCE.

	Using Total Population Basis for Division of Ordinary Expenses	Using Population *without* Slaves for Division of Ordinary Expenses.	Using Fair Estimated Valuation of Real and Personal Property for Division of Ordinary Expenses.	Using Fair Estimated Valuation of Real and Personal Property on Gold Basis for Division of Ordinary Expenses.
Paragraph III of Decree Joint Exhibit "C" I—Page 1.				
Expenditures by Va. in W. Va. as computed by West Virginia . . .	$1,251,288 92	$1,251,288 92	$1,251 288 92	$1,251,288 92
Paragraph IV of Decree Joint Exhibit "D" I—Page 1.				
Ordinary Expenses of Government, $18,207,-684.29, as computed by West Virginia. Joint Exhibit "D" I—Page 4	3,391,763 84	4,864,733 07		
Paragraph V of Decree Joint Exhibit "E" I				
Defendant's method of determining Fair Estimated Valuation of Real and Personal Property, per Joint Exhibit "E" I—Page 4 including Slaves and Income as Personal Property	. . . . .	. . . . .	2,499,987 98	
Defendant's Alternative Method Defendant's Exhibit "E" III—Page 3, using Gold Basis for Assessments, and including Slaves as Personal Property . .	. . . . .	. . . . .	. . . . .	3,773,289 46
Paragraph VII of Decree Defendant's Exhibit "G" I—Page 1.				
Value of Money, Stock, Property, and Credits acquired by West Virginia	176,120 00	176,120 00	176,120 00	176,120 00
Paragraph VI of Decree Joint Exhibit "F" I	$4,819,172 76	$6,282,141 99	$3 927,396 80	$5,200,678 37
All moneys paid into the Treasury of Virginia from West Virginia counties, West Virginia claim	7,051,215 56	7,051,215 56	7,051,215 56	7,051,215 56
Excess of Receipts by Virginia over payments made by her as computed by West Virginia	$2,232,042 80	$ 769,073 57	$3,123,818 76	$1,850,537 19

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910

ORIGINAL NO. 2

COMMONWEALTH OF VIRGINIA, Plaintiff,

vs.) In Equity.

STATE OF WEST VIRGINIA, Defendant.

DEFENDANT'S BRIEF

PARTS I, II AND III.

WILLIAM G. CONLEY,
Attorney General of West Virginia.

JOHN C. BROOKS,
CHARLES E. HOGG,
W. MOLOCHAN,
GEORGE W. McCLINTIC,
W. G. MATHEWS,
WM. M. O. DAWSON,
Of Counsel for Defendant.

CHARLESTON, W. VA.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910

ORIGINAL NO. 3.

COMMONWEALTH OF VIRGINIA, Plaintiff,

vs.) In Equity.

STATE OF WEST VIRGINIA, Defendant.

DEFENDANT'S BRIEF

PARTS I., II. AND III.

WILLIAM G. CONLEY,
Attorney General of West Virginia.

JOHN C. SPOONER,
CHARLES E. HOGG,
W. MOLLOHAN,
GEORGE W. MCCLINTIC,
W. G. MATHEWS,
WM. M. O. DAWSON.
Of Counsel for Defendant.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910

ORIGINAL NO. 3.

COMMONWEALTH OF VIRGINIA, Plaintiff,
vs.) In Equity.
STATE OF WEST VIRGINIA, Defendant.

DEFENDANT'S BRIEF

PART I.

ARGUMENT OF CASE ON THE BILL AND ANSWER AND EXHIBITS.

INTRODUCTORY STATEMENT.

Complainant's bill was filed at the October term, 1906, to which defendant interposed demurrer and amended demurrer, which, after argument, in March, 1907, were overruled in the opinion of this Court pronounced May 27, 1907 (206 U. S. 290).

The briefs and argument of counsel on the demurrer are contained in West Virginia Compilation, Vol. I. (See last paragraph of this statement.)

Defendant filed her answer and its exhibits in October, 1907.

May 4, 1908, the cause, by a decree, was referred to a Special Master

with directions (209 U. S. 514), which directions were modified, June 1, 1908, by substituting in paragraph 2 of the decree of reference the words "assessed valuation" for the word "value."

There is contained in Vol. 2 of West Virginia Compilation, at the pages indicated, the following:

Form of decree proposed by each party, referring cause to a Master, plaintiff's at p. 35, defendant's p. 41; the motion of defendant to modify the decree of reference, p. 325; the order modifying said decree, p. 371; the names recommended by each party as fit persons to be appointed Master, by plaintiff at p. 61, by defendant at p. 57; the order appointing Mr. Charles E. Littlefield Special Master, p. 375. The volume also contains the briefs and arguments of counsel on the motion to refer the cause to a Master and on the motion to modify the decree of reference.

Beginning on November 16, 1908, and ending on July 2, 1909, sessions were held by the Special Master at Richmond, Va., to take evidence. Thereafter the Special Master held sessions in the city of New York, to hear arguments of counsel, the last whereof was held on January 1, 1910.

March 17, 1910, the Special Master filed his report.

In April, 1910, the parties filed printed exceptions to the Master's report.

The printed Record consists of two volumes; the Record proper, referred to herein as "R., p. ___"; and the Appendix to the record, referred to herein as "App., p. ___." The Appendix contains such statutes and ordinances and extracts therefrom, and selections from constitutions of Virginia and West Virginia, as were deemed most material to the questions in the cause, compiled by the parties under direction of the Special Master.

The Record consists of Part I. and Part II. The former contains the Bill and its exhibits; defendant's demurrer and amended demurrer; opinion of the Court overruling demurrer (206 U. S. 290); defendant's answer and its exhibits; decree referring cause to the Master; motion to modify decree of reference; and the orders modifying decree, and appointing the Special Master.

Part II. contains the proceedings and evidence taken before the

Special Master, arranged under the seven paragraphs of the decree of reference; followed by the evidence of general application to the cause. Under each paragraph is printed the exhibits and other evidence germane to the subject of the paragraph.

But not all the exhibits, documents and other evidence adduced is printed in the Record. In order to keep the Record as small as might be, under direction of the Master much was omitted therefrom. None of the original principal exhibits of either party are printed, except under Paragraph VII. After the oral evidence of the expert accountants of each party was given, by direction of the Master, these accountants prepared "Joint Exhibits," from which all items were omitted about which there was no disagreement as to amount; and in which the items and details thereof about which there were disagreement were stated. Some other exhibits were also omitted.

So, the oral evidence of the expert accountants printed in the Record was given under the original exhibits and before the "Joint Exhibits" were prepared. All matters of mere routine were also omitted from the Record; but all the exhibits, evidence, etc., introduced before the Master at the hearings specified are part of the record of the cause, and were returned by the Master with his report.

Some evidence was taken by the Master after the Record was printed, and designated as "Supplemental Exhibits" 1 to 11.

Besides the foregoing, there have been used in the cause two books, gotten out by the Attorneys General of West Virginia, referred to above as West Virginia Compilation, Vol. I. and Vol. II., and referred to herein as "W. Va. Comp., vol. ---, p.----." Copies of these books have been filed in the clerk's office of the Court.

Historical Statement Showing Formation of West Virginia and Her Assumption of a Just Proportion of the Public Debt.

On November 15, 1860, Governor John Letcher issued a proclamation convoking the General Assembly of Virginia in extra session. In obedience to this proclamation, the general assembly convened in the capitol at Richmond at the time designated therein, and on January 14, 1861, passed an act providing "for electing members of

a convention and to convene the same." The delegates to this convention were to be elected on the 4th of February, 1861, and to assemble at Richmond on the 14th of the same month.

The convention assembled at Richmond at the time appointed, composed of 152 delegates, of whom 47 were from counties now included in West Virginia, and on April 17, 1861, the following ordinance was adopted by said convention:

"AN ORDINANCE TO REPEAL THE RATIFICATION OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA BY THE STATE OF VIRGINIA, AND TO RESUME ALL THE RIGHTS AND POWERS GRANTED UNDER SAID CONSTITUTION.

"The people of Virginia, in their ratification of the Constitution of the United States of America, adopted by them in Convention on the twenty-fifth day of June, in the year of our Lord, one thousand seven hundred and eighty-eight, having declared that the powers granted under the said Constitution were derived from the people of the United States, and might be resumed whensoever the same should be perverted to their injury and oppression, and the Federal Government having perverted said powers, not only to the injury of the people of Virginia, but to the oppression of the Southern Slaveholding States.

"*Now, therefore, we, the people of Virginia, do declare and ordain,* That the ordinance adopted by the people of this State in Convention, on the twenty-fifth day of June, in the year of our Lord, one thousand seven hundred and eighty-eight, whereby the Constitution of the United States of America was ratified; and all acts of the General Assembly of this State ratifying or adopting amendments to said Constitution, are hereby repealed and abrogated; that the union between the State of Virginia and the other States under the Constitution aforesaid is hereby dissolved, and that the State of Virginia is in full possession and exercise of all the rights of sovereignty which belong and appertain to a free and independent State.

"*And they do further declare,* That said Constitution

of the United States of America is no longer binding on any of the citizens of this State.

"This Ordinance shall take effect and be an act of this day, when ratified by a majority of the votes of the people of this State, cast at a poll to be taken thereon, on the fourth Thursday in May next, in pursuance of a schedule hereinafter to be enacted."

The Ordinance of Secession was accompanied by a Schedule providing, among other things, for a vote of the people on the question of the ratification of the ordinance by the people of Virginia, to be taken on the fourth Thursday in May, 1861. The ninth section of this ordinance provided as follows:

"The election for members of Congress for this State to the House of Representatives of the Congress of the United States, required by law to be held on the fourth Thursday in May next, is hereby suspended and prohibited until otherwise ordained by this Convention."

On April 18, 1861, said Convention adopted the following resolution:

"*Resolved*, That the Governor of this Commonwealth be requested to communicate immediately to the President of the Confederate States, the fact that this Convention, on yesterday, adopted an Ordinance resuming the powers delegated by Virginia to the Federal Government, and to express to the said President the earnest desire of Virginia to enter into an alliance, offensive and defensive, with the said Confederate States."

Pending the question of the ratification of the Ordinance of Secession by a vote of the people of Virginia, the State entered into the following temporary convention with the Confederate States of America:

"1st. Until the union of said Commonwealth with said Confederacy shall be perfected, and said Commonwealth shall become a member of said Confederacy according to the Constitutions of both powers, the whole military force and military operations, offensive and defensive, of said Commonwealth, in the impending conflict with the United States, shall be under the chief control and direction of the President of said Confederate States, upon the same principles, basis and footing

as if said Commonwealth were now, and during the interval, a member of said Confederacy.

"2nd. The Commonwealth of Virginia will, after the consummation of the union contemplated in this convention, and her adoption of the Constitution for a permanent Government of said Confederate States, and she shall become a member of said Confederacy, under said permanent constitution, if the same occur, turn over to said Confederate States all the public property, naval stores and munitions of war, etc., she may then be in possession of, acquired from the United States, on the same terms and in like manner as the other States of said Confederacy have done in like cases.

"3rd. Whatever expenditures of money, if any, said Commonwealth of Virginia shall make before the union under the Provisional Government, as above contemplated, shall be consummated, shall be met and provided for by said Confederate States.

"This Convention, entered into and agreed to, in the city of Richmond, Virginia, on the twenty-fourth day of April, eighteen hundred and sixty-one, by Alexander H. Stephens, the duly authorized commissioner to act in the matter of the said Confederate States, and John Tyler, William Ballard Preston, Samuel McD. Moore, James P. Holcombe, James C. Bruce and Lewis E. Harvie, parties duly authorized to act in like manner for said Commonwealth of Virginia—the whole subject to the approval and ratification of the proper authorities of both governments respectively.

"*In testimony whereof,* the parties aforesaid have hereto set their hands and seals, the day and year aforesaid, and at the place aforesaid, in duplicate originals.

"JOHN TYLER, (SEAL)
"WILLIAM BALLARD PRESTON, (SEAL)
"SAMUEL MCD. MOORE, (SEAL)
"JAMES P. HOLCOMBE, (SEAL)
"JAMES C. BRUCE, (SEAL)
"LEWIS E. HARVIE, (SEAL)
"Committee of the Convention.

"ALEXANDER H. STEPHENS, (SEAL)
"Commissioner for Confederate States."

On the day upon which the Convention adopted the Ordinance of Secession, it took steps to enable the government of Virginia to possess itself of the property of the Federal Government within its territorial jurisdiction; and Virginia accordingly reduced into her own possession the Norfolk and Gosport Navy Yards, with vessels, steam engines, machinery, tools, supplies and other property, valued at $2,497,130.92, and the old and new custom houses at Norfolk, valued at $207,000.00.

On the same day (April 17) the Commonwealth of Virginia, through said Convention, provided for a State Military force. This was done by the adoption of "An Ordinance to call the volunteers into the service of the State and for other purposes." On the 19th of April, the office of Major-General of the Military and Naval forces of the State was created. Three days later Governor Letcher nominated Robert E. Lee for this office, which was promptly confirmed by the Convention. April 27th, an Ordinance providing for Enlistment in the Provisional Army was adopted. It provided that all free, able-bodied men, between the ages of eighteen and forty-five, might enlist, and the enlistment should be binding on minors, provided they be allowed four days to reconsider and retract their enlistment.

On the 29th of April, five Congressmen were elected to represent Virginia in the Provisional Congress of the Confederate States, about to assemble at Montgomery, Alabama. These were the Hon. R. M. T. Hunter, of Essex county; William C. Rives, of Albemarle county; the Hon. John W. Brockenbrough, of Rockbridge county; Walter R. Staples, of Montgomery county, and Judge Gideon D. Camden, of Harrison county.

By another Ordinance, adopted April 30th, the term of service of all volunteers called into service under the Ordinance of the 17th of April, 1861, was twelve months, unless sooner discharged.

On May 1, 1861, the Convention adopted an Ordinance absolving all citizens of Virginia from their allegiance to the United States.

On May 7, 1861, the representatives of Virginia in the Confederate Congress took their seats in that body, except said Camden, and a Resolution adopted by the Congress of the Provisional Government, ratified the terms of alliance entered into on the 24th of the preced-

ing April, by and between Alexander H. Stephens, the Confederate Commissioner, and the Commissioners of Virginia, and the old Commonwealth was thus formally admitted into the Confederate States of America, May 7th, 1861.

> "*A Brief Summary.*—The Convention having adopted an Ordinance of Secession; forbidden the election in the State of representatives to the Federal Congress; effected an Alliance, offensive and defensive, between Virginia and the Confederate States; adopted the Constitution of the Provisional Government of said States; elected five members of the Confederate States Congress, four of whom hastened to take their seats; released all officers from the oaths they had taken to support the Constitution of the United States, and absolved all the people of Virginia from their allegiance to the United States; captured the property of the National Government at Harper's Ferry; took possession of the Norfolk and Gosport Navy Yards, with the property connected therewith; occupied the custom houses at Norfolk and Richmond; and made arrangements by which the State was formally admitted a member of the Confederate States,—the whole done before the time arrived for the people to vote for the ratification or rejection of the Ordinance of Secession,—the Convention adjourned until June 12th ensuing."
>
> See "*How West Virginia Was Made,*" by Lewis,, pp. 8-23.

Pending the vote upon the question of ratifying the Ordinance of Secession, the loyal citizens left within the counties now constituting West Virginia asserted an earnest and patriotic endeavor to avoid the calamity incident to the adoption of this ordinance. After publication by the authorities at Richmond of its adoption, the citizens of the old state living within the present boundaries of West Virginia, instituted a movement to restore the practical governmental relations of Virginia to the United States.

The first convention called by the people of Northwestern Virginia, known as the May Convention, adjourned on the 15th day of May, 1861, after having provided for the meeting of a second convention in the event that the Ordinance of Secession should be ratified by the

people on the 23rd day of May ensuing. This was done by means of a resolution, reported by the Committee on Federal Relations, adopted by the convention, as follows:

> "*Resolved*, That, in the event of the Ordinance of Secession being ratified by a vote, we recommend to the people of the Counties here represented, and all others disposed to co-operate with us, to appoint, on the 4th day of June, 1861, delegates to a General Convention, to meet on the 11th of that month, at such place as may be designated by the Committee hereinafter provided, to devise such measures and take such action as the safety and welfare of the people they represent may demand, each county to appoint a number of Representatives to said Convention equal to double the number to which it will be entitled in the next House of Delegates; and the Senators and Delegates to be elected on the 23rd inst., by the counties referred to, to the next General Assembly of Virginia, and who concur in the views of this Convention, to be entitled to seats in the Convention as members thereof."

The second convention of the people of Northwestern Virginia assembled on June 11, 1861. It adopted an ordinance for the reorganization of the State government of Virginia. This ordinance provided for the appointment of a governor and a lieutenant governor, and also for other State officers of Virginia, and declared that the members elected to the General Assembly of Virginia should meet in Wheeling and constitute the legislative department of the government; and all other necessary steps were taken to restore the government of Virginia to her proper place in the Union; in fact, the government of Virginia was duly restored in this convention. After transacting all the business necessary to this restoration, the convention adjourned to meet on the first Tuesday in August, 1861, in the city of Wheeling. On Tuesday, August 6, 1861, this convention, which adjourned on the 25th of June of the same year, re-assembled pursuant to its adjournment. At its second session this convention provided by ordinance for the formation of a New State out of the territory of Virginia now constituting West Virginia, and for the call of a convention, to which delegates should be elected, for the

formation of a constitution for the new State. This election was duly held, and the delegates elected to such convention met, and framed a constitution. The convention assembled on the 26th of November, 1861, and, having finished its work, adjourned on February 18, 1862. A schedule was attached to this proposed constitution, providing for an election to take the sense of the people on the question of ratification. The election was held on April 3, and resulted in its ratification by the people. On May 13, 1862, the General Assembly of Virginia passed an act giving the assent of Virginia to the formation and erection of the proposed new State; and on April 20, 1863, a proclamation was made by the President of the United States, reciting the act of Congress approved on the 31st day of December, 1862, by which the State of West Virginia was declared to be one of the United States of America, and was admitted into the Union on an equal footing with the original States in all respects whatsoever, upon the condition that certain changes should be duly made in the proposed constitution of that State; and then reciting that proof of a compliance with that condition had been submitted to him, he therefore declared in pursuance of the act of Congress, that the said act would take effect and be in force from and after sixty days from April 20, 1863; and accordingly on that day, June 20, 1863, West Virginia became one of the United States.

See *"How West Virginia Was Made,"* pages 78 *et seq.*, 317 *et seq.*

A condensed history of the formation of West Virginia appears in the case of *Virginia* v. *West Virginia*, 78 U. S. 39 (20 L. Ed. 67). There can be no question as to the validity of the acts of the Restored Government of Virginia which resulted in the formation of the State of West Virginia, as this is settled by the case just cited, and also because the new State was recognized as one of the States of the Union by all branches of the general government. The formation of the State of West Virginia was the result of the acts of the loyal government of Virginia—a government in harmony with the general government, and one performing all the acts of a government of a State in all its practical relations with the Federal government. The ninth section of the ordinance providing for the

formation of the new State, contains the following as to the assumption by West Virginia of a part of the public debt of Virginia:

> "Said new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State within the same period."
>
> Appendix to R., p. 122.

The Constitution of the new State, adopted in 1862, by a vote of the people, with reference to the said debt, provides as follows:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."
>
> Appendix to R., p. 125.

Shortly after the close of the late Civil War, Virginia brought suit against West Virginia to establish jurisdiction over the counties of Jefferson and Berkeley, claimed by the defendant as a part of her territory. This suit was not decided until March 6, 1871, when the demurrer filed to the bill was sustained and the bill dismissed.

Virginia v. *West Virginia*, 78 U. S. 39 (20 L. Ed. 67).

Therefore, it was not known until the decision of this case whether the counties of Jefferson and Berkeley were a part of Virginia or West Virginia; and hence no settlement could be made between the two States with reference to the public debt, on the basis of the ordinance of Virginia, above quoted, providing the method by which the settlement should be effected, until after this case was decided.

Virginia Sought No Adjustment with West Virginia of Any Part of the Public Debt as Alleged in Her Bill.

With reference to the efforts at settlement between the two states touching the public debt, the bill makes this averment:

> "After the year 1865, and prior to the year 1872, attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settling of any kind was ever had between the two States in regard to this debt."
>
> Record, p. 10.

The answer of the defendant to this paragraph of the bill appears in the record at pages 149-154. The facts in relation to this matter are as follows:

The first governor of West Virginia, the Hon. Arthur I. Boreman, in his first message to the first legislature of that state, in discussing the financial condition and prospects of the new state, said:

> "The constitution provides that this state shall assume an equitable proportion of the debt of Virginia, prior to the first day of January, 1861, but no settlement can be made at present, and when it is made our 'equitable proportion' cannot be much."

In his message, dated January 16, 1866, to the legislature of that year, Governor Boreman, after quoting section 8 of article 8 of the constitution of West Virginia, says that the execution of this provision of the constitution had theretofore been impracticable on account of the existence of the war, but now that the war is over and peace is restored, he recommended the appointment of commissioners on behalf of the state to meet a like commission from Virginia.

Prior to December, 1866, Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and

Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. During pendency of this suit no adjustment of West Virginia's liability, as provided in the ordinance, could be made, because until the boundaries of West Virginia were definitely determined it could not possibly be known what (1) amount of money was spent within the boundaries as state expenditures, (2) what her just proportion of the expenses of the state government was, nor (3) the amount paid into the state treasury from her counties, as provided by the ordinance.

In his message to the legislature of 1867, Governor Boreman refers to his recommendation of the appointment of commissioners, made in last message, to meet commissioners from the State of Virginia, and states that it had not been done because the authorities of Virginia had made no provision for such settlement. He states that he was informed that the Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the general assembly of Virginia; first, for the purpose of securing a reunion of the two states, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On February 28 of the same year, the legislature of West Virginia by resolution declared that the people of that state were unalterably opposed to a reunion with the people of Virginia, but expressed the willingness of West Virginia to effect a prompt and equitable settlement between the two states, and directed the Governor as soon as the said suit in the Supreme Court of the United States relating to the counties of Berkeley and Jefferson had been disposed of, to appoint three commissioners on the part of West Virginia to treat with commissioners of Virginia upon the matter of adjusting the public debt as provided in the ordinance of 1861 and the constitution of West Virginia (W. Va. Compilation, vol. 1, pp. 444-6).

In January, 1868, the governor of West Virginia informed the legislature in his annual message, that the

> "Commissioners to treat with Virginia in regard to the public debt of that state, have not yet been appointed under the resolutions of that subject adopted by the

> legislature, February 28, 1867. The resolutions prescribe that the suit brought by Virginia in the Supreme Court of the United States, to recover jurisdiction over the counties of Berkeley and Jefferson, shall be finally disposed of before such appointment shall be made, which event has not yet transpired; and, if it had, there might still be a question whether such settlement should take place in the present condition of affairs in Virginia."

The "present condition of affairs in Virginia" referred to was doubtless that arising out of the anomalous situation caused by the refusal of Congress to admit representatives from Virginia, from December, 1865, until the state was re-admitted into the Union in 1870. Congress, it appears, refused to recognize as valid the legislature that assembled under the Alexandria constitution of Virginia. Later, the state was placed under military government; a new constitution was adopted in 1868, ratified by the people in July, 1869, and Virginia re-admitted into the Union January 26, 1870. No negotiations could properly or safely have been carried on with Virginia during this period of "reconstruction," even if the suit to recover Berkeley and Jefferson counties had not been pending.

Again, in his message in 1869 to the legislature of West Virginia, the Governor stated that commissioners had not been appointed by him up to that time, owing to the fact that the suit between the states was still pending. Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of West Virginia, the Governor of West Virginia, by communication dated February 24, 1870, advised the legislature of West Virginia of the passage of that act; and thereupon the legislature of West Virginia, March 1, 1870, appointed a joint committee of its two houses to confer with the Virginia commissioners and report to the legislature, providing, however, that such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit then still pending in this Court respecting the counties of Berkeley and Jefferson. (W. Va. Comp., vol. 1, pp. 446-7.)

On March 3, 1870, the Governor of West Virginia was authorized

by the legislature by joint resolution to appoint three resident citizens of the state, to treat with the authorities of Virginia upon the subject of the public debt of that state, but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson. (W. Va. Comp., vol. 1, pp. 447-8.) As the resolution was passed on the last day of the session, and as there was omission to make appropriation of money to carry out its provisions, the Governor of West Virginia, in his message of 1871, stated that no appointment had been made owing to the lack of funds to pay the compensation and expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, through the Governor of that state, tendered to West Virginia a proposition for an arbitration of the question relating to the debt, the arbitrators not to be citizens of either state, each state to appoint two, and an umpire to be chosen by the arbitrators if deemed necessary. This proposal was submitted to the legislature of West Virginia on February 17, 1871; but on the 15th, two days prior to the communication of this action of Virginia, the legislature of West Virginia had passed a joint resolution, authorizing the Governor to appoint three disinterested citizens of the state to treat with the authorities of Virginia upon the subject of the adjustment of the public debt of that state existing prior to January 1, 1861, to report on various matters relating to the creation of the debt, upon the investments held by the state of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk. (W. Va. Comp., vol 1, pp. 448-9.)

The proposal of Virginia relating to arbitration was referred by the legislature of West Virginia to a joint special committee of the two houses, which committee reported a preamble and joint resolution, rejecting the tender of arbitration because the adjustment of the debt should be subject to the ratification of the legislature of the two states, and because citizen commissioners from the two states would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. This joint resolution also invited Virginia to appoint three disinterested

citizens of that state as commissioners, with authority to treat with the commissioners theretofore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the general assembly of the commonwealth of Virginia. The Governor of West Virginia was directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution. (W. Va. Comp., vol. 1, pp. 449-54.) Accordingly, the Governor of West Virginia appointed three commissioners for the purpose aforesaid. This commission is known as the "West Virginia Debt Commission of 1871." After their appointment they proceeded to Richmond, where all the evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible. Realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of Virginia, soliciting specifically the necessary information. To this request the second auditor made a reply, in which he declined to furnish the information desired, a copy of which reply is filed as "Exhibit No. 2" of defendant's answer (R., p. 166).

Soon after their appointment the commission addressed a letter to the Governor of Virginia, notifying him of their appointment, their organization, and the duties put upon them, and requesting him to indicate at his earliest convenience what "channel of communication will be open to us." Nearly a month later they received from the Governor of Virginia a copy of a letter from him to the Governor of West Virginia, declining to recognize the West Virginia commissioners (W. Va. Comp., vol. 1, pp. 457-9). A few weeks later, in his message to the legislature, the Governor of Virginia "proceeds," to quote the language of the West Virginia Debt Commission, "to asperse the good faith of the State of West Virginia" (W. Va. Comp., vol. 1, p. 463). Having failed in their effort to obtain either the recognition or the co-operation of the Governor or the second auditor of Virginia, the commission left Richmond, because, as they say in their report, "further stay was not likely to add to the scant information

already gleaned by them from the public documents" (W. Va. Comp., vol. 1, p. 462).

The failure and refusal of Virginia to recognize, receive, or co-operate with the commissioners placed them at a great disadvantage, and they therefore obtained only such facts and figures as enabled them to make an imperfect report to the Governor of West Virginia with reference to the matters with which they were charged; and because of the incompleteness and inaccuracy of their report, and because it appeared therefrom, that in making their invetsigations they wholly disregarded the provisions of the ordinance of the Wheeling convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed, their report was not adopted by the legislature of West Virginia. In 1873, the senate of West Virginia made an investigation of the subject of the debt, through its finance committee, of which J. M. Bennett, who was for eight years auditor of the old state of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. This committee made a report on December 22, 1873, from which it appeared that West Virginia upon a settlement with Virginia, based on the provisions of section nine of the ordinance, did not owe to Virginia anything whatever, but that, on the contrary, Virginia was indebted to West Virginia on account of said debt on January 1, 1861, in the sum of $512,000, not including interest. A copy of this report is printed in the record at page 166, as Exhibit 3 of defendant's answer.

A few weeks after the West Virginia Debt Commission of 1871 retired from Richmond after their fruitless endeavors there for recognition and co-operation, and after the Governor of Virginia had, in his message to the general assembly, questioned the good faith of West Virginia, Virginia passed her first funding act, that of 1871, in which she assumed two-thirds of the amount of the debt as her full share, and, *in violation and repudiation of section nine of the ordinance* of August 20, 1861, arbitrarily set aside the other one-third as West Virginia's portion. This is the more remarkable when it is remembered that she refers to and quotes from said section nine of the ordinance in the preamble of this act (R., p. 18). And to the same

effect were the funding acts of 1879, 1882, and 1892. The joint resolution of the general assembly of Virginia, approved March 6, 1894, to provide for adjusting the portion of the debt to be borne by West Virginia, and creating the Virginia Debt Commission, provides (R., p. 49):

> "But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof."

And the act of the general assembly of Virginia, approved March 6, 1900, is to the same effect, namely, that Virginia is liable for two-thirds only of the debt as her part thereof, which she has already provided for.

West Virginia, since the passage of the funding act of 1871—certainly since the adoption of the joint resolution of 1894,—could enter upon negotiations with Virginia upon no other basis. West Virginia must agree, as a preliminary to any such negotiations with Virginia, that Virginia was liable for two-thirds only of the debt, that this was her "equitable proportion," and that she has settled that. And what besides would it be held that West Virginia recognized or admitted or agreed to had she entered into negotiations with Virginia on such basis? This, that she had recognized that she was liable for the other third as *her* "equitable proportion"; for, it would be reasoned, that since it takes three thirds to make a whole, and as Virginia was liable for two-thirds only, West Virgina must be liable for the other third. It is and was not reasonable to ask that West Virginia should place herself in such a position, especially as it would have set aside the agreement West Virginia made with reference to her portion of the debt and the method of ascertaining the same, contained in section nine of the ordinance.

West Virginia has never receded from the said provisions of the ordinance with reference to the settlement of her just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a state. The resolutions adopted by her legislature in recent years, in which she declared that she did not owe

the state of Virginia anything on account of said debt, and would not negotiate with her concerning the same, were based upon the said report of the finance committee of 1873, upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance, and upon the conditions of negotiations dictated by Virginia in her said joint resolution of 1894 and said act of 1900.

After the said proposition of Virginia, made in 1871, to select arbitrators, which was declined by West Virginia, as hereinbefore stated, Virginia at no time signified her desire to settle with West Virginia the matters relating to West Virginia's proportion of said public debt, until after the adoption of said joint resolution approved March 6, 1894, whereby she had compromised and settled with her creditors and been released from all liability, which resolution provided that the commission thereby created should not proceed with negotiations with West Virginia until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under her funding acts, hereinbefore referred to, that they desired the commission to undertake such negotiations and would accept the amount so ascertained to be paid by West Virginia in full settlement of the one-third of the debt of the original state which had not been assumed by Virginia; and also that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original state and which she had already provided for as her equitable proportion thereof. Under this resolution no negotiations were proposed to West Virginia until the year 1895, and then only upon the conditions prescribed in said joint resolution of 1894, which has never yet been repealed or modified in this respect. Negotiations were again offered by Virginia in 1906, but upon the same condition, that is, that West Virginia should enter upon such negotiations with the admission on her part that Virginia should be liable for two-thirds only of the debt, which was again declined by West Virginia.

It will be clearly seen, therefore, that the allegations in the bill that "attempts were made at different times by the public authorities of both the commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportion of

the common liability," is not supported to the extent and effect sought to be shown by the bill filed in this case.

It is averred in the bill that it was soon apparent that Virginia had by the act of March 6, 1871, assumed a heavier burden than she was able to bear, and other plans for the settlement of the debt were attempted to be made by the action of the General Assembly on March 28, 1879, and February 14, 1882, until at length, it is alleged, that a final and satisfactory settlement of the portion of the debt of the original state which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. See R., pp. 21-47. Virginia files with her bill copies of each of these Acts of her General Assembly as exhibits Nos. 2, 3 and 4. It is also shown by the bill that Virginia by her Act of March 30, 1871, sought to fix her liability upon the basis of two-thirds of the original debt, and it is alleged that this was the intention of that act.

All Questions Arising Upon the Record of this Case Are Still Open for the Consideration and Decision of the Court.

Before entering upon the further consideration of the case, the attention of the Court is respectfully called to its former decision rendered upon the demurrer filed to the bill in this cause, appearing in 206 U. S. 290-322, the third point of the syllabus reading as follows:

> "The question whether the Commonwealth of Virginia has been released from all liability on account of the public debt evidenced by bonds of the state outstanding on January 1, 1861, will not be passed upon on a demurrer to a bill filed by that state against the State of West Virginia which seeks an adjudication of the amount due the former by the latter as the equitable proportion of the public debt of the original State of Virginia which was assumed by West Virginia at the time of its creation as a state, but the consideration of such question will be postponed until the final hearing."

Again, in this case, reported in 209 U. S. 514-537, in the opinion of the Court referring this cause to a Master, specifying the matters

as to which the Master should report, the Court uses the following language:

> "The answers to these inquiries to be without prejudice to any question in the cause."

Inasmuch as the question of the release of Virginia by her creditors from all liability to her on account of the debt in question, and her lack of interest to prosecute this suit so far as it relates to the settlement of said debt, or the ascertainment of the just proportion thereof payable by West Virginia, is still open for consideration, these matters may, therefore, be properly argued on the hearing of the cause at this time, as well as all other questions that properly arise in the cause.

The Bill Sets Up Four Distinct and Independent Grounds in Respect to Each of Which Virginia Seeks Relief.

To intelligently argue this case, it is necessary to know just what Virginia seeks to recover by her bill. An examination of it discloses four distinct and independent grounds upon which she asks adjudication, and in respect to each of which she seeks a recovery against West Virginia.

The *first* of these grounds is that which relates to the part of the public debt held by third persons which Virginia alleges West Virginia should be required to assume and pay, and which Virginia has not paid and declines to pay, for the very substantial reason, as shown by her bill and its exhibits, that from its payment she has been exonerated by the acts and consent of her creditors, the holders thereof, and as to which she avers that she *sues in trust* for the benefit of those creditors or holders of said unpaid part of said debt who may be entitled thereto.

The *second* of these grounds is that which relates to the part of the said debt not held by third persons but which Virginia avers she holds in her Literary and Sinking funds, of which she herself, as she contends, is the owner, and as to which she sues in her own right and *not as trustee*.

The *third* ground is predicated upon the allegation that Virginia

has paid off or retired of principal and interest of said debt a sum considerably in excess of $25,000,000, which she owns in her own right, and on account of which she avers that she has "a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor." This claim she asserts in her own right.

The *fourth* and last ground in respect to which she asks a decree against West Virginia is based upon certain property which she avers was transferred to and became the property of West Virginia, under two acts of the legislature of Virginia passed respectively on the 3rd and 4th days of February, 1863, amounting, in the aggregate, as alleged in the bill, to several millions of dollars, the exact amount of which it is alleged the plaintiff is unable to state. This claim is also asserted by Virginia in her own right.

These four several phases of the bill will be presented and considered in the order we have here respectively designated.

Questions Arising Upon the Record for the Consideration and Decision of the Court.

First. Virginia has no interest in this suit, so far as it seeks to ascertain West Virginia's proportion of said debt, Virginia suing therefor in her alleged capacity as trustee; because no liability now attaches to Virginia in respect thereto, as Virginia has been released therefrom by the concurrent acts of herself and her creditors.

Second. Inasmuch as the bonds held by Virginia through the agency of her Literary and Sinking funds do not constitute any part of the debt within the meaning and contemplation of the ordinance of 1861, or the provision of the constitution of West Virginia adopted in 1862, Virginia cannot maintain this suit as to this phase of the bill; for the very cogent reason that these bonds are assets belonging to Virginia herself, and do not constitute a debt in any sense of the term.

Third. To authorize a suit for contribution, where the principle of this doctrine is applicable, it is absolutely essential that the party seeking contribution shall have paid more than his just share of a common debt. The very contrary appears from exhibit 3 filed with

plaintiff's bill (R. pp. 26-38) and made a part thereof. From the bill and this exhibit it appears that every dollar which Virginia ever paid on account of said debt was actually applied in reduction of that part of the debt which she herself assumed, and that no part thereof was ever applied upon the unfunded part which Virginia contends should be assumed and paid by West Virginia; and, inasmuch as West Virginia has not received any benefit whatever of any sum paid by Virginia, she is not liable to the plaintiff for contribution. It is clear, therefore, that Virginia can not maintain the bill as to this phase of the cause, predicated upon her alleged right of contribution.

Fourth. The plaintiff produced no proof of the *value* of the property embodied in the claim of Virginia against West Virginia, for property transferred by the former to and received by the latter by the act of February 3, 1863 (App. to R., p. 128). In the printed record the only evidence of this value is that furnished by West Virginia. West Virginia admitted that the value of the bank stocks received by her was $186,630.00. The Special Master found that the value of the other property so received by West Virginia was $73,578.00 (Report, pp. 181-193). Hence, if Virginia can maintain this suit as to this feature of her bill, she could recover only the sum of $260,208.00.

Fifth. But Virginia has blended in this suit, with the claim which she asserts in her representative capacity as trustee, various other claims which she asserts in her own right, thus clearly creating a *multifarious* demand, which cannot be asserted in one and the same cause, unless the court shall be constrained for convenience' sake to treat those demands which she asserts in her own right as mere matter of surplusage and not entitling her to any relief on account thereof.

Sixth. Treating then the claims which Virginia asserts in her own right as not proper subjects for relief but as surplusage, Virginia has no claim whatever, as shown by the bill and its exhibits, which she can sustain in this cause; and therefore the whole bill must be dismissed.

The propositions which we have here presented, and which clearly arise upon the record in this cause, will be discussed in the order named; and in our argument we will consider the various acts of legislation adopted by the State of Virginia which ultimately resulted

in her release from any and all liability regarding the unfunded part of the Virginia debt created before and existing on January 1, 1861. It is clear that this is the date from which we must reckon, because this date is fixed by the ordinance of Virginia herself in section 9 thereof (R. p. 146), and the constitution of West Virginia adopted in 1862 (R. p. 147), and to the provisions whereof Virginia gave assent and therefore accepted as the condition of her assent to the formation out of her territory of the new state (R. p. 165).

Virginia Has no Interest in this Suit so far as it Seeks to Ascertain West Virginia's Proportion of Said Debt.

Virginia has no interest in this suit so far as it seeks to ascertain West Virginia's proportion of the debt, because any part of the debt which West Virginia may have assumed by reason of the ordinance or her constitution was direct to the creditors and not to Virginia; and because no liability now attaches to Virginia in respect thereto, as Virginia has been released therefrom by the concurrent acts of herself and the creditors.

Following in consecutive order the propositions arising on the record, we necessarily begin with the consideration of the Wheeling Ordinance and the first Constitution adopted by the State of West Virginia.

Any assumption of any part of the public debt that West Virginia may have taken upon herself by reason of the Wheeling Ordinance of August 20, 1861, or by reason of the West Virginia constitution of 1862, was to the creditors and not to the Commonwealth of Virginia. Both the terms of the Ordinance and of the Constitution relating thereto are clear and distinct, and show that West Virginia did not assume to pay any part of the public debt to Virginia. That part of said Ordinance relating thereto is as follows:

> "Sec. 9. The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any

part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period." * * * *

"Sec. 10. When the general assembly shall give its consent to the formation of such new state, it shall forward to the congress of the United States such consent, together with an official copy of such constitution, with the request that the said new state may be admitted in the union of states." App. to R., p. 122.

That part of the West Virginia Constitution referred to in section 10 of said Ordinance is as follows:

"Sec. 8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years." App. to R., p. 125.

From the foregoing it clearly appears, therefore, that the Commonwealth of Virginia had full knowledge that any assumption West Virginia made of any part of the public debt was to the creditors and not to the Commonwealth of Virginia. The terms of said Ordinance and the provisions of the West Virginia Constitution were known to Virginia. Section 3 of the act of the General Assembly of Virginia passed May 13, 1862, required the Governor of Virginia to transmit to the senators and representatives of Virginia in Congress, said act of the General Assembly and a "certified original of the said Constitution and schedule." App. to R., p. 126.

That the assumption was to the creditors, and not to Virginia, is evident not only from the words of the Ordinance and the Constitution, but also from the condition of the times. The people of Virginia inhabiting that part which became West Virginia were loyal to the Union; they adhered to and were under the jurisdiction of a government which was in a state of war with the government to which what

is now the State of Virginia adhered and was loyal. The two states of Virginia and West Virginia were in armed conflict. Virginia had "suspended," or postponed until after the end of the war, her obligations to those citizens, including those of West Virginia, who adhered to the Union. She "repudiated" that part of her debt, and the interest thereon, held by citizens loyal to the Union. She held up the property of the citizens of West Virginia who adhered to the Federal government. The Ordinance and the Constitution were framed under these conditions—in a time of war; when it was impossible to forecast the result of that war; when no victory had favored the Union cause, but when the victories favored the cause of the Southern Confederacy; indeed, when the chances favored the success of the Confederacy, and the creation of another nation in the territory of the Federal government seemed probable. It would be most unreasonable to suppose that West Virginia would, under such conditions, agree to pay money over to Virginia for the benefit of West Virginia's own citizens who were at that time the creditors of Virginia. It would be most reasonable that West Virginia would look to the interests of her own citizens, and that any money she should pay would be paid so as to protect their interests. And this is what she did do. And hence she agreed to take upon herself or assume a just or equitable proportion of the debt; but provided that this proportion should be ascertained by *her own legislature*. There is nothing in the compact that she would consult Virginia either as to the portion she would pay or as to the persons to whom she would pay it. To this agreement and compact Virginia assented. Upon this agreement and compact, Virginia assenting, West Virginia was admitted into the Union. It is fundamental that, while courts can enforce agreements between parties, they cannot make agreements for parties; they can only enforce the agreements the parties have made.

The lawfully Restored Government of Virginia, when she framed the ordinance for the creation of the new state (R., p. 6), and when she gave consent for the admission of West Virginia into the Union, did not contemplate that any part of the public debt should be paid by West Virginia to the mother state; nor would Congress, under the conditions then existing, have given its consent to the admission

of West Virginia if it had been understood that the said ordinance and the constitution provided that the share of the public debt which West Virginia would pay was to be paid to the old state. It was the understanding of the Restored Government of Virginia, of the framers of the constitution of West Virginia, and of Congress, that payment would be made direct to the creditors of Virginia, and not to the state of Virginia. The circumstances attending the passage of the act of Congress admitting West Virginia into the Union clearly indicate this. In support of this proposition, we quote from Exhibit No. 8 of plaintiff's bill the following excerpt:

> "A brief extract from the debates, when the bill providing for the admission of West Virginia was under consideration, will serve my purpose tonight:
>
> "MR. OLIN: 'I desire to ask what will become of the bonds and other obligations which Virginia has issued or incurred by the recognition of a new state?'
>
> "MR. HUTCHINS: 'I will answer my friend from New York. Here is the provision of the constitution of West Virginia in reference to that matter: An equitable portion of the debt of Virginia prior to January the first, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable.'"
>
> "MR. CRITTENDEN: 'There is another question; the State of Virginia owes a large debt. How is this debt to be divided?'"
>
> "MR. BLAIR: 'The constitution framed by the convention of the people of the proposed new state binds the new state to pay its just proportion of the debt owed by Virginia prior to the ordinance of secession.'"
>
> "MR. CRITTENDEN: 'I only knew that in this bill there was no provision made for a division of the said debt. The gentlemen tells us there is a provision made for it in the constitution, and I am satisfied with that. As it has been attended to, I have no more to say about it.'" (Record, pp. 80, 81.)

For the original of the above quotations from the debates in Congress, see pp. 45-47 of Congressional Globe, Part I., 3d sess. 37th Cong. 1862-63.

From that debate we add the following quotation from the speech of Representative Edwards (p. 47):

> "But it is said, further, that there may be some difficulty about the public debt of Virginia. Well, sir, if Virginia remains in rebellion, if she succeeds, in conjunction with others of the southern states, in establishing the independence of the southern confederacy, where then, I ask, will the creditors of that state, many of them living in the northern states, go for the collection of their debts? What is the market value of the securities of the state now under the circumstances of her rebellion? Sir, if I had bonds of that state in my possession, I should consider them worth far more with the new state of Western Virginia in the Union as a free state, with her industrious population, she having provided in her constitution to assume her just proportion of all the debts of the state, than if the old state remained entire and wasting the resources of both its eastern and western portions in supporting the rebellion."

It seems clear that the solicitude of Congress related to the holders of the debt, and it was believed by them that these creditors would have the right to look to the new state for payment to them of the just and equitable proportion of the debt she had assumed. The question asked by Mr. Crittenden, and his comment on the reply to it, and the remarks of Mr. Edwards, and, indeed, the whole course of the debate, so far as it touched the debt question, go to show that it was contemplated by all the parties that payment would be made to the creditors and not to the State of Virginia. There is no reason to believe that it was the intention of either the Restored Government of Virginia, or of Congress, that West Virginia was to assume a just or equitable proportion of the public debt of Virginia and then turn the same over to the old State of Virginia, the greater part of whose territory was then in rebellion against the Federal Government and held by armies in hostility to that government. Why would the Federal Government, under such circumstances, concern itself about the fiscal affairs of the rebellious government of Virginia? There was every reason, however, why Congress should concern itself about

the interest of the loyal creditors of Virginia; and the same sentiment which prompted Congress to have solicitude for the interest of such creditors, would also prompt the loyal Restored Government of Virginia concerning them. At that date there could be no negotiations between West Virginia and the old state; nor could it be told with any certainty how soon in the future there could be such negotiations between them, because the result of the war was at that time very uncertain, and no one could tell either what the result of the war would be nor how long it would continue, nor *what would be the conditions after its close.* The language of the ordinance and of the constitution of West Virginia is that West Virginia should assume or take upon herself and pay a just or an equitable proportion of the debt. But, very significantly, neither instrument declares it should be paid to Virginia. If the intention had been to pay it to Virginia, then it would seem a reasonable assumption that it could not be paid to Virginia until the amount was ascertained by negotiations between the two states. In other words, if it was the contemplation that whatever West Virginia was liable for was a liability to Virginia, then it would follow that Virginia should have something to say about the amount thereof. But the constitution of West Virginia distinctly provided that the legislature of West Virginia alone should ascertain the amount; and this was agreed to by both the Restored Government of Virginia and the Congress of the United States, the former in giving its consent to the formation of the new state, and the latter by its act admitting West Virginia into the Union.

This is the view taken by the Supreme Court of Appeals of the Commonwealth of Virginia, in the case of *Higginbotham* v. *Commonwealth,* 25 Gratt. 627, decided in 1874, and cited by Virginia in her brief in this cause. It was upon this principle of a direct liability from West Virginia to the creditors, that Virginia based her first act of March 30, 1871 (R., p. 17), whereby she funded a large amount of the public debt upon the basis of two-thirds to herself and one-third to West Virginia. It was upon this principle that she passed the acts of March 28, 1879 (R., pp. 21-26), and of February 14, 1882 (R., pp. 26-38), and of February 26, 1892 (R., pp. 38-47). It was upon this principle that Virginia adopted her joint resolution

approved March 6, 1894 (R., p. 49). It was upon this principle that Virginia passed the act of March 6, 1900 (R., p. 50). It was upon this principle of construction that Virginia waived, in said funding acts of 1871, 1882 and 1892, the clause in her constitution of 1869, which provided that such part of the public debt as should be assumed by West Virginia should be applied to the discharge of said debt. It was also upon this principle of construction that Virginia superseded section 19 of article 10 of her constitution of 1869 by her constitution of 1902, in the latter of which she impliedly remits the holders of the unfunded part of her debt to the State of West Virginia for the direct payment thereof.

We next take up in consecutive order the consideration of those acts whereby Virginia was ultimately released from all liability as to that part of the state debt which she has assumed to be her just portion thereof. The first of which is the

Act of 1871,

which had for its express object the funding of said debt and the fixing, upon her own basis, of Virginia's proportion thereof, and remitting her creditors to West Virginia for the payment of the residue. This act, which is filed as exhibit number 1 with plaintiff's bill (R. p. 17), contains the following recital:

> "Whereas in the formation of the State of West Virginia there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas, in the Ordinance authorizing the organization of said state, it was provided that the said state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state, and will continue to be made as long as may be necessary; and whereas the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it

has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof and not to this state, as the constitution of this state provides; now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

"1. Be it enacted," etc. (R., p. 18.)

The act then provides:

"That from and after its passage * * * no bond, certificate or other evidence of indebtedness shall be issued for any portion of the debt of this state; nor shall any interest be paid upon any part or portion of said debt except as hereinafter provided." (R. p. 18.)

The act then provides for the funding of the two-thirds of the debt, with its accrued and unpaid interest to the first day of July, 1871, to bear interest at the rate of six per cent per annum, to be due and payable in thirty-four years from date, redeemable at the pleasure of the state, the bonds to be made payable to order or bearer, the coupons to be paid semi-annually and receivable for taxes and other debts due the state (R. 18). The third section of the act provides for the surrender of the old and the acceptance of the new bonds for two-thirds of the amount of said debt, and the issuance of a certificate, bearing the same date as the new bond, for the other one-third of the debt, "and that payment of said amount, with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be made between the states of Virginia and West Virginia in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and that the state of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees. * * * The remaining one-third of unpaid interest, both on the bonds and certificates, shall be

payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia." (R. p. 19.)

Section 4 of this act provides:

> "The treasurer, by proper endorsement, written or stamped, upon each bond, certificate of stock or interest certificate so surrendered and delivered to him, shall cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law." (R. p. 20.)

An examination of this act discloses that provision is made only for the payment of the new bonds funded under this act and the interest accruing thereon. By this act Virginia signifies to her creditors that she will pay no bond or any part of said debt except the two-thirds thereof provided for in this act, nor any interest thereon except upon the bonds issued by her to cover said two-thirds.

The provisions of this act were accepted by a large number of her creditors, as shown by the number of certificates issued under it, which amounted on January 23, 1905, to $10,639,776.42 (R. p. 55.)

The acceptance of the provision of this act by the creditors constituted between them and Virginia a lawful contract, as declared by this court in *Hartman* v. *Greenhow*, 102 U. S. 672 (26 L. Ed. 271). The consideration of this valid contract was based upon the negotiability and receivability of the coupons for taxes and other dues owing to the state, written on their face, and the conditional promise of Virginia to pay the unfunded part of said debt. This act did leave a conditional liability upon Virginia to pay or provide for the payment of the unfunded debt of the Commonwealth represented by certificates issued by her, from which she could not relieve herself without the assent of her creditors; but Virginia was relieved from this conditional liability by the consent of the creditors, and the subsequent acts of the Commonwealth relating to the debt, and hereinafter cited.

Act of 1879.

To obtain a reduction of the rate of interest upon the two-thirds

of said debt assumed by Virginia, this act (1879) was passed, the recital in such act declaring that,

> "The council of foreign bondholders of London, England, and the funding association of the United States of America, limited, have, in view of this belief expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest." (R., p. 21.)

The act, to effectuate its purpose, divides the outstanding indebtedness of the state into two classes, as follows:

> "Class I., which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.
>
> "Class II., which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one, as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds." (R., p. 22.)

It will be seen that this act deals with the entire debt, both that funded under the act of 1871 and that not so funded, and of that so unfunded this new act provides for the funding of two-thirds of it at its face value with two-thirds of its unpaid accrued interest.

The act is made effectual upon the following condition, provided in the act as part of section 5 thereof:

> "If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the governor their assent to and acceptance of the terms of this act, the same shall be taken to be a contract between the state and the said corporations, and the governor shall forthwith provide for the preparation of the bonds provided for by this act." (R., p. 23.)

The act also provides for the funding of the entire debt, on the basis of two-thirds thereof assumed by Virginia, and gives, in effect, an indefinite period for such purpose (R., p. 23.)

Provision is made by section 6 of this act for the cancellation of the bonds surrendered under it (R., pp. 23, 24), and section 7 thereof provides as follows:

> "The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act and who shall not have yet received certificates representing the remaining one third of their principal and interest, due and payable by the state of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy one, when they make such exchange; and the state of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the state of Virginia from all liability on account of said certificates." (R., p. 24.)

The act provides in section 8 thereof for the payment of interest on the bonds issued thereunder (R., p. 24). The act also provides for a sinking fund to pay the principal of the bonds (section 9; R., pp. 24, 25). It repeals all acts inconsistent with it, and therefore repeals the act of 1871 and the acts amendatory thereof. The rate of interest under the act of 1871 was six per cent per annum (R., p. 18); while under this act the annual rate was three per cent for ten years, four per cent for twenty years, and five per cent for ten years (R., pp. 21, 22).

Act of 1882.

The following is the title of the act of 1882:

> "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing

at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon." (R., p. 26.)

To this act there is this preamble:

"Whereas to the end which this act comprehends, a full statement of the debt is essential; and whereas the following has been carefully made up from the records of the second auditor's office of the state, it is confidently submitted as presenting a true state of the account between the state and her creditors—the account is as follows." (R. p. 26.)

Then follows a full statement of the account of the debt as between Virginia and the holders thereof.

On January 1, 1861, there were three classes of this debt:

Sterling, bearing 5 per cent interest	$ 1,973,000.00
Dollar, bearing 6 per cent interest	29,533,582.90
Guaranteed, bearing 6 per cent interest	294,130.00
Total	$31,800,612.90

Interest on this debt:

Past due and uncalled for	$101,023.63
Maturing at this date, January 1, 1861	944,156.38
Total	$1,045,180.01

Then follows a statement of the debt as of July 1, 1863, amounting to $33,141,212.12. This is followed by a statement of accrued interest to July 1, 1863, amounting to $5,954,716.08. Of this total principal as of July 1, 1863, Virginia assumes two-thirds as her "equitable portion," which is $22.094,141.96. Of this total amount of interest Virginia assumes two-thirds, which is $3,969,810.72; an aggregate of principal and interest of $26,063,952.38.

Virginia continues this statement in detail to July 1, 1882, crediting herself and charging to her creditors all payments made by her on account of said debt from January 1, 1861, to July 1, 1882, making an aggregate balance of $21,935,377.15, principal and interest, and inclusive of $1,428,245.25 held by the literary fund of the state and

$602,016.90 as interest on such fund (R., pp. 27-32). This total sum of $21,035,377.15 represents two-thirds of the debt, principal and interest, as of July 1, 1882, after deducting everything ever paid by Virginia on account of said debt during the period between January 1, 1861, and July 1, 1882—a period of twenty-one and one-half years.

The act then continues with an extended recital classifying this debt, stating her intention to provide a uniform rate of interest, treating the said sum of $21,035,377.15 as,

> "the amount of Virginia's equitable share of the debt of the old and entire state, as the same is ascertained and now formally declared by the foregoing account" (R., pp. 33, 34).

Then follows sections 1, 2, 3 and 4 of the act, authorizing the issuance of new bonds for said debt, prescribing the form of the bond, fixing therein the rate of interest at three per cent per annum, and the form of the coupon to accompany the bond (R., pp. 34, 35). Section 5 of the act prescribes the denomination of the bonds to be issued in exchange for the outstanding indebtedness of the state as enumerated in the act for "her equitable share" (which the act fixes as we have seen at two-thirds of the original debt after deducting therefrom all money paid by her on account thereof) of each class as shown in the recital to the act (R., p. 33), extending from A to F inclusive. For her equitable share of class A she refunds at 53 per cent; class B at 60 per cent; class C at 69 per cent; class D at 80 per cent; class E at 69 per cent; class F at 63 per cent. (R., pp. 35, 36.)

Section 6 of this act of 1882 provides as follows:

> "For all balance of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate as follows:
>
> "No._____
>
> "The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for _____ dollars, held by _____, dated the _____ day of _____ and numbered _____, to be accounted for by the State

of West Virginia, without recourse upon this commonwealth.

"Done at the capitol of the State of Virginia, this ------ day of ----------, eighteen ----------
----------, Second Auditor.
----------, Treasurer."

(R., p. 36.)

It is prescribed in section 8 of this act:

> "All the bonds and certificates of debt and evidences of past due and unpaid interest taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are required, and by the treasurer the same shall be carefully preserved until such time as the general assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled from time to time shall be certified by said board and filed with the treasurer for preservation." (R., p. 37.)

The act, in section 11, provides for a sinking fund (R., p. 37), in section 13 for the payment of interest on the bonds issued under the act (R., p. 38), and section 15 declares:

> "That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this state, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided."

Act of 1892.

While the act of 1882 contemplated and provided for the funding of all the said debt assumed by Virginia and her release from the balance thereof, in March, 1890, as appears from a recital in this act of 1892 (R., p. 38), it had not all been funded by said act of 1882; so that in March, 1890, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the Commonwealth not funded under the act of 1882, known as the "Riddleberger bill" (R., p. 38).

This act recites as a fact that,

"said Virginia debt commission has submitted a report to the general assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central Trust Company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, Junior, Hugh R. Garden and John Gill, constituting a committee for certain of the creditors of Virginia, called the 'Bondholders' committee,' have proposed to said commission to surrender to the state in bulk not less than twenty-three million of dollars of the public debt, unfunded under said act approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves appointed; and that, in pursuance of said proposal an agreement has been entered into unanimously between the said commission and the said bondholders' committee, subject to approval by the general assembly, whereby in exchange for the said unsettled obligations of the state held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the commonwealth pursuant to law and by the United States) together with the interest thereon to July first, eighteen hundred and ninety one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety one, and maturing one hundred years from said date with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually, of which aggregate debt of about twenty-eight million of dollars the said bondholders' committee represent that they now hold and agree to surrender not less than twenty-three million of dollars; and

"Whereas said report and agreement contemplate the

surrender of the obligations held by the bondholders' committee as an entirety, and do not contemplate an apportionment by the general assembly between the various classes of creditors so represented by said bondholders' committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

"Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the state (except those issued under the act of February fourteenth, eighteen hundred and eighty two, the evidences of debt held by the public institutions of the state in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act." (R., pp. 38, 39.)

This act provides in the first section, that the sinking fund commissioners do issue nineteen million of dollars in bonds in lieu of the twenty-eight million dollars outstanding not funded under the act of 1882 (R., p. 39); in the second section, the date of the bonds, when payable, the rate of interest (two per cent for the first ten years and three per cent for the remaining ninety years), and for the redemption of the bonds (R., pp. 39, 40). The third section prescribes the form of the bond, and the fourth the form of the coupon (R., pp. 40, 41). Section 5 is divided into paragraphs, the first of which prescribes the denominations of the bonds. The other paragraphs are designated by capital letters from A to E inclusively (R., pp. 41-43). Paragraph C provides that after the presentation of not less than twenty-three million dollars:

"after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided." (R., p. 42.)

Paragraph D provides that:

> "The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph C of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered, provided that no certificates issued on account of the proportion of West Virginia of the obligations of the states shall be funded under this act." (R., p. 43.)

After thus carefully providing for a refunding of that part of the debt not funded under the act of 1882, section 6 of said act of 1892 provides as follows:

> "For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the Commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz.:
>
> "No. ------. The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ------ dollars, dated ------ day of ----------, and No. ------, leaving a balance of ---------- dollars with interest from ----------, to be accounted for to the holder of the certificate by the state of West Virginia, without recourse upon this commonwealth.
>
> "Done at the capitol of the State of Virginia, this ------ day of ----------, eighteen hundred and ninety-two.
>
> ----------, Second Auditor.
>
> ----------, Treasurer."
>
> (R., pp. 43, 44.)

Section 9 of this act provides that:

> "All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the general assembly, a schedule of the bonds, certificates, and other evidences of debt so canceled shall be certified by said commissioners and filed by the treasurer for preservation." (R., p. 45.)

Section 10 of this act provides for a sinking fund for the payment of the bonds issued under this and the act of 1882, and for their cancellation, and it also provides for the cancellation of all bonds issued under the act of 1882 and held by the commissioners of the sinking fund at the time said act of 1892 was approved,

> "as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act" (R., p. 46).

The thirteenth section of said act of 1892 provides for the payment of the interest on the bonds issued under it, as the same shall become due and payable (R., p. 46). Section 16 repeals the act of 1882, and all other acts amendatory thereof (R., pp. 46, 47).

It will be perceived that the act of 1871 was repealed by the act of 1879, as the two acts were inconsistent with each other, if not expressly repealed by the repeal therein of the act of 1878, as it was in substance an amendment and re-enactment of the act of 1871 (R., p. 26); and the act of 1882 repealed the acts of 1879 by implication, as it treated the adjustment and settlement of the debt, so far as the liability thereon of Virginia is concerned, as an entirety. That such repeal was so effected by the act of 1882, we submit the following authorities:

In *Grant* v. *Railroad Co.*, 66 W. Va. 175, this subject of the repeal of a statute by implication, where a subsequent statute deals with the subject as an entirety, is fully considered and the authorities cited. The opinion in that case deals with the repeal of a statute by implication, resultant upon the enactment of a subsequent act dealing with the subject as an entirety. The court said:

"The principle applied here has been stated by the Supreme Court of the United States in the following terms: 'Where the later of two acts covers the whole subject matter of the earlier one, not purporting to amend it, and plainly shows that it was intended to be a substitute for the earlier act, such later act will operate as a repeal of the earlier one, though the two are not repugnant. *District of Columbia* v. *Hutton*, 143 U. S. 18. This Court in *Herron* v. *Carson*, 26 W. Va. 62, has stated it in these terms: 'A subsequent statute revising the whole subject matter of a former one and evidently intended as a substitute for it, though it contains no express words to that effect, must, on principles of law as well as in reason and common sense, operate a repeal of the former law; it has been applied by this Court in other cases. *State* v. *Harden*, 62 W. Va. 313; *State* v. *Mines*, 38 W. Va. 125. Scores of additional cases of the same class could be enumerated. See *United States* v. *Claflin*, 97 U. S. 546; *Eckloff* v. *District of Columbia*, 135 U. S. 240; *Morris* v. *Crocker*, 13 How. (U. S.) 429; *Mitchell* v. *Brown*, 1 Ell. & Ell. 267; *Parry* v. *Croydon Gas Co.*, 15 C. B. (N. S.) 568; *Heckman* v. *Pinckney*, 81 N. Y. 211; *United States* v. *Tyneu*, 11 Wall. 88; *Commonwealth* v. *Killiher*, 12 Allen (Mass.) 480; *State* v. *Campbell*, 44 Wis. 529. Under this rule the implication does not rest on inconsistency or repugnancy, in the restricted sense in which these terms are generally used. It arises as a matter of legislative intention, disclosed by the character of the act, its title or preamble, and subject matter, and inconsistency, so far as it may be deemed to enter into the inquiry, is of a broader kind, namely, inconsistency between the old law and the legislative intent shown by the new. It is not inconsistency or repugnancy between words, phrases or clauses, considered as such, but inconsistency between the acts considered as entireties."

The act of 1892 refunded every part of the debt created by Virginia prior to January 1, 1861, except the one-third thereof which she claims is West Virginia's proportion; and, as to such unassumed and unfunded part, the act remits the holders thereof to West Virginia

without recourse upon the Commonwealth of Virginia. The holders of the part of the debt assumed by Virginia assented to its settlement under the acts of 1882 and 1892, in the manner therein prescribed. Of this the exhibits filed with the bill and made a part thereof afford full proof.

The Status of Virginia as to Her Unfunded Debt by Virtue of the Provisions of Her Four Legislative Acts of 1871, 1879, 1882 and 1892.

Virginia, in her act of 1871, declaring its object and clearly expressive of its purpose, says:

> "Now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon *her proportion of said debt* as the same shall become due, therefore,
>
> "1. Be it enacted," etc. (R., p. 18.)

Section 3 then provides for the issuance of certificates for the unfunded part of the said debt, alleged by Virginia to be West Virginia's proportion thereof, providing that,

> "payment" (of such unfunded debt) "will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia at the time of its dismemberment" (R., p. 19).

Thus, Virginia settled with her creditors for two-thirds of the debt, funded in new bonds drawing six per cent interest, with the understanding that the bonds unfunded and canceled, surrendered to Virginia, represented by the certificates delivered to the owners, should be held by Virginia *in trust*, to be paid in accordance with a settlement to be made at some future time with West Virginia. It will be seen that Virginia conditionally promises to pay the unfunded part of the debt under the act of 1871, dependent upon the contingency of a

subsequent settlement with West Virginia; payment to be in accordance with such settlement, and no interest is payable on any part of the debt not funded under the act.

It will be observed that this act treats the two-thirds which Virginia assumes as *her proportion of said debt.* All the creditors accepting the provisions of this act thereby assented to this as her portion to be assumed and paid by her, and the residue as West Virginia's proportion, as stated in the act, and with which Virginia was only connected or in which she was only interested under a conditional promise.

The act of 1879 repealed all acts inconsistent therewith and also the act of March 14, 1878 (R., p. 26), and provided again for the funding of the debt, as of the date of January 1, 1879, the principal payable forty years thereafter, bearing interest annually at the rate of three per cent for ten years, four per cent for twenty years, and five per cent for ten years, payable in the cities of Richmond, New York and London, as provided in the bonds issued thereunder (R., pp. 20, 21).

This act of 1879 provided that upon the filing with the governor of the assent of the representatives of the holders of the debt to an acceptance of the terms of this act, such acceptance should create a contract between the Commonwealth and said corporations—that is, the foreign bondholders' and funding associations, treated as corporations, representing the holders of the debt. This assent was accordingly filed. Therefore this act of 1879 created a new and different contract as to the entire debt from that which existed between the Commonwealth and the holders of the debt under the act of 1871. The characteristics or distinguishing features of this contract so created by the act of 1879 were:

First, that the state of Virginia would negotiate, or aid the creditors holding all certificates issued under the act of 1879 or previous acts in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia, thus relieving her from her conditional liability created as to the unfunded bonds under the act of 1871.

Second, the acceptance of certificates under this act of 1879 for West Virginia's alleged one-third was taken and held as a *just and absolute*

release of the Commonwealth of Virginia from all liability on account of said certificates.

Thus it is seen that Virginia was expressly released from all liability as to the certificates issued under the act of 1879; and as to the certificates issued under the act of 1871 there was substituted for her conditional liability a promise on her part either to negotiate herself directly with West Virginia or to aid the creditors holding the certificates issued under both acts of 1871 and 1879 in negotiating with West Virginia for an amicable settlement of West Virginia's alleged one-third of said debt, being the unfunded portion thereof not assumed by Virginia under said act.

It appears that there had been issued on December 14, 1904, $12,910,555.89, of which $10,639,776.42 were issued under the act of 1871. So that Virginia was released by the very words of the act of 1879 of more than $2,000,000 of the unfunded debt, and released of the residue (amounting to more than $10,000,000) by the acceptance of the terms of the act by the representatives of the holders of all the debt.

Third, another characteristic of the new contract made by Virginia with the holders of the debt under the act of 1879 was the very large reduction of the interest from that provided under the act of 1871.

By the act of 1882 Virginia makes a statement of her entire debt as existing before and on January 1, 1861; and upon the basis of this statement she makes an entirely new contract with reference to the entire debt. This act, thus forming a new contract, is assented to by her creditors. The characteristic changes made under this new act are:

First, a scaling of the debt whereby she pays a certain percentage of each class of bonds (R., pp. 35, 36).

Second, by this she effects a large reduction in the amount of the two-thirds of the debt which she had theretofore assumed under the acts of 1871 and 1879, and secures more favorable terms of interest and changes the place of the payment of the interest, the rate of interest by this act being fixed at three per cent and the place of payment at Richmond, Virginia (R., pp. 34, 35).

After thus fixing the basis of her liability upon the scaling of the debt at the rate designated in the act, the act then arbitrarily prescribes

that "for all balances of such debt, constituting West Virginia's share of the old debt," a certificate shall be issued to be accounted for by the state of West Virginia without recourse upon Virginia (R., p. 36). Virginia thus arrogated to herself the right to fix the amount to be paid by West Virginia without West Virginia's consent and without legal authority.

It will be observed that by this act it is not the certificates issued under it, if any were issued, as to which Virginia is released, but she is released by the terms of the act "for all balances of such indebtedness, constituting West Virginia's share of the old debt." This act provides, as we have seen, for the surrender of all bonds ever issued by Virginia, whether prior to 1861 or subsequent thereto, and for their cancellation. This act of 1882 by its very terms necessarily repealed all previous acts of Virginia relating to the public debt, and creates an entirely new contract between her and her creditors with reference thereto. It is true that the creditors did not bring in the certificates and surrender them which had been issued to them under the acts of 1871 and 1879, for the reason that these certificates represented definitely the unfunded portion of the entire debt, the very part that Virginia declines to assume under the act of 1882, and for which she provides that certificates shall be issued without recourse upon her, and for the very substantial reason that these certificates only represented that part of the debt from which Virginia had been released by the concurrent acts of herself and the holders of these certificates; and they accurately represented the part of the debt which Virginia declined to assume, and specifically designated the bonds for which the certificates were given, being the bonds of the old debt existing prior to and on January 1, 1861. Wherefore, then, bring in the old certificates and take new ones? To do so would not affect the relationship of the holders with reference to the unfunded debt, nor would it affect the liability of Virginia, because she had already exonerated herself, as we have seen, from even a conditional liability by virtue of the act of 1879 for any portion of the debt which these certificates represented. Therefore the certificates which these holders already possessed, issued under the acts of 1871 and 1879, were retained by them as an evidence of that part of the debt

as to which Virginia had been released and as to which, under the act of 1882, as well as the act of 1879, they were to look to West Virginia for payment.

The act of 1892 was designed to fund all that part of the debt which Virginia had assumed that had not been funded under the act of 1882. The debt not funded under the act of 1882, then amounted to about $28,000,000, as we have seen. This act was passed in the light of the agreement between the representatives of the holders of this debt and the Virginia debt commission created two years prior to this act, and they proposed to surrender the said $28,000,000 not funded under the said act of 1882, for new bonds to be issued under the act of 1892, amounting to $19,000,000. So, under said act of 1892, the $28,000,000 in bonds made for all principal and interest were surrendered to Virginia and canceled, and in lieu thereof new bonds amounting to $19,000,000 were issued, as we have already seen; and the act expressly provides for the cancellation of all bonds of the state issued under the act of 1882, then held by the commissioners of the sinking fund, "as soon as at least $15,000,000 of new bonds shall have been issued and delivered pursuant to the provisions of this act"—meaning the act of 1892 (R., pp. 45, 46).

Thus we perceive that, by the very language of the act of 1892, which is filed as exhibit number 4 with plaintiff's bill, Virginia effected a complete settlement as to that part of the debt which she assumed, and that all bonds issued prior to 1892 were canceled, and a complete settlement of the debt as to her liability thereon effected by this act.

And the act then provides:

> "for all balances of the indebtedness, *constituting West Virginia's share of the old debt*, principal and interest,"

a certificate shall be issued, the act prescribing that the amount of the old debt represented by such certificate

> "is to be accounted for to the holders of this certificate by the state of West Virginia without recourse upon the commonwealth." (R., pp. 43, 44.)

Neither the act of 1882 nor the act of 1892 restricts the certificates to be issued to any part of the unfunded debt, but the act applies such

certificate to all balances of the old debt, constituting West Virginia's alleged share thereof. The acts of 1871 and of 1879 restricted the certificates to those issued under the act.

Can there be any doubt now that said act of 1892 constituted a final settlement between Virginia and the holders of the debt as to the part which it was agreed Virginia should assume, and operated to release her from all liability whatsoever upon "all balances" not funded under said act? Indeed, Virginia herself alleges in her bill, after referring to the acts of 1871, 1879, and 1882, as follows:

> "Until at length a final and satisfactory settlement of the portion of the debt of the original state which Virginia should assume and pay was definitely concluded by the act of February 20, 1892." (R., p. 11.)

What are we to understand by the use of the term "final and satisfactory settlement"? If such settlement was final, there could be no further settlement in reference to the debt. If such settlement was satisfactory, it must necessarily have been satisfactory to the parties concerned in it, and these parties were the commonwealth of Virginia and the holders of the debt.

It was final, because the only provision made for the payment of any part of the debt is that contained in the act of 1892, which was brought about by the creditors themselves, and the state of Virginia through her debt commission. This act provides a sinking fund for the principal, and provides for the payment of the interest on the bonds issued under it, as the same should become due and payable (R., p. 46). No other act exists and is in force in the state of Virginia relating to the debt, except the act of 1892.

Now, when Virginia has been released from all liability as to the unfunded part of said debt which is represented by the certificates mentioned in the bill, she passes a joint resolution to provide a means whereby West Virginia may be induced to assume and pay the said unfunded part of said debt (R., p. 47). In this joint resolution there is a long preamble, the last of which reads as follows:

> "Whereas the present state of Virginia has settled and adjusted to the entire satisfaction of her people and the creditors the liability assumed by her on account of

two-thirds of the debt of the original state; now, therefore, be it resolved," etc. (R., pp. 48, 49.)

This resolution created a commission composed of citizens of Virginia, which is,

> "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia" (R., p. 49).

But the commission is not to proceed with its negotiation until satisfactory assurances have been received from a majority of the holders of said certificates (exclusive of those held by the state),

> "that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the state of West Virginia in full settlement of the one-third of the debt of the original state of Virginia which has not been assumed by the present state of Virginia. But Virginia shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof."

A majority of the holders of said certificates have requested this commission to proceed with its negotiations, and upon the understanding and agreement that Virginia is only bound for two-thirds of the debt, and that she has already provided for it.

Can there be any evidence more conclusive than this that Virginia is no longer liable for any part of the said debt represented by said certificates? She has been as effectually released therefrom as it is possible for positive legislation and the acts of the parties in conformity thereto to effect such a release.

This being in brief the status of the case as made out by the bill, West Virginia in her answer, in section 22 thereof, reciting these various acts, among other things, avers as follows:

> "And so respondent avers that the Commonwealth of Virginia has been wholly released from all liability on account of the said certificates and every part of them,

and has no legal or equitable interest in any claim based thereon, and that this suit was instituted and is being prosecuted by the said Commonwealth of Virginia solely as trustee for and on behalf of the holders of the said certificates, and not in her own right; and that she has agreed through her said commission with said creditors that she is to incur no expense on account of this action, and that the whole expense thereof is to be borne by the holders of said certificates, in whose behalf and for whose exclusive benefit the same was instituted and is now being prosecuted" (R., pp. 163, 164.)

Everything that Virginia did toward securing an exoneration from all liability as to the unfunded part of said debt, (she alleging that two-thirds of the original debt is her just proportion and which she has assumed and which the creditors have accepted as her just proportion,) appears on the face of the bill and its exhibits; and the allegation of the answer alleging this release must be taken as true for the purposes of this suit, because Virginia has not controverted the truth thereof by any replication to said answer. It is well settled that, in the absence of a statute or rule of court to the contrary, where a cause in equity is set down for hearing on bill and answer alone, the general rule is that the answer is to be considered as true in all its allegations, whether responsive or not, on the ground that the complainant's failure to put in issue by replication the facts alleged in the answer would preclude the defendant from proving them.

Gettings v. *Burch*, 9 Cranch 372 (3 L. Ed. 763).

Leeds v *Marine Insurance Co.*, 2 Wheat. 380 (4 L. Ed. 266).

Peirce v. *West*, 19 Fed. Cas. No. 10, 909.

United States v. *Scott*, 26 Fed. Cas. No. 16, 242.

Reynolds v. *Bank*, 112 U. S. 405 (28 L. Ed. 733).

Bank v. *Manchester*, 128 U. S. 244 (32 L. Ed. 425).

In re Sandford Fork, etc., Co., 160 U. S. 247 (40 L. Ed. 414).

United States v. *Freight Association*, 7 C. A. 15 (24 L. R. A. 74).

Atlantic Trust Co. v. *Chapman*, 145 Fed. 820 (76 C. C. A. 396).

We have here cited some of the decisions of the federal courts in support of the proposition above announced; but all the state courts that have passed on the subject hold the same doctrine, and there is no break in all the authorities. This is the doctrine of the courts of Virginia.

Jones v. *Mason*, 5 Rand. 577 (6 Am. Dec. 161).
Kennedy v. *Baylor*, 1 Wash. 162.
Pickett v. *Chilton*, 5 Munf. 467.
Blanton v. *Brackett*, 5 Call 232.
Cock v. *Minor*, 25 Gratt. 246.

But it is needless to cite authorities here, as there is a wilderness of them in support of the doctrine that all parts of an answer unreplied to must be taken as true.

Accord and Satisfaction Created Between Virginia and Her Creditors as to the Unfunded (One-third) Portion of Her Debt.

The acceptance by her creditors of the several acts of legislation of Virginia, hereinbefore cited, effected an agreement between them, whereby Virginia was not to be held liable for the payment of the unfunded debt, nor to suit thereon; which unfunded debt is one-third of the whole original debt, and which unfunded debt is evidenced as to amount by the certificates issued by Virginia. By this agreement the holders of this unfunded debt, who are also the holders of these certificates, look to West Virginia for payment thereof without recourse upon Virginia. Thus, Virginia was relieved of all liability for this one-third of her debt not funded nor assumed by her, and there was created between her and her creditors, as to the unfunded one-third of the debt upon which the certificates were issued, an *accord and satisfaction*.

If the acts of the legislature of Virginia, the provisions whereof were accepted and acted upon by her creditors, show anything at all, they show that these creditors accepted these certificates with the express agreement that Virginia was not to be liable to them for any part of the debt unfunded and which was represented by said certificates. Before considering the law applying to this feature of the case, we call the Court's attention to certain incontrovertible facts appearing in the record.

By the act of 1871, as we have seen, the bonds funded under said act were to be surrendered to Virginia and canceled, but to be retained by her nevertheless *in trust* for the holders of the certificates representing the unfunded part. The rate of the interest prescribed to be paid upon the new bonds was at the rate of six per cent per annum.

By the act of 1879, which provided for the funding of the entire debt (R., p. 23), all bonds surrendered were likewise to be canceled, and the rate of interest changed from six per cent to three per cent per annum for ten years, four per cent for twenty years, and five per cent for ten years (R., pp. 21, 22); and all certificates issued under that act were to be accepted by the holders *without recourse upon Virginia.*

Under the act of 1882, after a full statement of the debt and fixing Virginia's proportion thereof, a large reduction was obtained from the principal of the debt. The rate of interest was again changed from that fixed by the act of 1879, and fixed at the rate of three per cent per annum. Under the act of 1879, the interest was payable in the cities of Richmond, New York or London (R., pp. 21, 22), while under the act of 1882 the interest was payable at the office of the treasurer of Richmond, Virginia. There was therefore a change in the place of the payment of the interest.

By the act of 1892, Virginia obtained a reduction of the principal and a reduction of the rate of interest to two per cent for the first ten years and three per cent for the remaining ninety years, and the place of the payment of the interest to be at Richmond, New York and London, or either place, might be designated by the state (R., p. 40).

These changes in the contract as to the rates of interest, the places where the interest was payable, the reduction of the amount of principal, and the extension of time for the payment of the debt, the adjustment in this manner being to the satisfaction of the creditors before the maturity of the debt, constitute a valid consideration for an accord and satisfaction between Virginia and the holders of the old debt.

In *Goodnow* v. *Smith,* 35 Mass. 414, the action was assumpsit on a joint and several promissory note made by the defendants, Noah Smith and Joseph H. Adams, dated February 26, 1827, and payable one-half in one year and one-half in two years from April then ensuing. Adams defaulted. Smith pleaded the general issue. The defense was that in the autumn of 1827, before either of the installments of the note became due, it was agreed between the plaintiff and Smith that if Smith would then pay one-half of the note and take of the plaintiff at par a note for $21.14 which he held against one Willis the plaintiff would exonerate and discharge Smith from payment of the other half of this note, and that Smith in pursuance of this agreement then paid one-half of the principal and the interest on the note and took Willis' note at par value and endorsed by the plaintiff without recourse. The court sustained this defense. The syllabus of the case reads as follows:

> "In an action upon the joint and several promissory note of A. and S., brought against both promisors, A. was defaulted, and S. set up, as a defense, an agreement made between him and the plaintiff, before the note became due, by the terms of which the plaintiff exonerated and discharged S. from the payment of one-half of the note, upon his then paying the other half and receiving of the plaintiff, at par, a note of a third person endorsed without recourse to the plaintiff. It was *held,* that the agreement was founded on a good and sufficient consideration; and that it was a good defense to the action so far as respected S.; but that under St. 1834, c. 189 (Revised Stat., c. 100, §7), the plaintiff was entitled to judgment against A."

The court in its opinion said:

> "This case turns upon the distinction between a

> technical release and a covenant not to sue one of two joint obligors or promisors. The distinction is, that a release to one of two joint and several obligors discharges both, whereas a covenant with one not to sue him is not to be construed as a release so as to discharge the other obligor. This distinction is well founded on principle, and is supported by all the authorities."

The court reviews the authorities, and holds that the plaintiff could not maintain any action against Smith.

In *Chicago, Milwaukee & St. Paul Railroad Co.* v. *Clark*, 178 U. S. 353 (44 L. Ed. 1099), points two and three of the syllabus are as follows:

> "The rule that payment of a less sum in satisfaction of a larger sum is not binding for want of consideration only applies when the larger sum is liquidated, and when there is no consideration whatever for the surrender of a part of it, and the rule itself is considered so far with disfavor as to be confined strictly to the cases within it.
>
> "The payment of a specified sum conceded to be due, but including certain items but excluding disputed items, on condition that the sum so paid shall be received in full satisfaction, will be sustained as an extinguishment of the whole sum where the aggregate amount is in dispute."

An examination of the opinion in this case, delivered by the late Chief Justice Fuller, discloses a very careful consideration of the rule, an examination of many authorities, and the adoption of the principle that any (even the most insufficient) consideration is valid to support an accord and satisfaction based upon the payment of a less sum in discharge of a greater. The learned justice also says that in some of the states the old common-law rule has been changed by statute; the states mentioned as having altered the rule are Alabama, Georgia, Maine, Tennessee, and Virginia.

In *Hutton* v. *Stoddart*, 83 Ind. 539, the syllabus reads as follows:

> "A. employed B. as a traveling salesman at a salary

of $1,200 per annum, and becoming dissatisfied with him sent him a check for $400 in payment of the last half of the salary before the expiration of the year, with instructions to return it if not satisfactory. B. retained the check, collected the money upon it, and assigned the residue of the salary, for which suit was brought.

"*Held*, that the action cannot be maintained; that the retention of the money was an acceptance of A.'s proposition, and operated as a complete satisfaction of the claim.

"The payment of a part of a debt in satisfaction of the whole, if made before the debt is due, is a complete satisfaction of the whole debt.

"A dispute about a claim is sufficient to maintain a compromise, and thus render the payment of a part of a debt a complete satisfaction of the whole debt."

In *Allison* v. *Abendroth*, 108 N. Y. 470 (15 N. E. 606), the court in the course of its opinion, discussing the well settled common-law doctrine that a promise by a debtor to pay part of an admitted debt, followed by payment of such part, is not a good accord and satisfaction of the unpaid part, said:

"This rule of the common law, as was said by Nelson, J., in *Kellogg* v. *Richards*, 14 Wend. 117, is 'technical, and not very well supported in reason'; but it has been steadily maintained by the courts in cases coming strictly within it. But it is held that where there is an independent consideration, or the creditor receives any benefit, or is put in a better position, or one from which there may be a legal possibility of benefit, to which he was not entitled except for the agreement, then the agreement is not *nudum pactum*, and the doctrine of the common law to which we have adverted has no application. Upon this distinction the cases rest which hold that the acceptance by the creditor, in discharge of the debt, of a different thing from that contracted to be paid, although of much less pecuniary value or amount, is a good satisfaction; as, for example, a peppercorn for a thousand pounds (*Pinnel's Case, arguendo*), or a negotiable instrument binding the debtor or a third person for a smaller sum (*Curlewis* v. *Clark*, 3 Exch.

375). Following the same principle, it is held that, when the debtor enters into a new contract with the creditor to do something which he was not bound to do by the original contract, the new contract is a good accord and satisfaction, if so agreed. The case of accepting the sole liability of one of two joint debtors or co-partners in satisfaction of the joint or co-partnership debt is an illustration. This is held to be a good satisfaction, because the sole liability of one of two debtors 'may be more beneficial than the joint liability of both, either in respect to the solvency of the parties, or the convenience of the remedy.' *Thompson* v. *Percival*, 6 Barn. & Adol. 925. In perfect accord with this principle is the recent case in this court of *Luddington* v. *Bell*, 77 N. Y. 138, in which it was held that the acceptance by a creditor of the individual note of one of the members of a co-partnership, after dissolution, for a portion of the co-partnership debt, was a good consideration for the creditor's agreement to discharge the maker from further liability."

In *Silvers and Brittin* v. *Reynolds*, 17 N. J. L. 275, judgment was entered against two defendants. Silvers and Brittin, by confession on warrant of attorney, upon the joint and several notes to the plaintiff for $2,400, dated May 14, 1835, as collateral security for three other notes of theirs to the plaintiff of $800 each, payable successively in August, 1836, December, 1836, and January, 1837, with liberty to enter the judgment if either of these notes was not paid at maturity. Each defendant obtained a rule on the plaintiff to show cause why this judgment as to himself should not be set aside, or opened so as to allow him to plead. The court in the course of its opinion, in making the rule absolute, said:

"What is now shown by the affidavits, is not denied, that prior to the entry of the judgment, the plaintiff had agreed with the defendants, to take Silvers alone for the debt, and discharge Brittin from it, if he (Brittin) would pay down five hundred dollars toward it; in pursuance of which agreement, Brittin actually paid him the five hundred dollars, and the plaintiff immediately tore Brittin's name from each of the three notes, and delivered up to him the signatures; after which the

plaintiff applied for judgment against him. It is said that five hundred dollars cannot be a satisfaction for eight hundred dollarrs, in law; that an agreement to accept a less in satisfaction of a greater sum of money, is void on the face of it, and can never be enforced without a technical release. It is true that the law will not enforce an unexecuted agreement of that kind; but where such an agreement has been executed, as by giving a release of the larger sum, it is then valid and available. Now this case is as strong as that of a release. It was an executed agreement, for by voluntarily tearing the signatures from the notes, it extinguished them forever, as effectually as a release of them; and after this, it was an imposition on the court to apply for judgment against Brittin."

In *Jones* v. *Perkins*, 29 Miss. 139 (64 Am. Dec. 136), the syllabus is self-explanatory. The first two points are as follows:

"Agreement to accept less sum, or actual acceptance at the place of payment by the terms of the original contract of a less sum, than the amount due is no defense to the debtor. It is, however, said that this rule is entirely technical, and not very well supported by reasons; hence it requires but slight consideration to support such agreements.

"While general rule is that payment of less sum than the amount due at the place of payment will not discharge the contract, yet if the payment is made, or to be made, at a different place from that appointed by the contract, this is a sufficient consideration for an agreement to accept a less sum."

In *Sonnenberg* v. *Riedel*, 16 Minn. 72, the action was tried before a referee, who found that on January 12, 1867, the defendant owed the plaintiff $300 and some accrued interest, which would become due on the 1st of March, 1867; that on said 12th day of January the defendant paid the plaintiff and the plaintiff received the sum of $100 in full of said debt; that the plaintiff's motive in so doing was compassion for defendant's misfortune in having shortly before been burnt out. The referee held that the settlement was binding and a bar to the action. From the action of the court confirming the find-

ing of the referee the plaintiff appealed, and the action of the court below was affirmed. The syllabus of the case is as follows:

> "The payment and acceptance of a smaller sum, in full of a debt before it becomes due, discharges the debt."

In *Brooks* v. *White*, 43 Mass. 283, the point of the syllabus pertinent here is as follows:

> "If a debtor gives, and the creditor receives, in full satisfaction of the debt, the note of a third person for a smaller sum than the amount of the debt, it is a good accord and satisfaction to bar a suit by the creditor to recover the balance of the debt. So if the creditor receives a less sum than is his due, in satisfaction of the whole, before the day of payment."

In *McKenzie* v. *Culberth*, 66 N. C. 431, the question presented was, whether the payment by the debtor and an acceptance by the creditor of a less sum than is due upon a bond, as a payment of the whole, is a discharge of the obligation so as to preclude the creditor from recovering the remainder of the bond. The following are the points decided:

> "1. The principle is too well established and too long acquiesced in to be disturbed, that an agreement by a creditor to receive a part in discharge of the whole of a debt due him by single bill, is without consideration and therefore void.
>
> "2. To this rule there are exceptions, as if:
>
> 1. A less sum is agreed upon and received before the day of payment.
> 2. Or at a different place.
> 3. Or money's worth.
> 4. Or where a general composition is agreed upon."

The agreement of Virginia with her creditors comes within the exceptions noted above.

In *Fenwick* v. *Phillips*, 60 Ky. 87, the point in the syllabus applicable here reads as follows:

> "The doctrine is well settled, that the payment of a less sum is not a good satisfaction, unless it be made

before the money was due, or at a different place from that at which it was payable."

In *Schweider* v. *Lang*, 29 Minn. 254 (43 Am. Rep. 202), the action was upon a promissory note. The defense was what is known as an accord executory; that is to say, an agreement upon the sum to be paid and received at a future day in satisfaction of the note, a part of the agreement being that the note was to be paid for the lesser sum agreed upon at a future day before the maturity of the note. The holder refused to perform the agreement, and transferred the note, and an action was brought against the assignor for damages for breach of the agreement. The syllabus is as follows:

> "An oral agreement by the maker of a note to pay and by the holder to accept, before maturity, a less sum than the note calls for, in full satisfaction, is valid, and the holder is liable in damages for a breach of it."

In *Bowker* v. *Childs*, 85 Mass. 434, the point in the syllabus is as follows:

> "Payment of less than the face of several promissory notes, a portion of which are not due, is a good satisfaction of all of them, if upon the receipt and acceptance of the money by the holder the notes are given up to the maker."

In *Smith* v. *Brown*, 10 N. C. 580, the second point of the syllabus reads as follows:

> "If an obligor pay a less sum than is due, either before the day specified or at another place than is limited by the condition, and the obligee receive it, this is a good satisfaction."

Surrender and Cancellation of the Old Bonds.

Virginia, in each of the four acts hereinbefore considered, in each of which she dealt as an entirety with the subject of her debt, took the precaution to provide for a surrender of all the outstanding bonds which Virginia had ever issued under the acts of 1871, 1879, and 1882, and for the cancellation of these bonds as evidences of indebtedness; and the act of 1892 effects the same result. Why did she

stipulate that these old bonds should be surrendered unless it was to get into her posesssion the evidence of her old debt, which it was her purpose, by these acts, with the agreement with the holders of the debt, that she was discharging and paying off these bonds by the course pursued by her under these various funding acts? The authorities attach great importance to the surrender of an instrument evidencing a debt, when it is sought to show the discharge of such debt by the party against whom it is sought to enforce the unpaid or unsatisfied part. The attention of the Court is called to the following authorities:

In *Murray and Mason* v. *Snow*, 37 Ia. 410, the plaintiffs brought an action against the defendant upon an account. Upon the defendant pleading a settlement of the account by note, the plaintiffs then amended their petition, declaring upon the note, and to the petition as amended the defendant pleaded that the note had been fully paid off, satisfied and surrendered. The amount paid for the surrender of the note was fifty per cent in full satisfaction thereof. The court, in holding that the action could not be maintained, in the course of its opinion said:

> "It appearing, therefore, from the pleadings and the findings of fact, that the plaintiffs and the other creditors of the defendant who was in insolvent circumstances, and without any fraud on his part, agreed to accept fifty cents on the dollar in full satisfaction for their respective claims, and that the plaintiffs had been paid such composition in full, and had surrendered the note of the defendant held by them, pursuant to their agreement, they cannot maintain this action. The judgment should have been for the defendant."

In *Draper* v. *Hitt*, 43 Vt. 439 (5 Am. Rep. 292), the first point of the syllabus is as follows:

> "The acceptance of a note of $40 in satisfaction of a note of $60, and the simultaneous surrender of the larger note, is a full discharge thereof."

In *Ellsworth* v. *Fogg*, 35 Vt. 355, the second point of the syllabus reads as follows:

> "The acceptance by the holder of a promissory note

of part of the amount due upon it, in satisfaction and discharge of the whole note, and the surrender of the note by the holder to the maker to be canceled, is a full discharge of the note, and no action can be maintained for the unpaid portion."

The court, in the course of its opinion in this case, said:

"We think the surrender of the notes by the owner to the maker may well be put upon the same ground as a release,—as being an act of the highest significance and clearest import to show the deliberate and well understood agreement of the parties. It is their agreement executed,—a release in practical operation. It is free from liability to mistake or fraud. The deliberate surrender of notes by the owner to the maker, to be canceled, is an act which no man of prudence, or of the least knowledge of business, would do, unless he intended to discharge the debt. A release, as well as the surrender of notes, may be procured by deceit and fraud,—but when they are made according to the intent of the parties, they should be sustained."

Promise of a Debtor to do Some Act in the Future is Sufficient to Create an Accord and Satisfaction Without Performance by the Debtor.

By the act of 1879 Virginia relieved herself from the conditional liability created under the act of 1871 by her promise to her creditors and their acceptance thereof, to negotiate, or to aid the holders of the certificates issued under the acts of 1871 and 1879 in negotiating with West Virginia for an amicable settlement for the payment of the unfunded part of her debt, represented by the certificates. Virginia, when she made this promise, knew that its performance on her part was not a condition precedent to the validity of the accord and satisfaction sought by the said act to be created between her and her creditors as to the old debt; because the acceptance of the provisions of the act, the funding of the old debt under it, the surrender of the old bonds, and the changing of the rate of interest constituted an accord and satisfaction independently of this promise of Virginia to negotiate or aid the creditors in negotiating an amicable settle-

ment with West Virginia for the payment of the unfunded part of the debt.

In *Smith* v. *Elrod,* 122 Ala. 269 (24 So. 994), the court in its opinion said:

> "While it is a general rule that an accord, in order to operate as a discharge of a debt, must be executed, yet it is well settled that a creditor may accept the mere promise of the debtor to perform some act in the future in satisfaction of the debt; and where such is the case the satisfaction is good, and the debt extinguished without performance. 1 Am. & Eng. Enc. Law (2d Ed.) 423; *Knowles* v. *Knowles,* 128 Ill. 110 (21 N. E. 196); *Ports.* v. *Polk Co.,* 80 Iowa 401 (45 N. W. 775); *Averill* v. *Wood,* 78 Mich. 342 (44 N. W. 381); *Railroad Co.* v. *Forrest,* 128 N. Y. 83 (28 N. E. 137); *Babcock* v. *Hawkins,* 23 Vt. 561. That the plaintiff accepted the delivery of the sawmill machinery to him, and the defendant's promise to deliver the 20,000 shingles by March 1, 1896, and to perform the other stipulations in full satisfaction of the notes and accounts, and that defendant made the delivery and promises with this understanding, is, we think, made manifest by the undisputed evidence that plaintiff told defendant he would instruct his wife to deliver the notes to him, and he could call on her at any time and get them, and that one of them was in fact surrendered to defendant by the wife. The accord was executed, in so far as its execution was necessary to the satisfaction of the debt, by the delivery of the machinery and the promise to perform the other acts, and was a complete bar to any action on either the notes or the accounts, unless rescinded for sufficient cause."

Virginia Had the Right Under Her Own Laws to Discharge Herself from Liability by Assuming Two-Thirds of the Old Debt, if Done with the Consent of Her Creditors (and it Was so Done), Without Impairing Their Rights (if Any They Had) Against West Virginia for the Residue.

As shown by her acts of legislation, Virginia treated the liability of West Virginia as direct to the creditors, and not as an obligation enuring to her. She thus dealt with the debt under these acts as if she were liable for a certain proportion thereof and West Virginia for the residue. Without consulting West Virginia, she and the creditors arbitrarily fixed her part at two-thirds, and West Virginia's at one-third. In all these acts, beginning with that of 1871, Virginia assumed that West Virginia was liable, like herself, directly to the holders of the debt; and this being so, that Virginia had the right, under her own laws, to agree with her creditors as to the amount they would exact from her; and this they did, as we have already shown.

Under the laws of Virginia, upon this theory of the case, the creditors might have dealt with the debt with Virginia alone, excluding West Virginia from the negotiations; and after a settlement with Virginia as to her part, hold West Virginia liable (if she be liable at all) for the other part. Such a course was duly authorized under the statute law of Virginia, in subordination to which the negotiations of Virginia with the holders of the debt were carried on.

In 1866-7 Virginia adopted the following provision of law, which appears in the present Code as section 2856:

> "A creditor may compound or compromise with any joint contractor or co-obligor, and release him from all liability on the contract or obligation, without impairing the contract or obligation as to the other joint contractor or co-obligors."

In *Yuille* v. *Wimbish*, 77 Va. 308, this statute was construed and held to be constitutional. It was contended that as to existing contracts it impairs their obligation and is therefore unconstitutional. Overruling this objection, the court in the opinion says:

> "It preserves all rights, and only provides an express,

direct and ready mode of doing, by and between joint contractors, what it was not unlawful to do before the statute was enacted and was done by round-about and difficult indirection. It only removes technical difficulties out of the way of compromise and settlement.

"An English statute cited in *Dewolf* v. *Lindsell*, L. R. 5, Eq. Cas. 209, bears close resemblance to our Virginia statute in its purpose and effect, and the courts expressly held that it would apply to existing contracts."

There was inserted in the Code of Virginia of 1887 as section 2858 the following:

"Part performance of an obligation, promise or undertaking, either before or after a breach thereof, when expressly accepted by the creditor in satisfaction and rendered in pursuance of an agreement for that purpose, though without any new consideration, shall extinguish such obligation, promise or undertaking."

The law in Virginia existing prior to that enactment is clearly stated, after an examination of the authorities, in *Seymour* v. *Goodrich*, 80 Va. 303. The court in discussing the technical rule which, at common law, forbids the discharge of a debt by the payment of a smaller sum, said:

"But this rule, being highly technical in its character, seemingly unjust, and often oppressive in its operation, has been gradually falling into disfavor; and the courts have therefore not only confined its operation strictly within its own narrow limits, but have seized upon every possible opportunity to evade its application. As a consequence, it has been generally, if not universally, held that where any new element entered into the agreement of compromise—as where an earlier day is fixed for the payment, or a different place selected therefor, or where the payment is made in some other thing than what was originally contracted for, *e. g.*, a chattel, or personal services, it will amount to a satisfaction of the whole debt, if the parties so agree. *Bliss* v. *Charter*, 5 Day 359; *Gaffney* v. *Chapman*, 4 Roberts 275; *Watkinson* v. *Ingleby*, 5 John. 386; *Bowker* v. *Harris*, 30 Vt. 424; *Bull* v. *Bull*, 43 Conn. 455; *Perkins* v. *Lock-*

wood, 100 Mass. 249. And in *Goddard* v. *O'Brien,* reported in the 21st Vol. Am. Law Reg. (N. S.) 638, S. C. L. R., 9 Q. B. Div. 37, the court carried this distinction so far as to hold that an acceptance of a check for $100, payable on demand, was a good accord and satisfaction of an indebtedness of £125 7s 9d, then due and payable, for the reason that the check was a negotiable instrument, thus holding, in effect, that the supposed advantage to be derived from the negotiability of the check for a part of the indebtedness, was a sufficient consideration for a relinquishment of the remainder. *Foakes* v. *Beer,* L. R. 9 App. Cases 605."

Virginia Has No Such Interest in Any Part of the Unfunded Debt Held by Third Parties, Which It Is Claimed West Virginia Should Pay, as to Enable Her to Enforce Payment by This Suit.

If Virginia has any suable interest in the unfunded debt, what constitutes that interest? Is it to ascertain the amount of her public debt existing on January 1, 1861? No; because Virginia had already determined this by her act of 1882, to which the holders of the debt assented, and upon terms of that act and the act of 1892 they agreed to accept and did accept new bonds from Virginia for the share of the debt which it was agreed Virginia should pay. Virginia was thereby relieved from liability as to the residue. (See exhibits 3 and 4 with the bill, record pp. 26-47.)

To the action of Virginia in ascertaining the amount of the debt, as shown by her act of 1882, no objection has ever been made, either by West Virginia or any of Virginia's creditors. What controversy, then, between the two states exists as to this matter? There is none. Does Virginia's interest as to the debt consist in ascertaining the proportion thereof which she ought to assume and be liable for? No; because, as we have shown and as appears from the bill itself and its exhibits, this has already been done by agreement between Virginia and the owners of the debt, and that, too, to their mutual satisfaction. There is no controversy then between the plaintiff and defendant as to this feature of the case.

Is Virginia interested in ascertaining West Virginia's equitable proportion of said debt, if such there be? No; because Virginia, as we have seen, is not liable to her creditors for such part, and because she is to receive nothing in this suit on account of such part. No controversy, therefore, exists between the two states as to what is West Virginia's just or equitable proportion of said debt, if she be liable at all, inasmuch as it is neither due nor payable to Virginia, but to the holders of the unfunded part of said debt.

If a controversy exists with reference to what Virginia has done with her creditors touching said debt, upon what is such controversy based? Not under the act of 1871; because while she assumed a conditional liability under such act as to the unfunded part, she has been entirely released as to the certificates issued thereunder therefor by virtue of the acts of 1882 and 1892, whereby the holders of said debt agree to look to West Virginia for payment thereof without recourse upon Virginia. It is not by the form of the certificates issued under the act of 1871 that the holders thereof are to look to West Virginia for their payment, but by the very terms of the acts of 1882 and 1892, which the creditors themselves accepted.

There is no controversy created by the act of 1879; because the certificates issued thereunder representing the portion of the debt not funded under the act of 1871, were accepted under the express agreement that the creditors were to be without recourse upon Virginia.

Inasmuch as Virginia is, by express agreement with her creditors, not liable for the unfunded portion of her debt, represented by the certificates issued by her, and for payment of which portion she sues in this suit; and inasmuch as any liability for such portion of the debt as may attach to West Virginia, is to the holders of the certificates, and not to Virginia, Virginia has no such interest in this suit as enables her to enforce payment of said unfunded part of the debt.

Party Without Interest Cannot Maintain an Action.

The principle is well settled that a party cannot maintain a suit when another party is the real beneficiary in any judgment or decree that may be obtained in such suit.

An agent or other like representative cannot bring suit in his own name.

Bissell v. *Spencer*, 9 Conn. 267 (23 Am. Dec. 336).
Gilmore v. *Pope*, 5 Mass. 491.
Gunn v. *Contrie*, 10 Johns. (N. Y.) 387.
The State v. *New London*, 22 Conn. 170.
Townsend v. *Hoyle*, 20 Conn. 6.
People v. *Ingersoll*, 58 N. Y. 1 (17 Am. Rep. 178).
Morris Canal ads. *The State*, 14 N. J. L. 411.
People v. *Booth*, 32 N. Y. 397.
Wilson v. *Shively*, 10 Or. 267.
State v. *Bradish*, 34 Vt. 420.

In *Bissell* v. *Spencer*, 9 Conn. 267, cited above, an action of debt was brought by a state treasurer to enforce the payment of certain judgments rendered for fines against the testator of the defendant, who was sued as his personal representative. The fines were directed to be paid "to the treasurer of the State of Connecticut for the use of the treasury of said State." The declaration was demurred to, on the ground that the state treasurer had no interest in the sum sought to be recovered. The court below overruled the demurrer, and the Supreme Court of Connecticut, reversing the court below, in the course of its opinion said:

> "A person authorized to sue in a court of law must have a legal interest in the subject of the suit. If he is the servant or agent only of the creditor, the action cannot be sustained in his name: 1 Chit. Pl. 3, 5. That a person who has not the legal interest cannot maintain *indebitatus assumpsit*, is too clear to be disputed: 6 Conn. 312; and that even a promise by simple contract to the treasurer of a corporation is, by legal construction, a promise to his principal. The point has frequently been decided: *Pigott* v. *Thompson*, 3 Bos. & Pul. 147; *Gilmore* v. *Pope*, 5 Mass. 491; *Bainbridge* v. *Downie*, 6 *Id.* 253, 258; *Gunn* v. *Cantine*, 10 Johns. 387."

In *Gunn v. Cantine*, 10 Johns. (N. Y.) 387, it appears that the action was *assumpsit* for money had and received for the use of the

plaintiff. The plaintiff was the holder of a note which was turned over to him by the owner under a power of attorney authorizing him to sue and collect the same. The suit was brought in his own name. The Supreme Court of New York, in holding that the action could not be maintained, says:

> "It appears affirmatively, from the case, that the plaintiff had no beneficial interest in the money collected. He was a mere attorney employed by Simmons to collect this debt; and there was no express promise by the defendant to pay the money collected to the plaintiff."

The State v. *New London*, 22 Conn. 163, was an action of debt brought by the State of Connecticut against the town of New London to recover the sum of $1500 as a penalty for a violation of the statute requiring towns to appoint assessors and to cause them to be sworn. It was contended that the State could not maintain this action, but that it should be brought in the name of the financial agents of the State as the collectors of the State's revenue. The court, in overruling this objection, in its opinion said:

> "The penalties, incurred by a violation of this statute, are for the use of the treasury of the state, and the state alone has the legal interest in them, and not its officers. These officers are but agents, and cannot sue in their own names, unless empowered to do so by some statute. *Spencer* v. *Huntington*, 6 Conn. 312; *Bissell* v. *Spencer*, 9 *Id.* 267."

In *Morris Canal* ads. *The State*, 14 N. J. L. 411, the question arose whether or not the State could be made plaintiff in a writ of *certiorari*. The court, in discussing the question, in the course of its opinion said:

> "But, I apprehend, the state is never properly plaintiff in *certiorari*, where the object of the writ is to relieve individuals in matters affecting their private rights; unless the proceeding complained of has been instituted and carried on, by the state, in its corporate and political character, and for political or municipal purposes—in other words, the name of the state cannot be used, as plaintiff in *certiorari;* except in those cases

in which the individual, for whose benefit, or relief, it is sued out, cannot, upon legal principles, be himself the plaintiff; or where the state or the whole community have some rights, or interests, in the subject matter; not speculative or political, but direct and positive rights and interests, which are to be affected one way or the other. This will be found to embrace an extensive class of cases, relating to the public peace, the public revenue, the public defense, common and public highways, and many other matters of general interest and concern. In short, wherever the authority, or the interest, of the state, in the prosecution of any of the great purposes of government, comes into conflict with individual rights, and the state, either in its corporate name, or by its appropriate agents, is the actor, in carrying into execution those purposes; *then* the name of the state may be properly used by an individual complaining of, and seeking to be relieved against *its* proceedings. In such cases, the state yields a tacit consent to be made plaintiff in *certiorari* where that is the proper remedy, for the purpose of affording the citizen an opportunity of being heard in this court, and having the error corrected, if any has been committed."

In *Wilson* v. *Shively*, 10 Or. 267, the object of the suit was to have decreed the legal title held by the defendant to be in the relators—to have the state patent to certain tide lands alleged to have been procured by fraudulent representations by Shively to be canceled and annulled, and to compel a conveyance of the title held under the patent by the defendant Shively to the relators. In holding that this suit could not be maintained by the state, the court in its opinion said:

"And the question which confronts us at the threshold of our inquiry, is the right of the relators to carry on a litigation in the name of the state for the object sought by the suit, and the authority of the court, in a case so constituted, to adjudicate upon it. For it will hardly be asserted, if the subject matter of litigation concerns the rights of private parties only and exclusively, and the state has no direct interest in

> the prosecution or result of the suit, that state interference in such controversies ought not to be countenanced, or tolerated, either directly or upon the relation of private parties."

The court then considers the relation the state bears to the suit, or rather what interest it has in it, and, determining that the state has no interest in the subject matter of litigation, the court dismisses the action. The concluding sentence of the opinion is as follows:

> "It seems to us in facts thus constituted, in their relation of the state to them, and in consequences to be apprehended from such state interference, are objections of too serious a character to maintain this suit."

In *State* v. *Bardish*, 34 Vt. 419, the action was trespass for carrying away a quantity of tools and implements, the property of the State of Vermont. It was contended that the action could not be maintained by the state, but the court, in overruling this contention, in its opinion says:

> "It is evident both upon common law principles and upon inference from the legislation on this subject, that where there is no statutory provision to the contrary, actions by the state or for the benefit of the state are to be brought in the name of the state, in cases where, upon common-law principles, the legal interest in the subject matter is in the state."

In *Lynch* v. *United States*, 13 Okla. 142 (73 Pac. 1095), the action was brought by the United States to set aside a sale of land and cancel a patent issued by the United States. The main question discussed and decided in that case was whether or not the United States as plaintiff had such interest in the suit as authorized its maintainance. In discussing the question, the court in its opinion says:

> "The United States stands in no different relation as a suitor than any individual. When the government comes into a court to submit a question to judicial determination, she is not acting in her capacity as a sovereign, but as a litigant, claiming the same rights, and bound by the same rules, as any of her citizens under similar circumstances. This was expressly held

in *United States* v. *Bank of Metropolis*, 15 Pet. 377 (10 L. Ed. 444); *Brent* v. *Bank of Washington*, 10 Pet. 596 (9 L. Ed. 547); *United States* v. *Hughes*, 11 How. 552 (L. Ed. 809); *United States* v. *Throckmorton*, 98 U. S. 61 (25 L. Ed. 93); *United States* v. *Minor*, 114 U. S. 233 (5 Sup. Ct. 836, 29 L. Ed. 110). Hence, in determining whether the petition alleges such equities in the United States as against the defendants as will warrant the court in cancelling a patent, we must look to the general rule of chancery pleading in equity cases, and in determining these rules we need look only to the decisions of the Supreme Court of the United States, where every phase of the subject has been discussed and determined."

Classifying the cases in which a suit of this sort may be maintained by the government, and disposing of the second and third classes, holding that the suit did not come under these classes, and which it is not material to consider here, the court comes to the first class, "Where, the government being the only party interested, the patent is charged to have been obtained by fraud," and in its opinion regarding this class the Court says:

"In this class of cases a court of equity will furnish relief where the United States has been defrauded, her interest prejudiced, or to protect the general public from wrongful imposition. But if the United States has not been injured, and will not be benefited by the rescission of the contract and cancellation of the patent, the court will not grant any relief. *Ming* v. *Woolfolk*, 116 U. S. 599 (6 Sup. Ct. 489, 29 L. Ed. 740).

"This case must be tried and tested by the rule stated in the *San Jacinto Tin Co.* case, *supra*, where it was said that the United States can no more sustain an action to cancel a patent than can a private individual, if it is apparent that the United States has no pecuniary interest in the remedy sought, and is under no obligation to the party who will be benefited to sustain an action for his use, or that there is no obligation on the part of the United States to the public. It clearly appears from the petition that the only persons who will be benefited from this proceeding are

> the town site occupants who are residing on the land, and by their failure to make the proper town site application and tender the money for the land, and follow the same to a final disposition, they have forfeited all their rights under the law, and it is well settled that equity will not aid one who has had a full and complete remedy at law, and has failed to avail himself of such remedy."

In *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273 (31 L. Ed. 747), a suit brought by the United States to set aside and annul a patent for land issued in its name on the ground that it was obtained by fraud, the Court in its opinion said:

> "But we are of opinion that since the right of the government of the United States to institute such a suit depends upon the same general principles which would authorize a private citizen to apply to a court of justice for relief against an instrument obtained from him by fraud or deceit, or any of those other practices which are admitted to justify a court in granting relief, the government must show that, like the private individual, it has such an interest in the relief sought as entitles it to move in the matter. If it be a question of property a case must be made in which the court can afford a remedy in regard to that property; if it be a question of fraud which would render the instrument void, the fraud must operate to the prejudice of the United States; and if it is apparent that the suit is brought for the benefit of some third party, and that the United States has no pecuniary interest in the remedy sought, and is under no obligation to the party who will be benefited to sustain an action for his use; in short, if there does not appear any obligation on the part of the United States to the public, or to any individual, or any interest of its own, it can no more sustain such an action than any private person could under similar circumstances."

In *State* v. *Warner Valley Stock Co.*, 48 Or. 378 (86 Pac. 780), the suit was brought by the state, through its attorney general, for the cancellation of a patent for swamp land given by the state. The case turned on the question whether or not the complaint showed on

its face that the state has such interest in the controversy as to authorize it to maintain the suit. In the course of its opinion the court says:

> "Unless the plaintiff has some interest in the land in controversy, it has no right to maintain this suit."

In *City of Atchison* v. *State*, 34 Kan. 379, the syllabus of the case, as found in 8 Pac. 367, sufficiently states the matter in controversy and the point decided, without making any further explanation:

> "Where a city, without authority of law, caused a tax to be levied and extended upon the tax-roll for the purpose of creating a fund with which to pay certain bonds theretofore issued and delivered in payment of bridges that had been built therein, and after the tax-roll had come to the hands of the county treasurer for the collection of the taxes a number of the tax-payers of the city voluntarily paid the illegal tax thus levied: *held*, that the public has no such interest in the money thus paid as will authorize the state to interfere and to maintain an action in the name of the state, enjoining the treasurer from paying out the money so received by him, and from disbursing it in accordance with the will of those who paid the same."

In *People* v. *Stratton*, 25 Cal. 242, the first point of the syllabus is as follows:

> "The attorney general may file an information in the nature of a bill in chancery, to annul a patent for lands granted by this state to an individual, in a case where the matter involved in the suit immediately concerns the rights and interests of the state."

The third point of the syllabus in this case is as follows:

> "If the state has no interest in the subject matter, an information on the relation of the attorney general, on behalf of the state, to annul a patent cannot be sustained."

In the case of *Kansas* v. *United States*, 204 U. S. 331 (51 L. Ed. 510), the bill was filed by the attorney general of Kansas on behalf of the state as trustee for the Missouri, Kansas & Texas Railway Co. of certain lands in the Indian Territory alleged to have been granted

to the state for the benefit of the railway company. The case was dismissed for want of jurisdiction. The Court, in the course of its opinion, said:

> "In our opinion it appears upon the face of the bill that the state of Kansas is only nominally a party, and that the real party in interest is the railroad company. Section 3 provides that patents should be issued not to the state, but to the company direct, which made the state nothing but a mere conduit for the passage of title. And this is so even if it were ruled that the state of Kansas was made trustee under §9, because it would only be trustee of the bare legal title. In very many cases 'in which the grant was directly to the railroad company, or in which the act of Congress required that the patents for lands earned should be issued not to the state, for the benefit of the railroad company, but directly to the company itself,' it has been held that the title vested absolutely in the railroad company. *Sioux City and St. P. R. Co.* v. *United States*, 159 U. S. 349, 364, 40 L. Ed. 177, 182, 16 Sup. Ct. Rep. 17, 23. * * * * In these circumstances we think it apparent that the name of the state is being used simply for the prosecution in this court of the claim of the railroad company, and our original jurisdiction cannot be maintained."

It seems to us that the case just cited is clearly in point, as the court holds that the real party in interest was not the State of Kansas but the railroad company, and that the name of the state was simply inserted in order to give color to the claim of jurisdiction in the Supreme Court of the United States. The court clearly indicates by this decision that in order to give this court jurisdiction of a controversy between states, the state bringing the action must prosecute it for her own benefit—that it must be a suit to protect the rights of the state as such, and not enure only to the benefit of private persons. The state herself must be interested.

In *Smith* v. *Brittenham*, 109 Ill. 450, 549, one of the main questions determined by the court was the interest of the plaintiff to maintain the suit. The court in passing on this point said:

"It is a well recognized rule that in equity the party having the beneficial interest in the subject matter of the suit must sue in his own name for any invasion of his rights in respect thereto, although the legal title may be in another. (*Frye* v. *Bank of Illinois*, 5 Gilm. 332; *Elder* v. *Jones*, 85 Ill. 384; *Moore* v. *School Trustees*, 19 *id.* 83.) It is also well settled that no one, in the absence of some statute authorizing it, can maintain a suit in chancery with respect to real estate to which he has neither the legal nor equitable title. (*Bowles* v. *McAllen*, 16 Ill. 30; *Hoare* v. *Harris*, 11 *id.* 24.) If such an interest in the complainant is indispensable to the commencement of the suit, as will be conceded, the conclusion would seem to follow that where a party having such interest commences a suit, and before any hearing or disposition of the cause upon the merits voluntarily transfers all of his interest to another, and the same is made to appear of record, as is the case here, the whole proceeding will become so defective for want of proper parties, that no valid decree can be entered in the cause until the complainant's assignee, by some supplemental bill, or otherwise, makes himself a party complainant to the suit—and this, indeed, is the well recognized doctrine and practice in such cases. *Mason* v. *York and Cumberland R. R. Co.*, 25 Me. 82."

In *Ashby* v. *Ashby*, 39 La. Ann. 105 (1 So. 282), the suit was instituted by a plaintiff claiming to be judgment creditor of one of the defendants. Exception was taken on the ground that the petition disclosed no cause of action. This exception was deferred for decision to the merits of the case. The court in sustaining this exception announced the following as its decision as shown by the syllabus in the case:

"An action can only be brought by one having a real and actual interest, which he pursues. So, where one claiming to be a judgment creditor of another seeks to annul a mortgage executed by the latter in favor of his children on the ground of fraud, and the record shows that the judgment on which the suit is founded is not in favor of the plaintiff, but in favor of her minor children, for which she is tutrix, and who had attained their

majority before the action of nullity was brought, and they do not join in the action, the suit must be dismissed."

In *Oakley* v. *Bend*, 3 Edw. Ch. (N. Y.) 482, the action was brought in the name of certain persons as bankers who had received the note or paper sued on to collect the same, the authority to collect being transmitted under power of attorney given by the owners of the note. The court in holding that the plaintiffs had no such interest in the subject matter of the suit as authorized a suit in their own names, in its opinion, said:

"A person who is a mere agent to sue for and collect money under a power of attorney cannot be a party to a bill for an account in his own name, nor to be joined as a co-complainant, with his principal. *King of Spain* v. *Machaao*, 4 Russ. 225, 240, recognized in *Clarkson* v. *Depeyster*, 3 Paige 337, as good ground of demurrer. As a general rule, if an agent institutes a suit under an authority from his principal he must do so in the name of his principal. *Leigh* v. *Thomas*, 2 Ves. 313. And, see Calvert, Parties, 229, 232, for the authority on the subject."

"In the present case the bill alleges that the complainants are mere agents for the Bank of Leeds, in England, under a power of attorney transmitted to them by one of its officers duly authorizing the collection of the bill of exchange which the bank discounted and to whom it belongs. This being so, the bill should be filed in the name of the bank, if they have the corporate capacity to sue under the Act of Parliament mentioned in the bill; or if they have it not, then in the names of the individuals composing the bank; and it is no excuse that the names of all have not been transmitted or furnished to the agents here or that they are very numerous and constantly fluctuating. To avoid the inconvenience of numerous complainants and changes of interest, this court may allow a bill to be exhibited in the names of a few, in behalf of all interested in the bank. Calvert, 40, 41; Story, Eq. Pl. 97, 114-117."

Virginia, Being Without Interest in the Unfunded Debt Held by Third Parties, Cannot Constitute Herself a Trustee, and Thus Create a Controversy Between Herself as Trustee and the State of West Virginia, and Thereby Maintain This Suit as to Such Unfunded Part of Said Debt.

Virginia does not contend that she has any interest in the unfunded debt represented by the certificates issued by her which can in anywise enure to her benefit. She contends that she has a right to enforce payment of the unfunded debt in her capacity as trustee so far as said unfunded debt relates to third parties who own the same. It is settled by the decisions that a mere nominal trustee cannot maintain a suit in his own name.

Malin v. *Malin*, 2 Johns. Ch. (N. Y.) 238 (1 L. Ed. 361).

Graham v. *Graham*, 3 Barb. Ch. (N. Y.) 24 (5 L. Ed. 801).

Collins v. *Loffters*, 10 Leigh (Va.) 5 (34 Am. Dec. 719, and note 722).

Nichols v. *Williams*, 22 N. J. Eq. 63.

Elmer v. *Loper*, 25 N. J. Eq. 475.

Field v. *Maghee*, 5 Paige Ch. (N. Y.) 539, assignee suing in name of assignor who was without interest in the subject matter of suit.

Dean v. *Seyman*, 11 N. J. Eq. 220.

Wilink v. *The Morris Canal & Banking Co.*, 4. N. J. Eq. (3 Green) 377, 390, 397.

Blake v. *Allman*, 58 N. C. 407.

Elwell v. *Bursinger*, 70 Tex. 120 (8 S. W. 77).

In *State ex rel. Rife* v. *Hawes*, 177 Mo. 360 (76 S. W. 653), the action was mandamus by the state against Hawes and others as a board of police commissioners of the city of St. Louis to compel them to draw a warrant in favor of the relator for payment for himself and others as members of the police force of the city of St. Louis. Judgment was rendered for the relator, and the respondents appealed.

Under the laws of the State of Missouri, a trustee of an express trust may maintain an action in his own name, provided the declaration of trust be in writing. The court found from the record in the case that the real owner of the claim or debt was an individual by the name of Blair; that there was no consideration paid to Blair by the relator or any one else for a transfer of the claim; that Blair never sold his claim to the relator, and never intended to do so; that Blair would receive the fruits of the litigation, and that the action was brought by the relator for himself and his fellows purely as a matter of economy. It was held that Hawes as trustee had no such interest in the matter involved in the action as to maintain it in his own name, and the proceeding was accordingly dismissed for want of interest in the plaintiff.

But we do not concede that Virginia, as to the unfunded debt not assumed by her, is a trustee in reference thereto. To say that Virginia is a trustee of the part of the old debt which Virginia arbitrarily declared is West Virginia's equitable proportion thereof, and for which she is no longer liable, is to announce the proposition that a trust may be created having for its sole object the institution of a law-suit, and that therefore Virginia may bring this suit. Such a proposition is wholly foreign to every principle of the law relating to express trusts. Indeed, after a valid express trust has been created, the legitimate duties of the trustee defined, and the legal title to the property has passed to the trustee, ordinarily the courts will not permit him to bring a suit touching the trust property unless the beneficiaries are also before the court.

The fundamental idea of any kind of a trust contemplates the legal title to the trust subject inhering in the trustee, while the benefits which it carries accrue to and belong to another. This is elementary law.

Wallace v. *Wainwright*, 87 Pa. 263.
Seymour v. *Freer*, 75 U. S. 202 (19 L. Ed. 306).
Commissioners v. *Walker*, 6 How. (Miss.) 143 (38 Am. Dec. 433).
1 Minor on Real Prop., sec. 459.
2 Washb. on Real Prop., 4th Ed. 458.
Tiedeman on Real Prop., sec. 325.

The Court says, in *Seymour* v. *Freer, supra*:

> "A trust is where there are rights, titles and interests in property distinct from the legal ownership. In such cases, the legal title, in the eye of the law, carries with it, to the holder, absolute dominion; but behind it lies beneficial rights and interests in the same property belonging to another."

Mr. Minor, speaking of a trust as to real property, says:

> "A trust estate is a right *in equity* to take the rents and profits of lands, whereof the legal estate is vested in some other person, called the *trustee;* and to compel such trustee (subject to the discretion which may be vested in him) to execute such conveyance of the land as the person entitled to the profits, who is called the *cestui que trust,* shall direct."

Mr. Washburn says:

> "A trust may, therefore, be defined as a use, which, though lawful in itself, the statute does not operate upon to execute in the *cestui que use,* whereby the legal estate is in one, while another has a right to a beneficial interest in and out of the same, the first being termed a *trustee,* the other a *cestui que trust.*"

These few cases, of the very great number that could be cited, clearly establish the doctrine that a trustee is the holder of the legal title for some lawful and beneficial purpose, enuring to the benefit of a third party, usually called the *cestui que trust.*

It is also elementary law that, while the legal title gives the trustee dominion over the property in a court of law, in a court of equity the real owner is the *cestui que trust.* Here his rights are guarded and protected to the same extent as if he were the absolute owner.

To constitute a valid trust there must be a lawful and definite object to which the subject matter is to be devoted.

> 29 Am. & Eng. Enc. L. (2d Ed.) 866, and the many cases there cited.

Here the object of the trust is definite. It is for the purpose, through the agency of the debt commission, by and with the advice and consent of the attorney general of Virginia, in the name of Virginia, to bring a suit against West Virginia for the recovery of this alleged

debt represented by the certificates. This is not a lawful object. In all the multitude of decisions, either in this country or any other jurisdiction where the doctrines of the common law and equity have been recognized and prevail, has such an object of a trust ever appeared? Can a trust have such an object? We believe not. Is it not contrary to public policy thus to encourage litigation?

Virginia herself declined to bring any suit against West Virginia, and for the very valid reason that, as alleged by her, she has already adjusted her equitable proportion thereof and could have no interest in such a suit. She also declined to bring this suit, except at the request of the holders of these certificates and only on the condition that they should be turned over to the debt commission *for that purpose*, and that *the beneficiaries would bear all the expenses of the litigation, even to the payment of the compensation and expenses of her own debt commission.*

Is this suit, therefore, one brought by Virginia in her capacity as a trustee? That is, does she occupy the attitude before this Court of a lawful trustee acting under an express trust, bringing a suit to enforce a trust having a valid object and purpose? This question certainly carries its own answer in the negative.

But to recur to the proposition that a trustee of a valid trust will not be permitted to bring suit touching his trust property unless the beneficiaries are also before the court, reliance is had upon the following authorities:

> Story Eq. Pl. (9th Ed.), sec. 207.
> *Fish* v. *Howland*, 1 Paige Ch. (N. Y.) 20.
> *Reed* v. *Reed*, 16 N. J. Eq. 248.
> *Monday* v. *Vance*, 11 Tex. Civ. App. 374 (32 S. W. 559).
> *Ebell* v. *Bursinger*, 70 Tex. 120 (8 S. W. 77).

In *Ebell* v. *Bursinger*, cited above, the following appears in the opinion of the court:

> "Two questions are presented by the assignment: *First*, was the *cestui que* trust a necessary party to the suit? and, *second*, can the objection for want of a necessary party be taken by motion in the court below after default or upon appeal? As to the first question,

the general rule is well established that, in suits by or against the trustee for the recovery of the trust property, the beneficiary is a necessary party. *Boles* v. *Linthicum,* 48 Tex. 224; *Huffman* v. *Cartwright,* 44 Tex. 296; *Hall* v. *Harris,* 11 Tex. 300; *Holland* v. *Baker,* 3 Hare 72; *Woodward* v. *Wood,* 19 Ala. 213; *Van Doren* v. *Robinson,* 16 N. J. Eq. 256; *Richards* v. *Richards,* 9 Gray 313; *Ward* v. *Hollins,* 14 Md. 158; 1 Daniell Ch. Pr. (5th Ed.) 220, and note; Story Eq. Pl. §207; 2 Perry, Trusts, §873."

It is admitted that to this rule there are some exceptions. Thus, if the trustee holds the title to the property to manage and dispose of it and to do all other things to promote the purposes of the trust, he may represent the beneficiaries in a suit, and thus dispense with them as parties.

Kerrison v. *Stewart,* 93 U. S. 155 (23 L. Ed. 843).

So, another illustration is found in the case of trustees in a mortgage to secure a series of negotiable bonds upon the property of railroad companies.

Shaw v. *Railroad Co.,* 5 Gray 162.

Or where the beneficiaries are so numerous that it would be inconvenient to make them parties.

Story Eq. Pl., sec. 207*a*.

But it will be borne in mind that these principles are applicable only to valid trusts, to express trusts having a lawful object.

Furthermore, these certificates were not issued by West Virginia. They were issued by Virginia without the consent of West Virginia. West Virginia never has recognized their legality, or Virginia's wrongdoing in issuing them. And these certificates are not held by the State of Virginia, but by seven members of a commission created by a joint resolution of the General Assembly of Virginia, who as such commission are authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the public debt of the original State of Virginia proper to be borne by West Virginia. This joint resolution was approved March 6, 1894, and by an act of March 6, 1900, this commission was to receive and take upon deposit the cer-

tificates or to have the same otherwise placed or held on deposit subject to their control, upon an agreement and contract on the part of the holders of said certificates that if said commission would secure a settlement with West Virginia with respect to said certificates the holders would accept the amount realized upon such settlement from West Virginia "as a full settlement of all the claims thereunder." (R. pp. 47-51.)

Thus, it will be seen that this commission as an independent body holds these certificates by contract with the owners thereof that they will negotiate a settlement with West Virginia in regard to the matter. the State of *Virginia disclaiming in the joint resolution any liability on account of these certificates;* and likewise disclaimed such liability in the act of March 6, 1900, giving this commission power to take into its possession and control the certificates and to negotiate a settlement thereof with West Virginia.

The Principles of Law Governing Suits Between Private Persons Are Applied to Controversies Between States.

The principles of equity applicable in cases between individuals must necessarily be applied in the settlement of controversies between states when these controversies have been brought into court for settlement. The authorities are so numerous upon this proposition and the doctrine seems so well settled, that it scarcely seems necessary to cite them here; yet for the convenience of the court we cite a few of the many authorities bearing on this matter.

In considering the question of the rights of the State of Virginia in this suit, it must be constantly borne in mind that her rights as a state, when she becomes a suitor, are no greater or different from those of a private person. The same rules govern in such case as govern in suits between individuals.

In *State* v. *Cloudt*, ____ Tex. Civ. App. ____ (84 S. W. 415), which was an action brought by the state to recover taxes due the plaintiff on a section of land, the court says:

> "When a state appears as a party to a suit, she voluntarily casts off the robes of her sovereignty, and

> stands before the bar of a court of her own creation in the same attitude as an individual litigant; and her rights are determined and fixed by the same principles of law and equity, and a judgment for or against her must be given the same effect as would have been given it had it been rendered in a case between private individuals."

In *State ex rel. Taylor* v. *Lord,* 28 Or. 489 (31 L. R. A. 473), which was an action by the State to enjoin the defendants from executing the provisions of a statute relative to the location and erection of a branch insane asylum, the court, speaking of what it had decided on a former appeal of that case, reported in 26 Or. 205, said:

> "When this case was here before (26 Or. 205, 25 L. R. A. 862) we held that a private individual could not have public officers enjoined from using public funds, unless it could be shown that some civil or property rights were being invaded, or, in other words, that the individual was going to get hurt by the transaction. Upon that principle it was decided that he should be required to show that the location and building of the branch asylum in eastern Oregon would be attended with greater cost and expense than if constructed at the capital, thereby increasing the burden of taxation which would be imposed upon him, with others, whose duty it is to contribute to the support of the government. It was also held that the state, suing in its corporate capacity, for the protection of its property rights, stood in no different or better position in this regard than an individual. This doctrine is supported by high authority. Allen, J., in *People* v. *Canal Board,* 55 N. Y. 395, says: 'When the state as plaintiff invokes the aid of a court of equity, it is not exempt from the rules applicable to ordinary suitors; that is, it must establish a case of equitable cognizance, and a right to the particular relief demanded.' And as is said by the same eminent jurist in *People* v. *Ingersoll,* 58 N. Y. 14 (17 Am. Rep. 178): 'A distinction is to be observed between actions by the people or the state, in right of the prerogative incident to sovereignty, and those founded upon some pecuniary interest or proprietary right. The latter are governed by the ordinary rules of law by which rights are deter-

> mined between individuals. To the same effect is the doctrine announced in *People* v. *Fields,* 58 N. Y. 514. See also 2 High, Inj., §1327. So that we then concluded the plaintiff herein occupied no better or superior position, from a legal standpoint, for enforcing the remedy sought to be invoked, than the plaintiff in *Sherman* v. *Bellows,* 24 Or. 553. From this position we see no sufficient reason for receding, as we believe it to be sound in law, and supported upon reason and authority."

The first point of the syllabus in the case of *State ex rel Smyth, Atty. Gen.,* v. *Kennedy,* 60 Neb. 300 (83 N. W. 87), is as follows:

> "When a state invokes the judgment of a court for any purpose, it lays aside its sovereignty, and consents to be bound by the decision of the court, whether such decision be favorable or adverse."

To the same effect are the following cases:

Green v. *State,* 73 Cal. 29 (14 Pac. 610).
Harris v. *State,* 9 S. D. 453 (69 N. W. 825).
State v. *Paxson,* 119 Ga. 730 (46 S. E. 872, 873).

This Court Follows the Former Practice of the Courts of King's Bench and of Chancery, in England, in Cases of Original Jurisdiction in Equity.

The rules of this Court governing controversies between States do not differ materially from those where individuals are parties. The principles of law are the same. This Court, in *California* v. *Southern Pacific Company,* 157 U. S. 229 (39 L. Ed. 683), the late Chief Justice Fuller delivering the opinion, said at page 248:

> "By the third of our general rules it is provided: 'This Court considers the former practice of the courts of King's Bench and of chancery, in England, as affording outlines for the practice of this Court; and will from time to time make such alterations therein as circumstances may render necessary.' This rule is, with the exception of some slight verbal alterations and the addition of the word 'former' before the word 'practice' in the first line, the same as original general rule seven, adopted August 8, 1791. 1 Cranch, XVII; 2 Dall.

411. And in cases of original jurisdiction it has been determined that this Court will frame its proceedings according to those which had been adopted in the English courts in analogous cases, and that the rules of court in chancery should govern in conducting the case to a final issue (*Rhode Island* v. *Massachusetts*, 73 U. S. 12 Pet. 657; 38 U. S. 13 Pet. 23; 39 U. S. 14 Pet. 210; 40 U. S. 15 Pet. 233; *Georgia* v. *Grant*, 73 U S. 6 Wall. 241) although the court is not bound to follow this practice when it would embarrass the case by unnecessary technicalities or defeat the purposes of justice. *Florida* v. *Georgia*, 58 U. S. 17 How. 478."

The Court further says in the course of the opinion:

"We have no hesitation in holding that when an original cause is pending in the court to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and finality which should characterize such an adjudication to proceed in the absence of parties whose rights would be in effect determined, even though they might not be technically bound in subsequent litigation in some other tribunal."

All through the foregoing case this Court keeps constantly before it the well settled doctrine of equity jurisprudence and practice in deciding original cases brought before it on the chancery side.

Many times this Court has been called upon to decide controversies between states. Examination will disclose that in each case there was some well marked ground as the basis of a controversy. We call the Court's attention to some illustrative cases of the principle that this Court, in determining the rights of parties in an equity cause of original jurisdiction, has always been governed by the doctrines obtaining in the English court of chancery.

In the case of *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 13 How. 519 (14 L. Ed. 249), the Court said:

"The rules of the High Court of Chancery of England have been adopted by the courts of the United States, and there is no limitation to the exercise of a chancery jurisdiction by these courts except the value

of the matter in controversy, the residence or character of the parties, or a claim which arises under the laws of the United States and which has been decided against it in a state court.

In exercising this jurisdiction the courts of the Union are not limited by the chancery system adopted by any state, and they exercise their functions in a state where no courts of chancery have been established. The usage of the High Court of Chancery in England, whenever the jurisdiction is exercised, govern the proceedings. This may be said to be the common law of chancery, and since the organization of the government it has been observed."

See also the following cases:

Rhode Island v. *Mass.*, 15 Pet. 233 (10 L. Ed. 721).
Florida v. *Georgia*, 58 U .S. 478 (15 L. Ed. 181).

This Suit Discloses no Controversy Between the Two States, as to the Unfunded Debt Represented by Certificates Owned by Individuals.

The agreement between the holders of the certificates and the Virginia Debt Commission provides for their return to said holders in case they are not collected (R., pp. 94, 98), and if collected a method is provided for the distribution of the proceeds of such collection among the owners of the certificates. (R., pp. 68, 69, 98.)

So it is apparent upon the record of this suit that the great Commonwealth of Virginia as a State has not an iota of interest in this suit or in its result. *She does not even incur one cent of costs should it be decided against her.* She was not to bring this suit except at the request of the holders of these certificates (R., p. 49), and not even then until she was first indemnified against any expense to her incurred by the bringing and carrying on of such suit. (R., p. 49.) If there be any controversy in reference to said debt, it is between the holders of said certificates and West Virginia, and not between Virginia and West Virginia.

The conditions upon which this suit was instituted were very much like those prescribed by the act of the legislature of New Hampshire, section 2 of which provided as follows:

"Upon each deposit being made, it shall be the duty of the attorney general to examine such claim and the evidence thereof, and if, in his opinion, there is a valid claim which shall be just and equitable to enforce, vested by such assignment in the State of New Hampshire, he, the attorney general, shall, upon the assignor of such claim depositing with him such sum as he, the said attorney general, shall deem necessary to cover the expenses and disbursements incident to or which may become incident to the collection of said claim, bring such suits, actions or proceedings in the name of the state of New Hampshire, in the Supreme Court of the United States, as he, the said attorney general, shall deem necessary for the recovery of the money due upon such claim: and it shall be the duty of the said attorney general to prosecute such action or actions to final judgment, and to take such other steps as may be necessary after judgment, for the collection of said claim, and to carry such judgment into effect, or, with the consent of the assignor, to compromise, adjust and settle such claim before or after judgment."

New Hampshire v. *Louisiana*, 108 U. S. 76 (27 L. Ed. 656, 659).

Section 3 of this act provided:

"Nothing in this act shall authorize the expenditure of any money belonging to this state, but the expenses of said proceedings shall be paid by the assignor of such claim; and the assignor of such claim may associate with the attorney general in the prosecution thereof, in the name of the state of New Hampshire, such other counsel as the said assignor may deem necessary, but the state shall not be liable for the fees of such counsel or any part thereof."

New Hampshire v. *Louisiana, supra.*

The State of New Hampshire became the holder, as assignee of one of its citizens, of a part of the bonded obligation of Louisiana for the purpose of requiring payment thereof from Louisiana, and for the purpose of coercing payment suit was brought by New Hampshire against Louisiana.

This Court in its opinion says:

"No one can look at the pleadings and testimony in these cases, without being satisfied, beyond all doubt, that they were, in legal effect, commenced, and are now prosecuted, solely by the owners of the bonds and coupons. In New Hampshire, before the attorney general is authorized to begin a suit, the owner of the bond must deposit with him a sum of money sufficient to pay all costs and expenses. No compromise can be effected except with the consent of the owner of the claim. No money of the state can be expended in the proceeding, but all expenses must be borne by the owner, who may associate with the attorney general such counsel as he chooses, the state being in no way responsible for fees. All moneys collected are to be kept by the attorney general, as special trustee, separate and apart from the other moneys of the state, and paid over by him to the owners of the claim, after deducting all expenses incurred not before that time paid by the owner. The bill, although signed by the attorney general, is also signed and was evidently drawn by the same counsel who prosecuted the suits for the bondholders in Louisiana, and it is manifested in many ways that both the state and the attorney general are only nominal actors in the proceeding. The bond owner, whoever he may be, was the promoter and is the manager of the suit. He pays the expenses, is the only one authorized to conclude a compromise, and if any money is ever collected, it must be paid to him without even passing through the form of getting into the treasury of the state. * * * * * *

"It is contended, however, that, notwithstanding the prohibition of the amendment, the state may prosecute the suits, because, as the sovereign and trustee of its citizens, a state is 'clothed with the right and faculty of making an imperative demand upon another independent state for the payment of debts which it owes to citizens of the former.' There is no doubt but one nation may, if it sees fit, demand of another nation the payment of a debt owing by the latter to a citizen of the former. Such power is well recognized as an incident of national sovereignty, but it involves also the national powers of levying war and making treaties.

As was said in *U. S.* v. *Diekelman*, 92 U. S. 524, if a sovereign assumes the responsibility of presenting the claim of one of his subjects against another sovereign, the prosecution will be as one nation proceeds against another, not by suit in the courts, as of right, but by diplomatic negotiation, or, if need be, by war.

"All the rights of the states as independent nations were surrendered to the United States. The states are not nations, either as between themselves or toward foreign nations. They are sovereign within their spheres, but their sovereignty stops short of nationality. Their political *status* at home and abroad is that of states in the United States. They can neither make war nor peace without the consent of the national government. Neither can they, except with like consent, enter into any agreement or compact with another state. Art. 1, sec. 10, cl. 3."

Discussing the effect of the Eleventh Amendment, taking away the right of an individual to sue a state of the Union, the Court says:

"The evident purpose of the amendment, so promptly proposed and finally adopted, was to prohibit all suits against a state by or for citizens of other states or aliens, without the consent of the state to be sued and, in our opinion, one state cannot create a controversy with another state, within the meaning of that term as used in the judicial clauses of the constitution, by assuming the prosecution of debts owing by the other state to its citizens."

An examination of the pleadings and exhibits filed with them unquestionably discloses that the real parties to this suit are the holders of the Virginia deferred certificates, representing West Virginia's alleged proportion of the old debt, on the one side, and the state of West Virginia on the other, and hence cannot be maintained in this Court.

In *Ex parte Ayers*, 123 U. S. 443 (31 L. Ed. 216), this court held that—

"Whether a suit is within the prohibition of the Eleventh Amendment is not always determined by

> reference to the nominal parties on the record, but by a consideration of the nature of the case."

The principle here announced is considered in the opinion at some length, from which we take this excerpt:

> "The very question was presented in the cases of *New Hampshire* v. *Louisiana*, and *New York* v. *Louisiana*, 108 U. S. 76. In each of those cases there was upon the face of the record nominally a controversy between two states, which, according to the terms of the Constitution, was subject to the judicial power of the United States. So far as could be determined by reference to the parties named in the record, the suits were within the jurisdiction of this Court; but, on an examination of the cases as stated in the pleadings, it appeared that the state, which was plaintiff, was suing, not for its own use and interest, but for the use and on behalf of certain individual citizens thereof who had transferred their claims to the state for the purpose of suit. It was accordingly unanimously held by this Court, that it would look behind and through the nominal parties on the record, to ascertain who were the real parties to the suit."

In order to create a "controversy between two states," there must be an actual controversy between them in which both parties have an interest. The word "controversy" has been the subject of frequent consideration by the federal courts, and especially as it relates to the removal of causes from a state to a federal court. In all the cases in which it has been the subject of judicial consideration it is treated as meaning an *actual* controversy in which both parties have an interest.

Sheldon v. *Keokuk N. L. P. Co.*, 1 Fed. 789.

Every case that has ever come before this Court involving a controversy between states, has been one affecting boundaries and jurisdiction over lands, or cases directly affecting the property rights and interest of a state.

This is the conclusion deduced by Mr. Justice Shiras from an exhaustive examination of the cases bearing on the subject in *Missouri* v *Illinois*, 180 U. S. 208 (45 Law Ed. 497), and a review of the cases

by Mr. Justice Brewer in *South Dakota* v. *North Carolina*, 192 U. S. 286 (48 Law Ed. 448).

The cases illustrating the soundness of this deduction may be thus classified:

New Jersey v. *New York*, 5 Pet. 285 (8 Law Ed. 127); *Rhode Island* v. *Massachusetts*, 12 Pet. 657 (7 Law Ed. 1233); *Florida* v. *Georgia*, 11 How. 293 (13 Law Ed. 702); *Virginia* v. *West Virginia*, 11 Wall. 39 (20 Law Ed. 67); *Missouri* v. *Iowa*, 7 How. 660 (12 Law Ed. 861); *Florida* v. *Georgia*, 17 How. 478 (15 Law Ed. 181); *Alabama* v. *Georgia*, 23 How. 505 (16 Law Ed. 556); *Louisiana* v. *Mississippi*, 202 U. S. 1 (50 Law Ed. 913); *Missouri* v. *Kentucky*, 11 Wall. 395 (20 Law Ed. 116), and *Maryland* v. *West Virginia*, 217 U. S. 1 (54 L. Ed. . . . .), recently decided by this Court, were cases relating to the boundary lines of the respective states bringing the suits.

In *Pennsylvania* v. *Wheeling Bridge Co.*, 13 How. 18 (14 L. Ed. 249), it appeared that the state had constructed lines of transportation connecting with the Ohio river, a navigable stream, from the tolls upon which the state derived a revenue, and the defendant, a corporation of another state, had constructed a bridge across said river, by reason of which the navigation was obstructed and the revenues of the state decreased. The court sustained its jurisdiction in this case because of the injury resulting directly to the State of Pennsylvania.

The case of *Missouri* v. *Illinois*, 180 U. S. 208 (45 Law Ed. 497), involved a threatened injury by the State of Illinois to the health and prosperity of the inhabitants of Missouri and an injury to that portion of the bed or soil of the Mississippi River which lies within the territory of Missouri.

In *South Dakota* v. *North Carolina*, 192 U. S. 286 (48 Law Ed. 448), the title to the bonds sued on was vested absolutely in the State of South Dakota, and they were not held in a representative capacity, as in the case of *New Hampshire* v. *Louisiana*, 108 U. S. 76 (27 Law Ed. 656), as they were given outright unconditionally to the plaintiff state in that case.

In *Florida* v. *Georgia*, 17 How. 478 (15 Law Ed. 181), the United States was permitted to intervene because she was the proprietor of a large part of the land situated within the disputed boundary, ceded by Spain as a part of Florida. The State of Florida was also deeply interested as a proprietor.

In the exercise of their jurisdiction, the federal courts have often felt called upon to decide whether or not the state had such an interest in the subject matter of litigation as to uphold or defeat the jurisdiction of the court.

To determine in whom the real interest resides or inheres, the court will look beyond the nominal parties. *Missouri, K. & T. R. Co.* v. *Hickman*, 163 U. S. 53 (46 Law Ed. 78). From the record in the cause it will ascertain whether or not the judgment or decree will operate upon the pecuniary or material interests of the state, or upon the interests of individuals only. In the case last cited this Court in its opinion says: "Was the state the real party plaintiff?" In answering this question, the court discusses the practice after the adoption of the Eleventh Amendment, and shows that in determining whether or not a state is the real party plaintiff or defendant, it will go behind the mere allegation as to the nominal party; and, applying this principle, says:

> "It may fairly be held that the state is such real party when the relief sought is that which inures to it alone, and in its favor the judgment or decree, if for the plaintiff, will effectively operate. Such a case was *Ferguson* v. *Ross*, 3 L. R. A. 322, 38 Fed. 161. There an action was brought in the name of Ferguson, a shore inspector, against Ross and others, to recover a penalty. The statute of New York authorized the suit to be prosecuted in the name of the inspector, but all the moneys recovered were payable into the treasury of the state, and it was held by the circuit court for the eastern district of New York that the action was one in which the real party plaintiff was the state. It was for its sole benefit that the action was brought, and it alone was to be benefited by the recovery."

The case from which we have just quoted was a suit brought in a

state court of Missouri against certain individuals constituting the State Board of Railroad and Warehouse Commissioners of the state, and in which the state court had refused to order a removal to a federal court. The question involved was, on the motion for removal, whether or not the state was the real party in interest. The Missouri court held that it was, and the state not being a citizen within the meaning of the removal act, of course there could be no removal, if indeed the state were the real party in interest, and not the board of commissioners.

In considering the question whether or not the state was the real party in interest, the Court says:

> "It is true that the state has a governmental interest in the welfare of all citizens, in compelling obedience to the legal orders of all its officials, and in securing compliance with all its laws. But such general governmental interest is not that which makes the state, as an organized political community, a party in interest in the litigation, for if that were so the state would be a party in interest in all litigation; because the purpose of all litigation is to preserve and enforce rights and secure compliance with the law of the state, either statute or common. The interest must be one in the state as an artificial person."

As stated by this Court, the supreme court of Missouri held that the state had a direct pecuniary interest in the result of the litigation, by virtue, first, of its possible liability for costs, and, secondly, because, were the litigation pushed to the extreme, there might be penalties imposed which would, when collected, pass into the school fund of the state. This Court holding that these considerations, actuating the supreme court of Missouri to decide as it did, were not sufficient to make the state the real party in interest, and says:

> "We are of opinion, therefore, that the party named in the record as plaintiff is the real party plaintiff, and that the voluntary assumption by the state of the costs in some contingencies of the litigation, or the indirect and remote pecuniary results which may follow from a disobedience of the orders of the court, do not make it

> the party to whom alone the relief sought inures, and in whose favor a decree for the plaintiff will effectively operate."

So, it is by invoking this principle that the court will look beyond the mere allegations of the pleadings, with reference to parties, and ascertain and determine, for the purposes of its jurisdiction, who are the real parties in interest. *Ex parte Ayers*, 123 U. S. 443 (31 Law Ed. 216).

In *Louisiana* v. *Jumel*, 107 U. S. 711 (27 Law Ed. 448), though nominally a suit between individuals, the Court held that the real party to be affected by the action of the Court was the state, because its judgment must operate against the state itself. And may we not say, *converso*, that if the judgment or decree of the Court does not operate in favor of the state it is not, nor can it be, a party plaintiff?

In *Antoni* v. *Greenhow*, 107 U. S. 769 (27 Law Ed. 468), it was held that a suit to compel the officers of a state to do the acts which constitute a performance of its contracts by the state is a suit against the state itself, although the state is not nominally a party to the suit.

The cases could be multiplied illustrative of the principle that the court will and must look to the effect of its judgment or decree in determining the question as to whether the state is the real party whose rights or interests will thereby be affected so as to make it a plaintiff or a defendant in the suit, as the case may be.

Alabama v. *Burr*, 115 U. S. 413 (29 Law Ed. 435), was a suit at law brought in this Court by the State of Alabama against citizens of the States of Massachusetts and New Jersey. The defendants demurred generally to the declaration. The demurrer presented the question whether the facts in the declaration were sufficient to support the action. The court in considering the demurrer concluded that the state in her declaration failed to show any such acts affecting the interests of the plaintiff as authorized her to maintain the suit. The Court in its opinion said that the injury to innocent stockholders by the wrongful acts of the company and the defendants was direct and immediate, because their property was taken and fraudulently

converted to the use of the defendants or other wrongdoers. "To the state, however," said this Court, "the injury, if any, was both indirect and remote, because the state had no direct claim upon, or interest in, the property which was misappropriated." Therefore, the Court, by a unanimous opinion, sustained the demurrer and dismissed the action.

New York v. *Connecticut*, 4 Dall. 3 (1 Law Ed. 715), was an application by the plaintiff for an injunction to stay proceedings in certain ejectment causes brought in the State of Connecticut. The prayer for injunction was argued with great force and ability. The plaintiff was not a party to the ejectment suits, but it was contended that New York was interested to preserve peace and good order, to protect individuals, to indemnify those who trusted to her faith and even to prevent dismemberment of her territory; that this political and moral obligation and regard for her public improvements and fiscal operations, created an interest of the highest character in the government of New York, and one entitling her to maintain this bill for the purpose of its prayer. But the Court held that the State of New York was not a party to the suits below, nor interested in the decision of those suits, and that the injunction ought not to issue. Thereupon the attorney general of the State of New York said to the Court: "In every grant by New York, there is a reservation of gold and silver mines, and of five acres per cent for roads The bill might, besides, be amended, by averring the state to be interested in a residuum of the land, if that would be sufficient to sustain the prayer for an injunction." Mr. Justice Washington replied: "The amendment would not satisfy me; for my opinion is founded upon the fact, that New York is not interested in the suits below." The actions of ejectment were brought by grantees of Connecticut against grantees of New York to obtain possession of the land.

An examination of all the cases decided by the federal and state courts discloses no instance wherein the state has been permitted to maintain an action or suit, the judgment or decree of which would not inure to the state. In other words, the courts have placed the right of suit on the part of a state upon the same principle with reference to interest, that is always applied in suits by individuals.

An Accounting Cannot Be Maintained by Virginia in This Suit.

One part of the prayer of the bill in this case is

> "that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix in her own right and as trustee" (R., pp. 16, 17).

Whether this bill may be maintained for an accounting as to matters claimed in her own right we shall presently consider; but that it cannot be maintained in her representative capacity as a trustee seems to us quite clear. The suit in her capacity as trustee relates to the unfunded part of the debt in the hands of third parties, from which Virginia has been released, and which is alleged by Virginia to be one-third of the original debt existing on January 1, 1861.

It is a cardinal principle that no bill can be sustained for an accounting when the plaintiff in its own right is not interested in the result of such accounting. Under no circumstances can Virginia be interested in any account that may be taken as to the unfunded part of said debt which is claimed by Virginia and her creditors to be West Virginia's equitable proportion. There are several grounds for this lack of interest:

First, because Virginia and her creditors agreed to the amount which Virginia should assume as her part.

Second, because her bill and its exhibits show she will receive no part of the proceeds of the unfunded debt if West Virginia should pay any part thereof, but that all of it belongs and will go to the holders of said certificates, which represent such unfunded part.

Third, because West Virginia's liability, if any exists, is direct to the creditors and not to Virginia, as heretofore shown by the Wheeling Ordinance, the West Virginia Constitution of 1862 and the acts of the General Assembly of Virginia.

To sustain this suit on the ground of an accounting would violate one of the cardinal principles underlying this branch of the jurisdic-

tion of a court of equity. It is elementary law that the person seeking an account must have an interest of some sort to promote as a result of the accounting. If there be no such interest, the bill can not be maintained.

Nicholas v. *Anderson*, 8 Wheat. 365 (5 Law Ed. 637).
Ball v. *Carew*, 13 Pick. 28.
McCabe's Appeal, 22 Pa. St. 427.

In *Nicholas* v. *Anderson*, *supra*, a bill in equity was filed by and in the name of the attorney general of Virginia, under the authority of a special act of the legislature of that state, passed on October 15, 1813, for the better locating and surveying of the lands given to the officers and soldiers on continental and state establishments. The act provided that all persons holding officers' and soldiers' warrants by assignment should pay down to the principal surveyor, at the time of the delivery of such warrants, one dollar for every hundred acres thereof, exclusive of the legal surveyor's fees, toward raising a fund for the purpose of paying all contingent expenses, etc. The act further provided that the deputations of officers should appoint two principal surveyors, who were accordingly appointed, one of whom was the defendant, and who immediately took upon himself the duties of the office, and exacted, in virtue of the act of 1783, from all the holders of the military warrants, the one dollar per one hundred acres as provided in the act. The bill charged that the defendant had received a large sum of money in this way and had refused to account for the same to the complainant and the agents and attorneys appointed for this purpose under the act of 1813. It also charged a misapplication of the money; and that the deputations of officers, under the act of 1783, did appoint superintendents, etc., but that most of them had long since died and that the surveyors had declined to act for many years. The bill proceeded to state the substance of the act of 1813, which authorized one Colonel John Watts, the surviving superintendent, agent to settle with defendant, and to receive the moneys remaining unappropriated in his hands, and, if not paid, to sue for and recover the same in the name of the attorney general of Virginia; and then charged that the

defendant refused to account with Watts, and concluded with a prayer for an account, discovery and general relief.

To this bill the defendant demurred; and the circuit court of Kentucky, upon argument, sustained the demurrer and dismissed the bill. The case then came to this Court by appeal.

Mr. Justice Story, who delivered the opinion of the Court, after stating the case in substance as here stated, said:

> "The question in this case is, whether the demurrer was well taken. In support of the decree, two points are stated at the bar: 1st, that the plaintiff has not shown any interest in the subject, entitling the State of Virginia to maintain the bill; 2nd, that if there was originally any resulting authority to the state to compel an account, that power, by the erection of Kentucky into an independent state, devolved on the latter state, the defendant having been, and still continuing to be, a citizen of that state; and that it was not competent for the legislature of Virginia, in 1813, to pass a law which should bind a citizen of Kentucky to account for official duties which were not performed in virtue of any appointment made by the government of Virginia.
>
> "It is unnecessary to consider the last objection, because we are of opinion that the first is fatal to the bill. The act of 1783, for the better locating and surveying the lands given to the officers and soldiers on continental and state establishments, authorizes the deputations of officers, therein named, to appoint superintendents, in behalf of their respective lines, for the purpose of surveying the lands; and also to appoint two principal surveyors, and contract with them for their fees, etc. The third section of the act then provides, 'that every person or persons holding officers' or soldiers' warrants, by assignment, shall pay down to the principal surveyors, at the time of the delivering such warrant or warrants, one dollar, for every hundred acres thereof, exclusive of the legal surveyor's fees, toward raising a fund for the purpose of supporting all contingent expenses; or, at the option of such holder or holders, the same may be held up until warrants of all the original grantees have been surveyed; the said

surveyors to account for all the money so received to such person or persons as the said deputations may direct.' This is the clause upon which the bill is founded. And it is apparent, that in terms it provides for an accountability, not to the state, but to persons to be appointed by the deputations of officers; to those for whose benefit the fund was raised, and was to be applied, and not to the state, which had no interest whatsoever in it."

We are now brought to the second ground of recovery stated in the bill, which relates to

That Part of the Debt Not Held by Third Persons, But Which Virginia Avers She Holds in her Literary and Sinking Funds, in Her Own Right and Not as Trustee.

As to this part of the bill, we refer the Court to the answer; and, so far as pertinent to this phase of the case, the answer of West Virginia is as follows:

"This respondent denies that there was in addition to the above mentioned liability to the general public any other indebtedness evidenced by bonds held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the said State of Virginia as created under her laws, amounting, the former to $1,462,993, and the latter to $1,543,669.05, or to any other sums, as of the same date, as in the said bill is alleged, because this defendant avers that the commissioners of these two funds were and are mere state agencies, and public officials of the state, created by said State of Virginia to have the custody of and to preserve certain of her financial resources and obligations to be made available for specific purposes when necessary, and which now belong exclusively to Virginia and are held for her sole and exclusive use and benefit. Respondent denies that any of the bonds or certificates so alleged to be held by the Commissioners of the Sinking Fund and the Literary Fund were ever negotiated or sold by the State of Virginia, or that the same constituted a part of the public debt of that state on the first day of January, 1861, and denies that the certificates representing

> one-third of such bonds are now a part of the said public debt; and respondent avers that the State of Virginia has long since voluntarily canceled all of said bonds and the same are no longer of any force or validity."

It will be seen that the answer of the defendant controverts the allegations that the bonds held by the Commissioners of the Sinking and the Literary Funds of the State of Virginia constitute any part of the debt of Virginia within the meaning and contemplation of the said Ordinance of 1861, or of the constitution of West Virginia of 1862, and denies that such bonds so held constitute, or ever constituted, a part of the public debt of Virginia existing on the first day of January, 1861.

The commissioners of these two funds are mere state agencies or instrumentalities created by the Commonwealth of Virginia, to care for and preserve certain of her own financial resources, available for specific purposes, and which belong exclusively to Virginia. A few of the old bonds of Virginia issued prior to 1861 were by her converted into immediately available money by being deposited with these commissioners, and were therefore never sold and the title never transferred from her so as to create a liability against the state herself, and hence at no time was there ever any right of action or liability on account of these old bonds so deposited with the said commissioners which could properly be asserted against the old state. In other words. these few old bonds deposited with these commissioners did not create any debt against the State of Virginia. At no time or under any circumstances could these bonds have been made or become a legitimate subject matter of controversy or suit against the Commonwealth of Virginia. To make them such, would present the grotesque spectacle of a sovereign state suing herself for an accounting and payment to herself of her own funds, already under her absolute control.

Again: There can be no liability in favor of the Commonwealth of Virginia against the State of West Virginia on these bonds so held. The moneys in the sinking fund which purchased these bonds previous to the first day of January, 1861, were raised by the revenues of the entire state before the division, and they were therefore the

property of such entire state; and being owned by the state itself, the debtor, they were a dead asset both as to that portion of the state which passed into the new state and the State of Virginia as she remained, and Virginia claiming to be such owner has no more right to institute and prosecute a suit thereon against West Virginia than would West Virginia if a similar bond had fallen into her possession. If there is any liability in respect to said bonds it is a liability of the State of Virginia to the State of West Virginia for a portion thereof.

Then, if this were the status of Virginia as to the old bonds held by the commissioners of her Sinking Fund and Literary Fund prior to 1861, and which remained unchanged at the time of the formation of the State of West Virginia, could their refunding and the issuance of the deferred certificates as to the one-third of them, alter this status with reference to her right of suit thereon, or as to any part of them? The propounding of the question must evoke a negative answer.

The idea of debt necessarily implies an obligation payable by the debtor to some third party—a creditor existing independently of the debtor, and over whom, as to the obligation asserted, the debtor can have no control, and in the use or disposition of which the debtor has no right or interest whatever.

Upon what principle or ground or reason can Virginia claim that the old bonds placed by her with her commissioners of the Sinking and Literary Funds, were or are now any part of her *ante bellum debt?* We are wholly unable to perceive any. In fact, there is none.

If it be contended that the commissioners of the Sinking and Literary Funds are distinct entities from the state, persons clothed with an existence distinct and separate from the commonwealth, with the right to assert a liability against Virginia on account of these old bonds acquired by them prior to the erection of the territory contained within the boundaries of West Virginia into a state, then this Court cannot entertain jurisdiction of this suit, because these commissioners are necessary parties thereto; and the commission, having been created and existing by vrtue of the laws of Virginia, must be a citizen of Virginia, and if a distinct entity, it must necessarily be a corporation having its domicile in Virginia, where it was created.

Thus, it is seen that, in any aspect of the case, this Court has no jurisdiction of this suit so far as the certificates belonging to these commissioners are concerned. This feature itself of this cause can constitute no ground of controversy between the parties to the bill.

In the case of *Roe* v. *Marchand*, 86 Va. 107 (9 S. E. 995), we find the court saying:

> "A debt is an obligation due from one person to another, payment of which the latter has a legal right to enforce."

See also the case of *Harris* v. *Larsen*, 24 Utah 139, 1414 (66 Pac. 782).

The learned Master to whom this cause was referred had before him the question whether or not the bonds held by Virginia through the agency of her Literary and Sinking Funds constituted any part of the debt existing on the first day of January, 1861.

After careful consideration he deduces the following conclusion:

> "I am satisfied that the great weight of reason and authority is against the contention of the plaintiff, and I therefore find that the Sinking Fund with interest, and the Literary Fund with interest, within the meaning of the decree, were not a part of the public debt of the Commonwealth of Virginia on the first day of January, 1861" (Rep., p. 28).

True, Virginia has excepted to this part of the report; but the reasons assigned by the Master for his conclusion are so cogent, and the authorities cited and relied on by him in his report so conclusive, that further consideration of the question is not necessary. Therefore, we contend that Virginia cannot maintain this suit because of any claim by her on account of the certificates held by the Literary and Sinking Funds.

Virginia Is Not Entitled to Contribution from West Virginia.

The third ground stated in the bill upon which Virginia seeks relief alleges that Virginia has paid off or retired, of principal and

interest of said debt, a sum considerably in excess of $25,000,000, which she owns in her own right, and on account of which she avers that she has

> "a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor" (R., p. 13, Par. XVI of bill).

By reference to exhibit 3 of the bill (R., pp. 26, 38, and especially pp. 27-32), it will be seen that Virginia, by this act of her legislature, makes a full and detailed statement of the whole debt existing on January 1, 1861, stating it with reference to four distinct periods, to-wit: as of January 1, 1861; July 1, 1863; July 1, 1871; and July 1, 1882. Ascertaining by this statement the entire debt as of January 1, 1861, she by this act fixes as her just proportion thereof two-thirds of the entire debt. This statement purports to show the accrued interest and the various payments made by Virginia on account of said debt and its interest. It shows that she credits herself with every dollar paid by her on account of this debt, and deducts the aggregate of such payments from her assumed just proportion of two-thirds of said debt. By repeated declarations she avers this to be her just proportion, at the same time declaring the residue, one third, to be West Virginia's just proportion of said debt. It further shows that no part of any sum paid by Virginia on said debt was ever paid on account of any part of the one-third of said debt alleged to be West Virginia's just proportion. In fact, as shown by the record Virginia has paid nothing on account of any part of said debt she claims West Virginia should pay.

The answer of West Virginia with reference to this feature of the bill is as follows:

> "For further answer to said bill respondent avers that if any sum has been paid by Virginia, even though amounting in the aggregate to $25,000,000, including principal and interest to date, calculated at the rate of 6 per centum per annum, it was paid by her on account of her admitted just and equitable proportion of said public debt created prior to January 1, 1861; and if she has any claim at all against West Virginia on account of said alleged payment, which is not admitted,

but is denied, it can only be for such amount as may be ascertained upon the basis and according to the principles embodied in section 9 of the ordinance of the Virginia convention, as hereinbefore stated. So this respondent denies that she is liable for any part of the obligations mentioned in paragraph XV and paragraph XVI of the plaintiff's bill, alleged to have been taken up and paid on account of said public debt, and denies that the said Commonwealth of Virginia has, in her own right, a 'just claim' against West Virginia for contribution on account thereof.

"Respondent, for further answer to said paragraph XVI of said bill, avers that all accounts, vouchers and other records relating to the said public debt of Virginia, showing the payments made thereon, if any, and all other facts connected therewith, are now and always have been in the exclusive possession and control of the plaintiff, and respondent has no knowledge or information concerning the alleged payment of $25,000,000, or any other sum, on account of said debt existing prior to January 1, 1861, and therefore denies that plaintiff has paid said sum of $25,000,000, or any part thereof, and demands strict proof." (R., p. 157.)

Thus the answer positively denies any payment by Virginia on account of said debt which entitles her to contribution from West Virginia, thereby placing Virginia upon proof of this feature of her bill. The record is entirely barren of any proof in support of this allegation. Virginia could not properly take proof to bring this feature of the bill in issue, by reason of her failure to file a replication to the answer. In fact, the evidence, as shown by the contents of exhibit 3 of the bill, instead of supporting the bill in this regard, proves the truth of this part of the answer.

The cardinal principle of contribution is founded in and controlled by the doctrine of equity and natural justice, whereby one of two common debtors who has paid more than his *just share* of the common debt shall be permitted to call upon the other to contribute such sum to the one who has paid it all as will equalize the burden between the two.

White v. *Banks*, 21 Fla. 705 (56 Am. Dec. 283).

Owen v. *McGhee*, 61 Ala. 440.

Golsen v. *Brand*, 75 Ill. 148.

Chaffee v. *Jones*, 36 Mass. 260.

Campbell v. *Mesier*, 4 Johns. Ch. (N. Y.) 334 (8 Am. Dec. 570).

Moore v. *Moore*, 11 N. C. 358 (15 Am. Dec. 523).

Armstrong County v. *Clarion County*, 66 Pa. St. 218 (5 Am. Rep. 368).

Screven v. *Joyner*, 1 Hill Eq. (S. C.) 252 (26 Am. Dec. 199).

Jobe v. *O'Brien*, 21 Tenn. 34.

To entitle a party to enforce contribution, the one seeking it must have discharged the entire common or joint liability.

Culmer v. *Wilson*, 13 Utah 129 (44 Pac. 833).

The Bill Multifarious.

The question whether the bill is multifarious is yet open for discussion and decision. This Court, in disposing of the demurrer in this case, says:

> "Consideration of the objections of multifariousness, misjoinder of parties and of causes of action, may properly be postponed until the final hearing of a bill filed by the Commonwealth of Virginia against the State of West Virginia, which seeks an adjudication of the amount due the former by the latter as the equitable proportion of the public debt of the original State of Virginia which was assumed by West Virginia at the time of its creation as a state."
>
> *Virginia* v. *West Virginia*, 206 U. S. 290 (51 L. Ed. 1068).

And in a subsequent opinion, in referring the cause to a master, the Court said:

> "The answers to these inquiries to be without prejudice to any question in the cause."
>
> *Virginia* v. *West Virginia*, 209 U. S. 514 (52 L. Ed. 914).

One of the grounds of the defendant's demurrer filed to the plaintiff's bill was that of multifariousness, consisting in uniting two separate and distinct demands in the same bill. One of the grounds for an accounting set out in the bill is the claim or demand which Virginia asserts *in her own right* under two acts passed by the legislature of Virginia, on the 3d of February, 1863, and the 4th of February, 1863. This part of the bill appears in paragraphs VIII. and IX. of the bill at pages 7 and 8 of the record. The first act, under which it is alleged that certain property was transferred by the Commonwealth of Virginia to the State of West Virginia, reads as follows:

> "That all property, real, personal and mixed, owned by, or appertaining to this state, and being within the boundaries of the proposed state of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state." (R., pp. 7, 8.)

By the fifth section it was enacted:

> "That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and

credits shall have been obtained since the reorganization of the state government." (R., p. 8.)

The bill then charges that the property transferred to the state of West Virginia under this act was received and enjoyed by that state, and consisted of a number of items, the value of which amounted in the aggregate to "several millions of dollars," the bank stocks alone having realized to the state about "six hundred thousand dollars." (R., p. 8.)

The second act is as follows:

"1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the states of the United States.

"2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this state to make a statement of all the moneys that up to that time have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also all moneys that up to the same time have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this state." (R., pp. 8, 9.)

And the bill alleges that the sum of one hundred and fifty thousand dollars, "together with other sums belonging to the State of Virginia," were received and collected by the State of West Virginia, after its formation. It is also alleged in said bill in clause four of paragraph XVIII., at page 14 of the record:

"The State of West Virginia has, since her creation as a state, received from the State of Virginia real and

> personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia." (R., p. 14.)

This feature of the bill is intended to embody the demand made by the commonwealth of Virginia *in her own right*, separate and distinct from any claim or demand of the creditors of Virginia.

The other feature of the bill presents the claim of Virginia, for an accounting with West Virginia for the latter's proportion of the public debt of Virginia prior to January 1, 1861.

It is alleged in the bill that on the 20th of August, 1861, the commonwealth of Virginia, in convention assembled, at the City of Wheeling, adopted an ordinance "to provide for the formation of a new State out of the portion of the territory of this state," and then quotes section 9 of the ordinance. (R., pp. 6, 7.)

It then alleges that West Virginia was admitted into the Union on the 20th of June, 1863, under a constitution which contained the following provisions:

> "5. No debt shall be contracted by this state except to meet casual deficits in the revenue, to redeem a previous liability of the state, to suppress insurrection, repel invasion, or defend the state in time of war."
>
> "7. The legislature may, at any time, direct a sale of the stocks owned by the state, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the state shall not become a stockholder in any bank."
>
> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." (R., p. 9.)

As is shown in the bill and elsewhere in this brief, Virginia settled with the holders of the old public debt by issuing new bonds for two-thirds of the amount thereof, which amount she declared to be her equitable proportion of such debt; and the creditors agreed thereto, and accepted the bonds. Virginia arbitrarily declared that the other one-third of the amount of her debt was the proportion for which West Virginia was liable, and for such one-third she issued certificates; and her creditors agreed thereto and accepted the certificates and released Virginia from all liability therefor. The bill then alleges:

> "By each of the acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your oratrix, should be surrendered to and held by your oratrix, who either by the express terms of the settlement provided for by said acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your oratrix to each creditor whose old Virginia bond was so surrendered to her." (R., p. 12.)

And it is also further alleged in the bill that:

> "All of the bonds and obligations and other evidence of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph I of this bill, except a comparatively insignificant sum, not amounting to one per cent of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto." (R., pp. 12, 13.)

The several acts of the legislature of Virginia under which the debt was adjusted and the contracts made under which the certificates issued by the state have been deposited with the commission *in trust* for the purpose of bringing this suit, are exhibited with and made part of the bill; and it is alleged that "this suit has been instituted at the request and direction of the said Commission, and in strict conform-

ity with the provisions of said Act of March 6, 1900." See paragraph XX. of said bill, at p. 15 of Record.

Virginia seeks to obtain a decree in her own right for an alleged indebtedness against West Virginia, "evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05," in addition to the other claims made in her own right. See par. I. of bill, at p. 3 of Record.

Another feature of the bill is that which sets up a claim on the part of Virginia in her own right against West Virginia for the unfunded debt represented by the certificates held by the Literary and Sinking Funds, financial agents employed by Virginia as part of the policy of facilitating the administration of her state government.

A further demand made by Virginia in her own right is that for contribution, which is purely an equitable demand. This we have already discussed, and again call the court's attention to this feature of the case to present more clearly the proposition of multifariousness.

In *Haines* v. *Carpenter*, 1 Woods 262 (Fed. Cas. No. 5905), a demurrer was filed to the bill, one ground of which was multifariousness. In discussing this point the Court said:

> "By multifariousness is meant the improperly joining in one bill, distinct and independent matters and thereby confounding them; as, for example, by uniting in one bill several matters perfectly distinct and unconnected against one defendant, or the demand of several matters of a distinct and independent matter against several defendants in the same bill. 1 Coop. Eq. Pl. 182; *Saxton* v. *Davis*, 18 Ves. 72. In this bill the controversy raised by the heirs at law of the testatrix, touching the validity of the bequest of the will, is united with the claim of the heirs of George W. Graves, the husband of testatrix, to the property disposed of by the will; they claiming that the property descended to them, and did not belong to the testatrix, and could not therefore pass by her will, and with the suit of Elias W. Dennis, a creditor of the succession, whereby he seeks to recover judgment against the estate, and

with a demand for an account to be rendered by the executor. I do not think the adjudged cases furnish a better illustration of a multifarious bill. A bill by a creditor sought an account against an executor and trustee of the testator's estate, and also to set aside a sale made by the executor and trustee to a purchaser who was made a party to the bill; it was held demurrable for multifariousness, for the purchaser had nothing to do with the general settlement of the accounts of the estate, and ought not to be involved in any litigation respecting it. *Salvage* v. *Hyde*, Jac. 151. So when devisees and legatees brought a bill against the trustees and executors under the will and against a mortgagee of part of the estates, alleging collusion between the trustees and executors and the mortgagee, and that they refused to compel the mortgagee to account for the rents and profits, or to redeem the mortgage, and the bill prayed for an account of the testator's effects, and that the mortgage might be redeemed; the bill was held on demurrer by the mortgagee to be multifarious, for the mortgagee had nothing to do with the general settlement of the accounts of the estate. *Pearse* v. *Hewitt*, 7 Sim. 471. The case when unconnected parties are allowed to be joined in a suit are where there is one common interest among them all, centering in the point in issue in the cause. *Ward* v. *Duke of Northumberland*, 2 Anstr. 469."

In this case there was a uniting in the bill of different claims in different rights, and the court held that this was the uniting of several matters of a distinct and independent nature against several defendants in the same bill. This decision was subsequently affirmed by the Supreme Court of the United States, in 91 U. S. 254.

In *Cassels* v. *Vernon*, 5 Mason 332 (Fed. Cas. No. 2503), the bill was objected to on the grounds that the plaintiff united in his bill a claim for money as administrator of Mrs. Cassels, and also a claim in his individual capacity. The court in discussing this objection said:

"The bill is certainly incorrect in this union of inconsistent claims; and if the objection had been taken upon demurrer, it would have overthrown the bill,

unless an amendment was allowed. Courts of equity will not permit distinct and independent titles to be set up in the same bill, for that would be to allow multifariousness; much less will it permit inconsistent titles, or alternative titles, for that might tend to very inconvenient consequences in point of evidence. It is the duty of the party who seeks the assistance of the court, to state his own title directly, without any alternatives, and not to put the court upon the duty to select, out of many, any one, which it may ultimately think, upon the evidence, can be supported. See *Salvage* v. *Hyde*, Jac. 151; *Edwards* v. *Edwards*, *Id.* 335; *Mole* v. *Smith*, 1 Jac. & W. 665. This difficulty, however, could have been gotten rid of by an amendment; and coming on after a full answer, and a hearing by consent of parties, the shortest course will be to dismiss the bill as to all claims, except that made in the representative character."

In *Jones* v. *Foster*, 50 Miss. 47, the pertinence of the case and the points of law applicable here appear in the syllabus, which we here copy:

"Where J., as guardian of certain minors, sold real estate on time, under an order of the probate court, and took notes for the purchase money, and F. becoming the purchaser; and afterwards, J. sold other real estate, as administrator, and F. became the purchaser again, and executed notes for the purchase money, J. filed his bill to enforce his lien on the notes payable to him, both as guardian and as administrator; *held*, that the bill was bad for multifariousness.

"The bill cannot join several distinct, unconnected subjects, against the same defendant or against several defendants.

"A party cannot be pursued in the same suit in the double capacity of guardian and administrator, because the liabilities are separate and independent. *Wren* v. *Gayden*, 1 How. 365. The complainant, representing in his own person, separate and independent capacities and rights, and the defendant F. is pursued in respect to separate and distinct estates, acquired in different rights. Where several subjects are united, it must

appear, that as to the subject matters and the relief, all the defendants are connected, though differently, with the entire subject in dispute."

In *Van Mater* v. *Sickler*, 9 N. J. Eq. 483, the court said at page 484:

> "Second. The bill is multifarious. One object of the bill is to settle the personal estate of Isaac B. Van Mater. The complainant, as next of kin, calls on the defendant, who is the personal representative of the intestate, to answer in that capacity. But the complainant also, as an heir at law, calls upon the defendant to account for certain rents and profits which have come into his hands. It appears, from the bill, that the persons entitled to the rents, claim them as heirs at law, through their mother, who was the wife of the intestate. There are others than the heirs at law entitled to the rent, who, as next of kin, are interested in the distribution of the estate which the defendant represents. It is manifest, therefore, that these accounts cannot be settled in the same suit."

In *May* v. *Smith*, Busbee's Eq. 196 (N. C.) (57 Am. Dec. 594), the bill was filed by Peter May as the administrator with the will annexed of Reading Anderson, and part of the prayer is "that the defendants may account with the plaintiff for the assets of the deceased in their hands;" and another prayer is that the defendants may account "for the effects belonging to your orator deposited in their hands by the deceased." The court in holding that the bill could not be sustained said:

> "Here are two distinct and independent causes of action united; one to call in and collect the assets of the deceased; and the other to follow the effects of the plaintiff, effects due to him individually and in his own right. At law, an executor or administrator can not join a count for a debt due to him individually with one in his representative capacity. Neither can they be joined in equity; Adams' Eq., 2d Ed. 567; *Davoue* v. *Fanning*, 4 Johns. Ch. 199; *Bedsole* v. *Monroe*, 5 Ired. Eq. 315. And the reason assigned is, that different decrees and proceedings might be

> required; for convenience, therefore, the joinder will not be permitted. For this cause the defendant might have demurred."

In *Bosley* v. *Phillips*, 3 Tenn. Ch. 649, a widow filed her bill to charge the defendant with a fund alleged to have been entrusted to her for delivery to the complainant by the husband, on his deathbed, as a gift *causa mortis;* and upon its being held by the supreme court, that the personal representative of the husband was a necessary party to the suit, the complainant took out letters of administration on the husband's estate, and asked leave to file an amended bill individually and as administratrix, praying relief either in her own right or in her representative capacity. The court refused to permit the amendment on the ground that to do so would be to allow the uniting in the same bill in chancery of distinct and hostile claims.

In *Sylvester* v. *Boyd*, 166 Mass. 445, the plaintiffs filed a bill against James O. Boyd and others. One of the prayers of the bill was that an account be taken of Boyd's doings as trustee in order that justice be done to the plaintiffs. None of the other defendants had any interest in the money alleged to have been misappropriated by Boyd, and none of them had any interest in his doings generally and his account as trustee. The plaintiffs also charged the making of a conveyance of valuable real estate and personal property to Peckham, which they averred was in violation of the duty of Boyd as trustee. The court in sustaining the demurrer said:

> "It is clear that different causes of action are joined which cannot properly be tried together, and that the demurrers should be sustained on the ground that the bill is multifarious. *Cambridge Water Works* v. *Somerville Dyeing & Bleaching Co.*, 14 Gray 193; *Metcalf* v. *Cady*, 8 Allen 587; *Sanborn* v. *Dwinell*, 135 Mass. 236; *Keith* v. *Keith*, 143 Mass. 262."

In *Leslie* v. *Leslie*, 84 Fed. 70, a bill was filed seeking to enforce the performance of a trust in real property, and also to quiet complainant's title to the same property. The court in holding the bill multifarious, said:

> "Under the state procedure, the complaint, as the pleading was there styled, would have been bad on

account of a misjoinder of causes of action. Code Civ. Proc. Cal. sec. 427; *Reynolds* v. *Lincoln*, 71 Cal. 183, 9 Pac. 176, 12 Pac. 449. The general rules of equity practice which obtain in this court conduce to the same result. The bill is multifarious, in that it joins two distinct and unconnected grounds of equitable relief. 1 Fost. Fed. Prac., secs. 71-74."

In *Inman* v. *New York Interurban Water Co.*, 131 Fed. 997, the bill was filed to settle the right of ownership of stock of a corporation, and asking relief depending upon the ownership of such stock. The court held the bill multifarious, saying:

> "To settle such right and to ask relief which depends upon the right are two independent, disconnected and unrelated questions, and the bill which attempts to join them in one suit is multifarious. *Shields* v. *Thomas*, 18 How. 253, 259 (15 L. Ed. 368); *Walker* v. *Powers*, 104 U. S. 245 (26 L. Ed. 729)."

In *Cumberland Valley Railroad Company's Appeal*, 62 Pa. St. 218, the ninth point of the syllabus reads:

> "Charging two sources of right by a plaintiff renders a bill multifarious."

Point eleven of the syllabus of the same case is:

> "A bill is multifarious by the joinder of distinct, independent and separate causes of complaint, requiring different defenses and different decrees."

In *Alexander* v. *Alexander*, 85 Va. 353, especially at page 363, the court in discussing the doctrine of multifariousness, quoting from Lord Cottenham in *Campbell* v. *Mackey*, 1 My. & Cr. 603, says:

> "It is utterly impossible to lay down any rule applicable universally, or to say what constitutes multifariousness as an abstract proposition. For 'the cases upon the subject are extremely various, and the court, in deciding them seems to have considered what was convenient in the particular circumstances rather than to have attempted to lay down any absolute rule.' Yet, it will seldom, if ever, be found difficult to determine whether multifariousness exists in the particular case, if we will only bear in mind these cardinal rules

> upon the subject, namely, that a bill will always be deemed multifarious, where several matters joined in the bill against one defendant are so entirely distinct and independent of each other that the defendant will be compelled to unite, in his answer and defense, different matters wholly unconnected with each other, and as a consequence the proofs applicable to each would be apt to be confounded with each other, and great delays might be occasioned respecting matters ripe for hearing by waiting for proofs as to some other matter not ready for hearing."

As has been seen, the certificates held by Virginia in her own right through the agency of the Literary and Sinking Funds, constituted no part of her debt, and are therefore eliminated from this suit. Therefore, now the only claim asserted by Virginia with reference to the debt is by virtue of her alleged holding of the certificates or canceled bonds *in trust* as to that part of the debt which Virginia claims should be paid by West Virginia to the holders thereof. If anything can be recovered at all in this suit on account of said debt, it must be that part which Virginia alleges she holds in trust for the creditors. She does not pretend to claim anything in her own right by virtue of any part of this unfunded debt. She has no interest in it, but is simply suing in her capacity as trustee for the sole use and benefit of the private persons who are holders of these certificates. This raises a very different controversy from that involved as to the claim asserted by Virginia in her own right.

To settle the claim of Virginia asserted in her capacity as trustee, it is necessary to decide whether or not the ordinance is to control the question, or the provision inserted in the constitution of West Virginia adopted in 1862, or whether the ordinance and the constitution shall be read *in pari materia*. In addition to this, the Court must determine whether or not the assumption by West Virginia of a just proportion of this debt was direct to the creditors themselves, so that the obligation inures to them only, or whether it was to Virginia, who might collect the same and distribute it to the creditors. Furthermore, in deciding this question of the right of Virginia to sue as trustee many other matters must be considered and decided in order to reach

a proper conclusion as to what constitutes a just proportion of this debt to be borne by West Virginia.

The claim asserted by Virginia in her own right arises under the two acts of February 3 and 4, 1863 (R., pp. 7, 8; App. to R., pp. 128, 131)—acts passed by Virginia long after the adoption of the ordinance and constitution by which an assumption of a just proportion of the public debt was made. The determination of the amount of the claim under these acts depends upon the extent of the property received by West Virginia and its market value at the time received. In this part of the bill Virginia as trustee, representing the creditors who hold the unfunded debt, has not a particle of interest. A very different character of evidence is required to establish it, and it is absolutely a distinct and separate claim from that with which Virginia is concerned as trustee.

It is true that courts of equity will so act in the administration of justice, if they may properly do so, as to avoid a multiplicity of suits; but in the language of Judge Woods in *Haines* v. *Carpenter*, Fed. Cas. No. 5905, "Courts of equity will not allow a multifarious bill as a remedy for a multiplicity of suits."

In presenting the question of multifariousness, we have done so upon the assumption, which we think we may justly indulge, that this Court will be governed by its rules of practice applicable to cases involving an exercise of its original jurisdiction. In cases of this character, this Court has in many instances determined that its proceedings should be framed according to those which had been adopted in the English courts in analogous cases, and that the rules of courts in chancery should govern in conducting a case to its final determination.

Rhode Island v. *Mass.*, 12 Pet. 57 (9 L. Ed. 1233).
Rhode Island v. *Mass.*, 13 Pet. 23 (10 L. Ed. 21).
Rhode Island v. *Mass.*, 14 Pet. 210 (10 L. Ed. 423).
Rhode Island v. *Mass.*, 15 Pet. 233 (10 L. Ed. 721).
Georgia v. *Grant*, 6 Wall. 241 (18 L. Ed. 848).
Cal. v. *Sou. Pac. Co.*, 157 U. S. 229-249 (39 L. Ed. 683).
Florida v. *Georgia*, 17 How. 478 (15 L. Ed. 181).

Grayson v. *Virginia*, 3 Dal. 320 (1 L. Ed. 619).
Penn. v. *Wheeling, etc., Bridge Co.*, 12 How. 518 (14 L. Ed. 249).

Virginia asserts a claim for money against West Virginia; with reference to a part thereof, she asserts it as trustee; with reference to another part she asserts it in her own right. These claims are derived from different sources. It seems utterly irreconcilable, with the principles of justice, that she should be permitted to uphold this demand upon any other doctrines than those which obtain in a court of equity in cases of like character when asserted by the individual citizen. The application of any other principle would involve every controversy between states in the mazes of uncertainty and doubt; and all interstate communication involving transactions resulting in litigation, in the utmost confusion and capriciousness. Virginia cannot enter this Court and invoke any other doctrines than those which prevail in cases of common right as recognized by courts of equity. This Court will not embarrass itself by settling this controversy upon any other grounds or by invoking any other considerations. It is simply a contest between two litigants in a court of equity, whose conduct must conform to its exaction and be measured and determined by its principles.

We here call the Court's attention to that part of the argument made by the late Honorable John G. Carlisle, upon the demurrer to the bill which relates to its multifariousness, and for the convenience of the Court we here copy it:

Mr. Carlisle's Argument.

"We confidently submit that the outline of the bill heretofore given and the exhibits made part of it show conclusively that it is multifarious, and that the demurrer ought to be sustained on that ground, if any good cause of action is shown over which this court has jurisdiction.

"Virginia suing in her own right upon a separate and independent cause of action alleged to belong exclusively to her is not the same party as Virginia suing as trustee upon a different cause of action for the use and benefit of others who have no interest in her claim.

Moreover, the state could not sue in equity in her own right in one bill, upon two causes of action so entirely separate and distinct from each other as the claim for money and property alleged to have been delivered to the defendant under the acts of the legislature, and the claim founded upon the compact for the defendant's just proportion of the old public debt, even if she had paid that debt and was entitled to contribution. The foundations of the two causes of action are wholly different, and they are of a wholly different nature and require different judgments or decrees. They involve different questions of law and fact, and a defense which would be good against one would be wholly inapplicable to the other."

"'Multifariousness,' says Foster, 'consists in the joinder of two or more distinct and unconnected grounds for equitable relief, each of which might be the foundation for a separate bill. This may occur in three ways—by misjoinder of plaintiffs; by misjoinder of defendants, and by misjoinder of grounds for equitable relief held by and against the same parties.'

"Foster, Fed Prac., sec. 71; Calvert on Parties, Book I, ch. VII.

"Story says:

"'By multifariousness in a bill is meant the improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting in one bill of several matters perfectly distinct and unconnected, against one defendant, or the demand of several of a distinct and independent nature against several defendants in the same bill.'

"Story's Equity Pl., sec. 271.

"Again, it is stated by Story (section 533):

"'The result of the principles to be extracted from the cases on this subject seems to be that where there is a common liability and a common interest, a common liability in the defendants, and a common interest in the plaintiffs, different claims to property, at least if the subjects are such as may without inconvenience be joined, may be united in one and the same suit.'

"In Daniel's Chancery Practice, page 335, it is said:

> "'It may be that the plaintiffs and defendants are parties to the whole of the transactions which form the subject of the suit and nevertheless those transactions may be so dissimilar that the court will not allow them to be joined together, but will require distinct record.'

"In *Brown* v. *Guarantee Trust Co.* (128 U. S. 404) this Court said:

> "'To support the objection of multifariousness because the bill contains different causes of suit against the same person, two things must occur: first, the ground of suit must be different; second, each ground must be sufficient as stated to sustain a bill. *Bedsole* v. *Monroe*, 5 Iredell Eq. 313; *Larkins* v. *Biddle*, 21 Ala. 252; *Nail* v. *Mobley*, 9 Ga. 278; *Robinson* v. *Cross*, 22 Conn. 171.'

"See also *Shields* v. *Thomas*, 59 U. S. 253 (18 How.).

"In *Walker* v. *Powers*, 104 U. S. 245, a case analogous to the present, there was a misjoinder of plaintiffs and a misjoinder of causes of action. The opinion was delivered by Mr. Justice Miller, and the case of *Emals* v. *Emals*, 14 McArthur (N. J. Eq.) 114, and *Sawyer* v. *Noble*, 55 Me. 273, were cited and approved.

"See also *Dial* v. *Reynolds*, 96 U. S. 340.

"*Doggett, etc.*, v. *Florida R. R. Co.*, 99 U. S. 72.

"In *Salvidge* v. *Hyde*, Jac. 151 (5 Mad. 158), the vice-chancellor said:

> "'In order to determine whether a suit is multifarious, or, in other words, contains distinct matter, the inquiry is not, as this defendant supposes, whether each defendant is connected with every branch of the case, but whether the plaintiff's bill seeks relief in respect of matters which are, in their nature, separate and distinct.'

"In *Church* v. *Citizens' Street Railway Company*, 78 Fed. 529, the court said:

> "'Multifariousness consists in stating against the same party two or more independent causes of action in the same bill; or it may consist in stating one or

> more causes of action against a portion of the defendants and another cause of action against another portion of the defendants.'

"In that action the plaintiffs, who had purchased stock in a corporation, attempted to secure relief for themselves in their own right on one cause of action, and also to secure relief against the same defendants for themselves and all other stockholders on another cause of action. The court held the bill multifarious.

"*Zeigler* v. *Lake City Elevated R. R. Co.*, 76 Fed. 662.

"*First National Bank* v. *Sioux City*, 75 Fed. 154.

"*Price, etc.*, v. *Coleman*, 21 Fed. 557, opinion by J. Grey.

"*Central Bank* v. *Fitzgerald et al.*, 94 Fed. 16.

"*Lewarne* v. *Mexican Internal Imp. Co.*, 38 Fed. 629.

"*Aetna Insurance Co.* v. *Smith*, 73 Fed. 318.

"In *Metropolitan Trust Co.* v. *Columbus & Hocking Ry. Co.*, 93 Fed. 689, Judge Taft said:

> "'It is also true that a cause of action in favor of one in his own right is as distinct from a cause of action in favor of the same person as trustee as it is from that of a different person. And therefore that a defendant against whom a trustee attempted to unite in the same bill with a cause of action asserted by him as trustee a wholly distinct cause of action in his individual right might object on the ground of multifariousness. In the case before us the defendant railway company might therefore be heard to urge this defect in the bill, because it asks for an enforcement of two different liens held in different rights.'

"But the court held that the objection to the bill for multifariousness could not be taken by Zohorst and the Second National Bank, 'for,' said the court 'as to that issue made by the complainant as trustee the right is the same.' And again the court said: (p. 691):

> "'Upon that issue the complainant as trustee and in its own right has precisely the same interest. And the union of the two causes of action does not embarrass

> Zohorst or the bank in the slightest; for as to them, the causes of action raised but one narrow question.'

"The difference between that case and the case at bar is obvious at a glance. In the case at bar the bill alleges two entirely separate and distinct causes of action arising out of two unconnected transactions, in one of which it alleges an interest in the plaintiff state, and in the other an interest as trustee, and thus presents two distinct series of issues to be investigated and decided. And, besides, it is perfectly clear that the State of Virginia has not the same interest in the cause of action alleged in her own right and in the one asserted as trustee; nor can the State of West Virginia make the same defense to both.

"In *Hall* v. *Fisher*, 20 Barb. (N. Y.), the plaintiff sued in its own name and also as administrator, alleging that he and his intestate were during the lifetime of the latter tenants in common, the intestate owning three-fourths and the plaintiff owning one-fourth of a lot of land; and his claim was that the defendants should account to him individually and to him as administrator for their share of rent and profits. The court held that the cause of action should have been separately stated. It said:

> "'How else can the defendant, if he has a defense of a different character as to each co-tenant, avail himself of such defense? He might in this case have one defense against the plaintiff as to his personal claim and another defense as to the interest whose rights he claims to represent as administrator. It cannot be regular for a plaintiff to include in the same action claims in his individual right and as administrator of another. It was never allowed at common law and is not sanctioned or allowed by any statute, not even the Code.'

"It is evident that the State of Virginia, having been by contract with her creditors discharged from all liability for the one-third of the old debt represented by the certificates, has no pecuniary interest whatever in the alleged claim against West Virginia for which she sues as trustee; and it will not be contended, we presume, that the owners of the unfunded one-third of the ante-war debt, whether it is represented by the canceled bonds held in trust by the

state or by the certificates, have any interest whatever in the claim of Virginia for money and property alleged to have been transferred to West Virginia under the acts of 1863. The unfunded one-third of the old bonds formerly held by the Virginia Commissioners of the Sinking Fund and the Literary Fund is in the same position as that belonging to the other creditors. Virginia has solemnly and repeatedly declared that she was not liable for the one-third, has refused to pay it or any part of it, and has canceled the bonds and issued to the Sinking Fund and Literary Fund the same kind of certificates issued to other creditors. The fact that the commissioners of the Sinking Fund and the Literary Fund are agencies of the state, would simply show that the state owed that part of the debt to herself. But the state has released herself from the obligation for one-third of the bonds originally held by these funds and has thereby withdrawn from them that proportion of the sum which she originally intended they should have. Unless, therefore, the two funds, as agencies of the state, now have a valid claim against West Virginia, their demands have been fully satisfied and extinguished. In any aspect, the claim is asserted by Virginia to recover from West Virginia for contribution on account of money which she (Virginia) has never paid.

"The claim against West Virginia under the compact cannot be divided into separate parts, so that Virginia can sue in her own right or for the commissioners of the Sinking Fund and the Literary Fund for the part represented by the certificates held by those two funds, and also sue as trustee for another part held by different parties. The claim is an entirety and the amount is to be ascertained *in solido*, in the manner provided by the compact, and is to be paid in the manner provided by the compact. Whatever the amount might be, it was all payable to Virginia herself, and not to the bondholders, who never had a cause of action against West Virginia, even if the state had been suable; and they cannot create a cause of action for their own benefit, in the name of the state, by the process of having Virginia transfer the indebtedness, or a part of it, to them by the enactment of statutes or the issue of certificates or otherwise, and then transferring it back to the state as trustee. But whether the

state is, or could be, legally a trustee, or whether, if she be legally a trustee, she could maintain an action in this cause in that capacity, makes no difference in the decision of the question of multifariousness, for the bill and exhibits show that for nearly, if not all, of the unfunded one-third of the debt she actually sues as trustee in this action and not otherwise; and that is sufficient to sustain the contention that there is a misjoinder of parties and a misjoinder of causes of action. Even, therefore, if it should be held that the state is suing in her own right for a judgment and recovery of the amount represented by the certificates held by the two funds and as trustee for the holders of the other certificates, it would furnish another substantial reason for holding the bill to be multifarious. Besides, it would show that there is a conflict between the personal interest of the trustee and the interests of the *cestuis que trust*, for whatever the trustee might receive in her own right in the distribution of the sum recovered would, to that extent, diminish the portions of the other beneficiaries; and it is a well established rule that plaintiffs whose interests are conflicting cannot unite in the same action—a rule which ought to be rigidly enforced, especially when one of the plaintiffs sues as trustee for the others, and consequently controls the entire proceeding.

"*Walker* v. *Powers*, 104 U. S. 245."

The argument of Mr. Carlisle, from which the foregoing extract is taken, is filed in this Court in a printed brief, and will be found also in West Va. Compilation, Vol. I., pp. 157-219.

It will be seen, therefore from the positive statements of the bill, that the plaintiff has sought to unite and assert in this suit at least four different demands; three whereof are claimed to be due to her in her own right, in which her creditors have no interest whatever, and as to which there must necessarily be a separate and distinct defense made by the defendant—a claim for which a decree must be entered, if entered at all, in favor of the Commonwealth of Virginia *alone*. Two of these demands asserted in her own right arise from an entirely different source from the other demand asserted in her own right, one of which is based upon statutes passed long after the adoption of the ordinance of Virginia and the constitution of West Virginia,

and in which the measure of relief to which Virginia is entitled, if she is entitled to any, must be determined upon very different grounds and considerations from those which must determine the liability of West Virginia, if any exists, with reference to the claim by Virginia asserted in the bill as trustee for her creditors; and the other of which claims asserted by Virginia in her own right, being that for contribution, is based upon purely equitable grounds, not necessarily predicated upon the right of accounting, and is of course a subject in which the creditors have not a particle of interest.

The Plaintiff's Suit Barred by Laches.

It seems to us that, under the circumstances of this case, a final and complete answer to the claim asserted by Virginia in her representative capacity as trustee, is her laches, or that of those whom she represents as a nominal plaintiff in this suit, especially as to that part of the bill which seeks an accounting as to the unfunded debt, and as to which Virginia herself disclaims all liability.

West Virginia was admitted into the Union on June 20, 1863, and any liability which existed against her with reference to any part of said debt existed and could have been asserted against her at that time. Instead of taking any steps looking to the settlement of West Virginia's just or equitable proportion of said debt, if any existed, Virginia in 1866, three years after West Virginia's admission into the Union, brought a suit in equity in this Court touching the boundaries of the two states, which terminated March 6, 1871, when the case was decided in favor of West Virginia.

On March 30, 1871, just twenty-four days after the decision of the case just mentioned, Virginia passed an act arbitrarily making a division of the debt herself, without consulting West Virginia, on the basis of two-thirds to herself and one-third to West Virginia, and without any authority issued the so-called West Virginia certificates for such one-third to the holders of the original debt, who, so far as the record in this case discloses, are still the owners of said certificates, Virginia canceling the bonds representing the old debt which had been surrendered to her by the holders thereof, and holding said bonds, as

alleged by her, in trust for the owners of said certificates. In 1879, with these certificates still outstanding, and so far as the record discloses still in the hands of the former owners of the bonds evidencing the original debt, Virginia passed another act relating to the whole debt, refunding the entire debt under the provisions of the act of 1879, and as to so much of the original debt as had not been funded under the act of March 30, 1871, Virginia under this act of 1879 issued certificates for the one-third of such unfunded debt, which certificates were to be taken and held as a full and absolute release of the State of Virginia from all liability on account of such certificates.

This act of 1879 further provided that Virginia would

> *"negotiate, or aid the creditors holding all such certificates issued under this act or previous acts in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia."*

It will be seen from the foregoing that with this last act of 1879, and the other two acts passed subsequently, namely, the acts of 1882 and 1892, the provisions of which funded the entire debt, the holders of which so far as the record discloses were the holders of all the certificates, Virginia simply assumed to negotiate with West Virginia to secure the payment of these certificates by West Virginia to the holders thereof. The bill itself makes no claim for Virginia to any part of the unfunded debt represented by these certificates, held by third parties, but Virginia has simply constituted herself the holder thereof *in trust* for the creditors, the real claimants as to the part of the debt represented by these certificates, the owners and holders of said certificates being the owners and holders of the bonds evidencing the original debt of the State of Virginia created before and existing on January 1, 1861. An examination of the certificates issued under the acts of March 30, 1871 (R., pp. 83, 84), March 20, 1879 (R., p. 36), and February 14, 1882 (R., pp. 43-4), specifically designates and identifies the bond or bonds representing the former debt, and each certificate shows which of the original bonds was surrendered, the amount thereof assumed by Virginia, and the balance thereof not assumed by Virginia, but for the payment of which the holder of the

original bond, being the holder of the certificate, was referred by Virginia to West Virginia. Therefore, every certificate issued by Virginia was surrendered to the owner of the bond, and when Virginia funded any bond upon the two-thirds basis assumed by her she delivered to the holder of the old bond in lieu thereof a new bond issued by Virginia for two-thirds of the original debt and a certificate for the other one-third; or, in the language of the certificate, the balance of such bond, designating the amount, "to be accounted for by West Virginia." So, at the time of the delivery of these certificates and new bonds under these various acts, the holder of the original debt was then also the holder of the new bond for two-thirds of the original debt and was at the same time the holder of the certificate representing the other one-third. Such owner, so far as the record shows, is still the holder of the certificates, and was such holder at the time the acts of 1871, 1879, 1882 and 1892 were enacted and put into operation.

The record fails to disclose any change of ownership of these certificates. If such change of ownership did take place by sale or transfer to other parties, there is no allegation to that effect, nor is there any proof showing such sale or transfer.

We say that the owners and holders of the original bonds evidencing the debt of Virginia created prior to and existing on January 1, 1861, are still the owners and holders of the new bonds issued by Virginia and the certificates for the residue, upon the well recognized principle of law that a fact once shown to exist is presumed to continue to exist until the contrary is shown.

1 Greenl. Ev., §41.

McKenzie v. *Stevenson*, 19 Ala. 691.

In *St. Louis A. & T. H. R. Co.* v. *Eggman*, 161 Ill. 155 (43 N. E. 620), objection was made to the introduction in evidence of an ordinance, on the ground that it was not shown to be in force at the time of the accident in question. The court, overruling this objection, says:

> "It having been shown that the ordinances were passed prior to the day on which deceased was killed, the presumption is that they were still in force on that date; for when a fact or state of things is once shown

> to exist the presumption is that the fact or state of things continues to exist as before until the contrary is shown, or until a different presumption is raised."

The authorities in support of this proposition are numerous, and there are none to the contrary that we have been able to discover.

Could the holders and owners of these certificates retain them for a period of thirty-five years, and then arrange with Virginia to bring suit for their payment in her name against West Virginia and obtain a decree, even if such a suit was authorized under the constitution of the United States? Certainly not.

Laches is peculiarly a doctrine of equity. Mr. Pomeroy, in the third edition of his great work, Vol. 1, §418, discussing the maxim, "Equity aids the vigilant, not those who slumber on their rights," says:

> "The principle embodied in this maxim, the original form of which is, *Vigilantibus non dormientibus aequitas subvenit*, operates throughout the entire remedial portion of equity jurisprudence, but rather as furnishing a most important rule controlling and restraining the courts in the administration of all kinds of reliefs, than as being the source of any particular and distinctive doctrines of the jurisprudence. Indeed in some of its applications it may properly be regarded as a special form of the yet more general principle, He who seeks equity must do equity. The principle thus used as a practical rule controlling and restricting the award of reliefs is designed to promote diligence on the part of suitors, to discourage laches by making it a bar to relief, and to prevent the enforcement of stale demands of all kinds, wholly independent of any statutory period of limitation. It is invoked for this purpose in suits for injunction, suits to obtain remedy against fraud, and in all classes of cases, except perhaps those brought to enforce a trust against an express trustee."

Discussing the *rationale* of the doctrine of laches, a recent work declares:

> "The rule that the enforcement of a right may be barred by laches is an application of the maxim *vigi-*

lantibus, non dormientibus, subvenit leges. Thus it has been declared with general approval that only conscience, good faith and reasonable diligence can call a court of equity into activity, and that stale demands will not be aided where the party has slept upon his rights and acquiesced for a great length of time. The doctrine is based on grounds of public policy and its aim is the discouragement, for the peace and repose of society, of stale and antiquated demands."

18 Am. & Eng. Enc. L. 97, citing the authorities, both English and American.

Another recent and reputable work says:

"Long delay in asserting a demand may defeat the remedy by raising a presumption of payment or satisfaction. Delay is always a suspicious circumstance, and if prolonged may create a presumption against the validity of a right which might otherwise be deemed established."

16 Cyc. 160.

In *Piatt* v. *Vattier,* 9 Pet. (34 U. S.) 405, Mr. Justice Story, in refusing relief in that case, and especially in the opinion at page 416, says:

"And we are of opinion that the lapse of time is, upon the principles of a court of equity, a clear bar to the present suit independently of the statute. There has been a clear adverse possession of thirty years without the acknowledgment of any equity or trust estate in Bartle; and no circumstances are stated in the bill or shown in the evidence which overcome the decisive influence of such an adverse possession. The established doctrine—or, as Lord Redesdale phrased it, in *Hovenden* v. *Annesley,* 2 Sch. & Lef. 637, 638, 'the law of courts of equity'—from its being a rule adopted by those courts independently of any positive legislative limitations, is that it will not entertain stale demands. Lord Camden, in *Smith* v. *Clay,* 3 Brown's Ch. Rep. 640, note, stated it in a very pointed manner. 'A court of equity,' said he 'which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his

> rights or acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence. Where these are wanting, the court is passive and does nothing; laches and neglect are always discountenanced, and therefore from the beginning of this jurisdiction there was always a limitation of suit in this court.' The same doctrine has been repeatedly recognized in the British courts, as will abundantly appear from the cases already cited, as well as from the great case of *Cholmondeley* v. *Clinton*, 2 Jac. & Walk. 1. It has also repeatedly received the sanction of the American courts, and was largely discussed in *Kane* v. *Bloodgood*, 7 Johns. Ch. Rep. 93, and *Decouche* v. *Saratiere*, 3 Johns. Ch. Rep. 190. And it has been acted on in the fullest manner by this court, especially in the cases of *Prevost* v. *Gratz*, 6 Wheat. 481 (5 Cond. Rep. 142); *Hughes* v. *Edwards*, 9 Wheat. 489 (5 Cond. 648); *Willison* v. *Matthews*, 3 Peters 44, and *Miller* v. *M'Intire*, 6 Peters 61, 66."

In *Goddin* v. *Kimmel*, 99 U. S. 201, which was a suit brought by the creditors of a decedent for the recovery of real estate and personal property, and seeking to have the same subjected to the payment of the debts of the decedent, the syllabus of the case is as follows:

> "In cases of concurrent jurisdiction, courts of equity consider themselves bound by the statutes of limitation which govern courts of law; in many cases they act upon the analogy of the limitations at law; but even where there is no such statute governing the case, a defense founded upon the lapse of time and the staleness of the claim is available in equity where there has been gross laches in prosecuting the claim, or long acquiescence in the assertion of adverse rights."

The court in its opinion in this case says:

> "There is a defense peculiar to courts of equity founded on lapse of time and the staleness of the claim where no statute of limitations governs the case. Such courts in such cases often act upon their own inherent doctrine of discouraging for the peace of society antiquated demands by refusing to interfere where there has been gross laches in prosecuting the claim, or long

acquiescence in the assertion of adverse rights. *Badger* v. *Badger*, 2 Cliff. 154; *Roberts* v. *Tanstall*, 4 Hare 269; *Stearns* v. *Page*, 7 How. 819."

The doctrine here announced is supported by an unbroken line of authorities throughout the various state courts of the Union, among which appear those of Virginia and West Virginia.

In *Hatcher* v. *Hall*, 77 Va. 573, we find in point 1 of the syllabus the following as a statement of the law regarding laches:

> "It is an inherent doctrine of courts of equity to refuse relief where there has been gross laches in prosecuting rights or long and unreasonable acquiescence in the assertion of adverse rights. This doctrine is founded on considerations of natural justice and public policy, and is always firmly enforced, especially where the immediate parties to the transaction are dead."

It will be observed that the doctrine here announced has its foundation in want of diligence and the policy of discouraging by courts of equity the assertion of stale demands. It is especially applicable, of course, where all the parties to the transaction are dead. The reason of this is the difficulty of establishing a claim to the satisfaction of the court in the absence of satisfactory sources as to evidence. The doctrine is enforced in other cases where the parties may all be living. Here, the parties claiming the right never sought the aid of Virginia to bring this suit against West Virginia in her own name until after the lapse of about thirty-five years. Neither did the creditors apply direct to West Virginia for payment. Those persons who were familiar with the territory of the two states at the time of the formation of the new state, who knew its value as well as the value of the personal estate in both states in 1863 and in 1871, also those who knew the extent of the loss suffered by both states as an incident of the civil war, the officers of the government who were thoroughly cognizant of the situation in this regard as to both states, are all dead; in view of which the obtainment of evidence necessary to fix an equitable basis upon which to determine West Virginia's liability, if any existed, is no longer accessible. Furthermore, the witnesses necessary to fix the value or values of the property alleged to have been transferred by Virginia to West Virginia are likewise dead, and the Court cannot obtain any

reliable or satisfactory evidence as to what property was turned over by Virginia to West Virginia, to recover which this suit is in part brought; nor can the evidence as to its value be obtained.

The laches of these creditors suing through Virginia, as well as that imputable to Virginia herself, is absolutely inexcusable. No legal excuse for such laches is offered in the bill or in any manner attempted to be shown. It seems to us that this delay to assert these claims in the name of Virginia, both those demanded in her representative capacity and those in her own right, has been so long continued and is so inexcusably gross as to afford evidence of the injustice of the claim, if not of its actual abandonment on the part of the State of Virginia as well as the creditors.

It is well settled that delay in the assertion of a right, when it does not operate as a statutory bar, may operate in equity as evidence of assent, acquiescence or waiver unless satisfactorily explained.

Kelly v. *McQuinn*, 42 W. Va. 774.
Pusey v. *Gardner*, 21 W. Va. 469.
Bryant v. *Glover*, 42 W. Va. 10.
Nelson v. *Carrington*, 4 Munf. 332.
Coles v. *Ballard*, 78 Va. 139-147.
Eubank v. *Barnes*, 93 Va. 153.

In *Jones* v. *Perkins*, 76 Fed. 82, the second point of the syllabus is as follows:

> "To support the defense of laches it need not be shown that defendant has been injured by the delay."

In the course of the opinion, we find the following:

> "It is contended on behalf of the complainant in the case at bar that it must appear to the court, where laches is urged as a ground of defense, that detriment has come to defendant from the delay; that his position has been changed to his injury, or that he has been deprived of evidence which an earlier prosecution of the suit would have enabled him to obtain. This position is not tenable. There are cases where a longer delay than is here complained of has been excused by circumstances, where a court could clearly say that it caused no prejudice to the defendant, but these are exceptions.

> The doctrine of laches as a defense presumes that the lapse of time is constantly destroying the evidence of rights, and that the death of witnesses and the loss of documentary evidence is its ordinary consequence."

From the case of *Speidell* v. *Henrici*, 15 Fed. 753, the decree in which was affirmed in 100 U. S. 377, we take the following:

> "A suitor in equity is required to be 'prompt, eager, and ready' in the pursuit of his rights. Diligence is an essential condition of equitable relief, and unexplained negligence is never encouraged. 'Nothing can call forth a court of equity into activity but conscience, good faith and reasonable diligence. When these are wanting the court is passive and does nothing. Laches and negligence are always discountenanced, and, therefore, from the beginning of this jurisdiction, there was always a limitation of suits in this court.' *Smith* v. *Clay*, Amb. 645, quoted with approval in *Brown* v. *County of B. Vista*, 95 U. S. 160.
>
> "So, also, says Mr. Justice Swayne in the case last referred to: 'The law of laches, like the principle of the limitation of actions, was dictated by experience, and is founded in a salutary policy. The lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and other means of proof. The rule which gives it the effect prescribed is necessary to the peace, repose, and welfare of society. A departure from it would open an inlet to the evils intended to be excluded.'
>
> "And again: 'Courts of equity refuse to interfere after a considerable lapse of time, for considerations of public policy, from the difficulty of doing entire justice, when the original transactions have become obscure by time, and the evidence may be lost, and from the consciousness that the repose of titles and the security of property are mainly promoted by a full enforcement of the maxim, *vigilantibus et non dormientibus jura subserviunt*.' 1 Story Eq. Jur., §529."

May the doctrine of laches be imputed to a state? We find in the case of *Atty. Gen.* v. *Central R. Co.*, 68 N. J. Eq. 198 (59 Atl. 348),

in the opinion at page 360 of the reporter, the Court applying the doctrine of laches to the demand of a state, using this language:

> "The equitable rules relating to the effect of laches and acquiescence are enforced against the state when it is a suitor for equitable relief, as well as against private suitors. *Atty. Gen.* v. *Del. & B. B. R. Co.*, 27 N. J. Eq. 1, and cases cited at page 27."

So we find in *In re Hepburn*, 3 Bland (Md.) 95, the Court holding that laches is available as a defense against the state.

There are a number of cases decided by this Court holding that laches is not imputable to the government: *Armstrong* v. *Morrill*, 14 Wall. 120; *Lindsey* v. *Miller*, 6 Pet. 666; *U. S.* v. *Dalles Military Road Co.*, 140 U. S. 599; *U. S.* v. *Thompson*, 98 U. S. 486; *Redfoed* v. *Parts*, 132 U. S. 239. Yet this Court holds that the government may suffer loss through the negligence of its officers. If it comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the same laws that govern individuals there.

> *Cook* v. *U. S.*, 91 U. S. 389. See also *French Republic* v. *Springs Co.*, 191 U. S. 427, 438.

So, too, when the government is only a formal party, and the suit is brought in its name to enforce the rights of individuals, as in the case at bar, and no interest of the government is involved, the defense of laches and limitation will be sustained as though the government was out of the case and the litigation was carried on in the name, as in fact, for the benefit of private parties.

> *U. S.* v. *Navigation Co.*, 142 U. S. 510, 538.
> *U. S.* v. *Beebe*, 127 U. S. 338.
> *Moran* v. *Horsky*, 178 U. S. 205, 214.
> *U. S.* v. *Am. Bell Tel. Co.*, 167 U. S. 224, 265.
> *McNutt* v. *Bland*, 2 How. 9.

So where the government is suing for the use and benefit of individuals or for the prosecution of private and proprietary instead of public or governmental rights, it is clear that it is not entitled to the exemption of *nullum tempus* and that the ordinary rule of laches applies in full force.

French Republic v. *Springs Co.*, 191 U. S. 427, 438.
Maryland v. *Baldwin*, 112 U. S. 490.
Curtner v. *U. S.*, 149 U. S. 662.
U. S. v. *Beebe*, 127 U. S. 338.
U. S. v. *Navigation Co.*, 142 U. S. 510, 538.

So it is held in *Miller* v. *State, use, etc.*, 38 Ala. 600, that while the statute of limitations does not apply to actions by the state, still it does extend to a suit brought in the name of the state for the use of a particular township to recover lands which constitute a part of a certain section.

In view of the well settled doctrine of courts of equity, and which this Court always applies in proper cases, that stale demands are not countenanced and that gross neglect or inexcusable delay in bringing suit to enforce an equitable claim will constitute a bar even to an otherwise meritorious demand, there can be no doubt that Virginia can not maintain this suit so far as it seeks to establish a claim against West Virginia with reference to the unfunded debt held by third parties. This ground of defense is based upon the fact that Virginia is not asserting this claim in her own right but only in her representative capacity as trustee, and that if a decree as to this part of the case can be obtained no part of it can enure to her benefit. Indeed, she asserts this in her bill, alleging that whatever is obtained in this suit is payable to the holders of these certificates. This is none other than an individual claim, and not a case involving the rights of Virginia, either pecuniary or otherwise. In fact, she declined to bring any suit except at the special request of the owners and holders of these certificates. There is no reason or excuse for this delay of thirty-five years on the part of the owners of these certificates in exerting an effort to have West Virginia pay it. It does not answer the charge of laches to say that the holders of these certificates could maintain no suit. They could not maintain a suit against Virginia. They could have been diligent in asking West Virginia to pay, and in case of refusal, in arranging to have Virginia bring this suit long before it was brought with reference to this unfunded debt, the payment of which is to enure to them. But we deny the right of Virginia to sue for the creditors. They offer no excuse for this delay.

If West Virginia was liable for the payment of any part of said public debt, she has been liable since her admission into the Union, June 20, 1863, forty-three years before the bringing of this suit.

Why this long delay? The only just inference is that they did not regard these claims as constituting a valid demand against West Virginia. Indeed, they evidently knew that they could not be asserted against West Virginia; and the institution of this suit on the account of the holders of these certificates was a mere speculative matter in which Virginia would have no part except at their request and with the understanding that she should incur no costs or expenses in such suit. This long delay certainly affords conclusive evidence against the justice of the demand made by these holders through and in the name of Virginia as plaintiff against this defendant, and was evidently undertaken for the purpose, if possible, of constraining West Virginia by means of this suit to concede their inequitable demand and settle with them for these certificates, notwithstanding their lack of inherent justice and right, and in this way possibly create a demand for these certificates of a fictitious character, and speculate upon them in the markets.

No other construction can be placed upon the long delay of the holders of these certificates in taking steps to bring suit. Virginia could have brought this suit long before she did if she had a right to maintain it, with the same show of right as she could do in 1906.

We therefore confidently insist that, if there were no other ground of defense in this case as to the certificates issued in 1871, that of the laches of the holders thereof is an ample and complete defense.

PART II.

On Exceptions of the Plaintiff and the Defendant to the Report of the Special Master.

In this part of the brief for West Virginia we will consider the facts of the case as shown by the record in connection with the exceptions filed by the plaintiff and the defendant to the report of Hon. Charles E. Littlefield, the Special Master. Questions of law will be argued incidently only. For convenience, we will take up the several paragraphs of the decree of reference in the order they are set out in the report of the Special Master, who will hereafter be referred to as the "Master."

PARAGRAPH I. OF THE DECREE.

> "1. *The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specially how and in what form the same was evidenced, by what authority of law and for what purpose the same was created, and the dates and nature of the bonds or other evidence of said indebtedness.*"

No exceptions were filed to the report of the Master under this paragraph by West Virginia. Virginia did file an exception to the finding of the Master as follows:

> " For errors of law apparent in the record, complainant respectfully excepts to the statements contained in the Master's report in regard to the Literary Fund, save and except so far as they show the creation, existence, and amount of such fund, and especially does complainant except to the Master's conclusions that the Board of the Literary Fund (a corporation) had no right to sue and be sued and that the fund was the unconditional property of the State and subject to its control and

> ownership, while the said fund was under the law held and controlled by the board and the State in trust for educational purposes alone. See Master's Report, pp. 6 to 30, and acts in Appendix to Record, pp. 205-208."

There is no dispute of fact between the parties as to the report of the Master under this paragraph. The only dispute refers to a question of law. Virginia contended originally that the three items known as the Sinking Fund of $1,369,243.92, the Board of Public Works Fund of $150,895.00 and the Literary Fund of $1,116,843.35 were parts of the public debt of the Commonwealth of Virginia on the first day of January, 1861. The Master found against her contentions. Virginia excepted only to the report of the Master in his conclusion as to the Literary Fund, thereby conceding that the other two funds mentioned were no part of the public debt of Virginia. The Master argues the question at some length in his report, and decided it as he does therein on the ground that Virginia on the first day of January, 1861, was the absolute owner of the bonds in the Literary Fund, as well as those in the Sinking Fund, and that they were not outstanding in the hands of any one who could assert them against the state. In other words, the state could not owe a debt evidenced by said bonds and at the same time be the absolute owner of such bonds with power to do with them as she pleased. It seems to be clearly shown that these funds were simply methods of bookkeeping for the convenience of the state in the administration of her fiscal affairs. It was immaterial whether these funds were fixed and defined by the constitution or by statute. The fact remains that it was absolutely within the power of the state at any time she so willed to destroy these evidences of debt and declare the accounts closed. The funds that Virginia paid for these evidences of debt had been raised by some form of taxation from the people and property of the united state, and in law there can be no reasonable dispute on the question whether or not these bonds had been legally paid and canceled. The officers of the Board of the Literary Fund were by the law the chief executive officers of Virginia. No individuals had any rights or powers in connection therewith. We do not deem it improper to say at this point that the counsel representing Virginia in the argument before the

Master did not really deny the position here taken, and we think that the Master could truthfully have said that his conclusions were conceded by the Attorney General then in office and representing the State of Virginia.

PARAGRAPH II. OF DECREE.

"2. The extent and assessed valuation of the territory of Virginia and of West Virginia, June 20, 1863, and the population thereof, with and without slaves, separately."

There is no dispute as to any question of fact under this paragraph and no exceptions to the findings of the Master by either the plaintiff or the defendant.

We respectfully call the Court's attention to the alternative findings under this paragraph, which were made at the request of the defendant. (Master's Rep. pp. 37-8).

PARAGRAPH III. OF DECREE.

"3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

The plaintiff and the defendant have each filed numerous exceptions to the findings of the Master under this paragraph. For convenience, we will first take up the exceptions filed by West Virginia to the conclusions of the Master under this paragraph, and then we will discuss the exceptions of Virginia thereto.

Exceptions of West Virginia.

Kanawha River Turnpike and Kanawha River Improvements.

Items 10, 11, 12, 13 and 14 (Record, p. 373) were for the following sums:

Kanawha Turnpike	$152,130.54
Kanawha Turnpike	2,593.92
Kanawha Turnpike	7,189.65
Kanawha Turnpike	80,955.28
Kanawha River Improvements	59,572.36
Total	$302,902.15

These were found to be expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia. There is no real dispute as to the facts in relation to this sum, as understood by us.

There is one matter of fact in relation to the alternative finding of the Master, found at the bottom of page 70 of his report, to which we will refer later.

We differ from the Master and except to his findings on the ground that the Commonwealth of Virginia, after expending these sums of money for the purposes set out on the Kanawha River Improvements and the construction of the Kanawha Turnpike, did by her act of March 16, 1832 (App. p. 86), *sell and transfer to a private corporation* the turnpike and the river on which, and for the improvement of which, this money was expended; and the turnpike and the river so far as travel and navigation thereon were concerned, became the private property of this private corporation by reason of such sale and transfer by the Commonwealth, and for a period of more than twenty-five years prior to the first day of January, 1861, the only interest that the State of Virginia had in the subject matter of such expenditure was that of a stockholder of this private corporation. We do not agree with the argument of the Master and of Virginia that it was immaterial what the commonwealth did before the first day of January, 1861, with the subject created by such expenditure. The principle would be the same if the commonwealth had sold the turnpike for a money consideration and had made a large profit thereon. She could not have more effectually dispossessed herself of the power and control thereof than she did when she sold this turnpike and these river improvements for ten thousand shares of stock in the private corporation, to which she transferred this property. The title to such

turnpike and to such improvements still remained in the James River and Kanawha Company, *a private corporation.*

That this corporation was a private one is conclusively determined by the decision of the Supreme Court of Virginia in the case of *James River and Kanawha Company* v. *Early,* 13 Gratt. 541. This decision was rendered in 1856, and without any thought or imaginary possibility of any future difficulty in relation to this matter. The Supreme Court of Virginia specifically held in that case that the fact, that the state owned a large interest in the stock of the Company, did not in the slightest degree release it from liability for neglect of its officers, and that the rights of the state therein were no more than those of any other stockholder.

Conceding for the purpose of this argument only, that the original expenditure made by the commonwealth through the agency of the James River Company, was an expenditure within the meaning of the decree and the ordinance, we submit that this action of Virginia in selling this turnpike and these improvements should eliminate this whole item from this account. Can it be presumed for a moment that if the commonwealth, after paying $10,000 for the land on which the asylum at Weston was afterwards built, had decided not to build thereon and had sold this land for either money or stock in some private corporation or for other thing of value, she then could have charged under this head to West Virginia as an expenditure the amount she had originally paid for such piece of land? Let us take another example: If the commonwealth had sold, prior to the first day of January, 1861, the Covington and Ohio Railroad, so far as it had been completed, for money or other thing of value, could the sum exepended thereon by Virginia have then been included in this account as a state expenditure within the present limits of West Virginia? Is it not an insult to the intelligence of the able men, including Senator Carlisle, Senator Vanwinkle, Senator Boreman, and the many other men of ability who composed the convention which passed the Ordinance of August 20, 1861, to think that they intended to include under the word "state expenditures" property which had been built, constructed or purchased by the state, and then sold before the date of the separation to an individual or private company?

In the original account filed by Virginia before the Master in this cause is the following item:

"Interest on bonds of the City of Wheeling, $15,115.64."

This item was set up by Virginia and seriously claimed as an expenditure within the limits of the State of West Virginia during the period contemplated by the ordinance, because it had been paid by the commonwealth as interest on some bonds guaranteed by her, which bonds were made by the City of Wheeling, a municipal corporation. No doubt Virginia would be now claiming this expenditure as such if the defendant had not discovered and shown to the satisfaction of the counsel of Virginia, that in the year 1866 this sum with interest had been fully and completely repaid to the State of Virginia by the City of Wheeling. Then the counsel of Virginia withdrew this item from the account. While West Virginia never admitted that a loan to a muncipal corporation was a state expenditure within the meaning of the decree or ordinance; but if Virginia desires to be consistent with her claim with reference to the Kanawha River Turnpike and Kanawha River Improvements, she should also have insisted that this amount originally loaned by the commonwealth to the city of Wheeling should be included in this account.

The James River and Kanawha Company kept the control of the Kanawha Turnpike and of the improvements on the river after the first of January, 1861, and also after the separation of the states. All that West Virginia obtained therein was by reason of the stock ownership of Virginia in this private corporation. The ownership of the property of the James River and Kanawha Company remained in the corporation, and the ownership never was invested in West Virginia at all.

By reason of the fact that the Chesapeake and Ohio railway paralleled this turnpike, all its value to the company was taken away. This happened after the Civil War, however.

Record, page 820-A, shows defendant's Exhibit "G-1." On page 11 of that exhibit it will be seen that there was expended by the State of Virginia the sum of $1,216,666.30 on the James River Canal, Blue Ridge Canal, and Kanawha Road and River, which construction work

and improvements were turned over to the James River and Kanawha Company, a private corporation, under the act of March 16, 1832, in return for 10,000 shares of stock of the par value of $100 each in said James River and Kanawha Company. It will be further seen that the State of Virginia thereafter subscribed for 20,000 shares of stock in the same company and paid the sum of $2,000,000 in money therefor. It shows the good faith of Virginia in selling these properties to the private company. It shows that she received what she believed to be the real value of these improvements in 1832. She certainly regarded this stock as a good *investment*, or she would not have paid $2,000,000 in money for 20,000 shares more of it.

In addition to this purchase of 20,000 shares of stock in this company, for which the money was paid, the same record shows that the state loaned to this company large sums of money. The state also guaranteed large amounts of the bonds of this company, which bonds the state afterwards assumed as an original proposition by the act of March 23, 1860, and they are now included in the total of the debt set up under the first paragraph of the decree in this cause. In return for assuming these bonds as an original obligation and for the loans made by the state directly to the company, she received 72,000 shares of the stock of the company.

The Master speaks (Rep., p. 42), of the construction of the provision of the West Virginia constitution and the Wheeling ordinance relating to West Virginia's assumption of a just proportion of the debt, so as to produce an equitable result. If there is any place requiring such application anywhere in this case, it surely is here. Can it be called equitable in any sense of the word to charge against West Virginia as a "state expenditure" money which the old state spent in building a turnpike, which turnpike the old state, *before the separation of the two states*, sells and receives the proceeds? It seems rather shocking to one's equitable sense to propose such a thing. It also seems rather shocking for a plaintiff to ask a court of equity, a court of conscience, to grant such relief. If this suit had been brought solely for the purpose of recovering that one series of items, would not a court of equity have dismissed the suit upon demurrer? Assuredly it would.

On page 70 of this report, under the head "Alternative Finding," the Master says: "There is nothing in the record to show whether this transfer was actually made." He meant whether the property of the James River Company, including this Kanawha Turnpike and these improvements of the Kanawha River, were ever actually transferred to the James River and Kanawha Company. The case set out above, of *James River and Kanawha Company v. Early,* 13 Gratt. 541, and the case of *Higginbotham's Executor* v. *Commonwealth,* 25 Gratt. 627, both quoted in the Master's report, the reports of the Board of Public Works, the reports of the James River Company, numerous acts of the legislature of Virginia, which are included in the appendix, pages 86 to 112, show conclusively and prove absolutely that the transfer was duly made under the provisions of the act of March 16, 1832. Moreover the Exhibit "G-1" (R., p. 820-A), agreed to by the accountants of the plaintiff and defendant, shows conclusively that the transfer was made by the State of Virginia of all the properties above mentioned to the James River and Kanawha Company according to the provisions of the said act of March 16, 1832.

Brandonville, Kingwood and Evansville Road $10,595,73; Clarksburg & Buchanan Turnpike $19,259.36; and Kingwood and West Union Turnpike $18,140.61.

These three items, which are numbered 25, 28 and 35 in the report and record, were found to be state expenditures by the Master, to which finding West Virginia excepts. It is a question of law, whether or not they shall be charged to West Virginia. It is agreed that each one of these was a turnpike company duly chartered by the commonwealth, that the commonwealth was a stockholder in each one, and that each was a private corporation and managed by a board of directors; and while in this condition the commonwealth generously appropriated the above sums, which were expended upon the property of these private corporations. The state had no more title and no more rights to the property of the corporation after such expenditure than it had before. Under the acts appropriating the money it would appear that these sums were gifts to these corporations. If these gifts had been made to individuals and they then had expended the money

within the limits of West Virginia, would it be claimed for a moment that such gifts came within the purview of the decree or ordinance? *Can any gift to a private individual or corporation be a "state expenditure"?* We think not. If Virginia had given this money to a corporation resident of Maryland, or of Virginia itself, and such corporation had chosen to expend the same on a public utility project, such as a turnpike, railroad or canal within what are now the limits of West Virginia, would it have been a "state expenditure" in the meaning of this ordinance? Clearly not.

In the first account filed by Virginia before the Master (R., p. 373, Item 17) she claimed the sum of $7,882.92, which she had paid for stock in a Maryland corporation. This Maryland corporation had built a piece of road in the southwest corner of Garrett county, Maryland, which connected with some Virginia roads at each end. These Virginia roads were built and owned by Virginia. On reflection, at the hearing before the Master, counsel of Virginia asked leave to withdraw this item, and did so. Was it not as reasonable to charge this sum to West Virginia as the one under consideration?

It must not be forgotten that not a single one of these three turnpikes, built by private corporations, were open to free travel by the public, as turnpikes now are almost universally within the United States. Every such corporation in the state then charged and collected tolls on each and every one of these roads, as well as tolls on each and every one of the navigable rivers; and some of the road companies paid good dividends on the investment of the moneys therein, as shown by the record in this cause. Can a gift by the state, however generous might have been the impulse of the giver, which simply increased the toll collecting value of the property of a private corporation, and which did not increase the state's power or rights or financial interest therein, be called a "state expenditure," any more than the purchase of stock in that private corporation by the state could be called a state expenditure? Certainly not; but this last question will be elsewhere discussed under the exceptions of Virginia to this same paragraph.

Item 55, Surveys—$60,873.19.

This item is discussed under Paragraph III., page 75, and Paragraph IV., page 134, of the Master's report. It was agreed by the accountants that under the head of "Surveys" there was spent an aggregate of $250,206.56. It was claimed by the defendant that neither this sum of money nor any part thereof could be both a state expenditure under Paragraph III. and an item of the ordinary expenses of the state government under Paragraph IV. *The Master has seen fit to hold that it can be both;* that is to say, that such part thereof as can be shown to have been expended in the territory now West Virginia should be charged as a state expenditure, and such part as could not be shown to have been expended at any particular place should be charged as an ordinary expense of the state government. It is admitted that the total sum was expended as a part of the expenses of a state officer performing certain duties prescribed by a state statute. The Master said: "It is a narrow and close question." (Report, p. 76). It does not seem to us to be either. When we take into consideration the fact that in every other instance all the salaries of state officers, without exception, such as judges and the executive officers, and the cost of the work done by them and the expenses incurred by them in the performance of their duties, are all charged in this report as ordinary expenses of the state government, we can see no reason for this exception. In fact, it seems to us very clear that this sum of $250,206.56 is properly chargeable as a whole to the ordinary expenses of the state government; just as the other salaries and expenses of office of state officers are charged, as stated above.

Therefore, we earnestly contend that the said sum of $60,873.19, allowed as a state expenditure under this Paragraph, should be stricken out, and that there should be charged to ordinary expenses of the state government, under Paragraph IV. on page 134 of the Master's report, the said total sum of $250,206.56.

Item 150, Loan to the Town of Bath—$2500.

If it were not for the fact that there is a principle concerned in this small item we would not except to the finding of the Master. This

was a loan to the Trustees of the Town of Bath, and they were compelled to give bond with good security, payable to an agency of the state, to wit, the Board of Public Works, for the punctual payment of the interest annually to the state on this loan. The Master finds that this interest was paid to the state and that the auditor of the state described it as a loan and carried it on the books of the state as such. We do not agree with the Master that this action on the part of the State of Virginia in so carrying it has no weight, and we respectfully submit that the auditor's books quoted by the Master and the action of the state from the time of the loan up to the separation of the two states, and the action of the trustees of the Town of Bath in paying the interest thereon annually, conclusively fixes its status as a loan, and therefore is no charge against West Virginia. Further on under this paragraph we will discuss the question whether a loan by the state can possibly come under the head of "state expenditures." The Master holds that it cannot.

This *loan* is also recognized by the trustees of the Berkeley Springs, in their report to the legislature of West Virginia, 1869, which report is printed in the back part of the House Journal of the West Virginia Legislature of 1869, along with reports of state officers, other boards, etc. (What is now known as the town of Berkeley Springs, in Morgan county, West Virginia, was formerly known as the town of Bath.) This particular report of 1869 is a comprehensive one, and one of the signers thereto is no less a famous personage than David H. Strother, known in literature by his pen-name of "Porte Crayon." It is pointed out in this report (p. 4) that "the Berkeley Springs and adjacent property do not belong to the state of Virginia or to West Virginia (as its successor)." On page 3, in discussing the finances of the property, the report says:

> "That there were old debts standing against the property * * * * to wit:
>
> "To the estate of Philip C. Pendleton, deceased, $2,000, money borrowed for the purpose of building a row of baths, with a large pool attached, for the use of the ladies.
>
> To the *Board of Public Works, Richmond, Virginia*, $2,500, money borrowed for the purpose of constructing

a graded road from Sir John's Station to the Springs." (Sir John's Station is a station on the Baltimore & Ohio Railroad.')

Thus, the law authorizing the loan, the auditor of Virginia's books, the creditor, and the books of the trustees, the debtors, *all recognize it as a loan.*

This concludes the discussion of the exceptions of West Virginia to the Master's report so far as the third paragraph is concerned.

Exceptions of Virginia under Paragraph III.

Virginia specifically excepts under Paragraph III., only to the finding of the Master that certain moneys paid by her for stock in turnpike, bridge and railroad companies, which were private corporations, and that certain moneys loaned by her to such corporations, are not allowed as state expenditures within the meaning of the decree and the ordinance. These items are divided as follows, as shown on pages 375, 376 and 377 of the record:

Items 57 to 65, inclusive, Bridge Companies	$78,412.50
Items 66 to 69, inclusive, Navigation Companies, aggregating	210,500.00
Items 70 to 147, inclusive, Turnpike Companies, aggregating	803,555.83
Item 6 (R., p. 372) Berryville and Charles Town Turnpike Company	11,932.52
The total aggregate of these items	$1,104,400.85

All these items can, to a certain extent, be discussed at the same time, as the same general principle of stockholding investment runs through them all.

Item 6, Berryville & Charles Town Turnpike Company, $11,932.52, in some respects differs from the others, and Item 66, Coal River Navigation Company, $96,000 (R. p. 375), is somewhat like the principle in Item 6, and so far as they are alike will be discussed together.

The Berryville and Charles Town Turnpike Company was a private corporation, chartered by the State of Virginia. It was duly author-

ized to and did construct a turnpike from Berryville, Clark county, Virginia, to Charles Town, Jefferson county, now in West Virginia. There is now of this road in the present limits of West Virginia 58⅓ per cent. Virginia subscribed and paid for stock in this company of the par value of $20,455.74. The special fact in relation to this corporation is that it gave a deed of trust on its property, which was this turnpike, to secure loans to the company. This deed of trust or mortgage was foreclosed in the year 1858, and the physical property of the company sold. The purchaser at this sale was the State of Virginia, and the price paid was $7,236.97. West Virginia admits her liability for 58⅓ per cent of this last sum, but denies any liability whatever as to the stock subscription. This reason is in addition to the other reasons hereinafter given, which will apply to all stock subscriptions. There is no dispute between the parties as to the facts here related (R., pp. 454, 455).

The case of the Coal River Navigation Company is somewhat like this. This is item 66 on page 375 of the Record, and is included by Virginia in her exception to the finding of the Master in relation to Items 66 to 69, inclusive, aggregating $210,500. This particular item is for the sum of $96,000. This is another instance where the state bought stock of a private corporation, in this particular case of the par value of $96,000. The corporation, on July 30, 1858, executed a mortgage or deed of trust on the property of the company to secure a large amount of indebtedness set out therein. The company failed to pay the debts so secured, and the trustees named therein, under the authority thereof, on October 25, 1865, sold all the property of this company to private persons. (R., pp. 990, 1003.) We thus see, as to these two corporations, on the first day of January, 1861, the State of Virginia was not even a stockholder in either. The corporations had in a legal way disposed of their entire properties, and all the state had was stock in a defunct corporation, and the corporations still owed large debts. West Virginia did not, under the laws of nations, nor under the acts of Virginia transferring to her property within her limits, obtain anything from Virginia in these particular cases.

The exception of Virginia to the finding of the Master disallowing

this total sum of $1,104,400.85, is based on her claim that purchases of stock in corporations doing business and owning property within the present limits of West Virginia, were state expenditures in the meaning of the ordinance and the decree. The position of West Virginia on this important question is that these were but investment of the funds of the state in private companies with the expectation at least of absolute security of the money invested and in many instances with the expectation of producing large dividends from the investment. These corporations were not the agents of the state for the investment of public funds, and were not controlled by the state as a sovereign. They were under the absolute control of the stockholders, subject to the general laws governing corporations. This was definitely settled in Virginia by the decision of its Supreme Court in 1856.

The case of *James River & Kanawha Co.* v. *Early*, 13 Gratt. 541, was an action to recover for the negligence of the corporation. In discussing the question of the liability of the company, the court said:

> "It is not a *public corporation* representing the *public* and *administering public* funds for the benefit of *the public*, but it is a joint stock company which has undertaken the construction of a work, useful to the public certainly, but *intended for the private emolument* of the stockholders in dividends of the profits" (p. 552).
>
> "That the State owned a large interest in the stock of the company will not vary the case * * * * a mere interest taken by the commonwealth in the stock would not be sufficient to bring an action against the company for neglect of its corporate duty within the influence of the decision in the case of *Sayre* v. *The Northwestern Turnpike Road*, 10 Leigh. 454 * * *" (p. 553).

As persuasive authority on the same line the case of *Moore* v. *Schoppert*, 22 W. Va. 282, is pertinent. This case was decided in 1883. It arose upon the attempt of the county court of Jefferson county, West Virginia, to take possession of a certain toll-house of

the Cross-Road and Summit Point Turnpike Company, a Virginia corporation. This corporation is Item 71 on page 375 of the record, and is included as such in the exception of Virginia to "Items 70 to 147, inclusive, turnpike companies aggregating $803,555.83." The county of Jefferson, apparently going on the theory that this road and other property of this company belonged to it as grantee from the State of Virginia under the act of February 3, 1863, (App. to R., p. 128) took possession of a toll-house and a lot of land on which it was situated, and this action of ejectment was instituted by this Virginia corporation, the Cross-Roads and Summit Point Turnpike Company, in the name of Moore, its president, to recover this piece of property. As elsewhere shown in this case, West Virginia granted to the counties in which the roads were situated all the stock received by it in the road corporations under the act of February 3, 1863. In this case the Supreme Court of West Virginia distinctly recognized and enforced the corporate ownership of the turnpike company of the property connected therewith. We quote the second syllabus, as follows:

> 2. "The effect of the legislation of the re-organized government of Virginia and of this state is to transfer to and vest in the different counties of this state the stock or interest of the State of Virginia and of this state in the roads of incorporated turnpike companies and to confer upon the respective county courts of this state the management and control of the stock or interest thus transferred, and also to give to said county courts control of any such roads or parts thereof lying in any county as such county may by agreement, condemnation, or otherwise acquire, or of such roads as may have been entirely abandoned by any such corporation or the private stockholders thereof; but it does not give to the county courts jurisdiction and control over any turnpike road belonging to any incorporated company, which is or shall be managing and controlling its road according to its charter, further than the right to control and represent as a stockholder the stock or interest acquired by the county from the state in such company, and to regulate the tolls of such company" (p. 289).

The Court in this case further says:

> "From the facts as they now appear in this case, it is evident that the county of Jefferson has no other interest in the house and lot in controversy in this action than that of a stockholder representing and controlling the stock formerly owned by the State of Virginia in the Cross-Roads and Summit Point Turnpike Company."

This case clearly shows the attitude of the courts of last resort of the State of West Virginia towards these corporations; and this decision, made twenty-seven years ago, has never been overruled or extinguished, but has always stood as the law of West Virginia in relation to these corporations. The fact remains as to each and all of these items mentioned in this exception, that Virginia subscribed and paid for and received shares of stock in each and every one of these corporations. These shares of stock in her possession were her own private property, subject to sale or any disposition the state chose to make thereof, and which under the laws of nations would not have passed to the State of West Virginia upon the separation, although the actual property of these corporations lay wholly or partly within the present limits of the State of West Virginia. The title of the State of West Virginia to these stocks is based alone on the act of February 3, 1863 (App. to R., p. 128). This act provided, as set out in the eighth paragraph of the bill, that West Virginia should duly account for these stocks in the settlement thereafter to be made with Virginia. This provision is practically a contemporaneous construction of the meaning of the ordinance on this subject. West Virginia certainly was not to pay for this property but once. Certainly it was not intended that she should pay the cost of the stock under the ordinance, and then pay for the value of the stock under the said act of February 3, 1863.

In the account filed by Virginia under Paragraph III. she included value of shares of stock in two banks, and insisted that the money invested by Virginia in such stock be allowed as state expenditure. The Master found against her on this contention, and, unless the general exception put at the end of their printed pamphlet of exceptions covers it, Virginia did not except to this finding of the Master.

Certain it is that she did not deem it of sufficient importance to specify those two cases in her exceptions, and we feel justified in the conclusion that she has abandoned her contention as to same. She is not very consistent in such abandonment, because there is no difference in law as to money being a "state expenditure," which is expended by the state in the purchase of stock in a corporation, whether that corporation be the Northwestern Bank of Wheeling, or the Wheeling, West Liberty and Bethany Turnpike Company. As will be set out later, Virginia purchased between 1832 and 1840, 4,500 shares of the stock of the Northwestern Bank of Wheeling, and in her original account attempted to charge West Virginia with $450,000 paid therefor as a state expenditure. In the year 1857 (R., p. 499), Virginia sold 1,082 shares of this stock for the sum of $113,671.42. If an expenditure once made, as claimed in the case of the Kanawha Turnpike and Kanawha River Improvements, could never be changed by the subsequent action of Virginia prior to the separation of the two states, then Virginia was not just to herself when she withdrew from said charge of $450,000 the value of these 1,082 shares of stock, which were sold, paid for, and delivered to the purchaser in 1857. We refer to this here to show an example that Virginia dealt with these stocks as a private person would. It is further shown in this record, especially under Paragraph VI. of the Master's report, that Virginia received large dividends from many of these investments.

Against sustaining this exception of Virginia is the undisputed fact that Virginia did not expend this money or any part thereof in West Virginia. The corporation in each particular case, through its board of directors and other officers, expended the money. There was no control in the state over this expenditure beyond such as might have been given by stock ownership. The legal entity which made the expenditure, was actually the corporation. The title of the property was in the corporation; and the corporation as such managed and controlled the property. In the case of the Northwestern Turnpike, the state, through its own officers, directed the expenditure of the money. The same was true in the case of the Staunton and Parkersburg Turnpike, and of the Covington and Ohio Railroad.

In these three notable instances no one but a state officer or agent had any authority whatever. But in those corporations named in this exception the corporation alone, through its duly elected officers, expended its own money for its own corporate purposes.

On page 12 of the exceptions filed by Virginia is the following:

"VI. COMPLAINANT'S SIXTH EXCEPTION."

> "In addition to the five exceptions above set forth, complainant respectfully asks that all of the alternative statements contained in the Master's report, made at the request of and pursuant to objections interposed before the Master by the complainant, and not covered by any of the foregoing exceptions, may be taken and treated as exceptions made by the complainant to said report because of and with respect to the errors of law appearing on the face of said report and of the record returned therewith, in the particulars to which said alternative statements respectively refer."

We have seen no brief of Virginia in this case, and we are at a loss to know whether counsel for Virginia intends this to mean that every alternative statement made by the Master at her request will be insisted upon at the hearing or not; but in the event that counsel shall do so, we desire to call attention to certain alternative findings made by the Master under Paragraph III., which we will take up in the order in which they are found in the report.

The first one of these is "Item 3, Winchester and Potomac Railroad, $170,532.00." This item is discussed at length by the Master (Report, pp. 47-64). The total item is $270,000, made up of the sum of $120,000 paid for stock of this corporation by Virginia, and the sum of $150,000 loaned by Virginia to this corporation upon security therefor being given. The property of this corporation consisted of a railroad running from Winchester, in the county of Frederick in Virginia, to Harper's Ferry on the Potomac River, in the county of Jefferson, now in West Virginia. This road was constructed under the acts of Virginia of 1831, and was one of the early railroads projected in the United States. 63.16 per cent of the mileage thereof is in West Virginia. The legislation dealing with this road prior to

the separation of the two states, consisted in incorporating the same, authorizing the subscription of stock, authorizing the loan, and then by the act of February 24, 1846, Virginia commuted the loan and the stock into an annuity of $5,000.00 a year forever (App., p. 30). This annuity was paid annually up to and including the year 1861 (R., p. 489). The ledger account on the books of the Internal Improvement Fund of Virginia which carried the subscription of $120,000 to the stock, was closed with the explanation that the stock had been surrendered for this annuity. All these facts are undisputed. With the beginning of the Civil War the Court will take judicial notice of the fact that no railroad running from Winchester to Harper's Ferry could pay annuities. This annuity accumulated during the years of the war from 1861 to 1865.

The first question that arises is the state's subscription to the capital stock of this corporation. This stands, we think, on the same basis as the subscription of the state to the stock of turnpike companies, banks, and other private corporations; and the same principles and argument apply here that we have applied to the other cases of such stock subscription. They were not "state expenditures," nor were they "ordinary expenses of the state government"; they were merely and only *investments*. The special circumstances in this case of the annuity we will advert to presently.

As to the loan, we are fixed in our opinion. All the loans mentioned in the record, as was this one also, were secured in some way or manner. This record discloses three of them: the one under discussion; Item No. 15 (R., p. 373) Kanawha Board Bonds; and Item No. 150 (R., p. 377), Town of Bath. The first two have the principal and interest both secured by mortgage, and the third had the payment of the annual interest forever secured by a bond. Specific and careful provision was made in each case for this security. We deem the statement of this proposition sufficient to prove itself. In none of these cases was the money expended by Virginia. In each case it was expended by the borrower.

In this case of the Winchester and Potomac Railroad Company, Virginia, by acts passed on February 22, 1866, and April 25, 1867 (App., p. 31-2), provided that the corporation could pay to the

State of Virginia in bonds of that state at par the sum of $83,333.33, which was designated in the act as the "principal sum owing, together with all interest due thereon," and upon such payment the claim of the state against said company was to be "lifted and discharged." The Master finds (Rep., p. 64) that there was paid into the treasury of Virginia in 1866 in bonds under these acts, $118,518.12. A calculation will show that this was the principal sum of $83,333.33, plus the unpaid annuity from 1861 to time of payment, together with interest thereon. Under the act of 1846 this annuity of $5,000 was to be in lieu of interest on the debt due by this company to Virginia and of dividends on the stock of Virginia in the company, and so long as said $5,000 was paid the payment of the principal of the debt was to be postponed. Thus, we see that in 1867 Virginia capitalized the annuity of $5,000 at six per cent, making the principal sum of $83,333.33. She then exacted from the debtor the unpaid annuity with interest, and then she assigned to the company in consideration thereof all her right, title and interest and beneficial ownership in the loan and stock held by her in said company. In the event that the Court should find that West Virginia would be chargeable with this sum otherwise, then we confidently refer to this action of Virginia as an absolute release of all such claim.

Again: The act of February 3, 1863, (App. p. 128,) provides that there shall be transferred to West Virginia the "stocks of any company or corporation, the principal office or place of business whereof is located within the said boundaries" of West Virginia. The principal office of this railroad company was at Winchester, now and then in Virginia. Hence, none of the stock was transferable to West Virginia. Virginia evidently so understoood it, for after the Civil War she legislated about this road, made contracts with it, and otherwise dealt with it, without regard to West Virginia, and quite in contrast with her acts after the war in connection with the Covington & Ohio Railroad. By reference to pages 35 to 49 of the Appendix to the Record, it will be seen that the acts of Virginia respecting this last named railroad were concurrent with acts of West Virginia.

Item 15, Kanawha Board Bonds—$60,000.

This item is referred to above as one of the loans set up in the record, made by Virginia to the James River and Kanawha Company, and secured by mortgage. The bonds were delivered to a private corporation, which had the power to do as it pleased with such bonds and the money derived from the sale thereof. The Master found that West Virginia was not chargeable therewith (Rep., p. 71).

Item 53, Harper's Ferry Raid—$189,715.59.

The Court will take judicial notice of the John Brown Raid and what it meant. It was an invasion of the State of Virginia by an outside armed force. The fact that Brown accidentally entered territory that afterwards became a part of the State of West Virginia, and that this large sum of money was expended in the transportation of troops, pay of soldiers, quartermasters' supplies and subsistence of the soldiers called from all over Virginia and most of them from the territory still Virginia, does not under the meaning of this paragraph and the ordinance make this a state expenditure within the limits of West Virginia. It was a most extraordinary event—an invasion of the sovereignty of a state, and an armed conflict with the officers of the state. After the prosecutions of the invaders were ended, and punishment inflicted by the execution of the judgment of the court, the local evidence of the fact that this large sum had been spent partly in Jefferson county, now in West Virginia, disappeared as quickly as fog before the morning sun. The soldiers returned to their homes in Virginia. This subject is referred to again herein under Paragraph IV.

Item 54, School Commissioners—$830,865.37.

The Master (Rep., p. 74) gives a very succinct statement of this item and the reasons why he disallowed the same. It was the total of the annual appropriations for the education of poor children, which were assigned to the counties now forming the State of West Virginia. It was no more of a "state expenditure" in West Virginia than the payment of the salaries of the judges of the courts was such an

expenditure in that state. Hereafter, when this subject is again reached under Paragraph IV., we will state some reasons why we think that the most of it should be eliminated from this cause. Certain it is that there is no error in the refusal of the Master to allow it as an expenditure under Paragraph III.

Item 56, Trans-Alleghany Lunatic Asylum—$27,000.

Virginia never erected any public building in that part of her territory now in West Virginia. The only building she commenced in what is now West Virginia was an asylum at Weston in Lewis county, and called in the account by the above name. Prior to January 1, 1861, the sum of $125,000 was appropriated for purchase of the site and the construction of this building. On January 1, 1861, there remained of this appropriation the sum of $27,000 in bank to the credit of the board of directors of this asylum and in the hands of the treasurer of such board (R., pp. 484-5). The restored government of Virginia in January, 1861, took over this sum of $27,000 and placed the same in two banks in the City of Wheeling to the credit of the State of Virginia, and used the same for the purpose of the restored government. It needed money at that time to defend the loyal portion of the state. This money was not expended before January, 1861. It was the property of the state, and the state had the right to take it and use it for other purposes. Some time later, the state appropriated large sums of money for the purpose of completing this asylum, but that does not affect the fact that this $27,000 had not been expended at all on January 1, 1861; in fact this sum was never used for that purpose.

Item 148, Fairmont Bank $50,000; and Item 149, Northwestern Bank of Virginia at Wheeling, $341,800.

These two items were on account of the investment by Virginia of that much money in the purchase of shares of stock in these two banks. As stated heretofore, the original purchase by Virginia in the Northwestern Bank was somewhat larger, and Virginia in 1857 sold 1,082 shares, making a certain profit thereon. She covered this money into her treasury, and on the hearing before the Master she

withdrew the original claim of $450,000 and reduced it to this amount, by reason of such sale.

The attitude of Virginia in this cause has been that where an expenditure had once been made, as claimed by her, no act of hers thereafter in connection therewith would affect or alter the fact. In other words, that such expenditure, when once made, should be charged in this account against West Virginia, regardless of the fact that Virginia may have sold the subject matter thereof prior to the first day of January, 1861, to some private person or corporation. These bank investments were extremely profitable. It will be seen by reference to page 176 of the Master's report under Paragraph VI. of the decree, that he reports the dividends from these identical stockholdings during the period of the accounting as $786,666.98. If Virginia intends to abandon the claim asserted by her for the amount of these bank stocks, and to attempt to distinguish the money invested in them from moneys invested in navigation or bridge company stocks, it must be because the money invested was paid back in double quantity in dividends. If West Virginia is to be charged with the moneys invested, Virginia certainly would be charged with the moneys received on the investment. We, of course, adhere to our original position, that money invested by Virginia in the stocks of all these private corporations was not a state expenditure in the meaning of the decree and the ordinance, but, as shown by the Master in his report by his excerpts from the constitution and laws of Virginia, was intended by the State of Virginia as the investment of funds in private corporations for profit. This view is made well-nigh conclusive by the fact that Virginia, by statute, prohibited the sale or transfer of any of these stocks when productive or could likely be made productive.

PARAGRAPH IV. OF DECREE.

"4. *Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia,*

with and without slaves, as shown by the census of the United States."

This paragraph, like Paragraph III., is based on the Wheeling ordinance. The ordinance used the language " a just proportion of the ordinary expenses of the state government since any part of said debt was contracted." The decree uses the language "government of Virginia," instead of the words "state government." The parties to this controversy have apparently proceeded on the proposition that the language of the decree was intended to mean the same as that of the ordinance. The agreed period for the beginning of this account is the 19th day of March, 1823. There are no disputes as to the amounts under this paragraph. The only questions are whether certain items come under the head of "the ordinary expenses of the state government."

First, we take up the exceptions filed by West Virginia to the findings of the Master under this paragraph to which she objects. As before stated, in this part of the brief the aim is to state the facts only, and discussions of questions of law are merely incidental, and indulged in in connection with the facts only so far as necessary to make clear the position of West Virginia, and justify her exceptions.

Item No. 1, Tobacco Receipts $353,123.96; Master's Report, p. 114.

An explanation is needed to show what this means. Virginia, in her original exhibit (printed as Appendix A hereto and an exhibit herewith) under this paragraph, entered into many details. She divided the ordinary expenses, as based on her theory, into five divisions, to wit: (1) general expenses of the government; (2) administrative expenses of the Board of Public Works; (3) maps, expenses of surveys, and inspection of internal improvements; (4) general expenses of the Literary Fund; and (5) interest charges.

Under general expenses of the government there were included the following subjects, to wit: General Assembly, officers of the government, criminal charges, court charges, lunatic asylums, penitentiary, militia, public warehouses, tobacco sales, slaves transported and exe-

cuted, and many other smaller items. She gave credit on the total of these items for funds derived from the sale of articles made in the penitentiary, and for fees and other moneys earned by her officers and persons whose salaries and wages were paid by the state and which were charged to this account of ordinary expenses of the state government. One of the subjects of state supervision in Virginia was the inspection of tobacco. The Court will take judicial notice of the fact that for two centuries at least tobacco had been an extremely important product of Virginia. The state appointed certain officers, called inspectors of tobacco, and paid them certain sums as salaries, and they collected from the owners of this tobacco certain fees for inspecting their tobacco. These fees were covered into the state treasury as a part of the state's moneys, and the Master finds (Report, p. 116) that the sum set out above was actually paid into the commonwealth's treasury from this source. West Virginia believes that she is entitled to a credit of this sum from the total amount of the ordinary expenses of the state government, and believes it to be very inconsistent with the original admissions of Virginia under this identical head to refuse to allow to West Virginia this credit. Virginia herself says that it is correct to allow a credit of $275,000 for moneys received from the sales of goods manufactured in the state penitentiary. The expenses of the penitentiary are charged to ordinary expenses, and the credit is given by Virginia. Under the laws of Virginia at that time, certain slaves were transported to foreign countries and sold. The owners of such slaves were paid an appraised price from the state treasury. The moneys derived from the sale of these slaves, $272,000, were credited on the total of the ordinary expenses. She had certain state officers called weigh-masters of live stock. They collected certain fees from the persons for whom they did services, and these fees were paid into the state treasury, and Virginia voluntarily gave credit therefor in her statements filed with the Master under this paragraph. We are therefore surprised at her contention that the amounts collected by the inspectors of tobacco and turned into the treasury should not likewise be a credit. When the account of ordinary expenses is charged with all the salaries of all state officers and employees and all expenses of carrying out the state laws, it

seems that as a matter of principle it would necessarily follow that credit must be given for all sums of money earned by, through or under the administration of the affairs of the state by such officers and employees, and we utterly fail to see any difference between the amounts earned by inspectors of tobacco and the amounts earned by weigh-masters of live stock and the other items as above set out and conceded by Virginia in her original exhibit No. 4 under this paragraph, printed as an appendix hereto. We must therefore insist upon this claim of West Virginia, and respectfully ask that this exception be sustained, and that said sum of $343,123.96 be deducted from the total of ordinary expenses of the state government.

Exceptions to Item No. 5, maps (board of public works), $11,446.48, will be discussed along with exceptions to Item No. 27, general expenses connected with surveys, $106,983.67.

Items No. 7, International Exchanges, $2,836.19; No. 9, Printing Treasury Notes, $375.74; No. 18, Attorney General fees for prosecuting Seldon, Withers & Co., $500; and No. 19, part of $5,000 expended under the act of February 14, 1844, are in our opinion not properly charged as a part of the ordinary expenses of the state government, but a discussion of each would take too much time and space. This is especially true when we have under this identical head an item of $18,574,747.84, to the allowance of which as an ordinary expense we earnestly object. We therefore waive the exceptions of Items 7, 9, 18, and part of 19 as set out above.

Item 5, Maps (Board of Public Works) ----$ 11,446.48
Item 23, Sundry Board of Public Works expenses ----------$ 36,728.50
Item 27, General Expenses connected with Surveys ----------$106,983.67

These three items are found on pages 118, 128 and 134 of the Master's report. The general subject has already been discussed herein, and is also discussed on page 75 of the Master's report at Item 55, Paragraph III. We are of the opinion, as heretofore stated, that the amount allowed by the Master on the last named page of his

report, $60,873.19, was improperly allowed as a state expenditure, and that the whole of the three above items, 5, 23 and 27, together with the additional amount, should be allowed as an ordinary expense of the state government, and no part thereof as a state expenditure. This would make the total of Item 27, $250,206.56. There are sundry parts of these Board of Public Works expenses which to our mind seem clearly improper to be classed as ordinary expenses, yet considering the comparative smallness of the amounts we will not further insist, for the same reasons that are given above as to other small amounts.

Item 25, Harper's Ferry Raid.....$251,763.65
Item 16, Calling out Militia at Wheeling in 1836 .....$ 1,099.00

The Master has allowed both of these items as a part of the ordinary expenses of the state government (Rep., p 129). Virginia set up this amount, less a few deductions, as a state expenditure within the limits of West Virginia, and the Attorney General of Virginia stated her position to be that any moneys, which could be shown to have been spent in West Virginia, no matter for what purpose, were to be classed herein as state expenditures. In some instances, she has classed exactly similar expenditures when expended in West Virginia as state expenditures under Paragraph III., but when expended in Virginia she has classed them as ordinary expenses under Paragraph IV. It seems to us that under no possibility of the use of language, can it be said that exigencies of the kind for which these moneys were spent could be called "ordinary." The invasion of a state by an outside armed force for the purpose of freeing the slaves, and thus taking away from the people of the state more than $300,000,000 worth of property, was certainly somewhat "extraordinary". It would even come under the definition of one of the accountants of the plaintiff, who, when he testified in this case, said that every expense which was not "ordinary" was "extraordinary". It is true, as stated by the Master, that the maintenance of a military force was admitted as an ordinary expense by the defendant. But the defendant found on an examination of this item, that the state had maintained

such military force ever since its formation, and such maintenance and the laws therefor were general, and in existence on the 19th day of March, 1823, when this account began, and were in existence until the end of this account, as they had been from the year 1788 at least. After the happening of the two events, they were brought to the attention of the legislature of Virginia, and the appropriations were made, we believe, in each case at least two years afterwards. They were most *unusual and extraordinary*. No fixed provision of any kind had ever been made in anticipation of them. The fact is that only two such events happened between March 19, 1823, and January 1, 1861. This statement applies to the whole State of Virginia. It should be noted that, in the preparation for the presentation of evidence in this cause, every expenditure made by Virginia during the entire period of the accounting, has been carefully scrutinized, and counsel for the plaintiff have set up everything that could by any possibility be charged to this defendant. Thus, we see that the great State of Virginia, extending from the Atlantic ocean to the Ohio river, comprising an area of 66,000 square miles, only had within its immense borders, two calls for the militia in thirty-eight years. To provide funds to meet the expenses of these two extraordinary events, special acts of the legislature, long after the happening of the events, were passed; and the legislature itself fixed the status of the Harper's Ferry case by saying that the moneys therefor were appropriated for the "defense of the commonwealth". One could as well call the expenses of Virginia in defending her soil against the British soldiers in the war of 1812-14 an ordinary expense of the state government. It is true that the expenditure at Wheeling of the $1,099 might be called a part of the criminal expenses; that is, a part of the expenses for enforcing the penal laws of the state, and be allowed on that score; but the same reason does not apply to the Harper's Ferry raid. This historical event stands out as one of the spectacular and extraordinary occasions in the history of the United States; and now, more than fifty years after its happening, the chief actor therein, John Brown, is still looked upon as a martyr in more than half of these United States, and his memory honored as such by the erection of monuments and public celebrations and the like.

Historically, it is simply impossible to say that this was an ordinary event, an ordinary occasion, or that the cost thereof was an ordinary expense. Its status in history is fixed otherwise.

Item 24, Interest on Public Debt, Aggregate $18,547,747.84.

This is the largest item in this account under this paragraph. We do not understand that there are any disputes of fact in relation thereto, but there are certain facts in the record which we think are proper here to be summarized, and which will have a bearing on the discussion of law relating to this item and found in Part III. of this brief. It is not the purpose of this part of the brief to make extended discussions of any questions of law, as heretofore stated.

In plaintiff's original Exhibit D-1 (which was their statement of ordinary expenses of the state government under Paragraph IV., and printed as Appendix A hereof), there is set out a partially detailed account of this interest. Certain credits were there given, amounting to $2,418,116, which were deducted from the total interest paid by the state during the period of accounting in this cause, and that deduction leaves the balance as at the head of this section of the brief, to wit: $18,547,747.84. It is our purpose to take up those deductions and other sums which appear on pages 1056, 1058 and 1059 of the printed record.

As a preliminary to this discussion, we state an undisputed fact, that the entire amount received from the sale of bonds of the State of Virginia was used for the purpose of either constructing some sort of a public work by the state directly, or for the purchase of stock or bonds of some corporation, of which turnpike, bank, railroad, navigation, or bridge companies were the most usual. There was expended during the said period by Virginia in its subscriptions to the capital stock of banks within her *present* territory the sum of $2,108,591. There was expended in the purchase of stock of turnpike and road companies wholly within the *same* territory the sum of $1,897,747. There was expended in the purchase of stock of bridge companies in the *same* territory the sum of $49,622. There was expended on account of purchase of stock of navigation companies

in the *same* territory the sum of $908,173. There was expended for the purchase of stock of railroad companies wholly within the *same* territory the sum of $13,713,256. There was expended as loans to railroad companies within the *same* territory the sum of $2,930,000. There was expended in the direct construction of the Blue Ridge Railroad within the *same* territory $1,604,824. There was expended in the construction of the Covington and Ohio Railroad *in the State of Virginia* the sum of $1,640,668. There was expended for the construction of turnpike and roads wholly on state account, and not for the purchase of any stock in the companies, within the *same* territory, $791,888. There was expended directly on state account in the *same* territory in the construction of turnpikes and roads extending into and between the territory now constituting the two states, the sum of $247,289. This last sum is Virginia's proportion on a mileage basis of the actual cost of the construction of such roads. There was expended in the purchase of stock of the Alexandria Canal Company the sum of $272,000. There was expended in the purchase of stock of the Winchester and Potomac Railroad Company and in a loan to said company, the sum of $270,000. On a mileage basis, 41⅔ per cent of this road is in Virginia and 58⅓ per cent in West Virginia. There was expended for the purchase of stock in the Chesapeake and Ohio Canal Company (a Maryland corporation) the sum of $250,000. There was expended for construction work and improvements on the James River Canal, Blue Ridge Canal, and Kanawha Road and River $1,216,666. Stock was taken for this upon the transfer of the canals and Kanawha Road and Kanawha River improvements to the James River and Kanawha Company. There was expended in the purchase of stock of the James River and Kanawha Company directly the sum of $2,000,000 additional. There were cash loans made by Virginia to this company of $890,000. Virginia loaned to this company bonds of the par value of $1,597,000. She guaranteed for this company bonds of the par value of $2,260,000. By the act of March 23, 1860, she assumed all of these bonds as her original debt and took in lieu thereof stock of the James River and Kanawha Company. The expenditures above named, together with others paid in interest on the bonds, amounted to a total of $9,547,582.

(R., pp. 820 L. & M.). These expenditures aggregated a sum in excess of $36,000,000, all of which was expended in the present State of Virginia except $302,000 on the Kanawha Road and Kanawha River. Practically all of this immense sum was paid for in bonds, which either formed a part of the public debt on the first day of January, 1861, or which had been retired through the operations of the Sinking Fund, or by the payment thereof by the state.

It will be seen that each and every one of these expenditures was of an extraordinary character for a state to make. They could not have been then called and would not be now called "ordinary expenditures of the state government."

While these immense expenditures were being made in the territory of the present State of Virginia, there was only expended in the counties now forming West Virginia, according to the claim of the Commonwealth of Virginia in this case, out of the moneys derived from the sale of bonds for the construction of roads, etc., and for the purchase of stocks, the sum of $4,200,000. (West Virginia does not concede that this sum was expended in the meaning of the ordinance and the decree, and the Master finds that only $2,811,000 was so expended in West Virginia, to which amount West Virginia excepts, because too large.) It will thus be seen that according to the claim of Virginia, out of a total of $40,000,000 spent for the purposes above set out, nine-tenths thereof was spent in the present State of Virginia, and one-tenth in the present State of West Virginia.

Naturally these immense investments in stocks and loans were not without some returns to the state, and Virginia recognizing this fact, made certain deductions in her "interest schedule" annexed to her original exhibit D-1 under the fourth paragraph. Credit is there given for certain sums paid as interest, as follows:

Interest on bonds in the Literary Fund	$1,324,051.00
Interest on state stock	$312,214.00
Interest on state stock	639,670.00
Interest on James River and Kanawha Company bonds	142,181.00
Total	$2,418,116.00

But in addition to the amounts collected by the state and included in the said total sum of $2,418,116, there are many other large items of income from these investments of the moneys made by the commonwealth which should be deducted if West Virginia is to be charged with any part of this interest as an ordinary expense of the state government.

There was received by Virginia the following sums from the following classes of corporations on account of investments made by Virginia therein of the moneys arising from sale of bonds, to wit:

Dividends on Bank stock	$5,936,000.00
Dividends and interest from Railroad Companies	1,748,000.00
Dividends and interest from Canal Companies	321,000.00
Dividends and interest from Turnpike Companies	119,000.00
Dividends and interest from James River and Kanawha Co.	926,000.00
Tolls from James River Company	588,000.00
Interest and annuity, Winchester & Potomac Railroad Co.	76,000.00
Tolls and Interest:	
Northwestern Turnpike, Southwestern Turnpike, Staunton & Parkersburg Turnpike	$ 77,000.00
Total	$ 9,791,000.00

In this sum of $9,791,000 there is included the sum of $1,094,000 for which credit has been given. The true total is therefore $8,697,000.

There was received by the commonwealth from investments in the territory now forming West Virginia, for which no credit has been given to West Virginia in this account anywhere, the following sums:

Dividends from Banks	$786,666.00
Dividends from Turnpike Companies	15,000.00
Dividends from Bridge Companies	6.000.00
Total	$807,666.00

Of these large sums it is probable that part of the bank dividends arose from stock which was not purchased with money derived from sale of the state's bonds; but it is certain that all of the balance was wholly derived from investments made by the commonwealth with moneys derived from the sale of such bonds, and it is further a certainty that nearly all of the bank dividends from the West Virginia counties and a goodly portion of the bank dividends from the Virginia counties were derived from the stocks which were paid for by the issue of bonds of the commonwealth. It is certain that in Virginia, from companies whose stock was purchased with the proceeds of bonds, and from works which were constructed by the commonwealth with the proceeds of bonds, there was derived as dividends and interest and paid into the treasury, the sum of $3,855,000; but credit was given by the commonwealth in this account for only $1,094,000 thereof, leaving a balance of $2,761,000 so derived, for which no credit is given in this account. There should be added to this last named sum at least $1,500,000 for the dividends received from banks, the stock of which was purchased by the commonwealth out of the proceeds of her bonds. This last named sum is probably too small, but the record does not show the exact amount.

This extraordinary condition of affairs seems to us to constitute very strong reason indeed why this interest on the public debt should not be charged as an ordinary expense of the state government. Investments for profit made by the commonwealth cannot be considered as performing one of the usual, customary or ordinary duties of a state government. This is proven by the investigations made by the commonwealth through Chief Justice Marshall, and many other able men of Virginia before her system of internal improvements was commenced. The matter was in fact considered for a great many years, and many discussions for and against the inauguration thereof were had. Many reports were written by able commissions and many messages on the subject were penned by able executives. It was recognized then as a work of *extraordinary* character and one outside of the usual, *ordinary* functions of a state government.

West Virginia is charged by the Master under Paragraph III. as her portion of the ordinary expenses of the state government, the

sum of $2,811,000. Of this amount about $100,000 was expended prior to the year 1831. A further sum of about $500,000 was expended between 1830 and 1840. Another sum of about $500,000 was expended between 1840 and 1850. The balance between 1850 and 1861, and the greater part of this balance of $1,900,000 was expended between 1855 and 1861. These facts were known to the Master when he made up his report, yet he finds that $18,500,000 of interest on the public debt is an ordinary expense of the state government *under the peculiar circumstances of this case.* The result of this finding is that West Virginia would pay from one-fourth to one-tenth, as this Court may determine, of this huge sum of money. For argument's sake we will suppose that this court will determine that a just proportion of these ordinary expenses to be paid by West Virginia under the ordinance would be one-fourth. That would make West Virginia liable for more than $4,600,000 of this interest on the public debt. This sum would be treble the amount of interest that Virginia actually paid on the amount found by the Master to have been expended by the commonwealth within the present limits of West Virginia.

It must be remembered that under Paragraph VI. of the decree, it is shown that West Virginia paid into the treasury of the commonwealth more than $6,100,000 in taxes during the period. While West Virginia receives credit in the settlement under the ordinance for this amount, she does not receive any interest thereon or on any part thereof. Certainly, it would have been just and equitable for the Master to have offset the interest on the state expenditure of $2,800,000 by the use of the $6,100,000.

It must be further remembered that the men who passed or adopted the ordinance knew of this expenditure for interest on the public debt; knew what items entered into the expenses of the state government; knew what expenditures had been made by the state within the limits of the counties now forming West Virginia. It is shown by the historical records of Virginia that many of them had been members of the legislature of Virginia; that many of them had been members of the constitutional convention of 1851, wherein these matters were very thoroughly discussed; that one citizen of the territory now West Virginia had been at that time (1861) for many years auditor of the

commonwealth; that this auditor had made annual reports, some of which have been filed as exhibits in this cause. These reports were large volumes, and gave the annual details of the moneys received and expended by the commonwealth. It gave the details of the bonds issued and sold, and the purposes for which their proceeds were used. In addition, there were the annual reports of the Board of Public Works, which contained all the reports made to them by the state engineer and all the other officers and employees of the state under their authority. A glance at these reports will show how full and complete they were as to the cost of all of these public works.

A controversy had existed for at least forty years concerning the expenditure of the public moneys derived from bonds on these public works. Citizens of the territory now within West Virginia had for that period claimed that a gross injustice was done to the people west of the mountains, and justified their contention by giving details thereof; and even to this day, with the lapse of fifty years for the passion and prejudice and the deep-seated feeling of injustice suffered at that period to pass away, we submit that no unbiased person will say that West Virginia received her share of these public improvements, when it is considered that out of $40,000,000 expended therefor Virginia only *claimed* to have expended one-tenth in the present limits of West Virginia. Virginia spent during this period $20,000,000 and more in purchasing stock and making loans for, and directly building, railroads in her present territory. Between 1855 and 1860 she expended $1,146,000 in the direct construction of one railroad in West Virginia, and that was done, as is plainly to be seen, for the benefit of the Virginia Central Railroad, which was built from her capital at Richmond to a point within fifteen miles of the present limits of West Virginia, and which, as it was then seen, could not be made a successful financial venture unless it reached the Ohio river and tapped the paying traffic of that region and that of counties now in West Virginia. This road and its connections would carry this rich traffic, by way of Virginia's capital, to her eastern seaboard, and prove, as it was believed, of immense benefit to that part of the old state.

The division of the old state was not the growth of a few weeks of civil war, but it was the result of what the people of the counties now

forming West Virginia believed and said was the gross injustice done to the counties west of the mountains by the larger population east thereof. The counties of West Virginia found an opportunity in 1861 to do that for which many had hoped for half a century preceding that date.

The record in this cause shows that in 1860 the slave population of Virginia amounted to 490,000 people. Of these only 18,000 were inhabitants of the counties now forming West Virginia. Two-thirds of this number of 18,000 were inhabitants of a half dozen border counties. Slaves were then the most staple and productive property. At $350 apiece this property was worth over $170,000,000, of which about $6,000,000 belonged to the people of the counties now forming West Virginia, and $164,000,000 to the people of the counties now forming the State of Virginia. The estimate of $350 per slave is a very low one indeed. If we were to take the estimate placed upon this class of property by the owners thereof, as shown by the census of the United States for 1860, the value would be more than double our figures. The auditor of Virginia estimated the slaves to be worth $612.63 each. (Auditor's report for 1858-59, p. 392.)

By the constitution of 1851, which the majority east of the mountains imposed upon the state, it was decreed that none of these slaves under twelve years old, although property and subject to sale, should be taxed, and those above the age of twelve years were taxed at a very small rate which amounted to $1.20 a person. The assessor's books show, as set out in the record, that the assessment of these slaves in number was much less than that shown by the census of the United States. Certain it is that the slaves above twelve years of age would easily average the price of five to seven hundred dollars apiece, but for the selfish reasons of the owners they practically escaped taxation. All the property of the people west of the mountains, except their small and decreasing number of slaves, paid its full share of taxes and had no such exemptions.

By reason of this unjust system of taxation the people living in the territory now West Virginia, from March 19, 1823 to January 1, 1861, the period of accounting in this cause, paid very many thousands of dollars in taxes above their just share. The system worked

a double injustice; for the people west of the mountains not only paid their just share of taxes, but they were compelled to pay in addition what the people east of the mountains ought to have paid and did not pay. This unjust system of taxation was put and kept upon the western counties by an equally unjust scheme of representation in the General Assembly of Virginia, whereby the basis of representation in that body was arbitrarily fixed to favor the eastern part of the state. It provided among other things, that the owner of slaves should have three votes for every five slaves owned by him. By the political power thus given them by their slaves the owners thereof in eastern Virginia practically exempted their slaves from taxation; and also by this unjust power they enacted laws to protect them in the ownership of this property, which entailed great expense upon the state; such items, for instance, as "slaves transported and executed," $311,000; "transportation of free persons of color to Liberia," $26,103.50; "fugitive slave fund," $5201; as well as no inconsiderable part of the large disbursements for military and militia expenses, criminal expenses and penitentiary expenses. By reference to Appendix A hereof, it will be seen, that from 1820 to 1861 the disbursements out of the treasury of Virginia for "criminal expenses," were $1,785,632.11, exclusive of $1,188,212.34 of "court charges;" and that the disbursements, during that period, on account of military expenses, embraced in such items as the "militia," "public arsenals," "public guard," "guards in the country," "military contingent," "armory—manufactory and repairs of arms," etc., etc., aggregated $1,325,000. This does not include disbursements on account of the penitentiary, of $844,000, nor the cost of the Harper's Ferry raid, $255,745.77 (Rec., p. 374). It should be remembered that there was not in the entire territory of Virginia, which is now West Virginia, on the 1st day of January, 1861, a single mile of state-built or state-aided railroad, nor a mile of canal, nor a state building; not even a school, not a public institution of any kind. The asylum for the insane, at Weston had just been commenced. The capitol and all the buildings appertaining thereto, the university, the asylums, the institutes, armories, arsenals, and all other public institutions, as well as all the railroads and canals constructed wholly or partly by state money, and in which

millions of such money had been expended, were all located in eastern Virginia and fell to that part of Virginia upon the formation of West Virginia.

With this knowledge and under these conditions the ordinance was framed and passed. It was believed to be just that West Virginia should pay for the state expenditures within her limits during the period of the contraction of this debt; and also should pay a just proportion of the ordinary expenses of the state government during the same period. These two sections taken together necessarily imply a distinction between these two classes of expenditures. They were made with complete knowledge at first hand of the history of the state for the period. Is it right, reasonable, or just to hold that this ordinance was intended to mean that West Virginia was to pay the full amount of all these expenditures, and in addition thereto to pay a large amount of the interest on the public debt which had been expended in the limits of Virginia, the objects upon which it had been expended being still the property of Virginia and situated within her territory? Is it not more reasonable and just to believe that they intended that the state expenditures should be paid, and that the just proportion of ordinary expenses of the state government meant those expenses which were then, had been in 1823, and are now the usual and customary expenses attached to the running of any state government, to wit, the legislative, executive, and judicial expenses, together with those of the state educational system and the state eleemosynary institutions? No stretch of the imagination can include investment in private corporations as a part of the usual and customary functions of a state.

Again, as stated above, the interest on the moneys with which West Virginia is charged is largely in excess of the interest on the moneys expended in West Virginia.

The act of February 3, 1863, which transferred certain property of Virginia within the limits of West Virginia to the new state, is so near to the time of the passage of the ordinance and the adoption of the constitution of 1862, that it becomes entitled to weight as a contemporaneous construction of these documents. It is inconceivable

that in a little over a year after the adoption of the ordinance they would have passed the act just spoken of if they believed they were to pay the value of the properties received by the act and in addition interest on the money which created the properties?

We can think of no more apt illustration of the falsity of the finding of this interest as an ordinary expense of the state government, than that of the ordinary family. Every one can apply this to himself, whether he be a lawyer or a layman. Every family has certain usual expenses, which can be as justly termed "ordinary expenses of family government and maintenance," as those in this case are termed "ordinary expenses of the state government and maintenance." We use the word "maintenance" advisedly, because the language of the ordinance undoubtedly means those ordinary expenses which are necessary to maintain a state government. The ordinary expenses of a family would surely include food, clothing, a house in which to live, gotten by rent or otherwise, furniture, expenses of education, expenses of illness, and the expenses necessary and incident to the care of a house and things of like nature for the necessities and comfort of the household. With these expenses upon him, if the head of the family should determine upon an investment in the purchase of a corner lot and the erection of a building thereon, for rental, or should invest in stocks for the purpose of receiving dividends, and the funds not being in hand, he would have to borrow the same and pay interest thereon, is it possible to say that the interest on this loan, made for this purpose, wholly unconnected with the usual expenses and purposes of family government and maintenance, is an ordinary family expense?

That was the condition of Virginia in 1822. She owed no public debt. She had no interest to pay. She entered upon this system of borrowing money for purposes wholly unconnected with her usual and customary duties as a state government. Surely this expenditure was extraordinary; the purpose was extraordinary; this payment of interest then was extraordinary and unusual. Can this principle be changed by the fact that Virginia enlarged these expenditures, enlarged her issue of bonds, and necessarily continued and enlarged her payment of interest?

Item 26, Expended for Primary Schools, $2,400,331.11.

The differentiation of the sum of $2,400,331.11 from other funds expended for primary schools, which were derived directly from taxation, is partly based on the source from which it is derived. Virginia had what was known as the Literary Fund. This fund was mostly in hand when our period commenced on March 19, 1823. Some accretions were made to it from time to time from forfeitures, fines and escheats. None of the principal of this fund was expended. This sum of $2,400,331.11 came from the income derived from the investment of the principal of this Literary Fund in bonds, stocks and loans, from which was derived dividends and interest, and these dividends and interest were expended by the state for educational purposes. As stated above, most of the principal of this fund was in hand when our period commenced, and Virginia remained the owner of all of it when our period ended on January 1, 1861. This fund was during that period the property of the entire state. It had come from the property of the entire state, as shown by the record, and it is an historical fact, that the nucleus of the fund was the money collected from the government of the United States by the Commonwealth of Virginia on account of Revolutionary War claims.

A brief analysis of this fund and statement of the methods of its production are pertinent at this point. This analysis is made from the figures found in the record, pages 538-B to 538-H. These figures are agreed to by the accountants of each party. They show that on the 19th of March, 1823, there was in the Literary Fund, in cash and moneys invested, $1,240,000; that on the first day of January, 1861, there was $2,200,000; there was received during the period from all sources $4,869,000; and that there was paid out in cash and charged off on account of losses $3,907,000.

The accretions to the fund, making up the sum of $4,869,000, are divided as follows:

From counties now forming West Virginia under laws then in existence....	$114,395.00
From counties now forming Virginia....	401,972.00

These sums under the law were permanent additions to the fund

and became part of the principal, which was in no way to be expended. These permanent additions were invested from time to time, as they came in, like other parts of the principal, and only the income thereof was permitted to be expended.

There was received from the United States war claims $182,441. This was a permanent addition, and comes under the rule set out above as to the funds.

There was received as dividends on stock and as interest on loans made to persons or corporations other than the commonwealth, the sum of $1,059,695. Of this sum $800,764 were dividends on bank stock owned by this fund, and $155,291 were dividends on James River Company stock owned by this fund.

There was received directly from the treasury of the commonwealth,

1.	United States war claims ---------- This sum was a permanent addition to the fund and was not to be annually expended like its income.	$ 77,216.00
2.	Capitation taxes ---------- This sum was expended annually through the Literary Fund, as received.	751,481.00
3.	Interest on investments in state bonds--	2,230,445.00
4.	Dividends on James River Co. stock----	50,686.00
	Total ----------	$4,869,000.00

The expenditures made from this fund, which are charged to the account of "ordinary expenses of the state government" under the ordinance and the decree in this cause, are as follows:

For account of Primary Schools—		
Paid from income from investments ----------	$2,400,331.00	
Paid from capitation tax	655,908.00	$3,056,239.00
University of Virginia ----------		613,000.00
Institution of Deaf, Dumb & Blind ----		40,821.00
Virginia Military Institute ----------		28,500.00
Salaries and expenses of Board ------		85,322.00
Total ----------		$3,823,882.00

Each and every one of these items of expenditure, as stated above, are charged to the account of "ordinary expenses of the state government". We have admitted that the sum of $655,908, paid out of capitation taxes, should be charged against us, for the reason that this sum was taken from the taxes collected from the whole state, and West Virginia has received under Paragraph VI. credit for the amount of taxes paid in by her counties to this fund. We have not seriously objected to the amounts paid to the University and to the other institutions named above. We have not objected that the salaries and expenses of the board were charged as part of the ordinary expenses of the state government. We have insisted, and still insist, that the sum of $2,400,000 is *not* a proper charge, because of the reasons set out above and for the further reasons hereinafter given.

The analysis of the figures above given plainly shows that no moneys were expended out of the capital of the Literary Fund as it existed on March 19, 1863. There was added to the capital of this fund during the period $960,000, of which $260,000 came from the United States on war claims, *and this was the property of the whole state.* The additional sum of $516,000 thereof came from redemption of lands, escheats, and things of like nature. Of this sum about two-sevenths came from counties now in the state of West Virginia. The balance of this capital account came from income of the fund which was not expended, and went back into the fund as a permanent addition thereto.

Virginia has seen fit to give credit against the item of interest on the public debt under Paragraph IV., the sum of $1,324,000, being a part of the interest received from the commonwealth on state bonds. Why she did not also give credit for the $926,919 interest received by this fund from the same source, and the $50,686 received from the commonwealth as interest on James River Company stock, we are at a loss to understand. West Virginia is charged twice in this account with these two sums, once as interest on the public debt, and once as expenditures from the Literary Fund. Common justice requires that, if the Court shall be of opinion that it is proper to charge this sum of $2,400,000 to the account of ordinary expenses under the particular circumstances herein detailed, it certainly will deduct this total of

$977,606, either from this item, or from the item of interest on the public debt in the event that the Court shall overrule our exception to the finding of the Master in reference to the interest on the public debt. But counsel for West Virginia are confident this Court will sustain our exception to this item of interest and deny the right of Virginia to charge the same as part of the ordinary expenses of the state government.

Virginia in her original exhibit D-1 under Paragraph IV. of the decree (printed as Appendix A of this brief) gives credit against the total of the ordinary expenses therein claimed for many items of income. These credits aggregate the sum of $838,000. She recognized the fact that where moneys were paid into the state treasury, which were the result of expenditures made from that treasury and charged in this account as ordinary expenses of the state government, the account should be credited with such receipts. As hereinbefore set out, some of these receipts were moneys received from the sale of goods made by convicts in the penitentiary, moneys received from the sale of supreme court reports which were printed and sold by the state, moneys received from the sale of slaves, which under statute were transported and sold. This admission on the part of Virginia of these credits is a complete and authoritative answer to the position of the Master, that the particular source from which money was derived was immaterial to him, so far as this account is concerned (Rep. p. 134). Virginia admits the right of West Virginia to investigate the source of the moneys paid out for the items claimed by her as ordinary expenses of the state government. She thereby further admits the principle of the right to credits against this account of ordinary expenses for all income into the treasury that arose from the labor of state employees or the management of state institutions or the investment of state funds. In fact, credit should be given against this account of ordinary expenses for all income into the treasury that arose from sources other than taxes in some form or moneys borrowed.

What was the difference in principle between moneys earned by a state convict by his labor and moneys earned by the loan or investment of the state Literary Fund by its labor? Each is measured alone by the work done by it. Each is a producer. The expenses con-

nected with the work of each were paid by the state and are charged in this account as ordinary expenses of the state government. Why should not the earnings of each be treated in the same manner?

We submit that the finding of the Master on this Item 26 is erroneous, and the exception of the State of West Virginia thereto should be sustained.

Exception as to Apportionment.

The defendant further excepts to the following finding.

> "I find that the method adopted by the plaintiff of ascertaining 'the average total population,' is the clearest and most accurate approximation upon which the ordinary expenses can be apportioned to 'the average total population,' as the object to be ascertained, is the population in existence, at the time of the ordinary expenses to be apportioned, were paid, and I therefore adopt the plaintiff's method." (Rep., p. 141.)

Paragraph IV. of the decree provides that the proportion of the ordinary expenses of the state government chargeable to West Virginia, be ascertained "on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States" (R., p. 173). As understood by West Virginia, this meant the average total population of each census, beginning with the period commencing on the 19th day of March, 1823, and ending on the 31st day of December, 1860. This made five census periods, 1820, 1830, 1840, 1850 and 1860. We conceive the language of the decree to mean that the average of these five census periods should be taken. Nothing in the decree or elsewhere, so far as we can find, directed the Master to divide these expenss into four periods, one of seven years and three of ten years.

As shown by the Master's report (p. 139), the only state expense which increased in proportion faster than the population, was the item, "interest on the public debt". In fact, outside of this one item, as claimed by the plaintiff, the ordinary expenses of the state government were in proportion to the population greater in the first decade. For instance, when the population, with slaves, of Virginia in the period between 1823 and 1830 was 928.558, and of West Vir-

ginia was 136,808, the ordinary expenses of the state government, after deducting the claimed interest charged, were $3,394,301.

In the period of 1840 to 1850, when the population of Virginia had increased to 1,120,000 and the population of West Virginia had increased to 302,000, the ordinary expenses outside of this claimed interest charge, had only increased to $5,365,000. The population of West Virginia had more than doubled, but the ordinary expenses of the state government outside of the claimed interest charge, lacked one million and a half dollars of doubling. It will be observed that the first period only covered seven years and the last ten years. The interest charge of the third decade as found by the Master is greater in amount than the total charges for ordinary expenses in the first decade. The interest charge in the fourth decade exceeds in amount the total of the charges, other than interest, in the third and fourth decades. It also exceeds in amount the total of the charges in the first, second and third decades, after the interest charges have been deducted therefrom.

The percentage of the increase in the population of the territory composing the two states was greater in that which is now West Virginia. The percentage of the increase of the expenditures of the state government, outside of the claimed interest charge and the taxes under the constitution of 1851 for school purposes and the Harper's Ferry Raid of 1859, were quite uniform. As shown elsewhere herein, the interest charges were based on the extraordinary expenditures made by the Commonwealth of Virginia in the construction of railroads, canals, and other works of like nature, and in the purchase of stocks in railroad companies, canal companies, and other companies of like nature, and in banks. About $40,000,000 was expended by the commonwealth for these purposes. Nine-tenths of these expenditures and purchases were made in what are the present limits of the Commonwealth of Virginia. One-tenth of these expenditures and purchases was made in what are the present limits of the State of West Virginia. It does not seem to us to be an equitable way of ascertaining "a just proportion of the ordinary expenses of the state government" to apportion three-fourths of this interest to the decade when West Virginia's population was the largest. We sub-

mit that even if the Court should overrule the exception of West Virginia to the finding of the Master, which holds that interest on the public debt is an ordinary expense of the state government, it should nevertheless sustain the exception of West Virginia to this finding of the Master on apportionment.

We further submit that the Master was not called upon to render any decision on this claim of apportionment made by Virginia, as it is plainly not included in the decree of reference.

Exceptions of Virginia to the Finding of the Master Under Paragraph IV. of the Decree.

Virginia does not file any specific exceptions to any finding of the Master under Paragraph IV. Unless they intended to insist upon the same general exceptions as set out herein under Paragraph III., Virginia has no exception to the findings under Paragraph IV. The language of Virginia's general exception would include many findings of the Master under this paragraph.

The items asked for by Virginia, and which were not allowed by the Master, consist largely of one general class, to wit: buildings erected in the present State of Virginia in connection with public institutions. The following is a list thereof:

Item 6, Deaf, Dumb and Blind Institution	$ 80,661.94
Item 11, Virginia Military Institute, new building	151.000.00
Item 12, University of Virginia, repairs and improvements to buildings, and water supply	25,000.00
Item 13, Improvements, Capitol Square	12,278.47
Item 15, Penitentiary Lot, new hospital building	13,947.48
Item 17, Medical College of Virginia, additions and improvements to buildings	25,000.00
Item 19, Eastern and Western Asylum	344,295.57
Item 20, Gun House at Alexandria	900.00
Item 21, Cannon House, Surry County	110.00
Item 22, Cannon House for Richmond Artillery	1,079.00

All of these items were either for the purchase of real estate or the erection of buildings on real estate owned by the commonwealth. The only building in the territory now West Virginia was the asylum at Weston, called the Trans-Alleghany Lunatic Asylum, which was charged to West Virginia as a *state expenditure*. If such an expenditure of money should come under the first section of the ordinance as a state expenditure, then it would be utterly inconsistent to ask that expenditures of the same kind when made in Virginia should be classed as ordinary expenses of the state government. They were permanent investments, and are still owned and used by the State of Virginia. They were not expenditures for the maintenance of the inmates of those institutions. We submit that the Master's finding thereon was absolutely correct and should be sustained.

Three other items, which were claimed by Virginia as ordinary expenses of the state government, and which were not allowed by the Master, are as follows:

Item 2, Constitutional Conventions ---	$258,906.28
Item 4, Boundary lines ----------	16,704.78
Item 5, Maps of the Commonwealth ---	16,628.04

These items are in the same class in so far as they were moneys expended for occasional acts done in pursuance of law. There were two constitutional conventions within the period, one in 1829 and one in 1851, but they were not ordinary events in any sense of the word. During the period, under special acts of the legislature, certain boundary lines between Virginia and some of her neighbors were ascertained and established, and the sum of money above named as item 4 was specially appropriated for the purpose. The ruling of the Master should be sustained for the very good reasons given by him on p. 117 of his report.

The legislature also saw fit on certain occasions to have made a map of the state. These occasions were rare, and the duty was specially performed under a special act of the legislature. They were unusual in the sense that none of these acts were done except when the legislature specially ordered it, and when the specific order was complied with the whole matter was ended. We submit that the ruling of the Master thereon was correct. (Rep., p. 118.)

PARAGRAPH V. OF DECREE.

"5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia."

The exceptions of West Virginia under this paragraph are to the finding of the Master of the "fair estimated value" of the real estate in the counties now forming Virginia and in the counties now forming West Virginia. The assessed valuation of the real estate, on June 20, 1863, in the counties of Virginia was $296.085,460.31; and in the counties of West Virginia, $82,449,252.04.

In finding the valuation of property it has been conceded by both parties that the best evidence obtainable was the assessed valuation made by sworn officers of the state, chosen for the purpose. Their sworn returns of such valuation are *primi facie* correct. The acts were judicial in their character. The only other valuation of official character was that made by the officers of the United States in taking the census of 1860; in which each person for himself put down the real valuation, as conceived by him, of his property, real and personal. This valuation was at least three times as large as the assessed valuation. However, the Master took the assessed valuation as the basis; and the question now under discussion is whether he was justified in taking fifty per cent of the assessed valuation as the fair estimated valuation of such real property. He applied this rule to the *whole of Virginia* and to fourteen counties of West Virginia. This was done on the theory that the ravages of the war had depreciated the values equally in the ninety-nine counties of Virginia, but had only affected the values in fourteen of the forty-eight counties of West Virginia. We contend this is unfair to West Virginia.

Some evidence was taken by Virginia (R., pp 739-785). This was given by witnesses who had admittedly seen but a small part of Virginia and who necessarily knew the exact condition only in a small part of the state. Historically speaking, it is a known fact that up to the 20th of June, 1863, not one-third of the counties of Virginia had been in any way touched by invading armies, and no ravages could have been committed in the other counties where the sentiment of the people was apparently unanimously in favor of the Confederate

cause. The evidence of these witnesses is, we claim, incompetent, is very vague, indefinite, and altogether unreliable. None of them were qualified by reason of travel or knowledge during the particular period to speak of the conditions except in a very small territory. The evidence shows conclusively these facts. It is not the character of evidence sufficient to overthrow the official records of the State. Virginia cannot impeach the integrity of her sworn officers in this manner. Each county had an officer called Commissioner of Revenue and some counties had two or more of these officers. It was their sworn duty to assess the properties situated therein. They had the power *to reduce assessments of real estate* where the value thereof had been reduced by the destruction of any of the buildings or things of like nature thereon. The fact that the assessments of 1863 were made after the allowance of such reductions or depreciation in values, shows the mistaken ideas or the lack of information of these witnesses. The assessing officer fixed the value at the time he saw the property, while these witnesses estimated the value of such property which they casually saw a half century thereafter.

It is a well known historical fact that in the early period of the war there was a great conflict in many parts of the forty-eight counties now forming West Virginia. This is especially true of the southern and eastern counties thereof. It is a further fact that during practically the entire period of the war a destructive internecine conflict continued in at least one-half of the counties of West Virginia between those sympathizing with the Union and those sympathizing with the Confederacy. This condition was much more destructive of property than anything that had been actually done by the armies in the present State of Virginia prior to June 20, 1863.

We submit that there is no reliable or convincing testimony in this record sufficient for the Master to reduce the value of assessed real property in Virginia one-half in order to arrive at what is termed "the fair estimated value" thereof on the 20th of June, 1863. We further submit that if the testimony is sufficient to convince this Court that fifty per cent of the assessed value of real estate in Virginia was the fair estimated value, then the same rule should apply to West Virginia, and there should have been an equal reduc-

tion of the assessed value of the lands in the counties now forming West Virginia.

The fact must not be lost sight of that up to the 20th of June, 1863, the outlook for the success of the Union armies was not particularly bright; and the belief was pretty general, at least within the lines of the Confederacy, that the separation of the states therein from the Union was complete. Many parts of Virginia in the early period of the war reaped large benefits in a money way by the opportunity of her people to sell war supplies at an advanced rate.

It is proved by the evidence of witnesses that in West Virginia there was a decided emigration of many people, according to their sympathies. Those who sympathized with the southern cause sought protection within the lines of the Confederate forces and mostly within the counties now forming Virginia. Those who sympathized with the Union sought protection beyond the Ohio River within the certain lines of Union control. Many of these never returned, but settled upon the cheap lands of the West, and were lost as citizens forever to the State of West Virginia. Virginia still retained, up to the 20th of June, 1863, her labor supply of slaves. It will be remembered that in the Virginia counties, according to the census of 1860, there were 472,000 slaves, while there were only 18,000 in the counties of West Virginia. It is further shown in the record that three-fourths of those were in the counties which, during the greater part of the Civil War, gave allegiance to the Confederate government Thus, one state had its labor supply at hand and the other state had its labor supply either in the army of one or the other contending parties, or had seen it migrate to the West. It will be remembered that the counties of West Virginia furnished the two contending armies, or used as home guard soldiers, a force of 60,000 men out of a population of only 376,000 white persons, as shown by the census of 1860.

We respectfully insist that under these circumstances the assessed valuation of the real estate should stand as the "fair estimated value of the real property" in the two states.

Exceptions of Virginia.

The first exceptions of Virginia under this paragraph relates to the

finding of the Master of the fair estimated value of the real and personal property in the counties of Virginia as of January 1, 1861, on the ground that the same is not responsive to the paragraph or any other paragraph of the decree. This finding of the Master was made at the request of the defendant under the following clause in the decree:

> "The master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance, and to state such alternative accounts as may be desired by either of the parties, subject to the direction of the Court."

It seemed to West Virginia that January 1, 1861, was a much more proper and pertinent date on which to find the fair estimated value of property, than the 20th of June, 1863, and for that reason the defendant requested the Master to make such finding.

Virginia also excepted to the finding of the Master under this paragraph, because he included the value of slaves in his statement of personal property in Virginia, and because he adopted the assessed value thereof as the fair estimated value. We are utterly unable to see any point in either of these exceptions. Slaves constituted the most valuable personal property that Virginia had. Their productive value, as well as their salable value, was much greater than all the other personal property in the whole state. They were assessed annually by the Commissioners of Revenue, and that assessment, made by more than one hundred commissioners representing each county in the state, (all appointed by law and sworn to perform an official duty to the best of their ability), is certainly entitled to more weight than the personal testimony of a few witnesses given forty-seven years after the event. We submit that Virginia cannot at this late day impeach her own official records in any such way or manner.

The last exception of Virginia under this paragraph relates to the question whether or not these assessments were made on the basis of Confederate currency.

It is shown by a comparison of the assessments of 1860 and 1863 that there was relatively the same proportion of such personal prop-

erty as horses, sheep and cattle, and that the increase in the assessed value thereof in many counties was not noticeable, while the greatest seems only to have been a thirty or forty per cent increase. The claim by Virginia that they had been increased at least four times was found to be utterly and entirely refuted by their own records. This question was considered by the Master, and in view of the official records he found against the contention of Virginia thereon. We respectfully submit that this finding was correct. We further submit that all the exceptions filed by Virginia to this paragraph should be overruled.

PARAGRAPH VI. OF DECREE.

> *"6. All moneys paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."*

West Virginia excepted to the report of the Master under this paragraph, because of his refusal to allow any of the four items following as payment of money into the treasury of Virginia from counties now in West Virginia, namely:

Item 7, Dividends from Banks in West Virginia counties	$786,666.98
Item 8, Dividends and interest in Turnpike Companies in West Virginia counties	13,595.48
Item 9, Dividends from Bridge Companies in West Virginia counties	6,028.51
Item 10, Dividends from Interstate Turnpike Companies (proportion)	1,355.92

These four items aggregate $807,646.89. The Master refused to allow them on the ground that they were not public payments, but were simply dividends received by the state on stock owned by it and held in its private capacity. In view of the holding of the Master under Paragraph III. of the decree, that the purchase of the stock of banks and of turnpike, bridge and navigation companies was not a state expenditure within the meaning of the ordinance or decree, we believe that his holding in the present case is the corrct one; and if

this Court should approve his holding in that respect, we desire to withdraw these exceptions. But if this Court should hold that the purchase of these stocks by the commonwealth was a state expenditure in the meaning of the ordinance and decree, then we insist that these four items should be allowed, and that our exceptions be sustained. Certainly, if West Virginia is to be charged with the cost price of the stocks, she should be credited with the income received therefrom. The Commonwealth of Virginia, in her original account, and even in her amended accounts, filed under Paragraph III. of the decree, claimed the sum of $391,800, expended for the purpose of bank stocks, as state expenditures. In her exceptions filed to Paragraph III. no mention is made of the refusal of the Master to allow this sum on said account.

It is but human to wonder whether this apparent withdrawal of this item was caused by the showing made by the defendant under Paragraph VI. Virginia certainly must have recognized that if West Virginia was to be charged with the value of these stocks, then she should also be credited with the dividends received therefrom. The dividends received on the bank stock were very large, but those received on the stocks in the turnpike, bridge and navigation companies were so small in amount that the total thereof would have no appreciable influence upon the grand total of $1,104,000 that was expended in the purchase of these stocks, and which total sum Virginia desires to charge to West Virginia under said Paragraph III.

The Master found that

Item 1, Bonus received from Banks -----	$96,253.62
Item 20, Merchants and Mechanics Bank stock sold (bonus stock) ----------	43,103.35
Item 22, Northwestern Turnpike Road --- Item 23, Staunton and Parkersburg Road, net tolls ----------	12,132.12

were moneys paid into the treasury of the commonwealth, and allowed the contention of West Virginia on that point. We are again in the dark as to the contention of Virginia. Her general exception covers these items, but there was no *specific* exception to the finding of the Master thereon. There can be no real question on these points. The

finding of the Master is absolutely correct. (R., pp. 174, 177, 178.) These sums, except perhaps the tolls, were raised in another form of taxation than that usually employed. Still they were taxes, and nothing else. A license tax or a franchise tax is a tax in the meaning of this ordinance and decree. This Court has recently held that they were taxes in the meaning of the bankrupt act. (*State of New Jersey* v. *Anderson*, 203 U. S., page 483.) The language of the ordinance and of this decree is broader than the word "tax." They use the expression, "All moneys paid into the treasury of the commonwealth." Only sovereigns have a right to levy taxes; that is, sovereigns within their own jurisdiction. Here the state levied a franchise tax, in one case of money, and in the other case of stock. Then the state sold the stock and received the money therefor.

PARAGRAPH VII. OF DECREE.

> "7. *The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items, and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the Restored Government of Virginia, together with the nature and description thereof.*"

West Virginia excepted to the finding of the Master because he found that on June 20, 1863, the 3418 shares of the capital stock of the Northwestern Bank of Virginia at Wheeling was worth the sum of $427,250. (Rep., pp. 189-192.) We are unable to appreciate the reasoning upon which the Master arrived at this conclusion. This bank was incorporated in 1817. The stock purchased by the state was made for two different accounts: $50,000 of stock was purchased in the years 1832 and 1833 for the Literary Fund, and the balance of $400,000 in 1837, 1838 and 1839 for the Commonwealth Fund. It is shown herein, and not disputed, that all the accounts of the state were carried either in the Commonwealth Fund, the Board of Public Works Fund, or the Literary Fund. They were all funds of the state of Virginia.

The laws of Virginia (Code of Va. 1860, chap. 58, secs. 42-3) required each of its state banks to make quarterly statements to the governor, showing therein the amount of its capital stock paid and unpaid, the value of its real estate, amount of debts due to and from it, its bad and doubtful debts, specie on hand, amount of deposits, its circulation, amount of bills on hand, rate of last dividend, and amount of surplus or contingent fund. There was no provision of law for periodical examination of banks by an expert public officer, as in these days. The only provision found in the laws of Virginia for the inspection of banks, is that contained in section 45 of said chapter 58 of the Code of 1860, wherein it is provided that an examination of the books and proceedings of any bank might be made by a joint committee of the two houses of the general assembly, or by that of either house, or by a commission appointed by the general assembly or the governor. It will be perceived that each bank was the sole judge of the value of its assets—of the value of its real estate, and whether a debt due it was bad or doubtful, etc. With such power, almost any bank, no matter how bad or doubtful its condition, could make a good showing. Modern laws, both of the Federal government, and perhaps of the most of the states, have changed all this. Experience made it necessary. Now, expert examiners are required, at short periods, carefully to examine in detail the assets of banks, inspecting each note, bond, and other details of such assets.

The Northwestern Bank, under statutes of Virginia, had its main or parent branch at Wheeling, in the county of Ohio, now West Virginia; a branch at Wellsburg, in the county of Brooke, now West Virginia; a branch at Parkersburg, in the county of Wood, now West Virginia, and a branch at Jeffersonville, in the county of Tazewell, then and now Virginia. The reports made by these branch banks were made to the parent bank at Wheeling, which made reports to state officers of Virginia of the bank as a whole, and not distinguishing among the branches. Hence, there cannot be ascertained from the books or the records of the State of Virginia the value of the assets of any one of these branches, nor indeed of the parent bank itself separately from the branches. The State of West Virginia, through

one of the counsel employed in this case, made an exhaustive search to find, if possible, the books of the Northwestern Bank at the time of the separation of the two states, or at any period near thereto. It was found that all the books had long since been destroyed.

After the war, in 1865, the parent bank and the two branches in West Virginia were converted into three National Banks, namely: the National Bank of West Virginia at Wheeling, the First National Bank of Wellsburg, and the Parkersburg National Bank. There were certain assets of the old Northwestern Bank at each of these points which the new bank declined to take. These assets were administered by what was called the Board of Commissioners of the Northwestern Bank of Virginia. They acted as liquidating commissioners. The books of all the branches, after the national banks had taken such memoranda from them as they needed, were transferred and delivered to the Board of Commissioners of the Northwestern Bank, and for years remained in the building of the National Bank of West Virginia at Wheeling; but its affairs having been finally wound up a long time ago, no especial attention was paid to these old books, and they were deposited in the basement of the building occupied by the National Bank of West Virginia. Since that time Wheeling has been subjected to some extraordinary floods, particularly the one of 1884, and the best information that could be obtained tended to show that these old books of the Northwestern Bank were then completely destroyed. Certain it is that no trace thereof could be found. At the beginning of this suit, every one of the officers connected therewith, and who had any knowledge of the affairs of the bank, were dead. West Virginia was therefore compelled to get the best evidence she could to prove these values.

It is shown by the act of the general assembly of (the Richmond government of) Virginia, and by the report of the Hon. Chester D. Hubbard, which are printed as Appendix B of this brief, that the assets of the branch at Jeffersonville, in Tazewell county, Virginia, were wholly lost to the Northwestern Bank. What were the value of these assets which were practically confiscated by the said act, cannot now be definitely ascertained. The Northwestern Bank claimed a loss thereby of 1642 shares, of the par value of $164,200. (See statement

submitted by Mr. Hubbard in said Appendix B.) The provision of section 7 of the said confiscatory act of the Confederate government of Virginia, limiting the amount of redemption of certain notes to $180,000, seem to show that the estimate of the loss of the Northwestern Bank of $164,200 was not too high. The provisions of sections 2 and 4 of the said act are sweeping; they take from the Northwestern Bank every item of property it owned or held in its Jeffersonville branch.

Whatever the loss was—whether $164,200 or $180,000—it was a large loss, *and the Master takes absolutely no account whatever of this large loss* in arriving at the value of this bank stock as of June 20, 1863. *The best evidence, in our opinion, as to the value of these stocks, was the price put upon them by the National banks which took over the assets.* This was done in March, 1865. In the case of each of the three banks, to wit: National Bank of West Virginia, First National Bank of Wellsburg and the Parkersburg National Bank, the same value was placed upon the stock, that is to say, *fifty cents on the dollar.* At fifty cents on the dollar 3418 shares would have been worth $170,900.

By reference to the said report of Mr. Hubbard, which he made by the direction of the Board of the School Fund of West Virginia, it appears that on March 2, 1865, when these national banks were formed, the directors of the Northwestern Bank charged to the State of Virginia for the loss of the assets of the branch at Jeffersonville the amount of 1642 shares of the stock formerly held by the State of Virginia and canceled that amount, leaving 1776 shares, for which stock was given to West Virginia by the three national banks at the rate of *fifty cents on the dollar.* The stockholders other than the state only received stock in the new banks at the rate of fifty cents on the dollar. This fact shows their good faith in thus dealing with this proposition.

In addition to the 1776 shares of stock, for which West Virginia received stock in the new banks at the rate of fifty cents on the dollar, she also received stock in the new banks at the same rate for 326 shares of bonus stock given by the bank to the state of Virginia, and this makes the total of 2102 shares for which West Virginia received

stock in the new banks of the par value of $105,100. In addition to that West Virginia received out of the remaining assets of the Northwestern Bank the sum of $10,510 on the first day of July, 1867; the sum of $10,510 on the first day of August, 1868, and the sum of $10,510 on the first day of July, 1871. It is not denied that these amounts are all that were received by West Virginia in stocks or moneys out of the assets of the Northwestern Bank of Virginia upon its dissolution and winding up. The total was $136,630.

Suppose for a moment that West Virginia was negligent in permitting the stockholders of the Northwestern Bank to charge up the assets of the branch at Jeffersonville to the state holdings of stock, and that the state should have received also fifty cents per share on these 1642 shares, this would add the sum of $82,100 to the amount heretofore conceded. But we do not think that negligence can be reasonably charged to West Virginia in this matter. How could she prevent the State of Virginia from seizing the property of the branch at Jeffersonville, which was in her own territory and dominated by the arms of the Confederate States? This property of the Jeffersonville branch *was never transferred to West Virginia by Virginia. Virginia kept it and made us of it.* What reasonable claim can, therefore, be made that it should be charged to West Virginia?

We know of no better evidence that could be obtained than these acts of the parties at the time. They were dealing with the matter in a business way and on a business basis. The Master, as has been said, makes no deduction whatever for the loss of these assets of the branch at Jeffersonville, but on the contrary charges West Virginia with the stock as if this great loss had not happened. The Master also goes on the assumption that the fact of the payment of 7½ per cent dividend for a few years prior to the war shows that this stock was of the value of one-fourth more than par. This position is clearly untenable. *The sale by the state in 1857 to this bank itself of 1082 shares for $113,000 shows that the position taken by the Master cannot possibly be sound.*

Virginia, in 1857, when this stock was earning this 7½ per cent rate, was willing to take and did take less than $105 per share for the

stock, the par value of which was $100 per share. Hence, we cannot conceive how the Master could say that, amidst the throes of war, and especially at the time when the destiny of the country hung in the balance, as it did in June, 1863, this stock was worth $125 per share. It must be remembered that banks prior to 1863 and banks of the present day did business on different conditions. Supplemental Exhibit No. 9, filed with the Master after the record was printed, and upon which he based his finding in this particular in part, shows that the deposits in this bank were less than one-fourth of its capital stock, and further shows that the money-making powers of these banks in Virginia prior to the war lay in their exclusive right to issue Virginia notes, which notes passed as the money of that day. Certainly, by the second day of March, 1865, when this bank was nationalized, it was a recognized fact that this power to issue this money was gone; the immense amount of such notes which it had outstanding reduced its assets one-half. Is it to be presumed that, in June, 1863, before the battle of Gettysburg and before the fall of Vicksburg, when everything hung in the balance, the conditions of 1859 and 1860, so far as this bank is concerned, had continued just the same? The Master says that there is a presumption of such continuance of conditions, when there is no proof to the contrary. The Court will certainly take judicial notice of the fact that in this instance there is written on history's pages an immense amount of proof to the contrary. The greatest war of modern times, directly involving the territory of the two states, had drained into their soldiery the largest part of the able-bodied men who lived within the country reached by this bank. Can it be presumed that under these conditions the value of these bank stocks would have continued and grown twenty per cent greater in 1863 than they were in 1857?

The Master draws a comparison between the Fairmont Bank and the Northwestern Bank. He certainly overlooked some important matters in such comparison. He takes the statement made by West Virginia that Fairmont stock was worth par as proof that the stock of the Northwestern Bank must be worth more than par. The concession made by West Virginia as to the value of the Fairmont Bank stock was based solely and alone on the fact that when the Fairmont

Bank was nationalized in 1865, the stockholders thereof received stock in the new National Bank at par for their holdings in the Fairmont Bank. This concession on the part of West Virginia only proves that she was willing to pay for this stock every cent's value she received in it, which value is that which the persons in charge of the banks in 1865 fixed as the value of the stock, when they became incorporated under the laws of the United States. It is certainly reasonable to presume that when these banks became national banks, under the strict inspection given by the United States, they put a just value on the properties; and it is further reasonable to presume that when the stockholders in charge of the bank gave the state the same treatment that they gave themselves and other stockholders, they were acting justly. The comparison made by the Master between the Fairmont Bank and the Northwestern Bank on the basis of the concession that the Fairmont stock was worth par thus falls flatly to the ground. If the concession as to the Fairmont Bank can be regarded as proving anything, certainly the concession made as to the Northwestern Bank should be worth as much, and prove what it admits. Moreover, the Fairmont Bank had no such loss as was suffered by the Northwestern. A considerable part of its assets were not seized and confiscated by the enemy in war. This fact the Master also overlooks in his comparison.

We might recapitulate this case as follows: Virginia conceded in 1857 by her sale that the stock was worth only $105. A great war came on; there was a great upheaval, involving most of the territory served by this bank; one branch, with a capital stock of $150,000, was wholly lost to the bank; and yet the Master finds that the stock was worth twenty per cent more than the value placed upon it in 1857 by the Virginia state officers. The Master says that this conclusion is largely arbitrary, but he believes it reasonable. We certainly cannot agree with the latter phrase.

Exception by Virginia Under Paragraph VII. of Decree.

Virginia's exception under this paragraph is based on the finding of the Master that West Virginia received nothing in money from Virginia. The Master finds that there was received by West Virginia

from the restored government of Virginia a total of $170,771.46. These moneys were given over to West Virginia by the act of February 4, 1863, passed by the legislature of the loyal restored State of Virginia (App., p. 131). The entire amount of money so turned over was collected by taxation by the restored government from the people and properties of the territory which afterwards formed West Virginia. All of it had been acquired after the organization of the restored government. This is necessarily true, as the restored government had no money whatever when it was organized, and could only raise money by the collection of taxes within the territory where its authority was recognized.

It will be remembered that the act of February 3, 1863 (App., p. 128), transferred to the new state, when it should become one of the United States, certain described properties belonging to the State of Virginia within the boundaries of the proposed State of West Virginia. It further provided that if the new state was formed, and that grant took effect, the new state should account for the same in a settlement between the two states.

After that act had been passed and become law the legislature passed the act of February 4, 1863. By an act passed on May 14, 1862 (App., p. 128), there was appropriated to the new state the sum of $100,000; and this act provided in part as follows:

> "All of the appropriations made by this act shall be charged to the State of West Virginia in the settlement between the States of Virginia and West Virginia."

The act of February 4, 1863, contained the following provision:

> "That the act passed May 14, 1862, making an appropriation of $100,000 to the State of West Virginia be and the same is hereby repealed."

We thus see that it was plainly the intention of the legislature of Virginia not to charge to the new state this sum of $170,771.46. This is directly shown by the passage of the act of February 4, 1863, after the act of February 3, 1863, and by the repeal of the act of May 14, 1862. This was but simple justice to the new state. All this money had been collected on the property and from the citizens of the new state. It was specifically provided in the act of February 4,

1863, that all moneys which had been collected from the counties of Virginia outside of the new state, should be included in a settlement to be made by the auditor of Virginia, and also that all moneys that up to the same time had been expended in such counties should be included in another settlement, and the surplus expended, after deducting the moneys expended in such counties from the moneys collected from such counties, should remain the property of the Commonwealth of Virginia. This plainly shows that it was the intention of Virginia to separate the moneys then in the treasury according to the fact whether its sources were the counties of the new state or the counties of the old state. If it had been collected from the people of the counties of the new state, they justly said that the new state was entitled to it. The converse was also true. The moneys which had been collected from the counties of the old state should be retained by the restored government of Virginia. It was a gift indeed, but still a gift which in justice rightly belonged to the state to which it was given. It was no Indian gift: there was no expectation of any return.

PART III.

Causes of Separation of West Virginia.

Part I. of defendant's brief deals with questions of law which do not go to the merits of the case, and Part II. deals with the exceptions of the complainant and defendant and the report of the Master. This part is intended to deal with the principles of law applicable to the facts admitted by the pleadings, developed before the Master, and matters of common history and knowledge of which the Court takes judicial notice. Such an argument must inevitably involve some repetition in respect of questions covered by Part II.; but this is avoided as far as possible.

1 Rule of Construction to be Applied in This Case.

This Court said in *Scott* v. *United States* (12 Wallace 443), which involves the construction of a contract between the Government and an individual and the ascertainment of the intent of the parties:

> "In cases like this it is the duty of the Court to assume the standpoint occupied by the parties when the contract was made—to let in the light of surrounding circumstances—to see as the parties saw, and to think as they must have thought, in assenting to the stipulations by which they are bound. This process is always effective. When the terms employed are doubtful or obscure there is no surer guide to their intent and meaning."

This settled doctrine, so admirably stated by the Court, is peculiarly applicable to this case, both in the construction of the Wheeling Ordinance of August 20, 1861, and of Section 8 of Article VIII. of the Constitution of West Virginia, which was adopted by the Convention that assembled pursuant to the provisions of the Ordi-

nance and under which West Virginia, with the consent of Virginia, was admitted into the Union as a State. The true construction of these instruments and a just determination of the case, cannot be reached without reference to the relations of Northwestern Virginia and her people and Eastern Virginia and her people, territorially and sentimentally, and to the circumstances under which the movement for the formation of the new State was inaugurated and carried to consummation.

2. PHYSICAL CHARACTERISTICS OF EASTERN VIRGINIA AND NORTHWESTERN VIRGINIA.

Some elements in the problem are not susceptible of proof by the testimony of living witnesses, but are susceptible of accurate ascertainment from the history of that period. This Court will take judicial notice of the physical fact that Northwestern and Western Virginia within the boundaries described by the Ordinance and the Constitution is remote from tidewater, and separated from Eastern Virginia by the Alleghany Mountains; that this region which became the State of West Virginia lies mainly on the western slope of the Appalachian Mountains and is bounded on the north by Ohio, Pennsylvania and Maryland, on the east by Pennsylvania, Maryland and Virginia, on the south by Virginia and Kentucky, and on the west by Kentucky and Ohio.

> "The Alleghany watershed is in the eastern portion of the State, all except eight of the counties lying on the western slope within the Ohio Basin. In the higher parts of the State, where Pendleton, Pocahontas and Randolph Counties join, five rivers rise which flow across the State—two finally flowing eastward into the Atlantic and three westward into the Ohio. The Ohio forms the western boundary and is navigable throughout its length. The eastern part of the State is drained by the Potomac and its tributaries. The Cheat and Monongahela flow through the northern counties and the latter is now navigable as high up as Fairmont, in Marion County. The Greenbrier and the Elk form the watershed to the southwest and join the Great Kanawha, which flows northwest into the Ohio. The Great

Kanawha is navigable for 96 miles from the Ohio. The Big Sandy, flowing northwest, forms the southern boundary of the State. The river system of the State has been improved somewhat for navigation by government engineers, but the interior rivers will always be more valuable for their water power than for facilities of navigation" (See "West Virginia," the "Americana," published by "Scientific American").

3. COURT MAY RESORT TO SPEECHES OF CHAIRMAN OF COMMITTEE REPORTING A BILL AND OF AUTHOR OF THE BILL.

We are fully mindful of the rule that in construing an Act of Congress the court does not consider itself at liberty to recur to the views of individual members of either body in debate; or to consider the motives which influenced them for or against the passage of the measure. The rule has not always been observed here, and moreover, is not without exceptions.

What is said by the Chairman of a Committee of either body in reporting a measure as to its purpose and meaning, has been resorted to by the Court in aid of its construction. The same is true in respect of the observations of the author of a measure in exposition of its provisions. And here we, therefore, feel at liberty to quote from the remarks of Senator Wade, Chairman of the Committee on Territories of the Senate, who reported the Bill for the admission of West Virginia into the Union (Congressional Globe, Part 4, 37th Congress, 2d Session, p. 3038).

4. SPEECH OF SENATOR WADE IN SUPPORT OF ACT FOR ADMISSION OF WEST VIRGINIA.

Senator Wade said:

"I have looked at the condition of things in Western Virginia, and I have come to the conclusion that it is impossible for the people of Eastern and Western Virginia to live together in harmony and peace. It is not a new controversy among these people. When I came to investigate it, I find that it has existed for a long period of years, much of it probably growing out of

the entire isolation of the two sections, for there is really no communication between the east and west. As Governor Pierpont remarked to me, 'We have no communication whatever, except it be furnishing a few members of the Legislature, and a few inmates of their penitentiary.' In other respects, in commercial feeling, in political feeling, in association, they are entirely isolated. On this subject of slavery they feel entirely different. There is an animosity between them that is more intense, I believe, from what I gather from the best men of that section, than that which exists between any of the northern and southern States. Under these circumstances the question is, shall they be compelled to be joined with the other portions of the State where they will undoubtedly be put under the ban of a hostile legislation for years? They complain that they have been heretofore. It is a standing complaint with them that while taxes and burdens have been imposed upon them by the vast majorities of the eastern section, for internal improvements and the like, they have been awarded no benefit from them whatever, and this has aggravated the difference between them."

5. SPEECH OF SENATOR WILLEY.

Senator Willey, elected to the "Restored" Legislature of Virginia, and the author of the Bill to admit West Virginia as a State (Cong. Globe, Part 4, 37th Cong., 2nd Session, p. 3038), said:

"Sir, it is with pain that I am compelled to take this stand, but I am justified in doing it. These people have looked for sixty long years to this day. Time and again have the sections of Virginia been upon the eve of an outbreak, of an insurrection. Criminations and recriminations have sounded in our legislative halls at every session of the Legislature for the last thirty or forty years. Threats of violence have been hurled by one section at the other. And today, when the loyal people come with a united voice, having fulfilled all the requisitions of the Constitution and all the forms of the law, and I stand here, where my colleague does not stand, representing the voice of the people of Virginia, who ask for freedom, who ask for severance from the

eastern section of the State to whom we have been in bondage in a great degree for fifty or sixty years, he gets up here on the very eve, as I have reason to believe, of the passage of the bill, when the Senate of the United States is about to bestow upon us the long prayed for boon, and he interposes an objection, to postpone and defer our long-cherished hopes and desires.

"Now, sir, I wish to make another remark in answer to the Senator from Illinois. He seems to have fallen into the mistake, common to almost every person, that this movement was conceived in a desire to separate ourselves from the disloyal portion of the State of Virginia, that it grew out of our national difficulties, out of the secession of Virginia from the Federal compact. No, sir; no. These circumstances may have precipitated action upon it; they may have given us the opportunity to effect the long-cherished desire of our section of the State; but this controversy is older than I am; I have heard it ever since I can remember anything. It grows not out of these national dissensions; it grows not out of loyalty or disloyalty to the government; it grows not out of this question of secession; but it grows out of the social, geographical, commercial, industrial distinction and antagonisms that never can be reconciled by the power of man. The Almighty, with His own eternal hand, has marked the boundary between us. We live upon waters that flow in the valley of the Mississippi; our eastern brethren live upon waters that flow into the Potomac and the Chesapeake; and there is a chain of impassable mountain barriers between us that prevent, and will forever prevent, all connection, all social relations, all interchange of traffic and commodities by any convenient means of transportation. Owing to these facts, we ask this separation, and we place it upon these large national grounds; not upon the question of secession and disloyalty. If those were the only questions at issue, I would say to the western people, as I have hitherto said to them, stand fast, not only until the Union is restored, but until all Virginia again is made loyal to the national flag, and until we all dwell together again beneath its ample folds in peace and in security. But, sir, we never can dwell

> in harmony, not because now we are separated by principles of secession and anti-secession or loyalty and disloyalty, but because the Almighty, with His own hand, has placed barriers between us that separate our trade and our intercourse, because our social relations are different, because our places of market are different, because our industrial interests are different, and because, on account of these facts, our internal resources have never been developed, and never can be developed while we are connected with Eastern Virginia."

Again he said:

> "It is said, 'Whom God hath joined together, let no man put asunder.' The reverse is true, whom God hath put asunder, let no man attempt to put together. There is no identity of interests, there is no homogeneity between the people of the valley and the people west of the Alleghany Mountains. And we are today fulfilling that remarkable prediction of Mr. Webster, that whenever there was an attempt to withdraw Virginia from the Union, it would be seen that the inhabitants living upon the waters of that State which flow into the Valley of the Mississippi would inevitably go with the people of that valley."

This was said in opposing the amendment reported to the committee which added 140,000 people and several counties to the proposed State. He further said in support of the amendment to strike out the additional counties which had been added by the committee (p. 3037):

> "By so doing you secure a new State, that will be perfectly homogeneous and identical in interests with the great States of Ohio and Pennsylvania; the great breakwater which the selfish policy of the eastern government of Virginia has always interposed between those connections across West Virginia will be swept away, and the people of Ohio, Pennsylvania, and West Virginia will be one people in interest, living together harmoniously; and the great resources of that section of the State will no doubt be speedily developed; while all this can be done without detracting one iota

from the interest, the welfare, the rights, or the privileges of the eastern section of the State."

6. SPEECH OF DANIEL WEBSTER.

The historical fact must be remembered, also, that the people of West Virginia were not in sympathy with the institution of slavery and were opposed to secession. Mr. Webster recognized the natural and abiding commercial isolation of western Virginia from eastern Virginia, and in a speech which he made, to which Senator Willey refers, at the laying of the corner stone of the addition to the capitol here in 1851, he warned the people of Virginia against the issue of disunion raised by Mr. Calhoun. After appealing to the people of Virginia, and especially to the men of "James River and the Bay" and to the men "beyond the Blue Ridge," he said:

> "And ye men of western Virginia, who occupy the great slope from the top of the Alleghanys to Ohio and Kentucky, what benefit do you propose to yourselves by disunion? If you 'secede,' what do you 'secede' from, and what do you 'accede' to? Do you look for the current of the Ohio to change and to bring you and your commerce to the tidewaters of eastern rivers? What man in his senses can suppose that you would remain a part and parcel of Virginia a month after Virginia should have ceased to be a part and parcel of the United States?"

7. CONDITIONS AT THE TIME OF CREATION OF WEST VIRGINIA.

When the great transactions occurred which are under review, the Confederate States of America had been formed. The Ordinances of Secession had been passed by South Carolina, Georgia, Florida, Alabama, Mississippi and Louisiana. Virginia had passed an ordinance of secession, had borrowed $1,000,000, had called for 10,000 men to serve for twelve months and had arranged with the Confederate government for admission to the Confederacy, and in the meantime that her troops should, under that government, be employed against the United States. Her troops had seized the Norfolk and Gosport Navy Yards, the arsenal at Harper's Ferry, the Customs Houses, and other property of the United States within her borders;

had hauled down the flag of the United States and hoisted in its place another. President Buchanan in a message to Congress had taken the position that there was no power in the Federal government under the constitution to coerce a state. Fort Sumter had been surrendered.

President Lincoln had called for 75,000 troops to serve three months. The battle of Bull Run had been fought in which the Federal troops were disastrously defeated. The "New York Tribune," edited by Mr. Greeley, exercising a most potent influence upon public opinion, advocated a peaceful separation of the states determined to withdraw, and many eminent men of undoubted love for the Union in both parties seemed to be of the same opinion. There was grave doubt throughout the country as to the ultimate result. *The people of West Virginia could not be blind to the fact that if the Confederacy should be established, that territory would, unless action were taken, be irrevocably a part of that Confederacy.*

Isolated from eastern Virginia, and differing in sentiment from her people in respect to the right of secession and the institution of slavery, her people are not to be justly chided here or elsewhere for embracing that opportunity to become a state in the Union. In this situation, is to be found the genesis of West Virginia; and in the light of this situation, her people are to be judged and her compacts and "constating" instruments are to be construed.

The Rule of Public Law in Regard to the Apportionment of the Debt of a State After Its Division.

1. THIS COURT HAS NEVER DECIDED THAT WHEN A STATE IS DIVIDED THE DEBTS OF THE ORIGINAL STATE SHOULD BE RATABLY APPORTIONED BETWEEN IT AND THE NEW STATE.

It has been assumed, and is now assumed by counsel for the complainant, that this Court has so decided. They cite in support of their contention the opinion of the Court delivered by Mr. Justice Field in *Hartman* v. *Greenhow*, 102 U. S. 672; and *Antoni* v. *Greenhow*, 107 U. S. 769. It may be said here that the opinion of Mr. Justice Field in the latter case was a dissenting one. The question was not in any wise involved in either case. The Hartman case was as follows:

By act of March 30th, 1871, known as the "Funding Act," by which Virginia made an adjustment with her creditors under which she funded two-thirds of her debt and issued bonds for the same, it was provided that the coupons should be made payable to order or bearer, and it was declared that the coupons should be payable semi-annually, to be "receivable at and after maturity for all taxes, debts, dues, and demands due the state," and that this should be so expressed on their face. Hartman, a resident of Richmond, and a citizen of Virginia, on the 5th of April, 1878, was indebted to the state for taxes to the amount of $26.53. On that day he tendered to the treasurer of Richmond, who was by law charged with the duty of collecting the taxes of the state in that city, certain interest coupons, which were overdue, amounting to $24, cut from bonds of the state, (which bonds he did not own), issued under the act of 1871, and $2.53 in lawful money of the United States in payment of the taxes. The treasurer refused to accept the coupons in payment of the taxes without first deducting therefrom the taxes imposed by Virginia on the bonds to which they were originally attached, and of which the holder of the coupons was not the owner. Upon this refusal, he applied to the Supreme Court of Appeals of Virginia for a writ of mandamus to the treasurer to compel him to receive the coupons, with the money mentioned, in full discharge of his taxes, without any deduction from the coupons for the taxes upon the bonds. The Court of Appeals of Virginia issued a rule or an alternative writ upon the treasurer, he answering that the General Assembly for many years had exercised the right to tax all bonds, choses in action, and other evidences of debt, including bonds of the state; that the taxes assessed upon the latter bonds were according to their market value, the amount being fixed at 50 cents on the $100 of such value; that the law required the taxes to be collected when the interest on the bonds was paid, and made it a high penal offense for any officer to receive coupons in payment of taxes without deducting from their face value the tax levy upon the bonds from which they were taken, etc.

The judges of the Supreme Court of Appeals of Virginia were equally divided upon the question. This operated as a denial and the

petition was denied. The court, however, certified that on the hearing of the case there was drawn in question the validity of the statute of the state authorizing the tax upon the bonds and requiring its deduction from the coupons, on the ground of its repugnancy to the provision of the constitution of the United States, prohibiting any legislation by the states impairing the obligation of contracts; and that the decision was in favor of the validity of the state statute and against the right claimed by the petitioner under the provision of the constitution of the United States.

Thereupon the case was brought to this Court and manifestly it involved only the question of the right of plaintiff in error, Hartman, to pay his taxes with the coupons and the added money. This, by the terms of the law, providing for the issue of the bonds and coupons and by the terms of the coupons themselves, he was entitled to do. The Court based its judgment sustaining the right of the plaintiff in error to pay his taxes with coupons on the authority of *Murray* v. *Charleston*, 96 U. S. 432, saying:

> "This decision would be decisive here, but the present case is still stronger for the creditor. The Funding Act made the bonds issued under it payable to order or bearer, and made the coupons payable to bearer. They were so far distinct and independent contracts that they could be separated from each other and transferred to different hands."

So it is held:

> "We are clear that this act of Virginia of 1876 (Sec. 117), requiring the tax on her bonds, issued under the Funding Act of March 30, 1871, to be deducted from the coupons originally attached to them when tendered in payment of taxes or other dues to the state, cannot be applied to coupons separated from the bonds, and held by different owners, without impairing the contract with such bond holders, contained in the Funding Act, and the contract with the bearer of the coupons."

Mr. Justice Field said, however, in the opinion:

> "During the war a portion of her territory was separated from her, and by its people a new state, named

West Virginia, was formed, and by the Congress of the United States was admitted into the Union. Nearly one-third of her territory and people were thus taken from her jurisdiction. But as the whole state had created the indebtedness for which the bonds were issued, and *participated in the benefits obtained by the moneys raised, it was but just that a portion of the indebtedness* should be assumed by that part which was taken from her and made a new state. Writers on public law speak of the principle as well established, that where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On the subject Kent says: 'If a state should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by *special agreement*, their rights are to be enjoyed and their obligations fulfilled by all the parts in common.' 1 Com. 26. And Halleck, speaking of a state divided into two or more distinct and independent sovereignties, says: 'In that case, the obligations which have accrued to the whole before the divisions are, *unless they have been the subject of a special agreement*, ratably binding upon the different parts. This principle is established by the concurrent opinions of text-writers, the decisions of courts, and the practice of nations.' International Law, chap. 3, sec. 27." (Italics ours.)

In *Antoni* v. *Greenhow*, 107 U. S., p. 770, Mr. Justice Field, in his dissenting opinion, incorporated very much the same observations, referring to the authorities cited by him in *Hartman* vs. *Greenhow, supra*. The subject was not involved in either case. If Virginia had never been divided, under the same legislation and upon the same state of facts, the question befoe the Court would have been precisely the same.

We are constrained, albeit with the utmost reverence for the memory of Mr. Justice Field, to say that, in both opinions, his observations with respect to the liability of West Virginia, upon the rules of international law, for a proportion of the public debt of Virginia, prior to January 1, 1861, seem entirely *obiter*.

2. THE TRUE RULE OF PUBLIC LAW IN CASE OF THE DIVISION OF A STATE. GENERAL DEBTS ARE APPORTIONED ON THE BASIS OF TAXABLE VALUE. LOCAL DEBTS ARE ASSUMED BY THE STATE FOR THE EXCLUSIVE BENEFIT OF WHOSE TERRITORY THEY WERE INCURRED. THE AUTHORITIES.

Publicists seem to be in entire accord as to some phases of debt succession between states: First, that when one state and its provinces, if it have any, are absorbed by another, either through subjugation, or through voluntary merger, the absorbing state is liable for the whole debt of the extinguished state. Second, that when a state is broken up into separate states, the original state personality having become extinct, the separate states thus formed are each bound for a proportional amount of the debt of the original state. Third, where a state is broken up into fragments, and separate portions of it are absorbed by surrounding states, they are liable for the debts of the original state.

(*a*) HALL.

Mr. Hall, who has been frequently quoted by this Court, and who certainly was a discriminating and learned writer upon the law of nations, says at page 78:

> "When a *new state* splits off from one already existing, it necessarily steps into the enjoyment of all rights which are conferred upon it by international law in virtue of its existence as an international person, and it becomes subject to all obligations which are imposed upon it in the same way. No question, therefore, presents itself with respect to the general rights and duties of a new state. What, however, is its relation to the contract obligations of the state from which it has been separated, to property belonging to and privileges enjoyed by the latter, and to property belonging in common, before the occurrence of the separation, to subjects of the original state in virtue of their status as such, when some of them after the separation become subjects of the new state?
>
> "The fact of the personality of a state is the key to the answer. *With rights which have been acquired*

and obligations which have been contracted, by the old state as personal rights and obligations the new state has nothing to do. The old state is not extinct; it is still there to fulfill its contract duties, and to enjoy its contract rights The new state, on the other hand, is an entirely fresh being. It neither is, nor does it represent, the person with whom other states have contracted; they may have no reason for giving it the advantages which have been accorded to the person with whom the contract was made, and it would be unjust to saddle it with liabilities which it would not have accepted on its own account. What is true as between the new state and foreign powers, is true also as between it and the old state. From the moment of independence all trace of joint life is gone. Apart from special agreement no survival of it is possible, and the two states are merely two beings possessing no other claims on one another than those which are conferred by the bare provisions of international law. And as the old state continues its life uninterruptedly, it possesses everything belonging to it as a person, which it has not expressly lost; so that property enjoyed by it as a personal whole, or by its subjects in virtue of their being members of that whole, continues to belong to it. On the other hand, rights possessed in respect of the lost territory, including rights under treaties relating to cessions of territory and demarcations of boundary, *obligations contracted with reference to it alone*, and property which is within it, and which has theretofore a local character, or which, though not within it, belongs to state institutions localized there, transfer themselves to the new state person.

"Thus treaties of alliance, of guarantee or commerce, are not binding upon a new state formed by separation, and it is not liable for the *general* debt of the parent state. * * * * It is saddled with local obligations such as that to regulate the channel of a river or to levy no more than certain dues along its course, and *local debts*, whether they be debts contracted for local objects, or debts secured upon local revenues, are binding upon it."

On page 80 of his work on International Law is found a note upon the subject of this particular phase of law which is peculiarly instruc-

tive, for his comments upon the indefiniteness with which Grotius and other authors named have written upon it. For the convenience of the Court, it is herein incorporated:

> "The subject is one upon which writers upon international law are generally unsatisfactory. They are incomplete and they tend to copy one another. Grotius, for example, says that if a state is *split up*, 'Anything which may have been held in common by the *parts* separating from each other must either be administered in common or be ratably divided.' De Juri Belli et Pacis, lib. II, c. IX.; Section 10, Kent (Comm. i. 25) does little more than paraphrase this in laying down that 'If a state should be divided in respect of territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, those rights are to be enjoyed and those obligations fulfilled by all the parts in common.' Phillimore quotes Grotius and Kent and adds: 'If a nation be divided into *various distinct societies*, the obligations which had accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the parts; 1 sec. CXXXVII.'"

Mr. Hall adds (and it is certainly justified):

> "It is difficult to be sure whether these writers only contemplate the rare case of a state so *splitting up*, that the original state person is represented by no one of the factions into which it is divided, or whether they refer also to the more common case of the loss of such portion of the state territory and population by secession, that the continuity of the life of the state is not broken. If the former is their meaning, their doctrine is correct so far as property and monetary obligations are concerned; if not, it would be hard to justify their language even to this extent. No doubt the debt of a state from which another separates itself ought generally to be divided between the two proportionately to their respective resources as a matter of justice to the creditors, because it is seldom that the value of their security is not affected by a diminution of the state indebted to them. But the obligation is a moral, not a legal one. The fact

remains that the *general debt* of a state is a personal obligation. *The case also of the creation of a new state out of a part of an old one is not distinguishable, so far as the obligation to apportion debts is concerned, from that of the cession of a province by one state to another.* (Italics ours.) When the latter occurs at least as the result of conquest, it is not usual to take over any part of the *general debt* of the state ceding territory. The case of Belgium, which took over a portion of The Netherlands debt, is scarcely in point. The Treaty of 1839 (De Martens' Nouv. Rec. XVI, 782), by which the division of the debt was effected, was part of a general settlement of the countries in question made at the dictation of Europe with a view of dealing with all the interests concerned in the most equitable and advantageous manner and not with the bare object of enforcing law. The true rule is recognized by Halleck (i. 76), who distinguishes the case of a state which is so split up as to lose its identity from that of a state which suffers dismemberment without losing its identity. 'Such a change,' he says 'no more affects its rights and duties than a change in its internal organization or in the person of its rulers. This doctrine applies to debts due to as well as from the state and to its rights of property and treaty obligations except so far as such obligations may have particular reference to the revolted or dismembered territory or province.'"

In the brief of the learned counsel who formerly appeared as *amicus curiae*, but now appears for the bond-holding creditors of Virginia, it is said (page 20):

> "Among the writers on public law referred to by the learned justice (whose opinions concurred with the view expressed by him) there may be mentioned the following, citing Puffendorf, Phillimore, Wheaton, Moore, Wharton, Oppenheim."

(*b*) OPPENHEIM.

It is justly conceded that Oppenheim is a learned, accurate and discriminating publicist. He says (sec. 84):

> "When, in consequence of war or otherwise, one state cedes part of its territory to another, or when a

part of the territory of a state breaks off and becomes a state and an International Person of its own, succession takes place with regard to such international rights and duties of the predecessor as are *locally connected* with a part of the territory ceded or broken off and with regard to the fiscal property found on that part of the territory. It would only be just if the successor had to take over a corresponding part of the *debt* of its predecessor, *but no rule of international law concerning this point can be said to exist although many treaties have stipulated a devolution of a part of the debt of the predecessor upon its successor.* Thus, for instance, Articles 9, 33 and 42, of the Treaty of Berlin of 1878 stipulate that Bulgaria, Montenegro and Servia should take over a part of the Turkish debt."

He adds, in a foot-note:

"Many writers, however, maintain that there is such a rule of international law. (See Huber, Nos. 125-135 and 205, where various treaties are enumerated.")

(The italics are ours.)

(*c*) GLENN.

In Glenn's Work on International Law (Hornbook Series), page 36, under the head "Effect of Change of Sovereignty—Upon the Public Rights and Obligations," it is said:

"Three classes of cases arise: (*a*) When a new and independent state is formed by separation from an existing state; (*b*) When a portion of the state is lost by cession; (*c*) When a state is wholly absorbed.

"In the first case, two separate and distinct international persons exist instead of one and the new state has nothing to do with the personal rights and obligations of the parent state, which still possesses its identity. So also the parent state remains in sole possession and enjoyment of its separate property and the rights connected therewith. Treaties of alliance and guarantee of commerce are not binding upon the new state, nor is it liable for *the general debt of the parent state.* The new state comes into possession of rights, including those under treaties and *obligations, connected with the property within it.* It is entitled to the privileges of

navigating rivers that its citizens possess by virtue of being citizens of the parent state and is bound by the obligations connected therewith, such as regulations in regard to the dues, etc. It becomes liable for *local debts, including those for local objects,* and those *secured by local revenues.*" (Italics ours.)

(*d*) HANNIS TAYLOR.

Mr. Hannis Taylor, who is a writer of great research, and is quoted in the brief of the learned counsel for the bond-holding creditors, in his work on International Law, Section 166, says:

"*When severed territory becomes a distinct state—local rights and obligations.*—A narrower and more technical rule prevails when the parent state is deprived of a portion of its territory *which is erected into an entirely distinct political community.* The cogent reasoning in such a case is that as a man who loses an arm or leg in battle is not thereby relieved of any part of his obligations, so a state that is so dismembered as to suffer no loss of identity remains bound as before for its entire general indebtedness. 'Such a change,' Halleck says, 'no more affects its rights and duties, than a change in its internal organization, or in the person of its rulers.' This doctrine applies to debts due to as well as from the state, and to its rights of property and treaty obligations, *except so far as such obligations may have particular reference to the revolted or dismembered territory or province.*" (Italics ours.)

"In other words, as the old state continues its corporate life without interruption, it retains all general state property, and all general benefits resulting from treaties with full liability for all *general* obligations with which the new creation taken from its side may disavow all legal connection. The new state on its part carries with it *only local obligations,* whether *contracted for local objects* or secured by a lien on local revenues, and such local duties as arise out of agreements to maintain the channel of a river, or to levy no more than certain tolls along its course. As a compensation for such burdens the new state is entitled to property within it of a local character, or to such, not within it, as belongs to state institutions localized

there, and to the privileges arising from treaties specially contracted for the benefit of its territory," etc.

This certainly has the merit of clearness. Summarizing, he says (Section 168):

> "After a careful review of all the authorities the general statement may be made (1) that no matter whether a state is entirely extinguished by a division into two or more distinct states, or (2) whether it loses its identity by being absorbed into another state, or (3) whether a state without a loss of its identity has a portion of its territory taken from it to form an integral part of another state, or (4) whether such severed part is erected into an entirely new and independent state, all local charges, and guaranteed debts to which certain domains and their revenues are dedicated, survive as charges upon the localities to which they relate, with their equities unimpaired. In the case first named, the *general debt* of the state should certainly be ratably binding, morally, if not legally, on its several parts; in the second it passes as a whole to the absorbing state; in the third the acquiring state should assume a ratable proportion of it; and in the fourth, every principle of equity and good conscience requires that it should be provided for out of the common state property and the residue divided in proportion to the revenues of the two distinct commonwealths. In the notable case of West Virginia that obligation, though formerly recognized, has never been discharged."

He seems to coincide, so far as the moral obligation is concerned, with Hall, Oppenheim and other writers; and to agree with them also that there is no rule of International Law which makes it a *legal* obligation.

(*e*) PRADIER FODERE.

Pradier Fodere, in "Traite de Droit International Public," Vol. 1, Paris, 1885, Section 156, states:

> "The state to which cession is made is bound by *local debts* of ceded territory."

Section 157:

> "But is the state receiving the cession bound by a part of the other obligations resulting from treaties

made with the ceding state and not attached to the ceded territory, merely because it has had the benefit of the cession? In other words, are obligations and rights which are neither local nor personal, resulting from treaties made with a state, necessarily transmitted, in any proportion, to the state to which a cession is made, together with the ceded territory? *No; the ceding state remains bound or vested with the rights, for, it alone made the contract. The same rule holds, when, instead of being ceded, a province becomes an independent State.* The new state is not generally bound by *non-local obligations* of the state from which it is separated. Such at least is the principle; but it can be modified in practice by a treaty. Thus the Kingdom of Italy, after the acquisition of Lombardy and Venice, only took the place of Austria in respect of the local obligations and rights of the provinces acquired, and refused to take upon itself a proportion of the *general debt* (italics ours) of the Austrian Empire. So also no part of the French debt was imposed upon the province of Alsace-Lorraine which France was forced to cede to Germany in 1871; but—and this is an example of the exceptions which treaties can make from the general rule—the Treaty of Berlin, of 1878, imposed part of the public Turkish debt upon Bulgaria, constituting a diminished principality or territory under the suzerainty of the Sultan, and upon Montenegro and Servia, whose independence was recognized."

(*f*) BLUNTSCHLI.

Bluntschli says, Section 59:

"The debts of the state ought not to be divided proportionally to the *population*. Mortgage or landed debts will be adjudged to fall to the state which obtains the land securing the debt. Other debts will be apportioned proportionally to the *taxes* paid by the divers portions of the territory.

* * * * * *

"2. The security of other *public debts* rests on the *taxable fortune* of the members of the state, and is measured by the *actual product of the taxes* which, accordingly, furnish a *juster basis than the number of*

the population. Suppose a state to be divided in two parts, one having a rich urban population, and the other a poor rustic population. One of the parts, in case of a division proportional to the number of the inhabitants, would be overburdened with debt, and the other considerably relieved, in comparison with the taxes previously paid, all to the great prejudice of the creditors."

(*g*) BONFILS.

Manuel de Droit International Public, by Henry Bonfils, Professor of the Faculty of Law of Toulouse, 3d edition, 1901:

SECTION 223. "If a state ceases to exist by being broken up and divided into several new states, each of the latter ought to assume a portion of the debts which concerned the original state as a whole, and each of them ought also to take upon itself *exclusively the debts contracted for the exclusive benefit of its territory.*"

SECTION 224. "The new state formed by the separation of a province, or by the destruction of the bond of vassalage, should equitably assume a part of the public debt of the state of which it was a fraction. The reason of this is evident. The debts contracted by a state, in *the general interest,* have benefited all the provinces *in globo,* and the creditors had as a guaranty the wealth of all the provinces and the taxes which that wealth could bear."

SECTION 225. "Part of the territory of a state is ceded, annexed to another state. The annexing state should assume the contributive share of the annexed territory in the public debt of the ceding state. It is just that the state taking the cession should assume a part of the debts which, for divers reasons, directly or indirectly have benefited the territory with which it is enriching itself."

SECTION 226. "In the last mentioned cases, how shall the contributive share of the new state or of the annexing state be fixed? The authors are divided. Some fix upon the number of the population; others upon the extent of the territory. Bluntschli's opinion is better and juster. He determines the contributive

share according to the share of the *taxes borne by the annexed or separated province. There is, indeed, a necessary correlation between the public debt of a state and the taxes imposed upon the inhabitants.* The latter constitute a guaranty for the former.

"The personal debts of the annexed, or separated, provinces, relating to local interests, naturally ought to continue to be the debts of these provinces, and should be paid by the annexing state, or by the newly founded state."

(*h*) FRANZ V. LISZT.

..*Das Volkerrecht* by *Dr. Franz v. Liszt,* Professor of the University of Berlin; second edition; Berlin, 1902:

Section 23, p. 175: The author, discussing the cession by a state of a part of its territory to another state, says:

"In any case, succession takes place as regards the so-called hypothecated debts (dettes hypothequees), that is, those debts which were incurred in the *exclusive interest of the ceded territory* (as for drainage works), and as regards mortgage debts (dettes hypothecaires), that is, those debts for which real property situated in the ceded territory was pledged as security."

(*i*) PIEDELIEVRE.

Precis de Droit International Public, by *R. Piedelievre,* Professor of the Law Faculty of Rennes; Paris, 1894:

Section 154:

"First question: should the annexing state take upon itself a part of the *general debt* of the dismembered state?

"The question is, in theory, at least, controverted. The negative solution is the less generally accepted. Its partisans take the ground that the dismembered state, however important a diminution of territory it suffers, nevertheless preserves its juridical personality intact, and conclude that it ought not to cease to be bound by the entirety of engagements, no more than an individual could take advantage of the loss of a part of

his patrimony so as to escape in a similar proportion the fulfillment of his obligations.

"The contrary opinion, more usually announced, seems to us better founded. It involves two principal reasons. The first is that the debts contracted by a state with a view to the *general* utility of the inhabitants, weigh *indivisibly* upon all parts of the territory, and, consequently, if one part of the territory is detached, the part of the debt which was incumbent upon it ought to follow it into the hands of its new master; the second reason is that these debts have served to realize improvements from which the annexed territory benefited in the past, and from which it may benefit again in the future; that it is, therefore, equitable that the state to which the cession is made, as it is to have the fruit of these expenses, should assume an equivalent part of their payment."

"Accepting the principle of apportionment of the debt between the two states, there is still a difficulty to resolve: how shall the principle be applied? How are we to determine what share of the debt of the dismembered state belongs to the annexed territory? Several systems have been proposed.

"Some authors consider solely the *territorial* importance of the detached provinces, so that supposing the debtor state to have lost a fourth or a fifth of its total possessions, the annexing state would have to assume a fourth or fifth of the former state's public debt. While we recognize the simplicity of this system, we think it should be rejected, for the reason that the wealth of a country has less connection with its territorial extent than with the activity of its inhabitants and the direction it has taken. With equal extent of territory, an industrial region is evidently wealthier than a purely agricultural region. But the proposed solution does not take account of this fact; it wrongly supposes the wealth of a state to be mathematically apportioned among its provinces, in proportion to their territorial extent. In practice, the result would be to give one of the states concerned an advantage at the expense of the other.

"A second system has been proposed which is sub-

ject to nearly the same criticism: this is the system of dividing the public debt between the two states in proportion to the number of the *population* of the annexed provinces. To the foregoing observations we may here add that annexation generally has the effect of creating a current of emigration, the importance of which it is difficult to foresee, and for this reason, the governments concerned would have great difficulty in finding the basis for an equitable apportionment.

"A third doctrine remains, which seems to us the best. It is that the debts should be apportioned in proportion to the figure which represents, in the whole amount of *taxes* collected by the dismembered state, the taxes paid by the ceded territory. In fact, the value of the different provinces of a state can only be measured exactly by the actual amount of the taxes paid by each of them. Besides, this system is easily applied and fully protects the rights of the creditors. The annexing state cannot complain, since before consenting to the cession it must have ascertained what were the rights and obligations of the annexed provinces with regard to the dismembered state, and the financial law which fixed the amount of taxes they were to pay sufficiently informed in respect to the debts with which it would be burdened in consequence of the annexation; on the other hand, there is no danger of the dismembered state's raising any objection in regard to the contributive share of the territory lost by it; for it fixed this share itself on the basis of the actual resources of the territory taxed.

Section 156:

"Whatever may be the solution adopted with reference to the question whether the annexing state, by reason of the annexation, ought to contribute to the payment of the public debts of the dismembered state, there are two categories of debts about which there can be no doubt:

"The first includes the *special debts* belonging to the annexed territory, that is to say, the debts which were contracted for their exclusive benefit, and which, like our department or communal debts, are not chargeable to the state. Diplomatic language calls them

dettes hypothequces, because of their particular destination. These debts the annexing state ought certainly to assume, or at least to cause them to be borne by the provinces which they specially affect. In any case, the *ceding state no longer has to pay them.* Thus by the treaties of Campo Formio of Oct. 17, 1797 (Arts. 4 & 10), and of Luneville of Feb. 9, 1801 (Art. 8), France assumed the debts hypothecated on the soil of the ceded countries which were acquired or exchanged.

"The second category includes the mortgage debts (dettes hypothecaires): these naturally are charged to the state which becomes the proprietor of the real property securing their payment."

(*j*) RIVIER.

Principes du Droit des Gens, by *Alphonse Rivier*, Professor at the University of Brussels. Paris, 1826; Volume 1, p. 213 (Art. 40, V):

"It is a general principle that ceded territory passes to the acquiring state just as it is, particularly carrying with it the obligations with which it is charged. '*Res transit cum suo onere.*'

"This principle, in the first place applies to obligations of a private nature, to the debts which specially belong to the ceded territory; the territory is transferred with its debts which remain special to it under the new sovereign as they were special to it under the old sovereign.

"This principle *should also be applied to the debts of the dismembered state* which *were contracted for the benefit of the ceded territory* and for the security of which that state gave pledges as mortgages in this territory; lastly, *the principle applied to the proportion* of the *national* debt of the dismembered state which ought to be taken over by the ceded territory.

"The authors disagree in regard to the disposition of the national debt in case of dismemberment of a part of the territory. According to some authors, the dismembered state continues to bear the whole burden. According to others, the debt is divided between the dismembered state and the annexing state, and this equitable system was put into practice in 1860 between

France and Sardinia, in 1866 between Austria, Prussia and Denmark, between the Holy See and Italy, in 1878 between Turkey and the new states, Bulgaria and Montenegro. M. Appleton, and also M. Cabonat accept the principle of division, but between the dismembered state and the ceded territory 'we favor the division of the debt between the dismembered state and the fragment detached therefrom.' *The proportion of the debt to be borne by the latter should be determined in accordance with the relative wealth of the detached portion and of the remainder of the dismembered state, and this wealth is disclosed by the taxes.*"

(*k*) FIORE.

Il Diritto Internazionale Codificato (International law codified), by *Pasquale Fiore*, Professor of International Law at the University of Naples:

Section 132:

> "In the absence of express agreement they" (the debts of the ceding state) "should be divided equitably upon the basis of the economic importance of the ceded territory, taking into account the proportional amount of the *taxes* borne by it."

Nouveau Droit International by *Pasquale Fiore*, Professor at the University of Naples; Paris, 1885.

Section 360:

> "When only a part of the territory is ceded the public debt ought to be equitably apportioned. On this subject we consider the principle laid down by Bluntschli to be correct, that the opportionment should *not be made proportionally to population.* In the case of mortgage or landed debts (foncieres), the state which receives the real property securing these debts, ought to assume their burden. Ordinary debts should be apportioned proportionally to the taxes paid by the respective parts of the territory."

(*l*) PRADIER FODERE.

P. Pradier Fodere, *Traite de Droit International Public;* volume 1; Paris, 1885.

Section 156: The author states that the state to which cession is made is bound by *local debts* of ceded territory.

Section 157:

> "But is the state receiving the cession bound by part of the other obligation resulting from treaties made with the ceding states and not attached to the ceded territory, merely because it has had the benefit of the cession? In other words, are obligations and rights, which are neither local nor personal, resulting from treaties made with a state, necessarily transmitted, in any proportion, to the state to which a cession is made, together with the ceded territory? *No. The ceding state alone remains bound or vested with rights, for it alone made the contract.* The same rule holds when, instead of being ceded, a province becomes an *independent state. The new state generally is not bound by non-local obligations of the state* from which it has separated. Such at least is the principle, but it can be modified in practice by treaty. Thus, the Kingdom of Italy, after the acquisition of Lombardy and Venice only took the place of Austria in regard to the local obligations and rights of the provinces acquired, and refused to take upon itself the payment of a portion of the *general debt* of the Austrian Empire." (Italics not the author's.) "So also no part of the French debt was imposed on the province of Alsace-Lorraine, which France was forced to cede to Germany in 1871. But—and this is an example of the exceptions which treaties can make from the general rule—the treaty of Berlin of 1878 imposed part of the public Turkish debt upon Bulgaria constituted an autonomous principality tributary under the suzerainty of the Sultan (Arts. 1 & 9), and upon Montenegro and Servia, whose independence was recognized (Arts. 26, 33, 34 & 42)."

(*m*) HUBER.

Max Huber, in his work on Staaten succession (1898) says (p. 90 § 34):

"Without reference to those numerous cases in which a sum is fixed on account of the confusion of the financial conditions and when, therefore, it is difficult to ascertain the separate proportions, we are confronted in the practice of international law with four different methods of the assumption of the debt:

"1. Territorial division (*i. e.*, Geographical).

"2. Division in proportion to population.

"3. Division in proportion to the tax return of the original domain.

"4. Division in accordance with the nationality of the creditors.

"In cases of doubt the most frequent and also the most equitable calculation of the sum to be assumed is the division in proportion to the tax return which the seceding country bears to the whole of the country."

(A reference (paragraph 226) shows that in the treaty between Prussia and Saxony, May 18, 1815, this was the basis of the division and in accordance with the agreement entered into August. 28, 1819, between Prussia and Saxony, which provided for all of the details of the succession the *tax conditions* were used as a measure.)

"As in the countries of this day taxes are divided equally throughout the entire territory, the tax return of a particular portion of the country is a fairly accurate measure of its financial value to the state. Of course, the grantor always suffers a loss in favor of the grantee in so far as he loses the tax returns of the seceding country, but up to this time this has in no way been taken into consideration on account of the difficulty of the calculation.

"In confederations such as Switzerland this measure would, however, seem to be the only right way since the budgets of this country are based chiefly upon their duty returns. In such case only a division in accordance with the population would in case of necessity be permissible since the consumption of each individual

country cannot accurately be known, while at the same time it may be assumed that the imports will be in proportion to the poplation, and that the more densely populated districts are as a rule the wealthiest.

(Page 92): "The division '*pro regionis*' has no reasonable basis since a mere extent of territory bears no direct relation to the fiscal value of the country or with the political power of its government."

Section 136 (page 96). *Special Debts.*

Debts which arise out of a particular domain or which *have been incurred in the interest of a particular domain.*

"By reason of their legal nature these debts should also be considered together with those dealt with in the foregoing abstract (*i. e.*, debts borne by the entire state or country). The debtor is the entire country. The liquidation will arise out of the debts of the entire country. Only the purpose is a different one. Such debts arise either in the interest of a particular portion of a country or they may be assumed by the main government as an already existing debt of a particular portion of it, in which latter event, of course, this would relieve such smaller or particular portion. In this respect these are the debts of the main government in the interest of a particular portion of it.

"According to the European practice these debts are always assumed by the seceding state; that is the seceding state has the obligation to assume them."

Section 272:

"Certainly the territorial principle applies to debts which have reference to particular portions of the country. Regarding these, the owner of the particular portion interested incurs the indebtedness. We have designated these debts as 'special capital' and they should always follow the fate of their territorial foundation."

(*n*) APPLETON.

Henri Appleton makes the following statement in his book entitled: "Des Effets des Annexions de Territoires Sur Les Dettes de L'Etat

Demembre ou Annexe," etc., *Paris 1895*, Chapter IV., Section II., Section 65:

"As soon as the principle is admitted that the debt of a dismembered country should be divided between it and the state which takes one or more of its provinces, a new question arises. In what proportion shall the division be made? Very evidently the more important the annexation, the greater will be the contributory part to be charged to the annexing state. If a tenth of the dismembered country is taken, the annexing state will pay a tenth of its debt. If a fourth is taken, it will assume a fourth of the debt.

"But we must be precise. When a fourth, a tenth of the dismembered country is mentioned, is the reference to the extent of its territory, to the number of its population, or to its wealth?

"What criterion shall we take, what basis must be adopted for such an apportionment?

"On this point opinions have not always been in harmony. The practice has varied, and the authors themselves have not always agreed. We do not speak, to be sure, of authors like Hall, Dudley Field, etc., who leave the entire burden of its debts upon the dismembered state. For then the question cannot arise, and none of them treats it, because they reject the principle itself of apportionment. The problem exists only if one admits apportionment of debt in principle, whether from the point of view of payment, as we have treated the matter, or from the double point of view of collection and payment, as is generally done.

"Three systems of apportionment: on the basis of extent of territory, on the basis of population and on the basis of wealth, have been recommended and applied. In 1866 Italy took upon herself the papal debt in proportion to the population of the provinces of Roumania which she had conquered.

"The treaty of Berlin left the question in doubt. Bulgaria, Montenegro and Servia, which took important territories from Turkey, were required in consequence of this to assume a part of the Turkish debt 'calculated upon an equitable basis.'

SECTION 66. "But at the present time one may say that the two first systems have had their day. The third system receives support

from the unanimous opinion of the publicists and in practice. It seems to be the most just, and, in truth, the only really equitable system. Indeed, the extent of territory acquired by the annexing state cannot be taken as a criterion; if the conquered territory is that of a great city, the conquest is infinitely more valuable than if it consisted of mountains or desert regions. The city has infinitely greater resources and furnishes more taxes, which enable the conqueror to assume a heavier part of the debt. As M. Cabouat says very well: 'With equal area, an industrial region is superior to a purely agricultural region, and even between territories of equal extent, devoted either to agriculture or to industry, it would be rash to affirm a constant equilibrium. Now, the system we are combating, completely ignores these facts; it reasons as if the wealth of a state could be mathematically divided among each of its provinces in proportion to their respective extents. Such a system could not be followed except upon the altogether chimerical hypothesis of dealing with the debt of an exclusively agricultural or manufacturing state whose various parts should have attained an equal degree of development. In practice the clearest result of such a system would be to procure for one of the interested states a reduction of the obligations incumbent upon it, and, consequently a gain, wholly at the expense of the other state.'

"An apportionment of the debt according to the number of the population inhabiting the annexed provinces would be subject to the same criticism. The new population acquired by the annexing state may be poor and capable of paying only small taxes; it may be, on the contrary, rich and prosperous. It would be unjust, in the two cases, to charge the annexing state with the same part of the debt. On the other hand, annexation always starts a current of emigration more or less strong. The population which the annexing state gains by annexation is always more or less inferior in number to that of the province at the moment of the annexation. This diminution, this decrease, cannot be foreseen, with any precision, at the moment of the treaty, and the apportionment which the negotiators might wish to make, would lack a solid basis."

* * * * * * *

§ 67. "The conclusion drawn by the authors from these observations is that a single criterion is admissible: that of wealth. Wealth will be disclosed by the amount of taxes paid up to the annexation by the two portions of the dismembered state: the annexed portion and the portion which keeps its independence. To eliminate as much as possible causes of error, the taxes taken are not those paid during the year preceding the annexation, but an average calculated over a space of several years. If the ceded province supplied a tenth, a fourth of the taxes levied by the ceding state, that state will be discharged of a tenth, a fourth of its debt. We are bound, like everybody else, to approve of this criterion. It is plain justice to take as a basis of apportionment, wealth as disclosed by taxation."

3. APPLICATION OF INTERNATIONAL LAW DOCTRINE IN THIS CASE

Quotations from publicists have been indulged with much liberality in the hope that they may be found convenient to the members of the Court, also for the purpose of showing the unanimity with which they recognize the distinction, in respect of debt succession among nations, between a *general* or *national debt* and a *special* or *local debt*, and the consequences resulting from the distinction; and for the further reason that they supply the international law standard for debt apportionment, which counsel have assumed to be either area, population or taxable values, and that they agree that the latter is the just and adopted standard.

Even if the Court should be of opinion that the rule of international law does not govern the present case, yet if the Court, apart from the method prescribed by the ordinance and notwithstanding the provision in the Constitution of West Virginia referring the matter for ascertainment to the legislature of that state, should undertake to determine the equitable proportion of the old Virginia debt which West Virginia should assume, then we submit that the Court cannot fail to give great weight to the authorities on international law which we have cited. The rules of international law are based entirely upon consideration of equity and fairness. They have no force nor sanction except from the consent of nations by reason of their evident justice. This Court, therefore, in determining what would be an

equitable apportionment of the Virginia debt, would undoubtedly desire to take into most careful consideration the unanimous opinion of the modern international law authorities that, in apportioning the debt of a state after its division, equity requires a distinction to be made between the portion of the debt which is local or special in its character and that which is general, so that the parent state and the new state are bound respectively to assume the whole of the *local debt* relating to their respective territories, leaving only the *general debt* to be apportioned on the basis of taxable value.

4. RECOGNITION OF DISTINCTION BETWEEN GENERAL AND LOCAL DEBTS IN DIVISION OF TERRITORY OF DAKOTA.

The authority for the rule of international law in the present case is peculiarly confirmed and strengthened by the fact that it was adopted and applied in the only case in our history which is directly analogous to the present case. We refer to the division of the territory of Dakota into the two states of North Dakota and South Dakota. The territory of Dakota had a bonded indebtedness incurred for the purpose of erecting certain public buildings and institutions. It also had incurred certain other liabilities of a general character.

The Sixth Section of the Act of Congress providing for the devision of Dakota into two states (25 U. S. Stat. at Large, p. 676) required the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, whose duty should be to agree upon an equitable division of all property belonging to the territory of Dakota and to adjust and agree upon the amounts of the debts and liabilities of the territory which should be assumed and paid by each of the proposed states of North Dakota and South Dakota. The Act of Congress further required the agreement respecting the territorial debts and liabilities to be incorporated in the respective constitutions of the new states, and required each of them to obligate itself to pay its proportion of such debts and liabilities, the same as if they had been created by such states respectively.

A joint commission was duly appointed and made an agreement for the two new states respecting the territorial debts and liabilities, which agreement, in accordance with the enabling Act of Congress,

was incorporated in the constitutions of North Dakota and South Dakota. The provisions concerning the apportionment of the territorial debt which we shall quote, are taken from the Constitution of South Dakota. (Similar provisions will be found in Art. 16 of the Constitution of North Dakota.)

Section 6 of Article 13 of the constitution of South Dakota is as follows:

> "In order that the payment of the debts and liabilities contracted or incurred by or in behalf of the Territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an Act of Congress approved Feb. 22, 1889, entitled 'An Act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states,' the states of North Dakota and South Dakota, by proceedings of a joint commission duly appointed under said Act, the sessions whereof were held in Bismarck in said State of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the Territory of Dakota which shall be assumed and paid by each of the States of North Dakota and South Dakota, respectively, to wit:"

The agreement follows.

Paragraph 3 of the agreement provides:

> "The said State of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the legislative assembly of the Territory of Dakota, approved March 3, 1889, entitled 'An Act to provide for the refunding of outstanding warrants drawn on the capitol building fund.'"

Paragraph 4 provides as follows:

> "The said State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota."

Paragraphs 5 and 6 specify the particular bonds to be assumed respectively by North Dakota and South Dakota, and specify the local situations of the buildings and institutions on account of which the bonds assumed by the two states were issued.

Paragraph 6 provides:

> "The States of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore and hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided."

Paragraph 7 provides in part:

> "Nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institution, grounds or buildings of the territory situated or located within the boundaries of the other state."

Paragraph 8 provides in part:

> "A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 8, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within boundaries on the same accounts and during the same time. Each state shall be charged

with one-half of all other expenses of the territorial government during the same time."

The Court will observe that the apportionment of the debt of the Territory of Dakota between the new States of North Dakota and South Dakota under their agreement was absolutely in accordance with the rule of international law that when a state is divided *local debts* must be assumed in their entirely by the state taking the territory with reference to which such debts were incurred. Each of the States of North Dakota and South Dakota assumed the bonds which had been issued on account of institutions located within its boundaries. General liabilities, on the other hand, were apportioned equally between the two states, as appears in paragraphs 6 and 8 of the agreement quoted above.

No contention can be made that this was merely the case of a special agreement, from which no principle of general application can be derived. The constitutions of the two states expressly declare the result of their agreement to be just and equitable. Section 6 of Article 13 of the South Dakota constitution (a similar provision will be found in paragraph 3, section 203, article 16 of the North Dakota Constitution) declares:

> "In order that the payment of the debts and liabilities contracted or incurred by and in behalf of the Territory of Dakota may be *justly and equitably* provided for and made * * * the states of North Dakota and South Dakota * * * have agreed to the following adjustment of the amounts of the debts and liabilities of the Territory of Dakota," etc.

Hence the opportionment of the debt of the Territory of Dokata can only be regarded as an equitable settlement between the two states. The full recognition in this settlement of the distinction between *local* and *general debts* not only confirms the doctrine of international law on this subject, but must impress the Court as an unique and valuable precedent for the purposes of the present case.

5. DISTINCTION BETWEEN GENERAL AND SPECIAL DEBT DISCUSSED IN NEGOTIATION OF TREATY BETWEEN UNITED STATES AND SPAIN.

His Honor Mr. Justice Day will remember that the distinction between a *general* or national debt and a *special* or *local debt*, from the standpoint of international law, involved a prolonged discussion between the American and Spanish commissioners at Paris in negotiating the Treaty of Paris, under which the United States secured to Cuba her independence and brought under our sovereignty Porto Rico and the Philippines. The Spanish Commissioners contended that the United States should assume, either for herself or for Cuba, that portion of the indebtedness which had been incurred and for which Spain had issued obligations *primarily secured by an hypothecation of the revenues of Cuba.* They contended that it was, to all intents and purposes, a Cuban debt; in other words, *local or special*, as contradistinguished from the *general or national* debt of Spain. The American commissioners recognized the distinction, but refused to accede to the demand of Spain, upon the ground that Cuba had had no debt, but, on the contrary had been a self-supporting colony, and that the indebtedness was incurred, and its proceeds used to wage war upon Cuba, and to resist by arms the aspirations and struggles of her people to be freed from long-continued despotism and misrule and was a part of Spain's *national or general debt.*

If we had taken over Cuba in the absence of *strife between Cuba and Spain and the United States and Spain*, and *there had been found an indebtedness incurred by Spain*, the *proceeds of which had been expended in public improvements in Cuba and for the benefit and betterment of the island and its inhabitants*, the question would have been a different one, and from the standpoint of international law and justice, our attitude must have been different.

6. THE DISTINCTION BETWEEN GENERAL DEBT AND LOCAL DEBT IS SUBSTANTIAL AND JUST.

And this distinction between a *general* and a *special* or *local debt* is a substantial one. It rests upon a sound principle, and is essentially

just. Obviously, there is no such distinction when we consider the relation of a state and its creditors. There, the purpose for which the loan was effected is immaterial; but, in respect of the apportionment of the debt of a state between itself and a new state, erected out of its territory, the distinction is not only apparent but important.

A *general debt*, using the phrase as the publicists use it, with reference to debt succession, one would say is a debt, the object and result of which inures to the benefit of all the people subject to the dominion of the state, the expenditures of which are not susceptible of localization, and which cannot be said to benefit one section more than another, or one class of citizens more than another.

The debt incurred by the United States during the war in maintaining the Union would fall, from every standpoint, within the definition of a *general debt*. It was to preserve the Union as the fathers made it, and its benefits inured to all the people in all the states.

If the Southern Confederacy had become an established government, a nation, the indebtedness which it had incurred in the establishment of that government would have been a *national* or *general debt* as contradistinguished from a *special* or *local debt*.

This expenditure of its proceeds would have been made for the general and indivisible benefit of the people living under its sovereignty.

Such a debt is not, in its nature, apportionable except by special agreement, or, ratably upon some basis recognized by international law.

On the other hand, the *special* or *local debt*, however large it may be, incurred by a state or a nation, upon a division which results in the erection of a part of the national territory into another nation or state, *apportions itself*.

If it had happened that every dollar of the public debt of the Commonwealth of Virginia, prior to January 1, 1861, had been expended in the construction of railways which Virginia owned, and canals and public buildings, toll highways, improved navigation, the utilization of which by the public required the payment of tolls, all owned by Virginia and within her borders, after the separation, could it, with any justice, be said that West Virginia, upon the division of the

two states and the erection of West Virginia into a state, should in equity assume any portion of that burden, when not a dollar of the money had been expended within her territory, and if there were not within it a work of internal improvement erected by Virginia out of the proceeds of that debt? Such improvements are on the land, and, of necessity, are transferred with it.

Suppose, on January 1, 1861, the only debt resting upon the Commonwealth of Virginia had been a debt of $10,000,000, the proceeds of which had all been *directly expended within the limits of the present State of West Virginia, and thereupon for the benefit of its people,* in the construction of railways and public buildings, in the making of highways and other improvements, important in their character and beneficial to that people remote from tide-water, and West Virginia had been admitted as a state into the Union, with no provision as to apportionment of debt. Can there be any doubt, upon principles of international law, and upon principles of common justice that it would *have been the duty of the new state to take that entire debt upon her shoulders?* It would have been incurred with reference to her territory. It would have been expended within her limits, and for her benefit. Although such a debt, like any other, as between Virginia and her creditors, would have bound Virginia, yet, as between Virginia and West Virginia, it would have been a special debt which West Virginia ought to assume and pay. If this proposition is not sustained by all writers on international law who have touched the subject, we are mistaken. What answer could West Virginia have made to it? Between nations, a refusal to adjust it upon that basis might very well have resulted in war.

7. THE PUBLIC DEBT OF VIRGINIA PRIOR TO JANUARY 1, 1861, WAS A LOCAL OR SPECIAL AND NOT A GENERAL DEBT.

It is averred in the first paragraph of the bill, that:

> "On the first day of January, 1861, your oratrix was indebted in about the sum of $33,000,000 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory."

It is admitted, in the first paragraph of the answer:

> "That she believes it is true as alleged that on the first day of January, 1861, plaintiff was indebted in 'about' the sum of $33,000,000, upon obligations and contracts made in connection with the construction of works of internal improvement within her then territory."

The investigation before the Master, as shown by the exhibits, clearly makes it appear that Virginia had no *general* public *debt* in 1823, and that the $33,000,000 was expended in works of internal improvement.

Here we are logically led to an analysis of this debt and of the purposes for which it was incurred and the expenditure of its proceeds.

8. THE NATURE OF THE DEBT, AS SHOWN BY THE LEGISLATION UNDER WHICH IT WAS INCURRED.

Let it be said first, that Virginia, in 1823, the initial year of the period ending with December 31, 1861, during which the debt of the commonwealth here involved was created, appears to have had outstanding no general debt.

Virginia embarked early on a system of internal improvement. She passed, on February 5, 1816:

> "An act to create a fund for internal improvement, to be applied exclusively to the purpose of rendering navigable and uniting by canals the principal rivers, and of more intimately connecting, by public highways, the different parts of this commonwealth."

This fund consisted of the shares held by the commonwealth in the stock of the following companies; Little River Turnpike Company, Dismal Swamp, Appomattox, Potomac and James River Canal Companies, of the Bank of Virginia and also the Farmers' Bank of Virginia,

> "together with such dividends as may from time to time accrue to such shares of stock, and such bonds and premiums as may be hereafter received for the incorporation of new banks or the augmentation of the capitals or the extension of the charters of existing banks."

She, at the same time, provided that, for the purpose:

> "of preserving and improving this fund, and of disbursing such portions of it as the General Assembly may, from time to time, direct, to be applied to any object of internal improvement, it shall be, and the same is, hereby, vested in a corporate body to be styled 'the president and directors of the Board of Public Works,' in which name they shall have a common seal, etc."

The governor was made, *ex officio*, the president of the board of public works. The directors were to consist of the treasurer and attorney general of the commonwealth, for the time being, and of ten citizens thereof, three of whom were to reside westward of the Alleghany Mountains, two between the Alleghany and the Blue Ridge, two between the Alleghany and the Great Post Road, and the residue between that road and the sea coast

The act provided that the fund should be deposited in the Treasury, subject to the order of the president and directors of the board, paid out or delivered by the treasurer of the commonwealth upon the order of the board, and required accounts of the disbursements and the certificates upon which the same shall have been made to be preserved, and an annual account to be rendered to the general assembly.

Section 11 provided that the president and directors of the board of public works shall be, and they are hereby, authorized to subscribe, in behalf of the commonwealth, to such public works as the general assembly may, from time to time, agree to patronize, such portions of the fund for internal improvement as may be directed by law; but that no part of the said fund shall be subscribed towards the stock of any canal, turnpike or other company until three-fifths at least of the whole stock necessary to complete such canal, turnpike or other public works of such company, *shall have been otherwise subscribed:* or until, of the stock so subscribed, one-fifth thereof shall have been actually paid by the resident subscribers, or the payment thereof effectually secured by bond of approved security, or a deed of trust upon the real estate of such subscriber, of twice the value of such one-

fifth part; such bond to be taken payable to the president and directors of the company authorized to complete such public work.

It was then provided that the dividends on the stock subscribed by the president and directors of the board of public works should go exclusively to other subscribers than the commonwealth until such portion of the stock of those subscribers shall have netted to them six per centum per annum from the specified time of such payment; that any increase of profit after that net income should have been assured to the subscribers, should belong exclusively to the fund for internal improvements, until the net annual income of the whole stock actually expended by any company shall reach six per centum per annum;

> "*after which the commonwealth and the other subscribers to the stock* of the company shall divide the net profits on such stock in proportion to their respective interests."

It then provided that the president and directors should vest in some productive fund the undivided dividends accruing upon any of the stock, until the same was specially appropriated by law to some internal improvement; and adds:

> "And shall have power, subject to the control of the general assembly, to sell, from time to time, as may be ordained by law, the whole or any part of the shares held by the commonwealth of the stock of any canal, turnpike or other company subscribed for under the provisions of this act, *for the purpose of investing the proceeds of such sale in the stock of some other similar company,* subject to the like conditions as have been before expressed in this act."

The board of public works were given power, in behalf of the commonwealth, to appoint such number of directors of every public work as shall bear to the whole number of directors of such work the proportion of the commonwealth's shares of stock in such work, which may be subscribed in pursuance of this act to the whole number of shares thereof.

Section 16 provided:

> "That the public faith shall be, and the same is, hereby, solemnly pledged to fulfill the obligation of this act, and that the said appropriation shall continue in force until the first day of January of the year one thousand eight hundred and sixty-six; except at such time as the United States of America may be involved in war, or the safety of this commonwealth, may, in the opinion of the general assembly, require, when the general assembly may, withdraw (during the period of actual hostilities or of such imminent danger) the whole or any part of such fund, for the purpose of defense, provided such withdrawal can be made without a violation of any engagement made under this act."

The provision above quoted, by which the state withheld herself from dividends until the citizen subscribers had netted six per cent on what they had paid in, was changed by an act of February 20, 1829, chapter 21, in which it was enacted:

> "And all dividends upon subscriptions hereafter authorized or required to be made by the general assembly to any canal, road, bridge company or other corporation, shall be made and stand upon the same footing with subscriptions made by individuals."

The legislature of the commonwealth passed February 7, 1817, chapter 38, a general act providing certain general regulations for the incorporation of turnpike companies, entitled:

> "An act prescribing certain general regulations for incorporation of turnpike companies."

This act provided that:

> "Whenever it may be deemed expedient for the general assembly to make a turnpike road, and an act shall actually pass the general assembly for such purpose, the following general provisions shall be deemed to be contained as part of the said charter or act of incorporation, as if the same had been actually re-enacted in reference to such grant or charter, except in so far as such grant, charter or act may expressly provide."

And then provides that:

> "The commissioners named in any special act, or a majority of them, shall have power to open books for subscriptions to the stock at the places named in the act, and to divide the capital stock into as many shares, not exceeding one hundred dollars each, in amount, as they may deem proper, to appoint any number of deputy commissioners, to open books of subscription to the stock of the company, and the subscriptions shall be made and the payment of moneys received on subscriptions to the president and directors by the commissioners; that the books shall remain open until at least one-half of the capital stock of the company shall have been subscribed, when a general meeting of the subscribers is to be called by the commissioners,"

and provided other details for the purpose of organization.

It also prescribes the tolls which may be exacted, and provides for changing them, either raising or lowering the amounts, upon certain contingencies.

By section 28, it is provided that:

> "If the said president and directors do not begin the said work within two years after the passage of the act for *incorporating* the company, or shall not complete the same within ten years thereafter, in the manner hereinbefore directed, then the interest of such company in the said tolls and roads aforesaid shall be forfeited and cease."

It provides for reports of the receipts and profits to the board of public works.

It also provides that:

> "If the commonwealth shall desire to purchase the stock of such company, and shall vest authority to make such purchase in any person, corporation or body politic, it shall not be lawful for the *proprietor* of any such stock to sell or transfer the same to any person whatever until be shall actually and with good faith have offered the same for sale, for the price for which he is

> willing to take therefor, to the person, body politic or corporation, authorized to purchase by the commonwealth."

And also provides that after such offer to such person, body politic or corporation, no transfer or assignment to any other person, shall be entered or registered in the books of such company, or vest any right whatever, unless it shall have been proven to the satisfaction of the president and directors that the stock so transferred had been, with good faith, previously offered to the person, body politic or corporation, so authorized, at a price at least as low as that at which it had been sold to such assignee or transferee.

A general act was passed February 11, 1832, prescribing certain general conditions on which subscriptions to certain joint stock companies shall be made on behalf of the commonwealth. This act provides as follows:

> "That all subscriptions which are now authorized by law and have not been made by the board of public works, or which may hereafter be authorized, shall be subject to the following conditions and provisions, to wit:
>
> "In every case the board of public works shall be furnished with a certificate under the seal of the company signed by the treasurer and countersigned by their president, stating that at least one-fourth of the private subscriptions of not less than three-fifths of the capital stock has been actually paid up into the hands of such treasurer, and the remainder of such subscription is either so made or is made by solvent persons fully able to pay, and these facts be shown to the satisfaction of the board of public works. They shall also be furnished with a list of the stockholders, showing a list of the shares standing in each name."

(The provision with reference to the proportion of capital stock subscribed by individuals was afterwards changed to "two-fifths," so that the state took three-fifths and private stockholders were permitted to take only two-fifths.)

If any private improvement shall have been commenced previously, and the subscriptions thereto have been authorized or made, the

board of public works shall be furnished with a statement showing the amount of money received up to the date of such statement, and of the amount expended in the work, together with the balance of money on hand, the contracts entered into for the construction of the improvements, the exact progress made therein, as near as may be, its dimensions and a correct map of its location.

The section provided:

> "Installments of future subscription of the board of public works shall be applied in the manner and on the conditions hereinbefore mentioned when not otherwise specifically provided by law; that is, one-fourth of such subscription shall be paid on the production of the draft of the treasurer or other authorized agent of the company, in the manner and in such form as the board of public works may prescribe, and the remaining three-fourths on similar drafts, in six equal semi-annual installments or in installments *of the same proportions with future payments or private subscriptions at the discretion of the board of public works.*"

It also provided that:

> "Before payments of the installments aforesaid, the board of public works shall be furnished in every case with a certificate in the form and manner required by the first section of this act, showing the amount actually paid up by the private stockholders, which amount must be at least equal to the amount payable by the board of public works."

It was the evident purpose of the commonwealth from the beginning to render susceptible of easy ascertainment the identification of each loan with the particular improvement for which it was authorized by special act of the legislature to be made. Thus, by chapter 117 of the laws of 1834, which authorized the borrowing of money on the credit of the state at a rate of interest not exceeding five per centum for sums of money not less than $30,000, and not exceeding $60,000, it is provided:

> "That the moneys so to be borrowed shall be paid into the treasury upon the warrant of the second auditor, and upon the receipt in the treasury of the sum

or sums so borrowed, the treasurer shall issue his certificate of loan for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the principal sum so borrowed, together with the interest at the rate of interest agreed upon, and that the interest so agreed upon is payable semi-annually at the treasury of the commonwealth. *Such certificate shall show on the face thereof that the loan was made under authority of this act.*"

And this principle was embodied, as the Court will see, in chapter 12, laws of 1838, providing for the negotiation of loans for internal improvements, a general act, the pertinent portions of which are as follows:

"First, that all loans hereafter authorized by law for the payment of subscriptions on behalf of the commonwealth to the capital of joint stock companies *incorporated* for purposes of internal improvement or for defraying the expense of any work or internal improvement in which the state is or may be interested, as well as all loans heretofore authorized, shall be negotiated according to the provisions of this act, except so far as may be otherwise specially provided by the acts authorizing the loans.

"Second, the board of public works in effecting such loans shall borrow upon the credit of the commonwealth at the lowest rate of interest at which the necessary amount can be obtained, not exceeding in any case five per centum per annum. Upon the payment of the moneys so borrowed into the treasury, which shall be done upon the warrant of the second auditor, the treasurer shall issue a certificate or certificates of loan for the amount thereof purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the principal sum so borrowed, together with the interest at the rate agreed on; and that the interest is payable semi-annually at the treasury of the commonwealth, *and that such certificate or certificates were issued under authority of a special act authorizing such loans;* which certificate shall be signed by the treasurer and countersigned by

the second auditor and be registered in a book to be kept for that purpose by the second auditor, and shall be transferable on the books of his office in person or by attorney." * * * "All loans negotiated in conformity with this act shall be irredeemable for twenty years and shall afterwards be redeemed at the pleasure of the general commonwealth.

"Third, for the payment of the interest and the final redemption of the principal of any sum to be borrowed in conformity to this act, the stock of any joint stock company subscribed for or purchased with the moneys so borrowed, together with the dividends and other net incomes which may accrue therefrom to the commonwealth or to the fund for internal improvement, shall be and the same are *hereby appropriated and pledged; and in like manner the net income and other profits which may accrue from works in which the state is interested other than those of joint stock companies, and on which the money borrowed is to be expended,* shall be and the same are likewise hereby *appropriated and pledged for the payment of the interest and redemption of the principal of the moneys so borrowed;* that if the stock aforesaid and the said dividends, net profits and other income shall be inadequate to the payment of the said semi-annual interest and the final redemption of the principal of the respective loans, the general assembly pledges itself to provide other and sufficient funds, and for that purpose to levy any necessary and adequate taxes upon any or all subjects liable to taxation under the Constitution."

The act provides that:

"If the dividends and income arising from the stock or work as aforesaid, together with the fund for internal improvement, shall be insufficient to pay all interest due upon the loan when demanded, the auditor of public accounts shall, upon the application of the board of public works, issue his warrant upon the treasury directing the payment of such interest out of any moneys therein not otherwise appropriated, and in case of the inability of the treasury at any time to discharge such warrants, the board of public works shall be and they are hereby authorized to borrow the necessary amount from

> the banks of this state at a rate of interest not exceeding six per centum per annum, on the credit of the commonwealth, to be repaid in such manner as the general assembly may by law direct."

By section 5 the board is authorized and empowered to procure any or all of the loans authorized by law, either in the United States or in Europe, as they may deem most advantageous to the public interest, and for that purpose to appoint one or more agents with necessary powers, and to allow him or them such compensation as they may deem reasonable; also that as to European loans they may provide for the payment of interest on the same semi-annually in London or elsewhere, and may stipulate for the payment by the lenders of the amount of such loans in England or elsewhere, conforming the certificates to be issued to the terms of the loans.

It appears in the case that during the debt period, between 1823 and 1861, a large number of stock corporations were created to build works of internal improvement, of one kind and another, to whose stocks the board of public works, under this legislation, subscribed on behalf of the commonwealth, for a time, for two-fifths, and for another time, for three-fifths, but never until, in the one case three-fifths, and in the other, two-fifths, had been subscribed by *solvent private citizens,* and a required sum paid in *on the private subscriptions.* Moneys were borrowed in sums, great and small, from time to time, to pay these stock subscriptions of the commonwealth. This applied to turnpike companies, bridge companies, navigation companies and railway companies. And the state also subscribed a large amount to the stock of banks incorporated by her legislation and issued bonds in payment of her subscription.

The record shows that Virginia expended about $4,0000,000 more than the $33,000,000 debt on works of internal improvement, out of moneys raised by taxation. In some instances she expended through her board of public works directly the proceeds of loans.

In respect of all of the debt, the proceeds of which were expended in West Virginia, the schedule shows that the loans which she effected were numbered as required by law, the certificate of debt or certificates of debt, referring to the act which *authorized the particular expenditure,* so that it is not only true that the debt represents expenditures

for internal improvements, but it is true, so far as the expenditures in West Virginia were concerned, that the moneys which were expended, the proceeds of loans, are traceable to the particular improvements and the stocks and dividends thereon were pledged for the repayment of the loan.

An examination of complainant's exhibit A-2, which shows the form of bonds, will disclose that each loan was numbered; so that while the aggregate amount of the debt is very large, it is composed of a vast number of separate, relatively small loans, each susceptible of identification, and the proceeds of each traceable to the particular improvement for which the loan was authorized to be made, so that each loan was localized.

By chapter 8, laws, passed March 27, 1839, page 9, it was provided:

> "It shall be lawful for the treasurer of the commonwealth, and he is hereby directed upon the requisition of the board of public works, *and without requiring the previous payment of money into the treasury on account thereof, to issue* certificates of stock for the amount of any loan or loans which are now or may hereafter be authorized by law, to procure for private or internal improvements, payable in currency of the United States or that of any European state, and in such form and with such conditions and stipulations, *not inconsistent with law,* as the said board shall direct, which certificate shall be countersigned," etc., etc.

This phrase "not inconsistent with law" preserved the identification of the loan with the particular improvement as provided by the act of 1838 above quoted.

As it was a general provision of law, the presumption is that the same thing is true of the loans, the proceeds of which were expended within Virginia, or in the purchase of stocks of corporations whose improvements were within her present limits.

The Rule of Public Law Does Not Govern This Case Because the Wheeling Ordinance and the Constitution of West Virginia Constitute a Special Agreement as to the Proportion of the Old Virginia Debt to be Assumed by West Virginia.

Even if the Court should not recognize the distinction between *general* and *local debts*, the present case is within the exception to the rule of international law as stated by Mr. Justice Field in that the matter of the division of the public debt was the subject of a special agreement between the two states evidenced by the 9th section of the Wheeling Ordinance and Section 8 of Article VIII. of the Constitution of West Virginia.

1. SECTION 9 OF THE ORDINANCE.

The pertinent portion of the ordinance is as follows:

> "9. The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests, in lands within the proposed state, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in the State of Virginia.
>
> "The lands within the proposed state of non-resident proprietors shall not, in any case, be taxed higher than the lands of residents therein. No grants of lands, or land warrants issued by the proposed state shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last which shall be located on lands within the proposed state now liable thereto."

2. SECTION 8 OF ARTICLE VIII. OF WEST VIRGINIA CONSTITUTION.

Section 8 of Article VIII. of the Constitution, "Taxation and Finance," is as follows:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year one thousand eight hundred and sixty-one shall be assumed by this state; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

3. TWO VIEWS OF OPPOSING COUNSEL IN RELATION TO THE ORDINANCE.

Two views are taken in relation to the ordinance and the quoted provision of the constitution by opposing counsel. The learned counsel who represents the "bondholding creditors of Virginia" contends in his brief (p. 38):

> "That ordinance, as shown by its title, was to provide for the formation of the new state. All of its sections, except the ninth, were directed toward that end. The state was formed when its constitution was framed and adopted by the people. The ordinance then became *functus officio*, and ceased to have any operation."

It is hardly to be expected that a lawyer, in the changing fortunes of a great litigation, can always be entirely consistent. The learned counsel has stated that he drew the bill, by the filing of which this suit was inaugurated. In that bill, page 4 (May's Comp.), is set forth the ordinance, followed on page 6 by several quotations from the first Constitution of West Virginia, including section 8 of Article VIII.

Paragraph 18 of the bill is as follows (p. 10):

> "Your oratrix charges that the liability of the State of West Virginia for a just and equitable proportion of the public debt of Virginia as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:
>
> "*First*. The area of the territory now known as the

State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this *public debt* was created, and its population included about one-third of that of the original state at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the *public debt* created prior to the partition of such territory.

"*Second.* The *liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia as it existed prior to the creation and erection of the State of West Virginia forms part of her very political existence, and is an essential constituent of her fundamental law,* as *shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861 in which the method of ascertaining her liability on account of said debt is prescribed. And this liabilty is imbedded in the Constitution under which she was admitted as a state into the Federal Union,* and *was one of the conditions under which she was created a state and admitted into the Union.*"

The learned counsel for the bond-holding creditors says, in his brief (page 37):

"The tenth section of the ordinance to provide for the erection of a new state," etc. provided that—"When the general assembly shall give its consent to the formation of the new state, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the new state may be admitted into the union of states."

He adds:

"It did not provide that a copy of the 'ordinance' should be forwarded to congress, and there is nothing in this entire record to sustain the assertion that congress ever saw or knew of that ordinance or of its provisions."

It may be true that there is nothing in the record, technically speaking, to evidence the fact that the ordinance was before the congress, and accessible to its members, at the time the bill for the

admission of West Virginia was being considered and passed. That depends upon what the record in this case is; but some things the Court will take judicial notice of. In many instances, it has taken judicial notice of the archives of the government and the legislative history of measures before it, the construction and effect of which have been here involved. It has taken judicial notice of records of the treasury department, of the records of the congress in respect of the history of measures, or amendments offered and adopted or rejected, and of reports of committees.

It is said in our brief, filed on the argument of complainant's motion to refer cause to Master (page 42) as follows:

> "It ought here to be stated that the constitutional convention of West Virginia appointed three commissioners to that end, also that the commissioners presented on May 31, 1862, to the United States Senate a memorial praying for the admission of that state into the Union, addressed to the Honorable B. F. Wade, chairman of the committee on territories, in which they gave a history of the proceedings which led to the organization of the restored government of Virginia, *and which included at length the ordinance adopted on the 20th of August, 1861, by the convention at Wheeling, entitled, 'an ordinance to provide for the formation of a new state out of a portion of the territory of this state,' which, on the 31st day of May, 1862, was referred by the senate to the committee on territories and ordered to be printed* (Congressional Globe, p. 2451; 37 Cong. 2d. session, Misc. Senate Doc., No. 99)."

The Congressional Globe, being a public document, giving the proceedings of co-ordinate branches of the government, this Court will, undoubtedly, under the authorities, take judicial notice of the fact that it was presented to the senate, that it was ordered by the senate and referred to the committee on Territories. That the order to print the usual number, which supplies both houses, was obeyed, the Court will presume.

The Paquette Habana, 175 U. S., 712.
United States v. *Whittridge*, 197 U. S. 135.

4. VIRGINIA IS NOT IN A POSITION TO INSIST UPON THE ELIMINATION OF THE ORDINANCE FROM THE CASE.

Neither the learned counsel, nor the Commonwealth of Virginia, is in position to insist upon the elimination of the Wheeling Ordinance from this case. In 1871, *years after the adoption of the Wheeling Ordinance* and the *Constitution of West Virginia*, the Commonwealth of Virginia passed a funding act, the preamble of which (May's Comp. 14, Exhibit No. 1) of the bill, reads as follows:

> "WHEREAS, in the formation of the State of West Virginia there were included within its boundaries about one-third of the territory and population of the State of Virginia; and
>
> "WHEREAS, in the *ordinance authorizing the organization of said state it was provided* that the *said state shall take upon itself a just proportion* of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, *which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state*, and *will continue to be made as long as may be necessary;* and
>
> "WHEREAS, the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and
>
> "WHEREAS, it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof, and *not to this state, as the constitution of this state provides:*
>
> "NOW, THEREFORE, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt, as the same shall become due;
>
> "THEREFORE BE IT ENACTED:"

And the act proceeds to fund *two-thirds* of the debt, and to provide for the issue of certificates of Virginia for the remaining *one-third* —the payment of which

"will be provided for in accordance with such settlement as shall hereafter be had between the states of Virginia and West Virginia in regard to the public debt of the State of Virginia in existence at the time of its dismemberment."

We find here a legislative recognition of the ordinance as the sole evidence of the assumption by West Virginia of a proportion of the public debt of the commonwealth prior to January 1, 1861. The legislature of Virginia evidently regarded it as not *functus officio*, although the constitution had been adopted for some years; and this legislative declaration was despite the fact that Virginia, in her constitution adopted in 1864, which was the only organic law of the state until 1870, had attempted in express terms to repudiate the ordinance, so far as it related to the debt.

Section 27 of article IV. of the constitution of 1864 is as follows:

"SECTION 27. The *general assembly shall provide by law for adjusting* with the State of West Virginia the proportion of the public debt of Virginia proper to be borne by the states of Virginia and of West Virginia respectively * * * and no *ordinance passed by the convention which assembled at Wheeling on the 11th day of June 1861, adjusting the public debt between Virginia and West Virginia shall be binding upon this state.*"

5. VIRGINIA DOES NOT CONTEND THAT THE ORDINANCE HAS CEASED TO BE BINDING.

The legislation of Virginia, upon which was based her funding act, honorably ignored this attempted repudiation of the ordinance, and in the argument on the submission of a draft of a proposed decree the distinguished lawyer who represented the state as its attorney-general, now of counsel, in a brief filed here, said:

"While the basis of settlement prescribed by the Wheeling Ordinance is, as we have always considered it arbitrary and inequitable, we *have never taken the position that that ordinance, reasonably and fairly construed, and taken and applied together with the act of the restored government of Virginia of February 3, 1863*, and section 8 of article VIII. of the constitution under which West Virginia became a state, *was not binding on both states.*"

The learned counsel who argue for Virginia here, in their notes of argument, do not quite contend that the ordinance became *functus officio* by the adoption of the constitution.

On page 13 of their "notes of argument," they say:

> "Now the insistence of Virginia has been, and is, that West Virginia should be charged with an equitable proportion of the debt, to *be ascertained under the Wheeling Ordinance construed so as not to defeat the express controlling purpose of its enactment* and qualified and ruled by the provisions of article VIII. of the West Virginia Constitution, upon which the consent of the legislature and of the Congress of the United States to the formation of the new state, was predicated.
>
> "Agreeably to the decision of this Court in its opinion, delivered by the late Chief Justice (R., 136), the view of Virginia is, and has been, that the ordinance and the provisions of the West Virginia Constitution, should be read as being *in pari materia;* but that the constitutional provision being the latest, must prevail whenever there is conflict between them."

And it is then said,

> "as logical and inevitable consequence from this, the claim of Virginia was, and is, that, if the language of the Wheeling Ordinance is fairly and reasonably susceptible of such a construction as will, when fairly applied to the facts of the case, lead to an equitable result, and place upon West Virginia an equitable proportion of the debt, such construction should be given to that ordinance; and that, if the language of the ordinance is not reasonably and fairly susceptible of such a construction, *then the ordinance must be discarded,* and the *mandate* of the *West Virginia Constitution followed.* And that, in any event, the provisions of the constitution will govern in placing a contractual obligation upon West Virginia to pay an equitable portion of the debt of the undivided state, and to pay interest upon the same from the date when that express contractual obligation accrued, until it shall have been discharged.
>
> But the claim of Virginia was, and is further, that the provisions of the Wheeling Ordinance—fairly, sensible and justly construed, and applied, according to its manifest purpose—places upon West Virginia a just and equitable proportion of the debt; and that West Virginia

cannot be heard to repudiate this result of her own express covenant and promise."

In other words, the attitude of counsel for Virginia is, that if the ordinance, fairly, sensibly and justly construed, brings about a result which, in the opinion of the Court, is an equitable proportion of the public debt of Virginia, prior to 1861, to be assumed by West Virginia, the ordinance is binding; but if the Court shall be of opinion that the ordinance, construed in accordance with the settled rule of construction, does not produce a result which the Court regards as an equitable proportion of the public debt of Virginia, prior to 1861, to be borne by West Virginia, it was repealed by the Constitution and is no longer to be considered.

6. THERE IS NO CONFLICT BETWEEN THE ORDINANCE AND THE CONSTITUTION.

We contend that the ordinance is to be construed as any other contract would be construed; that its language is plain, and that the general words of assumption with which it begins cannot control the clear and special provisions which follow. We insist that there is no conflict between the ordinance and Section 8 of Article VIII. of the constitution. The ordinance contains substantially two provisions concerning the only matters with which the ordinance would naturally deal:

(1) That the proposed new state shall take upon itself a just proportion of the *public debt* of the Commonwealth of Virginia prior to the first day of January, 1861.

(2) The method by which it shall be ascertained which is clearly prescribed.

Two things the ordinance naturally and properly omitted:

(1) It made no provision as to the agency or tribunal whose duty it should be to ascertain the proportion by pursuit of the method prescribed by it.

(2) It made no provision for the payment of the just proportion when ascertained. These matters were left to the constitutional convention. In other words, the constitution supplies the provisions omitted from the ordinance which would obviously be necessary to carry it into execution. The one is a supplement of the other, and

there is no conflict between them, nor can any be claimed, but it is contended that if the method prescribed by the ordinance does not bring about a result which Virginia thinks is equitable, the ordinance then becomes *functus officio*, and Section 8 of Article VIII. of the constitution constitutes the entire compact between the two states. This is based upon the fact that the ordinance uses the word "just" as qualifying the word "proportion," and the constitutional provision uses the word "equitable." It is not to be doubted, we think, that the two mean, as here used, the same thing. The constitutional convention was provided for by the ordinance. It met and adopted the constitution within ninety days of the adoption of the Wheeling Ordinance.

It is stated in the brief of the learned counsel for the "bondholding creditors" that the same territory was represented in both bodies, and to a large extent by the same men. Probably no constitutional convention ever assembled in this country under such circumstances. It was in the midst of war, at a time of excitement and passion. There is no reason to suppose that the men in this convention who had thought out carefully the method by which the proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861, to be assumed by the new state should be ascertained had either forgotten or abandoned, ninety days later, the method prescribed in the ordinance, as to the manner in which it should be ascertained. The constitutional provision was silent as to method. There was no occasion for repeating in it the language of the ordinance so recently adopted.

Virginia vs. *West Virginia*, (11 Wall. 39), decided in 1870, was a suit brought here by Virginia to have determined the true boundaries of the latter state with reference to whether three counties which, according to the contention of Virginia, were within her jurisdiction. This ordinance was treated in that case by this Court as a compact between two states, not binding, of course, until it had been ratified.

The Court said at page 59:

> "But did congress consent to this agreement?
>
> "Unless it can be shown that the consent of congress under that clause of the constitution which forbids agreements between states without it, can only be

given in the form of an express and formal statement of every proposition of the agreement, and of its consent thereto, we must hold that the consent of that body was given to this agreement."

Virginia vs. *Tennessee*, 148 U. S. 503.
Wedding vs. *Meyler*, 192 U. S. 582.

The Court was referring there to the agreement so far as it related to the three counties.

It certainly was a compact, and wherever it was not carried into the constitution, it remains binding as such. There can be no doubt that if the constitution had been silent on the subject of the assumption of a proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861, our friends on the other side would have been here claiming that the ordinance was both as to assumption and method a compact, and we do not perceive how West Virginia could have answered that claim. It might not be a binding compact until acted upon in some way by congress, but if acted upon by congress in the admission of the state, it would be binding *ex relatione* as a compact from the beginning. Its validity as a compact could not be attacked, because in our view its validity does not depend upon that provision of clause 3, Section 10 of Article I. of the United States Constitution which provides:

> "No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power or engage in war unless actually invaded, or in such imminent danger as will not admit of delay."

The predicate of this provision is that there shall be "another state." When this ordinance was enacted there was but one state, and that was the Commonwealth of Virginia. The validity of this compact is traceable to, and well supported by, that provision of the constitution, clause I, Section 3 of Article IV.:

> "New states may be admitted by the congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states or parts of states, without the consent of the

> legislatures of the states concerned, as well as of the congress."

When the congress admitted West Virginia into the Union, there were two states, and the ordinance so far as it was not merged into the constitution, was a compact binding from the beginning.

If the method prescribed by section 9 of the ordinance for the ascertainment of the proportion of the debt which the new state should assume, had produced a result satisfactory to Virginia, and the constitution had contented itself with enjoining upon the legislature to provide for the ascertainment and payment of the debt to be assumed by the new state, our friends would have been here contending that the method prescribed by the ordinance, not being in conflict with the constitution, was a compact binding upon West Virginia, and how could that contention have been successfully answered?

The circumstances under which the framers of this ordinance drew it and adopted it, the purposes to be accomplished by it, the fact so often referred to by the learned counsel of the bond-holding creditors, that the men who drafted and adopted it were West Virginians, whose homes would be in the new state, whose association has always been with the people and with the territory which were to constitute the new state, and who resented, and had long resented what they had long deemed unjust and oppressive treatment by the government of the Commonwealth of Virginia, all this is to be kept in mind.

7. THE VICE IN THE ARGUMENT FOR VIRGINIA.

The vice in the argument for Virginia is in the assumption that the ordinance is to be read as if it consisted only of these words:

> "The new state shall take upon itself a just proportion of the public debt of Virginia prior to the first of January, 1861."

If the word "equitable" had been used instead of the word "just" in the first clause of the ordinance, then, applying the method prescribed, the result must have been the same.

Section 9 of the ordinance is to be construed as a whole; and it can mean but one thing, and that is an agreement that whatever sum shall result from an accounting, in accordance with the method

specifically prescribed by the ordinance, shall constitute the just proportion of the debt which the State of West Virginia should take upon herself.

It is perfectly apparent that the ordinance was not confined to the debt. Even the first item is not limited to expenditures in the creation of internal improvements within the limits of the new state, although it is well known that it was an internal improvement debt. It says:

> "The new state shall take upon itself a just proportion of the 'public debt,' etc., 'to be ascertained by charging to it all state expenditures within the limits thereof.'"

This is not limited in scope to internal improvement expenditures within her limits. First, whatever money the commonwealth has expended in the territory in the construction of public buildings, or the improvement of public buildings, it was clearly intended should be included. Every expenditure made by Virginia within the territorry of the proposed new state, which could be localized there, was to be included. Second, there was to be charged to her a just proportion of the ordinary expenses of the state government since any part of said debt was contracted.

It will be borne in mind, as has before been shown, that the Trans-Alleghany people had, for a great many years, complained publicly, in constitutional conventions, in the legislature and elsewhere, that a larger burden of taxation had been imposed upon the people living in the territory of the proposed new state than was just, from any standpoint. That Virginia had denied proper representation in the legislature to the people of the western portion of the state. That she had, while taxing them in a searching way, refused proper representation to the people of the western portion of the state, taxing them in the way of taxes on personal property, even including the interest on her own obligations, taxes on watches and plate, on carriages, and a long list of personal property; taxes on occupations and excises and taxes of every imaginable description; that she had exempted from taxation slaves under twelve years of age, unless hired to work under certain circumstances, and had taxed all slaves of greater age than twelve years, at the rate of one dollar and twenty

cents per slave, regardless, utterly, of the value of both classes—those under twelve years of age and those over twelve years of age—thus practically exempting, for the benefit of a class of property owners in the eastern portion of the state not less than $300,000,000 of marketable property; thereby casting an additional and oppressive burden upon the mountainous portion of the state, where there were, relatively, few slaves, and where the people were opposed to the institution of slavery. Those men, rightly or wrongly, considered that was the "parting of the ways" with the eastern portion of the state and her people, and that would "even up" on a just basis. They remembered that during the years from 1823 to 1861, the debt period, not a single public building had been constructed within the limits of the proposed new state; and that of the $33,000,000 of indebtedness incurred for internal improvements, only $2,800,000 at the uttermost, had been expended within her limits. And during all that time, the people felt that they had been over-taxed for the purpose of paying interest on an immense bonded debt, a trifle only of the proceeds of which had been expended within her territory, and that they had borne a larger than a just proportion of the ordinary expenses of the state government. It was, for this reason, manifestly, that there was inserted in that ordinance, as to be charged to West Virginia "a just proportion of the ordinary expenses of the state government," "since any part of said debt was contracted." And it was for this reason that, after charging both of the items to the new state, the ordinance provided for deducting from that total, "the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period."

It is said that this was an artificial and arbitrary method. That depends upon the point of view. We must take the standpoint of the men who drafted and adopted this ordinance. If the ordinance had used the word "equitable" instead of the word "just" before the word "proportion," in the first line, and had left the remainder as it stands, could the result have been any different?

The definitive words, "to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government since any part of the said

debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period," would have remained, and the result must have been precisely the same by the pursuit of the same method.

To construe this ordinance by disregarding the method prescribed in it, in order to reach a result which Virginia deems equitable, or which the Court may think ought to have been prescribed, is not to "construe" the ordinance; but is to make a new and different ordinance.

The members of the legislature of 1871, presumably, knew what this ordinance was when they embodied it in their funding act. Is it to be supposed that the men who framed the ordinance, and so carefully outlined the method to be pursued, had, within 90 days, in the constitutional convention, abandoned that method, and had intended to assume a different proportion of the debt from that assumed by the ordinance? Counsel would have the Court take an extraordinary liberty in construing the ordinance.

They say, on page 11 of their notes:

> "That ordinance purported to be an enactment of Virginia alone. It prescribed, *upon its face*, an arbitrary and what would seem to be an inequitable basis of settlement. In so far as it provided for the assumption of the new state of a "just proportion" of the debt of the commonwealth, its language was free from objection. But when it came to indicate the manner in which that proportion should be ascertained, its terms were not only artificial, but *on their face*, inequitable."

That is a matter of opinion, and, although that is the opinion of the learned counsel and of the bond-holding creditors and their counsel, that is not the question before the Court. The question is, "what was intended by the framers of the ordinance?"

8. "JUST" AND "EQUITABLE" ARE SYNONYMOUS.

We say again that there is no conflict between the ordinance and Section 8 of Article VIII. Where the latter covers the same ground as the former, there is but one change, which, in the excitement of

that day, is easily accounted for, if it requires explanation; and that is the substitution of the word "equitable" for the word "just" in the ordinance. What is the difference in common parlance between the word "equitable" and the word "just"? Webster defines "equitable" as follows:

> "Possessing or exhibiting equity; according to natural right or natural justice; marked by a due consideration for what is fair; unbaised; impartial; just; as an *equitable* decision, an *equitable* distribution," etc.

The first word he gives as a synonym is "just," followed by:

> "Fair, reasonable, right, honest, impartial candid, upright."

He defines "just."

> "That which was fitting; conforming or conformable to rectitude or justice; not doing wrong to any one; violating no right or obligation; upright; righteous; honest; true;—said both of persons and things.
>
> "3. Rendering or disposed to render to each one his due; equitable; fair; impartial, as a just duty."

He gives as synonyms of "just":

> "Equitable, honest, upright, true, fair, impartial, proper," etc.

Soule gives as the synonyms of "just":

> "1. Equitable, right, rightful, lawful, reasonable.
>
> "2. Fair, fair-minded, candid, even-handed.
>
> "3. Honest, upright, righteous, blameless, pure, conscientious, uncorrupted, virtuous, good, straight-forward."

As the synonyms of "equity," he gives:

> "1. Justice, right.
>
> "2. Justice, rectitude, uprightness, righteousness, impartiality, fairness, reasonableness, fair play."

But it seems impossible, for a moment, to consider that the use of the word "equitable" in the constitution operated to obliterate the method prescribed by the ordinance, when, if the word "equitable" had been in the ordinance instead of the word "just," the result would have been precisely the same.

9. IF THE ORDINANCE IS IN CONFLICT WITH THE CONSTITUTION THE ORDINANCE MUST BE WHOLLY ELIMINATED.

We take it to be clear that if the ordinance is to be ignored as the method prescribed for ascertaining the proportion of the debt of the commonwealth, it must be because it conflicts with Section 8 of Article VIII. of the Constitution. And if it does so conflict, it is eliminated as an entirety from this case, and is neither to be treated as a compact, nor, so far as the method it prescribes is concerned, to be considered at all. It cannot be partly in and partly out of the case; in so far as it meets Virginia's notion of what it ought to be, and out, so far as it comes within her condemnation. It must either be the basis upon which the amount is to be ascertained, or entirely discarded for that purpose.

10. WITH THE ORDINANCE ELIMINATED THE ASCERTAINMENT OF WEST VIRGINIA'S PROPORTION OF THE DEBT MUST BE LEFT TO THE LEGISLATURE OF VIRGINIA.

If the ordinance is discarded, the case rests, so far as the liability is concerned, entirely upon Section 8 of Article VIII. of the West Virginia Constitution. As we have said, this article is entirely without provision as to the rule which shall govern in ascertaining the equitable proportion. One thing only is explicit in Section 8 of Article VIII., and that is the command of the legislature found in the words:

> "And the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a Sinking Fund sufficient to pay the accruing interest and redeem the principal, within thirty-four years."

Here we have the action of the Virginia legislature consenting to and requesting, by legislative act, the admission of the state into the union under the provisions of its constitution. On the theory of the ordinance being eliminated, this is clearly a compact to the effect that the proportion of the public debt which the new state shall bear is to be ascertained by her legislature. This commits entirely to the legislature the ascertainment of the equitable proportion of the debt which the new state shall bear, and enjoins upon it the

necessity of using in the discharge of that duty all practicable speed. *Ex necessitate rei*, this not only gives to the legislature the power, but imposes upon it the duty, of choosing the method by which the equitable proportion shall be ascertained, and its action in that respect would not be subject to judicial review. This made of it a legislative question. It left it to the sense of justice of the tribunal which the constitution selected for its ascertainment. The legislature might ascertain it through a joint committee of the two houses, or it might provide for the appointment of a commission, instructing it as to the basis upon and a method by which it should be ascertained and reported to that body. It is urged against this view that it never could have been intended that the debtor state (if it should turn out on the accounting to be a debtor state), should be left to determine the proportion which it should assume. It is a sufficient answer to this to say that it was plainly and unmistakably done. The legislature was placed in the position sustained by the legislature of a state as to the selection of the method of ascertaining and prescribing the proportion of the debt of a county or town which is divided. And in such cases the courts have held, including this Court, that the question, "what proportion of the debt of a county or a city or a town which is divided by legislative authority, shall be borne by the portion set off to make a new town, or included within the boundaries of another county, city or town" is a legislative question and not a judicial one. *Commissioners of Laramie Co.* v. *Commissioners of Albany Co.*, 92 U. S. 307; *Mount Pleasant* v. *Beckwith*, 100 U. S. 514. If the Legislature of West Virginia has failed, with or without justification, to discharge its duty imposed upon it by the constitution, what is the remedy? It has not yet been decided that any Court can mandamus a legislature to pass a law, or can restrain it in the exercise of its functions. It cannot enjoin it from passing an unconstitutional measure, albeit it may overturn the measure after it shall have been passed. Whether the Legislature of West Virginia is to be justly reproached for not having acted, is a question that will be considered later. And if the legislature had proceeded to the ascertainment of the amount of the debt—the just proportion which should be assumed by West Virginia—either by its own committees or by a commission, could the court overturn its ascertainment upon the ground that it had

not adopted the proper basis or method as between population, area or assessed valuation? When the power is unqualifiedly committed by a constitutional provision to the legislature, can any court control the exercise of that discretion as to the selection of the method by which the proportion of the public debt which the new state shall assume is to be determined? When the legislature in the exercise of its power and discretion shall have ascertained what it regards as an equitable proportion of the debt, can any court overturn that determination because in its opinion the proper method was not pursued, and the result does not in *its* opinion constitute an equitable proportion? The plain truth seems to be that the matter—the ordinance being out of the case—was left by the legislature of Virginia and by the congress to the honor of the Legislature of West Virginia. This is nothing new in our system. Since the adoption of Article XI. of the Constitution:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state,"

No state can be sued, even in this court or in other Federal courts, by citizens of another state or by citizens or subjects of any foreign state. Whether suit may be brought in a state court by an individual against the state in one of her own courts depends upon her own consent, as evidenced by her own laws. So that every citizen of the United States and every subject of a foreign state who buys a bond of a state, takes it with full notice and knowledge that the payment thereof and of the interest thereon rests, in the last analysis, upon the honor of the state whose obligation it is.

11. WITH THE ORDINANCE ELIMINATED IS THE MATTER JUSTIFIABLE?

The case of *County of Tulare* v. *County of Kings*, 117 Cal. 195, throws light upon this question.

Section 3 of Article II. of the Constitution of California is as follows:

> "Every county which shall be enlarged or created from territory taken from another county or counties

> shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken."

The County of Kings, in the State of California, was created wholly out of Tulare County, and was fully established May 23, 1893. It was contended that on that date there were outstanding $22,000 of court house and $5,000 of road bonds, and that the plaintiff county, Tulare, between May 29, 1893, and September 18, 1895, had paid, on account of said bonds, $14,472.46; that on the assessment rolls of the two counties, as the basis of apportionment, the amount due from defendant was $4,615,22, which, with interest due, would make $5,049.61, due October 11, 1895; that this claim had been presented, etc., to the supervisors of Kings County and rejected, when action was brought against Kings County to recover the sum. A demurrer being sustained, the case was taken to the supreme court.

The contention in the supreme court was that the defendant was liable under the constitution.

The Court said:

> "The contention of plaintiff is that by the supreme law of the state it has been declared that the new county shall pay a *just proportion* of the debts of the old county and it is left with the courts to determine what that *just proportion* may be in a case presented. In other words, it is denied that the legislature has any power to apportion the indebtedness, but that this question as to how much this just proportion will amount to is purely judicial.
>
> "On the other hand, defendant contends that the sole question is whether the action will lie against defendant, the legislature having failed to provide in the act creating Kings County for the apportionment of the public property and debts of the County of Tulare."

The court held, on the strength of a prior decision, that the constitutional provision was a restriction upon the power of the legislature to divide a county, and that the power still remained with the legislature to divide counties and that where a county was divided by the legislature without any provision as to the apportionment of the debt the presumption was that the legislature thought no apportionment was required.

The Court added:

> "It would seem to me, if the courts should undertake to determine this question upon the authority of the constitution alone, they would have neither compass nor rudder by which to be guided."

The case was ruled largely by the opinion of the supreme court in *Los Angeles County* v. *Orange County*, 97 Cal. 329, of which decision the opinion says:

> "The learned justice, in delivering the opinion of the court, called attention to the established rule that where no provision is made by the legislature as to the debts of the old county they remain with the old county. He then takes up the constitutional provision in question, and says: 'The mode of determining the 'just proportion' of the debts and liabilities for which the new county shall be liable, is not prescribed in the constitution, *but is left to the determination of the legislature in each particular case*'; he points out that the legislature did provide a mode of ascertaining the 'just proportion' of the debts by the appointment of commissioners, and limited the liabilities to those existing at the time the act took effect, and he says: 'As the legislature could divide the public property and assets of the county in such mode as it might choose, it was competent for it to fix upon a date, which it might select, as the time for ascertaining their amount and value, *as well as determining in connection therewith the 'just proportion' of the debts and liabilities to be assumed by the new county. In the present instance the legislature fixed the time when the act took effect as the proper period for ascertaining the amount of these assets and liabilities, and it cannot be held that the constitutional provision was violated in selecting that as the point of time at which to properly determine what would be a 'just proportion' of the debts and liabilities to be assumed by the new county.*' The expenditures for which the claim was made were incurred in the new county prior to its organization, but after the date of the act, and the commissioners had reported these separately, with the remark, 'that as a matter of equity the amount should be refunded by Orange county to Los Angeles county.'

The opinion upon this point continues: 'The legislature may have considered that it would be necessary for the County of Los Angeles to expend the money for municipal purposes within this territory; *and as it was within its discretion to determine that it should bear the burden of any of the expenditures which it might thus make, the fact that it has made no provision for its reimbursement is indicative that it was not its intention that it should be reimbursed therefor.*'

"Now, this was just such a claim as counsel for plaintiff insists must be heard and determined by the judicial arm of the government, and that over it the legislature has no jurisdiction or power whatever. It seems to me the decision necessarily settles the very question here—that it is a legislative and not a judicial function. Upon plaintiff's theory it was the duty of the court to overrule the demurrer and proceed to hear and determine what the 'just proportion' of the debt of Los Angeles county was that should be borne by Orange county; but the court found no cause of action stated, because the legislature had disposed of it, and because it was a legislative function and not a judicial one. (See, also, *County of Orange* vs. *Los Angeles County*, 114 Cal. 390.)"

County of Tulare vs. *County of Kings*, 117 Cal. 195.

If the liability of West Virginia is to be determined under Section 8 of Article VIII. of her Constitution, without reference to the ordinance, then the grounds for holding that the legislature of West Virginia is the only tribunal which can ascertain the amount of her liability are much stronger than those upon which the California court, in the case just cited, decided that it had no jurisdiction; since the Constitution of West Virginia expressly provides that the legislature shall ascertain the equitable proportion of the debt to be assumed. The California constitution contained no provision of this character.

We recognize, of course, the fact that the power of the legislature to apportion the indebtedness of counties exists in case of division, as an incident to their power to divide such municipalities. These are public corporations, created for political purposes, and they have no contract rights to continued existence. They are subject, at all times, to legislative change. But the power which the legislature has to

create them, and divide them, and, therefore, the incidental power to apportion their liabilities, while it proceeds from the power to create them, is no more direct and unlimited than the power with which the Constitution of West Virginia clothed the legislature of that state, in respect to the method of ascertainment, and otherwise, of the proportion of the public debt which would constitute an equitable share for West Virginia to pay.

The question is not whether it was wise for the Legislature of Virginia to consent to the admission of the State of West Virginia, under Section 8 of Article VIII. of her Constitution, vesting such a power in her legislature. The question is, did they do it? The ascertainment is, certainly, in its nature, a legislative function. In the exercise of its legislative powers, the legislature may provide for examination. It must, ultimately, pass upon the result. It may have done it on several bases or theories; but it must, in the end, select the basis, for it must provide for the payment.

The constitutional provision, without the ordinance as a guide as to method, seems to submit to the Court a question which is not judicial in its nature. The case in that respect, as well as others, is unique. It does not differ much, in the aspect of it which we are now considering, from the case of *Taylor* vs. *Brewer, et als.*, 1 Maule & Selwin, 290, and *Cummer* vs. *Butts*, 40 Mich. 322.

In the former case plaintiff founded an action of assumpsit on an agreement by defendant that any service by plaintiff should be taken into consideration, and such remuneration be made as should be deemed right.

The court refused to set aside a non-suit.

Lord Ellenburough, C. J., said: "Here, I own, it struck me, was an engagement accepted by the bankrupt on no definite terms, but only in confidence that if his labor deserved anything he should be recompensed for it by the defendants."

Grave, J., said: "I consider the resolution to import that the committee were to judge whether any or what recompense was right."

Le Blanc, J., said: "It seems to me to be merely an engagement of honor."

Bagley, J., said: "The fair meaning of the resolution is this, that

it was to be in the breast of the committee whether he was to have anything, then how much."

Cummer vs. *Butts* arose on a contract for the sale of lumber which stipulated that either party might cancel the contract "for good cause."

One of the parties terminated the contract, whereupon the other party, who insisted that no good cause for cancellation existed, brought suit.

Judge Graves said: "The difficulty is inherent. It exists in the terms adopted by the parties. The requirement of good cause as something on which the right to revoke by one or the other should depend, is, as here introduced, too vague to be fairly intelligible. It is manifestly applied to each party, but the phrase 'good cause' in such connection, as to parties and subject matter, has no distinct sense as to furnish a common and intelligible criterion for the parties, or any determinate sense whatever. It is impossible to say that the wills of the parties concurred and that each meant exactly what the other did, or even to say what either meant. The room for difference of opinion is immense, and the case is one where the parties have failed to express themselves in terms capable of being reduced to lawful certainly by judicial effort."

12. THIS COURT HAS DECLARED THAT THE ORDINANCE AND THE CONSTITUTION DO NOT CONFLICT AND ARE TO BE READ IN PARI MATERIA.

When this case was argued here on demurrer, counsel for defendant contended that the Court did not have jurisdiction to determine the prinicple upon which West Virginia should be made liable for any portion of the old debt of Virginia because this was a matter which the Constitution of West Virginia had referred to her legislature. Hence, it was argued, the consent of Virginia to the admission of West Virginia into the union, under the provision of that constitution, and the action by congress admitting the new state, constituted a compact between Virginia and West Virginia, which operated to commit to the legislature of the latter state the ascertainment of what would be a just and equitable proportion of the debt to be assumed, including the basis and method upon and by which it should be ascertained.

The Court in reply to this argument resorted to the ordinance which prescribes the method of ascertainment and thereby defines the proportion which should be assumed. The Court said, through the Chief Justice (206 U. S. 290, 319):

> "It is, however, further insisted that this Court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of congress, by which the question of the liability of West Virginia to Virginia was submitted to the arbitrament and award of the Legislature of West Virginia as the sole tribunal which could pass upon it. As we have seen, the Constitution of West Virginia, when admitted into the union contained the provision: 'An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, one thousand eight hundred and sixty-one, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation of the same by a sinking fund and redeem the principal within thirty-four years.' And it is said that, on May 13, 1862, the Legislature of Virginia passed an act entitled 'An act giving the consent of the Legislature of Virginia to the formation and erection of a new state within the jurisdiction of this state,' by which consent was given to the creation of the proposed new state, 'according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861;' and that by the act of congress, the consent of that body was given to all those provisions which thus became a constitutional and legal compact between the two states. The act of May 13, 1862, was not made a part of the case stated in the bill, and its validity is denied by counsel for Virginia, but it is unnecessary to go into that, for when Virginia, on August 20, 1861, by ordinance provided 'for the formation of a new state out of the territory of this state,' and declared therein that 'the new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January,

> 1861,' to be ascertained as provided, it is to be supposed that the new state had this in mind when it framed its own constitution, and that when that instrument provided that its legislature should 'ascertain the same as soon as practicable,' it *referred to the method of ascertainment* (italics not the Court's) prescribed by the Virginia convention. Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression that the 'legislature shall ascertain' was that the legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained."

While nothing has been settled in this case except the question of jurisdiction, it is quite difficult to conceive upon what principle Section 8 of Article VIII. of the Constitution can be read without reference to Section 9 of the ordinance; and there is no point in reading it in connection with Section 9 of the ordinance except that the ordinance furnishes, and nowhere else is it to be found, the intention of its framers as to the method which should be pursued in ascertaining the result which would constitute the just or equitable proportion intended to be assumed. Reading the ordinance *in pari materia*, with Section 8 of Article VIII. of the Constitution, incorporates into that provision of the constitution all of Section 9 of the ordinance relating to the method prescribed for the ascertainment of the proportion of the debt which the new state was to assume.

Exceptions to the Master's Report.

Pursuant to the interlocutory decree, there has been an accounting before the Master on the basis of the ordinance, and, alternatively, on the other *bases* indicated by the decree. A large number of exceptions have been filed, by both parties, to the findings of the Master. Most of these exceptions have been fully argued in Part II. of this brief. It is admitted that the amount of the public debt, on January 1, 1861, was $32,919,863.93; nor is there any dispute that this debt was incurred for works of internal improvement, as alleged in the bill, and admitted in the answer.

1. THE MASTER WAS RIGHT IN HOLDING THAT BONDS HELD BY THE SINKING FUND AND BY THE LITERARY FUND WERE NOT A PART OF THE PUBLIC DEBT OF VIRGINIA.

The only difference that arose under Paragraph II. of the decree between the complainant and defendant is whether the bonds of the commonwealth held by the Sinking Fund of $1,369,243.92, and by the Literary Fund, $1,116,843.35, with accrued interest amounting to $15,895, are part of the debt.

As to the latter, after investigation by counsel for the complainant, it was conceded that the bonds were in possession of the board of public works for sale; but have never been disposed of, and were, therefore, not a part of the public debt. As to the other two items, the master held that the bonds were the property of Virginia, and were no part of the public debt on January 1, 1861. This question is elaborately discussed by the Master in his report.

We are content to rest the question whether the bonds in the Literary Fund and the Sinking Fund were part of the public debt of the Commonwealth of Virginia, on January 1, 1861, upon the reasoning and citations of the Master, calling attention only to one or two authorities which are not cited by him.

In *Board of Public Works, etc.*, v. *Gannt*, 76 Va. 465, the court said:

> "The bills are against the board of public works and the board of education. Although the persons composing those boards are made parties, in their individual character, no relief is asked against them as such, and it is obvious that as individuals they have no sort of concern or interest in the question. The acts complained of are acts of the legislature, and the relief sought is against corporations composed exclusively of officers of the state. The bill is precisely such as it would have been if the appellees were proceeding against the state.
>
> "*Conceding that the fund in controversy is subject to a pledge on behalf of the public creditors, it is still the property of the state as absolutely as any of the money in her treasury, or the capitol square and public buildings.*
>
> "It is none the less in her possession because it is

> under the control of the board of education, for that board is a mere agency of the state, having no existence or power independently of the state. As was said by Judge Anderson in *Clarke* v. *Tyler*, 30 Gratt. 159: 'After money is set apart as a literary fund, the commonwealth is still the sole owner of it, as she is of all the funds and property of the board of education and the other corporations, which are composed of officers of the government, the funds and property of which are the sole property of the commonwealth.'"

It would seem to be clear that the property of Virginia could not very well be a part of the public debt of Virginia. Such bonds are not outstanding obligations of the state. When the bonds were purchased by the state, the debt was *pro tanto* discharged, and the bonds were then no more the obligations of the state than if they had never been negotiated.

At the foot of the opinion is the following:

> "NOTE BY JUDGE STAPLES.—'Since the foregoing opinion was delivered, the decision of the Supreme Court of the United States in the case of *John Elliott and als.* v. *The Governor, Lieutenant-Governor, Auditor, and other State Officers of Louisiana*, has been rendered. The reasoning in that case sustains fully the views presented in my opinion.'"

(The case to which Judge Staples refers is reported under the title of "*Louisiana* v. *Jumel*" and "*Elliott* v. *Wiltz*," 107 U. S. 711.)

2. THE MASTER WAS RIGHT IN EXCLUDING UNDER PARAGRAPH III. OF THE DECREE EXPENDITURES BY CORPORATIONS IN WHICH VIRGINIA WAS A STOCKHOLDER.

Paragraph III. of the Decree required the master to ascertain and report:

> "All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, since any part of the debt was contracted."

We agree with the Master that the paragraph was based upon that portion of the Wheeling Ordinance which reads:

> "The new state shall take upon itself a just pro-

> portion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it *all state expenditures within the limits thereof.*"

We do not agree that the discussion by the Master of the question which arose under this paragraph, as to the doctrine of "equitable construction," was at all warranted by any question which arose, or could arise, under the third paragraph, and insist that the question is one of law, which the Court did not commit to the Master. The sole question under that paragraph, committed to the Master, was to ascertain and report:

> "All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

(*a*) THE MASTER'S FINDING.

The complainant claimed that $5,639,302.66 had been expended by the state within the designated territory (Record, p. 371, c. 1, p. 1).

The amount conceded by the defendant was $1,251,288.92.

The question as to the items 2, 3, 10, 11, 12, 13, 14, 25, 28, 35, 55, 150, have been fully argued in another portion of the brief.

The Master allowed, to which the defendant excepted, in addition to the conceded sum, $1,560,271.06, making $2,811,559.68, rejecting claims insisted upon under this paragraph by the complainant, amounting to $2,827,742.68.

(*b*) THE REJECTED CLAIMS REPRESENTED EXPENDITURES BY PRIVATE CORPORATIONS.

The claims rejected represented the expenditures within the State of West Virginia, except as hereinafter stated, by private corporations created by Virginia by special act, which possessed under her general laws all the faculties of a corporation, including perpetuity, the right to have a common seal, to be managed by a board of directors, to issue stock, to the stock of which corporations Virginia had subscribed through her board of public works duly thereunto authorized by law in conjunction with solvent citizens, either two-fifths or three-fifths, as the special act provided. The Master was clearly right in

excluding these as state expenditures within the Territory of West Virginia. The money paid in by the state and other stockholders to the treasury of the corporation on their respective subscriptions became the property of the corporation. For such payments the stockholders each received stock representing his interest in the company's property. The distinction between the stockholder and the corporation is too well settled to require argument. The improvements made through the expenditure of the moneys thus paid into the treasury of the corporation was its property. This property did not belong to the state, nor did it belong to the stockholders. The state in subscribing to the stock carried none of its sovereignty into that relation. It stood before the law in respect of ownership and control precisely as individuals or private stockholders stood. This has been long settled by the decisions of this Court.

(c) VIRGINIA LEGISLATURE AND COURTS RECOGNIZE THE DISTINCTION BETWEEN PRIVATE CORPORATIONS WITH STOCK AND PUBLIC CORPORATIONS WITHOUT STOCK.

The Virginia legislation recognizes the distinction between private corporations and public corporations. In several instances the legislature created public corporations composed of the governor, the attorney general, and some other official of the state, through which to construct works of public improvement. These corporations had no stock. The corporations were simply the agents of the state, each without stock; their property was the property of the state. The Supreme Court of Appeals of Virginia held that such a corporation was not liable for damages caused in the construction of an improvement, or in its management.

Sayre v. *The Northwestern Turnpike Road,* 10 Leigh 454.

These private corporations, on the other hand, in which the state had taken stock in conjunction with others, were, in respect of suits, subject to the same laws as other private corporations throughout the state, to which the state sustained no relation whatever except as a sovereign. In the case of *James River, &c.,* v. *Early,* 13 Grattan 541, cited by the Master and in Part II. of this brief, which was an action

to recover for the negligence of the corporation and in which the right to sue the corporation was raised, the Supreme Court of Appeals distinguished that corporation from the public corporation involved in the Sayre case.

We do not suggest that the primary motive of the state in subscribing to the stocks of such companies to secure the construction of highways, bridges and railways, and the improvement of rivers, and works of public convenience and benefit, was to make money. She borrowed the money to pay her stock subscriptions in almost every one of these cases. In each case, the loan was authorized by the act of the legislature which created the corporation. And in each case the evidences of debt, which were certificates of stock issued by the state, contained a reference to the particular act under the authority of which the loan was made, and the Court will see in the schedule annexed to the Master's report opposite the name of each of these corporations the purpose for which the loan was created, giving the act by date, and also the number of the loan, its maturity and amount. On principles of international law, upon the division of Virginia by the separation of the territory now constituting West Virginia, and her admission into the union as a state, the public improvements, public buildings and other governmental property within West Virginia, would pass by the fact of separation to the new state; and the latter would be obliged on principles of international law, as she took the property, to bear not a part, but the whole debt which had been incurred in its creation. It would be a debt running with the land, an obligation not secured by a mortgage upon the territory of the new state and localized in that way, but a debt *contracted with reference to, and for the benefit of, the territory embraced* in the new state. It would be manifestly impossible for the State of Virginia by any act of her own, or any agreement between her and the proposed new state, to convey to the latter the property of the corporations in which she was a mere stockholder, for she would not have any property to convey except her stock; manifestly she could not transfer the private property of the corporation; nor could the interest of the private stockholders in the corporation be displaced by any agreement made by the commonwealth in respect to it.

(*d*) VIRGINIA ACT OF 1863 TRANSFERRING TO WEST VIRGINIA PROPERTY WITHIN HER BOUNDARIES.

No change of the government of the old state, or its territory, could change in the slightest the corporation ownership, or release it from its duties under its charter. It would be subject, perhaps, to a new master; and this was evidently Virginia's notion of it in '63. The act of February 3, 1863, passed by the restored government, Chapter 15, Appendix to the Record, page 128, provides:

> "That all property, real, personal and mixed, owned by or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the State of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein contained; and shall include among other things not herein specified, all lands, buildings, roads and other internal improvements, or parts thereof, situated within the said boundaries, and now vested in this state, or in the president and directors of the board of the literary fund, or the board of public works therefor, or in any person or persons, for the use of this state to the extent of the interests and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any *parent bank or branch* doing business *within the said boundaries;* and all *stocks of any other company or corporation,* the principal office or place of business whereof is located within the said boundaries standing in the name of this state or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state."

It was admitted on the record by the defendant that the principal office or place of business of any corporation whose works were wholly within the State of West Virginia, was within the State of West Virginia, and came within the provisions of the act. Section 2, transferred unpaid and uncollected, arrearages of taxes on lands, lots, of all description, fines imposed by courts, forfeitures and penalties, &c., &c., dividends on stock owned by the state or by the board of public works

or the literary fund, in any bank, bridge or other corporation, and various other items which need not be mentioned. Section 5 provided that:

> "If the appropriations and transfers of property, stocks and credits provided for by this act take effect, the State of West Virginia *shall duly account for the same* in the settlement hereafter to be made with this state: provided that no such property, stocks and credits shall have been obtained since the re-organization of the state government."

(*c*) THE TRANSFERS OF PROPERTY TOOK PLACE.

That the transfers did take effect, is apparent from the legislation of West Virginia, put in the record by the complainant, and will be found in the appendix. If by that act Virginia had transferred to West Virginia her interest in the property, and had provided simply for the transfer of the stocks or property of corporations in which her stock represented her interest, it might be thought that it was intended as a mere muniment of title; but the provision that she shall *account for it hereafter in the settlement to be had between the two states gives to it conclusively a different aspect.* This act is set out in Paragraph VIII. of the bill. And it is alleged in this paragraph that:

> "The property which was by the operation of this act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate to several million of dollars, the exact amount your oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this act, the State of West Virginia realized and received into her treasury from the sale thereof about $600,000; and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

(*f*) WEST VIRGINIA CANNOT EQUITABLY BE CHARGED BOTH WITH THE VALUE OF THE STATE AND WITH THE EXPENDITURES MADE BY THE CORPORATIONS.

And the Master finds that the amount due Virginia on account of the stock of the Northwestern Bank of Virginia and of the Fairmont Bank is $477,250; and he also adds $7,578, stock of the Sweet & Salt Sulphur Spring Company; $4,000, stock of the White & Salt Sulphur Spring Company; $12,000 for stock of the Fairmont & Palatine Bridge Company, making in all $500,828. No evidence was offered, upon which he could find, nor does he find, the value of the other stocks at the time of the transfer under the act of 1863 to the defendant. It is admitted that they were of no value. Before that date the property of such corporations had to a considerable extent been destroyed by the troops of Virginia acting in co-operation with the Confederate States, stocks of the bridge companies and the turnpike companies. If there had been evidence upon the part of the plaintiff that the stock other than bank stock; in other words, the stocks of the private corporations created to build bridges, turnpikes, and other works of internal improvement, whose principal place of business was in 1863 in the territory of West Virginia were worth par when transferred, he would have been obliged to find in favor of West Virginia for all the stocks at par. That it is confessed on the record that they were worthless at the time they were transferred does not change in the slightest the status or the principle. Upon this basis, it is perfectly apparent that it was the understanding of the legislature that the expenditures by these companies of their money within West Virginia could not be considered state indebtedness; otherwise, if West Virginia were obliged to pay for them as *state expenditures* and also to pay for the *stock*, the defendant would be subjected to double payment for the same thing, which, of course, never could have been intended. It is thus apparent that not only was the Master right, as a matter of law, in rejecting under Paragraph 2 expenditures by these corporations as state expenditures, but that this could not have been the understanding of Virginia, as shown by the act of 1863. And it will not escape attention that the act of 1863 in respect of all the items embraced in it, stocks and improvements, localized them, just as the ordinance localizes expenditures. The

act of 1863 was based upon territorial limits. It can hardly be possible that West Virginia *could equitably be held responsible* for these stocks under the act of 1863 at par if they *were worth par*, and also be responsible for all, or a part, of the moneys which Virginia had *borrowed with which to purchase them*. That would be unique for want of equity:

(*g*) COUNSEL FOR VIRGINIA BEG THE QUESTION.

Counsel for Virginia on page 21 of their Notes of Argument say:

> "In considering the questions which are presented by the controverted items in the schedules filed under this paragraph it is important always to bear in mind the precise language of the decree which, following the terms of the Wheeling Ordinance, directs the ascertainment of:
>
> 'ALL *expenditures* made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.'
>
> "It is manifest that that language in explicit and comprehensive terms embraces without exception or qualification, all expenditures of whatever character or description, and on whatever account, or for whatever purpose, or in whatever manner made, which were made by the Commonwealth of Virginia in any part of the territory now constituting West Virginia, after March 19, 1823, the agreed time at which any part of the debt in question was contracted."

This is *petitio principii*. The question is whether an expenditure by Virginia in the purchase of stock of a corporation, which corporation is authorized to construct a work of internal improvement within the territory of what is now West Virginia, is an expenditure "*made* within West Virginia could not be considered state expenditures; *made in West Virginia by a corporation in which Virginia is a stockholder*. The learned counsel have emphasized the capital letters and italics in the wrong place. The point is not there; the capitals and the italics, both, should be transferred from the words "*all expenditures*" to the words "*made by the Commonwealth of Virginia.*"

Pile, etc.

3. THE MASTER WAS WRONG IN FINDING THAT INTEREST ON THE PUBLIC DEBT OF VIRGINIA WAS PART OF THE ORDINARY EXPENSE OF THE STATE GOVERNMENT.

If the state chooses to create corporations, and invest in their capital stocks, for the making of internal improvements, and borrows the money for the purpose of paying her stock-subscriptions, while she does it upon her credit as a sovereign, the use to which she devotes the money is not a *governmental* use; but is a commercial use.

While the debt, as between the bondholders and the state, is the debt of a sovereign state, the property acquired is an investment. It is, in no sense, governmental. It is commercial. And to say that the interest annually accruing upon such a debt is an ordinary expense of state government, seems to be absurd. To say that it is even an ordinary expense of a state, as a sovereignty, is not maintainable.

Is it conceivable that the framers of this ordinance could ever have been induced to agree to the proposition, or have contemplated, that by its provisions they were binding the new state to pay, under the guise of ordinary expenses, nearly $4,000,000 of interest on the moneys borrowed by Virginia to invest in capital stocks of corporations, which, on the separation, she was to keep, and did keep, as well as all of the internal improvements which that stock represented?

The Master finds the ordinary expenses of the state government of Virginia, during the debt period; that is to say, from March 19, 1823, to January 1, 1861, to have been $40,274,896.70, including interest on the public debt during that period, amounting to $18,574,747.84, leaving as the sum for ordinary expenses of the state government, excluding interest, $21,700,148.86, of which he assigns to West Virginia $4,161,352.99. This ascertainment and apportionment was excepted to by the defendant. He also assigns to the defendant, $3,986,102.93, as its proportion of the interest paid on the public debt during the debt period, which he includes as a part of the ordinary expenses of the state government. To this, the defendant excepts.

(*a*) THE LANGUAGE OF THE ORDINANCE.

Section 9 of the Wheeling Ordinance, in which the words to be construed occur, is as follows:

> "The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the *ordinary expenses of the state government*, since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period."

(*b*) DEFENDANT'S CONTENTION.

The defendant contends that upon every principle of construction, by the plain meaning of the words "ordiary expenses of the state government," by the interpretation which results from reading section 9 of the ordinance as a whole, by the meaning which the words in question have acquired from common use in the constitutions and statutes of the different states as well as by the great preponderance of judicial interpretation in cases where these words have been construed interest on a public debt, especially where such a debt was incurred for extraordinary purposes, cannot properly be included among the ordinary expenses of a state government.

(*c*) INTEREST ON A STATE DEBT IS NOT AN ORDINARY EXPENSE OF GOVERNMENT BECAUSE IT IS PAYABLE ONLY DURING A LIMITED PERIOD.

The adjective "ordinary" fixes the character of the expenses of the government with which the ordinance charges West Virginia. An ordinary expense of government is one which ordinarily recurs so long as government exists. It is obvious that interest on a state debt does not belong to this category. A state debt is a temporary obligation to be discharged at an agreed time by payment. The ordinary expenses of a state government, however, never cease. So long as the government exists, expenses for its support, for the maintenance of the legislative, judiciary and executive departments, for the performance

of the various duties which they owe to the people will annually recur and must be met. Even if it were proper, as we do not think it is, to describe payments upon a bonded state debt as an expense of government, is it not too clear for argument, when we find that payments upon such a bonded debt are by the terms of the contract creating the debt only to continue during a specified limited time, while ordinary expenses of the government must continue indefinitely, that the term *ordinary* expenses must be applied exclusively to the latter class of expenses, and cannot be deemed to include the payments on the debt which are to cease after the expiration of the time fixed by the contract?

(*d*) INTEREST ON THE OLD VIRGINIA DEBT WAS NOT AN ORDINARY EXPENSE OF GOVERNMENT BECAUSE THE DEBT WAS INCURRED FOR EXTRAORDINARY PURPOSES.

In considering whether interest on a state debt is one of the ordinary expenses of a state government, it is important to bear in mind the purposes for which the debt was incurred. The debt of Virginia to which the Wheeling Ordinance refers, was incurred for internal improvements. The proceeds of the Virginia bonds were either directly applied in the construction of highways, railways, bridges and similar improvements, or to the purchase of stock in corporations which applied the money in the construction of such internal improvements. These improvements were of a permanent character, and in constructing them the state was making a permanent investment. We do not understand that there is any dispute that expenditures for works of internal improvements are extraordinary and not ordinary expenditures. The Master's report (page 112) states that "the question as to what is an extraordinary expense seems to be well settled," and the cases which he cites in illustration decide that expenditures for permanent improvements are extraordinary expenditures. All the authorities on this question are in agreement. A number of state constitutions prohibit the state from expending money on works of internal improvement. This shows the impossibility of regarding such an expense as an ordinary expense of government. If the principal of some of the Virginia bonds issued for internal

improvements had fallen due within the period covered by the ordinance and had been paid to the bondholders, is it not manifest that this payment for an extraordinary purpose, a payment which could be made only once, could not be deemed an ordinary expense? And if payment of the principal debt would not be an ordinary expense, on what theory can payment of the interest, which is merely incidental to the principal debt, be so regarded?

(*e*) THE FACT THAT THE INTEREST WAS PAYABLE AT REGULAR INTERVALS DID NOT MAKE IT AN ORDINARY EXPENSE.

The only circumstance which gives any semblance of plausibility to the claim that interest on the Virginia debt was an ordinary expense of the state government is the fact that the interest was payable at regular intervals until the principal fell due and was paid. We have already pointed out that the annual recurrence of an interest charge during a *limited* period does not make the interest an *ordinary* expense. Suppose the state had made a contract for the construction of works of internal improvement, under which payment therefor was to be made in equal semi-annual installments during a period of years. Would it be possible to claim that the payment of such installments was an ordinary expense of government?

(*f*) INTEREST IS NOT PROPERLY DESCRIBED AS AN EXPENSE.

Leaving out of consideration the force of the adjective "ordinary," it would still be not in accordance with the common use of language to describe the payment of interest on a funded public debt as an *expense* of *government*. The difference between expense and debt in the common use of language is well expressed by Judge Spencer in a Louisiana case as follows: "In common parlance there is, no doubt, a distinction in the meaning of the words debts and expenses. The latter is usually applied to those current temporary obligations which are met by payment as they arise, while the former designates obligations of a more enduring kind" (*State ex rel.* vs. *State Auditor*, 32 La. Ann. 89, 90).

A striking illustration of this distinction is found in the provisions of state constitutions relating to taxation and revenue. In most of the

states the constitutional provisions concerning taxation and the appropriation of revenue expressly provide for the payment of the expenses of government, and *also* for the payment of the public debt and interest thereon. Clearly the men who framed these constitutions would not have provided separately for the payment of the principal and interest of the public debt, if they had supposed that such payment fell among the expenses of government for which they had already provided. We shall subsequently call the attention of the Court to the specific constitutional provisions to which we refer.

(*g*) THE DISTINCTION BETWEEN THE STATE AND THE GOVERNMENT OF THE STATE.

The Wheeling Ordinance expressly discriminates between the state and the government of the state. According to the ordinance, "the new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia." The public debt to be assumed is the debt of the Commonwealth of Virginia and not of its government; and the new *state*, not the *government* of the new state, is to take upon itself a just proportion thereof, which is to be ascertained "by charging to it all the *state* expenditures within the limits thereof and a just proportion of the ordinary expenses of the state *government*." All *state* expenditures within the defined area are to be charged and in addition a part of all the ordinanry expenses of the state *government*. It is a cardinal principle of construction that effect must be given to every word in a written instrument. In the ordinance no effect can be given to the word "government" unless it is construed as meaning something different from the word "state." If this is granted, then the conclusion follows that under the ordinance payment of the public debt of Virginia, if it is to be regarded as an "expense," is an expense of the *state*, and not of the *government* of the state, because the ordinance describes the public debt as the "debt of the Commonwealth of Virginia," that is to say, of the *state*. The state may have expenses which are not the expenses of the state government. If a state fails to pay interest on its bonds, its credit is affected, and it is an event to be deplored; but the government of the state must go on just the same. The distinction drawn by the ordinance between the state and the government of the state is a real and not an artificial

distinction which this Court has recognized in *Texas* v. *White*, 7 Wall. 700, and in *Poindexter* v. *Greenhow*, 114 U. S. 290. In the former case Chief Justice Chase delivered the opinion of the Court, and in enumerating the various senses in which the word state is used said: "And there are instances in which the principal sense of the word seems to be that primary one to which we have adverted, of a people or political community, as distinguished from a government. In this latter sense the word seems to be used in the clause which provides that the United States shall guarantee to every state in the union a republican form of government, and shall protect each of them against invasion. In this clause a plain distinction is made between a state and a government of a state." We think the language of the ordinance plainly shows that the words commonwealth and state are therein used in the primary sense of a people or political community as distinguished from the government. Such an interpretation is in accordance with the actual fact. Under American institutions the government of a state has no validity except as representing the people who compose the state. When a public debt is contracted it is not the government, but the people of the state who become liable for its payment. The government merely acts as the agent of the people in the transaction. In the case of this debt of Virginia this is peculiarly true. The whole debt which is the subject of this suit was incurred for internal improvements, matters in which the people were interested, from which the people might anticipate benefits in the conduct of their trade and commerce, but which have no relation to the work of government. How can the payment of such a debt or of the interest thereon be regarded as an expense of government? Suppose a private individual entrusts the conduct of his affairs to an agent, who, in the course of his employment, executes a note on behalf of his principal. Would it not be doing violence to the ordinary sense in which language is understood to include payment of the note or of interest thereon among the expenses of the agent? In the case of business corporations, the word government is not used to describe the agents who conduct the business, but the work performed by them is commonly described by the word management, and the expenses of the management of a private corporation, in the largest sense, are called operating expenses. We submit that no instance can be found in the

records of private corporations where the payment of interest on bonds of such a corporation is treated as an operating expense.

(*h*) FINANCE PROVISIONS OF STATE CONSTITUTIONS SHOW THAT INTEREST ON A STATE DEBT IS NOT REGARDED AS AN EXPENSE OF GOVERNMENT.

The provisions of the state constitutions relating to taxation and revenue are helpful in considering the phrase "ordinary expenses of the state government." The constitutions show two things, (1) that the creation of a public debt is not an ordinary, but an extraordinary matter, and (2) that the phrases "expenses of the state" and "expenses of the state government" do not apply to the payment of interest on state bonds. Examination of the constitutions makes it plain that the founders of state government intended that ordinary expenses should be defrayed out of funds raised by taxation, that the power of creating funded debts by the issue of bonds, if granted at all, should be exercised only for the purpose of meeting extraordinary emergencies, and that such debts when created should be paid and extinguished at maturity, thus restoring the normal and ordinary condition of paying expenses as they arise by the imposition and collection of taxes. Nearly all the state constitutions carefully limit the power of the legislature to issue bonds and define the purposes for which this power may be exercised. In some states, as in Wisconsin, the constitution prohibits the state from contracting public debts except for the purpose of defraying extraordinary expenditures. Many of the constitutions also direct that the law authorizing the creation of a public debt shall provide for levying a special annual tax sufficient to pay the interest on the debt and to provide a sinking fund for the payment of the principal at maturity within a specified number of years. Furthermore, in many of the states the constitutions direct the legislatures to raise revenues sufficient to defray the estimated expenses of the state or of the state government, and also sufficient sum to pay the interest on the state debt. There could not be a clearer indication that interest on the state debt was not regarded as an *expense* of the state government. Had it been deemed such an expense there would have been no need of requiring the legislature to raise revenue to pay

Georgia, Constitution of 1877 (in force), Article VII., Section 1: "The powers of taxation over the whole state shall be exercised by the general assembly for the following purposes only: For the support of the state government and the public institutions. * * * * To pay the interest on the public debt. To pay the principal of the public debt."

Section 14, Paragraph 1: "The general assembly shall raise by taxation each year, in addition to the sum required to pay the public expenses *and* interest on the public debt, the sum of $10,000 which shall be held as a sinking fund to pay off and retire the bonds of the state which have not yet matured."

Indiana, Constitution of 1851 (in force), Article X., Section 2: "All the revenues derived from the sale of any of the public works belonging to the state, and from the net annual income thereof, and any surplus that may, at any time, remain in the treasury derived from taxation for general state purposes, *after* the payment of *the ordinary expenses of the government, and* of the *interest* on bonds of the state, other than bank bonds, shall be annually applied, under the direction of the general assembly, to the payment of the principal of the public debt."

The ordinance relating to the state debt which was adopted as part of the Louisiana Constitution of 1879, reduced the interest payable on certain state bonds, fixing the rate from January 1st, 1880, at 2 per cent. for five years thereafter, and provided in article 3: "Be it further ordained, that the coupons of said consolidated bonds falling due the first day of January, 1880, be and the same is hereby remitted, and any *interest* taxes collected to meet said coupons are hereby *transferred* to defray *the expenses of the state government.*"

Michigan, Constitution of 1850 (in force), Article XIV., Section 1, provides that, "The legislature shall provide for an annual tax, sufficient with other resources, to pay the estimated *expenses of the state government,* the *interest of the state debt,* and such deficiency as may occur in the resources."

North Dakota Constitution, Article II., Section 174, provides that: "The legislative assembly shall provide for raising revenue sufficient to defray *the expenses of the state* for each year, not to exceed in any one year four mills on the dollar of the assessed valuation of all tax-

interest on the state debt in addition to revenue for the purpose of defraying the expenses of the state government.

We shall now quote the specific provisions from the state constitutions to which we have made general reference. In many of these provisions the phrase used is substantially the same as that in the Wheeling Ordinance; namely, the ordinary, or the current, or the necessary, expenses of the state government, and these expenses are expressly distinguished from interest on the state debt. When we find that so many constitutions, drawn up by men who were under a peculiar obligation to use language accurately, agree in separating the ordinary expenses of the state government from interest on the state debt, the inference is compelling that this distinction is generally accepted, and that the men who framed the Wheeling Ordinance, in charging the new state with a just proportion of the ordinary expenses of the state government, did not intend to include interest on the public debt of Virginia among these expenses.

(*i*) EXTRACTS FROM STATE CONSTITUTIONS.

Alabama, Constitution of 1875, Article X., Section 7, provides that the City of Mobile "may, until the 1st day of January, 1879, levy a tax not to exceed the rate of one per centum, and from and after that time a tax not to exceed three-fourths of one per centum to pay the *expense of the city government*, and may *also* until the 1st day of January, 1879, levy a tax not to exceed the rate of one per centum, and from and after that time a tax not to exceed three-fourths of one per centum to pay the *existing indebtedness* of said city and *the interest thereon*."

Alabama, Constitution of 1901, Article XI., Paragraph 216, provides that the City of Mobile "may from and after the ratification of this constitution levy a tax not to exceed the rate of three-fourths of one per centum to pay *the expenses of the city government*, and may also levy a tax not to exceed three-fourths of one per centum to pay *the debt* existing on the 6th day of December, 1875, *with interest thereon*, or any renewal of such debt."

Florida, Constitution of 1885 (in force at present), Article IX., Section 2: "The legislature shall provide for raising revenue sufficient to defray *the expenses of the state* for each fiscal year, and *also* a sufficient sum to pay *the principal and interest of the existing indebtedness of the state*."

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able property in the state, to be ascertained by the last assessment made for state and county purposes, and *also* a sufficient sum to pay *the interest on the state debt.*"

Ohio Constitution, Article XII., Section 4, provides that: "The general assembly shall provide for raising revenues sufficient to defray the *expenses of the state* for each year, and *also* a sufficient sum to pay the *interest on the state debt.*"

Oklahoma Constitution, Article X., Section 2, provides that: "The legislature shall provide by law for an annual tax sufficient, with other resources, to defray the estimated *ordinary expenses of the state,* for each fiscal year."

Section 4 provides that: "For the purpose of paying *the state debt,* if any, the legislature shall provide for levying a tax, annually, sufficient to pay the annual *interest and principal of such debt* within 25 years from the final passage of the law creating such debt."

Oregon, Constitution of 1857 (in force), Article IX., Section 2: "The legislative assembly shall provide for raising revenue sufficient to defray the *expenses of the state* for each fiscal year, and *also* a sufficient sum to pay the *interest on the state debt,* if there be any."

Pennsylvania, Constitution of 1838, Article XI. (added 1864), Sections 1, 2 and 3 provide for the creation of state debts. Section 4 provides for the creation of a sinking fund to pay the accruing interest and annually to reduce the principal of the state debt and then provides: "The said sinking fund may be increased from time to time by assigning to it any part of the taxes or other revenues of the state not required for the *ordinary and current expenses of government.*"

Pennsylvania, Constitution of 1873, Article IX., Section 11, is in substance the same as Section 4 of Article XI. of the preceding Constitution referred to above, and provides that: "Said sinking fund * * * shall be increased from time to time by assigning to it any part of the taxes or other revenues of the state not required for the ordinary and current expenses of government."

South Dakota Constitution, Article XI., Section 1, provides that: "The legislature shall provide for an annual tax sufficient to defray the estimated *ordinary expenses of the state* for each year, not to exceed in any one year two mills on each dollar of the assessed valua-

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tion of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes.

"And whenever it shall appear that such ordinary expenses shall exceed the income of the state for such year, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year. And for the purpose of paying *the public debt,* the legislature shall provide for levying a tax annually, sufficient to pay the *annual interest and the principal of such debt* within ten years from the final passage of the law creating the debt, provided that the annual tax for the payment of the interest and principal of the public debt shall not exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the state as ascertained by the last assessment made for the state and county purposes."

In the case of *In re Limitation of Taxation,* 3 S. D., 456, the court construed Section 1 of Article XI. of the Constitution as follows: "This section relates to three different and distinct items of taxation: First, the annual tax for defraying *the ordinary expenses* of the state; second, taxes to pay deficiencies from preceding years; third, taxation for the purpose of paying *the public debt.* * * * When the purpose is to pay the public debt, the legislature shall provide for levying an annual tax sufficient to pay the annual interest and the debt within ten years. The tax, *like the one* for the estimated ordinary expenses, is limited to two mills on the assessed valuation of property."

Texas Constitution, Article XI., Section 6, provides that: "Counties, cities and towns are authorized, in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed, and collected *separately* from that levied, assessed and collected for current expenses of municipal government, and shall when levied specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied."

Virginia Constitution, Article XIII., Section 188, provides that:

"No other or greater amount of tax or revenue shall at any time be levied than may be required for the *necessary expenses* of the government, *or* to pay the *existing indebtedness* of the state."

Section 189 fixes the rates of state taxation on property, and provides that the proceeds "shall be applied to the expenses of the government *and* the indebtedness of the state."

Washington Constitution, Article VII., Section 1, provides that: "The legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated *ordinary expenses* of the state for each fiscal year. And for the purpose of paying the *state debt,* if there be any, the legislature shall provide for levying a tax annually, sufficient to pay the *annual interest and principal of such debt* within twenty years from the final passage of the law creating the debt."

West Virginia Constitution, Article X., Section 4, provides that: "The payment of any liability other than that for the *ordinary expenses* of the state, shall be distributed over a period of at least twenty years."

Section 5 provides that: "The power of taxation of the legislature shall extend to provisions for the payment of the *state debt* and *interest* thereon, the support of free schools, *and* the payment of the annual estimated *expenses of the state.*"

(*j*) THE DISTINCTION BETWEEN ORDINARY EXPENSES OF GOVERNMENT AND INTEREST ON A PUBLIC DEBT IS APPARENT IN THE CASE OF MUNICIPAL CORPORATIONS.

The line of division between ordinary expenses of government and interest on a public debt is plainly marked in the case of municipal corporations. It is familiar law that a municipal corporation has no power to issue bonds without express authority from the legislature, and statutes giving such authority are strictly construed. It necessarily follows that a municipal corporation has no power to impose taxes for the purpose of paying bonds or interest thereon unless authority to issue the bonds was duly conferred. On the other hand, a municipal corporation, by virtue of its creation, has implied power to incur debts for the purpose of its existence and to raise money

by taxation to pay these living expenses. In *U. S.* v. *New Orleans*, 98 U. S. 381, 393, Mr. Justice Field, speaking for this Court, said: "When such (municipal) a corporation is created, the power of taxation is vested in it as an essential attribute, for all the purposes of its existence, unless its exercise be in terms prohibited. For the accomplishment of these purposes, its authorities, however limited the corporation, must have the power to raise money and control its expenditure. In a city, even of small extent, they have to provide for the preservation of peace, good order and health, and the execution of such measures as conduce to the general good of its citizens; such as the opening and repairing of streets, the construction of side-walks, sewers and drains, the introduction of water, and the establishment of a fire and police department."

Is it not clear that the expenses, which municipal corporations have power to incur by necessary implication, are ordinary expenses of municipal governments as distinguished from those payments which are not necessary to their existence and grow out of obligations which depend for their validity on the express authorization of the legislature?

(*k*) THE ADJECTIVES "ORDINARY," "CURRENT" AND "NECESSARY" WHEN APPLIED TO GOVERNMENTAL EXPENSES ARE SYNONYMOUS.

The Master has pointed out that the expression considered by the courts in some cases is "ordinary expenses," while in others it is "current expenses," and in still others it is "necessary expenses." These different phrases also appear in the constitutional provisions which we have quoted. The Master rightly concludes that the courts treat the adjectives "ordinary" and "current" when applied to expenditures of a state or a municipality as synonymous (Master's Report, pages 91, 92). This Court, in considering the terms of a private trust, said: "We think the correct interpretation to the phrase 'current expenses' was given it by the Circuit Court, namely, ordinary expenses" (*Taylor* v. *Mayo*, 110 U. S. 330). The cases, furthermore, show that the expression "necessary expenses," when the context shows that regularly recurrent expenses of government are referred to, has

the same meaning as "ordinary expenses" and "current expenses." We submit that all these phrases describe the expenses which are incurred in carrying on the regular work of government. Judge Lurton, in the case of *City of Cleveland* v. *U. S.*, 111 Fed Rep. 341, 350, defined current expenses as follows: "Those current expenses proper for the maintenance of the city government and chargeable against current revenue." In *Burch* v. *Earhart*, 7 Ore. 58, 66, Chief Justice Kellogg gave the following definition: "Current expenses of the state mean the ordinary running liabilities incurred by the state in the administration of its offices from year to year." In *Dunbar* v. *Board, etc.*, 5 Ida. 407, 412, 413, the court, referring to the ordinary expenses of a county, defined them as "Ordinary expenses such as are usual to the maintenance of a county government, the conduct of its necessary business, and the protection of its property."

(*l*) THE MASTER'S ARGUMENT.

The regular work of government to which the foregoing definitions refer differs according to the needs, the means and the demands of different communities. The Master's Report (page 87) states: "The defendant contends that the language should receive a construction which would make 'ordinary' synonymous with 'necessary' or 'essential' used in the sense of indispensable expenses—expenses which if not paid the wheels of government will cease to revolve, without the payment of which the state government cannot be administered." In one sense this is a correct statement of defendant's position, but not in the sense in which the Master apparently understands this statement. On page 92 of his report the Master says: "The defendant relies upon the line of cases where judgment creditors seeking to recover payments from the revenues of the municipality have been postponed to ordinary current or necessary expenses, which are made a primary charge upon revenues. The cases clearly establish the general doctrine. From some of them it might perhaps be inferred that interest was not a primary charge or an ordinary, current or necessary expense. I find none of them, however, where the specific question as to whether interest is or is not an 'ordinary expense' is concerned. It is very clear that all essential expenses are also 'ordinary expenses,' but it does not by any

means follow that all 'ordinary expenses' are essential expenses, that there may not be 'ordinary expenses' which are not essential expenses. If it were true that judgment creditors were postponed only to essential or indispensable expenses, the cases might be entitled to considerable significance. On the contrary, however, the postponing of judgment creditors is not confined to essential or indispensable expenses, as expenses which do not come within that class, are often held to be primary in their character and to precede judgment creditors as a charge upon the current revenues. The following cases show that such current or ordinary expenses as light, water and fire protection, none of which are essential to the revolution of the wheels of government, have been held to be ordinary or current expenses that will be made a charge upon the revenues prior to the claims of judgment creditors, thus demonstrating that the essential character of the expenditure is not the test of an ordinary expense.' "

(*m*) FALLACY OF THE MASTER'S ARGUMENT.

The Master's argument in substance appears to be this: He concedes that the payment of interest on a public debt is not an "essential expense," indispensable to carrying on the government, but he argues that because judgment creditors are postponed not only to essential expenses, but also to "ordinary expenses" which are not "essential," therefore the cases relating to judgment creditors do not decide that payment of interest on a public debt is not an ordinary expense. It would be a sufficient answer to point out that in some cases the judgments which were postponed to ordinary expenses were judgments for interest on a public debt. The fallacy of the Master's argument, however, lies in his assumption that he or a court can determine what is an indispensable or essential expense of a particular government. The true rule is that this is a matter to be determined by the government, and that the determination of the government cannot be reviewed by a court in the absence of clear abuse of discretion. The requirements of a highly developed state are different from those of a newly settled state. The essential expenses of a city like New York are in number and kind very unlike those of a town in a sparsely settled western state. There is no conflict in the cases if one bears in

mind this rule, that the judge of the necessity of expenses is the government itself. When this rule is borne in mind it is evident that the Master is wrong, and that there can be no ordinary expenses of government in the sense in which this phrase is used by the courts, which are not essential expenses. The rule as we have stated it has been established by the highest authorities. In *City of East St. Louis* v. *U. S.*, 110 U. S. 321, Mr. Justice Matthews, in delivering the opinion of the Court, said: "The question, what expenditures are proper and necessary for the municipal administration is not judicial; it is confided by law to the discretion of the municipal authorities. No court has the right to control that discretion, much less to usurp and supersede it." The same rule is also recognized and approved in the following cases:

White v. *Mayor*, 109 Ala. 476.
Mayor v. *State*, 32 La. Ann. 748, 749.
State ex rel. Lorenz v. *New Orleans*, 116 La. 851.
Sherman v. *Langham*, 92 Tex. 13.
Young v. *Lamb*, 43 Neb. 813.
State v. *Sheldon*, 52 Neb. 364.
Ward v. *Piper*, 69 Kan. 773.

(*n*) BY THE GREAT PREPONDERANCE OF JUDICIAL CONSTRUCTION INTEREST ON A PUBLIC DEBT IS NOT AN ORDINARY EXPENSE OF GOVERNMENT. THE AUTHORITIES.

The cases in which the question has arisen whether ordinary or current expenses of government include interest on a public debt are few. This we are persuaded is due to the general understanding as indicated by the constitutional provisions cited above, that interest on a public debt is not one of such ordinary expenses. The cases to which we shall now call the attention of the court, however, seem to us sufficient in number and weight to be decisive on this question.

In the case of *Quincy* v. *Jackson*, 113 U. S. 332, a creditor who had recovered a judgment upon coupons for interest on bonds which the City of Quincy had issued in payment of a subscription for stock of a railroad company, had petitioned for a writ of mandamus to compel the city to levy taxes for the payment of his judgment. The city was empowered by a law passed in 1863 to levy taxes not exceed-

ing fifty cents on each one hundred dollars ($100) of the assessed value of property "to pay the debts and meet the general expenses of said city." In 1869 the legislature passed the act authorizing the subscription for railroad stock in payment of which the city had issued the judgment creditor's bonds. The city contended that its power to tax was defined by the act of 1863, and that this power had been exhausted. The court, however, decided that the act of 1863 applied only to taxation for raising money to pay ordinary expenses, that the indebtedness arising on the bonds given for railroad subscriptions was not of this character, and the power to tax for the purpose of raising money to pay the bonds was implied in the grant of authority to issue the bonds in payment of the stock subscription. Mr. Justice Harlan, speaking for the Court, (page 336) said: "The act of 1863 related to debts and expenses incurred for ordinary municipal purposes and not to indebtedness arising from railroad subscriptions, the authority to make which is not implied from any general grant of municipal power, but must be expressly conferred by statute." Referring to the act of 1869, which authorized the city to subscribe for the railroad stock, Mr. Justice Harlan further said (page 337): "It could not have been contemplated that indebtedness thus created would be met by such taxation as was permitted for ordinary municipal purposes. In giving authority for such extraordinary indebtedness the legislature did not restrict its corporate authorities to the limit of the taxation provided for ordinary debts and expenses. The limitation imposed by the city's charter upon its power of taxation had reference to its ordinary municipal debts and expenses." This decision is in point. The judgment sought to be enforced was for interest on a public debt. The limited power of the city to tax for the purpose of meeting its ordinary expenses had been exhausted, and if the court had deemed interest on a public debt an ordinary expense the writ of mandamus must have been refused, but the Court held that the interest on this public debt was not an ordinary expense, and therefore, the limitation upon the city's power to tax for ordinary expenses did not apply.

In *Clay County* v. *McAleer*, 115 U. S. 616, the case arose on a petition for a writ of mandamus to compel Clay County to levy a sufficient tax to pay the petitioner's judgment. It appeared that the power of the county to levy for ordinary county revenue was limited to six

mills, and by demurrer to the answer it was admitted that the maximum levy would not be sufficient to pay the ordinary current expenses of the county, and that no part thereof could be applied for the payment of the petitioner's judgment without seriously impairing the efficiency of the county government. The Court held that no levy could be ordered to pay the relator's judgment, saying (page 618): "Here the answer shows affirmatively that the whole of the six mill levy of 1882 will not be sufficient to pay the ordinary expenses of the county."

East St. Louis v. *U. S.*, 110 U. S. 331, is to the same effect.

In *Sibley* v. *Mobile*, 3 Woods 535, 541, Judge Woods, referring to the bondholders who had recovered judgment against the city, said that they "are entitled to have all the taxing power of the city within the constitutional limit exercised, if necessary, to secure the performance of the contract made by the city with them. When that power is exercised the current expenses of the city must be paid out of the fund so raised, and out of the residue the relators are entitled to share *pro rata* with the other creditors of the city who have no specific lien or claim to any portion of the taxes."

Accord *Mayor, etc., of New Orleans* v. *U. S.*, 49 Fed. Rep. 40.

In the case of *Ward* v. *Piper*, 69 Kan. 773, a creditor who had obtained a judgment for interest on township bonds applied for a writ of mandamus to compel the officers of Isabel Township to pay his judgment. The plaintiff asked to have the fund which had been levied and collected to meet the general current expenses of the township applied to the payment of his judgment. This was denied by the court. Johnston, C. J., delivering the opinion, said (page 775): "It is not alleged nor shown that the funds raised for current expenses are more than sufficient for that purpose. It does not even appear that the indebtedness on which the judgment was founded was for an ordinary expense of the township to which funds derived from a levy for legal expenses could be legally applied. The taxes levied for one purpose cannot be diverted and applied to another. Presumably the township officers are acting in good faith, and have levied and raised a fund which is necessary as well as sufficient to meet the ordinary current expenses of the economical administration of the township. The township organization must be maintained, and its current ex-

penses met, although creditors of the township must wait for the payment of their bonds and judgments."

In *State ex rel. Watkins* v. *Macon County Court,* 68 Mo. 29, a creditor who had recovered judgment on bonds which the county had issued in payment of its subscription for stock in a railroad company, applied for a writ of mandamus to compel the county to pay his judgment out of its general fund. It appeared that the statute which authorized the county to issue bonds in payment of the subscription provided for a tax not to exceed one-twentieth of one per cent. upon the assessed value of the taxable property in the county for the purpose of paying the interest on the bonds, but this special tax was insufficient to pay relator's judgment. The case arose on demurrer to the return which alleged that all of the general fund was needed to pay the current and necessary expenses of conducting the county government. The court refused to grant the writ of mandamus. Judge Norton, in the opinion of the court, which he delivered, said (page 42): "What, then, are the purposes for which the general expenditure or common fund of a county is raised? A proper answer to this question can only be returned by the law which authorizes a levy of taxes to produce it. That law is to be found in Wagner's Statutes, section 165, page 1193, and is as follows: 'The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties, by a tax upon all property and licenses made taxable by law for state purposes, * * * but the county tax shall in no case exceed one-half of one per cent.' The revenue derived from the tax thus authorized to be annually imposed, is in the very terms of the law declared to be to defray the expenses of the county, which we understand to mean the ordinary current expenses incurred in conducting the county government, such as the payment of grand and petit jurors, witnesses summoned before the grand jury, costs of criminal prosecutions, expenses in supporting the poor and insane of the county, salaries of officers, assessing and collecting the revenue, &c.

"That an extraordinary indebtedness incurred by a county in subscribing stock to a railroad corporation and in issuing bonds in payment was never intended by the general assembly to be embraced in the words 'expenses of the county,' or that they contemplated the creation

of any debt for county purposes is manifest from section 166, which makes it the duty of the county court, after the assessor's book has been adjusted and returned, 'to ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes so as to raise the required sum.' If section 165, *supra,* was intended to authorize the creation of debts or provide for their payment, the general assembly would, doubtless, have so expressed themselves as they did in sections 1 and 7, page 1158, of the same law in providing for the levy of state taxes. Section 1 provides that 'for the support of the government of the state, the payment of the state debt, * * * taxes shall be levied on all property, real and personal,' * * * and section 7 provides that there shall annually be levied, assessed and collected on the assessed value of all the real and personal property subject to taxation in the state, one-fifth of one per cent. for state revenue, and one-fourth of one per cent. for the payment of all state indebtedness. The state revenue thus provided is in express terms for the support of the state goverment, and the county revenue provided for in section 165 is for the payment of the expenses of the county government.

> "That such an extraordinary indebtedness as is incurred by a county in issuing bonds in payment of a railroad subscription was not intended to be embraced in the terms 'expenses of the county,' is apparent when it is considered that the very same words used by the general assembly in section 165 are to be found in section 20, Revised Statutes 1825, page 671, except in the latter act, the tax authorized was limited to 50 per cent. of the amount of state tax. The same section was continued in the Revised Code of 1835, except that the amount of tax was in no case to exceed the amount of the state tax. It is also to be found in the Code of 1845, and that of 1855, the only difference being that in the former the rate of taxation was not to exceed 34 cents, and in the latter not to exceed 40 cents on a valuation of $100. It is clear that the general assembly in 1825 and in 1835, when they authorized the county courts to levy such tax from time to time as should be necessary for defraying county expenses, could have had no reference to such indebtedness as arises from a county bond issued in discharge of a subscription to

the stock of a railroad corporation, because, at that time, there was no law to be found on our statute books authorizing such subscriptions or the issuance of any such obligations."

Accord *State ex rel. Hudson* v. *Trammel*, 11 S. W. Rep. 747, Missouri.

City of Denison v. *Foster*, 37 S. W. Rep. 167, Texas.

Cromarty v. *Commissioners*, 85 N. C. 211, 87 N. C. 134.

In the foregoing cases creditors who had recovered judgments on claims for interest on municipal bonds were not allowed to take funds raised for the payment of the ordinary expenses of the municipalities when the funds were needed for this purpose. The decisions conclusively establish that interest on a public debt is not an ordinary expense of government; if it had been, the courts would have been bound to hold that funds devoted to the payment of ordinary expenses should be applied to the payment of such interest, but they held instead that the claims for interest must wait for payment until the ordinary expenses had been paid. The Master's report (page 108) protests that the cases of the judgment creditors are not directly in point, because the present case is not a controversy between a judgment creditor and a municipality; but surely the principle which governed the decisions by which the payment of judgments for interest on a public debt were postponed to the payment of ordinary expenses, is the same principle which must govern in the controversy between Virginia and West Virginia. The question here is the same as the question in these cases, namely, whether interest on a public debt is an ordinary expense of government. The cases cited above decided that it was not.

In *White* v. *Mayor*, 119 Ala. 476, the case arose on an application by the holder of a judgment based on coupons for interest on bonds of the town of Decatur for a writ of mandamus to compel the town to pay this judgment out of its general revenue. The court held that the petitioner was entitled to mandamus, applicable, however, only to the surplus of the town's revenues over its current expenses. McClellan, J., in delivering the opinion of the court, said, page 480: "It is thoroughly well settled law that where the interest and principal of a municipal bonded debt is payable out of the general revenue of the town, no part of such revenue that is necessary to meet current

legitimate municipal expenses can be subjected to the payment thereof, but only to the surplus of income after the governmental expenditures have been met or provided for can by any process of law be applied to such debt. *Dill* v. *Mun. Corp.*, Secs. 100, 101; *Underhill* v. *Calhoun*, 63 Ala. 216; *Williamsport* v. *Com.*, 190 Pa. St. 498; *East St. Louis* v. *U. S.*, 110 U. S. 321; *Com.* v. *Commission*, 1 Wharton 1. Nor can it make any difference that the bonded debt is specially charged upon the general revenues or that the corporate authorities are specially required to set apart a sufficiency of such revenues to meet such debt. * * * * with or in the absence of such provisions, it is within the power of and is the duty of municipal corporations * * * * to apply the whole revenues to current municipal expenses, leaving nothing to go in payment of bonded debts, nor can the courts determine what municipal expenditures are necessary. If a given expenditure is within charter authorization, and therefore abstractly considered a legitimate municipal charge, the courts cannot pass upon the advisability or wisdom of its being made or incurred."

In the case of *Anniston* v. *Hunt*, 140 Ala. 394, the charter of the City of Anniston required the city council before July 1st in each year to agree upon a budget of expenses for governmental purposes for the year ending on the 30th of the following June. In making up the budget for the year ending June 30th, 1903, the council had included among the expenses for government purposes an item of $7,600 for interest on bonds of the city. A judgment creditor of the city applied for a writ of mandmus commanding the mayor and councilmen to pay his judgment out of the surplus revenue of the city for the year ending June 30th, 1903, and restraining them from paying the interest on the bonds which had been included in the budget among the government expenses. If the revenues were not applied to the payment of this interest there would be a surplus to pay the petitioner's judgment. The writ of mandamus was granted and the Supreme Court affirmed the judgment of the court below. In delivering the opinion of the court, Haralson, J., said (p. 400): "We have found neither in the charter nor in any other statute any legislative authority to make the interest income on municipal bonds and accounts an item of expenditure for the administration of government purposes. The council, therefore, had no right to estimate this interest as a

government expense and by way of anticipation in their budget of expenses to appropriate the amount to the payment of interest on municipal bonds and accounts so as to defeat the plaintiff or other creditors in their efforts to subject this excess over necessary current expenditures to the satisfaction of their demands."

In *Leavitt* v. *Town of Somerville*, 75 Atlantic Rep. 54 (Maine, 1909), the question was whether certain bonds of the town were valid under the constitutional provision limiting the debt which the town could incur. The bonds in question, which exceeded in amount the limit of indebtedness, purported to refund a debt existing at the time when the constitutional limitation took effect. The amount of the bonds was larger than the original debt, but if the excess represented accumulated interest the bonds would be valid. The court, however, declared this fact had not been proved, saying (page 57): "There is no legitimate inference that the town officers paid current expenses any more than that they paid the interest on the town debt."

In *Dexter* v. *County Commissioners*, 20 Weekly Law Bulletin 364 (Hamilton County, Ohio, Common Pleas), it was held that the estimated levy which the statutes required the auditor to present to the county commissioners on or before the first Monday in April of each year, was intended to cover current expenses as distinguished from the payment of the bond liabilities of the county, and that the acts creating sinking funds for future payments of outstanding bonds did not contemplate the payment of debts and the accumulation of moneys for that purpose as among the current monthly or annual expenses of the county.

In the case of *University R. R. Co.* v. *Holden*, 63 N. C. 410, the Supreme Court of North Carolina had occasion to construe a provision of the recently adopted Constitution of 1868. This provision contained in Article 5, section 1 of the Constitution, is as follows:

> "The general assembly shall levy a capitation tax on every male inhabitant—which shall be equal, on each, to the tax on property valued at $300 in cash. * * * And the state and county capitation tax combined shall never exceed $2.00 on the head."

The question was whether this provision, requiring what the court called an equation of taxation between the property tax and the capi-

tation tax, applied to all taxes, or whether it was limited. The court gave the question most careful consideration, deeming it so important that each of the judges delivered a separate opinion. The conclusion of the judges was that the equation of taxation established by the provision which we have quoted did not apply to all taxes, but only to taxes imposed for the ordinary expenses of government, and the judges expressly declared that the equation of taxation did not apply to taxes imposed for the purpose of raising money to pay interest on a public debt.

Pearson, C. J., said (page 414):

> "I agree that if under this equation, carried to its limits, the amount is not enough to meet current expenses, and also to pay the interest on the public debt, then for the excess needed it is not only within the power, but it is the duty of the general assembly to disregard the equation."

Reade, J., said (page 418):

> "My construction of the tax power of the legislature under the constitution is as follows: (1) The first object of the convention in the fifth article of the constitution was to provide for the ordinary and current expenses of the government; that is done in sections 1, 2 and 3. And for that purpose the tax is limited to $2 on the poll, and the same amount on $300 worth of property, and the equation must be observed. This was thought to be sufficient for the ordinary and economical administration of the government. (2) We had a considerable public debt, and after providing for current expenses, the next consideration was, how is the public debt to be met? And the fourth section provides, that a special tax shall be laid for that."

Dick, J., said (page 432):

> "The object of the convention in article 5, section 1, was to provide a system of general taxation for the ordinary expenses of the government. * * * Sections 1, 2 and 3 establish a general revenue system for the state; and sections 4 and 5 provide special taxes for the state indebtedness, unexpected exigencies and for the completion of unfinished railroads."

Speaking in reference to Section 5, Article 5, of the Constitution, which authorizes the state to issue bonds for extraordinary purposes, Judge Dick said (page 433):

> "The convention evidently contemplated the necessity of incurring new debts outside of the ordinary expenses of the government."

Settle, J., said (page 436):

> "I conclude that the equation of taxation applies only to the ordinary expenses of the state government. It does not apply to the public debt."

The opinion of the judges in *University R. R. Co.* v. *Holden*, that the equation of taxation prescribed in Section 1, Article 5, of the North Carolina Constitution, applies only to taxes imposed for the payment of the ordinary expenses of government and does not apply to taxes imposed for payment of interest on a public debt, was affirmed after very careful consideration of the whole subject and a review of all the authorities in the recent case of *Southern Ry. Co.* v. *Board of Commissioners of Mecklenberg County*, 148 N. C. 220.

The case of *Union Pacific R. R. Co.* v. *U. S.*, 99 U. S. 402, though it relates to a private corporation, is, we submit, in point, because it decides that interest on a funded debt is not an ordinary expense. The question in the case was whether the Union Pacific Company was liable to account to the government for five per cent. of its net earnings under the sixth section of its charter, and the Court had to determine what was meant by the expression, "the net earnings of the road." Mr. Justice Bradley, who delivered the opinion of the Court, said:

> "As a general proposition, net earnings are the excess of the gross earnings over the expenditures defrayed in producing them, aside from, and exclusive of, the expenditure of capital laid out in constructing and equipping the works themselves. It may often be difficult to draw a precise line between expenditures for construction and the ordinary expenses incident to operating and maintaining the road and works of a railroad company. Theoretically, the expenses chargeable to earnings include the general expenses of keeping

up the organization of the company, and all expenses incurred in operating the works and keeping them in good condition and repair; whilst expenses chargeable to capital include those which are incurred in the original construction of the works, and in the subsequent enlargement and improvement thereof. * * * All payments of interest on the bonded indebtedness of the company should be charged to capital interest account, and not to current expenditures. Though payable out of earnings before any dividend can be made to stockholders, they cannot be deducted for the purpose of ascertaining the 'net earnings' of the road, as that term is to be understood in the sixth section of the act. The bonded debt incurred for the purpose of construction and equipment is but another form of capital, analogous to preferred stock; and the interest accruing thereon is in the nature of a dividend on such capital. It has nothing to do with and cannot affect the amount of the net earnings of the road."

(*o*) LEGISLATION OF VIRGINIA DURING THE PERIOD COVERED BY THE ORDINANCE DID NOT DEAL WITH INTEREST ON THE PUBLIC DEBT AS AN ORDINARY EXPENSE OF GOVERNMENT.

The legislature of Virginia, in its appropriations, from 1823, did not deal with the interest on the internal improvement debt as one of the items constituting the ordinary expenses of the state government. The fiscal year of the state began on the first day of October of each year. The annual appropriation bill constituted a general fund of the taxes and arrears of taxes due on the first day of October, last preceding, not otherwise appropriated, and all other branches of revenue not appropriated by law, which shall come into the public treasury prior to the succeeding October and the surplus of all appropriations theretofore made, shall constitute a general fund, and be appropriated in specific sums, as follows, to-wit:

To the expense of the general assembly; to the salaries and allowances of the officers of the civil government; to the commissioners of the revenue, for examining commissioners' books; to defray criminal charges, including the expense of guarding jails; for pensions, civil contingent fund, militia establishment, including the services of clerks

of courts-martial, of adjutants, provost marshals, and expenses, and for the purchase of drums, fifes, and to pay for instruments where the fines of the regiment are insufficient, pay of the adjutant and inspectors; internal charges of the penitentiary, house and officers' salaries and the transportation of criminals to the penitentiary, such balance of former appropriations to complete penitentiaries; public guard in the city of Richmond; slaves executed or transported; expense of representation to congress and state senate; public warehouses, including the pay of superintendents, civil prosecutions, including clerks and sheriffs' fees; services of guard at Lexington arsenal; for the collection and transportation of arms; to constitute the balance of military contingent fund, including claims for services during the last war; transportation of public arms; defray expense of publishing the map of Virginia; complete erection of Western Lunatic Hospital; support of lunatic hospital at Williamsburg; transportation and expenses of lunatics confined in jail, etc.—all ordinary expenses of the state government.

In addition, the legislature made specific appropriation to pay the interest on $319,000 of the seven per cent. debt, and on two certificates of six per cent. debt held by the literary fund, $23,773. This appeared to be the *general debt* outstanding. These bonds, held by the literary fund, were owned by the state; and this was simply the measure of annual appropriation to that fund, for purposes of convenience, such as has been frequently resorted to by other states.

The second section provides that so much of the public revenues, and of other public moneys *not otherwise appropriated by law* as may be received into the treasury after the thirtieth day of September, next, and the surplus of all other appropriations heretofore made, shall constitute a general fund to defray such expenses authorized by law as are not therein specifically provided for; and to defray the current and other expenses of the commonwealth in the fiscal year commencing on the first day of October, next, and terminating on the 30th day of September, 1828 (this was the act of 1827); and the auditor of public accounts is authorized and required to issue his warrants in the same manner as if the funds had been specifically mentioned, with such exceptions, etc. This was the act passed March 8, 1827; and those which had preceded it, from 1822, did not differ.

As early as 1840, in none of these appropriation bills was interest appropriated for the payment of bonds issued for internal improvements.

As early as 1840 the annual appropriation bill changed in respect of the provision as to interest. It created, as did its predecessors, a general fund constituted of the taxes and arrears of taxes due to the preceding October, and not otherwise appropriated, and all other branches of revenue not appropriated by law which should come into the treasury prior to the succeeding October, and the surplus of all other appropriations.

Out of this fund were appropriated expenses of the general assembly, officers of the civil government, commissioners and clerks, criminal charges, and items similar to those mentioned in the act of 1827.

And it provided expressly and specifically for interest on the public debt as follows:

To pay the interest on certain certificates of public debt, to-wit:

For one year on seven per cent. debt, due literary fund, $22,330;

Half year's interest on same, unpaid on October 1st last and chargeable on present fiscal year, $11,165;

(This did not default the state, for she had the bonds on which she had omitted to pay interest to the literary fund.)

One year's interest on 6 per cent. debt, held by literary fund, $1,442.35;

One year's interest on $250,000 of 5 per cent. stock subscribed to the Chesapeake and Ohio Canal Company guaranteed by the act of February 18, 1833, $12,500;

One year's interest on $298,700, certificates issued for money borrowed to pay commonwealth's subscription to the stock of the Exchange Bank, $19,922;

Ten months' interest on $62,825, additional sum borrowed to pay commonwealth's subscription to stock of Exchange Bank, $3,143.23;

One year's interest on $80,592, certificates issued for money borrowed to pay commonwealth's subscription to stock of the Northwestern Bank, $5,315.52;

and then, after appropriating for contingent expenses of courts, pensions, civil contingent fund, militia, public guards, slaves transported,

representation to congress and the state senate, warehouses, civil prosecutions, arms, military contingent fund, removal of lunatics in jails, vaccine agents, roads, military school, electors, clerks of committees, sweepers of the capitol, principal engineer, etc., etc.

Section 3 provides that so much of the public revenue and all other moneys not otherwise appropriated by law as may be received into the public treasury, after the 30th day of September, next, and the surplus of all other appropriations heretofore made, shall constitute a general fund to defray expenses authorized by law which are not herein particularly provided for, and to defray the current and other expenses of the commonwealth in the fiscal year which will commence on the first day of October, next, and terminate on the 30th day of September, 1842; and the auditor of public accounts is hereby authorized and required to issue his warrants in the same manner as if the sums had been specifically mentioned, subject to such conditions, exceptions, and limitations, as the general assembly may prescribe by law.

Then comes an additional section, which was continued in each appropriation act until after the establishment of the sinking fund for the payment of interest and principal on the public debt, provided for by the constitution of 1850. It will be remembered that the stock for which the commonwealth subscribed, and the dividends thereon, were, in each instance, pledged, primarily, together with the improvement fund, not otherwise appropriated. It enacted, further, that if the revenue of the fund for internal improvement shall, at any time, be insufficient to meet the payments of the interest charge on such fund as it shall become due upon loans obtained for purposes of internal improvement, under existing or future acts, of the general assembly, such interest *shall be paid out of any money in the Treasury not otherwise appropriated;* and the auditor of public accounts is hereby authorized and required, upon the receipt of the order or orders of the board of public works, certifying the fact of such insufficiency in the funds of said board, to issue his warrant or warrants in their favor for the necessary sum or sums which shall be deposited in the treasury to the credit of the fund for internal improvement, to be applied by the said board on the warrants of the second auditor towards the payment of such interest.

Here, it will be noticed, interest on the internal improvement loans,

perhaps as a reason why specific appropriations were not made in any year to pay the interest on internal improvement loans, is that by law the primary security for such loans was the stocks and dividends derived from the stocks, and the internal improvement fund, which, if taken together, were inadequate, were supplemented by the pledge of the commonwealth to raise the money otherwise necessary to pay the interest and the principal as it matured. By this provision, it is seen that the interest on the internal improvement fund, where the special security proved inadequate, was to be paid out of money deposited to the credit of the internal improvement fund; not, by the act, otherwise appropriated. In other words, the payment of interest on internal improvement loans was deferred to all appropriations for the ordinary expenses of the government, whether specifically made, or generally appropriated, by Section 3 above quoted. And that provision was the last section of every appropriation act from 1840 to the time the sinking fund was established. Twenty million dollars of this debt was incurred between 1850 and 1861, after the sinking fund for the payment of interest and principal had been created.

(*p*) THE CREATION OF A SINKING FUND FOR THE PAYMENT OF INTEREST ON THE VIRGINIA DEBT SHOWS IT WAS NOT AN ORDINARY EXPENSE OF THE STATE GOVERNMENT.

The very fact of the creation of a sinking fund for the payment of interest on the public debt differentiates it from ordinary expenses of the state government.

Whoever heard of the payment of the ordinary expenses of a state government out of a sinking fund?

Section 29 of Article IV. of the Constitution of 1850, sets apart annually, from the accruing revenues, a sum equal to seven per centum of the state debt, as existing on the first day of January, 1862, to be called "The Sinking Fund," and applied to the payment of the interest on the state debt and the principal or such part as may be redeemable. If no part be redeemable, then the sum so remaining shall be invested in the bonds or certificates of debt of this commonwealth, or of the United States, or of some of the states of this Union, and applied to the payment of the state debt as it shall become redeemable. And

it made subject to this provision all debts contracted by the commonwealth thereafter.

It added this provision:

> "The general assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion."

If there were a deficiency in the treasury, because of an underestimate of the revenue, or of the expenses of the government, resort could not be had, for its payment, to the sinking fund. That one fund could be resorted to only for a purpose other than that for which it was created and set apart, in case of war, insurrection or invasion.

The creation of a sinking fund, which is so common in all the constitutions, and has been for a great many years in most constitutions, marks, in an illuminating way, the distinction between the ordinary expenses of a state government and the interest to accrue upon the public debt.

The ordinary annual expenses of the state government are estimated for. They change. Some times they exceed the estimate; and there is a deficit, although, by the Federal government, that has been prohibited by law, as has been done by the constitutions of some of the states. It is true that ordinary expenses are estimated for by county governments and other municipalities, even towns and villages. Speaking in respect of governments, sometimes additional offices are created; some times departments or bureaus, which have long existed, have, in legislative judgment, become unnecessary, and they are disposed of, and their duties transferred to some other department, or altogether pretermitted. But who ever heard of estimating the interest on the public debt? That does not fluctuate. It may be enlarged by the increase of debt, or diminished by payment of debt; but it is always susceptible of accurate ascertainment. It is fixed. In corporate management, it is characterized as a "fixed charge," as contradistinguished from ordinary expenses.

The ordinary expenses of the government, changing from time to time, must continue as long as the government lasts. The interest on the public debt continues as long as the debt lasts.

The philological distinction as to the difference between the expenses

of the government—ordinary, essential and necessary—confuses; but does not enlighten. They come to the same thing in the end.

(*q*) THE WORDS OF THE ORDINANCE SHOULD BE CONSTRUED IN THE LIGHT OF THE SURROUNDING CIRCUMSTANCES.

This Court, said, in *Sand Filtration Corporation* v. *Cowardin*, 213 U. S., page 364:

> "The object of construction is to effectuate the intention of the parties in making a given contract. When the contract is in writing the language used should be interpreted in the light of the circumstances surrounding the parties at the time the contract was made."

This is a succinct and clear definition. It must be remembered, in reading the ordinance, that, at the time it was drafted and adopted, the debt of the Commonwealth of Virginia was about $33,000,000, the proceeds of which she had either expended directly for internal improvements or had invested in bank stocks, the stocks of railway companies, navigation companies, turnpike companies and bridge companies. The improvements constructed by the use of this borrowed money were almost all within the present limits of Virginia, and this was well known to the men who drafted and adopted this ordinance. These stocks were thought by Virginia to be of value, for, in her constitution of 1850, section 30, article IV., it was provided:

> "The general assembly may, from time to time, direct a sale of the stocks held by the commonwealth in internal improvement and other companies, and the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner."

Can it be supposed that the men who framed and adopted this ordinance would have been willing to stipulate that the proposed new state should take upon herself the payment not only of a just proportion of the ordinary expenses of the state government, but a proportion of the $18,000,000 of interest upon the moneys borrowed by the Commonwealth of Virginia from 1823 to 1861, and invested in $30,000,000 of stocks, bank and otherwise, incorporations whose

improvements lay almost entirely within her limits. would remain within her limits, and which investments she was to keep? It is inconceivable.

To say that when she incurred this indebtedness, which is the sum of a great number of special loans, each with a special security, and invested the same in stocks, she did not expect them to be valuable and revenue-producing, not simply during the duration of the debt, but long after the debt should have been paid, would be to impeach her honor in the earlier, if not better days, of her existence, for she held out these stocks and dividends as the primary security of the money she borrowed, with which to repay it.

She became a great battlefield and the camping ground of contending armies; and if the ravages of war destroyed, in large measure, these improvements, and disappointed the expectation with which she had invested her money, it cannot be said that that unfortunate result is, in any wise, imputable to West Virginia, or her people.

It is not a complicated question. The words "ordinary expenses of the state government" are words of common use, and they are without technical signification. It seems to us impossible to misunderstand them.

The ruling of the Master seems to have been unconsciously, and with perfect good faith, based somewhat upon what seemed to him to be the equitable construction which he advocates in his report. If the words "ordinary expenses of the state government," as a matter of law, include interest on the public debt, he is right. If they do not, whatever may be the result of their exclusion from the computation, he is wrong, for it is a question of law. Whatever it means, as here used, it means wherever it is used.

(*r*) THE PROPORTION OF ORDINARY EXPENSES WITH WHICH WEST VIRGINIA IS TO BE CHARGED SHOULD BE ASCERTAINED UPON THE BASIS OF TAXABLE VALUES.

Whichever view this Court may adopt as to the meaning of the phrase, "A just proportion of the ordinary expenses of the state government," the question confronts it, upon what basis or standard are these expenses to be apportioned?

First: On the basis of area; or

Second: Upon the basis of population, and if so, shall slaves be included or excluded? or

Third: Shall it be upon the basis of population of 1823 of Virginia, as shown by the census of the United States, the average population to be taken as required by the decree; or shall it consist of five averages of ten-year periods combined, as taken by the Master; or

Fourth: Shall it be upon the basis of the assessed valuation of the real and personal property of Virginia and West Virginia?

Fifth: If so, shall it be based upon the valuation of January 1st, 1861, or June 23rd, 1863?

The joint schedules returned by the Master furnish a basis in accordance with the several alternatives.

We feel constrained to the opinion that the true basis is taxable values, or the average revenues for a period prior to the 1st of January, 1861. We formerly inclined to the opinion that population was the best basis. We see no reason, however, for the adoption of a basis upon which the ordinary expenses are to be apportioned which differs from the international law basis of general indebtedness, which we have somewhat discussed. A peculiar complication arises here with reference to the ascertainment upon the basis of population; and that is, the large number of slaves within the limits of Virginia and the relatively small number within that portion of Virginia which now constitutes West Virginia. Those slaves were property, albeit, as we have shown, they constituted a property upon which was levied a tax entirely disproportionate to their market value. They were the subjects of barter and sale the same as any other private property in the commonwealth was subject to it. They were taken care of by their masters. They were, of course, not given the privileges of white children in respect of common education. They did not enter into the basis of representation; and, therefore, neither paid taxes, nor contributed to the school fund, nor derived benefit from it. Even in the emancipation of slaves by the constitution, and free negroes, section 19 of article "IV." of the Constitution of 1859 provided that:

> "Slaves hereafter emancipated shall forfeit their freedom by remaining in the commonwealth more than twelve months after they become actually free, and

shall be reduced to slavery under such regulations as may be prescribed by law."

Section 20:

"The general assembly may impose such restrictions and conditions as they shall deem proper on the power of slave owners to emancipate their slaves; and may pass laws for the relief of the commonwealth from the free negro population, by removal or otherwise."

Section 21:

"The general assembly shall not emancipate any slave, or the descendant of any slave, either before or after the birth of such descendant."

Section 22:

"Taxation shall be equal and uniform throughout the commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law."

Section 23:

"Every slave who has attained the age of twelve years shall be assessed with a tax equal to and not exceeding that assessed on land of the value of three hundred dollars. Slaves under that age shall not be subject to taxation; and *other* taxable property may be exempted from taxation by vote of a majority of the whole number of members elected to each house of the general assembly."

Section 24:

"A capitation tax, equal to the tax assessed on land of the value of two hundred dollars, shall be levied on every white male inhabitant who has attained the age of twenty-one years; and one equal moiety of the capitation tax upon white persons shall be applied to the purposes of education in primary and free schools; but nothing herein contained shall prevent exemptions of taxable polls in cases of bodily infirmity."

It seems quite impossible that slaves should be included in the population. The taxes upon them were assessed to their owners. It seems impossible that in such a situation slaves should be considered

as part of the population for any purpose. Their value, as property, would, of course, enter into any calculation based upon the taxable values, or assessed value, of the separate portions of the state. And as we have already shown to the Court, the population as a basis of apportionment of debt between nations, is rejected. It has also appeared that area, or territory, is rejected as a basis for the apportionment of state debts. Capitation taxes were levied by Virginia under the constitution of 1850. During the whole period from 1823, the revenues of the state, aside from those which went into the internal improvement fund, were derived from the taxation of lands, inheritance, taxes on incomes, salaries and licenses, and almost every imaginable excise tax, including the taxation of land and personal property, as well as watches, clocks, plate, carriages and the like, and interest on the state's own securities, and excises of every imaginable description. The basis upon which the moneys were collected for the payment of ordinary expenses during these years would seem to be the basis upon which they should be apportioned between the two states.

West Virginia is not Bound to Pay Interest from January 1, 1861, on the Proportion of the Old Virginia Debt Assumed by Her.

1. NEITHER BY THE ORDINANCE NOR BY HER CONSTITUTION DID WEST VIRGINIA IN PRAESENTI ASSUME ANY PORTION OF THE PUBLIC DEBT OF VIRGINIA.

By the ordinance West Virginia *was* to take upon herself a "just proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861, to be *ascertained*," etc. We may here inquire what is meant by the words "to *be ascertained*"? There can be but one answer to this question, and that is, the just proportion of the public debt of the Comonwealth of Virginia prior to January 1, 1861, which West Virginia was to take upon herself. How was this just proportion to be ascertained? First, by charging to it all state expenditures within the limits thereof; second, a just proportion of the ordinary expenses of the state government since any part of the said debt was contracted; and, third, deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period.

The ordinance did not become a compact between the two States of Virginia and West Virginia, nor did section 8 of Article VIII. of the Constitution become a compact between the two states at the time of their adoption, for there was then but one state and that was the Commonwealth of Virginia. When she consented and the congress of the United States admitted West Virginia into the union, there was an agreement between two states, and for the first time efficacy was given to section 9 of the ordinance and section 8 of Article VIII. of the Constitution. Before that they rested entirely in proposition.

When they became effective, they became effective as a compact between two states, one older than the other, but of no greater dignity or sovereignty; for West Virginia was admitted into the union, as all states must be admitted, on terms of equality with the original states. It is not conceivable that any state shall be dissimilar or unequal in dignity and sovereignty to the other states. If section 8 of article VIII. is to be read in connection with the ordinance, then the compact created the assumption, which was *in futuro*, and left yet to be ascertained, as we have argued, what was the just proportion of the debt which West Virginia agreed to assume or, what is precisely legally equivalent, to take upon herself? It was an unliquidated account. She did not assume the payment of any of the bonds or obligations of Virginia outstanding prior to January 1, 1861. The amount that she was to assume was, if the ordinance was in effect for any purpose, the amount ascertained by the methods prescribed by the ordinance. If it is not in effect, then the method is left to the legislature to choose and to execute.

The word "thereof" in section 8 of Article VIII. of the Constitution of West Virginia does not bear the construction for which counsel for Virginia contend, nor does the rule of law established in Virginia prior to 1863, that in private contracts "interest follows the principal as the shadow does the substance" apply to this case. The decisions which laid down that rule were all with reference to interest between individuals on private obligations.

2. THE VIRGINIA RULE AS TO PRIVATE CONTRACTS THAT INTEREST FOLLOWS THE PRINCIPLE DOES NOT APPLY TO CONTRACTS BETWEEN STATES.

But for the dignity and character of the eminent gentlemen who urge it, it is difficult to regard as serious the proposition that because among private parties in Virginia prior to the admission of West Virginia as a state "the interest follows the principal as the shadow does the substance" or, differently stated, because interest is an incident to the debt, or is favored both by the legislative and judicial bodies of the state, and because the laws of the old state, until changed, were adopted in the new as to private parties, that, therefore, by the contract between the sovereign State of Virginia and the sovereign State of West Virginia, a case for which the law of neither state made provision, West Virginia would be liable to pay all the unpaid interest on her proportion, when ascertained, of the debt existing January 1, 1861. No such intention can be imputed to the framers of the ordinance, nor the convention which adopted the Constitution of West Virginia.

The learned counsel appear to be conscious of the inapplicability of the rule which they assert as to interest on private contracts; and to show that it is the rule that the commonwealth pays interest on claims against her, they cite the case of *Higginbotham's Executrix v. Commonwealth*, 25 Grattan 627. That case was decided in 1875, and if it is authority for the statement that in 1875 interest, by the law of Virginia, was allowed against the commonwealth without any promise to pay interest, but as a mere incident to a debt, it cannot apply in this case. The question would be, what was the law of Virginia in respect of the liability for interest upon claims against her in the absence of contract in 1861, when the ordinance was adopted and when the constitution of West Virginia was adopted.

3. ANALYSIS OF HIGGINBOTHAM'S EXECUTRIX V. COMMONWEALTH.

It is notable that in the *Higginbotham case* the question of interest was not discussed, although many other questions were discussed. The syllabus of the case is as follows:

> "1. The present State of Virginia is bound to the creditors of the state for the debts due before the divi-

> sion for the whole of their debts. And West Virginia is equally bound for them."

That is a decision which hardly binds West Virginia, for she was not a party.

> "2. Under the statute, the State of Virginia may be sued for any debt or claim due, whether liquidated or unliquidated."

The plaintiff in error, and petitioner below, was the executrix of David Higginbotham, deceased, who was the owner of twelve shares of stock in the old James River Company.. By an amendment to the charter of that company, passed on the 17th day of February, 1820, and accepted by the company, the company became the agent of the state to carry on the work for the state, and under the direction and the control of the general assembly; and it was agreed between the state and the company that, in lieu of the annual dividends which might have been thereafter declared on the stock, the company should be allowed twelve per centum per annum on its stock for twelve years from the commencement of the amendatory act, and fifteen per centum per annum thereafter forever. The act was declared on its face to be "a compact" between "this commonwealth and the said company, subject, however, at all times, to such change and modification as the legislature may think proper to make; provided that no such change or modification shall be made as will take from the James River Company their right to the dividends, or any part of the dividends, upon their stock allowed to them by this act." It was a solemn compact between the state and the company that "the dividend or annuity, as it is in effect, should be forever paid without abatement or diminution." Such was the solemn obligation assumed by the state as the price of the stockholders' property.

By an act of February 17, 1820, and other acts, the powers and duties of the James River Company, acting for the state, were from time to time extended and enlarged; but the company up to the last mentioned date, continued to exist under its own organization. On that day, however, a new company, with greatly extended powers, was chartered, called the James River and Kanawha Company, to which all the interest of the state in the old James River Company was transferred; but this transfer was made expressly "subject to the

payment of fifteen per centum per annum forever to the *stockholders of the old company.*" By this act the James River and Kanawha Company became the successor of the old James River Company, and the duty of providing forever for the dividend, as it is called, of fifteen per centum per annum to the stockholders of the old company devolved, as we have seen, directly on the James River and Kanawha Company, under its agreement with the state; and by the act of March 22, 1836, the state required the latter company to pay these dividends into the public treasury, to be disbursed among the stockholders of the old James River Company by the second auditor; thus again solemnly acknowledging the right of the stockholders to these "dividends," and the duty of the state to see that they were punctually paid, by requiring her assignee to pay them into the public treasury to be disbursed to the stockholders by a state officer.

Now, this was treated by the court as a solemn compact, the obligation of which on the state should be "eternal." The court says:

> "Accordingly we find that under all the changes of legislation on the subject down to the first of January, 1865, the appellant's annuity was regularly paid; but since that date there has been but a single payment of $120, leaving arrearages to the amount of $2,220, as of the first of July, 1871. For that amount *with its accruing interest,* after applying for payment at the offices of the auditor of public accounts, and the second auditor, and being refused at both, this suit was brought."

The petition was dismissed below.

It was claimed by the attorney general of Virginia that the dismemberment of the State of Virginia and the formation of a new state, called West Virginia, out of a portion of her territory, had discharged the State of Virginia from this debt as now claimed; that the old debt of Virginia contracted prior to her dismemberment, if not wholly extinguished by the events leading to, attending and following her dismemberment, was not then due from her, but only ratably from the two states. The court say:

> "Were this a question between the two states alone, I should not question the concluding part of the proposition;"

and quote from Puffendorf:

> "When a kingdom divides by common consent into two or more distinct commonwealths, the public patrimony, with all the debts and encumbrances upon them, ought to be equally shared among them."

The court decided that, in its opinion, Virginia was liable to pay the petitioner the amount of her demand, with interest, but the court said, in so deciding:

> "No power is claimed for this court to control or in manner to interfere with the discretion of the legislature in making provision for the payment of this debt. * * * The judgment being for more than three hundred dollars, the court has no authority to require the auditor of public accounts to issue his warrant for the amount. In such cases, the provision to be made for the judgment is expressly reserved to legislative discretion, and to that discretion we must leave it."

It must be noted, in respect of this claim, and it is rather exceptional, that when the state took the property, it was agreed between the state and the old James River Company that, in lieu of the annual dividends which might have been thereafter declared, the company should be allowed twelve per centum per annum on the stock for twelve years from the commencement of the amendatory act, and fifteen per centum per annum thereafter forever. That was a liability from the state to the company in exchange for its property. By subsequent arrangement, all the interest of the state in the old James River Company was transferred to the James River and Kanawha Company, subject to the payment of fifteen per centum per annum forever to the *stockholders* of the old company. By this act the James River and Kanawha Company became the successors of the old James River Company, and the duty of providing forever for the dividend, as it is called, of fifteen per centum per annum to the *stockholders* of the old company devolved directly on the James River and Kanawha Company under its agreement with the state.

This created the relation of debtor and creditor between the James River stockholders and the James River and Kanawha Company. When the commonwealth compelled the company to pay the dividend

monies into her treasury for distribution by her among the stockholders, she made herself a trustee of the latter, had no right to withhold or use the trust fund, and having failed to pay it over was bound in equity for interest upon it, just as the company would have been liable for interest, if the commonwealth had not interfered and the company had failed to pay the dividend.

This case cited by counsel is a long way from establishing the proposition, that even in 1875, thirteen years after the transactions involved here, it was the rule in Virginia for the state to allow interest upon claims against her.

When a state takes upon herself a trust she should stand like any other trustee, and the principle that a trustee can take no profit out of the trust estate applies universally.

4. THE CASE OF UNITED STATES V. NORTH CAROLINA.

The learned counsel refer to the case of the *United States* v. *North Carolina*, 136 U. S. 211. This was an action of debt brought in this Court, November 5, 1889, by the United States against North Carolina upon 147 bonds, duly executed, for $1,000 each, payable in thirty years from date, with interest at the yearly rate of six per cent., alleged in the declaration to be payable half yearly until payment of the principal. They were executed at different dates, set forth in the statement of the case. They were interest bearing debts. The declaration alleged that, at the dates when the bonds became payable payment of the principal was demanded by the United States and refused by the State of North Carolina. The defendant pleaded payment of the principal sums of the bonds after they became payable, together with all interest accrued thereon to the days when they became payable. The Court say:

> "The only question presented for our decision is whether, as a matter of law, the principal of the bonds bore interest after maturity."

And they add:

> "Interest, when not stipulated for by contract, or authority by statute, is allowed by the courts as damages for the detention of money or of property, or of compensation, to which the plaintiff is entitled; and,

> as has been settled on grounds of public convenience, is not to be awarded against a sovereign government, unless its consent to pay interest has been manifested by an act of its legislature, or by a lawful contract of its executive officers;"

citing:

> *United States* v. *Sherman*, 98 U. S. 565.
> *Angarica* v. *Bayard*, 127 U. S. 251, 260.

The Court looked into the laws of North Carolina, and after stating the law as to the payment of interest in an action, against a private person and citing authorities, said:

> "But it is equally well settled, by judgments of the Supreme Court of North Carolina, that the state, unless by or pursuant to an explicit statute, is not liable for interest, even on a sum certain which is overdue and unpaid."

5. THERE IS NO BASIS FOR VIRGINIA'S CLAIM FOR INTEREST.

No statute of Virginia has been cited by the learned counsel, who would have cited it, we think, if there had been such, by which the state subjects itself to the payment of interest as an incident to a debt, or by way of compensation for its use, or damages for non-payment of the principal when due. Whether the legislature in the *Higginbotham case* appropriated the interest, the counsel do not state. The opinion of the Supreme Court of the state that it ought to do so does not make it the rule of the state, nor do legislative acts in special and sporadic cases which allow interest on claims constitute a rule which binds the state to pay interest upon claims against it.

Moreover, Virginia is the state *demanding interest*. If one sovereign makes it a rule to pay interest on claims against it without having contracted so to do; in other words, puts itself upon the same plane as private creditors may be placed by its laws, does it follow that, because it pays interest itself without having agreed to do it, that it may collect interest from another sovereign which does not pay interest except where it has contracted to do so? The United States does not pay interest except where it contracts to pay it.

We have found no indication in the decisions of the Supreme Court

of Virginia that any such rule has been adopted by the legislature of that state, or by the courts of that state, if indeed the courts can make such a rule for a state. It is a matter of contract, and contracts are not made by the courts for states or their citizens.

Virginia has given very liberal right to her citizens to sue; but it is a suit for liquidation. The court has no power, except in petty claims, amounting to not over $300, to direct the auditor to issue a warrant, and the whole matter of payment, including the principal sum awarded, with or without interest, is left entirely to the discretion of the legislature. Probably, sometimes, they pay interest, and oftener they do not, as the case may or may not appeal to the legislative judgment. But there is no statutory rule for the payment of interest by the state on claims against her where she has not contracted to pay it.

In 1837, the question arose in the Court of Appeals of Virginia in the case of *Commonwealth* v. *Marston's Administrator*, 9 Leigh, page 36. To that case, there is appended a note, as follows:

> "There was an error committed by the reporter, in the report of *Lilly's* case, 1 Leigh 525, 6. It is there stated, that the circuit court of *Henrico* reversed the auditor's decision, and ordered him to issue a warrant in favor of *Lilly's* administrator, *for the amount of five years full pay, with interest from the 22d April, 1873;* and that that judgment was affirmed. But, in fact, the circuit court gave judgment, *not* for the *commutation*, but for the *half pay* that accrued to *Lilly* during his life, without interest; and that was the judgment which this court affirmed. This court expressly decided, that no *interest* should be paid; see judge *Green's* opinion, in the same case, *Id.* 538, and in *Markham's* case, *Id.* 523, 4."

6. WEST VIRGINIA AGREED TO ASSUME A JUST PROPOSITION, NOT OF THE OUTSTANDING OBLIGATIONS OF VIRGINIA, BUT OF HER DEBT.

It is clear that the constitution can bear no such construction as is sought to be placed upon it. It must be borne in mind that neither by the ordinance nor by the constitution was there any agreement to assume, or an assumption of, any proportion of the obligations of the

Commonwealth of Virginia outstanding prior to 1862. If she had agreed to assume a just proportion of the obligations of the commonwealth, it might be argued that, as they were interest-bearing obligations, she assumed to pay the principal and accruing interest, until paid; but the bonds or state stock, as evidences of debt, are one thing. The debt is another, and different thing. Moreover, it seems impossible to impute an intention, upon the part of the framers of the two instruments, that the new state should assume a proportion of the outstanding interest-bearing securities of the old state, January 1, 1861. For that day, it was an enormous debt. The framers of those instruments were well aware, as were the people in the Trans-Allenghany territory, that the moneys borrowed by the state had been expended in payment of stock subscriptions in corporations created to construct various internal improvements. It is conceivable that it could have been intended by the convention which framed either the ordinance or the constitution that the new state should assume, considering the character of the debt, the purposes for which it was contracted, the territory within which it had been expended, from 1823 to 1861, a proportion of the obligations representing the debt, and especially in view of the fact that the people of what now constitutes West Virginia had been, during a large portion of the period, deeply resentful that they were taxed to pay interest upon such indebtedness, so little of the proceeds of which was expended within their territory, and enured to their benefit?

7. THERE IS NO EVIDENCE THAT THE IMPROVEMENTS CONSTRUCTED BY VIRGINIA WITHIN HER PRESENT LIMITS WERE FOR THE BENEFIT OF THE REGION NOW WEST VIRGINIA.

It is alleged in the bill that these expenditures were largely with a view to the ultimate benefit of West Virginia, and to secure the development of her resources and the prosperity of her people. This is alleged in general terms. If this allegation is susceptible of proof, no proof has been offered. If, by the participation of her government and people in the war she was, and as a consequence of the impoverishment and destruction wrought by war within her limits, unable to continue to completion such works as would, if completed, have benefited West Virginia and her people, it is safe to say that the people

of that portion of the state did not contribute to that result (*Davis* v. *Gray*, 16 Wallace 203).

The answer denies that the purpose of the improvements or the effect of the improvements, in the main constructed within the present limits of Virginia, were with reference to the well-being, or would, if completed, have essentially affected the well-being of what is now West Virginia and her people. Answer under oath is not waived by the bill, and the answer is verified by the oath of the governor of West Virginia. No evidence has been offered upon the subject.

8. FACTS SHOWING INJUSTICE OF VIRGINIA'S CLAIMS.

The injustice of charging to West Virginia a proportion of the internal improvement debt of Virginia, prior to January 1, 1861, *as such*, is further intensified by the facts in relation to the population of the other during the years from 1823 to 1861. While the territory was separated, as we have said, from Eastern Virginia, and what is known as "The Valley" by the Alleghany Mountains, and while the markets of its people were to the westward, rather than to the eastward, it was no sparsely settled region.

There was laid before the constitutional convention of 1829-30 by Mr. Doddridge, one of its ablest members, who represented West Virginia, a statement showing the distribution of the white population in 1810, 1820 and 1829, as follows:

"In 1810 the white population was distributed thus, viz.:

East of the Blue Ridge		338,837
In the Valley	108,355	
West of the Alleghany	104,377	212,726
Whole population		551,553

"In 1820 population was distributed thus. viz.:

East of the Blue Ridge		248,875
In the Valley	121,196	
West of the Alleghany	133.112	254,308
Whole population		603,081

"And in 1829 the white population, as estimated by the auditor, stood thus:

East of the Blue Ridge		362,745
In the Valley	138,134	
West of the Alleghany	181,384	319.516
Whole population		682,261"

It will be noticed that from 1810 to 1820 the population east of the Blue Ridge increased 10,038. The Valley increased 12,841. The increase west of the Alleghany was 28,735. From 1820 to 1829 the increase in the white population east of the Blue Ridge was 13,870. The increase in the Valley was 16,938. The increase in the Trans-Alleghany territory was 48,272.

(These figures from the book entitled "Proceeding and Debates of the Virginia State Convention of 1829-30," page 686. There are some errors in addition; but they are, relatively, trifling. The book was printed after the convention had been dissolved, and, undoubtedly, the figures used by Mr. Doddridge, were correct.)

It will be observed that the increase in population in the territory "east of the Blue Ridge" combined with the increase in population "in the Valley" was 30,808, a total increase for the two regions of 17,464 less than the total increase in population in the territory "west of the Alleghany."

Mr. Doddridge said (page 682):

> "It thus appears that in 19 years, white population east of the Blue Ridge, beginning with 338,837, has increased to 362,745, or to the amount of 29,908. The increase in the Valley having in 1810, 108,345 has been 29,779. Making in 1829, 138.134. These data show that the increase in the valley and in the whole east are nearly equal. That in the Valley being the smallest only by a difference of 129. As the Valley has kept pace with the whole east for nineteen years past, so it probably will hereafter, and therefore, a permanent apportionment which would do justice to the present Valley and eastern population with reference to each other, might probably suit them in all future time: yet, the same apportionment might operate to the

> utmost excess of cruelty and injustice to the Trans-Alleghany country. To concur in such a one would be a treachery to the Valley, of which we have not the least apprehension. The extent of this injustice will be manifest by comparing the increase of that population during the same period of 19 years. In 1810 we commenced with a population of 104,377, which, in 1829, is 181,384, having increased 77,007, or four times as much as either the Valley or all the country east of the Blue Ridge mountains."

The Territory of West Virginia was, by location, climate, proximity to Pennsylvania, Ohio and Kentucky, and in the sentiment of her people upon the question of slavery and the trifling number of slaves within her territory, inviting an immigration, which never sought, in even measurably the same numbers, the real slave states of the union. Notwithstanding this population, constantly increasing, of the $33,000,000 expended out of borrowed money, less than one-tenth was expended within what now are the limits of West Virginia; and it may very well be said that it was largely due to the fact of disproportionable representation.

It is truthfully said in "Part II." of this brief, page 173:

> "It should be remembered that there was not in the entire territory of Virginia, which is now West Virginia, on the 1st day of January, 1861, a single mile of state built or state-aided railroad, nor a mile of canal, nor a state building; not even a school, not a public institution of any kind."

9. UNDER THE ORDINANCE AND HER CONSTITUTION WEST VIRGINIA CANNOT BE CHARGED WITH INTEREST UNTIL AFTER THE ASCERTAINMENT IN THE MANNER PRESCRIBED OF HER EQUITABLE PROPORTION OF THE OLD VIRGINIA DEBT.

The ordinance prescribes a method of accounting by which a definite sum shall be ascertained. This sum the ordinance, in effect, declares to be West Virginia's just proportion of the old Virginia debt. Section 8 of Article VIII. of West Virginia's Constitution, when read in connection with the ordinance, as this Court has said it should be, produces precisely the same result. West Virginia did not agree to

pay interest on the sum to be ascertained by the prescribed method before this sum was ascertained.

We refer again to section 8 of Article VIII. of the Constitution of West Virginia.

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the 1st of January, 1861, shall be assumed by this state, and the legislature shall *ascertain the same* as soon as may be practicable and provide for the liquidation *thereof* by a sinking fund sufficient to pay the *accruing* interest and redeem the *principal* within thirty-four years."

That the word "thereof" refers to the result of an accounting in accordance with the terms of the ordinance, or, if the latter be eliminated, in accordance with such method as the legislature shall adopt, is not susceptible of doubt. That the command to the legislature to "provide for the liquidation thereof," means the sum which the legislature shall ascertain by pursuit of the methods prescribed by the ordinance, or if that be eliminated, by such method as the legislature shall adopt, is equally clear. The words "accruing interest" obviously refer to the word "principal."

We maintain most earnestly that, all things considered, it is clear that it was the manifest purpose that West Virginia was not to assume any portion of the public debt of Virginia as such, but was only to contribute to that end such sum, be it much or little, as would result from the accounting prescribed by the ordinance, unless the general words in the first clause of section 9 of the ordinance control and destroy the special provisions which follow, all being expressed in a single sentence. Moreover, this produces an equitable result, for the debt being an internal improvement debt, and nine-tenths of it having been expended by Virginia within her present limits, in public improvements, it would have been, in the highest degree, inequitable for the new state to take upon herself an obligation to contribute one-third of that debt, when Virginia retained the bank and other stocks.

"Accruing" is a word operative in the future, and has no reference to the past. When we speak of past due interest we refer to it as "accrued interest."

Six months' interest, the record shows, was due and defaulted on

this debt on January 1, 1861. Where is there any indication here, upon the part of West Virginia, of an intention to pay accrued interest? The interest up to the time of the ascertainment would be "accrued." She did not in her constitution assume:

> "a just proportion of the debt, with interest to accrue thereon, to the date of the ascertainment, until the just proportion shall have been ascertained and paid."

The constitution speaks of "accruing interest" and that means the interest to accrue on the principal thereafter to be ascertained, and not yet ascertained. This is not technical. It is substantial. It is in harmony with the ordinary use of the word "accrue" and with its technical, legal signification.

At an earlier hearing in this case, we called the attention of the Court to the case of *Gross* v. *Partenheimer*, 159 Pa. 556. The case may be briefly stated:

Plaintiff agreed to purchase from defendant, in April, 1883, a lot of land, for $8,000, payable $5,000 in cash, on delivery of deed, and the residue by plaintiff's assumption of a mortgage for $3,000, then on the lot, plaintiff to pay also the accruing interest on said mortgage, not exceeding six months. The six months' interest from the date of mortgage to February 26, 1893, was past due and unpaid, and, to avoid foreclosure proceedings, plaintiff was compelled to pay the same: He then brought suit to recover the sum thus paid, the vendor claiming that the purchaser was obliged to pay it under the agreement.

The court, at page 558, said:

> "This contention hinges entirely on the proper construction of the clause in the contract of sale above referred to, wherein the plaintiff agrees to pay 'the accruing interest in said mortgage not exceeding six months.' There is nothing in the affidavit of defense that can in any wise aid or control the construction of this clause. If, 'accruing interest' means interest which, according to the terms of the security, was due and payable on February 26, 1893, and remained overdue and unpaid at the date of the contract, the defendant's construction should prevail; but we cannot agree that these words mean any such thing. Such a con-

struction would be strained and wholly unwarranted by the language employed. As generally undertsood, accruing' interest means running or accumulating interest, as distinguished from accrued or matured interest. When we speak of interest which is from day to day accumulating on the principal debt, but which is not yet due and payable, we call it accruing interest. When we refer to interest heretofore payable but still remaining unpaid, we speak of it as overdue interest, arrears of interest, or interest in arrear, just as we speak of rent in arrear. We are therefore of opinion that the words 'accruing interest' do not refer to, or in any manner embrace any part of the six months' interest which was then overdue and unpaid. That interest was an encumbrance on the lot, which the defendant was bound to remove. He refused to do so, and the plaintiff, who was compelled to pay it, in order to prevent foreclosure of the mortgage, etc., is entitled to recover the amount thus paid with interest from date of payment. The learned court was clearly right in adjudging the affidavit of defence insufficient and entering judgment against defendant for the amount claimed by plaintiff."

If there had been any intent to assume, or pay, the accrued interest on the bonds of Virginia, outstanding, the constitution would have so expressed it; and, as expressed, we earnestly contend that it can be construed to mean no such thing.

For the convenience of the Court, we venture to insert the memorandum of authorities submitted by the late John G. Carlisle, who died during the last summer, upon this question of the liability of the state to pay interest.

10. MEMORANDUM OF JOHN G. CARLISLE.

"It will be observed that in Paragraph II. of this draft of a decree the Master is not only dircted to ascertain the amount and proportion of said indebtedness, but 'of the interest accrued thereon.'

"Counsel for the defendant object further to this paragraph because there is no legal ground for directing the ascertainment of interest. The State of West Virginia has not obligated herself in any manner for the

payment of interest. The principle is well settled that a state is not liable to pay interest unless it has expressly contracted to do so.

"In support of this proposition this Court, in *United States* v. *North Carolina*, 136 U. S. 211, said:

"'A state is not liable to pay interest on its debts, unless its consent to do so has been manifested by an act of its legislature, or by lawful contract of its executive officers.'

"Following the principle thus announced by this Court, many of the state courts have laid down in distinct terms the same proposition. Among the decisions of those courts are the following:

Sawyer v. *Colgan*, 102 Cal. 293; 36 Pac 583.

Hawkins v. *Mitchell*, 34 Fla. 421, 422; 16 So. 316.

Molineaux v. *State*, 109 Cal. 380; Am. St. Rep. 50; 42 Pac. 34.

Flint, etc., R. R. v. *Board of State Auditors*, 102 Mich. 502; 60 N. W. 971.

Carr v. *State*, 127 Ind. 204; 22 Am. St. Rep. 624.

"In *Carr* v. *State*, 127 Ind. 204, 22 Am. St. Rep. 624, this principle is announced as one of the points decided:

"'A sovereign state is not bound to pay interest unless it has contracted to do so.'"

"The court, in the course of its opinion in this case, says:

"'In the case of *State ex rel.* v. *Board*, etc., 36 Ohio St. 409, it was held that in the absence of a promise to pay interest none can be recovered against a state, and that a state is not within the provisions of a general statute providing for the payment of interest in cases where money is wrongfully withheld from a creditor. The court put its decision upon the familiar rule that a sovereign is not bound by the words of a statute unless it is expressly named, and in support of its conclusion cited these cases: *Trustee, etc* v. *Campbell*, 16 Ohio St. 11; *Jaselyn* v. *Stone*, 28 Miss. 753; *State* v. *Kinne*, 41 N. J. 238; *Attorney General* v. *Cape Fear, etc., Co.*, 2 Ired. Eq. 444; *Auditorial Board* v. *Arles*, 15 Tex. 72; *State* v. *Thompson*, 10 Ark. 61. In *Wightman* v. *United States*, 23 Ct. of Cl. 144, the general rule

> was stated, and it was said: 'Hence there is no law fixing a rate for interest for all classes of the public debt, and a long-established public policy has been to pay interest only where it is a subject of express agreement or of positive enactment.' It was held in the case of *Tillson* v. *United States*, 100 U. S. 43, that a statute referring to a claim did not authorize a recovery of interest, in the absence of words expressly providing for the payment of interest. It is impossible to escape the effect of these authorities, and considerations may be readily suggested which increase their force. One is, there is no right to coerce the payment of a debt due from a sovereign, and, of course, a sovereign may impose limitations upon its liability."

In a note appended to this case as reported in 22 American State Reports, at page 448, we find the following:

> 'With respect to the obligation of the state to pay interest upon its indebtedness, the principal case is well established by other authorities upon the same subject. In nearly and perhaps all of the states there are statutory provisions providing that moneys, after they become due, shall, in the absence of express contract to the contrary, bear the rate of interest specified in such statutes; but, acting under the old common-law rule that the king or sovereign is not bound by statute unless expressly named therein, it has been uniformly held that these statutory provisions respecting interest did not apply to any obligation either of the state or of the national government, and therefore that interest is never allowed upon such obligations, in the absence of some special statute clearly manifesting the intention of the sovereign to be bound for the payment of interest upon the particular obligation or class of obligations under consideration (*United States* v. *North Carolina*, 136 U. S. 211; *State* v. *Thompson*, 10 Ark. 61; *State* v. *Board of Public Works*, 36 Ohio St. 409; *State* v. *Bank of Washington*, 18 Ark. 554; *United States* v. *Sherman*, 98 U. S. 565; *United States* v. *Bayard*, 127 U. S. 251; *Tillson* v. *United States*, 100 U. S. 43; *In re Gosman*, 17 Ch. Div. 771; *Attorney General* v. *Cape Fear N. Co.*, 2 Ired Eq., 444; *Bledsoe* v. *State*, 64 N. C. 392; *Trustee* v. *Campbell*, 16 Ohio St. 11; *Joselyn*

v. Stone, 28 Miss. 753; *Wightman* v. *United States*, 23 Ct. of Cls. 144).'"

11. VIRGINIA'S RESPONSIBILITY FOR THE DELAY IN APPORTIONING THE DEBT.

Reading section 8 of Article VIII. of the Constitution of West Virginia with the ordinance, or regardless of it, the complainant, by her own act, rendered impossible, any ascertainment prior to January 1, 1871, of the just proportion of the public debt of Virginia to be borne by West Virginia. In 1866, she instituted in this Court, the suit of *Virginia* v. *West Virginia*, 11 Wallace 39. This was an original bill to settle the boundary line between the States of Virginia and West Virginia. It involved the question whether the counties of Berkeley and Jefferson were a part of West Virginia. The case was not decided until December, 1870. While Virginia cannot be complained of for instituting and prosecuting the suit, it is manifest that, until the determination thereof, there could be no apportionment of the old Virginia debt, either under the ordinance or under section 8 of Article VIII. of the Constitution of West Virginia.

Pending the decision of the case, the accounting provided for by the ordinance would be impossible, in view of its requirements:

> (*a*) "*Charging to it all state expenditures within the limits thereof.*"

Manifestly, so long as those limits were unsettled, this could not be done.

> (*b*) "*A just proportion of the ordinary expenses of the state government since any part of said debt was contracted.*"

This could not be fulfilled upon the basis of taxable values, area or population until the boundaries of the state were settled.

> (*c*) "*Deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period.*"

This could not be done until the territorial limits of the new state

were settled, and it was known what counties were included within the new state. So that, while entirely within her right, Virginia's own act compelled a delay from the filing of this bill until the entry of the final decree therein of an adjustment under the ordinance or under the constitution.

Section 9 of Article X. of the Constitution of Virginia, which became operative in 1870, contained the following provisions:

> "The general assembly shall provide by law for adjusting with the State of Virginia the proportion of the public debt of Virginia proper to be borne by the States of Virginia and West Virginia, and shall provide that such sum as shall be received from West Virginia, shall be applied to the payment of the public debt of the state."

We do not deem it necessary here to give a history of the appointment of commissioners by the two states with reference to the adjustment of the debt. This history is set out in the pleadings. It is enough to say that as early as 1870, a commission appointed by West Virginia proceeded to Richmond, where the archives all were, and their visit resulted in accomplishing little. But, on March 30, 1871, the legislature of Virginia, by a law passed in 1871, apportioned the debt between the two states, assuming for itself two-thirds, and issuing certificates for the other one-third as West Virginia's share. Subsequent legislation of Virginia proceeded upon that apportionment, certificates being issued, to be accounted for by West Virginia.

It is difficult to conceive of any theory upon which Virginia could justly assume the function of apportioning the debt and issuing obligations for which West Virginia could be accountable. Virginia's general assembly were, by the constitutional provision above quoted, required to provide by law for adjusting with the State of West Virginia the proportion of the public debt to be borne by the two states. They proceeded to apportion it themselves, without consulting West Virginia.

West Virginia then was a comparatively new state, and her resources were relatively undeveloped.

To issue securities to be accounted for by West Virginia, was not only apparently in defiance of Virginia's own constitutional provision.

but was usurpatory, detrimental to the credit of West Virginia, and well calculated to produce resentment among her people.

From that time, West Virginia was placed in a position which rendered it almost impossible for her, with dignity and self respect, to take further initiative in the matter.

In 1894, the legislature of Virginia, after she had funded and refunded her debt, adopted a joint resolution, providing for the appointment of a

> "commission of seven members, who were authorized and directed to negotiate with the State of West Virginia for a settlement and adjustment of the latter state's part of the public debt proper to be borne by her."

It was provided:

> "But said commission shall, in no event, enter into any negotiation hereunder, except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof."

It is quite manifest that West Virginia was here called upon, as a condition of any negotiation whatever, to accept the action of Virginia taken in 1871, 1879 and 1894 apportioning the debt, two-thirds to herself and one-third to West Virginia. It needs no argument to show that West Virginia could not be expected to negotiate upon such a basis. It was not until 1905, preliminary to the institution of this suit, that a commission went to West Virginia freed from such restraint.

The attention of the Court is especially directed to the Appendices "A," "B," "C," and "D" printed herewith.

We respectfully submit that from the record in this cause and upon the authorities cited by counsel for the defendant, the State of West Virginia ought to prevail.

WILLIAM G. CONLEY,
Attorney General of West Virginia.

JOHN C. SPOONER,
CHARLES E. HOGG,
W. MOLLOHAN,
GEORGE W. MCCLINTIC,
W. G. MATHEWS,
WM M. O. DAWSON,
Of Counsel for Defendant.

APPENDICES
A, B, C AND D.

APPENDIX A.

PLAINTIFF'S EXHIBIT "D-1."

Commonwealth of Virginia v. *State of West Virginia.*

Ordinary Expenses of Government.

ARTICLE [PARAGRAPH] IV.

Statement Prepared by
PRICE, WATERHOUSE & COMPANY,
Chartered Accountants.

Division of Ordinary Expenses of Government as per Article IV.:—		$40,023,287.79
I. On basis of Total Population (including Slaves) June 20, 1863:		
Virginia	75.66%	$30,281.619.54
West Virginia	24.34%	9,741,668.25
Note: This is without regard to color,—Whites and Blacks being taken together in arriving at the population of June 20, 1863, from the census figures of 1860 and 1870.		
II. On basis of Population (without Slaves) Estimated June 20, 1863:		
Virginia	66.71%	$26,699,535.28
West Virginia	33.29%	13,323,752.51

Ordinary Expenses of Government—Article IV.

	Schedule.	
General Expenses of Government, as per Commonwealth Disbursements	1	$20,371,768.47
Administrative Expenses of the Board of Public Works	2	221,532.78
Maps, Expenses of Surveys and Inspection of Internal Improvements	3	155,643,39
General Expenses of the Literary Fund	4	891,435.66
Interest on old Military Debt		24,265.31
Interest on Treasury Notes		157,879.02
Specie Premium		11,534.63
Interest on Sundry Claims		52,324.09
Interest on Temporary Loans		112,545.82
Interest on Public Debt	9	18,024,358.62
		$40,023.287.79

SCHEDULE I.

Analysis of General Expenses of Government—Summary.

Description.	*Amount.*
General Assembly	$ 4,130,064.55
Officers of Government	3,595,102.14
General Government	8,495.63
Pensions	88,548.74
Criminal Charges	1.785,632.11
Commissioners of the Revenue	1,697,751.95
Court Charges	1.188,212.34
Contingent Fund	679,120.46
Militia	755,663.41
Expenses of Representation	24,120.17
Public Arsenals	96,709.63
Public Guard (City)	839,528.23
Penitentiary, House Expenses	215,985.76

SCHEDULE 1—*Continued.*

Description.	*Amount.*
Penitentiary, Criminal Charges	256,522.93
Penitentiary, Officers	305,367.24
Warrants on Account, and General Appropriation	746,087.72
Slaves Transported and Executed	611,351.23
Gun Carriages	14,317.05
Guards in the Country	105,049.34
Public Improvements	11,803.75
Military Contingent	75,395.41
Lunatic Asylums	1,888,992.06
Revisions of Laws	4,500.00
Seines	71.10
Public Warehouses	35,722.00
Tobacco Sales	454.91
Armory, Manufactory and Repairs of Arms	243,015.60
Sale of Slaves	99.26
Expense of Lunatics	158,112.71
Collection and Transportation of Arms	10,212.83
Revolutionary Claims Agent	3,861.67
Administrators of J. Merryweather and R. Graves	11,067.33
Electors	11,839.26
Civil Prosecutions	47,684.56
Repairs to Governor's House	50,733.60
Penitentiary, Enlarging and Repairs	53,572.60
Clerk Hire, etc., on account of Delinquent Lands	18,374.27
Repairs to Capitol	51,281.47
Public Library	695.23
Military Equipment	9,993.09
Buckingham Furnace Lands	771.72
Transportation of Free Persons of Color to Liberia	26,103.50
Geological Survey	40,980.61
Military School, Appropriation and Repairs	296,296.19
Reassessment of Lands	147,868.10
Deaf, Dumb and Blind Institution	369,919.73

SCHEDULE 1—*Continued.*

Description.	*Amount.*
Unexpended Postage returned to Treasury	53.13
Penitentiary—*Hatcher* v. *Commonwealth*	12,897.96
Ferriage of Troops during late War	54.71
Criminal and Civil Code	52,073.88
Rents	52.25
Virginia Volunteers	29,470.05
Tobacco Sales and Burnt Tobacco	1,931.30
Land Taxes	296.59
Assessment of Free Negroes	897.21
Expenses of Sinking Fund	3,904.82
Fugitive Slave Fund	5,201.00
Land Sold in 1855	8.40
Public Printing	23,092.31
Claims under 27th and 45th ch. of Code of Virginia	1,344.05
Weights and Measures	14,854.90
Registration Expenses	14,661.20
Treasury Note Expenses	375.74
Tax on Dividends	128.50
Arms and Munitions of War	4,111.13
Survey of Washington's Birthplace	139.21
Temporary Clerks in Auditor's Office	3,826.64
Marking Virginia and Maryland Boundary	6,094.44
Maps	11,400.90
Public Arms	11,499.97
State Convention	258,677.40
Repairs to Legislative Halls	4,650.07
Medical College	25,000.00
Experimental Railroad	10,000.00
Blair & Bolling Special Service	200.00
Total	$21,209,952.03
Less—Total Credits as per Summary Schedule after P. No. 1	838,183.56
Total as per Recapitulation	$20,371.768.47

SCHEDULE "S."

Analysis of "Sundry Receipts."

Credits to Ordinary Expenses of Government—Auditor of Public Accounts—Summary.

Description.	*Total Amounts.*
Refunds of Advances, and amounts paid in error	$ 36,252.56
Rents	53,160.55
Repayments of Loans and Interest	1,603.35
Sundry Sales	15,631.70
Judgment on Bonds	16,483.69
Sale of Slaves	272,347.57
Sale of Land	9,189.61
Returns—Expenses of Lunatics	3,588.65
Returns—Lunatic Hospital	16,670.48
Returns—Court Charges	1,656.68
Governor's House	1,701.17
Refunds—Criminal Charges	3,754.69
Tax on Salaries	449.16
Refunds—Attorney General's Fees	1,622.74
Records of Court of Appeals and Clerk's Fees	42,154.55
Interest on Loans	3,914.53
Weighmaster of Live Stock	8,493.32
Virginia Volunteers	8,126.43
Tax on Express Companies	252.68
Collections from Banks to pay salary of Treasurer's Clerks	4,500.00
Voluntary Enslavements	5,175.54
Fugitive Slave Fund	2,444.50
Miscellaneous	53,078.06
	$562,242.26
Proceeds of Goods Manufactured at Penitentiary	275,941.30
Total Credits	$838,183.56

SCHEDULE 2.

Board of Public Works Disbursements—Administrative Expenses—Summary.

Description.	*Amount.*
Salary of Engineers	$ 54,353.30
Pay and Mileage—Members of the Board	19,286.71
Literary Fund, Difference in Exchange, etc.	187.50
Maps, Books, Supplies, Stationery, Postage, etc.	9,599.51
Salary of Secretary	4,982.97
Printing	14,098.70
Advertising	1,013.41
Doorkeeper's and Messengers' Compensation, Postage, etc.	4,208.34
Premium in favor of Specie over Bank Notes	45.60
Equivalent for Specie in Paying Auditor's Warrants	24.31
Literary Fund Transfer	48.67
Tax on Salaries—2nd Auditor's Office	143.76
Compensation	84.17
Engineers' Supplies and Repairs	2,200.63
Fee Bills	1,186.29
Expenses of Tour of Examination	488.37
Traveling Expenses—Respecting Loans, etc.	2.304.53
Expenses preparing Coupon Bonds	13,346.78
Damage Account—Experimental Railroad	65.00
Expenses *re* B. & O. Railroad	249.40
Expenses *re* Investigation Selden, Withers & Company	9,351.45
J. T. Soutar—New York Bond Agent	3,686.60
Commissioners, etc., for paying Coupons	4,604.87
Tabulated Railroad Reports, etc.	1,074.50
Sextant	40.00
Express	18.00
Collectors' Salaries	6,720.68
Salary of Second Auditor and Clerks	68,119.83
	$221,532.78

SCHEDULE 3.

Board of Public Works Disbursements.

Analysis of Charges to Both States to be Charged, in the Final Settlement, to Ordinary Expenses of Government.

MAPS.

Year.	*Reference.*	*Amount.*
1820	5-20	$12,000.00
1	1	9,000.00
2	1	9,000.00
3	22	4,428.79
1836	25	55.00
8	35	700.00
1848	22	750.00
9	21	750.00
1851	24	995.62
2	11-21-22	2,730.46
4	149	292.61
5	7	803.00
6	7	899.50
8	8	125.00
		$42,529.98

SURVEYS—SALARIES AND EXPENSES.

Year.	*Reference.*	*Amount.*
1820	6-7-8-10	$5,373.81
1	11	1,000.00
2	8	1,000.00
3	12	1,889.50
4	12-13	500.46
5	9-10	4,270.38
6	8	2,766.66
7	8	3,319.35
8	7	1,682.22

SCHEDULE 3—*Continued.*

Year.	*Reference.*	*Amount.*
9	8	2,100.00
1830	5	3,941.00
1	6-7	4,449.99
2	13	280.00
4	Pt. 16	2,151.32
5	Pt. 14-15	7,122.13
7	Pt. 22-23	12,464.35
8	20-26	16,699.84
9	13-16	13,678.93
1840	30-32	10,787.00
1	2-3	5,530.00
2	2	3,400.00
3	3	1,233.33
7	18	500.00
		$114,273.35
Credits as per Schedule attached		3,903.88
		$110,369.47

INSPECTION OF INTERNAL IMPROVEMENTS OF STATE.

Year.	*Reference.*	*Amount.*
1849	15	$ 665.00
1850	12	1,087.22
1	15	1,027.13
2	8	656.37
		$3,435.72
Credits as per Schedule attached		691.78
		$2,743.94

SUMMARY.

Maps	$ 42,529.98
Surveys, Salaries and Expenses	110,369.47
Inspection of Internal Improvements	2,743.94
	$155,643.39

SCHEDULE 4.

Summary of Analysis—Literary Fund Disbursements—General Expenses and Sundries.

Description.	*Amount.*
Copies of Judgments	$ 433.75
Clerks' Salaries	82,259.73
Expenses and Commissions to H. Eustace, etc., account of Bristoe Estate	1,786.30
Advances Account of Contingent Expenses	350.00
Judgments and Commissions on Escheats, Delinquent and Redeemed Lands	26,029.48
Accrued Interest and Premium on Sundry Securities Purchased	1,667.95
Expenses account of Purchase of Stock by J. Bauer	902.23
Commission on U. S. Debt	4.199.92
Cost of Seal	100.00
Stationery, Postage, Printing, Fee Bills and Advertising	8,625.21
Commission on Bonds	94.29
Sale of Slaves and Expenses of Free Negroes	837.73
Expenses on Sale of Stock	14.00
Taxes on Salaries	217.23
State Claims against the United States	2,722.82
Davis' Book on Criminal Law	12,000.00
Medical College	5,000.00
University of Virginia	649,874.00
Virginia Military Institute	28,500.00

SCHEDULE 4—*Continued.*

Description.	*Amount.*
Deaf, Dumb and Blind Institute	40,821.02
Hampden-Sidney College	25,000.00
Total	$891,435.66

SCHEDULE 9.

Interest on Public Debt.

Interest on Public Debt paid by the Board of Public Works	$5,825,538.66	
do do do	1,834,276.61	
Interest on Bank Debt paid by the Treasurer of the Commonwealth	360,883.02	
Interest on Public Debt (C. and O. Canal Loan) paid by Treasurer of Commonwealth	207,479.25	
Interest on Public Debt paid by the Sinking Fund from its establishment in 1853 till December 31st, 1860	11,762,509.04	
Interest on James River and Kanawha Guaranteed Bonds, paid by Treasurer of the Commonwealth	613,542.66	
		$20,606,229.24
Deduct		
Interest received on State Stock held by Board of Public Works and paid to that Board	$312,214.22	
Refund of Interest on Public Debt previously paid Selden, Wethers & Co.	29,924.70	

SCHEDULE 9—*Continued.*

Interest received by Sinking Fund of Trustees of Selden, Wethers & Company and J. T. Soutters ----	40,133.59	
Interest received on State Stock held by Board of Public Works, paid to that Board, etc., ----------	639,670.71	
Deduct		
Interest received by the Commonwealth on Certificate of State Stock, $100,000, owned by the Commonwealth ----------	30,213.70	
Interest received on State Stock held by the Literary Fund ----------	1,324,051.72	
Interest received on Bonds of J. R. & K. Company paid to the Treasurer of Commonwealth by that Company ----------	142,181.74	
Interest received by Sinking Fund on Stock held by them as Investments ----------	61,807.55	
Refunds received by the Sinking Fund account of over-payments ------	1,672.69	
		$ 2,581,870.62
		$18,024,353.62

Interest on 7% War Debt of 1813-14, viz: $319,000.00 and Interest on 6% War Debt of 1809, viz: 24,039,17. both of which were held throughout the period by the Literary Fund, has been excluded in both the Payments and Receipt statement above.

APPENDIX B.

CHAP. 75.—An Act to convert the Branch of the Northwestern Bank of Virginia at Jeffersonville into a Separate and Independent Bank.

Passed March 13, 1862.

Whereas the armed occupation of northwestern Virginia, by lawless enemies of this state, has entirely destroyed all business intercourse and relations between the Northwestern Bank of Virginia at Wheeling and its branch at Jeffersonville, to the great detriment of the state and loyal stockholders, and it seems proper under the circumstances to dissolve the connection heretofore subsisting between said bank and its branch at Jeffersonville, and of authorizing the latter to transact business as a separate and independent corporation:

1. Be it therefore enacted by the general assembly, that the branch of the Northern Bank of Virginia at Jeffersonville be and the same is hereby constituted, created and incorporated a separate, distinct and independent bank, under the corporate name of Graziers Bank of Virginia; and all the power, control, direction, supervision, relation and connection of said Northwestern Bank of Virginia over and with the said branch at Jeffersonville, are hereby dissolved, abrogated and annulled.

2. All the assets held by said branch (embracing all bills and notes discounted, whether the same be in suit, protested, due or maturing, all judgments, balances due on accounts current, all money, either in coin or currency, all evidences of debt or other securities, all real estate, and every right and interest) are absolutely vested in the said Graziers Bank of Virginia; and in every case where suit has been instituted in the name of the Northwestern Bank of Virginia for the recovery of money or other thing, to which said branch is entitled, the suit so brought shall be prosecuted in the name of the Northwestern Bank of Virginia, for the use and benefit of said Graziers Bank

of Virginia; and in every case where suit shall hereafter be instituted for the recovery of money or other thing belonging to said branch, the suit shall be in the name of said Graziers Bank of Virginia.

3. The said Graziers Bank of Virginia is subject to all the liabilities of the said branch, except so far as the said liabilities are modified by the followng sections of this act.

4. The said Graziers Bank of Virginia shall in no event be required to account to the said Northwestern Bank of Virginia for any portion of the net profits or contingent fund of the said branch, nor to contribute to the payment of, or pay out of the assets of said branch, or otherwise, to any stockholder, billholder or creditor of the said Northwestern Bank, any sum of money which any such stockholder, billholder or creditor may be entitled to demand and have of said Northwestern Bank of Virginia.

5. At any time within three months from the passage of this act, any loyal holder of stock in the Northwestern Bank of Virginia, whose stock in said bank was purchased through the said branch, or whose dividends have usually heretofore been credited to him at said branch, may return and assign to said Graziers Bank of Virginia such stock, and demand and receive in lieu thereof a certificate for a like number of shares of stock in the said Graziers Bank of Virginia.

6. As soon as may be after the expiration of the said three months from the passage of this act, the governor of the state shall cause certificates of the stock held by the state in the said Northwestern Bank of Virginia, for an amount equal to the balance of the capital stock of said branch, not exchanged under the previous section, to be in like manner returned and assigned to said Graziers Bank of Virginia, for a like number of shares of the stock thereof.

7. The Graziers Bank of Virginia, hereby established, shall be required to redeem, from loyal citizens of the Confederate States of America, in notes of its own issue, all such notes of said branch as may be in their possession at the passage of this act; provided the same be presented in six months after notice of this provision shall have been published for one month in some weekly newspaper published in the city of Richmond: and provided further, the amount

offered for redemption shall not exceed one hundred and eighty thousand dollars.

8. The legislature reserves the power to provide, after the termination of the war with the United States, the extent, mode and time of redemption by said Graziers Bank of Virginia, of any outstanding notes of said branch, with which, according to the principles of equity, justice and right, it is chargeable. But as it is represented to this general assembly that the said branch has a special deposit of twenty-four thousand dollars in gold with the said Northwestern Bank of Virginia, heretofore made by said branch to meet the redemption of its notes; and as notes payable at said branch may have been issued by the said Northwestern Bank of Virginia, which have not been reported to said branch, nor charged to said Northwestern Bank of Virginia, and which it would be evidently unjust to require the said branch to redeem, it is hereby expressly provided and enacted, that the whole amount of circulation of the said branch, which the said Graziers Bank of Virginia shall be required to redeem, under the provisions of this act, and of any subsequent act of the legislature, taken collectively, shall not exceed the balance of the circulation of said branch, after deducting therefrom the sum of twenty-four thousand dollars on account of said special deposit, and also any amount or amounts of circulation payable at said branch (if any such there be), issued by the said Northwestern Bank of Virginia, of which the said branch has not heretofore received notice from said Northwestern Bank of Virginia.

9. The cashier shall forthwith, after the expiration of three months from the passage of this act, out of the surplus or contingent fund of the said branch, pass to the credit of the stockholders of the said Graziers Bank of Virginia and to the state, a dividend of ten per centum upon their stock issued under the provisions of the fifth and sixth sections of this act.

10. The said Graziers Bank of Virginia shall be located and transact its business at the town of Jeffersonville.

11. The said Graziers Bank of Virginia may, by sales of new stock, increase its capital to two hundred thousand dollars.

12. The present board of directors for the said branch shall con-

tinue to act as a board of directors for the said Graziers Bank of Virginia until a new board shall be appointed under the general law.

13. Except so far as the same may be inconsistent with the provisions of this act, the general banking law of the state shall apply to the said Graziers Bank of Virginia; and the general law of joint stock companies shall apply to the said Graziers Bank of Virginia, so far as the same is applicable to it, and not inconsistent with the provisions of this act.

14. This act shall be in force from its passage, but may be repealed, altered or modified, at the pleasure of the general assembly.

(Copied from Acts of the General Assembly of Virginia, session of 1861-2, pp. 90, 91, 92, 93.)

Report of Honorable Chester D. Hubbard.

Wheeling, West Virginia, Feb. 23, 1871.

Hon. W. E. Stevenson, President.

Dear Sir: In accordance with the instructions of the Board of the School Fund in their action of the 15th, I have ascertained and herewith transmit a statement of the stock held by the state in the National Bank of West Virginia at Wheeling, the First National Bank of Wellsburg, and the Parkersburg National Bank, and the different funds to which said stock is credited.

I also proceeded to Wellsburg and exchanged as directed the stock of the Internal Improvement Fund in the First National Bank of Wellsburg, 163 shares, for United States 5-20 coupon bonds (the Bank had no registered bonds), receiving therefor six teen bonds of $1,000 each and three bonds of $100 each lettered and numbered as follows: $1000 K 134,401, 134,403, 134,404, 134,405, 134,406, 134,407, 134,413, 134,414, 163, 792, G. 142,990, 142,991, 142,981, 142,982, 142,983, 142,984, 142,985. $100 each I, 177,876, C. 102,938, D. 236,517. These bonds carry the coupons of July 1, 1871, and were issued July 1, 1867, under the act of 1865.

I have sealed the bonds in an envelope writing my name across the seal and labelling them as belonging to the School Fund of West Virginia, and have deposited them as a special deposit in the First

National Bank of Wheeling. The bonds can be exchanged for registered bonds by sending them to Washington. I will attend to it if you desire it to make any other disposition of the bonds you may direct.

The Bank declined to exchange for the stock held in the name of the state, believing that they could not safely do so under section 7, article 8, of the Constitution, besides I was not certain that my authority extended to such an exchange. If I am to make any other disposition of the bonds, please advise me at your earliest convenience.

The stock exchanged at Wellsburg will modify the bond statement to that extent.

Very respectfully,

C. D. HUBBARD.

Statement of Stock held by the State of West Virginia in "The National Bank of West Virginia at Wheeling," "The First National Bank of Wellsburg," and "The Parkersburg National Bank," and the different funds to which said stock is credited.

1837—(July 18)—The Commonwealth of Virginia subscribed 4,000 shares of stock in the Northwestern Bank of Virginia			$400,000.00
1857—March 3.—The Bank purchased of this stock 1,082 shares as follows:			
Northwestern Bank of Virginia at Wheeling,	332	shares	
" " " Wellsburg,	250	"	
" " " Parkersburg	250	"	
" " " Jeffersonville	250	"	
	1,082	"	
			108,200,00
Leaving 2,918 shares			$291,800.00
1865—March 2.—The Bank charged to the Commonwealth of Virginia all the stocks of the Bank of Jeffersonville, on the plea that the State had taken possession of that Bank, 1,642 shares			164,200.00

And transferred the remaining stock to the State of West Virginia, 1,276 shares	127,600.00
1866—July 1.—On the organization of the present Bank this 1,276 shares was transferred at 50 cents on the dollar, as follows, viz:	
National Bank of West Virginia at Wheeling, 300 shares	30,000.00
First National Bank of Wellsburg, 188 shares	18,800.00
Parkersburg National Bank, 150 shares	15,000.00
The Internal Improvement Fund of Virginia subscribed to the Stock of the Northwestern Bank of Virginia:	
1856—August 30.—326 shares	32,600.00
This stock was transferred at 50 cents on the dollar, 1866, July 1, to the First National Bank of Wellsburg, (163 shares)	16,300.00
The President and Directors of the Literary Fund of Virginia subscribed to the stock of the Northwestern Bank of Virginia—1832—November 24.—500 shares	50,000.00
This stock was transferred at 50 cents on the dollar, 1866, July 1, to the Parkersburg National Bank, 250 shares	25,000.00

SUMMARY.

The State now holds in the—	
National Bank of West Virginia at Wheeling, 300 shares (in name of the State)	$30,000.00
First National Bank of Wellsburg, 188 shares in name of the State	18,800.00
First National Bank of Wellsburg, 163 shares in Internal Improvement Fund	16,300.00
Parkersburg National Bank, 150 shares in Internal Improvement Fund	15,000.00
Parkersburg National Bank, 250 shares in Literary Fund	25,000.00
	$105,100.00

1867—July 9.—The Northwestern Bank of Virginia paid a dividend of 5 per cent on 326 shares Internal Improvement Fund	$1,630.00	
On 1,276 shares Commonwealth of Virginia stock	6,380.00	
On 500 shares Literary Fund	2,500.00	$10,510.00
1868—August 1.—A like dividend of 5 per cent on the same stocks		$10.510.00

February 21, 1871.

I, J. S. Darst, Auditor of the State of West Virginia, and *ex officio* Secretary of the Board of the School Fund of said State, hereby certify that the foregoing is a true and correct copy from the record of the minutes of the proceedings of said Board, pages 37 to 41 of Record Book No. 1 of said Board.

Given under my hand and official seal, this 26th day of February, 1910.

J. S. DARST,
Auditor.

APPENDIX C.

37TH CONGRESS, 2d Session. | SENATE. | MIS. DOC. No. 99.

MEMORIAL OF THE COMMISSIONERS

APPOINTED BY THE

CONVENTION OF WEST VIRGINIA

PRAYING

For the admission of that State into the Union.

MAY 31, 1862.—Referred to the Committee on Territories, and ordered to be printed.

To the Hon. B. F. WADE,

Chairman of the Committee on Territories:

In conformity with the suggestion of your committee, the undersigned, commissioners appointed by the convention to frame a constitution for West Virginia, beg leave to submit the following:

In the month of January, 1861, the Legislature of Virginia, convened in extra session, passed an act providing for the election of delegates on the 4th of February, 1861, to meet in convention at the city of Richmond on the 13th of the same month to take into consideration the then condition of the country.

The act calling the convention provided that it should submit any proposition it might adopt changing the relations of the State to the Federal Government or the organic law of the State to the voters of the State, to be approved or rejected by them at the polls, provided the people should so require by their vote on the 4th day of February, 1861; and accordingly the people, at the same time they voted for delegates to the convention, voted upon the question whether the action of the convention should be submitted to them

for their ratification before the said action of the convention should be of binding obligation.

The people, by a majority of more than fifty thousand votes, declared in favor of submitting the action of the convention to them for ratification or rejection.

On the 17th day of April, 1861, the convention passed an ordinance of secession; on the 24th day of April, 1861, commissioners appointed by the convention entered into an agreement with A. H. Stephens, vice-president of the so-called Confederate States, transferring the State to the said confederacy. On the fourth Thursday in May thereafter the question of ratifying or rejecting the ordinance of secession was submitted to the voters of the State, but prior to that day the authors of secession had organized the military forces of the State in the interest of the so-called Confederate States, and occupied most of the counties of the State on the day of voting upon the ordinance, so that, in fact, a reign of terror was inaugurated to prevent a free and fair expression of the popular will at the polls.

On the 22d of April, 1861, a meeting of the people of Harrison County was held at the courthouse of that county, which adopted the resolutions following:

GRAND UNION MEETING.

1,000 to 1,200 people present.

At a large and enthusiastic meeting of from 1,000 to 1,200 of the citizens of Harrison County, assembled at the courthouse upon a notice of forty-eight hours, on Monday, April 22, 1861, the following preamble and resolutions were adopted without one dissenting voice:

PREAMBLE.

Whereas the convention now in session in this State, called by the legislature, the members of which had been elected twenty months before said call, at a time when no such action as the assemblage of a convention by legislative enactment was contemplated by the people, or expected by the members they elected in May, 1859, at which time no one anticipated the troubles recently brought upon our common country by the extraordinary action of the State authorities of

South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, and Texas, has, contrary to the expectation of a large majority of the people of this State, adopted an ordinance withdrawing Virginia from the Federal Union; and whereas by the law calling said convention it is expressly declared that no such ordinance shall have force or effect or be of binding obligation upon the people of this State until the same shall be ratified by the voters at the polls; and whereas we have seen with regret that demonstrations of hostility, unauthorized by law, and inconsistent with the duty of law-abiding citizens still owing allegiance to the Federal Government, have been made by a portion of the people of this State against the said government; and whereas the governor of this Commonwealth has, by proclamation, undertaken to decide for the people of Virginia that which they had reserved to themselves, the right to decide by their votes at the polls, and has called upon the volunteer soldiery of this State to report to him and hold themselves in readiness to make war upon the Federal Government, which Government is Virginia's government, and must, in law and of right, continue so to be until the people of Virginia shall by their votes and through the ballot box, that great conservator of a free people's liberties, decide otherwise; and whereas the peculiar situation of northwestern Virginia, separated as it is by natural barriers from the rest of the State, precludes all hope of timely succor in the hour of danger from other portions of the State, and demands that we should look to and provide for our own safety in the fearful emergency in which we now find ourselves placed by the action of our State authorities, who have disregarded the great fundamental principle upon which our beautiful system of government is based to wit, "that all governmental power is derived from the consent of the governed," and have, without consulting the people, placed this State in hostility to the federal government by seizing upon its ships and obstructing the channel at the mouth of Elizabeth River, by wresting from the federal officers at Norfolk and Richmond the customhouses, by tearing from the nation's property the nation's flag, and putting in its place a bunting, the emblem of rebellion, and by marching upon the national armory at Harper's Ferry—thus inaugurating a war without consulting those in whose

name they profess to act; and whereas the exposed condition of northwestern Virginia requires that her people should be united in action and unanimous in purpose—there being a perfect identity of interests in times of war as well as in peace: Therefore, be it

Resolved, That it be, and is hereby, recommended to the people in each and all of the counties composing northwestern Virginia to appoint delegates, not less than five in number, of their wisest, best, and discreetest men, to meet in convention at Wheeling, on the 13th day of May next, to consult and determine upon such action as the people of northwestern Virginia should take in the present fearful emergency.

Resolved, That Hon. John S. Carlile, W. P. Goff, Hon. Charles S. Lewis, John J. Davis, Thos. L. Moore, S. S. Fleming, Lot Bowen, Dr. Wm. Dunkin, Wm. E. Lyon, Felix Sturm, and James Lynch, be, and are hereby, appointed delegates to represent this county in said convention.

JOHN HURSEY, *President*.

J. W. HARRIS, *Secretary*.

Strange to say, among that large assembly not a single response was heard to the call by the president for the nays on any of the questions before the meeting.—[*Guard Office, Clarksburg, Va.*]

The proceedings of this meeting were sent to the several counties of northwestern Virginia by special messengers, which responded to the call, and, in accordance with it, a convention of some five hundred delegates from thirty-odd counties of the State met in the city of Wheeling on the 13th day of May, 1861, and adopted the following resolutions:

Convention of the people of northwestern Virginia, held at Wheeling, May 13, 1861.

The following resolutions were unanimously adopted:

1. *Resolved*, That in our deliberate judgment the ordinance passed by the convention of Virginia on the 17th day of April, 1861, known as the ordinance of secession, by which said convention undertook, in the name of the State of Virginia, to repeal the ratification of the Constitution of the United States by this State, and to resume all the

rights and powers granted under said Constitution, is unconstitutional, null and void.

2. *Resolved,* That the schedule attached to the ordinance of secession, suspending and prohibiting the election of members of Congress for this State, is a manifest usurpation of power to which we ought not to submit.

3. *Resolved,* That the agreement of the 24th of April, 1861, between the commissioners of the Confederate States and this State, and the ordinance of the 25th of April, 1861, approving and ratifying said agreement, by which the whole military force and military operations, offensive and defensive, of this Commonwealth, are placed under the chief control and direction of the President of the Confederate States, upon the same principles, basis, and footing, as if the Commonwealth were now a member of said confederacy, and all the acts of the executive officers of our State in pursuance of said agreement and ordinance, are plain and palpable violations of the Constitution of the United States, and are utterly subversive of the rights and liberties of the people of Virginia.

4. *Resolved,* That we earnestly urge and entreat the citizens of the State everywhere, but more especially in the western section, to be prompt at the polls on the 23d instant, and to impress upon every voter the duty of voting in condemnation of the ordinance of secession, in the hope that we may not be involved in the ruin to be occasioned by its adoption, and with the view to demonstrate the position of the west on the question of secession.

5. *Resolved,* That we earnestly recommend the citizens of Western Virginia to vote for members of the Congress of the United States in their several districts, in the exercise of the rights secured to us by the Constitutions of the United States and the State of Virginia.

6. *Resolved,* That we also recommend to the citizens of the several counties to vote at said election for such persons as entertain the opinions expressed in the foregoing resolutions for members of the senate and house of delegates of our State.

7. *Resolved,* That in view of the geographical, social, commercial, and industrial interests of northwestern Virginia, this convention are constrained, in giving expression to the opinion of their constituents,

to declare that the Virginia convention, in assuming to change the relation of the State of Virginia to the federal government, have not only acted unwisely and unconstitutionally, but have adopted a policy utterly ruinous to all the material interests of our section, severing all our social ties, and drying up all the channels of our trade and prosperity.

8. *Resolved,* That in the event of the ordinance of secession being ratified by a vote, we recommend to the people of the counties here represented, and all others disposed to cooperate with us, to appoint on the 4th day of June, 1861, delegates to a general convention, to meet on the 11th of that month, at such place as may be designated by the committee hereinafter provided, to devise such measures and take such action as the safety and welfare of the people they represent may demand—each county to appoint a number of representatives to said convention equal to double the number to which it will be entitled in the next house of delegates; and the senators and delegates to be elected on the 23d instant, by the counties referred to, to the next general assembly of Virginia, and who concur in the views of this convention, to be entitled to seats in the said convention as members thereof.

9. *Resolved,* That inasmuch as it is a conceded political axiom that government is founded on the consent of the governed and is instituted for their good, and it cannot be denied that the course pursued by the ruling power in the State is utterly subversive and destructive of our interests, we believe we may rightfully and successfully appeal to the proper authorities of Virginia to permit us peacefully and lawfully to separate from the residue of the State, and form ourselves into a government to give effect to the wishes, views, and interests of our constituents.

10. *Resolved,* That the public authorities be assured that the people of the northwest will exert their utmost power to preserve the peace, which they feel satisfied they can do, until an opportunity is afforded to see if our present difficulties cannot receive a peaceful solution; and we express the earnest hope that no troops of the Confederate States be introduced among us, as we believe it would be eminently calculated to produce civil war.

11. *Resolved,* That in the language of Washington, in his letter of the 17th of September, 1787, to the President of Congress: "In all our deliberations on this subject we have kept steadily in view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, and perhaps our national existence." And therefore we will maintain and defend the Constitution of the United States and the laws made in pursuance thereof, and all officers acting thereunder in the lawful discharge of their respective duties.

12. *Resolved,* That John S. Carlile, James S. Wheat, C. D. Hubbard, F. H. Peirpoint, Campbell Tarr, G. R. Latham, Andrew Wilson, S. H. Woodward, and James W. Paxton be a central committee to attend to all the matters connected with the objects of this convention; and that they have power to assemble this convention at any time they may think necessary.

13. *Resolved,* That each county represented in this convention, and any others that may be disposed to co-operate with us, be requested to appoint a committee of five, whose duty it shall be to correspond with the central committee, and to see that all things necessary be done to carry out the objects of this convention.

14. *Resolved,* That the central committee be instructed to prepare an address to the people of Virginia, in conformity with the foregoing resolutions, and cause the same to be published and circulated as extensively as possible.

By order of the convention.

JOHN W. MOSS, *President.*

G. L. CRANMER,
M. M. DENT,
C. B. WAGGENER,
Secretaries.

Under the eighth of which resolutions delegates to a convention were chosen on the 4th of June, 1861, and met in the city of Wheeling on the 11th of that month, and adopted the following declaration on the 13th, two days after they met.

A declaration of the people of Virginia, represented in convention, at the city of Wheeling, Thursday, June 13, 1861.

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed; and when any form or organization of government proves inadequate for, or subversive of this purpose, it is the right, it is the duty of the latter, to alter or abolish it. The bill of rights of Virginia, framed in 1776, reaffirmed in 1830, and again in 1851, expressly reserves this right to a majority of her people. The act of the general assembly, calling the convention which assembled at Richmond in February last, without the previously expressed consent of such majority, was therefore a usurpation; and the convention thus called has not only abused the powers nominally intrusted to it, but with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitably subject them to a military despotism.

The convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the government of the United States, and against the citizens of neighboring States, with whom they have heretofore maintained friendly, social, and business relations.

It has attempted to subvert the Union founded by Washington and his co-patriots in the former days of the republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country.

It has attempted to transfer the allegiance of the people to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees.

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy, for offensive as well as defensive purposes.

It has, in conjunction with the State executive, instituted, wherever their usurped power extends, a reign of terror, intended to suppress the free expression of the will of the people, making elections a mockery and a fraud.

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriation of the property of the Federal Government, and by organizing and mobilizing armies, with the avowed purpose of capturing or destroying the capital of the Union.

They have attempted to bring the allegience of the people of the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended ordinances treason against the former.

"We, therefore, the delegates here assembled in convention to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy Commonwealth must be reduced unless some regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the universe for the rectitude of our intentions, do hereby, in the name and on behalf of the good people of Virginia, solemnly declare that the preservation of their dearest rights and liberties, and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said convention and executive, tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said convention and executive, whether legislative, executive, or judicial, are vacated."

This convention continued in session several weeks, and on the 19th of June, the following ordinance was adopted:

An ordinance for the reorganization of the State government, passed June 19, 1861.

The people of the State of Virginia, by their delegates assembled in convention at Wheeling, do ordain as follows:

1. A governor, lieutenant governor, and attorney general for the State of Virginia shall be appointed by this convention to discharge offices by the existing laws of the State, and to continue in office for

six months, or until their successors be elected and qualified; and the general assembly is required to provide by law for an election of governor and lieutenant governor by the people as soon as in their judgment such an election can be properly held.

2. A council, to consist of five members, shall be appointed by this convention to consult with and advise the governor respecting such matters pertaining to his official duties as he shall submit for consideration, and to aid in the execution of his official orders. Their term of office shall expire at the same time as that of the governor.

3. The delegates elected to the general assembly on the 23d day of May last, and the senators entitled under existing laws to seats in the next general assembly together with such delegates and senators as may be duly elected under the ordinances of this convention, or existing laws, to fill vacancies, who shall qualify themselves by taking the oath or affirmation hereinafter set forth, shall constitute the legislature of the State, to discharge the duties and exercise the powers pertaining to the general assembly. They shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected. They shall assemble in the city of Wheeling on the 1st day of July next, and proceed to organize themselves as prescribed by existing laws in their respective branches. A majority in each branch of the members qualified as aforesaid shall constitute a quorum to do business. A majority of the members in each branch thus qualified, voting affirmatively, shall be competent to pass any act specified in the twenty-fourth section of the fourth article of the constitution of the State.

4. The governor, lieutenant governor, attorney general, members of the legislature, and all officers now in the service of the State, or of any county, city or town thereof, or hereafter to be elected or appointed for such service, including the judges and clerks of the several courts, sheriffs, commissioners of the revenue, justices of the peace, officers of the city and municipal corporations, and officers of militia, and officers and privates of volunteer companies of the State, not mustered into the service of the United States, shall each take the following oath or affirmation before proceeding in the discharge of their several duties:

"I solemnly swear (or affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the State of Virginia, or in the ordinances of the convention which assembled at Richmond on the 13th of February, 1861, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention which assembled at Wheeling on the 11th of June, 1861."

If any elective officer, who is required by the preceding section to take such oath or affirmation, fail or refuse so to do, it shall be the duty of the governor, upon satisfactory evidence of the fact, to issue his writ declaring the office to be vacant, and providing for a special election to fill such vacancy, at some convenient and early day, to be designated in said writ; of which due publication shall be made for the information of the persons entitled to vote at such elections; and such writ may be directed, at the discretion of the governor, to the sheriff or sheriffs of the proper county or counties, or to a special commissioner or commissioners to be named by the governor for the purpose. If the officer who fails or refuses to take such oath or affirmation be appointed by the governor, he shall fill the vacancy without writ; but if such officer be appointed otherwise than by the governor or by election, the writ shall be issued by the governor, directed to the appointing power, requiring it to fill the vacancy.

ARTHUR J. BOREMAN,
President.

G. L. CRANMER, *Secretary.*

This convention, in pursuance of the declaration and ordinance aforesaid, elected a governor, lieutenant governor, and attorney general; each to serve for six months, and until their successors could be elected by the people of the State (which election was had on the 23d day of May, 1862). The governor, by proclamation, convened the legislature, under and by virtue of the power vested in him by the constitution of the State so to do, to meet in the city of Wheeling on the ——— day of July, 1861, and addressed an official letter to the President of the United States, calling upon him, as the

Chief Executive of the United States, to aid him, as the executive of the State, in suppressing the insurrection in the State, and to protect the people of the State from domestic violence. To this letter the President of the United States responded, recognizing the governor, thus elected by the June convention, as the chief magistrate of the Commonwealth of Virginia.

On the 9th day of July, 1861, the legislature elected senators of the United States, who were admitted on the 13th day of July to seats in the United States Senate, as senators from the State of Virginia.

On the 20th of August, 1861, the convention at Wheeling passed the following ordinance:

An ordinance to provide for the formation of a new State out of a portion of the territory of this State.

Whereas it is represented to be the desire of the people inhabiting the counties hereinafter mentioned to be separated from this Commonwealth, and to be erected into a separate State and admitted into the Union of States and become a member of the Government of the United States:

The people of Virginia, by their delegates assembled in convention at Wheeling, do ordain that a new State, to be called the State of Kanawha, be formed and erected out of the territory included within the following described boundary: Beginning on the Tug Fork of Sandy River, on the Kentucky line, where the counties of Buchanan and Logan join the same, and running thence with the dividing lines of said counties and the dividing line of the counties of Wyoming and McDowell to the Mercer County line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh County line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier, and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton to the southwest corner of Hardy County; thence with the dividing line of the counties of Hardy and Tucker to the Fairfax Stone; thence with the line dividing the States of Maryland and Virginia to the Pennsylvania line; thence with the line dividing the States of Pennsylvania

and Virginia to the Ohio River; thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning, including within the boundaries of the proposed new State the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Woods, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke, and Hancock.

2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new State, as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a constitution for the government of the proposed State.

3. The convention hereinbefore provided for may change the boundaries described in the first section of the ordinance, so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley, and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries or to the counties mentioned in this section, if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed State, and shall elect delegates to the said convention, at elections to be held at the time and in the manner herein provided for.

4. Poll books shall be prepared under the direction of the governor for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed, "For the new State," the other "Against the new State." And it shall be the duty of the commissioners who superintend, and the officers who conducted the election in May last, or such other persons as the governor may appoint, to attend at their respective places of holding

elections, and superintend and conduct the election herein provided for. And if the said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending the said election, and to appoint officers to conduct the same. It shall be the duty of the persons superintending and conducting said election to employ clerks to record the votes, and to indorse on the respective poll books the expenses of the same.

If, on the day herein provided for holding said election, there shall be in any of the said counties any military force, or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of the commissioners superintending, and officers conducting said election, and the clerks employed to record the votes, each, before entering upon the duties of his office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll-books, and ascertain the number of votes recorded in each, and make a return thereof to the secretary of the Commonwealth, in the city of Wheeling, which return shall be in the following form, or to the following effect:

"We, ———, commissioners, and ———, conducting officer, do certify that we caused an election to be held at ———, in the county of ———, at which we permitted all persons to vote that were entitled to do so under existing laws, and that offered to vote, and that we have carefully added up each column of our poll-books, and find the following result:

"For a new State, ——, votes; against a new State, —— votes.

"Given under our hands this —— day of ——, 1861."

"Under which certificate there shall be added the following affidavit:

"——— county, to wit:

"I, ——, a justice of the peace, (or any officer now authorized by law to administer oaths), in and for said county, do certify that the above-named commissioners and conducting officer severally made oath before me that the certificate by them above signed is true.

"Given under my hand this —— day of ——, 1861."

The original poll-books shall be carefully kept by the conducting officers for ninety days after the day of the election, and upon the demand of the executive shall be delivered to such person as he may authorize to demand and receive them.

5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new State, who has been elected from their county to the convention, hereinbefore provided for, and shall certify to the Secretary of the Commonwealth the name or names of the person or persons so elected to the said convention.

6. It shall be the duty of the governor, on or before the 15th day of November next, to ascertain and by proclamation make known the result of the said vote: and if a majority of the votes given within the boundaries mentioned in the first section of this ordinance shall be in favor of the formation of a new State, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling on the 26th day of November next, and organize themselves into a convention: and the said convention shall submit, for ratification or rejection, the constitution that may be agreed upon by it to the qualified voters within the proposed State, to be voted upon by said voters on the fourth Thursday in December next.

7. The county of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monongalia, Preston, and Wood shall each elect two; and the other counties named in the first section of this ordinance shall each elect one delegate to the said convention. And such other counties as are described in the third section of this ordinance shall, for every seven thousand of their population according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred: but each of said counties shall be entitled to at least one

delegate. The said delegate shall receive the same per diem as is now allowed to members of the general assembly; but no person shall receive pay as a member of the general assembly and of the convention at the same time.

8. It shall be the duty of the governor to lay before the general assembly, at its next meeting, for their consent, according to the Constitution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new State, and also in favor of the constitution proposed to said voters for their adoption.

9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of the said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.

The lands within the proposed State of non-resident proprietors shall not in any case be taxed higher than the lands of residents therein. No grant of lands or land warrants issued by the proposed State shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last which shall be located on lands within the proposed State now liable thereto.

10. When the general assembly shall give its consent to the formation of such new State it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the Union of States.

11. The government of the State of Virginia, as reorganized by this convention at its session in June last, shall retain, within the territory of the proposed State, undiminished and unimpaired, all the

powers and authority with which it has been vested, until the proposed State shall be admitted into the Union by the Congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said reorganized State government in any county which shall not be included within the proposed State.

A. I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

Under this ordinance the people within the boundary prescribed, having voted almost unanimously for a new State, and having elected delegates to a convention as provided for, those delegates thus elected from the counties named lying in the boundaries of the proposed new State met, and formed the constitution now before the committee, which was, on the 3d of April, 1862, ratified and adopted by the people of the counties named by the vote accompanying the constitution; and, as required by the ordinance, the legislature of the State of Virginia was convened by proclamation of the governor, and passed the act accompanying the constitution, giving the assent of the legislature of Virginia to the formation of the proposed State of West Virginia.

ELBERT H. CALDWELL.
JAMES W. PAXTON.
E. B. HALL.

APPENDIX D.

COMMONWEALTH OF VIRGINIA.

INVESTMENTS IN CAPITAL STOCK.

Investments in Companies Lying Wholly Within the Territory Now Constituting the Commonwealth of Virginia:		
Banks	$ 2,108,591.00	
Turnpike and Road Companies	1,897,747.22	
Bridge Companies	49,622.16	
Navigation Companies	908,173.17	
Railroad Companies	13,713,256.55	
Alexandria Canal Company	272,000.00	
Total Investment in Virginia Companies		$18,949,390.10
Percentage of Total Investment 62.9120		
Investments in Companies Lying Wholly Within the Territory Now Constituting the State of West Virginia:—		
Banks	$ 391,800.00	
Turnpike and Road Companies	700,103.49	
Bridge Companies	78,412.50	
Navigation Companies	210,500.00	
Total Investment in West Virginia Companies		$1,380,815.99

Brought forward		$30,330,206.09
Percentage of Total Investment .. 4.5844		
Investments in Inter-State Companies:—		
Turnpike and Road Companies	$ 175,108.58	
James River and Kanawha Company (3.49% located in West Virginia)	9,245,140.46	
Winchester and Potomac Railroad Company	120,000.00	
Total Investments in Inter-State Companies		9,540,249.04
Percentage of Total Investment 31.6736		
Chesapeake and Ohio Canal Company; Maryland Division		250,000.00
Percentage of Total Investment..0.8300		
Total Investment in Capital Stock		$30,120,455.13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

ORIGINAL No. 3.

COMMONWEALTH OF VIRGINIA, Plaintiff,

vs.) In Equity.

STATE OF WEST VIRGINIA, Defendadt.

Statement prepared by Mr. Thomas Bird Dixcy, Accountant for West Virginia, at the request of Mr. Justice Hughes on the hearing of the above case.

STATEMENT NO. ONE.

All State Expenditures Within the Territory now Constituting the Commonwealth of Virginia From March 19, 1823, to January 1, 1861.

Covington and Ohio Railroad:—	
Total Expenditure, (Record, p. 373; item 2.)	$2,787,128.33
Charged by Master to West Virginia, (Report, p. 83.),	1,146,460.42
Balance chargeable to Virginia,	$1,640,667.91

Appropriations to Turnpikes and Roads, wholly within the territory now constituting the Commonwealth of Virginia, (Record, bottom p. 1059.)		791,888.04
Construction of the Blue Ridge Railroad, (Record, top p. 1060.)		1,604,824.73
Bridge at Covington, (Record, p. 1060; item 2.)		6,007.07
Virginia's proportion, based on actual cost and mileage, of appropriations to to turnpikes and roads extending into and between the two states as at present constituted, (Record, p. 1060; item 3.)		247,289.33
Birthplace of Washington; Land, (Record, p. 1061; item 4.),†		139.21
Portrait of Chief Justice Marshall, (Record, p. 1061; item 8.)		500.00
Gun Houses in Virginia, (Record, p. 1061; item 10.)		1,000.00
Cannon House; 71st. Regiment, (Record, p. 1061; item 12.)		110.00
Institute for the Deaf, Dumb and Blind, (Record, p. 1061; item 17.)		100,661.94
Eastern Lunatic Asylum; Williamsburgh:—		
Buildings, (Record, p. 1061; item 20.)		68,264.19
Gas installation, (Record, p. 1061; item 21.)		6,000.00
Enclosure walls, etc., (Record, p. 1061; item 22.)		13,161.00
Additional charges on buildings, etc., (Same; item 23.)	$38,589.00	
Less amount charged by Master to Ordinary Expenses, (Report, p. 135; item 19.)	5,000.00	33,589.00
Furniture, buildings, land, etc., (Record, p. 1061; item 24.)		7,266.00
Gun House at Alexandria, (Record, p. 1062; item 3)		900.00
Gun House at Richmond, (Record, p. 1062; item 4.)		1,079.09
Jefferson Statue, (Record, p. 1062; item 16)		9,950.00
Lot on Governor Street, (Record, p. 1062; item 21)		983.92
Museum property, (Record, p. 1062; item 22)		6,958.50
Medical College of Virginia, at Richmond, (Record, p. 1062; item 24)		25,000.00
Monroe Monument and burial, (Record, p. 1063; item 1)		3,887.54
Margaret Academy, Accomac County, (Record, p. 1063; item 2)		1,500.00
Penitentiary:		
Erecting Hospital, (Record, p. 1063; item 7)		9,346.98
Lot, (Record, p. 1063; item 8)		3,000.00
Pipe for water supply, (Record, p. 1063; item 9)		1,600.50
State Courthouse, (Record, p. 1064; item 2)		22,387.54
Capitol Square, Governor's Mansion, etc., (Record, p. 1064; item 3)		12,278.47
University of Virginia, (Record, p. 1064; item 8)		25,000.00
Virginia Military Institute:		
Buildings, (Record, p. 1064; item 9)		151,000.00
Statue of Washington, (Record, p. 1064; item 10)		10,000.00
Washington College, (Record, p. 1064; item 11)		8,114.64
Warehouses purchased, (Record, p. 1064; item 12)		37,550.15
Washington Monument, at Richmond, (Record, p. 1064; item 13)		169,706.81
Western Lunatic Asylum, Staunton:		
Buildings, (Record, p. 1064; item 18)		160,642.37
Water, gas and heating plant, (Record, p. 1064; item 19)		40,685.00
Land, enclosure walls, etc., (Record, p. 1064; item 20)		25,988.01
Support, land, etc., (Record, p. 1064; item 21)	$10,700.00	

Less support charged by Master to Ordinary Expenses, (Report p. 135; item 19)		7,450.01	3,249.99
Surveys:			
Total, (Record, p. 374; item 55 & p. 1063; item 16)		$250,206.56	
Less charged by the Master to:			
West Virginia, (Report, p. 83; item 55)	$ 60,873.19		
Ordinary expenses, (Report, p. 135; item 27).	106,983.67	167,856.86	
Balance, chargeable to Virginia			82,349.70
Total			$ 5,334,527.63

STATEMENT NO. TWO.

Investments, by the Commonwealth of Virginia, in the Capital Stock of Companies incorporated for enterprises of public improvement and convenience, from March 19, 1823, to January 1, 1861.

	Total subscribed by the State	Cost of property located in Virginia	West Virginia
Investments in the Capital Stock of Companies whose property lay wholly within the territory now constituting the Commonwealth of Virginia:			
Banks, (Record, p. 1059)		$ 2,108,591.00	
Turnpike and Road Companies, (Record, p. 1059)		1,897,747.22	
Bridge Companies, (Record p. 1059)		49,622.16	
Navigation Companies, (Rec. p. 1059)		908,173.17	
Railroad Companies (Rec. p. 1059)		13,713,256.55	
Alexandria Canal Company, (Record, p. 1060)		272,000.00	
Total Investment in Virginia Companies.	$18,949,390.10		
Investments in the Capital Stock of Companies whose property lay wholly within the territory now constituting the State of West Virginia:			
Banks:			
Northwestern Bank of Virginia, (Record, p. 820 A)			$ 341,800.00
Fairmont Bank, (Record, p. 820A)			50,000.00
Turnpike and Road Companies, (Record, p. 820 A)			700,103.49
Bridge Companies, Rec. p. 820 A)			78,412.50
Navigation Companies, (Record, p. 820 A)			210,500.00
Total Investment in West Virginia Companies	1,380,815.99		
Investments in the Capital Stock of Companies whose property extended into and between the			

territory now constituting the two States:			
Record,(p. 375; items 70 to 80, inclusive):			
Berkeley & Hampshire Turnpike Co	$6,572.00	1,249.53	15,322.47
Cross Roads & Summit Pt. Turnpike Company	6,000.00	3,217.20	2,728.80
Giles, Fayette & Kanawha Turnpike Company	44,991.60	1,070.80	43,920.80
Huntersville & Warm Springs Turnpike Company	6,159.24	4,843.63	1,315.61
Hardy & Winchester Turnpike Company	23,400.00	7,672.86	15,727.14
Hillsborough & Harper's Ferry Turnpike Company	6,000.00	5,857.20	142.80
Martinburgs & Winchester Turnpike Company	27,000.00	11,045.70	15,954.30
Morgan & Frederick Turnpike Co	8,005.00	2,134.67	5,870.33
Mountain Lake & Salt Sulphur Springs Turnpike Company	4,800.00	4,000.00	800.00
North Frederick Turnpike Company	11,325.00	10,002.24	1,322.76
Raleigh & Wythe Line Turnpike Co	400.00	106.67	293.33
Berryville & Charlestown Turnpike Company (Record, pp. 373 & 1061. Master's Report, p. 64; item 6)	20,455.74	8,523.22	11,932.52
James River & Kanawha Company:			
Record, pp. 820 A and 820 M $9,547,582.21			
Less amount charged by Master as an expenditure within the territory of West Virginia 302,441.75			
(Report, p. 83; items 10 to 14, inclusive).	9,245,140.46	8,922,489.06	322,651.40
Whitcester & Potomac Railroad Co., (Record, pp. 373 & 1060)	120,000.00	44,208.00	75,792.00
Chesapeake & Ohio Canal Company; Maryland Division, (Record, p. 1061)	250,000.00	250,000.00	
Total	$30,120,455.13	$28,225,810.88	$1,894,644.25

STATEMENT NO. THREE.

Loans by the Commonwealth of Virginia to Companies incorporated for enterprises of public improvement, from March 19, 1823, to January 1, 1861.

	Total loaned by the State	Cost of property in Virginia	West Virginia
Loans to Railroad Companies whose Railroads lay wholly within the territory now constituting the commonwealth of Virginia; unpaid January 1, 1861. (Record, p. 1060)	$2,930,000.00	$2,930,000.00	
Loan to Winchester & Potomac Railroad; (Record,			

pp. 489 & 1060. Master's Report, p. 63). 63. 16% in West Virginia.....	150,000.00	55,260.00	$94,740.00
Loan to James River & Kanawha Company; (Record, pp. 490 & 1063. Master's Report, p. 710. 3.49% in West Virginia.....	60,000.00	57,906.00	2,094.00
Total.....	$3,140,000.00	$3,043,166.00	$96,834.00

It will be observed that statement No. 1 applies alone to moneys expended by Virginia within the territory of Virginia on properties wholly owned and continuing the property of the State of Virginia after the division.

It will be observed from statement No. 2. that it consists wholly of the investment in stocks where the property of the companies was located either in what is now Virginia or what is now West Virginia. This statement, in the portion applying to West Virginia, includes bank stock $391,800.00, James River and Kanawha Company stock $322,651.40 and Winchester and Potomac Railroad Company stock $75,792.00, and bonds $94,740.00, which Virginia has admitted was not a state expenditure within the meaning of the first section of the Ordinance and in third paragraph of the decree.

Statement No. 3 shows the loans made to companies and where the property of the company to which the loan was made is situated.

Respectfully submitted,

WILLIAM G. CONLEY,

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Feb. 10, 1911.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

Original, No. 3.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF ON BEHALF OF THE BONDHOLDING CREDITORS OF VIRGINIA TO REPLY TO PART III OF BRIEF FOR DEFENDANT.

Part III of defendant's brief was not filed until after the close of the argument at the bar, and leave was allowed to reply thereto.

For brevity sake I will refer to it hereafter as Senator Spooner's brief.

Taking up his points in the order in which they are presented in his brief the first one is:

> "This court has never decided that it is a settled rule of public law that where a State is divided into two or more States, in the adjustment of liabilities between each other, the debts of the parent State should be ratably apportioned among them."

It is not altogether apparent whether the Senator intends to lay stress on the word "decided," and thereby imply that the declaration made by Justice Field, in Hartman *vs.* Greenhow, was merely *obiter dictum,* or whether he means to assert that the rule as stated by Justice Field is not in accordance with the statement of the rule as usually made by writers on public or international law and by other accepted authorities.

If he means that the declaration of Justice Field was not pertinent and material to the judgment of the court, whose opinion and judgment he was announcing, a brief reference to the case will determine that.

In Hartman *vs.* Greenhow, 102 U. S., on page 674, it is said:

> "The principal question for determination, as thus seen, is the validity of the statute of the State requiring the tax levied upon its bonds to be deducted from the coupons for interest, originally attached to them, when the coupons are presented for payment, so far as it applies to coupons separated from the bonds and held by different persons.
>
> "To fully understand this question, it will be necessary to make a brief reference to the legislation of the State upon her indebtedness."

And then, after discussing a question of jurisdiction that lay in the way, the opinion proceeds (on page 676):

> "We proceed, therefore, to consider the legislation of the State upon her indebtedness. A brief sketch of it will perhaps enable us better than in any other way to exhibit the question for our determination, and indicate the solution it should receive."

So it is manifest that a consideration of all the legislation of the State upon her indebtedness was recognized as essential to a proper determination of the matter in hand.

The holder of the coupon for interest presented it to the

tax collector in payment of taxes due by him, and the tax collector declined to receive it.

If the holder had a right to insist that his coupon should be received in payment of his taxes, that right accrued to him only under the act of March 30, 1871, known as the "Funding Act."

By that act the State had undertaken to apportion her public debt into two parts. One part, amounting to two-thirds of the entire debt, was estimated to be the proper share to be borne by Virginia, and for this amount Virginia gave to the original bondholder her new bond with six per cent interest, evidenced by the coupons attached to the new bond, and provided that these coupons should be received by the State in payment of any taxes or dues to the State, and this was written on the face of the coupon.

The other part of the debt, amounting to the remaining one-third, was estimated to be the proper share to be borne by West Virginia as her just or equitable share of the public debt, and for this amount the bondholder received from the State a certificate setting forth the amount of the bond not funded, with interest thereon, and that payment thereof would be provided for in accordance with such settlement as might be subsequently had between the two States, and that Virginia would hold the bond so surrendered, so far as it was not funded, in trust for the holder or his assignees.

Suppose this court in its consideration of all the statutes and the history of the case had found that in 1861 the two States had by a solemn, valid compact, made between them, agreed that West Virginia's share of this public debt should be ascertained in accordance with the plan prescribed in the ninth section of the Wheeling ordinance. It must then have held that the act of 1871, which had estimated West Virginia's share to be one-third of the whole debt, and had proceeded to make a settlement on that basis, was in violation of the obligation of the contract made between the two States in 1861, and that said act was, for that reason, void

and of no effect, and instead of reversing the judgment of the Court of Appeals of Virginia it would have affirmed it, although not on the grounds stated by the lower court.

It did, however, reverse the judgment of the Court of Appeals of Virginia, and it did so for the reasons stated by Justice Field. These reasons embraced the plan of ascertainment of West Virginia's share, in accordance with the doctrines of public or international law, as stated in the opinion of the court, and without the statement of that doctrine the decision would have been meaningless and pointless.

Hence we conclude the statement of that doctrine, in the opinion of the court, was not *obiter*, but relevant, material and essential to the decision announced.

II.

Senator Spooner's second point is thus stated:

> "It can hardly be accurately said that it is a settled rule of international law, that where a State is divided into one or more States, the debt of the parent State, retaining its personality with diminished territory and resources, is, in the absence of special agreement, to be ratably apportioned between them."

To this version of the rule we readily assent, and we do not remember to have seen the rule so stated by any writer. Indeed, one obvious objection to the rule as stated and oppugned by the Senator, is the serious difficulty that lies in the premise of "dividing a State into *one* State," and this difficulty is not removed by the alternative of "or more States." But, assuming that what is meant is "dividing a State into 'two or more States,'" and that Justice Fields' statement of the rule, in this form, is challenged, we are prepared to vindicate Justice Fields' accuracy, and to maintain that in this form his statement of the rule is supported by reason and authority.

Whether or not a rule of law exists, and what is its exact form of expression, can be ascertained only by resort to those sources of information that are usually relied on as authoritative and controlling.

Senator Spooner appears to rely on Captain Edwin F. Glenn, U. S. A., as one of such sources, who, in his "Handbook of International Law," does indeed state, as his view, that

> "Treaties of alliance, of guaranty, or of commerce, are not binding upon the new State, nor is it liable for the general debt of the parent State."

This statement, so far as it embraces treaties of alliance, of guaranty, or of commerce, is to be found in all the writers; the additon, "Nor is it liable for the general debt of the parent State," is Captain Glenn's own original discovery. He cites as his authority Hall's Int. Law, 96-97, and he also cites Kent Comm., 25, where this addition does not appear; but he accounts for its non-appearance by the comment on Chancellor Kent's version of the rule that "this is true in the one case of the State so splitting up into parts as to completely lose its identity," which, he intimates, was overlooked by Chancellor Kent.

With Captain Hall's work, as the result of the lucubrations of a young army officer emulous of the fame of General Halleck, we are disposed to be liberal; but, for all practical purposes, we are inclined to prefer as our guide that "Digest of International Law of the United States, Taken from Documents Issued by Presidents, and Secretaries of State, and from Decisions of Federal Courts, and Opinions of Attorneys General, Edited by Francis Wharton, in Three Volumes, Washington, Government Printing Office, 1886," where, in volume 1, page 19, the rule is thus stated:

> "In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division

> are ratably binding on the different parts; for, as Story says, 'The division of an empire creates no forfeiture of previously vested rights of property.' And so, *eo converso*, where several separate States are incorporated into one sovereignty, the rights and obligations that belonged to each before the union are binding upon the new State; but, as General Halleck points out, of course the rule must be modified to suit the nature of the union formed and the characters of the act of incorporation in each particular case."

And again quoting from authorities it is said:

> "In the separation and rearrangement of nations in Europe, special provisions are usually made for the payment of public debts; and the principle seems admitted that, in case of a division of a State, each new State is bound for the whole debt contracted by the former; and in case of a union of States, it seems equally clear that as the whole must defend the part in war, which is the international process of attachment it must practically pay the debt, although the foreign power may look only to the people and land of the State which made the contract. The formation of the new States so alters the nature of all securities the creditor looked to, that the new State has a general obligation to see that he does not suffer by the change."
>
> *Ibid.*, p. 22.

We may be excused from following with acute nicety the views of Mr. Hall and the other English and Continental writers so profusely quoted by Senator Spooner when we find those of Wheaton, Kent, Halleck, and other American writers adopted by the Secretary of State, the Attorneys-General of the United States, and the Federal courts, so admirably compiled, arranged and digested by Dr. Francis Wharton, and found to be so entirely in accord.

A clever review of this work of Dr. Wharton appeared in the *Edinburgh Review*, and was reprinted in the *Littell's Living Age* for August 27, 1887. The reviewer said:

> "So that whilst the book contains definite propositions of international law and conduct, as laid down by American judges and statesmen, and, in this sense is essentially a digest of international law, it is at the same time, a collection of public documents and extracts of the highest historical value. But at present we are wholly without such a work as that before us, and the student of international law in this country, has only the ponderous and comprehensive work of Sir Robert Phillimore, or the more concise and elementary work by Mr. Hall, together with other works of a similar character, or monographs on some special subject."

From which we may infer that Dr. Wharton's digest is regarded even in Great Britain as the best work on the subject of international law.

Mr. Hannis Taylor is referred to by Senator Spooner as an author "quoted in the brief of counsel for the bondholding creditors." It is hardly noteworthy, but it would have been perhaps more accurate to have said "quoted in the brief of counsel for West Virginia, and commented on in the brief of counsel for the bondholding creditors," because the only ground that counsel for the creditors had for referring to Mr. Taylor was to show that he appeared to have been misapprehended by the counsel for West Virginia (*Vide* my brief, page 21).

It is apparent from the copious quotations from Mr. Hall's work, to be found in the brief of Senator Spooner, that we may do Captain Glenn an injustice in imputing to him the "discovery" of the view by which the text of Chancellor Kent is sought to be amended, for we find on page 14 of the Senator's brief the exact language used by Captain Glenn employed by Mr. Hall.

And it is but just to Mr. Hall to point out that he does concede all that is said by Kent, Wharton, and the other writers in the paragraph quoted on page 15 of the Senator's brief, as follows:

> "No doubt the debt of a State from which another separates itself ought, generally to be divided between the two proportionately to their respective resources, as a matter of justice to the creditors, because it is seldom that the value of their security is not affected by the diminution of the State indebted to them. *But the obligation is a moral, not a legal one.*"

We may not linger long over the distinction between the "moral" and the legal sanctions of international law. Captain Glenn's definition will suffice us for the present:

> "Public international law consists in certain rules of conduct which modern civilized nations regard as binding on them in their relations with one another and enforceable by appropriate means in case of infringement."

III.

Senator Spooner's third point is that the public debt of Virginia as of January 1, 1861, was "inherently a *special*, and not a *general* debt."

He insists on page 32 of his brief:

> "And this distinction between a *general* and a special or local debt is a substantial one. It rests upon sound principles, and is essentially just. Obviously, there is no such distinction when we consider the relation of a State and its creditor. There the purpose for which the loan was effected is immaterial; but in respect of the apportionment of the debt of a State between itself and a new State erected out of its territory, the distinction is not only apparent but important."

He further defines:

> "A general debt, using the phrase as the publicists use it, with reference to debt succession, one would say is a debt, the object and result of which inures to the benefit of all the people subject to the dominion

of the State, the expeditures of which are not susceptible of localization, and which cannot be said to benefit one section more than another, or one class of citizens more than another.

"Such a debt is not, in its nature, apportionable except by special agreement or ratably upon some basis recognized by international law."

We might rest our case upon the exception here stated on the ground that the public debt of Virginia is apportionable between Virginia and West Virginia on "some basis recognized by international law," and that basis is the one stated by Justice Field in Hartman *vs.* Greenhow.

But can it be contended that the public debt of Virginia, as it existed on the first of January, 1861, was a *special or local debt,* as distinguished from a *general debt?*

We have seen that this debt originated from the report of a commission, of which Chief Justice Marshall was the chairman and made the report. That it originated in the execution of a broad, general, comprehensive plan of public internal improvements, designed to benefit the entire State as a unit in interest, and embraced a system of works, such as railroads, canals, turnpikes, bridges, &c., &c., extending throughout the State from the east toward the west. That these works usually began in their construction in the eastern parts of the State for the manifest reason that the material to be used in their construction could be supplied only from the eastern parts—from tide water and through the navigable rivers emptying into the ocean.

Some of these works had been completely constructed at the outbreak of the war, conspicuously the great Northwestern turnpike, extending from Winchester, in the Shenandoah Valley, to the Ohio River, and the turnpike extending from Staunton to the Ohio River. These were the two great lines of trade and travel extending through the present State of West Virginia and connecting with the lines of railway to the coast.

Surely these great works of internal improvement were in no sense "local" or "special." They were as general in their usefulness and their advantage to the entire State and to its population as the atmosphere that covered them.

In Æsop's fable of the Belly and the Members it was objected by all the other organs that the belly was the sole receptable of all the food procured by the efforts of the other members—that in modern phrase the belly was the recipient of "local" and "special" favors—but the reply of the belly was conclusive, and has been accepted in all the ages as adequate and complete.

It has been argued here that inasmuch as the proceeds of the bonds that constitute and evidence the public debt of Virginia were expended in the eastern parts that those parts alone should be required to pay them.

The fact as stated is not true, as appears from the schedules annexed to paragraph 1 of page 30 of the master's report. But suppose the fact was as is stated, would it justify the conclusion claimed?

Suppose these works had been begun on the Ohio River and extended eastwardly through the Alleghanies toward tide water and their construction had been arrested by the war, and that country was disfigured as is eastern Virginia by the unfinished remains of these arrested works, would the claim be tolerated for a moment that West Virginia should now be required to pay the entire debt because all the money had been expended within her limits?

As well might it be claimed that the receiving end of a pipe line, extending through hundreds of miles, should alone be charged with the cost of all the oil and gas placed in it, although that oil and gas was thus distributed through a thousand square miles, bringing light and warmth to thousands of homes.

If a State, in the exercise of its lawful powers, expends a sum of money in one county, and for the benefit of that county and its inhabitants alone, that may be said to be a

local or special debt, and, in case of a partition of the State, that county, or at most that part of the State within which, on the partition, that county falls, should alone be required to pay that debt, but where a State expenditure, although made in one locality only, enures to the benefit of the whole State, or was intended to do so, such expenditure, if it forms part of the public debt, should be borne by the entire State, and not by the part in which it was made.

On page 33 of his brief Senator Spooner supposes the case of the expenditure of $10,000,000 within the limits of the present State of West Virginia *for the benefit of its people,* and that thereafter the State of West Virginia was formed and admitted into the Union with no provision as to the apportionment of this debt, and he asks, "Can there be any doubt, upon principles of international law and of common justice, that the new State should take that entire debt upon its shoulders?" We reply that there can be none. But note, that is because the expenditure was made, not for the benefit of the whole State of Virginia, but only for the benefit of the people of the proposed new State of West Virginia.

But let the supposition be made more in accordance with the facts of this case as charged in the bill and admitted in the answer.

Here all the people of the old State of Virginia were represented in the legislature by their delegates and senators. Those from the western parts urge the creation of a public debt, the proceeds of which shall be applied to the construction of works of internal improvement, whereby a closer and more profitable union between the eastern and the western parts may be effected.

The eastern delegates and senators oppose this, but the western combine with the Piedmont and Valley delegates and senators and carry it through the legislature. The public debt is contracted, and the internal improvements are begun. The war arrests their further construction by the old

State. West Virginia is erected into a new and independent State, and then these works are, by private enterprise, completed in accordance with the original plan. Who now shall bear the burden of the debt contracted? It was contracted for the benefit of the whole people and State, but was constructed only within the territory of the old State. It is charged in the bill, and is not denied—indeed is admitted in the answer—that the western delegates and senators, by their votes, had effected the creation of the debt. Can there be any diversity of opinion as to what equity, good conscience and the principles of public law would dictate? The James River and Kanawha Canal would have proved of great value to the territory now forming West Virginia, but today it is useless and abandoned.

Senator Spooner, on page 35 of his brief, refers to four companies, and even states the fact that they were projected at an early date, 1816. But he fails to note that this was nearly eight years before any part of the public debt of Virginia was created.

Senator Spooner's fourth and last point which we shall notice is that the ninth section of the Wheeling ordinance and the eighth section of the eighth article of the West Virginia Constitution, taken together, form a compact, a special agreement between the two States.

IV.

I have endeavored to show in my former brief, filed in October last, that this alleged contract had no existence in fact, because—

1. The ninth section of the Wheeling ordinance formed no valid feature or term in an ordinance the sole object of which was to provide for the creation of a new State out of part of the territory of Virginia. The convention that framed that ordinance had no power to prescribe to the new

State the plan or method by which she should ascertain the amount of her share of the old public debt of Virginia.

That was altogether a matter of internal and domestic concern, which fell within the exclusive power and control of the new State.

2. The constitution framed by the people of West Virginia made another and different provision for ascertaining that amount, and this constitution altogether superseded and supplanted the provision of the ordinance, just as the constitution of Kentucky superseded the provision of the northwest ordinance of 1787 as to slavery.

Strader *vs.* Graham, 10 Howard, 82.
Scott *vs.* Sanford, 19 Howard, 393.

3. The ninth section of the ordinance was never recognized by any subsequent convention or legislature of either State, and was ignored by the convention that framed the constitution of the State.

4. It was not recognized by Congress in the debates or proceedings had on the admission of the State into the Union, and when enquiry was made in both the Senate and the House of Representatives as to the provision made for the payment of West Virginia's share of the public debt the reply was uniformally made that adequate provision was made in the constitution under which the State was seeking admission.

5. When Virginia, by the act of her legislature, consented to the creation of the new State she did so in express and significant terms, only under the provisions of her constitution.

6. The only ground on which in the proceedings had in this case such alleged compact or agreement was sought to

be maintained was that the State of Virginia had offered the ninth section of the ordinance as a proposition to West Virginia, and that West Virginia had accepted that proposition when she framed her constitution. But, as we have shown, the acceptance was a wide departure, both in form and substance, from the proposition, and hence was a rejection of it.

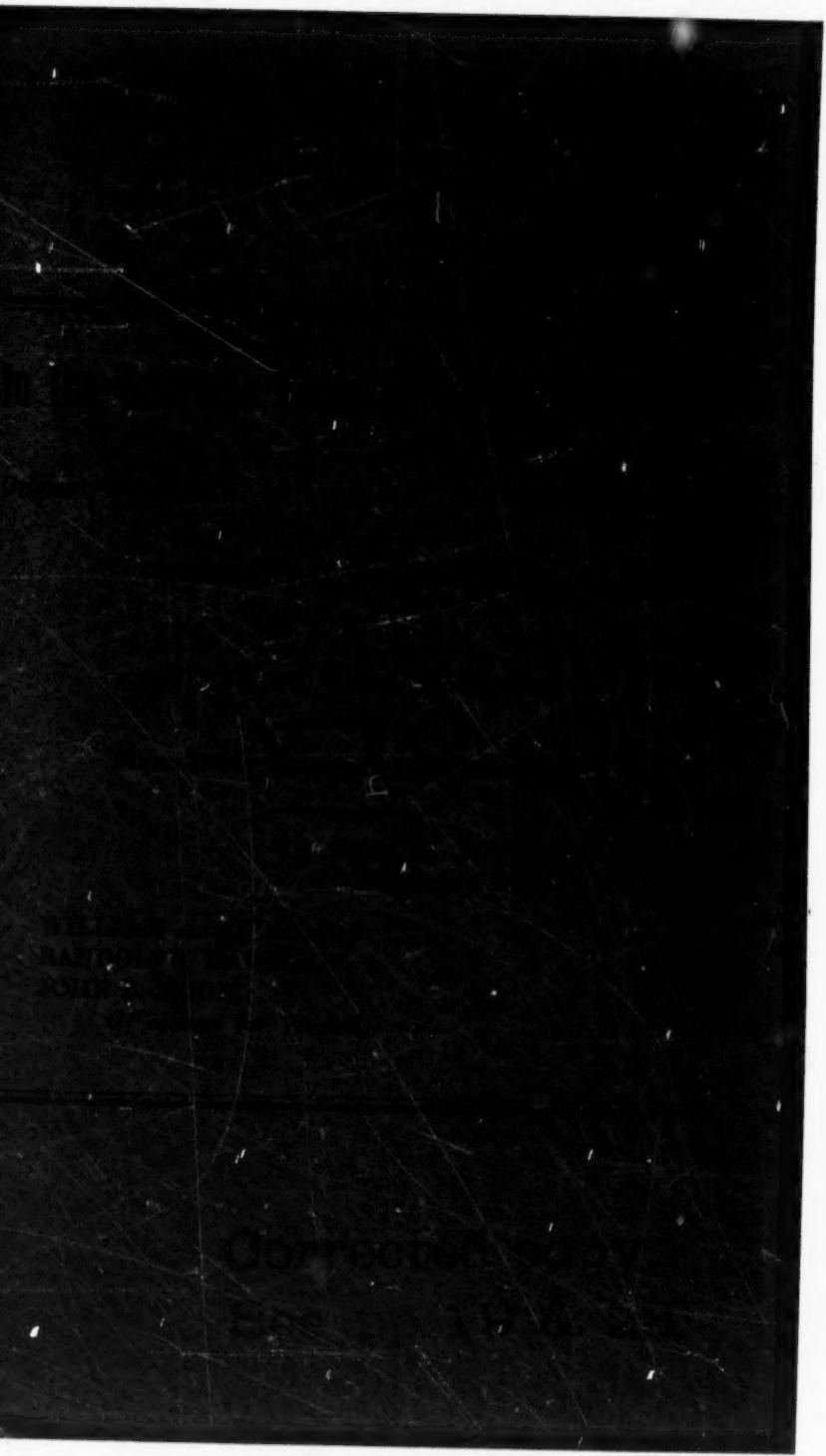
On page 61 of his brief Senator Spooner says: "The question is, What was intended by the framers of the ordinance?"

What the framers of the ordinance intended is immaterial. What was intended by those to whom the ninth section of the ordinance was offered as a proposition for their acceptance? What was intended by the Congress that admitted West Virginia into the Union under her constitution? What was intended by Virginia in her legislative consent to the erection of this new State within her territory?

On page 49 of his brief the Senator insists that the ninth section of the ordinance was claimed in the bill, in paragraph 18, to be one of the grounds on which Virginia asked relief in this case. An examination of that paragraph will refute this notion. That paragraph charged several instances in which West Virginia had fully recognized and admitted her liability for a proportion of the public debt. One of these was in this ninth section, where "a just proportion of the public debt shall be taken upon herself" and another, and immediately following, is the provision in her constitution where she says the new State shall assume an equitable proportion of the public lebt. Nowhere is the plan of ascertainment proposed by the ninth section recognized by Virginia except in the identification of the section as the one that proposed that plan.

HOLMES CONRAD,
Counsel for the Bondholding
Creditors of Virginia.

FEBRUARY 1, 1911.



In the Supreme Court of the United States.

Original, No. 3. October Term, 1910.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

FINAL REPLY BRIEF FOR THE COMPLAINANT.

In view of the elaborate discussion of the case in the Master's Report, in the briefs heretofore filed, and in the recent exhaustive oral arguments of the cause, a succinct reply to some of the points presented in the two latest briefs for the defendant will suffice.

I.

POINTS NOW RELIED ON FOR THE DEFENDANT WHICH DO NOT GO TO THE MERITS.

The contention of counsel for the defendant in this branch of their argument is,

That Virginia has no right to maintain this suit—

1. Because she has no such interest in the subject matter of the litigation as gives her a standing to maintain it, denying that she has any equity either for exoneration, or for contribution.

2. Because she sustains a dual relation to the controversy in that she asserts, as is alleged, several independent causes of action, and sues in a dual capacity, namely, both in her own right, and as trustee for the depositing creditors—that therefore her bill is *multifarious*.

3. Because any duty or liability of West Virginia to make a settlement or to pay anything is not to Virginia, but to the creditors of the undivided State.

4. Because Virginia has been guilty of "laches."

A brief response will dispose of each of these points:

(1)

The statement that Virginia has no interest in this suit in her own right is founded in a singular misapprehension of the facts.

(a) VIRGINIA'S EQUITY FOR EXONERATION.

If a liability rests upon the Commonwealth to pay any part of the common public debt of the undivided State, that circumstance plainly entitles her to have West Virginia contribute to the payment of that common indebtedness to the extent of West Virginia's equitable liability therefor, in exoneration of Virginia.

The view of opposing counsel that no such liability rests upon Virginia is based upon a misapprehension of the meaning and effect of the Funding Act of March 30, 1871, under which over three-fourths of the common debt was funded. Virginia's liability under that Act is defined in the third section thereof.—I West Va's Compilation, pp. 14-15; R. pp. 17-19.

That the contention of counsel for West Virginia, that Virginia was released from all liability for the one-third of the $38,110,855.37 (including accrued interest capitalized and funded), of her old bonds, funded under that Act, by reason of the issue by her of the $12,703,451.79 of "Deferred Certificates" under the terms of the third section of that Act, is conclusively refuted by the decision of the Supreme Court of Virginia in the case of *Greenhow* v. *Vashon*, 81 Va. 342-343. In that case Judge Richardson, delivering the opinion of the court and quoting with approval the dictum of Judge Staples in *Antoni* v. *Wright*, 22 Gratt. 864-5, says:

"It is said that the creditor has released one-third of his debt. I do not so understand it, and I will hazard the assertion, the creditor does not so construe the law. If this was the intention of the framers of the act they have adopted an obscure and equivocal mode of expressing a plain and simple agreement. The creditor surrenders his bond and obtains a new one for two-thirds of his debt, and coupons for the interest. For the remaining one-third the bond is held in trust by the State, and a certificate is given him stating that payment will be provided for in accordance with such settlement as may be made with West Virginia. If that State is faithful to the obligations resting upon her, the creditor will receive the other third also. On the other hand, if she repudiates these obligations there is no agreement or understanding absolving the State from the payment of the whole debt as before the passage of the funding bill."

The following are the terms of the certificates issued under the Act of 1871:

"Copy of Certificate under Act of March 30, 1871.

"Commonwealth of Virginia.

"No. ———.

"Treasurer's Office, Richmond, Va.

"This is to certify that there is due unto ———— heirs, executors, administrators or assigns $———, being one-third of bond surrendered under the provisions of an Act approved March 30th, 1871, entitled, 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. ——, with interest, amounting to $———. Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the State of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded in trust for the holder hereof or his assigns."

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"————————,

"Treasurer of the Commonwealth of Virginia.

"————————,

"Second Auditor of Virginia."

(R. 56-57; I West Va. Compilation 49).

Nor is it true, as gravely contended by West Virginia's counsel, that the subsequent, more or less abortive and ineffectual Funding Acts of March 28, 1879 (R. 21-26; and I West Va. Compilation 17-22), and of February 14, 1882 (R. 26-38; and I West Va. Compilation 22-40), released Virginia from any obligation or liability resting upon her under the Act of 1871 in reference to the third of the antecedent debt of the Commonwealth represented by the bonds deposited with her under that Act and expressed in the third section of the Act of 1871, and in the certificates issued thereunder.

Nor did the Act of February 20, 1892 (R. 38-47; 1 West Va. Compilation 32-40), under which a final adjustment of the two-thirds of the debt distinctly assumed by Virginia has been effected, release Virginia from any duty or obligations resting upon her in respect to the third of the bonds unfunded under the Act of 1871, or the certificates issued therefor.

It is true that each of said Funding Acts, subsequent to that of 1871, by its terms repealed the antecedent Funding Act or Acts: but while such repeal operated to stop any farther funding under such antecedent Acts, as it was designed to do, it could not, of course, operate to impair or affect the contract rights and obligations created by the Acts so repealed, or relieve Virginia from any contractual liability resting upon her under the provisions of those Acts. That such repeal could have any such effect is one of the extraordinary hallucinations into which defendant's counsel have fallen.

Neither the Acts of March 28, 1879, nor February 14, 1882, nor February 20, 1892, called for or required the surrender of any of the certificates issued under the Act of March 30, 1871; or for the substitution of other certificates therefor; or in the slightest degree modified or affected the status of those certificates of 1871, or any contract rights of the holders thereof, or any obligation or liability, contingent or otherwise, of Virginia in respect thereto.

It manifestly results from this, that Virginia has the right to invoke the equitable jurisdiction of this court for her exoneration from any liability resting upon her as to the portion of the common debt represented by the unfunded third of the bonds de-

posited with her under the Act of 1871, and evidenced by the certificates issued by her under that Act, to the extent of West Virginia's ratable equitable liability therefor.

(b) VIRGINIA HAS AN EQUITABLE CLAIM AGAINST WEST VIRGINIA FOR CONTRIBUTION—IN VIRGINIA'S OWN RIGHT.

If Virginia has paid any portion of the common debt resting upon both States, in full, she has an equity, in her own right, to reimbursment by West Virginia, to the extent of the ratable liability of the new State upon the obligations so paid off and redeemed by Virginia. This is the equity of contribution asserted in Paragraph XVI of the Bill (R. 13; 1 West Va. Compilation 10).

All the evidence in support of this claim has not been put into the cause any more than the evidence as to what the share of the recovery payable on any of the other obligations of the Commonwealth will be; and for the further reason that the court has not directed any such inquiry. There are, however, data, evidence, and authentic statements in the record which show that Virginia, since January 1, 1861, has paid off or taken up obligations for interest and for principal existing prior to January 1, 1861, amounting to a very large sum.

For instance, in payment for the Blue Ridge Railroad $625,348.08, Special Master's Report, pp. 47 and 84, and the record returned therewith, p. 487; Appendix to that Record, p. 45, Section 14 of the Act of March 1, 1867. And it also appears from the record that Virginia acquired $118,518.12 of her bonds for her claims against the Winchester & Potomac Railroad, of which $45,000.00 was paid in old bonds, and $66,130.90 in new registered bonds issued for interest upon the old debt. Special Master's Report, pp. 64 aad 84, Record, pp. 462 and 489, and Appendix p. 31.

In addition to this, the statement published as a part of Exhibit No. 3, filed with the bill, the Act of February 14, 1882, shows that Virginia paid on account of interest on old bonds held by the general public from January 1, 1861, to July 1, 1863, $3,462,434.55, and between July 1, 1863, and July 1, 1871, $3,594,289.11. The same public record shows that during the same period, and

before any funding of the share of the debt assumed by Virginia, she redeemed of the common debt dollar bonds to the amount of $3,710,449.67. R., pp. 27-32, 1 W. Va. Compilation, pp. 23-26.

Summarized, the following payments were made by Virginia upon the whole undivided debt in the period mentioned, as shown by said Act of February 14, 1882:

Paid, on account of interest, from Jan. 1, 1861, to July 1, 1871, on bonds held by the general public	$ 7,255,723.66
Dollar bonds redeemed during same period	3,710,449.67
Total sums paid	$10.966,173.33

The statement here referred to was made for the purpose of justifying the readjustment of the State debt proposed by said Act of February 14, 1882. That attempted readjustment proved so unsuccessful and abortive, that, while it was accepted by some of the creditors, chiefly those classes who were given by that Act the largest percentage of their claims in the new bonds tendered, the great mass of the bondholders of the State refused to accede to its terms. To such a large extent was this true, that "not less than twenty-eight million dollars of the public debt" remained, on the 20th of February, 1892, "unfunded under said Act approved February fourteenth, eighteen hundred and eighty-two," as appears from the recitals in the Act of February 20th, 1892. R. 39, 1 West Va. Compilation 32.—See Act of February 20, 1892, printed as Exhibit No. 4 with the bill: R. 38, 1 West Va. Compilation, p. 32.

In addition to the bonds issued under the Acts of February 14, 1882, and February 20, 1892, there were over $2,400,000 of bonds, held by certain educational corporations, which were recognized, assumed and provided for by the ancillary Acts of March 3, 1882, and February 23, 1892, and all of which obligations have since been redeemed and taken up by the Commonwealth, and the contracts represented thereby novated, by the issue of new obligations therefor, pursuant to the provisions of the Act approved February 23, 1892.

See copy of last mentioned Act and statement of bonds retired thereby in the Appendix to this brief.

The claim of Virginia, in her own right, for contribution, is not on account of any bonds issued by her after January 1, 1861, or on account of any bonds issued by her for the two-thirds of the original debt which she assumed, but on account of bonds outstanding prior to January 1, 1861, which were in the hands of the general public on that day, and interest thereon, which have been redeemed by Virginia and paid in full since January 1, 1861—obligations and interest thereon which constituted a part of the $33,897,073.82 of indebtedness ascertained by the Master to have been so outstanding on the 1st of January, 1861.—Masters Rep. 17.

The evidence as to what part of the debt Virginia had so paid off and so held was not called for by the decree of the court; nor was it of any interest to West Virginia for the precise amount of Virginia's interest in her own right to be determined. If she had paid *any portion* of the original debt of the undivided State she would have an equity for contribution against West Virginia and to participation in any recovery ratably and equitably to the extent that she was entitled to such reimbursement from West Virginia.

The record shows that she has paid millions of dollars, not counting such of the bonds held by institutions of learning as were outstanding prior to January 1, 1861, and as she redeemed, or retired under the provisions of the Act of February 23, 1892.

Upon this state of facts the equity of Virginia, in her own right, to contribution is fully sustained.

Either this, or the associated equity of exoneration, would be sufficient to support the jurisdiction of the court. But in addition to these there is her right to invoke the equitable jurisdiction of the court for an accounting with West Virginia in order to such a settlement between them as the complainant has a right to have.

(2)

The contention of West Virginia's counsel, that Virginia cannot maintain this suit because her bill is multifarious in that she,

as they charge, asserts several independent causes of action, and sues in a dual capacity, namely both in her own right and as trustee, has been heretofore fully argued, and effectually disposed of by this court upon the demurrer.—See briefs and oral arguments for complainant, 1 West Va. Compilation 233 to 236, 331 to 332, 333 to 336, 393 to 396; and decision of this court, Idem 434.

In absolute rebuttal of any such defence of multifariousness as is asserted here, see the admirable statement of the rule as now well established in this country given by the distinguished counsel for West Virginia, Mr. Hogg, in his work on Equity Procedure, Vol. I, Sec. 136, quoted at pp. 395-6, 1 West Va. Compilation.

The statement that Virginia is suing here in a dual capacity, namely, in her own right, and as trustee, is incorrect.

Virginia alone is the complainant. She sues distinctly and solely in her own right, and for her own relief and protection.

It is true that she also sustains a fiduciary relation to the bonds and evidences of the common indebtedness which have been confided to her by the creditors of the undivided State; but that circumstance was merely a proper, if not a necessary, incident of the contract she made with the common creditors for funding the two-thirds of their obligations which Virginia undertook to take care of.

It was an arrangement of convenience, if not of necessity, *which did not at all prejudice or affect any right of West Virginia.* Nor did it impair any right of Virginia.

To be sure the bill asks that all proper accounts may be taken to determine the balance due from the State of West Virginia to Virginia in her own right and as trustee: but such an accounting is not prejudicial to West Virginia. It would be merely incidental to an ascertainment of the amount which West Virginia owes.

It must be remembered that Virginia assumed the position of trustee as an essential part of the scheme for the settlement between the public creditors and herself. *She was not a mere volunteer, as were New Hampshire and New York in New Hampshire* v. *Louisiana, and New York* v. *Louisiana*, 108 U. S. 76. In those cases, neither New Hampshire nor New York had the remotest personal interest in the subject matter of the trust. The arrange-

ment in those cases was simply a device to evade the Eleventh Amendment to the Federal Constitution.

Here Virginia has a substantial personal interest in the trust subject. She is not only not a mere volunteer, but the creation of the fiduciary relation and her acceptance of it was a proper and essential part of the plan of settlement.

The trust devolved upon Virginia here was therefore not only a trust coupled with an interest, but a trust evolved from a common duty and a common obligation.

Virginia's position in this regard is radically different from that of the two plaintiff States in *New Hampshire* and *New York* v. *Louisiana*.

In the case of *United States* v. *Nashville, &c., Ry.* 118 U. S. 125, certain coupons were sued upon by the United States in its own name, the defense was interposed that they were held by the United States in trust for the Chickasaw nation of Indians, in pursuance of a treaty with them, and that the claim was barred by statute limitations on account of the United States having no interest except as trustee, and that the suit therefore could not be maintained. The court held, however, "they (the coupons) were held by the United States for a public use in its highest sense," and the suit was sustained.

It is also essentially different and stronger than the position of South Dakota in *South Dakota* v. *North Carolina*, for Virginia did not here buy herself into, or voluntarily accept, a controversy against another State. She merely, as was her right, and her duty to do, for her own protection, and at the same time in discharge of her duty to the common creditors, as a proper and essential incident of the settlement with them, accepted the fiduciary relation defined in the Funding Act of 1871 in reference to the bonds confided to her under that Act.

Even if she had been, by the terms of that Act, released entirely by the common creditors, upon the condition that she would by suit or otherwise secure a settlement with West Virginia for their benefit and her exoneration, she would, we think, clearly have a standing to maintain this suit: but as she was not so released there can be no question as to her right to maintain it, even if she had no personal claim for contribution, or for an accounting, on other equitable grounds.

Each of the grounds discussed under the last two general headings were fully argued, and considered, upon substantially the same state of facts which is now presented, when the cause was heard upon the demurrer, and was then unanimously decided by the court, adversely to the contentions of the defendant. No reason has been shown for overruling that decision in these regards, and we confidently rely upon the same.

See decision of the court upon the demurrer.—R. 132-137; 1 West Va. Compilation, 429-434.

(8)

THE DUTY AND OBLIGATION OF WEST VIRGINIA ARE TO MAKE A SETTLEMENT WITH VIRGINIA, AND NOT WITH THE BONDHOLDERS OF THE UNDIVIDED STATE.

So far, in all the acts and dealings of the two States upon this subject from the birth of West Virginia down to the filing, at the present term, of Parts I and II of the brief for the defendant, both States have acted upon the basis that any settlement would be, and would have to be, between the two States.

West Virginia, through her Governors, Debt Commissioners, and Legislature, has always heretofore recognized this. Her answer in this case, and her entire line of defence down to the present term has been distinctly upon this basis.

It is true that the preamble to the Virginia Funding Act of 1871 (R. 18; 1 West Va. Compilation 14) acquiesces in a settlement between West Virginia and the bondholders, if West Virginia shall so prefer; but that suggestion was in direct conflict with Section 19, of Article X of the then Constitution of Virginia, which commanded that,

> "Sec. 19. The General Assembly shall provide by law for adjusting with the State of West Virginia, the proportion of the public debt of Virginia, proper to be borne by the State of Virginia and West Virginia, and shall provide that such sum as shall be received from West Virginia shall be applied to the payment of the public debt of the State."

This declaration of that preamble was also in conflict with and rendered nugatory by Section 3 of that very Act, which ex-

pressly contemplates and provides for a settlement between the two States (R. 19; 1 West Va. Compilation 15).

No such line of defence is relied on or suggested in the Defendant's Answer. On the contrary that answer assumes and recognizes that any such settlement must be between the two States.—See particularly Paragraphs VIII, and XI,—R. 148, 149 to 154, and II West Va. Compilation 8, 10 to 15.

The entire defence of West Virginia, from the institution of this suit to the filing of the latest brief by her counsel, has been conducted upon this basis, and it is too late for the defendant in the very last stage of the litigation to adopt a different and inconsistent line of defence.

Apart from other influential considerations the compact arising under Section 8 of Article VIII of the first Constitution of West Virginia, and the Acts of the Legislature of Virginia and the United States Congress giving consent to the creation of the new State upon those terms, was a compact between the two States, which Virginia has the right to invoke the jurisdiction of this court to enforce.

(4)

This belated attempt to assert "laches" as a defence against Virginia is without merit.

It is based upon the singular assumption that Virginia is to blame, because she exhausted friendly negotiation before bringing her suit, and did not institute it until after her repeated overtures to West Virginia for an amicable adjustment had all been successively rejected.

Like other defences, unless disclosed by the bill, the defence of "laches" must be asserted in the answer or other defensive pleading.

Here it has never been set up by the answer, or other pleading, and is negatived by the allegations of the bill. It will not be allowed to be set up by amendment of answer long after the filing of same: or after the reference to a Master and the filing of his report.

Dixon v. *Dixon*, 1 Md. Ch. 171;
Thornton v. *Hantze*, 91 Ill. 199;
Webb v. *Fuller*, 83 Me. 405, 22 Atl. 384;
See also 16 Cyc. 176 and 177, and citations.

We ask leave, however, to briefly consider this defence as presented in defendant's brief, because of its relation to other equitable features of the cause.

The defence of "laches," in equity, is only permitted to defeat an acknowledged right on one or both of the following grounds:

(1) That it raises the presumption that the claim has been abandoned or satisfied.

(2) That the party pleading it has been seriously prejudiced by the culpable failure of the plaintiff to assert his claim.

Demuth v. *Old Town Bank*, 85 Md. 315, 37 Atl. 260, 268.
Coles v. *Ballard*, 78 Va. 139, 147;
Wisler v. *Craig's Adm'r*, 80 Va. 22, 30;
Cottrell v. *Watkins*, 89 Va. 101, 19 L. R. A. 754;
Johnson v. *Atlantic Gulf & West India Transit Co.*, 156 U. S. 618, 648;
Selbag v. *Abistbal*, 4 Maule & S., 462;
Morse v. *Seibold*, 147 Ill. 318, 35 N. E. 369, 371;
Hall v. *Otterson*, 52 N. J. Equity 522.

Not one of the grounds upon which such a defence must rest as shown by the authorities cited exists here.

(a) Any presumption of satisfaction of her share of the debt by West Virginia or of abandonment of her claim is absolutely rebutted by the proof that the new State has never paid, and has failed and refused to pay, a dollar on account of the Virginia debt, and that Virginia has persistently urged a settlement.

(b) Nor is there any evidence in the case showing, or tending to show that West Virginia has suffered prejudice from Virginia's forbearance to sue.

No evidence helpful to her has been lost. *The substantial proofs of the debt and of West Virginia's liability for it, are all matters of irrefutable record*, all of which have been kept and

preserved with wonderful accuracy and fidelity, so that the absolute verity of every item of the account and every entry upon those voluminous records, covering the transactions of forty years, has compelled the candid assent of the accountants and the counsel for West Virginia.

On the contrary West Virginia has profited enormously by her long delay in making a settlement with Virginia.

While Virginia has been struggling to meet her just obligations on account of this common debt, and has paid and assumed at least $75,000,000 as of the present year, most of her payments having been contributed years ago "from the scant resources of an impoverished people," West Virginia, husbanding her resources, and compounding her wealth, has not paid one cent.

Instead of her position and ability to pay having been impaired by this long delayed settlement, for the postponement of which she is largely responsible, she has profited so greatly by it, that her taxable resources have increased from a total assessed valuation of $126,060,743 in 1867, to $937,232,718.54 in 1908, an enhancement of 643 per cent.!—See Plaintiff's Exhibit E-3, R. 651.

It appears from this same authentic exhibit that the taxable resources of Virginia increased during the same period from $354,848,482.69 to $661,796,631, or only about 84 per cent.

That comparative schedule of taxable resources, fairly interpreted, demonstrates another thing, namely, that instead of being prejudiced by this lapse of time, West Virginia could, in her present prosperity and affluence—largely the result of the development of her territory by lines of railway which had their inception in the works which represent millions of dollars of Virginia's debt,—pay twenty million dollars to-day, with less inconvenience and less burden upon her people, than she could have paid two million dollars in 1867.

It may not be amiss to call attention to a somewhat conspicuous instance of *laches*, furnished by the defendant in this case, in this: That, although this litigation had been actively progressing and vigorously contested for five years before the cause was, in the spring of 1910, set down for a final hearing, during which long period every defence which the able and resourceful counsel for the defendant could suggest, was set up, no attempt was made

by them until this the very last stage of the litigation, when the issues had all been made up and the case submitted for decision to assert any one of several new and novel alleged grounds of defence which are presented for the first time in the brief filed and the oral arguments made for the defendant at the present term.

Moreover, the defense of laches cannot be interposed against a State. In *Armstrong* v. *The Morrill*, 14 Wal. 144-5, the court citing *Stoughton* v. *Baker*, 4 Mass. 526, holds that no laches can be imputed to the government and that time does not run against a State.

In *Metropolitan R.* v. *Dist. of Columbia*, 132 U. S. 11, the court through Mr. Justice Bradley says: "No restrictive laws apply to the sovereign unless so expressed. And especially no laws affecting a right on the ground of neglect or laches, because neglect or laches cannot be imputed to him. And it matters not whether the sovereign be an individual monarch, or a republic, or a State. The principle applies to all sovereigns. The reason usually assigned for this prerogative is that the sovereign is not answerable for the delinquencies of his agents. But whatever the true reason may be such is the general law—such is the universal law, except where it is expressly waived." See also *Wever* v. *Commissioners*, 18 Wal. 70. In *Gibson* v. *Chouteau*, 13 Wal. 99. *Lindsay* v. *Miller*, 6 Peters 673. *United States* v. *Knight*, 14 Peters 315. *United States* v. *Thompson*, 98 U. S. 489. *Gaussen* v. *United States*, 97 U. S. 584. *United States* v. *Nashville, &c., Ry.*, 118 U. S. 125, *supra*.

It is submitted that the transactions referred to in the cases relied on by the defendant related to such transactions as the protest of negotiable paper, or some entirely private matter where there was no public interest or duty whatever involved.

In *Bannock County* v. *Bell*, 101 American State Reports, 152-3, Note 2, it is stated as the universal rule that statutes of limitation should not run against a State nor can laches be imputed to it, although private parties may be interested along with the State in the matter sued on. See authorities there cited.

In the opinion of the court on the demurrer in this cause (V. 1, p. 433 of West Virginia Compilation) the lapse of time is referred

to, but the demurrer is overruled and an order afterwards entered for an accounting upon the defendants answer which in no manner refers to the matter. This of itself should preclude the question of laches.

II.

UPON THE MERITS.

BASIC PROPOSITIONS ON WHICH THE CASE OF VIRGINIA RESTS.

West Virginia is liable for an equitable proportion of the Virginia debt:

(1) Under the benign principles of Equity and International Law;

(2) Under the conventional agreements and enactments—the constating Acts of the two States, and of the National Congress,—by virtue of which West Virginia came into being.

There is no essential conflict between these postulates. They have already been exhaustively discussed in their various aspects in the principal briefs, and in the oral argument of the cause. So that we deem it sufficient to briefly notice some of the salient points upon this branch of the case.

(1)

Some of the authorities which support the view that West Virginia owes an equitable share of the Virginia Debt under the rules of Equity and Public Law are collated in Appendix No. 1 to the brief of Virginia, printed at pages 163 to 167, Vol. II, West Virginia's Compilation. Others are cited in the briefs for complainant filed at the present term. For others we are indebted to Part III of defendant's brief—Mr. Spooner's contribution thereto. We will not undertake to review these authorities in detail.

An examination of them will show that they are not agreed as to the rule which should obtain in the case of the formation of a new State out of the territory of a pre-existing State. Some of the authorities sanction an apportionment of the antecedent public debt of the original State according to the relative population and areas of the two States. Others according to the taxable resources or revenues, or, what amounts to substantially the same thing, according to the taxable values of the two States.

In a case like this, it would, we respectfully submit, be fair to consider all of these as factors in the consideration and solution of

the problem. It would not be satisfactory to take total taxable values alone, for the reason that it is extremely difficult to determine accurately the relative values of taxable property—particularly the value of personal property in the two Virginias in June, 1863. Land constituted then, and at all times perhaps, the most reliable, stable, and just measure of values. The record shows that both lands and personal property were very greatly depreciated in value in June, 1863, in "Confederate Virginia" and in "Confederate West Virginia;" and that there was by no means any such depreciation in what may be termed "Federal West Virginia."

The Master finds that the depreciation in the value of real estate in "Confederate Virginia" and "Confederate West Virginia" amounted to 50 per cent. as compared with its value in 1860 or 1861, before the War.—Master's Report, pp. 155-6.

The Master was led into the error of accepting the inflated Confederate assessments of personal property in Confederate Virginia. The proofs tended very strongly to show,—a proposition which is undoubtedly a historic truth,—that the personal property in Virginia, including slaves, had depreciated in value in the aggregate at least 50 per cent. as a minimum, as compared with the aggregate value of the personal property in the same territory in 1860 or 1861, before the War.

We will not repeat the argument upon these points presented at pp. 57 to 64 of our principal brief.

They are here referred to and relied upon by way of introduction to the following proposition, namely, that:

Under the circumstances of this case, a fair basis for determining the equitable proportion of the Virginia Debt to be borne by West Virginia, would be to combine territorial area, population, and assessed values of land.

It must be conceded that the circumstances here presented are exceptional.

This case is not only exceptional, but peculiar,—*sui generis.*

As stated in our principal brief: "History furnishes no counterpart, no precise parallel or precedent to guide us, by a clearly blazed path, to a correct conclusion."

Kingdoms, republics, and States have been divided—either by force, by violent revolution, or by conquest; or with their voluntary

consent. Never as here by a consent which rested upon a fiction legalized only by post-natal recognition.

Here, too, it is an unquestioned historic fact, alleged in the bill and not controverted in the answer, that very little of the public debt of Virginia would ever have been contracted, but for the votes in the General Assembly of Virginia of the representatives from the counties now constituting West Virginia, in favor of Acts creating that indebtedness.

Here, too, it appears that the debt was in large measure contracted in reliance, not upon the then existing, but upon the future enhanced values primarily of the lands in the Commonwealth. From the first active inauguration of her Internal Improvement System, it, and the public debt contracted in its furtherance, were mainly designed to develop primarily and chiefly the territory of the Commonwealth, but especially the vast mineral and timber resources then locked up in the mountain fastnesses of West Virginia.

The more important, and by far the most costly, of the turnpikes, canals, and railroads munificently aided by the State, and which would never have been otherwise undertaken, all pointed towards, and were designed ultimately to penetrate, or to effectually serve, West Virginia.

It is true that the completion and the extension into West Virginia of the most important and costly of these great projected channels of commerce, were prevented by the War; but by reason of the large sums already spent upon them by Virginia, and her subsequent generous concessions of the works represented by those expenditures to the companies which afterwards extended the Chesapeake & Ohio and the Norfolk & Western Railways into and through West Virginia, large portions of central and southern West Virginia have been given an access to the Atlantic Seaboard and the markets of the country, without which great and rich sections of that opulent young State would, when this suit was brought, have been practically as inaccessible and as undeveloped, as when they were a primeval wilderness.

The schedule printed as Appendix No. 1, pp. 109-110 of our opening brief, affords a conclusive confirmation of the view here presented: for, directly or indirectly, the large expenditures there

stated, and which represents 29/33rds of the public debt of the Commonwealth, went into lines of transportation which now efficiently serve West Virginia, and over which her vast output of coal, lumber and oil moves in increasing volume to the ports and cities of the Atlantic Seaboard, and to the markets, furnaces and factories of the West, Northwest and the Southwest.

Under these circumstances, it is right that territorial areas—the very areas which have been so enormously enhanced in value, in great part at least, by these internal improvements, which in their origin and development represent ultimately large portions of the Virginia debt—should be potential factors in the solution of the problem of West Virginia's share of that indebtedness.

And so, too, should population be: for there can be no productive development, without population; and in these States—particularly in such a State as West Virginia, with such a virile population as during the last one hundred years has inhabited the territory in her present limits—this is especially true.

If we could get fairly at the taxable resources of the two States in June, 1863, they too should be brought into the account: but, by reason of the confusion, destruction, and disturbance of values incident to the War, it is impossible to ascertain reliably or definitely the true taxable values in good money of the two States at that time.

By the terms of its decree the court seems to have wisely considered land as the most reliable, as it certainly is the most stable and uniform, subject of taxation, and form of property to be found in the two States at that or at any other period. But, if the assessed value of land be taken by itself, it would leave out of the account population and extent of territory, both of which should, we submit, be considered under the circumstances existing here. Not only should population be considered because, under such conditions, it is an element, and a creator of economic values; but areas should come into the account. It is manifest from the great enhancement of values in West Virginia shown by Complainant's Exhibit E-3, R. 651, that the mineral and lumber resources—the products of the lands of that State—are realizing the hopes and expectations of the projectors of the Internal Improvement System of Virginia, and that that enhancement has been far more

rapid, and far greater per square mile of territory in West Virginia, than it has been in Virginia.

Is it not right, therefore, that territorial areas should, under such circumstances, be brought into the account?

Now, stating the account accordingly, we have the following result:

West Virginia has 36.1843 per cent. of the total area of the undivided State, upon which basis she would be assigned the following amount of the Virginia debt.—See Master's Report, p. 37; Principal Brief for Virginia, p. 76.....	$12,265,418.88
West Virginia had, in June, 1863, 24.5145 per cent. of the total population of the undivided State, upon which basis she would be assigned (See Master's Report, p. 37, and Principal Brief for Virginia, p. 76)	8,309,698.16
The assessed value of the lands in West Virginia in June, 1863, was 21.7812 per cent. of the total assessed values of lands in undivided Virginia, on which basis, there would be assigned to the New State this amount of the common debt (see p. 37 of Master's Rep.; p. 76 of Principal Brief for Complainant)	7,383,189.44
Combining these and taking the average we have, as the amount of the debt chargeable to West Virginia, as of January 1, 1861, the sum of...	9,652,768.83

Such will be the result if the apportionment of the debt is made upon the basis thus stated, arrived at by combining the three bases as indicated.

Against any such adjustment of the debt, indeed against any assignment to West Virginia of any substantial part of it upon an accounting upon the principles of Equity and International Law, the present leading counsel for West Virginia has in the last ten days, in his oral argument and printed brief, for the first time presented a new international law theory, and a novel proposition in equity jurisprudence for the guidance of the court.

By the application of this newly discovered theory he proposes to relieve West Virginia from any appreciable burden on account of the public debt of the Commonwealth, if the court shall decide this case upon the principles of equity and public law.

The precedents indicated by Senator Spooner do not at all support the rule he advocates as applied to this case; as, for instance: Where a new State constituting or embracing a province or other integral political sub-division of the original State has been cut off from such original State.

The original State owed a debt which bound all of its parts alike. This was a general or national debt, which upon its partition into two States would have to be apportioned ratably among the new States into which it was subdivided.

But such original State, or some of its subordinate provinces, owed special or local debts contracted by such provinces or by the original State in behalf of such provinces; or the avails of which debt were distinctly expended within and for special exclusive and local benefit of such provinces respectively, by or on behalf of which the money represented by such special debt was borrowed.

Now, when such province, having charged upon it such a debt contracted distinctly for its several and separable benefit, is cut off from the original State, and formed into, or becomes part of an independent State, there can be no question that Mr. Spooner is right in the view, that, in such a case, such a debt would continue to be a charge upon such a seceding or withdrawing province; and that such a seceding or withdrawing province would not be liable for any of the special or local debts of the original state, which were similarly local to the provinces or subdivisions thereof which adhered to, or continued to be parts of, the original State.

And so here, county or city debts due by, or contracted in the name and on behalf of, and which were specially charged upon, counties or cities which were and continued to be parts of Virginia after her dismemberment, could not, of course, bind West Virginia.

The distinction and classification which the learned counsel seeks to make find no support in the facts of this case.

The only debt, of which West Virginia is here called upon to bear an equitable share, is the public debt of Virginia existing

prior to January 1, 1861, a debt as well known to the makers of West Virginia as it is to the counsel in this cause, and distinctly recognized in the fundamental constating acts to which West Virginia owes her existence.

The debt, a just and equitable portion of which the makers of West Virginia provided that the new State should assume, was the "public debt of the Commonwealth," statements of which were embraced in the Annual Reports of the Second Auditor of the Commonwealth; and the amount and character of which were known in approximate accuracy of detail to the representative citizens of West Virginia who framed those enactments, a number of whom had also been repeatedly members of the General Assembly, and officials of the unsevered Commonwealth. The learned Counsel, in order to maintain this new contention, in effect, classifies the whole public debt of Virginia as a special and local debt.

The indisputable fact is, that Virginia in 1861 *did not owe one dollar of special or local debt.*

Opposing counsel treats the words "special" and "local" as synonymous, which is not true of them. A debt, as, for instance, one contracted for the building of a capitol, or a penitentiary, for the common use and benefit of all the people of an entire State may, by the terms of its creation, be a special debt, and yet it will be the debt of and binding upon all of the people in every part of such State.

The distinction, for it to avail anything for West Virginia, would have to be between a distinctly *local* and a *general* debt. A local debt might not, and, under circumstances readily conceivable, would not bind a new State detached from the original Commonwealth, if such new State did not embrace the political sub-division or province of the original State upon which such local debt was charged.

The entire records of the Commonwealth from 1820 and prior thereto have been carefully scrutinized by accountants and counsel in this cause, and not one dollar of special, or local, debt has been discovered.

The only debt of Virginia which existed in 1860, or 1861, was what was then well known, and what was correctly defined in

the Wheeling Ordinance and in Article VIII of the first West Virginia Constitution, both written and enacted by West Virginians, as "the public debt of the Commonwealth." It was a general debt, binding the Commonwealth and every part of it alike and as a unit. To be sure, much of it was evidenced by bonds which recited the Acts by authority of which those bonds were issued; but they constituted none the less parts of the public debt of the Commonwealth because so ear-marked.

It was created in carrying out a great general public system of Internal Improvement, in part suggested by Washington, and by Chief Justice Marshall, but formally inaugurated by the creation of the Board of Public Works and the General Internal Improvement Fund in 1816, for the common benefit and general ultimate improvement and development of every portion of the State.

There were a large number of counties in Virginia, as now constituted, in which not a mile of railroad or canal had been built, and yet they shared, more or less remotely and unequally, it may be, in the common benefit to the whole State, and were bound along with the counties through which these public improvements passed for the debts contracted in their construction.

The Acts of the General Assembly of Virginia of March 26, 1853, "Establishing a Sinking Fund," and providing for the payment of the semi-annual interest on and redemption of the public debt, printed at pp. 200 to 205 of the appendix to the record, and chapter 44 of the Code of Virginia of 1860, Idem. pp. 196-199; and the statutes relating to the same subject, Idem. 188, and especially the Act of April 9, 1839, referred to by Mr. Spooner, Idem 191 to 195, show conclusively that the public debt of Virginia was a general, and in no sense a local, or a special debt.

Virginia's public debt was just as much the general debt of the whole Commonwealth, as is the debt of the United States the general debt of the nation. Nor can the burden of such a State debt be apportioned or distributed among the different counties or sections of the State in proportion to the benefits realized by each from the expenditure of the money borrowed, any more than the burden of the National debt can be similarly apportioned among the different States and sections of the American Union.

We would not devote so much space to this artificial, and,

frankness compels us to say, fanciful classification, but for the confidence and earnestness with which an advocate for whose ability and candor we have the greatest respect, seriously pressed it upon the consideration of the court.

If the doctrine of International Law and Equity are applied to the determination of West Virginia's share of the Virginia debt, she will be required to pay her ratable proportion of the public debt of the Commonwealth as the same existed on the 31st of December, 1861, and was recognized in the VIII Article of her first Constitution, to be computed upon such basis as will place upon the new State a just and equitable share of that burden.

The considerations which should be potential in such determination have been already fully discussed, both orally and in the printed briefs.

(2)

WEST VIRGINIA IS LIABLE FOR A JUST AND EQUITABLE PART OF THE PUBLIC DEBT OF VIRGINIA UNDER THE ENACTMENTS OF THE TWO STATES AND OF THE NATIONAL CONGRESS BY VIRTUE OF WHICH THE NEW STATE CAME INTO BEING.

The views of counsel for Virginia as to the respective rights and obligations of the two States under the constating Acts pursuant to the terms of which the new State was ushered into being, if the settlement should be made thereunder, have been fully stated in their principal or opening brief filed at the present term, and will not be reiterated.

The principal consideration and arguments there presented in support of the positions taken have not been answered, if indeed they have been at all discussed, by opposing counsel.

There are, however, a few important points in connection with this alternative aspect of the case which it is of interest to consider.

The view of Virginia is, and has been, that the important thing in this case is, that the result which shall be attained by the final decision of the cause shall be a just, an equitable, and a righteous result.

The matter of the method, or process of reasoning, by which such a result shall be reached is, and has been, one of no moment.

While the Wheeling Ordinance, the West Virginia Constitution (under the provisions of which the consent of the Legislature of "Restored Virginia" and of the Congress was given to her existence as a State), the Acts giving that consent, and the Act of said Restored Legislature of February 3, 1863, transferring to the new State the property and rights of the old State therein defined, were all parts of one great transaction—the dismemberment of Virginia,—it is, and has always been, our view, that the rights and obligations of the two States in reference to the portion of the debt of undivided Virginia to be borne by West Virginia, and the method of its ascertainment, were absolutely controlled by the eighth section of Article VIII of that first West

Virginia Constitution, and the compact necessarily arising from Virginia's consent to her statehood upon those terms.

It is a necessary corollary from this, that the proportion of the debt which West Virginia must pay, must be an equitable proportion, and that, if pursuing the method prescribed by the Wheeling Ordinance, an inequitable result is reached, that method, and that Ordinance must be discarded.

Now, a careful comparison of the results arrived at by fairly applying the method of the Wheeling Ordinance to the facts and figures admitted to be true, will show a remarkable agreement in the results reached by such a computation, with the results produced by an application of the standards, or measures, of West Virginia's liability sanctioned by Equity and Public Law.

After all it is a result which is equitable and just which we desire to attain, and it is of little concern by what process such a result shall be reached.

Now, applying the method prescribed by the Wheeling Ordinance to the facts of the case as the Master has done, but correcting the palpable error into which he was led in his exclusion of the expenditures made by the State in works in West Virginia territory built through the agency of public service corporations, which expenditures amounted to the agreed sum of $1,104,400.85, we have, taking the figures of the Master's Report in all other particulars, the following as the amount due by West Virginia under the Wheeling Ordinance fairly and equitably construed and applied:

(a) Stating the account on the basis of the Wheeling Ordinance, apportioning the ordinary expenses of government on the basis of the white population.—(that is, of the population excluding slaves, who did not then constitute a part of the body politic), as is shown at page 85 of our opening brief, we have as West Virginia's share of the debt on the 1st of January, 1861	$9,910,960.20
(b) Upon the same basis, stated under the Wheeling Ordinance, but following the suggestion	

made by Mr. Justice Harlan (II West Virginia Compilation, p. 227), and apportioning the ordinary expenses of the State government on the Federal basis, by which *three-fifths* of the slaves will be counted, we have as West Virginia's share of the debt on January 1, 1861 ..... $7,620,087.59

(See pages 85, 86 and 87, of our opening brief.)

Counsel for both States were agreed that population is the fairest criterion for apportioning the ordinary expenses of the State government. (Brief for Defendant, II West. Va. Compilation, p. 129: Oral argument for Complainant, Idem, pp. 227, 228). The only difference between counsel is, that those for West Virginia insisted that the total population should be taken as the factor, while counsel for Virginia urged that the white population alone should be considered, for the reasons stated in the brief for Virginia (II West Va. Compilation, pp. 157, 158), which seem to us to have great weight, and which we now quote and reaffirm:

"As to the criterion on which the apportionment of the expenses of government should be made, if this is to be the population, we respectfully submit that in this case it should be the free population—the citizenship—and not the total of the free and the slave population. The care and policing of the slaves cost the State little or nothing. Those matters were regulated by their masters on the plantations. Of course, none of them could vote; but upon the "mixed basis" of representation which was partially adopted in Virginia, they counted to some extent in fixing the basis of representation in the General Assembly: that is, five negroes counted as much as three white men, where the mixed basis prevailed.

"The debt was contracted solely by the votes of the white population or their representatives. It was expended by them or under laws of their enactment. The taxes were levied exclusively upon the property of the free population; and the revenues were appropriated and expended as they directed, and exclusively for their benefit.

"The negroes owed no part of the debt, did not constitute a part of the citizenship of the State during any part of the period when the debt was contracted, or the money

realized from it was expended; nor were they any part of the body politic.

"Under these circumstances we would submit as a just criterion for such apportionment the white population of the territory embraced in West Virginia, and of the territory still remaining to the Commonwealth, at the times when the expenditures to be apportioned were made."

Now, we beg leave, by way of comparison with the amounts thus arrived at under the method prescribed by the Wheeling Ordinance fairly and equitably construed and applied, to give the results reached, if, discarding the Ordinance, we state the account upon the principles of Equity and Public Law reasonably applied to the facts of the case.

Ascertained in accordance with the principles of Equity and Public Law, fairly applied to the facts of the case, we have, as we have already seen, as West Virginia's share of the debt on the 1st of January, 1861:

(a) Computing the same on the combined basis of territorial area, population, and assessed valuation of lands in the two States.....	$9,652,768.83
(b) On the basis of assessed valuation of the lands in the two States taken as the only factor.....	7,383,189.44

And per contra ascertained under the Wheeling Ordinance:

(c) Apportioning ordinary expenses according to white population	$9,910,960.20
(d) Apportioning ordinary expenses according to the Federal basis, counting three-fifths of the slaves	7,620,087.59

The approximation of these results is something more than a coincidence, and goes far to show that an equitable result can and will be attained by pursuing either method, fairly applying the same to the facts of the case.

In view of the long lapse of time since the assumption by West Virginia by the terms of the 8th Section of Article VIII

of her first Constitution of an equitable proportion of the then debt of the Commonwealth and the stipulation thereby made for the payment of the accruing interest thereon, the matter of interest is obviously the most important item in the account between the two States.

That question is so fully considered, and Virginia's equitable right to a decree for interest is so conclusively shown in the treatment of that subject found at pages 94 to 107 of our opening brief upon the present hearing, that we are content to refer the court to that discussion as fairly presenting our views.

Part III of defendant's brief in its complete form was not received by counsel for Virginia until the 2nd and 3rd instant.

It would be impossible in the time permitted for filing this brief to reply to, or even to notice the numerous points made therein; nor is any such reply necessary, for the distinguished counsel has failed to meet the positions taken by the Master, supported as they are by reason and authority, or to answer the arguments submitted in our opening brief in any important particular.

Especially is this true as to the question of classifying the annual interest on the State debt as one of the ordinary expenses of the State.

Defendant's counsel claim that the weight of authority is against such classification.

The Master's report and the opening brief for complainant show that the uniform and practically universal rule of the national, State, city, town and county governments in this country, and as is shown also to be the case as to the governments of Europe, so far as there is any information given on that subject, is to classify interest on a public debt as an ordinary governmental expense; and that this rule is sanctioned by publicists, political economists, and the courts.

Particularly should this rule control in this case, or else palpable inequity would be done; for the reason that under the Wheeling Ordinance West Virginia is to be credited with all the taxes which she must have paid into the State Treasury during the debt period on account of that interest. Being given this large credit it would be right that she should also be charged with her just proportion of the annually recurring interest paid out of those

very taxes, as the Master has done; and palpably unjust and inequitable to exonerate her from such a charge.

With this concise response to the elaborate briefs of the learned counsel for the defendant, we respectfully submit this cause to the consideration and judgment of the court.

SAMUEL W. WILLIAMS,
Attorney General of Virginia.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of counsel for Virginia.

February 4, 1911.

CHAP. 344.—An ACT for the retirement of bonds held by schools and colleges, and the issuing of registered certificates therefor, and providing for the payment of interest thereon.

Approved February 23, 1892.

Whereas, the friends of education have voluntarily contributed many millions of dollars for the establishment of schools and colleges in different parts of the State of Virginia, a large portion of which has been expended in the purchase of lands and the erection of suitable buildings thereon, and the residue held as permanent endowments, about two millions of which are in State bonds; and

Whereas, it appears from acts passed by the general assembly in eighteen hundred and sixty-seven, and at various other times since then, to be the settled policy of the State to encourage these efforts for the education of her citizens, and to co-operate with the generous donors of her bonds, by paying full interest thereon so long as they shall be held as endowments for educational purposes; and

Whereas, it is proper that all obligations of the State held by schools and colleges be of the same character, and on the same footing; therefore,

1. Be it enacted by the general assembly of Virginia, That the schools, colleges, and other educational organizations hereinafter named, shall, through their duly authorized officers or agents, on or before the first day of July, eighteen hundred and ninety-two, surrender to the second auditor all evidences of the State's indebtedness which they hold as endowments for educational purposes.

2. That said auditor shall make and keep a record of all bonds and other evidences of the State's indebtedness so surrendered to him, and shall, in the presence of the auditor of public accounts and treasurer, cancel all such evidences of debt, and issue to those by whom they have been surrendered registered certificates of debt for the respective amounts of the bonds and other evidences of debt surrendered by them.

3. That these certificates shall be non-transferable and redeemable at the pleasure of the State, and shall set forth that the State of Virginia is due the respective schools, colleges, and other educational organizations of learning to which they are issued the sums named therein, and that interest thereon shall be paid semi-annually at the rates and for the amounts now paid by the Commonwealth, as set forth in the report of the second auditor for the fiscal year ending September thirtieth, eighteen hundred and ninety-one, including in addition thereto interest on the amount herein named held by the Randolph-Macon's woman's college, at the rates set forth in the bonds it holds, so long as they are held as endowments for educational purposes.

4. That the second auditor shall, upon the first day of January and July of each year, draw his warrant upon the auditor of public accounts in favor of the following holders of the said certificates for the respective amounts due them at the aforesaid rate of interest upon the following sums, to-wit:

Washington and Lee University, upon the sum of two hundred and thirty-six thousand seven hundred and fifty-eight dollars and twenty-three cents.

The Virginia Military Institute, upon the sum of twenty thousand dollars.

Emory and Henry college, upon the sum of six hundred dollars.

Leesburg academy, upon the sum of two thousand and five hundred dollars.

New London academy, upon the sum of six thousand and five hundred dollars.

Randolph-Macon college upon the sum of nineteen thousand seven hundred and eight dollars.

University of Virginia, upon the sum of one hundred and forty-eight thousand and six hundred dollars.

Richmond college, upon the sum of forty-four thousand and seventeen dollars and nineteen cents.

Hall's free school, upon the sum of four thousand and eight hundred dollars.

Seminary and high school, Alexandria, Virginia, upon the sum of fifty-nine thousand and nine hundred dollars.

William and Mary college, upon the sum of thirty-five thousand and nine hundred dollars.

School commissioners of Prince William county, upon the sum of one thousand and four hundred dollars.

Hampden-Sidney college, upon the sum of ninety-six thousand and three hundred and fifty-three dollars and thirty-three cents.

Union theological seminary, upon the sum of one hundred and thirty-seven thousand and six hundred and ninety-five dollars.

Miller manual labor school, of Albemarle, upon the sum of one million and forty-four thousand and eight hundred and sixty-eight dollars and forty-nine cents.

Virginia agricultural and mechanical college, upon the sum of three hundred and forty-four thousand and three hundred and twelve dollars.

Hampton normal and agricultural institute, upon the sum of one hundred and seventy-two thousand and one hundred and fifty-six dollars.

Randolph-Macon woman's college, upon the sum of forty-nine thousand and six hundred dollars.

The Dawson fund, thirty-four thousand one hundred and eighty-seven dollars and sixty-one cents.

5. This act shall be in force from its passage.

STATEMENT OF BONDS EMBRACED IN THE FOREGOING ACT.

Washington and Lee University, upon the sum of..	$ 236,758.28
Virginia Military Institute, upon the sum of	20,000.00
Emory and Henry College, upon the sum of	600.00
Leesburg Academy, upon the sum of	2,500.00
New London Academy, upon the sum of	6,500.00
Randolph Macon College, upon the sum of.....	19,708.00
University of Virginia, upon the sum of	148,600.00
Richmond College, upon the sum of	44.017.19
Hall's Free School, upon the sum of	4,800.00
Seminary and High School, Alexandria, Virginia, upon the sum of	59,900.00
William and Mary College, upon the sum of	35,900.00
School Commissioners of Prince William Co., upon the sum of	1,400.00
Hampden-Sidney College, upon the sum of	96,353.33
Union Theological Seminary, upon the sum of	137,695.00
Miller Manual Labor School of Albemarle, upon the sum of	1,044,868.49
Virginia Agricultural and Mechanical College, upon the sum of	344,312.00
Hampton Normal and Agricultural College, upon the sum of	172,156.00
Randolph-Macon Woman's College, upon the sum of.	49,600.00
The Dawson Fund, upon the sum of	34,187.61
	$2,459,855.85

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 8, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR BONDHOLDING CREDITORS.

In response to the order made herein on March 18, 1912, directing the parties to show cause before this court on Monday, April 8, why the prayer of the petition of the special master, that the amount of his compensation, as fixed by the court, be advanced and paid by the complainant herein, should not be granted, the bondholding creditors of Virginia, who by leave of the court have been allowed to appear in this cause by counsel, ask permission to appear now and say:

1. That they know of no ground why the compensation allowed to the special master for the arduous and efficient

services performed by him under the order of the court in this cause should not be paid to him. He has certainly earned this compensation. He rendered the services as an officer of the court and on behalf of the parties to the cause. He might have withheld his report until his compensation was paid, but he did not do so. He returned it to the court, relying on the obligation of the court and of the parties to see that his compensation was paid.

2. There are considerations, however, why at this stage of the cause the State of West Virginia, the defendant in the cause, should be ordered to pay into court, as part of the costs, the amount fixed by the court as the compensation of the special master. To some of these considerations we beg to direct the attention of the court.

3. At an early stage of the cause, and while the burden rested on the complainant State of establishing the case it had charged in its bill, it was directed to deposit, and it did deposit, with the marshal of this court sums of money amounting to over $30,000, to meet the expenses of the litigation it had excited. All the expenses of the litigation up to the present stage have been paid by the complainant.

The defendant State demurred to the bill. There was argument before a full court of nine justices—five of whom, alas, are no longer here—and on May 27, 1907, there was a unanimous opinion and judgment overruling the demurrer (206 U. S., 290). In October, 1907, the defendant filed its answer. In April, 1908, plans for orders of reference to a master were submitted, and on May 4, 1908, the form of the decree was announced by the court after argument by counsel (209 U. S., 514), and the cause was referred to a special master. On March 17, 1910, the special master returned his report, and the cause was again argued in January, 1911, and was decided on March 6, 1911 (220 U. S., p. 1). In the opinion of the court, delivered by Mr. Justice Holmes, after

reviewing the various grounds which had been suggested as bases of settlement, the conclusion reached was stated as follows:

> "Taking 235 as representing the proportion of West Virginia, we have $7,182,507.46 as her share of the public debt.
>
> "We have given our decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed. In any event, before we could put our judgment in the form of a final decree there would be figures to be agreed upon or to be ascertained by reference to a master. Among other things there still remains the question of interest" (*ibid.*, p. 35).

So, it appears, that whatever remains to be done before the "judgment could be put in the form of a final decree," it has been *decided* that West Virginia is liable under the issues joined on bill and answer in the sum of $7,182,507.46.

And here another and distinct stage of the case is reached, and the parties are placed in a wholly different relation to each other.

It was very proper, at the early stages of the case, to require from the complainant the deposit of money sufficient to defray the costs of the litigation, because at those stages it was uncertain what the merits of the controversy were—who was in default, and in whose favor judgment would have to be finally given. That uncertainty no longer exists. The defendant State is here found to be in default, and while no formal final decree has been made, yet it has been decided that West Virginia is liable in an amount exceeding $7,000,000. A further payment on account of the costs of this suit has now to be made. The compensation of the master, who has stated the accounts, has been fixed at the amount of $20,000, and it must now be paid.

Which of the parties litigant should, at this stage of the case, be required to pay this amount?

Virginia, who has established her case as it is stated in the bill and has shown her right to recover against West Virginia, or West Virginia, as to whom it has been already decided by the court that she is liable to Virginia in a sum that is ascertained in full as to the principal?

If it be said that the usual and ordinary practice of the courts is to let the allowance and adjudication of costs abide the final result and be provided for in the final decree, that may be conceded.

But there is no peremptory and iron-clad rule that controls the court and prevents it from doing what is reasonable and proper in each case.

There is nothing to prevent the court from now giving judgment for both principal and interest in this case.

The material from which the amounts of both principal and interest can be readily ascertained is in the record. Both parties submitted the case for final decree, in the confidence that the court was furnished with all the means which the parties, at least, believed to be needful for making a complete, final decree in the cause.

The court in its opinion of March, 1911, after ascertaining the amount of the principal liability, said, with reference to the interest:

> "As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court in reliance upon the honor and constitutional obligations of the States concerned, rather than upon ordinary remedies, we think it best to go no farther, but to await the effect of a conference between the parties, which, whatever the outcome, *must take place.*" (Italics ours.)

So that the failure to ascertain the amount due as interest was not owing to any fault or dereliction on the part of the complainant.

The court might, had it seen proper to do so, have put the defendant upon terms and provided that its liability for

principal having been ascertained and decided, a further extension of time, for the purpose of a conference between the parties as to the *interest*, would be allowed upon the terms of the defendant State paying into court the amount ascertained for which she was liable as the *principal*.

But the court, controlled by considerations lying far beyond any that had been indicated in the previous opinions delivered in the earlier stages of the case or had been entertained by counsel in the cause, deemed it wisest to afford to the parties themselves an opportunity—which, to be sure, had been open to them, and of which they had been admonished during a period of fifty years—of meeting together in conference and agreeing upon the matter of interest.

The Governor of West Virginia, under powers given him by the constitution of his State, called the legislature to meet in special session in May, 1911. On April 20, 1911, the Governor of Virginia and the Virginia Debt Commission wrote to the Governor of West Virginia and conveyed to him, through a special committee, a letter earnestly requesting that he call upon the legislature, soon to assemble, to consider the suggestion made in the opinion of this court and to make provision for the conference there recommended. The Governor did lay before the legislature the communications he had received, but no action was had by the legislature.

The whole matter was brought to the attention of this court by the complainant the Commonwealth of Virginia on October 10, 1911, and on October 30, 1911, the court announced its opinion and judgment, overruling the motion of Virginia "to proceed with the further hearing and determination of the cause," saying, among other things:

> "If the authorities of West Virginia see fit to await the regular session of the legislature, that fact is not sufficient to prove that when the voice of the State is heard it will proclaim unwillingness to make a rational effort for peace,"

and holding, in effect, that the provision for the conference to be had between the two States could only be made at a *regular* session of the West Virginia legislature.

So, as the case now stands, it must await the regular session of the West Virginia legislature, which meets in January, 1913, and every two years thereafter, when it may provide for the conference.

What provision the legislature may make, what powers it may confer upon its representatives at such conference, what restrictions and conditions it may impose, what that conference may be authorized and empowered to do, and whether any agreement will be reached between the conferees, are all things beyond conjecture.

January, 1915, must come before the action of West Virginia's representative at such conference can be approved or rejected by the legislature, and other regular sessions, of two years' interval, must come and go before provisions can be made for the payment of the liability that has been already ascertained, and hence we feel authorized in suggesting that if the final payment of this liability is to be projected to a vanishing point in space that West Virginia should, at this stage of the cause, be required to pay, at least, so much of the costs of the litigation as are now demanded, and, with great diffidence, we suggest that she be further required to pay the amount of the principal, for which she has been already ascertained to be liable, before the further extension is allowed for the ascertainment of the interest accrued on that principal.

Doubts may exist in some minds as to expediency of pressing to final decree this liability against a "sovereign State," when no means or agencies are apparent by which such decree can be enforced against the State. That consideration was urged on behalf of West Virginia as a ground of demurrer to the bill. It may not be improper to aver here that Virginia has not instituted this litigation and referred her complaints to this court

> "in reliance upon the honor and constitutional obligations of the States concerned, rather than upon ordinary remedies."

She has come, not as matter of grace, but of right, in reliance upon those ordinary equitable remedies which the humblest man may invoke and employ in this court, in the absolute confidence that they will be applied in his behalf as fully and as impartially as would be the remedies on which he would rely for the protection of his life or liberty.

Virginia has no doubt as to the complete enforcement of any decree that this court may make against either of the sovereign States, litigant here, and she needs nor desires resort to any other than the usual and ordinary remedies that have been invoked in the arguments that have been heretofore addressed to the court.

The matter of costs has been often the subject of consideration by this court, and reliance is here had on those rules which this court has recognized and applied. In *Pennsylvania vs. Wheeling Bridge Co.*, 18 Howard, 461, this court said:

> "In the nature of this jurisdiction therefore, or in the character of the suits in this court of original jurisdiction, we perceive nothing that should lead us to distinguish, on the question of costs, between this court and the circuit courts. And, as we have already said, the grounds for the exercise of the power—namely, the repeated recognition by acts of Congress of the right of the prevailing party to costs—is as applicable to the one court as the other."

So, in *Missouri vs. Illinois*, 202 U. S., 598, a motion was made for allowance of costs. The complainant objected to an allowance of costs as being "inconsistent with the dignity of a sovereign State," but this court, through Mr. Justice Holmes, replied:

> "So far as the dignity of the State is concerned, that is its own affair, and * * * as to the sup-

> posed rule in boundary cases, it is not absolute. But, in many cases of that kind both parties are equally interested to have the boundary settled, and, whichever State brings the suit, both equally are actors. * * * There is no indication that the defendants desired or needed the determination of this court, as States well might when their jurisdiction is in doubt. So far as this point is concerned there is no reason why the plaintiff should not suffer the usual consequences of failure to establish its case."

The application of these views to the present case is quite apparent. The matter of the "dignity of the sovereign States" here litigating should not be allowed to handicap the regular and ordinary movement of the case, as cases involving the familiar questions presented here are accustomed to move. Unlike the boundary cases, in which questions of jurisdiction are involved, the parties here are not equally interested in desiring the determination of this court. In fact, the jurisdiction of the court was stoutly resisted by the defendant, State of West Virginia, and, as will be presently shown, that State has persistently, from the close of the war, in 1865, up to the institution of this suit, and even since this suit has been pending, resorted to every available ground for obstruction and delay.

West Virginia should be required to pay this item of the costs, because it was on her account, and on her insistence, that the services were rendered by the master that necessitated the amount allowed as the master's compensation.

Throughout this case, from the demurrer which it filed to the bill of complaint, through the pleas, the answer and down to the framing of the order of reference, West Virginia has persistently maintained that what is known as the "Wheeling Ordinance" afforded ample and adequate grounds for resisting and defeating the case stated in the bill. (See

brief of Mr. Carlisle, for West Virginia, and the answer of West Virginia, and the order of reference, May's Comp.)

It needs but a cursory glance at the report of the special master to see that ninety per cent of the labor and time expended in reaching the results there stated were expended upon those features which arose altogether and only under the Wheeling Ordinance. Had the scope of his inquiry been restricted to the international law doctrine as that had been applied in Hartman *vs.* Greenhow, 102 U. S., 672, and approved in Virginia *vs.* West Virginia, 220 U. S., 31, the time of the master had been limited to but a few hours and his work expressed in but a few pages of report. The needless expenditure of labor and time—which is but scantily compensated by the allowance made as his compensation—would all have been avoided, and, it having been made necessary by the insistance of West Virginia, it seems but reasonable that she should be required now to pay for it.

It is but right to say that the Attorney General of Virginia then in office did unite with West Virginia in reliance on the Wheeling Ordinance as the proper basis of settlement between the two States, but as Virginia had no pecuniary interest in the result of this case, beyond her exoneration from liability, it cannot be held that her contention served for more than a makeweight to that of West Virginia. It is undeniable that the bondholding creditors, through their counsel, opposed throughout the notion that the Wheeling Ordinance had any relevancy or potency in the inquiry that was urged in this suit.

But, in addition to this feature of West Virginia's contentions, it is evident from this record that since the close of the war and up to the institution of this suit she opposed every effort that was made to bring about a friendly settlement of this claim. During a period of forty-five years, from January 20, 1867, down to May 2, 1911, repeated efforts were made by Virginia to induce West Virginia to enter upon a settlement, all of which were without avail. Six con-

spicuous efforts on the part of Virginia to bring about a settlement may be more particularly referred to.

These six efforts were as follows:

Governor F. H. Pierpont, of Virginia, sent a communication to Governor Arthur I. Boreman, of West Virginia, dated January 20, 1867, together with a joint resolution adopted by the General Assembly of Virginia on February 28, 1866, in reference to the reunion of the States of Virginia and West Virginia and the adjustment of the public debt, and appointing Mr. A. H. H. Stewart, Mr. William Martin, and Mr. John Janny as commissioners to proceed to the seat of government of West Virginia, and giving them authority to treat with the authorities of West Virginia on both subjects.

On February 28, 1867, the legislature of West Virginia adopted a joint resolution declining to entertain any proposition looking to a reunion of the States, and refusing to treat with the Commissioners of Virginia upon the adjustment of the public debt of Virginia until the suit of Virginia against West Virginia to recover jurisdiction over the counties of Berkeley and Jefferson had been finally disposed of (May's Compilation, vol. 1, pp. 444-445).

Governor Gilbert C. Walker, of Virginia, sent another communication to Governor William E. Stephenson, of West Virginia, in February, 1870, endeavoring to adjust the Virginia public debt with the State of West Virginia, and about the same time Messrs. William J. Robertson, W. T. Sutherlin, and P. H. Aylett, commissioners appointed on the part of Virginia, also sent a communication to Governor Stephenson. The first communication was transmitted by Governor Stephenson to the West Virginia legislature on February 24, 1870, and the second communication was so transmitted on February 28, 1870.

It appears from the joint resolution adopted by the legislature of West Virginia after the receipt of Governor Stephenson's communication that the Virginia commis-

sioners were then present in the city of Wheeling for the purpose of adjusting the public debt. The West Virginia legislature appointed a committee to confer with the Virginia commissioners and report to the legislature, but as far as the journals of the House and Senate of West Virginia of the session of 1870 show no report was made by this committee (May's Compilation, vol. 1, pp. 446-447).

The defendant's answer states that afterwards, on March 3, 1870, the Governor of West Virginia was authorized by the legislature to appoint three resident citizens of the State to treat with the authorities of Virginia upon the subject of the proper adjustment of the public debt of that State, but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners and the resolution authorizing their appointment was passed on the last day of the session of the legislature, the Governor of West Virginia stated in his message of 1871 that no appointment had been made owing to the lack of funds to pay the expenses of such commission (May's Compilation, vol. 2, p. 12).

On February 17, 1871, Governor Walker, of Virginia, sent another written communication to Governor Stephenson, of West Virginia, offering to adjust West Virginia's proportion of the public debt of Virginia by arbitration in accordance with a joint resolution of the General Assembly of Virginia approved on February 11, 1871 (May's Compilation, vol. 1, pp. 449-451), but West Virginia declined this offer (May's Compilation, pp. 452-454).

In February, 1895, Governor O'Farrell, of Virginia, communicated to Governor McKorkle, of West Virginia, a copy of the resolution adopted by Virginia March 6, 1894, appointing commissioners for the purpose of negotiating with West Virginia for the payment of the proportion of the Virginia public debt to be borne by West Virginia, but no response was ever made by West Virginia, although her legislature declined to negotiate with Virginia (May's Compilation, pp. 76 and 494).

On February 1, 1905, Mr. Randolph Harrison, on behalf of the Virginia Debt Commission, addressed the joint committees on finance of the West Virginia legislature in relation to West Virginia's contributive share of the debt of Virginia (May's Compilation, pp. 68-82), and as West Virginia was still unwilling to treat with Virginia this suit was begun. The last attempt of Virginia to treat with West Virginia is set forth in the motion papers on the motion of October 9, 1911, herein to proceed with the determination of the suit.

The only effort made by West Virginia at any time to settle this debt was made through a committee consisting of Messrs. John J. Jackson, J. M. Bennett, and A. W. Campbell, appointed by Governor J. J. Jacob, of West Virginia, under resolutions adopted by the West Virginia legislature on February 15 and February 24, 1871. These gentlemen sent a letter to Governor Walker, of Virginia, notifying him of their appointment and inquiring what channel of communication with Virginia was open to them. Governor Walker replied that the joint resolution of Virginia providing for arbitration had superseded the joint resolution of February 18, 1870, authorizing the Governor to appoint commissioners, and for that reason that he could not appoint commissioners to confer with West Virginia.

He said that the tender of arbitration had not been withdrawn and was still open (May's Compilation, pp. 457-459). These commissioners of West Virginia then proceeded to determine for themselves the balance due Virginia from West Virginia, and found the amount to be $953,360.23 (May's Compilation, p. 472); but this determination was not satisfactory to the State of West Virginia, and the Senate finance committee of the West Virginia legislature, on December 22, 1873, made a report to the effect that the State of West Virginia was not liable for any part of the debt of the undivided Commonwealth of Virginia, but that the State of Virginia was indebted to the State of West Virginia in the sum of $525,000.00 (May's Compilation, pp. 490-493). Ever

since that time West Virginia has taken the position that she does not owe any portion of the debt of the undivided Commonwealth of Virginia and that she would not enter into any negotiations looking to the settlement of the Virginia debt question. West Virginia's legislature has repeatedly adopted resolutions denying that West Virginia owed any part of the so-called Virginia debt, and that her legislature was opposed to any negotiation whatsoever on that subject (May's Compilation, pp. 494-496).

The last visit of the representatives of Virginia to West Virginia with reference to the settlement of the debt took place on May 2, 1911, and subsequent to the time of the filing of the defendant's answer, but the other efforts of Virginia to settle this debt and the refusals of West Virginia to do anything with reference to a settlement are virtually admitted in the defendant's answer in paragraph XI thereof.

It appears from the foregoing that Virginia on five separate occasions in the years 1867, 1870, 1871, 1895, and 1905 tried to amicably settle this controversy, and, these repeated efforts having failed, that Virginia brought this suit in February, 1906, and in accordance with the decision herein, dated March 6, 1911, that she again endeavored to meet West Virginia, and it also appears that the only time West Virginia was willing in any way to discuss with Virginia the settlement of the debt was in 1871, when West Virginia appointed commissioners to treat directly with Virginia at a time when the General Assembly of Virginia had adopted a resolution providing for the settlement of the controversy by arbitration. It also appears that the findings of this committee fixing West Virginia's share in even the small sum of about $1,000,000 were repudiated by the West Virginia legislature of 1873, and that from that time down to the present West Virginia has continually refused to treat with Virginia in any way for the settlement of this controversy.

The court has already decided that West Virginia is liable

for the principal sum of upwards of $7,000,000, and this determination imposes upon West Virginia liability for all the costs in the suit.

It is now nearly fifty years since West Virginia's liability for her portion of the debt arose and forty-five years since Virginia first attempted to secure a settlement with West Virginia of that liability.

Virginia is now and at all times since the decision of March 6, 1911, has been ready to settle the decree with West Virginia and bring this litigation to an end. It is West Virginia that is unwilling to determine this controversy, and as West Virginia is the party that is preventing the final determination of the suit the complainant respectfully submits that the defendant and not the complainant should pay the master's fee. Virginia does not dispute that the allowance of $20,000.00 to the master is fair and reasonable, and she does not dispute the master's right to be paid now that his work is completed, but as West Virginia is liable for the costs in this suit the complainant respectfully submits that the court should order the master's fee to be paid by the defendant and not by the complainant.

Until West Virginia's liability for her portion of Virginia's debt was determined it was proper that the complainants should in the first instance advance the costs of this suit; but that time has gone by. Virginia's liability has been determined. Virginia and the bondholding creditors of Virginia who are entitled to receive the money due on their bonds are losers and not gainers because of the delay in the settlement of the decree. Virginia has done everything she can think of to induce West Virginia to act. Under these circumstances to shift West Virginia's liability for the master's fee from West Virginia to Virginia would be inequitable and unjust. The obligation rests upon West Virginia, and she should be compelled to meet it.

HOLMES CONRAD,
Counsel for the Bondholding Creditors.

Supreme Court, U. S.
FILED
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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1913.

No. 2 ORIGINAL.

COMMONWEALTH OF VIRGINIA

vs. In Equity.

STATE OF WEST VIRGINIA.

ADDITIONAL BRIEF OF [illegible]

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1913.

No. 2 ORIGINAL.

COMMONWEALTH OF VIRGINIA
)
vs.) In Equity.
)
STATE OF WEST VIRGINIA.

I.

STATEMENT OF FACTS.

The motion of West Virginia is for leave to file the supplemental answer presented with the motion for the inspection of the Court, and it is based, as we understand it, and certainly as it was intended,

upon the decision of this Court in this cause of March 6, 1911, and upon the investigations and discoveries of the West Virginia Commission that was appointed to negotiate with a like Commission of the State of Virginia an amicable settlement of the controversy, pursuant to the suggestion of this Court in said opinion.

Very briefly, and by way of premise, we will look to both in order to determine whether or not the motion is justified.

The decision of March 6, 1911, held—

First, that West Virginia was obligated to pay an equitable proportion of the Virginia debt existing prior to the first day of January, 1861. So much has been settled, and finally settled, by this Court, and its conclusion is not questioned, either by Virginia or by West Virginia;

Secondly, that the total debt existing as of that date to be apportioned between the two States amounted, in round numbers, to $30,000,000.00, and,

Third, that, taking the relative resources of the two debtor populations, exclusive of slaves, the debt should be apportioned in the ratio of 76½% to Virginia, and 23½% to West Virginia, and, upon this basis, West Virginia's equitable proportion of the principal of said debt was ascertained to be $7,182,507.46.

The Court, however, did not enter a decree for this amount against West Virginia; but, believing that enough had been said "for patriotism, the fraternity of the Union and mutual consideration to bring it to an end", suggested a conference between the two States.

Va. v. W. Va., 220 U. S., page 1.

Pursuant to this suggestion or warning, West Virginia, as speedily as practicable, appointed a Commission for the purpose of negotiating with a like Commission upon the subject from the State of Virginia. The first meeting of the Commissions amounted to little or nothing; but, after their adjournment, a sub-committee of the West Virginia Commission was appointed, for the purpose of investigating in detail the existence, disposition and value of any assets purchased with the common funds that Virginia might have appropriated to her own use, and for the proper per cent. of which West Virginia should be allowed a credit. This investigation was suggested by and based upon another statement in the opinion of March 6, 1911. It was there said by the Court, speaking through Mr. Justice Holmes, that—

> "The whole State would have got the gain, and the whole State must bear the loss, as it does not appear that there are any stocks of value on hand."
>
> (220 U. S., page 30; 55 L. Ed., 358.)

The investigation was made upon the theory that West Virginia was entitled to a proper per cent. of the assets, and upon the belief that, had they been presented to the Court, they would have been allowed. The sub-committee employed expert accountants, who investigated as best they could, in the time left them, the records of Virginia from the year 1820 until the present time, with the result that they reported to the Commission that Virginia had

appropriated to her own exclusive use, outside of public buildings—they were not taken into the account at all—assets that had been purchased with the common funds of the two States prior to January 1, 1861, and disposed of by Virginia, without any accounting at all, since June 20, 1863, amounting in actual value to $20,000,000.00 and more. Twenty-three and one-half per cent. of this amount was taken and deducted from the $7,182,507.46 of principal ascertained by this Court to be West Virginia's equitable proportion of the debt, leaving a balance of $2,327,195.27, which amount the West Virginia Commission offered to the Virginia Commission to pay in full satisfaction of the controversy. The proposition, however, was declined, and then the present motion was made.

Such is the history of the motion; and the proposed supplemental answer alleges that the disposition and value of the assets now presented were unknown to West Virginia at the time she filed her original answer herein, and were likewise unknown to her at the date of this Court's opinion of March 6, 1911.

II.

VIRGINIA'S RESPONSE TO THE MOTION.

The main point in the response of Virginia to the motion is an allegation to the effect that West Virginia was fully informed all the time concerning the common assets now presented by her, and 23½% of which she claims as a credit upon her proportion of the principal of the debt; that it is not true

that she obtained her information in relation thereto, as alleged in her proposed supplemental answer, subsequent to the filing of her original answer, and subsequent to the opinion of the Court of March 6, 1911; but that all of the matters and things now set up by her were fully set forth in detail in the report of a Commission appointed by her, known as the "Bennett Commission", in the year 1871, and heretofore embodied in the record of this cause.

In answer to this contention, it will be sufficient to say that it is inaccurate and misleading.

In the first place, the proposed supplemental answer does not allege that West Virginia had no knowledge whatever of the fact that Virginia had from time to time prior to the first day of January, 1861, invested certain of the common moneys of the two States in works of internal improvement, but it alleges that she did not know at the time of the filing of her original answer of the disposition and value of the stocks and securities evidencing these investments; that she only learned since the oppointment of, and through her recent Commission, that these securities had any actual value at all, and that they had been either retained by Virginia or sold by her subsequent to June 20, 1863, and the proceeds of such sales appropriated to her own exclusive use, without any report of the fact or accounting unto her *cestui que trust,* the State of West Virginia.

The Bennett report lists some, but not all, of the investments of the Commonwealth of Virginia in internal improvement companies, and contents itself with stating the amount of moneys that had been originally so devoted; but it does not anywhere

undertake to show which of these securities, if any, were still on hand, or what the actual value of any of them was. Neither does it show their disposition or sale, or the appropriation of the proceeds thereof by the State of Virginia. Indeed, the fact is that, with rare exception, all of these assets have been disposed of by the State of Virginia since the year 1871; that is to say, since the Bennett report.

West Virginia had no record of these sales, or of the amounts received thereon. She had no knowledge, as alleged in her answer, of the fact that they had any value at all. These matters were not in her archives, but in the archives and records of Virginia, which she has caused to be examined through her Commission since the last continuance, and the facts to be reported to her officially and reliably for the first time.

It is now easy for Virginia to say that her records were open all the time to West Virginia, and that, if she had taken the pains to examine the same, she would have been informed concerning these matters long since; but such was not the reception that was given, as shown by the record in this cause, to the West Virginia, or so-called Bennett Commission, in the year 1871.

In addition to this, attention is called to the fact that, when this case was originally argued upon demurrer, it was upon the theory that the settlement was proceeding upon the basis of the Wheeling Ordinance, which would not call for an ascertainment of these assets, and the decree of reference was along that line. After the report of the Master, however, the Court reached the conclusion that a settlement

in accordance with the Wheeling Ordinance would be arbitrary and inequitable, and proceeded to ascertain West Virginia's equitable proportion of the principal of the debt by another and more equitable method, and, finding no stocks or other securities on hand of value, left the ascertainment at $7,182,507.46 without abatement for any reason.

III.

REASONS WHY THE MOTION SHOULD PREVAIL.

1. The assets in question constituted a trust fund under the Constitution of Virginia of 1851, to be devoted to the payment of the Virginia debt, and, if Virginia has diverted this fund to other purposes, she must account, and an accounting between her and West Virginia, upon the basis of West Virginia's liability as fixed by this Court, would compel her to give credit to the latter for 23½% of the actual value of such assets.

New Orleans v. Warner, 175 U. S., 120.

Section 29 of the Constitution referred to reads in part as follows:

> "29. There shall be set apart annually, from the accruing revenues, a sum equal to 7% of the State debt existing on the first day of January, in the year one thousand, eight hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable."
>
> (Code of Virginia 1860, page 47.)

And Section 30 of said Constitution reads

> "The Generaly Assembly may, at any time, direct a sale of the stocks held by the Commonwealth in internal improvement and other companies; but the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner."
>
> (Code of Virginia 1860, page 47.)

2. The debt in question was created in the purchase of the assets presented, and, if West Virginia must pay 23½% of the debt, she should, in equity, receive a credit for 23½% of the actual value of the assets.

3. The fact that these assets had any actual value was discovered by West Virginia since the last continuance of this cause.

4. Virginia had full knowledge of the value and disposition of these assets all the time, and the evidence thereof was confined to her own records, but she did not voluntarily disclose the same, although her suit was instituted for the purpose of ascertaining West Virginia's *equitable* proportion of the debt.

5. The decree of reference herein proceeded upon the theory that the Wheeling Ordinance was to furnish the basis of settlement, and this basis did not call for a disclosure of the existence, disposition or value of these assets.

6. This Court has wisely prescribed few rules for the conduct of original proceedings before it, but it has prescribed rules for the conduct of such proceedings in equity before inferior federal tribunals, and, upon analogy to these rules, the supplemental answer should be received.

Equity Rule No. 19 reads in part as follows:

> "The Court may, at any time, in furtherance of justice, upon such terms as it may deem just, permit any process, proceeding, pleading or record to be amended, or material supplemental matter to be set forth in an amended or supplemental pleading * * * * * * * *."

And Equity Rule No. 34 reads in part as follows:

> "Upon application of either party, the Court or Judge may, upon reasonable notice, and such terms as are just, permit him to file and serve a supplemental pleading alleging material facts occurring after his former pleading, or of which he was ignorant when it was made * * * * * * * * *."

7. "The case is to be considered in the untechnical spirit proper for dealing with a quasi-international controversy, remembering that there is no municipal code governing the matter * * * *."

Va. v. W. Va., 220 U. S., page 27.

8. Neither is it any answer to say, as has been attempted, that such a proceeding would make an endless chain of the litigation, because it must be

remembered that the whole matter is always within the discretion of the Court, and that it can, and will, prescribe such terms and conditions in granting this, or any other motion, as may be sufficient to accomplish an equitable result.

Respectfully submitted,

A. A. LILLY,
Attorney General for West Virginia.

V. B. ARCHER,
CHARLES E. HOGG,
and
JOHN H. HOLT,
Associate Counsel
for West Virginia.

OCT 8 1913
JAMES H. McKENNEY,

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR THE BONDHOLDING CREDITORS.

HOLMES CONRAD,
SANFORD ROBINSON,
Counsel for the Bondholding Creditors.

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The case is over seven years old. It has been fully argued in this court three times. It was exhaustively tried before the special master for nearly two years. The accountants for both States agreed upon all the figures. West Virginia was represented by nine able lawyers.

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The West Virginia Commission insisted that the decision of the court should be ignored and the case reopened and considered all over again from the beginning. Nine lawyers on West Virginia's behalf have ably defended this case. All the facts have been brought out and exhaustively considered. Due delineation has been had. The case has taken over seven years. Now the West Virginia Commission asks to begin the case all over again.

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The only effort ever made by West Virginia was in 1871, when she appointed Commissioners to negotiate with Virginia. Virginia had previously made two such offers to West Virginia, which West Virginia did not accept. Virginia then settled her share with her creditors independently, and offered West Virginia an arbitration. West Virginia declined the arbitration and appointed three commissioners to negotiate with Virginia instead. These commissioners found that West Virginia was indebted to Virginia in the sum of $953,360.25. The West Virginia legislature repudiated this finding, and the senate finance committee of 1878 made a report on the debt, which found Virginia to be $525,000 in debt to West Virginia. West Virginia has declined all offers to settle since then and has repeatedly denied all liability.

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West Virginia is liable for interest upon her proportion of the bonds outstanding on January 1, 1861, according to their tenor, by the express terms of her contract contained in section 8 of Article VIII of the Constitution under which she was admitted as a State. This promise in her Constitution was merely the express acknowledgment of an already existing equity arising out of her act of separation from Virginia. This is a Virginia contract, and under the law of Virginia and West Virginia as well West Virginia is liable for interest from January 1, 1861, to date upon the whole of her share. We do not ask so much, but only that she pay the interest to maturity upon her share of the outstanding bonds.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR THE BONDHOLDING CREDITORS.

This motion seeks to have the court determine the questions left open in the opinion of the court delivered herein by Mr. Justice Holmes on March 6, 1911, and to have the court enter a final decree.

The concluding paragraph of the opinion begins as follows:

> "We have given our decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed. In any event, before we could put our judgment in the form of a

> final decree there would be figures to be agreed upon or to be ascertained by reference to a master. Among other things there still remains the question of interest. Whether any interest is due, and if due from what time it should be allowed and at what rate it should be computed, are matters as to which there is a serious controversy in the record, and concerning which there is room for a wide divergence of opinion. There are many elements to be taken into account on the one side and on the other. The circumstances of the asserted default and the conditions surrounding the failure earlier to procure a determination of the principal sum payable, including the question of laches as to either party, would require to be considered. A long time has elapsed. Wherever the responsibility for the delay might ultimately be placed, or however it might be shared, it would be a severe result to capitalize charges for half a century—such a thing hardly could happen in a private case analogous to this."

In the following pages we shall try to show the court that West Virginia is liable for interest, and that the time for which she is liable for interest and the rate at which it should be computed are matters as to which there is no controversy in the record. All the facts bearing upon the question of the amount of interest for which West Virginia is liable are contained in paragraph 1 of the master's report and are acquiesced in by West Virginia. All the facts bearing upon the circumstances of West Virginia's default and the conditions sur-

rounding the failure earlier to procure a determination of the principal sum payable, including the question of laches as to either party are admitted by West Virginia, and we shall rely exclusively on West Virginia's admissions in discussing this portion of the case. The result which we reach does not attempt to capitalize charges for half a century, but merely imposes interest according to the tenor of the bonds up to their maturity. We do not ask as much from West Virginia in the way of the performance of her promise to pay her share as Virginia has already done in regard to her proportion. Further delay is useless.

At the recent meeting of the two States at Washington on July 25, 1913, the proposition of Chairman Mason, of the West Virginia Commission, to the Virginia Commission was as follows:

> "It makes no difference which has the first say or which has the last say. We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure" (p. 40).

The first governor of West Virginia in his first message to the first legislature of that State said.

> "The Constitution provides that this State shall assume an equitable proportion of the debt of Virginia, prior to the first day of January, 1861, but no settlement can be made at present, and when it is made our 'equitable proportion' cannot be much" (W. Va. Brief, Jan., 1911, p. 12).

West Virginia's position in regard to the payment of her proportion of the debt is now as it was at the first meeting of her legislature and ever since has been—*not now, but later, and not much then.*

We shall present this subject of vital importance to the bondholding creditors of Virginia, located as they are throughout the world, and waiting over 50 years for realization upon this portion of their property under the following headings: *The Case in This Court; The Proceedings of the Two Commissions at Washington, July* 25, 1913; *The Efforts of West Virginia to Determine and Settle Her Proportion of the Debt; The Efforts of Virginia to Settle the Controversy and West Virginia's Excuses for Failure to Meet Virginia; West Virginia is Liable for Interest; The Amount of Interest Which West Virginia Legally Owes is* $14,055,962.56; *If West Virginia Should Pay Principal and Interest upon Her Proportion of the Debt in the Same Pro Rata Amount Which Virginia Has Paid upon Her Proportion, or if West Virginia Should Scale Both Principal and Interest in the Same Way that the Various Funding Acts of Virginia Provided, or if West Virginia Should Pay Interest for* 34 *Years, as Provided in Her Constitution, the Amount Would be More than the Amount We Ask for.*

Before proceeding to discuss the various points outlined above we wish very respectfully, but very

emphatically, to call the attention of the court to the fact that there is no controversy in the record about the facts which determine the question of interest nor the facts bearing upon the circumstances of the default, the failure earlier to procure a determination of the principal sum payable or the question of laches. These facts are all either admitted by West Virginia or found by the master in his report and acquiesced in by West Virginia. The only question in the case anywhere is as to the legal effect of the already admitted and determined facts.

Point One.

The Case in This Court.

The bill in this suit was filed on leave of the court in February of 1906. The defendant filed a demurrer and later an amended demurrer, and after full argument in March of 1907 Mr. Chief Justice Fuller delivered the unanimous opinion of the court overruling the demurrer. West Virginia filed her answer. The case was again fully argued before this court and on May 4, 1908, a decree was entered referring the cause to a master. West Virginia afterwards asked that the decree of reference be modified in several particulars, and the court acceded to her request in one respect and later on, June 1, 1908, appointed Hon. Charles E.

Littlefield as special master under the decree. He proceeded to take the evidence of the parties at Richmond, Va., between Nov. 16, 1909, and July 2, 1909, and afterwards the parties agreed upon substantially all the accounts taken under the various paragraphs of the decree as appears from the joint exhibits of the parties, all signed by their respective accountants. After that the case was very fully argued before the master in New York city in November and December, 1909, and on March 17, 1910, the master made his report. The case was not heard before this court upon the master's report until January, 1911, and on March 6, 1911, Mr. Justice Holmes delivered the opinion of the court, in which the court gave its decision in respect to the basis of liability and the share of the principal debt of Virginia that West Virginia assumed, but left open among other things the question of interest. Virginia at once sought a conference with West Virginia to determine the question of interest; but West Virginia, although abundant time remained for her governor to insert this matter in a supplementary call to her legislature, which had already been called to meet in special session, declined to take the matter up with Virginia at this time. Thereupon Virginia moved this court on October 9, 1911, to determine the questions left open in the opinion of March 6, 1911, and to enter a final decree. The court denied this application (222 U. S., 17). After the failure of the commissions of the two States to reach any result

at their joint meeting in Washington on July 25, 1913, Virginia again asks this court to proceed with the determination of the questions left open and to enter a final decree. The case is now over 7 years old and the controversy is over 50 years old. There has been no surprise. The case has been fully argued on the demurrer and again on the application to appoint a master and a third time upon the master's report, after taking testimony for a period covering nearly two years, and after both States had agreed upon, and their respective accountants had signed joint accounts under, each paragraph of the decree.

West Virginia has been represented in this case by Hon. John G. Carlisle, Hon. John C. Spooner, ex-Governor Dawson, Prof. Chas. E. Hogg, Mr. W. Mollohan, Mr. Geo. W. McClintic, Mr. W. S. Matthews, and by three Attorney Generals.

West Virginia has had two years and a half to consider the instructions of this court in regard to a joint conference to settle the question of interest. Her proposition at that conference was to begin the discussion of her liability all over again just as if the suit had not been brought and earnestly defended by her for seven years.

> "We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure" (p. 40).

This is the proposition of the West Virginia chairman at Washington.

Point Two.

The Proceedings of the Two Commissions at Washington, July 25, 1913.

The West Virginia legislature at its last regular session adopted a joint resolution on February 21, 1913, which, after reciting that this court had made a finding in this suit that the share of the principal debt of the original Commonwealth of Virginia to be borne by the State of West Virginia was $7,182,607.46, recited further that this court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the two States upon all the questions involved in said litigation as might lead to a settlement of the same, and then resolved that a commission of 11 members should be appointed by the governor, which commission was authorized and directed to negotiate with Virginia or her bondholding creditors or their committee and report to the governor, and upon receipt of the report the governor should again convene the legislature for consideration of the same. The governor appointed a commission of 11 members. Hon. John W. Mason, of Fairmont, Va., was chosen as chairman of the commission. The commissions, after correspondence between the governors of the two States, met at Washington on July 25, 1913, but Virginia was unwilling to meet

West Virginia's proposal and West Virginia was unwilling to meet Virginia's proposal, and so on July 26, 1913, the meeting adjourned to meet again at the same place on August 12, 1913. Before this meeting was held, however, it was called off by West Virginia, and no subsequent meeting has since been held.

Virginia took the position at the meeting that, except for arithmetical errors in calculations, the basis of liability of the share of the principal of the debt of Virginia that West Virginia assumed was determined by this court in its decision of March 6, 1911, and she therefore refused to treat with West Virginia in regard to the amount of principal which West Virginia owed. Virginia offered, however, to discuss the question of interest with West Virginia and expressed her willingness to consider any proposition which West Virginia might care to make, either in settlement of the interest or in settlement of the whole debt, principal as well as interest. West Virginia, on the other hand, declined to make any proposition, either in settlement of the interest or of the whole debt, principal and interest, and she insisted upon going into the whole question anew from the beginning just as if this question had not been litigated for the last seven years. The position taken by West Virginia at the joint conference is clearly shown from the following quotations taken from the remarks of Chairman Mason, of West Virginia:

"Chairman MASON, of West Virginia: Referring to the resolutions which have just been presented to us on behalf of the Commission of Virginia, I would say for the Commission of West Virginia that it was not our expectation that this conference was to be confined to the consideration of only the question of interest. Our idea had been that the scope of the conference would be wider, and that we would confer together and take up the whole case, principal and interest. We thought that was what we were to meet here for.

"It is my understanding that we, as commissioners representing the two States, have the power to ascertain what is West Virginia's equitable proportion of the debt, if anything" (p. 14).

* * * * * * *

"Let me say a word as to another matter, if you will indulge a personal allusion. I am one of the men who voted for that Constitution. I am one of the men who made that promise. It was my first vote. We made that promise. I, for one, have never had any inclination to, nor never thought of retracting it. But, for fifty years we have been asking, clamoring and demanding, trying in every way we knew how to get at the question of what is our equitable proportion of that debt" (p. 26).

* * * * * * *

"Mr. MASON: If you mean by that, gentlemen, to get down to the concrete and say 'West Virginia will pay you so much money' or, 'Virginia owes us so much money?' as to that we already have had two statements of that account in West Vir-

ginia. One statement brings West Virginia out a little in debt. The gentlemen who made that statement, the principal man who made that report, was the old auditor of Virginia for eight years. Since that report there is another statement which says you owe us" (p. 28).

* * * * * * *

"Chairman MOON, of Virginia: What do we understand by 'the whole matter'?

"Chairman MASON, of West Virginia: Interest and all; everything to go to the subcommittee; and let it thresh it out, and let it make its report.

"Mr. HARRISON, of Virginia: You mean to reopen the whole case and consider the questions *de novo.* That is what you mean by 'the whole matter,' I suppose?

"Chairman MASON, of West Virginia: That is our view" (p. 39).

* * * * * * *

"We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure" (p. 40).

* * * * * * *

"Chairman MASON, of West Virginia: I say, the amount of the principal. We do not look at it that way. We want the whole matter to be taken up by the subcommittees, to see just what we ought to pay, if anything" (p. 41).

* * * * * * *

"Mr. HARRISON, of Virginia: You mean, by 'the whole subject-matter,' to reopen the whole case and consider the matters *de novo.*

"Chairman MASON, of West Virginia: Yes sir, that is as far as the commissions are concerned" (p. 41).

From the foregoing it appears that West Virginia was not prepared to make or receive any proposition in settlement of the interest due or in settlement of the amount due, principal and interest, and was only willing to deal with Virginia upon the basis that the whole controversy should open anew from the beginning and all the proceedings in this case should go for nothing.

The attitude taken by West Virginia at the joint conference is not a new one. Her position, as stated by her chairman, is as follows:

> "We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure."

West Virginia's brief, upon the final hearing of this case after the master's report, at page 12 contains the quotation from the first governor of West Virginia in his first message to the first legislature of that State, which we also have quoted above. The governor said:

> "No settlement can be made at present, and when it is made our 'equitable proportion' cannot be much."

A West Virginia committee, appointed in 1871, reported that West Virginia's share of the debt was $953,360.23, but her legislature was unwilling to bind the State for even this modest amount of liability and repudiated the report. The Senate Finance Committee of 1873 made a report instead,

in which Virginia was found indebted to West Virginia in the sum of $525,000. These were the two reports on the debt to which Chairman Mason referred in his remarks quoted above.

Each legislature of West Virginia, from 1895 to 1905, inclusive, resolved that West Virginia owed nothing on account of the debt. Most of the resolutions added that West Virginia was unalterably opposed to any negotiations on the subject. We shall discuss these matters more particularly in our next point, but have referred to them here for the purpose of showing that the position assumed by West Virginia at the joint conference was not a new position, but the attitude she has taken throughout whenever the question of her liability for this debt has been called to her attention.

The West Virginia view,

> "No settlement can be made at present, and when it is made our 'equitable proportion' cannot be much,"

is as old as West Virginia herself. It is older. This conception of liability in West Virginia antedates the birth of the State itself. As long ago as the Constitutional Convention of Virginia of 1829-30, Mr. Alexander Campbell, remarking about it, measured West Virginia's liability in terms which have since become the Wheeling ordinance and which were intended to make West Virginia's share of the debt as remote, as shadowy, and as small as calculation could make it.

West Virginia is wrong about the question of the debt. She has told herself so many times that she does not owe anything that she has come to believe that she does not owe anything. Few of her citizens have yet had the courage to tell West Virginia the truth. When this court finally fixes the amount due from West Virginia and enters its decree to that effect we all know that the good people of West Virginia will at once proceed to comply with the conditions of the decree.

As long ago as 1873 West Virginia recognized the right of Virginia to determine this question in this court (Report of the Senate Finance Committee of 1873, W. Va. Comp., vol. 1, p. 491).

Hon. John W. Mason, the present chairman of the West Virginia Commission, in a letter dated May 29, 1908, to Governor Dawson, of West Virginia, in regard to the debt, wrote in part as follows:

> "We hear much talk about compromise and settlement out of court. All lawsuits arising out of controversies of this character are simply involuntary arbitration, and I know of no body of men to whom this controversy can be submitted with such confident assurance that it will be fairly, properly and justly settled, as to the Supreme Court of the United States"(W. Va. Comp., vol. 2, p. 383).

It is obvious from the foregoing that the ideas of the people of Virginia and West Virginia are radically different about the amount which West

Virginia should pay to the old creditors of Virginia, and that no amount of mere time will bring them any nearer in their views. The attitude of West Virginia today is the attitude of West Virginia 47 years ago, and the attitude of the people who then lived in the present boundaries of Virginia 80 years ago.

Point Three.

The Efforts of West Virginia to Settle and Determine Her Proportion of the Debt.

All the facts bearing upon this point of our brief are admitted by West Virginia. These admissions are contained in the Appendix of the West Virginia Compilation, vol. 1, pp. 444-472, inclusive, and 490-496, inclusive, in paragraph XI of her answer, and in pages 12-20, inclusive, of West Virginia's Brief on the final hearing of this case after the master's report. The extracts from West Virginia's Appendix and Answer and Brief are printed at the end of this brief as Schedules 1, 2, and 3.

From these admissions by West Virginia it appears that the first effort made by West Virginia to determine her proportion of the debt was the appointment of a committee of three men, known as the West Virginia Debt Commissioners of 1871. The resolutions of the West Virginia Legislature,

upon which the then Governor Jacobs appointed Messrs. Bennett, Cambell, and Jackson as commissioners, are found at pages 453-454 of the West Virginia Compilation, vol. 1, and their report appears on pages 457-489. It appears therefrom and from the proceedings as stated in the appendix that Virginia on several occasions prior to 1871 tried to induce West Virginia to appoint commissioners to treat directly with her commissioners, and that West Virginia having always refused to do so the Virginia legislature, on February 11, 1871, adopted resolutions providing for the settlement of the controversy by arbitration. Owing to the fact that Virginia had provided for the settlement of the controversy by arbitration, the Governor of Virginia declined to appoint commissioners to treat with West Virginia, but these commissioners of West Virginia proceeded to Richmond on an independent *ex parte* investigation of their own, and they found West Virginia's share of the Virginia debt to be $953,360.28. These commissioners felt themselves aggrieved because of the letter they received from the Second Auditor of Virginia, and because of a reference to West Virginia's attitude contained in Governor Walker's message to the General Assembly of Virginia at the time. This letter of the Second Auditor and this extract from the message of the then Governor of Virginia have ever since been used by West Virginia as excuses for her subsequent conduct. We quote them here:

"In reply to the foregoing communication we received the following note at 5 o'clock on the evening of the 16th of November, after a lapse of two and a half days, and after we had abandoned all hope of the assistance asked for in our letter, and after, in fact, we were on the eve of our departure for home:

"SECOND AUDITOR'S OFFICE,
"RICHMOND, *Nov.* 16, 1871.

"A. W. CAMBELL, Esq.,
Secretary, &c.

"DEAR SIR: Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood of course you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

"To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

"But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

"The books and records of this office are open to your inspection.

"I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or

your associates. None, certainly, is intended.

"I have the honor to be,

"Most respectfully yours,

"ASA ROGERS."

* * * * * * *

"Now, if the authorities of West Virginia entertained an earnest desire to make a speedy and final settlement of this matter, why did they not accept our tender of arbitration? A mode of settlement of such controversies universally recognized by both nations and individuals as right and appropriate. Suppose an equal number of Commissioners appointed by each State, and that they should meet and disagree upon any or all points involved, who is to decide between them? And yet, beyond a doubt, they would radically disagree upon the first or chief point to be settled, viz: the basis or principle upon which the settlement should be made. But, suppose that the Commissioners should finally agree, does any one suppose that their finding would be ratified by the legislatures of the two States, disagreeing as the people do radically upon the merits of the question at issue? Of course not" (W. Va. Comp., vol. 1, pp. 461, 462, 463).

It must be borne in mind that Virginia had offered in 1867 and again in 1870 to settle directly with West Virginia her proportion of the debt through Commissioners and that West Virginia having declined both offers, Virginia had gone ahead and settled her proportion of the debt with

her creditors on a basis satisfactory to the creditors and had proposed arbitration to West Virginia. What genuine exception can be taken to the letter of the Second Auditor or to this extract from Governor Walker's message. The letter was fair and the message was true.

The West Virginia Commissioners criticized Virginia for settling with her creditors without West Virginia; for fixing her share at two-thirds, and for compounding interest on the debt. They criticized Virginia for paying only two-thirds of her debt as too small a proportion and then for compounding the interest as making that proportion too large (W. Va. Comp., p. 464). In paragraph XII of her answer, West Virginia again makes the same complaint.

It seems to us a praiseworthy instead of a blameworthy thing, that Virginia so early settled with her creditors upon a basis satisfactory to them, and if Virginia compounded the interest in a high sense of her obligation to her creditors it is all the more praiseworthy. Certainly her creditors much preferred Virginia settling with them in 1871 to an indefinite postponement until such time as West Virginia should join in the settlement.

The Senate Finance Committee of West Virginia made a report in 1873, to which we have already alluded, finding Virginia indebted to West Virginia in the sum of $525,000.00. This report pointed out to Virginia that she could sue West Virginia in the Supreme Court of the United

States. When Virginia adopted that process as the only way left to her to obtain a settlement of this controversy, West Virginia shifted her position again and disputed the jurisdiction of the court. After 1873 West Virginia took no notice of her proportion of the debt until the meeting of her legislature in 1895.

That Legislature of West Virginia resolved that it declined to enter into any negotiations with the debt commission appointed by Virginia in 1894 to settle the Virginia debt, and since then each successive Legislature of West Virginia down to and including the session of 1905, just prior to the beginning of this suit has resolved that West Virginia owes no part of the Virginia debt, and that her legislature is opposed to any negotiations in regard thereto (W. Va. Comp., vol. 1, pp. 494, 495).

Chairman Mason, in his remarks at the joint conference at Washington, said as quoted above:

> "But, for fifty years we have been asking, clamoring, and demanding, trying in every way we knew how, to get at the question of what is our equitable proportion of that debt" (p. 26).

In the ten years from 1895 to 1905 each West Virginia Legislature resolved that she owed no part of the debt and was opposed to any negotiations on the subject.

In the twenty-two years from 1873 to 1895, West Virginia was silent. Prior to 1871 she refused to

meet Virginia, using as an excuse the pendency of the suit in this court, brought by Virginia to recover the counties of Berkeley and Jefferson.

In 1871 West Virginia did appoint commissioners, but the finding of this commission that West Virginia owed less than $1,000,000, was repudiated at once, and in 1873 the Senate Finance Committee reported that Virginia was indebted to West Virginia in the sum of $525,000. This report was made an exhibit in West Virginia's answer. The letter of the Second Auditor of Virginia, and the extract from message of Governor Walker to Virginia are given as excuses for the subsequent conduct of West Virginia. We have laid them both before the court to see if it finds in either of them an excuse for West Virginia's course.

We have now given all the efforts made by West Virginia from her beginning to the present time to procure a determination of her share of the debt. We do not find anything therein to excuse West Virginia from liability for the amount of interest which we shall later on in the brief show she legally owes.

Point Four.

The Efforts of Virginia to Settle the Controversy and West Virginia's Excuses for Failure to Meet Virginia.

West Virginia's admission of the facts bearing upon this portion of our argument are contained in the same papers to which we referred in our previous point and are pages 444-472, inclusive, and 490-496, inclusive, of West Virginia's Appendix to the West Virginia's Compilation, vol. I, and paragraph XI of her Answer, and pages 12-20, inclusive, of her Brief upon the hearing after the Master's report. They are printed at the back of this brief as Schedules 1, 2, and 3.

During a period of forty-five years, from January 20, 1867, down to May 2, 1911, repeated efforts were made by Virginia to induce West Virginia to enter upon a settlement, all of which were without avail. Six conspicuous efforts on the part of Virginia to bring about a settlement may be more particularly referred to.

These six efforts were as follows:

Governor F. H. Pierpont, of Virginia, sent a communication to Governor Arthur I. Boreman, of West Virginia, dated January 20, 1867, together with a joint resolution adopted by the General Assembly of Virginia on February 28, 1866, in reference to the reunion of the States of Vir-

ginia and West Virginia and the adjustment of the public debt, and appointing Mr. A. H. H. Stewart, Mr. William Martin, and Mr. John Janny as commissioners to proceed to the seat of government of West Virginia, and giving them authority to treat with the authorities of West Virginia on both subjects.

On February 28, 1867, the Legislature of West Virginia adopted a joint resolution declining to entertain any proposition looking to a reunion of the States, and refusing to treat with the Commissioners of Virginia upon the adjustment of the public debt of Virginia until the suit of Virginia against West Virginia to recover jurisdiction over the counties of Berkeley and Jefferson had been finally disposed of (W. Va. Comp., vol. I, pp. 444-445).

Governor Gilbert C. Walker, of Virginia, sent another communication to Governor William E. Stephenson, of West Virginia, in February, 1870, endeavoring to adjust the Virginia public debt with the State of West Virginia, and about the same time Messrs. William J. Robertson, W. T. Sutherlin, and P. H. Aylett, commissioners, appointed on the part of Virginia, also sent a communication to Governor Stephenson. The first communication was transmitted by Governor Stephenson to the West Virginia Legislature on February 24, 1870, and the second communication was so transmitted on February 28, 1870.

It appears from the joint resolution adopted by

the Legislature of West Virginia after the receipt of Governor Stephenson's communication that the Virginia commissioners were then present in the city of Wheeling for the purpose of adjusting the public debt. The West Virginia Legislature appointed a committee to confer with the Virginia commissioners and report to the legislature, but as far as the journals of the House and Senate of West Virginia of the session of 1870 show no report was made by this committee (W. Va. Comp., vol. I, pp. 446-447).

The defendant's answer states that afterwards, on March 3, 1870, the Governor of West Virginia was authorized by the legislature to appoint three resident citizens of the State to treat with the authorities of Virginia upon the subject of the proper adjustment of the public debt of that State, but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners, and the resolution authorizing their appointment was passed on the last day of the session of the legislature, the Governor of West Virginia stated in his message of 1871 that no appointment had been made owing to the lack of funds to pay the expenses of such commission (Record, pp. 151, 152).

On February 17, 1871, Governor Walker, of Virginia, sent another written communication to Governor Stephenson, of West Virginia, offering to adjust West Virginia's proportion of the public debt of Virginia by arbitration in accordance

with a joint resolution of the General Assembly of Virginia approved on February 11, 1871 (W. Va. Comp., vol. I, pp. 449-451), but West Virginia declined this offer (W. Va. Comp., pp. 452-454).

In February, 1895, Governor O'Farrell, of Virginia, communicated to Governor McKorkle, of West Virginia, a copy of the resolution adopted by Virginia March 6, 1894, appointing commissioners for the purpose of negotiating with West Virginia for the payment of the proportion of the Virginia public debt to be borne by West Virginia, but no response was ever made by West Virginia, although her legislature declined to negotiate with Virginia (W. Va. Comp., pp. 76 and 494).

On February 1, 1905, Mr. Randolph Harrison on behalf of the Virginia Debt Commission, addressed the joint committees on finance of the West Virginia Legislature in relation to West Virginia's contributive share of the debt of Virginia (W. Va. Comp., pp. 68-82), and as West Virginia was still unwilling to treat with Virginia this suit was begun. The last attempt of Virginia to treat with West Virginia is set forth in the motion papers on the motion of October 9, 1911, herein to proceed with the determination of the suit.

The only effort made by West Virginia at any time to settle this debt was made through a committee consisting of Messrs. John J. Jackson, J. M. Bennett, and A. W. Campbell, appointed by Governor J. J. Jacob, of West Virginia, under resolutions adopted by the West Virginia Legislature on

February 15 and February 24, 1871. These gentlemen sent a letter to Governor Walker of Virginia notifying him of their appointment and inquiring what channel of communication with Virginia was open to them. Governor Walker replied that the joint resolution of Virginia providing for arbitration had superseded the joint resolution of February 18, 1870, authorizing the Governor to appoint commissioners, and for that reason that he could not appoint commissioners to confer with West Virginia.

He said that the tender of arbitration had not been withdrawn and was still open (W. Va. Comp., pp. 457-459). These commissioners of West Virginia then proceeded to determine for themselves the balance due Virginia from West Virginia, and found the amount to be $953,360.23 (W. Va. Comp., p. 472); but this determination was not satisfactory to the State of West Virginia, and the Senate Finance Committee of the West Virginia Legislature, on December 22, 1873, made a report to the effect that the State of West Virginia was not liable for any part of the debt of the undivided Commonwealth of Virginia, but that the State of Virginia was indebted to the State of West Virginia in the sum of $525,000.00 (W. Va. Comp., pp. 490-493). Ever since that time West Virginia has taken the position that she does not owe any portion of the debt of the undivided Commonwealth of Virginia and that she would not enter into any negotiations looking to the settlement of

the Virginia debt question. West Virginia's Legislature has repeatedly adopted resolutions denying that West Virginia owed any part of the so-called Virginia debt, and that her legislature was opposed to any negotiation whatsover on that subjest (W. Va. Comp., pp. 494-496).

The last visit of the representatives of Virginia to West Virginia with reference to the settlement of the debt took place on May 2, 1911, and subsequent to the time of the filing of the defendant's answer, but the other efforts of Virginia to settle this debt and the refusals of West Virginia to do anything with reference to a settlement are virtually admitted in the defendant's answer in paragraph XI thereof.

It appears from the foregoing that Virginia on five separate occasions, in the years 1867, 1870, 1871, 1895, and 1905, tried to amicably settle this controversy, and, these repeated efforts having failed, that Virginia brought this suit in February, 1906, and in accordance with the decision herein, dated March 6, 1911, that she again endeavored to meet West Virginia, and it also appears that the only time West Virginia was willing in any way to discuss with Virginia the settlement of the debt was in 1871, when West Virginia appointed commissioners to treat directly with Virginia at a time when the General Assembly of Virginia had adopted a resolution providing for the settlement of the controversy by arbitration. It also appears that the findings of this committee fixing West

Virginia's share in even the small sum of about $1,000,000 were repudiated by the West Virginia Legislature of 1873, and that from that time down to the present West Virginia has continually refused to treat with Virginia in any way for the settlement of this controversy. West Virginia is willing to talk now, on condition that her liability is put at practically nothing, and that the decision in the case be ignored; but that is all she is willing to do.

West Virginia's excuse for failure to meet Virginia in 1867 was the pendency of the suit in this court in regard to the counties of Berkeley and Jefferson. The Governor of West Virginia was authorized to appoint commissioners to meet Virginia's commissioners in 1870, but he made no appointment because the legislature had failed to appropriate money to pay the expenses of such commission. Virginia's tender of arbitration in 1871 was declined, so West Virginia said, because West Virginia soon afterward appointed commissioners to treat with Virginia directly. West Virginia made no response to Virginia's offer in 1895, but her legislature declined to negotiate with Virginia and passed the following resolution:

"House Joint Resolution No. 10, Concerning the Virginia Debt.

"(Adopted February 7th, 1895.)

"*Resolved by the Legislature of West Virginia,* That this legislature hereby de-

clines to enter into any negotiations with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution."

West Virginia's answer to Virginia's offer in 1905 was the following resolution:

"(H. J. R. No. 7.)

"Joint Resolution No. 3.

"(Adopted January 20, 1905.)

"Relating to the Virginia Debt.

"*Resolved by the Legislature of West Virginia,* That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject."

Counsel for West Virginia have attempted to justify West Virginia's refusal to meet Virginia in 1895 and again in 1905 because the resolution of the Virginia Legislature creating the Virginia Commission provided that the commission should not enter into any negotiations thereunder except upon the basis that Virginia is bound only for two-

thirds of the debt of the original State, which she has already provided for as her equitable proportion thereof. An argument was based upon this provision that any negotiations conducted by the Virginia Commission must necessarily assume West Virginia's proportion to be one-third and that of course she was unwilling to negotiate on this basis.

The provision in the act referred to above was an arrangement between Virginia and her creditors. In 1871 Virginia assumed two-thirds of the debt and at once compounded and capitalized all the past-due interest on this portion. The load was more than she could bear and finally, in 1892, she made a final and satisfactory settlement with her creditors. Of course Virginia did not propose to reopen this question. She had, up to 1906, paid out various sums amounting to upwards of $70,000,000 in payment of her proportion of the debt. It was perfectly right that she should stipulate with her creditors that the amount of her liability was already fixed and determined, as in fact it was. There is not the slightest excuse for assuming that the act of 1894, creating the Virginia Commission, or the act of 1900, authorizing this suit, in the slightest degree attempted to fix West Virginia's liability in advance as one-third or to predetermine it to any extent. West Virginia's amount was left open to be determined by negotiation between the parties, and the excuses of counsel, are empty and without meaning. This is espe-

cially true when read in the light of the resolution of West Virginia's Legislature of 1895 and also 1905.

Chairman Mason, in his remarks before the joint conference at Washington, which we have quoted above and shall repeat here, said:

> "But for fifty years, we have been asking, clamoring, and demanding, trying in every way we knew how to get at the question of what is our equitable proportion of that debt" (p. 26).

We do not agree with Chairman Mason. We have stated the facts. We think they show that West Virginia for fifty years has been trying in every way she knew how to avoid the question of what is her proportion of the debt.

Point Five.

West Virginia is Liable for Interest.

The court has held this is a suit on a contract.

It is in fact a suit for the specific performance of a contract made for the benefit of a third party. The contract is set forth in section 8, Article VIII, of the West Virginia Constitution, upon which West Virginia was admitted into the Union. It is as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia

> prior to the first day of January, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

West Virginia is liable for interest by the express terms of this paragraph. Of course, as it is West Virginia that is speaking, the clause will be construed most strictly against that State. What was the public debt of the Commonwealth of Virginia prior to the first day of January, 1861? The court has already determined that it consisted almost wholly of interest-bearing bonds and the balance of the debt was accrued interest on those same bonds. If the accrued interest prior to the first day of January, 1861, was a portion of the public debt, how is it possible to say that the accruing interest was not. We are willing to accept for the purpose of this argument, as a settled rule of law, that a State is not bound to pay interest unless she promises to do so.

The court has made it very plain that this promise of West Virginia, contained in her constitution, is only the expressed recognition of a deep-seated equity for which she was already liable and by which she was already bound. The court, in its decision of March 6, 1911, said as follows:

> "The liability of West Virginia is a deep-seated equity, not discharged by changes in the form of the debt, nor split up by the

unilateral attempt of Virginia to apportion specific parts to the two States."

If there had been no promise in and no contract made by West Virginia's Constitution, West Virginia would have been just as liable for her equitable proportion of the debt as she is, having made that expressed promise. It will not bear the light of reason to say that, as to Virginia's share, after the dismemberment of the old State, the bondholding creditors of the old State would be entitled to receive interest upon the bonds according to their tenor; but upon West Virginia's proportion thereof, the same creditors holding the same bonds would not be entitled to receive their interest. The equitable obligation falling upon each State to pay its share of the undivided debt is contractual and not tortious. West Virginia is just as liable for her share of these bonds according to the tenor of the bonds as Virginia is liable for her proportion. The fact that West Virginia acknowledged her liability in her constitution, and promised to Virginia to discharge that liability, while it adds another form to West Virginia's obligation does not change the substance of that obligation. It certainly does not change the substance of that obligation to diminish it. Suppose West Virginia, for a sufficient consideration, had assumed the whole debt, would she be heard to say that, while she was liable for the principal of the bonds, the interest upon them, according to their tenor, was

not for her to pay. She proposed, in section 8, Article VIII, which we have discussed, to provide a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years. This shows that both West Virginia and Virginia had in mind, and that Congress had in mind, her liability for the interest as well as for the principal of her share. Suppose when the admission of West Virginia as a State was before Congress, and this clause of her constitution was under consideration, the clause read, "We propose to be liable for the principal of our proportion of the bonds, but we won't pay any interest accruing on our share of the debt until our legislature has ascertained what our proportion of the debt is," West Virginia would not have been admitted as a State. West Virginia is liable for her share exactly as Virginia is liable on her share of the bonds according to their tenor. This clause of her constitution will not bear any other construction. The debt is an interest-bearing debt and West Virginia is liable for it, including all its incidents, as it existed prior to January 1, 1861. West Virginia concedes that she is liable for the accrued interest. There is no term which determines the liability for interest which had accrued, different or additional to the terms which fix the interest to accrue after January 1, 1861. Suppose I give my promissory note to X for $1,000, payable in one year, with interest at 6 per cent; in six months from now Y comes along and assumes my obligation. Does not Y by

that act contract to pay the accruing interest just as much as he contracts to pay the interest which has accrued? In this respect West Virginia is no different from any individual. What we are seeking to determine is the nature of West Virginia's promise. Whatever way we look at it we are forced to the conclusion that her promise is to assume the obligation as it existed. This was an obligation for interest as well as for principal. The question of whether a State is liable for interest except where she expressly promises to pay it does not arise because West Virginia promised. We concede that a State is not chargeable with interest for failure to meet an obligation when due where interest would be imposed as damages against her for her failure to perform her promise. Only *ex contractu* obligations of a State are enforced in this court.

United States *vs.* North Carolina, 136 U. S., 211.

South Dakota *vs.* North Carolina, 192 U. S., 286.

In this case our right to interest is based upon West Virginia's promise to pay it.

In the brief filed on behalf of Virginia upon the argument on the merits after the master's report, West Virginia's liability for interest was very fully discussed (Va.'s Brief, pp. 94-97), and it was there shown to be the law of Virginia that interest is incident to the obligation and, even though not expressed in the contract, is an inherent part of it.

"Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation, and whenever a debt is due, the debtor is bound to pay interest unless relieved from this obligation by agreement. This is, and has been the law of the Commonwealth for more than one hundred years.

"In Jones *vs.* Williams, 2 Call, 106, decided in 1799, Edmund Pendleton, who was one of the great judges of our country, delivering the opinion of the court said:

> "Interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it."

"Cited with approval in Baker *vs.* Morris, 10 Lehigh, 284; McVeigh *vs.* Howard, 87 Va., 599, and Stuart *vs.* Hurt, 88 Va., 343.

"In Hatcher *vs.* Lewis, 4 Randolph, 152, 147, the court laid down the rules in the following expressive language:

> *"The interest follows the principal as the shadow does the substance."*

"In Chapman *vs.* Shepherd, the court said:

> "In contracts for the payment of money, interest is not given as damages at the discretion of the court, or jury, but as an incident to the debt, which the court has no discretion to refuse."

Chapman *vs.* Shepherd, 24 Gratt., 377, 384.

Roberts *vs.* Cocke, 28 Gratt., 207.

Tidball *vs.* Shenandoah National Bank, 100 Va., 741.

"Interest is favored both by the legislative and judicial bodies of the State."

Tazewell *vs.* Saunders, 13 Gratt., 354, 370.

"In McVeigh *vs.* Howard, 87 Va., 599, the Supreme Court of Appeals of Virginia said:

"It is the settled rule that when no day is named in the bond or note given for the payment of a precedent debt, it is due and payable on the day of its date, and bears interest from that date, though no interest be reserved. Such an instrument like a bond or note payable, in Virginia, on demand, is payable presently, and bears interest from date. This doctrine is founded in good conscience and correct morals."

* * *

"Citing Jones *vs.* Wiliams and Hatcher *vs.* Lewis, quoted above.

"Such is the law of Virginia as to interest. "*The law of West Virginia in regard thereto is the same.*

"In Shipman *vs.* Bailey, 20 W. Va., 140, 146, Judge Snyder, announcing the unanimous opinion of the Supreme Court of Appeals of that State, after citing a number of authorities upon the question, stated the rule as follows:

"Other authorities of the same character might be cited, but, we think, we have given sufficient to establish the rule which seems to be, that in contracts for the payment of money interest on the principal sum is a legal incident of the debt and a part of the

contract, and wherever there is a contract for the payment of a specified legal rate of interest, whether such rate is fixed by the contract itself or by the law of the place where the contract is made, the obligation of the contract extends to the payment of such interest as fully as it does to the principal sum, and courts have no more power to change the rate of interest thus fixed, than they have to dispense with the enforcement of the contract either in whole or in part."

"That decision reaffirms another proposition, applicable to this case, already a part of the jurisprudence of West Virginia, by the adjudications of the Supreme Court of Virginia rendered before the birth of the new State, namely, that the *lex loci contractus* controls in the matter of the interest chargeable against a debtor.

"In Pickins *vs.* McCoy, 24 West Va., 344-352, the court affirms Shipman *vs.* Bailey, and adopts the language just quoted from that decision.

"Independently of these West Virginia decisions, such parts of the common law and of the laws of the State of Virginia as were in force on the 20th of June, 1863, when the first Constitution of West Virginia went into operation, and as are not repugnant to said Constitution, were continued and declared to be the law of West Virginia. Section 8 of article XI of the first West Virginia Constitution. And see present West Virginia Constitution.

"The effect of this provision was to adopt for the new State the body of the common and statute laws of the Commonwealth, so far as the same were in force within the boundaries of the new State on the 20th of June, 1863.

"As a part of this body of laws, the law of Virginia as to interest became, and has continued to be, a part of the laws of West Virginia.

"Such, then, was the law of Virginia before, at the time of and since the formation of West Virginia, as to the legal and equitable liability of a debtor or contractor to pay interest. Such has been the law of West Virginia since the hour of her birth. And such was, and is, the law of the contract evidence by the public acts of Virginia and West Virginia set forth in complainant's bill.

"*This is the rule in Virginia as to debts due by the Commonwealth.*

"The question was presented in the celebrated case of Higginbotham's Executrix *vs.* Commonwealth, 25 Gratt., 627.

"That was a suit against the Commonwealth to recover the amount due Higginbotham's Executrix on certain past due dividends on stocks which had been guaranteed and assumed by Virginia by the acts cited in the opinion of the court—26 Gratt., 630, 631.

"There was no express contract by the State to pay interest upon said dividends. The petitioner's claim was for the amount of the dividends 'with its accruing interest.'

"The unanimous decision of the Supreme Court of Virginia was that 'judgment should be entered for the petitioner for the amount of her demand with interest' (*Idem*, p. 641).

(Va.'s Brief, pp. 94-97.)

North Carolina was not held liable for interest which she did not expressly promise to pay. In that State interest, unless expressly promised, is not an inherent term of the contract, but is im-

posed as damages for failure to keep the promise. If by the law of North Carolina the State was charged with interest, whether she expressly promised it or not, the decisions in the above cases would have been otherwise. Under the cases quoted above from the brief of Virginia, West Virginia is liable for interest upon her share of the debt down to the present time even if she had not expressly promised to pay it. If West Virginia had made no express promise about her debt we feel that under the law as laid down in the foregoing cases taken from Virginia's brief West Virginia would be liable for interest from January 1, 1861, up to the present time. *But we do not ask so much.*

It seems to us that West Virginia's liability for interest rests upon her promise in her Constitution; recognizing the deep-seated equity imposed by her action of separation; to pay her proportion of the debt, principal and interest, to the date of maturity of the various bonds according to their tenor. We shall now proceed to show the amount of that liability.

Point Six.

The amount of interest which West Virginia legally owes is $14,055,962.56.

This interest is computed upon West Virginia's share of the bonds outstanding January 1, 1861,

according to their tenor. All the facts and figures upon which the computation is made are found in paragraph 1 of the report of the special master, and these facts and figures are acquiesced in by West Virginia.

We have shown in the previous point that under the law of Virginia, and West Virginia as well,

> "Interest follows the principal as the shadow does the substance."

Interest, where not expressly promised, is not imposed in Virginia and West Virginia as damages awarded by the court against the party who fails to fulfill his promise, but is an inherent term of every contract. Every one in Virginia who makes a promise to pay a sum certain or which can be determined after an accounting or otherwise, also promises, by the inherent terms of the contract, to pay interest up to final payment of the obligation from the time it is created, irrespective of when or how the amount of obligation is definitely determined. We have shown that this same rule prevails against the Commonwealth of Virginia itself. Inasmuch as this is a Virginia contract it is to be construed by the laws of Virginia. These facts distinguish the present case from—

United States *vs.* North Carolina, 136 U. S., 211.

South Dakota *vs.* North Carolina, 192 U. S., 286,

cited above. North Carolina was not subjected to the payment of interest after the maturity of her promise in either of these cases because, in North Carolina, interest against an individual is imposed as damages and not as an inherent part of the obligation. Damages are never awarded against a State, and so North Carolina was relieved from interest after maturity upon her obligations. In United States *vs.* North Carolina (*supra*) the court indicated that the case would be otherwise if the law in North Carolina were as it is in some of the other States and as it is here shown to be in Virginia and West Virginia. If interest, even though not expressly mentioned, is an inherent term of the contract, West Virginia is liable for interest as she is for every other term in the contract.

This application of the law, however, imposes a heavy burden on West Virginia. Interest for fifty years amounts to 300 per cent, and West Virginia's total liability on this basis would be nearly $30,000,000. The court, in its opinion, has pointed out that it would be a severe result to capitalize charges against West Virginia for half a century. That is true. States as well as individuals have made and will continue to make mistakes, and for these mistakes they must pay. The men who made this country of ours built a constitution which has survived and will continue to live in spite of what from time to time looks like sure destruction at the hands of the then current public opinion which

must periodically burst forth in the evolution and progress of our country. The Constitution makers provided for the settlement of disputes between States by "involuntary arbitration." This phrase does not belong to us. It was used by Hon. John W. Mason, chairman of the present West Virginia Debt Commission, in a letter dated May 29, 1908, to Governor Dawson, of West Virginia (W. Va. Comp., vol. II, p. 383). It is very hard upon West Virginia today that her people must keep the promise which they made over fifty years ago in order to secure their political birth into a State of this Union. The hardship upon them of paying their honest debt, however, is probably immeasurably small compared to the hardship that would have fallen upon the people of West Virginia if our constitution had not provided for this method of "involuntary arbitration."

We have already pointed out in this brief that nothing that Virginia or West Virginia has done or failed to do entitles West Virginia to be relieved from the legal consequences of her failure to perform this solemn promise which was a necessary condition precedent to her creation as a State. Certainly no act or omission of the bondholders should relieve her. They have asked West Virginia to pay, and her answer to them was "No," just as her answer to Virginia was "No."

We do not ask for a Shylock application of the law. Undoubtedly many people in West Virginia honestly believe that West Virginia is not a de-

faulting debtor State. No one can read the remarks of the special master in this case at the beginning of paragraph 3 of his report without seeing that the Wheeling ordinance is not predicated upon the amount of the debt, and that the just proportion which it purported to determine would be the same irrespective of the size of the debt. "Just proportion and equitable proportion," from the time of the creation of West Virginia and for thirty years prior, originally meant "cannot be much." Since 1873, in West Virginia, "just proportion" and "equitable proportion" have meant no liability whatever. The report of the Senate Finance Committee of that year crystallized West Virginia repudiation. This has been repeated so often in West Virginia that many of her people have come to believe it is true.

Therefore, and because of the admonition of this court, and notwithstanding the rule of construction that section 8 of article VIII of West Virginia's Constitution should be construed most strictly against West Virginia and in favor of Virginia and her bondholding creditors for whose benefit the contract was made, we do not ask this court to impose the utmost liability for interest on West Virginia, but merely that West Virginia pay interest upon her proportion of the bonds according to their tenor.

All of the bonds are listed in paragraph 1 of the master's report, which follows paragraph 1 of the decree and reports:

"The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness."

These facts and figures found by the master are acquiesced in by West Virginia. An examination of the table in paragraph 1 shows that many of these bonds are redeemable at the pleasure of the General Assembly and draw interest until redeemed.

The 6 per cent registered bonds redeemable at the pleasure of the General Assembly, outstanding in the hands of the public, after deducting all bonds held by the Board of Public Works, the literary fund and the sinking fund amount to $8,957,271.03 and West Virginia's proportion thereof is $1,898,941.46.

The 5 per cent bonds redeemable at the pleasure of the General Assembly outstanding in the hands of the public, after deducting all bonds held by the Board of Public Works, the literary fund and the sinking fund of Virginia amount to $262,000.00 and West Virginia's proportion thereof amounts to $55,544.00.

The James River stock annuity shown in the Master's report to amount to $95,500.00, in the hands of the public, after deducting all bonds held by the Board of Public Works, and the literary

fund and the sinking fund of Virginia, was not evidenced by any form of certificate of debt, prior to January 1, 1861, but that figure is the principal amount required to produce annually at 6 per cent the sum guaranteed forever to the stockholders of the James River Company, and this treatment of the annuity was approved by West Virginia's accountant in joint Exhibit A1 and acquiesced in by West Virginia. West Virginia's proportion of this annuity is $20,246.00.

We have annexed to our brief as Schedule 4 thereof the computation of interest upon West Virginia's share of the bonds. For this purpose the bonds are collected in eight groups. The 6 per cent and 5 per cent registered bonds, redeemable at the pleasure of the General Assembly, and the James River stock annuity comprise groups 1, 2, and 3, respectively. West Virginia's share of the bonds in these three groups amounts to $1,974,731.46, being much less than one-third of the total principal for which she is liable. The court has pointed out in its opinion that no portion of the debt is extinguished, and there is no reason why on this proportion of West Virginia's share she should not pay interest to date. On any basis of computation she is legally bound to do so. This is off-set by the fact that in the case of the remainder of her share she does not pay interest at all on some of the bonds and on the others pays interest to periods which end from 1886 to 1894. Where the Virginia bonds were not redeemable at the pleas-

ure of the General Assembly; but had a definite maturity date; the Master put in his report as the date of the bonds the date of the act under which they were authorized. This, of course, greatly benefited West Virginia because it moved backwards the maturity date of the bonds by a period of time equal to the time between the passage of the act authorizing the issue and the date when the respective bonds under that issue were sold. Virginia did not object to this, for while it considerably reduced the amount of interest due by the method here adopted it tended to simplify the case and reduce the number of items to be considered by the Master and the court.

The bonds in group 4 were created under an act of March 16, 1838, and were redeemable in twenty years, so no interest is charged upon West Virginia's share of this group.

The bonds in group 5 are 6 per cent registered bonds redeemable in 34 years. They were created under acts passed March 23, 1860; March 17, 1856; March 18, 1858, and March 29, 1851. The bonds issued under the act of March 23, 1860, would mature 34 years thereafter, to wit, March 23, 1894, and we have figured no interest on West Virginia's share of these bonds subsequent to that date; the bonds issued under the act of March 17, 1856, would mature 34 years thereafter, to wit, March 17, 1890, and we have figured no interest on West Virginia's share of these bonds subsequent to that date; the bonds issued under the act of March 18,

1858, would mature 34 years thereafter, to wit, March 18, 1892, and we have figured no interest upon West Virginia's share of these bonds subsequent to that date. The bonds issued under the act of March 29, 1851, would mature 34 years thereafter, to wit, March 29, 1885, and we have figured no interest upon West Virginia's share of these bonds subsequent to that date.

Of course, in the bonds comprising this and every other group, no interest is computed prior to January 1, 1861, because the unpaid interest up to that time is found by the Master and accepted by West Virginia as a part of the debt existing upon that date.

The bonds in group 6 are 6 per cent coupon bonds redeemable in 35 years, issued under the act of March 29, 1851, and interest upon West Virginia's share of these bonds is figured to March 29, 1886, being 35 years after March 29, 1851, the date of the act under which they were authorized.

The bonds in group 7 are 6 per cent registered bonds redeemable in 35 years. These bonds were issued in exchange for coupon bonds under act of March 18, 1856, but as these coupon bonds, for which the registered bonds were exchanged, were issued under the act of March 29, 1851, as shown in group 6 we figure the maturity as 35 years after this prior date of March 29, 1851, being March 29, 1886.

The bonds in group 8 are 5 per cent Sterling coupon bonds redeemable in 35 years, issued under

the act of March 29, 1851, and interest upon West Virginia's share of these bonds is figured to March 29, 1886, being 35 years after March 29, 1851, the date of the act authorizing the issue. Adding together the interest chargeable against West Virginia on the bonds in each of these 8 groups here listed the whole interest is found to be $14,055,962.56. This sum is only about two-thirds of the interest for which she would be liable upon a strict enforcement of the full measure of her liability.

Adding to West Virginia's share of the interest as here computed her share of the principal, the total amount of West Virginia's liability is $21,238,470.02.

We shall proceed to show that this amount is less than West Virginia would pay if interest was allowed for 34 years as her legislature was instructed to provide in article VIII of her constitution; it is much less pro rata than Virginia has actually paid upon her share of the debt, and it is about the same as West Virginia would pay if she were to take advantage of the various funding acts which Virginia passed with reference to her share of the debt.

Point Seven.

If West Virginia Should Pay Principal and Interest upon Her Proportion of the Debt in the Same Pro Rata Amount which Virginia Has Paid upon Her Proportion, or if West Virginia Should Scale Both Principal and Interest in the Same Way that the Various Funding Acts of Virginia Provided, or if West Virginia Should Pay Interest for 34 Years as Provided in Her Constitution the Amount Would be More than the Amount We Ask For.

The figures to substantiate these deductions are annexed as Schedule No. 5 of this brief.

Exhibit No. 7 of the plaintiff's bill shows that the amount paid off by Virginia between January 1, 1861, and February 1, 1906, or assumed or carried by her on account of the old debt of the undivided State amounts to $71,861,253.31. This schedule shows that Virginia's then existing interest-bearing debt on this account amounts to $25,537,820.00. Adding to the sum shown in Exhibit No. 7 interest at 3 per cent for seven and a half years upon $25,537,820 makes about $6,300,000, more to be added to the $71,861,253.31 stated as then paid out by Virginia.

If West Virginia does as well by the old bondholding creditors upon her share as Virginia has done with her share West Virginia will pay over

$24,000,000. Instead of $21,238,470.02, which we ask as her share.

If West Virginia paid interest for 34 years as her constitution bade her legislature to provide, West Virginia would pay $21,681,432.96 instead of $21,238,470.02 which we ask as her share.

If West Virginia settled her proportion of the debt on the basis of the 1871 and 1891 Funding Acts of Virginia, she would pay $27,009,087.32; if West Virginia settled her proportion of the debt on the basis of the 1871, 1879, and 1891 Funding Acts of Virginia she would pay $21,130,123.56; if West Virginia settled her proportion of the debt on the basis of the 1891 Funding Act of Virginia alone she would pay $21,145,680.96. If West Virginia settled her proportion of the debt on the basis of the 1871, 1882 Refunding Acts of Virginia she would pay $19,721,628.75. If West Virginia settled her proportion of the debt on the basis of the 1871, 1879, and 1882 Refunding Acts of Virginia she would pay $18,244,193.52.

These Refunding Acts of 1879 and 1882 of Virginia have sometimes been referred to as a partial repudiation, and still on the basis of these acts West Virginia would pay as her share over eighteen million dollars if she should have the benefit of both the acts of 1879 and 1882, taken together, applied to all of her share of the debt.

Conclusion.

We respectfully submit to the court that if the court feels that West Virginia's liability for principal and interest should be less than $21,238,-470.02 which as we have already shown as to the interest portion thereof is one-third less than the full limit of her liability and desires to fix the total amount due from West Virginia at a sum less than $21,238,470.02 it should be so fixed only upon condition that West Virginia discharges that liability within a fixed period. If West Virginia does not discharge her liability within the period to be fixed by the court, then she should be held liable for the full amount of her obligation, principal and interest. Seven years of litigation and half a century of waiting is burden enough to impose upon any creditor, even a creditor of a sovereign State.

HOLMES CONRAD,
SANFORD ROBINSON,
Counsel for the Bondholding Creditors.

[Endorsed:] In the Supreme Court of the United States, October Term, 1913. Commonwealth of Virginia *vs.* State of West Virginia. Brief for bondholding creditors.

SCHEDULE I.

***West Virginia's Appendix to West Virginia Compilation, Vol. 1, Pages 444-472, Inclusive, and 490-496, Inclusive.**

Legislature of 1867.

On the 25th day of January, 1867, Governor Arthur I. Boreman sent to the legislature a communication, dated on January 20, 1867, from Governor F. H. Pierpont, of Virginia, together with a certain joint resolution adopted by the General Assembly of Virginia on the 28th day of February, 1866, in reference to the re-union of the States of Virginia and West Virginia and the adjustment of the public debt, and appointing Mr. A. H. H. Stuart, Mr. William Martin and Mr. John Janny as commissioners to proceed to the seat of government of West Virginia, and giving them authority to treat with the authorities of West Virginia on both subjects. On the 28th day of Februarv, 1867, the legislature of West Virginia adopted the following joint resolution, to-wit:

Senate Joint Resolution No. 19, "To provide Commissioners to treat with the authorities of Virginia in regard to the public debt of that State."

Whereas, the General Assembly of Virginia, on the twenty-eighth day of February, 1866, adopted a series of resolutions deeply lamenting the dismemberment of the "Old State," and declaring a sincere desire to establish and perpetuate the reunion of the States of Virginia and West Virginia, and appealing to their brethren of West

* West Virginia's Compilation, Vol. 1, was prepared by Attorney General May of West Virginia. West Virginia's Compilation, Vol. 2, was prepared by Attorney General Conley of West Virginia. Both volumes were filed in the suit by West Virginia and have been repeatedly referred to in the briefs of both sides.

Virginia, to concur with them in the adoption of suitable measures of co-operation in restoration of the ancient Commonwealth of Virginia, with all her people and up to her former boundaries, and further providing for the appointment of three Commissioners with authority to treat on the subject of the restoration of the State of Virginia to its ancient jurisdiction and boundaries, and further empowering said Commissioners to treat with the authorities of the State of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State;

And whereas, Commissioners have been appointed on the part of the State of Virginia pursuant to, and for the purpose named in the resolutions aforesaid;

And whereas, the citizens of West Virginia deeply regret the civil strife (for which they are in no way responsible), in the midst of which they secured their State organization, yet they regard their separate State existence of the most vital importance to them, and have no purpose or intention whatever, of reuniting with the State of Virginia;

And whereas, the citizens of this State are not only willing but deeply anxious that a prompt and equitable settlement should be made between the States of Virginia and West Virginia, and they greatly regret that the State of Virginia has interposed a difficulty by the institution of a suit against this State, to recover jurisdiction over the counties of Berkeley and Jefferson, which they fear will delay such settlement; Therefore,

Resolved by the Legislature of West Virginia:

1. That the people of this State are unalterably opposed to a reunion of this State with the State of Virginia, and will not entertain any proposition looking to that end.

2. That so soon as the suit of Virginia against this State, now pending in the Supreme Court of the United States, to recover jurisdiction over the counties of Berkeley and Jefferson has been finally disposed of, the Governor of this State appoint three Commissioners on the part of this State to treat with the Commissioners appointed by the State of Virginia upon the adjustment of the public debt of said State as provided in Section IX of "An ordinance to provide for the formation of a new State," adopted by a convention of the people of Virginia on the 20th day of August, 1861, and in Section VIII, of Article VIII of the Constitution of West Virginia, and report their action to the Governor, to be by him communicated to the Legislature of this State for their approval or disapproval.

Legislature of 1870.

Governor William E. Stevenson in his message on the 18th of January, 1870, called attention to the resolution of February 28th, 1867.

On the 24th day of February, 1870, Gov. William E. Stevenson transmitted to the Legislature of West Virginia, then in session at Wheeling, a communication from Gilbert C. Walker, then Governor of the Commonwealth of Virginia, enclosing an act entitled "An Act for the adjustment of the public debt with the State of West Virginia," which had been passed by the General Assembly of Virginia on the 18th day of February, 1870.

On the 28th day of February, 1870, the Governor of West Virginia transmitted to the Legislature of West Virginia a communication from Messrs. William J. Robertson, W. T. Sutherlin and P. H. Aylett, commissioners appointed on the part of Virginia with reference to the settlement of the public debt of Virginia.

On the 1st day of March, 1870, the Legislature adopted the following joint resolution:

Joint Resolution raising a Joint Committee to confer with the Commissioners appointed by the State of Virginia, to adjust the Public Debt with the State of West Virginia.

Whereas, The State of Virginia, by act approved February the eighteenth, eighteen hundred and seventy, provided for the appointment of three commissioners to treat with the authorities of the state of West Virginia upon the subject of a proper adjustment of the public debt of the state of Virginia; and

Whereas, The governor by a communication dated February twenty-fourth, eighteen hundred and seventy, notified the legislature of the passage of the above recited act; and

Whereas, The governor on the twenty-eighth of February, eighteen hundred and seventy, notified the legislature that said commissioners, on the part of Virginia, had been appointed, and are now in the city of Wheeling for the purpose of carrying said act, above recited, into effect, therefore,

Resolved by the Legislature of West Virginia, That a joint committee of two upon the part of the Senate and three upon the part of the House of Delegates, be appointed by the presiding officers of their respective bodies, to confer with said commissioners, and report to this legislature the result of said conference.

2. All communications connected with said commission are hereby referred to said committee.

On the part of the Senate, Henry G. Davis and William I. Boreman were appointed.

On the part of the House, John J. Davis, Henry

Brannon and Francis H. Pierpoint were appointed.

Joint Resolution adding two members to the joint special committee to confer with the Virginia commissioners.

Resolved by the Legislature of West Virginia, That Daniel Lamb, on the part of the house, and one member on the part of the senate, be added to the joint special committee, to confer with the commissioners of Virginia, in relation to the Virginia state debt.

Adopted March 1, 1870.

The additional member on the part of the senate was J. D. Ramsdell.

So far as the journals of the House and Senate of the session of 1870 show, no report was made by this committee.

On the 3rd of March, 1870, the following resolution was adopted:

Joint Resolution relating to the adjustment of the public debt with the commissioners appointed for the purpose by the State of Virginia.

Resolved by the Legislature of West Virginia, That the governor appoint three resident citizens of this state, one from each congressional district, to treat with the authorities of the state of Virginia on the subject of a proper adjustment of the public debt of that state, due or incurred prior to the first day of January, eighteen hundred and sixty-one, and a fair division of the property belonging to that state on that day; and make report thereof to this legislature for its approval or disapproval at its next regular session, with the

facts and documents upon which their report is founded. *Provided,* that nothing herein contained shall be construed as waiving or impairing in any way the rights of this state to jurisdiction over the counties of Berkeley and Jefferson.

2. The commissioners so to be appointed shall proceed without delay in the execution of their duties, and as compensation for their services, shall receive six dollars per day for the time actually employed therein, and the same mileage as that allowed to members of the legislature.

Legislature of 1871.

Gov. William E. Stevenson in his message to the Legislature of 1871 discussed at length the Virginia debt proposition and explained the reasons why no report was made under the above resolution and submitted the matter again to this Legislature.

On the 15th day of February, 1871, the Legislature adopted the following joint resolution.

Joint Resolution authorizing the appointment of commissioners to treat with the state of Virginia on the subject of the state debt.

Resolved by the Legislature of West Virginia:

1. That the governor, or on after the fifteenth day of March, 1871, appoint three disinterested citizens of this state to treat with the authorities of the state of Virginia on the subject of a proposed adjustment of the public debt of that state prior to the first day of January, 1861, and make report thereof to the governor, to be printed and communicated by him to the legislature, at the commencement of its next session, for approval or disapproval.

2. The commissioners so to be appointed are further directed to ascertain and report the amount of said debt then held by persons other than the state of Virginia, and what said debt was incurred for, and what amount of this state debt was then held by the commissioners of the sinking fund and by the board of the library fund; that they ascertain and report the amount of all investments then held by the state, their respective amounts and character, and what portions thereof were then productive, and the dividends therefrom, and whether any of such investments then so held by said state have since been donated, changed, converted or disposed of by the authorities of said state, and if so, the amount and how disposed of; that they ascertain and report the revenue derived for the fiscal year ending on the thirtieth of September, 1860, from all sources, by the state of Virginia, within the present territory of Virginia, and the amount derived from all sources from the territory now composing the state of West Virginia; and that they report any other relevant matter deemed proper by them.

3. The commissioners so to be appointed shall proceed without delay in the execution of their duties, and as a compensation for their services shall each receive six dollars per day for the time they or any one or more of them may be actually employed therein, and the same mileage as that allowed to the members of the legislature, and may employ such accountant or clerk, at a reasonable compensation, as they may deem necessary; and the governor shall have the power to remove any one or more of the commissioners, and fill any vacancy that may occur from removal, death or failure to act.

4. Nothing herein contained shall be construed as waiving or impairing in any way the rights of

this state to jurisdiction over the counties of Berkeley and Jefferson.

5. That the foregoing resolutions be communicated by the governor to the governor of Virginia.

Adopted, February 15, 1871.

On the 15th day of February, 1871, the Legislature adopted the following joint resolution:

STATE OF WEST VIRGINIA,
EXECUTIVE DEPARTMENT,
CHARLESTON, *February* 17, 1871.

Gentlemen of the Senate:

I have the honor herewith to transmit a certified copy of a Joint Resolution, adopted by the General Assembly of Virginia, and approved February 11, 1871, tendering to West Virginia an arbitration for the apportionment of the public debt, which I this day received from His Excellency the Governor of Virginia. The resolution is accompanied by a letter from His Excellency, addressed to the Governor and Legislature of West Virginia, which I also respectfully communicate.

W. E. STEVENSON, *Governor.*

COMMONWEALTH OF VIRGINIA,
EXECUTIVE CHAMBERS,
RICHMOND, *February* 10, 1871.

To His Excellency the Governor and General Assembly of West Virginia:

In pursuance of the authority vested in the Governor by a Joint Resolution passed by our General Assembly, and approved on the fourteenth day of February instant, entitled "Joint Resolution tendering to West Virginia an arbitration for the apportionment of the public debt," an authenticated copy of which is hereto attached, I,

Gilbert C. Walker, Governor of the Commonwealth of Virginia, on behalf of said Commonwealth, do hereby tender to the State of West Virginia "an arbitration of all matters touching a full and fair apportionment between said States, of the said public debt, contracted by the State of Virginia prior to January 1, 1861," upon the conditions in said Joint Resolution specified, viz: Each State to select two arbitrators, not residents thereof, and the four thus selected to appoint an umpire, if they shall deem it advisable, and the arbitrators and umpire thus chosen, to proceed, as soon as practicable, to adjust, award and decide upon fair, just and equitable principles what proportion of said public debt should be paid by West Virginia, and what part thereof should be paid by the State of Virginia: each State being represented by counsel if desired. The sole duty of the arbitrators and umpire will be to ascertain the amount of the public debt which each State ought justly to assume and pay.

It is earnestly hoped that the State of West Virginia will promptly accept this fair and equitable mode of adjustment of the public debt, to the end that the question involved may be speedily, satisfactorily and finally settled.

I have the honor to be, very respectfully, your obedient servant,

G. C. WALKER,
Governor of the Commonwealth of Virginia.

Joint Resolution Tendering to West Virginia an arbitration for the apportionment of the public debt.

(Approved February 11th, 1871.)

Whereas, the constitution of both Virginia and West Virginia impose upon the respective legis-

latures of said States the duty to provide by law, for the adjusting between them the proportion of the public debt, contracted prior to the first of January, 1861, proper to be borne by each of said States; and

Whereas, it is essential to the financial interests of Virginia that said settlement should be obtained as soon as practicable, therefore

Be it Resolved by the General Assembly of Virginia:

That the Governor of this Commonwealth be, and he is hereby, authorized to tender to the State of West Virginia an arbitration of all matters touching a full and fair apportionment between said States of the public debt, and in the event of the acceptance of such offer of arbitration by West Virginia, then the Governor, Lieutenant Governor, President of the Court of Appeals, Auditor of Public Accounts and the Secretary of the Commonwealth shall appoint two arbitrators on the part of this State, who shall not be citizens of this State, to meet any two arbitrators selected by West Virginia, not citizens of said State.

The arbitrators so appointed shall, if they deem it advisable, appoint an umpire. Said arbitrators and umpire shall, as soon as practicable, proceed to adjust, award and decide upon fair, just and equitable principles what proportion of said public debt shall be paid by West Virginia, and what part thereof shall be paid by this State. Said apportionment, when ascertained and made, to be reported by said arbitrators to the Legislatures of said States, to enable them to carry out such award or apportionment by appropriate legislation.

Each State may be represented by counsel, and the board hereby directed to appoint the arbitrators for Virginia shall be, and are hereby, authorized to draw on the Treasury of the State of Virginia, out of any money not otherwise appropri-

ated, a sum sufficient to defray the necessary expenses of this arbitration on the part of Virginia.

A copy.

(Signed) J. BELL BIGGER,
Clerk of House of Delegates and
Keeper of the Rolls of Virginia.

February 11, 1871.

On the same day the Legislature adopted the following joint resolution:

"Senate Joint Resolution No. 19, 'Raising a Joint Special Committee to consider the communication from the Governor of Virginia, concerning the proposed arbitration of the debt between Virginia and West Virginia.'"

"*Resolved by the Legislature of West Virginia:*

"That a Joint Special Committee of three on the part of the House of Delegates, and two on the part of the Senate, be appointed to consider and report on the communication from the Governor of Virginia, concerning the proposed arbitration of the public debt between Virginia and West Virginia."

On the part of the Senate, Mr. Henry G. Davis and Mr. George Koonce were appointed as members of such committee, and on the part of the House, Mr. James M. Jackson, Mr. James H. Ferguson and Mr. George C. Sturgiss were appointed as members of such committee.

On the 20th day of February, 1871, this special committee made the following report:

"To the Legislature of West Virginia:

"The Joint Special Committee, to whom was referred the special message of the Governor of the State, enclosing a Joint Resolution of the Gen-

eral Assembly of Virginia and the communication of the Governor of said State, tendering to West Virginia an arbitration for the apportionment of the public debt of Virginia contracted prior to the first of January, 1861, have had the same under consideration and submit the following

Report.

"The Legislature, by Joint Resolution No. 21, passed February fifteenth instant, having conferred upon the Governor authority, and instructed him to appoint three disinterested citizens of this State to treat with the authorities of the State of Virginia, on the subject of a proper adjustment of the public debt of that State, prior to the first day of January, 1861, and the authorities of the State of West Virginia having ever evinced a sincere desire to adjust and settle at the earliest practicable moment, the proportion of said debt proper to be borne by each of said States, and the Committee believing that the citizens of the respective States would of necessity be more familiar with the circumstances attending the creation of said debt and the many intricate questions connected therewith, and upon the proper comprehension of which must depend the equitable adjustment and apportionment of the same between said States, recommend that said tender of arbitration by arbitrators and umpire not citizens of either State, be respectfully declined; and that the said State of Virginia be invited to appoint three disinterested citizens of that Commonwealth as Commissioners, with authority to treat with like Commissioners to be appointed under said Joint Resolution No. 21, on behalf of this State, with power to adjust, award and decide upon fair, just and equitable principles, what proportion of said debt should be paid by each of said States,

subject to the ratification and approval of the General Assembly of Virginia and the Legislature of West Virginia; and to carry out the objects herein stated; the Committee recommend the adoption of the following:

"Senate Joint Resolution No. 21, 'Providing for the settlement of the debt between Virginia and West Virginia.' "

"Whereas, the Legislature of West Virginia in discharge of the duty imposed by the Constitution of the State, to 'ascertain as soon as may be practicable' the equitable proportion of the public debt of the Commonwealth of Virginia to be assumed and liquidated by this State, has authorized and directed by Joint Resolution passed on the fifteenth day of February, 1871, the appointment by the Governor of 'three disinterested citizens of this State to treat with the authorities of the State of Virginia on the subject of a proper adjustment of the public debt of that State, prior the first day of January, 1861;' " and

"Whereas, the Governor of the Commonwealth of Virginia, by authority conferred by a Joint Resolution of the General Assembly of said Commonwealth, passed February 11th, 1871, has tendered on behalf of said Commonwealth to the State of West Virginia, 'an arbitration of all matters touching a full and fair apportionment between said States, of the said public debt' by arbitrators, not citizens of either of said States, and not subject to the ratification of the legislative departments of said States; and

"Whereas, any adjustment of the said debt should be subject to such ratification; and

"Whereas, citizen commissioners would of necessity be more familiar with the circumstances

attending the creation of said debt, and the many intricate questions connected therewith, and upon the proper comprehension of which must depend the equitable apportionment and adjustment of the same between said States; therefore,

"*Resolved by the Legislature of West Virginia:*

"1. That the tender of an arbitration made by the Governor of the Commonwealth of Virginia to this State for the adjustment of the public debt of said Commonwealth, having been anticipated by the action of the Legislature of this State, authorizing the appointment of Commissioners to treat upon said subject, the said tender is respectfully declined, and the Commonwealth of Virginia is invited to appoint three disinterested citizens as Commissioners with authority to treat with like Commissioners heretofore authorized on the part of this State. And said Commissioners on behalf of this State in addition to the powers heretofore conferred, are hereby further empowered to proceed, as soon as practicable, to adjust, award, and determine, upon fair, just and equitable principles, what proportion of said public debt of Virginia should, in their opinion, be paid by West Virginia, and what part thereof should be paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia.

"2. The governor of this State is hereby directed to communicate to the Governor of the Commonwealth of Virginia, without delay, certified copies of this preamble and Joint Resolution.

Respectfully submitted,

JAMES M. JACKSON,
JAMES H. FERGUSON,
GEORGE C. STURGISS,
H. G. DAVIS,
GEORGE KOONCE,
Committee."

"February 20, 1871."

This report was signed by all the members of the Committee and the resolution therein set out was on the 24th day of February, 1871, adopted by the Legislature.

Under the resolutions of February 15th and 24th Governor J. J. Jacob appointed Mr. John J. Jackson, Mr. J. M. Bennett and Mr. A. W. Campbell.

Report of the Virginia Debt Commissioners of 1871.

Report of the Virginia Debt Commissioners of 1871.

To His Excellency J. J. Jacob, Governor of West Virginia.

SIR: Under the joint resolutions passed by the West Virginia Legislature on the 15th and 24th days of February, last, the undersigned were appointed Commissioners by you "to treat with the authorities of Virginia on the subject of a proposed adjustment of the public debt of that State prior to the first day of January, 1861," and were directed by the legislature "to make report thereof to the Governor," which we have the honor to do as follows:

On the 9th day of August last the Commissioners met in Parkersburg to confer together upon the subject matter of their appointment and to organize a programme of procedure in respect thereof. They addressed a letter to your Excellency notifying you of their meeting and organization, and also the following letter to Governor Walker, of Virginia:

PARKERSBURG, W. VA., *August* 9, 1871.

To His Excellency the Governor of Virginia.

SIR: The undersigned have the honor to inform you that under the joint resolutions passed by the legislature of West Virginia on the 15th and 24th days of February last, they have been appointed Commissioners by the Governor of West Virginia to treat with Virginia in regard to the debt as it stood on the first day of January, 1861."

Also, that they met in this city to-day for the purpose of entering upon the discharge of their duties, and to this end have designated General John J. Jackson as their chairman, through whom they propose to receive such communications as your Excellency may be pleased to submit.

Will your Excellency be pleased to indicate at your earliest convenience what action, if any, has been or is likely to be taken by Virginia in the matter of appointing Commissioners, or, in the event of no such appointments, what channel of communication will be open to us.

We have the honor to be

Your Excellency's most ob't servants,

JOHN J. JACKSON.
J. M. BENNETT.
A. W. CAMPBELL.

After forwarding this letter, together with the one to your Excellency, the Commissioners adjourned to meet in Richmond on a day to be agreed upon later in the season, there to confer with the authorities of Virginia, and to make such examination of public documents as might enable them to carry out the objects of their appointment.

Meanwhile they received from the Governor of Virginia in answer to their letter of August 9th, a letter dated September 7th, the same purporting to be a copy of a letter addressed to your Excellency, and which is as follows:

EXECUTIVE CHAMBERS,
RICHMOND, *Sept.* 7, 1871.

His Excellency J. J. Jacob, Governor of West Virginia.

SIR: I have the honor to acknowledge the receipt of your communication of the 17th ulto., notifying me of the appointment of Messrs. Bennett, Jackson and Campbell as Commissioners on behalf of the State of West Virginia to treat with the authorities of this State upon the subject of the State debt. I have also received a certified copy of the joint resolutions empowering you to make these appointments. Absence from the capital has prevented an earlier response to these several communications.

On the 18th of February, 1870, an act was passed by the Legislature of this State, and approved by me, authorizing the Governor to appoint three Commissioners on behalf of this State to treat with the authorities of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and a fair division of the public property.

Commissioners were promptly appointed under this act, and notice of their appointment, together with an authenticated copy of the act, were at once forwarded to the Governor of West Virginia. No response whatever to my communication was made by the Governor of West Virginia, but I learned through other sources that the matter was promptly submitted to the Legislature then in session, by which, either by act or resolution, the Governor was authorized to appoint Commissioners to meet and confer with those appointed from Virginia. I have never been informed, however, of the appointment of any Commissioners under the authority thus conferred.

A history of these proceedings, together with a statement of my own views upon the subject, was submitted to our Legislature in my annual message of December last, a copy of which I herewith enclose. The Legislature, acting upon the suggestion of the message, on the 11th day of February last, by a joint resolution, authorized the Governor to tender to the State of West Virginia "an arbitration of all matters touching a full and fair apportionment between said States of the said public debt," an authenticated copy of which joint resolution, together with the tender of an arbitration as therein authorized, was promptly forwarded to the Governor of West Virginia.

This joint resolution, while it does not in terms repeal the act of February 18th, 1870, was intended to *supersede* it, and therefore I do not feel authorized to appoint Commissioners. Our tender of an arbitration has not been withdrawn, and I regret exceedingly that the authorities of West Virginia declined to accept it. I cannot understand what reasonable objection can be raised to this fair and equitable mode of adjustment so frequently resorted to by individuals and nations, and I trust that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia, to the end that prompt justice may be done to the creditors of the old State, and that harmony and good feeling may prevail between the people of the two States.

Very respectfully,

Your Excellency's ob't servant,

G. C. WALKER,
Governor of Virginia.

(P. S.—Accompanying the above.) "The foregoing is a copy of the original letter mailed to Governor Jacob."

From this letter we at once understood that so fas as a conference with Commissioners or other persons authorized to represent Virginia in that capacity was concerned, our mission was at an end. But the joint resolution under which we were acting, copies of which you had forwarded for our guidance, directed that we should "ascertain and report the amount of the debt of Virginia on the first day of January, 1861, and what said debt was incurred for, and what amount of this State debt was then held by the Commissioners of the Sinking Fund, and by the Board of the Library Fund." Also that we should "ascertain and report the amount of all investments then held by the State, their respective amounts and character, and what portion thereof were then productive, and the dividends therefrom, and whether any of such investments then held by said State have since been donated, changed, converted or disposed of by the authorities of said State, and, if so, the amount and how disposed of." Also that we should "ascertain and report the revenue derived from the fiscal year ending on the 30th of September, 1860, from all sources by the State of Virginia within the present territory of Virginia and the amount derived from all sources from the territory now comprising the State of West Virginia;" and also that we "report any other relevant matter deemed proper" by us.

In addition to the foregoing duties thus devolved upon us by the terms of the joint resolution passed on the 15th day of February, we "were further empowered," in the language of the additional joint resolution passed on the 24th of the same month, "to proceed as soon as practicable to adjust, award and determine upon fair, just and equitable principles what proportion of said public debt of Virginia should in their opinion be paid by West Virginia, and what part thereof should be

paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia."

Under this authority and direction, thus minutely specified to us, we felt called upon to take substantially the same steps after the receipt of Governor Walker's letter of September 7th as we would have taken had we expected to meet Commissioners representing Virginia, viz: to go to Richmond and endeavor to gather the information expected and required under the terms of our appointment.

Accordingly we met in that city on the 9th of November last and after spending several days in the examination of such public documents as were available to us at the Capitol, and realizing the necessity for further and more explicit and official information than we could gather of ourselves unassisted from said documents, we addressed the following note to the Second Auditor of Virginia:

RICHMOND, *November 14th*, 1871.

To the Second Auditor of Virginia:

SIR: I am directed by the Commissioners representing West Virginia in the matter of the public debt of Virginia prior to the first of January, 1861, to procure from your office such information as can be furnished upon the following points, viz:

1. The actual amount of the public debt of Virginia on the first of January, 1861. And under the head the amounts of said debt owned by the Sinking Fund, the amount owned by the Literary Fund, and the amount owned by the Library Fund.

2. What portion of the bonded debt was invested, and how invested on the first of January, 1861. Also what portion of the investment was productive, what were the dividends or profits

arising therefrom for the year 1860, and whether any such investments have since been donated, changed, converted or otherwise disposed of.

3. What portion of the appropriations expended in West Virginia for public improvements came from the sales of State bonds and what portion from the revenues or taxes of Virginia.

4. A copy of the advertisement for the redemption of a portion of the public debt on the first of January, 1861.

5. A statement of the amount of public debt actually redeemed on the first of January, 1861, pursuant to said advertisement.

Upon these points the Commissioners desire to hear from you at your earliest convenience.

Very respectfully, your obedient servant,

A. W. CAMPBELL, *Secretary.*

In reply to the foregoing communication we received the following note at 5 o'clock on the evening of the 16th of November, after a lapse of two and a half days, and after we had abandoned all hope of the assistance asked for in our letter, and after, in fact, we were on the eve of our departure for home:

SECOND AUDITOR'S OFFICE,
RICHMOND, *Nov.* 16, 1871.

A. W. Cambell, Esq., Secretary, &c.:

DEAR SIR: Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would in-

volve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,

Most respectfully yours,

ASA ROGERS.

With the reception of this note the Commissioners closed their labors in Richmond, finding that a further stay was not likely to add to the scant information already gleaned by them from the public documents.

It is proper to say in connection with the Second Auditor's communication that we, in delivering our own communication to him, caused it to be verbally understood that we were ready and willing to pay for the services of an expert, competent to obtain for us the information requested, and that we did not desire or intend to trench upon the services of any one with whose duties the labor required might seriously conflict.

After this termination of their visit to Richmond, the Commissioners agreed to meet again on the 12th of December following, at Parkersburg, there to prepare and transmit to your Excellency such information as they had been able to obtain, and such as they might still further obtain, and along with it such an expression of opinion as is called for in the joint resolution of February 24th.

Accordingly we met in Parkersburg at the date named, and after nearly two weeks of examination and comparison of all the sources of information accessible to us, agreed upon and drew up the facts and statements hereinafter presented.

Previous to this meeting we had just received copies of the Richmond papers of December 7th, containing Governor Walker's message to the General Assembly of Virginia at its meeting on the 6th, in which we observed that among other allusions to the debt question pending between the two States, and after a reference to our correspondence with him of August last and his answer thereto, as already quoted, he proceeds to arraign the good faith of the authorities of this State as follows:

"Now, if the authorities of West Virginia entertained an earnest desire to make a speedy and final settlement of this matter, why did they not accept our tender of arbitration? A mode of settlement of such controversies universally recognized by both nations and individuals as right and appropriate. Suppose an equal number of Commissioners appointed by each State, and that they should meet and disagree upon any or all points involved, who is to decide between them? And yet, beyond a doubt, they would radically disagree upon the first or chief point to be settled, viz: the basis or principle upon which the settlement should be made. But suppose that the Commissioners should finally agree, does any one suppose that their finding would be ratified by the legislatures of the two States, disagreeing as the people do radically upon the merits of the question at issue? Of course not."

This quotation from Governor Walker's message fairly exhibits the spirit in which he has seemed to view not only our own efforts to carry out the objects of our appointment but likewise

the sincerity and good faith of the Legislature of West Virginia in providing for the appointment of such a commission by your Excellency. And yet while this is the case it is not to be forgotten that Virginia herself initiated this method of attempting to adjust the debt question. And the language of the Governor would seem to be all the more gratuitous in such a connection from the fact that in his annual message of December 7th, 1870, he considered it worth while to allude to the political change that had taken place in this State at the preceding October election, and bespoke in so many words for the "new administration" an "opportunity of manifesting its intentions and its appreciation of honesty and fair dealing." And yet notwithstanding this language by himself thus voluntarily employed on our behalf, and notwithstanding also the fact that one of the early acts of the "new administration" was to respond to the policy that Virginia herself had initiated, and before it was known in this State that she had changed that policy, and while the appointees under the response were in Richmond seeking in vain from the proper authority of Virginia for such information as every debtor is entitled in law to receive from his creditor, saying nothing of that spirit of "fair dealing" that was so conspicuously spoken on our behalf, Governor Walker proceeds in his late message to asperse the good faith of the State of West Virginia after the manner and in the words that we have quoted.

The authorities of West Virginia have never assumed to themselves any right of precedence in the matter of a policy for adjusting the difficulties surrounding the debt question. But in the joint resolution passed on the 24th of February last they did assume the modest right of adhering to the policy already inaugurated by the State of Vir-

ginia, and by her so freely tendered heretofore for their acceptance, and therefore they respectfully declined to adopt a new and different proposition from her until they could test the merits of the one already adopted.

Apparently the present Executive of Virginia, from an enforced familiarity with the workings of "personal government," which he so much deplores, has acquired ideas as to the right of the initiative between equal contracting parties that are scarcely consistent with the delicacy of the issue pending between this State and his own. For instance, in his letter of September the 7th, he tells us that the legislature of Virginia, upon his suggestion, has tendered an arbitration to this State, and he trusts "that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia." And again, in his late message, he says that "the better course to be pursued is for the two States to submit the whole question to arbitration," and West Virginia is arraigned, as heretofore shown, for not concurring in his opinions. Apparently it did not occur to the Governor that since Virginia had proposed both modes of settlement to this State, the latter might make her choice between them without subjecting her motives to imputation. And yet all that she had assumed to do is simply to chose between two policies initiated by Virginia. Unless, therefore, it can be shown that it is the prerogative of that State to prescribe the terms upon which the debt shall be adjusted the question should hereafter be discussed in a spirit better calculated to allay all sectional irritation.

But we pass from this incidental reference to Governor Walker's strictures upon the attitude of this State towards the debt question to the action

of the Virginia legislature upon the same question as embodied in the act approved on the 30th of March last, and known as the Funding bill. This act is in keeping with the initiatory legislation in regard to the debt to which we have just referred. It assumes to apportion the debt of that State arbitrarily, notwithstanding her authorities had six weeks before the passage of the act received notice of the joint resolution of the West Virginia Legislature providing for the appointment of Commissioners. It assumes, also, to apportion the debt, not as it stood on the first day of January, 1861, but as it would stand on the first day of July, 1871, after the interest had been twice compounded, once in 1866, and again at the date last named; and to apportion it, too, upon the basis of territory and population, and without any reference to the equities that should always govern an assignment of debt between sections that were so notorious in our own case. In other words it assumes to apportion to West Virginia one-third of the debt as it now stands, simply on the ground that she has one-third of the territory and population formerly belonging to Virginia, and without reference at all to the question of resources and values. This is apparently the practical result which Governor Walker hoped to reach when he urged upon us the "more speedy and satisfactory mode of settlement proposed by Virginia," inasmuch as he tells us in his late message that this is the "plan for a reorganization of the State debt," which he "had recommended twelve months before."

But without reference to the authorship of this or any other "plan" for adjusting the debt question, we propose to consider as briefly as possible the real cause now pending between Virginia and West Virginia as we understand it.

The tables or statements which we annex as part

of our report show, among other things, the following facts:

That the funded debt of Virginia on the first day of January, 1861, was $31,778,867.32, after all reductions.

That all, or nearly all, of this debt was incurred for and actually expended in works of public improvements, such as canals, railroads, turnpikes, plank roads and bridges.

That this vast sum, upwards of $30,000,000 was expended for improvements in the present State of Virginia, and only about two and a half millions in the present State of West Virginia.

That the present State of Virginia contains 41,352 square miles and West Virginia only 20,000 square miles, or less than one-third.

That the counties composing what is now Virginia contained by the census of 1860 a population of 1,220,829, and those composing West Virginia only a population of 374,985, or less than one-fourth.

To these exhibits we append others, under our instructions from the legislature, but they are such as do not enter into our argument here, which is to show that no just apportionment of the debt can be made upon the basis of population and territory alone, which is the basis upon which the Virginia Funding bill is confessedly predicated.

This theory of apportionment is apparently quite current among the people of that State, and is defended with ability by Judge Meredith, of Richmond, in a carefully prepared paper on the subject. His position is that West Virginia should pay one-third of the debt because, as he says, it is a principle of international law governing the division of nations that "the obligations which had accrued to the whole before the division are, unless they are the subject of special agree-

ment, ratably binding upon the different parts." This he gives as a quotation from Phillimore. Two inquiries present themselves in connection with it. First, was Virginia a nation in the sense intended by Phillimore? and, second, what are we to understand by a ratable part of a debt? We presume that it will not be contended that the general rights and obligations of a nation, as defined by international law, belonged to Virginia prior to the division of the State, and therefore we cannot admit the applicability of the quotation in that particular. Neither can we admit Judge Meredith's construction of the word ratable. He applies it exclusively to territory and population and excludes everything in the shape of resources and value, such as public works, buildings and institutions, which, as we all know, vitally affect the equity of a division of territory.

Judge Meredith next adduces the following quotation from Chancellor Kent to sustain his position:

"If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement those rights are to be enjoyed and those obligations fulfilled by all the parts in common."

This quotation is much more intelligible and just, and we think will tend to sustain the conclusions we have reached, as hereinafter stated.

In addition to the two quotations already given, Judge Meredith cites other authorities to sustain his position that West Virginia is chargeable with one-third of the debt, but we do not regard them as applicable to the case under consideration. First, because Virginia is not a nation. Second, because in all the cases referred to in the authorities quoted, treaty stipulations had more or less to do with the question. Third, because the debts were

war debts, the benefits of which, if any, accrued to each individual, and the obligations of which therefore rested upon each. In no instance was the debt created for internal improvements which necessarily confer partial and local benefits that in most cases exceed the general benefit to the State at large. We, therefore, fail to see the proper analogy that should exist to make these citations precedents for the case of Virginia and West Virginia.

Judge Meredith winds up these references to various authorities, by two general deductions of his own, as follows:

1. "That the public debt of a State is not affected by a change in the form of its government, nor by the partition of its territory into two States, but remains in full force and must be discharged."

2. "That if a State be divided into two or more States, the debts which had been contracted by the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts in proportion to territory and population."

The first deduction it is not necessary to consider, as West Virginia, in her ordinance of separation from Virginia, as also in her constitution, agreed to pay an equitable proportion of the public debt. What that equitable proportion is we are now considering.

In reference to the second deduction we have to remark that Judge Meredith draws a conclusion from his authorities which they do not sustain. Phillimore, for instance, says that "if a nation be divided into various distinct societies, the obligations which had accrued to the whole before the division are ratably binding upon the different parts." Here Phillimore and the authorities stop. But this does not suffice for the Virginia side of the question, and Judge Meredith adds

after the word "parts" the words "in proportion to territory and population." These words are not found in any of the authorities, so far as we are advised, and certainly not in any of the quotations adduced by the Judge.

A moment's consideration will show that a division of debt according to population and territory would not only be impracticable but would conflict with common sense. It would be impracticable because it does not determine the relative value of each one of the two elements of population and territory. Suppose the population to be twice as much as the territory, or suppose the territory to be three times as great as the population, which element has the greater value in determining the result?

Without pursuing this thought further it is manifest that nothing is settled by such a rule. You must fix the relative value of the two elements before you can reach a conclusion. It is, therefore, plain why the books do not give the rule as stated by Judge Meredith. Because of its indefiniteness, but mainly because of its injustice. Would any sane man lay down a rule for the division of a State which would ignore the great cities, public improvements, public works, institutions of all kinds, great commercial advantages, such as rivers and harbors and the great advantage of fertility; all of which, and many other elements of wealth, property and power, might be found in one division and be wholly absent in the other. Hence we say that such a rule is repugnant to common sense.

A public debt is mainly a charge upon the wealth and resources of a people. It is represented by taxes, and taxes are imposed not on numbers or square miles but on resources and values. How much stronger is the case when the very debt under

consideration was created in developing and enriching one portion of the State almost exclusively. Nay, more, when that division of the State is in possession of and enjoying, giving away and selling at auction and otherwise disposing of the very subjects for which the debt was created.

These considerations afford abundant reason why no authority would say, in the absence of a compact (unless there was perfect homogeneity) that it would be just to divide a "nation" any more than an individual estate by population and territory. We doubt not that Judge Meredith himself would scout the idea of dividing an estate on such a basis and without reference to the quality of the land and the improvements made. Why then would he ignore such considerations in apportioning a public debt between two divisions of a State? Chancellor Kent, whom he has quoted, does not sustain him in so doing. The quotation already given from that author says that "if a State should be divided in respect to territory its rights and obligations are not impaired; and if they have not been apportioned by agreement, those rights are to be enjoyed and those obligations fulfilled by all the parts in common." Not a word in this quotation about a division ratably according to population and territory. According to this authority the State of Virginia was only a tenant in common with West Virginia in all the public works, improvements and property of the original undivided State, and had no authority to alienate, sell, give away, or dispose of any of the public works, and being in possession and holding them for her own exclusive use and benefit, by ousting West Virginia, she would be bound to account to the latter for her share. This would seem to be the legitimate conclusion from the authorities relied on by Judge Meredith, even admitting their applicabil-

ity to the case under consideration, which we do not concede by any means; and, therefore, with this reference we pass them by.

We think we take a more practicable view of the subject, and one which will attain all the ends of justice. The table accompanying this report shows that the bonded debt of Virginia on the first day of January, 1861, represented money borrowed and expended in improving the State by canals, railroads, turnpikes, plank roads and bridges. All these expenditures conferred a local and special benefit, were expended, not only by the outlay of the money in creating a market and stimulating enterprise and trade, but in otherwise developing the resources of particular localities to an extent quite equal to the general benefit of the State at large. And this local and general development is the sum of the value of the improvements to the section where located, and gives them an inestimable and abiding value to that section. This value is progressive and not susceptible of being fixed. So certainly is this the case that it is probable, if it were practicable to utterly extinguish these improvements, and thereby extinguish the debt, that the State where they are located would not listen to such a proposition.

It may be assumed then that the public works for which the debt was created are worth what they cost. Virginia, by selling, donating, and disposing of these works as her own property, without regard to the rule laid down by Chancellor Kent, and without consulting West Virginia, must be taken to have accepted them on that basis, and is therefore chargeable with them on that basis.

When the tables are consulted they will show an expenditure of over thirty millions in Virginia and about two and a half millions in West Virginia. Much of this latter was expended at comparatively recent dates, whereas the expenditures in Virginia

range through a period of fifty years, with benefits accruing more or less throughout that period. In the light of such facts, we submit that no intelligent mind, wishing only to do justice, can doubt for a moment that the benefits conferred, and not the territory and population, should be the principal, if not the only basis of an adjustment of the debt. The Governor of Virginia, in his message of 1870, and again in 1871, and the Legislature of that State, by its funding bill, seem, however, to have entirely overlooked the foregoing considerations, and to have jumped to the conclusion that West Virginia should pay one-third of the debt.

We see the case differently. On the one hand, for instance, we see rich cities, commercial marts of all kinds, navigable rivers, fine harbors, a highly improved and productive territory, wealthy capitalists and a well to do people, public institutions, such as a State Capitol and extensive public grounds, an Executive Mansion, a Penitentiary, Armory, University, two Lunatic Asylums, a Military Institute, a Blind Asylum, a valuable miscellaneous and law library, a large literary fund and the United States deposit of surplus revenue. All these resources in addition to the vast millions invested in canals and railroads and other avenues of inland commerce.

On the other hand we see set in the balance against these rich resources the territory of West Virginia, less than one-third of the old State, much of it broken into barren mountains and hills, no navigable streams penetrating it in every direction, no railroad but the Baltimore & Ohio, no public works or institutions, her lands mostly covered with unbroken forests and rewarding industry but grudgingly, no outlets in the interior for the little surplus existing, the people poor and subsisting by rough work in the woods and fields, pos-

sessed of no capital wherewith either to develop their localities or ameliorate their own condition in life in fact, their only wealth being for the most part their poor soil, their untiring perseverance and their indomitable love of liberty.

And yet, notwithstanding this great discrepancy between the condition and resources of the two States, Virginia assigns one-third of her funded and compounded debt to West Virginia to pay, simply because the latter has one-third of the territory and one-fourth the population formerly belonging to the whole State. And this, too, notwithstanding her papers have often proclaimed that West Virginia was a foster child of the old State, and as such dependent upon her bounty. This opinion we shall not stop to discuss, and we only refer to it as showing the inconsistency between the theory and practice of our Virginia friends. Supposing it to be correct, the explanation as to how it came about can never be made creditable to those who lavished all their favors on one section of the State, and withheld them from the other, and the vindication of the step taken by West Virginia during the war in separating from the old State consists largely of this traditional discrimination against her. And in this connection it may not be out of place to notice that the increase of population in West Virginia during the decade from 1860 to 1870 was of a character to still further vindicate the step taken, it being about thirty per cent. This large increase illustrates her onward march since her separation from her former foster parent, and tends to suggest how far in advance of her present position she really might have been had she received in the past anything more than "the crumbs that fell from the rich man's table."

We come now to the conclusion of our report. Having given our reasons why we dissent entirely

from the position of Virginia in reference to the debt, we proceed to state our own conclusions in regard to it as follows:

Statement A, as annexed to our report, shows that the bonded debt of Virginia, on the first of January, 1861, after all deductions, was $31,779,067.32.

The same statement also shows that all of said debt was expended within the present State of Virginia, with the exception of $2,784,329.29.

Statement E, shows that $328,706.22 was collected from counties in West Virginia after January 1st, 1861.

Statement F, shows that the amount of expenditures for all purposes in West Virginia was $3,343,929.29.

We are not able to say certainly what part of this expenditure was from the proceeds of State bonds, (and, therefore, a part of the State debt) and what part was appropriated from the regular receipts of the treasury. We have had access to no data that could determine the question. Our letter to the Second Auditor at Richmond sought information on this point in vain. But we have given Virginia the benefit of it all as a credit on her side of the account, although the resolutions under which we are acting contemplate nothing on the part of West Virginia but an assumption of her proportion of the bonded debt, inasmuch as both sections and particularly Virginia, received appropriations out of the ordinary receipts of the treasury.

We have charged West Virginia with all that we have found expended within her limits, viz: The amount of the funded debt created for improvements within her territory, the amount invested in her banks, the amount expended on the Lunatic Asylum at Weston, and the estimated value of the property known as the Lewisburg Law Library.

On the other hand we have credited her with her share of the estimated value of the public property and assets of Virginia, other than the property represented in the bonded indebtedness. This latter equalizes itself, and therefore does not enter into the account. Virginia has the property and owes the debt which it represents. We refer only to the public buildings, institutions, and other assets as given in statement G. As to West Virginia's share in these we can only venture an approximate estimate. The public buildings, the common property of the two States, paid for out of the general revenue, we have estimated at $3,875,000, as per statement G, and it would be reasonable we think to estimate West Virginia's interest in them at one-fourth on the basis of population.

The same statement shows that the surplus revenue of the United States deposited with the State under the act of Congress, June 23, 1836, gave Virginia $2,937,237.34, of which sum she appears to have received at least $1,932,809.33. This act assigned to each State its share of deposits on the basis of its representation in Congress, and Virginia having, in 1860, thirteen representatives, three of whom were from West Virginia, it would seem that three-thirteenths of that fund belonged to the latter.

To this share of the deposits, and her interest in the public property, we add, as per statement, her proportion of the Literary Fund. This fund at the date quoted in statement G, amounted to $1,509,583.16: As it was apportioned throughout the State on the basis of the white population, we follow that rule in assigning to West Virginia three-sevenths of it, that being her ratio of white population in 1860.

Upon the data thus ascertained and explained, we summarize the account between the two States as follows:

WEST VIRGINIA TO THE STATE OF VIRGINIA.

Dr.	For the amounts expended and invested in her territory as set forth in statement F		$3,343,929.29
Cr.	By one-fourth of the estimated value of the public buildings and other assets, as given in statement G	$968,750.00	
"	By three-thirteenths of the United States surplus fund as per same statement	446,032.92	
"	By three-sevenths of the Literary fund as per same	647,079.92	
"	By the amount collected in West Virginia after January 1, 1861, as per statement E	328,706.22	2,390,569.06
	Balance due Virginia		$953,360.23

This is the balance as we find it after a protracted examination of such sources of information as were available to us. And the ascertainment of it naturally brings our labors to a conclusion. We commend our investigations to Your Excellency's favorable consideration. From the beginning we realized that the results arrived at must necessarily be only proximate in their character, inasmuch as our sources of information were limited. Subsequent inquiry, under more favorable circumstances, may change the general result a few thousands for or against either State, but such a contingency is of course unimportant. The principle upon which the debt should be adjusted is the important point to settle. And it is to this point, as set forth in these pages, that we beg leave, through Your Excellency, to call the attention of the Legislature.

Very respectfully,
Your Excellency's most obedient servants,

J. J. JACKSON.
J. M. BENNETT.
A. W. CAMPBELL.

Report of the Senate Finance Committee of 1873.

STATE OF WEST VIRGINIA,
CHARLESTON, *December* 22, 1873.

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subject their most earnest and careful attention as a matter fraught with more than ordinary consequence to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be approved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations or fundamental conditions, by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of the territory of this State," (Virginia) passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia *prior to the first day of January,* 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordi-

nary expenses of the State government since any part of the debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly a constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it to secure the exact fulfillment of the treaty stipulations as aforesaid.

By article eight, section eight of the constitution, it was provided that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and that the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This subject has received a careful consideration by commissioners appointed by authority of this State, and while this committee see much to approve in the Report of the Debt Commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may

rise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State." But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claims for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department, and subsequently affirmed by the Supreme Court of the United States, and may at this day be accepted by the public as firmly engrafted into obligations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, leads us to the following conclusions which are the results of a mathematical demonstration, founded upon public and official records, appropriate to determine how much of the bonded debt of Virginia existing prior to January, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to $3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which has been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of $3,366.929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioners aforesaid.

From the amount of the foregoing expenditures must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution, but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to $63,000; and in that year the total of the expenses of the State government chargeable to us was $47,000, leaving an excess of $16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed, the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to $512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to $647,079.96. In the same year our proportion of the ordinary expenses of government amounted to $135,000, which left the surplus aforesaid of $512,079.96. It will be observed that the committee have referred only to the surplus in 1822 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to $3,892,000 which is in excess of expenditures within our limits by $525,000.

It will thus be seen that our state is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts, by conditions precedent prescribed by Virginia under the restored govern-

ment which government has been approved as aforesaid by Congress, by the Executive and by by the Supreme Court of the United States.

Notwithstanding the satisfactory condition of our finances and our material resourves, the attention of the committee has been called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar, in many of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which this State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount of its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second, that we are either unable or unwilling to pay the debt which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say, and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our Constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued by West Virginia and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration, to cultivate our forests and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which has so far absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dollar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM.
A. E. SUMMERS.
J. T. MCCLASKEY.
R. B. SHERRARD.
ELLIOTT VAWTER.

House Joint Resolution No. 10, Concerning the Virginia Debt.

(Adopted February 7th, 1895)

Resolved by the Legislature of West Virginia, That this Legislature hereby declines to enter into any negotiation with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution.

House Joint Resolution No. 3.

(Adopted January 21, 1897.)

A resolution relating to the Virginia debt question.

Resolved by the Legislature of West Virginia, That it is the sense of this Legislature that West Virginia does not owe one cent of the so called "Virginia debt," and that this Legislature is opposed to any negotiations on that subject.

(H. J. R. No. 6.)

Joint Resolution No. 3.

(Adopted January 21, 1899.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia, That this legislature declines and refuses to take any action in regard to what is known as the Virginia debt, or Virginia deferred certificates, either by considering any propositions of adjustment or settlement, so called, or by authorizing the appointment of any committee or committees having for their purpose the consideration of the same; and that it is the sense of this legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt or certificates.

(S. J. R. No. 2.)

Joint Resolution No. 21.

(Adopted January 16, 1901.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia, That this legislature declines and refuses to take

any action in regard to what is known as the Virginia Debt, or Virginia Deferred Certificates, either by considering any proposition of adjustment for settlement so called, or by authorizing the appointment of any committee, or committees, having for their purpose the consideration of the same.

And, That it is the sense of the Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt, or certificates.

(H. J. R. No. 3.)

Joint Resolution No. 3.

(Adopted January 21, 1903.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia, That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject. And, *further,* that this legislature declines, and most emphatically refuses, to take any action in regard to what is known as the Old Virginia debt, or Virginia deferred certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee or committees having for their object or purpose the consideration of same; and that it is the sense of this legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt or certificates. Nor do we owe any other state or territory in this Union.

(H. J. R. No. 7.)

Joint Resolution No. 3.

(Adopted January 20, 1905.)

Relating to the Virginia debt.

Resolved by the Legislature of West Virginia, That it is the sense of this legislature that the state of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject.

AN ACT to provide for the defense of the equity suit of the Commonwealth of Virginia against the State of West Virginia, now pending in the Supreme Court of the United States, and appropriate money for such purposes.

Passed February 4, 1907.

Be it enacted by the Legislature of West Virginia:

SEC. 1. That the attorney general of West Virginia be and he is hereby authorized and directed to defend the equity cause of the Commonwealth of Virginia against the State of West Virginia now pending in the Supreme Court of the United States; and the board of public works is hereby authorized to employ such attorneys and agents to assist the attorney general in the defense of such suit as in its judgment shall be necessary for the purpose.

SEC. 2. The attorney general is further authorized and directed to have made as soon as possible such searches and investigations as may be neces-

sary to ascertain all the facts, which in his opinion, are needed for the proper defense of said suit; and the attorney general is further authorized, if in his opinion it is necessary, to request of the officers of the said Commonwealth of Virginia reasonable access to the records of said Commonwealth so far as it may be necessary for such purpose; and to cause such copies and extracts of such records made as he or his associates may deem necessary for such purpose; and the attorney general is directed to make full and complete reports of his acts hereunder to the board of public works, from time to time, as he may deem proper or as requested by said board, and to the legislature at each session thereof during the pendency of this suit.

SEC. 3. To carry out the provisions of this act, the sum of fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, to be paid out of the treasury from time to time on the requisition of the board of public works.

SCHEDULE 2.

Paragraph XI of West Virginia's Answer, Pages 10-15, Inclusive.

XI.

This respondent for further answer to said bill says that she denies that the Commonwealth of Virginia made attempts at different times to ascertain and settle the equitable proportion of her public debt to be borne by West Virginia, upon the terms and in the manner contemplated by section nine of the ordinance adopted by the convention of the State of Virginia on the 20th day of August, 1861, in section eight of Article VIII of the Constitution of West Virginia, or in the manner prescribed by either of said instruments. The facts relating to the efforts of the Commonwealth of Virginia and the State of West Virginia to make an adjustment of the liability of the latter State, if any such liability exists, between the year 1865, when communication between the two States was re-established, and the year 1872, are as follows:

Prior to December, 1866, the Commonwealth of Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. The effect of the pendency of this suit for over four years was to prevent a satisfactory adjustment of West Virginia's liability for the payment of an equitable proportion of the public debt of Virginia as provided in said ordinance of the Wheeling Convention because of the fact that

West Virginia's boundaries could not be known and therefore it could not be determined what amount of money had been expended within her limits for public works or other purposes prior to the 1st day of January, 1861.

Respondent avers that the Governor of West Virginia in his message to the legislature in January, 1866, recommended that Commissioners be appointed to settle with the commonwealth of Virginia respecting the said public debt; but no action was taken by the legislature of West Virginia of 1866 for the reason that the authorities of Virginia had made, at that time, no provision for a settlement, so far as was known to the authorities of West Virginia.

In his message to the legislature of West Virginia in 1867, the Governor again directed the attention of that body to the subject of the adjustment of the said public debt, stating that he was informed that Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the General Assembly of Virginia: First for the purpose of securing a reunion of the two States, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On the 28th day of February of the same year, the legislature of West Virginia by resolution declared that the people of that State were unalterably opposed to a reunion with the people of the commonwealth of Virginia, but expressed the willingness of the citizens of West Virginia to effect a prompt and equitable settlement between the States and directed the Governor as soon as the said suit in the Supreme Court of the United States, relating to the counties of Berkeley and Jefferson, had been disposed of, to appoint three commissioners on the part of West Virginia to treat with the commissioners of Virginia upon the matter of adjusting

the public debt of that State as provided in the ordinance of 1861, and the Constitution of West Virginia, adopted by the convention which assembled in November, 1861, and also requiring a report of their action to the Governor in order that the same might be communicated to the legislature of West Virginia for its action.

In January, 1868, the Governor of West Virginia informed the legislature in his annual message that the commissioners had not been appointed under the resolution because the suit in relation to the counties of Berkeley and Jefferson had not been disposed of. But in February of that year the Committee on Claims and Grievances of the House of Delegates, upon the petition of one of Virginia's creditors asking that the State of West Virginia provide for the payment of certain bonds of the State of Virginia of which he claimed to be the bona fide holder, reported that the settlement of West Virginia should be with the State of Virginia and not with the creditors of Virginia. And again in his message of 1869 to the Legislature of West Virginia the governor referred to the subject of the settlement of the public debt of Virginia and stated that commissioners had not been appointed by him up to that time owing to the fact that the suit between the States was still pending. The State of Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of the State of West Virginia, the governor of West Virginia, by communication dated February 24, 1870, advised the Legislature of West Virginia of the passage of that act by Virginia, and thereupon the Legislature of West Virginia, on the 1st day of March, 1870, appointed a joint committee of the two Houses of the Legislature to confer with the Virginia Commissioners and report to the Legislature, provided, however, that

such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit in equity brought against her by the commonwealth of Virginia as hereinbefore stated, which was still pending in this court.

Afterwards, on March 3, 1870, the governor of West Virginia was authorized by the Legislature to appoint three resident citizens of the state to treat with the authorities of the Commonwealth of Virginia upon the subject of the proper adjustment of the public debt of that State, but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson; but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners, and the resolution authorizing their appointment was passed on the last day of the session of the Legislature, the Governor of West Virginia again in his message of 1871 stated that no appointment had been made owing to the lack of funds to pay the expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, on February 20, 1871, through the Governor of that State, tendered to West Virginia a proposition for an arbitration of the question relating to the public debt of that State, the arbitrators not to be citizens of either State, each State to appoint two arbitrators and the two to select an umpire if deemed necessary. This proposal made by the Commonwealth of Virginia was submitted to the Legislature of West Virginia on the 17th day of February, 1871, but on the 15th day of February, 1871, two days prior to the communication of this action of the General Assembly of Virginia, the Legislature of West Virginia had passed a joint resolution authorizing the Governor to appoint three disinterested citizens of the State to treat

with the authorities of the Commonwealth of Virginia upon the subject of the adjustment of the public debt of that State existing prior to the 1st day of January, 1861, to report on various matters relating to the creation of the debt; upon the investments held by the State of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk.

The proposal of Virginia relating to arbitration was referred by the Legislature of West Virginia to a joint special committee of the two Houses, which committee reported a preamble and joint resolution rejecting the tender of arbitration made by the Governor of Virginia because the adjustment of the debt should be subject to the ratification of the legislatures of the two States and because citizen commissioners from both States would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. The said joint resolution also invited the Commonwealth of Virginia to appoint three disinterested citizens of that State as commissioners, with authority to treat with the commissioners, theretofore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the General Assembly of the Commonwealth of Virgina; and the Governor of West Virginia was also directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution. Accordingly, in pursuance of this resolution, the Governor of West Virginia appointed three commissioners to negotiate with the State of Virginia for a settlement of West Virginia's equitable part of the public debt. After their appointment the said commissioners pro-

ceeded to Richmond, where all the accounts, vouchers and other evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible, but realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of the Commonwealth of Virginia soliciting specifically the necessary information. To this request on the part of the Commissioners of West Virginia, the said second auditor made a reply in which he declined to furnish the information desired, a copy of which reply is herewith filed as "Exhibit No. 2" and made a part of this answer.

The failure and refusal of Virginia to co-operate with the said commissioners placed them at a great disadvantage in the examination of the records at Richmond, and they therefore obtained only such facts and figures as to enable them to make an imperfect report to the Governor of the State of West Virginia with reference to said public debt, showing the part of said public debt for which, in their opinion, according to such information as they could procure, West Virginia was liable.

Respondent avers that by reason of the inability of said commissioners to procure from the State of Virginia the necessary information concerning the public debt and other matters connected therewith, their report was not only very incomplete and inaccurate, but it appeared therefrom, that in making their investigations they wholly disregarded the provisions of the ordinance of the Wheeling Convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed and respondent avers that for these and other reasons the conclusions of said commissioners were not agreed to or accepted by the Legislature of West Virginia; but subsequently the Senate of West Virginia proceeded to

make an investigation of the subject through its Finance Committee, of which J. M. Bennett, who was for eight years auditor of the old State of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. Said committee made a report on the 22nd day of December, 1873, from which it appeared that the State of West Virginia upon a settlement with the Commonwealth of Virginia based upon the provisions of section nine of the ordinance passed by the commonwealth of Virginia at the Wheeling Convention, did not owe to the said Commonwealth of Virginia anything whatever, but that, on the contrary, the said Commonwealth was indebted to West Virginia on account of said debt on the 1st day of January, 1861, in the sum of $512,000, not including interest. A copy of said report is filed herewith, and made a part hereof as Exhibit 3.

The State of West Virginia has never receded from the provisions contained in section nine of the Wheeling Ordinance with reference to the settlement of this respondent's just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a State; and the resolutions adopted by her Legislature in recent years in which she declared that she did not owe the State of Virginia anything on account of said public debt were based upon the said report of the Senate Committee made in 1873 as aforesaid, and upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance as the just and true one upon which a settlement between the two States could legally and equitably be made.

After the proposition of the Commonwealth of Virginia to select arbitrators, which was declined by the State of West Virginia as hereinbefore stated the said Commonwealth of Virginia at no time signified her desire to settle with West Vir-

ginia the matters relating to West Virginia's proportion of said public debt until the adoption of a joint resolution approved March 6, 1894, after she had compromised and settled with her creditors and been released from all liability, which resolution provided for the appointment of a commission of seven members who were thereby authorized and directed to negotiate with the State of West Virginia for a settlement and adjustment of the latter State's part of the public debt proper to be borne by her, but which also expressly provided that such commission should not proceed with such negotiations until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under the acts hereinafter referred to, that they desired the said commission to enter into and undertake such negotiations and would accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State which had not been assumed by the State of Virginia; and it was also provided in said resolution that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original State and which, as recited in said resolution she had already provided for as her equitable proportion thereof. Under the aforesaid resolution no negotiations were proposed to West Virginia until the year 1895 and then only upon the conditions prescribed in the joint resolution of 1894, which has never yet been repealed or modified in this respect; and negotiations were again offered by Virginia in 1906 but upon the same condition, that West Virginia should enter upon such negotiations with the admission on her part that the said Commonwealth of Virginia should only be liable for two-thirds of said debt, which was again declined by the said State of West Virginia.

SCHEDULE 3.

Pages 12-20, Inclusive, of West Virginia's Brief Upon the Hearing on the Merits Upon the Report of the Special Master.

Virginia Sought No Adjustment with West Virginia of Any Part of the Public Debt as Alleged in Her Bill.

With reference to the efforts at settlement between the two States touching the public debt, the bill makes this averment:

> "After the year 1865, and prior to the year 1872, attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settling of any kind was ever had between the two States in regard to this debt."
>
> Record, p. 10.

The answer of the defendant to this paragraph of the bill appears in the record at pages 149-154. The facts in relation to this matter are as follows:

The first governor of West Virginia, the Hon. Arthur I. Boreman, in his first message to the first legislature of that State, in discussing the financial condition and prospects of the new State, said:

> "The constitution provides that this State shall assume an equitable proportion of the debt of Virginia, prior to the first day of January, 1861, but no settlement can be made at present, and when it is made our 'equitable proportion' cannot be much."

In his message, dated January 16, 1866, to the legislature of that year, Governor Boreman, after quoting section 8 of article 8 of the constitution of West Virginia, says that the execution of this provision of the constitution had theretofore been impracticable on account of the existence of the war, but now that the war is over and peace is restored, he recommended the appointment of commissioners on behalf of the State to meet a like commission from Virginia.

Prior to December, 1866, Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. During pendency of this suit no adjustment of West Virginia's liability, as provided in the ordinance, could be made, because until the boundaries of West Virginia were definitely determined it could not possibly be known what (1) amount of money was spent within the boundaries as State expenditures, (2) what her just proportion of the expenses of the State government was, nor (3) the amount paid into the State treasury from her counties, as provided by the ordinance.

In his message to the legislature of 1867, Governor Boreman refers to his recommendation of the appointment of commissioners, made in last message, to meet commissioners from the State of Virginia, and States that it had not been done because the authorities of Virginia had made no provision for such settlement. He states that he was informed that the Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the general assembly of Virginia; first, for the pur-

pose of securing a reunion of the two States, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On February 28 of the same year, the legislature of West Virginia by resolution declared that the people of that State were unalterably opposed to a reunion with the people of Virginia, but expressed the willingness of West Virginia to effect a prompt and equitable settlement between the two States, and directed the Governor as soon as the said suit in the Supreme Court of the United States relating to the counties of Berkeley and Jefferson had been disposed of, to appoint three commissioners on the part of West Virginia to treat with commissioners of Virginia upon the matter of adjusting the public debt as provided in the ordinance of 1861 and the constitution of West Virginia (W. Va. Compilation, vol. 1, pp. 444-6).

In January, 1868, the governor of West Virginia informed the legislature in his annual message, that the

> "Commissioners to treat with Virginia in regard to the public debt of that State, have not yet been appointed under the resolutions of that subject adopted by the legislature, February 28, 1867. The resolutions prescribe that the suit brought by Virginia in the Supreme Court of the United States, to recover jurisdiction over the counties of Berkeley and Jefferson, shall be finally disposed of before such appointment shall be made, which event has not yet transpired; and, if it had, there might still be a question whether such settlement should take place in the present condition of affairs in Virginia."

The "present condition of affairs in Virginia" referred to was doubtless that arising out of the

anomalous situation caused by the refusal of Congress to admit representatives from Virginia, from December, 1865, until the State was re-admitted into the Union in 1870. Congress, it appears, refused to recognize as valid the legislature that assembled under the Alexandria constitution of Virginia. Later, the State was placed under military government; a new constitution was adopted in 1868, ratified by the people in July, 1869, and Virginia re-admitted into the Union January 26, 1870. No negotiations could properly or safely have been carried on with Virginia during this period of "reconstruction," even if the suit to recover Berkeley and Jefferson counties had not been pending.

Again, in his message in 1869 to the legislature of West Virginia, the governor stated that commissioners had not been appointed by him up to that time, owing to the fact that the suit between the States was still pending. Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of West Virginia, the Governor of West Virginia, by communication dated February 24, 1870, advised the legislature of West Virginia of the passage of that act; and thereupon the legislature of West Virginia, March 1, 1870, appointed a joint committee of its two houses to confer with the Virginia commissioners and report to the legislature, providing, however, that such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit then still pending in this court respecting the counties of Berkeley and Jefferson (W. Va. Comp., vol. 1, pp. 446-7).

On March 3, 1870, the Governor of West Virginia was authorized by the legislature by joint resolution to appoint three resident citizens of the State, to treat with the authorities of Virginia upon the subject of the public debt of that State,

but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson (W. Va. Comp., vol. 1, pp. 447-8). As the resolution was passed on the last day of the session, and as there was omission to make appropriation of money to carry out its provisions, the Governor of West Virginia, in his message of 1871, stated that no appointment had been made owing to the lack of funds to pay the compensation and expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, through the governor of that State, tendered to West Virginia a proposition for an arbitration of the question relating to the debt, the arbitrators not to be citizens of either State, each State to appoint two, and an umpire to be chosen by the arbitrators if deemed necessary. This proposal was submitted to the legislature of West Virginia on February 17, 1871; but on the 15th, two days prior to the communication of this action of Virginia, the legislature of West Virginia had passed a joint resolution, authorizing the governor to appoint three disinterested citizens of the State to treat with the authorities of Virginia upon the subject of the adjustment of the public debt of that State existing prior to January 1, 1861, to report on various matters relating to the creation of the debt, upon the investments held by the State of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk (W. Va. Comp., vol. 1, pp. 448-9).

The proposal of Virginia relating to arbitration was referred by the legislature of West Virginia to a joint special committee of the two houses, which committee reported a preamble and joint

resolution, rejecting the tender of arbitration because the adjustment of the debt should be subject to the ratification of the legislature of the two States, and because citizen commissioners from the two States would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. This joint resolution also invited Virginia to appoint three disinterested citizens of that State as commissioners, with authority to treat with the commissioners theretofore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the general assembly of the commonwealth of Virginia. The Governor of West Virginia was directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution (W. Va. Comp., vol. 1, pp. 449-54). Accordingly, the Governor of West Virginia appointed three commissioners for the purpose aforesaid. This commission is known as the "West Virginia Debt Commission of 1871." After their appointment they proceeded to Richmond, where all the evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible. Realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of Virginia, soliciting specifically the necessary information. To this request the second auditor made a reply, in which he declined to furnish the information desired, a copy of which reply is filed as "Exhibit No. 2" of defendant's answer (R., p. 166).

Soon after their appointment the commission addressed a letter to the Governor of Virginia,

notifying him of their appointment, their organization, and the duties put upon them, and requesting him to indicate at his earliest convenience what "channel of communication will be open to us." Nearly a month later they received from the Governor of Virginia a copy of a letter from him to the Governor of West Virginia, declining to recognize the West Virginia commissioners (W. Va. Comp., vol. 1, pp. 457-9). A few weeks later, in his message to the legislature, the Governor of Virginia "proceeds," to quote the language of the West Virginia Debt Commission, "to asperse the good faith of the State of West Virginia" (W. Va. Comp., vol. 1, p. 463). Having failed in their effort to obtain either the recognition or the co-operation of the governor or the second auditor of Virginia, the commission left Richmond, because, as they say in their report, "further stay was not likely to add to the scant information already gleaned by them from the public documents" (W. Va. Comp., vol. 1, p. 462).

The failure and refusal of Virginia to recognize, receive, or co-operate with the commissioners placed them at a great disadvantage, and they therefore obtained only such facts and figures as enabled them to make an imperfect report to the Governor of West Virginia with reference to the matters with which they were charged; and because of the incompleteness and inaccuracy of their report, and because it appeared therefrom, that in making their investigations they wholly disregarded the provisions of the ordinance of the Wheeling convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed, their report was not adopted by the legislature of West Virginia. In 1873, the Senate of West Virginia made an investigation of the subject of the debt, through its finance committee, of

which J. M. Bennett, who was for eight years auditor of the old State of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. This committee made a report on December 22, 1873, from which it appeared that West Virginia upon a settlement with Virginia, based on the provisions of section nine of the ordinance, did not owe to Virginia anything whatever, but that, on the contrary, Virginia was indebted to West Virginia on account of said debt on January 1, 1861, in the sum of $512,000, not including interest. A copy of this report is printed in the record at page 166, as Exhibit 3 of defendant's answer.

A few weeks after the West Virginia Debt Commission of 1871 retired from Richmond after their fruitless endeavors there for recognition and cooperation, and after the Governor of Virginia had, in his message to the general assembly, questioned the good faith of West Virginia, Virginia passed her first funding act, that of 1871, in which she assumed two-thirds of the amount of the debt as her full share, and, *in violation and repudiation of section nine of the ordinance* of August 20, 1861, arbitrarily set aside the other one-third as West Virginia's portion. This is the more remarkable when it is remembered that she refers to and quotes from said section nine of the ordinance in the preamble of this act (R., p. 18). And to the same effect were the funding acts of 1879, 1882, and 1892. The joint resolution of the general assembly of Virginia, approved March 6, 1894, to provide for adjusting the portion of the debt to be borne by West Virginia, and creating the Virginia Debt Commission, provides (R., p. 49):

> "But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only

for the two-thirds of the debt of the original State which she has already provided for as her equitable proportion thereof."

And the act of the general assembly of Virginia, approved March 6, 1900, is to the same effect, namely, that Virginia is liable for two-thirds only of the debt as her part thereof, which she has already provided for.

West Virginia, since the passage of the funding act of 1871—certainly since the adoption of the joint resolution of 1894,—could enter upon negotiations with Virginia upon no other basis. West Virginia must agree, as a preliminary to any such negotiations with Virginia, that Virginia was liable for two-thirds only of the debt, that this was her "equitable proportion," and that she has settled that. And what besides would it be held that West Virginia recognized or admitted or agreed to had she entered into negotiations with Virginia on such basis? This, that she had recognized that she was liable for the other third as *her* "equitable proportion;" for, it would be reasoned, that since it takes three-thirds to make a whole, and as Virginina was liable for two-thirds only, West Virginia must be liable for the other third. It is and was not reasonable to ask that West Virginia should place herself in such a position, especially as it would have set aside the agreement West Virginia made with reference to her portion of the debt and the method of ascertaining the same, contained in section nine of the ordinance.

West Virginia has never receded from the said provisions of the ordinance with reference to the settlement of her just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a State. The resolutions adopted by her legislature in recent years, in which she declared that she did not owe

the State of Virginia anything on account of said debt, and would not negotiate with her concerning the same, were based upon the said report of the finance committee of 1873, upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance, and upon the conditions of negotiations dictated by Virginia in her said joint resolution of 1894 and said act of 1900.

After the said proposition of Virginia, made in 1871, to select arbitrators, which was declined by West Virginia, as hereinbefore stated, Virginia at no time signified her desire to settle with West Virginia the matters relating to West Virginia's proportion of said public debt, until after the adoption of said joint resolution approved March 6, 1894, whereby she had compromised and settled with her creditors and been released from all liability, which resolution provided that the commission thereby created should not proceed with negotiations with West Virginia until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under her funding acts, hereinbefore referred to, that they desired the commission to undertake such negotiations and would accept the amount so ascertained to be paid by West Virginia in full settlement of the one-third of the debt of the original State which had not been assumed by Virginia; and also that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original State and which she had already provided for as her equitable proportion thereof. Under this resolution no negotiations were proposed to West Virginia until the year 1895, and then only upon the conditions prescribed in said joint resolution of 1894, which has never yet been repealed or modified in this respect.

Negotiations were again offered by Virginia in 1906, but upon the same condition, that is, that West Virginia should enter upon such negotiations with the admission on her part that Virginia should be liable for two-thirds only of the debt, which was again declined by West Virginia.

It will be clearly seen, therefore, that the allegations in the bill that "attempts were made at different times by the public authorities of both the commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportion of the common liability," is not supported to the extent and effect sought to be shown by the bill filed in this case.

It is averred in the bill that it was soon apparent that Virginia had by the act of March 6, 1871, assumed a heavier burden than she was able to bear, and other plans for the settlement of the debt were attempted to be made by the action of the General Assembly on March 28, 1879, and February 14, 1882, until at length, it is alleged, that a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the act of February 20, 1892. See R., pp. 21-47. Virginia files with her bill copies of each of these acts of her General Assembly as Exhibits Nos. 2, 3, and 4. It is also shown by the bill that Virginia, by her act of March 30, 1871, sought to fix her liability upon the basis of two-thirds of the original debt, and it is alleged that this was the intention of that act.

SCHEDULE 4.

INDEX TO THE METHOD OF COMPUTING INTEREST ON WEST VIRGINIA'S SHARE OF THE DEBT AS IT EXISTED JANUARY 1, 1861.

	Total bonds outstanding.	In literary and sinking funds and in the hands of Board of Public Works.	Net amount.
Group 1—6's	$9,729,326.36	$772,055.33	$8,957,271.03
2—5's	452,200.00	190,200.00	262,000.00
3—6's	350,000.00	254,500.00	95,500.00
4—6's	125,393.27	18,680.02	106,713.25
5—6's	8,861,864.33	773,689.18	8,088,175.15
6—6's	13,082,500.00	.....	13,082,500.00
7—6's	1,059,500.00	547,000.00	512,500.00
8—5's	1,815,204.50	.....	1,815,204.50
5's	5,000.00	5,000.00	.....
Total	$35,480,988.46	$2,561,124.53	$32,919,863.93
Accrued interest January 1, 1861			977,209.89
Total debt			$33,897,073.82
West Virginia's proportion			7,182,507.46
West Virginia's proportion, per cent of total debt			21.2%

Group 1—6% registered bonds redeemable at the pleasure of the General Assembly $8,957,271.03

Interest upon West Virginia's share of these bonds is computed from January 1, 1861, to January 1, 1913.

Group 2—5% registered bonds redeemable at the pleasure of the General Assembly 262,000.00

Interest upon West Virginia's share of these bonds is computed from January 1, 1861, to January 1, 1913.

Group 3—6% annuity on old James River stock 95,500.00

Interest upon West Virginia's share of this annuity is computed from January 1, 1861, to January 1, 1913.

Group 4—6% registered bonds redeemable in 20 years 106,713.25

No interest is charged against West Virginia on her share of these bonds.

Group 5—6% registered bonds redeemable in 34 years 8,088,175.15

Interest upon West Virginia's share of the bonds, each of the four loans listed in this group, is computed from January 1, 1861, to a date 34 years after the date of the act authorizing such issue.

Group 6—6% coupon bonds redeemable in 35 years 13,082,500.00

The interest upon West Virginia's share of these bonds is computed from January 1, 1861, to March 29, 1886, being 35 years after March 29, 1851, the date of the act authorizing this issue.

Group 7—6% registered bonds in lieu of coupon bonds redeemable in 35 years 512,500.00

Interest upon West Virginia's share of these bonds is computed from March 29, 1886, being 35 years after March 29, 1851, the date of the first act authorizing issue of coupon bonds for which these bonds were exchanged.

Group 8—5% sterling coupon bonds redeemable in 35 years 1,815,204.50

Interest upon West Virginia's share of these bonds is computed from January 1, 1861, to March 29, 1886, being 35 years after March 29, 1851, the date of the act authorizing this issue.

GROUP 1.

6% Registered Bonds Redeemable at Pleasure of General Assembly.

	Amount
Alleghany & Huntersville Road	$2,700.00
Alexandria Canal Co	232,400.00
Berryville & Charlestown Turnpike Co	6,400.00
Beverly & Fairmount Road	16,600.00
Blue Ridge Railroad Co	32,200.00
City Point Railroad Co	49,600.00
Charlestown & Point Pleasant Turnpike Co	20,800.00
Charlestown & Point Pleasant Turnpike Co	5,800.00
Cacapon & North Branch Turnpike Co	11,000.00
Cumberland Gap Road	61,600.00
Clarkburg & Buckhannon Turnpike Co	8,000.00
Coal River Navigation Co	4,000.00
Dismal Swamp Canal Co	16,500.00
Dragon Swamp Navigation Co	1,464.00
Exchange Bank of Virginia and Northwestern Bank of Virginia	440,257.00
Giles Fayette & Kanawha Turnpike Co	9,000.00
Goose Creek & Little River Navigation Co	7,000.00
Holliday Cove Turnpike Co	4,700.00
Hardy & Winchester Turnpike Co	15,500.00
Howardsville & Rockfish Turnpike Co	5,000.00
Hampshire & Morgan Turnpike Co	4,600.00
Ice's Ferry Road	1,358.00
Bank of Virginia	97,800.00
James River & Kanawha Co	1,773,431.59
James River & Kanawha Co	229,034.00
James River & Kanawha Co	1,205,100.00
Louisa Railroad Co	106,350.00
Louisa Railroad Co	166,150.00
Louisa Railroad Co	126,987.00
Lewisburg & Blue Sulphur Springs Turnpike Co	12,900.00
Lafayette & English Ferry Turnpike Co	1,000.00
Lynchburg & Buffalo Springs Turnpike Co	2,550.00
Little Stone Gap Road	8,500.00
Marshall & Ohio Turnpike Co	3,000.00
Moorefield & North Branch Turnpike Co	9,000.00
Morgantown & Bridgeport Turnpike Co	10,700.00
Moorefield & Alleghany Turnpike Co	1,040.00
Natural Bridge Turnpike Co	3,600.00
North Carolina & Wytheville Road	6,100.00
North Western Turnpike Road	100.00
North Western Turnpike Road	53,850.00
North Western Turnpike Road	6,600.00
North Western Turnpike Road	2,000.00
North Western Turnpike Road	5,904.73
Newmarket & Sperryville Turnpike Co	2,100.00
Ohio River & Maryland Line Road	9,100.00
Ohio River & Maryland Line Road	12,000.00
Orange & Alexandria Railroad Co	6,600.00
Petersburg Railroad Co	108,200.00
Portsmouth & Roanoke Railroad Co	147,580.00
Portsmouth & Roanoke Railroad Co	64,950.00
Pittsylvania, Franklin & Botetourt Turnpike Co	50,000.00
	9,090.10

Richmond & Petersburg Railroad Co	175,900.00
Richmond & Petersburg Railroad Co	49,700.00
Rappahannock Co	12,900.00
Rappahannock Co	95,000.00
Red & Blue Sulphur Springs Turnpike Co	4,900.00
Rivanna Navigation Co	6,000.00
Richmond & Danville Railroad Co	378,000.00
Richlands to Kentucky Line Road	3,520.00
Rocky Mount Turnpike Co	9,800.00
Rich Patch Turnpike Co	1,100.00
Staunton & Parkersburg Road	1,900.00
Staunton & Parkersburg Road	16,510.00
Salem & Pepper's Ferry Turnpike Co	4,900.00
Salem & Newcastle Turnpike Co	3,875.00
South Western Turnpike Road	71,970.00
South Western Turnpike Road	123,162.00
Smiths River Navigation Co	2,600.00
Tazewell Court House and Fancy Gap Road	3,420.00
Upper Appomattox Co	37,900.00
Valley Turnpike Co	232,413.00
Valley Turnpike Co	22,064.00
Virginia & Maryland Bridge Co	8,200.00
Virginia, Tennessee Railroad Co	66,800.00
Winchester & Potomac Railroad Co	133,935.00
Wheeling, West Liberty & Bethany Turnpike Co	8,467.61
Weston & Fairmount Turnpike Co	4,000.00
Weston & Gauley Bridge Turnpike Co	5,000.00
Wellsburg & Bethany Turnpike Co	1,700.00
Williamsport Turnpike Co	800.00
Registered bonds	2,272,348.00
	$262,000.00

Elapsed time from January 1, 1861, to October 1, 1913 = 52 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$1,898,941.46
Interest on West Virginia's share	6,010,149.72

GROUP 2.

5% Registered Bonds Redeemable at Pleasure of General Assembly.

Portsmouth & Roanoke Railroad Co	$104,000.00
Portsmouth & Roanoke Railroad Co	100,000.00
Richmond, Fredericksburg & Potomac R. R. Co	5,000.00
Winchester & Potomac Railroad Co	8,000.00
	$262,000.00

Elapsed time from January 1, 1861, to October 1, 1913 = 52 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$55,544.00
Interest on West Virginia's share	146,497.30

GROUP 3.

James River Annuity, 6%.

James River Co.	$97,500.00

Elapsed time from January 1, 1861, to October 1, 1913 = 52 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$20,246.00
Interest on West Virginia's share	64,078.59

GROUP 4.

6% Registered Bonds Redeemable in 20 Years.

Staunton & Parkersburg, Loan No. 16, act of March 16, 1838	$106,713.25

No interest charged to West Virginia on this loan.

West Virginia's share, computed at 21.2% of the above	$22,623.21

GROUP 5.

6% Registered Bonds Redeemable in 34 Years.

James River & Kanawha Co., act March 23, 1860	$2,492,400.00		
West Virginia's proportion @ 21.2%		$528,388.80	
Interest on West Virginia's share from January 1, 1861, to March 23, 1894			$1,053,332.51

Being 34 years after March 23, 1860, the date of the act authorizing this issue. Elapsed time, 33 years, 82 days.

(Loan No. 91.)

Registered bonds issued for redemption of warrants, act March 17, 1856	2,698,700.00		
West Virginia's proportion @ 21.2%		572,124.40	
Interest on West Virginia's share from January 1, 1861, to March 17, 1890			1,002,642.29

Being 34 years after March 17, 1856, the date of the act authorizing this issue. Elapsed time, 29 years, 76 days.

(Loan No. 98.)

Registered bonds, act March 18, 1858	398,900.00		
West Virginia's proportion @ 21.2%		84,566.80	
Interest on West Virginia's share from January 1, 1861, to March 18, 1892			158,364.86

Being 34 years after March 18, 1858, the date of the act authorizing this issue. Elapsed time, 31 years, 77 days.

(Loan No. 90.)

Registered bonds (coupons attached), Acts March 29, 1851 / May 25, 1852	2,498,175.15		
West Virginia's proportion @ 21.2%		529,613.13	
Interest on West Virginia's share from January 1, 1861, to March 29, 1885			770,306.41

Being 34 years after March 29, 1851, the date of the first act authorizing this issue. Elapsed time, 24 years, 88 days.

Totals	$8,088,175.15	$1,714,693.13	$2,984,656.07

GROUP 6.

6% Coupon Bonds Redeemable in 35 Years.

Coupon bonds, act of March 29, 1851	$13,082,500.00

Elapsed time from January 1, 1861, to March 29, 1886—25 years, 88 days. Being 35 years after March 29, 1851, the date of the act authorizing this issue.

West Virginia's share, computed at 21.2% of the above	$2,773,490.00
Interest on West Virginia's share	4,200,367.40

GROUP 7.

6% Registered Bonds Redeemable in 35 Years.

(Loan No. 92.)

Registered bonds in exchange for coupon bonds, act of March 18, 1858	$512,500.00

West Virginia's share, computed at 21.2% of the above	$108,650.00
Interest on West Virginia's share	164,547.17

GROUP 8.

5% Sterling Coupon Bonds Redeemable in 35 Years.

Sterling coupon bonds, act of March 29, 1851	$1,815,204.50
West Virginia's share, computed at 21.2% of the above	$384,823.35
Interest on West Virginia's share	485,666.31

Summary.

	Net total amount of bonds outstanding.	Amount chargeable to West Virginia @ 21.2%.	Interest on West Virginia's share.
Group 1	$8,957,271.03	$1,898,941.46	$6,010,149.72
2	262,000.00	55,544.00	146,497.30
3	95,500.00	20,246.00	64,078.59
4	106,713.25	22,623.21	.....
5	8,088,175.15	1,714,693.13	2,984,656.07
6	13,082,500.00	2,773,490.00	4,200,367.40
7	512,500.00	108,650.00	164,547.17
8	1,815,204.50	384,823.35	485,666.31
	$32,919,863.93	$6,979,011.15	$14,055,962.56

SCHEDULE 5.

West Virginia Debt. The Amount West Virginia Should Pay on the Various Bases Shown in Point Seven.

Basis—Payments Made by Virginia on Account of Her Share of the Debt.

	From Exhibit No. 7 of the plaintiff's bill.	Estimated amounts accrued since 1906.	[Estimated] Oct. 1, 1913.
Interest paid	$35,551,642.82 to Feb. 1, 1906.	$6,300,000.00 to Feb. 1, 1913, about	$41,850,000.00
Bonds taken up	10,771,791.49 to Sept. 30, 1905	1,328,100.00 to July 14, 1913	12,099,891.49
New bonds issued and outstanding	25,537,820.00 1905 report	*1,153,907.73	24,383,912.27
Total paid out by Virginia—about	71,861,253.31	.....	78,333,803.76

* Deduct.

The court found that Virginia's proportion was 76.51% and West Virginia's 23.5%.

$$\text{Ratio}\left\{\frac{.235}{.7651}\right\}=0.30715$$

Multiplied by	$78,333,803.76
Equivalent payment by West Virginia on her share	24,060,227.82

BASIS—CONSTITUTIONAL PLEDGE.

	6's.*	5's.*	Total.
West Virginia proportion, 1861...	$6,731,361.24	$451,146.22	$7,182,507.46
34 years' interest	204%	170%	
amounts to.....	13,731,976.93	766,948.57	14,498,925.50
Total.....	$20,463,338.17	$1,218,094.79	$21,681,432.96

* See table below.

BASIS—1871-1891 FUNDING ACTS OF VIRGINIA.

The court has decided that West Virginia owed $7,182,507.46 out of a total debt of $33,897,073.82 January 1, 1861.

Under the State of Virginia Refunding Plan in 1871, 34-year bonds bearing 6% and 5% interest from July 1, 1871, were offered par for par for principal and interest of that portion of the joint debt settled for by Virginia in new bonds bearing same rates of interest. 6% accrued interest was allowed on 6% bonds and 5% for 5% dollar bonds. (Sterling bonds were extended, not exchanged.)

From the Master's report it appears that the

Amount of 6's was.....	$31,767,939.21
Amount of 5's was.....	2,129,134.61
Out of a total of.....	$33,897,073.82

debt, as of January 1, 1861.

Proportion of 6's.....	93.71882%
Proportion of 5's.....	6.28118%

On this basis, the West Virginia share is:

6's	$6,731,361.24
5's	451,146.22
Out of a total of.....	$7,182,507.46

Interest from January 1, 1861, to July 1, 1871, at—

5%—10½ years.....	52½%
6%—10½ years.....	63%

Settlement of 1871 applied to West Virginia debt:

	Principal.	Interest.	Total.
5's	$451,146.22	$236,851.77	$687,997.99
6's	6,731,361.24	4,240,757.58	10,972,118.82
	$7,182,507.46	$4,477,509.35	$11,660,116.81

Interest at 5%, July 1, 1871, to July 1, 1891, 20 years, 100%; at 6%, 120%.

Amount settled for—

Principal as above.....		$11,660,116.81
Interest at 100% on 5's.....	$687,997.99	
Interest at 120% on 6's.....	13,166,542.58	
		13,854,540.57
Total.....		$25,514,657.38

Virginia offered 19/28 of principal and interest in new century bonds.

19/28 of $25,514,657.38	$17,313,517.51

The century bonds have paid—

2% for 10 years to July 1, 1901	20%
3% for 12 years to July 1, 1913	36%
	56%

Value of settlement on 1871-1891 basis, as of July 1, 1913:

Principal in 1891	$17,313,517.51
56% interest to July 1, 1913	9,695,569.81
Total	$27,009,087.32

BASIS 1871-1879-1891 FUNDING ACTS OF VIRGINIA.

Total amount of settlement of 1871, if applied to West Virginia debt (from preceding statement), July 1, 1871:

5's	$687,997.99
6's	10,972,118.82
	$11,660,116.81

In 1879 Virginia offered 50% for accrued interest and par for principal in 40-year bonds dated January 1, 1879, paying 3% for ten years, 4% for 20 years, and 5% for the last 10 years.

	Per cent.
Accrued interest July 1, 1871, to January 1, 1879—	
7½ years at 6% on 6% bonds	45
One-half accrued interest	22½
Principal	100
Total settled for	122½
7½ years at 5% on 5% bonds	37½
One-half accrued interest	18¾
Principal	100
Total	118¾

118¾% of $687,997.99	$816,997.61
122½% of $10,972,118.82	13,440,845.55
Total	$14,257,843.16

Principal of new 40-year bonds:

Accrued interest to July 1, 1891—10 years at 3%	30%
Accrued interest to July 1, 1891—2½ years at 4%	10%
Total	40%
40% of $14,257,843.16	$5,703,137.26

Amount settled for in 1891:

Principal as above	$14,257,843.16
Interest at 40%	5,703,137 26
Total	$19,960,980.42

In 1891 Virginia paid 19/28 of principal and interest in new century bonds.

19/28 of $19,960,980.42	$13,544,951.00

Century bonds have paid 56% interest to July 1, 1913.
Value of settlement on 1871-1879-1891 basis, as of July 1, 1913:

Principal in 1891	$13,544,951.00
56% interest to July 1, 1913	7,585,172.56
Total	$21,130,123.56

BASIS 1891 FUNDING ACT OF VIRGINIA

Virginia paid 19/28 of principal and interest.
Debt July 1, 1861 (see preceding statement):

5's	$451,146.22
6's	6,731,361.24
	$7,182,507.46

Interest, 30 years, July 1, 1861-July 1, 1891:

At 5%	150%
At 6%	180%

Amount to be settled for in 1891:

	Principal.	Interest.	Total.
5's	$451,146.22	$676,719.33	$1,127,865.55
6's	6,731,361.24	12,116,450.23	18,847,811.47
	$7,182,507.46	$12,793,169.56	$19,975,677.02

Settlement at 19/28 in century bonds	$13,554,923.69

Century bonds have paid 56% interest to July 1, 1913.
Value of settlement—unfunded bonds, 1891 basis:

Principal in 1891	$13,554,923.69
56% interest to July 1, 1913	7,590,757.27
	$21,145,680.96

BASIS 1871-1882 SETTLEMENTS.

Total amount of settlement of 1871, if applied to West Virginia debt (from preceding statement), July 1, 1871:

5's	$687,997.99
6's	10,972,118.82
	$11,660,116.81

In the 1882 settlement consols of 1871 were to receive 53% for principal and interest in Riddleberger bonds bearing 3%.
Interest July 1, 1871, to July 1, 1882:

11 years at 5%	55%	
11 years at 6%	66%	
55% interest on $687,907.90—5's		$378,398.89
66% interest on $10,972,118.82—6's		7,241,598.42
Total interest		$7,619,997.31
Principal of 1871		$11,660,116.81
Add interest		7,619,997.31
Total to be settled		$19,280,114.12
Settled at		53%
Amount July 1, 1882		$10,218,460.48
Interest to July 1, 1913, 31 years at 3%—93%		9,503,168.25
Amount by July 1, 1913		$19,721,628.73

BASIS 1871-1879-1882 SETTLEMENTS.

Amount of settlement of 1879 (from prior statement)	$14,257,843.16
Accrued interest January 1, 1879, to July 1, 1882—3½ years at 3%, 10½%	1,497,073.53
Total	$15,754,916.69
Settled for July 1, 1882, at	60%
In 3% Riddleberger bonds	$9,452,950.01
Interest to July 1, 1913—31 years at 3%, 93%	8,791,243.51
Total to July 1, 1913	$18,244,193.52

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1913.

No. 2 ORIGINAL.

COMMONWEALTH OF VIRGINIA
)
vs.) In Equity.
)
STATE OF WEST VIRGINIA.

BRIEF ON BEHALF OF WEST VIRGINIA IN OPPOSITION TO INTEREST.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1913.

No. 2 ORIGINAL.

COMMONWEALTH OF VIRGINIA
)
vs.) In Equity.
)
STATE OF WEST VIRGINIA.

I.

STATES NOT CHARGEABLE WITH INTEREST IN THE ABSENCE OF A LEGISLATIVE OR OFFICIAL PROMISE.

It is a firmly fixed rule of universal recognition that interest is not to be awarded against a State unless its consent has been manifested by an act of

its Legislature or by a lawful contract of its executive officers.

U. S. v. State of North Carolina, 136 U. S., 211; 34 L. Ed., 336.

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Nat'l Home for Disabled Volunteer Soldiers et al. v. Parrish, 194 Fed. Rep., 940.

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II.

WEST VIRGINIA'S PROMISE TO PAY INTEREST, IF ANY SHE MADE, WAS CONDITIONAL, AND NOT ABSOLUTE.

Pursuant to the above rule, therefore, and in order to determine whether or not West Virginia is chargeable with interest upon her equitable proportion of the principal of the Virginia debt existing prior to January 1, 1861, it becomes necessary to ascertain from the terms of her contract by which she became responsible for a part of the principal whether or not she also promised to pay interest thereon, and, if so, whether or not such promise was absolute or conditional.

As held by this Court (Va. v. W. Va., 220 U. S., 1), the contract of West Virginia springs out of Section 8 of Article 8 of her Constitution of 1861, the

Act of the Legislature of the restored State of Virginia passed May 13, 1862, giving consent to the erection of the new State under the provisions of said Constitution, and the Act of Congress passed December 31, 1862, consenting, upon the faith of both, to the creation of said State.

The constitutional provision, therefore, must be looked to for the purpose of ascertaining the terms of the agreement, and it reads as follows:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand, eight hundred and sixty-one shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."
>
> W. Va. Constitution 1861, Art. 8, Sec. 8.

Here is a promise to pay an equitable proportion of the Virginia debt, and a like promise to establish "a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years"; but both promises have two qualifications attached thereto: *First,* she was not to contribute to the payment of any indebtedness of Virginia, whether principal or interest, accruing after the first day of January, 1861, and, *secondly,* she could not, and was not to establish the promised sinking fund until after her equitable proportion of the debt had been first ascertained.

It is true that any overdue and unpaid interest existing prior to the first day of January, 1861, might be treated as a part of the principal debt as of that date, and she compelled to contribute an equitable proportion to the payment thereof, but not so with any interest accruing upon the Virginia debt after that time; because, by her contract, she firmly fixed the first day of January, 1861, as the date beyond which no indebtedness should accrue to the payment of which she would contribute.

Evidently she contemplated the payment of interest upon her equitable proportion of the debt after the same had been ascertained, but not before. After its ascertainment, the amount so fixed would become the principal of her debt, which, according to the sinking fund provision, would bear interest from that time, but no sooner or otherwise.

This construction is in keeping with the rule of law that interest is not chargeable upon an unliquidated amount.

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III.

WEST VIRGINIA'S EQUITABLE PROPORTION OF VIRGINIA DEBT WAS NOT ASCERTAINED, IF FIXED AT ALL, UNTIL THE DECISION OF THIS COURT ON MARCH 6, 1911.

Neither the Legislature of West Virginia nor the Legislature of Virginia, standing alone, had the power to ascertain West Virginia's equitable proportion of the Virginia debt, and the two States, through all the years that have passed, have taken

no joint action, and, in consequence, the ascertainment of West Virginia's proportion of the debt has remained unliquidated and unfixed. There has never been a moment of time from the adoption of the West Virginia Constitution of 1861, or from the establishment of the State in 1863, that West Virginia could have established the sinking fund promised in the Eighth Article of her Constitution. She could lay no levy, and could fix no rate, because she did not know what she had to meet. She did not have the power to fix the amount herself, and she was unwilling to permit Virginia to do so arbitrarily. For the first time in fifty years, the basis of liability was fixed by this Court in its finding and opinion of March 6, 1911, and that finding was provisional; and, if West Virginia should be permitted by this Court to apply the credits thereto that she now claims, interest could only be calculuated upon the balance from the time the balance is ascertained, unless this Court should be of the opinion that West Virginia has actively prevented the ascertainment of her proportion of the debt, and to this suggestion we will now briefly address ourselves.

IV.

WEST VIRGINIA NOT AT FAULT.

From the adoption of her Constitution in 1861 until her admission into the Union in 1863, West Virginia had no power to act, because she had not become a State. From 1863 until 1866, the two States were at war, and nothing could be done. In

1866, Virginia filed a bill in this Court against West Virginia, attacking the integrity of her territory, and claiming jurisdiction over the Counties of Berkeley, Jefferson and Frederick, which suit was not decided until the sixth day of March, 1871, and, during its pendency, it was uncertain what constituted West Virginia, and her action upon the debt question was thereby prevented and postponed. Immediately following this; that is to say, upon the 15th day of March, 1871, the Governor of West Virginia, pursuant to a joint resolution of her Legislature, appointed a Commission to negotiate a settlement of the debt question with the Commonwealth of Virginia. This Commission proceeded without unnecessary delay to the Capitol of Virginia for the purpose of carrying out the objects of its appointment, but was met with a refusal upon the part of Virginia to negotiate, and West Virginia was once more powerless. Shortly after this; that is to say, on March 30, 1871, the State of Virginia, without consulting West Virginia, took the matter into her own hands, and, by legislative enactment, arbitrarily fixed West Virginia's portion of the debt one-third, thus making it impossible for West Virginia to do anything in the premises; and there the matter remained practically until immediately before the institution of this suit. West Virginia, it is therefore respectfully submitted, has not been at fault, and has not been the cause of the postponement of this settlement.

Upon the other hand, Virginia has had it in her power for more than forty years to institute this suit, and ascertain through this tribunal West Vir-

ginia's equitable proportion of her debt. Instead, she neglected so to do, and has caused, by her neglect and delay, the very time to run upon which she now seeks to charge interest.

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for West Virginia.

IN THE

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)
vs.) In Equity.
)
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for West Virginia.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1913.

No. 2 ORIGINAL.

COMMONWEALTH OF VIRGINIA, *Complainant*,

vs.) In Equity.

STATE OF WEST VIRGINIA, *Defendant*.

SUPPLEMENTAL PLEADINGS.

When the State of West Virginia formulated her answer, she was controlled, first, by the direct and specific allegations of the bill impleading her under the provisions of the Wheeling Ordinance, and second, by the express finding of this Court:

> "Reading the Virginia ordinance and the West Virginia constitutional provision in *pari materia*, it follows that what

> was meant by the expression that the 'Legislature shall ascertain' was that the Legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained."

By this finding the method of ascertaining the liability of West Virginia to Virginia, and her "just proportion" of the debt, were to be determined by the Wheeling Ordinance. Therefore, West Virginia was circumscribed, in her defense, by the bill and the opinion overruling the demurrer.

There was no question submitted to the Special Master by the Court requiring the amount and value of all moneys, property, stocks, and credits, which Virginia held, and which belonged to the Commonwealth, at and prior to the dismemberment, to be ascertained and reported.

The only auditing that was done before the special master, embraced that period of time from the beginning of the first indebtedness of Virginia, to-wit, March 17, 1823, to the 1st day of January, 1861, and hence the value and disposition of said stocks and bonds were in no way ascertained or investigated.

In the opinion of March 6, 1911, 220 U. S., 28, this Court held that the eighth section of Article 8 of the Constitution of 1862 governs the liability of West Virginia to Virginia. Then, *for the first time*, West Virginia was called upon for settlement under the Constitution.

Practically the entire debt of the Commonwealth of Virginia outstanding on January 1, 1861,

was incurred for public improvements. This debt was an investment. To make this investment safe, Virginia took the precaution to require, as a condition precedent to extending her aid, the payment or delivery to the Commonwealth of stocks, bonds, or other interest or dividend-bearing securities. These securities, therefore, belonged to the whole State. West Virginia had the same proportional interest therein as this Court has found her proportional liability on account of the public debt. These improvements consisted principally of railroads and canals.

The investigation by the West Virginia Commission, discloses the fact that Virginia, on January 1, 1861, and on June 20, 1863, held stocks, bonds and other securities of banks, railroad companies, canal companies, and other internal improvement companies, of the reasonable value of $20,810,357.98.

THE CONSTITUTIONAL PROVISIONS AFFECTING THE COMMON DEBT OF THE COMMONWEALTH AND THE STOCKS, BONDS AND OTHER SECURITIES HELD IN TRUST FOR THE PAYMENT THEREOF.

THE PROVISIONS OF THE CONSTITUTION OF VIRGINIA OF 1851 IN FORCE JANUARY 1, 1861, AND STILL IN FORCE JUNE 20, 1863, ARE AS FOLLOWS:

> "29. There shall be set apart annually, from the accruing revenue, a sum equal to seven per cent. of the State debt existing on the first day of January, in the year One

Thousand, Eight Hundred and Fifty-Two. The fund thus set apart shall be called the Sinking Fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the Sinking Fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this Commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt, as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the Commonwealth, there shall be set apart in like manner annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the Sinking Fund, and shall be applied in the manner before directed. *The general assembly shall not otherwise appropriate any part of the Sinking Fund,* or its accruing interest, except in time of war, insurrection or invasion.

"30. The general assembly may, at any time, direct a sale of the stocks, held by the Commonwealth in internal improvement and other companies; *but the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the Sinking Fund, and be applied in like manner.*"

Constitution of Virginia, 1851; Code 1860, p. 47.

The provisions of the Constitution of the Restored Government of Virginia, of February 13, 1864, in relation to the debt, and in relation to these securities, are as follows:

> "27. The general assembly shall provide by law for adjusting with the State of West Virginia the proportion of the public debt of Virginia, proper to be borne by the State of Virginia, and of West Virginia, respectively, and may authorize, in conjunction with the State of West Virginia, *the sale of all lands and property of every description, including all stocks and other interests owned and held by the State of Virginia, in banks, works of internal improvement, and other companies, at the time of the formation of the State of West Virginia*, and no ordinance passed by the convention which assembled at Wheeling on the eleventh day of June, Eighteen Hundred and Sixty-One, adjusting the public debt between Virginia and West Virginia, shall be binding upon this State * * * *.
>
> "28. The general assembly may at any time direct the sale of the stocks held by the Commonwealth in internal improvements, and other companies located within the limits of this Commonwealth, *but the proceeds of such sale, if made before the payment of the public debt, shall be appropriated to the payment thereof.*"

The provisions of the Constitution of the Reconstructed State of Virginia, of December 3, 1867, relating to the debt are as follows:

"Sec. 8. The general assembly shall provide by law a Sinking Fund, *to be applied solely to the payment and extinguishment of the principal of the State debt, which Sinking Fund shall be continued until the extinguishment of such State debt;* and every law hereafter enacted by the general assembly creating a debt, or authorizing a loan, shall provide a sinking fund for the payment of the same.

"Sec. 19. The general assembly shall provide by law for adjusting with the State of West Virginia the proportion of the public debt of Virginia, proper to be borne by the State of Virginia and West Virginia, and shall provide that such sum as shall be received from West Virginia shall be applied to the payment of the public debt of the State."

Constitution, 1867-1869; Code of Virginia, 1873, pp. 95, 96.

Under the provisions of the Constitution of Virginia, in force January 1, 1861, and still in force June 20, 1863, the General Assembly was authorized to direct sales of the stocks held by the Commonwealth in internal improvement and other companies; but the proceeds of such sales, when made, should constitute a part of the sinking fund, and be applied in like manner as other funds constituting the sinking fund, which the Constitution, under the provisions of Section 29, directed the Legislature to create and set apart for the purpose of liquidating the debt.

Notwithstanding these constitutional provisions, Virginia, under authority of the General Assembly, made sale of by far the greater part of these securities, and has converted the proceeds of such sales to her own exclusive use, and has not caused the public debt existing on said date to be reduced by the amount and value, or by the proceeds of the sale of such securities, or any part thereof.

West Virginia's claim to her interest in these trust securities, or the proceeds thereof, constitutes a distinct claim against Virginia. The proceeds of these securities is a proper set-off against any claim which Virginia may establish against West Virginia, on account of her constitutional obligation to assume a just proportion of the Virginia debt. West Virginia's demand is one justifiable under the rulings of this Court.

AFTER WEST VIRGINIA BECAME A STATE VIRGINIA BY VARIOUS ACTS OF LEGISLATION RECOGNIZED WEST VIRGINIA'S RIGHTS TO A "FAIR DIVISION OF PUBLIC PROPERTY".

In addition to Sec. 27 of the Constitution of the restored government of Virginia of February 13, 1864, section 3 of a joint resolution of the General Assembly of Virginia, adopted February 28, 1866, Acts 1861-1866, page 453, is as follows:

> "The Commissioners appointed under the foregoing resolution are also empowered and directed to treat with the authorities of West Virginia, upon the subjects of

a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, *and of a fair division of the public property;* subject, however, to the approval or disapproval of this general assembly."

In the same Acts, at page 458, is a joint resolution adopted February 9, 1866, in part as follows:

"1. Be it Resolved by the General Assembly of Virginia, That the amounts required by the said Act to be paid to the State of Virginia, shall be held by the State in trust, subject to an adjustment of the debt of the State *and a division of the public property between the States of Virginia and West Virginia,* in case the two States shall not be remitted as one State; provided West Virginia shall by law ratify the said Act."

The General Assembly of Virginia, on February 18, 1870, Acts 1869-1870, Chapter 6, passed the following Act:

"1. Be it enacted by the General Assembly, That three Commissioners, resident citizens of this State, be appointed by the Governor to treat with the authorities of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, *and a fair division of the public property; provided, however,* that the action of the said Commissioners shall be subject to the approval or disapproval of this General Assembly."

By a "fair division of the public property" Virginia necessarily meant the stocks, bonds and other securities which she held in trust for the payment of the common debt. *And it was not until March* 30, 1871, *that Virginia attempted to repudiate her constitutional obligations to West Virginia to apply the proceeds of the sale of any of these trust securities to the payment of the common debt outstanding January* 1, 1861. By Section 3 of the Act of March 30, 1871, Acts of Assembly of 1870-1871, Chapter 282, Virginia set apart, arbitrarily, one-third of the debt of the Commonwealth as the proportion of the debt which should be borne by West Virginia. By Section 5 of said Act it was provided:

> "Whatever sum may be realized from the claims of this State against Selden, Withers & Company, and the Chesapeake and Ohio Canal Company, and from the sale or disposition of the stocks and bonds, and debts owned by the State in and against any and all railway and other improvement companies, and all sums which may be realized from the claims of this State against the United States, and from the sales of any real estate now belonging to the Commonwealth, shall be paid into the Treasury of the State to the credit of the sinking fund hereby authorized and created. * * * The Treasurer and Auditor of public accounts, and the second Auditor are hereby appointed Commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the

credit of the sinking fund to the purchase and redemption of bonds *issued by authority of this Act.*"

By an Act of the General Assembly of Virginia, approved March 31, 1875, Acts 1874-1875, Chapter 331, entitled "An Act to Consolidate, Re-establish and Regulate the Sinking Fund of the State of Virginia," it was provided:

> "Sec. 6. In all cases in which bonds shall be funded under this Act, West Virginia certificates shall be issued for one-third of the amount, in the name of the said Commissioners, *and shall be held by them as an off-set against any claim which the State of West Virginia may hereafter set up against this State upon final settlement of the respective liabilities of the two States, for the public debt.*"

WEST VIRGINIA HAS NOT BEEN IN DEFAULT UPON THE QUESTION OF AN EQUITABLE ADJUSTMENT OF THE PUBLIC DEBT.

Virginia has continuously and persistently claimed that the failure to earlier adjust the Constitutional obligations of the two States was due to the default of West Virginia. But the records of the States disclose that the fault has not been on the part of West Virginia, but on the part of Virginia. While it is true that Virginia has apparently made some efforts to effect a settlement, such efforts have always been made either at a time when a settlement could not legally be made, or she has offered

settlements which she had disqualified herself from making and carrying into effect, or she has, in her propositions for settlement, imposed such conditions as to prohibit West Virginia from accepting.

The first circumstance to be considered is that the Civil War precluded any settlement between West Virginia and the Confederate State of Virginia. The Commonwealth of Virginia was continued in force in a two-fold aspect; that is, the Restored Government of Virginia and the Confederate State of Virginia. The Confederate State of Virginia continued to exercise its local governmental functions after the adoption of the ordinance of secession, down to the surrender at Appomattox; the legal ending of the Rebellion dates from April 2, 1866. There could be no settlement between the two States, so far as the Confederate State of Virginia is concerned, at any time from June 20, 1863, to April 2, 1866. This period, therefore, must be excluded in considering the circumstances of the asserted default.

Under the provisions of Section 20, Article 4, Constitution of West Virginia of 1863, the Legislature convened annually in regular session on the third Tuesday in January of each year. Under the provisions of Section 24, Article 4, no session of the Legislature after the first session could continue longer than forty-five days without the concurrence of three-fourths of the members. The session of the Legislature for 1866, therefore, was limited to forty-five days from the third Tuesday in January. There was no extension of the session for the year 1866; consequently the session ended before the second of April, 1866.

The first session of the West Virginia Legislature after April 2, 1866, convened on the third Tuesday in January, 1867. This was the first session of the West Virginia Legislature, after the close of the Civil War, at which action could be taken upon the the question of a settlement with Virginia of West Virginia's equitable proportion of the debt of the Commonwealth, proper to be borne by West Virginia.

On February 28, 1866, the General Assembly of Virginia adopted the following resolutions:

> "1. Resolved by the General Assembly of Virginia, that the people of Virginia deeply lament the dismemberment of the old State, and are sincerely desirous to establish and perpetuate the re-union of the States of Virginia and West Virginia; and that they do confidently appeal to the brethren of West Virginia to concur with them in the adoption of suitable measures of cooperation in the restoration of the ancient Commonwealth of Virginia, with all her people, and up to her former boundaries.
>
> 2. That three commissioners, resident citizens of this State, shall be appointed by the joint vote of the two houses of the general assembly, to proceed forthwith to the seat of government of West Virginia, for the purpose of communicating to the Governor and general assembly of that State a copy of the foregoing resolution, and the report of the committee accompanying the same, with authority to treat on the subject of the restoration of the State of Virginia to its ancient jurisdiction and boundaries; provided, that the result of such negotiation, if favorable to such restoration, on

any terms, shall be subject to the approval or disapproval of the Legislatures or conventions of the respective States, as may be hereafter mutually agreed upon.

3. The commissioners appointed under the foregoing resolution, are also empowered and directed to treat with the authorities of West Virginia, upon the subjects of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and for a fair division of the public property; subject, however, to the approval or disapproval of this general assembly."

Acts of Assembly, 1865, 1866, page 453.

On the first Monday in December, 1866, Virginia filed her bill in equity in this Court against West Virginia, wherein the plaintiff claimed that the counties of Berkeley and Jefferson, over which counties the State of West Virginia claimed jurisdiction, never legally became a part of the State of West Virginia; and the complainant claimed that the division line between the two States should be so changed and established as to include said counties within the boundaries of Virginia. This suit was not determined until March 6, 1871, when the Court sustained a demurrer to the bill.

Virginia vs. West Virginia, 11 Wall., 39.

The institution and prosecution of this suit would necessarily preclude a settlement between the two States until the determination of the action. And consequently, during that period, West Virginia was not in default.

On February 28, 1867, the Legislature of West Virginia adopted the following resolution:

> "Resolved, by the Legislature of West Virginia:
>
> "1. That the people of this State are unalterably opposed to a reunion of this State with the State of Virginia, and will not entertain any proposition looking to that, and
>
> "2. That so soon as the suit of Virginia against this State, now pending in the Supreme Court of the United States, to recover jurisdiction over the Counties of Berkeley and Jefferson, has been finally disposed of, the governor of this State appoint three commissioners on the part of this State to treat with the commissioners appointed by the State of Virginia upon the adjustment of the public debt of said State, as provided in Section Nine, of 'An ordinance to provide for the formation of a new State,' adopted by a convention of the people of Virginia on the twentieth day of August, Eighteen Hundred and Sixty-One, and in Section Eight of Article Eight of the Constitution of West Virginia, and report their action to the governor, to be by him communicated to the legislature of this State for their approval or disapproval."
>
> Acts of West Virginia, 1867, pp. 180-181.

On February 18, 1870, the General Assembly of Virginia passed the following Act:

> "Chapter 6. An Act for the Adjustment of the public debt with the State of West Virginia.

"1. Be it enacted by the general assembly, that three commissioners, resident citizens of this State, be appointed by the governor to treat with the authorities of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and a fair division of the public property; provided, however, that the action of the said commissioners shall be subject to the approval or disapproval of this general assembly."

Acts of General Assembly of Virginia, 1869-1870, page 8.

The foregoing Act of the Legislature of Virginia was superseded by a joint resolution adopted by the General Assembly, approved February 11, 1871, Acts of 1870-1871:

"Be it Resolved by the general assembly of Virginia that the governor of this Commonwealth be and he is hereby authorized to tender to the State of West Virginia an arbitration of all matters touching a full and fair apportionment between said States of the said public debt; and in the event of the acceptance of such offer of arbitration by West Virginia, then the governor, lieutenant-governor, president of the court of appeals, auditor of public accounts, and the secretary of the commonwealth, shall appoint two arbitrators on the part of this State, who shall not be citizens of this State, to meet any two arbitrators selected by West Virginia, not citizens of said State. The arbitrators so appointed shall, if they

deem it advisable, appoint an umpire. Said arbitrators and umpire shall, as soon as practicable, proceed to adjust, award and decide, upon fair, just and equitable principles, what proportion of said public debt should be paid by West Virginia, and what part thereof should be paid by this State. Said apportionment, when ascertained and made, to be reported by said arbitrators to the legislatures of said States, to enable them to carry out such award or apportionment by appropriate legislation. Each State may be represented by counsel, and the board hereby directed to appoint the arbitrators for Virginia shall be, and are, hereby authorized to draw on the Treasurer of the State of Virginia, out of any money not otherwise appropriated, a sum sufficient to defray the necessary expenses of this arbitration on the part of Virginia."

On February 15, 1871, the Legislature of West Virginia adopted the following resolutions:

"1. That the Governor, on or after the fifteenth day of March, 1871, appoint three disinterested citizens of this State to treat with the authorities of the State of Virginia on the subject of a proposed adjustment of the public debt of that State prior to the first day of January, eighteen sixty-one, and make report thereof to the Governor, to be printed and communicated by him to the Legislature at the commencement of its next session, for approval or disapproval."

"4. Nothing herein contained shall be construed as waiving or impairing in any

way the rights of this State to jurisdiction over the counties of Berkeley and Jefferson."

"5. That the foregoing resolutions be communicated by the Governor to the Governor of Virginia."

Acts 1871, pp. 278, 279.

On February 24, 1871, the Legislature of West Virginia adopted the following resolution:

"No. 26. Joint Resolution Providing for the Settlement of the Debt Between Virginia and West Virginia.

"Whereas, Any adjustment of said debt should be subject to such ratification; and

Whereas, Citizen commissioners would, of necessity, be more familiar with the circumstances attending the creation of said debt, and the many intricate questions connected therewith, and upon the proper comprehension of which must depend the equitable apportionment and adjustment of the same between said States; therefore,

"Resolved, by the Legislature of West Virginia:

"1. That the tender of an arbitration made by the Governor of the Commonwealth of Virginia to this State, for the adjustment of the public debt of said Commonwealth, having been anticipated by the action of the Legislature of this State, authorizing the appointment of commissioners to treat upon said subject, the said tender is respectfully declined, and the Commonwealth of Virginia is invited to appoint three disinterested citizens as commission-

ers, with authority to treat with like commissioners heretofore authorized on the part of this State. And said commissioners, on behalf of this State, in addition to the powers heretofore conferred, are hereby further empowered to proceed as soon as practicable, to adjust, award and determine, upon fair, just and equitable principles, what proportion of said public debt of Virginia should, in their opinion, be paid by West Virginia, and what part thereof should be paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia.

"2. The Governor of this State is hereby directed to communicate to the Governor of the Commonwealth of Virginia, without delay, certified copies of this preamble and joint resolutions."

Acts of West Virginia Legislature, 1871, pages 281, 282.

In pursuance of said resolution what is commonly known as the "Bennett Commission" was appointed, but the authorities of Virginia refused to treat with or consider said Commission. The Committee ascertained in an ex parte way all data available with regard to said debt and among other things reported as follows:

"We have charged West Virginia with all that we have found expended within her limits, viz.: The amount of the funded debt created for improvements within her territory, the amount invested in her banks, the amount expended on the lunatic asylum at

Weston, and the estimated value of the property known as the Lewisburg Law Library.

"On the other hand, we have credited her with her share of the estimated value of the public property and assets of Virginia, *other than the property represented in the bonded indebtedness. This latter equalizes itself, and therefore does not enter the account. Virginia has the property and owes the debt which it represents* * * *."

From the date of the report of said Commission no action was taken by either state with reference to the other in regard to this debt until the 6th day of March, 1894, when Virginia by an act of her Legislature created her present Debt Commission. This Commission was, as to a settlement with West Virginia, circumscribed by the following provision:

"But said Commission shall in no event enter into any negotiations hereunder, except upon the basis that Virginia *is bound only for the two-thirds of the debt of the original State, which she has already provided for as her equitable proportion thereof.*"

Thus it remained until the 6th day of March, 1900, the State of Virginia passed an Act in that regard, Section 2, which is as follows:

"2. If at least two-thirds in amount of the said certificates issued under the Act of 1871, exclusive of those held by the State through the agency of the Board of Education and the Sinking Fund Commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so de-

posited or placed, subject to the control of the said Commission, upon the agreement and contract aforesaid, then the said Commission shall be authorized and empowered, by and with the advice and approval of the Attorney-General of Virginia, to take such action and institute such proceedings on behalf of the State as may, in the judgment of said Commission and Attorney-General, be needful and proper to protect the interest of the State and bring about and carry into effect a settlement as aforesaid."

It is very doubtful whether the above act repealed the act of 1894, as to the conditions upon which the Virginia Commission could enter upon negotiations with West Virginia, and besides there was not a sufficient amount of certificates in the hands of said Commission whereby it could treat with West Virginia until about the year 1905 (See Exhibit 8 with the Bill), and in the next year suit was brought.

WEST VIRGINIA SHOULD NOT BE CHARGED WITH INTEREST ON HER EQUITABLE PROPORTION ON THE VIRGINIA DEBT.

FIRST.—Interest is not to be awarded against a sovereign government, unless its consent to pay interest has been manifested by an Act of its Legislature, or by a lawful contract of its executive officers.

United States vs. North Carolina, 136 U. S., 211, 216 (Dec., 1890). Approved South Dakota vs. North Carolina, 192 U. S., 321, 386, (Oct. 1903).

United States vs. Sherman, 98 U. S., 565 (Oct., 1878).

United States ex rel. Angarica vs. Bayard, 127 U. S., 251, 260 (Apr., 1888).

Molineaux vs. State, 109 Cal., 378; 42 Pac., 34; 50 A. S. R., 49 (Oct., 1895).

Sawyer vs. Colgan, 102 Cal., 283; 36 Pac., 583.

Davis vs. State, 121 Cal., 211; 53 Pac., 556.

Carr vs. State, 127 Ind., 204; 26 N. E., 778; 11 L. R. A., 370; 22 A. S. R., 624, 637 (Feb., 1891).

Flint, etc., R. Co. vs. Board of State Auditors, 102 Mich., 502; 60 N. W., 971 (Nov., 1894). Affirming principle, but holding that Michigan statute obligated the State to pay interest.

National Home, etc., vs. Parrish, 194 Fed., 940, 941; 114 C. C. A., 576 (April, 1912).

United States vs. Sargent, 162 Fed., 81, 83; 89 C. C. A., 81 (May, 1908).

William R. Trigg Co. vs. Bucyrus Co., 104 Va., 79; 51 S. E., 174, 177 (June, 1905).

West Virginia has not manifested, by any Act of her Legislature, her consent to pay interest on her proportion of the Virginia debt; nor has any lawful contract been made by her executive officers for the payment of interest.

SECOND.—Article 8, Section 8, Constitution of West Virginia, providing that an equitable proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861, shall be assumed by the State of West Virginia, constitutes a contract for the payment of such equitable proportion, and is the basis upon which this Court holds West Virginia

liable to the State of Virginia for her equitable proportion of the Virginia debt.

Virginia vs. West Virginia, 220 U. S., 1, 36, 37 (March, 1911).

Virginia vs. West Virginia, 11 Wall., 39, 59 (Dec., 1870).

THIRD.—Virginia is not entitled to interest, for the reason that her claim against West Virginia is unliquidated. The amount of her claim has never been ascertained by any contract, legislative enactment or judicial finding. The proportion of West Virginia's share of the debt, given by the Supreme Court in the opinion of March 6, 1911, is given provisionally. To entitle Virginia to interest, her demand must have been either a fixed, definite sum, or a sum which could be fixed or determined by mere computation.

Mowry vs. Whitney, 14 Wall., 620, 652 (Dec., 1871).

Redfield vs. Ystalyfera Iron Co., 110 U. S., 174; opinion, 176, 177 (Jan., 1884).

Stephens vs. Phoenix Bridge Co., 139 Fed., 248; 71 C. C. A., 374 (June, 1905). Second Circuit.

Pennsylvania Steel Co. vs. New York City R. Co., 198 Fed., 778, 779, 780; 117 C. C. A., 360 (July, 1912). Second Circuit.

The Auditor of Public Accounts vs. Dugger & Foley, 3 Leigh, 241 (Nov., 1831).

Payne vs. Graves, 5 Leigh, 561 (Dec., 1834).

Roper et al. vs. Wren, 6 Leigh, 38 (Feb., 1835).

Phillips et al. vs. Williams, 5 Gratt., 258 (Oct., 1848).

Stearns vs. Mason, 24 Gratt., 484 (March, 1874).
McConico vs. Curzen, 2 Call., 358 (April, 1800).
Skipwith vs. Clinch, 2 Call., 253 (April, 1800).
Waggoner vs. Gray's Admr's, 2 H. & M., 603 (Oct., 1808).
People ex rel. Cranford Co. vs. Wilcox, — N. Y., —; 101 N. E., 174.
Fenichel vs. Zicherman, 139 N. Y. S., 118; — App. Div., —; (Jan., 1913).
Tradesman's National Bank vs. Boldt, 139 N. Y. S., 531; — App. Div., —; (Jan., 1913).
S. C. etc. v. Port Royal, 89 Fed., 565; 22 Cyc. pp. 1510, 1511;
1 Sedgwick on Damages (9th ed.) sec. 312, citing long array of state and federal cases.

Selleck v. French, at page 195, 6 Am. Dec., says:

"In *People v. New York*, 5 Cow., 331, the general principle is stated that 'whenever the debtor knows precisely what he is to pay, he shall be charged with interest if he neglects to pay'; and the same rule is laid down in substantially the same terms in *Hunt. v. Jucks*, 1 Am. Dec., 555; and see *Swett v. Hooper*, 62 Me., 54, to the same effect. As to when an account is considered liquidated, we find a very good rule in *Clerk v. Dutton*, 69 Ill., 521, where it is held that a debt is liquidated when it is certain what is due and how much is due; and although it may appear that something is due, if it does not appear how much is due, the debt is not liquidated. An unliquidated debt is one which one of the parties cannot alone render certain. And in this case it was held that when a party receives notes, property and cash, for which he agrees to execute his promis-

> sory note in a given sum to the party letting him have the same, this will make the account or debt a liquidated one, and interest will be recoverable. And when parties are engaged in continuous dealings, the presentation of bills at different times stating parts of the account does not raise the presumption of liquidation, under which interest is therefore chargeable upon the balances shown to be due: *Raymond v. Williams*, 40 Iowa, 117. But an account may be considered liquidated when on being rendered to the debtor no objection is made: *Walden v. Sherburne*, 15 Johns. 224; *Haight v. McVeagh*, 69 Ill., 624."

Barrow v. Reab, 9 How. (U. S.), 366; 13 Law ed., 177, says:

> "But the general practice, where no statute or usage exists to the contrary, is not to allow interest on unliquidated damages due in cases of ordinary contracts. (Anonymous, 1 Johns., 315; 2 Penn., 652; Peters, C. C. 85, 172, 221; Cotton v. Bragg, 15 East., 223; 3 Gilman, 626)."

FOURTH.—The Constitution of West Virginia, Section 8, Article 8, made the basis of the contract between the two States by the Supreme Court, in the opinion of March 6, 1911, does not provide for the payment of interest. Interest, therefore, is not payable by virtue of the contract, and, if recoverable at all, is only recoverable as damages; and interest, therefore, is merely an incident of the principal debt.

Stewart vs. Barnes, 153 U. S., 456, 462 (May, 1894).

Southern R. Co. vs. Dunlop Mills, 76 Fed., 505 (Nov., 1896); 22 C. C. A., 302. Fourth Circuit.

Graves vs. Saline County, 104 Fed., 61, 63; 43 C. C. A., 414 (Oct., 1900). Seventh Circuit.

FIFTH.—There being no contract therefor interest can only, if at all, be claimed as damages in this proceeding. Virginia delayed the institution of any proceedings from April 2, 1866—the day on which the Civil War ended—to February 26, 1906, a period of thirty-nine years, ten months and twenty-four days. Plaintiff is, therefore, by reason of her laches, barred of any claim on account of interest.

*United States vs. Sanborn, 135 U. S., 271; opinion, 281 (April, 1890).

*Redfield vs. Ystalyfera Iron Co., 110 U. S., 174; opinion, 176, 177 (Jan., 1884).

Redfield vs. Bartels, 139 U. S., 694, 698, 701, 702 (April, 1891).

Mason vs. Wolkowich, 150 Fed., 699; opinion, 706; 80 C. C. A., 435 (Oct., 1906).

Mulliday vs. Machir's Adm's, 4 Gratt., 1 (April, 1846).

Nashua, etc., Corp. vs. Boston, etc., Corp., 61 Fed., 237; opinion, 251, 252 (Feb., 1894). First Circuit.

SIXTH.—In equity, where there is a contract to pay interest, the allowance of interest on unliquidated demands is a matter of discretion. But in all cases where interest is recoverable by way of damages, where the plaintiff has been guilty of laches

in unreasonably delaying the prosecution of his claim, interest will not be allowed.

Redfield vs. Ystalyfera Iron Co., 110 U. S., 174; opinion, 176 (Jan., 1884).
Pennsylvania Steel Co. vs. New York City R. Co., 198 Fed., 778; opinion, 779, 780; 117 C. C. A., 360 (July, 1912). Second Circuit.
Skipworth vs. Clinch, 2 Call., 253 (April, 1800); opinion, 257.

SEVENTH.—Virginia is not entitled to interest for the reason that whatever amount, she is entitled to recover from West Virginia is not due and payable. The amount of the principal has never been liquidated. Therefore, there is no sum *due and payable* upon which interest could be computed. There has been no default by West Virginia so as to render her liable for interest. Default cannot occur in the payment of interest where the sum due is uncertain.

Waggoner vs. Gray's Adm'r, 2 H. & M., 603 (Oct., 1808).

EIGHTH.—From the date of the adoption of the Constitution of West Virginia of 1862, to April 2, 1866, Virginia and West Virginia were engaged in war. The enforcement of all contracts, either between the States of Virginia and West Virginia, or between citizens thereof, was suspended.

Brown vs. Hiatts, 15 Wall., 117; opinion, 185, 186 (Dec., 1872).
Walker vs. Beauchler, 27 Gratt., 511; opinion, 525 (March, 1876).

Fred et al. vs. Dixon et al., 27 Gratt., 541 (March, 1876).

Robert vs. Cocks, 28 Gratt., 207; opinion, 219, 220 (March, 1877).

Tracy vs. Shumate, 22 W. Va., 474; Syl., 6 (Nov., 1884); opinion, 512.

NINTH.—Where interest is recoverable as damages, and not by reason of a contract, the law of the place of performance of the contract will control. In this case, in any event, the performance of this contract was to be in West Virginia.

Coghlan vs. South Carolina R. Co., 142 U. S., 101; opinion, 110, 111 (Dec., 1891).

United States Mortgage Co. vs. Sperry, 138 U. S., 313; opinion, 336, 337 (Feb., 1891).

Scotland County vs. Hill, 132 U. S., 107; opinion, 117 (Nov., 1889).

City National Bank vs. Hunter, 129 U. S., 557; opinion, 577, 578 (March, 1889).

Pana vs. Bowler, 107 U. S., 529; opinion, 546 (Oct., 1882).

Cockle vs. Flack et al., 93 U. S., 344; opinion, 347 (Oct., 1876).

National, etc., Assn. v. Ashworth, 91 Va., 706; 22 S. E., 521; opinion, 532 (July, 1895).

The Mary N. Bourke, 145 Fed., 909; opinion, 911; 76 C. C. A., 441 (April, 1906). Second Circuit.

Sloss-Sheffield, etc. Co. vs. Tacony Iron Co., 183 Fed., 645; opinion, 646 (Dec., 1910); C. C. E. D. Pa. Affirmed 188 Fed., 896; 110 C. C. A., 530 (June, 1911). Third Circuit.

ADDITIONAL REASONS WHY VIRGINIA SHOULD NOT BE ALLOWED INTEREST.

There are numerous equitable reasons why Virginia should not be awarded interest upon her claim against West Virginia, some of which may be briefly stated as follows:

a. It has been within the power of Virginia to have had West Virginia's equitable proportion of the debt judicially determined by this Court at any time during the past forty years, but she has failed and neglected so to do, and must be herself, in consequence, charged with the responsibility of the flight of time, and ought not to be permitted to penalize West Virginia for her own delay;

b. She has received during these years as interest upon loans and dividends upon stocks, made in the one case and purchased in the other with the common funds, and for which no credit is claimed by West Virginia in her supplemental answer, the aggregate sum at least of $5,782,240.09;

c. Many of the bonds in question have been mislaid, lost or destroyed, and the probabilities are will never be presented for payment, and many of the remainings bonds were purchased by the present holders thereof at nominal prices;

d. She has retained, free of charge, and without any claim upon the part of West Virginia of a credit on account thereof, all of the public buildings of the old Commonwealth, including the Capitol at Rich-

mond, the penitentiary in that City, the State asylum at Staunton, the University at Charlottesville, and various other public buildings and institutions that had been constructed and equipped out of the joint funds of the two States, of an aggregate value of at least $3,875,000.00, as shown by the report of the Master in this cause (Record, page) ;

e. She likewise retained and enjoyed much personal property, consisting of libraries, arms and munitions of war, etc., that had been purchased with the common funds, and for no part of which a credit is claimed, and,

f. She has likewise largely scaled her debt, without West Virginia receiving her full proportionate benefit of such scaling.

GENERAL OBSERVATIONS AS TO INTEREST.

It is contended that inasmuch as the debt of Virginia existing on January 1, 1861, was interest-bearing, when West Virginia in her Constitution, ratified in April, 1862, and assented to by Virginia in May of that year, assumed an equitable proportion thereof, that she also and at the same time assumed the payment of interest thereon.

This is a *non sequitur,* because the debt assumed by West Virginia by her constitution of 1862, was her equitable proportion of the debt that Virginia owed on January 1, 1861,—not the increase in that debt accruing thereafter by reason of the accumulation of interest thereon. West Virginia's promise was to Virginia and not to the creditors of Virginia.

West Virginia has nothing to do with any part of the debt arising after January 1, 1861.

Suppose at the first session of the legislature of West Virginia after her creation into a State, which was June 20, 1863, her first Legislature assembling on that day (as it did) had ascertained the proportion she assumed under her constitution, would it be for a moment contended that she also owed Virginia the interest on this amount for the years 1861-1862, and for the time elapsing from January 1, 1863, to the 20th day of June of that year, the time when her Legislature ascertained her equitable proportion thereof? Clearly not, because it was in May, 1862, that Virginia consented through her act of Legislation, to the formation of the new State, to receive from West Virginia an equitable proportion of the debt as it stood on January 1, 1861—being the debt as it existed sixteen months and six days prior to the making of the promise to assume an equitable proportion thereof.

The compact between the two States only contemplates the payment of the interest by West Virginia *after the amount she assumed has been definitely ascertained.* The compact of the two States consists of the Constitution of West Virginia ratified in April, 1862, on the one side, and the Act of the Legislature of Virginia of May, 1862, assenting to the formation of the new State, on the other side.

The only mention made of interest in this Constitution (Art. 8, Sec. 8), which, after declaring that an equitable proportion of this debt shall be assumed by West Virginia, provides that

"The Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal in thirty-four years."

Const., W. Va. (1862), Art. 8, Sec. 8.

Virginia accepted this constitutional declaration as the full and complete measure of West Virginia's liability. This declaration is silent as to accrued interest, although more than one years' interest had already accrued when Virginia assented to this Constitution, and nearly two and one-half years when West Virginia, taken from the territory of Virginia, became a part of the Union. This contract relates to a debt which Virginia herself had contracted prior to January 1, 1861, and West Virginia only agreed to assume the equitable proportion of it as it existed on that day, although she was admitted into the Union nearly two and one-half years thereafter. Virginia then declared through her Legislature that if West Virginia would assume her just proportion of this debt as created prior to January 1, 1861, and provide, *after the ascertainment of its amount*, for the liquidation thereof, by a sinking fund sufficient to pay the *accruing interest*, and redeem the principal in thirty-four years,—that this would be sufficient to discharge West Virginia from all liability.

The words "accruing interest" referred to that part of the debt which West Virginia assumed after her admission to the Union, and, of course, after she had become an independent State and after, as an

independent State, her *proportion had been ascertained. It does not refer to the interest accruing on the debt of Virginia,* but on a debt which West Virginia shall herself create when she becomes one of the States of the Union, and which is payable to Virginia and not to the holders of the debt.

It will not be overlooked that the *amount* of the liability of West Virginia *is to be* ascertained, and upon this amount she is to pay the accruing interest.

THE MEANING OF "DEBT" AS USED IN CONSTITUTION.

The liability of West Virginia being fixed by her constitution, submitted to a popular vote for ratification, and being so ratified, what is the meaning of the word "debt" as used in Art. 8, Sec. 8, of that instrument? Does it mean the debt of Virginia existing on January 1, 1861, with the unpaid accrued interest thereon at that time, or does it mean not only this, but the interest thereafter accruing until West Virginia's proportion has been ascertained and its liquidation provided for?

This presents the question as to how words used in a State Constitution are to be construed.

On this point the authorities are clear, that in the interpretation of a constitution words are presumed to be employed in their natural and ordinary meaning.

Epping v. City of Columbus, 117 Ga., 263; 43 S. E., 803.

Givens v. Ogden 9 Wheat. (U. S.) in the opinion of Mr. Chief Justice Marshall at page 188.

Miller v. Dunn, 72 Cal., 462; 1 Am. St. Rep., 67.
Carpenter v. People, 8 Colo., at pp. 833-834.
Hale v. Everett, 55 N. H. 9; 16 Am. Rep. in opinion at page 182.
Page v. Allen (58 Pt. St., 338), 98 Am. Dec., 272.
State v. Lessions (84 Kan.) 856, Am. & Eng. Cas. 1912-A, at page 798 in the opinion of the Court quoting 1 Story on the Const. (5 ed. Sec. 451.)

If a word has a technical meaning as well as a popular meaning such word, occurring in a constitution, will generally be accorded its popular meaning by the Courts.

Epping v. City of Columbus, 117 Ga., 263; 43 S. E., 803.
Weill v. Kenfield, 54 Cal., 111.
Sprague v. Norway, 31 Cal., 174.
Miller v. Dunn, 72 Cal., 462, 1 Am. St. Rep., 67.

In Durant v. Iowa City (1 Woolw., 69) Fed. Cas. No. 4189, the Court in the first point of the syllabus decided:

> "Coupons attached to bonds, providing for the yearly interest on the sum named in the bond, do not form part of the principal debt."

In Epping v. City of Columbus (117 Ga., 264), 43 S. E., 803, points 1 and 2 of the syllabus are as follows:

> "1. In interpreting the provisions of a constitution, it is to be presumed that the words therein used were employed in their

natural and ordinary meaning; and, where a word has a technical as well as a popular meaning, the courts will generally accord to it its popular signification, unless the nature of the subject indicates or the context suggests that it is used in a technical sense.

2. Constitutions are the result of popular will, and their words are to be understood ordinarily in the sense they convey to the popular mind."

See reasoning of Court.

In Park v. Candler (113 Ga., 647), 40 S. E., 523, 524, the Court holds in points 15 and 17 of the syllabus that,

"15. The expression 'bonded debt' of a certain corporation, state, etc., in a strictly legal and technical sense, embraces both the principal and interest that may accrue upon a debt of that class.

"17. The term 'bonded debt', as used in paragraph 1, Sec. 13, Art. 7, of the Constitution (Civil Code, Sec. 5900), which provides that the proceeds of the sale of public property shall be applied to the payment of the bonded debt of the state, and shall not be used for any other purpose whatever so long as the state has any existing bonded debt, was used in its popular, and not in its strictly legal and technical, sense."

To the same effect are the following cases:

Fudayson v. Vaughn, 54 Minn., 331; 56 N. W., 49.
Herman v. City of Oconto, 110 Wis., 660; 86 N. W., 681.

The use of the word "debt", as found in Art. 8, Sec. 8, Const. W. Va., 1862, does not contemplate the unearned and subsequently accruing interest on the bonds issued by Virginia prior to Jan. 1, 1861, for two reasons:

First. Because the compact between the States does not expressly so provide. A State is not liable for interest on her obligations in the absence of a valid promise to pay interest. But the Constitution does not bind West Virginia to pay interest upon her equitable proportion only when definitely ascertained, and not till then.

Second. The word "debt" in its ordinary meaning does not include unearned interest on an interest-bearing obligation. This is especially the case when the word debt is used in its popular sense. This view is upheld by the Courts.

It is therefore respectfully submitted that the supplemental answer tendered with defendant's motion on March 23d should be permitted to be filed and West Virginia be credited with her proper equities herein, and no interest should be allowed or charged against her.

V. B. ARCHER,
Of Counsel for West Virginia.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 2, Original.

IN EQUITY.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR BONDHOLDING CREDITORS.

The defendant, State of West Virginia, moves the court for leave to file a supplemental answer to the bill of complaint of the Commonwealth of Virginia.

Two objects are said to be had in view in this motion, viz:

> 1. "To obtain leave to file a supplemental answer, presenting assets purchased with the common funds, prior to January 1, 1861, and appropriated thereafter by the State of Virginia to her exclusive use, &c."
>
> 2. "By her said supplemental answer, to present certain facts why West Virginia should not be charged with interest upon whatever proportion of the principal of said debt may be decreed against her."

Seven specific grounds are assigned, on which it is proposed to sustain the motion to file said supplemental answer (pages 6-8).

Before considering the grounds assigned for said motion, it may be well to refer to the conditions which have been indicated by this court in its former decisions, under which amendments to equity pleadings will be allowed.

In Hardin *vs.* Boyd, 113 U. S., 761, the court said:

> "In reference to amendments of equity pleadings, the courts have found it impracticable to lay down a rule that would govern all cases. Their allowance must, at every stage of the cause, rest in the discretion of the court; and that discretion must depend largely on the special circumstances of each case. It may be said, generally, that upon passing upon applications to amend, the ends of justice should never be sacrificed to mere form, or by too rigid adherence to technical rules of practice. Undoubtedly, great caution should be exercised *where the application comes after the litigation has continued for some time*, or *when the granting of it would cause serious inconvenience or expense to the opposite side.* And an amendment should rarely, if ever, be permitted where *it would materially change the very substance of the case made by the bill*, and *to which the parties have directed their proofs.*"

In Jones *vs.* Meehan, 175 U. S., 28, the defendant, upon notice, moved the court for leave to file a supplemental answer. The court said:

> "The question whether a supplemental answer should be allowed was a matter within the discretion of the court, largely depending upon the circumstances of the particular case. Hardin *vs.* Boyd, 110 U. S., 756; Smith *vs.* Babcock, 3 Sumner, 583. The reasons for denying the motion in this case are not stated in the record. They may have been the late stage of the case at which the motion was made, and a failure to satisfy the court that the facts now at-

tempted to be set up were not known, or at least were easily accessible to the defendant or his solicitor long before."

A recital of "the special circumstances of the case" presented here will serve to render apparent that each and all of the conditions indicated in the two cases cited above, as preventing an amendment of a pleading, exist conspicuously in this case. The supplemental answer proposed to be filed by West Virginia is now tendered, more than eight years after the bill was filed; nearly seven years after her original answer was filed; nearly six years after the order referring the cause to the master was made, and more than four years after the master had returned his report; more than three years after the cause had been fully argued and submitted on the whole case, including the master's report, and after a decree had been made, by which the amount of the principal of the debt had been ascertained and decided by the court to be due from West Virginia, and more than three months after the cause had again been argued and submitted and a reaffirmation made by the court of its previous decision on the — day of November, 1913.

The granting of the leave to file this supplemental answer is not only made "after the litigation has continued for some time," viz: for the space of over eight years, but the granting of it would "cause serious inconvenience and expense" in this: It would have the effect of remanding the case to the stage it occupied in 1907, when the defendant State filed her answer to the bill, and would render unavailing the enormous expenditure of time, labor, and money already made in the cause. It will render necessary another reference to the master to state, settle, and adjust accounts on a theory and plan essentially and materially different from that on which the parties, the counsel, and the master expended two years of arduous labor and research, and, indeed, entail an equal expenditure of time, labor, and money.

Already there has been expended in the prosecution of this cause more than $160,000, and the filing of this supplemental answer must inevitably cause an expenditure of nearly an equal amount. The proposed answer "would materially change the very substance of the case made by the bill, and to which the parties have directed their proofs." It would make, indeed, an entirely new and different case from that on which we have been so long engaged.

Through all these years of toil, from the filing of the bill on the 28th of February, 1906, to the filing of the master's report in March, 1910, the State of West Virginia has not been *inops consilii*. She has had the benefit of the ablest legal advice and assistance that the country afforded. Her own resources were great, but she went beyond her borders and employed Mr. John G. Carlisle and Mr. John C. Spooner. Prof. Chas. E. Hogg, of her State University, brought vast stores of learning and experience; Mr. Wesley Mollahan was not only a learned lawyer, but his knowledge of the history of his State, of all the details of her economic history and of financial vicissitudes were familiar to him; McClintic and Matthews, and the three Attorneys General, May, Conley, and, more recently, Lilly, all aided, and were much strengthened by the ability and learning of Ex-Governor W. O. Dawson. All these names appeared throughout the record of the case, while to the present motion the only surviving name is that of Prof. Chas. E. Hogg. The implication necessarily is that through all these years the distinguished lawyers who had afforded their services had greatly erred, either in knowledge, judgment, skill, or ability of some kind, and that they had failed to discover this mine of "unsunned gold" which it has fallen to the lot of the new commission and their new lawyers to unearth.

From November 16, 1908, to July 2, 1909, the master, the counsel on both sides, the expert accountants and their assistants employed by each side were in the city of Richmond, Virginia, engaged in critically exploring the financial

and the industrial records of Virginia contained in the offices of the auditor and of the treasurer of Virginia. From pages 210 to 1049 of this record appear in part the results of this investigation. Now, note! Every item of this alleged "newly discovered evidence" relied on as a ground for the motion to file this supplemental answer was contained in and obtained from the records of the office of the auditor and the treasurer of Virginia, which had been already explored and examined by the counsel and expert accountants of West Virginia between November, 1908, and July, 1909, as appears by this record. So that all this matter was not only "accessible to the defendant or her solicitor," but had been actually seen and considered by them five years before this motion is made. Not only that, but further: There appears on page 1026 of the record a statement by Mr. McClintic, of counsel for West Virginia, as to "all the cash receipts and disbursements of the State of Virginia from March 19, 1823, to January 1, 1861," and such statement itself appears from pages 1051 to 1065 of the record. This statement does not show what Virginia did after the war with the debris of the works of internal improvement therein referred to, but the records of the treasurer's office did show all that, and these records were before the agents and attorneys of West Virginia. None of Virginia's transactions as to this property were "done in a corner." All were matters of public record, and these records were open to and examined by West Virginia. All of the subjects recited in the present exhibits to the proposed answer appearing on pages 53 to 62 of the motion were conspicuous, physical objects, open and visible to all eyes, the railroads and the incorporated institutions, the very subjects on which the money represented by the public debt was expended. These all were notoriously and palpably within the territory of Virginia, were held by her, and some of them, it may be, disposed of by her. West Virginia knew all this; the whole world might have known it, as it knew of anything apparent to the senses. Why did not

West Virginia, in her answer to the bill of complaint or in her submitted scheme of matters to be inquired into by the master, then claim that these subjects formed matter on which to rest a claim of equitable offsets to Virginia's claim set out in her bill?

The court, in an opinion delivered by Chief Justice White last fall, admonished all parties that in April next this case would be finally heard as to interest. West Virginia waits until one month of the time fixed for the final hearing, and then appears and asks leave to reopen the case back to the date of the filing of her answer in October, 1907.

West Virginia asserts in the second ground assigned by her, page 16 of the proposed answer, that at the time of filing her original answer she "did not then know that the same (viz., the property, stocks and securities aforesaid) had been sold by Virginia." Why did she not know it? It was not done secretly, clandestinely, or in any irregular way. It was all done openly, publicly, under authority of acts of her legislature. She asserts that "the knowledge of these facts was peculiarly within the possession of the plaintiff, the State of Virginia." It would be an abuse of the patience of the court to attempt to meet this assertion.

West Virginia asserts in the third ground assigned by her, page 17, that after the joint conference of July 25, 1913, a subcommittee was appointed

> "for the purpose of making a complete examination into all the matters involved in this controversy" and "that during the investigations made by the subcommittee aforesaid, it discovered the matters and things heretofore and hereinafter alleged with respect to the value and disposition of the stocks, bonds and property owned by the Commonwealth of Virginia," &c.

This may be all quite true, but what does it avail? The present West Virginia commission and its subcommittee may have been in ignorance of all these things, but is it anywhere averred or does it anywhere appear that the former counsel

of West Virginia, who had been charged with the preparation and conduct of her defense to this bill, or her expert accountants, were ignorant of them? Does it not clearly appear that those agents and attorneys not only had means of knowing, but did actually know all about them?

It is needless and unprofitable to review here the other averments in this proposed answer. Can it in all fairness be said to be anything more than an ungrateful arraignment of the gentlemen—some now in their graves—who through long years of labor devoted themselves to the defense of the interests of West Virginia—an impeachment of their professional conduct, an angry, petulant complaint that the long-cherished hopes of West Virginia had been disappointed, and that it must be attributed to the fact that through neglect or ignorance of her counsel an undesired fate had befallen her?

The record of the case affords complete refutation of these unjust charges. Some of the members of this court can, of their personal knowledge, attest the fidelity, zeal, and ability of the counsel of West Virginia, who, from the filing of the bill to the return of the master's report, represented her in this cause.

On the Allowance of Interest.

The eighth ground assigned in the proposed answer, page 37, is that under section 8 of article 8 of the Constitution of West Virginia, under which she was admitted into the Union, "there is no promise or obligation upon the part of this defendant to pay any interest already accrued upon the said debt." The article referred to provides that "an equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State," &c.

The view here presented—and it has been indicated elsewhere in the conduct of this case—appears to be, that because what West Virginia assumed in her Constitution was an

"equitable proportion" that therefore the debt of which such proportion was assumed must be an *equitable* and not a legal obligation.

The "public debt of the Commonwealth of Virginia," of which West Virginia assumed an equitable proportion, was a *legal* debt. It was constituted of and evidenced by bonds of the Commonwealth, each bearing interest from date. The interest, expressly promised on the face of the bonds, was as much a part of the public debt of Virginia as was the principal. West Virginia was as much the obligor of those bonds as was Virginia. Her name does not appear, because as yet she was not. But she formed an essential part of the Commonwealth, as did eastern Virginia. If all the counties that constituted the State of Virginia in 1863 save one had gone off and organized a new State, would those counties be heard to say that the public debt created before 1861 was no debt of theirs; that it was the debt of the one county that had retained the name of Virginia; that their name was not Virginia, but was West Virginia?

How the interest of this public debt can be separated from the principal and subjected to a different treatment is difficult to appreciate. It has been said that "it would be a severe result to capitalize charges for half a century." It certainly would, and yet if one, under the authority of law, gave his bond bearing compound interest—and that is what the writer understands to be "capitalizing charges"—and such a one evaded and avoided the payment of his debt for half a century, he surely would have no right to complain of the severity of a result that his own bad conduct had produced. This record shows, and it cannot be contradicted with safety, that since 1869 Virginia repeatedly sought a settlement with West Virginia of her just proportion of this debt.

This record shows—although it seems to have been overlooked in the consideration of this question—that Virginia, since January 1, 1861, has paid over seventy millions of dollars on account of this debt. She has made these pay-

ments up to 1905. West Virginia has not paid one dollar on account of her share of this debt (Record, p. 51).

If West Virginia is liable for any part of the principal of the debt—and this court has decided that she is liable for over $7,000,000 of it—then that is part of a debt that was due to the creditors fifty years ago. During that period that debt bore interest according to the express terms of the bonds evidencing the debt. Somebody is entitled to that interest, and if it is not allowed, then they will lose it. The party entitled to the interest is the party holding the bond. The party owing the interest must be the party owing the bond. This court has decided that West Virginia owes a certain proportion of the principal, which the court has ascertained. Upon what doctrines of equity, morals, or common honesty can she be exonerated from her liability to pay a corresponding proportion of the interest upon that principal is not apparent.

HOLMES CONRAD,
SANFORD ROBINSON,
Counsel for Bondholding Creditors.

[24180]

In The Supreme Court of the United States.

No. 2 ORIGINAL—OCTOBER TERM, 1913.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

IN EQUITY.

BRIEF FOR COMPLAINANT UPON FINAL HEARING SET DOWN FOR APRIL 13, 1914.

The counsel for Virginia beg leave to present in a compact form, convenient for the consideration of the court, the arguments in support of the right of the commonwealth to be paid, and of the obligation of West Virginia to pay interest upon such portion of the Virginia debt, as the new state has assumed, which arguments are chiefly collated from the briefs and oral arguments heretofore submitted on behalf of the complainant.

I.

THE LIABILITY OF WEST VIRGINIA FOR INTEREST.

Is West Virginia justly, legally, equitably and contractually chargeable with interest?

In this connection, we must remember that the contract we are considering was a Virginia contract. At all events it was a contract made by Virginians, or by Virginians and West Virginians, with reference to Virginia, or with reference to Virginia and West Virginia, and presumably also with reference to the principles of equity and of right which, for generations before the formation of West Virginia, had been an integral part of the body of the law of the commonwealth, and *eo instanti* with its birth, became a very part of the body of the law of the new state, and of every contract made within the jurisdiction thereof.

Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation, and whenever a debt is due, the debtor is bound to pay interest unless relieved from this obligation by agreement. This is, and has been the law of the commonwealth for more than one hundred years.

In *Jones* v. *Williams*, 2 Call 106, decided in 1799, Edmund Pendleton, who was one of the great judges of our country, delivering the opinion of the court said:

> "Interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it." Cited with approval in *Baker* v. *Morris*, 10 Leigh 284, *McVeigh* v. *Howard*, 87 Va. 599 and *Stuart* v. *Hurt*, 88 Va. 343.

In *Hatcher* v. *Lewis*, 4 Randolph 152, 157, the court laid down the rule in the following expressive language:

"The interest follows the principal as the shadow does the substance."

In *Chapman* v. *Shepherd,* the court said:

> "In contracts for the payment of money, interest is not given as damages at the discretion of the court, or jury, but as an incident to the debt, which the court has no discretion to refuse."
>
> *Chapman* v. *Shepherd,* 24 Gratt. 377, 384;
>
> *Roberts* v. *Cocke,* 28 Gratt. 207;
>
> *Tidball* v. *Shenandoah National Bank,* 100 Va. 741.

> "Interest is favored both by the legislative and judicial bodies of the state."
>
> *Tazewell* v. *Saunders,* 13 Gratt. 354, 370.

In *McVeigh* v. *Howard,* 87 Va. 599, the Supreme Court of Appeals of Virginia said:

> "It is the settled rule that when no day is named in the bond or note given for the payment of a precedent debt, it is due and payable on the day of its date, and bears interest from that date, though no interest be reserved. Such an instrument like a bond or note payable, in Virginia, on demand, is payable presently, and bears interest from date. This doctrine is founded in good conscience and correct morals." * * *
>
> Citing *Jones* v. *Williams* and *Hatcher* v. *Lewis,* quoted above.

Such is the law of Virginia as to interest.
The law of West Virginia in regard thereto is the same.

In *Shipman* v. *Bailey*, 20 W. Va. 140, 146, Judge Snyder, announcing the unanimous opinion of the Supreme Court of Appeals of that State, after citing a number of authorities upon the question, stated the rule as follows:

> "Other authorities of the same character might be cited, but, we think, we have given sufficient to establish the rule which seems to be, that in contracts for the payment of money interest on the principal sum is a legal incident of the debt and a part of the contract, and wherever there is a contract for the payment of a specified legal rate of interest, whether such rate is fixed by the contract itself or by the law of the place where the contract is made, the obligation of the contract extends to the payment of such interest as fully as it does to the principal sum, and courts have no more power to change the rate of interest thus fixed, than they have to dispense with the enforcement of the contract either in whole or in part."

That decision reaffirms another proposition, applicable to this case, already a part of the jurisprudence of West Virginia, by the adjudications of the Supreme Court of Virginia rendered before the birth of the new state, namely, that the *lex loci contractus* controls in the matter of the interest chargeable against a debtor.

In *Pickins* v. *McCoy*, 24 West Va. 344-352, the court affirms *Shipman* v. *Bailey*, and adopts the language just quoted from that decision.

Independently of these West Virginia decisions, such parts of the common law and of the laws of the State of

Virginia as were in force on the 20th of June, 1863, when the first Constitution of West Virginia went into operation, and as are not repugnant to said Constitution, were continued and declared to be the law of West Virginia. Section 8 of Article XI, of the first West Virginia Constitution. And see present West Virginia Constitution.

The effect of this provision was to adopt for the new state the body of the common and statute laws of the commonwealth, so far as the same were in force within the boundaries of the new state on the 20th of June, 1863.

As a part of this body of laws, the law of Virginia as to interest became, and has continued to be, a part of the laws of West Virginia.

Such, then, was the law of Virginia before, at the time of, and since the formation of West Virginia, as to the legal and equitable liability of a debtor or contractor to pay interest. Such has been the law of West Virginia since the hour of her birth. And such was, and is, the law of the contract evidenced by the public acts of Virginia and West Virginia set forth in complainant's bill.

This is the rule in Virginia as to debts due by the Commonwealth.

The question was presented in the celebrated case of *Higginbotham's Executrix* v. *Commonwealth*, 25 Gratt. 627.

That was a suit against the commonwealth to recover the amount due Higginbotham's Executrix on certain past due dividends on stocks which had been guaranteed and assumed by Virginia by the acts cited in the opinion of the court—26 Gratt. 630, 631.

There was no express contract by the state to pay interest upon said dividends. The petitioner's claim was for the amount of the dividends "with its accruing interest."

The unanimous decision of the Supreme Court of Virginia was that "judgment should be entered for the peti-

tioner for the amount of her demand with interest."—Idem, p. 641.

The framers of the Wheeling ordinance must be presumed to have drawn that instrument with reference to the principle of equity and justice which had then, and long before that time, been embodied in the laws of Virginia by the repeated decisions of her highest court.

To Virginia and West Virginia lawyers of that day, as since that time, Judge Coalter's apt formula that, "the interest follows the principal as the shadow does the substance," was as familiar as any other accepted rule of equity or of law.

Under the law of Virginia in force at the time of these transactions, interest upon the portion of the debt which West Virginia was to take upon herself, was an essential incident of the debt, and its payment as much a part of the obligation as was the payment of the principal.

But, even if the *lex loci contractus* had not brought us to this conclusion, the language of the ordinance itself, fairly construed, leads to the same result.

That language is that:

> "The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861," etc.

Now, that debt was an interest bearing debt. It was represented by obligations of the undivided state, some of them payable at a future day, some of them at a future day and thereafter at the pleasure of the commonwealth, but all of them interest bearing obligations, obligations in which the payment of the stipulated interest was made as much a part of the debt as was the payment of the principal.

The interest was an integral part of the debt, and as

many of the bonds were payable thirty-four years after date, and over $10,000,000 of them at the pleasure of Virginia, with interest from date, the interest as to much of the debt constituted much the greater part of it.

It was the manifest intention of the enactors of that ordinance, unless we are to ascribe to them the sinister purpose of perpetrating flagrant wrong and injustice, that the new state should take upon itself, and relieve what remained of the old state of a part of the burden of debt which rested upon both states. They knew that that burden consisted as well of interest, as principal, and as much, of interest as of principal.

It was not proposed that the new state should, as soon as she became a state, pay in cash a sum to be ascertained in the manner indicated in the ordinance. The framers of the ordinance understood too well that under the conditions then existing, it would be impossible for the new state to raise and pay any considerable sum in cash.

Why, the new state was dependent upon the old state for the money necessary to enable her to begin business, and she did not have, and in the nature of things could not command, a sufficient amount in cash to pay off one-tenth or even one-twentieth of the then Virginia debt.

The stipulation was not that the new state should pay a sum in cash on account of its share of a common indebtedness; but that it should take upon itself a just proportion of that debt, to be ascertained as in the ordinance prescribed.

Are we to understand that a court of conscience is to be asked to construe that stipulation to mean that the new state shall take upon itself only a proportion of a part of that debt? That it shall assume a share of the principal only of the debt, but shall be exonerated from any part of the interest which was, and is, as integral a part of the Virginia debt, and of the obligations which represent it,

as the branches are a part of the tree from whose trunk they spring?

In their elaborate arguments in this case, opposing counsel have heretofore devoted very little attention to this important question, although their attention was challenged to it by the argument for Virginia. In so far as they have discussed it, they have ignored the facts and principles upon which West Virginia's legal, "equitable," and "just" obligation to assume and pay the interest as well as the principal of her share of the debt, rests.

But West Virginia's equitable and legal liability to pay interest upon her share of the debt of Virginia does not at all depend alone upon the Wheeling ordinance, or upon the law of Virginia and West Virginia, which makes the interest an essential part of the debt; but it rests still more and beyond the possibility of question upon the express terms of the Constitution under which West Virginia became a state.

The fact, the character, and the legal effect, of the compact created by that important transaction have already been fully discussed.

West Virginia's solemn covenant in regard to the equitable proportion of that debt which she assumed was that her legislature should "provide for the liquidation thereof by a sinking fund, sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This was precisely in accordance with the plan which had long theretofore been adopted by the commonwealth for the payment of her debt.

This plan was embodied not only in the statutes but also in the Constitution of Virginia, in force when West Virginia became a state.

It was embodied in that constitution in the following terms:

"29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the state debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the state debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the state debt as it shall become redeemable. Whenever, after the first day of January, a debt shall be contracted by the commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The General Assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion."

Section 29 of the Constitution of Virginia, in force from January 1, 1852, Code of Virginia for 1860, p. 47; Appendix to the Record in this suit, p. 200.

It was expressed and given further effect by the second section of the following act passed by the General Assembly of Virginia:

"Chap. 17. An act establishing a sinking fund and providing for the payment of the semi-annual in-

terest on and redemption of the public debt. Passed March 26, 1853.

"2. Whenever after the said first day of January, eighteen hundred and fifty-two, a debt shall be contracted by the commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed."

Acts of General Assembly of Virginia, session of 1852-3, p. 29; Appendix to the Record, pp. 200, 201.

Its effect was, therefore, well understood to be to conform the undertaking of West Virginia in regard to the time and manner of the payment of her share of the debt to the plan and scheme of payment which had been adopted by the commonwealth, and which experience had approved.

That scheme was, the creation from the annual revenues of the state, of a fund equivalent to seven per centum of the principal of the debt. Of this, six per centum went to pay the annually accruing interest, and one per centum was invested and set apart to retire the principal sum due, within thirty-four years, and this arrangement was defined as a sinking fund.

It was found, and if the calculation is made it will be shown to be true, that one *per centum* of any sum invested and compounded at six *per centum* interest per annum, will in thirty-four years produce an amount equal to such sum.

This was the theory and the plan which Virginia had adopted for the liquidation of her debt.

It was a plan which Messrs. Willey, Van Winkle, Hall, Brown, Haymond and other members of the first West Vir-

ginia Convention, who had been previously members and some of them able members of the General Assembly of Virginia, were doubtless entirely familiar: And it is the same plan which we find incorporated in the scheme of settlement which constitutes a part of the foundation upon which West Virginia's existence as a state rests.

By this clause of West Virginia's Constitution, therefore, it was required, not that the new state should pay a lump sum in cash, to be ascertained in the manner prescribed, but that she should *assume* "an equitable proportion of the public debt of the commonwealth" existing on the 31st of December, 1860, and should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

The framers of the West Virginia Constitution thus manifestly adopted, and engrafted upon that instrument, the plan which for nine years or more had been a part of the organic and statutory law of Virginia for the extinguishment of her public debt, and the legislature of Virginia accepted and approved that plan.

That plan included, (as the West Virginia Constitution also expressly included), an undertaking on the part of the state to pay the accruing interest, and to liquidate or redeem the principal of each bond representing the debt, within thirty-four years.

In simple language, the stipulation of West Virginia expressed in her Constitution, and accepted and acted upon by Virginia, was, that West Virginia would pay the accruing interest on her share of the debt, as it should accrue, and the principal thereof within thirty-four years.

That such was her express undertaking, appears from the language of her first Constitution, interpreted according to the reasonable and natural meaning of that language.

That such was the purpose, meaning, and effect of that language, is conclusively shown when we read it in the light

of the plan established by the Constitution and statute of Virginia, then in force, for the establishment of a sinking fund for the liquidation of her public debt, which plan was adopted by the new state as to its share of that debt.

And so, we find that both by the express terms of the Wheeling ordinance fairly construed, and by the epxress terms of the Constitution under which Virginia and the National Congress consented that West Virginia should become a state, this new state has become expressly obligated to pay interest upon the share of the principal of the common public debt for which she is liable.

These positions are not at all in conflict with the general rule of American and of public law, as clearly defined by this court in *United States* v. *North Carolina*, 136 U. S. 211, as the law governing that case, that,

> 1. "Interest, when not stipulated by contract or authorized by statute, is allowed by the courts as damages for the detention of money or property;"
>
> 2. "Interest is not to be awarded against a sovereign unless its consent has been manifested by an act of its legislature, or by a lawful contract between executive officers;"
>
> 3. "By decisions in North Carolina that state, unless by or pursuant to an explicit statute is not liable for interest, even on a sum certain which is overdue and unpaid."
>
> See, also, *South Dakota* v. *North Carolina*, 192 U. S. 286.

The question presented in the case at bar is taken out of the reason and the decision of this court in the North Carolina cases by the following circumstances:

(1) The obligation to pay interest is determined by the *lex loci contractus*, and under the settled law of Virginia

which was the law of the contract between West Virginia and Virginia, and under the law of West Virginia also, interest is not and never has been allowed as damages for the detention of money, but in those jurisdictions interest is allowed as an essential incident of a contract, whether express or implied, for the payment of money, and as a matter of right and justice.

This court, in its opinion in *United States* v. *North Carolina*, expressly rested that decision upon the fact that under the law of North Carolina no interest was payable on such a contract.

(2) The payment of interest is here an obligation imposed by statute—first by the Wheeling ordinance, and second by the constitution under which West Virginia became a state.

(3) The express contract of West Virginia upon which her existence as a state was conditioned requires her to pay interest on the part of the debt which she assumed.

This is a very much stronger case for a decree for interest than *United States* v. *State of New York*, 160 U. S. 600, righteous as was the allowance of interest there.

Paraphrasing the language of this court in that case, p. 621, "It would be a reflection upon the" honorable motives of the members of the conventions which framed the Wheeling ordinance and the West Virginia Constitution "if we did not place a liberal interpretation upon those acts and give effect to what, we are not permitted to doubt, was intended by their passage."

Another question which arises in connection with the consideration of this subject, is, from what time is West Virginia justly and equitably bound to pay that interest?

Answer to this is furnished by the Wheeling ordinance and by the section of the first West Virginia Constitution above quoted.

The settlement by the terms of both instruments was to be made as of the arbitrary date of January 1, 1861, or to be precisely accurate, as of December 31, 1860. That, accordingly, is the date from which fairly, equitably, and legally, (because it accords with the express terms of both the ordinance and the Constitution), the interest should be computed.

As already shown, the debt, a proportion of which as of that date, West Virginia was to assume and pay, was an interest bearing debt, and the interest was as integral a part of it as was the principal.

A further kindred inquiry to the last is: To what time should West Virginia be required to pay such interest?

Our response to this is, that she is justly, equitably and legally bound to pay this interest.

(1) *By the terms of the Wheeling ordinance;* certainly, for the period during which the debt of the commonwealth existing on the 31st of December, 1860, would continue to be an interest bearing debt: And we have seen that that was not only until the obligations representing the debt became due, but under the just rule of the law of Virginia as to interest. in force during the whole period of the creation of the debt, until that principal should be fully paid.

(2) By the terms of the section of her Constitution above quoted, accepted by Virginia and by the Congress, West Virginia undertook to pay *all the accruing* interest on, and the principal of, her share of that debt in thirty-four years.

She has failed and refused to pay that share, or any part of it.

The interest accruing thereon from December 31, 1860, has continued to accrue, as to her, until it now amounts to vastly more than the principal. It was that interest which West Virginia agreed to pay, and it was that principal for the payment of which West Virginia legisla-

ture was to make provision, so that the same should be paid within thirty-four years.

We do not deem it necessary to argue in a court of equity that West Virginia is bound by that stipulation of her Constitution to pay all the thereafter accruing interest upon the portion of the principal of the debt which she thereby undertook to pay, and that her undertaking to pay the accruing interest thereon was not limited to thirty-four years; it cannot be that a state, any more than an individual, will be allowed to ignore her own solemn engagements or profit by her own procrastination and neglect of duty.

Here, West Virginia has not only not paid a just, or any other proportion of the common public debt, nor provided for the payment of the accruing interest thereon, and for the payment of the principal, but she has persistently failed and refused to do either of these things, and has by the votes of her legislature, again and again repudiated any and all liability whatever for any part of that indebtedness.

(See Resolutions of Legislature of West Virginia, App. to Record 247, 248.)

With all deference for the distinguished counsel for the defendant, we venture to believe that a court of equity will not allow any defendant, and particularly a state, which should be an exemplar of fair and honorable dealing in all of its transactions, to make gain out of its own palpable dereliction of duty.

And so, our response to such contention, if it shall be urged, is, that equity will not suffer any party to take advantage of his own wrong.

There is another equity which strengthens Virginia's claim to receive, and West Virginia's obligation to pay, *and to pay with interest*, whatever portion of this common debt, she assumed to pay.

Virginia, as now constituted after January 1, 1861, and before July 1, 1871, on which date (July 1, 1871) she as-

sumed two-thirds of the then unpaid Virginia debt, paid several millions of dollars of the accrued interest, as well as several millions of dollars of the principal of that debt.

It has been repeatedly asserted, in this cause that Virginia, after her dismemberment, assumed only two-thirds of that debt, but the fact is she did this and more.

It is true that by the Funding Act of March 30, 1871, (Printed Record, pp. 17-21, 1 West Virginia Compilation 14-17) she undertook to assume two-thirds of the whole of the existing debt of the undivided state, principal and accrued and *capitalized* interest to July 1, 1871; but that act, and the settlement for which it provided, left out of the account the millions of interest and principal which she had paid off during the preceding ten years, out of the meager resources of an impoverished people.

A very large amount of the money so paid by Virginia during that decade was paid in discharge of obligations for interest. As long and as far as she was able, she paid to the common creditors the interest which was due them; and she also, from time to time during the same period, paid them large amounts in satisfaction of the principal of a great number of their bonds.

These payments by the State of Virginia since January 1, 1861, in satisfaction of specific obligations for interest and for principal, for which West Virginia was ratably bound, give her a right to have contribution from West Virginia. Particularly do the large sums which Virginia paid upon obligations for interest on that common debt, give her a just claim to look to West Virginia to pay her back West Virginia's share of that interest.

It is difficult to conceive how, as a matter of conscience, a state any more than an individual, could avoid or evade such an obligation, for it should be at least equally incumbent upon a state as upon an individual, to be honest.

Most of these payments of interest and principal made by Virginia between January 1, 1861 and July 1, 1871, though by no means all of them, will be found set forth in the official statement or schedule, part of Exhibit No. 3, filed with the bill, being the act of the General Assembly of Virginia of February 14, 1882. (See printed record of suit, pp. 27-32).

That schedule shows that Virginia actually paid on account of the interest on bonds held by the general public $3,662,434.55, between January 1, 1861 and July 1, 1863, and the additional sum on the same account of $3,594,289.11 between July 1, 1863 and July 1, 1871, making $7,266,-723.66, which Virginia paid in discharge of interest accruing during that period, for which West Virginia was bound ratably with her, and of which West Virginia's share would have been, according to the decision of this court, (23½ per cent.) twenty-three and one-half per cent. of the sums so paid.

The same public record shows that during the same period, and before any funding of the share of the debt assumed by Virginia, she redeemed of the common debt, evidenced by dollar bonds, paid off and taken up by her, $3,710,-449.67. (Record, pp. 27-32, 1 West Virginia Compilation, 23-26).

Summarized, the following payments were made upon the undivided common debt in the period mentioned as shown by the act of March 14, 1882, besides other sums not therein mentioned.

Paid on account of interest from January 1, 1861 to July 1, 1871	$ 7,266.723.66
Dollar bonds redeemed and paid in full	3,710,449.67
Total sums so paid	$10,977,173.33

These, and other large sums not brought into that statement, all portions of the common debt of the commonwealth due prior to January 1, 1861, were paid off by Virginia between July 1, 1861 and July 1, 1871, *in excess of the two-thirds of the debt, interest and principal, as of said last named date, assumed by Virginia under the Funding Act of 1871.* To the extent that substantive obligations of the undivided state were thus paid off by Virginia, she clearly has a claim, both for interest and principal paid, to the extent of West Virginia's ratable liability therefor.

At the proper time Virginia will be prepared to show her precise interest in her own right in the recovery in this suit.

II.

AS TO THE SUGGESTION OF "LACHES."

The belated attempt to assert "laches" as a defence against Virginia is without merit.

It is based upon the singular assumption that Virginia is to blame because she exhausted friendly negotiation before bringing her suit, and did not institute it until after her repeated overtures to West Virginia for an amicable adjustment had all been successively rejected.

Like other defences, unless disclosed by the bill, the defence of "laches" must be asserted in the answer or other defensive pleading.

Here it has never been set up by the answer, or other pleading, and is negatived by the allegations of the bill. It will not be allowed to be set up by amendment of answer long after the filing of same: or after the reference to a master and the filing of his report.

Dixon v. *Dixon*, 1 Md. Ch. 171;

Thornton v. *Hantze*, 91 Ill. 199;

Webb v. *Fuller*, 83 Me. 405, 22 Atl. 384;

See, also, 16 Cyc. 176 and 177 and citations.

We ask leave, however, to briefly consider this defence as presented in defendant's brief, because of its relation to other equitable features of the cause.

The defence of "laches," in equity, is only permitted to defeat an acknowledged right on one or both of the following grounds:

(1) That it raises the presumption that the claim has been abandoned or satisfied.

(2) That the party pleading it has been seriously prejudiced by the culpable failure of the plaintiff to assert his claim.

Demuth v. *Old Town Bank*, 85 Md. 315, 37 Atl. 260, 268.
Coles v. *Ballard*, 78 Va. 139, 147;
Wisler v. *Craig's Adm'r*, 80 Va. 22, 30;
Cottrell v. *Watkins*, 89 Va. 101, 19 L. R. A. 754;
Johnson v. *Atlantic Gulf & West India Transit Co.*, 156 U. S. 618, 648;
Selbag v. *Abistbal*, 4 Maule & S. 462;
Morse v. *Seibold*, 147 Ill. 318, 35 N. E. 369, 371;
Hall v. *Otterson*, 52 N. J. Equity 522.

Not one of the grounds upon which such a defence must rest as shown by the authorities exist here.

(a) Any presumption of satisfaction of her share of the debt by West Virginia or of abandonment of her claim is absolutely rebutted by the proof that the new state has never paid, and has failed and refused to pay, a dollar on account of the Virginia debt, and that Virginia has persistently urged a settlement.

(b) Nor is there any evidence in the case showing, or tending to show that West Virginia has suffered prejudice from Virginia's forbearance to sue.

No evidence helpful to her has been lost. *The substantial proofs of the debt and of West Virginia's liability for it, are all matters of irrefutable record*, all of which have been se-

curely kept and preserved with wonderful accuracy and fidelity, so that the absolute verity of every item of the account and every entry upon those voluminous records, covering the transactions of forty years, has compelled the candid assent of the accountants and the counsel for West Virginia.

On the contrary West Virginia has profited enormously by her long delay in making a settlement with Virginia.

While Virginia has been struggling for half a century to meet her just obligations on account of this common debt, and has paid and assumed at least $78,000,000 on account of it as of the present year, a considerable part of her payments having been made years ago, during the period of the greatest poverty of her people, West Virginia, husbanding her resources, and *compounding* her wealth, has not paid one cent.

Instead of her position and ability to pay having been impaired by this long delayed settlement, for the postponement of which she is largely responsible, she has profited so greatly by it, that her taxable resources have increased from a total assessed valuation of $126,060,743 in 1867 to $937,232,718.54 in 1908, an enhancement of 643 per cent. See Plaintiff's Exhibit E-3, R. 651.

It appears from this same authentic exhibit that the taxable resources of Virginia increased during the same period from $354,848,482.69 to $661,796,631, or only about 84 per cent.

That comparative schedule of taxable resources, fairly interpreted, demonstrates another thing, namely, that instead of being prejudiced by this lapse of time, West Virginia could, in her present prosperity and affluence—largely the result of the development of her territory by lines of railway which had their inception in the works which represent millions of dollars of Virginia's debt pay twenty million dollars today, with less inconvenience and less

burden upon her people, than she could have paid two million dollars in 1867.

Moreover, the defense of laches cannot be interposed against a state. In *Armstrong* v. *The Morrill*, 14 Wal. 144-5, the court citing *Stoughton* v. *Baker*, 4 Mass. 526, holds that no laches can be imputed to the government and that time does not run against a state.

In *Metropolitan R.* v. *Dist. of Columbia*, 132 U. S. 11, the court through Mr. Justice Bradley says: "No restrictive laws apply to the sovereign unless so expressed. And especially no laws affecting a right on the ground of neglect or laches, because neglect or laches cannot be imputed to him. And it matters not whether the sovereign be an individual monarch, or a republic, or a state. The principles applies to all sovereigns. The reason usually assigned for this prerogative is that the sovereign is not answerable for the delinquencies of his agents. But whatever the true reason may be such is the general law—such is the universal law, except where it is expressly waived." See, also, *Wever* v. *Commissioners*, 18 Wal. 70. In *Gibson* v. *Chouteau*, 13 Wal. 99; *Lindsay* v. *Miller*, 6 Peters 673; *United States* v. *Knight*, 14 Peters 315; *United States* v. *Thompson*, 98 U. S. 489; *Gaussen* v. *United States*, 97 U. S. 584; *United States* v. *Nashville, &c. Ry.*, 118 U. S. 125, *supra*.

In *Bannock County* v. *Bell*, 101 American State Reports, 152-3, Note 2, it is stated as the universal rule that statutes of limitation should not run against a state nor can laches be imputed to it, although private parties may be interested along with the state in the matter sued on. See authorities there cited.

In the opinion of the court on the demurrer in this cause (V. 1, p. 433 of West Virginia Compilation) the lapse of time is referred to, but the demurrer is overruled and an order afterwards entered for an accounting upon the de-

fendant's answer which in no manner refers to the matter.

All of the known circumstances of this case combine to utterly preclude the doctrine of *"laches"* from applying to it, or being recognized as a just or an equitable defence against the right of the complainant to recover from West Virginia, the portion of the debt which West Virginia assumed *with the interest accruing thereon* from the date when West Virginia became so obligated to pay, until both the principal and the interest thereon shall be paid.

CONCLUSION.

It is, true that the amount which West Virginia is equitably bound to pay, including the interest fairly and justly due thereon, will, as of this date, aggregate a very large sum; but that constitutes no argument for her exoneration from the payment of the same.

Fortunately for West Virginia this indebtedness, in view of the affluence which the record shows she now enjoys, largely resulting from the expenditures made by Virginia in roads, turnpikes, railroads and bridges, and in the improvement of the navigation of her rivers will impose upon her a burden easy to be borne, and light, as compared with what Virginia, during the period of her greatest impoverishment has assumed and borne.

Virginia has paid, as of this date, over $40,000,000 of interest since January 1, 1861; and these payments, made by her, have been distributed through a period of more than forty-five years.

If interest were to be computed upon the payments thus made by Virginia during the last fifty years on account of this common debt—which would have to be done in order to equalize West Virginia with Virginia in regard to these transactions—the average period upon which interest should be so computed upon the payments so made by Virginia in

order to thus equalize her with West Virginia, would be considerably more than twenty-five years; and the amount assumed and paid by Virginia, including the upwards of $25,000,000 of her recognized and regularly met obligations still outstanding, and including the payments she has heretofore made on the whole debt, and on the two-thirds she has specifically assumed, would aggregate considerably over $100,000,000, as of this date.

What is of equal significance, the entire debt was hypothecated, not on such values as existed at its creation, or on June 20, 1863, but upon future and prospective values, which it was confidently expected the expenditure of the money borrowed would evolve. Realizing the difficulties in the way of the application of a rule which would have done exact justice by apportioning the burden and resting it upon prospective values in the two states, (a rule sanctioned by the highest authorities, Moore's Digest Int. Law, p. 334; *Hartman* v. *Greenhow*, 102 U. S. 672, 677; *Antoni* v. *Greenhow*, 107 U. S. 769) the court felt constrained, after mature consideration, to apportion the debt between the two states according to values of property therein on June 20, 1863.

This circumstance however is but an added proof that West Virginia will have no just ground of complaint against a decree which will require her to pay much less than the share of the debt which she would have to bear, if it was made to rest on the future and prospective values on which it was really hypothecated, and which constituted the chief inducement and consideration for its creation.

The people of West Virginia are today enjoying the fruits of the enterprise and liberality of the commonwealth in those expenditures,—not only those expended within the limits of West Virginia, but also in the expenditure of millions of dollars on works outside of the territorial limits of West Virginia, but which were built in large part for

the purpose of developing the resources of the territory now constituting that state.

Nor can it be forgotten that almost the entire indebtedness which is the subject matter of this investigation was created by the votes of the representatives of West Virginia, and that very little of it ever would have been created but for the support they gave to the acts by which this large indebtedness was imposed upon the commonwealth.

Too much emphasis cannot be laid upon the foregoing facts and considerations.

The complainant only desires and asks that a decree shall be entered which is in accordance with the legal and equitable rights and obligations of the parties as heretofore determined by the court, and which will require West Virginia to pay interest upon the principal sum due by her from the date when she assumed that liability until the principal sum shall be fully paid, at such rate as the court shall consider just and equitable under all the circumstances of the case.

Such a decree will impose upon the new state the duty of paying a large sum on account of this long ignored obligation, but a sum, every dollar of which West Virginia justly owes and the complainant is justly entitled to recover, for those who have entrusted their interests to her keeping, and in her own behalf.

Respectfully submitted,

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WILLIAM A. ANDERSON,
JOHN B. MOON,
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FILED
APR 20 1915
JAMES D. MAHER
CLER

IN THE

Supreme Court of the United States

IN EQUITY, No. 2, ORIGINAL.

OCTOBER TERM, 1914.

COMMONWEALTH OF VIRGINIA, Complainant,

v.

STATE OF WEST VIRGINIA, Defendant.

BRIEF OF COUNSEL FOR VIRGINIA UPON THE HEARING APRIL, 1915.

JNO. GARLAND POLLARD,
Attorney General of Virginia.

RANDOLPH HARRISON,
WM. A. ANDERSON,
Of Counsel for Virginia.

April 15, 1915.

RICHMOND PRESS, INC., PRINTERS

FOREWORD.

Appreciating, as we do, the thorough and patient consideration which the master had given to the case, the difficult character of the questions upon which he has had to pass, and the earnest desire and purpose which he has continually manifested to do equal and exact justice between the parties, and realizing the complex character of the litigation, the necessarily unsatisfactory character of some of the evidence and the importance of bringing this suit to an end as soon as a just result can be reached, we are convinced that the Complainant would be justified in assenting to liberal concessions in order to terminate this costly and vexatious litigation.

It may be pertinent in this connection to call attention to the following important considerations:

1. That, upon the main issues now presented, the burden of proof is upon the Defendant, and this requires her to make out her case upon every material point, by competent and convincing proofs, and if, upon any point, the evidence in support of any of her claims or contentions, is unsatisfactory, West Virginia must be held to have failed in maintaining her case in those particulars.

2. That, not only is this general rule of practice in the due administration of justice, applicable to this case, but, as was expressly and justly decided by this Court in its decree of March 6, 1911, adjudicating the main principles of the case; *"It is enough to refer to the circumstances in which the separation took place to show that Virginia is entitled to the benefit of any doubt so far as the construction of the contract is concerned."*

Notwithstanding these considerations the Master, as appears to us, has resolved every reasonable doubt upon every important question in favor of the defendant, and has, in our opinion, erred in some of his findings in particulars which involve large sums to Virginia and her bondholders, who have confided their interests to her keeping, nevertheless, in order to secure a final settlement without further delay or litigation, we would be strongly disposed to accept, as a finality, the result of the Master's report and findings, just as they have been made by him, including, of course, the allowance of interest from January 1st, 1861, the Court to give due effect to those findings by an appropriate decree, or decrees.

We venture to make this suggestion in a spirit of conciliation and compromise, in the belief that it would be better for all parties concerned that such an adjustment should be decreed by this Court, although it would involve large concessions by Virginia.

Such an adjustment would mean a decree against West Virginia for the amount ascertained by the decision of March 6th, 1911, to be due, namely, $7,182,507.46. less the sum of $2,868,839.49, the aggregate of the credits allowed by the Master (see page 116 of his Report) which leaves as the balance due by, and to be decreed against West Virginia as of January 1st, 1861, the principal sum of $4,313,667.97, with interest thereon from that date until the same shall be paid.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 2, ORIGINAL.

COMMONWEALTH OF VIRGINIA, Complainant,

v.

STATE OF WEST VIRGINIA, Defendant.

BRIEF FOR VIRGINIA UPON THE HEARING APRIL, 1915.

This cause is now submitted for final adjudication upon the Report of the Special Master Filed January 22, 1915, the Exceptions taken thereto by the parties respectively, and the testimony in the cause *relative to the issues* thus presented.

I.

WEST VIRGINIA'S EXCEPTIONS TO THE REPORT.

We will consider first West Virginia's exceptions to the Report.

(1) West Virginia's first exception is to the finding of the Master that "West Virginia's liability for interest begins on that date" (January 1, 1861), "by virtue of the contract between her and Virginia, and runs at the rate provided for in the bonds that evidence the debt, and make the interest an inseparable part thereof".

This conclusion of the Master is stated at the foot of page 10 and top of page 11 of his report.

The grounds upon which that conclusion is based are stated on pages 2 to 10 thereof.

We cannot hope to add anything to the force of his reasoning in favor of this finding, for it is a demonstration.

Without elaborating the arguments which have heretofore been repeatedly presented to the Court in its support, we would emphasize the basic proposition, that, when West Virginia, by her compact with Virginia, expressed in Section 8 of Article VIII. of her first Constitution, as one of the fundamental conditions, and an essential consideration for the consent of Virginia, and of the National Congress, to her existence as a State, covenanted that:—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first of January, in the year eighteen hundred and sixty-one, shall be assumed by this state."

She assumed an equitable proportion, as well of the interest, as of the principal of that debt; for, as was well known to, and in the full contemplation of, both contracting states, that debt was an interest bearing debt represented by interest bearing obligations, so that the interest was an integral and inseparable part of the debt assumed, inevitably as much a part of it as was the principal.

If there could be any possible question as to the necessary and logical correctness of this conclusion, any such question would be negatived by these farther provisions of that Section of West Virginia's initial Constitution:—

> "And the Legislature" (of West Virginia) "shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

By this significant and explicit language of her proposal to Virginia, afterwards accepted by that State, the new State not only recognized her obligation to pay all of the accruing interest upon her share of the State debt, but provided for the payment of both the interest and the principal thereof in the same manner in which under the Constitution and laws of Virginia the old State had, since its Constitution of 1851 and the Statute passed in pursuance thereof, been making provision for the liquidation of the public debt of the Commonwealth.

Such was the proposal submitted by the new state to the parent state, and to the National Congress and such the natural and reasonable sense in which that proposal must have been accepted by the high contracting parties.

The provision for the payment of the interest and principal of West Virginia's share of the debt thus embodied in her compact with Virginia, was, as the Master points out, precisely in accordance with the plan which had long theretofore been adopted by the Commonwealth for the payment of this debt.

This plan was embodied not only in the Statutes but in the Constitution of Virginia in force when West Virginia became a State.

It was expressed in that Constitution in the following terms:

> "29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand, eight hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this Commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the first day of January, a debt shall be contracted by the Commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The General Assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection, or invasion."

Section 29 of the Constitution of Virginia, in force from January 1, 1852, Code of Virginia for 1860, p. 47; Appendix to the Record, p. 200.

It was expressed and given further effect by the second section of the following Act passed by the General Assembly of Virginia:

> "Chap. 17. An act establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the Public debt.
> Passed March 26, 1853.
>
> "2. Whenever after the said first day of January, eighteen hundred and fifty-two, a debt shall be contracted by the Commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner heretofore directed."

Acts of General Assembly of Virginia, session of 1852-3, p. 29; Appendix to the Record, pp. 200-201.

Its effect was, therefore, well understood to be to conform the undertaking of West Virginia in regard to the time and manner of the payment of her share of the debt to the plan and scheme of payment which had been adopted by the Commonwealth, and which experience had approved.

That scheme was, the creation from the annual revenues of the State, of a fund equivalent to seven per centum of the principal of the debt. Of this, six per centum went to pay the annually accruing interest, and one per centum was invested and set apart to retire the

principal sum due, within thirty-four years, and this arrangement was defined as a sinking fund.

It was found, and, if the calculation is made it will be shown to be true, that one per centum of any sum invested and compounded at six per centum interest per annum, will in thirty-four years produce an amount equal to such sum.

This was the theory and the plan which Virginia had adopted for the liquidation of her debt.

It was a plan with which Messrs. Willey, Van Winkle, Brown, Haymond, and other members of the first West Virginia Convention, who had been previously members and some of them able members of the General Assembly of Virginia, were doubtless entirely familiar; And it is the same plan which we find incorporated in the scheme of settlement which constitutes a part of the foundation upon which West Virginia's existence as a State rests.

By this clause of West Virginia's Constitution, therefore, it was required, not that the new State should pay a lump sum in cash, to be ascertained in the manner prescribed, but that she should *"assume"* an equitable proportion of the public debt of the Commonwealth existing on the 31st of December, 1860, and should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

The framers of the West Virginia Constitution thus manifestly adopted, and engrafted upon that instrument the plan which for nine years or more had been a part of the organic and statutory law of Virginia for the extinguishment of her public debt, and the Legislature of Virginia accepted and approved that plan.

That plan included, (as the West Virginia Constitution also expressly included), an undertaking on the

part of the State to pay the accruing interest, and to liquidate or redeem the principal of each bond representing the debt, within thirty-four years.

The language in which this compact between the two States is expressed in the Constitution of the new State is significant in another important particular. It not only is a stipulation for the payment of interest by West Virginia but it clearly indicates the *rate* of that interest.

The scheme of the sinking fund thus taken from the legislation and practice of the old and incorporated in the fundamental law of the new State, included, and indeed was based upon, six per centum to be annually applied to the accruing interest, and in addition thereto one per centum of the principal of the debt to be provided, set apart, and invested at six per centum per annum, as a fund for the ultimate extinguishment of the principal of the debt in thirty-four years.

An annual appropriation of seven per centum of the principal sum of a debt, of which six per centum was to be applied to current accruing interest and one per centum to be invested and compounded at six per centum, and these dispositions only, will take care of the interest and effect the extinguishment of the principal of such a debt in thirty-four years, the precise period specified in the West Virginia Constitution; and such provision only will satisfy the requirements of that Constitution.

So it is manifest that these North Western Virginians who thus engrafted the principles and the practice of the Old Virginia Sinking Fund upon the financial Article of the Constitution of the new State, contemplated and plainly intended that, six per centum per annum, the rate of interest upon which the sinking fund they prescribed was predicated, the prevailing rate of interest

stipulated in the obligations of the Commonwealth, and then and long before that time the contract rate under the laws of Virginia, should be the rate of the accruing interest which West Virginia agreed to pay.

In simple language, the stipulation of West Virginia expressed in her Constitution, and accepted and acted upon by Virginia, was, that West Virginia would pay the accruing interest on her share of the debt, as it should accrue, and the principal thereof within thirty-four years.

That such was her express undertaking, appears from the language of her first Constitution, interpreted according to the reasonable and natural meaning of that language.

That such was the purpose, meaning, and effect of that language, is conclusively shown when we read it in the light of the plan established by the Constitution and statute of Virginia, then in force, for the establishment of a sinking fund for the liquidation of her public debt which plan was adopted by the new State as to its share of that debt.

The terms of the compact upon which Virginia consented to the division of her territory, afford unanswerable grounds for the Master's finding that the new State is bound to pay interest. The Equity of this conclusion, though it needs no such reinforcement, is confirmed by the following facts and considerations:

The holders of the old Virginia bonds, the creditors of the undivided State, all of whom, by plenary and exclusive authority from them, Virginia, and Virginia alone, represents in this suit, are entitled, by the terms of the bonds they hold, to be paid interest.

Virginia, as the record shows, has at the cost of a great effort, and great sacrifices, endeavored to meet

her obligation as to the two-thirds of the common debt including two-thirds of the then accrued and unpaid, *and two-thirds of the capitalized, interest,* upon the whole debt, which she assumed by the Act of March 30, 1871.

Since that act became operative, that is since December 31, 1871, and down to September 30, 1913, she has paid on account of interest alone $33,977,115.41.

Besides the interest paid by Virginia since December 31, 1871, she paid before that date, on account of interest, $7,094,103.61,—the significance of which item will be presently noted,—making her total payments on account of interest to September 30, 1913, the latest date to which we have the figures, $41,071,219.02.

In addition to these payments on account of interest, she has actually paid off and retired down to September 30, 1913, $12,141,490 of the principal of the debt; and in addition to this she has assumed, issued her obligations for, novated and is and has been for years regularly and promptly paying the interest upon $24,645,075.23 of the debt.

This sum added to the sums she has paid off gives $77,857,885.74 as the aggregate sum, either actually paid off by Virginia in cash, or assumed by her since January 1, 1861, out of, and on account of the debt of the undivided State.

See for the above figures, Plaintiff's Exhibit No. 22, p. 429 E.

Such were the contributions, to September 30, 1913, made by Virginia towards the payment of this common debt, the larger part of them having been made more than a quarter of a century ago out of the scant means of an impoverished people.

In this connection we deem it due to truth and justice to mention a fact which we recall in no spirit of acrimony, namely, that during all this period of more than half a century West Virginia has not paid, or offered to pay, one dollar towards the discharge of this large common indebtedness.

But, more distinctly, upon this question of West Virginia's liability for interest, we invite attention to the fact shown by the above cited authentic exhibit printed at 429 E., that, besides assuming and providing for two-thirds of the whole aggregate debt, including accumulated and capitalized interest to July 1, 1871, and actually paying the sums which she has paid, and adjusted on account thereof since that date, sums which, having reference to her then impoverished condition, were simply enormous, Virginia, on and after January 1, 1861, and *prior to December* 31, 1871, actually paid the sum of $7,094,102.61 on account of interest on that common debt.

That is to say, besides assuming two-thirds of the interest and principal of the whole debt accumulated to July 1, 1871, Virginia paid off, in addition thereto, $7,094,103.61 on account of the interest accrued before that date, on the undivided debt including West Virginia's share thereof as well as her own; and did not bring this large item into the account in the settlement which she made with the common creditors under her funding Act of March 30, 1871.

Besides this large contribution by Virginia in excess of the two-thirds or more, assumed under her funding acts, it must be in justice to her noticed that among the large payments made by Virginia on account of the principal and interest of the Old Virginia debt, the present State of Virginia has, since December 31, 1871, paid

off, settled, and discharged, so far as West Virginia is concerned, $864,842.03 of principal, and $1,453,577.78 of interest as of October 1, 1914, making in all $2,218,319.81 due upon obligations of the Commonwealth, constituting a part of the recognized debt ascertained in this cause to be due by her on the 1st of January, 1861, *not embraced in any settlement made under any of the Virginia Funding Acts and never before brought into the account between the two states.*

See Plaintiff's Exhibit No. 16, pp. 418 and 419 E.

The obligations of the undivided state for the $7,094,103.61 of interest paid by this State prior to December 31, 1871, and for the $2,218,319.81 of principal and interest paid off by Virginia since December 31, 1871, as shown by her said Exhibit, No. 16, are, with other obligations paid off by her, held by Virginia in her own right, as claims against West Virginia for which she is entitled to contribution from that State to the extent of West Virginia's aliquot liability therefor, under the averments of the Bill and the proofs in the Cause.

But these items of the account, as well as the other large items of payment made by Virginia in discharge of the principal and interest of the common debt, are relied upon by her in support of the manifest equity of her claim that West Virginia, when she shall be required to pay "an equitable proportion" of the debt of the unsevered Commonwealth, must be required to pay 23½% of the accruing interest, upon that debt, so long as that interest shall accrue, that is until the principal of her share of the debt shall be paid,—as well as 23½% of the principal thereof.

It is a gratifying circumstance that by reason of West Virginia's enhancement in prosperity and wealth

during the time that this interest has been accumulating, the payment in full of the interest which she assumed and justly owes, will impose no serious burden upon her, and that it will be much easier for West Virginia to pay the 23½% of the Virginia debt, including full interest until the same shall be paid, now, than it would have been to have paid the principal, or one-half of the principal sum thereof thirty, forty, or forty-five years ago.

Defences relied on by West Virginia against her liability for interest.

Against her liability to pay interest, West Virginia's counsel have heretofore urged two grounds of defence, each exceedingly technical having regard to the facts of this case, and neither affording any justification for the immunity claimed.

(1) The first of these defences is that the Cause of Action of the Complainant here is for an unliquidated demand, and that interest is not recoverable upon such a demand.

(a) If it were true, which we deny, that the Cause of Action, or claim asserted by Virginia here comes within the terms or the reasons of the doctrine asserted by the authorities heretofore relied upon by opposing counsel as holding that interest is not recoverable upon an unliquidated demand, a complete response to their contention is furnished by the circumstances that West Virginia has by her express contract agreed to pay interest upon that demand.

All that the authorities, heretofore cited by West

Virginia's counsel, hold is, that a contract to pay interest upon unliquidated demands of the character they consider will not be implied.

They have not held, and they would not have stultified themselves by holding, that a party who is competent to contract could not by express agreement bind himself to pay interest upon an unliquidated claim.

Here, as we have seen, and as the Master has found, West Virginia has expressly promised to pay the accruing interest upon her equitable share of the principal of the old Virginia debt.

(b) This renders unnecessary the consideration of the proposition contended for by adverse counsel, that Virginia's claim here is such an unliquidated demand, that interest will not be allowed upon it.

We will be content therefore briefly to refer to some of the principles of law which exclude such a claim as that of Virginia here from the general rule relied on by Defendant's counsel.

The claim of Virginia is a *pecuniary* claim, for money due upon an express contract, a contract not only for the payment of principal, but for the payment of interest upon that principal.

It is true that computation is necessary to ascertain the amount due, but it is equally true that by computation that amount can be determined.

This is no longer to be questioned, for this Court has, by its decree of March 6, 1911, determined the principal sum due, which amount, if West Virginia shall be allowed to set up off-sets against it, will be reduced by those off-sets. Still, the result is a matter of computation.

Most of the cases in the books in which interest has

been excluded, are cases of tort, or cases plainly sounding in damages.

This case is distinctly upon a specific pecuniary demand for the payment by the defendant of her equitable share of the principal and interest of a debt certain, which equitable share she has agreed to pay.

It is clearly a case in which an action of debt would lie, and one to which the principle of "*Id cerium est, quod* certum reddi protest" applies.

Even under the rule asserted for the defendant, interest would be payable upon a pecuniary liability like that of the defendant here.

But this is clearly not a case for the recovery of unliquidated damages which terms are defined as applying to, "cases of tort, as slander, assault and battery, etc., and to cases upon a *quontum meruit,* for goods sold delivered, or services rendered."

Cox v. *McLaughlin,* 76 Cal., 60, 18 Pac. 100, 104; 9 Am. St. Rep. 164, 169-172.

But this is not in any sense a case sounding in damages, but it is a suit to enforce a specific contract, and to ascertain by computation the amount which the defendant promised to pay thereunder.

(2) There was a belated attempt, which may be possibly renewed, to assert laches as a defence against the recovery of either principal or interest by Virginia.

Any such defence is absolutely without merit against this State.

It is based upon the singular assumption that Virginia is to blame, because she exhausted friendly negotiation before bringing her suit, and did not institute it

until after her repeated overtures to West Virginia for an amicable adjustment had all been successively rejected.

Like other defences, unless disclosed by the bill, the defence of "laches" must be asserted in the answer or other defensive pleading.

Here it has never been set up by the answer, or other pleading, and is negatived by the allegations of the bill. It will not be allowed to be set up by amendments of answer long after the filing of same; or after the reference to a Master and the filing of his report.

Dixon v. *Dixon*, 1 Md. Ch. 171;
Thornton v. *Hantze*, 91 Ill. 199;
Webb v. *Fuller*, 83 Me. 405, 22 Atl. 384;
See also 16 Cyc. 176 and 177 and citations.

We ask leave, however, to briefly consider this defence as heretofore presented for the Defendant, because of its relation to other equitable features of the cause.

The defence of "laches," in equity, is only permitted to defeat an acknowledged right on one or both of the following grounds:

(1) That it raises the presumption that the claim has been abandoned or satisfied.

(2) That the party pleading it has been seriously prejudiced by the culpable failure of the plaintiff to assert his claim.

Demuth v. *Old Town Bank*, 85 Md. 315, 37 Atl. 260, 268;
Coles v. *Ballard*, 78 Va. 139, 147;
Wisler v. *Craig's Adm'r*, 80 Va. 22, 30;

Cottrell v. *Watkins*, 89 Va. 101, 19 L. R. A. 754;
Johnson v. *Atlantic Gulf & West India Transit Co.*, 156 U. S. 618, 648;
Selbag v. *Abistal*, 4 Maule & S. 462;
Morse v. *Seibold*, 147 Ill. 318, 35 N. E. 369, 371;
Hall v. *Otterson*, 52 N. J. Equity 522.

Not one of the grounds upon which such a defence must rest as shown by the authorities exists here.

(a) Any presumption of satisfaction of her share of the debt by West Virginia or of abandonment of her claim is absolutely rebutted by the proof that the new State has never paid, and has failed and refused to pay, a dollar on account of the Virginia debt, and that Virginia has persistently urged a settlement.

(b) Nor is there any evidence in the case showing, or tending to show that West Virginia has suffered prejudice from Virginia's forbearance to sue.

No evidence helpful to her has been lost. *The substantial proofs of the debt and of West Virginia's liability for it, are all matters of irrefutable record*, all of which have been kept and preserved with wonderful accuracy and fidelity, so that the absolute verity of every item of the account and every entry upon those voluminous records, covering the transactions of forty years, has compelled the candid assent of the accountants and the counsel for West Virginia.

On the contrary, West Virginia has profited enormously by her long delay in making a settlement with Virginia.

While Virginia has been struggling to meet her just obligations on account of this common debt, and has paid

and assumed at least $78,000,000.00 as of the present year, most of her payments having been contributed many years ago, when her people were less able to pay one dollar than West Virginia is now to pay five, West Virginia, husbanding her resources, and compounding her wealth, has not paid one cent.

Instead of her position and ability to pay having been impaired by this long delayed settlement, for the postponement of which she is largely responsible, she has profited so greatly by it, that her taxable resources have increased from a total assessed valuation of $126,060,743.00 in 1867 to $937,232,718.54 in 1908, an enhancement of 643 per cent. See Plaintiff's Exhibit E-3, R. 651.

It appears from this same authentic exhibit that the taxable resources of Virginia increased during the same period from $354,848,482.69 to $661,796,631.00 or only about 84 per cent.

That comparative schedule of taxable resources, fairly interpreted, demonstrates another thing, namely, that instead of being prejudiced by this lapse of time, West Virginia could in her present prosperity and affluence—largely the result of the development of her territory by lines of railway which had their inception in the works which represent millions of dollars of Virginia's debt,—pay twenty million dollars today, with less inconvenience and less burden upon her people, then she could have paid two million dollars in 1867.

Moreover, the defence of laches cannot be interposed against a State. In *Armstrong* v. *The Morrill*, 14 Wall. 144-5, the court citing *Stoughton* v. *Baker*, 4 Mass. 526, holds that no laches can be imputed to the government and that time does not run against a State.

In *Metropolitan R.* v. *Dist. of Columbia,* 132 U. S. 11, the court through Mr. Justice Bradley, says:

> "No restrictive laws apply to the sovereign unless so expressed. And especially no laws affecting a right on the ground of neglect or laches, because neglect or laches cannot be imputed to him. And it matters not whether the sovereign be an individual monarch, or a republic, or a State. The principle applies to all sovereigns. The reason usually assigned for this prerogative is that the sovereign is not answerable for the delinquencies of his agents. But whatever the true reason may be such is the general law—such is the universal law, except where it is expressly waived."

See also *Weber* v. *Commissioners,* 18 Wall. 70. In *Gibson* v. *Chouteau,* 13 Wall. 99; *Lindsay* v. *Mill,* 6 Peters 673; *United States* v. *Knight,* 14 Peters 315; *United States* v. *Thompson,* 98 U. S. 489; *Gaussen* v. *United States,* 97 U. S. 584; *United States* v. *Nashville, etc. Ry.,* 118 U. S. 125, *supra.*

It is submitted that the transactions referred to in the cases relied on by the defendant related to such transaction as the protest of negotiable paper, or some entirely private matter where there was no public interest or duty whatever involved.

In *Brannock County* v. *Bell,* 101 American State Reports, 152-3, note 2, it is stated as a universal rule that statutes of limitation should not run against a State nor can laches be imputed to it, although private parties may be interested along with the State in the matter sued on. See authorities there cited.

In the opinion of the court on the demurrer in this cause (Vol. 1, p. 433 of West Virginia Complainant), the lapse of time is referred to, but the demurrer is over-

ruled and an order afterwards entered for an accounting upon the defendant's answer which in no manner refers to the matter. This of itself should preclude the question of laches.

Defendant's Second, Third, Fourth, Fifth and Sixth Exceptions.

These five exceptions will be considered together for they are based upon substantially identical grounds, and involve substantially identical questions.

They relate to the mode adopted by the Master for determining the value on January 1, 1861, of the shares of stock then held by Virginia, respectively, in the Richmond, Fredericksburg and Potomac; Orange and Alexandria; Richmond and Danville; Richmond and Petersburg; and Virginia Central Railroad Companies.

As to all of these, as well as other corporations in which the Commonwealth owned stock, the Master in his view of the case, was confronted with the difficult problem of determining what was the true value of those holdings fifty-four years ago.

We recognize and appreciate the difficulties of the situation, and the earnest purpose of the Master to find a solution of this problem which would be fair and just and in accordance with the truth.

As shown by the authorities cited by the Master in his discussion of this subject, at pp. 11 to 29 of his Report, and by other authorities to some of which we will refer, the sources of evidence as to the value of such properties are:

1. The expenses and earnings of each company, that is to say its dividend earning capacity, after making adequate provision for necessary repairs and renewals through a term of years.

2. The market prices of the shares, as shown by actual sales in sufficient amounts and number to give fairly reliable evidence that the shares have been or can be sold in quantity at those prices.

And, as evidence of these prices, the contemporaneous and financial market reports and stock quotations published from day to day and time to time, by reputable newspapers, whose reports are accepted, and acted upon by the business public, are accepted according to the great weight of authority, as among the most authentic and reliable sources of evidence as to such values.

3. The par value of the shares of such corporations, in exceptional cases and under certain conditions and subject to material qualifications of this proposition, and

4. The *book values* of the shares of a corporation, in exceptional cases and subject to like material qualifications.

In endeavoring to reach the value on January 1, 1861, of the shares of stock of these five railroad corporations, the Master combined his estimate of that value, based in each case upon the earnings of each of said railroad companies, with the value of their properties as shown by the "book values," deduced from the books of account of each company.

The Defendant's Exceptions are to the alleged error of the Master in not discarding the earnings of those companies from his consideration, and taking and accepting their alleged "book values" as final and conclusive evidence of their value.

We respectfully submit that the exceptions of the Defendant are without merit.

Not only so, but the learned Master erred in his computations of value based upon the earnings of those railroad companies in not making proper allowances for depreciation, renewals of the roadways, track, depots, rolling stock, and other physical properties of these companies.

An examination of his report, and of the testimony and statements in the record as to the operation and transactions of these companies, will show that no adequate deduction or allowance, or provision, was made by the respective companies, or has been made by the Master, to take care of this important item of cost and debit in the experience of every such company.

Considerable amounts were generally expended on repairs, but no account seems to have been taken in any of these cases and no such systematic provision made, such as sane and sound railroad practice requires to be made, to cover and provide for the depreciation and renewals of their properties.

Still, the net earnings of such companies even under such conditions, if averaged through a term of five or ten years of peace, afford a far more reliable criterion of the actual value of their properties, than do their book accounts.

The "book values" should not, under the proofs in this case, have been brought into the account, by the Master in computing the value of the shares of stock of said railroad companies.

There is, so far as we can see, no evidence in this case which justifies the acceptance of said "book values" as evidence, still less their acceptance as proofs of actual value.

The testimony of witnesses upon both sides shows that those "book values" represented merely the original cost of the respective railroad properties.

They show nothing definite or reliable whatever as to the actual subsequent values of those properties.

They make no deductions for wear and tear, and depreciation, nor for the cost of renewal, nor for the unremumerative character of the business developed by the respective railroads.

They are based upon the violent assumption (unsupported by any proofs, and negatived by the railroad experience of this country, and by the facts proved as to some of these very railroads) that every investment made by Virginia in these then comparatively new, and some of them unfinished railroads, was, not only a paying investment, but an investment which could be relied upon to be free from serious financial hazard and to yield through the years and decades to come, so large and so certain a net return upon the money invested as to give those shares of stock a certain value at least equal to the sums which had been expended upon these railroads respectively.

It is not necessary to refer to the railroad history and railroad experience of the country to show how utterly illusory, fallacious, and misleading any such evidence as proof of actual values, is; and how inconclusive, and unsatisfactory any computation based upon such assumptions must be.

That this is a just comment is shown by the fact that, we find that, if the book values of these companies are taken as evidence of true value, the absolutely worthless stock of such companies as the Virginia and Kentucky, the Manassas Gap, and the Roanoke Valley, and other like insolvent, or abandoned railroad companies, would appear to be just about as valuable as the stock

of solvent and comparatively prosperous companies such as the Richmond, Fredericksburg & Potomac R. R. Co., and the Richmond and Petersburg R. R. Co.

Another equally startling result of giving such credit to book values, is that the book values of the stocks of some of these companies as shown by the Defendant were actually greater in 1863, when as is notoriously true, the value of all such properties in Confederate Virginia, had been either wiped out or greatly depreciated by the wasting and destructive agencies of War, than those book values were shown to have been in January, 1861, before the War began.

For instance: The book value of the stock of the Richmond, Fredericksburg & Potomac R. R. Co., is given at 150, in January, 1861. (See Defendant's Exhibit No. 2, p. 2 E) and the book value of the same stock is given at 183.31 as of June 20, 1863 (See Defendant's Exhibit B-2, pp. 94, 95 E).

Orange and Alexandria R. R. Co. Book value as of January, 1861, given at 106.64. See Defendant's Exhibit No. 3, p. 13 E., and at 134.25 as of September 30, 1863. See Defendant's Exhibit No. 3, p. 108 E.

And so as to other railroad stocks claimed by Defendant as set-offs upon this extraordinary theory as to values.

But, in order to demonstrate the utter untrustworthiness of these "book values" as evidence of actual value, it will suffice to take the candid statements of Mr. Conway W. Hillman, the expert Accountant, the principal, and upon this point the only, witness for the Defendant, upon whose testimony this branch of their case is wholly based.

There is, to be sure, some inconsistency in his testimony as to what was the meaning and effect of the

words "Book value" of a stock as used by him; he sometimes stating one thing, and sometimes another, as at pages 19, 27, 99 and elsewhere in his examination in chief.

While this expert witness had stated more than once that the "book value" and the "actual value" of a stock were practically the same thing, on cross-examination he frankly and unreservedly admitted that he was in error in any such statement, and clearly conceded the want of probative value of such figures from the books and accounts of a corporation under the circumstances existing here. See pp. 314-318.

We here quote as follows from his testimony (Record, p. 315):

> "Q. Do I understand you now to testify as an expert that you would accept the value of stock shown on the books as constituting the true actual value of that stock without any further investigation?
>
> "A. No, sir, I would not.
>
> "Q. Then there must be a difference between book value and actual value, is there not?
>
> "A. Yes, sir, there is.
>
> "Q. Then you were wrong when you said that there was no difference, were you not?
>
> "A. Yes, sir, taking that view of it, that was not the proper statement."

And at page 454, and 455, in response to questions by the Master, Mr. Hillman testified as follows:

> "Q. If it was the policy of the road to minimize renewals and repairs and increase dividends, why, the natural tendency of that would be to decrease value, notwithstanding dividends may have been paid?
>
> "A. Yes, sir.
>
> "Q. On the other hand, if it was the policy of the

road to make liberal charges for depreciation, keep the renewal account or keep renewals up so that the road was in first class condition, that might minimize the dividend paying value and still leave the property worth very much more than the property would be under other conditions?

"A. Yes, sir.

"Q. The result of all that is here, that with these statements before us, we have not any definite information as to what policy was pursued in connection with any road?

"A. That is right.

"Q. Under these circumstances, state whether or not, in your judgment, the book value, or what was in your judgment the book value, under those conditions, should be entitled to receive in determining actual cash market value on a particular day. What I mean now is a practical proposition with our lack of knowledge and information of the conditions to which I have just called your attention.

"A. As roads were operated at that date, I would not like to accept the book value of the stock as its actual value.

"Q. Well, would it be fair to say this,—I don't want you to go any further than you can properly go, but I want to get your candid judgment about it,—would it be fair to say that under the conditions developed, that the element of book value was of more or less doubtful value in determining the actual cash market value on any particular day? Is that a fair statement of it in your judgment?

"A. Yes, sir; that is fair.

"Q. It is impossible, of course, for you to state anything definite in relation to it? That is, you cannot minimize by a percentage, because you have not any basis upon which to make any calculation; that is correct, is it not?

"A. That is correct.

"Q. And of course what you have done, and what we will all have to do of course, is to take the best

evidence possible, and then reach the safest and most satisfactory conclusion?

"A. Yes, sir."

It is due to this witness to say that, however anxious he may have been to aid the contentions of the defendant as far as he could do this consistently with truth, and however strong his bias may have naturally been in favor of the party who had employed him, whose case he had in large measure made up and presented by numerous schedules and exhibits, and who evidently depended upon his evidence to sustain her contentions, he could not go to the length of stating that the book value of the shares of stock of a railroad company or any other corporation was by itself conclusive, or indeed *prima facie* proof of anything as to either the sale value, or as to the actual or intrinsic value of those shares.

Taking Mr. Hillman's testimony upon this subject as a whole, it is manifest that his view merely was that the "book value" of a corporation's stock was its value as actually shown by the books of the company and not its true actual value, if the company should go into liquidation and be wound up, nor did it show the market value of that stock.

His testimony utterly failed to sustain the theory and contention of the Defendant's counsel that the "book value" of the shares of the Virginia railroad companies and the true value of those shares was identical, or that such "book value" alone was even *prima facie* evidence of real value. Mr. Hillman's candid statements on cross-examination show that such book values as are relied on by West Virginia in this case are utterly unreliable, misleading and wholly worthless as proofs.

As we have already indicated, there may be circumstances under which book values and also "par" values,

do afford competent and trustworthy evidence as to the value of the property and shares of a corporation, as for instance, in the case of a corporation whose assets consist of property or securities of known market, and readily convertible value, such as banks, trust companies, or other companies whose assets consist of property of known or readily ascertainable and readily obtainable, market values. In such cases the "book values" and also the "par" values, are based upon, not original cost, but upon actual commercial values, indeed are made up of such values, either in the shape of cash, or securities or property which can undoubtedly be easily and promptly converted into cash, as is true as to all solvent and well managed financial corporations; and as was doubtless in very large measure true as to the State banks in which Virginia had large holdings of stock in 1861.

But, it would be manifestly an error to assume any such state of facts as to a speculative enterprise like a Virginia railroad company in 1861 or 1863, without proof not only as to the value of its assets, but that those assets had a market and convertible value which made its shares worth what they had cost their holders.

But even in the case of such a solvent financial corporation, the cost of throwing it into liquidation, including the cost of realizing upon and distributing the avails thereof, should, of course, be deducted from the aggregate net value of its assets, after providing for debts and fixed charges, before determining the *pro rata* sum assignable to each share, as the actual value thereof. While the Master makes the very moderate allowance of five *per cent.* for the cost of winding up such a company, he, for the not very satisfactory reasons he gives, fails to make any allowance for the cost of wind-

ing up such companies in his ascertainment of the value of their shares.

We, of course, realize that the dividend earning capacity through a term of years, with just allowances for depreciation and renewals of their properties, may be one of the most satisfactory measures of the true value of their shares of stock, and our only criticism of the Master's findings in that regard is that he did not take the earnings of those companies for a sufficient period to afford assurance that they could be relied upon as continuing indefinitely for the future, and for the farther very important reason, that no adequate allowance was made for depreciation in value and renewals of their properties, among the most important factors to be brought into such an account.

Another just criticism of the method adopted by the Master in determining the value of the shares held by Virginia in these and other corporations is, that he discarded one of the most trustworthy and reliable measures of these values, namely, the market prices and market quotations of those shares, as shown by the contemporaneous market reports, and quotations, published in the financial columns of a reputable newspaper, which quotations and reports were considered, accepted, and acted upon as accurate and reliable by the commercial world and business public, which was in the habit of getting its information upon those subjects from the columns of that excellent journal.

The competency and sufficiency of such quotations and market reports thus published will be fully considered in connection with the presentation of the second branch of this argument in support of the Complainant's exceptions to the Master's Report.

Defendant's 7th and 16th Exceptions as to the Alex-

andria, Loudoun and Hampshire, and Manassas Gap R. R. Stock, Pages 48-49, *and* 107-110 *of the Master's Report.*

These two exceptions involve the same questions, namely, the competency and sufficiency of the par value of those stocks, as evidence, or as Defendant contends, as proof, in this case, of the true value of the shares of stock of those companies.

The "par" of these shares merely represented their "book" cost, that is their cost as shown by the book accounts of the respective companies.

Accordingly, it is evident that the question presented is in fact and in principle the same which is raised by West Virginia's contention that "book values" are proofs of the actual values of such shares.

The reasoning and the authorities upon which we rely in discussing the question of the competency and sufficiency of "book values," apply to these exceptions and effectually dispose of the contentions of opposing counsel in respect thereto.

As to these two railroad companies, however, it is proper to mention that each was the builder of an unfinished railway, that neither the assets of these roads, nor their capital stock is shown by any evidence whatever in the cause to have had either in 1861 or in 1863, any value whatever after paying the debts of the respective companies; that all that Virginia ever realized from her holdings in the Alexandria, Loudoun, and Hampshire R. R. Co. was $49,662.05 on the 25th of November, 1867; and for her large holdings in the Manassas Gap R. R. she never received a dollar, and it perished as an asset.

The statements of fact and the history of these items given by the Master as to the Alexandria, Loudoun, and

Hampshire R. R. Co. at pp. 48, 49 and as to the Manassas Gap R. R. Co. at pages 107 to 110, of his report, leave nothing to be added to show the manifest propriety of his findings.

Defendant's Eighth Exception, pp. 51-52 *of the Master's Report, as to debt paid by the Virginia and Tennessee R. R. Co.*

The Virginia and Tennessee R. R. Co. owed Virginia $1,000,000, secured by a mortgage on its road. In 1863 this railroad company made payments to the Second Auditor of Virginia aggregating $886,685.00 in Confederate currency, the currency in which transactions in Confederate Virginia were transacted. This is practically all that Virginia ever received distinctly on account of this claim.

The Master applies the Confederate scale to these payments to ascertain their value in lawful money, and charges Virginia with the value thus ascertained, with a rebate on account of interest, to carry the payment back to January 1, 1861, and apply it as of that date.

The Master states the facts and grounds upon which his conclusions rest with such clearness as to leave nothing to be added.

Defendant's Ninth Exception. Loan to Norfolk and Petersburg R. R. Co., pp. 55-58 *of Master's Report.*

The Master very fully and conclusively presents the facts and conclusions upon which this finding is founded, and demonstrates its propriety. We are content to submit this item upon the Master's statement of it.

Defendant's Tenth Exception. Loan to the United States Government and debt due by the United States to Virginia, pp. 67-70 *of Master's Report.*

The facts as to this matter are fairly and pretty fully stated by the Master. Upon these facts the claim of West Virginia is undoubtedly excessive.

The claim of Virginia *against* the United States was a very old and a *controverted* claim.

Virginia *owed* the United States a large *uncontroverted* debt, evidenced by her bonds in which the United States had invested a part of the Indian Trust Funds.

It doubtless never could and never would have been settled in the liberal manner in which it was finally adjusted under the Act of Congress of May 27, 1902, but for the fact that the United States held those Virginia bonds.

The United States, by the Act of May 27, 1902, made a special provision for the settlement of both the bonds of Virginia held by the United States, and the claim of Virginia against the United States.

That act provided that interest should be computed upon both demands in such fashion that the aggregate of principal and interest upon each demand should be as nearly equal as practicable, and authorized a settlement of the two claims as of the date at which such computation brought them nearest together, respectively in amounts.

The principal of the debt due the United States was much the larger, but the claim of Virginia had been standing for a much longer time.

Computing the interest in this way, the two demands were brought closest together in amount as of February 11, 1894, as of which date, upon the arbitrary terms prescribed by the Act of Congress there was $5.50 of a balance in favor of Virginia, which is all that was ever paid her on this account.

West Virginia, mending her hold as asserted in her

Answer, claims 23 1-2% of $1,130,821.31 as the credit to which she is entitled on account of this settlement with the United States.

When we consider that this liberal settlement was secured from the Congress of the United States solely through the efforts of Virginia and her representatives, prosecuted through years, without any help from West Virginia, and that it was largely *ex gratia* to Virginia, the finding of the Master is not unjust to West Virginia.

We prefer to leave that item where the Master's statement places it.

Defendant's Eleventh, Twelfth, Thirteenth and Fourteenth Exceptions in reference to value of stock held by Virginia in the Farmer's Bank of Virginia. The Bank of Virginia, The Bank of The Valley, and the Exchange Bank, pp. 85-90, *Master's Report.*

The Master charges Virginia on the basis of the book value of the shares she held in these banks, deducting five *per cent.* thereof as the cost of winding them up, and realizing upon and distributing the avails of their assets.

This was a very low estimate for this cost, particularly when their bills payable are taken to be all solvent, and collectable, as this finding of the Master assumes.

The Master's conclusions are, however, perhaps as near the truth as can now be attained. If there is any error in them, it is in his allowing only five *per cent.* as the cost of winding up these banks realizing upon all of their assets, and distributing the avails thereof among the parties entitled. Or else the Master erred in assuming that the value of those shares must be ascertained by throwing those banks into liquidation.

The shares of all of those banks, except the Bank of the Valley, are shown by the Master's Report, to have had market values, and if we were disposed to question the Master's findings, we could fairly insist that he should have taken that very definite and reliable evidence as proof the true value of those shares; but we are content to accept his conclusions as to the value of these bank shares.

Defendant's Fifteenth Exception, Atlantic, Mississippi and Ohio R. R. Co., pp. 95-98 *of Master's Report.*

The Master has quite fully, and very fairly stated the facts in reference to this transaction and the reasons for his findings.

His conclusions are supported by all of the circumstances surrounding the transaction. There is no evidence anywhere in the record showing or tending to show that the properties sold had any larger value on the 1st of January, 1861, than the amount finally realized for them by Virginia.

We rest upon the Master's findings and his reasons therefor.

This ends our response to the Defendant's Exceptions, and the questions they present, except, as to the competency and sufficiency of the price lists, prices current, market quotations, and financial reports, published in the contemporaneous financial columns of reputable newspapers of the community in which these companies had their *situs*, as evidence of the value of their shares, which question will be fully discussed by us in connection with the consideration of the Complainant's Exceptions to the Master's Report.

II.

THE COMPLAINANT'S EXCEPTIONS TO THE MASTER'S REPORT.

Complainant's Exception, No. 1 is to the following findings which we quote from Page 10 of his Report:

> "The only right that West Virginia acquired as to these assets or investments, as against Virginia, was the right to require Virginia, on the date agreed upon, to apply the assets or investments, at their fair value at the time agreed upon, towards the liquidation of her own debt; so that West Virginia could know, when the assets were so applied; the amount of the real debt remaining to which she would be obliged to contribute. It was perfectly competent for the two States to agree upon any date upon which the debt and the value of the assets and the investments, and the difference between the two, could be ascertained. West Virginia's rights do not depend upon any title that she acquired to assets solely owned by Virginia, as to which she did not, and could not acquire any title, but they do depend upon the agreement of Virginia to account for these assets or investments, at their fair value upon the date when the amount of the debt is to be ascertained. This is an absolute protection to West Virginia, as Virginia cannot recover any portion of the debt of West Virginia until those assets are thus accounted for and applied. This construction is in my judgment plain, clear, simple, equitable, just, and completely and adequately protects every legal and equitable right of both of the parties thereto.
>
> "It is my conclusion, therefore, that the assets are to be valued as of January 1st, 1861."

It is an axiomatic proposition, that, unless there was some agreement between the two States, by which it was stipulated that a different date should be adopted

for determining the values of any set-offs with which Virginia was to be charged, and for which West Virginia was to receive credit in determining her equitable share of the common indebtedness, those values would necessarily have to be determined, as of the date upon which the new State went off from the parent State.

There can be no question as to the correctness of this postulate.

West Virginia could have no rights before she came into existence.

To fix any other date for ascertaining those values there would have to be a specific agreement to that effect. Virginia denies that there ever was any such agreement, and calls for proof.

To this, West Virginia responds that the contract which binds the two States to take a date for the valuation of the assets retained by Virginia different from the 20th of June, 1863, the day when the new State came into being, is to be deduced from the 8th section of the VIII Article of the first West Virginia Constitution, which prescribed West Virginia's undertakings and agreement in reference to the Virginia debt.

There is not a word or a syllable in the language of that section in reference to either "assets" or "set-offs," nor any words which can be construed to import those terms or to include or refer to them. All that that section stipulates is that:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of anuary, 1861, shall be assumed by this State;"

and to prescribe the specific provision which shall be made by the new State for the payment of the interest or principal of the "proportion" so assumed.

This language merely defines the debt, an equitable

proportion of which West Virginia assumed, as the debt existing before January 1, 1861, that is the debt of the Commonwealth existing on the 31st of December, 1860. It says nothing, nor can it be reasonably construed to prescribe anything, as to how West Virginia's share of that debt shall be ascertained.

The debt of Virginia and the amount and character thereof are undoubtedly determined by the terms thus used; but there is no limitation or determination, as to West Virginia's equities or set-offs against that debt. As a result, those set-offs and equities could, in the nature of things, only be such as West Virginia was entitled to when she first came into existence.

From West Virginia's standpoint her equities were not limited by those terms to such equities as existed in her favor on the 31st of December, 1860, because there could have been no equities at that date in favor of West Virginia or against Virginia, more than two years and five months before the new State had any existence, in fact long before she had become an embryo in the womb of the future.

To give the language of this "compact" between the two states the retroactive and unexpressed and unintimated effect which adverse counsel claim for it, and which the Master has, without giving any plausible reason for his conclusion, conceded, would be, by strained, unnatural and unnecessary *construction*, to create a new term and inject a new and novel stipulation into the contract of the parties.

Such an extraordinary covenant would have to be express, or derived by necessary and *inevitable* implication from the language of the "compact."

It must not be the deduction from a forced, a fanciful, or an unnecessary implication from the language of that compact.

Still less can it be sustained or entertained if, as is the case here, such construction requires the interpolation of new terms into the language used by the contracting parties, so as to make the words "existing before January 1, 1861" apply not only, as they were designed to do, to the character and amount of the debt, an equitable proportion of which the new State was to assume, but to the date as of which any equities to which West Virginia was to be entitled should be ascertained.

In considering the branch of this case arising under the Supplemental Answer of the Defendant (which is in effect a bill of review and a cross bill) it must not be forgotten that the burden of proof is upon her; and that this Court has in this very case emphatically declared that:

> "It is enough to refer to the circumstances in which the separation took place to show that Virginia is entitled to the benefit of *any doubt* (italics ours) so far as the construction of the contract is concerned."
>
> Decision of this Court rendered March 6, 1911, 220 U. S. 1.

The allusion in this language of the Court to the "circumstances in which the separation" of the two States "took place," had reference, undoubtedly, to the fact that West Virginian citizens of Virginia undertook to speak and act for and deal with West Virginian citizens of Virginia in all of the transactions and stipulations leading up to, and finally consummated in the creation of, the new State,—Western Virginians, and largely the same persons, on one day acting and speaking for and in the name of and undertaking to bind Virginia, and on the next day acting and speaking as the representatives of West Virginia, while more than two-thirds

of the actual population and political sub-divisions of Virginia actually had no part, nor lot, nor agency, nor representation in anything which was done, or purported to have been done, in their name, and on their behalf.

This tremendous fact was taken cognizance of by this Court in the former stages of this litigation and cannot be ignored in this, which is, we trust, its final stage, without palpable injustice to Virginia.

This circumstance and the ruling of this Court above quoted, should be borne in mind in all our consideration of this cause.

The importance of the question involved in this, the principal exception of the Complainant, is such, that we beg leave, at the risk of some repetition to recapitulate the grounds upon which this, our main objection to the Master's Report, rests.

West Virginia came into existence on the 20th of June, 1863.

Independently of any agreement between the parties fixing a different date, not only would the amount of the debt of the undivided state be ascertained as of that date, but all of the rights of the two states in respect thereto would be necessarily and properly determined as of the same crucial date.

For reasons satisfactory to the West Virginians who, controlling the whole situation during the formative period of that State, undertook to speak, and did speak, both for the Revolutionary, or Restored Government of Virginia, and also for West Virginia, they fixed the 31st of December, 1860, as the date as of which the debt of Virginia, an equitable proportion of which the new state agreed to assume, should be ascertained.

To all intents and purposes that was an arbitary date, but it was doubtless adopted to exempt West Vir-

ginia from any liability for the debts or contracts of the Richmond or "Confederate" Government of Virginia, contracted after the Secession of the State from the Union, and after the Representatives from Northwestern Virginia Counties in the Virginia Constitutional Convention, then in session, had withdrawn from that convention and returned to their homes, where they were engaged in organizing a revolt against the Richmond Government, and in forming the revolutionary or Restored Government of Virginia.

While June 11, 1861, the date of the organization of the Revolutionary or "Restored" Government of Virginia, would have been, from the standpoint of the makers of that government, a more fit and more logical date to be prescribed for the ascertainment of the debt, a part of which West Virginia was to pay,—in the hurly-burly and confusion in which events were transpiring in that eventful period, there was little time for reflection, and January 1, 1861, or rather December 31, 1860, was adopted by those Northwestern Virginians as the date as of which the Virginia debt, an equitable portion of which West Virginia was to pay, should be ascertained.

There was no difficulty about taking that date or any other date prior to the formation of West Virginia as the date as of which the debt should be ascertained, and there was no injustice in this particular instance in adopting the date chosen, except that, whether designed to have such effect or not, it did operate to exclude from the thus recognized Virginia debt, over $1,509,150.02 of obligations afterwards issued by the State in discharge of liabilities for work done on the Covington & Ohio Railroad, and other railways under contracts entered into before the Secession of the State, for which West Virginians were legally and equitably as much liable as for

any other part of the debt. See Plaintiff's Supplemental Exhibit, No. 1, 289 E.

Still there was, from West Virginia's standpoint, a reason why a date prior to the secession of the State should be selected for the fixing of the debt, a portion of which she was to pay, namely, the avoidance of liability upon the New State for debts contracted by the Richmond Government after the Secession of the State; and there was also a reason, arising from convenience of computation and ascertainment of the debt for taking the end of the preceding calendar year, the period also of a half yearly rest in calculation and payment of interest, as the date for ascertaining this debt.

So that may have been all well enough, at least from West Virginia's point of view; but there was no reason for ascertaining the credits or set-offs to which West Virginia might be entitled against her liability for a part of that debt as of December 31, 1860, or any other date except June 20, 1863. Indeed, there was and is every reason why no other date except June 20, 1863, should be adopted for determining what credits West Virginia was entitled to be allowed.

As to that matter, any other date would not only be an arbitrary, but an unjustly arbitrary date, and possibly more unjust in its operation upon the rights of West Virginia than upon the rights of Virginia.

In the first place it would be illogical, if not an absolute solecism, to attempt to give to West Virginia, more than two years and five months before she had any existence, a credit for what Virginia could not by any possibility then have received, and for what West Virginia could not by any possibility, more than two years before she was born, and months before she was even conceived, have had any right, title, or claim, whatever.

To have attempted to have adopted any such ret-

roactive scheme of adjustment would have not only been unjust but impracticable.

Nor was anything of the kind done or attempted by the West Virginians who formulated both the First Constitution for that State, and the Act of Legislature of "Restored Virginia" of May 13, 1862, which gave Virginia's consent to the formation of the new State "under the provisions" of that Constitution.

The men who framed and adopted those enactments at the time they formulated them doubtless counted upon the settlement between the two states being made upon the terms prescribed in the 9th section of the Wheeling Ordinance, with which those West Virginian Constitution and Law-Makers were entirely familiar, for, both that ordinance, constitution, and the act of May 13, 1862, were largely the products of the same wills, minds, and brains. They had no idea then that any settlement would be made upon the principles adopted by the Court, and they never, for a moment, contemplated any such equitable set-off being asserted against her liability for the debt, as West Virginia now seeks to set up.

Whether for this, or some other reason, they certainly did not in any term of the stipulation by which they bound West Virginia to pay an equitable proportion of the debt as it stood on December 31, 1860, provide that the equities which West Virginia should be allowed should be such, and only such, as she might be entitled to upon that prenatal day, more than two years before her entrance upon the stage of existence, and when it was imply impossible that she could have any rights or obligations whatever.

It is true that the supplemental answer of the Defendant with a singular inaccuracy of statement, repeatedly alleges that at sundry periods before January 1, 1861, that is to say between 1822 and 1861, and there-

fore at times long before West Virginia had any existence, the State of Virginia, "with the common funds of the two states bought stocks," etc. (See pp. 26, 27, 30, 33 of said Answer.)

It may be that those strangely inexact averments were designed to give some color to the present contentions of the defendant's counsel which by some sort of marvelous psychological sleight of hand undertake to project the personality and coroporate existence of West Virginia backwards for some years or decades before that State had any existence, and to assign to her when she was as yet "without form and void," rights and interests which only an existent, corporate, responsible state could possess.

It suffices as a complete reply to this strange and unwarranted contention to say that, while it was agreed by the Restored Government of Virginia and the New State that the recognized debt, an equitable share of which West Virginia was to pay, was the public debt of the Commonwealth prior to January 1, 1861, it was never agreed between them that the set-offs and credits which West Virginia should be allowed against that indebtedness, should be such, and only such, as accrued to her prior to January 1, 1861.

The compact between the Old and the New State did undertake to determine, somewhat arbitrarily, the amount and character of the debt, a part of which West Virginia should pay, by reference to an antecedent date, but it did not undertake to provide for credits or to fix the date as of which West Virginia should be entitled to such credits or set-offs against that indebtedness.

The unquestionable fact is, that neither State, that is to say, that the men who constituted the legislatures and conventions of the two states, none of them had any

such matter or question in mind. They merely intended to limit West Virginia's accountability to her equitable share of the debt as it stood on the 31st day of December, 1860, expecting, if not counting upon it, that that equitable share would be computed in the mode prescribed by "The Wheeling Ordinance," a method which, as it turns out, would have placed at least as large, if not a larger liability upon the New State, than that ascertained by the Court in its decree of March 6, 1911, and a liability against which there could have been, by the terms of that Ordinance, no set-offs whatever, such as those which West Virginia is now asserting a right to set up (see Ninth Section of the Wheeling Ordinance, Appendix to the Record, pp. 119-123, and decision of this Court, 220 U. S. 1).

The conclusion from these indisputable premises is, that June 20, 1863, the date when West Virginia became a state, and for the first time vested with any rights or obligations in the premises, is the date as of which any possible right, or set-off, or of credit, then existing in her favor, shall accrue and be applied in her favor in determining the amount she owes.

COMPLAINANT'S EXCEPTION, NUMBER 2.

The reasons here urged in support of Complainant's exception No. 1, apply with identical force to her exception No. 2, which presents merely the correlative of the same proposition.

COMPLAINANT'S EXCEPTION NO. 3, which is as follows:

Complainant's Exception, No. 3.

Complainant respectfully excepts to the master's report and the findings and conclusions thereof, for this,

to-wit: that, in ascertaining and computing the value on January 1, 1861, of the shares of the capital stock of railroad companies the master erred, in that, disregarding other and competent evidence as to said values, he took and considered, solely, the "book values," and the alleged paper earnings of said companies for the periods more or less arbitrarily selected by him, as the same were inaccurately deduced from the book accounts of said companies, as evidence of the true value of said shares, as of said date.

Said "book values" did not constitute any valid or reliable evidence as to the true value of said properties inasmuch as they represented merely the original cost thereof; and both the said "book values" and the said "paper earnings" are unreliable and misleading as evidence of the true values of said properties because, in their computation no account whatever was taken of the depreciation and necessary cost of renewal of the physical properties of said companies.

This excetion is respectfully taken and is asked to be considered as taken (as though the same were in each instance reiterated), to the findings and conclusions of the master, as expressed, and to the method by which the same were reached, as said method and findings are set forth: as to the holdings of Virginia in the Richmond, Fredericksburg & Potomac R. R. Co. at pages 32, 33 and 34 of the master's report; as to the Orange and Alexandria R. R. Co. at pages 36, 37 and 38; as to the Richmond and Danville R. R. Co. at pages 39, 40 and 41; as to the Richmond and Petersburg R. R. Co. at pages 42, 43 and 44; and as to the Virginia Central R. R. Co. at pages 45 and 46 of said report.

Our views as to the incompetency and probative worthlessness of "book values" as evidence of the value

of the shares of these Virginia railroad companies, either in 1861 or in 1863, presented in the former part of this brief as our response to the Defendant's 2d, 3d, 4th, 5th and 6th Exceptions, apply with equal force to, and are relied upon in support of this 3rd exception of the complainant.

Supplementing what we have there said, we would call attention to the error of the Master in discarding or ignoring the market reports, prices current, market quotations, and financial reports of the shares of most of the corporations in which Virginia retained her holdings on and after June 30, 1863, which, in most cases, constitute the most dependable, the most definite, and the best evidence, now obtainable, as to the value of those shares, either on the 1st of January, 1861, the date adopted by the Master for ascertaining their value, or on the 20th of June, 1865, the date which should have been accepted by him therefor.

The following facts and considerations are respectfully submitted in support of the competency of such evidence:

MARKET QUOTATIONS AS EVIDENCE OF VALUE.

The great preponderance of authorities, who in this regard are in harmony with the experience and common sense of mankind, sustain the proposition that the market values, and market quotations of such securities constitute competent and important evidence as to their true value.

A good deal of evidence was put into the record as to the market quotations of the shares of most of these companies.

The Master rejects all of it for the reason, as we understand his view, that the transactions reported were not of sufficient volume and frequency to justify their acceptance as proof of value.

There was some question raised by defendant's counsel as to the competency of market reports published in the financial columns of reputable contemporaneous newspapers as evidence of the market value of the stocks and bonds therein mentioned.

That question has been pretty effectually disposed of and put at rest by the decisions of the courts and the conclusions of authorities of the greatest weight, some of which are cited by the Master.

The subject is discussed in Greenleaf on Evidence, (16th Edition, by Wigmore) and the rule now generally accepted is approved and concisely stated in section 162-L, page 270, Vol. I, in the following explicit language:

> "(1) *A number of Courts, constantly increasing, receive the reports of market prices as published in trade journals, or ordinary newspapers,* commonly resorted to for such information, or in price-current lists by wholesale dealers generally recognized as trustworthy. The doctrine dates from the case of *Cliquot's Champagne and Sisson* v. *R. Co.*, and, with more or less variation of phrasing, has received wide recognition."

In addition to those mentioned in the text, the author cites a number of authorities in the foot note.

Nowhere is the rule of reason, and of common sense, on which we rely, more clearly or conclusively stated, than by one of the most learned and accurate and ablest jurists of our country, Judge Cooley, in delivering the

unanimous decision of the Supreme Court of Michigan in *Sission* v. *Toledo R. R. Co.*, 14 Michigan 489, 90 Am. Dec. 252, 255, in which he says:

> "We also think that the court erred in excluding evidence of the state of the markets as derived from the market reports in the newspapers. The precise question involved does not appear to have been passed upon by the court; but we are aware of no reason and no authority which would exclude the evidence. In *Lush* v. *Druse*, 4 Wend. 317, the value of wheat at a certain point was allowed to be proved by a witness who had derived his knowledge solely from the books of large dealers in wheat at that place; and *in re* Fennerstein's Champagne, recently decided by the Supreme Court of the United States, 3 Wall. 145, the market value of articles of merchandise at a particular place in a foreign country was held provable by letters written by third persons, offering to sell at specified rates. The principle which supports these cases will allow the market reports of such newspapers as the commercial world rely upon to be given in evidence. As a matter of fact, such reports, which are based upon a general survey of the whole market, and are constantly received and acted upon by dealers, are for more satisfactory and reliable than individual entries, or individual sales or inquiries; and courts would be justly the subject of ridicule if they should deliberately shut their eyes to the sources of information which the rest of the world relies upon, and demand evidence of a less certain and satisfactory character."

> "*Whelan* v. *Lynch*, 60 N. Y., which seems to have been followed by the Supreme Court of Appeals of Virginia in *N. & W. R. R. Co.* v. *Reeves*, 97 Va. 284-289, is directly in conflict with *Terry* v. *McNeil*, 58

Barb. 241, which the court in *Whalen* v. *Lynch* do not undertake to overrule, but evidently misconstrue, as is pointed out in the note to *Sisson* v. *Cleveland*, in 90 Am. Dec., in which some of the cases in direct conflict with *Whelan* v. *Lynch* are discussed. 90 Am. Dec. 255."

"When subjected to the test of reason and authority the decisions in both *Whelan* v. *Lynch* and *N. & W. R. R. Co.* v. *Reeves* will be found to be erroneous to the extent that they are inconsistent with the rule as established by the authorities which we cite."

"It must be remembered in this connection that *Whelan* v. *Lynch and N. & W. R. R. Co.* v. *Reeves*, involved transactions of recent occurrence, as to which there must have been no difficulty in obtaining ample and direct proof as to the value of the property in controversy, while in this case the market reports and quotations constitute the best evidence obtainable."

Fortunately for the ends of justice, neither *Whelan* v. *Lynch*, nor *N. & W. R. R. Co.* v. *Reeves* (if indeed they mean what opposing counsel claim for them) are binding authorities in this jurisdiction, particularly when, as to this question, the Supreme Court of the United States has adjudicated the question adversely to those decisions, as West Virginia's counsel construe and extend them.

In Clicquot's Champagne, 3 Wall. 114, prices—current, obtained from dealers of manufactured articles, which had been prepared and used by them in the ordinary course of their business, and which were objected to on the ground, among others, that they were hearsay, that no actual transactions were based on them, that the price lists were not connected with the wine in controversy, and that the wines enumerated did not appear to

be of the same quality as the wines in question, and though the price list referred to was not furnished by witnesses under oath, were admitted in evidence, this court holding that it was competent evidence, which should be admitted in the interest of truth. In making this decision, the United States Supreme Court says:

> "While courts in the administration of the law of evidence should be careful not to open the door to falsehood they should be equally careful not to shut out truth. They should not encumber the law with rules which will involve labor and expense to the parties, and delay the progress of the remedy,—itself a serious evil,—without giving any additional safeguard to the interest of justice. We think the price current is not liable to the objection that it was hearsay. It was prepared and used by the party who furnished it in the ordinary course of his business. It is as little liable to that objection as the entries in the books of the dealer, or his answers to the inquiries of a witness, both of which were admissible upon the authority of the case referred to in Wendell. It was clearly relevant. What effect it should have, in connection with the other evidence adduced by the parties, was a question for the jury."

By the same token the price lists and market reports introduced by the Plaintiff in this case are clearly competent evidence.

The language of this decision may have gone further than was necessary to justify the conclusion reached, for the price lists in that case seem to have been furnished by the agents of Clicquot and were admissible on that account; but though to that extent *obiter*, the statements and reasoning of such an "*obiter*" by the highest court in the land are strongly persuasive as authority.

The doctrine enunciated in Clicquot's Champagne, 3 Wall., 114-115, was confirmed, emphasized, and extended, in Fennerstein's Champagne, 3 Wall. 14-149 in which it was held, that:

> "Letters to third persons from foreign dealers in regard to the prices of an article in a foreign country, are admissible to prove such prices." Syllabus of case, 3 Wall. 145.

This case carried the doctrine farther than it is necessary that it shall be carried to sustain the competency of the market reports published in the Richmond Dispatch, which the plaintiff has tendered as evidence of the market value of the securities mentioned therein.

Again, we find the rule of evidence and of reason which we advocate, reaffirmed by the United States Supreme Court in *Chaffee* v. *The United States,* 18 Wall. 516, where the Court says:

> "Market value is a matter of opinion which may require for its formation the consideration of a great variety of facts. To arrive at a just conclusion prices—current, sales, shipments, letters from dealers and manufacturers may properly receive consideration."

Such are the decisions of the tribunal of last resort in our land,—the very court in which this case is now pending.

The following very recent cases decided by the Supreme Court of North Carolina are the latest decisions upon this question, and sanction the wise rule established by the authorities above cited.

In *Moseley* v. *Johnson,* 144 N. C., 25, 56 S. E. 922, that Court held, at page 927:

"In this connection it is contended that his Honor erred in permitting quotations from the market reports of the Morning News, a daily newspaper published in Georgia, showing quotations for these debentures, and also of the Ocean Steamship Company bonds, under date of June 1, 1904. These were Georgia corporate securities and had a market value in that State . . . The competency of such evidence is settled. In this State it is held that market reports of such newspapers as the commercial world rely on, are admissible as evidence of market values." *Fairley* v. *Smith*, 87 N. C. 367, 42 A. M Rep. 522; *Sisson* v. *Ry. Co.*, 14 Mich. 496, 90 Am. Dec. 252; 3 Wigmore on Evidence, Sec. 1704; 1 Elliott on Evidence, Sec. 419.

The same doctrine is reaffirmed by the North Carolina Appellate Court in *Ferebee* v. *Berry*, decided February 16, 1915, reported in Advance Sheet, S. E. Reporter, Vol. 84, No. 9, page 262, issued March 13, 1915, as follows:

"Market reports, properly compiled and published in such newspapers as the commercial world relies on in the conduct of business and important affairs, are admissible in evidence of market values." Citing Moseley v. *Johnson*, 144 N. C. 257, 56 S. E. 922.

But not content with relying upon these adjudications, the Plaintiff has gone farther, and as far as it was practicable, or could be reasonably required, even if *Whelan* v. *Lynch* and *N. & W. R. R. Co.* v. *Reeves* were binding decisions in this case, has put into the case evidence, which meets, as far as can be reasonably expected, the points made against Market reports and prices-current, in *Whelan* v. *Lynch* and in *N. & W. R. R. Co.* v.

Reeves, by proving conclusively and abundantly, that:

1st. The Richmond Dispatch in which these market reports and price lists were published was a reputable and excedingly reliable newspaper, and that its financial and market reports were accepted, relied upon, and acted upon by the business public as true and trustworthy, and

2nd. By the evidence of living witnesses, and by the immutable testimony of the original books from which some of those published reports were derived, the sources of the information from which the prices given in those reports were obtained.

Under the controlling authorities which we have cited, or by logical and inevitable sequence from them, the current, contemporaneous market reports published in reputable newspapers in the community in which the stocks, securities and commodities are dealt in, bought and sold, constitute evidence, which is not only competent, but often, as in this case, the very best and most reliable evidence, in the nature of things obtainable, as to the value of the securities and commodities, in such community at the date of such reports; and like other historical papers and publications coming from trustworthy sources, *they prove themselves.*

But the plaintiff has supported the evidence as to the market reports, and market values of the stocks and bonds which are the subjects of this inquiry, by evidence which will be found to satisfy the most rigid requirements which can be reasonably prescribed, or which can be fairly deduced from *Whelan* v. *Lynch,* or any case which follows that questionable decision, as will be

seen from an examination of the testimony introduced into the cause on the 20th and 21st of November, 1914.

It will be observed that the market quotations of railroad and canal stocks and bonds, and bank stocks, and reports thereof, introduced into the cause and relied on by the Plaintiff, were chiefly those published in the Dispatch Newspaper in the City of Richmond, Virginia, in 1860, 1861 and 1863 and 1864, and copied into Plaintiff's Exhibit, No. 2, printed in the Record of the present hearing at pp. 311 to 321 E, and 333 to 344 E, inclusive, in each case, with such additional supplemental evidence, and schedules as have been put into the case since the last hearing before the Master.

It will be seen from an inspection of said schedules that a large number of said market quotations were based on the current reports of John A. Lancaster & Son, and Lancaster & Co., and of Davenport & Co., the first two firms, brokers, and the last named, stock auctioneers and brokers, doing business in Richmond during those periods.

Now, the Plaintiff has been exceedingly fortunate, after the lapse of more than half a century, in finding living witnesses of the highest character, and possessed of unusual opportunities for obtaining the facts in regard to the matters as to which they testify, and of great intelligence.

By these witnesses the following facts are proved:

Col. W. H. Palmer, 79 years of age, a man of large business experience, President of the National State and City Bank of Richmond, testifies first as to the character, reputation, and standing for business integrity, of the brokerage firms of John A. Lancaster & Son, Lancaster & Co., and Davenport & Co., and then as to character and standing of the Dispatch Newspaper, and of its

market quotations of stocks and bonds, and their acceptance as reliable and "correct."

His testimony is brief and we beg to quote the following extracts from it:

"Q2. Please state whether or not you were acquainted, by reputation or otherwise, with the firms of John A. Lancaster and Son, and Lancaster & Co., and Davenport & Co., during the period of the Civil War—prior thereto, and during that period?

"A. I knew of the firms in the brokerage business very well—Lancaster & Son before the war and after the war. I do not remember when Davenport & Co. commenced; but Lancaster and Co., I knew before the War. I dealt with them.

"Q3. Did you or not deal with Lancaster & Co. both before and during the War?

"A. Both before and after the war.

"Q4. I don't know whether your answer covered that, or not; were those firms, according to your recollection, engaged in business during the war?

"A. They were.

"Q5. How were they regarded, Colonel, in the business world?

"A. They were regarded as first class brokers.

"Q6. Were you, or not, familiar with the Dispatch, a newspaper published in the City of Richmond?

"A. Yes, I received it nearly every morning.

"Q7. Did your acquaintance with the Dispatch relate to the period both prior to and during the War

"A. Yes.

"Q8. What was the character and standing of that newspaper?

"A. Very high.

. . . . . .

"Q11. State whether or not you remember see-

ing market quotations published in the Dispatch, either prior to the War or during the Civil War—market quotations of stocks and bonds?

"A. Yes.

"Q12. In the name of what firm or firms were those publications made?

"A. I saw the market quotations both before and during the war. I take it that they were from those firms, but I could not swear that they were from those firms. I read the market quotations very regularly during the war, before and after the war, in the Dispatch.

"Q13. Then the market quotations of stocks and bonds did appear in the Richmond Dispatch, both before and during the period of the War?

"A. Yes, sir.

"Q14. And you frequently read them and consulted them?

"A. I read and consulted them, yes.

"Q15. How were they regarded, Colonel, with respect to their reliability?

"A. Absolutely as the transactions of the day and as correct."

"Re-Direct Examination:

"RDQ 1. You spoke, Colonel, of having a good many securities to handle during the war, and in that way had some independent knowledge of the market?

"A. Yes.

"RDQ. 2. Did you deal with Lancaster & Co.?

"A. I dealt with Lancaster & Co. before the war and after the war. I simply knew of the securities that were in my hands, belonging to an estate, and so on; but I naturally looked at the quotations published during the war, from having these securities. I examined the quotations for that reason, that I was interested in them.

"RDQ. 3. Then you did examine the quotations

that appeared in the Richmond Dispatch during the war, because you were interested in seeing what the market quotations were?

"A. Yes, sir.

"RDQ. 4. As a matter of fact, did your father have any connection with Lancaster & Co., in business; was he instrumental in starting them in business, or anything of that sort?

"A. My grandfather started Lancaster in business.

"RDQ. 5. Your grandfather started Lancaster in business?

"A. Yes.

"RDQ. 6. John A. Lancaster was in business then for many years before the war?

"A. Yes, my grandfather started the old man in business, and his son both, and I knew them, of course."

Col. John P. Branch (84 years of age), President of the Merchants National Bank, a man of large business experience, testified as follows: First, as to the reputable character and standing of the Dispatch newspaper and its market and financial reports, and their acceptance by the public, and then as to the standing, reputation, and character of John A. Lancaster and Son, and Lancaster and Co. for commercial integrity.

We quote as follows from his deposition, pp. 1237 to 1240:

"Q. 7. Were you acquainted with the Richmond Dispatch newspaper, as a newspaper, at that time?

"A. Yes. It was published in Richmond.

"Q. 8. What was the standing, reputation and character of that journal at that time?

"A. Very good.

"Q. 9. What was its standing as a journal giving

information upon financial matters—as to the information furnished by its financial columns?

"A. Well, sir, it was very reliable.

"Q. 10. Do you remember, Colonel Branch, anything as to the market quotations of the values of stocks and other securities appearing in that paper during that period, particularly from 1861 to 1863?

"A. I do not.

"Q. 11. You have no independent recollection of them?

"A. No.

"Q. 12. Do you know that there were such publications in the paper?

"A. Yes, they were published in the newspaper referred to by you.

"Q. 13. Can you state how they were esteemed and regarded by the business public in this community and in Virginia?

"A. Well, I can say, in Richmond and Petersburg, and the vicinity, very good.

"Q. 14. Can you say whether they were accepted by the public as reliable quotations of the values of those stocks and securities?

"A. They were accepted by the public—they were relied on by the public, as being true, so far as I know and believe.

"Q. 15. Were you acquainted with the firm of John A. Lancaster and Son, and its successor, the firm of Lancaster and Co.?

"A. I was, yes, and had business transactions with them.

"Q. 16. Do you know the standing and reputation of those firms, as brokers and bankers? If so, please state what the same was.

"A. They were considered very reliable people—reliable and honest.

"Q. 17. How were any stock quotations furnished by Lancaster and Son, or Lancaster & Co., and pub-

lished in the Richmond Dispatch or other newspapers, regarded by the public?

"A. I do not know, as a matter of fact, that they published any of these quotations, but the newspapers did publish them and stated that they were the quotations of these banking firms. What I mean by that is, I did not see the type put, or anything of that sort, but they were believed to be their quotations."

Mr. John B. Purcell, President of the First National Bank of Richmond, made the following statement, which it is agreed shall be taken and read as his testimony in the cause. Record, p. 89.

"I, John B. Purcell, of the City of Richmond, President of the First National Bank of Richmond, hereby certify that I have known the firms of Jno. A. Lancaster and Son, and Lancaster & Co., for many years up to the time the succeeding firm went out of business, and during this period was embraced the time occupied by the late Civil War in which I was engaged; that they were dealers in stocks and bonds and other securities in this City of Richmond, and that I further have known and seen advertisements of market reports of stock and bonds advertised to be sold and as sold in the financial columns of public prints. I have also been acquainted with the firm of Davenport & Co., of Richmond, who have been also dealers in stocks and bonds and are at this present day, and were during the period of the Civil War. The above firms were known to me as reputable concerns of this city.

"I recall financial notices and market reports in the Richmond Dispatch, a newspaper in good standing in the city of Richmond, and in the prints of its predecessor known as The Dispatch, and published in the city of Richmond, and that such market reports have always been regarded as dependable and relied upon by the business community of this city."

To the same effect is the testimony of Judge George L. Christian, lately president of the National Bank of Virginia of Richmond, James B. Pace, late president of the Planters National Bank of that city, and Richard W. Maury, who was a broker in Richmond during the period of the Civil War.

The above testimony is, under the authorities, sufficient to authenticate the market reports published in the commercial columns of the Dispatch newspaper, as shown by the files of that paper, kept and preserved by the Commonwealth of Virginia among the archives and historical and other papers and documents in her State Library.

But the plaintiff has put into the case even more explicit proofs.

All of this is corroborated by the testimony of Mr. John L. Williams, who was first a clerk in and afterwards a member of the firm of John A. Lancaster and Son, and Lancaster and Co., and is still more remarkably reinforced and confirmed by the concrete evidence as to the correctness of the stock quotations published in "The Dispatch" which is afforded by the old account books of Davenport & Co., a reputable firm of stock auctioneers and brokers doing business in Richmond, Virginia, from 1861 to 1864 inclusive and for years after that period.

Extraordinary as is the circumstance that seven such intelligent and credible witnesses, familiar with facts and conditions existing from fifty-one to fifty-four years ago, as have testified in this cause, five of them now or heretofore presidents of the foremost banks in that city, were still surviving in Richmond, to bear testimony to those facts,* a still more remarkable incident

in the progress of this cause, is the discovery and production in the case of the original books of account of Davenport & Co., the other principal firm of brokers and stock auctioneers, whose transactions and reports furnished in part the data for the market reports and price lists published in the columns of the Dispatch in 1861 and 1863, etc.

*Note: Two of these venerable witnesses, Mr. Branch and Mr. Williams, have died since they testified in this case.

It is a strange thing that the firm of Davenport & Co, which existed before and through the Civil War, should still survive, though, of course, with an entirely changed personnel. All those who were connected with it in the sixties have (doubtless) long since passed away.

But it is far more marvelous that the books of account of the predecessor firm of 1860 to 1865, surviving the mutations of half a century of change, including war and revolution, "destruction and reconstruction," should be now discovered in time to bring their irrefutable evidence into this case.

The incompetency of such books as evidence is urged by defendant's counsel, upon grounds which in the ordinary cases to which the doctrine which they invoke is applied, is undoubtedly a recognized rule, but which in a case like the present becomes the merest technicality, to be brushed aside in the interest of truth and right.

It was Lord Erskine who declared that "The reason of the law is the life of the law," a truth so manifest and so important that its utterance could not have been original with that great jurist.

It is true that books of account are not, under the general rule, competent evidence of what they show, unless they are proven by the oath of the responsible clerk or person who made the original entries in them, or, of such clerk or person be dead, or out of the juris diction of the court, then upon proof of his handwriting.

This is undoubtedly the general rule, except perhaps where such written evidence is sought to be introduced by third parties, that is by persons who were in no way parties to the accounts in question, as is the case here.

When such evidence is introduced by such third parties it is, we submit, competent, particularly if the entries in such book accounts were against the interest of the party making them, and were thus not self-serving, upon authenticating the book accounts in any way by legal proof.

The sole reason for requiring such accounts to be proved by the evidence of the bookkeeper who made the original entries, or, if that is impossible, then by proof of handwriting, is to authenticate such accounts, and to prevent fraud.

The ordinary general rule requires a deed or other instrument to be proved by proof of the signature, or of the due execution or acknowledgment of the instrument, by its maker, yet, where such a deed becomes, in legal parlance, "an ancient instrument," as after the lapse of thirty years or more, no such proof is required. Such an ancient instrument proves itself, if free from suspicion, and found in a rightful and proper custody.

The reasons which justify the admission of ancient deeds and written instruments without proof of their execution or of their handwriting apply with equal force

to the admission of such written records as appear upon these ancient books of Davenport & Co.

The four requirements which are prescribed, as conditions for admitting ancient writings, without proof of handwriting, are all satisfied as to these ancient books. **1 Greenleaf on Evidence, 16th Edition, Section 575-B, page 721 *et seq.***

(1) They have been in existence thirty years, indeed more than fifty years.

(2) They were found in a proper and rightful custody in the very depository and custody in which such books, if genuine, would be expected to be found. They were found in the old vault in the counting house of Davenport & Co., which was the depository of the old books of account of that firm, after they ceased to be used, and in which a large number of such old books were deposited.

(3) They not only have no suspicious appearance, but present upon their faces, and in themselves, the indisputable indicia of their genuineness.

The fourth requisite laid down by the authorities, namely: (4) "That there must be, if the writing purports to convey title to land, some other attendant circumstances corroborating its genuineness," etc., is also substantially satisfied as to these writings by the potential circumstance, amply proved by the testimony of Mr. Washington, Vol. 3, Supplemental Record, p. 176, etc., that the accuracy and authenticity of the entries made on the blotter of Davenport & Co. and carried forward to their day book, journal and ledger are shown by the fact that the same identical items, facts and figures ap-

pear in the contemporaneous daily issues of the Dispatch newspaper in the reports of sales made by Davenport & Co. upon those very dates.

This is proof as strong as Holy Writ. The authenticity and fact of the entries in these old books are thus confirmed by evidence far stronger than any proof of handwriting or any testimony based on human recollection could possibly be.

In addition to these conclusive indicia of truth, it is to be observed that all of these entries were made *ante litem motem,* and that many of them charging Davenport & Co. with the receipt of the proceeds of the sales of the stocks, etc., mentioned, were entries against the interest of the party making them and become competent evidence for that reason, not only of the facts adverse to the interests of Davenport & Co., but as to any other facts or circumstances which they disclose. 1 Greenleaf on Evidence, 16th Edition, Section 147.

In addition to the above grounds for their admissibility those entries in Davenport & Co.'s books constitute parts of the *res gestae* of the transactions to which they relate, and are competent evidence on that account, when the genuineness of the books is shown. Idem, §§ 575-B, paragraph (4), p. 720.

The rule dispensing with proof of handwriting, as to ancient writings, other than deeds or other instruments, applies to "entries and writings" such as those in these old books. *Id.* §§ 570, 578 and § 154, and the cases cited in footnote to §154.

These venerable books of account are in themselves facts, and facts of great significance.

It is utterly incredible that they could have been manufactured for any purpose sinister, or otherwise,

or could be other than they purport to be. And yet, in order to reject them as evidence, we are driven to the alternative presumption that these books were fabricated by somebody for some purpose; for if they are not genuine then they must have been so fraudulently made up and compiled, a conclusion against which any intelligent and impartial mind must revolt.

These books, presenting, as they do, upon their pages and in their very appearance, the evidence of their genuineness, found in the rightful and proper depository and custody of such records, confirmed in general and in every particular and detail by the contemporary publications in daily issues of the Richmond Dispatch, bearing upon their face entries which were against the interest of the parties making them, and which were of the *res gestae* of the transactions to which they relate, are not only evidence, but the very best and most satisfactory evidence of the facts which they record.

Comment has been made upon the fact that the market reports and quotations on which we rely are not those of a stock exchange like the present New York Stock Exchange, whose reports are everywhere accepted as evidence.

That is true. There was no such stock exchage in Richmond in 1861-1863; nor was there then in New York, and it is undoubtedly true that the market reports and quotations and prices current which by the overwhelming weight of authority in our country, dur-

ing more than half a century, have been accepted as evidence, were not the market reports or quotations furnished by any stock exchange.

Nevertheless such market reports and quotations from the financial columns of reputable newspapers have been accepted as evidence, if not as proof.

To fairly consider this question, it is neessary for us, as far as practicable, to put ourselves in the environment in which these transactions occurred, and to take account of the conditions there existing.

> "Richmond was then a comparatively small town of less than 50,000 inhabitants. There were comparatively few companies or enterprises in the region of which it was the financial center, the shares of which were the subjects of exchange and sale.
>
> "The transactions of that kind were at that time, everywhere in our country, far less frequent than they are now, but they did occur, and they were doubtless relatively of as much importance, and probably of as great interest to that little community, as larger transactions are today.
>
> "Lancaster & Son and Lancaster & Co. constituted at that time practically the stock exchange of Richmond.
>
> "They were relatively as important and as conspicuous in the financial life of that community as is the Richmond Stock Exchange today, or even as is the New York Stock Exchange in the business life of the Country. At all events they were a reputable and trust-worthy firm of brokers, and their market reports and quotations of stocks and bonds were accepted as true and were relied upon and acted upon by the business world whom they served."

It will not do to reject such evidence, when we are in search of the truth.

Notwithstanding the weight of the authorities, and the force of the facts and considerations above mentioned, the learned Master has discarded all of the evidence as to the values of these stocks, afforded by the contemporary financial and market reports, daily published in the financial columns of "the Dispatch", a reputable newspaper whose financial and market reports are proved to have been accepted and acted upon by the business public as entirely trust-worthy and accurate, and at the same time the Master has accepted and treated as evidence the unsupported statements and figures from the books of those companies as to the original cost of their several properties, and the amounts invested, and, it may be, sunk in prosecuting their respective ventures, as evidence, indeed in large measure, as proof of the value of those properties, and of shares in the respective enterprises, years, and in some instances decades, after those expenditures had been made.

COMPLAINANT'S EXCEPTION, NO. 4,

which is as follows:

> "Complainant respectfully excepts to the finding and conclusion of the master in allowing $149,984.00 as the basis for an item of charge against Virginia and of credit to West Virginia, being the value of a 'divided bond' of the Richmond, Fredericksburg and Potomac R. R. Co. held by Virginia, for which obligation Virginia realized only the equivalent of $19.111.11 in lawful money, that being the value of the Confederate currency in which said obligation was paid off by said company, which was all that the complainant ever realized or can ever realize from said dividend bond." (See Plaintiff's Exhibit, No. 3, 363 E.)

This item was for payments made to Virginia by the R. F. & P. R. R. Co. of $149,984.00 on account of a "dividend bond" of that company. The payment was made in Confederate money, in two instalments, the first of $27,520.00 on the 13th of March, 1863, and the second of $122,464.00 on July 1, 1863, the two sums aggregating $149,984.00. See Defendant's Exhibit, No. 3 (Asset 19), 44 E.

These payments charged against Virginia, having been made in Confederate money, should have been *scaled* by the Master, as were similar payments made by the Virginia & Tennessee R. R. Co. scaled by him. (See page 52 of his Report.)

Applying the scale the charge should have been $19,111.11. See Plaintiff's Exhibit, No. 3, 363 E.

COMPLAINANT'S EXCEPTION NO. 5.

As to the value of Virginia's holdings in the James River and Kanawha Company, pp. 100 to 106 of the Master's Report.

Complainant's Exception No. 5.

"Complainant further excepts to the findings and conclusions of the master as to the value as of January 1, 1861, of the holdings of Virginia in the James River and Kanawha Company, as set forth at pages 100 to 106 of his report, for the reason that said findings and conclusions and the grounds upon which they are based, are in conflict with the Master's former finding, and with the evidence in the cause, which demonstrates that after making the necessary, reasonable and moderate allowances for depreciation of its physical property, said company was to all practical intents and purposes insolvent on and after

January 1, 1861; and, at any rate, the holdings of Virginia therein, possessed no dividend earning capacity, and no appreciable value, whatever, on or after that date."

As the enterprise which this venerable company was organized to construct was a dream of the fathers of the Commonwealth, which unfortunately turned out to be an irridescent dream, so any hope or expectation that any dividends, or direct profits would ever be realized from its construction or operation, were by the inevitable logic of events, dispelled "like the baseless fabric of a vision."

From the time say in the fifties, when the practicability and desirability of transportation by railways ceased to be a problem, any such proposition as the James River and Kanawha canal ceased to be a possible financial success. In the Sixties some loyal and sanguine gentlemen, like Col. Thomas H. Ellis, the president of the company, and some optimistic adventeurers like M. Ernest Bellot des Minieres, still had very vivid dreams of the possibilities of the projected waterway, and they were willing, the former to grant and the latter to accept, an option to take over that company, on terms which would give the State for her $10,400,000 actual input (an input which had only yielded her about $10,000 in over twenty-five years) an annuity of $165,000, a year which could be extinguished by the cash payment of $2,225,000.

But after repeated and protracted efforts, by Monsieur Bellot des Minieros and his associates, who were vouched for as men who had the confidence of captilists, and could influence the investment of capital in promising ventures, were unable to secure from the monied men. and investors of the world, the funds necessary to carry

through that project, and it speedily lapsed, and signally failed to materialize.

The canal company dragged along a somewhat precarious existence throughout its entire career, without earning any net revenues down to 1860, running the gauntlet of disasters from freshets and from freezes, and escaping bankruptcy by the grace of God, and the generous assistance with which the Commonwealth from time to time came to its relief. Down to the fiscal year beginning September 30, 1860, it had run enormously in debt, and only by repeated grants of financial assistance by the State, was it enabled to keep its head above water.

In that year, Virginia, by the Act of her General Assembly, passed March 23, 1860 (Vol. 2), 67 E.,—came most generously to the relief of the canal company, assuming the entire amount of the large funded indebtedness of the company theretofore guaranteed by the State, releasing without a dollar of payment $360,000 of the indebtedness of the company to the State, accepting preferred stock of the company at par for that assumed indebtedness, and for the balance of the large debt already due by the company to the State, and actually advancing the company $200,000 to aid it in paying its large floating debt; and in addition to this, authorizing the company to create a paramount mortgage upon its works, property, and revenues to the amount of $2,500,000 for the purpose of completing the canal to Covington, "*carrying on their other works, and paying the residue of their floating debt.*"

The facts shown in this record and in the records of the company, show that the company was, if not actually insolvent, in failing circumstances when Virginia came thus liberally to its rescue in 1860. The only thing which had saved it from practical bankruptcy be-

fore that time was the fact that its principal and its preferred indebtedness was due to and controlled by such a generous and indulgent creditor as was Virginia.

By the Act of March 23, 1860, Virginia practically took over the canal.

From that time on as we shall presently see, the canal company was continually running behind, as indeed had been the case throughout its entire history, except that for the year 1836 it had an indicated earning of the large amount of $10,092.00.

In their efforts to give some value to Virginia's large nominal interest in this company the Defendant has adopted various more or less inconsistent theories and resorted to diverse claims, none of them supported by the facts.

In the Defendant's Supplemental Answer, she values that interest at $2,600,000 or 25 *per cent.* of $10,400,000 but that was merely a guess and a very wild guess absolutely unsupported by any proofs. See Defendant's Supplemental Answer, "Class G," pp. 59-60.

Then in Defendant's Exhibit, 1861, No. 7, Sheet 1, 58-59 E., the value of the canal property in 1861, is put at $5,437,341.38 and in Sheet II. of same exhibit at $5,410,429.54. See also Defendant's Exhibit, 1863. No. 7, 173-175 E.

Each of these estimates is based upon certain figures and estimates of value, which are furnished by the books and reports of the Richmond and Alleghany Railroad Company, in a self-serving effort to boost the affairs and particularly the stock of that company.

The wild extravagance of those figures, and their utter unreliability are shown by the fact that after the R. & A. R. R. Co. had built and equipped a railroad along the line of the canal 195 miles to Buchanan 34 miles thence

to Clifton Forge, with a branch of 21 miles to Lexington, making 250 miles in all, with sidings, yards, depots, and equipment, the cost of which to June, 1863, when the R. & A. R. R. Co. was thrown into liquidation and its property placed in the hands of receivers, was represented by two mortgages, one of $5,000,000 and the other for $4,000,000; and yet, that after expending the large sums representing the cost of that 250 miles of road upon the canal property, the whole property, including the Richmond Dock and the railroad, its branches and accesories and its franchises, was sold at public auction on the 15th of April, 1889, after due advertisement, when the entire works, property and rights of the company brought only $5,000,000, which, after paying the costs of suit and sale and the receivership, did not suffice to pay the principal sum of the bonds secured by said $5,000,000 mortgage.

If the entire property of the canal company, after having more than $5,000,000 expended upon it, brought at public auction only $5,000,000 it can hardly be contended that that property, before it was thus improved and enhanced in value, could have been worth any considerable sum, or indeed possessed any money value whatever.

Strongly confirmatory proof that the canal property was worth nothing after the payment of the debts which the canal company owed, is afforded by the fact that not only the State, but the private stock-holders of the canal company, agreed to the sale of the entire property of the canal company to the R. & A. R. R. Co., without the payment of a dollar either to the State or the private stockholders for their stock, upon the condition that the R. & A. R. R. Co. would build a railroad upon the general line of the canal from Richmond to Clifton Fofge, with

a branch to Lexington, within twenty months from the sale and conveyance of the canal property to the said R. & A. R. R. Co., and would satisfy the debts and liabilities of the James River and Kanawha Company. See deed from the J. R. & K. Co. to the R. & A. R. R. Co. and the schedule of debts annexed thereto. 209-220 E., and the several Acts of Assembly of Virginia, at pp. 199-208 E.

The conveyance authorized by said Acts was made March 4, 1880, so that the railroad was required to be built by November 4, 1881.

The figures furnished by the records of the canal company, as shown by the schedule compiled by Mr. Potter, show that there was a deficit in the current receipts of the J. R. & K. Co. from its organization in 1835 down to September 30, 1860, *"of not less than* $1,302,955.75 *without making any allowance for the depreciation of its property"*. (To this sum, $1,302,955.75, there should be added the $360,000 of indebtedness which the State at that time gave and released to the company without receiving any return for it whatever.) See pp. 1187 to 1190 E. and Mr. Potter's testimony on the 9th of December, 1914, pp. 1338 to 1342.

Whether this deficit occasioned, as would ordinarily have been its effect, a corresponding impairment of the capital of the company or whether it caused a corresponding increase in the indebtedness of the company, which latter result seems to be in accordance with the facts, it certainly shows not only that the property of the company as then constiuted, did not possess any earning capacity, but that the company was and had been for years losing and heavily losing money, so that its stock could not have possessed any considerable money value.

Considering its condition, the market quotations of its stock in 1861 and in 1863 were exceedingly high, even if the shares sold had been part of its $7,400,000 of preferred stock, instead of being, as was the case, doubtless shares of its common stock.

The master evidently had misgivings as to the correctness of his conclusions, for at the foot of page 105 of his Report, he says:

> "The average net returns for 25 years, $111,800, less the interest on $199,000, $11,940, is $99,860, I think it reasonable to assume that, if it had not been for the disturbing conditions caused by the war, this average might have been realized from the operations of the Company. This sum makes no allowance for depreciation; and there is nothing in the record, and I have not been able to find any data, which enables me to determine what allowance should be made therefor. I feel certain, however, that this property would require a substantial sum to take care of depreciation. In the absence of information, I do not feel at liberty to conjecture; and while I capitalize $99,850, as the only basis upon which I can predicate a conclusion, in doing so I feel that I reach an excessive valuation, particularly in view of its subsequent history. Capitalized at 6 per cent. we have a value of $1,664,333."

This concludes our review of the questions raised by the Defendant's and the Plaintiff's Exceptions.

The plaintiff desires only that such a result shall be reached by the decision of the Court as shall be in accordance with the legal and equitable rights of the parties.

Such a decree must place upon the new State a large sum on account of this long ignored obligation but one which West Virginia equitably owes and which the Com-

plainant is justly entitled to recover for those who have placed their interests in her keeping, and in her own behalf.

Respectfully submitted,

JOHN GARLAND POLLARD,
Attorney-General of Virginia.

RANDOLPH HARRISON,
WILLIAM A. ANDERSON,
Associate Counsel for Virginia.

April 15, 1915.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No 2, Original.

IN EQUITY.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

SUPPLEMENTAL BRIEF FOR WEST VIRGINIA UPON THE SUBJECT OF INTEREST.

Section VIII of article VIII of the Constitution of West Virginia constitutes the contract between the two States, and it is simply a promise made by the representatives of the people of West Virginia in constitutional convention assembled unto the State of Virginia to assume an equitable proportion of the public debt of Virginia existing prior to January 1, 1861. How broad is this promise and how far-reaching? Does it simply mean the assumption upon the part of West Virginia of an equitable proportion of the principal of that debt, or does it carry inherently with it or by implication the assumption or payment of an equitable pro-

portion of the interest accruing on that debt as well as an equitable proportion of its principal?

A debt, as defined by the law writers, is a specific sum that is due, and, applying this definition to the contract in hand, the debt to the payment of which West Virginia promised to contribute could have meant nothing more than the principal as it existed prior to the first day of January, 1861, and no unearned interest thereon. Unearned interest was not contemplated, and there was no promise to pay anything arising or accruing either in the shape of principal or interest after the first day of January, 1861. The real meaning of the contract is, and such was the intention of West Virginia, that out of the principal of the then existing debt, whatever its total amount at that time may have been, an equitable proportion was to be carved and set aside as the principal of a new debt created against West Virginia and in favor of Virginia. The old debt owing by the State of Virginia to her bondholders would go right along undiminished and unaffected by the agreement between the two States. West Virginia made no promise to these bondholders, and by the new contract the obligation of Virginia to her bondholders was not diminished, but remained the same. The principal of her debt to them remained the same and it bore interest just as it did before and both were to be paid by her to them. The fact that West Virginia might pay Virginia certain moneys would not affect the situation, for Virginia, after she had received these moneys from West Virginia, was under no obligation to apply them to the discharge of her debt to the bondholders. She was at perfect liberty to spend any money she received for any other purpose that she might please, or she might use it for the discharge of a portion of her bonded debt. There was nothing imperative upon her in this connection. The contract was and is silent upon this subject, and its terms do not make any moneys to be paid thereunder a trust fund in the hands of Virginia to be applied to the discharge and settlement of

her bonds. West Virginia made no promise to Virginia's bondholders. She does not know them and can have nothing to do with them.

The new debt thus created and existing between the two Virginias might bear interest, it is true, but it would be by virtue of the fact that the contract between the two States so provided. It would not be by virtue of the fact that the old bonded debt of Virginia, existing prior to January 1, 1861, bore interest.

If the promise of West Virginia to Virginia, by way of illustration, had been to pay not an indefinite equitable proportion of the public debt of Virginia as it existed prior to January 1, 1861, but had been a promise to pay a definite and ascertained part thereof, such as one-third, one-fourth, or one-fifth, the only thing necessary to be done would have been to ascertain the full amount of the net debt and then take one-third, one-fourth, or one-fifth thereof, whatever the case might be, as the measure of the obligation resting upon West Virginia to the State of Virginia, and as soon as this amount had been determined West Virginia might have at once ended all her obligations to Virginia by paying her in cash the amount so fixed and ascertained. If she had had current moneys on hand sufficient for the purpose and had paid them over to Virginia, her entire obligation would have been settled and at an end. No question of interest would arise between the two States at all. Virginia would have been compelled to receive the money thus tendered for the reason that the contract between them does not say when it was to be paid, whether it was to be upon time or in cash, and Virginia could not have refused to receive the sum so ascertained and the question of interest would have been eliminated forever without any interest ever having run. Or, upon the other hand, if West Virginia had had no current funds with which to settle the principal thus ascertained, she might have issued her bonds, payable to Virginia, to bearer, or to the order of Virginia for the amount of the

principal and bearing on their face such rate of interest as might be agreed upon between the two States, not necessarily the same rate that was borne by the old Virginia bonds. Or West Virginia might have issued her bonds and sold them to her own citizens and raised the money wherewith to discharge her debt to Virginia; and she might have been able to negotiate bonds in this way at two or three per cent interest, at least for a much less rate of interest than is borne by the Virginia bonds, and after they had been so negotiated she could pay the lesser rate to the holders of her bonds and no interest would accrue or be paid to Virginia.

It may be said, however, that all this will be granted; that no question will be made of these propositions or either of them, but that West Virginia did not do this; that she did not ascertain and discharge the principal in the way suggested and thereby prevent the running of interest. The answer to this suggestion, however, is that West Virginia did not do it because she could not. There never was a time when she, standing alone, could have ascertained her equitable proportion of the Virginia debt, and had she had the money to pay it, she could not have accomplished it for the reason that she did not know how much it was. It was not one-third, or one-half, or one-fifth of the Virginia bonds, but it was an "equitable" proportion thereof, which means nothing until after the equities have been examined and the amount made definite.

There are but two ways in which this indefinite sum could ever have been fixed; first, either by the agreement of the parties; or, second, by an application to this court. West Virginia could not have applied to this court because a debtor cannot sue the creditor. The man who owes cannot sue the man he owes, but the other must institute the proceeding against him. Virginia was the claimant and West Virginia had no claim against Virginia to enforce. And when we turn to the other method of ascertainment, namely, by agreement of the parties, we find that West Virginia was equally

helpless. From January 1, 1861, to June 20, 1863, she was not a State and could not negotiate. From June 20, 1863, to April 2, 1866, a state of war existed and negotiations would have been treasonable. From 1866 to 1871 a suit was pending in this court between the two States, by which the integrity of the territory of West Virginia was attacked by the State of Virginia, and until the settlement of that controversy West Virginia could not negotiate. This suit pended until the year 1871 undecided, and then nine days after its decision West Virginia sent a fully empowered Commission to the State of Virginia to ascertain, negotiate, and settle this debt. She, however, was rebuffed, and in the same year Virginia passed her funding acts, wherein she arbitrarily declared she owed only two-thirds of the debt and West Virginia owed the other third, and from that time on she never empowered a single one of her Commissions to treat with any West Virginia Commission upon any other basis. This meant that all negotiations were necessarily closed through the arbitrary conduct of Virginia, and the matter remained in this way until the present suit was instituted. Under such circumstances why should West Virginia be compelled to pay interest? She did not promise to do so, she was not in default, and interest should not be collected from her as damages and by way of punishment.

Another thought occurs upon the subject of interest, and it is this: when one promises to pay an equitable proportion of a debt as of a certain date, the equities by which the proper proportion of the debt is to be determined must be equities existing at that time, that is to say in this case, January 1, 1861, and cannot be determined by such equities as may have arisen or exist in the year 1915. So-called equities arising more than half a century after the contract was made were not contemplated by the parties. They did not have them in mind, and when they set up a standard of equity for the apportionment of the debt, the equities in contemplation of the parties must have been the surrounding circum-

stances at the time. In other words, had the contracting parties sat down on January 1, 1861, to ascertain West Virginia's equitable proportion of the then public debt of Virginia, they could not have looked forward and added into and made a part of that debt the interest that had not then been earned. Unearned interest was not a part of the debt. Neither could they, in the year 1915, sit down and look back and embrace as a part of the debt existing prior to January 1, 1861, the interest that had accrued after that time. In other words, this interest could not get into the debt either by anticipation or by retrospection.

There seems to be in this contract no express promise to pay interest and it is well settled that a sovereign State may not be charged with interest in the absence of an express promise to pay the same made either by the legislature or by its public officials thereunto lawfully authorized.

It is likewise well settled that interest cannot be charged either by virtue of a promise or as damages upon an amount that is unliquidated, the simple reason for such a rule being that you cannot ascertain six per cent or five per cent, or three, of any sum, unless you know what that sum is. You do not know what interest to pay because you do not know the amount of principal upon which it is to be paid. Two per cent of an unknown quantity would mean nothing and so would five, or six, or any other rate.

The principal here was absolutely unliquidated. Nothing could have been more so. It could not be arrived at by mere mathematical calculation, because the promise was not to pay one-fourth, one-fifth, or one-third of a definite amount, or any specific fractional part. It was to assume an equitable proportion of the public debt, whatever that might be, and the very use of the word "equitable" showed that evidence had to be taken, investigation made, and judgment given before the sum to be paid could be ascertained.

The strict law, therefore, would seem to be against the contention made by Virginia that West Virginia should be

charged with interest, and we find the equities strengthening this conclusion. The public debt of Virginia was created in the construction of railroads and canals, all of which were located within the limits of Virginia and she has them yet. When West Virginia was cut off she received none of these public improvements, but they were all left behind. Now after she has paid, we will say, toward the construction of these roads 23½ per cent of their cost and her territory has been cut off, taking with it none of these improvements, but leaving them all behind within the limits of Virginia, has she not done enough without paying interest beside? If she pays 23½ per cent of the principal of the debt that was created in the construction of these roads, none of which she gets, has she not performed her part without adding thereto the penalty of a half century's interest? She has not received by way of consideration for her contribution to the principal of this debt one cent. She has no public buildings constructed out of the proceeds of these bonds; she has no canals built therefrom; she has no railroads paid for out of their proceeds. These are all within the present limits of the State of Virginia. Virginia gets all the public improvements and West Virginia pays 23½ per cent of their cost. Why should she pay interest in addition? What consideration has West Virginia received for the 23½ per cent of the debt she will have to pay? And if she has received no consideration for that where would be the consideration for the interest that she now might be compelled to pay upon that 23½ per cent? Would it be equitable under such circumstances to pay interest?

Let us illustrate this situation further: Suppose two landowners undertake to jointly improve a tract of land owned by them and situate in the suburbs of some growing city. They conclude to first improve the eastern side of their joint property and borrow a hundred thousand dollars for that purpose. The whole of the money thus secured is expended upon the eastern half in the construction of sewers, the pavement of streets, the laying of sidewalks, and in such betterments and

improvements as ordinarily go with city property. After the whole fund has been exhausted they tire of their joint ownership and one concludes to withdraw in consequence of the fact, perhaps, that the other desires to create and place upon the property a still greater debt, and he takes a deed for the unimproved western half, relinquishing all interest in the eastern portion of the property. And at the time he retires from the enterprise he agrees to pay to his former associate an "equitable" proportion of the debt that had been created for the purpose of improving the property in which he no longer has any interest. What, under the circumstances, would be the equities between the two parties? Is there any equity that would compel the owner of the western half to contribute to the payment of the old debt? On the contrary, would not the equities point rather to the payment by the owner of the eastern half to the retiring partner a sum sufficient to indemnify the latter to the extent of the moneys expended by him upon improvements by which he has not and never can benefit in the least? This illustration relates simply to the principal of the debt, and nothing but the established promise, even according to the strictest rules of law, would hold the retiring owner to the payment of the promised part of the debt. Equity would not raise an obligation against him to that end under the circumstances, and if by virtue of the strict rule of law alone he could be compelled to pay a part of the principal, equity, where he had been silent upon the subject of interest, would certainly not compel him to also pay interest and go thereby beyond the strict terms of his foolish and unreasonable contract.

The situation is not met by giving West Virginia merely 23½ per cent of the value of the stocks and bonds that were purchased in the creation of this debt, because this would be settling with her upon the investment side of the proposition alone. All the indirect values, advantages, and benefits that flowed from the construction of these works of internal improvement were confined to Virginia, and they were worth more to Virginia than the mere investment. The construc-

tion of the railroads and canals increased her population, developed her territory, opened up her markets, and increased taxable values within her limits. The situation may be illustrated by the construction of a railway through a wilderness. Before its construction the lands would be cheap. There would be no transportation for its forest or farm products or for the wealth of its mines in the event minerals were found. After its construction mills would spring up, towns and villages and factories, its population would grow, its wealth increase, and the State of which it was a part would benefit almost beyond measure, although it might not own a single share of stock in the company that built it.

The map filed as an exhibit in this cause, and found between pages 282 and 285 of Vol. II of the new record, presents a perfect picture of conditions in the two States at the time of their separation. Virginia was penetrated in every direction by railways and her great canal traversed the State from the mountains to the sea. West Virginia, across the mountains, had no canals or public buildings and only seventeen miles of railway. Her territory was a blank and had yet to be developed at her own expense and unaided by Virginia or any one else.

Under such circumstances, after West Virginia has donated to the State of Virginia an amount equal to 23½ per cent of the principal of Virginia's debt, why should she be compelled to pay interest on her own donation? The fact that the debt was an interest-bearing one cannot, by implication or otherwise, stretch the rules of equity to such an unheard-of limit.

Respectfully submitted,

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April 26, 1915.